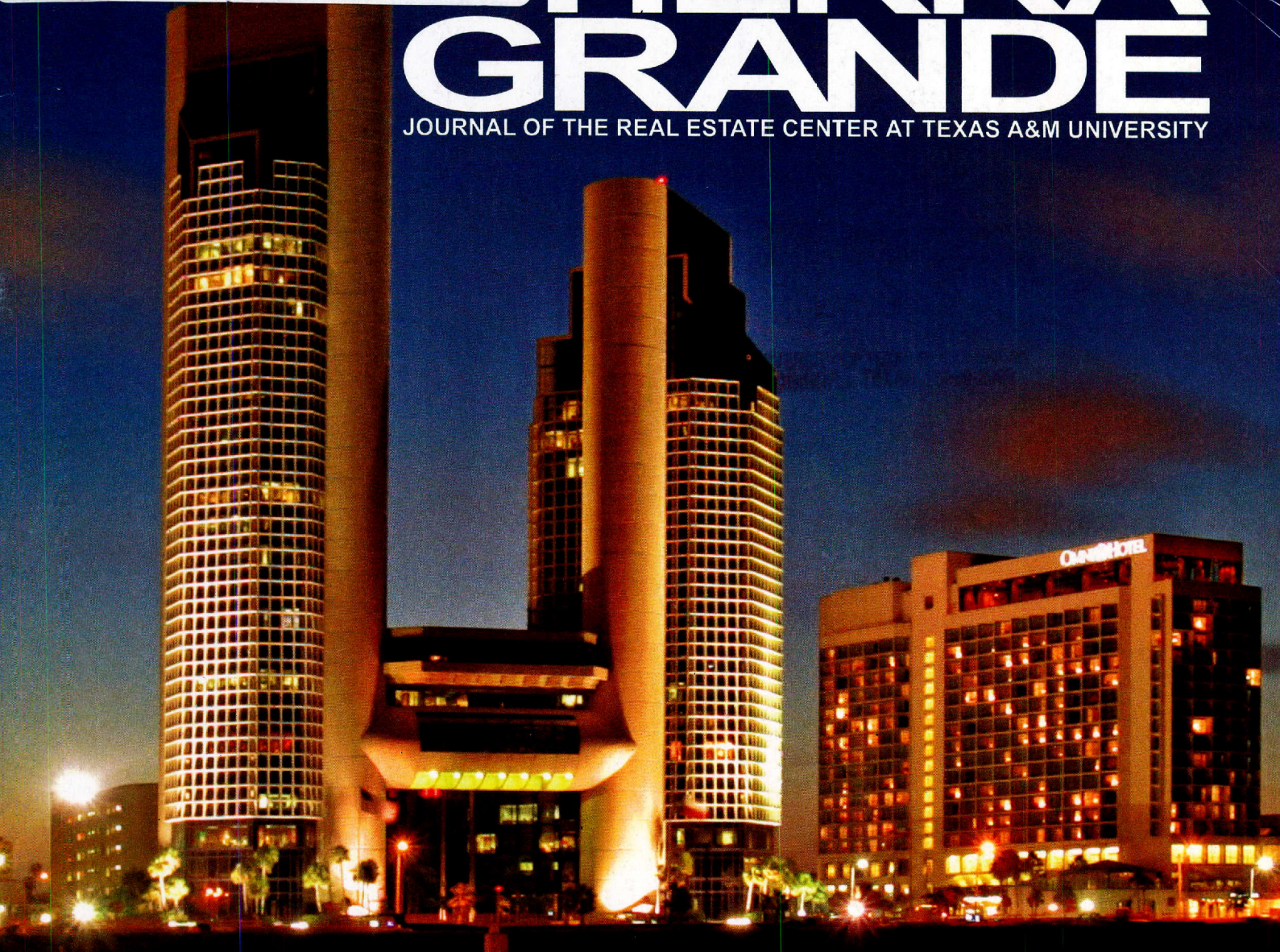


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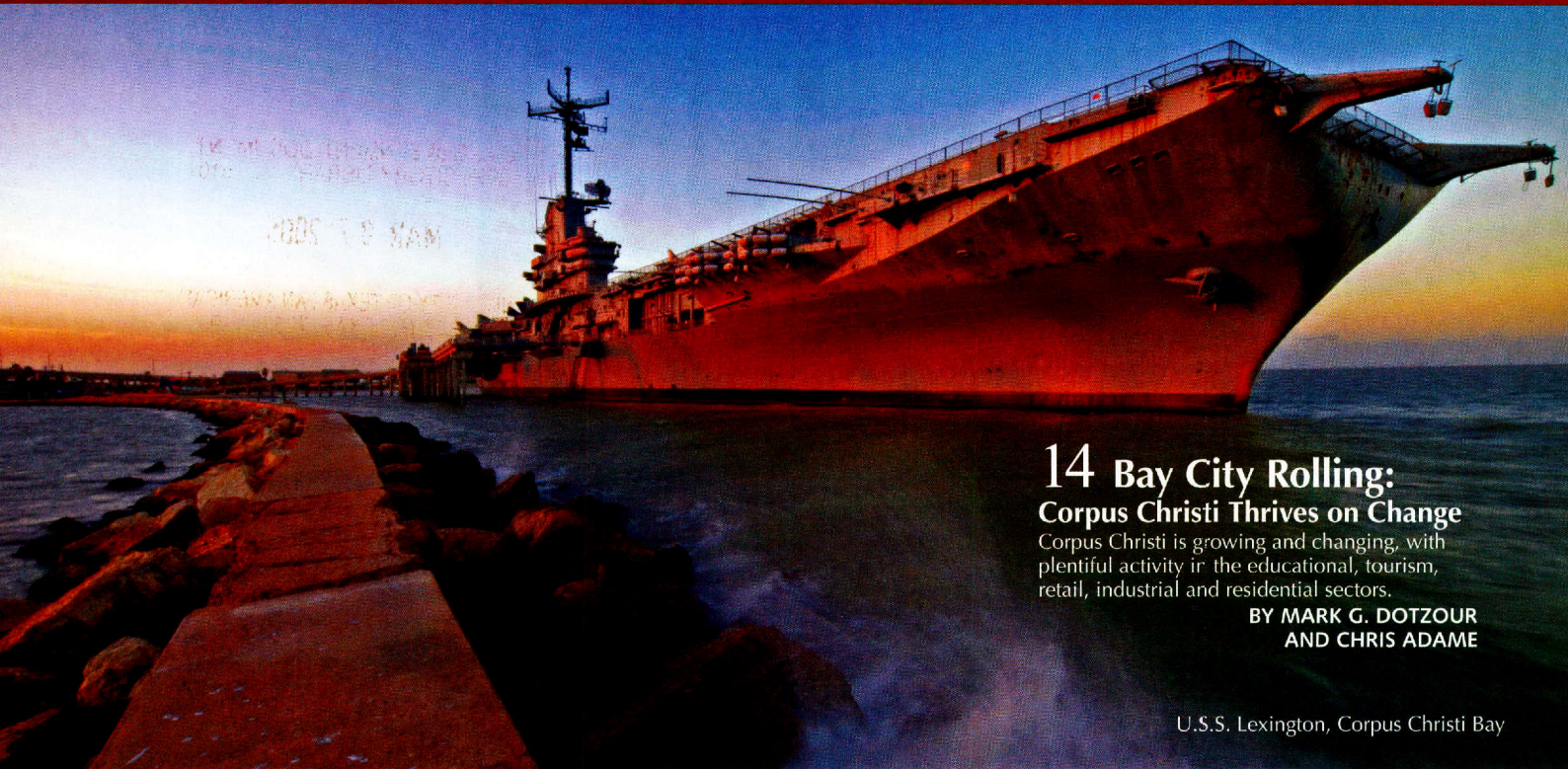
TIERRA GRANDE

JOURNAL OF THE REAL ESTATE CENTER AT TEXAS A&M UNIVERSITY



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CENTERS OF ATTENTION

Retail Tenants and Trends

By Mark G. Dotzour

Where do developers go to shop for new mall tenants? One of their biggest shopping sprees takes place at the annual "leasing mall" at the International Council of Shopping Centers (ICSC) convention. This year, 850 exhibitors gathered in Las Vegas to meet face-to-face with 35,000 developers, retailers, lenders and city officials. Everyone had the same goal in mind — put more retail space into the marketplace.

Fifty mayors led a discussion on how private developers and local governments can work together to make retail development happen. The mayors realize a substantial part of their cities' budgets are paid by revenues from sales taxes collected at shopping centers.

Mayors from Boston to New Orleans to Reno to Long Beach delivered the same message to developers: "We want you to develop quality shopping centers in our community."

The mayor of Albany, N.Y., even distributed his home phone number. Boston's mayor promised to refund all development fees if submitted plans are not approved within a specified time.



Obviously some retailers are in greater demand than others. Each year ICSC recognizes retailers that put sizzle into the tenant mix and bring traffic to stores. Here are the six retailers honored this year.

Trader Joe's

This specialty grocery offers more than 2,000 private label foods and other household items from all over the

world, many of which are distributed exclusively through Trader Joe's. Among the store's offerings are Pound Plus gourmet chocolate bars, seafood processed without chemicals, ready-packed Chinese chicken salad, European, South American and Australian wines for as little as \$2 per bottle and orchids from Thailand.

The chain has 216 stores in eighteen states (none in Texas). With 12,000 to 14,000 square feet of floor space, the stores are smaller than conventional groceries. About 25 store openings per year are planned, mainly on the East and West Coasts.

Trader Joe's recruits managers and staff who are outgoing and customer service oriented. The company's philosophy is that



grocery shopping should be fun. This approach, along with its unusual inventory, allows Trader Joe's to compete with major grocers.

Hollister Co.

Hollister Co. caters to adolescents ages 14 to 18. Clothing and accessories are presented in a relaxed environment that encourages customers to "hang out" rather than breeze through. With chairs to lounge in, magazines and popular music playing, the stores resemble beach houses.

In four years Hollister has expanded to 177 locations. Another 85 stores are planned to open in 2004. Locations are chosen based on "where the kids like to hang." Frequent customer cards are offered to those who spend more than \$500, allowing the best customers to get special tickets to music concerts.

H&M

H&M (Hennes and Mauritz) is all over Europe and is spreading throughout the United States. These stores offer stylish, affordable fashions for young women and men.

The first H&M store opened in 1947; now there are stores in 19 countries. Since entering the U.S. market in 2000, H&M has opened 70 stores. They have in-house designers and offer entire "looks" for less than \$100.

Build-a-Bear Workshop

Build-a-Bear Workshop exploded on the retail scene seven years ago. At these stores, kids of all ages select, stuff, dress and name their own teddy bears. Clothing for the bears and other animals ranges from classic to trendy, and children can record a message that will play each time the bear is hugged. CEO Maxine Clark says, "What we sell is smiles."

Build-a-Bear currently has 155 stores. Last year they opened 40 stores; another 25 will open in the United States and Canada in 2004.

Victoria's Secret

This widely recognized retailer of lingerie and women's apparel began remodeling their 1,000-plus U.S. stores in 2002. Between 45 and 50 stores have been remodeled; another 35 stores will be converted in 2004.

"Pink," the company's new sub-brand, targets women ages 19 to 22. The success of the "Pink" line is adding to the company's sales per square foot.

Hot Topic

For a second consecutive year, Hot Topic was recognized as a "hot retailer." The company studies music and popular culture and develops clothing that supports the pop lifestyle.

The retailer pays employees to go to rock concerts to keep up with what teenagers are wearing and doing. The stores are half apparel and half accessories for the 12- to 22-year-old age group. Hot Topic has 540 stores, with plans to expand to 800 stores in the future.

Small-Town Retail

Few national retailers want to locate in America's smallest cities and towns. But some do.

"Dollar" stores such as Family Dollar, Dollar General and Dollar Tree are active in smaller cities.

Fast-food franchises such as Subway and Quiznos are there, too.

So are movie rental stores such as Movie Gallery. Movie Gallery currently has about 2,400 stores and plans to add another 400 to 600 cities next year. This chain focuses on towns with populations of 5,000 to 15,000.

Save-A-Lot officials describe their company as "an extreme value retailer." Stores carry only 1,250 commonly purchased items and sell them at low profit margins. Save-A-Lot's growth plan targets communities of at least 20,000 and household incomes of \$35,000 or less.

'Dark Space' Increasing

Retail property owners are concerned with "dark centers," also known as "second generation" retail space. These are buildings that have been vacated by their initial tenants. Wal-Mart, which creates about 100 empty big boxes every year, currently has between 16 and 28 million square feet of dark space. The bankruptcy of Kmart increased the overall inventory of unused space.

Consolidation in the grocery industry is likely to produce more dark big box space. Panelists at the convention suggested that owners strongly consider promoting alternative uses, such



as medical clinics or office space. Conversion to apartments or condos is another possibility.

Lifestyle Centers

During the '60s and '70s, retail movement was toward regional enclosed malls. The '80s and '90s brought power centers, a cluster of large big box retailers in a common area. Then came "shoppertainment," the blending of shopping and entertainment experiences. The latest retail design innovation is labeled the "lifestyle center."

Lifestyle centers are focused on convenience for upper-income shoppers. They are open-air developments where shoppers can park in front of the store.

The tenant mix is likely to include home furnishings, women's fashion, specialty stores, bookstores and restaurants. Architectural design is emphasized and is used to create a pleasant and possibly nostalgic experience. The goal of lifestyle center developers is to recreate the downtown shopping experience of earlier decades.

The criteria for a successful lifestyle center are availability of target population (young professionals and upper-income families) and convenience for the high-income shopper. The center must be easily accessible from the street, must be visually appealing and must give shoppers a safe feeling.

