

1                                   BEFORE THE LAND USE BOARD OF APPEALS  
2                                   OF THE STATE OF OREGON

3  
4                                   ENVIRON-METAL PROPERTIES, LLC,  
5                                   and RALPH NAUMAN,  
6                                   *Petitioners,*

7  
8                                   vs.

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10                                  CITY OF EUGENE,  
11                                  *Respondent,*

12  
13                                  and

14  
15                                  LAUREL HILL VALLEY CITIZENS,  
16                                  *Intervenor-Respondent.*

17  
18                                  LUBA No. 2013-098

19  
20                                  FINAL OPINION  
21                                  AND ORDER

22  
23                                  Appeal from City of Eugene.

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25                                  Bill Kloos, Eugene, filed the petition for review and argued on behalf of  
26                                  petitioners.

27  
28                                  Anne C. Davies, Eugene, City Attorney, filed a response brief and  
29                                  argued on behalf of respondent.

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31                                  Sean T. Malone, Eugene, filed a response brief and argued on behalf of  
32                                  intervenor-respondent.

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34                                  BASSHAM, Board Member; HOLSTUN, Board Chair, participated in  
35                                  the decision.

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37                                  RYAN, Board Member, did not participate in the decision.

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39                                  AFFIRMED

01/29/2014

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You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioners appeal a city planning commission decision denying their applications for a zone change and related development approvals for a residential planned unit development.

**MOTION TO INTERVENE**

Laurel Hill Valley Citizens (intervenor) moves to intervene on the side of the city. There is no opposition, and the motion is allowed.

**MOTIONS TO FILE REPLY BRIEFS**

Petitioners request leave to file two reply briefs to respond to new matters raised in the two response briefs. Intervenor and the city move to strike all or portions of the reply briefs addressing their respective response briefs, arguing that the two reply briefs do not respond to “new matters” raised in the response briefs. OAR 661-010-0039. Petitioners respond, arguing that the reply briefs are limited to “new matters” and should be allowed.

We tend to agree with the city and intervenor that some portions of each reply brief address responses in the response briefs that are not appropriately characterized as “new matters” within the meaning of OAR 661-010-0039. However, the disputed responses and replies seem peripheral to resolving the merits of this appeal, and the effort necessary to separate wheat from chaff would benefit no party. Accordingly, the motions to strike are denied, and the two reply briefs are allowed.

**FACTS**

**A. The Subject Property**

The subject property is a parcel approximately 121 acres in size, located in the south hills of Eugene. The northern majority of the subject property is

1 indisputably located in an area that is planned Low Density Residential (LDR)  
2 on the city’s acknowledged comprehensive plan maps. The sole issue in this  
3 appeal is whether a portion of the subject property is designated Parks and  
4 Open Space (POS) on the city’s acknowledged comprehensive plan maps.

5 The parcel is located on the north and northwest side of a hillside sloping  
6 down from a ridgeline that runs generally along a northeast to southwest axis.  
7 The city’s urban growth boundary (UGB) runs along and in close proximity to  
8 the spine of that ridgeline. Prior to 2007, the exact location of the UGB in this  
9 area had not yet been determined. In a 2007 annexation decision by the local  
10 boundary commission, the precise location of the UGB was determined by a  
11 metes and bounds description, and that location was based in part on the  
12 location of the ridgeline.<sup>1</sup> We understand the parties to agree that at some  
13 point in 2007 or thereafter, the parcel’s southern property boundary with the  
14 large lot to the south was adjusted to generally correspond to the UGB line  
15 established in the 2007 annexation decision.<sup>2</sup> As presently configured, the  
16 southwest corner of the subject property looks like an upside down triangle,  
17 with the apex pointing south, the southwest side of the triangle formed by the  
18 East 30<sup>th</sup> Avenue right-of-way, and the southeast side of the triangle coinciding  
19 with the UGB line established in 2007. *See* Petition for Review App 22 (map

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<sup>1</sup> The parties dispute how close the UGB line established in 2007 is to the actual topographic ridgeline. The location of the ridgeline is one of the factors the 2007 boundary commission considered in establishing the metes and bounds location of the UGB, but not the only factor, so it is possible, even probable, that the UGB line established in 2007 does not correspond exactly to the topography of the ridgeline. However, the record includes a number of topographic maps, and it is beyond cavil that the UGB is located in close proximity to the topographic ridgeline. *See, e.g.*, Record 58 (site plan showing topography, the UGB line and the line of the “prominent ridgeline”).

<sup>2</sup> The only exception appears to be the southeastern corner of the subject property, which extends beyond the established UGB. Record 1636. The plan designation of the southeastern corner of the property is not at issue in this appeal.

