

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

3
4 BLUE BEACON INTERNATIONAL, INC.,)
5)
6 Petitioner,)
7) LUBA No. 94-262
8 vs.)
9) FINAL OPINION
10 CITY OF PORTLAND,) AND ORDER
11)
12 Respondent.)

13
14
15 Appeal from City of Portland.

16
17 Gregory S. Hathaway and Timothy R. Volpert, Portland,
18 filed the petition for review. With them on the brief was
19 Davis Wright Tremaine. Gregory S. Hathaway argued on behalf
20 of petitioner.

21
22 Peter A. Kasting, Senior Deputy City Attorney,
23 Portland, filed the response brief and argued on behalf of
24 respondent.

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

28
29 AFFIRMED 08/29/95

30
31 You are entitled to judicial review of this Order.
32 Judicial review is governed by the provisions of ORS
33 197.850.

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a City of Portland Adjustment
4 Committee decision upholding the administrative denial of a
5 sign adjustment.

6 **FACTS**

7 Petitioner is the lessee of a parcel that is part of a
8 irregularly shaped, 26-acre truck stop property. Petitioner
9 operates a truck wash facility on the leased parcel, which
10 is in the northeast portion of the truck stop property.
11 North Vancouver Way passes through the truck stop property,
12 close to its western boundary.

13 There is a 30-foot-high nonconforming sign on North
14 Vancouver Way at the entrance to the truck stop, which
15 advertises the truck stop itself, together with smaller
16 directional signs indicating the facilities accessible from
17 this entrance to the site. One of the directional signs is
18 for the truck wash facility. Upon entering the truck stop
19 property, vehicles proceed down a "road," which petitioner
20 calls "Main Street." Main Street leads immediately to a
21 fuel and fast food area visible from the street; beyond that
22 is a security/information booth adjacent to the parking
23 area.¹ Beyond the security/information booth, Main Street

¹The challenged decision calls the booth an "information booth."
Record 5. Petitioner contends it is a security booth. The function of the

1 is a corridor between angle-parked trucks in large parking
2 lots. The corridor continues straight to the end of the
3 truck stop property.

4 The truck wash facility has a large painted sign on the
5 side facing the parking lot to the southeast of Main Street.
6 Despite its large size, it is not easily seen from trucks
7 traveling along Main Street until the trucks have almost
8 reached the point where they must either turn away from the
9 truck wash facility or turn toward it.² According to
10 petitioner, truck drivers cannot react quickly enough after
11 seeing the truck wash facility to maneuver their trucks into
12 it.

13 Petitioner applied for a sign height adjustment to
14 erect a 40-foot-high freestanding sign at the end of Main
15 Street. Petitioner contends the 25-foot-high sign allowed
16 without an adjustment is insufficient to alert drivers
17 proceeding down Main Street to the availability of the truck
18 wash facility. According to petitioner, a 40-foot-high sign
19 would be visible from almost any point along Main Street and
20 would provide adequate reaction time. Petitioner's request
21 was denied administratively. Petitioner then appealed to
22 the adjustment committee, which affirmed the administrative

booth and its hours of operation have no bearing on our disposition of this appeal.

²The record includes a video of the view from the cab of a truck proceeding down Main Street. The video makes the point that the truck wash facility cannot easily be seen once a truck has entered the truck stop property.

1 denial.

2 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

3 In the second assignment of error, petitioner contends
4 that the challenged decision is not adequately justified
5 based on "criteria, standards and facts set forth in the
6 decision." Petition for Review 5. In the third assignment
7 of error, petitioner contends the challenged decision
8 improperly construes the "site difficulties" criteria stated
9 in Portland City Code (PCC) 33.286.240(2).³

³PCC 33.286.240(2) provides:

"Site difficulties: If there are unusual site factors which preclude an allowed sign from being visible to the **street immediately in front of the site**, an adjustment will be granted to achieve the visibility standards of Subparagraph d[.] below. This adjustment is not intended to be used to make signs visible to other streets or to freeways. Site difficulties may include the sign face being blocked due to topography of the site, existing development or landscaping on the site, or from abutting development or landscaping. This set of adjustment criteria is generally intended for freestanding and projecting signs and allows greater flexibility in placement of the sign. The adjustment will be approved if all of the following criteria are found to be met:

- "a. There is no reasonable place on the site for an allowed sign without an adjustment to achieve the visibility standards of Subparagraph d[.] below;
- "b. If the proposed sign extends into the right-of-way, the sign will not create a traffic or safety hazard;
- "c. Of potential adjustments to meet the visibility standards of Subparagraph d., the request is most consistent with the surrounding development and sign patterns; and
- "d. The adjustment is the minimum needed for a sign to meet the following visibility standards:

1 Notwithstanding the general challenge stated in the
2 second assignment of error, petitioner does not contest the
3 findings in the challenged decision that PCC
4 33.286.240(2)(b) through (d) do not apply to its application
5 for a sign adjustment. Petition for Review 6. We therefore
6 confine our review to the city's interpretation of
7 PCC 33.286.240(2)(a).

