

Subject: Planning Board Recommendation Change — Legal Requirement vs. Policy Risk

Date: March 2024

Purpose: To assess whether the Planning Board’s change in recommendation following executive-session discussion reflects a legally compelled outcome or a discretionary policy judgment framed as legal necessity.

Background

At the March 19, 2024 City Council meeting, the Planning Board Chair stated that the Board modified its initial recommendation based on legal guidance discussed in executive session, characterized as a “risk mitigation assessment.” The subject matter involved watershed protection, infrastructure investment, and balancing competing public interests. Olympic View Water and Sewer District (OVWSD) is implementing a Watershed Protection Plan pursuant to state law, based on a Source Susceptibility Assessment. The City of Edmonds is not the water purveyor.

Points to consider:

1. No Identified Legal Mandate in the Public Record

The public record does not identify a statute, regulation, court order, or regulatory directive requiring the Planning Board to adopt a specific land-use or infrastructure outcome. No legal prohibition rendering the original recommendation unlawful was cited publicly.

2. Washington Source Water Protection Law Is Advisory in Nature

Washington law requires Group A water systems to complete source susceptibility assessments and develop watershed or source water protection plans. These instruments are planning tools designed to identify vulnerabilities and inform decision-making. They do not mandate land-use outcomes or infrastructure investments by non-purveyor municipalities.

3. City Authority Is Discretionary, Not Compelled

Because the City of Edmonds is not the water purveyor, it does not bear direct regulatory responsibility for water system compliance and does not incur statutory liability for OVWSD’s implementation decisions. The City retains legislative discretion to balance environmental protection with cost, feasibility, property rights, and other policy considerations.

4. Indicators of Policy Risk Rather Than Legal Necessity

The recommendation change followed executive-session discussion rather than new law or newly identified legal violations. The justification was framed in terms of “risk mitigation” rather than statutory compliance. The analysis emphasized future risk scenarios, long-term cost exposure, and public investment considerations—factors characteristic of policy and political risk assessment.

5. Cost Considerations Reinforce the Discretionary Character of the Decision

The record reflects weighing permanent infrastructure costs and taxpayer burden. If a particular course of action were legally required, compliance would predominate over cost-benefit balancing. The presence of such balancing supports the conclusion that the decision was discretionary.

6. Executive-Session Framing and Transparency

Executive sessions are appropriate for receiving legal advice and discussing litigation risk. However, when policy recommendations change based on executive-session risk discussions without subsequent public citation to specific legal requirements, there is a risk that discretionary policy judgments are perceived as legally compelled outcomes.

7. Executive sessions are appropriate only for the limited purpose of receiving legal advice. Any discussion that materially shaped or resolved the Planning Board’s recommendation through discretionary policy judgment should have been conducted in an open public meeting to comply with the Open Public Meetings Act.

Conclusion

Based on applicable Washington law, the advisory nature of source susceptibility assessments, the City’s non-purveyor status, the emphasis on cost and balancing, and the absence of publicly identified legal constraints, the Planning Board’s change in recommendation is consistent with discretionary policy and financial risk management rather than a legally compelled outcome.

This finding does not imply improper intent. It highlights the importance of clearly distinguishing legal requirements from policy judgments to preserve transparency, accountability, and informed decision-making.

Factual Background and Timeline

February 6, 2024

The City Council held an executive session.

February 14, 2024

At a Planning Board meeting, staff member Mike Clugston stated that the City Attorney had identified a possible legal issue to be discussed with the Planning Board. The matter arose during the Board’s ongoing legislative and policy-development work.

February 28, 2024

The Planning Board entered executive session. No Planning Board action, vote, or publicly documented decision followed the executive session.

March 13, 2024

New items appeared on the Planning Board’s agenda despite the absence of any public action or recorded direction following the February 28 executive session.

March 19, 2024

At a City Council meeting, the Planning Board Chair stated that the Board’s recommendation had been changed due to legal guidance discussed in executive session and a “risk mitigation assessment.” The Board’s original recommendation had been developed over nine meetings and two public hearings. The revised recommendation did not return to the Planning Board for additional public comment prior to being advanced.

Procedural Issue

Minutes for the February 28, 2024 Special Meeting were not promptly published, as required by RCW 42.30.035, raising additional concerns regarding compliance with OPMA procedural requirements.

Conclusion and Implications

This sequence of events indicates that the Planning Board entered executive session while engaged in legislative and policy-development work, rather than while addressing pending or threatened litigation. The subsequent change in recommendation was publicly attributed to legal guidance and a “risk mitigation assessment,” without identification of a statutory mandate or legal prohibition requiring that outcome.

The timeline raises important questions about the proper use of executive session by advisory boards when performing legislative functions. In particular, it underscores the need to clearly distinguish between the receipt of legal advice—which may be appropriate for executive session under limited circumstances—and policy deliberation, recommendation-shaping, and cost-benefit balancing, which are subject to the Open Public Meetings Act’s open-meeting requirements.

These circumstances highlight the importance of clear guidance and training regarding when an advisory Planning Board may lawfully enter executive session, how to proceed when legal issues arise during legislative work, and what steps should be taken when there is uncertainty about OPMA compliance. Addressing these issues is essential to maintaining transparency, public trust, and adherence to Washington’s open-government principles.