Tenant mix is important, too. A coffee shop or café helps bring traffic to the stores. High-quality design amenities generally mean that rents are higher in lifestyle centers, so higher-end retailers are most successful. Results have been mixed for mid-priced retailers.

Open-air lifestyle centers have proven successful in cold, northern climates like Chicago as well as in hot, humid Florida markets. Lifestyle centers are conducive to mixed-use development. Residential and office uses fit the concept well.

Currently, lifestyle centers make up a small portion of the shopping center universe, representing only 2 percent of the square footage found in regional malls. There are an estimated 120 lifestyle centers in the United States.

Strong Investor Demand

ICSC panelists said that investment demand for retail properties is strong and cap rates have fallen to surprisingly low levels. Regional malls are the favored class, but community centers, power centers and lifestyle centers are also viewed favorably by investors.

Grocery-anchored retail shopping centers are viewed with caution. The onslaught of competition in the grocery business has been fierce.

Wal-Mart and Target have made significant inroads against major grocery chains. Discounters, such as Family Dollar and Dollar General, and drugstores, including Walgreens and CVS, are also selling food. Some grocers are insisting that "dollar stores" not be allowed to lease in their centers because they sell so many grocery products. More consolidation among traditional grocers such as Albertsons, Kroger and Winn-Dixie is likely.

Lots of money is chasing retail centers, making it easy to sell but hard to buy. High-leverage buyers are driving cap rates down and prices up.

One panelist quipped that some investors out there "have keys on their financial calculators that we don't have." Some California retail sites are selling at cap rates of less than 6 percent (one panelist cited 5.8 percent). As interest rates go up, cap rates are likely to rise as well. ♦

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EMPTY BIG BOX SPACE is abundant, presenting property owners with a tough marketing task. Creative sellers promote alternative uses for the space, such as office or medical space, apartments or condos. This former Wal-Mart store in Hearne, Texas, is now a high school.

WATER POWER

By Charles E. Gilliland,
John Robertson and
Heath Cover

To sell water,
or not to sell.
That is the question.
Markets for water and water
rights are active in five areas
of Texas. These regions
illustrate the various ways water
marketing affects land values.

Bexar County

Bexar County is a high-growth area, as San Antonio continues to expand and absorb the surrounding "bedroom" communities. The market in this area is development-dominated, with water rights playing a minimal role in land transactions.

End users of newly developed land in this area rely on municipal water sources, so water rights generally have little or no impact on land values.

Medina and Uvalde Counties

Agricultural production on irrigated land remains the most common use of land with water in Medina and Uvalde counties. Here, land with intact water rights normally commands a higher price than property without water rights.

Irrigated cropland, where 50 percent of the surface is irrigated, sells in the \$3,000- to \$4,000-per-acre range when water rights are included. Land without water rights sells for considerably less. Native rangeland, for example, sells for \$800 to \$1,500 per acre depending on location. Improved pasture or dry cropland without water rights normally brings \$700 to \$1,200 per acre.

For land over the Edwards Aquifer, whether it is best to separate water rights or preserve them intact depends on the market value generated by alternate uses allowed by regulations. Owners of qualified irrigated land in this region were allocated two acre-feet of water per acre by the Edwards Aquifer Authority, based on proven historical use. The first or "top" acre-foot can be leased or sold for any end use. The second or "bottom" acre-foot must remain with the land in agricultural use.

Although some extremely small sales have ranged higher, typical prices paid for unrestricted water rights to the top acre-foot range from \$1,750 to \$2,500 per acre-foot. Despite the restrictions on the bottom acre-foot, observers estimate sales prices of \$600 per acre-foot.

Landowners in Medina and Uvalde counties have several options. They can leave land and water rights intact and continue their current operations. They can sell the top acre-foot of water and retain the bottom acre-foot, irrigating less acreage than before while converting the remaining land to dry cropland.

They can sell the top acre-foot and, because of higher relative values, convert the property to rangeland using the bottom acre-foot, which must remain with the land, for supplemental irrigation. Finally, owners can lease the water while retaining ownership.

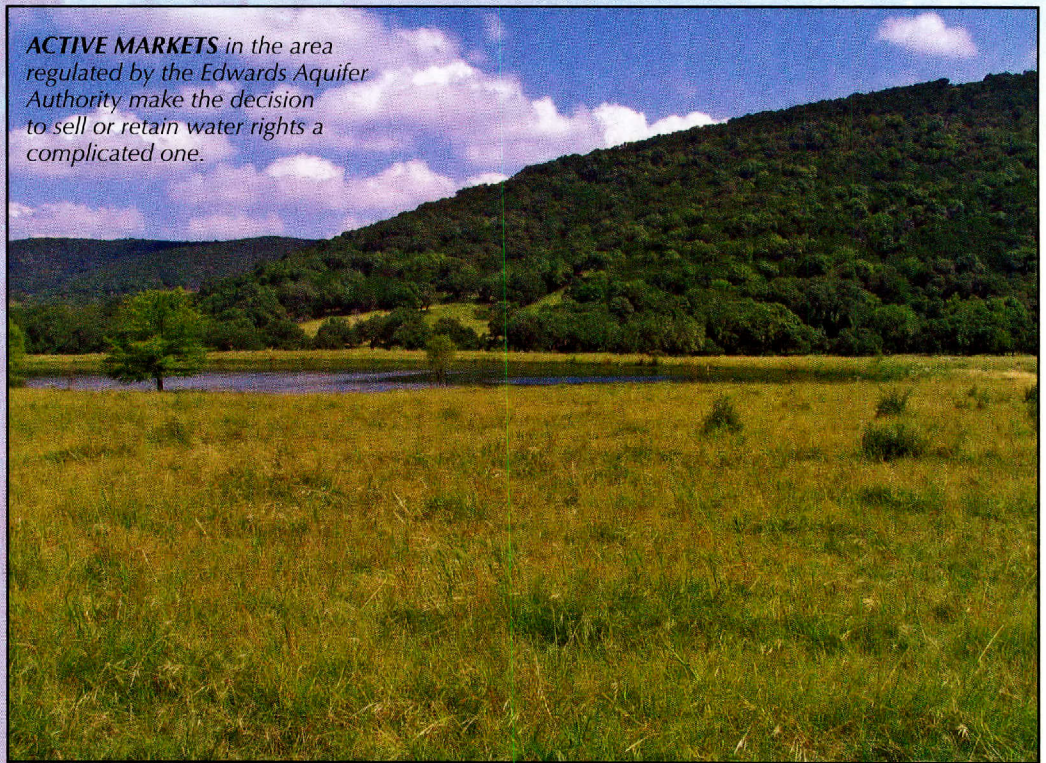
Comparing land prices that include water rights with dry cropland prices reveals that water rights raise sales prices from \$2,300 to as much as \$3,300 per acre. Owners may or may not find it beneficial to sell the rights to the top acre-foot. Because

prices for top acre-foot rights range higher than \$2,300 but lower than \$3,300, it would be possible to gain from the water sale but see the remaining land value fall by a corresponding amount. Even adding the \$600 bottom acre-foot price does not conclusively tip the scales in favor of a sale.

Rio Grande Valley

Most land in the Rio Grande Valley is in an irrigation district where water rights are controlled by the district, and therefore not readily severable from the land. The land must be purchased to obtain water rights.

Prices for cropland with water rights in a water district where 75 percent of the surface is irrigated range from \$1,000 to \$1,800 per acre. Native rangeland without water rights typically sells for \$750 to \$2,500 per acre, depending on location.



ACTIVE MARKETS in the area regulated by the Edwards Aquifer Authority make the decision to sell or retain water rights a complicated one.

Improved pasture or dry cropland without water rights sells in the \$600- to \$1,200-per-acre range.

In the Lower Rio Grande Valley, Texas law recognizes two categories of irrigation water rights, Class A and Class B. When Class A irrigation water rights are changed from agricultural use to municipal or industrial use, the amount of water associated with those rights is cut by 50 percent. Class B water rights would be reduced to 40 percent of the original allocation in the same situation.

Some landowners have obtained control of their water rights from the water districts and have subsequently sold those rights to investors or municipalities. Typically, Class A rights sell for \$2,000 to \$2,500 per acre.

In the Valley, water rights are priced by the acre. An acre of water rights is equivalent to 2.5 acre-feet of water annually, or \$800 to \$1,000 per acre-foot of Class A water rights. Class B rights bring \$1,750 to \$2,500 per acre, which equates to \$700 to \$1,000 per acre-foot of water rights.

In the Lower Rio Grande Valley, landowners can lease their allotted water to other irrigators who have used up their allotted water. If they can obtain control over their water rights

from the irrigation district, owners can sell the water rights and reduce their agricultural operations to dry cropland or rangeland. However, most irrigation districts have policies against conveying water rights to individual landowners, so this option is not always available. Transactions involving rights transferred from districts to individuals generally involve conditions such as a municipality needing to augment its water supply.

San Angelo, Concho River

It comes as no surprise that San Angelo, an area plagued with severe drought and brush overgrowth, is the site of an emerging water market. Land with water rights on the North and Main



IN AGRICULTURAL AREAS, irrigated land generally is valued higher than nonirrigated properties. But in the Panhandle (below), where native rangeland is better suited to ranching, selling water rights may not materially affect remaining land values.

Concho River that is 75 percent irrigated sells for \$1,250 to \$1,800 per acre. Similar land on the South Concho River sells for \$2,500 to \$4,000 per acre.

Land without water rights on the North and Main Concho River sells for \$600 to \$1,500 per acre, while similar land on the South Concho River commands \$1,000 to \$3,500 per acre.

The location-related difference between the North and Main Concho and the South Concho persists in determining the value of water rights. Water rights on the North and Main Concho sell for \$800 to \$1,000 per acre-foot. Water rights on the South Concho sell for \$1,000 to \$1,500 per acre-foot.

The combined value of dry land and proceeds from a water sale ranges from \$1,400 to \$2,500 per acre on the North and Middle Concho, assuming one acre-foot of water per acre of water rights. The corresponding figures on the South Concho are \$2,000 to \$5,000 per acre, again assuming one acre-foot of water per acre of water rights.

Given the value of irrigated farmland, some owners clearly would increase their net worth by selling their water rights. Just as clearly, others would not improve their situations because the combined proceeds of the water sale and remaining land value would fall short of the value of irrigated cropland.

Roberts County

In much of this region of the Texas Panhandle, soil conditions are not conducive to farming, making native rangeland

the most practical land use. Because ranching does not use large quantities of water, severing water rights while retaining a provision to retain domestic water rights probably has little or no effect on highest and best use.

Without demand from nonagricultural users, water plays a minimal role in overall land value. However, when nonagricultural users actively compete for water rights, water assumes a separate value. After water rights for native rangeland property are sold, the remaining land value is likely to stay at its original level.

A 2003 water rights sale in this area reportedly brought in more than \$300 per acre. The transaction included provisions allowing landowners to continue using water for livestock and domestic purposes. If landowners in this predominantly rangeland area can find a buyer, selling water rights is probably a prudent decision.

West Texas

The market for water rights in West Texas has not developed past the speculative stage, so there have not been enough current transactions to gauge price levels. Beyond a pending sale of surface water rights in the Rio Grande River, most activity in this area centers on proposed groundwater projects that remain in their infancy.



Emerging markets for Texas water are reshaping land use decisions in many regions. As municipal and industrial demand for water escalates the value of water rights, farmers and ranchers may forgo irrigated farming and sell their water rights.

In markets where water-intensive agricultural uses are not economical, such as the rangeland areas in Roberts County, leasing and selling water rights promises to increase landowners' wealth with little or no impact on current land use and value.

For many landowners, the decision to market water is complex. When weighing alternatives, landowners may benefit from the services of an experienced advisor. This is especially true in regions where water marketing is in its infancy. ♦

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Collecting Commissions in Commercial Transactions

By Reid C. Wilson



Most real estate transactions conclude with the broker being paid directly by a title company, in accordance with the Texas Real Estate Commission (TREC) form contract. But what if a dispute occurs concerning the commission due? What if the commission agreement is not clearly stated in the sales contract?

Texas courts have not often sided with brokers asserting rights to commissions. In many cases, brokers prove their own worst enemies by failing to follow relatively simple requirements.

Strict TREL A Compliance Required

Texas courts strictly enforce the requirements of the Texas Real Estate License Act (TREL A) in commission disputes. TREL A requires that a commission agreement:

- be signed by the person paying the commission;
- contain a promise that a specified commission will be paid or refer to a written commission schedule to calculate the commission;
- identify the broker; and
- identify the real property.

These rules apply to all real estate transactions.

Four Texas Supreme Court cases addressed disputes centered on commercial commission agreements. In all four cases, the brokers were denied commissions for failing to meet these rules.

To collect unpaid commissions, brokers must claim breach of contract under TREL A. Commercial brokers may also claim and foreclose a lien under the Brokers and Appraisers Lien on

Commercial Real Estate Act. A valid contract under TREL A is a prerequisite to the lien.

No Exceptions to Written Agreement

The Texas Supreme Court holds that a real estate contract that does not meet TREL A requirements may not be the basis for a broker to collect a commission, even if the broker set in motion the events culminating in a sale.



In *Trammell Crow v. Harkinson*, broker Harkinson had a written exclusive representation agreement with a tenant to locate rental space. The agreement expressly stated that Harkinson's commission would be paid solely by the landlord or property owner.

Harkinson found suitable space owned by Trammell Crow and began negotiating a lease. Trammell Crow representatives told Harkinson verbally that the company would pay a 42 percent cash commission. The broker was sent an unsigned commission agreement to that effect.

Harkinson redrafted the agreement, retaining the 42 percent commission term but changing other terms. He signed the agreement and returned it. Trammell Crow representatives never signed it, nor did they send any other written commission agreement to Harkinson.

