CLOSING THE OPPORTUNITY GAP[*]

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Opportunity Zones are low-income areas or economically distressed communities in the United States. The Opportunity Zone program encourages investment in low-income areas or economically distressed communities by offering investors tax benefits. Scholars have found little evidence that Opportunity Zones positively impact zone residents' lives, concluding that Opportunity Zone legislation mostly benefits wealthy investors and should be reformed to benefit community members better. Investors are currently not required to finance projects geared toward the needs of local communities; they are instead funding developments they would have already invested in, whether located in an Opportunity Zone or not. This Article argues that current reform efforts and related scholarship do not give adequate weight to active and direct participation by community members and investors as it relates to economic development tax incentives. It argues for a comprehensive framework that focuses on active, direct, and transformative participation by community members and investors. This Article uses the Opportunity Zone program as an example of how two novel policy reforms for economic development tax incentives could be implemented. First, Opportunity Zone investors should be required to buy into the community financially. Buy-in would entail a one-time lump sum payment to a community Opportunity Fund to ensure actualized commitment to community development. Second, a portion of each Opportunity Zone should be reserved for current community members to invest in. The buy-in will provide community members—often members of historically disadvantaged groups—with resources, allowing them to benefit irrespective of an investor's intent. The funds collected from the buy-in will be allocated to community members, allowing them to invest in and benefit from Opportunity Zones, which are otherwise prohibitively expensive for average residents.

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INTRODUCTION

The wealth gap between the rich and poor continues to grow in the United States. The age-old adage of the haves and the have-nots continues to drive the class conversation. Where you are from and what you have exposure to dictate future earning potential and homeownership. Unfortunately, not everyone has equal access to money, resources, and opportunities.[1]

1. DALTON CONLEY & REBECCA GLAUBER, WEALTH MOBILITY AND VOLATILITY IN BLACK AND WHITE, CTR. FOR AM. PROGRESS (2008), https://cdn.americanprogress.org/wp-content/uploads/issues/2008/07/pdf/wealth_mobility.pdf [https://perma.cc/2ZDS-5WSH]; MELANY DE LA CRUZ-VIESCA, ZHENXIANG CHEN, PAUL M. ONG, DARRICK HAMILTON & WILLIAM A. DARITY JR., THE COLOR OF WEALTH IN LOS ANGELES 5 (2016), http://www.aasc.ucla.edu/besol/color_of_wealth_report.pdf [https://perma.cc/4H72-4ZW8].

The federal government has long turned to economic development tools in the tax code in an attempt to alleviate poverty, remedy inequality, and improve the lives of residents within various communities.[2] One primary goal of economic development tax incentives is to encourage taxpayers to invest in specific areas through tax breaks. The Tax Cuts and Jobs Act of 2017 ("TCJA") introduced one such tool, the Opportunity Zone program, to encourage investment in economically distressed areas by offering investors tax benefits.[3] The Opportunity Zone program was enacted on the promise that it would enhance prosperity and quality of life for all community members.[4] However, as implemented, it has done just the opposite: the Opportunity Zone program has had the perverse effect of *harming* residents within the 8,764 communities it purports to aid while giving outside investors a windfall.[5] A study by PhD students working on behalf of Congress for the Center for American Progress found that most benefits from Opportunity Zone legislation go to wealthy investors rather than the residents within Opportunity Zones.[6]

2. For a discussion of the Low-Income Housing Tax Credit and the Opportunity Zone program, see Tracy Kaye, *Ogden Commons Case Study: A Comparative Look at the Low-Income Housing Tax Credit and Opportunity Zone Tax Incentive Programs*, 48 FORDHAM URB. L.J. 1067, 1090–96 (2021); see also Ellen P. Aprill, *Caution: Enterprise Zones*, 66 S. CAL. L. REV. 1341, 1343 (1993) (suggesting that an economic development tax incentive such as enterprise zones are not the best way to "revitalize" inner cities); Rebecca Lester, Cody Evans & Hanna Tian, *Opportunity Zones: An Analysis of the Policy's Implications*, 90 STATE TAX NOTES 221, 226–27 (2018) (discussing the differences between the New Markets Tax Credit and the Opportunity Zone program).

3. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, § 13823, 131 Stat. 2054, 2183–88 (codified as amended at 26 U.S.C. § 1400Z); *see also* I.R.C. §§ 1400Z-1 to -2 (defining Opportunity Zones, the designation process, and the special tax treatment allotted to investors); I.R.C. § 45D(e)(1) (describing that low-income areas are based on poverty rates and median income).

4. *The Promise of Opportunity Zones: Hearing Before the J. Econ. Comm.*, 115th Cong. 1–2 (2018) [hereinafter *The Promise of Opportunity Zones*] (statement of Rep. Erik Paulsen, Chairman, J. Econ. Comm.); *see also* Investing in Opportunity Act, S. 2868, 114th Cong. (2016).

5. *See* JASON RICHARDSON, BRUCE MITCHELL & JAD EDLEBI, GENTRIFICATION AND DISINVESTMENT 2020, at 12 (2020), https://ncrc.org/wp-content/uploads/dlm_uploads/2020/06/Gentrification-and-Opportunity-Zones-2020-v8.pdf [https://perma.cc/B9GW-8YGM]; *see also id.* at 7–8 (discussing how the Opportunity Zone legislation's lax requirements allow investors to "gam[e]" the system without thinking about the social impact or whether community members are benefitting); BRETT THEODOS, BRADY MEIXELL & CARL HEDMAN, URB. INST., DID STATES MAXIMIZE THEIR OPPORTUNITY ZONE SELECTIONS? 1 (2018), https://www.urban.org/sites/default/files/publication/98445/did_states_maximize_their_opportunity_zone_selections_6.pdf [https://perma.cc/KS3D-EEFT] (discussing that governors could designate 25% of eligible tracts as Opportunity Zones and that 5% of Opportunity Zones did not have to be in low-income areas).

6. *See* Patrick Kennedy & Harrison Wheeler, Neighborhood-Level Investment from the U.S. Opportunity Zone Program: Early Evidence 19 (Apr. 12, 2021) (unpublished manuscript) (noting that investors who benefit from Opportunity Zones are in the "99th percentile of national household income distribution") (on file with the North Carolina Law Review).

For example, Governor Rick Scott designated as an Opportunity Zone an area in West Palm Beach, Florida, that houses $100 million superyachts.[7] Within this Opportunity Zone, luxury apartment towers will be built in Marina Village while three low-income areas in West Palm Beach will receive nothing because they did not receive an Opportunity Zone designation from the governor.[8]

To invest in an Opportunity Zone, an investor must transfer realized capital gains—profits made from selling an appreciated asset such as land, businesses, cars stock, or bonds[9]—into an Opportunity Fund, an investment vehicle that directly contributes capital to Opportunity Zones on the investor's behalf.[10] Three potential tax benefits follow.[11] First, investors can temporarily defer tax on the initial capital gains invested in an Opportunity Fund.[12] Second, investors will receive a "step-up" in basis for the initial capital gains invested in an Opportunity Fund,[13] meaning their tax basis for calculating capital gains is higher, leading to lower capital gains and ultimately less tax liability. Third,

7. Justin Elliott, Jeff Ernsthausen & Kyle Edwards, *A Trump Tax Break To Help the Poor Went to a Rich GOP Donor's Superyacht Marina*, PROPUBLICA (Nov. 14, 2019, 5:00 AM), https://www.propublica.org/article/superyacht-marina-west-palm-beach-opportunity-zone-trump-tax-break-to-help-the-poor-went-to-a-rich-gop-donor [https://perma.cc/UPF4-QVYP (staff-uploaded archive)]; *see also* Kennedy & Wheeler, *supra* note 6, at 19.

8. Elliott, et al., *supra* note 7; *see also* Jesse Drucker & Eric Lipton, *How a Trump Tax Break To Help Poor Communities Became a Windfall for the Rich*, N.Y. TIMES, https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html [https://perma.cc/24VH-DY8S (staff-uploaded, dark archive)] (last updated Sept. 27, 2020) (mentioning that Opportunity Zone projects are being built in gentrifying areas). To realize a capital gain, a taxpayer must sell or exchange a capital asset. *See* I.R.C. § 1400Z-2(b)(1); *see also* I.R.C. § 1221(a) (defining a capital asset). To realize a short-term capital gain, a taxpayer must hold the asset for one year or less. I.R.C. § 1233(b). To realize a long-term capital gain, a taxpayer must hold the asset for at least one year and a day. I.R.C. § 1231(a). The holding period includes the day after the asset was acquired and includes the day the asset is sold. I.R.C. § 1233(b).

9. *See* I.R.C. § 1400Z-2(d)(1); *see also* I.R.C. § 1221(a) (defining a capital asset). When selling an asset, the tax basis of an asset and the asset's selling price must be considered. *See* I.R.C. § 1001(a)–(b); *see also* Treas. Reg. § 1.1001-1(a) (as amended in 2017). The tax basis of an asset is the cost of acquiring the asset. *See* I.R.C. § 1012(a). The tax basis of an asset can be adjusted upward or downward. *See* I.R.C. § 1016. Tax basis can be stepped-up or increased to the fair market value of the asset in certain tax scenarios. *See* I.R.C. § 1011; *see also* I.R.C. § 263(a)(1) (discussing that improvements to property increase basis). *See generally* I.R.C. § 167 (discussing that depreciation deductions decrease basis). Stepped-up basis is most commonly known when a taxpayer passes assets after death. I.R.C. § 1014(a). The taxpayer's heirs will receive a step-up in basis, which means if the heirs immediately sell the asset, they will not be taxed on the gains because the amount is stepped up to the fair market value. *Id.*

10. I.R.C. § 1400Z-2(d)(1).

11. *See* Adam S. Wallwork & Linda B. Schakel, *Primer on Qualified Opportunity Zones*, TAX NOTES (May 14, 2018), https://www.taxnotes.com/special-reports/real-estate-taxation/primer-qualified-opportunity-zones/2018/05/11/27zzt [https://perma.cc/G4UH-UAX3 (staff-uploaded archive)].

12. *See* I.R.C. § 1400Z-2(b)(1).

13. *See* I.R.C. § 1400Z-2(b)(2)(B)(iii)–(iv) (describing the increase in basis after the investment is held for five years and seven years); I.R.C. § 1014(a) (discussing that step-up basis means an asset's value will be increased from the original purchase price to the fair market value of the asset).

when investors sell the asset(s) in an Opportunity Zone, they will not be taxed on gains arising after the original investment, provided that the asset is held for at least ten years.[14]

For example, if an investor earned $40 million from selling a business in 2018, the $40 million is a capital gain, and the investor must pay $8 million in taxes due to the business's sale.[15] However, if the same $40 million was invested in an Opportunity Fund, the investor could delay paying that $8 million in tax. Additionally, if the investor holds the investment for at least ten years, the investor will not pay any tax on the difference between the purchase and sale prices for the assets originally invested in the Opportunity Fund.

The previous example demonstrates the significant tax benefits inherent in the Opportunity Zone program for investors. But the program was also enacted with the goal of benefiting residents within Opportunity Zones. As United States Senator Tim Scott observed, the goal of Opportunity Zones was to "make sure that those residents living in the Opportunity Zones, those businesses located in the Opportunity Zones, the property that could be rehabilitated in the Opportunity Zones, benefits from a long-term view of making a community better without . . . gentrification."[16] Unfortunately, Opportunity Zones have failed to meet this goal.

The Opportunity Zone legislation has contributed to problematic gentrification of communities because it lacks provisions requiring residential retention or affordable housing creation.[17] When a community is undergoing gentrification, new businesses and new people move into the neighborhood,[18]

14. *See* I.R.C. § 1400Z-2(c) (describing that if an investment is held for ten years the gain will be permanently excluded from tax).

15. The investor's capital gain in the example is $40 million. Assume the taxpayer owned the business for more than a year and a day prior to the sale. *See* I.R.C. § 1222(3). As a result, the taxpayer would be subject to tax at a preferential long-term capital gains tax rate of 0%, 15%, or 20%. *See* I.R.C. § 1. To determine the taxpayer's tax liability, you would multiply $40 million by 20%, which results in an $8 million tax liability for the taxpayer. *See* I.R.C. § 1001.

16. *The Promise of Opportunity Zones*, *supra* note 4, at 5–6 (statement of Sen. Tim Scott); *see also* Address Before a Joint Session of the Congress on the State of the Union, 2009 DAILY COMP. PRES. DOC. 58, at 2 (Feb. 4, 2020) [hereinafter State of the Union 2020]. President Trump stated that Opportunity Zones were working because wealthy people and companies were investing resources into low-income areas. State of the Union 2020, *supra*, at 2. "This is the first time that these deserving communities have seen anything like this. It's all working." *Id.*

17. *See* Michelle D. Layser, *How Do Place-Based Investment Tax Incentives Target Low-Income Communities? A Multi-State Survey of Enterprise Zone Tax Incentives* 5 (Univ. Ill. Coll. of L., Legal Stud. Rsch. Paper No. 19-29, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3381243 [https://perma.cc/6NUY-32RD (staff-uploaded archive)] (click "Download This Paper") ("Tax incentives that are designed to exclusively target zone residents can be understood as the most community-oriented types of tax incentive, for investment in human capital. These laws are specifically designed to benefit residents of the targeted community.").

18. *See* John A. Powell & Marguerite L. Spencer, *Giving Them the Old "One-Two": Gentrification and the K.O. of Impoverished Urban Dwellers of Color*, 46 HOW. L.J. 433, 441–42 (2003).

dramatically increasing land values and housing prices.[19] While new community members can afford the higher housing prices, most existing residents cannot[20] and ultimately become displaced.[21]

The connection between Opportunity Zones and problematic trends of gentrification is reflected in many of the neighborhoods that surround National Football League ("NFL") stadiums. Currently, fifteen out of thirty NFL stadiums are located within Opportunity Zones and another three stadiums are adjacent to Opportunity Zones.[22] This effectively allows NFL teams, stadium owners, and others the opportunity to invest in hotels, retail property, or mixed-use projects around the stadium and receive tax breaks.[23] As a result, community members and their businesses are bought out or pushed out as property values increase.[24]

Many scholars argue that Opportunity Zones are another tool for high-income investors to inflate their ever-expanding wealth.[25] Much of the scholarship advocating for the complete abolition of the Opportunity Zone program follows this thinking.[26] In the abolitionists' view, the Opportunity Zone program should be abandoned because it will never effectively increase

19. *Id.*

20. *Id.*

21. *Id.*; *see also Gentrification and Neighborhood Revitalization: What's the Difference?*, NAT'L LOW INCOME HOUS. COAL. (Apr. 5, 2019), https://nlihc.org/resource/gentrification-and-neighborhood-revitalization-whats-difference [https://perma.cc/5AEZ-6J8W] (describing the process of gentrification in the Bay Area in California as old residents are being displaced as a result of technology companies and new residents coming in).

22. *See* Jimmy Atkinson, *These 18 NFL Stadium Neighborhoods Are Eligible for the Opportunity Zones Tax Break*, OPPORTUNITYDB (Feb. 3, 2019), https://opportunitydb.com/2019/02/nfl-stadiums-eligible-for-opportunity-zones-tax-break/ [https://perma.cc/K4JM-DWZ4] [hereinafter Atkinson, *NFL Stadium Neighborhoods*].

23. *Id.*

24. *See* Scott Eastman, *Opportunity Zone Rules Hike Concerns over Tax Breaks for NFL Stadiums*, TAX FOUND. (Feb. 20, 2019), https://taxfoundation.org/opportunity-zone-nfl-stadiums/ [https://perma.cc/TA4S-EE66] (discussing how the NFL stadiums in Las Vegas, Denver, and Baltimore are in Opportunity Zones and how if roles do not exist for current residents, they will be displaced); *see also* Christopher Hong & Nate Monroe, *Stadium, Sports District Could Benefit from Program Intended for Poor Neighborhoods*, FLA. TIMES-UNION, https://www.jacksonville.com/story/special/special-sections/2018/12/14/stadium-sports-district-could-benefit-from-program-intended-for-poor-neighborhoods/6647697007/ [https://perma.cc/9L35-NTDM] (last updated Dec. 14, 2018, 2:49 PM) (reporting that Jacksonville Jaguars owner purchased plot of land near stadium to build "hotel, office, residential and convention space").

25. Hong & Monroe, *supra* note 24.

26. *See* Katelynn Harris, *Joint Economic Committee Hearing on the "Promise of Opportunity Zones*,*"* NAT'L COUNCIL STATE HOUS. AGENCIES (May 18, 2018), https://www.ncsha.org/blog/joint-economic-committee-hearing-on-the-promise-of-opportunity-zones/ [https://perma.cc/84TR-RYEA]; *see also* Press Release, Rashida Tlaib, Congresswoman, Congresswoman Rashida Tlaib Introduces Bill To Repeal Controversial Opportunity Zones (Nov. 22, 2019), https://tlaib.house.gov/posts/congresswoman-rashida-tlaib-introduces-bill-to-repeal-controversial-opportunity-zones [https://perma.cc/4W6N-ZMJB].

the income or wealth of community members.[27] While that perspective is understandable, this Article is not so willing to throw in the towel. It argues for a set of reforms that will make good on legislators' and supporters' good faith conviction that the Opportunity Zone program can benefit communities.

The policy recommendations in this Article reach more broadly than Opportunity Zones. While this Article uses Opportunity Zones as an example of an underperforming economic program and proposes reform, it offers policy recommendations to consider when designing any economic development tax incentive tool intended to benefit investors and community members. It focuses on how to close the opportunity gap by suggesting that economic development tax incentives should be designed in a way that benefits investors and community members alike. I argue for a comprehensive framework that is guided by principles and best practices from community development scholarship—specifically, insistence on active and direct participation by *both* community members and investors.

Community development is typically pursued through either a needs-based or an asset-based approach.[28] Under the traditional needs-based approach, communities are viewed from the top down[29] as helpless environments that can survive only through external assistance such as government aid and handouts.[30] Some community development scholars argue that the needs-based approach to community development hinders communities' long-term success because it prioritizes short-term maintenance and survival.[31] Specifically, a needs-based approach fails to acknowledge the assets that are already present in the community.[32]

The asset-based approach, in contrast, builds upon the assets present in the community—people, resources, and expertise—to ensure that the community benefits.[33] The asset-based approach acknowledges that outside

27. *See generally* Timothy Weaver, *The False Promise of Opportunity Zones*, BOS. REV., Spring 2023, at 139, 158 ("Opportunity Zones are founded on the discredited premise of trickle-down economics. . . . We should bury this zombie idea once and for all.").

28. *See* Raj Khadka, *Switching Gears: From Needs to Assets Based Approach to Community Development in Nepal*, 3 OIDA INT'L J. SUSTAINABLE DEV., no. 12, 2012, at 81, 84 (discussing the different approaches to community development).

29. *See* Kennedy Chinyowa, Mziwoxolo Sirayi & Selloane Mokuku, *From Needs-Based to Asset-Based Community Development: The ABCD Method as an Effective Strategy for Engaging with Grassroots Leaders in South Africa*, *in* GRASSROOTS LEADERSHIP AND THE ARTS FOR SOCIAL CHANGE 223, 226 (Susan J. Erenrich & Jon F. Wergin eds., 2017).

30. Alison Mathie & Gord Cunningham, *Who is Driving Development? Reflections on the Transformative Potential of Asset-Based Community Development*, 26 CANADIAN J. DEV. STUD. 175, 177 (2005).

31. *See* John Kretzmann & John P. McKnight, *Assets-Based Community Development*, NAT'L CIVIC REV., Winter 1996, at 23, 24–25 [hereinafter Kretzmann & McKnight, *Assets-Based Community*].

32. *See* Liesel Ebersohn & Irma Eloff, *Identifying Asset-Based Trends in Sustainable Programmes Which Support Vulnerable Children*, 26 S. AFR. J. EDUC. 457, 462 (2006).

33. *See* Kretzmann & McKnight, *Assets-Based Community*, *supra* note 31, at 25–27.

resources are necessary; however, it provides a more holistic view of community development that includes all involved parties.[34]

A productive method for implementing the asset-based theory is the sustainable livelihood approach. It prioritizes providing sustainable, long-lasting livelihood opportunities to community members rather than providing short-term solutions that fail to address the root causes of the issues they are purporting to solve.[35] The sustainable livelihood approach helps communities cope with and recover from "stress and shocks," and it "maintain[s] or enhance[s] [their] capabilities and assets, and provide[s] sustainable livelihood opportunities for the next generation; and . . . contribute[s] net benefits to other livelihoods at the local and global levels and in the short and long term."[36]

The asset-based and the sustainable livelihood approaches are bottom-up approaches that focus on the assets communities already possess.[37] In doing so, they ensure that investors and outsiders are working with and within communities and not against them.[38] This means that community members are acknowledged as willing and able participants who can create sustainable lives.[39] Although outside resources are necessary, government agencies and investors must ask community members what they need, so that community members can be cocreators and not just consumers.[40] Economic development tax incentives must offer transformative participation—participation that requires investors' buy-in and community members' ownership—to ensure community members are engaged in and benefit from the programs intended for them.

This Article argues that current Opportunity Zone reform efforts and related scholarship do not give adequate weight to active and direct participation by community members and investors. Specifically, this Article suggests that Opportunity Zone reform and future economic development tax incentives require an interdisciplinary approach that pulls from community development, urban planning, and sociological reform models. These

34. *See* JOHN P. KRETZMANN & JOHN L. MCKNIGHT, BUILDING COMMUNITIES FROM THE INSIDE OUT: A PATH TOWARD FINDING AND MOBILIZING A COMMUNITY'S ASSETS 345, 349 (1993) [hereinafter KRETZMANN & MCKNIGHT, BUILDING COMMUNITIES].

35. *See* Mary Ann Brocklesby & Eleanor Fisher, *Community Development in Sustainable Livelihoods Approaches – An Introduction*, 38 CMTY. DEV. J. 185, 187 (2003).

