

TWELFTH JUDICIAL DISTRICT  
COUNTY OF LINCOLN  
STATE OF NEW MEXICO

FILED  
12th JUDICIAL DISTRICT COURT  
Lincoln County  
5/15/2024 3:47 PM  
AUDREY HUKARI  
CLERK OF THE COURT  
Gloria Lamay

CAUSE NO. D-1226-CV-2021-00260

EBY REVOCABLE TRUST, and  
WILLIAM R. MOSER,

Appellants,

vs.

WALTER HILL, LINCOLN COUNTY  
ASSESSOR, AND THE LINCOLN COUNTY  
VALUATION PROTEST BOARD

Appellees.

#### MINUTE ORDER

THIS MATTER, having come before the Court on Appellant's Statement of Appellate Issues, Appellee's Response to Appellant's State of Appellate Issues and the Notice of Completion of Briefing filed by Appellants reflecting that neither party requested Oral Argument, and the Court having reviewed the Record Proper, the submissions of the parties and being otherwise fully advised in the premises:

#### COURT'S FINDING OF FACTS:

1. The Court has jurisdiction over the parties and the subject matter.
2. This matter primarily concerns the application and interpretation of several statutory provisions in the New Mexico Property Tax Code, Valuation of Property NMSA 1978 §7-36-1 through 7-36-33. There are additionally collateral issues concerning NMSA 1978 §7-38-6, NMAC §3.6.7.13, NMSA 1978 §7-38-17.1, NMSA 1978 §7-38-21.2, and the definition of "Residential property" found at NMSA 1978 §7-35-2 (k).

3. Appellant William Moser's Petition for Protesting Values, (R.P. pg. 12) challenges his property's valuation as follows: "Short-term rental of property for dwelling purposes does not transform the property into non-residential property." (NOTE: There are three miscellaneous filings on February 24, 2022 each of which is delineated as "record on appeal" the first at 11:46 a.m. consists of 77 pages. The coversheet references Eby Revocable Trust v. Lincoln County Assessor. This "record on Appeal appears to deal with the Eby Revocable Trust protest and the Petition for Protesting Values for the Eby Revocable trust is at page 11 of that record. The second, filed at 12:21 p.m. consists of 74 pages. It's coversheet also references the Eby Revocable trust, however it appears to deal with the William Moser Protest because the William Moser Petition for Protesting Values is contained at pg. 12 of that record. The third, filed at 12:50 p.m. also consists of 74 pages and although it's cover sheet references the Eby Revocable Trust it too appears to deal with the William Moser Protest because the William Moser Petition for Protesting Values is contained at pg. 12 of that record. The three page difference in numbers appears to deal with attachments of proof of certified mailing and not with respect to the contents of the record on the merits of this action.)

4. Appellant Eby Revocable Trust's Petition for Protesting Values, (R.P. Pg.11) challenges its property's valuation as follows: "Short-term rental of property for dwelling purposes does not transform the property into non-residential property."

5. The exhibits before the County Valuation Protests Board (hereinafter "Protest Board") concerning the William Moser Protest consisted of:

Board exhibits 1; a Protest Information Pamphlet consisting of 9 pages. (Pgs. 2-10 and 2; the respective protest petitions consisting of 4 pages. (Pgs. 11-14)

Assessor exhibits:

A: (45) pages consisting of a coversheet and index, an opening statement Pgs (17-18), a copy of NMSA 1978 §7-36-2.1; (Pg. 19) and, an article on New Mexico Law and Short term rentals (Pgs. 20 – 60).

