

86870

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

**RECEIVED**  
MAY 30 2018  
SC Court of Appeals

C.A. No.: 2011-CP-30-309

Commissioners of Public Works of the City of  
Laurens, South Carolina, also Known as the Laurens  
Commission of Public Works, ..... Respondent,

v.

City of Fountain Inn, South Carolina, ..... Appellant.

**PETITION FOR REHEARING**

Pursuant to Rule 221, SCACR, Appellant City of Fountain Inn, South Carolina ("City") petitions the Court for a rehearing of the opinion filed in this case on May 16, 2018. In its opinion, this Court affirmed the trial court's ruling relating to the parties' dispute over whether the Laurens Commission of Public Works ("LCPW") may properly exclude the City from providing natural gas service in an unincorporated area of Laurens County pursuant to S.C. Code Ann. § 5-7-60. The City respectfully submits that the Court overlooked or misapprehended the following points:<sup>1</sup>

<sup>1</sup> The City incorporates its Appellant's Brief and Reply Brief by reference herein. The City believes each of its arguments should have been addressed and analyzed by this Court.

**I. The Facts.**

The Court's opinion fails to acknowledge that the area that became the Owings Industrial Park was undeveloped at the time ZF Transmissions was seeking a natural gas supplier. This fact is key to the appropriate analysis of whether LCPW had established a designated service area that included the area in question.

**II. The Standard of Review.**

As an initial matter, the Court appears to have conflated a question of law (such as construction of a statute) with an action at law for purposes of the standard of review. This ruling fails to acknowledge that questions at law can arise in otherwise equitable actions such as this one. *See Jean H. Toal et al., Appellate Practice in South Carolina* 226, 230 (3d ed. 2016). In such a case, the court reviews the questions of law *de novo*, but reviews the factual findings according to the Court's view of the preponderance of the evidence. *See Sloan v. Greenville Cty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003) ("A legal question in an equity case receives review as in law.").

As previously argued, this was a declaratory judgment action seeking equitable relief in the form of an injunction. The City would agree that the construction of a statute is a question of law, but that does not convert the nature of this action from a case in equity to a case at law. To the extent this case raised factual issues (and the City believes it did with respect to whether service was actually being provided in the contested area), this Court remained free to take its own view of the preponderance of the evidence and was not constrained to accept the trial court's findings. Once the Court determined what constituted a "designated service area" for purposes of § 5-7-60, it could then apply the facts of this case according to its own view of the

preponderance of the evidence to that definition to determine whether LCPW established a designated service area.

For this reason, the Court should grant rehearing to consider the facts of this case in light of the proper standard of review.

**III. The Court erred in finding that there was a designated service area for purposes of § 5-7-60 under the facts of this case.**

South Carolina appellate courts have not previously addressed a case where two municipalities seek to serve the same unincorporated area. Under the Court's opinion here, LCPW can and will claim it has a territory over all of unincorporated Laurens County because it has infrastructure in place that can serve it. The City still does not have a clear idea of where it can and cannot pursue business under the reasoning of the Opinion.

This is not what § 5-7-60 was designed to do. Instead, § 5-7-60 was designed to allow cities to serve outside their borders unless such service would oust another governmental provider. That is the consistent theme of all of the previous cases under this statute. *See e.g., Spartanburg Sanitary Sewer Dist. v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984). The Court fails to acknowledge these general principles and further fails to address the City's arguments that service by contract outside the city limits is the rule under § 5-7-60 and designated service areas are the exception. In addition, the Court failed to acknowledge the policy arguments raised by the City in support of its construction of § 5-7-60 relating to Home Rule, the duties of municipalities with respect to residents versus non-residents, and the benefits of competition.

No one was serving the area in question at the time this industrial park was announced. It was undeveloped. (*See R.* at 286:11-13; 315:12-18; 331:12-16; 371). The only way LCPW could claim to be serving there and thus, that the area was its designated service area, is by

reference to the void boundary line to which the parties could not have agreed. If the line is void, no one had a designated service area with respect to the undeveloped property at issue.

Footnote 9 of the opinion again gives effect to the line shown on the 1992 Map, while at the same time declining to reach the issue of whether the parties could have made such agreement. If the parties could not reach such an agreement, how can the line give rise to an enforceable boundary? Certainly, LCPW may continue to serve the customers with whom it has contracts, but any other area should not be considered a designated service area. Such a ruling is directly contrary to the spirit of *City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth.*, 325 S.C. 174, 178-82, 480 S.E.2d 728, 731-32 (1997) and the idea that one council may not bind future councils. Thus, the Court erred in failing to treat the City's argument on this point.

#### **IV. The Court's opinion references rulings the trial court did not make.**

The trial court did not rule that "the phrase in section 5-7-60 'as certified by the governing body' only applies to the portion of the sentence stating 'funds have been applied for' and not to the prior part of the sentence stating 'an area in which the particular service is being provided.'" (Opinion at 9). The application of this sentence was raised in the City's Motion to Amend and was not addressed in the trial court's order denying the motion. (R. at 229-31, 17). The City again argued this sentence of the statute and that Laurens County is the appropriate certifying body in its appeal.

