Cleveland State Law Review

Volume 68 | Issue 4

Article 7

6-3-2020

Opportunity in Ohio: Rethinking Northeast Ohio's Opportunity Zones with Local Legislation

Patrick J. Lipaj
Cleveland-Marshall College of Law

OPPORTUNITY IN OHIO: RETHINKING NORTHEAST OHIO'S OPPORTUNITY ZONES WITH LOCAL LEGISLATION

PATRICK J. LIPAJ*

ABSTRACT

Welcome to Census Tract 1186.02! Here, in a small sliver of Cleveland's Glenville neighborhood, tucked between Superior and Hough Avenues, you will uncover a lot. You will discover a rich history of the city's ethnic and cultural roots. You will also find gang violence, underperforming schools, a median household income of $9,526, and a poverty rate of 66.5 percent. Something you will not find in 1186.02 is investment. Private or public, money is not flowing in to 1186.02 and it has not for a long time. The substantial toll of continuous underinvestment on the residents of this neighborhood, one of Cleveland's poorest, is palpable and the need for relief is clear.

This relief recently became possible when 1186.02 was designated as a Qualified Opportunity Zone by the U.S. Treasury Department. This designation, made available through the Tax Cuts and Jobs Act of 2017, could be a watershed moment for Glenville. By providing significant federal tax benefits to investors, Congress hopes to encourage a massive inflow of investment into low-income communities, like Glenville, that have long suffered from perennial underinvestment.

Unfortunately, the hope of relief for Tract 1186.02 and its residents will likely be short-lived. Because the federal Opportunity Zone provision was written too broadly, it not only permitted too many designations, but it also allowed for the designation of numerous not-so-poor neighborhoods. In other words, the law pits communities that need the investment most—like Glenville—against neighborhoods that are much better-off—like Cleveland's downtown core and trendy Tremont neighborhood. For context, there are tracts in the city's downtown core and Tremont neighborhood that were designated with median household incomes that septuple (i.e. seven times as much) those in 1186.02. The odds that areas like Glenville can outcompete such better-situated areas for private investment dollars are slim-to-none. As a result, the residents of 1186.02 will be left behind again.

But it does not have to be this way. It is not too late for the City of Cleveland and Cuyahoga County to take advantage of the many positive aspects of the Opportunity Zone provision, while ensuring that those benefits are directed towards their most-in-need neighborhoods. By enacting local legislation that targets these underdog tracts for additional services and public investment, this Note argues Cleveland and Cuyahoga County can level the playing field and provide neighborhoods like Glenville and tracts like 1186.02 with the competitive advantages they need to rediscover their potential.

---

* J.D., May 2020, Cleveland-Marshall College of Law. I thank my parents—John and Annette Lipaj—for being the most supportive and loving parents a kid could ask for. I am also deeply grateful for all the time, effort, and feedback that Professor John Plecnik and the *Cleveland State Law Review* team provided to improve this Note.

CONTENTS

I. INTRODUCTION

When the Great Recession ravaged the U.S. economy in 2008 and 2009, it spared no class of Americans. Wealthy Americans lost $8 trillion in stock market value as Wall Street tanked.[1] Middle-class Americans saw approximately $9.8 trillion in wealth disappear as their home values and retirement savings washed away.[2] Poorer Americans fell even further behind as poverty became more concentrated and job opportunities dried up.[3]

A decade later, by late 2019, the American economy bounced back. Stock markets more than recovered the value lost during the financial crisis, reaching record heights

---

[1] Renae Merle, *A Guide to the Financial Crisis — 10 Years Later*, WASH. POST (Sept. 10, 2018), https://www.washingtonpost.com/business/economy/a-guide-to-the-financial-crisis--10-years-later/2018/09/10/114b76ba-af10-11e8-a20b-5f4f84429666_story.html?utm_term=.3181b586cda1.

[2] *Id.*

[3] Elizabeth Kneebone & Natalie Holmes, *U.S. Concentrated Poverty in the Wake of the Great Recession*, THE BROOKINGS INSTITUTION (Mar. 31, 2016), https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/.

in late 2019.[4] Home values returned to pre-crash levels.[5] Businesses—big and small—experienced record profits,[6] and unemployment dipped to a fifty-year low.[7] Yet, for the poorest Americans, recovery never arrived.

Then, in early 2020, economic calamity struck again. As this Note went to press, the COVID-19 global pandemic was wreaking havoc on the U.S. economy and throwing Americans out of employment at levels not seen since the Great Depression in the 1930s.[8] And, unfortunately for the poorest of Americans, the road to recovery does not look any easier this time around.

The roadblock that withholds recovery from many of America's poorest during recessions is known as concentrated poverty. The term concentrated poverty refers to "areas where a high proportion of residents are poor."[9] In extreme cases, where more than forty percent (40%) of the population lives below the federal poverty line, social scientists refer to these areas as "pockets of poverty."[10]

Pockets of poverty are concerning for two reasons. First, pockets of poverty subject their poor residents to "concentrated disadvantage—from higher crime rates and poorer health outcomes to lower educational opportunities and weaker job networks."[11] Research shows that children who grow up in neighborhoods with concentrated disadvantage have less upward mobility than children who grow up

---

4 Chris Matthews, *Nasdaq Ends Above 9,000 with 10th-Straight Record Close; S&P, Dow Set New All-Time Highs*, MARKETWATCH (Dec. 26, 2019), https://www.marketwatch.com/story/nasdaq-ends-above-9000-with-10th-straight-record-close-sp-dow-set-new-all-time-highs-2019-12-26.

5 Merle, *supra* note 1.

6 *Record Level of Small Businesses Experiencing Profit Growth*, NAT'L FED'N INDEP. BUS. (May 8, 2018), https://www.nfib.com/content/press-release/economy/record-level-of-small-businesses-experiencing-profit-growth/.

7 Avie Schneider, *U.S. Unemployment Rate Drops to 3.7 Percent, Lowest in Nearly 50 Years*, NPR (Oct. 5, 2018), https://www.npr.org/2018/10/05/654417887/u-s-unemployment-rate-drops-to-3-7-percent-lowest-in-nearly-50-years.

8 Christopher Rugaber, *US Unemployment Surges to a Depression-Era Level of 14.7%*, ASSOCIATED PRESS (May 8, 2020), https://apnews.com/908d7a004c316baceb916112c0a35ed0.

9 Isaac Shapiro, Cecile Murray, & Barbara Sard, *Basic Facts on Concentrated Poverty*, CENTER ON BUDGET AND POLICY PRIORITIES, November 3, 2015, https://www.cbpp.org/sites/default/files/atoms/files/11-3-15hous2.pdf.

10 *See generally, e.g.*, Mark D. Partridge & Dan S. Rickman, *Persistent Pockets of Extreme American Poverty and Job Growth: Is There a Place-Based Policy Role?*, 32(1) J. AGRIC. & RESOURCE ECON. 201 (2007); Lisa Lambert, *Pockets of Poverty Grow in the United States*, REUTERS (Nov. 3, 2011, 8:57 AM), https://www.reuters.com/article/us-usa-cities-poverty-newspro/pockets-of-poverty-grow-in-the-united-states-idUSTRE7A23NU20111103?feedType=RSS&feedName=everything&virtualBrandChannel=11563.

11 Lambert, *supra* note 10.

elsewhere.[12] Second, analysis shows that pockets of poverty grew throughout the United States in the years after the Great Recession, even as the rest of the economy recovered.[13] These two problems, when combined, suggest that a growing number of Americans are deprived of upward mobility simply because of where they live.

Opportunity Zones seek to solve this problem. Through a bipartisan[14] provision in the Tax Cuts and Jobs Act of 2017 ("TCJA"),[15] Opportunity Zones hope to tap the economic recovery of the wealthy—an estimated $6.1 trillion in unrealized capital gains[16]—and reinvest it in the countless low-income communities that still await recovery. The Opportunity Zone provision attempts to achieve this end by rewarding investors, real estate developers, and businesses with significant tax incentives when they reinvest their capital gains in certain designated areas.

This Note centers on using Opportunity Zones as a means to the end of alleviating highly concentrated poverty. With that focus in mind, this Note argues that Opportunity Zones suffer from two key shortfalls. First, the TCJA was flawed because it qualified too many zones yet simultaneously allowed for some of America's poorest tracts to remain undesignated. Second, the tax incentives provided by the TCJA will not be enough, on their own, to effectively alleviate high concentrations of poverty. Therefore, this Note ultimately concludes that additional legislation is needed at the local level to ensure that Opportunity Zones reach their full potential. By exploring past initiatives similar to Opportunity Zones, this Note recommends four ways that local communities—like the City of Cleveland and Cuyahoga County—can maximize poverty-alleviation within their Opportunity Zones: (1) limiting the number and scope of eligible tracts, (2) tailoring local expenditures on services and infrastructure, (3) simplifying local taxation and regulation, and (4) encouraging robust community input.

This Note proceeds in four steps. Part II provides background on the growth of highly concentrated poverty in the United States, explores the theoretical foundations of Opportunity Zones, and analyzes the success of similar programs. Part III considers how investors, real estate developers, and businesses can benefit from Opportunity

---

12 Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects*, at 35 (2017) ("[C]hildren's opportunities for economic mobility are shaped by the neighborhoods in which they grow up. Neighborhoods affect children's long-term outcomes through childhood exposure effects: every extra year a child spends growing up in an area where permanent residents' incomes are higher increases his or her income.").

13 Kneebone & Holmes, *supra* note 3.

14 The Opportunity Zone proposal was hatched in a 2015 white paper by Jared Bernstein, who was an economic adviser to Joe Biden when he was vice president, and Kevin Hassett, who is now chairman of the Council of Economic Advisers for U.S. President Donald Trump. Jessie Romero, *Opportunity Zones, More Money More Problems? The Promise and Pitfalls of a New Financing Model for Distressed Communities*, ECON FOCUS, First Quarter, 2019, at 10.

15 26 U.S.C. § 1400Z (2018).

16 Jennifer Pryce, *There's A $6 Trillion Opportunity In Opportunity Zones; Here's What We Need To Do To Make Good On It*, FORBES (Aug. 14, 2018), https://www.forbes.com/sites/jenniferpryce/2018/08/14/theres-a-6-trillion-opportunity-in-opportunity-zones-heres-what-we-need-to-do-to-make-good-on-it/#1addafaf6ffc.

Zones. Part IV recommends legislative tools that local governments can use to maximize the poverty-alleviating potential of their Opportunity Zones and proposes legislation for Cleveland City Council and Cuyahoga County Council. Finally, Part V briefly concludes.

II. BACKGROUND

A. Growth of Highly Concentrated Poverty in the United States

Despite its status as one of the wealthiest nations on earth,[17] America has a poverty problem. The problem is not just that it has one of the highest rates of poverty among rich nations.[18] The more concerning problem is that America's poverty increasingly concentrates in small areas. Describing recent shifts in America's demographics, researchers from the Brookings Institution noted, "rather than spread evenly, the poor tend to cluster and concentrate in certain neighborhoods or groups of neighborhoods within a community."[19] The concern that arises from clustering—discussed more in the next section—is that businesses and investors avoid areas of concentrated poverty. As a result, residents struggle to obtain nearby employment, poverty compounds, and the likelihood that poor residents remain poor increases.[20] In sum, a growing number of Americans are trapped.[21]

1. Illustration: Market Failures

To solve the problem, it is important to understand how poverty concentrates in the first place. Generally, businesses in a free market economy seek to maximize

---

[17] John Harrington, *Richest Countries in the World 2018: The Top 25 Wealthiest Nations*, USA TODAY (Nov. 28, 2018), https://www.usatoday.com/story/money/2018/11/28/richest-countries-world-2018-top-25/38429481/ (ranking the United States the eleventh wealthiest nation in the world by Gross National Income per capita).

[18] *Poverty Rate*, OECD (2020), https://data.oecd.org/inequality/poverty-rate.htm.

[19] ELIZABETH KNEEBONE & CAREY ANNE NADEAU, THE NEW AMERICAN SUBURB: POVERTY, RACE AND THE ECONOMIC CRISIS 15 (Katrin B. Anacker ed., 2015).

[20] Joe Cortright & Dillon Mahmoudi, *Lost in Place: Why the Persistence and Spread of Concentrated Poverty—Not Gentrification—is our Biggest Urban Challenge*, CITY OBSERVATORY, Dec. 2014, at 7 ("[Research] looking at millions of families and their children, shows that intergenerational income mobility is significantly higher in metropolitan areas that have lower levels of income segregation.").

[21] ALAN BERUBE ET AL., THE ENDURING CHALLENGE OF CONCENTRATED POVERTY IN AMERICA: CASE STUDIES FROM COMMUNITIES ACROSS THE U.S. 11 (David Erickson et al. eds., 2008), https://www.brookings.edu/wp-content/uploads/2016/06/1024_concentrated_poverty.pdf; *see also* Eva T. Van Kempen, *Poverty Pockets and Life Chances: On the Role of Place in Shaping Social Inequality*, 41(3) AM. BEHAV. SCI. 430, 445–47 (1997) (noting how the reduced access to the job market, socialization, stigmatization, and limited access to social rights experienced by those living in poverty pockets can affect their life chances).

revenues and minimize costs.[22] This often entails hiring workers that are the most productive at the lowest cost (i.e. demanding the lowest wage).[23] Put another way, if worker A has the skills to produce ten widgets per hour and demands $10 per hour, while worker B can only produce eight widgets per hour yet also demands $10 per hour, a business will hire worker A because she is more productive.

In theory, the labor force of workers is mobile.[24] That is, workers like A and B are able to freely move from one job or area to another if they are not satisfied with their current working conditions. But here is where theory does not match reality. Labor is not freely mobile in areas with highly concentrated poverty.[25] As a result, the free market fails to optimally allocate resources between areas and people, as demonstrated below.

