

PANORAMIC ACCESS SPECIAL ROAD DISTRICT

Panoramic Access Special Road District

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

MINUTES: Regular 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 $\frac{3}{4}$ " gravel; knead with special roller and allow to cure for 2 weeks.
- Step 3: clean the road surface and apply an oil emulsion and $\frac{3}{8}$ " 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.

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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.

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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

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PREVIOUS MINUTES: Minutes 6 October 2020 are approved as distributed after three corrections: change “@20” to “\$20”; insert carriage return before “(5) A concern”; and change “(and Panoramic ??)” to “Panoramic”: **MSP** (motion made, seconded, and passed; the vote is unanimous unless otherwise indicated).

TREASURER’S REPORT: The current checking balance is \$35,093.74. We received our tax revenue check of \$35,796.29. Outstanding bills total \$3,574.58. The new balance will be \$67,315.45.

BUSINESS

Bills: \$319.58 for the Hogan notice in the Bulletin; \$3,255 for fall grading by R&O.

Upcoming board vacancy: We have 3 qualified candidates: Jim Becker, Sheila Gannon, and Whitney Lowe. The board has no established procedure for this situation. It is rare for there to be more than one candidate. The Bylaws state that in November the board will recommend one candidate to the Deschutes County Board of Commissioners; and provides that the board may consider availability, education, experience and familiarity with PASRD procedures.

Nye asked each candidate to explain their qualifications relating to the above criteria.

Jim has a degree in accounting and finance and has worked in operations and logistics management for several private companies. He also served as treasurer of the Sherwood HOA and for the past 15 months has served as chair of the PASRD Road Improvement Committee. Jim noted he was retired and had the time to devote to PASRD business. Nyle quizzed Jim on his commitment to serve the full 3 year term and his ability to take the heat that comes with the job. Jim confirmed that he could.

Whitney runs a small business providing instructional materials for massage therapists and provides online educational presentations. He served as chair of a national credentialing committee for therapists and has volunteered on the Oregon Land and Water Alliance. Whitney added that he supports Jim’s candidacy and prefers to continue to handle PASRD communications and the district website.

Annie noted that these proceedings are not meant to discriminate against Sheila Gannon. But, she is absent at this meeting and declined to submit a letter detailing her qualifications when requested. So, the board really has little information to go on.

Nyle then asked attendees for their opinions. Ronnie spoke in support of Jim. Nyle then polled the board – all supported Jim’s selection. The board nominates Jim Becker to fill the board vacancy beginning 1 January 2021: **MSB**. Lee will prepare a letter to the county to this effect for Nyle to sign.

ROAD IMPROVEMENT

Enewetak status update: Brian and Lee talked to the 2 property owners abutting Enewetak and came away with the impression that both were OK with designating Enewetak as a public right of way. The board met with Jack Godard of 69710 Lake Drive – the only property not in PASRD that uses district roads as the sole access to his property. This was a productive discussion and the board was left with the impression that the Godard’s are seriously considering joining PASRD.

Lee asked for board approval to engage Karnopp Petersen LLP to render legal opinions on several issues:

- Investigate the right of way status of the portion of Enewetak linking Lake Drive and Emerald Valley.
- Assist PASRD to get this part of Enewetak designated a “public local access” road – the same as all other roads currently maintained by PASRD.
- Advise on the legality of PASRD using tax revenue to maintain/improve access roads on private property – such roads lie on existing easements granting property owners access to their properties, but are not open to the public.

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- Investigate the status of such easements and recommend changes to allow PASRD access to maintain/improve these roads, should the board decide to do so. (Note: the board has already decided in July to plow snow from these roads.

Lee noted that all properties served by these non-public access roads are currently in the road district and have been paying property tax revenue to PASRD (except 69710 Lake Drive).

Some attendees questioned why the board is changing established policy that PASRD only maintains the public roads lying within the Panoramic View Estates Subdivision (PVES). Their understanding was that properties to the north and east of PVES were included in PASRD because they used PVES roads for access. The board response was: (1) similar dead-end roads, such as Buck Lane and Pine Drive are maintained by PASRD now because they are in PVES; and (2) the extra expense to plow snow and perhaps grade is not expected to be much.

Nyle asked for a delay to (1) send letters to the affected property owners on north Lake Drive; and (2) to get title report information on the existing easements for Enewetak in order to save some money on lawyer fees. It was agreed to: engage Karnopp Petersen, but to request a delay to allow PASRD to do some more legwork to save on legal fees. The board authorizes Nyle to sign the letter of engagement with Karnopp Petersen on behalf of PASRD and authorizes spending \$2000 as a retainer: **MSP**.

