

# City Wants Air Rights To Hop, Skip and Jump

By EDWARD C. BURKS

THE city may be on the verge of the age of the sensational "air grab," but it's all on the up and up, according to those who envision a booming business in air rights.

Quite simply it means that the familiar old "air right" — the unused, allowable construction space above countless buildings — will be able to take flight to another site.

Take, for example, the massive but squat United States Custom House at Bowling Green at the foot of Broadway. It has unused air rights the size of the Woolworth Building. In other words, under zoning regulations for that area, the site could be used for a building of skyscraper proportions.

Traditionally, the only way to take advantage of that vast air space would be to build up into it.

But the City Planning Commission has come up with a scheme — the subject of a public hearing Wednesday — to allow transfer of those rights from the Custom House to a development project across the street.

This is just one of three different plans conceived here for transferring unused air or development rights to another site — next door, across the street, up the block, or maybe even farther. They would be sliced, diced and even bent and scattered around the neighborhood. And as one City Hall wag put it, they might even be twisted a bit, too.

The intention is to shift the unused air rights from buildings that will not or cannot be enlarged — principally various municipal structures and landmarks.

In the case of the Custom House, which has been designated a landmark, the proposal is to shift its air rights across to the site of a planned skyscraper at 1 Broadway.

The new building, perhaps as high as 50 stories, would be erected by United States Lines, Inc., a subsidiary of the Walter Kiddee Company, to replace the 15-story structure that the company now occupies on that site as its headquarters.

Without the transfer of the air rights United States Lines would be restricted by the zoning law to a relatively low building.

A change in the city's zoning law is required to put this plan into effect. An interesting sidelight is the fact that the Planning Commission and the builder have so far not cleared the plan with the Federal Government.

Commenting on this a few days ago a Planning Commission spokesman said: "It made no sense to talk to the Feds till we had the authority to do something."

While the zoning law change was specially carpentered to fit the building plan at No. 1 Broadway, it in fact would permit a shift of air rights over any city, state or Federal landmark to an adjacent or nearby development site. Thus, a po-

tentially huge program of air rights swaps would be launched.

Before the commission can adopt this zone change, the Wednesday hearing is required. Afterwards Board of Estimate ratification is necessary.

In return for obtaining such valuable air rights the developer would be obligated to make "a major improvement of the public pedestrian circulation or transportation system in the area." In the case of No. 1 Broadway that seems to mean improved underground access and corridors to the Bowling Green subway station.

Since the developer must also agree to take a direct part in preserving the landmark involved, Donald H. Elliott, chairman of the Planning Commission, says:

"The plan is a practical and imaginative way to get good development, preserve a landmark and improve the subway and pedestrian movement."

If the change is approved it would be possible for the public landmark owner to apportion slices or chunks of air rights to different adjacent developers rather than giving all to one.

Already part of the zoning code is a provision allowing the transfer of unused air rights from above private landmark buildings to adjacent sites under the same ownership. Here again law is tailor-made to fit a special

Continued on Page 9, Col. 1

# City Wants Air Rights to Hop and Ski

Continued From Page 1

case, but with wide applications. It was enacted to allow the owners of Grand Central Terminal, a landmark that cannot be enlarged, to transfer the air rights above the terminal under controlled conditions to its adjacent properties for future large-scale construction.

A third plan for transferring air rights, a lawyer's dream conceived by Real Estate Commissioner Ira Duchan, is one of vast possibilities, a real high-flyer with the sky the limit. Under the Duchan plan, existing law is used, and the city makes money by offering unused air space over city-owned structures on long-term leases to private developers on adjacent sites.

