
Whitney Lowe <wlowe97@gmail.com>

Wed, Mar 18, 2020 at 7:48 PM

To: Lee Lucas <lee.w.lucas@gmail.com>

Cc: Nyle HEAD <craftsman_homes@msn.com>, Annie Wittenberg <anniejwittenberg@gmail.com>

Here is the letter from Doug Gannon

To: Panoramic Access Special Road District Board of Commissioners Nyle Head, President

Annie Wittenberg, Treasurer

Lee Lucas, Secretary

I would Like this letter reinto the minutes of the next board meeting.

After attending the January 8th and February 12th Panoramic Access Special Road district meeting, and receiving the boards letter to property owners, it is obvious that the board's priority is getting the roads in the Panoramic Subdivision paved. The board's priorities should be the maintenance of our roads, not the paving of our roads. The money that we as property owners pay into the Special Access Road District fund is intended for road maintenance, not for engineering, surveying, legal advice/ lawyer fees, website design, accounting software, or any other personal agenda or plans. I asked why the board has not sent out letters asking if property owners were interested in paving. They told me that they were investigating options for improving (paving) the roads and needed more info from the engineering study (\$6000.00 payed for out of the property owners road maintenance funds) in order to make sound decisions before a letter could be written. Well, the study has been done and the letter has been written and sent out to the property owners. However there was no mention in the letter of anything about what they are trying to do and no info regarding cost.

I would like to know why the board will not just come out and say that paving Panoramic subdivision is going to cost at least three million dollars \$3,000,000, and you as property owners are going to have to pay for all of it...\$21,000 Each. Also, this is separate from the taxes that you already pay into the Panoramic Access Special Road District. Also, you as Property owners will be responsible for all future paved road maintenance costs.

I am 100% in favor of maintaining our roads. We have plenty of money in our account and always have had and will continue to have for many years. The Board of Commissioners must use road maintenance funds for what they were intended for...maintenance.

At best the Panoramic Access Special Road District Board of Commissioners is being very unethical in trying to hide their intensions. At worst they are bordering on Illegal.

A concerned property owner with in the Panoramic Subdivision. Doug Gannon

On Wed, Mar 18, 2020 at 2:13 PM Lee Lucas <lee.w.lucas@gmail.com> wrote:

[Quoted text hidden]

[Quoted text hidden]

Lee Lucas <lee.w.lucas@gmail.com>

Thu, Mar 19, 2020 at 11:32 AM

To: Whitney Lowe <wlowe97@gmail.com>

thanks - Lee

[Quoted text hidden]

To: Oregon Ethics Commission
3218 Pringle Rd. SE, Suite 220
Salem, OR 97302-1680
ogec.mail@oregon.gov

From: Board of Commissioners
Panoramic Access Special Road District
PO Box 1226
Sisters, OR 97759
panoramicroads@gmail.com

Subject: Request for Advisory Opinion

The Panoramic Access Special Road District Board of Commissioners is in the process of investigating options for upgrading our roads to a hard surface and options for paying for the possible upgrade. We have two possible ways to pay for an upgrade: (1) increase property taxes on properties within the road district; or (2) impose an assessment for local improvements on properties within the road district.

Raising property taxes is an unattractive option for several reasons:

- Raising taxes requires a ballot measure with its attendant expense; it is uncertain if it would pass and it would delay us by a year or more (Raising property taxes has been tried before and failed.)
- Property owners not residing within the district do not get to vote, but are liable for any property tax increase that is approved.
- Voters residing within the district, who are not property owners do get to vote.
- In the case of a property tax increase, the road district does not have the option of dealing with properties in arrears on taxes, possibly resulting in foreclosures. The decision to foreclose would be up to the county and out of the board's control. With an assessment, the board might be able to handle a small number defaults by building in a reserve and charging a penalty for the default; this might help older property owners living on a fixed income.
- Plus, of the property owners who have expressed an opinion, an overwhelming majority support an assessment and oppose a property tax increase; and we have reason to believe that opinion is shared more generally.

If raising property taxes becomes the only option available to the board to raise funds to upgrade the roads, the Board is highly likely to abandon plans for upgrading roads.

It has recently come to the board's attention that there is a possibility that state ethics rules might prevent two out of three Board members from recommending an assessment for local improvements. The potential problem is probably best illustrated by using a hypothetical example. Suppose the total amount to be financed for road improvements is \$1.2M to be paid back over a period of 10 years; that is, \$120K per year (for simplicity, ignore interest and other loan costs).

Property tax increase approach:

The district currently gets around \$35K per year from taxes and would need to raise an additional \$120K per year, so property taxes would have to be raised by a factor of $\$120K \div \$35K = 3.43$; that is, the tax a

property owner would pay to the district would be 4.43 times whatever they now pay, every year for 10 years.

Per lot assessment approach:

The district contains 144 properties in private ownership, so each property would be assessed $\$1.2\text{M} \div 144 = \$8,333$. Property owners have the option to pay the assessment over 10 years at \$833 per year. For simplicity of this example let's assume all property owners choose 10 year lien contracts. Property owners would pay the same property taxes they pay now, plus an additional \$833 per year for 10 years.

The table below compares the resulting cost for properties at the high end of assessed value, at the median of assessed value, and at the low end of assessed value.

Comparison of total cost per year for Assessment versus Property Tax

Current property tax	Total/year if by Assessment	Total/year if by Property Tax
\$547 (near the top)	$\$547 + \$833 = \$1370$ per year	$\$547 * 4.43 = \2423 per year
\$243 (median)	$\$243 + \$833 = \$1086$ per year	$\$243 * 4.43 = \1076 per year
\$168 (bottom, with residence)	$\$168 + \$833 = \$1001$ per year	$\$168 * 4.43 = \744 per year

The potential ethics problem arises because two members of the 3-person board have properties at the high end of assessed value. So, if the board votes to impose assessments rather than to raise property taxes, these two board members each stand to avoid an expense (in this example) of around $\$24,232 - \$8,333 = \$15,899$. **If the board were to propose an assessment instead of a property tax increase to fund the road improvement project being considered, would this constitute an actual conflict of interest in violation of ORS 244.040 (1)?** If the two board members recuse themselves from the process, the board loses its quorum and cannot conduct business. When considering this question, also please note that while a "vote" of property owners is not required in order for the board to assess property owners, the board passed a resolution stating that the board will not pursue an assessment without a majority of property owners in support. The board has long stated that we are only trying to support the majority of the property owner's wishes. At this time it is the board's belief that a majority of property owners are interested in pursuing road improvement and funding it via an equal per lot assessment, and that a majority are opposed to a property tax increase.

On advice of the county legal counsel and of the lawyer advising us on the local assessment process we are referring this matter to the Oregon Ethics Commission for an advisory opinion.

Panoramic Access Special Road District

PO Box 1226

Sisters, OR 97759

panoramicroads@gmail.com

Lee Lucas, Secretary

This is a printed copy of your recent email to the board. You got a reply from Nyle Head, the district President. I copy it here so that property owners will know what Nyle said:

"There has not been any withholding of information. The numbers the engineer supplied were obviously wrong. I knew it the moment he gave me the report at the meeting. (\$2.5 million. NOT 3). I got 3 bids from paving contractors and all 3 were 1.5 and that was with a contingency for overages. About (150K). Divide that into 144 lots and it is \$10,416. Last year I got a price from R&O for graveling the entire neighborhood and Mike's bid was \$756,000.00. Ridiculous!!!

To answer your 3 questions

1. WE did take gravel off the table immediately for obvious reasons. If we're going through the hassle to get more money for improvements then we're going to do it right! And with a price tag of \$756K (we) might as well resolve the problems and complaints of endless potholes and dust. "We're going the hard surface route" (I'm fine with gravel if that's how it shakes out. I prefer pavement but I've been here for 15 years and will continue to be here.)
2. True
3. True – Approximately \$10 for asphalt.

I know this won't satisfy you but there has been nothing unethical or illegal as you and Doug suggest. We are simply trying to better our neighborhood and do what the majority of land owners want. I don't know where you're thinking we're dishonest? Everything has been discussed in the board meetings openly and there is NOTHING to hide. We know everyone cannot be satisfied, and that I regret. But all of us on the board are doing the best we can to represent the neighborhood.

I hope this helps.

Nyle"

I would like to add: (1) Our intent to engage a professional road engineer was to document the repairs needed on our roads and their cost, as well as to provide information for potential road contractors to give us their best guess on what road improvements would cost. Personally, I don't think we got what we paid for; (2) The meeting on February 12 was the first time I saw his charts comparing costs of gravel versus Otta Seal versus asphalt. The meeting minutes did contain the fact that we found the presentation unsatisfying and that we did not believe his cost figures; (3) Data we got from the county road department directly contradict the claim that "paved and improved roads are more expensive to maintain than gravel roads in the long term"; (4) The figure \$680,480 is for Otta Seal and the figure \$1.6M is the highest of the 3 costs for asphalt – but, these numbers will likely change when/if we get far enough to go out for bids; (5) The board does not engage in verbal abuse – but, with intense feelings on both sides of the issue of paving, arguments unfortunately occur – my preference is for calm, matter-of fact discussions – more light, less heat; (6) Minutes of meetings are approved at the next meeting and then are put up on the district website. I was derelict in my duty not to get the April meeting minutes on the website right away, but they are there now.

You may not believe it, but your emails help the board to clarify things and get more information out to property owners. Ultimately, informed property owners will decide what happens... Lee

PS. There is no policy that I am aware of for use of this district information kiosk. My personal opinion is that if property owners want to use it for information sharing, that is a legitimate use PROVIDED that a response from a board member is included. That is why I removed your copies last night and added this message.

Yours Truly,
Shiela Gannon

Nyle HEAD <craftsman_homes@msn.com>

Mon, May 18, 2020 at 6:04 PM

To: Shigan <shigannon@q.com>, Annie Wittenberg <anniejwittenberg@gmail.com>, Lee Lucas <lee.w.lucas@gmail.com>

Sheila,

There has not been any withholding of information. The numbers the engineer supplied were obviously wrong. I knew it the moment he gave me the report at the meeting. (\$2.5 million. Not 3) I got 3 bids from paving contractors and all 3 were 1.5 and that was with a contingency for overages. About (150K) Divide that into 144 lots and it is \$10,416. Last year I got a price from R&O for gravelling the entire neighborhood and Mikes bid was \$756,000.00. Ridiculous!!!

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3. True- Approximately \$10k for asphalt.

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I hope this helps.

Nyle

Sent from Mail for Windows 10

[Quoted text hidden]



Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

Telephone: 503-378-5105

Fax: 503-373-1456

Email: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

May 19, 2020

Sent via email and USPS

Lee Lucas, Secretary
Panoramic Access Special Road District
PO Box 1226
Sisters, OR 97759

Advice 20-0981

Dear Mr. Lucas:

This letter of advice is provided in response to your request received on May 14, 2020, which presented a question regarding the application of Oregon Government Ethics law to a road district commissioner's participation in proposing a road assessment to members of the road district, which would also financially affect themselves. This advice is offered under the authority provided in ORS 244.284 as guidance on how the current provisions of Oregon Government Ethics law may apply to the specific circumstances you have presented.

According to the information provided by you and information from Deschutes County's website, the Panoramic Access Special Road District (District) is managed by a three-member board of commissioners (Board) appointed by the Deschutes County Court. Each Board member must be an elector of the District, per ORS 371.338.

