



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PROTEST OF
VALUATION AND ASSESSMENT OF
IMPROVEMENTS FOR TAXATION AS
REAL PROPERTY OF NON-EXEMPT ENTITY

AMERICAN CAMPUS COMMUNITIES, INC.,

Appellant-Petitioner,

No. S-1-SC-41215

and

REGENTS OF THE UNIVERSITY OF NEW MEXICO,

Interested Party-Petitioner,

vs.

BERNALILLO COUNTY ASSESSOR,

Appellee-Respondent.

On Writ of Certiorari to the Court of Appeals of New Mexico
Ct. App. No. A-1-CA-42053

REPLY BRIEF

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References to Record Proper: The record on appeal encompasses three consolidated appeals to the district court from three decisions of the Valuation Protests Board:

No. D-202-CV- 2022-00099 (concerning the 2012-2020 Protest);

No. D-202-CV-2023-04349 (concerning the 2021-2022 Protest and 2022 Claim of Exemption);

No. D-202-CV-2023-08882 (concerning the 2023 Protest and 2023 Claim of Exemption).

The multi-volume record proper in No. 2022-00099, which constitutes the main case and includes the administrative record and a transcript of the administrative hearing, is cited as “RP” by volume and page number. The one-volume record proper in No. 2023-04349 is cited as “RP (04349)” by page number. The one-volume record proper in No. 2023-08882 is cited as “RP (08882)” by page number.

Transcript of Proceedings: As noted in the preceding paragraph, the transcript of the administrative proceedings is cited as “RP” by volume and page number, referring to the record proper in No. 2022-00099 where the transcript is found. There is no transcript of proceedings in the district court.

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Argument

I. *Alumnae Association* Provides the Proper Constitutional Analysis, Under Which the Court Should Conclude That the Facilities Are Used for Educational Purposes Under the Public-Private Partnership Established Between UNM and ACC.

The Assessor advances two broad arguments on the question of educational use – first, that substantial evidence supports the Valuation Protests Board’s determination that the use of the Facilities is residential and, second, that the Court should not apply *Albuquerque Alumnae Association v. Tierney*, 1933-NMSC-011, 37 N.M. 156, as the appropriate analysis of educational use in the circumstances of this case as urged by UNM and ACC. The Assessor’s substantial evidence argument is misdirected, and the Assessor’s argument regarding the applicable constitutional analysis is flawed in multiple respects. Neither should deter the Court from concluding that *Alumnae Association* provides the proper analysis and leads to the conclusion that the student residential facilities at issue, which are the result of a public-private partnership between the University and ACC to construct, lease, and operate the residences to meet the University’s need for student housing and advance its educational mission, are used for educational purposes under Article VIII, Section 3 of the state Constitution.

A. This appeal presents a question of constitutional interpretation, not substantial evidence.

Contrary to the Assessor’s assertion, this appeal does not call for a

substantial evidence standard of review. Substantial evidence is not the only standard under which an administrative decision is reviewed, as the Assessor has it. (*E.g.*, AB at 19.) Judicial review of administrative action also encompasses, among other standards, whether the agency “act[ed] . . . in accordance with law.” Rule 1-074(R)(4) NMRA; *see also* NMSA 1978, § 39-3-1.1(D) (1999). The latter standard applies here.

The Board was not required to resolve a single disputed question of fact in determining whether the Facilities qualify as tax-exempt. UNM and ACC presented facts tending to show that the Facilities were used for educational purposes under *Alumnae Association*, while the Assessor’s evidence related to educational use criteria employed in *NRA Special Contribution Fund v. Board of County Commissioners*, 1978-NMCA-096, 92 N.M. 42. Neither side disputed the evidence presented by the other. The dispute was whether *Alumnae Association* or *NRA* provide the applicable constitutional analysis. That is the question before this Court, and because it is a legal question of constitutional dimensions it is subject to de novo review. (BIC at 22.)

The Assessor therefore is off base in complaining that the brief in chief “fails to comply with the substantial evidence standard” in its presentation of the evidence. (AB at 6.) The opening brief fairly presents the substance of the evidence presented to the Board, appropriately framing the legal analysis to be

undertaken by this Court.

