SECURING THE MOMENTUM: COULD A HOMESTEAD ACT HELP SUSTAIN DETROIT URBAN AGRICULTURE?

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I. INTRODUCTION

Food security, employment opportunities, answers to urban blight, and health problems—urban agriculture has many reasons to deserve the buzz it has lately received. Long before "going green" entered the larger societal and business consciousness, many American cities enacting zoning provisions for agriculture before the current industrial agricultural system took hold. Indeed, the rise of urban agriculture coincides with economic depressions in modern history, when state and local governments promoted community gardens to counteract poverty and its attendant social unrest.[1]

But the most recent manifestation of urban agriculture is unique; it is a movement driven by social justice as well as necessity, incorporating an ethic of environmental sustainability, and community building to address the problems of the postindustrial city including unemployment, food access, and vacant land

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1. Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. LEGIS. & PUB. POL'Y 351, 354 n.19 (2000).

issues. Detroit exhibits a prime example of urban agriculture as a grassroots movement that shifts how the community thinks about food, where it comes from, and who controls it. Most importantly, Detroit's urban agriculture movement has stimulated the idea of access to healthful affordable food as a human right.[2] With the recovery from the auto industry's deterioration—where economic decisions affecting the lives of millions of people were decided by a privileged few—decades of white flight, and other detrimental factors, it is no surprise that urban agriculture in Detroit transcends the middle-class values of environmental sensitivity in favor of the economic justice of empowering those who stayed and persevered in Detroit when others left.

". . . [T]here's too much talk around the community and not enough talk around the individual . . . [I]f you actually believe in community in the city of Detroit, to get out and touch, you touch individuals, because the bulk of the city does not have community."[3] This is what John Hantz, CEO of Hantz Group, said as a panelist at the Urban Farming Summit—hosted by the University of Michigan Dearborn in April of 2010— in support of his proposal that Detroit reinstate a Homestead Act to promote urban agriculture as an industry. [4] Hantz is an outsider to the Detroit urban agriculture movement, a money manager worth over $100 million living in an older beautiful enclave of Detroit, separate from the urban decay that has given rise to the city's urban agricultural regeneration.[5] Many have been skeptical of Hantz's vision of a large for-profit farm in the middle of the city and talk of creating scarcity of land to generate investment, seeing it as both a threat to the community that urban agriculture has already generated—with over 1300 community gardens and farms—and a return to the individualistic, capitalistic motives that some say have led to Detroit's economic and social challenges.[6] Where urban agriculture in Detroit strives to cultivate food security for those who have little by organizing them for collective power, Hantz's

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2. *See A City of Detroit Policy on Food Security: "Creating a Food Secure Detroit,"* DETROIT BLACK COMMUNITY FOOD SECURITY NETWORK, http://detroitblackfoodsecurity.org/policy.html (last visited Sept. 22, 2011).

3. Univ. of Mich. Dearborn, *The Business of Urban Agriculture - Urban Farming Summit*, YOUTUBE (Apr. 14, 2010), http://www.youtube.com/watch?v=_IQ9gq0ShEk.

4. *Id.*

5. David Whitford, *Can Farming Save Detroit?*, CNNMONEY.COM (Dec. 29, 2009, 11:37 AM), http://money.cnn.com/2009/12/29/news/economy/farming_detroit.fortune/index.htm.

6. *See* Nancy Kaffer, *Urban Farming Can Succeed in Detroit, Panelists Say*, CRAIN'S DETROIT BUS. (Apr. 7. 2010, 1:53 PM), http://www.crainsdetroit.com/article/20100407/FREE/100409916#; *see also*, Univ. of Mich. Dearborn, *supra* note 3.

goal to create scarcity for the sake of traditional economic development is antithetical in comparison.[7]

The original Homestead Act of 1862 was itself one of many land acquisition statutes in American history that championed the individual over community as part of the persistent imperial conquest of native lands for the benefit of European Americans.[8] Today's critics of Hantz see a potential Detroit homestead act as antithetical to what they believe urban agriculture needs to be for the city—community oriented and organized—and fear the prospect of another government-sponsored land grab that could potentially be cultivated by Detroit natives.[9] Is a homestead act for Detroit too impractical and/or politically unfavorable to consider? Hantz made the following comment when discussing the difficultly of buying what he hopes to be 3000 acres of land at $30 million from the city, saying "[i]f you homestead, you engage [people] into their community, not someone talking for them, me or others . . . . When you talk to the land banks, it is very difficult for a citizen in Detroit to get a piece of acreage . . . the individuals are ahead of us."[10]

Currently, Detroit has no zoning ordinances for any type of non-public or personal agriculture production beyond personal backyard gardens; people make use of vacant lots by farming without ownership, lease, or permission, or by verbal agreement alone.[11] So far, with the abundance of urban gardening, husbandry, and beekeeping all happening "under the radar" in Detroit and organizations like The Greening of Detroit helping farmers navigate different state and city agencies to secure land rights, there have been minimal zoning problems.[12] For example, farmers leasing land must register a greenhouse, which current city zoning includes as part commercial and part industrial zoning, but they face an inefficient administrative process because the greenhouse is the primary structure on the

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7. *See* The Editors, *A New Harvest for Detroit*, THE ATLANTIC (May 27, 2010, 8:00 AM), http://www.theatlantic.com/special-report/the-future-of-the-city/archive/2010/05/a-new-harvest-for-detroit/57308/ (where Hantz discusses his theory of creating positive scarcity to motivate people to take action in their community).

8. *See generally* Homestead Act of 1862, ch. 75, 12 Stat. 392.

9. Kaffer, *supra* note 6.

10. Univ. of Mich. Dearborn, *supra* note 3; Kaffer, *supra* note 6.

11. Interview with Patrick Crouch, Program Manager, Earthworks Urban Farm (June 3, 2010). *But see* DETROIT, MICH., CODE OF ORDINANCES §§ 40-3-1 to 40-3-2 (2010) (outlining that the Recreation Department for Detroit may establish gardens on city land for the exclusive use of private citizens).

