

CONFRONTING THE LAND-SHORTAGE PROBLEM IN DETROIT: A PROPOSAL FOR LAND READJUSTMENT

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In my experience, in the real estate business past, success stories are generally not applicable to new situations . . . We must continually reinvent ourselves, responding to changing times with innovative new business models.

- Akira Mori, Japanese real-estate developer¹

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1. Sheila Eugenio, 3 *Tech Trends Helping to Bring New Investors to Real Estate*, ENTREPRENEUR (Mar. 22, 2017), <https://www.entrepreneur.com/article/285911> (internal quotation marks omitted).

I. INTRODUCTION

In April of 2017, Detroit Mayor Mike Duggan stated that Detroit is “almost out of land.”² This statement may have left many people scratching their heads. It has been estimated that Detroit, a city of 139 square miles, has between twenty and forty square miles of vacant land.³ How then can Detroit suddenly be at a loss for land? This paradox highlights one of the most significant problems in both city and real-estate planning: checkerboarding.⁴ Checkerboarding, in a land context, refers to a situation in which an area of land is divided into many separate smaller parcels, each with different features.⁵ Detroit may have miles upon miles of vacant land, but most of those parcels are checkerboarded—subdivided into small one or two-lot parcels that are unfit for any large-scale development.⁶ Plenty of demand exists for large tracts of vacant land in Detroit, but there is astonishingly little supply.⁷ To meet this demand, checkerboarded land must be assembled into larger parcels.⁸ Despite this need, legally and historically there have been few viable mechanisms for land assembly, most of which are no longer feasible.⁹ This leaves the city in a dilemma. What can be done to rectify this shortage of large tracts of land adequate for development?

This Note proposes a new mechanism for land assembly in Detroit: land readjustment. Land readjustment is a technique that several foreign countries have used successfully in real-estate development, but the United States has used limitedly.¹⁰ It allows landowners within a specified district to pool their parcels together into one plat, vote to

2. Chad Livengood, *In a City Without Large Chunks of Vacant Land, Detroit Airport a Tempting Target*, CRAIN'S DET. BUS. (April 25, 2017, 8:00 AM), <http://www.crainsdetroit.com/article/20170425/NEWS/170429898/in-a-city-without-large-chunks-of-vacant-land-detroit-airport-a>.

3. See Kate Davidson, *Detroit Has Tons of Vacant Land. But Forty Square Miles?*, MICH. RADIO (April 18, 2012), <http://michiganradio.org/post/detroit-has-tons-vacant-land-forty-square-miles>; Jack Lessenberry, *Jack Lessenberry: Setting Detroit's Path Means Bold Decisions*, TRAVERSE CITY RECORD-EAGLE, (Oct. 22, 2017), http://www.record-eagle.com/opinion/columns/jack-lessenberry-setting-detroit-s-path-means-bold-decisions/article_6695b74a-70c4-54d1-bd45-f9c52clad768.html.

4. See, e.g., *Land Tenure Issues: Checkerboarding*, INDIAN LAND TENURE FOUND., <https://iltf.org/land-issues/issues/>, (last visited Feb. 28, 2018).

5. *Checkerboard*, CAMBRIDGE DICTIONARY (2018).

6. See Lessenberry, *supra* note 3.

7. Livengood, *supra* note 2.

8. *Id.*

9. See Michael Heller & Rick Hills, *Land Assembly Districts*, 121 HARV. L. REV. 1465, 1468 (2008).

10. Michael M. Shultz & Frank Schnidman, *The Potential Application of Land Readjustment in the United States*, 22 URB. LAW. (ISSUE 2) 197, 198 (1990).

redistribute portions of the land amongst themselves, and then sell the remaining parcels.¹¹ When done properly, land readjustment can consolidate neighborhoods, increase property values, and create new, larger tracts of developable land—encouraging individual landowners to be a part of the process to reap the benefits.¹² Put simply, land readjustment is an innovative new mechanism which, if implemented in the United States, would allow Detroit to reinvent itself in the face of a changing economic landscape that requires larger developable tracts of land.

In analyzing whether land readjustment is a feasible solution to Detroit's land use problems, this Note will first provide background on current land-assembly techniques used in the United States and a brief overview of land readjustment plans used in several foreign countries. Then it will outline the statute proposed by George Liebmann in his article, *Land Readjustment for America: A Proposal for a Statute* (hereinafter referred to as "Proposed Statute").¹³ After outlining applicable portions of the Proposed Statute and providing additional background on relevant Michigan law, this Note will then analyze whether such a statute would comport with current Michigan law. This Note then addresses potential issues with eminent domain, special district law, tax exemptions, funding, and zoning. When the Proposed Statute would conflict with Michigan law, this Note will suggest alternative drafts which would more likely comply. This Note will then address whether such a proposal would be beneficial to Detroit and whether it should be implemented.

Concluding this analysis, this Note asserts that a land readjustment statute could comport with other Michigan law, proposes that Michigan adopt land readjustment, and apply it in Detroit. From this Note's conclusions, the benefits of land readjustment to individual landowners, private developers, businesses, and the city vastly outweigh any practical challenges.

II. BACKGROUND

In the United States, only two land-assembly mechanisms exist: private voluntary cooperation and compulsory purchase by a public

11. *Id.*

12. George Liebmann, *Land Readjustment for America: A Proposal for a Statute*, 32 URB. LAW. 1, 2 (2000).

13. *Id.*

entity.¹⁴ While private land assembly does not force any landowner to cede their home or property without consent, this method entails significant collective action problems.¹⁵ Conflicting interests disincentivize landowners from cooperating in pursuit of a common goal that would benefit the entire group.¹⁶ Once the public at large knows that a private developer is assembling land in a particular district, each landowner has an incentive to wait for the highest possible price.¹⁷ For any development project relying on private land assembly, the typical result is a project that takes decades to complete and becomes exorbitantly expensive.¹⁸ Voluntary land assembly, while free from most legal issues, presents great practical challenges which often defeat a large-scale project at the outset.¹⁹

Compulsory purchase, commonly referred to as eminent domain, overcomes many of the practical limitations of private land assembly but often at the expense of ethical or legal considerations.²⁰ Legally, courts must grapple with Fifth Amendment requirements that the government take the land for a “public use” and provide “just compensation” to the landowner.²¹ As a result, landowners often are undercompensated for their land or forced to relinquish property that they did not want to sell.²² It is a more efficient and inexpensive land assembly system, but it may also be patently unfair to landowners.²³ Furthermore, several states, including Michigan, have enacted eminent domain laws that are more restrictive than the Fifth Amendment and render large-scale eminent domain projects practically impossible.²⁴ Even if a particular taking is

14. Heller & Hills, *supra* note 9, at 1468; see also Robert Home, *Land Readjustment as a Method of Development Land Assembly: A Comparative Overview*, 78 TOWN PLAN. REV. (NO. 4) 459 (2007); Liebmann, *supra* note 12, at 1.

15. Heller & Hills, *supra* note 9, at 1473.

16. See *id.*; see also Keith Dowding, *Collective action problem*, ENCYCLOPEDIA BRITANNICA (2013).

17. Heller & Hills, *supra* note 9, at 1473.

18. *Id.*; see, e.g., Bill Shea, *How Olympia Financed an Arena in a Bankrupt City*, CRAIN'S DET. BUS. (Sept. 10, 2017, 12:01 AM), <http://www.crainsdetroit.com/article/20170910/news/638626/how-olympia-financed-an-arena-in-a-bankrupt-city> (noting Little Caesars Arena: while the arena opened in 2017, the Ilitch family began planning and assembling the land for the arena in the early 1990s, costing approximately \$863 million to complete).

19. Heller & Hills, *supra* note 9, at 1474.

20. *Id.*

21. U.S. CONST. amend. V.

22. See Heller & Hills, *supra* note 9, at 1476.

23. *Id.*

24. James A. Martone, *Rethinking Eminent Domain in Michigan*, 58 WAYNE L. REV. 537, 542 (2012).

legal under federal law, it may be prohibited under state law.²⁵ These additional state restrictions create an even more constrained mechanism for land assembly via compulsory purchase.²⁶

A. Land Readjustment Overview

These standard land assembly methods leave much to be desired. If Detroit is to innovate and reinvent itself in the face of a changing economic landscape that requires larger tracts of developable land, more land assembly mechanisms are needed. Land readjustment is a foreign technique that countries such as Japan, South Korea, Australia, and Germany have used successfully.²⁷ While specific land readjustment programs can vary from country to country, the fundamental principles remain the same:

The land readjustment project generally involves the replatting of already subdivided land and the construction of new or upgraded infrastructure to serve the land. Each participant in the project contributes a portion of his land for public areas, and a portion for financial resource land which is sold to raise funds for project execution, including the construction of infrastructure.²⁸

Each landowner not only contributes his or her property into this new pool of land but also participates in the decision of how to redistribute the land.²⁹ Therefore, existing neighborhood residents are not only afforded an opportunity to remain in the neighborhood but also directly participate in and reap the benefits of the area's economic redevelopment.³⁰ Land readjustment schemes are generally self-financing as the replatting and sale of land brings revenue and increases property values.³¹ This increase in property values creates an economic incentive for landowners to participate in a land readjustment scheme rather than dissent or opt out at the beginning.³²

