



# Easement Down the Road

## Good News for Preservation

Joel Warren Barna

for county offices. The Pillot Building was allowed to stand also, but the tactics of the preservationists left County Judge Jon Lindsay, the Chamber of Commerce, and several Harris County commissioners thoroughly angered.

"We tried working with [preservationists], but they didn't deliver on the money or the help they promised to fix up the Pillot Building," Lindsay charged in an interview in 1982. "I can't wait until it falls down."

Even though the county commissioners were exploring suggestions for renovating the Pillot Building for a badly needed county law library, Harris County did not (according to preservationists) maintain the building properly. Lindsay got his wish earlier this year, when, after what one critic calls "10 years of accumulated county neglect," one of the Pillot Building's walls began to collapse.

"At this point, for whatever reason, the county decided to dispose of the problem once and for all, and set about to demolish the building," says Shannon Vale, a lawyer with a major downtown law firm, who worked with the Volunteer Lawyers and Accountants for the Arts, the Greater Houston Preservation Alliance, and other groups to save the Pillot Building yet again. "The situation just shows how limited the code protecting Texas landmarks is."

All the county had to do, according to Vale, was notify the Texas Historical Commission of its intent to demolish and wait 60 days before tearing the building down. Citing the emergency created by the collapsing walls, however, Harris County sought to bypass the 60-day requirement. The Texas Historical Commission, the Greater Houston Preservation Alliance, and other groups mobilized quickly, raising money and public support. With County Commissioner Tom Bass heading the effort, they reached a compromise: All of three exterior walls and a portion of a fourth were preserved and incorporated into the new design for the building. Not everyone was pleased. *The Medallion*, the Texas Historical Commission's magazine, denounced the compromise in a recent issue, noting that county commissioners had rejected \$100,000 offered by the state agency to help restore the building to its original form.

Others were satisfied. "What we'll have is a building lacking in historical unity but which preserves the original façade," says Shannon Vale. "It's not the ideal solution, but considering that we were looking at total demolition within 48 hours of a commissioners' court hearing, I think it's the best real-world solution we could reach."

Beverly Pennington, president of the Greater Houston Preservation Alliance, agrees. "I think the Pillot Building compromise represents a considerable victory," she says. "The streetscape is preserved. But more important, the controversy about it heightened awareness of preservation issues here. It got a lot more people to be involved."

Indeed, there are more people to be involved. After the rash of Market Square renovations in the 1960s faded away, little public attention was paid to historic preservation, according to Pennington. Now there are several groups—the Harris County Heritage Society and its more activist offshoot, Pennington's Greater Houston Preservation Alliance; the Old Town Development Corporation; the South Main Center Association; the Sabine Association in the First and Sixth Wards; and the Freedman's Town Association in the Fourth Ward are some of the most active—working to preserve important architectural and historic places in many areas of the city.

John Hannah, who with Jesse W. Edmundson, III, bought and restored the 1884 Houston Cotton Exchange Building in 1973 (and sold it in 1983), says, "When we got started on the Cotton Exchange, there weren't that many designers or contractors working in preservation in Houston. Now people with skills are easier to find—there's a real preservation industry."

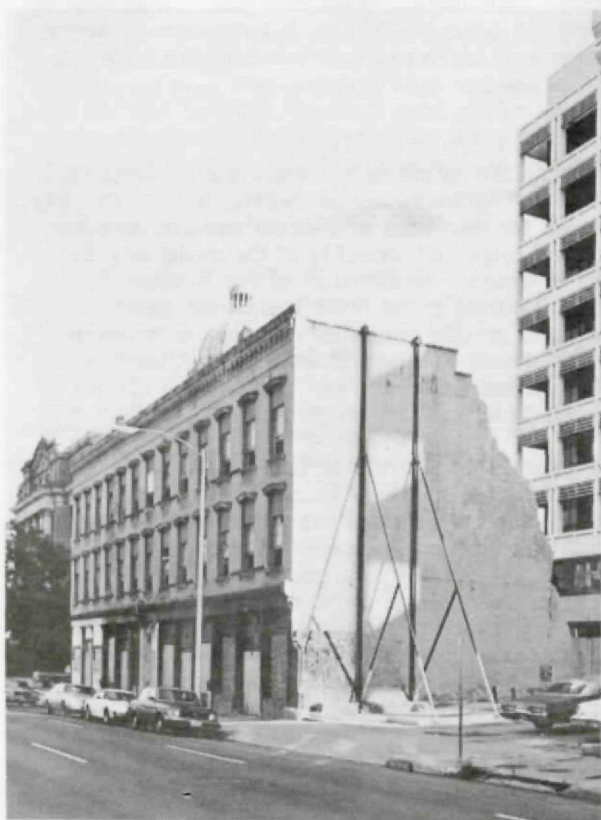
Says Shannon Vale, "The renovation of the Pillot Building will give us one more refurbished building—leading, we hope, to a kind of critical mass for preservation in the area, so that each additional building will be easier. You can already see it around Market Square, where several new shops and restaurants have opened recently. On the other hand, in the

After almost 20 years of frustrating rear-guard battles against ever stronger development pressures, Houston's harried historic preservationists find themselves in an unaccustomed position: They have recently won two major victories. In the afterglow, preservationists are uniting to plan strategy for what may be their hardest decade yet. They are trying to make preservation work in a city without development controls by experimenting with new incentives for those willing to save what's left of Houston's architectural heritage.

The first of the two recent preservation victories is a qualified one—the compromise that saved the façade of the 125-year-old Pillot Building, which stands at the corner of Fannin and Congress. Owned by Harris County, the three-story, cast-iron-front Pillot Building is the oldest building in downtown Houston. The 1889 Sweeney, Coombs and Fredericks Building stands next door. In 1975 it was rehabilitated by the county when the nine-story Harris County Administration Building was constructed.

Trying to block demolition of these two buildings in 1974, preservationists succeeded in placing both on the National Register of Historic Places and had them declared Registered Texas Historic Landmarks. They enlisted the aid of a number of activists, including Truett Latimer, then director of the Texas Historical Commission and a member of the commission's Antiquities Board. He, along with lawyer Terence O'Rourke, tried a number of legal and political maneuvers. Their efforts resulted in the county commissioners' decisions to retain these two 19th-century buildings. The Sweeney, Coombs and Fredericks Building underwent façade restoration, and the interior of the remaining three-story building was used

*Pillot Building, c. 1860, Lockwood, Andrews and Newnam, architects for adaptive reuse as Harris County Law Library, 1983 (Photo by Paul Hester)*



last year the Market Square area has seen several buildings torn down to make way for parking lots, of all things."



The second victory achieved by local preservationists was the acceptance of a new historic district in downtown Houston (see map) recently placed on the National Register of Historic Places. The district centers on Main Street north of Texas Avenue, and includes most of downtown's remaining 19th-century commercial buildings. The nomination, sponsored by the Old Town Development Corporation and forwarded to the U.S. Department of the Interior by the Texas Historical Commission earlier this year, was listed in the National Register on 18 July.

"Having the new historic district won't keep anybody from tearing down buildings [there]," says Charles Heimsath, Old Town Development Corporation's president. "But it will help us do alternative things to give property owners more than one economic choice. There are significant tax incentives that can become available in the area now that, before, were available only to owners of buildings individually on the National Register. Our aim is to provide economic assistance to landowners so they can preserve historic properties, rather than spend our time trying to block their plans to do otherwise. That kind of confrontation hasn't worked in the past."

Beverly Pennington of the Greater Houston Preservation Alliance concurs. "I don't think we'll ever have effective development controls in Houston—people here are too opposed to zoning," she says. "So if preservation is going to be viable, it's going to have to work economically. That's going to be hard in downtown, where land values have gone so high and where the buildings are so small. But nevertheless it's important to Houston—as the downtown goes, so goes the city. A state tourism expert recently reported here that when people visit a city, the number one thing they want to do is sightsee, to get an idea of the his-





During the night of Friday, 16 September, demolition was begun on the B.A. Shepherd, Dumble, and South Texas National Bank buildings. No advance warning of this action was given by the owners, 201 Main Ventures, an investment group that includes T. Frank Glass, Jr., Leo Womack, and Dean Maddox among its members. The Shepherd and Dumble buildings were 100 years old. All three buildings were listed in the National Register of Historic Places by virtue of their inclusion in the Main Street-Market Square Historic District.

The marble, temple-fronted South Texas National Bank Building (built in 1910 and occupied until 1955 by a predecessor of Texas Commerce Bank) was one of a distinguished collection of bank buildings near the foot of Main Street whose classical architecture has been remarked by Henry Hope Reed. The Shep-

herd Building, designed by one of Houston's first professional architects, George E. Dickey, was regarded as one of the outstanding surviving High Victorian commercial buildings in Texas. Its builder was Benjamin A. Shepherd, a pioneer Houston banker in whose memory the Shepherd School of Music at Rice University is named. The Houston National Bank (now RepublicBank, Houston), from its organization in 1889 until 1912, occupied the Shepherd Building. The loss of the Shepherd and Dumble buildings fundamentally alters a segment of Houston streetscape that had survived almost intact from the 19th century.

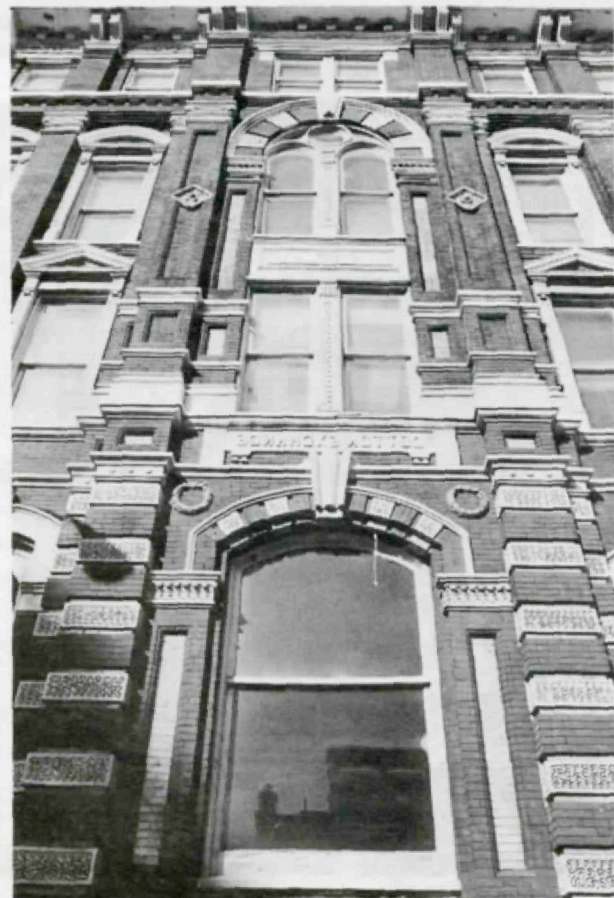
Demolition occurred less than a week before Judith Reynolds, a preservation easements consultant from Washington, D.C., arrived to discuss preservation strategy with local preservationists and interested property owners.

*Ruins of South Texas National Bank Building (Photo by Paul Hester)*

tory of an area. Now when visitors come to Houston, people take them shopping at the Galleria. The Galleria is nice, but there's something unbalanced about that. These historic areas are a valuable resource to the city, and they shouldn't be wasted."

It will take initiative from individuals and private groups to get over the first economic hurdles, Pen-

*Detail, Houston Cotton Exchange Building, 1884, Eugene T. Heiner, architect, Graham B. Luhn, architect for restoration, 1974 (Photo by Paul Hester)*



nington says. Federal tax credits for restoration costs have helped some in Houston, she notes. Local efforts—chiefly Houston City Councilmember Eleanor Tinsley's ordinance providing property tax incentives for rehabilitation of historic structures—have bogged down in the red tape generated by requiring that every city tax break be approved by the whole city council. What is needed, Pennington and other preservationists say, is another approach.

Representatives of preservation groups from around the city have met to explore how they can start a new program to harness easement donations—called "the best tax shelter in history" in one appraisal journal—to the cause of saving Houston's links with its past.

"The owner of a piece of property controls a bundle of rights. Among those is the right to demolish the current building and to redevelop the property in the future," says Tom Warshauer, an architect and vice president of the Sabine Association. Warshauer has headed the informal meetings of preservationists working on new strategies throughout the past several months. Those taking part included Charles Heim-sath; Beverly Pennington; preservationist Minnette B. Boesel; Cynthia Rowan, president of the Sabine Association; lawyer Chere Lott; Truett Latimer and Gloria Barboza of the construction firm Spaw-Glass, Inc., representing the Downtown Houston Association; and Wayne Hancock, representing Rovi Texas, the company that owns the Rice Hotel. Rovi Texas is rumored to have a serious customer for the property who is interested in a façade easement donation.

Under the federal tax laws enacted in 1976 and expanded in 1981, property owners can donate all or part of their property rights to non-profit organizations and take the value of the donation as a tax deduction, since they are forfeiting potential income from the donated rights.

For the purpose of historic preservation, owners

## ....And Then There Were None

usually give up their rights to demolish or alter the façade of the property (the outer 1/16 of an inch, for example) and deed them to a receiving organization in the form of an easement—usually called a façade easement or preservation easement—binding in perpetuity over future contracts. The receiving group must be a recognized non-profit organization, and it must agree to oversee the provisions of the easement, also in perpetuity.

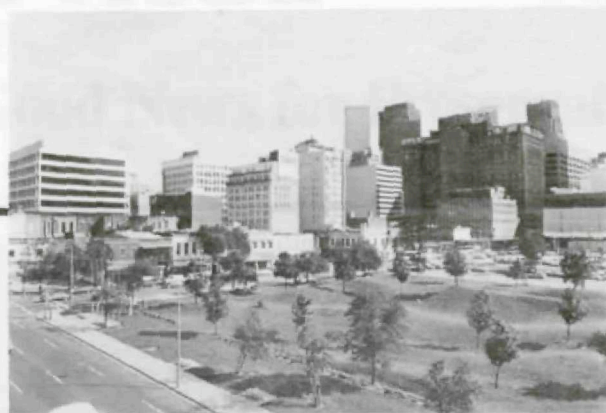
As an article in the National Trust for Historic Preservation's newspaper, *Preservation News*, explains, "While zoning limitations and historic district regulations can be changed, easement controls exist forever. They remain with the property and must be obeyed

*Map of Main Street-Market Square Historic District (Houston Old Town Development Corporation)*





Market Square looking toward 300 block of Travis Street (Photo by Paul Hester)



The Internal Revenue Service this year initiated audits of some 50 donations in Washington and 80 in New Orleans, claiming that the rights donated to preservation groups had been overvalued. The organizations and taxpayers affected contend that, with few exceptions, the easements are valued properly, and complain that the IRS could destroy the attractiveness of the easement donation program nationwide simply by threatening audits.

The Houston group is keeping tabs on the problems encountered in other cities and has decided on a strategy to keep them from cropping up here. They

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by all subsequent owners. Even if a building is accidentally destroyed, a new structure generally must conform to the original use and size and must also receive the preservation group's approval."

Hundreds of property owners have contributed façade easements to preservation groups in Washington, D.C., Charleston, New Orleans, and other cities since 1976. According to Warshauer, no easement donation programs have as yet been implemented in Texas.

The government recognizes the simple proposition that such a preservation burden decreases the potential uses of the property and can make it more difficult to sell (or cuts into its current value), says Warshauer. But tax breaks afforded under the donation regulations have turned out to be anything but simple. The regulations are ambiguous on the value of the donated easement, allowing it to be somewhere between the current market value of the property and its "highest and best use."

## Cite Seeing

### Buildings and Places that Ought to Be Recognized and Preserved

Photographs by Paul Hester

Since 1974 52 buildings, four districts, and two archaeological sites in Houston and Harris County have been listed in the National Register of Historic Places. This is only a fraction of the buildings, structures, places, and neighborhoods that could qualify for recognition, however. Lack of knowledge about the requirements for (and benefits of) National Register listing, compounded by the fear that listing will devalue property (the reverse is usually true), impose legal restrictions (it doesn't), or lead to government interference (it won't), inhibits owners of potentially worthy properties from applying to the National Register.

The National Register of Historic Places was established in 1966 as a part of the National Historic Preservation Act. It is administered by the National Park Service of the Department of the Interior through the Texas Historical Commission. The purpose of the Register is to record buildings or places that possess "significance in American history, architecture, archaeology, and culture," according to Park Service criteria.

Included here is just a sample of historically and architecturally significant Houston buildings, places, and structures that should be recognized and preserved.

- 1 Shadyside, Main and Montrose, 1916, George E. Kessler, landscape architect and planner
- 2 Clarke and Courts Building, West Clay and Van Buren, 1936, Joseph Finger, architect
- 3 Link House (now Administration Building, University of St. Thomas), Montrose and West Alabama, 1913, Sanguinet, Staats and Barnes, architects
- 4 Fourth Ward (Freedmen's Town) as seen from downtown
- 5 Lovett Hall, Rice University, 1912, Cram, Goodhue and Ferguson, architects



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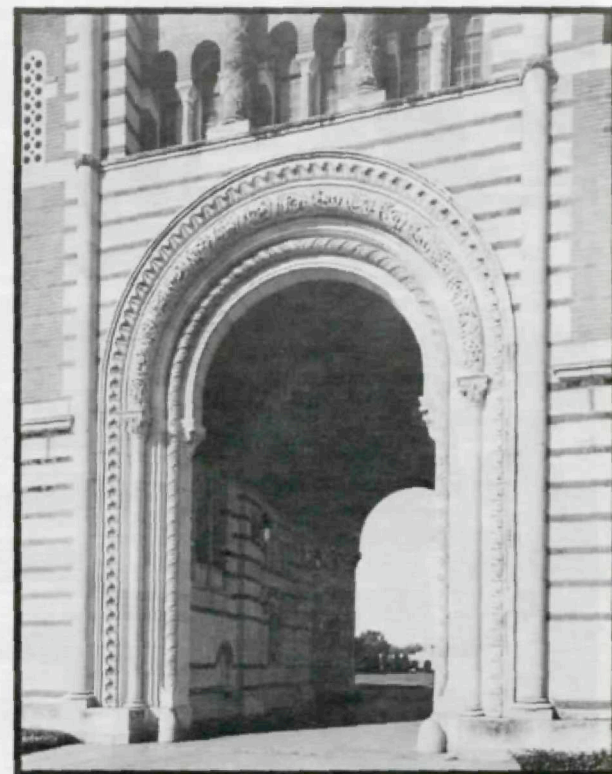
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Right to left: Radoff Building, 1860, 1896, and Texas Commerce Motor Bank, 1981, I. M. Pei and Partners and 3D/International, architects (Photo by Paul Hester)



will wait until later this year, when new IRS regulations are to be published, before proceeding with property evaluations. They recommend that anyone contemplating façade donations engage as appraiser the firm with the most conservative record in the country and the best track record with the IRS. The group is currently working with a number of appraisal firms.

Warshauer points out that the IRS has challenged preservation easements most successfully in cities that already have strong historic preservation ordinances. This, he contends, could actually work in favor of Houston preservation interests.

"The IRS argues that since state restrictions and city ordinances in New Orleans, for example, already protect so many buildings, a property owner there is really not giving much away when he gives up a façade easement," says Warshauer. "In Houston, of course, the situation is much different. A property

owner here is largely unrestricted, and donating a façade easement is *really* encumbering the property. That makes the donations much more valuable and at the same time harder to contest."

The Houston group also hopes to avoid another prob-

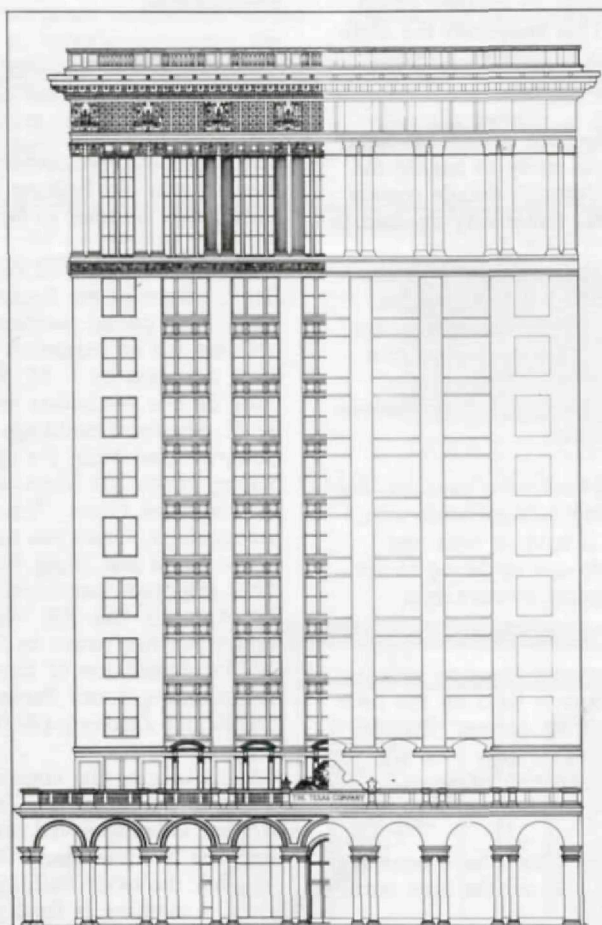
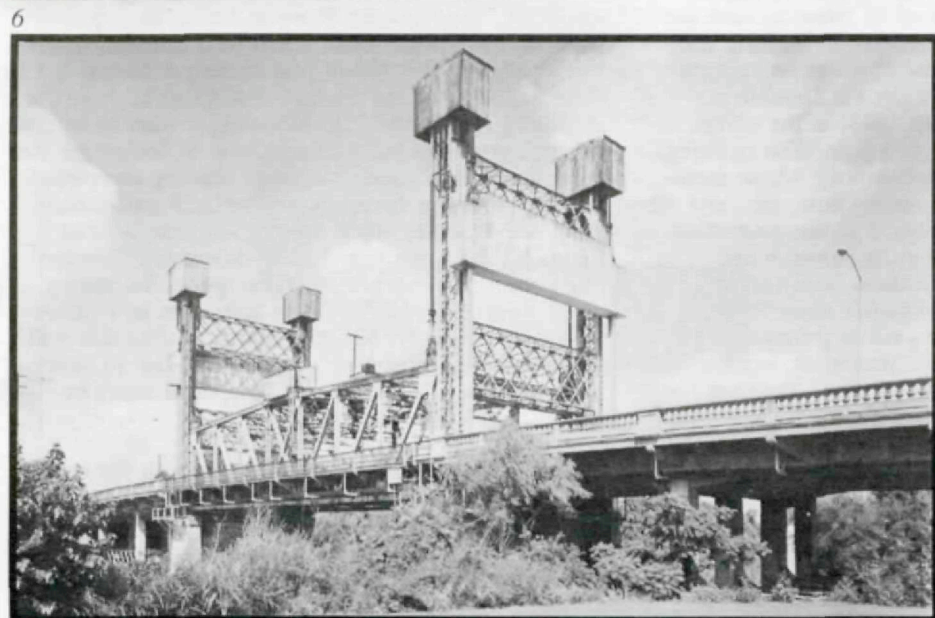
lem that has cropped up in New Orleans and other cities: competition between groups that accept façade easements.

"In New Orleans there are three different groups, each providing different services and each charging



6 Eastwood Elementary School, Telephone Road and McKinney, 1916, Maurice J. Sullivan, architect; 1927, Harry D. Payne and James Ruskin Bailey, architects

8 Texas Company Building, San Jacinto and Rusk, 1915, Warren and Wetmore, architects (Drawing by Roger Cooner, Jeff Holcomb, and Randy Lore)



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7 Lockwood Drive Bridge, Lockwood Drive over Buffalo Bayou, 1928, James Gordon McKenzie, engineer. This concrete counter-weight steel lift-span bridge is slated for demolition by the City of Houston.

9 Petroleum Building, Texas and Austin, 1927, Alfred C. Bossom with Briscoe and Dixon and Maurice J. Sullivan, architects

10 Niels Esperson Building, Travis and Rusk, 1927, John Ebersson, architect

11 Brady House, Wilmer and Milby, ca. 1860

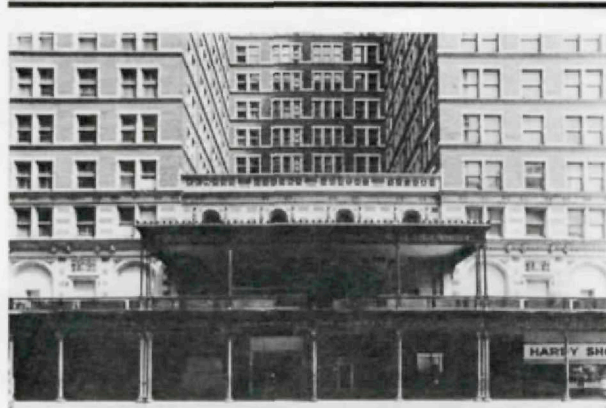
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Detail of Main Street entrance, Rice Hotel, 1913, Mauran, Russell and Crowell, architects (Photo by Paul Hester)

different amounts to process the paperwork and oversee the maintenance of the donation," says Warshauer. "Some people go to the most expensive organization, which provides the most complete services, and have the preparatory work done, then turn around and donate their easements to another group, which charges a smaller fee. This undercuts the ability of all the groups to maintain easements properly, and could damage the whole program."

To avoid such conflicts, the Houston groups involved are combining to set up a single entity to handle the easement donation program. Although details remain to be worked out, the group has tentatively decided to create a body for accepting easement donations as a committee within the Greater Houston Preservation Alliance. As a city-wide preservation organization, the Alliance is better suited to the donation program than neighborhood-specific groups such as Houston Old Town or the Sabine Association. Seats on the easement committee will be allotted to representatives of other interested groups, however.

"The facade easement idea may not be a panacea, but it will at least give us something new to work with," says Beverly Pennington. "We'll have to wait and see what some of the appraisals end up being to see just how attractive it is to property owners as a tax incentive."

But others think that, for downtown Houston at least, the easement donation program may be a lot too little and a little too late. Truett Latimer, former director of the Texas Historical Commission, now vice president for public relations and marketing of Spaw-Glass, Inc., is among the most pessimistic.

"The best [preservation] strategy would have been for somebody, 10 years ago, to buy up all the land north of Texas Avenue," Latimer says.

He continues, "That didn't happen and the property values in the area have escalated to the point that it will be very hard to preserve anything but large buildings with considerable square footage for rehabilitation. The buildings in the Market Square area are two-and three-story buildings, standing on property that's selling for between \$200 and \$400 per square foot. The development pressure is on that part of town. And that means that there is no way an individual, even taking advantage of all the incentives available (unless he wants to be a philanthropist), can come up with an economically viable way to save those buildings."

Developer John Hannah, although he says his experience with the Cotton Exchange was "very positive," agrees with Latimer about the prospects for saving buildings in the newly designated downtown historic district.

"Back then we didn't have the tax advantages available for renovating historic structures that exist now," Hannah says. "But it was a whole different picture for land values at that time. Now, with land prices over \$100 per square foot, all the tax incentives there are still won't let you restore a three-story building and generate enough income from it to justify saving the building."

Some people who asked not to be quoted said that after the Pillot Building battles, the next big strug-

gle will be over a succession of buildings threatened by development pressures in the new historic district. Their owners are not constrained by even the modest requirements that delayed the Harris County administration.

Said one, "A lot of those buildings could be demolished before the ink is dry on the National Register proclamation."



The Treptow Development Company demolished the 115-year-old Erikson Building on Market Square earlier this summer to build an 11-story parking garage, designed by Morris★Aubry Architects. One preservationist pointed out that Texas Commerce Bank, owner of the Radoff Building (1896), has already filed public notification of its intent to raze the building for an extension of its drive-in banking facilities, designed by I. M. Pei and Partners. A recent issue of *The Medallion* singled out the Dumble and B. A. Shepherd buildings (both 1883) at the corner of Congress and Main for special concern. The buildings belong to the 201 Main Venture, among whose members is Frank Glass. Through Spaw-Glass, Inc., and other partnerships, Glass has participated in the renovation of the Kiam and Hogg Buildings in Houston and other important preservation projects here and in San Antonio. But 201 Main Venture's plans for a 40-story office tower by Morris★Aubry Architects call for demolition of these two structures, most of the adjoining South Texas National Bank Building (1970) and Zindler's (1921).

Acknowledging the concern for the Dumble and B. A. Shepherd buildings, Truett Latimer says, "Think of what is being saved on that block. The façade of the First National Bank Building is being saved. Whether the other buildings can be saved, we don't know — nothing is final yet. There are several plans floating around, and the final plan will depend on the client and the client's needs. In the event those buildings have to be demolished, however, there might be the alternative of saving their façades, as has been



Right to left: Brashear Building, 1882, Eugene T. Heiner, architect; Scholibo Building, 1880. Both buildings are located on Prairie Avenue in the Main Street-Market Square Historic District (Photo by Paul Hester)

done with the Texas Theater in San Antonio." Latimer points out that Spaw-Glass is separate from the 201 Main Venture and is not directly involved in the plans for the block.

And, says Latimer, "No one is building speculative office buildings downtown at this time. Now you wait until you have a major tenant lined up—you can't get financing unless you do."

"Houston real estate values are going through another transition," says lawyer Shannon Vale. "Basing decisions on 1981 price levels could be a mistake. There's been a big change, not in real estate prices yet, but in the psychology of the market. You don't hear people predicting that Houston will be bigger than New York, the way you used to. And you have to remember that there are several major buildings nearing completion that will increase the space available. RepublicBank, Four Allen Center, 1600 Smith: All remain to be filled. It'll be some time before downtown Houston can absorb that much new office space. So tearing down buildings north of Texas to put up new office towers doesn't make sense for now. Maybe that will give us enough breathing room. If the last 10 years show anything, it's that preserving them won't be easy."

Says Charles Heimsath, "The downturn in the office market in downtown may be the best ally these old buildings have."

Beverly Pennington agrees. "The easement donation program will probably be a lot easier to use and more effective in the historic neighborhoods than downtown," she says. "But we're going to do our best to help property owners with it downtown too. It could be a very good thing."

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# Historic Preservation Incentives — In Houston?

**Minnette B. Boesel**

Never before have incentives been so great for preserving the historic fabric of Houston. A local ordinance and nationally legislated economic incentives, coupled with an enlightened new city planning administration, will, we may hope, encourage the preservation of the remnants of Houston's past.

Congress has passed a number of legislative acts to protect our nation's cultural heritage, but it was not until the passage of the Tax Reform Act in 1976 that tax incentives were provided to owners and lessees of income-producing historic structures.

### Investment Tax Credits

In 1981 President Reagan signed the Economic Recovery Tax Act (ERTA) into law. Its sweeping tax reform included even greater tax advantages to those restoring older and/or historic income-producing properties.

