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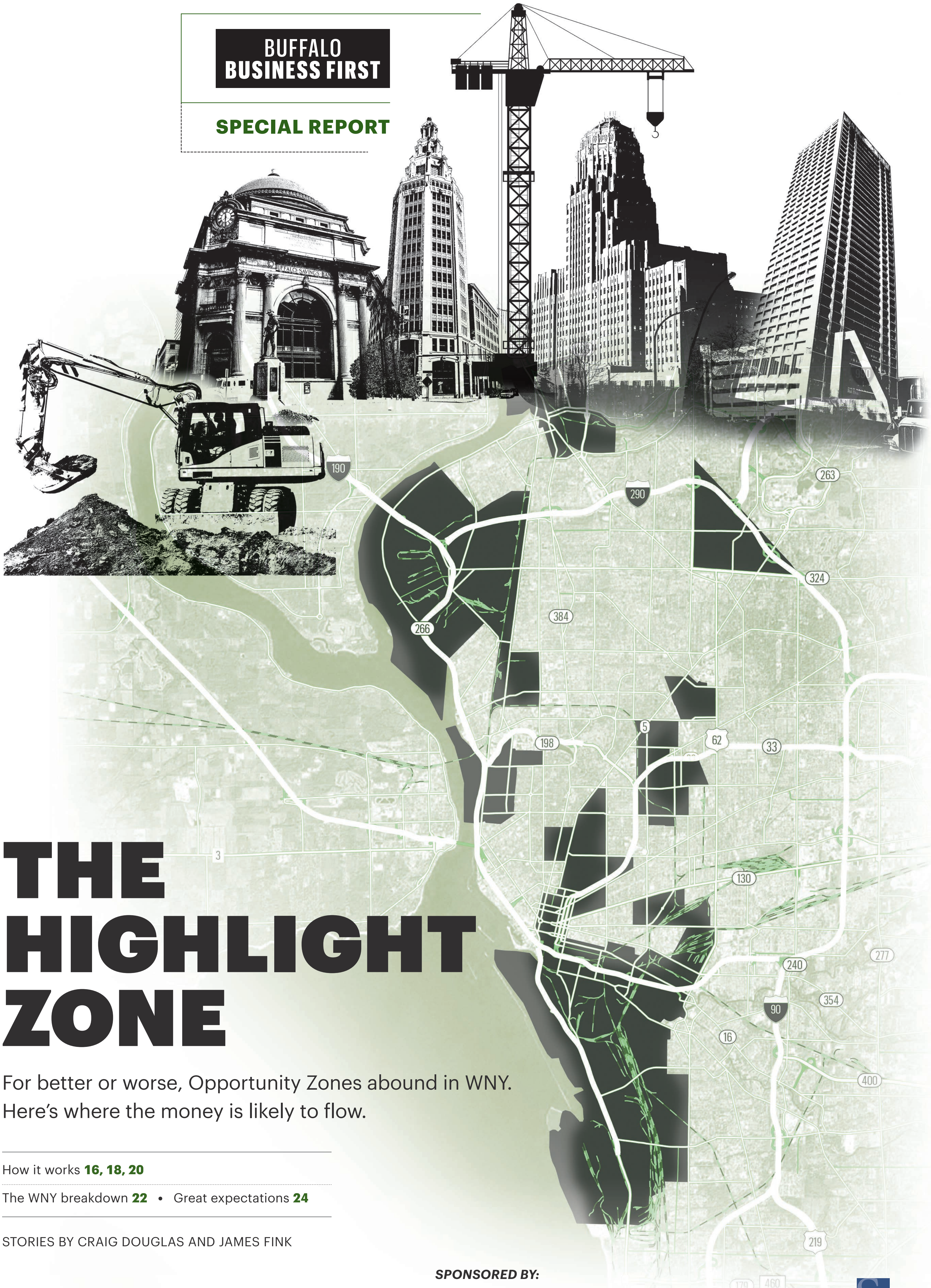
SPECIAL REPORT




# THE HIGHLIGHT ZONE

For better or worse, Opportunity Zones abound in WNY. Here's where the money is likely to flow.



STORIES BY CRAIG DOUGLAS AND JAMES FINK



ILLUSTRATION BY LAURIE LAWRENCE/AMERICAN CITY BUSINESS JOURNALS & NANCY KNIGHT; PHOTOS BY GETTY IMAGES

SPECIAL REPORT: OPPORTUNITY ZONES

# INTO THE GREAT O-ZONE

Thousands of neighborhoods are primed for an investment surge. Will a rising tide lift all boats, or will our poorest, least-educated communities be upended in the name of economic development?

BY CRAIG DOUGLAS
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Rarely has the federal government dabbled in social engineering without triggering a political backlash.

Yet, somehow, Congress stymied even its most vocal critics last year with new rules encouraging investment in thousands of America's most-underdeveloped neighborhoods, known forever more as Opportunity Zones.

The reasons for the muted response are many. For starters, the new regulations – included as part of the Tax Cuts and Jobs Act of 2017 – were finalized in late April.

Initially, the Internal Revenue Service issued hundreds of pages of guidance to explain how and over what time period the program is designed to work. Confusion stemmed from the definition of what constitutes an investment in an Opportunity Zone, and to the degree investments will be exposed to federal taxes, if at all.

Another wild card: tax officials at the local level. Potential investors have expressed uncertainty over whether states or cities will follow Congress with similar incentives.

There has been no shortage of voices from the commercial real estate and wealth management sectors heralding the potential payoffs in store for investors.

Tops among them is shelter from federal taxes, but there are plenty of additional perks. Unlike traditional government programs intended to boost economic development, the Opportunity Zone program's benefits do not depend on an investor hitting certain employment requirements.

Likewise, traditional limits on the types of properties or business investments that qualify are minimal. Among those that don't qualify include country clubs, liquor stores, racetracks and gaming venues.

Less clear is what the Opportunity Zone legislation will mean for communities in its crosshairs.

By definition, Opportunity Zones are populated by low-income residents. A Business Journals analysis of thousands of these designated areas found them to be, on average, undereducated and plagued by high home-vacancy rates relative to national, state and county averages. Most are a majority black or Hispanic.

But there are suburban areas included in Opportunity Zones such as the Boulevard Mall neighborhood in Amherst.

Some economists and policymakers caution the law's language is ripe to be gamed or exploited outside the intent of the Opportunity Zone program. Concerns over gentrification and the displacement of poor, minority neighborhoods in the name of economic development are legitimate, they say, and are likely to play out in unexpected ways.

Investors have until year-end to maximize the program's benefits, estimated in the billions.

## STATES OF OPPORTUNITY

U.S. governors were required to select qualified census tracts as Opportunity Zones by early 2018. Below is a breakdown of where zones are clustered, based on varied measures.