12. Interview with Janell O'Keefe, Intern, The Greening of Detroit (June 7, 2010).

property (as opposed to an auxiliary structure that is on the same lot as their residence).[13] Farmers register their greenhouses, hoop houses, and other growing set-ups as temporary structures because—important to many who use more affordable means to make the buildings—it is both a cheaper permit than a permanent structure and a lesser building code to maintain than a traditional greenhouse.[14] Detroit promotes urban agriculture by sponsoring the Adopt-A-Lot program with the property it owns, offering lots for gardening with the express condition that gardeners must leave the property and return it to its original condition in the event of sale or conveyance by the City.[15] The Michigan Land Bank has the Garden for Growth Program, which allows for $25 one-year and $75 three-year leases for individual or non-profit gardens, but does not offer potential ownership.[16] The Wayne County Land Bank offers similar programs.[17] Because all the possibilities for urban agriculture land rights are not well defined or streamlined, problems may arise when city agencies and citizens are in conflict on how to use lots of land.[18] An example of a worst case scenario is South Central Community Farm in Los Angeles, which cultivated an extensive urban garden on land the city acquired by eminent domain for twelve years, but were kicked off after the owner won a long legal battle for property rights.[19]

A new zoning ordinance that is supportive of agriculture is being drafted with the Urban Agriculture Workgroup, lead by Kathryn Lynch

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13. *See* DETROIT, MICH., ZONING ORDINANCES §§ 61-9-117(8) and 61-9-36(9) (2011) (classifying greenhouses as industrial or commercial, but does not offer a "personal use" greenhouse classification); *see also id.*; Crouch, *supra* note 11.

14. O'Keefe, *supra* note 12; Crouch, *supra* note 11.

15. City of Detroit Planning & Dev. Dep't, *Application for Garden Permit/Adopt-A-Lot Permit*, CITY DETROIT, http://www.detroitmi.gov/Portals/0/docs/planning/pedf/RED/Garden-Adopt-A-Lot-Application-Permit.pdf (last visited Sept. 22, 2011) [hereinafter *Adopt-A-Lot*].

16. Mich. Land Bank, Fast Track Auth., *Garden for Growth Program: Frequently Asked Questions*, MICHIGAN.GOV, http://www.michigan.gov/documents/dleg/Frequently_Asked_Question_316253_7.pdf (last visited Sept. 22, 2011).

17. Olga Bonfiglio, *Delicious in Detroit*, AM. PLAN. ASS'N (Aug./Sep. 2009), http://www.planning.org/planning/open/aug/deliciousdetroit/htm?print=true.

18. *See* Jonathan D. Lachance, Supporting Urban Agriculture: A Proposed Supplement to the City of Detroit Master Plan of Policies 8–10 (Apr. 2004) (unpublished M.U.P. thesis, Univ. of Mich.) (on file with author); O'Keefe, *supra* note 12.

19. S. Cent. Farmers Feeding Families v. City of Los Angeles, No. B195906, 2008 WL 4402115 (Cal. Ct. App. Sept. 30, 2008).

Underwood of the Detroit Planning Commission and including leaders of the Detroit Black Community Food Security Network, the Greening of Detroit, the Detroit Agriculture Network, Earthworks Urban Farm, and representatives from Michigan State University, along with officials from state and city government.[20] Intent on creating a zoning code that met the particular needs of Detroit, the Planning Commission began drafting after receiving input from the Detroit Food Policy Council and members of the Detroit urban agriculture community.[21] Once put into effect, the zoning laws will play a huge role in resolving the current disconnect between statutory schemes and street-level reality.[22] But even amid this renaissance for hundreds of farmers and gardeners in Detroit, the question persists of how to best utilize the momentum already generated while keeping property rights and the right to farm in central focus. This Article will explore whether government legislation sponsoring ownership of land in Detroit for urban agriculture could provide a feasible and efficient means for delineating long-term property rights and security rights for farmers—and if a Detroit Homestead Act could sustain the urban agriculture movement without repeating injustices inherent in its historical legacy.

II. EXPLORING THE ISSUE: URBAN AGRICULTURE AND DETROIT

Urban agriculture includes "the growing, processing, and distribution of food and other products through intensive plant cultivation and animal husbandry in and around cities . . . [including] food production in thousands of vacant inner-city lots."[23] Different types of urban agriculture include: (1) community gardens shared by a network of gardeners, (2) non-profit farms that provide public services through gardening and education, and (3) for-profit farms that are entrepreneurial in purpose.[24] All three types of urban agricultural practices currently pre-

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20. CITY PLANNING COMM'N, CITY OF DETROIT, URBAN AGRICULTURE POLICY FOR THE CITY OF DETROIT 1–2 (2010), *available at* http://www.detroitagriculture.org/GRP_Website/Home_files/uaw_official_UrbanAgPolicyDraft1-1.pdf [hereinafter CITY PLANNING COMM'N].

21. *Id.* at 2.

22. *See generally id.* (outlining a number of actions that the Detroit City Planning Commission would take in drafting and approving zoning ordinances).

23. KATHERINE H. BROWN & ANNE CARTER, CMTY. FOOD SEC. COAL., URBAN AGRICULTURE AND COMMUNITY FOOD SECURITY IN THE UNITED STATES: FARMING FROM THE CITY CENTER TO THE URBAN FRINGE, 1 (2003), *available at* http://www.foodsecurity.org/PrimerCFSCUAC.pdf [hereinafter URBAN AGRICULTURE].

24. *See generally id.*

vail in Detroit, alongside a longstanding tradition of backyard gardening—especially among Detroiters carrying on knowledge brought to the city with the migration of southern African-American sharecroppers to the north in the early twentieth century.[25] Even as early as the 1890s, Detroit sponsored urban agriculture in response to an economic downturn with the Potato Patch program.[26] Detroit itself started off as farmland, with many of the city's streets commemorating the names of the families who use to work the land.[27]

The benefit of growing food in cities has been widely reported. Devoid of supermarkets and other produce venues, cities can be food deserts for poorer populations.[28] The resultant lack of access to affordable fresh foods leads to higher rates of diabetes and obesity.[29] Gardens can improve the fruit and vegetable intake of those who participate, as well as offer an opportunity for exercise. Beyond nutritional needs, urban agriculture bolsters food security by increasing the availability to and accessibility of fresh produce, preserving limited resources for other necessities. While it may never be able to supply all the food needs of a city, urban agriculture is a key part of the broader food system currently undergoing major reform.[30] Gardening provides recreation for health while serving as a platform for education and community building in areas where increased need for social services encounters decreased public funding. Many Detroit schools now have gardens, including the Catherine Ferguson Academy for Young Women with its farming program for pregnant teenagers.[31] The Detroit Black Community Food Security Network, an organization that runs a non-profit farm, has as part of their mission to "encourage[ ] young people to pursue careers in agriculture,

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25. Detroit Food Policy Council, City of Detroit Policy on Food Security (unanimously adopted by the Detroit City Council on March 15, 2008), *available at* http://www.detroitfoodpolicycouncil.net/Page_2.html [hereinafter Detroit Food Policy Council].

26. *Encyclopedia of Detroit: Pingree Hazen*, DETROIT HIST. SOC'Y, http://www.detroithistorical.org/main/encyclopedia_item.aspx?ID=168 (last visited Sept. 22, 2011).

27. *See Origins of Detroit Street Names*, HIST. DETROIT, http://www.historydetroit.com/streets.asp (last visited Sept. 22, 2011).

28. ECONOMIC RESEARCH SERVICE, USDA, ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES, REPORT TO CONGRESS (2009), *available at* http://www.ers.usda.gov/Publications/AP/AP036/AP036fm.pdf.

29. *See generally id*.

30. *See* Sena Christian, *A Growing Concern: Urban Farms Are Sprouting Up Across the United States. Can They Translate Popularity into Profitability?*, EARTH ISLAND J. (Summer 2010), http://www.earthisland.org/journal/index.php/eij/article/a_growing_concern/ (discussing the difficulties urban farms face in their efforts to become self-sufficient in light of their scale of operations).

31. Grown in Detroit: Synopsis, FILMMIJ.NL, http://grownindetroit.filmmij.nl/about.php (last visited Sept. 22, 2010).

aquaculture, animal husbandry, bee-keeping and other food related fields."[32] As Dan Carmody, president of the Eastern Market Corporation, noted at the same Urban Farming Summit attended by Hantz, entrepreneurial farming is a steady source of economic growth for Detroit.[33] Co-operative business practices and smaller artisan and organic farming ventures enhance economic security in the region when Detroiters become the farmers, distributors, and processors in the food system, instead of being limited to consumer status.[34]

In its heyday of post-WWII automotive production, nearly two million people lived within the 140 square miles of Detroit's city limits.[35] Just as the city rose with the automotive industry, it too fell with it—as cheaper overseas factories, foreign competition, and, most recently, recession stilled Motor City's factories. Today, fewer than 900,000 people remain in Detroit, with vacated buildings and empty lots common parts of the cityscape.[36] Urban agriculture blossomed in this municipal void, expanding beyond backyards to support neighborhoods and businesses. In this sense, urban agriculture in Detroit could go beyond city beautification and work to alleviate other problems associated with urban blight—drug use, crime, and the city's ever dwindling tax revenues.

Hantz's suggestion for a homestead act is part of the broadening exploration of the economic potential of urban agriculture. Subsidies offered by foundations support a vast majority of the community and non-profit gardens and farms, raising the question of how the current movement will provide long lasting economic stability to the city and elsewhere in the country.[37] Yet, applying pure free-market expectations to any farming enterprise, especially highly productive but small-scale urban agriculture ventures, might be disingenuous. As it is, many farms, regardless of their size or location, survive in a market economy with some form of government subsidy.[38] The social and environmental capital, however, produced by community gardens and non-profit farms should not be meas-

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32. *Statement of Purpose*, DETROIT BLACK COMMUNITY FOOD SECURITY NETWORK, http://detroitblackfoodsecurity.org/about.html (last visited Sept. 22, 2011).

33. Univ. of Mich. Dearborn, *supra* note 3.

34. Detroit Food Policy Council, *supra* note 25.

35. Whitford, *supra* note 5; Jodi Wilgoren, *Detroit Urban Renewal Without the Renewal*, N.Y.TIMES.COM, (July 7, 2002), http://nytimes.com/2002/07/07/national/07DETR.html?pagewanted=print&position=bottom.

36. Whitford, *supra* note 5.

37. *See* Christian, *supra* note 30 (discussing City Slicker Farm's dependency on grants, which is a problem faced by most urban farms & food access organizations).

38. *See generally Farm and Commodity Policy: Program Provisions Briefing Room*, ECONOMIC RESEARCH SERV., USDA (Aug. 21, 2009), http://www.ers.usda.gov/Briefing/FarmPolicy/programprovisions.htm (providing a summary of farm and commodity subsidies administered through the USDA).

ured by conventional economic standards. Based on social capital, these urban farms are arguably intrinsically more valuable than conventional industrial farms. They also are not eligible for the same direct benefits as their conventional counterparts, including government commodity subsidies.[39]

Despite the relative lack of government programs geared toward assisting urban agriculture, there are numerous entrepreneurial farms in Detroit that manage to carve out a market niche through community supported agriculture ("CSA") memberships, farmers market sales, and partnerships with local restaurants and nurseries.[40] On the same panel as Hantz, senior policy specialist Patty Cantrell of the Michigan Land Use Institute argued that Detroit should be able to have for-profit and nonprofit agriculture and that "it can't be either/or."[41] Even with this possibility, the values of the grassroots movement are not necessarily betrayed by for-profit ventures. For example, many CSAs are structured such that consumers pay upfront for a season's subscription of produce, with or without the duty to volunteer at the farm, thus allowing farmers to cover their initial costs up front while cultivating community with their customers.[42] Business models like CSAs can incorporate for-profit agriculture principals, while still maintain grass-root community values and encouraging community building within an urban environment.[43]

Self-sufficiency is a mission of the Detroit urban agricultural movement, as the abundance of educational programs provided by farms such as Earthworks attests.[44] Economic self-sufficiency will not evolve overnight, and cannot happen without social self-sufficiency, which urban agriculture in Detroit helps foster. The urban agricultural movement has flourished thus far with the city's active supporters, and the city's passive unwillingness to enforce current zoning and trespassing laws. Securing the right to farm plays into the overall movement

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39. *See generally* William S. Eubanks, II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 STAN. ENVTL. L.J. 213 227–28 (2009) (discussing the government subsidies afforded conventional farms).

40. *See generally* Susan Kelke, *Community Supported Agriculture in Michigan, AKA Crop Sharing*, EXAMINER.COM, May 4, 2010, http://www.examiner.com/green-children-s-products - in-detroit/community-supported-agriculture-michigan-aka-crop-sharing (stating that there are almost 200 farms in Michigan offering CSA memberships or crop sharing).

41. Univ. of Mich. Deaborn, *supra* note 3.

42. Kelke, *supra* note 40.

43. *See* BROWN & CARTER, *supra* note 23, at 9 (discussing how CSAs, and urban agriculture in general, can be effective developmental tools for small business and communities in general).

44. *See Our Mission*, EARTHWORKS URBAN FARM, http://www.cskdetroit.org/EWG/mission.cfm (last visited Sept. 22, 2011) (stating one of Earthwork's goals is to restore the connection to the environment and the community).

towards self-sufficiency in urban agriculture—where the success of a garden depends on its permanence and longevity, as well as the agenda of those who work it.[45] The success and profit potential of a farm cannot be actualized in a few growing seasons, since the soil must be cultivated and business and community partnerships must be established.[46] This makes garden permanence a crucial issue, as previously discussed with current zoning regulation of temporary structures like greenhouses.[47] Other legal problems challenge the security of urban farms, from property issues, to liability, tax implications, and nonprofit status. Unsecured land used for farming could be bought up for development, leaving the ousted farmers with little legal recourse.[48]

The prevailing legal tools that community gardens and urban farms use to secure land rights are leases, zoning, ordinances, state and federal laws, adverse possession, conservation easements, and land trusts.[49] With the help of supportive leasers or the city, leases can be cheap or free, but they can also expire without renewal and contain clauses that allow for repossession of the property, as seen in Detroit.[50] Green zoning provisions, supportive of urban agricultural initiatives, are a component of securing urban farming permanence. Fortunately, the committee drafting the Detroit zoning provisions appears to be making a conscious effort to maintain community development strategies in their process.[51] Effective zoning requires strict enforcement, as evident by the changes taking place under Detroit's zoning laws.[52] Although municipal policies and initiatives can spur urban agriculture initiatives, they also risk posing a regulation burden, with excessive regulation that makes acquiring permission to garden "time con-

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45. *See* Dorothy A. Borrelli, *Filling the Void*: *Applying A Place-Based Ethic to Community Gardens*, 9 VT. J. ENVTL. L. 271, 279 (2008) (stating "a garden's success cannot be fully measured in one or two growing seasons," since the purpose of a community garden is not just growing food, but also promoting nutrition, education, and environmental restoration).

46. *Id.*

47. *See supra* note 13 and accompanying text.

48. *See Adopt-A-Lot*, *supra* note 15 (as an example of the volatility of unsecured land, participants in Detroit's Adopt-A-Lot program may have their permits revoked by the city with only thirty days notice).

49. *See* Kathryn A. Peters, Note, *Creating a Sustainable Urban Agriculture Revolution*, 25 J. ENVTL. L. & LITIG. 203, 240 (2010).

50. Borrelli, *supra* note 45, at 282–83; s*ee Adopt-A-Lot*, *supra* note 15 (stating permits for Adopt-A-Lot participants can be revoked with thirty days notice from the city of Detroit).

51. *See* Detroit Food Policy Council, *supra* note 25.

52. Borrelli, *supra* note 45, at 287 (stating that zoning is effective in ensuring the consistant longevity of urban gardening, but zoning "is highly expensive and requires solid and strict enforcement, which is often lacking."); CITY PLANNING COMM'N, *supra* note 20.

suming and expensive."[53] State and federal laws can promote urban agriculture by authorizing public land for agriculture use by promoting longer leases and looking beyond "narrow governmental interests."[54] Farmers whose vacant land use exceeds fifteen years may avail themselves to adverse possession, but this is a fickle and ineffective route to securing land tenure for the majority of urban farmers due to the litigation costs associated with adverse possession claims.[55] More promising tools for securing private property rights for urban farmers are easements and land trusts, which allow owners to keep, sell, and bequeath their land, subject to agreed-upon permanent restrictions for certain uses like urban agriculture.[56] Alternatively, easements by implication or by prescription can be legitimate without written agreements if gardeners can establish their reasonable reliance and consistent use of the land.[57]

Detroit farmers have been using a combination of the tools, detailed above, with most farmers and community gardeners either working on land they own or lease, or land they cultivate by verbal agreement with the rightful landowner.[58] From interviewing members of non-profit urban agricultural organizations, it seems that most farmers are more focused on establishing a viable food system for Detroit and getting their businesses off the ground than they are on wading through a morass of administrative red tape and legal fees to acquire land use rights.[59] Municipal, state, or federal initiatives designed with the Detroit agricultural community in mind could be the easiest, cheapest, and most efficient means of maintaining the momentum of the urban agriculture movement and protecting the burgeoning sector from future developers and outsider takeover.

III. WHAT HOMESTEADING MEANS: HISTORY AND CURRENT CONTROVERSY

John Hantz's homesteading idea was met immediately by boos from the crowd at the conference, and afterwards critics continued to blog and voice their skepticism and disapproval.[60] Hantz was met with accusations of land grabbing,

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53. Borrelli, *supra* note 45, at 288 (quoting Robert Fox Elder, Note, *Protecting New York's Community Gardens*, 13 N.Y.U. ENVTL. L.J. 769, 792 (2005)).

54. *Id.* at 289 (quoting Schukoske, *supra* note 1, at 371–72).

55. Schukoske, *supra* note 1, at 366.

56. Borrelli, *supra* note 45, at 290.

57. *Id.* at 291.

