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Today's webinar:

**OPPORTUNITY  
ZONES:  
WHAT DO  
INDIANA SMALL  
BUSINESSES NEED  
TO KNOW?**

## TODAY'S SPEAKERS



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# Opportunity Investment Consortium of Indiana

## Opportunity Zones: What Do Indiana Small Businesses Need to Know?

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Webinar

January 22, 2020, 3:30pm – 5:00pm



# The Opportunity Zone Tax Incentive

- » Enacted as part of sweeping federal tax legislation commonly referred to as the Tax Cuts and Jobs Act of 2017.
- » Internal Revenue Code (IRC) Section 1400Z-2 provides significant tax incentives for taxpayers to reinvest unrealized capital gains in certain property and businesses located or operating in low-income census tracts that Treasury has designated as qualified opportunity zones (“QOZ”).

# The Opportunity Zone Tax Incentive

- » December 22, 2017 – Tax Cuts and Jobs Act
- » October 19, 2018 - 1st Round Proposed Regulations; Rev. Rul. 2018-29
- » April 17, 2019 - 2nd Round Proposed Regulations
- » December 17, 2019 – Final Regulations – Effective March 13, 2020
  - In the interim, rely on final regs OR 2<sup>nd</sup> Round – consistently applied
- » Other guidance:
  - IRS Form 8996, *Qualified Opportunity Fund* (and instructions)
  - IRS Form 8949 Instructions
  - IRS FAQs

# The Opportunity Zone Tax Incentive

- » Census tract determined to be a low-income community.
- » Low-income census tract has individual poverty rate of at least 20% and median family income no greater than 80% of the area median.
- » Governors of each State nominated eligible low-income census tracts and contiguous tracts. In each state, only 25% of qualified low-income census tracts could be designated as Opportunity Zones. Only 5% of the designated Opportunity Zones could qualify as contiguous tracts.
- » The Department of the Treasury then designated the census tracts nominated by each state as QO Zones.
- » QO Zones retain designation for ten years – 2<sup>nd</sup> round of proposed regulations provide that “permanent exclusion” election can be made until 12/31/2047.
- » Treasury has designated QO Zones in all 50 states, the District of Columbia, and five U.S. territories.

# Investor Incentives – Temporary Tax Deferral

- » Temporary Tax Deferral
  - » **TEMPORARY** - Capital gains from the sale of assets can be deferred until December 31, 2026 or the sale of the new investment, whichever is earlier.
  - » Taxpayer uses Form 8949 to elect to defer gain – filed with federal income tax return in the year gain would have been realized.

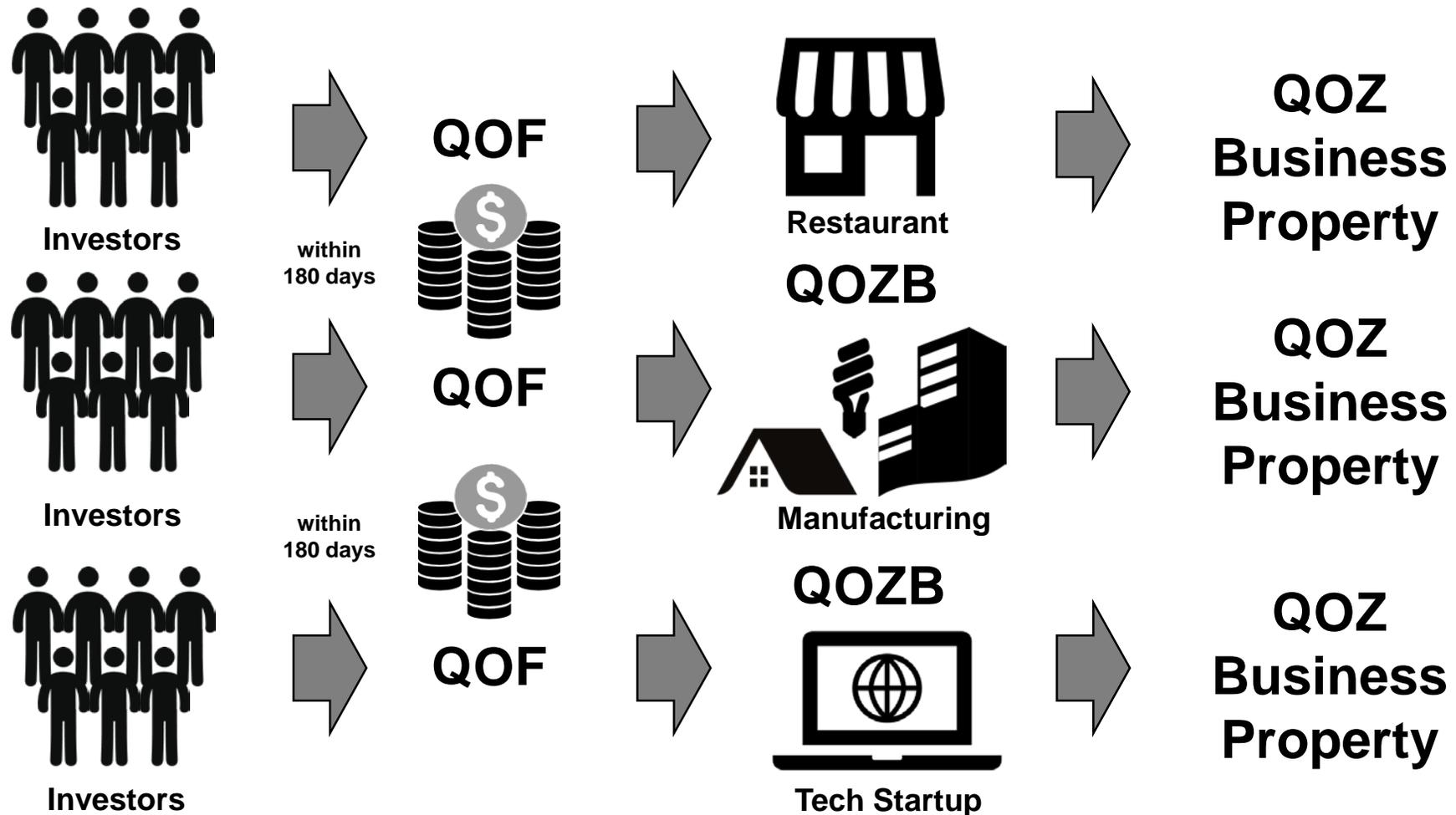
# Investor Incentives – Basis Step-up

- » Basis Step-up
  - » After a 5-year hold Taxpayer excludes 10% of the original capital gain.
  - » After a 7-year hold Taxpayer excludes an additional 5% - 15% total – no longer available to Investors – had to invest in QOF by December 31, 2019.

# Investor Incentives – Permanent Exclusion

- » Permanent Appreciation Exclusion
  - » After a 10-year hold, investors may permanently exclude any capital gains tax on post-acquisition gains.
  - » Claimed as a basis step-up.

# Basic Model for Investment in Operating Business



# What is a Qualified Opportunity Fund (QOF)?

- » A QOF is any investment vehicle organized as either a partnership (including an LLC treated as a partnership for tax purposes) or corporation that was formed for the purpose of investing in qualified opportunity zone property (“QOZ Property”).
- » At least 90 percent of the QOF’s assets must consist of QOZ Property. (90% test – semi-annual test)
- » QOF self-certifies with IRS filing Form 8996. QOF not required to seek pre-approval or related action to operate as a Fund – eliminates delay and complexity often associated with other tax credits and incentives.

# What is QOZ Property?

- » There are three categories of QOZ Property permitted under IRC Section 1400Z-2(d)(2)(A):
  - » Qualified opportunity zone stock (“QOZ Stock”);
  - » Qualified opportunity zone partnership interest (“QOZ Interest”); or
  - » Qualified opportunity zone business property (“QOZ Business Property”).
- » QOF cannot acquire an interest in another QOF.

# QOZ Stock

- » Any stock in a domestic corporation if:
  - a. the QOF acquired the stock after December 31, 2017 at its **original issue** for cash;
  - b. at the time of issue, the corporation was a qualified opportunity zone business (“QOZB”) or was organized to be a QOZB; and
  - c. during **substantially all** of the time the QOF held the QOZ Stock, the corporation qualified as a QOZB.
- » Corporation must qualify as a QOZB during **90% of the holding period** to satisfy the “substantially all” requirement for QOZ Stock.
- » QOF will be acquiring an **equity interest** in the QOZB.