The Board is investigating options for financing the upgrade of roads, and appointed a committee of 5 District residents to make recommendations to the Board. The District may finance the upgrades either by raising property taxes or imposing an assessment on each property within the District. For various reasons, the District board members prefer an assessment over a property tax increase and wish to refer a proposed assessment for a vote of the property owners of the District. The Board has passed a resolution to abide by the majority wish of the property owners in any plan to cover the costs of the road project. This is a self-imposed limit to the Board's power and no actual "vote" of property owners is required for Board action.

The proposed assessment amount is arrived at by dividing the necessary costs of improvement equally among the 144 private property owners in the District. If the improvement costs were raised through a property tax increase, the costs would not be divided equally among property owners. Property tax increases would result in those with more valuable property paying a higher share of the costs. Two members of the three member Board of Commissioners have properties at the high end of the assessed value.

Question: If the Board were to propose an assessment instead of a property tax increase to fund the road improvement project, would this constitute an actual conflict of interest or a violation of the prohibited use of office for these Board members?



Conflicts of Interest Definition and Disposition:

ORS 244.020(1) defines an actual conflict of interest and ORS 244.020(13) defines a potential conflict of interest. A public official is met with either an actual or potential conflict of interest when participating in an official capacity, in any action, decision, or recommendation, if the effect would or could be to the private pecuniary benefit or detriment of the public official, the public official's relative, or any business with which either are associated.

The difference between an actual and potential conflict of interest is determined by the certainty of the private financial impact. An **actual conflict** of interest occurs when a public official participates in an official action that would have a direct financial impact on themselves, a relative, or any business with which they or a relative is associated. A **potential conflict** of interest occurs when a public official's action, decision or recommendation could have a financial impact on themselves, a relative, or any business with which they or a relative is associated.

ORS 244.120 directs public officials how to resolve a conflict of interest, depending on the type of public position they hold. A public official who was elected or appointed to a governing body, board, or commission, when met with a conflict of interest, must on each occasion, publicly announce the nature of the conflict, regardless of whether the conflict is actual or potential. Then, if the conflict is actual, the official must also refrain from any discussion, debate or vote on the issue giving rise to the conflict. If the conflict is potential, the official may participate in official actions following their public disclosure. [ORS 244.120(2)]

An exception to the conflict of interest occurs if the financial benefit or detriment arises out of membership in a particular business, industry, occupation, or other class required by law as a prerequisite to holding the official position. [ORS 244.020(13)(a)].

When met with an actual conflict of interest, if any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, the official may be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises. [ORS 244.120(2)(b)(B)]

Prohibited Use of Office:

ORS 244.040(1) prohibits public officials from using or attempting to use their official position to obtain a financial gain or avoid a financial detriment for themselves, a relative or household member, or a business with which they or a relative or household member are associated, if the financial benefit would not have been available but for holding their official position. This prohibition applies regardless of whether a conflict of interest is disclosed. [ORS 244.040(7)]

Answer: There seems to be two decision points the Board members face in this situation. The first is the decision of what options to refer to the property owners for a vote, which presumably would be held in a public meeting. As described, there are two possible options, the property tax raise and the assessment option. The Board may choose to propose both options to the members of the Road District for a vote, in which case there would be no conflicts of interest for any Board member. If the Board decides that they only wish to propose the equal assessment option for a vote of the property owners, the

two Board members who would face a lower cost from that official decision, would be met with an actual conflict of interest, because the effect of their decision to eliminate the property tax raise from any further consideration would be to their personal financial benefit.

In this case, the quorum requirement in ORS 244.120 applies. When met with an actual conflict of interest, if any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, the official may be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises. Therefore, after declaring the nature of their actual conflict of interest at the public meeting when the decision comes up on the agenda, the two conflicted Board members may not discuss or debate the issues of which option or options to refer to the property owners for a decision. They may, however, vote on the issue.

Following the vote by the property owners, the issue returns to the Board for the final decision to either implement a property tax raise, an assessment, or neither. Because the Road District Board is not bound to abide by the majority will of the property owners, when the time comes for the Board to actually vote to implement one of the funding options, the two Board members in question would be faced with an actual conflict of interest again, regardless of which option is chosen, because the effect of either decision would be to their personal financial benefit or detriment. Therefore, they must declare the nature of their conflict publicly, refrain from discussing or debating the issue, but be eligible to vote.

Because the "quorum" exception to the actual conflict of interest applies in this case, the official votes of the conflicted Board members were necessary for the governing body to take action, and therefore, their action is not a prohibited use of official position under ORS 244.040(1).

If you have any additional questions regarding the application of Oregon Government Ethics law please feel free to contact me directly.

Sincerely,



Ronald A. Bersin
Executive Director

RAB/dg

*****DISCLAIMER*****

This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.

Response to Doug Gannon

Doug,

I apologize for the delay in responding to your recent communication. I was out sick for a while. Also, the board has been busy working the kinks out of teleconference board meetings.

You will note in the draft minutes of the April 15 meeting, which you will receive soon, that the board decided not to read your letter into the meeting minutes. However, the board is willing to distribute your letter to the district email list, if that is what you wish, but it would be accompanied by board comments to clarify some of the issues you raise.

In response to requests from a number of property owners at meetings last summer, the board set up the Road Improvement Committee to investigate options for improving district roads. The recent survey of property owners shows majority support for continuing the investigation. Much of this investigative work is being done by the committee, not the board.

Meanwhile, the board has done routine grading and needed repairs, such as rock hammering protruding bedrock, fixing potholes on Panoramic and Buck Horn, fixing the sinkhole at the “tee” where Buck Horn meets Lake, adding gravel to curve where Buck Horn turns into Green Ridge and to the intersection of Hinkle Butte and Lake, and attempting to repair drainage issues on Lake. The board has obtained an estimate to raise and reshape Emerald Valley, but the cost was too high to do it immediately. And, at your request, the board is in the process of getting an estimate for regrounding and rolling the problem “grinding” sections of Panoramic and Buck Horn.

You say that property tax revenue is intended for road maintenance, “not engineering, surveying, legal advice/ lawyer fees, website design, accounting software, or any other personal agenda or plans.” I don’t recall any such constraint in our Bylaws. I tried to locate the exact wording of the ballot measure that established the district permanent rate limit of \$1.186 per thousand, but I was unsuccessful. ORS 371.336 Purpose and powers of special road districts places no such restriction on special road district boards. In general, I agree the priority must be maintenance and repair to generally keep the roads in as good a shape as possible. However, in order to do that, we do have to spend money on administrative costs, such as insurance, PO Box rental, stamps, bookkeeping software, website fees (not design) and office supplies. So far, we have not spent any money on lawyer fees or surveying. The engineering expense is a debatable issue.

The reason the minutes did not highlight the \$3M figure of Dave Cosper for asphalt was that no one at that meeting thought it was a reasonable estimate. The draft minutes of 4.15.2020 list three recent cost estimates for asphalt paving – all of them are half the \$3M figure. We now have relatively firm cost estimates in hand and the next letter and accompanying survey will include that information and specifically ask yea or nay on going forward.

I do understand where you are coming from. When I first started attending board meetings, even before building a home here, I felt that paving was not really necessary. The money on hand seemed to be sufficient for maintenance and upkeep. And, compared to where I lived then, the roads here were in truly great shape. However, since joining the board, I have come to realize that gravel roads are very

Response to Doug Gannon

high maintenance. Gravel roads tend to thin out. They becomes increasingly hard to grade to restore the road crown. Water pools on the roads, which leads to potholes like we had a winter ago. Rock hammering the roads bought us some time. The last road grading is holding up well. We can keep adding gravel piecemeal, but we will always be chasing the problems and never quite getting ahead of them. Nonetheless, I personally can live with the roads as they are. But, if a majority of property owners vote to pave the roads, then I, as a board member, feel obligated to honor their wishes if at all possible.

Lee Lucas

An Important Note to the Board of the Panoramic Road District:

Withholding information is intentionally misleading and unethical. The Board approved and spent \$6 thousand dollars on a study under the guise they could not send a survey to homeowners without an engineering study to have an idea of the cost of paving. That survey was completed and that amount was \$3 million dollars. Stop pretending that amount was pulled out of thin air. It is conveniently omitted from the minutes. Dave Cospers of H.A. McCoy gave that figure at the meeting on February 12, "his presentation was not what we were expecting". Seems pretty unethical to me to not disclose these facts in the survey.

Also, from the February 12 meeting Dave Cospers contended "gravel is the most expensive, expected to double the cost of maintaining hard surface". This is directly opposite of the Special Road District Guide book, which states "paved and improved roads are more expensive to maintain than gravel roads in the long term". Why did the board spend \$6 thousand dollars on someone that clearly does not know the needs of the district? Per the \$3 million dollar price tag and his stance about maintaining gravel roads.

I can read, and I know very well that the Board has Authority. I am questioning your honesty and integrity not your authority. Where did the figures of \$680,480 and \$1.6 million come from? Why have more than one survey if you are not trying to deceive people? I understand that people are welcome to attend meetings. I also understand that if you attend a meeting and don't want the roads paved you can expect to be verbally abused. Members of the Board joined the Board specifically to fulfill their own agenda of paving Panoramic for personal gain. The Board has contended many times that their property value would increase if roads were paved.

Why are there no updated minutes? The last one is February 19th, when the Board "hammered out the wording for the survey". It was a simple question, why so hard to come up with wording for the survey? Also omitted from this "very complex survey" is no matter what the amount of paving these facts are true:

- 1) The Board immediately took gravel off the table after the "survey"
- 2) Current revenues are not sufficient to improve district roads
- 3) Paving would be paid for by homeowners

I appreciate the dialogue, it's unfortunate that it has not been an honest and open dialogue on the part of the board. Please update the minutes.

Yours Truly,
Shiela Gannon



LEGAL COUNSEL

David Doyle, Legal Counsel
Christopher Bell, Sr. Assistant Legal Counsel
John E. Laherty, Sr. Assistant Legal Counsel
D. Adam Smith, Assistant Legal Counsel
Amy Heverly, Assistant Legal Counsel

June 5, 2020

Nyle Head
Lee Lucas
Annie Wittenberg
Panoramic Access Special Road District
Sisters, OR

Via Email on 6/5/2020

Re: Complaint

Dear Board Members:

Please be advised that Deschutes County has received a complaint from Doug & Shiela Gannon specific to operation of the Panoramic Access Special Road District. A copy of the complaint is attached to this letter.

Pursuant to ORS Chp. 371, the qualifications for appointment of a road district member are: (1) elector in the district; and (2) take and subscribe an oath to support the Constitution and laws of the State of Oregon and of the United States, and to well and faithfully perform the duties of office to the best of the person's knowledge and ability

ORS does not provide a specific process or basis for removal of appointed road district board members. However, as the appointing authority, the Board of Commissioners (BOCC) has inherent powers to remove any of its appointments. **The process employed by Deschutes County is as follows: upon receipt of a written complaint from an elector within the subject district, County staff sends a copy of the complaint to the district and directs the district to provide a written response to the County within a stated period of time. County staff reviews the response and determines whether the allegations and response merit a hearing before the BOCC. County staff then responds to both the complaining party and the district – either scheduling the hearing or explaining why no hearing will be held.**

If a hearing is conducted, the BOCC will utilize the process described in ORS 215.030. That process allows that the appointing authority may remove the appointed member only after a hearing for misconduct or nonperformance. Removal criteria will track qualification criteria. Most relevant will be confirming "elector" status of the board member and the ability of the board member to "well and faithfully perform the duties of office to the best of the person's knowledge and ability." In addition, the BOCC will review and consider evidence of the following: (a) a change in elector status; (b) missing board meetings; (c) self-dealing; (d) ineptitude; (e) misappropriation of funds; (f) conduct which exposes the district to unreasonable risk of liability; (g) disruptive behavior at board meetings.

