

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

4 NORTH PORTLAND CITIZENS                               )  
5 COMMITTEE, BONNITA WILLIAMS, and                               )  
6 IDA L. SPEARS,   )  
7   )  
8                               Petitioners,                               )                               LUBA No. 96-097  
9   )  
10                               vs.   )                               FINAL OPINION  
11   )                               AND ORDER  
12 CITY OF PORTLAND,   )  
13   )  
14                               Respondent.                               )

15  
16  
17                               Appeal from City of Portland.

18  
19                               Melinda Wilde, Portland, filed the petition for review  
20 and argued on behalf of petitioners.

21  
22                               Adrienne Brockman, Deputy City Attorney, Portland,  
23 filed the response brief and argued on behalf of respondent.

24  
25                               GUSTAFSON, Referee; HANNA, Chief Referee, participated  
26 in the decision.

27  
28                               AFFIRMED   10/02/96

29  
30                               You are entitled to judicial review of this Order.  
31 Judicial review is governed by the provisions of ORS  
32 197.850.

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a city zoning classification  
4 determination.

5 **MOTION TO FILE REPLY BRIEF**

6 Petitioners move to file a reply brief. A reply brief  
7 accompanies the motion. The city consents to the motion,  
8 and it is allowed.

9 **FACTS**

10 Multnomah County proposes to locate a probation/parole  
11 office in the city's General Commercial (CG) zone. Office  
12 uses are allowed as of right in the CG zone. The city  
13 issued a building permit for office alteration and  
14 landscaping at the probation/parole office site in January,  
15 1996. Upon learning of the proposed location, petitioners'  
16 attorney contacted the city planning bureau on April 4,  
17 1996, and discovered that no written decision had been  
18 issued on the city's classification of the probation/parole  
19 office as an office use. In an April 9, 1996 letter to the  
20 city planning director and bureau of buildings director,  
21 petitioners' attorney argued that the use of the site for a  
22 probation/parole office constituted an unauthorized non-  
23 conforming use, and urged that the request be processed  
24 through a conditional use application.

25 Notwithstanding petitioners' request, on May 1, 1996,  
26 the city issued a zoning use determination, in which it

1 found that the activities proposed for the site "are  
2 characterized as those typically occurring within an office  
3 setting and are governmental in nature." Record 2. The  
4 determination concludes that the proposed use falls within  
5 the "Office" category. Id.

6 Written notice of the determination was sent to the  
7 surrounding neighborhood. Under "appeal rights," the notice  
8 states:

9 The above decision is final, there is no right to  
10 a local appeal to challenge the decision. You may  
11 appeal the decision directly to the Land Use Board  
12 of Appeals (LUBA). If you wish to appeal the  
13 decision to LUBA, you have 21 days in accordance  
14 with ORS 227.175(11)(c) and 197.830(4)(b) and OAR  
15 66-10-015. \* \* \*" Record 2. (Emphasis added.)

16 Petitioners appeal that determination.

#### 17 **ASSIGNMENTS OF ERROR**

18 Petitioners make three assignments of error, in which  
19 they challenge both the process the city used to make its  
20 determination, and the merits of the city's factual  
21 determination that a probation/parole office is an "office"  
22 use, allowed as of right in the CG zone.

#### 23 **A. Process**

24 Petitioners first argue the city's determination was  
25 erroneously processed through a "Type I" administrative  
26 procedure.<sup>1</sup> Petitioners argue the classification of the

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<sup>1</sup>Portland City Code (PCC) 33.730.010 describes the city's three quasi-judicial review procedures as follows:

1 probation/parole office necessitated the exercise of  
2 discretion to determine whether it should be classified as  
3 an office or a detention facility. Petitioners argue the  
4 city should have conducted a Type III conditional use  
5 review, or at least a Type II review, before allowing the  
6 probation/parole office to be cited in the CG zone. In  
7 addition, petitioners argue that even if the request could  
8 be processed through a Type I review, the city violated its  
9 Type I notice procedures by failing to provide petitioners  
10 an opportunity to submit written comment as required by PCC  
11 33.730.015(C).<sup>2</sup>

12 The city responds that petitioners' argument  
13 erroneously presumes the city used a Type I process to  
14 classify the probation/parole office as an office use. As  
15 the city explains, the city did not follow the Type I

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"The Type I procedure, or limited land use review, allows local decisions to be made administratively for such reviews as minor design cases. The Type II procedure is the shorter and simpler of the other two quasi-judicial reviews. It is intended for reviews which involve lesser amounts of discretion, lower potential impacts, or both. The Type III procedure is the longer and more in-depth review. It is intended for reviews which involve the most discretion or the greatest potential impacts.

<sup>2</sup>PCC 33.730.015(C) prescribes the following notice requirements for Type I reviews:

Notice of a request. Within 5 days of receiving the complete application the Director will mail a notice of the request to all property owners within 100 feet of the lot, and to the recognized organization(s) in which the lot is located. The notice will contain all information listed in 33.730.070.B, Type I notice of request.