Harkinson continued negotiating the lease with Trammell Crow, but his tenant, without his knowledge, made an agreement with Trammell Crow that Trammell Crow would pay Harkinson only \$30,000 in commission. This was significantly less than the \$346,500 that would have been due at the 42

percent rate. Harkinson refused the \$30,000 and sued both landlord and tenant for loss of commission, fraud, breach of contract, breach of duty of good faith and fair dealing, interference with contract and prospective business relations and civil conspiracy.

Ultimately, Harkinson lost his case because he did not have an enforceable written commission agreement. The trial court granted summary judgment for the defendants, and Harkinson appealed. The court of appeals reversed the ruling on the interference and civil conspiracy claims only and awarded Harkinson damages. However, the Supreme Court ruled that a real estate broker cannot recover lost commissions without a valid commission agreement.

The court distinguishes oral agreements for the sale of real estate, in which the statute of frauds may sometimes be avoided, from oral agreements for brokerage commissions. While the former may be enforceable in certain circumstances, the court holds that there are no circumstances in which a broker may enforce a commission agreement, except under TREL A.

Clear Agreement Precludes 'Unfair' Claim



In *Friendswood Development Company v. McDade + Company*, a relocating tenant contacted Friendswood about leasing office space. Friendswood had no space available but offered to lease sublet space it did not own to the tenant for an interim period.

While considering this proposal, the tenant retained McDade + Company by an exclusive brokerage contract, with an exception for Friendswood, allowing the tenant to deal with either McDade or Friendswood. McDade expended substantial effort looking for acceptable space. The tenant then accepted the Friendswood proposal.

When McDade learned that Friendswood had leased space that it did not own to the tenant, McDade sued the tenant for breach of the commission agreement and sued Friendswood for interference with the commission agreement. The court of appeals found that there were ambiguities in the contract that entitled McDade to a trial on his claims; therefore, the trial court's award of summary judgment for the defendants was not proper.

The Texas Supreme Court held that commission agreements are construed like other business contracts, and that an exception in the contract to the right to collect a commission precludes recovery of a commission, even if the circumstances are unusual or "unfair." The court held that the following exception clause in the listing agreement was clear:

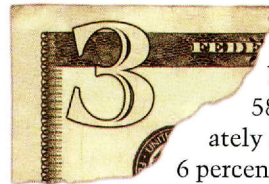
We hereby appoint McDade + Company as our sole broker and grant to McDade the exclusive right to obtain a lease or purchase of premises on our behalf, with the exception of Friendswood Development

Company or other Exxon affiliates which are excluded from the terms of this contract.

The Supreme Court overruled the court of appeals, which prevented McDade from introducing undisputed, outside evidence that Friendswood had never leased space it did not own, and because of that, McDade entered into the contract with the understanding that the exception would apply only to Friendswood leasing its own properties.

Specific Property Description Required

The Texas Supreme Court requires that a commission agreement must reasonably identify the property involved or it is unenforceable.



In *Texas Builders v. Keller*, a landlord sent solicitation letters to several brokers, including Keller, stating that 58,333 square feet of space was immediately available at 12050 Rojas and offering a 6 percent commission on all leases. The 12050 Rojas location contained 100,000 square feet total.

The same landlord had an additional 112,500 square feet at 12058 Rojas. Keller presented a tenant for the 12050 Rojas address to the landlord. The landlord delayed negotiating with Keller and began negotiating with the tenant directly, resulting in a lease for 16,667 square feet at 12050 Rojas and *all* of 12058 Rojas.

Keller sued the landlord for fraud and to collect his commission using the solicitation letter as a written commission agreement. Keller won at trial and appeal, both for fraud and breach of contract.

However, the Texas Supreme Court reversed the judgment, saying the solicitation letter did not satisfy TREL A requirements for a commission agreement because the property description was not specific. According to the court, "a contract providing for the sale or lease of an unidentified portion of a larger, identifiable tract is not sufficient."

The landlord's solicitation letter offered only 58,333 square feet of a total of 100,000 square feet at 12050 Rojas. The tenant leased only 16,667 square feet at that address.

Whether the 16,667 square feet was part of the offer in the solicitation letter was not clear, said the court, so the agreement did not satisfy TREL A.

As to the fraud claim, the court wrote, "Keller cannot circumvent the requirements of the Act by claiming the lost commission as fraud damages." In other words, a broker cannot allege fraud based on the failure to pay a commission if the basis of the claim is an unenforceable commission agreement.

Broker Must be Clearly Identified

Brokers must be clearly identified in commission agreements.

In many cases, brokers prove their own worst enemies by failing to follow relatively simple requirements.



In *Boyert v. Tauber*, a commission agreement stated that the buyer would pay a commission to “outside brokers” but did not name them. The purchase contract mentioned no brokers. Relying on the buyer’s representations that a commission would be paid, Boyert located a suitable property, which the buyer purchased for \$17 million.

When the deal closed, the buyer refused to pay Boyert a commission. Boyert sued, claiming that a letter he had sent was sufficient to serve as a commission agreement under TRELA, and that the doctrine of “partial performance” should preclude the buyer from enforcing any more rigorous legal requirements (such as full compliance with the TRELA requirements).

The Texas Supreme Court held the commission agreement unenforceable, notwithstanding the broker’s performance.

TRELA Violations May Kill Commissions

A recent court of appeals decision added the obligation to comply with every TRELA requirement relating to representation of the principal to receive a commission. Noncompliance by the broker will defeat a commission claim, whether or not the broker was the procuring cause of a sale or lease or the principal was harmed by the noncompliance.

TRELA provides that TREC may revoke or suspend a broker’s license if it determines that the licensee has failed to specify a definite termination date that is not subject to prior notice in a commission contract (except for contracts to perform property management services). In *Perl v. Patrizi*, Perl held that the broker’s failure to provide a termination date in his commission agreement rendered the agreement unenforceable.

The appeals court ruled that a broker’s noncompliance with any part of TRELA may render a commission agreement unenforceable. Based on the Texas Supreme Court’s treatment of commission agreements in the *Boyert* and *Harkinson* cases, the court wrote:

These cases [*Boyert* and *Harkinson*] reflect that the requirements of a contract as set out by the Act [TRELA] are not merely requirements that must be met to retain a Realtor’s® license, but are also substantive directives that must be followed in analyzing the contracts entered by licensed Realtors.® Accordingly, we conclude that we must apply the rule and statute as set out by the Legislature in our analysis of the contract at bar.

Practical Tips

What does all of this mean for practicing brokers and agents? To ensure that they collect a commission, brokers should comply with all requirements of TRELA, not merely those provisions relating to the form of commission agreements.

Brokers should get a properly signed commission agreement at the outset of the transaction. A good commission agreement form will help brokers avoid “reinventing the wheel” and ensure that all necessary components are included. The appropriate lien language should be included for commercial properties.

The Texas Association of Realtors has a set of forms members can use that are updated regularly by staff attorneys to meet all TRELA requirements. Brokers should consult with legal counsel if there are unusual circumstances or if the commission agreement is heavily negotiated.

Brokers should be careful not to inadvertently sign release-of-commission claims. When a deal breaks down, title companies



THERE'S NO SUBSTITUTE for a properly signed commission agreement when it comes to getting paid. Without one, the Texas Supreme Court is likely to rule against a broker seeking to collect an unpaid commission.

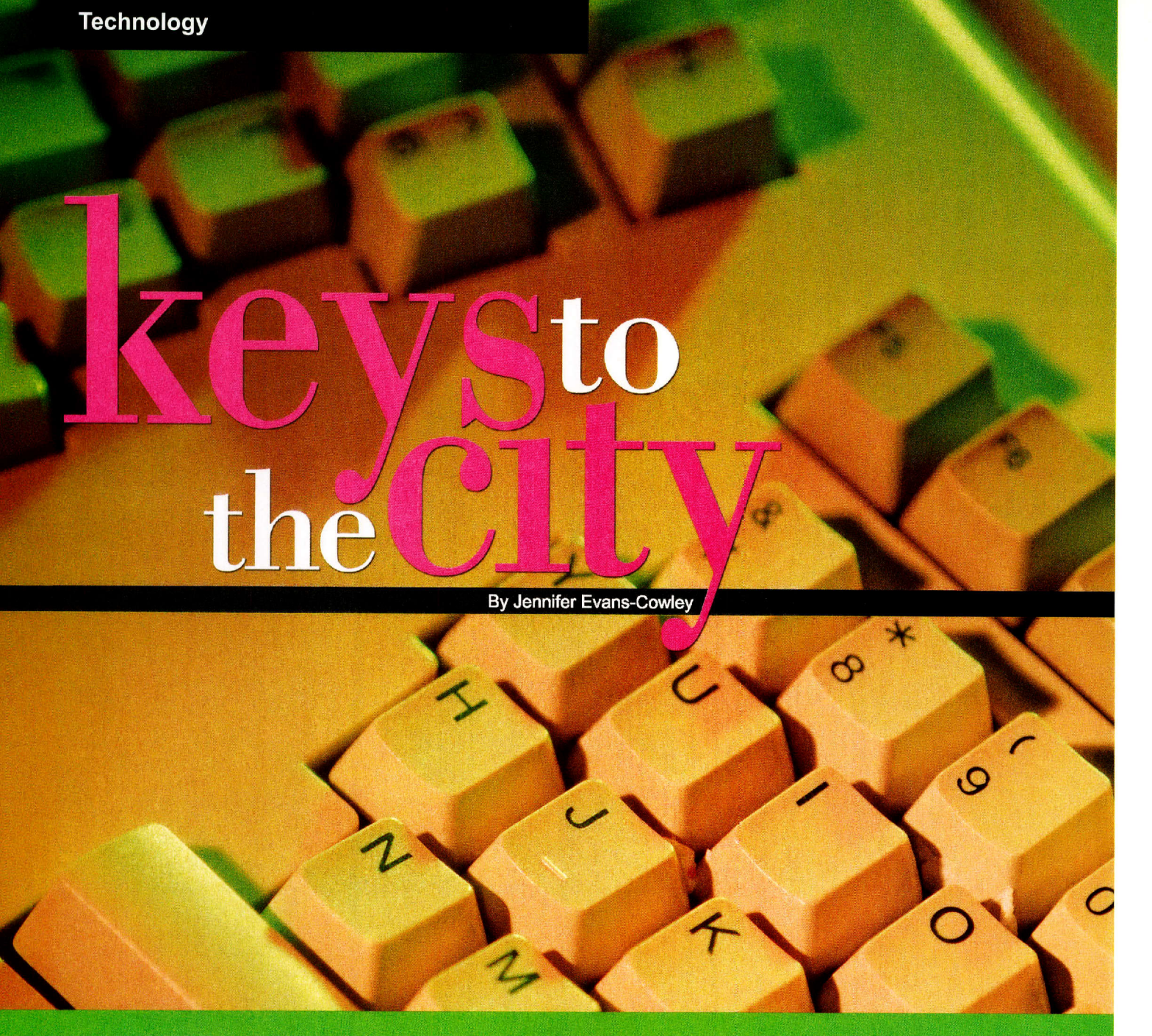
often require a signed release document before they will return the earnest money. Those releases typically are signed by all brokers, and include language releasing all claims related to the failed deal, including claims for brokerage commissions. If the deal later revives, the broker who has signed such a release may be out of luck.

In *Fraday v. May*, a court of appeals case, when a deal revived and the parties attempted to exclude the broker from the new transaction, the broker prevailed in his suit for commission because the original contract satisfied TRELA requirements and the subsequent contract was for the same land with the same parties. If the broker had signed a release, the commission would have been unrecoverable.

When brokers find that a commission situation is “heading south,” and no (or an inadequate) written commission agreement exists, they can try to negotiate an agreed-upon fee and put the results of the negotiation in writing signed by the party who will pay the commission. In such situations, brokers are often forced to take what they can get.

Following a few rules will protect well-intentioned brokers from the unfortunate fate of *Harkinson*, *McDade*, *Keller* and *Boyert*. ♦

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Keysto the City

By Jennifer Evans-Cowley

If the thought of dealing with city hall conjures up nightmares of long lines, inconvenient hours and telephone tag, take heart. Local governments across the state are improving customer service by providing services via the web. New tools such as interactive geographic information systems (GIS), online permitting and streaming video are making life easier for real estate professionals who depend on local development offices for a wide range of information.

Websites for every city in Texas with a population of 50,000 or more — a total of 47 — were examined to determine what services are being offered. The state's largest cities were the most likely to offer web-based services, but smaller cities such as Sugar Land (population 63,500) are providing high levels of e-government services as well.

Convenient Communication

Thirty-six of the cities in this study post e-mail contacts for their development departments. This allows real estate

professionals to submit questions at their convenience rather than having to call or stop by during business hours. Fifteen cities provide individual e-mail addresses for staff members, so customers may contact the person most familiar with a particular issue.

Thirty-nine of the surveyed cities provide customers with direct access to zoning ordinances. Information on the city's comprehensive zoning plan and other plans are available online for 29 cities.

Twenty-two cities provide online maps showing zoning of individual properties. Some cities provide the maps in jpg or pdf format, while others use an interactive GIS system.

With San Antonio's interactive GIS system, users can locate floodplain areas, historic districts and areas within San Antonio's extraterritorial jurisdiction. Bryan's system allows users to view subdivisions, zoning and proposed roads.

The City of Austin site allows users to download GIS data files. For example, users can download all multifamily projects

under development in the city by quarter. This helps licensees provide detailed, accurate information about properties and neighborhoods buyers are interested in.

Two cities allow customers to order and pay for permits online. San Antonio customers can apply for permits, schedule inspections and review balances owed on permits. Sugar Land allows customers to search for information on specific building permits and schedule or cancel inspections online.

Meetings Online

In 21 of the surveyed cities, customers can view agendas for planning commission meetings online in advance of the meetings. Seventeen city websites allow customers to view minutes from previous meetings.

Busy residents and business people may find it hard to attend city council, planning commission or other public meetings. But in six cities, one or more public meetings are viewable via the Internet. Corpus Christi's website includes live video of city council meetings. Sugar Land posts video of planning commission meetings on its website after the fact, so users who missed the meeting can view cases at their convenience.

The Denton and Irving websites allow users to view programs as they are broadcast on the municipal cable channel. El Paso's site provides an informational video about the city, which is helpful to newcomers.

News and Forums

Sixteen of the surveyed cities offer customers an e-mail news service. Midland and Tyler send periodic e-mail updates regarding city services and activities. Brownsville's site lets customers choose the specific type of information they receive, such as commission agendas, job postings, emergency information and environmental newsletters.

Seven city websites provide some or all content in Spanish. The City of Houston hires translators to translate individual pages, but as the site has more than 12,000 pages, not all are translated.

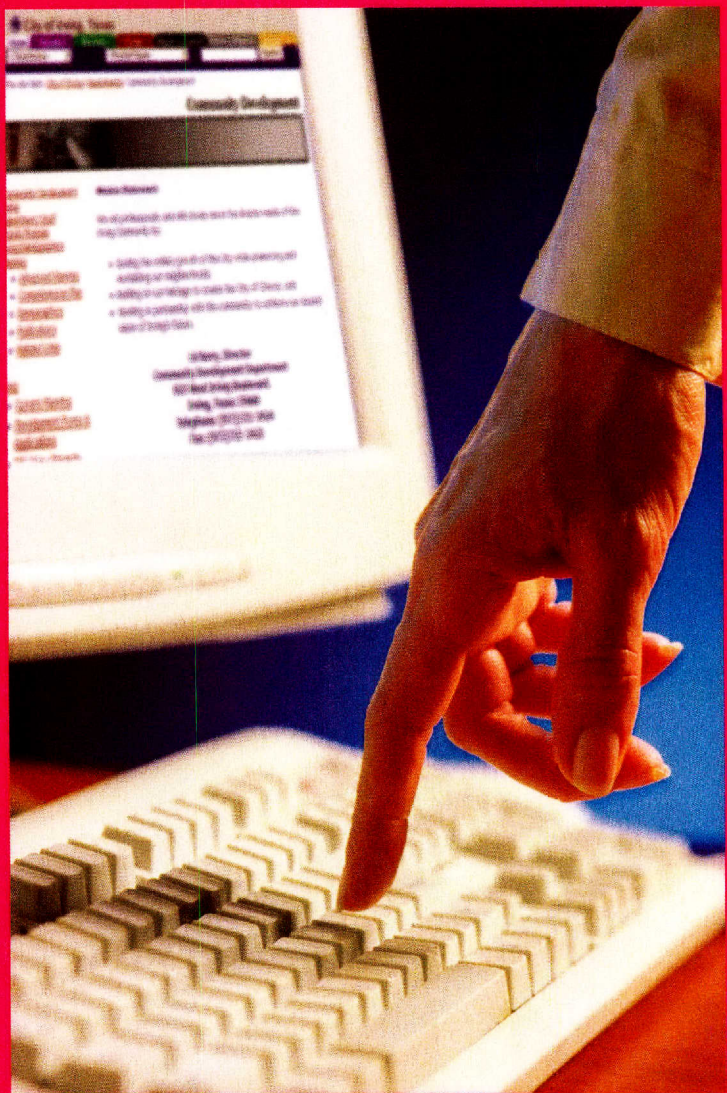
Five cities have online discussion boards to encourage citizens to comment on public issues. Port Arthur's discussion forum allows citizens to post questions and comments, which city staff members then respond to.

Arlington recently hosted a discussion forum on its website focusing on the city's 2025 comprehensive plan. More than 100 people registered to participate and more than 400 messages were posted, according to Luis Tamayo, senior city planner. Tamayo believes the forum was successful in encouraging input from those who do not typically attend public meetings. The city is now considering online forums for other public issues.

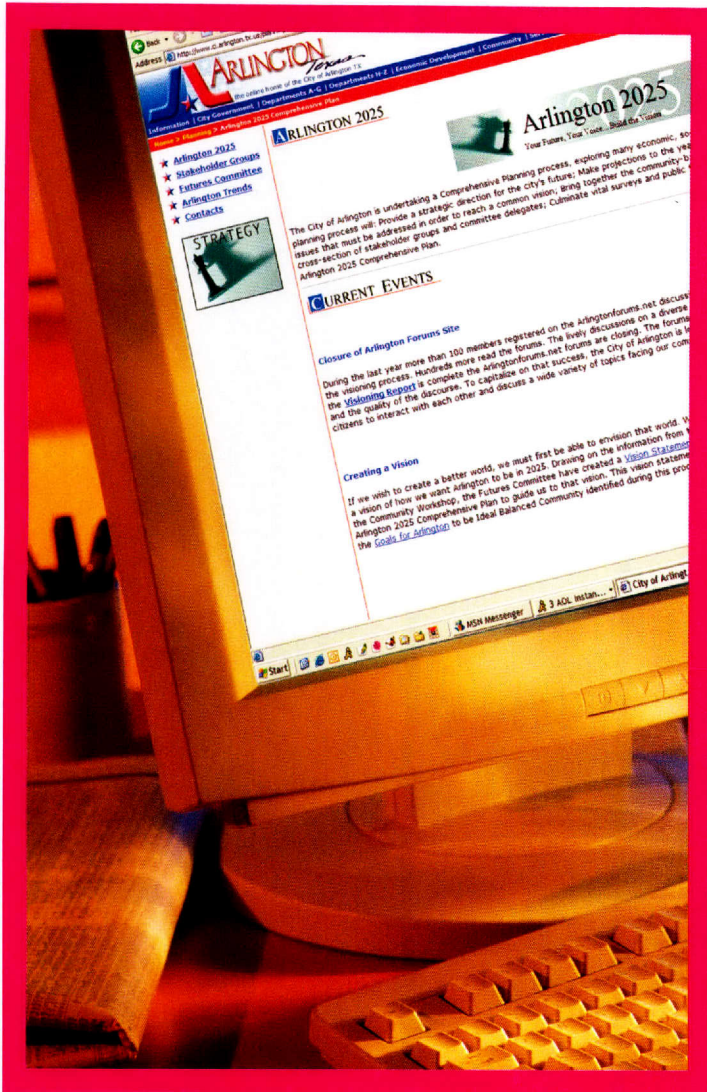
Case Study: Irving

Irving's website offers a variety of services in an easy to navigate, user-friendly format. The city's zoning ordinances, comprehensive plan and rezoning applications are online. Customers have e-mail access to individual city employees.

The city's interactive GIS system, which began in 1999, allows customers to view commercial building permits, zoning, subdivisions and aerial photography, in addition to other types of information. Meeting agendas and minutes



Arlington	www.ci.arlington.tx.us
Austin	www.ci.austin.tx.us
Bryan	www.bryantx.gov
Corpus Christi	www.cctexas.com
Denton	www.cityofdenton.com
Houston	www.cityofhouston.gov
Irving	www.ci.irving.tx.us
Midland	www.ci.midland.tx.us
Port Arthur	www.portarthur.net
San Antonio	www.sanantonio.gov/planning/
Sugar Land	www.sugarlandtx.gov
Tyler	www.cityoftyler.org



are available, with agendas typically posted at least 72 hours in advance.

Irving's site provides online streaming broadcasts of the city's government television station. Citizens can view planning and zoning commission meetings live. Users can also view videos on a wide range of topics including planting a tree, disaster planning and Irving parks. Some videos are available in Spanish.

Plans to enhance Irving's site include adding building inspection and other development information along with videos on community development issues in English and Spanish. Over the next year, city staff members plan to add an interactive feature that will allow visitors to get up-to-date information on demographics, economic characteristics and development information on a neighborhood, census tract or specific address in Irving. Another new feature will allow individuals to fill out some zoning and subdivision applications online. An online feedback survey is also in the works.

As this study shows, local government websites are proving to be powerful tools that enhance customer service and help cities communicate with their customers. The future will likely bring an increase in the number of Texas cities offering e-commerce applications, interactive GIS and interactive discussion forums. ♦

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cool ways cities are meeting customer needs

- Online zoning information. (Plano, Texas, www.planoplanning.org/gis/ims.html)
- Online property tax information and payments. (El Paso, Texas, www.elpasotexas.gov/tax_office/pay_taxes.asp)
- Building permits available online. (San Jose, Calif., www.sjpermits.org/permits/permits/)
- Report problems using interactive GIS. The City of San Diego's GIS lets users pinpoint potholes on a map. (interapp1.sannet.gov/street-div/sreq.jsp)
- Online discussion forums. (Indianapolis, Ind., www6.indygov.org/cgi-bin/ubb/Ultimate.cgi)
- Online code enforcement complaint submission. (Fremont, Calif., www.ci.fremont.ca.us/PublicSafety/ReportAHazard/default.htm)
- Virtual city tours that allow users to learn about the city and its neighborhoods. (Cleveland, Ohio, www.city.cleveland.oh.us/around_town/map/neighborhood/neighborhood.html)
- E-mail newsletters updating customers on topics of interest. (Scottsdale, Ariz., www.scottsdaleaz.gov/listserve/default.asp)
- Customizable websites. The City of Tampa, Fla., allows users to select frequently accessed information services and recent transactions to be displayed on a customized homepage. (www.tampagov.net/app_MyTampaGov/benefits.asp)
- Live traffic and construction web cams. Colorado Springs, Colo., provides a live traffic cam from 21 locations in the city. (www.springsgov.com/Page.asp?NavID=187)



UNCLE SAM GIVES HISTORY CREDIT

BY JERROLD J. STERN

Congress has declared the rehabilitation and preservation of historic structures and neighborhoods an important national goal. To encourage preservation of historic structures, tax law provides two types of rehabilitation tax credits that reduce tax liability and, in turn, reduce net restoration cost.

20 Percent Credit

To qualify for a 20 percent credit, the structure being restored must fit the tax law's definition of a "certified historic structure." The definition requires that the building be listed in the National Register of Historic Places or located in a registered historic district and certified by the Secretary of the Interior as being of historic significance to the district.

A property is treated as certified by the secretary if the taxpayer believes the building will become certified, files a request for certification and the secretary ultimately certifies the property. This means a property does not have to be certified when the rehabilitation work begins.

Normally, the request for certification must be filed on or before the date the property is placed in service. However, in a 2004 case, the IRS ruled that a request that was filed late would be treated as filed on time because the taxpayer intended to claim the tax credit, tracked the rehabilitation by taking numerous photographs and kept detailed records of the project. Moreover, the taxpayer's management had numerous discussions about the project and the tax credit with their professional tax consultants.

The portion of the property's cost not treated as a credit can be depreciated straight line for tax purposes — 27½ years for residential rental property and 39 years for nonresidential property.

For example, Larry Chamberlain pays \$600,000 for an apartment building certified as an historic structure because it is located on the town square of Granbury, Texas. Rehabilitation costs \$900,000. Chamberlain receives a \$180,000 tax credit (20 percent of \$900,000) and depreciates \$1,320,000 (\$600,000 plus \$900,000 less \$180,000) over 27½ years.

Another requirement is that the cost of the rehabilitation must exceed the



adjusted basis in the entire building (and also exceed \$5,000). This rule is met by the example, but a 1992 tax court case demonstrates how this rule can be elusive (ALEXANDER III, 97 TC 244).

Alexander spent \$69,000 to purchase a certified historic building of which \$22,000 was allocable to the first floor. He paid \$40,000 to rehabilitate the first floor to create an apartment and claimed the \$40,000 expenditure was eligible for the credit because it exceeded the \$22,000 cost of the first floor. Rehabilitation costs for the

remainder of the building were \$12,000. The tax court held that no credit was allowable because the \$52,000 total rehabilitation costs (\$40,000 plus \$12,000) did not exceed the \$69,000 total cost of the building.

10 Percent Credit

A 10 percent credit is available for rehabilitation of certain nonhistoric structures. To qualify, the building can be either residential rental or nonresidential as long as it was built before 1936. The building cannot be located in a registered historic district.

To qualify for the 10 percent credit, at least 50 percent of the external walls must remain as external walls, at least 75 percent of the external walls must remain as external or internal walls and at least 75 percent of the "internal structural framework" must remain in place. The internal structural framework includes all load-bearing internal walls and any other internal structural supports.

Also, the building must have been placed in service by the taxpayer before rehabilitation began. These rules do not apply to the 20 percent credit previously discussed.

There are some rules that apply to both the 10 percent and 20 percent credits. Qualified rehabilitation expenditures can be made by either a lessee or a lessor. Costs to enlarge the building do not qualify for the rehabilitation tax credit, although they do qualify for depreciation.

In addition to the rules discussed above, several other technical requirements must be met. Consultation with a tax accountant or tax attorney is recommended. ♦

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Where in Texas does a public university sit on an island adorned with palm trees? Where in the Lone Star State does a 28-story Class-A office tower overlook sailboats in a bay? Where are large stretches of oceanfront beach property still available for development? The answer is Corpus Christi.

bay city re

Corpus Christi Thrives on Change



ot many people, even Texans, are aware of the renaissance taking place in Nueces and San Patricio Counties. Along this stretch of the Coastal Bend, positive changes are creating opportunity for real estate investment and development.

Tourism, Convention Activity Full Speed Ahead

Corpus Christi convention activity is focused in the area at the north end of Shoreline Boulevard near the Harbor Bridge. The anchor, the AmericanBank convention center, is currently going through a complete renovation and expansion that will double its size.

Scheduled for completion in fall 2004, the center will have a 2,526-seat auditorium, a sports arena seating 10,500 and meeting and exhibition space all under one roof. The sports arena will be home to a professional minor league hockey team and Texas A&M–Corpus Christi basketball. Both large Omni Hotels nearby offer spectacular views of the bay.