For example, when neighborhoods—like Cleveland's Glenville—lack skilled workers, businesses often locate their offices and plants distant from these areas, preferring proximity to skilled workforces that can provide a higher return on their investment.[26] As such, residents living in pockets of poverty must make a tough decision to stay employed: travel longer distances or move closer to the job. The first option is limited to those who *can* travel longer distances. Research suggests that access to cars and adequate public transportation is limited for low-income families.[27] This is especially true for Glenville residents because Ohio notoriously underinvests in public transportation, compared to other states.[28] The second option, moving closer

---

[22] MARTIN KOLMAR, PRINCIPLES OF MICROECONOMICS: AN INTEGRATIVE APPROACH 201–04 (Springer International Publishing, 1st ed., 2017) (explaining the basic assumption of revenue maximization in free market economic theory and its link between cost functions).

[23] *Id.*

[24] *See, e.g.,* ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 99 (New York: Random House 1937) ("The whole of the advantages and disadvantages of the different employments of labour and stock must, in the same neighborhood, be either perfectly equal or continually tending to equality. If, in the same neighbourhood, there was any employment evidently either more or less advantageous than the rest, so many people would crowd into it in the one case, and so many would desert it in the other, that its advantages would soon return to the level of the other employments. This at least would be the case in a society where things were left to follow their natural course, where there was perfect liberty, and where every man was perfectly free both to [choose] what occupation he thought proper, and to change it as often as he thought proper."); *see also* Simon Rottenberg, *On Choice in Labor Markets*, 9 INDUS. & LAB. REV. 183 (1956).

[25] Partridge & Rickman, *supra* note 10, at 203–04.

[26] *Id.*

[27] BERUBE ET AL., *supra* note 21, at 11 ("A large proportion of low-income households in many metropolitan areas do not own private vehicles and also lack access to good public transit, further isolating them from job opportunities."); *see also* Partridge & Rickman, *supra* note 10, at 204.

[28] Wendy Patton & Victoria Jackson, *How Ohio Funds Public Transit*, POL. MATTERS OHIO (May 26, 2017), https://www.policymattersohio.org/research-policy/sustainable-communities/transit/how-ohio-funds-public-transit ("Ohio spends less on public transit than 44 states . . . Ohio's contribution of just $.63 per-capita is below that of rural South Dakota and Maine, and ranks eighth lowest in the nation.").

to the job, is also limited. The lack of affordable housing in other parts of town[29] and a variety of other informational and discriminatory barriers all but eliminate the possibility of moving.[30] For many, the only option left is to stay in the pocket of poverty without a job.[31]

When the middle class moves out, the situation only worsens. Without families generating income, real estate values plummet and local schools deteriorate because their primary funding source—property taxes—evaporates. This leaves pockets of poverty with jobless parents and hopeless children who face an uphill battle due to their concentrated disadvantage. Unable to obtain the skills or education necessary, children born into highly concentrated poverty oftentimes remain through adulthood.[32] Then, the cycle repeats with the next generation.

2. Poverty, Data, and the Midwest

While recent analysis suggests that the problems of highly concentrated poverty worsened in the United States after the Great Recession,[33] the problem appeared especially profound in the post-industrial economies of the Midwest—cities like Detroit, Cleveland, Toledo, and Indianapolis.[34] In its assessment of the growth of pockets of poverty, the Brookings Institution noted that the Midwest led the nation in the growth of such pockets.[35]

And at the center of the Midwest's problem is Northeast Ohio, where vast portions of the population live in pockets of poverty.[36] The numbers are staggering. In Cleveland, 32% of residents live in neighborhoods where the median household income is in the bottom quartile of American households.[37] In East Cleveland, the

[29] BERUBE ET AL., *supra* note 21, at 11 ("[T]he lack of affordable housing options in other parts of the city-as well as racially segmented housing markets-can constrain the ability of low-income families to move to lower-poverty neighborhoods, even when they express a desire to relocate.").

[30] Raj Chetty et al., *Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice* 7 (Nat'l Bureau of Econ. Research, Working Paper No. 26164, 2020), https://opportunityinsights.org/wp-content/uploads/2019/08/cmto_paper.pdf.

[31] *Id.*

[32] BERUBE ET AL., *supra* note 21, at 11–13.

[33] Kneebone & Holmes, *supra* note 3.

[34] *Id.*

[35] Lambert, *supra* note 10.

[36] *Economically Distressed Neighborhoods: Cleveland Profile*, FUND FOR OUR ECONOMIC FUTURE (July 29, 2016), http://www.thefundneo.org/content/uploads/attachments/Cleveland_Economically%20distressed%20neighborhoods%202016_0.pdf.

[37] *Id.*

number is 47%.[38] In Youngstown, it is even worse at 52%.[39] To put these figures into context, the typical household in these neighborhoods earns roughly $18,323 per year, compared to a regional median of $51,263.[40] Labor force participation among working-age adults in these neighborhoods is more than twenty percentage points below the regional average.[41] Unfortunately for residents of these neighborhoods, the conventional government response for fighting poverty has failed them.

B. The Solution: Opportunity Zones

Enter Opportunity Zones: an unconventional solution to the problem of concentrated poverty. Opportunity Zones have the potential to reverse the serious dangers inherent in growing concentrations of poverty in America. Through a provision in the tax code[42] signed into law by President Trump as part of the TCJA, Opportunity Zones fight poverty by directing private capital into low-income communities through long-term equity investments.[43] Simply stated, this initiative is the "most ambitious Federal attempt to boost private investment in low-income areas in a generation."[44]

1. Origins and Congressional Intent

Initially hatched in a 2015 white paper by a bipartisan pair of economists, Jared Bernstein and Kevin Hassett, Opportunity Zones are premised on the notion that historic levels of investment could be made in downtrodden areas by unlocking private capital.[45] Bernstein and Hassett envisioned employing the vast amount of unrealized capital gains, obtained by private individuals through the stock market's record growth

---

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 Unless stated otherwise, all chapter and section references are to title 26 of the United States Code (the Internal Revenue Code of 1986) and the Treasury Regulations (the "Regulations") issued thereunder.

43 26 U.S.C. § 1400Z (2018); *see also The Promise of Opportunity Zones: Hearing Before the Joint Economic Committee*, S. Hrg. 115-297 at 7 (May 17, 2018) (statement of Mr. John Lettieri) ("The fundamental purpose of this incentive is to encourage long-term equity investment.").

44 *The Promise of Opportunity Zones: Hearing Before the J. Econ. Comm.*, 115th Cong. 7 (May 17, 2018) (statement of Mr. John Lettieri).

45 The paper was jointly written by Jared Bernstein, an economic adviser to former Vice President and 2020 presidential hopeful Joe Biden, and Kevin Hassett, senior economic advisor to President Trump and former chairman of the Council of Economic Advisers. *See* JARED BERNSTEIN & KEVIN A. HASSETT, UNLOCKING PRIVATE CAPITAL TO FACILITATE ECONOMIC GROWTH IN DISTRESSED AREAS 1 (Econ. Innovation Group eds., 2015).

over the past decade, for the purpose of reinvestment in low-income communities.[46] With estimates pegging the value of these unrealized capital gains at over six *trillion* dollars in the United States, it was quickly clear that their idea had enormous potential.[47]

By April 2016, a bipartisan group in Congress—consisting of Senators Cory Booker (D-NJ) and Tim Scott (R-SC), as well as Representatives Ron Kind (D-WI) and Pat Tiberi (R-OH)—bought into the idea and introduced the Investing in Opportunity Act.[48] In the next session of Congress, the Investing in Opportunity Act was bundled into the TCJA and became law.

Congress's intent for Opportunity Zones was evident: to help rebuild distressed communities inflicted with concentrated poverty. For example, in a hearing before the Joint Economic Committee, Senator Scott said,

> Fifty-two million Americans live in distressed communities. I have personally been raised in one of those distressed communities. . . . [T]he goal of the legislation, is to make sure that those residents living in the Opportunity Zones, those businesses located in the Opportunity Zones, the property that could be rehabilitated in the Opportunity Zones, benefits from a long-term view of making a community better without the gentrification.[49]

Similarly, Senator Booker told the committee that the goal of Opportunity Zones was to "incentivize private investors to invest their inactive capital in high-impact projects in economically distressed communities—in places like Camden and Newark in my home State of New Jersey. In doing so, we can unleash a wave of transformative investment and revitalize hard-hit rural and urban communities across the country."[50] The next section summarizes operates to achieve these aspirations.

---

46 *Id.* at 17 ("The explosion in unrealized capital gains and cash holdings presents an opportunity for policies that create new incentive for private investors to redeploy capital to regions in need of economic development."); *The Promise of Opportunity Zones*, *supra* note 44, at 3 (statement of Senator Martin Heinrich) ("Thanks to the long bull market, many investors are sitting on substantial unrealized capital gains that we can put to work generating housing, jobs, and growth."); Noah Buhayar, *Will 'Opportunity Zones' Help the Rich, the Poor or Both?*, BLOOMBERG BUSINESSWEEK (Jan. 4, 2019), https://www.bloomberg.com/news/articles/2019-01-04/will-opportunity-zones-help-rich-poor-or-both-quicktake.

47 *Opportunity Zones: Tapping into a $6 Trillion Market*, ECON. INNOVATION GROUP (Mar. 21, 2018), https://eig.org/news/opportunity-zones-tapping-6-trillion-market ("the pot of potential capital eligible for reinvestment in Opportunity Zones climbs to a total of $6.1 trillion."); Pryce, *supra* note 16 (explaining that American households hold an estimated $3.8 trillion in unrealized capital gains and American corporations hold another $2.3 trillion).

48 *See* Investing in Opportunity Act, S. 2868, 114th Cong. (2d Sess. 2016); Investing in Opportunity Act, H.R. 5082, 114th Cong. (2d Sess. 2016).

49 *The Promise of Opportunity Zones*, *supra* note 44, at 5 (statement of Senator Tim Scott).

50 *Id.* at 35 (statement of Senator Cory Booker).

2. How Opportunity Zones Operate

Operationally, Opportunity Zones consist of two provisions in the tax code: (1) the designation process[51] and (2) the tax benefits.[52]

a. The Designation Process

The process for designating communities as "Qualified Opportunity Zones" (QOZs) began immediately upon passage of the TCJA in late 2017. First, the statute provided the governor of each state with a ninety-day window to recommend a certain number of census tracts within their state to the Department of Treasury for designation status.[53] Governors could select up to twenty-five percent (25%) of the tracts within their states that were deemed "low-income" by the New Markets Tax Credits program, a similar piece of legislation from 2000 that is discussed more in Part II.C.[54] Generally, this meant that tracts had to have a median income no greater than eighty percent (80%) of the area's median family income or a poverty rate in excess of twenty percent (20%) to be eligible for recommendation.[55] Then, upon receiving the governors' recommendations, the statute gave the Treasury Department a thirty-day period to approve the tracts as QOZs.[56]

Ultimately, 8,761 tracts throughout the country were approved and, on average, the approved QOZs had poverty rates that nearly doubled the national average.[57] Designations are to remain in effect for ten years, expiring on December 31, 2028.[58] IRS guidance clarifies that many of the benefits—described below—will still be available long after expiration in 2028.[59]

Unfortunately for communities with tracts left undesignated, the statutory language indicates that no new tracts can be designated without another act of

---

51 26 U.S.C. § 1400Z-1 (2018).

52 *Id.* § 1400Z-2.

53 *Id.* §§ 1400Z-1(b)(1)(A), 1400Z-1(c)(2)(B).

54 *Id.* §1400Z-1(d)(1).

55 *See id.* § 45D(e)(1); Rebecca Lester, Cody Evans, & Hanna Tian, *Opportunity Zones: An Analysis of the Policy's Implications*, 90(3) STATE TAX NOTES 221, 222 (October 15, 2018).

56 §§ 1400Z-1(c)(2)(A), 1400Z-1(b)(1)(B).

57 *Boondocks and Boondoggles: A New Place-Based Policy Takes Shape*, THE ECONOMIST, Nov. 17, 2018, at 34; Lester, Evans & Tian, *supra* note 55, at 222 ("The average poverty rate across the Zones is 28.7 percent, as compared to a national average of 15.1 percent.").

58 26 U.S.C. § 1400Z-1(f); *see also* Investing in Qualified Opportunity Funds, 83 Fed. Reg. at 54283.

59 *See* Investing in Qualified Opportunity Funds, 83 Fed. Reg. at 54283 ("the proposed regulations permit taxpayers to make the step-up election under section 1400Z-2(c) after a qualified opportunity zone designation expires.").

Congress.[60] And while further designations are certainly possible after 2028, it seems unlikely that Congress will designate more QOZs before then, absent overwhelming evidence that the program is working. This Note opposes the designation of more QOZs before 2028 for reasons discussed in Part III.B.

b. The Tax Benefits

On June 14, 2018, the Treasury Department completed the designation process.[61] Immediately, investors were eligible for three tempting federal tax incentives for reinvesting their capital gains into QOZs: (1) a tax-free rollover of their reinvestment; (2) up to 15% step-up in basis in their reinvestment; and (3) a complete exemption of any capital gain generated by their reinvestment. The first benefit allows investors to *defer* recognition of any capital gains[62] that are reinvested into an Opportunity Zone, for federal taxation purposes, until as late as December 31, 2026, if the investment is not sold before then.[63] Because capital gains are usually subject to a federal tax rate of 15-20% when recognized, deferrals allow investors to put more capital to work immediately.[64] Accounting for the time value of money, such deferrals present investors with potentially significant economic benefits.[65]

The second benefit provided by Opportunity Zones is a series of step-ups in basis that reduce an investor's tax burden on the initial capital gain when the reinvestment

---

60 Under §1400Z-1(b)(1), the text indicates that the only census tracts that are designated as Qualified Opportunity Zones are those that (1) are nominated by a governor and (2) certified by the Secretary of Treasury *before* the end of the 30-day "consideration period. While the law allowed for an extension of the consideration period, it limited that extension to another 30 days, which has long passed. *See id.* § 1400Z-1(b)(2).

