

## URBAN HOMESTEADING AS A METHOD OF REDEVELOPING DETROIT'S NEIGHBORHOODS

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*"It is one of the most successful endeavors in American history, causing the great land rush to the Wild West and forming the vision for a new homesteading program in urban America today. Because Abraham Lincoln's Homestead Act empowered people, it freed people from the burden of poverty. It freed them to control their own destinies, to create their own opportunities, and to live the vision of the American dream."*

George H. W. Bush  
November 28, 1990

### INTRODUCTION

President Lincoln's Federal Homesteading Act of 1862<sup>1</sup> developed America's untamed frontier by giving land to anyone who would settle and farm it for a minimum of five years. Enacted while the country was tearing itself apart during the Civil War, the Homesteading Act sought to expand the United States by encouraging people to move west and populate the country's vast wastelands, cultivating them into fertile, productive tracts that ultimately became capable of feeding first the settlers, and later the re-united nation. Capitalizing on the pioneering spirit of the individual, and rewarding hard work with home and land, the Homesteading Act thus served the dual purposes of developing and populating the otherwise desolate regions of the country.

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<sup>1</sup> An Act to Secure Homesteads to Settlers on the Public Domain, 12 Stat. 392-94 (1862) (codified as amended at 43 U.S.C.A. §§161-302 (1986)) (repealed 1988).

One hundred and fifty-five years later, that same idea is being used to address the contemporary problem of structural abandonment,<sup>2</sup> which has turned the neighborhoods of many American cities, including those of Detroit, into urban wastelands. To redevelop and repopulate blight-stricken urban neighborhoods, several municipalities<sup>3</sup> have enacted “urban homesteading”<sup>4</sup> ordinances – the modern counter-part to Lincoln’s original Homesteading Act of 1862. Although the settlers’ covered wagon has been replaced by the automobile and the empty prairie by empty neighborhoods and houses, urban homesteading ordinances capitalize on the same pioneering spirit that contributed to the success of the 1862 Act. Under these ordinances, private citizens are allowed to take temporary possession of abandoned structures owned by the city, make improvements on them while living in them, and then acquire title from the city either for a nominal fee or for the value of the structure before improvements. This response to structural abandonment first gain popularity in the early 1970s and has become a key component of many municipal urban renewal schemes.<sup>5</sup>

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<sup>2</sup> Abandonment exists when “the effective demand for [housing] units declines so much that it is no longer profitable to operate them and they cease to have economic value in their present use.” G. STERNLIEB & R. BURCHELL, RESIDENTIAL ABANDONMENT: THE TENEMENT LANDLORD REVISITED xiv (1973). After this occurs buildings become vacant and are considered abandoned.

<sup>3</sup> See *infra* notes 80-83 and accompanying text.

<sup>4</sup> “Urban homesteading” has been described as a simple [concept] which borrows from past experience. The homesteader “purchases” his parcel by the agreement to reside in the unit and improve it over a certain period of time. For this he receives title to the property free, or for a nominal charge. The central thesis underlying this program is that home ownership fosters a higher degree of parcel maintenance and specific attachment. The objective is to make previously unattractive units available to qualified owners for little or no initial cost, with the results that parcels which have been economically nonviable can come back on the market simply for the costs of rehabilitation.

J. HUGHES & K. BLEAKLY, URBAN HOMESTEADING 3-4 (1975). In contrast to demolition, urban homesteading is a method of regenerating housing stock. *Id.* at 5.

<sup>5</sup> See J. MYER, URBAN HOMESTEADING: AN ANNOTATED BIBLIOGRAPHY 1-2, 6 (1975). See also *infra* notes 80-83.

Although Detroit's urban homesteading ordinance<sup>6</sup> is similar to those of other major cities, it is unique in one important respect. Most urban homesteading ordinances only allow private persons to homestead abandoned property that the city owns. But Detroit's ordinance grants "urban homesteaders" (called "Nuisance Abatement Contractors"<sup>7</sup>) the right to occupy abandoned properties over which the city *does not* possess title. The city granted this unique right because it recognized that the process through which abandoned property reverts to the state and then to the city<sup>8</sup> "takes several years, during which time many dwellings are lost through vandalism and deterioration."<sup>9</sup> To avoid such waste, Detroit's ordinance allows homesteaders to rehabilitate property before the city acquires title to it.

This Paper describes Detroit's urban homesteading ordinance and how its use can be expanded to combat neighborhood blight and structural abandonment. Part I chronicles the history, causes and consequences of structural abandonment in Detroit, the scope of abandonment throughout the city, and how Detroit currently addresses the problem of abandonment, which is primarily through demolition and the destruction of housing stock. Part II describes the concept of urban homesteading as a response to urban decay and abandonment,

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<sup>6</sup> DETROIT, MICH., CODE ch. 37, art. II, §§37-2-1 to 37-2-9 (1990).

<sup>7</sup> *Id.* §37-2-2(d)(1).

<sup>8</sup> MICH. COMP. LAWS. ANN. §211.127b (West 1986) governs the tax reversion process in Michigan. The statute provides that:

Lands located within the corporate limits of any city or village, and acquired by the state by virtue of the automatic operation of section 127 hereof prior to June 5, 1933, and not heretofore conveyed to the state by the auditor general in accordance with said section, after absolute title thereto has been determined so to be in the state by final judgment or decree of a court of competent jurisdiction, and after such judgment or decree is no longer subject to modification or reversal by the same or a higher court, shall be conveyed by the director of conservation to such city or village. All lands conveyed hereunder or any part thereof or interest therein maybe sold by such city or village as provided by law or charter, and the proceeds of any such sale shall be applied as provided in section 131 hereof.

*Id.* (footnotes omitted).

<sup>9</sup> DETROIT, MICH., CODE §37-2-1(e).

drawing on the experiences of other cities that have implemented urban homesteading programs. It also considers and describes Detroit's particular homesteading ordinance and the unique provisions it contains for encouraging redevelopment of houses and neighborhoods. Finally, Part III suggests how Detroit can modify its approach to abandonment and redevelop its neighborhoods by modifying and expanding the use of Detroit's homesteading ordinance to reduce demolitions, and to increase the rehabilitation of sound housing stock.

I. A SHORT HISTORY OF STRUCTURAL ABANDONMENT AND URBAN DECAY IN DETROIT

A. *The Causes of Abandonment*

Urban blight and structural abandonment have plagued American cities since World War II,<sup>10</sup> and the decline of Detroit as an urban population center and the ensuing urban decay following World War II is well known. Detroit had its greatest population in 1950, with approximately 1,850,000 residents.<sup>11</sup> By 2015, it had fallen to 677,116, and for the first time since 1850 Detroit was no longer among the United States' 20 most populous cities.<sup>12</sup> Although it has been said that "Detroit rose and fell with the automobile industry,"<sup>13</sup> many complicated and interwoven social and economic factors contributed to the swelling of the post-World War II population, as well as its subsequent decline over the following decades.

The causes of structural abandonment and urban decay are subject to disagreement among commentators,<sup>14</sup> but in summary, they range from "crime, racism, poverty, poor city services and scheduling, congestion, and pollution of the environment."<sup>15</sup>

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<sup>10</sup> See D. VARADY, NEIGHBORHOOD UPGRADING: A REALISTIC ASSESSMENT 1 (1986).

<sup>11</sup> DETROIT NEWS, May 19, 2016.

<sup>12</sup> *Id.*

<sup>13</sup> T. Sugrue, *From Motor City to Motor Automobile In American Metropolis: How the Automobile Industry Reshaped Urban America* (2004).

<sup>14</sup> For a general discussion of competing theories of abandonment, see J. HUGHES & K. BLEAKLY, *supra* note 4, at 47-50; D. VARADY, *supra* note 10, at 5-35; see also Note, *Abandonment of Residential Property in an Urban Context*, 23 De Paul L. Rev. 1186 (1974) [hereinafter

Perhaps the most visible, dramatic and commonly-cited explanation for Detroit's precipitous loss of population is the 1967 riots in which, over the course of five days, 43 people died, over 2,500 stores were looted or burned, almost 400 families became homeless, and over 400 buildings were so damaged that they had to be demolished. The estimated economic loss of those riots ranged up to \$80 million.<sup>16</sup> As former Mayor Coleman A. Young bluntly put it, the "riot put Detroit on the fast track to economic desolation, mugging the city and making off with incalculable value in jobs, earnings taxes, corporate taxes, retail dollars, sales taxes, mortgages, interest, property taxes, development dollars, investment dollars, tourism dollars, and plain damn money."<sup>17</sup> Just as bluntly, Mayor Young noted that the "money was carried out in the pockets of the businesses and the white people who fled as fast as they could."<sup>18</sup>

Some economists, such as Edward Glaeser, have argued that "[w]hile the 1967 riots are seen as a turning point in the city's fortunes, Detroit's decline began in the 1950s, during which the city lost almost a tenth of its population."<sup>19</sup>

Regardless of whether the riots actually caused, or merely exacerbated, Detroit's population loss, in the decades following the 1967 riots, Detroit's population continued to dwindle as the city's social and economic conditions worsened. Alternatively named "arson capital of America," "murder capital of America," and "the most dangerous city in America"

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*Abandonment of Residential Property*]. For a discussion of structural abandonment in Detroit specifically, see Note, *Property Abandonment in Detroit*, 20 Wayne L. Rev. 845 (1974) [hereinafter *Abandonment in Detroit*].

<sup>15</sup> Comment, *Abandonment in Detroit*, *supra* note 14, at 852.

<sup>16</sup> National Advisory Commission on Civil Disorders (the "Kerner Report") (Feb. 9, 1968).

<sup>17</sup> COLEMAN A. YOUNG AND LONNIE WHEELER, *HARD STUFF: THE AUTOBIOGRAPHY OF MAYOR COLEMAN YOUNG* 179 (1994).

<sup>18</sup> *Id.*

<sup>19</sup> Edward Glaeser, *In Detroit, Bad Policies Bear Bitter Fruit*, THE BOSTON GLOBE, July 23, 2013.

during that period, “[a]mong the nation’s major cities Detroit was at or near the top of unemployment, poverty per capita, and infant mortality throughout the 1980’s.”<sup>20</sup>

Not surprisingly, the loss of Detroit’s population directly contributed to structural abandonment. Simply put, people left in large numbers, and they did not take their houses with them. The abandoned housing stock they left behind was usually poorly maintained (if maintained at all), and remained idle or, worse, became a haven for drug use and other illegal activity. In the context of a given neighborhood, the initial abandonment of one or a few houses signaled the decline of the neighborhood and gave those remaining a powerful incentive to leave before their own property values further declined. That cycle of “abandonment begets further abandonment” often resulted in entire neighborhoods spiraling ultimately into complete abandonment. This process has been described as follows:

Abandonment, once begun, will achieve a life of its own in some neighborhoods. The ensuing abandonment crisis will leave sound as well as unsound buildings deserted. . . . With increased abandonments there inevitably is a decline of investment and further deterioration in the neighborhood. Eventually, the faith of the neighborhood residents in the future of the neighborhood will disappear, and residents will leave the little equity they might have in their own homes. . . .<sup>21</sup>

Most recently, the housing mortgage crisis of the mid-2000’s contributed significantly to structural residential abandonment in Detroit’s neighborhoods. A few historical statistics illustrate the scope, breadth and depth of the problem in Detroit.

In the decade between 2005 and 2015, one out of every three Detroit properties (139,699 out of 384,572) has been foreclosed either because of mortgage defaults or for failure to pay

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<sup>20</sup> Z’EV CHAFETS, *DEVIL’S NIGHT AND OTHER TRUE TALES OF DETROIT* at 23 (1991).

<sup>21</sup> Comment, *Abandonment in Detroit*, *supra* note 14, at 857.

taxes.<sup>22</sup> To put that statistic in context, if one were to combine all of the occupied houses in the cities of Warren, Livonia, Royal Oak, Southfield and Allen Park, the number would constitute fewer than the number of foreclosed homes in Detroit.<sup>23</sup> Stated another way, “Detroit has had more homes foreclosed in the past 10 years than the total number of houses in . . . all of Buffalo, New York.”<sup>24</sup> On average, Detroit has seen 15,000 to 25,000 foreclosures per year since 2006.<sup>25</sup>

As could be expected, mortgage and tax foreclosures are directly linked to abandonment as foreclosure forces residents out of their homes, leaving the structures unoccupied, unmaintained and ultimately uninhabitable. According to the Detroit Blight Task Force, as of 2015 76% of the 84,000 blighted properties in Detroit had been foreclosed on and not re-occupied.<sup>26</sup> Those foreclosures, and the abandonment that follows, “affect[ ] everything: housing stock, neighborhoods[,] [i]t exacerbates crime, blight, the loss of city services and taxable income.”<sup>27</sup>

The economic and financial consequences of abandonment through foreclosure are enormous. The Alliance for a Just Society found that in 2012, the decline in property values in Detroit from abandonment caused a loss of \$1.3 billion in personal wealth.<sup>28</sup>

Detroit’s declaration of chapter 9 bankruptcy on July 18, 2013 was the apex of the city’s financial extremis, a necessary measure that followed Governor Snyder’s appointment of an emergency manager on March 25, 2013.<sup>29</sup> At the time, the city had an estimated debt of \$18

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<sup>22</sup> Joel Kurth and Christine MacDonald, *Volume of abandoned homes “absolutely terrifying,”* DETROIT NEWS, May 5, 2015.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *In re City of Detroit, Mich.*, 504 B. R. 191, 194 (Bankr. E.D. Mich. 2013).

billion, owed to over 100,000 secured and unsecured creditors.<sup>30</sup> The bankruptcy court succinctly, if not understatedly, concluded that in order “to attract new residents and businesses, and to revitalize and reinvigorate itself, the City needs help.”<sup>31</sup>

Detroit’s emergence from history’s largest municipal bankruptcy laid the groundwork for some of the most significant development, and re-development, that the downtown area has seen in decades, including the construction of the M-1 light rail system, the Little Caesars Arena sports complex, numerous new restaurants and retail businesses such as Shinola, and the renovation and restoration of several hotels, apartments and other residential facilities in the mid-town and downtown area.

However, despite the post-bankruptcy influx of commercial and business development in the downtown area of Detroit, many (if not most) Detroit neighborhoods have not been part of that new renaissance. One commentator has said that “[o]ne year after the bankruptcy, the verdict is somewhat mixed as to how well the neighborhoods are benefitting once you step outside of downtown and Midtown.”<sup>32</sup> Jones Ribbron, a co-founder of the organization Process Leaders/Impact Detroit, has noted some positive changes in some Detroit neighborhoods, while other community leaders and activists, such as Mildred and Tommie Robins, Jr., who co-founded the West Grand Boulevard Collaborative in 2004, are not convinced that Detroit’s bankruptcy has benefitted the city’s neighborhoods.<sup>33</sup> Others still, such as Luther Keith, founder of ARISE! Detroit which sponsors an annual Neighborhood Day Celebration, acknowledge that with respect

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<sup>30</sup> *Id.* at 207.

<sup>31</sup> *Id.* at 194.

<sup>32</sup> Kieth A. Owens, *What about the neighborhoods? The Detroit bankruptcy one year later*, MICH. CHRONICAL, Dec. 2, 2015.

<sup>33</sup> *Id.*



to rehabilitating its neighborhoods, “Detroit is not there yet, but I think we’re going in the right direction.”<sup>34</sup>

How Detroit is currently trying to “get there” is the focus of the next section.

*B. The Current State of Structural Abandonment in Detroit, Its Consequences, and the City’s Response To It*

In the wake of structural neighborhood abandonment, Detroit has been described a “ghost town.”<sup>35</sup> Apropos of using urban homesteading as a method of addressing abandonment, some commentators have described some of Detroit’s neighborhoods as “farmland,” “urban prairies,” or “complete wilderness.”<sup>36</sup>

The trial court in the Detroit bankruptcy proceeding found that “[t]here are approximately 78,000 abandoned and blighted structures in the City,” and that of those “38,000 are considered dangerous buildings.”<sup>37</sup>

In 2014, a comprehensive study of Detroit’s tens of thousands of abandoned buildings revealed that of the city’s approximately 261,000 structures, 50,000 of them were abandoned.<sup>38</sup> Over half of the property owners in Detroit did not pay property taxes in 2012, which resulted in lost tax revenue of \$131 million, or approximately 12% of the city’s general revenue funds.<sup>39</sup>

The social consequences of structural abandonment can be devastating. For example, the relationship between abandonment and crime has been well documented.<sup>40</sup> Abandoned structures provide an attractive and convenient forum for crime, ranging in severity from

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<sup>34</sup> *Id.*

<sup>35</sup> Pete Brook, *Captivating Photos of Detroit Delve Deep to Reveal a Beautiful, Struggling City*, WIRED, January 29, 2013.

<sup>36</sup> Terry Eagleton, *Detroit Arcadia*, HARPERS, April 1, 2013.

<sup>37</sup> 504 B. R. at 214.

<sup>38</sup> Monica Davey, *A Picture of Detroit Ruin, Street by Forlorn Street*, N.Y. TIMES, February 17, 2014.

<sup>39</sup> *Half of Detroit Property Owners Don’t Pay Taxes*, DETROIT NEWS, February 21, 2013.

<sup>40</sup> See, e.g., J. HUGHES & K. BLEAKLY, *supra* note 4, at 3; G. STERNLIEB & R. BURCHELL, *supra* note 2, at 148; Note, *Abandonment of Residential Property*, *supra* note 14, at 1195.

vandalism to murder. Empty buildings are a likely haven for street gangs, vagrants, and drug addicts.<sup>41</sup> As one commentator has put it, “[t]he abandoned structure acts as a focal point of neighborhood decay, functioning as a very convenient clubhouse for drunks, neighborhood gangs, and drug addicts.”<sup>42</sup>

Although obviously not entirely attributable to neighborhood abandonment, in 2011 there were 136,000 reported crimes in Detroit, of which 15,245 were violent crimes.<sup>43</sup> Detroit’s violent crime rate in 2012 was five times the national average for cities with over 200,000 residents.<sup>44</sup>

Abandonment in Detroit, or elsewhere, inevitably results in a significant increase of fires, both intentional and accidental.<sup>45</sup> A comprehensive study of structural fires in Newark, New Jersey in the early 1970s, for example, revealed that twenty-one percent of all fires occurred in abandoned structures.<sup>46</sup> Similar statistics can be found in other urban cities.<sup>47</sup> In Detroit, about one-third of abandoned buildings eventually catch fire.<sup>48</sup> The risk of fire is so great in some abandoned areas that many insurance companies either refuse to insure nearby occupied buildings or set premiums so high that most area residents cannot afford them.<sup>49</sup> Abandoned

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<sup>41</sup> See Comment, PHILADELPHIA’S URBAN HOMESTEADING ORDINANCE: A POOR BEGINNING TOWARD REOCCUPYING THE URBAN GHOST TOWN, 23 BUFFALO L. REV. 735, 751 (1974); Note, *Abandonment in Detroit*, *supra* note 14, at 857.

<sup>42</sup> Sternlieb, *Abandon Housing: What is to be Done?*, 31 URBAN LAND 4 (Mar. 1972), at 4.

<sup>43</sup> 504 B. R. at 214.

<sup>44</sup> *Id.*

<sup>45</sup> One author succinctly stated: “It may be seen that, like crime, fire in abandoned structures is mushrooming.” G. STERNLIEB & R. BURCHELL, *supra* note 2, at 171.

<sup>46</sup> See J. HUGHES & K. BLEAKLY, *supra* note 4, at 56.

<sup>47</sup> See Comment, *Philadelphia’s Urban Homesteading Ordinance: A Poor Beginning Toward Reoccupying the Urban Ghost Town*, 23 BUFFALO L. REV. 735, 751 n.81 (1974).

<sup>48</sup> Comment, *Abandonment in Detroit*, *supra* note 14, at 866.

<sup>49</sup> See Comment, *supra* note 47, at 751 nn.81-82 and accompanying text.

buildings create fire hazards because they are both likely arson targets<sup>50</sup> and significant sources of accidental fires. The city council of Detroit acknowledged the seriousness of these problems in the legislative findings of the Nuisance Abatement Ordinance.<sup>51</sup>

In Detroit, between 2003-2013 there were, on average, 11,000 to 12,000 fires annually, and 60% of those fires were in blighted or abandoned structures.<sup>52</sup>

In the face of these adverse social and economic consequences of structural abandonment, in recent years the City's main response has focused on demolition, rather than rehabilitating housing stock. That response had been financed, in large part, by the federal government.

In February 2010 the United States Department of Treasury created the "Hardest Hit Fund" to assist homeowners in 18 states, including Michigan, impacted by the housing crisis that began in 2008. The Fund initially provided \$7.6 billion to state-based programs designed to keep homeowners in their homes, with \$498 million going to Michigan.<sup>53</sup> After the program began, Detroit requested and received permission to use that funding to pay for demolishing vacant residences. Between 2014 and early 2016, approximately \$172 million had been used to demolish approximately 8,000 abandoned homes in Detroit.<sup>54</sup>

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<sup>50</sup> *Id.* at 752.

<sup>51</sup> The ordinance provides:

Legislative findings. The Council finds that: (a) Scattered throughout the city are a large number of unoccupied dwellings which are constantly broken into, vandalized, used for unsanitary or immoral purposes, and are potential fire hazards.

DETROIT, MICH., CODE §37-2-1(a).

<sup>52</sup> 504 B. R. at 214.

<sup>53</sup> Todd Spangler, *Feds Give Michigan \$188M More to Fight Blight*, DETROIT FREE PRESS, Apr. 20, 2016.

<sup>54</sup> *Id.*

The Treasury Department gave Michigan an additional \$74.5 million in February 2016, of which Governor Rick Snyder designated \$42 million to go to Detroit for blight removal.<sup>55</sup> In April, 2016 the Treasury Department gave another \$188 million to Michigan under the Hardest Hit Fund to address blight in Detroit and other Michigan cities.<sup>56</sup> Based on that funding, Detroit set a target of demolishing 15,000 more homes by 2018.<sup>57</sup>

In mid-2016, Detroit announced that it had demolished 10,000 houses since January 2014, or approximately 75 houses per week, and that it was increasing that pace to 150 demolitions per week.<sup>58</sup> According to city officials, “90% of Detroit residents now live in neighborhoods where the city can demolish dangerous and abandoned buildings.”<sup>59</sup>

Demolishing abandoned residential structures has effectively increased the property values of the houses in the neighborhoods. A 2015 study concluded that the value of occupied houses within 500 feet of houses demolished by Hardest Hit Fund money increased an average by 4.2% which, across the city, is an approximately \$209 million increase in housing value.<sup>60</sup>

Although there are immediate economic benefits to simply demolishing abandoned neighborhood structures, there are also direct short- and long-term costs associated with it. In Detroit, the per-house cost of demolition can be tens of thousands of dollars. The “average cost of demolition, including asbestos abatement, for 6,152 Detroit houses torn down under Hardest

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> News From The City Government, July 18, 2016, <http://www.detroitmi.gov/News/ArticleID/919/Detroit-knocks-dow-10-000thvacant-house/>, accessed March 30, 2017.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

Hit funding between March 18, 2014 and October 2015 was \$13,870.”<sup>61</sup> Demolitions occurred in two phases. In the first phase, from March 2014 to January 2015, the average cost was \$12,670 per house.<sup>62</sup> In the second phase, it increased to \$15,915 per house.<sup>63</sup> If the demolition cost factors in soil testing for contaminants, property surveying, asbestos assessments, disconnection of utilities, administration and lot maintenance, the average cost to demolish a house was \$17,936.<sup>64</sup> Some demolitions have cost up to \$21,000.<sup>65</sup>

Another cost of demolition is the loss of potentially viable and habitable housing stock that could be reclaimed and re-used. Rehabilitating, rather than destroying, existing abandoned houses would preserve the neighborhoods in which they exist. More importantly, rehabilitation instead of demolition entails the prospect of returning those houses back into revenue-generating structures, housing tax-paying residents.

As an additional measure to address neighborhood blight, the Detroit Land Bank Authority was established in 2008 to essentially serve as the owner of last resort by acquiring and holding title to vacant and abandoned property until it can be turned over to private owners according to its “highest and best use.”<sup>66</sup> The Authority currently holds title to over 93,000 properties in Detroit, many of which remain occupied.<sup>67</sup> Most of those occupied homes were acquired by the Authority when they failed to sell through tax foreclosure auctions.<sup>68</sup>

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<sup>61</sup> Khalil AlHajal, *How Much Does It Cost to Demolish a House: The Price Tag in Five Michigan Cities*, DETROIT NEWS, Nov. 9, 2015.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Michele Oberholtzer, Jan. 30, 2017, <http://www.modelmedia.com/features/detroit-sell-homes--13017.aspx>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

Michigan law gives land banks special powers in dealing with vacant and abandoned properties, allowing land banks to quickly and efficiently clear title.<sup>69</sup> They can acquire, transfer, exchange and hold title to property,<sup>70</sup> file actions to quiet title,<sup>71</sup> and numerous other broad powers to “do all things necessary and convenient to implement the purposes, objectives, and provisions of” the Land Bank Fast Track Act.<sup>72</sup>

Through the Detroit Land Bank Authority, Detroit, like some other cities, has also implemented a “Side Lot Sales” program under which a homeowner can purchase a vacant property next to theirs for \$100. Those lots can then be used to expand the homeowner’s yard, be used for gardening, or be used to construct new structures like garages or sheds.<sup>73</sup> Residents can buy such side lots directly on the city’s website, or purchase them at fairs that the city runs throughout the year.<sup>74</sup> Over 6,000 side lots have been sold in Detroit neighborhoods since the program began.<sup>75</sup>

The Detroit Land Bank Authority has implemented other programs in an attempt to return abandoned housing stock back into productive use. In early 2014 the Authority established a rejuvenated Nuisance Abatement Program (“NAP”) under which the NAP files lawsuits against vacant property owners, demanding that the record owner renovate the property or risk losing it

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<sup>69</sup> The Land Bank Fast Track Act, MICH. COMP. LAWS §§124.751 – 124.774 (Jan. 5, 2004).

<sup>70</sup> *Id.*, §124.755 – 757.

<sup>71</sup> *Id.*, §124.759.

<sup>72</sup> *Id.*, §124.754. The Legislature determined it to be “in the best interests of this state and local units of government in this state to assemble and dispose of public property, including tax reverted property, in a coordinated manner to foster the development of that property and to promote economic growth in this state.” *Id.*, §124.752. The Act’s purposes included the right “to acquire, assemble, dispose of and quiet title to property,” and “to provide for the financing of the acquisition, assembly, disposition, and quieting of title to property” subject to the Act. *Id.*

<sup>73</sup> BUILDING DETROIT: SIDE LOT SALES, <http://www.buildingdetroit.org/our-program/side-lot-sales/>, accessed April 10, 2016.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

to the Authority.<sup>76</sup> The owner can either enter into a nuisance abatement agreement, or oppose the action.<sup>77</sup> In the event the owner fails to respond to the action, a default judgment allowing transfer of title to the Authority can be entered.<sup>78</sup> In the three years from April 2014 to April 2017, the NAP filed 215 complaints covering 3892 empty properties, entered into 1598 agreements with property owners to abate nuisances, and obtained 1373 default judgments where owners failed to respond.<sup>79</sup>

These approaches to structural neighborhood abandonment and decay have been more or less effective in accomplishing their goals, which is primarily to permanently remove abandoned housing stock through demolition. But for the long-term prospects of Detroit neighborhoods, a far better goal would be to return existing abandoned structures into useful, productive residential housing stock. How that goal can be accomplished through urban homesteading is considered in the next section.

## II. URBAN HOMESTEADING AS A REMEDY TO NEIGHBORHOOD ABANDONMENT

### A. *Generally*

Urban homesteading originated in the early 1970s as one response to the problem of abandonment facing many cities. One of the first programs was in 1973 in Wilmington, Delaware.<sup>80</sup> Similar programs were implemented within a short time in Philadelphia,<sup>81</sup> Baltimore,<sup>82</sup> and other large cities plagued by abandonment.<sup>83</sup> In 1974, congressional interest in

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<sup>76</sup> <http://www.buildingdetroit.org/our-programs/nuisance-abatement/>.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> WILMINGTON, DEL., REV. CITY CODE ch. 33A (1973).

<sup>81</sup> PHILADELPHIA, PA., ORDINANCE, 543 (1973).

<sup>82</sup> Baltimore's homesteading act was promulgated under the general charter powers of the city. *See Note, From Plows to Pliers - Urban Homesteading in America*, 2 FORDHAM URB. L.J. 273, 274 n.5 (1974).

the concept of urban homesteading culminated in the United States Department of Housing and Urban Development's (HUD) Urban Homesteading Demonstration (UHD) program.<sup>84</sup> This demonstration program, which became operational in 1978,<sup>85</sup> involved thirty-eight cities across the nation. Under the program, HUD could transfer federally-owned abandoned property to urban homesteaders who met program standards.<sup>86</sup>

In 1983, the Housing and Urban-Rural Recovery Act made several changes to the UHD program, creating rules for selecting applicants who would receive properties to homestead based on income.<sup>87</sup> Applicants paying over 30% of their income to rent were given priority, and applicants in households that had income that was less than 50% of the median income in the area were given federal grants to assist them in rehabilitating property. By 1983, 110 cities participated in the UHD program.<sup>88</sup>

The federal Urban Homesteading Demonstration program continued through 1991.<sup>89</sup> Despite this early demonstration effort of the federal government, implementing urban homesteading legislation remains primarily the responsibility of local governments.

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<sup>83</sup> See J. MYER, *supra* note 5, at 2.

<sup>84</sup> D. VARADY, *supra* note 10, at 40-41.

<sup>85</sup> *Id.* at 41.

<sup>86</sup> Under the HUD program,

vacant properties owned by the government are sold to families for a dollar, providing the families agree to live in them for at least three years and bring them up to code standards. it [sic] is assumed that the existence of homesteading activity would raise confidence levels among existing neighboring residents, causing them to remain at their locations and improve their own properties. It is also assumed that the homesteading activity would attract middle-income families, who might not otherwise consider living in these areas.

*Id.* at 3.

<sup>87</sup> *40 Years Ago: Federal Urban Homesteading Initiative Inspires Local Programs Today*, NATIONAL LOW INCOME HOUSING COALITION, Sept. 2, 2014.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*



Chicago's Large Lot Program permits homeowners to purchase for \$1 abandoned lots of property that the city owns provided the lot is on the homeowner's block and is vacant.<sup>90</sup> The lots can be used to extend the homeowner's yard, or be used for gardens or for housing.<sup>91</sup>

Buffalo, New York's Urban Homestead Program has three distinct options under which a qualified applicant can acquire city-owned property for \$1.<sup>92</sup> First, a property owner can acquire vacant property that is next to their primary residences.<sup>93</sup> Second, a homesteading applicant can acquire vacant property to construct housing, which must be done within 12 months. The homestead must then occupy the residence for at least 3 years.<sup>94</sup> Third, a homesteader can acquire an existing residential structure for rehabilitation if the homesteading applicant can show its financial ability, completes the repairs within 18 months, and occupies the residence for at least 3 years.<sup>95</sup>

According to Buffalo's Office of Strategic Planning, Buffalo has an estimated 4,600 vacant homes, and another 16,000 empty lots.<sup>96</sup> The average cost of demolition in Buffalo is \$15,000 per house,<sup>97</sup> an amount that some have proposed be spent on rehabilitation, with the potential to return the property to habitable housing stock and tax revenue.

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<sup>90</sup> LARGE LOT PROGRAM, <https://www.large-lot-program.html>, accessed Feb. 23, 2017.

<sup>91</sup> *Id.*

<sup>92</sup> CITY OF BUFFALO URBAN HOMESTEAD PROGRAM, [http://www.ci.buffalo.ny.us/Home/City\\_Departments/RealEstate/UrbanHomesteadProgram](http://www.ci.buffalo.ny.us/Home/City_Departments/RealEstate/UrbanHomesteadProgram), accessed Feb. 23, 2017.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Alana Semuels, *As An Alternative to Demolition, Buffalo Offers Houses for A Dollar*, L.A. TIMES, Aug. 14, 2014.

<sup>97</sup> *Id.*

*B. Detroit's Homesteading Ordinance*

Detroit's urban homesteading ordinance became effective on September 2, 1983. Under the ordinance, private persons and development corporations can identify abandoned structures and apply to the city for a "nuisance abatement contract." The ordinance applies to "dwellings," defined as a "single family, two family, or multiple family property."<sup>98</sup> A dwelling is considered "abandoned" if, it is vacant and "open at the door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers," and there are outstanding taxes due on it.<sup>99</sup> An abandoned dwelling is deemed a nuisance if it is a "dangerous building" under Ordinance Chapter 12-11-28.2 of the 1964 City Code.<sup>100</sup> If granted, the contract allows the contractor to take possession of the abandoned property and the applicant for the nuisance abatement contract "must agree to reside in the contract property as his or her sole residence for a thirty-six month period."<sup>101</sup> Once application for a contract is made, the record owner is notified and the Department of Building Safety and Engineering holds a hearing to determine whether the structure should be demolished or repaired through the nuisance abatement procedure. If repair is possible, the owner is given twenty days to abate the nuisance.<sup>102</sup> Should the owner fail to act, the city may then grant a nuisance abatement contract which authorizes the applicant to take possession of the property and commence repairs.<sup>103</sup> This transfer, however, is contingent upon the city obtaining title from the record owner either through delinquent tax proceedings or an action to quiet title.<sup>104</sup> If the city does not obtain title, it must compensate the applicant for his

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<sup>98</sup> §37-2-2(a).

<sup>99</sup> §37-2-2-(b).

<sup>100</sup> §37-2-2-(c).

<sup>101</sup> *Id.* §37-2-2(d)(2).

<sup>102</sup> *Id.* §37-2-3(a)-(h).

<sup>103</sup> *Id.* §37-2-3(j).

<sup>104</sup> *Id.* §37-2-6.

service in abating the nuisance caused by the abandoned structure. The record owner is allowed to redeem his claim on the property at any time before title vests with the city.<sup>105</sup>

Under the ordinance, a nuisance abatement contract with the city constitutes both a temporary occupancy permit, as well as a building permit under §12-11-70.0.<sup>106</sup>

Detroit's urban homesteading ordinance contains many of the provisions common to the homesteading ordinances of other cities. One novel feature of the Detroit ordinance, however, is that it grants private persons the right to take possession of and rehabilitate structures over which the city *does not yet have title*. The ordinance does not require paying the record owner just compensation for the encroachment on his possessory interest. That novel aspect of the ordinance was the basis of a constitutional challenge in *Moore v. Detroit*.<sup>107</sup> The plaintiff in *Moore* argued that the ordinance effected as an unconstitutional taking of property under the Fifth Amendment<sup>108</sup> because it fails to provide just compensation to the record owner during the course of the homesteader's occupancy or when title is transferred to the homesteader. The Michigan Supreme Court, however, found the ordinance constitutional. It summarily affirmed the court of appeals which held that because the homesteading statute does not take property for a "public use," it is an exercise of the state's police power, rather than its power of eminent

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<sup>105</sup> *Id.* §37-2-7.

<sup>106</sup> *Id.* §37-2-2(e)(2) and (3).

<sup>107</sup> 159 Mich. App. 194, 406 N.W.2d 488, *leave to appeal denied*, 429 Mich. 876 (1987).

<sup>108</sup> U.S. CONST. amend. V provides that "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The amendment was incorporated to the states in *Missouri Pac. Ry. Co. v. Nebraska*, 164 U.S. 403, 417 (1986) ("The taking by a State of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the Fourteenth Article of Amendment of the Constitution of the United States.").

domain.<sup>109</sup> As a result, under Detroit's homesteading ordinance property owners need not be given just compensation in order to satisfy their Fifth Amendment rights.<sup>110</sup>

### III. A PROPOSED MODIFIED APPROACH TO NUISANCE ABATEMENT AND NEIGHBORHOOD REVITALIZATION THROUGH THE EXPANDED USE OF URBAN HOMESTEADING

Under local ordinance, state statutory law, and federal funding, Detroit possesses the tools to combat structural neighborhood abandonment. However, those tools can be made more effective with some important modifications and adjustments designed to re-focus emphasis away from demolition and onto renovation and revitalization.

First, Detroit should seek to use federal money under the Hardest Hit Fund to assist private and individual urban homesteaders to reclaim abandoned neighborhood housing stock, rather than simply demolishing it and permanently remove it from neighborhoods. Redirecting those funds to provide funding - - either in the form of direct subsidies or loans - - to potential abatement contractors could incentivize a greater number of private individuals to undertake homesteading.

As originally conceived, the Hardest Hit Fund provided federal money to states to assist homeowners from having their houses foreclosed on, mostly through state programs.<sup>111</sup> Detroit requested, and was given, permission to use those federal dollars to fund its demolition program, thus establishing some precedent for the ability to change use of those federal funds.<sup>112</sup>

As discussed in Section I(B), the average cost of demolishing abandoned houses in Detroit is currently in the area of approximately \$18,000 per house.<sup>113</sup> Although demolishing some abandoned properties in some neighborhoods has enhanced the value of surrounding sound

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<sup>109</sup> 159 Mich. App. at 202-03, 406 N.W.2d at 490.

<sup>110</sup> *Id.*

<sup>111</sup> *See supra* note 53.

<sup>112</sup> *See supra* note 54.

<sup>113</sup> *See supra* note 64.

housing and stabilized the economic security of local areas, the demolished houses themselves are permanently removed and there is no opportunity for them to return to productive use, to provide viable housing, or to generate tax revenue. However, if money used for demolition were re-directed instead to potential nuisance abatement contractors to renovate, revitalize, and reclaim that property, it would constitute an investment in the property and carry with it the prospect of getting a return in the form of tax revenues from the abated nuisance.

In 2012 alone, Detroit lost an estimated \$131 million in property tax revenue because owners did not pay taxes on their properties, many of which were left abandoned.<sup>114</sup> For every structure that is abated through urban homesteading, there is a saving of the direct expense of demolition, and the additional benefit to the city of future tax revenue if the property becomes habitable.

Second, Detroit's urban homesteading ordinance should be amended to eliminate the requirement that an urban homesteader must "agree to reside in the contract property as his or her sole residence for a thirty-six month period."<sup>115</sup> Requiring potential homesteaders to live in properties as their sole residence for at least three years artificially and unnecessarily limits the pool of potential homestead applicants. Under the ordinance's current structure, all potential homesteaders are constrained to renovating at most one home every three years, because a homesteader can have only one home as is or her "sole residence."

Moreover, relieving potential urban homesteaders of the requirement of residing in the renovated property as their "sole residence" would open the possibility that individuals living in other areas would be enabled to invest and participate in urban homesteading while continuing to live in their existing residences elsewhere (even outside the city). That modification to the

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<sup>114</sup> See *supra* note 39.

<sup>115</sup> §37-2-2(d)(3).

ordinance would permit such individuals to participate in neighborhood revitalization and encourage them to renovate and acquire abandoned property within the city, either to live in themselves, to use as second homes, to sell after completing renovation, or to use as rental property.

Third, and related to the second point, Detroit's homesteading ordinance should be amended to eliminate the requirement that an individual be only able to obtain a nuisance abatement contract on one property at a time. A homesteader willing to do so should be permitted to abate the nuisance of abandoned property on multiple parcels. The prospect of abating, and obtaining title to, several parcels of abandoned property could provide a powerful incentive for individuals to rejuvenate complete blocks of property and to either resell it (presumably at profit) or retain and rent it. Under either scenario, the result would be to return vacant, abandoned property into restored, revenue-generating housing stock.

Fourth, the ordinance should be amended so that its definition of "nuisance abatement contractor" includes not just private individuals and community groups,<sup>116</sup> but also incorporated entities.

In its current form, only individuals and community groups are eligible to undertake urban homesteading under the ordinance. To increase the pool of financially capable entities willing to participate in homesteading, other incorporated businesses should be permitted to invest in neighborhood renovation under the ordinance, creating the prospect of private, for-

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<sup>116</sup> Currently, the only two categories of "nuisance abatement contractors" set out in the ordinance are "individuals" and "community groups." An eligible "community group" must be a nonprofit organization, have "an established track record in or a demonstrated capability for home rehabilitation," have "distinct geographical boundaries," have a "community-based board" with at least 51% residing within the boundaries, conduct open meetings, and be certified by the city planning commission as meeting all those criteria. §37-2-2(d)(1).

profit business entities supplying the capital, labor and materials for structural nuisance abatement in exchange for title to the property for either resale or other residential use.

Such relatively small modifications to the Detroit's approach to dealing with abandoned housing could dramatically impact the vitality of its urban homesteading ordinance, expand the scope of its application, and help Detroit's neighborhoods share in the renaissance that the downtown areas are currently experiencing.

#### CONCLUSION

Detroit's post-bankruptcy renaissance is evident throughout the downtown and mid-town areas as businesses and commercial enterprises such as restaurants, retail stores, and sports complexes have begun to flourish. The city's neighborhoods should not be left behind. Although structural residential abandonment was the result of multiple social and economic forces, at bottom the cause of abandonment is ultimately homeowner's lack of confidence that continuing to invest in their property would be worth the expense and effort. The city's economic revitalization presents an opportunity for the city to encourage neighborhood re-development and revitalization by capitalizing on the same pioneering spirit that was the foundation of Lincoln's 1862 Homestead Act - - providing housing and property in exchange for enterprising private individuals' investment, commitment, and sweat to create stable, populated, and well-maintained neighborhoods where there is currently only abandonment and urban desolation. Re-focusing Detroit's response to abandonment away from demolition and back to reclamation of housing stock can be done, and can be done much more efficiently, by altering the conditions and limitations currently restricting wider application of, and access to, urban homesteading within Detroit's neighborhoods.