

APPEAL #: 22-844
TAX TYPE: PROPERTY TAX
TAX YEAR: 2022
DATE SIGNED: 11/22/2022
COMMISSIONERS: J.VALENTINE, R.ROCKWELL, M.CRAGUN, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

COUNTY-1 CLERK/AUDITOR, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Ex Rel PROPERTY OWNER, Respondent.	INITIAL HEARING ORDER Appeal No. 22-844 Parcel No: ##### Tax Type: Property Tax Tax Year: 2022 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 Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PET. REP-1, Deputy COUNTY-1 Attorney
PET. REP-2, Supervisor, COUNTY-1 Clerk/Auditor's Office
PET. REP-3, Tax Relief Coordinator, COUNTY-1 Tax

Administration

For Respondent: No One Appeared

For Ex Rel Party: RES. REP-1, Operations Manager, PROPERTY OWNER

STATEMENT OF THE CASE

Petitioner ("County") brings this appeal from the decision of the COUNTY-1 Board of Equalization pursuant to Utah Code §59-2-1006. This matter was argued in an Initial Hearing on DATE in accordance with Utah Code §59-1-502.5. The COUNTY-1 Board of Equalization had granted the property an exclusive use property tax exemption pursuant to Utah Code §59-2-1101(3)(a)(iv). The County appealed the decision on the basis that the subject property did not qualify for the exemption for tax year 2022. The COUNTY-1 Board of Equalization did not appear at this hearing. A representative for the ex rel party, which is PROPERTY OWNER ("Property Owner") did appear at this hearing.

APPLICABLE LAW

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

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(2022)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;

....

- (6)(a) A property may not receive an exemption under Subsection (3)(a)(iv) if:
 - (i) the nonprofit entity that owns the property participates in 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

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 the 2022 tax year.

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.
- (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 . . .
- (9) If a person is dissatisfied with a tax relief decision made under designated decision-making authority as described in Subsection (8)(b), that person may appeal the decision to the commission under Section 59-2-1006.

“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.

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

- (c) "Exclusive use exemption" means a property tax exemption under Subsection (3)(a)(iv), for property owned by a nonprofit entity used exclusively for one or more of the following purposes:
 - (i) religious purposes;
 - (ii) charitable purposes; or
 - (iii) educational purposes.

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

- (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;

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

- (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 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.

The procedures for filing an application and having the County issue a decision regarding an exemption are as follows in Utah Code Ann. §59-2-1102:

- (3) (a) Except as provided in Subsection (8) and subject to Subsection (9), a reduction may not be made under this part or Part 18, Tax Deferral and Tax Abatement, in the value of property and an exemption may not be granted under this part or Part 19, Armed Forces Exemptions, unless the party affected or the party's agent:
 - (i) makes and files with the county board of equalization a written application for the reduction or exemption, verified by signed statement; and
 - (ii) appears before the county board of equalization and shows facts upon which it is claimed the reduction should be made, or exemption granted.

- (b) Notwithstanding Subsection (9), the county board of equalization may waive:
 - (i) the application or personal appearance requirements of Subsection (3)(a), (4)(b), or (9)(a); or
 - (ii) the annual statement requirements of Subsection (9)(c).
- (4) (a) Before the county board of equalization grants any application for exemption or reduction, the county board of equalization may examine under oath the person or agent making the application.
- (b) Except as provided in Subsection (3)(b), a reduction may not be made or exemption granted unless the person or the agent making the application attends and answers all questions pertinent to the inquiry.
- (5) For the hearing on the application, the county board of equalization may subpoena any witnesses, and hear and take any evidence in relation to the pending application.
- (6) Except as provided in Subsection (11)(b), the county board of equalization shall hold hearings and render a written decision to determine any exemption on or before May 1 in each year.
- (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:

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

Administrative Rule R884-24P-40 provides guidance on whether vacant land can meet the ‘exclusive use’ criteria for the property tax exemption. Although this rule was written specifically to apply to vacant land held by a religious organization, the Utah Tax Commission has applied this guidance to properties held by charitable organizations.³ Rule R884-24P-40 provides as follows:

- (1) Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:
 - (a) The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

³ See *Utah State Tax Commission Initial Hearing Order, Appeal No. 21-1079* (03/1/2022). See also *Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 07-1121* (1/29/2009). This and other Tax Commission decisions are available for review in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

- (b) The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.
 - (c) The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.
2. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.
 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.

A party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption. *See Butler v. State Tax Comm'n*, 367 P.2d 852, 854 (Utah 1962). Further, in *Corporation of the Episcopal Church in Utah v. Utah State Tax Comm'n*, 919 P.2d 556 (Utah 1996), the Court wrote, "[t]he burden of establishing the exemption lies with the entity claiming it, although that burden must not be permitted to frustrate the exemption's objectives." In addition, the Court noted, "[e]xemptions are strictly construed[,]" but noted that the strict construction "should not be so narrowly applied, however, that it defeats the purpose of the exemptions."

DISCUSSION

Under Utah law, a property may qualify for exemption from property tax if it is owned by a nonprofit entity and used exclusively for religious, charitable or educational purposes. See Utah Constitution, Art. XIII, Sec. 3 and Utah Code §59-2-1101(3). In this appeal the County Board of Equalization had allowed the exemption, but at this hearing the representatives for the County pointed out that the subject property as of the lien date was not actually "used exclusively" for religious, charitable or educational purposes because the property as of the lien date was vacant land. The County's representatives pointed out that on the Application for New Exemption that was filled out by the Property Owner and submitted to the County Board of Equalization, the Property Owner had checked the box that the property was unimproved vacant land and also checked the box that the land "is being held to be developed by the organization at a later date."

