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# FARMING THE SLUMS: USING EMINENT DOMAIN AND URBAN AGRICULTURE TO REBUILD BALTIMORE'S BLIGHTED NEIGHBORHOODS

KEITH BUZBY\*

## INTRODUCTION

The decline of American industry in the Northeast region of the United States has left a number of cities in a state of population contraction.<sup>1</sup> In places like Detroit, Flint, and Cleveland, residents have either left for the suburbs or else fled, moving to other parts of the country in search of work.<sup>2</sup> The inner core of many of America's northeastern metropolises have been hollowed out and left vacant.<sup>3</sup> This urban decline has been a vexing problem for what has become known as the "Rust Belt" for decades.<sup>4</sup> City planners, mayors, council members, and academics have searched for solutions to this conundrum.

A new paradigm has developed in recent years. Rather than fight this population decline, some are advocating a strategy of "smart decline," in which municipalities attempt to consolidate their populations into core neighborhoods so as to save money on public services.<sup>5</sup>

Baltimore, Maryland has not been immune to the urban decline facing its northeastern neighbors. The city has faced a large population decline, starting in the 1960s and accelerating in the 1980s.<sup>6</sup> Unlike

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<sup>1</sup> See Ben Beckman, Note, *The Wholesale Decommissioning of Vacant Urban Neighborhoods: Smart Decline, Public-Purpose Takings, and the Legality of Shrinking Cities*, 58 CLEV. ST. L. REV. 387, 391 (2010).

<sup>2</sup> See Catherine J. LaCroix, *Urban Green Uses: The New Renewal*, PLAN. & ENVTL. L., May 2011, at 3.

<sup>3</sup> See RANDALL BARTLETT, *THE CRISIS OF AMERICA'S CITIES* 224 (1998).

<sup>4</sup> LaCroix, *supra* note 2, at 3.

<sup>5</sup> See *id.*

<sup>6</sup> BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *STATISTICAL ABSTRACT OF THE UNITED STATES*, 2012, at 34–35, tbl. 27 (2012) [hereinafter *STATISTICAL ABSTRACT OF THE UNITED STATES: 2012*], available at <http://www.census.gov/compendia/statab/2012/tables/12s0027.pdf>.

Detroit, Flint, and Cleveland,<sup>7</sup> however, Baltimore's decline has been more evenly distributed throughout the city.<sup>8</sup> Baltimore faces a different set of challenges. Rather than consolidating its population into a more manageable space, Baltimore must find ways to manage and repurpose these vacant lots that are scattered around the city.

Smart decline may offer solutions to Baltimore's problems. Baltimore's uneven distribution of vacant properties calls for a unique approach to smart decline. This Note will advocate for a new model of smart decline, one that unites government and private investment to salvage vacant properties and bring Baltimore back from the brink.

This Note will argue that the City of Baltimore should use its powers of eminent domain to take vacant and abandoned buildings in depressed parts of the city and sell them to private business entities who will use the property for urban farming. While not a viable option for all cities, the use of the power of eminent domain is consistent with the Maryland Constitution and existing Maryland case law, especially in the cases *Mayor of Baltimore v. Valsamaki* and *Mayor of Baltimore v. Chertkof*.<sup>9</sup> These cases highlight that Maryland courts have allowed cities to exercise the power of eminent domain when the results benefit the public.<sup>10</sup> Turning vacant properties into plots for agricultural farming will have significantly positive environmental effects on the city and its residents. A program that uses vacant property for agricultural farming will improve the lives of less affluent Baltimoreans and will qualify under both federal and state courts' definition of "public use."<sup>11</sup>

Part I of this Note will define the problem of urban decline as it exists in Baltimore and compare it to the issues that other, more northern Rust Belt cities face. Part II focuses on solutions to the problem of urban decline. Other cities' strategies will be examined, from population consolidation via tax incentives to urban forestry and land banks. Baltimore's attempts at neighborhood renewal will be studied as well. Part III is an overview of the right of eminent domain in American law, with an eye towards the public takings clause's use in urban renewal. This Note's study of eminent domain will concentrate on Maryland's case law. Finally,

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<sup>7</sup> See LaCroix, *supra* note 2, at 3.

<sup>8</sup> See Press Release, Mayor Stephanie Rawlings-Blake, Mayor Announces "Vacant to Value" Plan to Reduce Blight (Nov. 3, 2010), available at [http://www.baltimorecity.gov/OfficeoftheMayor/Newsmedia/tabid/66/ID/691/Mayor\\_Announces\\_Vacants\\_to\\_Value\\_Plan\\_to\\_Reduce\\_Blight.aspx](http://www.baltimorecity.gov/OfficeoftheMayor/Newsmedia/tabid/66/ID/691/Mayor_Announces_Vacants_to_Value_Plan_to_Reduce_Blight.aspx); LaCroix, *supra* note 2, at 3.

<sup>9</sup> See discussion *infra* Part III.D.

<sup>10</sup> *Id.*

<sup>11</sup> See discussion *infra* Part III.

Part IV will explain the advantages of urban farming, what crops and products can be cultivated in an urban area, and the environmental advantages urban farming can offer.

## I. THE PROBLEM OF URBAN DECLINE

### A. *Urban Decline Defined*

The rise of American industry led to the development of large urban centers in the Northeast.<sup>12</sup> As the focus of the American economy changed from manufacturing to services,<sup>13</sup> the American city changed as well. After World War II, Americans began to leave the urban environment in favor of the suburbs.<sup>14</sup> This process was especially pronounced in the industrial region of the Upper Midwest, now called the Rust Belt.<sup>15</sup> Detroit, the Motor City and headquarters of the “Big Three” automakers,<sup>16</sup> has lost nearly one million residents since 1950.<sup>17</sup> Pittsburgh, the “Steel City,”<sup>18</sup> has lost half of its population in the same time frame.<sup>19</sup>

Many of these former industrial metropolises have been hollowed out.<sup>20</sup> Shrinking cities like Detroit have vibrant suburbs surrounding a nearly vacant interior.<sup>21</sup> The problem facing many Rust Belt towns is that

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<sup>12</sup> See S. Paul O'Hara, *Model Cities, Mill Towns, and Industrial Peripheries: Small Industrial Cities in Twentieth-Century America*, in *AFTER THE FACTORY: REINVENTING AMERICA'S INDUSTRIAL CITIES* 19 (James J. Connolly ed., 2010).

<sup>13</sup> See Beckman, *supra* note 1, at 396.

<sup>14</sup> See Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 *YALE L. & POL'Y REV.* 1, 1–2 (2003).

<sup>15</sup> See LaCroix, *supra* note 2, at 3.

<sup>16</sup> John Tamny, *The Unions Didn't Bankrupt Detroit, But Great American Cars Did*, *FORBES* (July 21, 2013, 10:00 AM), <http://www.forbes.com/sites/johntamny/2013/07/21/the-unions-didnt-bankrupt-detroit-but-great-american-cars-did/>.

<sup>17</sup> See Campbell Gibson, *Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1990* tbl. 1 (U.S. Bureau of the Census, Population Div. Working Paper, Paper No. 27, 1998) [hereinafter *Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1990*], available at <http://www.census.gov/population/www/documentation/twps0027/tab01.txt>.

<sup>18</sup> David J. Lynch, *Pittsburgh's Heart of Steel Still Beats Amid Transformed City*, *USA TODAY*, Sept. 21, 2009, 9:29 PM, [http://usatoday30.usatoday.com/money/economy/2009-09-21-us-steel-pittsburgh\\_N.htm](http://usatoday30.usatoday.com/money/economy/2009-09-21-us-steel-pittsburgh_N.htm) (last updated Sept. 22, 2009, 3:03 PM).

<sup>19</sup> See Gibson, *supra* note 17.

<sup>20</sup> See Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 *URB. LAW.* 225, 228 (2010).

<sup>21</sup> See *id.*

entire neighborhoods are going vacant.<sup>22</sup> This problem is so bad in Detroit that Mayor David Bing has gone on the record as stating that “[i]f [certain Detroit residents] stay where they are [he] absolutely cannot give them all the services they require.”<sup>23</sup> It is simply too expensive to provide services to parts of the city that are barely inhabited.<sup>24</sup> The City of Flint, Michigan has proposed letting some neighborhoods revert back to forest.<sup>25</sup> As these examples illustrate, post-industrial decline is a major problem facing many parts of urban America.

*B. Urban Decline in Baltimore*

The City of Baltimore shares much of the history of industrial boom and post-war bust as its counterparts to the north. Buoyed by its wealth of low-skill high-wage jobs, Baltimore grew steadily through the late nineteenth and early twentieth centuries, reaching a peak of almost 950,000 residents by 1950.<sup>26</sup> Industrial jobs began to recede in Baltimore, as they did in much of the United States in the mid-twentieth century.<sup>27</sup> By 2010, Baltimore had lost a third of its 1950 population.<sup>28</sup>

Such a large population loss resulted in massive amounts of vacant land within the city. The Baltimore Mayor’s Office has estimated that over 16,000 lots in the city lie vacant.<sup>29</sup> Unlike Flint, Detroit, or Cleveland, however, vacant properties in Baltimore are mostly scattered throughout the city.<sup>30</sup> Though some neighborhoods have been affected more than others by the depopulation of the city, Baltimore has been free from the massive “dead zones” that have plagued cities in the Rust Belt.<sup>31</sup>

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<sup>22</sup> *See id.*

<sup>23</sup> Christine MacDonald, *Bing: I'll Move Some Residents*, DETROIT NEWS, Feb. 25, 2010, at A4.

<sup>24</sup> *See infra* Part II.A.1.

<sup>25</sup> David Streitfeld, *An Effort to Save Flint, Mich., by Shrinking It*, N.Y. TIMES, Apr. 21, 2009, [http://www.nytimes.com/2009/04/22/business/22flint.html?ref=davidstreitfeld&\\_r=0](http://www.nytimes.com/2009/04/22/business/22flint.html?ref=davidstreitfeld&_r=0).

<sup>26</sup> *See* BUREAU OF THE CENSUS, POPULATION OF CITIES HAVING 50,000 INHABITANTS OR MORE IN 1950, 1900 TO 1950, AND AREA, 1950, *available at* <http://www2.census.gov/prod2/statcomp/documents/1960-02.pdf>.

<sup>27</sup> *See id.*

<sup>28</sup> *See* STATISTICAL ABSTRACT OF THE UNITED STATES: 2012, *supra* note 6, at 34.

<sup>29</sup> *See* Press Release, Mayor Stephanie Rawlings-Blake, *supra* note 8.

<sup>30</sup> Baltimore City has created a truly amazing data catalog in its Open Baltimore program. Open Baltimore maintains a map of every vacant property in the city, updated every two weeks. *Map of Vacant Buildings in Baltimore*, OPEN BALTIMORE, <https://data.baltimorecity.gov/property/map-of-vacant-building-in-baltimore/dqzz-nefw> (last visited Feb. 1, 2014).

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

Even if not all grouped together, a loss of a third of a municipality's population still leaves a lot of empty land in a city.<sup>32</sup> Population loss has made a major impact on Baltimore's urban landscape and architecture. One affected architectural feature in the city is the rowhouse. The rowhouse is so ubiquitous in Baltimore that it has come to be a symbol of the city itself.<sup>33</sup> Baltimore has come to suffer from what some experts call the "broken teeth" syndrome.<sup>34</sup> As residents left the city and abandoned their property, the solid face of a block of rowhouses came to be marred by vacant lots.<sup>35</sup> These vacant lots leave space for illegal dumping, trash, loitering, and are generally dark, unsafe areas at night.<sup>36</sup>

The City of Baltimore has developed programs to deal with such vacant properties in the short term. The city has opened up the lots it owns, which number some 5,000, to recreational use by residents through the Power in Dirt Program.<sup>37</sup> Through this Program, Baltimoreans have used the city's vacant lots to plant community gardens, create and display public art, grow green spaces, and for a variety of other uses.<sup>38</sup> Though Power in Dirt is an excellent program that promotes community development,<sup>39</sup> its use is somewhat limited. No permanent structures may be built on the lots used in the Program.<sup>40</sup> Further, the Program's rules do not allow residents to operate businesses from the vacant lots.<sup>41</sup> Though 5,000 lots may be in use via the Program, an additional 11,000 or more remain empty and unused.<sup>42</sup>

Nonetheless, these unused lots contain great potential for the City of Baltimore, especially as assets for making the city a greener, more

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<sup>32</sup> See STATISTICAL ABSTRACT OF THE UNITED STATES: 2012, *supra* note 6, at 34.

<sup>33</sup> See CHARLES BELFOURE & MARY ELLEN HAYWARD, *THE BALTIMORE ROWHOUSE 2* (Jan Cigliano ed., 1999) ("It's true that other American cities like Boston, Philadelphia, New York, Richmond, and St. Louis have rowhousing, but few other cities' psyche and identity are so closely tied to this architectural form as Baltimore's.").

<sup>34</sup> Elizabeth Evitts Dickinson, *Vacancy*, POINT OF VIEW BLOG, METROPOLIS MAG.COM (Dec. 12, 2008, 4:50 PM), <http://web.archive.org/web/20090326080629/http://www.metropolismag.com/pov/20081212/vacancy#more-3353>.

<sup>35</sup> See Phil Fairbanks, *Forgotten, But Not Gone: Neglected Homes and Vacant Lots Leave Buffalo Residents Angry. Who Owns Thousands of These Dangerous Properties? City Hall*, BUFF. NEWS, July 6, 2008, at A1.

<sup>36</sup> *Id.*

<sup>37</sup> *How It Works*, POWER IN DIRT, <http://www.powerindirt.com/how.html> (last visited Feb. 1, 2014).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

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

<sup>42</sup> See Press Release, Mayor Stephanie Rawlings-Blake, *supra* note 8.

environmentally friendly place. Baltimore could use this land to promote urban agriculture to help alleviate “food deserts” that deprive residents of nutritious fresh produce and meats.<sup>43</sup> Urban farming could help revitalize Baltimore’s distressed neighborhoods.

## II. SOLUTIONS TO URBAN DECLINE

### A. *Solutions in Northeast United States Cities*

Confronted with emptying neighborhoods, cities like Detroit, Flint, and Cleveland have adopted various strategies to cope with depopulation.<sup>44</sup>

#### 1. Downsizing City Services and Encouraging the Population to Relocate

Detroit has explored a variety of economic and social policies to confront its plunging population levels. Detroit explored the idea of ending services to underpopulated neighborhoods and trying to move these residents to other, more populated areas of the city.<sup>45</sup> Mayor David Bing has stated that he cannot guarantee that all neighborhoods will continue to receive city services.<sup>46</sup> Indeed, Detroiters have complained of slow services for several years as the city has contracted.<sup>47</sup> Critics point to a climbing murder rate as proof that reduced police funding is having a negative impact on the city.<sup>48</sup>

Highland Park, a community incorporated within Detroit’s city limits,<sup>49</sup> has made good on its warnings of pending service cuts. Reduced to less than 12,000 residents from a one-time high of 50,000, the community

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<sup>43</sup> Baltimore has several neighborhoods classified by the USDA as food deserts. *See Food Deserts*, BALTIMORE CITY GOV., <http://www.baltimorecity.gov/Government/AgenciesDepartments/Planning/BaltimoreFoodPolicyInitiative/FoodDeserts.aspx> (last visited Feb. 1, 2014).

<sup>44</sup> *See generally* LaCroix, *supra* note 2.

<sup>45</sup> Suzette Hackney, *Bing: Strategy, Plan for Detroit is in the Works*, DETROIT FREE PRESS (May 12, 2010), <http://www.freep.com/article/20100512/NEWS06/5120305/Bing-Strategy-plan-Detroit-works>.

<sup>46</sup> MacDonald, *supra* note 23.

<sup>47</sup> Monica Davey, *State Control Draws Closer for Detroit After Fiscal Review*, N.Y. TIMES, Feb. 19, 2013, <http://www.nytimes.com/2013/02/20/us/review-moves-detroit-nearer-emergency-oversight.html>.

<sup>48</sup> *Id.*

<sup>49</sup> *City Charter*, HIGHLAND PARK CITY, <http://www.highlandparkcity.us/Government/CityCharter.asp> (last visited Feb. 1, 2014).

found itself unable to pay the municipal power bill.<sup>50</sup> Out of options, the town simply removed two-thirds of its street lights.<sup>51</sup>

Unable to provide for those residents who live in depopulated areas, Detroit's leadership is trying mightily to move the population into more densely populated neighborhoods that are easier to serve. The Motor City also considered the use of tax incentives and the elimination of disincentives to encourage residents to leave blighted areas.<sup>52</sup> Mayor Bing has discussed the possibility of simply moving residents out of neighborhoods too difficult to serve reliably.<sup>53</sup>

## 2. Urban Woodlands and Green Spaces

One more extreme solution to the problem of declining urban population is to simply embrace the "hollowing out" of the inner city and let neighborhoods revert back to nature.<sup>54</sup> Flint, Michigan has given serious consideration to the idea of letting increasingly deserted neighborhoods lie fallow.<sup>55</sup> The abandoned neighborhoods would revert back to forest, offering potential use as parkland in the future.<sup>56</sup>

Other geographic areas have played with the idea of deurbanization of unused spaces. The industrial Ruhr region in Germany, for example, has faced many of the same problems as the American Rust Belt in terms of shrinking cities.<sup>57</sup> German city planners and designers have advocated that human-designed green spaces be laid out in place of condemned industrial factories.<sup>58</sup> Landscape architects are confident that their field offers the solution to the post-industrial urban decline.<sup>59</sup>

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<sup>50</sup> See Monica Davey, *Darker Nights as Some Cities Turn Off the Lights*, N.Y. TIMES (Dec. 29, 2011), <http://www.nytimes.com/2011/12/30/us/cities-cost-cuttings-leave-residents-in-the-dark.html>.

<sup>51</sup> *Id.*

<sup>52</sup> See, e.g., CITY OF DETROIT, PROPOSAL FOR CREDITORS 41 (June 14, 2013), available at <http://www.detroitmi.gov/Portals/0/docs/EM/Reports/City%20of%20Detroit%20Proposal%20for%20Creditors1.pdf>. See also Hackney, *supra* note 45.

<sup>53</sup> *Id.*

<sup>54</sup> Craig Segall, *The Forestry Crisis as a Crisis of the Rule of Law*, 58 STAN. L. REV. 1539, 1561 (2006).

<sup>55</sup> Streitfeld, *supra* note 25.

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

<sup>57</sup> Jorg Dettmar, *Forests for Shrinking Cities? The Project "Industrial Forests of the Ruhr,"* in WILD URBAN WOODLANDS: NEW PERSPECTIVES FOR URBAN FORESTRY 263 (Ingo Kowarik & Stefan Korner eds., 2005).

<sup>58</sup> *Id.* at 263–67.

<sup>59</sup> *Id.* at 263–64.

At least one private business has attempted to use natural green spaces to counter neighborhood abandonment in Detroit.<sup>60</sup> John Hantz, owner of Hantz Farms and Hantz Woodlands, has been buying up vacant land in abandoned neighborhoods in Detroit and converting them into new woodlands.<sup>61</sup> Mr. Hantz has been snatching up land at a mere \$300 per lot and has a goal of planting 15,000 trees on 140 acres.<sup>62</sup>

Urban green spaces offer many advantages for shrinking cities. They can provide places of outdoor recreation for urban-dwellers.<sup>63</sup> Green spaces, if given enough time, could offer sustainable production of natural resources, such as timber.<sup>64</sup> They can even help a city reestablish its identity and character through the concepts of land art and landscape architecture.<sup>65</sup> Perhaps most useful of all, these natural or human-designed green spaces can be placed in brownfields, areas too contaminated by industrial waste to be fit for human habitation without extensive (and costly) clean-up efforts.<sup>66</sup>

Another tactic employed by shrinking cities is “blotting,” also known as “sideyard expansion.”<sup>67</sup> Blotting is the tactic of allowing remaining residents in hollowed out neighborhoods to purchase land adjacent to their property at deeply discounted rates.<sup>68</sup> Detroit, for example, has offered residents adjacent lots for as low as \$200 each.<sup>69</sup> Cleveland sells blotted plots for as little as \$1.<sup>70</sup> Residents purchase the reduced-price land and add it to their own property.<sup>71</sup> Some residents have expanded their own property to encompass entire city blocks.<sup>72</sup> One particularly

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<sup>60</sup> Sarah Hulett, *An Urban Tree Farm Grows in Detroit*, NPR, Dec. 21, 2012, <http://www.npr.org/2012/12/21/167807136/an-urban-tree-farm-grows-in-detroit>.

<sup>61</sup> *Id.*

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

<sup>63</sup> Sigurd Karl Henne, “*New Wilderness*” as an Element of the Peri-Urban Landscape, in *WILD URBAN WOODLANDS: NEW PERSPECTIVES FOR URBAN FORESTRY* 247, 260 (Ingo Kowarik & Stefan Korner eds., 2005).

<sup>64</sup> *Id.* at 259.

<sup>65</sup> *Id.* at 259–60.

<sup>66</sup> *Id.* at 248–49, 259.

<sup>67</sup> David Lepeska, *Is Blotting the Best Solution for Shrinking Cities?*, *THE ATLANTIC: CITIES*, Nov. 10, 2011, <http://www.theatlanticcities.com/housing/2011/11/blotting-good-or-bad-shrinking-cities/470/>.

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

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Kate Davidson, *Blotting* “Not Squatting”—*In Detroit Neighborhoods*, NPR (Dec. 5, 2011, 12:00 PM), <http://www.npr.org/2011/12/05/142341520/blotting-not-squatting-in-detroit-neighborhoods> (last visited Feb. 1, 2014).

enthusiastic Detroiters blotted her property to the point that it included gardens, a gazebo, a basketball court, and numerous birdhouses.<sup>73</sup> Blotting has greatly decreased the density of inner city neighborhoods, but at the very least it keeps those neighborhoods functional and habited by the shrinking city's denizens.<sup>74</sup>

### 3. Land Banks

The City of Cleveland has developed a land bank program to acquire vacant lots so as to put them to more productive use.<sup>75</sup> The land bank itself is “a governmental entity that takes title to tax-delinquent property,”<sup>76</sup> and then prepares it for more productive use.<sup>77</sup> The program may also purchase properties outright from willing sellers.<sup>78</sup> The bank also has the power to demolish vacant buildings to further properties' repurposing.<sup>79</sup> The land bank program requires approval from the state legislature.<sup>80</sup>

The Cleveland Land Bank Program (“The Cleveland Land Bank”) is aimed primarily at addressing the declining property taxes afflicting the Cleveland region.<sup>81</sup> With properties being abandoned and then literally stripped by looters, property values plummeted in Cleveland following the economic collapse of 2008.<sup>82</sup> The Cleveland Land Bank aims to keep the more sturdy homes standing and give them to low-income residents, who would take low-interest mortgages out to pay for them.<sup>83</sup> Those properties that could not be salvaged would be torn down to make way for new development.<sup>84</sup>

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<sup>73</sup> Lepeska, *supra* note 67.

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

<sup>75</sup> *Division of Neighborhood Development*, CITY OF CLEVELAND, <http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/CommunityDevelopment/LandBank> (last visited Feb. 1, 2014); Lepeska, *supra* note 67.

<sup>76</sup> See LaCroix, *supra* note 2, at 5.

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

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

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

<sup>80</sup> *Id.*

<sup>81</sup> See OHIO REV. CODE ANN. § 5722.03 (West 2009); Thomas J. Fitzpatrick IV, *Understanding Ohio's Land Bank Legislation* (FRB of Cleveland Policy Discussion Paper, Paper No. 25, 2009), available at <http://ssrn.com/abstract=1316971>.

<sup>82</sup> See Aaron Marshall, *Rokakis Lays Groundwork for County Land Bank Bill*, CLEVELAND PLAIN DEALER, Dec. 6, 2008, at B3.

<sup>83</sup> Joan Mazzolini, *Land Bank Nets \$41M for Fix-Ups and Tear-Downs*, CLEVELAND PLAIN DEALER, Jan. 15, 2010, at B1.

<sup>84</sup> *Id.*

#### 4. Local Baltimore Initiatives

Baltimore has recently announced a new program designed to redevelop vacant lots around the city. Titled "Vacants to Value," the program is designed to redevelop city-owned vacant property.<sup>85</sup> The program will target distressed areas, support large-scale development in down-trodden neighborhoods, facilitate investment in emerging markets, and promote home ownership through the sale of vacant city lots.<sup>86</sup>

The program is a step in the right direction, but Vacants to Value is still not at the level of a land bank. Vacants to Value focuses solely on city-owned property,<sup>87</sup> unlike The Cleveland Land Bank, which is actively engaged in acquiring unused public property.<sup>88</sup> Vacants to Value is a good start for Baltimore, but the city would be better-served by a more comprehensive revitalization program. Such an expansive effort would require the city's power of eminent domain so that it can acquire abandoned and vacant property more similarly to The Cleveland Land Bank.

### III. EMINENT DOMAIN

#### A. *History*

The United States inherited the idea of eminent domain from English law dating as far back as the Magna Carta.<sup>89</sup> The founding generation appears to have taken the idea of eminent domain for granted, not making any mention of the power in the original text of the Constitution,<sup>90</sup> nor in any of the state constitutions of the founding period.<sup>91</sup>

In his proposal for the Constitution's first ten amendments, however, James Madison offered language that would eventually become the public takings clause of the Constitution's Fifth Amendment.<sup>92</sup> The public

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<sup>85</sup> *Vacants to Value*, BALTIMORE HOUSING, [http://www.baltimorehousing.org/vacants\\_to\\_value.aspx](http://www.baltimorehousing.org/vacants_to_value.aspx) (last visited Feb. 1, 2014).

