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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

IN THE MATTER OF THE PETITION OF THE
PANORAMIC ACCESS SPECIAL ROAD DISTRICT

Case No.: 21CV41823

OBJECTION TO THE PETITION FOR JUDICIAL
VALIDATION

1.

We, Jeremy, and Tonya Rollins object to the petition for judicial validation of Resolutions 2021-1 and 2021-2.

2.

We object to paragraph 8, there is no proof that the gravel roads impact the District residents' vehicles. I, Jeremy Rollins am the owner of Rollins and Sons Automotive and am an automotive mechanic of 30 years and have not had any of my vehicle's negatively impacted due to the gravel roads. I have seen more damage to vehicles from potholes on city roads than a gravel road. Another objection to paragraph 8 is the estimated amount in repairs. The Board is estimating the project to cost \$795,000. In the "Full Update on Road Project from May 24th Meeting", attached as **Exhibit 1**, the Board updates the District residents, "Unfortunately, that is far to late for any construction to take place this year. And it is guaranteed the project will cost more next year, there's a large increase in the cost of oil coming Jun 15th. It's also unlikely that we will still find a 3.5% interest rate."

3.

We object to paragraph 10. As stated in previous paragraph it has been determined the Improvement costs will exceed the estimated amount of \$795,000, see **Exhibit 1**. We also question the estimated amount of \$795,000 for the Improvement when each lot within the District is assessed to be \$5,656.73. If you multiply the estimated assessment for each lot of \$5,656.73 by the 143 lots in the District the sum is \$808,912.39.

4.

We object to paragraph 12. As stated previously, Resolution 2021-1 is incorrect because estimated cost of the Improvement is not correct and will exceed the estimated amount as stated in **Exhibit 1**.

5.

OBJECTION TO THE PETITION FOR JUDICIAL VALIDATION - 1

1 We object to paragraph 13 because the Board did not hold a formal vote on the bond. As Tonya
2 Grass from the SDAO states via email, “If a tax levy, bond purchase, etc. will be required, those are things that have
3 to go on the ballot and get approved by electors”, see **Exhibit 2**. The Board did not abide by the ORS 255.085
4 Notice of district election on issuance of bonds or on other measure. The Board did hold a vote however it was to
5 “gauge” support of the Improvement, see **Exhibit 3**, page 2.

6 6.

7 We object to paragraph 14 because the Board did not hold a vote to purchase a bond to fund the
8 Improvement. The process of a District to purchase a bond is regulated by ORS 255.085.

9 7.

10 We object to paragraph 15 because the Board’s proposal of Resolution 2021-2, the petitioner did
11 not hold a vote on issuing a bond to fund the Improvement. Resolution 2021-2 also states it may not exceed the
12 estimated costs of the project. Again, in **Exhibit 1**, the Board states the project will cost more.

13 8.

14 We object to paragraph 16 because the Board did not comply with the issuance and sale of the
15 Note and Bonds by not holding a vote in accordance to ORS 255.085.

16 9.

17 We object to paragraph 17 because Resolution 2021-2 sates, “The interim financing provided
18 pursuant to this authority (1) may not exceed the estimated cost of the Project”. **Exhibit 1** proves that cost of the
19 Project will be more than the estimated amount.

20 Dated this day of January 14, 2022.

21
22 _____
Jeremy Rollins

23
24 _____
Tonya Rollins

GOOD EVENING.

As we start tonight, I'd like to thank each of you for your participation in this process. Zoom meetings in a pandemic are certainly not ideal for any of us, but required by the governor's mandate, and so huge thanks to Whitney for bringing PASRD up to speed with technology and allowing us to still function over the last year.

I also want to make a personal statement and I think that I can speak for Jim and Nyle too. I am a volunteer. We are all volunteers. And we are your neighbors. And we love this neighborhood and community and it is our home as well. You must be a resident owner to serve on the board. It's always been difficult to get people to Volunteer for this job because its not easy. Huge thanks to Dennis and Bruce, John and Lee, and so many others that served for years and years. I admire your strength.

