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Sargent Shriver National Center on Poverty Law



Urban agriculture TAKES ROOT

By William Kraus

William Kraus
Former volunteer attorney,
Sargent Shriver National Center
on Poverty Law, and now associate,
Katten Muchin Rosenman LLP

Defined loosely as localized small-scale agriculture within an urban setting, urban agriculture is changing the way we think about land use while offering possibilities for those living in poverty. All across the country, farms and gardens are springing up in backyards, abandoned lots, and in the shadows of once great symbols of industrial progress. The potential benefits are vast and range from improved nutrition to job creation, increased home values to improved public safety, and educational opportunities to community ownership. From an environmental perspective, urban agriculture also can sequester carbon, reduce energy use, and increase awareness about our natural world.

Here I explore the opportunities and challenges that urban farming presents, set against the backdrop of Detroit's growing agricultural movement. By examining relevant legal issues, I hope to present a starting point for advocates attempting to advance similar efforts within their own communities.

A Walk Through Detroit

Speramus meliora; resurget cineribus ("We hope for better things; it will arise from the ashes").

—Detroit's official motto

At the heart of the Great Lakes system, freighters move slowly down the narrow channel between Detroit and Windsor, Canada, at times seeming close enough to touch. A soft breeze from the water pushes sailboats along and cools those enjoying Belle Isle on this sunny summer day.

The air is quiet in this city, which has seen its population fall from 1.8 million to less than half of that in just over fifty years, and, looking out onto the water, one forgets that he is standing on the border of a massive urban center where, just to the west, great buildings rise into the sky, among them stunning examples of period architecture.

As one moves closer to the city center, the monorail passes by above, a passenger or two visible within. In the shadows of skyscrapers, the streets and sidewalks are largely empty, as many of the businesses long ago left for the suburbs or other states. Although unemployment estimates here range between 25 percent and 50 percent, one could look up at these buildings—quiet on a weekend morning—and imagine that they were in the financial center of New York City or the Loop in Chicago.

Farther away in neighborhoods once busy with activity and families, well-tended homes neighbor shells of those ravaged by arson, neglect, or vandals. Vacant land within Detroit roughly equals an area the size of San Francisco, and some of the homes here can be purchased for just a few thousand dollars.¹ Yet the sense of hope shared by the people who have chosen to stay, or who are now coming here for the first time, is palpable.

In many ways Detroit is a city of striking contrast. Amidst all that has been said and written about the hardships that have wounded and scarred this city, it offers unparalleled opportunity for reinvention, innovation, and creation. Urban agriculture, perhaps more than any other phenomenon occurring here, embodies these prospects and, like Detroit itself, typifies the melding of opposites with the hope for a better future.

Health Benefits

As in other low-income areas, many Detroiters suffer from poor nutrition

and the attendant health problems of obesity, diabetes, and cardiovascular disease. Although the reasons for poor health vary, one undeniable contributor is a general difficulty that most Detroiters have in obtaining healthy, fresh food. Indeed, many Detroiters live much closer to a fast-food restaurant than to a grocery store, and one study found that as of 2007 approximately 92 percent of all food stamp retailers were not grocery stores but gas stations, liquor stores, or other convenience stores that offer little nutritious food.²

Detroiters are combating this shortage with innovative solutions in backyard gardens and neighborhood cooperative efforts, behind churches and abandoned buildings—solutions such as the Capuchin Soup Kitchen's Earthworks Urban Farm. Cultivating land on twenty city lots, the farm grows crops of vegetables each year for use in a soup kitchen and for distribution to food stamp recipients, helping ease the food shortage suffered by Detroit's lowest-income individuals.³

Poor nutrition affects people of all ages, and efforts to improve nutrition must consider the potential benefits for children—improved academic performance and prevention of long-term health problems such as osteoporosis. Land behind some public schools may offer a novel solution to a growing problem. For example, at the remarkable Catherine Ferguson Academy for Young Women in Detroit, pregnant teens and teenage mothers grow fruit, vegetables, and flowers and operate a small farm that produces goat milk, eggs, and honey. While also gaining an education and valuable life skills, the young women enjoy fresh produce and meals for free or at a reduced cost.

Moreover, the health benefits of urban agriculture and green space are not limited to physical well-being, and some studies suggest that green space in urban settings may offer mental health ben-

¹In December 2008 the median price of houses sold in Detroit was \$7,500 (Alan Mallach et al., American Institute of Architects, Leaner, Greener Detroit 16 (2008), <http://bit.ly/dqy4pt>).

²Mari Gallagher Research and Consulting Group, Examining the Impact of Food Deserts on Public Health in Detroit (2007), <http://bit.ly/a5KQUz>.

³Earthworks Urban Farm, 2010 Earthworks Harvest Dinner (n.d.), <http://bit.ly/9nH8PE>.

efits. For example, researchers found that women who lived in apartment buildings with trees and greenery immediately outside reported increased effectiveness, reduced procrastination, and increased ability to cope with problems over those living in otherwise identical buildings without such greenery.⁴ Other studies found that women in greener surroundings benefited from increased self-discipline and committed fewer acts of domestic violence against their partners.⁵

Community Reactions

Urban agriculture may also benefit the community as a whole. According to Colleen Murphy-Dunning, director of the Urban Resources Initiative at Yale University, creating urban green space has been found in some cases to “grow trees and leaders.”⁶ The program seeks out abandoned and neglected areas, turns them into opportunities for social and physical renewal, and has had great success around the New Haven, Connecticut, area through projects focusing on the development of green space, education, and building community involvement.

Participants in these efforts find that communities undertaking projects benefit from a new sense of empowerment that allows them to deal with other problems. As people get to know one another, some go on to create such small organizations as neighborhood watches, with citizens reporting that the development of green space ultimately helped “push crime off of our block.” In other situations, neighborhood leaders of green projects have gone on to run for political office, with the green spaces themselves serving as an organizing point for their campaigns.

Communities also benefit when land is used rather than simply abandoned. Vacant land can lead to crime and lower home values in the surrounding area, and reducing the amount of unused land can help counter these trends. Indeed, according to one study’s estimate, Detroit’s publicly owned vacant land conservatively totaled 7.6 square miles, an amount that alone could supply up to 76 percent of the city’s vegetables and 42 percent of its fruits.⁷ Yet, as the study’s co-author Kathryn Colasanti points out, the estimate excludes such additional land as publicly owned parks, publicly owned land with structures, and privately owned land—sources which could substantially increase food production potential.⁸ If land with abandoned buildings is considered, Colasanti estimates that the amount of available land would either double or triple. In accord with that conclusion, one study performed by the American Institute of Architects estimated that vacant land in Detroit roughly totaled 40 square miles, just slightly less than the size of Boston or San Francisco.⁹

This overabundance has been tied to a profound drop in property values in Detroit. In response to the problem, Detroit Mayor Dave Bing has undertaken a plan to tear down thousands of abandoned homes and consolidate city services; he is even considering relocating residents in barely inhabited areas to more central locations. While undoubtedly controversial, Bing’s plan is arguably rooted in reality: “We’re never going—in my mind—going to get back to 1.8 million, 2 million people that we had, but we have to figure out how to use all of the vacant land.”¹⁰

⁴Frances E. Kuo, *Coping with Poverty: Impacts of Environment and Attention in the Inner City*, 33 ENVIRONMENT AND BEHAVIOR 5 (2001), <http://bit.ly/bNW66P>.

⁵Andrea Faber Taylor et al., *Views of Nature and Self-Discipline: Evidence from Inner City Children*, 22 JOURNAL OF ENVIRONMENTAL PSYCHOLOGY 49 (2002), <http://bit.ly/bFKeld>; Frances E. Kuo & William C. Sullivan, *Aggression and Violence in the Inner City: Effects of Environment via Mental Fatigue*, 33 ENVIRONMENT AND BEHAVIOR 543 (2001), <http://bit.ly/bDGTf6>.

⁶The information in this and the next paragraph is based on my conversation with Colleen Murphy-Dunning in April 2010.

⁷Kathryn Colasanti et al., *Growing Food in the City: The Production Potential of Detroit’s Vacant Land* 3, 5 (2010), <http://bit.ly/dw84dU>.

⁸The information in this paragraph is based on my conversation with Kathryn Colasanti in July 2010.

⁹Mallach et al., *supra* note 1.

¹⁰*Bing Expects Detroit Population to Drop Below 850,000*, DETROIT NEWS, May 18, 2010.

Many believe that urban agriculture and green space creation can help reduce the overabundance of land plaguing not just Detroit but cities around the country.

Urban agriculture and green space creation can also offer innovative educational and vocational opportunities in cities with severe unemployment. For example, urban food production can offer numerous small-business opportunities for entrepreneurs and the opportunity to put unemployed individuals to work in nontechnical roles. In one instance, New Haven found that trees planted by the nonprofit Urban Resources Institute had a better survival rate than those planted through private contractors. This discovery led the city to contract with the nonprofit organization to do the planting instead; it then hired people with employment barriers (e.g., teens and ex-offenders) for transitional tree-planting jobs, where they learned skills directly applicable in the landscaping industry.

Environmental Benefits

Green space creation and urban agriculture increasingly have been found to offer wide-reaching environmental benefits. Aside from promoting general awareness about the environment and the importance of plants, green space aids carbon sequestration, the process by which plants remove and store carbon dioxide through photosynthesis.

In larger buildings, rooftop gardens are springing up atop high rises and housing developments; the gardens help control internal temperatures, reducing both electricity bills and the release of carbon into the atmosphere. And urban gardens can enrich soil with nitrogen fixation, are suitable places for the composition of organic waste, and create a tree canopy, which reduces storm water runoff entering the sewer system.

How Advocates Can Help

Although the legal parameters vary, advocates who want to help clients and communities create green space and urban

gardens should be mindful of several considerations.

As a first step, advocates should determine applicable zoning codes and potential prohibitions on agricultural activities. Where zoning laws prohibit such activities, model codes available online can offer considerations on confronting restrictive laws.¹¹ In some instances, advocates might consider petitioning for a new zoning category that recognizes the unique features of not-for-profit urban gardening.

Advocates must ensure that steps are taken to protect the health of both people working on the land and those who consume the food produced. Indeed, special consideration must be given when gardening in residential areas, where the runoff from lead paint as well as other pollutants can contaminate soil that appears clean. Be sure that an environmental analysis is undertaken to confirm that the land is safe to use. Many public universities offer free or reduced cost soil testing and practical advice about low-cost techniques such as raised soil beds, which may allow for safe growing in polluted areas by using fresh soil that is kept isolated from the contaminated ground beneath.

Of course, determining land ownership is also important. If privately owned land is leased rather than purchased outright, be sure to consider how long a lease term must be in order for lessees to reap benefits from the land. Lessees must understand that a property owner might not renew a lease after the end of the initial term, and incorporating purchase options into lease agreements may sometimes be appropriate. Furthermore, private landowners may be concerned with issues of liability, and so a responsible waiver of liability may be necessary.

Regarding outright purchase from private owners, advocates should make sure that their clients understand the full potential costs, including tax obligations, and liability issues. However, you may find that land purchase offers the greatest flexibility and security for long-term use.

¹¹See, e.g., Leah Erickson et al., *Urban Agriculture in Seattle: Policy and Barriers* (n.d.), <http://bit.ly/dl0WBc>.

Where land is publicly owned, you will face other considerations. Although public land can often be obtained for very little money, even minimal amounts may be cost-prohibitive for community groups or individuals. Cities often decline to lease land, but licensing agreements may offer a negotiable alternative that can be tailored for client needs. At its most basic level, a license is an agreement granting permission to do something otherwise illegal—creating a garden on a plot of public land, for example. Thus in essence a license can contain limitless provisions to fit the parties' needs while generally keeping title to the land with the city, and this may be attractive for groups concerned about liability and cost. Licenses can also be tailored to accommodate city concerns—allowing government, for example, to revoke a license if the land is not maintained according to fixed criteria or otherwise put to good use. As with private owners, however, note that cities may require a waiver of liability on behalf of those taking license or working on the land, although in some instances cities have been known to retain legal liability.

Finally, in any agreement, the individual client's needs must be considered. Is temporary fencing allowed? Construction of a tool shed? What are the condi-

tions of water use? Individuals and community groups will look to advocates to help ensure that these questions are considered. Furthermore, advocates should ensure that any agreements are memorialized in writing and disseminated to the appropriate government agencies. Horror stories abound of community groups receiving the appropriate authorization from one government agency only to have another agency raze what it thought was vacant land. Advocates can assist in preventing such outcomes.



The motto of Detroit, once a proud industrial powerhouse and the fourth most populous American city, seems as relevant today as it was in 1805 when a great fire destroyed much of the city. With its residents hopeful for a better future, Detroit is poised to rise from the ashes. Looking at the urban agriculture and green space creation efforts under way there, other cities and towns can consider their own innovative approaches to low-income individuals' problems. Advocates can help on legal advice on lease and purchase agreements, licensing opportunities, and zoning changes and as a conduit for communications with cities, landowners, and available resources such as universities and charitable groups.



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