1 from 2007 annexation decision). In petitioners’ application, the area of this  
2 triangle is referred to as tax lot 703, and the application proposes to locate  
3 multi-family development within the triangle.

4 **B. The 2004 Metro Plan Diagram**

5 The overarching comprehensive plan land use map for the city is the  
6 Eugene Springfield Metropolitan Area General Plan Diagram (Metro Plan  
7 Diagram), first adopted in 1980, and amended in 1987 and 2004. As explained  
8 more fully below, the city has adopted refinement plans for some areas of the  
9 city that can include more detailed maps and policies that refine the plan  
10 designations and policies set out in the more general Metro Plan. However, the  
11 Metro Plan at I-5 provides that refinement plans must be consistent with the  
12 Metro Plan and “[s]hould inconsistencies occur, the Metro Plan is the  
13 prevailing policy document.” All or part of the subject property, as presently  
14 configured, is included within a refinement plan area known as the Laurel Hill  
15 Refinement Plan, which includes a land use designation map. One of the key  
16 issues in this appeal is whether the Laurel Hill Refinement Plan map is  
17 inconsistent with the 2004 Metro Plan Diagram.

18 The 2004 Metro Plan Diagram is a small scale map that covers all of  
19 Eugene and Springfield, and part of Lane County. The scale of the 11 inch by  
20 17 inch map is approximately one inch equals 7,000 feet. The 2004 Metro Plan  
21 Diagram and its predecessors do not depict specific tax lots or lots and parcels,  
22 and the only land features depicted are major roads, rivers and railways. In the  
23 1980 and 1987 versions, different plan designations are indicated by various  
24 “blobs” of color that were hand drawn on the map. Some plan designations  
25 were simply blobs of color surrounded by other blobs of color, without much in  
26 the way of referents. Sometimes the edges between two plan designations

1 corresponded to a street, river or other linear feature that is drawn in black or  
2 blue lines. The 2004 Metro Plan Diagram, on the other hand, is derived from a  
3 digital database and, while still small scale and not parcel-specific in the area  
4 of the subject property, the 2004 map depicts more streets and linear features  
5 than its predecessors, and the edges between plan designations are somewhat  
6 crisper.

7 The 2004 map includes the following note:

8 “The information on this map was derived from digital databases  
9 on Lane Council of Governments’ regional geographic  
10 information system. Care was taken in the creation of this map,  
11 but it is provided ‘as is.’ LCOG cannot accept any responsibility  
12 for errors, omissions or positional accuracy in the digital data or  
13 the underlying records. Current plan designation, zoning, etc., for  
14 specific parcels should be confirmed with the appropriate  
15 governmental entity—Eugene, Springfield or Lane County—with  
16 responsibility for planning and development of the parcel. \* \* \*”  
17 Petition for Review App 46.

18 On the 1980, 1987 and 2004 Metro Plan Diagrams, the POS designation  
19 is depicted in a green color and the LDR designation in a yellow color.<sup>3</sup> In the  
20 area of the subject property, all three versions of the Metro Plan Diagram  
21 depict East 30<sup>th</sup> Avenue as a solid black line and the approximate location of  
22 the UGB as a dashed black line. As noted, the location of the UGB line  
23 depicted on the 1980, 1987 and 2004 Metro Plan Diagrams is only an  
24 approximate or generalized location. As explained above, not until the 2007  
25 annexation decision was the exact location of the UGB in this area established  
26 based on a precise metes and bounds description.

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<sup>3</sup> On the 1980 and 1987 maps, it is difficult to distinguish different shades of green, but the parties agree that the green color shown on both sides of the UGB line in this area represents the POS designation.

1           On all three maps, the two lines representing East 30<sup>th</sup> Avenue and the  
2 UGB intersect. On the 1980 and 1987 maps, the UGB line in this area is a  
3 fairly straight line, angling in a southwest direction from Interstate 5 for  
4 approximately one mile and intersecting East 30<sup>th</sup> Avenue at something close to  
5 a right angle. On the 1980 and 1987 maps, the UGB line passes through the  
6 northerly portion of the POS plan designation, with most of the POS  
7 designation south of the line, and only a very narrow band of green color  
8 visible in the area north of the intersection of East 30<sup>th</sup> Avenue and the UGB.