I got involved with the board because I wanted to "improve" our roads – note that I didn't say PAVE WITH ASPHALT. I love the rustic feel of our eclectic community and I love the look of red cinder roads. I moved to Panoramic from a paved HOA across town because Panoramic was NOT THAT! But I don't like pot holes, washboards, wide spreading roads with no crown and terrible drainage and 9 months of dust. I have a dear friend who meets me at the mailboxes because the red cinder dust causes her chronic bronchitis. I'm really not a fan of spending \$30k per year of our tax money to grade and dump down more gravel, only to have the roads potholed and the gravel spread into the shoulders in just a couple months. So, I just wanted to look at all the options to find a something that might be more efficient and economical way to maintain our roads and keep them in a dust and pothole free state year round. I think we found a fantastic option in Otta Seal because it still got that rustic gravel road appearance, but it's dust free and annual maintenance-free!

The next huge task was to look at all the options for how to pay for a road improvement project. Ad Valorum tax **is indeed** the most common way. But previous boards tried that, and it failed - 41 YES and 48 NO. That's a pretty low participation rate. One of the concerns I heard multiple times was that some folks thought paying for roads, based on assessed value, was unfair, and that non-resident owners didn't get to vote on their own property tax increase was also unfair. I know there are some of you who disagree. I'm pointing out that the board has heard strong arguments in support of each point of view over the last two years.

Then the board looked at the County's LID program but dismissed that quickly because asphalt paving (they only option the county will do) to county standard would have been exorbitantly expensive – we got a quote for \$4.3 million – that's \$30,069 per lot.

We reached out to the Special District Association of Oregon and learned about the Assessment process. I'll spare you the legal citations because they are published in a legal opinion on our website for you to review. One owner objected to the board considering any method other than Ad Valorum taxes and demanded a legal opinion, which was then flatly rejected by said owner.

In the relevant statutes we found a legal avenue to assess each lot equally for a road improvement project. As explained in the opinion and other documents, the assessment process does not require the board to take any kind of VOTE. But the board was always committed to engaging as much participation and involvement as possible and then following the wishes of the majority. Though there is no legal requirement to do so, this board took two separate poll/survey/votes to determine the wishes of the majority of owners – not residents – because those are who would pay an equal per lot assessment.

Another objector takes issue with the concept of majority, and I won't use terms like overwhelming majority. But our poll/vote did meet the same standards of majority as used in all elections in our nation. And much like our republic – the board is committed to and has a duty to interests of the majority.

So enough impassioned speech making from me – well, almost. It's been an exhausting and brutal few weeks and I'm tired. And a little sad. But what I am not is a corrupt bully determined to destroy my community. And I deeply appreciate those who have reached out to express thanks and even apology the nasty turn taken on Facebook. At the same time, I do assure you that I respect your objections. I am proud of the hard work and integrity with Jim, Myself and Nyle have conducted ourselves and this boards business and I think we've put an excellent project together. Its not perfect and we will never please everyone. But it is an economical long term solution for our roads and a viable alternative to financing the project that previous boards have tried. I'm proud of our work.

SO... lets get to the business.

The board has received written objections and Whitney has posted them to the panoramicoads.org. We have read them all and we do take them seriously.

One set of comments/objections we'd like to discuss is the construction contract/warranty and estimated assessment. Nyle has been working with Vic Russel to ensure what the contract is tight and legal. Vic warranties his work, in the contract for one year and stands behind his work with his reputation as well. So, we will have a warranty in writing. Also, In any construction project of this size, there can be cost savings and cost over runs. For example, in the R&O work just completed, their final invoice came in \$2000 less than their estimate. Some of the numbers in the contract (the price of oil or the price of gravel) are valid for a period (30 days, 90 days) but aren't guaranteed indefinitely. If the project was delayed or extended outside that window, those prices could go up, or down. If they require less gravel or emulsion than estimated the price could be lower. We are happy to explain further but I propose we move on and come back to this later if needed.

