

'Tax' on Developers?

New York City Proposal for New Fund To Aid Poorer Areas Poses Problems

By MARTIN GOTTLIEB

Like a weathered mountain, New York City's voluminous set of zoning regulations usually undergoes change in subtle ways. But every so often it becomes the focus of issues that can profoundly affect the way the city regu-

lates development and the way it interprets the reach of its land use powers. Such is the case, planners believe, with a concept advocated by city

planning commissioners, borough presidents and community activists that is now being studied by a panel appointed by Mayor Koch. Under the concept, developers of office buildings and luxury housing would contribute to a fund for housing and possibly other needs in the city's poorer neighborhoods.

Through negotiation and present regulations, developers have already pledged millions of dollars to the city, almost always for such amenities as parks and subway station improvements that serve to ease the effects of density in neighborhoods where they are building.

With thousands of homeless people on the city's streets, thousands more doubling up with friends or relatives in housing projects and Federal housing construction funds sharply curtailed, many officials want to use this money to tackle problems of housing and poverty across the city.

Complex Issues Involved

But even those who feel most strongly about this idea agree it presents issues of unusual complexity. Among them are several concerning the proper function of zoning, which has traditionally been used to regulate development in carefully defined areas.

Would the establishment of a city-wide fund "basically be a perversion of the process of zoning" because it "coerces" contributions from developers, as Julia Vitullo-Martin of a civic group, the Citizens Housing and Planning Council, argues? The council is made up of builders, planners and housing and social welfare professionals.

Is there a legal basis for applying developer contributions beyond a neighborhood bearing the brunt of development? And if the city collects money for granting a zoning bonus, would this not invite suits by property owners who claim injury when the city takes away development rights? This could occur when a neighborhood is "down-zoned" or a property is designated a landmark.

There are also a host of questions involving the carrying out of such a policy: Should developers receive extra floor space in exchange for contributions, or should they be "taxed" for the simple right to build? Should the assessments be levied solely on Manhattan property or on new projects in other boroughs as well, even though the city wants to encourage them? In what proportions should proceeds be divided between a community where development is taking place and the rest of the city — and who should make that decision? Should all the proceeds go for housing or should they be shared with other needs, such as economic development?

Finally, since the New Deal, the costly responsibility of building low- and moderate-income housing has rested primarily with the Federal Government. Is it a proper responsibility for the city and would it slow development here — something even the staunchest proponents of the redistribution concept say would be a mistake.

"If one wanted to destroy this concept, one could pick holes with each of the 15 parts of it," said Paul Davidoff, director of the Center for Municipal Action, a planning research and advocacy organization at Queens College. The center is undertaking its own analysis of the issue with the Pratt Institute's Center for Community and Environ-

mental Development in Brooklyn.

"The important thing," Mr. Davidoff said, "is not to let the particulars destroy the overriding mission, which is to create low- and moderate-income housing in a city that desperately needs it."

Proponents point out that two Federal programs have been left without new funds this year. As recently as 1981, they provided more than \$30 million for new subsidized housing construction in New York City.

"I think the central legal issue would be whether a plan of this type is a zoning provision or whether it is a new tax," said Norman Marcus, counsel to the City Planning Department.

If the plan is deemed to be a zoning provision, Mr. Marcus says, a case will have to be made that new development, largely in booming Manhattan neighborhoods, has created special needs in the city's poor and working-class communities. "The link will have to be forged between richer neighborhoods and poorer neighborhoods," he says.

If the proposal is deemed a tax, he says, such a link would not have to be defined, but the State Legislature as well as the Board of Estimate would have to approve the plan.

Success in San Francisco

In San Francisco, the Planning Department established such a link two years ago when it decided to require office developers to contribute toward lessening the housing needs generated by their projects. According to Dean L. Macris, San Francisco's planning director, \$20 million has been raised, mostly for low- and moderate-income housing.

Furthermore, he says, developers have not challenged the provision legally.

In New York the local chapter of the American Planning Association, an organization of planning professionals, has tried to make a similar link in a position paper. The organization argues that while new developments create jobs and revenues, they "also cause indirect as well as direct displacement of low- and moderate-income persons in the vicinity of the project and generally throughout the city."

These arguments are met with scorn by some planners and many developers, although one builder, William Zeckendorf, said he thought that such plans could work as long as developers received bonus space and did not have to make payments larger than those required under some present city regulations.

"The question is whether you are solving the right problem with the right tool," said Daniel Rose of Rose Associates, a major developer of housing in Manhattan.

