

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

3  
4                   CAF PARTNER PROPERTIES, LLC,  
5                                   *Petitioner,*

6  
7                                   vs.

8  
9                   CITY OF JACKSONVILLE,  
10                                  *Respondent.*

11  
12                                  LUBA No. 2024-061

13  
14                                  FINAL OPINION  
15                                  AND ORDER

16  
17           Appeal from City of Jacksonville.

18  
19           Garrett K. West filed the petition for review and reply brief and argued on  
20 behalf of petitioner. Also on the brief was O'Connor West, LLC.

21  
22           Leah Samelson filed the respondent's brief and argued on behalf of  
23 respondent. Also on the brief were Mark S. Bartholomew and Hornecker  
24 Cowling LLP.

25  
26           RUDD, Board Member; ZAMUDIO, Board Chair, participated in the  
27 decision.

28  
29           RYAN, Board Member, did not participate in the decision.

30  
31  
32                   REMANDED                   12/19/2024

33  
34           You are entitled to judicial review of this Order. Judicial review is  
35 governed by the provisions of ORS 197.850.

**NATURE OF DECISION**

Petitioner appeals a city council decision denying its partition application.

**FACTS**

The subject property is approximately 1.38 acres in size and is located at 455 North Oregon Street. The subject property is within the city’s Historical Core District and contains a structure known as the “Tou Velle House.”

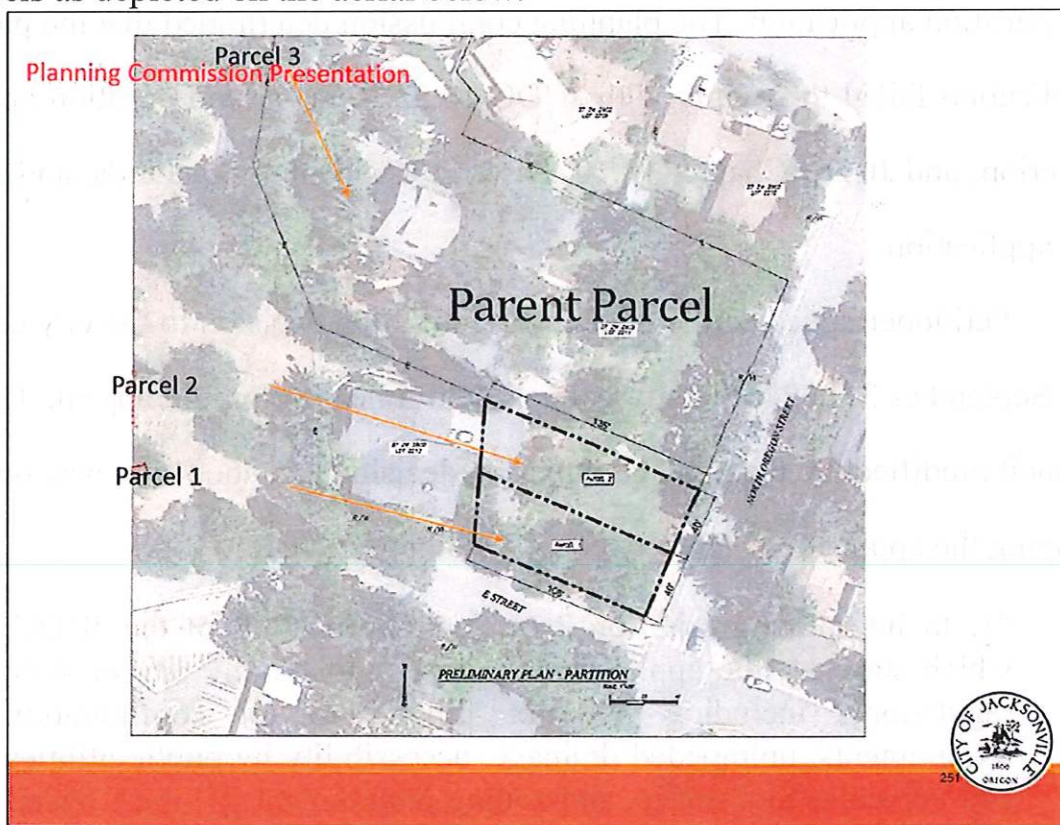
The Tou Velle House was built in 1866, and substantially altered and enlarged in 1916. The 1980 State of Oregon Inventory of Historic Properties (State Inventory) identifies the subject property and describes the house as two and one-half stories, essentially rectangular in shape and a good example of the Craftsman style of architecture. Record 131. The State Inventory also describes the subject property in part as follows:

