

RESTORING DETROIT ONE HISTORIC HOUSE AT A TIME: A NEW LOOK AT OLD HISTORIC PRESERVATION LAWS

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*We must not let the doomsayers and the naysayers cause us to
lose faith in our city, in ourselves and in each other.*

Coleman A. Young¹

I. INTRODUCTION

In light of Mayor Young's quote, although Detroit's population is plummeting, hope is not lost even in the face of staggering statistics. According to the latest census data, Detroit lost twenty-five percent of its residents in ten years.² Former residents left behind approximately 80,000 vacant single-family homes.³ Although there is no study of how many of these homes are salvageable,⁴ Detroit's well-built, brick historic homes were built to last in contrast to inexpensive post-World War II housing and offer a much-needed opportunity for reinvestment and growth in Detroit.⁵

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1. QUOTATIONS OF MAYOR COLEMAN A. YOUNG 40 (Bill McGraw ed., 2005). Coleman A. Young was Detroit's longest-serving mayor, holding office from 1974 to 1994.

2. Katharine Q. Seelye, *Detroit Consensus Confirms a Desertion Like No Other*, N.Y. TIMES, March 23, 2011, at A1, available at <http://www.nytimes.com/2011/03/23/us/23detroit.html>.

3. DATA DRIVEN DETROIT, CENSUS DEMOGRAPHIC PROFILE 5, available at http://datadrivendetroit.org/webftp/Census/PlaceProfiles/Detroit_city_MI.pdf (last visited May 14, 2014).

4. The Detroit Future City proposes an evaluation matrix to determine which homes should be demolished versus salvaged for renovation. See DETROIT WORKS PROJECT, DETROIT FUTURE CITY 290 (2013), <http://detroitworksproject.com/wp-content/uploads/2013/01/The-DFC-Plan.pdf>.

5. See Greta Guest, *What Kind of House Can You Buy in Detroit? Median Prices Below \$10,000*, DETROIT FREE PRESS (June 24, 2012), <http://www.freep.com/article/20120624/BUSINESS04/206240311/What-kind-of-houses-you-can-buy-in-the-city-of-Detroit>. A Detroit realtor said \$10,000 would buy a nice

As Detroit lawmakers look at the mechanics of reshaping Detroit, an emphasis should be placed on new legal mechanisms to encourage the restoration of one of Detroit's assets, its cache of historic homes. However, the key is recognizing that Detroit's present historic preservation ordinance system was enacted in a different era for different reasons. At the time, Detroit's historic homes needed protection from owners wishing to demolish their historic homes and build anew or at least substantially alter the historic character of their homes.⁶ In contrast, today Detroit faces a new host of problems that the city's ordinance is unprepared to address.

As an example of Detroit's present-day problems, although these historic homes offer good value and are located in stable neighborhoods, they often need costly repairs that are unlikely to be recovered in Detroit's depressed housing market.⁷ Adding to the financial burden of prospective and current homeowners, Detroit's property taxes are the highest in Michigan.⁸ A 2011 *Detroit Free Press* article calculated Detroit's residential tax rate at 97 mills.⁹ In comparison, the average Michigan city has a tax rate of 31 mills, nearly two-thirds less than Detroit.¹⁰ Equating this to dollars, a home valued at \$50,000 in Detroit would be taxed \$4,850 per year, while the same home valued in the average Michigan city would be taxed \$1,550 per year. A new legal solution can accommodate the economic realities of Detroit while encouraging historic preservation.

house. *Id.* Homes below the \$10,000 mark will likely be missing their copper plumbing, furnace, and bathroom fixtures. *Id.*

6. See *infra* Part II.C.

7. See *infra* Part II.C.

8. Stephen Henderson, *Detroit Must Jettison Its Losing Tax Scheme*, DETROIT FREE PRESS (Jan. 2, 2011), <http://www.freep.com/article/20110102/COL33/101020437/Detroit-must-jettison-its-losing-tax-scheme>. Even with a high tax rate, Detroit's city services fail to provide even basic services like a quick police response time. *Id.* Among novel ideas to lure business development, former U.S. House Speaker Newt Gingrich proposed that Detroit jettison its taxes. *Id.*

9. *Id.* A mill equates to \$1 per \$1,000 of a home's value. *FAQ*, CITY OF DETROIT, <https://www.detroitmi.gov/DepartmentsandAgencies/Finance/TreasuryDivision/FAQs.aspx> (last visited Mar. 31, 2013). A detailed itemization of the taxes that comprise a Detroit's tax bill include 4.6 mills for the Detroit library system, 13 mills for the Detroit Public Schools' bonds, and 19.95 mills for the city's general operating expenses. *Id.*

10. Henderson, *supra* note 8. Even with Detroit's high tax rate, city services continue to be cut, making the city unattractive for both current and new residents. Matt Helms & Suzette Hackney, *Detroit City Council OKs \$1.12B Budget with Severe Cuts to Firefighters, EMS, Jobs, Parks, Many Services*, DETROIT FREE PRESS (May 25, 2012), <http://www.freep.com/article/20120525/NEWS01/205250447/Detroit-City-Council-OKs-36-1-12B-budget-with-severe-cuts-to-firefighters-EMS-jobs-parks-many-services> (discussing eliminating EMS and firefighters).

Although Detroit faces numerous problems,¹¹ this Note addresses the specific hurdles found in restoring Detroit's historic homes. Presently, the two largest hurdles are a home's rehabilitation costs and high property tax rates.¹² Current or prospective owners are likely to think twice before rehabilitating a home when there is little chance that the investment will be recovered.¹³ Further, historic home repairs often boost a home's taxable value, leading to higher property taxes.¹⁴

Part II of this Note begins by providing the context for the proposed legal solution by discussing current efforts to reshape Detroit's laws and economic strategy through the Detroit Future City plan¹⁵ along with examples of Detroit historic homes for sale and their repair costs.¹⁶ Part II continues with a history of preservation law and concludes with a review of Detroit's present-day historic preservation ordinance.¹⁷

Part III analyzes the legal mechanisms available to government to encourage historic preservation in Detroit.¹⁸ After critiquing federal and state governments' legal mechanisms to encourage preservation, this Note proposes that Detroit's city government is in the best position to

11. Detroit's murder rate and constant turnover of top police management is one concern. See Matt Helms & Gina Damron, *Detroit's Next Police Chief Will Have Hands Full*, DETROIT FREE PRESS (Oct. 12, 2012), <http://www.freep.com/article/20121021/NEWS01/310210184/Detroit-s-next-police-chief-will-have-hands-full>.

Another concern is Detroit's public education system. See Jennifer Mrozowski & Mike Wilkinson, *DPS Fails Kids, Fed School Chief Says*, DETROIT NEWS (Feb. 14, 2009), <http://www.detroitnews.com/article/20090214/POLITICS/902140377>. However, Detroit leadership realizes changing the city's direction will take time. As Detroit's economic development chief, George Jackson, recently said, "We'd be crazy to think that we're going to fix everything at the same time." Susan Stellin, *New Thirst for Urban Living, and Few Detroit Rentals*, N.Y. TIMES, Dec. 12, 2012, at B8, available at <http://www.nytimes.com/2012/12/12/realestate/commercial/new-thirst-for-urban-living-in-detroit-leaves-few-rentals.html>.

