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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LAURENS COUNTY
In the Court of Common Pleas
J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 5559 (S.C. Ct. App. filed May 16, 2018)
Supreme Court Case No. 2018-001309
S.C. Ct. App. Case No. 2015-001894
Lower Court Case 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.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iv
STATEMENT OF ISSUES	1
STATEMENT OF CASE	2
SUMMARY OF ARGUMENT	3
STATEMENT OF FACTS	5
ARGUMENT	11
I. This is an action at law and therefore subject to an “any evidence” standard of review on fact questions but, assuming this is an action in equity, Fountain Inn has failed to demonstrate any reversible error by the Court of Appeals	11
A. This is an action at law, and there is no dispute that some evidence supports the trial court’s rulings	11
B. The Court of Appeals correctly concluded that there were no fact disputes in this case and, therefore, the application of § 5-7-60 presented a question of law.....	13
C. Assuming this case is in equity, Fountain Inn has failed its appellate burden of demonstrating reversible error.....	14
II. Fountain Inn’s “county certification” argument is not properly before this Court, is barred by the law of the case doctrine, and has no merit	15
A. Fountain Inn’s “county certification” argument is not properly before this Court	15
B. Fountain Inn’s “county certification” argument is barred by the law of the case doctrine and, in any event, no certification was required in this case, because certification is required only when establishing a designated service area by applying for funds to provide the service in an area.....	16
C. Fountain Inn’s “county certification” argument has no merit	18

III. Fountain Inn’s “not serving” argument has no merit.....24

A. Fountain Inn’s “not serving the disputed area” argument has no merit25

B. Fountain Inn’s “no contract” argument has no merit.....26

C. Fountain Inn misreads the relevant case law27

CONCLUSION.....36

TABLE OF AUTHORITIES

Cases

<i>Adkins v. Comcar Indus., Inc.</i> , 447 S.E.2d 228 (S.C. App. 1994)	21
<i>Arrow Bonding Co. v. Warren</i> , 732 S.E.2d 622 (S.C. 2012)	14
<i>Auto Owners Ins. Co. v. Rollison</i> , 663 S.E.2d 484 (S.C. 2008)	12
<i>Avery v. Avery</i> , 634 S.E.2d 668 (S.C. App. 2006)	12
<i>Blackburn v. Daufuskie Is. Fire. Dist.</i> , 677 S.E.2d 606 (S.C. 2009)	20
<i>Boggero v. South Carolina Dept. of Rev.</i> , 777 S.E.2d 842 (S.C. App. 2015)	13, 18
<i>Brown v. Duke</i> , 270 S.E.2d 130 (S.C. 1980)	22
<i>Bundy v. Shirley</i> , 772 S.E.2d 163 (S.C. 2015)	11
<i>Carolina Power & Light, Co. v. Darlington County</i> , 431 S.E.2d 580 (S.C. 1993)	31-33
<i>City of Darlington v. Kilgo</i> , 393 S.E.2d 376 (S.C. 1990)	29-35
<i>City of Spartanburg v. County of Spartanburg</i> , 401 S.E.2d 158 (S.C. 1991)	32-34
<i>Eldridge v. Eldridge</i> , 728 S.E.2d 24 (S.C. 2010)	17
<i>Estate of Guide v. Spooner</i> , 457 S.E.2d 623 (S.C. App. 1995)	20
<i>First Sav. Bank v. McLean</i> , 444 S.E.2d 513 (S.C. 1994)	14

<i>Hollman v. Bulldog Trucking Co.</i> , 428 S.E.2d 889 (S.C. App. 1993)	22
<i>Mathis v. Hair</i> , 594 S.E.2d 851 (S.C. App. 2002)	34-36
<i>Mazloom v. Mazloom</i> , 709 S.E.2d 661 (S.C. 2011)	16
<i>Normandy Corp. v. South Carolina Dep't of Transp.</i> , 688 S.E.2d 136 (S.C. App. 2009)	12
<i>Russo v. Sutton</i> , 422 S.E.2d 750 (S.C. 1992)	22
<i>South Carolina Dep't of Natural Resources v. Town of McClellanville</i> , 550 S.E.2d 299 (S.C. (2001))	21
<i>South Carolina Farm Bureau Mut. Ins. Co. v. Mumford</i> , 382 S.E.2d 11 (S.C. App. 1989)	22
<i>Spartanburg Sanitary Sewer Dist. v. City of Spartanburg</i> , 321 S.E.2d 258 (S.C. 1984)	27-29, 35
<i>State v. Baucom</i> , 531 S.E.2d 922 (S.C. 2000)	22
<i>State v. Peak</i> , 545 S.E.2d 840 (S.C. App. 2001)	20
<i>State v. Petty</i> , 241 S.E.2d 561 (S.C. 1978)	12
<i>Timmerman v. Timmerman</i> , 502 S.E.2d 920 (S.C. App. 1998)	12
<i>Wallace v. Milliken & Co.</i> , 389 S.E.2d 448 (S.C. App. 1990), <i>aff'd as modified on other grounds</i> , 406 S.E.2d 358 (S.C. 1991).....	12
<i>White Oak Manor, Inc. v. Lexington Ins. Co.</i> , 753 S.E.2d 537 (S.C. 2014)	17, 19, 20
<i>Williams v. Government Employees Ins. Co.</i> , 762 S.E.2d 705 (S.C. 2014)	12, 13

Other Authorities

S.C. Const. art. VIII, § 16	20
S.C. Code Ann. § 4-19-10 (Rev. 1986).....	29
S.C. Code Ann. § 5-7-60 (Rev. 2004).....	<i>passim</i>
S.C. Code Ann. § 23-9-420 (Rev. 2007).....	34
Rule 242(d)2), SCACR.....	15, 16
Rule 242(d)(4), SCACR.....	16
BLACK’S LAW DICTIONARY (5 th Ed.) (1979).....	19, 25
Merriam-Webster.com	19, 26

STATEMENT OF ISSUES

1. This is an action at law and therefore subject to an “any evidence” standard of review on fact questions.
2. The Court of Appeals correctly concluded that there were no fact disputes in this case and, therefore, the application of § 5-7-60 presented a question of law.
3. Assuming this case is in equity and the Court of Appeals could but did not take its own view of the evidence, Fountain Inn has failed its appellate burden of demonstrating reversible error.
4. Fountain Inn’s “county certification” argument is not properly before this Court, is barred by the law of the case doctrine, and has no merit.
5. Fountain Inn’s “not serving” argument, including its argument that the trial court and Court of Appeals impermissibly relied on a non-existent and unenforceable contract, has no merit.

STATEMENT OF THE CASE

The Respondent (LCPW) brought this declaratory judgment action against the Petitioner (Fountain Inn), seeking a determination that LCPW had a “designated service area” for natural gas services outside its corporate limits and that Fountain Inn did not have the power to provide gas services in that area without LCPW’s permission. At issue was the meaning and application of S.C. Code Ann. § 5-7-60 (Rev. 2004), which grants municipalities the power to provide services outside their corporate limits and states in pertinent part:

Any municipality may . . . furnish any of its services . . . in areas outside the corporate limits of such municipality by contract . . . , *except within a designated service area* for all such services *of another municipality*
[D]esignated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof.

(Emphasis added).¹ This statute is the only source of a municipality’s power to provide services outside its corporate limits. If one municipality has a designated service area, another cannot provide service in that area absent permission to do so. § 5-7-60.

¹ § 5-7-60 provides in full:

Any municipality may perform any of its functions, furnish any of its services, except services of police officers, and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, and in the case of electric service, except within a service area assigned by the Public Service Commission pursuant to Article 5 of Chapter 27 of Title 58 or areas in which the South Carolina Public Service Authority may provide electric service pursuant to statute. For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. Provided, however, the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned.

(Shaded areas comprise the quote in the appended text).

The meaning and application of § 5-7-60 in this case presents two basic questions: (1) what are the requirements for a “designated service area,” *i.e.*, what is the meaning of § 5-7-60; and (2) did LCPW meet those requirements? Relying on the undisputed evidence presented at trial, the trial court ruled that LCPW satisfied the requirements of § 5-7-60 and thereby acquired a “designated service area” for natural gas services. Fountain Inn therefore did not have the municipal power to provide gas service in this area without LCPW’s permission. (Appx. 102-111). The Court of Appeals affirmed the trial court, and thereafter denied Fountain Inn’s timely petition for rehearing.