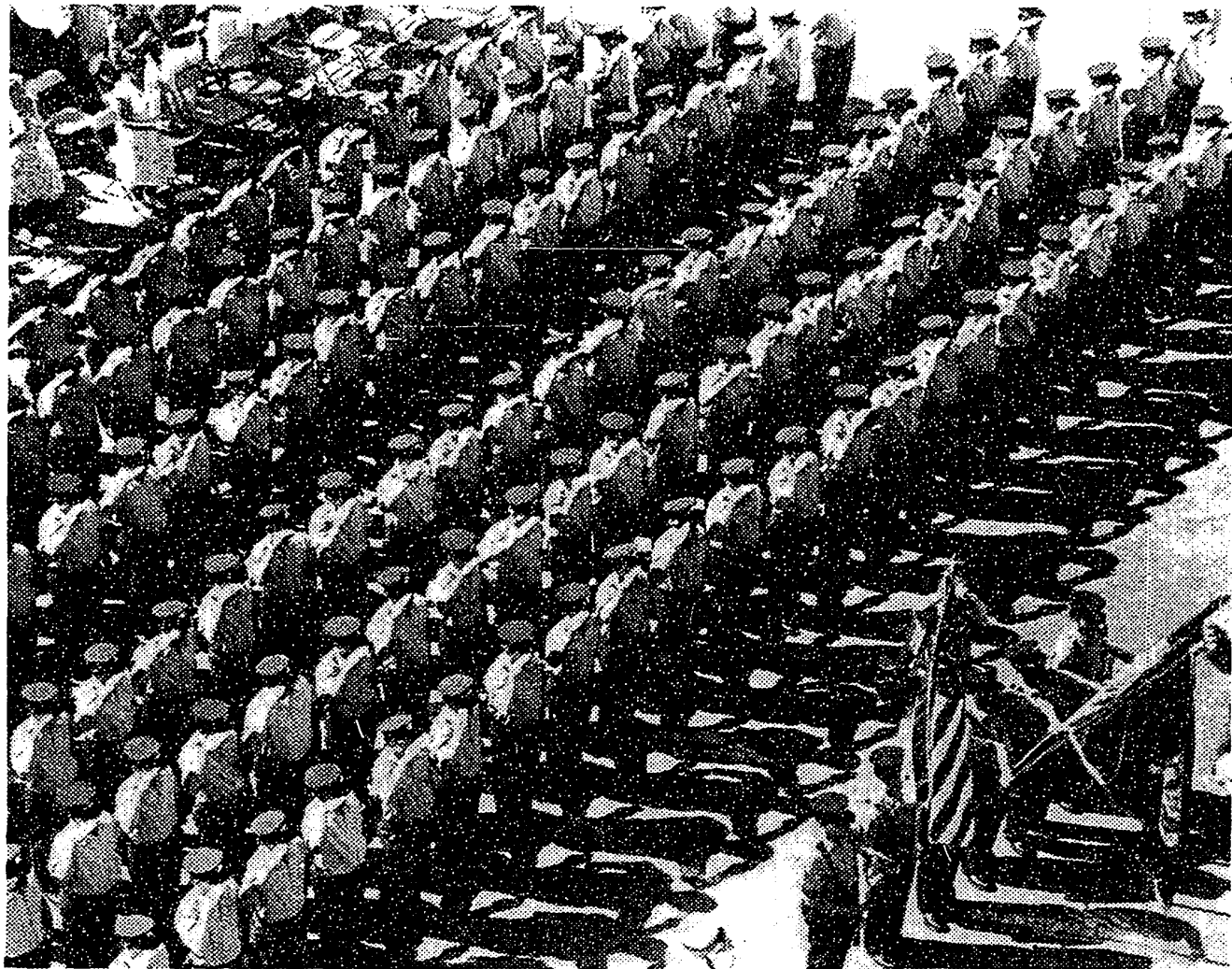
Drawbacks Are Noted

If there are increased development costs, he says, builders either will stop building or will pass much of the cost on to tenants or condominium buyers.

"The overwhelming majority of developers would say this money should not go to some general pot, but to amenities in the neighborhood of the new building," Mr. Rose said.

A member of the City Council, Ruth Messinger, contends that a key difference between the two is that amenities in a neighborhood, such as a nearby park, could well increase a developer's property value while a contribution toward a housing pool would not.

A guide to construction activity published by Yale Robbins Inc., a real-estate publishing and consulting concern, indicates how much could be at stake as the committee appointed by Mayor Koch attempts to work its way through these issues. The guide estimates that in various stages of planning south of 96th Street are 37 residential buildings and more than 30 office buildings.



The New York Times/Neal Boenzi

Fire Academy Celebrates Centennial

Part of class of 150 probationary firefighters at graduation at Fire Academy on Randall's Island. The ceremony, which also celebrated the academy's 100th anniversary, included a parade of antique equipment and a

demonstration of lifesaving by the latest class to join the academy's 50,000 graduates. "Countless New Yorkers owe their lives over that 100 years to the excellent training given by the Fire Academy," Mayor Koch said.