

**COUNTY OF MILWAUKEE**  
INTEROFFICE COMMUNICATION

**DATE:** December 21, 2018

**TO:** Supervisor Theo Lipscomb, Chair, County Board of Supervisors

**FROM:** Aaron Hertzberg, Director, DAS Economic Development

**SUBJECT:** An Informational Report on Opportunity Zones, a federal program created as part of the 2017 Tax Cuts and Jobs Act to encourage private investment in economically distressed communities

**REQUEST**

This report is for informational purposes, there is no request at this time.

**REPORT**

The Economic Opportunity Zones Program was created as part of the Tax Cuts and Jobs Act approved by the Federal Government in December of 2017. The program provides tax incentives for private investment in qualified and approved Economic Opportunity Zones (EOZs). 120 census tracts in Wisconsin have been approved as EOZs, 37 of which are in Milwaukee County (see Exhibit A). The Treasury Department and Internal Revenue Service (IRS) issued proposed regulations and guidance for the program in October of 2018. Additional regulations and guidance are anticipated in the coming months. Following release of complete guidance, a public comment period will be held prior to finalizing the program rules.

Economic Development Division staff recently attend a presentation hosted by CARW regarding Opportunity Zones. A copy of the presentation is included as Exhibit B. Staff has and will continue to discuss Opportunity Zones with area economic development officials and members of the commercial real estate community to continue to explore ways to support investment in EOZs.

**How the EOZ Program Works**

The program hopes to leverage unrealized capital gains by incentivizing investment in EOZs. When making qualified investments in an EOZ, taxpayers can: 1. defer capital gains 2. receive partial forgiveness (up to 15%) of prior gains, and 3. receive forgiveness of gains on appreciation of the investment after 10 years. Taxpayers receive the benefit by electing to defer the gain on their tax filings and future reporting to the IRS.

Four types of investments qualify.

- Real estate development with significant property improvement in an EOZ
- Opening a business in an EOZ
- Expansion of businesses into an EOZ
- Significant expansions of businesses already in an EOZ

To qualify, an investment in an EOZ Fund must be made within 180 days of realizing a capital gain. The taxable portion of the gain, initially 100%, is reduced by 10% if the investment remains in the EOZ Fund for five (5) years. The taxable portion of the gain is further reduced by 5% after seven (7) years, for a total maximum benefit of 15% forgiveness. If the investment is held for ten (10) or more years, any appreciated gains after the initially investment are forgiven.

### **Milwaukee County EOZs**

There are 37 census tracts approved as EOZs in Milwaukee County. Zones hold their designation until December 31, 2028. Sites include portions of:

- Menomonee Valley
- Harbor District
- Near Westside
- Park East
- Bronzeville
- 30<sup>th</sup> Street Corridor
- Harambee
- Granville/Northridge
- Holler Park (west of Gen. Mitchel International Airport)
- West Allis
- South Milwaukee

### **Milwaukee County Role in EOZs**

While Milwaukee County does not play a role in administering or overseeing the program, the Economic Development Division sees opportunity to benefit qualifying areas of the County. The County's Land Information Office has created a map of EOZs in the County that is available to the public on the Economic Development Division's webpage: <https://county.milwaukee.gov/EN/Administrative-Services/Economic-Development>.

There are several ways Milwaukee County could support development in EOZs.

- Collaborate with local and regional officials to disseminate information about EOZs and promote qualifying redevelopment and investment opportunities.
- Pursue public/private partnerships to layer resources with private investments in EOZs.
- Target infrastructure investments to align with EOZs. For example: the planned Bus-Rapid Transit Line bisects EOZs on the Near West Side.

Note the County may also benefit when selling property in EOZs.

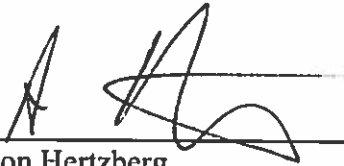
### **Attachments**

- A. Map of Economic Opportunity Zones in Milwaukee County
- B. Opportunity Zones Presentation to CARW by Husch Blackwell on November 28, 2018

**RECOMMENDATION**

This report is for informational purposes, there is no request at this time.

Submitted by:

A handwritten signature in black ink, appearing to be 'A Hertzberg', is written over a horizontal line.

