

APPEAL # 21-1085
TAX TYPE : PROPERTY TAX
TAX YEAR : DATE
DATE SIGNED : 02/14/2022
COMMISSIONERS : J. VALENTINE, M. CRAGAN, J. FRESQUES, R. ROCKWELL

BEFORE THE UTAH STATE TAX COMMISSION

COUNTY-1 ASSESSOR, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.	CORRECTED INITIAL HEARING ORDER Appeal No. 21-1085 Parcel No: ##### Tax Type: Property Tax Tax Year: 2021 Judge: Halverson
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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 Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Shannon Halverson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Deputy County Attorney
PETITIONER'S REP-1, COUNTY-1 Tax Administration Supervisor
PETITIONER'S REP-2, COUNTY-1 Tax Relief Coordinator
For Respondent: No one appeared
For ex rel Party: EX REL PARTY REP-1, CEO, PROPERTY OWNER

STATEMENT OF THE CASE

Petitioner ("County") brings this appeal from the decision of the COUNTY-1 Board of Equalization. The County's appeal was filed pursuant to Utah Code Ann. §59-2-1102 and Utah

Code Ann. §59-2-1006. This matter was argued in an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 by teleconference on DATE. The County is appealing the COUNTY-1 Board of Equalization’s decision granting the PROPERTY OWNER (“Property Owner”) request for a property tax exemption for the subject property for the DATE tax year. The Property Owner is requesting that the Commission sustain the Board of Equalization’s decision granting the subject property a property tax exemption for the DATE tax year. No one appeared at the Initial Hearing to represent the Respondent, which was the County Board of Equalization.

APPLICABLE LAW

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

- (2) 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.

Article XIII, Section 3 of the Utah Constitution exempts certain property from tax, as set forth below in relevant part:

- (1) The following are exempt from property tax...
 - (f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes...

Utah Code Ann. §59-2-1101(DATE)¹ provides that certain properties are exempt from property tax as follows, in pertinent part:

- (3)(a) The following property is exempt from taxation...
 - (iv) except as provided in Subsection (6) or (7), property owned by a nonprofit entity used exclusively for one or more of the following purposes:
 - (A) religious purposes;
 - (B) charitable purposes; or
 - (C) educational purposes;

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- (6)(a) A property may not receive an exemption under Subsection (3)(a)(iv) if:
 - (i) the nonprofit entity that owns the property participates or intervenes in any political campaign on behalf of or in opposition to any candidate for public office, including the publishing or distribution of statements; or
 - (ii) a substantial part of the activities of the nonprofit entity that owns the property consists of carrying on propaganda or otherwise attempting to influence legislation, except as provided under Subsection 501(h), Internal Revenue Code.
- (b) Whether a nonprofit entity is engaged in an activity described in Subsection (6)(a) shall be determined using the standards described in Section 501, Internal Revenue Code.

¹ The Commission notes that this decision refers to the version of the Utah Code that became effective as of January 1, 2021 and is applicable in this appeal for 2021 tax year. The Utah Legislature made substantial revisions to Utah Code Ann. §59-2-1101 effective as of January 1, 2021.

- (7) A property may not receive an exemption under Subsection (3)(a)(iv) if:
 - (a) the property is used for a purpose that is not religious, charitable or educational; and
 - (b) the use for a purpose that is not religious, charitable, or educational is more than de minimis.
- (8) A county legislative body may adopt rules or ordinances to: (a) effectuate the exemption, deferrals, abatements, or other relief from taxation provided in this part, Part 18, Tax Deferral and Tax Abatement, or Part 19, Armed Forces Exemptions;² . . .

“Charitable purposes” is defined in Utah Code Ann. §59-2-1101(1), as follows:

- (a) “Charitable purposes” means:
 - (i) for property used as a nonprofit hospital or a nursing home, the standards outlined in *Howell v. County Board of Cache County ex rel. IHC Hospitals, Inc.*, 881 P.2d 880 (Utah 1994); and
 - (ii) for property other than property described in Subsection (1)(a)(i), providing a gift to the community.

