

1 BEFORE THE LAND USE BOARD OF APPEALS  
2 OF THE STATE OF OREGON  
3

4 REX A. MEISENHEIMER,  
5 WILLIAM C. CARPENTER JR.  
6 and SUSAN L. STONEBURNER,  
7 *Petitioners,*  
8

9 vs.

10 CITY OF SPRINGFIELD,  
11 *Respondent,*  
12

01/12/18 AM 8:00 LUBA

13 and  
14

15 CMC DEVELOPMENT, LLC,  
16 *Intervenor-Respondent.*  
17

18 LUBA No. 2017-073  
19

20 FINAL OPINION  
21 AND ORDER  
22

23 Appeal from City of Springfield.  
24

25 Sean T. Malone, Eugene, filed the petition for review and argued on  
26 behalf of petitioners.  
27

28 Kristina Schmunk Kraaz, Springfield, filed a response brief and argued  
29 on behalf of respondent. With her on the brief was Leahy, Van Vactor, Cox &  
30 Melendy, LLP.  
31

32 Bill Kloos, Eugene, filed a response brief and argued on behalf of  
33 intervenor-respondent. With him on the brief was the Law Office of Bill Kloos,  
34 PC.  
35

36 HOLSTUN Board Member; RYAN, Board Chair; BASSHAM, Board  
37 Member, participated in the decision.  
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REMANDED

01/12/2018

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

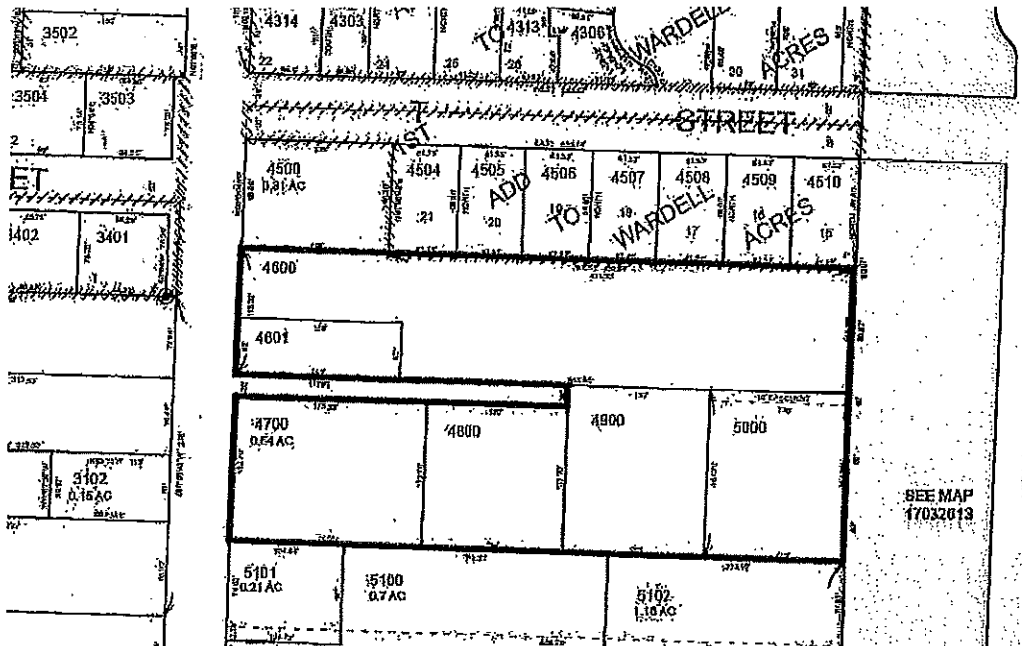
Opinion by Holstun.

**NATURE OF THE DECISION**

Petitioners appeal City of Springfield Ordinance 6369, which changes the Metro Plan Diagram and city zoning map designations for six tax lots that total 3.35 acres.

