



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

**LISA P. BLUM, as TRUSTEE of the
Lisa P. Mahoney Revocable Trust; and
ARTHUR A. BLUM, as TRUSTEE
Of the Arthur A. Blum Trust,**

Appellants-Respondents,

v.

No. S-1-SC-41083

**ISAIAH F. ROMERO,
Santa Fe County Assessor,**

Appellee-Petitioner.

APPELLEE-PETITIONER'S REPLY BRIEF

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
ARGUMENT	2
1. Substantial Evidence Standard	2
2. Distinction of Idle Property	2
3. Preservation of Error	5
4. Building Envelope Restrictions	7
5. Public Access	8
CONCLUSION	9

STATEMENT OF COMPLIANCE

Undersigned counsel hereby certifies that this brief was prepared in 14-point Times New Roman typeface and the body of this brief complies with the page limit requirement of Rule 12-318(F)(2), with a word count of 2063 words using Microsoft Word, version 2601.

TABLE OF AUTHORITIES

New Mexico Cases

<i>Hinojosa v. State ex rel. Employment Sec. Dept.</i> , 1986-NMCA-118, ¶ 16, 105 N.M. 212	2
<i>Pecos River Open Spaces, Inc. v. County of San Miguel</i> , 2013-NMCA-029, 495 P.3d 1129	3, 9
<i>CAVU Co. v. Martinez</i> , 2014-NMSC-029, 332 P.3d 287	5

Petitioner Santa Fe County Assessor respectfully submits this Reply to Respondents' Answer Brief.

INTRODUCTION

The district court and Respondents take the basic position that the current use of the Building Envelope is the same as the remainder of the property and, since the remainder qualifies for a charitable exemption, the Building Envelope must qualify as well. In this regard, Respondents constantly equate the "conservation values" with the "preservation" of those values. (Answer Brief at 6, 13, 29, 34, 41, 43).

The Assessor does not dispute the "conservation values." Rather, the Assessor submits that the only way that the use of the property confers a substantial public benefit that qualifies for a charitable exemption is by *the preservation of those values in perpetuity* by way of the Conservation Easement. That preservation applies to the remainder of the property, but not to the Building Envelope, which, quite simply, has been carved out of the property for development purposes. This is exactly the finding of the protest board.

These respective positions have been thoroughly explained and argued in the parties' briefs, and the Assessor respectfully refers this Court to those arguments rather than repeating them here. A few of the statements in Respondents' Answer Brief, however, require brief replies.

ARGUMENT

1. Substantial Evidence Standard.

A primary contention of Petitioner in this appeal is that the district court misapplied the substantial evidence standard of review by substituting its own judgment for that of the protest board rather than reviewing the record to determine whether the evidence supports the board's decision. (Brief in Chief at 10-14). Respondents do not directly address this argument, but instead focus on the evidence that purports to support the district court's decision. (Answer Brief at 34). The evidence is largely the same and Petitioner submits that the district court has misinterpreted that evidence and has not viewed it in the light most favorable to the board's decision as required. (Brief in Chief at 10); *Hinojosa v. State ex rel. Employment Sec. Dept.*, 1986-NMCA-118, ¶ 16, 105 N.M. 212. The Assessor respectfully refers this Court to that argument in the Brief in Chief. (BIC at 11-14).

2. Distinction of Idle Property.

The development of caselaw involving charitable and educational exemptions is lengthy and detailed. In brief, that caselaw has always looked to the actual use of the subject property for charitable or educational purposes and the courts conduct a detailed review of the evidence on an individual case basis. The Assessor has provided a discussion of this history in his Brief in Chief. (BIC at 20-24). There is an important distinction between actual use and idle property.

The district court and Respondents repeatedly refer to the current use of the Building Envelope as being the same as that of the remainder of the property. (AB at 6, 29, 34, 41, 43). But there is no actual, current use of the property other than the limited recreational use of the trails. The court and Respondents confuse “current use” with “conservation values.” (AB 13, 39, 41). Those values are not uses except to the extent that they permanently preserve the property. This is the holding of *Pecos River Open Spaces, Inc. v. County of San Miguel*, 2013-NMCA-029, 495 P.3d 1129, the case that the protest board correctly relied upon and that Petitioner submits is controlling. The case is discussed in detail in Petitioner’s Brief in Chief. (BIC at 24-26).