25. *Id.*

26. *Id.*

27. Shultz & Schnidman, *supra* note 10, at 224.

28. *Id.*

29. *Id.*

30. Gerhard Larsson, *Land Readjustment: A Tool for Urban Development*, 21 HABITAT INT'L 141, 142 (1997).

31. See Home, *supra* note 14, at 461–63.

32. Liebmann, *supra* note 12, at 2.

Land readjustment projects may be initiated and completed entirely by private landowners, though an established legal process generally facilitates cooperation when many landowners are involved.³³ The general framework of this process is outlined as follows:

Under land readjustment, a specified supermajority of owners is permitted to establish a redevelopment area by petition approved by public authority. When its boundaries are established, dissenting owner-occupiers have the right to be excluded. Other dissenters can insist that the petitioners immediately buy them out at an impartially appraised value, a remedy like that given dissenting shareholders in corporate reorganizations. The remaining petitioners then receive proportionate shares in the common enterprise. A committee is elected to manage the enterprise, which either funds construction by borrowing against land values or enters into joint ventures with builders. When work is complete, each petitioner receives either a building representing his pro rata share of the new development, together with fractional cash payments, or a pro rata share as owner in common.³⁴

At its core, land readjustment is a legal technique which gives landowners the opportunity to simultaneously maximize the value of their property, redevelop misused land, and benefit the community as a whole.³⁵ Detroit could use this community-based land redistribution scheme to rehabilitate checkerboarded or blighted neighborhoods without compelling residents to relinquish their existing homes or property.³⁶ Land readjustment can benefit every party involved if it is used in an efficient and equitable manner.³⁷

Each country's land readjustment scheme has unique characteristics.³⁸ Understanding and comparing some of these characteristics may be helpful should Michigan or another state or municipality in the United States adopt land readjustment. Land

33. Larsson, *supra* note 30, at 141.

34. Liebmann, *supra* note 12, at 2.

35. See Shultz & Schnidman, *supra* note 10, at 199-200.

36. Home, *supra* note 14, at 463; *see also* Shultz & Schnidman, *supra* note 10, at 240 ("Obsolete neighborhoods may present one of the best opportunities for remedying the misuse of land . . . It is possible that residential neighborhoods that are no longer appropriate for residential use are the best candidates for land readjustment . . .").

37. *See* Larsson, *supra* note 30, at 142 (outlining a list of potential benefits of land readjustment).

38. Shultz & Schnidman, *supra* note 10, at 224.

readjustment in Germany is almost completely regulated by local authorities from the initiation of the project to its adoption and implementation.³⁹ Projects do not require consent by landowners, and landowners have little influence over both the process and decisions made by the local authorities.⁴⁰ Participation in the land readjustment scheme is compulsory.⁴¹ Landowners only have a right of appeal.⁴² Nonetheless, it is a highly effective and efficient land-use planning technique.⁴³

In contrast, the process in Japan is less regulated by local authorities than in Germany.⁴⁴ Anyone—whether it be the local authorities, a private entrepreneur, a corporation, or an ordinary individual—may initiate a land readjustment project.⁴⁵ Because anyone may initiate a project, the pre-planning process is often extensive.⁴⁶ Most projects are initiated by private associations.⁴⁷ If a private association initiates and plans a project, the impacted landowners must approve the plan by a two-thirds majority.⁴⁸ If a public entity initiates and is responsible for the project, then no vote is necessary, but the project must be approved by a higher governmental authority.⁴⁹

Japan, in particular, has exemplified successful land readjustment in a number of projects.⁵⁰ These projects have shown that land readjustment is possible in densely populated urban areas such as Tokyo and Kobe City.⁵¹ Perhaps the best example of land readjustment lies in Nagakute City, a city of at least 57,000 inhabitants and which has a population density of 2,673 people per square kilometer.⁵² Since 1969, Nagakute City has used a total of nine land readjustment projects to foster development in the city.⁵³ The total area covered by these projects is 599 hectares, or approximately 2.31 square miles.⁵⁴ One particular project,

39. Larsson, *supra* note 30, at 142; Shultz & Schnidmann, *supra* note 10, at 231.

40. Larsson, *supra* note 30, at 143; *see* Shultz & Schnidmann, *supra* note 10, at 231.

41. Larsson, *supra* note 30, at 143; Shultz & Schnidmann, *supra* note 10, at 231–32.

42. Larsson, *supra* note 30, at 143; Shultz & Schnidmann, *supra* note 10, at 231.

43. Larsson, *supra* note 30, at 143; Shultz & Schnidmann, *supra* note 10, at 231–32.

44. Larsson, *supra* note 30, at 146; *see* Shultz & Schnidmann, *supra* note 10, at 225.

45. Larsson, *supra* note 30, at 146; Shultz & Schnidmann, *supra* note 10, at 225.

46. Larsson, *supra* note 30, at 146; *see* Shultz & Schnidmann, *supra* note 10, at 225.

47. Shultz & Schnidmann, *supra* note 10, at 225.

48. Larsson, *supra* note 30, at 146; Shultz & Schnidmann, *supra* note 10, at 225.

49. Larsson, *supra* note 30, at 146–47.

50. *See* MINORU MATSUI, CASE STUDY: “LAND READJUSTMENT IN JAPAN,” (Mansha Chen et. al. eds., 2017), <https://collaboration.worldbank.org/docs/DOC-23643>.

51. *See id.* at 23–31.

52. *Id.* at 19; Nagakute, CITY POPULATION, <http://www.citypopulation.de/php/japan-admin.php?adm2id=23238> (last visited Nov. 11, 2018).

53. MATSUI, *supra* note 50, at 19.

54. *Id.*

the Nagakute Nanbu Land Readjustment Project, sought to develop a new town center complete with schools, residences, businesses, and green spaces.⁵⁵ The project area was 98 hectares, and the land at the beginning of the project was primarily covered by forests and farmland.⁵⁶ Even with 780 landowners participating in the project, the project plan was successfully adopted by a cooperative organized by the landowners.⁵⁷ The project took seventeen years to complete and accomplished several key results.⁵⁸ The project successfully created a new town center to define the city scape, promoted the sales of private residences and stores, and increased the number of residents from 30 to 5,000 people.⁵⁹

The United States has a surprisingly limited experience with land readjustment considering that it was one of the first countries that used a land-pooling technique similar to land readjustment.⁶⁰ In 1791, the L'Enfant Plan for Washington D.C. required affected landowners to transfer their land in trust to President Washington for the design of the city.⁶¹ Once pooled, President Washington either reserved or purchased the land necessary for infrastructure, government buildings, public spaces and other uses.⁶² All remaining land was then redistributed and apportioned equitably among the landowners and the government.⁶³ Despite this auspicious beginning, no state has since adopted similar legislation, although some states have proposed similar legislation.⁶⁴

B. The Proposed Statute

George Liebmann proposed a model statute for states to consider.⁶⁵ His Proposed Statute envisions land readjustment as a key solution to the "depopulation and decay of many American central cities."⁶⁶ Similarly, this Note envisions land readjustment as a solution for Detroit. Although his Proposed Statute is "not suitable for adoption as it stands," it is an

55. *Id.* at 20.

56. *Id.*

57. *Id.*

58. *Id.* at 22-23.

59. *Id.* at 22-23.

60. Shultz & Schnidmann, *supra* note 10, at 234.

61. *Id.*

62. *Id.* at 235.

63. *Id.* at 235.

64. *Id.* at 235; see Home, *supra* note 14, at 478; see also Larsson, *supra* note 30, at 142 ("[I]n the USA several bills have been introduced (but not passed) in the states of California, Hawaii and Florida.").

65. See generally Liebmann, *supra* note 12.

66. *Id.* at 6.

adequate starting point for considering the legal and practical feasibility of land readjustment in Michigan.⁶⁷

1. Initiation of the Land Readjustment Project and Organization of the District

To initiate a land readjustment project, the Proposed Statute requires that “the owners of 25% of the privately owned acreage and representing 25% of the assessed values of all the property with an area . . . file a petition for organization of a Land Readjustment District.”⁶⁸ Then notice is sent to each owner within the district, the appropriate municipal department, and certain civic organizations operating within the district.⁶⁹ Property owners may object to inclusion in the proposed district:

Any objector who shall have been an owner-occupier of property within the proposed district and who shall request to be excluded if the district is created shall be excluded from the boundaries of the proposed district. The municipal council shall provide for a legislative hearing of objections, and shall consider whether the district shall be created notwithstanding the objections.⁷⁰

The property owners within the proposed district then vote on whether to be officially organized and recognized as a Land Readjustment District:

Upon approval of a proposed district by the municipal council, or upon fulfillment of the conditions set forth in a conditional approval, the petitioners shall secure the signatures on the petition of such additional owners as are necessary to secure the assent of owners of two-thirds of the land area and the assessed value in the proposed district. Owner-occupiers electing to be excluded from the district shall be excluded from both the numerator and denominator of this calculation.⁷¹

67. *Id.* at 7.

68. *Id.*

69. *Id.* at 7–8.

70. *Id.* at 8 (expounding on this provision by stating that “[t]he right of owner-occupiers to exclude themselves is included in almost all foreign land readjustment legislation . . .”).

71. Liebmann, *supra* note 12, at 9.

2. Creation of a Land Readjustment Plan

When the district is certified, the property owners of the district elect a board of directors.⁷² The board of directors then adopts a plan of redevelopment:

The Plan may provide for the demolition or reconstruction of some or all the buildings within the district, and for the use of some or all of the land within the district for the purpose of erecting new buildings. The Plan shall include evidence of lack of necessity of any public streets or public easements which are to be vacated or abandoned. The Plan shall describe the old and new configurations of buildings and land uses, and shall contain a budget, a traffic study, a completion schedule, and a description of the basis of profit allocation and of any proposed continuing activities of the District.⁷³

The city may not reject this plan merely because it contains provisions inconsistent with the current zoning ordinance.⁷⁴ Rather, municipal approval of a plan operates as a zoning amendment with the exception that a plan may not increase "overall allowable density of the District absent express amendment of zoning regulations."⁷⁵ The plan must also include the means by which property owners receive compensation, whether that be an "issuance of shares in the Land Readjustment District or the distribution in kind of redeveloped land accompanied by monetary adjustments."⁷⁶ During this time, the Proposed Statute requires the municipal council to continuously provide notice of assessed property values to landowners within any certified or proposed Land Readjustment District to ensure adequate knowledge of property values.⁷⁷

3. The Adoption Meeting and Rights of Dissenters

When a plan is proposed to the district, an adoption meeting is held and the community may vote on the proposed plan.⁷⁸ The statute is silent

72. *Id.* at 10.

73. *Id.* at 11.

74. *Id.* at 11-12.

75. *Id.* at 12.

76. *Id.* at 12.

77. Liebmann, *supra* note 12, at 10.

78. *Id.* at 13.

on the requisite majority vote to adopt the plan, but it provides for the rights of dissenters should the plan be adopted:

Any owner within the Land Readjustment District dissenting from adoption of the Plan by vote at the adoption meeting may, by notice given within thirty days of such meeting, demand payment for his property in cash. Upon such demand, which shall be irrevocable, within sixty days thereof, the Land Readjustment District must either (1) pay such owner in cash the value of his property as determined by the assessment provided for in Section 7 . . . or (2) deliver to such owner subject to the rights of lienholders shares in the District reflecting the pro rata value of his property to the total value of the District, and pay to such owner . . . in cash the amount by which the then current market value of the shares falls short of the assessed value of the property. If such payment is not made, the land shall thereafter be deemed excluded from the Land Readjustment District. Until payment is made, the District shall not enter upon, deny access to, or take any other action relating to the dissenting owner's land. Upon such payment, the property shall belong to the District, and the landowner may challenge the adequacy of compensation by the procedures applicable to "quick-take" eminent domain proceedings.⁷⁹

The rights of any lienholder, private or public, are unaffected by the adoption of a plan and attach to the owner's interest in the district rather than the property itself.⁸⁰ Likewise, tenants have the same legal rights after adoption as they did before, and the district retains any legal right possessed by the former landlord.⁸¹ The municipality, if formerly an owner of property in the district, has the same rights as any other private property owner.⁸² Any land transfer made pursuant to the plan "shall be exempt from state or municipal transfer or recordation tax."⁸³ The statute also confers upon the board of directors the necessary powers and immunities needed to facilitate implementation of the plan.⁸⁴

79. *Id.* at 13 ("Recent Supreme Court cases leave little doubt that compulsory inclusion of a property in a land readjustment project constitutes a compensable taking at least at the point of physical entry, since the right to exclude is a basic property right.").

80. *Id.* at 14–15.

81. *Id.* at 15–16.

82. *Id.* at 16.

83. Liebmann, *supra* note 12, at 19.

84. *Id.* at 18.

4. Implementation of the Plan and Reallocation of Parcels

If the landowners receive shares of the district as compensation, the board of directors has the authority to manage those shares with the same rights and responsibilities of any business corporation.⁸⁵ If, however, the landowners are to receive reallocated or redeveloped parcels as compensation, the statute provides:

Upon completion of the plan, parcels shall be distributed to owners in accordance with the Plan. The value of the parcels distributed shall be determined for both allocation and tax purposes by a special reassessment pursuant to Section 7, subject to the appellate remedies provided for tax assessments. Owners whose share of the total property being distributed is less than their share of contributed property . . . shall be compensated by the District by [an additional payment]. Owners whose share of the total property being distributed exceeds their share of contributed property . . . shall be assessed a payment, which shall be a lien against their property until paid⁸⁶

C. Applicable Michigan Law

Liebmann's Proposed Statute is only intended to raise legal and practical questions on the feasibility of land readjustment in the United States.⁸⁷ To assess the feasibility of Liebmann's Proposed Statute in Detroit, this Note must provide further background on the current relevant law in Michigan.

1. Eminent Domain

Eminent domain is described as the "power of a governmental entity to take private property for a public use without the owner's consent."⁸⁸ The government derives this power of eminent domain from the common law.⁸⁹ The Fifth Amendment to the Constitution limits this power, stating that "private property [shall not] be taken for public use, without just

85. *Id.* at 17.

86. *Id.* at 17–18.

87. *Id.*

88. *Rex Realty Co. v. City of Cedar Rapids*, 322 F.3d 526, 528 (8th Cir. 2003); *see also* 26 AM. JUR. 2D EMINENT DOMAIN § 2 (2017).

89. *Kohl v. United States*, 91 U.S. 367, 376 (1875) ("The right of eminent domain always was a right at common law.").

compensation.”⁹⁰ Despite this limitation, the Supreme Court takes a “deferential approach to legislative judgments” and gives wide discretion to the government to limit the burden of “just compensation” and “public use.”⁹¹ However, federal eminent domain law only provides a legal floor for eminent domain law. Many states, including Michigan, impose even greater restrictions on a state government’s power to take private property.⁹²

The Michigan Constitution mirrors the language of the Fifth Amendment as to public use and just compensation requirements:

Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law . . . “Public use” does not include the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenues. Private property otherwise may be taken for reasons of public use as that term is understood on the effective date of the amendment to this constitution that added this paragraph.⁹³

Although the definition of “public use” under the Michigan Constitution is clearer than in the U.S. Constitution, it is not inherently clear whether the government may transfer property to a private entity for economic development purposes. Does economic development constitute a “public use” to allow the government to transfer condemned property to a private entity?⁹⁴ Resolution of this issue is paramount to land readjustment because readjusted and re-platted land will be transferred to a private entity for development.

The Michigan Supreme Court decided in *County of Wayne v. Hathcock*, that the “public use” requirement does not allow the government to take private property for economic development reasons.⁹⁵ Rather, the government may transfer condemned property to a

90. U.S. CONST. amend. V.

91. See *Kelo v. City of New London*, 545 U.S. 469, 482 (2005); *Berman v. Parker*, 348 U.S. 26 (1954).

92. See Martone, *supra* note 24, at 540–42 (providing a thorough background on federal eminent domain law and the limitations that states may additionally impose on the government).

93. MICH. CONST. art. X, § 2; see also U.S. CONST. amend. V.

94. See *Poletown Neighborhood Council v. City of Detroit*, 410 Mich. 616, 632, 304 N.W.2d 455, 458 (1981) (stating that, in general, the government may not transfer condemned property for a private use).

95. 471 Mich. 445, 684 N.W.2d 765 (2004); see also Martone, *supra* note 24, at 544–547.

private entity only in a few circumstances.⁹⁶ This holding was in turn adopted into the Michigan Constitution and is the interpretation that controls today.⁹⁷ In *Hathcock*, Wayne County initiated condemnation actions against nineteen parcels of land south of Detroit Metropolitan Airport which the county intended to transfer to a private developer to increase economic development in the area.⁹⁸ In initiating this action, Wayne County relied on the Michigan Supreme Court's decision in *Poletown Neighborhood Council v. City of Detroit*, which held that a municipal government may transfer condemned land to a private entity to "accomplish the essential public purposes of alleviating unemployment and revitalizing the economic base of the community."⁹⁹ Even though a private entity may benefit from the transfer, the court in *Poletown* concluded that an economic development rationale was sufficient to satisfy the "public use" requirement.¹⁰⁰

While federal courts have adopted the economic development rationale,¹⁰¹ the *Hathcock* court relied instead on the Justice Ryan's dissent in *Poletown* and overturned the decision.¹⁰² The court prohibited the government from taking private property and transferring it to a public entity unless one of three requirements is satisfied.¹⁰³ First, condemned land may be transferred to a private entity if the transfer involved a "public necessity of the extreme sort otherwise impracticable."¹⁰⁴ Generally, this "necessity" refers to acquisitions of land for "highways, railroads, canals, and other instrumentalities of commerce."¹⁰⁵ Second, the government may transfer condemned property to a private entity when the entity itself "remains accountable to the public in its use of the property."¹⁰⁶ These types of entities are generally public utility companies.¹⁰⁷ Finally, condemned land may be

96. *Hathcock*, 471 Mich. at 478, 684 N.W.2d at 783.

97. MICH. CONST. art. X, § 2.

98. *Hathcock*, 471 Mich. at 450, 684 N.W.2d at 770.

99. 410 Mich. 616, 634, 304 N.W.2d 455, 459 (1981).

100. *Id.*

101. See *Kelo v. City of New London*, 545 U.S. 469, 485 (2005) ("Clearly, there is no basis for exempting economic development from our traditionally broad understanding of public purpose.").

102. *Cty. of Wayne v. Hathcock*, 471 Mich. 445, 475–82, 684 N.W.2d 765, 783–87 (2004).

103. *Id.*

104. *Id.* at 473, 684 N.W.2d at 781 (quoting *Poletown*, 410 Mich. at 478, 304 N.W.2d at 675 (Ryan, J., dissenting)).

105. *Id.* at 473, 684 N.W.2d at 781 (quoting *Poletown*, 410 Mich. at 478, 304 N.W.2d at 675 (Ryan, J., dissenting)).

106. *Id.* at 473, 684 N.W.2d at 782.

107. See, e.g., *Lakehead Pipe Line Co. v. Dehn*, 340 Mich. 25, 64 N.W.2d 903 (1954); *Bd. of Health of Twp. of Portage v. Van Hoesen*, 87 Mich. 533, 49 N.W. 894 (1891).

taken and transferred to a private entity when the condemned land is “itself based on public concern.”¹⁰⁸ This means that the condemnation action itself, rather than the eventual use of the land, was done for public purposes.¹⁰⁹ Generally, this action refers to the “need to remedy urban blight for the sake of public health and safety.”¹¹⁰ Therefore, even though federal law allows the transfer of condemned property to a private entity for economic development purposes, Michigan law does not.

2. *Special Districts*

An enacted land readjustment statute may establish that a district has the authority and privileges of a special district. All legislative power in Michigan is “vested in a senate and a house of representatives.”¹¹¹ This legislative authority includes the power to create special purpose districts.¹¹² These districts are political subdivisions of the state¹¹³ and are “independent, special purpose governmental units that exist as separate entities with substantial administrative and fiscal independence from general purpose local governments.”¹¹⁴ These types of governments are widely used to provide a single specific service to the public.¹¹⁵ The Michigan legislature has adopted many provisions enabling local units of government to create special districts.¹¹⁶ These districts have the right to tax its residents or landowners (and only those residents or landowners) to pay for the special services provided within the district.¹¹⁷ These

108. *Hathcock*, 471 Mich. at 475, 684 N.W.2d at 782–83 (2004).

109. *Id.*

110. *Id.* at 476, 684 N.W.2d at 783; *see also In re Slum Clearance in Detroit*, 331 Mich. 714, 50 N.W.2d 340 (1951).

111. MICH. CONST. art IV, § 1.

112. *See Voigt v. Detroit*, 123 Mich. 547, 549, 82 N.W. 253, 254 (1900); 1 McQUILLIN MUN. CORP. § 2:28 (3d ed. 1999); *see also* 56 AM. JUR. 2d MUN. CORPS., COUNTIES, AND OTHER POL. SUBDIVISIONS § 9 (2017).

113. 56 AM. JUR. 2d MUN. CORPS., COUNTIES, AND OTHER POL. SUBDIVISIONS § 9 (2017).

114. U.S. CENSUS BUREAU, *Population of Interest-Special Districts*, <https://www.census.gov/programs-surveys/gus/technical-documentation/methodology/population-of-interest.html> (last visited Nov. 30, 2017).

115. *Id.*

116. *See, e.g.*, MICH. COMP. LAWS ANN. § 104A.5 (West 2019); MICH. COMP. LAWS ANN. § 42.31 (West 2019); MICH. COMP. LAWS ANN. § 125.2469; MICH. COMP. LAWS ANN. § 117.4d (West 2019).

117. *See Voigt v. Detroit*, 123 Mich. 547, 550–51, 82 N.W. 253, 254 (1900) (“It is wrong that a few should be taxed for the benefit of the whole, and it is equally wrong that the whole should be taxed for the benefit of a few . . . The same principle of justice requires that, where taxation for any local object benefits only a portion of a city or town, that portion only should bear the burden.”).

districts may be created by either the legislature or a local unit of government so long as the legislature has empowered the local government.¹¹⁸ In *Voigt v. City of Detroit*, the court stated that, "[t]he establishment of the special assessment district, in the one instance by the legislature, and in the other instance by the common council, is the exercise of a legislative power, with which the courts will not ordinarily interfere."¹¹⁹

Special districts also constitute an exception to the 'one person, one vote' principle established in *Baker v. Carr*.¹²⁰ The U.S. Supreme Court in *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.* and *Ball v. James* held that special districts may limit the ability to vote to a particular class.¹²¹ In each case, the state legislature provided that only landowners, and not tenants or other residents, could vote in a particular special district election.¹²² The Supreme Court upheld these restrictions, reasoning that the legislature could limit the voting ability to only landowners without running afoul of the Equal Protection Clause because the landowners would bear the costs of the district.¹²³ Legislation that establishes a voting scheme limiting the ability of citizens within the district to vote is constitutional as long as it "bears a reasonable relationship to its statutory objectives."¹²⁴

3. Tax Exemptions and Funding

Land readjustment projects may provide for some form of tax exemptions as a method to overcome financing or participation issues.¹²⁵ Under the Michigan Constitution, the legislature has the authority to impose taxes,¹²⁶ but with the requirement that the taxation power "never be surrendered, suspended or contracted away."¹²⁷ Outside of this general mandate, the Michigan Constitution contains no provisions addressing

118. *Id.* at 552, 82 N.W. at 255.

119. *Id.*

120. *Baker v. Carr*, 369 U.S. 186 (1962).

121. *Ball v. James*, 451 U.S. 355 (1981); *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.* 410 U.S. 719 (1973).

122. *Ball*, 451 U.S. at 359; *Salyer*, 410 U.S. at 724.

123. *Ball*, 451 U.S. at 370-71; *Salyer*, 410 U.S. at 731; *see also* U.S. CONST. amend XIV.

124. *Ball*, 451 U.S. at 371.

125. *See Shultz & Schnidman, supra* note 10, at 238 ("[T]ax benefits for properties within land readjustment projects can aid in overcoming the financial barriers to land readjustment.").

126. MICH. CONST. art. IX, § 1.

127. *Id.* at § 2.

the permissibility of tax exemptions.¹²⁸ However, courts have interpreted the tax-levying provision of the Michigan Constitution to include the power to exempt property from any taxation.¹²⁹ This gives the legislature broad authority to “create, grant, and deny exemptions.”¹³⁰ The power to grant exemptions in potential contracts with private entities does not run afoul of the Michigan constitutional requirement that the taxation power not be “surrendered, suspended or contracted away.”¹³¹

Most land readjustment projects will also require funding at the outset, which may come from the legislature.¹³² Though the legislature has the power to provide funding for any law, it is constitutionally prohibited from imposing new requirements on local units of government without providing funding.¹³³ This restriction prohibits states from imposing “unfunded mandates.”¹³⁴ The Michigan legislatures cannot require “a new activity or service or an increase in the level of activities or services” without an appropriation.¹³⁵ If a statute is called into question as a potential unfunded mandate, the state must show that any statutory requirement does not “actually increase costs or the increased costs were not necessary.”¹³⁶ If such a requirement is imposed, the state must appropriate funds for any necessary increased costs.¹³⁷

128. 23 MICH. CIV. JUR. TAXES § 95 (2017).

129. *Fed. Res. Bank of Chi. v. Dep’t of Revenue*, 339 Mich. 587, 592, 64 N.W.2d 639, 642 (1954) (“The tax-levying power vested in the legislature includes the power to exempt therefrom so long as classifications made for that purpose are based, as here, on substantial distinctions and are in accord with the aims sought to be achieved by the act.”).

130. *Frost-Pack Distrib. Co. v. Grand Rapids*, 52 Mich. App. 694, 699, 218 N.W.2d 75, 78 (1974), *rev’d on other grounds*, 399 Mich. 664, 252 N.W.2d 747 (1977); *see also In re Auditor General*, 199 Mich. 489, 490, 165 N.W. 771, 771 (Mich. 1917) (“There being no constitutional restriction on this power of the Legislature, it follows that it can exercise the power of exemption as it chooses.”); *The General Property Tax Act, Real Estate Exemptions*, MICH. COMP. LAWS ANN. §§ 211.7–211.7nn (West 2019).

131. MICH. DEP’T OF ATT’Y GEN., OP. NO. 5484 (1979).

132. *See Shultz & Schmidman, supra* note 10, at 238 (“[M]ost land readjustment programs are characterized by some level of government subsidization, at least in the initial stages of project formulation.”).

133. MICH. CONST. art. IX, § 29.

134. *Adair v. State*, 497 Mich. 89, 95–96, 860 N.W.2d 93, 96 (2010).

135. *Id.* at 102, 860 N.W.2d at 100 (citing MICH. CONST. art. IX, § 29).

136. *Id.* at 106, 860 N.W.2d at 102.

137. *Id.* at 102, 860 N.W.2d at 100.

4. Zoning

Michigan law allows local units of government to regulate and zone land to promote the general “health, safety, and welfare” of the public.¹³⁸ Michigan law requires a local unit of government to establish a zoning commission that has the authority to zone and rezone parcels of land.¹³⁹ In Detroit, that zoning commission is the City Planning Commission.¹⁴⁰ If a landowner wants to change the zoning restrictions of a particular parcel, the landowner may petition the City of Detroit to rezone the parcel or grant a variance.¹⁴¹

If a landowner wants to rezone a parcel, he or she must first petition the City Planning Commission for a zoning map amendment.¹⁴² The commission will review the petition and hold a public hearing.¹⁴³ After conducting this review, the City Planning Commission then makes a recommendation to the City Council to approve or deny the petition.¹⁴⁴ The City Council then makes a final decision on the petition.¹⁴⁵

If a landowner instead wants the city to grant a variance, he or she may apply for a variance with the Zoning Board of Appeals.¹⁴⁶ The Zoning Board of Appeals may grant or deny the application after a public hearing.¹⁴⁷ In Michigan, local governments may grant one of two types of variances: use and nonuse.¹⁴⁸ Michigan law places more restrictions on the granting of use variances than nonuse variances.¹⁴⁹ A use variance permits otherwise prohibited uses of a parcel of land while a nonuse variance addresses structure-specific concerns, such as height and setback.¹⁵⁰ In Detroit, the local ordinances set out a list of approval criteria that the Zoning Board of Appeals must consider in granting or denying the variance.¹⁵¹

138. MICH. COMP. LAWS ANN. § 125.3201 (West 2019).

139. *Id.* at § 125.3301 (West 2019).

140. DETROIT, MICH., CODE OF ORDINANCES § 61-2-11 (2017).

141. *Id.* at §§ 61-3-73, 61-4-85.

142. *Id.* at § 61-3-73.

143. *Id.* at §§ 61-3-75, 61-3-77.

144. *Id.* at § 61-3-77.

145. *Id.* at § 61-3-79.

146. DETROIT, MICH., CODE OF ORDINANCES §§ 61-4-85, 61-4-89 (2017).

147. *Id.* § 61-4-89.

148. 25 MICH. CIV. JUR. ZONING § 39 (2017).

149. MICH. COMP. LAWS ANN. § 125.3604 (West 2019).

150. *Heritage Hill Ass'n v. Grand Rapids*, 48 Mich. App. 765, 768, 211 N.W.2d 77, 79 (1973).

151. DETROIT, MICH., CODE OF ORDINANCES § 61-4-81 (2017) (stating that the Zoning Board of Appeals must consider, among other requirements, practical difficulties with the current Zoning Ordinance, adverse impacts that may be caused by the variance, any

If a local unit of government decides to change a parcel's zoning through granting either of these exceptions, then that government may have to comply with the "consistency doctrine."¹⁵² The consistency doctrine applies when a "separate plan's existence is mandated and becomes a prerequisite to land use regulation."¹⁵³ The statutory language generally provides that zoning be "in accordance with a comprehensive plan."¹⁵⁴ If a landowner applies for a zoning amendment or variance in Detroit, the reviewing body must consider whether the amendment or variance conforms to the master plan.¹⁵⁵ The Michigan Zoning Enabling Act in general does not require strict conformity with a comprehensive plan; rather the master plan "serves as a general guide to future development, and is a factor in determining the reasonableness of a particular zoning classification."¹⁵⁶ As a result, a Michigan municipality's comprehensive plan often serves only an advisory role when that municipality enacts or changes its zoning ordinances.¹⁵⁷ That being said, courts in Michigan of late have begun to give more consideration to comprehensive plans and to treat the comprehensive plan as a significant factor in deciding whether to uphold a local zoning ordinance.¹⁵⁸

III. ANALYSIS

The Proposed Statute must be changed for land readjustment to be feasible under Michigan law because the statute does not adequately address the abovementioned subjects.¹⁵⁹ However, changing the Proposed Statute to ensure its validity should not be done at the expense of practicality. Any enacted statute must possess both attributes, lest it suffer from the problems confronting private land assembly and compulsory purchase. If the Michigan legislature drafts a land

special circumstances that necessitate the variance request, and the justice of granting such an application).

152. 1 ARDEN H. RATHKOPF ET AL., *THE LAW OF ZONING AND PLAN*. § 14:1 (4th ed. 2001).

153. *Id.*

154. *Id.*

155. DETROIT, MICH., *CODE OF ORDINANCES* §§ 61-3-71, 61-4-81 (2017).

156. See Michigan Zoning Enabling Act, MICH. COMP. LAWS ANN. § 125.3203 notes of decisions (West 2019); see also *Inverness Mobile Home Cmty. v. Bedford Twp.*, 263 Mich. App. 241, 687 N.W.2d 869 (2004).

157. RATHKOPF, *supra* note 152, § 14:7 (noting also that other states have a heightened standard and require either strict or moderate conformance with the comprehensive plan).

158. *Binkowski v. Twp. of Shelby*, 46 Mich. App. 451, 463, 208 N.W.2d 243, 249 (1973).

159. See *supra* Subpart II.B.

readjustment statute that addresses the aforementioned issues; it should mitigate many of these concerns. Land readjustment could be an innovative new land-assembly mechanism that benefits all parties involved.

A. Eminent Domain

Considerations of public use and just compensation are most concerning for a land readjustment statute to be successfully implemented in Michigan. These constitutional protections described in the background section render a land readjustment scheme relying on eminent domain unfeasible under current Michigan law.¹⁶⁰ While land readjustment would have satisfied the "public use" requirement under *Poletown*, it fails both *Hathcock* and the listed requirements in the Michigan Constitution.¹⁶¹ A principle purpose of land readjustment is to sell the assembled readjusted land to a private entity for economic development and financing. Therefore, a land readjustment scheme in Michigan must avoid implicating these constitutional protections.

If the legislature adopted the Proposed Statute as drafted, the principle issue is whether the vote to incorporate the district or approve the plan of redevelopment would constitute a taking. The government may create a special district for a land readjustment project and compel each property owner's membership in this association.¹⁶² It may also restrict the voting rights in the association to those individuals affected, so long as the restrictions are reasonable.¹⁶³ Alone, compulsory membership in a special district does not constitute a taking, because landowners have not lost any private property interest.¹⁶⁴ Nonetheless, compelling a member landowner to relinquish his or her property would constitute a taking. If the final readjustment plan seizes and redistributes the property of dissenting landowners, it would trigger the public use and just compensation protections of the Michigan Constitution. Michigan law prohibits the taking of private property to redistribute to a private entity except in limited circumstances.¹⁶⁵ Thus, the government may compel membership in a land readjustment district, but needs consent from every member to lawfully bind the district to a redevelopment plan.

160. See *supra* Subpart II.B.1.

161. MICH. CONST. art. X, § 2; see *Cty. of Wayne v. Hathcock*, 471 Mich. 445, 684 N.W.2d 765 (2004); see also *Poletown Neighborhood Council v. Detroit*, 410 Mich. 616, 304 N.W.2d 455 (1981).

162. See *supra* Subpart II.B.2.

163. See *supra* Subpart II.B.2.

164. See MICH. CONST. art. X, § 2 ("Private property shall not be taken . . .").

165. See MICH. CONST. art. X, § 2; *Hathcock*, 471 Mich. 445, 684 N.W.2d 765.

If a landowner within the district is given an opportunity to opt out of the district at the beginning, then his or her decision to remain could be construed as consent. The government certifying the district needs to provide sufficient notice to *every* landowner within the district to comply with due process requirements.¹⁶⁶ Under the Fourteenth Amendment to the U.S. Constitution, no state may deprive any person of property without due process of law.¹⁶⁷ The pivotal aspects of due process are sufficient notice and an opportunity for a hearing.¹⁶⁸ In sufficient detail, this notice must describe the land readjustment process, the option to opt out of this process, and the potential to lose one's private property. A public hearing describing the plan of redevelopment must also occur. Therefore, if a properly informed landowners choose not to opt out of the district after proper notice and a hearing, a lack of response could conceivably be an adequate expression of consent to avoid triggering constitutional protections. Any eventual reallocation of land may then be considered a voluntary transfer.

Importantly, the ability to opt out of a condemnation proceeding is novel in Michigan.¹⁶⁹ As far as legal research shows, the law in Michigan has not contemplated the possibility of opting out of a takings action.¹⁷⁰ It is entirely possible that a court in Michigan could hold that a landowner who neither opts in nor out of a land readjustment project after sufficient notice and a hearing has given constructive consent to the action. But until a land readjustment statute is adopted, the issue is undecided. Changes should be made to the Proposed Statute to ensure its constitutionality in Michigan.

When analyzing potential changes to the Proposed Statute, the eminent domain issues leave the enactment of a possible land readjustment statute at a dilemma. An enacted statute must both be constitutional and practically feasible. To be free from a possible legal challenge, the statute should seek to obtain consent from every participating landowner in a proposed district. To be practical, the statute must provide for an easy and persuasive way to obtain consent. An enacted statute must bridge this gap.

One solution to ensure the Proposed Statute is constitutional is by using contracts. The statute could retain the provision allowing

166. *In re Wayne Cty. Treasurer*, 265 Mich. App. 285, 293, 698 N.W.2d 879, 884 (2005) (“[F]ederal and state constitutions require that one be given notice and afforded an opportunity to be heard before being deprived of a property interest.”).

167. U.S. CONST. amend. XIV.

168. See *Richards v. Jefferson Cty.*, 517 U.S. 793, 797 (1996).

169. See Uniform Condemnation Procedures Act, MICH. COMP. LAW. ANN. §§ 213.51–213.75 (West 2019).

170. See, e.g., MICH. CONST. art. X, § 2.

landowners to opt out of the district before incorporation but then require all remaining landowners to sign a contract after the district is incorporated. This contract would provide the landowner's consent to the possible taking and obligate them to accept the results of an approved plan of redevelopment. This contract, if it has the proper requirements, would serve as consent and would properly inform a member landowner of the project's implications.¹⁷¹

This contractual approach may be constitutional, but without more it would be impracticable. Without providing any great incentive for member landowners to participate, a land readjustment statute requiring this provision would suffer from the same collective action problems as private land assembly.¹⁷² It is likely that many landowners may not opt out of the certified district but will subsequently refuse to sign this contract for fear of losing their land. If landowners hold out to protect their individual property rights, the government would not be able to enforce a plan of redevelopment without threat of lawsuit from landowners claiming an illegal taking. If a statute required consent after the district is incorporated, it is likely that the district would be paralyzed.

To solve this problem, an enacted statute should require landowner consent before the district is certified. After the initiation of a land readjustment project, but before the government certified the district, the statute should require landowners to opt in to the project rather than opt out. This would avoid the public use and just compensation protections because each participating landowner gives explicit consent to participating in the project and accepts the possible consequences. This solution is also contractual in nature, though it would seek consent before, not after, the commencement of the project. While this solution would ultimately encounter similar collective action problems, experiencing these problems earlier in the process mitigates some of the consequences. It means that the landowners who participate in the project must stay from the beginning to the end. The district will have fully known limits and participation before it is certified.

Even though an opt in provision would satisfy the legal requirements of Michigan law, the Proposed Statute still needs to address the significant question of how to obtain unanimous collective action. The legislature should mitigate these practical concerns by providing large

171. See *McInerney v. Det. Trust Co.*, 279 Mich. 42, 45, 271 N.W. 545, 546 (1937) (naming the essential elements as (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation).

172. See, e.g., *Heller & Hills*, *supra* note 9, at 1473.

incentives to participating landowners so that wary landowners are enticed to opt in to the land readjustment project. A legislature could set a minimum amount of compensation that any landowner who relinquishes property must receive—similar to the compensation required for a taking of an individual's principal residence.¹⁷³ If a statute provided for this type of incentive, then landowners that receive anything other than their original parcel in return would also be entitled to a compensation amount greater than the relinquished property's fair market value. This could reassure landowners that they are statutorily guaranteed recompense for lost property.

The government should also provide relocation incentives. In addition to receiving a statutory amount or percentage, the government must assist a displaced landowner with securing new housing. Similar to the provisions in the Uniform Relocation Assistance Act,¹⁷⁴ the government would reimburse displaced landowners' actual moving expenses or provide payments for a new house and other administrative costs.¹⁷⁵ The legislature or city may allocate money to help residents relocate to other areas of the city, similar to what Detroit has done in response to the Gordie Howe Bridge Project.¹⁷⁶ Homeowners in the Delray neighborhood near the Bridge Project construction site who want to "swap" their house for another city-owned house elsewhere will receive assistance to move, even if they did not live in the footprint of the new bridge.¹⁷⁷

Perhaps the best incentive that the legislature should offer is the elimination of all delinquent property taxes and exemption from further property tax until the land readjustment project is complete. As discussed earlier, the legislature has the authority to exempt property from taxation.¹⁷⁸ In enacting a land readjustment statute, the legislature can give local governments the ability to forgive and exempt property taxes.¹⁷⁹ Excessive property tax foreclosure is a crisis that the city and

173. See MICH. CONST. art. X, § 2 ("If private property consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall be not less than 125% of that property's fair market value.").

174. 42 U.S.C. §§ 4621–4655 (2018).

175. See *id.* at §§ 4622–23.

176. Chad Livengood, *City sells land for bridge, will use \$23.6 million to relocate up to 240 Delray homeowners*, CRAIN'S DET. BUS. (June 23, 2017), <http://www.crainsdetroit.com/article/20170623/NEWS/170629945/city-sells-land-for-bridge-will-use-23-6-million-to-relocate-up-to>.

177. *Id.*

178. See *supra* Subpart II.B.3.

179. See *supra* note 128.

Wayne County currently face.¹⁸⁰ Both Detroit and Wayne County have solutions in place to reduce the large number of property tax foreclosures, such as payment plans, foreclosure advice, and financial aid.¹⁸¹ These programs only come into effect once the tax debt is incurred and the landowners are facing an imminent foreclosure.¹⁸² If a homeowner is unable to pay his or her property taxes before facing foreclosure, it seems unlikely that payment plans or financial advice will provide a permanent, successful solution to the problem. This is a serious public welfare issue facing Detroit; community advocates have already proposed the idea of eliminating residential property tax as a feasible solution to the problem.¹⁸³ If Detroit is reticent to eliminate residential property tax for the entire city, eliminating this tax for small land readjustment districts could provide a large enough incentive to encourage as much participation as possible. Any resident landowners facing eviction due to foreclosure would have the opportunity to stay in his or her home and participate in creating a new neighborhood. If this elimination of property taxes is used in conjunction with the other incentives described above, it certainly mitigates some of the collective action problems that a land readjustment statute might face.

Altogether, constitutional protections are the most significant problem for a land readjustment statute to overcome. Due to Michigan's constitutional restrictions on the "public use" requirement, a land readjustment statute that redistributed land to private entities would be unconstitutional. Although enacting an amendment to the Michigan Constitution would solve this issue, this amendment would have to be submitted to the voters for approval.¹⁸⁴ Perhaps because of this requirement, the Michigan Constitution has been amended less than

180. See Violet Ikonomova, *Nearly 36,000 Detroit Properties Facing Foreclosure Ahead of 2018 Tax Auction*, DET. METRO TIMES (Dec. 15, 2017, 9:24 AM), <https://www.metrotimes.com/news-hits/archives/2017/12/14/nearly-36000-detroit-properties-foreclosed-ahead-of-2018-tax-auction>.

181. Eric Sabree, *Wayne County Treasurer's Office Works Hard to Reduce Foreclosures*, CRAIN'S DET. BUS. (June 25, 2017, 12:15 AM), <http://www.crainsdetroit.com/article/20170625/BLOG200/170629923/wayne-county-treasurers-office-works-hard-to-reduce-foreclosures>.

182. See *id.*

183. See, e.g., John E. Mogk, *Mogk: Detroit Needs to Abolish Property Taxes*, THE DET. NEWS (Nov. 26, 2014), <http://www.detroitnews.com/story/opinion/2014/11/26/mogk-detroit-abolish-property-taxes/70110608/>; *One Solution to the Property Tax Foreclosure Crisis in Detroit? End Property Taxes.*, MICH. RADIO (Nov. 3, 2017), <http://michiganradio.org/post/one-solution-property-tax-foreclosure-crisis-detroit-end-property-taxes>.

184. Peter Luke, *How We Got Here: Review of Michigan Constitutional Amendments that Passed and Failed since 1966*, MLIVE (Oct. 11, 2010, 8:12 AM), http://www.mlive.com/news/index.ssf/2010/10/how_we_got_here_review_of_mich.html.

twenty times since its adoption in 1966.¹⁸⁵ While it is possible that the law could change or a court could hold that the opt out provision is constitutional, a land readjustment statute should not rely on that possibility. The Proposed Statute should be changed to avoid constitutional protections and comply with Michigan law as it currently stands. The statute should require consent from participating landowners and provide large enough incentives to strongly encourage landowners to join the project. A land readjustment statute that balances these factors would be a more attractive land-assembly solution than both private land assembly and compulsory purchase because it balances the interests and provides benefits to all parties involved.

B. Financing

A land readjustment project will need financing at the beginning of a project to pay for the costs of implementation.¹⁸⁶ Although the Proposed Statute authorizes the board of directors to levy an assessment on all district property to pay for the administrative costs of implementation, an enacted statute should authorize the district to seek other funding sources outside of the district.¹⁸⁷ A land readjustment project should enable some form of external debt financing that leverages the land values of the district. This is possible because land values generally increase over the course of the project, if market forces are favorable.¹⁸⁸ At the conclusion of the project, the district can reimburse the lender for any initial financing with interest.¹⁸⁹

Many large scale infrastructure projects usually seek funding from a variety of private sources, including equity, loans, and bonds.¹⁹⁰ Private projects generally receive financing from multiple sources to both spread the financial risk among the parties and effectively manage the flow of capital.¹⁹¹ Factors such as the project's location, members, size, current

185. *Id.*

186. Shultz & Schnidman, *supra* note 10, at 232 (discussing that, in other countries, implementation generally "consists of the assembly of the lands, the design and construction of the subdivision and public facilities, and the final redistribution of the new sites").

187. See Liebmann, *supra* note 12, at 18–19.

188. See Home, *supra* note 14, at 461–63; see also Shultz & Schnidman, *supra* note 10, at 237 (noting that an increase in property value is not necessarily inevitable and depends on market forces in and around the district.).

189. Larsson, *supra* note 30, at 149 (noting that a land readjustment scheme may be designed so that the land will cover the costs of the project).

