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To Detroiters and Outsiders: A Call to Action to Bring Back the Motor City

Leah A. Walker

Michigan State University School of Law

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TO DETROITERS AND OUTSIDERS: A CALL
TO ACTION TO BRING BACK THE
MOTOR CITY

By Leah A. Walker[†]

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“We hope for better things; it will arise from the ashes.”
Motto on the Official Seal of Detroit¹

I. A CALL TO ACTION

Redeeming Detroit will take more than talking about change. It will take action. It will take action by Detroiters and outsiders. It will take action in the form of urban agriculture. One garden at a time, one community at a time, Detroit needs citizens and outsiders to start farming.

Starting small, Detroit natives like Myrtle Thompson Curtis and her husband Wayne, who maintain a small plot of vegetables just outside of downtown Detroit, can make the changes Detroit needs.² According to Myrtle, building food and building community are one in the same.³ The Curtis’s sole purpose in creating their garden was to improve their community by forming relationships with neighbors.⁴ The

[†] Author Bio: J.D., Michigan State University School of Law, Spring 2013; B.S., Florida State University, 2010; Staff Member, *Michigan State University College of Law Journal of Business and Securities Law*, 2011–2013.

1. *Why Detroit*, INSIDE DETROIT, <http://www.insidedetroit.org/why-detroit/> (last visited Mar. 26, 2012).

2. *Seeds of Progress*, PBS VIDEO (Aug. 19, 2011), <http://video.pbs.org/video/2099465971>.

3. *Id.*

4. *Id.*

day the Curtis's neighbor, who had never before spoken to Myrtle or Wayne, asked them for flowers to give to her daughter exemplified the growing neighborliness in their community.⁵ Surpassing the characterization as simply a labor of love, Myrtle and Wayne now employ two young adults to maintain the garden and act as youth mentors to community children.⁶

Adding larger farms next to smaller gardens like the Curtis's will spark even greater success in Detroit's recovery. Claiming no intent to displace urban gardening or to exist as the sole large urban farm in Detroit, Mike Score, the business planner of Hantz Farms, describes Hantz's plan to grow oak trees and fruit to sell to large-scale buyers in the wholesale market, buyers whose needs could not be met by smaller growers.⁷ *Recovery Park*, another proposed large operation, will create an impressive 8,000 to 10,000 new permanent jobs and exist based on scaled-up community garden ideals.⁸ While creating jobs for Detroiters recovering from addiction and others, the project's mastermind, Gary Wozniak,⁹ plans to create urban farms on city land and turn buildings into commercial kitchens, storefronts, and farms with livestock, mainly fish.¹⁰

Those hoping for a speedy recovery in Detroit need to "[l]ook at the possibilities as opposed to the why's and the how's."¹¹ Although large-scale projects are on hold because developers are moving at a much faster pace than lawmakers, the laws currently governing urban farming in Detroit allow urban agriculture to a generous extent; even better, the freedom to farm in Detroit is likely to expand in the near future when the city enacts a revised zoning ordinance that favors urban agriculture.¹²

5. *Id.*

6. *Id.* (Myrtle and Wayne receive funds from the U.S. Department of Agriculture to support their non-profit organization called "Feed Em' Freedom Growers" and to pay for the two young adult workers they employ.).

7. Eric T. Campbell, *Hantz Farms: We Can All Get Along*, THE MICHIGAN CITIZEN (Aug. 12, 2012), available at <http://michigancitizen.com/sample-post-hantz-farms-relies-on-community-support-for-project/>; see *infra* Part IV–D for information on Hantz farms and its negotiations with Detroit to obtain land and begin its planned project. Hantz later decided against growing fruit trees because the proposed oak trees will create less impact and therefore cause much less community concern. Urban Agriculture Workgroup Meeting Notes (Mar. 6, 2012) [hereinafter UAW].

8. *Seeds of Progress*, *supra* note 2 (The estimated number of new jobs is based on farming 5,000 acres in Detroit, a goal that project leader Gary Wozniak deems obtainable.).

9. Gary Wozniak, *Gary Wozniak*, LinkedIn, <http://www.linkedin.com/in/wozniakgary> (last visited Mar. 16, 2012) (Wozniak worked as the Chief Development Officer at SHAR Foundation.); *Seeds of Progress*, *supra* note 2.

10. *Id.* ("Wozniak maintains an interest in producing Atlantic char, Atlantic salmon, and tilapia.").

11. *Seeds of Progress*, *supra* note 2 (quoting Wozniak).

12. *Seeds of Progress*, *supra* note 2 (addressing the criticism of urban agriculture in Detroit); see *infra* Part IV–D at 31–32, citing *Seeds of Progress*, *supra* note 2 (stating the progress of drafting the revised code includes Kathryn Lynch Underwood, who

In order to spark progress in the form of urban farming, a basic understanding of the relevant history, benefits, and laws proves essential. Part II of this Comment introduces the history of urban agriculture in the United States. Part III narrows the historical focus to Detroit before discussing the benefits that accompany urban agriculture, which are essential to Detroit's survival and potential revival. Finally, Part IV discusses the laws with the most widespread and immediate impact on urban farming in Detroit and reveals the significant role timing plays in starting an urban farm, as changes to the zoning ordinance loom.

II. INTRODUCTION TO URBAN AGRICULTURE

A. *Definition and History*

Urban agriculture is simply defined as “the growing and distribution of food through intensive plant cultivation and animal husbandry in urban areas.”¹³ As used in this Comment, *urban agriculture* includes private gardens, community gardens, institutional gardens, demonstration gardens, edible landscapes, guerrilla landscapes and gardens, bee-keeping, market farms, urban farms, and hybrid urban agriculture.¹⁴ This Comment will focus on small-scale urban agricultural production, the type that Thomas Jefferson deemed necessary to construct a nation with an agrarian base, rather than on large-scale animal production practices, which raise a different slew of concerns, namely involving sustainability.¹⁵

The fact that up to 15% of the world's agricultural production occurs within metropolitan areas obviates the general importance of urban agriculture.¹⁶ America was founded on the idea that farming was

does not believe large scale industrial agriculture is appropriate in a city, and Mike Score, who is an urban agriculture stakeholder of Hantz Farms, are working together to draft a zoning ordinance that favors urban agriculture and addresses legitimate community concerns continues in spite of criticism of urban agriculture in Detroit).

13. SUSAN A. SCHNEIDER, *FOOD, FARMING, AND SUSTAINABILITY* 696 (2011).

14. KIMBERLEY HODGSON ET AL., *URBAN AGRICULTURE: GROWING HEALTHY, SUSTAINABLE PLACES*, AMERICAN PLANNING ASSOCIATION 17–18 (2011). “Farm” and “agriculture” are used interchangeably in this Comment, except where otherwise stated.

15. SCHNEIDER, *supra* note 13, at 3, 42; *see infra* Part IV–D at 31–32, citing UAW Meeting Minutes (Jan. 27, 2011); UAW Meeting Notes (Mar. 6, 2012) (noting that concerns regarding large scale production will likely be addressed when Detroit amends its zoning ordinance).

16. Rodale News, *Making a Case for the Urban Garden*, MOTHER NATURE NETWORK (Sept. 16, 2011), <http://www.mnn.com/your-home/organic-farming-gardening/stories/making-a-case-for-the-urban-garden> (The statistic is based on findings by the U.S. Department of Agriculture. The portion of agriculture production made up by urban agriculture is much lower in the United States. For example, Cleveland produces only 1.7% of its food through urban farming practices.); SCHNEIDER, *supra* note 13, at 696 (stating the U.S. Department of Agriculture estimate appears conservative compared to other presumably less reliable and timely findings, one claiming that urban agriculture makes up 30% of the world's agriculture production).

the finest way of life and the most beneficial economic activity; farming produces people with personalities required for a democracy because farming requires independence and hard work.¹⁷ Urban communities across the United States have flourished from the benefits of farming benefits throughout history. The history of urban agriculture in the United States supports the conclusion that it will persist, in one form or another, for the foreseeable future.

During the recession of the late 1800s, urban gardening began in the form of school gardens and cultivation of vacant lots.¹⁸ The City Beautiful Movement, originally inspired by Frederick Law Olmstead and supported by citizen groups and local governments, focused on beautifying cities, such as Detroit, Washington, D.C., Chicago, San Francisco, and Cleveland, during the urban economic boom that followed the 1880s recession.¹⁹ The movement inspired civic-improvement gardens and was based on the idea that cities with more green spaces would have higher moral values and civic duty.²⁰ As a main source of the country's food security, urban agriculture remained crucial to the wellbeing of the United States throughout World War I, the Great Depression, and World War II.²¹ During these periods, the federal government supported urban gardening through education programs in hard-hit communities; the government-supported gardens provided nutritional and psychological aid in those communities.²² Soon after, federal government support faded and urban gardening functioned as a niche activity until the 1960s and 1970s brought an energy crisis, food quality and price worries, environmental concerns, and urban decline.²³ At the time of this urban agriculture reemergence, community gardens grew with the support of community groups, particularly in cities characterized by deindustrialization and declining job markets.²⁴

By the 1990s and 2000s, city government officials realized that urban agriculture could revive their cities by alleviating health concerns, providing economic benefits, and encouraging sustainable practices, among other benefits; accordingly, city government officials began to implement policies to promote urban agriculture.²⁵ Today, the usefulness of urban agriculture varies between communities, depending on community interests and goals. The sources of support, or lack

17. See Nina Mukherji & Alfonso Morales, *Zoning for Urban Agriculture*, ZONING PRACTICE-AMERICAN PLANNING ASSOCIATION (Mar. 2010), at 2–3.

18. *Id.* at 2.

19. Adam Sowder, *The City Beautiful Movement: Frederick Law Olmstead's Ideas Developed the City Beautiful Movement*, ABOUT.COM, <http://geography.about.com/od/urbaneconomicgeography/a/citybeautiful.htm> (last visited Mar. 16, 2012).

20. *Id.*

21. Mukherji & Morales, *supra* note 17, at 2.

22. *Id.* at 3.

23. *Id.*

24. *Id.*

25. *Id.*

thereof, also vary; this Comment reveals the growing support for urban agriculture in Detroit.

III. URBAN AGRICULTURE IS CRUCIAL TO DETROIT'S WELLBEING

A. *History of Urban Agriculture in Detroit*

Urban agriculture of the type now booming in Detroit began in the 1970s, when the city's main source of support for urban agriculture, the Farm-a-Lot program, began to provide seeds and free tilling to residents aspiring to garden on city-owned lots next to their properties.²⁶ When budget cuts forced the city to eliminate the Farm-a-Lot program at the turn of the century, numerous educational institutions and nonprofit organizations stepped in to provide supplies and technical assistance to urban farmers.²⁷ The growth in number of urban agriculture support groups and the breadth of assistance those groups provide alludes to the presence of numerous and broad benefits provided by urban agriculture.

Among the main reliable support groups existing today are the Garden Resource Program and the Urban Agriculture Workgroup.²⁸ The Garden Resource Program ("GRP"), formed in 2004 by four organizations- the Greening of Detroit, the Detroit Agricultural Network, Michigan State University Extension, and Earthworks Urban Farm- receives funding from a United States Department of Agriculture food security grant.²⁹ The GRP currently supports over 1,300 existing and developing urban gardens and farms in Detroit, Highland Park, and Hamtramck.³⁰ The production of residents supported by the GRP in 2011 was outstanding, "gardeners picked up 49,858 seed packs and 230,296 transplants and grew over 73 varieties of fruits and vegetables in their 382 community, 48 market, 64 school and 857 family

26. HODGSON ET AL., *supra* note 14, at 73; John E. Mogk et al., *Promoting Urban Agriculture as an Alternative Land Use for Vacant Properties in the City of Detroit: Benefits, Problems and Proposals for a Regulatory Framework for Successful Land Use Integration*, 56 WAYNE L. REV. 1521, 1527 (2010).

27. HODGSON ET AL., *supra* note 14, at 73; some of the groups that rallied together to support urban agriculture after the demise of the Farm-a-Lot program included "the Gardening Angels, which organized inter-generational transfer of skills and knowledge; the Detroit Agriculture Network, which organized networks for sharing resources; and, more recently, the Garden Resource Program Collaborative, the D-Town Farm . . . ;" Mogk et al., *supra* note 26, at 1528.

28. Much misinformation about the urban agriculture industry in Detroit and the laws affecting it continues to fluctuate throughout the media and by word of mouth. Before relying on information spread through the media or community rumors, urban farmers should confirm the reliability of their sources; if doubt remains as to their understanding of certain applicable laws, farmers should consult local attorneys who have dealt with urban agriculture issues in their practice.

29. HODGSON ET AL., *supra* note 14, at 73.

30. The Garden Resource Program, THE GREENING OF DETROIT, <http://detroitagriculture.net/urban-garden-programs/garden-resource-program/> (last visited Mar. 25, 2012).

gardens.”³¹ GRP participants receive various resources, including seeds and Detroit grown transplants; they also become part of an expanding gardener and urban agriculture support network that focuses on encouraging urban agriculture and providing a productive, healthy, local food system.³² Furthermore, the GRP places participants in cluster groups based on the location of their farms and gardens, providing growers with local connections and exposure to the resources available to those connections.³³ Participation in cluster groups is incentivized through the receipt of additional resources, such as “tilling, compost, flowers, woodchips, weed fabric, volunteers, and access to a tool sharing program,” as a reward for participation.³⁴ *Detroitagriculture.net* provides more information on the GRP, as well as urban garden start-up advice, educational workshops for youth and adults, open space programming (which advises urban farmers on planning, implementation, and maintenance issues), job and volunteer opportunities, and useful links to resources on multifarious urban agriculture issues.³⁵

Formed more recently, in 2009, the Urban Agriculture Workgroup (“UAW”) is “a stakeholder group charged with drafting a policy and zoning amendment to articulate the city’s support for urban agriculture and to specify where and how food can be grown in Detroit.”³⁶ The UAW submitted a draft policy to the Detroit planning commission in March 2010 and continues to refine its policy to include specific needs and goals of the urban agriculture community.³⁷ The work of the UAW signifies Detroit’s support for urban agriculture.³⁸ The current UAW policy and progress towards its implementation by the Detroit zoning board are discussed in Part IV.

B. *Benefits Provided by the Growth of Urban Agriculture in Detroit*

Sustainable agricultural practices encompass all of the community goals discussed below and accordingly exist at the forefront of Detroit’s planning agenda.³⁹ *Sustainable agriculture* is defined as “an integrated system of plant and animal production practices”⁴⁰ that

31. *Id.*

32. The Garden Resource Program, KEEP GROWING DETROIT 1, http://detroitagriculture.net/wp-content/uploads/2013/02/2013_GRP-Application_FINAL_email.pdf (last visited Sept. 19, 2013).

33. *Id.*

34. *Id.*

35. *Id.*

36. HODGSON ET AL., *supra* note 14, at 73–74.

37. *Id.* at 74.

38. *Id.*

39. UAW Meeting Minutes (Jan. 27, 2011).

40. Food, Agriculture, Conservation, and Trade Act (FACTA) of 1990, 7 U.S.C. § 3103 (19) (2012).

allows producers to “meet the needs of the present without compromising the ability of future generations to meet their own needs.”⁴¹ Sustainable agriculture practices focus on environmental quality, profitability, and balance between social and economic values⁴²—goals that can solve many of Detroit’s woes. People value urban agriculture for diverse reasons, benefiting from it in varying and numerous ways, all of which fall under the overreaching goal of sustainability. Universal benefits of sustainability include insulation from terror threats and other weaknesses caused by dependency on foreign nations. Additional community goals in Detroit that fall under the sustainability umbrella include, but are not limited to: getting rid of urban blight, destroying Detroit’s designation as a food desert, creating more united communities, and boosting the economy.

First, urban agriculture is a solution to urban blight because it creates green spaces. According to a 2010 estimate, Detroit had 33,500 empty houses and 91,000 vacant residential lots,⁴³ around 44,085 (totaling 4,848 acres) of which were publically owned.⁴⁴ The number of vacant lots continues to increase, but the substantial inaccuracies in the city’s records make it nearly impossible to come up with a close estimate of the total vacant land.⁴⁵ Communities benefit from the aesthetic value, mental health improvements (mostly in the form of stress reduction), physical benefits (such as expedited healing and reduction of the *heat island effect*), and social benefits (including crime reduction and positive effects on children) that accompany green spaces.⁴⁶ With more green spaces and less vacant land and buildings to host prostitution, drugs, and squatters,⁴⁷ Detroit residents will be safer and happier with increased urban agriculture.

41. SCHNEIDER, *supra* note 13, at 31.

42. *Id.*

43. *Detroit Looks at Downsizing to Save City*, WASHINGTON TIMES, (Mar. 9, 2010), available at <http://www.washingtontimes.com/news/2010/mar/09/detroit-looks-at-downsizing-to-save-city/?page=all>.

44. Kathryn Colasanti et al., *Growing Food in the City: The Production Potential of Detroit’s Vacant Land*, C.S. MOTT GROUP 3 (June 2010), http://www.fairfood-network.org/sites/default/files/growing_food_in_the_city.pdf. This estimate includes lots owned by the City of Detroit, Wayne County, the State of Michigan, the Wayne County Land Bank, and the State Land Bank.

45. *Id.*

46. Susan Barton & Rebecca Pineo, *Human Benefits of Green Spaces*, U. OF DEL. C. OF AGRIC. & NAT. RESOURCES COOPERATIVE EXTENSION 1–3 (Jan. 31, 2009), http://ag.udel.edu/udbg/sl/humanwellness/Human_Benefits.pdf. The “heat island effect” occurs when built up areas become hotter than surrounding rural areas because of the trapping effect of asphalt, concrete, and certain building materials; *Heat Island Effect*, ENVIRONMENTAL PROTECTION AGENCY, <http://www.epa.gov/hiri/> (last updated Mar. 9, 2012).

47. Robert Johnson, *Squatters Are Taking Over Detroit’s 100,000 Vacant Homes*, BUSINESS INSIDER (Aug. 23, 2011, 8:02 AM), available at http://articles.businessinsider.com/2011-08-23/news/30093376_1_squatters-vacant-homes-dwellers#ixzz1pNq1WsAg.

Next, Detroit can shed its characterization as a food desert by promoting urban agriculture. The 2008 Farm Bill defines *food desert* as “an area in the United States with limited access to affordable and nutritious food, particularly such an area composed of predominantly lower income neighborhoods and communities.”⁴⁸ Detroit has long been defined as a food desert; the city hosts a surplus of fast food and fringe food stores (such as liquor stores, gas stations, and convenience stores) and a dearth of actual grocers selling healthy, fresh foods.⁴⁹ Adding another layer to the lack of healthy options is the fact that of all the Detroit food-stamp stores, which an overwhelming number of Detroiters rely on, only 8% are actual grocery stores or supermarkets with fresh food options; the other 92% of food-stamp stores are primarily gas stations, liquor stores, party stores, bakeries, and convenience stores.⁵⁰ The food imbalance in Detroit means that over half of its residents must travel at least twice as far to the closest grocery store than to the closest fringe food store.⁵¹ This greatly reduces the food choices available to Detroit households, more than 20% of which are carless and therefore forced to choose closer fringe stores over grocery stores.⁵² Proving the limited food choices and resulting unhealthy diets of many Detroiters, Detroit holds the title of the world’s leading potato chip consumer.⁵³ In order to allow current and future generations to live healthy lives, Detroit can no longer exist as a food desert.⁵⁴ Access to healthy food so that citizens can lead productive, long lives, must be provided. The first move towards a healthier Detroit is promoting and engaging in urban agriculture in neighborhoods that otherwise lack fresh food options.

Third, healthy citizens create strong communities, and Detroit communities strengthen when citizens work together to sustain them. For example, in the Farnsworth neighborhood, Detroit public school teacher Pete Weertz farms about ten lots and encourages people to move into his neighborhood to similarly engage in farming.⁵⁵ Caroline Leadley and her husband Jack Van Dyke did what Weertz proposes; they farm three lots a few blocks from Weertz’s urban farming operation, growing mainly cherry tomatoes and ornamental flowers

48. Food, Conservation, and Energy Act of 2008, 7 U.S.C. §7527 (2008).

49. MARI GALLAGHER, EXAMINING THE IMPACT OF FOOD DESERTS ON PUBLIC HEALTH IN DETROIT, 1, 3 (2007).

50. *Id.* at 5.

51. *Id.* at 4.

52. *Id.*

53. *Id.*

54. A. COLLIER & C. RAUBAUT, GOOD FOOD ACCESS FOR FAMILIES AND COMMUNITIES: MICHIGAN GOOD FOOD WORK GROUP REPORT SERIES 1, 3 (Jan. 2011) (The Center for Disease Control and Prevention (CDC) states that without “serious intervention” into the lifestyles of Americans, today’s children will live shorter lives than their parents for the first time in history.).

55. Jon Kalish, *Farming Detroit*, MAKE MAGAZINE (Feb. 26, 2012, 2:30PM), <http://blog.makezine.com/2011/09/09/farming-detroit/>.

that they sell at Detroit's Eastern Market and to local restaurants.⁵⁶ The couple remains pleasantly surprised at the income they enjoy from their small farming operation and hopes that their success encourages others to move to the Farnsworth neighborhood, which currently lacks any foods stores.⁵⁷ Citizens partaking in urban agriculture for all reasons will add to the success already occurring in urban agriculture communities around Detroit. Those who are in it to gain additional income will be happier and healthier as a result, lifting the spirits of their households and neighborhoods; those who are involved for the camaraderie will similarly benefit their communities.

In addition to community orientation, citizens will carry another trait that Thomas Jefferson had in mind when he imagined America as an agrarian society—a strong work ethic.⁵⁸ Accompanying their increased productivity, citizens will enjoy improved work ethics and improve their educational and career achievements as a result. For example, Detroit's Brightmoor neighborhood, with a vacancy rate exceeding 60%, is home to twenty gardens encompassing over fourteen city blocks and allows teenagers to work together in a Youth Garden.⁵⁹ In 2010, the teenagers shared almost \$3,000 in profits by working together to grow from lackadaisical to hard working after watching older, more experienced teenagers bring in impressive amounts of money.⁶⁰ Teenagers involved in productive activities such as urban farming are less involved in mischief and are more appreciative of learning opportunities.⁶¹ This shift in focus of youth energy will likely lead to increased results in Detroit's schools, which are allegedly one of the main reasons many Detroiters leave Detroit.⁶² Furthermore, with their focus shifting towards education and away from dangerous activities, Detroit's youth can use their knowledge of agricultural practices to market themselves for careers in the agriculture industry in Detroit and beyond.⁶³

Lastly, urban agriculture brings economic growth and economic recovery, both of which remain necessary events in Detroit. Increased economic production means more income for Detroit, and the quantity of vacant land in Detroit means that the city possesses massive

56. *Id.*

57. *Id.*

58. SCHNEIDER, *supra* note 13, at 3–4.

59. Kalish, *supra* note 55.

60. *Id.*

61. *Id.*

62. *Census Says Detroiters Leaving City for Suburbs*, CBS DETROIT, May 23, 2013, <http://detroit.cbslocal.com/2013/05/23/census-says-people-leaving-detroit-for-suburbs/>.

63. Niala Boodhoo, *Agriculture Drives the Midwest Economy-and Farming is Just the Start of It*, MICHIGAN RADIO (Mar. 21, 2012), <http://www.michiganradio.org/post/agriculture-drives-midwest-economy---and-farming-just-start-it> (People who work in industries relating to agriculture make up at least a quarter of the work force in America; “[t]hat includes everyone from people in food services jobs to Kraft executives to commodities traders.”).

production potential. With just 568 acres (remember, there were approximately 4,848 vacant acres in Detroit in 2010, and that number continues to increase), experienced farmers using advanced technology, techniques that extend the growing season, and storage facilities could produce 76% of the vegetables and 42% of the fruit consumed by Detroiters each year.⁶⁴ Even more impressive, beginning farmers in Detroit could produce the same amount of fresh produce by cultivating just 2,086 acres.⁶⁵ Based on the amount Detroiters spend on produce annually, this would place \$63 million in the local economy each year.⁶⁶ These figures, of course, do not account for the potential decreases in unemployment rates or the additional economic boosts that would accompany large-scale commercial crop production and animal production practices within Detroit.

The benefits of urban agriculture in Detroit are seemingly endless, as are the sources proving that motivating fact. Among the benefits affecting the entire Detroit community are sustainability, destruction of the food desert, reduced blight and expanded green spaces, healthier citizens, stronger communities, and economic recovery. Lucky for Detroiters, the laws currently in place seem to support urban agriculture.

IV. LAWS WITH A GENERAL IMPACT ON URBAN FARMING IN DETROIT

A wide array of laws and government policies impact urban farming in Detroit to varying extents.⁶⁷ This Comment does not cover all of those laws; rather, it focuses on the laws most relevant to urban agriculture. First, an analysis of Michigan's Right to Farm Act reveals that urban agriculture can continue to exist in Detroit if a few broad requirements are met. Second, side lot transfer programs and blotting serve key roles in obtaining land to conduct urban agricultural activities.⁶⁸ Third, adverse possession exists as another workable method of acquiring legal title to land in certain narrow circumstances. Finally,

64. Colasanti et al., *supra* note 44, at 7.

65. *Id.*

66. Tom Philpott, *From Motown to Growtown: The Greening of Detroit*, GRIST (Aug. 25, 2010), <http://grist.org/food/food-from-motown-to-growtown-the-greening-of-detroit/full/>. ("Detroit residents spend less than the residents of any other American city on food — about \$2,200 combined at home and in restaurants and bars in 2009.")

67. Two laws that are not discussed in this Comment, but that urban farmers should remain aware of are: (1) the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C.A. § 136a (West 2009 & Supp. 2013) (regulating pesticide distribution, sale, and use) and, (2) the Clean Water Act, 33 U.S.C.A. § 1251 (West 2001 & Supp. 2013) (regulating discharges of pollutants into the waters of the United States and quality standards for surface waters).

68. Kate Davidson, *Blotting Update: Detroit wants to sell you this lot for \$200*, MICHIGAN RADIO (Mar. 13, 2012, 3:33 PM), <http://michiganradio.org/post/blotting-update-detroit-wants-sell-you-lot-200> ("Blotting describes what happens when home-

upcoming changes to Detroit's zoning ordinance will create a new source of confidence for current and future farmers of Detroit.

A. *Michigan's Right to Farm Act*

Most states initially enacted right to farm laws to protect farmers from the increased risk of nuisance actions that accompanies urbanization.⁶⁹ Nuisance⁷⁰ actions originated at common law based on the concept that "a man shall not use his property so as to harm another."⁷¹ A nuisance can be private ("a nontrespasory invasion of another's interest in the private use and enjoyment of land")⁷² or public ("an unreasonable interference with a right common to the general public").⁷³ Accordingly, before right to farm laws, landowners who bought their land with knowledge of a neighboring farm's existence, use, and practices that caused noxious odors or other nuisances, and landowners who bought their land before a neighboring farm existed, would likely be successful in nuisance actions against the farm. Most right to farm laws, including Michigan's, provide a full defense to nuisance actions by declaring that if the farm or farm operation meets one of the following requirements, it "shall not be found to be a public or private nuisance":⁷⁴

- (1) the farm or farm operation was not a nuisance before a change in land use, such as the amendment or enactment of a zoning ordinance; or
- (2) the farm or farm operation is managed in a statutorily required way to protect the health and safety of neighboring landowners.⁷⁵

Currently, Michigan's Right to Farm Act ("RTFA") allows landowners to engage in farming and farm operations if the landowner meets requirements essentially mirroring the above-mentioned elements.⁷⁶ If a farm or farm operation⁷⁷ meets one of the following re-

owners annex the vacant lot, or lots, next door. They create expanded properties, between the size of a lot and a city block.").

69. SCHNEIDER, *supra* note 13, at 202.

70. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926) ("A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of a barnyard."); Also significant to the laws discussed in this Comment is that Michigan defines a violation of a zoning ordinance as a nuisance per se that shall be abated. MICH. COMP. LAWS ANN. § 125.3407 (West 2012).

71. JOSEPH A. JOYCE & HOWARD C. JOYCE, *TREATISE ON THE LAW GOVERNING NUISANCES WITH PARTICULAR REVERENCE TO ITS APPLICATION TO MODERN CONDITIONS AND COVERING THE ENTIRE LAW RELATING TO PUBLIC AND PRIVATE NUISANCES* 45 (1906).

72. RESTATEMENT (SECOND) OF TORTS § 821D (1979).

73. § 821B.

74. MICH. COMP. LAWS ANN. § 286.473 (West 2003); Patricia Norris et al., *When Urban Agriculture Meets Michigan's Right to Farm Act: The Pig's in the Parlor*, 2011 MICH. ST. L. REV. 365, 373–74 (2011).

75. *Id.*

76. *Id.*

quirements, the landowner can successfully use the RTFA as a defense to nuisance actions:⁷⁸

- (1) the farm or farm operation conforms to generally accepted agricultural and management provisions ("GAAMPs"); or⁷⁹
- (2) the farm or farm operation "existed before a change in the land use or occupancy of land within 1 mile of the boundaries of the farm land, and if before that change in land use or occupancy of land [it] would not have been a nuisance."⁸⁰

Eliminating the threat that local zoning laws pose to urban agriculture otherwise protected under the RTFA, the 1999 Amendments to the RTFA provide that the RTFA preempts "any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of [the RTFA] or generally accepted agricultural and management practices developed under [the RTFA]" starting June 1, 2000.⁸¹ In *Papesh*, the court applied this provision ("Preemption Provision") and held that a local zoning ordinance conflicted with the RTFA because the ordinance would preclude a farm protected by the RTFA from operating by allowing the township to implement size restrictions on the farm.⁸² Although this holding might seem unfair to the township, the court reasoned that the potential unfair result was not enough to allow judicial construction of the statute; it stated that the legislature clearly expressed its intent and the law must be enforced as written.⁸³ This broad interpretation of the Preemption Pro-

77. The broad statutory definition of "farm" includes "land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the *commercial production of farm products*." "Farm operation" is also defined broadly as follows: "the operation and management of a farm or a condition or activity that occurs at any time necessary on a farm in connection with the *commercial production*, harvesting, and storage of *farm products* . . ." For the remainder of this paper, "farm" and "farm operation" will be used interchangeably, although their statutory definitions differ. "'Farm product' means those plants and animals useful to human beings produced by agriculture . . ." MICH. COMP. LAWS ANN. § 286.472(a)-(c) (West 2003) (emphasis added); *Charter Twp. of Shelby v. Papesh*, 704 N.W.2d 92, 98-99 n.4 (Mich. Ct. App. 2005) ("Commercial production" is not defined by the RTFA but has been defined by the Court of Appeals as: "the act of producing or manufacturing an item intended to be marketed and sold at a profit," and requiring no minimum level of sales.).

78. MICH. COMP. LAWS ANN. § 286.473 (West 2003).

79. *Papadelis v. City of Troy*, No. 268920, 2006 Mich. App. LEXIS 2748, at *10 (Mich. Ct. App. 2006) (holding that simply one provision (MICH. COMP. LAWS ANN. § 286.473(1) or (2)) needs to be met in order for a farm or farm operation to obtain protection under the RTFA).

80. MICH. COMP. LAWS ANN. § 286.473(2) (West 2003).

81. § 286.474(6).

82. *Charter Twp. of Shelby v. Papesh*, 704 N.W.2d 92, 102 (Mich. Ct. App. 2005).

83. *Id.*; see also *Papadelis*, 2006 Mich. App. LEXIS 2748, at *12 n.1 ("We are aware that, under MCL 268.473(1), a business could conceivably move into an established residential neighborhood and start a farm or farm operation in contravention of local zoning ordinances as long as the farm or farm operation conforms to generally accepted agricultural and management practices. Although we might personally disagree with the wisdom of the policy choice codified under MCL 286.473(1), we are

vision reflects the general sway of the Michigan Court of Appeals: “state law preempts a municipal ordinance where the ordinance *directly conflicts* with a state statute or the statute *completely occupies the field* that the ordinance attempts to regulate.”⁸⁴ The Michigan Supreme Court seems to view the Preemption Provision more narrowly, reasoning that the RTFA preempts local zoning ordinances *only when* a provision in the RTFA or any of the GAAMPs *directly addresses* the conflict, therefore occasionally allowing local governments to place restrictions on what the RTFA would otherwise allow.⁸⁵ For example, under the Supreme Court’s reasoning, a greenhouse protected under the RTFA could not operate without conforming to local zoning laws restricting the size of the greenhouse.⁸⁶

Due to the increasing use of the RTFA as a sword, allowing farms to move to urban environments while maintaining protection under the RTFA, rather than for its originally intended use as a shield against nuisance actions, the Preemption Provision has become controversial.⁸⁷ One recent development widens the potential scope of prospective zoning laws and therefore favors the Detroit zoning board and other opponents of the Preemption Provision. Specifically, opponents of the Preemption Provision obtained victory over supporters when the Michigan Department of Agriculture & Rural Development (“MDARD”) added a provision (“2012 GAAMP Provision”), absent in previous GAAMPs, to every 2012 GAAMP. The 2012 GAAMP Provision states: “This GAAMP does not apply in municipalities with a population of 100,000 or more in which a zoning ordinance has been enacted to allow for agriculture provided that the ordinance designates existing agricultural operations present prior to the ordi-

without the authority to override the clearly expressed intent of the Legislature. MCL 286.473(1) is simply not ambiguous and, therefore, must be enforced as written.”).

84. *Papesh*, 702 N.W.2d at 102 (Clarifying, the court explained that a direct conflict exists between a local ordinance and the state statute when one permits what the other prohibits.) (emphasis added).

85. *Papadelis v. City of Troy*, 733 N.W.2d 397, 398 (Mich. 2007) (“As no provisions of the RTFA or any published generally accepted agricultural and management practice address the permitting, size, height, bulk, floor area, construction, and location of buildings used for greenhouse or related agricultural purposes, no conflict exists between the RTFA and the defendant city’s ordinances regulating such matters that would preclude their enforcement under the facts of this case.”) (emphasis added).

86. *Id.*

87. *See infra* Part IV–D at 30, citing UAW Meeting Minutes (Jan. 27, 2011) (explaining that the complaints against the RTFA’s protection of farms in urban areas are based on concerns about theoretical large scale operations which prospective operators of large scale farms will surely not invest in land without first obtaining assurance from the city that their operation will comply with the soon altered zoning ordinance); *see infra* Part IV–D at 31, citing UAW Meeting Minutes (Jan. 27, 2011) (explaining the city officials spoke of a resident who complained of unsightliness of crop covers, which protects crops from destruction by pests, across the street from her home which is another major complaint for displaced-residents claiming that farming belongs outside of the city since it brings unwanted pests, traffic, and other annoyances).

nance's adoption as legal nonconforming uses as identified by the Right to Farm Act for purposes of scale and type of agricultural use."⁸⁸ The 2012 GAAMP Provision initially appears to resolve the argument that the Preemption Provision should be repealed and replaced with a statute that allows local control over farming if the locality can prove that it has effective land use planning in place because local governments are granted that authority under the 2012 GAAMP Provision.⁸⁹

With a population estimate of 701,475,⁹⁰ Detroit could seek protection from RTFA preemption under the 2012 GAAMP Provision, but it has not yet implemented a zoning ordinance to secure that protection. Although the Detroit zoning board is meeting regularly to implement zoning regulations to override GAAMPs to a certain extent, no such changes have been made yet, so the below analysis will continue based on that fact.⁹¹ Furthermore, because urban farms that exist if and when Detroit implements a zoning ordinance regulating urban farming will enjoy the protection of continued operation under the 2012 GAAMP Provision, that Provision does not alter this immediate Call to Action.

Despite the 2012 GAAMP Provision, conflict continues regarding the implications of the Preemption Provision, probably because Detroit's zoning ordinance does not yet consider urban agriculture. Opponents allege that the Preemption Provision allows urban agriculture to occur without concern for the significant community interests served by local zoning ordinances, including long-term community visions and goals.⁹² This argument is easily dismissed because urban farming protects specific community interests of Detroit, mainly revival of the city, in the ways discussed in Part III-B of this Comment. Furthermore, because Detroit zoning ordinances have not yet been adjusted to protect community interests related to urban farming, op-

88. MICHIGAN COMMISSION OF AGRICULTURE & RURAL DEVELOPMENT, AGRICULTURAL AND MANAGEMENT PRACTICES (Jan. 2012) [hereinafter MICHIGAN COMMISSION OF AGRICULTURE & RURAL DEVELOPMENT], http://www.michigan.gov/documents/mdard/2012_FINAL_SITE_SELECTION_GAAMP_378548_7.pdf; *Jerome Township v. Melchi*, 457 N.W.2d 52, 55-56 (Mich. Ct. App. 1990) (A legal nonconforming use is a use that existed before a change in a zoning law and is allowed to continue in the same nature and size legally; otherwise, it is a nuisance per se.).

89. Wendy K. Walker, *Whole Hog: The Preemption of Local Control by the 1999 Amendment to the Michigan Right to Farm Act*, 36 VAL. U. L. REV. 461, 463 (2002) (This conclusion is based on the assumption that effective land use planning can be presumed from a zoning ordinance that allows for farming. After all, if a local zoning authority has enacted a zoning ordinance to allow farming, it has surely considered specific local concerns about how farming operations could impact the community.).

90. *State & County Quickfacts: Detroit, Michigan*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/26/2622000.html> (last visited Aug. 15, 2013). This is the 2012 population estimate, as 2013 estimates are not yet published.

91. See *infra* Part IV-D at 31, citing UAW Meeting Minutes (Jan. 27, 2011) (discussing the progress of the UAW towards implementing the new zoning ordinance).

92. Norris et al., *supra* note 74, at 395.

ponents of the Preemption Provision are incorrect in stating that community interests are better served by local zoning ordinances. If urban farming falls outside the scope of community goals at a later date, however, opponents' argument that community interests might be better served by zoning ordinances would be more persuasive. That circumstance could occur because of re-urbanization of the city and stabilization of its economy, allowing farmers to sell their farms for a satisfying profit, stop farming because of new employment, or simply walk away with little or no loss because of the low costs of starting and maintaining urban farms in Detroit. In conclusion, Detroit community interests are safeguarded by the RTFA in its current state and can gain further protection under local zoning laws if and when the city implements them.

Another significant argument against the opponents' community interest concern is the GAAMP provision that allows local governments to propose ordinances that prescribe standards differing from GAAMP requirements if public health or the environment would otherwise be adversely affected.⁹³ After such a local government proposal, the director of the City Planning Commission is required to host a public meeting to allow community input on the proposed ordinance.⁹⁴ The Commission must then approve or disapprove the ordinance based on various additional considerations, including consultation with the departments of environmental quality and community health.⁹⁵ This provision surely allows community interests to remain at the forefront of city planning goals, despite GAAMP requirements. In addition, the 2012 GAAMP Provision allows communities the opportunity to draft their own regulations regarding farm laws without raising community health or safety concerns as described above; this provision permits local zoning boards to address community interests as they would through traditional zoning laws.⁹⁶ For example, Flint permits hoop houses within city limits in particular circumstances, thereby operating under a zoning law that permits agriculture, as required by the 2012 GAAMP Provision for a local zoning law to preempt the RTFA.⁹⁷ Accordingly, the hoop house ordinance will allow Flint to create its own regulations regarding urban agriculture, addressing community interests as it deems fit. In order to satisfy community interests, Detroit can and should follow Flint's lead by

93. MICH. COMP. LAWS ANN. § 286.474(7) (West 2003).

94. *Id.*

95. *Id.*

96. MICHIGAN COMMISSION OF AGRICULTURE & RURAL DEVELOPMENT, *supra* note 88.

97. Norris et al., *supra* note 72, at 394–95. Before the hoop house revision, Flint's zoning ordinance had not been revised since 1968; Liz Shaw, *Flint to Consider Ordinance Changes to Enhance Urban Agriculture*, MLIVE BLOG (July 7, 2009, 10:18 AM), http://blog.mlive.com/get-healthy-in-genesees/2009/07/flint_to_consider_ordinance_ch.html.

implementing a zoning ordinance that allows for urban farming or by proposing ordinances to escape GAAMP regulation due to public health or environmental concerns.⁹⁸ This will allow Detroit to take full advantage of the protection provided by the 2012 GAAMP Provision and quash arguments against the Preemption Provision.

The next argument opponents raise is that unlike zoning ordinances, GAAMPs are not intended to protect property values.⁹⁹ For example, critics argue, manure management and pesticide application GAAMPs may be appropriate in rural areas while they create hazards in urban areas.¹⁰⁰ However, this argument is defeated by the points raised in the previous paragraph because the value of property in any community is of significant interest to its citizens. If Detroit finds that it opposes certain GAAMPs, it can simply provide a zoning ordinance that allows for agriculture, and will then be able to govern operations that would otherwise be regulated by GAAMPs. For example, if it disagreed with a GAAMP that allowed chickens to live on top of houses because it believed that practice decreased property values, Detroit could allow agriculture to exist under its zoning ordinance and forbid chickens from living on top of houses, escaping GAAMP regulation.

Given the benefits provided by urban agriculture and its lack of other revitalization sources, Detroit is unlikely to implement zoning regulations that would severely limit or harm urban agriculture. From Detroit's recent negotiations with John Hantz, a financial services magnate and Detroit resident, regarding the transfer to Hantz of approximately 200 acres of vacant land on the east side of Detroit, the city appears to support the expansion of urban agriculture.¹⁰¹ Hantz

98. See *infra* Part IV–D at 33, citing *Seeds of Progress*, *supra* note 2 (discussing that the UAW is working to draft a zoning ordinance that best fits Detroit's specific needs by allowing certain farming uses in order to escape RTFA governance and obtain local control over farming in order to meet community interests, but not necessarily to allow hoop houses). It is not yet clear whether Detroit will allow hoop houses when it amends the zoning ordinance, but the UAW wants to allow raising chickens to some extent so residents are not forced to rely on Tyson's "gross meat." UAW Meeting Minutes (Jan. 27, 2011). If hoop houses are allowed under the amended zoning code, an Agriculture Review Committee proposed in the current draft code will review and investigate all site plans. Site plans are required to describe proposed activities and crops for areas where agriculture is designated as a "Conditional Use," where a "Planned Development" zoning designation is required, and where farm operations will occur on a parcel sizing two acres or more. Put more simply, most urban gardens, currently defined in the draft zoning ordinance as those spanning one acre or less, will not have to undergo this review, so it may be easier to maintain small hoop houses on these small operations. However, larger operations that could host larger hoop houses will be reviewed by the Committee, which will have the power to deny the operation from having a hoop house. UAW Meeting Notes (Mar. 6, 2012).

99. Norris et al., *supra* note 74, at 396.

100. *Id.*

101. Laura Berman, *Urban Farming Idea Slowly Sprouts in Detroit*, DETROIT NEWS (Mar. 20, 2012, 3:37 PM), available at <http://www.detroitnews.com/article/20120320/OPINION03/203200352>.

stands ready to invest \$30 million into his commercial farming plan and proposes to plant oak trees and other hardwoods, while providing new employment opportunities for Detroiters.¹⁰² Detroit wants urban farms to survive and provide the aforementioned benefits to the city, so it will predictably either allow farmers to continue growing under the RTFA or amend the local zoning ordinance to allow farming in a manner that the city believes better protects community interests, the latter option almost assured at this point.¹⁰³

In conclusion, although multiple arguments against the application of the RTFA to urban farming in Detroit continue to surface, the RTFA currently allows farming within Detroit and significant changes to the RTFA that would harm urban farmers are unlikely to occur in the foreseeable future. The RTFA was designed to protect farmers engaged in accepted practices from whims of community residents and government officials; it is presently doing just that in Detroit.¹⁰⁴ If Detroit chooses the unlikely route of continuing to operate under the RTFA, rather than enacting a zoning ordinance to qualify for protection under the 2012 GAAMP Provision, Detroit planning officials will have to track GAAMPs annually in order to craft their zoning laws accordingly.¹⁰⁵ That choice would force the MDARD to do the same, modifying GAAMPs to obtain the greatest control over urban farming. Therefore, even if the RTFA endures changes, the likely outcome would be more regulation, rather than a ban on urban agriculture practices. Most importantly, the 2012 GAAMP Provision and Detroit's need for the benefits of urban agriculture make engaging in urban farming in Detroit an undeniably successful tool to advance Detroiters' wellbeing.

102. Campbell, *supra* note 7.

103. Nancy Kaffer, *Detroit Officials Work to Create Zoning Code for Urban Farming*, CRAIN'S DETROIT BUSINESS (Mar. 23, 2012), available at <http://www.craindetroit.com/article/20100323/FREE/100329977/detroit-officials-work-to-create-zoning-code-for-urban-farming#> (Although farming in Detroit technically violates the city's zoning code as presently enacted, the city's formation of the Urban Agriculture Workgroup (UAW) to draft a zoning code that allows for various forms of urban agriculture and the lack of complaints about existing urban agriculture operations leave little room for most people farming "under the radar" to worry that they will face legal consequences.); see *infra* Part IV–D at 30, citing UAW Meeting Notes (Mar. 6, 2012) (detailing the latest progress of the UAW); see also *infra* Part IV–B at 25, citing *Priorities and Policies for Property Acquisition and Disposition*, *infra* note 110, at 4 (explaining Detroit's expedited land transfer programs).

104. Jonathan Oosting, *State Senator Looks to Amend Michigan Right to Farm Act, Let Detroit Regulate Urban Farming*, MLIVE (Nov. 29, 2011, 10:32 AM), http://www.mlive.com/news/detroit/index.ssf/2011/11/state_legislator_looks_to_amen.html.

105. See *infra* Part IV–D at 32–33 (stating Detroit is working towards amending the zoning ordinance to allow for urban farming, meaning that it would no longer be governed under GAAMPs).

B. *Side Lot Transfer Programs*

In 2008, the Detroit City Council approved the Detroit Land Bank Authority (“DLBA”)¹⁰⁶ under the Fast Track Act.¹⁰⁷ That Act became law in 2004, when the legislature established a need for economic reutilization and disposition of public property in a coordinated manner that encouraged economic growth.¹⁰⁸ Land bank fast track authorities created under the Act have the power to: “acquire, assemble, dispose of, and quiet title to property . . . provide for the financing of the acquisition, assembly, disposition, and quieting of title to property . . . exercise other powers granted to a land bank fast track authority under this act.”¹⁰⁹

Detroit’s first side lot transfer program, the *Side Lot Disposition Program*, was established by the DLBA in its 2010 *Priorities and Policies for Property Acquisition and Disposition*.¹¹⁰ This program allows qualified Detroit landowners (those who hold title to and occupy property contiguous to a qualified side lot, do not have any outstanding citations of state or local codes and ordinances, and own no tax delinquent property) to purchase qualified residential property (vacant, unimproved, physically contiguous to the side lot on one side, and consisting of at most five lots capable of development) for \$200 plus applicable fees.¹¹¹ The Side Lot Disposition Program quickly became an extremely affordable vehicle for Detroit homeowners to obtain land for urban farms.¹¹² However, complaints of slow transfers under the program, often meaning that residents waited years for the city to process their applications, prompted the city to take further action.¹¹³

On March 7, 2012, Detroit Mayor Dave Bing announced a new plan that allows property owners to buy vacant city-owned adjacent lots for \$200.¹¹⁴ This policy announcement was made at the Mayor’s annual State of the City speech in response to the need for Detroit’s government to stop cash outflows in order to reduce its \$100 million deficit.¹¹⁵ Referred to as the *White Picket Fence Program*, this new program essentially operates like the DLBA Side Lot Disposition Pro-

106. *This Just In: Land Bank Authority Getting off the Ground*, CRAIN’S DETROIT BUSINESS (July 20, 2009, 5:14 PM), available at <http://www.crainsdetroit.com/article/20090719/SUB01/907189993/this-just-in-land-bank-authority-getting-off-the-ground#>.

107. MICH. COMP. LAWS ANN. §§124.751–74 (West 2006).

108. §124.752.

109. *Id.*

110. *Priorities and Policies for Property Acquisition and Disposition*, DETROIT LAND BANK AUTHORITY, May 16, 2013, at 2.

111. *Id.* at 12.

112. *Id.*

113. Davidson, *supra* note 68.

114. John D. Stoll, *Detroit Mayor’s New Plan: Sell City Lots for \$200*, REUTERS (Mar. 8, 2012, 9:08 PM), <http://www.reuters.com/article/2012/03/08/us-detroit-mayor-idUSBRE82706520120308>.

115. *Id.*

gram.¹¹⁶ The main difference between the programs is that the White Picket Fence Program entails city planners targeting particular neighborhoods and identifying eligible lots; the city then writes letters to eligible homeowners offering to sell them a vacant adjacent lot for \$200.¹¹⁷ To complete a side lot purchase, eligible homeowners must simply sign an application attached to the letter they receive from the city and submit \$200; the city will then mail the new side lot owner the deed.¹¹⁸ As a further incentive, the city will give new side lot owners a \$200 gift card to a local lumberyard to use towards fencing their vacant lot.¹¹⁹

The side lot transfer programs described above are the local government's attempt at promoting legal blotting. *Blotting* describes the process of homeowners acquiring vacant adjacent lot(s), to create *blots*, properties larger than a lot, but smaller than a city block.¹²⁰ Recognizing that blotting is highly conducive to urban agriculture,¹²¹ the DLBA supports using side lots acquired through its program for that purpose.¹²² It revealed its support by placing urban agriculture on the list of priorities the DLBA must consider when deciding whether to execute a side lot program purchase; urban agriculture exists on the list along with uses that did not occur at a high frequency when the policies were implemented and still do not appear to threaten urban agriculture.¹²³ Given the city's emphasis on the importance of urban agriculture as a tool for successful disposition of city-owned parcels and the ease of obtaining parcels through the side lot transfer programs, urban agriculture will surely continue to flourish in Detroit.

Of course, if a future farmer cannot obtain land through one of the side lot programs, she will presumably purchase property legally through a standard real estate sales transaction, similarly effectuating legal blotting. The future farmer in Detroit has countless parcels of land available to her. The city owns over 60,000 parcels, most of

116. Davidson, *supra* note 68.

117. *Id.* (contrasting program waits for citizens to apply, rather than first contacting them regarding their eligibility).

118. *Id.*

119. Stoll, *supra* note 114.

120. Davidson, *supra* note 68.

121. Michael Yun, *Alternative Uses for Vacant Land in Detroit, Michigan* (Spring 2008) (unpublished MLA practicum, University of Michigan) (on file with the University of Michigan Library system) (acknowledging that although the most common use of blots is parking, the practice provides great benefits, including reduced crime and more green spaces, some of the benefits commonly associated with urban agriculture, in addition to opportunities for urban farming); David Lepas, *Is Blotting the Best Solution for Shrinking Cities?*, THE ATLANTIC CITIES, (Nov. 10, 2011), available at <http://www.theatlanticcities.com/housing/2011/11/blotting-good-or-bad-shrinking-cities/470/> (describing blotting as a form of "smart shrinkage" implemented in many recession area cities such as Cleveland and Chicago, in addition to Detroit).

122. *Priorities and Policies for Property Acquisition and Disposition*, *supra* note 110, at 4.

123. *Id.* at 5.

which are vacant,¹²⁴ and many of which do not qualify for side lot programs. Additionally, countless parcels, some vacant and some improved, remain real estate owned (“REO”); banks with ever-increasing inventory of foreclosed properties are desperate to reduce their holdings of vacant homes and lots. The availability of REO and city-owned parcels for next to nothing forces private landowners to sell their land at low prices in order to compete in the market; in sum, prices of land owned by all entities are low. Temptingly low land prices mean that obtaining land for urban farming remains possible to people of limited resources. However, because most of the land on the market is either city-owned or in REO, the process of legally acquiring Detroit land often proves slow, causing future farmers to look for alternatives.

Blotting without owning the land, which is cheaper but illegal, is another avenue Detroiters may pursue to obtain land for urban farming.¹²⁵ Detroit landowners feel threatened by the emptiness surrounding them, especially by abandoned properties near their own land.¹²⁶ Accordingly, neighboring landowners bought more than a quarter of the tax-reverted properties sold by the city through 2005.¹²⁷ However, because obtaining land legally is often seemingly impossible, landowners are making productive uses, namely gardening and farming, of others’ land. For example, the Besheers fenced off four lots around their house in order to plant cherry trees, apple trees, and grape vines and as “a relief from the pit bulls, the burnt house and the emptiness across the street.”¹²⁸ However, the family only owns one of the four lots that make up their blot.¹²⁹ They tried to buy two of the other lots, one from the city and one from the county, but their requests were denied.¹³⁰ The Besheers’s son, Paul Browne, describes his family’s reasoning for blotting: “If you go up the next block from here you’ll see what it would look like. Just overgrown bush piles. Trash. Car parts. And it’s only from stubbornness and perseverance that keeps it

124. Kate Davidson, *Empty Places: It’s Not Squatting . . . It’s Blotting*, CHANGING GEARS, (Nov. 9, 2011, 7:00 AM), <http://www.changinggears.info/2011/11/09/empty-places-its-not-squatting-its-blotting/>.

125. Whitney Moon, *Reclaiming the Ruin: Places*, THE DESIGN OBSERVER GROUP (May 15, 2009), <http://places.designobserver.com/feature/reclaiming-the-ruin/1144/> (arguing that illegal uses of blots such as parking, gardening, or building a fence to prevent waste from being dumped on the blot seem to go unpunished. This is likely due to the city’s great need for revitalization and the positive effects of blotting that improve the city’s landscape, and landowners’ lack of resources to productively use their land. Thankfully for farmers and others making productive use of illegal blots, the illegal nature of their acts will likely continue to go unsanctioned, as the focus of citizens and city officials remains on the fact that “unsanctioned acts are early signs of life in the aftermath.”).

126. *Id.*

127. Davidson, *supra* note 124.

128. *Id.*

129. *Id.*

130. *Id.*

from becoming a debris pile.”¹³¹ This practice of using land owned by others might seem more feasible to Detroiters motivated by the present state of the neighborhoods they know as home, than to newcomers. However, newcomers who are aware of the city’s bad reputation for keeping property records current, the number of city owned parcels sitting vacant and rarely inspected, and the low costs of urban farming are likely to adopt the common Detroit resident perspective on the issue.

Finally, remaking cities as neo-suburbs, more green and less dense, blotting remains one of the best options to help shrinking cities such as Detroit survive. Blotting will create a Detroit with fewer, less homogenous lots, changing the city’s genetic code.¹³² This certainly will not alone return Detroit to its former glory, but will return the benefits commonly provided by *smart downsizing* or *creative shrinkage*, benefits for which Detroit has long yearned. Providing larger lots that are better cared for and used for gardening and farming rather than as junkyards and crime beds, blotting in Detroit proves desirable for Detroit’s shrinking population.

C. *Adverse Possession*

Those who initially farm land illegally may obtain legal title to that land through adverse possession. In order to do so, a farmer must show “clear and cogent proof of possession that is actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of 15 years, hostile, and under claim of right.”¹³³ First:

[F]or a party to establish possession by clear and cogent evidence, the evidence must clearly establish the fact of possession and there must be little doubt left in the mind of the trier of fact as to the proper resolution of the issue; where there is any reasonable dispute, in light of the evidence, over the question of possession, the party has failed to meet his burden of proof.¹³⁴

Actual possession does not require residing on the property; a court is more likely to find it when the possessor pays taxes on the land and will examine the activities conducted on the property to make a final determination.¹³⁵ *Open possession* exists when the titleholder should

131. *Id.*

132. Tobias Armbrorst et al., *Improve Your Lot*, in 1 CITIES GROWING SMALLER 47, 48 (Karina Pallagst ed., 2008).

133. *Beach v. Twp. of Lima*, 802 N.W.2d 1, 6 (Mich. 2011) (quoting *Burns v. Foster*, 81 N.W.2d 386 (1957)).

134. *McQueen v. Black*, 425 N.W.2d 203, 205 n.2. (Mich. Ct. App. 1988).

135. *Compare* *Hayward v. Marker*, 55 N.W.2d 143, 144–45 (Mich. 1952) (holding that planted flowers and trees, cleared branches, a constructed road, shored up lake banks, and picnics were enough to demonstrate actual possession), *and* *Beach v. Twp. of Lima*, 770 N.W.2d 386, 399–400 (Mich. Ct. App. 2009) (holding that a barn, planted trees, planted crops, and fencing were sufficient to find adverse possession, although none of these was individually conclusive), *with* *Ennis v. Stanley*, 78 N.W.2d 114,

have actual knowledge of another's use of the property.¹³⁶ *Exclusive possession* consists of maintaining possession to the exclusion of all others.¹³⁷ *Continuous possession* simply means that the required elements must be present for the entire statutory period.¹³⁸ *Hostile* in the adverse possession context does not require ill will, but use that is inconsistent with the right of the true owner; this element is defeated if the landowner gives the adverse possessor permission to use the land or if the landowner would not be entitled to bring a cause of action against the possessor.¹³⁹ Lastly, *claim of right* requires use of the land under a mistaken belief that it belongs to the possessor.¹⁴⁰ If all of these elements are met for the entire statutory period, the farmer possessing the land should bring a quiet title action, asking the court to judicially recognize the transfer of marketable title to the farmer.¹⁴¹

The average farmer who attempts to obtain title to a parcel through adverse possession faces significant barriers. First, skepticism towards the viability of obtaining farmland through adverse possession might arise from doubts that the city would let farmers use its land continuously for fifteen years. However, if farmers pay property taxes and maintain land owned by others, providing the city with additional income and reduced blight, Detroit officials are unlikely to interfere. Furthermore, former Detroiters who abandoned their land will reap benefits of others' farming on the Detroiters' abandoned land, as they will no longer have to worry about delinquent taxes once farmers obtain legal title through adverse possession. Establishing a claim of right might be most difficult for farmers who begin to use land that they have not even attempted to purchase but farm because the true owner has failed to use the land productively. Detroiters who simply farm parcels next to their own land may have an easier time establishing the claim of right element, as they can argue they believed their plot extended beyond the true property line; a counter-argument to this point might become impossible to support due to Detroit's poor record keeping. Additionally, land owned by the state enjoys immunity from the fifteen-year limitation period that applies to adverse possession claims, but a farmer who could otherwise obtain legal title through adverse possession may seek equitable relief.¹⁴²

117–18 (Mich. 1956) (holding that occasional or periodic entry is not enough to constitute actual use).

136. *Gould v. Fiero*, 247 N.W. 719 (Mich. 1933).

137. *Jonkers v. Summit Twp.*, 747 N.W.2d 907 (Mich. App. 2008) (citing *LeRoy v. Collins*, 142 N.W. 842 (Mich. 1913)).

138. *Ennis v. Stanley*, 78 N.W.2d 114, 117 (Mich. 1956).

139. *Wengel v. Wengel*, 714 N.W.2d 371, 377 (Mich. Ct. App. 2006).

140. *Gould v. Fiero*, 247 N.W. 719 (Mich. 1933).

141. *Beach v. Twp. of Lima*, 802 N.W.2d 1, 6 (Mich. Ct. App. 2011).

142. MICH. COMP. LAWS ANN. § 600.5821(1) (West 2000).

To make the best adverse possession cases, farmers should build and maintain fences around the plots they farm, plant and maintain crops, make their use and the exclusion of others known (*no trespassing* signs help prove this), and avoid asking the true owner for permission to use the land. However, the determination of whether one has obtained legal title through adverse possession lies in the court's discretion; of the large and hopefully increasing number of urban farmers in Detroit, some are likely to obtain legal title through this process.

D. *Detroit's Zoning Ordinance*

Finally, upcoming amendments to Detroit's zoning ordinance have great potential to fill Detroiters with a new confidence in urban agriculture. Detroiters who have been farming will stop worrying about being sanctioned as a result of unpredictable changes to the ordinance; Detroiters and outsiders previously reluctant to farm because of the city's unconfirmed intentions for the amended ordinance will start farming.¹⁴³ Support for these assertions lies in UAW's goal to implement a zoning ordinance that allows for expansive growth in Detroit's urban agriculture movement.¹⁴⁴

Agriculture is not mentioned by Detroit's zoning code as presently enacted, meaning that it is only allowed to the extent provided by the RTFA.¹⁴⁵ In order to resolve the incongruity between the restrictive zoning code and the urban agriculture practices already occurring in great numbers within the city, the UAW has been meeting regularly and will soon submit a draft policy for public comment.¹⁴⁶ It plans to implement the early policy recommendations that the City Planning Commission submitted to the City Council in the form of a Draft Policy on May 23, 2010.¹⁴⁷ In addition, the revised draft will include resolutions to hot button issues.¹⁴⁸

Among the hot button issues discussed by the UAW so far, those receiving the focus of whole meetings spanning several hours include:

143. For example, as soon as Hantz farm's plans are allowed under the ordinance, its operations will commence. UAW Meeting Notes (Mar. 6, 2012).

144. UAW Meeting Notes (Mar. 6, 2012); Kaffer, *supra* note 100 (adding strength to the urban agriculture movement, the power of the latest draft ordinance stems from the reason for the UAW's creation—to draft a zoning ordinance that allows for urban agriculture in response to the changing needs of Detroit.).

145. DETROIT, MI., ZONING ORDINANCES (2012).

146. UAW Meeting Minutes (Jan. 27, 2011).

147. *Id.*; MINDY GOLDSTEIN ET AL., URBAN AGRICULTURE: A SIXTEEN CITY SURVEY OF URBAN AGRICULTURE PRACTICES ACROSS THE COUNTRY, GEORGIA ORGANICS, at 24 (2011), <http://georgiaorganics.org/wp-content/themes/GeorgiaOrganics/Downloads/SiteMoveOver/urbanagreport.pdf> (In the draft policy, the City Planning Commission "proposes revising the zoning code in two stages: first determining in which zoning districts urban agriculture activities will be allowed and under what standards and circumstances, and then addressing the keeping of animals like bees, rabbits, chickens, and horses.").

148. *Id.*

large-scale projects (the definition of a *large farm*, impact on residential areas, and food security), farm products (Hantz oak trees, and proactive, rather than restrictive, zoning regulations), pesticides, herbicides, and other chemicals (concerns about children, elders, high rates of asthma, alternative methods), soil testing (determine best practices), animals (look to Cleveland for slaughtering regulations, probably allow production for personal consumption), and genetically modified organisms (“GMOs”).¹⁴⁹ Revealing steady progress, the UAW has made some specific determinations that it plans to work into the code.¹⁵⁰ First, the UAW defines *garden* as a farming operation spanning one acre or less.¹⁵¹ It defines *farm* as an operation sizing over an acre, and is currently contemplating whether and how to define *large scale farm*.¹⁵² Sticking to its focus on community concerns, the group recently pondered how much public notice is needed for large farm plans.¹⁵³ All agreeing that the more community involvement they allow, the better citizens will react to the new ordinance, the group narrowed the options down to: (1) determining that farms over a certain acreage are *Planned Developments*, meaning they get the highest level of community input (two hearings, one during the day and one during the evening); or (2) creating a third size definition for *large scale farms* in which all large scale farms are *Conditional Uses* and therefore require one daytime hearing.¹⁵⁴

Confirming that support for urban agriculture will remain, the UAW wants to keep the process of obtaining permission to start a farm simple, while not too simple as to allow unsophisticated farmers to harm the community by, for example, misapplying pesticides.¹⁵⁵ In addition, the UAW aims to create programs that promote gardens and small scale agriculture; out of several options, it seems to be leaning towards a *One Percent for the Arts* program that would place 1% of

149. *GMO Facts*, THE NON-GMO PROJECT, <http://www.nongmoproject.org/learn-more/> (last visited Oct. 6, 2013) (defining GMOs as “plants or animals that have been genetically engineered with DNA from bacteria, viruses or other plants and animals”). UAW Meeting Minutes (Jan. 27, 2011).

150. UAW Meeting Notes (Mar. 6, 2012).

151. *Id.*

152. The UAW wants the definition of “large scale urban farm” to focus on size, not production. However, measuring the impact of operations is impossible without first knowing what the farmer will grow, because, for example, according to several members of the group, 100 acres of oak trees will have less impact (traffic, workers, environmental effects, etc.) than 20 acres of vegetables, so it is having trouble coming up with a standard definition. Additionally, the UAW discussed the importance of allowing people to change the crops they plant after their initial growing season, making a standard definition even less workable. UAW Meeting Notes (Mar. 6, 2012).

153. *Id.*

154. *Id.* (The final zoning ordinance will contain just one of these rules stating the public notice requirements for large farms.).

155. *Id.* (The latest draft of the zoning code provides for an Advisory Committee that will review these plans in order to ensure their compliance with city codes.).

the sale price of lots sold by the city in a fund for urban agriculture resources.¹⁵⁶

Based on the latest progress of the UAW and the city's obvious support for urban agriculture, as revealed by its creation of the UAW, decision to create a zoning ordinance that will allow it to escape the RTFA, and implementation of the side lot programs, the future of urban agriculture is bright and farmers can rest assured that the city's support will not vanish anytime soon. Although the zoning ordinance still has to be finalized, submitted for public comment, and approved by the City Planning Commission and City Council for approval, the final version that becomes law will surely reveal the city's strong support.

Significantly, commercial projects larger than Recovery Park are knocking at Detroit's door.¹⁵⁷ If the city can successfully implement a zoning code that balances farming policies with community interests, other industries presumably will become keen on the idea of Detroit doing the same for their needs, so it looks like the city is currently moving in the right direction.¹⁵⁸ As more individual and commercial farmers engage in urban production practices, leaders in other industries will have a hard time denying the feasibility of moving into Detroit.

V. A FEW CLOSING LOTS TO BRING TO YOUR FARM

Detroit's need for urban farming remains obvious. In order to keep reaping countless benefits, particularly relating to revitalization, and to redeem their city, Detroiters must band together to strengthen the urban agriculture movement. Illustrating the significance of outsiders to this movement and perhaps bringing all of this together, Whole Foods opened a 21,000 square-foot store in Midtown on June 5, 2013.¹⁵⁹ A store that prides itself on selling *local*¹⁶⁰ foods, Whole Foods looks to urban farms within the city to supply many of its production needs.¹⁶¹ Furthermore, Whole Foods's move into Detroit reveals that ongoing positive efforts within the city, particularly those related to urban farming, give outside businesses and investors much faith in the city, providing the Motor City with another chance.

156. *Id.*

157. *Seeds of Progress*, *supra* note 2.

158. *Id.*

159. David Muller, *Whole Foods CEO Tells Bloomberg New Detroit Store 'Exceeding Our Wildest Expectations,'* MLIVE BLOG (Aug. 5, 2013), http://www.mlive.com/business/detroit/index.ssf/2013/08/whole_foods_ceo_tells_bloomberg.

160. SCHNEIDER, *supra* note 13, at 670 (explaining Whole Foods' definition of the term "local" to mean that the products travel "less than a day from farm to store" and "most of its stores have even shorter maximum distances").

161. *Id.*