Uses and Abuses of Value Capture for Transit

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Introduction

With the New York State Fiscal Year 2019 Executive Budget proposal to include a "value capture" mechanism for financing transit, an obscure and highly technical subject suddenly has generated considerable attention. This report explores the purpose of, and issues created by value capture generally, and by the current proposal. What is "value capture?" What are its uses? Has it ever been used successfully before in New York City?

Much of the favorable attention transit experts give to value capture stems from the Hong Kong model. In Hong Kong, the rail operator, MTR, builds rail lines financed through the profits from development above stations and depots along the route.[1] Hong Kong has unique characteristics that facilitate this model, particularly its high density and scarcity of developable land, which make the rail right-of-way development particularly profitable. New York City used a similar strategy to finance the extension of the #7 subway to Hudson Yards in Manhattan.

While value capture has in the past successfully provided new revenue for the Metropolitan Transportation Authority's capital projects, the current proposal does not build successfully on past achievements. Rather, it diverts New York City's largest and most stable tax source in a manner that could affect the City's fiscal stability and limit the productive ways that the City has used value capture to funnel funding generated by private real estate development to the MTA.

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1 Lincoln Leong, "The 'Rail plus Property' model: Hong Kong's successful self-financing formula," https://www.mckinsey.com/industries/capital-projects-and-infrastructure/our-insights/the-rail-plus-property-model.

What is Value Capture?

Value capture, broadly defined, is substituting revenues derived from real estate development for the traditional bond funding for transit capital improvements. Traditional transportation bonds need to be repaid from fares or general tax revenues. Value capture financing is either contributed in cash or kind by real estate developers or is repaid out of the tax revenues generated by a specific real estate development. The transit rider or general taxpayer is not responsible for repaying value capture financing.

Value capture is appealing to public officials since bond issues add to the long-term debt burden of governments and transportation agencies. Moreover, these entities may not be in a good position to borrow, because of poor debt ratings or high interest rates. However, high-density real estate development that potentially generates substantial value, to be tapped through one of the mechanisms discussed below, is also often controversial and the political process needs to determine whether the benefits outweigh the impacts.

Types of Value Capture

Value capture comes in a variety of forms:

Tax increment financing. This form of value capture requires the definition of a taxing district, within which the incremental tax revenues from development will be devoted to the repayment of bonds financing capital improvements that make that development possible. For example, in a suburban location a new residential subdivision requires an expansion of the sewer system. The property tax increment from development in the subdivision is dedicated to repaying the bonds financing the new sewer.

Tax increment financing is often depicted as sealing off the general taxpayer from the costs of the infrastructure necessary for a new development, but this protection can be illusory.The residents of the new development will use public services such as education, police and fire protection, and if the tax increment is dedicated to debt service for capital improvements, these public services may well need to be provided out of general tax revenues.

Incentive zoning. This mechanism provides a zoning incentive, typically a higher Floor Area Ratio (the amount of floor area permitted on a lot, expressed as a multiple of the lot area). In exchange for this incentive, a real estate development is required to provide an amenity that mitigates the land use impacts of the development. For example, the suburban subdivision discussed above would increase the population of the community, creating a need for additional parks and playgrounds. In exchange for dedicating a portion of its property to public park use, the development would be granted a higher floor area ratio, or "bonus." The public park would serve not only residents of the development, but all residents of the community. While incentive zoning typically does not involve a specific monetary calculation, the drafters of the zoning need to consider the relationship between the economic value of the bonus floor area and the cost of the amenity. If the park is required to be too large and costly, the developer will be unwilling to utilize the bonus and no public park will be provided.

Unlike tax increment financing, improvements financed through incentive zoning are truly off-budget and do not impair the flow of tax revenues to general government services. This is not to say, however, that incentive zoning is cost-free. Real estate development comes with land use impacts. For example, with the added density, there might be a need not only for more parks but for schools. Whether the additional density is acceptable in light of the amenities provided should be the subject of a transparent and responsive public review process.

Mandatory improvements. Unlike incentive zoning, mandatory improvements do not involve a tradeoff between density and amenities. Whether the proposed subdivision ultimately constructs half a dozen houses or a thousand, the mandatory improvements must be provided. However, such provisions are subject to heightened legal scrutiny. Mandatory improvements must be consistent with generally applicable principles of good site planning or, if imposed specifically on a proposed development, proportional to its actual effects. For example, based on a traffic study, the planning authority reviewing our prototypical suburban development might require the developer to install a traffic signal and street widening at the main entrance to the development.

As with zoning incentives, when requiring mandatory improvements planners need to be conscious of the impact of mandatory improvements on the developer's rate of return. While the developer might be willing to provide the traffic signal and street widening, if the planning authority determined that a highway interchange were needed, the developer might argue that such a requirement would make the entire development infeasible.

Non-binding linkage. In this form of value capture, the local government undertakes improvements using its general bonding authority, arguing that by facilitating development, the improvements will generate additional tax revenues that will effectively pay for them. For example, our suburban jurisdiction might widen an arterial highway through an undeveloped area, with the rationale that this will facilitate new residential developments whose tax revenues will effectively repay the bonds financing the improvement. Unlike tax increment financing, there is no special taxing district and no specific set-aside of tax revenues to repay debt. If the local authority is wrong about the development-spurring character of the improvements, all taxpayers are on the hook for the debt. On the other hand, many municipalities will find that their general obligation bonds are more highly rated, and thus can pay less interest, than tax increment financing debt, or that to achieve a better rating for the latter, so much taxable property needs to be included in the special tax district that revenues for general government services are unduly impaired.

Rezoning public property for development. This is the most clear-cut form of value capture. Many municipal governments own property whose original purpose is not as valuable as it once was. For example, the local government may own a municipal parking lot downtown, but today the priority is to encourage commuters and shoppers to use public transit rather than drive. By rezoning the parking lot property, and approving redevelopment, the municipality can create and then capture real estate value just like any other property owner. Like incentive zoning, rezoning public property involves a tradeoff between the value of additional development and the land use impacts associated with it, and this tradeoff needs to be considered in a transparent and responsive public review process.

How Has New York City Used Value Capture for Public Transit?

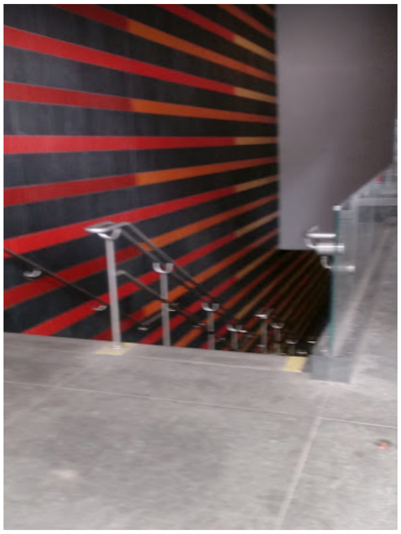
New York City has over many years partnered with the Metropolitan Transportation Authority to use most of these methods to aid transit. Many of the most important improvements of recent decades have been the consequence of these partnerships.

The one method the City has not used is tax increment financing. New York City's general obligation bonds, and those of other entities financing the city's capital program, are highly rated.[2] The City has never perceived tax increment financing as a beneficial mechanism, given its access to debt on favorable terms.

Incentive Zoning. New York City has long used floor area bonuses to promote transit improvements by developments adjacent to, or near subway stations. Some of the most-utilized connections between subway lines constructed in recent decades, including those between the Sixth Avenue and Flushing Lines and the 53rd St. Crosstown and Lexington Avenue Lines in Midtown Manhattan, as well as the connections at Court Square in Long Island City, Queens, were induced by floor area bonuses. More recently, SL Green Realty, the developer of the 1 Vanderbilt office tower under construction next to Grand Central Terminal, agreed to undertake $220 million in improvements to the Grand Central subway station, one of the most congested in the city, in exchange for a floor area bonus.[3] These improvements are currently underway. The Greater East Midtown rezoning plan, also recently approved, also has a floor area bonus mechanism to encourage subway station improvements.[4]

Mandatory Improvements. New York City zoning provides for mandatory relocation of a subway stair inside the property line of abutting developments in major business districts. A recently constructed example provides an entrance to the Sixth Avenue subway at the northwest corner of West 39th St. and Avenue of the Americas (1045 Avenue of the Americas, Figure 1).

Figure 1: Off-Street Relocation of a Subway Stair, 1045 Avenue of the Americas at W. 39th St.