“The main portion of the Judge Tou Velle House is located on a raised portion of land that slopes considerably from west to east. The house is set back approximately one hundred feet from North Oregon Street. Heavy posts of stacked, rounded stone, which were once part of a continuous fence, run parallel to North Oregon and West ‘E’ Streets along the east and south property lines. A grassy unmowed lawn sweeps up the hill to the house. The east hillside is broken by numerous small trees, shrubs, a small garden, and the sweep of the driveway. Several large evergreen trees are located to the rear of the house. Also in the rear is a small house, and a large, gable roof barn/shed is located several feet from the northwest corner of the house.

“The Tou Velle house is maintained in good condition while the grounds are kept in only fair condition.

1 “Although the major portion of the existing house was not  
2 constructed until 1916, well after Jacksonville’s importance as the  
3 major agricultural and trade center in southern Oregon had  
4 dissipated, *this substantially sized, undivided parcel of land, as well*  
5 *as the more recently built structure on it, possess an elevated*  
6 *significance because of its association with two of the more*  
7 *venerable figures in southern Oregon history: William Hoffman and*  
8 *Judge Frank L. Tou Velle.”<sup>1</sup> Record 132 (emphasis added).*

9 Petitioner applied to partition the subject property to create a total of three  
10 parcels as depicted on the aerial below.



11  
12 Record 251.

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<sup>1</sup> Hoffman served as county auditor and clerk and was the first president of the city board of trustees. Tou Velle was a county judge and state highway commissioner. Record 132-33.

1 The proposed parcel sizes are Parcel 1 at 4,585 square feet, Parcel 2 at 5,117  
2 square feet and Parcel 3, the parcel on which the Tou Velle house would be  
3 located, at 60,321 square feet. The Jacksonville Unified Development Code  
4 (JUDC) does not contain minimum lot size standards for the Historical Core  
5 zone.<sup>2</sup>

6 On June 5 and 10, 2024, the planning commission held public hearings on  
7 the partition application. The planning commission determined that the partition  
8 application failed to comply with JUDC 16.32.20(2), a land partition approval  
9 criterion, and JUDC Chapter 18.10, Historic Residential Standards, and denied  
10 the application.

11 Petitioner appealed the planning commission decision to the city council.  
12 On September 3, 2024, the city council held a hearing on the appeal. The city  
13 council modified the planning commission decision and adopted a new decision  
14 denying the application. The city council findings include:

15 “1. In interpreting criterion 2 of Section 16.32.20 of the JUDC,  
16 which states, [‘]the application does not violate any city or state  
17 regulations, including but not limited to lot configuration  
18 requirements, unimpeded drainage, accessibility by public utilities  
19 and vehicular/foot traffic, and zoning requirements,[’] the Council  
20 finds that [the] Planning Commission correctly applied the standards  
21 from 18.10, the Historic Residential Standards. Specifically,

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<sup>2</sup> Petitioner explains that the “Historical Core does not have minimum parcel sizes.” Petition for Review 4. JUDC Chapter 17.36 is titled “Historical Core (HC) District” and sets out performance use standards in, and the purpose of, that district.

1 criterion 2's phrase, 'including but not limited to' indicates that the  
2 Commission was justified in considering additional city regulations  
3 beyond those expressly stated. Furthermore, the Council interprets  
4 Section 18.10 to determine that Section 18.10 is not solely  
5 applicable to dwellings, but extends to the entire site, especially  
6 when it contains inventoried historic features outside of the  
7 dwelling, as per section 18.10.010, Landmark Protection.

