

BEFORE THE LAND USE BOARD OF APPEALS JUN 7 11 06 AM '82  
OF THE STATE OF OREGON

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WILLIAM J. TICHY, )  
 )  
 Petitioner, ) LUBA NO. 82-001  
 )  
 v. ) FINAL OPINION  
 ) AND ORDER  
 )  
 PORTLAND CITY COUNCIL, )  
 )  
 Respondent. )

Appeal from City of Portland.

William J. Tichy, Portland, filed a petition for review and argued the cause on his own behalf.

Ruth Spetter, City Attorney, filed a brief and argued the cause for Respondent. With her on the brief was Christopher P. Thomas, City Attorney.

BAGG, Referee; REYNOLDS, Chief Referee, COX, Referee; participated in the decision.

AFFIRMED 6/07/82

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).

1 BAGG, Referee.

2 NATURE OF THE DECISION

3 Petitioner appeals the grant of a zone and comprehensive  
4 plan designation for a lot on the east side of NE 68th Avenue  
5 in the City of Portland. The granted change was from R5 (High  
6 Density Single-Family) to R2.5. The R2.5 designation is also a  
7 high density single-family designation, but attached  
8 residential development is allowed in the R2.5 zone. The  
9 specific request was to develop a rowhouse on the property.<sup>1</sup>

10 STANDING

11 The city does not contest standing of Petitioner Bill  
12 Tichy. The city does object to standing of "neighborhood" in  
13 that petitioner does not identify the "neighborhood" as a  
14 neighborhood association, and no neighborhood association filed  
15 a notice of intent to appeal or a notice of intent to  
16 participate.

17 Oregon Laws 1979, ch 772, sec 4(6)(a), as amended by Oregon  
18 Laws 1981, ch 748, provides that the petitioner must include  
19 within his petition "the facts that establish that the  
20 petitioner has standing." The petitioner has not included any  
21 such facts showing that "neighborhood" has standing. In  
22 addition, there is no explanation of what "neighborhood" is.  
23 That is, the petition does not reveal whether "neighborhood" is  
24 an organization or association that would itself be entitled to  
25 standing, or an organization that is attempting to establish  
26 representational standing through Petitioner Tichy. See 1000

1 Friends v. Multnomah County, 39 Or 917, 593 P2d 1171 (1979);  
2 1000 Friends v Douglas County, 1 Or LUBA 42, 45 (1980). Also,  
3 our record does not reveal any request for intervention or  
4 participation from a neighborhood association or an entity  
5 calling itself "neighborhood."

6 We conclude that sufficient facts have been alleged in the  
7 petition for review to give standing to Petitioner William  
8 Tichy only.

9 FACTS

10 The request for a change in zoning and comprehensive plan  
11 designation from R5 to R2.5 was heard by a hearings officer for  
12 the City of Portland on September 28, 1981. Petitioner was  
13 present at that hearing and gave testimony. Included in  
14 testimony at the hearing was evidence that there is a duplex  
15 directly adjacent to the site, that property directly south of  
16 the site is already zoned R2.5 and that the west side of NE  
17 68th on the block across from the subject property bears a  
18 comprehensive plan designation of R2.5. The record also shows  
19 that the Montevilla and SE Uplift Committees (neighborhood  
20 associations) gave testimony in favor of the proposal.

21 The report of the hearings officer was issued on October 2,  
22 1981. His favorable report included a condition of  
23 neighborhood approval of the final design of the proposed  
24 duplex. The condition was apparently attached in response to  
25 neighborhood concerns about compatibility of the project with  
26 surrounding properties.<sup>2</sup> The approval included findings

1 covering what the hearings officer believed to be each  
2 applicable Portland Comprehensive Plan policy. The hearings  
3 officer noted "heavy investment of R2.5 in the neighborhood."  
4 (Record 50)

5 The hearings officer also found that the city's housing  
6 goals were "achieved" by adding housing to this vacant lot.  
7 The hearings officer's only concern about the proposal centered  
8 on traffic. The hearings officer stated

9 "if full development of maximum comprehensive plan  
10 densities were increased, on-street parking problems  
will cause circulation problems \* \* \* \*" (Record 50)

11 The hearings officer noted that the comprehensive plan  
12 "strongly desired" the R2.5 designation for this immediate  
13 area. The hearings officer went on to say

14 "the circumstances of pre-existing sound, detached  
15 single-family development, will delay the  
16 implementation of that goal for some time except for  
17 sites such as this one which are vacant. Because,  
18 therefore, the goal indicated by the Plan Map is for  
additional R2.5 and because this is one of the few  
available sites upon which to begin to realize it, it  
is the Hearings Officer's conclusion that both Plan  
and its Map go far to dictate the extension of the  
R2.5 designation to this site.

19 "The argument to do so would derogate from the  
20 character of the single-family detached residences is  
21 hard for the hearings officer to accept: That  
22 argument would be just as applicable, but designedly  
precluded by Plan and Code provisions, should it be  
directed at any one of the houses directly across the  
street.

23 "In short, and in summary, it appears to the Hearings  
24 Officer that it would be a mistake to refuse to allow  
25 this first step toward implementation of the  
26 Comprehensive Plan direction on almost the only site  
which allows such implementation to occur." (Record  
52).

1           Petitioner appealed the hearings officer's decision on  
2 October 10, 1981, and the city council heard his appeal on  
3 December 9, 1981. On that same date, the council rejected the  
4 appeal and adopted the decision of the hearings officer.

5           ASSIGNMENTS OF ERROR

6           Petitioner makes thirteen claims of error which are  
7 entitled "Summary of Arguments." The first four concern the  
8 city comprehensive plan, and the next five allege violation of  
9 city ordinances. Petitioner then makes four concluding  
10 assignments of error that do not lend themselves to  
11 classification.<sup>3</sup>

12           In each of petitioner's assignments of error, we note the  
13 petitioner appears to be asking this Board to review  
14 petitioner's evidence and decide the case as if the Board were  
15 sitting in the council chambers. To the extent petitioner may  
16 be asking us to perform this function, we are unable to  
17 comply. Oregon Laws 1979, ch 772, sec 4(7), as amended by  
18 Oregon Laws 1981, ch 748, provides that our review of a land  
19 use decision "shall be confined to the record," and we are  
20 "bound by any findings of fact of the local government \* \* \*  
21 for which there is substantial evidence in the whole record."  
22 We are not allowed to substitute our judgment as to any matter  
23 of fact for that of the city. Our review is confined to an  
24 inquiry into whether the city met applicable legal criteria.  
25 We note that the petitioner has not alleged that the city's  
26

1 decision is not supported by substantial evidence in the  
2 record, and it appears petitioner simply disagrees with the  
3 city's decision.

4 Violation of City Comprehensive Plan Goals

5 "URBAN DEVELOPMENT

6 "Goal 2: Maintain Portland's role as the major  
7 regional employment, population and cultural center  
8 through public policies and encourage expanded  
9 opportunity for housing and jobs, while retaining the  
10 character of established residential neighborhoods and  
11 business centers." Comprehensive Plan Goal 2.

12 Petitioner first complains that this goal is violated  
13 because the rowhouse development differs from existing  
14 single-family development in the neighborhood. Petitioner  
15 claims that this deviation encourages "premature degeneration  
16 of existing residences, incompatible building styles, increased  
17 parking and traffic problems." Petitioner does not offer  
18 examples of these errors or otherwise explain this allegation.

19 The hearings officer recognized that Goal 2 included  
20 several elements and that the request could be considered  
21 partially supportive and partially conflicting with the goal.

22 "The proposal would supply additional housing (one  
23 unit) over the existing zoning (Policies 2.9 and  
24 2.18). Rowhouses differ from the existing  
25 single-family neighborhood to the north and west of  
26 the site and thus, staff argues, will not retain the  
existing character of residences to the north.  
Therefore, the request can be argued to be partially  
supportive of and conflicting with the Urban  
Development Goal and associated Policies."

27 The hearings officer resolved this conflict by stressing  
28 that the R2.5 zone is "a 'one-family residential zone' and is

1 labeled such in the zoning code." Record 50. The hearings  
2 officer noted that the R2.5 zone differs from the R5 zone in  
3 that the lots are smaller and the housing units may be  
4 attached. He found that in this particular neighborhood, and  
5 other neighborhoods throughout the city, R2.5 designations are  
6 established "cheek to jowl with R5 designations." Record 50.  
7 The hearings officer found that this particular proposal seemed  
8 well suited to increasing density by adding housing to this  
9 vacant lot "in accordance with a map designation intended by  
10 the plan to be a significant one in this neighborhood." Record  
11 50. He added that the R2.5 designation "is strongly desired by  
12 the comprehensive plan for this immediate area." Record 52.  
13 While the hearings officer noted that pre-existing detached  
14 single-family residences will "delay the implementation of that  
15 goal" except for vacant sites such as the one at issue here, he  
16 concluded that because the goal in the plan is for an R2.5  
17 designation and because this site is one of few available for  
18 such a designation, "the plan and its map go far to dictate the  
19 extension of the R2.5 designation to this site." Record 52.

20 As to the issue of the degeneration of the neighborhood,  
21 the hearings officer notes that there is concern by the  
22 neighborhood association (we presume he means the Montavilla  
23 Neighborhood Association and the SE Uplift Board) about the  
24 appearance of the structures. The hearings officer therefore  
25 attached a condition which requires neighborhood associations'  
26 assent to the design of whatever structure is placed on the

1 property.

2 The hearings officer's report recognizes possible future  
3 traffic problems. He nonetheless found that the request was  
4 supportive of the transportation goal after first noting that  
5 access is available. The hearings officer quotes the response  
6 of the traffic engineer that services are adequate "but that if  
7 there are additional rezonings and developments in the area,  
8 there may be concerns, '\* \* \* this is an area of narrow  
9 roadways. A large increase in on-street parking could cause  
10 circulation problems.'" The hearings officer does not further  
11 discuss this potential traffic problem, except to underline  
12 that there will be traffic circulation problems.

13 "The Traffic Engineer states that current levels of  
14 road service are adequate to support the proposed  
15 development, but if full development of maximum  
16 comprehensive plan densities were increased, on-street  
parking problems will cause circulation problems (see  
Section II.,D., Agency Responses). (Emphasis in  
original).

17 We can only understand this inclusion in the hearings officer's  
18 order as a flag to the city. The hearings officer did not find  
19 the plan violated, and appeared to rely on the traffic engineer  
20 for his conclusion that the plan policy about traffic was met.  
21 We believe findings are needed addressing how the city proposes  
22 to deal with what it recognizes as a future traffic problem.  
23 However, the city has concluded that this particular proposal  
24 meets city traffic criteria, and we can not state that the city  
25 is wrong without an assertion by the petitioner that the city's  
26 finding is without substantial evidence or is somehow legally



1 incorrect.

2 We conclude that the petitioner takes as axiom his view  
3 that an attached dwelling, even in single ownership is  
4 detrimental to "single-family" neighborhoods. As noted in the  
5 findings, however, the hearings officer was sensitive to  
6 concerns about the way the structure would look and required a  
7 condition of review of the final plans. The hearings officer  
8 specifically found that the proposed use would meet city goal 2  
9 in that it provided an expanded opportunity for housing  
10 density. The petitioner does not seem to challenge the  
11 hearings officer's analysis as to what the goal means, and the  
12 petitioner does not challenge the hearings officer's conclusion  
13 by claiming there are insufficient facts in the record in  
14 support of the conclusion. We believe the petitioner must do  
15 more than simply say that the goal was broken where the city  
16 has articulated what it believes its policies mean and how it  
17 is that a particular proposal meets the policies, see Lee v.  
18 City of Portland, 3 Or LUBA 31 (1981).

19 "NEIGHBORHOODS

20 "Goal 3: Preserve and reinforce the stability and  
21 diversity of the city's neighborhoods while allowing  
22 for increased density in order to attract and retain  
23 long-term residents and businesses and insure the  
24 city's residential quality and economic vitality."  
25 Comprehensive Plan Goal 3.

26 Petitioner alleges Goal 3 is violated because the  
comprehensive plan change will adversely affect the  
neighborhood. Petitioner cites single-family residences to the

1 northeast and west in support of this proposition. Petitioner  
2 also states that the lots have "stable housing stock" and that  
3 rezoning of these properties to allow rowhouse development is  
4 not likely.

5 The hearings officer again recognizes the argument of the  
6 planning staff and two neighborhood residents that expansion of  
7 a R2.5 zone to this lot will change the neighborhood and depart  
8 from the area's existing single-family residential character.  
9 The hearings officer, though not stating so directly, appears  
10 to disagree with the conclusion that the neighborhood is  
11 characterized by single-family residences. Under a "comment"  
12 to Goal 2 and 3, the hearings officer states:

13 "This single lot addition appears compatible and even  
14 in conformity with the land use map aim for the  
15 neighborhood. In fact, it can be argued to represent  
16 one of the few opportunities in the neighborhood to  
17 begin implementing the process of land use envisioned  
18 by the heavy investment of R2.5 in the neighborhood."

19 The hearings officer apparently felt it important to give  
20 some greater emphasis to increasing housing density and to  
21 implementing what he finds to be a comprehensive plan strategy  
22 of extending R2.5 zoning to this general area. We note that  
23 the hearings officer found the city's housing goal, Goal 4, to  
24 be particularly applicable in this case. The hearings officer,  
25 then, not only considered Goal 2, urban development and Goal 3,  
26 neighborhoods, but also Goal 4 and concluded, as we read his  
report, that the three goals are together served by this  
particular application.<sup>4</sup>

1 Respondent City echoes the hearings officer's report and  
2 reminds the Board that R2.5 zoning exists to the south, and all  
3 of the property to the west bears an R2.5 comprehensive plan  
4 designation. Respondent City argues that the development is  
5 for a single-family use, simply with a higher density, which is  
6 in keeping with other single-family uses in the immediate area.

7 Again, petitioner's arguments suggest that he is in simple  
8 disagreement with the city's decision. Petitioner does not  
9 appear to argue that the hearings officer's balancing of the  
10 various goals was in error or that any of the findings made by  
11 the hearings officer are insufficient or not based upon  
12 substantial evidence in the record. Petitioner does argue that  
13 "the lots have stable housing stock so that eminent rezoning  
14 and development of these properties with rowhouses is  
15 unlikely," but we do not understand how this view affects the  
16 city's decision. It has not been suggested by anyone that  
17 existing single-family residences would be torn down and  
18 converted to rowhouses or duplexes, only that the comprehensive  
19 plan appears to favor R2.5 zoning for this area. The hearings  
20 officer and the city have only concluded that this development  
21 proposal is a means of implementing a desired density.

22 We are unable to find a violation of applicable legal  
23 standards in the city's discussion under Goal 3.

24 "ENVIRONMENT

25 "Goal 8: Maintain and improve the quality of  
26 Portland's air, water and open space resources and  
protect neighborhoods and business centers from

1 detrimental noise pollution." Comprehensive Plan Goal  
2 8.

3 Petitioner alleges this comprehensive plan goal is violated  
4 because before the developer purchased the property, children  
5 were allowed to play on this empty lot. It was known as "North  
6 Mount Tabor Park," and now it is fenced off and children may  
7 not play there any longer. Petitioner alleges "a lack of green  
8 space in this area."

9 The hearings officer's comment as to Goal 8 is simply that

10 "Environment: The request will not significantly  
11 impact the air or water resources, no designated open  
12 space is affected, and the proposed use will not  
13 increase noise levels in the area; therefore, the  
14 request is not in conflict with this Goal and related  
15 Policies."

16 From the finding, it is clear that the hearings officer did not  
17 find this vacant lot in any city inventory of open space  
18 resources. Therefore, the city did not treat this vacant lot  
19 as a park or open space resource within the meaning of its  
20 plan, and petitioner does not point to any portion of the plan  
21 or any other city ordinance that could establish that a vacant  
22 lot is considered an open space resource.

#### 23 "CITIZEN INVOLVEMENT"

24 "Goal 9: Improve the method of citizen involvement in  
25 the on-going land use decision-making process and  
26 provide opportunities for citizen participation in the  
27 implementation, review, and amendment of the adopted  
28 Comprehensive Plan." Comprehensive Plan Goal 9.

29 Petitioner alleges a violation of the city's citizen  
30 involvement goal in that the city refused to recognize or  
31 consider the complaints of the neighborhood. Petitioner claims

1 the Montavilla Community Association misrepresented the  
2 petitioner and the neighborhood generally.

3 The city states the petitioner is located in the  
4 C.E.N.T.E.R. Neighborhood Association and not the Montavilla  
5 Association. Respondent states petitioner's association was  
6 notified but chose not to participate in the proceeding.  
7 Respondent also states that petitioner has been involved in  
8 each step of the procedure, and has made his views known to the  
9 hearings officer and the city council.

10 We do not believe there is any violation of Goal 9. The  
11 record shows petitioner had ample opportunity to present his  
12 views to the hearings officer and the city council. Petitioner  
13 simply appears to be angry that the city did not agree with his  
14 views.

15 Violations of City Code

16 In the next five complaints, the petitioner asserts that  
17 actions of the Montavilla Neighborhood Association violated  
18 parts of the City Code Chapter 3.96. Chapter 3.96 controls  
19 neighborhood associations. The purpose of neighborhood  
20 associations is stated below.

21 "3.96.010. Purpose. The purpose of this chapter is  
22 to provide standards and procedures whereby organized  
23 groups of citizens seeking to communicate with city  
24 officials and city bureaus on matters concerning  
25 neighborhood livability may obtain assistance from  
26 staff in so communicating and to provide certain  
minimum standards for said organizations in order to  
insure the broadest possible means for citizen's  
organizations to communicate with city government may  
exist.

1 "Nothing in this chapter shall limit the right of any  
2 person or group to participate directly in the  
3 decision-making processes of the city council or any  
4 city agency."

5 There then follows a list of duties and administrative  
6 provisions including provisions for notice to neighborhood  
7 associations of planning matters, a requirement that  
8 neighborhood associations maintain records and other  
9 directives. At section 3.96.080, there is also a procedure in  
10 case a neighborhood association violates minimum standards.  
11 The remedy is for the complaining party to request that the  
12 office of neighborhood associations suspend assistance to the  
13 offending neighborhood association. Resolution of conflict is  
14 provided by mediation or "a decision" by the city commissioner  
15 in charge if mediation fails.

16 Petitioner alleges that Montavilla Neighborhood Association  
17 did not make an effort to determine the attitudes of the  
18 neighbors on the rezone, in violation of 3.96.030. Petitioner  
19 claims no satisfaction from city officials in trying to remedy  
20 grievances existing against the Montavilla Association.  
21 Petitioner also claims that Montavilla's records are incomplete  
22 or non-existent under 3.96.040, and that there was no effort by  
23 the association to determine the priority needs of the  
24 neighborhood. Petitioner further argues that the notices  
25 provided before the Association's Monday night meetings were  
26 insufficient. Petitioner cites 3.96.050, the provision  
requiring neighborhood associations to "undertake to notify

1 affected persons" of planning efforts.

2       Petitioner asserts a violation of 3.96.060 in that the city  
3 did not notify petitioner as a representative of the  
4 neighborhood. Petitioner argues that he meets the criteria of  
5 a neighborhood association, but does not allege specifically  
6 how he so meets the criteria or whether he has, in fact,  
7 requested recognition by the city as a neighborhood  
8 association.<sup>5</sup> Petitioner also alleges that the notice given  
9 by the city was inadequate because the address given for the  
10 meeting to consider the matter was a construction site without  
11 adequate facilities.

12       Respondent states that the petitioner is not within the  
13 Montavilla Neighborhood Association, and the Montavilla  
14 Neighborhood Association owed petitioners no special treatment  
15 and could not violate any of his rights. Respondent reminds us  
16 the petitioner did appear and present his views.

17       Petitioner has not asserted that the recommendation or  
18 opinion of the Montavilla Community Association was so critical  
19 to the outcome of the decision on appeal that the conduct of  
20 the association itself should be reviewed. In any event, we do  
21 not believe that petitioner's arguments with the Montavilla  
22 Community Association are even relevant to this proceeding. We  
23 note that the hearings officer's mention of the association is  
24 limited, and the mention that is made is of the association's  
25 concerns about the design of the development. In view of  
26 petitioner's fear over the impact of the rowhouse on the

1 neighborhood, we believe the attention given the association by  
2 the hearings officer works more to petitioner's benefit than to  
3 his detriment.

4 As to petitioner's assertion of error on the part of the  
5 city in failing to recognize petitioner as representing a  
6 neighborhood association, we only note that there is no  
7 evidence in the record to suggest that the petitioner has even  
8 made application to the city to be recognized as a  
9 representative of a neighborhood association or that if granted  
10 recognition as an association, petitioner would be entitled to  
11 comment on this proposal. We, therefore, must reject  
12 petitioner's concerns regarding City Code Chapter 3.96.

13 Other Assignments of Error

14 "History and Future Quality of the Neighborhood"

15 Under this heading, petitioner argues against the city on  
16 the basis of what petitioner recites as the history of the  
17 property. This history is not included in the record, but is  
18 included in petitioner's petition for review. In summary,  
19 petitioner argues that it is the single-family neighborhood  
20 that has kept Portland livable. Petitioner argues that a  
21 review of the hearings officer's report would also show that a  
22 high-rise apartment complex would meet all of the goals as  
23 interpreted by the hearings officer.

24 Respondent notes that the references made in petitioner's  
25 argument are to documents not in the record. Respondent claims  
26 petitioner's use of the documents amounts to a request to make



1 LUBA an original decisionmaker in this case. Respondent argues  
2 LUBA has no such function, and if petitioner wished to argue  
3 these issues, he should have raised them before the city.

4 We agree with respondent that the proper time to raise  
5 evidence about a proposed development is before the local  
6 governing body. It is not appropriate for the Land Use Board  
7 of Appeals to consider evidence that was not placed before the  
8 city. See Oregon Laws 1979, ch 772, sec 4(7), as amended by  
9 Oregon Laws 1981, ch 748.

10 "City Assistance on Appeal"

11 Under this heading, petitioner lists some of his contacts  
12 with the city during the pendency of the matter before the  
13 hearings officer and the city council. Petitioner includes  
14 within his list of events what we understand to be a complaint  
15 that the staff presented both sides of the issue to the  
16 hearings officer, not just the staff's recommendation.

17 Petitioner concludes with the following:

18 "I guess what amounted to my stumbling from  
19 bureaucracy [sic] was this; If I knew what questions to  
20 ask of the right person I would get the answer to that  
21 question only. I found myself coming back time and  
22 time again to get a complete procedure or answer.  
23 What fair consideration can the average untrained  
24 citizen expect? I started out with a single page  
25 concerning a zone change and now have a pile of  
26 information that is burying me. Should a private  
27 citizen bear the burden of proof to keep his  
28 neighborhood liveable and desirable?"

29 Respondent states that the city staff is responsible to  
30 inform the council of both sides of a land use controversy, and  
31 a land use appeal will necessarily include many documents.

1 Respondent understands petitioner's frustration, but states  
2 there is no basis in the city's conduct for reversing the  
3 decision.

4 We agree with respondent that petitioner has not stated  
5 reasons for reversing or remanding the city's decision. We  
6 appreciate the petitioner was dealing with several different  
7 individuals during the pendency of this matter, and the issues  
8 and documents concerning the matter were many and may have been  
9 complicated. Petitioner has stated what may be a valid cause  
10 for his annoyance, but he has not stated a claim for reversal  
11 of the city's decision. See Oregon Laws 1979, ch 772, sec  
12 5(4)(a)(B) as amended by Oregon Laws L981, ch 748.

13 "Comp Plan Revision"

14 Under this heading, petitioner complains he was told by the  
15 hearings officer that it was almost impossible to down-zone  
16 anything in the comprehensive plan. Petitioner states he was  
17 told by a city planner that a request for down-zoning would  
18 have a "snowballs chance in Hell." Petitioner seems to be  
19 saying the city is lopsided in favor of up-zoning property.<sup>6</sup>

20 Respondent states that petitioner has raised an argument  
21 which does not relate to the land use controversy at issue.  
22 Respondent says petitioner may request a down-zoning, but his  
23 burden is heavy.

24 We do not believe petitioner's concerns are about the  
25 comprehensive plan and zoning amendment at issue. Petitioner's  
26 views are more appropriately expressed to the city as a

1 legislative body. If petitioner believes the city's ordinance  
2 is lopsided, he may make his views known to the city council.

3 "Montavilla Neighborhood Violations of the Bylaws"

4 Petitioner says nothing about this subheading except to  
5 state that he is prepared to answer questions during the  
6 hearing before this Board. Respondent correctly notes that  
7 allegations without specification are not grounds for reversal,  
8 citing Gulf Holding v. McEachon, 39 Or App 675, 593 P2d 1202  
9 (1979).

10 This Board recognizes petitioner's frustrations with a  
11 decision that petitioner believes was wrong and violative of  
12 what petitioner understands to be the relevant comprehensive  
13 plan and city ordinance provisions. However, petitioner has  
14 been unable to state with specificity how it is that the city's  
15 actions have violated applicable legal criteria. Petitioner  
16 has neither asserted that the city's findings were unsupported  
17 by substantial evidence in the record, nor that the city has  
18 engaged in a procedure which has prejudiced substantial rights  
19 of petitioner. See Oregon Laws 1979, ch 772, sec 5(4)(a)(B),  
20 as amended by Oregon Laws 1981, ch 748. The Board recognizes  
21 the preparation of evidence and exhibits to present to a local  
22 governing body is a heavy burden to be borne by anyone seeking  
23 to oppose a land use action. Similarly, the applicant for a  
24 land use permit or for a change in a local government  
25 comprehensive plan or ordinance has the heavy burden of proving  
26 the change meets all applicable criteria. Sometimes these

1 matters become so complicated that the assistance of an  
2 attorney well versed in land use matters may seem a necessity.

3 Our review of this case shows a city grant of a  
4 comprehensive plan and zone change which appears to meet  
5 applicable city criteria. We can not overturn a decision which  
6 on its face appears to meet applicable criteria without  
7 specific and well supported challenges. We believe petitioner  
8 has every right to claim the city's decision was inappropriate,  
9 but we decline to find that it was illegal herein.

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FOOTNOTES

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We understand the rowhouse to be a two unit structure with each unit in individual ownership.

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The hearings officer states

"it appears that a number of immediate neighbors, the neighborhood association, and the Southeast Uplift Board all concur in the approval of this application. For the reason that both the neighborhood association and the Board are strongly concerned about appearance of the structures, and because of the Hearings Officer's conception that design of the structures is crucial to their integration into the neighborhood, it will be the intention here to impose a condition which requires the neighborhood association's assent to the structure's design." (Record 52)

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In support of petitioner's assignments of error, petitioner has made many attachments to his petition for review. In a conference call held on March 30, 1982, to resolve issues regarding the record, petitioner stated that the items attached to his petition were not, in fact, placed before the city council when it considered his appeal. Petitioner does not dispute that the record furnished by the city included all of the materials in front of the city council during the course of its consideration of the appeal. We appreciate petitioner's concern that the items attached to the petition for review are relevant and important, but as they were not placed before the city council by the city staff or pursuant to a request by petitioner, we will not consider them. Sane Orderly Development v. Douglas County, 2 Or LUBA 196 (1981).

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Goal 4 states:

"Housing: Provide for a diversity in the type, density and location of housing within the city consistent with the adopted City Housing Policy in order to provide an adequate supply of safe, sanitary housing at price and rent levels appropriate to the varied financial capabilities of city residents."

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Sec 3.96.020 of the city code defines "neighborhood association" as a "group of people organized for the purpose of considering and acting upon any of a broad range of issues affecting the livability of their neighborhood." (Emphasis added.)

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6  
Petitioner adds a complaint regarding the Montavilla Neighborhood Association that concerns events after the city's decision, and we will, therefore, not consider it.