

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 021256-WU

In the Matter of

APPLICATION FOR CERTIFICATE  
TO PROVIDE WATER SERVICE IN  
VOLUSIA AND BREVARD COUNTIES  
BY FARMTON WATER RESOURCES,  
LLC.



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Volume 3

Pages 306 through 452

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON  
COMMISSIONER LILA A. JABER  
COMMISSIONER RUDOLPH "RUDY" BRADLEY

DATE: Wednesday, June 23, 2004

TIME: Commenced at 9:00 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
Chief, Office of Hearing Reporter Services  
FPSC Division of Commission Clerk and  
Administrative Services  
(850) 413-6732

APPEARANCES: (As heretofore noted.)

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## P R O C E E D I N G S

(Transcript follows in sequence from Volume 2.)

COMMISSIONER DEASON: Call the hearing to order. As I recall last evening, when we broke, Mr. Knox, you were still presenting your direct case.

MR. KNOX: That's correct.

COMMISSIONER DEASON: You may call your next witness.

MR. KNOX: Mr. Chairman, my next witness is Mel Scott. He was not sworn yesterday, he was not here.

COMMISSIONER DEASON: Very well. I'm going to ask if there are any other witnesses that are present today that were not present yesterday, please stand and raise your right hand.

(Witness sworn.)

COMMISSIONER DEASON: Thank you. Please be seated.

**MEL W. SCOTT**

was called as a witness on behalf of Brevard County, Florida, and having been duly sworn, testified as follows:

**DIRECT EXAMINATION**

BY MR. KNOX:

Q Mr. Scott, you have now been sworn, correct?

A Yes.

Q And would you state your name, employment, and address, please?

A My name is Mel Scott. I'm the Director of Brevard County's Planning and Zoning Office. The address is 2725 Judge

1 Fran Jamieson Way, Viera, Florida.

2 Q In conjunction with my office, did you prepare  
3 prefiled testimony for filing in this case in approximately  
4 five pages?

5 A Yes, that's correct.

6 Q Have you reviewed that testimony?

7 A Yes, I have.

8 Q Do you have any changes that you would like to make?

9 A I have some changes I would like to make to the March  
10 5th document. On Page 6, Line 12.

11 MR. WHARTON: Well, I'm not sure what is happening  
12 here, Commissioner Deason. The March 6th, I think Mr. Scott is  
13 referring to his deposition.

14 THE WITNESS: Oh, yes, I was.

15 COMMISSIONER DEASON: Could we confirm whether the  
16 witness is talking about --

17 BY MR. KNOX:

18 Q I'm restricting -- I'm asking specifically about your  
19 prefiled testimony. Any corrections to that?

20 A No. Thank you.

21 Q And if I asked you those same questions today, would  
22 you answer them the same way?

23 A Yes.

24 Q And you had some exhibits attached to your prefiled  
25 testimony. Are there any corrections or changes to those?

1           A     No.

2                   MR. KNOX:  Mr. Chairman, at this time I would like to  
3 ask that the prefiled testimony of Mr. Scott be inserted into  
4 the record as if read.

5                   COMMISSIONER DEASON:  Without objection, it shall be  
6 so inserted.

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**APPLICATION OF FARMTON WATER RESOURCES, LLC**  
**FOR AN ORIGINAL WATER CERTIFICATE**  
**DOCKET NO. 021256-WU**  
**ON BEHALF OF BREVARD COUNTY, FLORIDA**  
**DIRECT TESTIMONY OF MEL W. SCOTT**

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- Q. Please state your name and occupation.
- A. Mel Scott. I am the Director of the Planning and Zoning Office of the Brevard County Community Development Group.
- Q. How long have you held that position?
- A. About seven years.
- Q. What academic degrees and professional designations do you have?
- A. I hold an undergraduate Bachelor of Arts degree in political science from the University of Tampa obtained in 1988, and in 1991 I obtained a Masters in Urban and Regional Planning from Florida Atlantic University. I have been a member of the American Institute of Certified Planners since 1997 as well as a member of Florida American Planning Association and have been since 1991.
- Q. How long have you been a planner?
- A. Since 1991.
- Q. Do your duties with Brevard County include the any responsibilities in connection with the Brevard County Comprehensive Plan?
- A. I am responsible for interpreting the comprehensive plan and overseeing the preparation of amendments and updates of the comprehensive plan, as well as the implementation of the comprehensive plan through the preparation, administration and oversight of the county's land development regulations.

- 1 Q. I would like to show you Exhibit MWS-1 and ask if you can identify that  
2 document?
- 3 A. Yes I can. Exhibit MWS-1 is a true copy of written excerpts from the Future  
4 Land Use Element of the Brevard County Comprehensive Plan.
- 5 Q. Would you read Future Land Use Objective 1.A., B and C into the record  
6 please?
- 7 A. Residential Land Uses, Objective 1. Brevard County shall facilitate the  
8 development of residential neighborhoods that offer the highest quality of life  
9 to the citizenry through the implementation of policies that accomplish the  
10 following:
- 11 Criteria:
- 12 A. Ensure the compatibility of new development with its surroundings;  
13 B. Ensure the delivery of services that meet or exceed established levels  
14 of service;  
15 C. Discourage the occurrence of inefficiencies inherent in urban sprawl as  
16 defined by Florida Statutes.
- 17 Q. I would now like you to show you Exhibit MWS-2 and ask you if you can  
18 identify that document?
- 19 A. Exhibit MWS-2 is a copy of the Future Land Use Map that covers the area  
20 identified in the Farmton application for a certificated service area.
- 21 Q. What land use designation does Exhibit MWS-2 depict for Farmton's  
22 proposed service area?
- 23 A. Agricultural.
- 24 Q. I would like to draw your attention to Exhibit MWS-1 again. Which, if any,  
25 objectives or policies in that exhibit are specifically applicable to lands



- 1 designated as Agricultural on the Future Land Use Map?
- 2 A. Specific objectives and policies governing Agricultural Land Uses are set forth
- 3 under Objective 4 of that exhibit, although technically all of the policies in the
- 4 Future Land Use Element are potentially applicable to Farmton's proposed
- 5 service area to the extent that any future use other than agricultural uses are
- 6 proposed for that area.
- 7 Q. Would you please read Objective 4 into the record.?
- 8 A. Objective 4. Brevard County recognizes the importance of agricultural lands to
- 9 the community as the industry benefits the economy, reduces the extent of
- 10 urban sprawl, and the costs of providing public facilities and services, provide
- 11 environmental benefits, and provides open space and visual beauty. The
- 12 County shall enhance and protect agricultural lands, and provide for the
- 13 continuing viability of the agricultural industry in the County's economy.
- 14 Q. Does the Brevard County Comprehensive Plan provide a definition of the term
- 15 "urban sprawl"?
- 16 A. Yes. That definition is found in the glossary to the comprehensive plan.
- 17 Q. I will now show you Exhibit MWS-3 and ask if that is the glossary that you
- 18 have just referred to?
- 19 A. Yes, it is.
- 20 Q. Is the definition of the term "urban sprawl" contained in that glossary?
- 21 A. Yes, it is.
- 22 Q. Will you please read the definition of the term "urban sprawl" as it appears in
- 23 the glossary?
- 24 A. Urban Sprawl - a land development pattern characterized by the location of
- 25 development in areas where public facilities and services cannot be provided

1 efficiently.

2 Q. Would facilities, such as wells and distribution lines, constructed to provide  
3 potable water to retail customers constitute public facilities and services within  
4 the meaning of the urban sprawl definition you just read?

5 A. Yes.

6 Q. In your opinion as an expert in land use planning, does the area comprising  
7 Farmton's proposed certificated territory in any way create an issue of urban  
8 sprawl as defined in the comprehensive plan glossary?

9 A. Yes, the area within Farmton's proposed certificated territory is an extensive  
10 area of undeveloped, primarily agricultural and forested area of the county with  
11 virtually no residential, commercial or industrial development. There are no  
12 public facilities and services available within that area at this time, to my  
13 knowledge, including road infrastructure and central water or sewer service.  
14 Moreover, the area is designated as agricultural. In my experience as a planner,  
15 it is inefficient to attempt to provide centralized potable water service in an  
16 area that can only be used for agricultural purposes.

17 Q. Do you have an opinion as to whether the Farmton proposal to establish a  
18 certificated area for the provision of central potable water service is consistent  
19 with the Brevard County Comprehensive Plan?

20 A. In my opinion, the Farmton proposal is inconsistent with Brevard County's  
21 comprehensive plan.

22 Q. Would you give the reasons for your opinion?

23 A. First, Farmton has not applied for the approval of either the County  
24 Commission in either its capacity as governing body of the County or of the  
25 Brevard County Water and Sewer District. That approval is required under

1 Policy 3.4 of the Potable Water Element of the Comprehensive Plan. Second,  
2 the area embraced by the proposed service area is designated as agricultural on  
3 the Future Land Use Map component of the comprehensive plan. A potable  
4 water system would typically be proposed to serve retail residential and  
5 commercial land uses, not agriculture land use. Therefore, a land use  
6 amendment would be required to support the types of uses necessary to support  
7 a potable water system. Those amendments and land uses do not exist at this  
8 time. Third, the County, in Objective 4 of the Future Land Use Element text,  
9 seeks to preserve agricultural uses that work to reduce the extent of urban  
10 sprawl. There is currently no existing or planned residential or commercial  
11 development proposed in the certificated area applied for by Farmton. Since a  
12 potable water system is typically designed to serve residential and commercial  
13 development, in my experience as a planner, the grant of a certificated area to  
14 provide water services in an agricultural area could set up an attempt at  
15 leapfrog development unless the system were limited to providing bulk raw  
16 water to other retail water providers in areas outside of the proposed  
17 certificated area. That is precisely the type of urban sprawl that the Brevard  
18 County Comprehensive Plan land use policies and implementing land  
19 development regulations are designed to discourage.

20 Q. No further questions.  
21  
22  
23  
24  
25

1 BY MR. KNOX:

2 Q Mr. Scott, could you give us a summary of your  
3 testimony, please?

4 A And this includes deposition or just the prefiled?

5 Q Just the prefiled, please.

6 A Okay. Essentially that prefiled testimony gave an  
7 overview of the Comprehensive Plan, the way that the  
8 Comprehensive Plan is applied to the landscape. That is  
9 really, in essence, what the prefiled testimony talked about

10 MR. KNOX: At this time I would like to tender Mr.  
11 Scott for cross-examination.

12 COMMISSIONER DEASON: Very well. Mr. McNamara, do  
13 you have any questions?

14 MR. McNAMARA: No questions.

15 COMMISSIONER DEASON: Mr. Bosch?

16 MR. BOSCH: No questions.

17 COMMISSIONER DEASON: Mr. Wharton?

18 MR. WHARTON: Thank you, Commissioner.

19 CROSS EXAMINATION

20 BY MR. WHARTON:

21 Q Morning, Mr. Scott.

22 A Good morning.

23 Q Isn't it true that you haven't looked at Farmton's  
24 application?

25 A That's correct.

1 Q You were here yesterday afternoon for Mr. Martens'  
2 testimony?

3 A Yes, I was.

4 Q And so you heard the exchange between he and Mr.  
5 Deterding that essentially he -- and I'm paraphrasing this  
6 loosely, I understand that -- that he had changed his mind with  
7 regard to testimony he gave in his deposition, and with regard  
8 to an interrogatory response that he signed saying that the  
9 county had declared a service area for itself to the four  
10 corners of the county. Do you remember that?

11 A Yes, I do.

12 Q What is your understanding as we sit here today, has  
13 the county declared all the areas in the county not being  
14 served by some other utility as its service area or not?

15 MR. KNOX: Mr. Chairman, I'm going to object to the  
16 question as not being within the scope of the prefiled  
17 testimony.

18 COMMISSIONER DEASON: There's an objection.

19 MR. WHARTON: I'll move on.

20 COMMISSIONER DEASON: Very well.

21 MR. WHARTON: You say in your prefiled testimony --  
22 well, actually, give me a chance, if you will --

23 COMMISSIONER DEASON: You've changed your mind, too,  
24 right?

25 MR. WHARTON: -- to revisit that. Yes. Now I

1 remember the point of this testimony. The point of this  
2 testimony is essentially that Mr. Scott has offered the opinion  
3 that our declaring a service area out there in that part of the  
4 county violates the comp plan. And in his deposition I said,  
5 well, if the county has declared a service area out there,  
6 doesn't that equally violate the comprehensive plan. So I  
7 think it goes to that opinion.

8 COMMISSIONER DEASON: Cite me to his prefiled  
9 testimony, Mr. Wharton.

10 MR. WHARTON: Okay. On Page 4, Line 17, in response  
11 to a question therein he has said at Line 20, "In my opinion,  
12 the Farmton proposal is inconsistent with Brevard County's  
13 comprehensive plan." And, Commissioner Deason, whether you  
14 consider it impeachment, whether you consider that it goes to  
15 the weight, if he is giving opinions that are inconsistent with  
16 regard to the county engaging in the same activities, vis-a-vis  
17 ours, I think it is something that you should consider and  
18 something we'll probably play up in the briefs.

19 COMMISSIONER DEASON: The objection is overruled.  
20 You may ask your question. Please repeat it for the witness.

21 MR. WHARTON: All right.

22 BY MR. WHARTON:

23 Q As we sit here today, is it your -- what is your  
24 understanding as to whether or not the county has declared a  
25 service area for itself to the four corners of the county other

1 than areas that are currently being served by other utilities?

2 A It's my understanding that the potable water element  
3 of the comprehensive plan identifies potable water service  
4 areas, and that is what -- that is where you will find Brevard  
5 County's identification of areas that it will be providing  
6 service to.

7 Q And do you understand that the potable water element  
8 of the comprehensive plan describes the county's service area  
9 as the way I just described it, to the four corners of the  
10 county other than what is already being served by somebody  
11 else?

12 A The comprehensive plan does not do that.

13 Q Do you understand that there is any other document or  
14 ordinance that does that?

15 A I understand that there is a document that the Board  
16 of County Commissioners have adopted, which you had the  
17 testimony from Mr. Martens regarding yesterday.

18 Q But as you recall, my preface to this question was  
19 that Mr. Martens indicated that since he had given his  
20 deposition and answered the interrogatory he was reading that  
21 in a new way.

22 A Uh-huh.

23 Q How do you read that ordinance presently?

24 A Quite frankly, that is not my area of expertise, and  
25 I was not part of the drafting, nor was I a part of the public

1 hearing process in that regard.

2 Q Okay. We may talk about that a little bit later as a  
3 hypothetical.

4 Did you also hear Mr. Martens testify that that same  
5 ordinance, he believed, did not require that the district  
6 approve service areas for utilities, but only the construction  
7 of infrastructure?

8 A I do recall him mentioning that.

9 Q Okay. You have indicated in your prefiled testimony  
10 at Page 4, Line 23, that Farmton has not applied for approval  
11 of either the county commission, in either its capacity as  
12 governing body of the county, or the Brevard County Water and  
13 Sewer District. Do you recall that testimony in your prefiled?

14 A Yes.

15 Q Do you agree with Mr. Martens that the ordinance,  
16 vis-a-vis the district, does not require approval for the  
17 service territory, only for the construction of infrastructure?

18 A I'm not an expert in that ordinance.

19 Q All right. Then let me ask you: That sentence in  
20 your prefiled testimony which seems to indicate your belief  
21 that Farmton needs approval of the county commission as  
22 governing body of the county, or the district, what was the  
23 reference to the district predicated upon? Are you aware of  
24 some requirement that Farmton go to the district and get  
25 approval for establishment of a service area?



1 A In the water service district?

2 Q (Indicating yes.)

3 A Well, if my brief understanding or overview  
4 understanding of the ordinance was that that would also be an  
5 entity that you would have to go to, then that would be the  
6 point of reference and why I would make that.

7 Q But you indicated a minute ago that you are not that  
8 familiar with that ordinance. Would you defer to Mr. Martens  
9 in that regard?

A I would.

Q Then let's go back to the comp plan, which is your  
area.

A Yes. Thank you.

14 Q The comprehensive plan clearly indicates at Policy  
15 3.4, does it not, that Public Service Commission regulated  
16 service areas shall be reviewed and approved by Brevard County?

17 A Yes.

18 Q And that is what you are referring to on Page 4 of  
19 your prefiled testimony that Farmton has not done?

20 A Yes. And if we are going to continue to ask the  
questions that way, is it possible for me to have a copy in  
that in front of me. I have my deposition, but not --

Q Of your prefiled testimony?

A Yes.

25 Q Absolutely.

1           A       It would be helpful.

2                    COMMISSIONER DEASON:  Mr. Knox, do you have a copy of  
3 the prefiled testimony for the benefit of the witness?

4                    THE WITNESS:  Thank you.

5 BY MR. WHARTON:

6           Q       And, Mr. Scott, I have been looking down at Page 4, a  
7 response that begins at Line 23.

8           A       Okay.

9           Q       How long has it been since you have reviewed your  
10 prefiled testimony?

11          A       It has been a couple of weeks, although I have  
12 brushed up on my deposition.

13          Q       Okay.  I want to take a look at that one reference on  
14 Page 4, Line 23?

15          A       Yes.

16          Q       That is the one I have been referring to.

17          A       Yes.

18          Q       Is that provision of the comprehensive plan, Policy  
19 3.4 that we just talked about, the one you are referring to on  
20 Page 4 of your prefiled testimony, that Farmton has not jumped  
21 through that hoop, if you will?

22          A       Yes.

23          Q       All right.  As we sit here today, are you aware of  
24 any other requirement of the county with certainty, other than  
25 Policy 3.4 in the Brevard County Comprehensive Plan, that

1 requires Farmton to get approval of the county in order to  
2 establish a service area?

3 A Yes, with certainty. In the future land use element,  
4 the agricultural future land use designation is the designation  
5 that is over this particular property, and that policy also  
6 speaks to the fact that services shall not be -- such as  
7 potable water -- shall not be extended into the agricultural  
8 areas of the county unless the Board of County Commissioners  
9 deems it to be in the public interest.

10 Q But, again, that is a policy that is within the  
11 comprehensive plan?

12 A Yes, that is correct.

13 COMMISSIONER JABER: Mr. Wharton, may I interrupt for  
14 just a second. The agricultural designation is what currently  
15 exists?

16 THE WITNESS: That's correct, on the future land use  
17 map.

18 COMMISSIONER JABER: But there are hunting  
19 facilities, for lack of a better word, now on the property in  
20 question, correct?

21 THE WITNESS: Yes, but I don't believe there is  
22 facilities that are within Brevard County's area, and I would  
23 seek clarification on that from the Farmton representatives. I  
24 think that most of their things, it is a large tract of land,  
25 only a portion of which is in unincorporated Brevard County.

COMMISSIONER JABER: Okay. I appreciate that clarification. Since you might not be sure about that as it relates to Brevard County, if you assume that there are hunting hedges, cabins, facilities in some part of Brevard County, would that change the designation from agriculture to commercial?

THE WITNESS: No, it would not.

COMMISSIONER JABER: Okay. What does? What makes it commercial?

THE WITNESS: Well, first, the agricultural future land use designation and the zoning that is on the property, quite frankly, if there is a -- say in your hypothetical there was a hunting lodge in the unincorporated Brevard County, unless that were established prior to 1958, or they had a building permit, that is not something that we would permit. So unless that is a longstanding non-conforming use, that would probably be something that, in my estimation, as the zoning official as well, would not be legally permitted out there.

Once you establish, once you go out into a natural area like this is for hunting, if you are going to establish residences, then we need to ensure that you have access to a county maintained or accepted roadway so that we can then provide emergency services, should you need that. So the fact that there are many times tents and very rough and rugged campsites established is different than the formal

1 establishment of, say, a hunting lodge, which I don't believe,  
2 again, has been permitted in unincorporated Brevard County.

3           Making that switch to commercial, I think, would be a  
4 function of the clientele that you would have there. In  
5 Brevard County -- this is not the case throughout the State of  
6 Florida -- but in Brevard County we don't make any distinction  
7 in the zoning code between a residence that you construct and  
8 potentially rent out to another family, and that does not in  
9 and of itself, even though you are gaining some revenue from  
10 that, that doesn't represent a commercial endeavor.

11           So for a hunting lodge to go from something that  
12 potentially could be permitted residential to commercial, it  
13 would have to speak to a caretaker being there, and residents  
14 or tourists coming in with the caretaker still on site, and  
15 maybe the presence of some retail items, as well.

16           COMMISSIONER JABER: Okay. And then so that I am  
17 clear on your position, is it your fear that the PSC issuing a  
18 certificate somehow precludes the county, the county's  
19 determination of whether it is appropriate to change the zoning  
20 designation or to allow for permits at a subsequent time?

21           THE WITNESS: Well, the county's position to this  
22 point has been largely one of procedure. We are simply stating  
23 that Florida law empowers local governments to establish  
24 through the comprehensive planning process the ability of local  
25 governments, which are entrusted with the development of land,

1 the ability to also see such an application and offer that  
2 expertise in land development and land growth trends to the  
3 PSC. So our position has been that absent that procedural  
4 hurdle being jumped over, that on its face it would be  
5 inconsistent with our local comprehensive plan not to have had  
6 a chance to discuss potentially the land use implications that  
7 do come with the granting of a utility by the PSC.

8 COMMISSIONER JABER: And in stating that, though, you  
9 don't take issue with our jurisdiction and authority to issue a  
10 certificate?

11 THE WITNESS: Absolutely not. It is a matter of  
12 procedure. Again, we believe that Florida Statutes empowers  
13 local governments to become part of that process because we  
14 feel that it does change the landscape to a certain extent, the  
15 development landscape.

16 COMMISSIONER JABER: Thank you.

17 Thank you, Mr. Wharton.

18 COMMISSIONER DEASON: I'm going to follow up on that,  
19 Mr. Wharton. I need to understand, then, how does the granting  
20 of a certificate consistent with the application that is filed  
21 here, how does that impede you, as a land planner, for lack of  
22 a better term, how does that impede you and the county from  
23 making whatever decisions you think are appropriate when it  
24 comes to any future development on this tract of land?

25 THE WITNESS: That's an excellent question. I think

1 that it is never so easy, when you are talking about ag lands,  
2 or the hinterlands about to become the next green space which  
3 is converted to suburbia, or whatever kind of development  
4 pattern you are talking about. But I think it is never so  
5 simplistic to simply look at one facet of development, potable  
6 water, the delivery of sewer service, the delivery of a road  
7 network. It is never so easy to look at one dimension.

8 But I do believe that they are all building blocks  
9 to -- and they all contribute to the change, the landscape. I  
10 think that the viability of the hinterlands for development of  
11 a suburban type nature, I think that the landscape does start  
12 to change when a prospective developer does come to the Board  
13 of County Commissioners and says, look, folks, I know you are  
14 not bound to give us this simply because we have water. But I  
15 would like to share with you that that is a very important  
16 service and one that suburbia does require.

17 So I think the Board of County Commissioners, a local  
18 government, needs to play a role in how that landscape very  
19 incrementally, very deliberately does start to change. So I  
20 would share with you that the introduction of water service  
21 does not tie their hands. But it does represent something that  
22 a prospective developer can share with the board. And in  
23 painting his or her picture of why it is a good idea now to  
24 convert that green space to something other than it currently  
25 is, to something more dense. I just think it is a precursor.

1           COMMISSIONER JABER: Commissioner Deason, can we  
2 continue to delve into this a little bit more?

3           COMMISSIONER DEASON: Yes.

4           COMMISSIONER JABER: But that provision of water  
5 service as it relates to opening the door for residential or  
6 commercial development is limited by whether the county is  
7 willing to establish roads and emergency service and all of the  
8 other infrastructure needs that a development requires, isn't  
9 that correct?

10          THE WITNESS: Again, I think --

11          COMMISSIONER JABER: Isn't it correct? Give me a yes  
12 or no and I'll --

13          THE WITNESS: Sure, you need a lot of things. You  
14 need a lot of things.

15          COMMISSIONER JABER: And those lots of things, roads,  
16 emergency service, other infrastructure requirements,  
17 electricity, other infrastructure requirements are still  
18 controlled by some level of a municipality, whether it is  
19 county or city, depending on what area we are talking about,  
20 isn't that correct?

21          THE WITNESS: That is correct in most cases. Roads  
22 will be the exception of that. Federal and state entities can  
23 dictate where roads will go through eminent domain.

24          COMMISSIONER JABER: Thank you.

25          COMMISSIONER DEASON: Mr. Wharton, you may continue.



1 MR. WHARTON: Thank you. And this is an area,  
2 Commissioners, that we are going to go into at length.

3 BY MR. WHARTON:

4 Q All right, Mr. Scott. Now, if I understand your  
5 previous answer, it is that you believe with regard to the  
6 reference in your prefiled testimony on Page 4 that Farmton has  
7 not yet jumped through some county level hoops that it will  
8 have to jump through without getting into which comes first?

9 A Sure.

10 Q As I understand it, you are saying both of those are  
11 contained within the comprehensive plan. One is the statement  
12 in 3.4, and the other is this agricultural portion?

13 A Yes.

14 Q Okay. Is there any other requirement that you know  
15 of, particularly given our discussion earlier about the  
16 ordinance?

17 A No.

18 Q Okay. It is in the comprehensive plan?

19 A Yes.

20 Q First of all, do you agree that you have only  
21 formulated this opinion regarding the latter hoop, that being  
22 the agricultural designation, since I took your deposition in  
23 March? It is not in your prefiled testimony, is it?

24 A Page 5, Line 8, the future land use element and  
25 agricultural uses.

1           Q     Now, your testimony on Page 5 indicates that a  
2     potable water system would typically be proposed to serve  
3     retail, residential, and commercial land uses, not agricultural  
4     land use. Therefore, a land use amendment would be required to  
5     support the types of uses necessary to support a potable water  
6     system. So that is what you are referring to in that regard?

7           A     Well, I spoke about the comprehensive plan's  
8     agricultural land use designation, and I touch upon that in  
9     this prefiled testimony, as well. That's it.

10          Q     But what I'm attempting to do is to ascertain the  
11     basis for your opinion that Farmton would need to go and get  
12     somebody's permission at the county to establish a service  
13     area?

14          A     3.4.

15          Q     And do you understand, Mr. Scott -- pardon me,  
16     Commissioners.

17                     Do you understand, Mr. Scott, that that is what  
18     Farmton has applied for in this case, a certificate to  
19     establish a service area?

20          A     Yes.

21          Q     Isn't it true that, in your opinion, the  
22     establishment of a water service territory is not either a land  
23     use nor is it development as defined by Florida's planning  
24     statutes and rules?

25          A     Is the certificate itself a land use or a

1 development? I don't believe it is.

2 Q All right. And isn't it true that you do not believe  
3 that Farmton's application in and of itself violates the  
4 comprehensive plan?

5 A The application does not.

6 Q And isn't it true that you don't have an opinion one  
7 way or another whether obtaining a certificate violates any  
8 other provision of the comp plan other than the part that  
9 requires prior approval?

10 A That is a fair assessment, yes.

11 Q So your inconsistency opinion, then, is based on that  
12 as it relates to the establishment of the service area, 3.4, in  
13 other words?

14 A Yes.

15 Q And your answer was yes?

16 A My answer was yes.

17 Q Okay. If the establishment of a service area, at  
18 least in the way that it manifests itself in this PSC process,  
19 is not a land use or development as defined by Florida's  
20 planning statutes and rules, why does Brevard County have a  
21 sentence in its comp plan addressing that? Isn't the  
22 comprehensive plan just about land use and development?

23 A Yes. Well, land use and development. I think the  
24 comprehensive plan embodies lots of things that regard health,  
25 safety, and welfare, so I don't know if it would be simply

1 limited to land use and development.

2 Q Why does the comprehensive plan address an issue that  
3 you have testified you do not believe is either land use or  
4 development?

5 A The comprehensive plan is a document that, again,  
6 articulates a county's vision or a local government's vision  
7 regarding many health, safety, and welfare issues.

8 Q Isn't it true that you do not believe that Farmton's  
9 current status as an applicant for a PSC certificate violates  
10 even that aspect of the comprehensive plan, Policy 3.4, the one  
11 requiring approval as of today?

12 A Not as an applicant.

13 Q That is only if Farmton goes and tries to do  
14 something with that certificate in Brevard County, then you  
15 believe there would be an inconsistency?

16 A Well, there is a difference between making  
17 application, receiving the application, and then trying to do  
18 something with it. And on page -- in the deposition we had  
19 quite a discussion on that in the 90s that I would be happy to  
20 further elaborate on, if you care.

21 Q But you don't believe that Farmton was required to  
22 get the approval of the county prior to this case, do you?

23 A I believe that the county needs to deem it consistent  
24 with its comprehensive plan prior to the PSC granting approval,  
25 not simply the application.

1 Q I'm sorry, Mr. Scott, you --

2 A There are three phases. You make application, you  
3 receive approval, and then you attempt to benefit from that  
4 approval.

5 Q And you do recall, I believe you have previously  
6 indicated that I took your deposition on March 5th, 2004?

7 A Yes.

8 Q And on Page 85, Line 23, we had the following  
9 exchange.

10 "Question: In terms of what the comprehensive plan  
11 says about Farmton or anybody else who proposes to expand --"

12 A What line is it?

13 Q Page 85, Line 23.

14 A Yes, thank you.

15 Q "Question: In terms of what the comprehensive plan  
16 says about Farmton, or anybody else who proposes to expand or  
17 create a service territory seeking approval of the board, what  
18 is your understanding of the order of these events? Should  
19 Farmton have come to the board before it went to the PSC, or is  
20 it doing things in the proper order, PSC, then board?

21 "Answer: I don't think the comprehensive plan cares  
22 about the order."

23 Do you stand by that testimony?

24 A Yes, I do. Because the question was you are seeking  
25 approval, and I go on to actually elaborate that, yes, I think

1 it is helpful when an applicant can demonstrate intent clearly  
2 and completely to the Board of County Commissioners. So it is  
3 many times helpful to the board to see that we are asking you  
4 for this approval, but also we want you to know that we have  
5 got several trains on several tracks, and we are also seeking  
6 approval over here at the same time. So that question is  
7 clearly about your client's request. And I don't believe that  
8 the comprehensive plan weighs in on whether it is inappropriate  
9 to ask and get that ball rolling in another entity like this  
10 entity right here.

11 Q All right, sir. On Page 86, Line 19, we had the  
12 following exchange.

13 "Question: But does that mean that you -- it is not  
14 your opinion that Farmton is in violation of the comprehensive  
15 plan right now in that regard. Right now they are an applicant  
16 at the PSC for a certificate, that is their status, and there  
17 has been a protest, and they haven't come to the board. That  
18 is the status.

19 "Do you believe that violates that aspect of the  
20 comprehensive plan as of today?

21 "Answer: On its face, no, I do not."

22 A Uh-huh.

23 Q Do you stand by that testimony?

24 A Yes.

25 Q Is there something different about Farmton's status

1 today than it was on March 5th, 2004?

2 A Farmton is still making application to the PSC.

3 Q So is it still your opinion as of today that Farmton  
4 is not in violation of that particular provision of the  
5 comprehensive plan?

6 A Not yet. That's my opinion.

7 Q Mr. Scott, let's talk about this subject that the  
8 Commissioners touched upon that you and I discussed in your  
9 deposition at some length. Isn't it true that it is not your  
10 opinion that Farmton's obtaining a certificate for the  
11 provision of potable water services from the Commission would  
12 somehow tie the board's hands if Farmton appeared before the  
13 Commission and was requesting an amendment to the comp plan?

14 A It does not tie their hands, but it represents a  
15 changed landscape which I have just discussed with some  
16 Commissioners.

17 Q You would agree that if someone comes in from a  
18 particular area of the county that had a particular designation  
19 under the future land use map and said that designation needs  
20 to be changed because I have a certificate to provide central  
21 water service from the PSC, the county is not compelled to make  
22 that change?

23 A It is not compelled.

24 Q And you don't even have an opinion whether under the  
25 same scenario the county would be more likely to make that

1 change?

2 A That would be me presupposing that I understand what  
3 a board might do with a given set of circumstances. I'm  
4 uncomfortable doing that.

5 Q So my statement is correct that you have no opinion  
6 in that regard?

7 A I guess it would be.

8 Q Okay. You agree, don't you, that the provision or  
9 ability to provide potable water does not necessarily mean that  
10 a request for an amendment to the comp plan is more likely to  
11 be granted. I tell you what, that's the same question. I will  
12 withdraw it.

13 Just to make sure the record in that regard is clear,  
14 you do agree, don't you, that if someone comes before the board  
15 and they are proposing an amendment to the comprehensive plan  
16 and they are holding a certificate for water service from the  
17 PSC in their hand, the board has every power, authority,  
18 privilege, obligation, right, that it would have if that person  
19 did not have a PSC certificate in order to make the decision  
20 whether or not to amend the comp plan? They don't lose any of  
21 those just because that person is holding that certificate?

22 A They don't lose rights to offer a decision regarding  
23 a request to change the comprehensive plan. They may at that  
24 time challenge the validity of the PSC certificate, but that  
25 would be another issue.



1 Q But they in terms of having -- if it is their wish  
2 not to grant that certificate, they are not any more compelled  
3 one iota than they would have been if that person did not have  
4 a certificate because that person does have a certificate,  
5 don't you agree with that?

6 A They are not compelled in the quasi-judicial  
7 proceeding which they would be in, and they have to weigh  
8 substantial and competent evidence. That is evidence that is  
9 put forward, and they would consider it and weigh it. The use  
10 of your word compel, I would answer the question using another  
11 phrase you used. Would their hands be tied? No. It may be  
12 compelling to a commissioner.

13 Q And the comprehensive plan now is set up at least in  
14 part, in your opinion, is it not, to prevent sprawl, which you  
15 talk about in your testimony?

16 A Our comprehensive plan does its best job, as do most  
17 comp plans, to prevent sprawl. Success is another issue.

18 Q So if it was the -- if it was the desire of the Board  
19 of County Commissioners that I have been speaking about where  
20 the person comes, they are applying for an amendment to the  
21 comp plan, and they have a PSC water certificate, to not amend  
22 the comprehensive plan because they feel like that amendment  
23 would lead to sprawl, they have every sling, and arrow, and  
24 power they would have otherwise to refuse to make that  
25 amendment, don't they?

1           A     They have the ability not to grant that.

2           Q     Now, if I understood an answer that you either made  
3 to Commissioner Deason or to Commissioner Jaber correctly, it  
4 sounded a little bit like you were concerned about saving a  
5 future board from itself. In other words, it seemed to me that  
6 what you said was that it might make a board more likely to  
7 make a change under a certain scenario. Is that part of your  
8 concern?

9           A     I think it is -- yes, I think that there is a --  
10 local government, I believe, needs to be at the table every  
11 step of the way in considering in good faith all the component  
12 parts that make up something other than a natural environment  
13 at a very low density. And as those pieces do fall into place,  
14 I think that it is appropriate to have local governing bodies  
15 there at the table.

16          Q     But you would agree that if the Board of County  
17 Commissioners as constituted at some future date, say ten years  
18 from now, wants to take into consideration that Farmton has a  
19 certificate in order to determine whether the comprehensive  
20 plan for that part of the county should be amended, that you  
21 would not presume to condemn that consideration, would you?  
22 They can do whatever they want at the time.

23          A     The Board of County Commissioners is empowered to  
24 look at the substantial and competent evidence that is brought  
25 before them. And if a certificate for water is one of the

1 pieces of that puzzle that is presented to them, then they need  
2 to consider that.

3 Q Touching upon the comprehensive plan process, this is  
4 a process that is established through kind of a labyrinth of  
5 administrative code rules and Florida Statutes, isn't that  
6 correct?

7 A One more time with the question.

8 Q The comprehensive planning process is one that is  
9 established by detailed statutes and administrative code rules?

10 A Yes, that's correct.

11 Q And there is a mechanism for approaching the board to  
12 modify the comprehensive plan?

13 A That is correct.

14 Q In Brevard County you can approach the board during  
15 two cycles a year, is that right?

16 A Yes, Florida Statutes allows for that to change the  
17 text.

18 Q Okay. And that is an active process, there usually  
19 are applications to amend the comp planning in Brevard County  
20 within those cycles?

A We haven't skipped an available cycle since we have  
been given that opportunity.

Q And there's all kinds of factors a board takes into  
account when deciding whether to amend the comprehensive plan,  
25 correct?

1 A That's correct.

2 Q Now, you have testified in your prefiled testimony  
3 about your concern about sprawl, is that correct?

4 A That's correct.

5 Q Now, you do agree that in order for urban sprawl to  
6 occur in the part of the county in which Farmton is located  
7 there would have to be a change in the comp plan?

8 A Not necessarily.

9 Q I'm interested in that, and I'm going to explore that  
10 in a minute. Let's talk about your answer right now first.

11 A If you would like me to elaborate now or respond  
12 further --

13 Q We will go back to that. If it is okay with you, we  
14 will go back to it in one second.

15 A Sure.

16 Q You do recall that I took your deposition on March  
17 5th, 2004?

18 A Yes.

19 Q And at Page 27, Line 8 thereof we had the following  
20 exchange, and I will let you find that. Page 27, Line 8.

21 The comprehensive plan in that area right, now if it  
22 were to be developed out, would not -- I'm sorry, I started in  
23 the wrong place. Line 8.

24 "Question: And if urban sprawl -- well, if what you  
25 define as urban sprawl did occur in that part of the county

1 then, there would have to be some change to the comp plan?

2 "Answer: Yes.

3 "Question: And that would have to go through all the  
4 processes that you have described?

5 "Answer: That is correct."

6 Do you stand by that testimony?

7 A Well, actually that question was asked several times  
8 in the deposition. And there is another place in the  
9 deposition where we did investigate that further. And it is  
clear in the deposition that at that point I had also recalled  
there are several indicators of sprawl. And when I answered  
yes at this point, I was thinking in terms of the one unit per  
acre requirement that is an indicator of sprawl. And this is  
14 one unit per five acres. But in another part of the deposition  
15 we also talked about, well, if there were an extreme case  
16 which, quite frankly, isn't possible right now because there is  
17 no road connection out there. But if you were to development  
18 any piece of land, say, 14,000 acres, 10,000 acres, all at one  
19 unit per five acres, then that would also trip another  
20 indicator of sprawl which is using the term sprawling  
21 homogeneous development pattern. So that could still be  
22 unwieldy at one unit per five acres if it was large enough,  
23 because you would have an unwieldy roadway network,  
24 efficiencies would not be there, and that is also covered  
25 there. So internal to the deposition I guess there is a --

1 Q And I make no bones about the fact that what I'm  
2 reading to you now out of the deposition are the parts that I  
3 like, so --

4 A I appreciate that candor.

5 Q It was a long deposition.

6 Were you here for Mr. Landers' testimony yesterday?

7 A No, I was not.

8 Q He gave a similar opinion about the Brevard County  
9 plan and sprawl that you just did. Let me ask you, though, did  
10 you understand the question that I asked you on Page 27,  
11 Line 8, if what you define as urban sprawl did occur in that  
12 part of the county, then there would have to be some change to  
13 the comp plan?

14 A But I have answered that we had quite a discussion on  
15 that, and that the yes there does not reflect the evolving  
16 thought process that we had together on that point, which I  
17 have now just offered to the Commissioner.

18 Q But in terms of that testimony, in and of itself you  
19 stand by it?

20 A No, I don't, because my thought process evolved on  
21 that day.

22 Q Okay.

23 A And I have offered that to the Commission just now.

24 Q I'm glad I could help you out in that regard.

25 A I appreciate it.

1           Q     Now, you would agree, for instance, that an area that  
2 doesn't have electricity -- if you don't have electricity, that  
3 is going to discourage development, correct?

4           A     Yes, that's does.

5           Q     And yet there are areas in Brevard County that are  
6 designated agricultural that have electricity, but they don't  
7 have urban sprawl, correct?

8           A     That's correct.

9           Q     And is that because the county is able to prevent  
10 urban sprawl, not by regulating whether or not it has  
11 electricity, but by implementing all the other planning tools  
12 that we have talked about?

13          A     I would suggest to you that urban sprawl does not  
14 necessarily follow electricity, because electricity is a  
15 different kind of building block to development. It is very  
16 separate and distinct, in my opinion, than water.

17          Q     Although you would agree that if the county didn't  
18 want a particular area of the county to develop, and it was  
19 within its power to stop electricity from going into that area,  
20 they could reach their designed end by preventing electricity  
21 from going in?

22          A     If you prevent electricity from going in, then you  
23 are not going to be able to issue a certificate of occupancy  
24 for any dwelling unit.

25          Q     So you are certainly not going to have any urban

1 sprawl, are you?

2 A I wouldn't think so.

3 Q Okay. Isn't it true that you are not sure whether  
4 the comp plan has a direct provision providing that central  
5 water services shall not be provided in areas designated as  
6 agricultural?

7 A The agricultural future land use designation has a  
8 paragraph that states that it shall not be extended into the  
9 agricultural future land use designation unless the board  
10 determines that there is an overriding public interest.

11 Q And I think you said that it has the word services  
12 shall not be extended?

13 A Services. I think that is a distinction that is  
14 being drawn between a private well and some kind of a line.

15 Q You said you had reviewed your deposition. Do you  
16 agree with me that on March 5th when we talked about it, you  
17 indicated that you weren't sure whether or not the provision of  
18 central water services was inconsistent with the agricultural  
19 designation?

20 A I do recall that, and I also promised to look up  
21 that.

22 Q And you went and looked it up, huh?

23 A I try to do my homework.

24 Q And again, though, it is the phrase central water  
25 services, or PSC certificated utilities, or central, that is



1 not in there, right? It is just that it says services shall  
2 not be extended?

3 A It says services.

4 Q And in your mind that is kind of umbrella phrase that  
5 would include --

6 A I believe that the intent of the author in using that  
7 phrase is to make a distinction between sewer line -- I mean, a  
8 potable water line service and private well.

9 Q I hesitate to ask this, but you were not that author,  
right?

A I don't think I wrote that sentence, no. I didn't  
have that joy.

14 Q Brevard County is a very fast-growing county, isn't  
it?

15 A Yes, it is.

16 Q It is currently issuing building permits at 189  
17 single family homes a month?

18 A Yes.

19 Q Processing over 10,000 of those permits a year?

20 A Yes, we are.

21 Q And the portions of Brevard County that are being  
22 developed are the country estate portions, the urban portions,  
23 and the suburban portion?

24 A Brevard County offers the full range of lifestyle  
25 choices, and we are developing briskly on all of those fronts.

1 Q And do you believe that currently there are  
2 agricultural lands in Brevard County that have suburban  
3 densities on them?

4 A Agricultural lands? Yes, there are.

5 Q Sir, you are not aware of any judicial or  
6 quasi-judicial determination which supports your assertion that  
7 what Farmton has proposed violates the comprehensive plan, are  
8 you?

9 A That what Farmton proposes violates the comprehensive  
10 plan? At this point I'm not aware of case law in that regard.

11 Q And we have had a little bit of discussion of this.  
12 As a planner, you don't believe the provision of water services  
13 by government is superior or inferior to the provisions of  
14 those services by private utilities, do you?

15 A I don't believe that the quality of the material that  
16 comes out of that tap is more superior because a private sector  
17 entity provided it as opposed to a public sector entity.

18 Q It should just be looked at on a case-by-case basis?

19 A You are talking about the ability to provide the  
20 service once that decision has already been made, and at that  
21 point I think the public and private sectors are quite capable.

22 Q It is your opinion, is it not, that within a four or  
23 five mile radius of Farmton's property over the next ten years  
24 the likelihood of adjacent properties going up in density for  
25 population is quite high?

1 A Going up in density regarding the zoning requests?

2 Q No, their populations, the people who live in them?

3 A I would imagine that within a four or five-mile range  
4 of the southern boundary of the Farmton property that more  
5 people will be living there in ten years than live there today,  
6 yes.

7 Q It was your testimony in your deposition, wasn't it,  
8 that you believe that the biggest stumbling block for  
9 developing the Farmton area is access, a lack of roads?

10 A That's correct.

11 Q Now, a county maintained road can also be a dirt road  
12 in Brevard County?

13 A Yes, we have a dirt road ordinance that has a length  
14 requirement. So you can kind of start to get in there on a  
15 dirt road. But once a number of people develop along that dirt  
16 road it has to be paved, and they all agree that they will do  
17 that, and then you get to the next segment. It's kind of an  
18 incipient policy that has occurred in urban sprawl.

19 Q I'm sorry, Mr. Scott. As a planner, you agree there  
20 are planning advantages that are presented by the development  
21 of large tracts of land owned by single landowners?

22 A There are planning advantages.

23 Q Let's talk about the issue of clustering for a  
24 moment.

25 A Okay.

1           Q     Do I correctly paraphrase the concept of clustering  
2 that essentially a developer would come in and he would be  
3 allowed to develop a portion of his property perhaps more  
4 densely than the regulations allow in exchange for leaving  
5 another part of the property open or undeveloped?

6           A     That's correct.

7           Q     Okay. And Brevard County does have a clustering  
8 ordinance, for lack of a better phrase?

9           A     Yes, we do.

10          Q     And that type of clustering is allowed under the  
11 comprehensive plan because there is a provision in the  
12 comprehensive plan allowing for that occurrence?

13          A     It allows for innovative design, yes.

14          Q     Brevard County has previously permitted developments  
15 under that ordinance?

16          A     Yes, we have.

17          Q     And you are not aware of any instance under which  
18 developers came in under that open space ordinance and the  
19 county denied their requests?

20          A     Actually, the open space subdivision ordinance is one  
21 that you can use without county approval. They have blessed  
22 the mechanism, and that is one of the incentives to a  
23 development community; no rezoning, no comprehensive plan  
24 amendment. You get to give the same yield, but you get to --  
25 in return for open space, we give you a slight density

1 increase, and you can do it administratively in return for open  
2 space.

3 Q And this has been on the books for about two and a  
4 half years in Brevard County?

5 A Coming on three years.

6 Q Do you agree that clustering is a sprawl prevention  
7 tool, for lack of a better phrase?

8 A Clustering in and of itself, I don't think -- with  
9 Brevard County's framework it doesn't change, by and large, the  
10 overall density of a property. It allows for a few more units  
11 to be provided in exchange for open space, but I don't know  
12 that it is necessarily pro or anti-sprawl in that regard,  
13 because it is not necessarily changing the gross density of an  
14 area, it is just allowing for an innovative design in return  
15 for a few more homes.

16 Q Wouldn't you agree, though, that with regard to a  
17 given piece of property, the ordinance might be applied in a  
18 way that if the property were developed outside the ordinance  
19 there might be sprawl, but if it were developed in a cluster,  
20 that piece of property would not present sprawl?

21 A Again, I think the clustering provision isn't one  
22 that encourages or discourages sprawl. I think it is  
23 understanding that there is not a significant yield increase  
24 possibility. It is just about innovative design versus cookie  
25 cutter design. So, you know, if you had access you could do an

1 open space subdivision ordinance on the Farmton property,  
2 theoretically, even though it says one unit per five acres. We  
3 say, well, you know, for 20 percent more units, potentially, if  
4 development were to make it to that doorstep, you give us 50  
5 percent open space, we allow you without a rezoning change to  
6 reduce lot size, you market those lots around the open space,  
7 and it is a win/win. But it is really speaking towards the  
8 design of the property and not necessarily whether or not it  
9 encouraged or discouraged urban sprawl.

10 Q You think clustering is a good concept?

11 A I think it's a wonderful concept.

12 Q Are you pleased with the way that it has worked out  
13 in Brevard County so far?

14 A So far I am, yes.

15 MR. WHARTON: That's all we have, Commissioners.

16 COMMISSIONER DEASON: Staff?

17 MS. RODAN: No questions.

18 COMMISSIONER DEASON: Commissioners?

19 COMMISSIONER JABER: Mr. Scott, I have listened  
20 carefully to your testimony, and I get the impression that if  
21 this Commission were to issue an order that recognized Brevard  
22 County's Comprehensive Plan and recognized that if we grant the  
23 certificate further work needs to be done between Farmton and  
24 the county, i.e., an amendment to the comp plan, that that  
25 would alleviate your concerns. Is that a fair statement?

1 THE WITNESS: If the PSC were to state that this --  
2 would you be saying that the approval that you would  
3 theoretically grant would not be entirely consummated until  
4 there was application made to amend the comprehensive plan?

5 COMMISSIONER JABER: No, let me rephrase it. That's  
6 an excellent point you bring up. If this Commission were to  
7 issue an order that granted Farmton's application for a  
8 certificate pursuant to our own state law, which you don't take  
9 issue with, but recognized that Brevard County does have a  
10 current comprehensive plan that has designated the territory in  
11 question as agricultural, and recognizes that their certificate  
12 is only as good as the PSC certificate designating service  
13 area, and that further work needs to be done with the county,  
14 i.e., an amendment to the comprehensive plan so that this  
15 company could provide service going forward, that that would  
16 alleviate your concerns?

17 THE WITNESS: Again, I just need to understand it  
18 completely.

19 COMMISSIONER JABER: Go ahead.

20 THE WITNESS: I'm getting the same interpretation  
21 from the question. So you would issue it, but how would the  
22 issuance give the board the ability to say yes or no to an  
23 upcoming comprehensive plan amendment? If the board were to  
24 determine that it was not timely, given the location of this  
25 property, to extend or to alter its service map and its potable

1 water element, if it were to deny that, what would that do to  
2 the PSC approval?

3 COMMISSIONER JABER: Let me rephrase the question  
4 differently, because I think that I'm not being clear in asking  
5 the question. Feeding off of your testimony, you recognize  
6 that the PSC certificate is just that, a PSC certificate. And  
7 it has been your testimony that the Board of Brevard County's  
8 hands are not tied in amending or not amending the  
9 comprehensive plan. That is your testimony.

10 THE WITNESS: That is my testimony. But I was never  
11 asked directly whether or not the granting of a PSC certificate  
12 is contrary to the -- I mean, we talked a lot about acting upon  
13 it, but we didn't really get to whether or not the issuance of  
14 it ultimately is contrary to the comprehensive plan.

15 COMMISSIONER JABER: I think you were. Let me --

16 THE WITNESS: I think I said with the application  
17 process.

18 COMMISSIONER JABER: Mr. Scott, let me tell you what  
19 I heard so we can clarify this going forward.

20 THE WITNESS: Thank you.

21 COMMISSIONER JABER: I heard you say the county's  
22 hands were not tied if the company comes before the Board of  
23 County Commissioners and is holding the certificate. We can  
24 agree on that.

25 THE WITNESS: Yes, absolutely.



1           COMMISSIONER JABER: You also agreed that the Board  
2 of County Commissioners would have its own proceeding to  
3 determine whether the provision of services would be  
4 appropriate in that area.

5           THE WITNESS: Whether or not -- well, no, because if  
6 they have a PSC certificate, are they, then, not compelled to  
7 provide the service?

8           COMMISSIONER JABER: You are asking me a question.  
9 You have to answer the question.

          THE WITNESS: Oh. I'm sorry, I'm just trying to  
understand your question by asking a question.

          COMMISSIONER JABER: Is that the level of confusion?  
Mr. Scott, is that the level of confusion Brevard County has?  
14 I go back to the original question I asked you. Is it your  
15 concern that the PSC's certificate takes away the county's  
16 authority to amend the comprehensive plan or how to amend the  
17 comprehensive plan, is that your concern?

18           THE WITNESS: No, the county's concern is that they  
19 feel statutorily that they are able to be part of the process  
20 actively by virtue of Chapter 163. That they are able to say  
21 we have the ability to review it concurrent or before the PSC,  
22 and are not put in a reactive mode of, well, they have their  
23 certificate. That's my understanding.

24           COMMISSIONER JABER: Then you and I are not  
25 understanding each other. Because if you acknowledged earlier

1 that the certificate is not leverage in front of the county in  
2 amending the comprehensive plan, then you are not being clear  
3 in your concern today.

4 THE WITNESS: Okay.

5 COMMISSIONER JABER: So either you are worried about  
6 the certificate being some sort of leverage in front of the  
7 county process or you are not. Which is it?

8 THE WITNESS: To that question, I'm not concerned  
9 that the Board's hands would be tied if there was a  
10 certificate, but I do believe it would be -- the issuance of it  
11 would be contrary to Policy 3.4 in the potable water element.

12 COMMISSIONER JABER: Because?

13 THE WITNESS: Because that states that the Board of  
14 County Commissioners has to grant compliance first.

15 COMMISSIONER JABER: Your comprehensive plan  
16 specifically states that the plan has to be amended before PSC  
17 action?

18 THE WITNESS: Yes. If I could have a copy of that.

19 COMMISSIONER JABER: I need that.

20 THE WITNESS: That is really to the point.

21 COMMISSIONER JABER: Mr. Knox, can you give your  
22 witness a copy of what he is discussing?

23 MR. KNOX: I believe you have it in front of you.

24 THE WITNESS: Yes, let me find it here. I apologize  
25 for shuffling. It is not jumping out at me.

1 MR. WHARTON: Would you like one?

2 THE WITNESS: "Policy 3.4. Newly proposed service  
3 areas, expanding restricted service areas, or Public Service  
4 Commission regulated service areas shall be reviewed and  
5 approved by Brevard County and applicable agencies."

6 COMMISSIONER JABER: Does it speak to the timing of  
7 when they will be reviewed?

8 THE WITNESS: Newly proposed. I think the intent of  
9 the policy is that if you are proposing it, that you will bring  
10 it to Brevard County so that they could review it and approve  
11 it.

12 COMMISSIONER JABER: But you would agree with me that  
13 it is silent on whether it is before a certificate has been  
14 issued or after a certificate --

15 THE WITNESS: I think that the intent is clearly that  
16 it would be before it was issued, because it says newly  
17 proposed as opposed to recently approved or recently granted.

18 COMMISSIONER JABER: And I appreciate what you  
19 believe the intent is, but I need to look at the plain  
20 reading --

21 THE WITNESS: The plain English says newly proposed.

22 COMMISSIONER JABER: Let me finish the question, Mr.  
23 Scott, because it drives the court reporter crazy.

24 THE WITNESS: I'm sorry.

25 COMMISSIONER JABER: You would agree with me that the

1 actual words do not speak to whether the certificate has yet  
2 been issued?

3 THE WITNESS: Yes, it does speak to whether or not  
4 the certificate has been issued.

5 COMMISSIONER JABER: Where?

6 THE WITNESS: Newly proposed service areas I believe  
7 speaks to whether or not it has been issued.

8 COMMISSIONER JABER: So you would agree with me then  
9 the issue we need to think about in agreeing with you or not is  
10 whether that means before or after a certificate is issued?

11 THE WITNESS: Yes.

12 COMMISSIONER JABER: Okay. I appreciate it.

13 THE WITNESS: Thank you.

14 COMMISSIONER DEASON: Redirect.

15 REDIRECT EXAMINATION

16 BY MR. KNOX:

17 Q Mr. Scott, let's assume for a moment that the Public  
18 Service Commission is required to consider whether the  
19 certificate that is being sought in this proceeding must be in  
20 the public interest, okay?

21 A Okay.

22 Q You have indicated, I think, in your  
23 cross-examination that there is a policy in the future land use  
24 element that requires an overriding public interest  
25 determination, is that correct?

1 A That is correct.

2 Q All right. And that pertains to the extension of  
3 water service into this kind of an area?

4 A That's correct.

5 Q All right. And that county commission determination  
6 of overriding public interest has not been made to this point  
7 for this property, has it?

8 A That is my understanding, yes.

9 Q And you alluded to the water and sewer district in  
10 your direct testimony as well, correct?

11 A Yes.

12 Q And the water and sewer ordinance has a provision for  
13 review of the county commission for construction of facilities  
14 that are proposed in areas like this, as well, does it not?

15 MR. WHARTON: Objection. This is the same ordinance  
16 that he testified he wasn't very familiar with and that he  
17 would defer to Mr. Martens.

18 THE WITNESS: That's correct. I mean, I'm responding  
19 that --

20 COMMISSIONER DEASON: Hold on just a second. We have  
21 an objection to the question.

22 MR. KNOX: I'll rephrase the question.

23 BY MR. KNOX:

24 Q If you assume for a moment, Mr. Scott, that that  
25 ordinance has a provision requiring a public interest

1 determination, to your knowledge has the board made such a  
2 determination?

3 A No, it has not.

4 Q Now, Mr. Scott, what is the designation -- land use  
5 designation for the portion of the Farmton territory that lies  
6 within Brevard County?

7 A It has an agricultural future land use designation.

8 Q Okay. And what zoning classifications are allowed in  
9 that agricultural land use designation?

10 A The general use zoning classification, which is one  
11 unit per five acres, and the AGR, which is short for  
12 agricultural zoning classification, which is also one unit per  
13 five acres.

14 Q Okay. And I believe you have testified that any  
15 person who wished to develop in this area could utilize  
16 the clustering ordinance without having to get rezoning of any  
17 kind, is that correct?

18 A That is correct.

19 Q All right. So under the scenario you described where  
20 density is transferred from the areas that are preserved, such  
21 as wetlands, to an area that is being developed, it is  
22 conceivable that you could develop a subdivision in this area,  
23 is it not, under the current regulations?

24 A Under the current regulations, given the delivery of  
25 a plethora of other services which are not yet there, but, yes,

1 conceivably.

2 Q Well, assume a developer builds roads. Developers  
3 build roads all the time, don't they?

4 A Sure.

5 Q They build all kind of infrastructure, don't they?

6 A Yes, they do.

7 Q All right. Well, then it is possible a subdivision  
8 could be built in this area, correct?

9 A That is correct.

10 Q Now, in order to sustain a subdivision, would a  
11 potable water system be a benefit?

12 A Would it be a benefit?

13 Q Yes.

14 A As opposed to a series of private wells?

15 Q Yes.

16 A Yes.

17 Q Would it be from a planning standpoint more  
18 desirable?

19 A Yes.

20 Q Would it be something that could be expanded into the  
21 future for other subdivisions?

22 A Yes, it could be.

23 Q So currently if someone wanted to build a subdivision  
24 in this area, is that something that would fall into the  
25 definition of urban sprawl?

1           A     Without any changes to the comprehensive plan or  
2 without any rezonings?

3           Q     Yes.

4           A     Not necessarily. Not inherently. I think if it were  
5 a cluster development the answer would be no.

6           Q     And how many cluster developments would it take  
7 before you had urban sprawl?

8           A     How many cluster developments?

9           Q     Uh-huh.

10          A     Well, we are only going to allow in the current open  
11 space subdivision ordinance those units to go down -- the  
12 development to go down to one unit per acre, and we would have  
13 a series of green belts and open space, 50 percent as a result.  
14 I don't know if urban sprawl would come to be if the entire  
15 area were built out using the open space subdivision ordinance.

16          Q     All right. Well, if you assume that there were  
17 multiple subdivision out there, aren't there other services  
18 like schools and EMS that have to be provided?

19          A     That's true, yes.

20          Q     Doesn't that go into the calculation of what urban  
21 sprawl is?

22          A     If they are not delivered, if we are not able to  
23 deliver them efficiently then it could be urban sprawl, yes.

24          Q     Okay. So, if a subdivision were developed in this  
25 area and water was the only thing standing in the way of



1 building that subdivision or not building that subdivision, the  
2 Public Service Commission certificate might have some impact on  
3 whether that subdivision could be built, wouldn't it?

4 A In that scenario, yes.

5 MR. KNOX: No further questions.

6 COMMISSIONER DEASON: Okay. All right. I think we  
7 have no additional exhibits other than the ones that have  
8 already been identified and admitted. Thank you, Mr. Scott,  
9 you may be excused.

10 Mr. Bosch, I believe we are to your direct case.

11 MR. BOSCH: Yes, Commissioner. I call Gloria  
12 Marwick.

13 **GLORIA MARWICK**

14 **was called as a witness on behalf of Volusia County, Florida,**  
15 **and** having been duly sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 BY MR. BOSCH:

18 Q Ms. Marwick, you were sworn yesterday?

19 A That's correct.

20 Q Ma'am, give us your name and your profession?

21 A My name is Gloria Marwick. I am the water resources  
22 and utilities director for Volusia County.

23 Q Back last August, did you assist my office in  
24 preparing a prefiled testimony?

25 A I did.

1 Q And have you had a chance to review that testimony?

2 A Yes.

3 Q If you were asked those questions today, would your  
4 answers be the same?

5 A Yes.

6 Q Is there anything you would like to change in there?

7 A No.

8 Q And you had no exhibits attached to that testimony,  
9 correct?

A I don't believe so.

MR. BOSCH: Commissioner, at this time I would move  
to insert the prefiled testimony into the record.

COMMISSIONER DEASON: Without objection, it shall be  
14 so inserted.

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1 Q. State your name and address.

2 A. Gloria Marwick, 123 West Indiana Avenue, DeLand, Florida  
3 32720.

4 Q. Ms. Marwick, where do you work and what is your position?

5 A. I am the Director for the County of Volusia's Water Resources  
6 and Utilities.

7 Q. How long have you held that position?

8 A. Since January 2000.

9 Q. What are your duties as Director of Water Resources and  
10 Utilities?

11 A. Direct and coordinate the activities of Utilities and  
12 Stormwater. Our utility has 14 water treatment plants and 15  
13 wastewater treatment plants and a stormwater management component.

14 Q. What is your educational and professional background?

15 A. B.S. in Business/Economics from Rollins College, Winter Park.  
16 I have worked with Volusia County for the past 14 years, the last  
17 three as the Utilities Director. The previous seven years I was  
18 Operations Manager for Public Works, which includes divisions of  
19 Water Resources and Utilities, Construction Engineering, Traffic  
20 Engineering, Road and Bridge, Mosquito Control and Solid Waste. For  
21 several years I worked for Fleet Maintenance and Facilities  
22 Services. Before working for Public Works, I was the Administrative  
23 Assistant and Acting Director of Utilities.

24 Q. As Director of Water Resources and Utilities for the County,  
25 are you familiar with the area owned by the Miami Corporation, which

1 s the subject matter of the Farmton Application for PSC  
2 Certification of a Water Utility?

3 A. Yes I am. This area is in the south-central portion of  
4 Volusia County. It has never been included within any of the  
5 groundwater simulation models used by either the St. John's River  
6 Water Management District or the Volusia Water Alliance.

7 Q. Why is that important?

8 A. The St. John's River Water Management District has designated  
9 most of Volusia County as being within a "Priority Resource Caution  
10 Area". This designation indicates that, given current plans for  
11 use, the current groundwater supplies will not sustain the demand by  
12 the year 2020. With that in mind, "Vision 2020" was created by the  
13 Volusian Water Alliance (which is an intergovernmental planning body  
14 created through interlocal agreement, back in 1996). Vision 2020  
15 was a plan formulated by the VWA as a long-range plan and conceptual  
16 vision for meeting the legislative requirements and accomplishing  
17 the District's water supply planning goals within Volusia County.  
18 The primary aim of this long-range plan is to minimize the  
19 construction of new systems through the management of current assets  
20 and resources. However, as I mentioned, this significant portion of  
21 land area owned by the Miami Corporation, was never included in  
22 these models, and so any additional demands originating from this  
23 area, outside the current modeling or existing system, will put  
24 further stress on a water supply already strained and in need of  
25 careful planning. In fall 2002, an advisory item "Do you support the

1 reation of a centrally managed wholesale raw water production and  
2 istribution organization for Volusia County for the better  
3 anagement of groundwater supplies and planning for alternative  
4 ources of future water as needed" received a 67% "yes" vote from  
5 he citizens of Volusia County. A new water entity (Water Authority  
6 f Volusia - WAV) will become operational October 1, 2003. As this  
7 ame time, the Volusian Water Alliance will be dissolved. The new  
8 .gency will oversee management of Volusia County's water supply  
9 hrough implementation of the Water Supply Plan, implement a  
10 wellfield management plan to provide for optimization of existing  
11 water supply facilities, promote conservation and plan for  
12 alternative water sources. It is expected that WAV will be able to  
13 develop new water supplies more efficiently than an individual local  
14 government or private utility and have a customer base that will  
15 support an alternative supply facility. More basic is the premise  
16 that since all water user and citizens in Volusia County will  
17 benefit from preservation of existing water supplies and/or  
18 development of new water supplies, a funding mechanism will be  
19 implemented that will be an equitable way for all beneficiaries to  
20 pay for future water.

21 Q. Does that mean that this area can never have a water service  
22 system?

23 A. No, not at all. What it means is that, in the natural course  
24 of future development, as such demand becomes apparent and  
25 necessary, (which it is not now), based on the demand projections

1 nd modeling, Volusia County through WAV, will incorporate the area  
2 nd its water supply demands into the regional water supply plan.  
3 This can only be done by members of WAV, which are all governmental  
4 entities within the County; therefore, Farmton could not be part of  
5 such a regional planning practice.

6 Q. How will the County provide this area with water service in  
7 the future?

8 A. The County has and continues to negotiate water service area  
9 agreements with various Municipalities to provide for a regional  
10 approach to service, and to prevent duplication of infrastructure.  
11 While the Miami Corporation property has not demonstrated a need for  
12 a potable water distribution system and treatment facilities, if  
13 such a need is ever demonstrated, the County Utilities, through WAV,  
14 is prepared to serve the area.

15 Q. Are there any water supply systems currently near to this area  
16 which could be utilized?

17 A. The County currently serves the adjacent area of  
18 unincorporated Oak Hill and Edgewater communities with both potable  
19 water and sanitary sewer.

20 Q. Why does the County wish to provide such services itself?

21 A. The County, through WAV, is trying to solve the water supply  
22 problems on a regional basis. Additionally, pursuant to the  
23 County's Land Development Regulations, Volusia County requires  
24 developers to provide and dedicate to the County the potable water  
25 distribution system and treatment facilities (and wastewater

1 systems) within any new development. Therefore, design and  
2 construction must be in conformance with County design and  
3 construction standards. The reason this Land Development regulation  
4 was adopted was because under Section 367.165, Florida Statutes, the  
5 County has been appointed receiver for various developer and private  
6 systems because these private systems historically do not make  
7 capital improvements to the system. Once they face compliance  
8 issues or major deficiencies, they have historically abandoned the  
9 system, leaving the County to take-over and provide the necessary  
10 funds for improvement and continued service for these customers.  
11 Furthermore, private systems are hesitant to invest in conservation  
12 programs or reuse programs, which are designed to aid the ground  
13 water supplies.

14 Q. Do you hold any opinions regarding whether the Farmton  
15 application is consistent with the County's Comprehensive Plan?

16 A. Yes I do. According to the Volusia County Comprehensive  
17 Plan's Water Sub element, utility lines should only be extended to  
18 those areas if the absence of a potable water facility would result  
19 in a threat to public health or safety; or, if the area is already  
20 in an area with a water service agreement, or if the Comprehensive  
21 Plan is amended to change the land use designation. Farmton has not  
22 alleged nor demonstrated any of these prerequisites.

23 Q. Do you have any further testimony?

24 A. As the discovery progresses in this case, I may indeed.  
25 However, the foregoing testimony is an accurate summary of what I

1 i tend to say at this point.



1 BY MR. BOSCH:

2 Q Ms. Marwick, could you please give us a summary of  
3 what it is you have testified to in your prefiled testimony?

4 A Yes. I testified that I believed the Farmton  
5 application is in conflict with Volusia County's comprehensive  
6 plan, the position of public versus private utilities within  
7 Volusia County, and the organization of WAV, the water  
8 authority of Volusia and what its intent is.

9 According to the Volusia County potable water  
subelement to the comp plan, central water is not required for  
nonurban areas. Lines should only be extended if the absence  
of such facilities would result in a threat to the public  
health or safety, or if a designated rural area is inside an  
14 approved water service area. The comprehensive plan further  
15 provides that developers within the unincorporated area build  
16 lines, pumps, plants all to the specification of county  
17 standards. And it further requires that these be dedicated to  
18 the county. I believe the original intent of this part of the  
19 comp plan was to address the private versus public utilities.

20 The county has been appointed by the court as  
21 receiver for several systems over the years. These systems  
22 were abandoned by the developers and owners because they were  
23 in very poor condition. They had compliance issues and much  
24 capital needed to be expended to bring them to standards.

25 The water authority in Volusia County became

1 operational in 2003. The mission of the authority is to  
2 optimize existing water supplies, promote conservation, and  
3 plan for future supplies of water, which could be water from  
4 the St. Johns River or it could be desalinization on the east  
5 side. Rather than competing for a limited supply of  
6 sustainable groundwater, WAV puts forth an effort to cooperate  
7 and eliminate competition.

8 WAV was formed by an interlocal agreement between 14  
9 cities and the county. The authority made a conscious and  
10 deliberate decision not to allow private entities become  
11 members of WAV. WAV has also adopted a local sources first  
12 option. They will not export water out of the county, and I  
13 should say groundwater, and conversely it is only fair that we  
14 will not import water from outside the county. WAV also is  
15 required to complete a master plan within two years and they  
16 will build upon our existing water supply plan.

17 MR. BOSCH: Thank you, Ms. Marwick.

18 Mr. Commissioner, at this time I would tender the  
19 witness for cross-examination.

20 COMMISSIONER DEASON: Very well. Mr. Knox.

21 MR. KNOX: No questions for this witness.

22 COMMISSIONER DEASON: Mr. McNamara.

23 CROSS EXAMINATION

24 BY MR. McNAMARA:

25 Q Ms. Marwick, I just have a few questions. Has

1 Farmton ever requested water service from Volusia County?

2 A No, not to my knowledge.

3 Q And has Miami Corporation ever requested water  
4 service from Volusia County?

5 A Not to my knowledge.

6 MR. McNAMARA: That's all I have.

7 COMMISSIONER DEASON: Mr. Deterding.

8 MR. DETERDING: Thank you, Commissioner.

9 CROSS EXAMINATION

10 BY MR. DETERDING:

11 Q Good morning, Ms. Marwick.

12 A Good morning.

13 Q Are you a hydrologist or trained in hydrology?

14 A I am not.

15 Q And you don't hold yourself out as an expert in  
16 hydrology, correct?

17 A I do not.

18 Q Do you hold yourself out as an expert in engineering?

19 A I am not an engineer.

20 Q Okay. And you are not a planner, either, correct?

21 A I am not a planner.

22 Q Okay. You state on Line 3, Page 2, of your testimony  
23 that the Farmton area, quote, has never been included within  
24 any of the groundwater simulation models used by the St. Johns  
25 River Water Management District or Volusian Water Alliance, is

1 that correct?

2 A Correct.

3 Q So you are saying there has never been any modeling  
4 of the water resources within the area?

5 A What I am saying is that in the water supply plan  
6 they predicted a need or a demand. The demand in that area was  
7 not calculated as being built for residential, or commercial,  
8 or industry as in the application.

9 Q Okay. So you are saying they didn't even look at the  
10 demand, is that correct?

11 A I'm saying they did not look at the demand in that  
12 respect.

13 Q Well, in respect to the needs that Farmton is  
14 proposing in this application?

15 A Correct.

16 Q So they did not include any consideration of any  
17 water use within the Farmton property?

18 A For not residential.

19 Q Okay. What type of service has Farmton proposed in  
20 this application?

21 A Service to residential.

22 Q And what residences are those?

23 A I guess they are the mobile homes or the hunting  
24 camps.

25 Q So you are saying that they did not include the

1 hunting camps in that analysis?

2 A Not that I'm aware of.

3 Q But you were not speaking to the question of  
4 analyzing the resources, or were you, in that modeling?

5 A I don't understand your question, I'm sorry.

6 Q Well, you were just talking about demand in response  
7 to my question about analyzing the availability of the  
8 resource.

9 A I'm talking about demand.

10 Q Okay. So you are not talking about the resource  
11 itself?

12 A I'm talking about demand and as a consequence of  
13 that, of what our future supplies may need to be.

14 Q What new demands for water are there within the  
15 proposal by Farmton other than the relatively small demands  
16 from the hunt club?

17 A I don't know. I think they are proposing for a  
18 couple of new hunting clubs, but, you know, what I hear  
19 constantly is that, you know, what will the future bring. What  
20 will -- you know, what development will occur there. They  
21 don't know. We are trying to plan all the way through 2020 on  
22 our water supplies, and I think it is very crucial that, you  
23 know, things like this be considered in our water supply plan.  
24 And I hear that development may occur.

25 Q So you are concerned about some change in the

1 authorized development of the property, or are you concerned  
2 about just any use within the property?

3 A I am concerned as far as our water supply plan is any  
4 change or any additional demand.

5 Q Has the utility proposed to make any substantial  
6 change in the usage within its property that is not already  
7 approved and authorized within that property?

8 A From looking at the allocation, they are talking  
9 about possible changes in that use.

10 Q Well, aren't there possible changes in every part of  
11 the county?

12 A Yes, and we have projected for those.

13 Q So I guess what you are saying is this plan just  
14 failed to include any consideration of any existing uses within  
15 the Farmton property?

16 A That's correct.

17 Q You state on Page 2, Line 18 through 20, of your  
18 testimony in reference to the Vision 2020 plan that the, quote,  
19 primary aim of that long-range plan is to minimize the  
20 construction of new systems through the management of current  
21 assets and resources. Isn't it true that nowhere in the plan  
22 does it state that this is a primary aim?

23 A I think that they have added as an attachment to the  
24 interlocal agreement the existing wells, and anything beyond  
25 that will be under the purview of the Water Authority of

1 Volusia, and they will take the existing supplies and try to  
2 manage them better.

3 Q Well, you are referring to something that was adopted  
4 since the filing of this application, are you not?

5 A No.

6 Q Okay. When was this adopted?

7 A It is the interlocal agreement that was adopted -- I  
8 don't have it in front of me. I think it was adopted -- it has  
9 been at least a year.

10 Q And it says in it that the primary aim of that  
11 long-range plan is to minimize construction of new systems?

12 A Not necessarily the primary aim. It's primary aim is  
13 to better manage the existing supplies.

14 Q Okay. Do you serve or did you serve on the Volusian  
15 Water Alliance?

16 A I did not serve on the Volusian Water Alliance. We  
17 have normally elected officials. I serve as a staff  
18 representative to him or her.

19 Q And isn't it true that Mr. Underhill did serve on the  
20 Volusian Water Alliance at the time this plan was adopted?

21 A He was on the Volusian Water Alliance for the  
22 Volusian Water Alliance water supply plan. Then there was a  
23 transition team that was created to put the authority in place.  
24 I do not know if a representative for agriculture was included  
25 in that transition, and they are the ones who actually put

1 together, I think, the interlocal agreement for the Water  
2 Authority of Volusia.

3 Q Have you read the testimony of Mr. Underhill?

4 A I did.

5 Q And you would agree that he says that he was part of  
6 that Volusian Water Alliance when that plan was adopted,  
7 correct?

8 A I believe he was a part of the Volusian Water  
9 Alliance when -- there are two different groups. Volusian  
10 Water Alliance was a cooperative. The authority is a different  
11 group altogether. It evolved, but it has different powers,  
12 different scope.

13 Q But when this plan was adopted, Mr. Underhill was on  
14 the board?

15 A I don't know that. I don't know that he was part of  
16 the transition team.

17 Q Okay. You don't know one way or the other?

18 A I do not.

19 Q Does the failure of the plan to include demand within  
20 this area prevent an applicant from obtaining a consumptive use  
21 permit or a revised consumptive use permit?

22 A Not to my knowledge.

23 Q You note on Page 4, Line 8 through 10, of your  
24 testimony that the county is working on agreements to prevent  
25 duplication of infrastructure.



1 A Yes.

2 Q Isn't it true that Farmton already has facilities  
3 within its territory providing potable water service?

4 A I don't know that we would classify that as a  
5 facility. From what I can gather it is simply wells. I don't  
6 even think it has a distribution network.

7 Q Okay. But if the county -- let's say for the moment  
8 we call those facilities or infrastructure.

9 A (Indicating yes.)

10 Q If the county now proposed to provide the same  
11 service that is being provided by Farmton, then it would be the  
12 county who was attempting to duplicate facilities, correct?

13 A No, I do not agree with that.

14 Q Well, didn't you just say that the county is working  
15 on agreements to prevent duplication of infrastructure?

16 A You're supposing that that is infrastructure. I  
17 don't know that we consider that infrastructure.

18 Q Well, I just asked you to assume that was  
19 infrastructure. And you said if you did -- my question was  
20 premised on if you did consider that infrastructure, wells?

21 A If it was infrastructure, I guess the county would be  
22 duplicating it.

23 Q Okay. You indicated the county currently serves the  
24 adjacent area of unincorporated Oak Hill and Edgewater with  
25 potable water?

1           A       The county has a wholesale agreement with the City of  
2 Edgewater. We do not have a water plant in the area. We have  
3 a wastewater plant. We buy water wholesale from the City of  
4 Edgewater. The City of Edgewater buys wholesale sewer from us.

5           Q       So you are the retail provider of water there?

6           A       That's correct.

7           Q       Okay. How far are these two communities from the  
8 edge of the Farmton property?

9           A       Edgewater, to my knowledge, has -- when you talk  
10 about infrastructure, you are also talking about lines. From  
11 what I understand they have lines under construction right now  
12 that take both water lines and wastewater lines to the west  
13 side of 95, which puts them less than one mile from the Farmton  
14 border.

15          Q       Okay. You are talking about Edgewater's lines,  
16 correct?

17          A       That's correct.

18          Q       Okay. How far are Volusia County's nearest lines to  
19 the proposed Farmton service area?

20          A       Volusia County does not have water in the area. We  
21 wholesale water from the City of Edgewater. We have an  
22 interlocal agreement and a service area agreement with them.

23          Q       So Volusia County doesn't have any lines within ten  
24 miles of the proposed Farmton service area, is that correct?

25          A       No. We would provide water via Edgewater or WAV.

1 Q And Edgewater has withdrawn any protest to this  
2 application, have they not?

3 A That is what I understand.

4 Q You note in your testimony that Volusia County  
5 requires developers to provide and dedicate to the county  
6 potable water distribution treatment facilities and wastewater  
7 systems within any new development, correct?

8 A That is correct.

9 Q Has the county ever attempted to apply this  
10 requirement to any area within the certificated service  
11 territory of a regulated utility?

12 A Not to my knowledge.

13 Q You noted that the county has been appointed receiver  
14 for various developer and private systems because the private  
15 systems do not make capital improvements to the system, is that  
16 correct?

17 A That's correct.

18 Q How many of these systems, Public Service Commission  
19 regulated systems have been abandoned in the history of Volusia  
20 County?

21 A Within my tenure, there have been three. And these  
22 areas -- we have three of them, Pine Island, Stone Island, and  
23 Meadowlea-on-the-River. They are, like Farmton, in remote  
24 areas of the county, the majority of them. And there were some  
25 previous to that. But to be perfectly honest, if I had to try

1 to find files on them, I don't know that I could. They date  
2 back.

3 Q And how long have you been with the county?

4 A I have been with the county 15 years, three as the  
5 utility director.

6 Q And you mentioned a Pine Island, and what were the  
7 other two?

8 A Pine Island. Stone Island, which we received from  
9 Florida Water Services, were appointed. They abandoned the  
10 system, we were appointed the receiver. The other one was  
11 Meadowlea-on-the-River, which was I believe DeBary Associates  
12 were the owner developers that petitioned the courts and we  
13 were appointed the receivers.

14 Q How many of these systems that were abandoned had  
15 hundreds of millions of dollars in assets at the time they  
16 abandoned the system?

17 A I would certainly think that Stone Island did. They  
18 were owned by Florida Water Services, one of the largest  
19 private utilities in our state, certainly.

20 Q So Florida Water Services developed this system and  
21 then abandoned it to the county?

22 A They did not develop it. I think Enterprise  
23 Utilities petitioned the courts. They abandoned it, Florida  
24 Water Services, I believe, stepped up to the plate and  
25 voluntarily took the utility, managed and operated it for a

1 number of years. And, again, I do not think put any capital  
2 into the system. Again, petitioned the courts, and the county  
3 was appointed receiver.

4 Q Wasn't Florida Water Services merely the receiver for  
5 that system?

6 A They were, I believe, the receiver.

7 Q So it was not their system, they were acting as a  
8 receiver for that system?

9 A Yes, but for a number of years.

10 Q Okay. Do you know of any other of these abandoned  
11 systems where the actual ownership of the system was by someone  
12 or creation of the system was by someone who had hundreds of  
13 millions of dollars in assets?

14 A I am not familiar with either DeBary Associates nor  
15 the people who developed Pine Island. I would not know their  
16 background.

17 Q You also state that once these systems face  
18 compliance issues or deficiencies they have historically  
19 abandoned the system. Would you agree that you don't know of  
20 any that have been created or owned by private utilities with  
21 that level of assets that have abandoned such systems?

22 A I would think, again, Stone Island with Florida Water  
23 Services.

24 Q Well, Florida Water was the receiver for that system,  
25 it did not own or develop that system, isn't that correct?

1           A       That's correct. But the county, on the other hand,  
2 are appointed receivers. We operate those plants, we bring  
3 them into compliance, and then we assimilate them into the rest  
4 of our system. So I don't understand, you know, the difference  
5 between Florida Water Services being the receiver for a number  
6 of years.

7           Q       You state that the private systems are hesitant to  
8 invest in conservation or reuse programs which are designed to  
9 aid groundwater supplies, correct?

10          A       That's correct.

11          Q       How many private systems have ever formally stated  
12 that they are hesitant to invest in conservation or reuse  
13 programs in some formal document to you?

14          A       There are no formal documents that I'm aware of, just  
15 my experience.

16          Q       Okay. And are these the same systems you are talking  
17 about?

18          A       Those would be some of them, yes.

19          Q       What other ones are there?

20          A       We have some issues out there now with other  
21 utilities. Terra Mar was one, they just were purchased by the  
22 City of Edgewater. We have compliance issues with another  
23 system, Highbanks (phonetic), that, you know, they just don't  
24 put the money back into the systems.

25          Q       Now, you are talking about conservation and reuse

1 programs?

2 A I'm talking about compliance, anything.

3 Q Well, I was asking you about your statement about  
4 conservation and reuse programs.

5 A I do not know of any private utilities that have  
6 reuse programs and large conservation programs.

7 Q Okay. Isn't it true that the water management  
8 district regulates, as does this Commission, conservation  
9 programs that are being implemented by these utilities?

10 A They regulate them through your consumptive use  
11 permit to a degree.

12 Q Okay. And which of these systems are refusing to  
13 invest in those that are required by those agencies?

14 A I don't think that they are refusing to invest in  
15 those that are required. I do not think they do anything  
16 beyond what is required.

17 Q Okay. And the same is true with reuse systems or  
18 reuse programs, you don't know of any that are refusing to do  
19 those reuse systems that are required by the regulatory  
20 agencies?

21 A I don't know of any large or any of the private  
22 utilities out there that do have reuse programs.

23 Q Okay. Isn't it true that this objection to the  
24 application of Farmton by Volusia County is not tailored to the  
25 circumstances of Farmton, but the county would object to any

1 proposed certification of a private utility by the PSC?

2 A That is correct.

3 Q You note on Page 5, Line 16 through 22, of your  
4 testimony that Volusia County's comprehensive plan water  
5 subelement states that, quote, utility lines should only be  
6 extended to those areas in the absence of potable water  
7 facilities -- I'm sorry, to those areas in the absence of  
8 potable water facilities, will result in a threat to public  
9 health, safety, or if the area is already in an area with a  
10 water service agreement, correct?

11 A That is correct.

12 Q Where has Farmton proposed to extend any utility  
13 lines?

14 A Within their area.

15 Q Which specific area did they propose to extend  
16 utility lines?

17 A Within the Farmton area.

18 Q Are you talking about potable water service, fire  
19 protection service, or bulk service?

20 A I'm talking about all them.

21 Q Okay. And you believe that each one of those  
22 proposes to extend lines?

23 A No, I do not. I did not say that. I guess I'm not  
24 understanding your question is what it boils down to.

25 Q Well, the reference to comprehensive plan subelement



1 in your testimony says utility lines should only be extended to  
2 those areas. Where has Farmton proposed to extend utility  
3 lines?

4 A They are putting in a series of raw water wells.  
5 What is the purpose of the raw water lines if you are not --  
6 raw water wells if you are not extending lines to somewhere?

7 Q Has Farmton's proposal to provide bulk water service  
8 suggested that they are putting in those wells?

9 A From what I read in the application, I believe so. I  
10 may be mistaken, but that is certainly what I'm reading.

11 Q Isn't it true that they will only put those wells in  
12 and stated they will only put those else in if a need arises  
13 for that type of service?

14 A I guess so. I'm not sure.

15 Q And they have not proposed any utility lines be put  
16 in for potable water service, have they?

17 A It was difficult to read the application. It was  
18 very difficult for me to understand exactly what they were  
19 attempting to do. I don't understand putting wells in without  
20 distribution lines.

21 Q Okay. But you don't know whether that application  
22 proposes to put in utility lines?

23 A I could not garner that from there, no.

24 Q Does Volusia County consider all of the county not  
25 already in its service area, already in the service area of an

1 existing private utility, or a municipality to be its service  
2 area?

3 A Anything in the unincorporated -- everything in the  
4 unincorporated area that is not in an existing service area.

5 Q Yet the county has no plans to serve the Farmton  
6 area, and inclusion of the Farmton property in the county  
7 service area does not indicate the county is ready, willing, or  
8 able to serve that area, does it?

9 A Under, I guess, the land use, that area is considered  
10 nonurban and, therefore, potable central utilities is not  
11 necessary.

12 Q So the county has no plans to serve that area, isn't  
13 that correct?

14 A Not at this time. At some point in time, if those  
15 designations could change, I think there is infrastructure  
16 available to serve that area.

17 Q And inclusion of that area does not -- in the  
18 county's service area does not indicate the county is ready,  
19 willing, and able to serve the area currently, correct?

20 A Repeat that, please.

21 Q Yes. Inclusion of that area in the county's service  
22 territory, the Farmton area in the county's service territory,  
23 does not indicate the county is ready, willing, and able to  
24 serve that area?

25 A It is a nonurban area.

1 Q And, therefore, the county is not ready, willing, and  
2 able?

3 A Correct.

4 MR. DETERDING: Thank you. That's all I have.

5 COMMISSIONER DEASON: Staff.

6 CROSS EXAMINATION

7 BY MS. FLEMING:

8 Q Ms. Marwick, do you know how many privately owned  
9 utilities have been certificated by the Commission in Volusia  
10 County?

11 A I do not. I'm aware of a few. Florida Water  
12 Services, of course, was the largest, and it has just recently  
13 been purchased by the City of Deltona. I think there are some  
14 small ones within the county, but I don't think there is  
15 anything of any substantial size.

16 Q Would you agree, subject to check, that in the past  
17 45 years the Commission has approximately issued 30  
18 certificates?

19 A I do not have that knowledge.

20 MS. FLEMING: Thank you.

21 COMMISSIONER DEASON: Commissioners. Redirect.

22 MR. BOSCH: Very briefly.

23 REDIRECT EXAMINATION

24 BY MR. BOSCH:

25 Q Ms. Marwick, you have been asked a lot of questions

1 by counsel regarding public versus private. Can you tell us  
2 what are the benefits of having public ownership of utilities  
3 in Volusia County versus private ownership?

4 A Sure. I think that public we're enterprise funds, we  
5 don't make profits, we take and put back into the systems. We  
6 encourage conservation, we encourage reuse of wastewater for  
7 irrigation. Stone Island is a very good example of years of  
8 neglect. As we took that system or were appointed receivers  
9 for that system, we entered into a consent order with DEP that  
10 we were mandated to take the flows off that island. We  
11 constructed a force main at 14,000 feet very recently to do  
12 just that, and to serve as little as I think 150 or 160 people.  
13 We take our plants, we put money back into the systems, and,  
14 again, we emphasis conservation, we emphasize reuse in taking  
15 the demand off our groundwater supplies.

16 Q What are the benefits of having the various public  
17 water utilities under the WAV banner?

18 A I think that WAV eliminates competition. I think at  
19 some point in time we will be looking at alternative water  
20 supplies in Volusia County. I think it will be easier for one  
21 entity to coordinate that many municipalities in the county. I  
22 think they will have a customer base that can better support  
23 these supplies. They are encouraging the interconnection of  
24 most of these systems so that we can integrate and move water  
25 around. We are also talking about a consolidated CUP

1 throughout the county, all the municipalities at some point in  
2 time. I think it is just a better way to manage our dwindling  
3 supplies.

4 Q If at some time in the future it were determined that  
5 there was, indeed, a need in the Farmton area for a central  
6 water system, is the county able to provide such service?

7 A Yes.

8 Q How would they do that?

9 A The county has many interlocal and service area  
10 agreements with the cities, and this is to prevent duplication  
11 or redundancy, and Edgewater is such a utility. We work out  
12 our service areas, we do wholesale agreements, and I believe in  
13 this area that the same would happen. You know, we would be  
14 able to supply that either through the City of Edgewater --  
15 from what I understand they have a five million gallon water  
16 facility that is easily expandable to ten million gallons.  
17 They have capacity there. So there are facilities available in  
18 that area.

19 Q And, finally, you were asked regarding Mr.  
20 Underhill's participation with the Volusian Water Alliance. To  
21 your knowledge during his participation with that alliance, did  
22 he ever mention the Farmton plans for this water service?

23 A Not to my knowledge. I do not believe that was ever  
24 included in, like I say, the cities and the county. As a  
25 matter of fact, the agriculture was not a member. They were a

1 member of the Volusia Water Alliance, but they were actually  
2 under the umbrella of the county. The county was the  
3 representative to Volusia Water Alliance. And underneath the  
4 county we supported the agricultural community and we supported  
5 the largest private utility, which was Florida Water Services.  
6 Not only that, but we paid their dues, too, for the  
7 agriculture. So they were actually a representative under the  
8 county's umbrella.

9 MR. BOSCH: I have nothing further.

10 COMMISSIONER DEASON: Thank you, Ms. Marwick. You  
11 may be excused.

12 THE WITNESS: Thank you.

13 COMMISSIONER DEASON: We are going to take a  
14 ten-minute recess, and then we will resume with Volusia's next  
15 witness.

16 (Brief recess.)

17 COMMISSIONER DEASON: Call the hearing back to order.  
18 Mr. Bosch.

19 MR. BOSCH: John Thomson.

20 **JOHN THOMSON**

21 **was called as a witness on behalf of Volusia County, Florida,**  
22 **and having been duly sworn, testified as follows:**

23 DIRECT EXAMINATION

24 BY MR. BOSCH:

25 Q Mr. Thomson, you were sworn yesterday?

1 A Yes.

2 Q Okay. Sir, give us your name and your profession and  
3 the address?

4 A My name is John Thomson, I'm a planner with Volusia  
5 County. And the address is 123 West Indiana Avenue.

6 Q Last August, did you assist me in preparing a  
7 prefiled testimony for yourself?

8 A That's correct.

9 Q And the answers to the questions that were asked in  
10 that prefiled testimony, if you were asked those today, would  
11 your answers be the same?

12 A That's correct.

13 Q Any changes you would like to make in that?

14 A No.

15 Q There were also exhibits attached to that. Were the  
16 exhibits, to your knowledge, accurate?

17 A To my knowledge, yes.

18 MR. BOSCH: Okay. At this time, Commissioner, I  
19 would move to move that prefiled testimony into the record.

20 COMMISSIONER DEASON: Without objection it shall be  
21 so inserted.

22 MR. BOSCH: Thank you.

23

24

25

## DIRECT TESTIMONY OF JOHN THOMSON

1 Q. State your name and employment address.

2 A. John Thomson, 123 West Indiana Avenue, DeLand, Florida 32720.

3 Q. What is your profession?

4 A. I am a Planner with the County of Volusia Growth Management  
5 Department. My current title is Planner III.

6 Q. Please describe your educational background.

7 A. I have a Bachelor of Arts in Political Science from Stetson  
8 University, a Masters in Public Administration from Florida Atlantic  
9 University in Growth Management Studies with a focus on Urban  
10 Planning. While attending college a was invited to join the Alpha  
11 Theta History Honor Society, and I was awarded the Noyes Fellowship  
12 in order to pursue my Masters degree through the Joint Center for  
13 Urban and Environmental Problems.

14 Q. What is your practical planning experience in either the  
15 public or private sectors?

16 A. I have been a planner for over 23 years. My public experience  
17 includes development review, zoning administration, and  
18 comprehensive planning for three local governments including my  
19 current position with County of Volusia. I have also worked for the  
20 St. John's River Water Management District, where my planning duties  
21 involved natural resource, strategic and financial issues. My  
22 private sector expertise includes planning and management of major  
23 commercial and industrial real estate projects with the Stiles  
24 Corporation, which is one of the major commercial and industrial  
25 developers in the nation.



## DIRECT TESTIMONY OF JOHN THOMSON

1 Q. In addition to your professional employment you just  
2 escribed, have you served on any governmental boards or committees?

3 A. I have served in various leadership roles within my planning  
4 career, including chairmanship of a Planning Advisory Committee and  
5 an Architectural Review Committee. I have also served as a member  
6 of the Planning and Zoning Board for the City of Boca Raton, and I  
7 was the corporate representative on the Broward County Economic  
8 Development Council.

9 Q. Do you hold any certifications within your profession?

10 A. I am certified as a professional planner by the American  
11 Institute of Certified Planners.

12 Q. You were asked to review the Farnton Water Resources  
13 Application to the PSC in order to determine whether it was  
14 consistent or not with the County of Volusia's Comprehensive Plan.  
15 Having done so, what is your conclusion?

16 A. The proposed Application to the Public Service Commission to  
17 establish a water utility is inconsistent with the Comprehensive  
18 Plan for Volusia County. The Future Land Use Plan Categories that  
19 encompass the land area included within this application do not  
20 include any urban land use categories. Policies in the Plan limit  
21 the provision of water and sewer service to urban future land use  
22 designations except for limited circumstances. (These circumstances  
23 are limited to providing service to existing populations where a  
24 bonafide threat to the health, safety, and welfare can be  
25 established). These policies are also intended to coordinate urban

## DIRECT TESTIMONY OF JOHN THOMSON

1 rowth and to protect the County's agricultural and natural  
2 esources. This is in concert with a central guiding principal of  
3 he plan that is to maintain and extend appropriate levels of urban  
4 ervice necessary to support existing and projected populations  
5 within the 20-year time horizon of the Comprehensive Plan. To date,  
6 he County has not considered any changes to its Plan to establish  
7 urban land uses within this area to justify the creation of a  
8 utility. Furthermore, the Application does not address a need that  
9 could be considered consistent with the Plan.

10 Q. Do you have any opinion regarding how the Application's  
11 mpacts the regional water planning procedures?

12 A. This Application is inconsistent with the Plan Goals,  
13 bjective, and Policies related to coordination with the Regional  
14 Water Supply Planning process that has been underway for many years.  
15 Much of Volusia County, including the land area within this  
16 Application, are located within a "Priority Water Resource Caution  
17 Area" which indicates that, given current plans for use, water  
18 supplies will be inadequate by the year 2020. To date, the Farmton  
19 proposal to establish a utility has not been included within the  
20 Water Supply Planning efforts, which have involved the analysis and  
21 modeling of existing sources to meet the projected needs within the  
22 region.

23 Q. Which specific portions of the County's Comprehensive Plan  
24 support your opinions?

25 A. Chapter 1, "Future Land Use Element", Section A, Overview,

## DIRECT TESTIMONY OF JOHN THOMSON

1 provides a general guide to the County's intent, and clearly points  
2 to the inconsistencies in the Application with such intent.

3 Q. We will attach this portion of the Comprehensive Plan as  
4 Exhibit JT-1.

5 Q. Under the County's Plan, what are the Future Land Use  
6 categories for the Miami Corporation property within which Farmton  
7 has requested to provide water service?

8 A. The Volusia County portion of the application is located  
9 wholly within the County's Natural Resource Management Area (NRMA)  
10 which is characterized by large expanses of relatively uninterrupted  
11 environmentally sensitive areas. This category serves as an overlay  
12 allowing several future land use categories that are appropriate for  
13 the protection and management of the NRMA as a system. These  
14 categories are not considered urban land use categories. The land  
15 use designations within the area proposed for the utility are  
16 Environmental Systems Corridor (ESC), Forestry Resource (FR), and  
17 Agricultural Resource (AR). These land use designations are not  
18 intended to support uses which will require an extensive, central  
19 water service system as proposed by Farmton. I have a Future Land  
20 Use Map for this area of the County which identifies these  
21 categories on the subject property.

22 Q. We will have that "Future Land Use, Farmton Water Resources  
23 LLC" map marked as Exhibit JT-2 to your testimony. Are there other  
24 exhibits to support your testimony regarding the future land uses of  
25 this area?

## DIRECT TESTIMONY OF JOHN THOMSON

1 A. Yes, I have the relevant excerpts of the Comprehensive Plan  
2 high list and describe these categories. I will submit them as  
3 exhibit JT-3.

4 Q. Does the Comprehensive Plan address specifically, the  
5 extension of water service systems into these designated future land  
6 uses?

7 A. Yes. I have Exhibit JT-4, the Future Land Use Element  
8 policies which address limiting water and sewer extension into rural  
9 areas and directing urban growth into areas where public facilities  
10 are currently available. Again, the intent is to maintain and  
11 extend appropriate levels of urban service necessary to support  
12 existing and projected populations within the 20-year time horizon  
13 of the Comprehensive Plan. The Future Land uses shown on the Future  
14 Land Use Plan provide adequate amounts of land appropriate for urban  
15 development. Policies limiting extension of urban services, such  
16 as potable water facilities, within rural areas such as the subject  
17 area, limit the negative impacts associated with sprawl and  
18 protection of agricultural and natural resources by directing growth  
19 into existing urban areas. The extension of potable water and sewer  
20 service into these areas is also in limited circumstances, as noted  
21 earlier, to protect the health, safety and welfare of existing  
22 development. I have not read anything within the Farmton  
23 Application which falls under this exception.