Highlights of the law include:

15% investment tax credit on the rehabilitation costs of non-historic, income-producing, non-residential structures more than 30 years old;

20% investment tax credit for similar structures more than 40 years old;

25% investment tax credit on the rehabilitation costs of designated historic structures that are

income-producing (including residential). A higher depreciation of 87.5% is also given on the rehabilitation costs of historic structures.

By the end of 1983 the government estimates that \$3 billion will have been invested in historic properties as a result of the investment tax credit provision. The effects of this kind of investment, for the most part in inner-city urban areas, are catalytic. New jobs, revitalized areas, increased tax bases, tourist attractions, and the influence on others to invest in their communities multiply the initial figure many times over.

To qualify for the 25% ITC, a structure must be listed in the National Register of Historic Places, as administered by the U.S. Department of the Interior, or be in a locally designated historic district whose ordinance has been certified by the Department of the Interior. All rehabilitation work must also be certified by the Interior Department as compatible with the architectural and historic integrity of the building. In Texas, National Register nominations and all certification are coordinated by the Texas Historical Commission in Austin.

### Grants-in-aid

As outlined in the National Historic Preservation Act of 1966, National Register properties are eligible for grants-in-aid for preservation planning and actual restoration costs. In Texas, the Texas Historical Commission administers this program as well as a state grants program. The amounts available vary from year to year, depending on state and national appropriations. Grants cannot be used in conjunction with the 25% investment tax credit.

### Preservation Easements

In 1976 Congress passed a law allowing for tax deductions on the value of easements given to charitable organizations or governmental entities. Amended language in 1980 specifically mentions historic buildings. Preservation easements place restrictions on the development or alteration of historic structures; the loss in income value can be taken as a charitable deduction. In downtown Houston a preservation easement on a qualifying building could result in a large tax deduction. Currently, there is no non-profit or-

ganization or governmental entity in Houston with an easement program. Such a program is being examined.

### Local Property Tax Abatement

Houston buildings listed in the National Register or Texas Historic Landmarks designated by the Texas Historical Commission are eligible under a local ordinance passed in 1981 for property tax abatement of up to 50% annually. A penalty for part or all of the back taxes due is imposed if the property in question is damaged or destroyed, or if taxes are delinquent.

The new City Planning Department director, Efraím García, has stressed his commitment to the revitalization and redevelopment of inner urban areas of Houston. His recent application to seek Houston's first Urban Development Action Grant (UDAG) is a sign that city government recognizes the economic advantage of the adaptive use of historic structures. The grant will assist in the redevelopment of the Lottman-Myers Manufacturing Company building as the "Mercado," a festive retail area targeted for Houston's Hispanic community. This structure, begun in 1904, is part of a 15-acre project that abuts Buffalo Bayou and U.S. 59.



Houstonians in general are now recognizing the need to redevelop and preserve what is left of Houston's historic built environment. In this climate of economic austerity where big is not necessarily better, developers can take a breath and examine what *is* here and not what *could be* here. Areas such as the Main Street-Market Square Historic District, a part of the original town site of Houston adjacent to Buffalo Bayou, have the potential of Baltimore's Harbor Place, San Antonio's Riverwalk, or Boston's Faneuil Hall Marketplace. All the ingredients are there. It will take guts, vision, capital, coordination, and as many economic incentives as possible.

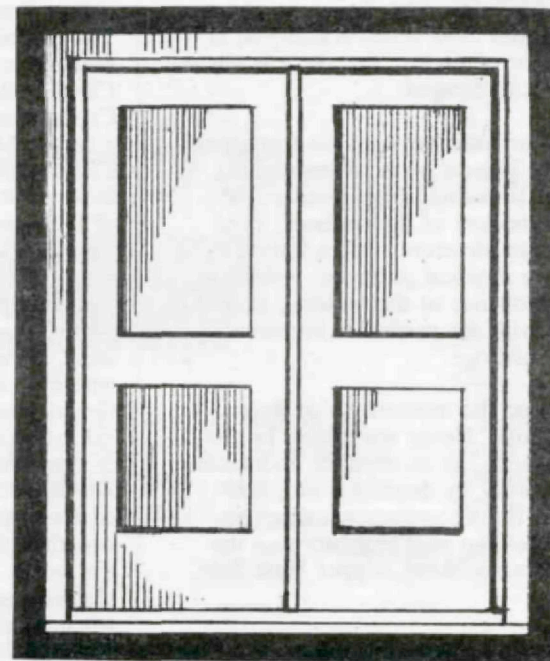
Houston's vibrancy as a "new town" can be coupled with Houston's "old town" elements not only to continue the growth of the city but to maintain its history and character as well.

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