

Investment Up in the Air:

Air Rights and Transit

By Pamela Friedman

The current economic climate is influencing how we all do business. Many transit agencies – particularly rail operators – are facing revenue shortages that impact their ability to support infrastructure and related facility improvements. They are looking beyond traditional federal program support and fare box recovery to explore feasible alternatives. Leasing air rights – above or below transit stations to private developers – is a mechanism that has been successfully tapped in the past, and may present a responsible solution. When used to support station infrastructure development or expansion, the result is better and more frequent transit service to the community as a whole.

Air rights are a value capture financing mechanism in which a public agency is compensated by a private company for the cost of an investment. Value capture financing is based on the concept that the increases in property values created by public improvement projects should (in part) revert to the entity that created that value rather than solely to the property owner. Projects supported through the lease or sale of air rights support transit oriented development efforts, help increase connectivity and improve access



The most famous – and lucrative – example of passenger rail air rights was the creation of Park Avenue in Manhattan above the New York Central Railroad's main approach to Grand Central Terminal.

for commuters and local residents. Leasing air rights above, below or adjacent to transit centers allows for development in prime locations without the demolition of existing structures or the displacement of current residents. In 2008, New York City alone documented 83

transportation infrastructure sites, comprising nearly 1,000 acres of roads, rail corridors and rail yards that could provide areas for new surface development.

Reviving a Previously Successful Concept

Air rights have been used to fund development around transit stations for nearly a century. Railroads were among the first to implement the concept. The idea was first introduced by William Wilgus, chief engineer of the New York Central and Hudson River Railroad, as part of plan to redesign New York's Grand Central Station for the use of electric trains after a devastating collision between steam trains in 1902. Electrification enabled the railroad to construct platforms over the previously open rail yard in what had become prime, valuable real estate. The platforms provided developers space on which to construct revenue generating buildings. In exchange, they paid the railroad for the use of the *air rights* above the platform. These funds helped offset project costs and boosted development along a 30 block area adjacent to the station. In the years following the completion of the new terminal, numerous apartment houses and hotels were built along the area from 45th to 49th streets. After the now-familiar Grand Central Terminal opened in 1913, development around it continued well into the 1920s.

Use of Air Rights Today

The following examples highlight the community-wide impacts achieved when transit agencies successfully negotiate the use of air rights with private developers. In each instance, air rights were either sold or



leased, resulting in expanded housing, economic development and job creation around a transit hub in addition to improved access and customer services for the transit agencies involved. Transit leadership's efforts to create strong partnerships with developers played a key role in the success of each project.

South Station, Boston, Massachusetts

Through the development of strong public-private partnerships, the Massachusetts Bay Transit Authority (MBTA) has successfully leased or sold air rights to support station redesign. In recent years, MBTA has implemented three large projects including the redevelopment of Boston's South Station Transportation Center (SSTC). The SSTC serves as a



hub for the Red Line, the Silver Line Bus Rapid Transit (BRT), Amtrak, and commuter rail service in the historic rail headhouse and a separate intercity bus station. Initial plans for the development of the intercity bus station included two wings and a central ticketing bay, with one wing connecting the MBTA bus terminal to the center's historic headhouse. In exchange for the sale of air rights valued at near \$55 million, the developer agreed to complete the second wing connecting the terminal to the station. Air rights options include the right to build a 1.8 million-square foot mixed-use project incorporating a 40-story tower, a 13-story hotel and residential tower and a 9-story office tower. The project is expected to generate 2,500 construction jobs, 5,000 permanent jobs, 16 additional bus gates and \$12 million in new taxes for the city. When completed, the project will serve as a gateway to the seaport district, providing commuter access to the many new businesses slated to open.

South Station, opened in 1899, soon became the country's busiest railroad station. The original train terminal included five stories

of offices running perpendicular and parallel to the tracks and a shed covering passenger platforms. The structure underwent various renovations over the years until interest in rail travel began to decline. In 1965, the Boston Redevelopment Authority (BRA) took ownership of the facility. As rail travel continued to decrease, portions of the property were sold and the remaining structure fell into disrepair. In 1978 the station was sold to MBTA. With the sale, the BRA maintained ownership of the air rights above the 6th floor. Financial support from the Federal Railroad Administration and others allowed MBTA to rebuild the tracks. MBTA installed the footings for future air rights beneath the eleven commuter rail and Amtrak tracks in conjunction with the construction. At the time, MBTA used the station to support transit (Red Line) and commuter rail service. In 2004 the Silver Line BRT was completed as part of Boston's *Big Dig* project connecting South Station to Logan Airport.

BRA, MBTA and the Federal Railroad Administration announced plans for a staged redevelopment project including an intermodal transportation center with commercial space development located in the air rights above the center in 1984. Beacon Properties was granted a long-term master lease to redevelop and operate the historic train headhouse. Completed in 1989, the space included new ticketing and seating areas, a food court, an Amtrak first-class lounge and upper floor private office space. The first half of the intercity bus terminal was completed in the 1990s by the MBTA and TUDC LLC, a subsidiary of

Tufts University. TUDC obtained an option for the air rights which was later sold to another developer, Hines Interests. Hines received the 10-year option to purchase air rights in return for the construction of the second wing connecting the intercity bus terminal to the train headhouse. Construction was temporarily halted because of the recession, but at present the project is fully permitted and seeking financing for completion.