8 "2. In reviewing the Planning Commission's decision, the City  
9 Council concurs that the proposed land partition does not comply  
10 with all standards outlined in Section 18.10.020, particularly  
11 criterion 2, which states, [']All buildings, structures, and sites shall  
12 be recognized as products of their own time. Alterations that have  
13 no historical basis and that seek to create an earlier appearance shall  
14 be discouraged.['] In interpreting Section 18.10.020, the Council  
15 finds that this standard emphasizes preserving the historical context  
16 of the site, and that preservation extends beyond the dwelling, noting  
17 specific built features on the site beyond the dwelling.

18 *"The Council interprets this criterion to mean that fragmenting the*  
19 *site through a partition process would distort its historical context*  
20 *and undermine its integrity by conflicting with the preservation*  
21 *principles, noting, 'the Preservation Principles expressly discuss*  
22 *the preservation of sites, not just dwellings. While the focus of many*  
23 *preservation efforts is on individual buildings or structures, the*  
24 *broader context of a site is essential to its significance.*

25 *"In the case of the Tou Velle House [The Property], the site in its*  
26 *entirety is discussed and described as a historic resource.'*

27 "3. Additionally, the Council modified the Planning Commission's  
28 findings and further determined that the proposed Land Partition  
29 conflicts with the Landmark Protection Standards outlined in  
30 Section 18.10.010 of the JUDC. Section 18.10.010 states that  
31 historic resources found in the Historical Survey should be  
32 preserved. *The City Council interprets the Historical Survey,*  
33 *included in the Planning Commission record as Exhibit 'F', to*  
34 *highlight the significance of the entire site and not just the dwelling,*  
35 *through its description of specific architectural features beyond the*

1 dwelling such as the stacked stone pillars. The Council determined  
2 that the fragmenting of the site through a partition would adversely  
3 affect the historic resource as it would hinder the City's ability to  
4 protect site features as highlight the significance of the entire site  
5 and not just the dwelling, through its description of specific  
6 architectural features beyond the dwelling such as the stacked stone  
7 pillars. The Council determined that the fragmenting of the site  
8 through a partition would adversely affect the historic resource as  
9 it would hinder the City's ability to protect site features as they  
10 would no longer be part of the inventoried historic resource and  
11 ultimately would undermine the findings of the Historical Survey."  
12 Record 15-16 (emphases added; emphases in original omitted).

13 This appeal followed.

#### 14 **MOTION TO TAKE OFFICIAL NOTICE**

15 OAR 661-010-0046(1) provides that we may take official notice of  
16 relevant law as defined in ORS 40.090. A motion to take official notice is  
17 required to contain "a statement explaining with particularity what the material  
18 sought to be noticed is intended to establish, how it is relevant to an issue on  
19 appeal, and the authority for notice under ORS 40.090." OAR 661-010-0046(2).

20 ORS 40.090 identifies as judicially noticed law:

21 "(1) The decisional, constitutional and public statutory law of  
22 Oregon, the United States, any federally recognized  
23 American Indian tribal government and any state, territory or  
24 other jurisdiction of the United States.

25 "(2) Public and private official acts of the legislative, executive  
26 and judicial departments of this state, the United States, any  
27 federally recognized American Indian tribal government and  
28 any other state, territory or other jurisdiction of the United  
29 States.

1           “(3) Rules of professional conduct for members of the Oregon  
2           State Bar.

3           “(4) Regulations, ordinances and similar legislative enactments  
4           issued by or under the authority of the United States, any  
5           federally recognized American Indian tribal government or  
6           any state, territory or possession of the United States.

7           “(5) Rules of court of any court of this state or any court of record  
8           of the United States, of any federally recognized American  
9           Indian tribal government or of any state, territory or other  
10          jurisdiction of the United States.

11          “(6) The law of an organization of nations and of foreign nations  
12          and public entities in foreign nations.

13          “(7) An ordinance, comprehensive plan or enactment of any  
14          county or incorporated city in this state, or a right derived  
15          therefrom. As used in this subsection, ‘comprehensive plan’  
16          has the meaning given that term by ORS 197.015.”