36. *See* LASSE KRANTZ, SWEDISH INT'L DEV. COOP. AGENCY, THE SUSTAINABLE LIVELIHOOD APPROACH TO POVERTY REDUCTION 1 (2001), https://commdev.org/wp-content/uploads/pdf/publications/The-Sustainable-Livelihood-Approach-to-Poverty-Reduction-SIDA.pdf [https://perma.cc/4LBA-5WNV].

37. *See* *Asset-Based Community Development*, CTR. FOR PUB. INT. DESIGN, http://www.centerforpublicinterestdesign.org/abcd-assetbased-community-development [https://perma.cc/6EQC-Z67S]; KRANTZ, *supra* note 36, at 12.

38. *See* KRANTZ, *supra* note 36, at 18.

39. *See infra* Section II.B (discussing the sustainable livelihood approach).

40. *See infra* Sections II.A–B (discussing the asset-based and sustainable livelihood approaches).

interdisciplinary approaches have been successfully used internationally and can offer potential solutions and models that can be employed domestically.[41]

If Opportunity Zone reform is to be effective, it should require participation from investors through buy-in so that investments are not harming the community members that the tax benefit is intended to benefit.[42] Currently, there is no requirement that investors must invest in projects that benefit the community.[43] For example, investors often fund luxury hotels or luxury apartment buildings.[44] These investments allow investors to receive extensive tax benefits but do not meaningfully benefit the existing residents.[45] These luxury developments attract new people, and as new people move into the community, rents increase and push out community members.[46] While investors typically make passive investments in Opportunity Zones, reform should require active participation. Active participation means that investors would be required to provide money that will go directly into the hands of community members so that community members are not waiting for benefits to trickle down.[47] The promise of opportunity must be more than mere words

41. *See* M. KOLLMAIR & ST. GAMPER, THE SUSTAINABLE LIVELIHOODS APPROACH 9–10 (2002), https://www.humanitarianlibrary.org/sites/default/files/2014/02/SLA_Gamper_Kollmair.pdf [https://perma.cc/YM9M-4833]; *see also* Kara Christine Poppe, Asset-Based Community Development Practices in International Service-Learning: A Content Analysis of Short-Term Programs in Nicaragua (May 2015) (Honors thesis, University of Northern Iowa), https://scholarworks.uni.edu/cgi/viewcontent.cgi?article=1187&context=hpt [https://perma.cc/2W6E-SL9R (staff-uploaded archive)].

42. *See The Promise of Opportunity Zones*, *supra* note 4, at 36–37 (statement of Sen. Martin Heinrich, Ranking Member, J. Econ. Comm.) (mentioning that flexibility for investments carries with it the risk that the "social impact will not be as great"). A buy-in is a set amount of money an investor would have to invest in the community to invest in an Opportunity Zone. The buy-in amount and requirements will be discussed *infra* Section III.B.

43. *See The Promise of Opportunity Zones*, *supra* note 4, at 36–37 (statement of Sen. Martin Heinrich, Ranking Member, J. Econ. Comm.) ("To achieve broad public benefits, projects should be part of a community strategy to create jobs, boost entrepreneurship, increase affordable housing, and promote economic development."); *see also* I.R.C. § 1400Z-2.

44. *See* Noah Buhayar & Caleb Melby, *Real Estate Investors See Riches in a Tax Break Meant To Help the Poor*, FIN. ADVISOR (Jan. 15, 2019), https://www.fa-mag.com/news/real-estate-investors-see-riches-in-a-tax-break-meant-to-help-the-poor-42759.html [https://perma.cc/SAM6-SXMF]. Investors may take advantage of tax breaks for investing in areas including "neighborhoods surrounding Manhattan, Atlantic beach towns drawing vacation-home developers, bedroom communities near Silicon Valley and anomalies like Portland, Oregon, where the entire downtown was deemed eligible for the breaks." *Id.*

45. *See* Drucker & Lipton, *supra* note 8.

46. Letter from Americans for Financial Reform to Member of Congress 2–3 (May 5, 2022), https://ourfinancialsecurity.org/wp-content/uploads/2022/05/5.5.22-support-for-ozone-reform-act.pdf [https://perma.cc/DFG7-QZUK] (suggesting that "[g]entrification was baked into the program's flawed design and implementation").

47. *Cf.* Christopher Ingraham, *'Trickle-Down' Tax Cuts Make the Rich Richer but Are of No Value to Overall Economy, Study Finds*, WASH. POST (Dec. 23, 2020, 12:42 PM), https://www.washingtonpost.com/business/2020/12/23/tax-cuts-rich-trickle-down/ [https://perma.cc

and a passive agenda for economic development. It must offer community members the option to accumulate assets and pass down wealth. Successful economic development tax incentives only exist in conjunction with community development.[48] Based on this premise, this Article proposes a comprehensive framework that focuses on the actions of investors and community members to ensure that both parties benefit from the Opportunity Zone program.

The Article proposes two novel policy reforms for economic tax development incentives using the Opportunity Zone program as an example. First, investors should be required to buy into the community financially. Buy-in would entail a one-time lump sum payment to a community Fund. Second, a percentage of each Opportunity Zone should be reserved for current community members to invest in. Investors are currently not required to finance projects geared toward the needs of local communities.[49] They are instead funding developments they would have already invested in, whether located in an Opportunity Zone or not.[50] As such, undertakings that confer a high amount of community benefit—affordable housing, awarding business contracts to community members, and offering high-paying jobs—remain unfunded.[51] At the same time, investors still reap significant tax benefits.[52] The buy-in would provide community members with resources, allowing them to benefit irrespective of an investor's intent. The funds collected from the buy-in would be allocated to community members, allowing them to invest in and benefit from Opportunity Zones, investment which is prohibitively expensive for average residents.[53]

This Article has broader implications for racial justice, antipoverty law, inequality, and systemic racism. Historically, marginalized groups have been

/W84M-9H3P (staff-uploaded, dark archive)] (describing the failure of classic trickle-down economics policies to provide meaningful benefits to nonwealthy citizens or overall economic health).

48. *See* John W. Vincent II, *Community Development Practice*, *in* AN INTRODUCTION TO COMMUNITY DEVELOPMENT 58, 66–67 (Rhonda Phillips & Robert H. Pittman eds., 2009) (describing the relationship between economic and community development).

49. *See* Atkinson, *NFL Stadium Neighborhoods*, *supra* note 22 (disclosing that eighteen NFL teams' stadiums are located in or adjacent to Opportunity Zones); *supra* text accompanying notes 23–24.

50. *See, e.g.*, Hong & Monroe, *supra* note 24 (describing Jacksonville city officials' efforts to designate area where Jaguars owner already intended to expand sports entertainment complex as an Opportunity Zone).

51. *See id.*

52. *See generally* MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY (2d ed. 2006) (discussing racial inequality by looking at assets and debt); DOROTHY A. BROWN, THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS AND HOW WE CAN FIX IT (2021) [BROWN, WHITENESS OF WEALTH] (discussing inequality in the United States tax system).

53. *See* Jean Ross, *New Research Adds to Evidence That Opportunity Zone Tax Breaks Are Costly and Ineffective*, CTR. FOR AM. PROGRESS (June 16, 2022), https://www.americanprogress.org/article/new-research-adds-to-evidence-that-opportunity-zone-tax-breaks-are-costly-and-ineffective/ [https://perma.cc/8A2T-XBSJ].

excluded and denied access to participating in wealth-building opportunities.[54] To remedy that longstanding inequality and systemic racism, policies should focus on solutions that benefit historically underrepresented groups.[55] One potential solution is to design policies and programs that positively impact community members' life experiences.[56] Community members should have an active role in the policies that will directly impact them, and investors and institutions should be committed to working alongside communities. This Article focuses on potential solutions that would allow for participation by community members and buy-in by investors to ensure that the Opportunity Zone program and future economic development tax incentives offer real economic opportunity to community members and remedy the historical inequality and systemic racism that has essentially barred entire groups of people from participation.[57]

This Article proceeds as follows: Part I analyzes related scholarship and highlights the need for active and direct participation by community members in not only Opportunity Zone reform but in developing other economic development tax incentives. Part II describes integrating community development concepts to realize and recognize the promise of opportunity for all community members through access and asset-accumulation opportunities. Part III proposes a framework that promotes participation by investors and community members—requiring investors to buy in financially. It also focuses on reducing the barrier to investing in Opportunity Zones and making asset ownership accessible to community members. Finally, Part IV concludes with guiding principles for lawmakers to consider when designing or reforming any economic development tax incentive, including but not limited to Opportunity Zones.

54. *See* DANYELLE SOLOMON, CONNOR MAXWELL & ABRIL CASTRO, CTR. FOR AM. PROGRESS, SYSTEMIC INEQUALITY: DISPLACEMENT, EXCLUSION, AND SEGREGATION 9 (2019), https://www.americanprogress.org/article/systemic-inequality-displacement-exclusion-segregation/ [https://perma.cc/QS7V-XWPE] (discussing the effects that racism in the United States has on homeownership, wealth, and financial well-being).

55. *See generally* BROWN, WHITENESS OF WEALTH, *supra* note 52 (discussing the disadvantage Black Americans have versus White Americans and how this contributes to the growing wealth gap in the United States).

56. *See, e.g.*, Brocklesby & Fisher, *supra* note 35, at 189–94 (describing several different "sustainable livelihood" community development programs).

57. Historically, certain groups of people have experienced negative generational impact as it relates to income, livelihood, homeownership, access to loans and credit, and building wealth. *See generally* Solomon et al., *supra* note 54 (discussing the effects that racism in the United States has on homeownership, wealth, and financial well-being); BROWN, WHITENESS OF WEALTH, *supra* note 52 (discussing inequality in the United States tax system).

I. BACKGROUND

The legislative history of the Tax Cuts and Jobs Act of 2017 ("TCJA") implies that both investors and community members would benefit from the Opportunity Zone program.[58] However, currently, only investors are benefiting.[59] A hypothetical below will describe the vast tax benefits and tax savings associated with investing in an Opportunity Zone via an Opportunity Fund.[60] While the promise of opportunity is being fulfilled for investors through the receipt of tax benefits, scholars agree that the promise has yet to be fulfilled for community members.[61] Scholars and members of Congress have offered various reform proposals that, if implemented, would better ensure that the Opportunity Zone legislation does not continue to harm communities.[62]

A. *Legislative History of Opportunity Zones*

The TCJA was a Republican-sponsored tax bill that focused on reducing the corporate tax rate and changing the international tax regime in the United States, among other reforms.[63] The Opportunity Zone legislation, which was authored by Republican Senator Tim Scott,[64] was one of a few bipartisan provisions within the TCJA.[65] The intended purpose of the Opportunity Zone program is to "spur economic growth and job creation in low-income communities while providing tax benefits to investors."[66] On May 17, 2018, the Joint Economic Committee presented and promoted the Opportunity Zone provision.[67] At that hearing, Senator Tim Scott made clear that the goal of

58. *See The Promise of Opportunity Zones*, *supra* note 4, at 5–6 (statement of Sen. Tim Scott).

59. *See* RICHARDSON ET AL., *supra* note 5, at 24; Michelle D. Layser, *Subsidizing Gentrification: A Spatial Analysis of Place-Based Tax Incentives*, 12 U.C. IRVINE L. REV. 163, 169 (2021) [hereinafter Layser, *Subsidizing Gentrification*].

60. *See infra* Section I.B (providing an example of the tax benefits of investing in an Opportunity Zone).

61. *See* Kennedy & Wheeler, *supra* note 6, at 28; *see also* Layser, *Subsidizing Gentrification*, *supra* note 59, at 169.

62. *See, e.g.*, Weaver, *supra* note 27, at 156 (describing alternatives to the current "unfettered capitalism" of Opportunity Zones that enhance the "*use* value" of land over its "*exchange* value" (first emphasis added)).

63. *See* Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (codified as amended in scattered sections of 26 U.S.C.).

64. *Opportunity Zones*, U.S. SEN. TIM SCOTT OF S.C., https://www.scott.senate.gov/issues/opportunity-zones/ [https://perma.cc/LL5T-QZWB]; *see also* Tax Cuts and Jobs Act of 2017 § 13823.

65. *See* Tatiana Kimbo & Richard Phillips, *How Opportunity Zones Benefit Investors and Promote Displacement*, INST. ON TAX'N & ECON. POL'Y (Aug. 10, 2018), https://itep.org/how-opportunity-zones-benefit-investors-and-promote-displacement/ [https://perma.cc/273Y-EV96].

66. *Opportunity Zones*, INTERNAL REVENUE SERV., https://www.irs.gov/credits-deductions/businesses/opportunity-zones [https://perma.cc/R3NR-6574] (last updated Nov. 2, 2023).

67. The Joint Economic Committee's "primary tasks are to review economic conditions and to recommend improvements in economic policy." *About*, U.S. JOINT ECON. COMM.,

Opportunity Zones was to ensure that the residents, businesses, and property located in Opportunity Zones benefited from increased investment without gentrifying the community.[68] The members in attendance believed that the Opportunity Zone legislation could benefit community members without displacing them if the proper guidelines and requirements were developed.[69]

At the hearing, a witness noted that the scalability and flexibility of the Opportunity Zone legislation distinguished it from prior tax incentives.[70] Opportunity Zones are scalable because there is no maximum amount of money an investor can invest.[71] They provide flexibility because money invested in Opportunity Funds has little to no investment constraints.[72] This flexibility means high-return projects can also be funded without considering the impact on communities.[73] Senator Cory Booker also recognized that flexibility might allow investors to exploit communities.[74] During a hearing on Opportunity Zones, Senator Martin Heinrich warned that Opportunity Zone projects must be part of "a community strategy to create jobs, boost entrepreneurship, increase affordable housing, and promote economic development."[75] Terri Ludwig, CEO of Enterprise Community Partners, suggested that Congress should work closely with the Treasury Department on establishing regulations and guidance to ensure that the Opportunity Zone program provides benefits to low-income communities.[76]

https://www.jec.senate.gov/public/index.cfm/about [https://perma.cc/76YL-8QAN]. The purpose of the hearing was to discuss the potential impact of Opportunity Zones. *See The Promise of Opportunity Zones*, *supra* note 4, at 1–2 (statement of Rep. Erik Paulsen, Chairman, J. Econ. Comm.).

68. *See The Promise of Opportunity Zones*, *supra* note 4, at 5 (statement of Sen. Tim Scott).

69. *See id. passim*; Layser, *Subsidizing Gentrification*, *supra* note 59, at 165 (arguing that selecting gentrifying areas as Opportunity Zones may take investments away from neighborhoods that need them).

70. *See* Harris, *supra* note 26; *The Promise of Opportunity Zones*, *supra* note 4, at 7–8 (statement of John Lettieri, Co-Founder & President, Economic Innovation Group).

71. *See* I.R.C. § 1400Z-2(a) to (b) (listing no cap on investments); Harris, *supra* note 26; *see also Opportunity Zones 101*, LOC. INITIATIVES SUPPORT CORP., https://www.lisc.org/our-resources/resource/opportunity-zones-101 [https://perma.cc/8AB9-HE76]; *The Promise of Opportunity Zones*, *supra* note 4, at 7–8 (statement of John Lettieri, Co-Founder & President, Economic Innovation Group).

72. *See* I.R.C. § 1400Z-2(d) to (f). The investment requirements are lenient and allow investors to invest as much money as they choose in Opportunity Zones. *See id. But see* Treas. Reg. § 1.1400Z2(d)-1(d)(4)(i) (as amended in 2021) (prohibiting investments in massage parlors, golf courses, country clubs, and liquor stores, *inter alia*).

73. *See* Michelle D. Layser, *The Pro-Gentrification Origins of Place-Based Investment Tax Incentives and a Path Toward Community Oriented Reform*, 2019 WIS. L. REV. 745, 750 (2019) [hereinafter Layser, *Pro-Gentrification Origins*] (discussing that place-based tax incentives are designed in a political environment of business and lobbying efforts to benefit businesses and developers).

74. *See The Promise of Opportunity Zones*, *supra* note 4, at 35 (statement of Sen. Cory A. Booker).

75. *Id.* at 36 (statement of Sen. Martin Heinrich, Ranking Member, J. Econ. Comm.).

76. *See id.* at 50–52 (statement of Terri Ludwig, CEO, Enterprise Community Partners).

After the Opportunity Zone legislation was enacted, the Internal Revenue Service and the Treasury Department issued proposed treasury regulations on October 19, 2018, and again on April 17, 2019.[77] The October 19, 2018, proposed regulations clarified that investors could only use capital gains to invest in Opportunity Funds during the 180 days after the sale or exchange of the asset that gave rise to the capital gains.[78]

On April 7, 2022, several Democratic and Republican senators introduced the Opportunity Zones Transparency, Extension, and Improvement Act.[79] The bipartisan Act sought to improve Opportunity Zone rules to "further [the] shared vision for the program to catalyze funding to communities and level the economic playing field for their residents."[80] The Act would have revoked specific Opportunity Zone tract designations deemed improper and imposed new reporting requirements to promote transparency.[81] The bill would have also created a new entity, "the State and Community Dynamism Fund."[82] This $1 billion fund would have provided states with assistance to promote projects and businesses in lower-income communities.[83] The Act would have also required Opportunity Funds to report additional information on their investors and on the businesses in which the funds were invested.[84] Failure to comply with the reporting requirements would have resulted in penalties from $500 to $250,000.[85] Because the bill was proposed in the prior Congress and did not

77. *See* I.R.S. News Release IR-2018-206 (Oct. 19, 2018), https://www.irs.gov/newsroom/treasury-irs-issue-proposed-regulations-on-new-opportunity-zone-tax-incentive [https://perma.cc/G6AH-WCSP]; *see also* I.R.S. News Release IR-2019-75 (Apr. 17, 2019), https://www.irs.gov/newsroom/irs-issues-guidance-relating-to-deferral-of-gains-for-investments-in-a-qualified-opportunity-fund [https://perma.cc/C3UM-Z7CC]. *See generally* J. Brian Charles, *States, Cities Add Sweeteners To Attract 'Opportunity Zone' Investors*, GOVERNING (Apr. 3, 2019), https://www.governing.com/archive/gov-opportunity-zones-extra-incentives.html [https://perma.cc/U644-UHYP] (discussing states passing Opportunity Zone legislation to incentivize investment).

78. Investing in Qualified Opportunity Funds, 83 Fed. Reg. 54279, 54290 (Oct. 29, 2018) (codified at 26 C.F.R. pt. 1).

79. Opportunity Zones Transparency, Extension, and Improvement Act, S. 4065, 117th Cong. (2022).

80. Press Release, Sen. Cory Booker et al., The Opportunity Zones Transparency, Extension, and Improvement Act (Apr. 7, 2022), https://www.booker.senate.gov/imo/media/doc/booker_scott_kind_kelly_introduce_bipartisan_bicameral_bill_reforming_opportunity_zones1.pdf [https://perma.cc/HGT7-957C]; *see also* S. 4065 § 401.

81. S. 4065 §§ 101, 201; *see* Opportunity Zone Reform Act, H.R. 5042, 116th Cong. (2019) (proposing that Opportunity Zone designation rules should be modified).

82. S. 4065 § 401.

83. *Id.*

84. *Id.* § 201; *see* Opportunity Zone Reporting and Reform Act, S. 2787, 116th Cong. (2019) (proposing annual reporting requirements for Opportunity Funds and individuals investing in Opportunity Funds).

85. S. 4065 § 201; *see also* Doug Jones, *Opportunity Zone Update: The Opportunity Zones Transparency, Extension and Improvement Act*, HUSCH BLACKWELL (May 23, 2022), https://www.huschblackwell.com/newsandinsights/opportunity-zone-update-the-opportunity-zones-transparency-extension-and-improvement-act [https://perma.cc/QK5N-RSEP].

become law, it would have to be reintroduced to the new Congress and the legislative process would have to be restarted.[86] Although this bill is no longer pending in Congress, its initial drafting suggests that these issues have the attention of the legislature—a step in the right direction.

B. *Opportunity Zones and Opportunity Funds Generally*

Opportunity Zones are geographic areas designated as low income or economically distressed.[87] There are over 8,764 certified Opportunity Zones in all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands.[88] To receive Opportunity Zone tax benefits, a taxpayer must invest capital gains via an Opportunity Fund—an investment vehicle designed to organize investments for Opportunity Zones.[89] An Opportunity Fund can be formed as a partnership or a corporation.[90]

The TCJA added a capital gains tax incentive for investors in the form of Opportunity Zones.[91] The Internal Revenue Code generally assesses tax on the sale of an asset based on the difference between the amount the taxpayer paid for the asset and the sale price.[92] This amount is called the capital gain (or capital loss). The tax rate is based on how long the investor held the asset prior to the sale.[93] If an investor holds an asset for one year or less, the gain on the sale of the asset is subject to ordinary tax rates, which range from 10% to 37%.[94] If an investor holds an asset for more than a year, the gain will be considered "long-term capital gains," subject to preferential rates: 0%, 15%, or 20% depending on the amount of the taxpayer's total taxable income.[95] Most investors are likely to

86. S. 4065; *What Happens to a Bill That Has Not Become Law at the End of a Congress?*, LIBR. CONG., https://ask.loc.gov/law/faq/334496 [https://perma.cc/9RPQ-857S] (last updated Dec. 14, 2020).

87. *See* Rev. Proc. 2018-16, 2018-9 I.R.B. 383, 383–84; *see also* I.R.C. § 45D(e)(1) (defining "low-income community"). Tracts that do not satisfy the low-income criteria can be nominated as Opportunity Zones if they are adjacent to Opportunity Zones and median family income does not exceed 125% of the adjacent low-income tract. *See* Rev. Proc. 2018-16, 2018-9 I.R.B. 383, 383–84.

88. *See* I.R.S. Notice 2018-48, 2018-28 I.R.B. 9 (listing all Qualified Opportunity Zones as of July 9, 2018).

89. *See* I.R.C. § 1400Z-2(d)(1).

90. *Id.*

91. *Id.*; *see* OFF. OF THE COMPTROLLER CURRENCY, FACT SHEET: OPPORTUNITY ZONES 3–4 (2020), https://www.occ.gov/publications-and-resources/publications/community-affairs/community-developments-fact-sheets/cd-fact-sheet-opportunity-zones.pdf [https://perma.cc/75AC-KTVD].

92. *See* I.R.C. § 1001(a)–(b).

93. *See* I.R.C. § 1222(1)–(4).

94. *See* I.R.C. § 1.

95. *Id.* The tax rate will depend on a taxpayer's taxable income and whether their respective filing status is single, married filing jointly or separately, or head of household. *Id.*

be high-income earners who are subject to the 20% long-term capital gain tax rate.[96]

There are three tax benefits for investors investing in Opportunity Zones. First, investors can defer paying taxes on their capital gains if they invest funds in an Opportunity Fund.[97] The deferred tax must be paid by December 31, 2026, or when the investment is sold, whichever is first.[98] For example, imagine an investor sold a business in 2019 and made $20 million as a result of the sale. The $20 million is a capital gain, and the investor must pay $4 million in taxes due to the business's sale.[99] However, if the investor would have invested the $20 million in an Opportunity Fund, the investor could defer paying that $4 million in tax. This deferral is beneficial because of the concept of the time value of money,[100] which means that the benefit of receiving money today—or delaying a payment—outweighs the benefit of receiving money later.[101] This is because the money deferred or not subjected to current tax can be invested or grown.[102]

Second, if the investor holds the original investment in the Opportunity Zone fund for at least five years, the investor will be able to exclude 10% of the original gain from taxation.[103] If the original investment in the Opportunity Zone fund is held for at least seven years, the investor will be able to exclude up to 15% of the original gain from taxation.[104] Returning to the hypothetical in the previous paragraph, after five years, the investor is given a $2 million basis, reflecting 10% of the original capital gain that was not taxed. After seven years, the investor is given another basis of $1 million, reflecting 5% of the original

96. *See* SAMANTHA JACOBY, CTR. ON BUDGET & POL'Y PRIORITIES, POTENTIAL FLAWS OF OPPORTUNITY ZONES LOOM, AS DO RISKS OF LARGE-SCALE TAX AVOIDANCE 4 (2019), https://www.cbpp.org/research/federal-tax/potential-flaws-of-opportunity-zones-loom-as-do-risks-of-large-scale-tax [https://perma.cc/X3YN-9S8D] ("[C]apital gains are heavily concentrated among the wealthy . . . ."); *see also* Sultan White, *Opportunity Zones Incentivize Impact Investing Through Tax Benefits*, FENNEL (Apr. 20, 2023), https://fennel.com/blog/opportunity-zones-incentivize-impact-investing-through-tax-benefits [https://perma.cc/FVR3-AYV5] (mentioning that tax cuts help the wealthy and increase inequality in the United States).

97. *See* I.R.C. § 1400Z-2(a)(1).

98. *See* I.R.C. § 1400Z-2(b)(1).

99. In the example, the taxpayer's capital gain is $20 million. Assume the taxpayer owned the business for more than a year and a day prior to the sale. *See* I.R.C. § 1222(3). As a result, the investor would be subject to tax at a preferential long-term capital gains tax rate of 0%, 15%, or 20%. *See* I.R.C. § 1. To determine the investor's tax liability, you would multiply $20 million by 20%, which results in a $4 million tax liability for the investor. *See* I.R.C. § 1001.

100. *See* Catherine Cote, *Time Value of Money (TVM): A Primer*, HARV. BUS. SCH. ONLINE (June 16, 2022), https://online.hbs.edu/blog/post/time-value-of-money [https://perma.cc/4YL7-JK3K].

101. *Id.*

102. *See* Michelle Rama-Poccia, *What Is the Time Value of Money & Why Does It Matter?*, THESTREET (Feb. 22, 2023, 7:53 PM), https://www.thestreet.com/dictionary/t/time-value-of-money [https://perma.cc/3DRV-XUN9 (staff-uploaded archive)].

103. *See* I.R.C. § 1400Z-2(b)(2)(B)(iii).

104. *See* I.R.C. § 1400Z-2(b)(2)(B)(iv).

capital gain not taxed. After seven years, if the taxpayer sells the $20 million investment, the investor will only pay tax on $17 million of the gain.[105]

Third, if the investment is held for ten years, any new capital gains from the sale or exchange of that investment in the Opportunity Zone are permanently excluded from taxation.[106] For example, if the investor sells the investment in 2031 for $30 million, the $10 million ($30 million – $20 million) appreciation in the investment is not subject to tax.

While investors have the option to invest in Opportunity Zones and receive massive tax benefits, community residents do not have the same options due to the capital gains requirement and the significant minimum investments required to invest in an Opportunity Fund.[107] In 2018, only the highest-income earners had capital gains (specifically, 0.8% of Americans).[108] Generally, an investor needs an initial investment in the five- or six-figure range at a minimum to invest in an Opportunity Fund.[109] Some Opportunity Funds require an initial investment ranging from $50,000 to $100,000, while other funds require as much as a $250,000 or $1 million initial investment.[110] Other Opportunity Funds require investors to be accredited investors.[111] This means to invest in an Opportunity Fund an investor's net worth would have to be more than $1 million or an investor's income would have to be at least $200,000 for the past two years.[112]

105. *Id.* The investor will only pay $17 million. To calculate the gain, subtract: $20 million – $3 million. Without the Opportunity Zone investment, the investor's tax liability would be $4 million (that is, $20 million × 20% long-term capital gain tax rate). Because the taxpayer invested in an Opportunity Zone, 15% of the gain would be excluded from tax (that is, $20 million × 15% = $3 million). The taxpayer's liability would be $3.4 million (that is, $17 million × 20% long-term capital gain tax rate). In this example, the taxpayer would have saved $600,000 (that is, $4 million - $3.4 million) as a result of investing in an Opportunity Fund. It is worth noting that the above example is a modest example of the tax savings associated with investing in an Opportunity Zone.

106. *See* I.R.C. § 1400Z-2(c).

107. *See* JIMMY ATKINSON, OPPORTUNITYDB, THE ULTIMATE GUIDE TO INVESTING IN OPPORTUNITY ZONES 20–21 (2024) [hereinafter ATKINSON, ULTIMATE GUIDE], https://opportunitydb.com/guide/ [https://perma.cc/H2RK-3ZW8 (staff-uploaded archive)]; I.R.C. § 1400Z-2(a)(1)(A) (discussing that capital gains, gains from the sale or exchange of a capital asset, are required to invest in Opportunity Zones). *See generally supra* note 8 and accompanying text (discussing capital gains).

108. Galen Hendricks & Seth Hanlon, *Capital Gains Tax Preference Should Be Ended, Not Expanded*, CTR. FOR AM. PROGRESS (Sept. 28, 2020), https://www.americanprogress.org/article/capital-gains-tax-preference-ended-not-expanded/ [https://perma.cc/3QF2-XGP8].

109. ATKINSON, ULTIMATE GUIDE, *supra* note 107, at 23.

110. *Id.*

111. *See* Ryan Ermey, *Opportunity Zone Investing: Is It for You?*, KIPLINGER (June 5, 2019), https://www.kiplinger.com/article/investing/t041-c000-s002-opportunity-zone-investing-is-it-for-you.html [https://perma.cc/L95N-HLSJ].

112. *Id.*

C. *The Aftermath of Opportunity Zone Legislation*

The Opportunity Zone legislation's emphasis on enticing high-wealth investors while ignoring the needs of the community has had the effect of the program's benefits accruing only to investors and not to the communities in need of assistance.[113] Generally, investors would have invested in these areas regardless of the tax benefits offered via the Opportunity Zone program.[114] For example, Dan Gilbert, the owner of the Cleveland Cavaliers, purchased about 100 properties in downtown Detroit over the last decade, prior to the enactment of the Opportunity Zone legislation.[115] The areas in which Gilbert invested in the properties were not initially designated as Opportunity Zones because they did not meet the statutory definition of a low-income area under the Internal Revenue Code.[116] However, the Governor of Michigan decided to select all three of Gilbert's downtown tracts as Opportunity Zones.[117] This is just one of many examples of investors receiving massive tax benefits for areas that they would have invested in without the tax incentives or in areas that they invested in prior to the Opportunity Zone legislation.[118]

Some scholars argue that Opportunity Zones are ineffective and should therefore be abandoned.[119] Other scholars have argued that Opportunity Zone legislation can harm the community members it intends to assist, either inadvertently or purposefully, with the hidden objective of supporting gentrification to benefit investors.[120]

113. *See* Steven M. Rosenthal, *Opportunity Zones May Create More Opportunities for Investors and Syndicators than Distressed Communities*, TAX POL'Y CTR. (Aug. 2, 2018), https://www.taxpolicycenter.org/taxvox/opportunity-zones-may-create-more-opportunities-investors-and-syndicators-distressed [https://perma.cc/2MPZ-N4N7].

114. *See* Drucker & Lipton, *supra* note 8.

115. Jeff Ernsthausen & Justin Elliott, *How a Tax Break To Help the Poor Went to NBA Owner Dan Gilbert*, PROPUBLICA (Oct. 24, 2019, 2:10 PM), https://www.propublica.org/article/how-a-tax-break-to-help-the-poor-went-to-nba-owner-dan-gilbert [https://perma.cc/B8VA-XMGW (staff-uploaded archive)].

116. *Id.*

117. *Id.*; Carter Coudriet, *After Billionaire Dan Gilbert Criticized for Opportunity Zones, Company Blasts Back*, FORBES (Oct. 25, 2019, 3:46 PM), https://www.forbes.com/sites/cartercoudriet/2019/10/25/quicken-billionaire-dan-gilbert-criticized-for-exploiting-opportunity-zones-blasts-back [https://perma.cc/W7X2-X5VM (dark archive)]. There is email correspondence that suggests that one of the downtown tracts should not have been designated as an Opportunity Zone because it did not meet the poverty requirements. Ernsthausen & Elliott, *supra* note 115. However, because Dan Gilbert contributed $750,000 to the president's fund, reports seem to suggest his relationship with the United States President helped him secure an Opportunity Zone designation that was improper. *See id.*

118. *See* Drucker & Lipton, *supra* note 8.

119. *See generally* Weaver, *supra* note 27 (summarizing the findings of Alan Peters, Peter Fisher, Michael Rich, and Robert Stoker).

120. *See* Letter from Americans for Financial Reform to Member of Congress, *supra* note 46, at 2–3; *see also* Steven Bertoni, *An Unlikely Group of Billionaires and Politicians Has Created the Most Unbelievable Tax Break Ever*, FORBES (July 18, 2018, 6:00 AM), https://www.forbes.com/sites

In an empirical study, the authors of the *Journal of Urban Economics* found little to no evidence that Opportunity Zones positively impact the lives of zone residents.[121] For example, Opportunity Zones do not materially affect employment rates for zone residents.[122] Nor do they reduce local poverty levels; in fact, they may slightly *increase* poverty rates.[123] Specifically, the study found that poverty rates in Opportunity Zones increased by approximately 2% after their designations.[124] The study concluded with 95% certainty that being designated as an Opportunity Zone does not reduce poverty rates.[125] Other studies have concluded that low-income areas designated as Opportunity Zones had lower employment rates, lower average earnings, and higher poverty rates than tracts that could have been designated as Opportunity Zones but were not.[126] These early studies show that while the Opportunity Zone program is likely benefitting investors, it is not improving the economic conditions of zone residents.[127]

Professor Edward W. De Barbieri has argued that part of the reason Opportunity Zones are ineffective is that the government and the public are not involved in determining which projects within the Opportunity Zones are funded.[128] He provides several reasons why the Opportunity Zone program

/forbesdigitalcovers/2018/07/17/an-unlikely-group-of-billionaires-and-politicians-has-created-the-most-unbelievable-tax-break-ever/ [https://perma.cc/H27H-8T8T (dark archive)]; Ofer Eldar & Chelsea Garber, *Opportunity Zones: A Program in Search of a Purpose*, 102 B.U. L. REV. 1397, 1397–440 (2022) (discussing Opportunity Zones as a program without a purpose).

121. Matthew Freedman, Shantanu Khanna & David Neumark, *JUE Insight: The Impacts of Opportunity Zones on Zone Residents* 1–2 (Nat'l Bureau of Econ. Rsch., Working Paper No. 28573, 2021).

122. *Id.*

123. *Id.* at 14.

124. *Id.*

125. *Id.* at 15.

126. *See* Noli Brazil & Amanda Portier, *Investing in Gentrification: The Eligibility of Gentrifying Neighborhoods for Federal Place-Based Economic Investment in U.S. Cities*, 58 URB. AFFS. REV. 1234, 1256, 1258 (2021); *see also* Mary Margaret Frank, Jeffrey L. Hoopes & Rebecca Lester, *What Determines Where Opportunity Knocks? Political Affiliation in the Selection of Opportunity Zones*, 206 J. PUB. ECON. art. no. 104588, at 6 (2022); Letter from Americans for Financial Reform to Member of Congress, *supra* note 46, at 1 (suggesting that real estate "projects create mostly temporary construction jobs with very limited to no positive spillover effects on the economy of the communities in which they are located").

127. *See* Freedman et al., *supra* note 121, at 1–2; *see also* David Zipper, *How Opportunity Zones Launched a 'Gold Rush' for Wealthy Investors*, BLOOMBERG (Nov. 11, 2021, 5:00 AM), https://www.bloomberg.com/news/articles/2021-11-11/why-opportunity-zones-failed-to-help-low-income-areas [https://perma.cc/ZH7P-JQJF (staff-uploaded, dark archive)] (discussing the impact of Opportunity Zones on investors and community members).

128. *See* Edward W. De Barbieri, *Opportunism Zones*, 39 YALE L. & POL'Y REV. 82, 92 (2020). *See generally* OSCAR VALDÉS-VIERA & PATRICK WOODALL, WALL STREET'S BIG OPPORTUNITY: OPPORTUNITY ZONES ARE A CORPORATE TAX BREAK MASQUERADING AS COMMUNITY DEVELOPMENT 16–17 (2020) (mentioning that Opportunity Zone legislation should be repealed because it does not directly address the needs of low-income communities).

does not benefit low-income community members.[129] First, the value of investments to investors is incongruous with the value for community members, tracing to the "flexibility" touted by proponents.[130] Often, the types of investments most beneficial to investors are those least beneficial to residents.[131] Second, the program suppresses community members' ability to invest in Opportunity Zones because of the significant minimum investments required and the capital gain requirement, which are out of reach for most community members.[132] De Barbieri notes that one potential solution to Opportunity Zone reform is allowing local governments to act as a proxy for community members in selecting which projects to fund.[133] Essentially, local governments would step into the shoes of community members and serve as representatives on behalf of community members to advocate on their behalf and put pressure on investors in selecting which projects should be funded.[134] He also suggests that this role could be filled by community development entities and mission-based groups.[135] These groups already work with economically distressed communities and could act on behalf of community members to give them a voice by selecting which projects to fund.[136]

129. *See* De Barbieri, *supra* note 128, at 92; *see also* VALDÉS-VIERA & WOODALL, *supra* note 128, at 16.

130. *See* Harris, *supra* note 26.

131. *See* Scott Hodge, *Opportunity Zones "Make a Good Return Greater," but Not for Poor Residents*, TAX FOUND. (Aug. 25, 2023), https://taxfoundation.org/blog/opportunity-zones-tax-incentives/ [https://perma.cc/CQ33-U4ZQ] (discussing that most investments in Opportunity Zones have been in real estate because it offers a massive return on investment); *see also* Ruth Simon & Richard Rubin, *New Hotel or Affordable Housing? Race Is On To Define 'Opportunity Zones*,*'* WALL ST. J. (July 13, 2018, 5:30 AM), https://www.wsj.com/articles/new-hotel-or-affordable-housing-race-is-on-to-define-opportunity-zones-1531474200 [https://perma.cc/SJF2-7AQY (staff-uploaded, dark archive)] (describing that cities are investing in luxury hotels instead of affordable housing); Noah Buhayar, *Scaramucci Pitches 'Swank' Hotel for Tax Cut Aimed at Poor Areas*, BLOOMBERG L. (Dec. 12, 2018, 8:51 AM), https://www.bloomberglaw.com/bloomberglawnews/daily-tax-report/XB2D9J78000000 [https://perma.cc/UJ52-WPT9 (staff-uploaded, dark archive)] (finding that investors are investing in cities already undergoing gentrification and this behavior may push out residents and displace current residents); Kimbo & Phillips, *supra* note 65. *See generally* Letter from Olugbenga Ajilore et al., Ctr. for Am. Progress, to Steven Mnuchin et al., U.S. Dep't of the Treasury (Dec. 21, 2018) (on file with the North Carolina Law Review) (arguing that social outcomes for the communities chosen for Opportunity Zones are difficult to measure, Opportunity Zones are created in tracts that are already gentrifying, the Opportunity Zone program does not require Qualified Opportunity Funds to sustainably partner with communities, and that Opportunity Zones do not guarantee the development of essential community infrastructure and services).

132. *See* Kimbo & Phillips, *supra* note 65; *see also* De Barbieri, *supra* note 128, at 139; Ermey, *supra* note 111.

133. *See* De Barbieri, *supra* note 128, at 96, 154 (suggesting that local government involvement "would ensure that members of the community have a chance to shape and benefit from the investments in their neighborhoods").

134. *Id.*; s*ee also* VALDÉS-VIERA & WOODALL *supra* note 128, at 18–19 (suggesting that state and local governments create accountability policies for Opportunity Zones).

135. *See* De Barbieri, *supra* note 128, at 154–55.

136. *See id.* at 153–54.

Another proposed solution—set forth by Katie Raitz in a student note—includes replacing the Opportunity Zone program with universal basic income ("UBI") as a means for reparations for low-income communities of color.[137] A UBI program would pay low-income community members a sum of money in set intervals.[138] Raitz argues that UBI payments would be far more effective in alleviating poverty, as UBI recipients would have greater freedom to pursue educational opportunities, pay off debts, and afford other basic needs.[139] Ultimately, she concludes that any form of direct cash payments to community members would be more successful in lifting them out of poverty and bridging the health inequality gap than the current Opportunity Zone program.[140]

Professor Michelle Layser argues that place-based investment tax incentives, such as Opportunity Zones, have the potential to curb concentrated poverty if appropriately designed.[141] She also notes that the Opportunity Zone program fails to empower poor residents,[142] and she highlights the importance of community participation, suggesting community benefit agreements as a potential solution to Opportunity Zone reform.[143] Community benefit agreements are binding agreements between developers and coalition groups wherein the coalition groups will agree with the developers' project as long as there is some economic benefit for them.[144] Layser also suggests implementing "Community Oriented Investment Tax Incentives," which would give tax

137. Katie Raitz, Note, *Public Health and Racial Inequality: Why the Opportunity Zone Program Fails Low-Income Communities and Costs Lives*, 12 U.C. IRVINE L. REV. 315, 351–53 (2021); *see also* Philippe Van Parijs, *A Short History of the Basic Income Idea*, BASIC INCOME EARTH NETWORK, https://basicincome.org/history/ [https://perma.cc/3MFR-59KM] (providing a background on where universal basic income originated from).

138. *See* Raitz, *supra* note 137, at 351; *see also* Parijs, *supra* note 137.

139. *See* Raitz, *supra* note 137, at 351–52; *see also* Parijs, *supra* note 137.

140. Raitz, *supra* note 137, at 355–56. *But see* Johnathan D. Grossberg, *Something for Nothing: Universal Basic Income and the Value of Work Beyond Incentives*, 26 WASH. & LEE J. C.R. & SOC. JUST. 1, 9 (2019) (suggesting that the United States will likely not adopt a universal basic income).

141. *See* Layser, *Pro-Gentrification Origins*, *supra* note 73, at 750.

142. *Id.* at 806; *see also* Victoria Lee, *Opportunity Without Reach: The Problems with the Opportunity Zone Program and the Need for Clarification, Oversight, and Regulation*, 47 FORDHAM URB. L.J. 117, 151 (2019) (suggesting that states participate in the Opportunity Zone program so neighborhoods can gentrify in a smart manner and provide the community with what it needs).

143. *See* Layser, *Pro-Gentrification Origins*, *supra* note 73, at 807. *See generally* JULIAN GROSS, GREG LEROY & MADELINE JANIS-APARICIO, COMMUNITY BENEFIT AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE 6 (2005) (suggesting that "[a] community group's ability to win a CBA is directly related to how much power it has organized").

144. GROSS ET AL., *supra* note 143, at 9. *See generally* Patricia E. Salkin & Amy Lavine, *Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations*, 26 UCLA J. ENV'T L. & POL'Y 291, 293–94 (2008) (discussing community benefit agreements).

breaks to businesses that invest in low-income communities.[145] Layser argues that these incentives would give power to community stakeholders rather than to outside investors by requiring engagement with communities that is specifically tailored to benefit the community.[146] Layser suggests that these incentives should focus on shifting power to community stakeholders as opposed to outside investors.[147] This would improve neighborhood conditions in low-income areas by allowing community members to control aspects of their community instead of being ignored or disregarded.[148]

Professor Daniel Figueroa argues that Opportunity Zone reform should focus on a community-wealth-building model.[149] Specifically, he suggests a model that focuses on collaboration and inclusivity to foster growth and prosperity in local communities without external influence by investors.[150] While De Barbieri, Layser, and Figueroa's reform proposals to Opportunity Zones do not fit neatly into the asset-based community development model, their proposals have elements of asset-based solutions because they focus on benefitting the community through preexisting or internal channels while accepting external influence when it is needed.

This Article, however, proposes a framework that would put power and resources directly in the hands of community members while retaining the value brought by outside investors, within a framework of accountability and buy-in by those investors. Specifically, this Article considers the necessity of active and direct participation by community members and investors. In doing so, it fills a gap in the literature for economic development tax incentives. Whether Opportunity Zone reform is politically possible or not, the recommendations in this Article go beyond Opportunity Zone reform. This Article offers policy recommendations that should be considered broadly in designing economic development tax incentives.