61 Press Release, U.S. Dep't of Treasury, Treasury, IRS Announce Final Round of Opportunity Zone Designations (June 14, 2018), https://home.treasury.gov/news/press-releases/sm0414.

62 A "capital gain" is the difference between the cost paid for a capital asset and the amount realized when that asset is sold. Almost everything owned for investment purposes is considered a capital asset. Common examples are houses, stocks, bonds, and personal-use items. *Topic No. 409 Capital Gains and Losses*, Internal Revenue Service, Jan. 28, 2019, https://www.irs.gov/taxtopics/tc409; *Opportunity Zones: Tax-Free Gains*, 51 No. 10 MORTG. & REAL EST. EXEC. REP. NL 1 (July 15, 2018).

63 26 U.S.C. § 1400Z-1(b).

64 *See* DEBORAH A. GEIER, U.S. FEDERAL INCOME TAXATION OF INDIVIDUALS 407 (6th ed. 2019) ("The American Taxpayer Relief Act of 2012 . . . restored the 20% net capital gain rate for such gain within Taxable Income exceeding $400,000 . . . Net capital gain within Taxable Income below those thresholds remains generally at 15%."); *Topic No. 409 Capital Gains and Losses*, *supra* note 62 ("The tax rate on most net capital gain is no higher than 15% for most individuals . . . However, a net capital gain tax rate of 20% applies to the extent that [a taxpayer's] taxable income exceeds the thresholds set for the 15% capital gain rate.").

65 SEAN LOWRY & DONALD J. MARPLES, CONG. RESEARCH SERV., R45152, TAX INCENTIVES FOR OPPORTUNITY ZONES: IN BRIEF 6 (2018).

is held for extended lengths of time.[66] In other words, the law rewards investors for keeping their money invested in QOZs by reducing the taxation rate on their initial capital gains.[67] If the investment is held for five years, "the basis of such investment shall be increased by an amount equal to ten percent (10%) of the amount of gain deferred."[68] If held for seven years, the basis of such property shall be increased by an additional five percent (5%), providing taxpayers with the possibility of a fifteen percent (15%) reduction.[69]

Finally, the third and most enticing benefit Opportunity Zones offer is a complete exemption from federal taxation of all new capital gains derived from a QOZ investment, provided the investment is held for at least ten years.[70] The law states that,

> In the case of any investment held by the taxpayer for at least 10 years and with respect to which the taxpayer makes an election under this clause, the basis of such property shall be equal to the fair market value of such investment on the date that the investment is sold or exchanged.[71]

This last benefit—complete exemption from capital gains taxation—is the crux of the Opportunity Zone regime because it both (a) provides investors with a tax-free upside, leveling the playing field with areas that are traditionally "safer" investments, and (b) encourages patient, long-term commitments to the low-income neighborhoods.[72] After ten years, it is projected that "an investor will see an additional $44 for every $100 of capital gains reinvested into an Opportunity Fund in 2018 compared to an equivalent investment in a more traditional stock portfolio generating the same annual appreciation."[73] A more in-depth look at the novelties and investment applications of these provisions is discussed in Part III.A.

---

66 26 U.S.C. § 1400Z-2(b)(2)(B) (2018); *Opportunity Zones: Tax-Free Gains*, *supra* note 62.

67 *Opportunity Zones: A New Incentive for Investing in Low-Income Communities*, at 1, Economic Innovation Group, https://eig.org/wp-content/uploads/2018/02/Opportunity-Zones-Fact-Sheet.pdf ("The basis is increased by 10% if the investment in the Opportunity Fund is held by the taxpayer for at least 5 years and by an additional 5% if held for at least 7 years, thereby excluding up to 15% of the original gain from taxation.").

68 26 U.S.C. § 1400Z-2(b)(2)(B)(iii) (2018).

69 *Id.* § 1400Z-2(b)(2)(B)(iv).

70 *Opportunity Zones: Tax-Free Gains*, *supra* note 62.

71 26 U.S.C. § 1400Z-2(c) (2018).

72 *Opportunity Zones: A New Incentive for Investing in Low-Income Communities*, *supra* note 67, at 2 ("The Opportunity Zones program is designed to incentivize patient capital investments in low-income communities nationwide. All of the underlying incentives relate to the tax treatment of capital gains, and all are tied to the longevity of an investor's stake in a qualified Opportunity Fund, providing the most upside to those who hold their investment for 10 years or more.").

73 *Id.* at 2.

C. The History of Place-Based Economic Development

While the provisions described above—using capital gains deferrals and exemptions to fight poverty in targeted neighborhoods—are novel, the concept of funneling resources into low-income communities is not new. The idea has been around for half a century and is known as *place-based economic development*. Place-based economic development is premised on the notion that "sufficient incentives will induce business to locate where it does not usually locate and hire employees it does not usually hire."[74] In essence, place-based economic development attempts to alter business decisions on where to locate by making traditionally undesirable locations more financially attractive.

1. The Shift Towards Place-Based Economic Development

a. Early Place-Based Development: Enterprise Zones and Empowerment Zones

Place-based economic development was first revolutionized in the U.K. in the late 1970s with the creation of "Enterprise Zones."[75] Enterprise zones were intended to encourage rapid transformation of certain low-income neighborhoods "in the most depressed part of a city" by eliminating all taxes, regulations, wage controls, and zoning laws within that neighborhood.[76] The rationale was that enterprise zones—free from nearly all red tape and taxation—would mimic a true free market economy, which would allow resources to allocate more efficiently and jobs to flow to the zone's low-income residents because of newfound investment.

Enterprise zones quickly made their way across the Atlantic and into the halls of Congress.[77] By 1980, a federal enterprise zone program was proposed in the House of Representatives.[78] While disagreements between Congress and the George H.W. Bush administration temporarily derailed the federal proposal,[79] the states jumped at the prospect of fighting poverty with enterprise zones. As a result, states were the primary

---

[74] E. Scott Golden, *Enterprise Zones: New Life for the Inner City*, 4 HARV. J. L. & PUB. POL'Y 243, 245–46 (1981).

[75] Enterprise zones were initially proposed by the British urbanist Peter Hall in a 1977 speech, in which he spoke of the potential benefits that downtrodden areas could receive, through the free flow of labor and capital, if regulations and taxation were eliminated within limited geographical areas. *See id.* at 267–68; Jennifer Forbes, *Using Economic Development Programs as Tools for Urban Revitalization: A Comparison of Empowerment Zones and New Market Tax Credits*, 2006 U. ILL. L. REV. 177, 179 (2006); Peter Hall, *Enterprise Zones: A Justification*, INT'L J. URB. & REGIONAL RES. 416, 416–17 (1982).

[76] Golden, *supra* note 74, at 268.

[77] *Id.* at 269–70.

[78] H.R. 7240, 96th Cong. (2d Sess. 1980).

[79] Ellen P. Aprill, *Caution: Enterprise Zones*, 66 S. CAL. L. REV. 1341, 1341–42 (1993).

drivers of place-based economic development throughout the 1990s.[80] By the mid-1990s, 37 states—including Ohio—and the District of Columbia had experimented with some form of enterprise zone.[81] Many of these programs were so successful that they are still active today.[82]

The federal government finally acted in 1993 when President Clinton signed into law "Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas" as part of the Omnibus Budget Reconciliation Act of 1993.[83] The spending bill included over $25 billion in place-based tax incentives aimed towards low income communities.[84]

In several ways, Empowerment Zones and Enterprise Communities were similar to today's Opportunity Zones. For example, they targeted areas with poverty rates greater than 20%.[85] Additionally, they mandated a vast majority of a "qualified" business entity's assets be held within the designated zone to qualify for federal benefits.[86]

However, there are many important differences. First, Empowerment Zones and Enterprise Communities were limited in number. The law permitted for the designation of only nine Empowerment Zones and ninety-five Enterprise Communities across the country.[87] The scale was notably smaller than the 8,700+ QOZs. Empowerment Zones and Enterprise Communities had much less competition for capital than QOZs.

A second important difference is the investment vehicle utilized. Empowerment Zones and Enterprise Communities were funded primarily through "enterprise zone facility bonds."[88] When 95% of net proceeds from the bond offering were utilized within a designated zone, the bonds were completely tax-exempt.[89] This provided a powerful incentive to invest in designated communities. Nevertheless, tax-free bonds are markedly different from the capital gains deferrals and exemptions available through Opportunity Zones because of the risk-taking involved for businesses and investors. Research indicates that a capital gains exemption might encourage higher-risk businesses, whereas tax-free bonds might be more beneficial to lower-risk

[80] Forbes, *supra* note 75, at 177.

[81] Aprill, *supra* note 79, at 1341–43; OHIO REV. CODE ANN. § 5709.632 (West 2017).

[82] *See, e.g.*, IND. CODE ANN. 5-28-15-10 (2018); 20 ILL. COMP. STAT. ANN. § 655/5.3 (2016); FLA. STAT. ANN. § 290.0065 (2012).

[83] Omnibus Budget Reconciliation Act of 1993, 1993 Enacted H.R. 2264, 103 Enacted H.R. 2264, Pub. L. No. 103-66.

[84] Susannah Camic Tahk, *The Tax War on Poverty*, 56 ARIZ. L. REV. 791, 814 (2014).

[85] *See* Pub. L. No. 103-66 § 1392(a)(4)(A).

[86] *See* Pub. L. No. 103-66 § 1397B(b)(3) ("substantially all of the use of the tangible property of such entity (whether owned or leased) is within an empowerment zone . . .").

[87] *See* Pub. L. No. 103-66 § 1391(b)(1)-(2).

[88] Pub. L. No. 103-66 § 1394.

[89] Pub. L. No. 103-66 § 1394(a).

businesses.[90] "[E]ntrepreneurs may choose external debt in order to keep ownership and control of their firms, or they may choose external equity to help share the risk with less risk-averse investors."[91]

Additionally, Empowerment Zones included incentives above-and-beyond the tax-free bonds available for investments in the 95 Enterprise Communities. For example, Work Opportunity Credits incentivized employers to hire low-income employees by allowing them to deduct 25-40% of the wages that they paid those employees in their first year on the job.[92] Similarly, Empowerment Zone Employment Credits provided employers with a 20% tax credit for wages paid to employees that lived and worked in a federally-designated Empowerment Zone.[93] Opportunity Zones have no such provision to explicitly promote employment of a zone's low-income residents.

b. New Markets Tax Credits

In 2000, Congress enacted the New Market Tax Credit (NMTC) program, which President Clinton signed into law as part of the Community Renewal Tax Relief Act.[94] As a major place-based development initiative, the program aimed to attract equity investments into low-income communities through designated community development entities (CDEs).[95] Twenty years later, the program is still valid law after continuous renewals by Congress. Widely hailed as an overwhelming success, NMTCs are estimated to generate $8 in private investment for every $1 invested by the federal government.[96]

Like many place-based development initiatives, NMTCs are designed to level the playing field between low-income communities and wealthier communities in the battle for capital investment. NMTCs accomplish this goal by increasing the after-tax return to investors through a tax credit that offsets the amount of taxation due to the federal government, which ultimately lowers the risk for investors and businesses.[97] The size of the incentive is quite significant. "Investors may claim a 39 percent credit

---

[90] Allen N. Berger & Gregory F. Udell, *The Economics of Small Business Finance: The Roles of Private Equity and Debt Markets in the Financial Growth Cycle*, 22 J. BANKING & FIN. 613, 624 (1998) ("high-growth, high-risk new ventures often obtain angel finance and/or venture capital before they obtain significant amounts of external debt finance . . .").

[91] *Id.*

[92] Tahk, *supra* note 84, at 815.

[93] Pub. L. No. 103-66 § 1396; Tahk, *supra* note 84, at 816.

[94] Community Renewal Tax Relief Act of 2000, H.R. 5662, 106th Cong. (2000).

[95] 2 Tax Planning Real Estate Trans. § 17:22.

[96] *New Markets Tax Credit Program Fact Sheet*, CDFI Fund, https://www.cdfifund.gov/Documents/NMTC%20Fact%20Sheet_Jan2018.pdf.

[97] Ted M. Handel, The New Markets Tax Credit Program: New Tax Credits Will Level the Playing Field for Investments in Low-Income Areas, 25-Jan L.A. Law. 13 at 13 (Jan 2003); GEIER, *supra* note 64, at 32–33.

over seven years (30 percent in present value) on their federal income tax liability."[98] To qualify for tax credits, investments must be made in *low-income communities*, which are statutorily defined as any census tract where the poverty rate is at least twenty percent (20%) or, generally, where the median family income inside the tract is eighty percent (80%) of the statewide or metropolitan average.[99]

In many ways, the NMTCs are very similar to Opportunity Zones.[100] For example, both programs target the same low-income communities[101] and incentivize longer-term investments by providing larger benefits the longer investment is held.[102] Both programs require that investments are *equity* investments rather than debt, which deviates from other place-based development programs.[103] Similarly, both programs mandate that "substantially all" of the business assets—in which Opportunity Zone and NMTC money is invested—be kept within the qualified area.[104] Finally, both programs require annual compliance filings with the Treasury Department.

Despite the many similarities, Opportunity Zones differ from NMTCs in a couple important aspects. First and foremost, Opportunity Zones involve far fewer administrative barriers than NMTCs. Unlike with NMTCs, Opportunity Zone investors are not required to submit proposals to the government nor await approval before investing in low-income communities.[105] Qualified Opportunity Funds can self-certify. Upon receiving approval from the Community Development Financial Institutions Fund (CDFI), community development agencies must enter into allocation agreements with the CDFI that strictly specify the terms and conditions of tax credit usage. No such agreement is required for Opportunity Zone investors. Additionally, although NMTCs and Opportunity Zones both require annual compliance tests, NMTCs demand satisfaction of two tests—the "primary mission" test and the "community accountability" test[106]—whereas Opportunity Zone reporting only requires compliance with a single test.

---

98 Handel, *supra* note 97, at 13.

99 26 U.S.C. § 45D(e)(1) (2018).

100 Lester, Evans & Tian, *supra* note 55, at 226 ("The Opportunity Zone incentive closely resembles the New Markets Tax Credit (NMTC) program . . .").

101 The Opportunity Zones explicitly use the same definition for "low-income community" as used in NMTCs. *See* 26 U.S.C. § 1400Z-1(c)(1) (2018) ("The term 'low-income community' has the same meaning as when used in section 45D(e).").

102 NMTCs provide tax credits of 5% in the first three years, then 6% for the final four years. *See* 26 U.S.C. § 45D(a)(2) (2018). Similarly, Opportunity Zones provide a 10% step-up in basis when investments are held for five years, then an additional 5% when held for seven years. *See* 26 U.S.C. § 1400Z-2(b)(2)(B) (2018).

103 *See* Investing in Qualified Opportunity Funds, 83 Fed. Reg. 209 (proposed Oct. 29, 2018) (to be codified at 26 C.F.R. § 1.400Z-2(a)-1(b)(3)) ("an eligible interest in a QOF is an equity interest issued by the QOF."); 26 U.S.C. § 45D(b) (2018).

104 *See, e.g.*, 26 U.S.C. § 45D(b)(1)(B) (2018); 26 U.S.C. § 1400Z-2(d)(3)(A)(i) (2018).

105 Lester, Evans & Tian, *supra* note 55, at 226–27.

106 The "primary mission" test requires that the entity's organizational documents clearly show that its purpose is to serve the needs of low-income communities and "at least 60 percent

The second important distinction between the two programs is that NMTCs have funding caps and Opportunity Zones do not.[107] For example, NMTCs capped nationwide funding for the program at $1 billion in 2001, $5 billion in 2008, and a steady $3.5 billion from 2010 through 2019.[108] Accordingly, the CDFI restricted allocations of credits to a single CDE to a $100 million maximum. Because of these caps, "only 16.1 percent of applications from 2003 to 2017 received [NMTC] funding."[109] Opportunity Zone investors are not hamstrung by funding caps and are permitted to invest as much as they want in Opportunity Zones, then receive equivalent tax benefits.

A third notable difference is the nature of the benefit provided to investors. As implied by the name, NMTCs provide a tax credit, whereas Opportunity Zones provide capital gains deferrals and the potential for nonrecognition of future gains. Tax credits offset the amount of tax due, meaning that "a $1 tax credit saves $1 in tax for taxpayers in every tax bracket" on their gross income.[110] Capital gains taxes are the taxes paid on investments—different than ordinary income for taxation purposes—and are generally taxed at lower rates than traditional income.[111] The policy purpose for taxing capital gains at a lower rate than ordinary income is to encourage more risk-taking and entrepreneurship.[112] Thus, by tailoring Opportunity Zones towards capital gains rather than ordinary income, Congress is promoting risk-taking even more by allowing investors to keep a greater percentage of their upside.

c. Promise Zones

A decade after the enactment of NMTCs, as some of the Empowerment Zones and Enterprise Communities of the 1990s began to expire, President Obama put his own touch on place-based economic development with the "Promise Zone" initiative.[113]

---

of the products and services of the entity must be devoted to serving these communities or persons." Handel, *supra* note 97, at 14. The "community accountability" test requires that "at least 20 percent of the governing board of the entity or an advisory committee formed by the entity must include representatives of low-income communities within the service area." *Id.*

107 Lester, Evans & Tian, *supra* note 55, at 227 (explaining how Opportunity Zones are notably different from New Markets Tax Credits because there are no funding caps).

108 *See* 26 U.S.C. § 45D(f)(1) (2018).

109 Lester, Evans & Tian, *supra* note 55, at 227.

110 GEIER, *supra* note 64, at 32–33.

111 *See, e.g.*, *id.* at 407.

112 *Id.* at 415.

113 *See generally* MEMORANDUM to the HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, PRIORITIZING FEDERAL INVESTMENTS IN PROMISE ZONES, OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT (2016); Fact Sheet: President Obama's Promise Zones Initiative, White House Press Release, (Jan. 8, 2014), https://obamawhitehouse.archives.gov/the-press-office/2014/01/08/fact-sheet-president-obama-s-promise-zones-initiative; James Hall, *The Promise Zone Initiative and Native American Economic Development: Only the First Step Forward Toward the Promise of a Brighter Future*, 40 AM. INDIAN L. REV. 249, 268 (2016).

Unable to reach a deal with Congress for a program the size of Clinton's, the Promise Zone initiative was an executive action that designated twenty economically distressed jurisdictions across the country to receive federal support.[114] Promise Zones partnered the Department of Health and Human Services and Department of Agriculture with local leaders to assist them with the bureaucratic process of attaining federal grants and tax incentives.[115] Although they showed potential, it was clear early on that Promise Zones were "not the ideal vehicle" to raise communities out of poverty because their lack of congressional approval limited their scope and resources.[116]

2. Critiques of Place-Based Economic Development

After half a century in practice, place-based economic development has been the subject of serious debate.[117] Critics are mainly concerned with a lack of distributive equity.[118] They argue that the benefits of place-based policies mainly flow to the wealthy investors, leaving the poor stuck in dead end, low-paying jobs.[119] In the same vein, many critics fear that "successful" place-based policies result in gentrification, which displaces the intended beneficiaries.[120] Others worry that the foregone revenue, given away in the form of tax breaks, will never be fully recovered.[121]

Conversely, supporters of place-based programs believe that these worries can be alleviated through effective legislative drafting.[122] Proponents argue place-based economic development is more effective at fixing the specific problem at hand—highly concentrated poverty—than more traditional welfare programs because it geographically targets the areas where help is needed most.[123] Place-based development, supporters contend, provides the benefits of flexibility and market

---

114 Hall, *The Promise Zone Initiative*, *supra* note 113, at 263–65.

115 *Id.*

116 *Id.* at 289.

117 *See generally* ALAN H. PETERS & PETER S. FISHER, STATE ENTERPRISE ZONE PROGRAMS, HAVE THEY WORKED? (W.E. Upjohn Inst. Emp. Res. 2002).

118 Tahk, *supra* note 84, at 826–27.

119 Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 407–08 (2001).

120 *See id.* at 448 (2001); Tahk, *supra* note 84, at 815 ("[T]hese projects do not assist the poor, but instead help higher-income residents enjoy services in what rapidly become gentrified neighborhoods.").

121 Golden, *supra* note 74, at 264.

122 *See infra* Part IV.

123 PETERS & FISHER, *supra* note 117, at 25.

responsiveness not found with traditional welfare payments.[124] Similarly, supporters claim that, unlike welfare programs run through large bureaucracies, place-based development results in administrative ease because the vast majority of these programs are implemented through the tax code.[125] Moreover, proponents note that place-based development has non-economic advantages, including a less stigmatizing effect on beneficiaries when compared to traditional welfare programs.[126] Finally, place-based development tends to have broad political support.[127] Bipartisan backing is especially important for the success of Opportunity Zones in an era of political uncertainty because it encourages investors that the incentives will not be repealed and may even be renewed for another ten years.[128]

D. Status Quo: Current Approach in Ohio, Cuyahoga County, and Cleveland

With these critiques in mind, state and local governments across the country have implemented various forms of place-based economic development in their communities. Ohio is no exception. The next three subsections summarize the place-based economic development policies that the State of Ohio, Cuyahoga County, and City of Cleveland utilize to fight poverty.

1. Ohio

Like many states in the 1990s, Ohio experimented with place-based development through the creation of its own Enterprise Zone Program (EZP) in 1994.[129] The legislature enacted EZP to provide "tax incentives to businesses in depressed areas to promote job creation and economic development,"[130] and it remains enshrined in the Ohio Revised Code after renewals by the General Assembly.[131] As it stands today,

---

124 Tahk, *supra* note 84, at 832–34; *see also* Golden, *supra* note 74, at 260 ("[B]y using tax preferences the public sector leaves more decisions to the private sector, and this situation is likely to lead to increased innovation and diversity in the economy.").

125 Tahk, *supra* note 84, at 829–32.

126 *Id.* at 828–29.

127 *See id.* at 820–26; *see also* Partridge & Rickman, *supra* note 10, at 204 ("[T]here may be more widespread voter support for targeting disadvantaged locations than disadvantage people.").

128 Lester, Evans & Tian, *supra* note 55, at 228 ("The proposal had more than [one hundred] Democratic and Republican cosponsors when it was included in the [Tax Cuts and Jobs Act of 2017], suggesting broad bipartisan support."); *Opportunity Zones,* ECON. INNOVATION GROUP https://eig.org/opportunityzones/history (last visited Nov. 2018).

129 S.B. 19, 120th Gen. Assemb., Reg. Sess. (Ohio 1994).

130 *See* Mark Cassell, Ph.D., *Zoned Out: Distribution and Benefits in Ohio's Enterprise Zone Program*, POL'Y MATTERS OHIO (2003), https://www.policymattersohio.org/files/research/ezreport.pdf.

131 OHIO REV. CODE ANN. § 5709.61 (West 2018).

Ohio's EZP permits local officials to negotiate tax incentive agreements with prospective companies that include exemptions of up to 75% of the assessed values on real and personal property for up to ten years.[132] Alternatively, exemptions of 60% on new investments in buildings, machinery, equipment, inventory, and improvements to existing land and buildings for specific projects can be negotiated for ten years, as well.[133] Evidence suggests the program is becoming more popular as more businesses are taking the state up on its offer and moving into distressed areas.[134]

On top of EZP, Ohio Governor Mike DeWine signed into law a state-level "Opportunity Zone Investment Credit" in July 2019.[135] Under the new law, Ohio provides a nonrefundable personal income tax credit equal to ten percent (10%) of capital gains reinvested by individuals into qualified Opportunity Funds operating within one of the state's 320 QOZs.[136] Unlike the federal government, which taxes capital gains at a lower rate than ordinary income, Ohio includes capital gains in ordinary income for taxation purposes. Thus, Ohio's Opportunity Zone Investment Credit presents investors with the potential for quite significant income tax savings.[137]

2. Cuyahoga County

Cuyahoga County's leadership is also warming up to the notion of place-based development.[138] In a recent "Five-Year Development Plan," the County explicitly

---

132 *Ohio Enterprise Zone Program*, OHIO DEV. SERVS. AGENCY, https://development.ohio.gov/files/bs/ez_OhioEnterpriseZoneProgram.doc (last visited Nov. 28, 2018).

133 *Id.*

134 By October 2005, eleven years into EZP's existence, Ohio had 339 active enterprise zone agreements. *See* Cassell, *supra* note 130, at 3. As of November 9, 2018, there were 1079 active agreements throughout the State of Ohio, 37 of which were in Cuyahoga County. *See Business | Tax Incentives*, OHIO DEV. SERVS. AGENCY, https://development.ohio.gov/OTEISearch/ez/selection.aspx?County=All&Company= (last visited Nov. 9, 2018).

135 Amended Substitute H.B. 166, 133th Gen. Assemb., (Ohio 2019).

136 OHIO REV. CODE ANN. § 122.84(B) (West 2020).

137 For example, say Taxpayer A has an ordinary income of $200,000, but just sold her shares of Amazon, Inc. for a gain of $500,000. This year, her taxable income in Ohio would be $700,000. At current rates, she would owe the State roughly $32,449 in personal income taxes. However, if she reinvests all $500,000 into a Qualified Opportunity Fund that invests in an Ohio Opportunity Zone, she owes the State nothing. Because tax credits offset the amount of taxation due, Taxpayer A would have $50,000 in credit (10% of $500,000) to offset the original $32,449 in tax liability. Unfortunately, because the credit is nonrefundable, Taxpayer A will not receive a $17,551 refund from the State to account for the leftover credit.

138 County Executive Armond Budish recently remarked that Opportunity Zones were the "best" thing to come from TCJA. *Cuyahoga County Executive Debate*, CITY CLUB OF CLEVELAND (Oct. 30, 2018) https://www.cityclub.org/inc/audio-player.php?event_id=1191.

listed "emphasize place-based development" as a key strategy for the future.[139] The County now offers a Place-Based/Mixed-Use Development Loan, which targets funding towards "redevelopment projects concentrated in the urban core."[140]

On March 21, 2019, Cuyahoga County announced "Opportunity CLE"—a private-public collaboration with the City of Cleveland, the Greater Cleveland Partnership, Cleveland Development Advisors, Fund for Our Economic Future, and Cuyahoga Land Bank—to draw capital towards the region's Opportunity Zones.[141] Mainly, Opportunity CLE will market eleven of the region's Opportunity Zones and create a portal for businesses and developers to connect with potential investors.[142]

3. City of Cleveland

On the municipal level, the City of Cleveland utilizes many financing and incentive packages that are not uncommon amongst large U.S. cities. For example, Cleveland uses place-based incentives to combat the growth of abandoned commercial and industrial properties through its Vacant Property Initiative.[143] In exchange for hiring a construction team consisting of at least 20% Cleveland residents—4% of which must be low-income—and creating one full-time job for each $10,000 in city assistance, Cleveland structures very favorable loans to private developers attempting to revitalize downtrodden properties.[144] Similar packages are offered through the City's Job Creation Incentive Program,[145] Economic Development Loan Program,[146] and more.[147]

Moreover, the City has been willing to experiment with other major place-based investments. One example is a unique project called the HealthLine where Cleveland partnered with the regional transit authority to target $190 million of investment in

139 ARMOND BUDISH, CUYAHOGA COUNTY FIVE-YEAR ECONOMIC DEVELOPMENT PLAN 2018-2022 15 (2018).

140 *Id.*

141 Jordyn Grzelewski, *'The Floodgates Are About to Open': Cuyahoga County, Cleveland Leaders Unveil Opportunity-Zone Plan*, PLAIN DEALER (March 21, 2019), https://www.cleveland.com/news/2019/03/the-floodgates-are-about-to-open-cuyahoga-county-cleveland-leaders-unveil-opportunity-zone-plan.html.

142 *Id.*

143 Mayor Frank G. Jackson, *Vacant Property Initiative*, CITY OF CLEVELAND, http://rethinkcleveland.org/Cleveland/media/Cleveland/Documents/VPI-Program.pdf.

144 *Id.*

145 *Job Creation Incentive Program*, CITY OF CLEVELAND, DEP'T OF ECON. DEV., https://rethinkcleveland.org/incentives/job-creation-incentive-program (last visited Feb. 11, 2019).

146 *Incentives & Financing*, CITY OF CLEVELAND, DEP'T OF ECON. DEV., https://rethinkcleveland.org/grow-and-expand/incentives-and-financing (last visited Feb. 11, 2019).

147 *Id.*

transportation infrastructure along a nine-mile stretch of blighted roads.[148] Over a decade, the HealthLine spurred an estimated $9.5 billion of private development.[149] Hailed by one local leader as "one of Cleveland's greatest place-based achievements in the modern era," the HealthLine overhaul should serve as a blueprint for further place-based development in Cleveland.

III. MAKING THE MOST OF OPPORTUNITY ZONES: INVESTORS

Opportunity Zones are an attempt by Congress to align the profit-driven motives of investors with the people-driven motives of local communities. This Part explores the first half of the connection and asks: how can investors make the most out of federal Opportunity Zones? Detailed below are a few important guidelines for investors to keep in mind when reinvesting their capital gains in Opportunity Zones.

A. Passive Investors

1. Benefits for Passive Investors

Individual investors seeking passive ownership are fully eligible to take advantage of the sizeable federal tax benefits made available through Opportunity Zones.[150] Upon investment, these benefits include a deferral of gains from their federal tax bill for several years, a reduction of basis from their federal tax bill by as much as 15%, and, in some circumstances, a complete elimination of federal taxation on certain gains.[151]

For example, if Taxpayer A purchased one share of Amazon, Inc. stock in July 2017, when its price was $1,000 per share, and then sold the stock in September 2018, when the price was $2,000 per share, she would have realized a gain of $1,000.[152] Ordinarily, this gain—a capital gain—is subject to a federal tax rate of 15-20%.[153] In other words, Taxpayer A would walk away with a net profit of $800-850 while the federal government would take $150-200. However, by reinvesting that capital gain of $1,000 into an Opportunity Zone, Taxpayer A can benefit tremendously.

---

148 *RTA's HealthLine – the World-Class Standard for BRT Service*, GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY (Oct. 2018), http://www.riderta.com/healthline/about.

149 *Id.*

150 The Regulations clarify this point, clearly stating that individuals are eligible taxpayers under the statute. *See* Investing in Qualified Opportunity Funds, 83 Fed. Reg. at 54, 290.

151 *See* 26 U.S.C. § 1400Z-2(b) (2017).

152 *Amazon.com, Inc. Common Stock (AMZN) Historical Stock Prices*, NASDAQ, https://www.nasdaq.com/symbol/amzn/historical (last visited May 14, 2019).

153 *Topic No. 409 Capital Gains and Losses*, *supra* note 62 ("The tax rate on most net capital gain is no higher than 15% for most [taxpayers] . . . . However, a net capital gain tax rate of 20% applies to the extent that [a taxpayer's] income exceeds the thresholds set for the 15% capital gain rate.").

Say Taxpayer A reinvests the money into a Qualified Opportunity Fund that operates a startup pizza chain called "OZ Pizzeria" in a QOZ. If Taxpayer A keeps her investment in the Opportunity Zone for five years, then withdraws her money, the taxation basis for her investment will be reduced by ten percent (10%).[154] This means that $100 of her $1,000 capital gain will be untaxed, while the standard rate of 15-20% will be applied to the remaining $900. In other words, she will now receive a net profit of $820-865, excluding the gains made by the new investment.

If she holds the investment for seven years, the taxation basis for her investment will be reduced by another five percent (5%).[155] Consequently, $150 of her $1,000 capital gain will go untaxed, while the remaining $850 will be taxed at 15-20%. Now, her net profit from the Amazon stock sale amounts to roughly $830-872.5. These calculations do not consider the time value of money, which provides investors with considerable economic benefits on its own.[156] By deferring taxation several years, the "aggregate tax paid by the owner is less in real economic terms than it would be if the taxpayer's wealth increases were taxed each year as they accrued."[157] For instance, the "present value" of Taxpayer A's future $150-200 obligation—not accounting for the steps-up in basis—would be only $121.95-162.6, as this is the amount that she would have to set aside today for it grow (at a 3% interest rate, after taxes) to $150-200 by the end of Year 7.[158]

Moreover, any further capital gains ascertained because of Taxpayer A's investment in OZ Pizzeria will be tax-free.[159] In words, if Taxpayer A's ten-year investment results in an additional gain of $1,000, the entirety of that $1,000 new gain will go to into Taxpayer A's pocket tax-free, in addition to the $830-872.5 of her initial investment from Amazon, Inc.

If Taxpayer A had instead reinvested her $1,000 gain into another traditional investment, she would have immediately paid the federal taxes on her initial gain from Amazon, Inc. Comparatively, she would only be able to reinvest 80-85% of her Opportunity Zone capital. Then, upon exiting her new investment, any new gains would again be subject to a federal taxation rate of 15-20%, meaning she would only receive $800-850 in a new gain of $1,000.

At the end of the day, utilizing Opportunity Zones can result in a double-digit percentage return on investment when compared to ordinary investments of similar nature.[160]

---

[154] 26 U.S.C. § 1400Z-2(b)(2)(B)(iii) (2017).

[155] 26 U.S.C. § 1400Z-2(b)(2)(B)(iv) (2017).

[156] GEIER, *supra* note 64, at 9 ("The ability to defer the taxation of unrealized gain in property until a realization event provides a critically important financial benefit to those whose income is in the form of such gain.").

[157] *Id.*

[158] *Id.* at 9–11.

[159] 26 U.S.C. § 1400Z-2(c) (2017).

[160] Federal tax savings of over 10% in the hypothetical above.

2. Investment in Practice

In practice, passive investment in Opportunity Zones is accomplished by first electing to defer federal capital gains taxation on an IRS Form 8949, Sales and Other Dispositions of Capital Assets, then through reinvestment in a Qualified Opportunity Fund (QOF).[161] A QOF is an investment vehicle organized as a corporation or partnership for the purpose of investing in Qualified Opportunity Zone Property (QOZP) and these vehicles must hold at least 90% of their assets in QOZP.[162] The statute considers stock and partnership interests in a Qualified Opportunity Zone Business (QOZB) as QOZP. It also considers Qualified Opportunity Zone Business Property (QOZBP) as QOZP.[163] While all of these terms are confusing, their differences are legally significant. To provide a simple example, if Taxpayer A wants to benefit from Opportunity Zones, she must invest in a QOF. Then, the QOF she invested in—let's call it the Cleveland Fund—must hold at least 90% of its assets in QOZP. If all the Cleveland Fund's assets were stock ownership in OZ Pizzeria, a subsidiary of the Cleveland Fund that qualifies as a QOZBP, then the Cleveland Fund satisfies the 90% requirement and Taxpayer A is eligible for tax benefits because of her investment. The Cleveland Fund would also satisfy the 90% requirement if it operated OZ Pizzeria on its own, instead of as a QOZB subsidiary, as long as it met the requirements described in Part III.C.

Generally, investments in a QOF operate like investments in other corporations and partnerships. However, the statute and Regulations place several important limitations on these investments. First and foremost, the only gains eligible for beneficial tax treatment are gains treated as *capital* gains for federal income tax purposes, including section 1231 gains.[164] The Regulations make this point evident, despite a lack of statutory clarity.[165] The importance of this elucidation is that it comports with Congress's long history of giving preferential treatment to capital gains in order to increase the availability of capital for business investment.[166] It is also

161 *See* Investing in Qualified Opportunity Funds, 83 Fed. Reg. at 54,282.

162 *See* 26 U.S.C. § 1400Z-2(d) (2017); Michael March & Brandon Mourges, *Opportunity Zones: The Good, The Bad, and the Yet to be Defined*, 2019-WTR Inside Basis 8, https://www.fedbar.org/section-on-taxation/wp-content/uploads/sites/128/2019/12/InsideBasis-Winter2019-v4-pdf.pdf.

163 26 U.S.C. § 1400Z-2(d)(2)(A) (2017).

164 Investing in Qualified Opportunity Funds, 83 Fed. Reg. at 54,290; *see also id.* at 54280 ("Eligible gains, therefore, generally include capital gain from an actual, or deemed, sale or exchange, or any other gain that is required to be included in a taxpayer's computation of capital gain.").

165 Compare *id.*, *with* 26 U.S.C. § 1400Z-2(a)(1) (2017) ("Treatment of gains.--In the case of a gain from the sale to, or exchange with an unrelated person of any property. . . .").

166 Congress began providing preferential treatment for capital gains as early as the Revenue Act of 1921. *See* J. MARTIN BURKE & MICHAEL K. FRIEL, TAXATION OF INDIVIDUAL INCOME 746 (10th ed. 2012); *see also id.* at 750 ("[W]hen capital gains are given preferential tax treatment, people are encouraged to save (by investing in stock, etc.), thus increasing the capital available for business investment. The availability of investment funds for capital formation is particularly critical to new and small businesses. Furthermore, additional business investment

significant because gains that do not satisfy the meaning of § 1222(11) are not be eligible for preferential treatment from Opportunity Zone investments.[167] For example, if Taxpayer A wants to reinvest short-term gains from the sale of a few Amazon, Inc. shares that she just purchased two months ago, or she wanted to reinvest dividends and interest earned on bonds, her reinvestments would not be eligible for preferential tax treatment.

While Taxpayer A may invest ordinary gains and cash into QOFs, the IRS will treat investments based on their eligibility for deferral. That is, if Taxpayer A makes a $600,000 mixed investment into a QOF—funded partially by her $500,000 eligible capital gain from the sale of Amazon, Inc. shares and partially by $100,000 from another source of capital—the IRS will treat this as two separate investments for tax purposes. Only $500,000 are eligible for tax benefits.

Another limitation on Opportunity Zone investments is that they must obtain an *equity* interest in a QOF. In other words, the capital gain cannot be reinvested in the debt of a QOF or QOZ business. This provision is unique and departs from similar federal place-based economic development programs in the past. For instance, under the Enterprise Zone program, taxpayers could purchase enterprise zone facility bonds that were tax-exempt.[168] The equity requirement involves more risk, which likely explains the substantiality of the benefits offered to investors willing to take the risk.

A third constraint that passive investors should be wary of is the timeframe for investment. Investors have only 180 days to reinvest their capital gains from the date of sale or exchange.[169] This window provides six months for investors to complete the due diligence necessary before deciding where to invest their capital. On the back end of the investment, the Regulations establish a hard deadline for investors to cash out their equity. Unlike traditional equity interests in companies that can be indefinite, the Regulations mandate that an investor's interest in a QOF must be sold by the end of 2047, in order to qualify for the tax benefits.[170]

A final note for passive investors is the applicability of the passive activity loss rule of section 469. For passive investors, like Taxpayer A, who simply provide funding for a QOF without materially participating in the QOF's trade or business, their activity would be deemed "passive."[171] Generally, taxpayers may deduct all losses from passive activities from all gains from passive activities for federal taxation purposes.[172] By choosing to reinvest capital gains into a QOF, investors will lose the opportunity to offset those gains with passive losses during the immediate tax period.

---

results in greater productivity and a correspondingly higher standard of living. Denial of preferential capital gain treatment would therefore significantly hinder economic growth.").

[167] The tax code only provides preferential treatment for "net capital gains" under 26 U.S.C. § 1(h) (2019). A net capital gain is defined as "the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year." 26 U.S.C. § 1222(11) (2020).

[168] 26 U.S.C. § 1394 (2018); March & Mourges, *supra* note 162, at 8.

[169] 26 U.S.C. § 1400Z-2(a)(1)(A) (2017).

[170] *See* Investing in Qualified Opportunity Funds, 83 Fed. Reg. at 54283.

[171] *See* 26 U.S.C. § 469(c)(1) (2018).

[172] BURKE & FRIEL, *supra* note 166, at 1086.

B. Real Estate Developers

Real estate development is likely one of the biggest beneficiaries of Opportunity Zones. While developers are entitled to the same tax deferments and exemptions as passive investors, there are several important provisions of which developers must be wary.[173]

To start, the statute mandates that property must have been acquired *after* December 31, 2017, in order to qualify as QOZP.[174] Because of this, developers who already owned land within a tract before it was designated an Opportunity Zone may not be able to benefit, as commentators have speculated, "based on the statute, current land owners could not take advantage of the tax incentive."[175]

Second, the statute mandates that after a QOF obtains property within an Opportunity Zone, the QOF must "substantially improve" the property within 30 months.[176] The clock for this two-and-a-half-year window begins ticking upon the date of acquisition of the property.[177] For developers, this requirement is nothing new. The New Market Tax Credits have long required "substantial improvement" to real property to qualify for tax benefits.[178] Nevertheless, the statute left unclear what satisfied this requirement for QOZs.

Generally, to establish "substantial improvement," the additions to the basis of the property must exceed an amount equal to the adjusted basis.[179] In other words, if the adjusted basis of a building is $50,000, a developer must make additions equivalent to $50,001 or more to qualify for substantial improvement. Alternatively, if the QOF obtains property for a new and "original use," it does not have to substantially improve the property.[180] While it makes sense that a new building built for original use by a QOF need not be substantially improved, what about abandoned buildings on a valuable piece of land?

The Regulations answer this question. The Treasury Regulations state, "land does not need to be substantially improved to qualify as opportunity zone business property and the value of land is not included when assessing if a building has been substantially improved."[181] Moreover, a building or structure that has been vacant for

[173] The Regulations specify that real estate investment trusts (REITs) are one of the many business forms considered an "eligible taxpayer" for the purpose of the statute. *See* Investing in Qualified Opportunity Funds, 83 Fed. Reg. at 54,290.

[174] 26 U.S.C. § 1400Z-2(d)(2)(D)(i)(I) (2017).

[175] March & Mourges, *supra* note 162, at 8–9.

[176] 26 U.S.C. § 1400Z-2(d)(2)(D)(ii) (2017).

[177] *Id.*

[178] 26 C.F.R. § 1.45D-1(d)(5) (2012).

[179] 26 U.S.C. § 1400Z-2(d)(2)(D)(ii) (2017).

[180] March & Mourges, *supra* note 162, at 8.

[181] *Opportunity Zone Guidance Offers Flexibility for Investors*, GRANT THORNTON (Oct. 24, 2018), https://www.grantthornton.com/library/alerts/tax/2018/Flash/opportunity-zone-guidance-offers-flexibility.aspx.

five years prior to purchase by a QOF or QOZB will satisfy the "original use" requirement, meaning that it need not be substantially improved either.[182] Thus, it appears possible for developers to purchase a building that has been abandoned for more than five years and make no improvements, yet still receive the tax benefits from the sale of the property at a later point when the value of the land underneath the building has appreciated.

C. Businesses

Upon passage of the TCJA, it was unclear whether traditional businesses operating within QOZs would be eligible to obtain Opportunity Zone benefits or whether the benefits would be limited to real estate developers. Two rounds of IRS guidance later, the answer is clear: businesses can and should take full advantage of Opportunity Zones.

1. Businesses Eligible for Benefits

The first round of guidance clarified that many different types of business entities—ranging from sole proprietorships and partnerships to S and C corporations—will be considered "eligible taxpayers" for the purpose of receiving tax benefits.[183] This clarification is important because it gives businesses big and small the green light to reinvest gains from a strong economy and reap the federal tax benefits for doing so. For clarity's sake, "eligible taxpayers" are the parties receiving the federal tax benefits and should not be mistaken for "qualified opportunity zone businesses," which are the enterprises actually operating inside QOZs and are subject to more stringent regulation. Put differently, eligible taxpayers own the equity interests in the QOFs that invest in qualified opportunity zone businesses.

The Regulations also made clear that pre-existing entities may become QOFs, if they are eligible, by self-certifying.[184] Self-certification requires that an eligible entity submit an IRS Form 8996, Qualified Opportunity Fund.[185] QOF eligibility requires that the investment vehicle (1) is organized as a corporation or partnership, (2) for the purpose of investing in qualified opportunity zone property, and (3) that it hold at least ninety percent (90%) of its assets in qualified opportunity zone property.[186] To ensure compliance, the statute mandates semi-annual reporting to the IRS.[187] Such reporting can be submitted using the IRS Form 8996.[188]

---

[182] Investing in Qualified Opportunity Funds, 84 Fed. Reg. 18654, 18688 (May 1, 2019) (to be codified at 26 C.F.R. pt. 1).

[183] Investing in Qualified Opportunity Funds, 83 Fed. Reg. at 54,290.

[184] *See id*. at 54,293.

[185] *Id.*

[186] 26 U.S.C. § 1400Z-2(d)(1) (2017).

[187] 26 U.S.C. § 1400Z-2(d)(1)(A) (2020).

[188] *See* Investing in Qualified Opportunity Funds, 83 Fed. Reg. at 54,283.

2. Minimum Amount of Income Derived from Zone

For businesses seeking to operate as Qualified Opportunity Zone Businesses, one major concern from TCJA's text and first round of guidance was the applicability of the fifty percent (50%) gross income requirement. Generally, TCJA requires that a Qualified Opportunity Zone Businesses must (1) ensure that substantially all of its tangible property is Qualified Opportunity Zone Business Property and (2) that "at least 50 percent of the total gross income of such entity is derived from the active conduct" business within a QOZ.[189]

The second round of guidance washed away many of the fears surrounding this requirement, making clear that it would not be a significant hurdle for businesses. The Regulations establish four different ways for businesses to satisfy the fifty-percent rule: (1) at least fifty percent (50%) of the services performed for the company, based on the total number of hours worked by employees and independent contractors, are performed within a QOZ; (2) at least 50% of the total amount paid for services performed for a company are performed within a QOZ; (3) the management or operational functions performed within a QOZ are necessary for the generation of at least 50% of the company's gross income, and (4) a catchall category that can be established by "facts and circumstances."[190] In other words, a company like OZ Pizzeria need not worry about failing to qualify as a Qualified Opportunity Zone Business simply because 51% of its income derives from delivery orders outside of the QOZ. Under the second round of guidance, it is clear that OZ Pizzeria will satisfy the fifty-percent requirement because it satisfies (1), (2), and (3).

3. Risk Minimizing Provisions

Opportunity Zones provide businesses with a "Working Capital Safe Harbor" which allows them to hold cash, or other nontangible property, within the fund for 31 months. This provision buys businesses time for acquisitions, construction, and rehabilitation, provided that they are equipped with a written plan and they satisfy the meaning of "working capital" under section 1397C(e)(1).

Finally, the Code and Treasury Regulations provide businesses with the ability to minimize the danger of investing in riskiest QOZs by allowing as much as 37% of an entity's property to be held *outside* of the QOZ, when operating through a subsidiary. This is because a QOF must hold at least 90% of its assets in qualified opportunity zone property.[191] "Qualified opportunity zone property" is statutorily defined as either: (i) qualified opportunity zone stock, (ii) qualified opportunity zone partnership interest, or (iii) *qualified opportunity zone business property*.[192] Qualified opportunity zone business property is defined as holding "substantially all" of its property within a QOZ.[193] Finally, "substantially all" has been interpreted by the regulations as

[189] 26 U.S.C. §§ 1400Z-2(d)(3)(A), 1397C(b)(2).

[190] *See* Investing in Qualified Opportunity Funds, 84 Fed. Reg. at 18,658.

[191] 26 U.S.C. § 1400Z-2(d)(1) (2020).

[192] 26 U.S.C. § 1400Z-2(d)(2)(A) (2020) (emphasis added).

[193] 26 U.S.C. § 1400Z-2(d)(2)(D)(i)(III) (2020).

70%.[194] Therefore, businesses can diversify their risk by placing the bare minimum—90%—of a QOF's holdings into a QOZ. Then, the QOF can place the bare minimum of 70% in qualified business property, while using the remaining portion outside of a QOZ. Moreover, because land qualifies as QOZBP yet does not need to be substantially improved and is unlikely to decrease in value as the surrounding area improves, the Code minimizes the risk for businesses buying land to open new facilities.

IV. MAKING THE MOST OF OPPORTUNITY ZONES: COMMUNITIES

Because Opportunity Zones are only two years old—and the Regulations are even younger[195]—it is too early to assess their long-term impact on highly concentrated poverty.[196] However, place-based economic development policies have, historically, demonstrated mixed results.[197] This Note, in the next subsection, argues Opportunity Zones will likely suffer the same fate.

Nevertheless, this Note also contends that local governments, like the City of Cleveland and Cuyahoga County, can enact local legislation to ensure their Opportunity Zones maximize their poverty-alleviating potential. Subsection B explores several possibilities for accomplishing this goal by drawing on the insights available from previous place-based economic development initiatives. Because of the many commonalities between Opportunity Zones and the New Market Tax Credits and various state and federal Enterprise Zone programs, analysis from these initiatives is particularly valuable in assessing ways to improve Opportunity Zones.[198] Subsection C converts these lessons into proposed legislation for Cleveland and Cuyahoga County.

---

194 *See* Investing in Qualified Opportunity Funds, 83 Fed. Reg. at 54,285.

195 At the time of this Note's writing, the IRS has released two rounds of guidance. The first was released on October 19, 2018. *See* Investing in Qualified Opportunity Funds, 83 Fed. Reg. at 54,279. The second round of guidance was issued on April 17, 2019. *See* Investing in Qualified Opportunity Funds, 84 Fed. Reg. at 18,652.

196 Scott Eastman & Nicole Kaeding, *Opportunity Zones: What We Know and What We Don't*, TAX FOUNDATION (Jan. 8, 2019), https://taxfoundation.org/opportunity-zones-what-we-know-and-what-we-dont/.

197 Lester, Evans & Tian, *supra* note 55, at 10 ("research has produced mixed results – in part due to the difficulty in measuring outcomes because of the variety of incentives concurrently provided to the designated jurisdictions.").

198 *See, e.g.*, Dane Stangler, *Turning Opportunity Zones Into Real Opportunities With Launch Pad*, FORBES (Feb. 6, 2019), https://www.forbes.com/sites/danestangler/2019/02/06/turning-opportunity-zones-into-real-opportunities-with-launch-pad/#7b9ca1c63bfe; LESTER, EVANS & TIAN, *supra* note 55, at 10 ("The Opportunity Zone incentive closely resembles the New Markets Tax Credit (NMTC) program . . . .").

A. Why Opportunity Zones Will Not Resolve Concentrated Poverty on Their Own

Opportunity Zones are a step in the right direction but are unlikely to significantly reduce concentrated poverty on their own. The two principal reasons for this conclusion, based on analysis from similar place-based economic development programs, are that (1) the TCJA designated too many of the wrong zones and (2) the benefits flowing from QOZ status are limited in nature.

First, the TCJA allowed for too many zones to become "qualified." Analysis from the Brookings Institution indicates that the effectiveness of various enterprise zone programs significantly diminished when governments liberally expanded the number of targeted areas that qualified for incentives.[199] The reason? Supply and demand. When more zones are designated, the amount of private investment available to each zone is reduced—assuming that the amount of capital available is relatively fixed. Another problem with too many designations is that a gap develops between zones that desperately *need* the investment and zones that *could use* the investment. When zones that desperately *need* investment are pitted against better-off zones that *could use* the investment, investors will perceive less risk in the latter and investment will divert away from the areas that need it most.

Are there too many Opportunity Zones? Nationally, the answer is unclear. As stated previously, the Treasury Department designated more than 8,700 census tracts throughout the United States as Qualified Opportunity Zones.[200] The number of Opportunity Zones far exceeds the nine Empowerment Zones and ninety-five Enterprise Communities designated in the mid-1990s.[201] However, TCJA limited the number of designations to roughly a quarter of the number of low-income communities available for New Market Tax Credit investment.[202]

The answer is clearer when viewed from the state and local levels. For example, Ohio is now home to 320 Opportunity Zones.[203] Yet, only 41% of the poorest census tracts in the state were recommended for designation by former governor John Kasich.[204] In Cuyahoga County, which has sixty-four Opportunity Zones, the entire

---

199 *See* HILARY GELFOND & ADAM LOONEY, LEARNING FROM OPPORTUNITY ZONES: HOW TO IMPROVE PLACE-BASED POLICIES 1 (2018), https://www.brookings.edu/wp-content/uploads/2018/10/Looney_Opportunity-Zones_final.pdf ("[P]oor geographic targeting reduces the impact of the program and limits the benefits that accrue to poor residents.").

200 *Boondocks and Boondoggles, supra* note 57, at 34.

201 *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 §1391(b), 107 Stat. 312, 543 (1993).

202 26 U.S.C. § 1400Z-1(d)(1) (2020) ("the number of population census tracts in a State that may be designated as qualified opportunity zones under this section may not exceed 25 percent of the number of low-income communities in the State."); *see also id.* ("The term 'low-income community' has the same meaning as when used in section 45D(e).").

203 *Opportunity Zones: Background*, OHIO DEV. SERVS AGENCY, https://development.ohio.gov/bs/bs_censustracts.htm (last visited Feb. 25, 2020).

204 WENDY PATTON & MICHAEL LEONARD, ASSESSING OPPORTUNITY ZONES IN OHIO 4–5 (2018), https://www.policymattersohio.org/research-policy/quality-ohio/revenue-budget/tax-policy/assessing-opportunity-zones-in-ohio ("Although Ohio's Opportunity Zones included

city of East Cleveland—the poorest city in Ohio—was excluded from designation.[205] Instead, many well-established and "up-and-coming" areas were designated.[206] In other words, more than half of Ohio's poorest census tracts, including Ohio's poorest city, will not receive a cent of private investment from a program Congress explicitly intended to boost economic growth in the poorest communities.[207] Moreover, the extremely poor tracts that were fortunate enough to be designated—like Cleveland's Glenville neighborhood—must now compete for investment with "trendier" areas—like Cleveland's downtown business district and Ohio City neighborhood—which also received designations.

While some blame for Ohio's designations may fall on former Governor Kasich for recommending the wrong tracts, the majority of the blame should fall on the drafters of the legislation. If Cleveland's downtown business district and trendy neighborhoods qualified for designation, clearly the term "low-income community" cast too wide of a net. But even if Kasich did not recommend many of the better-off areas, selecting all sixty-four of the poorest tracts in Cuyahoga County would still be suboptimal because the same problems seen with enterprise zones would result: too many zones, not enough capital.

The second reason why Opportunity Zones, left alone, will not sufficiently alleviate pockets of poverty is because their benefits are limited to the tax code. Much recent literature about enterprise zones indicates that tax-based incentives, alone, "have failed to reduce urban poverty and reverse the decline of urban communities, even when . . . these policies have promoted the growth of downtown businesses."[208] Why so? Because tax-code benefits cannot rebuild a neighborhood's broken infrastructure, nor can they train a neighborhood's unskilled workforce or improve policing. Tax-code benefits are limited to the short-term. Once the tax benefits expire, the investors and businesses leave for more competitive areas and the poor neighborhood is no better off.

The most successful poverty-alleviating policies "must also address complex social problems."[209] They include improved workforce training, provision of

---

many census tracts in the highest-poverty quartile, most of the poorest 739 poorest tracts did not make the cut. Less than half (41 percent) of the 100 tracts with the highest poverty rates, where between 57 percent and 87 percent of the population live in poverty, were included in Opportunity Zones.").

205 Nick Castele, *Cuyahoga County Won Dozens of Opportunity Zones. Now What?*, IDEASTREAM (Dec. 10, 2018), https://www.ideastream.org/news/cuyahoga-county-won-dozens-of-opportunity-zones-now-what.

206 Jay Miller, *Zones are Producing Mixed Reactions*, CRAINS CLEVELAND BUS. (April 1, 2018), https://www.crainscleveland.com/article/20180330/news/156761/opportunity-zones-are-producing-mixed-reactions-neo-officials; Governor Kasich's recommendations for Cuyahoga County include most of Downtown Cleveland and Ohio City, areas that have received significant amounts of investment in recent years, yet excludes the entirety of East Cleveland.

207 *See* discussion about congressional intent *supra* Part II.B.1.

208 Cummings, *supra* note 119, at 449.

209 Scott A. Tschirgi, *Aiming the Tax Code at Distressed Areas: An Examination and Analysis of Current Enterprise Zone Proposals*, 43 FLA. L. REV. 991, 1034 (1991).

childcare, upgraded infrastructure, and the like.[210] Only when these foundational building blocks are in place will pockets of poverty begin their road to recovery.

B. Enhancing Opportunity Zones Through Local Legislation

Before crafting ordinances to supplement their Opportunity Zones, local governments must develop a framework to maximize the effectiveness of any new legislation. If the ultimate goal is to reduce concentrated poverty by boosting the number of employment opportunities for residents in their city's most impoverished areas, then local legislators must prioritize leveling the playing field for their most impoverished Opportunity Zones.

When considering how to do this, legislators should consider three factors. First, what attributes do businesses and entrepreneurs consider when deciding where to locate? Second, what additional incentives can city and county governments provide to make their zones more attractive to those businesses and entrepreneurs? And, third, how sizeable must the additional incentives be to justify the cost?

Turning to the first inquiry, site selection factors vary widely depending on the industry and the size of the firm involved.[211] For example, Elon Musk—CEO of Tesla, now one of America's largest automakers—recently explained his own factors for where to build Tesla's next manufacturing plant in the United States. "Incentives play a role," Musk said, "but so do logistics costs, access to a large workforce with a wide range of talents, and quality of life."[212] Much of the literature on site selection is consistent with Musk's view. Large manufacturing firms tend to value access to a large labor pool, high-quality labor, low wages, raw materials, a market for their goods, and tax benefits.[213] And for small-and-medium-sized companies, the "most important factor [is] the availability of regional development assistance, followed by the quality and size of the labor supply, including wage levels, and the potential for future expansion."[214]

As to the second inquiry, local governments can provide for these needs to make certain places more attractive. For example, local legislation has the power to improve the quality of an area's workforce, lower labor costs, provide targeted infrastructure projects, loosen regulations, and exempt certain taxation for specified areas.[215]

---

210 *Id.*

211 *See, e.g.*, Charisia Vlachou & Olga Iakovidou, *The Evolution of Studies on Business Location Factors*, 20(4) J. Dev. Entrepreneurship 1, 2 (2015).

212 Tim Higgins, *Elon Musk Says Incentives, Costs Will Influence Site of New U.S. Tesla Factory*, WALL STREET J. (Mar. 10, 2020), https://www.wsj.com/articles/elon-musk-says-incentives-costs-will-influence-site-of-new-u-s-tesla-factory-11583890306.

213 *See generally* Vlachou & Iakovidou, *supra* note 211; *see also* M. I. Logan, *Locational Decisions in Industrial Plants in Wisconsin*, 46 LAND ECON. 325, 326 (1970).

214 Vlachou & Iakovidou, *supra* note 211 at 7 (citing Barry Moore, et al., *The Influence of Regional Development Incentives and Infrastructure on the Location of Small and Medium Sized Companies in Europe*, 28(6) URBAN STUDIES 1001–26 (1991)).

215 *See* discussion *infra* Part IV.B.

Finally, in determining the size of incentives to provide, local governments must consider much more than the ratio of private investment dollars returned for each public dollar spent. To be sure, large financial returns, like Cleveland's $9.5 billion return on its $190 million HealthLine investment,[216] are important. Nevertheless, local governments must also weigh the numerous intangible benefits that flow from investing in impoverished areas. These include positive externalities like the value of upgrading residents' skills and social capital[217] or reducing gun violence.[218]

With this three-part framework in mind, the following subsections advance four coherent strategies that have proven effective with previous place-based legislation. Moreover, these four strategies serve as the basis for the legislation proposed, below, in Part IV.C.

1. The Smaller the Better

Size matters. This rule is especially applicable in the context of place-based economic development, regarding both the size and number of qualified tracts. The bigger the size and number of qualified tracts, the less targeted the benefits become.

One example comes from the United Kingdom. In 2011, the British government announced the creation of eleven enterprise zones to boost job growth around the country. The largest and most ambitious of the eleven was the Humber Enterprise Zone, which comprised an area of nearly 3,059 acres.[219] Promoters of the zone advertised its vast size as a perk and said the zone "aimed to create almost 5,000 jobs by 2015."[220] Yet, Humber's great size and ambition fell flat. "In its first 28 months, [the Humber Enterprise Zone] managed only 145" new jobs.[221] By 2017, the Humber Enterprise Zone had actually lost an estimated 320 jobs—a far cry from the 5,000 new jobs that were projected.[222] Meanwhile, another enterprise zone one-twentieth the size

216 *See* discussion *supra* Part II.D.3.

217 Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility II: County-Level Estimates*, at 28 (2017) ("[O]ur results suggest places with more social capital and better schools tend to cause higher rates of upward mobility for both low and high-income children.").

218 One recent study found that simply treating abandoned buildings and vacant lots can reduce local gun violence by as much as 39%, resulting in somewhere "between $5.00 and $26.00 in net benefits to taxpayers and between $79.00 and $333.00 to society at large, for every dollar invested." Charles C. Branas, PhD, et al., *Urban Blight Remediation as a Cost-Beneficial Solution to Firearm Violence*, Vol. 106, No. 12 AM. J. PUB. HEALTH 2158, 2162 (2016).

219 Humber Enterprise Zone, https://enterprisezones.communities.gov.uk/enterprise-zone-finder/humber-enterprise-zone/ (last visited May 11, 2020).

220 *Opinion Divided on Success of Enterprise Zones*, FINANCIAL TIMES (Dec. 26, 2013), https://www.ft.com/content/72da4944-6be3-11e3-a216-00144feabdc0.

221 *Id.*

222 Caroline Brockelbank & Pritti Mistry, *Enterprise Zones 'Failed to Deliver' Jobs Boost in England*, BBC NEWS (July 11, 2019), https://www.bbc.com/news/uk-england-48856440.

of Humber,[223] the Bristol Temple Quarter Enterprise Zone, created an estimated 5,493 new jobs during the same period.[224] While many factors were undoubtedly at work, one cannot help notice the stark contrast between the two zones' sizes and effectiveness at creating new jobs.

Similarly, analysis of Ohio's enterprise zones from the 1990s suggests that the vast number of areas that were designated seriously hampered the overall success of economic development.[225] "In the early 1990s, the state of Ohio was quite liberal in its rules permitting establishment of enterprise zones. As a result, many cities with little or no economic distress established zones . . . ."[226] In 1994, for instance, 62.5% of Ohio cities—i.e. sixty-five cities—with populations of more than 15,000 were designated as enterprise zones.[227] But only 29.3% of those cities—i.e. nineteen cities—were actually economically distressed.[228] The analysis found that Ohio's liberal designation policy "further weaken[ed] the targeting effect of zone programs, as a larger and larger portion of the state falls under the targeted program."[229] The lesson: supplemental legislation should focus on reducing the number of qualified tracts to ensure the targeting effect is maximized.

Applying this lesson locally requires rethinking how many zones should qualify under supplemental legislation. Currently, there are sixty-four census tracts in Cuyahoga County that are Opportunity Zones. Only twenty-six qualify as pockets of poverty: 1033.00, 1078.02, 1039.00, 1041.00, 1046.00, 1049.00, 1087.01, 1123.01, 1128.00, 1131.01, 1187.00, 1188.00, 1189.00, 1965.00, 1135.00, 1138.01, 1141.00, 1143.00, 1145.01, 1146.00, 1147.00, 1193.00, 1164.00, 1181.01, 1186.02, and 1962.00. Instead of providing tax breaks to investors in the city's downtown core, designations should be limited to these twenty-six tracts that are actually "pockets of poverty" with poverty rates of 40% or more. Doing so would significantly benefit the poorest tracts' ability to compete for private capital.

2. Public Investment Attracts Private Investment

Opportunity zones located in areas that already have "basic labor skills, public infrastructure and transportation" are more likely to succeed than areas that lack these basic components.[230] Analysis from Illinois's enterprise zone program suggests that

---

223 Press Release, Bristol Temple Quarter, Temple Quarter Enterprise Zone Opens for Business (Apr. 25, 2013) (available at https://www.bristoltemplequarter.com/temple-quarter-enterprise-zone-opens-for-business/).

224 Brockelbank & Mistry, *supra* note 222.

225 PETERS & FISHER, *supra* note 117.

226 *Id.* at 78.

227 *Id.* at 80.

228 *Id.*

229 *Id.* at 78–83.

230 Aprill, *supra* note 79, at 1341; *see also Opinion Divided on Success of Enterprise Zones*, *supra* note 220.

"the most successful enterprise zones were located in areas with adequate infrastructures and public services."[231] For example, in the late 1980s, the State of New York enacted an Economic Development Zone Program, which was designed to attract businesses to low-income communities by offering a mix of tax credits, low-interest loans, reduced property taxes and discounted utility bills.[232] However, the State noted that the success of its program hinged not on the tax incentives, but the additional job training, child care, affordable housing, and educational services that it provided within those zones.[233] These investments enabled New York's zones to differentiate themselves from other cities because they not only provided incremental cost reductions in tax savings, but they also equipped companies with better skilled workers who were not worried about child care or traveling long distances home after work.

Yet, successful public investments have not been limited to traditional notions of infrastructure and services. Some governments are investing in high-speed broadband internet within their zones.[234] Public investments in infrastructure like broadband immediately provide downtrodden neighborhoods with a comparative advantage that enables further private technology investment within the zone. Another example of investment in services comes from Oregon, where two similar municipalities established enterprise zones. The Oregonian city of Metras' enterprise zone failed while the city of Redmond's flourished. What distinguished the two zones? Unlike Metras, Redmond invested in an active marketing campaign that promoted the zone to entrepreneurs throughout the state.[235] The lesson: public investments within a zone a crucial to spur private investments.

Taking note from these examples, Cuyahoga County and Cleveland must look closely at their twenty-six poorest tracts to examine each tract's weaknesses and then commit substantial public resources for infrastructure, services, and job training to create competitive advantages. For instance, a census tract like Glenville's 1186.02 already has access to transportation infrastructure. It is located less than two miles from Interstate 90 and surrounded on two sides by major railroads. Of course, upgrading roads and public transit stations would help, but what the tract needs most is job training and childcare services. In 2018, the Center for American Progress labeled tract 1186.02 a "child care desert" with roughly fifteen children under the age

---

231 Tschirgi, *supra* note 209, at 1035.

232 Tom Redburn, *21 Enterprise Zones Created, Including 4 in New York City*, N.Y. TIMES (July 28, 1994), https://www.nytimes.com/1994/07/28/nyregion/21-enterprise-zones-created-including-4-in-new-york-city.html.

233 Tschirgi, *supra* note 209, at 1034; *Admin.'s Enterprise Zone Proposal and H.R. 6, The Enterprise Zone Improvements Act of 1989: Hearings Before the H. Comm. on Ways and Means*, 101st Cong., 1st Sess. 161 (1989) (statement of Liz Abzug, Director of the N.Y. State Economic Development Zone Program).

234 *Opinion Divided on Success of Enterprise Zones*, *supra* note 220.

235 Nick Bjork, *Enterprise Zones: What Works and What Doesn't*, DJC OREGON (Aug. 12, 2010), http://djcoregon.com/news/2010/08/12/enterprise-zones-what-works-and-what-doesnt/.

of five for each available licensed childcare slot.[236] By investing the necessary resources into training and childcare, Opportunity Zones like Glenville's 1186.02 can develop the competitive advantages that made New York's Economic Development Zones successful in the 1980s.

3. Simplicity is the Ultimate Sophistication

Reducing red tape is key to ensuring zones flourish. An influential report from the Heritage Foundation, analyzing the success of state enterprise zones in the 1990s, argues that the most effective zones were those where government removed obstacles, like certain forms of taxation, that hampered business growth.[237] Further, the report promotes keeping zone benefits as simple as possible because "large amount of paperwork . . . can be especially time-consuming for the small businesses which zones are intended to attract."[238] As noted in Part II.D, all levels of government offer different and often confusing investment incentives. Large corporations with fleets of lawyers may be able to drudge through all of the paperwork and regulation that accompanies these incentives but imagine the difficulty for a local entrepreneurs! The lesson: remove growth-hampering regulations, but make qualification as simple as possible.

