

ORIGINAL

SUZANNE BROWNLESS, P. A.

ATTORNEY AT LAW

1311-B Paul Russell Road, Suite 201
Tallahassee, Florida 32301

ADMINISTRATIVE LAW
GOVERNMENTAL LAW
PUBLIC UTILITY LAW

TELEPHONE (850) 877-5200
TELECOPIER (850) 878-0090

August 13, 2001

HAND DELIVERY

Blanca Bayo, Clerk
Florida Public Service Comm.
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket No. 991666-WU
Application for amendment of Certificate No. 106-W to add
territory in Lake County by Florida Water Services
Corporation

Dear Ms. Bayo:

Attached please find the originals and 15 copies each of the
City of Groveland's Brief on Motions to Strike and to Reject or
Accept Expert Witnesses and Brief on Issues to be filed in the
above-styled case. Also attached is a disk formatted in
WordPerfect 5.1 containing these documents. Please stamp the extra
copies of these filings for our records and return them to our
office.

Thank you for your attention to this matter. Should you have
any questions, please contact me.

Very truly yours,


Suzanne Brownless

APP _____
CAF _____ c: 3433
CMP _____
COM 3 _____
CTR _____
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LEG 1 _____
OPC _____
PAI _____
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SEC 1 _____
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DOCUMENT NUMBER-DATE

09874 AUG 13 2001

FPSC-COMMISSION CLERK

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for amendment)
of Certificate No. 106-W to add)
territory in Lake County by Florida))
Water Services Corporation.)
_____)

DOCKET NO. 991666-WU
Filed: August 13, 2001

BRIEF OF
THE CITY OF GROVELAND, FLORIDA

Suzanne Brownless, Esq.
Suzanne Brownless, P.A.
1311-B Paul Russell Road
Suite 201
Tallahassee, Florida 32301
Phone: (850) 877-5200
FAX: (850) 8878-0090

ATTORNEY FOR CITY OF GROVELAND,
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ATTORNEY FOR CITY OF GROVELAND,
FLORIDA

Pursuant to PSC-01-1448-PHO-WU, the City of Groveland, Florida (City), files this post hearing brief, and in support of its positions in this docket states as follows:

FACTS

On November 3, 1999, pursuant to §367.045, F.S., and Rule 25-30.036, F.A.C., Florida Water Services Corporation (FWSC) filed an application for amendment of Certificate No. 106-W to add territory in Lake County, Florida. The City of Groveland filed a timely protest to the application on November 24, 1999. By Order No. PSC-00-0623-PCO-WU, issued April 3, 2000, this matter was set for hearing on December 11 and 12, 2000.

On October 27, 2000, the parties filed a Joint Motion for Extension of Time to File Rebuttal Testimony and Joint Motion for Continuance of the hearing dates. By Order No. PSC-00-2096-PCO-WU, issued November 6, 2000, the hearing dates were changed to March 13 and 14, 2001, the prehearing date was changed to March 1, 2001, and other key activity dates were also changed. By Order No. PSC-01-0279-PCO-WU, issued January 31, 2001, the hearing dates were changed to March 15 and 16, 2001. Pursuant to Order No. PSC-01-0395-PCO-WU, issued February 16, 2001, the prehearing conference and hearing dates were changed to June 26, 2001 and July 11 and 12, 2001, respectively. In addition, by Order No. PSC-01-0395-PCO-WU, the discovery cutoff date was changed to June 18, 2001. By Order No. PSC-01-1287-PCO-WU, issued June 26, 2001, the discovery cutoff date was extended to July 3, 2001.

The prehearing was held on July 26, 2001 and Prehearing Order No. PSC-01-1448-PHO-WU was issued on July 6, 2001. The hearing was

held in Lake County, Florida on July 11 and 12, 1001 before Commissioners Jaber, Palecki and Baez with Commissioner Jaber presiding. At the hearing the following testimony was presented: Jeffrey Cooper, 8950 Cherry Lake Road, Groveland as a resident of Lake County; James Perry and John Tillman on the part of FWSC; Jason L. Yarborough, Joseph A. Mittauer and Greg A. Beliveau on the part of the City and Brenda Winningham on the part of the Staff of the Florida Public Service Commission (FPSC). Exhibits 1 through 25 were identified and admitted into evidence.

At the conclusion of the hearing Commissioner Jaber identified two additional issues to be briefed separately: Issue A: Should Mr. Tillman and Mr. Mittauer be tendered as expert witnesses, and if so, in what areas? and Issue B: Should the City's motion to strike those portions of Mr. Tillman's testimonies identified at the July 11th hearing and exhibits be granted? The brief on these two issues are separate from that of the previously identified issues in the case and not subject to any page limit.

ISSUES AND POSITIONS

Issue 1: When will service be required in the territory proposed by Florida Water Services Corporation's application?

Position: No viable date for service has been established in this record by FWSC since the only date for requested service in this record is July 1, 2000. The changing nature of the development, lack of County construction plan approval and delays on the part of both FWSC and the developer in completing the essential steps necessary to provide service to the Summit are clear indications that this development will not require utility service in the near future. Given these facts, the utility's application is premature and should be dismissed.

In the Summit developer's Application for Service Extension

dated October 5, 1999, included as Ex. C of the Florida Water Services Corporation & Summits Land Trust Water Service Agreement for the Summit in the Palisades System located in Lake County, Florida FPSC Certificate Number 106-W (Water Services Agreement), the developer indicated that the "estimated date service is required" was "by 7/1/2000". [Ex. 5, Water Services Agreement at 34] The July 1, 2000 date, a date more than one year old, is the only date for service in the entire record of this proceeding. FWSC has neither given testimony nor produced any written documentation from the developer in this proceeding stating a revised date for when service will actually be needed by the Summit development.

And, the City would not expect the developer to give FWSC a revised service date, because it is the City's contention that the developer doesn't know the date himself. Consistent with this conclusion is that fact that although required by Section 8.3 of the Water Services Agreement to produce "any building permits for construction of all or any portion of the Improvements" within 10 days of the developer's receipt of such documents, as of the date of the hearing FWSC had not received a single building permit for construction of all or any portion of the proposed utility facilities identified on the developer's plan. [T. 252] The reason that FWSC does not have any building or construction permits is simple: there are none since Lake County is still in the process

of reviewing the Summit's construction plans. [T. 325]¹ Without a final set of approved construction plans and building permits, the developer cannot even begin construction, much less provide FWSC with an accurate date for when service will be needed.

Section 3.1 of the Water Services Agreement, dated February 25, 2000, requires that the developer prepare and submit a "Development Plan" for FWSC's approval. [Ex. 5, Water Services Agreement at 6] This "Development Plan" is required to describe the proposed improvements to be made on the developer's property and anticipated time schedule for the construction. [Ex. 5, Water Services Agreement at 3] A set of proposed construction plans for the Summit development dated August 15, 2000, a month after the proposed in service date for the Summit, was submitted to FWSC and authorized by FWSC for construction on September 22, 2000. [Ex. 15, Sheet 1]. However, the submitted plan does not contain a revised schedule for construction or any indication of when service would be needed, an obvious and intentional omission given the fact that the previous in-service date was 1 month past. [Ex. 15]

Further support for the fact that the developer has no firm

¹ On redirect Mr. Tillman attempted to address the lack of written permits with this statement: "Additional conversation with staff over the evening also indicates to me that Mr. Davis has completed the submission process to the county to begin construction so that construction can start at will." [T. 405] This testimony cannot be used to support the finding that the developer can start construction "at will" for several reasons. First, Mr. Tillman has no personal knowledge this conversation, he didn't have it, i.e., it is hearsay. Second, it is inadmissible hearsay if not substantiated by competent substantial evidence in the record and as noted above, there is none to support it.

date for service is both his and FWSC's pattern of behavior with regards to compliance by the developer with the deadlines in the Water Services Agreement. The following chart lists the requirements of the Water Service Agreement, dates for filing and dates of developer compliance.

<u>Section</u>	<u>Description</u>	<u>Contract Date</u>	<u>Compliance Date</u>
3.9	Assurance of Title	4/10/00	"later" [T. 249]
6.3	Engineering, Inspection Fees	2/25/00	10/2/00 [T. 250]
6.5	Legal/Admin. Fees	2/25/00	10/2/00 [T. 250]
16.0	Recording Agreement	No date	3/16/00 [T. 251]
22.0	Certificate of corporate good standing	No date	Doesn't know [T. 252]

Thus, it is apparent of the five requirements listed above, the record establishes that the developer only complied with one in a timely fashion (recording the Agreement), complied with three up to eight months later than required and may not have complied with one (production of the certificate of good standing) at all. It should also be noted that while the developer did provide FWSC with a set of construction plans for the Summit, those plans as of Sept. 22, 2000, the date that FWSC approved them for construction, had already been revised several times as shown by a range of dates from Feb. 25, 2000 to Sept. 18, 2000 on the separate sheets. [Exs. 15, 21] Further, Mr. Tillman apparently does not rule out further

revisions to these plans based on his redirect comments concerning the use of the developer's construction plans for fire flow protection. [T. 404]

Also consistent with an unknown date for service is the fact that the developer has not paid the plant capacity charge of \$105,411.74 required by the Water Services Agreement. [T. 253] Until the developer has actually paid these fees, requested connection and physically interconnected with FWSC's system, FWSC is not contractually required to provide water capacity to the developer nor to reserve any plant capacity for the developer. [T. 255-7]

Further evidence of an ephemeral date for service is the course of this docket itself. The application was filed on November 3, 1999 based on a request for service dated October 5, 1999, 10 months before the earliest date that a detailed development plan could have been provided by the developer to FWSC. [Ex. 15] This docket, at either the request of, or with the agreement of FWSC, has been continued twice: once in October of 2000, approximately year after the application was filed, and again in February of 2001, 15 months after the application was filed. FWSC's agreement to these types of extensions are inconsistent with a developer who actually needs service in the near future as Mr. Tillman would have the Commission believe.

Further, the plans for this development have substantially changed over the last 21 months since the filing of the request for service. This is evident from the face of the construction plans

themselves which show numerous revisions as well as the fact that the amounts of capacity requested for the development have changed with each request for service or regulatory agency approval. The developer requested 200,000 gpd average daily flow in his application for service dated 10/5/99; agreed that 38,400 gpd average daily flow was adequate when he signed the Water Service Agreement on 2/25/00; and stated that 78,550 gpd average daily flow would be needed in his application to the Department of Environmental Protection (DEP) filed 9/27/00. [Ex. 5, Water Service Agreement at 34; Ex. 11 at 4] Based on these changes in water demand, the project has got to be radically changing as well. Absent final construction plans approved by the County, there is no reason to believe that the changes in the Summit development are at an end.

Finally, it should be noted that even if the developer had final construction plan approval by Lake County, which he does not, there are other factors which influence the timing of any development: economic conditions affecting the developer's ability to finance the project, potential annexation, the presence of a willing buyer, a desire to sell. [T. 463-4] We know from Mr. Cooper's testimony that homeowners are opposed to a development of higher density than that proposed and anxious that annexation by Groveland would allow such development. [Service Hearing T. 7-8, 16] Mr. Yarborough testified that the City intends to annex the Summit and surrounding Cherry Lake area. [T. 503-5, 510-1] The developer's desire to wait and see if annexation will in fact take

place allowing him to develop his 690 acre parcel at a higher density would also lead him to delay the project.

In sum, this application was filed prematurely in the fall of 1999 for a project which is still very much in the preliminary stages of development. And while the City agrees, and has stipulated to the fact, that this development will eventually require potable water service, the only date in the record for that service, July of 2000, has long since come and gone. [T. 6] Without a reliable date for time of service, this application must fail as premature.

Issue 2: Does Florida Water Services Corporation have the financial ability to serve the requested territory?

Position: Parties stipulated to the following position: Florida Water Services Corporation has the financial ability to serve the requested territory.

This Stipulation was identified in the Prehearing Order, Order PSC-01-1448-PHO-WU, issued on July 6, 2001 and adopted by the Commissioners by a unanimous vote on the first day of the hearing, July 11, 2001.

Issue 3: Does Florida Water Services Corporation have the technical ability to serve the requested territory?

Position: Parties stipulated to the following position: Florida Water Service Corporation has the technical ability to serve the requested territory.

This Stipulation was identified in the Prehearing Order, Order PSC-01-1448-PHO-WU, issued on July 6, 2001, and adopted by the Commissioners by a unanimous vote on the first day of the hearing, July 11, 2001.

Issue 4: Does Florida Water Services Corporation have the plant capacity to serve the requested territory?

Position: No, the existing 576,000 gpd permitted capacity of the Palisades plant is insufficient to provide service to existing Palisades customers when maximum day demands and reasonable growth are taken into account. The addition of Summit customers will require that an additional well plus water storage improvements be added immediately.

In order to determine whether FWSC has the ability to provide adequate water service to the Summit, it is necessary to calculate three quantities: the amount of water demand associated with the proposed development; the maximum amount of capacity available at the Palisades water plant from which FWSC intends to provide service; and the maximum and average daily flows at the plant. [T. 150] FWSC has failed to provide competent, substantial evidence regarding any of these quantities as demonstrated below.

Summit water demand

The demand associated with the Summit has been calculated by the developer at least two times. The first developer calculation of demand is found in the Application For Service Extension dated Oct. 5, 1999: 200,000 gpd average daily flow and 2,500 gpm fire flow. [Ex. 5, Water Service Agreement at 34] The second developer calculation is found in the developer's application to construct a public drinking water facility filed with DEP on Sept. 27, 2000: 78,550 gpd average day water demand and 860 gpm fire flow demand. [Ex. 11 at 9] However, DEP agreed with neither calculation and issued a water facility construction permit for average day water demand of 78,750 gpd. [Ex. 10 at 1]

On the Application For Service Extension, the typed 200,000 gpd average daily flow and 2,500 gpm fire flow amounts are lined through and replaced by a hand written amount of 38,400 gpd. [[Ex. 5, Water Service Agreement at 34] Mr. Tillman, the only FWSC witness tendered in support of this document, did not know who inserted this hand written amount or deleted the 2,500 gpm fire flow amount. [T. 267-8] Nor did he know why this number replaced the typed 200,000 number although the 38,400 number, a number 81% lower than that proposed by the developer, was used by FWSC as the amount of capacity which would be reserved for the Summit in its Water Service Agreement, the only service availability contract applicable to the Summit in existence. [T. 267-8; Ex. 5, Water Service Agreement, §7.1 at 17] With regard to the 38,400 gpd amount, Mr. Tillman did not know if it included fire flow or not although he had previously testified that FWSC was responsible for providing fire flow protection to the development. [T. 248, 268] Neither could Mr. Tillman explain the disparity between the 78,750 average daily demand found on the DEP permit and the 38,400 average daily demand amount reserved in the Water Services Agreement, a difference of 51.2%, other than to say that one was the "DEP standard" and the other the "PSC standard". [T. 267] Since Mr. Tillman did not calculate the 38,400 gpd amount, he could not explain how the calculation was actually done, i.e., he could not explain the "PSC standard" incorporated in FWSC's Water Service Agreement which he signed. [T. 267; Ex. 5, Water Service Agreement at 27]

In addition to the 38,400 gpd amount which is utilized by FWSC in the Water Services Agreement, FWSC also calculated an average water demand of 135,000 gpd and maximum daily demand of 270,000 gpd for the development. This figure is found in Ex. D to FWSC's Application. Thus, the developer has calculated at least two and possibly three average daily demands covering a range of 200,000 to 38,400 gpd for the proposed development, a range of 421%, while FWSC has calculated at least two average daily demands from 38,400 gpd to 135,000 gpd, a range of 252%.

The amount of average daily flow associated with the Summit development is an expert opinion requiring engineering expertise. Mr. Tillman did not, by his own admission, calculate either the 38,400 gpd or 135,000 numbers, and there is nothing in the record to establish the expertise of whomever did, in fact, compute these numbers. Further, there is nothing in the record which reconciles this numbers to each other or to any other demand number in the record. These numbers are not only hearsay, but unattributed hearsay at that, and cannot be competent substantial evidence.

With regard to the numbers provided by the developer similar problems exist. Mr. Tillman has no personal knowledge about either the DEP permit application or the water services application numbers: who prepared them, the formulas used, the underlying data inserted into the formula, or whether the person who prepared them had the necessary expertise. And while the DEP permit indicates on its face that Mr. Farner is a professional engineer with expertise in the design of water treatment, storage and distribution

facilities, that document alone is not persuasive or competent substantial evidence without the underlying calculations which are not part of the record here. [Ex. 11 at 3]

Given these factors, the only expert engineering testimony in this record as to the actual average daily water and fire flow demand associated with the Summit development is that of Mr. Mittauer: 51,880 gpd and 750 gpm, respectively. [T. 314]

Permitted Palisades plant capacity

FWSC has calculated two significantly different numbers in this record for the permitted maximum day capacity of the Palisades water plant. In Mr. Tillman's testimony and in Section III of the DEP permit application, FWSC states that the maximum day capacity of the plant is 1.152 MGD. [T. 150; Ex.11 at 2] Mr. Tillman did not calculate this number and originally testified that it was found on the plant's Consumptive Use Permit (CUP). [T. 196] However, on review of the Palisades CUP, Mr. Tillman acknowledged that the maximum permitted capacity was not on the permit but was calculated. [T. 198-9] The Palisades plant has two 800 gpm wells, no elevated storage tank, no high service capacity pumps and a hydropneumatic tank of unknown size. [T. 199-200] Mr. Tillman further agreed that 1.152 mgd maximum permitted capacity number was consistent with multiplying one 800 gpm well times 1,440 minutes per day. [T. 200] If this number were divided by 2 to reflect the lack of high service pumps or water storage facilities, the maximum rated capacity of the plant would be 576,000 gpd. [T. 200]

And, in fact, all of the Monthly Operating Reports (MOR) for

the Palisades plant filed by FWSC from July, 1999 to June, 2000 and for January, February and May, 2001 reported the plant's maximum permitted capacity as 576,000 gpd. [T. 222-24] And while Mr. Tillman acknowledges that he does not know which number, the 1.152 MGD or 576,000 gpd, is correct of his own knowledge, dividing the 1.152 by 2 to account for the absence of elevated storage tanks or high service capacity pumps, is the formula that he believes DEP applies to determine maximum permitted daily capacity of water plants. [T. 200] This is also the formula which is consistent with Mr. Mittauer's calculations of the maximum day capacity of the City's water plants. [T. 356-58; Ex. 18]

On redirect Mr. Tillman attempted to explain the fact that as late as one month before the hearing FWSC's employees were reporting maximum plant capacity of 576,000 gpd in FWSC's MORs. According to Mr. Tillman this was an "administrative error" caused by the fact that in January of 2000 an additional well was placed in service bringing the total number of wells to 2, each of which is rated at 800 gpm. [T. 399-400] Thus, if one accepts Mr. Tillman's explanation, FWSC's employees had been incorrectly reporting the maximum daily capacity of the plant for a period of 18 months. [T. 400]

Nor does this calculation take into account that at any given time a well may be completely out of service, therefore, when there are only two wells, as in the instant case, the maximum permitted capacity would never exceed 1/2 of the permitted capacity of the one remaining well unless high service pumps or water storage tanks

are available. [Ex. 5, FWSC Application at Appendix E-1; Ex. 18] Such is not the case here. Contrary to the testimony of Mr. Tillman, the installation of high service pumps and water storage tanks would not increase the maximum permitted capacity of the Palisades plant to 2.304 MGD, but rather bring it up to the 1.152 MGD amount previously incorrectly reported. [T. 401] This explanation, like all of the other technical data in this record, is unattributed hearsay which is not supported by any other testimony or written documentation in the record and concerning which Mr. Tillman has no personal knowledge.

The only permitted maximum daily capacity calculation in this record supported by expert testimony, and DEP's rules, results in a permitted maximum daily capacity of 576,000 gpd.

Existing demand

Next one must consider the amount of water demand currently being placed on the system by the existing Palisades development. Here again, one can choose from a variety of numbers prepared FWSC's expert staff. In the original direct testimony filed by FWSC on August 10, 2000, the average daily demand of the Palisades plant was reported as 395,000 gpd. [T. 226] This number was changed to 319,000 gpd at the hearing to reflect the "most recent" data. However, Mr. Tillman did not calculate this number and could not be sure exactly which months were included. [T. 225-6, 231] Nor did Mr. Tillman know exactly which months had been included in the previous calculation of 395,000 gpd. [T. 226] The DEP permit application provides yet another number: 218,000 gpd "as of

3/31/00". [Ex. 11 at 4, ¶ 11]

If one calculates the average daily demand for the months January through May of 2001, using the MORs filed by FWSC with DEP, yet another number is produced: 278,087 gpd (1,390,433 divided by 5). [Ex. 7] Using the 12 months previous to the August, 2000 filing date of FWSC's original testimony, yet another number 249,817 (2,997,802 divided by 12) gpd appears. [Ex. 8] This 249,817 gpd number should correspond with the 395,000 gpd number in FWSC's August, 2000 testimony, or at least be close, yet it is 37% too low.

With regard to the 319,000 gpd number, since FWSC objected to the entry of its MORs for the months of July through December, 2000, it is impossible to determine whether that number corresponds to the data on the previous 12 months of MORs or not. However, this number seems reasonable since it represents an increase in average daily consumption from the same period approximately one year before by roughly 2.8%. If one uses 395,000 gpd number, consumption has decreased over that same time period by 76,000 gpd or 19.2% while 151 (219-68) connections have been added over that same time period. [Exs. 7, 8] Notwithstanding Mr. Tillman's stringent assertions to the contrary, under those circumstances, a decrease in consumption at all, not to mention of that magnitude, makes no sense whatsoever. [T. 140] Use of the 319,000 number is consistent with the fact that the 395,000 gpd was an error and represented a maximum daily, not average daily, flow for the plant as reported in the DEP permit application filed just 2 months

before Mr. Sweat's testimony was prepared. [Ex. 11 at 2, T. 230-1]

One might attempt to check on the reasonableness of the numbers presented by FWSC by taking the average monthly consumption for Palisades customers reported by FWSC as 22,660 gpm or 1,888 gpd and multiplying that by the number of existing customers, 219. [T. 167, Ex. 7] If one does this, 413,472 gpd average daily flow is the result. Again, this number does not match any other number testified to by FWSC.

In sum, FWSC's testimony and the data in this record can produce six different average daily flows: 413,472; 395,000; 319,000; 278,087; 249,817; and 218,000 gpd; the smallest 90% less than the largest number. Suffice it to say, FWSC has failed to carry the burden of proof on this crucial issue.

The second component of evaluating existing demand is the maximum daily flow experienced by the Palisades plant. The CUP establishes that maximum daily ground water withdrawals from both existing wells cannot exceed 674,000 gpd nor can annual ground water withdrawals exceed 127.75 MGD. [Ex. 5, FWSC Application, Appendix E-1 at 000017 ¶¶ 16, 17] The existing demand on the Palisades plant has already produced a maximum day withdrawals of 637,000 on June 21, 2000 and 567,000 gpd on May 24, 2001. [Exs. 7,8] Thus, no matter which of the five average day consumptive numbers are used, it is obvious that the addition of the Summit would have caused this plant to exceed its water withdrawal limit on these peak days. [T. 276-279] And, even Mr. Tillman agrees that FWSC cannot exceed the CUP withdrawal limits without violating

the CUP permit. [T. 279]

FWSC's application states, and Mr. Tillman has repeatedly indicated, that FWSC does not intend to add any additional wells or improvements to the Palisades plant at the time that the Summit is connected. [T. 275] However, Mr. Tillman agrees that additional wells will be needed in three years, or by 2002, as stated in Ex. D of FWSC's application and "can't say that absolutely" that FWSC will not need to add more facilities at this time. [T. 274-5]² Mr. Tillman also indicated that if there was insufficient capacity at the existing plant, FWSC would exercise their "option" on a third well located on the Summit property and request that it be permitted. [T. 292-94] There is no testimony in this record regarding the cost of exercising this "option" or the conditions under which FWSC can exercise it, the exact location of this third well, the type of distribution lines or other improvements that would be necessary to connect this well to the Summit development or the cost of getting it permitted. The timing and lack of detail concerning this "fix" renders this testimony unpersuasive.

Conclusion

Using a plant capacity of 576,000 gpd, existing demand of 319,000 gpd and estimated Summit total demand of 141,880 gpd

² On redirect the next day Mr. Tillman changed his testimony stating that "his engineering department" had now determined that the Palisades plant could provide adequate service to the Summit without further improvements until 2006, an increase in the plant's current viability by four years or 233%. [T. 402] No data whatsoever was produced to substantiate this new claim of plant longevity which the City considers to be plainly bogus and yet another example of uncorroborated hearsay.

(51,880 gpd plus 90,000 gpd for fire flow demand) the Palisades plant has only 115,120 gpd of capacity left. Using the 395,000 gpd consumption number of the original testimony this gap narrows to 39,120 gpd. Using the 413,472 gpd consumption number associated with 22,660 gpm figure, the gap narrows further to 20,648 gpd. These calculations do not take any growth in the existing Palisades subdivision into account. Based on the fact that existing customers have already imposed maximum day demands of 567,000 gallons per day on the system in May of this year, this plant must be expanded in order to provide adequate service to the existing Palisades customers, and cannot serve any additional demand placed by the Summit development.

Issue 5: Is Florida Water Services Corporation's application consistent with the local comprehensive plan?

Position: No. Service by FWSC of the City of Groveland's utility service district established by Ordinance 99-05-07 is inconsistent with the City's Comprehensive Plan Intergovernmental Coordination Element 9J-5.015(3), Policy 7-1.8.1 and the proposed Joint Planning Area (JPA) for Lake County.

The City's Comprehensive Plan clearly indicates that the City will provide water and wastewater utility service outside of its corporate limits (Policies 4-1.5.1 and 4-1.13.1). [T. 420, 427] Further, City's Comprehensive Plan Intergovernmental Coordination Element 95-5.015(3), Policy 7-1.8.1 requires that the City coordinate with other municipalities in Lake County via interlocal agreements, to establish a "joint planning area which covers the area where a municipality can logically deliver public services and infrastructure." [T. 421] This joint planning effort will coordinate all of Lake County's existing Section 180, F.S., municipal utility districts and will be included in Lake County's Comprehensive Plan. [T. 422, 436]

The Summit development is included totally within the City's Chapter 180, F.S., utility services district. [T. 481, 484] To that extent, FWSC's amendment is inconsistent with the City's and Lake County's Comprehensive Plans.

Issue 6: Does the City of Groveland have the financial ability to serve the requested territory?

Position: Yes.

The City's strong financial position is shown by the City's Annual Financial Report dated September 30, 1999. [Ex. 25] The City Council has authorized the expansion of its system beyond Cherry Slough, its current terminus, another 3,000 feet to the Summit property. [T. 300] The City has adequate cash on hand to construct this extension and is currently in the process of preparing the engineering studies and requesting appropriate permits. [T. 483, 332-3]

While the City's audited financial statements for 1998 indicate that the City's proprietary fund, which includes the City's utility department revenues and expenses, had an operating loss of \$21,406, this loss was a "paper one" attributable to depreciation expenses. [T. 499-500] FWSC made much of the fact that the City would also have lost money in 1999 had it not been for a "water quality assurance" payment of \$150,466. [T. 500] However, the expense figure used to calculate this loss, \$784,793, was the total operating expenses for the proprietary fund for that period which included expenses associated with sanitation services as well as utility services. [T. 508] Thus, standing alone the utility department of the City may well not have suffered a loss in 1999. Finally, as a condition of its revenue bonds the City's utility department does have a sinking fund and/or reserve fund for equipment and plant replacement. [T. 501]

Issue 7: Does the City of Groveland have the technical ability to serve the requested territory?

Position: Yes, the City's lines currently end at Cherry Slough and are being extended 3,000 feet to the Summit, a process that is underway now and will take approximately four months. Further, the City, unlike FWSC, has adequate existing water plant capacity to meet the Summit's potable water and fire flow needs even if the highest demand amounts found in this record are used.

The questions that must be asked in order to determine if the City has the ability to provide water service to the Summit development are the same as those outlined above for FWSC: the amount of water demand associated with the proposed development; the maximum amount of capacity available at the City's water plants; the maximum and average daily flows at the plant; and the infrastructure necessary to get the water to the development.

Proposed demand

As noted above, Joe Mittauer, the City's engineer, has calculated the average daily water and fireflow demand for the Summit as 51,880 gpd and 750 gpm, respectively or a total demand of 141,880 gpd. [T. 314]

Plant capacity

The City has two water plants served by three wells: Well 1, 550 gpm and 792,000 gpd; Well 3a, 503 gpm and 724,320 gpd and Well 5, 462 gpm and 665,280 gpd. [T. 313, 357] In addition to these wells, the City has a 200,000 gallon storage tank, two elevated tanks totaling 175,000 gallons and high service pumps. [T. 357-8] The total capacity of the City's water system was calculated by multiplying the gallons per minute rated capacity of the well times

60 minutes per hour times 24 hours per day. [T. 356-8] This is an appropriate calculation of well capacity here, based on an analysis of the City's entire water system which includes high capacity service pumps and elevated storage tanks. [T. 357-8] Thus, the total water plant capacity of the City is 2.18 mgd. The City is in compliance with all applicable rules of the St. Johns River Water Management District, EPA and DEP. [T. 315]

Available plant capacity

The average daily flow for each water treatment plant is approximately 110,000 and 320,000 gpd, respectively. [T. 313] Thus, of this permitted capacity, the City had approximately 1.6 mgd available to serve the Summit as of June, 2000. [T. 313] If May, 2001 data is used, Plant 1 (Pomelo Street) had an average daily flow of 697,000 gpd while Plant 2 (Sampey Road) had an average daily flow of 90,000 gpd for a total of 787,000 gpd. [Ex. 17] Maximum daily flows for the month of May, 2001 would be 225,000 gpd (Plant 1) and 949,000 gpd (Plant 2) for a total of 1.015 mgd. [T. 361] However, even using these May, 2001 amounts, the plant still has 1.12 mgd of capacity available to serve the Summit.

Infrastructure

As testified to by Mr. Mittauer, the City currently has lines which are 3,000 feet from the Summit at its closest point and 7,000 feet from the entrance of the Summit. [T. 363-5] The construction of the line 3,000 feet will cost \$145,000; the construction of the line 7,000 feet will cost \$228,000. [Ex. 22] The City has

approved extension of the line to the Summit at its closest point (3,000 feet from Cherry Slough) and Mr. Mittauer is in the process of preparing the engineering drawings for permitting. [T. 333] Construction of the line the remaining 3,000 feet will take approximately four months so that service will be available by early November of this year. [T. 325] As noted above, no construction permits have been issued for the Summit at this time. [T. 325] Thus, the City will be able to timely provide water services to the development.