Page 2

Please send your written response to my attention by no later than July 6, 2020. Thereafter, on or before July 20, 2020, County staff will send a written response to both the complaining party and your Board indicating whether or not a hearing will be scheduled.

Thank you.

Respectfully,



David Doyle
david.doyle@deschutes.org
541-388-6625

Attachment

DHD/s

David Doyle

From: Sharon Keith
Sent: Wednesday, June 03, 2020 11:38 AM
To: David Doyle; Tom Anderson; Chris Doty
Subject: FW: Panoramic Special Road District

Below please find a complaint filed by Doug and Sheila Gannon.

From: Shiela Gannon <shigannon@q.com>
Sent: Sunday, May 31, 2020 12:52 PM
To: Sharon Keith <Sharon.Keith@deschutes.org>
Subject: Panoramic Special Road District

[EXTERNAL EMAIL]

June 1, 2020

Dear Sharon Keith:

The intent and purpose of this letter is to file a formal written complaint against the Board of Commissioners of the Panoramic Access Special Road District. As stated in the Special Road District Guide Book, Section 2 Board Conduct Requirements, Ethics Chapter 294 ORS 244 Government Ethics. Public officials are prohibited from using their position for financial or personal gain. The Board of Commissioners has performed many deeds for the purpose of personal gain.

- 1.
2. Members
3. of the Board have stated their desire to pave the roads because it will increase the value of their home.
- 4.
- 5.
6. Every
7. person on the board sought their positions to form a coalition of like minded individuals to push forth the agenda of paving.
- 8.
- 9.
10. The
11. Board formed a Road Improvement Committee Comprised of 5 people that all want to push paving as the only option.
- 12.
- 13.
14. The
15. Board submitted a survey to homeowners that knowingly and willfully neglected to provide all pertinent information that would give cost and consequences of paving. The purpose of withholding information was to deceivingly move forward with a project that all
16. of the Board wants completed.

- 17.
- 18.
19. The
20. Board immediately took gravel off the discussion as soon as the deceptive survey was completed.
- 21.
- 22.
23. The
24. Board spent \$6,000.00 to hire H.A. McCoy Engineering to perform a study. The study quoted a \$3 million dollar cost as well as stating "gravel is the most expensive". This is directly opposite of the Special Road District Guide Book which states "Paved and
25. improved roads are more expensive to maintain than gravel roads in the long term."
- 26.
- 27.
28. The
29. president of the Board states in a letter "Gravel was taken off the table immediately for obvious reasons" and then says in the same letter "I'm fine with gravel if that's how it shakes out". It can't be both things. This is proof that he is proceeding with
30. an agenda that benefits him personally regardless of an honest vote.
- 31.

Thank you for your consideration.

Sincerely,
Doug and Shiela Gannon



LEGAL COUNSEL

David Doyle, Legal Counsel
Christopher Bell, Sr. Assistant Legal Counsel
John E. Laherty, Sr. Assistant Legal Counsel
D. Adam Smith, Assistant Legal Counsel
Amy Heverly, Assistant Legal Counsel

June 5, 2020

Nyle Head
Lee Lucas
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Panoramic Access Special Road District
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Via Email on 6/5/2020

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Please be advised that Deschutes County has received a complaint from Doug & Shiela Gannon specific to operation of the Panoramic Access Special Road District. A copy of the complaint is attached to this letter.

Pursuant to ORS Chp. 371, the qualifications for appointment of a road district member are: (1) elector in the district; and (2) take and subscribe an oath to support the Constitution and laws of the State of Oregon and of the United States, and to well and faithfully perform the duties of office to the best of the person's knowledge and ability

ORS does not provide a specific process or basis for removal of appointed road district board members. However, as the appointing authority, the Board of Commissioners (BOCC) has inherent powers to remove any of its appointments. **The process employed by Deschutes County is as follows: upon receipt of a written complaint from an elector within the subject district, County staff sends a copy of the complaint to the district and directs the district to provide a written response to the County within a stated period of time. County staff reviews the response and determines whether the allegations and response merit a hearing before the BOCC. County staff then responds to both the complaining party and the district – either scheduling the hearing or explaining why no hearing will be held.**

If a hearing is conducted, the BOCC will utilize the process described in ORS 215.030. That process allows that the appointing authority may remove the appointed member only after a hearing for misconduct or nonperformance. Removal criteria will track qualification criteria. Most relevant will be confirming "elector" status of the board member and the ability of the board member to "well and faithfully perform the duties of office to the best of the person's knowledge and ability." In addition, the BOCC will review and consider evidence of the following: (a) a change in elector status; (b) missing board meetings; (c) self-dealing; (d) ineptitude; (e) misappropriation of funds; (f) conduct which exposes the district to unreasonable risk of liability; (g) disruptive behavior at board meetings.

Page 2

Please send your written response to my attention by no later than July 6, 2020. Thereafter, on or before July 20, 2020, County staff will send a written response to both the complaining party and your Board indicating whether or not a hearing will be scheduled.

Thank you.

Respectfully,



David Doyle
david.doyle@deschutes.org
541-388-6625

Attachment

DHD/s

David Doyle

From: Sharon Keith
Sent: Wednesday, June 03, 2020 11:38 AM
To: David Doyle; Tom Anderson; Chris Doty
Subject: FW: Panoramic Special Road District

Below please find a complaint filed by Doug and Sheila Gannon.

From: Shiela Gannon <shigannon@q.com>
Sent: Sunday, May 31, 2020 12:52 PM
To: Sharon Keith <Sharon.Keith@deschutes.org>
Subject: Panoramic Special Road District

[EXTERNAL EMAIL]

June 1, 2020

Dear Sharon Keith:

The intent and purpose of this letter is to file a formal written complaint against the Board of Commissioners of the Panoramic Access Special Road District. As stated in the Special Road District Guide Book, Section 2 Board Conduct Requirements, Ethics Chapter 294 ORS 244 Government Ethics. Public officials are prohibited from using their position for financial or personal gain. The Board of Commissioners has performed many deeds for the purpose of personal gain.

- 1.
2. Members
3. of the Board have stated their desire to pave the roads because it will increase the value of their home.
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6. Every
7. person on the board sought their positions to form a coalition of like minded individuals to push forth the agenda of paving.
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11. Board formed a Road Improvement Committee Comprised of 5 people that all want to push paving as the only option.
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15. Board submitted a survey to homeowners that knowingly and willfully neglected to provide all pertinent information that would give cost and consequences of paving. The purpose of withholding information was to deceivingly move forward with a project that all
16. of the Board wants completed.

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20. Board immediately took gravel off the discussion as soon as the deceptive survey was completed.
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25. improved roads are more expensive to maintain than gravel roads in the long term."
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28. The
29. president of the Board states in a letter "Gravel was taken off the table immediately for obvious reasons" and then says in the same letter "I'm fine with gravel if that's how it shakes out". It can't be both things. This is proof that he is proceeding with
30. an agenda that benefits him personally regardless of an honest vote.
- 31.

Thank you for your consideration.

Sincerely,
Doug and Shiela Gannon



LEGAL COUNSEL

Christopher Bell, Sr. Assistant Legal Counsel
John E. Laherty, Sr. Assistant Legal Counsel
D. Adam Smith, Assistant Legal Counsel
Amy Heverly, Assistant Legal Counsel

July 6, 2020

David Doyle, Legal Counsel

Doug and Sheila Gannon
69505 Pine Ridge Dr.
Sisters, OR 97759

Re. Complaint -- Panoramic Access Special Road District

Dear Mr. and Mrs. Gannon:

On or about June 1, 2020, you submitted a complaint to Deschutes County regarding the Panoramic Access Special Road District Board (the "PASRD Board"). Specifically, you believe that the PASRD Board, or its commissioners, have acted in a manner that is improper and/or have expended district funds for an improper purpose.

As County Counsel David Doyle explained in an earlier email to you, road district boards are afforded significant latitude in managing and operating their districts, and the County normally does not insert itself into a road district's decision-making process. That said, if it appears to County staff that a road district and/or any of its commissioners have engaged in misconduct or have failed to perform their required duties, staff may forward the matter to the Board of County Commissioners for its consideration. If it chooses, the Board of County Commissioners may then hold a hearing to determine whether any of the road district's commissioners should be removed.

I recognize that decisions regarding potential road district projects can be controversial -- particularly when they involve the expenditure of significant funds -- and I appreciate you bringing your concerns to the County's attention. However, after reviewing your complaint and the PASRD Board's response (a copy of which is enclosed with this letter), it does not appear that PASRD's Board or any of its commissioners have engaged in misconduct or have failed to perform their required duties. For this reason, staff does not believe that your complaint meets the criteria for further consideration by the Board of County Commissioners.

Sincerely,

John E. Laherty

cc. Nyle Head
Lee Lucas
Annie Wittenberg

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

July 1, 2020

Via Email on: July 1, 2020

David Doyle
Deschutes County Legal Council

Re: Complaint

Dear Mr. Doyle:

Thank you for the opportunity to respond to the complaint recently filed by Doug and Sheila Gannon. We believe the claims made are without merit, but, before responding to the specific claims we would like to review the history of how we got to where we are now.

The Panoramic Access Special Road District (PASRD) comprises 144 properties in private ownership which are owned by 137 distinct owners. Some 35 owners reside outside the local area, leaving over 100 owners who could participate in road district activities. Please find attached attendance lists for 2018, 2019, and 2020. Note that in 2018 the average attendance at road district board meetings, including the 3 members of the Board, was 5. This was typical up until 2019. Attendance picked up in 2019 (average = 12) due to interest in making improvements to district roads.

A quick review of the PASRD records reveals that the topic of a potential road improvement project has been discussed by owners and board members many times since the founding of PASRD in 1983/1984. A paving proposal and survey were conducted in 1993, again in 1998 with 57% in support of paving but a complication with the funding prevented the project from proceeding. Paving via tax levy was placed on the ballot in 2003, received a 70% turnout with 41 yes votes and 48 no votes. Again in 2008 a committee was formed; letters and presentations were made and surveys were sent. In 2015, in response to the threat of a lawsuit over dust, the previous board "paved" sections of Panoramic Drive and Buck Horn using Recycled Asphalt Paving (RAP) also known as grindings. Those sections have mostly failed, resulting in worse conditions than prior to the RAP and the board has received complaints from owners, including Mr. Gannon, that the new board find a way to repair these sections.

In 2017 the previous board formed another committee of volunteers who attempted to collect an email address for every owner in PASRD to be able to better communicate meeting minutes, agendas and other information with PASRD property owners (letter of Dec 2017 attached).

By 2018 what to do about the failing RAP sections, deteriorating road conditions (washboards, protruding rocks, potholes, lack of base material and crown, drainage problems, and ineffective grading) were the primary topic of board meetings though attendance was low. The current board discussed the failed RAP sections with several contractors and have been told by all that the RAP sections cannot be repaired and can only be ripped up and removed or used for base material. While the board continued to address each of these problems in a piece-meal fashion as funds allowed, the potential for a PASRD-wide road improvement project again became a regular topic of discussion. Attendance at board

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

meetings increased. At one meeting all in attendance except one person raised their hands in support of a potential road improvement project.

