

17-1129
TAX TYPE: PROPERTY TAX
TAX YEAR: 2017
DATE SIGNED: 01/17/2018
COMMISSIONERS: J VALENTINE, M CRAGUN, R PERO, R ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER , Petitioner, v. BOARD OF EQUALIZATION OF COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 17-1129 Parcel No. ##### Tax Type: Property Tax Tax Year: 2017 Judge: Phan
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to the address listed near the end of this decision.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Associate Pastor /
TAXPAYER

For Respondent: REPRESENTATIVE FOR RESPONDENT, COUNTY Attorney

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the COUNTY Board of Equalization ("the County") under Utah Code §59-2-1006, in which the County denied the property tax exemption for a portion of the parcel subject to this appeal. This matter was argued in an Initial Hearing on October 3, 2017 in accordance with Utah Code §59-1-502.5.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

The Utah Constitution, Art. XIII, Sec. 3(1) provides for certain exemptions from property tax as follows:

The following are exempt from property tax:

...

- (f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes;

...

The Constitutional exemption has been codified at Utah Code §59-2-1101(3)(a) as follows:

The following property is exempt from taxation:

...

- (iv) property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;

...

The Tax Commission has adopted Utah Admin. Rule R884-24P-40(C) regarding vacant land which states:

Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.
2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

The procedures for appealing a decision of the County Board regarding an exemption are as follows in Utah Code §59-2-1102:

- (7) Any property owner dissatisfied with the decision of the county board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006.

A person may appeal a decision of a county board of equalization, as provided in Utah Code §59-2-1006 (1), in pertinent part below:

Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

Utah law requires a County Assessor to take into account in its value of a property the impacts of having a threatened or endangered species on the property at Utah Code Sec. 59-2-301.5(2) as follows:

In assessing the fair market value of property, a county assessor shall consider as part of the determination of fair market value whether a threatened or endangered species is present on any portion of the property, including any impacts the presence of the threatened or endangered species has on:

- (a) the functionality of the property;
- (b) the ability to use the property; and
- (c) property rights.

The burden of proof in this matter is on the Property Owner. As noted by the Utah Supreme Court in *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting *Parson Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980), “exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption.”

DISCUSSION

It was not in dispute that the Property Owner is a church and that it qualified as a nonprofit entity for purposes of Utah Code §59-2-1101. The issue in this appeal was whether the portion of the parcel that had been denied the exemption met the requirement of being “used exclusively for religious, charitable, or educational purposes” as required under the statute.

The Property Owner has four parcels of property located adjacent to each other. The Church building is one parcel and the paved parking lot for the church is on a second parcel adjacent to the church. These two parcels were exempt from tax by the County and are not at issue. The Property Owner actively uses these two parcels for religious purposes. The parcel appealed and at issue, Parcel #####, is located behind the church and parking lot parcels. Parcel ##### is ##### acres in size and towards the back of the lot, has a residential building or annex,

which the church actively uses for its youth program. The County also exempted this building and the #####-acre of land around the building. The County, however, denied the exemption for the ##### acres of land between the front parcels where the church and parking lot is located and the rear portion of parcel ##### where the annex building is located. This #####-acre parcel of property is vacant and is unused land. The County denied the exemption for the #####-acres because it found the land was not used exclusively for religious purposes. The County had also denied the exemption on the fourth parcel, parcel #####, which is also a vacant land parcel and was located adjacent to parcel #####. However, the County's decision was not appealed for parcel #####.