With regard to fire flow, the psi at the point of interconnection with the Summit will be 55 psi. [T. 351; Ex. 20 at 2] This amount of pressure would be 35 psi greater than that needed to meet environmental regulations. [T. 347] The City's responsibility is to provide psi of 20 psi or greater to the entrance of the Summit. It is the developer's responsibility to provide the needed pressure booster systems, a part of the development's on-site water distribution system, to provide at least 20 psi to areas within the development itself. [T. 355]

In conclusion, the City has the technical ability to serve the Summit since it has both the plant capacity and the infrastructure necessary to provide adequate and reliable water service to the Summit in a timely fashion.

Issue 8: Is the City of Groveland's proposal to serve the area consistent with the local comprehensive plan?

Position: Yes, the presence of contaminated water in the Garden City subdivision and along SR 478 in conjunction with vested developments requiring centralized water service make service by the City to the Summit consistent with the County's Future Land Use Map and the City's Comprehensive Plan.

The crux of this issue, whether service by the City is consistent with Lake County's and the City's comprehensive plans, is contained in the testimony of Ms. Winningham, the Department of Community Affairs (DCA) witness, whose testimony is at best confusing and at times, contradictory.

One should start by noting that the testimony inserted in this proceeding was originally developed by Mr. Gautier, Ms. Winningham's Bureau Chief. [T. 32] Ms. Winningham adopted the testimony of Mr. Gautier but also conducted her own investigation into whether City service would be consistent with both the City's and the County's Comprehensive Plans. [T. 37-41] This investigation included a review of the City's Comprehensive Plan, Lake County's Future Land Use Map, along with supporting data, and conversations with Lake County planning staff concerning the type of developments which were vested in the area of the Summit. [T. 38-9]

In the original testimony of Mr. Gautier and the attached February 2, 2000 and January 13, 2000 letter and memoranda, the questions of whether either the City's or the County's Comprehensive Plans were consistent with City service were never

asked, and therefore never answered. [T.60-1, 76-7] The first time that a DCA witness expressed an opinion on the consistency of the City's service to the Summit with either the County's or the City's Comprehensive Plan was at Ms. Winningham's deposition on June 28th. [T. 75-6]

City Comprehensive Plan

The basis for Ms. Winningham's conclusion that City service to the Summit is inconsistent with the City's Comprehensive Plan is that the Summit is not identified therein as a potential utility service area. [T. 76-7] However, Ms. Winningham concedes that comprehensive plans are dynamic documents which are appropriately amended based on a demand for service and environmental concerns, one of which would be the need to provide uncontaminated water to an area, an issue of public health and safety. [T. 77-8]

The reason that the City extended its lines to the Garden City subdivision was in order to provide water to an area which had been identified by DEP as contaminated with EDB, a known carcinogen. [Ex. 19; T. 447-8] Based on the location of the Palisades water plant completely within an area which like Garden City is identified on DEP's Delineation Map for Potable Water Well Permitting, Clermont West, as containing ethylene dibromide (EDB), there would also be a basis for amending the City's Comprehensive Plan to extend the City's line to provide service to the Summit. [T. 78, 94] Modification of the City's Comprehensive Plan to add the Summit to its utility service area would remove any concerns that DCA had regarding inconsistency and DCA would have "no

preference whatsoever between the City and Florida Water." [T. 81]

In sum, the City extended its lines to Garden City for health and safety reasons, to remove Garden City residents from well water in an area known to be contaminated with EDB. The Summit and the Palisades water plant are both located in such an identified area. Given these facts, DCA would allow the City's Comprehensive Plan to be amended to include these areas in its utility service area with the effect that City service would be consistent with its Comprehensive Plan.

County Comprehensive Plan

Although confusing at times, the gist of Ms. Winningham's testimony appears to be that she is "concerned" that City service will be inconsistent with the County's Comprehensive Plan due to the fact that the City lines transverse areas designated as rural and suburban on the County's Future Land Use map. [T. 82] Ms. Winningham further testified that the presence of vested development at densities which would require the installation of centralized water and/or wastewater systems could make service by the City consistent with the County's plan. [T.59-60] While Ms. Winningham questioned Lake County planners concerning the vested development in the area of the Summit, she did not question them about vested developments along SR 478, the route of the City's lines, because she didn't know that was the route the City's lines were taking. [T. 58] Thus, Ms. Winningham testified that it was possible that a significant number of such vested developments were located along SR 478. [T. 58] And, as Mr. Beliveau confirmed,

there are other vested developments between the Garden City subdivision and the Summit which will require the installation of centralized utility services. [T. 447-50] Further, as stated above, the provision of water lines to provide safe, uncontaminated water is a matter of public health and safety which will also make the City's line through rural and suburban areas appropriate and consistent with Lake County's Future Land Use Map.

Given these facts, the extension of the City's lines to the Summit is consistent with Lake County's Comprehensive Plan.

Issue 9: What is the landowner's [developer's] service preference and what weight should the Commission give to the preference?

Position: The developer requested service from FWSC apparently unaware that the Summit development was located within the City's service area. Notwithstanding this fact, Florida case law is clear that developers/customers cannot select their own utility service provider. Therefore, the developer's preference should be given no weight in this case.

The landowner requested service from FWSC in October of 1999 apparently unaware that the Summit development was located completely within the City's established Utilities Service District. [Ex. 5, FWSC Application at 34] It is established Florida law that, where adequate and timely service is available, as in this case, landowners/developers cannot select their own utility service provider. Storey v. Mayo, 217 So.2d 304 (Fla. 1968). Given these facts, the developer's uninformed request for service should be given no weight in this case.

Issue 10: Will the extension of Florida Water Services Corporation 's territory in Lake County duplicate or compete with the City of Groveland's utility system?

Position: Yes.

The City has enacted a utility service district pursuant to Chapter 180, F.S., which has been provided to the County and to which the County nor other municipalities have objected. [T. 455-6] The Summit is located totally within that utility district. [T. 480] It is the intention of the City to provide service through phased expansion throughout the entire utility district in order to make its system more efficient on both an infrastructure and economic basis. [T.443-4, 486-7] Expansion of the City's services to the Summit will allow the City to loop its water lines to areas south of the City it already serves and to lower customer service availability charges, developer costs and rates. [T. 489]

The City has a plan of service for its water and wastewater utility and has established a territory to provide that service through the enactment of its §180, F.S., utility services district ordinance in May of 1999, 5 months before the developer of the Summit requested service from FWSC and 6 months before FWSC requested an amendment to its certificate. [Ex. 25, Ordinance 99-05-07] This plan of service, unlike that of FWSC, has a policy of requiring developers to install dry sewer lines in developments that receive water service so that the infrastructure is already in place should centralized wastewater services become necessary due to septic tank failure. [T. 458]

The City's water system was extended by means of a DEP grant

to the Garden City subdivision Planned Unit Development (PUD) in order to remove Garden City residents from wells contaminated with EDB. [T. 459-60] The DEP grant was for approximately \$500,000 of which approximately \$391,000 was expended to provide service to Garden City. [T. 340-2] The remaining balance of the \$500,000 loan to the City was used to extend the City's water line to Cherry Slough, its current terminus. [T. 342] DEP was aware of the disposition of the loan funds since it was sent a bid tab and notice of award for the Garden City project. [T. 342] Thus the record clearly establishes that the City extended its 12" lines to Garden City at the request of, and with the assistance of, DEP. [T. 313]

Cherry Slough is 3,000 feet from the nearest connection point to the Summit. [T. 300] The distance from the Palisades water plant to the nearest point of connection with the Summit development is 6,700 feet. [T. 155] It is the developer's intention to run 12" lines from the Palisades water plant down Cherry Lake Road to a point of connection with the subdivision. [Ex. 15, Sheets 34, 35] Thus, the City's line/system is currently 3,700 feet closer to the Summit development than that of FWSC.

The City currently provides water and wastewater service outside of its city limits to the Green Swamp area south of the City limits and to areas west of the City and south of the Summit development. [T. 445-8, 489] The City has also had written and oral requests for both annexation and utility services along Cherry Lake Road in the area of the Summit, specifically for Wilson Island

which is located directly across from the Summit development. [T. 510-2] Expansion of the City's system is both consistent with its legally adopted service territory ordinance and consistent with its utility policy objectives.

FWSC will no doubt argue that "competition with" and "duplication" under §367.045(5)(a), F.S., should be measured at the time that the application was filed, November of 1999, not at the present. The City disagrees. Utility systems are by their very nature dynamic and are modified in response to demands for service and in order to enhance system efficiencies. The record has established that such was the case here. The City is not required to stop developing its system simply because FWSC wants to serve a particular area or a developer wants FWSC to do so absent a certificate to serve that area. The whole purpose of having a utility service territory for either an investor-owned utility or municipal utility is to encourage the efficient use of funds in order to provide the lowest cost reliable service. The Commission ignores the presence of existing municipal systems and their legitimate right to provide service at the expense of this fundamental utility principle.

FWSC will also argue that the City should have asked FWSC's permission before extending its lines "adjacent" to the Palisades system as required by §180.06, F.S.³ The City would note that the

³ The City finds it fascinating that FWSC takes the position that Chapter 180, F.S., does not apply at all to potable water systems, but cites §180.06, F.S., for the proposition that the City is prohibited from extending those same water lines to serve the

statute actually uses the term "immediately adjacent to" without further definition. How close does one have to be to be "immediately adjacent": 13,000 feet⁴; 6,700 feet; 3,000 feet, across the street, or simply near an area that the objecting utility wants to serve itself? Obviously, the Legislature intended that the trier of fact make reach his own finding on this issue based on the record before him. It is also obvious that in Lake County, where virtually every one of the 14 municipalities have enacted a Chapter 180, F.S., ordinance of its own, every municipal system can be construed as being "immediately adjacent" to many other systems if the term is interpreted too broadly. [T. 443]

Finally, the City would remind the Commission that even if the developer was not aware of the presence of the City's right to serve this area, FWSC certainly was. The City attempted to negotiate a territory swap which would have allowed the City to serve the Summit in exchange for transferring City service territory to FWSC at the intersection of U.S. 19 and 27. [T. 461-2] This compromise, of economic benefit to both sides, was at first accepted and then rejected by FWSC. [T. 462]

This record is clear that service by the City to the Summit development does duplicate and compete with the City's utility system.

Summit.

⁴ The City is unclear whether it is FWSC's position that service outside of the City's limits to the Garden City subdivision was also subject to this "ask permission" requirement although one can infer that from Mr. Menton's questions.

Issue 11A: If the granting of the territory which Florida Water Services Corporation seeks to add to its PSC Certificate would result in an extension of a system which would be in competition with, or a duplication of, the City of Groveland's system or portion of its system, is the City of Groveland's system inadequate to meet the reasonable needs of the public or is the City unable, refusing or neglecting to provide reasonably adequate service to the proposed territory?

Position: No, the City of Groveland has both the technical and financial ability to provide adequate and timely water service to the Summit. Further, the City also has the existing plant capacity to provide centralized sewer services to the development if and when such service is needed. [T. 314-5]

See discussion of Issues 1, 6, 7 and 8.

Issue 11B: Does the Commission have the statutory authority to grant an extension of service territory to Florida Water Service Corporation which will be in competition with, or a duplication of, the City of Groveland's system(s), unless factual findings are made that the City's system(s) or portion thereof is inadequate to meet the reasonable needs of the public or that the City is unable, refuses, or has neglected to provide reasonably adequate service to the proposed service territory?

Position: No, §367.045(5)(a), F. S., prohibits the Commission from granting a certificate for modification of FWSC's certificate in this case.

Section 367.045(5)(a), F.S., states as follows:

The commission may not grant a certificate of authorization for a proposed system, or an amendment to a certificate of authorization for the extension of an existing system, which will be in competition with, or a duplication of, any other system or portion of a system, unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses or neglects to provide reasonably adequate service.

[Emphasis added.]

The record is clear, as noted above, that FWSC's system is a duplication of, and in competition with, the City's utility system. The record is also clear, as discussed in the previous issues, that the City is in full compliance with the requirements of all applicable regulatory agencies and has the plant capacity and infrastructure necessary to provide service adequate and reliable service to the Summit and is ready and willing to do so. Based on these facts, the Commission does not have the statutory authority to amend FWSC's certificate in this proceeding.

Issue 12: Is it in the public interest for Florida Water Services Corporation to be granted an amendment to Water Certificate No. 106-W for the territory proposed in its application?

Position: No. The City of Groveland has a prior right to provide water and sewer service to the Summit and the technical and financial ability to provide both water and sewer utility services to the development in a timely manner. Extension of FWSC's certificate in this case will duplicate the City's existing water services and is prohibited under §367.045(5)(a), Florida Statutes. Further, the cost to both the developer and customers will be significantly lower if the City provides service.

