

Matilda Sanders

From: Stephanie Snyder [ssnyder@co.volusia.fl.us]
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Stephanie Snyder
Volusia County

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STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

ORIGINAL

IN RE:

Application of Farnton Water Resources
LLC for original Water Certificate in Volusia

DOCKET NO.: 021256-WU

COUNTY OF VOLUSIA'S POST- HEARING STATEMENT

COUNTY OF VOLUSIA, pursuant to the Order Establishing Procedure dated March 18, 2003 and as subsequently amended, hereby submits its Post-Hearing Statement of issues and positions.

The County of Volusia has objected to the Farnton Water Resources Application for Original Water Certificate for a number of valid reasons. These objections are based on the inconsistency between the Application and the County's Comprehensive Plan; the significant risk that approval of this Application will encourage urban sprawl; the disastrous effect this previously unplanned, unanticipated and unmodeled water system would have upon the County's overall provision of water to its residents; the undesirability of having a major private water utility within the County which is not eligible to become a member of the County's Water Alliance group and therefore, cannot participate in long-range planning decisions concerning a vital natural resource; and the total lack of need for water service in this undeveloped, rural, forested and uninhabited wilderness area.

The evidence and exhibits presented, through pre-filed testimony and through live testimony at the Commission hearing held between June 22 and 23, 2004,¹ have provided

¹All testimony delivered through live testimony, either cross-examination or re-direct at the Commission hearing shall be referenced by page and line numbers using the Electronic Version of the Transcript. All references to prefiled testimony shall be noted by witness, page and line numbers.

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the Commission with a record by which it should deny the Application. A summary of the County's position on each issue in this case, together with more fully-articulated supporting legal and factual arguments, are provided below.

ISSUE 1. DOES THE COMMISSION HAVE EXCLUSIVE JURISDICTION OVER THE CERTIFICATION OF PRIVATE UTILITIES?

SUMMARY: **While the Commission has exclusive jurisdiction over issuance of certificates to operate private utilities, the Commission is charged by the Legislature with a concurrent duty to act in the public interest, and said duty requires serious consideration of, and where practical, deference towards, a County's Comprehensive Plan and the effect such certification will have thereon.**

Supporting Argument:

The Commission has certainly been statutorily authorized to issue Original Certificates to private utilities to operate water systems, and such authority is specifically labeled "exclusive" in Section 367.011(2), Florida Statutes. However, this jurisdiction or authority is still subject to a number of statutory restrictions, among these restrictions is the requirement that the Commission "shall consider" the local comprehensive plan of the County of Volusia. Section 367.045(5)(b), Florida Statutes. While Farnton will be quick to point out that this requirement is tempered, within that same section, by the caveat that the Commission is not "bound by" said Comprehensive Plan, it nevertheless is a direct indication that the Legislature intended that decisions regarding certification of private water utilities must be made in a broader context than simply asking whether a proposed utility is practical within a certain geographical area. Instead, there is a clear legislative scheme requiring input from other governmental entities, and seeking to have the Commission utilize this input for the benefit of the public as a whole. As the Supreme Court has

repeatedly stated, “the public interest is the ultimate measuring stick to guide the PSC in its decisions,” Gulf Coast Electric Cooperative, Inc. v. Johnson, 727 So.2d 259, 264 (Fla. 1999); and the “public interest” in this case can best be served if the Commission uses its discretion to defer to the governmental agencies which have provided expert and informed input within their realm of expertise.

In the present case, this input has come in the form of testimony from representatives of various governmental entities, among them the County of Volusia, the City of Titusville, Brevard County, the Florida Department of Community Affairs, and the St. John’s River Water Management District. In order to make this certification process meaningful, and to carry-out the obvious intent of the Legislature, the opinions, data, experiences, and public policy objectives of each of these governmental entities must be given more than mere “consideration” by the Commission, but rather, should be utilized as the very “measuring stick” for determining what is in the public interest.

While the County of Volusia does not deny that the Commission has exclusive jurisdiction over the certification process, the County nevertheless would suggest to the Commission that where issues involving local land uses, urban sprawl, environmental protection, water resource planning, and natural resource management are involved and entangled with the certification process through the local comprehensive plans, the Commission, under the requirements of Chapter 367, Florida Statutes, must look beyond the more typical issues such as rate setting, returns on equity, plant capacity, etc. In cases such as the present one, the Commission has the duty to ensure that the public interest “measuring stick” is utilized properly, for the benefit of the entire public, and not just one small group or a few individuals who may be benefited by the certification of a private water

utility system.

Therefore, while the Commission is the final arbiter for these decisions, the Legislature's intent, clearly spelled-out within Section 367.045, is for the certification process to be a cooperative effort when land use issues or matters of particular concern to local governments, are identified and examined during the Commission hearings. The County will provide additional substantive arguments regarding the public interest aspects of this case, when it discusses "Issue 11" below.

ISSUE 2. IS THE SERVICE PROPOSED BY FARMTON EXEMPT FROM COMMISSION REGULATION?

County of Volusia takes no position on this issue. However, to the extent that City of Titusville, or Brevard County, choose to make arguments on this issue, County of Volusia does not oppose such arguments or positions.

ISSUE 3. HAS FARMTON MET THE FILING AND NOTICE REQUIREMENTS REQUIRED BY COMMISSION RULES FOR THIS APPLICATION?

County of Volusia takes no position on this issue. However, to the extent that City of Titusville, or Brevard County, choose to make arguments on this issue, County of Volusia does not oppose such arguments or positions.

ISSUE 4. IS THERE A NEED FOR SERVICE IN FARMTON'S PROPOSED SERVICE TERRITORY AND IF SO, WHEN WILL SERVICE BE REQUIRED?

SUMMARY: **There is absolutely no need for service in the proposed service territory. This area is an unpopulated wilderness without need for such services at this time, or into the reasonably foreseeable future. The only documented "need" can be supplied by the continued use of existing wells which presently provide adequate water for the several small hunting camps scattered within this huge, environmentally sensitive, forested area.**

Supporting Argument:

Pursuant to Section 367.045(1)(b), Florida Statutes, an applicant for an initial certificate must provide the Commission with “detailed” information regarding “the need for service in the area involved . . .” The testimony and exhibits in the present case are noticeably lacking in substantial competent evidence regarding a clear need for service in this area.

The testimony from Farmton’s own witnesses confirms the lack of need for central water service. In cross examination, Mr. Gerald Hartman, Farmton’s engineer consultant, testified to the limited extent of the need for water service. He stated that there is only a “seasonal service for the hunt club and then there is continuous service for, if you will, the commercial or residential type commercial aspects of the headquarters. I think there is five to seven people working there all the time.”² Mr. Howard Landers, a land planner who was retained by Farmton to discuss land use issues at this hearing, conceded that there is no significant residential development within the 57,000+ acres of the proposed Farmton service area, and that the entire area is “rural, agricultural, silvicultural lands”containing wetlands.³ Furthermore, Mr. Landers admitted that, under existing land use categories, the 42,000+ acres in Volusia County would be limited to a maximum of 2,000 units, regardless of whether, sometime in the future, the owner concentrates the development (clustering)

²Cross examination of Gerald Hartman, p. 44, lines 16 through 20

³Cross examination of Howard Landers, p. 107, lines 14 through 23; and p. 123, lines 8 through 19.

or spreads it out over the entire forest area⁴. Mr. Landers speculated that there could be amendments to the County's future land use map⁵, thus increasing density and creating a true "need" for service in the area, but he also admitted that he was unaware of any presently-pending, or near future plans on the part of the land owner, to attempt to develop this property, or to utilize it in any fashion other than as a hunting preserve.⁶

Mr. Earl Underhill, the Applicant's Vice President for Operations, gave even more convincing testimony regarding the lack of need and the speculative nature of any future need. He has repeatedly denied that the land owner of the service area has any plans to develop the region. For example, Mr. Underhill testified in his pre-filed rebuttal testimony, and again at the hearing, that there were no plans for immediate development⁷. A particularly glaring admission of lack of need was made during Mr. Underhill's testimony before the Commission. Mr. Underhill stated the following:

What are our future needs? I would say to you that they're really unknown, but I would also say to you that we at the current time do not have any immediate needs or any immediate plans for development.⁸

Despite the admission that there are only 5 employees using the existing wells on a full time basis, and despite the fact that the 57,000 acres of property contains only a few

⁴Cross-examination of Mr. Landers, p. 119, lines 12 through 17; and p. 120, lines 11-14..

⁵Howard Landers prefiled testimony, p. 3, line 25 through p. 4, line 1; and Cross-examination p. 98, lines 14-18, and p. 109, lines 5 through 11.

⁶Cross-examination of Mr. Landers, p. 122, lines 23 through p. 123, lines 1 through 7.

⁷Earl Underhill prefiled rebuttal testimony, p. 2, lines 22 and 23.; and cross-examination, p. 176, line 25 through P. 177, lines 1-2.

⁸Underhill, p. 160, lines 17 through 20.

hundred seasonal hunting camp sites and two or three residences, and despite the fact that the owners claim to have no plans for future development, Farmton maintains that there is a need for a central water service area throughout all 57,000 acres. In light of the testimony provided by Farmton, there is insufficient competent substantial evidence to support that claim.

ISSUE 5. IS FARMTON'S APPLICATION INCONSISTENT WITH BREVARD OR VOLUSIA COUNTY'S COMPREHENSIVE PLANS?

SUMMARY: **Definitely. The County of Volusia's Future Land Map designates the entire service area contained within County of Volusia as non-urban, environmentally sensitive land, suitable solely for low-density uses, and such areas are intended to be maintained for uses wholly inconsistent with the creation of a central water service. **

Supporting Argument:

As argued above, the Commission "shall consider, but is not bound by, the local comprehensive plan of the county or municipality." Section 367.045(5)(b), Florida Statutes. The Legislature provided the Commission with discretion in applying the local comprehensive plans, but did so together with the overall directive that the Commission oversees the public interest. While the Commission can find this application inconsistent with the County's Comprehensive Plan, it has the discretion to disregard this inconsistency. County of Volusia suggests, however, that the Commission's duty in seeking the public interest, weighs heavily in favor of denying any application which is determined to be inconsistent with the guiding land use document controlling and guiding growth, managing resources, and utilized for the public interest.

In the present case, the overwhelming weight of the evidence indicates that the

proposed certification of a central water system throughout the 42,000+ acres of uninhabited, environmentally sensitive, wilderness area which Miami Corporation owns within Volusia County, would be inconsistent with the guiding goals, policies and objectives of the County's plan. In direct pre-filed testimony, John Thomson, a Planner with the County of Volusia, provided the evidence required to find the Application inconsistent with the Comprehensive Plan. He provided testimony that the Application is in direct opposition to various sections of the Comprehensive Plan. Among these sections, Chapter 1, "Future Land Use Element," Section A, Overview⁹, sets out the major themes and overriding concerns of the County. The more relevant portions are set-forth below (emphasis supplied):

A. OVERVIEW:

The Future Land Use Element establishes the pattern of land uses and location of urban growth for Volusia County through 2020. This Element represents the growth policy from which Volusia County ensures that **physical expansion of the urban areas are managed** (1) at a rate to accommodate projected population and economic growth; (2) **in a contiguous pattern centered around existing urban areas**; and (3) in locations which optimize efficiency in public service delivery and **conservation of valuable natural resources . . .**

The overall direction of the Future Land Use Element evolves around what has been referred to as the "Urban Service Concept." **The future land use pattern will be influenced by the availability of urban services. New urban growth will be encouraged adjacent to the major cities that have a full range of urban services or inside County service areas . . .**

Regarding public systems, the major assumption is that the **areas adjacent to existing public infrastructure will be the primary areas for future infrastructure extension. Expansion of existing facilities will be the primary option.** The intent of this concept is to maximize efficiency of urban services through compact development and utilization of existing development and facilities for planned developments otherwise consistent with the Volusia County Comprehensive Plan . . .

In addition to encouraging development near existing or planned public

⁹John Thomson, Pre-filed testimony, p. 3, line 25 through p.4 lines 1-4, Exhibit JT-1.

facilities, areas that are outside the proposed development areas or contain environmentally sensitive features will receive special attention to ensure proper management of the County's natural resources.

From these introductory remarks to the County's Comprehensive Plan, it is obvious that the major concern of the County is unplanned or harmful urban growth in areas not contiguous to existing urban areas; and the preservation of the County's natural resources.

The existing Application fails miserably when held to these basic standards and guidelines. It seeks to build entirely new infrastructure, rather than extend existing infrastructure. It attempts to place a central water system in the middle of an environmentally sensitive region far from any existing urban region. Finally, it seeks to place the service area over 42,000 acres of land in Volusia County, for the use of a small group of part time users, ignoring the pattern of compact, contiguous growth which the Comprehensive Plan provides for.

With regard to the Future Land Use categories on the Farmton property, John Thomson testified that the entire region within Volusia County is located within the Natural Resource Management Area (NRMA).¹⁰ The NRMA, according to Chapter 1, Section B, "Future Land Use Categories" of the Comprehensive Plan, is an overlay district, intended "to ensure that the development that does occur within its boundaries does not adversely impact the quality and quantity of existing resources."¹¹ Any development within the NRMA overlay region must meet not only the requirements of the underlying future land use categories, but must also meet the additional, more stringent requirements and restrictions

¹⁰John Thomson pre-filed testimony, p. 4 lines 8 through 21.

¹¹Exhibit JT-3 to John Thomson's pre-filed testimony.

of the NRMA overlay.

The underlying future land use categories for the proposed Farmton service area include three low density categories.¹² The first of these is Environmental System Corridor (ESC), and is described as follows:

These consist of important ecological corridors consisting of environmentally sensitive and ecologically significant lands. Land use activities occurring within these corridors shall not degrade these natural functions and connections. The intention is to provide protected, natural pathways which connect to other protected areas such as parks, conservation lands and water bodies. This interconnection helps maintain the ecological integrity and ecodiversity of the County's vast natural resources . . . Conservation and silviculture, utilizing Best Management Practices (BMP's), will be the preferred use, however, such other compatible passive agricultural activities may also be permitted such as unimproved pasture . . .¹³

It is difficult, if not impossible, to reconcile the above language for ESC categories within the NRMA overlay region, with the Farmton Application. The Farmton Application requires "demand," which in turn requires or anticipates present or future development. The ESC on the other hand, is intended to preserve the existing "conservation and silvicultural" uses, along with "passive agricultural activities" (**unimproved** pasture).

The second future land use category within the Farmton Application area is Forestry Resource (FR).¹⁴ This is reserved for

land that is primarily suited for silviculture (the cultivation and harvesting of timber for commercial purposes), however, other limited agricultural activities may be appropriate. Forest lands are a multiple-use resource which yields valuable agricultural product while providing wildlife habitat and recreational opportunities. In addition to being a multiple-use resource, for the forests of

¹²Exhibit JT-2 to John Thomson's pre-filed testimony.

¹³Exhibit JT-3 to John Thomson's pre-filed testimony, p.1-3.

¹⁴Exhibit JT-2 to John Thomson's pre-filed testimony.

Volusia may provide important environmental functions that may also be components of the land's value for silviculture, limited agriculture, wildlife habitat, protection of watershed lands, the prevention of soil erosion, reduction of stormwater runoff, and provision of high quality groundwater recharge.¹⁵

Once again, the FR category is incompatible with a central water supply system as proposed by the Farnton Application. The FR is used for land already devoted to silviculture and associated forest uses, including environmental protection. The fact that it is not intended for use with those higher-density uses which might require central water supplies can be discerned from the language of the Comprehensive Plan, where it states: "The Forestry Resource category was developed to help provide protection to the silviculture business in Volusia County, in recognition of the need for adequate timber resources and to protect the value of the land for forest purposes and significant environmental purposes as well."¹⁶

The final future land use category on the subject proposed service area, carries a designation of Agricultural Resource (AR).¹⁷ These are "areas representing land that is suited for intensive cultivation, ranching, aquaculture, and timber farming."¹⁸ The clear intent to prohibit higher density uses, or more intensive uses requiring central water systems, is indicated within the text of the Comprehensive Plan when it states: "In order to protect the agricultural industry, it is important that uses incompatible with agriculture, and

¹⁵Exhibit JT-3 to John Thomson's pre-filed testimony, p.1-3 through 1-4.

¹⁶Exhibit JT-3 to John Thomson's pre-filed testimony, p. 1-4.

¹⁷Exhibit JT-2 to John Thomson's pre-filed testimony.

¹⁸Exhibit JT-3 to John Thomson's pre-filed testimony, p.1-5.

uses and facilities that support or encourage urban development are not allowed.¹⁹

Common sense dictates that central water supply systems are “facilities that support or encourage urban development,” and as such, they should not be allowed within the AR designated properties upon which Farmton proposes to establish their utility.

The County’s Comprehensive Plan specifically addresses how the provision of water (and wastewater) facilities should proceed throughout the unincorporated areas. Growth, infrastructure, and resource protection are all tied together in Section C, Goals, Objectives & Policies. The very first “Goal” of the Comprehensive Plan is “ensure that future growth is timed and located to maximize efficient use of public infrastructure”; and this is followed by the first “Objective” in which it is stated that: “Growth management criteria will be established to ensure that future land use patterns will maintain vital natural functions and in conjunction with the availability of public facilities and services to support that development at the appropriate level of service.”²⁰ Thus, the most basic goal and objective of the County’s Comprehensive Plan recognize that these matters are intertwined, and must be dealt within a consistent manner. It recognizes that development, as well as the construction of infrastructure such as central water systems, must be timed in such a fashion as to protect natural resources while at the same time making efficient use of existing facilities. To do this, the Comprehensive Plan sets forth Policies requiring that growth within the County must be directed toward already existing facilities nearby to previously existing development.

¹⁹Exhibit JT-3 to John Thomson’s pre-filed testimony, p.1-6.

²⁰Exhibit JT-4 to John Thomson’s pre-filed testimony, p. 1-24, Goal 1.1 and Objective 1.1.1.

Most tellingly and applicable to the present situation, the Comprehensive Plan specifically provides as follows:

Policy 1.1.1.4 Central water and sewer are not intended nor required for areas designated rural. Extension of central sewer into non-urban areas must be consistent with the provisions of the Sanitary Sewer Sub-element. Extension of central water into rural areas must be consistent with the provisions of the Potable Water Sub-element.²¹

This prohibition against central water in all areas encompassed by Farnton's Application, is a direct conflict with the present Application, and there can be no finding of "consistency" with the County of Volusia's Comprehensive Plan, based on this language. The reasons for prohibiting central water in Farnton's proposed service area are found throughout the remainder of the Comprehensive Plan. For example, Objective 1.1.3 provides that "Volusia County shall limit urban sprawl by directing urban growth to those areas where public facilities and services are available inside designated service areas."²² The policies to carry-out this objective includes 1.1.3.11 which requires that new development be encouraged toward infilling existing urbanized area in order to protection the County's natural resources.²³

Other support for the County's goal of avoiding the placement of central water systems within rural areas include Goal 1.2 "Future development shall be designed and located in a manner that protects the County's natural resources, particularly

²¹Exhibit JT-4 to John Thomson's pre-filed testimony, p. 1-25 (emphasis supplied).

²²Exhibit JT-4 to John Thomson's pre-filed testimony, p.1-26.

²³Exhibit JT-4 to John Thomson's pre-filed testimony, p.1-27.

environmentally sensitive areas.”²⁴ This is followed by numerous policies which the County has established to carry out this goal. Among these applicable to the instant case:

1.2.1.3 Development occurring along the boundaries of Conservation and Natural Resource Management Areas shall be designed to protect and minimize the impact of development, consistent with the criteria included in the Conservation Element.

1.2.1.4 Those lands most suited for silviculture activities shall be identified and located on the Future Land Use Map, under the Forestry Resource subcategory of NRMA.

1.2.1.5 Inside the Natural Resource Management Area (NRMA) there are areas that have been used for agriculture, these areas are indicated on the Future Land Use Map. Because of the environmentally sensitive characteristics, intensive agriculture is not encouraged extensively throughout the NRMA . . . ²⁵

These policies, and others with similar intent, are found throughout the County’s Comprehensive Plan, and demonstrate an overriding, clear, and unwavering intent to protect the undeveloped natural resources of the County, preserve the agricultural regions, and thereby prevent urban sprawl. However, creation of a central water system in the middle of a forested, unpopulated region designated as NRMA, far from existing urban areas, is certainly not consistent with any of the above cited goals, objectives or policies of the Comprehensive Plan.