190. PRACTICAL LAW FINANCE, PRACTICE NOTE 8–422–4846, PROJECT FINANCE: SOURCES OF AVAILABLE FINANCING (2018).

191. *Id.*

economic conditions, and projected benefits influence the types of financing that are available.¹⁹² If a land readjustment project obtains public financing, the Proposed Statute should be redrafted to authorize a district to seek available private funding. This would mitigate some of the financial risk for all parties involved and provide the district with greater access to capital.¹⁹³

The first obvious source of financing is a commercial lender.¹⁹⁴ A commercial bank provides capital at the beginning of a project in return for a favorable interest rate on the loan.¹⁹⁵ These types of loans are generally available and the terms can be flexible.¹⁹⁶ However, if a district does not sell enough land upon the completion of a project, it may be unable to repay the loan. Many banks are also risk-adverse and thus will provide less favorable terms if they perceive a district to be a risky investment.¹⁹⁷ The financial terms of the loan may hinder the district's finances in the future. But even with these risks, this type of financing provides a cash-strapped district with easy access to capital. Therefore, this is a market solution that needs to be legally permitted but regulated to help and protect the district's finances.

A land readjustment district could also seek financing through equity investors.¹⁹⁸ Equity investment allows an investor to buy "stock" or "shares" of a project.¹⁹⁹ In a land readjustment district, an investor could buy shares of the district and receive the same treatment as a landowner.²⁰⁰ These shares could be redeemed upon the conclusion of the project for either plots of land or capital.²⁰¹ Therefore, a business entity that wants preferred access to the assembled land could buy into the project at the beginning. Because the investment is paid back in land, equity investment would involve less financial risk to the district. However, a problem with this method is that investors would have the ability to vote on the plan of redevelopment. These investors could overrule the desires of the other landowners if that investor owns enough shares. To prevent this, an enacted statute could either limit the number

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. PRACTICAL LAW FINANCE, PRACTICE NOTE 8-422-4846, PROJECT FINANCE: SOURCES OF AVAILABLE FINANCING (2018).

197. *Id.*

198. *Id.*

199. *Id.*

200. See Liebmann, *supra* note 12, at 12.

201. *Id.* ("The Plan may provide for either the issuance of shares in the Land Readjustment District or the distribution in kind of redeveloped land accompanied by monetary adjustments.").

of shares available for sale to investors or impose restrictions on the ability of those investors to vote on the plan of redevelopment. These protections allow the resident landowners to make their own decision regarding the future of their neighborhood. But if the voting issue is regulated, equity investment would be a key form of external financing.

A district could also seek financing with bonds.²⁰² Bonds are generally issued to institutional investors who are seeking stable, long-term investment opportunities.²⁰³ Bonds often serve as a significant source of funding for many large-scale public projects.²⁰⁴ Generally, large projects seeking significant financing are well suited for this type of investment.²⁰⁵ Bonds typically offer longer maturities, less restrictions, and a larger pool of investors than traditional loans or equity investors.²⁰⁶ However, the high transaction costs and the difficult waiver and amendment processes are disadvantages for this type of investment.²⁰⁷ But despite these costs, a land readjustment district should be permitted to seek and obtain bond funding, especially because bonds are typically stable investments.²⁰⁸

An enacted statute should not only allow a land readjustment district to seek financing from private sources, but also from the local unit of government. Local government subsidization traditionally serves as the primary financing method for land readjustment projects.²⁰⁹ The Michigan legislature should change the Proposed Statute to authorize the local government to provide initial funding for new land readjustment project. However, the legislature should avoid drafting the statute in a way that forces a local government to provide this funding. Such an authorization could constitute an “unfunded mandate,” which is

202. PRACTICAL LAW FINANCE, *supra* note 190.

203. *Id.*

204. See, e.g., John Gallagher, *Illitches Paying Off Public Little Caesars Arena Bonds 28 years Early, Refinancing Privately*, DET. FREE PRESS (Nov. 1, 2017, 11:21 PM), <https://www.freep.com/story/money/business/michigan/2017/11/01/ilitches-paying-off-public-arena-bonds-28-years-early-refinancing-privately/823317001/>; Kirk Pinho, *Gilbert's \$2.1 Billion in Detroit Projects Going after State Tax Incentives*, CRAIN'S DET. BUS. (Sept. 20, 2017, 1:11 PM), <http://www.craindetroit.com/article/20170920/news/639781/gilberts-21-billion-in-detroit-projects-going-after-state-tax>; Eric Platt, *Bond Investors Scramble for a Slice of New York's Hudson Yards*, FINANCIAL TIMES (May 23, 2017), <https://www.ft.com/content/6d6abc5e-4002-11e7-9d56-25f963e998b2>.

205. Practical Law Finance, *supra* note 190.

206. *Id.*

207. *Id.*

208. *Id.*

209. See Shultz & Schnidman, *supra* note 10, at 238 (“[M]ost land readjustment programs are characterized by some level of government subsidization, at least in the initial stages of project formulation.”).

prohibited in Michigan.²¹⁰ To avoid this, the legislature should draft the statute so that the local government is authorized to provide funding but is not mandated to do so. Even if the legislature required local governments to provide funding, the fact that land readjustment projects are voluntary mitigates the possibility of an “unfunded mandate” challenge.²¹¹ Additionally, if the statute obligates the land readjustment district to reimburse the local government after the completion of the project, then it would prevent an actual increase in costs.²¹² As a result, a land readjustment statute that authorizes a local government to provide initial financing does not constitute a prohibited “unfunded mandate.”

The types of financing discussed above would provide valuable capital to a land readjustment district for administrative, construction, and general implementation costs. Because a local government will certify or approve the district, that government should provide some initial financing. But a land readjustment statute should also allow a district to seek alternative private sources of capital. This would diversify the financial risk among investors. Access to other sources of funding could also help to increase the value of the property, especially if equity investors bought shares of the district. Altogether, a diverse array of financing options would benefit a district.

C. Zoning

It is likely that a land readjustment project will, in some way, conflict with the city’s current zoning ordinance codes. After the local government certifies a land readjustment district, the residents of the district will vote and hopefully approve a plan of redevelopment. This plan could call for land uses that conflict with current zoning codes, especially if the district is situated in a largely residential area and the resident landowners wish to sell excess land to commercial investors. To illustrate this, consider a land readjustment district in a sparsely occupied area on the east side of Detroit.²¹³ The district residents approve a plan of redevelopment in which some of the land is sold to businesses who

210. See *supra* Subpart II.B.3.

211. See *Adair v. State*, 447 Mich. 89, 107, 860 N.W.2d 93, 102 (Mich. 2010) (“[T]he increased costs were not necessary . . .”).

212. See *id.* (“[T]he requirement did not actually increase costs . . .”).

213. See, e.g., *City of Change—Occupancy Density in Detroit’s Residential Neighborhoods*, DATA DRIVEN DETROIT (Nov. 25, 2014), <https://datadrivendetroit.org/city-of-change/city-of-change-occupancy-density-in-detroits-residential-neighborhoods/>; Matthew Lewis, *On Detroit’s East Side, Managing Vacant Land Takes Collaboration*, NEXT CITY (May 21, 2015), <https://nextcity.org/daily/entry/detroit-east-side-vacant-lots-management>.

hoped to open warehouses, factories, or other commercial operations. However, the city has zoned at least a portion of this land as residential, not commercial. In this hypothetical, part of the plan of redevelopment would not comply with the local zoning ordinance.

The Proposed Statute must address this conflict because it is mostly silent on the zoning.²¹⁴ If the Proposed Statute is left as is, the district or the entities buying land in the district would be required to go through the normal process of obtaining a variance or zoning amendment.²¹⁵ Although a variance or amendment would reduce the administrative costs for the district, it does seem somewhat impractical. A business entity is less likely to buy the land, or at least pay full price for it, if the city may use its zoning powers to prevent the landowner from using the property in her desired fashion. This decreases the economic incentive for landowners or investors to participate in the project and reduces the ability of the district to repay any financing loans. The Proposed Statute would be much more realistic if it contained some provision addressing rezoning.

Perhaps the most efficient and effective way to rectify this issue would be to require the local government's zoning commission to approve the plan of redevelopment before the plan takes effect. In Detroit, the land readjustment district's board of directors should follow special procedures for each landowner seeking a zoning amendment and submit a rezoning application to the City Planning Commission.²¹⁶ The rest of the process should follow the normal rezoning procedure: the City Planning Commission reviews the application, conducts a public hearing, and makes a recommendation to the City Council as to whether the land should be rezoned.²¹⁷ The City Council will then make the final decision.²¹⁸ If the City Council approves the application, then the plan would have final approval and the district may then begin to reallocate the parcels as prescribed by the plan. Conversely, if the City Council denies the application, then the district must amend the plan and refile the application.²¹⁹ This process, though it may take longer, allows the district to arrange a potential buyer who will know whether she will be able to use the purchased land as she wishes before receiving the reallocated parcels.

214. See Liebmann, *supra* note 12, at 11–12 (including only one provision addressing residential zoning not applicable to the types of scenarios discussed).

215. See *supra* Subpart II.B.4.

216. DETROIT, MICH., CODE OF ORDINANCES §§ 61–3–73 through 79 (2017).

217. *Id.*

218. *Id.* at § 3-79.