12. See Henderson, *supra* note 8; Guest, *supra* note 5.

13. Jeffrey Rothfeder, *Should You Buy That Fixer-Upper?*, THIS OLD HOUSE, <http://www.thisoldhouse.com/toh/article/0,,694903,00.html> (last visited Mar. 31, 2013). When considering whether to purchase a home requiring extensive repairs, the potential owner should include the homeowner's own labor and a factor from 5-10% to cover unexpected costs. *Id.* Homeowners are also cautioned to avoid homes requiring significant improvements like foundations, plumbing, and electrical because the repairs will not raise the resale value of the home. *Id.*

14. Julie Flaherty, *Personal Business; Ready to Renovate? Keep an Eye on Taxes*, N.Y. TIMES (Aug. 17, 2003), <http://www.nytimes.com/2003/08/17/business/personal-business-ready-to-renovate-keep-an-eye-on-taxes.html>. City tax assessors often learn of building improvements through work permits. *Id.*

15. See *infra* Part II.A.

16. See *infra* Part II.B.

17. See *infra* Part II.C.

18. See *infra* Part III.

encourage historic home preservation through its ability to offer tax incentives.¹⁹

II. BACKGROUND

A. Detroit Government Seeks a New Plan to Save the City

Detroit has relied for years upon demolition to solve its vacant home dilemma.²⁰ In 1999, a *Detroit Free Press* opinion touted then-Mayor Dennis Archer's demolition of 3,500 homes and conceded, "It won't be enough. It's far from certain that the city's population has bottomed out yet."²¹ Years later, Detroit has 80,000 homes to demolish²² and not enough money.²³ For the 2012-2013 budget year, Detroit's deficit was \$265 million.²⁴ Yet, the cost to demolish all of Detroit's vacant properties was estimated at an astounding \$640 million.²⁵

In light of the lack of resources, Dave Bing, Detroit's former mayor, looked at creative ways to solve Detroit's vacant housing dilemma.²⁶ One of Mayor Bing's initiatives was the Detroit Works Project (Project).²⁷

19. See *infra* Part III.C.3.

20. Editorial, *Demolitions: The More Blight Removed, the More Potential Revealed*, DETROIT FREE PRESS, Aug. 9, 1999, at A8.

21. *Id.*

22. DATA DRIVEN DETROIT, *supra* note 3.

23. Nancy Kaffer, *Detroit's Budget for Coming Year Cuts \$160 Million, Uses \$75 Million to Reduce Deficit*, CRAIN'S DETROIT BUS. (Apr. 12, 2012), <http://www.crainsdetroit.com/article/20120412/FREE/120419953>. Detroit's tax revenue is further going to decrease an expected \$23 million over the budget year. *Id.*

24. *Id.*

25. The calculation was performed using 80,000 vacant homes multiplied by \$8,000 per home, which is \$640 million. The \$8,000 figure was recently reported as the current cost to demolish one Detroit home. Matthew Dolan, *State to Unveil Detroit Demolition Plan*, WALL ST. J., Aug. 2, 2012, at A3, available at <http://online.wsj.com/article/SB10000872396390443545504577563440677917310.html>.

26. Maureen MacDonald, *New Visioning Strategies Hatched via Mayor's Detroit Works Project*, MODEL D MEDIA (Nov. 2, 2010), <http://www.modeldmedia.com/features/detroitworksproject1110.aspx>.

27. *Project Team*, DETROIT WORKS PROJECT, <http://detroitworksproject.com/about-us-2/project-team/> (last visited Feb. 23, 2014). To provide input, Mayor Bing utilized a steering committee comprising a broad slice of Detroit and Metro Detroit leaders, including religious figures, small business owners, large charitable trusts, and city planning and development officials. *Id.* Then, between September 2010 and May 2011, the program leaders received feedback from 10,000 Detroiters via public meetings, which were contentious at times. John Gallagher, *Detroit Works Project to Offer Vision for City: Turn Liabilities into Assets*, DETROIT FREE PRESS (Aug. 5, 2012), <http://www.freep.com/article/20120805/BUSINESS06/308050048/Detroit-Works-project-to-offer-vision-for-city-Turn-liabilities-into-assets>.

The Project aims to create a plan to redefine all aspects of Detroit from property use to education to public transportation.²⁸

In January 2013, the Project yielded the Detroit Future City (DFC), an exhaustive 347-page report that provides recommendations to be integrated into governing documents like Detroit's Master Plan and zoning ordinances along with recommendations for investors and businesses.²⁹ Realizing the immense change needed, the DFC looks to shape Detroit as far out as fifty years into the future.³⁰

The DFC recognizes the strength and stability of Detroit's historic neighborhoods.³¹ As neighborhoods and their homes are evaluated, the DFC suggests an evaluation matrix to decide whether vacant homes should be rehabilitated or demolished.³² Historic properties in a low or medium vacancy neighborhood,³³ even if in poor condition, receive a rehabilitation recommendation.³⁴ However, the DFC fails to provide a specific plan on how to encourage historic preservation of Detroit's historic homes.

B. For Sale: Detroit's Historic Homes Needing Repair

Considering the DFC's recognition of the value of Detroit's historic homes, there is no shortage of available historic Detroit properties that need new owners. Historic Detroit neighborhoods like Boston-Edison

28. *Frequently Asked Questions*, DETROIT WORKS PROJECT, <http://detroitworksproject.com/faq-2/> (last visited Feb. 23, 2014).

29. DETROIT WORKS PROJECT, *supra* note 4, at 17. It should be noted that the Detroit Future City is not law, nor is it binding. *Id.* The findings and suggestions are at most aspirations. *Id.*

30. *Id.*

31. *Id.* at 205. Although the DFC is careful to avoid naming high vacancy neighborhoods, which presumably would lead either to land speculation or further exodus, the DFC did recognize by name the historic neighborhoods of Grandmont Rosedale and Indian Village. *See id.* Other Detroit historic neighborhoods like Boston-Edison, Palmer Park, Woodbridge, and Corktown also appear to be in low vacancy neighborhoods according to the Detroit Works Project. *See Market Map*, DETROIT WORKS PROJECT (image); *Framework Zones*, DETROIT WORKS PROJECT (image). The DETROIT WORKS PROJECT no longer provides the referenced images, which are on file with the author.

32. DETROIT WORKS PROJECT, *supra* note 4, at 290.

33. To achieve change, the DFC establishes framework zones based on vacancy rates meant to guide investment decisions. *Id.* at 102. From the DFC's studies, three levels of vacancy were established: low, medium, and high, with each zone yielding a different plan. *Id.* at 104. There is also a greater Downtown zone, which is tailored to the unique aspects of Downtown Detroit's skyscrapers. *Id.* This Note focuses solely on historic home preservation.