Accordingly, Cuyahoga County and Cleveland should exempt businesses within the twenty-six poorest tracts from sales taxation and their employees, who are also residents of the tract, from municipal income taxation. Ohio is one of only fourteen states that currently allows municipalities to levy their own separate individual income taxes in addition to state income taxes.[239] Cleveland uses this power to levy a two percent (2%) local income tax on income earned within the city. Cleveland City Council should exempt employees who work and reside within any of the twenty-six QOZ tracts from local income taxation. Doing so would reduce paperwork for employers and, more importantly, provide residents living in concentrated poverty with an extra $2 for every $100 earned.

Similarly, Cuyahoga County should exempt the twenty-six QOZs from county sales taxation. Currently, the county levies the highest sales tax in the entire state: 2.25% (1.25% collected for the county and 1.00% collected for the transit authority).[240] Exempting the selected QOZs from sales taxation would provide two

---

236 Rasheed Malik et al., *America's Child Care Deserts in 2018*, CTR. FOR AM. PROGRESS (Dec. 6, 2018), https://www.americanprogress.org/issues/early-childhood/reports/2018/12/06/461643/americas-child-care-deserts-2018/

237 *How to Create a Successful Enterprise Zone Program*, HERITAGE FOUND. (June 9, 1992), https://www.heritage.org/taxes/report/how-create-successful-enterprise-zone-program.

238 *Id.*

239 Tonya Moreno, *U.S. Cities that Levy Income Taxes*, THE BALANCE (Dec. 3, 2018), https://www.thebalance.com/cities-that-levy-income-taxes-3193246.

240 Chris Stewart, *Montgomery County Sales Tax Goes Up Monday; How Does It Compare to Other Counties?*, DAYTON DAILY NEWS (Sept. 30, 2018), https://www.mydaytondailynews.com/news/sales-tax-rates-for-all-ohio-counties-how-does-yours-compare/60F4OSUL9msUH5NkW64RXI/.

significant benefits for the zones. Not only would the exemption make purchases cheaper for residents, many of whom live below the poverty line, but it would also encourage non-zone residents to come to the zone to shop. The latter benefit would essentially create a stronger market for goods and provide in-zone entrepreneurs with a comparative advantage, because goods would cost consumers 2.25% less than similar goods purchased outside the zone.

Finally, Cuyahoga County and the City of Cleveland must work together to simplify the entire tax incentive process so that entrepreneurs have more time to focus on what matters: running and growing their businesses. While this can be accomplished in several ways, providing specialized employees to help entrepreneurs with paperwork for the various federal, state, and local incentives would go a long way.

4. Get Everyone Involved

Local buy-in can make or break place-based development. Some analysts have argued that programs should provide more definitive roles for residents (on advisory boards, etc.).[241] It is believed that these provisions will provide another guard against private interests from extracting too much out of local neighborhoods and decrease the possibility of gentrification.[242] The evidence on this point is stark.

In Baltimore's Enterprise Zone, a success story that touted the creation of more than 12,000 jobs for zone residents, the community played an active role in the redevelopment of the tracts.[243] This community engagement entailed the creation of a Community Advisory Council, consisting mainly of local residents, who had the power to approve and modify decisions of the committee that managed the Enterprise Zone funding.[244] On the other hand, the zones in Chicago and Philadelphia/Camden, which did not establish councils like Baltimore, went as far as to disregard the input of community activists. As a result, their communities opposed the development, investors were not willing to take the risk, and the programs failed.[245] The lesson: give residents a voice.

C. Proposed Legislation for City of Cleveland and Cuyahoga County

The following proposals ("Proposed Legislation") incorporate the aforementioned lessons into legislation can be used as a model to maximize the concentrated-poverty-alleviating potential of Opportunity Zones within the City of Cleveland and Cuyahoga County. The Proposed Legislation would amend chapters 191, 192, and 137 of the

---

241 Forbes, *supra* note 75, at 201.

242 *Id.*

243 *Id.* at 186–87.

244 *Id.*

245 *Id.* at 187 ("Between 1995 and 2000, the Chicago zone posted a negative growth rate and experienced less growth than in the previous five-year period when compared to similar areas within the city.").

Codified Ordinances of Cleveland and titles 5, 6, 7, and 8 of the Cuyahoga County Code.

1. City of Cleveland

a. Explanation of Legislation

The Proposed Legislation for Cleveland City Council identifies Cleveland's Opportunity Zones that qualify as pockets of poverty—that is, the twenty-six tracts where over forty percent (40%) of the population lives below the poverty line—as "Prioritized Opportunity Zones" and provides targeted benefits for residents and investments within these zones. These benefits include an exemption from the local income tax, a tax credit for workers, a directive to the city's Commissioner of Neighborhood Services to provide childcare services to residents of Prioritized Opportunity Zones, a directive to the city's Commissioner of Neighborhood Services to create and oversee a "Community Advisory Board" consisting of residents of Prioritized Opportunity Zones, and a directive to the city's Commissioner of Neighborhood Development to provide services that assist entrepreneurs with federal, state, and local red-tape within these Prioritized Opportunity Zones.

b. Proposed Legislation

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

<u>Section 1.</u> That the following sections of the Codified Ordinances of Cleveland, Ohio, 1976,

Section 191.0901, as amended by Ordinance No. 2208-04, passed December 13, 2004,

Section 192.21, as enacted by Ordinance No. 1412-15, passed November 23, 2015,

Section 137.08, as enacted by Ordinance No. 57-94, passed June 13, 1994,

Section 137.10, as enacted by Ordinance No. 1329-10, passed December 6, 2010,

are amended to read as follows:

<u>Section 191.0901 Sources of Income Not Taxed</u>

The tax provided for in this chapter shall not be levied on the following:

<u>(p) Compensation and net profits derived from a Qualified Opportunity Zone Business by any taxpayer domiciled within a Prioritized Opportunity Zone.</u>

<u>Section 192.21 Credit for Person Working in Joint Economic Development District or Prioritized Opportunity Zone</u>

The municipality shall grant a credit against its tax on income to a resident of the municipality who works in a <u>prioritized opportunity zone,</u> a joint economic development zone created under RC 715.691<u>,</u> or a joint economic development district created under RC 715.70, 715.71, or 715.72 to the same extent that it grants a credit against its tax on income to its residents who are employed in another municipal corporation, under Section 192.19 of this chapter.

Section 137.08 Duties of the Commissioner of Neighborhood Services

The Commissioner of Neighborhood Services shall administer City programs for the Department of Community Development that strengthen City neighborhoods through direct services to homeowners, tenants, merchants, and community-based institutions, that preserve dwelling units through direct loans and grants to property owners for repairs, renovations, and energy conservation improvements, that maintain safe, high-quality and affordable housing for low income households, and that provide direct social services to low and moderate income citizens of the City, including services provided by community-based institutions; shall establish and implement initiatives to provide access to affordable childcare services to citizens residing within a Prioritized Opportunity Zone; shall establish and oversee a "Community Advisory Council" consisting of residents and small businesses residing within Prioritized Opportunity Zones to provide recommendations to the Mayor regarding economic development in their communities; and shall perform such other duties as may from time to time be required by ordinance or by the Director of Community Development.

Section 137.10 Duties of the Commissioner of Neighborhood Development

The Commissioner of Neighborhood Development shall administer City programs intended to encourage the development or improvement of residential and commercial property in Cleveland's neighborhoods; shall establish and implement initiatives to simplify federal, state, and local tax and regulatory filings for neighborhood entrepreneurs; shall manage public acquisition of real estate to be used in furtherance of the City's neighborhood development objectives; shall manage and propose allocation of the City's capital resources to provide incentives for private investment in residential and commercial development within the City; shall plan and implement City programs intended to foster the construction of safe, high-quality, and affordable housing for low income residents; and shall perform such other duties as may from time to time be required by ordinance or by the Director of Community Development.

Section 2. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Sections 191.031500, 191.0315001

to read as follows:

Section 191.031500 Prioritized Opportunity Zone

"Prioritized Opportunity Zone" means any of the following census tracts: 1033.00, 1078.02, 1039.00, 1041.00, 1046.00, 1049.00, 1087.01, 1123.01, 1128.00, 1131.01, 1187.00, 1188.00, 1189.00, 1965.00, 1135.00, 1138.01, 1141.00, 1143.00, 1145.01, 1146.00, 1147.00, 1193.00, 1164.00, 1181.01, 1186.02, and 1962.00.

Section 191.0315001 Qualified Opportunity Zone Business

"Qualified Opportunity Zone Business" means a trade or business, as defined in Section 1400Z-2(d)(3) of the Internal Revenue Code.

2. Cuyahoga County

a. Explanation of Legislation

Similarly, the Proposed Legislation for Cuyahoga County Council establishes "Prioritized Opportunity Zones" and provides county benefits for QOZs that qualify as pockets of poverty. In addition to directing county development funds into Prioritized Opportunity Zones, these benefits include priority for abandoned building demolitions, priority for the County's job training program, priority for road improvements, and an exemption from the three-year residency requirement for businesses to qualify for preferences under the Cuyahoga County Based Business (CCBB) Preference Program.

b. Proposed Legislation

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Chapter 709 of the Cuyahoga County Code is hereby amended to read as follows (additions are underlined, deletions are stricken):

Chapter 709: Community Development Fund

Section 709.03 Use for Opportunity Zone Development

<u>As of July 1, 2020 and through June 30, 2022, the revenues contained in the Community Development Fund shall be used to promote economic development in the Prioritized Opportunity Zones, hereby defined as the following census tracts:</u> 1033.00, 1078.02, 1039.00, 1041.00, 1046.00, 1049.00, 1087.01, 1123.01, 1128.00, 1131.01, 1187.00, 1188.00, 1189.00, 1965.00, 1135.00, 1138.01, 1141.00, 1143.00, 1145.01, 1146.00, 1147.00, 1193.00, 1164.00, 1181.01, 1186.02, and 1962.00.

SECTION 2. Chapter Section 807 of the Cuyahoga County Code is hereby amended to read as follows (additions are underlined, deletions are stricken):

Section 807.03 Property Demolition Program

B. The Department of Development, in consultation with the Land Bank, shall establish eligibility criteria to evaluate applications received in each round of the program. The eligibility criteria shall be established to evaluate the following factors, exclusively:

1. Whether the applicant has sufficiently identified a target area, neighborhood typological priorities, spot demolition site(s), <u>or prioritized Opportunity Zone</u> containing a demonstrable need for demolition;
2. Whether the structures identified by the applicant for demolition have been certified as vacant, abandoned, and nuisance or blighted;
3. Whether the applicant has identified a plan for redevelopment or maintenance of the property or properties;

4. Whether the applicant has sufficient capacity to administer the demolition, or intends to engage an agent such as the Land Bank to administer demolition on its behalf;

5. Whether the applicant has committed and is able to exercise the necessary police powers or has identified alternative legal authority to enable demolition of the identified structure or structures; and

6. Whether the actions proposed in the application are designed to assist in carrying out a plan developed by the applicant to improve housing quality or strengthen the housing market in the applicant's municipality.

SECTION 3. Chapter 804 of the Cuyahoga County Code is hereby amended to read as follows (additions are underlined, deletions are stricken):

Section 804.01 Post Secondary Educational Programs

B. Component One-Job Training/Retraining Program

2. Component One scholarships are open to all Cuyahoga County residents who satisfy one of the following criteria:

a. They enroll in a degree or certification program in a field designated as "in demand" by the City of Cleveland/Cuyahoga County Workforce Investment Board; or

b. They enroll in a degree or certification program in a non-demand field that has a commitment from an employer to hire or promote; or

c. They are within twelve (12) credit hours from completing an associate, bachelor, or master degree in any field at an approved postsecondary institution; or

d. They enroll in a class to satisfy continuing educational credit obligations associated with professional licensing; or

e. They reside in a Prioritized Opportunity Zone, as defined in Section 709.03.

SECTION 4. Chapter 604 of the Cuyahoga County Code is hereby amended to read as follows (additions are underlined, deletions are stricken):

Section 604.01 Improvement and Maintenance of County Roads

C. The Director of Public Works shall establish a process by which fiscally distressed municipalities may apply for a grant to subsidize the cost of labor and materials required to perform routine maintenance of County roadways. The Department of Public Works shall qualify eligible applicants in order of priority based on the following factors:

1. The availability of County resources;

2. The condition of the individual County roadway and assessed need for routine maintenance;

3. The location of a County roadway within a Prioritized Opportunity Zone, as defined in Section 709.03; and

4. The severity of fiscal distress of the applicant municipalities, as declared by the Auditor of State.

SECTION 5. Chapter 502 of the Cuyahoga County Code is hereby amended to read as follows (additions are underlined, deletions are stricken):

Section 502.01 Program

There is hereby created a Cuyahoga County Based Business (CCBB) Preference Program.

Section 502.02 Definitions

For purposes of Chapter 502 of the Cuyahoga County Code, a Cuyahoga County Based Business means:

an individual, domestic corporation, sole proprietorship, partnership, or joint venture whose principal place of business <u>is located within a Prioritized Opportunity Zone or otherwise</u> has been located in Cuyahoga County for at least three (3) years as registered in official documents filed with the Secretary of State of Ohio or the Cuyahoga County Fiscal Office. If one party to a joint venture has its principal place of business in Cuyahoga County, the joint venture shall be considered as having its principal place of business in Cuyahoga County;

V. CONCLUSION

In the coming years, Opportunity Zones will be put to the test. Will they achieve Congress's intention of reducing concentrated poverty? Or will they simply become another tax break for wealthy investors? The answer depends on how local governments respond. On their own, Opportunity Zones will not achieve much. But, with local supplements, their potential is endless. The key to successful local supplements will be (1) limiting the number of qualified tracts, (2) tailoring public expenditures toward services and infrastructure in the tracts, (3) simplifying taxation and regulation, and (4) promoting citizen engagement. By enacting legislation with these features, local governments have the power to finally break the cycle of concentrated poverty that continues to devastate communities like Cleveland's Glenville neighborhood.