

**PUBLIC IMPROVEMENT DISTRICT 2007-1
IN THE VILLAGE OF ANGEL FIRE, NEW MEXICO**

RESOLUTION NO. 2018- 5

WHEREAS, on February 14, 2008, pursuant to Sections 5-11-1 through 5-11-27, NMSA 1978 as amended (the "Public Improvement District Act") and Village of Angel Fire, New Mexico (the "Village") Resolution No. 2007-34, the Village adopted Resolution No. 2008-07 (the "Formation Resolution") creating the Village of Angel Fire Public Improvement District No. 2007-1 (the "AFPID"); and

WHEREAS, the Formation Resolution authorized the Board of Directors of the District (the "Board"), among other things, to: (i) finance and construct certain public infrastructure improvements ("Improvements") upon real property in the District ("Real Property"); (ii) impose a District special levy upon the Real Property within the AFPID (the "Special Levy") to finance the Improvements; and (iii) issue bonds in an aggregate principal amount not to exceed \$24,978,5250 to finance the Improvements; and

WHEREAS, by letter dated October 16, 2009, the AFPID informed certain Real Property owners that the Village and the AFPID had reserved infrastructure issues for additional review and consideration by the AFPID; and

WHEREAS, on May 9, 2013, the Board held an administrative hearing to consider the objection of Frank Felts to the AFPID assessment on Lots 147 and 148 of Country Club Unit 1B Amended (Group 1B/2); and


WHEREAS, on May 29, 2013, after considering Mr. Felts' objection, the Board decided, among other things that the levy on Lot 147, Country Club Unit 1B Amended should be adjusted and that Mr. Felts' request for an adjustment of the electric and telephone portion of the AFPID levy for Lot 148 should be denied; and

WHEREAS, Mr. Felts appealed the Board's Decision to the State District Court. On June 28, 2017, that Court issued its ORDER AFFIRMING THE DECISION OF THE AFPID BOARD IN PART AND REMANDING IN PART ("Order") directing the AFPID to supplement its decision regarding the denial of the water assessment issue raised by Mr. Felts.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ANGEL FIRE PUBLIC IMPROVEMENT DISTRICT:

1. In accordance with the State District Court's June 28, 2017 Order, the Board adopts the attached Supplemental Decision which Supplemental Decision supersedes the May 29, 2013 Decision of the Board.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE ANGEL FIRE
PUBLIC IMPROVEMENT DISTRICT No. 2007-1 THIS 17th DAY OF August, 2017.



Chairperson

ATTEST:



District Administrator

BEFORE THE ANGEL FIRE PUBLIC IMPROVEMENT DISTRICT

**In the Matter of Frank Felts
Lot 147 Country Club Unit 1B Amended
Village of Angel Fire, Colfax County, New Mexico**

AFPID Matter No. 2012-0007

SUPPLEMENTAL DECISION

THIS MATTER came before the Angel Fire Public Improvement District Board on May 9, 2013, upon the objection of Frank Felts to the Angel Fire Public Improvement District (AFPID) special levy on Lot 147 of Country Club Unit 1B. This Decision was further supplemented in accordance with the June 14, 2017 ORDER AFFIRMING THE DECISION OF THE AFPID BOARD IN PART AND REMANDING IN PART.

SUMMARY:

1. Carl Abrams, Project Manager for HDR Engineering, Inc. presented for the AFPID. Mr. Frank Felts was represented by legal counsel Ms. Julia Armstrong.
2. The Board administratively noticed the following documents:
 - a. The General Plan (Including Exhibits A-F) of Angel Fire Resort Operations, LLC submitted with its Application for the creation of Public Improvement District No. 2007-1;
 - b. The Rate and Method of Apportionment of Special Levy;
 - c. The February 14, 2008 Village of Angel Fire Resolution 2008-07 (Formation Resolution);
 - d. The Notice of Imposition of Special Levy recorded June 4, 2008;
 - e. PID NO. 2007-1 Resolution Fixing, Levying and Assessing the Amounts to be Raised by the District Special Levy (Levy Order);
 - f. The AFPID correspondence to Melinda Felts at Shoemaker Hill Ranch dated September 20, 2012 setting the hearing in this matter;
 - g. The AFPID correspondence dated March 14, 2013 addressed to Dr. Frank Felts and Melinda Felts;
 - h. The Hearing Procedure attached to the AFPID correspondence to Mr. Felts; and
 - i. The Village of Angel Fire voting record for the election held April 21, 2008 (Tr. 44¹).

¹ Transcript of Proceedings for the hearing held May 9, 2013. All further references will be cited as "Tr. __."