MBTA's other air rights projects include Columbus Center at Back Bay Station, a project valued at \$650 million, for which a 99-year air rights lease, offered in partnership with the Massachusetts Turnpike Authority was negotiated. In exchange, MBTA received a \$3.5 million cash payment and a commitment to improve the station's ventilation system for its portion of the air rights once the construction begins. A third project, the Avenir, located above the North Station Super Station opened for occupancy in 2009. MBTA received nearly \$20 million for the project, payable in two installments, which includes rental apartments, ground floor retail and structured parking. An entrance to the subway was incorporated into the first floor.

Arena Station, Dallas, Texas

Dallas Area Rapid Transit (DART) is a regional transit agency serving 13 cities in a seven-county area. In addition, DART provides access to the Dallas-Fort Worth International Airport via the Trinity Railway Express. In the 1980s, DART purchased land that originally housed a power plant and railroad yard.



Included in the purchase was a 300-foot deep area between the rail station, running parallel to a highway accessing downtown Dallas, and a 400-foot wide area near the platform for which DART obtained air rights. At that time, DART purchased the rights from the city for 80 percent of fair market value.

The location eventually became home to a sports and entertainment arena built and managed by Hillwood Development Corporation. The Arena was part of a master develop-

ment plan for the location that also included a planned light-rail station. Additional development for the site included hotel, office, condominium, rental apartments and retail space. The purchase of air rights by the developer was part of an extensive negotiation between DART and the developer for rail right-of-way that DART had acquired to accommodate future expansion of the light-rail system. In 2000, Hillwood – a company owned by Ross Perot, Jr., – offered to purchase 22,000 square feet of air rights for 32 percent of the property land value. This was part of a package of land acquisitions needed to implement the master planned development. Negotiators settled on a final purchase price based on 55 percent of property value, bringing DART approximately \$450,000, in funds which are used to support system expansion and operations.

DART's renovated Arena station opened soon after the completion of the arena. Initially located on the periphery of project, the station provided service only to sports-related activities. Full service began in 2010 as part of the 17.6-mile extension of the Green Line and as development expanded to include land close to the station.

The project has increased economic development in the area and DART expects ridership to continue to increase. Jack Wierzenski, DART's Director of Economic Development, attributes the agency's success in negotiating a highly profitable sale of air rights to the foresight of acquiring the property for future rail service expansion when it initially came on the market.

Issues for Consideration

The lease or sale of air rights present an opportunity for transit agencies to generate much needed revenue, but successful projects require time and extensive planning. Laying the groundwork for and building secure partnerships with key stakeholders is a must. The overall physical appeal of the facility to all participating partners and local residents was instrumental in building support.

Because they are location-specific, air rights projects are susceptible to changes in the commercial real estate market. They are most effective in communities with a strong real estate market and in neighborhoods. One way to address possible fluctuations in property values is through the arrangement of an up front, one-time payment as opposed to a conventional lease agreement. Other issues for consideration related to the development of commercial real estate in conjunction with facility redevelopment, including zoning restrictions, configurations that may impact access to transit rights of way, and impacts on existing open space or structures.

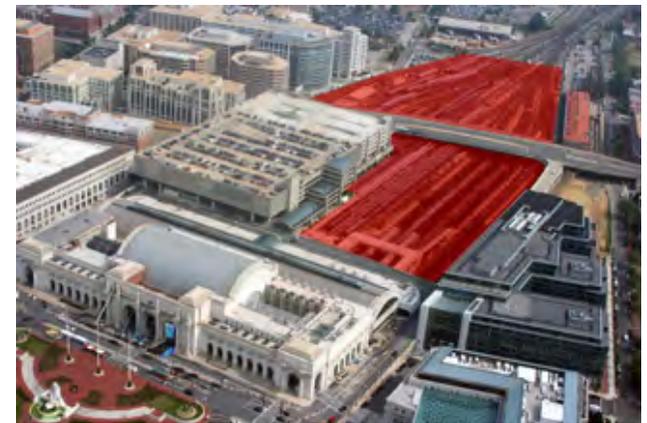
The Mineta Transportation Institute notes that when gauging the sustainability of financing mechanisms, such as air rights, transit agencies and local governments should consider the following:

- Have a clear policy framework in place to guide joint development activities.
- Strong local government and transit institutional capacity are needed to suc-

cessfully plan, implement and manage joint development projects.

- The support or opposition of local stakeholders, including local residents can make or break a project.
- Strive to ensure that agreements are equally beneficial to all partners.

Leasing or selling air rights in conjunction with economic development projects does much more than generate income for transit agencies. Increased ridership and the ability to expand station services are among the immediate results. Long-term benefits include becoming a more active partner in supporting business development, providing increased access to affordable housing and expanded transportation options for residents and commuters alike. 



Plans are emerging to utilize the air rights above the passenger platforms and tracks at Washington's Union Station for an extensive, mixed-use rail-oriented development project (see page 11 for more – ed).