

# IN THE SUPREME COURT OF TEXAS

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No. 96-1154

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JERRY J. QUICK, KAIRA G. QUICK, JOHN M. BRYANT, RUTH E. BRYANT, JOE  
COX, DOLORES COX, FLORENCE TURCK AND CIRCLE C LAND CORP.,  
PETITIONERS

v.

CITY OF AUSTIN, SAVE OUR SPRINGS LEGAL DEFENSE FUND, INC. AND AL ST.  
LOUIS, RESPONDENTS

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ON APPLICATION FOR WRIT OF ERROR TO THE  
COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS

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**Argued on November 3, 1997**

JUSTICE ABBOTT delivered the opinion of the Court on Motion for Rehearing as to Section VI, in which CHIEF JUSTICE PHILLIPS, JUSTICE HECHT, JUSTICE OWEN, and JUSTICE GONZALES join.

JUSTICE HANKINSON filed a dissenting opinion, in which JUSTICE ENOCH, JUSTICE BAKER and JUSTICE O'NEILL join.

We granted Petitioners' Motion for Rehearing. We now withdraw Part VI of our opinion and substitute the following.

## VI

Petitioners finally contend that the court of appeals erred by holding that only projects in which the original permit applications were filed after September 1, 1987 are required to be considered on the basis of the City's regulations and ordinances in effect at the time the original permit applications were filed. Circle C made applications for preliminary subdivision approval for five different sections of the Circle C development, four of which were filed in 1985 and the fifth of which was filed in 1992. In furtherance of its ongoing development from these permit applications, Circle C applied for site development permits after the enactment of the Ordinance. These subsequent permit applications are at issue.

The trial court concluded that, under former section 481.143 of the Government Code, the ordinances in effect when Circle C filed its original permit applications in 1985 and 1992 governed the City's consideration of Circle C's subsequent permit applications for the same development. The court of appeals, however, modified the trial court's judgment, holding that because section 481.143 became effective September 1, 1987, only projects in which the initial permits were filed between September 1, 1987 and the effective date of the Ordinance (August 10, 1992) were not subject to the strictures of the Ordinance. Petitioners contend that the court of appeals erred in modifying the trial court's judgment in this manner.

Generally, the right to develop property is subject to intervening regulations or regulatory changes. *See Connor v. City of University Park*, 142 S.W.2d 706, 709 (Tex. Civ. App.—Dallas 1940, writ ref'd). In adopting sections 481.141-.143 of the Texas Government Code on September 1, 1987, the Texas Legislature significantly altered this rule by requiring that each permit in a series required for a development project be subject to only the regulations in effect at the time of the application for the project's first permit, and not any intervening regulations. The stated purpose of the statute was to establish requirements relating to the processing and issuance of permits and approvals by governmental regulatory agencies in order to alleviate bureaucratic obstacles to economic development. *See Act of May 30, 1987, 70th Leg., R.S., ch. 374, § 1, sec. 7.001(2), 1987 Tex. Gen. Laws 1823, 1838, amended by Act of May 24, 1997, 74th Leg., R.S., ch. 794, § 1, sec. 481.141(b), 1995 Tex. Gen. Laws 4147, 4147, repealed by Act of June 1, 75th Leg., R.S., ch. 1041, § 51(b), 1997 Tex. Gen. Laws 3943, 3966.* The version of section 481.143 in effect at the time of the dispute provided:

The approval, disapproval, or conditional approval of an application for a permit shall be considered by each regulatory agency solely on the basis of any orders, regulations, ordinances, or other duly adopted requirements in effect at the time the original application for the permit is filed. If a series of permits is required for a project, the orders, regulations, ordinances, or other requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project.

Act of May 30, 1987, 70th Leg., R.S., ch. 374, § 1, sec. 7.003(a), 1987 Tex. Gen. Laws 1823, 1839, *amended by Act of May 24, 1995, 74th Leg., R.S., ch. 794, § 1, sec. 481.143, 1995 Tex. Gen. Laws 4147, 4147, repealed by Act of June 1, 1997, 75th Leg., R.S., ch. 1041, § 51(b), 1997 Tex. Gen. Laws 3943, 3966.*

The Legislature repealed section 481.143 while this case was pending before this Court. *See* Act of June 1, 1997, 75th Leg., R.S., ch. 1041, § 51(b), 1997 Tex. Gen. Laws 3943, 3966. The general rule is that when a statute is repealed without a savings clause limiting the effect of the repeal, the repeal of that statute is usually given immediate effect. *See Knight v. International Harvester Credit Corp.*, 627 S.W.2d 382, 384 (Tex. 1982). When a right or remedy is dependent on a statute, the unqualified repeal of that statute operates to deprive the party of all such rights that have not become vested or reduced to final judgment. Ordinarily, all suits filed in reliance on the statute must cease when the repeal becomes effective; if final relief has not been granted before the repeal goes into effect, final relief cannot be granted thereafter, even if the cause is pending on appeal. *See id.*; *National Carloading Corp. v. Phoenix-El Paso Express, Inc.*, 176 S.W.2d 564, 568 (Tex. 1943); *Dickson v. Navarro County Levee Improvement Dist. No. 3*, 139 S.W.2d 257, 259 (Tex. 1940). The repeal of the statute in such instances deprives a court of subject matter jurisdiction over the cause. *See Knight*, 627 S.W.2d at 384; *Dickson*, 139 S.W.2d at 259.

This common-law rule of abatement may be modified by a specific savings clause in the repealing legislation or by a general savings statute limiting the effect of repeals. Most states, including Texas, have adopted some form of general savings statute. *See Ruud, The Savings Clause — Some Problems in Construction and Drafting*, 33 TEX. L. REV. 285, 296-97 (1955). Texas's general savings clause is codified in section 311.031 of the Government Code, which states:

(a) Except as provided by Subsection (b), the reenactment, revision, amendment, or repeal of a statute does not affect:

(1) the prior operation of the statute or any prior action taken under it;

(2) any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it;

(3) any violation of the statute or any penalty, forfeiture, or punishment incurred under the statute before its amendment or repeal; or

(4) any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(b) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

TEX. GOV'T CODE § 311.031 (a), (b).

Petitioners assert that the general savings provision of the Code Construction Act applies to the repeal of section 481.143. *See* TEX. GOV'T CODE § 311.002 (application of the Code Construction Act); *Knight*, 627 S.W.2d at 385. The City argues that the general savings clause does not apply because a much narrower specific savings clause is included in section 52 of the repealing legislation, which provides:

The rules, policies, procedures, and decisions of the Texas Department of Commerce are continued in effect as rules, policies, procedures, and decisions of the Texas Department of Economic Development until superseded by a rule or other appropriate action of the Texas Department of Economic Development.

The validity of a rule, form, or procedure adopted, contract or acquisition made, proceeding begun, obligation incurred, right accrued, or other action taken by or in connection with the authority of the Texas Department of Commerce before it is abolished under . . . this section is not affected by this Act. To the extent those actions continue to have any effect on or after September 1, 1997, they are considered to be the actions of the Texas Department of Economic Development.

Act of June 1, 1997, 75th Leg., R.S., ch. 1041, §§ 52(g), 52(h), 1997 Tex. Gen. Laws 3943, 3967.

The City argues that because the repealing legislation contains a specific savings clause, application of the general savings provision is preempted. *See Ex parte Mangrum*, 564 S.W.2d 751, 755 (Tex. Crim. App. 1978) (“The general savings clause of the Code Construction Act, however, is

inapplicable to the new Penal Code because a specific savings clause was provided by the Legislature.”); *Scott v. State*, 916 S.W.2d 40, 41 (Tex. App.—Houston [1st Dist.] 1995, no pet.); *Wilson v. State*, 899 S.W.2d 36, 38 (Tex. App.—Amarillo 1995, pet. ref’d); see also TEX. GOV’T CODE § 311.026.

We conclude that section 52 contains a specific savings clause. But the existence of the specific savings clause does not preclude application of the general savings provision of the Code Construction Act to the repeal of section 481.143.

The Legislature’s adoption of the general savings clause in the Code Construction Act indicates a general legislative policy that the repeal of any statute shall not affect the prior operation of that statute nor extinguish any liability incurred or affect any right accrued or claim arising before the repeal takes effect. Given this general policy and the broad applicability of the Code Construction Act, we will presume that the general savings clause applies unless a contrary legislative intent is shown by clear expression or necessary implication. See *Great N. Ry. Co. v. United States*, 208 U.S. 452, 465 (1908) (“[T]he provisions of [the general savings clause] are to be treated as incorporated in and as a part of subsequent enactments, and therefore under the general principles of construction requiring, if possible, that effect be given to all parts of a law the section must be enforced unless either by express declaration or necessary implication, arising from the terms of the law, as a whole, it results that the legislative mind will be set at naught by giving effect to the provisions of [the general savings clause].”). Here, no contrary legislative intent is expressed or implied by section 52.