“Gift to the community” is defined in Utah Code Ann. §59-2-1101(1), as follows:

- (e) “Gift to the community” means:
 - (i) the lessing of a government burden; or
 - (ii)(A) the provision of a significant service to others without immediate expectation of material reward;
 - (B) the use of the property is supported to a material degree by donations and gifts including volunteer services;
 - (C) the recipients of the charitable activities provided on the property are not required to pay for the assistance received, in whole or in part, except that if in part, to a material degree;
 - (D) the beneficiaries of the charitable activities provided on the property are unrestricted or, if restricted, the restriction bears a reasonable relationship to the charitable objectives of the nonprofit entity that owns the property; and
 - (E) any commercial activities provided on the property are subordinate or incidental to charitable activities provided on the property.

Guidance on what constitutes a “nonprofit entity” is provided in Utah Code Ann. §59-2-1101(1)(g), below:

- (i) “Nonprofit entity” means an entity:
 - (A) that is organized on a nonprofit basis, that dedicates the entity's property to the entity's nonprofit purpose, and that makes no dividend or other form of financial benefit available to a private interest;
 - (B) for which, upon dissolution, the entity’s assets are distributable only for exempt purposes under state law or to the government for a public purpose;
 - (C) that does not receive income from any source, including gifts, donations, or payments from recipients of products or services, that produces a profit to

² The Commission notes that the County did not provide any information at the Initial Hearing to indicate that the County has adopted rules or ordinances to effectuate the charitable exemption at issue in this appeal.

- the entity in the sense that the income exceeds operating and long-term maintenance expenses; and
- (D) for which none of the net earnings or donations made to the entity inure to the benefit of private shareholders or other individuals, as the private inurement standard has been interpreted under Section 501(c)(3), Internal Revenue Code.
- (ii) “Nonprofit entity” includes an entity:
 - (A) if the entity is treated as a disregarded entity for federal income tax purposes; and wholly owned by, and controlled under the direction of, a nonprofit entity; and
 - (B) for which none of the net earnings and profits of the entity inure to the benefit of any person other than a nonprofit entity.

Utah Administrative Rule R884-24P-40(3) provides additional guidance regarding the eligibility of vacant land for a property tax exemption as follows:

- (3) 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.
 - (a) 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.
 - (b) 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 Ann. §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 Ann. §59-2-1006(1), below:

- (1) 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, or a tax relief decision made under designated decision-making authority as described in Section 59-2-1101, may appeal that decision to the commission

In determining whether a property is entitled to an exemption, courts have strictly construed exemptions against the property owner. See *Board of Equalization of COUNTY-1 v. Intermountain Health Care, Inc. and Tax Comm’n of the State of Utah*, 709 P.2d 265 (Utah 1985), in which the Court stated “[A] liberal construction of exemption provisions results in the loss of a major source of municipal revenue and places a greater burden on nonexempt taxpayers, thus, these provisions have generally been strictly construed.” See also the Utah Supreme Court’s

decision in *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission and County Board of Equalization of Salt Lake County*, 919 P.2d 556, 558 (1996) in which the Court notes, “The exemption provided in Article XIII, section 2(2)(c) is an exception to the general rule that all land is taxable. Exemptions are strictly construed. The rule should not be so narrowly applied, however, that it defeats the purpose of the exemptions. The burden of establishing the exemption lies with the entity claiming it, although that burden must not be permitted to frustrate the exemption’s objectives (internal citations omitted).” In most appeals, the Petitioner is the property owner. However, in this case the Petitioner is the County and the Property Owner is merely requesting that the decision issued by the County Board of Equalization be upheld. Therefore, it is the County in this matter that needs to show error in the decision issued by the County Board of Equalization and establish that the property is not used exclusively for a charitable purpose and, therefore, not exempt from property tax.

DISCUSSION

On or about DATE, the Property Owner submitted an application for exemption from property tax for parcel no. ##### for the 2021 tax year. On DATE, the COUNTY-1 Board of Equalization made a decision to grant the Property Owner’s request for a property tax exemption for the 2021 tax year, having determined the subject property would be used exclusively for charitable purposes. The County timely appealed to the Tax Commission the COUNTY-1 Board of Equalization’s decision to grant the property tax exemption.