Fountain Inn timely petitioned this Court for a writ of certiorari based on two questions presented. First, did the Court of Appeals apply the correct standard of review? (Cert. Pet. at 2). Second, did the Court of Appeals err in relying on a 1992 Map and agreement to find that LCPW had satisfied § 5-7-60? (*Id.*). This Court granted the petition.

SUMMARY OF ARGUMENT

Applying the plain meaning of § 5-7-60 to the undisputed evidence in this case demonstrates as a matter of law that LCPW established a “designated service area” that includes the area specifically in dispute here (Owings Industrial Park). Thus, under the plain meaning of § 5-7-60, Fountain Inn does not have the municipal power to provide natural gas service in this area without LCPW’s permission.

Fountain Inn makes four basic arguments. First, it argues that the trial court and the Court of Appeals erred by enforcing a boundary agreement between the parties to find that LCPW had a “designated service area” under § 5-7-60. This is a straw man argument. The trial court and the Court of Appeals never found the boundary agreement was enforceable, never enforced it, and never relied on its as being an enforceable contract that

created a “designated service area.” Rather, the trial court and the Court of Appeals relied on the undisputed testimony to find that LCPW had, in fact, provided natural gas services in the disputed area for 20 years, and that Fountain Inn had never attempted to do so before the current dispute. This “fact” of actually providing service in the area established LCPW’s “designated service area” under § 5-7-60.

Second, Fountain Inn argues that LCPW did not and could not establish a “designated service area” under § 5-6-70, because the statute requires a certification from Laurens County Council, not LCPW, on whether LCPW had provided service in the area, was providing service in the area, or had budgeted funds to do so. This argument is not properly before this Court, because it was not made in Fountain Inn’s certiorari petition. Moreover, this argument is barred by the law of the case doctrine. In any event, this argument has no merit.

Third, Fountain Inn argues that a “designated service area” under § 5-7-60 is limited to existing customers with existing contracts or, in the alternative, a “designated service area” is a very small and specific area that depends solely on having a customer in that area. This argument fails under the plain meaning of “area” as used in § 5-7-60 and as explained by this Court in several opinions. Moreover, acceptance of Fountain Inn’s narrow reading of § 5-7-60 would frustrate the General Assembly’s purpose and intent in enacting § 5-7-60, which was to encourage municipalities to make their services available in rural areas.

Fourth, Fountain Inn argues that the Court of Appeals applied the wrong standard of review in affirming the trial court, *i.e.*, this is an action in equity and the Court of Appeals failed to take its own view of the evidence. This argument fails because this is an action

at law subject to an any evidence standard of review on factual disputes. Moreover, there is no dispute on the relevant and controlling facts, and the Court of Appeals therefore properly treated the question as a question of law, *i.e.*, the application of § 5-7-60 to the undisputed facts. Finally, assuming the Court of Appeals should have but did not take its own view of the evidence, the only reasonable conclusion from reviewing the evidence is to affirm the trial court. Therefore, Fountain Inn has failed to satisfy its appellate burden of demonstrating reversible error.

STATEMENT OF FACTS

A. The Evidence Presented

Six witnesses testified at trial as to the relevant facts and circumstances that date back to 1985. Five of these witnesses testified for LCPW, including Fountain Inn's former gas service manager, and each of these witnesses had direct and personal knowledge of the relevant facts:

1. Coleman Smoak worked for LCPW from 1977 to 2006, was its general manager from 1985 to 2006, represented LCPW in the 1992 meeting, and had personal knowledge of how the parties conducted themselves from 1985 to 2006, and even before that time. (Appx. 348-357; 363).
2. Carey Elliot was Fountain Inn's gas manager at all relevant times, represented it in the 1992 meeting, and had personal knowledge of how the parties conducted themselves from 1992 to 2005. (Appx. 364-368).
3. Irvin Satterfield worked for LCPW from 1982 to 2014, was its general manager from 2006 to 2014, and had personal knowledge of how the parties conducted themselves from 1992 to 2014. (Appx. 369-384; 396-397).
4. Eric Heath is an engineer with the firm that handled both parties' gas system expansions. He worked on many of those projects, attended the 1992 meeting, and had personal knowledge of how the parties conducted themselves from 1992 to the present. (Appx. 398-408; 410-415).

5. John Young began working for LCPW in 2000, is the current general manager, and had personal knowledge of LCPW's gas service activity in the disputed area. (Appx. 415-417).

The trial court specifically and repeatedly relied on the testimony of these witnesses, thereby accepting their veracity. (*E.g.*, Appx. 103-104, 106, 108).

Fountain Inn presented the testimony of only one witness, Thomas Pitman, who was hired in December 2006 to be Fountain Inn's gas manager. (Appx. 420-421). He moved to South Carolina to take this job (Appx. 440), so he had little to offer about what happened before his arrival, but he admitted the following on cross-examination:

1. He believed that Fountain Inn could provide natural gas service anywhere in the disputed area, even if LCPW was already serving customers in the area, because there was no contract or formal agreement giving LCPW a service territory and he therefore undertook to do so. As to § 5-7-60, he blithely stated that he was not an attorney. (Appx. 432-433).
2. Fountain Inn did not run any gas lines into LCPW's service area prior to this case in 2011. (Appx. 431).
3. He had no knowledge of any attempt by Fountain Inn to run any gas lines into LCPW's service area until he did so in 2011. (Appx. 440).

In short, other than being the author of the present case and controversy, Pitman had little to offer on the relevant facts. As a result, he could not and did not dispute the testimony of LCPW's witnesses on the relevant and controlling facts.

B. The Undisputed Evidence

Prior to 1985, LCPW received its natural gas from an 8-inch supply line that connected to the Transco national pipeline near Fountain Inn. (Appx. 349, 356, 411-412). With the enactment of § 5-7-60 and the deregulation of natural gas in the 1980's that made it a cheaper form of energy, substantial pent up demand was released and there was a

general need to expand municipal gas systems to reach these new rural customers. (Appx. 411). Both parties expanded their systems in their respective areas throughout the late 1980's and 1990's. (Appx. 404; 411).

By 1985, both parties had expanded their natural gas systems into the surrounding unincorporated area of Laurens County and already had a general understanding on the locations of their respective service areas. (Appx. 349). In 1985, LCPW planned to expand its gas supply line system by adding a 10-inch line to the Transco national pipeline and connecting it to the existing 8-inch line with a 6-inch line. (Appx. 349-350; 356; 361; 381-382; 412-413). The purpose of this expansion project was three-fold: (1) to better maintain the gas supply to Laurens; (2) to expand LCPW's natural gas capacity to serve the growing demand for natural gas service outside its corporate limits; and (3) to provide redundancy of supply for both of these needs. (Appx. 108; 356; 361; 380-382; 396-397; 408; 410-415).

Also in 1985, due to the cost of the planned supply line expansion, the parties' gas system managers, the mayor of Fountain Inn, and the engineers for LCPW's expansion project met to discuss the future of gas services in the area around the cities and avoiding duplication of services. (Appx. 317-320; 349-350; 356; 449). The parties reached a general understanding on their respective areas, but no written agreement was reached, nor was any map drawn. (Appx. 317-320).

In October 1992, the parties' gas managers again met to discuss the future of natural gas services in the area surrounding the two cities. The pipeline engineer for both parties also attended the meeting. By this time, both parties were expanding their natural gas systems well beyond their corporate limits. Both parties were concerned that there needed to be a clearer dividing line between their systems so as to avoid duplication of services

and encroachment into each other's service area. (Appx. 103; 349-352; 365-367; 402-407; 444-447). At this meeting, the parties drew a boundary line on a map ("the 1992 Map"), with each party to provide natural gas services on its respective side of the line. (*Id.*) *It is undisputed* that the area in question here is on the LCPW side of this boundary line.

When the parties discussed the boundary agreement, it was anticipated that the respective governing bodies would formally adopt the agreement, but this never happened. (Appx. 97; 357-358; 368-369). It is nevertheless *undisputed* that the parties provided natural gas service in accordance with the boundary line for the next twenty years. (Appx. 103, 106, 108; 353-355; 367-368; 406-408). From time to time, questions arose as to which city should serve a particular natural gas customer along the boundary line. All of these "boundary disputes" were resolved by agreement, resulting in one of the cities contracting with the particular customer.