8 The Oregon Supreme Court held, in Gage v. City of
9 Portland, 319 Or 308, 860 P2d 282 (1993), that the
10 interpretive deference required of LUBA by Clark applies
11 only to interpretations of local enactments by local
12 governing bodies.⁴ Because the challenged decision was made
13 by the city's adjustment committee rather than its governing
14 body, we owe the city's interpretation no deference. We
15 must decide whether the city's interpretation is
16 "reasonable" and "correct." McCoy v. Linn County, 90 Or App
17 271, 752 P2d 323 (1988).

18 PCC 33.286.240(2)(a) must be read in the context of the
19 prefatory language in PCC 33.286.240(2), which states an

<u>"Posted Road Speed</u>	<u>Visibility To Travel Lanes On The Street In Front Of The Site</u>
35 mph or less	200 feet
40 -50 mph	300 feet
55 mph or more	400 feet"

(Emphasis in original.)

⁴ORS 197.829 was enacted to codify Clark, but was not in effect when this Board made the decision reviewed in Gage. Nevertheless, the Court of Appeals has stated that it will interpret ORS 197.829 to mean what the Supreme Court, in Gage, interpreted Clark to mean. Watson v. Clackamas County, 129 Or App 428, 431-32, 879 P2d 1309, rev den, 320 Or 407 (1994).

1 adjustment will be granted "[i]f there are unusual site
2 factors which preclude an allowed sign from being visible to
3 the **street immediately in front of the site.**" (Emphasis in
4 original.) The PCC defines "site" as "an ownership,"
5 subject to certain exceptions that do not apply here. PCC
6 33.910. The PCC defines "ownership" as

7 "one or more contiguous lots that are owned by the
8 same person, partnership, association, or
9 corporation. Ownership also includes lots that
10 are in common ownership but are separated by a
11 shared right-of-way. * * *" Id.

12 These definitions clearly require that the entire truck
13 stop property be viewed as one site and that North Vancouver
14 Way be viewed as the street immediately in front of the
15 site.⁵ Petitioner is requesting a sign height adjustment
16 from the city not to make the sign located on the leased
17 parcel visible from North Vancouver Way, but to make it
18 visible from points within the site itself.

19 Petitioner's objective, however reasonable, does not
20 render erroneous the adjustment committee's application of
21 PCC 33.286.240(2)(a). Very large sites create unusual
22 challenges for lessees seeking to identify their businesses.
23 However, the city's sign adjustment criteria do not permit
24 the solution petitioner seeks. No unusual site
25 characteristics preclude an allowed sign from being visible

⁵Petitioner urged us during oral argument to consider the leased property as the site and Main Street as the "street immediately in front of the site." The definition of "site" precludes this approach.

1 from North Vancouver Way.⁶ Moreover, since the 40-foot-high
2 sign that petitioners propose would itself not be visible
3 from North Vancouver Way, there is no basis for an
4 adjustment under PCC 33.286.240(2)(a). The city's
5 determination that the request does not satisfy
6 PCC 33.286.240(2)(a) is reasonable and correct.

7 The second and third assignments of error are denied.

8 **FIRST ASSIGNMENT OF ERROR**

9 In its first assignment of error, petitioner makes a
10 general evidentiary challenge to the city's decision.
11 Petitioner disputes certain facts upon which the adjustment
12 committee relied. However, petitioner does not dispute the
13 facts relevant to evaluating a sign adjustment request.
14 Petitioner acknowledges that if a sign were located on the
15 leased property, neither a 25-foot-high sign, which would be
16 allowed without an adjustment, nor the requested 40-foot-
17 high sign would be visible from North Vancouver Way.
18 Petitioner also acknowledges that it already has a sign at
19 the entrance to the truck stop property and that this sign
20 is visible from North Vancouver Way. Finally, petitioner
21 acknowledges that there are many locations on the truck stop
22 property outside the leased parcel where a sign not
23 requiring an adjustment could be placed, if the owner of the

⁶We reject petitioner's contention, made for the first time at oral argument, that an adjustment is required by PCC 33.286.240(2) to achieve the visibility standards of PCC 33.286.240(2)(d) for any sign located at any point on the site.

1 truck stop property were amenable.⁷

2 Since petitioner does not dispute the facts relevant to
3 evaluating a sign adjustment request, petitioner's
4 evidentiary challenge must fail.

5 The first assignment of error is denied.

6 The city's decision is affirmed.

⁷The record makes clear that petitioner's predicament stems from the terms of its lease with the owner of the truck stop property. In its application for the sign adjustment, petitioner states:

"All of the existing signs, advertising and information provided to the drivers on the [truck stop] site have been negotiated in the lease with [the truck stop owner]. While the lease can be re-negotiated, at this time [the truck stop owner] is not willing to allow [petitioner] to negotiate placement of a free standing sign except on the area currently leased by [petitioner]. [The truck stop owner] will not allow placement of any additional logos or directional signs on the [truck stop] property, or provide [petitioner] informational handouts at the Security Booth." Record 42.