Section 52 does not expressly state that only the enumerated items are saved, nor does it expressly negate application of the general savings statute. See *State v. Fenter*, 569 P.2d 67, 70

(Wash. 1977) (en banc) (“Although [the specific savings clause] exempts three categories from repeal and thus acts as a mini-savings statute, it does not expressly state that these three categories are the only three categories exempt from repeal. Therefore, we find no express legislative intent that the general savings statute . . . does not apply [to the repealed statute].”). Nor is application of the general savings clause negated by necessary implication. Although in many cases it could be argued that the Legislature’s inclusion of a specific savings clause despite its awareness of the existence of the general savings clause renders the specific savings clause redundant, *see State v. Showers*, 8 P. 474, 477 (Kan. 1885), that is not the case here. The specific savings clause in section 52 is not redundant of the general savings provision. The purpose of Senate Bill 932, which repealed section 481.143, was to “abolish[] the Texas Department of Commerce and transfer[] its powers and duties to the newly created Texas Department of Economic Development and to certain other economic development programs.” Act of June 1, 1997, 75th Leg., ch. 1041, 1997 Tex. Gen. Laws 3943, 3943. Sections 52(g) and (h) ensured that proceedings begun, rights accrued, and other actions taken by or in connection with the authority of the Texas Department of Commerce before it was abolished were not affected by the Act, and, as of the September 1, 1997 effective date of the Act, would be continued in effect as the actions of the newly created Texas Department of Economic Development. This result may not have been achieved by the general savings clause. Thus, both the general and specific clauses were needed to effectuate legislative intent.

Additionally, in contrast to the cases that have held that a specific savings clause “trumps” application of the general savings clause, the specific savings clause in section 52 does not irreconcilably conflict with the general savings clause. *See* TEX. GOV’T CODE § 311.026(a) (providing that a special provision prevails over a general provision only if the conflict between the

provisions is irreconcilable). Accordingly, we conclude that the general savings clause applies to the repeal of section 481.143. Applying the clause, the prior operation of section 481.143 is not affected by the repeal, and we may address Petitioners' point of error.

## A

The parties do not dispute whether section 481.143 applies to subsequent permit applications when the original permit application was filed after September 1, 1987, such as the one application for preliminary subdivision approval filed in 1992. The issue we must decide is whether the statute is applicable to Circle C's subsequent permit applications filed after September 1, 1987, when the original application in the series was filed *before* September 1, 1987, such as the four applications for preliminary subdivision approval filed in 1985. The City argues that, in order to apply the statute to original permit applications filed before September 1, 1987, the statute must be applied retroactively, and that the law disfavors such retroactive application. *See Houston Indep. Sch. Dist. v. Houston Chronicle*, 798 S.W.2d 580, 585 (Tex. App.—Houston [1st Dist.] 1990, writ denied); *see also* TEX. GOV'T CODE § 311.022 (“A statute is presumed to be prospective in its operation unless expressly made retroactive.”). Because section 481.143 does not expressly or impliedly indicate that it has a retroactive effect, the City asserts that the court of appeals correctly concluded that the statute does not apply to original permit applications filed before September 1, 1987. 930 S.W.2d at 693. Petitioners respond that they are not requesting a retroactive application of section 481.143, but rather a prospective application of the law to Circle C's subsequent permits filed after September 1, 1987.

Our first task is to determine whether the Legislature has expressly prescribed the statute's proper reach. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994). The statute provides that if a series of permits is required for a project, the ordinances in effect at the time the original application for the first permit is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. Nowhere does the statute require that the original application for the first permit in the series be filed after September 1, 1987. But neither does the statute expressly state that it will apply to projects in progress before that date. Thus, the plain language of the statute does not expressly delineate its reach.

Petitioners contend that the statute applies to the treatment of any subsequent permit application filed after September 1, 1987, regardless of when the first permit was filed. This construction is consistent with the plain language of section 481.143, which states that “the . . . ordinances . . . in effect at the time the original application for the first permit in that series is filed [the ordinances in effect in 1985 in this case] shall be the sole basis for consideration of all subsequent permits required for completion of the project [the subsequent permits filed by Circle C in 1992].”<sup>1</sup> Moreover, this construction complies with the Legislature's mandate to construe statutes liberally to achieve their purposes. *See* TEX. GOV'T CODE § 312.006. If we were to apply the

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<sup>1</sup> Chapter 481 was amended in 1995. *See* Act of May 24, 1995, 74th Leg., R.S., ch. 794, § 1, 1995 Tex. Gen. Laws 4147, *repealed by* Act of June 1, 1997, 75th Leg., R.S., ch. 1041, § 51(b), 1997 Tex. Gen. Laws 3943, 3966. The 1995 amendments provided that section 481.143 applied “to all projects in progress on or commenced after the effective date of this subchapter as originally enacted.” Act of May 24, 1995, 74th Leg., R.S. ch. 794, § 1, sec. 481.143(b), 1995 Tex. Gen. Laws 4147, 4147 (repealed). Although the 1995 amendments were expressly made retroactive to September 1, 1987, Circle C concedes that the amendments do not apply to its claims. *See* Act of May 24, 1995, 74th Leg., R.S., ch. 794, § 3, 1995 Tex. Gen. Laws 4147, 4148 (“Nothing in this Act shall be construed to diminish or impair the rights or remedies of any person or entity under a final judgment rendered by, or in any pending litigation brought in, any court concerning an interpretation of the provisions of Subchapter I, Chapter 481, Government Code.”). Subchapter I was reenacted in 1999 as Local Government Code, Subtitle C, Title 7, Chapter 245, but the reenacted version contains a similar provision and is thus also inapplicable to this litigation. *See* Act of April 29, 1999, 76th Leg., R.S., ch. 73, § 4, 1999 Tex. Gen. Laws \_\_\_\_, \_\_\_\_ (to be codified at TEX. LOC. GOV'T CODE § \_\_\_\_). Moreover, given the Legislature's mandate, we do not consider the 1995 amendments in construing section 481.143 as enacted.

construction urged by the City and the dissent, the statute would at least partially fail of its intended purpose to “alleviat[e] bureaucratic obstacles” that “inhibit the economic development of the state.” Obviously, “current administrative practices” can present bureaucratic obstacles to both ongoing and future projects. If the statute only applies to projects in which initial permit applications are filed after the statute’s effective date, the benefit of the statute would be denied to existing projects even though they too play a role in the State’s economic development. Accordingly, we agree with Petitioners’ construction of the statute.

Our next step is to determine whether this construction renders the statute retroactive, thereby invoking the presumption against retroactivity. *See Landgraf*, 511 U.S. at 280. As the Supreme Court observed in *Landgraf v. USI Film Products*, “[w]hile statutory retroactivity has long been disfavored, deciding when a statute operates ‘retroactively’ is not always a simple or mechanical task.” *Id.* at 268. The Court in *Landgraf* did not attempt to precisely define what constitutes a retroactive law, instead preferring a “functional” approach. The Court instructed:

A statute does not operate “retrospectively” merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law. Rather, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment. The conclusion that a particular rule operates “retroactively” comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event. Any test of retroactivity will leave room for disagreement in hard cases, and is unlikely to classify the enormous variety of legal changes with perfect philosophical clarity. However, retroactivity is a matter on which judges tend to have “sound . . . instinct[s],” and familiar considerations of fair notice, reasonable reliance, and settled expectations offer sound guidance.

*Id.* at 269-70 (citations and footnote omitted).

Applying these principles, we conclude that our construction does not operate retroactively. Contrary to the court of appeals' conclusion, section 481.143 does not affect any applications for permits filed before September 1, 1987. That would be retroactive. But applying section 481.143 to subsequent permit applications filed after September 1, 1987, when the original permit application was filed before September 1, 1987, is not a retroactive application of the law. The statute operates prospectively on new permits for existing projects. It affects only new permits to be issued in the future. It does not annul or affect prior permits, or require the City to issue a permit retroactively.

When Circle C filed its original permit applications in 1985, the City's ordinances in effect at that time governed the City's evaluation of those applications. Although subsequent applications in the series required for a project would normally be subject to any new ordinances and regulations in effect at the time of their filing, the Legislature provided that these subsequent applications, if filed after September 1, 1987, would be governed by only the ordinances and regulations in effect at the time the original permit application was filed. Thus, when Circle C filed subsequent permit applications after September 1, 1987, the City was required to apply only the ordinances in effect in 1985 to those applications. The statute is not retroactive merely because it requires the City to evaluate future permits based on past law.