The subject property is owned by the PROPERTY OWNER (“Property Owner”). The Property Owner is a nonprofit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The Property Owner’s purpose as stated on its exemption application is to care “for the well-being and self-reliance of individuals and families by providing safe, decent, and affordable housing to those in need. We enhance CITY-1 economic and social stability through our services, programs, and collaborative relationships. All earnings are used by the nonprofit to further our mission.”

The subject property is a ##### acre lot improved with a vacant restaurant building located at ADDRESS-1 Utah. The subject property was purchased by the Property Owner on DATE. The Property Owner’s representative indicated that the subject property is not currently being used as a restaurant and is a vacant building. The Property Owner previously applied for a property tax exemption for part of the 2019 tax year and all of the 2020 tax year. He indicated at the 2020 Board of Equalization hearing that the intended future use of the subject property is that the restaurant will be “taken down” and ##### condo units will be built on the subject property.

He also stated that, within the next year, the subject property would be put into a community land trust, and the units, once built, would be sold to homeowners. The COUNTY-1 Board of Equalization granted the Property Owner's request for a property tax exemption for part of the 2019 tax year and the 2020 tax year.

On DATE, the Property Owner submitted an "Annual Statement for Continued Property Tax Exemption" to the County. The Property Owner's Financial Services Manager sent an email to the County on DATE that stated the Property Owner was not using the restaurant and indicated that it would be torn down. On DATE, the Property Owner's representative appeared before the COUNTY-1 Board of Equalization and stated the following:

" . . . all we do is develop affordable housing. And we are getting ready probably in the next ##### days to file for a zoning change on this property. We are working with an architect to develop plans. These projects take years. You know, ADDRESS-1, our #####-story building there we are getting ready to break ground on, has taken 2 ½ to 3 years. Hopefully, this will not take that long to get this developed. You have to control the land to start the process. Having vacant land is just a part of the process that has to happen. So, I can't see separating out vacant land that is used for future use for affordable housing as not being a tax-exempt purpose."

The Property Owner's representative also indicated at the 2021 Board of Equalization hearing that no building permits have been issued nor has any excavation begun on the subject property. The Property Owner's representative indicated that, first, the subject property needs to be rezoned and they were still working on getting that done. The COUNTY-1 Board of Equalization approved the exemption for the DATE tax year.

The County's submitted information asserted that the subject property was not being used exclusively for a charitable purpose for the DATE tax year. The County cited Utah Code Ann. §59-2-1101(7), which provides:

- (7) A property may not receive an exemption under Subsection (3)(a)(iv) if:
 - (a) the property is used for a purpose that is not religious, charitable or educational; and
 - (b) the use for a purpose that is not religious, charitable, or education is more than de minimis.

The County's submitted information asserted that "exclusive use refers to the primary or dominant use of property, as opposed to its incidental use."³ The County argued that the subject property does not meet the criteria of being exclusively used for a charitable purpose because it is a vacant building that is being held for future development. They asserted that no portion of the

³ The County's information cited the definition of "exclusive use property law" on us.legal.com to support that assertion.

property is used for a charitable purpose or any purpose other than being held for future development.

The County's submitted information asserted that vacant land or vacant buildings that are held for future use cannot receive an exemption. The County cited Utah Administrative Rule R884-24P-40(3), which states that vacant land that is not actively used or is held for future development is not deemed to be devoted exclusively to a religious purpose and therefore not exempt from property taxes. The County's submitted information asserted that the administrative rule is clear that being in the planning stages of construction/destruction or being committed to construct on the property is not sufficient. The County cited to *Appeal No. 06-1109*⁴ and asserted that the Commission previously held in that decision that Utah Administrative Rule R884-24P-40(3) applied to a property with a vacant building even though the rule as written applies to vacant land. The County noted in that decision the Commission stated "[i]n the case before the Commission, although there was a building on the property, it is similar to these vacant land cases because Petitioner was not going to use the building prior to substantial renovation."⁵ The County also noted that in *Appeal No. 06-1109*, the Commission stated the following:

"The rule provides a clear and workable line for the Counties and the Commission to apply uniformly, regardless of which nonprofit is applying for the exemption. The rule also provides clear notice to nonprofit organizations when their property qualifies for the exemption. The Commission cannot find for the Petitioner without contradicting or making an exception to its rule . . . Although the Commission recognizes that the Petitioner's intended uses of the subject property were to provide important and needed charities, the Commission may not make exceptions to the rule and does not find a basis in law to grant the requested exemption."⁶

The County also cited *Appeal No. 14-1284*⁷ which referenced the Utah Supreme Court decision *Corporation of Episcopal Church in Utah v. Utah State Tax Comm'n*, 919 P. 2d 556 (Utah 1996). In that decision, the Supreme Court held that "the exemption hinges on the actual use of the property and, in the case of Utah, whether it can be said that the [exempt] use is

⁴ See *Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 06-1109, Utah State Tax Commission* (February 23, 2007)(finding that a building that was vacant on the lien date but was being held for future charitable purposes does not qualify for the exemption) to support that assertion. The Commission notes that the County cited *Initial Hearing Order, Appeal No. 14-1662, Utah State Tax Commission* (February 25, 2015) in referencing *Appeal No. 06-1109*. However, the Commission notes that the decision in *Appeal No. 14-1662* distinguished the decision in *Appeal No. 06-1109*, did not apply Utah Administrative Rule R884-24P-40, and held that the vacant building in that appeal was eligible for a property tax exemption in that appeal. These and other decisions are available for review in a redacted format at tax.utah.gov/commission-office/decisions.

⁵ *Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 06-1109, Utah State Tax Commission* (February 23, 2007), pg. 4.

⁶ *Id.* at 5-6.

⁷ *Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 14-1284, Utah State Tax Commission* (December 2, 2016).

exclusive.”⁸ The County’s information also cited *Yorgason v. County Board of Equalization*, 714 P.2d 653 (Utah 1986) to further support that assertion.

The County asserted that properties held for future use (vacant land or vacant buildings) cannot receive a property tax exemption. The County argued that the decisions also show that the Commission cannot approve exceptions to the Administrative Rule and argued that the COUNTY-1 Board of Equalization should not have approved exceptions to this Administrative Rule.

The County’s representatives argued that the subject property’s current use does not provide a gift to the community. The County’s representatives cited *COUNTY-1 v. Intermountain Health Care Inc.*, 709 P.2d 265 (Utah 1985), where the Supreme Court held:

“An entity may be granted a charitable tax exemption for its property under the Utah Constitution only if it meets the definition of a "charity" or if its property is used exclusively for "charitable" purposes. Essential to this definition is the element of gift to the community.

Charity is the contribution or dedication of something of value to the common good By exempting property used for charitable purposes, the constitutional convention sought to encourage individual or group sacrifice for the welfare of the community. An essential element of charity is an act of giving. (citing *Salt Lake County v. Tax Commission ex rel. Greater Salt Lake Recreational Facilities*, 596 P.2d 641, 643 (Utah 1979)). A gift to the community can be identified either by a substantial imbalance in the exchange between the charity and the recipient of its services or in the lessening of a government burden through the charity's operation. (citing *Salt Lake County by and through the County Board of Equalization of Salt Lake County v. Utah State Tax Comm’n ex rel Laborers Local No. 295 Building Association*, 658 P.2d 1192, 1198 (Oaks, J., concurring)).

The County also cited *Appeal No. 16-720* where the Commission explained that a gift to the Community provides something that would lessen a government burden, and a Property Owner may not be eligible if the government would not be required to step in and fill the void if Petitioner were no longer able to provide the gift to the community that the Property Owner is providing.⁹ The County asserted that nothing on the property lessens a government burden at this time. They argued that there is no gift to the community and, thus, no charity is being given.

⁸ *Corporation of Episcopal Church in Utah v. Utah State Tax Comm’n*, 919 P. 2d 556, 560 (Utah 1996).

⁹ *Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 16-720, Utah State Tax Commission* (January 14, 2019).