9           In contrast to the two earlier maps, on the 2004 Metro Plan Diagram the  
10 UGB line in this area has several significant curves in it, and in particular at its  
11 western end dips almost straight south before turning west to intersect the East  
12 30<sup>th</sup> Avenue right-of-way. That dip and intersection form an inverted triangle  
13 somewhat similar in shape to the one established in the 2007 annexation  
14 decision.<sup>4</sup> Also in contrast, on the 2004 Metro Plan Diagram the body of the  
15 triangle north of the intersection of East 30<sup>th</sup> and the UGB line is colored  
16 entirely green, representing the POS designation. At the one inch equals 7,000  
17 feet scale of the 2004 map, the north to south width of the POS designation in  
18 the area of the triangle where it borders East 30<sup>th</sup> Avenue appears to be about  
19 3/8ths of an inch, well over 1000 feet on the ground. South and southeast of  
20 the apex of the triangle, outside the UGB, there is a relatively narrow area

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<sup>4</sup> Petitioners dispute that the 2007 annexation decision relied on the 2004 Metro Plan Diagram to determine the precise location of the UGB line. That may be, but there is no possible dispute that the curves and general shape of the 2007 UGB line established in the annexation decision resembles the curves and general shape of the UGB line depicted in the 2004 Metro Plan Diagram. Compare Petition for Review Appendix 22 and Appendix 46. In particular, the southwest portion of both lines form the rough shape of an inverted triangle where the UGB line dips south to intersect the East 30<sup>th</sup> Avenue right-of-way. The record does not reflect the explanation for this similarity, but it is easy to speculate that the curves depicted on the 2004 Metro Plan Diagram were intended to approximate the location of the ridgeline, based on more recent topographic data available since 1987. That could account for the resemblance, because the location of the ridgeline was one of the factors the boundary commission considered in establishing the precise location of the UGB line.

1 colored green, followed further south by an area designated Natural Resource.  
2 In other words, as depicted on the 2004 Metro Plan Diagram, the area  
3 designated POS lies mostly north of the UGB line in the vicinity of the triangle  
4 formed by East 30<sup>th</sup> Avenue and the UGB line.

5 **C. The 1982 Laurel Hill Refinement Plan Map**

6 Petitioners applied to the city for a zoning map change from AG  
7 (Agricultural) to R-1 (Low Density Residential) for the entire property located  
8 within the UGB, along with an associated application for tentative planned unit  
9 development. The R-1 zone is consistent with the LDR plan designation, but is  
10 not consistent with the POS designation. City staff raised concerns that the  
11 proposed R-1 zoning is inconsistent with the 2004 Metro Plan Diagram, which  
12 as described above appears to show a considerable area subject to the POS  
13 designation north of the UGB, in the area occupied by the southern portion of  
14 the subject property. For that reason, city staff recommended that the hearings  
15 officer deny the zone change. In response, petitioners argued that the 2004  
16 Metro Plan Diagram is ambiguous on this point, and the city should rely  
17 instead upon the land use designation map in the Laurel Hill Refinement Plan,  
18 described below.

19 Adopted in 1982, the Laurel Hill Refinement Plan includes a land use  
20 designation map of the Laurel Hill plan area. That refinement map is at a scale  
21 of approximately one inch equals 800 feet. *See* Record 626, Petition for  
22 Review App 41. The 1982 refinement plan map is not property-specific, and  
23 does not depict the subject property's boundaries or any property boundaries.  
24 However, there is no dispute that at least the northern majority of the subject  
25 property as presently configured lies within the refinement plan area. The  
26 southeastern border of the plan area is delineated with a dotted line.

1 Immediately south of that dotted line is a wavy line that depicts the UGB. Like  
2 the Metro Plan Diagrams, the location of the UGB line depicted on the 1982  
3 refinement map is approximate, since the UGB line location in this area was  
4 not precisely determined until 2007. A portion of East 30<sup>th</sup> Avenue is depicted  
5 in the southwestern corner of the refinement map. The UGB line has several  
6 curves similar to those shown on the 2004 Metro Plan Diagram, but at its  
7 western end does not appear to dip as sharply south as on the 2004 Metro Plan  
8 Diagram, or as depicted on the 2007 annexation map.

9 South of the UGB line, outside the plan area, the refinement plan map is  
10 blank and nothing is depicted. North of the two lines, inside the plan area, the  
11 map shows three types of land use designations, using shaded and hatched  
12 markings: Low Density Residential, Medium Density Residential, and  
13 Commercial. The area immediately north of the two lines representing the plan  
14 area boundary and the UGB is shaded to represent the Low Density Residential  
15 plan designation. The 1982 refinement map does not depict the Parks and Open  
16 Spaces plan designation anywhere within or without the plan area. Petitioners  
17 argued to the city that the Laurel Hill Refinement Plan map indicates the city's  
18 intent to designate as LDR all lands north of the UGB in this area, and to  
19 designate as POS no lands north of the UGB in this area.

