

THURSTON COUNTY  
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RESOURCE STEWARDSHIP

**BEFORE THE THURSTON COUNTY BOUNDARY REVIEW BOARD**

SSHI, LLC, dba DR Horton,

Petitioner,

vs.

THE CITY OF LACEY, a Washington  
municipal corporation; THURSTON COUNTY

Respondent.

**NO.**

**AMENDED PETITION FOR  
REVIEW**

SSHI, LLC, dba DR Horton, a Washington corporation, by and through its attorneys Duana T. Koloušková of Johns, Monroe, Mitsunaga, Koloušková, PLLC, submit this Petition for Review of the City of Lacey's Ordinance No. 1521 and Notice of Intent to Annex the area commonly known as City of Lacey Gateway Division II Annexation 2017106236, comprised of two parcels totaling 80.43 acres.

**I. PETITIONER'S IDENTITY**

SSHI, LLC, dba DR Horton  
11241 Slater Ave NE, Suite 200  
Kirkland WA 98033

Petitioners are represented by:

Duana T. Koloušková, WSBA # 27532  
JOHNS MONROE MITSUNAGA KOLOUSKOVA, PLLC  
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**ORIGINAL**

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**II. IDENTITY OF RESPONDENTS**

The City of Lacey and Thurston County are both duly established municipal organizations under the laws of Washington State.

**III. DATE OF ACTION**

The City adopted Ordinance 1521 on November 9, 2017; published said ordinance on November 13, 2017, and provided notice of intent to this Board on November 13, 2017.

**IV. STANDING**

DR Horton has standing as it owns the larger of the two parcels subject to the annexation at issue, parcel number 11803340000, 73.77 acres in size. DR Horton owns property consisting of more than five percent of the assessed valuation within the annexation area. Therefore, DR Horton has standing to bring this Petition for Review pursuant to RCW 36.93.100.

**V. STATEMENT OF FACTS AND ISSUES**

1. DR Horton owns 73.77 acres within the total 80.43-acre annexation area. DR Horton also owns property immediately south, within the City of Lacey limits which has been residentially developed as a subdivision known as Gateway 1. DR Horton is developing a residential subdivision on the Gateway Division 2 property. The Gateway Division 2A final plat for Phase 2 is currently under review by Thurston County; DR Horton reasonably anticipates the Phase 2 final plat will be scheduled for approval by the Thurston County Board of Commissioners at a regularly scheduled hearing in January 2018.
2. DR Horton originally filed a notice of intent to commence annexation proceedings on June 27, 2017. DR Horton was required to file this notice due to Lacey's policies

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- 1 regulating its provision of water and sewer services requiring such notice as a  
2 condition of service to property in unincorporated Thurston County.
- 3 3. Lacey internally reviewed DR Horton's notice but rejected it on September 14, 2017.  
4 Instead, Lacey decided to pursue annexation of the area through the 'island'  
5 annexation method.
- 6  
7 4. Lacey originally scheduled a hearing for October 12, 2017 but cancelled that hearing  
8 upon DR Horton identifying a concern that the statutory timelines for notice of such  
9 hearing had not been met. In addition, DR Horton commented that, although more  
10 than three months had passed since DR Horton's original notice, Lacey and Thurston  
11 County had not reached any consensus as to how the annexation would proceed or  
12 how orderly transition of municipal services would be conducted.
- 13 5. The transition of services is of critical import to DR Horton since Gateway Division  
14 2A, Phase 2 is currently under construction and Thurston County is reviewing the  
15 final plat. DR Horton has four pending model home permit applications (one issued)  
16 and will begin pulling additional building permits as soon as the final plat is recorded.
- 17 6. Lacey rescheduled its hearing and ultimately adopted Ordinance 1521, annexing the  
18 Gateway Division 2 area, on November 9, 2017. That Ordinance was published on  
19 November 13, 2017.
- 20  
21 7. In the interim, DR Horton has requested that Lacey or Thurston County provide a  
22 draft of any interlocal annexation agreement addressing how services will be  
23 provided, how fees will be assessed and what jurisdiction will process which permits,  
24 approvals and inspections. Although both Lacey and Thurston County have assured  
25 DR Horton jointly and separately that the jurisdictions intend to adopt an interlocal

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1 agreement, no draft has been provided as of the date of this Petition, let alone  
2 received public, including DR Horton, review and comment.

