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Supporting Our Land Stewards: Building a Constituency to Change Policy and Preserve Philadelphia's Gardens

No one knows exactly how many community gardens exist throughout Philadelphia's diverse neighborhoods, but there are hundreds. Yet, the majority of gardens, including some of the oldest and most established, are land insecure and at risk of displacement. The Public Interest Law Center Garden Justice Legal Initiative (GJLI) works to ensure that residents have the resources and tools they need to create and preserve farms and gardens. Over the past four years, GJLI has used law and organizing in collaboration with a multitude of partners to build a political voice for Philadelphia's gardeners and farmers. Together, we are changing policy, creating new opportunities, and preserving deeply rooted community spaces, while bolstering leadership and incubating Soil Generation, our gardener and farmer coalition. Despite our successes, we are not yet where we need to be. We continue efforts to give life to the concept that healthy and sustainable communities are built through a range of beneficial land uses, that residents should have tools to legally access land as effectively as any corporate or nonprofit purchaser, and that there is value to something called the commons.

Keywords

community gardening, urban farming, food justice urban agriculture, commons, land sovereignty

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INTRODUCTION

Picture this scenario: Everyday, neighbors walk in the street to avoid four adjacent parcels of land. Invasive trees of over twenty-five feet tall have taken over, the lots attractive only for dumping trash and stashing drug paraphernalia. One never knows who or what is in the weeds. Two of these parcels are publicly owned, by two different city agencies. No one can identify a clear path to acquiring either parcel, despite the community's best efforts. The other parcels have been tax delinquent for over thirty-five years. Residents know that the owners are long dead; they were once their neighbors. Community members come together to transform the properties, clearing out contraband, breaking up concrete foundations with a pickax, bringing in soil and constructing raised beds, and, finally, growing food and maintaining the properties, openly and safely. Then, the real estate market shifts and the privately owned properties go up for a sheriff's sale, without notice to any of the gardeners. Soon, the public properties are also at risk of being sold to a developer.



No one knows exactly how many community gardens exist throughout Philadelphia's diverse neighborhoods, but there are hundreds. These spaces of refuge and growth have sprung up over decades. Historically, Philadelphia's gardens have been rooted in the city's African American, Puerto Rican, immigrant, and refugee communities.¹ With tens

of thousands of vacant and abandoned privately- and publicly-owned parcels, empowered neighborhood communities work to mitigate the impact of historic disinvestment, drawing from cultural farming traditions to create a food-producing commons. Numerous Philadelphia gardens date back a generation² or more³--city government tacitly accepting residents' role as land stewards and even funding programs on squatted land. Yet, the majority of gardens, including some of the oldest and most established, are land insecure and at risk of displacement.

¹ Domenic Vitiello and Michael Nairn, "Community Gardening in Philadelphia: 2008 Harvest Report," Penn Planning and Urban Studies 27 (October 2009) available at http://www.farmlandinfo.org/sites/default/files/Philadelphia_Harvest_1.pdf.

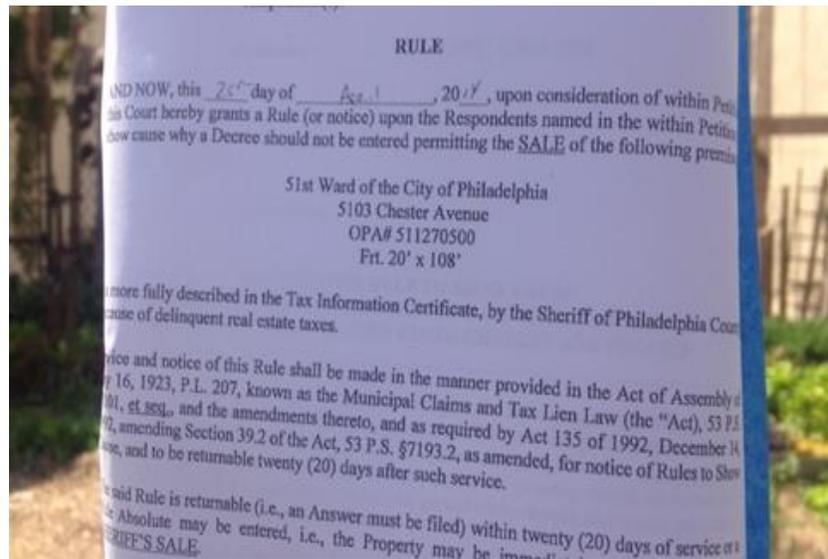
² See e.g., "Las Parcelas," Smithsonian Community of Gardens Website (no date) available at <https://communityofgardens.si.edu/items/show/43>.

³ Joseph Myers, "Taxing Times at Central Club," South Philly Review (June 7, 2012) available at <http://www.southphillyreview.com/news/cover-story/Taxing-times-at-Central-Club-157601275.html>.

THE GARDEN JUSTICE LEGAL INITIATIVE

In 2010, the Public Interest Law Center convened conversations with stakeholders like those gardeners described above to ask if there was a role for lawyers in supporting community gardeners and market farmers. Invariably, the answer was “yes”—the critical issues were always land security and land sovereignty.⁴ Thus, since the launch of the Garden Justice Legal Initiative in 2011, the Law Center has used law and organizing to support gardeners and farmers. We work to ensure that residents have the resources and tools they need to create and preserve farms and gardens. We support building community power, self-advocacy, and informed leadership to affect equitable and meaningful reforms needed to promote community land and food security and sovereignty, working at the neighborhood, city, and state levels.

We do this knowing that each of our strategies is connected to the other. Providing direct representation to Kensington’s Norris Square Neighborhood Project or to Farm 51 in West Philadelphia, we assist garden and farm leaders to protect critical community resources. These legal representations also educate *us* about the systems for obtaining land access and achieving garden preservation, the myriad barriers, and the changes in policy necessary to dismantle those barriers. Even as we work to change policy, these policies are only good if implemented fairly and transparently. For this purpose, we engage hundreds of people each year, in plain language, about existing and proposed food- and land-related policies. And our clients and allies work with us to lobby for improved policies. These relationships have coalesced into a citywide coalition for farm, garden, and open space preservation, as well as partnerships within city agencies. In doing so, we are collectively changing the game for how land is made accessible to grow food and build community citywide.



BUILDING AN URBAN AGRICULTURE CONSTITUENCY FOR PHILADELPHIA

“Urban agriculture is not a constituency.” About three months into the life of GJLI, a staffer from one of Philadelphia’s land holding agencies made this comment to members of the Mayor’s Food Policy Advisory Council (FPAC) vacant land subcommittee. FPAC members had requested a meeting with the agencies to discuss the city’s new draft land disposition policies, which were developed in a yearlong process throughout 2011. An oft-cited figure, Philadelphia has approximately 40,000 vacant and abandoned parcels, about twenty-five percent of them held

⁴ Yuen, Jeffery. “City Farms on CLTs: How Community Land Trusts Are Supporting Urban Agriculture. Lincoln Institute of Land Policy, available at https://www.lincolninst.edu/pubs/2376_City-Farms-on-CLTs--How-Community-Land-Trusts-Are-Supporting-Urban-Agriculture

by four different city agencies: the Philadelphia Redevelopment Authority (PRA), the Department of Public Property (DPP), the Philadelphia Housing Development Corporation (PHDC), and the Philadelphia Housing Authority (PHA). Until 2011, each of these agencies used distinctly different policies and procedures to make city owned vacant land available for license, lease, sale, or other transfer out of city inventory. The 2011 draft policies aimed to create consistency and streamline the process for three of these agencies, excluding PHA. However, proposed policies took Philadelphia's gardeners and farmers a step backward.



For Philadelphia gardeners and farmers seeking legal access to publicly owned land, status quo has long been to apply for an Urban Garden Agreement—a year-to-year license. Unlike a lease, which provides a property right, a license is revocable at any time without cause. Thus, a license offers no land security, only temporary permission that comes with the assurance that one is no longer trespassing. These agreements reflect the perception within many city governments, in Philadelphia and elsewhere, that urban agriculture is an “interim use,” “a means to other ends” best employed only until a “higher” use for land emerges.⁵ This perspective has persisted in the face of deeply rooted and long standing garden spaces on city-owned property and the long-term reliance of the City on community gardeners as the city’s vacant land stewards.

The draft policies began to circulate in December 2011, reflecting status quo, with no progress for gardens and farms. Publicly accessible community gardens and market farms would still be eligible for a license, but only if

sponsored by a registered nonprofit organization and only with proof of potentially expensive liability insurance.⁶ No option for longer-term land tenure was even mentioned.

The FPAC worked with GJLI and the now disbanded grassroots Food Organizing Collaborative (FOrC) to make clear that Philadelphia has an urban agriculture constituency--that the broad scope of vibrant, verdant work on and *in* the ground translates to a political voice. In the span of less than two weeks, FPAC and FOrC collected feedback from over 100 gardeners and farmers throughout the city, developing recommendations for how disposition policies could be revised to support Philadelphia’s diverse urban agriculture sector. The group shared with the

⁵ See e.g. Susan Wachter et al., *Redevelopment Authority Of The City Of Philadelphia: Land Use And Policy Study 19*, 34 (2010) available at <http://pennur.upenn.edu/uploads/media/urban-agriculture-final-report.pdf>.

⁶ City of Philadelphia, *Policies for the Sale and Reuse of City Owned Property*. Draft (December 16., 2011) available at http://planphilly.com/uploads/media_items/http-planphilly-com-sites-planphilly-com-files-saleandreuseofcityproperty-pdf.original.pdf.

agencies a summary of the needs, goals, and priorities expressed by gardeners and farmers, including:

- 1) More transparent public process and policies that reflect community engagement and on-the-ground garden realities;
- 2) Citywide, district, and community planning to identify urban agriculture sites and create clear expectations about potential future uses; and
- 3) A shift from the “urban agriculture as interim use” paradigm and expanded opportunities for longer land tenure.⁷

Proposing a language for amended policies, we made the case to the city agencies for an investment by the City towards continuity and permanence. We outlined the significant and wide-ranging benefits garden and farm projects bring to communities and the intense investment of time, money, engagement, and trust-building required to start a new garden. We shared the place-based nature of this work. We said Philadelphia farmers and gardeners needed real leases of at least five years and stressed that the city needs to commit to the preservation of legacy spaces.



By June 2012, the City had incorporated some of our policy language into the final document. Revised policies allowed for up to a 5-year lease for a community garden and leases of variable terms for market farms.⁸ The requirement for nonprofit status was removed entirely as a barrier. And the policies suggested a pathway to permanence for gardens that demonstrate long-term sustainability. GJLI has been working since that time to ensure these policies are implemented.

The following year, as the city’s new zoning code went into effect,⁹ we were provided with the chance to further electrify our constituency building efforts. The city had spent 4 years creating a new zoning code for the first time in 50 years. Amongst other efforts to promote sustainability, the code created a framework that acknowledged urban agriculture as a use,

⁷Johanna Rosen and Amy Laura Cahn to City Disposition Policy (December 22, 2011) available at <http://www.pilcop.org/wp-content/uploads/2012/04/FPAC.pdf>; Food Growers to Proposed City of Philadelphia Land Disposition Policies (no date) available at http://www.pilcop.org/wp-content/uploads/2012/04/PUFN_FORC.pdf.

⁸ City of Philadelphia. *Policies for the Sale and Reuse of City Owned Property*. (April 20, 2012) available at http://www.phdchousing.org/rfps/Philadelphia_Land_bank_Strategic_Planning_and_Analysis_RFP_final.pdf.

⁹ See generally, Philadelphia Code, Title 14 (enacted August 22, 2012) available at [http://www.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/thephiladelphiacode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:philadelphia_pa](http://www.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/thephiladelphiacode?f=templates$fn=default.htm$3.0$vid=amlegal:philadelphia_pa).

explicitly permitting community gardening and market farming in most areas of the city.¹⁰ This step essentially legalized hundreds of gardens and farms. However, within months of the code going into effect, the district council member from Northeast Philadelphia introduced legislation into City Council intended to roll back many of the sustainability provisions of the new zoning code, including an outright prohibition of community gardening and market farming in commercial mixed use areas.

Using data collected by GJLI during the summer of 2012, we determined that this legislation could put about 20 percent of Philadelphia's gardens and farms at risk, since this use would, once again, be illegal, and would restrict urban agriculture on a third of the city's commercial land.¹¹ Very quickly, our partners at Weavers Way Co-op, the Pennsylvania Horticultural Society, Overbrook Environmental Education Center, and a host of other organizations, gardens, and farms mobilized with us, including many of the legacy garden and farm spaces put at risk by the legislation. Building the ad-hoc Coalition for Healthier Foods and Greener Spaces, we made urban agriculture visible in the media and in city council chambers.¹² Within a month, the bill had been scaled back and the bill's sponsor had removed provisions affecting urban agriculture entirely.

Out of that ad-hoc organizing effort, a more formal Healthy Foods Green Spaces coalition was born. The coalition developed a mission and values and began creating action steps to protect gardens through policy advocacy and organizing while building a network. The existence of the coalition, as well as the growing strength of the FPAC, situated urban agriculture constituents to have strong voice in the land bank legislation¹³ that emerged in 2013 as the next step in streamlining the process of land access and creating a more transparent and equitable land access system, building on prior policy changes.

A land bank is a public entity tasked with consolidating ownership of city owned property; acquiring vacant, abandoned, and tax delinquent private property; and putting it all back out to productive reuse, but with greater intentionality and a more transparent, accessible, and equitable process. Seeing the land bank as a tool to address our clients' and partners' needs, GJLI participated in two coalitions to pass the local land bank legislation. The Campaign to Take Back Vacant Land allied us, as urban agriculture land access advocates, in a grassroots effort with activists working on affordable housing, disability rights, and labor organizing, as well as ACT UP and civic associations. The Philly Land Bank Alliance brought us around the table with other citywide organizations representing real estate, the builders association, architects and design professionals, and community development corporations. GJLI connected Healthy Foods Green Spaces to these larger efforts, resulting in a strong urban agriculture presence at every single city council hearing. The fruits of our advocacy are a land bank law¹⁴ that explicitly names

¹⁰ See id. § 14-601(11); Table 14-602-1.

¹¹ "Twilight Zone- Already Some on Council Messing with Zoning Reform," Philly.com (November 19, 2012) available at http://articles.philly.com/2012-11-19/news/35206190_1_new-code-twilight-zone-developers.

¹² John McGoran "Zoning Amendment Threatens Urban Farms in Philly", Gridphilly.com (2013) available at <http://www.gridphilly.com/grid-magazine/2013/1/18/zoning-amendment-threatens-urban-farms-in-philly.html>; Virginia Smith, "And You Thought Gardening Was A Passive Sport," Philly.com (January 17, 2013) available at <http://www.philly.com/philly/blogs/gardening/And-you-thought-gardening-was-a-passive-sport.html>; Christine Fisher, "Councilman O'Neill's Amendments Hit Community" Planphilly.com (January 17, 2013) available at <http://planphilly.com/eyesonthestreet/2013/01/17/councilman-o-neill-s-amendments-hit-community-gardens>.

¹³

¹⁴ See, generally, Phila. Code § 16-700 (enacted Dec. 18, 2013).

urban agriculture and open space as “creat[ing] beneficial community impact” such that the land bank may sell properties at a discounted or nominal price for this purpose.¹⁵

The legislation called for the land bank to engage in strategic planning during its first year. In contrast to 2011, urban agriculture was firmly acknowledged as a constituency and the strategic planning team’s first stakeholder meeting was with gardeners, farmers, and open space advocates. GJLI gathered these stakeholders, working to expand the diversity and breadth of our reach. Gardeners and farmers sat with planning consultants and land bank staff and gave voice to historic barriers and current needs, helping create the plan to guide the land bank over the next five years.

The land bank strategic plan¹⁶ reflects the role of Philadelphia residents and the investment they have made as land stewards. It also acknowledges the fragility of so many community spaces. The plan names creation of new and preservation of existing community gardens as objectives, evaluates community need, outlines several pathways to promote this work, and recognizes the critical role of community partners in implementation. Our gains culminated in “Guiding Criteria” that state “[i]f properties are already in use as an active and maintained community garden, this use will be protected.”¹⁷ That simple language in the Guiding Criteria signals a paradigm shift from urban agriculture as interim use and changes the rules of game for Philadelphia gardeners and farmers.

CONCLUSION

Over time, Healthy Foods Green Spaces has blossomed into the newly renamed Soil Generation. The coalition’s work is broadening, deepening, and changing to reflect on-the-ground organizing by growers Owen Taylor and Kirtrina Baxter. Soil Generation now functions as a space for mutual aid, solidarity, and skill sharing amongst gardeners and farmers. Many coalition members continue to build their skills at policy advocacy, with the group as a whole creating a vision for Philadelphia’s next steps to support urban agriculture. Always, meetings focus on how to best support threatened gardens, through outreach, education, and organizing. And, in recent months, every meeting has had childcare to allow for broad participation.



¹⁵ Id. at § 16-708(2).

¹⁶ *Philadelphia Land Bank Strategic Plan & Disposition Policies*, The Philadelphia Land Bank (2015) available at http://www.philadelphialandbank.org/assets/LandBankStrategicPlan_022315.pdf.

¹⁷ Id. at 112.



Despite the successes described above, we are not yet where we need to be. Access to vacant land is still a problem. Last summer, we discovered only a fraction of eligible garden applications to all land holding agencies have been brought to completion in two years. The staff does not exist in any city agency to process applications and applications for property uses perceived as revenue neutral are still not made a priority. In

the almost three years since city policy allowed for five-year urban agriculture leases, less than five have actually been signed. For applications that are processed, every agency continues to offer, as a default, the one-year license that is revocable at any time, with most gardeners and farmers unaware that they could negotiate for more secure options. This creates an inequitable situation in which gardens and farms with resources, political savvy, an advocate, or independent knowledge get results when others do not. Furthermore, while a standard license agreement exists, a standard lease does not. Thus, we find ourselves negotiating the same issues anew every time.

Finally, there is still work to be done to build trust for the new systems. The final hearing prior to the passage of the land bank law revealed that even our multi-racial, cross-class, cross-sector coalition endeavor did not reach as far as it could and not all relevant constituencies were brought into the process. Residents from some primarily African American neighborhoods, who still live with the aftermath of urban renewal and other failed programs,¹⁸ raised concerns that the land bank would facilitate land grabs and made clear the need for greater transparency and better community representation. One community leader cautioned that residents who have put time, effort, and resources into maintaining and farming on individual parcels would be priced out.¹⁹ Others shared that their communities want better housing and abandoned land put to good use, but that residents need to better understand the law and the conditions it will create for the neighborhood before they can support the land bank.²⁰

¹⁸ Mindy Thompson Fullilove, *Root Shock* (2004); See, E.G., Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation And The Making Of The Underclass* (1993).

¹⁹ Hearing on Bill No. 130156A Before the Comm. of the Whole, Phila. City Council 111 (Dec. 5, 2013) (statement of Reverend Lewis Nash).

²⁰ *Id.* at 125-128 (statements of Tiffany Green, Darnetta Arce).

We need community education about the role of the land bank and about what equitable land access should look like. We need to reach farther and deeper to ensure residents and grassroots groups have a voice in planning and implementation — not just three minutes at a public hearing, but a process to ensure that feedback is heard and incorporated and that residents know it. And we need to continue to give life to the concept that healthy and sustainable communities are built through a range of beneficial land uses, that residents should have tools to legally access land as effectively as any corporate or nonprofit purchaser, and that there is value to something called the commons.



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