17          The city asks that we take official notice of the 1980 Historical Survey  
18          Map under ORS 40.090(7), as “[a]n ordinance, comprehensive plan or enactment  
19          of any county or incorporated city in this state, or a right derived therefrom.”<sup>3</sup>

20          JUDC 18.10.010(A) provides:

21          “For the purpose of design review, reference should be made to the  
22          Jacksonville Landmark List, the 1980 Historical Survey and the  
23          1999 Inventory Update prepared by Gail Evans and the 1993  
24          Historic Resource Inventory Update prepared by George Kramer.  
25          The historic resources identified in those inventories must be  
26          preserved if Jacksonville is to retain its National Historic Landmark

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<sup>3</sup> In support of its motion, the city submitted a declaration from its planning director stating that the maps submitted with its motion are from the 1980 Historical Survey Map.

1 designation.”

2 The city states that the Historical Survey Map is therefore part of its ordinance  
3 and is relevant to show that, contrary to petitioner’s assertion, the subject property  
4 has remained the same size since the 1980 inventory.<sup>4</sup> The motion is unopposed.  
5 The motion to take official notice is granted.

6 **ASSIGNMENT OF ERROR**

7 Petitioner argues that the city council implausibly misconstrued the  
8 partition criteria to allow it to erroneously apply inapplicable landmark protection  
9 and historic dwelling standards to deny petitioner’s partition application. For the  
10 reasons explained below, we agree with petitioner and sustain the assignment of  
11 error.

12 **A. Standard of Review**

13 Petitioner requests that we reverse the denial with an order to approve or,  
14 in the alternative, remand the city’s decision. We will reverse a limited land use  
15 decision if the local government exceeded its jurisdiction, made an  
16 unconstitutional decision, or made a decision which violates applicable law and

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<sup>4</sup> In its petition for review, petitioner asserts that the subject property was divided right after the 1980 survey. Petition for Review 4. Petitioner does not address whether the subject property was reduced in size after its inventory in its reply brief, other than to state that the “historical inventories and surveys are not regulatory documents with applicable criteria. They serve as reference materials for design review but do not create binding standards for administrative processes like land partitions.” Reply Brief 4.



1 is prohibited as a matter of law.<sup>5</sup> OAR 661-010-0073(1). We will remand a  
2 limited land use decision if the decision “improperly construes the applicable law,  
3 but is not prohibited as a matter of law[.]” OAR 661-010-0073(2)(d). We will  
4 also remand a limited land use decision that is not supported by adequate  
5 findings, except as provided in ORS 197.835(11)(b), or substantial evidence in  
6 the record. OAR 661-010-0073(2)(a), (b). Adequate findings identify the relevant  
7 approval criterion, the evidence relied upon, and explain how the evidence leads  
8 to the conclusion that the criterion is or is not met. *Heiller v. Josephine County*,

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<sup>5</sup> A partition denial is a limited land use decision. ORS 197.015(12) defines “limited land use” decision and provides that it

“(a) Means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

“(A) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040(1).

“(B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

“(b) Does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.” (Emphasis added).

1 23 Or LUBA 551, 556 (1992). Substantial evidence is evidence in the whole  
2 record that a reasonable person would rely upon to reach a decision. *Dodd v.*  
3 *Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993).

4 JUDC 16.32.20 sets out the approval criteria applicable to partition  
5 applications and provides:

6 “The application must meet all of the following objective criteria:

7 “1. The submittal contains all of the information asked for in the  
8 application.

9 “2. The application does not violate any city or state regulations,  
10 including but not limited to lot configuration requirements,  
11 unimpeded drainage, accessibility by public utilities and  
12 vehicular/foot traffic, and zoning requirements.

13 “3. The project is compatible and suitable within the context of  
14 its surroundings. This shall include, but not be limited to,  
15 consideration of human scale, street scape, landscaping, and  
16 any view shed, noise, and lighting impacts.

