

Lawyers argue over annexation

By Matthew van Buren

The Taos News, 3/21/2013

A prickly exchange between lawyers for the town and county preceded the Taos Town Council's vote to annex the regional airport March 12, and it could hint at the types of arguments against annexation the county has threatened to take to court.

The council ultimately voted 3-1 to move forward with annexation, hoping to capture gross receipts taxes to fund the town's anticipated \$1.2 million match for a \$24 million airport expansion project, which includes a new crosswind runway.

County leaders have opposed the town's move to annex, expressing particular concern about a six-mile "shoestring" that would run along the Highway 64 right of way through El Prado. March 12, deputy county manager Rick Bellis spoke to the commercial importance of that corridor to the county and the uncertainty future annexations along Highway 64 could bring.

The county proposed other ways the town could fund the construction project without annexing, including forfeiting part of its own GRT collections to the town, but town leaders were hesitant to change course. Prior to the council's March 12 vote, town manager Oscar Rodriguez said some of the county's offers were "very reasonable," but that annexation was still the town's best option in light of "uncertainty" and time constraints.

Legal arguments over annexation were also made before the council by attorneys for the town and county.

County attorney Robert Malone began by telling the Town Council he believes the town's adoption of an annexation ordinance that day would be "legally flawed."

First, Malone argued that the town had no annexation petition on file as legally required under state law. "The statutes are absolutely clear," he said.

He presented the council with an email from the town clerk's office to the El Prado Water and Sanitation District in response to a records request seeking the required petition; according to the email, such a record does not exist.

Town attorney C. Brian James later responded by saying the law does not specify the form of the petition required, and the council's vote in an open meeting should suffice; he said the denial was sent in error, as the town could have provided meeting minutes.

Malone went on to cite a 1995 New Mexico Supreme Court Case, *Dougherty v. City of Carlsbad*, in which the court upheld the city's annexation of 141 acres. In its decision, the court examines the petition method — one of three methods by which territory can be annexed in the state, and the method the town of Taos chose for the airport annexation.

Malone read from the decision: "The petition method, however, may only be initiated by the owners of property contiguous to the municipality, and not by the city itself. In this situation, there is less danger that the municipality will use its governmental power arbitrarily to obtain what it wants."

Malone circulated further exhibits, including an affidavit from an employee of the county assessor's office that states the R'o Lucero, property of the federal government, crosses under Highway 64 in El Prado. Malone argued that the town needs consent from the U.S. government and/or Taos Pueblo to proceed with the annexation.

Another affidavit, signed by county public works director Rick Chávez, identifies a dozen streets along Highway 64, including Blueberry Hill, Millicent Rogers Road, and Upper and Lower Los Colonias, that Malone said state law would require the town to include in its annexation. According to state statute, "any municipality annexing any territory shall include in the annexation any streets located along the boundary of the territory being annexed."

Malone also said courts have expressed "skepticism" about "shoestring" annexations like the one the town is attempting, and he warned that county legal action to prevent the annexation could put the town's funding strategy in jeopardy.

Town attorney James began by reminding Malone that the courts are located on Albright Street, not Civic Plaza Drive, and saying he does not want to get into a legal debate before the council. He said in his 33 years doing legal work he had never had his client addressed by someone else's attorney without having discussed any concerns with James first. "I think it's inappropriate," he said.

James rebutted some of Malone's points, beginning with the Carlsbad case. He said the test the court applies centers on whether an annexation ordinance bears a reasonable or rational relationship to a legitimate goal or purpose; courts tend to show deference to municipalities in such matters.

In an interview with *The Taos News*, he has said he thought the petition method was the best way for the town to move forward quickly, particularly as it takes considerable time to convene a meeting of the state Boundary Commission.

"The petition method seemed more direct to me," he said.

James said the town is not seeking to annex El Prado, its acequias, infrastructure or waterways, and annexation would have "no impact whatsoever" on associated rights. He said the town doesn't need to obtain the consent of other parties to proceed with annexation, and the county has "no standing whatsoever" in the matter.

He said the state owns Highway 64, and a Feb. 11 letter from the Transportation Department states it "will not object to the proposed annexation" as long as the town understands the department will retain sole jurisdiction over the highway right of way within the annexation limits.

James said nothing he heard from Malone would cause him to change his position that annexation is an appropriate course for the council to take. He said the town is making proper use of the statute, and the council should not change its course because of the “frivolous legal arguments” it had heard. James urged the council to decide the issue on its merits “without worrying about the specter of some legal action that may or may not be taken down the road and may or may not be successful.”

County leaders, including manager Stephen Archuleta and commissioner Tom Blankenhorn, have said the county would consider suing to stop the annexation.

In an email he sent March 13, Blankenhorn wrote: “Meanwhile, the courts will have to decide whether the annexation ordinance is procedurally and legally sound — unless the courts rule on lack of standing, in which case they would not be obliged to consider either the procedural or fundamental merits of the ordinance.”