58. Crouch, *supra* note 11; O'Keefe, *supra* note 12.

59. Crouch, *supra* note 11; O'Keefe, *supra* note 12.

60. Univ. of Mich. Dearborn, *supra* note 3; *see generally* Patrick Crouch, *Urban Ag Panel at U of M Dearborn*, LITTLE HOUSE ON THE URBAN PRAIRIE (May 5, 2010, 3:15 PM), http://littlehouseontheurbanprairie.wordpress.com/2010/05/05/urbanagpanel-at-u-of-m-dearborn/ [hereinafter Crouch, *Urban Ag Panel*].

with one calling it "mere economic rent-seeking" or asking for "a bunch of handouts in the form of free or greatly discounted property" in order for Hantz to start a large-scale farming operation.[61] Patrick Crouch of Earthworks Urban Farms pointed to the potential allegory of the original Homestead Act of 1862:

> [T]alking about the [H]omestead [A]ct is a pretty loaded topic if you are not looking at [U]nited [S]tates history from a western, expansionist, manifest destiny sort of way. [I]t fails to address that fact that many of the lands taken in the homestead act were not unoccupied – natives still lived there. [A]nd the ones that were unoccupied were by false treaty, war, and starvation. [I]t's not a comparison [I] would want to make. [T]hough it actually may be pretty apt.[62]

Using the term "homesteading" has ramifications beyond semantic political correctness; one cannot ignore the emotional and political implications of the word. The Homestead Act of 1862 was one of a series of over 375 federal land acts, the first starting in 1785, to promote development in the Western United States.[63] By the time Abraham Lincoln signed the Homestead Act—promising private ownership of 160 acres of then-public land to those who farmed it for five years—Native American tribes had already been forced onto reservations, their populations decimated by war, disease, and starvation.[64] The Land Office processed over 1.6 million homestead applications during 1862-1934, granting a total of 270 million acres or ten percent of all American land.[65] The rush for free acreage was nothing short of an actual land grab, with the intent of the law being no match for wealthy influential people leveraging the inefficient and corrupt administration to sneak in speculation, mining, cattle raising, timber, and railroad construction by means of fake applicants called "dummy entrymen."[66] Not only did these men hoard the most arable land, precluding settlement by poor and immigrant populations hoping to live out Jefferson's vision of the American "yeoman farmer," they further continued to procure holdings stripped from ever-shrinking Indian reservations.[67]

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61. David Z., *Homesteading Detroit: On Urban Farming*, NO THIRD SOLUTION (Apr. 2, 2009) http://www.nothirdsolution.com/2009/04/02/homesteading-detroit-on-urban-farming/.

62. Crouch, *Urban Ag Panel*, *supra* note 60.

63. *See Teaching with Documents: The Homestead Act of 1862*, NATIONAL ARCHIVES, http://www.archives.gov/education/lessons/homestead-act/ (last visited Sept. 22, 2011) [hereinafter NATIONAL ARCHIVES].

64. PATRICIA NELSON LIMERICK, LEGACY OF CONQUEST 62 (W.W. Norton Co. 1987); *see* Homestead Act of 1862, ch. 75, 12 Stat 392.

65. NATIONAL ARCHIVES, *supra* note 63.

66. LIMERICK, *supra* note 64, at 61–62.

67. *Id.* at 61, 94, 126.

White Americans saw the Homestead Act as a way to assimilate Native Americans, to "encourage them in this advanced step towards civilization."[68] In contrast to the native tradition of communally held property, land in severalty would help Native Americans feel their "individuality and responsibility, and a sense of proprietorship . . . and abandon his shiftless, do-nothing, dependent life."[69] With this underlying attitude, and goal "to break up tribal relations," the federal government offered to the Native Americans an equal chance at the promised 160 acre-lots if they abandoned their "tribal relations." [70] The only caveat from the provisions offered to the general public was that their homesteads were held in government trust and could not be sold nor conveyed except by court decree for an additional six year period. [71] Replacing the native peoples and their indigenous agricultural methods with unsustainable agricultural practices and poor land management despoiled vast stretches of the High Plains, eventually contributing the Dust Bowl of the 1930s.[72] In summary, the Homestead Act was not a completely positive statute that helped settle the West, but was in many respects a continuation of nineteenth century American imperialism, by perpetuating strife and oppression of native tribes and systemic exploitation by the powerful. Whitewashing such a tragic time in United States history with imagery of diligent European Americans piloting covered-wagons over deserted plains to start anew ignores not only past grievances, but induces in today's policy makers the potential to reproduce historic mistakes.

IV. HOMESTEADING'S TWENTY-FIRST CENTURY VARIANTS

Contemporary use of the word "homesteading" in the urban context refers to two different practices; one is more of a lifestyle choice—people devoting their time to growing and preserving food, do-it-yourself projects, and other self-sustaining activities associated with rural living, in the midst of the urban landscape. This is becoming more popular in cities like Detroit, where white college-educated people from the suburbs of Detroit and elsewhere come to embrace both

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68. 1WILCOMB E. WASHBURN, THE AMERICAN INDIAN AND THE UNITED STATES: A DOCUMENTARY HISTORY (Greenwood Press 1973).

69. *Id.*

70. DAVID E. WILKINS, AMERICAN INDIAN POLITICS AND THE AMERICAN POLITICAL SYSTEM 57 (2d ed. 2007).

71. *Id*.

72. *See North American Drought: A Paleo Perspective—20th Century Drought*, NAT'L CLIMATIC DATA CENTER, http://www.ncdc.noaa.gov/paleo/drought/drght_history.html (last visited Sept. 22 2011) (stating that years of land management practices had left top soil susceptible to the forces of the wind).

the current agricultural possibilities and fire sale real estate prices.[73] While buying and cultivating land generates taxes for the city and helps mitigate blight, the increased ownership of land by outsiders does risk gentrification, which is discussed further in the next section.

The second type of urban homesteading is a response to the urban renewal projects of the post-WWII period.[74] To elucidate urban homesteading, it helps to compare it to urban renewal, since the former is an effort to counteract the unilateral decision-making that confounded poor and working-class communities and ethnic minorities during what was then, like urban agriculture today, touted as regeneration of American cities.[75] Detroit itself has undergone various waves of urban renewal since 1946, many of which cleared public facilities and poor neighborhoods to build highways and beautify the city to assuage vestiges of the prewar depression.[76] The white flight of middle-class and upper-class families to the suburbs only served to perpetuate the urban blight that predominately affected minorities and makes the greater Detroit metropolitan area one of the most racially divided areas of America today.[77] The racially biased Gratiot Project of the 1950s forced people out of slums slated for destruction, eventually delivering them to conditions "'equal to, if not worse than, those they left,'" and exacerbated Detroit's African American housing crisis.[78] With hindsight, the race riots of 1967 appear to be the unintended, but no less unavoidable, were the result of urban renewal projects of the 1950s and 1960s, which aggravated the existing minority housing crisis, amplified economic inequalities pursuant to the deindustrialization of the automotive sector, and exacerbated the effects of histor-

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73. *Urban Farms, Cheap Housing Put Detroit on the List for Places to Live, Especially After Graduation*, MODEL D (May 25, 2011), http://www.modeldmedia.com/inthenews/farmscheap052510.aspx (excerpt from BRATTLEBORO REFORMER discussing that some have purchased homes for under market value, making urban Detroit homes extremely affordable for the middle-class, but still out of reach for Detroit's poorest communities who have little loan access).

74. *See generally* JEAN MARIE ERNECQ, CENTER FOR URBAN STUDIES, WAYNE STATE UNIV., *Urban Renewal History of Detroit 1946-1970* (Mar. 1972), *available at* https://jscholarship.library.jhu.edu/bitstream/handle/1774.2/32400/ErnUrb.pdf?sequence=1 (discussing Detroit's history of attempting to establish urban renewal after WWII, with only limited success).

75. *See generally id.* at 3–27.

76. Robert C. Goodspeed, Urban Renewal in Postwar Detroit: The Gratiot Area Redevelopment Project: A Case Study, 1 (2004) (unpublished B.A. thesis, University of Mich.), *available at* http://goodspeedupdate.com/RobGoodspeed-HonorsThesis.pdf.

77. ERNECQ, *supra* note 74, at 1.

78. Goodspeed, *supra* note 76, at 3 (quoting Robert J. Mowitz and Deil S. Wright, Profile of a Metropolis: A Case Book 78–79 (Wayne State Univ. Press 1962)).

ical job discrimination.[79] Insurance and loan redlining, where insurance companies and banks illicitly avoid business or charge excessive rates for loans in predominately African-American neighborhoods, has been a chronic problem for Detroit, particularly after the 1967 destruction and continuing up to today, and only helps to "concentrate poverty in urban and heavily minority populated" areas.[80] These are some of the harbingers of failure deriding current proposals, resulting from Detroit's past urban renewal projects and their contribution to the city's current baleful circumstances.

In contrast, urban homesteading focuses on revitalizing poor neighborhoods suffering from urban decay or were ignored or adversely affected by urban renewal. Starting in the 1970s with organizations like the now defunct National Urban Coalition in Washington, DC and the Urban Homesteading Assistance Board ("UHAB") in New York City, urban homesteading involved deeding formally abandoned urban housing to applicants who worked to rehabilitate the buildings.[81] Both are examples of non-profit organizations that contracted and worked closely with the government as a liaison between it and its members and operated on the principles of self-help and skills training, democratic residential control, and shared-equity cooperative ownership.[82] Detroit started an urban homesteading program in 1981 following the enactment of the Housing and Community Development Act of 1974, which transferred federally owned and abandoned single family residences to states or cities to use in approved homesteading programs.[83] As with the urban homesteading non-profits, the Detroit project relied heavily on federal government funds, creating administrative hurdles and funding problems that are a perpetual impediment to these types of programs.[84]

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79. *See Events*, Detroit Riots – 1967, RIOTS–1967, http://www.67riots.rutgers.edu/d_index.htm (last visited Sept. 22, 2011).

80. *See generally Insurance Readline*, DETROIT BRANCH NAACP (2007), http://www.detroitnaacp.org/publicpolicy/insurance.asp (defining insurance redlining); *see also* Press Release, U.S. Dep't of Justice, Detroit Bank Charged with Discriminatory "Redlining" Lending (May 19, 2004), *available at* http://www.justice.gov/opa/pr/2004/May/04_crt_342.htm (reporting on the 2004 court settlement for a racially discriminatory commercial lending lawsuit).

81. NATIONAL URBAN COALITION, URBAN HOMESTEADING: PROCESS AND POTENTIAL 9, (1974); URBAN HOMESTEADING ASSISTANCE BOARD, THE URBAN HOMESTEADING ASSISTANCE BOARD 1974–1984: A RETROSPECTIVE REPORT AND REVIEW 1–3 (1986).

82. *Glossary/FAQs, Frequently Asked Questions*, URB. HOMESTEADING ASSISTANCE BOARD http://www.uhab.org/about/glossary-faqs (last visited Sept. 22, 2011) [hereinafter *Glossary/FAQs*]

83. MITTIE OLION CHANDLER, URBAN HOMESTEADING: PROGRAMS AND POLICIES 1 (Greenwood Press 1988), *available at* http://www.questia.com/PM.qst?a=o&d=23600619.

84. *Id.* at 8; *see also* NATIONAL URBAN COALITION, *supra* note 81, at 11.

Both federal and state homesteading acts are on the books, with the Federal Urban Homesteading Act and the Michigan Urban Homestead Act.[85] The Federal Act provides guidelines to receive funding for those who develop local urban homesteading programs.[86] Michigan's version was developed by the Michigan Urban Policy Initiative of the Hudson Institute, which worked closely with Governor Engler to pass the bill in 1999.[87] The drafters likened the bill to the Homestead Act of 1862, stating that just like "in the nineteenth century, homesteaders also had to be law-abiding," current applicants are eligible only if they have been employed for one year and not convicted of a felony or imprisoned five years prior to application, have an income below the median for Michigan, and are drug free.[88] Clearly, there are many more restrictions on current homesteader applicants than back in 1862, with Wayne County having 29.7 percent of Michigan's total incarcerated persons and an overall unemployment rate of 15.1 percent (over twenty percent for African Americans, and possibly as high as forty-five percent factoring in those who have given up looking for work or gone back to school in 2009).[89] One reason for the lack of success in urban homestead programs is that improved homestead units still remain surrounded by blighted neighborhoods, making eligible applicants weary of investment and raising families there.[90] Also, the program costs of providing support, counseling, and tax abatement may be so large that the costs outweigh the benefits.[91]

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85. Federal Urban Homesteading Act, 24 C.F.R. § 590.7 (2009); MICH. COMP. LAWS ANN. §§ 125.2701–125.2709 (West 2006).

86. 24 C.F.R. § 590.7.

87. John C. Weicher, *History Lesson Shapes Michigan's Future Urban Policy*, HUDSON INSTITUTE (July 20, 1999), http://www.hudson.org/index.cfm?fuseaction=publication_details&id=4019.

88. *See id.*; MICH. COMP. LAWS ANN. § 125.2704.

89. *Fixing Prison-Based Gerrymandering After the 2010 Census: Michigan*, PRISONERS OF THE CENSUS (Mar. 2010), http://www.prisonersofthecensus.org/50states/MI.html; Algernon Austin, *Uneven pain—Unemployment by Metropolitan Area and Race*, ECON. POL'Y INST. (June 8, 2010), http://www.epi.org/publications/entry/ib278/; David Alire Garcia, *Detroit's Unemployment Rate is Probably Near 50 Percent*, MICH. MESSENGER, Dec. 16, 2009, http://michiganmessenger.com/31983/detroits-unemployment-rate-is-probably-near-50-percent; THE PEW CENTER ON THE STATES, PRISON COUNT 2010: STATE POPULATION DECLINES FOR THE FIRST TIME IN 38 YEARS, 2–3 (Apr. 2010), *available at* http://www.pewcenteronthestates.org/uploadedFiles/Prison_Count_2010.pdf (stating that there was a substantial decline in the prison population in Michigan). With 45,478 prisoners in Michigan in 2010, this makes the Wayne County's prison population approximately 13,506, and this is after a significant decline in population due to state budget cuts. *See* THE PEW CENTER ON THE STATES, *supra*, at 3.

90. NATIONAL URBAN COALITION, *supra* note 81, at 10.

91. *Id.* at 11.

Looking at the past, it is understandable that Detroit residents would be skeptical of another government-sponsored initiative or statute like an urban agriculture homestead act. Previous attempts at urban renewal—from the 1940s to former Detroit Mayor Kwame M. Kilpatrick's efforts starting in 2002 to tear down thousands of abandoned homes despite having no development plan for the lots—have not pulled the city out of its social and economic slump.[92] In contrast, non-profits that work closely with the communities they serve—from New York's UHAB showing the potential of urban homesteading to the many examples in Detroit's urban agricultural movement—provide a working alternative to the top-down approach of government initiatives.[93] Whatever steps the Detroit government takes to support farming in the city, it must take great effort to not interfere with or burden the work of these types of organizations with overregulation.

V. WHAT WOULD A DETROIT URBAN AGRICULTURE HOMESTEAD ACT LOOK LIKE?

Patrick Crouch, musing about what should be done with the empty lots and vacant homes that make up 17 percent of Detroit housing, wrote, "and one other idea I've been toying with—why does someone even have to own this land? [W]hy not just make large swaths of the city into commons to be used by all residents."[94] Not only have others suggested this idea, but current agricultural practice in Detroit is just that, with an informal commons available to anyone willing to put in the work for farming. Unlike the spirit of rugged individualism and rush to ownership that fueled the original Homestead Act, farmers and gardeners in Detroit are focused primarily on the right to grow food, food security, and livelihood, not necessarily traditional ownership rights.[95]

Whatever policy measures are taken to secure urban agriculture in Detroit, the wide range of urban farmers, as well as other community groups and neighborhood organizations, should be at the table with city planners and elected officials to craft a sound plan for the future. There are potential problems with a homestead act approach: too much government regulation making farming less profitable or impossible, eligibility requirements barring those willing to work the land, and the widely discussed fears of land grabbing by the rich, powerful, and predominately white, at the expense of Detroit's predominately black, poor,

92. Wilgoren, *supra* note 35.
93. *Glossary/FAQs*, *supra* note 82.
94. Crouch, *Urban Ag Panel*, *supra* note 60.
95. Crouch, *supra* note 11.

and working class. In exploring how to reconcile these potential conflicts, stakeholders will have to move away from trying to apply the skeleton structure of the rural, nineteenth century concepts behind the first Homestead Act and adapt to the twenty-first century demands of an urban post-industrial city healing from decades of economic plight and race conflict.

Should a land grab or, stated in neutral wording, a larger amount of land owned by one or a few individuals as opposed to thousands of smaller lots, actually be something to avoid? The old economic model of corporation and profiting due to increased output is familiar, but has consequences. There is a need for serious discussion over whether urban agriculture should try to replicate industrial agricultural scales of production on economic and environmental fronts, or whether it could ever fill in the void left by the mono-industry of automotive manufacturing that used to control the Detroit landscape. Could a few urban mega farms provide the same or improved type of social and economic capital as many cooperatively owned and diverse smaller operations?[96] Despite the media's hype, urban agriculture will not likely solve all of Detroit's problems. What urban agriculture has offered so far is nourishment, work, skills training, and individual and community building that could play a major part of the overall equation to help diversify Detroit's economy and uplift its neighborhoods. An urban agricultural homestead act should keep these goals at its core. Also, large scale farms may be better suited in the vast amounts of open farm space outside of Detroit, where there is a need for jobs and an infrastructure that already matches the enterprise. In order to have a large-scale farm like the model advocated by Hantz,[97] whole streets may have to be demolished, changing traffic patterns and pedestrian accessibility. This could generate the first signs of public ill will towards urban agriculture, which has been overwhelmingly positive so far.[98] In order to allow the most opportunity to hundreds of school children and adults for non-profit farms and school programs the land should not remain concentrated with relatively few people. A Detroit urban agricultural homestead act could offer the same amount of land to all applicants, depending on the intent of the act. For example, if the land would be for a community garden, drafters can look to the size of existing gardens of relative neighborhood size. If the land were to start an entrepreneurial farm, then it may need to allow for a different acreage.

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96. *See Would the Hantz Farm be Good for Detroit?*, MARKMAYNARD.COM (Jan. 10, 2010), http://markmaynard.com/?p=7243 (discussing possible benefits of urban homesteading for Detroit).

97. Univ. of Mich. Dearborn, *supra* note 3.

98. Interview with Molly McCullagh, Former Intern, Earthworks Urban Farm, June 2, 2010.

Creating a functional urban agricultural homestead program would require funding, whether state or federal, for the city of Detroit to coordinate all its records of current land ownership, and any additional vesting that must be done to take title from abandoned and foreclosed land.[99] It should be up to stakeholders, including citizens, working with city planners to decide what land should be available for farming, and what should be left for future smart development. Also, relevant soil testing and treatment should be provided for designated farming land. Land that is already being used by farmers and community gardens—whether by lease, squatting, or verbal agreement—should be eligible for ownership or common land, depending on the decision of the current occupant.

Applicant eligibility is another key factor in making an equable homestead act. It must be designed in a way that allows for the demographics that have been central to Detroit urban agriculture—the poor, working-class, minorities—have fair access. Broad strikes against those with criminal records and unstable employment would have to be avoided, in favor of those with experience or agricultural training. This way, former inmates like those who volunteered through Urban Farming Inc. and Carleton Flakes of the Wayne County Department of Children and Family Services could have just as much of a chance of starting an urban farm as those without a criminal record.[100]

There is a potential for gentrification of neighborhoods because of the rise in popularity of urban agriculture. Of course, Detroit citizens want to escape the pitfalls of urban blight, but gentrification—when new-residents (and most often white non-residents) with higher-incomes "discover" a neighborhood and cause prices and service costs to rise to the point of displacing the original residents—is a social justice problem that should be prevented in such a program.[101] Applicants could be chosen depending in part on how long they have lived in Detroit, or if they are from the neighborhood or surrounding area in which they wish to farm, for example.

Just like the diverse needs and wants of Detroit farmers, a Detroit homestead act should provide many options to its applicants. For those who would like to own their land, there should be that option after an agreed upon time period, just like homestead acts of old. For other ventures, like a seasonal hoop house or some entrepreneurial farm projects, a lease may be a more desirable option. Returning to Crouch's comment on community commons and the current success of Detroit's urban agriculture movement, is the opportunity for the city to

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99. *See* URB. HOMESTEADING ASSISTANCE BOARD, *supra* note 81, at 67.

100. *See About Urban Farming*, URB. FARMING, http://www.urbanfarming.org/about.html (last visited Sept. 22, 2011).

101. URB. HOMESTEADING ASSISTANCE BOARD, *supra* note 81, at 65.

provide a commons option.[102] Whether it is in designated smaller plots throughout the city, or in larger congregations, commons could provide a place for people to continue operating as they have been with the legal right to farm, without the uncertainty of having the land taken from them because they are trespassers.[103] It would provide an option for new residents, immigrants, and children and adolescents interested in urban agriculture, and would have the lowest administrative costs, with Detroiters continuing their own management of the land.[104]

One concern the city government may have about providing a commons is the lack of tax revenue that could be generated from it, as it is a land practice that fell out of favor by the Industrial Revolution.[105] The rise and fall of common land in Europe is similar to the rise, fall, and budding rebirth of Detroit. In the law of servitudes' medieval beginnings, the in council or lord of the village inhabitants would divide land into strips, each person receiving a fair amount and right to farm, with decisions made communally.[106] With rising populations and further development of private property institutions, common land became closed off, leaving former farmers to leave for the more lucrative jobs in cities, helping to fuel the Industrial Revolution.[107]

Many African-American Detroiters have roots in the South and agriculture (a major reason for the prevalence of backyard gardens in the city), and moved to Northern cities as part of the Great Migration to work in industry, as well as the hope of escaping Southern racism.[108] Now, in Detroit's postindustrial present, there is a return to organizing around the commons, which is not threatening or harming anyone so far. Some may be concerned that the "tragedy of the commons" may be inherent in supporting common farming land, but considering that thousands of homes and commercial buildings have been left to dilapidate and to accumulate decades of tax liability, supporting a commons that would upkeep themselves and terminate a financial drain for the city, makes it an attractive idea to incorporate in not just a homestead act, but new zoning ordinances and other future city planning.

Other parts of the United States are moving towards incorporating commons as part of smart growth planning. For example, in Weston, Massachusetts, citizens began a farm that is open to the whole community, which is similar to

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102. Crouch *supra* note 11.
103. *Id.*
104. *Id.*
105. JESSE DUKEMINIER ET AL., PROPERTY, 670 (6th ed. 2006).
106. *Id.* at 669.
107. *Id*. at 670.
108. Interview with Blair Nosan, The Greening of Detroit (June 2, 2010).

the methods used by other towns preserve open space for wildlife and recreation.[109] Creating commons offers ecological, economic, educational, and aesthetic improvements to rural and suburban settings, and can translate to urban situations like Detroit, where these benefits are already being enjoyed.[110]

VI. CONCLUSION: KEEPING THE FAITH, LISTENING TO THOSE WHO GROW

At one point during Hantz's speech at the University of Dearborn panel, he said "I would trade in Hantz Farms tomorrow if I could get you guys to agree that we homestead all the acreage . . . I have more faith in those 10,000 people than in my idea."[111] Hantz has very good reason to have faith in Detroiters, considering the fast growth of urban agriculture in the city. He and those of the movement are on to something—let people organize themselves, their communities, and their food system. For all the problems Detroiters have faced, the bulk of them do have community, despite what Hantz believes. There should be faith in Detroit communities' ability to organize themselves, because "[t]here is no such animal as a disorganized community."[112] Neighborhoods may be demoralized, the ones that still have people in them, but community-generated urban agriculture has been addressing these issues by getting people to participate and change their surroundings.[113] While most of the media may focus on urban agriculture's beautification possibilities, or ability to provide fresh produce to those who have no choice but to grocery shop at convenience stores, the real cause for curiosity is how the movement will impact urban citizens like Detroiters, and if the City will support it—or harvest it too early. Whether or not a homestead act will be part of that delicate balance is up to those who hold the power to decide, and hopefully this time, it is the citizens of Detroit that will hold this decision making power.

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109. SMART GROWTH VERMONT & THE CONSERVATION LAW FOUNDATION, COMMUNITY RULES: A NEW ENGLAND GUIDE TO SMART GROWTH STRATEGIES 18 (2002), *available at* http://www.smartgrowthvermont.org/fileadmin/files/publications/community_rules_chapter_2.pdf.

110. *Id.* at 19.

111. Univ. of Mich. Dearborn, *supra* note 3.

112. SAUL D. ALINSKY, RULES FOR RADICALS: A PRAGMATIC PRIMER FOR REALISTIC RADICALS 115 (1971).

113. *Id.*