3. In this administrative appeal, among other things, Mr. Felts seeks to challenge electric and telephone assessments and water assessments associated with the construction of a water tower. However, the water infrastructure and related assessments were determined in 2008 by the Village of Angel Fire as noted in the 2008 Village Formation Resolution. RP000093-000136. In hearings spanning several months in 2007 and 2008, the Village considered, among other things, the General Plan (which addressed all construction improvements), a feasibility study, and appraisal of all contemplated improvements. RP000093-000095.
4. After consideration of the improvements, feasibility study, and appraisal and after multiple successive hearings, the Village (not the AFPID) decided all objections to assessments except those concerning telephone and electric assessments. However, the Village expressly delegated the resolution of telephone and electric objections to the AFPID (only after additional information could be obtained). See RP000111-000112. Accordingly, the AFPID cannot make specific determinations concerning the water assessments or the water tower, because those assessments were not before it – those determinations were made in 2008 by a different agency altogether.
5. Ms. Armstrong presented the basis for Mr. Felts request for a reduction of the levy for Lots 147 and 148.² Mr. Felts requested the following relief:
 - a. A reduction in his special levy on both lots for the value of electric and telephone utility service supplied by Kit Carson and Century Link (formerly Qwest), that was installed prior to the time the AFPID was formed and is still in use (Tr. 33, 41);
 - b. An exemption from any levy for water on Lot 147, the lot that his home sits on (Id.); and
 - c. Some adjustment to the water related portion of the levy based on the allegation that (1) the levy includes the cost of an unnecessary water tank, or (2) alternatively, the cost of the water tank should have been allocated to a broader base of users (Tr. 40-41, 68).
6. Mr. Felts testified that Lots 147 and 148 were served by electric and telephone utility services prior to the development of the AFPID infrastructure.
7. Mr. Felts admitted that he did not object to the development of the AFPID levies in 2007 and 2008 (the time of AFPID formation).
8. Mr. Felts legal counsel offered and the AFPID Board accepted the following exhibits:
 - a. F-1 Village of Angel Fire water service records;
 - b. F-2 Kit Carson Electric Coop records;
 - c. F-3 Chart prepared by Mr. Glaser indicating reductions of assessments based on infrastructure;
 - d. F-4 Excerpt from site visit notes regarding Felts property;

² Until the date of hearing, May 9, 2013, there appears to be no record of any objection lodged by Mr. Felts to the AFPID special levy on Lot 148.

- e. G-8 Group of documents prepared by Mr. Glaser;
 - f. G-9 Memorandum from AFPID Review Committee dated June 12, 2007; and
 - g. G-10 Cost numbers for General Plan.
9. Mr. Abrams testified that he did not review Lot 148 and was unaware that there had been an objection to the Lot 148 levy.
10. Mr. Abrams indicated that Lot 147 is currently subject to an AFPID assessment for electric, telephone, road and water improvements.
11. Mr. Abrams testified that:
- “electric and telephone service are ... sufficient to serve the homes or properties only but not sufficient to extend and continue through the remainder of the subdivision.
- ...
- The property has about 1,000 feet of frontage along Brazos. About 200 feet of that property frontage did have a water main installed prior to the PID. ... the PID extended that water line throughout the full frontage of that property, and of course through the rest of the subdivision.
- ... Again, in summary, approximately 20 percent of the lot frontage did have Village water but the remainder of the lot has now been extended, and that includes fire hydrants and fire-flow protection for the remainder of the lot and continuing through lot 148.” (Tr. 89)
12. Mr. Abrams testified that new road and water improvements constructed as part of the AFPID project provide additional fire protection and fire and emergency vehicle access to Lot 147.
13. Mr. Abrams offered and the AFPID Board accepted Mr. Abrams written summary of his findings as confirmed by representatives of Kit Carson Electric Co-op, Qwest (CenturyLink) and the Village (identified as AFPID Exhibit 9 in the Transcript of Proceedings).³

FINDINGS:

14. Mr. Felts did not object to the Village of Angel Fire to the special levy on Lots 147 or 148 at the time of AFPID formation in 2007 and 2008.
15. There is no record of any objection by Mr. Felts to the levy on Lot 148 until May 9, 2013, five years after the Village formation of the AFPID.

³ At the request of Ms. Armstrong, the signature pages of Mr. Abrams summary were redacted. Regardless, Mr. Abrams testified that the opinions of qualified Kit Carson Electric Co-op and Qwest personnel had met with him and reviewed and approved the relevant infrastructure.

