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The price of air in New York City is far from free – Selling at prices that baffle the mind - by Josh Lipton and Andrew Levine

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The air we breathe may be free but the air rights in NYC aren't and they are often sold at numbers that baffle the mind. With limited habitable land remaining in NYC, developers must go vertical to maximize what can be built. With every soaring skyscraper comes a unique and remarkable view for the residents living there. But what you can build and how much is governed by a complicated set of rules and regulations and building as high as the eyes can see often involves the buying and selling

of air rights—a staple of NYC real estate since the zoning laws were amended in 1961. A 2018 report by the Municipal Art Society of New York indicated that there are “3.7 billion s/f of unused development rights citywide, enough air rights to build more than 1,300 Empire State Buildings.” A properly-structured deal for the acquisition of air rights, formally Transferable Development Rights (TDRs), can often mean the difference between a nominally profitable, or even money-losing project and one that puts a developer on the top 500 Forbes list.

With more than 8.6 million residents in NYC forced to squeeze into a land area of 302 square miles, urban planners and developers must get creative. This often means turning towards the sky! In fact, nearly every supertall skyscraper that has transformed the city’s skyline involved building beyond what was allowed under the zoning rules and acquiring air rights. Through technological and engineering advances, the city has seen the advent of ever more slender and taller skyscrapers. With slenderness ratios (the quotient between the width of a building and its height) exceeding 1:10, developers have been able to dramatically transform the city with obscenely tall pencil-shaped buildings. Certain notable projects include the following: (i) Gary Barnett’s 1,005 ft. tall tower known as One57, (ii) Harry Macklowe’s slender and simple 432 Park Avenue stands 1,396 ft. tall, (iii) Arthur and William Lie Zeckendorf’s 35-unit 780 ft. tall condo project at 520 Park Ave., (iv) Bruce Eichner’s Madison Sq. Park Tower located at 45 East 22nd St. reaches 777 ft., and (v) Alexico Group’s 56 Leonard described as “houses stacked in the sky” stands at 821 ft.

Regardless of your views on extreme verticalization in NYC in recent years, many of these transactions took years to assemble, requiring patience along with delicate maneuvering by the developers involved. Gary Barnett spent 15 years assembling the property and air rights that comprise One57 by negotiating with smaller property owners surrounding the tower. Because of it, he is considered the grandmaster of the air-rights assemblage game. The air rights acquired for 432 Park Ave. began in 2004 before Harry Macklowe took ownership of the property in 2006. The art of purchasing air has been compared to a high-stakes poker game, and it requires patience as these assemblage transactions can take a decade or more to complete.

Transferring air rights to increase the density of development at another designated location can be accomplished by various mechanisms, including: (i) a zoning lot merger; (ii) a special district transfer; (iii) a landmark transfer special permit; or (iv) through off-site inclusionary housing. The most common form of air rights transfer is through zoning lot mergers as it does not require city approval. The donor and receiver properties need to share 10 ft. of contiguous property line, and the lot benefiting from the unused development rights can sell or transfer those air rights to the adjacent lot, as-of-right. Less discussed is the city’s ability to re-zone an entire neighborhood giving every owner effected unused development potential and untapped value with the stroke of a pen. Without a crystal ball or inside information as to when the next re-zoning will take place, typically developers must pursue a path of negotiation with their neighbors.

The measure of value most associated with TDRs is the price per buildable s/f. TDRs tend to trade at a discount to vacant land, but there is no “hard and fast” rule on what that discount should be; however, specialists suggest that air rights trade for 50%-60% of what the earth beneath them would sell for. Twenty-five years ago, an air-rights deal traded at \$45/BSF in prime Manhattan while,

today, that number could exceed \$450/BSF.

Once sold, the air rights are gone for good and how much the developer ultimately is willing to pay for the air rights depends, in large part, on how much scale they are seeking for the project and whether there are alternative options for acquiring air rights.

In some cases, the air rights are of marginal utility to the developer and sometimes sell as low as 20% of prevailing market land value. In rare cases, air rights trade on par with vacant land—situations reserved for the city's best areas offering prime views.

With the limited and diminishing supply of vacant land throughout NYC and Manhattan especially, building to the sky has become the only solution to accommodate the elite seeking a prime address and spectacular views. To do so, developers must participate in the often complex and expensive undertaking of acquiring air rights from neighboring parcels and, if done successfully, the payoff can be more spacious apartments, abundant light and higher resale value. But what does this all mean for NYC's skyline, will Manhattan be dotted with pockets of supertall skyscrapers with less impressive diminutive structures in between? These are questions for city planners but, in the meantime, it's a good time to be a member of the .001%.

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