The County's representatives appeared at the Initial Hearing and stated that the Property Owner has not met the burden of proof establishing that the subject property is used exclusively for a charitable purpose. They noted that when the Property Owner submitted its application for continued exemption, no documentation was provided to demonstrate that property was currently being used for a charitable purpose. The County's representatives noted that although the Property Owner's representative indicated that the Property Owner would be requesting a zoning change to build housing on the property in the next ##### days, CITY-1 website indicates that the CITY-1 Planning Commission has not had any agenda items to rezone the subject property as of the date of the Initial Hearing. The County's representative also noted that the area was zoned CM as of DATE, which is heavy commercial. The County's representatives indicated that no construction is occurring on the property and there has been no difference in the building on the subject property for the past several years. The County's representatives asserted that a property usually does not qualify for a religious, charitable, or educational exemption unless the ground is broken and construction has started on the property. The County's representatives argued that the subject property, as vacant land held for future development, is not eligible for exemption .

The Property Owner's representative appeared at the Initial Hearing and indicated that the existing improvement on the property is a vacant restaurant building. The Property Owner's representative indicated that the subject property was purchased as a restaurant and noted that, prior to its purchase, the subject property was used as a BUSINESS-1 and then BUSINESS-2. He indicated that it is a good size restaurant and parking lot. He stated that most of the food and equipment have been moved out, and the subject property has been winterized. He indicated that the Property Owner has no plans to use the vacant restaurant building, and the Property Owner is working through the purchase of another parcel, and the two parcels together will go to a rezone and then entitlement. He indicated that until the other parcel of land is acquired, the Property Owner cannot rezone the subject property or do anything with it. He indicated that, as of the date of the Initial Hearing, the Property Owner has not filed to rezone the subject property and it does not have a building permit. The Property Owner's representative indicated that the Property Owner purchased the subject property for development, and the subject property is not currently rented and the Property Owner is not receiving income from the property. He indicated that the subject property is not being used and it is costing the Property Owner upkeep and the time value of money. The Property Owner stated that the subject property is being held for future development. The Property Owner's representative stated that he thought it was going to move more quickly but that has not been the case.

The Property Owner's representative indicated that the Property Owner has ##### affordable housing units and ##### other properties. He stated that it is unusual to be able to purchase a piece of property and immediately put a shovel in the ground. He stated that the Property Owner's position is that anything that is being held for future development is being held for a nonprofit purpose because the Property Owner's purpose is the development of affordable housing units and property development takes time. The Property Owner's representative also asserted that Utah Administrative Rule R884-24P-40 is specific to religious use and was not intended to be extended to other nonprofit entities.

The Commission notes that no one appeared at the Initial Hearing to represent the Respondent, which was the County Board of Equalization, and no information or arguments were submitted by the Respondent for the Commission to consider at the Initial Hearing.

Commission Findings and Analysis

In determining whether a property qualifies for the "exclusive use" exemption under Article XIII, Section 3 of the Utah Constitution and Utah Code Ann. §59-2-1101(3), two requirements must be met. First, the property must be "owned by a nonprofit entity." Second, the property must be "used exclusively for religious, charitable, or educational purposes." The exemption for property "used exclusively for a...charitable . . .purpose" must be strictly and narrowly construed. *Loyal Order of Moose, #259 v. County Bd. of Equalization*, 657 P.2d 257, 261 (Utah 1982) and *County Bd. of Equalization v. Intermountain Healthcare, Inc.*, 725 P.2d 1357, 1359 (Utah 1986). The burden is generally on the entity seeking the exemption to show that it is entitled to the exemption. See *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). However, in this appeal the Petitioner is the County and the Property Owner is merely requesting that the decision issued by the County Board of Equalization be upheld. Therefore, it is the County in this matter that needs to show error in the decision issued by the County Board of Equalization and establish that the property is not used exclusively for a charitable purpose and, therefore, not exempt from property tax.