16. In hearings spanning several months in 2007 and 2008, the Village considered, among other things, the General Plan (which addressed all construction improvements), a feasibility study, and appraisal of all contemplated improvements. RP000093-000095. After consideration of the improvements, feasibility study, and appraisal and after multiple successive hearings, the Village (not the AFPID) decided all objections to assessments except those concerning telephone and electric assessments.
17. Section I.C of Exhibit A of the February 14, 2008 Village of Angel Fire Resolution 2008-07 (Formation Resolution), expressly provides: "... no objections requesting **relief from assessments for electrical and telephone improvements** be accepted at present, but that the general plan should be modified to give the AFPID board authority to provide such relief on a case-by-case basis as the more extensive engineering investigation required for procurement of the Design/Build Contract provides reliable information about the existing lines." Emphasis supplied. RP000111.
18. Other than "relief from assessments for electrical and telephone improvements", the 2008 Village Formation Resolution grants no authority to the AFPID to hear objections or arguments regarding boundary challenges, arguments that lots already had water and septic systems, arguments that double fronting-dual utility lots should not be assessed twice and arguments that lots were not improved by AFPID road improvements. RP000110-000112.
19. As noted in Exhibit A of the 2008 Village Formation Resolution, the Village heard and ruled on all arguments, other than electric and telephone improvements, of lot owners including: boundary challenges, arguments that lots already had water and septic systems, arguments that double fronting-dual utility lots should not be assessed twice and arguments that lots were not improved by AFPID road improvements.
20. In 2008, as evinced in Exhibit A of the Village Formation Resolution, the Village heard and considered over 38 objections of various lot owners. RP0000113-000136. Mr. Felts did not present himself or his objections to the Village and, accordingly, was not heard by the Village in 2008. *Id.*
21. The decision to impose assessments related to the construction of the water tower was made by the Village of Angel fire—not the AFPID—and therefore cannot be considered in this administrative hearing. *See, e.g.,* Hearing Transcript p. 37; RP000171.
22. Even if the AFPID had the authority to consider a master water infrastructure plan reviewed, conducted and approved by the Village of Angel Fire in 2007 and 2008, that record is not in evidence in this proceeding. Nor did Appellant request that such proceeding be made a part of this administrative record. (On Appeal, the Eighth Judicial District Court DENIED Mr. Felt's request to supplement the record with the Village's 2008 deliberations.) Accordingly, the AFPID has neither the record nor the expertise to review such extensive and complicated plans, drawings, and studies.

23. Additionally, after the 2008 Village denial, Mr. Felts had a 30-day period of time to challenge the assessments in accordance with Section 18 of the Village formation resolution dated February 14, 2008. *See* RP000107 (“The Village Clerk is hereby directed to serve a copy of this Formation Resolution by certified mail, return receipt requested, to all persons who submitted objections to the formation of the District . . . as notice of the Village Council’s final decision on those objections. Pursuant to Rule 1-074 NMRA 2002, any appeal from such final decision must be filed with the Eighth Judicial District Court in Raton, New Mexico, within 30 days after the date of this Formation Resolution.”).
24. This 30-day statute of limitations was rigorously litigated in *Glaser et al., v. Angel Fire Public Improvement District*, 2012-NMCA-028 and *Glaser, et al. v. James L. LeBus, et al*, 2012-NMSC-012, 276 P.3d 959 (appeal from 2012-NMCA-028). Both the New Mexico Court of Appeals and the New Mexico Supreme Court found in favor of the AFPID holding that challenges to the Village Resolution were subject to a 30-day statute of limitations.
25. By letters dated September 20, 2012 and March 14, 2013, Mr. Felts was put on notice that the AFPID board would only hear “outstanding power and telephone infrastructure issues” and would not hear the type of objections that should have been heard by the Village in 2008.
26. The PID board has conducted the “more extensive engineering investigation” required by the Formation Resolution and determined that Lot 147’s pre-existing electric and telephone infrastructure meet applicable standards of Kit Carson Electric Co-op and Qwest (CenturyLink) and do not require any improvements or increase in size.
27. Lot 147 is provided additional fire protection and emergency vehicle access given the new AFPID constructed road and water improvements. Regardless, Mr. Felts did not object to the road improvements and testified that he received benefit from the water infrastructure (“We’re going to get some water flowing but they are going to get some benefit, as well ...”. Hearing Transcript p. 42; RP000172).
28. The annual special levy on Lot 147 for fiscal year 2012-2013 is \$8,384.60.

DECISION:

- A. The Lot 147, Country Club Unit 1B Amended levy should be adjusted to exclude assessments resulting from AFPID constructed electric and telephone improvements retroactive to 2008, including interest at the same rate imposed upon the AFPID. The AFPID’s administrator is directed to ascertain the appropriate adjustment and prepare a Board Resolution accordingly.
- B. The 2008 Village Formation Resolution precludes the AFPID from considering any adjustments to assessments except those relating to relief from assessments for electrical and telephone improvements. Thus, the AFPID has no authority to address Ms. Felt’s

relief regarding "water tank" issues and his request for adjustment related to the same simply can't be considered for that reason. Regardless, (1) those concerns should have been raised with the Village in 2008, and (2) Mr. Felts testified he received benefit from the water infrastructure he objects to.

- C. Lot 147 may not, at any time in the future, connect to AFPID constructed electric and telephone infrastructure without full and retroactive application of the original special levy and payment of the same, including interest, to the AFPID.
- D. Mr. Felts' request for an adjustment of the electric and telephone portion of the AFPID levy for Lot 148 is denied.
- E. This Decision and the approving AFPID Resolution should be filed with the Colfax County clerk.

Decided May 29, 2013, and supplemented August 17, 2017, by the Angel Fire Public Improvement Board:

Approved telephonically 8/17/17
Alan Young

Don A. Borgeson
Don Borgeson

Burl Smith
Burl Smith

Absent:

excused
Dan Rakes

excused
Carl Abrams