I now must let you all know that due to a threat of litigation from one of our owners, we will not be able to move forward with the next steps in the process tonight. After reviewing his objections with the boards attorneys and advisors, we remain confident in the legal authority to proceed but the risk of court delays putting the district in an unstable financial position as well as the personal risk, let alone stress to VOLUNTEER board members, sorry, I just can't go there. And I feel like I'm letting the majority down.

Our next step will be to take the proposed assessment before a Deschutes county judge in a process called Validation. This process will take between 2 to 6 months. The result will be a legal opinion that our assessment is valid and legal and that we can proceed.

Unfortunately, that is far to late for any construction to take place this year. And it is guaranteed the project will cost more next year, there's a large increase in the cost of oil coming June 15th. It's also unlikely that we will still find a 3.5% interest rate. But we have no choice at this point.

In closing I'd just like to remind everyone again that though we may disagree on any or all aspects of his project – we are neighbors. We are blessed to live in this special unique community in Sisters. Let's try to respect one another.



Jeremy Rollins <rollinsandsons@gmail.com>

Panoramic Special Road District

Tonya Grass <tgrass@sdao.com>

Thu, Feb 18, 2021 at 12:23 PM

To: "rollinsandsons@gmail.com" <rollinsandsons@gmail.com>

Hi Tonya,

For road district (or any major district improvements), the decision regarding whether a particular project is needed, in the district's best interest, etc., is decided by the board. How they then expend the funds for the project is governed by the Oregon public contracting laws (ORS 279A-C). Those chapters outline the details and cover a lot of specific information, and are a good resource for that.

If the district needs to *raise* a considerable amount of funds to accomplish a project, that's when there may or may not be a public vote involved, which is I think more what you're asking. If a tax levy, bond purchase, etc. will be required, those are things that have to go on the ballot and get approved by the electors. It just depends on how they will raise the funds whether that is required. Both the public contracting chapters listed above and elections chapter (Ch. 255) of the Oregon Revised Statutes are pretty good resources for information on the process.

Thanks; have a great day!

Tonya

Tonya Grass

Tonya Grass

Legal and Technical Support Administrator

S|D|A|O

503-375-8883



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[Quoted text hidden]

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

Panoramic Access Special Road District

P.O. Box 1226, Sisters, OR, 97759; Email: panoramicroads@gmail.com

MINUTES: ~~Regular~~ Special meeting: 14 November 2020

Zoom Video Conference meeting: hosted by Whitney Lowe

IN ATTENDANCE:

Jim Becker, Bruce Bowen, Glenn & Joyce Brown, Brian Bubak, Tony Corrieri, Melissa Cretsinger, Doug & Sheila Gannon, Wil Hansen, Nyle Head, Whitney Lowe, Lee Lucas, Bryan Stevens, and Annie Wittenberg.

PASRD 2020 ROAD IMPROVEMENT PROJECT

Annie welcomed all attendees and reminded them to stay on mute to limit extraneous background noise until you would like speak. A copy of Annie's presentation is on the [PASRD website](#)

Annie discussed the reasons to consider improving PASRD roads - road deterioration, fix "grindings" problems, insufficient funds to restore roads to good condition, and problems with dust. The estimate to fix known problems (except dust) totals \$103,400.

Options considered by the board were: (1) status quo; (2) restore gravel surface; (3) Otta Seal paving; and (4) asphalt paving. The Road Improvement Committee did extensive research on these options and prepared a report available on the [PASRD website](#) –

Annie presented a cost comparison of the four options, a corrected copy of which appears below.

Road Options	PASRD History	STATUS QUO	GRAVEL	OTTA SEAL	ASPHALT
Construction			\$756,000	\$660,000	\$1,500,000
Needed repairs		\$103,000	*	*	*
Annual grading	\$2,612	\$8,000	\$8,000		
Annual gravel/repairs	\$17,838	\$20,000	\$5,000		
Crack seal every 2 years	\$1,558	\$1,375	\$1,375		\$10,312
Chip seal - 10 years		\$6,250	\$6,250	\$187,500	\$186,500
ANNUALIZED COST	\$22,008	\$30,000	\$15,000	\$18,750	\$29,062

* Needed repairs included

The board proposal is to pave PASRD roads using the Otta Seal process because it is the lowest cost hard-surface option, has low annual maintenance cost, and fixes the problems with potholes, wash-boarding, dust, and vehicle wear and tear.