In addition to those portions of the Comprehensive Plan cited above which discuss where central water systems should not be placed, and the reasons for discouraging or preventing creation of such a central water distribution system within these areas, the Plan also provides specific guidelines on how and where such central water systems should be placed. This is found in Chapter 7, Potable Water Sub-Element of the Plan. Of particular

²⁴Exhibit JT-4 to John Thomson’s prefiled testimony, p. 1-29.

²⁵Exhibit JT-4 to John Thomson’s prefiled testimony, p.1-29

relevancy to the instant action, Objective 7.1.6 specifically states that “Volusia County shall maximize the use of existing facilities in the water service areas, so as to discourage urban sprawl.”²⁶ Furthermore, Policy 7.1.1.7 provides:

Except as may be otherwise permitted by this Sub-element, the extension of water lines or establishment of central systems of potable water outside of the water service areas (County, municipal, or other established by an adopted service area agreement) shall be prohibited unless said extension or facility construction will mitigate existing or potential problems of public health, safety, or welfare or other exceptions under the guidelines delineated in the Future Land Use Element.²⁷

Similarly, Policy 7.1.1.11 states:

Central water is not required for non-urban areas. Lines should only be extended if the absence of such facilities would result in a threat to the public health or safety or a designated rural area is inside an approved water service area with an agreement that describes the method and timing of when these services would be provided, or the Comprehensive Plan is amended to change rural areas to urban areas.²⁸

Then finally, Policy 7.1.1.14 speaks of package treatment plants:

The establishment of package treatment plants outside of water service areas is prohibited except for Rural Communities and Rural Recreational Areas may otherwise be permitted by this Sub-element or where the Florida Department of Environmental Protection, or other appropriate agency, has determined that such a facility is necessary to correct existing or potential problems of public health, safety, or welfare . . .²⁹

These three policies indicate that, to be consistent with the County Comprehensive Plan, the proposed service territory must be in an urban region, and that the reason for

²⁶Exhibit JT-5 to John Thomson’s prefiled testimony, p. 7-7.

²⁷Exhibit JT-5 to John Thomson’s prefiled testimony, p. 7-3 through 7-4.

²⁸Exhibit JT-5 to John Thomson’s prefiled testimony, p. 7-4.

²⁹Exhibit JT-5 to John Thomson’s prefiled testimony, p.7-5

construction of said facility must be to alleviate a previously identified and government-approved health, safety or welfare problem. Farnton's Application proposes to build its facility in a non-urban area, not within an existing water service area, and for reasons not related to health, safety or public welfare. As such, the Farnton application again is specifically in conflict with the plainly stated policies of the County Comprehensive Plan, and should be denied by the Commission.

The above citations to various portions of the County's Comprehensive Plan are unmistakable in their inconsistency with Farnton's Application in the instant situation. The proposed service territory for this central potable water system, is wholly contained within the NRMA, making all the land therein subject to higher standards of land use review for purposes of compliance and consistency. The NRMA creates increased restrictions upon the use of the land in order to protect valuable and limited natural resources. The three future land use categories are similarly restrictive in the availability of land uses, particularly as the existing character of this entire region is forested wilderness areas, used primarily for silviculture, hunting, and environmental preservation. When considering the existing uses, together with the land use designations and the County's Comprehensive Plan Goals, Objectives and Policies designed to protect such areas, there is no doubt that Farnton's Application is wholly violative of the intent of the County's legislative body (County Council) which adopted the Comprehensive Plan, as well as the Florida Department of Community Affairs (DCA), which approved the language of the County's Plan. Furthermore, the DCA provided testimony in this case agreeing with the County, and finding the Application

inconsistent with said Plan.³⁰ Based on the evidence presented by County of Volusia and the DCA, the applicant Farmton has failed to carry its burden of demonstrating that the Application is consistent with the Comprehensive Plan, and the Commission should therefore find as such. Furthermore, the Commission should place great weight in this finding, and should allow this to be conclusive of the matter, as such is in the public interest.

ISSUE 6. WILL THE CERTIFICATION OF FARMTON RESULT IN THE CREATION OF A UTILITY WHICH WILL BE IN COMPETITION WITH, OR DUPLICATION OF, ANY OTHER SYSTEM?

