



**Greenwich  
Village  
Society for  
Historic  
Preservation**

252 East 11th Street  
New York, New York 10005

(212) 475-9585  
fax: (212) 475-9582  
www.gvshp.org

*Executive Director*  
Andrew Berman

*President of the Board*  
Arthur Levin

*Vice-Presidents*  
Leslie Mason  
Kate Bostock Shefferman

*Secretary/Treasurer*  
Allan G. Sperling

*Trustees*  
Mary Ann Arisman  
Penelope Barreau  
Tom Birchard  
Elizabeth Ely  
Cassie Glover  
Justine Leguizamo  
Ruth McCoy  
Andrew S. Paul  
Cynthia Penney  
Robert Rogers  
Katherine Schoonover  
Marilyn Sobel  
Judith Stonehill  
Fred Wistow  
Linda Yowell  
F. Anthony Zunino III

*Advisors*  
Kent Barwick  
Joan K. Davidson  
Christopher Forbes  
Margaret Halsey Gardiner  
Elizabeth Gilmore  
Carol Greitzer  
Tony Hiss  
Martin Hutner  
James Stewart Polshek  
Elinor Ratner  
Henry Hope Reed  
Martica Sawin Fitch  
Anne-Marie Sumner  
Calvin Trillin  
Jean-Claude van Itallie  
George Vellonakis  
Vicki Weiner  
Anthony C. Wood

November 15, 2013

Madelyn Wils, President  
Hudson River Park Trust  
353 West St., Pier 40, 2nd floor  
New York, NY 10014

State Senator Brad Hoylman  
322 8<sup>th</sup> Avenue, Suite 1700  
New York, NY 10001

State Senator Daniel Squadron  
250 Broadway, Suite 2011  
New York, NY 10007

Assemblymember Deborah Glick  
853 Broadway, Suite 1518  
New York, NY 10003

Assemblymember Richard Gottfried  
242 West 27<sup>th</sup> Street  
New York, NY 10001

City Councilmember Margaret Chin  
165 Park Row, Suite 11  
New York, NY 10038

Borough President-elect Gale Brewer  
563 Columbus Avenue  
New York, NY 10024

City Councilmember-elect Corey Johnson  
309 West 20th Street  
New York, NY 10011

**Re: Hudson River Park Air Rights Transfers**

Dear Ms. Wils, State Senators Hoylman and Squadron, Assemblymembers Glick and Gottfried, City Councilmember Chin, Councilmember-elect Johnson, and Borough President –elect Brewer:

As you know, on November 13<sup>th</sup>, more than 250 people attended a Town Hall meeting co-sponsored by twenty Greenwich Village, Chelsea, Tribeca, and SoHo community groups regarding the sale of air rights from the Hudson River Park -- the same night that Governor Cuomo signed into law the bill making this possible. From that Town Hall and from prior conversations with several of you, there remain some very important unanswered questions about the air rights provision, and some critical points which still require clarification. I appreciate your dialogue with the Greenwich Village Society for Historic Preservation and other community groups about these issues and your responses, and expect that dialogue will continue.

It is our goal to ensure that the allowance for air rights transfers is not and cannot be used in a way which would be harmful to our neighborhoods and to efforts to preserve their scale and character. Toward that end, I ask your assistance in securing answers regarding the following:

- **Unequivocal written commitment by the City and State that air rights cannot be transferred and used without a ULURP or General Project Plan.** Our State Legislators and the Trust have given assurances that it is their understanding and intention that the air rights from the park cannot be used without one of these two additional actions. I appreciate that at the request of our State Legislators, City Planning Chair Amanda Burden has written that “the transfer of development rights from the park would require a new mechanism to be created under local zoning.” Because of the far-reaching and long-term implications of this issue, I ask you to seek an even more definitive written assurance from the City stating that it is their position that the transfer of development rights from the park can ***only*** be made possible by a full Uniform Land Use Review Procedure, barring other action by the State.
- **Unequivocal written commitment by the City and State that only Piers 40, 57, 76, 81, 83, and 98 and Chelsea Piers have transferable “air rights.”** Thus far community groups have been told that these are the only sections of the park which would have transferable air rights. We have been told that this is based upon Section 7, part 5 of the Hudson River Park Act, which states that “the only uses or structures within the park which shall not be subject to zoning and other land use laws and regulations of the city of New York *shall be passive and active public open space uses*”, and Section 7, part 9, which says “Piers 25, 26, 32, 34, 42, 45, 46, 51, 54, 62, 63, 64, 66 and the adjacent float bridge, 84, 95, and 96, shall be used solely for park use.” The deduction is that the set of piers and other spaces identified in Section 7, part 9 as “solely for park use” are therefore “not subject to zoning and other land use laws and regulations of the city of New York” as per Section 7, part 5, and therefore have no transferable air rights, but that the remaining piers -- 40, 57, 76, 81, 83, and 98 and Chelsea Piers -- do.

However, this language in and of itself does not seem to fully support this claim. First, part 5 only uses the term “*passive and active public open space uses*,” while part 9 only uses the term “*park uses*.” The explanation we have been given seems to hinge on these terms being legally equivalent, but it is not clear why this is so.

Additionally, this would not explain why non-pier sections of the park, such as the bulkhead and inland park areas, which are not named in Section 7, part 9, would not have air rights as well.

Finally, the contention is that since the legislation says that certain sections of the park are not “subject to zoning and other land use laws and regulations of the city of New York” they therefore have no transferable air rights. However, the City has consistently approved the transfer of “air rights” from State, Federal, and other properties (such as Post Offices) which similarly do not appear to be “subject to zoning and other land use laws and regulations of the city of New York.” If this is so, then why would this language in the Hudson River Park Act eliminate transferable air rights from the park at all?

- **Clarification on where “one block east” of the park, as defined in the legislation, allows the air rights to be transferred to.** For a variety of reasons, it is not clear in all cases how the limits of the area within which the park’s air rights could be transferred is defined. For instance, at Weehawken Street, and between 13<sup>th</sup> and 14<sup>th</sup> Street, the definition of “one block” seems murky because of “mini-blocks” in that area. Additionally, it is not clear if the common sense definition of a block

would be used (i.e. to the next street), or if the city's mapping system for blocks would be used, in which case sometimes two or three "blocks" might be included. For example, between Clarkson and Leroy, Leroy and Morton, and Morton and Barrow Streets, the three blocks between West Street and Hudson Street are all considered one block under the city's mapping system. In those cases, would "one block east" of the park therefore extend all the way to Hudson Street?

- **Clarification regarding the amount of air rights.** This is a question which has been raised with the Trust since the bill was passed by the Legislature, and we understand the Trust has been pursuing a definitive answer. We hope that a clear and broadly inclusive catalogue of the volume of air rights from each location and how they were calculated can be shared with us and the general public as soon as possible, and that no substantive discussions about the use of said air rights takes place until this question has been settled.
- **Can air rights be used for use expansion (as opposed to just bulk expansion)?** Thus far the use of Hudson River Park air rights has only been discussed in the context of adding to the allowable bulk of development on sites, which is a cause of deep concern for many. As the Greenwich Village Society for Historic Preservation has previously raised, we would like to know if it is possible for air rights to be used to expand the allowable uses on a site without necessarily expanding the maximum allowable size of development. For instance, on a site where current zoning would allow the development of a 5 FAR (floor area ratio) hotel or office building, but not a residential building, could the air rights be used to allow development of a residential building of up to 5 FAR? If this is not possible, it would be important to know why not.
- **Is there any reason why air rights could not be used solely as a part of a downzoning, keeping the scale of new development the same?** It would seem entirely feasible for the transfer of air rights to be connected to a downzoning of any site, thus avoiding the transfer of air rights resulting in an increase in the allowable size of development. For instance, on a site currently zoned to allow 6 FAR (floor area ratio) development, the site could be downzoned to only allow 4 FAR development as-of-right, with an allowance for the transfer of an additional 2 FAR of development rights through the purchase of air rights. If there is any reason why this is not possible, it would be important to know. If it is possible, it would seem essential to consider this as an alternative to the use of air rights as a means to upzone sites and increase the allowable density of development along the waterfront.
- **Has the possibility of finding ways for the park to receive revenue from all new adjacent development been explored, rather than just through air rights transfers?** Advocates of the air rights transfer provision have claimed that it is simply a way to allow the park to "truly directly benefit from all new adjacent development," when in fact this is not actually the case – the air rights provision only allows the park to benefit from the sale of air rights, rather than from development which would take place anyway. Have the Trust and other officials explored the possibility of finding ways to have new development adjacent to the park generate revenue which would go directly to the park without having to transfer air rights? For instance, could some sort of assessment be attached to new development whereby a certain amount of money would be contributed to the park for each square foot of new development which takes place in a defined area? (*please note: this is different than the 'Neighborhood Improvement District' proposal which would have placed an assessment on all properties in a given area, as opposed to solely upon new development.*)
- **What other funding sources are being explored for the park, so air rights are not the only answer to the park's financial needs?** Many people are concerned about how much of the burden of the park's financial need is expected to fall upon the sale of air rights; the more of the burden that is

placed upon the air rights sales, the more pressure to sell more of them, and the more danger there is of oversized development resulting. Therefore it is important to understand what additional sources of funding continue to be pursued for the park, and what other solutions to the park's financial problems are being pursued. This is necessary to ensure that the sale of air rights is not being looked at as the sole source of additional revenue to meet the park's needs.

- **Can limitations or an end point be placed on the sale of air rights from the park?** The highly unusual step of allowing air rights from the Hudson River Park to be sold is premised on the notion that such revenue is desperately needed to meet the park's financial shortfalls. However, there is currently no way of determining when that shortfall has been met, or even how it can be defined. Thus there is nothing to prevent the continued application for the sale of air rights, regardless of whether or not the original 'need' has been met.

Therefore it is very important to explore ways in which the sale of the air rights can be linked to a specific need or the attainment of a certain financial goal, beyond which the air rights cannot be sold. For instance, this could take the form of a defined financial need which the Trust would have to prove for any application for the sale of air rights to move ahead. Or a requirement could be established that once a certain amount of money has been raised from the sale of air rights or an overall financial goal is met, the ability to sell air rights from the park would be terminated, and the "spigot," so to speak, would be turned off. This would help prevent this highly unusual provision from being abused in the future and used for purposes other than those for which it was originally envisioned.

Thank you for your attention to these questions. I very much look forward to your responses.

Sincerely,



Andrew Berman  
Executive Director

Cc: City Planning Chair Amanda Burden  
Community Board #2, Manhattan  
Community Board #4, Manhattan  
Community Board #1, Manhattan