The representative for the Property Owner explained that the Property Owner had purchased the four parcels in 1988 and the #####-acres at issue, located between the church building and the annex, had been used as a play area for the children and youth, ball field and access between the two buildings. The Property Owner had seeded the property for ground cover. The County had always exempted all of the parcels. However, according to the Property Owner, sometime prior to 2011 the nearby development of the SUBDIVISION caused an influx of Utah Prairie Dogs to move over to the subject property. He explained that originally they were told to put up an 18 inch fence and that would keep the Prairie Dogs out, but that was a complete waste of time. He found out later that Prairie Dogs could burrow fourteen feet underground bypassing fences that way. The Prairie Dogs were listed on the endangered species list and the Property Owner understood that based on federal law it could not take any action that would disturb or harm them in any way. So at this point, they could not even have canine dogs on the property and had told the children to stay away from this portion of the property so they would not harm the Prairie Dogs. Also, there was a concern that Prairie Dogs can sometimes carry diseases that could spread to humans. The Property Owner applied in 2011 to be placed on the Prairie Dog Mitigation List but these early mitigation programs allowed only very minimal removal. At some point late in 2014, the control of the mitigation programs was transferred to the Utah Department of Natural Resources, which allowed trapping to remove the Prairie Dogs. In 2015, the Property Owner applied for and received a permit to trap and remove the Prairie Dogs. In the first trapping, the Property Owner caught 153 Prairie Dogs which were removed from the property, but to keep them from returning the Property Owner was told it would have to build a barrier fence, this time 6 feet underground and 3 feet above ground. The Property Owner just did not move fast enough to get this done and so as of the lien date at issue, the property was still unused.

The representative for the County did not refute the facts provided by the Property Owner and explained that in November 2014 the Federal District Court had issued a ruling that the Federal Government did not have authority to regulate the Utah Prairie Dog, and that Utah should have control. This is when the process changed from federal control to the Utah Department of Natural Resources and property owners were allowed to trap and remove the Prairie Dogs. The Federal District Court decision was appealed and the Tenth Circuit Court of Appeals overturned the decision in the summer of 2017, so now the Prairie Dogs were back under federal control. Under federal law, property owners cannot do anything that would harm the Prairie Dogs or their habitat. The County representative acknowledged that the Property Owner may well want to use the property and would use the property absent the Prairie Dogs, but as of the lien date, the property was unused vacant land held for possible future development. The County's representative pointed out that it has previously been held that land held for future development is not exclusively used for religious purposes, citing *Corporation of the Episcopal Church in Utah v. Utah State Tax Comm'n*, 919 P.2d 556 (Utah 1996). In that case, the Episcopal Church had purchased two vacant parcels of land in 1990, which they used for outdoor church services for about 2 hours per year prior to constructing the church on the parcels. The County denied the property tax exemption for the years prior to when construction had commenced and the Utah Supreme Court found that land primarily held for future development did not meet the exclusive use criteria for purposes of the exemption. The Tax Commission has clarified the tax treatment of vacant land in Utah Admin. Rule R884-24P-40(C), which provides, "Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt."

The representative for the County did confirm that the Property Owner would not need to construct a building on this parcel in order for it to be exempt. He stated that if the property had a playground and/or ball fields that were used by the church members in conjunction with the church's activities, the property could qualify.

After reviewing the information presented in this matter, and noting that property tax exemptions are strictly construed, the County is correct that the #####-acre portion of the subject parcel as of 2017 was not being used for religious purposes, but was just being held for possible future use. It does appear that some of the factors preventing full use of the property are beyond the Property Owner's control. However, as of January 1, 2017, it seemed likely that if the Property Owner could have moved quickly, it did have a window of opportunity to remove the Prairie Dogs and develop the property, but did not do so. Further, it is not uncommon for a church to have to wait to commence construction due to lack of funding and in those cases, the

exemption is also denied. Based on the foregoing, the County's denial of the property tax exemption for the #####-acre portion of parcel ##### should be sustained.

The parties did not discuss at the hearing what value the County had placed on the ##### acre portion of the property that the County had placed back on its tax rolls and no longer exempted from property tax. It did appear that the County was aware of the Prairie Dog situation on the property prior to this Initial Hearing. Based on Utah law, when a county assessor values a property for property tax assessment purposes, the county assessor is to consider whether a threatened or endangered species is present on the property and the impact it has on the functionality, use and property rights for the property. See Utah Code Sec. 59-2-301.5. The Property Owner did not argue the County had failed to take this into account in the assessment, but both parties should be aware of this law for future actions regarding this property.

Jane Phan

Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Property Owner's appeal regarding the property tax exemption for tax year 2017. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner