



*good morning*

# Metro South

Friday, January 25, 2019  
at The Martin Institute @ Stonehill College



PARTRIDGE SNOW & HAHN LLP

ROCKLAND  
TRUST



# OPPORTUNITY ZONE TAX BENEFITS

Presented To:  
**Metro South Chamber of Commerce**

JANUARY 25, 2019

PARTRIDGE  
SNOW &  
HAHN LLP

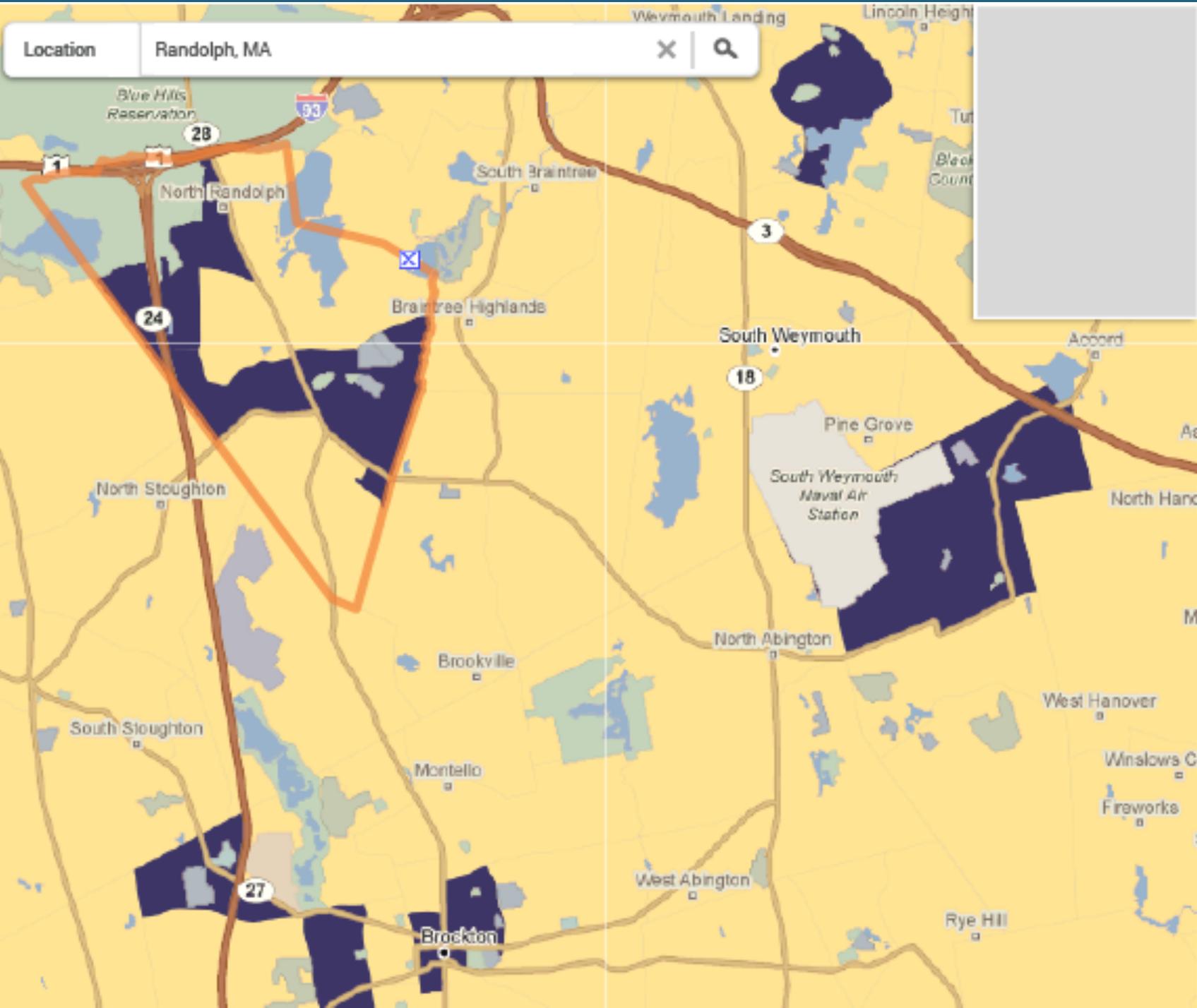
# OPPORTUNITY ZONE TAX CREDIT

- ⊖ Enacted as part of 2017 Tax Reform
- ⊖ Draft IRS Regulations issued October 19, 2018
- ⊖ Over 8700 designated zones, covering 12% of the US
- ⊖ Treasury Secretary Mnuchin predicted it could create \$100 billion in private investment in low-income communities (WSJ 10/23/18)
- ⊖ Tremendous amount of discussion and interest in the program, not much actual investment to date.

# GENERAL OVERVIEW

- ☉ Capital Gains invested in businesses / properties in “opportunity zones” can:
  - Defer recognition of such gain until 12/31/26;
  - Possibly exclude a percent of such deferred gain permanently; and
  - Exclude future appreciation from taxation.
- ☉ Eligible Investments have to be through “Qualified Opportunity Funds” (“QOF”)
- ☉ Massachusetts has 138 tracts in 79 communities classified as Opportunity Zones
- ☉ Opportunity Zones “disappear” after 10 years





# TAX BENEFITS – 3 PRIMARY BENEFITS

## 1. Deferral of capital gain

- ☉ Invest in a QOF within a certain time period after gain realized
- ☉ Recognize gain earlier of when sell or 12/31/2026.

## 2. Exclusion of a portion of deferred gain

- ☉ Hold investment for 5 years, exclude 10% of gain permanently
- ☉ Hold investment for 7 years, exclude 15% of gain permanently
- ☉ Exclusion is accomplished via a basis step-up

## 3. Exclusion of Appreciation from taxation

- ☉ If investment is held for at least 10 years, get a step-up in basis upon disposition to FMV so exclude all appreciation from taxation.
- ☉ Investment has to be disposed of by 12/31/2047 to get full step-up in basis

# TAX BENEFIT EXAMPLE

- ⊖ Investor sells property (stock or building) on April 15, 2019 for \$1.5 million
  - Her tax basis was \$1 million, so sale created a \$500,000 capital gain.
  - She finds a building in an OZ for \$1 million and invests along with another partner her \$500,000 gain on September 1, 2019 (through an LLC taxed as a partnership).
  - On her 2019 tax return she elects to defer the \$500,000 capital gain.
- ⊖ 10% exclusion – if she holds onto the investment until at least September 2024, \$50,000 of the deferred gain is permanently excluded.
- ⊖ 15% exclusion – if she holds onto the investment until at least September 2026, \$75,000 of the deferred gain is permanently excluded.
- ⊖ 12/31/2026 – The remaining deferred gain of \$425,000 is recognized even if she still holds onto the property. She will pay capital gains tax on the \$425,000.
- ⊖ She decides to sell her interests on December 1, 2031, for \$800,000. Since she held onto the property for over 10 years, her basis is “stepped-up” to \$800,000 and she recognizes Zero in capital gain. She received \$375,000 free from federal income taxes.

# TERMS

- ☉ “Qualified Opportunity Fund”
  - A Partnership, LLC or Corporation that holds at least 90% of its assets in “qualified opportunity zone property.”
    - Ways to bring it down to 63% by investing in sub-entities
- ☉ 3 types of Qualified Opportunity Zone Property
  - Qualified opportunity zone business property
  - Qualified opportunity zone stock
  - Qualified opportunity zone partnership interest

# QUALIFIED OPPORTUNITY ZONE BUSINESS PROPERTY

- ⊖ Tangible property used in a trade or business of a QOF if:
  1. Such property is purchased by the QOF after 12/31/17
  2. The original use of the property commences with the QOF or QOF substantially improves the property, and
  3. Substantially all of the use of the property is in a QOZ
- ⊖ Substantial Improvement
  - Over a 30-month period additions to the property exceed an amount equal to the adjusted basis of the property (not counting land)

# QUALIFIED OPPORTUNITY ZONE BUSINESSES

- ⊖ Substantially all (70%) of tangible property owned or leased by business is Qualified Opportunity Zone Business Property
- ⊖ At least 50% of the gross income is derived from the active conduct of a trade or business in the qualified opportunity zone

# RISKS AND UNCERTAINTIES

- ⊖ Investment Risk
- ⊖ Tax Rate Risk – what if the capital gains tax rate goes up?
- ⊖ Regulations are just in proposed form, not finalized
- ⊖ No guidance yet on what happens when a QOF sells a property for a gain
- ⊖ No guidance yet on the re-cycling of money in the QOF

# OPPORTUNITIES FOR REAL ESTATE COMPANIES

- ➊ Improved marketability for sale of buildings in Opportunity Zones
- ➋ Improved marketability for rental of buildings in Opportunity Zones
- ➌ Speculation – buildings in OZ have seen prices rise in anticipation

# OPPORTUNITIES FOR BUSINESSES

- Enhanced capital market availability – more funds looking to invest in zones
- Enhanced Exit strategy
- Potential windfall for internet start-ups

# QOF BENEFITS OVER §1031 EXCHANGES

- ➊ Potential for income exclusion in addition to income deferral
- ➋ Applies to any capital asset (including stock) and not just real estate
- ➌ No intermediaries involved
- ➍ Don't need to re-invest the principal
- ➎ But – limited in areas you can invest in, and more uncertainty with OZ because of lack of guidance

# PS&H OPPORTUNITY ZONE LEGAL SERVICES

- Qualified Opportunity Fund formations
  - Representation of both Sponsors and Investors
- Full-service Commercial Real Estate, Leasing and Financing Counsel
- Full-service Business Law Group
- Structuring Advice
- Tax Advice

# QUESTIONS?



**Jay R. Peabody**  
jpeabody@psh.com



**Russell R. Stein**  
rstein@psh.com

PARTRIDGE SNOW & HAHN LLP

The information within this presentation may not account for all specifics of your particular situation. It is not confidential legal advice and does not create an attorney-client relationship. Responsive inquiries are also not confidential and do not create an attorney-client relationship. You should always consult a legal professional to determine how the law may apply in your specific circumstances. We welcome the opportunity to discuss providing you with legal advice pursuant to a mutually agreeable written retainer agreement.

ATTORNEY ADVERTISING.

**Find the experience you're looking for at [psh.com](https://www.psh.com).**



# UPCOMING CHAMBER EVENTS

Visit [www.metrosouthchamber.com](http://www.metrosouthchamber.com) for details.

**February 22:** Good Morning Metro South: Brunch Edition @ Southeastern Technical Institute, Easton

**March 7:** 4<sup>th</sup> Annual Multi-Cultural Business Forum & Business After Hours @ The Perfect Place, Brockton

**April 24:** 27th Annual A Taste of Metro South @ The Shaw's Center, Brockton