

ANOTHER LOOK AT SOHO'S A-I-R REQUIREMENTS, PART 2

Posted on April 6th, 2011 by [Shirley Hackel](#)

In a previous column I posed the question: *Isn't it time to drop SoHo's AIR requirements?* Several brokers wrote to say they would welcome an opportunity to join in a concerted effort to accomplish this. A number of attorneys said they were actively involved with clients to effect a change. A handful of non-SoHo homeowners were astonished that such outdated laws were still on the books. One reader expressed regret that artists were being displaced and that the area "has turned into a mall."

Today's stepped up efforts by city inspectors to enforce AIR zoning restrictions that were previously ignored is interfering with sales and creating vulnerability in an area of the city that should be thriving. As the DOB cracks down on artist certification compliance, the ramifications have ranged from buildings being unable to obtain final Certificates of Occupancy, to lenders refusing to lend to individual purchasers, to apartment owners being denied renovation permits. All those I consulted agreed that the issue is highly charged politically and that it was far simpler to create loopholes to the law than to change the actual zoning which has been in effect since the early 70's.

Some history

In the early 60's, artists populated SoHo's manufacturing district illegally. Attorney [Margaret D. Baisley](#) remembers when the area was largely deserted and unpoliced: "You had to step over the homeless who slept aside piles of rubble and scraps of manufacturing cloth. The artists were manufacturers of sorts," she observes, "because they manufactured art. When they came into the area, they took huge risks moving into buildings with rickety manual elevators, no fire protection, no proper venting, no garbage pickup, limited hot water and no place to buy a cup of coffee. There is great respect for these

pioneers who started SoHo's gentrification, and it's a myth to think that artists would be thrown out if zoning laws were repealed."

In 1971, the city created the Joint Living Work Quarter for Artists—JLWQA—which allowed artists certified by the Department of Cultural Affairs to live and work in SoHo's manufacturing buildings legally. From the beginning, however, the laws were not enforced. Few certified artists had the financial means to purchase SoHo's rising residential stock. The "SoHo letter" soon became part of co-op board packages to acknowledge the law, and deals were made with a "wink and a nod," according to one attorney who wished to remain anonymous.

In 1982, The New York City Loft Board was created to ensure that residences were up to code and to oversee the conversion of lofts from commercial/manufacturing use to residential use. A "Loft Law" was adopted and a new classification of buildings was created—interim multiple dwellings or IMDs which lacked residential certificates of occupancy. If a building could show residential occupancy by three or more families living independently between 4-30-80 and 12-1-81, it could file for a waiver with the Loft Board as an IMD for legal residential status, and AIR certification was waived.

Similarly and more recently, another time window was added to the Loft Law to cover 1-1-08 to 12-31-09 to legalize the residential use of IMDs and to waive AIR certification.

There are those who argue that changes in zoning would alter the fabric of the neighborhood. "That's untrue because the community has already changed," notes Robert Jacobs of Belkin Burden Wenig & Goldman who in 2009 formed the presently inactive Coalition for SoHo/Noho Zoning Reform. In 1985, a city survey showed that 30% of SoHo's population was artists. "Today, that number would be halved at best," says Jacobs. In an attempt to convince city planners to change zoning laws to reflect actual population, Jacobs formed the Coalition which was interrupted by the recession. "Most of SoHo's artists cashed out on their expensive residential assets long ago. It's the responsibility of the City Planners to design zoning that accurately reflects the realities and expectations of the community, that addresses conflicting land uses and improper development but does not ignore reality. A small faction is clinging to the delusion that SoHo remains an artist community, and they don't want to see current zoning laws

repealed.” The character of the neighborhood, however, changed long ago. There simply aren’t enough certified artists to create a pool of buyers for SoHo lofts.

Enforcement of zoning law today is “arbitrary and capricious” according to **Margaret Baisley**. “It’s a real waste of city manpower,” she continues. “The city is creating violators of people who move to SoHo who are not certified artists and who want to upgrade their properties and the area.”

What advice do attorneys give to buyers considering a SoHo purchase today? “The zoning statute does not require that an owner of a loft be a certified artist,” explains Baisley. “It only requires that an artist ‘occupy’ the space. But since there is no definition of ‘occupancy’ in the regulations, owners may identify family members, friends, or associates to ‘occupy’ the lofts with them and have the artist file for certification with the loft address as well as the artist’s name on the AIR document. This is entirely legal and if an inspector ever inquires, the owner of the loft can produce the AIR certificate and meet his burden of proof. However, it is a tortured and contorted way to legalize one’s loft ownership, and in my opinion, entirely outmoded.”

At heart, the issue remains political. A study costing several hundred thousand dollars would have to be conducted and most assuredly co-op owners would be reluctant to admit that they are residing illegally. At present, REBNY is in the process of collecting anecdotal information from brokers about deals that have been affected by AIR zoning. Many like REBNY’s Senior Vice President Mike Slattery believe that the best solution will come from within the SoHo community and that the city would support a community driven change. A recent vote at the SoHo Alliance, an activist group led by Sean Sweeney, showed 49-51% in favor of keeping the statute which means half of the contingency welcomes a change. Perhaps the compromise solution is to waive AIR requirements for purchase transactions and to retain artist certification for renters, thereby protecting SoHo’s heartland.