- 3
- 4 8. A review of the Thurston County Board of Commissioners meeting schedule  
5 available on the County's website reflects that no further regularly held meetings are  
6 set for 2017. As a result, it appears impossible for Thurston County and Lacey to  
7 have a duly adopted interlocal agreement in place by the time annexation of the  
8 Gateway Division 2 area would be effective.
- 9
- 10 9. This potential failure of inter jurisdictional cooperation would have direct impacts on  
11 DR Horton's ongoing and active development of its property. For example, DR  
12 Horton has no concrete assurance that Thurston County will finish final plat review  
13 after annexation is effective, and no information as to which jurisdiction will perform  
14 ongoing infrastructure inspections as construction continues or which jurisdiction will  
15 review and issue building permits for homes. Further, DR Horton has not been  
16 advised as to what each jurisdiction anticipates will be due for chapter 82.02 RCW  
17 and/or SEPA based impact fees for building permits. Finally, DR Horton has no  
18 information as to how a timely and orderly transfer of such a large and complex,  
19 phased residential development will be handled so as to not incur delay.
- 20
- 21 10. The annexation fails to provide information on fully two of three sets of factors under  
22 RCW 36.93.170. In addition, the annexation fails to provide any "applicable  
23 interlocal annexation agreement" between Thurston County and Lacey, a  
24 consideration under the set of factors set forth in RCW 36.93.170(1).
- 25
11. Under RCW 36.93.170(2), one of three sets of factors the Board evaluates falls under  
the category of municipal services, namely their need, the effect of regulations on the  
area set for annexation, the adequacy of services and controls, future needs, the effect

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1 of the annexation on finances and structure of the affected governmental units.  
2 Absent an executed interlocal agreement, this class of factors has not been adequately  
3 addressed.

4 12. Under RCW 36.93.170(3), a set of factors requires the Board to evaluate the  
5 annexation's effect on economic and social interests and on the local government  
6 structure of the county. Absent an interlocal agreement this set of factors has simply  
7 not been met. There can be no rational argument that a city's annexation of an area  
8 under active, major residential development needs to involve a thoughtful analysis  
9 and consensus between the given city, county, and property owner/developer  
10 regarding the "mutual economic and social interests" of the annexation and how that  
11 annexation will affect the "local governmental structure of the county."

12 a. With respect to the "mutual economic and social interests" of the annexation,  
13 there is no publically available draft of an agreement by which Lacey and  
14 Thurston County reflect how they will address these interests under the  
15 annexation. An abstract legal analysis of whether the annexation is allowed  
16 under law is not the sum total of the annexation process. Instead, the factors  
17 under RCW 36.93.170(3) require consideration also of the *timing* of the  
18 annexation, how that annexation will affect property owners and how the  
19 economic and social interests of the jurisdictions and the affected parties, here  
20 for example DR Horton, are taken into consideration.

21 b. With respect to the latter consideration, how that annexation will affect the  
22 "local governmental structure of the county," the city's annexation will  
23 potentially financially affect Thurston County by potentially taking away a  
24 significant amount of impact fees that would have an economic impact on  
25

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1 County services. Lacey and Thurston County appear to have conducted  
2 absolutely no evaluation of this impact, let alone given the public an  
3 opportunity to consider the ramifications.