At the hearing the County also submitted an exhibit that indicated that CITY-1 City had not issued a building permit for the subject land as late as DATE, and also that the land at that time was vacant and there was no development. At the Initial Hearing, the County pointed out that vacant land held for future development does not meet the “used exclusively” requirement, and that it could not qualify for the exemption unless construction had commenced or a building permit had been issued by the lien date for the tax year at issue. The County’s representatives did state that the Property Owner could reapply once the Property Owner had obtained a building permit or started construction.

The Property Owner agreed at the hearing that the land was vacant as of the lien date, that development of the property had not started and that they had not applied for a building permit. He explained that when he filled out and submitted the Application for New Exemption, he did not understand the property would not qualify until a building permit was obtained or construction actually commenced on the project. He had checked the boxes indicating the land was unimproved vacant land and it was being held to be developed at a later date. He stated that the Property Owner’s first action towards development of the property had occurred in May 2022 when they had cleared the land to get it ready for construction. He agreed that they had not yet applied for the building permit. He explained that it was the Property Owner’s intention to build a low-income senior housing 4-plex on the subject property.

Upon review of the applicable law, legal argument presented by the County and the fact that construction had not commenced and no building permit had been issued as of the lien date, the Tax Commission must conclude that the subject property does not qualify for the “exclusive use” property tax exemption for the tax year at issue. The Utah Supreme Court made it clear in *Corporation of the Episcopal Church in Utah v. Utah State Tax Comm'n*, 919 P.2d 556, 560 (Utah 1996) that “[f]uture development of a lot for an exempt purpose is not within the constitutional purview of the limited class of property uses exempt from taxation.” In addition, although written specifically for property used exclusively for religious purposes, Utah Admin. Rule R884-24P-40(3)(a) provides that vacant land held for future development by a religious organization “is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.” It is noted that for purposes of determining whether a property qualifies for one of the three exclusive use exemptions listed at Utah Code §59-2-1101(3)(a)(iv), the courts and the Tax Commission have treated the three exempt categories similarly.⁴ *Utah State Tax Commission*

⁴ As noted by the Court in *Corporation of Episcopal Church*, at 558, “Article XIII, section 2(2)(c) of the Utah Constitution lists among those properties that are exempt from property taxes “[p]roperty owned by a non-profit entity which is used exclusively for religious, charitable or educational purposes. . . .” Recognizing that each exemption is rooted in the same policy concerns, this Court has always treated the

Initial Hearing Order, Appeal No. 21-1079 (DATE), involved facts similar to the subject appeal as that petitioner was a nonprofit organization that had purchased land for eventual use for affordable housing, but had not yet obtained a building permit or commenced construction prior to the lien date at issue for that tax year. In its decision, the Tax Commission concluded the property did not qualify for the exemption, noting at page 14:

[t]he Commission sees no reason to depart from the Utah Supreme Court’s determination in *Corporation of the Episcopal Church* that the exemption hinges on the actual use of the property. In this matter, the Commission finds that the subject property was not “used exclusively for a charitable purpose” nor did it provide a “gift to the community” as of the January 1, 2021 lien date, because it was still being held for future development. This finding is also consistent with Subsection (3)(b) of Rule R884-24P-40, which provides that “[v]acant 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.” In this case, the building permit was not issued until DATE, after the January 1, 2021 lien date.⁵ Thus, under the plain language of Rule R884-24P-40, the subject property is not tax exempt.

In this case, it is clear that the property was being held for future development as of the lien date, so it did not meet the exclusive use requirement. Therefore, based on the Utah Constitution and Utah statutes, the property does not qualify for the exclusive use property tax exemption.

At the hearing, the County did encourage the Property Owner to apply again for the exemption after a building permit had been issued or construction had commenced on the property. Because it was clear to the County that the subject property did not meet the “used exclusively” requirement, at the Initial Hearing there was no discussion and little information regarding whether the property met the other criteria for the property tax exemption. To be exempt from property tax pursuant to Utah Constitution, Art. XIII, Sec. 3 and Utah Code §59-2-1101(3)(a)(iv) the property must be owned by a nonprofit entity and used exclusively for religious, charitable or educational purposes. Utah Code §59-2-1101 was substantially revised effective for tax year 2021, adding several statutory requirements including a statutory definition for “charitable purposes” and “nonprofit entity.” There are also the requirements at Utah Code §59-2-1101(6) under which a property would not qualify for the exemption if the property owner intervenes in any political campaign on behalf of or in opposition to any candidate for public office or a substantial part of the activities of the nonprofit entity that owns the property consists of carrying on of propaganda or otherwise attempting to influence legislation. In order to obtain

three exempt categories similarly.” See *Benevolent and Protective Order of Elks v. Tax Comm’n*, 536 P.2d 1214, 1217.”

⁵ The Commission notes that information on when the building permit application was submitted was not provided at the initial hearing.

the exemption a property owner must demonstrate that they meet all of the requirements set out in Utah Code §59-2-1101. The Commission decision in this matter is limited to the one issue presented by the County and not contested by the Property Owner, that the property was vacant land and held for future use, therefore, the property does not qualify for the exemption. The Commission has no factual basis to offer an opinion regarding whether the Property Owner has met the other requirements of the statute.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission finds that for tax year 2022, the subject property fails to qualify for the exclusive use property tax exemption. The COUNTY-1 Auditor is hereby ordered to remove the exemption from the property and 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.

Appeal No. 22-844

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner