

The City Club of New York

A Better Path for East Midtown

In early January 2017 the City of New York began the official public approval process for a proposal to rezone East Midtown Manhattan¹. The proposal is based on a report by the East Midtown Steering Committee², co-chaired by the Manhattan Borough President Gale Brewer and the District 4 Council Member Daniel Garodnick.

The 2017 proposal follows the recently adopted rezoning of the Vanderbilt Corridor as well as a withdrawn proposal³ in the Bloomberg administration to rezone East Midtown. The 2017 proposal to rezone East Midtown and the rezoning of the Vanderbilt Corridor differ from the withdrawn proposal for East Midtown in that a developer must build an improvement to the public realm rather than just write a check to receive bonus floor area. Still, both the 2017 proposal and the Vanderbilt Corridor rezoning represent zoning-for-dollars and take zoning in a wrong direction. How might we do better?

Zoning is but one of many tools available to shape the future of our city. Others include designating landmarks, building infrastructure, providing tax incentives, crafting urban design guidelines, and more. The effectiveness of these tools depends on the appropriateness of their application and the quality of the well-considered plan they seek to implement.

1 See the website of the Department of City Planning: <http://www1.nyc.gov/site/planning/plans/greater-east-midtown/greater-east-midtown.page>

2 See the website of the Manhattan Borough President: <http://manhattanbp.nyc.gov/downloads/pdf/East%20Midtown%20Report%2010-13-15.pdf>

3 The City's proposal in 2013 to rezone East Midtown introduced a District Improvement Bonus (DIB) and a District Improvement Fund (DIF). To receive a DIB a development would pay to the DIF a set amount of dollars per square foot of zoning floor area. The DIF would then use the funds it received to build improvements to the public realm. The City Club characterized this approach as "zoning-for-dollars" and noted, among other things:

- that the zoning was not based on a well considered plan relating the additional floor area to public realm improvements,
- the lack of a requirement for proximity between the public benefit of the improvements to the public realm and the public burden of the increased density of the bonus floor area,
- a potential lack of proportionality between the improvements to the public realm and the increases in density,
- a conflict between the City's interest in determining appropriate densities and in using increased density to fund improvements to the public realm in place of ordinary funding sources, and
- a competition between the DIF and other public goods, particularly the transfer of unused development rights from Grand Central Terminal.

In the case of East Midtown the City Club proposes that there should be a Terminal City Design and Finance District for the area near Grand Central Terminal. This better path starts with as good and complete a plan as possible for the area and accepts that zoning is only one part of the regulatory regime employed to realize the plan. Such a district could serve as a model for similar districts at Penn Station and Long Island City and, in a diminutive form, at local transit hubs.

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The Role of Zoning: New York State's Land Use Enabling Acts grant local government the power to regulate and restrict, for the purpose of promoting the health, safety, morals, or the general welfare of the community, the size of buildings and other structures, the percentage of lot that may be occupied, the size of open spaces, the density of population, and the location and use of buildings, structures and land. The Enabling Acts do not provide for the sale of development rights.

New York City established the nation's first zoning resolution in 1916, amended it comprehensively in 1961, and added the Special Midtown District in 1982 and the Grand Central Subdistrict in 1992. This history provides a context in which to judge the rezoning of the Vanderbilt Corridor and the 2017 proposal to rezone the rest of East Midtown.

The 1916 resolution mainly addressed (i) incompatible uses and (ii) obstruction of light and air. The proverbial incompatible use is a glue factory (which then involved rendering dead animals) next to your home. In New York City it was garment factories near the stores on Fifth Avenue. Light and air was a reaction to the Equitable Building, which occupied its entire site in Lower Manhattan to a height of 41 stories and blocked light and air to the adjacent streets and buildings. The Woolworth Building across from City Hall was a model for the new rules.

The 1961 amendment of the zoning resolution revised the rules protecting light and air to encourage towers in plazas – the Seagram Building was much admired as a model of the international school of modern architecture (this was zoning based on a plan, or at least a style). The 25% coverage tower allowed by the 1916 regulations was increased to a 40% coverage tower allowing greater development on smaller zoning lots.

1961 also added density controls based on floor area ratio (FAR), the ratio between the floor area in the building and the area of its lot. The unintended consequence of this change was that the maximum FARs to which sites were zoned became the minimum FARs to which owners and developers felt entitled, regardless of other constraints such as height and setback rules or irregular sites or existing buildings that were to remain on a parcel. It is useful to remember that FAR is a limitation on density, not an entitlement.

To encourage public open space, 1961 introduced incentive zoning that allowed additional FAR in return for providing a plaza or an arcade. Incentive zoning exchanges additional density for a density ameliorating amenity. It is, therefore, important that the public benefit of the amenity relate to the anticipated impact of the additional density in terms of the **nature** of the impact, the **scale** of the impact, and the **location** of the impact.⁴

4 Incentive zoning is a system in which a zoning incentive or bonus is granted in exchange for a community benefit. The bonus consists of an adjustment to a zoning ordinance provision; and the amenity can consist of open space, affordable housing, elder care, day care, or other physical, social, or cultural benefit that accrues to the community, or of cash to be used to provide that amenity. This zoning scheme must operate in compliance with the City's comprehensive plan and be implemented as an amendment to local zoning law. Incentive zoning provisions must specify, among other elements, the incentives that may be granted, the community benefit that may be accepted from the applicant, and the criteria for approval.

Incentive zoning is premised on a mitigating rationale. The City is in effect saying that the public is willing to endure the burden of additional density in exchange for a public amenity. Absent this rationale, the program would become a sale of development rights and exceed the scope of the City's police power. The practice of specifying zoning's bonus-to-amenity formula provides a safeguard against treating the program as zoning-for-dollars. Arriving at a formula in advance implies a public benefit analysis, instead of the market calculus that would characterize an outright sale of development rights.

Because incentive zoning conditions development rights on a form of payment, it constitutes an exaction. Courts' treatment of exactions has involved a special application of the doctrine that protects the constitutional right to just compensation for property taken by the government. This application arises from a sense that land use permit applicants are especially vulnerable to abuse because the government has broad discretion in denying permits whose market value may far exceed the fee that the government would like to take. Accordingly, courts have held that exactions must be subjected to a dual-nexus test

In 1982 the City added the Special Midtown District to the zoning resolution. This action recognized that East Midtown was fully developed in respect to its transportation infrastructure and the availability of development sites and, therefore, encouraged development to shift west where there was more subway capacity and more readily developable sites. This led to major investment west of Sixth Avenue, including Times Square and, eventually, Hudson Yards.

The Special Midtown District also established pedestrian circulation requirements for the privilege of building in Midtown and new height and setback rules to provide more architecturally flexible envelopes for new buildings that continue to protect light and air to streets and plazas and to adjacent buildings and do so in a quantitative way that allows one to measure the degree of any modification or variance.

A motivation for creating the Special Midtown District was the loss of daylighting in Midtown, similar to the effect of the Equitable Building on the 1916 zoning, and the realization that the loss was associated with discretionary zoning seeking other public goods. Therefore, the Special Midtown District established pedestrian circulation requirements for the privilege of building in Midtown, making many of what had been negotiated improvements into requirements. It also established new height and setback rules that allow flexibility of design while producing buildings that provide at least the minimum expectation of sky exposure in streets and public spaces.

The Grand Central Subdistrict was added to the Special Midtown District in 1992 primarily to provide for the transfer of unused development rights from Grand Central Terminal. The ability to realize the value of the unused development rights was a consideration in the Supreme Court's decision to uphold the landmarks law protecting Grand Central. Originally the transfers were intended to take place under section 74-79 of the Zoning Resolution through a chain of

that evaluates whether the exaction is reasonably related to and proportional to the burdens imposed by the contemplated development. This test protects applicants against extortionate abuse of governmental discretion in the approval process. The most recent Supreme Court ruling on the matter (Koontz) holds that exactions must abide by the dual nexus test regardless of whether a permit is approved or denied and regardless of whether the exaction is physical or monetary.

In other words, the cost of a zoning bonus permit cannot exceed the cost of the impacts directly attributed to new development. If the city exacts property (in any form) as a condition of building, then that condition must pass the dual-nexus test. The voluntariness of the exchange -- the fact that the developer strikes the deal willingly -- does not matter. The point of the dual-nexus test is to restrict the government's ability to demand more than what it can reasonably link to negative externalities of the new development in question. This requirement conforms to the broader principle that land use controls must have a fair and rational basis related to the exercise of the city's police power. The governmental sale of development rights at market rate for whatever reason will always raise a red flag.

Conversely, the dual-nexus test could also protect the public from the City giving an applicant a zoning benefit substantially larger than the density ameliorating amenity that The City requires.

ownership; however, the New York Central divested its real estate interests and the Grand Central Subdistrict was created to allow transfers without a chain of common ownership.⁵

5 The recent rezoning of the Vanderbilt Corridor adds the City as a source of purchasable floor area in competition with owners of nearby designated landmarks. It thereby upsets a carefully constructed element of the City's statutory landmarks preservation scheme under which owners of landmarked structures are not deprived of their development rights because they are permitted to convey them to other nearby properties.

This arrangement was endorsed by the Supreme Court in the key case, *Penn Central Transp. Corp. v. City of New York*, buttressing historic preservation law throughout the country. *Penn Central* is particularly important in New York City, because it directly construed and sustained the constitutionality of this City's Preservation Law so that our Law has the continuing imprimatur of the Court.

The Supreme Court did not rest its ruling upholding the Landmarks Commission's denial of a permit to build a tower atop the Terminal on the fact that the owner retained the air rights and could sell them for development elsewhere. The Court viewed this as a supporting factor diminishing the economic impact of regulation and thereby helping to protect the regulation against the charge that prohibiting the tower constituted a taking requiring compensation. (438 U.S. 104 at 135-138).

The transferability of development rights also played a role in the Court's conclusion that New York's law was not designed to impose on private owners burdens that are uniquely governmental in nature. This is an aspect of "the character of the governmental action", one of the three famous "factors" the Court pointed to as influential elements for assessment of regulatory takings cases. In this weighing process, a challenged regulation gains when it is more in the nature of an adjustment of competing private interests (typical of zoning) rather than a means of performing governmental functions, as a direct taking would be. (See 438 U.S. 104 at 124-128, 135 (1978)). Thus the Court appears to have been swayed by its recognition that the City's Landmarks Law does not work by acquiring historic properties, but rather by "providing services, standards, controls, and incentives that will encourage preservation by private owners and users While the law does place special restrictions on landmark properties as a necessary feature to the attainment of its larger objectives, the major theme of the law is to ensure the owners of any such properties both a 'reasonable return' on their investments and maximum latitude to use their parcels for purposes not inconsistent with the preservation goals." (438 U.S. at 109, including notes 6 and 7).

The Supreme Court took the development rights transfer provisions at face value: in the Court's view these rights gave landmark owners reasonable assurance that their development rights retained significant value. On the other hand, the court understood that the development rights were only one component of the property rights and only a portion the property's total value. Although the transferability of Grand Central's air rights was not the basis of the Court's decision one might ask, what would the Court's view be in the next case if it turns out that such rights actually have little to no value because the City, in the Vanderbilt Corridor, has taken to selling zoning rights itself for transit improvements as a direct competitor against owners of transferable development rights?

A related issue is public support for the landmarks law. It seems reasonable to assume that property owners whose property is subject to landmark protection, or may be in the future, accept whatever burdens that imposes because there are benefits that go with it, including the prestige (which may be reflected in market price) conferred by official recognition of the importance of a building, the mutual benefit of preservation of all buildings in an historic district, and the opportunity to transfer development rights.

The Future of Zoning: In support of public transit the zoning resolution has incorporated several provisions:

- The Special Transit Land Use District (ZR 95-00), mapped at existing and proposed subway stations, requires developments to offer easements for access to those stations.
- A requirement in some locations to relocate a subway stair from the sidewalk into an adjacent new or enlarged building (ZR 37-40).
- The special permit for subway station improvement bonus (ZR 74-634) allowing a bonus of not more than 20% for developments or enlargements adjacent to listed stations.

These show two trends: from on-site to off-site improvements -- from making an access easement available through providing an entrance on-site to performing or paying for work in an adjacent subway station – and from ministerial to discretionary approval.

This is a worrisome trend in that zoning functions best when it regulates what happens on a site – providing an easement for access to a subway station or requiring a subway entrance be moved from the adjacent sidewalk onto the site. These sections of the zoning resolution provide considerable specificity as to the size and design of the facility, administrative relief for impractical situations, and no bonus floor area – what is provided reflects the privilege of being located adjacent to the transit station. The property owner, the City/MTA, and the community each know what is required and the process is largely as-of-right.

The special permit for improving a subway station is different. It requires work to be done off of the site, on the MTA's property; it requires a scope of work and a compensating bonus to be negotiated between the property owner and the City/MTA; and it requires a public review. A public review is needed because there are not clear standards in the zoning for the types and amounts of improvements that would generate a public benefit equal to the amount of bonus floor area being granted.

The special permits authorized for the Vanderbilt Corridor move from the predictability of well defined, largely as-of-right, on-site requirements to the unpredictability of ill defined, largely discretionary provisions. The developer and the City/MTA negotiate the transfer of landmark development rights, identify on-site and off-site improvements to the public realm and the bonus floor area they are to earn, and modify many of the requirements of the Special Midtown District.

Although the Vanderbilt Corridor is presented as a special district it is more like a package of special permits that only apply to sites in the five blocks of the corridor.

If the Vanderbilt Corridor were a legitimate special district it would have a unifying theme or plan. For example, its rationale might be to provide better access to the Long Island Rail Road concourse that is being built below Vanderbilt Avenue. If so one would expect the district to encompass all sites that might be able to provide access to the concourse and one would expect a plan describing the improvements. However, the five blocks of the corridor are not coincident with the concourse, which extends north to between 48 and 49 Streets while the

Corridor stops at 47 Street, and there is no plan for improvements to the public realm that would serve East Side Access.

Zoning, including special permits, is required to treat like sites in a like way. In the Vanderbilt Corridor sites in each of the five blocks may increase their FAR by as much as 15.0. However, these blocks are not alike. Each block differs in the number of characteristics that might justify greater density. Only One Vanderbilt (i) has frontage on more than one wide street, (ii) overlooks the “air park” above Grand Central, (iii) can connect to the Terminal City pedestrian circulation system, and (iv) is adjacent to a subway station. The other blocks enjoy fewer of these characteristics. As a special district one might expect a range of maximum FARs related to the number of density justifying characteristics of the site or as a package of special permits one might expect only sites with all four characteristics to qualify.

Such loosely structured regulation encourages unintended consequences⁶. The Vanderbilt Corridor should either be made into a real special district with a detailed plan that addresses the individuality of the five blocks or it should be recast as a package of special permits for which only sites with the density justifying characteristics of One Vanderbilt would qualify.

The Example – One Vanderbilt: The new Vanderbilt Corridor zoning does three things:

- It allows development rights from a landmark site to increase the FAR of the receiving site from 15.0 to 30.0 rather than the maximum of 21.6 currently allowed in the Grand Central Subdistrict⁷.
- It allows a bonus for improvements to the public realm to increase the FAR of the benefiting site from 15.0 to 30.0⁸.
- It permits many of the requirements of the Special Midtown District to be modified, including (i) required pedestrian circulation space, (ii) the required significant improvement to the Grand Central pedestrian circulation system to transfer development rights, and (iii) sky exposure requirements.

One Vanderbilt is the office building currently being built on the block bounded by 42 and 43 Streets and Madison and Vanderbilt Avenues. It will contain 1.6 million square feet of floor area for an FAR of 30.0 and will rise 57 stories to a height of 1,300 feet with a spire extending another 100 feet.

6 For example, because there is no plan for public realm improvements associated with the MTA site (west half of the block bounded by Madison and Vanderbilt Avenues and 44 and 45 Streets) the developer might obtain a 15.0 FAR PRI bonus by paying for cost overruns in East Side Access rather than providing new density ameliorating amenities.

7 The increase in the amount of air rights that may be transferred is unnecessary for One Vanderbilt because only 2.7 FAR is to be transferred from the Bowery Savings Bank.

8 This change allows the entire bonus of 15.0 FAR, to the new maximum of 30.0 FAR, to be earned for improvements to the public realm. This is a departure from the existing Grand Central Subdistrict, which allows a 3.0 FAR bonus for subway station improvements, effectively reserving the remainder of the increase to 21.6 FAR for a transfer of development rights from a landmark.

One Vanderbilt increases its FAR in two ways: first, from 15.0 to approximately 17.7 by transferring unused development rights from the Bowery Savings Bank and, second, from approximately 17.7 to 30.0 through a Public Realm Improvement bonus. Approximately 2.5 FAR of the Public Realm Improvement bonus is for investments in the Lexington Avenue subway station that were already promised to be provided by the MTA and the City as mitigation for the East Side Access and #7 extension projects, respectively. This relieves the MTA and the City of approximately \$42.5 million in obligations while burdening the community with 2.5 FAR of building bulk without compensating density ameliorating amenities.

The City gave One Vanderbilt numerous modifications of the Special Midtown District requirements, including forgiving the requirement for a significant improvement to the public circulation system of Grand Central in exchange for a remote transfer of development rights. The City also allowed a negative 62 sky exposure score rather than a positive 75 minimum passing score⁹.

The egregiously failing sky exposure score of One Vanderbilt is a return to the lack of daylight of unregulated buildings before the 1916 zoning and of negotiated buildings before the establishment of the Special Midtown District in 1982. Perhaps a third of a century of well-regulated daylight has made us forgetful. Also, the steeper, more nearly vertical, envelope constrains views along streets. This reduces the visibility of buildings further down the street, for example the Chrysler Building viewed from the west along 42 or 43 Streets.

Without a better understanding of the kinds of office space needed in the Terminal City area it is difficult to judge whether the shape of One Vanderbilt has to do with needed floor sizes and shapes or with exterior aesthetics. Also, without seeing alternatives it is difficult to understand to what degree the failing sky exposure scores are the result of fitting too much FAR into the envelope.

The use of the Vanderbilt Corridor's incentive zoning in the absence of a broader plan created a conflict of interest for the City.¹⁰ It put the City in a position of both regulator and beneficiary in

9 Relief from the sky exposure regulations and One Vanderbilt's poor scores do not appear to be discussed in the EIS for the Vanderbilt Corridor. There is an extensive chapter on shadows; however, in a densely built area such as Midtown Manhattan new shadows, even from a very large building tend to get lost among the existing shadows and a significant negative impact is difficult to find. There is also an extensive chapter on urban design and visual resources; however it tends to be a qualitative tour of the neighborhood rather than a quantitative analysis of the impacts of the proposed building on its surroundings. The sky exposure regulations, in particular Daylight Evaluation, lend themselves to a quantitative analysis of the reduction in the exposure of streets and other public spaces to the sky dome and of the degree to which the profile of the building occludes views along the streets. Such an analysis would be helpful in understanding the impacts of One Vanderbilt's poor sky exposure scores and should have been added to the environmental analysis.

10 First, incentive zoning can lead to the misuse of zoning as a revenue generator, in violation of its rightful function as a tool for the implementation of well-considered plans. Absent such a plan, development controls become a commodified public good (similar to proposals for the sale or commercial use of parks, libraries, and historic landmarks) that can be sold to meet funding needs. This bases land

the market for development rights. This created an incentive for the formulation of bad land use policy. It undermines public confidence in land use regulation by casting government as a self-interested marketer¹¹ rather than as a disinterested arbiter seeking a balance among interests.

It is difficult to know whether the City negotiated a good deal with One Vanderbilt. There will be some worthwhile improvements to pedestrian circulation and to the Lexington Avenue subway station; however, it is clear that the calculus had to do with dollars rather than the implementation of a well-considered plan for the Vanderbilt Corridor and the proportional mitigation of the increased density of the new building as provided by the zoning power. As for the negative 62 sky exposure score, the rising building will soon replace your imagination in trying to understand its impact on daylighting.

Terminal City and Battery Park City as Exemplars: Terminal City, built by the New York Central Railroad during the first third of the twentieth century, and Battery Park City, built during the last third of the century, are examples of the better path that is being advocated here. Both were based on well-considered plans, used a variety of regulatory and funding tools to implement the plan, and were seen as successes.

Both projects divided a large site into blocks and lots, funded and built streets and other infrastructure, disposed of the lots to various developers to insert individual buildings into the new urban fabric, and provided guidance as to the appearance and interrelationship of the buildings. In both cases the developers were responsible for building what was on their sites and the New York Central Railroad or the Battery Park City Authority were responsible for building what was off of the developers' sites.

At the start of the Twentieth Century electrification made possible placing the train yards and platforms of Grand Central Terminal below street level. The terminal and the yards were rebuilt between 1903 and 1913. To help pay for electrification of the trains and for the new terminal the

use decisions not on a planning rationale, but on the extent to which new development may generate funds to assist the municipal treasury.

Second, incentive zoning in the Vanderbilt Corridor distorts the market for transferable development rights (TDR), the main mechanism by which landmark owners are compensated for the cost of abiding by landmark regulation. Currently, TDRs can be purchased within the Grand Central Subdistrict, subject to a special permit approval, in order to increase the maximum allowable FAR by as much as 6.6 FAR, from a base of 15.0 to 21.6 FAR, or subject to an administrative approval for an increase of as much as 1.0 FAR. Under the Vanderbilt Corridor regulations zoning development rights can be negotiated at CPC's discretion, subject to City Council approval, in exchange for improvements to the public realm. The introduction of this new mechanism for obtaining a density bonus to go up to 30 FAR could decrease the value of existing TDRs and also place the City in the role of both regulator of and participant in the market for development rights, operating as both a seller and as an arbiter of special permits. The City's interest in funding infrastructure improvements creates an incentive to undersell the market for landmark development rights, thereby frustrating the very reason for the creation of the Grand Central Subdistrict in the first place.

11 Note that the property owned by the MTA on the east side of Madison Avenue between 44 and 45 Streets, which it plans to sell, is made considerably more valuable by the Vanderbilt Corridor upzoning.

area above the train yards was leased for the development of hotels, office buildings, and apartment buildings. The New York Central held a competition for the design of Grand Central, prepared and revised plans for the area, built the infrastructure of streets and utilities, and coordinated the design of terminal and buildings.