Otta Seal consists of 3 layers applied in 4 separate steps:

- Step 1: prepare the road bed: add material as needed to restore crown and ensure good drainage
- Step 2: apply a special oil emulsion and 3/4" gravel; knead with special roller and allow to cure for 2 weeks.
- Step 3: clean the road surface and apply an oil emulsion and 3/8" gravel and roll
- Step 4: apply a waterproof FOG seal layer to seal all cracks and openings

Expected Otta Seal road maintenance:

- Recommended maintenance is to reseal primary roads every 10 years.
- Otta Seal does not need regular crack sealing like asphalt; it is less brittle and summer heat heals winter cracks.

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- Estimated cost of resealing is \$187,500; the board proposes to set aside \$18,750 per year to pay for this.

The board proposes to pay for the Otta Seal paving project by an equal per lot assessment on all 142 properties in PASRD.

Owners will have two options:

- Pay the assessment in full up front; or
- Finance the assessment with a lien contract over 10 years.

Financing will add significant interest charges; our best guess now is:

- The assessment will be about \$5,130 per lot.
- The total lien contract amount will be about \$8,440 per lot.

Full details and cost spreadsheets may be found in the letter sent to all property owners and is on the [PASRD website](#) –

The assessment process is described in Oregon Revised Statutes (ORS) 223.389:

- PASRD notifies owners of intent to impose an estimated assessment for the road project.
- Owners have 10 days to file objections.
- District amends assessment notice as needed and imposes an estimated assessment.
- The road project is completed and final costs are calculated.
- PASRD notifies owners of final assessment.
- Owners have 10 days to pay the assessment in full or to sign a lien contract.
- Bonds are issued to cover costs of the road project and the long term financing of lien contracts.
- PASRD engages a bond trustee to bill for lien payments, receive lien payments and make bond principal and interest payments.

Each property owner is being sent a secret ballot to gauge support for the board proposal.

- Owners will receive one secret ballot for each lot owned.
- There are two choices:
 - Status quo: continue fixing problems as tax revenue allows; or
 - Do Otta Seal paving, paid for by a per lot assessment.
- If ballot results are favorable, the board will:
 - Notify owners of an estimated assessment.
 - Engage a paving contractor to begin work in the spring of 2021.
 - Arrange interim and long-term financing.

Your vote counts, so please return ballots promptly.

DISCUSSION

During the presentation attendees had comments and questions appearing in a chat side bar. Plus, there was extensive discussion following the presentation. Here is a summary by topic:

A major issue was raised by Glenn Brown who believes the district does not have the authority to do an assessment. These are the leading paragraphs of his communication:

“I’m reviewing the letter you sent. Again, I’m in favor of paving, but not on a per lot basis and not without a levy vote to be sure funds are being collected and disbursed according to Oregon statutes.

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

I have reviewed the statutes, talked to the county assessor and to the county counsel. (County counsel emphasized he is not able to provide a legal opinion to us, but he is familiar with the statutes.) All lead to the same answer, the only way to finance special road district improvements is a levy vote. (There are local improvement districts but none have been proposed here.) The statutes require ad valorem assessments, a levy vote of the electors (residents) to approve them, and the ad valorem tax to be collected and disbursed by the county."

Board response: Glenn is describing the taxing authority of special road districts, such as PASRD, created under Oregon Revised Statutes (ORS) 371. He does not believe that PASRD has the authority under ORS 223.387ff to do assessments. The board believes it does according to the following excerpts from ORS, which seem pretty unambiguous:

174.116 "Local government" and "local service district" defined. (1)(a) ...

"local government" means all cities, counties and **local service districts** located in this state, and all administrative subdivisions of those cities, counties and local service districts.

(2) ... "**local service district**" means:

(L) **A special road district organized under ORS 371.305 to 371.360.**

223.389 Procedure in making local assessments for local improvements. (1) The governing body of a local government may prescribe by ordinance or resolution the procedure to be followed in making estimated assessments and final assessments for benefits from a local improvement ...

