THE REAL DEAL QUOTES MITCHELL GOLDBERG "HOW MIAMI-BASED PLAYERS ARE MAKING THE MOST OF OPPORTUNITY ZONES"

While ambitious national Opportunity Zone funds fail to reach their goals, local players find success in targeting specific projects for the federal program

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Call it a case of lowered expectations.

At one time, former White House communications director Anthony Scaramucci saw auspicious possibilities in the Opportunity Zone program enacted as part of Trump's sweeping 2017 tax law.

Believing the initiative had $100 billion in investment potential, he set up a fund to raise $3 billion from mom-and-pop investors who wanted to cash in on the lucrative tax break. But the fund has only raised $30 million since its launch in the end of 2018, and it is now is seeking to raise just $300 million, or 10 percent of what his firm, SkyBridge Capital, initially sought.

"A lot of people misplaced and outsized the demand for what we thought we could achieve," said Scaramucci at a real estate event in Fort Lauderdale Beach in October.

Scaramucci's not alone. For a sampling of 103 Opportunity Zone Funds that collectively sought to raise $22.7 billion, only $3 billion has actually come in, according to a recent study by the accounting firm Novogradac & Company first reported by the Wall Street Journal.

Even government officials such as Housing and Urban Development Secretary Ben Carson said sources told him the program is no longer expected to generate the $100B in investment opportunities. Now they expect it to draw between $49 billion and $60 billion.

Scaramucci and other managers said weakened expectations are partially due to the delay in the second round of rules coming out. The original legislation had left a lot of uncertainty about some basic real estate questions. It was unclear, for example, what would happen if a developer had to refinance an Opportunity Zone project and take money out. The Treasury and the IRS finally released rules this past April, but some of these questions remain unanswered.

"The biggest challenge has been everyone, from accountants to lawyers, trying to interpret what the law currently states," said Todd Rosenberg, co-founder of Boca Raton-based Pebb Capital, which has Opportunity Zone properties in Florida and New York. [This story was reported out before additional guidance on the program was issued in late December 2019.]

But some are finding success despite the confusion. Unlike Scaramucci, Related Companies and Brookfield Asset Management, which have all set up massive Opportunity Zone funds, locals have raised Opportunity Zone capital by targeting specific projects in eligible areas.

“Investing in Opportunity Zones requires that one has a thesis and investment strategy,” said Michael Tillman of PTM Partners, who is developing a 360-unit apartment project in an Overtown Opportunity Zone. “Simply doing deals because they’re located within Opportunity Zones doesn’t make for a successful strategy.”

OZ smarts

Tucked into President Trump’s 2017 tax legislation, the Opportunity Zones initiative’s goal was to encourage private investment in distressed communities by allowing investors and real estate developers to defer or forgo paying capital gains taxes if they invest in one of the more than 8,700 zones throughout the country.

In South Florida, developers embarked on a mad rush to acquire existing properties and open land within Opportunity Zones.

From April through September 2018, property sales in Miami-Dade County Opportunity Zones came to $942 million. That’s a 25 percent increase from the same period a year earlier, prior to the program’s passage, according to The Real Deal’s analysis of records.

But some local developers have struggled to find shovel-ready sites at a reasonable price, since some landowners in Opportunity Zones have jacked up their prices.

“It’s like the tulip craze,” said Daniel Lebensohn of BH3, referring to 17th-century Dutch tulip mania, when the flowers reached ridiculously high prices and then fell sharply.

Still, taking a targeted approach to Opportunity Zone funding has been a boon to developers like Avra Jain, who is best known for redeveloping the historic Vagabond Motel in Miami’s MiMO neighborhood. She sought to hedge her risks with Opportunity Zones by only opening her funds on a project-specific basis to sophisticated investors she knew.

“A chance to not pay taxes is not a reason to do a deal,” said Jain.

Jain had no problem finding investors. She’s planning to build a 15-story office building in Midtown Miami at 225 Northeast 34th Street with $33 million in Opportunity Zone money. She is also looking to take advantage of the program to redevelop a 6-acre industrial complex at 4800 Northwest 37th Avenue in Hialeah into an entertainment center.

Nick Rojo with Affiliated Development applied a similar strategy. His Fort Lauderdale-based firm is building SIX13, a 142-unit workforce apartment complex at 13 Northwest Third Avenue in an Opportunity Zone near Fort Lauderdale’s Flagler Village. The company was quickly able to raise funds and has already started construction.

One reason Rojo thinks the massive Opportunity Zone funds aren’t working? Most of the money is coming from retail investors who have to keep their money in the funds for at least 10 years to get the biggest tax benefit.

“When you are raising money, pension funds don’t have capital gains. The only other avenue is the retail investors,” said Rojo. “[If you are a retail investor] and you have a small gain, do you want to tie it up?”

Hope on the horizon

Developers like Jain, Tillman and Rojo are optimistic about the program’s potential in South Florida despite the negative headlines and reports of funds struggling to raise money.

One reason to be cheerful: Guidance issued last spring changed the program’s rules to help allow more businesses operating in Opportunity Zones to qualify for the tax breaks. That could help Jain’s office properties, since she believes more tenants will want to take advantage of the tax break.

“Banks are not always favorable toward office,” said Jain. “ [The Opportunity Zone program] is encouraging people to spend money where they may not have spent it before.”

But questions remain as to whether the new rules will be enough of an incentive to do what the program intended — to actually build in distressed areas places such as Liberty City, Opa-locka or Carol City.

And now the program is starting to draw comparisons to the EB-5 program, which was designed to create jobs in distressed and rural areas but instead became known for fraud and abuse. This is something Mitchell Goldberg, an attorney and Opportunity Zone expert at the law firm Berger Singerman, warns his clients about.

“South Florida is a sunny place for shady people, and Op Zones and tax breaks look great,” said Goldberg. “But do your diligence and be careful who you give your money to.”

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