
Real Estate Advisor

Air Rights in New York City

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By John Houck

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Description & History

New York City enacted the nation's first comprehensive zoning resolution in 1916. Currently, with the exception of parkland and other open spaces, every square foot of the city is subject to zoning regulations. The purpose of these regulations is to ensure some degree of structural and usage conformity in the various boroughs and neighborhoods that comprise this very diverse metropolitan area.

The central component of zoning regulation is the Floor Area Ratio, or FAR, which specifies the maximum permissible ratio of building floor area to the area of the zoning lot. A 10,000 square foot lot with a 5.0 FAR can accommodate a 50,000 square foot structure. The square footage allowable is referred to as "Development Rights." In cases where the actual FAR is less than the permitted FAR the difference is known as "Unused Development Rights," or "Air Rights."

Unused development rights may be re-distributed as the result of either a zoning lot merger or a transfer of development rights. A zoning lot merger is the consolidation of two or more adjoining lots, which allows rights to be shifted within the enlarged site. A transfer of development rights ("TDR") allows for the transfer of development rights from one zoning lot to another. In general, transfers are permitted between adjoining lots. However, transfers to "...promote the preservation of historic buildings, open space or unique

cultural resources" [New York City Zoning Glossary] are subject to a more liberal standard that permits transfers across streets and intersections.

The sale of air rights has attracted significant attention recently, primarily as a result of the height of the buildings that these sales have spawned and the high profile individuals purchasing residences in these projects for astronomical sums.

The current development of super tall residential towers is concentrated in the area around Central Park South. The zoning designation for most of this area is C5 or C6 which permits a maximum FAR of 15.0. Obviously, 15 stories will neither attract attention nor produce the stellar views of Central Park that every buyer desires. Constructing a building with a footprint of less than the total site area allows for buildings to rise to greater heights. There are also bonus programs tied to the inclusion of plazas, amenities and subway improvements.

However, even the most skillful use of the options available in the city's zoning regulations can achieve only so much. At this point air rights become the only recourse.

Railway tracks and stations have historically generated the most bountiful air rights. These rights have been instrumental in the construction of some of New York City's most notable and controversial buildings.

The first use of air rights in New York City date back to the early 1900s when electrification allowed the railroad to cover the tracks into Grand Central Terminal. This artery is now Park Avenue and is flanked by skyscrapers that were built on air rights above the tracks. In 1963, the Pan Am building (now Met Life) was constructed above Grand Central on unused air rights purchased from the financially troubled Penn Central railroad. In 1964, the former Penn Station was demolished and air rights were transferred to enable the construction of commercial space and Madison Square Garden. Currently, the 26 acre Hudson Yards project on the west side is reliant on significant air rights which were transferred by the city to developers in 2010.

Current Trends

Advances in structural design and construction materials have made it possible to build taller, slimmer buildings. Historically, developers have avoided constructing buildings with floor plates of less than 10,000 square feet. That has changed in recent years as a result of the demand for units in ever taller residential towers, often with a single unit per floor, or per multiple floors (duplex and triplex units). Buyers seek views, status, and the potential for future profit if unit prices continue to rise, creating significant financial incentive to construct these buildings.

Currently the prices for super-luxury units have exceeded the cost to build them by a significant margin. Typical steel frame commercial buildings cost from \$350 to \$500 per square foot to construct. While super tall structures with expensive residential amenities may cost up to a \$1,000 per square foot to construct, current sales prices for these luxury residential units are in the \$5,000 to \$7,000 per square foot range, with penthouse units closer to \$10,000. This profit potential offers allows developers to pay very high prices for suitable sites.

Manhattan land values fluctuate according to development activity and supply. The current average land price in Manhattan is about \$400 per square foot of building area, with prime areas suitable for luxury

residential development in the \$800 range. The value of air rights is generally in the vicinity of 50% of land value but has recently been trending higher. According to a report issued by Tenantwise Inc., a real estate services and advisory company, the average price paid for transferrable air rights in Manhattan rose an astonishing 47% from \$207 per square foot in 2012 to \$305 in 2013. In 2013 the developers of 43 East 60th Street purchased 70,000 square feet of air rights from nearby Christ Church for \$600 per square foot. This surpassed the previous record of \$500 per square foot set in 2012. With condominium sales prices starting at \$6,000 per square foot, \$600 is a very reasonable price. But when the units are ready, will they really sell for that price?

The Future of Air Rights

Sales activity in the super luxury residential segment has recently slowed. Units at One57, the tower that birthed the current super high, luxury building boom, are reportedly 75% sold and two sales were announced in October of this year. However, the property recorded only two unit sales during the nine month period ending June 30, 2014. With six other high priced residential properties under development, buyers have a much broader selection. The combination of high prices and increased supply has begun to test the limit of the demand for these units.

Current trends suggest that the development of super luxury properties will continue until the market becomes oversaturated. At that point, the value of land and air rights will likely fall, but not significantly as long as unit pricing continues to exceed building costs. Future profit potential in the super luxury market will ultimately depend upon the number of wealthy individuals who want to live in, or at least invest in, New York City.

For more information contact:

John Houck
Senior Managing Director, Real Estate Group
212.375.6511

John.Houck@WeiserMazars.com

Visit us on www.weisermazars.com

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