



County sues town to stop annexation

By J.R. Logan

The Taos News, 4/11/2013

Taos County has filed two separate legal challenges opposing a “shoestring” annexation proposed by the town of Taos that is meant to fund a runway expansion at the airport.

The complaints, turned in to district court this week, amount to more than 70 pages of argument and exhibits aimed at sinking the annexation. The appellants — Taos County, El Prado Water and Sanitation District and the Acequia Madre del Prado del Rio Lucero — are all being represented by the county’s legal department.

While the complaints are asking that the annexation be quashed, the town could start collecting tax revenue as soon as July 1 unless a judge makes an order to the contrary.

The Taos News obtained a copy of the complaints and contacted the town’s legal department Wednesday (April 10) to comment on the suit. The town contends that it was unaware of one of the lawsuits until that phone call from a reporter, though it notes that a lawsuit was “already promised by the county manager.”

Hours after *The Taos News*’ call, the town issued a press release accusing the county of trying to use the paper as a “partisan” in the dispute rather than what the town described in an email as its “normal role of non-partisan reporter of facts and information.”

In recent months, the town has said it needs to annex the airport in order to capture tax revenue associated with a \$24-million expansion project funded mostly with a federal grant. Without the annexation, the town says it may not be able to come up with a \$1.2 million grant match.

The town and county spent weeks discussing ways to fund the runway project without resorting to annexation. The county says it opposes annexation for fear that it would set a “dangerous precedent” for future annexations and result in the loss of gross receipts tax revenue.

Discussions between the two governments over annexation fell apart after the town repeatedly said it could not rely on the county to meet its promise to shoulder half the cost of the match amount and airport operations costs. The focus of county meetings on the issue gradually moved from finding compromise to discussing legal strategies to stop the annexation dead in its tracks.

County officials have acknowledged that prolonged litigation could derail the airport project, but they insist the issue is worth fighting.

The town council voted March 12 to go ahead with the annexation. This week, the county made good on its promise to contest the move in court.

The court filings — one from the Acequia Madre del Prado and another joint filing from the county and El Prado Water and Sanitation District — allege that the town violated the appellants' right to due process and constituted an “unreasonable exercise of police power.”

When litigation was first threatened, town attorney James countered that the county owned no property within the area up for annexation and therefore had no standing to bring a suit.

The county's complaint admits that it is not a property owner within the area proposed for annexation, but the county contends that it has a legal right to question the annexation procedure. The complaint notes that it could lose gross receipts tax revenue as a result of the annexation.

The complaint also says El Prado Water and Sanitation District owns property along the highway corridor and has substantial interest in the case because it provides water and sewer service in the area.

The filing from the acequia contends that the town failed to follow its own code by approving the annexation without developing a water plan.

Among its claims, the county's legal team alleges in both complaints that the town did not provide a detailed map of what property it intended to bring into its boundaries before approving the annexation.

The filings also reiterate the county's argument that state law demands that the town should be required to annex a dozen county roads that are adjacent to the highway.

As owner of the airport, the town petitioned itself for annexation and intends to use six miles of highway right of way to keep the town boundaries contiguous as required by state law. The town solicited and received a letter from the New Mexico Department of Transportation (DOT), owner of the right of way, saying that the agency would not oppose the annexation.

But in its complaints, the county says that the DOT should have been the body to petition for annexation in order to make the process valid. Because the airport is not contiguous to the town, the town had no right to petition itself to annex, the county argues.

The county's filing cites a decision in New Mexico case law that found that a municipality petitioning itself for annexation was a “potentially arbitrary abuse of governmental power.”

Town attorney Brian James said Wednesday (April 10) that he had only seen the complaint from the acequia but that the arguments appeared to be “hyper-technical” interpretations of state annexation law.

James said the issues outlined in the county's filings would be sorted out in district court, but he said that it would be “beyond outrageous” if the town were unable to move forward on the airport project because of the lawsuit.