

APPEAL # 21-1079

TAX TYPE: PROPERTY TAX EXEMPTION

TAX YEAR: 2021

DATE SIGNED: MARCH 1, 2022

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

BEFORE THE UTAH STATE TAX COMMISSION

PROPERTY OWNER-1, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 21-1079 Parcel No: ##### Tax Type: Property Tax Exemption Tax Year: 2021 Judge: Marshall
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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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REPRESENTATIVE-1, Managing Director

For Respondent: RESPONDENT'S REPRESENTATIVE-1, COUNTY-1 Assessor

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the COUNTY-1 Board of Equalization ("the County") in which the County denied a property tax exemption for the subject property. The Property Owner's appeal was filed in accordance with Utah Code Ann. §59-2-1102(7) and §59-2-1006. This matter was argued in an Initial Hearing on November 15,

2021 in accordance with Utah Code Ann. §59-1-502.5. The hearing was conducted via teleconference.

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 §59-2-1101¹ 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 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 the exemption, deferrals, abatements, or other relief from taxation provided in

¹ 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 tax year 2021. There were substantial revisions to Utah Code Ann. §59-2-1101 effective as of January 1, 2021.

this part, Part 18, Tax Deferral and Tax Abatement, or Part 19, Armed Forces Exemptions...

“Charitable purposes” is defined in Utah Code §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 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.

Guidance on what constitutes a “nonprofit entity” is provided in Utah Code §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.

Administrative Rule R884-24P-40 provides the following guidance on vacant land:

- (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.
 - (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.

Administrative Rule R884-24P-35 sets forth the requirements for submitting a statement to claim an exemption under Utah Code Ann. §59-2-1102, below:

- (1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).
- (2) The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:
 - (a) the owner of record of the property;
 - (b) the property parcel, account, or serial number;
 - (c) the location of the property;
 - (d) the tax year in which the exemption was originally granted;
 - (e) a description of any change in the use of the real or personal property since January 1 of the prior year;
 - (f) the name and address of any person or organization conducting a business for profit on the property;

- (g) the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;
 - (h) a description of any personal property leased by the owner of record for which an exemption is claimed;
 - (i) the name and address of the lessor of property described in Subsection (2)(h);
 - (j) the signature of the owner of record or the owner's authorized representative; and
 - (k) any other information the county may require.
- (3) The annual statement shall be filed:
- (a) with the county legislative body in the county in which the property is located;
 - (b) on or before March 1; and
 - (c) using:
 - (i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or
 - (ii) a form that contains the information required under Subsection (2).

Property Tax Division Standard of Practice 2.13.8 provides the following guidance regarding vacant land:

2.13.8 Vacant Land

Land which is not actively used by the religious, charitable, or educational organization, is not deemed to be devoted exclusively to religious purposes, and therefore not exempt from property taxes.

Vacant land which is held for future development or utilization by a religious organization may not be deemed to be devoted exclusively to exempt purposes, and therefore not tax exempt, until either construction commences or a building permit is issued for construction of improvements that are intended for exclusive use. (R884-24P-40)

Guideline 1

Although R884-24P-40 refers specifically to land owned by religious organizations, vacant land or buildings owned by religious, charitable, and educational nonprofit entities should also be exempt if they have been issued a building permit or commenced construction on an improvement intended exclusively for their stated purpose. "The same statutory and constitutional constraints apply to the other non-profits seeking the exemption..." [Petitioner v. Board of Equalization of Salt Lake County, Utah (UTC Appeal No. 07-1121)].

The State Tax Commission has previously found that construction "incidental and reasonably necessary" to [a] charitable purpose qualifies for the exemption. [in Utah County v. Intermountain Health Care., 725 P.2d 1357 (Utah 1986)]. Further, the Utah Supreme Court has found that:

"To deny a charitable exemption for real estate on which a hospital is being constructed when its use is irrevocably committed to purposes that

will qualify for a charitable exemption at its completion would not be consistent with the constitutional policy of encouraging private charities.” (ibid.)