20 **D. The City's Decision**

21 The hearings officer concluded that 2004 Metro Plan Diagram  
22 unambiguously designates some portion of the subject property POS, and  
23 rejected petitioners' reliance on the 1982 Laurel Hill Refinement Plan map as  
24 support for petitioners' claim that no part of the subject property is designated

1 POS.<sup>5</sup> To the extent the refinement plan map supports that claim, the hearings  
2 officer concluded, the refinement map would conflict with the Metro Plan  
3 Diagram, in which case Metro Plan I-5 expressly provides that the Metro Plan  
4 Diagram prevails.<sup>6</sup> Accordingly, the hearings officer denied the application to  
5 rezone the entire property R-1.

6 On petitioners' appeal, the planning commission affirmed the hearings  
7 officer's decision, and adopted findings and the hearings officer's decision by  
8 reference.<sup>7</sup> This appeal followed.

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<sup>5</sup> The hearings official's decision states, as relevant:

“\* \* \* [T]he Metro Plan Diagram shows that a portion of the subject property along its southern boundary adjacent to the UGB is designated Parks and Open Space. I have reviewed the 2004 diagram at the ‘11 x 17’ scale and have no trouble determining, without magnification, that the diagram designates some portion of the subject property north of the UGB and to the east of E 30<sup>th</sup> Avenue as Parks and Open Space. I agree with both staff and [opponents] that the UGB and 30<sup>th</sup> Avenue are sufficient reference points upon which to locate the subject property and determine, simply by looking at the map, that the Parks and Open Space designation has been applied to this area.” Record 16.

<sup>6</sup> The hearings official's decision states, in relevant part:

“As all parties note, the Laurel Hill Plan contains a land use diagram. The diagram shows three land use designations: low density residential, medium density residential, and commercial. There is no Parks and Open Space designation on the Laurel Hill land use diagram. As such, the Laurel Hill Plan is uninformative, and there is no additional information by which the *Metro Plan Diagram* can be refined.

“\* \* \* [I]f the applicant's position were accepted, the fact that the Laurel Hill land use diagram shows the subject property to be low density residential represents a contradiction of, or conflicts with, the *Metro Plan* text and *Metro Plan Diagram*. It represents a conflict because the refinement coming from the Laurel Hill plan would completely eliminate the Parks and Open Space designation for part of the subject property that the text and mapping of the *Metro Plan* strongly suggest that the City Council intended to implement. Staff and the opponents are correct that in cases of a conflict between a refinement plan and the *Metro Plan*, the *Metro Plan* prevails. \* \* \*” Record 18.

<sup>7</sup> The planning commission's findings state:

“\* \* \* The Planning Commission finds that it is clearly evident that there is a POS designation north of the UGB because the UGB and East 30<sup>th</sup> Avenue are both reference points which can be used to fix its position with respect to other boundaries. These reference points also distinguish the facts of this case from the *Knutson* case which the applicant/appellant asserts require that the refinement plan designation prevail for this application.

1 **ASSIGNMENT OF ERROR**

2 Petitioners argue that the planning commission misconstrued the  
3 applicable law in concluding, based on the 2004 Metro Plan Diagram, that  
4 some portion of the subject property is designated POS. According to  
5 petitioners, the Laurel Hill Refinement Plan map controls the plan designation  
6 of the subject property, and demonstrates that the city intended to designate the  
7 entire property LDR.

8 Petitioners’ argument rests almost entirely on the holdings in *Knutson v.*  
9 *City of Eugene*, 48 Or LUBA 399, *aff’d* 200 Or App 292, 114 P3d 1150 (2005).  
10 In *Knutson*, the city relied upon the then-applicable 1987 version of the Metro  
11 Plan Diagram to conclude that the commercially-zoned subject property was  
12 designated residential instead of commercial. The 1987 Metro Plan Diagram  
13 included no referents in the area of the subject property, such as street  
14 intersections, that could be used to locate the subject property with relation to  
15 the adjoining residential area and the indistinct commercial “blobs” of color.  
16 Based on the 1987 Metro Plan Diagram, it was impossible to determine  
17 whether the subject property was located entirely within a residential  
18 designation, as the city found, partially within the residential designation, or  
19 entirely within the commercial designation. 48 Or LUBA at 414. The

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“\* \* \* \* \*

“\* \* \* The HO [Hearings Official] disagreed with the applicant’s application of *Knutson* in this case noting that the Metro Plan text and diagram have changed since the case, including more accurate and improved resolution in the 2004 diagram. The HO also agreed with opponents of the application that noted that the existence of reference points differentiated this case from the *Knutson* case. The Planning Commission finds that while the rules for the *Knutson* case directs that ambiguities be resolved by referencing the refinement plan, in this case there is no ambiguity. There is a conflict or inconsistency between the two in which case the *Metro Plan* prevails. Relevant to this case and material to this site are reference points including a road and the UGB which were not available in the *Knutson* case. These reference points help clearly identify the POS designation on the subject property.” Record 6-7.