Terminal City was a successfully completed project when the Waldorf-Astoria and the New York Central Building were finished in 1929 and the Chrysler Building in 1930. Since then buildings have been remodeled and replaced, the terminal has evolved from inter-city rail to commuter rail, and the New York Central Railroad has divested its interests, removing its guiding hand.

Similarly, the Battery Park City Authority pursued a series of plans until it had one that worked well and had the flexibility to adjust to changing circumstances. The plan, at its most basic level, divided the site into blocks, streets, and parks and these were established on the City Map. A special zoning district was prepared that regulated the uses, bulk, and parking on the various blocks. Urban design controls were developed for each neighborhood. These established detailed guidelines for the buildings and their relationship to the street, including lobby entrances, parking entrances, and retail frontage. The Battery Park City Authority sold bonds to pay for creating the land, building streets and other infrastructure, and building the parks. Revenue from the buildings pays down the bonds and pays for the operation of the parks and other public areas of the site.

Terminal City's Future: A new generation of Terminal City is emerging. The MTA is building East Side Access to bring the Long Island Rail Road to Grand Central and the City has undertaken a change in its public policy that would encourage substantial redevelopment in East Midtown, starting with One Vanderbilt.

If the new Terminal City is to be seen as successful it needs to be based on a well considered plan that:

- Places it in the context of the region's transportation system and business centers,
- Contains a vision for growth that builds on the existing physical and cultural investments,
- Has a detailed plan for the complex public realm that intertwines buildings, streets, and transit, and
- Evolves a new guiding hand to coordinate and manage change.

Terminal City also needs a plan to fund the improvements to the public realm and transit infrastructure that are needed to integrate East Side Access, solve existing congestion problems, and accommodate the increased density that is being considered.

A plan usually addresses a perceived problem or problems and it is true that the answers one gets usually depend on the questions one asks. Therefore, it is important to start making a plan by being clear as to one's objectives – one's vision.

It is easy to agree to the goal of maintaining East Midtown as the city's and the nation's, perhaps the world's premier business address and it is sensible to cluster any new office buildings near Grand Central, where they are most accessible to transit.

It is also reasonable to believe that the best business district in East Midtown would have a rich mix of uses including special stores, restaurants, and galleries, retain the best of its existing historic fabric, retain its varied scale and styles of architecture, incorporate some memorable new buildings, and, most importantly, have a significantly improved public realm, including access to the area and circulation within it.

However, what is East Midtown's problem? If the problem is how best to maintain the attractiveness of East Midtown such that tenants will prefer to be there, what makes East Midtown attractive?

The essence of the attractiveness of the Grand Central area is access -- both to the place and to and among the activities and people nearby. Local circulation depends on the quality and connectedness of the public realm. Access to the place depends on trains, and has since 1856 when New York City's Common Council banned steam locomotives from south of 42 Street.

This is a convenient neighborhood. There are excellent urban residential neighborhoods within walking distance to the east, north, and southeast and nearby residential suburbs served by transit. There are cultural, retail, dining, entertainment, and service offerings in abundance. The rest of the midtown business district, and the theater district, is a short walk west, Lower Manhattan is close, and Long Island City, Downtown Brooklyn, and even Jersey City, Hoboken, and Newark are not far. There are three nearby airports and Pennsylvania Station linking New York to the Washington-Boston megalopolis and to the rest of the nation and the world.

This is a transit oriented neighborhood. Today Grand Central is served by Metro-North, by the 4, 5, and 6 trains of the Lexington Avenue IRT subway, by the 7 train of the Flushing IRT subway, and by the Times Square shuttle. Soon it will also be served by LIRR trains via the East Side Access project and eventually it will be served by the Second Avenue subway as it wends its way slowly south.

There are, however, two more improvements needed to better connect Grand Central to the region and bring it into step with other world class cities:

- A direct rail connection between Grand Central and Penn station. This would allow NJ Transit trains to bring passengers directly from New Jersey through Penn Station to Grand Central and Metro-North passengers to travel through Grand Central directly to Penn Station and it would allow Amtrak to serve the east side of Manhattan.
- Direct rail access to the airports.

The attractiveness of East Midtown as a premier business address also reflects its rich mix of uses including special stores, restaurants, and galleries, its convenience to nearby residential neighborhoods, its existing historic fabric, and its varied scale and styles of architecture.

Making a plan might reasonably involve:

- A study of the markets for central business districts to understand the relationships among the several business districts in the region and their supporting hinterlands.

- A study to compare available built space in East Midtown with market demand and public policy to maintain a rich mix of users.
- Consideration of the transportation improvements that would support East Midtown, including a rail connection between Grand Central and Penn Station, the Second Avenue subway, light rail and public open space on 42 Street (Vision 42), and rail access to the airports.
- An analysis of how to integrate and improve the public realm so as to better connect transit, buildings, public space, and pedestrian circulation.
- Consideration of how to enhance an area's rootedness and history. (A palimpsest is a page that has been erased and reused but on which the older information is still discernable. The richest built environments are often palimpsests in that the inquiring eye can see their history.)¹²

Terminal City Design and Finance District: The District would combine three components:

- A cooperative organization to operate the public realm so as to realize its potential synergies,
- A tax increment finance district to help pay to build those improvements to the public realm that are not on private property, and
- An urban design plan for the public realm, in both public and private property.

The **operating group** would need to represent all property owners in Terminal City, including the City of New York and the MTA, and the community, including local elected officials. Perhaps it could be an offshoot of the Grand Central Partnership. Membership might be proportional to the amounts of the public realm controlled by each property owner.

The primary role of the operating group would be to coordinate the operation and maintenance of the public realm of Terminal City, especially the pedestrian circulation system linking buildings, transit, and streets. It would provide the guiding hand originally provided for Terminal City by the New York Central and currently provided for Battery Park City by the Battery Park City Authority.

The **tax increment finance district**¹³ would capture a portion of the increase in land value resulting from the completion of East Side Access. This would not be a surcharge on real

12 Which is not to detract from the validity of entirely new districts such as La Defense, in Paris, or Hudson Yards but is to point to the value of existing urban fabric.

13 Tax increment financing (TIF) is a financing mechanism that links new private and public development to infrastructure needs. It works by designating a geographically delineated TIF district for a set period of time. During this period, property taxes resulting from the increase in the assessed value of district properties are dedicated to funding improvements within the district. The City may issue revenue bonds backed by this expected revenue stream in order to pay upfront for infrastructure improvements. These bonds are not secured by the "faith and credit" of the city or state and do not count against the former's debt limit. It should be noted, however, that under current legislation the State intends TIFs as a tool to eliminate "blight" in areas where it "cannot be accomplished through private investment alone." While municipalities have been given broad discretion in satisfying these conditions, a project in the heart

estate taxes (as would be the case with a Business Improvement District) but a segregation of part of the natural increase. That portion would be calculated to allow funding of improvements to the publicly owned portion of the public realm – particularly those that would more graciously integrate the LIRR with the rest of Terminal City. The use of tax increment funds should be limited to capital investments and not allowed for operating costs.

Some tax increment finance districts, including the simulacrum at Hudson Yards, have difficulty because the increment is based on the value of new development, rather than the land value, and the new buildings do not always happen as quickly as projected.¹⁴ This suggests two lines of inquiry:

- For the properties in the Terminal City area is the appropriate portion of the total property assessment in the land portion of the assessment¹⁵, and
- Would the increment of increase of the land portion of the assessments pay for the needed improvements to better integrate the LIRR into Terminal City?

Tax increment financing would avoid conflicts of interest between planning and raising revenue, would spread the cost over all the properties that benefit from the transit improvements, and would likely provide significantly more funds for improvements to the public realm than fees being proposed through zoning. We also understand that there are arguments against tax increment financing, not least of which is that it diverts tax revenues from the City's general budget. Nevertheless, we believe it is a tool that is worth thorough and objective consideration.

of the country's largest CBD perhaps pushes beyond the lax boundaries of these legislative constraints and might need modified enabling legislation.

14 Real estate tax assessments have two parts: a land portion and a building portion. The land portion is based on the location of the site, its serviceability for probable uses, and the scarcity or abundance of similar sites; the building portion is based on the improvements that are made on the site. Infrastructure investments, such as a new road or a sewer system, can increase the value of the land. When these are provided by others, such as the municipality, rather than the property owner, the increase in property value might be referred to as the "unearned increment." Improvements to the site, such as a new building, can increase the building portion of the assessment. Such improvements are typically by the property owner and might be considered the "earned increment."

The earned increment typically represents a denser use that needs more services from the municipality. The real estate taxes from that increase in assessed value should go to the municipality's general fund to pay for those services. However, the unearned increment does not represent an increased demand for municipal services. It results from a capital improvement and the real estate taxes from that increase in assessed value should go to retire the cost of that investment. This is the rationale for a tax increment finance district: the increased land assessment resulting from a public investment should be used to help fund that investment.

15 One would expect the value of the land assessment to be consistent for similarly situated properties; however, in the Vanderbilt Corridor they range between 14 and 34 million dollars per acre, with a median near 20 million dollars.

Basic to the Terminal City Design and Finance District would be an updated **urban design plan** for the area. This could start with the assumption that all of the buildings in Terminal City share a special pedestrian circulation system that benefits the participants synergistically – that better connectivity, more retail frontage, enhanced maintenance, and light, air, and circulation improvements benefit all.

Because Terminal City is largely an existing built environment there is a question of how to encourage the participation of existing buildings in improving the system. One approach would be to identify improvements in existing buildings and to allow a floor area bonus that may be used on site, if practicable, or transferred to another site, similar to a transfer of unused development rights from a landmark. An existing building might provide a new access to the Terminal City pedestrian circulation system or light and air to the system through a skylight in a plaza; the urban design plan would identify the bonus floor area the improvement would earn; and the property owner would be able to use the floor area or sell it to a developer of another site in the district.

Similar to Battery Park City the updated urban design plan would identify and coordinate the features of the public realm on public and private property, establish tools such as zoning and urban design guidelines to regulate change on private property, and establish a master plan for improvements on public property.

A Model for Other Transit Hubs: A Terminal City Design and Finance District could serve as a model for other locations where the City seeks to encourage transit-oriented development based on a significant increase in transit accessibility supporting increased density. The most obvious current candidates are the Penn Station¹⁶ area and Long Island City¹⁷.

16 The major transit improvement being planned for Penn Station is Gateway, a pair of new tracks in tunnels under the Hudson River, effectively doubling the rail capacity between New Jersey and Penn Station. The new tunnels and improvements to Penn Station should significantly increase the value of land in the area and provide the basis for a tax increment finance district.

An important consideration is the future of Madison Square Garden. Should it remain where it is – very convenient to transit but constraining improvements to pedestrian circulation and to light and air and orientation. Or should it move elsewhere to allow a more gracious Penn Station to emerge.

What is the vision for the future of the Penn Station area in the context of the city and the region? What should be the extent of the Penn Station terminal city? What should be the plan for the public realm? What improvements should be capital cost of Gateway and Moynihan Station and what should be funded through a tax increment finance district?

17 A component of the East Side Access project is a new rail station in Long Island City. When a significant number of the LIRR trains that use the main line through Long Island City to Penn Station are routed to Grand Central there will be room to stop trains at a station to be located on the main line near Queens Plaza. This will not only allow more convenient LIRR service to Long Island City but also allow New Jersey trains that now are parked in the Sunnyside Yards during the day to make their last revenue stop in the morning and their first revenue stop in the evening in Long Island City. When some Metro-

Applications on a smaller scale might include opportunities such as the extension of the Second Avenue subway to the Metro North Station on 125 Street.

A Better Path for East Midtown: Remember:

- Zoning is but one tool available in a regulatory regime to guide the future of our built environment; however, it is the tool most readily available to the Department of City Planning and so it has tended to be employed even when it is not the ideal choice.
- Zoning is not the same as planning, and the zoning resolution is not the de facto plan for the city. However, much of the zoning resolution is based on at least partial plans and urban designs for aspects or areas of the city. A good example of zoning based on a well-considered plan is the Special Battery Park City District (Section 84-00 of the Zoning Resolution).
- Zoning is intended to regulate what is built so as to protect the public welfare; it is not intended to generate funds to supplement the municipal budget.

The 2017 proposal for East Midtown – like the rezoning of the Vanderbilt Corridor -- is reliant on zoning rather than other tools and is not based on a well-considered plan for the public realm. Instead its goals are to encourage some very large office buildings, help the MTA pay for the improvement of several subway stations, and transfer a large amount of air rights from a few landmarks. It is designed to raise funds for subway and street improvements through a transit improvement bonus and through fees on the transfer of air rights and the rebuilding of overbuilt floor area rather than to integrate development with the public realm.

A better path starts with as good and complete a plan as possible for the area being dealt with and accepts that zoning is only one part of the regulatory regime employed to realize the plan. Urban change based on well-considered plans and using the most appropriate tools to regulate, fund, and operate improvements provides a better path for East Midtown as well as other parts of our city.

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North trains are routed through Sunnyside to Penn Station (Penn Station Access Study) they might also stop in Long Island City. Even Amtrak would be able to stop in Long Island City.

Although the cost of the new station is modest, and is part of the East Side Access project, the increase in train service is phenomenal and the increase in property value should be proportional, providing a foundation for a tax increment finance district.

It has been City policy for some time to encourage the growth of Long Island City as the city's fourth central business district. Now would be the time to confirm that the new rail station is going to be built and to plan for the growth it should generate in Long Island City.