145. *See* Michelle D. Layser, *A Typology of Place-Based Investment Tax Incentives*, 25 WASH. & LEE J. C.R. & SOC. JUST. 403, 440 (2019) (stating that a place-based investment tax incentive is community oriented when "the tax law contains features to increase the likelihood that poor residents in the targeted area will benefit").

146. *Id.*; *see* Layser, *Pro-Gentrification Origins*, *supra* note 73, at 811; s*ee also* Anika Singh Lemar, *An Opportunity Zone Falls in a Forest*, 48 FORDHAM URB. L.J. 1183, 1188 (2021) (discussing that limiting the use of Opportunity Zones still does not guarantee that low-income residents will benefit because there is no requirement that low-income residents benefit).

147. *See* Layser, *Pro-Gentrification Origins*, *supra* note 73, at 814–15.

148. *See id.* at 799, 804.

149. Daniel J. Figueroa, Economic Opportunity & Resilience: Opportunity Zones & Equity 15–36 (Dec. 22, 2020) (unpublished manuscript) (on file with the North Carolina Law Review).

150. *Id.*

II. INCORPORATING A COMMUNITY-BASED PARTICIPATORY APPROACH

In the Promise of Opportunity Zone Hearing before the Joint Economic Committee, "[a]ll three witnesses agreed that this tax incentive, with the right guardrails, can be a useful and effective tool for community development."[151] Community development principles may offer such guardrails. Community development is an interdisciplinary approach that focuses on how to empower communities through varying levels of participation with a focus on sustainable outcomes and solutions.[152] Community development can be viewed as both a process and an outcome.[153] As a process, the focus lies in determining what assets the community possesses, ultimately attempting to enable all parties to work together to achieve a goal.[154] As an outcome, community development involves improving all aspects of communities.[155]

This Article focuses on the necessity of participation through the lens of the asset-based and sustainable livelihood approaches to community development, which will be discussed in the section below. The asset-based approach builds upon the assets present in the community—people, resources, and expertise—to ensure that the community benefits.[156] The sustainable livelihood approach acknowledges the assets and strengths present in the community.[157] It targets long-term improvements to the community members' lives.[158] It accomplishes this by emphasizing the root causes of systemic issues afflicting these neighborhoods, such as generational poverty, and seeking to address those causes while actively improving residents' livelihoods and opportunities.[159] Keeping with these philosophies, this Article explicitly argues that transformative participation must be included in Opportunity Zone reform to result in beneficial outcomes for economically distressed communities.

151. Harris, *supra* note 26. Some legal scholars view the plain text of the legislation as the best evidence of intent, while others believe we should consider legislative history. We should focus on legislative history here because the legislative history sets forth the purpose and goals of the Opportunity Zone legislation.

152. *See* MAHBUB HASAN, COMMUNITY DEVELOPMENT PRACTICE: FROM CANADIAN AND GLOBAL PERSPECTIVES 17–18 (2022) (ebook), https://ecampusontario.pressbooks.pub/app/uploads/sites/2841/2023/08/Community-Development-Practice-From-Canadian-and-Global-Perspectives-Aug-2023.pdf [https://perma.cc/Y5UC-FCDP]; *see also* MARK ROSELAND, TOWARD SUSTAINABLE COMMUNITIES 26–28 (2005) ("Communities must be involved in defining sustainability from a local perspective.").

153. *See* LA. CMTY. NETWORK, INTRODUCTION TO COMMUNITY DEVELOPMENT 2, 5, https://www.opportunitylouisiana.gov/wp-content/uploads/2023/10/lcn_module_1_overview.pdf [https://perma.cc/5GAA-4VHK].

154. *Id.* at 5; *see* HASAN, *supra* note 152, at 3, 17.

155. *See* HASAN, *supra* note 152, at 17; LA. CMTY. NETWORK, *supra* note 153, at 16.

156. DAN DUNCAN, ASSET BASED COMMUNITY DEVELOPMENT 2–3 (2016).

157. *See* Brocklesby & Fisher, *supra* note 35, at 187–89.

158. *See id.* at 194–96.

159. *See id.* at 187–89.

Specifically, community members must employ active and direct participation, and investors must participate through a financial buy-in.

A. *The Asset-Based Community Development Approach*

The asset-based community development approach was developed in reaction to the needs-based approach.[160] The needs-based approach only considers the shortcomings of the community and presumes that external individuals should fix problems occurring internally within the community.[161] The needs-based approach leads community members to view themselves from a deficient mindset, in which they are cast as helpless and powerless, or as victims.[162] It assumes that all of the power is outside of the community members' hands and that the only solution is external help.[163] Furthermore, by failing to consider community members as a potential part of the solution to a problem and neglecting to consider their perspectives on the specific issues afflicting their community, the aid apportioned by these outside actors may be misplaced.[164] This twofold error can only partially solve the issues it intends to solve, and at its worst, it creates more problems and harms the community.[165] It can also waste the capital allotted for the community.[166]

The asset-based approach instead centers around the community's preexisting assets.[167] It does not ignore a community's problems but begins its strategy by considering the community's strengths, including material resources, existing economic channels, and residents' knowledge, labor, and expertise.[168] An asset-based analysis starts with asset mapping, a process by which resources within a community are identified and evaluated.[169] Then, based on the assets the community may use to their advantage, communities

160. *See* Rebecca Harrison, Christian Blickem, Jonathan Lamb, Susan Kirk & Ivaylo Vassilev, *Asset-Based Community Development: Narratives, Practice, and Conditions of Possibility—A Qualitative Study with Community Practitioners*, 9 SAGE OPEN art. no. 10.1177/2158244018823081, at 4–5 (2019).

161. *See* Ebersohn & Eloff, *sup*ra note 32, at 462.

162. *Id.*

163. KRETZMANN & MCKNIGHT, BUILDING COMMUNITIES, *supra* note 34, at 2.

164. *See id.* at 2, 4.

165. *Id.* at 4 (suggesting that "communities are never built from the top down").

166. *See id.* (noting that resources for low-income communities are bleak even within Enterprise Zones).

167. *Id.* at 5; *see also* Harrison et al., *supra* note 160, at 5.

168. *See* Bill Berkowitz & Eric Wadud, *Identifying Community Assets and Resources*, CMTY. TOOL BOX, https://ctb.ku.edu/en/table-of-contents/assessment/assessing-community-needs-and-resources/identify-community-assets/main [https://perma.cc/5E3R-9QXB].

169. *See* Sherianne Kramer, Taryn Amos, Sandy Lazarus & Mohamed Seedat, *The Philosophical Assumptions, Utility and Challenges of Asset Mapping Approaches to Community Engagement*, 22 J. PSYCH. AFR. 537, 537 (2012).

can plan and organize strategic solutions that utilize and mobilize their skills and resources accordingly.[170]

In one study, conducted in South Africa, researchers set out to determine how effective the asset-based approach was by analyzing twenty-four communities or projects.[171] Fourteen of the communities or projects had been exposed to the asset-based approach through engagement and training.[172] Ten of the communities or projects did not have any engagement or training in the asset-based community development approach but had experience with the needs-based approach.[173] The methodology included face-to-face group interviews with people directly involved with the communities or projects.[174] The researchers' goal was to determine the effectiveness and applicability of the asset-based approach and the needs-based approach as it relates to external stakeholders.[175]

The study concluded that community members should be active participants and producers of their own future as opposed to recipients of services, suggesting that closer adherence to the asset-based approach over the needs-based approach yielded higher success rates for development projects.[176] Essentially, this study concluded that all stakeholders should realize the value of existing assets within a community and build upon prior wins in the community.[177] Communities are not one-size-fits-all, and community members should be involved and participate for sustainability purposes.[178] Each community and their respective residents must be accounted for in all levels of development.[179] Furthermore, power should be transferred from them as stakeholders, and all other stakeholders involved, to the community, which would enable communities to lead their own development by coinvesting their own assets, taking advantage of opportunities, and leveraging their own resources with resources of government, businesses, and other organizations.[180] In the projects that were asset-based, communities used their own assets and resources in connection with external resources and they were able to articulate

170. *See* Hanna Nel, *Stakeholder Engagement: Asset-Based Community-Led Development (ABCD) Versus the Traditional Needs-Based Approach to Community Development*, 56 SOC. WORK/MAATSKAPLIKE WERK 264, 264 (2020).

171. *Id.* at 267. To be included in the study, projects and communities must have existed for at least two years. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.* at 266.

176. *Id.* at 273.

177. *Id.* at 274–75.

178. *Id.*

179. *Id.* at 265.

180. *Id.* at 269–70.

what was needed from external stakeholders.[181] Essentially, the asset-based approach encourages community agency, ownership, and sustainability.[182] In contrast, the needs-based approach can make a difference by providing outside resources to communities.[183] The needs-based approach can also undermine local initiatives because projects are not determined or dictated by communities and thus are or have not been sustainable.[184]

One notable example of a successful implementation of the asset-based approach is the Neighborhood Solutions Project in North Charleston, South Carolina. The project intended to reduce crime rates, poverty, and juvenile arrests to reduce out-of-home placements for the city's youth.[185] The project's organizers identified regions with the highest concentrations of the issues mentioned above and sought to contact regional leaders, both official and unofficial.[186] The organizers went in with the mindset of working with the community to revitalize these regions rather than simply directing funds or imposing ineffective measures upon them.[187] After the outsiders identified community leaders, meetings were held that emphasized community input on identifying issues and coming up with solutions, with importance placed upon the individual communities' agencies and ability to participate meaningfully in solving these issues.[188]

During such meetings, the "outsiders" came to learn about the neighborhood from the locals.[189] The outsiders' willingness to learn, coupled with their ability to highlight the participants' strengths, helped the neighborhood realize that there was substantial benefit to be garnered from collaboration.[190] The community leaders emphasized that all neighborhoods are different and that outsiders should not approach a neighborhood with the attitude of "I can fix your community."[191]

181. *Id.* at 265.

182. *Id.* at 265, 272.

183. *See id.* at 272.

184. *See id.* at 272–74.

185. *See* CYNTHIA CUPIT SWENSON, SCOTT W. HENGGELER, IDA S. TAYLOR & OLIVER W. ADDISON, MULTISYSTEMIC THERAPY AND NEIGHBORHOOD PARTNERSHIPS 63–64 (2005); *see also* Candice P. Boyd, Louise Hayes, Rhonda L. Wilson & Cate Bearsley-Smith, *Harnessing the Social Capital of Rural Communities for Youth Mental Health: An Asset-Based Community Development Framework*, 16 AUSTL. J. RURAL HEALTH 189, 190 (2008); Jeff Randall, Cynthia Cupit Swenson & Scott W. Henggeler, *Neighborhood Solutions for Neighborhood Problems: An Empirically Based Violence Prevention Collaboration*, 26 HEALTH EDUC. & BEHAV. 806, 806–07, 809 (1999).

186. SWENSON ET AL., *supra* note 185, at 64 (describing how the team included a family resource specialist that grew up in the neighborhood).

187. *Id.* at 68–69 (describing the purpose of a meeting between community leaders as ensuring that everyone is committing to substantially contributing to the communities).

188. *Id.* at 69–70.

189. *Id.*

190. *Id.* at 68–69.

191. *Id.* at 69.

After meetings with community leaders, the outsiders presented the ideas that were brainstormed to the community in a public meeting, with the specific intent to make residents feel comfortable with the project and for them to have faith in it.[192] Special efforts were made to ensure that the outsiders were familiar with the cultural language of the community, illustrating the project's commitment to working alongside community members as equals and as servants of the neighborhood, rather than as elites "fixing" it.[193] Project leaders met one-on-one with community leaders as well—again, both official and unofficial, including civil servants and officials, community elders, church leaders, business leaders, etc.[194] Ultimately, the project leaders maintained the importance of building a rapport with the community members, rather than simply treating the community as an aggregate of statistics.[195]

The project itself utilized multisystemic therapy as its primary strategy.[196] Multisystemic therapy focuses on family and community treatment for individuals who have had legal involvement or substance use issues.[197] It involves families and communities of patients to assist them with a better environment and peers to assist with positive behavior.[198] Over the course of a few years, the crime rate dropped significantly.[199] The organizers noted significant reductions in exposure to violence among participants, with many of the outlier cases experienced outside of the community.[200] Scholars note that a significant factor in this project's success was its commitment to working with the community, creating a residential force for change, rather than attempting simply to force blanket solutions upon them.[201]

Opponents of the asset-based approach suggest the approach falls short because it neglects to acknowledge the power dynamics, systems, and structures present in communities.[202] Those opponents argue that by neglecting the power dynamics and systems present in communities, the approach is void of reality and does not work.[203] While this Article acknowledges the shortcomings of the asset-based community development approach as it relates to power dynamics, this Article uses transformative participation coupled with the asset-based

192. *Id.* at 69–70.

193. *See id.* at 69–71.

194. *Id.* at 71–72.

195. *See id.*

196. *Id.* at 40, 69–70.

197. *See id.* at 88–93, 113–19.

198. *Id.* at 40–42.

199. *See id.* at 93.

200. *Id.*

201. *See id.* at 219.

202. *See Challenges of Asset Based Community Engagement*, UNIV. MEMPHIS, https://www.memphis.edu/ess/module4/page6.php [https://perma.cc/ZJ99-7Q2J] (last updated Sept. 20, 2023).

203. *Cf. id.* (suggesting recognizing power dynamics as a solution to this issue).

approach to make up for the asset-based approach's shortcomings. Transformative participation requires participation by all people and accounts for the power dynamics present within communities.[204] It requires a level of engagement by all people—essentially a transfer of power so that oppressed or marginalized communities can take actions that contribute to sustainable livelihoods.[205]

B. *Sustainable Livelihood Approach*

As previously mentioned, transformative participation requires participation by all parties involved.[206] Transformative participation is an approach that actors use to attain sustainable livelihoods. The United Kingdom's Department for International Development emphasizes that the sustainable livelihood approach is people centered, participatory, and responsive in nature, and encourages partnerships at different levels while promoting economic, social, environmental, and institutional sustainability toward development.[207] The sustainable livelihood approach is a suitable method for applying the asset-based approach. The Department for International Development suggests that the sustainable livelihood approach should focus less on what people lack and more on what they have, their assets and strengths, and how these could be mobilized to help people make a living and improve their standard of living.[208]

Many policies employing other community development approaches do not embody the standards for sustainable livelihoods and thus do not serve their intended purpose of aiding afflicted communities.[209] The "reality of sustainable development through capacity building, community empowerment, and community decision-making," or lack thereof, does not "live up to the rhetoric" commonly put forward in the discourse surrounding community development.[210] In order to alleviate this disparity, community development

204. *See infra* Section II.C.1 (discussing transformative participation).

205. *See infra* Section II.C.1 (describing how transformative participation requires a shift in power and focuses on empowering community members to make their own decisions).

206. *See infra* Section II.C.1.

207. *See* KRANTZ, *supra* note 36, at 1, 18–19.

208. *See id.* at 3, 13–14; *see also* Jim Bingen, *Institutions and Sustainable Livelihoods*, *in* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, PROCEEDINGS FROM THE FORUM ON OPERATIONALIZING SUSTAINABLE LIVELIHOODS APPROACHES 119, 122 (2001), https://www.fao.org/3/x9371e/x9371e.pdf [https://perma.cc/L6W6-S6A6].

209. *See* KRANTZ, *supra* note 36, at 22–24; *see also supra* Section II.A (discussing the failures of the needs-based approach).

210. Rebecca Skhosana, The Design and Review of an Integrated Asset-Based Community-Led and Sustainable Livelihoods Practice Model for Poverty Alleviation 3–4 (Feb. 2021) (Ph.D. thesis, University of Johannesburg) (on file with the North Carolina Law Review); *accord* Lyn Simpson, Leanne Wood & Leonie Daws, *Community Capacity Building: Starting with People Not Projects*, 38 CMTY.

approaches must evaluate community assets and strengths before structuring any problem-solving tactics or plans.[211] The sustainable livelihood approach requires developers to consider and utilize community strengths and local knowledge in order to achieve and sustain improvements to community livelihood.[212] This approach utilizes the skills already present within community members to address those issues to avoid the more common practice of injecting solutions to supposed problems.[213] The sustainable livelihood approach also allows community citizens to engage in collective action.[214] Collective action allows the opportunity for all stakeholders within the community to have a voice and meaningfully participate in these development projects.[215] Collective action can also encourage skill development and civic duty by granting citizens the means to engage with and meaningfully influence a previously inaccessible process.[216]

While current reform proposals understand the goals valued in an asset-based approach, they do not consider active and direct participation, nor buy-in, as potential solutions for Opportunity Zone reform to meet its twofold policy goal.[217] This Article focuses on how to close the opportunity gap by suggesting that economic development tax incentives should be designed in a way that closes the wealth gap and requires participation by investors and community members.[218]

Reform to Opportunity Zone legislation and broader policy recommendations focused on economic development tax incentives should be *asset*-based. Reform should focus on direct participation and investment in local communities by integrating asset-based community development and sustainable livelihood approaches. Previous community development approaches and strategies have yet to work because they have not focused on active and direct participation. Participation must focus on both internal assets and external sources to achieve success and sustainability for community members.

DEV. J. 277, 278, 284 (2003). *But see* SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., COMMUNITY ENGAGEMENT: AN ESSENTIAL COMPONENT OF AN EFFECTIVE AND EQUITABLE SUBSTANCE USE PREVENTION SYSTEM 19–21 (2022), https://store.samhsa.gov/sites/default/files/pep22-06-01-005.pdf [https://perma.cc/4UTJ-TZHR] (promoting the effectiveness of the community development approach).

211. *See supra* Section II.A (discussing the asset-based community development approach versus the needs-based approach).

212. *See* Bingen, *supra* note 208, at 122; *see also* KRANTZ, *supra* note 36 at 4, 10–11.

213. *See* KRETZMAN & MCKNIGHT, BUILDING COMMUNITIES, *supra* note 34, at 2.

214. *See* Skhosana, *supra* note 210, at 6.

215. *See id.* at 56–57.

216. *See id.* at 37, 44, 232–33, 360.

217. *See supra* Section I.C (discussing Figueroa's and Layser's approaches to the extent to which they fit into an asset-based approach).

218. *See infra* Section III.

One example of the integration of the asset-based and sustainable livelihood approaches is a study designed by Rebecca Skhosana. Specifically, in her doctoral thesis focused on social work, Skhosana designed a community development approach that would assist in alleviating poverty in South Africa.[219] According to Skhosana, poverty rates continued to increase in South Africa.[220] She noted that community development efforts in South Africa were not holistic and did not involve community members.[221] By neglecting to include community members in community development efforts, community problem-solving was ignored, and thus the community's issues were not addressed thoroughly.[222] Skhosana concluded that most community development projects are not sustainable because they rely too heavily on external aid rather than on the internal strengths and assets of the community members.[223] In addition, there was no empowerment or capacity building in communities when projects were externally imposed on them, and there was little attempt to work with communities to change their livelihoods.[224] These factors kneecapped the community's ability to exist without this external aid, because they put no effort toward helping community members meet their own needs and transition toward self-sufficiency.[225]

While there is undoubtedly value in many forms of direct aid, especially in instances where a community has suffered an economic disaster or has suffered from long-term intergenerational poverty, such an approach must be coupled with the mindset of giving community members the resources and the opportunity to rebuild their community on their terms.[226] Skhosana argued that a practical and sustainable application of development projects, whether infrastructural, educational, or otherwise, must be employed to involve communities through participation effectively.[227] Specifically, the application should include effectively involving communities through the integration of the asset-based and the sustainable livelihood approaches.[228] Practical participation by community members in the process of building and maintaining community resources is vital to the success of the initiatives themselves.[229]

219. *See* Skhosana, *supra* note 210, at 5–7.

220. *Id.* at 26 (citing STAT. S. AFR., POVERTY TRENDS IN SOUTH AFRICA: AN EXAMINATION OF ABSOLUTE POVERTY BETWEEN 2006 AND 2015, at 14 (2017)).

221. *See id.* at 43.

222. *See id.* at 7, 97–98, 229.

223. *Id.* at 4, 376.

224. *Id.* at 4.

225. *See id.* at 94, 141–42, 376.

226. *See id.* at 4, 32–33, 37, 376.

227. *See id.* at 30, 37.

228. *Id.* at 89–90.

229. *See id.* at 50, 291–92.

The Opportunity Zone program's lack of space for community input is not exclusive to the program.[230] Previous government programs, such as Enterprise Zones, the Low-Income Tax Credit, and the New Markets Tax Credit, operated on a similar set of principles.[231] Proponents of these programs, often government officials and investors, are informed by their lived experiences and fail to consider the community perspective that could dictate a more effective strategy.[232] Historically, Congress has been unrepresentative of the United States population.[233] A legislator whose basic needs have always been met may fail to consider the value of welfare programs, such as food stamps, over a more investor-friendly tax incentive.[234] These broadly applied tax incentives have had varying degrees of effectiveness but generally have failed to compensate for the gap caused by removing other welfare programs.[235]

230. *See* Kaye, *supra* note 2, at 1081 & n.83, 1100 (Low-Income Housing Tax Credits and Opportunity Zone Tax Incentives); Aprill, *supra* note 2, at 1340–50, 1356–58 (Enterprise Zones); Lester et al., *supra* note 2, at 226–28 (New Markets Tax Credits).

231. *See* Kaye, *supra* note 2, at 1090–93 (Low-Income Housing Tax Credits); Aprill, *supra* note 2, at 1343–46 (Enterprise Zones); Lester et al., *supra* note 2, at 226–28 (New Market Tax Credit).

232. *See* Kaye, *supra* note 2, at 1084–89; Aprill, *supra* note 2, at 1343–46; Lester et al., *supra* note 2, at 228–30; *see also* ANDREW SCHWARTZ, CTR. FOR AM. PROGRESS, THE REALITIES OF ECONOMIC DEVELOPMENT SUBSIDIES 8 (2018), https://www.americanprogress.org/article/realities-economic-development-subsidies/ [https://perma.cc/BK69-CZ5A]. Economic development subsidies are "a trickle-down strategy at the local level—financial incentives targeted toward a single company with the promise that the community and its residents will benefit from the job creation and investment that follow." Schwartz, *supra*, at 8.

233. *See* Katherine Schaeffer, *Racial, Ethnic Diversity Increases Yet Again with the 117th Congress*, PEW RSCH. CTR. (Jan. 28, 2021), https://www.pewresearch.org/short-reads/2021/01/28/racial-ethnic-diversity-increases-yet-again-with-the-117th-congress/ [https://perma.cc/M6AT-H9PE]. While ethnic diversity has increased within the 117th Congress, historically Congress has been unrepresentative of the United States population. *Id.* For example, in 1981, White individuals only made up 80% of the United States population; however, they made up 94% of the United States Congress. *Id.*

234. COMM'N ON THE PRAC. OF DEMOCRATIC CITIZENSHIP, AM. ACAD. OF ARTS & SCIS., OUR COMMON PURPOSE: REINVENTING AMERICAN DEMOCRACY FOR THE 21ST CENTURY 22–24 (2020), https://www.amacad.org/sites/default/files/publication/downloads/2020-Democratic-Citizenship_Our-Common-Purpose.pdf [https://perma.cc/54A2-TELV] (discussing the need to "enlarge the House of Representatives through federal legislation to make it and the Electoral College more representative of the nation's population"). *See generally* Nicholas Carnes & Noam Lupu, *The Economic Backgrounds of Politicians*, 26 ANN. REV. POL. SCI. 253 (2023) (discussing the fact that politicians' economic backgrounds are better than the citizens they represent).

235. *See* Gregory S. Burge, *Do Tenants Capture the Benefits from the Low-Income Housing Tax Credit Program?*, 39 REAL EST. ECON. 71, 73 (2011) (concluding that the large gap between tax expenditures and rent savings embodied in LIHTC programs "compares unfavorably to the merits of demand-side voucher programs or other direct forms of household-level assistance"); Matthew Freedman, *Teaching New Markets Old Tricks: The Effects of Subsidized Investment on Low-Income Neighborhoods*, 96 J. PUB. ECON. 1000, 1013 (2012) (finding "some positive effects of subsidized investment in disadvantaged neighborhoods, [but] the benefits . . . are modest"); Kaitlyn Harger & Amanda Ross, *Do Capital Tax Incentives Attract New Businesses? Evidence Across Industries from the New Markets Tax Credit*, 56 J. REG'L SCI. 733, 733, 751 (2016) (finding New Market Tax Credit program created an increase in employment in certain industries but had negative effects on employment in others).

Specific to this section, these programs are often so broad and unregulated that they fail to adhere to any strategy that would ensure community benefit.[236]

The Opportunity Zone program is the most glaring example, as investors are free to invest in whichever projects they deem most profitable, rather than those that the community desires.[237] Because the program is legislated generally, applying to a broad range of communities, they fail to consider differing problems, needs, and, notably, preexisting resources.[238] Opportunity Zones fail to reach their highest possible efficiency level because they do not engage meaningfully with the communities they purport to assist.[239] Operating only through the lens of government and investors creates a program whose priorities are inextricably unbalanced.[240] It threatens to inflict misdirected assistance onto these communities rather than engage with them and their residents.[241]

C. *Active and Direct Participation*

A common criticism of Opportunity Zones across this Article and others is the need for genuine purposeful community participation. Unfortunately, the legislature constructed the mechanisms of Opportunity Zones in a way that virtually precludes meaningful input from residents.[242] Investors control the direction of projects and decide which Opportunity Funds to finance; these investors are independent organizations that are not accountable to residents or the public.[243] In order for the asset-based and sustainable livelihood approaches to succeed, it is necessary for community participation to be an integral part of the process. Specifically, there needs to be a structure in the Opportunity Zone program and future economic development tax incentives that allows community members to decide which projects investors should finance so that they can garner some benefit from them. However, the only actual participants in the program are the Opportunity Funds managing the projects and wealthy investors deciding which projects will come to fruition.[244] Actual residents in Opportunity Zones are relegated to bystanders around whom this commercial activity is undertaken rather than as meaningful actors, contributors, or

236. *Cf.* Harger & Ross, *supra* note 235, at 751 (discussing the possible effects of the breadth of these programs); Freedman, *supra* note 235, at 1013 (finding that the "some positive effects of subsidized investment in disadvantaged neighborhoods, [but] the benefits . . . are modest").

237. *See* Drucker & Lipton, *supra* note 8.

238. *See* VALDÉS-VIERA & WOODALL, *supra* note 128, at 3–4, 8–9.

239. *See* Buhayar & Melby, *supra* note 44.

240. *See* Weaver, *supra* note 27, at 151–55.

241. *See supra* Introduction (discussing the needs-based approach to community development).

242. *See* RICHARDSON ET AL., *supra* note 5, at 6–8; *The Promise of Opportunity Zones*, *supra* note 4, at 37–38 (statement of Sen. Tim Scott). *See generally supra* note 9 and accompanying text (discussing capital gains).

243. *See* VALDÉS-VIERA & WOODALL, *supra* note 128, at 3–4, 8–9; *see also* RICHARDSON ET AL., *supra* note 5, at 6–8.

244. *See* Kennedy & Wheeler, *supra* note 6, at 6–7, 9–13.

participants.[245] The assertion that Opportunity Zones are problematic in their isolation from the wants and opinions of communities implicates other concerns. Why does community participation contribute to the common good? What would community participation consist of in Opportunity Zones? Answering either question first requires defining "participation" as a concept. In the case of Opportunity Zones, community participation could be defined simply as involvement in an economic project. However, that still does not delineate what actions rise to the level of participation.

1. Degrees of Participation

This section describes the various degrees of participation in order to more fully understand the deficiencies in the current format of Opportunity Zones and how these deficiencies can be corrected.

Scholars have delineated degrees of participation within community development work.[246] Even where an individual's or entity's effort to engage the community falls under the category of participatory action, its characterization and effect can vary.[247] The purposes that inform the participation from both the community side and from the institutions' side can indicate what degree the participation falls under.[248] Participation can be described as a dynamic, multilayered process that requires engaging the local community.[249] Understanding the various forms of participation creates a lens

245. *See* Elliott et al., *supra* note 7.

246. *See* Deribe Assefa Aga, N. Noorderhaven & B. Vallejo, *Project Beneficiary Participation and Behavioural Intentions Promoting Project Sustainability: The Mediating Role of Psychological Ownership*, 36 DEV. POL'Y REV. 527, 528–30 (2018); Inst. of Dev. Stud., *Levels of Participation*, PARTICIPATORY METHODS, https://www.participatorymethods.org/method/levels-participation [https://perma.cc/4W7S-BUNY].

247. *See* STEPHEN JONES & ANDREW KARDAN, NORWEGIAN AGENCY FOR DEV. COOP., A FRAMEWORK FOR ANALYSING PARTICIPATION IN DEVELOPMENT 12 & fig.4 (2013), https://www.norad.no/globalassets/import-2162015-80434-am/www.norad.no-ny/filarkiv/evalueringsavdelingens-filer/a-framework-for-analysing-participation-in-development.pdf [https://perma.cc/Y8LP-V4VS]; Andrea Cornwall, *Unpacking 'Participation': Models, Meanings and Practices*, 43 CMTY. DEV. J. 269, 271 (2008).

248. *See* JONES & KARDAN, *supra* note 247, at 12 & fig.4; Cornwall, *supra* note 247, at 271.

249. *See* KRANTZ, *supra* note 36, at 3, 12; *see also* CREATIVE COMMONS, PARTICIPATION MODELS: CITIZENS, YOUTH, ONLINE 13 (2012), https://www.nonformality.org/wp-content/uploads/2012/11/Participation_Models_20121118.pdf [https://perma.cc/EDP6-EB3G] (citing Kurt De Backer & Marc Jans, Youth (-Work) and Social Participation (2002) (unpublished manuscript)). Some participation models state that participation challenges the status quo and requires rethinking whether only certain people have the capacity to participate. CREATIVE COMMONS, *supra*, at 13 (citing Kurt De Backer & Marc Jans, Youth (-Work) and Social Participation (2002) (unpublished manuscript)). *See generally* Judith Mashinya, Participation and Devolution in Zimbabwe's Campfire Program: Findings from Local Projects in Mahenye and Nyaminyami (2007) (Ph.D. dissertation, University of Maryland) (on file with the North Carolina Law Review) (describing, among other findings, the decline of community participation in two Zimbabwean CAMPFIRE projects and recommending ways to address this decline).

through which the effects of government programs, and, in particular, Opportunity Zones, can be viewed.

Approaches to including community participation in projects range on a broad spectrum.[250] At one end of the spectrum is the Beneficiary Approach.[251] Within the Beneficiary Approach, community members have no role in the decision-making process.[252] This means the Beneficiary Approach does not include the input of community members and involves almost no participation.[253] Conversely, the Participatory Approach directly involves people in the process.[254] Sarah White proffers "four [different] forms of participation: nominal, instrumental, representative, and transformative."[255] White's four forms of participation are different manifestations of the Participatory Approach.[256]

With nominal participation, the participation's purpose is for "display" only.[257] According to White's framework, under this show of participation, the interest of the overseer is "legitimation"—a demonstration of participation in order to grant the overseer legitimacy by way of the supposed involvement and approval of the intended beneficiary.[258] The interest of the lower-power party is "inclusion," or the desire to be acknowledged and retain some level of access, however slight it may be.[259]

The next level of White's framework is instrumental participation, at which point the intent of the participation shifts from merely justifying itself to being a means of efficiency.[260] The interest of the institution shifts toward the goal of making the project more cost-effective, an interest shared by the community or beneficiary to speed up the process and reap the intended benefit sooner.[261] Instrumental participation may involve relying on community members' skills or contributions.[262] For example, the manager of the project may hire community members to build a piece of infrastructure or inquire within the community for the best location for a project or event, rather than

250. *See* JONES & KARDAN, *supra* note 247, at 12–13, 15; Mashinya, *supra* note 249, at 25.

251. *See* JONES & KARDAN, *supra* note 247, at 12–13, 15.

252. *See* Aga et al., *supra* note 246, at 529.

253. *See id.*

254. *See id.*

255. Inst. of Dev. Stud., *supra* note 246.

256. *See id.*; JONES & KARDAN, *supra* note 247, at 11–12, 11 fig.3, 12 fig.4.

257. *See* Sarah C. White, *Depoliticising Development: The Uses and Abuses of Participation*, 6 DEV. PRAC. 6, 7–8, 7 tbl.1 (1996) [hereinafter White, *Uses and Abuses*]; Inst. of Dev. Stud., *supra* note 247.

258. *See* White, *Uses and Abuses*, *supra* note 257, at 7–8, 7 tbl.1.

259. *See id.*; *see also* JONES & KARDAN, *supra* note 247, at 12 & fig.4.

260. *See* White, *Uses and Abuses*, *supra* note 257, at 7–8, 7 tbl.1; *see also* Cornwall, *supra* note 247, at 273 tbl.2.

261. *See* White, *Uses and Abuses*, *supra* note 257, at 7–8, 7 tbl.1; E. Kay M. Tisdall, *The Transformation of Participation? Exploring the Potential of 'Transformative Participation' for Theory and Practice Around Children and Young People's Participation*, 3 GLOB. STUD. CHILDHOOD 183, 185 (2013).

262. Inst. of Dev. Stud., *supra* note 246.

looking to outside actors for these needs, which may be less economical or less practical.[263]

Representative participation differs in that it grants community members input in the decision-making process.[264] Accordingly, the goal of representative participation is to allow intended beneficiaries a voice; thus, the individual interests of the parties also change.[265] Naturally, the interest of the community is to maintain a sense of leverage over the project, and the interest of the overseer is ensuring the success and sustainability of the program by lessening the likelihood of dependency.[266]

Lastly, transformative participation involves empowerment; the interest of the lower-power party is to empower themselves into a state of agency and self-determination, and the interest of the institution is similarly to empower the beneficiary.[267] As White explains:

> The idea of participation as empowerment is that the practical experience of being involved in considering options, making decisions, and taking collective action to fight injustice is itself transformative. It leads to greater consciousness of what makes and keeps people poor, and greater confidence in their ability to make a difference.[268]

The goal of transformative participation is to reshape the two parties' relative positions of power.[269] Specifically, participation must consist of a transfer of power and control.[270] Essentially, transformative participation requires action both by the powerful people at the top and those without such power.[271] For example, meaningful participation can be viewed as involvement in "decision-making processes, in implementation and evaluation, and in benefit sharing."[272]

Another scholar, Sherry Arnstein, developed a similar framework for evaluating participation.[273] Arnstein's Ladder of Citizen Participation includes

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263. *See* White, *Uses and Abuses*, *supra* note 257, at 8 (providing an example of instrumental participation).

264. Inst. of Dev. Stud., *supra* note 246.

265. *See* JONES & KARDAN, *supra* note 247, at 12 fig.4; *see also* White, *Uses and Abuses*, *supra* note 257, at 8 (providing an example of representative participation in Bangladesh).

266. JONES & KARDAN, *supra* note 247, at 12 fig.4; White, *Uses and Abuses*, *supra* note 257, at 8; *see also* Tisdall, *supra* note 261, at 185.

267. *See* JONES & KARDAN, *supra* note 247, at 12 fig.4 (acknowledging that transformative participation focuses on empowering community members to make their own decisions and to act).

268. White, *Uses and Abuses*, *supra* note 257, at 8–9; *see also* Tisdall, *supra* note 261, at 185.

269. *See* White, *Uses and Abuses*, *supra* note 257, at 8–9.

270. *See* CREATIVE COMMONS, *supra* note 249, at 31.

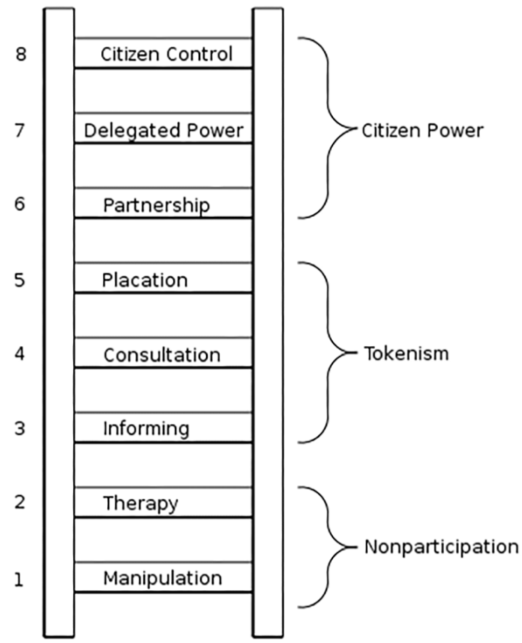
271. *Id.*

272. Mashinya, *supra* note 249, at 26; *see also* JONES & KARDAN, *supra* note 247, at 12.

273. Sherry Arnstein was a social worker. *Sherry Arnstein Biography*, AACOM, https://www.aacom.org/become-a-doctor/apply-to-medical-school/pay-for-medical-school/sherry-r-

eight degrees of participation: (1) manipulation, (2) therapy, (3) informing, (4) consultation, (5) placation, (6) partnership, (7) delegated power, and (8) citizen control.[274] Arnstein's ladder is a more linear characterization of the levels of participation, the different degrees hinging on the level of input or control by the community.[275]

Figure 1: Arnstein's Ladder (1969), Degrees of Citizen Participation[276]



Arnstein's framework includes a different level of classification: steps 6–8 on the ladder are categorized as "degrees of citizen power," 3–5 as "degrees of tokenism," and 1–2 as "nonparticipation."[277] Such a hierarchical model

arnstein-minority-scholarship/sherry-arnstein-biography [https://perma.cc/R5HQ-LXA7]. She also worked for the Kennedy Administration as a special assistant to the assistant secretary for the United States Department of Housing, Education, and Welfare. *Id.* She continued her work under the Johnson Administration. *Id.* Sherry Arnstein developed the degrees of citizen participation to articulate the social hierarchy and ways in which individuals and government agencies interact. *Id.*

274. *See* JONES & KARDAN, *supra* note 247, at 10–11.

275. *See id.*

276. Crispin Butteriss, *"Ladder of Citizen Participation" by Sherry Arnstein Revisited*, GRANICUS: CMTY. ENGAGEMENT, https://granicus.com/blog/ladder-of-citizen-participation/ [https://perma.cc/EWU6-BQCG].

277. *See* Sherry Arnstein, *A Ladder of Citizen Participation*, 35 J. AM. INST. PLANNERS 216, 216–24 (1969).

necessarily suggests that situations falling within the higher value steps on the ladder are more likely "true" manifestations of community participation.[278]

Some scholars have criticized such models as lacking nuance and overlooking possible needs and desires of a community in furtherance of the notion of "better" participation.[279] Jules Pretty suggests a different categorization approach in his typology of participation that lists different participation approaches and their characteristics in a nonhierarchical manner.[280] Some scholars suggest that a commitment to participation must be clear, specific, and tangible.[281] Specifically, "clarity through specificity" would allow for substantive and meaningful participation.[282] Andrea Cornwall explains that "clarity through specificity" means "spelling out what exactly people are being enjoined to participate in, for what purpose, who is involved and who is absent."[283] Participation must have clear objectives and employ appropriate techniques.[284] All of these participation theories suggest that the level that a community participates in a government or charitable program can vary depending on the interests between the two parties, the goals of the program, and the opportunity for participation.[285]

Exploring scholars' various categorizations of degrees of participation creates a lens through which the effects of government programs and philanthropic actions can be viewed. Specifically, these degrees can better illustrate the relationship between the parties in these situations, with greater discernment of power imbalances. As previously noted, some of these frameworks suggest a hierarchy of participation wherein the "most" participation appears the most just. However, it is vital to recognize these

278. *See* Inst. of Dev. Stud., *supra* note 246.

279. *See* JONES & KARDAN, *supra* note 247, at 12.

280. *See* Jules N. Pretty, *Participatory Learning for Sustainable Agriculture*, 23 WORLD DEV. 1247, 1252 (1995). Jules Pretty is an author and Professor of Environment and Society at University of Essex. *Professor Jules Pretty*, UNIV. OF ESSEX, https://www.essex.ac.uk/people/PRETT50806/Jules-Pretty [https://perma.cc/4RNH-GMT4 (staff-uploaded archive)]. Jules Petty's view of participation is progressive. *Models of Participation*, 360 PARTICIPATION, https://360participation.com/models-of-participation/ [https://perma.cc/4BMP-4W5K].

281. *See* Cornwall, *supra* note 247, at 278, 281. Andrea Cornwall is a Professor of Global Development and Anthropology at King's College London. *Andrea Cornwall*, KING'S COLL. LONDON, https://kclpure.kcl.ac.uk/portal/en/persons/andrea.cornwall [https://perma.cc/NCE2-668Q].

282. *See generally* John M. Cohen & Norman T. Uphoff, *Participation's Place in Rural Development: Seeking Clarity Through Specificity*, 8 WORLD DEV. 213 (1980) ("[P]rovid[ing] some order to the emergence of participatory concerns in the development literature, and . . . offer[ing] a carefully elaborated framework that clarifies the notion of 'rural-development participation' and make[s] it applicable to total-development projects.").

283. *See* Cornwall, *supra* note 247, at 281.

284. *See* Scott Davidson, *Spinning the Wheel of Empowerment*, 1262 CMTY. PLAN. 14, 14–15 (1998); VIVIEN LOWNDES & LAWRENCE PRATCHETT, CLEAR: UNDERSTANDING CITIZEN PARTICIPATION IN LOCAL GOVERNMENT—AND HOW TO MAKE IT WORK BETTER 1, 6 (2006).

285. *See* JONES & KARDAN, *supra* note 247, at 15.

frameworks as tools to better guide our public policy approaches, not as models to adhere to.

Specific to this Article, the nature of the relationships and degrees of participation within the Opportunity Zone program can be analyzed under these frameworks. The Opportunity Zone program reflects the Beneficiary Approach, and interactions between investors and the community at best reach the level of informing, which is rung three on Arnstein's ladder, within the range of "non-participation."[286] By contrast, the proposal this Article will suggest can best be described as "transformative participation" or "partnership" within the frameworks above. The view of this Article is that the Opportunity Zone program and future economic development tax incentives must be reworked to increase community participation. Moral or equitable considerations aside, doing so is necessary because the program does not achieve its stated goals in its current form.[287]

2. Varieties of Participation

In addition to contemplating the proper depth of participation, integrating the asset-based approach and the sustainable livelihood approaches requires a deeper examination of the types of participation in community development and the role of participation in community development. If community development principles are to be successful, the appropriate form of participation must be identified to determine which form will lead to the best results. Opponents of the asset-based approach suggest that it fails to address the power struggles and differences in the community.[288] On the other hand, proponents of the asset-based approach to community development can recognize the need for local and global resources.[289] The participation taxonomy remedies the power differences and struggles that the asset-based approach may need to resolve to be effective.[290] Specifically, transformative participation can acknowledge the power struggles inherent in the asset-based approach and stand in the gap where the asset-based approach to community development is

286. *See id.* at 10–11.

287. Whether there is a moral obligation for individuals to use material resources depends on whether it is viewed from the vantage point of a historian, moralist, or economist. *See* Thomas Francis Moran, *The Ethics of Wealth*, 6 AM. J. SOCIO. 823, 823–24 (1901); *see also* Kaushik Basu, Opinion, *The Ethics of Reducing Inequality*, BROOKINGS INST. (Mar. 30, 2018), https://www.brookings.edu/articles/the-ethics-of-reducing-inequality/ [https://perma.cc/75RG-WT3F].

288. *See supra* Section II.A (discussing critiques of the asset-based approach to community development).

289. *See supra* Section II.A (discussing the asset-based community development approach); *see also* Nel, *supra* note 170, at 269 (describing that global resources are resources outside of the community).

290. *See supra* Section II.C.1 (discussing transformative participation); *see also Challenges of Asset Based Community Engagement*, *supra* note 202.

lacking.[291] The asset-based approach coupled with transformative participation allows communities to utilize internal assets and expertise and requires action by all parties involved. Requiring action by all parties involved considers the need for additional resources and a shift in power and participation to ensure that legislation designed to benefit multiple parties is living up to its intended purpose. Wealth offers the opportunity of influence as it relates to choices, goals, and political power.[292] Therefore, inequality creates limitations as it relates to decision-making, goal-reaching, lack of opportunities, and precluding political influence due to lack of resources.[293] Transformative participation requires participation by both parties so that some of the power in the form of resources and political influence can be transferred from the wealthy to the not-so-wealthy.[294] In other words, for Opportunity Zone reform and future economic development tax incentives to be successful, both parties must participate.

Other scholars suggest that the idea of community participation can be broken down into two scenarios: "organic" participation, wherein community members collectively and independently organize in furtherance of a particular goal, and "induced" participation, wherein community members are compelled by an outside actor such as a donor or a government.[295] As such, community participation can feel and behave differently given the context of the situation.[296] "Induced" participation may be restricted by the disposition of the outside actor and the nature of the government program or the donation.[297]

291. *See supra* Section II.C.1 (discussing transformative participation); *see also* CREATIVE COMMONS, *supra* note 249, at 31; White, *Uses and Abuses*, *supra* note 257, at 8–9.

292. *See* Marjorie E. Kornhauser, *The Morality of Money: American Attitudes Toward Wealth and the Income Tax*, 70 IND. L.J. 119, 157 (1994).

293. *Id.* at 127.

294. *See supra* Section II.C.1 (discussing transformative participation); *see also* White, *Uses and Abuses*, *supra* note 257, at 146–47; James M. Strickland & Nathan Tarr, *Diversity for Access? Legislative Diversity, Identity Group Mobilization, and Lobbying*, 8 J. RACE ETHNICITY & POL. 267, 283 (2023) (suggesting that "[l]obbyists registered in the states continue to reflect poorly the ethnic and racial diversity of the American population"); Jeffrey H. Birnbaum, *Number of Black Lobbyists Remains Shockingly Low*, WASH. POST (Aug. 7, 2006), https://www.washingtonpost.com/archive/business/2006/08/07/number-of-black-lobbyists-remains-shockingly-low/1ad269db-fe18-4967-bb2d-ee2ad8524443/ [https://perma.cc/PN2W-QX58 (dark archive)]; Jeff Patch, *Hispanic Lobbyists Unite To Increase Clout*, POLITICO (Jan. 21, 2007, 4:35 PM), https://www.politico.com/story/2007/01/hispanic-lobbyists-unite-to-increase-clout-002376 [https://perma.cc/92Y5-YD4D]; Jack Frankenfield, *Which Industry Spends the Most on Lobbying?*, INVESTOPEDIA, https://www.investopedia.com/investing/which-industry-spends-most-lobbying-antm-so/ [https://perma.cc/C5VL-KEEK] (last updated Sept. 29, 2022) (noting that pharmaceutical/health products, insurance, electric utilities, electronics manufacturing and equipment, business associations, and oil and gas industries spend the most money on lobbying).

295. *See supra* Section II.C.1 (discussing transformative participation); *see also* GHAZZALA MANSURI & VIJAYENDRA RAO, LOCALIZING DEVELOPMENT: DOES PARTICIPATION WORK? 32 (1996).

296. *See supra* Section II.C.1 (discussing the degrees of participation and the varieties of participation); *see also* MANSURI & RAO, *supra* note 295, at 32.

297. *See supra* Section II.C.1; *see also* MANSURI & RAO, *supra* note 295, at 36.

Community participation under Opportunity Zones would fall under "induced" participation, and, as such, would still be restricted by the kinds of economic development projects that Opportunity Zones allow or suggest.[298]

In many community development contexts, community members are used to extract data regarding what needs to be improved but are discarded when the time comes for implementation.[299] Skhosana argues that participation is vital to the sustainability of community development.[300] More specifically, in order for these projects to be worthwhile, participation must act, in essence, as "a learning-by-doing exercise where plans are made, action [is] taken, lessons [are] learned, and new plans and action take place."[301] This community participation creates a synergy among community members that eventually evolves into the sustainable implementation of development practices.[302] Skhosana also notes that in order for community members to take ownership of the project, they must meaningfully participate and develop a sense of self-reliance that also feeds into future sustainability.[303] Other scholars suggest participation as an argument for equity and empowerment to ensure vulnerable groups are

298. The Clear Participation Model created by Vivien Lowndes and Lawrence Pratchett establishes five enabling factors for impactful participation: what citizens "can do," "like to" do, are "enabled to" do, are "asked to do," and are "responded to" do for meaningful participation. LOWNDES & PRATCHETT, *supra* note 284, at 1, 6. Vivien Lowndes is now an Emerita Professor of Public Policy at the University of Birmingham. *Emerita Professor Vivien Lowndes*, UNIV. BIRMINGHAM, https://www.birmingham.ac.uk/staff/profiles/gov/lowndes-vivien [https://perma.cc/RTH2-NTV4]. Lawrence Pratchett is the Dean of Business, Government, and Law at the University of Canberra. *Lawrence Pratchett*, UNIV. CANBERRA, https://researchprofiles.canberra.edu.au/en/persons/lawrence-pratchett [https://perma.cc/88RW-FL2L].

299. According to the United Nations Secretary-General's Independent Expert Advisory Group (IEAG, 2014), there are systemic barriers to the access and use of data. These barriers limit data's role in sustainable development for all parties involved. *See Big Data for Sustainable Development*, UNITED NATIONS, https://www.un.org/en/global-issues/big-data-for-sustainable-development [https://perma.cc/HGU8-X39D]. *But see* Ayoung Yoon, Andrea Copeland & Paula Jo Anders McNally, *Empowering Communities with Data: Role of Data Intermediaries for Communities' Data Utilization*, 55 PROC. ASS'N INFO. SCI. & TECH. 583, 583 (2018) (suggesting that data intermediaries' organizations can assist in removing barriers); Elsa Falkenburger, *Data Walks: Getting Data into the Community's Hands*, URB. INST. (Nov. 18, 2015), https://www.urban.org/urban-wire/data-walks-getting-data-communitys-hands [https://perma.cc/279Z-A63J (staff-uploaded archive)]. Data Walks is a method used by teachers to see data visually and discuss it with a group. Falkenburger, *supra*. This approach is used in public health to involve residents in data collection, research design, and treats them as research partners. *Id.*

300. *See* Skhosana, *supra* note 210, at 7.

301. *See id.* at 223.

302. *See id.* at 372. The participatory approach is people centered and responds to evolving needs of the community. *Id.* By working with stakeholders, self-reliance begins to form within the community—along with practices that lead to equitable and sustainable development. *Id.* at 376–77.

303. *See* Jennifer Graham, An Evolving Dynamic: Community Participation in Community-Based Coastal Resource Management in the Philippines 28 (Aug. 1998) (Master's thesis, Dalhousie University) (on file with the North Carolina Law Review); *see also* Skhosana, *supra* note 210, at 50, 360.

participating and mobilized.[304] Participation is a process through which community members "control the projects that affect their lives."[305] Participation by local community members can be considered as a method to assist with numerous goals such as sharpening poverty targeting, improving service delivery, expanding livelihood opportunities, and strengthening demand for good governance.[306]

For community-based conservation projects, a researcher developed categories of participation, including participation through compensation and participation through ownership.[307] Participation through compensation involves incentivizing cooperation with the new regimen of community development by granting benefits from the project to community members as compensation for the loss of access to prior resources stemming from the development project.[308] When community members are shown that their participation in the development of their communities is both valued and financially accounted for, it can encourage them to further participate in subsequent schemes that will allow them to reap the benefits of their efforts.[309]

Participation through ownership instead prioritizes a community's control over projects.[310] A project adhering to participation through ownership may cede a higher level of the decision-making process to community members rather than only the benefits that the project accrues.[311] As such, the benefit to the community members may be less immediate, but could inspire high levels of engagement, as those individuals feel empowered with a voice for the direction of their community.

In addressing all of these different interpretations of participation, one might assume that effective participation must comport with these frameworks, and that participation must strive toward what scholars deem to be material and not superficial.[312] However, these frameworks and categorizations merely exist as tools, useful in addressing why a particular program may be failing. Clearly,

304. *See* Andrea Solnes Miltenburg, Sandra van Pelt, Willemijn de Bruin & Laura Shields-Zeeman, *Mobilizing Community Action To Improve Maternal Health in a Rural District in Tanzania: Lessons Learned from Two Years of Community Group Activities*, 12 GLOB. HEALTH ACTION art. no. 1621590, at 7 (2019).

305. *See* Mashinya, *supra* note 249, at 26.

306. *See* Skhosana, *supra* note 210, at 79, 216.

307. *See* Graham, *supra* note 303, at 28. For community-based conservation projects, Robinson developed categories of participation. *Id.* Among the categories are participation through compensation and participation through ownership. *Id.* For community-based conservation projects, the researcher wanted to determine and analyze the Philippines as a case study for participation and equity in Community-Based Coastal Resource Management. *Id.* at 5.

308. *Id.*

309. *Id.*

310. *See id.*

311. *Id.* Essentially, here community members participate in the development of the project. *Id.* at 19.

312. *See supra* Section II.C.1 (discussing degrees and varieties of participation).

participation has no singular manifestation, no perfect method of application.[313] If such is the case, one may question why any program should strive toward community participation at all. At a minimum, "it is vital to pay closer attention to who is participating, in what and for whose benefit."[314] According to Skhosana, the most essential aspect of community involvement at the implementation stage is to develop a sense of ownership of the implemented activity for long-term sustainability.[315] Another scholar notes that when people can genuinely and decisively participate in matters that change their lives, they become self-reliant and empowered.[316]

One of these approaches is asset based, which focuses on leveraging community participation to make better use of the assets already present in the community—people, resources, and expertise—to build sustainable lives and communities.[317] The asset-based approach to community development acknowledges that resources from external sources outside of the community still need to be present within the community.[318] But the asset-based approach must be integrated with a sustainable livelihood approach, which is a community development approach that prioritizes providing sustainable, long-lasting livelihood opportunities to community members rather than providing band-aid solutions that do not address the root of the community's problems.[319] Integrating the asset-based and sustainable livelihood approaches allows for collaboration among community members, local officials, and investors in development.[320]

Participation should be at the forefront of development and not an afterthought.[321] Effective participation must transcend the level of consulting

313. *See supra* Section II.C.1.

314. Cornwall, *supra* note 247, at 269; *cf.* Mashinya, *supra* note 249, at 156 (suggesting that projects "foster the emergence of resilient and democratic local institutions that have consensual legitimacy in the participating communities" and noting that "enduring democratic structures would help protect against elite capture").

315. *See* Skhosana, *supra* note 210, at 147.

316. Community members should actively participate in development from the planning stage through implementation. *See id.* at 66, 230. The top-down approach should be avoided during the implementation phase because project outcomes are unpredictable. *Id.* at 50. Implementation will require a transfer of power and allow decisions to be made by beneficiaries. *Id.*

317. *See supra* Section II.A (describing the asset-based approach to community development).

318. *See supra* Section II.A.

319. *See supra* Section II.A (describing the asset-based community development approach); *see also supra* Section II.B (describing the sustainable livelihood community development approach).

320. *See supra* Section II.B.1 (describing Rebecca Skhosana's research that integrates the asset-based and sustainable livelihood community development approaches).

321. Elizabeth McIsaac, *From Storytelling to Rights-Based Participation*, PHILANTHROPIST J. (Mar. 7, 2023), https://thephilanthropist.ca/2023/03/from-storytelling-to-rights-based-participation/ [https://perma.cc/4GRB-SKWP]; *see also* Yoshira Ornelas Van Horne, Cecilia S. Alcala, Richard E. Peltier, Penelope J.E. Quintana, Edmund Seto, Melissa Gonzales, Jill E. Johnston, Lupita D. Montoya, Lesliam Quirós-Alcalá & Paloma I. Beamer, *An Applied Environmental Justice Framework for Exposure Science*, 33 J. EXPOSURE SCI. & ENV'T EPIDEMIOLOGY 1, 5 (2023).

or informing community members and instead allow community members to act as consultants and inform outsiders of what is occurring in the community.[322] Some scholars in the community development space note that participation requires finances and social standing, which most community members do not possess.[323] Specifically, transformative participation means making resources available and focusing on improving the well-being of community members.[324]

III. FRAMEWORK: INCLUDING ACTIVE AND DIRECT PARTICIPATION BY COMMUNITY MEMBERS

As discussed above, the current scholarship surrounding economic development tax incentives does not address a central feature of successful reform: direct and active participation by community members and investors. The proposed framework in this Article uses Opportunity Zones as an example to focus on designing economic development tools that encourage investors to invest in distressed areas and benefit community residents. The next section will discuss potential solutions to Opportunity Zone reform using transformative participation.

A. *Applicability of Transformative Participation to Opportunity Zone Reform*

Effective community development requires direct and active participation by the most vulnerable members of society, which can be achieved by integrating the asset-based and sustainable livelihood approaches.[325] Effective and meaningful participation must be transformative and offer substantive change that rises above pure performance. Transformative participation should provide community members the opportunity to build wealth. In the Opportunity Zone context, participation must be transformative because investors currently hold too much power over the economic character of these communities, such that community members must be empowered to determine and influence the degree of change that outside actors can impart. Finally, participation must be acknowledged as a process rather than a one-off opportunity for dialogue.

Potential solutions to economic development tax incentives require direct action by all community members. Unfortunately, community members have been excluded from investing in Opportunity Zones under the current Opportunity Zone framework. Transformative participation must offer community members a realistic and tangible opportunity for ownership and

322. *See* JONES & KARDAN, *supra* note 247, at 24.
323. *Id.* at 23.
324. *Id.* at 24.
325. Efforts must be made to ensure that participation is independent of the exclusion of particular groups. *See* Cornwall, *supra* note 247, at 276–78.

asset accumulation. The section below proposes two novel Opportunity Zone reforms. First, investors should be required to buy into the community through a one-time lump sum payment at the time of investment. Second, a percentage of Opportunity Zones should be reserved for current community members.

B. *Require a One-Time Financial Buy-In from Investors Investing in Opportunity Zones*

1. Financial Buy-In

Investors should be required to pay a one-time initiation fee to invest in Opportunity Zones. The funds collected from the one-time initiation fee would create a community Fund in each respective Opportunity Zone. The community Fund would focus on providing capital to invest in Opportunity Zones, as well as creating a microlending program and a home ownership fund. Requiring a financial buy-in would safeguard against investors exploiting communities by ensuring that community members derive some benefit and are not only being pushed out through gentrification.

While no prior program employs the above buy-in requirements, examples of successful programs implementing similar strategies can be relied upon as exemplars for economic development tax incentives.[326] One example is Hope Ministries of Northeast Texas, a nonprofit organization in Mount Pleasant, Texas.[327] Their mission is to "transform lives and alleviate poverty for single moms with children and senior women by offering transformational housing in a Christian environment through a multigenerational community approach."[328] Hope Ministries owns the Landing Event Center.[329] The event center is rented to the community, and all proceeds go toward transforming the lives of single moms and senior women by offering them the opportunity to pursue their academic goals, careers, financial freedom, and homeownership.[330]

Hope Ministries also uses the Family Self-Sufficiency ("FSS") program for its participants. The FSS program is a federal government program.[331] The goal of the program is to help families receiving Housing and Urban

326. *See* Hodge, *supra* note 131 (discussing that Empowerment Zones and New Markets Tax Credits are other examples that provide tax credits to investors but no direct benefit to community members).

327. *See What We Do*, HOPE MINISTRIES, https://www.hopeministriesofnet.org/what-we-do [https://perma.cc/A8ES-EKCP].

328. *Your Impact*, LANDING EVENT CTR., https://www.thelandingofnet.org/impact [https://perma.cc/N5HS-S925].

329. *Id.*

330. *Id.*

331. *See* CTR. ON BUDGET & POL'Y PRIORITIES, BASIC FACTS ABOUT HUD'S FAMILY SELF-SUFFICIENCY PROGRAM 1 (2020) [hereinafter BASIC FACTS], www.cbpp.org/research/housing/basic-facts-about-huds-family-self-sufficiency-program [https://perma.cc/YZC2-REUD].

Development rental assistance increase earnings and save money.[332] The program is intended to assist families so that they no longer need to rely on governmental financial assistance.[333] Each family creates an action plan to determine their respective goals and the steps needed to meet those goals. The FSS program focuses on the specific needs of its participants by collaborating with local partners such as Hope Ministries.[334] Throughout the five or seven years of the program, an interest-bearing escrow (savings) account is created for each FSS program participant.[335] As the participant works toward goals and earned income increases, the Housing Authority makes contributions into the FSS account.[336] When the program is completed, the families receive all the funds credited to their escrow account.[337] The average amount of savings per person is more than $6,000.[338] The success of this program can be attributed at least in part to this mindset of aiding the intended beneficiaries directly, and this strategy can carry over into Opportunity Zones. As the Hope Ministries and FSS programs demonstrate, offering community members the opportunity to engage in transformative participation leads to positive results and self-sufficiency.

The Hope Ministries program coupled with the FSS program has been successful because single mothers have the opportunity to pursue their personal goals.[339] For the FSS, saving $6,000 is a great accomplishment. However, other positive outcomes include: "[A]n academic education, starting career paths, achieving financial freedom, improving credit scores, obtaining driver's licenses, [and] becoming homeowners."[340] Hope Ministries partners with local businesses to ensure that participants receive steady employment.[341] Hope Ministries also owns affordable housing where participants live until they are prepared to purchase a home.[342] For example, Janet enrolled in the program as a single mother.[343] In as little as a year, Janet had stable employment and

332. *Id.*

333. *See id.*

334. *See id.*; *What We Do*, *supra* note 327.

335. BASIC FACTS, *supra* note 331, at 1.

336. *Id.* The Family Self Sufficiency Program also helps with transportation, childcare, family and personal counseling, youth services, and drug and alcohol treatment and counseling. *Id.* at 3.

337. *Id.* at 4.

338. *Id.*

339. *See Single Moms*, HOPE MINISTRIES, https://www.hopeministriesofnet.org/single-moms [https://perma.cc/7YDJ-3U7R].

340. *Id.*

341. *See Janet's Testimony*, HOPE MINISTRIES (Aug. 27, 2019), https://www.hopeministriesofnet.org/testimonies/janets-testimony [https://perma.cc/3GT2-KUMY].

342. *Id.*

343. *See id.*

housing.[344] She also graduated with three degrees: her GED, a degree from Mt. Pleasant Police Academy, and her Law Enforcement Certification.[345]

Under Opportunity Zone legislation, investors are not required to direct funds toward projects that positively impact, benefit, or serve the needs of communities. As a result, investors are investing in projects that provide high returns (for example, luxury housing) in already-developed areas within Opportunity Zones.[346] This behavior continues to price out existing community members in rapidly gentrifying neighborhoods.[347] A financial buy-in would better ensure that community residents benefit from Opportunity Zones. In addition, a financial buy-in would help provide the capital needed in low-income areas. Currently, investors reap benefits with no accountability to community members.[348] The buy-in would create a Fund for community members to buy a home, start a business, or invest in Opportunity Zones.[349] The buy-in Fund may also grant Opportunity Zone residents the unique opportunity to engage economically with the projects being undertaken in their neighborhoods.

As the goal is to develop a strategic plan to ensure participation and cooperation, inaction by investors is not an option. Opportunity Zone reform must include active and direct participation to fulfill its legislative intent. Community members should be incorporated into every level of community development.[350] Therefore, Opportunity Zone reform must consider community members' livelihoods and ways projects will affect them. Reform must do more than purport to offer benefits and opportunities for all and must create specific rules that sharply reduce the distance between the program's goals and its current state. Requiring an investor buy-in will ensure active and direct participation by investors because investors will be required to buy into the community prior to investing in an Opportunity Zone. This will ensure that community members would receive some benefit and investors would not continue to receive tax incentives without potentially positively impacting the community.

344. *See id.*

345. *Id.*

346. *See* Drucker & Lipton, *supra* note 8; *see also* Elliott et al., *supra* note 7.

347. *See generally* Powell & Spencer, *supra* note 18 (discussing gentrification).

348. *Cf.* RICHARDSON ET AL., *supra* note 5, at 7–8 (discussing features of the TCJA which leave investments vulnerable to "gaming," favoring high returns over social benefits).

349. A community member must have lived there for over a year. This will ensure that individuals cannot move into communities automatically to draw on the funds. *See* Jennifer Schell, *Residency Requirements by State*, ANNUITY.ORG, https://www.annuity.org/personal-finance/taxes/residency-requirements-by-state/ [https://perma.cc/XN88-NFHE] (last updated Dec. 8, 2023) (stating that states like Connecticut and Oklahoma base residency on living in the state for the entire tax year).

350. *See* JONES & KARDAN, *supra* note 247, at 12.

Opponents of the buy-in might suggest that a buy-in will discourage investors from investing.[351] However, the key benefit of the Opportunity Zone program is the ten-year permanent exclusion allowed as a result of investing in an Opportunity Fund.[352] The buy-in fee is not likely to discourage investors because the buy-in amount will not make the investment in Opportunity Zones more expensive than it would have been without the benefits. Additionally, investors are currently investing in projects they would invest in whether or not they were present in Opportunity Zones, indicating that the Opportunity Zone program in its current state is not strongly incentivizing investment.[353] For example, preliminary research shows that investors are investing in areas that were already undergoing gentrification and development.[354] Some of these investments include real estate, self-storage spaces, and cryptocurrency mining facilities which do not positively impact the lives of residents.[355]

This buy-in has broader implications outside of Opportunity Zone legislation. It should guide how policymakers think about ensuring that community members garner some direct and tangible benefit from economic development tax incentives. Asset-based community development relies on assets already in the community.[356] However, assets from external resources are welcomed as long as community members have input into how the funds will be used.[357] To have input, community members must have a voice and power to live sustainable lives.[358] This is why transformative participation stands in the gap; and requires participation by investors and community members.[359] In this proposal, the buy-in essentially shifts finances from investors to community members. Community members will participate in managing the Fund and will

351. While this proposal may lessen the tax break to investors, it does not completely wipe out the tax benefits associated with the Opportunity Zone program. The goal is to encourage investors to invest in low-income communities. This proposal offers options that could potentially allow investors to continue receiving tax benefits while communities are being improved so that it is a win-win situation for all parties involved.

352. I.R.C. § 1400Z-2(c).

353. *See* Kennedy & Wheeler, *supra* note 6, at 11–13; *see also* Drucker & Lipton, *supra* note 8.

354. Kennedy & Wheeler, *supra* note 6, at 26; *see also* Drucker & Lipton, *supra* note 8.

355. Kennedy & Wheeler, *supra* note 6, at 11–13; Press Release, U.S. Senate Comm. on Fin., Wyden Continues Opportunity Zone Oversight, Probes Possible Cryptocurrency Industry Exploitation of Program (Mar. 28, 2022), https://www.finance.senate.gov/chairmans-news/wyden-continues-opportunity-zone-oversight-probes-possible-cryptocurrency-industry-exploitation-of-program [https://perma.cc/S2R9-C8VH]; Jennifer Nagorka, Opinion, *Opportunity Zone Tax Breaks Shouldn't Go to Another Self-Storage Facility in a Low-Income Neighborhood*, DALL. MORNING NEWS (Feb. 23, 2020, 2:00 AM), https://www.dallasnews.com/opinion/commentary/2020/02/23/opportunity-zone-tax-breaks-shouldnt-go-to-another-self-storage-facility-in-a-low-income-neighborhood/ [https://perma.cc/22DH-4YV7 (staff-uploaded, dark archive]; *see also* Drucker & Lipton, *supra* note 8; Atkinson, *NFL Stadium Neighborhoods*, *supra* note 22.

356. *See supra* Section II.A (discussing asset-based community development approach).

357. *See supra* Section II.A.

358. *See supra* Section II.B.1 (discussing transformative participation).

359. *See supra* Section II.B.1.

be eligible for funds to participate in homeownership, business formation, and fractional investing within the community so that as the community is developing they will not necessarily be displaced or derive no benefit. The buy-in will ensure active and direct participation by community members in two ways. First, community members will be elected to manage the buy-in Fund. Second, community members will have access to the buy-in funds. This will offer an option for community members to actively and directly participate by utilizing the funds to invest in a home, a business, or fractional investing which has the ability to improve livelihoods. Essentially, a buy-in will force the Opportunity Zone program to consider communities' livelihoods.

2. Determining the Buy-In Amount

There are various ways to approach determining the amount of the proposed buy-in. These approaches include but are not limited to a flat amount, a percentage of investment, or an amount equal to the deferred tax savings. One potential approach might focus on determining the buy-in amount using the amount deferred as a result of investing in an Opportunity Fund and offering a corresponding 80% tax credit. This option is likely one of the best approaches because it will not discourage investors from investing in Opportunity Zones while allowing communities to benefit.

As noted above, investors must hold their investments in an Opportunity Fund for seven years to receive a 15% tax exclusion from their initial capital gain amount invested. An investor receives a 10% step-up in basis after five years and an additional 5% after seven years.[360] To be eligible for the 10% step-up basis, an investor must have invested in an Opportunity Fund by December 31, 2021.[361] If an investor had invested by December 31, 2019, the tax on their initial capital gain amount would have been deferred until December 31, 2026.[362]

For example, recall the investor described above, who sold a business and had a capital gain of $20 million from the sale.[363] Assume that the gain is taxed at 20% and that the taxpayer must pay $4 million (specifically, $20 million × 20%) in taxes due to the business's sale. However, if the investor invested the $20 million in an Opportunity Fund, the taxpayer could delay paying that $4 million in tax. Specifically, if the investor invests in an Opportunity Fund, the investor gets to exclude 15% of the taxable gain. Here, that's $3 million excluded

360. *See* I.R.C. § 1400Z-2(b)(2)(B)(iii)–(iv).

361. *See QOF Investment by December 31, 2021 Required To Maximize Federal Qualified Opportunity Zone Tax Benefits*, VORYS (Sept. 27, 2021), https://www.vorys.com/publication-QOF-Investment-by-December-31-2021-Required-to-Maximize-Federal-Qualified-Opportunity-Zone-Tax-Benefits [https://perma.cc/G3LQ-EWMZ (staff-uploaded archive)].

362. *See* I.R.C. § 1400Z-2(a)(1), (b)(1).

363. *See supra* Section I.B (providing a hypothetical to illustrate the benefits of investing in Opportunity Zones).

out of the $20 million gain. The result is tax savings of $600,000 (specifically, $3 million × 20%).[364] Additionally, if the taxpayer holds the investment for at least ten years, the taxpayer will not pay any tax on the capital gain, which is the difference between the purchase and sale prices.[365]

Determining the buy-in amount is no easy feat because each investment is different, and the value of money in different cities allows for different investments. The buy-in amount must be calculated the same way for each Opportunity Zone investment. For consistency and efficiency purposes, the buy-in amount could be determined based on the amount that would have been excluded due to deferral. In the above example, an investor's buy-in amount would be $3 million, which would have been excluded from tax if the investment was held for seven years. The goal is to have a buy-in amount that would benefit the community without being so costly as to reduce the incentive to invest. Overall, the risk of investors being discouraged from investing may be overstated because, so far, many of them have been continuing to invest in projects they were already interested in, whether or not they were located in Opportunity Zones.[366]

The buy-in amount would apply prospectively.[367] To ensure that investors continue to invest, they would receive a tax credit for the amount invested in the community Fund. One potential approach includes limiting the amount of the tax credit and ensuring that the tax credit would not be refundable. This means an investor would only be able to benefit from the credit if they have taxable income.[368] The tax credit would be limited to 80% of the investor's

364. For an example calculation, see *supra* notes 97–99, 103–05 and accompanying text (calculating the deferral of tax benefit on $20 million and the ultimate tax due after investing in an Opportunity Fund and holding the asset for the requisite five and seven years).

365. I.R.C. § 1400Z-2(c).

366. *See* Elliott et al., *supra* note 7.

367. Applying the buy-in prospectively may cause some communities to miss out on funds from prior investments. To remedy this, a payment in lieu of the initial buy-in amount can be contributed to a community cause. One issue that plagues many communities is children's school lunch debt. *See* Melanie Hanson, *School Lunch Debt Statistics*, EDUC. DATA INITIATIVE, https://educationdata.org/school-lunch-debt [https://perma.cc/W6MT-HHZP] (last updated July 8, 2023) (describing average annual lunch debt per child in 2023); *see also* Hilary Burns, *Taxing Times*, BUS. J. (Jan. 25, 2021), https://www.bizjournals.com/bizjournals/news/2021/01/25/colleges-taxes-endowments-cities-covid-19-budgets.html [https://perma.cc/5F2Z-HH5N (staff-uploaded, dark archive)] (describing analogous "payment in lieu of taxes" ("PILOT") program in Boston encouraging universities to make community support contributions in light of tax exemptions on their property and endowments).

368. *See* I.R.C. § 63 (defining taxable income and explaining how to calculate taxable income). Assume an investor does not have taxable income and has a $100,000 tax credit from investing in an Opportunity Zone. The investor would not be able to use the $200,000 credit and would have to carry it forward to a year that they have sufficient taxable income to offset.

taxable income.[369] This means the tax credit would not be allowed to wipe out their entire tax liability. Employing this plan would require an amendment to the Internal Revenue Code, which would need to be passed by Congress.

Requiring meaningful commitment by investors through a financial buy-in comports with the asset-based community development approach and the transformative participation framework.[370] The buy-in fits into the participation framework because it acknowledges that all parties must be involved in the solution to have transformative participation. The buy-in acknowledges that for the Opportunity Zone legislation to be effective and not harmful to the residents it was intended to benefit, investors must be required to participate in and bring meaningful value to the community. Specifically, investors would have to pay to play. The Opportunity Zone legislation's most significant tax benefit is the ability to invest in an asset and hold it for ten years so that one's entire gain upon the sale is excluded.[371] Therefore, a buy-in with a corresponding 80% tax credit would not discourage investors from investing because the ability to exclude the appreciation of an asset invested in an Opportunity Fund far outweighs the proposed buy-in requirement.[372]

369. *Cf.* I.R.C. § 172(a) (limiting net operating loss limitation to 80% of taxable income); I.R.C. § 960(d)(1) (limiting foreign tax credit usage to 80% for global intangible low-taxed income). Assume an investor has taxable income of $100,000 and a $100,000 tax credit from investing in an Opportunity Zone. Because the tax credit will be limited to 80% of the investor's taxable income, the investor would be allowed to use $80,000 of the credit to offset his $100,000 of taxable income. This means the investor would be subject to tax on $20,000. The investor would be able to carry forward the remainder $20,000 tax credit to the next tax year.

370. There are concerns that investors may view this requirement simply as another box to check to receive their tax break rather than as an essential piece in their engagement with a community. However, there are ways to address this. An additional tax credit could be offered for investors who help improve average income, unemployment, or other living conditions within communities. For example, outside investors would be responsible for assisting community members in increasing their credit scores. If the investors succeed, those investors would receive an additional tax credit. Another potential solution could be to propose a separate tax on Opportunity Zone investment returns that would go directly to the community. This means that the more investors benefit, the more the community members benefit. Another potential proposal could include providing an additional tax benefit for improvements in community livelihood. Specifically, investors could be compelled to contract local workers and businesses for their development projects, checking two boxes at once. It would grant the investors an actual stake in ensuring the success of the individuals in the community, not just in the localized success of their development projects.

371. *See* ECON. INNOVATION GRP., THE TAX BENEFITS OF INVESTING IN OPPORTUNITY ZONES 1 (2018), https://eig.org/wp-content/uploads/2018/01/Tax-Benefits-of-Investing-in-Opportunity-Zones.pdf [https://perma.cc/H8L8-EMCD]; TAX POL'Y CTR., TAX POLICY BRIEFING BOOK 479 (2020), https://www.taxpolicycenter.org/sites/default/files/briefing-book/tpc_briefing_book-may2022.pdf [https://perma.cc/Y6K3-SNVC].

372. Some opponents may object to the potential solutions described because they would view them as being too expensive for the government. However, it should be noted that empowering persons in Opportunity Zones will likely increase their taxable income with the result that some of the revenue loss from the credit may be offset by the increased tax revenue from the residents.

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Additionally, the buy-in requirement grants families the ability to accumulate assets to build generational wealth. By assisting residents with homeownership or business ownership, the buy-in requirement would grant future Opportunity Zone residents the opportunity to invest. A family granted assistance in capital accumulation today would assist with creating generational wealth for the future. A family that buys a house today would have an asset that could be passed down and sold, giving their children a realized capital gain, with which they could invest in the Opportunity Zones in which their neighborhoods lie.

The buy-in amount satisfies the asset-based approach because it allows community members to participate through the use of internal resources, such as people within the community and community assets coupled with external resources. It gives community members the opportunity to be empowered through ownership. Specifically, the buy-in acknowledges that resources from outside of the community still need to be present within the community. However, the external sources must coincide with a focus on what community members need. Requiring a buy-in amount would provide the necessary capital for community members to invest in a house, a business, or an asset via fractional investing. This comports with transformative participation because it requires a transfer of power through financial resources to community members and allows them to determine what benefits them.

3. Managing the Community Fund

Another consideration is how the community Fund would be managed. This includes issues such as who should manage the Fund and how exactly funds should be distributed. The goal of fund management is to ensure that no parties except the community members have political influence so that the management is as free of corruption as possible.

One possible method for managing the Fund could involve an elected board of members responsible for allocating fund resources. This elected board could comprise nonprofit-affiliated members, civil servants, business-minded individuals, religious leaders, community members, real estate professionals, and one unrelated party. Having the board elected ensures that these funds are managed by individuals genuinely representing community members and their needs. However, it could also open the door to lobbying and manipulation.[373] To counteract this, first, the system could exclude as candidates career politicians, lobbyists, and other groups that would create a conflict of interest

373. *See generally* JOHN CRAIG & DAVID MADLAND, CTR. FOR AM. PROGRESS, HOW CAMPAIGN CONTRIBUTIONS AND LOBBYING CAN LEAD TO INEFFICIENT ECONOMIC POLICY (2014), https://www.americanprogress.org/article/how-campaign-contributions-and-lobbying-can-lead-to-inefficient-economic-policy/ [https://perma.cc/ZMS4-YBZQ] (discussing the role lobbying plays in influencing policy).

that may harm the community. Second, rather than leaving candidates to fundraise for their campaigns, campaigns could be funded by a small portion of the Fund, eliminating potential conflicts of interest through wealthy or influential campaign donors.[374] Finally, these elections could run concurrently with regular elections.[375] They could be administered by the secretary of state of each state on regular election ballots to ensure the highest possible level of civic engagement. This solution certainly is not foolproof, as many issues surrounding voter suppression could exist, especially in lower-income and minority communities.[376]

The elected board would be responsible for reviewing applications and dispersing funds. For example, the elected board members would accept applications from residents within Opportunity Zones. Depending on the amount in the Fund, the elected board members might have specific funds to allocate to homeownership, businesses, and fractional investing. There could be a public website that shows how much funding will be dispersed each year and how many people received the funds for homeownership and businesses, with corresponding amounts. Such a website would ensure another layer of protection from corruption.[377]

For example, assume a community member who lives in an Opportunity Zone in Pasadena, California, wants to apply for funds to help purchase a home. The community member would apply to the Fund.[378] The elected board members would review each application blindly.[379] All applications would be reviewed by each board member separately.[380] Once each board member has determined the score based on a predetermined rubric, the elected board would host a meeting to discuss and decide by majority vote to ensure that each member is on the same page.[381] Community members who are chosen must

374. Opponents of the proposal may argue that wealthy community residents could spend their own money in an election, giving them an advantage. One potential solution would be to implement resident requirements associated with who is eligible to run for a board member position and require background checks and references.

375. *See* Christopher Warshaw, *Local Elections and Representation in the United States*, 22 ANN. REV. POL. SCI. 461, 462 (2019) (noting that low voter turnout is due to local elections not being held concurrently with federal elections).

376. *See generally* Kyle Pitzer, Gena Gunn McClendon & Michael Sherraden, *Voting Infrastructure and Process: Another Form of Voter Suppression?*, 95 SOC. SERV. REV. 175 (2021) (discussing infrastructure and processes of voting and how it leads to voter suppression).

377. Additionally, a local government agency should complete an independent review of any complaints or concerns about how the Fund is run.

378. Potential application requirements might include current paystubs, credit score, current address, and references.

379. This means the elected board members cannot determine the applicant's gender or race.

380. Once each board member is on the same page, depending on the number of eligible applicants, board members might have to conduct some form of a blind lottery to choose the applicants.

381. Each board member would give each applicant a score based on income, creditworthiness, and reputation.

provide documentation associated with homeownership and monthly mortgage payments to ensure the money is being used properly. The application process for business ownership would run just as the homeownership application process.

The oversight process described above to manage the Fund reflects the principles of asset-based development and transformative participation. The management of the Fund satisfies the asset-based approach—it acknowledges that people within the community have the expertise necessary to be elected on the board because they know what is taking place in the community and what is needed in the community. The oversight process for the funds also satisfies transformative participation because it allows community members an active and direct role in dictating how the Fund would be managed and operated.

C. *Involve Community Members Through Access and Asset-Accumulation Options and Opportunities*

This section discusses the various options community members can explore when applying for resources from the community Fund. The options discussed below are homeownership, business ownership, and fractional investing.

An asset is usually a "stock" that can be drawn upon, built upon, or developed, as well as a resource that can be shared or transferred across generations.

> As the poor gain access to assets, they are more likely to take control of important aspects of their lives, to plan for their future and deal with economic uncertainty, to support their children's education achievements, and to work to ensure that the lives of the next generations are better than their own.[382]

Historically, government policies have prevented the wealth accumulation of impoverished people, especially people of color. For example, government policies and approaches, like replacing welfare programs with tax credits, and even more egregiously, excluding Black people from New Deal programs through policies like redlining, have resulted in an inability to build

382. GARY PAUL GREENE & ANNA HAINES, ASSET BUILDING & COMMUNITY DEVELOPMENT 15 (4th ed. 2016) (quoting Melvin Oliver, the former vice president of the Ford Foundation), https://sk.sagepub.com/books/asset-building-and-community-development-fourth-edition/i644.xml [https://perma.cc/F3W9-5VVU (dark archive)]. *See generally* ASSETS FOR THE POOR: THE BENEFITS OF SPREADING ASSET OWNERSHIP (Thomas M. Shapiro & Edward N. Wolff eds., 2001) (detailing various aspects of the asset-based approach to fighting poverty and analyzing various policy proposals). Access to money, education, and opportunity positively impacts lives. Therefore, the lack thereof negatively impacts lives. Suppose people do not develop and learn essential habits to serve their future in a low-risk environment. In that case, this will have dire consequences on the back end.

generational wealth.[383] Unfortunately, the Opportunity Zone program is on track to continue this legacy of neglecting asset accumulation for impoverished communities of color. As such, a reform proposal for economic tax development incentives must include capital accumulation by community members.

Specifically, reform requires viewing community members as willing and able participants, empowered to make decisions impacting their community rather than as helpless bystanders onto whom aid must be inflicted. Community participation must be implemented and continually evaluated, ensuring it is an evolving process, not just a one-off opportunity for inconsequential dialogue and perpetual inaction. Finally, participation must be sustainable and implemented with vision and intention.

1. Homeownership

Supporting homeownership is one potential option community members could explore for the community Fund. Homeownership is valuable because it is one way to create a built-in savings account and pass down wealth.[384]

The intergenerational wealth transfer for property occurs in part through a step-up in basis. When someone dies while holding assets, the tax code allows heirs and devisees to take those assets with a basis that is stepped-up to the assets' fair market value at the time of death.[385] This rule enables families to pass down property through generations while allowing heirs to avoid paying taxes on the appreciation of the property that occurred during the decedent's lifetime.[386] The benefit of stepped-up basis is that the inheritor can retain more gain from the asset's sale, granting them greater wealth to purchase another asset or meet expenses. As such, the descendants of families who cannot afford homeownership cannot reap the benefit of untaxed asset appreciation and stepped-up basis.

Additionally, the Internal Revenue Code further exacerbates the gap between renters and homeowners by providing several tax benefits for

383. *See* Charles L. Nier, III, *Perpetuation of Segregation: Toward a New Historical and Legal Interpretation of Redlining Under the Fair Housing Act*, 32 J. MARSHALL L. REV. 617, 618 (1999); EZRA ROSSER, HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY 1, 2–7 (2019) (discussing a brief history of the welfare system and welfare reform in the United States).

384. *See* Thomas M. Shapiro, *Race, Homeownership and Wealth*, 20 WASH. U. J.L. & POL'Y 53, 59 (2006) ("[H]ome equity . . . accounts for 60% of the total wealth among America's middle class.").

385. I.R.C. § 1014(a)(1).

386. *See id.* For example, assume that Bob purchases a home in 1942 for $60,000. His basis in the home is its cost of $60,000. Bob writes a valid will leaving his house to his daughter Tiana. Bob dies in 2020. When Bob dies, the home is worth $1,000,000. As a result, the house's basis will go from $60,000 to $1,000,000. Therefore, when Tiana receives the property, her basis in the property will be "stepped-up" to $1,000,000.

homeownership through annual deductions.[387] Suppose a homeowner chooses to itemize deductions (specifically, subtract deductions from their adjusted gross income).[388] In that case, homeownership expenses will reduce their tax liability.[389] Itemized deductions include mortgage interest and property tax deductions.[390] Other benefits include the primary residence exclusion upon the sale of a principal residence.[391] The primary residence exclusion allows a taxpayer who sells their main home to exclude up to $250,000 of the gain from income and up to $500,000 if a joint return is filed.[392]

Thus, one potential disbursement of funds could go toward homeownership. The money collected from the financial buy-in would be contributed to the community Fund to assist community members with a down payment on a home. Homeownership is one of the most prevalent ways that families pass down wealth.[393] Future homeownership is influenced by parental ownership and parental wealth.[394] Specifically, children of less affluent renter households fall behind in accessing critical opportunities to build wealth.[395] Unfortunately, homeownership is an unrealized dream for many due to the lack of affordable housing and persisting systemic barriers that limit access.[396] The funds from the financial buy-in to assist residents within Opportunity Zone

387. *See* Dorothy A. Brown, *Shades of the American Dream*, 87 WASH. U. L. REV. 329, 329 (2009) (discussing how White homeowners on average capture more tax benefits such as the mortgage interest deduction and capital gains exclusion than black homeowners due to greater average home costs and appreciation).

388. *See* I.R.C. § 68.

389. *See* I.R.C. § 163(a); *see also* I.R.C. § 164(a)(1).

390. I.R.C. §§ 163(h)(2)(D), (h)(3), 164(a)(1). Homeownership is encouraged in the Internal Revenue Code. *See, e.g.*, I.R.C. § 163. Homeowners can deduct mortgage interest on indebtedness up to $1 million for homes bought prior to December 14, 2017, and up to $750,000 for homes bought after that date. I.R.C. § 163(h)(3)(B), (F). As a result of the Tax Cuts and Jobs Act, state and local tax deductions are limited to $10,000. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, § 11042, 131 Stat. 2054, 2085–86 (codified as amended at I.R.C. § 164(b)).

391. I.R.C. § 121.

392. I.R.C. § 121(b)(1)–(2). For example, on January 1, 2000, Kennedy, an unmarried taxpayer, bought a home and used it as a principal residence. Kennedy sells the home on January 1, 2004, four years later; she may exclude up to $250,000 on the gain on the sale of her home. If Kennedy is married, she may exclude up to $500,000 on the gain on the sale of her home.

