

APPEAL # 24-1317

TAX TYPE: PROPERTY TAX

TAX YEAR: 2024

DATE SIGNED: 7/8/2025

COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

COUNTY-1 ASSESSOR,

Petitioner,

v.

BOARD OF EQUALIZATION OF
COUNTY-1, STATE OF UTAH,
EX REL PROPERTY OWNER,

Respondent.

INITIAL HEARING ORDER

Appeal No. 24-1317

Parcel Nos: #####, #####, #####, and #####

Tax Type: Property Tax

Tax Year: 2024

Judge: Phan

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: PETITIONER'S REP-1, COUNTY-1 Assessor

For Respondent: No One Appeared

For Ex Rel. Party: EX REL. PARTY REP-1, Attorney at Law

EX REL. PARTY REP-2, CFO, PROPERTY OWNER

EX REL. PARTY REP-3, 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 before the Utah State Tax

Commission in an Initial Hearing on January 21, 2025, in accordance with Utah Code §59-1-502.5. The COUNTY-1 Board of Equalization (“County BOE”) had granted the properties an exclusive use property tax exemption pursuant to Utah Code §59-2-1101(3)(a)(iv). The COUNTY-1 Assessor appealed the decision, asserting that the subject properties did not qualify for the exemption for tax year 2024. The County BOE did not appear at this hearing. Representatives for the ex rel. party, which is PROPERTY OWNER (“Property Owner”), appeared at this hearing and argued that the County BOE decision should be upheld.

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 property 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...

Based on the constitutional exemption, Utah Code Ann. §59-2-1101(2024) 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 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 an exemption under this part; and
 - (b) designate one or more persons to perform the functions given to the county under this part.
- (9) If a person is dissatisfied with an exemption 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.

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

- (d) "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.

The definition of “nonprofit entity” is provided in Utah Code Ann. §59-2-1101(1)(h), 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; and
 - (C) 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.

“Charitable purposes” and “gift to the community” are 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.
- ...
- (f) “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.

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:

- (2) Except as provided in Subsection (7) and subject to Subsection (8), a county board of equalization may not grant an exemption under this part unless the party affected or the party's agent:
 - (a) submits a written application to the county board of equalization; and
 - (b) verifies the application by signed statement.
- (3) (a) The county board of equalization may require a person making an application for exemption or reduction to appear before the county board of equalization and be examined under oath.
- (b) If the county board of equalization requires a person making an application for exemption or reduction to appear before the county board of equalization, the county board of equalization may not grant an exemption unless the person affected or the person's agent appears and answers all questions pertinent to the inquiry.
- (4) 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.
- (5) Except as provided in Subsection (10)(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.
- (6) Any person that made an exemption application and is dissatisfied with the decision of the county board of equalization regarding any 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 as follows:

- (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 by:
 - (a) 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 or entity with designated decision-making authority described in Section 59-2-1101. . . .
 - . . .
- (3) In reviewing a decision described in Subsection (1), the commission may:

- (a) admit additional evidence;
- (b) issue orders that it considers to be just and proper; and
- (c) make any correction or change in the assessment or order of the county board of equalization or entity with decision-making authority.

Administrative Rule R884-24P-40 provides guidance on vacant land as it pertains to the exclusive use exemption for religious purposes. Although this rule was written specifically to apply to vacant land held by a religious organization, the Commission has applied this guidance to properties held by charitable organizations. Rule R884-24P-40 provides 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.

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 stated, "[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." The Utah Supreme Court concluded, "The general rule is then that all property is taxed unless exempt, and to be exempt the burden is upon the property owner to show it falls within the exemption." *See Friendship Manor Corp. v. Tax Comm'n*, 26 Utah 2d 227, 239, 487 P.2d 1272, 1280. In most appeals, the Petitioner is the property owner. However, in this case, the Petitioner is the County Assessor and the Property Owner is merely requesting that the decision issued by the County BOE be upheld. Therefore, it is the County Assessor that has the burden to show error in the decision issued by the County Board of Equalization and establish that the subject properties are not used exclusively for a charitable purpose and, therefore, are not exempt from property tax.

DISCUSSION

I. Facts Presented at the Initial Hearing

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, as those purposes

are defined in statute. *See* Utah Constitution, Art. XIII, Sec. 3 and Utah Code §59-2-1101(3). In this appeal, the Property Owner had applied for the exclusive use property tax exemption for the four parcels subject to this appeal, and the County BOE had granted the exemption. However, the County Assessor appealed the decision of the County BOE, and argued at the Initial Hearing, that as of the January 1, 2024 lien date, the subject parcels were not “used exclusively” for religious, charitable or educational purposes because they were vacant land being held for future development and no building permits had been issued.