<sup>86</sup> *Vacants to Value-Strategies*, BALTIMORE HOUSING, [http://www.baltimorehousing.org/vtov\\_strategies](http://www.baltimorehousing.org/vtov_strategies) (last visited Feb. 1, 2014).

<sup>87</sup> *Id.*

<sup>88</sup> Lepeska, *supra* note 67; Mazzolini, *supra* note 83.

<sup>89</sup> See 13 POWELL ON REAL PROPERTY § 79F.01 (Michael Allan Wolf ed., 2000).

<sup>90</sup> See *id.*; U.S. CONST. art I–V.

<sup>91</sup> See POWELL, *supra* note 89, § 79F.01(1)(a)(iii).

<sup>92</sup> See *id.*

takings clause states that “nor shall private property be taken for public use, without just compensation.”<sup>93</sup>

For much of the nation’s early history, the courts gave little consideration to the public takings clause. Eminent domain would not be taken up as a constitutional issue by the Supreme Court until the 1875 case *Kohl v. United States*,<sup>94</sup> in which the Court declared that the federal government had the power of eminent domain.<sup>95</sup> Commentators have noted that America’s vast tracts of unused land resulted in little need to take land already held by private citizens.<sup>96</sup> Furthermore, the land that the government did take was usually used for highways,<sup>97</sup> which were clearly for the “public use.”<sup>98</sup>

Industrialization brought new changes to the idea of public takings. The state had a vested interest in the development of new technologies, like railroads.<sup>99</sup> Municipal governments gained more power and used this power to have a greater impact on their cities’ planning and design, necessitating the use of the public takings clause.<sup>100</sup> Greater use of the public takings clause led to a debate over just what constitutes a “public use.”<sup>101</sup> This debate continues to rage today.<sup>102</sup>

The narrow view of public use is limited to actual government use of the land taken.<sup>103</sup> Such uses would include roads, public schools, parks, and any institution or structure that may be used by the general public. As explained by Ben Beckman in his article *The Wholesale Decommissioning of Vacant Urban Neighborhoods*: “[s]ome opponents of public-purpose takings argue that the Constitution’s requirement of public use bars all government takings that are justified solely in terms of economic benefits.”<sup>104</sup>

<sup>93</sup> U.S. CONST., amend. V.

<sup>94</sup> See POWELL, *supra* note 89, § 79F.01(1)(a)(iii); *Kohl v. United States*, 91 U.S. 367 (1875).

<sup>95</sup> *Kohl*, 91 U.S. at 371–72.

<sup>96</sup> POWELL, *supra* note 89, § 79F.03(1).

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

<sup>98</sup> *Id.*

<sup>99</sup> 2A NICHOLS ON EMINENT DOMAIN, § 7.01 (Julius L. Sackman ed., 3d ed. 1999).

<sup>100</sup> POWELL, *supra* note 89, § 79F.03(2). See also ERIC H. MONKKONEN, *AMERICA BECOMES URBAN: THE DEVELOPMENT OF U.S. CITIES & TOWNS 1780–1980* 207–08 (1988) (explaining how the “rise of industrial capitalism” corresponded with an “expanding conception of the public good” and the rise of more city services).

<sup>101</sup> See generally JOHN RYSKAMP, *THE EMINENT DOMAIN REVOLT: CHANGING PERCEPTIONS IN A NEW CONSTITUTIONAL EPOCH* 11–12 (2007).

<sup>102</sup> *Id.*

<sup>103</sup> POWELL, *supra* note 89, § 79F.03(3)(a).

<sup>104</sup> Beckman, *supra* note 1, at 404.

The alternative “broad view” of public use includes any use that “manifestly contributes to the general welfare and prosperity of the whole community.”<sup>105</sup> This broad view would allow the government to use the power of eminent domain to take land from one private citizen or entity and transfer it to another citizen or private entity, provided that such a transfer would be of benefit to the community as a whole.<sup>106</sup>

Over time, the Supreme Court has come to embrace a broader view of the public takings clause.<sup>107</sup> In doing so, the Court has offered great deference to the legislature in deciding just what constitutes a “public good.”<sup>108</sup> One of the reasons for this deference is the rise of urban America in the early part of the twentieth century.<sup>109</sup> Urban leaders feared that American cities were on the decline, and, they argued, broad public takings powers were required to stem the tide of blight.<sup>110</sup> This sentiment was reflected in the Supreme Court case *Berman v. Parker*.<sup>111</sup>

#### B. *Blight: Berman v. Parker*

Nearly sixty years ago, the Supreme Court established that the power of eminent domain extends to the government’s efforts to combat blight.<sup>112</sup> *Berman v. Parker* concerned a proposed program in the District of Columbia called the Redevelopment Land Agency (“Agency”).<sup>113</sup> The Agency was charged to “acquire and assemble, by eminent domain and otherwise, real property for the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight.”<sup>114</sup> The Agency was permitted to acquire land from private individuals and then transfer that land either to public agencies or private development businesses.<sup>115</sup>

The Court approved of the Redevelopment Land Agency’s practices, confirming the constitutionality of using the public takings power

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<sup>105</sup> NICHOLS, *supra* note 99, § 7.02(3).

<sup>106</sup> *See id.* § 7.02(3)–(5).

<sup>107</sup> POWELL, *supra* note 89, § 79F.03(3)(b)(ii).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 7.

<sup>110</sup> *See* Pritchett, *supra* note 14, at 1–2.

<sup>111</sup> *Berman v. Parker*, 348 U.S. 26, 31 (1954).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 29.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 30.

in order to redistribute land to private ownership.<sup>116</sup> The Court then described just how impoverished and desolate the slums of the District of Columbia were, noting, among other factors, that 83.8 percent lacked central heat, 18.4 percent needed major repairs, and 64.3 percent were beyond repair.<sup>117</sup>

In its decision, the Supreme Court wrote broadly of the government's powers regarding the public welfare.<sup>118</sup> Wrote Justice Douglas:

The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.<sup>119</sup>

The *Berman* case continued the trend of granting wide latitude to the legislature in determining the public good, especially when it comes to municipal governments.<sup>120</sup>

### C. Kelo v. City of New London

The Supreme Court once again took up the issue of eminent domain in its landmark decision in the case of *Kelo v. City of New London*.<sup>121</sup> New London, Connecticut had been facing dramatic decline for several decades, and the situation was exacerbated by the closure of the Naval Undersea Warfare Center in 1996.<sup>122</sup> Unemployment was double that of the state average, and the government sought ways to redevelop the city.<sup>123</sup>

The city decided to redevelop the neighborhood by purchasing land or else acquiring land through the right of eminent domain to give to redevelopers.<sup>124</sup> These redevelopers then would construct office buildings, marinas, retail space, a river walk, and other structures designed to revamp

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<sup>116</sup> *Id.* at 29.

<sup>117</sup> *Berman*, 348 U.S. at 30.

<sup>118</sup> *See generally id.*

<sup>119</sup> *Berman*, 348 U.S. at 33 (internal citations omitted).

<sup>120</sup> *See generally id.*

<sup>121</sup> *Kelo v. City of New London*, 545 U.S. 469 (2005).

<sup>122</sup> *Id.* at 474.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 475–76.

the waterfront.<sup>125</sup> The plan was designed to revitalize the distressed city, and the city government hoped that the effort would create a thousand new jobs in the city.<sup>126</sup>

Unlike the District of Columbia in *Berman*, though, New London was not facing massive urban blight.<sup>127</sup> Although the neighborhood had parts that were blighted, many of the houses were in good repair.<sup>128</sup> The plaintiff argued that the New London plan did not have the public use requirements that *Berman* did, and that New London's plan was thus unconstitutional.<sup>129</sup>

The Court disagreed, finding for New London.<sup>130</sup> The Court wrote that transferring private property for redevelopment was a proper use of the public use clause.<sup>131</sup> The majority wrote: "The disposition of this case therefore turns on the question whether the City's development plan serves a 'public purpose.' Without exception, our cases have defined that concept broadly, reflecting our longstanding policy of deference to legislative judgments in this field."<sup>132</sup>

The Supreme Court ruled that economic development qualifies as "public use" under the Fifth Amendment.<sup>133</sup> Even though the land would be passed from private ownership to government hands and then back into private hands, the transaction was designed to revitalize the ailing waterfront district, and was thus for "public use."<sup>134</sup>

#### 1. Public Response to *Kelo*

Many reacted negatively to the *Kelo* decision and states enacted laws barring *Kelo* style use of eminent domain.<sup>135</sup> The public response was partisan and vigorous.<sup>136</sup> Political groups from all sides of the spectrum

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<sup>125</sup> *Id.* at 475.

<sup>126</sup> *Id.* at 473.

<sup>127</sup> *Kelo v. City of New London*, 545 U.S. 469, 473 (2005).

<sup>128</sup> *Id.* at 476.

<sup>129</sup> *See id.*

<sup>130</sup> *See id.* at 490–91.

<sup>131</sup> *See id.* at 486.

<sup>132</sup> *See id.* at 481.

<sup>133</sup> *Kelo v. City of New London*, 545 U.S. 469, 485 (2005).

<sup>134</sup> *Id.* at 484–85.

<sup>135</sup> *See* KYLE SCOTT, *THE PRICE OF POLITICS: LESSONS FROM KELO V. CITY OF NEW LONDON* 122 (2010).

<sup>136</sup> *See id.* at 119.

decried the decision's impact on private land ownership.<sup>137</sup> Fearing that *Kelo* would result in broader powers of government takings, many organizations rushed to add state constitutional amendments limiting the government's use of the power of eminent domain.<sup>138</sup>

Response was not limited to the states, however. The House of Representatives passed a resolution condemning the *Kelo* decision 365 to 33.<sup>139</sup> A bill was introduced in the House of Representatives declaring that the federal government would not exercise its power of eminent domain "for the purpose of economic development."<sup>140</sup> Among other provisions, the proposed bill would have forced the U.S. Attorney General to compile a report regarding states acting in violation of the law,<sup>141</sup> would have declared states' Eleventh Amendment immunity void in eminent domain cases,<sup>142</sup> and, most damaging, would have denied federal economic development funding to states found in violation of the takings prohibition.<sup>143</sup>

Backlash to the *Kelo* decision rose so high that the Justice's own personal property was targeted for public taking, largely motivated by spite.<sup>144</sup>

#### D. *Eminent Domain in Maryland*

Maryland has failed to enact an anti-*Kelo* law, as many other states have done.<sup>145</sup> The power of eminent domain is mentioned specifically in the Maryland Constitution,<sup>146</sup> and the language roughly parallels that of the Fifth Amendment's Public Takings Clause.<sup>147</sup>

The Maryland Constitution grants the City of Baltimore specific powers of eminent domain.<sup>148</sup> Baltimore has the authority to acquire land

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<sup>137</sup> *See id.*

<sup>138</sup> *See id.* at 123.

<sup>139</sup> H.R. Res. 340, 109th Cong. (2005) (enacted).

<sup>140</sup> H.R. 4128, 109th Cong. (1st Sess. 2005).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Motivated by their negative feelings towards his vote in favor of the Court's finding in *Kelo*, the citizens of Weare, New Hampshire considered an action to seize Justice Souter's home and "turn it into a park with a monument to the Constitution." John Tierney, *Supreme Home Makeover*, N.Y. TIMES, Mar. 14, 2006, at A27.

<sup>145</sup> SCOTT, *supra* note 135, at 122.

<sup>146</sup> MD. CONST. art. 3, § 40

<sup>147</sup> Compare U.S. CONST. amend. V, with MD. CONST. art. 3, § 40.

<sup>148</sup> MD. CONST. Art. 11-B, § 1.

for redevelopment.<sup>149</sup> Indeed, Baltimore used this power in the redevelopment of the now-famous Inner Harbor.<sup>150</sup> Despite the lack of a restrictive anti-*Kelo* law, Maryland courts have established certain limits on the state's power of eminent domain.

Maryland has a history of allowing broad state powers in the context of eminent domain. In *Mayor and City Council of Baltimore v. Chertkof*, the Court of Appeals ruled that the "public purpose" of the City of Baltimore's power of eminent domain was to be defined broadly.<sup>151</sup> "Public purpose" was not solely to be viewed in terms of a government-owned institution, like a highway or a police station.<sup>152</sup> Instead, the city had the right to take a piece of property from one owner and put it into another's private hands, so long as the new owner's use had a public benefit.<sup>153</sup> *Chertkof* specifically involved the transfer of industrially zoned property to a developer who planned to build a public marina on the edge of a public park.<sup>154</sup> The marina was deemed to have enough of a public character to justify the government's taking.<sup>155</sup>

In 2007, *Mayor of Baltimore v. Valsamaki* somewhat limited eminent domain.<sup>156</sup> The case involved a "quick-take" condemnation of a bar and package goods store in Baltimore.<sup>157</sup> The City specifically sought to take the property in its urban redevelopment program in the Charles North Revitalization Area.<sup>158</sup> The Supreme Court noted that the City was essentially rushing the redevelopment process for no identifiable reason, citing the Circuit Court's transcript where the President of the Baltimore Land Corporation testified that no request for proposals had been drafted.<sup>159</sup> The Court decided in the *Valsamaki* case that the City had failed to establish an immediate need.<sup>160</sup> The *Valsamaki* case only limits a citywide vacancy redevelopment plan in terms of timing.<sup>161</sup> Provided that the City of Baltimore plans ahead and does its due diligence, *Valsamaki* should not prove to be a hindrance to vacancy redevelopment in distressed areas.

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<sup>149</sup> *See id.*

<sup>150</sup> John C. Murphy, *Eminent Domain*, 41 MD. B.J. 28, 28, 31 (Nov./Dec. 2008).

<sup>151</sup> *Mayor of Baltimore v. Chertkof*, 441 A.2d 1044, 1050 (1982).

<sup>152</sup> *Id.* at 1051.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 1052.

<sup>155</sup> *Id.* at 1053.

<sup>156</sup> *Mayor of Baltimore v. Valsamaki*, 916 A.2d 324, 326 (2007).

<sup>157</sup> *Id.* at 326.

<sup>158</sup> *Id.* at 328.

<sup>159</sup> *Id.* at 333.

<sup>160</sup> *Id.* at 344.

<sup>161</sup> *See generally id.*

Maryland courts have put some limitations on the state's power of eminent domain in recent years. The ruling in *Baltimore Development Corp. v. Carmel Realty* established that the Baltimore Development Corporation was not exempt from the public information and open meetings rules by which other agencies must abide.<sup>162</sup> The Baltimore Development Corporation, though a non-profit organization, was ruled to be an "instrumentality" of the city.<sup>163</sup> Being such an "instrumentality," the Baltimore Development Corporation is held to the same standards of openness and public information as any city board or commission.<sup>164</sup>

The *Baltimore Development* holding would potentially have an effect on any board or agency seeking to implement the proposed urban agriculture plan. Any organization tasked with carrying out the plan would have to hold its meeting regarding condemnation in public.<sup>165</sup> Such a requirement would not be overly burdensome for the organization, and would in fact be a positive benefit for the urban agriculture plan, as public meetings would offer increased exposure for the proposal, thus increasing public awareness and involvement.

This ruling may be tempered somewhat by the court's ruling in *J.P. Delphey Limited Partnership v. Frederick*, which allowed the city to decide to condemn a property in closed session.<sup>166</sup> The case involved the construction of a parking garage in downtown Frederick, Maryland.<sup>167</sup> The Frederick City Board of Aldermen had been planning the construction of the garage for several years, and ultimately settled on a tract of land near the county courthouse.<sup>168</sup> Delphey, the owner of the land upon which the city wanted to build the garage, did not want to sell, and resisted the city's efforts to condemn his property.<sup>169</sup> The controversy generated a lot of bad press for the city, and the Board of Aldermen met in a private session to "consult with the city attorney on potential or pending litigation" regarding the Delphey property.<sup>170</sup>

The Maryland Court of Appeals ruled that the municipality's legislative authority holds the power of eminent domain.<sup>171</sup> Though the city's

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<sup>162</sup> *Baltimore Dev. Corp. v. Carmel Realty Assocs.*, 910 A.2d 406, 428 (2006).

<sup>163</sup> *Id.* at 427.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *J.P. Delphey Ltd. P'ship v. Frederick*, 913 A.2d 28, 29 (2006).

<sup>167</sup> *Id.* at 31.

<sup>168</sup> *Id.* at 29–30.

<sup>169</sup> *Id.* at 30–31.

<sup>170</sup> *Id.* at 31.

<sup>171</sup> *Id.* at 35.

legislative authority, vested in the Board of Aldermen, could not make its decision to condemn Delphey's property in a private session, it had already made the decision via the budgeting process of the past several years, which took place in open session.<sup>172</sup> The court approved the condemnation of the property.<sup>173</sup>

*E. Maryland's Eminent Domain Law and Baltimore Urban Agriculture*

Maryland's laws regarding public takings and eminent domain are very promising for a proposed urban agriculture plan. Case law indicates that the City of Baltimore would be free to use its power of eminent domain to take privately held property for the purpose of redeveloping it for private urban farming.<sup>174</sup> As discussed in the previous Section, the public use requirement has been broadly defined in Maryland case law.<sup>175</sup> Property taken via eminent domain needs to simply have a "proper public benefit."<sup>176</sup> Because the urban agriculture plan is designed to redevelop economically distressed neighborhoods, it would meet the requirements laid out in *Mayor v. Chertkof*.<sup>177</sup>

The Maryland Constitution grants Baltimore the power of eminent domain specifically,<sup>178</sup> and the *Baltimore Development* case supports the idea that the city could even create a special non-profit or agency to handle the project on its own.<sup>179</sup> *Baltimore Development*, as well as *J.P. Delphey*, indicate that the agency or non-profit would have to meet publicly,<sup>180</sup> but, as discussed in the previous Section, this fact should not be a hindrance to an urban agriculture proposal. Public meetings may even advance the community-oriented benefits associated with an urban agriculture proposal.

This proposed urban agriculture non-profit would need to take its time in condemning the property in question. Aside from the public

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<sup>172</sup> *J.P. Delphey Ltd. P'ship v. Frederick*, 913 A.2d 28, 40 (2006).

<sup>173</sup> *Id.* at 41.

<sup>174</sup> *See, e.g., Mayor of Baltimore v. Chertkof*, 441 A.2d 1044, 1055 (1982).

<sup>175</sup> *Id.* at 1050.

<sup>176</sup> *Herzinger v. Baltimore*, 98 A.2d 87, 92 (1953).

<sup>177</sup> *See Chertkof*, 441 A.2d at 2055.

<sup>178</sup> MD. CONST. Art. 11-B, § 1.

<sup>179</sup> *See generally Baltimore Dev. Corp. v. Carmel Realty Assocs.*, 910 A.2d 406 (2006).

<sup>180</sup> *J.P. Delphey Ltd. P'ship v. Frederick*, 913 A.2d 28, 40 (2006).

meeting requirement established in *J.P. Delphey* and *Baltimore Development*,<sup>181</sup> the Maryland courts have struck down “quick-take” provisions, as in *Valsamaki*.<sup>182</sup>

By adopting a more aggressive approach to take on vacant land within its limits, Baltimore could revitalize a much larger portion of its city. Baltimore case law leaves much space for law makers to use eminent domain as a means for revitalization, while staying well within their legal limits.

Critics of the *Kelo* decision would perhaps be hesitant to support such a large transfer of property. However, as established above, the proposal would be in line with Maryland law. Furthermore, critics should consider the current productivity of the land in question, or, more properly, the lack thereof. Indeed, the houses in question have been completely abandoned by their owners. Unlike the much-resented *Kelo* decision, the land in question is truly unproductive, and, at worst, a public nuisance contributing to urban blight.

#### IV. COMMERCIAL URBAN FARMING IN BALTIMORE AS A MEANS TO COMBAT DECLINE

##### A. *Advantages of Urban Farming*

Redevelopment of vacant properties could provide a variety of green-friendly projects. Parts of Baltimore suffer from “food deserts,” areas of the city which lack easy access to fruits and vegetables.<sup>183</sup> Residents are already using vacant lots as community gardens.<sup>184</sup> If permitted to take land via the public takings clause and then give that land to a private organization or company (as was done in *Kelo v. City of New London*),<sup>185</sup> Baltimore could host a variety of urban farms. The fact that the vacant properties are located throughout the city, dotting the landscape rather than taking up huge swathes of the city, as in Detroit,

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<sup>181</sup> *J.P. Delphey Ltd. P'ship v. Frederick*, 913 A.2d 28, 29 (2006); *Baltimore Dev. Corp. v. Carmel Realty Assocs.*, 910 A.2d 406 (2006).

<sup>182</sup> *Valsamaki*, 916 A.2d at 326.

<sup>183</sup> See MARK WINNE, CLOSING THE FOOD GAP: RESETTling THE TABLE IN THE LAND OF PLENTY 87 (2008).

<sup>184</sup> See John E. Mogk et al., *Promoting Urban Agriculture as an Alternative Land Use for Vacant Properties in the City of Detroit: Benefits, Problems and Proposals for a Regulatory Framework for Successful Land Use Integration*, 56 WAYNE L. REV. 1521, 1523 (2010).

<sup>185</sup> *Kelo v. City of New London*, 545 U.S. 469 (2006).

would be a great asset in working against food deserts. Urban farms could be set up throughout the city, providing access to fresh fruits and vegetables that currently does not exist. Private enterprise could take on the risk and expense that the city would not want to endure. By repossessing blighted property, the city could foster an entrepreneurial enterprise that would serve to improve the lives of its poorer citizens.

Urban farming has been gaining notoriety in recent years.<sup>186</sup> Urban agriculture provides a variety of benefits for cities. The Environmental Protection Agency has examined the myriad of benefits that urban farming has to offer, stating that “[u]rban agriculture reuses provide a local source of fresh healthy food, increase surrounding property values, reduce environmental hazards, create biologically diverse habitats, reduce storm-water runoff, create jobs, promote physical activity, increase community connections, and attract additional economic activity.”<sup>187</sup>

In addition, urban farms serve to lower the amount of emissions used to transport fresh produce from farm to grocer,<sup>188</sup> thus reducing the amount of pollution created within city limits.

Soil contamination is a potential issue that may complicate the development of urban agriculture, especially in a formerly industrial city like Baltimore.<sup>189</sup> Even land previously used for residential purposes may be contaminated. Urban agriculture projects in Detroit ran into problems when lead paint chips were found in the city’s soil.<sup>190</sup> Nonetheless, government agencies like the Environmental Protection Agency work to develop appropriate methods to clean up otherwise unsuitable land for farming.<sup>191</sup>

### *B. What Urban Farms Could Produce in Baltimore*

Perhaps the easiest way to engage in urban farming is to grow crops. Urban agriculture in this manner can be as simple as maintaining a garden in the backyard. For Baltimore’s purposes, however, a private enterprise would potentially have a much more intensive use. Crop growth has the advantage of not requiring broad swaths of land. An urban farm

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<sup>186</sup> See Kate A. Voigt, Note, *Pigs in the Backyard or the Barnyard: Removing Zoning Impediments to Urban Agriculture*, 38 B.C. ENVTL. AFF. L. REV. 537 (2011).

<sup>187</sup> U.S. EPA, LAND REVITALIZATION FACT SHEET: URBAN AGRICULTURE, (April 2011) [hereinafter LAND REVITALIZATION FACT SHEET], available at <http://permanent.access.gpo.gov/gpo21388/fs-urban-agriculture.pdf>.

<sup>188</sup> Mogk et al., *supra* note 184, at 1523.

<sup>189</sup> *Id.* at 1535.

<sup>190</sup> See *id.* at 1537.

<sup>191</sup> LAND REVITALIZATION FACT SHEET, *supra* note 187.

in redeveloping Baltimore could consist of several smaller plots of land situated close to one another in a neighborhood. The proximity of the land would allow for ease of maintenance. The company could use the same machinery, tools, and labor force to work the land.

Maryland's agricultural output largely consists of corn and soybeans, and there would be no reason these crops could not be planted in the city of Baltimore.<sup>192</sup> Given the small amount of land available for harvest, at least in comparison to the massive farms that lie just a few miles outside of Baltimore's city limits, corn and soybeans would not be as profitable for an urban farm.<sup>193</sup>

From a profit-maximization standpoint, however, an urban farm would find more profit in growing vegetables to sell directly to consumers in the city. Vegetables like carrots, lettuce, tomatoes, and cucumbers, which are used frequently in American cooking,<sup>194</sup> would most likely have a much higher profit margin. These crops would serve to help remedy the food desert situation, and would probably sell well because of a lack of competition in the poorer neighborhoods of Baltimore.

Some urban farms have experimented with raising livestock.<sup>195</sup> In most locations, raising pigs, cattle, or other bovines would be impractical, as space-to-animal ratios would not be sufficient.<sup>196</sup> Chickens, however, may be a possibility.<sup>197</sup> Commentators have noted that a market exists for fresh eggs, even in cities.<sup>198</sup> Poultry farming requires less space than pigs or cattle,<sup>199</sup> but is not without problems of its own. Chickens can be noisy, smelly, unsightly, and generally a nuisance to neighbors if not properly controlled and maintained.<sup>200</sup>

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<sup>192</sup> See NAT'L AGRIC. STATISTICS SERV., THE 2007 CENSUS OF AGRICULTURE: FARM SALES AND PRODUCTION IN MARYLAND (2008), available at [http://planning.maryland.gov/msdc/census\\_agriculture/Sales/Census%20of%20Agriculture%202007%20Sales.pdf](http://planning.maryland.gov/msdc/census_agriculture/Sales/Census%20of%20Agriculture%202007%20Sales.pdf).

<sup>193</sup> See *id.*

<sup>194</sup> Elliot Essman, *Fruits and Vegetables in America*, LIFE IN THE USA, <http://www.lifeintheusa.com/food/vegetables.htm> (last visited Feb. 1, 2014).

<sup>195</sup> Jeninne Lee-St. John, *Urban Animal Husbandry*, TIME, Aug. 17, 2009, <http://www.time.com/time/magazine/article/0,9171,1914991,00.html> (showcasing efforts in Oakland, California to raise pigs, goats, and turkeys within city limits).

<sup>196</sup> Mogk et al., *supra* note 184, at 1545.

<sup>197</sup> The poultry industry has a huge presence in Maryland, especially on the state's Eastern Shore. Poultry is the state's top agricultural product, accounting for \$768 million in sales per year. Indeed, Maryland has the seventh-largest output of broilers and meat chickens of all fifty states. NAT'L AGRIC. STATISTICS SERV., *supra* note 192.

<sup>198</sup> See generally Julia Moskin, *Straight from the Home Coop*, N.Y. TIMES, Apr. 3, 2012, <http://www.nytimes.com/2012/04/04/dining/hatching-your-own-batch-of-eggs.html?pagewanted=all>.

<sup>199</sup> Mogk et al., *supra* note 184, at 1545.

<sup>200</sup> *Id.*

Beekeeping is another avenue for urban agriculture. Apiculture has become increasingly important as colony collapse disorder has severely limited the number of active hives across the United States and Europe.<sup>201</sup> Beekeeping does not require a large amount of space,<sup>202</sup> and honeybees often prefer an urban environment over a rural agricultural one, as the city offers a wider variety of plants to pollinate and less pesticides.<sup>203</sup>

Urban beekeeping does have its downsides, though. There is some risk to injury to neighbors from stings, and the company raising the bees would be liable for any injuries caused by the hive.<sup>204</sup> Hives would have to be located away from neighbors' housing and the sidewalks.<sup>205</sup>

Another point to consider is whether the existing structures should be allowed to remain standing or be torn down. There are several points in favor of keeping the existing buildings standing. Many of the business activities described in this Note could be performed as well on a rooftop as on the street level. Some activities may even be conducted with greater chances of success on the roof. Solar panels would almost certainly be more profitable when placed on the roof and out of the shade. Many urban gardens are planted on rooftops, and the increased sunlight may serve certain kinds of crops better than being in the shade of other buildings on the street level.

Alternatively, hydroponics are an increasingly popular way of growing crops in cities, sometimes inside of buildings.<sup>206</sup> Some agricultural firms may actually prefer to keep their newly acquired buildings standing, so as to do their farming indoors. Such an arrangement may work well for Baltimore. New forms of indoor agriculture have caught on in recent years. Aquaculture is one kind of botanical science that works well indoors.<sup>207</sup> Aquaculture relies on a closed-loop water system that is fertilized by the

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<sup>201</sup> The United States Department of Agriculture has reported that annual hive losses from 2006 to 2011 averaged thirty-three percent. These losses are significantly higher than usual, and if such hive losses were to continue at these levels, they could threaten the economic viability of the pollination industry and potentially increase the price of food paid by the consumer. See *Honey Bees and Colony Collapse Disorder*, AGRIC. RESEARCH SERV., <http://www.ars.usda.gov/News/docs.htm?docid=15572> (last modified Dec. 2, 2013) (last visited Feb. 1, 2014).

<sup>202</sup> Cherie Langlois, *The Basics of Beekeeping*, HOBBY FARMS, <http://www.hobbyfarms.com/crops-and-gardening/beekeeping-14945.aspx> (last visited Feb. 1, 2014).

<sup>203</sup> Mogk et al., *supra* note 184, at 1546.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> CATHERINE TUMBER; SMALL, GRITTY, AND GREEN: THE PROMISE OF AMERICA'S SMALLER INDUSTRIAL CITIES IN A LOW-CARBON WORLD 63 (2012).

<sup>207</sup> *See id.*

nutrients of fish feces.<sup>208</sup> Aquaculture systems have found success in abandoned big-box stores in smaller metropolitan areas.<sup>209</sup>

Baltimore could employ aquaculture or other hydroponic systems in the city's formerly industrial areas. Baltimore has a host of abandoned factories that could be converted into urban farms.<sup>210</sup> Such a strategy would most likely not be successful in the residential portions of the city, where the structures are not large enough to merit the construction of indoor aquaponic systems. Outdoor hydroponics systems could be a possibility if teetering houses are taken down.<sup>211</sup>

Conversely, there are also reasons to take the buildings down. Though hydroponic methods are increasingly popular,<sup>212</sup> a firm focusing on more traditional methods may prefer to farm open fields. Further, some of the vacant buildings may not be in proper shape for human habitation. Occupancy in these circumstances may not even be an option. If the abandoned buildings are not fit for human habitation, then their danger as a fire hazard is heightened. Any investor interested in buying Baltimore's vacant land would most likely be disinclined to invest further money in bringing the building up to occupancy standards. Rooftop farming or energy use may also result in the buildings essentially becoming empty shells. Though the new owners might try to keep people out of their buildings, squatting and criminal activities may well remain a problem. Considering that the elimination of these annoyances was one of the reasons this Note advocated for the taking of the vacant land in the first place,<sup>213</sup> keeping such structures standing may be inadvisable.

### C. *Other Environmental Benefits to Urban Agriculture*

#### 1. Reduction in Water Pollution

Situated at the northern end of the Patapsco River, Baltimore sits within the Chesapeake Bay ("Bay") watershed.<sup>214</sup> Consequently, the City

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<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> Eric Siegel, *A Neighborhood Abandoned*, BALT. SUN, June 25, 2006, <http://www.baltimoresun.com/news/bal-te.brewery25jun25,0,1300342.story>.

<sup>211</sup> *Id.*

<sup>212</sup> Naresh Kumar, *Aquaponics Growing in Popularity Around the World*, PSFK (Mar. 29, 2010), <http://www.psfk.com/2010/03/aquaponics-growing-in-popularity-around-the-world.html>.

<sup>213</sup> See discussion, *supra* Part III.

<sup>214</sup> CHESAPEAKE BAY PROGRAM, CHESAPEAKE BAY: INTRODUCTION TO AN ECOSYSTEM 2 (Kathryn Reshetiloff ed., 1999).

of Baltimore has a great impact over the health of the Bay. In recent years the Bay has been in poor health.<sup>215</sup> The Chesapeake Bay faces a variety of environmental challenges, including loss of habitat, overharvesting of resources, excess sediment, excess nutrients entering the Bay, chemical contamination, and too much runoff and silt, just to name a few.<sup>216</sup> Urban farming in the city of Baltimore could address several of these challenges facing the Chesapeake watershed.

Runoff is one of the most vexing problems facing any watershed,<sup>217</sup> and one that has proven to be an especially dangerous problem for the Chesapeake Bay.<sup>218</sup> Before human development, forests, wetlands, and underwater grasses served to filter rainwater runoff.<sup>219</sup> This natural filtration system reduced nutrient and sediment contamination by as much as ninety percent.<sup>220</sup> Increased human development has destroyed this natural filtration system and has allowed significant levels of pollution to enter the Bay.<sup>221</sup> Rainwater running over concrete picks up sediment, hydrocarbons, microbial organisms, heavy metals, and toxic substances before making its way into the watershed.<sup>222</sup>

Urban crops, if planted strategically, could be used to reduce the amount of rainwater runoff flowing into the Chesapeake Bay. The roots of the crops would filter rainwater before it moved into the watershed.<sup>223</sup> Urban farms located on the edge of the waterfront could prove especially effective at urban filtration. Though fertilizer is actually a major source of excess nutrients in the Bay,<sup>224</sup> organic farming could ensure that such excess nutrients would not find their way into the Bay.

## 2. Reduction in Air Pollution

Urban agriculture could help to ameliorate air pollution issues in Baltimore. Air pollution has been decreasing over the past ten years in

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<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> ANDREW KARVONEN, POLITICS OF URBAN RUNOFF: NATURE, TECHNOLOGY, AND THE SUSTAINABLE CITY 8–9 (2011).

<sup>218</sup> See CHESAPEAKE BAY FOUND., LAND AND THE CHESAPEAKE BAY (2000).

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> KARVONEN, *supra* note 217, at 8–9.

<sup>223</sup> See LAND REVITALIZATION FACT SHEET, *supra* note 187.

<sup>224</sup> Megan Cronin, *Less-Toxic Lawns in Maryland*, BALT. SUN, Mar. 15, 2011, [http://articles.baltimoresun.com/2011-03-15/news/bs-ed-lawn-fertilizer-20110315\\_1\\_fertilizer-pollution-diet-water-restoration](http://articles.baltimoresun.com/2011-03-15/news/bs-ed-lawn-fertilizer-20110315_1_fertilizer-pollution-diet-water-restoration).

Baltimore,<sup>225</sup> but urban farming could lead to still more improvement. Research has shown that air pollution may be harmful to some kinds of crops,<sup>226</sup> but those crops most susceptible to pollution, such as tobacco, would not be grown for harvest.<sup>227</sup>

The crops themselves would also help lower air pollution. Much air pollution is comprised of carbon dioxide.<sup>228</sup> This excess carbon dioxide is from the burning of fossil fuels.<sup>229</sup> Plants absorb carbon dioxide as part of the photosynthesis process.<sup>230</sup> Planting more plants results in more carbon dioxide being taken out of the atmosphere.

Some governments and organizations have taken advantage of plants' natural affinity for carbon dioxide removal by planting new-growth forests.<sup>231</sup> Called "carbon sinks," these man-made forests have been recognized as powerful tools in combating climate change and reducing pollution.<sup>232</sup> Carbon sinks have even been recognized in the Kyoto Protocol as a form of certified emission reductions.<sup>233</sup>

Urban agriculture has the potential to greatly increase the amount of green space within Baltimore's city limits. The crops being prepared for harvest would absorb excess carbon emissions from Baltimore's automotive exhaust, industry, and power plants. Though the amount of emissions reduced may be incremental, the carbon sink effect would be a potent bonus offered by urban agriculture.

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<sup>225</sup> Baltimore had twenty-four poor air quality days and eight code red air quality days in the summer of 2010. BALT. OFFICE OF SUSTAINABILITY, 2010 ANNUAL REPORT (2010), available at [http://www.baltimoresustainability.org/sites/baltimoresustainability.org/files/AnnualReport.2010.ForWeb\\_1.pdf](http://www.baltimoresustainability.org/sites/baltimoresustainability.org/files/AnnualReport.2010.ForWeb_1.pdf).

<sup>226</sup> WAYNE T. SPROULL, AIR POLLUTION AND ITS CONTROL 111 (2nd ed. 1972).

<sup>227</sup> The Maryland government instituted a tobacco buyout program that essentially ended the state's tobacco harvest. Philip Rucker, *End of an Era for Maryland Tobacco*, WASH. POST, Mar. 1, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/28/AR2007022800006.html>.

<sup>228</sup> SPROULL, *supra* note 226, at 17.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.* at 16.

<sup>231</sup> Eric T. Sundquist, et al., *An Introduction to Global Carbon Cycle Management*, in CARBON SEQUESTRATION AND ITS ROLE IN THE GLOBAL CARBON CYCLE 1, 5 (Brian J. McPherson & Eric T. Sundquist eds., 2009).

<sup>232</sup> Joanna M. Foster, *As 'Sinks' for Carbon, Forests Are Even Mightier Than Assumed*, GREEN BLOG, N.Y. TIMES (July 15, 2011, 5:15 PM), <http://green.blogs.nytimes.com/2011/07/15/as-carbon-sinks-forests-are-even-mightier-than-assumed/>.

<sup>233</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change art. 2, 37 I.L.M. 22 (1998).

*D. The Benefits of Privatization*

The key to true urban redevelopment is the use of the private sector. Private investment into the parts of Baltimore that have otherwise been abandoned will bring life back into the neighborhoods that are otherwise dilapidated and without hope. Private investment will also serve to revitalize blighted areas of the city far faster than simple government maintenance, as new business ventures will bring jobs into the blighted neighborhoods.

Still, relying purely on discounted home sales, even deeply discounted home sales, has its disadvantages. The revitalization process is slow. Few people will be willing to buy in neighborhoods that are deeply depressed. Residential revitalization will take time, as new entrants to depressed neighborhoods will start at the periphery and slowly move inwards to the core. This manner of revitalization will take years to accomplish.

Some cities have relied on gentrification to revitalize neighborhoods in decline.<sup>234</sup> Gentrification relies upon younger, entrepreneurial, middle class homeowners who are attracted to the steep discounts being offered for homes in neighborhoods bordering economically distressed parts of the city. Gentrification slowly spreads from the periphery of the blighted neighborhoods and into the core. Home sales will bring wealthier residents into the neighborhoods, who will then spur further investment in shops, restaurants, bars, and other services that suit the needs of the newcomers. Land values will rise, and the city can point to a revitalized neighborhood.

Gentrification is a complicated process, however. Those who called the neighborhood home before gentrification would not necessarily be pleased by the changes to the neighborhoods in which they have lived all their lives. The original residents often find themselves priced out of their own neighborhood.<sup>235</sup>

The original, less affluent residents would likely be unable to pay for the new services that gentrification would bring. Further, as land values increase, the taxes on land would increase as well. Taxes may well reach levels that the original residents would be unable to afford. If the city is not careful to balance gentrification, the process of revitalization may have a negative impact on the city's poorer residents.

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<sup>234</sup> See generally NEIL SMITH & PETER WILLIAMS, GENTRIFICATION OF THE CITY (1986).

<sup>235</sup> *Id.*

Baltimore can take the sting out of gentrification by promoting private investment of vacant lots. It should not abandon its existing Vacants to Value program, but in neighborhoods that have large amounts of vacant lots it should focus instead on potential business opportunities.

The main advantage private investment offers in terms of avoiding gentrification's potential pitfalls is that new businesses in depressed neighborhoods would create jobs. Baltimore has suffered higher unemployment rates than the national average, and four percentage points above the Maryland average.<sup>236</sup> This data is misleading, as unemployment is even higher in economically distressed neighborhoods.

Urban farming is an excellent form of private investment that will bring jobs to economically distressed neighborhoods with far fewer of the complications gentrification brings. Urban farms will need labor to work the crops. Most of the labor needed is unskilled, and the poorer neighborhoods could provide a source of labor for urban farms, as educational levels are lower in the city's depressed areas.

## CONCLUSION

The power of eminent domain has a long history of promoting urban revitalization. The U.S. Supreme Court had recognized urban renewal as a legitimate use of the public takings clause since the 1950s, as established in the *Berman v. Parker* decision.<sup>237</sup> The *Kelo* decision established that governments have the power to transfer property they have acquired through the public takings clause to another private entity.<sup>238</sup> Though its detractors fear that it is a power that can be abused, Baltimore has the potential to revive huge sections of the city by taking vacant, unused property and selling it to entrepreneurs who would invest in otherwise neglected tracts of the city. Maryland law would allow this form of the takings clause,<sup>239</sup> and the city would be well served to move forward with this kind of revitalization plan.

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<sup>236</sup> On average, Baltimore City's unemployment is about four percent higher than the state of Maryland. GOOGLE PUBLIC DATA, <http://www.google.com/publicdata> (follow "U.S. Bureau of Labor Statistics" hyperlink; then follow "Unemployment in the U.S." hyperlink; select "Unemployment Rate"; deselect "United States" check box; select "Maryland" and "Baltimore, MD" check boxes; click on "Seasonality" and select "Not Seasonally Adjusted").

<sup>237</sup> See *supra* Part III.B.

<sup>238</sup> See discussion *supra* Part III.C.

<sup>239</sup> See discussion *supra* Part III.D.

Baltimore's best use for that publicly taken land would be urban agriculture. Urban farms would help protect and preserve the environment. They would reduce storm water runoff into the Chesapeake Bay, as well as reduce the amount of carbon emissions in Baltimore and its environs.<sup>240</sup>

The urban farms would also have nutritional benefits to poorer Baltimoreans who do not have access to grocery stores. Urban farming would solve many of the food desert issues faced by Baltimore denizens, as well as provide a source of fresh fruits and vegetables.<sup>241</sup> Furthermore, the urban farms would provide new investment and sources of employment to neighborhoods that have suffered poverty and unemployment for decades.<sup>242</sup>

As Baltimore's proud industrial past fades and its residential neighborhoods decay, naysayers are quick to denigrate Charm City. Baltimore suffers from an overabundance of land, and the vacant lots that dot the cityscape have become a problem. New thinking will bring fresh solutions forward. Urban farming is an opportunity for Baltimore to turn what would otherwise be a detriment into an amazing opportunity for renewal and growth.

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<sup>240</sup> See discussion *supra* Part IV.A.

<sup>241</sup> See *supra* Part IV.B.

<sup>242</sup> See discussion *supra* Part IV.C.