17 “4. The development will be compatible with the use or character  
18 of any adjacent resource land.

19 “5. Development conforms to or minimally alters existing  
20 topographic features and seeks to preserve natural features.  
21 Development in areas adjacent to streams and those  
22 characterized by steep slopes has been limited to the extent  
23 necessary to minimize risk to acceptable levels as determined  
24 by the Jacksonville Comprehensive Plan, or where objective  
25 levels are not available, as determined by the Planning  
26 Commission.

27 “6. Natural wildlife habitats and wetlands have been identified,  
28 preserved, and protected.

29 “7. There is adequate availability of solar access.

1           “8. The conservation and revitalization of any existing housing  
2           stock, particularly historic, has been encouraged.

3           “9. Adjoining land under the same or separate ownership can  
4           either be developed or be provided access that will allow its  
5           development in accordance with the Jacksonville  
6           Comprehensive Plan and this Code, and with the Jackson  
7           County Comprehensive Plan and Code, where applicable.

8           “10. The drawing is technically correct and the final partition plat  
9           conforms to the approved site plan.”

10           In denying the partition application, the planning commission and the city  
11           council applied and relied on JUDC 16.32.20(2), and did not address the other  
12           nine partition criteria in JUDC 16.32.20. The city council found that, in  
13           interpreting JUDC 16.32.20(2), the “Planning Commission correctly applied the  
14           standards from [JUDC] 18.10, the Historic Residential Standards. Specifically,  
15           criterion 2’s phrase, ‘including but not limited to’ indicates that the Commission  
16           was justified in considering additional city regulations beyond those expressly  
17           stated. \* \* \*.” Record 15.

18           ORS 197.829(1) provides:

19           “The Land Use Board of Appeals shall affirm a local government’s  
20           interpretation of its comprehensive plan and land use regulations,  
21           unless the board determines that the local government’s  
22           interpretation:

23           “(a) Is inconsistent with the express language of the  
24           comprehensive plan or land use regulation;

25           “(b) Is inconsistent with the purpose for the comprehensive plan  
26           or land use regulation;

1           “(c) Is inconsistent with the underlying policy that provides the  
2           basis for the comprehensive plan or land use regulation; or

3           “(d) Is contrary to a state statute, land use goal or rule that the  
4           comprehensive plan provision or land use regulation  
5           implements.”

6           We must affirm a local governing body’s interpretation of its local code so  
7           long as it is not inconsistent with the regulation’s express language, purposes, or  
8           underlying policies. *Id.*; *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d  
9           776 (2010). The determination of whether a local government’s interpretation of  
10          its own ordinance is “inconsistent” with the express wording of the ordinance for  
11          purposes of ORS 197.829(1)(a) depends on “whether the interpretation is  
12          plausible, given the interpretive principles that ordinarily apply to the  
13          construction of ordinances” under *State v. Gaines*, 346 Or 160, 206 P3d 1042  
14          (2009) and *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143  
15          (1993). *Siporen*, 349 Or at 255 (quoting *Siporen v. City of Medford*, 231 Or App  
16          585, 598, 220 P3d 427 (2009) (quoting *Foland v. Jackson County*, 215 Or App  
17          157, 164, 168 P3d 1238 (2007)). Our task “is not to determine whether the city’s  
18          interpretation of the code was ‘correct’ in some absolute sense of choosing among  
19          various plausible interpretations, but, instead, merely whether that interpretation”  
20          is plausible. *Id.* (quoting *Siporen*, 231 Or App at 598-99). If it is plausible, then  
21          we must sustain that interpretation.

22          Applying rules of construction, we consider the JUDC text and context.  
23          The first sentence of JUDC 16.32.20 characterizes the criteria to be met as  
24          “objective,” stating, “The application must meet all of the following objective

1 criteria \* \* \*.” JUDC 16.32.20(2) requires that a partition application “not violate  
2 any city or state *regulations, including but not limited to* lot configuration  
3 requirements, unimpeded drainage, accessibility by public utilities and  
4 vehicular/foot traffic, and zoning *requirements.*” (Emphases added.)

