

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a city Design Commission decision
4 denying its request for design review approval for a sign.

5 **FACTS**

6 The petition for review states the following relevant
7 facts:

8 "In early 1992, petitioner submitted to the City
9 of Portland Bureau of Buildings for approval a
10 series of sign designs to be installed outside
11 Carl's Jr. Restaurant in downtown Portland. The
12 City approved these sign designs finding that they
13 were not subject to design review by the City, and
14 issued a permit allowing their construction. The
15 signs were installed in March, 1992.

16 "In late 1992, petitioner was informed by the City
17 that these sign designs were subject to design
18 review and that petitioner needed to make
19 application for such review. Accordingly,
20 petitioner made application in December, 1992, for
21 design review approval of the sign designs as
22 installed.

23 "The City of Portland Bureau of Planning issued an
24 administrative decision approving the sign designs
25 with modification specified and conditions of
26 approval. Petitioner objected to the conditions
27 of approval and appealed the administrative
28 decision to the Design Commission for the City of
29 Portland.

30 "The Design Commission, after hearing the appeal,
31 denied it and affirmed the Administrative Decision
32 of approval with conditions. Petitioner filed a
33 notice of intent to appeal the Design Commission
34 decision with LUBA on May 6, 1993. The City filed
35 a Motion to Withdraw the Land Use [Decision] for
36 Reconsideration on May 21, 1993. The Design
37 Commission issued a Revised Report and Decision on
38 October 7, 1993. This Report and Decision again

1 conditioned approval of the sign designs on the
2 same modifications required in the Design
3 Commission's previous decision. This Revised
4 Report and Decision is the subject of this
5 appeal." (Record citations omitted.) Petition
6 for Review 2-3.

7 **ASSIGNMENT OF ERROR**

8 "[Respondent] improperly construed applicable law
9 in finding that petitioner's application is
10 subject to design review under the Portland City
11 Code [(PCC)]. Properly applying the Sign
12 Measurement provisions of the [PCC], the sign
13 designs in question are less than 32 square feet
14 in area and are therefore not subject to design
15 review under the [PCC]."

16 Under PCC 33.825.020(C)(3), signs that are less than
17 32 square feet in area are not subject to the design review
18 process. The sole dispute in this appeal is whether, under
19 the relevant PCC provisions, petitioner's signs are properly
20 measured as being greater than 32 square feet in area and,
21 therefore, subject to design review.

22 Petitioner's restaurant is located in the street level
23 of a multi-story building, at the corner of SW Fifth Avenue
24 and SW Taylor Street. The storefront windows on the street
25 level of the building are recessed, creating an overhang.
26 The building is supported at the street level by pillars
27 that are flush with the outside walls of the upper stories
28 of the building. The disputed signs are composed of eight
29 illuminated rectangular vinyl panels. The vinyl material is
30 attached to frames, which are mounted between the pillars at
31 the top of the storefront windows, under the overhang, so

1 the vinyl panels themselves are flush with the outer
2 surfaces of the pillars and the outer walls of the upper
3 stories of the building. The panels run the length of the
4 restaurant's two street frontages, separated only by the
5 pillars.

6 Each vinyl panel is bright yellow with red copy or
7 graphics. A continuous red stripe runs across the panels,
8 separated only by the pillars. In addition to the common
9 stripe, five of the panels also bear the words "Carl's Jr."
10 The remaining three panels bear petitioner's business logo
11 of "happy-faced stars," in addition to the red stripe.

12 Essentially, petitioner argues that because the
13 disputed panels are constructed from materials typically
14 used for "awnings," the panels should be measured as eight
15 separate "awning signs," each less than 32 square feet in
16 area. As explained in more detail below, the challenged
17 decision takes the position that the panels facing SW Taylor
18 Street and the panels facing SW Fifth Avenue, should be
19 measured together, thereby being measured as two "signs,"
20 each of which is greater than 32 square feet in area.

21 PCC 33.286.060 (Sign Measurements), defines how signs
22 are to be measured. With regard to signs composed of
23 individual elements, PCC 33.286.060(A)(6) provides as
24 follows:

25 "Individual elements. When signs are constructed
26 of individual elements attached to a building
27 wall, the sign area is determined by calculating

1 the area of an imaginary rectangle drawn around
2 the sign elements. See [PCC] Figure 286-4. Sign
3 elements will be measured as one unit when the
4 distance between elements is less than two times
5 the dimension of each element. See [PCC] Figure
6 286-5." (Emphasis supplied.)

