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# THE LAND OF OPPORTUNITY ZONES: WHERE OPPORTUNITY GOES TO DIE

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## I. INTRODUCTION

What do a superyacht marina in West Palm Beach, Florida; the city in Minnesota that is home to the Mall of America; and a blighted East Harlem, New York, have in common? They are all opportunity zones.[1] This may be a striking fact, considering the first two areas are affluent while the third is home to many low-income families with an average income for elderly citizens below twenty thousand dollars.[2] The problem with the opportunity zones program, as we currently know it, is that it does not serve the right communities, and when it does, it is not always in the right way.

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* 2023 Albany Law School graduate and former Editorial Board Member of the Albany Law Review I would like to thank Professor Danshera Cords for being an instrumental gateway into the rich depths of Tax-law.

1. *See* The Editorial Board, *Opportunity Zones–For Billionaires*, N.Y. TIMES (Nov. 16, 2019), https://www.nytimes.com/2019/11/16/opinion/trump-tax-opportunity-zones.html; David J. Bartoletti, *A Primer on Qualified Opportunity Zones*, 36:1 PRAC. TAX LAW. 1, 6 (2021) ("In Minnesota, the area south of the regional airport is a QOZ (Qualified Opportunity Zone). It includes a 'distressed' area called The Mall of America, the largest shopping center in the United States."); *see also* CHRISTOPHER A. COES & TRACY HADDEN LOH, NATIONAL OPPORTUNITY ZONES RANKING REPORT 60, 63 (2018).

2. THOMAS P. DINAPOLI & KENNETH B. BLEIWAS, AN ECONOMIC SNAPSHOT OF THE EAST HARLEM NEIGHBORHOOD 1, 3 (2017) ("Almost one-third (29 percent) of the households had incomes below the federal poverty level, much higher than the citywide share (18 percent).").

Blighted neighborhoods have long been considered a legal matter.[3] Historically, the law has implemented tools to aid in "fixing" neighborhoods at issue; for example, the eminent domain doctrine allows the government to take land from private owners, placing rebuilding and redevelopment in the hands of the government.[4] Moreover, in the case of *Kelo v. City of London*, the United States Supreme Court held that the government can transfer eminent domain properties to private owners.[5]

After attempting to take control of urban blight, the government began diversifying its methods through programs and incentives to promote the privatized improvement of these neighborhoods.[6] In 2017, the Qualified Opportunity Zone ("QOZ") program was formed out of the Tax Cut and Jobs Act ("TCJA") with the intention to relieve poverty.[7] QOZ was created to incentivize privatized improvements of low-income or blighted neighborhoods.[8] The program provided favorable tax treatment for investment in businesses within designated tracts referred to as "opportunity zones."[9] These zones are designated by the governors of each state, who are tasked with choosing areas that fall within the criteria laid out in the tax code.[10]

Because Congress enacted the program in 2017, we have yet to see a full ten-year cycle of the program.[11] As a result, it faces the same challenges as most new government programs—growing pains that arise from identifying

3. *See generally* Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. REV. 1, 3-6 (2003) (discussing the view and thoughts behind beating urban blight).

4. *See id.* at 3; *see also* William Reis, Eminent Domain and Land Disposition: Urban Renewal in Upstate New York (May 2019) (M.S. Thesis, Colum. Univ.) (on file with Colum. Univ. Acad. Commons) ("Through various methods of urban renewal, including land disposition and eminent domain . . . cities have created disasters for the residents of the cities and the character of the environment during the period of heavy American urban renewal in the mid-20th century.").

5. Kelo v. City of New London, 545 U.S. 469, 478 (2008).

6. *See* Pritchett, s*upra* note 3, at 48.

7. *See* DONALD J. MARPLES, TAX INCENTIVES FOR OPPORTUNITY ZONES 1 (2022).

8. Tax Cut and Jobs Act, Pub. L. No. 115–97, 131 Stat. 2054 (hereinafter "TCJA"); 26 U.S.C. §1400Z-1.

9. 26 U.S.C. §1400Z-2; *see* Ruta R. Trivedi, *Opportunity Zones Providing Opportunity for Whom?: How the Current Regulations Are Failing and a Solution to Uplift Communities*, 27 WASH. & LEE J. CIV. RTS. & SOC. JUST. 745, 748 (2021).

10. 26 U.S.C. §1400Z-1(b)(A); *see* Bartoletti, *supra* note 1, at 6.

11. *See* TCJA § 2054.

issues through practical implementation and data collection.[12] Consequently, several issues with the QOZ program have emerged, including increased gentrification and tracts that fail to meet the intended criteria.[13]

Some consequences, such as the influx of luxury and high-end businesses, are adverse to the legislative goals of the program.[14] These investments do not aid the population that needs economic growth. Instead, the investments harm at-risk populations by forcing them out of their neighborhoods through increased living costs resulting from expensive amenities and high-end housing.[15] This Article proposes a remedy for some of the unintended results the program has caused.

In Part II, this Article will discuss the origins and purpose of the QOZ program.[16] This part will explain how the program is designed to work, describe the legislative goals behind the program, and identify the provisions that may be holding the door open for abuse.[17]

Part III will discuss how the code sections are applied and the consequences of that application. Notably, this part will discuss the investments that the opportunity zone program has enabled because of how it is written. Due to the current drafting, the code has made it more attractive to invest in high-end businesses.[18] Businesses within opportunity zones largely comprise ventures such as luxury apartments.[19] These investments do not aid the individuals the program is intended to help. This has resulted in pushing the communities meant to be served out of their homes and neighborhoods.[20]

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12. TCJA § 2054; 26 U.S.C. §§ 1400Z-1, 1400Z-2.

13. Samuel Dastrup & Ingrid Gould Ellen, *Linking Residents to Opportunity: Gentrification and Public Housing*, 18 CITYSCAPE: J. POL'Y DEV. & RSCH. 87, 88 (2016) ("As a result [of gentrification], some of the subsidized housing developments that were created in racially concentrated areas of high poverty are now seeing increases in incomes, educational levels, and White population shares in their surroundings.").

14. *The Promise of Opportunity Zones: Hearing Before the Joint Econ. Comm.*, 115th Cong. 36-37 (2018) (statement of Hon. Martin Heinrich, Ranking Member, U.S. Sen. from N.M.).

15. Trivedi, *supra* note 9, at 770.

16. *See infra* Part II: What is a Qualified Opportunity Zone.

17. *Id.*

18. See *id.*

19. *See* Trivedi, *supra* note 9, at 745.

20. *See* Jesse Drucker & Eric Lipton, *Meant to Lift Poor Areas, Tax Break Is Boon to Rich*, N.Y. TIMES (Sept. 1, 2019), https://www.nytimes.com/2019/08/31/business/ tax-

In Part IV, this Article will propose a change to the language of the code to curb abuse of its tax incentives. Specifically, this Article argues that the current definition of Qualified Opportunity Zone Business ("QOZB") is too broad, which has allowed for misuse. Redrafting this definition to require approval by local economic development boards will allow for a narrower stream of investments, such as grocery stores or low-income housing, to serve the community living in these areas and take a holistic approach to fighting urban blight.

## II. WHAT IS A QUALIFIED OPPORTUNITY ZONE?

The QOZ program was enacted with significant bipartisan support.[21] The program was intended to act as a jump-start for economic activity in blighted or low-income areas.[22] During the Joint Economic Committee hearing, opportunity zones were said to "offer an additional path to spur economic development."[23] Specifically, lawmakers intended to use the program to "seed new startups, accelerate business expansions, create jobs, increase and improve housing options, and revitalize the built environment in distressed communities across the country."[24]

To facilitate this result, the QOZ program provides tax incentives for investors who invest in a business or qualified opportunity fund within tracts that have been designated as "opportunity zones."

Three main categories of tax incentives are available: a zero-percent tax on new gains, deferred taxation, and a basis boost. First, the zero-percent tax on new gains means that if an investor holds a stake in a Qualified Opportunity Fund ("QOF") for ten years, any capital gains from the QOF

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opportunity-zones.html (noting the gentrification of some opportunity homes and the disparity in investment between high-end development projects and poorer communities).

21. *History of Opportunity Zones*, ECON. INNOVATION GRP., https://eig.org/opportunityzones/history (last visited Jan. 9, 2024) ("The policy as we know it today is based on the bipartisan Investing in Opportunity Act, which was championed by Senators Tim Scott (R-SC) and Cory Booker (D-NJ) and Representatives Pat Tiberi (R-OH) and Ron Kind (D-WI), who led a regionally and politically diverse coalition of nearly 100 congressional cosponsors in the House and Senate.").

22. *See* Trivedi, *supra* note 9, at 768.

23. *The Promise of Opportunity Zones: Hearing Before the Joint Economic Committee*, 115th Cong. 36-37 (2018) (statement of Hon. Martin Heinrich, Ranking Member, U.S. Sen. from N.M.); SEAN LOWRY ET AL., TAX INCENTIVES FOR OPPORTUNITY ZONES: IN BRIEF 8 (2018) ("OZs are an addition to the array of geographically targeted, federal programs and incentives for economic development").

24. Trivedi, *supra* note 9, at 768.

investment are taxed at a federal rate of zero percent. Capital gains refer to income from the sale of property, including stocks, business property, and financial instruments, and are distinct from ordinary income, such as wages, rents, dividends, and interest.[25]

An investor must invest in an opportunity zone to take advantage of these benefits.[26] An area becomes a designated opportunity zone after two steps. First, it must meet the specified criteria to be considered a low-income census tract ("LIC") as defined under the New Markets Tax Credit ("NMTC") Program or, in limited situations, a census tract adjacent to an LIC.[27] An area meeting this definition will be eligible for designation by the governor of its respective state.[28] Second, the area must be designated by the governor. The governor of each state or U.S. territory and the mayor of the District of Columbia are allowed to designate tracts as opportunity zones.[29] A maximum of twenty-five percent of eligible tracts within a state can be designated as opportunity zones.[30] Additionally, up to five percent of these designated zones may be contiguous to low-income census zones.[31]

Investments must also satisfy the requirements of Code Section 1400Z-2. First, QOZ investments may be made directly in a QOZ business property or through a QOF.[32] A QOF is a corporation or partnership that is organized to invest in QOZ property.[33] At least ninety percent of a QOF's assets must be qualified opportunity zone property.[34] Opportunity zone property comes in three forms: stock, partnership interest, or qualified opportunity zone business property.[35]

> The term "qualified opportunity zone business property" means tangible property used in a trade or business of the qualified opportunity fund if—
> (I) such property was acquired by the qualified opportunity fund by

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25. Daniel Marcin, *Opportunity Zones: A Place Based Incentive for Investment in Low Income Communities*, 22 CITYSCAPE: J. POL'Y DEV. & RSCH. 101, 105 (2020).

26. 26 U.S.C. §1400Z–2.

27. Bartoletti, *supra* note 1, at 6.

28. *See id.*

29. *Id.*; 26 U.S.C. § 1400Z-1(b)(1)(A).

30. 26 U.S.C. §1400Z-1(d)(1); Bartoletti, *supra* note 1, at 6 ("However, states or territories in which there are fewer than 100 LICs could designate up to 25 LICs. In addition, substantially all of Puerto Rico is a QOZ.").

31. 26 U.S.C. § 1400Z-1(e)(2).

32. 26 U.S.C. § 1400Z-2(d)(1); I.R.C. §1400Z-2(d)(2)(D).

33. 26 U.S.C. § 1400Z-2(d)(1); I.R.C. §1400Z-2(d)(2)(D).

34. 26 U.S.C. § 1400Z-2(d)(1); I.R.C. §1400Z-2(d)(2)(D).

35. 26 U.S.C. §1400Z-2(d)(2)(A).

> purchase (as defined in section 179(d) (2)) after December 31, 2017,
> (II) the original use of such property in the qualified opportunity zone commences with the qualified opportunity fund or the qualified opportunity fund substantially improves the property, and
> (III) during substantially all of the qualified opportunity fund's holding period for such property, substantially all of the use of such property was in a qualified opportunity zone.[36]

This percentage must be maintained and measured every six months of the tax year.[37]

It is important to note that the only requirement for investing in tangible businesses within opportunity zones is that they are substantially improved.[38] The code clarifies that "substantial improvement" requires "additions to basis with respect to such property in the hands of the Qualified Opportunity Fund exceed an amount equal to the adjusted basis of such property" and that it occurs "during any 30-month period beginning after the date of acquisition of such property."[39]

While the code focuses on the capital invested into the businesses, the code does not identify the intended outcomes of these investments.[40] The requirement is simply that the property be substantially improved; however, it does not speak to how this improvement will affect the surrounding areas.[41] This leaves a large loophole that investors have abused.[42] Instead of drafting the program in such a way that requires improvement of the area or an overall increase in indicators of economic improvement, the code simply requires that a specific business be improved, without regard to what type of business it may be and how it affects the surrounding areas.[43] Congress has recognized this gap. In April, the Congressional Research Service released

36. 26 U.S.C. §1400Z-2(d)(2)(D)(i).

37. 26 U.S.C. §1400Z-2(d)(1).

38. 26 U.S.C. §1400Z-2(d)(2)(D)(ii).

39. *Id.*

40. *See generally* 26 U.S.C. §1400Z-2(d)(1).

41. 26 U.S.C. §1400Z-2(D)(i); *see* Adam Looney, *Will Opportunity Zones Help Distressed Residents or Be a Tax Cut for Gentrification?*, BROOKINGS (Feb. 16, 2018), https://www.brookings.edu/blog/up-front/2018/02/26/will-opportunity-zones-help-distressed-residents-or-be-a-tax-cut-for-gentrification/ (explaining that there is a risk that the tax break displaces nearby poorer neighborhoods instead of revitalizing them).

42. *See* Looney, *supra* note 41 (explaining that opportunity zone tax breaks will provide benefits to developers investing in already-gentrifying areas and may displace current residents).

43. 26 U.S.C. §1400Z-2(2)(D)(i).

a report noting that several bills have since been introduced to try and mitigate the gap.[44] One such bill, H.R. 7467, seeks to require information on investments, including location, industry, and the jobs created.[45]

## III. THE PROGRAM: APPLICATION AND ISSUES

While the QOZ program was launched with high hopes for success, its practical outcomes have not met the expectations of the legislative branch.[46] Although some areas have thrived because of the program, others have suffered, with many residents losing their homes and communities.[47] In some opportunity zones, "[h]omeownership levels are very low. . . as most residents cannot afford to purchase homes and many of the homeowners who live in zones are cost-burdened."[48] This outcome directly opposes the intended results of the legislation, which was to foster economic growth for low-income families.[49]

Currently, criticism stems from the fact that opportunity zone resources are not reaching the poorer communities they were meant to benefit.[50] Instead of supporting essential businesses that the communities need, such as grocery stores or affordable housing, opportunity zones often become sites for luxury housing and expensive amenities.[51] This shift ultimately displaces residents due to the increased cost of living or the lack of necessary

44. *See* MARPLES, *supra* note 7, at 14 (noting that Congress introduced several bills intended to promote oversight and transparency of opportunity zones).

45. *See id.*

46. *See* Samantha Jacoby, *Potential Flaws of Opportunity Zones Loom, As Do Risks of Large-Scale Tax Avoidance*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 11, 2019), https://www.cbpp.org/research/federal-tax/potential-flaws-of-opportunity-zones-loom-as-do-risks-of-large-scale-tax (explaining that Congress quickly drafted and passed the law without public hearings or broad expert input, and that the new opportunity zone tax breaks were among the provisions that didn't receive nearly the attention they deserved).

47. *See* Trivedi, *supra* note 9, at 770 (noting that the investments made in luxury real estate and retailers will likely displace residents as they will not be able to afford to live in such a place if costs rise); *see also* Megan Brewster & Jack Jowers, *State of Opportunity Zone Marketplace in 2021*, FORBES (Sep. 2, 2021), https://www.forbes.com/sites/sorensonimpact/2021/09/02/state-of-the-opportunity-zone-marketplace-in-2021/?sh=43ac9b486abb (explaining that the opportunity zone activity has left many communities excluded from the benefits of the very policy designed to overcome previous divestment).

48. Trivedi, *supra* note 9, at 775.

49. Drucker & Lipton, *supra* note 20; *see* MARPLES, *supra* note 7, at 7.

50. *See* Trivedi, *supra* note 9, at 770.

51. *Id.* at 745.

services.[52]

Because opportunity zones are situated in low-income areas, the communities there often face issues such as food deserts and high unemployment rates.[53] Rather than promote more businesses and jobs or provide more low-income housing to allow residents to work near where they live, developers build new, luxury housing to serve professionals and graduate students, resulting in the natives of the neighborhood being effectively evicted.[54]

For example, University Heights in Albany County is tract twenty-one of the QOZs in New York State.[55] While the tract contains roughly four universities, one in particular, Albany Medical Center, has spread its roots to most of the surrounding areas.[56] After investing in a $110 million anchor project, the medical center has solidified plans to build "268 apartments, a 134,000 [square foot] medical office building, an 816-space parking garage, and two mixed-use buildings."[57] Realizing this goal "would require the demolition of every building on the north side of Myrtle Avenue, both sides of Morris Street and the south side of Dana Avenue between New Scotland Avenue and Robin Street—including 37 buildings that Albany Med currently rents to its own employees."[58] With the initial goal to clean up a "crime- and drug-ridden neighborhood;"[59] this is the quintessential example

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52. *Id.* at 775.

53. *See, e.g.,* DINAPOLI & BLEIWAS, *supra* note 2, at 5-7.

54. *See* Dastrup & Ellen, *supra* note 13, at 88 ("These efforts may be shaped by the current wave of gentrification, which is bringing higher-income, college-educated households into many high-poverty, central city neighborhoods. As a result, some of the subsidized housing developments that were created in racially concentrated areas of high poverty are now seeing increases in incomes, educational levels, and White population shares in their surroundings."); *see also* Looney, *supra* note 41 ("State's Opportunity Zones could also serve as a subsidy for displacing local residents in favor of higher-income professionals and the businesses that cater to them—a subsidy for gentrification.").

55. *Opportunity Zone Prospectus*, CAPITALIZE ALBANY CORP., https://capitalizealbany.com/albany-opportunity-zones/ (last visited Jan. 12, 2024).

56. *See id*. ("Investing more than $360 million, AMC continues to expand its presence in the area to keep pace with demand for healthcare services and has partnered with public and private entities to improve the community.").

57. *Id*.

58. Jordan Carleo-Evangelist, *Albany Med details $110M Transformation*, TIMES UNION (July 24, 2013), https://www.timesunion.com/local/article/Albany-Med-details-110M-transformation-4682834.php.

59. *See id.*

of the opportunity zone program being misused. The result is not a low-income or poverty-friendly approach; instead, there is a total resurfacing of the area. Old landmarks are replaced with expensive apartments to serve the young professionals in the area and the students from the nearby colleges.[60]

This program misuse arose from a combination of factors. Some argue that the program's drafting prioritized benefiting the area itself rather than the people living in it.[61] Others believe the issue lies in the program's lack of focus on achieving its intended outcomes.[62] Additionally, some contend that the program lacks sufficient limitations to prevent abuse of its provisions and tax incentives, due to both direct omissions in the tax code and ambiguities that allow for overly broad interpretations of the law.[63] Some criticism arises from the overbroad application of the "low-income" criteria, which has led areas that may not be "truly distressed" to become designated zones.[64] Other concerns derive from loopholes the code creates; for example, "[t]he proposed regulations let an investor get the full tax break even if only 63 percent of the total capital that an opportunity zone fund invests flows to a zone."[65] The issues and abuses of the program concern not only the extent to which gains can be deferred but also the nature of the investments that receive preferential treatment.[66] The code lacks effective limitations on which businesses can be invested in, resulting in a focus on financial return rather than social and economic effects.[67]

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60. *See id.* ("Two other landmarks of Park South's grittier past—the now-closed Quintessence diner and the building housing Valentine's rock club, both on New Scotland Avenue—also would disappear. In their place would rise a five-story building with shops and apartments.").

61. *See* Edward W. De Barbieri, *Opportunism Zones*, 39 YALE L. & POL'Y REV. 82, 132 (2020) ("[T]hey ought to focus on improving the lives of people living in those places. Here, the Opportunity Zone's agnosticism with respect to use and the individuals who stand to benefit from uses is harmful. The singular focus on place and not people demonstrates a troublesome shift away from any consideration of the ideal beneficiaries of development: individuals already residing in low-income communities.").

62. *See* Looney, *supra* note 41 ("It's a subsidy based on capital appreciation, not on employment or local services, and includes no provisions intended to retain local residents or promote inclusive housing.").

63. *See* Jacoby, *supra* note 46.

64. *See id.*

65. *Id.*

66. *See id.*

67. *See id.*

## IV. THE PROPOSED SOLUTION

The issues that have resulted from the current application of the QOZ program include the misuse of the program and gentrification under the pretext of economic development. The next step for Congress must be to correct course and restore the program to its intended purpose.

The QOZ program suffers from the same plight as most other incentive programs, and it must solve the latent issues within its drafting to discourage misuse. As with many incentives, the program will likely be adjusted as real-world implementation reveals issues that were not apparent in its theoretical design.

The tax code focuses on the success of businesses alone rather than its effect on the surrounding area.[68] This has led to only sporadic success for the QOZ program. While some blighted areas do enjoy economic growth the way the program intended, most opportunity zones are either contiguous zones that do not need the aid or zones that have become gentrified and become a wholly new community.[69]

With the former tenants and citizens moving out, the question becomes whether the individualized business success approach effectively addresses the issue of a blighted neighborhood or whether it merely causes low-income individuals to move into other blighted neighborhoods, leading to more uncomfortably overpopulated run-down areas.[70] Did we find a solution or effectively push the problem under the rug?

Instead, we should shift our focus to a more community-centered and people-oriented approach. Rather than improving an area only on its face, we should attempt to improve it from the inside out. Just as a QOF must meet specific requirements and a QOZB needs to be "substantially improved," we must ensure that the investments have the intended results

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68. *See* De Barbieri, *supra* note 61, at 143 ("Failing to restrict project type, or to consider use value, means that Opportunity Zone investments need not necessarily contain a public benefit other than the mere investment of capital itself. Capital alone, however, is insufficient to ensure a public benefit. An investment that improves a piece of real estate, or supports a new or operating business, does not necessarily improve the lives of a designated neighborhood's existing residents.").

69. *See* Brewster & Jowers, *supra* note 47; *see also* Trivedi, *supra* note 9, at 770.

70. *See* Trivedi, *supra* note 9, at 770; *see also* Carleo-Evangelist, *supra* note 58 (not two streets to the right of the ever-improved University Heights District in Albany, New York rests N. Delaware Avenue on the intersection of Lark St. which is still a heavily crime and drug ridden area, featuring run-down apartment buildings which are anticipated to become more overpopulated as those being driven out of University Heights seek new, affordable, housing).

through tangible metrics.[71]

A first step would be to amend the current tax provisions that govern the programs. We should investigate not only the areas where we see the most abuse or where the provision is taken advantage of most, but also those areas with less-than-ideal results. These investigations should allow us to distill common factors that affect those outcomes. For example, how do we combat the influx of unaffordable high-end housing? Some scholars believe the solution lies in limiting investments in real estate to low-income housing.[72] However, restrictions that are too intense run the risk of freezing investments altogether.[73] Thus, we must reach a balance between the interests of the investors and the interests of the community served by the program.

One method is to add a provision into the code that would mandate investments to be approved by a local economic development board to qualify for favorable tax treatment.[74] Review of the investment by the board tailor the program to the specific needs of each tract. Additionally, regional economic development boards are created to serve a specific area; it is their fiduciary duty to ensure that the projects they approve serve the needs of these areas.[75] This approach will indirectly promote a comprehensive evaluation of both the business's success and its impact on the neighborhood.[76]

Additionally, the investments brought to the local economic development boards should be analyzed under more scrutiny. Rather than appealing to the goals of the program on its face, the investment should directly appeal to the overall interests of the community it intends to improve. Regional economic development boards are in the best position to ensure an investment plays to those interests, as they have a detailed understanding of the issues in that area.[77] Enhanced scrutiny will allow the boards to promote

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71. 26 U.S.C. §1400Z-2(d)(D)(ii). *See generally* Brewster & Jowers, *supra* note 47 ("The communities that appear to have attracted OZ investment demonstrate entrepreneurial initiative and an ability to frame community priorities in a way that invites investors participation.").

72. *See* De Barbieri, *supra* note 61, at 92.

73. *See id.* at 144.

74. *See id.* at 145 ("[l]ocal government agencies can consider particular project features").

75. *See About E.D.A.*, U.S. ECON. DEV. ADMIN., https://eda.gov/about/ (last visited Jan. 12, 2024).

76. *See id.*

77. *See* Trivedi, *supra* note 9, at 775 (discussing case studies in which local communities limited the investments made in opportunity zones to better focus on the

investments that would otherwise be overlooked, as well as create community partnerships and connections.

Referring to the expertise of board members and allowing them to conduct the cost-benefit analysis of each investment would function as a vetting tool to allow for effective investments and ward off those who seek tax breaks under the pretext of economic development. It also allows board members to bring attention to investment opportunities that may not have been obvious to investors.

While there may be a fear that this restriction would freeze and discourage investment, it may also be argued that this application should be treated no differently than seeking a city permit for buildings and construction.[78] Furthermore, investors should consider it is a small price to pay on balance for the possible tax-free treatment of capital gains.

## V. CONCLUSION

So, what do a Superyacht Marina in West Palm Beach, Florida; the city in Minnesota holding The Mall of America; and a blighted East Harlem New York have in common? They are all opportunity zones. Whether they are LICs or Contiguous, they can be vehicles for aiding low-income families and combatting urban blight.[79]

Conducting the Qualified Opportunity Zone program with some new restrictions can result in meaningful and effective investments that provide job growth and area improvement in a way that serves the community and economy, as well as helps prove that this is truly the land of opportunity (zones).

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needs of the community); DEBRA MOUNTFORD, ORGANIZING FOR LOCAL DEVELOPMENT: THE ROLE OF LOCAL DEVELOPMENT AGENCIES, 2 (2009) ("[d]evelopment Agencies and companies are especially suited to 'contested' activities such as locational and investment decisions, or 'collaborative' activities (such as multi-party planning and joint ventures)").

78. *See* De Barbieri, *supra* note 61, at 144 and accompanying discussion.

79. *See* The Editorial Board, *supra* note 1; *see also* Bartoletti, *supra* note 1, at 5 ("[I]n Minnesota, the area south of the regional airport is a QOZ. It includes a 'distressed' area called The Mall of America, the largest shopping center in the United States"); *see also* COES & LOH, *supra* note 1, at 3.