B: (2) pages consisting of an advertisement for short term rental of a property. (Pgs. 60 & 61)

C: (1) page consisting of an Assessor's summary of repercussions of changing classifications from non-residential to residential within the Village of Ruidoso and in the unincorporated are of Alto (Pg. 62)

D: (4) pages consisting of a Ruidoso News Article, including an interview with the Village of Ruidoso Tourism Director. (Pgs. 63-66)

An undesignated document bearing the title Decision and Order. (6 pgs) containing the Protest Board's findings and decision. (Pgs. 67-72)

Two undesignated pages reflecting certified mail return receipts. (Pgs. 73 & 74)

6. The exhibits before the County Valuation Protests Board (hereinafter "Protest Board") concerning the Eby Revocable Trust Protest consisted of:

Board exhibits 1; a Protest Information Pamphlet consisting of 9 pages. (Pgs. 2-10 and 2; the respective protest petitions consisting of 4 pages. (Pgs. 11-14)

Assessor exhibits:

A: (45) pages consisting of a coversheet and index, an opening statement Pgs (17-19), a copy of NMSA 1978 §7-36-2.1; (Pg. 20) and, an article on New Mexico Law and Short term rentals and miscellaneous documents (Pgs. 21 – 59) a closing statement. (Pg. 60)

B: (3) pages consisting of an advertisement for short term rental of a property. (Pgs. 61-63)

C: (1) page consisting of an Assessor's summary of repercussions of changing classifications from non-residential to residential within the Village of Ruidoso and in the unincorporated area of Alto (Pg. 64)

D: (4) pages consisting of a Ruidoso News Article, including an interview with the Village of Ruidoso Tourism Director. (Pgs. 64-68)

An undesignated document bearing the title Decision and Order. (6 pgs) containing the Protest Board's findings and decision. (Pgs. 69-74)

Three undesignated pages reflecting certified mail return receipts. (Pgs. 75-77)

7. The Appellant also submitted a disc containing the recording of the hearing before the Protest Board.

8. The basic facts are not disputed.

9. Appellant's Eby Revocable Trust and William Moser own residential properties within the jurisdictional limits of the Village of Ruidoso.

10. Appellant Eby's property is a single-family home described as Lot 5 Touch of Texas Townhomes in Ruidoso, Lincoln County, New Mexico.

11. Appellant Moser's property is a single-family home described as Lot 13 Block 3 Glen Grove Subdivision in Ruidoso, Lincoln County, New Mexico.

12. Each of their respective properties are located in areas zoned for residential use.

13. Lincoln County Assessor Walter Hill has classified Appellant's properties as non-residential for property taxes for several years going back to 2012.

14. The 2021 value for each of these properties as classified by the Assessor was in excess of 103% of the 2020 value.

15. Appellant's frame the issue as: whether or not the use of Appellant's homes (or abodes) for short-term shelter to live in is significantly different from using the property to conduct a business or commercial enterprise on the premises for purposes of property tax classification. (Statement of Appellate Issues Pg. 3)

16. Appellees frame the issue as: Appellants seek review of a decision by the Lincoln County Valuation Protest Board upholding the 2021 assessments (classification) on Appellant's properties and finding "no change" for the 2021 tax year. Whereas the County Assessor has assessed these properties as non-residential since 2012, Appellants contend that the properties should be classified as residential. (Response to Appellants' Statement of Appellate Issues Pg. 3)

17. Appellees assert, and the Protest Board found that the parties stipulate that the subject Properties are used as short term (i.e., under 30 days) rental, and that appellants concede that such use of the Subject Properties does not constitute use "primarily for permanent human habitation" and that it is us (sic) used for "temporary or transient human habitation." (Eby and Moser Decision and Order at 19. And 20)

#### COURT'S CONCLUSIONS OF LAW:

1. The Court has Jurisdiction over the Parties and Subject matter.
2. NMSA 1978 § 7-38-6 provides:

#### **7-38-6. Presumption of correctness.**

Values of property for property taxation purposes determined by the division or the county assessor are presumed to be correct. Determinations of tax rates, classification, allocations of net taxable values of property to governmental units and the computation and determination of property taxes made by the officer or agency responsible therefor under the Property Tax Code are presumed to be correct.