The city has made strong efforts to boost tourist attractions to further enhance convention business. In 1990, the Texas State Aquarium opened on the north side of the harbor entrance. Dolphin Bay, the newest exhibit, offers visitors an opportunity to get face-to-fin with dolphins and other species native to the Gulf of Mexico.

The aircraft carrier U.S.S. Lexington was moored in the bay in 1992. Visitors can tour the carrier, see the aircraft and discover the history of the ship known as the Blue Ghost.

In summer 2004, ground was cleared near the convention center for Whataburger Field, a \$25 million baseball stadium. The field will be home to the Corpus Christi Hooks, the AA farm team of the Houston Astros. Land is being prepared for retail development and a hotel site near the new stadium.

Island University Growing



exas A&M University–Corpus Christi continues to expand. A \$40 million performing arts center is under construction.

The facility's signature feature will be a glass wall offering a panoramic view of Corpus Christi Bay. Another project, the \$60 million Harte Research Institute for Gulf of Mexico Studies, will bring researchers and research dollars to the city.

Fall 2003 enrollment grew to 7,860 students, up from 7,200 students the previous year. This enrollment growth has created additional demand for housing and retail services in the university area. Many apartment complexes are located along Ennis Joslin Road to serve students and nearby military bases.

As enrollment continues to expand in the coming years, more apartments and retail should develop in this area. Currently, there is almost no retail serving the immediate area of the island campus.

Reopened Channel Promises Development

Across the bay on Padre Island, which starts at Corpus Christi and runs 150 miles south to Mexico, is one of the region's most important public projects. The \$30 million Packery Channel project is a partnership between the City of Corpus Christi and the Corps of Engineers that will result in the reopening of a long-closed channel between Corpus Christi Bay and the Gulf of Mexico. In addition to providing Gulf access for boaters, the project will open up 400 waterfront acres for development. When the channel is completed, Corpus Christi boaters will no longer have to make the lengthy trip to Port Aransas to get into the Gulf.



By Mark G. Dotzour and Chris Adame

The City of Corpus Christi has annexed most of the beaches on Mustang Island, resulting in daily sand cleaning, new amenity investment and more public safety officers. This will benefit visitors and residents of Mustang Island alike and should help the city attract more tourism dollars.

Trade Corridor Will Harbor New Industry

Corpus Christi entered the arena of global trade in 1519 when Spanish adventurer Alonso Alvarez de Pineda sailed into the bay and claimed the area for the king. More recently, the Port of Corpus Christi opened in 1926 and has become a vital artery in the flow of world trade.

Crude oil from the Middle East and Venezuela arrives daily to supply local refiners with the feedstock to produce gasoline and chemicals that are the backbone of American industry. Military equipment of all types makes its way from Fort Hood to Iraq through the port.

Recent developments show how the port stays on the front edge of the shipping industry. Ground has been broken on a \$55 million project to develop the Joe Fulton International Trade Corridor, which will add 11 miles of roadway and six miles of rail that will greatly enhance accessibility on the north side of the ship channel. The roadway is expected to be completed in 2008. The project also will open 1,100 acres and four miles of frontage on the ship channel for industrial development.

In addition, several companies are likely to build liquefied natural gas (LNG) processing facilities at the port. When the cryogenically frozen natural gas arrives, it will be warmed until it returns to a gaseous state and then transported by pipeline to buyers. The byproduct of this process is an enormous

quantity of "cool." Other industries, such as the frozen food processing industry, are likely to locate near these facilities to take advantage of this resource.

Plans for the port include development of the 1,100-acre La Quinta Container Terminal on the north shore of Corpus Christi Bay near Ingleside. This would open the area to receive containers of manufactured goods and produce from other countries.

Residential Building Frenzy

Residential housing construction has exploded in three distinct areas of Corpus Christi. Many vacation and permanent resident homes are being built on Padre Island for those who enjoy water access and the beach. A wide array of housing is available in south Corpus Christi in the Staples Avenue at Oso Creek area near Kings Crossing Country Club. The third growth area is in the northwest near Calallen.

The number of building permits for single-family homes in Corpus Christi increased 76 percent from 1999 to 2003, from 942 to 1,659. The building frenzy continues in 2004, with single-family permits for the first five months up 27 percent from the same period in 2003.

Home sales volume in the Corpus Christi market has set a new record every year since 1998. Sales in 2003 totaled 4,198, up 32 percent from 1998. The pace has quickened in 2004 with sales in the first five months running 16 percent higher than the same period a year ago. The median price in May was up 13 percent from a year earlier, but at \$116,800 is still affordable.

Apartment construction has been modest in recent years, with only 764 units built since 2000. Occupancy rates have



TOURISM, EDUCATION AND BUSINESS

help keep Corpus Christi's economy thriving. The lure of the ocean reels in tourists eager to view wildlife at the Texas State Aquarium (above, left) and along the waterfront (above, right). The lucky ones go home with a good fish story (right). With enrollment of 8,000 and an annual budget close to \$80 million, Texas A&M-Corpus Christi (opposite, left top and bottom) is one of the community's economic lifelines. Spectacular views (opposite, right) and office space at bargain prices await businesses in this city by the bay.





remained at high levels, with Apartment MarketData Services reporting an overall occupancy rate of 95.4 percent in May 2004. An 82-unit waterfront apartment community on Padre Island was completed in 2004, with two-bedroom units renting for \$1,000 per month.

Retail Follows Housing's Wake

Like housing, the retail sector is experiencing unprecedented growth. The city's primary retail corridor is centered along South Padre Island Drive. Many large national retailers have recently announced or completed stores in this area, including Bed, Bath & Beyond, Conn's, Best Buy, Marshall's, Ross Dress for Less and Starbucks. Projects currently under construction include a Lowe's Home Improvement Center and an adjacent 30,000 square feet of retail space.

Rapid housing construction in south Corpus Christi is spawning retail development. Saratoga Boulevard, which serves as the south side's primary north-south arterial route, is becoming the location of choice for many retailers. Expansion is currently centered on the Staples Street-Saratoga Boulevard intersection.

In fourth quarter 2003, developers completed an 85,000-square-foot Kohl's department store and started an additional 50,000 square feet of in-line retail space at the northeast corner of the adjacent intersection. Preleasing activity includes tenants such as Petco, Keva Juice and Quizno's Subs.

In addition to this development, a 45,000-square-foot retail center is under construction approximately one mile to the north. The project will be named Regal Plaza and is being marketed as a high-end center. Annual quoted rents in the project are \$12 to \$20 net of common area maintenance, which is estimated at \$3.60.



Offices on the Waterfront

The Corpus Christi office market has experienced a moderate increase in leasing activity. Expansions in the legal and finance, insurance and real estate industries drove absorption activity during 2003, as overall net absorption was more than 60,000 square feet.

As a result, the market's overall vacancy decreased to 14.1 percent compared with more than 15 percent at the end of 2002. Over the same 12-month period, marketwide lease rates increased approximately 2 percent. However, the increase was more attributable to a rise in expenses than a significant increase in demand, as insurance costs have escalated over the past year.

No speculative office construction has occurred since the mid-1980s. The local tenant base consists primarily of 5,000- to 10,000-square-foot users. Large users (over 50,000 square feet) are scarce.

Significant space is available in the two Class-A buildings in the central business district, One Shoreline Plaza and the Frost Bank Plaza, with waterfront space available for \$8 per square foot triple-net. Rental concessions are abundant, with landlords reportedly considering an expenses-only lease for tenants who will build out their own space at \$20 per square foot. Clearly, this market creates a tremendous opportunity for Texas businesses to enjoy waterfront views at an economical price.

What's on Horizon?

The winds of change are blowing through this tropical cove on the Coastal Bend. Interesting real estate investment and development questions abound.

What kind of retailers will locate near the new baseball stadium? Will the expansion of the convention center create demand for another hotel nearby? What kind of industrial development will take place on the north side of the ship channel in the wake of road and rail improvements?

How long will it be before a major resort developer reshapes the sandy beaches of Padre Island? What kind of housing and retail amenities will boaters need when the Packery Channel opens access to "blue water"? How many more apartments, condos and townhomes will be needed to house students at the university in years to come? Where will restaurants, bars, coffee shops and bookstores locate to serve the growing student population?

Stay tuned for the answers. ♣

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GROWING PAINS

FM 2499 Case Study

By Randall S. Guttery



It is no secret that growth brings challenges — and sometimes controversies — to communities. Since mid-2002, citizens in the Dallas-Fort Worth metroplex have been debating the proposed project to extend Texas Farm-to-Market Road 2499 through the City of Highland Village.

Project opponents cite increased traffic noise, pollution, property devaluation and crime, as well as possible damage to vegetation and wildlife if the road requires elevated bridges over Lake Lewisville, adjacent wetlands or both. Proponents contend the road would encourage commercial construction, thereby enhancing Highland Village's tax revenues.

For many citizens, the biggest question is whether FM 2499 will affect housing values positively or negatively. This case study addresses that issue.

Project Boundaries

The Texas Department of Transportation has proposed widening and extending FM 2499 through much of southeastern Denton County over the next seven to ten years. Phases 1, 2 and 3 of the construction project, bounded by Highway 121 on the south and FM 407 on the north, currently handle through-traffic.

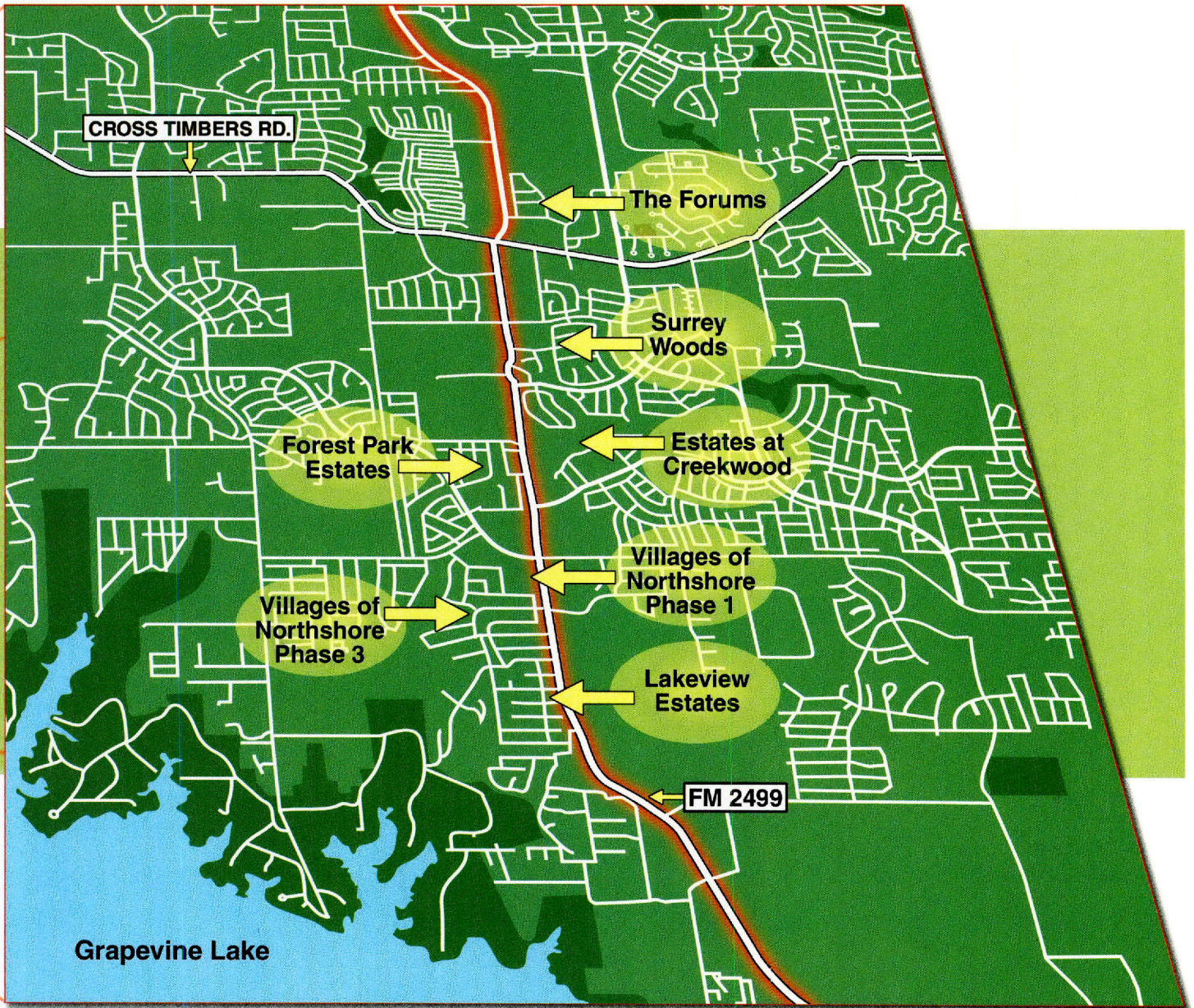
The southern end of Phase 4 from FM 407 to Highland Shores Boulevard handles local traffic into Highland Village. The balance of Phase 4 is expected to travel north through the western edge of the Highland Shores subdivision to FM 2181 in Lake Dallas. Phase 5 will continue FM 2499 north to Corinth, terminating at I-35E near Shady Shores.

Study Data Limitations

Seven neighborhoods in Flower Mound, south of Highland Village, include houses adjacent to FM 2499. Assessed values of houses in the neighborhoods were reduced to a per-square-foot value and the properties were categorized as either adjacent to FM 2499 or interior lots.

Because real estate sale prices are not disclosed in Texas as a matter of law, assessed value was used as a surrogate for price in this study. Assessed value is likely a better measure of value than sales price because sales price may or may not reflect fair market value. Assessed value is applied even-handedly, with a prescribed process for appealing an assessment.