It must be remembered that *Pecos River* was a case of first impression involving property that was not in actual use. The court of appeals was faced with the question of whether such property could qualify for a charitable exemption despite being idle. The court held that conservation itself is a charitable use “insofar as the conservation of the particular land provides a substantial benefit to the public.” *Id.* ¶ 13. The property in that case was subject to a conservation easement that prohibited all development of any kind in perpetuity. The easement itself was not in issue; it was the question of whether conservation itself was a charitable use that provided a substantial public benefit, and the court of appeals answered that it did.

It is essential to an understanding of *Pecos River* that it was the preservation of the property in perpetuity that conferred the substantial public benefit. Without that guarantee, the property was simply fenced off and left alone. If fencing the property and leaving it alone with no requirement of preservation is the standard, then all unused property would qualify for an exemption. This would include private acreage suitable for subdivision development, as was the status of the subject property in this case prior to executing the Conservation Easement. That is not the holding of *Pecos River* and it would amount to a repudiation of the long history of the charitable exemption cases that look to the actual use of the property.

The board in this case was very interested in that very aspect of the matter, that is, whether preservation in perpetuity by way of a conservation easement or some other binding legal device was required. The Assessor emphatically argued that it was; Respondent's declined to provide an answer then, and they continue to decline the answer. The district court avoided the issue by focusing on the current use of the Building Envelope being the same as the rest of the property and that the Assessor had approved an exemption for the rest of the property. The court's reasoning, however, overlooks the necessity of the preservation in perpetuity of the conservation values.

Moreover, Respondents specifically argue that "the Building Envelope Area, whether it is developed or not, will forever be subject to the general prohibition in

the Conservation Easement that nothing shall be done on or to the Property ‘that is inconsistent with the or to the detriment of the Conservation Values.’” (AB at 32). That simply is not correct. The provisions allowing for residential and limited commercial development, discussed in more detail below, are completely inconsistent with the conservation values and the suggestion that the Building Envelope is “forever subject to the general prohibition” is both meaningless and wrong.

This issue also concerns this Court’s opinion in *CAVU Co. v. Martinez*, 2014-NMSC-029, 332 P.3d 287. *CAVU*, like *Pecos River*, involved property that was not in actual use and that the protest board in that case considered “a rare instance of temporary nonuse.” *Id.* ¶ 8. The district court in the current case provided its interpretation of *CAVU*, but the Assessor submits that that interpretation is in error. It is part of the Assessor’s basis for requesting review by this Court since protest boards and district courts across the state have interpreted and applied *CAVU* many times, not always consistently, and clarification of the scope of *CAVU* by this Court is necessary. The Assessor discussed this aspect of the issue in depth in his Brief in Chief and respectfully refers this Court to that discussion. (BIC at 22-24).

3. Preservation of Error.

Respondents argue that Petitioner failed to preserve the argument regarding idle property. (AB at 38). They similarly argue that Petitioner is newly raising his

argument that “the preservation of the conservation purposes in perpetuity” is required for state and federal tax credits. (AB 37). The Assessor respectfully submits that Respondents have misconstrued any preservation requirement.

This case is an appeal by Respondents of an administrative decision. The only two issues are whether the protest board’s decision was supported by substantial evidence and whether that decision was in accordance with law. A review of both the law and the evidence is necessarily required. The Assessor is not presenting any new evidence.

Moreover, both issues were in fact central to Respondents’ application for a charitable exemption and the board’s consideration of it. Respondents note that they did in fact submit an application for tax credits under both state and federal law. (AB at 37-38). For some unexplained reason, they note that the purchase price was \$1,250,000. (AB at 2). The purchase price is irrelevant, but it would, in any event, serve as the basis for the tax credits. In any event, Respondents have based their argument, in part, on the provisions of the income tax laws that recognize conservation of land as qualifying for tax credits. Pointing out that their own authorities require that the conservation be in perpetuity is hardly raising a new issue.

