

**From:** Tom McCormick  
**To:** [Davis, Kris](#)  
**Subject:** Transit access required -- SSHI LLC v. City of Olympia  
**Date:** Thursday, May 24, 2018 9:29:31 AM

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TO: Honorable Peter Camp, Snohomish County Hearing Examiner

Exhibit I-446 is a copy of the decision in *SSHI LLC v. City of Olympia*, No. 43300-1-II (Wash. Ct. App. Sep. 24, 2013).

A developer (DR Horton) sought approval for its Trillium master plan. The hearing examiner denied approval, the Olympia City Council affirmed, then in a LUPA action challenging the denial, both the Superior Court and Court of Appeals affirmed.

The primary issue was whether the developer, by building a sheltered transit stop but providing no guarantee that transit service would be provided, could satisfy City Code:

The City code expressly requires "a sheltered transit stop" approved by Intercity Transit in each neighborhood village center. Olympia Municipal Code (OMC) 18.05.050(C)(1), (4). *Id.* at 8.

Both "the hearing examiner and the Council concluded that the City code requires actual bus service to serve the proposed Trillium neighborhood village, rather than merely a sheltered transit stop without transit service." *Id.* at 10. The Court of Appeals deferred "to the Council and affirm[ed] its interpretation of its comprehensive plan and City code, which effectuate the City's goals and policies encouraging actual public transportation."

In a footnote, the Court said, "DR Horton also appears to claim that the transit requirement imposes an impossible task on a developer—requiring a developer to obtain a guarantee from Intercity Transit, a body over which the developer has no control. DR Horton does not support its impossibility argument with authority. Thus, we do not address this issue." Footnote 2.

The bottom line: Neither a bus shelter without Intercity Transit service (Trillium in Olympia), nor a station without Sound Transit service (Point Wells), is sufficient to satisfy a transit access requirement.

Transit service must be there now, or there must be a guarantee with 100% certainty that transit service will be there at a definite date in the future; for example, the sort of guarantee with 100% certainty that exists with bringing light rail to Northgate, where binding and irrevocable approvals from all agencies and jurisdictions and property owners have been secured, with funding, and are legally enforceable.

BSRE has not presented evidence that Sound Transit provides high capacity transit service to Point Wells now. BSRE has not presented evidence that Sound Transit will provide transit service to Point Wells at a definite date in the future, a sort of guarantee with 100% certainty that exists with bringing light rail to Northgate, where binding and irrevocable approvals from all agencies and jurisdictions and property owners have been secured, with funding, and are legally enforceable.

Accordingly, BSRE has not met the high capacity transit access requirement in 30.34A.040(1)

to qualify for a building height increase up to an additional 90 feet.

Thank you.

Tom McCormick