Using assessed value does have drawbacks. First, there is a sample selection bias. Real estate research suggests that assessed value, in aggregate, will always be less than fair market



value because only overassessed property values get challenged by taxpayers.

A second problem is one of perception more than reality. Many taxpayers believe that tax assessors have no incentive to lower assessments because doing so reduces county tax revenues. While decreasing an assessment will, in fact, lower the revenue, assessors are obligated to do so if facts support the action. Nevertheless, assessed values were used in this study because they are updated annually and are readily available.

Properties Studied

The Denton Central Appraisal District (DCAD) identified seven sample subdivisions and 653 houses for the study. Of these, 68 (10.4 percent) are adjacent to FM 2499, and 585 (89.6 percent) are not.

From north to south, the seven subdivisions studied were The Forums, Surrey Woods, The Estates at Creekwood, Forest Park Estates, The Villages of Northshore, Phase 1; The Villages of Northshore, Phase 3, and Lakeview Estates (see maps and Table 1).

Gross assessed values were adjusted to reflect major component parts that some properties have but others do not. For

example, the assessed value of a swimming pool, deck, enclosed glass porch, storage building or enclosed garage is deducted from the gross assessed value so that all sample properties, theoretically speaking, are nearly identical. This adjustment process results in *net assessed value (NAV)*.

Subtracting the value of a pool, deck or storage building is simple, but glass porches and enclosed garages require more investigation. An enclosed glass porch's value was not deducted from gross assessed value because without the glass enclosure, the improvement still had an open-air porch. Instead, the difference between the assessed value of the enclosed glass porch valued at \$3,200 and an open-air porch valued at \$1,200 was subtracted from the gross assessed value.

This is referred to as *incremental value*. Similarly, an enclosed garage valued at \$15,000 versus a traditional garage valued at \$9,000 prompted a \$6,000 reduction in gross assessed value.

Each subdivision's sample properties were reduced to their NAVs. An average NAV for the entire subdivision was calculated, as were average NAVs for properties adjacent to FM 2499 and those in the interior of the neighborhoods.

Results were aggregated for the entire 653-property sample. Each property's NAV was then divided by square feet of living area to determine the NAV per square foot (psf). Finally, the NAVs psf for FM 2499-adjacent properties were compared with interior properties (see Table 2).

Ten properties abutting FM 2499 in the Estates at Creekwood were granted a 10 percent adjustment for economic obsolescence (EO) by DCAD. The records state, "–10% EO; Property backs up to Hwy. 2499."

The 10 percent EO adjustment was not applied to the gross assessed value, however. It was applied only to the value of the residence. In other words, there was no adjustment granted for

buildings, enclosed garages and for the 11 FM 2499-adjacent properties that received an EO adjustment.

What the Results Suggest

The study data suggest that properties located next to FM 2499 assess for approximately \$1.07 more per square foot than those not adjacent to the roadway (\$84.11 versus \$83.04, a 1.3 percent difference).

Fifty-seven of the 68 FM 2499-adjacent properties had a NAVs psf of \$84.77, while the 585 interior properties were valued at \$83.04, a \$1.73 difference.

Had the DCAD granted an EO adjustment to most or all

of the 68 property owners whose houses abut FM 2499, it would be evident that these properties have suffered adverse effects from being located next to the roadway. Their NAVs psf, however, were not systematically lower than those of interior lots. In fact, for five of the seven subdivisions and for the overall sample, the NAVs psf were higher for FM 2499-adjacent properties than for interior lots.

DCAD did stipulate that 11 properties adjacent to FM 2499 suffered economic

Table 1. Description of Studied Subdivisions

Subdivision Name	Improved Lots	Lots Adjacent to FM 2499	Lots, FM 2499 Separated by	Average Assessed Value	Average Sq. Ft. of Living Area
The Forums	65	9	Wrought iron fence	\$248,380	3,030
Surrey Woods	29	2	Wooden fence, greenbelt	\$203,776	2,653
Estates at Creekwood	106	10	Wooden fence	\$180,736	2,309
Forest Park Estates	106	23	Brick wall fence, greenbelt	\$216,616	2,661
Villages of Northshore, Phase 1	176	11	Brick wall fence, greenbelt	\$242,249	2,737
Villages of Northshore, Phase 3	59	4	Brick wall fence, greenbelt	\$271,417	3,066
Lakeview Estates	112	9	Brick wall fence, greenbelt	\$267,510	3,090
TOTAL	653	68	–	\$233,973	2,771

Source: Randall S. Guttery

the value of the lot, the swimming pool, the deck or any other part of the property. With the adjustment, the ten properties' average reduced NAV was \$73.34. Without the adjustment, NAV psf would have been \$79.96.

The ten properties' reduced assessed values ranged from 91.4 to 92.5 percent of what they would have been without the EO adjustment. In other words, they received overall downward adjustments ranging from 7.5 to 8.6 percent, with an average of 8.07 percent. This is less than the ten percent EO adjustments because the DCAD reductions were applied only to the value of the residences, not the entire property.

One of the 11 lots on FM 2499 in the Villages of Northshore, Phase 1, subdivision received a 5 percent EO adjustment, applied only to the value of the residence. This lot received a reduced assessed value of \$84.21 NAV psf compared with \$87.79 NAV psf.

Because of the large number of properties in the subdivision (176), the 5 percent reduction for only one property decreased the NAV psf for the entire subdivision sample by only two cents and for the 11 FM 2499-adjacent properties by 32 cents. The NAV psf for the 165 interior lots was unchanged.

The assessed values shown in Table 2 reflect all adjustments for swimming pools, decks, enclosed glass porches, storage

Table 2. Net Assessed Values Per Square Foot of Studied Subdivisions

Subdivision Name	All Properties	FM 2499-Adjacent Properties	Interior Lot Properties	Properties Not Adjusted by the DCAD	11 Properties Adjusted by the DCAD
The Forums	\$80.84	\$85.96	\$80.01	\$80.84	N/A
Surrey Woods	\$75.77	\$77.50	\$75.64	\$75.77	N/A
Estates at Creekwood	\$78.24	\$79.96	\$78.06	\$78.06	\$79.96
Forest Park Estates	\$80.74	\$84.33	\$79.75	\$80.74	N/A
Villages of Northshore, Phase 1	\$87.94	\$86.39	\$88.04	\$87.94	\$87.79
Villages of Northshore, Phase 3	\$88.16	\$86.27	\$88.30	\$88.16	N/A
Lakeview Estates	\$83.69	\$84.03	\$83.66	\$83.69	N/A
TOTAL	\$83.15	\$84.11	\$83.04	\$83.28	\$80.67

Source: Randall S. Guttery

obsolescence and granted an 8 percent adjustment, on average, to the assessed values of those residences. All 11 of these were case-by-case tax challenges, not uniform adjustments, suggesting that homeowners must show undue hardship.

At the same time, the fact that the remaining 57 houses did not receive a downward adjustment does not mean that the adjustments were superfluous.

The DCAD's action or inaction related to the other 57 houses adjacent to FM 2499 should signal whether it believes the roadway systematically affects housing values. ♣

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SPICING UP SALES IN THE MELTING POT

By Gary W. Maler

A weekend visit to any major metropolitan shopping center in Texas verifies firsthand what demographers have been predicting for decades: the face of Texas is changing! Sizeable numbers of shoppers filling store aisles are likely to be of Mexican, El Salvadorian, Chinese, East Indian, Pakistani, Vietnamese or one of a dozen other national origins. Many languages other than English are likely to be overheard.

Texas' ethnic makeup has already changed dramatically in most areas. The Texas State Data Center and Office of the State Demographer projects that, under all of the most likely population growth scenarios, the Texas population will become less than one-half Anglo before 2010. Sometime between 2025 and 2034, Texas will become a majority Hispanic state.

To determine how these shifts will affect the real estate industry, the Real Estate Center conducted a survey of homeowners and likely homebuyers. The objectives were straightforward: identify differences in how each of the four major Texas ethnic

and December 31, 2003, averaged 22 minutes in length. They were conducted in either English or Spanish, depending on the primary language of the household.

Overall Lessons Learned

One key finding is that the mix of real estate services desired and valued by both buyers and sellers is fairly consistent across all four ethnic groups. This means that real estate agents are on target in offering a traditional package of services.

What differs among the ethnic groups is how they respond to the image agents or brokerage firms project and how services should be marketed to establish strong business relationships. Once a good working relationship is in place, ethnic differences appear to be based on personal characteristics of both the customer and the agent, and varying communication needs and styles.

Survey respondents were asked to rank characteristics important in selecting an agent. Responses indicate that higher-income groups are most concerned with agent reputation and technical proficiency. Lower-income groups have greater interest in a firm's reputation and national affiliation. Hispanics of all income

levels, especially those having difficulty conducting business in English, show distinct preferences for young, Spanish-speaking Hispanic agents. The importance of trust-based relationships cannot be overemphasized with the Hispanic segment of the market. All ethnic groups reported a preference for agents who appear neat and professional, but not ostentatious.

New homes make up a significant percentage of homes purchased by most ethnic groups in Texas. When responses from all ethnic groups are combined,

**Likelihood of Recommending a Real Estate Agent
Percent Definitely or Probably Would**

	All Respondents	Hispanic	White	Black	Asian
Recommend using a real estate agent?	79	81	78	86	83
Recommend using the real estate agent you used?	66	72	63	75	66

Source: Real Estate Center at Texas A&M University

groups approach the homebuying process, determine what services each group wants and needs from real estate licensees and how licensees can more effectively market their professional services to meet each group's needs.

The survey polled 4,080 Texans, 1,870 of which identified themselves as Hispanic, 880 as white, 772 as black and 481 as Asian. Hispanics were intentionally oversampled to compensate for historic underrepresentation of Hispanics in most survey methodologies and because they are the fastest growing segment of Texas' population. The telephone surveys, which were conducted by Harris Interactive between November 14

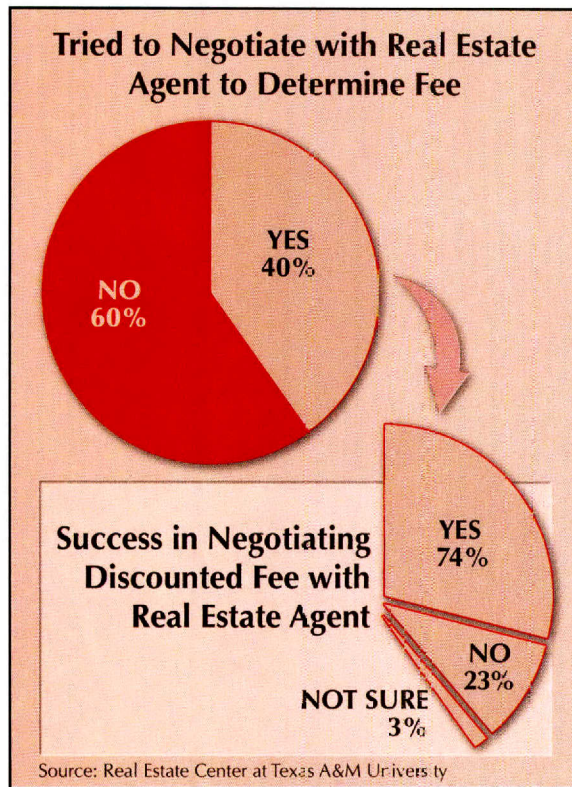
46 percent of respondents who purchased homes in Austin bought new homes. That figure was 40 percent in San Antonio, 51 percent on the Border, 35 percent in Houston and 33 percent in the Dallas-Fort Worth Metroplex. Compared with other groups, Hispanic respondents typically purchased fewer new homes in all areas of the state except the Border.

Mirroring studies conducted by the National Association of Realtors, about 79 percent of survey respondents think it is a good idea to use an agent to buy or sell a home and that agents earn their fees by providing valuable services. Sixty-six percent would recommend the agent they used. A majority (58 to 62 percent) of all respondents from all ethnic groups felt that using an agent increased the selling price of the home by the commission amount.

Across all ethnic groups, 43 percent of sellers and similar numbers of buyers expect their agents to contact them at least two to three times a week to keep them informed. Thirty-one percent expect to be contacted at least once a week with updated information.

Group Responses

Hispanics. A majority of Hispanics (70 percent) have owned only one home compared with 33 percent of whites, making Hispanics the group with



to think agents earn their fees by providing valuable services.

Of the ethnic groups surveyed, Hispanics are the most likely to want an agent who speaks their language, with sizeable percentages of respondents indicating they are not comfortable conducting business in English. Compared with other regions of the state, Houston and the Dallas-Fort Worth Metroplex had more respondents whose primary language is not English and who are not comfortable conducting business in English. These cities also have the largest numbers of Hispanics with the shortest tenure in United States.

Whites. This group has the most experience with homeownership; 66 percent having owned two or more homes. White respondents had the highest rates of homeownership statewide and, when asked about future plans to purchase, were the least likely to buy a home in the immediate future.

White respondents generally hold positive views of agents, though they are the group least likely to think it is a good idea to use an agent to buy or sell a home. They are most willing (62 percent) to pay significantly more for a mortgage than they currently pay in rent. Whites reported finding nearly all aspects of the homebuying process easy. The most difficult aspect, they said, is finding an agent they are comfortable with.

The main reasons whites gave for buying a home were to have more space or because they were getting a job in a new location. When it comes to learning about neighborhoods, whites are the least likely of the ethnic groups to use a real estate source (agents, builders, mortgage companies). However, when asked who they typically go to for real estate advice, the largest

the least experience as homeowners. About half of Hispanic respondents indicate they are likely to buy a home in the next few years.

