

Supreme Court of Texas

No. 19-0689

Kathleen Powell & Paul Luccia,
Petitioners,

v.

City of Houston, Texas,
Respondent

On Petition for Review from the
Court of Appeals for the First District of Texas

SUPPLEMENTAL OPINION ON MOTION FOR REHEARING

The City has filed a motion for rehearing challenging our holding that section 211.003(b) of the Local Government Code subjects city regulation of structures in historical areas to the requirements of Chapter 211. In part, the City contends that section 211.013 recognizes cities' ability to regulate the appearance of property without complying with Chapter 211. We disagree and therefore deny the City's motion.

Section 211.013 provides that another statute, local ordinance, or regulation may impose higher standards than a regulation adopted under Chapter 211; in that event, the higher standards control. TEX. LOC. GOV'T CODE § 211.013(a). But this section does not list regulations of historical structures under section 211.003(b) among the subjects on which an ordinance could impose a higher standard. Instead, section 211.013 gives examples such as height, size of open space, and percentage of lot left unoccupied—subjects that a city may regulate under section 211.003(a).¹ On those subjects, there are other statutes that authorize a city to regulate without following the constraints of Chapter 211. *E.g.*, TEX. LOC. GOV'T CODE §§ 212.002, 212.045(a).

Given these overlapping sources of statutory authority for city regulation, the Legislature included section 211.013 to address which regulation controls in the event of a conflict. But nothing in section 211.013 is inconsistent with our holding in Part II.A. that a city may not rely on its home-rule authority to issue historic-preservation regulations that do not comply with Chapter 211. As previously noted, we express no view on whether other statutes

¹ Section 211.013 has always tracked the original types of zoning regulations listed in section 211.003(a). *See* Act of March 14, 1927, 40th Leg., R.S., ch. 283, § 9, 1928 Tex. Gen. Laws 424, 428. Section 211.013 was not amended when the Legislature added section 211.003(b) to bring historic-preservation regulations within the ambit of Chapter 211.

with different requirements would also authorize the City's ordinance. *See* n. 16, *supra*.

J. Brett Busby
Justice

OPINION DELIVERED: October 8, 2021