Owned By A Nonprofit Entity

The Commission must make a determination as to whether the subject property is owned by a nonprofit entity. Utah Code Ann. §59-2-1101(1)(g) defines "nonprofit entity" as follows:

- (i) "Nonprofit entity" means an entity:
 - (A) that is organized on a nonprofit basis, that dedicates the entity's property to the entity's nonprofit purpose, and that makes no dividend or other form of financial benefit available to a private interest;
 - (B) for which, upon dissolution, the entity's assets are distributable only for exempt purposes under state law or to the government for a public purpose;

(C) that does not receive income from any source, including gifts, donations, or payments from recipients of products or services, that produces a profit to the entity in the sense that the income exceeds operating and long-term maintenance expenses; and

(D) for which none of the net earnings or donations made to the entity inure to the benefit of private shareholders or other individuals, as the private insurance standard has been interpreted under Section 501(c)(3), Internal Revenue Code.

(ii) “Nonprofit entity” includes an entity:

(A) if the entity is treated as a disregarded entity for federal income tax purposes; and wholly owned by, and controlled under the direction of, a nonprofit entity; and

(B) for which none of the net earnings and profits of the entity insure to the benefit of any person other than a nonprofit entity.

The subject property is owned by the PROPERTY OWNER. The Property Owner is organized as a nonprofit corporation that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Section 501(c)(3) prohibits any part of the net earnings from insuring to the benefit of any private shareholder or individual. There was no indication, nor was it argued or contested by the County, that the Property Owner made any dividends or other forms of financial benefit available to a private interest. It was not disputed that the Property Owner meets the definition of a non-profit entity that engages in charitable purposes as defined in Utah Code Ann. §59-2-1101(1)(g). Thus, the Commission finds that the subject property is owned by a nonprofit entity, the Property Owner meets the definition of non-profit entity, and the subject property meets the first criterion for the exclusive use exemption.

The Commission also notes that Utah Code Ann. §59-2-1101(6) prohibits a nonprofit entity that engages in certain political activities from receiving an exemption. However, the County did not assert that the Property Owner engages in any of the political activities that would disqualify the Property Owner from being eligible for a property tax exemption. Thus, the Commission finds that the Property Owner is not disqualified from receiving the property tax exemption under Utah Code Ann. §59-2-1101(6).

Charitable Purpose

Utah Code Ann. §59-2-1101(3)(a)(iv)(B) provides that a property owned by a nonprofit entity is exempt from taxation if it is used exclusively for a charitable purpose. The Commission must make a determination as to whether the subject property was used exclusively for a charitable purpose for the 2021 tax year. Utah Code Ann. §59-2-1101(1) defines charitable purpose as follows:

(a) “Charitable purposes” means:

(i) for property used as a nonprofit hospital or a nursing home, the standards outlined in *Howell v. County Board of Cache County ex rel. IHC Hospitals, Inc.*, 881 P.2d 880 (Utah 1994); and

(ii) for property other than property described in Subsection (1)(a)(i), providing a gift to the community.

The subject property was not used as a nonprofit hospital or a nursing home, thus the Commission must determine whether the subject property's use was providing a gift to the community. Utah Code Ann. §59-2-1101(1) defines "gift to the community" as follows¹⁰:

- (e) "Gift to the community" means:
 - (i) the lessening of a government burden; or
 - (ii)(A) the provision of a significant service to others without immediate expectation of material reward;
 - (B) the use of the property is supported to a material degree by donations and gifts including volunteer services;
 - (C) the recipients of the charitable activities provided on the property are not required to pay for the assistance received, in whole or in part, except that if in part, to a material degree;
 - (D) the beneficiaries of the charitable activities provided on the property are unrestricted or, if restricted, the restriction bears a reasonable relationship to the charitable objectives of the nonprofit entity that owns the property; and
 - (E) any commercial activities provided on the property are subordinate or incidental to charitable activities provided on the property.

Furthermore, Utah Code Ann. §59-2-1101(7) provides:

- (7) A property may not receive an exemption under Subsection (3)(a)(iv) if:
 - (a) the property is used for a purpose that is not religious, charitable or educational; and
 - (b) the use for a purpose that is not religious, charitable, or educational is more than de minimis.