These principles have been upheld in a more recent State Tax Commission decision, for a building undergoing extensive renovation. [Taxpayer v. Board of Equalization of Rural County, State of Utah (UTC Appeal No. 14-1662)]. The burden still lies with the taxpayer to apply for the exemption. (§ 59-2-1102). Counties may consider informing exempt taxpayers they may apply for an exemption for a property under construction, but are not obligated to refund prior year’s taxes if the county BOE does not find sufficient reason to do so. (§ 59-2-1347)

Should a taxpayer apply for an exemption for land or building under construction, consider the following:

- *Has a building permit been issued or construction commenced (simply planning future construction is NOT sufficient)?*
- *Is the construction irrevocably committed to the stated exempt purpose?*

Guideline 2

In rare instances, “use” and “vacant” become subject to interpretation. Two cases have come before the Tax Commission concerning the exemption of land with little or no improvements. In both cases, the land was owned by nonprofit wild life refuges, where keeping the land in its natural state was the charitable gift. Both successfully received the charitable use exemption even though improvements were limited to “no trespassing” signs. [Petitioner v. County Board of Equalization of County, State of Utah (UTC Appeal No. 93-0071 & 93-0079)] and [Petitioner v. County Board of Equalization of County 1 (UTC Appeal No. 15-1569)]

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

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

A person may appeal a decision of a county board of equalization, as provided in Utah Code §59-2-1006(1), 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 Utah County 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).” See also *Butler v. State Tax Comm’n*, 367 P.2d 852,854 (Utah 1962) in which the court found that a party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption.

DISCUSSION

The subject property is parcel no. ##### located on LOCATION-1 in CITY-1. It is a #####-acre parcel that was vacant as of the January 1, 2021 lien date. The Property Owner applied for an exemption under Utah Code Ann. §59-2-1101, on the basis that the subject property was used for charitable purposes. The Board of Equalization denied the exemption request, and the Property Owner appealed to the Tax Commission.

The facts in this case are not in dispute. The Property Owner is a Utah 501(c)(3) organization. The Property Owner acquired the property on DATE, with the purpose of developing a 40-unit apartment complex of affordable housing units. A Restriction Concerning Affordable Housing Units at COMPANY-1 (“deed restriction”) between the Property Owner and the County was recorded on DATE. The deed restriction requires that all 40 units are restricted to occupancy by local working households earning less than 60% of the area median income for COUNTY-1. Rents may not be charged in excess of an affordable amount as set/approved by the County. All units are restricted for a minimum of 60 years, which may be further extended.

The DATE deed restriction identifies the Property Owner as “Developer” and COUNTY-1 as the “County.” The deed restriction includes the following “Recitals,” which provide more background on the subject property:

- A. On or about DATE, the County entered into the Development Agreement for the COMPANY-1 Specially Planned Area (“the Development Agreement”) with COMPANY-2 and NAME-1, the master developers of the COMPANY-1 Specially Planned Area. The Agreement was recorded on DATE as Entry No. ##### (Book #####, Page #####) in the Office of the COUNTY-1 Recorder; and

- B. Subsequent to execution of the Development Agreement, the master developer transferred certain portions of the COMPANY-1 Specially Planned Area to other parties, including the transfer of certain parcels to COMPANY-3. (“COMPANY-3”); and
- C. The Development Agreement, per Section 5.2 “Affordable Housing Requirements,” requires the construction of Workforce Housing Unit Equivalents or “WUEs”, as that term is defined in the Development Agreement, subject to a number of requirements to ensure that the units are oriented towards persons employed in the County and remain affordable to those employed in the County, in perpetuity, including sales beyond the original owner; and
- D. Developer is a nonprofit organization that advocates for, and owns and develops, affordable housing in COUNTY-1 and COUNTY-2 Counties; and
- E. The Development Agreement allows the master developers (and their successors in interest) to donate land within the COMPANY-1 Specially Planned Area to a County-approved nonprofit, and specifically lists Developer, for the purposes of constructing Workforce Units thereon. The terms of such donation are set forth in Section 5.2.2.17; and
- F. COMPANY-3 donated to Developer a parcel identified as Lot ##### of COMPANY-1 Center Lot ##### (as more particularly described below and on Exhibit A (hereinafter the “Property”) on terms set forth in a separate agreement between COMPANY-3 and COMPANY-4; and
- G. Developer proposes to construct a forty (40) unit apartment complex to be known as “NAME-2” (hereinafter the “apartments” or “Apartment Units” when used together or “Apartment Unit” when used singularly) consisting of two buildings located at ADDRESS-1 LOCATION-1 in COUNTY-1, Utah on the Property; and
- H. All of the Apartment Units on the Property (comprised of 10 one bedroom, 26 two bedroom and 4 three bedroom Apartment Units) are intended to be designated WUEs pursuant to the Development Agreement; and
- I. On or about DATE, the County and Developer entered into a “Workforce Housing Agreement” setting forth specific timelines and details related to affordable housing requirements on the Property, including that all WUE’s to be developed thereon shall be designated and deed-restricted as workforce units pursuant to the terms of the Development Agreement. The Workforce Housing Agreement was recorded on DATE as Entry No. ##### Book #####, Page ##### in the Office of the COUNTY-1 Recorder; and
- J. The Parties are exercising and recording this Deed Restriction to satisfy the terms of the Workforce Housing Agreement regarding the Apartment Units intending that the leasing of the Apartment Units be in accordance with its terms. Upon its recording in the public records of the County Recorder of COUNTY-1, Utah, this Deed Restriction shall govern the terms and conditions of ownership, management, use and occupancy of the Property by Developer and any subsequent owners, managers, tenants and their heirs, successors, executors, administrators, devisees and assigns as addressed herein.