7 Figure 286-4, referred to above, is a drawing of a sign
8 flush against a building. PCC Figure 286-5, referred to
9 above, is a drawing of "Multiple Elements in a Painted Wall
10 Sign or Fascia Sign." The PCC Figure 286-5 drawing depicts
11 signs composed of more than one part. However, the text of
12 PCC 33.286.060(A)(6) is clear that it is not limited to the
13 kinds of signs drawn in the figurative examples.

14 The challenged decision determines the disputed signs
15 are "fascia signs." Record 3. PCC 910-18 defines fascia
16 sign, as follows:

17 "A single faced sign attached flush to a
18 building."

19 The challenged decision also determines the disputed signs
20 are not "awning signs."¹ However, the challenged decision
21 takes the position that for purposes of determining size, it

¹PCC 910-18 defines an awning sign as follows:

"A sign incorporated into or attached to an awning."

The PCC does not contain a definition of the term "awning." However, the city used a dictionary definition of the term "awning" as follows:

"A rooflike cover in front of a place (as over the deck or in front of a door or window) as a shelter." Record 3.

Petitioner does not dispute this is an appropriate definition of the term "awning."

1 really does not matter whether a sign is an awning, fascia
2 or other type of sign listed in PCC 33.286.060. The
3 challenged decision states:

4 "Many of the sign types described in
5 [PCC] 33.286.060[(A)] might be located on a
6 building wall in such a way as to be considered
7 fascia signs. [PCC] Figure 286-5 titled 'Multiple
8 Elements in a Painted Wall Sign or Fascia Sign'
9 provides further instructions in sign measurement
10 to determine how proximate signs are to be
11 calculated [in determining] sign area.

12 "In the applicant's proposal the dimension between
13 the adjacent fascia sign panels is 2.0' and the
14 horizontal dimension of each panel is 13.0'-/+.
15 To be counted as one sign face $2.0' > [sic <] 2$
16 $(13' + 13')$. The entire length of the fabric
17 panels facing SW 5th Avenue must be counted as one
18 sign; i.e., the total area is $73.25' \times 3.0'$ or
19 219.75 square feet. Similarly, the SW Taylor
20 Street frontage is $46.0' \times 3.0'$ or 138 square
21 feet.

22 "If a conclusion were reached that only the
23 lettering and logo elements themselves should be
24 counted as the sign, the fascia sign test for
25 proximate signs would still apply. In that case
26 the greatest distance between a star logo and a
27 lettered sign is 9.58 feet. The length of the
28 elements themselves are 2.5 feet and 8.5 feet. To
29 be counted as two signs, $9.58 > 2 (2.5 + 8.5)$.
30 This method also requires that the multiple panels
31 be counted as one sign. In this case, the
32 calculation would be made from end of copy to end
33 of copy on each street frontage; therefore, the
34 area on SW 5th Avenue is $2.0' \times 68.5'$, or 137
35 square feet. For SW Taylor, it would be $2.0' \times$
36 $40.0'$ or 80 square feet." Record 3.

37 As we understand it, the challenged decision interprets
38 the city code provisions to mean that regardless of whether
39 a sign is characterized as an awning, fascia or other kind

1 of sign listed in PCC 33.286.060, all signs are subject to
2 the multiple elements measuring requirements of
3 PCC 33.286.060(A)(6). Further, the decision determines that
4 so measured, the disputed signs consist of two signs, each
5 exceeding 32 square feet in area.

6 We must determine whether the city's interpretation of
7 its own code requirements, as applied to the subject signs,
8 is one to which we must defer. In other words, we must
9 determine whether the challenged city decision is contrary
10 to the express words, policy or purpose the PCC provisions
11 regulating signs. ORS 197.829; Clark v. Jackson County, 313
12 Or 508, 836 P2d 710 (1992). Petitioner cites nothing in the
13 PCC or the city comprehensive plan that establishes the
14 city's interpretation of its sign measurement provisions are
15 contrary to the express words, policy or context of the PCC
16 and, therefore, we defer to the city's interpretation.

17 Petitioner's assignment of error is denied.

18 The city's decision is affirmed.

19