Aaron Hertzberg  
Economic Development Director

cc: Chris Abele, County Executive  
Teig Whaley-Smith, Director, Department of Administrative Services  
Economic and Community Development Committee Members  
Raisa Koltun, Chief of Staff, Office of the County Executive  
Kelly Bablitch, Chief of Staff, County Board of Supervisors  
Kenneth Smith, Research Analyst  
Allyson R. Smith, Committee Coordinator

Attachment A

Map of Economic Opportunity Zones in Milwaukee County



**Attachment B**

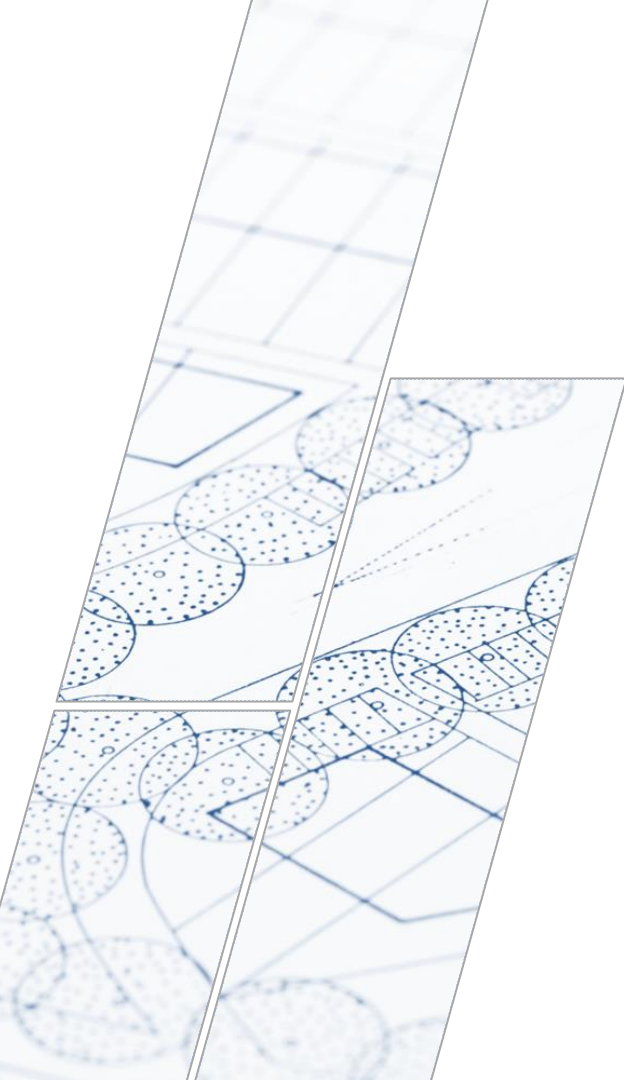
**Opportunity Zones Presentation to CARW by Husch Blackwell on November 28, 2018**  
**See PDF file**

**HUSCH BLACKWELL**



# Opportunity Zones

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# Agenda

- Opportunity Zone Overview
- Opportunity Zones in Southeast Wisconsin
- Benefits to Investors
- Benefits to Property Owners and Developers
- Comparison to 1031
- Case Study – Good City Brewing
- Broker Take-Away

“Opportunity Funds are private sector investment vehicles that invest at least 90 percent of their capital in Opportunity Zones. U.S. investors currently hold trillions of dollars in unrealized capital gains in stocks and mutual funds alone—a significant untapped resource for economic development. Opportunity Funds provide investors the chance to put that money to work rebuilding the nation’s left-behind communities. The fund model will enable a broad array of investors to pool their resources in Opportunity Zones, increasing the scale of investments going to underserved areas.” <https://eig.org/opportunityzones/about>





# Opportunity Zones are a law in process

- **Created in the Tax Cuts and Jobs Act of 2017 (TCJA)**
- **New Section 1400Z-2 added to Internal Revenue Code**
- **Program is managed by the U.S. Department of Treasury, Community Development Financial Institutions Fund**
- **Treasury issued additional, interim guidance in October 2018**
- **A final set of guidance is anticipated around year-end**

Taxpayers can get  
capital gains  
tax deferral  
(& more)



*for making  
timely  
investments in*

Qualified  
Opportunity Funds  
(QOFs)



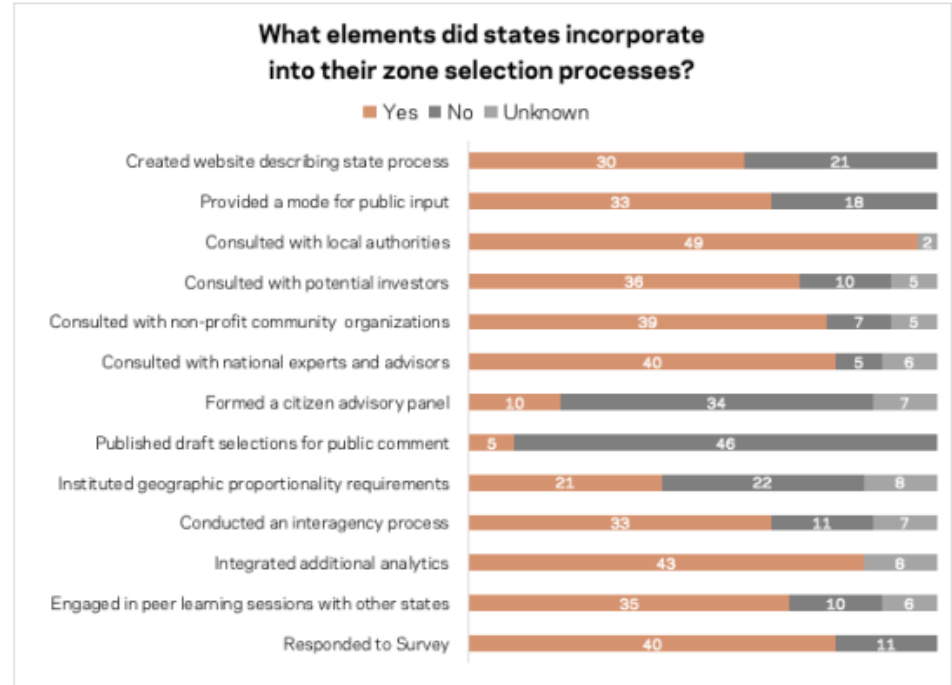
*which  
invest in*

Qualified  
Opportunity Zone  
Property

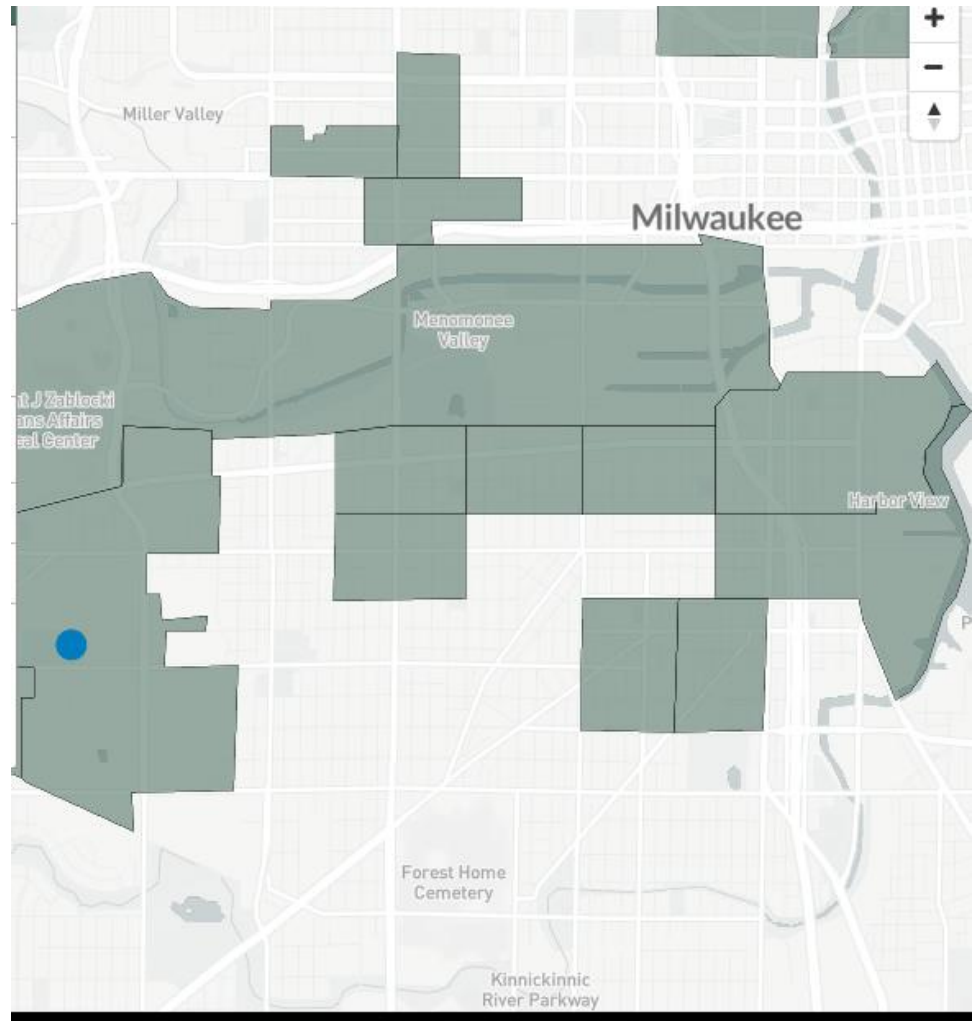


# Opportunity Zones are Low Income Communities certified by each state as Opportunity Zones

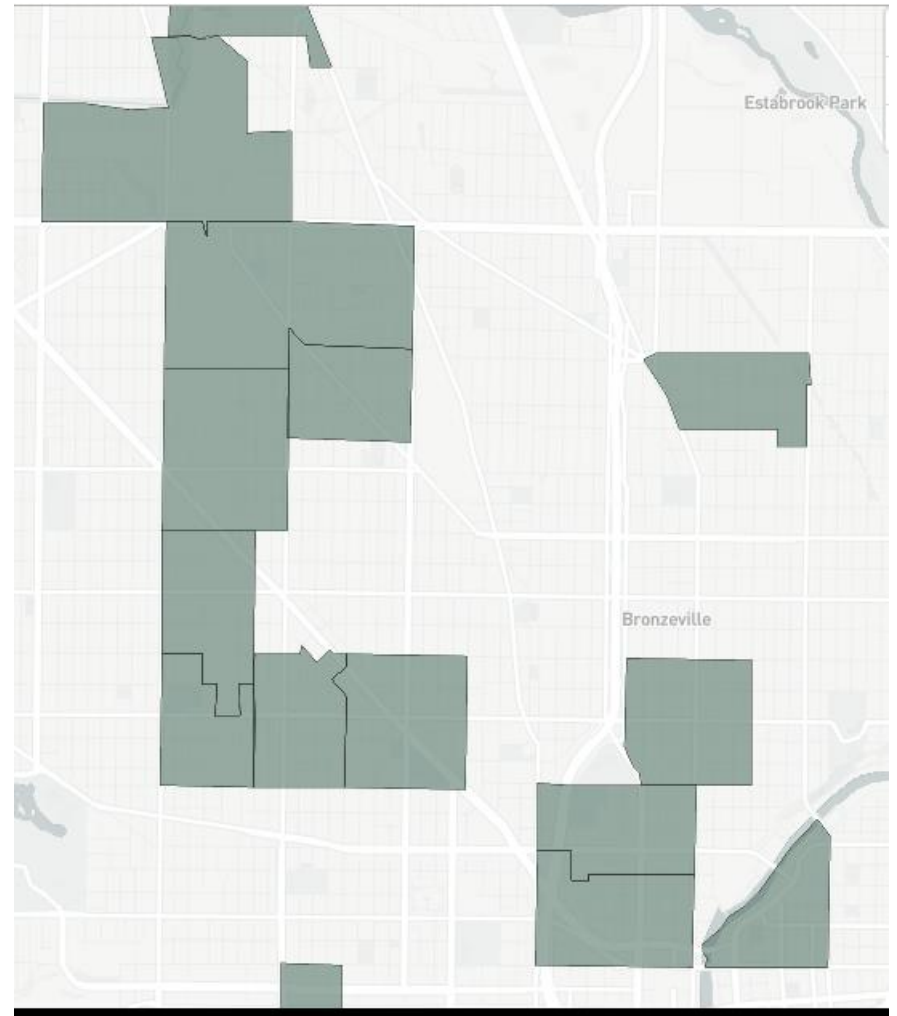
- States consulted with their municipalities, counties, and local and regional economic development organizations in designating their OZs.
- Zones hold their designation until December 31, 2028



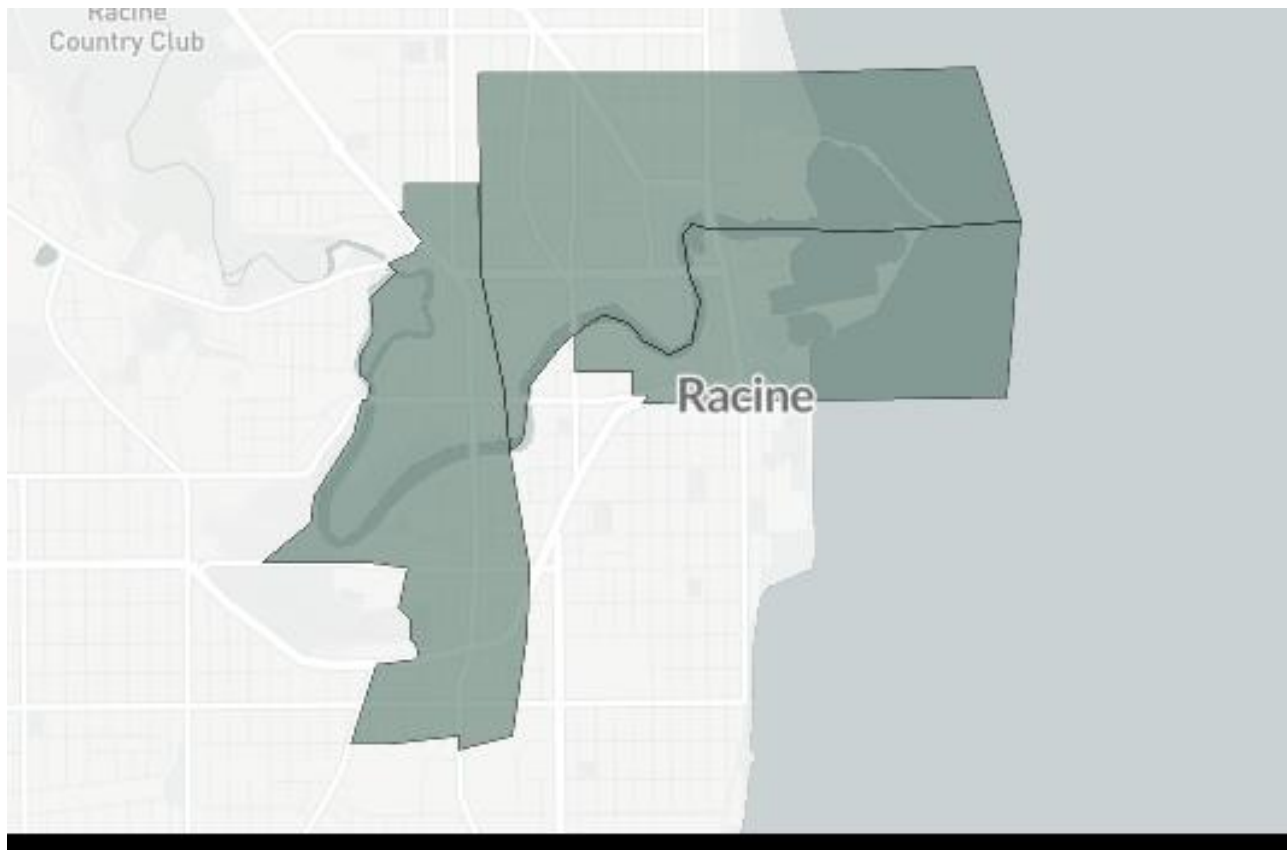
- **Menomonee Valley**
- **Harbor District**
- **Near Westside**
- **West Allis**



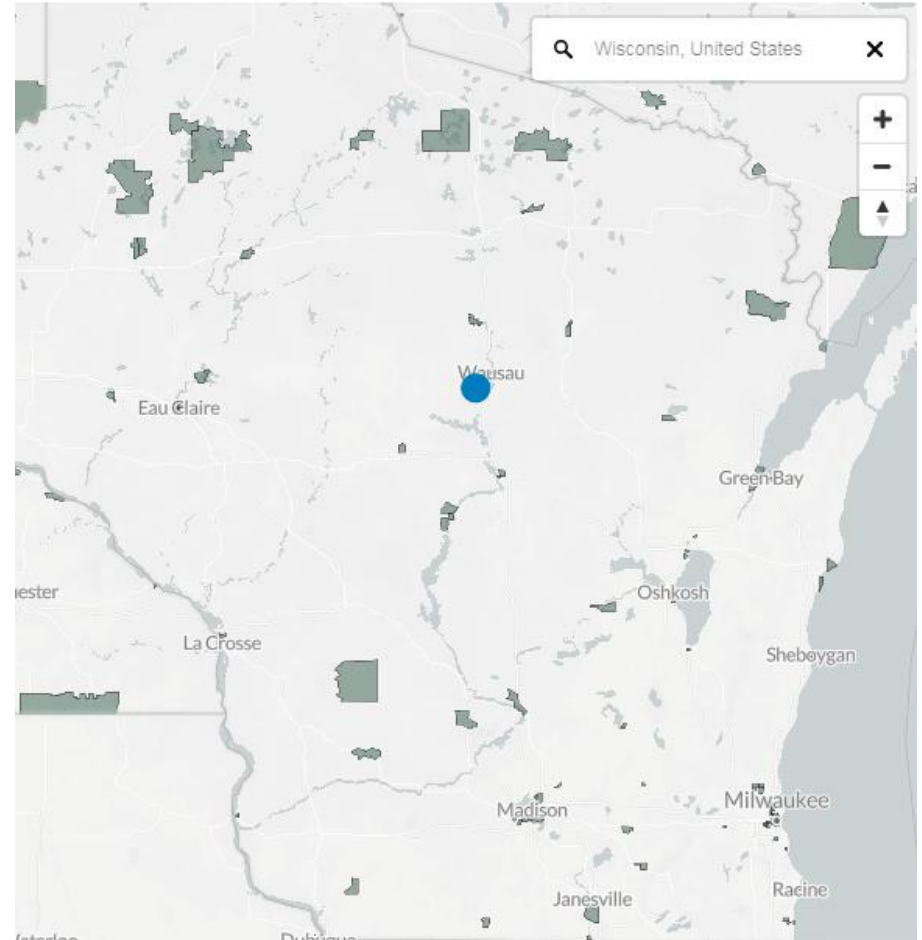
- **30<sup>th</sup> Street Industrial Corridor**
- **Park East**
- **MLK Dr./Bronzeville**
- **Harambee**
- **Granville - Northridge**



# RACINE



- **Fond du Lac**
- **Green Bay**
- **Janesville**
- **Kenosha**
- **La Crosse**
- **Madison**
- **Oshkosh**
- **Sheboygan**



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*which  
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Qualified  
Opportunity Zone  
Property





# Qualified Opportunity Fund

- Statutory definition:
  - An **investment vehicle** organized as a **corporation** or a **partnership** for the purpose of investing in **Qualified Opportunity Zone Property (QOZP)**.
- Opportunity Funds self certify
- Noncompliance Penalty
  - 90% asset test
  - Per month penalty equal to % of shortfall x underpayment rate
  - No penalty for reasonable cause
- Qualified Opportunity Funds will be large blind funds, small project specific funds and everything in between

# 3 Tax Incentive Benefits

1. Gain  
Deferral

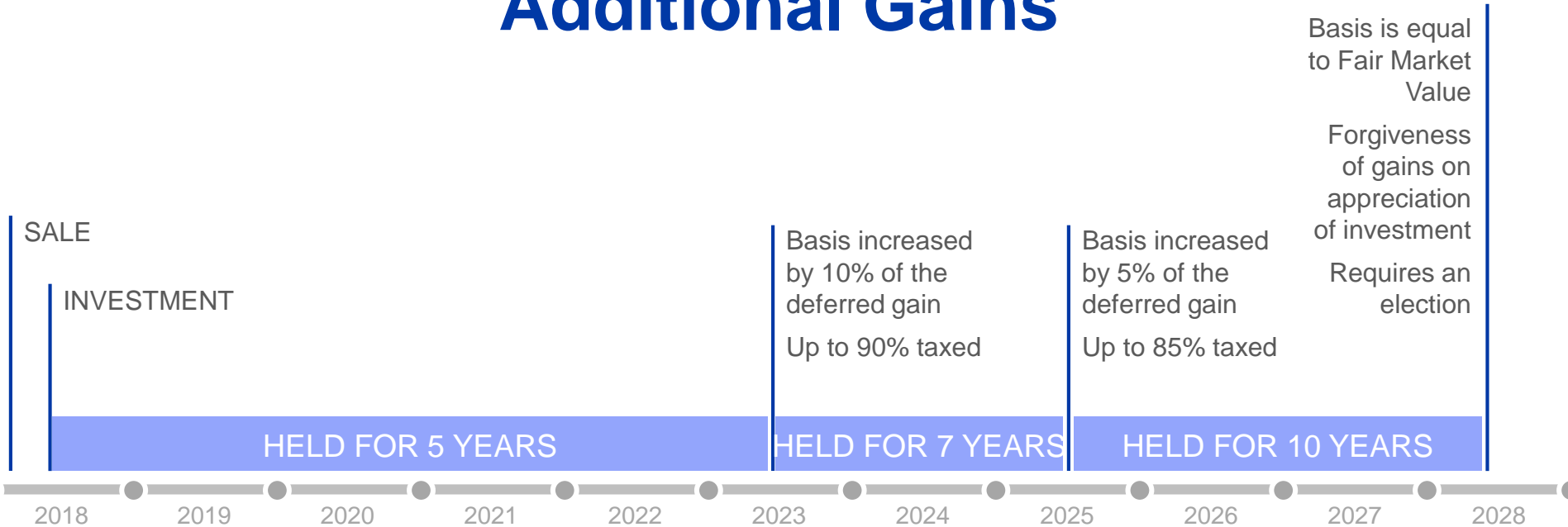
2. Partial  
forgiveness

3. Forgiveness of  
additional gains

# Period of Deferral & Amount Recognized

- Deferral period ends upon the earlier of:
  - Sale of QOF interest or
  - December 31, 2026
- Amount of capital gain tax recognized:
  - Lesser of:
    - Amount of gain deferred or
    - The fair market value of the investment in the QOF interest
  - Minus
    - Taxpayer's basis in the QOF interest (basis in QOF interest initial is deemed to be zero)

# Partial Forgiveness and Forgiveness of Additional Gains



Taxpayers can get  
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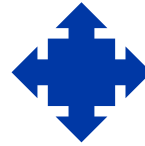
# Readily Identifiable Investment Types in Opportunity Zones



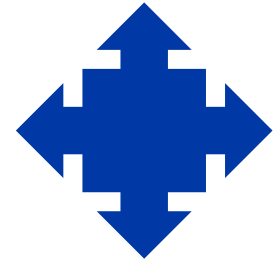
Commercial Real Estate Development and Renovation in Opportunity Zones



Opening New Businesses in Opportunity Zones



Expansion of Existing Businesses into Opportunity Zones



Large Expansions of Businesses already within Opportunity Zones



# Commercial Real Estate Development and Renovation in Opportunity Zones



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# Qualified Opportunity Zone Businesses (QOZB)

A trade or business in which **substantially all** of the tangible property owned or leased by the taxpayer is **qualified opportunity zone business property** (QOZBP) and:

- At least 50% of income derived from Active Conduct
- Substantial portion of intangible property used in active conduct of business
- < 5 percent unadjusted basis of property is nonqualified financial property (October regulations created a 31 month safe harbor for reasonable working capital held pursuant to a plan and schedule for use)

No “sin businesses” permitted

- A private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises



# Qualified Opportunity Zone Business Property (QOZBP)

- ✓ Tangible property used in a trade or business
- ✓ Acquired by purchase from an unrelated party (20% standard) after December 31, 2017
- ✓ During substantially all of holding period, substantially all the use is in a QOZ
- ✓ Original use in the QOZ commences with the taxpayer

OR

- ✓ Taxpayer substantially improves the property
  - ✓ during any 30-month period after acquisition, additions to basis exceed an amount equal to the adjusted basis of such property at the beginning of such period