In addition to the DATE deed restriction, the Property Owner received funds from the State of Utah via the COMPANY-5 and the COMPANY-6. The deed restriction for the COMPANY-5 was recorded on DATE, and limits the funds to use in providing housing for low-income families. The deed restriction from the COMPANY-6 was recorded on DATE, and provided funds for project financing of the apartments to be built on the subject property.

The COMPANY-1 Affordable Housing Final Site Plan was recorded with the COUNTY-1 Recorder's Office on DATE. COUNTY-1 issued a building permit on DATE for construction of the affordable housing units on the subject property. No information was provided at the Initial Hearing as to when the Property Owner applied for the building permit.

The Property Owner's representative stated that he believes the issue before the Commission is a question of law, not fact. He argued that the subject property was permanently restricted for charitable purposes when the County recorded the deed restriction on DATE. It is the property owner's position that the subject property's established purpose as affordable housing units was in place prior to the January 1, 2021 lien date.

The Property Owner's representative noted that at the Board of Equalization, the County Assessor had argued that under Administrative Rule R884-24P-40, the property is not "in use" until construction has commenced and/or a building permit has been issued. He stated that he is unsure that Rule R884-24P-40 is applicable in this case because the property owner is claiming the exemption due to the use of the property for charitable, rather than religious, purposes. The Property Owner's representative argued that if Rule R884-24P-40 does not apply, then the subject property should qualify for the exemption because the imposition of the deed restriction recorded in DATE had permanently limited the use of the property for charitable purposes for 2021.

The Property Owner's representative noted that under Administrative Rule R884-24P-35, a property owner has until March 1, 2021 to file a statement for exemption. He argued that if the requirement is that a property owner receive the building permit prior to the filing deadline, then the subject property qualifies for the exemption, as the building permit for the subject property had been issued on DATE.

The County's representative stated that their initial recommendation to the Board of Equalization was to deny the exemption because the building permit had not been issued as of the lien date. She stated that as most items pertaining to property tax are tied to the January 1 lien date, the County had assumed that the building permit for the subject property would need to have been issued by the lien date. However, the County's representative stated that in review of the Administrative Rules and Standards of Practice 2.13.8, the County was unable to find any reference to the date by which a building permit had to be issued in order for a property to qualify

for the exemption. She stated that the County agrees that the property would otherwise meet the statutory requirements to qualify for the exemption, if the Commission determines that the property was being used for charitable purposes as of the lien date, even though a building permit had not yet been issued.

The County's representative stated that she does not believe the deed restriction is addressed in statute. She acknowledged that the deed restriction was in place as of the lien date, but noted the property was vacant. The County's representative stated that the exemption was denied because the County did not find any guidance on when the building permit must be issued in order for the property to qualify for the exemption.

In closing, the Property Owner's representative stated that he agrees with the County that the question before the Commission is whether a building permit issued after the lien date is sufficient for the subject property to qualify for the exemption as of January 1, 2021. He reiterated that the Property Owner owned the property, and the deed restriction was in place prior to the lien date.

