



THE TAOS NEWS

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Town grants up to \$25k for annexation appeal

By J.R. Logan

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The town of Taos has agreed to pay up to \$25,000 to appeal a ruling by Judge Jeff McElroy that invalidated its annexation of the Taos Regional Airport.

By annexing the airport, the town was planning to collect gross receipts tax revenue generated by a \$24 million runway expansion project. The bulk of the project is being paid for with a federal grant, but the town does not have the cash to cover its \$1.4 million match obligation.

On Tuesday (Feb. 4) Taos County voted unanimously to spend up to \$20,000 on appellate legal counsel to “vigorously defend against the town’s appeal of the annexation cases to a higher court,” according to a media release. While just \$20,000 has been approved for now, County Manager Steve Archuleta said the commission is committed to spending “whatever it costs” to ensure the original ruling is upheld.

The town council voted in March to annex the airport, including a six-mile strip of US 64 needed to make the airport “contiguous” to the existing town boundaries. The county responded by filing two lawsuits challenging the annexation on behalf of itself, El Prado Water and Sanitation District and an El Prado acequia.

In a Dec. 18 ruling at district court in Taos, McElroy ruled that the town missed several administrative steps and violated the due process clause of the state constitution by petitioning itself for annexation (the town owns the airport). McElroy also said the scheme to annex the highway to meet the law’s continuity requirement was not a “reasonable solution.”

Town attorney Brian James argued that the county did not have standing to bring the suit and characterized the county’s case as “wonky.”

Immediately following McElroy’s ruling, Taos Mayor Darren Córdova called the decision “political.” He said then that the town would not appeal the ruling because it did not want to prolong the issue and risk delays to the airport project.

Five days later, the town drafted a contract to hire Santa Fe attorney Jane Yohalem to represent the town in the annexation case before the Supreme Court and/or the New Mexico Court of Appeals.

The contract states that the town will pay Yohalem \$200 an hour, up to \$25,000 (or 125 hours worth of legal work). A procurement form shows the money would come from a line item in the town’s general fund.

Mayor Córdova has said recently that the appeal is necessary because McElroy's ruling sets legal precedent that would "affect the ability of the town, or any town, to ever annex." He also said McElroy violated the law by "substituting the council's wisdom for his own."

Before the council's decision to annex, the county offered to find a way to help the town cover its match without resorting to annexation. The town said it could not trust the county and instead chose to annex.

At Tuesday's county meeting, the commission voted to again extend its offer to help the town, which it plans to do by offering the town any future GRTs generated through the construction of the expansion. The county contends this would eliminate the need for annexation.

County Commissioner Tom Blankenhorn said Wednesday (Feb. 5) an annexation would put the county in a difficult financial situation, because it creates a scenario where business owners can "shop for the most advantageous land use regulations," whether that be those of the town or the county.

"It's better to have a unified development code," Blankenhorn said in an interview.

There have been no discussions between the town and county about finding a solution to the controversy to avoid continued litigation. While the contract with Yohalem was dated Dec. 23, the town council did not formally vote on whether to seek her advice on the case until it met behind closed doors during a special meeting Jan. 7. The town's purchasing policy allows the mayor to approve professional services contracts valued at less than \$50,000 without a full vote of the council.

The council again met in private Jan. 28 before voting to pursue the appeal. Online court records do not show an appeal has yet been filed in the case.

As a part of its records request,

The Taos News asked the town for all correspondence between Yohalem and town staff. Town attorney James refused to provide those records, citing a provision in the state's Inspection of Public Records Act that protects public hospitals from disclosing information that is attorney-client privileged.

Public records provided by the town show it approached two other attorneys —Kerry Kiernan and Edward Ricco, both of Albuquerque — about handling the appeal. Emails show Kiernan would have charged \$340 an hour and Ricco would have cost the town \$300 an hour.

— *Reporter Elizabeth Cleary contributed to this story.*