The four parcels at issue in this appeal are residential townhouse lots, which are located in a residential subdivision. LOCATION-1, which is a for-profit entity, owns ten residential lots in the subdivision and the Property Owner, which is a nonprofit entity, owns the four lots at issue in this appeal. As of the lien date, some of the infrastructure for the subdivision, such as water lines, sewer and roads had been constructed. However, no building permits had been issued for any of the subject properties. The Property Owner indicated at the hearing that it had paid for its share of the costs for the infrastructure. The Property Owner stated that the intent was to lease the townhomes to low-income and moderate income individuals after the construction was completed.

The Property Owner had provided information to the County BOE with its application to support its position that it was a nonprofit entity. This included a letter from the Internal Revenue Service, dated DATE, that stated the Property Owner was exempt from federal income tax under IRC Section 501(c)(3) as a private foundation within the meaning of Section 509(a). The Property Owner also submitted a copy of its Articles of Incorporation, which were signed on DATE. However, the copy submitted did not have a certification from the Department of Commerce to indicate that the Articles of Incorporation had been filed with the State of Utah. These Articles of Incorporation stated that the entity was a nonprofit corporation under the Utah Revised Nonprofit Corporation Act. Article II (a) stated that the corporation's purpose was to operate exclusively “for charitable, educational, religious and/or scientific purposes within the meaning of Section 501(c)(3)” and “shall include, but not be limited to finding, supporting and providing solutions for housing affordability and sustainability.” Article III provided that the corporation would distribute its income and conduct its operations in compliance with IRC Sections 4942, 4941, 4943, 4944 and 4945, and, “No part of the net earnings of the corporation shall inure to the benefit of any director or officer of the Corporation or any private individual, except that reasonable compensation may be paid . . . and no director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the Corporation's assets upon dissolution of the corporation.” Article III (g) provided, “Unless otherwise permitted by Code, the Corporation shall not carry on propaganda or otherwise attempt to influence legislation, and the Corporation shall not participate in or intervene in . . . any political campaign on behalf of any candidate for public office.”

With its application, the Property Owner had provided to the County BOE a page titled “Schedule C, Questions 1 and 2.”¹ This document provided in part the following explanation of how the rental units, once constructed, would be used:

Revenue will be generated from affordable rents according to Area Median Income (AMI). %%%%% of rents will be at least %%%%% AMI, %%%%% will be %%%%% AMI and %%%%% will be at market rates. Rent prices are established by IRS and HUD requirements for affordable housing. As an example, low income limits for a family of four in COUNTY-1 would be \$\$\$\$ at the %%%%% level.

Annual operating expenses will include costs for property management, repair and maintenance, open space landscaping maintenance, and operations of the clubhouse amenity area.

Net revenues are used to subsidize the lowest income units. %%%%% of residual earnings after subsidies, if any, will be used to fund new, affordable housing projects. The remaining %%%%% residual is earmarked for other charitable endeavors through a sustaining fund which funds other charitable projects.

The Property Owner provided to the County BOE a copy of its fiscal year end balance sheet dated DATED. This indicated \$\$\$\$ in revenue from contributions, and \$\$\$\$ in expenses, which were administrative expenses, wages, accounting, legal and consulting expenses, and \$\$\$\$ in property taxes. The Property Owner also provided a copy of its fiscal year end 2022 Form 990-PF federal tax return filing. This return showed \$\$\$\$ in “contributions, gifts, grants, etc.” and \$\$\$\$ in “dividend and interest from securities.” The return indicated that the Property Owner had a tax balance owing of \$\$\$\$ due to its investment income.

The Property Owner had also provided to the County BOE a copy of its costs to date as of DATE.² These costs were dated on or after DATE, and were for engineering fees, city utility permit connection fees, and \$\$\$\$ to COMPANY-1.

II. Property Owner’s Arguments

The representatives for the Property Owner argued that even though there had not been any building permits issued for construction of the townhouses on the subdivision lots, and construction of the townhouses had not commenced as of the lien date, construction of the infrastructure had commenced and they had paid utility connection fees and obtained permits for the utilities prior to the lien date. The Property Owner’s representatives argued that the Property Owner was a “nonprofit entity” as that was defined at Utah Code §59-2-1101(2)(h)(ii), and that the subject property would be used for a charitable purpose. The Property Owner’s representatives asserted that the statutory definition of “gift to the

¹ County’s BOE Record, PDF# 49.

² County’s BOE Record, PDF# 121.

community” in Utah Code §59-2-1101(2)(a)(ii), would be met because the Property Owner was lessening a government burden. The Property Owner’s representatives stated that CITY-1, where the subject property is located, is required by law to create a moderate income housing plan and if it does not comply with this requirement it would lose access to funding and be required to pay a fee. The Property Owner’s representatives explained the housing on the subject property is for moderate-income and low-income persons making %%% to %%% of the average median income for COUNTY-1. They also argued that affordable housing provides a benefit for the City and County’s critical workforce. They pointed out that the median home price in COUNTY-1 in 2024 was \$\$\$\$ and police officers, teachers, and city employees cannot afford to live in the community where they work. They also argued that the use of the subject property is well within the “safe harbor” for aid to the poor and distressed described in the Internal Revenue Services’ Revenue Procedure 96-32.