**FACTS**

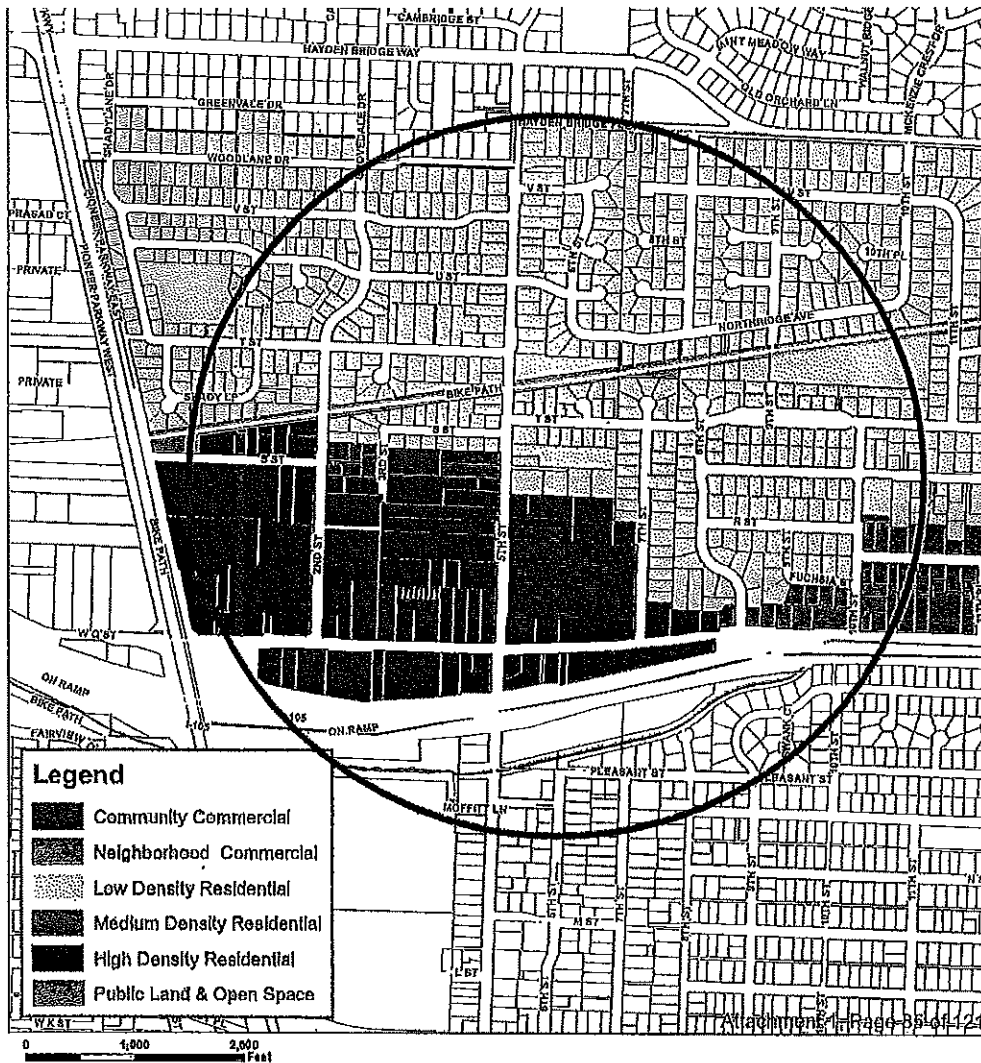
The subject property is made up of six tax lots, TL 4600, TL 4601, TL 4700, TL 4800, TL 4900 and TL 5000. A diagram at Record 61 is the clearest map showing the tax lots by number and a portion of that map is set forth below. The six tax lots are the larger tax lots in the approximate middle of the diagram.



The six tax lots are located in a large block bounded by 7<sup>th</sup> Street on the east, 5<sup>th</sup> Street on the west, T Street on the north and Q Street on the south. A

1 map from Record 102 is included below to show that block and the  
2 surrounding area. The six tax lots are located near the middle of the circle, a  
3 short distance south of the bike path and southeast of the intersection of 5<sup>th</sup>  
4 Street and T Street, immediately north of the darker shaded lower  
5 approximately two thirds of the T Street-5<sup>th</sup> Street-Q Street-7<sup>th</sup> Street block.

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8 The dark shaded area that makes up approximately two thirds of the  
9 block, north of Q Street and south of the subject six tax lots, is developed with

1 a Fred Meyer store. The Fred Meyer property is designated Community  
2 Commercial (CC) on the Metro Plan Diagram and city zoning maps. The  
3 subject six tax lots, and the adjoining lots to the east, north and across 5<sup>th</sup> Street  
4 to the northwest are all designated Low Density Residential (LDR) on the  
5 Metro Plan Diagram and city zoning map (light grey on the above map). The  
6 subject six tax lots, and the adjoining lots to the east and north and beyond  
7 those adjoining tax lots, are generally developed with single family residences.<sup>1</sup>

8 The lots directly across 5<sup>th</sup> Street from the subject property to the west  
9 are designated Medium Density Residential (MDR) (darker grey on the map)  
10 and High Density Residential (HDR) (darkest grey or black on the map). The  
11 properties to the south of those MDR and HDR designated properties on the  
12 west side of 5<sup>th</sup> Street are designated HDR (down to the lots along the north  
13 side of Q Street) or Community Commercial (the lots along the north side of Q  
14 Street (black on the map)).

15 The challenged decision changes the Metro Plan Diagram and zoning  
16 map designations of the northernmost two tax lots (TL 4601 and TL 4600) and  
17 easternmost tax lot (TL 5000) from LDR to MDR. And the challenged  
18 decision changes the map designations of the remaining three tax lots to the  
19 west of TL 5000, which adjoin the Fred Meyer property, from LDR to HDR  
20 (Tax Lots 4700, 4800 and 4900). The challenged decision has the practical

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<sup>1</sup> Five of the six tax lots are developed with single family residences. The sixth tax lot is vacant.

1 effect of extending the existing MDR and HDR zoning on the west side of 5<sup>th</sup>  
2 Street eastward across 5<sup>th</sup> Street onto the presently LDR-designated properties  
3 immediately north of the Community Commercial-designated Fred Meyer  
4 property. Access to the subject tax lots is provided by 5<sup>th</sup> Street, which the  
5 challenged decision finds is a major collector street.

6 The subject property is subject to the Metro Plan, which is a regional  
7 plan adopted by the cities of Springfield and Eugene and by Lane County. The  
8 subject property is also subject to the Q Street Refinement Plan (QSRP), which  
9 is a refinement or sub-area plan of the Metro Plan.<sup>2</sup> The subject property is also  
10 designated LDR on the QSRP map. And finally, the subject property is subject  
11 to plan provisions and land use regulations adopted by the city of Springfield.  
12 Of particular importance in this appeal is the QSRP, which includes criteria for  
13 QSRP Map Designations.

## 14 **ASSIGNMENT OF ERROR**

### 15 **A. Introduction**

16 Petitioners advance a single assignment of error, which they divide into  
17 five subassignments of error. The overlapping and frequently duplicative and  
18 interwoven arguments in support of those five subassignments of error are  
19 presented in 34 pages of the petition for review. Intervenor-respondent

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<sup>2</sup> A portion of the QSRP is included at Record 601-13. A map showing the QSRP area is included at Record 601.

1 (intervenor) responds in kind with 37 pages of responsive argument. And  
2 finally, the city responds with 17 pages of responsive argument.

3 At its heart, this is a fairly simple and straightforward “inadequate  
4 findings” case that has devolved into a complicated dispute about the meaning  
5 of various aspects of the QSRP Map Designation Criteria. And the parties’  
6 lengthy arguments about why they believe other parties misinterpret the  
7 relevant standards that govern changes of map designations clearly demonstrate  
8 the wisdom, if not the practical necessity, of requiring that a land use decision  
9 be supported by adequate findings (including any required interpretive findings  
10 regarding the meaning of ambiguous standards) or be remanded so that the  
11 decision maker can adopt adequate findings.

12 Rather than proceed with a separate discussion of each sub-assignment  
13 of error we (1) set out the relevant map designation criteria, (2) set out the  
14 city’s findings addressing those criteria, (3) explain why those findings are  
15 inadequate in order to provide guidance to the city on remand, and (4) remand  
16 so that the city can adopt findings that are adequate for review to explain why  
17 the QSRP Map Designation Criteria led the city to conclude that three tax lots  
18 should be re-designated from LDR to MDR and three tax lots should be re-  
19 designated from LDR to HDR. In doing so, we decline the parties’ numerous  
20 invitations that LUBA adopt the needed interpretations or to find that the city  
21 has adopted implied or implicit interpretations by failing to adopt the needed  
22 interpretive and explanatory findings.

1           **B.    The QSRP Criteria for Plan Designations**

2           The QSRP Designation Criteria are set out below, omitting the criteria  
3 for Commercial Plan Designations:

4           **“CRITERIA FOR PLAN DESIGNATIONS**

5           “The Criteria for Plan Designations are the basis for assigning site  
6 specific land use designations in the Q Street Area. In areas where  
7 one set of criteria clearly applies the corresponding plan  
8 designation shall apply. In certain areas one set of criteria may not  
9 clearly predominate. If this occurs, other factors, such as metro  
10 area need for a specific type of land use shall be considered and  
11 entered into the findings which support these designations. All  
12 designations shall be consistent with Metro Plan policies.

13           \*\* \* \* \* \*

14           **“Residential**

15           “1) The Low Density Residential plan designation shall be  
16 applied where the following circumstances predominate:

17           “a) areas that are primarily developed as single family;

18           “b) areas that are not intermixed with community  
19 commercial development;

20           “c) areas that are not located directly on arterial streets;

21           “d) areas that are designated Low Density Residential on  
22 the Metro Plan Diagram.

23           “2) The Medium Density Residential plan designation shall be  
24 applied where the following circumstances predominate:

25           “a) areas that are primarily developed as high quality  
26 Medium Density Residential;



1           “b) areas that are designated Medium Density  
2 Residential, or adjacent to Medium Density  
3 Residential, on the Metro Plan Diagram;

4           “c) areas that could serve as a buffer between Low  
5 Density Residential and Community Commercial;

6           “d) areas that are within one-half mile of a transit transfer  
7 station.

8           “3) The High Density Residential plan designation shall be  
9 applied where the following circumstances predominate:

10           “a) areas that are primarily developed as high quality  
11 High Density Residential;

12           “b) areas that are designated High Density Residential, or  
13 are adjacent to High Density Residential, on the  
14 Metro Plan Diagram;

15           “c) areas that are within one-half mile of a transit transfer  
16 station;

17           “d) areas that are within one-half mile of large  
18 Community Commercial Centers;

19           “e) areas which can meet the solar setback requirements  
20 and other Development Code standards;

21           “f) areas that are within one quarter mile of an arterial or  
22 collector street.” Record 608-09.

23           To summarize, the above criteria require the city to answer an initial  
24 question: Do the LDR, MDR or HDR criteria “clearly appl[y]” or  
25 “predominate”? If one of those sets of criteria clearly applies or predominates,  
26 the city must apply the corresponding designation and establish that the  
27 designation is consistent with Metro Plan policies. However, if neither the  
28 LDR, nor the MDR, nor the HDR criteria “clearly applies” or “predominate[s],”

1 the city proceeds to an intermediate step and considers “other factors, such as  
2 metro area need for a specific type of land use,” to select a designation before  
3 proceeding to demonstrate that the selected designation is consistent with  
4 Metro Plan policies.<sup>3</sup>

5 **C. The City’s Findings Regarding the QSRP Designation Criteria**

6 After setting out the criteria for MDR designations ((2)(a) through (d)  
7 above) and the criteria for HDR designations ((3)(a) through (f) above), but  
8 without setting out the criteria for LDR designation ((1)(a) through (d) above),  
9 the city adopted the following findings regarding those criteria:<sup>4</sup>

10 “Finding 39: Staff observes that the subject property already meets  
11 or could meet some of the above-listed criteria for Medium and  
12 High Density Residential plan designations as follows: (1) there is  
13 existing Medium and High Density Residential designated land on  
14 the west side of 5<sup>th</sup> Street across from the subject site; (2) the  
15 property abuts a large Community Commercial site (Fred Meyer  
16 store) to the south; (3) the property could serve as a buffer and  
17 transitional zone between the Fred Meyer commercial site and  
18 existing single family homes along 7<sup>th</sup> Street and T Street; (4) the  
19 property is less than 500 feet from an existing Lane Transit  
20 District park and ride station located in the Fred Meyer parking lot  
21 and a transit stop on the east side of 5<sup>th</sup> Street; (5) the property is  
22 sufficiently large to meet the solar setback requirements of SDC  
23 3.2-225; (6) and the property has frontage on 5<sup>th</sup> Street, which is

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<sup>3</sup> We probably overstate the simplicity of the criteria. For example, it is not clear to us whether the LDR, MDR and HDR criteria have continuing relevance if no set of criteria clearly applies or predominates and if so, what weight they have in selecting a map designation compared to the somewhat open-ended “other factors.”

<sup>4</sup> We have added numbers to the findings for ease of reference.

1 classified as a major collector street. Based on the foregoing, the  
2 proposal is largely consistent with the policy direction provide[d]  
3 by the Springfield 2030 Refinement Plan Residential Land Use  
4 and Housing Element and provisions of the adopted Q Street  
5 Refinement Plan for Medium and High Density Residential plan  
6 designation[s].”<sup>5</sup> Record 39.

7 We identify below the criteria that the six findings seem to find apply  
8 here:

- 9 Finding 1. Criteria 1.2(b) and 3(b) – areas adjacent to MDR  
10 and HDR zoning.
- 11 Finding 2. Criterion 3(d) – areas within one-half mile of large  
12 community commercial center.
- 13 Finding 3. Criterion 2(c) – areas that could serve as buffer  
14 between LDR and CC designated property.
- 15 Finding 4. Criteria 2(d) and 3(c) – areas within one-half mile  
16 of a transit transfer station.
- 17 Finding 5. Criterion 3(e) – areas that can meet solar setback  
18 and other standards.
- 19 Finding 6. Criterion 3(f) – areas within one quarter mile of an  
20 arterial or collector street.

21 By our count, the city found that three of the four MDR criteria apply  
22 and five of the six HDR criteria apply. Without making any clear decision  
23 about whether the city believes that either MDR or HDR criteria “clearly

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<sup>5</sup> The city earlier found that the Springfield 2030 Refinement Plan Residential Land Use and Housing Element identified “a surplus of approximately 378 gross acres of LDR designation, a surplus of approximately 76 gross acres of MDR designation, and a deficit of approximately 28 gross acres of HDR designation.” Record 33 (Finding 15).

1 applies” or “predominate[s],” the city simply concluded the proposal is “largely  
2 consistent with the policy direction provide[d] by the Springfield 2030  
3 Refinement Plan Residential Land Use and Housing Element and provisions of  
4 the adopted [QSRP] for Medium and High Density Residential plan  
5 designation[s].” Record 39.

6 **D. Issues the City Adequately Resolved**

7 We briefly discuss one issue that the challenged decision correctly  
8 resolved before turning to the city’s findings regarding the QSRP Map  
9 Designation Criteria.

10 We are not sure we understand petitioners’ fifth sub-assignment of error.  
11 Petitioners appear to argue that even if the Metro Plan map designation of the  
12 six tax lots was properly and correctly changed from LDR to MDR and HDR it  
13 would be error to do so and not, at the same time, amend the QSRP map  
14 designations from LDR to MDR and HDR. To the extent petitioners make that  
15 argument, we reject it. As the decision, intervenor and respondent all point out,  
16 while Springfield Development Code (SDC) 5.22-115(C)(1) and (2) require  
17 that the zoning map, Metro Plan map and Metro Refinement Plan maps must be  
18 consistent, Metro Refinement Plan map consistency is achieved by operation of  
19 law when, as here, the Metro Plan map designation is amended and no text  
20 amendment is involved. SDC 5.14-120(D).<sup>6</sup>

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<sup>6</sup> SDC 5.14-120(D) provides:

1           **E.    The City’s Findings Concerning the Q Street Refinement Plan**  
2           **Designation Criteria**

3                   **1.    The Findings Fail to Determine Whether the LDR, MDR**  
4                   **or HDR Criteria Predominate**

5           The primary shortcoming in the city’s findings concerning the QSRP  
6 Designation Criteria is the complete failure of those findings to consider  
7 whether the LDR criteria “clearly appl[y]” or “predominate,” and a lack of  
8 clarity about whether the city believes the MDR or HDR criteria (or neither)  
9 “clearly appl[y]” or “predominate.”<sup>7</sup> Intervenor offers the following argument  
10 to excuse the city’s failure to consider the LDR criteria:

11           “\* \* \* It is evident from the findings that the QSRP LDR criteria  
12 do not clearly predominate for the subject property, even without  
13 findings that conduct a detailed evaluation of the LDR criteria,  
14 because criteria that support both MDR and HDR designations  
15 exist as the findings explain.” Intervenor-Respondent’s Brief 23.