3. NMAC 1978 § 3.6.7.13 provides:

### 3.6.7.13 Effect of the presumption of correctness:

A. To overcome the presumption of correctness provided in Section 7-38-6 NMSA 1978, the taxpayer has the burden of coming forward with evidence showing that values for property taxation purposes determined by the division or the county assessor or determination of tax rates, classifications, allocations of net taxable values of property to governmental units and the computation and determination of property taxes made by the officer or agency responsible therefor under the Property Tax Code are incorrect. Failure to present evidence tending to dispute the factual correctness of the above determinations in any hearing pursuant to the provisions of the Property Tax Code may result in a denial of relief sought by a taxpayer.

B. Where the only evidence presented by the taxpayer is the purchase price of the property which is the subject of the dispute over value for tax purposes and the evidence of comparable sales indicates the sales price was not the market value, the presumption of correctness of the determination of the division or the county assessor is not overcome.

C. Once the presumption of correctness is overcome, the burden of showing a correct valuation shifts to the division or to the county assessor.

4. NMSA 1978 §7-35-2 (k) provides:

#### **7-35-2. Definitions.**

As used in the Property Tax Code:

. . . K. "residential property" means property consisting of one or more dwellings together with appurtenant structures, the land underlying both the dwellings and the appurtenant structures and a quantity of land reasonably necessary for parking and other uses that facilitate the use of the dwellings and appurtenant structures. *As used in this subsection, "dwellings" includes both manufactured homes and other structures when used primarily for permanent human habitation, but the term does not include structures when used primarily for temporary or transient human habitation such as hotels, motels and similar structures;* (emphasis mine)

5. NMSA 1978 §7-36-2.1 provides:

#### 7-36-2.1. Classification of property.

A. Property subject to valuation for property taxation purposes shall be classified as either residential property or nonresidential property.

B. The department by regulation, ruling, order or other directive shall provide for the implementation of a classification system and shall include a method for apportioning the value of multiple-use properties between residential and nonresidential components.

6. NMSA 1978 §7-38-17.1 provides:

**7-38-17.1. Presumption of nonresidential classification; declaration of residential classification.**

A. Property subject to valuation for property taxation purposes for the 1982 and succeeding tax years is presumed to be nonresidential and will be so recorded by the appropriate valuation authority unless the property owner declares the property to be residential. This declaration will be made on a form prescribed by the division, signed by the owner or his agent and mailed to the valuation authority not later than the last day of February of the property tax year to which it applies. The form for the declaration shall be mailed by the valuation authority to property owners no later than January 31 of each property tax year and shall include the property owner's name and address and the description or identification of the property. It may be included as part of a preliminary notice of valuation form or any other similar form mailed to property owners during the appropriate time period. The valuation authority will take reasonable steps to verify any such declaration. Once the declaration is accepted, the valuation authority will make appropriate entries on the valuation records. Declarations, once accepted by the valuation authority, need not be made in subsequent tax years if there is no change in the use of the property.

B. No later than the last day of February of each tax year, every owner of property subject to valuation for property taxation purposes shall report to the appropriate valuation authority as set out in Section [7-36-2](#) NMSA 1978 whenever the use of the property changes from residential to nonresidential or from nonresidential to residential. This report will be made on a form prescribed by the division and will be signed by the owner of the property or his agent.

C. Any person who violates Subsection A of this section by declaring a property which is nonresidential to be residential or who violates Subsection B of this section by failing to report a change of use from residential to nonresidential shall be liable, for each tax year to which declaration or failure to report applies, for:

(1) any additional taxes because of a difference in tax rates imposed against residential and nonresidential property;

(2) interest, calculated as provided under Section [7-38-49](#) NMSA 1978, on any additional taxes determined to be due under Paragraph (1) of this subsection; and

(3) a civil penalty of five percent of any additional taxes determined to be due under Paragraph (1) of this subsection.

D. Any person who violates Subsection A of this section by declaring a property which is nonresidential to be residential with the intent to evade any tax or who violates Subsection B of this section by refusing or failing to report a change of use from residential to nonresidential with the intent to evade any tax is guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars (\$1,000). Any director, employee of the division,

county assessor or employee of any assessor who knowingly records a property which is nonresidential to be residential is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) and shall be automatically removed from office or dismissed from employment upon conviction under this subsection.

