



## MEMORANDUM

TO: Cannon Beach Planning Commission  
FROM: Land Use Attorney Bill Kabeiseman  
DATE: July 13, 2020  
RE: Planning Commission Review of Single-Family Homes

---

### INTRODUCTION

The City recently received a letter from a citizen expressing concern about a prospective building permit for a single-family home in a Planned Unit Development (PUD). The letter asks the Planning Commission to “review this project prior to administrative approval.” In addition, the citizen has submitted a public records request asking for the city to provide certain calculations under certain circumstances. As discussed below, the Planning Commission has been granted authority to review certain permits and actions, but there is no authority that would allow the Planning Commission to review a building permit in the manner requested in the letter. In addition, the state public records law is designed to allow all members of the public to review records that already have been created; it does not require governments to create new records or do additional analysis of existing records

### DISCUSSION

In Cannon Beach, as with most cities, the City Council is vested with “all powers of the city.” Cannon Beach City Charter, section 6. To exercise those powers, the City Council has created a variety of subsidiary bodies, including the Planning Commission, and granted them certain powers. The Planning Commission's authority is set out in CBMC 2.12.020:

The powers and duties of the planning commission shall include the following:

- A. Develop and maintain the comprehensive plan;
- B. Investigate and make recommendations regarding the implementation of the comprehensive plan;
- C. Prepare and review land development regulations, including, but not limited to, zoning, subdivision and land partitioning, and make recommendations to the city council;
- D. Conduct hearings, prepare findings of fact, conclusions and recommendations and perform other duties relating to the city's land use regulations as may be prescribed by law (e.g., considerations of conditional use permit, variance and other applications or appeals); and
- E. Perform other functions as indicated by city or state law or as requested by the city council.

CANNON BEACH PLANNING COMMISSION  
July 13, 2020

As noted in that section, the Planning Commission's primary duties involve the development and maintenance of the City's comprehensive plan, as well as the City's land use regulations that implement the comprehensive plan.

In addition, the Planning Commission was granted authority to conduct hearings pursuant to those land use regulations, including the consideration of conditional use permits and variances, as well as other applications or appeals that have been assigned to it. Turning to Titles 16 and 17 of the CBMC, the City's land use regulations, they identify the specific applications over which the Planning Commission has been granted authority, including the following:

- Subdivisions (16.04.120; 16.04.210)
- Planned Unit Developments (17.40.040)
- Setback Reductions (17.64.010)
- Historic Site Protection (17.72.010)
- Conditional uses (17.80.020)
- Variances (17.84.040)
- Similar uses (17.90.010)

In contrast, single family dwellings are “outright permitted uses” in each of the City's residential zones, and the Planning Commission was not delegated the authority to review such applications.

Instead, the City Council has delegated authority to the Building Official to review applications for building permits. 15.04.080. Applications for outright permitted uses are reviewed by the building official under the state building code, which provides its own administrative process, including the potential for appeals in certain circumstances. Although there may be land use implications for a building permit, it is the Building Official's duty to make the initial review of those questions.

Finally, the Oregon Public Records Law requires the City to retain certain records and to make sure that those records, with some exemptions, are available for inspection and copying for all citizens. Under Oregon's Public Records Law, “every person” has a right to inspect any nonexempt public record of a public body in Oregon. Moreover, the identity, motive, and need of the person requesting access to public records are irrelevant. Generally, Oregon courts have interpreted the Public Records Act broadly to facilitate citizen's participation in and scrutiny of government.

However, the Public Records Law does not require public bodies to create new public records; nor does it require public bodies to disclose the reasoning behind their actions; answer questions about their records; analyze their records; or perform legal research in order to identify records that are responsive to a request. Accordingly, the City will provide to the citizen the records that it has, but it will not create new records to respond to the public records request.

## CONCLUSION

As discussed above, the Planning Commission has been delegated authority to make decisions on certain specified applications. Those applications do not include a preliminary review of an application

CANNON BEACH PLANNING COMMISSION  
July 13, 2020

for a building permit for an outright permitted use. Instead, the Building Official has authority to make that initial review and the Planning Commission lacks authority to do so. Regardless of the Planning Commission's concern over a particular location, the request made in the letter is beyond the Commission's authority. Please feel free to contact me if you have any questions or concerns.