III. County’s Argument

At the hearing and in her prehearing statement, the County Assessor acknowledged that the Property Owner was a 501(c)(3) entity, but argued that the subject properties were not used exclusively for a charitable purpose on the lien date because they were vacant land parcels held for future development. The County cited to Utah Admin. Rule R884-24P-40(3), which states: “(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 County also cited to the Property Tax Division’s Standard of Practice 2.13.8, which noted that although the rule specifically mentioned land owned by religious organizations, it also applied to land owned by charitable entities.

IV. Tax Commission Conclusions

The Commission examines the facts submitted at the hearing, and the applicable law. Utah Code §59-2-103 provides that 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, unless otherwise provided by law. Utah law provides several exemptions from property tax, including the exclusive use exemption at issue in this appeal. A property may qualify for the exclusive use exemption if the property 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). The Commission considers first the question of whether the four vacant subdivision lots at issue met the requirement of being “used exclusively” for charitable purposes, as this issue is dispositive in this matter. The Property Owner’s representatives stated that the charitable purpose was to provide housing for low-income and moderate-income individuals. The subject

parcels were located in a subdivision, which contained residential townhouse lots, some of which were owned by a for-profit developer and some by the Property Owner. Some of the infrastructure in the townhouse subdivision had been completed as of the lien date, but construction of the townhouses on the subject lots had not commenced and building permits had not yet been issued for the construction of the townhouses. The Commission agrees with the County that based on these facts, as of the lien date, the subject lots were being held for future development and were thus not “used exclusively” for charitable purposes. 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 “is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.” The Tax Commission has applied this rule to properties owned by other types of nonprofit entities that were holding the land for use for charitable or educational purposes when determining whether a property qualifies for an exclusive use exemption in Utah Code §59-2-1101(3)(a)(iv). The courts³ and the Tax Commission⁴ have treated the entities allowed an exclusive use exemption similarly.

The Tax Commission has recently heard three appeals involving different nonprofit entities requesting an exclusive use exemption for land parcels they were intending to develop into low income housing and the facts in those appeals are very similar to the subject appeal. In these other appeals, the Tax Commission concluded that even though there were some utilities and commitments in place that the land would be used for construction of low-income housing purposes, no building permits had been issued and construction of the actual housing units had not commenced. In *Utah State Tax Commission Initial Hearing Order, Appeal No. 21-1079* (March 1, 2022), the property owner was a nonprofit organization that had purchased land for eventual use for affordable housing. There was a deed restriction on the properties that they could only be used for charitable purposes, but the property owner had not obtained a building permit or commenced construction prior to the lien date at issue in that appeal. In its decision, the Tax Commission concluded the property did not qualify for the exemption, noting at page. 14:

³ As noted by the Court in *Corporation of the 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 three exempt categories similarly. See *Benevolent and Protective Order of Elks v. Tax Comm’n*, 536 P.2d 1214, 1217.”

⁴ 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). These and other Tax Commission decisions are available for review in a redacted format at: <https://tax.utah.gov/commission-office/decisions>.

The 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. Thus, under the plain language of Rule R884-24P-40, the subject property is not tax exempt.

The Commission reached the same conclusion in *Initial Hearing Order, Appeal No. 21-1085* (2/14/2022). In that case, that property owner had acquired land that had a vacant restaurant building, which the property owner intended to tear down and then construct low income housing. At page 16, the Commission concluded: "[T]he 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 same conclusion was also reached in *Initial Hearing Order, Appeal No. 22-844* (11/22/2022), where the property owner had purchased the land with the intent to construct a low-income senior housing fourplex. These cases are factually similar to the subject appeal, and no legal basis has been presented at this hearing that would cause the Commission to reverse its position.

In *Initial Hearing Order, Appeal No. 22-844*, the Commission also pointed out that once construction commences or a building permit is issued, it is still not clear whether the other requirements for the exclusive use exemption would be met. The Commission finds that this reasoning is applicable in this matter as well. This decision concludes that because neither a building permit has been issued with respect to the subject property, nor has construction commenced, the property is ineligible for the exclusive use exemption. However, if a building permit is issued or construction has commenced, the Property Owner will still need to demonstrate that they meet all of the requirements set out in Utah Code §59-2-1101, and the Commission declines to rule on these issues at this time.

Based on the facts presented at the Initial Hearing and the applicable law, the subject properties do not meet the criteria for the exclusive use exemption as properties owned by a nonprofit entity used exclusively for charitable purposes pursuant to Utah Code §59-2-1101(3), because as of the lien date the subject properties were vacant land held for future development.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission finds that for tax year 2024, the subject parcels do not qualify for the exclusive use property tax exemption pursuant to Utah Code §59-2-1101(3) and the exemption should be removed from the subject parcels. 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 ____, 2025.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner