

Welcome to Issue 27, Berkeley Neighborhoods Council E-News, September-October 2019

BNC's core principle is that even though we don't agree on lots of things, instead of just sitting home and complaining, neighborhoods need to come together to be informed, exchange opinions and ideas, and try to work together to create a safe, pleasant, livable and resilient city. That is exactly what Issue 27 is all about!

BNC first started hearing about "tax opportunities" for developers at a January 31, 2019 public hearing at which the City Council voted to take away the public's historic view of the Bay from Campanile Way on the campus and give it to a handful of people living in the top two floors of 2190 Shattuck Avenue. At that meeting, special tax incentives for developers were mentioned



because the developer's financial situation is an important part of how the City considers the level of community benefits that the project should meet. At that time, the developer claimed little knowledge and no certainty of any tax benefits for that project. Months later, we found out that significant tax benefits would indeed apply to developers who constructed projects in two areas in Berkeley, one of which

was a large area that runs through the Downtown, south of University Avenue, and extended southward along Shattuck Avenue including the Ashby BART Station, to the Oakland border.



The second area was in West Berkeley along University Avenue, and San Pablo Avenue to Dwight Way.



These specific areas are called “Opportunity Zones” or “OZs” for short. Yes, Berkeley had entered a nationwide ‘Land of OZ’ in which promises of a wonderland of goodies were being made in a complicated tea party of regulations in which only the most-wealthy would benefit. An opinion article published in the *San Francisco Chronicle* on July 6, 2019 proclaimed that Governor Newsome and President Trump agreed on this one thing – tax breaks for richest. But no one, here, even members of our City Council claimed to know how or when OZs came about in Berkeley, but here we are faced with them and wondering what to do. That’s why BNC held a Forum on September 28, 2019.



The BNC Forum on Opportunity Zones:

Invited to speak at the Forum were the following community leaders:

- ✓ Mayor Jesse Arreguin: He responded that he couldn’t attend because of a schedule conflict, but his Chief of Staff, Jacqueline McCormick attended, but did not make a presentation.
- ✓ District 2, Council Member Cheryl Davila: Did not respond, did not attend. After the Forum was held, she sent her apologies for not attending.
- ✓ District 3 Council Member Ben Bartlett, attended and made a few remarks which were interrupted by the news that his wife was going into labor with their first child. So he left early with good reason and with the applause and good wishes of the audience.
- ✓ District 4 Council Member Kate Harrison: Attended, presented and answered questions.
- ✓ City Manager, Dee Williams-Ridley: Sent an e-mail on September 27, did not attend.
- ✓ Economic Development Manager, City of Berkeley, Jordan Klein: Couldn’t attend. but referred us to Christopher Karachale as a substitute information resource.
- ✓ Christopher Karachale: A resident of the City of Berkeley who lives with his family in Berkeley’s main OZ in South Berkeley. He is a tax attorney with Hanson, Bridgett, LLC, a large full-service law firm headquartered in San Francisco. He is an experienced tax advisor who has worked on State, Federal and International tax issues, as well as currently working with OZ investors.

What we learned from Christopher Karachale:

Mr. Karachale has given BNC permission to include his entire slide presentation with our readers. It is posted on the BNC website. We won’t repeat all his information here, but we urge you to study it closely. The following is a brief summary of what he said:

- There are some 8,751 communities in 50 states that have designated OZ’s. About 200 are in California. (Inserted note: Some newspapers have placed the California number as high as 879, affecting some 4 million people.) Conceptually, OZ’s are low income census tracts that were selected because they were “blighted” and “in need” of attracting economic development which would occur because developers in the area would be able to defer or avoid capital gains taxes. The concept was born in the Obama Administration and finalized in the Trump administration in Washington.
- Some state that Washington selected the OZs, or that the Governor of each state selected them. (Inserted note: While it is unclear what jurisdiction did the selection, apparently it

was done initially without consultation of the local governments involved. We also know that after the initial selection was made there was some local involvement since Jordan Klein received a letter from Sacramento informing him about Berkeley's largest OZ – the Downtown south of University along Shattuck Ave. He wrote back suggesting that the State also designate an OZ in West Berkeley which did, in fact, happen. It is said that an OZ on Telegraph Avenue was also suggested, but that did not happen, some maintaining that this didn't happen because the University of California objected. Selections were made by census tracts that were in need of economic revitalization as shown by the income of residents living within that tract.

- There is a defined set of rules to follow in order to receive tax benefits from investing in an OZ. You can be an individual, a small group or one of many investors in an outside large investor group, such as a bank, Hedge Fund, or the like. Investment is made through what is called a Qualified Investment Fund (QIF) which can invest in a business located in an OZ or directly in the OZ by purchasing or investing in a tangible property after 12/31/2017 and making substantial improvements to that property. As a way to encourage such investment, the project will receive reduced capital gains taxes beginning at five years which will increase through ten or more years. It is possible that the City of Berkeley, or interested groups within Berkeley, could form their own QIF. (Inserted note: The description given by Mr. Karachale was helpful and informative. However, we feel compelled to once again remind our readers that they really need to thoroughly review his presentation which is posted in full on the BNC website. Additionally, we conclude that the requirements are so complicated that individuals or small group investors should proceed with caution and will most likely need the help of a knowledgeable and trustworthy tax advisor/attorney before proceeding.)
- Here's what some analysts are saying:



- Pros:

1. The process will bring lots of development dollars invested locally.
2. It will advance entrepreneurship – we are told that this is why Presidential hopeful Corey Booker, is in favor of the idea. It was also said that President Trump's son-in-law was part of a prominent investment fund participating in OZ projects.
3. It provides an opportunity for both small and large investors.

- Cons:

1. There are no requirements for community benefits, such as local developers and workers, and there is concern over fast tracking OZ projects.
2. It will accelerate gentrification and displacement.
3. There is no transparency or accountability.

What we learned from Kate Harrison:

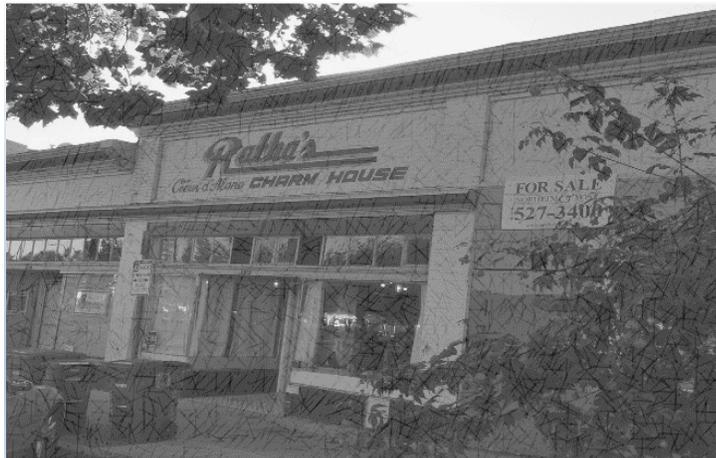
- Developers come to Berkeley because they know they can make money even without OZs. The two OZ areas don't need development incentives. This is also true of Oakland where OZs have been designated near the Oakland Airport.
- This could increase the on-going problem of displacement and gentrification
- State law says we can now require on-site inclusion of affordable units so we will be able to get more affordable housing in a shorter time in any event.
- We need to have the developer include the tax break in the initial financial information (proforma) that they have to submit to the City with their project application. Knowing this could possibly result in providing more community benefits.
- While demonstrably unhappy about how this happened, Council Member Harrison remained optimistic that Berkeley could create criteria for developments in OZ zones. One way to do this would be to create a program that would meet specific criteria for the use of property in an OZ zone. The question is what will encourage people to invest in a city of Berkeley Qualified Opportunity Fund rather than in other QIFs? Possibly because we could require more affordable housing in developments, but there is still the enticement of making more money in other QIFs which we may not be able to overcome.
- This was established without our knowing about them and now we are stuck with making the best of it as we can. We are talking with the East Bay Community Fund about working with them as a QIF, but maybe we are in a position of too little, too late.

What we learned from Ben Bartlett:

- We learned too late. Compass Realty, owned by Jerry Kushner and Saudi Arabian international investors, have already been buying up property,
- In response, volunteers are now going door-to-door advising people who are interested in selling their property to be very careful as they might be solicited to sell their property for an amount lower than its potential value.
- The Planning Commission is already discussing a zoning overlay for the involved areas.
- We could create a City of Berkeley QIF. To do that we need to create a prospectus to market the Fund. Berkeley is famous around the world and should attract investors.
- We have been in contact with the East Bay Community Fund, but they are doing an East Bay Fund, not a Berkeley Fund.
- Berkeley needs to take the initiative. It should include labor standards, and training of our youth so they will be able to fill the jobs created.
- Berkeley needs to jump start a program of economic inclusion.

What we learned from the September 27 E-mail from Jordan Klein on behalf of the City Manager (Taken from the Manager’s 9/27/19 e-mail which was read to the audience at the Forum):

- June 2019, Council referred to the City Manager and Planning Commission the creation of a zoning overlay or other mechanisms to protect Berkeley residents living in OZs from gentrification and displacement and to leverage the OZs to confer community benefits such as affordable housing, supportive social services, green features, open space, transportation demand management features, job training or employment opportunities.
- July 2019, Council referred to the City Manager a list of priorities for development with OZs and asked that these priorities be incorporated into a ‘prospectus’ to market development opportunities with OZs that are aligned with the City’s priorities and to use the priorities to inform any communications with investors. These priorities are:
 1. Construction of new or acquisition and preservation of affordable housing.
 2. Preservation of historic buildings.
 3. Cultural institutions and performing arts venues.
 4. Civic uses (government offices, libraries, schools, public safety).
 5. Public open space and recreation facilities.
 6. Health care services
 7. Transportation demand management facilities.
 8. Job training or employment opportunities.
- Berkeley’s Office of Economic Development plans to release the prospectus by November.
- We are waiting to hear from the East Bay Community Foundation about the creation of an East Bay QIF as to the next steps.



What the Community Said:

- Can small groups of investors participate in OZs? Yes, they can, but they have to meet the same requirements to form a QIF, and all other requirements regarding opening a bank account and meeting deadlines.

- The zoning overlay currently being discussed should be set up so that it is responsible to the neighborhood involved.
- The community needs to know if there are existing funds that can be tapped for investment. What is the minimum needed? Small investors are at a disadvantage.
- Residential areas in West Berkeley are included in the OZ, right along with the heavy transit corridors, University and San Pablo. Why?
- The City is just accepting this -- we should go to court and challenge it.
- There are no rules to keep affordable housing, affordable in perpetuity.
- OZs will cause displacement of existing tenants for new tenants, many of whom will be low to moderate income households, as there are no requirements for former tenants to reclaim their units
- Gentrification will increase.
- If a church group has property it wants to develop for housing, it could work through an established QIF, but would have to include a 'sell-back' clause so they could continue to manage the resultant development.
- Concern was expressed about when the City knew about the OZ program, and that Jordan Klein asked for the inclusion of West Berkeley and Telegraph Avenue in the program. West Berkeley was included, but Telegraph was not, most likely because of UC opposition. Did this happen?
- A change in the ownership of the proposed development on Harold Way will not change the entitlements that have been granted by the City. This project is likely within the Downtown OZ.
- One year ago, we were informed there were only 20,000 beds for assisted living for the elderly. These kinds of facilities are missing as possible OZ developments, when the need is growing.
- The community needs to get Berkeley planners to follow the zoning rules.
- OZs will be far worse than the old Redevelopment plans. There is no control over speculation.
- Concern expressed about how this will affect housing vouchers.

- The Council is responsible to write policies that are clear and then hold the City Manager responsible for enacting them.
- We live in a society where people make profit from housing which is a basic human right

It is clear that more discussion is needed!

The next Berkeley Neighborhoods Council meeting will be Saturday, November 2, 2019, 10:00 am to 12:00 noon, at the Tarea Hall Pittman South Berkeley Library, 1901 Russell Street. All are Welcome!

You can see the Opportunity Zones in the full City of Berkeley (OZ Map 1) on the BNC website in the “Resources” section.