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June 27, 2012

Ms. Yolanda Rodriguez
Director
New Orleans City Planning Commission
1340 Poydras Street, Ste. 900
New Orleans, LA 70112

Re: Neighborhood Participation Program for Land Use Actions (May 22,
2012 Draft)

Dear Ms. Rodriguez:

As you know, BGR has focused on neighborhood participation issues for a number of years, recommending an enhanced participation process as part of a fairer, more rational and more consistent land use decision-making process.

BGR strongly supported – and in fact helped to draft – the language that now appears in the charter requiring that the city create “a system for organized and effective neighborhood participation in land use decisions.” According to the charter, the system must provide “for timely notification to a neighborhood of any proposed Land Use Action affecting the neighborhood” and “provide the opportunity for meaningful neighborhood review of and comment on such proposals.”

To its credit, the draft Neighborhood Participation Program for Land Use Actions (the Draft Program) attempts to address the charter mandates, and it does so in an economical, straightforward manner. It identifies two key areas of concern: the need to engage citizens at the beginning of the decision-making process, rather than the end; and the need for a mechanism to ensure a response to neighborhood concerns. It also recognizes that technology has changed the way citizens interact and seek information, and embraces new technology as a means of providing more comprehensive information. The Draft Program represents a step forward.

However, the Draft Program in certain aspects leaves something to be desired. Some of its provisions create the danger that the program will fall short of the charter’s mandates.

Key Elements of the Draft Program

The Draft Program contains several key elements designed to improve participation. These include:

- Using technology to improve public notice and information sharing on land use actions.
- Informing citizens about administrative decisions. (Currently, administrative decisions, such as those made by the director of Safety & Permits, are not announced, and there is only a 45-day window for citizens to appeal such decisions. As a result, many such decisions are approved without the knowledge of neighbors who might be directly affected by them.)
- Requiring applicants to develop and implement a Project Neighborhood Participation Plan for early notification and community engagement.
- Providing staff reports on certain proposed land use actions earlier to allow citizens adequate time to discuss and respond to their contents.

BGR's concerns are limited to the last two elements.

Project Neighborhood Participation Plans

The Draft Program would require applicants, other than the city administration and the City Council, to develop Project Neighborhood Participation Plans for proposed land use actions. Such a plan would be developed, approved by City Planning Commission staff and implemented prior to the submission of an application. It would have to include the following:

- A brief description of the proposed project.
- A map showing the location and a contact list for notifying “adjacent property owners, interested parties and registered associations within a radius of 300 feet of the petitioned site.” The applicant must also send notice to “the occupants of non-owner-occupied buildings.”
- A description of how those parties will be contacted, including public notification techniques.
- A description of how those parties will be informed of changes to the proposal.
- A description of how those affected by the proposal will be provided an opportunity to discuss issues on an ongoing basis or issues that arise suddenly.
- Contact information to be used for concerned parties to obtain information or set up a meeting.

The applicant would be required to respond to inquiries, offer to set up a meeting within a reasonable time frame, and hold a meeting if requested.

After conducting the outreach process, the applicant would submit a neighborhood participation report along with his application. The report would contain the following:

- A list of neighborhood associations and other groups that were notified.

- The total number of individuals notified and the number of participants in the process.
- The concerns expressed by participants.
- How each concern was addressed, or why certain concerns will not be addressed.
- How the proposal was revised to address public concerns.
- Copies of any documentation received in support of or against the proposed project, and any other materials pertaining to the notification process and meeting.
- If a meeting was not held, the report should explain why not.

In effect, the Draft Program places the neighborhood participation process in the hands of the applicant. This approach is fraught with hazard. To begin with, the applicant could misrepresent what occurred in the process, understating or cherry-picking the concerns of neighbors, and overstating the extent to which neighbors agreed to proposed solutions. City Planning Commission staff has stated that if neighbors were vigilant in reviewing the applicant's version of the dialogue, they could challenge any misrepresentations. However, this approach creates a new and unnecessary opportunity for conflict over a development proposal.

Another problem relates to the information that the applicant provides at the outset. The Project Neighborhood Participation Plan process would occur prior to the submission of an application, and the process does not require the applicant to submit for public review anything more than "a brief description of the proposed project." As a result, there is no guarantee that the applicant would accurately and thoroughly represent the project for which he actually intends to apply.

Finally, the notification area of 300 feet might not always be appropriate. For instance, while a proposal for a barber shop might affect neighbors only within a small area, a proposal for a supermarket or a nightclub would affect neighbors at distances greater than 300 feet because of traffic or other impacts.

The Draft Program should be changed to address these problems. While it is appropriate to place the burden of soliciting neighborhood comments on the applicant, the City Planning staff should be intimately involved in the process. It is critical that a staff member gather written comments, attend the meetings and record the relevant concerns expressed by neighbors and any commitments the applicant makes to address those concerns.

To ensure the integrity of the information presented to neighbors, the Draft Program should require the applicant to submit to the City Planning Commission staff the sort of detailed information, including plans and drawings, that would be required for an application. This Planning Commission should make this information accessible on its website. Any changes from the pre-application proposal to the official application should be limited to those that are designed to address the concerns of neighbors.

As to the notification area, the Draft Program should allow the planning staff to require wider areas for projects with wider impacts.

We note that the City Council and the administration are exempt from this process. The Draft Program should include a comparable process for land use actions that they propose.

The Role of Staff Reports

Staff reports on proposed land use actions represent the professional fact-finding portion of the decision-making process. Staff submits these reports to the City Planning Commission and Board of Zoning Adjustments to inform their decisions on land use actions.

Currently, the City Planning Commission's staff releases its reports two or three business days before the public hearing. This has been a source of frustration for citizens, because it does not allow them adequate time to discuss and respond to their contents.

The Draft Program would change the release date to one week prior to the public hearing for zoning changes, conditional uses, planned unit developments and zoning text amendments. This is an improvement, and it applies to the land use actions that tend to be the most controversial.

Regardless of the timeline, however, it is essential that staff reports include information from the neighborhood participation process and specifically consider the concerns of neighbors and neighborhood associations. If approached this way, a staff report would provide the decision-making body with a more accurate, complete and effective analysis to inform its decision. It would provide citizens who are directly affected by a proposal with the reasons why the staff does or does not agree with any relevant comments or recommendations those citizens make.

* * *

We understand that implementing some of the changes we recommend will require increased staff time. However, given the limited scope of our recommendations, they may not require a significant addition of manpower. In any case, we believe the necessary investment would be worthwhile. It could make the difference between a potentially half-hearted process and one that provides for meaningful neighborhood participation in land use decision-making.

That said, we commend the City Planning Commission staff on providing a substantive analysis of and focused approach to the issue of neighborhood participation in land use decisions. We hope these observations and recommendations will be helpful as you work to refine the Neighborhood Participation Program for Land Use Actions. As always, if you have any questions or concerns, you can reach me at 525-4152 x107 or at janethoward@bgr.org.

Sincerely yours,

Janet R. Howard
President & CEO