34. *Id.*

have websites dedicated to showcasing such properties.³⁵ Surveys of available properties range from \$15,300 to \$174,300.³⁶ One property, 2512 W. Boston, was previously listed for \$43,000 and consisted of 3,446 square feet with five bedrooms and three bathrooms.³⁷ The listing comment included, “A LITTLE TLC AND YOURE [sic] GOOD TO GO.”³⁸

Clearly these historic homes offer value, but the TLC can be more expensive than the home’s purchase price. In Detroit’s Indian Village neighborhood, one of the most prestigious and well cared for historic Detroit neighborhoods, a 3,600 square foot home sold for \$50,000.³⁹ After being vacant for two years, the home required \$60,000-\$70,000 worth of repairs to replace broken pipes, install a new furnace, and repair a porch.⁴⁰

Although every property will require a different amount of rehabilitation investment, informed buyers may shy away from homes that require so many repairs that, if performed, would exceed the home’s resale value.⁴¹ Further, add into the equation Detroit’s high tax rate, and prospective buyers and current owners of Detroit’s historic homes need incentives to invest in these historic neighborhoods.

C. Changing Times: Detroit’s Current Legal Mechanism to Encourage Historic Preservation Is Ineffective

Historic preservation laws, such as Detroit’s Historic Landmarks and Districts ordinances of 1976 (Ordinances),⁴² are relatively recent legal concepts enacted to stop the demolition of historic buildings. A brief history of historic preservation laws illustrates that the purpose of these laws was to prevent demolition rather than provide incentives to restore historic buildings.

In the early twentieth century, as America’s cities grew and new building techniques became common, cities started enacting zoning laws

35. *Homes for Sale*, HISTORIC BOSTON EDISON, <http://www.historicbostonedison.org/forsale/forsale.shtml> (last visited Feb. 23, 2014).

36. *Id.*

37. 2512 W. Boston Blvd., REALTOR.COM, http://www.realtor.com/realstateandhomes-detail/2512-W-Boston-Blvd_Detroit_MI_48206_M36689-89676 (last visited Mar. 31, 2013).

38. *Id.*

39. Guest, *supra* note 5.

40. *Id.*

41. Rothfeder, *supra* note 13.

42. DETROIT, MICH., CODE § 25-2 (2012); *The Detroit Historic District Commission*, DETROIT HISTORIC DISTRICT COMMISSION, <https://www.detroitmi.gov/historic/> (last visited Feb. 25, 2014).

to try to prevent the destruction of historic buildings to make room for new buildings.⁴³ By 1926, property owners challenged zoning laws as an unlawful taking of property without just compensation, yet the laws were upheld under the rationale that benefits inured to both owners and cities.⁴⁴ Federal historic preservation laws were passed in 1966 after the federal urban renewal and highway-building programs of the 1950s and early 1960s gutted historic buildings.⁴⁵ Yet, it took until the 1970s, with the national environmental movement, to see the wide-scale passage of local historic preservation ordinances.⁴⁶

Detroit's Ordinances, enacted in 1976,⁴⁷ are an example of local preservation ordinances that aim to prevent demolition rather than incentivize the restoration of historic houses. A review of the Ordinances demonstrates that Detroit's preservation laws were structured for an era in which interest in Detroit homeownership was plentiful and laws were needed to prevent homeowners from demolishing their homes and building anew or making major alterations that destroyed a building's historic character.⁴⁸

The Ordinances established the Detroit Historic Commission (Commission), which is a volunteer body of professionals appointed by the mayor.⁴⁹ Today, the Commission typically becomes involved when a historic property owner seeks to modify his or her property,⁵⁰ although a private demolition of a historic home also requires review.⁵¹ In the case

43. A HANDBOOK ON HISTORIC PRESERVATION LAW 3-4 (Christopher J. Duerksen ed., 1983).

44. *Id.* at 5 (discussing *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926)).

45. *Id.* at 8-9.

46. *Id.* at 12-13.

47. *See* DETROIT, MICH., CODE § 25-2-1 (2012). A local government's ability to regulate private property for the benefit of historic preservation was cemented in *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978). New York's Historic Commission rejected plans by Penn Central's owners to build an office tower over the train station. *Id.* at 117. Penn Central appealed New York City's law all the way to the Supreme Court and argued that the law was a taking that required just compensation. *Id.* at 122. The Supreme Court rejected Penn Central's arguments. *Id.* at 130. The Court found that New York City's preservation law was not an arbitrary taking of a single property owner's property rights, but rather a comprehensive, citywide plan to benefit all of New York, which was similar to zoning laws. *Id.* at 134-35.

48. *See* David M. Thoms, Comment, *Historic Preservation: Detroit's Ordinance Almost Puts It All Together*, 55 U. DET. J. URB. L. 807 (1977).

49. DETROIT, MICH., CODE §§ 25-2-50 to -51 (2012).

50. *See id.* § 25-2-55(2). The Commission's power is limited to properties within designated historic districts. *Id.* A list of historic districts is found at § 25-2-65 through § 25-2-184.

51. *Id.* § 25-2-23 (requiring the Historic District Commission to hold a public hearing when demolitions, additions, or new buildings are sought in a historic district).

of modifying a historic home, the owner submits building plans to the Commission, and the Commission decides whether to issue a building permit depending on whether the remodeling plans are consistent with the property and neighborhood.⁵²

The Commission also has limited enforcement power.⁵³ For example, the Commission may investigate a complaint from neighbors when homeowners do not obtain the required permits for repair work.⁵⁴ Upon finding a violation, the Commission can fine the homeowner.⁵⁵ The Commission may also fine a property owner for failing to maintain his or her historic building.⁵⁶

However, herein lies the problem: The Commission's enforcement power ceases to be effective once owners walk away from their home and the property reverts to government through tax foreclosure proceedings.⁵⁷ Moreover, unlike booming cities such as Miami and Phoenix where property owners wish to demolish historic homes and build anew,⁵⁸ Detroit faces the opposite problem of fleeing owners and too few buyers.

In light of Detroit's present problems, Detroit's current regulatory approach to historic home preservation is ineffective. However, historic preservation is vital to rebuilding Detroit. All levels of government

52. *Id.*

53. *Id.* § 25-2-10.

54. DETROIT, MICH., CODE § 25-2-10 (2012).

55. *Id.* § 25-2-10(c).

56. *Id.* § 25-2-10(a). This is often known as demolition by neglect, which is defined as a lack of maintenance or repair of a building that leads to deterioration of roofs or walls. *Id.* § 25-2-2.

57. Meaningful enforcement requires a building owner that can be located and is able to pay the fine. Homeowners also find ways of exploiting loopholes in tax foreclosure laws. For example, homeowners let their home fall into tax foreclosure and then repurchase their home at auction to erase the home's tax debt. Christine MacDonald & Mike Wilkinson, *Half of Detroit Property Owners Don't Pay Taxes*, DETROIT NEWS (Feb. 21, 2013), <http://www.detroitnews.com/article/20130221/METRO01/302210375>.

58. Lizette Alvarez, *A Fight Over Historic Preservation Brews in Art Deco Country*, N.Y. TIMES, Jan. 16, 2013, at A11, available at <http://www.nytimes.com/2013/01/16/us/miami-beach-preservationists-push-to-protect-home.html>; Fernanda Santos & Michael Kimmelman, *Sale Assures Wright House Preservation*, N.Y. TIMES, Dec. 21, 2013, at A19, available at <http://www.nytimes.com/2012/12/21/us/wright-house-in-phoenix-is-sold-after-fight-for-preservation.html>. Unfathomable in Detroit, a buyer bought a historic Miami home for \$7.6 million and then sought to tear it down. Alvarez, *supra*. Similarly, in Phoenix, a buyer bought a Frank Lloyd Wright home for \$1.8 million and sought to tear it down. Santos & Kimmelman, *supra*. The new owners planned to build several new homes on the site, but after an outpouring of concern, plans to demolish the home were scrapped. *Id.*

should reexamine the legal mechanisms available via historic preservation laws to solve Detroit's vacant housing dilemma.

III. ANALYSIS

An analysis of current government programs nationwide is required to determine the best mechanism for encouraging Detroit historic home preservation. This Note analyzes legal mechanisms among federal, state, and local levels, which are subdivided by each government's ability to encourage historic preservation through the powers of regulation, spending, and taxing.

A. Federal Government's Limited Role in Encouraging Detroit Residential Historic Preservation

The federal government recognizes the importance of historic preservation through congressional legislation,⁵⁹ through spending federal dollars on urban programs through federal agencies,⁶⁰ and through offering tax credits to businesses that rehabilitate historic structures.⁶¹ While decisions on regulation and tax credits are largely decided at the federal level, federal agencies cede much decision-making ability to Detroit to decide how to spend federal dollars.⁶²

1. Federal Preservation Legislation Has a Limited Impact on Historic Detroit Homeowners

The Historic Preservation Act of 1966⁶³ (Preservation Act) is the most important historic preservation legislation passed by Congress.⁶⁴ The Preservation Act established the National Register of Historic Places, which is a national inventory of historic structures.⁶⁵ The

59. 16 U.S.C.A. § 470 (West 2012).

60. *See* 42 U.S.C.A. § 5301 (West 2012).

61. NAT'L PARK SERV., HISTORIC PRESERVATION TAX INCENTIVES 2-3 (2012), available at <http://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>; 26 U.S.C.A. § 47 (West 2012).

62. *See* 24 C.F.R. § 91.15(a)(1) (2009) (requiring a plan from the local community on how federal money will be spent).

63. 16 U.S.C.A. § 470 (West 2012).

64. *See* NORMAN TYLER ET AL., HISTORIC PRESERVATION: AN INTRODUCTION TO ITS HISTORY, PRINCIPLES, AND PRACTICE 46 (2009). Before this time, the federal government made little effort to encourage historic preservation. *Id.* at 30. Early federal government "preservation" consisted of parks like Yellowstone and Mesa Verde. *Id.* at 30-31.

65. *Id.* at 47.

Preservation Act also establishes a preservation advisory board.⁶⁶ This board is empowered to comment on federally funded projects that could alter buildings on the National Register.⁶⁷

Even though federal recognition of historic preservation is commendable, the Preservation Act does little to encourage historic Detroit preservation. The key trigger, which Detroit often lacks, is federal funding behind the project.⁶⁸ Further, even if the Preservation Act requires review, the preservation advisory board only has the power to comment, but not stop a project or even alter its course.⁶⁹

2. Federal Funding Is Controlled by the Local Government, but Detroit Is Incapable of Managing the Funding

The Department of Housing and Urban Development (HUD) administers several spending programs, including the Community Development Block Grant (CDBG) program.⁷⁰ Enacted in 1974, Congress intended CDBG spending to be used by urban communities to conserve older urban areas, increase population growth, and spur economic growth.⁷¹ There are few statutory limitations on spending.⁷² Local governments have discretion to choose which programs are funded and the amounts, and they are only required to submit an annual plan on how money will be spent.⁷³

As an example of the program's discretion, federal dollars can be spent on construction projects such as increasing energy efficiency of

66. 16 U.S.C.A. § 470(i) (West 2012).

67. *Id.* § 470(f).

68. *See id.*

69. *See* TYLER ET AL., *supra* note 64, at 53. The burden is on the applicant to get on the National Register, which requires filing exhaustive documentation on the property's eligibility. MICH. STATE HOUS. DEV. AUTH., LISTING PROPERTY IN THE NATIONAL REGISTER OF HISTORIC PLACES IN MICHIGAN: THE PROCESS & REQUIREMENTS 1 (2011), available at http://www.michigan.gov/documents/mshda/mshda_shpo_NR_intro_letter_2011_348904_7.pdf. There are layers of review, including a preliminary evaluation by the State of Michigan State Historic Preservation Office (SHPO), preparation of the national registration nomination materials by the applicant, approval of the nomination materials by SHPO, and then presentation to the SHPO Review Board before submission to the National Registry. *Id.* Further, even if a historic home gets on the National Register and there is a proposed action allowing comment, the comment process is labor-intensive and difficult for community members to participate in. LESLIE E. BARRAS, SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT: BACK TO BASICS 39-40 (2010), available at http://www.preservationaction.org/Reports/SECTION106_RPT_PT1_FINAL.pdf.

70. 42 U.S.C.A. § 5301 (West 2012).

71. *Id.*

72. *See id.*

73. 24 C.F.R. § 91.15(a)(1) (2009).

buildings,⁷⁴ neighborhood code enforcement to prevent the decline of neighborhoods,⁷⁵ and even rehabilitation of private buildings.⁷⁶ However, there is one caveat: at least 70% of the federal dollars must be used on projects that benefit low- and moderate-income citizens.⁷⁷

The CDBG program is based upon a standardized formula⁷⁸ and will provide Detroit \$33.3 million for the 2012-2013 budget year.⁷⁹ Notwithstanding that Detroit is charged with earmarking spending each year, remarkably Detroit has failed to spend an accumulated \$70 million dollars in CDBG funds over the past three years.⁸⁰

Although spending the accumulated \$70 million on historic preservation is desirable, even if Detroit could manage the CDBG funds,⁸¹ the majority of the funding of historic home projects would need to be directed to low- and moderate-income residents.⁸² Rather, a better use of CDBG funds would be to pay for low- and moderate-income programs that are now paid for by the City of Detroit's general fund. This would ease the demands on Detroit's budget, and the savings could be used to fund the local government tax incentive program proposed in Part III.C. Furthermore, the CDBG allocation formula includes population in its calculation,⁸³ and as Detroit's population declines, the CDBG funds may decline or disappear entirely.⁸⁴ To isolate a historic

74. 42 U.S.C.A. § 5305(a)(2) (West 2012).

75. *Id.* § 5305(a)(3).

76. *Id.* § 5305(a)(4).

77. *Id.* § 5301. For example, the Department of Housing and Urban Development establishes the income threshold of a low-income person as \$36,600 per year. U.S. Dep't of Hous. & Urban Dev., *Income Limits 2012*, HUD.GOV, http://www.huduser.org/portal/datasets/il/il12/IncomeLimits_Section8.pdf (last visited Mar. 31, 2013).

78. 42 U.S.C.A. § 5306 (West 2012). Some of the factors include the population of the urban community, extent of poverty, and age of housing in the community. *Id.*

79. CITY OF DETROIT PLANNING & DEV. DEP'T, HUD CONSOLIDATED PLAN 2012-2013 DRAFT ACTION PLAN 5 (2012), *available at* <http://www.ci.detroit.mi.us/Portals/0/docs/planning/pdf/archive/2012-13%20Action%20Plan%20Draft.pdf>. The \$33 million in CDBG funds is in addition to \$9.5 million set aside for housing programs for low-income citizens and others with special housing needs. *Id.*

80. Kate Abbey-Lambertz, *Detroit Community Development Grant Funding Piles Up; City Tries To Spend \$20 Million by May*, HUFFINGTON POST (Mar. 6, 2012), http://www.huffingtonpost.com/2012/03/06/detroit-community-development-block-grant-funding_n_1323872.html. Detroit Mayor Bing attributed the lack of spending to information technology problems and vowed to fix the problems before HUD revoked funding. *Id.*

81. *Id.*

82. 42 U.S.C.A. § 5301 (West 2012).

83. *Id.* § 5306. *See supra* text accompanying note 78.

84. 42 U.S.C.A. § 5306(b) (considering population in the equation for funding amounts).

preservation program from outside influences, such as Detroit's declining population, a different legal mechanism is required.

3. Federal Tax Incentives Are Limited to Commercial Preservation Projects

The last legal mechanism the federal government has at its disposal to encourage historic preservation is a federal tax incentive.⁸⁵ However, the current incentive only applies to commercial projects⁸⁶ and thus has no use to the Detroit historic homeowner.

The National Park Service and Internal Revenue Service administer the Federal Tax Incentives for Historic Preservation Program (Federal Tax Credit).⁸⁷ The Federal Tax Credit provides a 20% tax credit equal to 20% of the cost of a historic rehabilitation of a historic property.⁸⁸ The program is highly successful.⁸⁹ The National Park Service reports that nationwide the program has attracted over \$62 billion in private investment on over 38,000 historic properties.⁹⁰

Unfortunately for neighborhood historic districts, the federal tax credit does not apply to owner-occupied residential properties.⁹¹ While expanding the Federal Tax Credit to residential properties is desirable, there are concerns in the preservation community that updates to the federal tax code will eliminate federal preservation tax credits even for commercial projects.⁹² However, about 25 states, not including Michigan,⁹³ have stepped in to offer similar state level tax credits for historic homes.⁹⁴

85. See 26 U.S.C.A. § 47 (West 2012).

86. NAT'L PARK SERV., *supra* note 61, at 4.

87. *Id.*; 26 U.S.C.A. § 47.

88. NAT'L PARK SERV., *supra* note 61, at 3.

89. *Technical Preservation Services: Tax Incentives for Preserving Historic Properties*, NAT'L PARK SERVICE, <http://www.nps.gov/tps/tax-incentives.htm> (last visited May 17, 2013).

90. *Id.*

91. NAT'L PARK SERV., *supra* note 61, at 4.

92. *Talking About the Historic Tax Credit: A Forum Webinar*, NAT'L TRUST FOR HISTORIC PRES. 2 (2012), <http://www.preservationnation.org/information-center/economics-of-revitalization/rehabilitation-tax-credits/additional-resources/advocacy-materials/HTC-Forum-Webinar.pdf>.

93. *State-Only Tax Credits for Historic Properties*, MICH. STATE HOUS. DEV. AUTHORITY, http://www.michigan.gov/mshda/0,4641,7-141-54317_19320_62001-211483--,00.html (last visited Mar. 31, 2013).

94. Harry K. Schwartz, *State Tax Credits for Historic Preservation*, SM056 ALI-ABA 1035, 1037 (2007).

In conclusion, the federal government supports historic preservation through legislation regulating historic properties listed on the Federal Register,⁹⁵ provides federal dollars to urban development programs,⁹⁶ and offers tax credits for commercial developments.⁹⁷ However, these federal government programs fall short of providing incentives to preserve Detroit's historic homes.

B. Michigan State Government's Role in Encouraging Historic Detroit Home Preservation Should Be Expanded

Presently, Michigan's state government provides little encouragement for historic preservation. Regulatory activity occurs at the federal and local levels.⁹⁸ Michigan's spending is limited to educational programs and administration through its state historic preservation office.⁹⁹ Moreover, Michigan's largest opportunity to contribute to Detroit's historic home preservation, a historic rehabilitation project tax credit for residential properties, was eliminated for 2012.¹⁰⁰

1. Michigan Offers Minimal Regulatory Support to Encourage Historic Preservation of Detroit Historic Homes

Presently, Michigan indirectly supports historic preservation by enabling local governments to enact historic preservation ordinances.¹⁰¹ In comparison, states such as New York and South Dakota take an active role in encouraging historic preservation.¹⁰² Both New York and South Dakota require that a preservation review by a state historic preservation

95. See 16 U.S.C.A. § 470 (West 2012).

96. See 26 U.S.C.A. § 47 (West 2012).

97. See 42 U.S.C.A. § 5301 (West 2012).

98. See *supra* Part III.A.1; see also *infra* Part III.C.1.

99. See *SHPO Publications*, MICH. STATE HISTORIC PRES. OFFICE, http://www.michigan.gov/mshda/0,4641,7-141-54317_54760_27123---,00.html (last visited Feb. 25, 2014).

100. *State-Only Tax Credits for Historic Properties*, *supra* note 93.

101. 18 MICH. CIV. JUR. *Mun. Corp.* § 232 (2012). There is much literature on Michigan's Home Rule Act and Detroit's Emergency Manager. See, e.g., Evan Gross, *Michigan: A State of Home Rule, Local Autonomy, and Emergency Managers*, MICH. POL'Y NETWORK (Dec. 3, 2011, 2:13 AM), http://michiganpolicy.com/index.php?option=com_content&view=article&id=1155:michigan-a-state-of-home-rule-local-autonomy-and-emergency-managers&catid=60:urban-affairs-current-issues&Itemid=248.

102. S.D. CODIFIED LAWS § 1-19A-11.1 (2012); N.Y. PARKS REC. & HIST. PRESERV. LAW § 14.09 (McKinney 2012).

office occur when historic properties are affected by state funded projects.¹⁰³ New York goes further by requiring its program offices to the “fullest extent practicable . . . avoid or mitigate adverse impacts” on historic properties.¹⁰⁴

Although New York and South Dakota’s laws apply to projects funded by the state, the laws codify a state interest in historic preservation and elevate the status of historic preservation efforts. Therefore, to increase the State of Michigan’s role in historic preservation activities, Michigan should enact a similar law.

2. Michigan Does Not Fund Historic Preservation Projects

Another area where Michigan fails to encourage historic home preservation is in the area of direct grants to historic homeowners.¹⁰⁵ In contrast, South Dakota offers a grant of \$1,000 to \$25,000 to residential historic property owners for rehabilitation projects.¹⁰⁶ Considering Michigan’s economic problems,¹⁰⁷ it is unlikely that Michigan’s legislature would enact such a spending measure.

However, even if Michigan offered a grant program modeled after South Dakota, the program would benefit only a few of Detroit’s historic

103. See *supra* note 102.

104. N.Y. PARKS REC. & HIST. PRESERV. LAW § 14.09.

105. Michigan provides funding to its State Historic Preservation Office (SHPO). This office has discretion over how to allocate National Park Service grants, but the grants are modest and unavailable to homeowners. *MSHDA – Introduction to the Historic Preservation Grant Program*, MICH. STATE HISTORIC PRES. OFFICE, http://www.michigan.gov/mshda/0,4641,7-141-54317_19320_61958-54145--,00.html (last visited Feb. 25, 2014). For example, in 2012, Michigan awarded \$71,500 in grants to projects across the state. *MSHDA—Previously Awarded Certified Local Government Grants (2003-Present)*, MICH. STATE HISTORIC PRES. OFFICE, <http://www.michigan.gov/mshda/0,4641,7-141-54317-68384--,00.html> (last visited Feb. 25, 2014). Furthermore, applicants for grants must provide matching funds from non-governmental resources, which can range from private donations to volunteer labor. *MSHDA – Introduction to the Historic Preservation Grant Program*, MICH. STATE HISTORIC PRES. OFFICE, http://www.michigan.gov/mshda/0,4641,7-141-54317_19320_61958-54145--,00.html (last visited Feb. 25, 2014).

106. S.D. STATE HISTORIC PRES. OFFICE, DEADWOOD FUND OVERVIEW 1 (2012), available at <http://history.sd.gov/preservation/FundingOpps/DeadwoodFundOverview.pdf>. Most states, however, do not provide funding to residential homeowners. See *Historic Preservation Grants*, VT. AGENCY OF COMMERCE & CMTY. DEV., http://accd.vermont.gov/strong_communities/preservation/grants/historic_preservation (last visited Feb. 25, 2014); *Preservation Resources: Incentives & Grants*, LANDMARKS ILL., <http://www.landmarks.org/incentives.htm> (last visited Feb. 25, 2014).

107. Susan Saulny & Monica Davey, *New Economic Fears Arise in Michigan*, N.Y. TIMES, Nov. 23, 2008, at A24, available at <http://www.nytimes.com/2008/11/23/us/23michigan.html>.

homeowners. South Dakota's grant application advises that homeowners meeting all the criteria still may not receive a grant.¹⁰⁸ The decision ultimately lies with a committee that takes into account factors such as public significance and urgency of grant money for preventing substantial decay of the house.¹⁰⁹ This limitation makes a grant program unavailable to all but the most unique historic homes.¹¹⁰ For Detroit to gain the most benefit from a historic home preservation program, there needs to be a program available to all historic property owners.

3. Michigan Repealed Its Successful State Tax Incentive Program

Michigan offered a successful historic preservation tax incentive program available to residential historic property owners, but it was repealed in 2011.¹¹¹ First enacted in 1998, the tax credit offered residential historic property owners a 25% state tax credit.¹¹²

In the first two years, 205 property owners took advantage of the credit.¹¹³ James Turner, the head of Detroit's largest historic preservation society, Preservation Wayne,¹¹⁴ said that Michigan's tax credit was an invaluable resource for the City of Detroit, saving numerous historic Detroit properties.¹¹⁵ Unfortunately, even in light of all the program's benefits, a new Michigan political landscape in 2011 repealed the program, among several other programs, aiming to balance Michigan's budget.¹¹⁶

108. S.D. STATE HISTORIC PRES. OFFICE, *supra* note 106, at 2.

109. *Id.* at 4-5.

110. "The property is significant to South Dakota history and the project substantially benefits historic preservation and serves as a major public demonstration of historic preservation." *Id.* at 4.

111. Melissa Milton-Pung, *Requiem for Michigan's Historic Tax Credits*, NAT'L TRUST FOR HISTORIC PRES. (June 9, 2011), <http://blog.preservationnation.org/2011/06/09/requiem-for-michigan's-historic-tax-credits>.

112. *Id.* The program required the historic homeowner applicant to provide such documentation as a construction plan and photographs. MICH. ADMIN. CODE r. 206.154 (1998). To prevent abuse, the Michigan legislature included a provision that allowed the state to inspect a home's interior and exterior and revoke the tax credit if abuses were found. MICH. COMP. LAWS ANN. § 206.266(5) (West 2011).

113. MICH. HISTORIC PRES. NETWORK, *INVESTING IN MICHIGAN'S FUTURE* 4 (2002), available at http://www.michigan.gov/documents/hal_mhc_shpo_econ_benies_115616_7.pdf.

114. Preservation Wayne was recently renamed Preservation Detroit. See PRESERVATION DETROIT, <http://preservationdetroit.org> (last visited Mar. 31, 2013).

115. MICH. HISTORIC PRES. NETWORK, *supra* note 113, at 4.

116. Milton-Pung, *supra* note 111.

Ideally, as Michigan's economy rebounds, Michigan should re-enact its historic home tax incentive program. The Michigan tax incentive program would reach more historic homeowners than a grant program like South Dakota's program, which relies on a committee to select projects, or state laws promoting historic preservation similar to those in South Dakota and New York that only require a preservation review when state funding is involved.¹¹⁷ However, recognizing Michigan's changed political climate,¹¹⁸ programs to encourage historic preservation of Detroit homes may be more likely to be implemented at the local level, especially considering the goals outlined in the DFC.

C. The City of Detroit Is Most Able to Encourage Historic Preservation Through New Laws Coupled with the DFC

Of all the levels of government, the City of Detroit has the greatest ability to encourage historic preservation through its powers of regulation and taxation. While Detroit's preservation ordinances are effective when there is an owner, a new tax incentive program offered by Detroit would encourage new ownership of historic homes and investment by current historic homeowners. Moreover, considering the DFC's desire to build upon Detroit's strengths like its historic homes, this Note's proposed tax incentive offers a concrete proposal for Detroit's leaders to implement as part of the DFC's proposed changes.

1. Detroit's Historic Preservation Ordinances Are Only Effective When There Is an Owner

Historic preservation ordinances are common legal mechanisms to encourage historic home preservation in cities across the United States.¹¹⁹ As discussed in Part II, Detroit has historic preservation ordinances and a Historic Commission, but the ordinances are only effective in encouraging historic preservation when there is an owner to fine.¹²⁰ Once

117. South Dakota's residential grant program is only available to homes with a significant contribution to the state's history and that serve as a major demonstration of historic preservation. S.D. STATE HISTORIC PRES. OFFICE, *supra* note 106, at 3. Further, the South Dakota and New York state laws only require review when state funds are used on a historic property. S.D. CODIFIED LAWS § 1-19A-11.1 (2012); N.Y. PARKS REC. & HIST. PRESERV. LAW § 14.09 (McKinney 2012).

118. Milton-Pung, *supra* note 111.

119. See ATLANTA, GA., CODE § 6-4041 (1977); MIAMI, FLA., CODE § 23-1 (2008); S.F., CAL., CODE § 10-1001 (2012).

120. The Commission's enforcement power was recently tested by an out-of-state developer who purchased a historic Detroit house and began dismantling it, allegedly to

the historic home reverts to the City of Detroit, the Historic Commission has no remedies at its disposal to force the city to care for the properties.¹²¹ Furthermore, even if the Historic Commission was granted remedies, it is unlikely that the City of Detroit would be able to care for the properties.¹²²

2. Local Governments Do Not Fund Historic Home Preservation Grant Programs

Another mechanism to encourage historic preservation is Detroit's spending power. Cities generally do not fund historic preservation grants.¹²³ Ideally, as discussed in the DFC, Detroit should maintain the historic homes that it acquires from fleeing owners.¹²⁴ Unfortunately, even if Detroit had the financing to secure and police its vacant historic homes, the homes that are already vacant are likely severely vandalized.¹²⁵ Instead, considering Detroit's limited resources, Detroit should offer a program through which private citizens promise to restore historic homes in exchange for incentives from the City of Detroit.