E. The civil penalties authorized in Subsection C of this section shall be imposed and collected at the same time and in the same manner that the tax and interest are imposed and collected. The county treasurer is responsible for making entries on the appropriate records indicating amounts due and the date of payment.

7. NMSA 1978 §7-36-16 provides:

**7-36-16. Responsibility of county assessors to determine and maintain current and correct values of property.**

A. County assessors shall determine values of property for property taxation purposes in accordance with the Property Tax Code and the regulations, orders, rulings and instructions of the department. Except as limited in Section [7-36-21.2](#) NMSA 1978, they shall also implement a program of updating property values so that current and correct values of property are maintained and shall have sole responsibility and authority at the county level for property valuation maintenance, subject only to the general supervisory powers of the director.

B. The director shall implement a program of regular evaluation of county assessors' valuation activities with particular emphasis on the maintenance of current and correct values.

C. Upon request of the county assessor, the director may contract with a board of county commissioners for the department to assume all or part of the responsibilities, functions and authority of a county assessor to establish or operate a property valuation maintenance program in the county. The contract shall be in writing and shall include provisions for the sharing of the program costs between the county and the department. The contract must include specific descriptions of the objectives to be reached and the tasks to be performed by the contracting parties. The initial term of any contract authorized under this subsection shall not extend beyond the end of the fiscal year following the fiscal year in which it is executed, but contracts may be renewed for additional one-year periods for succeeding years.

D. The department of finance and administration shall not approve the operating budget of any county in which there is not an adequate allocation of funds to the county assessor for the purpose of fulfilling his responsibilities for property valuation maintenance under this section. If the department of finance and administration questions the adequacy of any allocation of funds for this purpose, it shall consult with the department, the board of county commissioners and the county assessor in making its determination of adequacy.

E. To aid the board of county commissioners in determining whether a county assessor is operating an efficient program of property valuation maintenance and in determining the amount to be allocated to him for this function, the county assessor shall present with his annual budget



request a written report setting forth improvements of property added to valuation records during the year, additions of new property to valuation records during the year, increases and decreases of valuation during the year, the relationship of sales prices of property sold to values of the property for property taxation purposes and the current status of the overall property valuation maintenance program in the county. The county assessor shall send a copy of this report to the department.

8. NMSA 1978 §7-36-21.2

### **7-36-21.2. Limitation on increases in valuation of residential property.**

A. Residential property shall be valued at its current and correct value in accordance with the provisions of the Property Tax Code; provided that for the 2001 and subsequent tax years, the value of a property in any tax year shall not exceed the higher of one hundred three percent of the value in the tax year prior to the tax year in which the property is being valued or one hundred six and one-tenth percent of the value in the tax year two years prior to the tax year in which the property is being valued. This limitation on increases in value does not apply to:

- (1) a residential property in the first tax year that it is valued for property taxation purposes;
- (2) any physical improvements, except for solar energy system installations, made to the property during the year immediately prior to the tax year or omitted in a prior tax year; or
- (3) valuation of a residential property in any tax year in which:
  - (a) a change of ownership of the property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined; or
  - (b) the use or zoning of the property has changed in the year prior to the tax year.

B. If a change of ownership of residential property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined, the value of the property shall be its current and correct value as determined pursuant to the general valuation provisions of the Property Tax Code.

C. To assure that the values of residential property for property taxation purposes are at current and correct values in all counties prior to application of the limitation in Subsection A of this section, the department shall determine for the 2000 tax year the sales ratio pursuant to Section [7-36-18](#) NMSA 1978 or, if a sales ratio cannot be determined pursuant to that section, conduct a sales-ratio analysis using both independent appraisals by the department and sales. If the sales ratio for a county for the 2000 tax year is less than eighty-five, as measured by the median ratio of value for property taxation purposes to sales price or independent appraisal by the department, the county shall not be subject to the limitations of Subsection A of this section

and shall conduct a reassessment of residential property in the county so that by the 2003 tax year, the sales ratio is at least eighty-five. After such reassessment, the limitation on increases in valuation in this section shall apply in those counties in the earlier of the 2004 tax year or the first tax year following the tax year that the county has a sales ratio of eighty-five or higher, as measured by the median ratio of value for property taxation purposes to sales value or independent appraisal by the department. Thereafter, the limitation on increases in valuation of residential property for property taxation purposes in this section shall apply to subsequent tax years in all counties.