Lee will check with the county legal counsel and draft a letter to the owners on north Lake Drive. Annie will verify that our insurance covers work on non-public roads in the district.

Road Improvement Committee report: We have the letter from Mersereau Shannon on our authority to do an assessment. However, it seems that Glenn Brown remains unconvinced and wants to raise the issue at the meeting on Saturday, 14 Nov. We still need information from Jim Shannon (JS) on assessment process and possible lien contracts and we need information from David Ulbricht (DU) on setting the reserve and the interest rate on lien contracts. Jim agreed to set up a conference call as soon as possible with JS and DU to include Lee and anyone else interested.

Preparing for and scheduling the public hearing:

The 4-page letter and 5-page supplement have been mailed to all property owners. The ballot will be mailed this Friday. The board offers its sincere thanks to Jim Becker for vetting the information and to Elise Wolf for preparing the two letters as well as the Power Point presentation for Sat, 14 Nov. The letter, supplement, and presentation are now all on the website.

ROAD MAINTENANCE

Lake 'S' curve repair status: The contractor on this project is busy catching up after fighting fires and won't be able to finish the work until spring 2021.

Adding gravel to Emerald Valley: The bid to add 1000' of gravel (4" edge, 6" at the crown) at 20' wide is \$13,000. The work must be done before any possible paving. Nyle will get two more bids on this work.

ADMINISTRATIVE

PASRD Policies and Procedures: Lee presented some slides on the draft policies and procedures document to gather feedback. (The slides are appended to these minutes). The reasons for PASRD to have written policies and procedures are: (1) to inform new board members; (2) to provide transparency with property owners; and (3) to meet state legal requirements. The Special Road District Guide by the county (on the website) is a good summary of state laws and regulations.

The proposed schedule for adoption of PASRD policies and procedures is:

- Discussion at this meeting.

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- Emailing the draft policies and procedures to our email list.
- Further discussion and feedback at the December meeting.
- Possible adoption by the board at the January 2021 meeting.

Website report/status: The letter and supplement to owners, the presentation for Saturday, and the letter from Mersereau-Shannon are all on the website. The letter from Glenn Brown will be put on the website. It was agreed to post agendas for upcoming meetings on the website in addition to posting them at the mailbox kiosk and sending them out to our email list.

FUTURE MEETINGS

Special Meeting: Saturday, 14 November: Presentation of proposed road project and financing plan – via Zoom

General Meeting: 7pm, Tuesday, 15 December 2020 – Zoom teleconference

General Meeting: 7pm, Tuesday, 12 January 2021 – Zoom teleconference

Lee Lucas, Secretary

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PASRD Policies & Procedures

- Purpose
 - Inform new board members
 - Promote transparency
- Organization – by topic
 - Administration, Operations, Finances, Records, Communications, Ethics, Discrimination
- Schedule for adoption
 - Discussion – 11.10.2020 & 12.15.2020
 - Adoption – 1.12.2021?

PASRD Administration

- Officers – designate in Jan, usual duties
- Reports
 - Monthly: minutes, balance sheet & cash flow
 - Annual: activities, resolutions, budget & review
- Meetings
 - Regular: monthly, 1 week notice
 - Special: as needed, 1 week notice when possible
 - Emergency: if needed, notice via email
- Agenda format

PASRD Operations

- Scope
 - Public roads in district
 - Private roads - TBD
- Contracting
 - Must compete jobs over \$10K
 - Require insurance certificates
- Grading – spring, fall
- Snow plowing – when 8” is expected

PASRD Finances - 1

- Fiscal year – July 1 to June 30
- Budgets: annual in June
 - Requires 3 resolutions: adopt budget, impose taxes, make appropriations
- Taxes: check from county in November
 - Rate limit – 1.1860 per thousand
- Audits: exempt – in lieu of audit in September
 - Annual review (informal audit) in June – new proposal

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Finances - 2

- Assets & payments
 - Funds in federally insured account
 - Pay bills by check, signed by treasurer & president (or secretary)
 - Debit card for petty cash
- Financial reporting – monthly, annual
- Reimbursement
 - Requires receipt
 - Over \$250 must be approved in advance

Records

- Management
 - Applies to all media and forms
 - Permanent: bylaws, policies, minutes/resolutions, budgets, financial reports, committee reports
 - Temporary: working papers, communications
- Requests
 - Addressed to secretary by mail, email, in person
 - Two week response
 - Recover reasonable costs

Other Topics

- Communications
 - Surveys – as needed, advisory
 - Website – webmaster appointed by board
 - Email – primary communication medium
- Ethics: conflict of interest
- Discrimination/Harassment