In determining whether a property qualifies for the exclusive use exemption under Article XIII, Sec. 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 must be strictly and narrowly construed. Additionally, the burden is generally on the entity seeking the exception to show that it is entitled to the exemption.²

The Commission must first determine 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

² *Loyal Order of Moose, #259 v. County Bd. of Equalization*, 657 P.2d 257, 261 (Utah 1982), *County Bd. of Equalization v. Intermountain Healthcare, Inc.*, 725 P.2d 1357, 1359 (Utah 1986), and *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).

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 subject property is owned by PROPERTY OWNER-1, a Utah nonprofit corporation and 501(c)(3) organization. The Property Owner advocates for, and owns and develops, affordable housing in COUNTY-1 and COUNTY-2 Counties. Section 501(c)(3) of the Internal Revenue Code prohibits any part of the net earnings from inuring to the benefit of any private shareholder or individual. There was no indication, nor was it argued, 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 meets the first criterion for the exclusive use exemption, that it is owned by a nonprofit entity as defined in Utah Code Ann. §59-2-1101(1)(g).

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).

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 follows³:

- (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 Property Owner's intended use of the subject property is to construct affordable housing units on the subject property. The Property Owner has the burden of proof, and in order to prevail, must show that the statutory requirements have been met. Thus, in order for the subject property to be used exclusively for a charitable purpose, it must provide a gift to the community. In this case, the County's representative acknowledged that the subject property is used for a

³ 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.

charitable purpose, and thus did not address whether the use of the subject property met the specific requirements of “gift to the community” under Utah Code Ann. §59-2-1101. The County originally denied the exemption because a building permit had not been issued for the subject property as of the lien date. The County’s representative stated that she agrees that the property would otherwise qualify under Utah Code Ann. §59-2-1101 for the exclusive use exemption.

The Property Owner’s representative has questioned whether Administrative Rule R884-24P-40 is applicable to the subject property. Subsection (3) of Rule R884-24P-40 addresses the exclusive use exemption with regard to vacant land, and provides:

- [v]acant 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 Commission has previously determined that Administrative Rule R884-24P-40 can be applied to entities other than those with a religious purpose.⁴ The Commission relied upon the Court’s reasoning in *Corporation of the Episcopal Church*, which stated, “[r]ecognizing that each exemption is rooted in the same policy concerns, this Court has always treated the three [religious, charitable and educational] exempt categories similarly.” *Id.* at 558.

In *Corporation of the Episcopal Church*, 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 in *Corporation of the Episcopal Church* denied the exemption, and found that:

The determination of whether a parcel of land is tax exempt does not turn on the property’s level of development. Rather, the exemption hinges on the actual use of the property and, in the case of Utah, whether it can be said that the religious use is exclusive Construction of a church on church owned property indicates that the property is “irrevocably committed” to a religious use, not simply held for future development. *See Utah County By and Through County Bd. of Equalization v. Intermountain Health Care, Inc.*, 725 P.2d 1357, 1359 (Utah 1986).

⁴ See Appeal Nos. 06-1109 and 07-1121. Prior Commission decisions are available in redacted format online at tax.utah.gov/commission-office/decisions.

Even though Utah Code Ann. §59-2-1101 was substantially revised beginning with tax year 2021, 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.⁵ Thus, under the plain language of Rule R884-24P-40, the subject property is not tax exempt. Furthermore, Standard of Practice 2.13.8, which was relied upon by the County, specifically provides, "[v]acant land which is held for future development or utilization by a religious organization may not be deemed to be devoted exclusively to exempt purposes, and therefore not tax exempt, until either construction commences or a building permit is issued for construction of improvements that are intended for exclusive use."⁶

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the County properly denied the s exclusive use exemption under Utah Code Ann. §59-2-1101 as of the January 1, 2021 lien date. 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:

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

⁶ The Commission notes that the County acknowledged that but for obtaining a building permit, the property would otherwise qualify under Utah Code Ann. §59-2-1101 for the exclusive use exemption. Now that a building permit has been obtained, the Property Owner may apply for exemption for future tax years in accordance with the procedures and requirements of Title 59, Chapter 2, Property Tax Act.

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