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“When a Metro Plan amendment is enacted that requires an amendment to a refinement plan or functional plan map or diagram for consistency, the Metro Plan Diagram amendment automatically amends the diagram or map if no amendment to the refinement plan or functional plan text is involved.”

Because the challenged ordinance adopts no textual changes, the QSRP map designations of the six tax lots was amended by operation of SDC 5.14-120(D) to conform to the changes the ordinance adopts to the Metro Plan and city zoning maps.

<sup>7</sup> Intervenor takes the position that city council concluded that neither the MDR nor the HDR criteria predominate. Intervenor-respondent’s Brief 16. The city appears to take the position that the city council found the MDR and HDR criteria predominate in this case. Respondent’s Brief 13.

1 We do not follow intervenor's logic. Just because three of the four MDR  
2 criteria may apply or be satisfied and five of the six HDR criteria may apply or  
3 be satisfied,<sup>8</sup> it does not necessarily follow that the LDR criteria could not  
4 "clearly appl[y]" or "predominate." That might be the case if the criteria were  
5 mutually exclusive; but they are not. And in this case, if the "areas" referred to  
6 in those criteria are the six tax lots, the six tax lots appear to be: (1) "primarily  
7 developed as single family," (criterion 1(a)), (2) "not intermixed with  
8 community commercial development," (criterion 1(b)), (3) "not located on  
9 arterial streets," (criterion 1(c)), and (4) "designated Low Density Residential  
10 on the Metro Plan Diagram" (criterion 1(d)). Record 608-09. In that  
11 circumstance all of the LDR criteria would apply.

12 The challenged findings make no attempt to explain the city's  
13 understanding of the terms "areas," "clearly appl[y]" or "predominate." But if  
14 the six tax lots constitute the "areas" referred to in the criteria, under almost  
15 any definition of the terms "clearly appl[y]" and "predominate" that we can  
16 think of, it would appear that, as compared to the MDR and HDR criteria, the  
17 LDR criteria "clearly appl[y]" or "predominate."<sup>9</sup>

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<sup>8</sup> Petitioners dispute the number of MDR and HDR criteria that apply to the subject property.

<sup>9</sup> As we note later, the parties have different understandings of the terms "areas," "clearly applies," and "predominate."

1 On remand the city must consider whether the LDR criteria “clearly  
2 apply” or “predominate,” and if not, whether the MDR or HDR criteria,  
3 “clearly appl[y]” or “predominate.”

4 Before turning to some ambiguities in the QSRP Map Designation  
5 Criteria that the city will be required to address on remand, we note here our  
6 agreement with the city and intervenor that if the city on remand determines  
7 that neither the LDR, nor the MDR, nor the HDR criteria “clearly appl[y]” or  
8 “predominate,” the “clearly appl[y]” or “predominate” inquiry under the criteria  
9 comes to an end, although the criteria that apply may have some continuing  
10 bearing on the selection of the appropriate map designation. If no set of criteria  
11 “clearly applies” or “predominate[s]” the city must then proceed to consider  
12 “other factors, such as metro area need for a specific type of land use” and  
13 ensure that whatever map designation is selected is “consistent with Metro Plan  
14 policies.” Record 608.

15 **2. The Findings Will Need to Resolve at least Three**  
16 **Ambiguities in the Q Street Plan Criteria**

17 **a. Areas**

18 There are at least three ambiguities that the city will need to address and  
19 resolve in its findings. As already noted, the parties disagree about the meaning  
20 of the term “areas” in the QSRP Map Designation Criteria. The criteria apply  
21 to “areas.” Record 608. One of the petitioners below argued that the criteria  
22 apply to each tax lot individually. The city appears to believe the word “areas”  
23 refers to the six tax lots that are the subject of this application, collectively.