As to the remainder of the service areas demarked by the boundary line, LCPW provided natural gas services throughout the service area on its side of the boundary line, including the general area in which the Owings Industrial Park is now located. (Appx. 355; 371-372; 376-377; 382; 416-417). Fountain Inn never solicited or served any customers in this service area, including the general area in which the Owings Industrial Park is now located. (Appx. 355, 357; 367-370; 378, 379, 381; 430-431). The development of the Owings Industrial Park, and the resulting lure of cherry-picking industrial gas customers, was the impetus to the current dispute.

In 2011, the Laurens County Development Corporation announced plans to develop an industrial park, which came to be known as the Owings Industrial Park (the Industrial Park). The entire Industrial Park was well within in LCPW's service area. (Appx. 355;

371-372; 376-377; 382; 416-417). The area within the confines of the planned park was not being served by anyone, because there was no one to serve. LCPW, however, already had supply line infrastructure in the area as a result of its 1985 infrastructure expansion project, and it already had customers in the area near the Industrial Park. (Appx. 371-372; see also Appx. 355; 376-377; 416-417).

ZF was the first company to build a facility in the Industrial Park. After 20 years of each party serving its service area exclusively, Fountain Inn solicited ZF to provide gas services to it. Fountain Inn's new gas manager (Pittman) simply believed that he could serve customers anywhere, including anywhere in LCPW's service area. (Appx. 432-433).

LCPW objected to Fountain Inn's solicitation – the parties met but failed to resolve the matter. (Appx. 375-376). LCPW thereafter commenced the present action and sought a preliminary injunction to prohibit Fountain Inn from soliciting customers during the pendency of the lawsuit. (Appx. 96). While the injunction motion was pending, LCPW secured a contract with ZF. (*Id.* at 100). Laying the service line to ZF only took a few days, because LCPW simply tapped into its existing supply line in the area. (Appx. 435). This supply line was part of LCPW's 1985 supply line expansion project, which it had undertaken for the specific purpose of reaching and serving customers in this area.

The circuit court ultimately denied LCPW's motion for a preliminary injunction. (Appx. 96-100). Thereafter, Fountain Inn entered a natural gas service contract with Uniscite, the second customer to build a facility in the Industrial Park. To serve this customer, Fountain Inn had to first build a supply line into the area, so that it could then run a service line from the supply line to Uniscite. (Appx. 356-357; 380-381; 432-433; 434-435; 435-436). Fountain Inn had to build a supply line because its supply line system,

unlike LCPW's system, was not designed to serve this area, and this was Fountain Inn's first intrusion into LCPW's service area.

Based on the undisputed testimony presented at trial, the trial court ruled in favor of LCPW under the following findings:

1. In 1992, the parties' service managers drew a boundary line for their respective natural gas service areas outside their city limits. (Appx. 103).
2. The parties' governing bodies never ratified any agreement, so there was no agreement to enforce, but the parties voluntarily operated their systems in accordance with the boundary line for the next 20 years. (*Id.* at 103).
3. When a dispute arose about a customer along the boundary line, the parties resolved the issue by agreement. (*Id.* at 103, 108-109).
4. For the next 20 years, until the controversy in this case arose in 2011, LCPW provided gas services throughout the area on its side of the boundary line; Fountain Inn never sought to provide services in this area; and providing service is enough to establish a designated service area in the area being served. (*Id.* at 103-104; 106; 108-109).
5. LCPW issued a resolution certifying that it provides natural gas service to the area defined by the boundary line, has budgeted to do so, and has expended funds to do so in accordance with § 5-7-60. (*Id.* at 106).
6. The current dispute arose in 2011 when Fountain Inn, for the first time, solicited a customer in the newly developed Industrial Park, which is in LCPW's service area. (*Id.* at 104; 108-109).

The trial court held that LCPW had a designated service area under § 5-7-60:

Therefore, the territory served by LCPW is a territory "in which the particular service [natural gas] is being provided or is budgeted or funds have been applied for as certified by the governing body thereof." S.C. Code Ann. § 5-7-60. Further, in accordance with the statute, the City of Fountain Inn may not furnish natural gas in the LCPW's designated service area without the consent of the LCPW

(Appx. at 106; see also *id.* at 102; 110).

ARGUMENT

- I. **This is an action at law and therefore subject to an “any evidence” standard of review on fact questions but, assuming this is an action in equity, Fountain Inn has failed to demonstrate any reversible error by the Court of Appeals.**

Fountain Inn argues that that this case was in equity and, therefore, “[t]o the extent this case raised factual issues, the Court of Appeals . . . should have considered the facts of this case according to its own view of the evidence . . .” (Pet. Br. at 9). The arguments fails for three reasons. First, this case was an action at law under the general rule that actions to enforce a statutory right are actions at law, and Fountain Inn never argues that there was no evidence to support the trial court’s ruling. Second, Fountain Inn ignores the Court of Appeals’ actual ruling – the Court agreed with the trial court that there were no disputed issues of fact and, therefore, correctly concluded the question was a question of law that involved determining the meaning of § 5-7-60 and applying it to the undisputed facts. Third, and assuming this case is in equity, Fountain Inn never identifies any conflicting evidence that created a question of fact for the Court of Appeals to determine on appeal, and Fountain Inn never explains how the Court would have or could have reversed the trial court had it resolved any unidentified factual dispute in favor of Fountain Inn. Thus, Fountain Inn has failed to demonstrate any prejudicial or reversible error, even if one assumes that the Court of Appeals applied the wrong standard of review.

- A. **This is an action at law, and there is no dispute that some evidence supports the trial court’s rulings.**

This is a declaratory judgment action, and the standard of review therefore depends on the nature of the underlying issue. *Bundy v. Shirley*, 772 S.E.2d 163, 168 (S.C. 2015). Thus arises the question of whether an action to determine rights under a statute is at law

or in equity. If “at law,” appellate review of factual issues is limited to whether any evidence supports the trial court’s factual findings. *Williams v. Government Employees Ins. Co.*, 762 S.E.2d 705, 709 (S.C. 2014). If “in equity,” an appellate court may take its own view of the evidence but generally defers to the trial court’s credibility determinations based on the trial court’s superior position to make such determinations. *Avery v. Avery*, 634 S.E.2d 668, 671 (S.C. App. 2006).

The general rule is that an action to determine and enforce rights created and granted by statute is an action at law, and underlying factual disputes are reviewed under the “any evidence” standard of review. *Normandy Corp. v. South Carolina Dep’t of Transp.*, 688 S.E.2d 136, 141 (S.C. App. 2009); *Timmerman v. Timmerman*, 502 S.E.2d 920, 921 (S.C. App. 1998); *accord Auto Owners Ins. Co. v. Rollison*, 663 S.E.2d 484, 487 (S.C. 2008) *and State v. Petty*, 241 S.E.2d 561, 562 (S.C. 1978). An equity review of factual issues is undertaken when required by the statute or when the statute includes a remedial scheme that is predominately equitable in nature. *Wallace v. Milliken & Co.*, 389 S.E.2d 448, 449 (S.C. App. 1990), *aff’d as modified on other grounds*, 406 S.E.2d 358, 360-361 (S.C. 1991). Section 5-7-60 does not require an “equity review” of factual issues, and it is not part of a remedial scheme that is predominantly equitable in nature. Thus, the instant action is at law and subject to the “any evidence” standard of review. Fountain Inn never argues that there is no evidence to support the trial court’s rulings.

Fountain Inn argues that “[t]his is not an action seeking to assert a claim under at statute, but rather an action seeking injunctive relief based on the construction of a statute.” (Pet. Br. 8). LCPW clearly “assert[ed] a claim under” 5-7-60. This entire action is based on LCPW’s claim that it has a “designated service area” under 5-7-60. Thus, this case fits

within the general rule that actions to enforce a statutory right are at law. To avoid this, Fountain Inn argues that the “main purpose” of the action was to obtain an injunction and, therefore, injunctive relief was not incidental to LCPW’s statutory claim. (Pet. Br. 7-8).

Here, injunctive relief is ancillary and therefore does not satisfy the “main purpose rule” even if it applied. Section 5-7-60 is the only source of Fountain Inn’s municipal power to provide gas service outside its corporate limits. If LCPW has a “designated service area” under § 5-7-60, then Fountain Inn does not have the power to provide gas service in the area absent LCPW’s permission, and its attempt to do so is *ultra vires*. In other words, the grant or denial injunctive relief is a foregone conclusion *after* determining whether LCPW has a “designated service area” under § 5-7-60. Thus, the action is at law and reviewed under the “any evidence” standard. Fountain Inn never disputes the sufficiency of the evidence under this standard of review.

B. The Court of Appeals correctly concluded that there were no fact disputes in this case and, therefore, the application of § 5-7-60 presented a question of law.

The controlling question in this case is the meaning and application of § 5-7-60, which is a mixed question of law and fact. *Boggero v. South Carolina Dept. of Rev.*, 777 S.E.2d 842, 844, 845 (S.C. App. 2015). The meaning of a statute is a question of law and subject to *de novo* review. *Id.* Whether the requirements of the statute have been met is a question of fact. *Id.* When there is no disputed factual issue, the application of the law to the facts is also a question of law for the court. *Williams v. Government Employees Ins. Co.*, 762 S.E.2d 705, 709 (S.C. 2014).

Here, the Court of Appeals agreed with the trial court that the relevant facts were presented by undisputed testimony. (Appx. 99, 104-105). The Court then properly

interpreted the meaning of § 5-7-60 and applied it to these undisputed facts, all of this being a question of law for the Court.

C. Assuming this case is in equity, Fountain Inn has failed its appellate burden of demonstrating reversible error.

Assuming this case is in equity, Fountain Inn bears the appellate burden of demonstrating reversible error. *Arrow Bonding Co. v. Warren*, 732 S.E.2d 622, 624 (S.C. 2012). To demonstrate reversible error, Fountain Inn must show that an error occurred and resulted in prejudice. *First Sav. Bank v. McLean*, 444 S.E.2d 513, 514-515 (S.C. 1994).

Here, Fountain Inn argues the “error” was the Court of Appeals’ failure to take its own view of the evidence. Assuming this is true, Fountain Inn has failed to demonstrate any resulting prejudice. Fountain Inn never identifies a factual dispute that, if resolved in Fountain Inn’s favor, would have or could have caused the Court of Appeals to reverse the trial court. Thus, Fountain Inn has failed to demonstrate any reversible error from any assumed failure to apply the correct standard of review. (See Pet. Br., Arg. I at 6-9, *passim*).

Moreover, the undisputed testimony on the relevant and controlling facts fully supports the trial court’s order and the Court of Appeals’ affirmance of that order. Also, there is no basis to disturb the trial court’s credibility determinations in favor of LCPW’s witnesses. In short, the only reasonable conclusion to be drawn from the evidence, even under a *de novo* review, is that both courts ruled correctly. Thus, Fountain Inn does not and cannot satisfy its appellate burden of demonstrating reversible error.

II. Fountain Inn’s “county certification” argument is not properly before this Court, is barred by the law of the case doctrine, and has no merit.

Fountain Inn’s “county certification” argument is a statutory interpretation argument that involves the meaning of the following language in § 5-7-60:

[D]esignated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the *governing body* thereof. Provided, however, the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the *governing body* of the other municipality or political subdivision concerned.

(Emphasis added). Fountain Inn argues that “LCPW has not created a designated service area with respect to the *disputed area* . . . because there was no certification from the governing body of *that area* [*i.e.*, Laurens County] as to the provision of service, budgeting of funds, or application for funds.” (Pet. Br. at 12, see generally *id.* at 12-17) (emphasis added). This “county certification” argument is not properly before this Court, is barred by the law of the case doctrine, and has no merit.

A. Fountain Inn’s “county certification” argument is not properly before this Court.

The “county certification” issue is not and was not a “subsidiary question fairly comprised within” either “Question Presented” in Fountain Inn’s Certiorari Petition. See Rule 242(d)(2), SCACR.² More importantly, Fountain Inn did not make any “county

² Fountain Inn’s first “Question” involved the standard of review. The only other Question stated in full:

Did the Court of Appeals err in *finding* that [LCPW] had established a designated service area pursuant to S.C. Code Ann. § 5-7-60 and could exclude Fountain Inn from entering contracts in an unincorporated area of Laurens County that had previously been undeveloped land *based on* a 1992 Map drawn by the parties in furtherance of an agreement that was not and could not be approved by the respective City Councils?

(Cert. Pet. at 2) (emphasis added). This question challenges the use of the 1992 Map and unapproved agreement as the basis for finding a designated service area. This argument has no merit. Nothing even hints at a “county certification” issue, and no such issue was argued in the Certiorari Petition. (Cert. Pet., *passim*). Thus, Fountain Inn’s “county certification” argument is not properly before this Court.

certification” arguments in its Certiorari Petition. (Cert. Pet., *passim*). See Rule 242(d)(4), SCACR (petition shall contain “argument on each question”). Thus, Fountain Inn’s “county certification” argument is not properly before this Court. See *Mazloom v. Mazloom*, 709 S.E.2d 661, 661 (S.C. 2011) (issue raised in petitioner’s brief not properly before Court pursuant to Rule 242(d)(2), SCACR, because not raised in the rehearing petition before the Court of Appeals). In any event, Fountain Inn’s argument is barred by the law of the case doctrine and has no merit.

B. Fountain Inn’s “county certification” argument is barred by the law of the case doctrine and, in any event, no certification was required in this case, because certification is required only when establishing a designated service area by applying for funds to provide the service in an area.

The trial court rejected Fountain Inn’s “county certification” argument on two grounds. First, the undisputed evidence demonstrated that LCPW had been serving the area exclusively for more than 20 years and providing the service, *standing alone*, creates a designated service area under § 5-7-60 without any certification by anyone.³ Second,

³ The trial court ruled that “[u]nder the statute, *Spartanburg Sanitary Sewer District and Kilgo*, providing the particular service in question is enough to establish a designated service area.” (Appx. 110) (emphasis added) (cited discussed in Arg. III(C), *infra*). The trial court made the same and similar rulings throughout its order:

[T]his Court concludes that *under the language of Section 5-7-60*, the area that LCPW has served . . . is LCPW’s *designated service area* for furnishing natural gas, and that the City of Fountain Inn may not provide natural gas service in that area without the permission of LCPW.” [Appx. 96 (emphasis added)].

Based upon the language of Section 5-7-60, the Court agrees that the area served by LCPW . . . is the LCPW’s ‘*designated service area*’ for natural gas service. [Appx. 100 (emphasis added)].

In [*Sanitary Sewer*], the fact that the Sewer District had the facilities in place to provide service to that area *qualified it as* the Sewer District’s ‘designated service area.’” [Appx. 101 (emphasis added)].

What is important about *Kilgo* to this case is that *under the language of Section 5-7-60 . . .*, the cities had the right to control provision of a service outside the cities’ corporate limits where the cities were already providing that service by contract, and *the only requirement for designating that area was that the municipality was serving it*. [Appx. 108 (all emphasis added)].

(See also Appx. 108-109, noting throughout that providing service established a designated service area).

LCPW properly certified that it had budgeted to provide service to the area and had applied (used) funds from its gas service operations to provide service in the area. (Appx. 15).

The Court of Appeals affirmed the trial court. First, the Court ruled that the certification requirement “only applies to the portion of the sentence stating ‘funds have been applied for’ and not the prior part of the sentence stating ‘an area in which the particular service is being provided.’” (Appx. 104). Thus, the certification requirement is required only when a municipality seeks to establish a designated service area based on having applied for funds to provide the service. Fountain never specifically challenges this ruling in its brief (Pet. Br. *passim*) and, therefore, this ruling is the law of this case and, right or wrong, requires affirmance. *Eldgridge v. Eldridge*, 728 S.E.2d 24, 28 (S.C. 2010).