**State with the most Opportunity Zones per census tract**

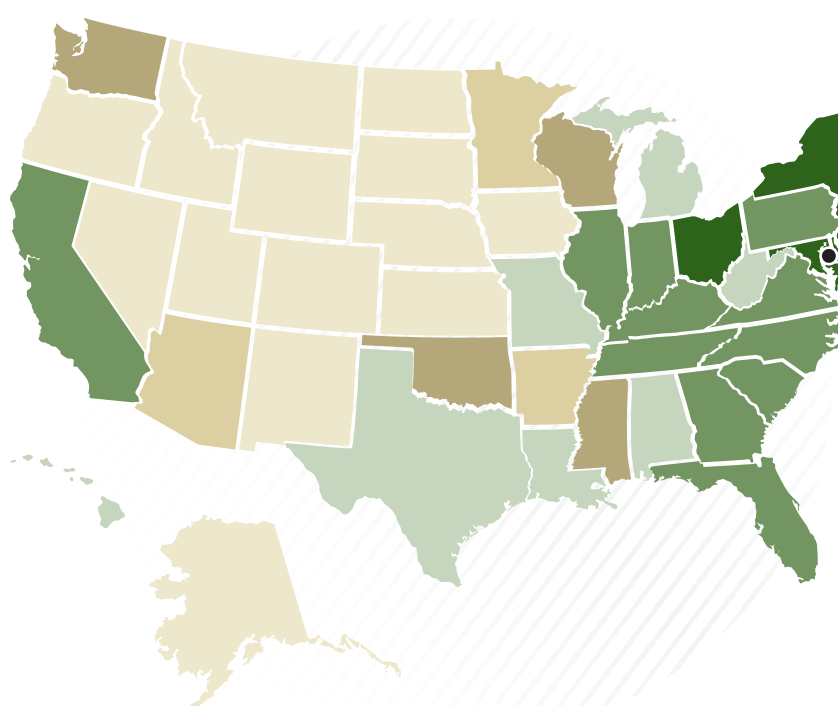
Wyoming **18.9%**

**State with the most residents per Opportunity Zone**

Utah **86,720**

**State with the most total Opportunity Zones**

California **879**



**Square miles per Opportunity Zone**

- 0-150
- 151-300
- 301-450
- 451-600
- 601-750
- 751+

## DISTRICT OF CONCENTRATION

With 25 Opportunity Zones packed into a 68-square-mile land area, the District of Columbia has by far the program's greatest concentration of qualified neighborhoods. At one Opportunity Zone for every 2.8 square miles, D.C.'s closest rival states are New Jersey and Rhode Island at a zone for every 51.6 square miles and 61.8 square miles, respectively. Alaska ranked last at one Opportunity Zone per 26,615 square miles.

**Square miles per O.Z.**

District of Columbia **2.8**

**OPPORTUNITY ZONES VERSUS THE MEDIAN CENSUS TRACT: A POOR COMPARISON**

Compared to U.S. medians, Opportunity Zones are poorer, less educated and have significantly lower home values.

| | ALL U.S. CENSUS TRACTS | OPPORTUNITY ZONES |
|---|---|---|
| Total tracts | 73,070 | 8,764 |
| Median household income | $58,810 | $33,345 |
| Median home value | $232,818 | $145,187 |
| Home vacancy rate | 12% | 15% |
| Population black or Hispanic | 30% | 54% |
| Age 25+ with college degree | 29% | 17% |

SOURCES: U.S. Census Bureau; Urban Institute

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# New Opportunities to Invest in Buffalo's Economically Distressed Communities

When Congress added the "Opportunity Zones" (OZ) to the 2017 Tax Cuts and Jobs Act (TCJA), it was unclear what the term "opportunity" meant for taxpayers.

As time has passed and IRS guidance has filled in some of the gray areas of the law, it has become clear that "opportunity" is an appropriate term on a number of levels: it will channel new investment into clearly identified economically distressed communities; it will reward taxpayers with tax deferrals and, in some cases, reduction of tax on capital gains for investments they make in those communities; and it will provide for development and sponsorship of funds to manage those investments, whether for a group of properties or businesses or for a single property or business.

While at first blush, the OZ program looks appealing, our guidance is simple: proceed with caution because the rules are still being developed and additional regulatory guidance is expected in the coming year.

## Sponsoring a Qualified Opportunity Fund

The tax law and subsequent guidance send clear messages for those who are attempting to create, sponsor, or manage a Qualified Opportunity Fund (QOF) and attract investors.

- The fund needs to meet the IRS requirements to qualify *when it is established.*
- The fund needs to *stay in compliance* with those requirements *over the life of the fund.* Any significant asset purchase or sale of property within the fund should be evaluated to determine its impact on the qualification, and a compliance review should be performed every year in connection with annual tax reporting. The rules give fund managers some safe harbors to stay compliant. Those safe harbors should be employed in connection with the fund's planning for ongoing compliance.

Like individual investors, fund managers should consider the pros and cons of single asset vs. multiple asset funds. Compliance planning will vary based on the fund's investment structure and investors will want some assurance that the fund will be able to comply with the rules. Multi-asset funds may be more administratively difficult to manage than single asset funds.

## Investing in a Qualified Opportunity Fund

If you are considering an investment in a QOF, it's important that you and your tax advisor note that they are a new investment option, providing a unique set of tax considerations to be weighed against other tax-advantaged strategies. Like any other investment, the appropriate level of due diligence should be performed when considering a QOF investment. Alternatively, you might consider establishing your own QOF to engage in an OZ project.

## Timing QOF Investments

Certain tax benefits provided by the OZ program expire on Dec. 31, 2019 and Dec. 31, 2021. Therefore, investments in QOFs after these dates will forfeit these tax benefits. In addition, the tax deferral provision expires on Dec. 31, 2026. Therefore, timing of QOF investments will potentially impact the overall return on an investment in a QOF.

## Get Assistance from the Opportunity Zones Program Specialists at Freed Maxick

Whether you are an individual investor or a fund manager or sponsor, you should connect with a professional tax advisor who is well versed on the OZ program rules as well as other federal and state tax credit programs.

Freed Maxick is qualified to be that advisor. Our familiarity with OZ program rules makes us an advisor-of-choice for those considering a QOF investment or establishing a QOF. We have a history of working with the various federal and state tax credit programs such as the new markets tax credit, low-income housing tax credit, historic tax credit, and brownfield tax credit. Proper planning and structuring is necessary to maximize the return on a QOF investment when other federal and state tax credits can be employed.

For more information about the OZ program, please visit our website www.freedmaxick.com or call us at 716.847.2651.

**Don Warrant, CPA**
*Tax Director, Freed Maxick*

**Mark Stebbins, CPA**
*Tax Director, Freed Maxick*


The Tax Cuts and Jobs Act of 2017 (TCJA) created the "Opportunity Zones" (OZ) program to encourage private investment in low-income communities throughout the country designated as Qualified Opportunity Zones (QOZ). Freed Maxick works with fund sponsors, fund investors, real property owners and developers, and businesses that can potentially benefit by participating in this program.

**Learn more by contacting a member of the Freed Maxick Opportunity Zones team:**

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SPECIAL REPORT

# FOLLOW THE MONEY: A PRIMER ON OPPORTUNITY ZONE INVESTING

The potential benefits to investors are many, from the deferral of taxes owed on investment returns to the ability to completely shelter from taxes any future cash-outs from properties or businesses located in Opportunity Zones. Proponents see the arrangement as a win for investors, states and communities seeking to revitalize blighted and underutilized areas. Others have raised concerns that Opportunity Zones are yet another giveaway to the wealthy at the expense of the poor.

## HOW IT WORKS

*"**Jane**" sells a long-owned multifamily property and pockets a $1 million gain. Rather than reinvest her money through traditional means, Jane instead seeks to shelter her nest egg by reinvesting her initial gain into an Opportunity Zone.*

**Jane's $1 million gain is deposited into a qualified Opportunity Zone fund.**

The IRS allows investors to create their own Opportunity Zone funds or invest through qualified funds established by the likes of a traditional money manager or investment firm. Jane is now eligible to benefit from the Opportunity Zone program.

**Scenario 1: Invest in a property**

Jane's $1 million gain is reinvested within 31 months in a real estate asset. To qualify for the program's full tax benefits, she must eventually match her investment dollar-for-dollar with upgrades to the property. This only applies to structures, not the value of the actual land in question.

**Will the community benefit?**

*What if Jane buys a parking lot? The law's "upgrade" clause only requires a matching investment in the property's structures, say a dilapidated ticket shed worth $5,000. So $5,000 could be the extent of the property's economic "redevelopment."*

**Scenario 2: Invest in a business**

Jane's $1 million gain is reinvested within 31 months in a business with at least 70 percent of its tangible assets in an Opportunity Zone. The business also qualifies if 50 percent of its employees' hours or wages are in the zone or if 50 percent of the business' revenue is generated within the zone.

**Can it be gamed?**

*The short answer: yes. There are many hypotheticals – online sales, aggressive asset valuations – that could enable investors to benefit from the law while delivering little value to a community. Will the IRS have the resources to enforce the letter of the law?*

**The initial payoff**

All the federal tax exposure on Jane's initial $1 million gain is deferred to 2026. If her reinvestment in an Opportunity Zone is held for seven years at that point, some 15 percent, or $150,000, of that gain will be completely sheltered from capital-gains taxes. If her reinvestment is held only five years, her shelter drops to 10 percent, or $100,000, of that original gain.

**The big payoff**

Should Jane's investment explode in value, none of that appreciation will be exposed to federal capital-gains taxes. So if in 10 or 20 years that asset is worth $20 million and Jane decides to sell, she will pocket $19 million in gains, completely free from federal capital-gains taxes.

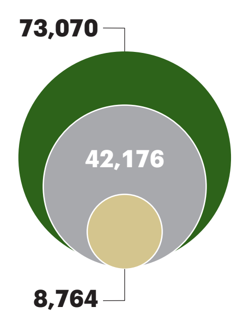
## WHAT QUALIFIES?

In 2018, state governors selected qualified census tracts as Opportunity Zones in cases where:

- The poverty rate was at least 20 percent of all households, or
- Median family income did not exceed 80 percent of the region's median family income, or
- The tract was contiguous to another low-income tract and had fewer than 2,000 residents.

## GETTING TO 8,764 ZONES

Governors were given considerable latitude to designate up to 25 percent of eligible census tracts as Opportunity Zones in their respective states. Of the nation's 73,070 total census tracts, 42,176 qualified as "low income." As of May, there were 8,764 Opportunity Zones in U.S. states, as well as two more designated in Puerto Rico.




## THE CLOCK IS TICKING

Investors have a tight timeline – effectively the end of 2019 – to make a qualified investment in an Opportunity Zone and still maximize all the program's tax benefits, at least when it comes to sheltering from the IRS a portion of the initial amount invested. All dates are as of Dec. 31.

**2019**

The latest date when an investor can reinvest untaxed gains into an Opportunity Zone and still be eligible for the program's maximum 15 percent tax shelter.

**2021**

The latest date when an investor can reinvest untaxed gains into an Opportunity Zone and still be eligible for the program's next-highest tax shelter – 10 percent.

**2026**

The deadline at which investors must pay any capital-gains taxes owed on an amount initially invested in a property or business located in an Opportunity Zone.

**2028**

All investments in Opportunity Zones must be finalized by this date to be eligible for the program's tax-exempt status on gains earned from the property or business in question.

**2047**

The final deadline when investors can claim tax benefits from gains earned from the Opportunity Zone program.

**The good, the bad and the ugly**

How will Opportunity Zones help or hurt Western New York? Hear from the voices at the center of the action.

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## WHAT'S IT ALL COST?

The federal government has offered a 10-year estimate for lost tax revenue, but a total tab remains a moving target.

$1.6 BILLION — Estimated cost of the Opportunity Zone program in lost tax revenue for the federal government over the next 10 years. This does not account for foregone taxes after 2028.

BILLIONS MORE? — No one knows, but a total cost in the tens, if not hundreds, of billions is conceivable.

GRAPHICS: Craig Douglas, Laurie Lawrence and Sarah Price; Map: Infogram

# Seizing opportunity: Revitalizing downtown Buffalo.

**Over the last decade, Western New York, and particularly the Greater Buffalo area, has experienced a renaissance in commercial development. One of its pioneers, Nick Sinatra, a proud Buffalo native whose family has owned and operated the iconic Sinatra's restaurant for nearly 40 years, has been at the forefront of this resurgence in economic activity, building his company's $550 million portfolio and helping revitalize Buffalo's downtown. Five Star Bank has served as lender for several of these endeavors, providing capital, local knowledge, and expertise to contribute to the success of these challenging projects.**

**We're pleased to bring you a conversation between Nick Sinatra, founder of Sinatra & Company Real Estate, and Craig Burton, Commercial Real Estate Executive of Five Star Bank, as they discuss accomplishments, current and future plans and the complexities of urban commercial real estate development within Opportunity Zones.**

**Craig Burton:**
I often think about how real estate is really the fabric of a community. For decades, Buffalo was under served and under managed in terms of quality and inventory of real estate. I suspect that was something you identified as a way you can contribute in your hometown and have a real impact?

**Nick Sinatra:**
Absolutely. Real estate is a vital component of the economic fabric and there's a community fabric here in Buffalo that's hard to replicate in other places. In 2010, after some initial challenges, we started gaining momentum downtown. We saw that there was going to be a lot of demand for housing, specifically around the Buffalo Niagara medical campus. And then of course came UB 2020, which ultimately brought the medical school downtown.

**Craig Burton:**
Your Phoenix Brewery project is very close to the medical campus. That was one of the first projects that you worked with Five Star?

**Nick Sinatra:**
Yeah, it was actually one of the first large developments we did at the time— I believe it was our largest development. And it was challenging because it was originally a brewery that was used as a warehouse after prohibition. It needed a lot of TLC as it was a historic rehabilitation with structural issues. But you know, ultimately, we found a great lender in Five Star, and the project came out great.

The City of Buffalo Preservation Board often references the project as a model for development and adaptive reuse, historic reuse. Having a lender like Five Star with a project that challenging was key because we were able to communicate directly with lenders who could really understand our situation and be flexible, and work with us on problems as opposed to having a larger out of area bank that just didn't really care about the customer or the project. Most projects have a bump in the road, so to have a lender who cares is important.

**Craig Burton:**
That's what we strive for here at Five Star— to gain an understanding of the project and the capabilities of the developer and align them to structure the project financing. We've elevated our understanding of historic tax credit capital structures, and endeavors like the brewery project have inspired us to increase our own capabilities. Thank you for recognizing that we can be depended on and work effectively on complicated projects.

**Nick Sinatra:**
As you know, we really loved working with you on Phoenix Brewery, a great experience thanks in part to your understanding of how the tax credits can work. So now we're also working together on Harvard Place Apartments. And that one has been smooth sailing.

**Craig Burton:**
Well, let's talk about Harvard (Place) for just a second. Harvard is an interesting building. Unlike the Phoenix, it's in a park-like setting. What's the history of the building?

**Nick Sinatra:**
The building was built in 1929 as the home for wayward women. It is a gorgeous, tudor style building on a three-and-a-half-acre site, nestled in the Cold Springs area near the medical campus district, in a very up-and-coming neighborhood. It was being used as the Community Action organization headquarters for many, many years. We purchased it, along with the land around it, a few years ago for a good price and we got it into the old historic tax credit program. We're just now working on it with Five Star and it should be finished by the end of the year.

**Craig Burton:**
We look forward to the opportunity to finance that next phase.

So, we've discussed a couple of historic tax credit capital structures that we've worked with you on. Again, it requires specific insight on the part of a bank to work with historic investors. It takes a little effort and the right expertise, and we've developed that here at Five Star Bank. Now, you have a very special project coming up at Heritage Point— the first project to be built within an Opportunity Zone in Buffalo or Western New York.

**Nick Sinatra:**
Right. I can't imagine there's another project in the Opportunity Zone program that's as shovel-ready as Heritage Point…right across from a major sports arena. And that's the key— that we as a company have been on the forefront of this Opportunity Zone program. That specific structure is unique and we're all going in together with this new structure for the first time.

There are regulations that have been put out by the Treasury Department and IRS and we've gotten some great guidance and counsel from accounting firms and law firms. But at the end of the day, we're pioneers together on this one to figure out what the right structure is from a finance standpoint, and how it all works with new regulations for the investors, the developer and the lender. We really appreciate Five Star stepping up and working with us on it, because it's going to be a phenomenal project. And I think this could be a template for all these deals in the future.

**Craig Burton:**
And when you say stepping up, it does require an accommodating approach in terms of the structure, which we've become comfortable with. So, we appreciate your confidence in us to deliver the type of financing that's needed for this project. But let's back up a little bit. Perhaps you could talk about what Heritage Point is, the RFP process, and the development's relevance to downtown Buffalo?

**Nick Sinatra:**
Absolutely. It will be a $27 million ground-up development in the new Canalside District, which is going to be the heartbeat of Buffalo's entertainment district for decades to come. This is the first site that New York State put out an RFP for to find a private developer in that area. With our track record of doing great mixed-use projects and being one of the larger residential landlords in Buffalo, we were awarded the RFP. It's going to be two six-story buildings, truly mixed-use, with 64 apartments that will be 90% market rate, 10% affordable. There will be office space on the second floor and a food hall on the first floor, which we're very excited about.

**Craig Burton:**
Regarding the RFP, are there any key points that you can illuminate?

**Nick Sinatra:**
Our expertise in mixed-use and residential was critical. Also, our internally-mandated design standards played a role. And we like to work with brick, and that fits the fabric of the architecture of Buffalo. Lastly is our vision for transit-oriented development and for activating the space, making it a must-visit destination, especially in summer, attracting people from all over the community.

**Craig Burton:**
That's fantastic. And it's right in our focus: downtown redevelopment and financing for projects like this. Three years ago, we opened a downtown branch at Fountain Plaza, demonstrating our commitment to be in downtown Buffalo. One thing about financing this project that we really liked was being the first bank to work with a developer to structure an Opportunity Zone Financing that needs a unique approach. Another thing we like about Heritage Point is the affordable component. This isn't just a market-rate apartment community exclusive to high-income people. The affordable component makes it available to all levels of income.

**Nick Sinatra:**
As do we. So, Heritage Point is very similar to Phoenix in that it has lots of layers, with government oversight and incentives. The project itself poses great construction challenges, driving construction costs higher. The state recognizes this and they've really layered in lots of gap financing. There's also a Brownfield cleanup component because some of the fill needs to be removed to make sure the soil meets the Department of Environmental Conservation standards. So, there are multiple different layers, multiple LLCs involved alongside of state agencies. It's going to be a complex deal. A project like this takes creativity and a solutions-oriented, customer-friendly bank like Five Star.

**Craig Burton:**
Those are great points. We feel that we have developed the expertise and have the right environmental consultants to accommodate a Brownfield capital structure as well. So, again, thank you for mentioning that. And finally, Nick, thank you for your time. It's been a pleasure talking with you. Just as it is working with you.

**Nick Sinatra:**
I appreciate the time and opportunity. We're looking forward to breaking more ground with Five Star.

Five Star Bank

For more information visit: **Five-StarBank.com/commercial-lending**

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SPECIAL REPORT

# DEVELOPERS SEEK NEW OPPORTUNITIES

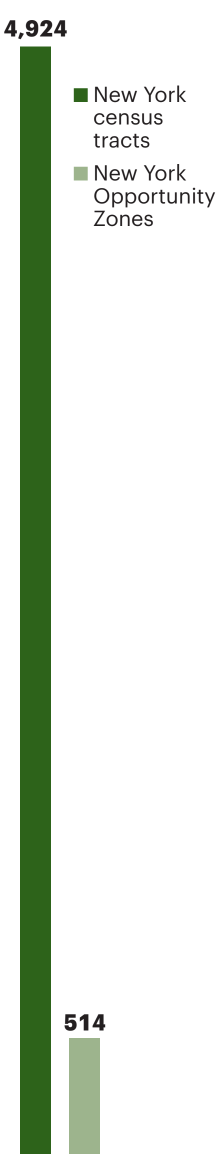
## Tax credits provide incentive for investors

BY JAMES FINK jfink@bizjournals.com

Development investors locally and from outside the area are giving Western New York a closer look thanks to Opportunity Zones, a fledgling federal tax credit program that in many respects is geared toward assisting projects in middle-market communities.

**EMPIRE STATE IN THE ZONE**

Gov. Andrew Cuomo designated 514 census tracts as Opportunity Zones in 2018. In Western New York there are 48 Opportunity Zones, 18 of them in Buffalo.




JOED VIERA

*Nick Sinatra will use the federal tax credit program to help build the $21 million Heritage Point apartment complex at Canalside.*

That was certainly the case with Marvin Wilmoth, a Miami developer working on a proposed $100 million residential project and artists colony in the Buffalo River's Silo City corridor.

"When you are looking at capital sources, Opportunity Zone credits give you another avenue," said Wilmoth, managing partner of Generation Development Group LLC. "It may very well come into play with Silo City."

That's the same for Douglas Jemal as he plans a $30 million renovation of the five-story former Buffalo Police headquarters on Franklin Street that will include 175 apartments.

The federal program offers investors varying degrees of tax credits – based on the length of the deal – and captured the attention of development and investment executives.

"There's certainly a lot of money gravitating toward it," Jemal said.

Opportunity Zone tax credits are a driving financial source for Jemal and Buffalo developer Nick Sinatra as they plan a transformation of Boulevard Mall in Amherst.

Town officials gerrymandered an Opportunity Zone tract with the mall as the focal point.

Opportunity Zones are dictated by U.S. Census Bureau data and are targeted for neighborhoods, business districts and hamlets that are considered economically and demographically challenged.

"We would be crazy not to take advantage of Opportunity Zone tax credits," Jemal said.

Sinatra plans to use the tax credits for several other projects including the $21 million Heritage Point twin apartment buildings and the $120 million Elmwood Crossing, which will be developed in conjunction with Ellicott Development.

Sinatra's pitch? A big ROI for investors.

It could take some local projects that might have had a long-term return in the 8 percent to 10 percent range up to 14 percent or more.

"Just by doing that math, we are seeing institutional investors that might have otherwise bypassed Buffalo give our projects a second look," Sinatra said.

After 10 years, investors might not see their capital gains appreciation taxed by the IRS.

"That moves the needle," Sinatra said.

Interest in Opportunity Zones isn't limited to Buffalo. The region's first zone-driven project was completed in mid-June when Blue Cardinal Capital paid $3.2 million for 38 Niagara Falls parcels and properties.

The company will use the tax credits as a key part of its long-term financing strategy.

In Genesee County, Batavia has two designated Opportunity Zone districts. One is for the Harvester/Masse Campus, owned by Mancuso Business Development Group, and the other for the City Center building on Route 5. They are among the 544 Opportunity Zones in New York state, as selected by Empire State Development.

*Rachael Tabelski*

Rachael Tabelski is director of economic development for Batavia Development Corp. She called the addition of Opportunity Zone tax credits a "potential game changer."

The organization is putting together a $5 million Opportunity Zone investment pool that she said may trigger some projects.

"The city is hyper-focused on the best way to move forward," Tabelski said.

*Tom Mancuso*

B. Thomas Mancuso, president of Mancuso Business Development Group, said as one of Batavia's largest developers, the Opportunity Zone investment pool could be "a godsend."

The Harvester complex covers 25 acres and more than 900,000 square feet, much of it dating to the early 1900s.

"From my perspective, it gives us one more economic tool in our toolbox," Mancuso said. "In a small Upstate community, you need to be creative – very creative – when it comes to financing projects."

So what happens now?

Opportunity Zone investment guidelines were issued in late April by the U.S. Treasury Department. Investors and developers are in varying stages of due diligence.

Will there be a massive Opportunity Zone-triggered wave of development?

Not likely.

"There will be more people looking and checking off boxes. But the deals still have to make economic sense," Mancuso said. "I think people are waiting to see who is the first to put together a financing package using 'O Zones' credits as part of the deal and they'll take it from there."

## EMPIRE STATE BY THE NUMBERS

New York's densely populated urban centers and sprawling rural tracts provide diverse opportunities for prospective developers. Western New York is home to 48 of the state's 514 designated Opportunity Zones.

**Est. population**

**19.5M**

*Rank: 4th among all U.S. states*

**Land (sq. miles)**

**54,555**

*Rank: 27th*

**Pop. per O.Z.**

**38,020**

*Rank: 34th*

**Median household income**

**$65K**

*U.S. median: $60,336*

**Median home value**

**$315K**

*U.S. median: $217,600*

**Home vacancy rate**

**12%**

*U.S. rate: 13%*

**Black or Hispanic**

**33%**

*U.S. rate: 30%*

**Age 25+ with college degree**

**36%**

*U.S. rate: 32%*

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# New Developments in Opportunity Zone Investing

The time is right for entrepreneurs and venture capitalists to benefit from investments in areas of New York State under a new federal tax incentive program intended to spark business development and job creation in distressed communities.

The program included in President Trump's signature Tax Cuts and Jobs Act of 2017 created Opportunity Zones, now numbering 8,700 across all 50 states, which are earmarked for community improvement.

There are 514 zones from Albany to Buffalo and elsewhere in New York.

The attorneys at **Hodgson Russ LLP** are uniquely qualified to show investors how to take advantage of the tax incentives from the types of projects to pursue to how to proceed through the program's regulations.

The Opportunity Zones were created by census tracts of low-income areas nominated by each state and certified by the Secretary of the U.S. Treasury. Located in downtown, industrial, suburban and rural areas, the zones stand to benefit from an estimated $40 billion in investments in projects such as start-up technology companies, small businesses and real estate development.

"The Federal government has estimated that investors stand to benefit from more than $9 billion from the act's preferential tax treatment for fiscal years 2018-2022," said **Terry Gilbride,** a Hodgson Russ partner specializing in commercial real estate, construction and public-private partnerships.

"The program affords taxpayers, who have gain from the sale of a capital asset to an unrelated person, capital gain deferral, reduction and elimination. To take advantage of these benefits, taxpayers have to invest an amount equal to all or part of that gain in a 'qualified opportunity fund' in exchange for equity, and taxpayers have to make an election and attach it to your tax return in the year the gain is recognized," Gilbride said.

Those who qualify for the program can receive substantial tax benefits in capital gain deferral until 2026 or the date the interest is disposed, capital gain reduction depending on the length of time the investment is held, and capital gain exclusion on the appreciation of the investment if held for more than 10 years.

"If you hold your interest in the fund for 10 years and you dispose of it on or before 2047, you get elimination of capital gain on the appreciation of your investment in the fund. That's what people are focused on as the biggest tax benefit," Gilbride said.

Two sets of regulations have been released by the U.S. Treasury Department. The most recent round, announced in April, clarified for Opportunity Zone investors several important issues such as an investment's eligibility requirements, treatment of pre-existing entities, what qualifies as substantial improvement to a property and treatment of leased property.

"The April regulations in general are extremely taxpayer friendly," said **Leslie Kellogg,** a Hodgson Russ tax partner who focuses on federal and international tax. "They are meant to give investors comfort that they really can deploy this capital and take advantage of the benefit of these funds."

Meanwhile, the program is expected to cost New York $7 million a year, according to state Tax Department estimates, said **Chris Doyle,** Leader of the Hodgson Russ State and Local Tax Practice.

The state appears to be waiting to see whether the investments that result from the program align with the state's economic development needs, Doyle said.

Doyle predicted that a repeat of the 2008 recession, for example, could find that the "revenue needs of the state trump the economic development needs of the state," and the state could change the law to get rid of the deferral and exclusion amounts. Let the buyer beware, he said.

The April regulations also addressed in greater detail Qualified Opportunity Zone Funds, investment vehicles that take the form of partnerships, corporations or limited liability companies.

Those using a fund to attract investors should understand that the offering needs to comply with existing federal and state securities laws, said **John Zak,** Leader of the Hodgson Russ Securities Regulations and Corporate Compliance Practice.

"Any time you raise funds from third parties you need to be concerned about whether you can deliver on your promises," Zak added. "Given these tax regulations, which are still in flux somewhat, it's difficult to know whether you can answer all the questions of your investors."

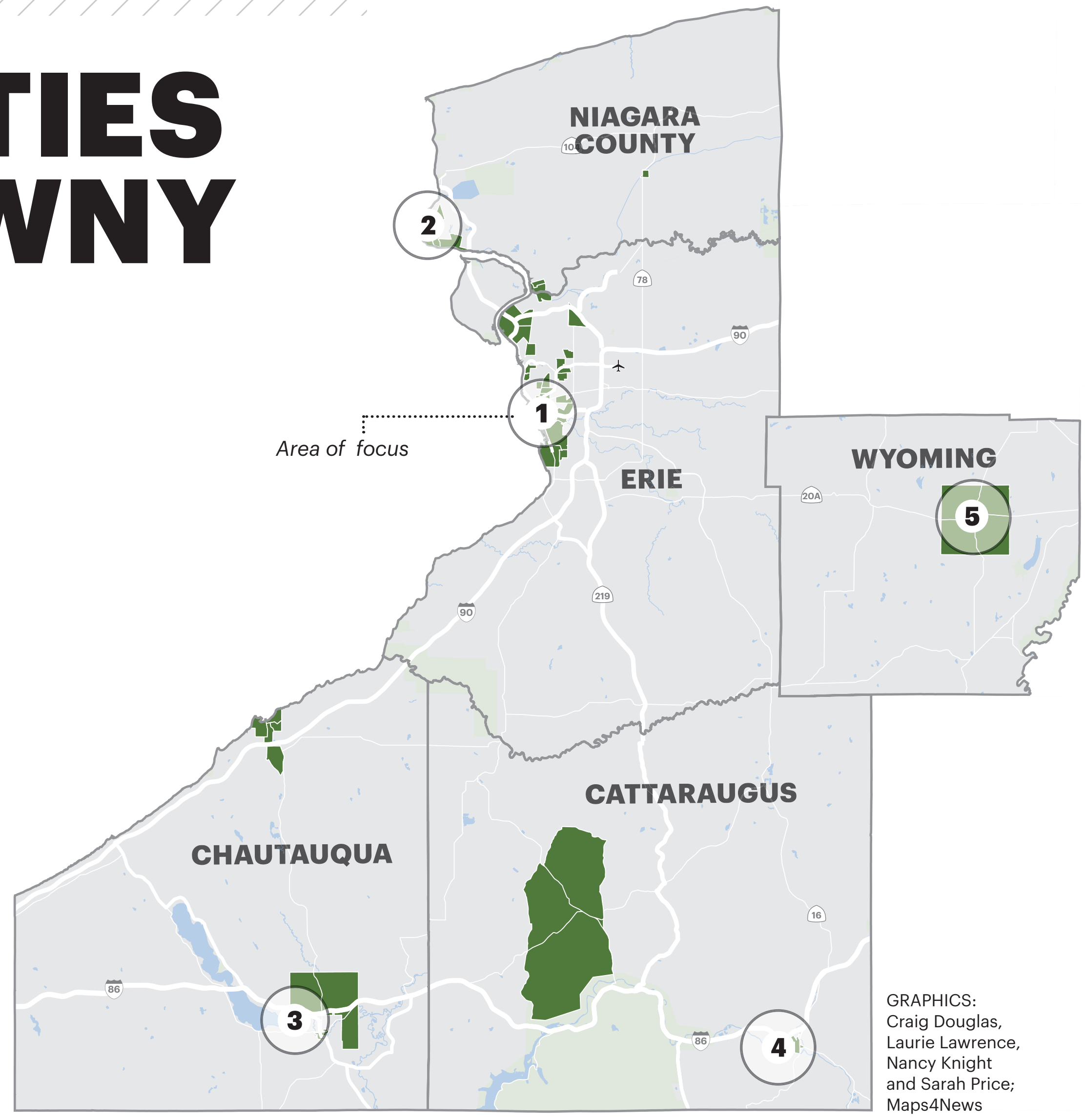
The firm expects several of its practice areas to be engaged for years to come in this business and investment opportunity, Gilbride said.

"Just about every project I'm involved in," he said, "people are talking about and considering using Opportunity Zone incentives."

**SPECIAL REPORT**

# OPPORTUNITIES ABOUND IN WNY

In Western New York, the state designated 48 Opportunity Zones. In downtown Buffalo, Opportunity Zone tax credits and deferred benefits are considered essential to fueling big-ticket proposals such as the $100 million residential/artists colony planned for the Silo City area and the $120 million makeover of the former Women & Children's Hospital property. In Buffalo, Opportunity Zone tax credits could play a role in expansion plans by M&T Bank, Rich Products Corp. and General Mills, as well as developments by Ciminelli Real Estate Corp., Ellicott Development Co., Signature Development and Sinatra & Co. "Everyone is chasing Opportunity Zones," said Jim Krencik of the Genesee County Economic Development Center. With Opportunity Zone investment guidelines ratified, developers are beginning to get a handle on how to effectively use the tax deferrals and credits.




GRAPHICS: Craig Douglas, Laurie Lawrence, Nancy Knight and Sarah Price; Maps4News

## ERIE COUNTY

Erie County has 23 Opportunity Zones. The largest suburban zone centers around the Boulevard Mall in Amherst and extends to the Maple Road/Youngmann Highway area. Depending on location, zones may include luxury condominiums and townhouses such as those in Buffalo's Waterfront Village or post-World War II neighborhoods in the Sheridan-Parkside area in Town of Tonawanda.

### WHERE'S THE OPPORTUNITY?

**1** Census Tract 165 includes the Elm/Oak corridor, Delaware Avenue and the Cobblestone District. The tract houses the Buffalo Niagara Convention Center, Hyatt Regency Buffalo, KeyBank Center, M&T Bank's corporate headquarters and the Chippewa Street district. Apartment buildings in the tract include the Market Arcade, The Marin and The Alexandre.

| Location | Population | Square miles | People per square mile | Median household income | Median home value | Home vacancy rate | Black or Hispanic | College degree |
|---|---|---|---|---|---|---|---|---|
| Erie County | 925,928 | 1,043 | 888 | $55,604 | $153,300 | 10.0% | 18.0% | 34.4% |
| Area of focus: **Tract 165** | 1,672 | 0.73 | 2,287 | $69,632 | N/A | 23% | 39% | 43.7% |

## ZONES IN OTHER COUNTIES

Excluding the 23 Opportunity Zones in Erie County, Western New York has 25 designated zones. They include the core area of Niagara Falls with employers such as Maid of the Mist Steamboat Co. to Dresser-Rand Group in Olean to destinations such as the National Comedy Center in Jamestown.

### NIAGARA COUNTY

Niagara County has seven Opportunity Zones, five in Niagara Falls that center on the tourist-friendly area near the waterfalls and the industrial neighborhoods.

### CHAUTAUQUA COUNTY

Seven Opportunity Zones include portions of Dunkirk, Fredonia, Falconer and Jamestown. The zones encompass the National Comedy Center and the Lucille Ball Desi Arnaz Museum in Jamestown.

### CATTARAUGUS COUNTY

Cattaraugus County's three Opportunity Zones center around Olean and Little Valley. Ellicottville – an upscale ski haven – is not included in the Opportunity Zones.

### WYOMING COUNTY

The county's lone designated Opportunity Zone is in the Village of Warsaw, which saw construction begin on its first nationally branded hotel, Microtel by Wyndham.

### WHERE'S THE OPPORTUNITY?

**2** Bounded by Pine Avenue to the north, John Daly Boulevard to the east, the Niagara River/Goat Island area to the south and the Niagara River and Canada to the west, Census Tract 211 is dominated by hotels and attractions including Seneca Niagara Resort & Casino, Aquarium of Niagara, Hyatt Place Hotel and Niagara Reservation State Park.

**3** With the Chadakoin River cutting through the middle, Jamestown Census Tract 305 includes the National Comedy Center and Northwest Savings Bank Ice Arena along with much of the city's business district. The tract is bounded by East Second Street, Harrison Street, Foote Avenue, West Third Street, Newland Avenue and Forest Avenue.

**4** Census Tract 9617 is bounded by the Southern Tier Expressway to the north and Alleghany River to the south. Buffalo Street is the western boundary and North Union Street is the eastern boundary. The tract includes Siemens Oil & Gas plant and the recently renovated West State Street, the commercial spine in Olean.

**5** Simply put, stay within the boundaries of the Village of Warsaw. If you went to Perry, you went too far. Jim Pierce, executive director of the Wyoming County Industrial Development Agency, said county officials are "still trying to get their arms around" what the Opportunity Zone designation can do for Warsaw. "It is the county seat," Pierce said.

| | Niagara County | Area of focus: Tract 211 | Chautauqua County | Area of focus: Tract 305 | Cattaraugus County | Area of focus: Tract 9617 | Wyoming County | Area of focus: Tract 9705 |
|---|---|---|---|---|---|---|---|---|
| **Population** | 211,328 | 1,142 | 129,046 | 3,578 | 77,348 | 3,301 | 40,886 | 4,938 |
| **Square miles** | 522 | 0.8 | 1,060 | 0.6 | 1,308 | 0.9 | 593 | 35.4 |
| **People per square mile** | 404.6 | 1,415 | 122 | 5,609 | 59 | 3,601 | 69 | 139 |
| **Median household income** | $54,743 | $37,250 | $46,079 | $14,745 | $48,484 | $27,000 | $55,459 | $54,821 |
| **Median home value** | $124,900 | $64,700 | $87,500 | $51,400 | $88,300 | $60,600 | $108,500 | $111,500 |
| **Home vacancy rate** | 12% | 50% | 23% | 14% | 22% | 17% | 13% | 8% |
| **Black or Hispanic** | 10% | 35% | 9% | 18% | 4% | 6% | 8% | 4% |
| **College degree** | 24.4% | 25.5% | 22.8% | 11.1% | 20.1% | 16.8% | 15.4% | 14.7% |

SOURCE: U.S. CENSUS BUREAU, CENSUSREPORTER.ORG

**PAID ADVERTORIAL**

# Buffalo receives top grades nationally for its strong Opportunity Zones

You may have heard the buzz around Opportunity Zones lately and are probably wondering what exactly they are. In short, federal Qualified Opportunity Zones are part of a program created by the Tax Cuts and Job Act of 2017 to incentivize investment in underserved communities. The program provides material tax benefits for investments made into designated Opportunity Zones.

