



THE TAOS NEWS

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County wins annexation battle in court

By J.R. Logan

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The town of Taos missed several administrative steps and failed to meet the constitutional standard for due process when it attempted to annex the Taos Regional Airport in March, according to a ruling by Eighth Judicial District Court Judge Jeff McElroy.

The decision, handed down Wednesday (Dec. 18), invalidates the town's "shoestring" annexation and amounts to a victory for Taos County, which filed two lawsuits in April to have the annexation overturned.

Taos Mayor Darren Córdova told *The Taos News* immediately following the ruling he thought McElroy's decision was partly "political" and could delay an airport expansion project that is still in the design phase.

"This is a very political case and we anticipated it might go this way because of political pressure. But we're going to regroup and do the things that the court has said," Córdova said.

The airport expansion was the impetus for the annexation, which drove a wedge between the town and county governments earlier this year.

The town said the annexation was needed so that it could collect gross receipts tax revenue from the expansion project. The project is being funded with a \$22 million federal grant, but the town must come up with a \$1.4 million match. Lacking that kind of cash, the town hoped it could collect tax revenue generated by the project and use it to provide the match.

Taos County, however, disapproved of the annexation, arguing it would give the town a toehold to annex more territory and take a bite out of the county's tax revenue.

In discussions earlier this year, the county offered to turn over gross receipts tax revenue generated by the expansion to the town so it could cover its match without needing to annex. The town declined that offer, stating that it could not rely on the county to stick to its word.

The town officially voted to annex in March. The county filed two lawsuits on behalf of itself, El Prado Water and Sanitation District, and an El Prado acequia, opposing the move.

Taos County Commissioner Gabriel Romero, who was in the audience during Wednesday's hearing, said in an interview he hoped the ruling would open the door to cooperation between the two governments. He said he would still be willing to find a way to help the town pay for its airport project that didn't require annexation.

"I have a feeling that may come back on the table again," Romero said.

But Còrdova said Wednesday such an arrangement could not legally be made. Instead, he said the town had a “solid plan in place” to ensure the project would go forward.

Town attorney Brian James spent much of Wednesday’s hearing trying to paint the county’s arguments as irrelevant or overly technical. James said the county’s case was based on “wonky matters” and “political arguments.”

But county attorney Robert Malone countered he was asking the court to rule on specific legal missteps taken by the town that amounted to a clear violation of state law.

“If it is wonky then I’m proud to be a wonk,” Malone said. “And I would ask this court to join me as a wonk.”

In announcing his decision, McElroy acknowledged there was a legal presumption the town’s actions were valid, but he went on to list a number of problems he saw with the annexation.

First, as owner of the airport, the town petitioned itself for annexation. The county argued such a move violated the due process clause of the state constitution, and McElroy agreed.

“Because the town is the one seeking out the annexation of its own property, the due process standard was not met when the town stood as the deciding body,” McElroy said.

State law also requires that annexed territory be contiguous to existing municipal boundaries. To meet that requirement, the town annexed more than 6 miles of highway right of way to connect the airport property to the town. McElroy concluded the airport was not contiguous to the town and the right of way was not a “reasonable solution.”

McElroy also noted the town failed to create and adopt a petition to annex as stipulated by the law. He added the only map the town provided to show what territory it intended to annex was a satellite image outlining the airport boundary with a line drawn along US 64 from the airport to the northernmost town boundary.

In addition, McElroy determined the town did not seek the permission of an El Prado acequia or the U.S. Government — both property owners as determined by McElroy — before it filed its petition to annex.

Mayor Còrdova said the town did not plan to prolong the case by filing an appeal to McElroy’s decision. Instead, he said the town would request a hearing before the New Mexico Municipal Boundary Commission, which is charged with reviewing annexation requests.

The New Mexico Department of Taxation and Revenue told *The Taos News* earlier this month the town began collection gross receipts tax revenue generated in July after approving the annexation. The department said at the time it would follow whatever direction the court gave, but said getting revenue sent to the town back to the county “would not be a simple process.”