The "public interest" in this case encompasses both policy and factual issues. The policy issues, while manifested in contradictory interpretations of the legality of service territories and niceties of comprehensive plans, fundamentally involve the relationships between the Commission and the multitude of agencies involved, one way or another in this case: DCA, DEP, Lake County and the City. "Public interest" also includes the general public's interest, which here could be interpreted to be as narrow as the interest of the Summit developer since there are no utility customers at this time or as broadly as the existing customers of FWSC's and the City's utilities.

The factual issues are fairly straight forward: cost of the utilities to provide service; cost to the developer to secure service; cost to the ultimate customer to receive service. When analyzed as a whole, the public interest supports the City's provision of service to the Summit.

Cost to provide service

FWSC has repeatedly stated that no improvements would have to

be made to the Palisades water plant to provide service to the Summit. As discussed in Issue 4, this is not the case. In order to provide water service, FWSC will have to immediately "exercise its option", permit a third well, construct chlorination facilities and tie that well into its existing system. While FWSC provided on redirect neither a timeframe for the completion of these improvements, nor their cost, have no doubt that FWSC will have to expend funds to do so since these are not water distribution facilities for which the developer can be held responsible under the Water Services Agreement.

The City's incremental cost to serve the Summit is no more than \$148,000, the cost of extending the line from Cherry Slough 3,000 feet to the Summit. The City has the money on hand to extend the line and Mr. Mittauer, the City's engineer is currently doing so. While the City, unlike FWSC, has already expended the funds necessary to provide service, the City will recoup these costs through its service availability agreement with the developer.

Cost to the developer

Should FWSC serve the Summit, the developer will be required to pay, at a minimum, the charges set forth in the Water Services Agreement (\$106,838.74) plus the cost of constructing a 12" line 6,700 feet from the water plant to the development. [Ex. 5, Water Service Agreement at 37] Assuming that it costs the developer the same total amount to construct his 12" line as it does the City, 6,700 feet would cost \$323,350.00 [Ex. 22] The developer may also have to pay all or part of the expenses associated with hooking the

third well up to FWSC's existing system. Thus, the developer must pay at least \$430,188.74 if service is provided by FWSC.

Should the City serve the Summit, the developer will pay a negotiated main extension fee and plant capacity charges rebated to him as customers connect. The main extension fee, covering the incremental cost from Cherry Slough to the Summit will be \$145,000 and plant capacity charges will be \$100,440 (135 homes x \$744) for a total cost of \$245,440, 75% less than he will pay to actually connect with FWSC. [Exs. 22, 25]

Cost to the customer

Customers connecting to the City' system with a 1" meter, absent a developer agreement, pay \$1,569.00; however, the City would negotiate with the developer to lower this cost to \$769.00. [Ex. 25; T. 471-2] Pursuant to the Water Services Agreement, customers connecting to FWSC's system with a 1" meter will pay \$896.00. [Ex. 5, Water Services Agreement at 37] Customers receiving water service from FWSC using a 1" meter (the size anticipated by the Water Service Agreement) will pay a base facility charge of \$23.56 and a gallonage charge of \$2.04 per 1,000 gallons per month. [Ex. 9] Customers receiving regular water service from the City using a 1" meter will pay \$13.13 for the first 4,000 gallons and \$3.44 per 1,000 gallons for everything in excess of 4,000 gallons per month. [Ex. 25, T. 507] Thus, customers of the City consuming 10,000 gallons will pay \$33.77 compared to \$43.96, a savings of \$10.19 or 23%. For customers consuming 20,000 gallons per month, FWSC's charges will be \$64.36

compared to the City's charges of \$55.04, a savings of \$9.32 or 15%.⁵ The City would note that these rates include the City's 25% onerous nonresidential surcharge, and are still substantially less than that of FWSC. [T. 502]

Policy/public interest

Service by the City would result in the developer installing dry sewer lines initially thus avoiding costly retrofitting should septic tanks later fail or be prohibited. [T. 458] Service by FWSC totally ignores these possibilities. Further, the City has the current wastewater treatment capacity, managerial and technical expertise to serve the Summit, FWSC does not. [T. 315] Service by the City would allow the City to expand its customer base, spread its cost of operation and take advantage of the economies of scale associated with its existing water and wastewater system. [T. 486] The City, unlike FWSC, has reduced its nonresidential water gallonage rates by 7% in the last three years. [T. 487] Service by the City of the Summit will allow the City to make further reductions. [T. 487] There is no indication in this record that even if economies of scale were realized by FWSC by the addition of the Summit there would be any rate reductions for these customers. And, based on FWSC's past history, such reductions are not too likely. Service by the City will allow customers the same access

⁵ The City also has an irrigation rate available to all of its customers which results in fees of \$20.63 per month for 10,000 gallons and \$38.13 per month for 20,000 gallons for all meter sizes, a savings of \$23.33 and \$26.23 or 53% and 41%, respectively when compared with FWSC's 1" meter. [Ex. 23]

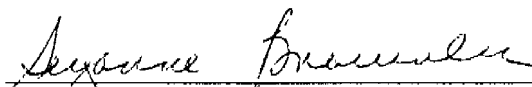
to the policy makers that set rates as will occur should FWSC be allowed to serve this area. [T. 513] Service by the City will prevent the uneconomic duplication of the City's system and allow the City to loop its water and wastewater systems for greater efficiency. [T. 489] Service by FWSC fulfills none of these policy interests.

Given all of these policy and factual considerations, it is not in the public interest to allow FWSC to provide service to the Summit by granting the proposed amendment.

CONCLUSION

Based upon the evidence adduced at hearing, the application of Florida Water Services Corporation to amend Certificate 106-W in Lake County, Florida must be denied since the Commission is without statutory authority to grant the requested amendment.

Respectfully submitted this 13th day of August, 2001:


Suzanne Brownless, Esq.
Suzanne Brownless, P.A.
1311-B Paul Russell Road
Suite 201
Tallahassee, Florida 32301
Phone: (850) 877-5200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing was furnished by Hand Delivery (*) or regular U.S. Mail to the following on this 13th day of August, 2001 :

J. L Yarborough, City Manager
156 South Lake Avenue
Groveland, FL 34736

(*) Patricia Christensen, Esq.
Division of Legal Services
Florida Public Service Comm.
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

J. Stephen Menton, Esq.
Kenneth A. Hoffman, Esq.
Rutledge Law Firm
P.O. Box 551
Tallahassee, Florida 32302



Suzanne Brownless, Esq.

c: 3432