The Commission notes that the Property Owner's future intended use of the subject property is to construct affordable housing units on the subject property. However, the Property Owner's interim use of the subject property, which is the use to which the subject property was put for the 2021 tax year, is as a vacant restaurant building being held for future development. The Commission finds that the subject property's current use as a vacant restaurant building does

¹⁰ The Commission notes that prior to the 2021 tax year, the gift to the community standard was analyzed using a six-factor test developed by the Supreme Court of Utah in *Utah County v. Intermountain Healthcare, Inc.*, 709 P.2d 265 (1985) to determine whether a property was used exclusively for charitable purposes. The six-factor test involved an analysis of the following:

- (1) whether the stated purpose of the entity is to provide a significant service to others without immediate expectation of material reward;
- (2) whether the entity is supported, and to what extent, by donations and gifts;
- (3) whether the recipients of the "charity" are required to pay for the assistance received, in whole or in part;
- (4) whether the income received from all sources (gifts, donations, and payment from recipients) produces a "profit" to the entity in the sense that the income exceeds operating and long-term maintenance expenses;
- (5) whether the beneficiaries of the "charity" are restricted or unrestricted and, if restricted, whether the restriction bears a reasonable relationship to the entity's charitable objectives; and
- (6) whether dividends or some other form of financial benefit, or assets upon dissolution, are available to private interests, and whether the entity is organized and operated so that any commercial activities are subordinate or incidental to charitable ones.

not provide a gift to the community by lessening a government burden. The Commission notes that there are no charitable recipients through the use of the subject property as a vacant restaurant building and the Commission must make a determination as to whether the subject property provides a gift to the community by satisfying the five factors described in Subsections 59-2-1101(1)(e)(ii)(A) through (E).

The first factor concerns whether the subject property's use provides a significant service to others without immediate expectation of material reward. The subject property's current use as a vacant restaurant building does not provide a significant service to others.

The second factor concerns whether the use of the property is supported to a material degree by donations and gifts. The Property Owner did not submit information to demonstrate the extent to which the use of the property is supported by donations or gifts.

The third factor concerns whether the recipients of the charitable activities provided on the property are required to pay for the assistance received, in whole or in part. The Property Owner's representative indicated that the subject property is not generating any revenue and it is costing the Property Owner upkeep and the time value of money to hold the property for future development. No charitable activities were provided on the subject property in DATE.

The fourth factor concerns whether the beneficiaries of the charitable activities provided on the subject property are restricted or unrestricted, and if restricted, whether that restriction bears a reasonable relationship to the entity's charitable objectives. No charitable activities were provided on the subject property in 2021.

The fifth factor concerns whether any commercial activities provided on the property are subordinate or incidental to charitable activities provided on the property. No charitable activities were provided on the subject property in 2021.

Based on the above analysis, because no charitable activities were provided on the subject property in 2021 and the subject property is being held for future development, the Commission finds that the subject property did not provide a gift to the community in 2021. In *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission*, 919 P.2d 556 (Utah 1996), the Utah Supreme Court considered vacant land that a religious organization had purchased with the purpose of constructing a house of worship and holding outdoor religious services. During the years at issue, the church had not yet begun to improve the property but held religious services on the property approximately two hours per year. The Court held "that the term 'used exclusively' requires that the land in question be actually used or committed to a use that is exclusively religious in nature, and held that the land was being held for future development" and, therefore, denied an exemption for the property. Furthermore, in the

Corporation of Episcopal Church in Utah the Court stated, “Recognizing that each exemption is rooted in the same policy concerns, this Court has always treated the three [religious, charitable and educational] exempt categories similarly.”¹¹ Similar to the *Episcopal Church* case, the use of the subject property is that it is being held for future development. The Property Owner indicated at the Initial Hearing that the subject property was not currently in use and was being held for future development. The Commission finds that holding property for future use does not meet the “used exclusively” requirement of the Utah Constitution or statute and does not qualify for the charitable property tax exemption. However, the Commission notes that in *Utah County Board of Equalization v. Intermountain Healthcare, Inc.*, 725 P.2d 1357 (Utah 1986), the Court determined that once construction of a building that would be used exclusively for a charitable purpose had commenced, the property would be entitled to the exemption¹².