24 Q. Does the Comprehensive Plan provide directives for the  
25 extension of potable water within County of Volusia?

## DIRECT TESTIMONY OF JOHN THOMSON

1 A. Exhibit JT-5 contains the overviews, goals, objectives and  
2 policies excerpts from within the County's Potable Water, Natural  
3 groundwater and Aquifer Recharge, Intergovernmental Coordination and  
4 Capital Improvements Elements. These policies reinforce the central  
5 guideline of the plan to limit growth to established urban areas to  
6 maximize the use of existing facilities in the existing water  
7 service areas so as to discourage urban sprawl. Again, the  
8 provision of water facilities to rural areas is precluded except in  
9 limited circumstances intended to protect the health, safety, and  
10 welfare for existing residents. Additionally, other policies in  
11 these elements recognize that much of the County, including the land  
12 within this Application, is located within a "Priority Water  
13 Resource Caution Area". This designation indicates that, given  
14 current plans for use, that water supplies will be inadequate by the  
15 year 2020. The Plan recognizes the importance of coordinating with  
16 the Water Supply Planning process currently underway that has  
17 involved extensive analysis and modeling of ground and surface water  
18 resources to determine reliable sources for future projected needs.  
19 To date, this has not included any projected potable water for  
20 public supply from the area within the Farmton Application area  
21 (Miami Corporation property).

22 Q. Do you have other opinions regarding the Application, from a  
23 planning standpoint?

24 A. Yes, this testimony is simply a brief summary of my opinions.  
25 I will be prepared to answer any additional questions depending on

## DIRECT TESTIMONY OF JOHN THOMSON

1 that information or issues become relevant during these proceedings.

1 BY MR. BOSCH:

2 Q Mr. Thomson, please just give us a brief statement or  
3 summary of what your testimony was.

4 A Sure. Overall, the Farmton proposal runs counter to  
5 the guiding principles and the goals, objectives, and policy of  
6 the county's comprehensive plan. The guiding principles have  
7 been established to designate future urban areas that, number  
8 one, accommodates projected population growth in a contiguous  
9 compact pattern centered around existing urban areas. And,  
10 number two, in locations that optimize both the efficiency of  
11 service delivery and the conservation of valuable natural and  
12 agricultural resources.

13 Expansion of existing facilities within existing  
14 urban areas is the primary option for serving these areas, not  
15 the creation of new utilities within nonurban areas. These  
16 guiding principles have been translated into the various goals,  
17 objectives, and policies within the various elements of our  
18 plan that we have submitted as exhibits. Local government's  
19 decisions related to growth must be consistent with these  
20 goals, objectives, and policies.

21 This is a mandate of all local governments subject to  
22 Chapter 163, Florida Statutes, which we commonly refer to as  
23 the growth management act. It is not merely limited to  
24 decisions concerning development and land use. It includes  
25 broader policy decisions, including the designation or

1 expansion of utility service areas.

2           Now, let me briefly touch on how, as I have indicated  
3 in my pretrial testimony that this application is inconsistent  
4 with our plan. The future urban areas of our county are  
5 generally concentrated around existing urbanized cities. These  
6 urbanized areas are located within the coastal ridges adjacent  
7 to the Atlantic Ocean and the DeLand Ridge on the southwestern  
8 side of our county. The central area of the county, including  
9 the Farmton area, is generally located within low-lying areas  
10 comprised of rural, agricultural, forestry, and environmentally  
11 sensitive areas.

12           The future land use plan categories that encompass  
13 the Farmton application are nonurban and do not permit the  
14 extension of potable water service. The Volusia County portion  
15 of this application is located wholly within the county's  
16 natural resource management area, or what we call NRMA. The  
17 NRMA is characterized by large expanses of relatively  
18 uninterrupted environmentally sensitive areas. This category  
19 serves as an overlay allowing several underlying future land  
20 use categories that are appropriate for the protection and the  
21 management of this area.

22           In the case of Farmton, these primarily are an  
23 environmentally systems corridor forestry resource with some  
24 smattering of agricultural designation. Our plan limits the  
25 provision of water and sewer service to urban future land use



1 categories except for limited circumstances. These limited  
2 circumstances are to provide service to existing populations  
3 where a bona fide threat to the health, safety, and welfare can  
4 be established. I have not read anything within the Farmton  
5 application of any other circumstance which falls under this  
6 exception.

7           Additionally, in no case other than for the potential  
8 use of the cluster provision, would a central system be  
9 permitted by either the underlying future land use designations  
10 or zoning categories. The cluster provision allows for  
11 relatively limited residential development in small pockets of  
12 land to protect much larger expanses of land. Even in this  
13 instance where a central system would be allowed, a new utility  
14 would not be warranted by our plan.

15           Let me touch briefly on the rationale in our  
16 comprehensive plan as it relates to the provision of utility  
17 service first. This is in concert with the central guiding  
18 principle to maintain and extend appropriate levels of urban  
19 service necessary to support existing and projected populations  
20 within the 20-year horizon of our plan. Any extensions of  
21 utilities must be within existing service areas where there is  
22 an agreement with the county to service these areas.

23           Secondly, policies limiting the extension of urban  
24 services, such as potable water facilities to urban and not  
25 rural areas, such as the Farmton area, are intended to limit

1 the negative impacts associated with sprawl. This is  
2 accomplished by directing growth into existing urban areas  
3 while at the same time protecting agricultural, forestry, and  
4 natural resources. Our future land use plan map provides more  
5 than adequate amounts of land appropriate for urban development  
6 within this 20-year horizon.

7 To conclude, the county has not considered any  
8 changes to its comprehensive plan that would justify a need for  
9 a utility. Thank you.

10 MR. BOSCH: Thank you, Mr. Thomson. At this time I  
11 would tender him for cross-examination.

12 COMMISSIONER DEASON: Mr. Knox, questions?

13 MR. KNOX: No questions of this witness.

14 COMMISSIONER DEASON: Mr. McNamara.

15 MR. McNAMARA: No questions.

16 COMMISSIONER DEASON: Mr. Wharton.

17 CROSS EXAMINATION

18 BY MR. WHARTON:

19 Q Good morning, Mr. Thomson. Sir, you have not  
20 reviewed the prefiled testimony of Farmton, have you?

21 A Specifically what prefiled testimony? No, no, I have  
22 not.

23 Q The direct prefiled testimony of Farmton?

24 A No. I have reviewed some materials provided by staff  
25 that provided overview of that application, but not directly

1 the --

2 Q You haven't looked at the actual application that was  
3 submitted to the PSC, but rather only a synopsis that was  
4 prepared by the county attorney?

5 A That's correct.

6 Q Okay. On Page 2, Line 12 of your prefiled testimony,  
7 there is a question. You were asked to review the Farmton  
8 Water Resources application to the PSC in order to determine  
9 whether it was consistent or not with the County of Volusia's  
10 comprehensive plan. Having done so, what is your conclusion?

11 Do you agree that the way that question is worded  
12 might cause the reader to get the wrong impression about  
13 whether or not you had read the application?

14 A It could if they didn't know right now that I had not  
15 directly read the application, but read a synopsis. In my mind  
16 I guess I assumed that that counted for reading the  
17 application.

18 Q Okay. Sir, do you agree that comp plans are  
19 documents that by their very nature change, and grow, and are  
20 amended or modified over time?

21 A That is correct, recognizing that plans generally  
22 focus on a long-term period. And by Chapter 163 we are  
23 required during that long-range period to project what our  
24 urban growth needs would be based on population growth and  
25 other factors. So unless there are some changes in

1 circumstances, generally we like to stick with the 20-year  
2 horizon.

3 Q Although the Volusia comp plan is one that is amended  
4 from time to time, isn't it?

5 A That's correct.

6 Q And you have two cycles a year for large scale  
7 amendments?

8 A That's correct.

9 Q You do believe, don't you, that there have been  
10 instances where the county has placed or redesignated areas  
11 that were not in urban land use into the categories of urban  
12 land use?

13 A That's correct.

14 Q And you would agree that there are numerous instances  
15 throughout the State of Florida where areas are now densely  
16 populated that 15 or 20 years ago were rural or agricultural?

17 A Oh, yes.

18 Q Sir, you discuss natural resources in your prefiled  
19 testimony. Isn't it true that you can't specifically quantify  
20 what natural resources would be specifically harmed by  
21 Farmton's certification as we sit here today?

22 A The mere act of designating a service area in and of  
23 itself would not impact those resources. However -- but on the  
24 other side of the coin, the action to designate a water service  
25 area would be inconsistent with our plan.

1 Q But, again, you can't specifically quantify what  
2 natural resources would be specifically harmed by Farmton's  
3 certification as we sit here today?

4 A No. In the future perhaps with development that may  
5 or may not occur if the plan is amended or not.

6 Q And you can't quantify specifically how Farmton's  
7 certification would adversely affect the county's agricultural  
8 resources as we sit here today, can you?

9 A Again, just the mere designation of that service area  
10 would not in and of itself impact those areas. However, as I  
11 stated before, my testimony touched on the action of  
12 designating such a service area would be inconsistent with the  
13 comprehensive plan per the policy references I have made.

14 Q It is your opinion that Farmton could be certificated  
15 by the PSC and thereafter conduct its activities in a way that  
16 would not harm the county's agricultural and natural resources,  
17 isn't it?

18 A I recognize the PSC has the right under statute to  
19 designate or certificate utility service areas. However, my  
20 point has been that by designating a service area that would be  
21 inconsistent with our local government comprehensive plan. In  
22 other words, if it was designated for an area inappropriate for  
23 such a service designation, for example, we could not do that.  
24 A local government could not come to us and say, hey, I want to  
25 provide and extend services into a nonurban area, would you

1 please approve this agreement to allow me to do that. And we  
2 would say no. We would have to say no, otherwise we would make  
3 an decision inconsistent with our comprehensive plan.

4 Q Understanding your explanation, just so the record is  
5 clear, is the answer to the question, though, that I asked you  
6 yes, there is a way, that it is possible for Farmton to be  
7 certificated by the PSC and to thereafter conduct its  
8 activities in a way that would not harm the county's  
9 agricultural and natural resources?

10 A Well, again, that depends upon how they use that  
11 certificate. If it is for purposes of extending potable water  
12 service as we define in our comprehensive plan, then, yes, it  
13 would -- then it would be inconsistent. So it depends on how  
14 they would use the certificate.

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19 Farmton had a certificate, it is possible that they could  
20 conduct their activities in a way that would not harm the  
21 resources?

22 A Again, my answer would be to some extent. I mean, it  
23 would depend on how they used it, per my previous answer. So  
24 in and of itself I would admit that the PSC granting a  
25 certificate, just the actual action to do such on their part

1 might be consistent with the Florida Statutes they operate  
2 under. My point is that that designation would be inconsistent  
3 under Chapter 163, particularly for a local government to make  
4 that kind of action.

5 Q But just so the record is clear, it is your testimony  
6 that the mere granting of the certificate will not cause harm  
7 in and of itself to the agricultural and natural resources of  
8 the county?

9 A That is correct, based on my testimony, the  
10 limitations based on my testimony.

11 Q Okay. Let's talk about the concept of clustering for  
12 lack of a better phrase. The future land use element of the  
13 comprehensive plan of Volusia County does allow for the  
14 clustering of development within some subcategories of the  
15 NRMA, does it not?

16 A That's correct.

17 Q And, again, were you here when I was cross-examining  
18 Mr. Scott?

19 A Yes.

20 Q Is the clustering concept in Volusia County similar  
21 to that in Brevard?

22 A Well, in context it is similar, but in terms of the  
23 mechanics it is a bit different. For example, I think in  
24 Brevard it is a matter of right, the cluster provision is a  
25 special exception. The densities are different obviously. Our

1 densities are lower for both the forestry resource and  
2 environmentally sensitive corridor, which is a predominant  
3 future land use out there, and that is 1 to 25 for the ESC and  
4 1 to 20. So basically the concept is the same, where you  
5 transfer your density into a compact area where it is  
6 appropriate to preserve a much larger area.

7 Q Okay. And you don't know what type of density or  
8 cluster developments could potentially be allowed on the  
9 Farmton property in Volusia County as we sit here today?

10 A Well, I mean, obviously I have not seen a proposal.  
11 You know, we generally have an idea of how much land is out  
12 there, you know, how much of certain designations there are,  
13 and then you can simply use the density allowed by those land  
14 uses to come up with a general number. But, of course, there  
15 is other things that come into play. Locational issues, for  
16 example. You have got to find the right place that is  
17 appropriate for that type of development and those other kinds  
18 of things.

19 Q I don't mean to be rude, but it is probably better if  
20 you answer yes or no and then explain, because I'm always going  
21 to ask you at the end, so does that mean yes or no.

22 A Yes. Yes.

23 Q Let's talk about the county's authority over the  
24 comprehensive planning process. The scheme that is established  
25 by state statute in Florida is that the county has authority



1 over the creation of the comprehensive plans and their  
2 amendment, is that correct?

3 A That's correct.

4 Q Do you agree that the county would not lose any of  
5 that authority over modification or amendment of its  
6 comprehensive plan in any way, shape, or form merely by the PSC  
7 granting a certificate to Farmton?

8 A I would agree with you with the caveat that -- well,  
9 I would simply agree with you.

10 Q Okay. Do you agree that certification by the PSC in  
11 and of itself doesn't have any force or effect over any  
12 development proposal?

13 A Strictly reading the goals, objectives, and policies  
14 and, you know, the guiding principles and all of that that are  
15 applying, yes, that is correct. However, that could play into  
16 the decision-making for someone to say, hey, I've got a  
17 utility, I can serve as a private utility and I can service  
18 this area. So that could weigh into the decision-making  
19 process.

20 Q You agree that if Farmton was proposing X number of  
21 units per acre, and that that was inconsistent with the  
22 comprehensive plan, that it would be equally inconsistent with  
23 the comprehensive plan whether or not Farmton had a certificate  
24 from the PSC?

25 A Oh, sure, yes.

1 Q Now, the county has the power and authority under its  
2 comprehensive plan to prevent urban sprawl in the county,  
3 doesn't it?

4 A And, again, I guess the answer to that really is no,  
5 because recognizing that one of the requirements that we have  
6 under 9J-5 is to pass muster on what has been termed the sprawl  
7 indicators, and there are several of them. So as part of our  
8 review and consideration ultimately at DCA, we have to take  
9 these indicators into account. And, again, as I said, there is  
10 no strict definition of sprawl. There is no density provision,  
11 however, there's different indicators. For example, how you  
12 locate urban relative to rural, whether it protects  
13 agricultural or natural resources, promotes infill. And I  
14 think, if I'm not mistaken, there are seven of these categories  
15 or indicators.

16 Q Sir, do you recall that I took your deposition on  
17 March 10th, 2004?

18 A Yes.

19 Q And on Page 41, Line 8, thereof we had the following  
20 exchange:

21 "Question: But the county has the power and the  
22 authority under the comprehensive plan, does it not, to prevent  
23 such sprawl?

24 "Answer: Correct.

25 "Question: As we talked about quite extensively

1 earlier, you believe it will have that power in either case,  
2 whether or not Farmton has a certificate?

3 "Answer: Correct."

4 Do you stand by that testimony?

5 A Correct.

6 Q Okay. From a planning perspective, Mr. Thomson,  
7 isn't it true that your concern with Farmton's application is  
8 that it may be the first falling domino in a line of dominos  
9 that could lead to adverse effects on natural resources, but  
10 that other things would have to occur before that happened?

11 A Yes.

12 Q Okay. And you do agree that if spawl occurs out on  
13 the Farmton property, that will be because the county allowed  
14 that to occur?

15 A Yes, in terms of its actions to amend its plan or to  
16 approve development.

17 Q Do you agree that the county is subject to all of the  
18 same requirements and policies of the comprehensive plan when  
19 it is promulgating a service area for its utilities that a  
20 private utility would be?

21 A Yes.

22 Q So in terms of the provision of that kind of  
23 establishment of a service area, both would have to make the  
24 same demonstration in order to show compliance with the comp  
25 plan?

1           A     Yes.

2           Q     You do understand, do you not, that the county claims  
3 all of the unincorporated areas in the county as its utility  
4 service area?

5           A     Yes, to the extent where there is no agreement in  
6 place.

7           Q     Okay.

8           A     You know, with a municipality or otherwise.

9           Q     I think I asked you in deposition -- I was looking at  
10 an interrogatory the county had answered that all property that  
11 is located in the unincorporated area of Volusia County is  
12 within the water service area of Volusia County. Does that  
13 sound right to you?

14          A     I'm sorry, can you repeat that?

15          Q     All property that is located in the unincorporated  
16 area of Volusia County is within the water service area of  
17 Volusia County?

18          A     No, in that we have service agreements with  
19 municipalities for unincorporated areas where it is  
20 appropriate, for example, urban or otherwise, because you have  
21 to recognize that most of, or a preponderant amount of our  
22 urban designated areas within the unincorporated areas are  
23 adjacent to cities, which is appropriate, you know, to meet the  
24 contiguity and compactness to optimize service delivery and all  
25 of that. So I would suggest or I would state that we do have

1 agreements with municipalities to serve unincorporated areas,  
2 yes.

3 Q But the county's service area extends to the four  
4 corners of the county other than in those areas that you just  
5 described?

6 A Correct

7 Q Okay. You believe that Farmton's attempt to  
8 establish a service area on the Farmton property in Volusia  
9 County is inconsistent with the comprehensive plan, correct?

10 A Yes.

11 Q And yet it is your belief that the county's  
12 establishment of a service area to provide the same services on  
13 the Farmton properties within Volusia County is consistent with  
14 the comprehensive plan, correct?

15 A Yes, other than where we have agreements with  
16 municipalities to provide service to unincorporated areas.

17 Q Had you ever considered whether the county's action  
18 in that regard was consistent with the comprehensive plan  
19 before that issue came up in that proceeding?

20 A Could you repeat that?

21 Q Had you ever thought about this issue of whether or  
22 not the county's declaration of a countywide service area even  
23 into areas that are designated agricultural, or rural, or which  
24 are in the NRMA, whether or not that was consistent with the  
25 comp plan before the issue came up in this proceeding?

1           A       I'm not sure. I mean, I have read the comp plan, so  
2 I know generally what it says, so -- I'm not sure if you are  
3 getting to a question that hasn't has been asked of me that I  
4 didn't have, you know, an answer at the time, so I'm not  
5 quite --

6           Q       You mean am I going to pull out your deposition and  
7 use it?

8           A       Well, I don't know.

9           Q       I'm just asking whether you had ever thought about  
10 that subject before it came up in the deposition, whether the  
11 county's declaration of this wide service area was consistent  
12 with the comp plan?

13          A       Oh, sure, because I have done some work with the comp  
14 plan, and working on a water supply work plan and those kinds  
15 of things, and actually have put together some draft amendments  
16 that are kind of on hold right now.

17          Q       Sir, as I understand it, one of the reasons that you  
18 were selected to testify as an expert in this proceeding, other  
19 than the fact that you are a planner with the county, is that  
20 you had some experience with the water planning efforts?

21          A       That's correct. I worked with St. Johns River Water  
22 Management District for over 11 years, and I was chosen to work  
23 on our water supply facilities work plan in conjunction with  
24 our utilities people.

25          Q       Do you agree that one of the tools of the planning

1 process which Volusia County is undertaking is to encourage the  
2 development of new water resources in the county?

3 A That's correct, where -- you know, where they are  
4 consistent and coordinated with the overall water supply  
5 planning effort starting with the St. Johns River Water  
6 Management District. The water management districts down to  
7 the local level which has been accomplished both by our water  
8 alliance and now our WAV and by the individual municipalities.

9 Q And you would agree that that planning process  
10 presumes that it would be a positive thing for Volusia county  
11 with regard to its future needs for potable water to develop  
12 new water resources?

13 A Sure, particularly where the existing sources are  
14 limited. For example, groundwater.

15 Q Don't you agree that the bottom line of all the  
16 planning processes that you have been engaged in is the concern  
17 that Volusia County might not have enough potable water to meet  
18 its future demands?

19 A Yes.

20 Q Now, you don't know as we sit here today whether or  
21 not the certification of Farmton would provide a positive net  
22 amount of water to Volusia County or a negative net amount, do  
23 you?

24 A No, but to the extent that to my knowledge the  
25 Farmton area has not looked at any projected need; and, number

1 two, any source development in that area. In the planning  
2 process that is underway, the water supply planning process  
3 that has been underway to date.

4 Q So you don't know as we sit here today whether or not  
5 new water resources could be developed on the Farmton property  
6 which would add to the amount of water available to be served  
7 to the population in Volusia County?

8 A No.

9 Q Now, you would agree that even if a particular source  
10 of groundwater has not been part of the planning process that  
11 you testified about, that doesn't mean it should be  
12 discouraged, correct?

13 A Well, I mean, again, to the extent that -- I guess  
14 the answer is yes. But to the extent that it falls within the  
15 parameters of, you know, the water supply planning process and  
16 not creating impacts to the resource, and all the impact  
17 criteria that is used. But, again, in this particular  
18 instance, looking at potential water sources from the Farmton  
19 area, to my knowledge I have not been included in that planning  
20 process.

21 Q You agree that the estimate, the best estimate you  
22 are aware of is that in between now and the year 2020 the  
23 county is going to need to come up with somewhere between 8  
24 million gallons a day and 22 million gallons a day of  
25 additional water resources?



1 MR. BOSCH: Commissioner, I'm going to object. We  
2 have gotten off course. Mr. Thomson has been offered as a land  
3 planner with the expertise with regard to the comp plan and all  
4 planning associated with it. He is not here, nor was his  
5 direct testimony, prefiled testimony with regard to water  
6 source resources, and that is where the cross-examination has  
7 gotten off to, and I think it is therefore outside the scope.

8 COMMISSIONER DEASON: Mr. Wharton, there is an  
9 objection to your line of questioning being outside the scope.

10 MR. WHARTON: And what I'm doing, Commissioner, is  
11 glancing at the prefiled testimony.

12 COMMISSIONER DEASON: I do note that on Page 3 this  
13 witness indicates about a priority water resource caution area  
14 and does make reference to the year 2020 as in terms of water  
15 supplies.

16 MR. WHARTON: Also on Page 6 there is a discussion of  
17 the water supplies being inadequate and the plan which is being  
18 worked on by the county.

19 COMMISSIONER DEASON: Objection overruled. You may  
20 ask your question.

21 BY MR. WHARTON:

22 Q So do you agree, sir, that given the best estimate  
23 that you are aware of, that in between now and the year 2020  
24 the county is going to need to come up with somewhere in  
25 between 8 million gallons a day and 22 million gallons a way of

1 additional water resources?

2 A The answer to that, the actual number, no, I don't  
3 know. But I understand, and from reading and my knowledge of  
4 the water supply planning process that there are some amounts  
5 that are going to be needed. And, you know, that varies  
6 between which plan, you know, that you are looking at.  
7 Different numbers have been used in the planning process, but  
8 the bottom line, yes, in terms of groundwater, you know, we are  
9 going to be into a deficit in the future.

10 Q Do you agree that is the estimate, though, in the  
11 Post Buckley plan, which is the most current plan of projected  
12 need that you are aware of?

13 A Off the top of my head, no, I can't say.

14 Q Do you know if you remember that particular figure  
15 when I took your deposition?

16 A I might have had that figure in my head when I --

17 Q Well, let's try that. Do you recall that I took your  
18 deposition on March 10th, 2004?

19 A Sure.

20 Q And on Page 95, Line 2, the following exchange  
occurred between you and I, "Question --

A Hold on.

Q Sorry. Page 95, Line 2.

"Question: Doesn't that mean that from now until the  
25 year 2020 if these projections hold true the county is going to

1 need to come up with somewhere between -- well, I should say  
2 somewhere from 8 million gallons a day to 22 million gallons a  
3 day additional water resources?

4 "Answer: Yes, that is the estimate.

5 "Question: And is it in line with others you have  
6 heard or seen?

7 "Answer: To my knowledge that is the most current  
8 plan that estimated a projected need."

9 Does that refresh your memory?

10 A Yes, now that you have refreshed my memory.

11 Q Sir, you don't know as we sit here today whether or  
12 not any of the private utilities in Volusia County have  
13 certificated territories which include land that is within  
14 urban -- that is not, I should say, within urban land use  
15 categories? Have you gone out and done a survey whether you  
16 have got any territories that are outside of your urban land  
17 use designations?

18 A No, I have not.

19 Q Okay. Do you know of any case where the county has  
20 ever taken action or a stand against a utility which proposed  
21 to receive a certificate from the PSC because it was proposing  
22 a service area in lands that were not designated urban in the  
23 comprehensive plan?

24 A No, not to my knowledge. But recognize that I have  
25 been with the county for 17 months, so anything before 17

1 months I'm not --

2 Q Not in that 17 months, huh?

3 A Correct.

4 Q But none that you have heard of other than that?

5 A No.

6 Q Okay. Let's talk about Farmton for a second. Are  
7 you aware of any bigger private landowner in Volusia County  
8 other than Farmton's parent, Miami Corporation?

9 A No, I'm not.

10 Q And it is your opinion, is it not, that large tracts  
11 of land being owned by single landowners provide positive  
12 opportunities for planning?

13 A That's true, yes, to the extent that whatever is  
14 proposed would meet the goals, objectives, and policies and be  
15 consistent with those policies.

16 Q Isn't it true, Mr. Thomson, that it is your opinion  
17 that the creation of a certificated territory by the PSC does  
18 not constitute development in and of itself?

19 A Not in and of itself.

20 MR. WHARTON: That's all we have, Commissioner.

21 COMMISSIONER DEASON: Staff.

22 MS. RODAN: No questions.

23 COMMISSIONER DEASON: Commissioners. Okay, redirect.

24 MR. BOSCH: I have nothing.

25 COMMISSIONER DEASON: Very well. Thank you, Mr.

1 Thomson, you may be excused. I believe we have already  
2 addressed the exhibits for this witness.

3 Staff, you may call your first witness.

4 MS. RODAN: Staff calls Richard H. Burklew.

5 **RICHARD H. BURKLEW**

6 **was called as a witness on behalf of the Staff of the Florida**  
7 **Public Service Commission, and** having been duly sworn,  
8 testified as follows:

9 **DIRECT EXAMINATION**

10 BY MS. RODAN:

11 Q Mr. Burklew, you were sworn in yesterday, correct?

12 A Yes.

13 Q Please state your name and business address for the  
14 record?

15 A My name is Richard H. Burklew, Jr., and my work  
16 address is the St. Johns River Water Management District, Palm  
17 Bay Service Center, located at 525 Community College Parkway in  
18 Palm Bay, Florida.

19 Q In what capacity are you employed?

20 A I'm a Supervising Regulatory Hydrologist in the  
21 Department of Resource Management.

22 Q Have you prefiled direct testimony in this docket  
23 consisting of four pages?

24 A Yes, I have.

25 Q Do you have any changes or corrections to your

1 testimony at this time?

2 A No, I don't.

3 MS. RODAN: Commissioner, may we have Mr. Burklew's  
4 testimony inserted into the record as though read?

5 COMMISSIONER DEASON: Without objection it shall be  
6 so inserted.

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**DIRECT TESTIMONY OF RICHARD H. BURKLEW**

1

2 Q. Please state your name and business address.

3 A. My name is Richard H. Burklew, Jr. My business address is 525 Community College  
4 Parkway, S. E., Palm Bay, Florida 32309.5 Q. **By whom are you employed?**6 A. I am employed by the St. Johns River Management District (SJRWMD) as a  
7 Supervising Regulatory Hydrologist in the Division of Water Use Regulation in the Palm Bay  
8 Service Center.

9 Q. Could you please summarize your educational background and work responsibilities?

10 A. I graduated from the University of Florida in 1984 with a Bachelor of Science degree  
11 in Geology and in 1988 with a Master of Science degree in Geology. I have about 18 years of  
12 experience as a geologist and hydrogeologist and am a registered professional geologist.  
13 Please see Exhibit RHB-1 for a more detailed description of my current responsibilities, work  
14 history, and related experience.

15 Q. What is the purpose of your testimony in this proceeding?

16 A. To provide relevant information for the Public Service Commission (PSC) concerning  
17 the Farmton application.

18 Q. Does Farmton currently have a consumptive use permit (CUP) with the SJRWMD?

19 A. No. None of the wells or the minimal current water use on Farmton's site requires a  
20 CUP as provided in Rule 40C-2.041, Florida Administrative Code.21 Q. Would Farmton need to obtain a CUP to provide bulk raw water from wells in its  
22 proposed service territory?23 A. Yes, if the quantity to be provided would exceed one of the CUP thresholds. Under  
24 Rule 40C-2.041(1), Florida Administrative Code, the SJRWMD requires a CUP for any of the  
25 following:

1 (a) Average annual daily withdrawal exceeding one hundred thousand (100,000)  
2 gallons average per day on an annual basis.

3 (b) Withdrawal equipment or other facilities which have a capacity of more than  
4 one million (1,000,000) gallons per day.

5 (c) Withdrawals from a combination of wells or other facilities, having a combined  
6 capacity of more than one million (1,000,000) gallons per day.

7 Q. Has Farmton applied for a CUP for the bulk raw water wells in its proposed service  
8 territory?

9 A. No. The SJRWMD has not yet received an application from Farmton for a CUP. The  
10 SJRWMD is aware of Farmton's PSC application, but the SJRWMD has been given no  
11 indication of when, or if, Farmton will apply for a CUP to get legal authorization for the wells  
12 and water use noted in the PSC application.

13 Q. Has any other entity applied for a CUP for bulk raw water wells within the area  
14 Farmton has requested to serve?

15 A. Yes. The City of Titusville (City) applied to modify its existing CUP (#10647) on  
16 March 9, 2001. The City proposed to install fifteen (15) wells within the right-of-way of an  
17 abandoned Florida East Coast Railway line that lies within a portion of Farmton's property.  
18 The City has requested an average daily withdrawal rate of 2.75 million gallons per day (mgd)  
19 and a maximum daily withdrawal rate of 6.5 mgd from those 15 proposed wells.

20 Q. What is the status of that application?

21 A. The City's CUP application is pending.

22 Q. What are the SJRWMD's concerns regarding the City's CUP application to install bulk  
23 raw water wells and withdraw water from those wells?

24 A. The surficial aquifer and Upper Floridan Aquifer in this area are locally recharged by  
25 rainfall and have limited quantities of good quality ground water available. Excessive



1 pumping can draw down the water table to the point where nearby wetlands can be adversely  
2 impacted or induce salt water upcoming which degrades the water quality of the upper  
3 Floridan aquifer.

4 Q. Would the SJRWMD have the same concerns if Farnton applies for a CUP?

5 A. Yes. The proposed wells are in the same area and hydrogeologic setting.

6 Q. Does this complete your testimony?

7 A. Yes, it does.

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1 BY MS. RODAN:

2 Q Mr. Burklew, did you file Exhibit RHB-1 in  
3 conjunction with your testimony?

4 A Yes.

5 Q Could you briefly summarize your testimony?

6 A Certainly. Basically, the focus of my testimony  
7 deals with the consumptive use permitting issues surrounding  
8 the PSC application of Farmton. And I had stated in my  
9 testimony that to my knowledge Farmton has not yet applied for  
10 a consumptive use permit and that is still my understanding.  
11 And also that the existing use at Farmton right now would not  
12 require a permit. And, briefly, those thresholds would have to  
13 be tripped were the capacity to pump a million gallons per day,  
14 the average daily use of 100,000 gallons per day on an annual  
15 basis, or the use of a well that is six inches in diameter or  
16 larger.

17 And I also noted that we are reviewing an application  
18 in this area for the City of Titusville, and they are  
19 requesting 2.75 million gallons per day on average and a  
20 maximum allocation of 6.5 million gallons per day from 15  
21 proposed wells on an abandoned Florida East Coast Railroad line  
22 that lies within a portion of the Farmton property. And that  
23 is pretty much a summary of my testimony.

24 MS. RODAN: Thank you, Mr. Burklew. I tender the  
25 witness for cross-examination.

1 COMMISSIONER DEASON: Mr. Knox.

2 MR. KNOX: No questions for this witness.

3 COMMISSIONER DEASON: Mr. McNamara.

4 MR. McNAMARA: No questions.

5 COMMISSIONER DEASON: Mr. Bosch.

6 MR. BOSCH: No questions.

7 COMMISSIONER BRADLEY: Mr. Wharton.

8 CROSS EXAMINATION

9 BY MR. WHARTON:

Q Good morning, Mr. Burklew.

A Good morning.

Q You have been sitting through this proceeding so far?

A For the most part.

14 Q So were you here when Commissioner Jaber had an  
15 exchange with a witness from Titusville about any potential  
16 effect that certification by the PSC of Farmton might have on  
17 Titusville's CUP application?

18 A Yes, I did hear that.

19 Q If, in fact, Farmton was certificated by the Public  
20 Service Commission, to what extent would St. Johns take that  
21 into account in processing Titusville's CUP application?

22 A The issuance of a certificate to Farmton would not  
23 affect our review of the Titusville application.

24 Q Okay. Sir, let me ask you some questions. You  
25 mentioned the Titusville CUP application and its status in your

1 testimony. Do you understand that Titusville's application for  
2 a consumptive use permit involves the potential sinking of  
3 wells on a railroad right-of-way that goes through the Farmton  
4 property?

5 A Yes, I do.

6 Q And in that regard was Titusville limited to propose  
7 the location of those wells on a very narrow corridor?

8 A Yes. I guess as we discussed in my deposition, their  
9 ability is limited to that right-of-way with this application  
10 that we are reviewing.

11 Q Does the district currently have some concerns  
12 regarding potential wetland impacts and saltwater upconing in  
13 Titusville's application?

14 A Yes, I would say those have been two of the principal  
15 issues that we are seeking to see resolved.

16 Q In order to minimize wetland impacts and the  
17 potential for saltwater upconing, would it be better for  
18 Titusville to spread its wells over a larger area and/or to  
19 reduce the pumping rate?

20 A Let me speak hypothetically. Those are certainly two  
21 options and ones that we have seen done. You do see wellfields  
22 reduce their withdrawal to correspondingly reduce the impact  
23 induced, and we do see wells relocated and basically different  
24 delineation to avoid impacts. Those are both fairly standard,  
25 I guess would be a good term, way that impacts are avoided.

1 Titusville has chosen another option to avoid their impacts or  
2 to seek to avoid them.

3 Q In fact, you would agree that because of its location  
4 on the corridor that you just talked about, Titusville has  
5 limited options to spread out its wells?

6 A Yes, I would agree with that.

7 Q And, would you agree that that is not true of  
8 Farmton, that should it come in for a consumptive use permit,  
9 that it will certainly have options to spread its wells out  
10 over a larger area to mitigate or avoid those impacts?

11 A There is definitely a larger area that Farmton  
12 controls that could be worked with.

13 Q Isn't it true that Titusville is not withdrawing the  
14 maximum amount allowed from its present wellfield, and yet it  
15 is before the district with an application for a consumptive  
16 use permit in the corridor that we have talked about?

17 A That's correct.

18 Q You mention in your testimony that Farmton has not  
19 applied for a consumptive use permit, is that correct?

20 A That's correct.

21 Q Now, with regard to the applicant in this proceeding,  
22 Farmton Water Resources, LLC, are you aware of the fact that  
23 Chapter 367.031 provides that a utility must obtain a  
24 certificate from the Commission prior to being issued a  
25 consumptive use permit by a water management district?

1 MS. RODAN: Commissioner, I object to that question.  
2 It calls for a legal conclusion.

3 COMMISSIONER DEASON: There has been an objection,  
4 Mr. Wharton.

5 MR. WHARTON: Well, I don't think that the --  
6 frankly, I don't think you have to be a lawyer to understand  
7 that. And it is really not a big point, I just wondered why  
8 the testimony contained that when -- I'll just brief it. I  
9 will withdraw the question.

10 COMMISSIONER DEASON: Very well. Let me ask a  
11 question.

12 Is it your understanding that a certificated utility,  
13 certificated by this Commission before it can obtain a  
14 consumptive use permit, must demonstrate to the water  
15 management district that it is, indeed, a certificated utility?

16 THE WITNESS: Yes.

17 COMMISSIONER DEASON: Very well.

18 BY MR. WHARTON:

19 Q Now, I just want to make sure that the record is  
20 clear. I think you said in your prefiled testimony that you  
21 would have the same concerns about Farmton proposing a  
22 wellfield and applying for a consumptive use permit that you do  
23 about -- that you do currently about Titusville, is that  
24 correct?

25 A Yes, in my testimony.

1           Q     But does that concern, though, assume that the wells  
2 applied for by Farmton in that case would be approximately in  
3 the same area?

4           A     My intent in saying that is -- and, once again, the  
5 same general region the hydrogeologic system would be likely  
6 similar, and those same issues which you mentioned earlier,  
7 saltwater intrusion and impacts to wetlands would be issues  
8 that we would -- resource issues we would need to ensure are  
9 remedied and an impact wouldn't result.

10          Q     Okay. But it is not the purposes of your testimony  
11 to indicate your belief that either the area or the  
12 hydrogeologic setting in this case is the same for where  
13 Titusville proposes its wellfield as for the whole remainder of  
14 the Farmton property? You were just focused on the one area  
15 where Titusville is proposing its wellfield, correct?

16          A     I was speaking to the area that Titusville is  
17 proposing theirs. As I understand from looking at the diagram  
18 where Farmton's proposed wells would be, one line delineated  
19 basically is very similar to where Titusville's proposed wells  
20 would be. So the issues would be the same there. As far as  
21 you move some distance away, there is likely, you know, some  
22 changes that can be some variability. But in general this  
23 vicinity is prone to impact. A fairly good connection between  
24 the surficial system and the production zone, which is the  
25 Floridan in this case.

1           Q     Mr. Burklew, before Farmton came to the district for  
2 the issuance of a consumptive use permit, would you expect that  
3 they would engage in detailed hydrogeologic testing?

4           A     I would expect -- it is not required, but I would  
5 expect first that there would be some sort of a premeeting  
6 where there would be basically a scheme, a plan, a framework of  
7 what would be desired and some input be given. That is not  
8 necessary, but that would likely occur. And then some sort of  
9 prescribed testing program would be initiated. That could  
10 happen before the application is submitted, it could also  
11 happen as part of the application process.

12          Q     And is it possible to your mind that that kind of a  
13 preapplication investigation might convince Farmton that the  
14 wells should be located somewhere other than where they have  
15 tentatively proposed?

16          A     The intent of a premeeting would be to raise obvious  
17 issues that could be constraints or concerns. And although it  
18 is not a comprehensive review, it allows for some interchange  
19 of information between staff and a potential applicant over  
20 issues that they can keep in mind as they are tailoring their  
21 application.

22          Q     In terms of processing a consumptive use permit  
23 application, do you believe there are advantages with working  
24 with an applicant who owns and controls a large piece of  
25 property on which he is proposing the wells, as opposed to,



1 say, a more highly developed area, or an area that is in a lot  
2 of different hands?

3 A In a hypothetical sense, very much so. If you have a  
4 single landowner with a large holding, a number of our criteria  
5 deal with impacting, for instance, existing users. If you are  
6 in an area where there aren't existing users, that precludes or  
7 that avoids that constraint. Also other things that could be  
8 impacted, if there is less density there, there is potentially  
9 less use. Strictly speaking hypothetically.