There is nothing “misleading” (AB at 10) about the description in the brief in chief of the process through which the University opted to enter into a public-private partnership with ACC to obtain needed housing that the University lacked resources to finance. In the 2007 University-commissioned study (BIC at 4; AB at 10), one-quarter of students surveyed who rated the on-campus housing at UNM in comparison with that at other universities classified the UNM housing as “unsatisfactory” or “very unsatisfactory.” (20 RP 5155.) The study makes note of the University’s belief that a “commitment to the improvement of the on-campus residential community” was “essential” and its desire “to improve its housing offering.” (20 RP 5103.) The study “identified [a] demand for additional on-campus student housing” and recommended that public-private partnerships should be investigated to meet that demand. (20 RP 5106-07.) The University followed that advice. The terms of the arrangement between UNM and ACC are detailed in the transactional documents introduced into evidence, which demonstrate the high degree of oversight and control retained by the University to assure that its needs and standards would be met and the student residence experience would be “seamless,” regardless of whether students resided in the Facilities or UNM-managed dormitories. (BIC at 4-9.)

The Assessor asserts it is “undisputed” that the Facilities “are residential

buildings used for residential purposes.” (AB at 24.) That is true insofar as the Facilities undeniably provide living quarters for students. But that does not answer the question presented in this appeal: whether, in light of all the facts regarding the Facilities developed in the record, the Facilities are used for educational purposes *in the constitutional sense*. That question is answered affirmatively by *Alumnae Association*.

B. *Alumnae Association* provides the appropriate constitutional analysis, under which the Facilities are exempt from taxation because they are used for educational purposes.

The Assessor argues that the Board and lower courts correctly applied the holding of *Alumnae Association*, which the Assessor takes to be a determination that student housing facilities are, categorically, “entirely residential.” (AB at 1, 30, 32.) But a case quoted in the answer brief shows that the Assessor’s argument is overbroad. This Court has emphasized the fact-dependent nature of exemptions under Article VIII, Section 3 and cautioned that “no case can be said to constitute a controlling precedent” on the subject “[e]xcept to the extent that the facts as to use are so nearly alike as to logically compel like results.” *Benevolent & Protective Order of Elks, Lodge No. 461 v. N.M. Property Appraisal Dep’t*, 1972-NMSC-006, ¶ 3, 83 N.M. 445. (AB at 22.) The Assessor’s argument and the decisions below overlook a key aspect of *Alumnae Association* that distinguishes the private sorority house at issue there from the present case, in which the Facilities

constitute University property dedicated specifically to the purpose of student housing by the institution itself. (BIC at 24, 29.) That distinction is built into the actual holding of *Alumnae Association*, as well as being reflected in the Court’s discussion of its rationale. *See* 1933-NMSC-011, ¶ 25 (noting that fraternity houses are generally considered to be private facilities for the use of fraternity members); *cf. id.* ¶¶ 17-18. (BIC at 24.)

It is the rationale of *Alumnae Association*, not its holding, that provides the applicable analysis here. The Assessor repeatedly characterizes the Court’s explanation of its rationale as “dicta,” but the Court has made clear that the “analytical frameworks” expressed in its cases “provide legal guidance that should be understood as binding.” *State v. Mares*, 2024-NMSC-002, ¶ 40, 543 P.3d 1198. The holding of *Alumnae Association* is fact-bound and provides no guidance when, as here, the facts differ. Its underlying rationale, however, is universally applicable and provides a uniform and consistent framework for adjudication across factual differences.

Under the rationale of *Alumnae Association*, the University’s dedication of its own property to student residential use through a public-private partnership – a use that satisfies a pressing need and advances the institution’s educational mission under the University’s direction and control – constitutes a use of the property for educational purposes under Article VIII, Section 3. Such an approach

appropriately takes into account the judgment of the officials responsible for institutional governance and policymaking, who are the most qualified to ascertain the institution's needs and determine how best to meet them. (BIC at 25-26, 32.) The *Alumnae Association* analysis properly focuses on the ultimate question: “whether the use of the property furthers exempt purposes.” *CAVU Co. v. Martinez*, 2014-NMSC-029, ¶ 21, 332 P.3d 287 (internal quotation marks & citation omitted). The Assessor's dogged insistence in applying the test for exemption used in *NRA*, a test heretofore applied only in cases involving the use of privately owned property, would instead invoke the sort of “mechanical” test for educational use that this Court has disavowed. *Id.* ¶ 20.

C. The Assessor's arguments are unavailing.

The Assessor raises a number of objections to applying the analysis of *Alumnae Association* to resolve the question of educational use in this case. All lack merit.