At the May 2019 board meeting (minutes attached), President Nyle Head presented estimates from several local road contractors. It was noted that Deschutes County had reactivated the Local Improvement District (LID) program and that it may be worth investigating. A special meeting was held (minutes attached) to further discuss the LID program. Many questions were raised. Various attendees volunteered to pursue answers. At the June 2019 board meeting (minutes attached) Jim Becker and Sonya Gangstead announced they had submitted a list of 24 questions on the LID program and would meet with the county engineer to get answers.

At the July 2019 regular board meeting (minutes attached) Jim Becker reported on the county LID program. We decided it was unattractive for PASRD needs. A Road Improvement Committee with Jim as chair was appointed along with 4 other volunteers; see attached minutes for the charter of this committee. Jim's committee has since spent hundreds of hours getting information and cost figures on options and identifying possible ways to pay for improvements, in particular working with the Special Districts Association of Oregon (SDAO) on possible financing. At the November 2019 board meeting (minutes attached), the Board authorized the President to sign a letter of engagement with SDAO. In the fall of 2019, the Board sent a letter summarizing the information collected by the committee to all property owners (see attached).

The board was also concerned that our piece-meal approach to addressing problems as they arose was not the most cost effective approach, and aware of negative feelings of property owners regarding the failed RAP project, the board determined that an engineering study of our roads was needed to assess current conditions and make recommendations for long term maintenance and potential improvement. The board first explored the possibility of getting a team of students from the Oregon State University School of Civil and Construction Engineering to study our roads and make recommendations. But, this eventually fell through. So, in December 2019, the Board authorized the President to engage a local professional engineer to conduct the engineering study (minutes attached). The proposal from McCoy Engineering and Survey was for \$23,240. But the board authorized only Phase 1 for \$6K.

The prospect of spending \$23K prompted Doug Gannon to attend the January 2020 board meeting (minutes attached) to object to spending tax revenue intended for road repair and maintenance on an engineering study. Doug also claimed that a majority of property owners opposed doing any road improvements. There was a heated discussion as other attendees pushed back and asserted that a majority of property owners were in favor of investigating road improvement options.

The engineer, Dave Cosper, presented preliminary results of his study at the February 2020 board meeting (minutes and excerpts of engineering report attached) and it was not exactly what the board was expecting. None of the attendees believed the engineer's \$3.1M figure was realistic and lengthy discussion ensued after Mr. Cosper left the meeting. Mr. Gannon was present for this discussion as well.

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

The board decided to survey property owners to determine the level of support for continuing to investigate road improvement options. Specific wording for the survey (attached) was decided at a special meeting and the survey was mailed out, with the option of either a mail-in response or an online response using Survey Monkey.

Meanwhile Doug Gannon sent a letter (attached) requesting that his letter be read into the minutes of the next meeting. The scheduled March 2020 board meeting was cancelled due to the coronavirus shutdown.

At the April 2020 meeting (minutes attached), which was held via Zoom teleconference, results of the February survey were presented: 110 responses (76% response rate); 78 in support of continuing to investigate road improvement options (71% of responses); 32 opposed (22%). The board considered Doug's request and decided the meeting minutes were not the appropriate place to publicize Doug's letter. Lee Lucas, Secretary, sent a reply (attached) to Doug offering to send out the letter with the board's response to the district email list – the same email list that is used to send out agendas and draft meeting minutes and other items of information. Doug never replied.

Sheila Gannon sent a letter expressing her displeasure (attached) at what was going on. Nyle Head, President, sent a reply to her (attached). No answer was received. Several days later, hand written notes appeared on the district kiosk bulletin board (photo attached) and some 50 copies of Sheila's letter appeared in the "Take One" box at the kiosk – without mentioning Nyle's reply. Lee Lucas removed the copies, printed a response on the back side (attached) and replaced them in the "Take One" box. Several days later the copies disappeared from the "Take One" box. The Board sent out a rumor control letter (attached).

At the May 2020 board meeting minutes attached), the board determined that Jim's committee had assembled as much information as could be obtained and that firm construction cost data were at hand. It was time to send out another letter and survey. A committee consisting of Annie Wittenberg, Treasurer, Jim Becker and Brian Bubak was appointed to draft a letter and survey for board approval. The board authorized the letter and survey to be sent as soon as possible after approval. The letter and survey (copy attached) were mailed in early June. Preliminary results of this survey are attached.

That brings us to the complaint before us.

CLAIM #1: Members of the Board have stated their desire to pave the roads because it will increase the value of their home.

RESPONSE #1: No board member has ever stated that a potential increase in their property value is the motivation for supporting the efforts of Jim Becker's committee. It is likely that property market values will increase for ALL property owners in the road district. The board did confirm with Deschutes County that paving our roads would not and could not increase the assessed value of properties. The board mentioned this in our October 2019 letter.

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

CLAIM #2: Every person on the board sought their positions to form a coalition of like-minded individuals to push forth the agenda of paving.

RESPONSE #2: Since 2017 there have been 5 vacancies on the board. In all 5 instances the board position was advertised, and volunteers were invited to apply – but, there was only one volunteer for each vacant board position. The current board members volunteered to keep the district operating. Board members must be property owners in PASRD. As property owners, each individual is certainly allowed to have their own personal opinion on what is best for their property and the district. When volunteering to serve on the board, it becomes their responsibility to maintain and improve the PASRD roads in the most cost-effective manner and in full public view. We have affirmed again and again, in meetings that we are gathering and presenting information to inform property owners about the options for road improvement and ongoing maintenance, and that we will respect the wishes of the majority of property owners, regardless of our own personal preferences. The reference documents attached will support this.

CLAIM #3: The Board formed a Road Improvement Committee comprised of 5 people that all want to push paving as the only option.

RESPONSE #3: The committee consists of the only 5 people who volunteered to be on the committee – see minutes of 7.10.2019. The Board has repeatedly asked for more volunteers, but no one else has come forward, including the Gannon's. In fact, Sheila has not attended a single Board meeting in 2018, 2019 or 2020. Doug has attended only two: Jan & Feb 2020.

We would agree that the committee members are in support of a potential road improvement project - why else would they volunteer hundreds of hours of their time to research all the potential options and distribute this information to their fellow owners? The claim that the committee members want to push paving as the only option is false. They have demonstrated this by researching three potential alternatives to the status quo.

CLAIM #4: The Board submitted a survey to homeowners that knowingly and willfully neglected to provide all pertinent information that would give cost and consequences of paving. The purpose of withholding information was to deceptively move forward with a project that all of the Board wants completed.

RESPONSE #4: The first survey was sent out as a direct consequence of Doug Gannon's claim voiced in the January 2020 meeting that a majority of property owners did not support a potential road improvement project. The purpose of the survey was only to find out if a majority of property owners supported or opposed the continued investigation of a potential road improvement project. At the time the survey was sent, the information and costs we had gathered so far were still tentative and unconfirmed – there was no intent to conceal information. Additionally please note that though the board had already discussed in previous meeting that we would not move forward with any project without the support of the majority of property owners, and in direct response to Doug's assertions, at

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

that meeting, in Doug's presence, the Board passed a motion that no project will move forward unless a majority of property owners approve.

CLAIM #5: The Board immediately took gravel off the discussion as soon as the deceptive survey was completed.

RESPONSE #5: This claim seems to be founded in misunderstanding on both sides. When considering what to evaluate in a potential road improvement project to improve all roads in PASRD at one time, the board and committee decided to compare both the initial construction costs and the ongoing annual maintenance costs of four options: Status quo, gravel, Otta Seal, and asphalt. In the two months between February when the first survey was sent out and April when the Board decided not to pursue road improvement option 2 (gravel), cost figures had become available to establish that the gravel option (\$754K for 6 inches of gravel, grading and shaping on all PASRD roads) was more expensive than option 3 (\$680K for Otta Seal paving on all PADRD roads) for initial construction costs.

With this fact in mind, it makes little sense to pursue the gravel option. That said, the board has acknowledged repeatedly that if the majority of property owners do not support the potential road improvement project, then the board will continue to maintain our roads as they exist today, mostly cinders and gravel, as our operating budget allows. The board has also indicated we are willing to reconsider the gravel option if that's what the majority of property owners would prefer.

CLAIM #6: The Board spent \$6,000 to hire H.A. McCoy Engineering to perform a study. The study quoted a \$3 million dollar cost as well as stating "gravel is the most expensive". This is directly opposite of the Special Road District Guide Book which states "Paved and improved roads are more expensive to maintain than gravel roads in the long term."

RESPONSE #6: In late 2019 in response to increasing interest in a potential road improvement project the board received informal bids from one contractor for 6" of gravel on all PASRD roads for \$756K and informal bids from three contractors for asphalt paving for a range between \$925k and 1.3M. These informal bids were discussed in board meetings and published in the minutes. Though informal and not based on a standard specification, this gave the board and participating owners at least a reasonable ballpark estimate of the cost of both gravel and asphalt paving of the whole neighborhood. Meanwhile, the board has been addressing various problems with our deteriorating road system including washouts, sink holes, lack of crown, lack of base material, spreading road widths, and the failing RAP paving sections. Seeking an engineering recommendation for these problems as well as concern over not making the mistakes that were made when installing the RAP paving motivated the board to seek an engineering study of all the roads in PASRD, and to provide recommended design engineering drawings and cost estimated for the gravel option, the Otta Seal option and the asphalt option to ensure that all future bids would be working from a uniform specification. While it is true that both the preliminary Engineering report presented at the January meeting and the final report received in February show an estimate of \$3.1M to complete option 4, asphalt paving, it is important to note that it was immediately apparent that the figures Mr. Cosper had prepared and presented were not actual quotes or bids, but rather his calculations based on the "going rate" for asphalt in central Oregon, and included

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

considerable "markup" for his services as a general contractor to oversee the project. None of the attendees believed the \$3.1M figure was realistic and lengthy discussion ensued after Mr. Cosper left the meeting. Mr. Gannon was present for this discussion as well.

When the board received the final engineering study, we immediately used the engineering design and specification it provided to request bids from the only local Otta Seal contractor and three asphalt paving contractors. The board has since received firm cost figures from these contractors and all of them are about half of the \$3.1M estimate of McCoy Engineering. The bids are also attached for your reference.

As for the claim that "Paved and improved roads are more expensive to maintain gravel roads in the long term," the latest information from the county engineer is that they expect Otta Seal to be no more expensive than gravel to maintain.

CLAIM #7: The president of the Board states in a letter "Gravel was taken off the table immediately for obvious reasons" and then says in the same letter "I'm fine with gravel if that's how it shakes out". It can't be both things. This is proof that he is proceeding with an agenda that benefits him personally regardless of an honest vote.

RESPONSE #7: Both of the quoted statements are from the reply sent by Nyle Head, district President, to Sheila Gannon in response to her letter – the very same letter 50 copies of which appeared in the "Take One" box on the road district kiosk WITHOUT Nyle's response. The claim that this is proof of dishonesty is puzzling. If the improvement project being considered does not move forward, the board will continue to maintain our roads as they exist today, mostly cinders and gravel, as our operating budget allows. Additionally, as we already noted above, the board stands ready to reconsider option 2 (gravel) as part of the system-wide road improvement project if that is what a majority of property owners want. Additionally, the board has repeatedly stated in letters and surveys, and by decisions that the board will not proceed with any road improvement project or assessment to pay for it without the support of a majority of property owners. As far as the claim that paving would benefit Nyle personally because of an increase in property value, the same is true for every property owner in the road district.