5 Petitioner’s application is only for a partition and is not combined with any  
6 application for approval of development or use. JUDC Chapter 18.10 is titled  
7 “Historic Residential Standards.” In its findings, the city council

8 “interprets Section 18.10 to determine that Section 18.10 is not  
9 solely applicable to dwellings, but extends to the entire site,  
10 especially when it contains inventoried historic features outside of  
11 the dwelling, as per Section 18.10.010, Landmark Protection.

12 “\* \* \* \* \*

13 “Additionally, the Council modified the Planning Commission’s  
14 findings and further determined that the proposed Land Partition  
15 conflicts with the Landmark Protection standards outlined in Section  
16 18.10.0[2]0 of the JUDC.” Record 15.

17 Petitioner argues that the city council’s construction of JUDC 16.32.20(2)  
18 as allowing it to consider JUDC 18.10.010 and 18.10.020 in evaluating a partition  
19 is inconsistent with the express text, purpose, and policy of those provisions and,  
20 thus, is implausible.

21 **B. JUDC 18.010.010**

22 JUDC 18.010.010 provides:

23 “(A) For the purpose of design review, reference should be made  
24 to the Jacksonville Landmark List, the 1980 Historical Survey and  
25 the 1999 Inventory Update prepared by Gail Evans and the 1993

1 Historic Resource Inventory Update prepared by George Kramer.  
2 The historic resources identified in those inventories must be  
3 preserved if Jacksonville is to retain its National Historic Landmark  
4 designation.

5 “(B) The purpose of this section is to preserve the historic character  
6 of the Historic District as a whole, including its similarity of design,  
7 materials, pedestrian scale and harmonious pattern. The following  
8 guidelines are intended to comply with the Secretary of the Interior’s  
9 Standards for Historic Preservation.”

10 Petitioner argues that the city council’s interpretation of JUDC 18.10.010  
11 contradicts its express text, purpose, and policy “because it extends landmark  
12 protection standards (meant solely for design review and structural development)  
13 to the land partition process, which does not involve changes to the structure or  
14 site.” Petition for Review 15. Petitioner emphasizes that JUDC 18.10.010 states  
15 that “reference should be made” to the city’s historical inventory “[f]or the  
16 *purpose of design review*” and argues that language limits JUDC 18.10 to design  
17 review, such that those standards may not be imported into the partition  
18 evaluation. Further, petitioner argues that JUDC 18.10.010 does not set out  
19 approval criteria, but rather sets out aspirations and that those aspirations relate  
20 to structural development, and not land partitions.

21 JUDC 18.10.010(B) refers to preserving the “historic character of the  
22 Historic District as a whole, including its similarity of design, materials,  
23 pedestrian scale and harmonious pattern.” The city argues that the city council’s  
24 interpretation of “including but not limited to” in JUDC 16.32.20(2) to allow  
25 consideration of historic preservation standards is consistent with the ordinance’s

1 “broad intent to ensure land partitions are compatible with the surrounding  
2 environment and applicable regulatory framework.” Respondent’s Brief 10. The  
3 city argues JUDC 18.10.010 refers to preserving the character of the Historic  
4 District, and that purpose includes, but is not limited to, “similarity of design,  
5 materials, pedestrian scale and harmonious pattern[,]” and that “[i]t is plausible  
6 to read JUDC 18.10.010 as being instructional and permissive, as opposed to  
7 dictating that those resources may only be considered during design review[,]”  
8 and that “[t]his is especially true in light of the second half of section (A), which  
9 clearly states that the historic resources identified in the historic inventory must  
10 be preserved.” Respondent’s Brief 12-13.