4 13. Under RCW 36.93.180, the Board is required to consider whether the annexation  
5 creates and preserves logical service areas. Absent an executed interlocal agreement  
6 there is no way for the Board to evaluate whether that objective has been met. While  
7 DR Horton understands that not every objective under RCW 36.93.180 must be met,  
8 an annexation is not appropriate until the Board has the necessary information to  
9 event *evaluate* whether the objective has been met. Here, with no jurisdictional  
10 consensus as to how services are to be preserved, there is no way for the Board to  
11 evaluate the annexation under this objective.

12 14. The annexation failed to comply with RCW 36.93.157 and RCW 36.70A.210 because  
13 it is inconsistent with the Countywide Planning Policies. The annexation is  
14 inconsistent with Policy 3.3, which requires jurisdictional cooperation on annexations  
15 to “accomplish an orderly transfer of contiguous lands” and cooperation “on  
16 developing a streamlined and efficient process for annexation.” The annexation is  
17 inconsistent with Policies 4.1 and 4.2, which requires Thurston County and Lacey to  
18 jointly plan for the unincorporated urban growth area. Finally, the annexation is  
19 inconsistent with Policy 6.1 which requires financing methods that are fairly divided  
20 between existing and new development.

21 22 15. The annexation also failed to provide effective opportunities for public participation  
23 under RCW 36.93.295-299. The island annexation method requires the annexing city  
24 hold a public hearing regarding the annexation. While Lacey held a public hearing  
25 under those statutes, Lacey’s comments in that hearing admitted that there was no

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1 effective and completed coordination with Thurston County as of that hearing date.  
2 Instead, Lacey indicated that cooperation would proceed during the 45-day waiting  
3 period before annexation was to be effective. The decision to not accelerate  
4 annexation review before Thurston County and Lacey had agreed upon the terms of  
5 the annexation means that affected parties, like DR Horton, have never had an  
6 opportunity to comment on the terms of the annexation and neither jurisdiction's  
7 legislative authority will consider affected parties', including DR Horton's, comments  
8 and concerns as to the terms of the annexation. This scenario is even more egregious  
9 as it appears that neither legislative authority will have an understanding of the terms  
10 of the annexation as of its effectiveness date nor how those pertain to municipal  
11 services. This collapse of inter jurisdictional coordination prior to the annexation's  
12 effectiveness appears unprecedented and renders the purposes of a public hearing  
13 meaningless and ineffective.

#### 14 VI. ESTIMATED LENGTH OF HEARING

15 Petitioners anticipate the hearing will last two to four hours.

#### 16 VII. RELIEF SOUGHT

17 Petitioners request the Board delay the effective date of the annexation until the City  
18 of Lacey and Thurston County execute an interlocal annexation agreement that effectively  
19 and fully accounts for a logical transfer of municipal services, including permit processing  
20 and administration, in a manner that does not incur delay to DR Horton's Gateway Division 2  
21 residential subdivision development. DR Horton further requests this Board (a) address  
22 whether the annexation is consistent with RCW 36.93.157, 36.93.170, and 36.93.180, and (b)  
23 determine a division of assets and liabilities between Lacey and Thurston County as such  
24

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1 pertain to the provision of municipal services regarding the Gateway Division 2A residential  
2 subdivision pursuant to RCW 36.93.150(3).

3 **VIII. CERTIFICATION**

4 Petitioners and the undersigned attorneys have read the foregoing petition for review  
5 and believe the contents thereof to be true.

6 DATED this 19<sup>th</sup> day of December, 2017.

7 JOHNS MONROE MITSUNAGA &  
8 KOLOUŠKOVÁ, PLLC

9  
10 By   
11 Duana T. Koloušková, WSBA #27532  
12 Attorneys for Petitioners

13  
14 [attestation previously provided in original petition dated December 18, 2017] SSH,  
15 LLC, dba DR Horton, hereby attests that DR Horton owns property consisting of more than  
16 five percent of the assessed valuation within the annexation area.

17  
18 By \_\_\_\_\_

19 Its \_\_\_\_\_

20  
21 *422-15 Petition for Review to BRB 12-18-17*