

Washington Supreme Court Announces New Rule for Entering Executive Session to Discuss Real Estate Transactions

A recent Washington Supreme Court decision has significantly limited the circumstances under which governmental entities can enter executive session to discuss real estate transactions. Many governing bodies may find that their current practices for entering executive session for these discussions are inconsistent with the new ruling.

The “minimum price” exception to the Open Public Meetings Act (“OPMA”) permits public bodies to enter executive session “[t]o consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price.” RCW 42.30.110(1)(c). The Supreme Court unanimously concluded this exception confines discussion in executive session to the lowest acceptable value to sell or lease property. [*See Columbia Riverkeeper v. Port of Vancouver*, ___ Wn.2d ___, No. 92455-4 at *2 \(June 8, 2017\)](#). As a result, governmental entities cannot enter executive session to discuss the contextual factors behind the transaction. *See id.* at *29. Factors such as a real estate transaction’s potential impact on local jobs, the environment, and public safety must be discussed in public. *See id.* at *24, 27. Once these factors have been publicly discussed, governmental entities can then enter executive session to “apply the new knowledge to set a new minimum price.” *Id.* at *12. This executive session can reference the contextual factors if the goal and outcome of the discussion remains identification of the lowest acceptable value to lease or sell real estate. *Id.* at *25. The executive session cannot, however, become a “general discussion of the contextual factors themselves[.]” *Id.* at *12.

This narrow interpretation of the “minimum price” exception may prompt the Legislature to revise the OPMA. Unless and until that happens, governmental entities need to take care to follow the Supreme Court’s directive. The decision also suggests that the Court will narrowly interpret the scope of other topics that can be discussed in executive session under the OPMA. Consequences for violating the OPMA include voiding the transaction discussed in an improper executive session and civil penalties for the members of the governing body who participated.

Pacifica Law Group is prepared to assist and advise our public clients in bringing their practices into conformity with this new ruling.