1 applicable refinement plan map, on the other hand, was a large scale, parcel-  
2 specific map that clearly showed that the subject property was located entirely  
3 within the commercial plan designation. LUBA concluded under those  
4 circumstances that the refinement map refined (i.e. eliminated ambiguity), but  
5 did not *conflict* with, the 1987 Metro Plan Diagram, and therefore that the city  
6 erred in finding, based on the Metro Plan Diagram, that the subject property  
7 was designated residential.

8 The Court of Appeals affirmed. The Court concluded that, as a  
9 consequence of the small scale, non-property specific nature of the Metro Plan,  
10 and the paucity of referents,

11 “\* \* \* the land use designation for properties near the boundary  
12 between use designations on the diagram is unclear. As indicated  
13 in the Metro Plan, those ambiguities require reference to local  
14 government refinement documents to conclusively determine the  
15 applicable designation. Under those circumstances, there is no  
16 inconsistency between the Metro Plan and a refinement plan.  
17 Instead, the refinement plan serves to resolve the inherent  
18 ambiguities that exist in a general diagram such as the Metro Plan  
19 diagram.” 200 Or App at 302 (footnote omitted).

20 In the omitted footnote, the Court commented:

21 “Under different circumstances, however, an inconsistency  
22 between the Metro Plan and a refinement plan could clearly exist.  
23 For example, if it were possible to locate a subject property based  
24 on the minimal referents in the Metro Plan diagram *and* the  
25 location of the property was not near the boundary between two  
26 use designations, the Metro Plan diagram, as a matter of law,  
27 might indicate the subject property’s land use designation. In that  
28 case, the designation in the Metro Plan diagram would prevail  
29 over an inconsistent designation in the applicable refinement  
30 plan.” *Id.* at 302, n 6 (emphasis original).

31 Petitioners argue that the present case should be viewed as the “Son of  
32 *Knutson*,” and is squarely within the holding of that case. According to

1 petitioners, the proper test under *Knutson* is to simply ask whether, looking at  
2 the Metro Plan Diagram in the vicinity of the subject property, does the map  
3 show that the property is located near the boundary line between the LDR and  
4 POS designations? If so, petitioners argue, then the Metro Plan Diagram is  
5 indeterminate, and *Knutson* directs the city to determine the plan designation of  
6 the property based on the refinement plan map, assuming one is available. In  
7 the present case, petitioners argue, the subject property is located near the  
8 boundary between the LDR and POS designations, and therefore the applicable  
9 refinement plan, the 1982 Laurel Hill Refinement Plan map, is controlling.  
10 Petitioners contend that the 1982 Laurel Hill Refinement Plan map shows that  
11 the LDR designation extends south to the UGB line, with no POS designation  
12 north of the UGB.

13 We disagree with petitioners' simplistic restatement of *Knutson*. Under  
14 petitioners' test, a refinement map would control over a conflicting Metro Plan  
15 Diagram even if there were sufficient referents on the Metro Plan Diagram to  
16 resolve the plan/zoning question presented by the rezoning request. We do not  
17 believe that the Court intended, in footnote 6 quoted above, to suggest that, in  
18 all cases, mere proximity of property to the boundary between plan  
19 designations is a sufficient basis to make the refinement plan map controlling  
20 over the Metro Plan Diagram. Rather, in footnote 6 the Court provides a non-  
21 exclusive example of a circumstance where a clear inconsistency exists  
22 between the two maps, and therefore the Metro Plan Diagram controls.  
23 Footnote 6 does not purport to identify all circumstances where an  
24 inconsistency could exist.