1. The Assessor contends that an educational institution could obtain a tax exemption under *Alumnae Association* for any use of property merely by “say[ing] it is educational.” (AB at 25.) Such a “wide-open, standardless rule” purportedly would “allow property owners to set their own standards” which assessors, protest boards, and courts would be required “to blindly accept.” (AB at 25, 27.) But the *Alumnae Association* analysis is narrow and well-defined,

applying only to an institution’s dedication of its property “to a use reasonably related to its general purposes.” 1933-NMSC-011, ¶ 18. The Facilities qualify as an educational use not because the University says so but because the facts at hand bring this case within *Alumnae Association*’s rationale. And, of course, this Court has the final say on any issue of constitutional interpretation. If the Court determines that the standard flowing from *Alumnae Association* should be restated to avoid indeterminacy or abuse, this case provides an opportunity for it to do so. But there should be no question that the Facilities qualify as property used for educational purposes under the letter and spirit of *Alumnae Association*.¹

2. The Assessor points out that ACC is a for-profit enterprise. (AB at 8.) This fact in itself is not disqualifying. *See CAVU Co.*, 2014-NMSC-029, ¶ 29 (noting that the constitutional exemption could apply to property used educationally “even if [the owner] had succeeded in leasing or selling the [p]roperty to a noneducational tenant”). What matters, as the Assessor agrees, is the purpose for which ACC uses its leasehold. (AB at 29-30 (stating that to qualify

¹ The Assessor points to *Temple Lodge No. 6, A.F. & A.M. v. Tierney*, 1933-NMSC-013, 37 N.M. 178, as weighing against “adding an element” to the educational use analysis relating to institutional purposes. (AB at 26.) Actually, the Court observed there that the constitutional exemption provision omitted a restriction of the exemption, in a prior statute, to purposes that were “appropriate objects of [the] institutions.” From this change the Court concluded that the constitutional provision was intended “to extend the field or liberalize the policy of tax exemption.” *Id.* ¶ 32; *accord CAVU Co.*, 2014-NMSC-029, ¶ 14. *Temple Lodge* thus supports the position advocated by UNM and ACC far more than it supports the Assessor’s argument.

for an exemption ACC “must establish an educational use of the improvements”).)

The leasehold is used educationally to assist UNM in providing additional, modern, on-campus student housing, using property earmarked by UNM for that purpose to meet an urgent need of the University to improve its housing facilities.

The Assessor’s characterization of ACC as enriching itself at taxpayer expense (AB at 28) is inapt, because like any other educational or charitable use exempt under the state Constitution, the Facilities are tax-exempt because they fulfill a need that otherwise would have to be funded by taxpayers. (BIC at 23.)

3. The Assessor argues that the use of property, rather than “the declared objects and purposes of the owner,” is determinative. (AB at 29.) But *use* is what UNM and ACC have relied upon all along. It is true that a tax exemption cannot be predicated on the owner’s mere “unrealized intentions” but requires concrete effort to achieve an exempt purpose. *See CAVU Co.*, 2014-NMSC-029, ¶¶ 23-26. The properties at issue here are real structures that have stood on the UNM campus and been used to house UNM students for more than a decade. Real buildings commissioned and owned by the University that house real students to advance the University’s educational mission are not a “mere dream,” *id.*, but an exempt, educational use.

4. The Assessor contends that the analysis in *Alumnae Association* concerns “dormitories of the school itself” (AB at 33) – apparently meaning

facilities owned by the institution. But the Facilities are owned by UNM and thus are, in fact, “of the school itself” – no less so because they were built and are leased and operated as student residences by ACC in partnership with UNM. *Alumnae Association* requires only that an educational institution “devote[] property to a use reasonably related to its general purposes.” 1933-NMSC-011, ¶ 18. The public-private partnership between UNM and ACC resulting in the development and use of the Facilities for student housing fully meets the conditions necessary to establish educational use as contemplated by *Alumnae Association*.

5. The Assessor claims that treating the Facilities as an exempt educational use is “inconsistent with UNM’s existing practices.” (AB at 35.) During the protest hearing, a UNM witness was asked whether there are “other UNM-owned parcels where there is an improvement that is separate from the land, owned by someone else.” (17 RP 4341, at 559:12-14.) The witness identified faculty housing and two fraternity houses on which property tax is paid. (*Id.* at 559:17-560:16.) This brief testimony does not demonstrate any inconsistency. Private fraternity houses would not constitute an educational use under *Alumnae Association*, and no facts were developed that would make the faculty housing referred to comparable to the Facilities with respect to educational use.

