Foredune Management Plan – Legal Aspects

I. Procedural Issues

II. Regulatory Framework

III. Other Legal Issues

I. Procedural Issues

• Legislative Process
  • Setting Policy for Large Part of City
  • Not “quasi-judicial”
    • The Council is not acting as a judge
      • No requirement to be impartial
      • You are not applying pre-existing policy to discrete issue
      • You can have a discussion about this outside of process

• You are setting policy here
  • You are supposed to use your biases here
  • The Council decision is constrained by science and facts
    • But this is where you get to be you
II. Regulatory Framework - Terminology

II. Regulatory Framework – Lines in the Sand
II. Regulatory Framework – Land Use Framework

I. Statewide Planning Goals
   • All city plans and regulations must be consistent with all 19 Goals.

II. Goal 18 – Beach and Dunes
   • Implementation Requirement 7
     • Doesn’t require dune-grading, but allows it

III. If City’s Plan Allows Dune-Grading
   • Must be done under adopted plan, addressing certain elements
   • The City’s Foredune Management Plan was adopted in 1997
     • Over 20 years ago, with limited timeframe
     • If dune-grading is to be allowed in future, City must update its plan

II. Regulatory Framework – Land Use Framework

I. Allan Report and other testimony in record must support your final decision
   1. Which is given form in the Foredune Management Plan
   2. Which drives the policies found of the Cannon Beach Comprehensive Plan
   3. And implemented through the City’s land use regulations found in the Cannon Beach Municipal Code

II. The end result is multiple documents, each of which must be consistent with and support each other
   • Setting forth the City’s comprehensive policy on dune-grading
III. Other Legal Issues

I. Beach Access
   • Important and addressed in Goal 18; beach access also implicates the ADA
   • But no affirmative obligation to allow dune-grading to ensure access to the beach

II. Property Rights – Right to a View
   • General rule – there is no right to a view
     • Absent regulation or other obligation like a “view easement”
   • Can have significant impact on property values
     • But there is no general legal right to a view

Council questions or discussion