25 In the present case, the plan/zoning conflict issue presented by  
26 petitioners' request to rezone the entire property north of the UGB to R-1 is

1 whether *any* part of the area proposed for R-1 zoning is designated POS. In  
2 this respect, as in others, the present case differs from the circumstances at  
3 issue in *Knutson*, as the hearings officer observed.<sup>8</sup> In the present case, we  
4 believe, the critical question is whether the 2004 Metro Plan Diagram includes  
5 sufficient referents to determine whether *any* part of the subject property that is  
6 proposed for rezoning is designated POS. If the answer to that question is yes,  
7 and using those referents it is clear that some part of the property is designated  
8 POS, then the Laurel Hill Refinement Plan map conflicts with the Metro Plan  
9 Diagram to the extent it suggests otherwise.<sup>9</sup>

10 As noted, the hearings official and planning commission concluded that  
11 East 30<sup>th</sup> Avenue and the UGB line depicted on the 2004 Metro Plan Diagram  
12 provide sufficient referents to conclude that at least the southwest corner of the

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<sup>8</sup> The hearings official's findings state, in relevant part:

“\* \* \* [The question presented in *Knutson*] was whether the diagram showed the subject property as Commercial or Medium Density Residential. That is not the question presented by this zone change request. The question here is: ‘whether two land use designations apply to the subject property?’ *Knutson* does not answer that question. Here, the dispute is whether the 2004 Metro Plan Diagram depicts [LDR] and [POS] on the subject property. Based on the discussion above, the answer to the correct question is ‘yes.’

“The Hearings Official has not been directed to any part of the Metro Plan or the Metro Plan Diagram which demands that, in all cases, properties must fall into only one land use designation. While that might make sense in fact situations like those at issue in *Knutson*, it does not make sense in the application of the [POS] designation, because that designation can be applied to protect natural features, like the South Hills ridgeline, which do not follow property line boundaries. Particularly in the case of the [POS] designation, it is reasonable to expect that the Metro Plan Diagram would depict both a traditional use designation such as residential, commercial or industrial and the [POS] designation following a natural feature—on the same property, without regard to property boundary lines. \* \* \*” Record 19-20 (emphases in original).

<sup>9</sup> As explained below, a more accurate understanding of the 1982 Laurel Hill Refinement Plan map is that it says nothing at all about the plan designation of the *entirety* of the subject property, as presently configured, and nothing at all about whether or not some portion of the subject property, or any property, is designated POS. If there is a conflict, it is created by petitioners’ proposed interpretation of the refinement plan map, to the effect that the city intended the LDR designation to extend south to the UGB line, wherever the UGB line is ultimately located in the future.

1 subject property is designated POS. Petitioners argue that where this  
2 conclusion goes astray is in presuming that the UGB line depicted on the 2004  
3 Metro Plan Diagram is a reliable “referent” that can be used to determine  
4 whether any part of the subject property is designated POS.

5 As explained above, the UGB line as depicted on the 2004 Metro Plan  
6 Diagram (and earlier maps) is approximate and generalized in this area, and the  
7 UGB line was not located with precision until the 2007 annexation decision.  
8 According to petitioners, the dashed line representing the UGB on the 2004  
9 Metro Plan Diagram is approximately 1/20<sup>th</sup> of an inch wide, which at the one  
10 inch to 7,000 feet scale of the map represents a width of approximately 350 feet  
11 on the ground. Petitioners argue that the area designated POS is also somewhat  
12 generalized on the 2004 map, in the sense that it is not tied to specific property  
13 boundaries. Petitioners contend that, given a generalized UGB line that is  
14 approximately 350 feet wide, and a generalized POS designation that is not  
15 linked to property boundaries, the city cannot reliably conclude anything from  
16 the Metro Plan Diagram regarding the relationship between the UGB line and  
17 the POS designation, much less whether there is a POS designation on any part  
18 of the subject property. Therefore, petitioners argue, the city must rely on the  
19 Laurel Hill Refinement Plan map to determine the subject property’s plan  
20 designation.

21 If the UGB line depicted on the 2004 Metro Plan Diagram were the only  
22 available referent, petitioners would have a stronger argument that the Metro  
23 Plan Diagram does not include the information necessary to reliably determine  
24 whether any part of the subject property is designated POS. However, the  
25 Diagram also depicts the location of the East 30<sup>th</sup> Avenue right-of-way, and

1 petitioners do not argue that the location of the East 30<sup>th</sup> Avenue right-of-way  
2 is generalized or approximate.

3         The 2004 Metro Plan Diagram depicts the POS designation bordering the  
4 East 30<sup>th</sup> Avenue right-of-way for a considerable distance, with the northern  
5 border of the POS designation ending shortly before East 30<sup>th</sup> Avenue enters a  
6 curve to the west and intersects with Spring Boulevard. Petition for Review  
7 App 46. The 2004 Metro Plan Diagram depicts another intersection with  
8 Gonyea Road to the southeast, with the southern border of the POS designation  
9 between those two intersections, but closer to the Spring Boulevard  
10 intersection.