2 City of New York, Executive Budget, Fiscal Year 2018, Message of the Mayor, http://www1.nyc.gov/assets/omb/downloads/pdf/mm4-17.pdf, p. 73

3 Emma G. Fitzsimmons, "Plan to Build Tower at Grand Central in Exchange for Transit Upgrades Is Approved," https://www.nytimes.com/2015/05/28/nyregion/plan-to-build-tower-at-grand-central-in-exchange-for-transit-upgrades-is-approved.html?login=smartlock&auth=login-smartlock, May 27, 2015

4 https://www1.nyc.gov/site/planning/plans/greater-east-midtown/greater-east-midtown.page

Non-binding linkage. New York City paid for the $2.4 billion extension of the #7 Flushing line to Hudson Yards (Figure 2) on the expectation that the investment would more than pay off in terms of value created and tax revenue generated. With development proceeding in the Hudson Yards area rezoned by the city in 2005, this expectation has been borne out.

Figure 2: 34th Street-Hudson Yards Subway Station

Source: Hudson Yards Infrastructure Corporation, Official Statement of Hudson Yards Infrastructure Corporation Relating to $2,141,760,000 Second Indenture Revenue Bonds, p. 3

The Hudson Yards bond financing is often incorrectly described as tax increment financing[5] -- but there was never a formal special taxing district or a legally binding dedication of specific property tax revenues to repay debt. The City set up a special financing entity, the Hudson Yards Infrastructure Corporation, to issue bonds to finance the subway extension and parks. HYIC uses a number of revenue sources to pay principal and interest on its bonds (as of June 30th, 2017, HYIC had $2.75 billion in bonds outstanding[6]). Only one revenue source, District Improvement Bonus funds generated through zoning floor area incentives, is legally dedicated to HYIC.[7] As of December 31, 2016, the District Improvement Bonus funds collected amounted to $341 million. HYIC expects to collect an additional $93 million in 2017 and 2018.[8]

Other revenue sources are assigned to HYIC through agreements with the New York City Industrial Development Agency, the City of New York and the Metropolitan Transportation Authority. These include payments in lieu of real estate taxes (PILOT) and payments in lieu of mortgage recording tax (PILOMRT) for new office buildings, which are eligible for tax benefits. With the completion of 10 Hudson Yards and three office buildings currently under construction (30 and 55 Hudson Yards and One Manhattan West), by 2021 HYIC expects to collect $112 million annually in PILOTS.[9] Additionally, by the end of 2018 HYIC had collected $57 million in PILOMRT, and expects to collect an additional $28 million in 2017 and 2018.[10]

5 See, e.g., Eric Jaffe, "3 Missed Chances to Pay for New York's Subway Expansions," https://www.citylab.com/life/2013/11/new-york-three-missed-chances-pay-subway-expansions/7549/, November 12, 2013.

6 Hudson Yards Infrastructure Corporation, *Annual Report 2017*, http://www.nyc.gov/html/hyic/downloads/pdf/hyic-annual-report-17.pdf, p.3.

7 New York City Zoning Resolution, Section 93-01, definition of "Hudson Yards District Improvement Fund".

8 Hudson Yards Infrastructure Corporation, *Official Statement of Hudson Yards Infrastructure Corporation Relating to $2,141,760,000 Second Indenture Revenue Bonds*, Appendix E, Cushman & Wakefield, *Hudson Yards Demand and Development Report*, pp. E-156, E-166

9 Hudson Yards Infrastructure Corporation, Official Statement, p. E-53.

10 Ibid., pp E-156, E-166

The City has also agreed, subject to annual appropriation by the City Council, to pay to HYIC an amount equal to real estate taxes collected by the City on new development in the Hudson Yards project area. By 2021 HYIC expects that Tax Equivalency Payments for completed residential projects will be $50 million[11], for hotels $39 million,[12] and for retail $5 million[13].

All these funding sources continue to grow with additional construction of new buildings and inflation. While recurring and non-recurring revenues will be adequate to cover HYIC's debt service in future years[14], these sources were expected to be, and in fact were inadequate to pay bond interest in the initial years. Thus the City has also agreed, subject to annual appropriation by the City Council, to make Interest Support Payments from the City's general tax revenues to cover any shortfall[15]. The City has made, in past years, $359 million in such payments[16]. The City's explicit commitment to pay interest on the bonds regardless of development-related revenues sharply distinguishes Hudson Yards from bona fide tax increment financing.

Rezoning for private development. In addition to constructing the subway expansion, the Hudson Yards plan aided the MTA by rezoning the West Side train storage yards to permit high-density development. The private real estate development currently underway over the rail yards, confusingly also known as Hudson Yards (Figure 3), provides ground lease payments to the MTA. A report prepared for the developer in 2016 estimates the net present value of ground lease payments over the life of the lease at about $1 billion[17]. Additionally, the MTA has thus far received $479 million from the sale of transferable development rights from the Eastern Rail Yard at Hudson Yards, pursuant to the zoning plan[18], with the possibility of additional sales.

Figure 3: Hudson Yards under Construction above MTA Storage Yard, February 2018

11 Ibid., p. E-91
12 Ibid., p. E-119
13 Ibid., p. E-145
14 Ibid., pp. 60-63
15 Hudson Yards Infrastructure Corporation, *Annual Report*, pp. 28-9.
16 Hudson Yards Infrastructure Corporation, *Official Statement*, p. 41.
17 Appleseed, *An Investment That's Paying Off: The Economic and Fiscal Impact of the Development of Hudson Yards*, http://www.hudsonyardsnewyork.com/content/uploads/2016/09/Appleseed-Hudson-Yards-Economic-Impact-Report_Final.pdf, p. 29
18 Hudson Yards Infrastructure Corporation, Official Statement, pp. E-162, 163, 166; New York City Department of Finance, Office of the City Register, Document ID 2017083100200001, Recording a Transfer and Distribution of a Portion of Eastern Rail Yard Floor Area Pursuant to Sections 93-21 and 93-34 of the Zoning Resolution of the City of New York, August 31, 2017 and Document ID 2017092900227001, Recording a Transfer and Distribution of a Portion of Eastern Rail Yard Floor Area Pursuant to Sections 93-21 and 93-34 of the Zoning Resolution of the City of New York, September 28, 2017.

Executive Budget "Value Capture" Proposal

The State Fiscal Year 2019 Executive Budget legislative proposal[19] is a form of tax increment financing. It would empower the Board of the Metropolitan Transportation Authority to establish "transportation improvement subdistricts" within the City of New York. Such subdistricts could include properties within a one-mile radius of proposed transportation improvements with a cost exceeding $100 million. The designation of a transportation improvement district would be based on an analysis presented to the Board that the fair market value of properties within the subdistrict is expected to increase as a result of the improvement, by more than would have occurred in the absence of the improvement. No standards are provided for how this analysis would be undertaken or determined to be valid.

A public hearing by the Board would be required, with thirty days' notice to the public and the Mayor. The Board's action is exempt from environmental review.

The baseline real property tax assessment for purposes of the legislation would be the first tax assessment after the approval of the planning process for each project by the Capital Program Review Board. Up to 75 percent of any real property tax increment, above and beyond the baseline, could be assessed by the MTA for purposes of project financing.

The Capital Program Review Board has four voting members, appointed by the Governor, of which one is recommended by the New York City Mayor, and two others by the legislative leaders. While unanimity is required, the Mayoral appointee's ability to veto projects extends only to those involving subways, buses and the Staten Island Rapid Transit. The Mayoral appointee does not vote on projects affecting the commuter railroads, for which projects are specifically cited in the legislation as potential beneficiaries of transportation improvement subdistricts.

Assessment of the Proposed Legislation

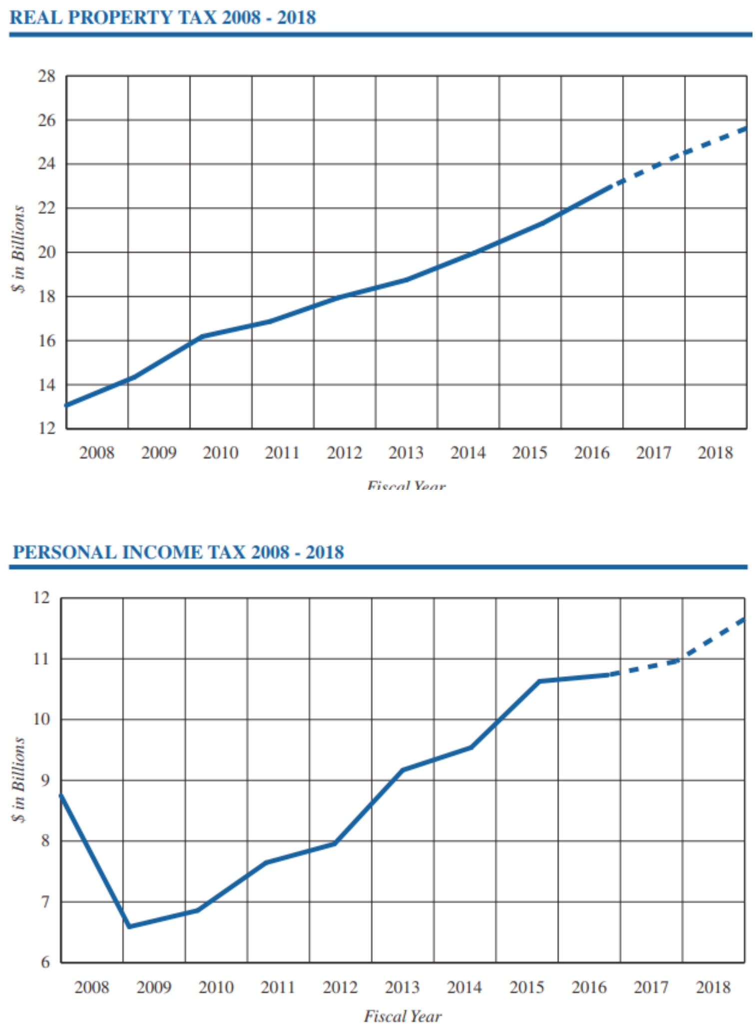
The current proposal undermines the City's taxing authority. The property tax represents $26 billion, or 30 percent of all the revenue supporting the City's $85.2 billion Fiscal Year 2018 adopted expense budget[20]. The property tax is the only tax the City Council can increase without the authorization of the Legislature.

Most of the City's property tax revenue comes from its Central Business Districts and other high-density, centrally located areas. It is precisely these locations where transportation improvements are likely to be located. The legislation specifically cites the Second Avenue Subway; East Side Access into Grand Central Terminal; Penn Station Access; and the 125th Street Metro-North and subway stations in Manhattan as designated transportation improvement subdistricts. These are all in such high-density, centrally located areas, and East Side Access and Penn Station Access are located amidst some of the most valuable commercial real estate in the city.

19 New York State, Division of the Budget, FY 2019 New York State Executive Budget Transportation, Economic Development and Environmental Conservation Article VII Legislation, https://www.budget.ny.gov/pubs/archive/fy19/exec/fy19artVIIs/TEDArticleVII.pdf, Part L, pp. 68-75

20 New York City Comptroller, *Comments on New York City's Adopted Budget*, https://comptroller.nyc.gov/wp-content/uploads/documents/Comments-on-New-York-Citys-Fiscal-Year-2018_AdoptedBudget.pdf, July 25, 2017, Chart 3, p. 13.

Figure 4: New York City Tax Collections



Source: City of New York, Executive Budget, Fiscal Year 2018, Message of the Mayor, pp. 30, 35

The City of New York counts on property tax revenues from such areas, which are located principally in Manhattan, to generate a surplus to pay for services to residents of all five boroughs. Many New Yorkers live in less affluent areas that do not produce enough in taxes to maintain local services. This arrangement, in which taxes generated by the central, high-density areas of the city cross-subsidize services for all, was the underpinning of the consolidation of the five boroughs in 1898 and has sustained the city since. Indeed, the objective of constructing the subway system in the early 1900's was to disperse Manhattan's residential population, which peaked in 1910 at 2.3 million, to undeveloped areas in the other four boroughs in order to permit the expansion of its commercial core, thus generating taxes that would support public services throughout the city.

The City rarely raises property tax rates; the last significant rate increase took effect on January 1, 2003[21]. However, its ability to do so in a situation of fiscal stress is an important reason why the City's debt is highly rated. In spite of the general stability of the tax rates, because of general price inflation and the city's growing and vibrant economy, property values tend to rise from year to year and property tax collections increase. The City's four-year financial plan projects property tax collections growing from $26.0 billion in FY 2018 to $30.2 billion in FY 2021, or 16.2 percent[22]. The city is counting on those tax revenues to maintain services since its costs also go up. The property tax is also less volatile than other local tax revenues such as income and sales

21 Citizens Budget Commission, *New York City Property Taxes: 3 Things Owners and Renters Should Know*, https://cbcny.org/sites/default/files/media/files/REPORT_PROPERTYTAXES_12212016_1.pdf, December 22, 2016, p. 2.

22 New York City Comptroller, Table 1, p. 7.

taxes[23] (Figure 4). That is why property taxes form the basis for funding local governments, which are not permitted to run budget deficits, throughout the country.

If the MTA is permitted to have access to a large share of the City's property tax increment, the city will still be required to provide services and balance its budget. It will need to make up for lost revenues with service cuts or increases in other taxes (increasing the property tax rate will just funnel more money to the MTA). Since other tax increases require the consent of the State legislature, the City is at best subjected to whatever conditions the legislature imposes, and at worst forced to make budget cuts because it has been forced to pay over, to the MTA, the increase in its most reliable revenue source and is unable to secure legislation to increase other taxes.

The legislation provides no guidance for how the proposed study of the effects of a transit improvement on property values, which forms the basis for the designation of transportation improvement subdistricts, is to be conducted. There is no sound methodological basis for separating out the marginal influence of transit improvements on property values from all other influences, including general economic conditions and past investments in infrastructure, particularly when one is considering as dynamic a location as Manhattan. Manhattan must of course have transit to function at the density it has, but it must have many other kinds of infrastructure as well, including the bridges and tunnels, water mains, sewers, electrical supply and so forth. Moreover it needs the population, labor force, businesses and institutions to make it a global center of commerce and culture. All these have built up over the city's history. To claim that one has an economic model so finely calibrated, that it can separate the influence of, say, East Side Access on property values near Grand Central, as opposed to all other factors that give property high value in the Grand Central area, is questionable.

There are other issues to consider. New York City grants tax exemptions or abatements for many types of development, to promote affordable housing and economic development. It is likely that much of the new development and reinvestment in an area designated as a transportation improvement subdistrict would quality for tax exemptions or abatements, which in turn affect the size of the tax increment. Would transportation improvement subdistricts limit such exemptions or abatements? If they do not, how could a reliable funding stream be guaranteed?

Is bonding contemplated against the captured tax increments? How could this work, given the complexity of property tax assessment and the uncertainty about how assessments translate into actual tax collections?[24] It is likely that the transportation improvement subdistrict would need to take far more tax revenue than it anticipates needing to repay bonds in order to provide a sufficient debt service coverage ratio to satisfy rating agencies' requirements. This would magnify the impacts on the City of diverting its property tax base to support the MTA.

Finally, the legislation jeopardizes the successful value capture mechanisms the state and city have used over decades to funnel billions of dollars, in cash and kind, to the MTA. All of these mechanisms ultimately require the consent of the New York City Council, which is cut out of the transportation improvement subdistrict process entirely, and the Mayor. The City Council has rightly recognized the value of transit and supported many innovative value capture mechanisms. But why should it do so in the future if this legislation is enacted? Approving increased density in areas with improved transit might just mean the City has to provide more services, but the MTA keeps most of the property tax increment.

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23 See City of New York, Executive Budget, Fiscal Year 2018, *Message of the Mayor,* http://www1.nyc.gov/assets/omb/downloads/pdf/mm4-17.pdf, p. 28 et.seq., which shows collections from 2008 onward for the City's major taxes. Real property tax collections increase steadily while most other taxes show a cyclical component relating to the post-2008 recession.

24 Citizens Budget Commission, pp. 3-7 details some of these complexities.

Two recent New York Times articles argue that real estate owners are the prime beneficiaries of subway investments, so real estate owners should pay[25]. Two NYU engineering professors, Giancarlo Falcocchio and Constantine Kontokosta, have calculated that

> *Manhattan below 60th Street holds 664 million square feet of commercial and industrial space, where around 1.7 million people work, within a quarter mile of a subway or rail station. In 2016 the MTA spent \$2.6 billion providing the area with mass transit, which comes out to \$3.85 per square foot.*[26]

Times columnist Jim Dwyer writes:

> *The issue was explained 70 years ago by Stanley Isaacs, a … Manhattan borough president and a City Council member ...“The subways were built under pressure from real estate interests and added tremendously to real estate values in the city. The capital charges of those subways which had built up real estate values, should be carried by real estate.”* [27]

The opposite is true. The subways were built so that the city could grow and prosper. In fact the city roughly doubled its population between 1900 and 1950, the period of most subway construction, and then grew yet more in the 21st Century, while also creating the commercial core. That benefited not only real estate but every business, and the entire population. Transit is a basic component of the public infrastructure that enables New York City to exist in its current form. Without it, the city would be much smaller, and poorer. All New Yorkers would be worse off and not just real estate investors.

Since the benefits of the investments by the city and state in mass transit are broad-based, taxes that support transit should also have a broad base. This is not to argue that the real estate industry has no role to play in funding the MTA’s needs – it already does, through dedicated mortgage recording and real estate transactions taxes – but that the real estate industry should not be portrayed as the principal, or intended beneficiary of public investments in mass transit.

Recent MTA capital projects have Environmental Impact Statements, and each EIS is required to have a chapter called “Project Purpose and Need,” laying out the rationale for the project as proposed. None of the EIS’s say that the purpose of the project is to enhance real estate values. Rather, it is to meet a growing need for transit service. For example, for the Second Avenue Subway the MTA stated:

> *The Lexington Avenue Line and East Side bus routes are already congested from high travel demand that they cannot fully accommodate. Population and employment are predicted to continue to increase in the project area, so that in the future, travel demands will only increase. Further, as other transit projects—such as LIRR East Side Access—and future developments along the corridor are built, they will add to ridership on East Side subways and buses. Without improvements to the existing capacity of the system, it will be difficult for NYCT to meet future ridership demand.*[28]

The MTA Chairman points to the Mayor’s role on the Capital Projects Review Board as the ultimate check on the misuse of the Transportation Improvement Subdistrict mechanism[29]. However, this would not appear to apply to commuter railroad projects. Moreover, once the Governor and legislature have the ability to utilize

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25 Jim Dwyer, “Pushing New Yorkers Beyond the End of the Line,” https://www.nytimes.com/2017/11/28/nyregion/new-york-subway-funding-real-estate.html, November 28th, 2017 and James Barron, “The Subway Is Next Door. Should New Yorkers Pay Extra for That?”.

26 Matthew Flam, “Landlords benefit from subways. Two NYU professors calculated how much that’s worth”, http://www.crainsnewyork.com/article/20171117/REAL_ESTATE/171119899/landlords-benefit-from-subways-two-nyu-professors-calculated-how, November 17, 2017.

27 Dwyer, “Pushing New Yorkers Beyond the End of the Line”.

28 Metropolitan Transportation Authority, *Second Avenue Subway, Final Environmental Impact Statement*, http://web.mta.info/capital/sas_docs/feis/chapter01.pdf, p. 1-9

29 James Barron, “The Subway Is Next Door. Should New Yorkers Pay Extra for That?”, https://www.nytimes.com/2018/01/29/nyregion/subway-real-estate-nyc.html, January 29th, 2017.

the city's property tax, it may be tempting to amend the legislation to restrict the powers of the Mayor. Finally, the legislation gives no role to the City Council, which is required to adopt a balanced budget every year.

One is reminded of the objections that then-New York City Comptroller Alan Hevesi raised in the 1990's to the proposed sale of the New York City water system to an entity, the New York City Water Board, that was defined by state legislation. Hevesi argued that what the Legislature defined, it could change, including taking control away from the Mayor[30].

What is the Solution?

The MTA capital program still needs to be expanded and funded to achieve a state of good repair, modernization of the physical plant and capacity expansion to meet the needs of a growing population. The failure to work constructively together to solve the MTA's problems reflects badly on both the City and State, but allowing the MTA to use the city's most stable tax source, thus potentially impairing the city's ability to address its own service needs, is a one-sided solution. The MTA, in its current structure, is not designed to protect the city's interests. What is needed is a solution that works for both parties, and that means the City needs to keep control of its property tax while acknowledging that it needs to play a greater role in resolving the current transit crisis.

Transit is critical infrastructure for the city and the overcrowding, unreliability and poor condition of the subway system, in particular, is a challenge to the continued economic growth on which the Mayor's spending priorities depend. Governance reforms at the MTA should give the city more influence over decisions affecting its population, and also assure systematic reform of the MTA's procurement and contracting processes. New York City should commit more funding backed by its own tax base to transit – arrived at through its normal budget process, with full public participation and the consent of the City Council – and the MTA must become a credible construction manager finishing projects on time and within budgets that are no longer bloated far beyond the costs of comparable cities[31]. A better structured and managed MTA likely will still need additional broad-based dedicated revenues – whether through congestion pricing, a surcharge on for-hire vehicles or another tax source – to address its capital needs, but taxpayers need assurance that any additional resources will be well spent.

What is the role of value capture in the solution? Value capture mechanisms will continue to provide funding for station upgrades through floor area bonuses. Currently, an application for a floor area bonus at 45 Broad Street in Lower Manhattan is under public review. The applicant proposes to make improvements to the Broad Street subway station (J/Z lines), providing two elevators for access for persons with disabilities, as well as to the Wall Street Station (4/5 lines), providing improved ingress and egress equipment, in exchange for the floor area bonus[32] (Figure 5).