The dissent argues that application to existing projects is retroactive because it reaches back in time and attaches new legal consequences to past acts. But the only new legal consequences it attaches to prior acts is in determining which "orders, regulations, ordinances, and other requirements" may be applied in the future to new permits. The Legislature could have passed a law comprehensively setting out criteria for new permits. Instead, section 481.143 adopts by reference to original permits the appropriate orders, regulations, ordinances, and other requirements to apply

to new permits — those in effect at the time the original application for the first permit in the series was filed. As the *Landgraf* opinion states, “a statute ‘is not made retroactive merely because it draws upon antecedent facts for its operation.’” *Id.* at 270 n.24 (quoting *Cox v. Hart*, 260 U.S. 427, 435 (1922)); accord *Regions Hosp. v. Shalala*, 522 U.S. 448, 456 (1998); *General Dynamics Corp. v. Sharp*, 919 S.W.2d 861, 866 (Tex. App.—Austin 1996, writ denied); *American Home Assurance v. Texas Dep’t of Ins.*, 907 S.W.2d 90, 94 (Tex. App.—Austin 1995, writ denied); see also *Walls v. First State Bank of Miami*, 900 S.W.2d 117, 121 (Tex. App.—Amarillo 1995, writ denied) (discussing *Landgraf*). Here, the statute merely draws upon an antecedent fact — the date of the first permit application — to determine what law will apply to subsequent permit applications.

Accordingly, we hold that the court of appeals erred in holding that only the subsequent permit applications from original permit applications filed after September 1, 1987 were governed by the ordinances in effect at the time of the original application.

## **B**

That does not end our inquiry, however, for we must also consider the effect of the repeal on Circle C’s rights. The general savings clause of the Code Construction Act saves both the prior operation of the statute and “any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it.” TEX. GOV’T CODE § 311.031(a)(2).

We begin by identifying Circle C’s rights under section 481.143. As we have concluded, by its terms, section 481.143 gives Circle C the right to have the City consider an application for a permit “solely on the basis of any orders, regulations, ordinances, or other duly adopted requirements

in effect at the time the original application for the permit is filed,” which in this case would be the regulations and ordinances in effect in 1985 when the original applications for preliminary subdivision approval were filed and approved.

The general savings clause saves this right only if it was acquired, accrued, or accorded under section 481.143 before the September 1, 1997 effective date of the repeal.<sup>2</sup> *See Iowa Dep’t of Transp. v. Iowa Dist. Ct. for Buchanan County*, 587 N.W.2d 774, 776 (Iowa 1998) (“[O]ne relying on [the general savings clause] must demonstrate that the privilege he seeks to save is one that he possessed, or that had vested, or that had been granted prior to the date the statute providing such a privilege was repealed.”). This right would not accrue until Circle C filed an application for a permit; it is only when an application is filed that the right granted by section 481.143 is due and attaches to the review of the application. As each subsequent application for a permit is filed, Circle C’s right accrues with respect to that application. With respect to applications filed after the repeal of section 481.143, Circle C’s right would not have accrued before the effective date of the repeal, and nothing is saved by the general savings clause. Thus, the City may not apply current regulations and ordinances to its evaluation of permit applications filed or approved during the prior operation of section 481.143, but it may do so with respect to any applications filed after its repeal, subject, of course, to the effects, if any, of the statute as reenacted in 1999. *See Act of April 29, 1999, 76th Leg., R.S., ch. 73, 1999 Tex. Gen. Laws* \_\_\_ (to be codified at TEX. LOC. GOV’T CODE § \_\_\_).

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<sup>2</sup> It is unclear whether the terms “accorded” and “acquired” relate to rights. Certainly, not all terms in the general savings clause relate to rights — for example, incur, which generally means “become liable or subject to” would not refer to a party’s rights. In addition, if we apply the general definition of “accord,” which is “grant” or “allow,” then any right of action granted or allowed by a statute would be saved despite a repeal, regardless of whether it had accrued before repeal. This cannot have been the Legislature’s intent in enacting the general savings clause, for repeals of statutory causes of action would have no effect. Accordingly, we will apply these terms, but in the more limited sense of affording the right when due, rather than when granted.

In sum, we hold that the general savings clause applies to the repeal of section 481.143. Considering Petitioners' point of error, we conclude that, under the 1987 version of section 481.143, any subsequent permit applications filed or approved between September 1, 1987 and September 1, 1997 are governed by only the rules, regulations, and ordinances in effect in 1985 when the original applications for preliminary subdivision approval were filed. Because we hold that this is not a retroactive application of the statute, we reverse the court of appeals' judgment in that regard, and we modify the judgment accordingly.

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GREG ABBOTT  
JUSTICE

OPINION DELIVERED: September 30, 1999