11         Because none of the city’s comprehensive maps in this area are property  
12 specific, references to other maps in the record are necessary to locate the  
13 boundaries of the subject property. The 2007 annexation decision map depicts  
14 the southwestern boundary of the subject property bordering the East 30<sup>th</sup>  
15 Avenue right-of-way for a considerable distance in the area of the “triangle”  
16 formed by the right-of-way and the UGB line. The northern corner of that  
17 common border begins just south of the same curve depicted on the Metro Plan  
18 Diagram, and then extends southeast parallel to the East 30<sup>th</sup> Avenue right-of-  
19 way for a considerable distance toward the next intersection with Gonyea  
20 Road. Petition for Review App 22. Admittedly, the Metro Plan Diagram and  
21 the annexation map are at different scales, but the common referents provided  
22 by the East 30<sup>th</sup> Avenue right-of-way, the curve and the two intersections are  
23 sufficient to determine, even without any reference to the UGB line, that at  
24 least some portion of the southwest corner of the subject property is within the  
25 POS designation. Based on those referents alone, the city could easily

1 conclude that some portion of the southwestern corner of the subject property  
2 bordering the East 30<sup>th</sup> Avenue right-of-way is designated POS.

3 In addition, we disagree with petitioners that the location of the  
4 generalized UGB line depicted on the 2004 Metro Plan Diagram is of no  
5 assistance in determining whether some portion of the subject property is  
6 designated POS. As noted earlier, the shape and curves of the UGB line  
7 depicted on the Metro Plan Diagram are similar to the shape and curves of the  
8 UGB line established in the 2007 annexation decision. Further, both lines  
9 appear to intersect East 30<sup>th</sup> Avenue at roughly the same point, between the  
10 curve to the northwest and the next intersection with Gonyea Road to the  
11 southeast. As noted, the intersection between the UGB line and East 30<sup>th</sup>  
12 Avenue forms the rough shape of an inverted triangle on both the 2004 Metro  
13 Plan Diagram and the 2007 annexation map. On the 2004 Metro Plan Diagram  
14 the body of that inverted triangle is entirely designated POS. There is no  
15 dispute that the subject property's southern boundary corresponds to the UGB  
16 line as established in the 2007 annexation decision. Because on both maps the  
17 two UGB lines appear to intersect East 30<sup>th</sup> Avenue right-of-way at  
18 approximately the same point along the Avenue, and form a dip or triangle that  
19 the Metro Map designates POS, the location of the UGB line on the Metro Plan  
20 Diagram lends some support to the city's conclusion that at least some portion  
21 of the southwest corner of the subject property within that triangle is  
22 designated POS.

23 Finally, as the hearings officer observed, the 1982 Laurel Hill  
24 Refinement Plan map does not shed any light on the question of whether some  
25 part of the subject property is designated POS. As noted, unlike the refinement  
26 plan map at issue in *Knutson*, the Laurel Hill Refinement Plan map is not parcel

1 specific, and does not depict the boundary between the two plan designations at  
2 issue. The 1982 Laurel Hill Refinement Plan area depicted on the map *might*  
3 include *all* of the subject property, as the property was configured in 2007, but  
4 it easily might not, and there is simply no way to tell. It is possible that the  
5 southern portion of the subject property as it was configured prior to 2007 was  
6 located beyond the Laurel Hill Refinement Plan area. It is also possible that  
7 when the precise location of the UGB was established in 2007, and the property  
8 boundaries were made consistent with the new UGB line, that some portion of  
9 the subject property as then configured extended south beyond the area  
10 included in the Laurel Hill Refinement Plan area. The refinement plan map  
11 purports to designate only lands within its planning area, and does not purport  
12 to designate *any* lands outside its planning area. While the refinement plan  
13 map depicts the plan area line and the UGB line as parallel lines, the location of  
14 the UGB on the refinement plan map is approximate, and may bear little  
15 relationship to the UGB line and property boundaries that were eventually  
16 established in 2007. Further, the southwest end of the UGB line depicted on the  
17 refinement plan map does not show the same sharp southern dip in the line  
18 depicted on the 2004 Metro Plan Diagram and particularly on the 2007  
19 annexation map. The hearings officer correctly concluded that the refinement  
20 plan map provides no useful information for purposes of determining whether  
21 any part of the subject property is designated POS.

22         Petitioner’s contrary position, as we understand it, is that the Laurel Hill  
23 Refinement Plan map represents the city’s policy choice in 1982 to designate  
24 all lands immediately north of the UGB—wherever the UGB line is ultimately  
25 located—as LDR. Petitioner argues that it makes no sense for the city council  
26 to adopt the first Metro Plan Diagram in 1980, which appears to depict a slice

1 of land north of the UGB line as POS, and then to turn around in 1982 and  
2 adopt the Laurel Hill Refinement Plan map showing all lands immediately  
3 north of the UGB line as LDR, if the city council intended to designate some  
4 land north of the UGB as POS. Had that been the city's intent, petitioner  
5 argues, it would have shown the POS designation north of the UGB line on the  
6 refinement plan map.