Similarly, the entire issue before the protest board was whether the use of the Building Envelope was a charitable use that provided a substantial public benefit. Whether that use or nonuse is active, passive or idle is central to the issue. This is

what both *Pecos River* and *CAVU* were about, and the board addressed both of those cases, as did the district court. It is hard to see how the discussion in Petitioner’s Brief in Chief is being raised for the first time.

4. Building Envelope Restrictions.

Respondents state in their Answer Brief that “[t]he Conservation Easement provides that the Blums retained the right to build one single-family residence and associated accessory outbuildings within this one-half-acre area (the ‘Building Envelope Area’) subject to numerous restrictions.” (AB at 4). They do not identify those restrictions, and the Conservation Easement itself does not support the statement.

The only restrictions identified in the Conservation Easement (“deed”) are as follows:

First, the owners must submit construction plans to the Trust for review, but not for approval. (ROA 78, ¶ 3(a)). Second, the owners must obtain an archeological survey prior to construction. (ROA 78, ¶ 3(b)). Third, the construction is limited to a height of 30 feet. (ROA 78, ¶ 3(c)). That is all there is.

On the other hand, the language of the Conservation Easement allows construction of a single-family residence together with associated outbuildings, including a guest house, as permitted by the county zoning ordinances. (ROA 78, ¶

3(c)). In other words, the restrictions are those that are found in the county's zoning code, not in the deed. No approvals by the Trust are required.

Fences within the Building Envelope, as well as in the Privacy Zone, may be constructed without prior approval of the Trust. (ROA 79, ¶ 3(d)). Commercial activities, including home occupations, home businesses, lodging activities and destination events are specifically allowed. (ROA 84, ¶ 18).

The “numerous restrictions” do not in fact exist, and the Board was correct in determining that the Building Envelope had been carved out of the easement.

5. Public Access.

Respondents repeatedly claim that the trails, including the existing trail passing through the Building Envelope, provide “critical public access” to the city's open space in La Tierra. (AB at 5, 10, 12, 41, 42). Whatever is meant by “critical access,” their own evidence belies the claim.

The plat of the property shows that the trail passing through the Building Envelope is accessed from the north, which consists entirely of private residential properties located within the Canterbury Subdivision and adjoining the subject property. (ROA 99-100 (Baseline Documentation Report); AB at 10). The Baseline Documentation Report confirms this, stating: “The trail section provides connectivity between the City of Santa Fe's La Tierra trail system to the south and

the Canterbury subdivision to the north, *enabling neighbors to access the La Tierra trails directly without driving to a trailhead.*” (ROA 46)(emphasis added).

This limited access is precisely the type of non-exempt activity that the *Pecos River* opinion described as “routine activity or inactivity summarily denoted to be ‘conservation,’ *but which benefits only the owner or a limited number of people or interested parties.*” *Pecos River*, 2013-NMCA-029, ¶ 17. The protest board found that the activity did not qualify as “charitable use and did not rise to the level of creating a substantial public benefit.” (ROA 150, ¶ 35). The evidence supports this finding.

CONCLUSION

Respondents raised and repeated many issues and arguments in their Answer Brief. Petitioner Assessor has endeavored to reply only as needed to those arguments. To the extent that specific allegations, arguments or references within the Answer Brief have not been specifically addressed herein, the Assessor respectfully refers this Court to his Brief in Chief.

WHEREFORE, for all of the reasons argued herein and in his Brief in Chief, Petitioner Santa Fe County Assessor requests that this Court reverse the Order of the district court and affirm the Decision and Order of the Santa Fe County Valuation Protests Board.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 2026, I filed the foregoing pleading electronically through the court's Odyssey file and serve system. I FURTHER CERTIFY that a copy of the foregoing was also transmitted via electronic mail to the following:

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