219. See *id.* at § 3–73 through 79.

D. Policy

From a policy perspective, the potential benefits of a land readjustment project are enormous, especially in a place like Detroit. Detroit is a city of paradoxes. It has both large redevelopment projects and collapsing infrastructure;²²⁰ it is a city that is both growing and shrinking.²²¹ In short, redevelopment is necessary, and the current economic landscape makes redevelopment possible and worthwhile.²²² But, in light of this changing economic landscape and need for redevelopment, many lifelong residents strongly fear gentrification or being forced from their homes by increased costs.²²³ Land readjustment is something that can enable necessary redevelopment in Detroit while counteracting the displacing effect that economic development has on lower-income residents. It will not solve all the problems posed by redevelopment and gentrification, but land readjustment can allow more residents to partake in and share in Detroit's revitalization. Because landowners directly approve or disapprove of a development plan, land readjustment would allow Detroit landowners in low-income and vacant areas of the city to join as a community and decide how *they* want their neighborhood to be redeveloped, not how other people want it to be redeveloped.²²⁴

From the city's perspective, land readjustment could be an effective tool in the fight to redevelop checkerboarded land.²²⁵ It could allow the city to "resize" itself through consolidating neighborhoods, residents, and city services, but it would do so in a way that facilitates resident participation rather than coercion.²²⁶ Generally, land readjustment also

220. Peter Moskowitz, *The Two Detroits: a City Both Collapsing and Gentrifying at the Same Time*, GUARDIAN (Feb. 5, 2015), <http://www.theguardian.com/cities/2015/feb/05/detroit-city-collapsing-gentrifying>.

221. *Id.*

222. See, e.g., Joel Kurth, *Are there 2 Detroits? New Report Says Yes, But There's a Reason*, CRAIN'S DET. BUS. (Sept. 12, 2017), <http://www.crainsdetroit.com/article/20170912/news/638871/are-there-2-detroits-new-report-says-yes-but-theres-a-reason>; Moskowitz, *supra* note 220.

223. Lara Moehlman, *The New* Detroit: How Gentrification Has Changed Detroit's Economic Landscape*, MICH. DAILY (Sept. 13, 2016), <https://www.michigandaily.com/section/statement/new-detroit>; see also *Gentrification*, MERRIAM-WEBSTER DICTIONARY (2017) ("The process of renewal and rebuilding accompanying the influx of middle-class or affluent people into deteriorating areas that often displaces poorer residents.").

224. Larsson, *supra* note 30, at 142; Liebmann, *supra* note 12, at 13.

225. See *Checkerboard*, *supra* note 5.

226. See Sarah Cwiek, *Detroit Leaders Promise Ambitious 'Future City' Plan Will Become Reality*, MICH. RADIO (Feb. 21, 2014), <http://michiganradio.org/post/detroit-leaders-promise-ambitious-future-city-plan-will-become-reality> (discussing resident fears associated with forced resizing and depopulation of neighborhoods).

increases property values.²²⁷ An increase in property values within the land readjustment district may occur if the region is already experiencing development and land is in demand, as is the case in Detroit.²²⁸ Land valued at a low price as residential property may be intrinsically more valuable if it serves commercial or industrial purposes.²²⁹ An increase in property values in under-developed or low-income areas of the city would provide landowners with more money and the city with greater property tax revenue.²³⁰ It would also help to facilitate development in neighborhoods outside of downtown—already a priority for Detroit officials.²³¹

But for each promise of future benefits, land readjustment also poses significant political challenges. First, like in consensual private development projects, land readjustment projects will only be as successful as the number of landowners who are willing to participate.²³² If a large number of landowners in a proposed district choose not to participate in a project for fear of losing their property; the project could be defeated. Furthermore, a statute that requires landowners to opt in rather than out could render a land readjustment project impractical. Studies in multiple fields have shown that opt-out programs have a much higher participation rate than opt-in programs.²³³ If a land readjustment statute requires landowners to opt in, a project may never receive the necessary participation that it needs to succeed.

Additionally, if a land readjustment statute requires participants to opt in, it is possible that all landowners in a district will need to be

227. See Home, *supra* note 14, at 461–63 (discussing how land formerly valued at £4,000 as agricultural property may be worth £200,000 as serviced land).

228. Schultz & Schnidman, *supra* note 10, at 237; see also Livengood, *supra* note 2 (detailing how Mayor Duggan believes that the supply of land in Detroit is dwindling); Kirk Pinho, *Report: Downtown Detroit's Most Prominent Office Buildings Just 7.5% vacant*, CRAIN'S DET. BUS. (July 20, 2017, 11:19 AM), <http://www.craindetroit.com/article/20170720/news/634431/report-downtown-detroits-most-prominent-office-buildings-just-75-vacant> (describing the increasing demand and employment bases in downtown Detroit).

229. Home, *supra* note 14, at 461–63.

230. Liebmann, *supra* note 12, at 2.

231. See Christine Ferretti, *Duggan Lays Out Plan to Boost Detroit Neighborhoods*, DET. NEWS (Aug. 16, 2017), <http://www.detroitnews.com/story/news/local/detroit-city/2017/08/16/detroit-mayor-duggan-neighborhoods-meeting/104673062/>.

232. See *supra* Part II.

233. See, e.g., Jaya Aysola et al., *A Randomized Controlled Trial of Opt-In Versus Opt-Out Enrollment Into a Diabetes Behavioral Intervention*, 32 AM. J. HEALTH PROMOTION 745, 746 (2018); *The Opt-Out Option*, ASS'N FOR PSYCHOL. SCI. (Sept. 13, 2013), <https://www.psychologicalscience.org/news/minds-business/the-opt-out-option.html>.

personally convinced to participate in the project.²³⁴ This will necessitate educating large sections of the public about the wide-spread benefits of a proposed project. Such an undertaking will require significant time, effort, and resources from the government, land readjustment district, and other community organizations that decide to participate in or facilitate the project.²³⁵ Resident landowners may believe that participation in this project will only lead to losing their home. They may not understand the larger private and social benefits that the project may have. To mitigate this lack of understanding, government agencies or the land readjustment district may need to expend significant resources to fully educate the district.

But even with these challenges, land readjustment is an attractive proposal from a policy standpoint. The theoretical benefits are widespread and significant. However, these policy implications suggest that while land readjustment could significantly benefit Michigan and especially Detroit, it would still face significant challenges that may hamper its efficacy. Indeed, the practical circumstances surrounding any given project may render the project impractical, though this is likely true of any new political development. These practical challenges illustrate why the Proposed Statute must be changed. Ultimately, the legislature must consider the political and economic landscape to weigh the benefits and costs of enacting a land readjustment statute.

IV. CONCLUSION

The Michigan legislature should adopt a land readjustment statute because land readjustment is an ideal solution to Detroit's land-shortage problem. But, the legislature must draft the statute in a way that mitigates the legal and practical challenges presented. Liebmann's Proposed Statute is an adequate draft with which to start because it is "designed to surface issues."²³⁶ This Note addressed several of these key issues and showed that the Proposed Statute is not feasible under Michigan law without certain changes. The Proposed Statute must include provisions addressing at least the constitutional restrictions specific to Michigan, the availability of outside financing, and the potential conflicts with municipal zoning codes. But this Note also shows that these changes are possible. This Note recommends that the Michigan legislature adopt a land readjustment statute. Ultimately, the benefits for Detroit are

234. See Aysola et al., *supra* note 233, at 1 (discussing the low participation rates with opt-in programs).

235. See *id.*

236. Liebmann, *supra* note 12, at 7.

immense. Land readjustment is a better solution to the land-shortage problem in Detroit than either compulsory purchase or private voluntary assembly.

Further, a well-drafted land readjustment statute addressing the issues presented in this Note would mitigate the practical challenges inherent in private land assembly and distribute the benefits of redevelopment to more people.²³⁷ Land readjustment is also more equitable and inclusive than compulsory purchase as landowners participate in the redistribution process.²³⁸ Private land assembly and compulsory purchase represent past success stories that are no longer applicable to the current land-shortage situation in Detroit. Whether for legal or practical reasons, neither of these mechanisms is an effective solution to the development problems facing Detroit.

Land readjustment provides a better way forward for Detroit. It allows the city to reinvent itself in the face of a changing economic landscape and help a greater number of Detroiters in the process. The benefits of land readjustment greatly outweigh the challenges. Detroit is currently enjoying a significant increase in development and investment, the benefits of which have been concentrated in the hands of very few people.²³⁹ Land readjustment would bridge this gap and allow more residents to benefit from Detroit's renaissance. The city may experience an increase both in population and in land values. Developers may profit off otherwise undevelopable land. Most importantly, more Detroiters could participate in Detroit's revitalization. Land readjustment provides a mechanism for a group of landowners to come together, decide for themselves how they want to redevelop their neighborhood, and then share the benefits of redevelopment. It is an ideal approach to redevelopment that would help make Detroit, to echo the words of Mayor Mike Duggan, "one city for all of us."²⁴⁰

237. Larsson, *supra* note 30, at 142.

238. *Id.* at 149.

239. See, e.g., Kurth, *supra* note 222; Moskowitz, *supra* note 220.

240. John Gallagher, *Duggan Outlines Plans for 'One City for All of Us' and New Blight-Fighting Effort*, DET. FREE PRESS (May 31, 2017, 6:03 PM), <https://www.freep.com/story/money/business/john-gallagher/2017/05/31/mike-duggan-detroit-blight/359771001/>.