7 The foregoing argument would be more persuasive if the relevant  
8 question were whether the refinement plan conflicted with the 1980 Metro Plan  
9 Diagram. The thin sliver of green color north of the UGB line depicted on the  
10 hand-colored 1980 Metro Plan Diagram could easily be seen as an inadvertent  
11 brushstroke. However, that argument is less forceful when applied to the 2004  
12 Metro Plan Diagram, which is generated by a digital database and features  
13 much crisper boundaries between plan designations compared to the 1980 or  
14 1987 Metro Plan Diagrams. Moreover, the 2004 Metro Plan Diagram clearly  
15 shows a large expanse of green color north of the UGB line, particularly where  
16 the UGB line dips south before intersecting with the East 30<sup>th</sup> Avenue right-of-  
17 way. If the 1982 Laurel Hill Refinement Plan map can be understood as a  
18 "policy choice" to designate LDR the area immediately north of the UGB line  
19 wherever that line is ultimately located, as petitioners argue, then the 2004  
20 Metro Plan Diagram can equally well be understood to reflect a subsequent  
21 choice to change that "policy."

22 Finally, petitioners argue that the city's conclusion that the subject  
23 property is split-designated LDR and POS presents the practical problem of  
24 how to precisely determine the boundary between the two designations on the  
25 subject property, based solely on the 2004 Metro Plan Diagram. According to  
26 petitioners, there is no principled or empirical basis to determine precisely

1 which part of the subject property is designated LDR and which is designated  
2 POS, and therefore exactly where the zoning boundary should be located.

3 We agree with petitioners that determining the plan designation of  
4 property using the 2004 Metro Plan Diagram, in situations where the applicable  
5 refinement plan, if any, is not a property specific map, presents a practical  
6 problem, given the scale and nature of the Metro Plan Diagram. However, that  
7 practical problem is not a basis to reject the city's correct legal conclusion that  
8 the 2004 Metro Plan Diagram designates the subject property both LDR and  
9 POS.

10 Moreover, the practical problems of applying the 2004 Metro Plan  
11 Diagram cannot be entirely avoided, even if petitioners' interpretation were  
12 adopted. As the Metro Plan text indicates, the POS designation is intended to  
13 protect the South Hills ridgeline. That ridgeline is not the kind of geographic  
14 feature with a defined border. If the boundary between the LDR and POS  
15 designation is drawn at the current location of the UGB, as petitioners argue,  
16 that simply displaces the entire POS designation, and the practical problem of  
17 finding the boundaries of that designation, to the far side of the ridgeline and  
18 the adjoining property to the south. If, as seems likely, the large parcel to the  
19 south is not subject to a property-specific refinement plan, at some point the  
20 extent of the southern boundary of the POS designation on that property must  
21 be determined based solely on the 2004 Metro Plan Diagram.

22 Further, the practical problem in the present case is just a single instance  
23 of a larger issue. Some areas of the city are not subject to any refinement plan.  
24 Some refinement plans, such as the Laurel Hill Refinement Plan, do not have  
25 parcel-specific maps, or maps informative about the designation of particular  
26 properties. Some refinement plan maps will conflict with the Metro Plan

1 Diagram. In all such circumstances, the designation of specific properties must  
2 be determined based on the Metro Plan Diagram, and there may be no  
3 straightforward way to do so.

4 Because the Metro Plan Diagram is now digitized, and the depicted plan  
5 boundaries are sharper than in previous versions, the problem may not be as  
6 difficult to solve as petitioners fear. It may be possible to scale up the digital  
7 version of the map, overlay it with property lines from a digital database, and  
8 determine the precise plan designation boundaries on the subject property with  
9 reasonable accuracy. If for some reason that is not possible, the city and  
10 petitioner will have to do the best they can with the tools at their disposal.

11 In sum, we disagree with petitioners that the holding in *Knutson* controls  
12 the present case. The 1982 Laurel Hill Refinement Plan map is not property  
13 specific and does not include useful information regarding the plan designation  
14 of the entire subject property. To the extent the refinement plan map can be  
15 understood to indicate that the subject property proposed for rezoning to R-1 is  
16 entirely designated LDR, the refinement plan map conflicts with the 2004  
17 Metro Plan Diagram, which includes sufficient referents to allow the city to  
18 determine that some portion of the subject property is designated POS.

19 Accordingly, petitioner's assignment of error is denied.

20 The city's decision is affirmed.