3. Detroit Government Should Offer Historic Homeowners Tax Incentives

Detroit has at its disposal the power to tax, or more appropriately the power to offer tax incentives, in order to encourage the preservation of its historic homes. Unlike many other U.S. cities, Detroit does not offer tax incentives to historic homeowners.¹²⁶

sell off its architectural elements. Megha Satyanarayana, *Van Dyke Place in Detroit's West Village to be Restored, New Owner Says*, DETROIT FREE PRESS (Dec. 17, 2012, 1:36 AM), <http://www.freep.com/article/20121217/NEWS01/312170060>. The prior owner claimed he was dismantling the architectural elements to find a water leak, but no plans were submitted to the Historic Commission. *Id.*

121. The Commission can seek repairs of a structure and then assess the property owner for costs. DETROIT, MICH., CODE § 25-2-10(a)(2) (2012). However, there is no language authorizing the Commission to tax the City of Detroit for repairs performed on its properties.

122. See Kaffer, *supra* note 23.

123. See *Boston Landmarks Commission*, CITYOFBOSTON.GOV, <http://www.cityofboston.gov/landmarks/default.asp> (last visited Mar. 31, 2013); *Historic Preservation Grant Program*, NYC LANDMARKS PRES. COMM'N, http://www.nyc.gov/html/lpc/html/about/staff_historic.shtml (last visited May 17, 2014) (offering a grant program funded through federal dollars).

124. DETROIT WORKS PROJECT, *supra* note 4, at 101.

125. Kaffer, *supra* note 23.

126. Generous tax incentives are available to certain businesses under the Renaissance Zone program. *Renaissance Zones*, CITY OF DETROIT,

Recognizing that Detroit's tax rate is the highest in Michigan,¹²⁷ this Note takes the position that the most effective tool to encourage historic preservation of Detroit homes is a tax incentive program similar to a program offered in Dallas, Texas.¹²⁸ Such a tax incentive program is likely to be a powerful incentive to invest in a Detroit historic home. In addition, this proposed program fits directly into the DFC's suggestion to rebuild neighborhoods by reducing property taxes¹²⁹ and can be adjusted or phased out once Detroit rebounds.

First, before analyzing the Dallas incentive program and general criticisms of tax incentives, there should be recognition that Detroit government may face difficulty in immediately adopting a tax incentive program. Besides a decline in tax revenue, which this Note addresses below, is a looming question of whether Detroit's leadership can effect change.

In March 2013, Michigan Governor Rick Snyder appointed an Emergency Manager (EM) to oversee Detroit's finances.¹³⁰ The EM law vests the EM with many powers, including transferring decision-making power from Detroit's governing body to the EM.¹³¹ Depending on the viewpoint, this will either be a step towards reducing Detroit's debt obligations or will allow corporations to gut Detroit's municipal assets.¹³²

If the EM is successful in reducing Detroit's debt, once the mayor and city council return to governing Detroit, ideally they will have more resources. Even if the EM is ultimately unsuccessful in reducing debt, one Detroit commentator noted that the DFC should remain as a municipal triage plan and be used to direct limited resources.¹³³ Further, with the DFC's wide array of support from local leaders and

<http://www.detroitmi.gov/DepartmentsandAgencies/RenaissanceZones.aspx> (last visited Feb. 25, 2014).

127. Henderson, *supra* note 8.

128. DALL., TEX., DEV. CODE § 51A-11.205(c)(2) (2013).

129. DETROIT WORKS PROJECT, *supra* note 4, at 213.

130. Bill Vlasic, *Lawyer Outlines Challenges in New Job Fixing Detroit*, N.Y. TIMES, Mar. 15, 2013, at A12, available at <http://www.nytimes.com/2013/03/26/us/detroits-emergency-outlines-challenges.html>.

131. MICH. COMP. LAWS ANN. § 141.1549(2) (West 2013).

132. Darren A. Nichols, *Detroit Emergency Manager Orr Faces Hostility, High Hopes in First Day on Job*, DETROIT NEWS (Mar. 23, 2013), <http://www.detroitnews.com/article/20130325/METRO01/303250342>.

133. Brian Dickerson, *Detroit Future City Plan Confronts Grim Realities and Maps a Plausible Way Forward*, DETROIT FREE PRESS (Jan. 10, 2013), <http://www.freep.com/article/20130110/COL04/301100126/Editorial-Detroit-Future-City-plan-confronts-grim-realities-and-maps-a-plausible-way-forward>.

businesses,¹³⁴ at the worst, the DFC's suggestions and this Note's proposal will take longer to implement.

Looking beyond Detroit's current governing uncertainty, an exemplary tax incentive program to adopt for Detroit is Dallas's ten-year exemption on 100% of a historic property's city taxes.¹³⁵ In order to limit the program to meaningful repairs, the total cost of the eligible rehabilitation expenditures must exceed 25% of the historic home's pre-rehabilitation value.¹³⁶ Once the work is completed and documentation is submitted, the historic homeowner applies for final approval and verification that the work was actually performed.¹³⁷ Furthermore, to prevent abuse, Dallas's program contracts with the historic homeowner to reimburse the city for the exempted taxes if the home is willfully or negligently destroyed.¹³⁸

Tax incentives are not without critics. For example, some see tax incentives in Austin, Texas as benefitting wealthier neighborhoods because there are no caps to exclude wealthy homeowners from applying.¹³⁹ Moreover, there are criticisms that historic preservation tax incentive programs grow beyond their intended scope and are prone to abuse.¹⁴⁰ Particular to Detroit, there are concerns that property tax

134. DETROIT WORKS PROJECT, *supra* note 4, at 345-47.

135. DALL., TEX., DEV. CODE § 51A-11.205(c)(2) (2012). Further, there are several varieties of tax incentive programs; for example, Illinois, Maryland, and Georgia offer statewide incentive programs. *Property Tax Assessment Freeze*, ILL. HISTORIC PRES. AGENCY, <http://www.illinoishistory.gov/PS/taxfreeze.htm> (last visited Mar. 31, 2013); *Local Tax Incentive Programs for Historic Preservation*, MD. HISTORICAL TRUST, http://mhmt.maryland.gov/taxcredits_local.html (last visited May 17, 2014); *State Tax Incentives Programs*, GA. DEP'T OF NATURAL RES. HISTORIC PRES. DIV., <http://georgiashpo.org/incentives/tax/state> (last visited May 17, 2014). One appreciable difference with these programs is that the tax-assessed value is frozen, which translates to the homeowner still owing some amount of tax. *See Property Tax Assessment Freeze, supra*.

136. DALL., TEX., DEV. CODE § 51A-11.205(c)(2)(A). If a home is outside of an approved historic district, the qualified expenditures must exceed fifty percent of the pre-rehabilitation appraised value. DALL., TEX., DEV. CODE § 51A-11.206(b)(1)(B). This pre-rehabilitation value is the appraised value according to the city's appraisal role. DALL., TEX., DEV. CODE § 51A-11.205(a)(9)(B).

137. DALL., TEX., DEV. CODE § 51A-11.201(g)(1). Documentation includes receipts and an architect or engineer's schedule of value to confirm the project's qualified expenses. *Id.*

138. *See id.* § 51A-11.203.