Most Hispanic respondents are financially conservative, with 44 percent indicating they would pay a

Likelihood of Recommending a Real Estate Agent Based on Agent's Ability to Meet Client's Expectations

Percent Definitely or Probably Would

	All Respondents	Agent's Ability to Meet Client's Expectations		
		Exceeded Expectations	Met Expectations	Below Expectations
Recommend using a real estate agent?	79	92	87	48
Recommend using the real estate agent you used?	66	90	76	22

Source: Real Estate Center at Texas A&M University

number of white respondents said a broker or agent, followed by their parents, then a builder.

Asians. Survey data reveal that Asians have achieved among the highest levels of education as well as income and generally own among the largest and most expensive houses. Responses also make it clear that a substantial number of Asians strongly prefer newly built homes. Sixty-two percent of Asians responding to the survey in Austin bought new homes.

Asians are more likely than the other ethnic groups surveyed to buy a home in the next few years. Asians generally are receptive to real estate agents, tend to rely upon them and value their expertise. They are, however, highly motivated to negotiate discounted agent fees and are by far the most effective negotiators, with 86 percent saying they were successful. When asked who they first go to for real estate advice, the largest percentage of Asians reported going to a broker, then to their parents.

Blacks. Like Asians, blacks are receptive to real estate agents and are likely to seek their advice. Thirty-seven percent indicated they would go to a broker or agent as their first contact in the homebuying process.

financial considerations (such as interest rates). Seventy-eight percent of black respondents (current homeowners and potential buyers) reported being very comfortable with a very small down payment. Fifty percent

said they thought it was hard to qualify for a mortgage loan. Compared with other ethnic groups, blacks were nearly twice as likely to learn about neighborhoods by driving through them and observing them firsthand.

	All Respondents Percent
Male	2
Female	7
No difference	90

Source: Real Estate Center at Texas A&M University

Practical Applications

Survey results show that real estate professionals benefit from letting their customers know what to expect during

the process of selling or buying a home. When meeting with potential customers, agents should carefully and specifically describe the services they will provide.

Agents should stay in close touch with customers, perhaps contacting them several times a week to keep them informed about the homebuying-homeselling process and the progress of the

transaction. Following up with customers once the transaction is completed is a key to overall customer satisfaction and generates repeat business.

Agents should go the extra mile in assisting customers. Personalized service, or the lack of it, is critical to how people view the real estate brokerage industry as a whole and affects the likelihood that customers would use a particular agent again.

Agents should be prepared to negotiate fees because sizeable numbers indicate a desire and ability to do so. Agents should develop working relationships with homebuilders since new

homes represent such a large share of homes bought.

And finally, although the survey points out similarities in buying and selling behaviors within each of Texas' four major ethnic groups, it is critical to remember that individuals may not think or act in lockstep with their peers. Many will no doubt march to the beat of their own drummers. ♡

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Current Value of Home

	All Respondents Percent	Hispanic Percent	White Percent	Black Percent	Asian Percent
Less than \$100k (Net)	42	60	36	45	24
Less than \$50k	12	21	10	10	3
\$50k to less than \$100k	30	39	26	35	21
\$100 to \$200k (Net)	35	24	38	36	40
\$100k to less than \$125k	14	13	14	16	10
\$125k to less than \$150k	10	6	11	10	10
\$150k to less than \$200k	11	5	13	10	20
\$200k to \$300k (Net)	8	4	9	6	22
\$200k to less than \$250k	5	2	6	4	14
\$250k to less than \$300k	3	2	3	2	8
\$300k or more	5	1	7	*	7
MEAN (in thousands)	\$119.5	\$89.8	\$132.4	\$107.8	\$162.5
MEDIAN (in thousands)	\$81.7	\$55.7	\$100.7	\$73.3	\$142.4

Source: Real Estate Center at Texas A&M University

Blacks have high opinions of real estate agents and are more likely than the other groups surveyed to think that using an agent is a good idea. Forty percent of blacks reported that they are likely to buy a home in the next few years.

Like Hispanic respondents, blacks are financially conservative, with 35 percent saying they would want to pay the same or less on mortgage payments than they currently pay in rent. Black homebuyers are typically motivated to buy by the need for more space, reaching a certain age, getting a new job or

INTEREST IN INTEREST

RISING RATES AND HOME SALES

BY JACK C. HARRIS

Even economists would agree that when interest rates go up, home sales decline. After all, for most buyers, the interest rate represents a significant part of the price, translating into higher or lower monthly payments.

Interest rates have a potent effect on affordability, and declining rates have been a major factor in the record number of home sales over the last several years. But the seemingly simple relationship between interest rates and cost is more complicated than it seems.

If the home is a principal residence, much of the monthly payment is tax-deductible. Within generous limits, money spent on mortgage interest can be claimed as an itemized deduction on federal income taxes. This means that part of the cost of higher interest rates may be offset by lower taxes.

As interest rates rise, more homebuyers resort to adjustable rate loans, which offer lower initial interest rates. True, these buyers take a chance that the rate will rise in the future, but the lower current rate makes the purchase more affordable.

Buyers may see higher interest rates as signaling inflation that will be reflected in the value of the home and increase the resale price in the future. An increase in inflation expectations may actually make real property more desirable because of its reputation as a hedge against inflation.

Higher interest rates often coincide with an improving economy, bringing more employment, higher incomes and added economic security, all of which tend to expand the demand for housing. The initial stage of a rate increase may cause people looking for a home to accelerate the process, thus raising sales temporarily.

The market has benefited in recent years from unusually low mortgage interest rates. Current expectations are for a gradual increase in rates over the next year or so, largely through the actions of the Federal Reserve Bank. The Fed is expected to raise interest rate targets to slow the growth of the money supply and counter any inflationary pressures now that the economy appears to be expanding.

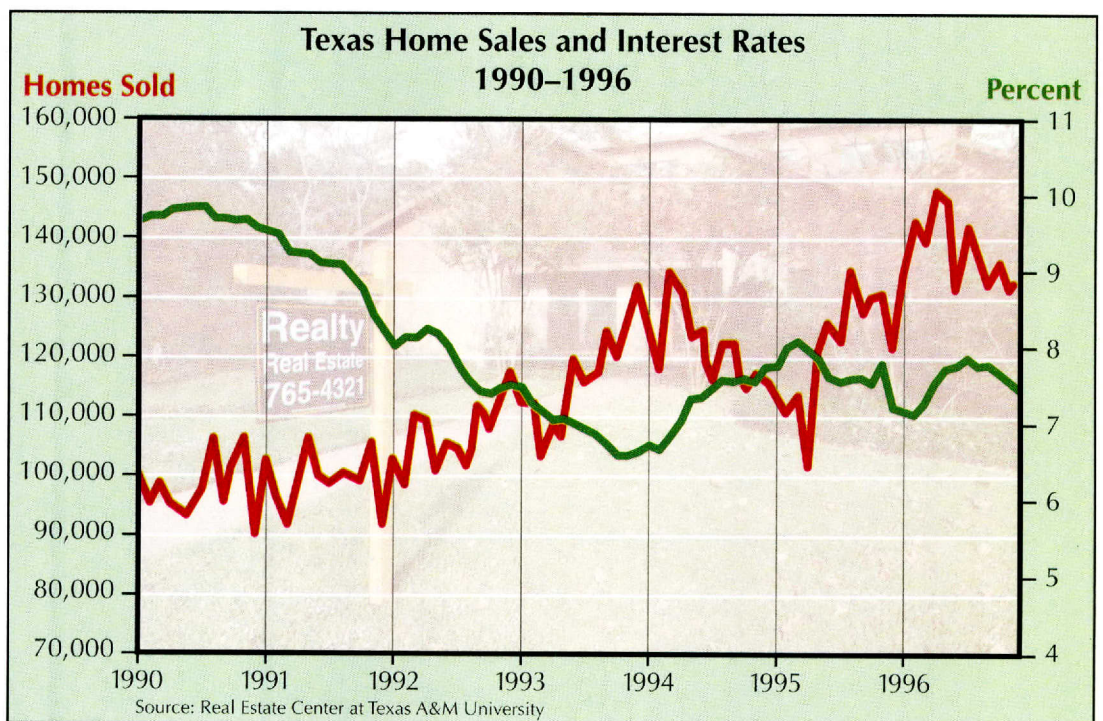
While no one is predicting a return to double-digit rates, the days of rates below 6 percent are probably history. Will this increase kill the housing boom? Perhaps not, if the market continues to behave as it has over the past eight years.

The Recent Past

By far, the predominant trend for interest rates over the past 15 years has been downward. The trend began in the early 1980s as the Federal Reserve whittled away at inflation expectations that had pushed mortgage rates into the upper teens. The 1990s began with mortgage rates close to the two-digit level but headed downward.

Along the way, the descent has been punctuated by bounces of 50 or more basis points (100 basis points equal one percentage point). These interruptions in trend provide opportunities to examine how housing markets react to both periods of rising and falling credit costs.

To make it easier to see movements in the interest rate and housing markets, monthly (rather than annual) rate and sales data are portrayed in the charts and used to delimit the periods of rising and falling rates. Home sales are indicated by the total of all single-family sales as reported by local Realtor® boards and associations throughout Texas. The raw data can be found on the Center's website (recenter.tamu.edu).



Seasonally adjusted annual totals are estimated from the raw monthly sales figures (basically a 12-month projection based on monthly totals). Because monthly sales figures are based on closed sales, they are advanced two months to approximate the period when the sales contract was executed.

For the first half of the 1990s, housing markets were sensitive to interest rate changes. The decade began with the economy coming out of the Gulf War recession. Consequently, the growth in Texas employment was slow.

Contract mortgage interest rates fell from 9.85 percent to a low of 6.59 percent in late 1993. Much of this decline was caused by lower inflation, but even "real" rates (the nominal rate minus the inflation rate) declined 160 basis points. Despite the slow economy, seasonally adjusted sales grew by 6.5 percent per year during the period.

As the recovery matured, the Fed grew wary of inflationary pressures and tightened throughout 1994. Mortgage rates responded with a 148 basis point climb, peaking at over 8 percent in early 1995. Real rates returned to their 1990 level. Texas home sales dropped 18.5 percent from spring 1994 to spring 1995.

Rates resumed their fall through the remainder of 1995, hitting a low of 7.13 percent in early 1996. Texas housing markets

Late in 1998, the Fed began a series of rate hikes that eventually sent mortgage interest rates back over 8 percent — in total, an increase of 143 basis points. The rise did manage to slow the raging economy, but had minimal effect on the housing market. Sales grew by an annual rate of almost 4 percent and median sales prices went up by more than 8 percent.

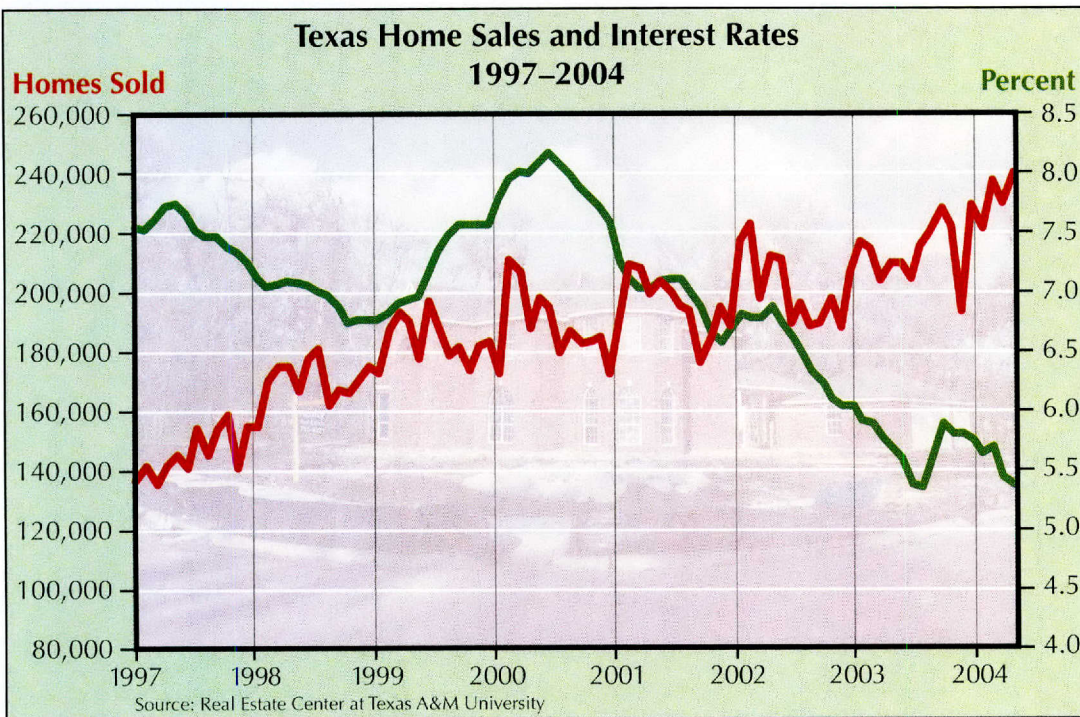
After 2000, interest rates declined and home sales continued to grow by almost 9 percent per year. Prices grew by 4 percent per year. All this occurred despite stagnant employment figures. Predictions are for rates to go higher. Most observers feel that the low rates of recent years will not be seen again in the near future.

Will home sales volume continue to grow if rates increase from here? Recent history suggests that any pullback will be negligible even if rates rise by a full percentage point. The experience of recent years supports this outlook. However, if the market reverts to its early 1990s mode, a more drastic pullback could be in store.

The main difference between the earlier period and the last eight years is mortgage lenders' attitudes toward risk. In 1989, the Federal Institutions Reform, Recovery and Enforcement Act was passed. This was the law that created the Re-

covery Trust Corporation to clean up after the failed savings and loan associations across the country. During this time, mortgage lenders and insurers, even the FHA, raised the bar on loans they made and insured, effectively cutting off the entry level of the housing market.