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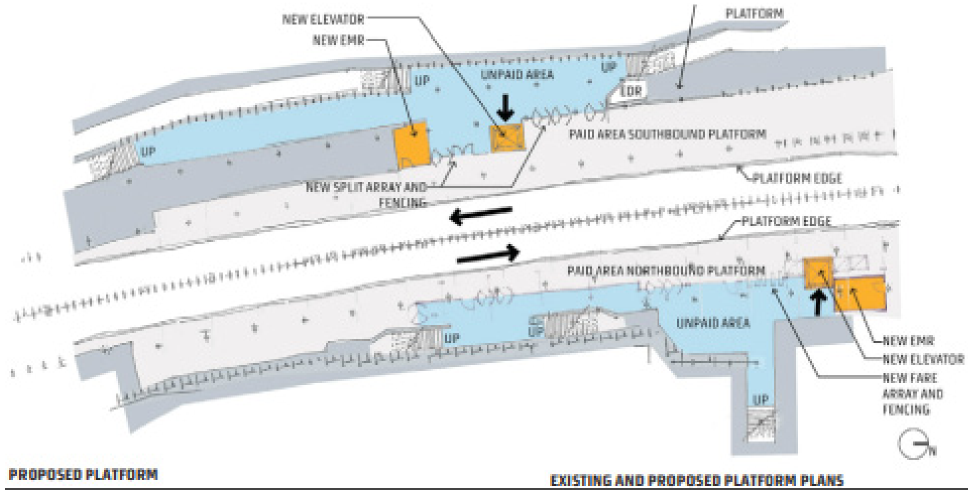
30 "Mr. Hevesi's Timely Warning," The New York Times, http://www.nytimes.com/1995/06/29/opinion/mr-hevesi-s-timely-warning.html, June 29th, 1995.

31 These issues are discussed in Regional Plan Association, *Building Rail Projects Better for Less: A Report on the Costs of Delivering MTA Megaprojects*, http://library.rpa.org/pdf/RPA-Building-Rail-Transit-Projects-Better-for-Less.pdf.

32 New York City Environmental Quality Review Final Environmental Assessment Statement and Supplemental Report, 45 Broad Street Development, CEQR Number: 18DCP063M, 22 November 2017, downloaded at https://a002-ceqraccess.nyc.gov/ceqr/.

Figure 5: Proposed Improvements at the Broad Street Subway Station



Source: New York City Environmental Quality Review Final Environmental Assessment Statement and Supplemental Report, 45 Broad Street Development, CEQR Number: 18DCP063M, p. B-3

The Department of City Planning can enhance the utility of the subway station improvement bonus by proposing to expand the radius within which new developments are eligible. At present, to take advantage of the bonus, development lots must adjoin a subway station[33]. Special rules providing for an expanded radius apply in the recent Greater East Midtown rezoning, but zoning generally needs to recognize the appropriateness of a broader radius in all of the dense commercial areas where this incentive applies. The Department can provide an additional incentive to use the bonus by making it as-of-right in those locations where necessary improvements can be identified in advance, as is the case in East Midtown[34].

The MTA continues to benefit from other value capture zoning provisions. All future proceeds of Hudson Yards transfers of development rights from the Eastern Rail Yard will go to the MTA. Additionally, the MTA's former headquarters at 347 Madison Avenue is located in the Vanderbilt Corridor Subarea and, once redeveloped, will generate substantial additional revenues for the MTA from a property sale for high-density commercial development and the applicable floor area bonus[35].

Additionally, a comprehensive program of identifying overbuild opportunities throughout the MTA's sizable real estate holdings in New York City can bring the MTA considerable revenue. Although for MTA-owned property, the Empire State Development Corporation's General Project Plan process represents an alternative to the City's land use process, the City has far greater capacity to plan complex projects. While value capture can finance transit expansions only if a development opportunity on the size and scale of Hudson Yards materializes elsewhere in the city, such opportunities should not be excluded. The collaborative planning process for Hudson Yards, in which the New York City Planning Commission and the Metropolitan Transportation Authority were co-lead agencies for the Environmental Impact Statement, offers a model for future efforts. Moreover, securing approvals through the City's land use review process promotes community participation and buy-in to land use decisions.

A timely and responsive financial commitment by the City, combined with continued effective use of value capture mechanisms, new revenue sources and reforms that ensure that funding will be utilized more effectively, should represent goals that the State and City can meet collaboratively. The alternative currently on offer of a contentious city-state battle in the Legislature, in contrast, harms the city and ultimately the MTA and state government, which both depend on the city's continued vitality and prosperity.

33 New York City Zoning Resolution, Section 74-634.
34 New York City Zoning Resolution, Section 81-641.
35 New York City Zoning Resolution, Section 81-633.