139. *See* Editorial, *Using Landmarks as Loopholes*, AUSTIN AM.-STATESMAN, Dec. 20, 2009, at D2, available at <http://www.statesman.com/news/news/opinion/using-landmarks-as-loopholes/nRYMw/>.

140. Craig Gustafson, *City is Generous with Tax Breaks for Old Homes*, SAN DIEGO UNION TRIB. (Jan. 27, 2008), http://www.utsandiego.com/uniontrib/20080127/news_1n27mills.html. The legislator behind California's property tax

collection is already at a historic low,¹⁴¹ and providing tax incentives would further erode tax income. Lastly, opponents argue that tax dollars are better spent on funding city programs than encouraging private development.¹⁴²

These criticisms can be addressed by modifying Dallas's city tax exemption program to fit Detroit's specific needs. First, to reduce concerns that tax incentives will go to the wealthy, a maximum annual incentive cap should be applied. This would still encourage prospective Detroit historic homeowners of all incomes to restore Detroit homes but would limit the maximum incentive available for the largest projects.

Second, to limit the project from growing beyond its intended purpose, the proposed Detroit program should be limited to established historic neighborhoods as the DFC determines.¹⁴³ Furthermore, as the DFC suggests, neighborhoods should be reevaluated every five years to determine whether resources like the proposed tax incentive should be reallocated to other neighborhoods.¹⁴⁴

Third, to prevent abuse, Dallas's requirement of a 25% ratio of qualified rehabilitation expenses in relation to the assessed value should be adjusted.¹⁴⁵ Due to Detroit's large number of inexpensive historic properties,¹⁴⁶ the ratio of qualified expenses should be raised to encourage homeowners to make meaningful investments.

Fourth, although solutions to Detroit's low rate of property tax collection are beyond this Note, Governor Snyder's appointment of an EM recognizes that Detroit's low property tax collection is one of several areas needing improvement.¹⁴⁷ In addition, Detroit's upcoming mayoral election is already yielding candidates with suggestions on how to address Detroit's tax collection efforts.¹⁴⁸ Further, depending on the success of Detroit's EM in solving Detroit's financial issues, this Note's suggested tax incentive program can be adjusted. For example, in order

incentive, Jim Mills, said he did not envision the program growing as large as it has today when it was enacted in 1972. *Id.*

141. MacDonald & Wilkinson, *supra* note 57.

142. *Id.*

143. The Detroit Future City specifically recognized the strength of two historic Detroit neighborhoods, Grandmont Rosedale and Indian Village. DETROIT WORKS PROJECT, *supra* note 4, at 205. Presumably, other historic neighborhoods would qualify for the proposed tax incentive, too.

144. *Id.* at 101.

145. DALL., TEX., DEV. CODE § 51A-11.205(c)(2)(A) (2012).

146. See 2512 W. Boston Blvd., *supra* note 37; Homes for Sale, *supra* note 35.

147. Joel Kurthy, Snyder: Land Banks May Help Slow Detroit Foreclosures, DETROIT NEWS (Feb. 22, 2013), <http://www.detroitnews.com/article/20130222/METRO01/302220358>.

148. *Id.*

to limit the program's impact on tax income, if a particular historic neighborhood has nearly all of its homes restored, Detroit lawmakers can decide to end the program in that neighborhood.

Similarly, in light of concerns that historic home incentives drain tax revenue better used elsewhere, in the long term, Detroit wins. Under this incentive program, Detroit would gain new residents who rehabilitate historic homes and rebuild neighborhoods. The question becomes one of short-term prioritization between reducing property tax income for a historic preservation incentive or providing funding elsewhere, such as for Detroit's chronically underfunded police and fire departments.¹⁴⁹ The key is to attract new residents, and Detroit needs to find ways to leverage its current assets such as its historic buildings and even its federal funding.

Because Detroit's historic houses have character, are well built, and are inexpensive to purchase, some new buyers remain attracted despite crime and poor fire department response times.¹⁵⁰ In contrast, besides vacant lots with scenic views of the Detroit River, there are whole blocks of inexpensive vacant land devoid of character, and few are interested in building at these locations.¹⁵¹ Further, Detroit has discretion over how to spend \$70 million in unspent federal grant dollars.¹⁵² Although the grants restrict spending to low- and moderate-income citizens,¹⁵³ Detroit can direct the grants to programs for these citizens, which will then free up Detroit dollars to support the tax incentive program.

Lastly, the proposed tax incentive plan should be timed to be implemented with the DFC's plan to return empty streets to fields. As infrastructure is removed, the burden on Detroit's tax income to maintain underused land is reduced, which makes tax income available for the proposed incentive plan.¹⁵⁴

149. See Matt Helms, *Bing: Detroiters to See More Police on Patrol*, DETROIT FREE PRESS (Jan. 23, 2013), <http://www.freep.com/article/20130123/NEWS01/130123044/Detroit-Police-Department-Mayor-Dave-Bing; Suzette Hackney et al., 164 Detroit Firefighters Targeted for Layoffs; Residents Frustrated>, DETROIT FREE PRESS (Jun. 26, 2012), <http://www.freep.com/article/20120626/NEWS01/206260427>.

150. See TYLER ET AL., *supra* note 64, at 238; Guest, *supra* note 5.

151. John Gallagher, *With So Much Space, So Few Options—Detroit's Vast Vacant Lots Are a Burden*, DETROIT FREE PRESS (Apr. 1, 2012), <http://www.freep.com/article/C4/20120401/NEWS01/204010467>.

152. Abbey-Lambertz, *supra* note 80.

153. 42 U.S.C.A. § 5301 (West 2012).

154. See DETROIT WORKS PROJECT, *supra* note 4, at 173 ("Reductions in capacity in low-density areas and wholesale replacement, repurposing, or even decommissioning of [municipal service] networks in areas that are no longer in residential use will drive the cost reductions without the need to reduce the service levels to end users.").

Recognizing Detroit's financial problems, difficult decisions are needed in this chicken and the egg scenario of which comes first: new residents and stronger neighborhoods through an incentive program or spending money elsewhere, perhaps on the police and fire departments. With these competing interests, the proposed incentive program should remain flexible to Detroit's financial needs, and perhaps the proposed incentive duration should be restricted to return properties to the tax rolls sooner than Dallas's ten-year window.

IV. CONCLUSION

Addressing Detroit's vacant housing dilemma requires a new problem-solving approach rather than relying on costly demolition. As the DFC agrees, this new approach should be built upon some of Detroit's most valuable assets like its stock of well-built, attractive historic houses.

However, potential residents are confronted with homes requiring expensive repairs and an already high tax bill that is likely to increase upon the completion of repairs. A tax incentive program, which provides a 100% exemption of city property taxes upon completion of qualified historic renovations, will help make Detroit's historic homes more attractive for restoration.

In the larger context of Detroit's revitalization and current budgetary problems, there is a tradeoff between tax revenues for items like public safety and an incentive plan to bring new residents into Detroit. In the long term, once the proposed tax incentives lapse, more homeowners will be present to pay taxes. Further, Detroit lawmakers can tailor the tax incentive program by neighborhood depending on where growth and stability is needed.

Eventually, once Detroit returns to being a prosperous city, the property tax incentive can be repealed, and Detroit's Ordinances enacted in 1976 to confront the problem of demolishing historic homes will once again be relevant.