The board would like to share additional information that we believe further demonstrates this board and committee commitment to fair, open, honest communication with all PASRD owners.

Previous efforts by prior boards proposed to raise the needed funds with a property tax increase. As you know, property tax increases are based on assessed value and are therefore not equal per lot. Additionally, the voting requirements result in owners who don't live in the road district being unable to vote and renters (non-property owners) who do live in PASRD are able to vote. Some PASRD owners have commented that they believe these two factors may be why previous road improvement project attempts that seemed to have widespread support ultimately fell short when brought to a vote.

When this board initially began to consider a potential road improvement project, owners attending meetings discussed and decided to find a mechanism where we could have one vote per lot and divide the cost of improvement equally per lot.

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

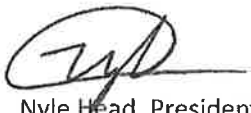
In conversations with the attorney James Shannon, recommended by David Ulbricht of the Special Districts Association of Oregon (SDAO), we learned of an alternative to increasing property taxes that could satisfy our desire to have one vote per lot equal cost per lot. ORS 223.387-401: Assessments for Local Improvements lay out a process to pay for improvements on an equal per lot basis. We also agreed that we would not proceed without majority support of property owners. Though a final decision on the exact mechanism for voting has not yet been made, the board remains committed to obtaining majority approval before imposing an assessment to improve our roads.

To underscore the board's commitment to the integrity of the process, we identified in February a potential ethics problem that two board members may have – both own properties valued well above the median values of property in PASRD and would personally benefit from an equal per lot assessment as opposed to an increase in property taxes. Based on advice we obtained from your office and from the attorney James Shannon, we referred the matter to the Oregon Governmental Ethics Commission for an advisory opinion. (Both our inquiry and the OGEC opinion are attached.)

The board will follow the OGEC's recommendations.

We ask that the commissioners consider that we are a volunteer board and committee, made up only of PASRD property owners. Any potential road improvement project and the various mechanisms provided by state law to finance such a project are complex and well outside the scope of our normal careers and lives. We are doing the best we can to research, report, survey, engage, seek ideas, and address the concerns and suggestions of every PASRD owner. Ultimately any decision will be made by a vote of the property owners and unfortunately some owners will not be happy with that decision. This board rests well knowing that we are conducting PASRD business within the scope of our charter and with the highest level of integrity. We look forward to your decision that a public hearing is not justified.

Sincerely,



Nyle Head, President



Annie Wittenberg, Treasurer



Lee Lucas, Secretary



LEGAL COUNSEL

Christopher Bell, Sr. Assistant Legal Counsel
John E. Laherty, Sr. Assistant Legal Counsel
D. Adam Smith, Assistant Legal Counsel
Amy Heverly, Assistant Legal Counsel

July 6, 2020

David Doyle, Legal Counsel

Steve and Melody Johnson
69539 Hinkle Butte Dr.
Sisters, OR 97759

Re. Complaint -- Panoramic Access Special Road District

Dear Mr. and Mrs. Johnson:

On or about June 18, 2020, you submitted a complaint to Deschutes County regarding the Panoramic Access Special Road District Board (the "PASRD Board"). Specifically, you believe that the PASRD Board, or its commissioners, have acted in a manner that is improper and/or have expended district funds for an improper purpose.

As County Counsel David Doyle explained in an earlier email to you, road district boards are afforded significant latitude in managing and operating their districts, and the County normally does not insert itself into a road district's decision-making process. That said, if it appears to County staff that a road district and/or any of its commissioners have engaged in misconduct or have failed to perform their required duties, staff may forward the matter to the Board of County Commissioners for its consideration. If it chooses, the Board of County Commissioners may then hold a hearing to determine whether any of the road district's commissioners should be removed.

I recognize that decisions regarding potential road district projects can be controversial -- particularly when they involve the expenditure of significant funds -- and I appreciate you bringing your concerns to the County's attention. However, after reviewing your complaint and the PASRD Board's response (a copy of which is enclosed with this letter), it does not appear that PASRD's Board or any of its commissioners have engaged in misconduct or have failed to perform their required duties. For this reason, staff does not believe that your complaint meets the criteria for further consideration by the Board of County Commissioners.

Sincerely,

John E. Laherty

cc. Nyle Head
Lee Lucas
Annie Wittenberg

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

July 1, 2020

Via Email on: July 1, 2020

David Doyle
Deschutes County Legal Council

Re: Complaint

Dear Mr. Doyle:

Thank you for the opportunity to respond to the complaint recently filed by Doug and Sheila Gannon. We believe the claims made are without merit, but, before responding to the specific claims we would like to review the history of how we got to where we are now.

The Panoramic Access Special Road District (PASRD) comprises 144 properties in private ownership which are owned by 137 distinct owners. Some 35 owners reside outside the local area, leaving over 100 owners who could participate in road district activities. Please find attached attendance lists for 2018, 2019, and 2020. Note that in 2018 the average attendance at road district board meetings, including the 3 members of the Board, was 5. This was typical up until 2019. Attendance picked up in 2019 (average = 12) due to interest in making improvements to district roads.

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PANORAMIC ACCESS SPECIAL ROAD DISTRICT

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At the May 2019 board meeting (minutes attached), President Nyle Head presented estimates from several local road contractors. It was noted that Deschutes County had reactivated the Local Improvement District (LID) program and that it may be worth investigating. A special meeting was held (minutes attached) to further discuss the LID program. Many questions were raised. Various attendees volunteered to pursue answers. At the June 2019 board meeting (minutes attached) Jim Becker and Sonya Gangstead announced they had submitted a list of 24 questions on the LID program and would meet with the county engineer to get answers.

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PANORAMIC ACCESS SPECIAL ROAD DISTRICT

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Sheila Gannon sent a letter expressing her displeasure (attached) at what was going on. Nyle Head, President, sent a reply to her (attached). No answer was received. Several days later, hand written notes appeared on the district kiosk bulletin board (photo attached) and some 50 copies of Sheila's letter appeared in the "Take One" box at the kiosk – without mentioning Nyle's reply. Lee Lucas removed the copies, printed a response on the back side (attached) and replaced them in the "Take One" box. Several days later the copies disappeared from the "Take One" box. The Board sent out a rumor control letter (attached).

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That brings us to the complaint before us.

CLAIM #1: Members of the Board have stated their desire to pave the roads because it will increase the value of their home.

RESPONSE #1: No board member has ever stated that a potential increase in their property value is the motivation for supporting the efforts of Jim Becker's committee. It is likely that property market values will increase for ALL property owners in the road district. The board did confirm with Deschutes County that paving our roads would not and could not increase the assessed value of properties. The board mentioned this in our October 2019 letter.

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CLAIM #2: Every person on the board sought their positions to form a coalition of like-minded individuals to push forth the agenda of paving.

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PANORAMIC ACCESS SPECIAL ROAD DISTRICT

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With this fact in mind, it makes little sense to pursue the gravel option. That said, the board has acknowledged repeatedly that if the majority of property owners do not support the potential road improvement project, then the board will continue to maintain our roads as they exist today, mostly cinders and gravel, as our operating budget allows. The board has also indicated we are willing to reconsider the gravel option if that's what the majority of property owners would prefer.

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PANORAMIC ACCESS SPECIAL ROAD DISTRICT

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When the board received the final engineering study, we immediately used the engineering design and specification it provided to request bids from the only local Otta Seal contractor and three asphalt paving contractors. The board has since received firm cost figures from these contractors and all of them are about half of the \$3.1M estimate of McCoy Engineering. The bids are also attached for your reference.

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RESPONSE #7: Both of the quoted statements are from the reply sent by Nyle Head, district President, to Sheila Gannon in response to her letter – the very same letter 50 copies of which appeared in the "Take One" box on the road district kiosk WITHOUT Nyle's response. The claim that this is proof of dishonesty is puzzling. If the improvement project being considered does not move forward, the board will continue to maintain our roads as they exist today, mostly cinders and gravel, as our operating budget allows. Additionally, as we already noted above, the board stands ready to reconsider option 2 (gravel) as part of the system-wide road improvement project if that is what a majority of property owners want. Additionally, the board has repeatedly stated in letters and surveys, and by decisions that the board will not proceed with any road improvement project or assessment to pay for it without the support of a majority of property owners. As far as the claim that paving would benefit Nyle personally because of an increase in property value, the same is true for every property owner in the road district.

The board would like to share additional information that we believe further demonstrates this board and committee commitment to fair, open, honest communication with all PASRD owners.

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When this board initially began to consider a potential road improvement project, owners attending meetings discussed and decided to find a mechanism where we could have one vote per lot and divide the cost of improvement equally per lot.

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In conversations with the attorney James Shannon, recommended by David Ulbricht of the Special Districts Association of Oregon (SDAO), we learned of an alternative to increasing property taxes that could satisfy our desire to have one vote per lot equal cost per lot. ORS 223.387-401: Assessments for Local Improvements lay out a process to pay for improvements on an equal per lot basis. We also agreed that we would not proceed without majority support of property owners. Though a final decision on the exact mechanism for voting has not yet been made, the board remains committed to obtaining majority approval before imposing an assessment to improve our roads.

To underscore the board's commitment to the integrity of the process, we identified in February a potential ethics problem that two board members may have – both own properties valued well above the median values of property in PASRD and would personally benefit from an equal per lot assessment as opposed to an increase in property taxes. Based on advice we obtained from your office and from the attorney James Shannon, we referred the matter to the Oregon Governmental Ethics Commission for an advisory opinion. (Both our inquiry and the OGEC opinion are attached.)

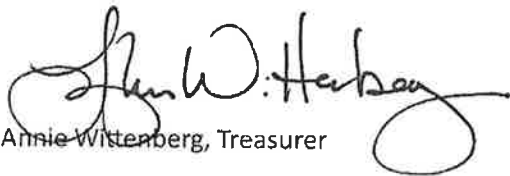
The board will follow the OGEC's recommendations.

We ask that the commissioners consider that we are a volunteer board and committee, made up only of PASRD property owners. Any potential road improvement project and the various mechanisms provided by state law to finance such a project are complex and well outside the scope of our normal careers and lives. We are doing the best we can to research, report, survey, engage, seek ideas, and address the concerns and suggestions of every PASRD owner. Ultimately any decision will be made by a vote of the property owners and unfortunately some owners will not be happy with that decision. This board rests well knowing that we are conducting PASRD business within the scope of our charter and with the highest level of integrity. We look forward to your decision that a public hearing is not justified.

Sincerely,



Nyle Head, President



Annie Wittenberg, Treasurer



Lee Lucas, Secretary

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

July 1, 2020

Via Email on: July 1, 2020

David Doyle
Deschutes County Legal Council

Re: Complaint

Dear Mr. Doyle:

Thank you for the opportunity to respond to the complaint recently filed by Doug and Sheila Gannon. We believe the claims made are without merit, but, before responding to the specific claims we would like to review the history of how we got to where we are now.

The Panoramic Access Special Road District (PASRD) comprises 144 properties in private ownership which are owned by 137 distinct owners. Some 35 owners reside outside the local area, leaving over 100 owners who could participate in road district activities. Please find attached attendance lists for 2018, 2019, and 2020. Note that in 2018 the average attendance at road district board meetings, including the 3 members of the Board, was 5. This was typical up until 2019. Attendance picked up in 2019 (average = 12) due to interest in making improvements to district roads.