Furthermore, the Commission has issued Utah Administrative Rule R884-24P-40, construing “used exclusively” for religious purposes. Utah Administrative Rule R884-24P-40(3) provides as follows, in pertinent part:

- (3) 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.
 - (a) 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.
 - (b) 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.

Although the Property Owner’s representative asserted that the rule was specific to religious use and argued that it was not intended to be extended to other nonprofit entities, the Commission notes that it has previously held in *Appeal No. 07-1121* that the rule specifically mentions religious organizations, but the same statutory and constitutional constraints apply to the other nonprofits seeking the exclusive use exemption, and the Commission would apply the rule to the other entities as well¹³. Furthermore, the Commission notes that in *Appeal No. 06-1109* the Commission applied Utah Administrative Rule R884-24P-40 to a vacant building and found that the Property Owner in that appeal was not eligible for a property tax exemption because

¹¹ *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission*, 919 P.2d 556 (Utah 1996).

¹² *Utah County Board of Equalization v. Intermountain Healthcare, Inc.*, 725 P.2d 1357 (Utah 1986).

¹³ *Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 07-1121, Utah State Tax Commission* (January 29, 2009), pg. 4.

construction had not commenced and a building permit had not been issued for the property in that appeal¹⁴.

However, the Commission notes that in *Appeal No. 14-1662*, the Commission held that Utah Administrative Rule R884-24P-40 did not apply to a vacant building that was being renovated for a charitable purpose¹⁵. The Commission determined that the circumstances were distinguishable in *Appeal No. 14-1662* because the Property Owner had demonstrated a sufficient intent and manifestation to use the property for a charitable purpose¹⁶. The Commission found that the Property Owner had demonstrated a bona fide necessary preparation of the property in that appeal that included repairing the pipes two days after purchase, repairing the roof, completing reviews and evaluations, abating the lead paint, preparing renovation plans, installing flooring, and adjusting an entrance¹⁷. Although the Commission determined that Utah Administrative Rule R884-24P-40 did not apply to the vacant building that needed substantial renovations in *Appeal No. 14-1662* to fulfill that property's intended charitable purpose, the Commission finds that Utah Administrative Rule R884-24P-40 does apply in this appeal because the circumstances in this appeal are distinguishable from those in *Appeal No. 14-1662*. The Commission finds that the relevant distinguishing factors in this appeal are that the Property Owner's intended future charitable use of the property does not incorporate the existing improvements but only involves the use of the land, and the existing improvements will need to be torn down to accomplish the Property Owner's intended future charitable use. Furthermore, the Commission notes that to accomplish the Property Owner's future intended charitable use of the subject property, the Property Owner's representative indicated that the Property Owner needs to acquire an additional parcel of land, the subject property needs to be rezoned and titled, the improvements on the subject property need to be demolished, and building permits need to be issued for construction of the affordable housing units to commence. The Property Owner's representative indicated that none of these things have happened as of DATE, which was the date of the Initial Hearing. The Commission finds that, in this appeal, the Property Owner's holding of the subject property is more similar to holding vacant land and Utah Administrative Rule R884-24P-40 should be applied. The Commission also finds that the Property Owner is still in the planning phase of construction for the development of the subject property and, although has expressed a commitment to construct on the property, has not obtained building permits or

¹⁴ *Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 06-1109, Utah State Tax Commission* (February 23, 2007).

¹⁵ *Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 14-1662, Utah State Tax Commission* (February 25, 2015).

¹⁶ *Id.* at 13.

¹⁷ *Id.* at 8-9.

commenced construction on the subject property. Thus, the Commission finds that merely being in the planning phase of construction or being committed to construct on the property is not sufficient to be eligible for the property tax exemption. The Commission finds that the County has provided sufficient evidence to show error in the decision issued by the County Board of Equalization and establish that the property is not used exclusively for a charitable purpose and, therefore, not exempt from property tax.

Shannon Halverson
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the subject property is not used exclusively for a charitable purpose, and is therefore not exempt from property tax. The COUNTY-1 Auditor is hereby ordered to adjust its records accordingly. 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 _____, 2022.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner