The Wild, Wild Midwest

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It might seem paradoxical that in a city like Detroit with so much vacant land, few resources are going to preventing vacancy. Of the city’s land area of 139 square miles, approximately twenty are vacant. Roughly 80,000 of the city’s housing units, amounting to 23 percent of the city’s housing, are vacant. The vacancy rate is similarly high for commercial and industrial properties, with 36 percent of commercial properties standing vacant and 22 percent of industrial properties being vacant. Simultaneously, some organizations and individuals in the city are finding it difficult to acquire land, especially for urban agriculture uses. Though there is no explicit policy, in some neighborhoods community members are not able to purchase city-owned land. In many ways, the current story of the city of Detroit is a study of contrasts. After emerging from bankruptcy, one might think that tax collections should be a priority. But not enough is being done to prevent the loss of housing by homeowners due to tax foreclosures.

By many regional and national accounts, the City of Detroit is undergoing a renaissance. The media accounts highlight the attractiveness of the city to young people, the inexpensive housing, available retail space, the art scene, the demand for local products, and “a gritty, ‘can-do’ and underdog attitude among Detroit residents.”

The city is experiencing extensive private and public investment. Several companies, including Compuware, Quicken Loans, and Fifth Third Bank, relocated their headquarters to the central business district. The downtown area is experiencing significant commercial and residential development.

2. Id.
3. Id.
6. Id.
7. Id.
New retail, coffee shops, and restaurants are opening. Residential developments, including “new construction, rehabilitation and adaptive reuse,” are emerging throughout the downtown area. A new hockey and basketball arena is nearly complete. As the city emerged from bankruptcy, city services such as lighting, garbage pick-up, snow removal, and police and fire response times began to improve. Certain city services were privatized (lighting, Eastern Market) or regionalized (water and sewer), and the State of Michigan took over the operation of the city’s large riverfront park, Belle Isle. A new light rail line opened in May, 2017.

In many respects, Detroit is a tale of two cities. In addition to the development happening downtown, Detroit is also the poorest large city in the nation. Over 40 percent of Detroit’s population lives in poverty. The city has lost more than half its population since 1970. The city currently has fewer than 700,000 residents, a decline from the high of over 1.8 million residents in 1950. The city’s residents are primarily African American (just over 80 percent), and 10 percent are White. The city continues to lose population, though the decline has recently slowed. Transportation to jobs continues to be a major issue. The school system continues to face challenges. There are several signs of the distress experienced by the city’s residents. In 2015, the city shut off water service to over 23,000 homes, approximately one in nine of the city’s residential accounts.

Decades of deindustrialization, the decline of the automobile industry and suburban White flight “have severely eroded Detroit’s population, employment, and tax base.” Though the city has been losing population...
for quite some time,20 the recent economic recession exacerbated the problem of housing decline. The city has lost 37 percent of its housing units since 1960.21

The Detroit Land Bank Authority controls nearly 100,000 parcels of land in the city (over one in city four parcels). Since 2014–2016, the city has demolished over 11,000 properties.23 The demolitions are slated to continue. Federal Hardest Hit funds provided much of the financing for the demolitions.24 The Land Bank administers several programs to sell homes and vacant land,25 auction homes,26 and sell vacant lots to owners next door.27 Community partners may purchase up to nine lots at a discount and ten or more lots with more oversight.28 Properties continue going into the Land Bank inventory.

One of the reasons for the continuing entry of homes into the Land Bank inventory is the crisis in tax foreclosures in recent years. Between 2005 and 2014, one in three Detroit properties was foreclosed as a result of mortgage or tax default.29 Not surprisingly, over half of the homes

20. See MacDonald, supra note 14.
25. The Land Bank sells homes under two programs. The Own It Now Programs sells homes that are need substantial investment because the homes are not cleared or secured and title may not be clear. See Detroit Land Bank Authority, Own It Now Program, http://www.buildingdetroit.org/own-it-now/ (last visited May 1, 2017). Under the Rehabbed & Ready Program, the Land Bank sells homes that are move-in-ready. See Detroit Land Bank Authority, Rehabbed & Ready Program, http://auctions.buildingdetroit.org/RehabbedAndReady/SplashPage (last visited May 1, 2017).
that were in foreclosure became blighted.\textsuperscript{30} Over three-quarters of the homes on the city’s blight list are foreclosures.\textsuperscript{31} Detroit was fourth in mortgage foreclosures during the 2005–2014 period, behind Las Vegas, Phoenix, and Chicago, but it had more tax foreclosures that the other cities.\textsuperscript{32} In addition, Detroit’s housing prices dropped the most, down 73 percent from the peak before the housing market crash.\textsuperscript{33} That has meant a devastating loss of wealth to the residents as well as reduced tax collection for the city as a result of the reduction in value, and complete loss of revenue for the properties that are abandoned. Abandoned properties cost the city additional funds when they are demolished. Blighted homes means reduction in the value of nearby homes as well. Many properties “reenter tax delinquency.”\textsuperscript{34}

In 2015, over 60,000 properties in the city entered the tax foreclosure process.\textsuperscript{35} That amounts to one-sixth of the properties in the city. Of the more than 28,000 that went into auction, more than a third were occupied residential properties.\textsuperscript{36} An enormous effort by many allowed some homeowners to enter into payment plans that permitted some of the homes initially subject to tax foreclosure to be saved (at least temporarily). The mayor worked with the state legislature to reduce penalties and interest for those owing back taxes.\textsuperscript{37} Several churches, community organizations, and legal services programs sponsored sessions to inform residents of the various programs available to lower their taxes and make partial payments in order to avoid foreclosure. For many, these were temporary fixes. Even with the herculean efforts of many, close to 28,000 properties went to the tax action in 2015.\textsuperscript{38} More than a third of those properties were occupied.\textsuperscript{39} The majority of the occupied homes were sold in the auction. Some may have been purchased by the tenants living in them. The vast majority were likely sold to investors.\textsuperscript{40} The list of purchasers

\begin{footnotesize}
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\item Id.
\item Id.
\item Id. Detroit had 100,000 tax foreclosures during that ten-year period. Id.
\item Id. The decline was the lowest among the fifty largest cities. Id.
\item See Dewar et al., supra note 21, at 595.
\item Id.
\item Bill Laitner, Tax-foreclosure Crisis Looming as Lawmakers Set to Act, DET. FREE PRESS, Nov. 29, 2014.
\item Eric D. Lawrence, Wayne County Foreclosure Numbers See Big Dip, DET. FREE PRESS, June 26, 2016.
\item Id.
\end{enumerate}
\end{footnotesize}
shows many individuals and corporations purchased one property. Five individuals purchased over 100 properties, and one purchased 473.\textsuperscript{41} The situation improved in 2016 with a 36 percent decrease (from 2015) in the number of homes entering the county tax foreclosure process but that still meant that approximately 18,000 properties went to auction.\textsuperscript{42}

The reasons for the staggering number of tax foreclosures are varied. The city’s poverty rate contributes to people’s inability to pay. The County Treasurer’s difficult-to-navigate poverty exemption results in many people liable for the full amount of taxes when they might otherwise be eligible for a reduction. Another major contributor to the tax foreclosure crisis has been the over-assessment of properties in the city. Under the Michigan Constitution, a property’s assessed value cannot exceed half of its market value.\textsuperscript{43} The city recognizes that properties in the city are over-assessed and decreased assessment in 2014 and 2015.\textsuperscript{44} In early 2017, the city announced it had completed an individualized reassessment of all properties.\textsuperscript{45} A recent study shows that most properties in the city were over-assessed and that the average assessment ratios declined as the property values increased.\textsuperscript{46} The study finds that on average assessment were 7.3 times higher than market values in 2010 and 2.1 times higher than market values in 2015.\textsuperscript{47} The American Civil Liberties Union and the NAACP Legal Defense and Educational Fund sued the city and county challenging the over-assessment as violations of the Fair Housing Act.\textsuperscript{48} The city responded that the plaintiff’s requests for reassessment threatens city services and violates the bankruptcy plan of adjustment.\textsuperscript{49}

Mortgage foreclosures contributed to the problems of abandoned homes. Detroit was “an epicenter of subprime lending.”\textsuperscript{50} In 2005, eight of the twenty census tracts with the highest rates of subprime lending in the country were in Detroit.\textsuperscript{51} Unlike other cities that faced a mortgage

\begin{itemize}
\item \textsuperscript{41} Id.
\item \textsuperscript{42} Lawrence, supra note 38.
\item \textsuperscript{43} Bernadette Atuahene & Timothy R. Hodge, \textit{Stategraft}, \_ \_ S. Cal. L. Rev. \_ \_ (forthcoming 2018) (citing Mich. Const. art. IX §211.27(a)(1) (2013)).
\item \textsuperscript{44} Matt Helms, \textit{Detroitors to See Property Assessment up to 20\% Lower}, Det. Free Press, Jan. 28, 2015.
\item \textsuperscript{46} Id.
\item \textsuperscript{48} Christine MacDonald, \textit{ACLU, NAACP Sue to Stop Wayne County Tax Auction}, Det. News, July 13, 2016.
\item \textsuperscript{49} Id.
\item \textsuperscript{50} Christine MacDonald & Joel Kurth, \textit{Detroit Backed off Suing Lenders over Risky Mortgages, Blight}, Det. News, June 25, 2015.
\item \textsuperscript{51} Id.
\end{itemize}
foreclosure crisis, Detroit never sued the banks and other lending institutions over predatory lending and the blighted foreclosures. The city was in crisis and did not have the necessary staff.\textsuperscript{52} The city received money from national settlements and used it for blight removal.\textsuperscript{53} The State of Michigan has also been criticized for not using more of its Hardest Hit Funds in foreclosure prevention.\textsuperscript{54}

The foreclosures have real consequences for people as well as the city. Studies show that foreclosures and auctions decrease owner occupancy.\textsuperscript{55} Auctions are responsible for “dumping properties,” offering them at very low prices, as a result lowering the value of nearby properties, and therefore seeding blight.\textsuperscript{56} Many of the purchasers at auction are investors.\textsuperscript{57} More resources need to be used to prevent both mortgage and tax foreclosure. It is both the fiscally right thing to do as well as the morally correct thing to do. Foreclosures have both human and financial consequences for the city and the people involved. When properties go into foreclosure, families lose their home. That has lasting financial consequences since any investment is wiped out. The family has to then look for housing elsewhere. Families may lose their support networks, including schools and care networks for the children. In addition, the city and county have to spend the resources to process the foreclosure and eventually demolish the home.

Detroit is not the blank slate that many may think it is. It has a rich history. It also has a present. Even with its vacancy, the city’s “density remains significantly higher than cities of a comparable territorial size such as Atlanta, Denver, and Portland.”\textsuperscript{58} The city does face substantial challenges, including high rates of unemployment and poverty, violent crime, an educational system needing extensive improvement, and vacant properties. What the future holds depends on the ability to craft more democratic and just approaches to the city’s challenges. The “current recovery discourse is focused on fiscal and physical concerns.”\textsuperscript{59} Missing from much of the planning of the city’s future is a conversation about

\begin{itemize}
\item \textsuperscript{52} Id.
\item \textsuperscript{53} Id.
\item \textsuperscript{54} Todd Spangler, \textit{Federal Inspectors Criticize Michigan Housing Aid Program}, DET. FREE PRESS, Jan. 11, 2017.
\item \textsuperscript{55} Dewar, \textit{supra} note 21, at 600.
\item \textsuperscript{56} Id. at 601.
\item \textsuperscript{57} Id. at 600.
\item \textsuperscript{58} Clement & Kanai, \textit{supra} note 19, at 374.
\item \textsuperscript{59} Gary Sands, \textit{Not Dead Yet: Response to William Tabb’s “If Detroit is Dead, Some Things Need to be Said at the Funeral}, 37 J. URB. AFF. 13, 15 (2015).
\end{itemize}
the current residents of the city, “human capital.” 60 “Repairing the city’s balance sheet and demolishing abandoned buildings will not . . . ensure the prosperity” of the city’s residents. 61 Fairness demands that we attend to the needs of the residents, not merely look to replace them.