New Orleans, known sometimes as the Big Easy, fails to live up to that nickname when it comes to land use decisions. The announcement of a major project invariably triggers apocalyptic predictions, accusations of betrayal, and recriminations in City Hall, as well as in business headquarters and in neighborhood association meetings.

While New Orleans is a complex city, there is nothing inherent in its composition or structure that dictates chronic battles over land use. Rather, the battles appear to be symptomatic of systemic weaknesses and an ad hoc approach to decision making.

New Orleans is plagued by unclear ground rules, an unpredictable process, unbridled City Council discretion, and an unhealthy lack of mechanisms for citizen participation. The research gathered in this report indicates that it is time the Crescent City undertake a program that offers clarity and predictability, one that empowers citizens and encourages economic development.

The current process (or lack thereof) that surrounds land use decisions is discouraging to large numbers of residents and businesses. Both developers and residents agree that such decisions do not emerge from a fair, clear, or consistent process. Critics complain that the rules and process are murky, that the situation on the ground is subject to the caprices of a half-hearted planning program, and that politically motivated exceptions may give one competitor an unfair advantage over another.

The Nagin administration views the land use process as part of a larger, dysfunctional system that hinders economic growth. Officials posit that because the process of moving a project from permitting to completion is so complex, arbitrary, and politically treacherous, developers choose one of two options: (i) they march straight to a City Council member’s office to ensure a project will happen before wasting time navigating the process; or (ii) they take their projects and investment dollars to another jurisdiction altogether. Many out-of-town or otherwise new developers take the latter route, officials say.

The frustration of those focused on economic development is matched by the frustration of residents who feel deprived of meaningful participation in the future of their neighborhoods. Residents active in their neighborhood associations complain bitterly that they are excluded from the process until after a developer has the nod from City Hall, and that they are forced to engage in rear-guard actions to protect their interests.

In this report, BGR identifies factors that have contributed to the malaise and discontent in the area of land use decisions, and it sets forth possible solutions for consideration by elected officials and the public.

**THE LAY OF THE LAND**

In any community, certain ingredients are crucial to effective, meaningful land use decision making. There should be a master plan with an array of elements, including a central land use element, that reflect the needs and values of the community. The land use plan should be executed through a zoning ordinance, which at a bare minimum consists of zoning designations with allowable uses and labeled maps showing which designation applies where.

Both the plans and zoning ordinance should be clear and simple, creating a system that allows for some (but not too much) change and discretion. The zoning ordinance should be consistent with the master plan.
In New Orleans, the responsibility for planning is placed in the hands of the City Planning Commission, an advisory body whose nine members are appointed by the mayor and approved by the City Council. The commission hires the executive director, who oversees the commission staff and serves at the pleasure of the commission.

The City Charter mandates that the City Planning Commission prepare and adopt “a long term Master Plan for the physical development of the city.” The commission may “modify or extend” the Master Plan at any time, but must review it at least once every 10 years.

The City Charter further states that the commission shall prepare and recommend to the City Council “a zoning ordinance and revisions and amendments thereof.” It requires that the City Planning Commission review the Comprehensive Zoning Ordinance (CZO) “at least once every ten years, immediately following the review of the Master Plan.” It requires that the City Council refer any amendments of the zoning ordinance to the commission for review.

The City is currently working on a Master Plan, though the date of its completion remains unclear. The land use element was adopted by the City Planning Commission and passed the City Council by resolution in 1999. Other adopted elements include: parks, recreation and open space; economic development; tourism; historic preservation; and arts and culture. Elements that are works in progress include: transportation; housing; community facilities and infrastructure; and environment.

A major overhaul of the City’s Comprehensive Zoning Ordinance has been proposed. But, like the Master Plan, it appears to be adrift. City officials lack any clear idea of when it will be submitted to the City Council. The most recent draft of the zoning ordinance was completed in November 2002 after a lengthy public hearing and meeting process. City Planning Commission officials say that draft will undergo significant changes, primarily in response to the concerns received recently from the business community.

However, the Nagin administration has indicated it will ask the City Planning Commission to table altogether the draft CZO, and shift course to completion and approval of the Master Plan. The administration believes, as do most planning professionals, that the CZO should emerge from the Master Plan, not alongside it. The Nagin administration promises it will structure the process so that it obtains and honors the input of neighborhoods and developers.

### The Root of the Problem

Examination of land use decision making in New Orleans reveals several interrelated problems. Among them:

- The current Comprehensive Zoning Ordinance is incoherent, over-amended, outdated, and vague. Interpreting the zoning ordinance is well beyond the reach of the typical developer, not to mention the average citizen.

- Planning decisions do not emerge from a fair, rational, or consistent process. The City Council regularly overrules recommendations that emanate from the City Planning Commission and its professional staff.

- Neighborhoods lack an adequate voice in their future.

### The CZO: Toward Clarity or Chaos?

The Comprehensive Zoning Ordinance now in effect is generally derided as a morass of amendments, exceptions, inconsistencies, structural deformities, and syntactical grotesqueries. In addition, the current zoning ordinance is outdated. The ordinance has not been radically overhauled since 1970, when it was crafted from generic suburban planning doctrines, though it was revised as recently as 1995.

The City’s own analysis of the existing ordinance found “an incoherent organization and poorly phrased directives. Indeed, it appeared that only an ‘expert’ – in this case, someone who worked with the document so often that it was committed to memory – could successfully search for pertinent zoning standards.”

The draft CZO is supposed to address this by creating a consistent, user-friendly document. While the goal is a worthy one, the draft falls short of the target. The complex draft ordinance is, in many respects, as daunting and intimidating as the current zoning ordinance. Although the much-touted matrix format simplifies the process for checking on a particular use, the advantage is offset by a format change that requires the reader to hopscotch across the document to collect the information needed for development at a given site.

### Note on Sources

In conducting research for this report, BGR consulted a wide range of sources, including legal documents, official proposals, and scholarly literature. Interview subjects included planners, academics, legal experts, developers, neighborhood advocates, and officials from the Nagin administration, City Planning Commission, and City Council.
Unfortunately, the draft zoning ordinance suffers from more serious problems than formatting. The document is unclear in important areas, such as the treatment of non-conforming uses and the application of the Residential Overlay District. In other cases, the details seem incompatible with the stated purpose. For example, the Neighborhood Services District, which purports to provide for clusters or concentrations of small businesses on major streets at the periphery of residential neighborhoods, allows commercial uses of up to 25,000 square feet. Multi-family residences are allowed in a single-family district, as long as they are placed in “existing” buildings. (What qualifies as an existing building is unclear.)

It appears that the unwieldy nature of the document has discouraged the public from reviewing it. This is unfortunate, because the draft CZO would effect some significant changes.

By way of example, under the proposed zoning for Magazine Street, many businesses that may be contributing positively to its character would suddenly become non-conforming. These include: auction houses, interior decorators’ shops, dry cleaners, carpet and flooring sales, electronics stores, fish and seafood markets, furniture stores, and stores that rent or sell musical instruments.

While these relatively inoffensive uses would no longer be permitted, other, potentially more controversial ones would be allowed. Restaurants and a wide range of other outlets could sell alcohol as a matter of right. Homeowners could build four-car garages and rent out two spaces. Service stations abutting residential neighborhoods could store and rent moving vehicles. Parking lots would be allowed as an “interim” use in an area where such lots are deemed unsuitable on a permanent basis.

Although the draft CZO has been touted as a clarifying tool, it appears to effect, intentionally or inadvertently, dramatic changes that have not been brought to the public’s attention. The fact that these changes have gone unnoticed suggests that the document is failing in its mission of creating a user-friendly system. It also suggests that the draft ordinance should be reviewed by the City Planning Commission on a line-by-line basis with a technical committee representing stakeholders, such as the development community and neighborhoods, to clarify confusing aspects of the ordinance and to explain the rationale for the provisions that effect substantive changes.

### Planning and the City Council

Criticisms of planning in New Orleans focus primarily on the City Council. At issue are procedures and the administration of power. The council holds the trump card on significant land use decisions, and critics say it plays that trump card with alarming frequency.

A BGR survey of year 2002 zoning petitions revealed that the City Council upheld the City Planning Commission’s decisions 29 times; overruled the commission 12 times; and modified the commission’s recommendation 45 times.

The commission has an expert staff advising it and can count among its own number commissioners with planning expertise. The members of the City Council, on the other hand, have comparatively little planning expertise. Frequent observers say it often appears that a developer coming before the City Planning Commission has already negotiated with his council member. Furthermore, many close to the process suggest that sometimes council members’ decisions turn more on political connections and campaign contributions than sound planning principles or the common good.

### The Two ‘Ds’

At the City Council level, two “Ds” are at the center of criticisms: deference and discretion.

Deference connotes the longstanding tradition among council members to cast their votes with the council member whose district contains a matter at hand. Critics charge that this renders each council district a political fiefdom over which the council member has control. Such an arrangement tends to subvert consensus- and standard-driven planning decisions by placing ultimate control in the hands of one person.

Discretion refers to the degree to which the City Council controls land use decisions. Some discretion is
clearly necessary. For example, adjustments may be necessary to accommodate special needs that evolve in particular areas of town. Occasionally, projects proposed in contradiction to zoning rules may serve a greater good. The problem arises when discretion is too broad or is misused.

The City Council’s discretion comes into play (and under fire) in two primary areas: conditional uses and zoning map changes. A conditional use is defined in the current zoning ordinance as “a land use which because of its unique nature is compatible with the permitted land uses in a given zoning district only upon a determination that the external effects of the use in relation to … adjoining property and the neighborhood can be mitigated through imposition of standards and conditions.” Conditional uses can be granted only with City Council permission. Therefore, applications for conditional uses pass through the City Planning Commission for recommendations, then move to the City Council, which can approve, deny, or modify each proposal.

A zoning map change must also pass through the City Planning Commission and receive City Council approval, as it constitutes an amendment to the CZO. According to one planning official, zoning map changes are usually requested by businesses seeking to change a residential use to a commercial one, or to allow a more intense commercial use at a particular site. In other words, rather than following guidelines, zoning is implemented on an ad hoc basis. Observers say politically connected applicants are most likely to meet with success in this arena.

The discretion and deference issues create problems for both developers and residents. Developers perceive that they must pay homage to the appropriate council member in order to get approval, and that campaign contributions are part of the cost of doing business in New Orleans. Said one local developer: “You certainly want to participate in (council members’) campaigns if you’re going to do business.”

Some developers perceive that adhering to the City’s zoning regulations can place a business at a competitive disadvantage; a competing developer, more successfully navigating the process, may be able to skirt the rules and push through a more profitable project, despite its affront to good planning principles and zoning regulations. Local developers may build up some tolerance for the process, but outside developers are said to be turned off.

Too much discretion in zoning decisions endangers the home buying market and residential base by opening the way for incompatible land uses in residential areas. If the City Council can confect zoning rules virtually at will, the charming cottage across the street today could become a surface parking lot next year.

Furthermore, according to estimates from inside and outside of the City Council, district council members spend from 30% to 50% of their time dealing with land use issues, meaning that other important areas of concern can get shortchanged. Land use decision making places council members at the center of bitter disputes between development interests and neighborhoods in which it is difficult to please both sides.

Discretion in the Draft CZO

In preparing the draft CZO, the City Planning Commission attempted to limit the City Council’s discretion largely by reducing the number of conditional uses. The proposed reduction was accomplished, for the most part, by changing conditional uses to permitted ones subject to standards, rather than by prohibiting them. According to the City Planning Commission, if the draft zoning ordinance had been in place in 2002, 64% of conditional use applications would not have required conditional use approval; 25% would not have required a map change. All told, 41% of requests for zoning action that required City Council approval would not have gone to the council.

In some cases, the document seeks to limit discretion by imposing a surface parking lot. For example, the City Council would not be able to waive certain dimensional restrictions by more than a specified percentage (e.g., height or lot area). In some districts, the City Council would be prohibited from granting conditional uses for businesses over a specified square footage.

The draft CZO also attempts to rein in discretion by requiring that the council consider specific matters when reviewing conditional use applications. Unfortunately, it would not require specific findings or the creation of a written record to reflect the evaluation.

Despite these changes, the draft CZO leaves the City Council’s discretion largely unbridled. The discretion arises from a number of factors, including: the large number of conditional uses that remain; the creation of unmapped zoning districts and overlays with vague standards or a potential use for spot zoning; and loosely defined standards for evaluating proposed changes. Perhaps most significantly of all, it fails to make significant changes in the approval processes (e.g., transferring the power to approve conditional uses from the City Council to an administrative body with expertise).

The draft zoning ordinance contains wildcards that will make it difficult for any neighborhood to rely on its own zoning and that of the surrounding areas. These result from potential
The misuse of two overlay districts: the Residential Planned Community District (RPC) and the Residential District Overlay (RDO).

Both of these overlay districts, which provide for the introduction of commercial uses into residential neighborhoods, were conceived for large areas. The draft CZO, however, allows them for very small sites. In the case of the RPC, the overlay can cover an area as small as one acre or one-half of a city square, and, with City Council approval, an even smaller site. In the case of an RDO, the City Council can allow an overlay in an area as small as one city square. Under those circumstances, the RPC and RDO become tools for spot zoning.

Another overlay zoning district, the Planned Development District, also serves as a wild card. The draft CZO authorizes the City Council, subject to the vaguest standards, to approve for such districts deviations from the base zoning. In evaluating the proposed district, the City Council is required to take “into account” certain criteria. It is not required to make specific findings or to deny an application if criteria are not met.

Among the criteria are the following: that the proposed land uses are authorized in the text of the base zone district or the planned development district; that the proposed uses and development standards are consistent with the purposes of the base zoning district; and that the proposed uses and project design are compatible with existing and planned adjoining uses and the character of the neighborhood in which the project is located.

The first criterion imposes no limit whatsoever on discretion; the last one will apparently be evaluated in a void, since there is no requirement for the developer to provide design information.

The lack of information, the vague (in some cases meaningless) standards, and the fact that the City Council is required only to take the criteria into account all create a situation that interjects uncertainty into the zoning.

What Can Be Done to Limit Discretion?
The City Planning Commission has indicated its intention to limit the City Council’s discretion, via three vehicles:

- A substantial reduction in the number of conditional uses. Planning officials hope to produce a document with the maximum number of permitted uses, converting the maximum number of the remainder into prohibited uses. This will make clear to developers early in the process what they can and cannot do, and will reduce the number of instances that allow the City Council discretion. The danger here, of course, is that conditional uses that ought to be limited or prohibited will instead become permitted outright. Such changes deserve thorough public scrutiny.

- Reduction of the City Council’s power to issue waivers. While zoning waivers are supposed to be reserved to the Board of Zoning Adjustments, they often fall into a conditional use package granted by the City Council for a certain development. The draft CZO would limit the Council’s ability to waive certain dimensional standards. But the real question remains: Why is the City Council making decisions that should be reserved to the Board of Zoning Adjustments?

- Limiting consideration of amendments to a quarterly basis. Planning officials say that this will make amending the ordinance much more of an “event,” putting far greater emphasis on changes and focusing citizen participation. The notion is that this will make it more difficult for developers and the City Council to “sneak” an amendment past affected neighborhoods. Currently, amendments can occur every two weeks, during regularly scheduled City Council meetings. Quarterly review would be an important step toward limiting the current ad hoc approach to planning decisions.

While these proposals indicate a move in the right direction, they would not result in a significant change. As the Nagin administration and City Planning Commission move forward in their reform of planning procedures, there are a number of other potential solutions that merit attention, including the following:

Give the Land Use Plan the Force of Law.

Whether the Master Plan should have the force of law — that is, whether the City should be required by law to abide by its own Master Plan — is a matter of some debate. On one side, some planners argue that master plans do not lend themselves to holding the force of law because they are too general and broad in scope; others argue that master plans, and particularly land use plans, should be adopted by ordinance to ensure that the jurisdiction abides by them, as well as to justify the effort and expense that went into them. Ultimately, the answer may depend on the community in question.

The City Council adopted the 1999 Land Use Plan, but did so by resolution, rather than by ordinance. Critics say that makes it meaningless, because it lacks the force of law. Indeed, adoption of a plan by resolution does not require that the zoning ordinance conform to the plan, nor
does it in any way constrain the City within the parameters of the plan. From a legal standpoint, the land use plan is simply a piece of paper that the City Council smiled upon back in 1999.

New Orleanians have little trust in the land use decision-making process. The City’s unwillingness to commit firmly to a long-term plan is reflected in the draft CZO. Rather than require conformity with the Master Plan, the draft states only an intent that the zoning “be consistent with and implement the City’s Master Plan and any subsequent amendments thereto.” Giving the Master Plan, or at least its land use component, the force of law would show the City’s commitment to long-term planning and build citizen trust in the process.

Were New Orleans to give the Master Plan or its land use plan the force of law, there are three locally based approaches available. The first would be a change in the language of the City Charter, specifically stating that any ordinance passed henceforth must conform to the Master Plan. The second would be to adopt the Master Plan in its entirety by ordinance, making the Master Plan itself a law. The third, and perhaps most practical approach for the land use process, would be to include language in the Comprehensive Zoning Ordinance requiring that it conform to the Master Plan or at least to the land use section of the Master Plan. In order for these approaches to be effective, legal provision would have to be made to ensure that the plan could not be altered except on a biennial or less frequent basis; otherwise, the City Council could change the Master Plan at any time to accommodate a whimsical change in the zoning ordinance or map.

At a minimum, the City might commit to explicit dates for completion and passage of the Master Plan and zoning ordinance. It could limit amendments to or revisions of the Master Plan to biennial (or less frequent) events. It could substantially reduce the number of conditional uses through a decision-making process that is sensitive to both neighborhoods and businesses. Finally, it could legally require that the Comprehensive Zoning Ordinance conform to the Master Plan.

Reallocate Decision-Making Power.
City Council discretion could be reined in by shifting decision-making authority on matters such as conditional uses from the council to the City Planning Commission. The commission has greater expertise and is potentially less susceptible to political motives. Conditional use requests could be approved or denied at the administrative level.

The City could also strengthen protections against the unsavory and illegal practice of spot zoning. It could set up specific, though broad-based, criteria for the City Planning Commission to determine whether a zoning request constitutes a spot zone. Should the commission reach this determination, the request would die at the administrative level, without the possibility of appeal to the City Council. The City Planning Commission’s decision would reflect an administrative determination of legality, and therefore would be properly appealed to the court system, not the City Council.

Incorporate Neighborhoods into the Planning Process.
New Orleans could also rein in the City Council’s discretion by following the example of more progressive cities and developing a program to integrate neighborhoods into the planning process, with neighborhood liaisons to government. The City could put neighborhoods affected by development at the beginning of the decision-making process, rather than at the end. This would go to the heart of the discretion issue by ensuring that the City Council is accountable to neighborhoods. But it would require commitment to a system that sends developers first to planning staff, which in turn sends projects to neighborhoods for review. Neighborhood participation, a key area of good planning practice, is discussed in further detail below.

**Neighborly Advice**
Planning literature is virtually unanimous in proclaiming neighborhoods the primary unit of urban planning and in recognizing neighborhood participation as an essential element of any worthy planning process. Unfortunately, neighborhood participation in New Orleans relies almost completely on the steam and willpower of neighborhood activists and community groups.

According to a 2000 study, New Orleans has “weaknesses in methods of notification, accessibility of meetings, and public trust in government. The system flaws are preventing more meaningful and sustainable participation by the community.” In fact, as neighborhood participation goes, there is little “system” to speak of in New Orleans. Often, newspaper accounts suggest that mayoral endorsement and City Council approval are a foregone conclusion before the planning and development bodies in place to protect citizens have the opportunity to weigh in. This leads ineluctably to cynicism and disengagement among the citizenry and even to the perception of “corruption” in City government.

One of the four problem areas identified in the Land Use Plan was inadequate neighborhood participation in the City’s decision-making process.
regarding development and redevelopment. According to the Executive Summary to the draft CZO, this problem was addressed through a Master Plan Advisory Committee created under the direction of former Mayor Marc Morial. The committee was composed of 40 members, each representing a “neighborhood” of approximately 12,500 citizens. Each member was appointed by the mayor. According to the draft zoning ordinance, this “democratized” approach is an “important step” toward “ensuring neighborhood participation in land use matters.”

The Master Plan Advisory Committee falls far short of the spirit of the neighborhood participation mechanism the Land Use Plan recommended. Its neighborhoods fail to correspond to what New Orleanians actually consider to be their neighborhoods. Furthermore, the committee was appointed by the mayor, rather than containing a membership emanating from the neighborhoods themselves – precisely the sort of top-down approach the “mechanism” was intended to avoid.

The committee’s utility as a voice for individual neighborhoods is questionable, since decisions affecting a neighborhood in eastern New Orleans or Carrollton are of little interest to a representative from Lakeview or Treme. More importantly, the committee no longer exists. The terms of members (two years, with an automatic three-year renewal) expired in May 2003. The Nagin administration has no plans to appoint new members.

The proposed CZO continues the status quo with regard to neighborhood participation, restricting residents’ input to the public hearing process. Affected neighborhoods are not even incorporated into the notice requirements for matters that directly affect them, such as map amendments, the establishment of overlay districts, and conditional use permits.

In some cities, models of neighborhood participation have been in place for years, if not decades. The structures in place in other cities appear to strongly address the need for organized neighborhood participation in land use decisions. (For greater detail, see discussions of Birmingham, Ala.; Dayton, Ohio, and Portland, Ore., on our web site, www.bgr.org.)

Cities that engage in neighborhood-based planning contain several features in common:

- These cities generally allow residents to determine the boundaries of their neighborhoods.
- These cities consider the neighborhood to be the primary unit in which master planning decisions are made.
- These cities envision the planning department as a helpful liaison between neighborhoods and city government. When a project is proposed in a particular neighborhood, these cities present development plans to resident groups at the beginning of the process, before a single decision has been made.
- These cities provide the neighborhoods with an officially organized opportunity to view and hear presentations on development plans.
- These cities provide the neighborhood with an officially organized opportunity to formally express and register its opinion – for or against – a project.
- These cities provide the neighborhood with an organized opportunity to meet and seek compromise, if necessary, with the developer.
- These cities provide neighborhoods with a framework for and financial assistance to nurture neighborhood leadership.
- These cities offer financial and administrative assistance to help boost citizen participation.

In other words, neighborhoods are treated as an integral part of planning and land use decision making. They are nurtured, rather than approached as an afterthought or an annoyance. Cities with long-term success in neighborhood participation say it bolsters citizenship and builds trust between voters and elected officials. They say it often leads to compromises between neighbors and developers that would not have occurred otherwise.

New Orleans planning and administration officials are not currently envisioning any organized citizen participation process. They believe that the system of quarterly review will provide an ample medium for neighborhood participation in land use decisions. In light of the range of options available for increasing neighborhood participation and the benefits a city can expect from them, New Orleans would be well-advised to go much further.

Cities with long-term success in neighborhood participation say it bolsters citizenship and builds trust between voters and elected officials. They say citizen participation often leads to compromises between neighbors and developers that would not have occurred otherwise.
CONCLUSION AND RECOMMENDATIONS

Ultimately, until a more rational system for arriving at land use decisions emerges, the land use process in New Orleans will continue to breed frustration, distrust, acrimony, and inappropriate choices. The City must empower its planning experts and citizens, and put in place a strong program to guide the process.

By mustering the political will and showing leadership, elected officials can inaugurate a land-use process that ensures clarity, fairness, and respect for the residents and businesses of New Orleans.

BGR makes the following recommendations to the City:

- Set firm deadlines for completion of the Master Plan, ensuring a high level of neighborhood and business participation.
- Through the City Charter, require that the Master Plan in all its elements bear the force of law and, thereby, that all ordinances must conform to it.
- Through the City Charter and by ordinance, set forth a system for evaluation and revision of the Master Plan no more frequently than on a biennial basis.
- Upon completion of the Master Plan and using citizen advice, complete and adopt a new Comprehensive Zoning Ordinance. Include in the ordinance a requirement that the CZO, and the decisions made pursuant to it, comply with the Master Plan.
- Ensure that the Comprehensive Zoning Ordinance is succinct and reader-friendly, yet sensitive to the needs of neighborhoods and businesses.
- Through the Comprehensive Zoning Ordinance, limit the power to grant waivers and variances solely to the Board of Zoning Adjustments.
- Shift the power to decide conditional use applications to the City Planning Commission.
- Through the City Charter or by ordinance, designate the City Planning Commission as the body that determines whether a requested map change constitutes illegal spot zoning. Provide for appeal of that process only to the court system.
- Through the City Charter or by ordinance, create a system for organized, expeditious, meaningful neighborhood participation in land use decisions that puts neighborhoods at the beginning of the land use decision-making process, rather than the end.

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