Moreover, this ruling is correct. Section 5-7-60 provides: “[D]esignated service area shall mean an area in which the particular service is being provided **or** is budgeted **or** funds have been applied for as certified by the governing body thereof.” (Emphasis added). The cardinal rule of statutory interpretation is to give effect to the legislature’s intent, and the best evidence of that intent is the plain meaning of the words used in the statute. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 753 S.E.2d 537, 540 (S.C. 2014). Under the plain meaning of “or,” and under ordinary rules of grammar and punctuation, the use of “or” without any commas or other punctuation limits the “as certified . . .” qualifier to “funds have been applied for.” Fountain Inn’s certification argument is therefore irrelevant, because LCPW has never sought to establish a designated service area on this basis – rather, it has always relied on having actually provided service in the area, having actually budgeted to do so, having actually applied (used) its gas operations revenue to provide

service in the area, and its certification of these facts, not any certification that it has applied for funds to serve the area. (See LCPW Certification at Appx. 467-468).

Second, the Court of Appeals held that providing the service, standing alone, is sufficient to establish a designated service area: “Because LCPW has been providing natural gas in the area, it has established a designated service area.” (Appx. 104). Again, Fountain Inn never specifically challenges this ruling (Pet. Br. *passim*) and, therefore, it is the controlling law of this case.

Moreover, this ruling is correct. Again, under the ordinary meaning of “or” and ordinary rules of grammar and punctuation, the use of “or” in § 5-7-60 without any commas or other punctuation limits the “as certified . . .” qualifier to “funds have been applied for.” Thus, Fountain Inn’s certification argument is irrelevant.

C. Fountain Inn’s “county certification” argument has no merit.

Fountain Inn’s “county certification” argument is a statutory interpretation argument that presents a question of law of this Court. *Boggero v. South Carolina Dept. of Rev.*, 777 S.E.2d 842, 844-845 (S.C. App. 2015). At issue is the meaning of the following language in § 5-7-60:

[D]esignated service area shall mean an area in which the particular service is being provided **or** is budgeted **or** funds have been applied for as certified by the *governing body* thereof. Provided, however, the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned.

(All emphasis added). As shown above, no certification was required in this case, because LCPW does not rely on the “funds have been applied for” alternative to establish a designated service area. Assuming some certification was required, Fountain Inn’s “county certification” argument has no merit for numerous reasons.

First, in the sentence immediately following the certification language, §5-7-60 specifically grants the governing body of the municipality with the designated service area the power to grant permission to other municipalities to provide service in the designated service area. It would be absurd to hold that only the county can create the designated service area, but the municipality can allow other municipalities to provide service in the area designated by the county without any input from or the permission of the certifying county. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 753 S.E.2d 537, 540 (S.C. 2014) (courts avoid interpretations that lead to absurd results).

Second, the cardinal rule of statutory interpretation is to give effect to the legislature's intent, and the best evidence of that intent is the plain meaning of the words used in the statute. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 753 S.E.2d 537, 540 (S.C. 2014). Here, the plain and ordinary meaning of "certify" is to "*authenticate or vouch for a thing in writing, [and to] attest as being true or as represented.*" BLACK'S LAW DICTIONARY (5th Ed.) at 207 (1979) (emphasis added).⁴ Manifestly, one governing body cannot authenticate, vouch for, or attest to the truth of another governing body's actions, budget, expenditures, or funding applications. Fountain Inn never explains how Laurens County Council could ever do so, and the reason is simple – Laurens County Council does not have the power or knowledge to certify anything done by LCPW and, therefore, it is impossible for Laurens County Council to issue any certification under § 5-7-60.⁵

⁴ See also merriam-webster.com, giving the full definition of "certify" as "to attest *authoritatively*" and "to attest as *being true*." (Emphasis added).

⁵ All of this also dovetails with the plain meaning of "designate," which is to "indicate, select . . . or set apart for a purpose" and to "make known." BLACK'S LAW DICTIONARY (5th Ed.) at 402 (1979) (emphasis added). By undertaking the actions specified in § 5-7-60 and thereafter certifying that it had done so, LCPW made known that it had selected and set apart an area for the purpose of providing natural gas service in the area. See also merriam-webster.com, giving the full definition of "designate" as "to indicate and set apart for a specific purpose" and "to point out the location of."

It is absurd to suggest that the General Assembly intended the establishment of a designated service area to rest upon the doing of an impossible act, because it would result in there never being a designated service area under § 5-7-60. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 753 S.E.2d 537, 540 (S.C. 2014) (courts avoid interpretations that lead to absurd results in light of the statute’s purpose or would defeat the legislature’s intent). Thus, the only reasonable reading of § 5-7-60 is that the certification must come from the governing body whose conduct is being certified.

Third, were it true that Laurens County Council has the power and knowledge to *certify* LCPW’s conduct and budget, requiring a county certification would nevertheless lead to an absurd result. LCPW does not have the power to compel Laurens County Council to certify anything, much less the actions and budget of LCPW itself. Nothing in § 5-7-60 requires Laurens County Council to issue the certification if requested by LCPW, even if LCPW indisputably establishes the facts to be certified. Thus, under Fountain Inn’s argument, Laurens County Council would have unbridled control over the creation of a designated service area in the county. Nothing in § 5-7-60, which is a municipal power statute, even hints at granting such power to counties, and if the General Assembly intended for a county council to be the sole arbiter of designated service areas within the county, “surely it would have said so,” particularly in a municipal power statute. *Blackburn v. Daufuskie Is. Fire. Dist.*, 677 S.E.2d 606, 609 n.5 (S.C. 2009); *accord Estate of Guide v. Spooner*, 457 S.E.2d 623, 624 (S.C. App. 1995).⁶

⁶ Also, the state constitution expressly prohibits counties from providing any gas services in the county. S.C. Const. art. VIII, § 16. Making a county the sole arbiter over a service that it cannot itself provide makes no sense, and it leads to the absurd and unconstitutional result of the county doing indirectly what the constitution prohibits it from doing directly. See *State v. Peak*, 545 S.E.2d 840, 844 (S.C. App. 2001) (axiomatic that courts avoid interpretations of statutes that would lead to unconstitutional results).

Fourth, reading a “county certification” requirement into § 5-7-60 would frustrate and interfere with the General Assembly’s purpose in providing for a “designated service area,” which is to encourage municipalities to provide services outside their corporate limits. No municipality would spend its time, money, and resources to establish a “designated service area” under Fountain Inn’s “county certification” theory unless it was confident that the county council would thereafter issue the requisite certification. The only way to achieve this would be a long-term, “designated service area” agreement with the county before providing the service or spending money to provide the service. But this is precisely the type of agreement that Fountain Inn argues cannot be made by a governing body, because it would extend beyond the tenure of the governing body’s members. Moreover, § 5-7-60 plainly requires an after-the-fact certification. The only logical source for this certification is the governing body whose conduct is being certified.

Fifth, Fountain Inn attempts to bolster its reading of § 5-7-60 with public policy arguments like political accountability, price competition, preventing monopolies, etc. This argument fails for three reasons. First, as shown earlier, the plain and ordinary meaning of the language used in § 5-7-60 demonstrates a legislative intent that is contrary to Fountain Inn’s arguments. Thus, there is no need to resort to public policy and the like. Second, as also shown earlier, accepting Fountain Inn’s argument yields absurd and unconstitutional results that courts avoid. Third, assuming resort is to be had to public policy and the like, then Fountain Inn’s argument does not withstand scrutiny on the merits.

The wisdom of a statute is not subject to judicial review – such matters are within the sole province of the General Assembly. *South Carolina Dep’t of Natural Resources v. Town of McClellanville*, 550 S.E.2d 299, 304 (S.C. (2001)); *Adkins v. Comcar Indus., Inc.*,

447 S.E.2d 228, 230 (S.C. App. 1994). The public policy decisions underlying a statute are likewise not subject to judicial review. *Hollman v. Bulldog Trucking Co.*, 428 S.E.2d 889, 893 (S.C. App. 1993); *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 382 S.E.2d 11, 14 (S.C. App. 1989).

Public policy resides in the province of the General Assembly *Brown v. Duke*, 270 S.E.2d 130, 132 (S.C. 1980). Courts may pronounce public policy if the General Assembly has not addressed the matter. *State v. Baucom*, 531 S.E.2d 922, 925 (S.C. 2000); *Russo v. Sutton*, 422 S.E.2d 750, 753 (S.C. 1992). Once the General Assembly does so, however, the courts must not only abide by that public policy, but must also promote it. *Mumford*, 382 S.E.2d at 14.

The clear purpose of § 5-7-60 is two-fold: (1) grant municipalities the power to provide their services to areas outside their corporate limits; and (2) encourage them to do so by granting them a “designated service area” that is free from competition by any other municipality. The wisdom of this legislative decision on how to best implement the goals of § 5-7-60 is not subject to judicial review, even though it limits competition.

The public policy underlying § 6-7-60 is equally clear. Much of rural South Carolina did not and does not have access to services enjoyed by municipal residents. The General Assembly enacted § 5-7-60 to encourage municipalities to make those services available to rural citizens. The incentive for municipalities to do so, and to undertake the expense of doing so (*e.g.*, building infrastructure), is the ability to acquire a designated service area that is free from competition by another municipality. Again, the wisdom of this incentive is not subject to judicial review.

Imposing a “county certification” requirement would discourage rather than encourage municipalities to undertake the expense of providing service to rural customers. The General Assembly clearly intended to encourage municipalities to do so, and any judicial interpretation of § 5-7-60 must follow and promote that legislative intent. The trial court and Court of Appeals did so by rejecting Fountain Inn’s “county certification” argument, and this Court should affirm.

Finally, Fountain Inn supports its “county certification” argument with the following analysis of § 5-7-60: (1) the main purpose and general rule of the statute is to give municipalities the power and freedom to provide services outside its limits by contract; (2) the “designated service area” is an exception to this purpose; (3) as an exception to the main purpose of the statute, the “designated service area” provision should be construed narrowly; and (4) reading a “county certification” requirement into the statute protects its main purpose and limits the exception to its proper role of protecting existing contracts and prevents the use of the exception “as an offensive tool for the creation of extra-territorial monopolies.” (Pet. Br. at 16; see generally *id.* at 14-16). The “designated service area” provision is not an exception – it is the incentive and reward chosen by the legislature to motivate municipalities to undertake the expense of expanding their infrastructure and service systems so that services can be made available in rural areas. An incentive is not and cannot be an exception – to the contrary, the incentive is an integral part of the statute, and it is designed to promote the fundamental purpose of the statute, which is to encourage municipalities to make their services available in rural areas.

III. Fountain Inn's "not serving" argument has no merit.

Fountain Inn makes two basic arguments under the assumption that no certification is required. (See generally Pet. Br. at 17-23). First, it argues that LCPW does not have a designated service area that includes the Industrial Park, because LCPW was *not serving* a customer in the area that ultimately became the Industrial Park at the time that the development of the Industrial Park was first announced. (*Id.* at 12, 17, 18). The plain meaning of § 5-7-60, and the undisputed evidence presented at trial, demonstrates as a matter of law that LCPW has a designated service area that includes the Industrial Park. (See Arg. III(A), *infra*).

Second, LCPW argues that to get around the undisputed fact that LCPW was *not serving* a customer in the area when the development of the Industrial Park was first announced, the trial court and the Court of Appeals relied on the 1992 Map and thereby enforced a non-existent and unenforceable agreement between Fountain Inn and LCPW. (Pet. Br. at 18-19). This argument fails for two reasons. First, it is based on the false premise of getting around the facts – to the contrary, the trial court and the Court of Appeals properly applied the plain meaning of § 5-7-60 to the relevant and undisputed facts of this case. (See Arg. III(A), *infra*).

Second, for reasons that are unclear, Fountain Inn refuses to take “yes” for an answer on the enforceable contract issue. LCPW abandoned all contract claims at trial. (Appx. 419-420). The trial court expressly noted this in the appealed order. (Appx. 104, n.3). Moreover, the trial court never based any finding or ruling on any contract theory. (Appx. 102-111 *passim*). Rather, the trial court relied on the undisputed evidence that LCPW had, in fact, been the only municipal gas service provider in the relevant area for

more than twenty (20) years, and this area included the Industrial Park. In like manner, the Court of Appeals relied on the same evidence to reach the same conclusion, and it specifically noted that it was not relying on any contract theory. (Appx. 9, n.9). In short, the trial court and the Court of Appeals did not commit the error argued by Fountain Inn, because neither court based its ruling on any contract theory. (See Arg. III(B), *infra*).

A. Fountain Inn’s “not serving the disputed area” argument has no merit.

Fountain Inn argues that “LCPW has not created a designated service area with respect to the disputed area because it was *not serving* customers there”; and “there is no evidence that LCPW was actually *providing service* to customers in the disputed area.” (Pet. Br. at 12; 17) (all emphasis added). Throughout its brief, Fountain Inn describes the relevant “area” under § 5-7-60 in various ways: (1) “the area of the proposed industrial park” and similar terms⁷; (2) the “area in question”⁸; and (3) the “disputed area.”⁹ With this argument, Fountain Inn erroneously interprets “area” as used in § 5-7-60 to be a very small area in which the municipality has at least one existing customer. This argument fails under the plain meaning of “area,” and it also fails because it is undisputed that LCPW was the first municipality to provide service in the “disputed area,” thereby satisfying the erroneous standard argued by Fountain Inn.

The meaning of “area” as used in § 5-7-60 is a question of statutory interpretation. The cardinal inquiry is legislative intent, and the principal means for determining intent is the plain and ordinary meaning of the words used in the statute. The plain and ordinary meaning of “area” is a “territory” or “region” or “geographic region.” BLACK’S LAW

⁷ See Pet. Br. at 4, 6, 16, and 23, describing the “area” as “the area of the proposed industrial park”; “the disputed industrial park”; “where the new industrial park is located”; and the “proposed industrial park.”

⁸ *Id.* at 6, 9, 12, 18 (twice), 21, and 23.

⁹ *Id.* at 12, 17 (four times), and 18 (twice).

DICTIONARY (5th Ed.) at 97 (1979); merriam-webster.com definition of “area.” Thus, “area” as used in § 5-7-60 plainly is not the very small area advocated by Fountain Inn. Indeed, this Court has already rejected Fountain Inn’s real argument, that “area” is limited to existing customers with existing contracts. See *Kilgo, infra*. Moreover, accepting Fountain Inn’s view of “area” would frustrate the legislative purpose of § 5-7-6, which is to encourage municipalities to make their services available in rural areas. The legislatively designed incentive of a designated service area free from municipal competition would be meaningless if the area is the very small one argued by Fountain Inn.

Fountain Inn uses its “small area” reading of § 5-7-60 to make the following argument: the relevant area (the disputed area) is the site of the Industrial Park, and it is undisputed that no one had a gas customer in this area when the plans for developing the Industrial Park was first announced. This argument fails for two reasons. First, the undisputed evidence demonstrates that LCPW had infrastructure and existing customers in the area that included the future Park, and this was sufficient as a matter of law to create a designated service area that included the Park. Second, even if one accepts Fountain Inn’s narrow view of “area” as limited to the confines of the Park, it is undisputed that LCPW had the first contract and first customer in the Park and, therefore, under Fountain Inn’s own argument, the Park is LCPW’s in designated service area.

B. Fountain Inn’s “no contract” argument has no merit.

Fountain Inn accuses the trial court and the Court of Appeals of silently enforcing an unenforceable contract, even though both courts expressly stated that their rulings were not based on any contract theory. Both courts referenced the 1992 Map, but only because it showed where the parties had, in fact, provided service and not provided service for the

decades preceding the present controversy. Neither court viewed the Map as a contract, neither court enforced the Map as contract, and neither court enforced any agreement of any kind.

In short, Fountain Inn argues against an error that does not exist. LCPW abandoned all contract theories at trial, and the courts did not rely on any contract theories. Fountain Inn will not take “yes” for an answer on its argument that any such contract was not enforceable, but this does not mean the trial court or Court of Appeals committed any error.

C. Fountain Inn misreads the relevant case law.

At the end of its brief, Fountain Inn challenges the trial court’s reading of and reliance on several cases, essentially contending that all of the cases support its narrow reading of § 5-7-60. Fountain Inn simply misreads the cases. The case law fully supports the trial court’s ruling that LCPW acquired a designated service area and the Court of Appeals’ affirmance of that ruling.

1. *Spartanburg Sanitary Sewer Dist. v. City of Spartanburg*, 321 S.E.2d 258 (S.C. 1984).

In *Sanitary Sewer*, the defendant (“the city”) sought to expand its sewer service beyond its corporate limits and into an adjacent sewer district (“the district”), which was empowered to provide sewer service directly to customers in the area by a 1970 Act. Relying on the subsequent 1975 Home Rule Act that enacted § 5-7-60, the city argued that § 5-7-60 gave it authority to extend its sewer service beyond its corporate limits and into the district’s service area. This Court held that § 5-7-60 precluded the city from doing so under the following analysis: (1) § 5-7-60 precludes a municipality from serving an area outside its corporate limits if that area is in the “designated service area” of another political subdivision; (2) the district had already constructed main lines as infrastructure in the area

to handle the waste water generated in the area; (3) the district thus had a “designated service area” under §5-7-60 in the disputed area; and (4) under § 5-7-60 itself, the city could not provide sewer services in the area. 321 S.E.2d at 260-261.

Here, the trial court cited *Sanitary Sewer* for the salient point that building infrastructure in an area for serving the needs of the area creates a “designated service area” under § 5-7-60. (Apx. 106-107; 108). The same facts are present here, because the undisputed testimony is that a major purpose of LCPW’s 1985 supply line expansion project was to create the supply infrastructure for providing natural gas service in the area.

Fountain Inn acknowledges this Court’s ruling that the district’s actions of building main line infrastructure gave rise to a “designated service area” under § 5-7-60 (Pet. Br. 21), but then argues as follows:

LCPW could make similar arguments if Fountain Inn sought to provide services within the City of Laurens; however, in this case, LCPW is not the governing body with respect to the area in question. Therefore, it has not established a designated service area.

(Pet. Br. 21). Fountain Inn apparently reads *Sanitary Sewer* as based on issues of crossing political subdivision boundaries and being the governing body for the area. There is no such ruling in *Sanitary Sewer*.¹⁰

In short, the trial court correctly read and applied the salient point in *Sanitary Sewer*, to-wit: that the construction of infrastructure in the area for providing service in the

¹⁰ Returning to the actual language of *Sanitary Sewer*, the Court rejected the city’s § 5-7-60 claim as follows: (1) this Court noted that the city based its claim on § 5-7-60; (2) then quoted § 5-7-60; and (3) then found that the district had the power to construct a sewer system in the area and had built the infrastructure for doing so. 321 S.E.2d at 260-261. This Court then applied § 5-7-60: “The Sewer District *thus would* fit the definition of a *designated service area*, and the City *would therefore* be precluded from extending its collection lines to areas outside its corporate limits *absent permission* from the Sewer District.” 321 S.E.2d at 261 (emphasis added). The foregoing represents the entirety of this Court’s analysis and ruling. It is a straightforward application of § 5-7-60 to the facts that had nothing to do with any notion of crossing corporate boundaries of a political subdivision or who is the governing body of the designated service area.

area satisfies the definition of “designated service area” under § 5-7-60. That is precisely what happened here. Fountain Inn’s attempt to avoid this salient point has no support in this Court’s actual analysis and ruling. Moreover, the ruling in *Sanitary Sewer* provides no support for Fountain Inn’s argument that a “designated service area” is limited to existing customers with existing contracts. To the contrary, this Court found that building infrastructure in the area, with no mention of any existing customer or contracts in the area, gave rise to a “designated service area” under § 5-7-60.

2. *City of Darlington v. Kilgo*, 393 S.E.2d 376 (S.C. 1990).

In *Kilgo*, the plaintiff (“the city”) had a “designated service area” for fire protection under § 5-7-60 that extended outside the city’s corporate limits, as measured by five road miles from the city’s fire station. 393 S.E.2d at 377; see also *id.* at 379 (Goolsby, A.A.J., dissenting).¹¹ Thereafter, pursuant to S.C. Code Ann. § 4-19-10 (Rev. 1986), which was enacted in 1984 after the 1975 enactment of § 5-7-60, the defendant (“the county”) passed an ordinance creating a county-wide fire protection district that included the city’s “designated service area.” *Id.* at 377. The city sued, and the trial court granted summary judgment to the city, holding that the county’s fire district could not include the city’s service area without the city’s consent. *Id.* This Court affirmed.

Section 4-19-10 gave counties the power to create a county fire district but further provided that the county’s “service area” could not include an “area” already being served by another political subdivision. *Id.* at 377-378 (emphasis added). The county argued that the city’s service area did not qualify for protection under § 4-19-10, because the city’s

¹¹ *Kilgo* involved two cities (Darlington and Hartsville) with the same five-mile radius “designated service area.” For ease of reference, this brief refers to them jointly as “the city.”

limited service in the area did not qualify as a “service area” under § 4-19-10. The dissent agreed with this argument, *id.* at 379-382, but the majority expressly rejected it as follows:

[The] legislative intent [in § 4-19-10] was to allow municipalities to continue to offer fire protection services in *areas* previously served under contract, and that such *areas* could not be included in any county district plan without prior agreement with the municipality.

Id. at 378 (emphasis added). Thus, the majority held that “the five-mile radius protected by the [city] under contract constitutes a ‘service *area*.’” *Id.* (emphasis added). The majority also held that there was no conflict between the county’s power under § 4-19-10 and “the [city’s] *statutory rights under § 5-7-60.*” *Id.* at 378-379 (emphasis added). If there was “an existing municipal service *area* within the county,” the county could not include that area in its fire district absent an agreement with the city. *Id.* at 379 (emphasis added).

The dispute between the dissent and the majority illuminates the salient point in *Kilgo*. The city had contracts with only one-third of the customers in the area. 321 S.E.2d at 377 n.1, 379-380. The dissent concluded that the “service area” protection afforded by § 4-19-10 extended only to those customers but did not otherwise extend to the five-mile radius area claimed by the city, *i.e.*, the county could include any part of the five-mile radius in its district except for customers with existing municipal contracts. *Id.* at 380-381. The majority rejected this conclusion, holding that the city’s service area included the entire five-mile radius area, because the city contracted with customers in the area and made its service available in the area. *Id.* at 378-379.

Here, the trial court relied on *Kilgo* for this salient point, *i.e.*, that “the only requirement for designating [a service] area was that the municipality was serving it [and] that area included the entire area in which the service was made available by contract and not just to customers with whom the [city] had existing contracts.” (Appx. 108). The facts

are the same here – LCPW is providing service to existing customers in the disputed area and makes it service available in the area.

Fountain Inn blithely ignores the salient ruling in *Kilgo*. After making summary references to this Court’s ruling, Fountain Inn argues that two subsequent cases make it clear that the protection afforded by § 5-7-60 is limited to customers with existing contracts. (Pet. Br. 22-23). Those cases are *Carolina Power* and *City of Spartanburg*, both *infra*. Fountain Inn simply misreads these cases.

- a. *Carolina Power & Light, Co. v. Darlington County*,
431 S.E.2d 580 (S.C. 1993).

In *Carolina Power*, the county created a fire protection district and imposed taxes on the property in the district. The plaintiff (CP&L) brought a tax protest suit against the county, arguing that it was not properly included in the district. CP&L argued that it was in the City of Hartsville’s (“the city”) fire protection service area by contract, *i.e.*, the same five-mile radius designated service area approved in *Kilgo, supra*.

Two controlling facts distinguished *Carolina Power* from *Kilgo*. First, CP&L was not in the city’s service area, which was defined as the area within five-road miles from the city’s fire station. CP&L was within five miles “as the crow flies,” but it was not within five-road miles of the city’s fire station and therefore not in the city’s service area. 431 S.E.2d at 581 & n.1. Second, in addition to not being in the city’s service area, CP&L did not have a valid fire service contract with the city. *Id.* at 582-584. Thus, this Court upheld the trial court’s denial of CP&L’s tax protest.¹²

¹² There was an agreement between the city and CP&L, but it was not an enforceable contract, because *inter alia* it was signed by the fire chief, who did not have the capacity to enter the contract on behalf of the city. Thus, CP&L did not have a fire services contract with the city. 431 S.E.2d at 581-583.

Importantly, nothing in *Carolina Power* changed the salient point in *Kilgo*, *i.e.*, that the city's service area included the entire five-road miles radius area and not just the customers with whom the city had existing contracts. Indeed, this Court went to some length to make it clear that CP&L was not within the service area that it upheld in *Kilgo*, which included the entire area and not just customers with existing contracts.