(2)(a) The ordinance or resolution prescribing the procedure shall provide for adoption or enactment of an ordinance or resolution designating the local improvement as to which an assessment is contemplated...

(b) If the governing body determines that the local improvement shall be made...

Notice of the estimated assessment shall be mailed or personally delivered to the owner of each lot proposed to be assessed...

What are your plans for damage to Otta Seal due to snow removal? We expect no damage from snow removal – same as asphalt.

What do the road edges look like? They look like normal asphalt road edges. See the photos in the presentation.

Is an equal per lot assessment the only way to pay for the road improvement? No. The road district could pay for the improvement by levying additional property taxes under ORS 371.

Majority support means a majority of owners, right? No, 'majority' is commonly defined as 1 more than half of those voting, majority support means support by a majority of property owners voting.

Then a non-vote is essentially a 'yes' vote? Many people assume a non-vote is a vote for the status quo. In a sense a non-vote is a yes vote. If an owner does not return a secret ballot, the board has no way to determine that owner's wishes. It lowers the total votes cast by 1 (or more if the owner owns more than one lot), thus making majority support easier to obtain.

The vote must be a vote of the resident voters, not owners. That would be true if we were to seek a property tax increase. But, it is not true, for an assessment. The board has decided to send a secret ballot to all property owners whether they reside within PASRD or not. Voters not owning property will not receive a ballot.

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

This falls under forming a Local Improvement District (LID). Why did the board decide against it? This was the first issue investigated by the Road Improvement Committee. They had a number of discussions with Deschutes County personnel. LID is a program authorized by state law and offered by Deschutes County. However, it comes with several unattractive features. First, the road construction is done by the county to county standards – more than doubling the cost. Second, oversight is exercised by the county – PASRD has almost no role to play. Third, the county assesses property owners and collects their payments – if they can't pay, too bad. Fourth, the district must prove to the county's satisfaction that it can afford to maintain the roads after construction – this entails unknown costs.

Can you explain the possible conflict of interest that 2 board members have? Sure. As mentioned above the board has 2 possible ways to pay for road improvements: (1) increase property taxes; or (2) do a per lot assessment. Owners of higher valued properties would pay more of the cost with a property tax increase than they would with an assessment. Likewise, owners of lower valued properties would pay less of the cost with a property tax increase than they would with an assessment. Two board members own higher valued properties – which makes an assessment financially beneficial to them. State law prohibits public officials, such as special road district board members, from benefitting financially by decisions they make as public officials. The remedy, spelled out in the county Special Road Districts Guidebook and in an advisory opinion from the Oregon Governmental Ethics Commission is: the 2 board members must announce publicly the nature of their conflict of interest; they may not take part in the discussion of any motion or resolution that raises the conflict of interest; and they may not vote on the matter unless their vote is required in order to reach a decision.

Is there a place on the website where owners can discuss this plan? No, but there will be. After some discussion, the board directed Whitney Lowe to set up such forum on the district website, subject to 2 restrictions: (1) Submissions must be civil and constructive; (2) The board reserves the right to correct misinformation.

You have had only 9 to 16 people per board meeting, so you are not reaching as many people as you say you are. Actually, attendance has been averaging more like 17 to 20 this year. But, you are correct – meeting turnout is quite disappointing. The board has been begging for email addresses for the past 3 years, but there are still many owners that we can reach only by mail. Response to the November 2019 and June 2020 surveys averaged 77%, so we are reaching many owners.

You should take this lack of interest as feedback that your neighbors are happy with the status quo. Actually, the reverse may be true. Attendance in 2018 averaged 4 to 5 per meeting – including the 3 board members. Attendance picked up markedly when we started discussing possible road improvements and most attendees have been vocal in their support of doing something. In the June survey supporters of road improvement outnumbered opponents 2 to 1.

What is the name of the Facebook group? The Facebook group is Panoramic Estates Neighborhood – which has no affiliation with PASRD.

Lee Lucas
Secretary, PASRD

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

To contact us:

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