As the City has argued previously and raises again here, the better construction, and the only one that is consistent with Home Rule, is that any certification must be made by the governing body for the area. Otherwise, cities could proclaim designated service areas by fiat whether or not they were actually serving any customers in the particular area in question, as was the case here. Counsel for LCPW acknowledged the possible extremes to which a designated

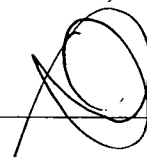

service area might be carried under its construction when he mused at trial “does this mean it goes on forever, does this mean we can go all the way to Charleston.” (R. at 345:5-7). This would leave customers with no recourse as a matter of contract or at the ballot box.

Moreover, even if this Court agrees with LCPW that no certification is required in cases where service is already being provided, there is no evidence that LCPW was actually providing service to customers in the disputed area. Instead, LCPW presented evidence that it generally served the entire area on its side of the line as shown in the 1992 Map. As discussed above, the line is a nullity and cannot serve as the basis for an argument that service was being provided in the disputed area in the absence of evidence of actual customer contracts. Therefore, LCPW has not established a designated service area with respect to the area in question.

### **CONCLUSION**

For these reasons and those contained in its briefs, the City urges the Court to grant rehearing in this matter and reverse the trial court’s determination that LCPW has created a designated service area with respect to any and all properties located on its side of the line, regardless of whether it has actually provided service to customers in a particular area.

Respectfully submitted,



---

Sarah P. Spruill, SC Bar No. 68337  
Boyd B. Nicholson, Jr., SC Bar No. 65387  
HAYNSWORTH SINKLER BOYD, P.A.  
ONE North Main, 2nd Floor  
Greenville, SC 29601-2772  
Telephone: 864.240.3200

David W. Holmes, SC Bar No. 2577  
HOLMES LAW FIRM  
712 North Main Street  
Greenville, SC 29609  
Telephone: 864.271.2381

Attorneys for Appellant  
City of Fountain Inn, South Carolina

May 30, 2018  
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

---

C.A. No.: 2011-CP-30-309

---

**RECEIVED**

**MAY 30 2018**

**SC Court of Appeals**

Commissioners of Public Works of the City of  
Laurens, South Carolina, also known as the Laurens  
Commission of Public Works, .....Respondent.

v.

City of Fountain Inn, South Carolina, .....Appellant,

---

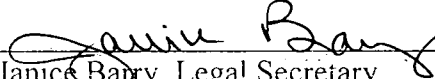
**PROOF OF SERVICE**

---

I certify that I have served the *Appellant's Petition for Rehearing* on Respondent on May 30, 2018, by mailing a copy of the same via United States Mail, postage prepaid, to the following:

Bernie W. Ellis  
McNair Law Firm, P.A.  
P.O. Box 447  
Greenville, SC 29602

Robert L. Widener  
McNair Law Firm, P.A.  
Suite 1800, 1221 Main Street  
P.O. Box 11390  
Columbia, SC 29211

  
Janice Barry, Legal Secretary  
Haynsworth Sinkler Boyd, P.A.

Haynsworth  
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

ONE NORTH MAIN, 2<sup>ND</sup> FLOOR (29601-2772)  
POST OFFICE BOX 2048 (29602-2048)  
GREENVILLE, SOUTH CAROLINA  
TELEPHONE 864.240.3200  
FACSIMILE 864.240.3300  
WEBSITE [www.hsblawfirm.com](http://www.hsblawfirm.com)

SARAH P. SPRUILL  
DIRECT DIAL NUMBER 864.240.3220  
EMAIL [sspruill@hsblawfirm.com](mailto:sspruill@hsblawfirm.com)

May 30, 2018

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**RECEIVED**

MAY 30 2018

SC Court of Appeals

Re: *Commissioners v. City of Fountain Inn*  
Appellate Case No. 2015-001894

Dear Ms. Kitchings:

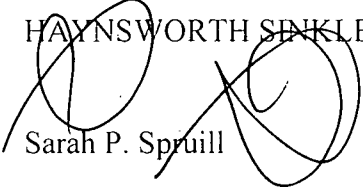
Enclosed for filing, please find an original and seven (7) copies of Appellant's *Petition for Rehearing* in the above-referenced matter, together with our Proof of Service of same. Also enclosed is our firm's \$25 check to cover the cost of the filing fee. Please return clocked copies to me via our courier.

If you have any questions, please give me a call.

Thank you for your assistance in this matter.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.

  
Sarah P. Spruill

SPS/jmb  
Enclosures

cc: Bernie W. Ellis (via U.S. Mail)  
Robert L. Widener (via U.S. Mail)  
David W. Holmes (via e-mail only [davidholmes@holmes-law.com](mailto:davidholmes@holmes-law.com))