Fountain Inn summarily argues that *Carolina Power* stands for the proposition that only an existing customer with an existing contract is to be protected by § 5-7-60. (Pet. Br. 22). There simply is no such ruling in *Carolina Power*. To the contrary, the only reasonable reading of *Carolina Power* is that this Court reaffirmed its ruling in *Kilgo* on the scope of the city's service area as being the entire five-road mile area and not just where the city had existing customers with existing contracts. CP&L could not take advantage of this ruling in *Kilgo*, because it was not within the city's service area. Thus, to potentially exclude itself from the county's fire district, CP&L had to prove the existence of a valid fire service contract with the city, but it failed to do so. CP&L therefore was in the county's district and had to pay the property taxes imposed by the county.

- b. *City of Spartanburg v. County of Spartanburg*,
401 S.E.2d 158 (S.C. 1991).

The plaintiff ("the city") provided fire service for several years by contract to Draper, an industrial plant located outside the city limits but "bounded on all sides by property within [the city's] limits." *Id.* at 159. In other words, Draper was a county island within the sea of the city's limits. The city enacted an ordinance whereby it would provide fire services to contiguous areas only by annexation into the city. *Id.* at 159. The contract between the city and Draper lapsed, and Draper declined annexation. *Id.* Thus, there was

no service contract between Draper and the city. More importantly, after the city adopted the ordinance, the city only provided fire services within its corporate limits. *Id.*

In 1988, pursuant to § 4-19-10, the defendant (“the county”) created the Draper Corporation Fire Service Area, which encompassed only the Draper plant, and then contracted with Glendale Area Fire District to provide fire service in the Draper Area. *Id.* at 159 The city sued, challenging the validity of the Draper Corporation Fire Service Area and seeking an injunction against its continued existence. *Id.* This Court summarily rejected the city’s argument under the following analysis: (1) as a general rule, a city has no standing to challenge a county’s creation of a special purpose district that is not within the city’s limits; (2) to have standing, a city “must allege an infringement of its own proprietary interest *or statutory rights*,” but the city “alleged no such infringement”; and (3) there was no existing contract between Draper and the city, “and this case is *clearly distinguishable* from our recent decision in [*Kilgo, supra*].” *Id.* (emphasis added).

Kilgo was “clearly distinguishable” because, unlike the city in *Kilgo*, the city in *City of Spartanburg* did not have a service area outside its corporate limits. Rather, by force of its own 1987 ordinance, the city’s service area was limited to its corporate limits.

Fountain Inn argues that *City of Spartanburg* is similar to *Carolina Power*, an apparent reference to its meritless argument that *Carolina Power* changed the rule in *Kilgo* and limited the scope of a § 5-7-60 “designated service area” to existing customers with existing contracts. To support this argument, Fountain Inn asserts that *City of Spartanburg* “*distinguished [Kilgo]* and found that a city could not challenge the creation of a [fire service district] outside the city’s limits with respect to a former city customer with which the city no longer had an existing agreement.” (Pet. Br. 22-23) (emphasis added).

This Court, however, did not “distinguish *Kilgo*” – rather, it distinguished *City of Spartanburg* from *Kilgo*. This is not mere semantics, because it makes clear that this Court did not alter the ruling in *Kilgo*. Moreover, what distinguished the two cases was that the city in *Kilgo* had a service area outside its corporate limits and the city in *City of Spartanburg* did not because of its own 1987 ordinance disclaiming any service area outside its city limits. Thus, because Draper was outside the city’s limits, was not in the city’s service area, and was not under contract with the city, the city did not and could not allege an infringement of its statutory rights. Therefore, the city did not have standing to challenge the creation of the fire district. This was the actual ruling by this Court in *City of Spartanburg*, and nothing changed the salient ruling in *Kilgo*, which the trial court correctly applied here.

3. *Mathis v. Hair*, 594 S.E.2d 851 (S.C. App. 2002).

In *Mathis*, there was a dispute over the allocation of funds from the South Carolina Fireman’s Insurance and Inspection Fund (“the Fund”) between the city and county fire departments. The central issue was the meaning of “service area” as used in S.C. Code Ann. § 23-9-420 (Rev. 2007), because the allocation was based on the property values in the “service area” of each fire department. Section 23-9-40 did not define “service area,” and the county treasurer concluded that the allocation should be based on the corporate limits of the city and county, even though the city provided fire service to areas within the county district pursuant to a contract with the county. The trial court agreed with the county treasurer, but the Court of Appeals reversed under the following analysis: (1) the plain and ordinary meaning of service area “is the *area* where the fire department provides services”; (2) this meaning is bolstered by that term as used and defined in other statutes and cases,

including § 5-7-60 and *Kilgo, supra*; and (3) therefore, the funds must be allocated between the city and county fire departments based on property values within the areas that each actually provides fire service. 594 S.E.2d at 854.

Here, the trial court simply and correctly noted that the Court of Appeals defined “service area” under § 23-9-420 by relying in part on the definition in § 5-7-60, to-wit: “an *area* in which the service is being provided.” (Appx. 108) (emphasis added). Thus, the trial court correctly concluded that *Mathis*, like *Sanitary Sewer* and *Kilgo*, supported its ruling that LCPW’s designated service area under § 5-7-60 included “the *entire area* in which the LCPW provides service by contract.” (Appx. 10-8-109) (emphasis added).¹³

In a footnote, Fountain Inn correctly notes that *Mathis* did not arise under § 5-7-60, then accuses the trial court of failing to provide the full context of *Mathis*, then quotes *Mathis*, and then summarily and without explanation asserts that “*Mathis* is consistent with

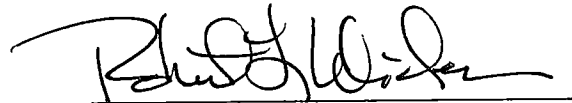
¹³ The facts in *Mathis* were somewhat complicated. The Fund operated in the following manner: (1) The Fund was financed by payments from all fire insurers in South Carolina equaling 1% of all premiums received by the insurer, accompanied by a report that allocated the payment according to the county where the insured property was located; (2) the insurers made their payments to the state treasurer, who in turn disbursed the funds to the county treasurers in accordance with the county allocation report from the insurers; and (3) the county treasurer then disbursed the funds to local fire departments based on S.C. Code Ann. § 23-9-420 (1989), which required disbursements on the basis of the assessed value of real estate improvements “within the *service areas* of the fire department.” 594 S.E.2d at 852 (emphasis added). The controversy focused on the meaning of “service area” as used in § 23-9-420, which did not define the term. *Id.* at 852, 854. The controversy arose under the following facts: (1) the county had seven tax districts, all of which received fire services from either the city fire department or the county fire department; (2) two of the tax districts were within the city’s limits, and the city fire department provided fire service to the entirety of both of these districts; (3) the remaining five tax districts were within the unincorporated area of the county, but the city fire department provided fire service to some of these areas pursuant to a contract with the county; (4) the county treasurer determined that “service area,” as used in § 23-9-420, meant the area within the city’s limits and the area within the unincorporated areas of the county, and she therefore divided and disbursed the Fund based on the relative assessed property values within the city’s limits and those in the unincorporated area of the county; and (5) the city fire department challenged this allocation, contending that the disbursement to it must include the assessed value of the properties in the county where the city fire department provided fire service, *i.e.*, the city fire department argued that its “service area,” as used in § 23-9-420, included the county areas where the city provided fire service. 594 S.E.2d at 852-853. There was disagreement over which department provided service to which area so, after reversing the trial court’s affirmance of the county treasurer’s action, the Court of Appeals remanded for a factual determination of this question, with the Fund disbursement to thereafter be allocated accordingly. *Id.*

Fountain Inn’s arguments relating to § 5-7-60 and [Kilgo].” (Pet. Br. 21, n.9). There simply is no such “consistency.” *Mathis*, like all of the other cases, concerned the “area” in which services were being provided, not simply the location of existing customers with existing contracts. More importantly, like all of the prior cases, *Mathis* again made it clear that providing service in an area was the key factor in defining the existence and scope of a statutory “service area.”

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should affirm the rulings of the trial court and the Court of Appeals.

Respectfully Submitted,



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March 6, 2019
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM LAURENS COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2018-001309

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.

CERTIFICATE OF SERVICE

I, Lisa Gibson, an employee of Burr & Forman, LLP, certify that I served the Brief of Respondent, by placing a true and correct copy in the U.S. Mail, sufficient postage pre-paid to Petitioner's counsel at the addresses shown below, on March 6, 2019:

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