11 JUDC 18.10.010 identifies specific items, but does not limit its reach to  
12 those items, and in fact sets out a broad purpose of preservation of the historic  
13 character of the district as a whole. Petitioner argues, however, and we agree, that  
14 the purpose statements are not approval criteria. In *Rouse v. Tillamook County*,  
15 the petitioner challenged an application’s compliance with a code provision  
16 setting out the purpose of land use standards applicable in all residential and  
17 commercial zones, and we concluded “[b]y their language, the ‘purpose’  
18 provisions [at issue were] aspirational policies, and [did] not constitute  
19 mandatory approval criteria.” 34 Or LUBA 530, 537-38 (1998). The direction to  
20 reference specific resources in the course of design review described in JUDC  
21 18.10.010(A) is not a city regulation or zoning requirement and, thus, cannot be  
22 a partition approval criterion under JUDC 16.32.20(2). The statement in JUDC

1 18.10.010(A) is not that the resource must be preserved, but that it “must be  
2 preserved *if Jacksonville is to retain its National Historic Landmark*  
3 *designation.*” (Emphasis added.) The statement of purpose of preserving historic  
4 character set out in JUDC 18.10.010(B) is also not an approval criterion. JUDC  
5 18.10.010 does not “regulate” the use of property or set out any “zoning  
6 requirements.” We agree with petitioner that the city council erred in considering  
7 it as part of its partition review as “any city or state *regulations*, including but not  
8 limited to lot configuration requirements, unimpeded drainage, accessibility by  
9 public utilities and vehicular/foot traffic, and zoning *requirements*,” as provided  
10 in JUDC 16.32.20(2). (Emphases added.) Accordingly, the city council’s  
11 interpretation is inconsistent with the express language of JUDC 16.32.20(2).

12 Because we conclude that JUDC 18.10.010 is not applicable to the  
13 partition under JUDC 16.32.020(2), we do not reach petitioner’s argument within  
14 its second subassignment of error that the city council’s finding that the partition  
15 would fragment the site and harm the historic character of the property “is  
16 speculative and unsupported by the record and JUDC 18.10.010[.]” Petition for  
17 Review 19.

18 **C. JUDC 18.10.020**

19 JUDC 18.10.020 provides:

20 “All maintenance, remodeling and replacement construction of  
21 historic contributing dwellings must comply with the following  
22 principles and standards, as complemented by the guidelines  
23 contained in Section VII (A) & (B) of the Design Guidelines for



1 Jacksonville, Oregon, prepared by The Architectural Resources  
2 Group (also see National Park Service Preservation Brief #14 for  
3 additional guidance):

4 “Preservation Principles:

5 “1. If remodeling is required for a new use, the remodeling must  
6 not damage or destroy the historic quality and character of the  
7 structure or site.

8 “2. All buildings, structures, and sites shall be recognized as  
9 products of their own time. Alterations that have no historical  
10 basis and that seek to create an earlier appearance shall be  
11 discouraged.

12 “3. Distinctive stylistic features or examples of skilled  
13 craftsmanship that characterize a structure or site must not be  
14 damaged or destroyed.

15 “4. Deteriorated architectural features shall be repaired rather  
16 than replaced, wherever possible. In the event replacement is  
17 necessary, the new material should match the material being  
18 replaced in composition, design, color, texture, and other  
19 visual qualities. Repair or replacement of missing  
20 architectural features should be based on accurate  
21 duplications of features, substantiated by historic, physical, or  
22 pictorial evidence, rather than on conjectural designs or the  
23 availability of different architectural elements from other  
24 buildings or structures.

25 “5. Changes that have taken place over the years are evidence of  
26 the history and development of a structure, or site and its  
27 environment. Changes that have been constructed during the  
28 historic period and acquired significance in their own right  
29 must not be damaged or destroyed.

30 “6. A contemporary addition or alteration may be made to a  
31 historic structure if it does not damage or conceal significant  
32 historical, architectural or cultural material. The design must

1 be compatible with the size, scale, color, material, massing  
2 and character of the property, neighborhood and environment.

3 “7. An addition or alteration must be so constructed that if it is  
4 removed in the future, the original form and integrity of the  
5 structure can be easily recovered.”

