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Air rights: building castles -- or at least studios -- in the air

Small building owners' ambitions soar as the air rights boom continues, but additions can be tricky

By Jaffer Kolb

There's nothing like profit to spur creativity -- in New York, that has meant creating parts of buildings out of thin air, with smaller landlords taking advantage of air rights to build additions to their property to maximize income.

The purchase, sale and use of air rights -- the ability to use the "land" floating above smaller buildings -- has created a small sub-industry during the recent boom, as a group of professionals including architects and lawyers has become well-versed in claiming and utilizing eligible vertical space under current zoning codes.

But entering the market remains a tricky proposition, as many owners and developers are still unclear about their options.

As word spreads, smaller sites are getting into the air rights game.

But Jonathan Merrill, acquisition and development director for Time Equities, says it may be easier to sell and trade these rights than use them directly to build additions to one's own property, thanks in part to zoning restrictions limiting building heights.

"If you're building a floor, a small site will require corridors, and mechanical space that will detract from the property's value," he says. "The smaller the site, the less efficient square feet are. It comes down to the relative value."

Others, however, note that any addition can be a valuable one.

"Think about it -- it's those last few floors on top of any building that are the most valuable, which makes air rights desirable," says Andrew Oliver, managing director at real estate investment bank Sonnenblick Goldman.

Landowners who want to capitalize on unused air rights should hire a zoning attorney who can easily and quickly assess the situation. They can often help a developer find local property owners who don't realize they even have air space to sell.

Firms like Oliver's Sonnenblick Goldman specialize in financing properties, which oftentimes have corollary air rights transactions.

Special district height limitations are often the biggest stumbling block to market entry, Merrill says.

"People think they have something that's desirable, but it can't be utilized with all of the recent rezonings and downzonings," he says. "Sometimes it's difficult or impossible to develop all that you think you can."

Historically designated areas can pose as great a problem as those in rezoned areas.

Wayne Turett, principal at Turett Collaborative Architects, ran into a problem with a client who had purchased a property in Tribeca on top of which they had planned to add another story. The Landmarks Preservation Commission, however, wouldn't allow the client to build, because the site is next to a landmarked building. Because the LPC wouldn't budge, Turett helped facilitate the sale of the building to someone else who didn't want a rooftop addition.

Turett also purchased air rights for his own home about 16 years ago, and said that the process at that time, while simpler, was still daunting.

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"Very few people know enough about air rights. More people know about them now than ever before, but they might not know about all the forms and the paperwork and the certifications," says Turett.

He equates the complexity of air rights to property insurance, saying: "I'd imagine that when people first bought property, they didn't need a specialist to help them with property insurance." Air rights now require that same level of expertise and knowledge of law and policy, he says.

Some think the public still hasn't gotten it.

"Air rights aren't real," says architect Stephen Jacobs, founder of the Stephen B. Jacobs Group in New York. "What we think of as air rights are just zoning lot mergers, meaning that you can develop the full as-of-right zoning potential on a site." Jacobs, too, notes that with air rights and the legalities of zoning, "a little knowledge can be quite dangerous."

Even if a building owner has the necessary air rights to add floors, there are still construction considerations. The existing structure must be able to support the added floor or floors, which requires an engineering analysis, and there needs to be sensitivity to what's going on in the floors below.

And of course there are price considerations. "I would estimate that to build on top of an existing structure [just a simple rooftop addition] would cost in the range of \$400 per square foot, which is, of course, subject to change depending on the level of luxury," says Turett.

The city Department of Finance has yet to compile all of the data regarding how many properties have undersold air rights, but for those who do have air rights and get into the development game, a full entourage of lawyers, consultants, architects and engineers seems like a necessary evil.

As Jacobs notes, "development in New York City is not for novices." Air rights may be getting big, but without help, their meaning could be lost in translation.

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