

**REAL PROPERTY LAW SECTION
SUMMER CONFERENCE 2010**

**CRYSTAL MOUNTAIN RESORT AND SPA
*Thompsonville, Michigan***

URBAN FARMING ROUNDTABLE

Presented By:

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REAL PROPERTY LAW SECTION SUMMER CONFERENCE 2010
BREAKFAST ROUNDTABLE—URBAN AGRICULTURE
July 14-17, 2010

As the number of urban agricultural projects continues to increase in Michigan and around the country, it is important for attorneys to familiarize themselves with some common issues and questions that continually surface. We've listed a fraction of such issues and questions below. What additional problems concern you and your practice?

- I. **WHY URBAN FARMING:** “Amid Ruin of Flint, Seeing Hope in a Garden,” *New York Times*, October 19, 2009; “Detroit’s Desolate Middle Makes Downsizing Tough,” *The Detroit News*, March 9, 2010; “Urban Farming Can Succeed in Detroit, Panelists Say,” *Crain’s Detroit Business*, April 11, 2010; “Cultivate Detroit’s Significant Farming Opportunity,” *Detroit Free Press*, March 25, 2010; “Detroit Wants to Save Itself—By Shrinking,” *Associated Press*, March 8, 2010.
 - A. Access to Food
 - B. Shipping Issues
 - C. Quality and Nutrition
 - D. Community Empowerment
 - E. Vacant Land

- II. **LEGAL:** “Envisioning a New Detroit,” *Detroit Free Press*, May 9, 2010; City of Detroit City Planning Commission, Letter to the City Counsel, March 18, 2010; City Planning Commission Urban Agriculture Draft Policy.
 - A. Taxes and Taxation
 - 1. Farm Land and Open Space Preservation Act – MCL 324.36101 *et seq.*; <http://www.michigan.gov/mda>
 - B. Tax Incentives
 - 1. Potential 501(c)(3) Exemption
 - 2. Conservation Easements
 - 3. Brownfields
 - 4. Carbon Credits
 - C. Zoning
 - 1. PUD
 - 2. Residential Use
 - 3. Mixing Uses

- D. Use Restrictions
 - 1. Sample
 - 2. Amendment Process
- E. Plat Issues
 - 1. Vacation
 - 2. Amendment
 - 3. Easement Vacation/Utilities
- F. Entity Issues
 - 1. LLC
 - 2. Cooperative
 - 3. Corporation
- G. Ownership
 - 1. Community
 - 2. Public
 - 3. Individual
 - 4. Fee or Other Form
 - Lease
 - License
 - Co-Op Membership
- H. Liability/Environmental Issues
- I. Tax and Foreclosed Property Acquisition/Issues/Land Assembly
 - 1. Land Banks
 - 2. Private Sales
 - 3. Bank Foreclosures
- J. Crop Land Leases
- K. Constitutional Issues
 - 1. Eminent Domain— *County of Wayne v. Hathcock*, 684 N.W.2d 765 (Mich. 2004) and exceptions

III. ENVIRONMENTAL ISSUES: “Bees in the City? New York May Let the Hives Come Out of Hiding,” *New York Times*, March 14, 2010.

- A. Prior Use
 - 1. Lead Based Paint

2. Industrial Use
3. Commercial Use
4. Other Toxins

B. Geophysical

1. Foundations
2. Buried Debris
3. Construction Materials
4. Infrastructure
 - Roads
 - Alleys
 - Abandoned Utility Line

C. Farm Use

1. Issues in Intensive Agriculture
2. Run-off – Soil and Sediment
3. Fertilizer Run-off
4. Chemical Use/Pesticides
5. Irrigation
 - Public Water System
 - Wells – Viability
 - Sewer Charges Separate from Water Bills
6. Storm Water Detention, Retention and Control
7. Harvesting
8. Animals

J. Carbon Sequestration and Tree Farming

1. Orchards
2. Christmas Trees

IV. PLANNING ISSUES: “Land Banks Spur Redevelopment,” *The Detroit News*, December 21, 2009; “Planners Recommend New Zoning, Lower Tax Rate for Urban Farms,” *Crain’s Detroit Business*, March 31, 2010; “Recovery Park Seeks to Harvest Jobs With Farm,” *Crain’s Detroit Business*, March 21, 2010; “Keys to the Future of Michigan: Reaping the State’s Agribusiness Potential,” *Crain’s Detroit Business*, June 6, 2010.

- A. Land Assembly
- B. Road Networks
- C. Zoning

1. PUD Agreements
 2. Clustering Housing w/farm amenities
 3. Overlay Zoning
- D. Fire and Emergency Issues; Snow Removal
- E. Security/Site Control
1. Fences
- F. Utilities
1. Water
 2. Sanitary
 3. Storm
- G. Public Services
1. Line Relocation
 2. Buried Utilities
- H. Mixing Uses
1. "Fruit Stands"
 2. "Cider Mills"
 3. Agro Tourism
 - Christmas Tree Farms
 - Cut Your Own Tree
 - Petting Farm
 - Pick Your Own Pumpkins, Berries, Apples
 4. Facility Location
 - Showrooms
 - Tasting Room
 - Liquor Licensing
 - Occupational Licensing
 - Produce Markets
 - "Farmer's" Market
- I. Green Cemeteries