

REBUTTAL TESTIMONY OF DAN DELISI

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
APPLICATION FOR ORIGINAL CERTIFICATES
FOR PROPOSED WATER AND WASTEWATER SYSTEMS
IN HERNANDO AND PASCO COUNTIES
AND REQUEST FOR INITIAL RATES AND CHARGES
FOR SKYLAND UTILITIES, LLC
DOCKET NO. 090478-WS
ON BEHALF OF SKYLAND UTILITIES, LLC
REBUTTAL TESTIMONY OF DANIEL B. DELISI

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Q. State your name and address.
A. Dan DeLisi, DeLisi Fitzgerald, 1605 Hendry Street, Fort
Myers, Florida 33901.
Q. Have you reviewed the direct testimony of Ronald A.
Pianta, AICP, on behalf of Hernando County, Florida?
A. Yes.
Q. Have you reviewed the direct testimony of Paul L.
Weiczorek, AICP, on behalf of Hernando County, Florida?
A. Yes.
Q. Have you reviewed the direct testimony of Bruce Kennedy,
PE, on behalf of Pasco County, Florida?

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A. Yes.
Q. Have you reviewed the direct testimony of Richard E.
Gehring on behalf of Pasco County, Florida?
A. Yes.

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1 Q. Have you reviewed the direct testimony of Daniel W. Evans
2 on behalf of the Florida Department of Community Affairs?

3 A. Yes.

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

5 A. To review the consistency of the Skyland application with
6 the comprehensive plans of Hernando and Pasco Counties, to
7 address their relevance to this proceeding, and to respond to
8 some of the testimony of the aforementioned individuals.

9 Q. Would you please review your educational background?

10 A. I hold a Bachelor of Arts Degree from Brandeis University
11 and a Masters Degree in City Planning from the Massachusetts
12 Institute of Technology. Additionally, I received a
13 Certificate in Urban Design at MIT, which included a series of
14 courses in the graduate program dealing with land development
15 and urban, suburban, rural and regional planning issues. My
16 graduate work also included a series of published articles and
17 written works on environmental dispute resolution through the
18 Harvard Law School Program on Negotiation; car sharing and
19 mobility in China through the MIT Cooperative Mobility
20 Project; and community planning through the Earth Pledge
21 Foundation. I have attached a copy of my resume as Exhibit
22 DBD-1.

23 Q. How many years and where have you practiced as a planner?

24 A. I have been practicing as a land use planner in the State
25 of Florida for the last 10 years.

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1 Q. Would you please review your employment experience as a
2 professional planner?

3 A. After graduating with my Masters Degree in City Planning
4 from MIT in 2000, I moved to Florida and worked as a planning
5 consultant for Vanasse Daylor, a land planning and engineering
6 firm based in Fort Myers, Florida. In 2003, I joined Barraco
7 and Associates, another Planning/Engineering firm as its Vice
8 President of Planning. My primary responsibilities for both
9 companies included amending land use entitlements for
10 properties ranging in size from small 1 acre infill sites to
11 large 5,000 acre Developments of Regional Impact. Through this
12 time, I processed rezonings and comprehensive plan amendments,
13 serving as an expert witness before the Lee County hearing
14 examiner and zoning boards/planning agencies in Lee, Hendry
15 and Charlotte Counties. During this time, I also worked on a
16 number of public sector planning efforts from community/sector
17 plans to the creation of industrial overlays.

18 In 2004, I was hired by The Bonita Bay Group, a developer
19 of large master planned communities in southwest Florida and
20 served as its Director of Planning. In this role, I was
21 responsible for all land use entitlement efforts for all of
22 its properties in southwest Florida and land use due diligence
23 efforts for properties throughout the state. I also served as
24 the person responsible for monitoring and reviewing land use
25 policy changes in the local governments where we had

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1 properties, as well as state legislative issues as they
2 related to comprehensive planning.

3 In 2006, I formed DeLisi Fitzgerald, Inc., a consulting
4 firm specializing in land use planning and engineering. My
5 responsibilities in my current firm are the same as my
6 consulting responsibilities prior to joining The Bonita Bay
7 Group, the difference being that I have been actively working
8 in central Florida, with a satellite office in Maitland. I
9 have worked on projects to varying degrees throughout the
10 state in the east coast, west coast, and central Florida
11 regions, as well as providing expert testimony.

12 During my career, I have served as a guest speaker at
13 conferences throughout Florida presenting on topics ranging
14 from creating Capital Improvement Elements in Comprehensive
15 Plans to "Innovations in Planning". For the last several years
16 I have been a regular guest speaker for the Urban Land
17 Institute throughout the United States on land use regulation
18 and models of compact growth patters. I am also an adjunct
19 faculty member at Nova Southeastern University in Davie,
20 Florida where I teach a graduate level course at the Huizenga
21 School of Business on "Land Use Regulation".

22 Q. Do you hold any professional registrations and
23 certifications?

24 A. I am certified through the American Institute of
25 Certified Planners (AICP). In addition I am certified by the

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1 Supreme Court of Florida as a Circuit Mediator.

2 Q. Are you a member of any professional organizations?

3 A. I am a member of the American Planning Association.

4 Additionally, I am a former member of the Board of Directors
5 and Chapter President of the Florida Planning and Zoning
6 Association.

7 Q. Have you ever testified as an expert before any courts,
8 administrative tribunals, or in quasi-judicial venues?

9 A. Yes. I have testified as an expert witness before
10 administrative tribunals and Hearing Officers in quasi-
11 judicial matters.

12 Q. Are you familiar with Chapter 163, Florida Statutes,
13 known as the "Local Government Comprehensive Planning & Land
14 Development Act"?

15 A. Yes.

16 Q. Are you familiar with the rules of the Department of
17 Community Affairs as they relate to local government and
18 comprehensive plans?

19 A. Yes.

20 Q. Mr. DeLisi, do you have any comments regarding the
21 testimony of Mr. Pianta?

22 A. Yes.

23 Q. Who is Mr. Pianta?

24 A. The Planning Director for Hernando County.

25 Q. Do you agree with Mr. Pianta's opinion that Skyland's

1 proposal is not consistent with the adopted Comprehensive Plan
2 for Hernando County?

3 A. No.

4 Q. What is your opinion in that regard?

5 A. Mr. Pianta relies on a series of policies in the Hernando
6 County Comprehensive Plan that lead him to conclude that the
7 Comprehensive Plan does not allow utility service in the Rural
8 area as so designated on the Future Land Use Map. A careful
9 review of the Comprehensive Plan and the policies that are
10 specifically listed in his testimony lead me to conclude that
11 Mr. Pianta is not correct in his finding. In my opinion, in
12 several instances, Mr. Pianta has either taken the policies
13 out of context or he has inappropriately applied them. I will
14 address a few such instances here:

15 Policy 1.01B6 states: "Allow new development within the
16 Rural Land Use Category which is compatible with the level of
17 public services provided. The County will not provide water,
18 sewer, transportation, or other infrastructure to support
19 urban development in the Rural Land Use Category so that urban
20 development can be directed into those areas which are planned
21 to receive such services."

22 When a policy in a comprehensive plan directs a county to
23 do something, the application of that policy is limited to the
24 county's actions, not a private land owner or a private entity
25 such as Skyland. For example, if a comprehensive plan states

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1 that the county will create buffer guidelines in their land
2 development code, it is the responsibility of the county to
3 take that action, not another entity. In reviewing a
4 development application in that scenario, it would not be
5 appropriate to transfer or superimpose the county's
6 responsibility of creating the buffering ordinance to a
7 private land owner, or to infer any tangible intent from that
8 policy. The same is true with a policy that directs that
9 county to refrain from the provision of water and sewer
10 service in the rural area.

11 Therefore, if Hernando County sought to prevent all
12 utilities, public and private, from providing service in rural
13 areas; rather than stating "the county will not provide water,
14 sewer..." the Comprehensive Plan should have been written to
15 state that "no utility provider will extend service in to the
16 Rural land use category..." Whether such would be lawful is a
17 subject I will leave for the Commission to address.

18 Given the limited resources of public agencies it is
19 understandable that Hernando County, through its comprehensive
20 plan, would prioritize urban areas for the provision of public
21 utilities. Policy 1.01B6 reads the way it was likely intended
22 to be written - to prioritize the county's limited resources
23 in the most cost efficient manner by directing the county to
24 concentrate those limited resources in areas with the greatest
25 population. Stating in a comprehensive plan that the county

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1 will not provide water and wastewater in the rural area does
2 not, however, preclude a private utility from providing those
3 same services. It is commonly understood that if government
4 has limited resources it should concentrate those resources in
5 areas with the most population, especially urban areas.
6 Private entities, however, do not have the same resource
7 limitations that the public sector has.

8 Similarly, Policies 1.01T1, 1.01T2, 1.01T4 and 1.01T8 all
9 are policies that describe how public utilities will be
10 extended. All of these policies must be read in context to
11 understand their meaning. According to the rules of statutory
12 construction commonly used by professional planners,
13 objectives in a comprehensive plan are intended to implement
14 the goals that they are listed under. Policies are intended to
15 implement the objectives that they are listed under.

16 Objective 1.01T states: "Provide for efficient use and
17 provision of public facilities/services in a cost-efficient
18 manner." The policies under Objective 1.01T are intended to
19 implement the county's desire for the county to provide
20 utilities in a cost efficient manner. Policies that direct the
21 county to concentrate its limited resources in areas with
22 existing development or contiguous to existing development
23 implement Objective 1.01T. However, similar to Policy 1.01B6,
24 there is nothing in this policy that directs that private
25 resources should not or cannot provide infrastructure

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1 elsewhere in the county.

2 Q. Specifically with regard to the siting of the proposed
3 utility, did you review Mr. Pianta's opinion?

4 A. Yes.

5 Q. Did you review Mr. Pianta's opinion that Skyland's
6 proposal would violate the intent of the Hernando County
7 Comprehensive Plan?

8 A. Yes.

9 Q. Do you agree with that opinion?

10 A. No.

11 Q. Does Mr. Pianta set forth the basis of his opinion?

12 A. Yes.

13 Q. What is your opinion in that regard?

14 A. He is incorrect in his reading of the Hernando County
15 Comprehensive Plan. Mr. Pianta seems to equate the proposed
16 utility certificated area with a development proposal (Page 5,
17 lines 7 - 21). To the extent that development has been
18 discussed as part of this application, those levels of
19 development are within levels allowed under the existing
20 comprehensive plans of Hernando and Pasco Counties.

21 It is important to note that "development" cannot happen
22 if it is inconsistent with a comprehensive plan. The proposal
23 that is currently being reviewed is not a development action.
24 Mr. Pianta, in his testimony, seems to indicate that approval
25 of a utility certificated territory would make it a foregone

1 conclusion that levels of development in excess of that which
2 are currently permitted in the Comprehensive Plan will be
3 permitted. Mr. Pianta provides no basis for his conclusion. I
4 am not aware of any real world instance where the creation of
5 a PSC certificated area has somehow exempted a land owner from
6 complying with the development levels allowed in a local
7 comprehensive plan, or exempted any proposal of a land owner
8 from any required review under Chapter 163 FS and Rule 9J-5
9 FAC to change the Comprehensive Plan.

10 It seems to be inferred in Mr. Pianta's testimony that
11 the provision of utilities will create pressure for new
12 development to occur. However, in my experience utilities will
13 create development pressure only if all other services are in
14 place or otherwise planned for, and there is a market for that
15 development. For instance, even if utilities exist, but there
16 is poor road access, development won't happen. Even if
17 utilities exist, but the county's comprehensive plan does not
18 allow development at significant levels, then the only
19 development that will occur will be that which is allowed. In
20 the planning process, if urban development is proposed in a
21 rural area, the applicant for the change must show how
22 infrastructure would be planned for and financially feasible,
23 in addition to demonstrating "need", land use form, and the
24 myriad of other requirements in Chapter 163 F.S and Rule 9J-5
25 FAC and must satisfy the general requirements of the

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1 Department of Community Affairs. The existence of a utility,
2 much less a PSC certificate, in and of themselves, changes
3 none of this.

4 Q. Did Mr. Pianta express the opinion that Skyland's
5 proposal undermines the stated goals, objectives, and policies
6 of the county?

7 A. Not really. He was asked a hypothetical question whether
8 he had an opinion "if a development is allowed to go forward
9 which is inconsistent with the County's Comprehensive Plan"
10 and his opinion was stated in reference to that premise. This
11 is not a "development" proposal, and no such proposal is
12 pending before Hernando County. In his hypothetical
13 development proposal, Mr. Pianta is assuming entitlements in
14 excess of what exists on the property today. However, in the
15 Skyland application, the entitlements on the property are
16 consistent with what is allowed in the comprehensive plan. I
17 want to be clear though that in my opinion, the application of
18 Skyland does not undermine any of the goals, objectives or
19 policies of the Hernando Comprehensive Plan.

20 Q. Mr. Pianta is asked in his testimony if development can
21 go forward inconsistent with the County's comprehensive plan.
22 He states that it cannot, and then further elaborates that the
23 form of the development would constitute urban sprawl. Do you
24 agree or disagree with his assertion that the Skyland
25 Utilities proposed certificated area constitutes a

1 "development proposal"?

2 A. No. The term "development" refers to something very
3 specific. The Florida Statutes has an extensive definition of
4 what constitutes a development activity. This definition is
5 found in Chapter 380.04 F.S. and specifically referenced in
6 Chapter 163.3164, the "Local Government Comprehensive Planning
7 and Land Development Regulation Act; definitions" section.

8 Both Chapters 163 and 380 F.S. are administered by the state
9 Department of Community Affairs and govern development and
10 comprehensive planning. The definition in the Statutes lists
11 the activities and uses that involve "development".

12 Certification of a utility territory is not one of those
13 actions or uses. The definition also specifically lists those
14 operations or uses that do not constitute development as
15 follows:

16 "(3) The following operations or uses shall not be taken
17 for the purpose of this chapter to involve "development" as
18 defined in this section: ...

19 (b) Work by any utility and other persons engaged in the
20 distribution or transmission of gas, electricity, or water,
21 for the purpose of inspecting, repairing, renewing, or
22 constructing on established rights-of-way any sewers, mains,
23 pipes, cables, utility tunnels, power lines, towers, poles,
24 tracks, or the like. This provision conveys no property
25 interest and does not eliminate any applicable notice

1 requirements to affected land owners..."

2 As I read this definition, the Florida Statutes
3 specifically contemplate the process for growth management
4 being separate and distinct from utility planning. That is to
5 say that utility "work", as that phrase is used, does not
6 remove or diminish any of the tools for growth management that
7 exist under Chapter 380 or 163 F.S. and therefore does not, in
8 and of itself require review under these Chapters of the
9 Florida Statutes. Certification of a utility territory is not
10 a development activity.

11 Q. What, in your opinion, is "urban sprawl"?

12 A. Urban sprawl is the proliferation of low density single
13 use development spread out over large areas of land. Chapter
14 9J-5 of the Florida Administrative Code has a formal
15 definition which sets forth 13 indicators of urban sprawl.

16 Q. Do you agree with Mr. Pianta's opinion that if Skyland
17 Utility "begins a water/wastewater utility operation" that
18 this would constitute or promote urban sprawl?

19 A. No. There is no development being proposed in this
20 application. Urban Sprawl is a concept describing patterns of
21 development, not the location of certificated utility areas.

22 Q. In your opinion, would the certification of Skyland alone
23 constitute or promote urban sprawl?

24 A. No. Urban sprawl relates to development patterns.

25 Q. In your opinion, would the construction of Skyland's

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1 proposed utility facilities alone promote or constitute urban
2 sprawl?

3 A. No. In order for either the certification or construction
4 of a utility to promote urban sprawl, the County and the State
5 would have to first permit urban sprawl to occur under the
6 county's comprehensive plan. That has not happened. In the
7 absence of Hernando County, with the concurrence of the
8 Department of Community Affairs, amending the Hernando
9 Comprehensive plan, development in excess of current
10 entitlements cannot and will not happen. Urban sprawl as
11 envisioned by Mr. Pianta simply will not occur as a result of
12 this application.

13 Q. Do you agree with Mr. Pianta's projection as to "what
14 types of affects can be expected" if Skyland begins
15 operations?

16 A. No, I do not. And I am not aware of any similar cases
17 where the certification of a utility area in a rural area has
18 lead to uncontrolled sprawling development.

19 Q. Can you think of examples where unexpected positive results
20 have been created through the establishment of a PSC
21 certificated area?

22 A. Yes. It is impossible to predict any future development
23 form that may take place under a future county administration.
24 Such would be subject to numerous vagaries including, but not
25 limited to, population growth and trends, the economy, and the

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1 political and policy decisions of state and local governments.
2 Mr. Pianta's scenario envisions only the worst possible
3 outcome, one that is in fact the most unlikely outcome given
4 the development of the Growth Management Statutes in Chapter
5 163 F.S. over the last 2 ½ decades. As stated above, the only
6 thing that this application requests is the designation of a
7 utility certificated area in a location where the county's
8 comprehensive plan precludes the county itself from providing
9 service.

10 As history with these types of actions has shown, it is
11 impossible to predict the planning and environmental
12 preservation opportunities that may exist in the future. In
13 one instance I am familiar with, when Town and Country
14 Utilities (Babcock Ranch) received its certificate from the
15 PSC in 1999 there was likely no understanding that it would
16 remove one future impediment to the state's acquisition of
17 over 73,000 acres of pristine environmental lands. In 2005 The
18 State had tried unsuccessfully to acquire the full 91,000 acre
19 property but could not do so without the intermediary
20 assistance of a private entity. The end result was one
21 supported by nearly every local environmental and planning
22 organization and involved a private land developer, gaining
23 development rights on approximately 17,000 acres of impacted
24 lands in order to broker the sale of the pristine lands to the
25 state. Had the utility plan not been established and in place,

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1 that may have ended the entire complex deal which was
2 structured, to the detriment of the state's land acquisition
3 goals and the open advocacy of nearly every state planning and
4 environmental organization. Since its designation in 1999 by
5 the PSC, we know three things about the affect of the
6 existence of Town and Country Utilities:

- 7 1. Its existence did not in any way create an artificial
8 market for development. No sprawling development has
9 happened on the property or in the area and the utility
10 still does not have an urban customer base, even 11
11 years after this designation and through one of the most
12 aggressive development cycles in the history of Florida.
- 13 2. Having the utility in place at the time of the
14 comprehensive plan amendment and the sale of the
15 preservation area to the State of Florida did not in any
16 way limit the state's and the local governments'
17 abilities to regulate and impose land use forms that did
18 not allow or constitute "urban sprawl". It is important
19 to note the widespread agreement among planning and
20 environmental organizations to this point.
- 21 3. Having the utility in place with a plan for the
22 provision of central water and wastewater facilities did
23 remove an impediment for the State of Florida to achieve
24 a larger land acquisition goal that was unforeseen at
25 the time of the PSC designation.

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1 In another example, two years ago Charlotte and DeSoto
2 Counties challenged a proposal by Sun River Utilities to
3 establish a certificated area over a portion of northern
4 Charlotte County and southern DeSoto County. Eventually the
5 Counties and Sun River Utilities entered in to a settlement
6 agreement that allowed the designation of the certificated
7 area. Last year a joint public/private planning study that
8 included a portion of the area in Charlotte County was
9 completed. The establishment of the certificated area did not
10 deprive Charlotte County of any existing tool to prevent urban
11 sprawl. Even more instructive was the review at the state
12 level which included a strenuous application of what is
13 commonly referred to as the "Urban Sprawl Rule" found in 9J-5
14 of the Florida Administrative Code. In this particular review,
15 however, the Department of Environmental Protection saw an
16 opportunity to tie future development to the conversion of
17 leaky septic systems that are currently leading to pollution
18 of the Peace River. This unforeseen opportunity to stop a
19 point of environmental pollution would not have been possible
20 without prior utility planning. Not only does the form of
21 development contemplated in the planning study not constitute
22 urban sprawl under the Rule 9J-5 or any other planning
23 definition of the word, but it contributes to an environmental
24 restoration project that was not anticipated when Charlotte
25 County originally challenged the designation of the PSC

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1 franchise area.

2 Q. Do you agree with Mr. Pianta's opinion regarding the
3 "public policy implications" if "property develops" in a
4 manner that constitutes urban sprawl?

5 A. Yes. I agree that if Hernando County chooses to amend
6 their comprehensive plan to allow development on this property
7 that is in a sprawling land use form, without any of the
8 controls afforded to the County in Rule 9J-5 FAC, and that
9 development actually occurs, there are "public policy
10 implications." What I do not agree with is Mr. Pianta's
11 implication of how such a result would occur. Hernando County,
12 with the concurrence of the Department of Community Affairs,
13 would need to approve and permit increased levels of
14 development in a sprawling land use pattern for Hernando
15 County to be faced with these "public policy implications". It
16 is, of course, possible for Hernando County and the Department
17 of Community Affairs to approve an amendment to the
18 comprehensive plan that is not characteristic of urban sprawl.
19 However, since there has been no effort to seek increased
20 entitlements on this land, it is not possible to specifically
21 address future land use form that may or may not be proposed
22 or approved.

23 Q. Do you have any comments regarding the testimony of Mr.
24 Paul Wieczorek?

25 A. Yes.

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1 Q. Who is Mr. Wieczorek?

2 A. Senior Planner with the Hernando County Planning
3 Department.

4 Q. Does Mr. Wieczorek provide any opinions that are any
5 different than those opinions provided by Mr. Pianta?

6 A. No.

7 Q. Does Mr. Wieczorek explain why he concurs with Mr.
8 Pinata's opinions?

9 A. No.

10 Q. Do you have any comments regarding the testimony of
11 Richard Gehring?

12 A. Yes.

13 Q. Who is Mr. Gehring?

14 A. The Director of Planning and Growth Management for Pasco
15 County.

16 Q. Do you agree with Mr. Gehring's opinion that Skyland's
17 proposed utility is inconsistent with Pasco County's
18 Comprehensive Plan?

19 A. No.

20 Q. Why not?

21 A. While there are several areas of the Comprehensive Plan
22 that discourage private utilities county-wide and which direct
23 Pasco County to take over private systems, the policies that
24 are specific to the Northeast Pasco Rural Area do the
25 opposite. They specifically permit private systems under

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1 certain circumstances, two of which occur on properties
2 located within Skyland's proposed certificated territory. In
3 interpreting comprehensive plans, when there are two seemingly
4 conflicting policies the more specific or directed policy
5 applies. Therefore, even though there are policies that do
6 speak generally about the removal and discouragement of
7 private systems, the policy that deals directly with the
8 Northeast Pasco Rural Area specifically permits these
9 facilities and is therefore the controlling policy.

10 Q. Do you agree with Mr. Gehring's opinion that the very
11 existence of Skyland will promote "urban sprawl"?

12 A. No. I fail to see how that will occur just by the
13 existence of a utility franchise area. I am personally not
14 aware of any cases where the designation of a utility
15 franchise area has created urban sprawl in the absence of the
16 comprehensive plan already allowing for that form of
17 development. In other words, many other things would need to
18 occur in order for future development to be "sprawling" in
19 nature. Most notably the comprehensive plan would need to
20 permit that form of development already, or be amended. In
21 this case, in amending the comprehensive plan to allow for
22 "urban sprawl", both Pasco County and the Department of
23 Community Affairs would need to ignore the provisions of
24 Chapter 163 F.S. and 9J-5 of the Florida Administrative Code,
25 which guide the form of development that occurs under

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1 comprehensive plans. It may be possible to create a proposal
2 for amending the comprehensive plan in the future that
3 addresses Mr. Gehring's concerns. It is not possible however,
4 to comprehend all future opportunities that may occur in this
5 area, such as described in the Town and County Utility case
6 above. However, for urban sprawl to occur the worst case
7 scenario of every review process - and a total disregard for
8 state law - would also need to occur. From my experience in
9 representing both local government and private interests in
10 the amendment of comprehensive plans, I simply do not see
11 state agencies ignoring the Florida Statutes and Florida
12 Administrative Code to allow Mr. Gehring's dire predictions to
13 be realized.

14 Q. Did you review Mr. Gehring's opinion regarding
15 "deviations" from the requirements of the Pasco Comprehensive
16 Plan?

17 A. Yes.

18 Q. Do you agree with that opinion?

19 A. No. As I have alluded to in my previous testimony, I see
20 this concern as a bit of a red herring.

21 Q. Please explain your opinion.

22 A. It is impossible and unlawful to "deviate" from a
23 comprehensive plan. Comprehensive plans must be followed or
24 amended. As Mr. Gehring outlined in his testimony, there is a
25 process for amending comprehensive plans. However,

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1 Conservation Subdivisions and Employment Centers located in
2 the Northeast Pasco County Rural Area in compliance with
3 Policies WAT 2.1.4, SEW 3.2.6 and FLU 3.1.13 would neither
4 constitute a "deviation" nor would they require an amendment
5 to the comprehensive plan. Conservation Subdivisions can be
6 designated on the property and a portion of the property (ID
7 4) is already designated for Employment Center uses.

8 The inclusion of a private utility for Conservation
9 Subdivisions and Employment Centers is specifically allowed in
10 Policies WAT 2.1.4, SEW 3.2.6 and FLU 3.1.13 and therefore
11 would not constitute a "deviation" from the plan or the
12 "intent" of the plan. In fact, FLU Policy 3.1.13, the policy
13 that specifically allows for private utilities for these forms
14 of development, was created and proposed as part of the
15 Northeast Pasco County Special Area Plan in 2005, a study
16 conducted with the expressed intent of preserving rural
17 character and natural resources.

18 Policies FLU 2.1.15 and FLU 2.1.17 state that:
19 "Individual wells and septic tanks shall be accepted as
20 the primary method of providing potable water and
21 sanitary sewer to the residents and other occupants
22 within the Northeast Pasco County Rural Area.";

23 The same policies further state that the county will:

24 "Protect groundwater systems in the Northeast Pasco
25 County Rural Area by:... Relying primarily on a system of

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1 small, individual, residential wells for the provision of
2 potable water...and... Relying primarily on properly
3 installed and periodically inspected septic tanks..."

4 This is not inconsistent with the provisions in Policy
5 FLU 2.1.13 which specifically allows the use of private
6 utilities for both and Employment Center and a Conservation
7 Subdivision. It is highly unlikely that there will be
8 significant areas of the Northeast Pasco County Rural Area
9 that will qualify for one of the five exceptions and develop
10 with utilities. This remains consistent with the county's
11 vision for the area as expressed in Objective FLU 2.1. Even
12 with utility service over the entire Skyland certificated
13 territory, the Northeast Pasco County Rural Area will
14 primarily be reliant on septic systems and individual wells,
15 consistent with FLU 2.1.15 and FLU 2.1.17.

16 Q. Do you agree with Mr. Gehring's conclusion that if the
17 PSC denies Skyland's application it will "preserve Pasco
18 County's ability to implement its Comprehensive Plan"?

19 A. No.

20 Q. Why not?

21 A. Pasco County is the implementing agency of its own
22 comprehensive plan and it has the sole discretion in the
23 approval of plan amendments (with review by the Department of
24 Community Affairs) and development proposals. That authority
25 is in no way being removed, diminished, or impeded by this

1 application. Pasco County will remain the decision making
2 authority for plan amendments and development proposals after
3 designation of a utility franchise area. There is nothing in
4 this designation that compels the County or the Department of
5 Community Affairs to grant future plan amendments or
6 development on this property.

7 Q. Mr. Kennedy states in his testimony that, "One of the
8 parcels (Parcel ID 4) of the proposed service area is within a
9 designated Employment Center for which PCU plans to provide
10 water and wastewater service consistent with the Pasco County
11 Strategic and Comprehensive Plans." In your review, have you
12 found anything in the Pasco County Strategic and Comprehensive
13 Plans that would substantiate this comment?

14 A. No. I can't find anything in the Pasco County Capital
15 Improvement Element or in the Strategic Plan that would
16 indicate that the county has any ability to serve Parcel ID 4
17 as Mr. Kennedy states. In fact the Strategic Plan indicates a
18 \$200 million deficit in the five-year Capital Improvement
19 Element. Based on this it seems very unlikely that plans exist
20 to actually construct utility service as Mr. Kennedy
21 indicates.

22 Q. Will you please discuss, generally, the concept of "urban
23 sprawl" as it relates to this type of certificate application?

24 A. Both Mr. Gehring and Mr. Pianta have significant
25 testimony regarding the way that utilities impact or influence

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1 development patterns. It is true that providing utility
2 service may allow development to happen. It is untrue that
3 utility service will cause development to happen. The primary
4 determinant of whether or not development will happen is
5 whether or not land is entitled for development and whether or
6 not there is a market for that development. In addition, the
7 only determinant of whether or not development happens in a
8 land use form that is characteristic of "urban sprawl" is how
9 those entitlements are granted in the comprehensive plan and a
10 given county's land development code. Because this PSC
11 certificate is not an amendment to the comprehensive plan and
12 does not grant any particular development entitlements to this
13 property in addition to those already allowed in the
14 comprehensive plan, there is zero relationship between the
15 granting of this certificated area and urban sprawl.

16 Both Mr. Pianta and Mr. Gehring discussed their fear that
17 the granting of this utility certificate area would lead to
18 "leap frog" development. With regard to this, I have two
19 points:

20 1. I believe that we are in agreement that the problem with
21 leap frog development is the cost inefficiencies of extending
22 urban services from one urban area to another by crossing
23 large areas of undeveloped land. However, as far as utilities
24 are concerned, this would not happen. Having an on-site
25 utility does not create this inefficiency.

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1 2. Mr. Gehring seems to recognize this by pointing to other
2 forms of infrastructure that would also be needed to support
3 development. All of this is conjecture without knowing the
4 nature of that development. For instance, additional school
5 children would not be generated from the Employment Center
6 that is already designated on the Future Land Use Map and
7 subject to this application; we do not know if a unique park
8 system can be accommodated within this area; funding
9 mechanisms can be established to off set infrastructure
10 construction and maintenance fees; etc.. There are potential
11 solutions with regard to the provision of infrastructure, all
12 of which will need to be addressed if a given property submits
13 for an amendment to the local comprehensive plan.

14 Should no amendment to the comprehensive plan ever be
15 requested, this utility would serve the area based on current
16 entitlements. Should Evans Properties request an amendment to
17 the comprehensive plan, at that point in time there would be
18 an extensive review process for the provision of urban
19 services outlined in Chapter 163 F.S. Should any future
20 applicant fail to meet those requirements (as Mr. Gehring is
21 already concluding) then in my experience the amendment would
22 not be granted.

23 Q. In the course of your professional career and in your
24 preparation for your participation in this proceeding, have
25 you become aware, from any source, of any sprawling

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1 development occurring on any property that resulted from the
2 issuance of a PSC certificate?

3 A. No.

4 Q. From your professional and expert perspective, do you
5 believe it is in the public interest for the PSC to grant this
6 certificate?

7 A. Yes.

8 Q. Have you reviewed other such certificates re: urban
9 sprawl?

10 A. I have become aware of a few other certificates granted
11 by the PSC to large land owners. None of them have resulted in
12 the development patterns Pasco County and Hernando County seem
13 to be concerned about. Three such service areas contain
14 properties that are pursuing plan amendments that have been
15 unable, at least so far, to overcome review by the Department
16 of Community Affairs and local governments based on their
17 statutory authority to review for urban sprawl. Thus the
18 planning process continues to remain in force and effect if
19 those land owners continue to desire increased densities.
20 These examples demonstrate that local government retains its
21 planning authority even when an applicant owns property within
22 a certificated area. Another certificated area, Town and
23 Country Utilities as discussed above, has urban development
24 entitled only after overcoming local and state review based on
25 a clear demonstration that urban sprawl would not be created.

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1 Q. Have you reviewed Section 367.045(5)(b), Florida
2 Statutes?

3 A. Yes.

4 Q. Will you comment generally on the interrelationship
5 between the granting of a PSC Certificate, that statutory
6 provision, and comprehensive planning as a whole under the
7 rules and regulations in Florida?

8 A. Yes. This section of the Florida Statutes states that,
9 "the commission shall consider, but is not bound by, the local
10 comprehensive plan of the county or municipality." The
11 statutes recognize that there are two very separate processes
12 here. This process is to designate PSC certificated areas.
13 Chapter 163 F.S. deals specifically with comprehensive
14 planning, should a plan amendment ever be proposed at a future
15 date. Since there is no pending amendment to the Pasco or
16 Hernando comprehensive plan it is not appropriate and simply
17 out of context to assume any future level of entitlements to
18 support the position that a certificated area is inconsistent
19 with either plan.

20 Q. Does anything about a PSC certificate take away any right
21 the County would otherwise have to prevent the type of
22 development that the fear is being expressed about?

23 A. As discussed above, granting of a PSC certificate does
24 not take away any right that the county or the Florida
25 Department of Community Affairs would otherwise have to

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1 prevent urban sprawl through the appropriate processes.

2 Q. Do you have any further testimony at this time?

3 A. Not at this time.

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EDUCATION:

Massachusetts Institute of Technology (9/98 – 6/00)

Master of City Planning (M.C.P), Urban Design Certificate (U.D.C.)
Courses and Research on Urban Design and Conflict Resolution
GPA: 4.8 out of 5.0; 206 credits (150 credits necessary for the M.C.P. degree)

Brandeis University (9/91-5/95)

B.A., East Asian Studies
Graduated May 1995
Dean's List, Cum Laude

EXPERIENCE:

DeLisi Fitzgerald, Inc.

July 2006 – Present

Principal/Owner: Serve as the lead planner for the entitlement of developments in Southwest, Southeast and Central Florida; consult for local governments on public outreach, dispute resolution and comprehensive planning; and provide expert witness testimony throughout the State of Florida.