A quick review of the PASRD records reveals that the topic of a potential road improvement project has been discussed by owners and board members many times since the founding of PASRD in 1983/1984. A paving proposal and survey were conducted in 1993, again in 1998 with 57% in support of paving but a complication with the funding prevented the project from proceeding. Paving via tax levy was placed on the ballot in 2003, received a 70% turnout with 41 yes votes and 48 no votes. Again in 2008 a committee was formed; letters and presentations were made and surveys were sent. In 2015, in response to the threat of a lawsuit over dust, the previous board "paved" sections of Panoramic Drive and Buck Horn using Recycled Asphalt Paving (RAP) also known as grindings. Those sections have mostly failed, resulting in worse conditions than prior to the RAP and the board has received complaints from owners, including Mr. Gannon, that the new board find a way to repair these sections.

In 2017 the previous board formed another committee of volunteers who attempted to collect an email address for every owner in PASRD to be able to better communicate meeting minutes, agendas and other information with PASRD property owners (letter of Dec 2017 attached).

By 2018 what to do about the failing RAP sections, deteriorating road conditions (washboards, protruding rocks, potholes, lack of base material and crown, drainage problems, and ineffective grading) were the primary topic of board meetings though attendance was low. The current board discussed the failed RAP sections with several contractors and have been told by all that the RAP sections cannot be repaired and can only be ripped up and removed or used for base material. While the board continued to address each of these problems in a piece-meal fashion as funds allowed, the potential for a PASRD-wide road improvement project again became a regular topic of discussion. Attendance at board

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meetings increased. At one meeting all in attendance except one person raised their hands in support of a potential road improvement project.

At the May 2019 board meeting (minutes attached), President Nyle Head presented estimates from several local road contractors. It was noted that Deschutes County had reactivated the Local Improvement District (LID) program and that it may be worth investigating. A special meeting was held (minutes attached) to further discuss the LID program. Many questions were raised. Various attendees volunteered to pursue answers. At the June 2019 board meeting (minutes attached) Jim Becker and Sonya Gangstead announced they had submitted a list of 24 questions on the LID program and would meet with the county engineer to get answers.

At the July 2019 regular board meeting (minutes attached) Jim Becker reported on the county LID program. We decided it was unattractive for PASRD needs. A Road Improvement Committee with Jim as chair was appointed along with 4 other volunteers; see attached minutes for the charter of this committee. Jim's committee has since spent hundreds of hours getting information and cost figures on options and identifying possible ways to pay for improvements, in particular working with the Special Districts Association of Oregon (SDAO) on possible financing. At the November 2019 board meeting (minutes attached), the Board authorized the President to sign a letter of engagement with SDAO. In the fall of 2019, the Board sent a letter summarizing the information collected by the committee to all property owners (see attached).

The board was also concerned that our piece-meal approach to addressing problems as they arose was not the most cost effective approach, and aware of negative feelings of property owners regarding the failed RAP project, the board determined that an engineering study of our roads was needed to assess current conditions and make recommendations for long term maintenance and potential improvement. The board first explored the possibility of getting a team of students from the Oregon State University School of Civil and Construction Engineering to study our roads and make recommendations. But, this eventually fell through. So, in December 2019, the Board authorized the President to engage a local professional engineer to conduct the engineering study (minutes attached). The proposal from McCoy Engineering and Survey was for \$23,240. But the board authorized only Phase 1 for \$6K.

The prospect of spending \$23K prompted Doug Gannon to attend the January 2020 board meeting (minutes attached) to object to spending tax revenue intended for road repair and maintenance on an engineering study. Doug also claimed that a majority of property owners opposed doing any road improvements. There was a heated discussion as other attendees pushed back and asserted that a majority of property owners were in favor of investigating road improvement options.

The engineer, Dave Cosper, presented preliminary results of his study at the February 2020 board meeting (minutes and excerpts of engineering report attached) and it was not exactly what the board was expecting. None of the attendees believed the engineer's \$3.1M figure was realistic and lengthy discussion ensued after Mr. Cosper left the meeting. Mr. Gannon was present for this discussion as well.

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The board decided to survey property owners to determine the level of support for continuing to investigate road improvement options. Specific wording for the survey (attached) was decided at a special meeting and the survey was mailed out, with the option of either a mail-in response or an online response using Survey Monkey.

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That brings us to the complaint before us.

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PANORAMIC ACCESS SPECIAL ROAD DISTRICT

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Sincerely,



Nyle Head, President



Annie Wittenberg, Treasurer



Lee Lucas, Secretary

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

ENCLOSURES

The most salient enclosures are letters to property owners: enclosures 4, 11, 24, and 26 and the results of the two surveys: enclosures 17 and 27.

You may also want to consider the letters from Doug and Sheila Gannon and our replies: enclosures 18, 19, 20, 21, and 22.

Please protect the confidentiality of contractor bids: enclosures 28 – 33.

Table of enclosures

1	Attendees 2018	21	First reply to Sheila Gannon
2	Attendees 2019	22	Second reply to Sheila Gannon
3	Attendees 2020	23	Photo of district kiosk board
4	Dec 2017 letter to owners	24	Apr 2020 letter to owners
5	Minutes 2019.5.8	25	Minutes 2020.5.13
6	Minutes 2019.5.15	26	Jun 2020 letter/survey to owners
7	Minutes 2019.6.12	27	Preliminary survey results
8	Minutes 2019.6.19	28	R&O bid for gravel
9	Minutes 2019.7.10	29	Russell bid for Otta Seal
10	Minutes 2019.11.13	30	Russell bid supplement
11	Oct 2019 letter to owners	31	Bartlett bid for asphalt
12	Minutes 2019.12.11	32	High Desert bid for asphalt
13	Minutes 2020.1.8	33	Tri-County bid for asphalt
14	Minutes 2020.2.12	34	Ethics query to OGE
15	Excerpts from Engineer's Report	35	OGE advisory opinion
16	Feb 2020 survey of owners		
17	Minutes 2020.4.15 – survey results		
18	Doug Gannon letter		
19	Reply to Doug Gannon		
20	Sheila Gannon letter		

Special Road District Guidebook



2019 Edition
Revised by Deschutes County Legal Counsel

Special Road District Guidebook

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Section 1

Creation of Road Districts / Legal Requirements

Oregon Revised Statutes Chapters 371 and 198 set out the basic requirements for creation of a special road district:

- area must be contiguous and not overlap with existing districts or be within the boundaries of a city
- properties to be included must benefit by creation of the district

Special road districts share some statutory requirements with other types of special districts, but not all provisions are the same.

ORS Chapters 198, 255 and 371 set out the procedural requirements to the formation process, including:

- Signature requirement for formation petitions
- proposal must include an economic feasibility statement with a description and analysis of the district's proposed services and functions and a proposed first- and third-year line item budget
- proposed formation must include a description of the boundaries of the territory to be included in the district
- if proposed formation includes a tax rate limit, formation must be voted on at the May or November election
- petitions to form a new district with a proposed permanent tax rate limit must be filed not later than 180 days before the next May or November election where the formation will be considered by voters

If election is successful and the petition is approved, the first property tax revenues will be received after the March 31 deadline to file boundary changes with the Oregon Department of Revenue.

Once established, the district governing structure is initiated:

If the Board of County Commissioners approves the formation petition, the order will declare whether the commissioners of the district will be appointed or elected.

Appointed: county commission appoints 3 board members and sets term of office of each

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- 3-year terms, staggered
 - Board selects its president, secretary, treasurer each January

Elected: election held at same time as election to form district

District board shall meet at least once per month

- all meetings open to public
- records shall be available to public (within reasonable time following written request specifying item(s) to be disclosed)

Financial operation

- all monies deposited in federally insured bank(s)
- all expenses paid out from tax proceeds must be by check/draft signed by president and treasurer

Special Road District boards are subject to a variety of local, state, and federal regulations, as referenced throughout this Guidebook. Due to continual changes in applicable laws, members of the district board should regularly review their legal requirements for operating a special road district.

As long as a special road district board is following the overall purpose of the district, which is to improve roads within the district, it shall have the power:

- to make contracts
- to acquire, hold, receive and dispose of real and personal property
- to sue and be sued
- to exercise the powers of eminent domain
- to assess and levy taxes on all taxable real property in the district (provided it has taxing authority)
- to do any other act necessary to carry out the purposes of ORS 371.305 - 371.360

Public Meetings Law

The Public Meetings Law, ORS 192.610 to 192.695, applies to meetings of the “governing body of a public body,” and covers state and local governmental boards, commissions, councils, committees, or subcommittees:

- that consist of two or more members
- when a quorum of members is present for the purpose of deciding or deliberating on public matters

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- to gather information on which to deliberate
 - where the governing body has the authority to make decisions for or recommendations to the public body on the matter in question

Special road districts are subject to the Public Meetings Law.

The Public Meetings Law's intent is that decisions of governing bodies be arrived at openly.

The Public Meetings Law recognizes three different types of meetings:

- Regular - reasonable notice required
- Special - at least 24 hours' notice required
- Emergency - less than 24 hours' notice (allowed only for actual emergency topics)

Board meetings and work sessions also must be open to the public; attendees do not have a right to participate or comment during the meeting unless allowed by the Chair to do so.

An Executive (Closed) Session is defined as any meeting or part of a meeting of a governing body that is closed to certain persons for deliberation on exempt matters pursuant to ORS 192.660. Typical examples include:

- discussion of specific personnel matters, such as employee discipline or potential hiring of a specific individual
- negotiations on real estate matters, such as considering an offer on property owned by the governing body
- to consult with legal counsel on current or likely to be filed litigation and confidential legal matters

While the members of a governing body may come to informal consensus during an executive session, all formal actions (including votes) must be conducted in open session.

Public officials who fail to follow the executive session provisions of ORS 192.660 could be subject to civil penalties (including monetary fines) imposed by the Oregon Government Ethics Commission.

Notice of meetings should, be reasonably calculated to give actual notice of the time and place for the meeting. Meetings must be publicly noticed. Notification should include:

- interested persons, including news media, requesting such notice
- members of the governing body
- general public

At a minimum, notice should be posted in a public area and placed online (i.e. district website). In addition, notice may be published in local news media (display advertising is not required), personal delivery, and/or mailed via first class postage, facsimile or electronic device.

Either written minutes or a sound, video or digital recording must be taken at all meetings and shall include at least the following:

- all members of the governing body present
- motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition
- results of all votes (by name)
- the substance of any discussion on any matter, and
- reference to any document discussed at the meeting, subject to ORS 192.311 to 192.478

A verbatim transcript is not required. Executive sessions may be kept in the form of a tape recording.

Public Records Law

ORS 192.210 to 192.607 set out the requirements of governing bodies to keep records and provide reasonable access to such records. A public record is defined as any writing containing information prepared, owned, used or retained by the governing body and relating to the conduct of the public's business necessary to satisfy the fiscal, legal administrative or historical policies or needs of the governing body regardless of physical form or characteristics.

"Public records" include:

handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or any combination thereof, all papers, maps, files, facsimiles or electronic recordings.