By the mid-'90s, mortgage markets were in much better shape, and the federal government began a push to extend homeownership to lower-income and minority households. Lending criteria were loosened and down payment requirements reduced at the same time interest rates were mostly falling. In an environment of easily-acquired



celebrated with a surge equal to a 22 percent annual growth rate. During the next five months, interest rates reversed course again and spiked up to 7.87 percent in July. Sales during this time slid by almost 11 percent (26 percent on an annualized basis).

Era of Easy Mortgage Credit

The sensitivity of housing sales to interest rate swings all but disappeared in the mid-1990s. Starting in mid-1996, interest rates fell for the next two years to a low of 6.74 percent. While sales went up, the annual growth rate was a little over 12 percent — not remarkable considering the severe contraction of the previous period and the fact that employment grew by 4 percent per year during the interval.

financing, the occasional rate increase had much less effect than during the earlier tight credit period.

Most likely, higher interest rates will not kill the housing boom. Contraction in lenders' willingness to extend credit would be a more serious threat.

Fortunately, the only sign that such a contraction might be imminent is the currently high delinquency rate on FHA loans. With the economy in recovery, the delinquency rate may recede, but it does bear watching by all who value a robust housing market. ♣

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Virtual Signatures

[sign here]

by Judon Fambrough

Real estate agent Linda has a listing on the Internet. She receives a call from a prospective buyer. After some discussion, Linda inserts all the seller's and buyer's proposed terms and conditions in an electronic version of a TREC contract and e-mails it to the buyer. The buyer accepts by typing his name in the appropriate space and returns the document electronically to Linda.

Linda forwards the offer to the seller electronically. He types his name in the appropriate space signifying acceptance of the offer. The completed contract is e-mailed to Linda. None of the signatures are encrypted.

Do the parties have a binding contract? Specifically, have they done enough to satisfy the statute of frauds found in the Texas Business and Commerce Code? The code requires enforceable promises or agreements for the sale of real estate to be in writing and signed by the persons charged with the promises or agreements.

Electronic Transactions Gain Status

Little attention was given to the Uniform Electronic Transactions Act (UETA) when it was passed by the Texas Legislature in 2002. However, if used properly this new law could significantly impact the way real estate professionals negotiate and consummate contracts.

Simply stated, the UETA gives electronic contracts and signatures the same legal status as paper signatures and contracts, as long as certain requirements are met.

The question is whether the UETA satisfies the statute of frauds. The answer is obscured among its many definitions of terms.

Terms Defined

According to the act, a *contract* means the total legal obligation resulting from the parties' agreement. An *agreement* is the bargain of the parties as found in their language or inferred from other circumstances.

The term *electronic contract* is not defined, but *electronic* is. It relates to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

So far, the TREC contract used by the agent in this example satisfies the definitions. The act does not put real estate contracts on a different footing than other contracts or documents. But what about the unencrypted signatures? Are they valid and enforceable?

The act defines an *electronic signature* as an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

While most people associate the typing of their names with an electronic signature, the law allows a sound, symbol or process to be used. The act literally permits the use of bells and whistles.

Encrypted signatures are not mentioned or required, but certainly they can be used. Encrypted or digital signatures are beyond the scope of this article. It is sufficient to say that unless a computer has had the proper software installed, it is unencrypted.

UETA states, "If a law (such as the statute of frauds) requires a signature, an electronic signature satisfies the law."

The statute refers frequently to a *record*. According to the act, a record means information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form. An electronic contract satisfies this definition.

The statute goes on to say, "If a law requires a record to be in writing (such as the requirement of a written agreement by the statute of frauds), an electronic record satisfies the law." Clearly, UETA satisfies the statute of frauds.

Formal Agreement Required

Based on the broad definition of an electronic record and an electronic

signature, contracts entered via facsimile transmission (FAXs) appeared to be validated by the act — assuming the other requirements are met.

The agent in the example, however, may not have fulfilled all of the requirements of the act.

The act applies only to transactions between parties who have agreed to conduct transactions by electronic means. In this situation, the buyer and seller did not formally agree to an electronic transaction. The act goes on to say, however, that the agreement to an electronic transaction may be determined from the context and surrounding circumstances, including the parties' conduct.

The proof of an agreement to conduct the transaction by electronic means presents the greatest impediment to use of the procedure.

It could be argued in the example that the buyer and seller agreed to the electronic transaction by typing their names in the appropriate spaces. But this is not an ironclad argument.

In the scenario, Linda could conduct a conference call and ask the parties to consent to the electronic transaction. Later, however, the phone conversation would be difficult to prove if one party wants out of the contract.

Another possibility would be to send an e-mail to each party, getting their consent to an electronic transaction. But again, one party could later allege forgery of his or her e-mail signature. A formal written agreement signed by both parties may be the only solution.

Security Procedures

The entire concept introduced by UETA appears to invite fraud and counter traditional pen-and-ink contracts.

Anticipating these problems, drafters of the statute provided for the use of *security procedures*. These procedures verify that an electronic signature, record or performance is that of a specific person and detect changes or errors in the information in an electronic record. Security procedures include the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment.

The methods or means of implementing a security procedure are left to the parties' discretion and imagination. This again raises the issue of how and when the parties agree on the security procedures without a face-to-face meeting.

Perhaps a face-to-face meeting is inevitable for an enforceable, no-questions-asked electronic contract. In most transactions, the buyer and seller meet personally before a pen-and-ink contract is consummated. The issue of whether the transaction can be conducted electronically and the implementation of security procedures may be discussed

The UETA gives electronic contracts and signatures the same legal status as paper signatures and contracts.

at this meeting. If the parties agree, a formal written document outlining the agreement and describing security procedures should be drafted and signed by the respective parties.

The parties may require that the final document be notarized. According to the act, if a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature meets certain conditions. The person authorized to perform those acts, together with all other information required to be included by other applicable law, must

be attached to or logically associated with the signature or record. The act elaborates no further on the procedure.

John A Niemoeller, a partner with the Stolar Partnership in St. Louis, Mo., writing on the topic, states, "A forged electronic signature is no more valid than a forged pen-and-ink one. An altered electronic contract is not more enforceable than an altered paper one. The legal system (especially the courts) will need to develop practices for establishing and accepting the reliability of electronic records and signatures submitted as evidence, just as it did for hard copies, carbon copies, photocopies, and faxes in years past. UETA does not solve these problems."

Changes and Errors

To some degree, the act addresses the effect of changes and errors to electronic contracts. Here are the conditions.

First, the parties (the buyer and seller in this example) must agree to implement security procedures to detect changes and errors. Second, one party (the buyer, for example) does not conform to the security procedures, but the other party (the seller) does. Third, an error occurs that the buyer (the nonconforming party) would have detected had he or she followed the procedures. Under these conditions, the seller (the conforming party) may avoid the effect of the change or error.

In other circumstances, the change or error has the effect provided by the contract or by existing law, including the law of mistake.

Because UETA is relatively new, title companies and mortgage lenders may insist on pen-and-ink signed contracts before issuing a title commitment or processing a loan application. Even if they do not accept electronic contracts and signatures, UETA will speed negotiations and may be sufficient to earn the commission. ♣

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BIG as TEXAS

by Steve H. Murdock

No one can say when it will happen. But if population projections follow forecasted

scenarios, sometime around 2040 Texas' two most populated areas could hit ten million people each. In other words, Houston–Baytown–Sugar Land and Dallas–Fort Worth–Arlington will each have more people than the entire state had in 1960.

Before that happens, significant change must occur. The Texas State Data Center at the University of Texas at San Antonio is continually updating the numbers. The center studies population patterns and makes assumptions about births, deaths and net migration. Various scenarios have been developed to project populations in Texas' metropolitan areas, both in the long and short terms.

All scenarios point to a substantial Texas population boom. The state had 20.9 million residents in 2000; in 2040, it will be home to between 35.8 and 45.4 million. That is a jump of between 71.5 and 118 percent. Any way it's calculated, Texas faces a staggering population gain.

Put another way, even if the most conservative projection proves true, the 2000–2040 numerical population increase will be equivalent to the entire 1980 state population. If the larger increase pans out, it will be equivalent to more than doubling the state's 2003 population of 22.1 million. Compounding the problem is the fact that the burgeoning Texas population will not be evenly distributed.

The Dallas metro area had roughly 5.2 million people living in it during 2000. State Data Center scenarios point to the area's population surging to between 10.1 and 15.9 million by 2040. Meanwhile, the Houston–Baytown–Sugar Land metro area — with a 2000 population of 4.7 million — is expected to have 8.4 to 11.5 million.

By 2040, the Austin–Round Rock metro area population is expected to propel it past San Antonio to become the state's third largest metro area.

Austin–Round Rock had a 2000 population of more than 1.2 million. In 2040, that is projected to swell to between 2.7 and 3.5 million. San Antonio's 1.7 million is expected to grow to between 2.5 and 2.7 million.

During the next 36 years, McAllen–Edinburg–Pharr will surpass El Paso to become Texas' fifth largest metropolitan area. The McAllen metro area of more than 569,000 in 2000 is projected to increase to between 1.4 and 1.7 million. At the same time, El Paso's 680,000 in 2000 is expected to grow to more than 1.1 million.

The ranking of Texas' counties is not projected to change substantially. In

general, the largest percentage increases are projected for suburban counties. Rural counties will grow the least.

Harris County will increase from 3.4 million in 2000 to between 5.9 and 7.1 million in 2040. At the same time, Dallas County should increase its 2000 population of 2.2 million to nearly four million. Tarrant County is expected to grow from 1.4 million to between 2.4 and 3.8 million. Collin County will see its 2000 population of 592,000 swell to between 1.4 and 3.4 million.

The concentration of growth means that while some counties face unprecedented growth, others will actually record population declines. One scenario predicts numerical population declines for 92 Texas counties by 2040.

The new projections make population patterns clearer. Millions of new Texans will be added to the population over the next three and a half decades. But the growth will not be evenly distributed, and the most successful real estate firms will adjust their plans accordingly. ♣

Dr. Murdock (smurdock@utsa.edu) is a research fellow with the Real Estate Center, Lutch Brown Distinguished Chair in Management Science and Statistics in the College of Business at the University of Texas at San Antonio, and state demographer of Texas.



MOONSTRUCK

BUYERS CAUGHT IN LUNAR LAND RUSH

BY DAVID S. JONES

Talk about out-of-this-world real estate. Would you believe millions of earthlings have bought land on the moon?

According to the Lunar Embassy, more than 400 million acres of the moon have been sold worldwide. Among the buyers are two former U.S. presidents and movie stars ("Star Trek," of course).

The Lunar Embassy is the brainchild of Dennis Hope, who 20 years ago claimed ownership of the moon and other planets in our solar system. Hope bases his claim on what the 1967 United Nations Outer Space Treaty does not say. While the treaty stipulates no government can own extraterrestrial property, it does not prohibit individuals and corporations from doing so.

"Therefore, under laws dating back from early U.S. settlers," proclaims the Lunar Embassy website, "it was possible to stake a claim for land and register it with the U.S. government office of claim registries."

Hope, better known as the "head cheese," says his confidential list of lunar buyers includes 250 celebrities, companies buying gifts for clients, investors, professionals, space hobbyists and 30 NASA employees.

An acre of land purchased from Hope's planetaryinvestments.com sells for \$29.95. That includes a lunar deed, lunar map where an "X" marks the location of

your property, a copy of the lunar constitution and bill of rights, mineral rights, registration card and the buyer's name "deposited on the moon in a transorbital mission."

But Hope isn't the only one claiming title to the moon and selling parcels to would-be moonies. Lunarland.com is thinking much bigger. They offer a 100-acre block for \$2,150 and the parcel size increases to a "quadrant property" they will part with for a little more than \$1.1 million.

The lunarland.com website shows the current locations already sold. Of course, it's of the lighted side only. The website notes there are nine billion acres on the entire moon's surface, and it is all land — no oceans covering valuable real estate. At least buyers don't have to worry about getting stuck with swampland.

Who really owns the moon? Geneva, Ohio, residents say they claimed the moon as their own back in 1966. Thirty-five Geneva residents signed the "Declaration of Lunar Ownership" 38 years ago and unveiled it to the world at the high school auditorium.

Meanwhile, in an effort to bring the planetary land rush down to earth, Virgiliu Pop, a Ph.D. candidate at Glasgow University, has claimed ownership of the sun. His intention is to charge the other extraterrestrial owners for solar energy. Pop registered his claim in 2001.

Noting that extraterrestrial land claims are as "valid as Monopoly money," Pop — who has written papers on extraterrestrial property rights — says he now "owns the electric company on the game board."

As the planetary land rush moves throughout the solar system, it is now possible to shop online at buyuranus.com. While poking good-natured fun at planetary ownership, they are more than happy to take your \$14.95 and sell you a piece of Uranus.

One thing is certain. We haven't heard the last of the claims. Members of the International Institute of Space Law, the International Astronautical Federation and others see the need for serious discussions on extraterrestrial property rights.

Once the colonization of the moon and planets begins, it will no longer be a laughing matter. And should oil be discovered on one of the celestial bodies . . . ✦

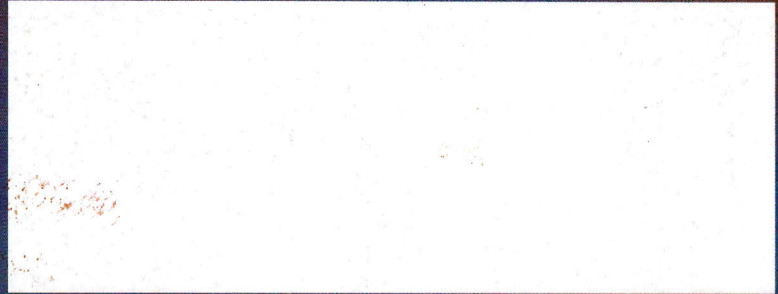
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