



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD No. 4**

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**J. LEE COMPTON**  
Chair

**MICHELLE SOLOMON**  
Acting District Manager

March 1, 2006

John E. Potter  
Postmaster General  
United States Postal Service  
475 L'Enfant Plaza, SW  
Washington, DC 20260-0010

Arthur E. Strange  
National Manager, Real Estate  
United States Postal Service  
4301 Wilson Boulevard, Suite 300  
Arlington, VA 22203-1861

Ruth Pierpont  
Director, NY State Office of Parks, Recreation, and Historic Preservation  
Peebles Island, P.O. Box 189  
Waterford, NY 12188

Don Klima  
Director, Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue NW, Suite 809  
Washington, D.C. 20004

**Re: Sale of Development Rights and Section 106 Review**

Dear Messrs. Potter, Strange, and Klima, and Ms. Pierpont

Manhattan Community Board No. 4 has been deeply concerned for some time about the impact on the McGraw Hill Building, a National Historic Landmark, of the construction that has taken place directly to the west at 350 West 42nd St. This construction has resulted in the obstruction of the view from the west of this iconic building. Indeed the building owed much of its historic impact to its isolated height in an environment of low structures. This effect has now been all but destroyed.

We would therefore like to express our extreme concern that USPS sold a considerable amount of development rights from its Times Square Station of the Postal Service to the owner of this development without subjecting them to the review required by Section 106 of the National Historic Preservation Act. The station separates the development site from the McGraw Hill building, and it was this sale that made possible a significant increase in the height of this

development. Compliance with the local zoning ordinance under which these rights were sold made the rights available through a process known as “zoning lot merger” of the Times Square Station site with the development site. This merger made the rights usable only for the purpose of enabling construction of a higher building on the site at 350 West 42<sup>nd</sup> Street; and therefore any reasonable person involved in the transaction must have been able to foresee that there would be a significant impact on the view of the adjacent McGraw Hill Building, which is a well-known landmark of New York City. In fact this action enabled the new development to obstruct almost completely the public view of the landmark from the west. This constitutes a direct impact on historic resources from the sale of the development rights, which in conformance with the provisions of Section 106 should have been reviewed and possibly could have been avoided or mitigated.

Unfortunately the Board became aware only belatedly that the height of this development was partially due to the sale of development rights from the Times Square Station. The Board has since reviewed the location and surroundings of the postal stations owned by the Service within our district. While at the present time we see no situation that would lead to a similar situation within the district because of the restrictions of current zoning and the absence of designated historic resources in the immediate neighborhood of most of these stations, we recognize that situations may change. This is especially true in the case of the Morgan Station, close to a historic landmarked church and in an area where major development is projected to occur. The special case of the nearby Farley Building, transferred to a corporation that will transform it into the striking Moynihan Station for railway use, might also raise major issues if that proposal should not go through.

The Board therefore joins other Boards, elected officials, and community groups in requesting the establishment of guidelines for the sale of development rights by the Postal Service in conformance with Section 106 of the National Historic Preservation Act. The Board believes that if such guidelines had been in place and had been followed by performing appropriate review under such guidelines the impacts on the McGraw Hill Building might have been avoided. It is essential that such unfortunate consequences must not be repeated.

It is our understanding that USPS asserts that there is no clear way to subject the sale of air rights to Section 106 review, and apparently there are no set guidelines in place for this sort of transaction. As we understand that discussions are taking place between all parties regarding establishing such guidelines, we offer our support for proposed guidelines submitted by the Greenwich Village Society for Historic Preservation and supported by various elected officials and other community boards. Those proposed guidelines include:

- Section 106 review should take place before development rights are sold, and all potential buyers of USPS or other state or federal agencies’ development rights should be made aware in advance that any sale will have to go through such a review, and that sale will be contingent upon agreement to satisfy the review’s findings and recommendations regarding mitigation or avoidance of impact upon historic resources.
- Potential buyers of development rights be required to disclose exactly how the development rights will be used, and the sale of development rights be made contingent

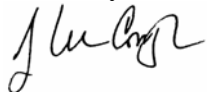
upon an agreement to use those development rights only as reviewed in the Section 106 review process.

- Use of development rights in such a way as to diminish the stature or public view of a National Register-listed or eligible property – whether owned by USPS or privately owned on a nearby lot – should be considered a negative impact to be avoided or mitigated.
- Use of development rights in such a way that would contribute to or increase the degree of destruction of a National Register-listed or eligible property should be considered a negative impact to be avoided or mitigated.
- After the sale of development rights from a state or federal site, the State or Federal agency must forego its right to override local zoning, so that future development on that site is consistent with local zoning and uses only the development rights that remain after the sale.

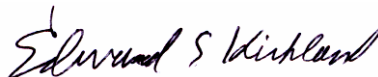
Additionally, Manhattan Community Board No. 4 should to be granted consulting party status for any Section 106 review that takes place within its boundaries.

It is very unfortunate that USPS has already sold its development rights for the Times Square Station and they have already been used. Nevertheless, we would urge all parties to consult with local affected parties to see if there are ways that perhaps USPS could positively impact nearby historic resources to counterbalance the unmitigated negative impacts created by its sale of development rights to the neighboring development. Such consultation should include this Community Board.

Sincerely,



J. Lee Compton  
Chair  
Manhattan Community Board No. 4



Edward S. Kirkland  
Chair  
Landmarks Taskforce

Cc: Elected Officials

National Trust for Historic Preservation  
New York State Preservation League  
Municipal Art Society  
New York Landmarks Conservancy  
Historic Districts Council  
Greenwich Village Society for Historic Preservation  
Hell's Kitchen Neighborhood Association  
Manhattan Plaza Tenants Association