The right of any member of the public to inspect nonexempt public records is limited only by rules of reasonableness. A governing body is required to:

- provide proper and reasonable opportunities for inspection and copying of the records during normal business hours in the record custodian's office
- furnish a copy of the record upon demand, if the record can be copied
- ensure that fees charged for the cost of providing access and/or copies of records, including staff time to search and/or reproduce requested records are reasonable and reflect actual costs incurred by the governing body

Records exempt from disclosure include those pertaining to litigation involving the governing body, real estate appraisal information prior to acquisition, personnel disciplinary actions, and other records where the right for protection of an individual or negotiation process outweighs the public's right to access.

ORS 192.005 to 192.170 regulate the custody, maintenance, and retention of public records, and each governing body shall maintain a public record in accordance with a retention schedule adopted under these sections.

Oregon Administrative Rule Chapter 166 Division 150 is the County and Special District Retention Schedule and all special road districts should follow the applicable subsections, unless they adopt a more strict local retention schedule. Examples include:

ordinances, resolutions - permanent

meeting minutes, agendas, indexes and exhibits - permanent

executive session minutes - 10 years

work schedules & assignments - 5 years

financial work papers & reports, relating to general condition and operation of district, annual reports permanent and other reports - 3 years

audit records, external permanent District codes, charters, bylaws and all amendments - permanent retention

Section II Exercising Authority

Exercising Road District Authority

Valid decisions and/or transactions are conducted according to proper procedures, including:

- a majority vote of the three-member board or pursuant to authority otherwise delegated
- advisory committees cannot make decisions binding on the district
- some decision-making authorities cannot be delegated, such as budget adoption
- at a duly authorized and noticed district meeting
- on matters within the authority of the district

Parliamentary procedures are the preferred method of conducting district business at meetings. The handbook, Roberts Rules of Order is the best reference book for meeting procedures not addressed in the Open Meetings Law.

Board action is required to:

- establish operating policies and internal control mechanisms
- approve or disapprove proposed annexations
- determine funding needs of district, and if necessary, approve measures for submission to voters on funding levels
- prioritize use of resources
- authorize transactions
- authorize expenditures, either individually or through an adopted budget

The board can appoint committees to help it accomplish some of its responsibilities, but it cannot delegate final decision-making authority to the committees.

Decisions of the board are:

- expressed by formal votes taken by the board
- are typically made by a vote taken by the board, after one board member makes a motion, another board member seconds the motion, and the board president has invited discussion by the board on the motion
- may be expressed through formal resolution documents signed by the board, signed transaction documents, such as contracts, letters, etc.,

motions memorialized only in the minutes of the board meeting in which it was passed, or a combination of these

All decisions made at open meetings should be reflected by a motion and recorded in the minutes, including the outcome of the vote.

Board Conduct Requirements

ORS 244 Government Ethics defines a public official as any elected or appointed official, employee, or agent of a political subdivision (this includes special road districts):

The law does not distinguish between people who are compensated and volunteers. Both are covered whether or not they are compensated.

The main provisions in ORS Chapter 244, provide in part:

- conflicts of interest must be disclosed
- public officials are prohibited from using their position for financial or personal gain
- penalties for ethical violations

The Oregon Government Ethics Commission (OGEC) and its staff are available to assist public officials in avoiding ethical violations relating to:

- actual conflict of interest
- potential conflict of interest
- receiving gifts

The address and phone number of the OGEC is listed in the Resource Section of this Guidebook.

When a public official is faced with a potential conflict of interest, he/she must announce publicly the nature of the potential conflict prior to taking any action.

When a public official is faced with an actual conflict of interest, he/she must announce publicly the nature of the actual conflict and refrain from participating in any discussion, debate or vote on the issue, unless the public official's vote is necessary to meet the minimum number of votes required, then he/she can vote but not debate or deliberate the issue.

A public official also may voluntarily remove himself/herself from decision-making, supervision, or similar authority-related role when conflicts arise.

Failure to take appropriate action may result in imposition of the following penalties:

- civil penalties including monetary fines
- removal from office, if appointed
- additional penalty equal to twice the amount of money the public official received if the conflict resulted in a financial benefit

Oregon law prohibits public officials from receiving gifts with an aggregate value in excess of \$50 from a single source with a legislative or administrative interest with the public body or with that public official. As defined by ORS Chapter 244, candidates and relatives of the public official, also are subject to the gift limitation. A gift is defined as any, but not limited to the following:

- something of economic value that a public official accepts and for which the official does not pay back equal value.

Examples of gifts are:

- product samples
- candy or flowers
- promotional clothing
- the waiving of debt, as well as the giving of some object or service that is not available to the general public for the same or lesser consideration or conditions

The law allows the following exceptions about receiving gifts when the public official is acting as a public official:

- gifts from relatives
- reasonable amounts for admission, food, lodging, and travel for events when the public official represents the public body
- food and beverage when consumed at a reception when the food and beverage are incidental to the main purpose of the event when the public official represents the public body
- entertainment that is incidental to the main purpose of an event or for a ceremonial purpose when the public official represents the public body
- unsolicited tokens or awards with a resale value of less than \$25

Expenditure Limitations

District board members are subject to personal liability for unlawful expenditures under Oregon law (ORS 294), as summarized as follows:

- It is unlawful for any public official to expend any money in excess of the amounts provided by law, or for any other or different purpose than provided by law.
 - special road district board members are interpreted to be included in this rule
 - money refers to tax receipts, proceeds of bond sales or loans, grants and user fees (such as sewer and water fees)
- Consequence for violation: a public official shall be civilly liable for the return of the money by suit of the district attorney or at the suit of any taxpayer of such district

Examples of violations to the rule regarding unlawful expenditures by public officials:

- Expenditures for purposes not authorized by law
 - state statute authorizes road district to spend money for improvement or maintenance of roads. Governing body of a road district expends funds or purchase of land for park purposes.
- Expenditures without governing body authority
 - individual board member authorizes an expenditure of money without approval of other board members and for an item that was not included in any approved budget. The expenditure is *never* ratified by the governing body. The expenditure is unauthorized *even* if the expenditure is for a purpose falling within the statutory authority of the district.
 - governing body authorizes expenditure not authorized by adopted budget (may be some exceptions for special road districts not subject to local budget law)

There are other provisions of law that expenditure of public moneys for otherwise authorized purposes may fall under, as these examples indicate. Election laws prohibit public expenditures for certain activities:

- state law prohibits any person from requiring a public employee to aid, promote, or oppose an election measure
- state law also prohibits any public employee from promoting or opposing adoption of an election measure while on the job

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- public officials (other than elected officials) could be held liable if promoting a public information campaign regarding a ballot initiative or referendum that advocates for or against the measure; literature should be factual and for informational purposes only

Financial Planning

While special road districts are not subject to provisions of Oregon's Local Budget Law, certain principles should be applied in the development and oversight of a district's finances. This includes three basic phases of financial planning on an annual basis:

- budgeting done on an annual basis
- Operations, depending on size of district, may involve daily, weekly, and/or monthly processes
- evaluation at a minimum, includes annual review and/or audit

The Oregon Secretary of State requires filing of Notice of property tax certification form (LB-50, UR-50 or ED-50) and copy of the resolution by governing body adopting budget with the county assessor's office no later than July 15 each year. LB-50 forms are mailed directly to each district near the end of each fiscal year.

Section III

Budgeting and Finances

Preparing and adopting an annual operating budget is one of the most important processes a special road district board conducts. The annual budget reflects the needs, policies, and goals of the district for the year (and perhaps longer).

Components of an annual budget include:

- income
 - taxes (including prior year taxes)
 - investment income
 - fees
 - other income
- expenses
 - personnel or administrative costs
 - materials and supplies
 - legal and professional fees
 - contract services
 - capital improvements
 - uncollected taxes

The budget is a tool through which district members can gain insight into the district's plans for the coming year, and a base against which the members and board can monitor the district's performance.

The person(s) responsible for preparing a draft budget for the district should consider the following:

- goals and objectives of the district board
- required services (and levels)
- desired services (and levels)
- historical operating costs and unit consumption data
- patterns of extraordinary costs
- proposed or known significant changes to past costs based on rising prices for services or materials
- information gleaned from physical inspection of district assets (roads and equipment)

A successful budget process gives district members and the board an opportunity to be involved in budget decisions.

A process for systematically maintaining accurate expense and revenue information is important in providing the board with reliable information about the financial status of the district. Some of the critical components of that operating process include:

- written policies on the handling of district funds
- monthly financial statements
 - balance sheet
 - income and expense statement
- bank statements/reconciliation

A board cannot delegate its legal responsibility for overseeing the financial operation of the district, even though it may delegate some of its responsibilities to a manager or accountant.

Sound written policies, and the adherence to them, are the single best strategy a district board can provide for the management of district funds. Topics that should be covered include:

- cash handling guidelines
 - timeliness of deposits
 - signature authority for expenses, investments
- collection of funds owed to district
 - process for billing/aging of accounts
- investment of funds
 - bank accounts in insured institution
 - no high risk strategies

A bonus advantage of having clear, written policies in place is that such policies can serve as a guidebook for new treasurers or board members of a small district, who often do not have the benefit of training with the person previously responsible for handling district funds.

An independent evaluation of the manner in which district funds are handled and reported gives protection to the board, staff, and district members. There are three levels of financial review that may be performed:

- a compilation

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- is a report in which an accountant takes information provided by the district and puts it into a financial format
 - does not ensure accuracy of the information
 - a review
 - requires an accountant to perform certain analytical procedures and make certain inquiries about the district's financial condition
 - provides limited assurance that the district's financial statements are in accordance with generally accepted accounting principles
 - an audit
 - requires an auditor to do independent tests of the district's financial information and management system
 - provides highest degree of assurance, as well as professional opinions of sound financial management
 - may include recommendations for improvements

ORS 297 provides that every special district shall be audited and reviewed at least once every calendar or fiscal year, although smaller districts with minimal annual expenditures may be exempt from the general rule (ORS 297.435 and .445):

- all districts are subject to audit by petition if within 6 months of the end of the fiscal year for which the audit is requested residents file a petition with the Secretary of State. For districts with population 150 or less, 10 residents must sign and for districts with population more than 150 at least 30 residents must sign. The District must respond within 30 days after receiving notice of such a petition and provide evidence of either a signed ordinance or resolution calling for an audit or of a signed contract with an accountant to perform an audit, otherwise the Secretary of State will conduct an audit at the district's expense.

There are two types of exemptions from the audit requirements of ORS 297.425:

- any municipal corporation that, in any given calendar or fiscal year has total expenditures of \$150,000 or less; has submitted financial statements to the Secretary of State within 90 days of the end of the year
 - and for which a fidelity or faithful performance bond has been obtained in the amount of the year's receipts; or
- any municipal corporation that, in any given calendar or fiscal year, has total expenditures exceeding \$150,000 but not more than \$500,000; has submitted financial statements within 180 days of the end of the year, and the statements have been reviewed by an accountant or the Secretary of State;

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- and for which a fidelity or faithful performance bond has been obtained in an amount at least equal to 10 percent of the total receipts but not less than \$10,000

Long Range Planning

With consistent financial systems in place, a district is able to engage in long range planning activities that further contribute to successful asset management. Primary steps in constructing a long range plan include:

- identify existing assets
 - establish current value of roads
 - all operating and investment funds
 - current value of equipment/supplies
- develop replacement schedule
 - determine life of existing improvements
 - document basis for value
- identify future needs
 - select 5- or 10-year planning horizon
 - include both replacement and upgrade projects
- determine capitalization plan
 - annual contributions to reserve/replacement fund
 - identify funding strategy in plan, such as loans or special assessments

Gaining necessary approvals from district members or financing sources is much easier with a clear plan in place that includes a track record of monitoring and performance over several years.

