

*Less Is Mo-town: Goals and Tools for “Smart Shrinkage” Land Use Planning in Rust Belt Cities  
like Detroit*

by  
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*“Historically, declining cities have focused on fostering growth and development. Urban redevelopment efforts seek to attract businesses to lift depressed areas from their slump. Nobody wants stagnation; the cure is growth. We often assume that if a city is not growing there is something wrong.” – Catherine J. LaCroix<sup>1</sup>*

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<sup>1</sup> Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URBAN LAWYER 225, 226 (2010). LaCroix is an Adjunct Professor of Law at Case Western Reserve University.

“A great city should not be confounded with a populous one.” – Aristotle<sup>2</sup>

## INTRODUCTION

Land use regulation can be critical to maintaining the health, safety, and welfare of citizens.<sup>3</sup> Before the advent of land use planning and sanitation management, American cities were characterized by filth, stench, and darkness; backyards and public streets were repositories for waste matter, debris—even fecal matter and animal carcasses.<sup>4</sup> Cities were overcrowded with people and heavily polluted by industry. In response, citizen groups and then municipalities began to plan their cities through zoning, restricting certain uses in certain areas to beautify and improve residential life.<sup>5</sup> Since then, city planners have aimed to achieve growth that balances the needs of employers (to stimulate the local economy) with the preferences of the residents (who may want open spaces and lots of parking).<sup>6</sup>

However, a new problem has arisen in northern industrial “Rust Belt” cities. Instead of growth and overpopulation—the issues that early land use planners faced—the cities are shrinking in population, leaving swathes of vacant land with decaying structures. The land has once again become a repository for waste, and the blight poses a challenge to redevelopment.<sup>7</sup>

Rust Belt cities such as Detroit, Cleveland, Youngstown, Buffalo, Rochester, Philadelphia, and Pittsburg and have all seen their populations drop tremendously in the last few decades.<sup>8</sup> They therefore face some different problems than the growing cities in the South.<sup>9</sup>

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<sup>2</sup> See *infra* note 315.

<sup>3</sup> As discussed *infra* in Subsection I.B.1, the police power inherent in government to promote the general health, safety, and welfare of the citizenry is the source of the power to zone and control land use.

<sup>4</sup> JULIAN CONRAD JUERGENSMAYER & THOMAS E. ROBERTS, LAND USE PLANNING AND DEVELOPMENT REGULATION LAW 18 (2d. ed. 2007).

<sup>5</sup> See *id.* at 19-24.

<sup>6</sup> See *infra* Subsection I.B.5.

<sup>7</sup> See *infra* Section II.B.

<sup>8</sup> Providence, Rhode Island; Milwaukee, Wisconsin; and Rochester, New York have also seen moderate growth.

<sup>9</sup> Cities such as Raleigh, North Carolina; Austin, Texas; Orlando, Florida; Charlotte, North Carolina; and Phoenix, Arizona have grown in the past decade, partially due to immigration. See *City and Town Totals: Vintage 2011*, U.S.

Although some of the northern industrial cities, such as Pittsburgh,<sup>10</sup> have seen somewhat of a revival, repopulation to the level during the industrial age is not likely for most of them. Modern literature and discussions have dubbed them “shrinking cities,” because they are losing population with no foreseeable prospect of regaining it to past levels.<sup>11</sup> They may more aptly be called “hollowing” metropolitan areas, because like many cities, they are often characterized by suburban sprawl—the metropolitan areas are growing, though the population in the center is shrinking.<sup>12</sup> The city of Detroit lost a quarter of its population since 2000, but the larger metropolitan area has lost only four percent.<sup>13</sup> These changes also tell a story of racial segregation, as those left behind in the center tend to be lower-income minorities, while the white middle- and upper-classes move out to the suburbs.<sup>14</sup> Commentators who prefer to look

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CENSUS BUREAU, <http://www.census.gov/popest/data/cities/totals/2011/index.html> (last visited April 2, 2013) [hereinafter *City and Town Totals*] (click into the Excel [XLS] or comma separated values [CSV] of “Annual Estimates of the Resident Population for Incorporated Places over 50,000, Ranked by July 1, 2011 Population: April 1, 2010 to July 1, 2011 (SUB-EST2011-01)”).

<sup>10</sup> Pittsburgh, which has “reinvented itself as a successful tech and health hub,” is one of the Rust Belt cities that has recently switched from negative growth to positive. *Other Shrinking Cities: Smaller Is More Beautiful*, THE ECONOMIST (Oct. 22, 2011), available at <http://www.economist.com/node/21533417> [hereinafter *Other Shrinking Cities*]. The *Economist* reports:

Pittsburgh is often pointed to as a model for other shrinking cities. Its revival since its steel industry collapsed in the early 1980s is partly thanks to good long-term planning. Under the leadership of Tom Murphy, a three-term mayor, more than 1,000 acres of abandoned, blighted industrial land in Pittsburgh was cleaned up and is now thriving commercial, retail, residential and public space. Once lined with factories the city’s waterfront has been given over to parks. Mr[.] Murphy oversaw the development of more than 25 miles of new trails alongside the river and urban green space. He helped develop public-private partnerships which leveraged \$4.8 billion in economic development.

*Id.* (The “kicker,” or small headline, of this source reads, “Many other cities are battling problems almost as acute as Detroit’s,” which clarifies that “other” in the title refers to shrinking cities besides Detroit, the unfortunate poster child of post-industrial decline).

<sup>11</sup> LaCroix, *supra* note 1, at 226. Some commentators warn against the use of the term “shrinking cities,” both because it is inaccurate—they are better described as “hollowing” cities—and has a negative connotation. However, “shrinking cities” has entered the planning vernacular and this Article thus uses that term, to partake in the dialogue as LaCroix does in her article. *See id.* at 228.

<sup>12</sup> *Id.* at 228.

<sup>13</sup> Kaid Benfield, *Which Part of Detroit, If Any, Really Needs “Right Sizing”?*, SWITCHBOARD: NATURAL RESOURCES DEFENSE COUNCIL STAFF BLOG (June 9, 2011), [http://switchboard.nrdc.org/blogs/kbenfield/which\\_part\\_of\\_detroit\\_needs\\_ri.html](http://switchboard.nrdc.org/blogs/kbenfield/which_part_of_detroit_needs_ri.html) [hereinafter Benfield, *Which Part of Detroit*].

<sup>14</sup> *See* David D. Troutt, *Katrina’s Window: Localism, Resegregation, and Equitable Regionalism*, 55 BUFF. L. REV. 1109, 1112 (2008) (“[W]hite flight’ is not a historical concept, but remains an accurate descriptor for the residential settlement patters of most white Americans”; “segregation accompanies suburban sprawl and enclavism, which

only at metropolitan statistics ignore the issues of hollowing inner cities, which suffer externalities of vacant and abandoned land.

Detroit was once a great technological powerhouse, the Silicon Valley of its day.<sup>15</sup> Now it is the boogeyman shown to city planners to scare them.<sup>16</sup> In Detroit's troubled past, the automobile industry shrank and moved away, race riots caused white flight to the sprawling suburbs and created racial tensions that still run deep, and high crime rates have been perpetuated by a thin police force the city can barely afford.<sup>17</sup> Today, over one fourth of Detroit is vacant.<sup>18</sup> The nearly 80,000 residences that stand vacant and abandoned are a source of blight;<sup>19</sup> the empty neighborhoods fill up with waste and danger, making mothers afraid to walk their children to the bus stop.<sup>20</sup> Developing plans to revive the city is "no easy task with a poor, aging and dwindling tax base, expensive health and pension legacy costs, reduced commercial activity, high unemployment and high crime."<sup>21</sup> However, the city and local organizations have recently begun

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creates economic and environmental waste, a succession of declining communities and disparities between middle-class and more affluent localities within a metropolitan area.”).

<sup>15</sup> Christopher Dreher, *Be Creative—Or Die*, SALON (June 6, 2002) [http://www.salon.com/2002/06/06/florida\\_22/](http://www.salon.com/2002/06/06/florida_22/).

<sup>16</sup> See e.g., *id.* (explaining that “cities must attract the new ‘creative class’ with hip neighborhoods, an arts scene and a gay-friendly atmosphere—or they’ll go the way of Detroit”); *Other Shrinking Cities*, *supra* note 10 (discussing “other” shrinking cities in addition to Detroit, the quintessential struggling city); JOHN GALLAGHER, REIMAGINING DETROIT: OPPORTUNITIES FOR REDEFINING AN AMERICAN CITY 55-56 (Kindle ed. 2010) [hereinafter GALLAGHER, REIMAGINING DETROIT] (“Detroit may be the nation’s poster city for urban dystopia”) (note: the page numbers listed for this source are Kindle Locations, rather than traditional page numbers; there are 2,612 Kindle Locations in the book).

<sup>17</sup> See *infra* Sections II.A-B.

<sup>18</sup> See *infra* note 168 and accompanying text.

<sup>19</sup> DETROIT WORKS PROJECT, DETROIT FUTURE CITY: DETROIT STRATEGIC FRAMEWORK PLAN 98 (January 2013), available at <http://detroitworksproject.com/wp-content/uploads/2013/01/The-DFC-Plan.pdf> [hereinafter DETROIT FUTURE CITY]. In addition to vacant residential units, 22% of industrial zoned land and 36% of commercial parcels in Detroit are vacant. *Id.*

<sup>20</sup> See John Gallager, *Pulte Grandson’s Nonprofit Effort to Help Rid Detroit of Vacant Eyesores*, DETROIT FREE PRESS (Feb. 14, 2013) <http://www.freep.com/article/20130214/BUSINESS06/302140245/Pulte-grandson-s-nonprofit-effort-to-help-rid-Detroit-of-vacant-eyesores> [hereinafter Gallager, *Pulte Grandson’s Nonprofit*] (“‘You’ve got kids who walk to school and fear for their lives as they pass these dangerous structures where rapes, murders and drug activities occur’”); Ecojaunt, *Hantz Farms: Detroit’s Saving Grace*, HANTZ FARMS DETROIT (Jan. 8, 2012), <http://www.hantzfarmsdetroit.com/introduction.html> (starting at 4:50, mother says she was thinking about moving out of her neighborhood due to the vacant homes, until Hantz Farms bought the properties from the city and demolished the blighted buildings).

<sup>21</sup> *Other Shrinking Cities*, *supra* note 10.

a number of initiatives to get Detroit back on its feet.<sup>22</sup> As vacant land is one of the primary challenges facing Detroit today,<sup>23</sup> land use planning will be an important piece to Detroit’s future.

This Article aims to redraft the land use discussion for shrinking cities. Part I gives a short history of land use planning, the goals behind it, and the traditional tools used by land use planners. Part II examines the new realities and challenges facing shrinking cities, with particular emphasis on Detroit—the city that has lost the most. Part II also discusses how new land use goals should be created for shrinking cities, rather than solely focusing on the traditional planning mantra of “growth.” Part III suggests a three-prong approach to “smart shrinkage”: *leaner*, *greener*, and *keener* land use planning.<sup>24</sup> This Article suggests that to the extent shrinking urban cores can implement the ideas proposed in Part III, the cities and their surrounding suburbs can move together out of post-industrial depression to success as twenty-first century cities.

## I. TRADITIONAL LAND USE PLANNING

Before redrafting the land use discussion for shrinking cities, a basic understanding of traditional land use planning is necessary.<sup>25</sup> This Part takes a step back from the discussion of shrinking cities like Detroit to give a short history of land use planning, an overview of traditional land use planning goals, and some common tools planners use to achieve those goals.

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<sup>22</sup> These include the sale of government-owned land to Hantz Farms in December 2012, the Detroit Future City plan released in January 2013, the Detroit Blight Authority and its demolition efforts revealed in March 2013. These initiatives will be discussed further *infra* in Section II.C. and Part III.

<sup>23</sup> Section II.B, *infra*, gives a more thorough explanation of the many challenges facing Detroit, as a case study of a shrinking city.

<sup>24</sup> These original terms of art are given meaning by the author in Part III. To the author’s knowledge, “leaner” and “keener” have not been used this way in other scholarship.

<sup>25</sup> Patricia E. Salkin, *From Euclid to Growing Smart: The Transformation of the American Local Land Use Ethic into Local Land Use and Environmental Controls*, 20 PACE ENVTL L. REV. 109, 110-11 (2002) (“we cannot begin to strategize about reforms for the future without appreciating the foundation upon which our system of land use controls has evolved”).

## A. A Short History of Land Use Planning

Land use planning is a relatively modern invention.<sup>26</sup> Until the twentieth century, land use regulation borrowed from various disciplines, but was not its own area of the law.<sup>27</sup> This Section explains how the challenges facing rapidly growing cities at the turn of the century prompted states to give cities the tools to proactively control the way their land is used.

### 1. *Nuisance Law*

Prior to the twentieth century, land use was unplanned and unregulated. Courts often thought about land use in terms of nuisance law. Private litigants could bring nuisance suits against their neighbors, alleging either a nuisance per se (a public nuisance by definition)<sup>28</sup> or a nuisance per accidens (often a private nuisance).<sup>29</sup> In *Gilbert v. Showerman*, the Michigan Supreme Court heard a nuisance case brought by a resident of an industrial area in Detroit against the owner of a neighboring steam-flouring mill.<sup>30</sup> The complainant alleged that the mill caused his building to constantly shake, poisoned the air with the smell of spoiled, damp flour, and threw soot and cinders into the air, making it hard to breathe or dry clothes outside,<sup>31</sup> and sought to enjoin the neighbor from continuing the steam-flouring mill operation there.<sup>32</sup> The

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<sup>26</sup> JUERGENSMEYER & ROBERTS, *supra* note 4, at 1.

<sup>27</sup> *Id.* at 1-2.

<sup>28</sup> A nuisance per se is an activity or structure that is a nuisance at all times and under any circumstances regardless of location, such as a brothel or bordello, a house full of pests, or a fire trap. JUERGENSMEYER & ROBERTS, *supra* note 4, at 621-22. Nuisances per se also fall under the category of public nuisances, which are unreasonable and often continual interferences with a right common to the public that impairs the health, safety, morals, or comfort of the community. *Id.* at 621.

<sup>29</sup> A nuisance per accidens, or nuisance in fact, is a use of one's property that causes an unreasonable interference with the a neighbor's use and enjoyment of its property. JUERGENSMEYER & ROBERTS, *supra* note 4, at 621, 623. The harm-producing activity underlying a nuisance per accidens is "lawful somewhere and even socially productive." *Id.* at 621. The question is therefore, "is it reasonable for the defendant to be doing what it is doing *where* it is doing it?" *Id.* at 623.

<sup>30</sup> *Gilbert v. Showerman*, 23 Mich. 448 (Mich. 1871).

<sup>31</sup> *Id.* at 449-50.

<sup>32</sup> *Id.* at 450.

court noted the steam-flouring mill was a lawful business and complainant's dwelling was more out-of-place in the area than the steam-flouring mill.<sup>33</sup> Gilbert's nuisance suit was dismissed.

The problem in *Gilbert* was that two largely incompatible land uses, residential and heavy industrial, were colliding. As the court explained, "every kind of business is generally regarded as undesirable in the parts of the city occupied most exclusively by dwellings."<sup>34</sup> On the other hand, the court worried that some persons, like Gilbert, would always choose to live in the "heaviest business quarters and among the most offensive trades of every city," and if those persons could complain of bothersome industrial neighbors, then any manufacturing use in any area could be enjoined.<sup>35</sup> Both of these concerns were answered by zoning.

## 2. *Euclidean Zoning*

In 1916, New York City became the first municipality to adopt a comprehensive zoning ordinance.<sup>36</sup> In 1922, the United States Department of Commerce, under the leadership of soon-to-be President Herbert Hoover, issued a draft form of the Standard State Zoning Enabling Act (SZEA).<sup>37</sup> The SZEA was a model for states to follow to delegate their inherent land use powers to cities, so that cities had legitimacy to "prepare, adopt, and administer zoning codes."<sup>38</sup> The SZEA requires that zoning should be enacted "in accordance with a comprehensive plan."<sup>39</sup>

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<sup>33</sup> *Id.* at 455.

<sup>34</sup> *Id.* at 453-54. Another consideration behind the court's reasoning in *Gilbert* was that some persons would always live in the "heaviest business quarters and among the most offensive trades of every city," and if those persons could complain of bothersome industrial neighbors, then any manufacturing use in any area could be enjoined. *Id.* at 456. This was also answered by zoning, which usually prohibits residential uses in manufacturing or industrial areas.

<sup>35</sup> *Id.* at 456. The court opined that if enjoined the mill, then "almost any manufactory in any of our cities can be enjoined upon similar reasons." *Id.* at 456.

<sup>36</sup> JUERGENSMEYER & ROBERTS, *supra* note 4, at 23.

<sup>37</sup> Nearly half of the states had passed zoning enabling laws before the SZEA was first printed in 1924. By the time it was reprinted in 1926, forty-three states had enacted a similar statute. *Id.* at 24 n.1.

<sup>38</sup> *Id.* at 24.

<sup>39</sup> A Standard State Zoning Enabling Act § 3 (1926). The SZEA did not define "comprehensive plan," and courts have determined that a zoning ordinance itself, if it is the entire plan of the city, can be a comprehensive plan. JUERGENSMEYER & ROBERTS, *supra* note 4, at 26. Some states require a separate comprehensive plan. *Id.*

Zoning ordinances are best known for sectioning off parts of the city for certain uses: any non-conforming use that has not otherwise been approved by the city violates the ordinance and has attendant consequences. Use zoning is also referred to as Euclidean zoning, based on the leading case of *Village of Euclid v. Ambler Realty Co.*,<sup>40</sup> in which the United States Supreme Court upheld the practice's validity as an exercise of the police power. The use restrictions in the Village's zoning plan showed a hierarchy of uses, from single family dwellings in the first category (perhaps the traditional gold standard of American land use), to apartments in the third category, and sewage, scrap yards, and cemeteries in the sixth and last category, to name a few.<sup>41</sup> The Court noted that "[a] nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard," and zoning can be used to separate such uses where it is done for the public good.<sup>42</sup> The Court also noted that zoning practices had become ubiquitous.<sup>43</sup>

## **B. Goals of Traditional Land Use Planning**

The driving goal of early land use planning was to improve residential life by getting the "pig out of the parlor": segregating residential uses from more intensive uses of land to provide safer, healthier, and more peaceful areas for family life.<sup>44</sup> Once land uses were separated, land use goals became proactive and earned the term "planning."<sup>45</sup> Traditional land use planning goals include separating incompatible land uses, attracting residents, economic development, and, increasingly, environmental protection. Different theories have waxed and waned in popularity

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<sup>40</sup> *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

<sup>41</sup> *Id.* at 380-81.

<sup>42</sup> *Id.* at 388. See further discussion of the police power *infra* in Subpart I.B.

<sup>43</sup> *Id.* at 387 (noting that the "wisdom, necessity, and validity" of zoning regulations were so apparent that they had become uniformly practiced, just as traffic regulations became with the "advent of automobiles and rapid transit street railways"). Over forty states had adopted zoning acts by the time *Euclid* was decided. See *supra* note 37.

<sup>44</sup> JUERGENSMEYER & ROBERTS, *supra* note 4, at 23.

<sup>45</sup> Land use planners aim to use land regulations to set an "optimum path for the development or redevelopment of a geographic area." They are thus "future-oriented. The urban planner believes that by analyzing existing conditions, forecasting future trends, and establishing normative goals and policies, an optimum path for the development or redevelopment of a geographic area may be formulated." JUERGENSMEYER & ROBERTS, *supra* note 4, at 14.

as to how to achieve those particular goals. This section will discuss various theories, but will start with an exploration of the power to regulate land use.

### **1. *The Police Power: General Health, Safety, and Welfare***

The goals of land use planning must be based on the power to regulate land use, as land use regulations are limited by the boundaries of that power. The right to control land use is not constitutionally granted; the Constitution is quiet on land use regulation, which is not surprising as there was little land use regulation at that time.<sup>46</sup> The Supreme Court in *Euclid* determined that the power to control land use comes from the police power,<sup>47</sup> which is inherent in sovereignty of the states and delegated to municipalities through zoning enabling legislation. As land use control is authorized under the police power, local governments exercising the power must do so to further the public health, safety, and/or welfare. The *Euclid* Court found that the increase in development and urbanization presented problems that justified governmental intervention in the form of land use regulation to protect the public.<sup>48</sup> Importantly, the Court set a deferential standard for judicial review of municipal zoning decisions.<sup>49</sup>

### **2. *Separating Uses: Keeping the Pig Out of the Parlor***

As discussed above, the most basic goal of Euclidean zoning is to keep incompatible land uses separate to reduce conflicts, such as the one seen in *Gilbert*.<sup>50</sup> However, not only do zoning ordinances keep industrial and residential uses separate, they also separate different residential uses. In *Village of Belle Terre v. Boraas*, the Supreme Court noted that “boarding houses,

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<sup>46</sup> Colonial planners sometimes mapped out street grids for large cities, but did not undertake zoning or other land use controls as we know them today. See JUERGENSMEYER & ROBERTS, *supra* note 4, at 16-19.

<sup>47</sup> *Euclid*, 272 U.S. at 387.

<sup>48</sup> See *supra* note 43.

<sup>49</sup> If the ordinance is “fairly debatable, the legislative judgment must be allowed to control.” *Euclid*, 272 U.S. at 388. Many articles have chronicled the Supreme Court jurisprudence supporting local control of land use planning. That discussion is beyond the scope of this Article. See Marci A. Hamilton, *The Constitutional Limitations on Congress’s Power over Local Land Use: Why the Religious Land Use and Institutionalized Persons Act Is Unconstitutional*, 2 ALB. GOV’T L. REV. 366, 368-86 (2009).

<sup>50</sup> Hamilton, *supra* note 49, at 375.

fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.”<sup>51</sup> This demonstrates the low bar for “incompatible uses” that may be separated under local zoning law.

### **3. *The American Dream: Single-Family Homes in Aesthetic Cities***

The City Beautiful Movement, the precursor to modern urban planning, was led by committees of people across the country in the early 1890s who sought to cure the lack of order and cleanliness they perceived in American towns.<sup>52</sup> Their goals of “[w]ell-kept streets, beautiful parks, attractive private residences, fresh air and sanitary improvements” transferred to the municipal planners who came after them.<sup>53</sup> Many planned cities in the early twentieth century took their inspiration from Ebenezer Howard’s anti-urbanization, utopian *Garden Cities of Tomorrow*, in which he envisioned small, planned, privately financed suburbs encircling a central city, surrounded by agricultural land.<sup>54</sup> Howard’s idyllic construction was based on four basic principles: “(1) separation of uses, (2) protection of the single-family home, (3) low-rise development, and (4) medium-density of population.”<sup>55</sup> Howard’s vision thus matched that of early land use regulation leaders, including Herbert Hoover, who favored single-family home ownership and whose leadership as Secretary of Commerce led to the SZEA in 1922.<sup>56</sup>

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<sup>51</sup> *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974).

<sup>52</sup> JUERGENSMEYER & ROBERTS, *supra* note 4, at 19-21.

<sup>53</sup> *Id.* at 20-21.

<sup>54</sup> EBENEZER HOWARD, *GARDEN CITIES OF TO-MORROW* (1902); *see also* Ed Morgan, *The Sword in the Zone: Fantasies of Land-Use Planning Law*, 62 U. TORONTO L.J. 163, 176-79 (2012).

<sup>55</sup> Hamilton, *supra* note 49, at 376.

<sup>56</sup> *See* Lawrence J. Vale, *The Ideological Origins of Affordable Homeownership*, in *CHASING THE AMERICAN DREAM: NEW PERSPECTIVES ON AFFORDABLE HOMEOWNERSHIP* 15 (William M. Rohe & Harry L. Watson, eds., 2007). In his memoirs, Hoover explained, “We inaugurated nation-wide zoning to protect home owners from business and factory encroachment into residential areas.” *Id.* at 24. Hoover also promoted ownership of single-family dwellings through the Department of Commerce’s “Own Your Own Home” campaign. *Id.* at 21. Homeownership was also seen during the Red Scare period as a “vital alternative to Soviet-style collectives, a kind of social glue that would stabilize American society.” *Id.* at 20.

Federal and local government have promoted single-family homeownership since the 1920s.<sup>57</sup> The “American dream” itself may be described as “a single family dwelling with a picket fence and a flower garden in the front and a tree house for the kids in the back.”<sup>58</sup> In *Village of Belle Terre v. Boraas*, the Supreme Court upheld a local zoning ordinance that prohibited more than two unrelated adults from living together, finding that the ordinance protected the village’s legitimate goal of creating the suburb ideal of “[a] quiet place where yards are wide, people few, and motor vehicles restricted.”<sup>59</sup> As represented in zoning ordinances such as the Village of Euclid’s, single-family homes top the hierarchy of land uses,<sup>60</sup> and many zoning ordinances carve out large areas for such use.<sup>61</sup>

#### **4. *Attracting Residents: The Tiebout Hypothesis and Richard Florida’s Creative Class***

In the latter half of the twentieth century, many cities latched onto a theory posed by economist Charles M. Tiebout. The Tiebout hypothesis,<sup>62</sup> as it applied to land use planning, said that municipalities compete with each other for residents<sup>63</sup> by offering a basket of public goods, such as school quality, police protection, public beaches, parks, roads, and parking facilities, for a certain tax price.<sup>64</sup> Following from this theory, the goal of city planners was to plan for development that included land uses and services that would attract individuals to their cities above others.

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<sup>57</sup> *Id.* at 20.

<sup>58</sup> JUERGENSMEYER & ROBERTS, *supra* note 4, at 321.

<sup>59</sup> *Belle Terre*, 416 U.S. at 9. The Court referred to the suburb ideal as a “a sanctuary for people.” *Id.*

<sup>60</sup> *See supra* note 41 and accompanying text.

<sup>61</sup> “[T]he advent of comprehensive zoning—spread across the nation during the 1920s—enshrined the single-family home with special prominence, again safeguarding a preference for certain kinds of dwellings in certain kinds of places for certain kinds of people.” Vale, *supra* note 56, at 15.

<sup>62</sup> *See* Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

<sup>63</sup> From the examples given (such as “a city resident about to move to the suburbs”) and assumptions named (such as persons living on dividend) in Tiebout’s 1956 article, the “consumer-voting” his model was based on seems based on middle- to upper-class individuals. *See id.* at 418-19.

<sup>64</sup> *Id.* at 418 (“Consider . . . the city resident about to move to the suburbs. What variables will influence his choice of a municipality? If he has children, a high level of expenditures on schools may be important. Another person may prefer a community with a municipal golf course. The availability and quality of such facilities and services as beaches, parks, police protection, roads, and parking facilities will enter into the decision-making process.”).

That aspect of Tiebout's hypothesis was recently updated by Richard Florida. Florida proposed that cities that excel do not attract just any residents, but specifically attract residents who belong to the "Creative Class,"<sup>65</sup> a new dominant social class<sup>66</sup> comprised of science, engineering, artistic, and professional workers.<sup>67</sup> Like Tiebout's hypothesis, Florida's theory is based on the location decisions<sup>68</sup> of (certain) individuals.<sup>69</sup> Under the Creative Class theory, if cities build quality-of-life features attractive to talented workers of a region, they will come—along with the high-tech industries that want them.<sup>70</sup> Florida asserts, "Knowledge and creativity have replaced natural resources and the efficiency of physical labor as the sources of wealth creation and economic growth. In this new era, human capital, or talent, has become the key factor of production."<sup>71</sup> "Those that have the talent win, those that do not lose."<sup>72</sup>

City planners who agree with Florida's theory therefore aim to attract the Creative Class and its talent, and the high-tech industries that are promised to follow.<sup>73</sup> The public goods that Florida suggests will attract the Creative Class include an entrepreneurial climate, environmental quality, ethnic diversity, and liberal social policies.<sup>74</sup> Creative Class people also "value active outdoor recreation very highly," and they prefer to bike to work.<sup>75</sup>

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<sup>65</sup> RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS* (2002) [hereinafter FLORIDA, *CREATIVE CLASS*].

<sup>66</sup> "Because creativity is the driving force of economic growth, . . . the Creative Class has become the dominant class in society." *Id.* at ix.

<sup>67</sup> *Id.* at ix. About 30% of the American population belongs to the Creative Class. *Id.*

<sup>68</sup> Florida's "location decisions" are similar to Tiebout's "consumer-voting," or what also has become known as "voting with their feet."

<sup>69</sup> RICHARD FLORIDA, *CITIES AND THE CREATIVE CLASS 50* (2005) [hereinafter FLORIDA, *CITIES*].

<sup>70</sup> *Id.* at 50. Florida believes high-technology regions are the leaders of the creative economy. *Id.* at 51.

<sup>71</sup> *Id.* at 49.

<sup>72</sup> *Id.* at 50.

<sup>73</sup> Florida's theory has achieved tremendous popularity in the city planning and economic development realms. See Jamie Peck, *Struggling with the Creative Class*, 29 INT'L J. URBAN & REG'L RESEARCH 740, 741 (2005) (describing the surprising "celebrity" status that Florida gained with his first book on the Creative Class).

<sup>74</sup> FLORIDA, *CITIES*, *supra* note 69, at 55-86; see also Charles J. Ten Brink, *Gayborhoods: Intersections of Land Use Regulation, Sexual Minorities, and the Creative Class*, 28 GA. ST. U. L. REV. 789 (2012).

<sup>75</sup> FLORIDA, *CREATIVE CLASS*, *supra* note 65, at 174-75 (in addition, "riding a mountain bike has become almost a *de rigueur* social skill—much as horseback riding was for the members of the old elite"; today the bike is "cool"). Florida gives an interesting explanation for why the Creative Class favors active sports, while blue-collar workers tend to favor more sedentary pastimes: "Creative work is largely intellectual and sedentary; thus Creative Class

Tiebout and Florida are not without their critics.<sup>76</sup> Critics of Tiebout point out that his theory rests on major assumptions, such as a free market with complete information and choices.<sup>77</sup> All of Tiebout's "consumer voters" live on dividend income,<sup>78</sup> so lower income residents are not factored into Tiebout's analysis. Similarly, Florida is critiqued for promoting city planning that intensifies racial and class inequality.<sup>79</sup> Others disparage Florida for confusing causation and coincidence.<sup>80</sup> Nevertheless, many government leaders have adopted Florida's theories and have made attracting the Creative Class a primary goal of their planning efforts.<sup>81</sup>

### **5. Economic Development: Jobs and Commercial Activity**

Economic development is another key goal of city planners. The more prosperous the city's inhabitants, the more prosperous the city.<sup>82</sup> Conversely, the absence of a strong economy usually leads to a cash-strapped city being relied on for more public services.

Land use planning plays a key part of attracting businesses to a community because it determines what land they can use and how. Although Tiebout's hypothesis was mainly

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people seek to recharge through physical activity." *Id.* at 175. By contrast, steelworkers and construction workers use their bodies all day, and thus prefer calmer activities and motorized transportation. *Id.*

<sup>76</sup> *Bring Me Sunshine: The Sudden Popularity of a Controversial American Economist*, *ECONOMIST* (Nov. 11, 2010), available at <http://www.economist.com/node/17468554> ("One Canadian newspaper columnist, fed up with [Florida's] high profile after he became head of the Martin Prosperity Institute at Toronto University three years ago, started handing out badges that read 'Please stop talking about Richard Florida.'").

<sup>77</sup> See JONATHAN C. LEVINE, *ZONED OUT: REGULATION, MARKETS, AND CHOICES IN TRANSPORTATION AND METROPOLITAN LAND-USE* (2006).

<sup>78</sup> See Tiebout, *supra* note 62, at 418-19; see also *supra* note 63. Tiebout's hypothesis rested on a number of assumptions including complete information and the economic resources necessary for a move. *Id.* at 419. For those who remain in shrinking cities such as Detroit, such conditions are likely not present.

<sup>79</sup> Peck, *supra* note 73, at 746 ("Florida concedes that the crowding of creatives into gentrifying neighborhoods might generate inflationary housing-market pressures, that not only run the risk of eroding the diversity that the Class craves but, worse still, could smother the fragile ecology of creativity itself. He reminds his readers that [the creatives] depend on an army of service workers trapped in 'low-end jobs that pay poorly because they are not creative jobs,' while pointing soberly to the fact that the most creative places tend also to exhibit the most extensive forms of socio-economic inequality. . . . Certainly, there is no space here for 'obsolete' forms of politics, like unions or class-aligned political parties, all of which are breezily dismissed" (internal citations omitted)).

<sup>80</sup> *Bring Me Sunshine*, *supra* note 76.

<sup>81</sup> For example, a former governor of Michigan created the "Cool Cities" initiative based on Florida's work. Peck, *supra* note 73, at 742. David Cameron, the current Prime Minister of the United Kingdom, cited Florida as an inspiration for the government's plan to "create a rival to Silicon Valley in the East End of London." *Bring Me Sunshine*, *supra* note 76.

<sup>82</sup> Cities' incomes are tied to their residents', through income, real estate, and sales taxes.

formulated in terms of individual “consumer-voters,” it is also applicable to businesses. Tiebout explained that cities with underdeveloped industrial zones may seek to attract manufacturing by setting up facilities and offering public goods and tax levels that businesses want.<sup>83</sup> Florida explains that businesses may be attracted by public goods such as the resource endowments of the land, transportation access, and the education level or “talent” of the local workforce.<sup>84</sup> To maintain competitive advantage, then, the goal of city planners is to encourage development that includes land uses and public goods that attract businesses to their cities above others, while still also attracting residents. Land use planners often work in conjunction with economic development directors, who may give initial tax breaks (like signing bonuses) to make the city comparatively cheaper and draw businesses within its borders.

A common challenge of land use planning is to balance the needs of industry and employers with the preferences and property rights of residents. Planners try to strike the appropriate balance,<sup>85</sup> so that the city is economically prosperous but also a pleasant place to live.

### ***6. Separation and Segregation: An Unspoken Goal***

Although city planners may not always be forthright about this goal, Euclidean zoning is often used to effectuate class and racial segregation.<sup>86</sup> Municipalities are able to zone out not only certain uses, but certain people, by only allowing land uses that certain classes can afford. Large minimum lot sizes and restrictions on multifamily housing and mass transit may make it difficult for those from lower classes and minority groups to move in. This practice of pricing out lower-income persons through land use planning is referred to as “exclusionary zoning.”<sup>87</sup>

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<sup>83</sup> Tiebout, *supra* note 62, at 419-20.

<sup>84</sup> See FLORIDA, CITIES, *supra* note 71, at 49.

<sup>85</sup> However, as discussed *infra* in Section I.C.2, employers sometimes win when “economic growth” is on the line.

<sup>86</sup> Troutt, *supra* note 14, at 1146. “Suburban legal power is sometimes a tool, but more often a shield used to defend against outsiders.” *Id.*

<sup>87</sup> Wayne Batchis, *Suburbanization and Constitutional Interpretation: Exclusionary Zoning and the Supreme Court Legacy of Enabling Sprawl*, 8 STAN. J. CIV. RTS. & CIV. LIBERTIES 1, 1 (2012).

City planners cannot be unilaterally blamed for such policies, as they often have the support of residents.<sup>88</sup> Also, as economic policies, land use policies that cause de facto segregation are “effectively shielded from constitutional attack by the proxy of economic discrimination.”<sup>89</sup>

David D. Troutt writes explains that local land use policies that facilitate and promote segregation and their support from the United States Supreme Court, which together he calls “legal localism,” are the modern successor to racial segregation. Because of legal localism’s protection from constitutional attack,<sup>90</sup> Troutt argues that the system has created “a more durable system of racial and economic inequality than de jure racial discrimination could.”<sup>91</sup> Legal localism was seen in *Milliken v. Bradley*,<sup>92</sup> in which the United States Supreme Court essentially upheld racial segregation by suburb when it held that the primarily-black Detroit school district could not look to the Detroit suburbs to achieve greater diversity.<sup>93</sup> The outcome was that although a single school district cannot segregate its students into separate schools by race, municipalities and states are free to fashion policies that separate entire school districts by race.<sup>94</sup>

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<sup>88</sup> Troutt, *supra* note 14, at 1137 (“Middle-class resistance to[:] the siting of affordable housing in its neighborhoods, meaningful racial integration, the sharing of environmental burdens necessary to the region’s businesses and residents, desegregated classrooms, common employment centers, mass transit—all represent perfectly rational, yet self-maximizing instincts.”).

<sup>89</sup> *Id.* at 1115.

<sup>90</sup> See text accompanying note 89.

<sup>91</sup> Troutt, *supra* note 14, at 1145. In contrast to regulations that discriminate on the basis of race, which receive strict scrutiny, economic regulations must only pass a rational basis test; they will fail only if arbitrary and capricious. *Vill. of Belle Terre v. Boraas*, 416 U.S. 1, 1 (1974) (“Economic and social legislation with respect to which the [state] has drawn lines in the exercise of its discretion, will be upheld if it is ‘reasonable, not arbitrary,’ and bears ‘a rational relationship to a (permissible) state objective.’”); see also David D. Troutt, *Localism and Segregation*, 16 J. AFFORDABLE HOUSING & COM. DEV. L. 323 (2007) (explaining how local, race-neutral land use regulation has reproduced the patterns of racial inequality that slavery, Jim Crow, and segregation inscribed).

<sup>92</sup> *Milliken v. Bradley*, 418 U.S. 717 (1974).

<sup>93</sup> The Court said that it was improper to impose a multidistrict remedy absent findings that the other districts had caused the segregation within the Detroit system or that school district boundary lines were established with the purpose of fostering racial segregation. However, Justices Douglass and White argued in their dissents that the lower courts had found such facts, especially given the state control over the educational system (rather than solely local control). *Milliken*, 418 U.S. at 761-62, 770.

<sup>94</sup> “Today’s decision . . . means that there is no violation of the Equal Protection Clause though the schools are segregated by race and though the black schools are not only ‘separate’ but ‘inferior.’” *Milliken*, 418 U.S. at 761 (Douglass, J., dissenting). *Milliken* did not even meet the “separate but equal” test established in 1896, let alone *Brown v. Board of Education*, 347 U.S. 483 (1954), according to Justice Douglass. *Id.*

Although segregation goals are not often openly discussed by planners, they are common goals of land use planning. The racial composition of a town may actually be one of the public goods considered by Teibout's consumer-voters.<sup>95</sup> As a result, local legal power, including the power to zone and control land use, is often used as a tool to "defend against outsiders."<sup>96</sup>

### ***7. Stopping Sprawl: Smart Growth and Regional Planning***

Sprawl is the growth of suburbs at a rate that outpaces the population growth.<sup>97</sup> Typically this happens by development "leapfrogging" the inner city and suburbs, so that new homes are built at the peripheral of the metropolitan, leaving homes towards the center empty. This phenomenon "encourages the wasteful passing on of burdens" and causes "school closures [in its wake] and the wasteful duplication of public services in new populations centers."<sup>98</sup> Sprawl is inefficient; higher residential densities are more efficient.<sup>99</sup>

As scholars and planners began noticing the negative impacts of suburban sprawl in the 1970s and 1980s,<sup>100</sup> movements developed to help *manage* growth in a way that had not been

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<sup>95</sup> "Stark racial animus may not play a conscious role in [consumer-voters'] thinking, although there is strong evidence that it still might [factor in]." Troutt, *Katrina's Window*, *supra* note 14, at 1165. Troutt notes that this is rational to a degree, as "homevoters" seek to maximize their property values and there is a direct association between blackness of a community and "declining property values, higher taxes for public services, crime, and underperforming schools." *Id.* at 1162.

<sup>96</sup> Troutt, *Katrina's Window*, *supra* note 14, at 1146.

<sup>97</sup> "Sprawl" describes a pattern of suburban growth, where development expands in an unlimited and "leapfrog" way outward from the core of a metropolitan area. Julian C. Juergensmeyer, *An Introduction to Urban Sprawl*, 17 GA. ST. U. L. REV. 923, 925 (2001) (quoting the Rutgers Center for Urban Policy Research). Michael Lewyn explains that sprawl typically involves "low-density development requiring dependence on automobiles, . . . segregated land uses (that is, commercial uses are far from residential uses); . . . [and] consumption of agricultural and/or environmentally sensitive land for suburban development."

Michael Lewyn, *Sprawl, Growth Boundaries and the Rehnquist Court*, 2002 UTAH L. REV. 1, 1 (2002) (quoting Paul Emrath, *How Communities Manage Growth*, HOUSING ECON. 6 (2000)). For an interesting narrative of sprawl and its place in land use planning history, see Wayne Batchis, *Suburbanization and Constitutional Interpretation: Exclusionary Zoning and the Supreme Court Legacy of Enabling Sprawl*, 8 STAN. J. CIV. RTS. & CIV. LIBERTIES 1, 6-11 (2012).

<sup>98</sup> Troutt, *Katrina's Window*, *supra* note 14, at 1175.

<sup>99</sup> See JOAN FITZGERALD, EMERALD CITIES: URBAN SUSTAINABILITY AND ECONOMIC DEVELOPMENT 11 (2010).

<sup>100</sup> Negative impacts of sprawl include (but are not limited to):

- (1) "pollution and highway [traffic] congestion from car-dependent communities on the urban fringe";
- (2) destruction of green space, natural habitats, and farm lands; and

thought about before.<sup>101</sup> Thus, a new goal emerged: hindering sprawl and protecting the environment.<sup>102</sup> The smart growth movement is explained as an “evolving approach to development that balances economic development with environmental protection and a better quality of life.”<sup>103</sup> Conservation of farmland and open space is one of the goals.<sup>104</sup> Many proponents of smart growth recognize that “regionalism and inter-jurisdictional cooperation are vital to government’s ability to achieve measured success” in these areas.<sup>105</sup> The smart growth framework and its mantra of sustainability was in vogue in the 1990s and 2000s,<sup>106</sup> and arguably remains so today, but was always a framework for *growth* management, rather than shrinkage.

### **8. *Creating the Modern City: New Urbanism***

Half a century ago, Jane Jacobs wrote a ground-breaking work entitled *The Death and Life of Great American Cities*.<sup>107</sup> The book examined cities as they were then, attacked the modern city planning goals and tools of the time,<sup>108</sup> and described “different tactics” to be taken

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(3) destabilization of urban neighborhoods, which disproportionately affects minority communities that are left in increasingly segregated areas with less funding for urban public schools and higher crime.

See JUERGENSMEYER & ROBERTS, *supra* note 4, at 321; Lewyn, *Sprawl*, *supra* note 97, at 2-3; Jess M. Krannich, *A Modern Disaster: Agricultural Land, Urban Growth, and the Need for A Federally Organized Comprehensive Land Use Planning Model*, 16 CORNELL J.L. & PUB. POL’Y 57, 57-58 (2006) (arguing that the “imminent disaster” of the “impending shortage of productive agricultural land” due to sprawl is so dire as to require the federal government to step in and take over some planning aspects); Troutt, *supra* note 14, at 1113 (“[S]egregation accompanies suburban sprawl and enclavism, which creates economic and environmental waste, a succession of declining communities and disparities between middle-class and more affluent localities within a metropolitan area.”).

<sup>101</sup> See JUERGENSMEYER & ROBERTS, *supra* note 4, at 317 (noting that “controlling the maximum population of a community and the rate at which growth will occur is at best a minor goal of traditional zoning and subdivision control ordinances”).

<sup>102</sup> See Salkin, *supra* note 25.

<sup>103</sup> Brian W. Ohm, *Reforming Land Planning Legislation at the Dawn of the 21st Century: The Emerging Influence of Smart Growth and Livable Communities*, 32 Urb. Law. 181, 189 (2000).

<sup>104</sup> Salkin, *supra* note 25, at 124. Urban growth boundaries, discussed *infra* in Subsection I.C.1.b, are one method of preserving farmland.

<sup>105</sup> Salkin, *supra* note 25, at 113.

<sup>106</sup> See *id.* at 118-26.

<sup>107</sup> JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (Vintage Books 1992) (1961).

<sup>108</sup> In 1961, Jacobs wrote,

Most of the [new goals] I have been writing about, aims such as unslumming slums, catalyzing diversity, nurturing lively streets, are unrecognized today as objectives of city planning. Therefore, planners and the agencies of action that carry out plans possess neither strategies nor tactics for carrying out such aims.

*Id.* at 321.

to address modern problems.<sup>109</sup> Jacobs argued for abolishing zoning in favor of grass-roots organization to create dense, mixed-use neighborhoods through an open market, as she seemed to think “experts and planners” did more harm than good.<sup>110</sup> Her ideas are credited as a major inspiration for the New Urbanism movement.<sup>111</sup>

New Urbanism encourages “neo-traditional, pedestrian-friendly, transit-oriented streetscapes” centered around “walkable city centres with well-defined edges that enclose and concentrate development rather than allowing it to sprawl.”<sup>112</sup> Similar to smart growth goals, the main principles of New Urbanism planning may be summarized as: (1) mixed-use and diversity of uses, (2) connectivity, (3) walkability, (4) mixed housing, (5) quality architecture and urban design, (6) traditional neighborhood structure, (7) increased density, (8) efficient transportation, (9) sustainability, and (10) quality of life.<sup>113</sup> A major critique of New Urbanism is that rather than actually being urban, its principles are often applied to suburbs.<sup>114</sup> Disney’s planned community development in Celebration, Florida, was premised on New Urbanism principles.<sup>115</sup> Towns like Celebration give New Urbanism the reputation of building on “former green-field sites”—contributing to sprawl—and creating only “tame, insular enclaves more characterized by their garden-city-like, sedentary atmosphere than by any actual urban . . . pulse.”<sup>116</sup>

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<sup>109</sup> *Id.* (Part IV of the book is titled “Different Tactics”).

<sup>110</sup> See Bill Steigerwald, *City Views: Urban Studies Legend Jane Jacobs on Gentrification, the New Urbanism, and Her Legacy*, REASON (June 2001), available at <http://reason.com/archives/2001/06/01/city-views>.

<sup>111</sup> See Barry Katz, *Design 101: The New Urbanism Movement*, DWELL (May 2007), <http://www.dwell.com/design-101/article/new-urbanism-movement> (naming Jacob’s *The Death and Life of Great American Cities* as the first of two “manifestos” of the New Urbanism movement; the second is the “Charter of the New Urbanism” published in 1993 by the Congress for the New Urbanism). However, Jacobs does not seem to think the New Urbanists have mastered city planning either. See Steigerwald, *supra* note 110.

<sup>112</sup> Morgan, *supra* note 54, at 181.

<sup>113</sup> Freeman, *supra* note 120, at 118.

<sup>114</sup> Morgan, *supra* note 54, at 183-84.

<sup>115</sup> Michael Pollan, *Town-Building Is No Mickey Mouse Operation*, N.Y. TIMES MAGAZINE (Dec. 14, 1997), available at <http://www.nytimes.com/1997/12/14/magazine/town-building-is-no-mickey-mouse-operation.html>.

<sup>116</sup> Morgan, *supra* note 54, at 184. The Congress for the New Urbanism (CNU) recently signed an agreement with the Natural Resources Defense Counsel (NRDC) to help combat its reputation of sprawl, promising that “CNU architects, planners, and developers will no longer pursue so-called ‘leapfrog’ development isolated from cities and

Despite New Urbanism’s perhaps failed potential, market forces have been fueling modern city planning as the Millennial generation moves back into core cities.<sup>117</sup> Kaid Benfield, Director of Sustainable Communities at the Natural Resources Defense Council (NRDC), reports that “[f]or the first time in a century, America’s largest cities are growing faster than their suburbs.”<sup>118</sup> He writes that this is largely explained by demographic changes and lifestyle preference shifts: “the Millennial generation, which strongly favors walkable lifestyles and urban living, has been coming of age.”<sup>119</sup> Thus, while Euclidian zoning was originally concerned with the intrusion of industrial development into residential neighborhoods, some modern city planning focuses on “the uncontrolled sprawl and the use-segregated suburbs where it is not possible to walk to a local store or school.”<sup>120</sup>

### C. Land Use Planning Tools

For the goals discussed above to become reality, land use planners must have tools to control land use. Traditional tools are discussed in this Section. Parts II and III will discuss how these tools can be used to accomplish the goals of shrinking cities, or whether they should be retired in favor of new tools.

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suburbs,” and will refocus investment in inner cities. Kaid Benfield, *NRDC, CNU Launch Potentially “Historic” Agreement to Control Sprawl, Rebuild Cities*, SWITCHBOARD: NATURAL RESOURCES DEFENSE COUNCIL STAFF BLOG (Apr. 1, 2013), [http://switchboard.nrdc.org/blogs/kbenfield/nrdc\\_cnu\\_launch\\_potentially\\_hi.html](http://switchboard.nrdc.org/blogs/kbenfield/nrdc_cnu_launch_potentially_hi.html).

<sup>117</sup> Kaid Benfield, *Central Cities Now Growing Faster than Suburbs, Confirming Trends for Walkable Lifestyles, Shorter Commutes*, SWITCHBOARD: NATURAL RESOURCES DEFENSE COUNCIL STAFF BLOG (June 29, 2012), [http://switchboard.nrdc.org/blogs/kbenfield/the\\_unmistakable\\_rebirth\\_of\\_ce.html](http://switchboard.nrdc.org/blogs/kbenfield/the_unmistakable_rebirth_of_ce.html) [hereinafter Benfield, *Central Cities*].

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* Florida also notes that urban centers are coming back, and attributes “[t]heir turnaround . . . in large measure [to] the attitudes and location choices of the Creative Class.” FLORIDA, *CREATIVE CLASS*, *supra* note 65, at 286.

<sup>120</sup> H. William Freeman, *A New Legal Landscape for Planning and Zoning: Using Form-Based Codes to Promote New Urbanism and Sustainability*, 36 MICH. REAL PROP. REV. 117, 120 (2009).

## 1. *Comprehensive Plans and Zoning Ordinances*

As discussed earlier,<sup>121</sup> zoning ordinances and comprehensive plans are the bedrock of twentieth century land use planning. Zoning ordinances usually operate on at least three dimensions: use, height, and area.<sup>122</sup> Zoning ordinances can be complicated, but typically apportion sections of the city for residential (often separated between single family homes and multi-family homes), commercial and professional office space, light industrial, and heavy industrial uses.<sup>123</sup> Ordinances also create height and area regulations by controlling the minimum and maximum height of buildings, lot sizes, and portions of a lot that may be improved.<sup>124</sup>

Another zoning tool is known as a floating zone. Floating zones allow greater flexibility by creating “a zone classification [] authorized for future use, but not placed on the zoning map” until a developer’s petition, a local legislature’s decision, or a recommendation of the planning board or commission calls for the floating zone calls to be placed in a particular location.<sup>125</sup> Floating zones were first upheld by New York’s highest court in *Rodgers v. Village of Tarrytown* in 1951.<sup>126</sup> The court approved Tarrytown’s floating zone system that was created to provide flexibility for affordable housing, with “the input of multifamily housing developers who had superior knowledge of regional real estate markets and where they wanted to build.”<sup>127</sup>

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<sup>121</sup> See *supra* Subsections I.A.2 and I.B.2.

<sup>122</sup> JUERGENSMEYER & ROBERTS, *supra* note 4, at 69-70. Area restrictions are sometimes referred to as density or bulk restrictions.

<sup>123</sup> Hamilton, *supra* note 49, at 375. Uses such as trash dumps often require a special use permit and are not automatically allowed in any zone.

<sup>124</sup> JUERGENSMEYER & ROBERTS, *supra* note 4, at 70.

<sup>125</sup> Jennie Nolan Blanchard, *Zoning and Land Use Planning: Fostering Green Neighborhood Development Through Floating Zones*, 41 REAL EST. L.J. 102, 106 (2012).

<sup>126</sup> *Rodgers v. Vill. of Tarrytown*, 96 N.E.2d 731 (N.Y. 1951).

<sup>127</sup> Blanchard, *supra* note 125, at 109.

Because zoning regulations are considered economic regulations, they must pass only a rational basis test.<sup>128</sup> City planners receive high deference from the courts. Their determination of whether a zoning regulation serves the general welfare will only be overturned by courts if arbitrary and capricious.<sup>129</sup>

Proponents of traditional zoning consider the practice “a rich and complex tapestry of best practices and procedures in combinations unique to the fulfillment of each community’s particular needs and goals.”<sup>130</sup> Critics of modern zoning argue that zoning is often used to discriminate and is easily bended to arrangements between cities and developers.<sup>131</sup> Another critique is that municipality-based zoning is insufficient to deal with land use problems whose effects are experienced on the regional scale.<sup>132</sup>

#### **a. Regional Planning Bodies**

Most planning is municipality-based. However, some states, intra-state regions, and metropolitan areas have established regional planning bodies. These bodies create a regional comprehensive plan that the cities and towns that comprise the region must follow when making land use decisions. States with regional or state-wide land use planning include Oregon, Vermont, Florida, and Hawaii.<sup>133</sup>

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<sup>128</sup> *Vill. of Belle Terre v. Boraas*, 416 U.S. 1, 1 (1974) (“Economic and social legislation with respect to which the [state] has drawn lines in the exercise of its discretion, will be upheld if it is ‘reasonable, not arbitrary,’ and bears ‘a rational relationship to a (permissible) state objective.’”).

<sup>129</sup> *Rodgers*, 96 N.E.2d at 733 (“the power of a village to amend its basic zoning ordinance in such a way as reasonably to promote the general welfare cannot be questioned. . . . [The] decision as to how a community shall be zoned or rezoned, as to how various properties shall be classified or reclassified, rests with the local legislative body; its judgment and determination will be conclusive, beyond interference from the courts, unless shown to be arbitrary”).

<sup>130</sup> Hamilton, *supra* note 49, at 375.

<sup>131</sup> See Morgan, *supra* note 54, at 164-66.

<sup>132</sup> See *infra* Section II.B.

<sup>133</sup> See Nancy Kubasek & Alex Frondorf, *A Modest Proposal for Ameliorating Urban Sprawl*, 32 REAL EST. L.J. 246, 246 (2003); Michael C. Soules, *Constitutional Limitations of State Growth Management Programs*, 18 J. LAND USE & ENV’T L. 145, 145 & n.2 (2002) (naming and discussing the fourteen states that have some form of state-wide growth management land use planning).

Transferring planning authority from local bodies back to the state government or regional bodies can be difficult.<sup>134</sup> Citizens and municipal governments in “[s]tates with strong histories of local or home rule have difficult times accepting state legislation mandating planning behavior.”<sup>135</sup> In a few instances, states have lost court battles with municipalities over local authority on property issues.<sup>136</sup>

However, most land use issues are regional, and thus require regional answers. As Troutt has explained, localism allows enclavism and largely serves upper classes at the expense of lower classes and minority communities.<sup>137</sup> Localism survives largely due to the rhetorical power of local government<sup>138</sup> and the power that it gives to local officials—who are then unwilling to relinquish the power.<sup>139</sup> However, localism has largely failed to create sustainable cities.

#### **b. Urban Growth Boundaries**

Sprawl, its causes, and its side effects—such as the effects on the sustainability of the urban core—stretch over many jurisdictions, so that no single municipality’s governments can effectively regulate them.<sup>140</sup> Regional problems require regional solutions. Regional planning can help redirect development that occurs at the edges of suburbs to the available land in the central city. Oregon pioneered this type of land use planning when it adopted state-wide planning in the 1970s and mandated urban growth boundary (UGBs) for all cities in the state.<sup>141</sup> UGBs

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<sup>134</sup> See Kubasek & Frondorf, *supra* note 133, at 246.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> Troutt, *Katrina’s Window*, *supra* note 14, at 1113 (“[S]egregation accompanies suburban sprawl and enclavism, which creates economic and environmental waste, a succession of declining communities and disparities between middle-class and more affluent localities within a metropolitan area.”)

<sup>138</sup> See *supra* text accompanying note 135.

<sup>139</sup> Troutt, *Katrina’s Window*, *supra* note 14, at 1170.

<sup>140</sup> Kubasek & Frondorf, *supra* note 133 (“Because the impact of sprawl stretches over many jurisdictions, community governments often lack the authority or power to deal with such large-scale issues as urban sprawl.”)

<sup>141</sup> See OR. REV. STAT. § 197.005 (Oregon Comprehensive Land Use Planning Coordination Act); Lewyn, *Sprawl*, *supra* note 97, at 5. For more information on Oregon’s UGB system, see Benjamin P. O’Glasser, Note, *Constitutional, Political, and Philosophical Struggle: Measure 37 and the Oregon Urban Growth Boundary*

are implemented to contain sprawl by prohibiting certain development beyond a metropolitan limit. As a result of Oregon’s regional planning system, Portland has not sprawled to the extent of its metropolitan peers.<sup>142</sup>

## **2. Public Purpose Takings**

Public purpose takings are both a tool and a challenge to land use planning. Takings are exercises of the state’s power of eminent domain to condemn properties and take them for public purposes.<sup>143</sup> The United States Constitution limits this power by providing that the government must take the property for a “public purpose” and cannot take property without “just compensation.”<sup>144</sup> The takings clause of the Fifth Amendment was incorporated to the states through the Fourteenth Amendment.<sup>145</sup>

Takings can operate as a tool when cities determine that the exercise of eminent domain is worth the cost of paying just compensation to the property owners. However, takings are more commonly presented as legal challenges to land use planning, where a resident claims that a government action constitutes a taking of her property or is unconstitutional, and therefore the resident must be compensated or the action enjoined. The challenge for “cash-strapped” governments is therefore to “avoid imposing restrictions that carry with them the hefty price tags of litigation and possible compensation.”<sup>146</sup>

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*Controversy*, 9 U. PA. J. CONST. L. 595 (2006). For a comprehensive discussion of the constitutional limitations on growth management programs such as UGBs, see Soules, *supra* note 133.

<sup>142</sup> Portland’s “total metropolitan footprint is about half of what it would be in another metropolitan area of similar population.” O’Glasser, *supra* note 141, at 600 n. 24 (quoting Daniel Brook, *How the West Was Lost*). See *supra* Subsection I.C.1.b for discussion of Portland, Oregon’s UGB.

<sup>143</sup> See *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 241 (1984) (“where the exercise of the eminent domain power is rationally related to a conceivable public purpose, the Court has never [struck down] a compensated taking”).

<sup>144</sup> U.S. CONST. amend. V (“nor shall private property be taken for public use, without just compensation”).

<sup>145</sup> See *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001).

<sup>146</sup> LaCroix, *supra* note 1, at 248.

The clearest form of public purpose takings in the land use context is where the government physically “encroaches upon or occupies private land for its own proposed use.”<sup>147</sup> Physical takings have been used to clear slums, eliminate blight,<sup>148</sup> make way for highways and other infrastructure,<sup>149</sup> and, more recently, to achieve every city’s goal of “economic development.”<sup>150</sup> Detroit effected a physical taking in 1981 when it took an entire working-class, immigrant community area called Poletown and sold it to General Motors for a Cadillac assembly plant.<sup>151</sup> The neighborhood association and residents challenged the city’s grant of power to the Detroit Economic Development Corporation to acquire the land, by condemnation if necessary; they argued that the action was an unconstitutional taking because it was for a private purpose, not a public one.<sup>152</sup> However, the Michigan Supreme Court found that the “transfer to a private corporation to build a plant to promote industry and commerce, thereby adding jobs and taxes to the economic base of the municipality and state” was a sufficiently public purpose to satisfy the takings clause.<sup>153</sup> Unfortunately, after all was said and done, the relocation of the community cost Detroit much more than it gained.<sup>154</sup>

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<sup>147</sup> *Palazzolo*, 533 U.S. at 617.

<sup>148</sup> See *Berman v. Parker*, 348 U.S. 26 (1954).

<sup>149</sup> See *Poletown Neighborhood Council v. Detroit: Private Property and Public Use*, 88 MICH. B.J. S18, S20 (Mar. 2009) (Supplement from the Michigan Supreme Court Historical Society, *The Verdict of History: The History of Michigan Jurisprudence Through Its Significant Supreme Court Cases*) [hereinafter *Poletown: Private Property and Public Use*].

<sup>150</sup> See *Kelo v. City of New London, Conn.*, 545 U.S. 469 (2005) (holding that the city’s exercise of eminent domain power in furtherance of economic development plan satisfied the constitutional “public use” requirement).

<sup>151</sup> At the time, Poletown “included over 6,000 residents, 1,400 houses, 144 businesses, 16 churches, two schools, and a hospital. It was expected to cost the city \$200 million to compensate, raze, and improve the area, in hopes that the new factory would create 6,000 jobs directly . . . and thousands more related to the plant.” *Poletown: Private Property and Public Use*, *supra* note 149, at S19.

<sup>152</sup> *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455, 457 (Mich. 1981), *overruled by* *Cnty. of Wayne v. Hathcock*, 684 N.W.2d 765 (Mich. 2004). Government actions that take “property from A and gives it to B” are presumptively invalid, as the Constitution limits government takings to those for the “public use.” See *Poletown: Private Property and Public Use*, *supra* note 149, at S20 (quoting Supreme Court Justice Samuel Chase in *Calder v. Bull*, 3 U.S. 386, 388 (1978)).

<sup>153</sup> *Poletown*, 304 N.W.2d at 458 (the action was part of the state’s attempt “to provide for the general health, safety, and welfare through alleviating unemployment, providing economic assistance to industry, assisting the rehabilitation of blighted areas, and fostering urban redevelopment”). Detroit was already in crisis by the 1980s, and Detroit was likely feeling pressure to keep car manufacturers in the city, as other manufacturers moved South due to

Another form of takings that has been recognized by courts is a regulatory taking. This occurs when a government regulation goes “too far”<sup>155</sup> or “denies all economically beneficial or productive use of land.”<sup>156</sup> Whether a regulation goes “too far” is an ad hoc, factual inquiry. Factors set out in *Penn Central* include (1) the economic impact of the regulation on the claimant, (2) the reasonable investment-backed expectations, and (3) the character of the governmental action, such as whether it was a physical intrusion or a mere monetary diminution in value.<sup>157</sup>

Zoning ordinances, UGBs, and takings have been employed by cities and states over the past decades to promote growth. The next Parts of this Article will discuss how these tools may be used to lean and revive Detroit.

## II. RUST BELT CITIES: REALITIES AND GOALS

Shrinking cities like Detroit face some of the same problems that traditional and modern land use planning strategies aim to address, such as suburban sprawl. But they face other issues, such as vacancy and blight, to an extent that traditional land use planners have rarely faced. For

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the disproportionately high wages and benefits demanded by Detroit unions. *Poletown: Private Property and Public Use*, *supra* note 149, at S18-S19.

[S]o desperate were the city and state to keep GM in Detroit that few voices opposed the plan. Most of the political establishment believed that the plan was necessary to stave off economic calamity. The major Detroit media agreed; organized labor endorsed it. Despite the intense attachment of local parishioners and priests to their churches, the Roman Catholic hierarchy accepted the plan and deconsecrated and sold its Poletown buildings . . . .

*Id.* at S19.

<sup>154</sup> “The plant’s opening was delayed, and it ended up providing only about half of the hoped-for jobs. Owner suits raised the price paid by Detroit for the project from \$200 million to closer to \$300 million. An oil company that the city estimated to be worth \$350,000 won a \$5 million award at trial. Most of this money came from state and federal aid, since GM paid only \$8 million for the property.” *Poletown: Private Property and Public Use*, *supra* note 149, at S21. *Poletown* was overruled in 2004 by *County of Wayne v. Hathcock*, 684 N.W.2d 765 (Mich. 2004).

<sup>155</sup> Regulatory takings were first recognized in *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) (“The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”).

<sup>156</sup> *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992). This situation is a categorical taking by total economic deprivation. In *Lucas*, the Supreme Court accepted the lower court determination that the state Beachfront Management Act, which barred Lucas from erecting any permanent habitable structures on his parcels, “worked a permanent and total loss in the value of Lucas’s property.” LaCroix, *supra* note 1, at 251; *Lucas*, 505 U.S. at 1009. Such a “total taking,” the Court held, would require compensation. *Lucas*, 505 U.S. at 1030. The “total taking” test of *Lucas* requires a near 100% diminution in value; in *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), the Court found that a 93.7% diminution was a categorical taking.

<sup>157</sup> *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 123 (1978).

most of our nation's history, the "expectation has been growth, not shrinkage, and our land use system has been focused on how to manage expansion, rather than decline."<sup>158</sup> Now many scholars and planners focus on "smart growth," and in some areas, "smart decline."<sup>159</sup> This Part details the challenges facing shrinking cities attempting smart decline; Part III will present a suggested path for "smart shrinkage," in light of these issues.

### A. A Tale of Shrinking Cities

Detroit doubled in size from 1910 to 1920.<sup>160</sup> Like many American cities, Detroit's population peaked in the 1950s.<sup>161</sup> Since then, Detroit has lost over half of its population.<sup>162</sup> The artists Yves Marchand and Romain Meffre give a succinct history of Detroit.<sup>163</sup>

In 1913, up-and-coming car manufacturer Henry Ford perfected the first large-scale assembly line. Within few years, Detroit was about to become the world capital of automobile and the cradle of modern mass-production. For the first time of history, affluence was within the reach of the mass of people. Monumental skyscrapers and fancy neighborhoods put the city's wealth on display. Detroit became the dazzling beacon of the American Dream. Thousands of migrants came to find a job. By the 50's, its population rose to almost 2 million people. Detroit became the 4th largest city in the United States.

The automobile moved people faster and farther. Roads, freeways and parking lots forever reshaped the landscape. At the beginning of the 50's, plants were relocated in Detroit's periphery. The white middle-class began to leave the inner city and settled in new mass-produced suburban towns. Highways frayed the urban fabric. Deindustrialization and segregation increased. In 1967, social tensions exploded into one of the most violent urban riots in American history. The population exodus accelerated and whole neighbourhoods began to vanish. Outdated downtown buildings emptied. Within fifty years Detroit lost more than half of its population. . . .

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<sup>158</sup> LaCroix, *supra* note 1, at 284.

<sup>159</sup> See Ben Beckman, Note, *The Wholesale Decommissioning of Vacant Urban Neighborhoods: Smart Decline, Public-Purpose Takings, and the Legality of Shrinking Cities*, 58 CLEVELAND ST. L. REV. 387 (2010); Edward L. Glaeser, *Shrinking Detroit Back to Greatness*, NY TIMES ECONOMIX (March 16, 2010), <http://economix.blogs.nytimes.com/2010/03/16/shrinking-detroit-back-to-greatness/>; James A. Kushner, *Planning for Downsizing: A Comparison of the Economic Revitalization Initiatives in American Communities Facing Military Base Closure with the German Experience of Relocating the National Capital from Bonn to Berlin*, 33 URB. LAW. 119 (2001).

<sup>160</sup> For historical city population levels, see Campbell Gibson, *Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1990*, U.S. CENSUS BUREAU (June 1998), <http://www.census.gov/population/www/documentation/twps0027/twps0027.html> (Tables 13-20 list the top 100 largest cities from 1900 to 1990).

<sup>161</sup> See *id.* In the latter half of the twentieth century, Northern cities' population dropped, while cities in the South and West saw growth. See *id.* That trend has continued into the twenty-first century. See *id.*; *City and Town Totals*, *supra* note 9.

<sup>162</sup> DETROIT FUTURE CITY, *supra* note 19, at 98.

<sup>163</sup> Yves Marchand & Romain Meffre, *The Ruins of Detroit*, MARCHAND & MEFFRE, <http://www.marchandmeffre.com/detroit/index.html> (last visited April 2, 2013) (click right ">").

Perhaps like the Titanic, it is Detroit's initial size and grandeur that makes its failure so staggering.<sup>164</sup> That Detroit has steadily lost population since the mid-twentieth century does not make it unique,<sup>165</sup> but its total loss of population and high rates of vacant parcels do. The city's "boundaries contain an area the size of Manhattan, San Francisco, and Boston combined," but now hold only 706,585 people<sup>166</sup>—only a quarter of the over 3 million people that fill the same amount of space in those cities.<sup>167</sup> As a result, over one fourth of Detroit now sits vacant,<sup>168</sup> including almost 80,000 housing units, 22% of the industrial zoned land, and 36% of the city's commercial parcels.<sup>169</sup> With twenty square miles of Detroit's occupiable land vacant,<sup>170</sup> Detroit looks like an Empty City.<sup>171</sup>

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<sup>164</sup> For an astonishing photographic display of what has become of some of Detroit's most iconic buildings, as well as everyday apartments, schools, libraries, and police stations, click through the images of Yves Marchand & Romain Meffre, *The Ruins of Detroit*, MARCHAND & MEFFRE, <http://www.marchandmeffre.com/detroit/index.html> (last visited April 2, 2013) (Detroit's "splendid decaying monuments are, no less than the Pyramids of Egypt, the Coliseum of Rome, or the Acropolis in Athens, remnants of the passing of a great Empire."); *see also Detroit's Future: Thinking About Shrinking*, ECONOMIST (Mar. 25, 2010) available at <http://www.economist.com/node/15772751> [hereinafter *Thinking About Shrinking*] (The article's image shows a common sight in areas of Detroit: a house with broken windows and old boards placed in front of the doors. One side of the building has collapsed, giving the dangerous, leaning structure the appearance of a macabre funhouse.).

<sup>165</sup> *See supra* note 161 and accompanying text.

<sup>166</sup> *City and Town Totals, supra* note 9.

<sup>167</sup> July 2011 population estimates: Manhattan 1,619,090; San Francisco 812,826; Boston 625,087. *Table 1. Annual Estimates of the Resident Population for Counties of New York: April 1, 2010 to July 1, 2011*, U.S. CENSUS BUREAU, <http://www.census.gov/popest/data/counties/totals/2011/tables/CO-EST2011-01-36.xls> (last visited Apr. 4, 2013); *City and Town Totals, supra* note 9.

<sup>168</sup> The Detroit Residential Parcel Survey found that 26% of the residential lots (excluding large apartment buildings) were vacant in 2009. *Detroit Residential Parcel Survey*, DATA DRIVEN DETROIT, <http://datadrivendetroit.org/projects/detroit-residential-parcel-survey/> (last visited Apr. 4, 2013).

<sup>169</sup> DETROIT FUTURE CITY, *supra* note 19, at 98.

<sup>170</sup> DETROIT FUTURE CITY, *supra* note 19, at 98. Other sources estimate forty square miles (25,600 acres) of vacancy in the city. *See* John Gallagher, *10 Tips for Downsizing Detroit*, DETROIT FREE PRESS (May 9, 2010), <http://www.freep.com/apps/pbcs.dll/article?AID=/20100509/BUSINESS04/5090541/1318/10-tips-for-downsizing-Detroit&template=fullarticle>.

<sup>171</sup> In Chrysler's moving 2011 Superbowl commercial based on Detroit's reputation as the Motor City, the narrator announces, "this isn't New York City, or the Windy City, or Sin City, and we're certainly no one's Emerald City." Chrysler, *Chrysler Eminem Super Bowl Commercial – Imported From Detroit*, YOUTUBE.COM (Feb. 5, 2011), [http://www.youtube.com/watch?v=SKL254Y\\_jtc](http://www.youtube.com/watch?v=SKL254Y_jtc). But, Detroit may aptly be called the Empty City today.

However, Detroit is not completely empty. Despite dramatic losses, the city is still the eighteenth largest city in the United States by population.<sup>172</sup> But it is characterized by low density. Outside the city, the larger metropolitan area boasts almost 4.3 million people.<sup>173</sup> So why so much vacancy in the city? And how can land use planning help the city move forward?

Each shrinking city has its own culture and hurdles to growth. This Article discusses Detroit in particular, as Detroit has the most vacant land to deal with.<sup>174</sup> The key challenge for shrinking cities like Detroit is how to regulate and use their acres of vacant, occupiable land.<sup>175</sup>

### **B. Realities: The Problems Facing Hollowing Cities**

All cities are bound to experience fluctuations in growth and may experience decreases in population at some times.<sup>176</sup> What characterizes the once-great Northern industrial cities is a steady decline of population over the last few decades, with no expectation of regaining population to past levels.<sup>177</sup> Other challenges facing shrinking cities, which make it hard for them to increase the standard of living for their residents and to attract new residents and businesses, include high levels of crime, old infrastructure in need of repair, and insufficient monetary resources (which perpetuate low quality schools and inadequate public services such as police and fire departments). These qualities are not surprisingly absent from the list of amenities that Florida's Creative Class seeks.

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<sup>172</sup> *City and Town Totals*, *supra* note 9. However, Detroit is the only city in the top twenty that lost population from 2010-2011. *Id.* The larger metropolitan area rings up as the fourteenth largest in the country. *Table 1. Annual Estimates of the Population of Metropolitan and Micropolitan Statistical Areas: April 1, 2010 to July 1, 2012*, U.S. CENSUS BUREAU, <http://www.census.gov/popest/data/metro/totals/2012/index.html> (last visited April 2, 2013) [hereinafter *Metropolitan Populations*].

<sup>173</sup> As of July 2011, the city of Detroit was estimated to have 713,777 residents and the greater metropolitan area of Detroit-Warren-Dearborn was estimated to have nearly 4.3 million. *City and Town Totals*, *supra* note 9; *Metropolitan Areas*, *supra* note 172.

<sup>174</sup> Throughout the literature on shrinking cities and modern city planning in general, Detroit is the boogeyman.

<sup>175</sup> LaCroix, *supra* note 1, at 228 (explaining that the “fundamental land use question for [shrinking or hollowing] cities is what to do with their unused or under-used land in the core”).

<sup>176</sup> GALLAGHER, REIMAGINING DETROIT, *supra* note 16, at 104. As noted in *supra* note 161 and accompanying text, most large American cities declined in the middle of the twentieth century. However, the large cities are now on the rise again, and all of the top twenty (besides Detroit) have seen growth in the last year. *See supra* note 172.

<sup>177</sup> LaCroix, *supra* note 1, at 226.

Detroit's challenges, which are discussed below in more detail, are compounded by Detroit's financial woes. Detroit is on the brink of bankruptcy,<sup>178</sup> and is saddled with approximately \$15 billion dollars in debt.<sup>179</sup> Because of Detroit's financial problems, the city was recently placed under the direction of an Emergency Manager, which is given special governing powers under Michigan law "when the mayor and council have failed to solve the problems of a city."<sup>180</sup> Part of Detroit's financial struggle is caused by one of the fundamental challenges facing shrinking cities: it is shrinking. The loss of population leaves more land within the city's boundaries than current populations can use now and in the foreseeable future.<sup>181</sup> With a loss of population comes a loss of tax revenue.<sup>182</sup> The city cannot afford to take care of the vacant properties it owns or provide basic services to the remaining residents,<sup>183</sup> and has little control over blighted properties owned by speculators.<sup>184</sup> Detroit land speculators often do nothing to improve their properties, so although their properties are privately owned the homes remain vacant and blighted. The city sometimes imposes fees for blight violations, but these

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<sup>178</sup> Matt Helms and Joe Guillen, *Lawsuit Takes Aim at Power of Emergency Managers*, DETROIT FREE PRESS (Mar. 29, 2013), <http://www.freep.com/apps/pbcs.dll/article?AID=2013303290145>.

<sup>179</sup> Joel Kurth & Darren A. Nichols, *Law Firm's Role in Detroit's Financial Recovery Questioned*, DETROIT NEWS (Mar. 29, 2013), available at <http://www.detroitnews.com/article/20130329/METRO01/303290371>.

<sup>180</sup> Helms & Guillen, *supra* note 178 (quoting the Mayor Leon Jukowski of Pontiac, Michigan, another city under the direction of an Emergency Manager).

<sup>181</sup> LaCroix, *supra* note 1, at 247.

<sup>182</sup> See Publius, *What Happened to Detroit?*, VIMEO (Mar. 30, 2012 5:58 p.m.), <http://vimeo.com/39508782>.

<sup>183</sup> Ecojaunt, *Hantz Farms: Detroit's Saving Grace*, HANTZ FARMS DETROIT (Jan. 8, 2012), <http://www.hantzfarmsdetroit.com/introduction.html> (Mike Score, President of Hantz Farms explains, "Part of the problem is that the city now owns about a third of the real estate through foreclosure. And when the city owns that land, they don't collect any revenue in the form of taxes, but they still have to maintain it. And it costs the city about \$9 million dollars per square mile per year just to provide basic services to that land. So, in theory it would cost the city about \$360 million dollars to maintain the property they own. and because they don't have \$360 million dollars a year to spend on this vacant property, Detroit looks like it looks today.").

<sup>184</sup> Speculators pose an expensive challenge to city efforts to clean up blighted neighborhoods. See Christine MacDonald, *Private Landowners Complicate Reshaping of Detroit*, DETROIT NEWS (Feb. 3, 2011) <http://www.detroitnews.com/article/20110203/METRO01/102030395> (discussing the challenge posed by speculators and absentee landlords like Michael G. Kelly, Detroit's largest landowner, who buy properties for as little as \$500 at tax foreclosure sales and then demand high prices from buyers and city development programs like the Detroit Works Project). Also,

often go unpaid.<sup>185</sup> Due to the city's inability to fix its own properties and to control the upkeep of others' properties, "Detroit looks like it looks today": blighted.<sup>186</sup>

The vast amount of vacant land threatens the city's health.<sup>187</sup> The city, already billions of dollars in debt, cannot afford to renovate blighted homes or historic landmarks. In addition, Detroit's industrial vacancies leave behind not only old structures, but also often contaminants that render the land unusable by residents or urban farmers.<sup>188</sup> Because cleaning up these "brownfields" can be expensive, Detroit is starting smaller by demolishing vacant homes that plague neighborhoods, but even that project will require large federal or private investments.<sup>189</sup>

Even with a shrinking population, Detroit's sewage system is stressed.<sup>190</sup> The city's sewer system is massive and under-maintained.<sup>191</sup> Rainwater runoff, domestic sewage, and industrial wastewater are all collected in the same pipe.<sup>192</sup> When a heavy rainfall exceeds the capacity of the system, a combined sewer overflow (CSO) dumps "untreated sewer water into the Detroit River. CSOs occurred 36 times in 2011."<sup>193</sup> Building a holding tunnel to prevent

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<sup>185</sup> *Id.* ("The city says many [of Michael G. Kelly's properties] are so dilapidated that Kelly's firms owe \$100,000 from 139 blight violations since 2005.")

<sup>186</sup> Ecojaunt, *supra* note 183 (Mike Score speaking).

<sup>187</sup> "[The city of Cleveland] recognizes that its long-term health is threatened by vacant and abandoned properties that are not located in pathways of development, and that *new uses* for these properties *must be* found." LaCroix, *supra* note 1, at 234 (emphasis added).

<sup>188</sup> See LaCroix, *supra* note 1, at 280-84 (discussing the challenges shrinking cities face in cleaning up brownfields).

<sup>189</sup> "Detroit has more than 30,000 vacant homes [that are unlivable or require repairs], and the deficit-strangled city has no resources of its own to level them. Mayor Dave Bing is promoting a plan to tear down as many as possible using federal money." *Vacant Detroit Becomes Dumping Ground for the Dead*, *supra* note 196. The Detroit Blight Authority (DBA) has used private dollars to finance the "lot clearing and demolition across a 10 block area just east of Eastern Market in Detroit." DETROIT BLIGHT AUTHORITY, <http://www.blightauthority.com/> (last visited Apr. 20, 2013). The nonprofit is currently seeking additional donations and applying for 501(c)(3) tax-exempt status so that it can qualify for grants. *Id.* (navigate to the "Pledge" page). The DBA advertises that it can demolish a home for \$5,000—half of what it says the standard market cost is. *Id.*

<sup>190</sup> Matthew Lewis, *Detroit, Blue City*, MODEL D (Jan. 29, 2013), <http://modeldmedia.com/features/detroitbluecity113.aspx>.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

CSOs and comply with the Clean Water Act will cost between \$500 million and \$1 billion<sup>194</sup>—again, money that Detroit does not have lying around.

Unlike other cities that have been able to attract new residents by becoming cleaner and safer,<sup>195</sup> Detroit has become neither. Vacant lots are repositories of trash and hubs for crime.<sup>196</sup> Not only that, but Detroit cannot afford its already-meager police force.<sup>197</sup>

Another challenge facing central cities is the availability of historically preferable suburbs without formal limits on outward growth. Sprawl is a major challenge to Detroit's revival. Benfield writes that “an even bigger problem for Detroit than the decline of the rust-belt economy has been that the fringe of the region has been allowed, more than in most places, to expand, not shrink, and to suck the life and hope out of the inner city.”<sup>198</sup> The availability of

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

<sup>195</sup> FLORIDA, CREATIVE CLASS, *supra* note 65, at 287 (“Several forces have combined to bring people and economic activity back to urban areas. First, crime is down and cities are safer. In New York City, couples now stroll city blocks where even the hardest urban dweller once feared to tread. Cities are cleaner. People no longer are subjected to the soot, smoke, and garbage of industrial cities of the past. In Pittsburgh, people picnic in urban parks, rollerbladers and cyclists whiz along trails where trains used to roll, and water-skiers jet down the once toxic rivers.”).

<sup>196</sup> Numerous recent news stories have reported murders in vacant Detroit houses. *See e.g.*, Gus Burns, *Two Women and Man Found Dead Inside Vacant Detroit Home; Children Spared*, M LIVE (Mar. 7, 2013) (reporting a triple-homicide in a vacant house located in a northwest Detroit neighborhood where residents “say hearing gunshots at night is so prevalent they rarely call police.”); Robin Schwartz, *Man’s Beaten and Burned Body Found Inside Vacant Detroit House*, MY FOX DETROIT (Feb. 14, 2013), <http://www.myfoxdetroit.com/story/21201794/mans-body-found-beaten-burned-inside-vacant-detroit-house#ixzz2ONsTiwJz> (The victim’s family and friends “want to see abandoned houses like the one where the body was found torn down.”); *Vacant Detroit Becomes Dumping Ground for the Dead*, FOXNEWS.COM, Aug. 2, 2007, <http://www.foxnews.com/us/2012/08/02/vacant-detroit-becomes-dumping-ground-for-dead/> (“From the street, the two decomposing bodies were nearly invisible, concealed in an overgrown lot alongside worn-out car tires and a moldy sofa”; “[P]eople [used to] go to rural areas’ to dump bodies, said Daniel Kennedy, a Michigan-based forensic criminologist. ‘Now we have rural areas in urban areas.’”).

<sup>197</sup> Detroit recently cut police pay by 10% and the force is already thin. *Vacant Detroit Becomes Dumping Ground for the Dead*, *supra* note 196. Detroit police officer John Garner told the Associated Press that when he joined the department thirteen years ago, he patrolled a 3.6-square mile area and bumped into another officer every twenty minutes. *Id.* Now he covers 22 square miles and bumps into another officer only once every two hours. *Id.* “If we know this, the criminals know this,” he said. *Id.* Private donations totaling \$8 million were recently made by “some of the city’s top corporations and community groups, including the Detroit Three automakers and Penske Corp” to lease and maintain 100 police cruisers and 23 new ambulances to replace the city’s aging fleet. Matt Helms, *Protesters Seek Meeting with Detroit Emergency Manager, Mayor Dave Bing*, DETROIT FREE PRESS (Apr. 2, 2013), available at <http://www.freep.com/apps/pbcs.dll/article?AID=2013304020041>. The sponsors hope this will help speed up the city’s emergency responses, which are slow at present. *Id.* However, the City will unlikely be able to count on such large donations on a regular basis. A steady income of higher tax revenue would provide more stable funding for the thin police force.

<sup>198</sup> Benfield, *Which Part of Detroit*, *supra* note 13; *see also* text accompanying note 118.

suburbs and their unrestricted growth allows many to work in Detroit but not live there, escaping the underperforming school system, crime, and low property values—and therefore have little incentive to do anything about them. Professional workers employed by companies that still prefer the glamour of city skyscrapers and lakefront property commute from their outer “bedroom community” suburbs to office buildings mere blocks from empty and boarded up neighborhoods.<sup>199</sup> Yet the Detroit suburbs are not full.<sup>200</sup> The whole region has an overabundance of residential, commercial, and industrial space.<sup>201</sup> Population in metropolitan Detroit has leapfrogged inner-ring suburbs much like Detroit, and the residential vacancies have recently climbed higher in the outer suburbs as well.<sup>202</sup> Benfield calls for regional planning to “right-size” the suburbs, which have grown faster than their population.<sup>203</sup> Shutting off the metropolitan limits with a UGB would help not only Detroit, but the existing suburbs, from leapfrog development.

However, racial tensions remain a significant element of Detroit politics.<sup>204</sup> The “white fear” that caused many white middle-class families to flee Detroit after the race riots in the

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<sup>199</sup> Florida describes this effect as creating “skyscraper ghost towns”: cities “filled with workers by day but empty and dangerous at night, as the middle-class workers climbed into their cars and drove to their lives in the suburbs, leaving only the underclass in the city.” FLORIDA, CREATIVE CLASS, *supra* note 65, at 286.

<sup>200</sup> Kaid Benfield, *Signs of Life in Downtown Detroit*, SWITCHBOARD: NATURAL RESOURCES DEFENSE COUNCIL STAFF BLOG (Sep. 20, 2011) [http://switchboard.nrdc.org/blogs/kbenfield/signs\\_of\\_life\\_in\\_downtown\\_detr.html](http://switchboard.nrdc.org/blogs/kbenfield/signs_of_life_in_downtown_detr.html) [hereinafter Benfield, *Signs of Life*] (calling the vacancy rates in both Detroit and the suburbs “scary-high”).

<sup>201</sup> Brian J. Connolly, *Right-Sizing Done Right: How Planned Shrinkage Can Save Detroit*, PLANETIZEN (Apr. 22, 2010) <http://www.planetizen.com/node/43881>.

<sup>202</sup> *Id.* “Detroit is not alone in its plight.” *Id.*; see also Patrick Cooper-McCann, *Retrofitting Detroit: Stop the Sprawl*, RETHINK DETROIT (July 15, 2010) <http://www.rethinkdetroit.org/2010/07/15/retrofitting-detroit-stop-the-sprawl/> (“Older suburbs like Hazel Park and the southern end of Warren have long struggled to maintain their retail and commercial corridors.”).

<sup>203</sup> Benfield, *Which Part of Detroit*, *supra* note 13.

<sup>204</sup> See the domestic public policy journalism site *Remapping Debate*’s “Detroit Series”: Mike Alberti, *Detroit’s Woes Can Be Eased, But Region’s Officials Avert Their Eyes*, REMAPPING DEBATE (Jan. 25, 2012), <http://www.remappingdebate.org/article/detroit%E2%80%99s-woes-can-be-eased-regions-officials-avert-their-eyes> [hereinafter Alberti, *Region’s Officials Avert Their Eyes*]; Mike Alberti, *Segregation and Racial Politics Long the Death Knell for Regionalism in Detroit Area*, REMAPPING DEBATE (Jan. 11, 2012), <http://www.remappingdebate.org/article/segregation-and-racial-politics-long-death-knell-regionalism-detroit-area> [hereinafter Alberti, *Segregation and Racial Politics*]; Mike Alberti, *Detroit Consigned to an Unnecessarily Bleak Future?*, REMAPPING DEBATE (Dec. 21, 2011), <http://www.remappingdebate.org/article/detroit-consigned->

second half of the twentieth century is likely continued by today's high crime rates in Detroit. The white-black segregation has led to divided politics: the city versus the suburbs.<sup>205</sup> Although regional planning mechanisms like statewide planning and UGBs have been successful in cities like Portland, they are unlikely to have success in regions as divided as metropolitan Detroit.<sup>206</sup>

Other challenges facing Detroit and other shrinking cities are past mismanagement and failures to plan.<sup>207</sup> Many Rust Belt cities failed to plan effectively during their heyday, simply riding the success of their main employer or employers.<sup>208</sup> Now the cities must reinvent themselves, but they must do so with old infrastructure and planning mistakes of the past.

### C. New Goals for Shrinking Cities

Until recently, city planners in shrinking industrial cities like Detroit were still acting under the belief that traditional land use tools and zoning ideas should be used to set the cities back on a track of traditional growth. “[R]eviving Detroit meant recreating a bustling metropolis.”<sup>209</sup> For decades, leaders “fought against urban population loss in every way imaginable—with tax abatements, federal grants, renaissance zones, [and] big showcase projects

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unnecessarily-bleak-future (“Our interest was peaked by the fact that there is no indication that either the Detroit metropolitan region, the state of Michigan, or the federal government is prepared to step forward and make structural changes to re-integrate Detroit in the larger region.”).

<sup>205</sup> Alberti, *Region's Officials Avert Their Eyes*, *supra* note 204 (noting that the narrative of “many officials and advocates in Detroit” who “blame the city’s decline primarily on suburban, state, and federal policies that have combined to ‘steal’ the city’s assets” is “born, in part, from a long-held suspicion that the mostly-white suburbs want to take autonomy and self-determination away from the mostly-black city”); Alberti, *Segregation and Racial Politics*, *supra* note 204 (“‘There are always two partners in segregation’ . . . ‘In the suburbs, they were saying, ‘I’m going to lose my money,’ and in the city, they were saying, ‘I’m going to lose my political power.’” (quoting Myron Orfield and Joe T. Darden)).

<sup>206</sup> UGBs are an area worthy of further investigation and could be a possibility for shrinking cities with different regional politics. However, given the animus towards regional cooperation in metropolitan Detroit, UGBs are likely a political impossibility in the foreseeable future, and this Article does not devote further analysis to the topic.

<sup>207</sup> Alberti, *Region's Officials Avert Their Eyes*, *supra* note 204 (Experts including Myron Orfield cite “Detroit’s failure to plan for the long-term as evidence of the city’s mismanagement—‘For a long time there wasn’t even a land map of the city.’”); Troutt, *supra* note 14, at 1183 (“in larger cities . . . comprehensive planning is rare, often an afterthought”).

<sup>208</sup> The *Economist* explains, “Many of the rustbelt’s cities were single industry towns. Some were single company towns, like Kodak in New York’s Rochester or GM in [Michigan’s] Flint.” *Other Shrinking Cities*, *supra* note 10. Flint just recently developed a 20-year master plan—its first master plan “since Jack Kennedy was in the White House.” *Id.*

<sup>209</sup> *Thinking About Shrinking*, *supra* note 164.

such as stadiums and casinos.”<sup>210</sup> There was a belief that loss of population was necessarily a sign of a failing city.<sup>211</sup>

However, there is beginning to be an understanding by scholars,<sup>212</sup> land use planners,<sup>213</sup> city leaders,<sup>214</sup> and community members<sup>215</sup> that cities that relied on manufacturing “will *have to shrink somehow*,” as the manufacturing uses and accompanying residential uses that left are unlikely to soon be replaced with others.<sup>216</sup> In 2005, Youngstown adopted a city plan that “demanded accepting it is a smaller city.”<sup>217</sup> Detroit came to the same realization a few years later<sup>218</sup>—but what is important is that it is there now, and city leaders are taking action to recreate Detroit as a leaner city.<sup>219</sup> The city took a step in the right direction in early 2013 with its Detroit Future City strategic framework, a long-term comprehensive plan that acknowledges

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<sup>210</sup> GALLAGHER, REIMAGINING DETROIT, *supra* note 16, at 73-75.

<sup>211</sup> *Id.* at 70-72. “We often assume that if a city is not growing there is something wrong.” LaCroix, *supra* note 1, at 226.

<sup>212</sup> See e.g. LaCroix, *supra* note 1; Morgan, *supra* note 54; Beckman, *supra* note 159.

<sup>213</sup> Connolly, *supra* note 201 (Connolly, a planner, argues that “Detroit is beyond preserving” and needs to shrink; the opposing argument that “a successful revitalization is built on preservation efforts . . . ignores Detroit’s exceptional problems—no city has experienced the magnitude of abandonment that Detroit has, and no market exists to bring the city back.”).

<sup>214</sup> *Thinking About Shrinking*, *supra* note 164 (discussing Mayor Dave Bing’s “right-sizing” plan and the city’s “epiphany” that instead of “recreating a bustling metropolis,” Detroit must become “a new, leaner city”).

<sup>215</sup> In early 2010, the nonprofit Community Development Advocates of Detroit (CDAD) published its Neighborhood Revitalization Strategic Framework Neighborhood Typology, in which it called for “a bold new vision for Detroit’s neighborhoods—one that acknowledges that the loss of population will not be reversed for the foreseeable future.” Community Development Advocates of Detroit, *Neighborhood Revitalization Strategic Framework Neighborhood Typology*, CDAD ONLINE 1 (Feb. 2010), available at <http://cdad-online.org/wp/wp-content/uploads/2012/01/CDAD-Typologies.pdf> [hereinafter CDAD, *Neighborhood Typology*]. The same year, John Gallagher, who lives in Detroit and writes for the *Detroit Free Press* on issues of reviving Detroit, wrote that leaders need to leave “fantasy versions of the city’s comeback” behind—“That ship sailed a long time ago. The more time and money we waste on such fantastic visions, the worse Detroit . . . will become. A better future awaits Detroit if those of us who call the city home make the right choices.” GALLAGHER, REIMAGINING DETROIT, *supra* note 16, at 61-64.

<sup>216</sup> Morgan, *supra* note 54, at 165 (emphasis added).

<sup>217</sup> *Other Shrinking Cities*, *supra* note 10.

<sup>218</sup> See *supra* note 215. The CDAD wrote in April 2012 that since publishing its Strategic Framework, “the notion that Detroit cannot sustain its current land use pattern went from being a controversial and radical idea to a self-evident truth.” Community Development Advocates of Detroit, *Neighborhood Revitalization Strategic Framework Process Guide*, CDAD ONLINE \*iii (Apr. 2012), available at [http://cdad-online.org/wp/wp-content/uploads/2012/01/CDAD\\_Process\\_Guide\\_2012.pdf](http://cdad-online.org/wp/wp-content/uploads/2012/01/CDAD_Process_Guide_2012.pdf) [hereinafter CDAD, *Process Guide*].

<sup>219</sup> An example of city actions to shrink the city is Mayor Dave Bing’s promise to demolish 10,000 vacant homes during his first term; the newly-created nonprofit Detroit Blight Authority is helping him accomplish that goal. See Matt Helms & Joe Guillen, *New Detroit Blight Authority to Speed Up Demolition of Vacant Buildings*, DETROIT FREE PRESS (Feb. 15, 2013) <http://www.freep.com/article/20130215/NEWS01/302150119/New-Detroit-Blight-Authority-to-speed-up-bringing-houses-down>; Gallagher, *Pulte Grandson’s Nonprofit*, *supra* note 20.

Detroit's goal should not be to return to the past but to address its current problems and revive to a new, sustainable size.<sup>220</sup>

The new goal for shrinking cities is to shrink in an organized way. The city should determine the optimum population levels and land uses so that no land is vacant: Land is either used for residential, business, public, or environmental purposes, and none is sitting uncared for, collecting trash and enabling crime. From that point, the cities can return to a traditional growth outlook. Before then, however, city planners cannot simply focus on attracting new businesses and residents because there are characteristics of the city, such as blight and its accompanying crime, that insure new businesses and residents will not come to fill all the vacancies until those characteristics are changed. Instead of working towards futile goals, shrinking cities must first attack their hurdles.<sup>221</sup>

Also, traditional means of drawing people downtown may no longer be effective. Stadiums, for example, may not attract the Creative Class, whose members tend not to enjoy spectator sports because they prefer to participate directly and do not want to waste nice weather sitting around.<sup>222</sup> Instead, the Creative Class wants “scenes”: a music scene, an art scene, a tech scene, an outdoor sports scene, and so on.<sup>223</sup> They also “require trails or parks close at hand.”<sup>224</sup>

Numerous new tools for achieving the goal of optimum population and land use have been posited. In Detroit, urban agriculture and other environmental uses are favorites. Hindering suburban sprawl has become another battle cry of those thinking about shrinking cities.<sup>225</sup> In contrast to the Euclidean goal of separate uses, mixed-uses neighborhoods are touted as areas

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<sup>220</sup> DETROIT FUTURE CITY, *supra* note 19.

<sup>221</sup> As discussed earlier, shrinking cities' main hurdles include vacancy, blight, and crime.

<sup>222</sup> FLORIDA, CREATIVE CLASS, *supra* note 65, at 176.

<sup>223</sup> *Id.* at 224.

<sup>224</sup> *Id.*

<sup>225</sup> “[T]he areas that are sprawling are where the ‘right-sizing’ most needs to occur.” Benfield, *Which Part of Detroit*, *supra* note 13; Cooper-McCann, *supra* note 202 (commenting that “if we build our older communities upward and our newer communities outward simultaneously . . . something will have to give”).

that will draw young professionals from the Creative Class. Finally, while traditional zoning has been used to keep not only certain land uses separate, but also races and classes,<sup>226</sup> modern scholars suggest that new goals should include greater diversity and “social justice.”<sup>227</sup>

### III. “SMART SHRINKAGE”: LEANER, GREENER, AND KEENER LAND USE PLANNING

Americans like frontiers. We like moving outward and creating towns where there was wilderness before. But when the Old World is Detroit (or another shrinking city), we can no longer simply leave it behind. The questions remain: how to attract residents and how to best use extra urban space that is unnecessary for foreseeable population levels.

This Part makes three suggestions for land use planning in shrinking cities under the banner of “smart shrinkage.” The first is to make the city *leaner* by demolishing structures that hold the city back. Although this requires an up-front cost, it also leans the city’s budget by reducing the strain that such properties place on the government. Clearing the blight of vacant, burned out buildings is also an important step towards making Detroit a safer, more attractive city for new residents. The second suggestion is making the city *greener* (and bluer) by using the cleared lots for open greenspaces, blue infrastructure, and alternative energy sources. Policies that enable urban agriculture should be favored. Finally, and in conjunction with the first two suggestions, shrinking cities should use what resources and planning power they have to make their cities *keener* to Creative Class desires to attract residents who will help build a vibrant economy.

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<sup>226</sup> See *supra* Section II.A.

<sup>227</sup> Social justice refers to the concern over “the distribution or maldistribution of environmental consequences, which usually translates into concerns over inequality exposure to environmental hazards and risks.” Kent E. Portney, *Is a Sustainable City a More Egalitarian Place? Sustainable Communities, Environmental Equity, and Social Justice*, TAKING SUSTAINABLE CITIES SERIOUSLY 157-75 (2003). See also Troutt, *Localism and Segregation*, *supra* note 89, at 323-34 (discussing the environmental disparities between black and white communities in New Orleans which lead to disproportionate hardships from Hurricane Katrina on black communities); Troutt, *Katrina’s Window*, *supra* note 14, at 1141-42 & n.144 (discussing “environmental racism-classism,” another term for what Portney calls “social justice” (or lack thereof)).

### A. Leaner: Necessary Demolishment

Shrinking cities often do not have the resources to be anything but lean. As the *Economist* writes, Detroit “can no longer afford itself. In place of the old must come a new, leaner city.”<sup>228</sup> In 2009, Mayor Dave Bing proposed a plan to “right-size” the city by concentrating population to certain areas and cutting off services to the other areas where providing services is no longer efficient.<sup>229</sup> This plan was unpopular because it raised impossible issues such as which neighborhoods would be abandoned, and what would happen to the remaining residents of those neighborhoods.

However, blighted, vacant homes pose one of the greatest challenges to Detroit’s ability to thrive. As the Detroit Future City plan notes, vacant properties quickly become blighted and pose public safety risks, and “represent real, physical hurdles to Detroit’s redevelopment.”<sup>230</sup> Eighty thousand homes in Detroit are vacant.<sup>231</sup> At least 17,000 homes are beyond repair as a result of fire and structural damage.<sup>232</sup> These “forsaken properties,” which “provide havens for criminals, prostitution, drugs, and generally hamper economic development,” must be removed for Detroit to recover.<sup>233</sup>

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<sup>228</sup> *Thinking About Shrinking*, *supra* note 164.

<sup>229</sup> The following video gives a succinct visual explanation of the budget problems facing Detroit (the city can no longer afford to provide services to all neighborhoods), how “right-sizing” would occur, and how it would help revitalize Detroit: Publius, *What Happened to Detroit?*, VIMEO (Mar. 30, 2012 5:58 p.m.), <http://vimeo.com/39508782>. Right-sizing was to be carried out by the Detroit Works Project. *Id.* See also Connolly, *supra* note 201.

<sup>230</sup> DETROIT FUTURE CITY, *supra* note 19, at 99.

<sup>231</sup> *Id.*

<sup>232</sup> *Detroit Residential Parcel Survey*, *supra* note 168.

<sup>233</sup> Devin Bone, “*It Shall Rise from the Ashes*”: *How Public Nuisance Law Increases Safety in Detroit’s Burned Out Neighborhoods* 16 (March 2013) (unpublished Law Review comment, Michigan State University College of Law) (on file with author) (assertion based on an interview with Ron Reddy, Co-Director of the Detroit Crime Commission, which targets vacant residences in Detroit in an effort to make the city safer).

Some say that demolition is the wrong step and argue that money should be poured into reviving the area.<sup>234</sup> This argument is stuck in the old mindset of growth as the only way forward. It ignores the realities of Detroit. “Preservation-based regeneration examples such as Georgetown, Harlem, or neighborhoods in Brooklyn are not replicable in parts of Detroit”—the buildings are past repair or “simply have nothing left to revitalize.”<sup>235</sup> Also, Detroit lacks the proximity to employers and the New York real estate that supported those areas’ revitalization.<sup>236</sup> It may be possible for some cities that lose population to “reurbanize,” at least in some areas—but for those areas where reurbanization is unlikely, other uses for the land must be found.

Profit-seeking companies have not stepped in to buy up and demolish the properties in Detroit, demonstrating that doing so is economically inefficient; the demand for the property is so low that the land is worth less than the cost required to tear down the structures.<sup>237</sup> Speculators who have purchased homes in Detroit for pennies at tax auctions generally do nothing with the properties, simply waiting for the market to recover.<sup>238</sup> Recently, a non-profit corporation started by Bill Pulte, the grandson of a successful local land developer, partnered with Detroit to demolish thousands of vacant homes owned by the city.<sup>239</sup> Pulte’s Detroit Blight Authority claims it can demolish the structures at half the normal cost, and that it can do so with little cost to taxpayers, as the corporation is funded privately and through grants.<sup>240</sup> There are many Detroit

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<sup>234</sup> See Roberta Brandes Gratz, *Shrinking Cities: Urban Renewal Revisited?*, PLANETIZEN (Apr. 19, 2010), <http://www.planetizen.com/node/43826>.

<sup>235</sup> Connolly, *supra* note 201.

<sup>236</sup> *Id.*

<sup>237</sup> The Detroit Blight Authority estimates that a typical home demolition costs \$10,000. DETROIT BLIGHT AUTHORITY, <http://www.blightauthority.com/> (last visited Apr. 8, 2013).

<sup>238</sup> See *supra* notes 184-185 and accompanying text.

<sup>239</sup> See Gallagher, *Pulte Grandson’s Nonprofit*, *supra* note 219; Helms & Guillen, *New Detroit Blight Authority*, *supra* note 219.

<sup>240</sup> See DETROIT BLIGHT AUTHORITY, <http://www.blightauthority.com/> (last visited Apr. 8, 2013) (select “Learn More” and scroll down). Honigman Miller Schwartz and Cohn LLP, one of Michigan’s largest law firms, is a partner of the project. *Id.*

residents who want Pulte and his wrecking balls to come to their neighborhoods next.<sup>241</sup> Removing blighted structures may not only reduce the owner's tax responsibility,<sup>242</sup> but may increase the value of the land because the possibilities are once again open. It will also help decrease crime, as criminals will not be able to hide their crimes in the abandoned homes.<sup>243</sup>

There is an understanding in business thinking now that being lean can help a company be flexible and innovative.<sup>244</sup> Jay Williams, the Mayor of Youngstown, applies that theory to cities: "Smaller cities—unlike their larger counterparts—are tailor-made for the kind of flexible innovation required to compete in the new global economy. . . . Results can be seen more quickly. Novel approaches to public- and private-sector challenges can be kick-started on a manageable scale."<sup>245</sup> Change becomes possible when a city gets smaller.<sup>246</sup>

Burned out, boarded up buildings are not the only structures in the city that need to be leaned. John Gallagher argues Detroit needs to go on a "road diet," as well.<sup>247</sup> The eight- or ten-lane thoroughfares that no longer carry the volume of traffic for which they were designed can be reduced by "creating bicycle lanes, widening sidewalks, and running a transit line up the middle."<sup>248</sup> The nonprofit Community Development Advocates of Detroit (CDAD) envisions

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<sup>241</sup> See Helms & Guillen, *New Detroit Blight Authority*, *supra* note 219 (quoting Detroit resident Byron Spivey, who says Bing's promise to knock down 10,000 abandoned properties is "noble but inadequate," and hopes the "boarded-up brick house with a collapsing porch across the street" from his house—where a man was stabbed and killed—will be torn down soon). The Detroit Blight Authority's website says that it is "building our capacity to take requests" for demolitions. DETROIT BLIGHT AUTHORITY, *supra* note 240.

<sup>242</sup> DETROIT BLIGHT AUTHORITY, *supra* note 240.

<sup>243</sup> Khalil AlHajal, *Detroit Blight Authority Cuts Cost of Demolition Nearly in Half as It Looks to Clean Up the City*, MLIVE (Feb. 15, 2013), [http://www.mlive.com/news/detroit/index.ssf/2013/02/detroit\\_blight\\_authority\\_cuts.html](http://www.mlive.com/news/detroit/index.ssf/2013/02/detroit_blight_authority_cuts.html) ("That's the way to cut crime," William Pulte said, "because nobody can get away with anything without being seen by everybody.").

<sup>244</sup> See generally Eric Ries, *THE LEAN STARTUP: HOW TODAY'S ENTREPRENEURS USE CONTINUOUS INNOVATION TO CREATE RADICALLY SUCCESSFUL BUSINESSES* (2011); *THE LEAN STARTUP*, <http://theleanstartup.com/> (last visited Apr. 8, 2013).

<sup>245</sup> Jay Williams, *Foreword to JOHN GALLAGHER, REIMAGINING DETROIT: OPPORTUNITIES FOR REDEFINING AN AMERICAN CITY* 42-44 (Kindle ed. 2010) (the page numbers listed for this source are Kindle Locations, rather than page numbers of any hard copy edition).

<sup>246</sup> GALLAGHER, *REIMAGINING DETROIT*, *supra* note 16, at 86-87.

<sup>247</sup> *Id.* at 81-83.

<sup>248</sup> *Id.*

replacing the buildings along some of these corridors with greenscapes, creating Green Thoroughfares that “provide tasteful way-finding directions to nearby neighborhoods, separate incompatible uses, and convey a sense of beauty, safety, and spaciousness.”<sup>249</sup> Road diets are necessary even in neighborhoods that are doing well—Midtown’s Woodward Avenue is nine lanes wide.<sup>250</sup> Cutting Woodward Avenue down to a street more easily crossed on foot could help the area become more tourist, business, and Creative Class friendly.

Before Detroit can go on a road diet, however, the city likely needs to revise its street and parking regulations. Ordinances that require the construction of wide, multilane streets and highways should be replaced by policies that require fewer and leaner streets.<sup>251</sup> Parking regulations that “discourage landowners from placing housing within walking distance of shops and jobs [and] force landowners to surround their buildings with parking lots”<sup>252</sup> should be replaced by policies that require fewer parking spaces and mandate little setback of commercial spaces from the street. New policies should allow a bike rack to fulfill one of the remaining parking space requirements. These changes will allow Detroit to go on a necessary road diet.

Such proposals demonstrate how the three aims of “smart shrinkage” can be accomplished together: replacing oversized roads with bicycle lane and public transit makes the city leaner by cutting down expensive infrastructure,<sup>253</sup> greener by adding trees and foliage and encouraging lower-pollution means of transportation, and keener by replacing the old

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<sup>249</sup> CDAD, *Neighborhood Typology*, *supra* note 215, at 6.

<sup>250</sup> Connolly, *supra* note 201.

<sup>251</sup> Michael Lewyn, *You Can Have It All: Less Sprawl and Property Rights Too*, 80 TEMP. L. REV. 1093, 1094 (2007) (Current barriers to sustainability planning that encourage sprawl and segregation include “[z]oning, street design, and parking regulations discourage landowners from placing housing within walking distance of shops and jobs, force landowners to surround their buildings with parking lots, and mandate the construction of streets and highways that are too wide to be crossed comfortably on foot.”).

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

infrastructure with public goods that the Creative Class wants: walkability, bikability, and more green space.<sup>254</sup> “Increased human activity” in the areas could reduce crime, too.<sup>255</sup>

Shrinking down to a sustainable size should become a goal—not a fate to be shunned—of shrinking cities. A lean city can be a great city with less blight, greater safety, more green space, cheaper infrastructure, and happier residents.

## **B. Greener: Green and Blue Spaces and Urban Agriculture**

One of the major proposals for new uses of vacant land where traditional redevelopment is unlikely is urban agriculture. “Green” uses such as open spaces and ecosystem restoration and “blue” uses such as stormwater management are other popular proposals.<sup>256</sup> Greening a city requires planners (and courts that review their decisions) to consider new “best uses” for the land. In addition to traditional residential, commercial, industrial, and agricultural zoning areas, planners should provide for and encourage “green” and “blue” uses.

### **1. Green and Blue Infrastructure**

Green Infrastructure includes land used for alternative energy generation, open green space (which may be used as habitats, parks, and aesthetic city gardens), urban agriculture, and bio-remediation of mildly contaminated sites through natural processes.<sup>257</sup> Detroit was ranked eighth in the nation in 2012 for green energy jobs.<sup>258</sup> Green energy jobs could increase further by

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<sup>254</sup> Connolly explains that the success of this proposal has been shown by the downtown portions of Woodward, Broadway, and Washington Boulevard, which were successful rehabilitated in the early 2000s by adding landscaping and pedestrian amenities, which “brought new development to the surrounding neighborhood.” *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> See LaCroix, *supra* note 1, at 235.

<sup>257</sup> LaCroix, *supra* note 1, at 234.

<sup>258</sup> *Report Ranks Michigan 8th in Nation for Clean Energy Jobs*, MICHIGAN ENERGY MICHIGAN JOBS (Mar. 7, 2013) <http://mienergymijobs.com/Newsroom/tabid/194/articleType/ArticleView/articleId/860/PRESS-RELEASE-Report-ranks-Michigan-8th-in-nation-for-clean-energy-jobs>.

allowing some of the vacant land cleared by “leaner” practices to become solar, wind, or waste-to-energy energy plants or plants that manufacture solar panels and wind turbines.<sup>259</sup>

Blue Infrastructure refers to using landscapes for water system management through swales, stormwater boulevards, retention ponds, and detention basins.<sup>260</sup> Some of the roads sacrificed in the city “road diet” may be rubblized, meaning that the existing pavement is broken up so that it is permeable to rain water.<sup>261</sup> Landscapes can retain and filter runoff that would otherwise flow directly into natural bodies of water and sewers.<sup>262</sup> Using Detroit’s vacant land, much of which is already owned by the city due to tax defaults, as part of the city’s stormwater management could help Detroit mitigate its severe sewage and water management issues.

However, there is some policy legwork to do before blue infrastructure can be formally used to meet Michigan’s “long-term control requirements; only hard infrastructure is seen as an acceptable way to reduce overflows.”<sup>263</sup> Similarly, Detroit’s zoning ordinance has no classifications for landscape infrastructure.<sup>264</sup> Shrinking cities should jump at the chance to amend their governing rules to allow for this land use, which costs little to the city and can help it solve some of its expensive problems. Green and blue infrastructure can also be placed on the roofs of residential or commercial buildings, potentially lowering their energy costs.<sup>265</sup> The city

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<sup>259</sup> The Detroit Economic Growth Corporation (DEGC) advertises that it already works with green energy businesses to identify the best available sites or buildings for their needs. *Renewable Energy Detroit Initiative*, DETROIT ECON. GROWTH CORP., <http://www.degc.org/special-initiatives.aspx/renewable-energy-detroit-initiative-1> (last visited Apr. 23, 2013). The parcels available to companies that work with DEGC could increase through more flexible zoning and cooperation with community groups like CDAD.

<sup>260</sup> Lewis, *supra* note 190.

<sup>261</sup> *Id.*

<sup>262</sup> See *supra* text accompanying notes 190-194.

<sup>263</sup> Lewis, *supra* note 190 (quoting Detroit Future City report).

<sup>264</sup> *Id.*

<sup>265</sup> A “green roof,” or vegetative roof cover, can reduce the amount of water entering the stormwater system by absorbing the rain first and can reduce energy usage by providing extra insulation. Patricia E. Salkin, 3 N.Y. ZONING LAW & PRAC. § 32A:72. Rooftop solar panels and wind turbines, like the one atop the Twelve West building in Portland, Oregon, can also provide green energy. *Urban Wind Turbines Go Up in Portland*, PORTLAND BUSINESS JOURNAL (Aug. 13, 2009), <http://www.bizjournals.com/portland/stories/2009/08/10/daily42.html>.

can incentivize private adoption of green and blue infrastructure such as green roofs through incentives like giving floor area bonuses for installation, as Chicago and Portland do.<sup>266</sup>

## 2. *Urban Agriculture*

Urban agriculture in the context of shrinking cities has gotten a lot of attention in media<sup>267</sup> and scholarly articles.<sup>268</sup> It is a popular idea because it solves not only the issue of putting vacant land to a productive use, but also the issue of “food deserts.”<sup>269</sup> Food deserts, where “fast food restaurants are prevalent and grocery stores are few,” are common problems in cities like Detroit.<sup>270</sup> Major investments have been made in Detroit for urban agriculture. The city recently sold Hantz Farms<sup>271</sup> 140 acres (or about 0.2 square mile) of land to build the world’s largest urban farm<sup>272</sup> and Michigan State University pledged \$1.5 million over the next three years to help Detroit farmers and local organizations bring an oasis to the “food desert.”<sup>273</sup>

Due to the surplus of information already available on urban farming, the topic will get little ink here, except to emphasize two main points: (1) downzoning to urban agriculture or green zones is likely not a taking, and (2) if urban agriculture is a step away from “growth,” that is okay. First, in most cases a city can successfully defend a takings challenge relating to

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<sup>266</sup> Salkin, *ZONING LAW & PRAC.*, *supra* note 265, at 32A:72 (“Chicago and Portland give floor area bonuses for installation of Green Roofs. Portland also requires green roofs in some development agreements where the City is assisting through its Urban Renewal Areas initiative. New York State has adopted a property tax abatement for Green Roofs in New York City.”).

<sup>267</sup> See e.g., John Collins Rudolf, *Reimagining Detroit as Grow Town*, N.Y. TIMES: GREEN BLOG (Nov. 18, 2010) <http://green.blogs.nytimes.com/2010/11/18/reimagining-detroit-as-grow-town/>.

<sup>268</sup> See e.g., LaCroix, *supra* note 1; Kate A. Voigt, *Pigs in the Backyard or the Barnyard: Removing Zoning Impediments to Urban Agriculture*, 38 B.C. ENVTL AFF. L. REV. 537 (2011); Dana May Christensen, *Securing the Momentum: Could a Homestead Act Help Sustain Detroit Urban Agriculture?*, 16 DRAKE J. AGRIC. L. 241 (2011).

<sup>269</sup> LaCroix, *supra* note 1, at 236.

<sup>270</sup> *Id.* at 236 n.70. Adding to the difficulty of finding affordable, healthy food in cities is the paradox that consumer prices are actually higher in low-income areas. Troutt, *Katrina’s Window*, *supra* note 14, at 1135 & n.120.

<sup>271</sup> For more information on Hantz Farms, watch the video: Ecojaunt, *Hantz Farms: Detroit’s Saving Grace*, HANTZ FARMS DETROIT (Jan. 8, 2012), <http://www.hantzfarmsdetroit.com/introduction.html>.

<sup>272</sup> Leslie Macmillan, *Vast Land Deal Divides Detroit*, Green, NY TIMES (Dec. 10, 2012), <http://green.blogs.nytimes.com/2012/12/10/vast-land-deal-divides-detroit>.

<sup>273</sup> *Id.*

rezoning, or downzoning, of land to urban agriculture.<sup>274</sup> Under *Lucas*, a regulatory takings occurs when the government action renders the land of no economic value;<sup>275</sup> if the government can show “that property zoned for urban gardens retains some residual economic value, *Lucas* does not apply.”<sup>276</sup> Similar actions, such as downzoning land on the edges of town to agricultural use to buffer against sprawl, have been upheld.<sup>277</sup>

However, on the other side of the discussion are those who caution against too much emphasis on urban agriculture. Benfield calls the urban agriculture fad “misguided.”<sup>278</sup> His main concern is that as suburbs keep expanding (as they can without a UGB), planting gardens in the city will not fix the city’s issues—rather, it will “ensure that any further development and population shifts in favor of the fringe suburbs.”<sup>279</sup> It is unclear that urban agriculture will “ensure” no future growth occurs, however. Suburban sprawl suggests in part that developers prefer to build on former greenspace. Thus, returning land to agricultural uses in the near future could actually help attract developers back to the city.

Benfield also notes that the “back to nature plan” is not in line with the traditional goal of growth—but for shrinking cities, the way forward is not necessarily the same path as the traditional one.<sup>280</sup> Urban agriculture’s “admission” that population and industry may never return to past levels<sup>281</sup> may actually be an advantage, rather than a shortcoming, of urban agriculture.

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<sup>274</sup> LaCroix, *supra* note 1, at 250.

<sup>275</sup> *Id.* at 251.

<sup>276</sup> *Id.* at 252.

<sup>277</sup> See LaCroix, *supra* note 1, at 252-53 & n.171. “[T]he few contrary instances generally concern cases in which the land is unsuitable for agriculture, so that it has no value as zoned.” *Id.* at 253.

<sup>278</sup> Kaid Benfield, *They Are Stardust. They Are Golden. But Are They Right About “Shrinking Cities”?*, (July 2, 2009) [http://switchboard.nrdc.org/blogs/kbenfield/they\\_are\\_stardust\\_they\\_are\\_gol.html](http://switchboard.nrdc.org/blogs/kbenfield/they_are_stardust_they_are_gol.html) [hereinafter Benfield, *They Are Stardust*]; see also text accompanying note 118.

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

Detroit's recent recognition that it will likely never return to the population levels of the 1950s is the first step in moving forward.<sup>282</sup>

The posture now taken by Detroit leaders is that the city's vacant land is its greatest liability—and its greatest asset.<sup>283</sup> If “used strategically, the city can emerge as a national leader in blue infrastructure,”<sup>284</sup> urban agriculture, and smart shrinkage in general. However, not all of the vacant land needs to be repurposed for green or blue uses. As discussed in the next Section, city planners should form all new policies with the Creative Class in mind, with a goal of bringing Creative Class members into the city core.

### **C. Keener to the Creative Class: Draw Residents Downtown**

Tiebout introduced the idea that residents choose between cities based on the public goods offered and the taxes charged, and then “vote with their feet.”<sup>285</sup> Florida's analysis of the modern economy updates Tiebout's hypothesis by examining what public goods the Creative Class looks for, and posits Creative Class members are the type of residents cities should aim most to attract.<sup>286</sup> Taking cues from Tiebout and Florida, cities should create neighborhoods that attract the Creative Class, who will in turn attract other residents, businesses, and investment.

This Section applies Florida's update on Tiebout's hypothesis to shrinking cities, arguing that “smart shrinkage” planning should be “keen” to Creative Class desires to attract Creative Class members back to the city. Florida's survey data is helpful in determining the public goods that are most important to the Creative Class. Sports stadiums and casinos—projects that Detroit

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<sup>282</sup> The city's recognition that it will likely never return to the population levels of the 1950s and that some new plans for the land are necessary is evidenced in the DETROIT FUTURE CITY Strategic Framework, released in early 2013. The Land Use Element may be viewed as a new comprehensive plan for the city. *See* DETROIT FUTURE CITY, *supra* note 19.

<sup>283</sup> DETROIT FUTURE CITY, *supra* note 19.

<sup>284</sup> Lewis, *supra* note 261.

<sup>285</sup> *See supra* Subsection I.B.4.

<sup>286</sup> *See supra* Subsection I.B.4.

has sunk millions of public dollars into—do not make the priorities list.<sup>287</sup> Local parks, bike lanes, walkable districts, outdoor recreation, art galleries, music festivals, tolerance of sexual minorities,<sup>288</sup> and technology scenes do.<sup>289</sup> “Keener” land use planning is planning done with the desires of the Creative Class in mind, so that future plans have the greatest likelihood of attracting residents who will help create a vibrant economy.

### **1. *Allow for Mixed Uses***

Detroit has miles and miles of single family residences, but the demand for that land use is far behind the supply. Single family residence zoning should be cut down, as statistics show that the generation coming of age no longer has the same “golden standard” as their grandparents had.<sup>290</sup> Multifamily residences and denser housing options like apartments and condominiums need not always be placed lower than single family residences on land use hierarchies, like the one established in *Euclid*.<sup>291</sup> Land use regulations should become more flexible<sup>292</sup> to provide for other residential, green, green energy, and commercial uses so that when blighted properties are demolished, they can be put to a new higher use.

Although heavy industrial and residential uses are still incompatible, as shown in situations like *Gilbert v. Showerman*,<sup>293</sup> the same is not necessarily true for commercial and residential uses, or even light industrial and residential uses. Apartments above shops have long

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<sup>287</sup> See FLORIDA, CREATIVE CLASS, *supra* note 65, at 302.

<sup>288</sup> See Ten Brink, *supra* note 74.

<sup>289</sup> FLORIDA, CREATIVE CLASS, *supra* note 65, at 224, 294; Dreher, *supra* note 15; Benfield, *Central Cities*, *supra* note 117; Kaid Benfield, *Why Smarter Land Use Can Help Cities Attract and Retain Young Adults*, SWITCHBOARD: NATURAL RESOURCES DEFENSE COUNCIL STAFF BLOG (Feb. 1, 2013), [http://switchboard.nrdc.org/blogs/kbenfield/why\\_smarter\\_land\\_use\\_can\\_help.html](http://switchboard.nrdc.org/blogs/kbenfield/why_smarter_land_use_can_help.html) [hereinafter Benfield, *Why Smarter Land Use Can Help*].

<sup>290</sup> See Benfield, *Central Cities*, *supra* note 117; Benfield, *Why Smarter Land Use Can Help*, *supra* note 289.

<sup>291</sup> See *supra* Subsections I.B.2-3.

<sup>292</sup> Through rezoning for new uses, de-zoning to an extent (e.g. providing for many various uses), or providing for floating zones.

<sup>293</sup> See *supra* Section I.A.1.

been popular. Such comingling land uses provide the convenience that the Millennial generation and the Creative Class seek.

Before the *Detroit Future City* framework was released in 2013 and provided for some more modern, mixed use neighborhoods,<sup>294</sup> CDAD stepped in to lead the way. Through community organizing and partnership with experienced planners, CDAD developed ten “neighborhood typologies” that are somewhat akin to floating zones. Neighborhoods are encouraged to examine their own features and goals, and then select the typology that they want their neighborhood to become. CDAD lays out short term and long term strategies for moving the neighborhood in the selected “future direction” and provides a Process Guide to help the neighborhood accomplish the transition.<sup>295</sup>

One of the typologies CDAD envisions neighborhoods may choose to become is a “Village Hub.” The CDAD describes the mixed-use Village Hub neighborhood:<sup>296</sup>

With a small main-street feel, these high-density streets include neighborhood shopping districts and gathering spots for the surrounding residents. A young couple exists their single-family house or town home to walk to the local bakery for some pastries, and then go upstairs to where their accountant has his office. A retiree street-parks his car in front of his barber—who also happens to be his next-door neighbor. A young single leaves his apartment building to ride his bike along the local greenway path. Libraries and schools cater to active families including the influx of new immigrant residents . . . . An array of ethnic restaurants and stores attract a variety of customers including a growing mix of new immigrant residents who enjoy the neighborhood along with long-time residents.

Detroit can allow for mixed use neighborhoods like the Village Hub either by rezoning, dezoning (and letting the community or the market determine the best land use, as Jane Jacobs argued for), or providing for floating zones that can be placed on the map when a community petitions the city to allow its neighborhoods to become a Village Hub.<sup>297</sup> Use of floating zones could be a great way to get local community input—CDAD’s position is that the communities

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<sup>294</sup> DETROIT FUTURE CITY, *supra* note 19.

<sup>295</sup> See CDAD, *Neighborhood Typology*, *supra* note 215.

<sup>296</sup> *Id.* at 10.

<sup>297</sup> See *supra* text accompanying notes 125-127 for a discussion of floating zones.

know their neighborhoods best and should therefore play a large role in determining the best use of the land—and involve city residents,<sup>298</sup> while still benefitting from city-wide planning.<sup>299</sup>

## **2. Outdoor Recreation**

Detroit is beginning to recognize the importance of adding more outdoor resources for its residents. The Land Use Element of the *Detroit Future City* strategic framework aims to make adding open space and recreational resources a key goal for the city.<sup>300</sup> A popular term in Detroit planning parlance is “pocket park.”<sup>301</sup> Pocket parks may be a good use of cleared lots and road lanes, but the city should not stop there. As Detroit plans where to add new recreational resources, it should think about the outdoor activities favored by the Creative Class. The Creative Class does not just want neighborhood parks where they can walk their dogs and let the kids play on the swings. They also want nearby places where they can engage in more physical outdoor activities such as mountain biking (which is best on land with hills) and kayaking (which requires access to relatively clean water).<sup>302</sup>

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<sup>298</sup> Due to Detroit’s history of unpopular—and unsuccessful—projects that have been forced upon residents, including the Poletown evacuation, community approval should be considered an important element of any future project. The community reaction to Mayor Bing’s “right-sizing” plan was overwhelmingly negative, and has hindered the Detroit Works Project’s success. As one planner working on a river and sewage project said, “With the history of projects in this city . . . we need support from residents before we do anything.” Brian Bienkowski, *Detroit’s Long-Buried Bloody Run Would Flow Again Through Planned Development*, MICHIGAN RIVER NEWS (July 21, 2011), <http://www.michiganrivernews.com/2011/07/detroits-long-buried-bloody-run-would-flow-again-through-planned-development/> (quoting Stephen Vogel).

<sup>299</sup> Purely neighborhood planning could lead to all neighborhoods choosing the same typology or zoning out land uses that would ultimately benefit the city through a “not in my backyard” sentiment. See Kaid Benfield, *LULUs, NIMBYs, and BANANAs: Just Say No to Just Saying NOPE*, SWITCHBOARD: NATURAL RESOURCES DEFENSE COUNCIL STAFF BLOG (Dec. 12, 2007) [http://switchboard.nrdc.org/blogs/kbenfield/lulus\\_nimbys\\_and\\_bananas\\_just.html](http://switchboard.nrdc.org/blogs/kbenfield/lulus_nimbys_and_bananas_just.html).

<sup>300</sup> DETROIT FUTURE CITY, *supra* note 19, at 99 (“For all the discussion about vacancy and surplus land, Detroit still falls well below the national average for park space per resident”; Detroit can transform “into a greener city with beautiful vistas, playing fields, urban woodlands, bicycle paths, and walking trails, as well as lakes and ponds, streams, playgrounds, and pocket parks.”).

<sup>301</sup> *Id.*

<sup>302</sup> See *supra* note 75.

### 3. *A Diverse City*

A major criticism of Florida's work is that attracting the Creative Class to the city may result in gentrification and push out lower income residents.<sup>303</sup> One of the benefits Detroit has to offer on this front is that there is so *much* space. Current residents need not be pushed out, as much of the repurposing of land should be focused on the vacant properties, rather than the occupied ones. The populations of Boston and Manhattan could be added to Detroit and there would still be space for the current residents.<sup>304</sup> New plans should, to the extent possible, allow for the continuation of occupied land uses. For example, CDAD's Urban Homestead Typology<sup>305</sup> allows for occupied homes in otherwise vacant neighborhoods to stay by allowing the area to become more rural; the vacant properties can be demolished and put to use by the homeowner, another private party, or the government as urban farmland or greenspace, while allowing a few homes to remain. Where it is uneconomic for the city to provide services to isolated homes, the city provides incentives for the occupants to move, such as a "house swap" program.<sup>306</sup>

Also, more flexible zoning advocated for above<sup>307</sup> would allow multifamily affordable housing to be interspersed with more expensive land use types. For example, CDAD's long term impact strategies for the Village Hub typology include planning for "[m]ixed-income housing development to prevent gentrification."<sup>308</sup> The larger challenges to diversity in Detroit remain

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<sup>303</sup> See *supra* note 79 and accompanying text.

<sup>304</sup> This would require a denser housing stock, but the example is given to demonstrate the population potential. See *supra* note 167 and accompanying text.

<sup>305</sup> The Urban Homestead typology is described by the CDAD as "Country living in the City!" CDAD, *Neighborhood Typology*, *supra* note 215, at 4.

<sup>306</sup> DETROIT FUTURE CITY, *supra* note 19, at 92. Rather than condemnation and forced moves, as originally contemplated by the Detroit Works Project, the Detroit Future City plan recognizes that many residents don't move because they feel they can't afford another house and have nowhere to go. Thus, the plan introduces a "house swap" incentive program for relocation. See JC Reindl, *Detroit Planners Try a Softer Approach to Urban Renewal*, DETROIT FREE PRESS (Feb. 10, 2013) <http://www.freep.com/article/20130210/NEWS01/302100118/Detroit-planners-try-a-softer-approach-to-urban-renewal>.

<sup>307</sup> See *supra* Subsection III.C.1.

<sup>308</sup> CDAD, *Neighborhood Typology*, *supra* note 215, at 10.

the ingrained racial tensions<sup>309</sup> and resisting the use of exclusionary zoning to segregate classes and races, as has traditionally been done.<sup>310</sup>

#### **4. *Demographic Changes Favor Cities***

Luckily for cities, urban lifestyles are back in vogue for a large amount of the population. Thirty-one percent of the Millennial generation now coming of age prefers to live in a core city—that is double the percentage of the previous generations at their age.<sup>311</sup> As societal preferences shift back to favor cities, the “invisible hand” of the market may naturally bring population back to downtowns. Dan Gilbert, founder of Detroit-based Quicken Loans, has already bought a substantial amount of real estate in downtown Detroit, which started a trend of businesses and workers moving back into the city.<sup>312</sup>

Another factor helpful in Detroit’s recovery is that in the competition for Creative Class members, Detroit is seen as a cheaper alternative to cities like San Francisco for entrepreneurs and start-ups.<sup>313</sup> Because of its sale price, Detroit may have to develop fewer public goods sought by Creative Class than more expensive cities to attract a critical mass of new residents.<sup>314</sup> The more Detroit can direct resources to creating spaces and atmospheres that attract the Creative Class, the more likely Detroit’s future will include a vibrant economic revival.

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<sup>309</sup> See *supra* notes 204-206 and accompanying text.

<sup>310</sup> See *supra* Subsection I.B.6.

<sup>311</sup> Benfield, *Why Smarter Land Use Can Help*, *supra* note 289.

<sup>312</sup> Benfield, *Signs of Life*, *supra* note 200; see also Kaid Benfield, *Rust Belt Cities: To Avoid More Shrinkage, Protect and Strengthen the Core*, SWITCHBOARD: NATURAL RESOURCES DEFENSE COUNCIL STAFF BLOG (Jan. 4, 2012), [http://switchboard.nrdc.org/blogs/kbenfield/rust\\_belt\\_cities\\_to\\_avoid\\_more.html](http://switchboard.nrdc.org/blogs/kbenfield/rust_belt_cities_to_avoid_more.html) (stating that even if regional planning does not work to slow the growth of suburbs, “perhaps the strongest [] force for bringing sense to our settlement patterns and strengthening central cities . . . [is] the business community”).

<sup>313</sup> Alexis C. Madrigal, *Detroit’s Gleaming Start-Up Tower*, THE ATLANTIC (Sept. 23, 2012) <http://www.theatlantic.com/technology/archive/2012/09/detroits-gleaming-start-up-tower/262730/> (a San Francisco Bay Area perspective on Detroit); Susan Saulny, *Detroit Entrepreneurs Opt to Look Up*, NY TIMES (Jan. 10, 2010) [http://www.nytimes.com/2010/01/10/us/10startup.html?\\_r=0](http://www.nytimes.com/2010/01/10/us/10startup.html?_r=0). In 2013, the city hosted its first iOS conference, dubbed Detroit Mobile City in an effort to rebrand Detroit to modern technology. Detroit Mobile City, <http://detroitmobilecity.com/> (last visited Apr. 24, 2013).

<sup>314</sup> Remember, Tiebout’s hypothesis also factors in price. See *supra* text accompanying note 64.

## CONCLUSION

Aristotle wrote, “a great city should not be confounded with a populous one.”<sup>315</sup> The post-industrial Rust Belt cities face numerous challenges, but the good news is that they have accomplished the first step of recovery: admitting they have a problem.<sup>316</sup> The next step is for shrinking cities to reevaluate their goals. Shrinking cities should not be tunnel-visioned on creating population growth. Instead, the primary goal should be to reach the point where no land is unused.<sup>317</sup> This Article suggests three new prongs of “smart shrinkage”: making cities (1) leaner by demolishing buildings that are uneconomic to retrofit and demolishing superfluous road lanes; (2) greener by putting the least in-demand properties to use as green and blue spaces; and (3) keener to Creative Class desires by rezoning (or dezoning) for walkable, bikable, mixed use areas and encouraging other land uses that are currently bringing Millennials and Creative Class members back into cities.<sup>318</sup> The cities that accomplish smart shrinkage may not regain their populations to 1950s levels, but that is no longer the goal—the goal is not simply to be populous, but great.<sup>319</sup>

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<sup>315</sup> This quote is often used in discourse on shrinking cities. *See Other Shrinking Cities*, *supra* note 10; Williams, *supra* note 245, at 41-42; GALLAGHER, REIMAGINING DETROIT, *supra* note 16, at 41-42.

<sup>316</sup> “Changing attitudes [about growth in shrinking cities] is essential. . . . ‘Then you can get people’s minds to focus on what’s next and not what has been lost.’” *Other Shrinking Cities*, *supra* note 10 (quoting Dan Kildee of the Centre for Community Progress); *see also supra* notes 214-219 and accompanying text.

<sup>317</sup> *See supra* Section II.C.

<sup>318</sup> Benfield, *Why Smarter Land Use Can Help*, *supra* note 289.

<sup>319</sup> A great city is one that is healthy. *See supra* text accompanying notes 220-221.