6. Finally, the Assessor contends that accepting the position advocated

by UNM and ACC would nullify the statute authorizing taxation of fractional interests in exempt property and would unintentionally work against the University's planned development of a tax increment development district (TIDD) on south campus land. (AB at 37-38.) The fractional interest statute of course cannot override the constitutional exemption for property, such as ACC's leasehold, if the property is used for educational purposes. That does not make the statute "meaningless" (AB at 37), because it still applies to the presumably far greater number of instances in which a fractional interest in exempt property is used for a nonexempt purpose. With respect to the planned TIDD, the Facilities and the TIDD that UNM is undertaking to develop occupy different areas of the south campus. UNM makes no claim that any commercial development relating to the TIDD would be a tax-exempt educational use. Taxation of commercial uses is a contemplated aspect of the TIDD and thus would not threaten the achievement of its purposes.²

² The Assessor also points to a project recommended in the 2007 housing study to develop a mixed-use residential and commercial structure to connect the University's main campus to the Nob Hill area of Albuquerque. (AB at 37-38.) How the mix of uses in such a facility would be treated for tax purposes will depend on facts yet to be determined. There is no reason to believe, however, that assessors, protest boards, and courts are not capable of resolving any taxation issues that may arise, applying the standards of *Alumnae Association* or *NRA*, as appropriate.

II. Equitable Estoppel Bars the Assessor From Denying an Educational Use Exemption for the Years ACC Relied on the Assessor’s “Feint” and Did Not Apply for an Exemption.

The Board found that the Assessor “work[ed] a feint” on ACC by providing guidance on which ACC reasonably could have relied in understanding that there was no need to apply for an educational use exemption because the Facilities were exempt due to UNM’s ownership. (BIC at 14-15.) The Assessor contends that the Board’s report did not make “a finding” of facts relevant to estoppel (AB at 39), but there is simply no other way to describe the Board’s action. The Board concluded that it lacked jurisdiction to rule on ACC’s claim of equitable estoppel, which was a question for the courts (BIC at 15), but there is little doubt how the Board perceived the matter.

The district court did not reach the estoppel question in light of its ruling on educational use. (*Id.* at 19.) But the Court of Appeals rejected ACC’s claim of estoppel because it believed that ACC was required to report the Facilities to the Assessor and apply for an exemption – even though the Assessor was aware of the Facilities and ACC would have been barred from requiring an application if equitable estoppel applied. (*Id.* at 21, 36-37.)

As with the issue of educational use, there is no factual dispute about the events that transpired among the individuals representing UNM, ACC, and the Assessor’s office; there is thus no reasonable basis to challenge the Board’s

determination of the facts, including its characterization of the Assessor's communications as misleading and ACC's reliance as reasonable. The question for decision is whether denying ACC's claim of estoppel on these facts was an abuse of discretion because it was unreasonable in the circumstances or was based on a misapprehension of the law. (*Id.* at 34.)

The Court of Appeals erred in denying ACC's claim of estoppel on a logically flawed basis and contrary to this Court's decision in *AA Oilfield Service, Inc. v. N.M. State Corporation Commission*, 1994-NMSC-085, 118 N.M. 273. (BIC at 34-37.) The Assessor attempts to defend the result reached by the Court of Appeals by putting a different gloss on the facts than the Board did. But in an administrative system the agency tribunal hears the evidence and determines the facts, as the Board did, and those facts constitute the facts on appeal if they are supported by evidence, as they are here. *See, e.g., N.M. Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶ 20, 336 P.3d 436 (stating that agency's determination of facts is "conclusive" if supported by substantial evidence and reviewing court will not reweigh the evidence). On that basis this Court should reject the Assessor's arguments and hold that equitable estoppel results from the findings of the Board.

"Right and justice" require that the Assessor be estopped, just as the same factors applied to support equitable estoppel in the similar circumstances of *AA*

Oilfield Service. See 1994-NMSC-085, ¶ 22. The Assessor does not make out a case to the contrary. As an entity having “substantial experience” with on-campus housing and taxation issues nationally (AB at 41), ACC would have every reason to believe the Assessor’s representation that the Facilities would not be subject to tax because they fell within a general exception applicable to state-owned property. And there is nothing nefarious in an agreement between UNM and ACC to “cooperate in good faith to ensure that applicable exemptions for [t]axes” are available to the Facilities. (*Id.*) Such an agreement would promote the economic success of the public-private partnership and help ensure that UNM students had an opportunity to live in quality housing at affordable rents. The Assessor’s contention that UNM and ACC “never attempted to comply” with any tax obligations is simply untrue, given the communications reflected in the record among the University, ACC, and the Assessor regarding that very subject.

Conclusion

The Court should reverse the Court of Appeals, recognize the applicability of *Alumnae Association* and equitable estoppel, and grant relief as requested in UNM’s and ACC’s brief in chief.

Respectfully submitted,

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We certify that the foregoing pleading was filed through the Odyssey File-and-Serve electronic filing system, which caused a copy to be served automatically on all counsel of record this 16th day of June, 2026.

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