Boundary Changes

ORS Chapter 198 provides requirements for annexation, withdrawal of property, mergers and consolidations for special districts. There are several specific requirements that districts must meet in order to ensure accurate tax assessment and collection following any boundary changes, including:

- filing of various documents with:
 - Department of Revenue
 - Secretary of State
 - county clerk
 - county assessor

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- receive approval from Department of Revenue for taxing purposes; provide final descriptions and maps no later than March 31
 - file proposed boundary changes by March 31 if final descriptions are not available, for changes effective between April 1 and June 30

Deschutes County Legal Counsel processes petitions for boundary changes for all special districts in the County pursuant to ORS Chapter 198. The staff will handle filings with DOR, SOS and shepherd the petition through the process. County Legal cannot provide the special road district with legal advice, but is available to provide information and suggest options. A good source of information on this subject also is the Department of Revenue publication “Boundary Change Information” available on the DOR website.

Section IV

Public Contracting Provisions

It is the policy of the State of Oregon to encourage public contracting competition that supports openness and impartiality to the maximum extent possible. ORS Chapters 279A-279C set out extensive requirements for public bodies' purchasing of goods and services. Some of the elements of the bidding and award processes regulated by state law include:

- advertising for bids or proposals
 - timing, frequency, and methods
- selection criteria
 - low or “best” bid
 - type of contract
 - prequalifications and disqualifications
- process
 - notice requirements to bidders
 - response to bidder inquiries
- evaluation and award
 - criteria eligibility
 - legal obligations of governing body and successful bidder/proposer
 - payment/retainer provisions

A Model Public Contract Rules Manual is available for purchase through the Department of Justice. Contact information is contained in the Resources Section of this Guidebook.

Certain exemptions are allowed under Model Public Contracting Rules, including:

- contracts for small purchases less than **\$10,000, though the cost may not be divided to avoid the law**
- emergency contracts
- cooperative contracts with other entities
 - local, state, or federal agencies
- certain insurance and service contracts related to medical assistance
- contracts with public agencies utilizing an existing solicitation as long as
 - original contract meets requirements of ORS 279A, 279B or 279C
 - contract allows other public agency usage of the contract
 - original contracting agency concurs

Oregon has Prevailing Wage Rate laws and criteria that may apply to contracts districts enter into, according to these guidelines:

- public works projects that cost \$750,000 or more
- projects that involve construction, reconstruction, major renovation, on a road or highway or improvement of any type

Dividing a project up to avoid prevailing wage requirements is not allowed.

A checklist for district projects that meet the criteria includes these activities:

- including prevailing wage rate fee, rates, and other required language in any contract specifications covered by this law
- submit a list of every public improvement planned in the subsequent budget to the Oregon Bureau of Labor and Industries (BOLI) not less than 30 days before adopting the budget or 30 days before construction begins
 - exceptions to this rule include resurfacing highways, roads or streets at a depth of less than two inches and a cost of less than \$125,000, and placing maintenance patching, chip seals or other seals on highways, roads, streets or bridges
- submit a notice to BOLI within 30 days of awarding a contract subject to prevailing wage
- submit a responsibility determination form to the Oregon Construction Contractors Board (CCB) within 30 days from the contract award dates
- verify that none of the contractors or subcontractors working on the project are on BOLI's ineligible list
- require that the contractor has a performance bond or obtain a cashier's check or certified check from the contractor, unless the contract value is more than \$100,000, or more than \$50,000 for highways, bridges and other transportation projects, and that the contractor and subcontractor have public works bonds filed with the CCB, unless exempt
- verify that the project manager has knowledge of construction and worker classifications
- withhold not more than 5 percent retainage if desired
- verify that contractors and subcontractors know the job is a prevailing wage rate job
- remind the contractor and subcontractor that the correct prevailing wage rates and the details of any benefit plans must be conspicuously posted at the job site

Section V

Operating an Effective District

Policy development does not need to be complicated, but should include these basic principles:

- opportunity for district member involvement throughout process of adoption
 - provide forum(s) for identification/discussion of issues and options
 - inform members of progress through newsletters, distribution of work session summaries, update reports
- include clear statement of intent or purpose for each policy adopted
 - cannot conflict with local, state, or federal laws
 - adopt in form of resolution consistent application of policy
 - no changes to written policy without due process
 - evaluate effectiveness periodically

Keeping a Book of Resolutions, indexed by subject and adoption date, is an effective way of managing policy records. Record retention laws require all resolutions to be kept permanently.

Regardless of district size, internal operating procedures should be written, followed, and documented to ensure consistency in dealing with district members, district business, and relationships with external entities. A basic policy on how communications are conducted should include guidelines covering internal board communications that comply with Open Meetings Laws and:

- define roles of board members and officers
 - procedures for setting of agenda, relaying district member contacts, and decision-making
- board to/from district members
 - regular method of communication
 - process for airing of concerns and receiving citizen input
- board to external entities
 - who has authority to represent district
 - process for determining district position

Gaining necessary approvals from district members or financing sources is much easier with a clear plan in place that includes a track record of monitoring and performance over several years.

A district's relationship with Deschutes County includes several aspects of the organization, including:

- Appointment - the Board of County Commissioners, upon receipt of nominations from the existing special road district board appoints special road district board members for each district's term replacements and vacancies as they arise
- The special road district board selects its own officers.
- Taxes - the county treasurer collects and distributes true proceeds levied by the district

Other county departments may occasionally provide information or other assistance to districts, on a limited basis and depending upon availability.

The hiring and supervision of staff is a major responsibility of a district board, and board members should take these issues into consideration before employing any personnel:

What is the advantage or disadvantage of hiring staff versus contracting out for services?

- compare cost and control
- look at current availability

What are the district's legal responsibilities regarding personnel?

- supervision and direction
- compliance with applicable employment laws

If the decision to hire has been made, are personnel management policies and procedures in place?

- clear job description
- reporting relationship established
- compensation/benefits defined
- periodic review/evaluation process identified, with clear goals/standards determined

Poor records management and lack of consistency in applying performance criteria are two ways boards often get into trouble with personnel issues.

Risk management is essential for districts of all sizes. Some of the considerations in development of sound risk management practices are summarized below:

- identification of potential exposures
 - personnel
 - equipment & property
 - maintenance practices
 - board or board member actions
- assignment of risk
 - eliminate: cancel or determine not to provide a particular service or engage in a particular type of activity to avoid exposure
 - mitigate: alter method of service delivery by upgrading equipment
- contract out instead of using staff to perform
 - insure: accept that there is a certain level of risk to be taken, but purchase coverage for unforeseen events
- continuous education
 - part of mitigation strategy, but often overlooked as an active part of risk management for small organizations

The Tort Claims Act, ORS 30.265 et seq., provides some protections for districts and other public bodies by limiting the liability of districts, including their officers, employees, or agents acting within the scope of their authority.

- typical actions against a road district would be negligence for damages to a person or vehicle suffered by the person as a result of the district's failure to be careful in exercising its duties

A “tort” is a breach of a legal duty that is imposed by law (not contractual duties or obligations) that results in injury to a specific person or people for which the law provides a civil right of action for damages or a protective remedy.

Understanding how to avoid or reduce exposing the district to claims is an important risk management function of the district board:

- purchasing liability insurance
 - the Special Districts Association of Oregon (SDAO) provides coverage for many special districts in the state
 - there are commercial providers that offer plans, as well
- properly supervising all employees of the district

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- if an officer and/or employee is sued while acting within the scope of his or her authority, then the district is the proper party to be sued, and the district is responsible for paying the costs of any damages awarded to the claimant

Section VI

Road Maintenance Responsibilities

The responsibility and authority for various road functions in unincorporated areas of the county are divided between Deschutes County and its road districts. As the principal road authority, Deschutes County retains the exclusive authority to:

- grant permits to public and private utilities to place utility facilities in County rights-of-way
- establish and enforce regulations to limit encroachments in the public right-of-way and order their removal
- establish weight limits
- issue gate or stock guard permits
- abate road hazards under ORS 368.251 - 368.281

Establishing speed limits is a state or county matter. Road districts have no police powers.

Road Maintenance/Development

Local Improvement Districts (LIDs) are created to construct road improvements that are financed by special assessment against benefitted properties. The process of formation includes:

- a petition requesting the improvements
 - signed by not less than 25 percent of landowners abutting the proposed improvements
 - filed with the Board of County Commissioners
 - applicable filing fee
- a feasibility study
 - completed by the Road Department
 - provides information to determine whether to proceed with formation
- discussion/comment from owners
 - neighborhood meetings
 - mail poll, which must gain approval by at least 60 percent of land owners to proceed
- Report by county engineer following the poll

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- public hearing, followed by Board of County Commission determination whether to proceed
 - development of project
 - lien notification to owners
 - construction of improvements
 - tabulation of final costs to owners
 - collection of assessments

Per County Resolution 2009-118, the LID process remains available to Special Road Districts subject to demonstration of the financial ability to maintain the improved road. As paved and improved roads are more expensive to maintain than gravel roads in the long term, the LID option may require an adjustment to the tax rate.

There are extensive skills and techniques employed today in properly maintaining dirt and gravel roads, which many districts oversee. Some basic considerations, however, are helpful for district board members to understand. There are three basic elements to effective dirt/gravel road maintenance:

- proper road surface material
 - good gradation
 - proper moisture
 - proper compaction
- proper grooming techniques
 - grade entire roadway
 - aim for quality, not speed
 - cut all washboards/potholes
 - cut at predetermined cross slope
 - mark centerline
 - lay back in first gear
 - never leave a windrow or working berm
- use of dust suppressants/base stabilizers

The Deschutes County Road Department is available to provide technical recommendations and consultation on maintenance and improvement techniques.

Section VII

Resources Section

Deschutes County:

Legal Department 541-388-6623

Finance Dept. (Treasurer) 541-388-6559

Assessor /Tax Department 541-388-6508

Road Department 541- 388-6581

Helpful Web Sites:

www.deschutes.org

www.oregonlegislature.gov

sos.oregon.gov (Secretary of State)

www.oregon.gov/DOR/Pages/index.asp (Department of Revenue)

For questions or information on Ethics Laws, contact

Oregon Government Ethics Commission

3218 Pringle Road SE, Ste. 220

Salem, OR 97302-1680

503-378-5105

www.oregon.gov/OGEC/Pages/index.aspx

To order a Model Public Contract Rules Manual:

Download an order form or purchase online at

www.doj.state.or.us/oregon-department-of-justice/publications-forms/forms-manuals-reports/

Mail order form and \$65 payment or credit card info to

Publications Section

1162 Court Street NE, Room 16

Salem, OR 97301-4096

Call 503-378-2992

To order a Public Records and Meetings Manual,

www.doj.state.or.us/oregon-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual-2014/

To obtain a current list of municipal auditors:

Contact the Board of Accountancy

503-378-4181 or search: licenseesearch.oregonboa.com/

To obtain a copy of the Bureau of Labor and Industries' Prevailing Wage Rate Law Handbook:

www.oregon.gov/boli/WHD/PWR/docs/2018_PWR_law_book.pdf

For BOLI's list of ineligible contractors:

www.oregon.gov/boli/WHD/PWR/docs/Debar_List.pdf

To contact the Special Districts Association of Oregon (SDAO):

800-305-1736 (claims)

800-285-5461 (main)

www.sdao.com

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