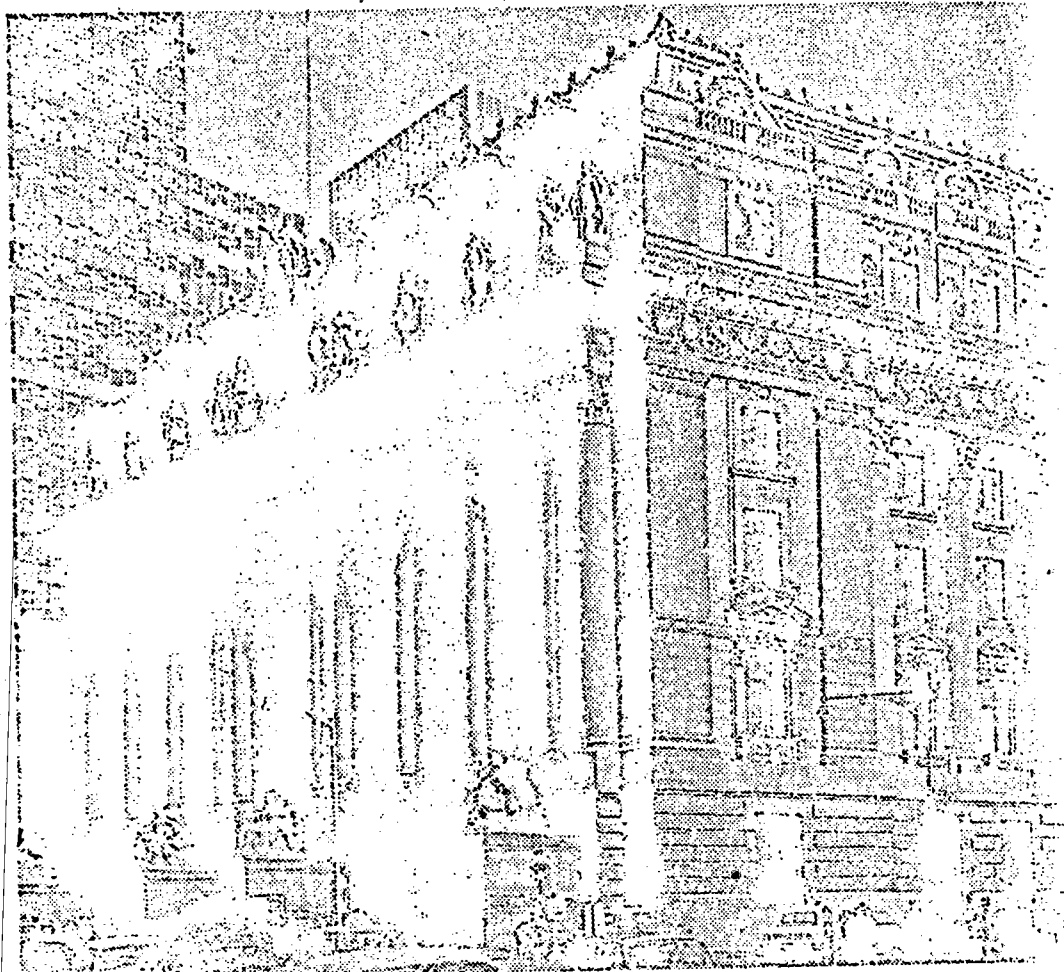
So far there has been just one application — the transfer of air rights over the city-owned Appellate Division Court House, on the east side of Madison Avenue at 25th Street, for 75 years to a next-door developer who will pay \$3,450,000. The lease was signed April 10.

But Mr. Duchan sees countless possibilities throughout the city. Think of all the schools, police and fire houses, relatively low buildings not apt to be enlarged skyward, many of them with vast unused air rights awaiting a nearby developer.

The legal complications in general are these:

The city takes advantage of the law allowing it to lease municipally owned buildings for up to 99 years to the highest bidder. In the case of the Appellate Division Court House, for instance, that ornate three-story structure, its six-door annex and the vast air rights above are handed over as a package in a 75-year lease agreement with the next door developer, Samuel Rudin & Co.

Now, for zoning purposes the Rudin site and the Court House are considered a single zoning lot. The developer



The United States Custom House at Bowling Green has air rights that would permit a Woolworth Building. City Planning Commission is considering a plan to transfer the right

wants the air rights to add 100,000 square feet to his permissible floor space, allowing him to increase the size of his proposed building on the corner of Madison and 26th by nearly one-quarter. He in turn subleases the Court House back to the city, and does not utilize it in any way, but he keeps the Court House air rights on his site.

Mr. Duchan sees the plan as a stimulant for the construction industry while at the same time it brings revenue to the city. So far all of these air rights transfer schemes are confined to adjacent or close-by sites.

But already Mr. Duchan is toying with the possibility of expanding things to include properties farther away and

not necessarily adjoining the city building. And the rights, of course, could be "cut up" into slices for various developers.

"If he can do all these tricks," one City Hall skeptic said last week, "why doesn't he go whole hog and transfer the rights out to Colorado in exchange for some pure mountain air?"

Another skeptic who sees the wholesale transfer of air rights from various buildings as a warping of the zoning code is Mrs. Beverly Spatt, long a maverick on the seven member Planning Commission.

So far the Planning Commission has expressly stated that air rights over public parks, historic districts and

cemeteries are not to be transferred.

The Landmarks Preservation Commission has commented in favor of transferring air rights from landmarks. But Alan Burnham, executive director, conceded a possible conflict of interest with the Federal Government in the Custom House case.

The commission has designated the Custom House as a landmark, meaning that it should not be altered or enlarged. But the Federal Government usually takes umbrage, Mr. Burnham said, when the city designates a Federal structure as an untouchable landmark. So far there has not been a test case, but if the Government

should ever contest the city's designation a major clash or lawsuit might develop, Mr. Burnham added.

The massive, stone-faced Custom House contains a post office and other Federal offices as well. The Custom House facilities will be moved in a few years to the World Trade Center. Under present zoning regulations the Custom