1 procedure in evaluating the classification, nor does the  
2 city's code require that it do so. Zoning classification  
3 determinations are not included among the types of uses  
4 subject to the Type I procedure. Nor are such  
5 determinations subject any other of the city's review  
6 procedures. The city does not have any local procedure for  
7 making zoning classification decisions.

8 In making zoning classification determinations, the  
9 city relies solely on state statute, through which zoning  
10 classifications are defined under ORS 227.160(2) and subject  
11 to review under ORS 227.175(11)(c).

12 ORS 227.160(2) states:

13 "'Permit' means discretionary approval of a  
14 proposed development of land, under ORS 227.215 or  
15 city legislation or regulation. 'Permit' does not  
16 include:

17 "\* \* \* \* \*

18 "(b) A decision which determines the appropriate  
19 zoning classification for a particular use by  
20 applying criteria or performance standards  
21 defining the uses permitted within the zone,  
22 and the determination applies only to land  
23 within an urban growth boundary[.]"

24 ORS 227.175(11) states:

25 "A decision described in ORS 227.160(2)(b) shall:

26 "(a) Be entered in a registry available to the  
27 public setting forth:

28 "(A) The street address or other easily  
29 understood geographic reference to the  
30 subject property;

31 "(B) The date of the decision; and

1           "(C) A description of the decision made.

2           "(b) Be subject to the appeal period described in  
3           ORS 197.830(4)(b)."

4           Petitioners do not challenge the city's compliance with  
5           ORS 227.175(11) or challenge the city's authority to make  
6           zoning classification determinations under ORS 227.175(11).  
7           Nor do petitioners cite any other authority that would  
8           further restrict the city's process for making zoning  
9           classification determinations. We find no basis to preclude  
10          the city from making such determinations solely on the basis  
11          of ORS 227.160(2) and 227.175(11).

12          Because the city did not process the challenged zoning  
13          classification through a Type I review, it was not required  
14          to follow the procedural notice requirements for a Type I  
15          review. Petitioners have established no violation of the  
16          process the city followed in making its zoning  
17          classification determination.

18           **B. Merits**

19          Petitioners argue that the city's determination that  
20          the proposed probation/parole office is an office use,  
21          permitted as of right in the CG zone, misconstrues the law  
22          and lacks substantial evidence. Petitioners argue,  
23          essentially, that because of the clientele, a  
24          probation/parole office is more appropriately characterized  
25          as a "detention facility" than an office.

26          In making a zoning classification decision, the city  
27          must consider only the use proposed. The city must compare

1 the proposed use, including all activities described, to  
2 the uses allowed in the zone in which the use is proposed.  
3 In this case, Multnomah County described the activities at  
4 the proposed probation/parole office as follows:

5 "Probation/Parole Officers have traditionally  
6 supervised offenders through office or home  
7 contacts, counseling, referral to treatment,  
8 contacts with collateral sources, and sanctions  
9 when appropriate. We are planning to supervise  
10 our North Portland clients in their neighborhoods,  
11 visiting them at their homes as much as possible,  
12 or at their worksites. This will minimize their  
13 visits to the new office. Although there will be  
14 some client contact at the Peninsula Office, most  
15 of the activity there will be of an administrative  
16 nature. Major activities will include entering  
17 field notes into an automated case management  
18 system, preparing legal reports, accounting for  
19 fee collections, conducting staff meetings and  
20 training sessions and meeting with community  
21 stakeholders, including crime victims, civic  
22 leaders, and neighborhood association members."  
23 Record 10.<sup>3</sup>

24 Under Gage v. City of Portland, 319 Or 308, 316-17, 877  
25 P2d 1187 (1994), and Watson v. Clackamas County, 129 Or App  
26 428, 431-32, 879 P2d 1309, rev den 320 Or 407 (1994), we do  
27 not defer to local interpretations made by other than the  
28 local governing body. Thus, our review of the city planning  
29 bureau's zoning classification is to determine whether the  
30 interpretation is reasonable and correct. McCoy v. Linn

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<sup>3</sup>Petitioners discuss evidence outside the record to urge that the probation/parole office should be characterized as a detention center. The city responds by requesting that, if we consider petitioners' extrinsic evidence, we also consider an affidavit appended to the city's brief that responds to petitioners' evidence. We consider neither.

1 County, 90 Or App 271, 275-76, 752 P2d 323 (1988); Ellison  
2 v. Clackamas County, 28 Or LUBA 521 (1995).

3       Based on the stated activities of the proposed  
4 probation/parole office, we find that the city's  
5 classification is reasonable and correct. Petitioners'  
6 argument that we should look at the clientele, rather than  
7 the use proposed, is neither authorized nor allowable.

8       Petitioners' assignments of error are denied.

9       The city's decision is affirmed.