# QOZ Interest

- » Consists of any capital or profits interest in a domestic partnership (including an LLC treated as a partnership for federal tax purposes) if:
  - a. the QOF acquired the interest after December 31, 2017 in exchange for cash;
  - b. at the time the QOF acquired the interest in the partnership, the partnership was a QOZB or was organized to be a QOZB; and
  - c. during **substantially all** of the time the QOF held the interest, the partnership qualified as a QOZB.
- » Partnership must qualify as a QOZB during **90%** of the holding period to satisfy the “substantially all” requirement for a QOZ Interest.
- » QOF will be acquiring an **equity interest** in the QOZB

# QOZB Property

- » Tangible property that a QOF or QOZB purchased after December 31, 2017 and that is used by the QOF/QOZB in a trade or business operating in a QOZ for **substantially all (70%)** of the time that the QOF/QOZB owns the property.
- » The **original use** of the property in the QOZ must begin with the QOF or QOZB, **or** the QOF/QOZB must **substantially improve** the property.
  - » “Original use” – placed in service for purposes of depreciation or amortization – acquire prior to issuance of CO?
  - » Unimproved land – does not need to be substantially improved. Can be treated as QOZ Business Property as long as it is used in a trade or business activity AND more than insubstantial improvement. – “Land Banking” is prohibited.

# QOZB Property – Substantially Improve

- » Property will be treated as “substantially improved” if the basis of the QOF or QOZB in the property increases over a 30-month period beginning at acquisition by an amount that exceeds its initial basis (i.e., the purchase price) in the property.
  - » The improvement expenditures of the QOF or QOZB in the property over the 30-month period must **exceed** the original acquisition price.
  - » Not required to improve underlying land – capital investment attributable to purchase price of building.
- » Property must be used in the OZ at least 70% of the time to satisfy the “substantially all” use requirement for QOZ Business Property.

# QOZB Property – Related Party Restriction

- » To qualify as QOZB Property, the QOF or QOZB can only acquire the property from an **unrelated party** (less than 20% common ownership).
- » Property that a QOF or QOZB purchases in a transaction involving certain prohibited relationships such as individuals from the same family, entities related through common ownership or control, or entities from the same controlled group, may **NOT** be considered QOZB Property.

# What is a QOZB?

## REQUIREMENTS:

1. The activity must be a trade or business in which **at least 70%** of the tangible property owned or leased by the taxpayer is QOZB Property.
2. **50% Gross Income Test**
  - Entity must derive at least 50% of its total gross income from the active conduct of a trade or business within a QOZ.
  - Safe Harbors and a facts and circumstances test for evaluating compliance.

# Encouraging Investment in a QOZB?

- Leasing of real property confirmed to be considered an active trade or business activity for OZ purposes. – However, simply entering into triple net lease is not an active trade or business – permitted as part of larger leasing business.
- Reasonable working capital safe harbor for operating business - planned use of working capital now includes development of trade or business – expanded under final regulations
- Real property straddling a zone may be considered in the QOZ if the cost of the real property inside the QOZ is greater than the cost of the real property outside the QOZ.
- Inventory in Transit - Inventory (including raw materials) of a trade or business does not fail to be “used” in an OZ solely because the inventory is in transit from a vendor to a facility of the trade or business that is in an OZ, or from a facility of the trade or business in an OZ to customers located outside the OZ.
- Leased tangible property can be treated as QOZB property.
  - Lease entered into after 12/31/2017
  - Substantially all of the use of the leased property must be in the QOZ.
  - Market-Rate Lease – arms length terms consistent with market (IRC § 482).
  - No “original use” requirement = No requirement to substantially improve
  - Related party – prepayment restriction; personal property (30-month acquisition requirement)

# Encouraging Investment in a QOZB?

- No grace period for QOF starting an operating business – likely limits structuring QOF to own QOZB Property and conduct operating business.
- QOZB satisfies 70% QOZB Property test at the end of its taxable year.
- QOZB cure period – one-time, six-month cure if it fails to meet 70% test.
- QOZB prohibited from leasing 5% or more of its property to “sin businesses.”
- QOZB intangible property restrictions – “used in the qualified opportunity zone in the performance of an activity of the trade or business.”
- Relaxed “original use” requirement – brownfield sites, vacant property, property purchased from local government.
- Aggregation of original use property/buildings for substantial improvement purposes.

# Miscellaneous Provisions

- Distributions of property (including cash) are an inclusion event (investor required to include some portion of its deferred gain investment into income) only to the extent that the property distributed has a FMV in excess of the investor's basis in its qualifying investment.
- Can an investor receive a profits interest in a QOF in exchange for services? – Profits interest partner in exchange for services are ineligible for Opportunity Zone tax incentive/benefit.
- Interest received for services is considered a non qualifying investment.
- Investor can acquire an eligible QOF interest from another investor.
- Proceeds that a QOF receives from the sale of QOZ Business Property during the 10-year investor hold period are treated as qualifying property so long as the proceeds are reinvested into other qualifying property within 12 months. – does not shield the QOF investors from any taxable gain on the sale of the property.
- Transfer at Death? – Distribution of a qualifying investment to a beneficiary by the estate or by operation of law is not an inclusion event.

INDIANA ECONOMIC DEVELOPMENT CORPORATION



INDIANA'S  
**OPPORTUNITY ZONES**  
and  
**COMPANION TOOLS**



**HEALTH CARE** eHealth // 500 jobs // Indianapolis



**TECHNOLOGY** Zotec // 300 jobs // Carmel

### **Economic Development for a Growing Economy (EDGE) Tax Credit**

- ▶ Offers an incentive to businesses to support new job creation and capital investment
- ▶ These incentives are performance-based, meaning until Hoosiers are hired, the company is not eligible to claim incentives

### **Skills Enhancement Fund (SEF)**

- ▶ One of the IEDC's most utilized economic development tools
- ▶ These grants help offset short-term costs associated with new jobs and investment, benefitting new business growth while helping skill up or retrain Indiana's workforce

## 2019 LEGISLATIVE SESSION

### **INNOVATION + ENTREPRENEURSHIP**

- ▶ Attracting high-growth companies with an expanded **Headquarters Relocation Tax Credit**
- ▶ Helping innovators start up quickly with transferability for the **Venture Capital Investment Tax Credit**
- ▶ Supporting Hoosier innovation with a new **Innovation Voucher Program**

### **QUALITY OF PLACE + TALENT**

- ▶ Encouraging regional development and revitalization with the new **Redevelopment Tax Credit**
- ▶ Supporting quality of place initiatives through continued funding of the **Business Promotion + Innovation Fund (BPI)**

### **MODERNIZATION**

- ▶ Increasing Indiana's competitiveness by taxing service companies only for income they earn from services sold in Indiana
- ▶ Modernizing capital investment qualifications through updates to the **Hoosier Business Investment (HBI) Tax Credit**



U.S. Small Business  
Administration



# U.S. Small Business Administration

[SBA.gov](https://www.sba.gov)

## Counseling

- Small Business Development Centers (SBDCs)
- SCORE
- Women's Business Centers (WBCs)
- Veterans Business Outreach Centers (VBOCs)

## Capital

- Loans
  - Lender Match
- Investment Capital
- Surety Bonds
- Disaster Assistance
- Grants

## Contracting

- Contracting assistance programs for:
  - HUBZone Businesses
  - Women-Owned Small Businesses
  - Service-Disabled Veteran-Owned Small Businesses
  - Small Disadvantaged Businesses
- Procurement Technical Assistance Centers (PTACs)

# QUESTIONS AND DISCUSSION



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Christopher Coffman,  
Member



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Matt Tuohy,  
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# INDIANA'S OPPORTUNITY ZONE RESOURCES

## OPPORTUNITY ZONES

[iedc.in.gov/programs/Indiana-Opportunity-Zones/](http://iedc.in.gov/programs/Indiana-Opportunity-Zones/)

## OPPORTUNITY INVESTMENT CONSORTIUM

[OpportunityInvestmentConsortium.com](http://OpportunityInvestmentConsortium.com)



*Encouraging investment in Indiana communities*

ABOUT | POST AN OPPORTUNITY | INVESTORS | PROFESSIONAL SERVICES | TRAINING AND RESOURCE PARTNERS

Opportunity Zones were designated throughout the country in 2015 in response to bipartisan legislation at the federal level. The goal of the Opportunity Zone initiative is to encourage long-term private capital investment in low-income urban and rural communities. The program offers long-term federal tax deferral on capital gains for investments in designated Opportunity Zones, with additional tax exclusion from new capital gains achieved from those investments.