D. The provisions of this section do not apply to residential property for any tax year in which the property is subject to the valuation limitation in Section [7-36-21.3](#) NMSA 1978.

E. As used in this section, "change of ownership" means a transfer to a transferee by a transferor of all or any part of the transferor's legal or equitable ownership interest in residential property except for a transfer:

(1) to a trustee for the beneficial use of the spouse of the transferor or the surviving spouse of a deceased transferor;

(2) to the spouse of the transferor that takes effect upon the death of the transferor;

(3) that creates, transfers or terminates, solely between spouses, any co-owner's interest;

(4) to a child of the transferor, who occupies the property as that person's principal residence at the time of transfer; provided that the first subsequent tax year in which that person does not qualify for the head of household exemption on that property, a change of ownership shall be deemed to have occurred;

(5) that confirms or corrects a previous transfer made by a document that was recorded in the real estate records of the county in which the real property is located;

(6) for the purpose of quieting the title to real property or resolving a disputed location of a real property boundary;

(7) to a revocable trust by the transferor with the transferor, the transferor's spouse or a child of the transferor as beneficiary; or

(8) from a revocable trust described in Paragraph (7) of this subsection back to the settlor or trustor or to the beneficiaries of the trust.

F. As used in this section, "solar energy system installation" means an installation that is used to provide space heat, hot water or electricity to the property in which it is installed and is:

(1) an installation that uses solar panels that are not also windows;

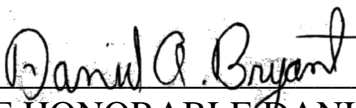
- (2) a dark-colored water tank exposed to sunlight; or
- (3) a non-vented trombe wall.

9. The cardinal rule of statutory construction is that a court's primary focus is to ascertain and give effect to the intent of the Legislature as manifested by the express statutory provisions themselves. *Colfax County v. Angel Fire Corp.*, 1993-NMCA-015, (pp. 24) 115 N.M. 146, 848 P.2d 532; and *State ex rel Kline v. Blackhurst*, 88-NMSC-015 (pp. 12) 106 NM 732, 749 P.2d 1111. In determining this intent, we look primarily to the language used, yet may also consider the history and background of the subject statute. This court must give the words used in the statute their ordinary meaning unless the legislature indicates a different intent. Although we cannot add a requirement that is not provided for in the statute, and cannot read into it language that is not there, we do read the act in its entirety and construe each part in connection with every other part to produce a harmonious whole. All parts of an act must thus be read together. (citations and authorities removed) *State ex rel Kline Id.*

10. The statutory language employed by the legislature is clear and unambiguous and by its plain meaning provides that Petitioners' respective properties are not being used for residential purposes as defined in the statute.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED:

1. The Court has Jurisdiction over the Parties and Subject matter.
2. The Decision of the County Valuation Protest Board is supported by substantial evidence in the record on appeal; was within the scope of authority of the County Valuation Protest Board, was in accord with law and the board did not act fraudulently, arbitrarily, or capriciously.
3. The Decision of the County Valuation Protest Board is affirmed in all respects.
4. Counsel for Appellees shall prepare a judgment accordingly and submit it to counsel and the Court.

  
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THE HONORABLE DANIEL A. BRYANT  
District Judge Div. III.

## CERTIFICATE OF SERVICE

I, the undersigned Employee of the District Court of Lincoln County, New Mexico, do hereby certify that I served a copy of this document to all parties on the date of filing.

/s/ Vicki L. Moran

Vicki Moran

Trial Court Administrative Assistant