

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

OCT 5 10 43 AM '81

JEROME MARGULIS, MARIAN  
SEGUIN and ROGER EDDY,

Petitioners,

v.

THE CITY OF PORTLAND,

Respondent.

LUBA NO. 81-066

FINAL OPINION  
AND ORDER

Appeal from City of Portland.

Paul R. Meyer and Jan D. Sokol, Portland, filed the  
petition for review and argued the cause for Petitioners.

Kathryn S. Beaumont, Portland, filed a brief and argued the  
cause for Respondent.

Bagg, Referee; Reynolds, Chief Referee; Cox, Referee;  
participated in the decision.

Remanded.

10/05/81

You are entitled to judicial review of this Order.  
Judicial review is governed by the provisions of Oregon Laws  
1979, ch 772, sec 6(a).

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1 BAGG, Referee.

2 NATURE OF THE DECISION

3 Petitioners appeal approval of a conditional use and  
4 variance to develop a 1.78 acre parcel on the south side of NW  
5 Cornell Road and NW 30th Avenue within the City of Portland as  
6 a planned unit development. Petitioners ask that we reverse  
7 the decision.

8 STANDING

9 Standing of petitioners is not contested.

10 FACTS

11 In October of 1980, the deed holders and contract purchaser  
12 and developer of the subject property applied for a conditional  
13 use for a planned unit development consisting of eight 2 1/2  
14 story attached units with access to NW Cornell Road, west of  
15 the terminus of NW Fairfax Terrace. The property exists in an  
16 R-7 zone. The R-7 zone is a medium-density, single-family  
17 residential zone, but planned unit developments are allowed as  
18 conditional uses within the R-7 zone. Sec 33.24.250(20). The  
19 petitioners describe the property in part as follows:

20 "A near vertical escarpment exists on the western  
21 portion of the site, with a relatively flat bench  
22 halfway up the embankment on the east. The bench is  
23 defined on the northern and eastern edge by a one to  
one downward slope, and on the southern edge by an  
incline to Fairfax Terrace."

24 The site is further described as being on the "northern face of  
25 a hill that rises from N.W. Cornell Road."

26 A public hearing on the project was held on December 15,

1 1980 before a hearings officer of the City of Portland.  
2 Considerable opposition was expressed by the Hillside  
3 Neighborhood Association. The Association contended that the  
4 project would adversely affect the character of the  
5 neighborhood, would harm property values of adjoining property,  
6 would create a hazardous intersection at the project's access  
7 to Cornell Road and would present serious public health and  
8 safety problems adversely affecting adjoining properties. This  
9 latter concern was about landslide potentials and water  
10 drainage problems.

11 The December 15 hearing resulted in a decision on December  
12 18, 1980 approving the project with conditions. The decision  
13 was approval of a preliminary development plan. A preliminary  
14 development plan approval requires submittal of, among other  
15 things, a description of the site, a statement describing the  
16 PUD's objective and its character and relationship to  
17 surrounding land uses, a statement of the proposed PUD's  
18 conformance with the comprehensive plan, an outline of the  
19 proposed preliminary development plan and a site plan. The  
20 site plan must show physical features of the site, the  
21 approximate location of dwelling units, the proposed traffic  
22 circulation system, the proposed location of public or common  
23 areas, proposed pedestrian circulation system and "proposed  
24 conceptual utility plans." Ibid. The hearings officer must  
25 approve this application if he finds that it is consistent with  
26 the city's comprehensive plan, the standards for conditional

1 uses and that the project can be served by existing or proposed  
2 public facilities. Sections 33.79.010, 33.79.050,  
3 33.79.070(a)(b).<sup>1</sup>

4 The decision of December 18 was appealed to the city  
5 council. The council affirmed the hearings officer and  
6 prepared an order and findings. The council also adopted the  
7 earlier finding of the hearings officer, which included several  
8 conditions. The conditions are:

- 9 "A. Prior to any clearing or grading, a complete  
10 geotechnical investigation including engineering  
11 recommendations, shall be reviewed and approved  
12 by the Bureau of Buildings. The bureau may set  
13 such standards and require such analysis as they  
14 deem appropriate.
- 15 "B. All requirements for fire flow and access shall  
16 be met to the satisfaction of the Fire Marshal.
- 17 "C. The private street shall be reviewed and approved  
18 by the Bureau of Buildings in conjunction with  
19 the City Engineer.
- 20 "D. All requirements of the Multnomah County  
21 Department of Environmental Services regarding  
22 the intersection of the proposed access road and  
23 Cornell Road shall be met.
- 24 "E. Storm water shall be disposed of in a manner  
25 acceptable to Multnomah County Department of  
26 Environmental Services and the City Engineer.
- "F. The proposed declaration of covenants, conditions  
and restrictions shall be reviewed and approved  
by the City Attorney in consultation with the  
Bureau of Planning.
- "G. Pedestrian walkways shall be provided to meet all  
requirements of the Transportation Planning  
Section of the Bureau of Planning."<sup>2</sup> Record  
183-184.

Along with the PUD approval, a variance was granted. The

1 variance was required because the PUD lies within an area of  
2 "special concern." An area of special concern exists around  
3 the perimeter of a PUD adjacent to any residential zone, and is  
4 an area equal in size "to the minimum lot depth in the  
5 underlying zone parallel to such boundary of the PUD \* \* \* \*"  
6 33.79.050(f)(1)(A). In an area of special concern, no building  
7 or structure may exceed 97 feet in any dimension, and no more  
8 than four dwelling units may share common walls or be included  
9 in any common structure. 33.79.050(f)(2). Because the  
10 structure exceeded 97 feet in length and had eight attached  
11 dwellings, the variance was necessary.

12 The applicant must submit a statement of why the variance  
13 is necessary based upon:

14 "size, topography, shape; soil, vegetation and other  
15 natural conditions of the site; the character of the  
16 adjoining neighborhood; access to the PUD; the market  
17 demand for housing units; proposed landscaping or  
18 other means available to mitigate any adverse affects  
upon the adjoining parties; and the architectural  
means available to bring the proposed structures into  
harmony with the neighboring property." Section  
33.79.050(f)(3)(A).

19 The hearings officer may grant the variance if he finds that  
20 the proposal

21 "accommodates the objectives listed above to a great  
22 extent and sets forth an arrangement of the number of  
23 units allowed under Section 33.79.040 which has  
minimized adverse affects upon the adjoining property  
to a substantial extent \* \* \* \*" 33.79.050(f)(3)(B).

24 FIRST ASSIGNMENT OF ERROR

25 The first assignment of error alleges:

1 "The City Council erred in approving the proposed PUD  
2 because the applicant failed to establish that:

3 "a) The project would not have an adverse impact  
4 on the character of the surrounding  
5 neighborhood; and

6 "b) The project would not be detrimental to  
7 neighborhood property values."

8 Petitioners begin by citing to Goals 2 and 3 of the City of  
9 Portland Comprehensive Plan.<sup>3</sup> Goals 2 and 3 generally  
10 require that new developments retain the "character of  
11 established residential neighborhoods" and preserve "the  
12 stability and diversity" of the city's neighborhoods.

13 Additionally, petitioner cites us to Section 33.106.010  
14 providing that a conditional use may be granted if the project  
15 is "not detrimental or injurious to the public health, peace or  
16 safety or to the character and value of the surrounding  
17 properties." Petitioner then cites a portion of the city code  
18 requiring any variance to be supported by a statement  
19 explaining why the variance request is necessary and how the  
20 variance minimizes adverse effects upon adjoining property  
21 values, among other requirements. See Section 33.79.050  
22 (f)(3)(A) quoted above. Petitioner concludes that the  
23 comprehensive plan and the Portland city code together require  
24 a finding that the proposed conditional use and its associated  
25 variance "will improve and protect the city's residential  
26 neighborhoods, preserve and reinforce the stability of the  
city's neighborhoods, preserve the existing landscape features,  
relate harmoniously to adjacent residential zones, not

1 adversely impact the character of the surrounding neighborhoods  
2 and not be detrimental to neighborhood property values."<sup>4</sup>  
3 Petition for Review at 14. Petitioners allege the city made a  
4 conclusory finding that the "project does not have a  
5 detrimental effect on the character and value of the  
6 surrounding properties." In addition, petitioner says there  
7 are simply no facts in the record which support this finding.  
8 Petitioners point to the city's conclusion that there was no  
9 evidence to directly support or refute compliance with city  
10 Comprehensive Plan Goal 3 (regarding the preservation and  
11 reinforcement of the stability and diversity of the city's  
12 neighborhoods) and allege this statement is not sufficient to  
13 show compliance with the city comprehensive plan. The city has  
14 to prove compliance, not rest on the absence of facts showing  
15 non-compliance, according to petitioners.

16 Petitioners then make specific reference to the proposed  
17 price of the units. The price is to be from \$135,000 to  
18 \$162,000 in a neighborhood where the established homes  
19 currently sell from \$200,000 to \$400,000. Petitioner goes on  
20 to allege that site improvements are necessary to meet  
21 landslide and other hazards associated with this property.  
22 These associated costs will reduce the value of the dwelling  
23 units themselves, claim petitioners. Petitioners allege the  
24 disparity in cost is evidence of incompatibility of the  
25 proposed units within the existing neighborhood. In short,  
26 what facts do exist relevant to compatibility show the PUD to

1 be incompatible with the neighborhood in violation of the  
2 comprehensive plan and the conditional use ordinance.

3 The city characterizes the petitioners' argument as one  
4 based on an assumption that detached single-family houses and  
5 attached multi-family dwellings may not be compatibly located  
6 in the same neighborhood. Respondent says that the applicant  
7 carried his burden of proof showing such compatibility, and  
8 petitioners fail to present sufficiently credible evidence to  
9 contradict that of the applicant. Respondent notes that the  
10 city's PUD ordinance specifically lists townhouses, rowhouses  
11 and cluster houses as permitted uses within the PUD. As PUDs  
12 are permitted in single family residential zones (the R-7 zone  
13 in particular), there is nothing, according to respondent, to  
14 support the assertion that two forms of dwelling units are not  
15 compatible. Respondent then notes that the record contains  
16 information showing that the price of the units will be from  
17 \$135,000 to \$162,000, a price that respondent says is in  
18 keeping with the value of homes in the neighborhood.<sup>5</sup>

19 However, respondent says petitioners' assertion that a  
20 great portion of the cost of the individual units must be spent  
21 on construction improvements is not supported by citation to  
22 the record or by any evidence in the record. The city  
23 concludes that the city's findings are supported by substantial  
24 evidence in the record. Respondent characterizes petitioners'  
25 views as to the diminution of their property values as simply  
26 "fears" of petitioners that are unsubstantiated.

1 As mentioned earlier, Section 33.106.010 provides that a  
2 conditional use may be granted if it is found to be not  
3 injurious to, among other things, the character and value of  
4 the surrounding properties. The city's finding is as follows:

5 "The proposed project is desirable to the public  
6 convenience and welfare because it provides additional  
7 housing opportunities within the City of Portland.  
8 Construction of the project at this site will help to  
9 stabilize land which has an identified landslide  
10 potential. The project is not detrimental or  
11 injurious to the public health, peace, or safety  
12 because public facilities [sic] are or will be  
13 adequate to serve the site. The project is accessible  
14 by foot, car, and bus. By concentrating development  
15 on one portion of the site, much of the site will be  
16 preserved in its natural state and existing views will  
17 be protected. The project does not have a detrimental  
18 effect on the character and value of the surrounding  
19 properties. For the above reasons, and the reasons  
20 stated in response to the LCDC Goals and Comprehensive  
21 Plan Goals and Policies, a conditional use is  
22 appropriate on this site." Record 16.

23 This finding is conclusory particularly with respect to the  
24 matter of "character and value" of surrounding properties.  
25 This finding and the city's findings generally do not recite  
26 facts to support compliance with Section 33.106.010. The  
27 hearings officer's report from December of 1980 discusses the  
28 matter of property values only, and a conclusion that "no  
29 documentation has been submitted to indicate that surrounding  
30 property values will be negatively affected by this proposal,"  
31 does not show compliance with the city code. Compliance must  
32 be affirmatively stated, not simply passed over with a comment  
33 to the effect that "no one has showed us we are wrong." See  
34 Scappoose Drainage Dst. v. Columbia Co., 2 Or LUBA 174 (1981);

1 Lee v. Portland, 3 Or LUBA 31 (1981); and Bettis v. Roseburg,  
2 Or LUBA 134 (1980). The city does mention that the cost of  
3 the proposed units will be between \$135,000 and \$162,000, but  
4 the city does not compare this estimated value against existing  
5 neighborhood property values.

6 Similarly, the variance code requires a showing that the  
7 variance will "accommodate" certain objectives. One such  
8 objective is "harmony" of the subject structure with  
9 "neighboring property." See Section 33.79.050(f)(3)(A), (B).  
10 The city has not detailed how it believes the variance achieves  
11 harmony of the proposed structures with property in the  
12 neighborhood. Rather, the city's finding goes primarily to why  
13 a variance is necessary or desirable.

14 "Finding: The minimum side yard requirement for a 2  
15 1/2 stories [sic] structure in an R7 zone is 7 feet.  
16 Section 33.79.050(f)(3) therefore requires a  
17 separation of 14 feet (twice the minimum side yard  
18 requirement in the underlying zone) between 2 clusters  
19 of buildings. If the applicant was held to this  
20 requirement, the project would extend 14 feet onto the  
21 northern face of the plateau and additional trees  
22 would have to be removed. The buildings would have to  
23 be constructed on pilings or in the alternative, would  
24 require extensive fill. The northern face of the  
25 plateau is visible to the neighborhood to the north.  
26 Varying the requirements of 33.79.050(f)(3) for this  
project would preserve trees on the site, make the  
potential addition of fill material unnecessary, and  
allow the project to have less of an impact on  
surrounding properties. A variance from the  
requirements of 33.79.050(f)(3) is, therefore,  
justified.

24 We view the conditional use ordinance (and the variance  
25 code) to require that a comparison be made of the proposed  
26 structures with those in the neighborhood to determine whether

1 the proposed units are compatible. We do not see that the  
2 city's findings make this active comparison.<sup>6</sup> We recognize  
3 the city in this finding has considered the visibility of the  
4 site and has considered means to screen the site. However,  
5 such screening is only one potential quality or factor to  
6 consider when deciding whether a project is compatible with an  
7 existing neighborhood. Another factor is value and another is  
8 architecture. We believe whatever factors the city chooses to  
9 believe should be discussed in the findings.

10 With respect to petitioners' allegation that the city  
11 comprehensive plan was violated, we note only that as the  
12 comprehensive plan may be read to guide land use decisions to  
13 insure the "character" and "stability" of neighborhoods, the  
14 city has failed to make sufficient findings showing the project  
15 meets these goals.<sup>7</sup>

16 Assignment of error no. 1 is sustained.

17 ASSIGNMENT OF ERROR NO. 2

18 The second assignment of error alleges:

19 "The City Council erred in approving the proposed  
20 PUD, subject to conditions which are essential  
21 prerequisites to any approval and which are not solely  
within the power of the applicant to meet."

22 As quoted above, the city included several conditions as  
23 part of its approval of the conditional use and the variance.  
24 Section 33.79.020 specifically allows permit approval with  
25 conditions, but petitioners assert the conditions the city  
26 attached were, in essence, necessary prerequisites to approval

1 of the conditional use. The petitioners attack three of the  
2 conditions. We will relate petitioners' attacks, then give the  
3 city's response, and following the city's response, we will  
4 discuss the merits of the three claims of error.

5 As petitioners' first example, the city council included a  
6 condition requiring a geotechnical investigation along with  
7 engineering recommendations. The city's Bureau of Buildings  
8 was required to "set such standards and require such analysis  
9 as they [sic] deem appropriate." Petitioners argue that "this  
10 type of information" must be before the city prior to approval  
11 of the PUD. Petitioners say that it is "unfair" to approve a  
12 project when the ability of the applicant to comply with the  
13 city's goals regarding natural hazards is as yet undetermined.

14 As another example, the city council attached a condition  
15 requiring placement of a traffic light at the entrance of  
16 Cornell Road should the traffic engineer for the city or  
17 Multnomah County believe the device would contribute to safety  
18 at the intersection. Petitioners say that a "solution to the  
19 hazardous traffic problems should be found (if indeed it is  
20 possible) before approval of the PUD project and before the  
21 granting of a variance." Petition for Review at 20.

22 The petitioners lastly point to the condition requiring  
23 that storm water be disposed of in a manner that is acceptable  
24 to Multnomah County and the City Engineer. Petitioners say  
25 there was no information submitted on how the storm sewers  
26 would be constructed.

1           The city responds generally by stating that the code makes  
2 it quite clear that the preliminary development stage "is  
3 intended to be tentative in nature." Respondent's Brief at  
4 19. Detailed information is only due at the final stage. The  
5 city says its ordinance reflects the intent "that a developer  
6 should not be required to spend an inordinate sum of money on  
7 technical reports to obtain preliminary approval of the PUD  
8 proposal. Respondent's Brief at 20.

9           As to the allegation of deficiency in consideration of the  
10 landslide potential, the city cites us to the record at pages  
11 191-204 at which soil reports appear. The reports conclude  
12 that the project could be developed as long as "accepted  
13 engineering practices" were followed." Respondent's Brief at  
14 22. The hearings officer agreed with this conclusion. Record  
15 181. However, the hearing officer deferred the matter by  
16 saying

17           "As with other landslide-prone sites, the procedure  
18 for assuring safe engineering rests with the Bureau of  
19 Buildings at the time permits are sought, and at that  
time it will be the applicant's burden of proof to  
show that safety can be assured."

20 In the final set of findings issued by the city council, the  
21 city concludes

22           "Because extensive excavation is necessary for the  
23 roadway, however, the actual engineering feasibility  
24 of the project has yet to be established. Conditions  
governing further geotechnical study and procedures  
25 for initiating site work are included in the  
conditional use approval." Record 17.

26 Notwithstanding this "finding," the city argues that it did

1 determine at this initial stage that the development could  
2 proceed, and the detail of precisely what engineering work had  
3 to be done could properly wait for the final development  
4 stage.

5 To support its argument, the city points to its code and  
6 says again that the applicant is only required to submit "a  
7 proposed site plan which shows the existing site conditions  
8 including 'topography, water courses, significant vegetation,  
9 flood plains, unique natural features, and existing storm,  
10 sanitary and water facilities.'" Section 33.79.060(b);  
11 Respondent's Brief at 23. The city says evidence of site  
12 suitability is required only at the final plan approval. In  
13 short, the city in essence argues the ordinance allows sketchy  
14 information to be furnished at the initial development plan,  
15 and final studies need only be submitted at the final approval  
16 stage.

17 As to the traffic conditions, the city says that the city's  
18 deferral of the need for a traffic light to the Multnomah  
19 County Department of Environmental Services does not improperly  
20 defer resolution of traffic problems to some later date. The  
21 city sites to the record showing the City Traffic Engineer, the  
22 Bureau of Planning, Transportation Section and the Multnomah  
23 County Department of Environmental Services to have reviewed  
24 this proposal. All agencies acknowledged that the proposed  
25 intersection was less than optimal, but all concurred that the  
26 traffic generated would not have a "negative impact" on Cornell

1 Road. Respondent's Brief at 24. Respondent concludes by  
2 saying that the City Council is entitled to rely on the advice  
3 of its bureaus.

4 The city responds to the concern over storm water by citing  
5 again the Rittenhouse-Zeman engineering report at page 195 of  
6 the record. The city says that its City Engineer and the  
7 Multnomah County Department of Environmental Services reviewed  
8 the matter of surface water disposal. The Bureau of Street and  
9 Structural Engineering concluded that "storm water detention  
10 will be required to control the rate of discharge to the sewer  
11 and to protect downstream properties from overland flow. A  
12 drainage reserve will be required." Record 210. The findings  
13 approving the conditional use cited this conclusion by the  
14 engineer.

15 The report about geology and soils prepared by  
16 Rittenhouse-Zeman and Associates appearing at pages 191-204 of  
17 the record, and the geologist's report appearing at pages  
18 222-226 of the record may be sufficient to support a conclusion  
19 that the "construction of the buildings and their proposed  
20 location appears feasible." Record 17. However, as we noted  
21 above, the city's findings go on to say that "[b]ecause  
22 extensive excavation is necessary for the roadway, however, the  
23 actual engineering feasibility of the project has yet to be  
24 established. Conditions governing further geotechnical study  
25 and procedures for initiating site work are included in the  
26 conditional use approval." Record 17. (Emphasis added).

1           The city has not, then, found that this project is  
2 "feasible" from an engineering standpoint. Section 33.106.010  
3 requires a finding that a proposed conditional use is "not  
4 detrimental or injurious to \* \* \* public health, peace or  
5 safety \* \* \* ." We recognize that the final engineering  
6 studies and precise plans for the placement of such items as  
7 traffic lights and drainage tiles may wait for the final  
8 development plan much as the precise nature of such facilities  
9 is permitted at the final plat stage in a subdivision  
10 approval. ORS 92.010-92.160. However, as the initial  
11 feasibility of the subdivision must be shown at the preliminary  
12 plat stage, the initial feasibility of the PUD project must be  
13 shown at the preliminary development plan stage. See Van  
14 Volkinburg v. Marion County, 2 Or LUBA 112 (1980) and Atwood v.  
15 Portland, 2 Or LUBA 397 (1981). Persons, including the  
16 applicant, are entitled to know that the project can or can not  
17 reasonably be expected to meet applicable regulations and be  
18 "feasible." The "inordinate expense" the city says might  
19 result from a requirement that all engineering be done at the  
20 preliminary plan stage could well result from too early  
21 approval of a project not known to be feasible.

22           Further, we do not believe the city can claim compliance  
23 with the conditional use ordinance requirements of "public  
24 health, peace or safety" without knowing whether the project to  
25 be feasible from an engineering standpoint.

26           The review of traffic issues was extensive in the record,

1 and we find the city was within its bounds to decide traffic  
2 problems could reasonably be solved with adherence to city  
3 design standards and a possible traffic light. See Record 182,  
4 210, 211.

5 Also, we believe that the report of the engineer is  
6 sufficient evidence for the city to conclude that the storm  
7 sewer issue is resolvable. The city's conclusion that storm  
8 sewers are to be handled in a manner satisfactory to the City  
9 Engineer and Multnomah County is sufficient given the factual  
10 basis present in the record (the report of Rittenhouse and the  
11 City Engineer).

12 The second assignment of error is sustained insofar as it  
13 alleges the city's approval to be premature and to improperly  
14 permit review of the engineering feasibility of the project to  
15 wait until the final development plan review stage.

16 The decision of the city is remanded for proceedings not  
17 inconsistent with this opinion.

18 Remanded.

1 FOOTNOTES

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4 After this preliminary approval, a final plan must be  
5 submitted. The final development plan is due within three  
6 years after approval of the preliminary development plan and  
7 must include, among other things, a detailed design plan and an  
8 engineer's, geologist's or soil engineer's report. This plan  
9 is reviewed by the planning director. No public hearing is  
10 involved unless the applicant appeals the Planning Director's  
11 approval or lack thereof to the city hearings officer. Section  
12 33.79.070(d).

13 2

14 The city council added an additional condition requiring a  
15 traffic light at the intersection of Cornell Road and access to  
16 the site should any question by the city engineer arise as to  
17 the safety of access.

18 "To assure a safe intersection a traffic control  
19 device may be necessary. The City Council authorized  
20 the City Engineer and Traffic Engineer to acquire a  
21 traffic control device at no cost to the public if it  
22 will contribute to traffic and pedestrian safety."

23 3

24 Petitioner here alleges that Goal 2 of the City of Portland  
25 Comprehensive Plan requires any project must "[m]aintain  
26 Portland's roll as the major regional employment, population  
and cultural center through public policies that encourage  
expanded opportunity for housing and jobs while retaining the  
character of established residential neighborhoods and business  
centers." Goal 3 of the plan requires that a project must  
"[p]reserve and reinforce the stability and diversity of the  
city's neighborhoods while allowing free increased density in  
order to attract and retain long-term residences and businesses  
and assure the city's residential quality and economic  
vitality."

27 4

28 We view petitioners to be attacking the conditional use  
29 permit and the variance. The criteria for a conditional use  
30 grant and a variance are similar, at least insofar as both must  
31 be in harmony with the surrounding properties. See  
32 33.79.050(f)(1)(B) and 33.79.050(f)(3)(A).

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2       Petitioners and Respondent use these figures in arguing the  
3 value and comparative value of the proposed structure and the  
4 existing neighborhood. These figures were presented by an  
5 attorney; and, at the request of the Board, the matter of the  
6 competency of evidence presented by attorneys for an applicant  
7 was briefed. We do not find it necessary to reach any  
8 conclusions concerning whether or not an advocate may testify  
9 for an applicant and if so, what the permissible scope of his  
10 testimony may be.

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8       Our conclusion is not necessarily a conclusion that there  
9 are insufficient facts in the record from which the city could  
10 make such a comparison.

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11       Were the city's order to discuss the requirements of the  
12 conditional use and variance ordinance more completely, then  
13 presumably the comprehensive plan goal requirements would be  
14 achieved. In other words, the plan's goals would be met  
15 through compliance with the implementing ordinances.