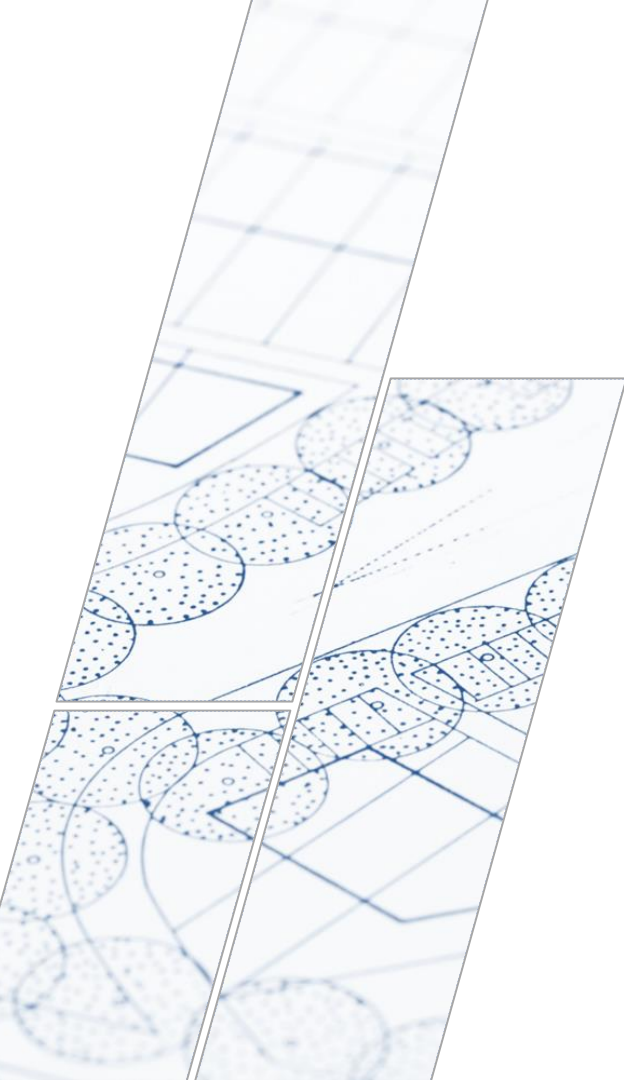


# Considerations for Real Estate Developers

- **New construction in an OZ works well**
- **Renovations of existing structures must meet substantial improvement test**
- **Potential that “original use” test could be applied to vacant structures**
- **If the QOZB is an operating company, the company may only need to locate in an OZ but not construct or substantially improve a structure**
- **OZ capital can be layered with other financing incentives**

# 1031 Comparison

- **No “like kind” requirement**
- **No qualified intermediary necessary**
- **180 days to reinvest**
- **No initial property identification necessary**
- **Benefits to tax payer in additional to deferral**
- **No continuous deferral - taxes on original gain must be paid in April 2027**
- **Potential cash flow issues when taxes are due**



# Opportunity Zones Case Study



*Former Tower/ A.O. Smith site in October 2009. Note Building 37 (center) is collapsing. (City of Milwaukee)*





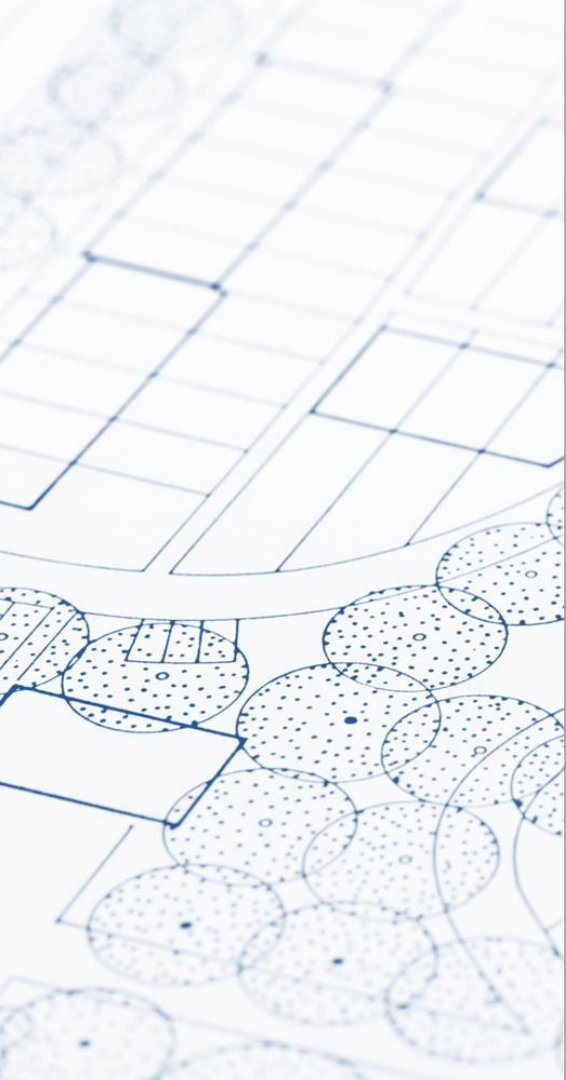






# Take-Aways for Brokerage Community

- **Know what listings you have in Opportunity Zones and consider marketing a location in an OZ as an asset to the property.**
- **Understand the program so you can introduce it to potential purchasers who are renovating property or developing vacant land**
- **Know that it is an option for taxpayers who are considering a sale but are concerned about capital gains**
- **Know that it is an option for 1031s gone wrong**



## For more information about Opportunity Zones, talk to a member of Husch Blackwell's Opportunity Zones Team

- A multidisciplinary team of more than 25 attorneys covering tax, finance, real estate, fund management, securities and corporate law
- Offices in 18 cities across the United States
- Find us at:  
<https://www.huschblackwell.com/capabilities/opportunity-zones>
- Or call Rebecca Mitich (414) 978-5367 or Hal Karas (414) 978-5549 in Husch Blackwell's Milwaukee office.