The Bonita Bay Group

June 2004 – July 2006

Director of Planning: Manage all land use entitlements for projects in Lee, Collier, Charlotte, and Hendry Counties. Manage land use policy initiatives at a local and state level. Represent the Bonita Bay Group and the industry on policy committees and as a lobbyist before the state legislature and on a local level.

Barraco and Associates, Inc.

January 2003 – June 2004

Vice President of Planning: Manage a department of planners, landscape designers and support staff. Facilitated planning processes and wrote land development regulations in Charlotte County, Lee County and the City of LaBelle. Coordinated and managed multi-disciplinary teams of professionals for re-zonings and Comprehensive Plan Amendments on developments in Charlotte County, Lee County, Hendry County and DeSoto County, ranging in size from .5 acres to 5,300 acres.

Vanasse & Daylor, LLP

September 2000 – December 2003

Senior Planner: Coordinated and managed multi-disciplinary teams of professionals for re-zonings and Comprehensive Plan Amendments on developments ranging in size from a 2-acre marina to a 1,500 acre Mixed-Use Planned Development; conducted visioning processes and wrote plans for redevelopment and growth management for urban, suburban and rural communities in Lee and Charlotte Counties; and testified as an expert witness in Lee County, Fort Myers and Bonita Springs.

MIT Office of Environmental Management

April 1999 – August 2000

Competition Organizer: Worked with the Region 1 EPA on storm water education and organized a national storm water design competition.

China USA Business University/JP International

January 1997 - May 1998

Institutional Development Director: Pre-opening responsibilities included: Designing and constructing university facilities; organizing and initiating opening of the university; and hiring of staff. Post-opening responsibilities included: Managing a department of nine public relations and marketing staff; advancing the reputation of the university through working with the media; attracting students through advertising; and building joint projects and training programs for the corporate community; attracted positive media

attention from the Wall Street Journal, South China Morning Post, and several major mainstream newspapers and magazines in mainland China; initiated numerous training programs with multinationals including Pfizer Pharmaceuticals, IBM, Nestle, Seimens and Schneider Electric.

Albert A. List Foundation

July 1995 - July 1996

Research Assistant: Responsibilities included: grant management, tracking and assisting in preparation of dockets; assisting in research and development of programs in the environment, the American Jewish community, training, and other fields of interest to the trustees; soliciting grant applications and assisting in interviews of applicants; reviewing grant applications.

SELECTED PUBLICATIONS:

- *Patio de Leon: Creating Successful Place Without Successful Design*; Daniel DeLisi and Wayne Robinson; Critiques of Built Works Of Landscape Architecture, Vol. 6, Fall 2001, P. 45-50
- *The Mystic View Task Force*; Anne Tate and Daniel DeLisi; Sustainable Architecture; Earth Pledge Foundation; New York; 2000; P. 61-67
- *Financing Environmental Moderation in China*; Daniel DeLisi; Dollars and Sense Magazine; Cambridge; Sept./Oct. 2000; No. 231; P. 44-47
- *Urban China Adjusting to Motorization*; Ralph Gakenheimer and Daniel DeLisi; Presented for the Cooperative Mobility Conference; MIT; Cambridge; 2000
- *MC Metals*; Daniel DeLisi, Lawrence Susskind and Paul Levy; Program on Negotiation Clearinghouse, Harvard Law School; Cambridge; 1999
- Newspaper Columnist: Wrote essays in Chinese for the "Service Weekly" and "City Planning Overseas" (Beijing). Essays were Re-printed in "The Capital Fax" Magazine and aired on Beijing Radio.

SELECTED SPEAKING ENGAGEMENTS/COURSE INSTRUCTION:

- *Regular Course Instructor for the ULI Basic Real Estate Development Course taught nationally*
- *Adjunct Faculty Member of Nova Southeastern University, teaching on Land Use Regulation*
- *"Innovations in Planning, Zoning and Development"*, Florida Chamber Short Course, Feb. 2006 - 2010
- *"TDRs: Trying To Do It Right in Collier County"*, FAPA State Conference, St. Petersburg, Sept. 2005
- *"Growth Management Initiatives"*, Senate Committee on Community Affairs, Tallahassee, Jan. 2005
- *"Consensus Based Planning"*, FPZA State Conference, Naples, Oct. 2003
- *"Collaborative Community Planning and Development"*, ULI Southwest Florida, Feb. 2003
- *"Fundamentals of Consensus Planning"*, Florida Main Street Conference, Panama City, Nov. 2002
- *"Community Participation in Design"*, Florida Council of Garden Clubs, Sebring, Feb. 2001

AWARDS/HONORS:

- Florida Planning and Zoning Association Outstanding Report/Study Award, "The Estero Community Plan", 2002 (accepted on behalf of VanasseDaylor)
- MIT Carroll Wilson Award, 1999
- Urban Studies and Planning Fellowship, MIT, 1998-2000
- Environmental Health and Safety Fellowship, MIT, 1999-2000