The goal of the [Opportunity Investment Consortium of Indiana](#) is to help more intentionally encourage the transformation of Opportunity Zone neighborhoods into vibrant places for residents and businesses. The consortium is comprised of a public/private coalition of investors and community partners, poised to support and invest in Opportunity Zones through the facilitation of this online pairing tool.

In addition, stakeholder roundtables meet regularly to discuss support for advancing projects, and the training and professional resource partners further assist the effort by providing access to critical legal and financial services, training and information.

[← Back To Programs](#)

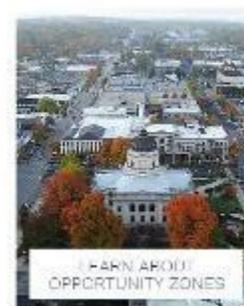
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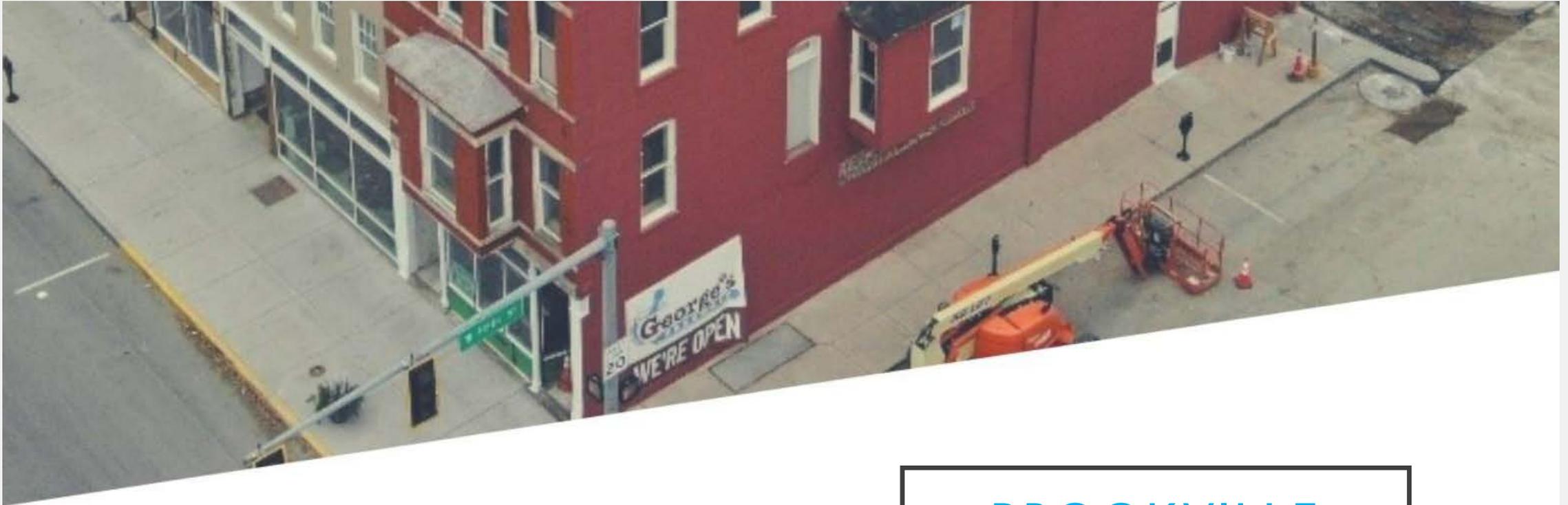
Reasons to Invest

Where to Invest

There has never been a better time to invest in Indiana. With the designation of 156 new Opportunity Zones and ranking #1 in the Midwest and #5 in the nation on Chief Executive's "Best States for Business" list, big things are happening and we want you to be a part of it.

Why Indiana? Because we are taking business to the Next Level in a State That Works. But it's about more than just good business sense, it's about building something that will last. It's about the freedom to set our own terms, it's about the place we call home.





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## BROOKVILLE CASE STUDIES

COMMUNITY LEADERS USE OPPORTUNITY ZONES  
TO BRING NEW LIFE TO SMALL TOWN INDIANA

# BROOKVILLE CASE STUDY

1. Historic Main Street Mixed Use Redevelopment
2. Local Newspaper Acquisition
3. Hotel Franchise
- 



COMMUNITY LEADERS USE OPPORTUNITY ZONES  
TO BRING NEW LIFE TO SMALL TOWN INDIANA



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