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OCT 15 2018

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

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, .....Petitioner.

**REPLY IN FURTHER SUPPORT OF PETITION FOR A WRIT OF CERTIORARI**

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## ARGUMENT IN REPLY

The Laurens Commission of Public Works (“LCPW”) does not address Rule 242, SCACR in its Return, nor does it address the Consent Motion to Certify and Transfer Appeal filed by the parties on April 20, 2016 in which the parties essentially agreed that the requirements of Rule 242, SCACR are met in this case. As stated there, “[g]iven the importance of the question presented and its potential to provide guidance to municipal service providers throughout the state as they seek to expand those services beyond their municipal limits, this appeal warrants prompt consideration and final disposition by this Court.” The Petition filed by the City of Fountain Inn (“Fountain Inn”) is consistent with the spirit of Rule 242, which contemplates that the Petition is used to convince this Court to review certain issues and that subsequent briefing will address the merits of the issues accepted for review by this Court.

LCPW concedes that no one was serving the specific property in question at the time this action was filed. (Return at 4, 7-9). Fountain Inn believes this fact shows that LCPW had not established a designated service area with respect to this property. LCPW disagrees and argues that it was serving a broader general area, which is defined by reference to a purported 1992 boundary map (“1992 Map”) and an agreement that it admits was never formally made. (Return at 3-4). The trial court and the Court of Appeals both gave effect to the 1992 Map and found that LCPW had established a designated service area for purposes of S.C. Code Ann. § 5-7-60 within the disputed area. (See Appendix at 9, 110). This dispute underlies Fountain Inn’s Petition both on the merits and with respect to the applicable standard of review.

**I. The Court of Appeals applied an incorrect standard of review in this case and that error was not harmless.**

The parties agree that matters of statutory construction are questions of law for the Court. The dispute arises over whether the Court of Appeals incorrectly reviewed the factual issues raised

in this appeal from a declaratory judgment action seeking injunctive relief as a case at law rather than one in equity. LCPW contends that any error on this point is harmless. Fountain Inn disagrees for several reasons.

First, this was a published opinion in which the Court of Appeals ruled that any action seeking construction of a statute is an action at law. (Appendix at 5). This represents a departure from the well settled "main purpose rule" applied in declaratory judgment cases. *Hardy v. Aiken*, 369 S.C. 160, 164, 631 S.E.2d 539, 541 (2006); *Corbin v. Carlin*, 366 S.C. 187, 192, 620 S.E.2d 745, 748 (Ct. App. 2005). The cases cited by LCPW are inapplicable because in those cases the question of statutory construction arose together with relief at law. For instance, *Normandy Corp. v. South Carolina Dep't of Transp.*, 386 S.C. 393, 688 S.E.2d 136 (Ct. App. 2009) arose in the context of condemnation, an action at law. *Timmerman v. Timmerman*, 331 S.C. 455, 502 S.E.2d 920 (Ct. App. 1998) holds that an action seeking relief under the Omitted Spouse Statute is an action at law; importantly however, the case cited by *Timmerman* for that proposition, *Williams v. Williams*, 329 S.C. 569, 573, 496 S.E.2d 23, 25-26 (Ct. App. 1998) *rev'd on other grounds*, 335 S.C. 386, 517 S.E.2d 689 (1999), makes the crucial distinction that in a case where equitable relief is sought, as is the case here, the action is in equity. In *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 606-07, 663 S.E.2d 484, 487 (2008), the request for declaratory relief was tied to a contract dispute, which sounds at law. Lastly, *State v. Petty*, 270 S.C. 206, 208, 241 S.E.2d 561, 562 (1978) arose from an action for forfeiture of property, an action at law. See *Ducworth v. Neely*, 319 S.C. 158, 162, 459 S.E.2d 896, 899 (Ct. App. 1995). Thus, these cases cited by LCPW are distinguishable from the instant case.

This is not an action seeking to assert a claim under a statute, but rather an action seeking injunctive relief based on the construction of a statute. As such, the standard of review is equitable,

and the Court of Appeals should not have been bound by the trial court's factual findings. Thus, the opinion of the Court of Appeals is likely to confuse the bench and bar about the applicable standard in cases involving statutory construction.

Secondly, the standard to be applied matters in this case because the reviewing court should have been free to determine whether LCPW had established a designated service area under the statute based upon the preponderance of evidence in the record. Fountain Inn contends the evidence shows that no one was providing service to the area in dispute. LCPW takes a broader view that it was serving the entire area shown on the 1992 Map. To the extent that this is a factual question, either this Court should rule in favor of Fountain Inn on the merits or this case should be remanded to the Court of Appeals to consider the facts of this case under the appropriate standard of review.

**II. LCPW has not established a designated service area in this case.**

LCPW's Return again highlights the logical problem with the rulings of the trial court and the Court of Appeals. In its return, LCPW discusses at length the parties' history with respect to a purported agreement dividing unincorporated areas between themselves and the 1992 Map, but then spends the bulk of its argument disavowing any agreement. LCPW's problem is that it cannot establish that it was serving the area in question without reference to the 1992 Map (because it admits no one was providing service to the specific area), but it knows that the parties did not enter a formal agreement and could not have entered a formal agreement permanently dividing the area. If there was not a boundary agreement, the 1992 Map is a nullity and does not reflect where service was being provided. If the 1992 Map is a nullity, no one was providing service to the area in question and it was fair game for both LCPW and Fountain Inn.

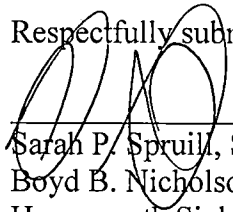
Fountain Inn has asked this court to review the merits of this case in hopes that this Court will address the scenario presented here: what happens when two municipal providers seek to

serve the same, previously unserved customers located in an unincorporated area? Fountain Inn contends that S.C. Code Ann. § 5-7-60 provides that municipalities may generally serve outside their city limits by contract. The lower courts in this case have disagreed with this rule and have instead applied a broad concept of designated service areas, which would in effect allow municipalities to carve out monopolies in unincorporated areas free from political or market pressures. Given the implications of this case for municipalities and their customers located outside municipal limits, this Court should grant review on this question and address this appeal on the merits.

**CONCLUSION**

For these reasons and those presented in its Petition, Fountain Inn asks this Court to review this matter.

Respectfully submitted,



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October 10, 2018  
Greenville, South Carolina

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**PROOF OF SERVICE**

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I certify that I have served the *Petitioner City of Fountain Inn's Reply in Further Support of Petition for a Writ of Certiorari* on the following parties on this the 10th day of October 2018, by mailing a copy of the same via United States Mail, postage prepaid, to the following:

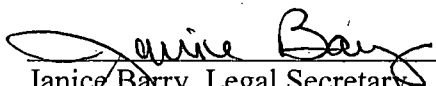
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