**Nick Sinatra**
*President and Founder of Sinatra & Company Real Estate*

You can invest using long- or short-term capital gain from any source including stocks, property, or the sale of a business. These gains must be re-invested within six months of realization.

Opportunity Zones are census tracts designated by the federal and state government based on lower income demographics. You can defer and reduce your capital gains taxes. Then after a 10-year hold period, future capital gains on that qualified investment would be eliminated. The result is the potential for stronger after-tax investment returns compared to a traditional real estate investment.

The three most prolific incentives of Opportunity Zone investing are as follows:

1. A **deferral on capital gains** reinvested in a Qualified Opportunity Zone (OZ) project until Dec. 31, 2026.
2. A **step-up in basis on capital gains** reinvested in an Opportunity Zone Fund. The basis is increased by 10% if the investment in the OZ fund is held by the taxpayer for at least five years and an additional 5% if held for at least seven years, thereby excluding up to 15% of the original gain from taxation.
3. A **permanent exclusion from taxable income** of capital gains from the sale or exchange of an investment in an Opportunity Zone Fund if the investment is held for at least 10 years. This exclusion only applies to gains accrued after an investment in a Qualified Opportunity Zone Fund.

Now that you have a brief introduction as to what Opportunity Zones are, there are undeniable statistics as to why investors are very interested in what Western New York and Buffalo have to offer.

Buffalo, New York has seen constant and significant growth in development over the past 10 years. Canalside, the Buffalo Niagara Medical Campus, Allentown, the Elmwood Village and Hertel Avenue are all ripe with new development, bustling small business, and walking traffic representing the best of the Buffalo renaissance.

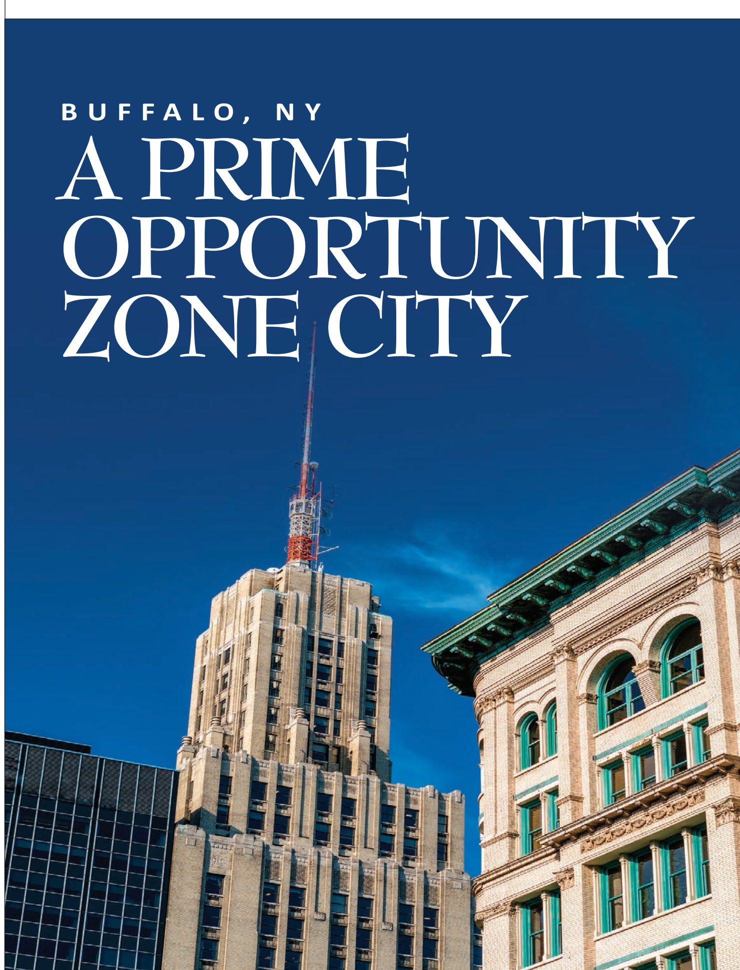
The Ralph C. Wilson, Jr. Foundation has gifted $100 million to remake Centennial (LaSalle) Park. This includes $50 million investment in LaSalle Park and $50 million in trails and greenways in Western New York which will connect current gaps between the waterfront and the city.

The recently moved Oishei Children's Hospital to the Buffalo Niagara Medical Campus in our city's core has helped fuel the rebirth of the historic "Fruit Belt" section of the city. Substantial development, office relocations, and new housing have all followed suit. This has been a key economic and job driver in the New Buffalo.

Economic development officials and local government leaders are concentrating on the creation of thousands of jobs and attracting billions in new investments and economic activity in the region. High potential sectors include advanced manufacturing, health and life sciences, tourism, entrepreneurship, workforce development and smart growth.

According to national Opportunity Zone data provider InvestReal, the OZ tract that includes Canalside and the Medical Campus ranks better than almost all other zones in the nation on income growth rate. Their fundamental score, which measures the fundamental economic drivers (population growth, income growth, and income level), ranked better than 96% of all other Opportunity Zones nationally for the Canalside OZ tract and better than 94% for the tract that includes the original Woman and Children's Hospital on Bryant. Another powerful data point was the house value growth score of 90% for both Buffalo-based OZ tracts. This score estimates the long-term (10+) growth potential of house values by combining momentum, historical risk and market health measures.

The statistics above speak for themselves when thinking about investing in Buffalo, New York. Born and raised in the Queen City, I've always valued how lucky we are to live in such an architecturally rich and historic community on the waterfront. It's great to finally see the rest of the country noticing what we already knew.




SINATRA & COMPANY
REAL ESTATE
OPPORTUNITY ZONE FUNDS

The Opportunity Zones incentive is a new community investment tool established by Congress in the Tax Cuts and Jobs Act of 2017 to encourage long-term investments in low-income urban and rural communities nationwide. Opportunity Zones provide a tax incentive for investors to re-invest their unrealized capital gains into dedicated Opportunity Funds.

## | UNPRECEDENTED FEDERAL TAX INCENTIVES INCLUDE |

- A **10 Year Deferral of Taxable Income** on capital gains reinvested
- Up to a **15% Step-Up in Basis** on capital gains reinvested in an Opportunity Zone.
- A **Permanent Exclusion from Taxable Income of capital gains** from the sale or exchange of an investment in an Opportunity Zone fund if the investment is held for at least 10 years.

**FOR MORE INFORMATION PLEASE CONTACT 716.220.8468**
**WWW.SINATRAANDCOMPANY.COM**

100% INCOME GROWTH RATE
CANALSIDE & BUFFALO MEDICAL CAMPUS OZ CENSUS TRACTS RANKINGS*

THE FUNDAMENTAL SCORE RANKED BETTER THAN 96%
HERITAGE @CANALSIDE VS ALL OTHER OZ'S NATIONALLY *

THE FUNDAMENTAL SCORE RANKED BETTER THAN 94%
ELMWOOD CROSSING VS ALL OTHER OZ'S NATIONALLY*

THE HOUSE VALUE GROWTH SCORE RANKED BETTER THAN 90%
HERITAGE @CANALSIDE AND ELMWOOD CROSSING VS ALL OTHER OZ'S NATIONALLY*

*Statistics indicate scores for the two Opportunity Zone tracts that Canalside and Buffalo Niagara Medical Campus fall in compared to all other OZ's nationally. Source:www.investreal.com

## CURRENT PROJECTS

### 1200 JEFFERSON/SAY YES to Education Buffalo HQ
1200 Jefferson, Buffalo, NY 14208
PROJECT TYPE: Ground-Up Development
ESTIMATED DATE OF COMPLETION: Q4 2020
STRUCTURAL SIZE: 34,260 sf
RESIDENTIAL UNITS: n/a
COMMERCIAL SF: 34,260

### HERITAGE POINT @ CANALSIDE
130 Main Street, Buffalo, NY 14202
PROJECT TYPE: Ground-Up Development
ESTIMATED DATE OF COMPLETION: Q2 2020
STRUCTURAL SIZE: 101,508 sf
RESIDENTIAL UNITS: 64
COMMERCIAL SF: 22,736

### ELMWOOD CROSSING
451 Elmwood Avenue, Buffalo, NY 14222
PROJECT TYPE: Ground-Up Development
ESTIMATED DATE OF COMPLETION: Q2 2020
STRUCTURAL SIZE: 81,016 SF
RESIDENTIAL UNITS: 23
COMMERCIAL SF: 32,018

SPECIAL REPORT

# GREAT EXPECTATIONS

There's little doubt the money will flow to Opportunity Zones. Then it's anyone's guess.

## THIS IS A POSITIVE FOR WNY

Call the Opportunity Zone program a gift for the development community and investors who lobbied to help provide critical financial backing for projects.

This especially holds true in Western New York where out-of-town investment dollars have been tough to come by. Does that mean the federal O-Zone program will be a panacea? The short answer is no, but it does help.

O-Zone tax credits clearly play a role in the redevelopment of Boulevard Mall and the conversion of the former Women & Children's Hospital of Buffalo campus into the $120 million Elmwood Village development.

David Mingoia, executive director of the Amherst Industrial Development Agency, said he expects developers to tap into O-Zone tax credits in the region. Amherst has one Opportunity Zone centered around Boulevard Mall.

**David Mingoia**
Amherst Industrial Development Agency

JOED VIERA

## NOW FOR A WORD OF CAUTION

Opportunity Zones have gained momentum. Created by the Tax Cuts and Jobs Act of 2017, much of 2018 was occupied with Zone selection, draft rule writing and education about this new community development tool. The rule-writing phase is not complete, but even while that progresses, investors, local officials and businesses have engaged with the incentive. Hundreds of Opportunity Funds have been created and investment is beginning to flow. But will the on-the-ground impact of Opportunity Zones be in line with the legislative intent to tangibly benefit disinvested communities? While their potential has excited many in policy and investing circles, there are reasons to be doubtful.

**Brady Meixel** and **Brett Theodos**
Urban Institute, Washington, D.C.

URBAN INSTITUTE PHOTOS BY JOANNE LAWTON / WASHINGTON BUSINESS JOURNAL

### WHERE ARE OPPORTUNITIES STRONGEST?

**Mingoia:** There are two aspects to the Opportunity Zone that we are seeking to capitalize on: real estate development and company investment. Our strongest play is the real estate opportunity kick-starting the transformation of Boulevard Mall area into a town center/mixed-use environment. There is already activity in this area that encompasses 900 acres, but it could be better. The possibility of enhanced transit/light rail connected the nearby SUNY Buffalo campuses is an attractive element and further strengthens our positioning as a top Opportunity Zone.

**Meixel and Theodos:** We anticipate the effects will be concentrated in a minority of Opportunity Zones. Treasury Secretary Steven Mnuchin estimates Zones could attract as much as $100 billion in private capital and could alter the landscape of the 8,762 designated communities. The largest tax benefit in the incentive is linked to asset appreciation – the more appreciation, the more capital-gains taxes avoided. Real estate investments – which we expect to be the clear winner over operating business investments – will produce the best return in neighborhoods undergoing rapid change.

### DO YOU HAVE ANY CONCERNS?

**Mingoia:** With any new legislation there are concerns. Recent postings by the federal government alleviated some concerns regarding definitions of a "Zone Business," but it appears that there may be an opportunity to acquire and hold property. The intent was to spur investment and physical development. Regulations should be promulgated to effect this intent. The Opportunity Zone credits will not make bad deals good, so the lemons we have in our communities will remain until another solution is developed.

**Meixel and Theodos:** Given the lack of guardrails around the Opportunity Zone incentive, special care is needed to ensure this tool doesn't harm communities, especially low- and moderate-income residents. In this capacity, unfortunately, the federal government has abdicated its responsibility, leaving states and localities to do what they can, where they can. Unmitigated, harm could take many forms, including projects that contaminate air and water quality. Perhaps most salient are investments that repurpose affordable housing as expensive rental or ownership units, out of reach of current residents.

### WILL THIS BE A NET-POSITIVE FOR AFFECTED COMMUNITIES?

**Mingoia:** Absolutely. It will accelerate development due to the immediacy of investing funds to capitalize on the capital-gains savings. The benefits of the program diminish significantly even one year from now. On the company investment side, it allows entities such as Launch NY to raise capital and invest in startups that continue our growth in entrepreneurial activity.

**Meixel and Theodos:** Opportunity Zones will achieve positive community-driven outcomes. We don't want that overlooked. There will be deals that revitalize distressed communities, finance burgeoning small businesses and create new affordable housing. But the open-ended nature of the legislation and proposed regulations will also result in deals without community input, lacking community benefit or, worse, accelerating gentrification and displacement. Restrictions on which projects qualify and how they do so are minimal, and only a few "sin" businesses are excluded outright.

### WHAT'S YOUR LONG-TERM PREDICTION?

**Mingoia:** The long-term benefit is the attraction of capital from largely outside the area investors who may not have looked at this market but for the Opportunity Zone program. Their investment and subsequent returns will showcase the rising community we have and spur further investment. Locally, we will see the benefit in accelerated redevelopment of Boulevard Mall and the Ridge Lea Complex into a diverse offering of commercial and residential spaces.

**Meixel and Theodos:** A large share of Opportunity Zones are truly disinvested. But for communities with declining populations and prices, simply being designated a Zone will likely not be enough. Discretion lies with those investing in Opportunity Zone funds, and they have a lot of choices.

Opportunity Zones will undoubtedly attract substantial capital in aggregate. And investors and other creative community developers will certainly use this tool to bring benefits to at least some needy communities. But affordable housing, health centers, community facilities and other community development projects will not be the typical Opportunity Zone investment, and we expect the bulk of Opportunity Zone capital to go toward the best-off and most-rapidly appreciating Opportunity Zones.

How much of the benefit will current residents of disinvested communities realize, particularly those with low and moderate incomes? In its current iteration, left up to states and localities to do the heavy lifting, there are good reasons to be skeptical. We will be tracking the evidence in the years to come.