1 Respondent’s Brief 17-18. Intervenor suggests the term “areas” could refer to  
2 areas larger than the six tax lots that are the subject of this application.  
3 Intervenor-Respondent’s Brief 16-18.

4 Every one of the criteria applies to “areas.” And as the parties’  
5 arguments demonstrate, whether those criteria apply or are satisfied in this case  
6 can vary dramatically depending on the meaning of the term “areas” in those  
7 criteria. The city council’s findings quoted above never use the term “areas,”  
8 and do not explain the city council’s understanding of the term. Without  
9 expressing any view on whether we agree with any of the above  
10 understandings, or whether the term necessarily must have precisely the same  
11 meaning when used in different criteria, the city will need to explain its  
12 understanding of the meaning of the term “areas” as it is used in the criteria.

13 **b. “Clearly Applies” and “Predominate”**

14 One of the petitioners below argued that the LDR, MDR and HDR  
15 criteria apply to each tax lot, and assigned a numerical score for each set of  
16 criteria. That petitioner appears to have taken the position that the set of  
17 criteria with the highest score “clearly applies” or “predominate[s].” Intervenor  
18 argues that a range of possible meanings of the terms “clearly applies” or  
19 “predominate[s]” are possible under their dictionary definitions, which are  
20 inconsistent with the petitioner’s numerical score approach.

21 We decline to attempt to determine how we would give meaning to the  
22 “clearly applies” or “predominate[s]” language in the QSRP Map Designation



1 Criteria. In the findings quoted above the city council does not adopt an  
2 express interpretation of those terms and does not adopt an implied  
3 interpretation that is sufficient for review. *Green v. Douglas County*, 245 Or  
4 App 430, 438-40, 263 P3d 355 (2011). In this context the terms are sufficiently  
5 ambiguous and subjective that the city council should have the first opportunity  
6 to explain its understanding of the terms, an opportunity it failed to take  
7 advantage of in the challenged decision.

8 Before turning to the next ambiguity we note that intervenor argues  
9 “some criteria may weigh more than others in certain circumstances when  
10 determining whether one designation clearly predominates or whether none  
11 do.” Intervenor-Respondent’s Brief 13. Assigning different weights to the  
12 criteria could significantly complicate carrying out the “clearly applies” or  
13 “predominate[s]” inquiry, and we see nothing in the challenged decision to  
14 suggest the city council agrees that the criteria carry different weights. But on  
15 remand the city council will be free to consider whether it shares that  
16 understanding of the criteria, and may explain the basis for its agreement with  
17 intervenor if it does agree.

18 **c. Transit Transfer Station**

19 Both the MDR and HDR criteria include a criterion requiring proximity  
20 to a “transit transfer station.” MDR criterion 2(d); HDR criterion 3(c). The  
21 city found that those criteria apply here without explaining why the  
22 transportation facilities it referred to qualify as a “transit transfer station.” We

1 agree with petitioners that this undefined term is ambiguous. On remand the  
2 city council will need to explain its understanding of the meaning of the term.

3 **F. Conclusion**

4 On remand the city council will need to consider whether the QSRP LDR  
5 Map Criteria “clearly applies,” or “predominate[s].” In doing so it will need to  
6 explain its understanding of the terms “clearly applies” and “predominate[s],”  
7 and explain its understanding of the key term “areas,” as that term is used in all  
8 the criteria, as well as its understanding of the term “transit transfer station.”  
9 The city council should also consider adopting interpretations of any other  
10 terms that it may find are ambiguous on remand. And finally, although it has  
11 not been an issue in this appeal, if the city council ultimately finds that no set  
12 of criteria “clearly applies” or “predominate[s],” in considering other factors,  
13 the city council will need to explain what role, if any, the LDR, MDR and HDR  
14 criteria it has found to apply here should play, along with “other factors” to  
15 determine what plan map designation should apply to the subject tax lots.

16 The city’s decision is remanded.

## Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2017-073 on January 12, 2018, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 12th day of January, 2018.

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Kelly Burgess  
Paralegal



Kristi Seyfried  
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