6 Petitioner argues that the city council’s interpretation of JUDC 18.10.020  
7 improperly extends a standard meant for structural development to an  
8 administrative land partition. JUDC 18.10.020 provides that it applies to  
9 “maintenance, remodeling and replacement construction of historic contributing  
10 dwellings.” Petitioner argues that JUDC 18.10.020 applies to structural  
11 development, not land partitions. Petitioner also argues that the standard provides  
12 guidance and is not an enforceable standard applicable to partitions.

13 The city responds that the city council found that the partition would distort  
14 the site’s historical context and be a detriment to a resource on a historical survey.  
15 Respondent’s Brief 14. The city argues that JUDC 16.32.20(2) contains a non-  
16 exclusive list of applicable regulations and the city may interpret its code “to  
17 preserve the historic character of the historic district as a whole.” Respondent’s  
18 Brief 14. The city argues that the preservation principles in JUDC 18.10.020  
19 include that “sites shall be recognized as products of their own time. Alterations  
20 that have no historical basis and that seek to create an earlier appearance shall be  
21 discouraged,” and that petitioner improperly ignores the express references in  
22 JUDC 18.10.020 to the “site.” Respondent’s Brief 13. The city argues that the  
23 city council could properly interpret JUDC 18.10.020 to apply to the entire  
24 subject property and not just the dwelling.

1           We agree with petitioner that the text of JUDC 18.10.020, providing that  
2 it applies to “maintenance, remodeling and replacement construction of historic  
3 contributing dwellings,” all structural development, may not be plausibly read to  
4 allow its consideration in evaluation of petitioner’s partition application as a  
5 regulation included via JUDC 16.32.020(2).<sup>6</sup>

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<sup>6</sup> JUDC 18.38.010 includes the following definitions:

“DEVELOPMENT: Any manmade change to improved or unimproved tracts of land, including, but not limited to, construction of buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations located within the area.”

“DEVELOPMENT PERMIT: Any permit or authorization issued by the city as a prerequisite for undertaking any development. It includes permits and authorizations customarily known as certificates of appropriateness, building permits, zoning or rezoning permits, variances, conditional use permits, street plans, *plat approvals, subdivision or planned unit development permits.*”  
[(Emphasis added.)]

“PARTITION LAND: To divide land into two (2) or three (3) parcels within a calendar year, but does not include a division of land that creates a road or results from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or an adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance. Partitioning of a lot or parcel or a portion thereof into more than three (3) parcels in a calendar year results in a subdivision.”

“PLAT: A diagram, drawing, re-plat, or other writing concerning a partition or subdivision

1           Accordingly, the city council’s interpretation that JUDC 18.10.020 applies  
2 via JUDC 16.32.020(2) is implausible.

3           The assignment of error is sustained.

4   **DISPOSITION**

5           In its petition for review, petitioner requests that we reverse the city  
6 council’s decision with an order to approve the partition pursuant to ORS  
7 197.835(10)(a)(A), which requires reversal “if the board finds [that, b]ased on  
8 the evidence in the record, that the local government decision is outside the range  
9 of discretion allowed the local government under its comprehensive plan and  
10 implementing ordinances[.]” As we observe above, in denying the partition  
11 application, the planning commission and the city council applied and relied on  
12 JUDC 16.32.20(2) and did not address the other nine partition criteria in JUDC  
13 16.32.20. The city argues that remand, and not reversal, is appropriate if we  
14 sustain petitioner’s assignment of error. At oral argument, petitioner disavowed

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“(a) ‘Preliminary plat’: A plat submitted prior to actual application and intended only for department review or discussion.

“(b) ‘Tentative plat’: A plat submitted as a part of an application for a partition or subdivision, also referred to as a Tentative Plan.

“(c) ‘Final plat’: A plat that has been prepared for recordation after approval of the tentative plat.

“(d) ‘Re-plat’: An alteration of a previously recorded plat. A property line adjustment is not a re-plat. A partition of an existing lot is not a re-plat.”

1 the request for reversal and instead requested remand for the city to address the  
2 partition criteria that were not addressed in the challenged decision. The city  
3 council's decision is remanded for the city to apply JUDC 16.32.20 in a manner  
4 consistent with this opinion.

5 The city council's decision is remanded.