10 Q Is there also the advantage that we touched upon  
11 earlier in that it might be that the district would advise an  
12 applicant if your wells could be relocated to another spot, or  
13 spread out, the adverse impacts would be lessened potentially?

14 A Yes. Conceptually that is certainly an option that  
15 an applicant has. That is one option they could pursue, or  
16 might be able to pursue. They could be in a limited constrain  
17 thing where spreading isn't possible.

18 Q The district does not have a position on whether  
19 Farmton's certificate should or should not be granted, does it?

20 A The district does not have a position.

21 Q And although I blew the question in your deposition  
22 and said Volusia County, I will ask you now, are you aware of  
23 whether or not Brevard County is overpumping its CUP?

24 A Yes, I am aware.

25 Q And are they?

1           A       They were in 2002 and 2003.  However, there is a  
2 point I would like to make on that issue.  When a consumptive  
3 use permit is issued for a utility, what is done is they will  
4 do a demonstration in that application process that the total  
5 amount of water that they intend to use for the duration of  
6 that permit will not result in impacts, adverse impacts to the  
7 resource.  North Brevard did go through that process in their  
8 previous permit application for the permit they currently hold.  
9 And basically what is done with a utility is based on the need  
10 that allocation is given.

11                       So incrementally for utilities on an annual basis  
12 that need typically increases as they have demonstrated that  
13 their utility is growing.  So for that incremental use in 2002  
14 and 2003 they were over their allocation.  However, they are  
15 significantly under the allocation that a demonstration was  
16 made their water could be withdrawn and not cause an impact.  
17 So from a resource standpoint, we don't have a concern with  
18 that overage that they had.  However, from a water use  
19 efficiency standpoint, there is a concern, and we are following  
20 up.  As Brevard County has spoken to you, they have applied to  
21 modify their permit to address that issue.

22           Q       Sir, you say in your prefiled testimony that  
23 Titusville's CUP application is pending.  That is still the  
24 status as we sit here today?

25           A       Yes, sir.

1 Q Will the district require Titusville to implement a  
2 wetlands monitoring network as part of the condition of the  
3 issuance of the CUP if it is issued?

4 A Yes, that would be a component of any CUP that would  
5 be issued.

6 Q And before Titusville can actually pump water from  
7 the wells, will they have to demonstrate they have ownership or  
8 control of the lands where that wetland monitoring network  
9 would be built?

10 A In your question did you say before the water is  
11 used, or before the permit is issued?

12 Q Before they can actually pump.

13 A Okay. Yes; before they can actually pump, there  
14 needs to be a demonstration that they have access and can do  
15 the monitoring that is necessary to ensure that there is not an  
16 impact.

17 Q Who owns the land where the wetlands monitoring  
18 network is proposed, do you know?

19 A Primarily it lies within Farnton's property.

20 MR. WHARTON: That is all we have, Commissioner.

21 COMMISSIONER DEASON: Commissioners.

22 COMMISSIONER JABER: Mr. Burklew, nice to see you  
23 again.

24 THE WITNESS: Good to see you.

25 COMMISSIONER JABER: One of the concerns that we

1 heard from Witness Marwick related appropriately so, I think,  
2 to conservation, and reuse, and how aggressive private  
3 companies may be versus public in helping attaining the goal of  
4 statewide conservation and reuse. And it occurred to me that I  
5 probably need you to refresh my recollection on how that comes  
6 into play with a consumptive use permit process.

7 THE WITNESS: Well, regardless of whether it is  
8 private or public, that same criteria has to be met by every  
9 applicant. And that is something that requires commitments up  
10 front. And it is fairly prescriptive in our rule what you  
11 would have to do in order to have demonstrated that you are  
12 efficiently using water. You know, there's provisions where,  
13 for instance, any applicant that is existing would have to do  
14 an audit.

15 And if an audit does not meet a certain criteria, you  
16 have to do certain provisions, testing or corrective actions  
17 to meet an acceptable standard on what is an efficient use of  
18 water for that particular utility. So, really, whether it is  
19 private or public is not an issue in the review at all, it is  
20 the type of use.

21 COMMISSIONER JABER: And just so folks in the  
22 audience know why you and I know each other, in my prior life I  
23 was a lawyer in the water area here on staff. And as I recall  
24 you were very instrumental in helping the Commission and the  
25 water management district reach a memorandum of understanding

1 on conservation and reuse, is that correct?

2 THE WITNESS: That's correct. I don't know if my  
3 part was that instrumental, but --

4 COMMISSIONER JABER: Well, for whatever it was worth  
5 to you, I thought it was. In that regard, refresh my memory  
6 on -- is it still the case, Mr. Burklew, that you would  
7 actually deny a consumptive use permit if you were not  
8 satisfied with, I guess at the time it was called the reuse  
9 feasibility study, if you were not satisfied with plans that  
10 are put forward by companies as it relates to reuse and  
11 conservation, would you deny a consumptive use permit?

12 THE WITNESS: It is staff that those criteria would  
13 need to be met. One of those being what you mentioned, for  
14 instance, the reuse feasibility study. If an adequate plan was  
15 not in place or a commitment was not made, we would not be able  
16 to recommend that permit for approval to our board.

17 COMMISSIONER JABER: And would you also generally  
18 speak to that memorandum of understanding with the PSC and what  
19 you perceive the PSC's role as it relates to conservation and  
20 reuse to be?

21 THE WITNESS: The PSC has been very helpful, and this  
22 is speaking from my personal experience, in promoting  
23 conservation and reuse in a number of ways. One is it is a  
24 fairly dynamic regulated industry we deal with, and we all  
25 speak with different folks, so we meet regularly on a quarterly

1 basis, the PSC and the perspective water management district.  
2 I know we do with you all. And that is very helpful in  
3 understanding what issues are coming up, what concerns there  
4 are that we may need to address and coordinate and work  
5 together on.

6 Also, the PSC has expertise that we don't in the  
7 issue of rates, and what is appropriate, and what is in the  
8 public interest. And they have been helpful to us in a number  
9 of cases where that has been an issue. You know, weighing the  
10 different goals that have to be met and being both fair in a  
11 rate, and yet also accomplishing the necessary goal of ensuring  
12 conservation and discouraging an excessive use and behavior  
13 that often happens.

14 COMMISSIONER JABER: Okay. And my final question in  
15 that regard: Do you have any doubt in your mind, as you sit  
16 here today, whether it's we grant Farmton's application or any  
17 other private company as they come in and achieve a certificate  
18 and then future rates, do you have any doubt in your mind that  
19 the PSC would be aggressive in maintaining its responsibilities  
20 as it relates to reuse and conservation because of the  
21 memorandum of understanding and because of the state law that  
22 we operate under?

23 THE WITNESS: Once again, speaking from my personal  
24 opinion and my experience, I think the PSC would continue to  
25 act as I have seen them act in my, you know, the past 12-plus

1 years with the district.

2 COMMISSIONER JABER: Thank you, Mr. Burklew.

3 COMMISSIONER DEASON: Redirect.

4 MS. RODAN: No further questions.

5 COMMISSIONER DEASON: Thank you, Mr Burklew, you may  
6 be excused.

7 Staff, you may call your next witness.

8 MS. BROWN: Staff calls Valerie James.

9 **VALERIE JAMES**

10 **was called as a witness on behalf of the Staff of the Florida**  
11 **Public Service Commission, and having been duly sworn,**  
12 testified as follows:

13 **DIRECT EXAMINATION**

14 BY MS. BROWN:

15 Q Good morning, Ms. James. Have you been sworn?

16 A Yes, I have.

17 Q Would you state your name and business address for  
18 the record, please?

19 A My name is Valerie James, and I'm employed with  
20 Community Affairs located at 2555 Shumard Oak Boulevard,  
21 Tallahassee, Florida 32399.

22 Q And what is your occupation with the Department of  
23 Community Affairs?

24 A I am currently a planner there with the department.

25 Q Did you file prefiled direct testimony in this

1 proceeding --

2 A Yes, I did.

3 Q -- on behalf of DCA?

4 A Yes, I did.

5 Q Have you reviewed that testimony?

6 A Yes, I have.

7 Q Do you have any changes or corrections to make to it?

8 A No, I don't.

9 Q Did you file any exhibits with your testimony?

10 A No, I did not.

11 MS. BROWN: Commissioner, I would like to have Ms.  
12 James' prefiled direct testimony admitted into the record.

13 COMMISSIONER DEASON: Without objection it shall be  
14 so inserted.

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**DIRECT TESTIMONY OF VALERIE JAMES**1  
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Q. Please state your name and business address.

A. My name is Valerie James. My business address is 2555 Shumard Oak Boulevard, Tallahassee, Florida, 32399-2100.

Q. By whom are you employed?

A. I am employed by the Florida Department of Community Affairs (DCA), in the Bureau of Comprehensive Planning.

Q. Could you please summarize your educational background and work responsibilities?

A. At the DCA, I am a Planner, and have worked with the DCA since 1990. I have a Bachelors Degree in Public Administration. In my job, I am responsible for the implementation and administration of Volusia and Brevard Counties Comprehensive Planning (Chapter 163, F.S.), the Development of Regional Impact Program (Chapter 380, F.S.), and interagency review coordination and provision of technical assistance to local governments.

Q. What is the purpose of your testimony in this proceeding?

A. Pursuant to a Memorandum of Understanding between the DCA and the Public Service Commission (PSC), the DCA provides information to the PSC regarding the relationship of amendment applications and the respective county's comprehensive plan, including information about land use categories and the densities and intensities of land use. In this proceeding, DCA provided input to the PSC in February, 2003, which identified inconsistencies of the application and urban sprawl concerns. The DCA believes that the utility's proposal is inconsistent with several goals, objectives, and policies of the Volusia and Brevard Counties, and the City of New Smyrna Beach Comprehensive Plans. Therefore, the Department is opposed to the proposed application by Farnton Water Resources, LLC for utility services.

Q. Could you be more specific?

1 A. Yes. Portions of the proposed utility service area in Volusia County are designated  
2 Forestry Resource, Agricultural Resource, and Environmental Systems Corridor land use  
3 categories, while the remaining portions in Brevard County are designated Agriculture. The  
4 utility services are proposed in an area that is completely rural; some of these areas contain  
5 natural resources that are environmentally sensitive and are intended to be protected.  
6 Therefore, extension of services into this area would encourage urbanization of rural,  
7 agriculture, and environmentally sensitive areas and may result in urban sprawl development  
8 patterns. Both Volusia and Brevard Counties have identified several goals, objectives, and  
9 policies in their Future Land Use Element (FLUE) plans which the proposed utility service  
10 application is inconsistent with, in addition to other objections. For example, FLUE Objective  
11 1.1.3 requires Volusia County to limit urban sprawl by directing urban growth to those areas  
12 where public facilities and services are available inside designated service areas. Brevard  
13 County FLUE Objective 4 recognizes the importance of agricultural land to the community as  
14 the industry benefits the economy, reduces the extent of the urban sprawl, and the costs of  
15 providing public facilities and service, provides environmental benefits, and provides open  
16 space and visual beauty. The application area is outside the County's designated service area.  
17 Volusia County Potable Water Sub-Element Policies 7.1.1.7 and 7.1.1.11, and Brevard County  
18 FLUE Policy 4.1 prohibit the extension of water lines, or establishment of central systems of  
19 potable water outside of the water service areas. In addition, the Cities of New Smyrna Beach  
20 and Titusville have also raised objections to the proposed utility service application. The City  
21 of New Smyrna Beach has concerns over the potential impacts to existing and projected  
22 demands of potable water wells. The City of Titusville believes that the utility's application  
23 conflicts with the Comprehensive Plans for both Volusia and Brevard Counties in the areas of  
24 establishment of central water systems outside the water service areas, and unapproved water  
25 wells and treatment plant sites.

1 Q. Does this complete your testimony?

2 A. Yes, it does.

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1 BY MS. BROWN:

2 Q Would you provide a summary of your direct testimony  
3 for the Commission?

4 A My testimony in this case is intended to provide  
5 information to the Commission regarding Farmton's application  
6 and its relation to the affected local government's  
7 comprehensive plan. As explained in my testimony, the  
8 Department of Community Affairs' position is that the Farmton  
9 application is inconsistent with the future land use element of  
10 those comprehensive plans, and it would promote urban sprawl as  
11 described in DCA's rule. Specifically, Rule 9J-5.006(5) of the  
12 Florida Administrative Code.

13 MS. BROWN: I submit Ms. James for cross-examination.

14 COMMISSIONER DEASON: Okay. Mr. Knox.

15 MR. KNOX: I have no questions of this witness.

16 COMMISSIONER DEASON: Mr. McNamara.

17 MR. McNAMARA: No questions.

18 COMMISSIONER DEASON: Mr. Bosch.

19 MR. BOSCH: No questions.

20 COMMISSIONER DEASON: Mr. Wharton.

21 CROSS EXAMINATION

22 BY MR. WHARTON:

23 Q Good morning, Ms. James.

24 A Good morning.

25 Q The Department of Community Affairs has a process,

1 does it not, where it writes a letter to the PSC commenting  
2 upon applicants for certificates from a planning perspective?

3 A Correct.

4 Q And your testimony in this case is consistent with  
5 the letter that was written for this particular application?

6 A Yes.

7 Q Isn't it true that those letters never go higher than  
8 the division director, and that in this case only went to Mr.  
9 Gauthier, who is the Bureau Chief?

10 A In this case the letter only went to Charlie  
11 Gauthier, the Bureau Chief. But there are some instances where  
12 there may be a possibility it could go higher than the Bureau  
13 Chief.

14 Q Okay. Having had the pleasure of sitting through  
15 this proceeding for a couple of days, do you feel that you have  
16 a good understanding of what it is that Farmton will get from  
17 this proceeding if its application is granted?

18 A I think I do.

19 Q Okay. It will receive a certificate from the  
20 Commission which would grant it a service area?

21 A Right.

22 Q Isn't it true that you don't know whether or not the  
23 granting of the certificate in and of itself is inconsistent  
24 with the comprehensive plans of Brevard and Volusia Counties?

25 A The granting of a certificate in and of itself, I

1 don't think so.

2 Q Okay. You would agree that the granting of the  
3 certificate in and of itself is not development and is not a  
4 land use, is that true?

5 A That is true in and of itself. However, at planning  
6 we look at the long-term effect of this application.

7 Q So your concern in that regard then is consistent  
8 with what some of the other planners have said. Your concern  
9 that it might be the first domino in a line of dominos that  
10 leads to a certain type of development?

11 A Yes.

12 Q Would you agree in that regard that the counties will  
13 retain the power and authority to enforce the comprehensive  
14 plans in their respective counties whether or not Farmton has a  
15 PSC certificate?

16 A Yes, they will.

17 Q Are you able to think of any case, Ms. James, where  
18 at any time you are aware of where the granting of a  
19 certificate to a utility by the PSC has lead directly to urban  
20 sprawl?

21 A Not to my knowledge, I can't.

22 Q Do you know of any case anywhere in the United States  
23 where the creation or the designation of a utility's service  
24 area lead directly to urban sprawl?

25 A Not to my knowledge.

1 Q Do you know whether or not DCA expressed opinions in  
2 the East Central Florida Services certificate case ten years  
3 ago that granting of that certificate would lead to urban  
4 sprawl?

5 A Ten years ago?

6 Q Are you familiar with the ECFS case?

7 A No, sir, I'm not familiar with the ECFS case.

8 Q And you would agree that you don't know whether or  
9 not any sensitive areas of the environment will be harmed  
10 merely by the fact of Farmton's certification, correct?

11 A Merely by the fact of just holding that certificate?

12 Q (Indicating yes.)

13 A There wouldn't be a harm, no. Not at that time, no.

14 Q Wouldn't you agree that in order for your concerns as  
15 expressed in your testimony to manifest themselves into reality  
16 something is going to have to happen at the County Commission  
17 level in terms of like amending the comprehensive plans?

18 A That is correct.

19 MR. WHARTON: That's all we have, Commissioner.

20 COMMISSIONER DEASON: Commissioners. Redirect.

21 MS. BROWN: No questions.

22 COMMISSIONER DEASON: Okay. Thank you, Ms. James,  
23 you may be excused.

24 THE WITNESS: Thank you.

25 COMMISSIONER DEASON: I believe we have finished the

1 direct phase of the proceeding. Perhaps now is a good time to  
2 inquire as to time necessary to complete the rebuttal phase of  
3 the hearing. We have four witnesses. I would assume the  
4 summaries will be brief. Is that correct, Mr. Wharton?

5 MR. WHARTON: The testimony is longer, but the  
6 summaries will be brief.

7 COMMISSIONER DEASON: Okay. Then we have parties to  
8 conduct cross-examination. Do we have a general feel for the  
9 length of cross-examination? I'm not trying to bind you to any  
10 type of restraint, I am just trying to get a general feel.

11 MR. KNOX: I would say short.

12 MR. BOSCH: We have discussed it and I think the  
13 consensus is it will be very short.

14 MR. McNAMARA: I agree.

15 COMMISSIONER DEASON: Okay. Staff.

16 MS. FLEMING: If we do have any questions, it will be  
17 very short.

18 COMMISSIONER DEASON: Okay. I'm inquiring as to  
19 whether we should plow ahead and try to conclude the hearing  
20 without the necessity of a lunch break, or should we just go  
21 ahead and break now for lunch and come back and finish the  
22 hearing. And I would like input from the parties and from  
23 Commissioners.

24 MR. WHARTON: I think our preference would be to take  
25 a break, at least sufficient to run over to EATZ.



1           COMMISSIONER DEASON: Coming from you, Mr. Wharton,  
2 I'm not surprised to hear that.

3           COMMISSIONER JABER: But that will be a short break,  
4 considering where you are going.

5           COMMISSIONER DEASON: Now is a good time to break.  
6 We are right at the noon hour. We will break for lunch and we  
7 will -- do you have something before we break?

8           MR. WHARTON: There is one quick thing. I think that  
9 I would like to introduce the smaller of the maps that are  
10 depicted on the demonstrative. I have discussed this with  
11 other counsel and don't believe anyone has any objection,  
12 although Mr. McNamara said he wanted to think about it a little  
13 further. This is very similar to what Mr. Hartman had attached  
14 to his testimony, except that it depicts some facilities and  
15 wells outside the service area. It also, just so the record is  
16 clear, does not accurately reflect the entire size of East  
17 Central Florida Services, which we have drawn by hand on the  
18 larger map. But it has been referred to quite a bit and looked  
19 at quite a bit. That is probably a third of the ECFS area.

20           COMMISSIONER DEASON: We will identify the map as  
Exhibit 42, and before the hearing is concluded I will give you  
the opportunity to move it, and I will entertain any objections  
at that time.

          MR. WHARTON: Thank you.

25           MR. McNAMARA: Commissioner, we have no objection.

1 COMMISSIONER DEASON: Is there any objection to it?

2 MR. BOSCH: No, there is no objection.

3 COMMISSIONER DEASON: Staff.

4 MS. RODAN: We have no objection.

5 COMMISSIONER DEASON: Very well. We can just go  
6 ahead and admit Exhibit 42.

7 (Exhibit 42 marked for identification and admitted  
8 into the record.)

9 COMMISSIONER DEASON: We will recess for lunch and  
10 reconvene at 1:00 o'clock.

11 (Lunch recess.)

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STATE OF FLORIDA )

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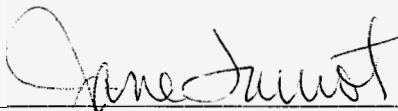
COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 30th day of June, 2004.



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JANE FAUROT, RPR  
Chief, Office of Hearing Reporter Services  
FPSC Division of Commission Clerk and  
Administrative Services  
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