393. *See Homeownership Remains Primary Driver of Household Wealth*, NAT'L ASS'N HOME BUILDERS (Feb. 18, 2021), https://www.nahb.org/blog/2021/02/Homeownership-Remains-Primary-Driver-of-Household-Wealth [https://perma.cc/XBP8-MPF2]; *see also Building Generational Wealth Through Homeownership*, CBC MORTG. AGENCY (Dec. 6, 2021), https://chenoafund.org/building-generational-wealth-through-homeownership/ [https://perma.cc/QLX2-ZN9S].

394. *See* Jung Hyun Choi, Jun Zhu & Laurie Goodman, *Is Homeownership Inherited? A Tale of Three Millennials*, URB. INST. (Aug. 2, 2018), https://www.urban.org/urban-wire/homeownership-inherited-tale-three-millennials [https://perma.cc/N6GJ-N86R (staff-uploaded archive)].

395. *Id.* White parents had an 84% homeownership rate. *Id.* Hispanic parents had a 64% homeownership rate. *Id.* Black parents had a 48% homeownership rate. *Id.* Additionally, the median wealth for White parents is $171,000 compared with $20,700 for Hispanic parents and $17,600 for black parents. *Id.*

396. *See* RICHARDSON ET AL., *supra* note 5, at 21–23.

communities would assist with asset accumulation through homeownership and potentially reduce gentrification.

The homeownership program could be structured similarly to the proposed California Dream for All Program.[397] This program assists potential homeowners by providing them with a 20% down payment on a home.[398] Providing down payment assistance reduces monthly mortgage payments and makes homeownership more accessible.[399] Additionally, an organization like Greenline Housing Foundation in Pasadena, California, is an example of a nonprofit that could serve as an elected board member for the Fund. This organization focuses on: "Closing the Racial Wealth Gap[,] Granting Access to Homeownership[,] Restoring Justice – One Home at [a] Time."[400] Greenline Housing Foundation would fit into the participation models mentioned above because the organization is already present in the community and meeting needs in the community.[401] Directly including nonprofits who already advocate for homeownership would allow for specificity and certainty.[402] This means an organization like Greenline Housing, already providing access to housing or advocating for homeownership, can continue positively impacting the communities they serve.

Further, some scholars consider homeownership as a primary means of creating wealth.[403] As mentioned above, the Internal Revenue Code provides substantial tax benefits to homeowners. Therefore, individuals who are not homeowners are precluded from receiving these tax benefits. Providing funds for homeownership aligns with the asset-based and sustainable livelihood

397. *California Dream for All Shared Appreciation Loan Program*, CAL. HOUS. FIN. AGENCY, https://www.calhfa.ca.gov/dream/index.htm [https://perma.cc/9X25-MU2Q] (describing a loan program in California that would assist with down payments for homeownership).

398. *Id.* If you do not put 20% down on the home using a conventional loan, you will have to include primary mortgage insurance in your mortgage, which means your monthly mortgage payments are more expensive. *See The Math Behind Putting Down Less than 20%*, FREDDIE MAC (July 21, 2022), https://myhome.freddiemac.com/blog/homeownership/20170620-downpayment-math [https://perma.cc/3HUB-AQCV].

399. *See The Math Behind Putting Down Less than 20%*, *supra* note 398.

400. GREENLINE HOUS. FOUND., https://greenlinehousing.org/ [https://perma.cc/5CWF-64D7].

401. *Id.*

402. *Cf.* Cornwall, *supra* note 247, at 281 (defining "'clarity through specificity' [as] spelling out what exactly people are being enjoined to participate in, for what purpose, who is involved and who is absent"); *supra* notes 281–85 and accompanying text (discussing clarity and specificity).

403. *See, e.g.*, Robert Keough, *Sociologist Thomas Shapiro Says That a Lack of Assets, Not Income, Is Holding African-Americans Back*, COMMONWEALTH (Apr. 1, 2004), https://commonwealthmagazine.org/economy/sociologist-thomas-shapiro-says-that-a-lack-of-assets-not-income-is-holding-africanamericans-back/ [https://perma.cc/4DYV-WRP6]; Leslie Cook, *Here's Who Benefited the Most from Homeownership over the Past 10 Years*, MONEY (Apr. 20, 2023), https://money.com/build-wealth-owning-a-home-study [https://perma.cc/A7S7-66FY] (quoting Dr. Lawrence Yun, Chief Economist of the National Association of Realtors: "This analysis shows how homeownership can be a catalyst for building wealth for people from all walks of life.").

approaches coupled with transformative participation. Providing community members with funds for a home allows them to invest in an asset within their community. This allows community members the opportunity to invest in their communities and not be displaced by development and gentrification.[404] Ensuring heightened access to homeownership in low-income communities is a meaningful tool in assisting them to escape the cycle of generational poverty.[405]

2. Business Ownership

A microlending program could also be set up to ensure that community members would have the resources that they need to open businesses within the community and ensure community support.[406] The value of business ownership extends through generations.[407] There are immense benefits to business ownership, such as tax benefits, asset appreciation, employment opportunities, loans, and building wealth.[408]

Thus, the funds collected from the one-time buy-in could also be used to create a microlending program in each community. A microlending program is a loan program that provides loans to small businesses when starting up and expanding.[409] A microlending program can be developed to assist community members with funding for their respective businesses or to buy a community asset such as a business that will produce income. One potential solution to ensuring that communities are benefitting from Opportunity Zone legislation is to design the program similarly to Muhammad Yunus's microlending program. Yunus is the founder of the Grameen Bank, which gives small loans to individuals who are poor and have no collateral.[410] Essentially, Yunus allows

404. Ensuring heightened access to homeownership in low-income communities would be a meaningful tool in assisting them to escape the cycle of generational poverty. *See* Christopher E. Herbert, Daniel T. McCue & Rocio Sanchez-Moyano, *Is Homeownership Still an Effective Means of Building Wealth for Low-Income and Minority Households? (Was it Ever?)* 2 (Harv. U. Joint Ctr. Hous. Stud., Paper No. HBTL-06, 2013), https://www.jchs.harvard.edu/sites/default/files/hbtl-06.pdf [https://perma.cc/S5XU-W6X9] (concluding that owning a home can lead to wealth accumulation).

405. *See id.*

406. *See* Peter Eavis, *Race Strongly Influences Mortgage Lending in St. Louis, Study Finds*, N.Y. TIMES (July 19, 2016), https://www.nytimes.com/2016/07/19/business/dealbook/race-strongly-influences-mortgage-lending-in-st-louis-study-finds.html [https://perma.cc/VWS7-G5GF (staff-uploaded, dark archive)] (discussing mortgage lending not being available to black residents); *see also* Jesse P. Houchens, Comment, *Minority Entrepreneurs and Fast Failure*, 32 BYU J. PUB. L. 257, 280 (2018) (discussing that minority business owners access to capital and good interest rates is lacking).

407. *See generally* Benjamin Means, *Wealth Inequality and Family Businesses*, 65 EMORY L.J. 937 (2016) (discussing the role family businesses play in generation wealth and wealth inequality).

408. *See id.* at 952–53, 967.

409. *See generally* MUHAMMAD YUNUS, BANKER TO THE POOR: MICRO-LENDING AND THE BATTLE AGAINST WORLD POVERTY (2003) (telling the story of Grameen Bank's work in providing tiny loans to the poorest people in Bangladesh to support small enterprise and personal initiative for those whose lack of access to capital keeps them in poverty).

410. *Id.* at 54–58; *see also Muhammad Yunus*, GRAMEEN FOUND., https://grameenfoundation.org/about-us/leadership/muhammad-yunus [https://perma.cc/BGS9-V6C4].

individuals to create a group of at least five unrelated people, which acts as a social network to support each other's business.[411] The group also acts as both encouragement and accountability—as a community.[412] With microcredit, poor individuals will have the opportunity to invest in a trade or skill that can create a stable way of living and an opportunity for economic advancement and sustainable living.[413]

The microlending program could take many shapes. For example, loans could come with incredibly low or zero interest, allowing community members to focus on growing their businesses rather than needing to fixate on repaying their loans. Additionally, repayment on these loans could be deferred until the loan-holder is in a strong enough financial position to begin making payments, again to incentivize business owners to focus on their business and community rather than be prisoners to debilitating debt.[414] Again, the purpose here is to revitalize businesses and communities in need.

A potential method for managing the microlending program might involve creating a managing body responsible for the portion of money delegated to the microlending program. This managing body could be the designated recipient for loan applications, and it would initiate relationships with community members who may benefit from or need a loan. As a result, these loans would be friendlier to community members, as opposed to if they were provided by predatory loan providers who may sink community members into poverty with unreasonable interest rates and unethical practices or larger banks for whom residents of these Opportunity Zones likely lack the necessary capital or financial security required for approval.[415] In this way, a microlending program

411. *See* Joseph E. Stiglitz, *Peer Monitoring and Credit Markets*, 4 WORLD BANK ECON. REV. 351, 352–53 (1990) (describing the aspects of Muhammad Yunus's microlending program).

412. *See* Rashmi Dyal-Chand, *Human Worth as Collateral*, 38 RUTGERS L.J. 793, 826–27 (2007) (discussing the risk of shame associated with not paying back a loan as a participant in Muhammad Yunus's microlending program); *see also* Stiglitz, *supra* note 411, at 361 (attributing success of the Grameen Bank microlending program to peer monitoring).

413. *See* Press Release, United Nations, Microfinance Can Help Poor People Move Beyond Day-To-Day Survival, Says Secretary-General at Launch of International Year of Microcredit, U.N. Press Release DEV/2493-GA/EF/3098 (Nov. 18, 2004), https://press.un.org/en/2004/dev2493.doc.htm [https://perma.cc/97LM-H3DX].

414. Opponents might argue that the model of offering low- or zero-interest-rate loans would not be economically sustainable for the community Fund. The goal of the community Fund is to allow the community members the opportunity to invest in assets they have not been able to due to finances. The community Fund is the vehicle to assist community members. It is an alternative to going to a bank for higher-interest loans or being declined for a loan.

415. *See Access to Credit*, NAT'L FAIR HOUS. ALL., https://nationalfairhousing.org/issue/access-to-credit/ [https://perma.cc/R95E-D79M]; *see also Who's Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System Before the H. Comm. on Fin. Servs.*, 116th Cong. 5 (2019) (testimony of Lisa Rice, President, National Fair Housing Alliance). *See generally* JOE VALENTI & ELIZA SCHULTZ, CTR. FOR AM. PROGRESS, HOW PREDATORY DEBT TRAPS THREATEN VULNERABLE FAMILIES (2016), https://www.americanprogress.org/wp-content/uploads/sites/2/2016/10/DebtTrap-brief.pdf [https://perma.cc/JFM3-38ZH] (detailing the acute risks to the poor of predatory lending practices).

extends services to individuals for whom other lending programs accessible to the rest of the country are systemically out of reach. In this sense, many small businesses owned by those living in poverty are functionally designed to fail because their owners cannot obtain the same resources as those in wealthier areas.[416]

Successful economic development tax incentives such as Opportunity Zones require tangible, sustainable, and effective participation by investors. Community development through business ownership is one pathway to personal and community wealth building. Unfortunately, Opportunity Zone legislation creates no incentive for investments to be directed to minority-owned businesses. If closing the wealth gap is a goal, there must be strategy, cooperation, and active steps toward that intended goal by creating access to business ownership. There is a need for a more holistic, well-rounded strategy that includes individual and community wealth-building objectives while simultaneously addressing social issues, including racism and trust. Microlending directly aligns with the asset-based approach to community development and transformative participation because it provides resources to community members to enable them to leverage their existing strengths and expertise to start small businesses within the community. The small businesses then serve and invest in the local community.

D. *Fractional Investing To Lower the Barrier to Entry*

Fractional investing is extremely valuable because it allows investment in an asset even if the entire investment cannot be purchased.[417] There is a significant barrier to entry for potential investors in Opportunity Zones.[418] In 2019, the average household income of Opportunity Zone investors was $4.8 million, which is in the top 1% of income distribution.[419] To overcome this barrier to entry, a percentage of Opportunity Zones should be reserved for current community members to invest in. I propose that fractional investing

416. *See generally* ROBERT W. FAIRLIE & ALICIA M. ROBB, U.S. DEPT. OF COM., DISPARITIES IN CAPITAL ACCESS BETWEEN MINORITY AND NON-MINORITY-OWNED BUSINESSES: THE TROUBLING REALITY OF CAPITAL LIMITATIONS FACED BY MBES (2010), https://www.mbda.gov/sites/default/files/migrated/files-attachments/DisparitiesinCapitalAccessReport.pdf [https://perma.cc/9RJH-WUMY] (detailing struggles among minority-owned businesses regarding access to resources).

417. Miranda Marquit, *How Do Fractional Shares Work?*, FORBES ADVISOR, https://www.forbes.com/advisor/investing/fractional-shares/ [https://perma.cc/VUV8-6FCE] (last updated Dec. 5, 2022, 1:42 PM).

418. *See supra* notes 107–12 and accompanying text (discussing the requirements to invest in an Opportunity Zone).

419. *See* Jean Ross, *New Research Adds to Evidence That Opportunity Zone Tax Breaks Are Costly and Ineffective*, CTR. FOR AM. PROGRESS (June 16, 2022), https://www.americanprogress.org/article/new-research-adds-to-evidence-that-opportunity-zone-tax-breaks-are-costly-and-ineffective/ [https://perma.cc/8A2T-XBSJ].

would be the best mechanism by which community members could invest in Opportunity Zones.

Fractional investing allows investors to purchase a portion of a stock rather than the entire stock, making investing in quality stocks (those likely to increase in value) affordable for those who cannot afford to purchase an entire share.[420] Fractional investing is now also available in real estate contexts. For example, Fundrise is an online service that allows individuals to purchase fractional shares of commercial real estate without meeting the typical requirement of being an accredited investor.[421] The increasing prevalence and success of fractional investing support the proposal to extend its use to Opportunity Zones and future economic development tax incentives.[422] Fundrise proves that even real estate developments in Opportunity Zones can support fractional investing.[423] Opportunity Zone reform should include an opening for residents to invest in their communities. Creating an opportunity for fractional investing can achieve this by lowering the high barrier to entry that Opportunity Zones currently possess.

Currently, the benefits of the Opportunity Zone program are being realized only by investors rather than communities.[424] As previously mentioned, one reason for this disparity is the extreme power and participation imbalance between the investors and the community members.[425] One way to shrink this disparity would be to remove the barriers that prevent community members from accessing the power to influence and better their community using the Opportunity Zone program. Specifically, reserving a percentage of Opportunity Zones for community members will offer communities a stake in the community so that as it grows, their investment grows.

A potential solution could be the creation of an Opportunity Fund that retail investors could pool their money to invest in. Such a fund could be directed toward local businesses. This creates an avenue for residents to participate in the Opportunity Zone program, giving them a channel to have a say in the projects undertaken in their communities. It also further safeguards residents against the domination of projects that do not benefit them. Allowing residents to invest makes funds with a community focus more likely to succeed because the residents' interests are not merely the accumulation of profit but

420. Marquit, *supra* note 417.

421. *See How It Works*, FUNDRISE, https://fundrise.com/how-it-works [https://perma.cc/97KH-WEVP].

422. *See, e.g.*, *id.*

423. *Cf. Accredited Investor*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/education/capitalraising/building-blocks/accredited-investor [https://perma.cc/XB68-VK39] (last updated July 12, 2023) (discussing the guidelines for accredited investors, which have a high threshold much like investors in Opportunity Zones but unlike fractional investors).

424. *See* Drucker & Lipton, *supra* note 8.

425. *See* Kennedy & Wheeler, *supra* note 6, at 2–4.

also the betterment of their community. As such, giving the community a chance to invest in the Opportunity Zone program gives them the agency to decide which developments they would like to see funded rather than simply those that wealthy outside investors have selected. Creating an Opportunity Fund for local retail investors to participate in the Opportunity Zone program allows community members to benefit as the community improves. The proposal to grant community members access to Opportunity Zone investment would still put outside wealthy investors at an advantage because they are most able to benefit from the tax breaks that the program grants. The current Opportunity Zone legislation gives significant reductions in capital gains tax obligations to investors.[426] Even amending the Internal Revenue Code to remove the capital gain requirement would not necessarily extend these tax benefits to community members due to the minimum investment requirements, which are in the six-figure range.[427] Even so, undertaking this change would still be substantially beneficial because it would, as previously stated, give community members a say and a stake in the development of their community.

Opponents might argue that prescribing a specific use of funds (that is, homeownership, microlending, and fractional investing) violates the principles of asset-based community development and transformative participation. To be clear, homeownership, microlending, and fractional investing are only *potential* options for communities. Other potential options might include building schools or giving neighborhood residents universal basic income.[428] Funds might also be used to give the entire community a collective stake to invest in a community asset such as a grocery store or an affordable housing complex. The goal of this proposal is to offer guidelines with the understanding that communities are not one-size-fits-all and one example or option might not work everywhere.[429]

426. *See* Drucker & Lipton, *supra* note 8.

427. The amendment must either remove the capital gain requirement or provide an exception for investors under a certain income level to bypass the capital gain and time restrictions, allowing them to invest in Opportunity Zones using different sources of income. *See supra* Section I.B (generally discussing how capital gains are only available to the upper class and the minimum investment requirements are in the six-figure range).

428. Universal basic income payments are a series of ongoing payments to all residents based on a certain period. *See* Miranda Perry Fleischer & Daniel Hemel, *Atlas Nods: The Libertarian Case for a Basic Income*, 2017 WIS. L. REV. 1189, 1199–201 (2017) (describing current universal basic income programs); Grossberg, *supra* note 140, at 13–16; Miranda Perry Fleischer & Daniel Hemel, *The Architecture of a Basic Income*, 87 U. CHI. L. REV. 625, 706–08 (2020) (describing how universal basic income should be distributed among individuals). *See generally* Parijs, *supra* note 137 (describing writings from various eras promoting the policy of a basic endowment).

429. Other opponents of the proposal might suggest limiting investor investment opportunities. However, this solution still does not ensure that community members will benefit as it relates to jobs, economic opportunities, or wealth-building opportunities.

The fractional investing proposal aligns with the asset-based and sustainable livelihood approaches to community development. It advances these approaches by providing the resources and giving the community members a chance to invest in what they see fit. Fractional investing will not only give the communities a stake; it will also give them an opportunity to dictate what will be invested in to better their community. This proposal gives community members the opportunity to participate in their communities as the communities are developing and gentrifying.

This proposal acknowledges that outside resources and capital are needed in communities. The outside resources will come from the investor buy-in. The investor buy-in aligns within the asset-based approach to community development for several reasons. First, it acknowledges that external resources are necessary, but community members get the opportunity to decide what is needed versus being told what they need. Second, community members have the ability to invest in assets like a home, business, or a fractional share in an Opportunity Zone within their community so that as the community is developing, they will also be able to benefit.

This proposal perfectly fits into transformative participation because it acknowledges the necessity of a shift of power and control from those in power to those who do not have power. The fund management being operated by people in the community shifts power to community members and the access to resources gives them a voice. Here, community members are viewed as willing and able participants who deserve the best options to suit their lifestyles, and community members will have the ability to participate in a transformative manner. Currently, investors are massively benefiting without positively impacting the community.[430] Requiring investors to buy-in requires them to participate by paying to play.

Successful Opportunity Zone reform or successful future economic development tax incentives requires participation by investors. While this proposal does not cover every potential solution, it discusses principles by which economic development tools should be designed to benefit investors and community members. Sustainable community growth is possible through social-justice-oriented efforts that provide access to resources and the opportunity to accumulate assets. Access to resources empowers communities and allows them to utilize the assets already within their communities to assist in building sustainable lives and establishing and maintaining wealth.

430. *See* RICHARDSON ET AL., *supra* note 5, at 7–8.

CONCLUSION

This Article has argued that Opportunity Zones should be reformed based on community development principles. Drawing on these principles, it has proposed reforms that integrate the asset-based and sustainable livelihood approaches to community development. These approaches prioritize providing sustainable, long-lasting livelihood opportunities to community members rather than providing band-aid solutions that do not address the root of a community's problems. Integrating the asset-based and sustainable livelihood approaches allows for collaboration among community members, local officials, and investors.

Communities should be involved in all levels of economic development. Community members should be active and participate in opportunities designed for them. Legislation should be more than just mere words. There must be a practical agenda specifying who is participating, why they are participating, who is benefiting, and how they benefit. Therefore, transformative participation should be incorporated into Opportunity Zone reform and future economic development tax incentives to ensure community members are not harmed by the legislation designed to benefit them.

Transformative participation means that Opportunity Zone residents must have a voice in the process that goes beyond nominal participation.[431] They must have a stake in the game—a real opportunity beyond meaningless displays or tokenism. Transformative participation requires participation by both parties that focuses on transferring some power from those with power to those without power. Transformative participation as it relates to Opportunity Zone reform must include participation by investors and community members in the decision-making process, in program implementation, and in benefit sharing.[432]

Community members must also have the opportunity to benefit from the legislation passed for their benefit, the opportunity to recognize assets already in the community, and the opportunity to access the capital and resources that they need. These opportunities must materialize for them and carry on for them and their children's children. Reform necessitates a strategy acknowledging that the solution is not one-size-fits-all but a long-term solution that will offer opportunities to vulnerable communities. Opportunity Zones should serve their purpose as an economic development tool that will provide tax benefits and "spur economic growth and job creation in low-income communities."[433] Opportunity Zones must do more than they are doing now, which is primarily functioning as another tax avoidance tool for wealthy investors.[434]

431. *See* White, *Uses and Abuses*, *supra* note 257, at 8 (discussing nominal participation).
432. *See* JONES & KARDAN, *supra* note 247, at 12; Skhosana, *supra* note 210, at 58.
433. *See Opportunity Zones*, *supra* note 64.
434. *See* Drucker & Lipton, *supra* note 8.

Practitioners and academics agree that Opportunity Zone legislation must be reformed. The legislative history posits that Congress intended both investors and community members to benefit from the implementation of the program. While the promise of opportunity is being fulfilled for investors through the receipt of tax benefits, the promise of opportunity is still unfulfilled for community members.