SUMMARY: **Yes. County of Volusia has the financial and technical ability to provide water service to this area if or when the need ever arises, and that the area is within unincorporated Volusia County, thus overlapping into an area which the County intends to service if the need ever arises. Therefore, Farmton's proposed Application will duplicate the County's intended services.**

Supporting Argument:

Gloria Marwick, the County's Water Resources and Utilities Director, provided the Commission with pre-filed testimony, as well as being cross-examined at the hearing. She has stated that the area which Farmton seeks to service is currently included within the County's own future service area by virtue of its status as unincorporated, and without previously existing service agreements.³¹ As such, if or when this area has "need" for central water systems, the County is able to provide said services through water service

³⁰Valerie James, pre-filed testimony.

³¹Cross-examination of Gloria Marwick, p. 386 lines 24-25 through p. 386 lines 1-4.

area agreements with the adjacent municipality of Edgewater.³² Ms. Marwick was very specific regarding how this would be accomplished, stating that the City of Edgewater currently has a 5 million-gallon water facility, and “that is easily expandable to ten million gallons. They have capacity there. So there are facilities available in that area.”³³

This type of expansion of existing facilities, as opposed to creation and construction of all new facilities and providers, is the preferred method of providing such services under the County's Comprehensive Plan. In Chapter 7, Potable Water Sub-Element, Section B, Goal 7.1 calls for the County to “Provide an adequate public supply, treatment, and distribution of potable water for unincorporated Volusia County.”³⁴ Policy 14.1.2.2 calls for the County to “negotiate interlocal agreements with municipalities in order to facilitate the orderly and efficient provision of water and sewer services within adjacent unincorporated areas.”³⁵

Based upon the Comprehensive Plan provisions cited, the County's inclusion of this unincorporated area within its defined service area, and the testimony of Gloria Marwick that such service would be possible when an actual need arises, County suggests to the Commission that the Application of Farmton, if approved, would create a situation where the County and Farmton were both legally designated as the service providers, creating competition and confusion; and it would also create a duplication of service, as County is

³²Gloria Marwick pre-filed testimony, p. 4, lines 6 through 19; and Re-direct of Ms. Marwick during Commission hearing, at p. 390, lines 4 through 18.

³³Re-direct of Gloria Marwick, p. 390, lines 15 through 18.

³⁴Exhibit JT-5 to John Thomson's prefiled testimony, p. 7-3.

³⁵Exhibit JT-5 to John Thomson's prefiled testimony, p. 14-5.

able, authorized, and expected to, eventually extend its existing system through the adjacent City of Edgewater.

ISSUE 7. DOES FARMTON HAVE THE FINANCIAL ABILITY TO SERVE THE REQUESTED TERRITORY?

County of Volusia takes no position on this issue. However, to the extent that City of Titusville, or Brevard County, choose to make arguments on this issue, County of Volusia does not oppose such arguments or positions.

ISSUE 8. DOES FARMTON HAVE THE TECHNICAL ABILITY TO SERVE THE REQUESTED TERRITORY?

County of Volusia takes no position on this issue. However, to the extent that City of Titusville, or Brevard County, choose to make arguments on this issue, County of Volusia does not oppose such arguments or positions.

ISSUE 9. DOES FARMTON HAVE SUFFICIENT PLANT CAPACITY TO SERVE THE REQUESTED TERRITORY?

County of Volusia takes no position on this issue. However, to the extent that City of Titusville, or Brevard County, choose to make arguments on this issue, County of Volusia does not oppose such arguments or positions.

ISSUE 10. HAS FARMTON PROVIDED EVIDENCE THAT IT HAS CONTINUED USE OF THE LAND UPON WHICH THE UTILITY TREATMENT FACILITIES ARE OR WILL BE LOCATED?

County of Volusia takes no position on this issue. However, to the extent that City of Titusville, or Brevard County, choose to make arguments on this issue, County of Volusia does not oppose such arguments or positions.

ISSUE 11. IS IT IN THE PUBLIC INTEREST FOR FARMTON TO BE GRANTED A WATER CERTIFICATE FOR THE TERRITORY PROPOSED IN THE APPLICATION?

SUMMARY: **No. Granting this Application will only serve the interest of a small group, while the public interest will be harmed as a result of the potential urban sprawl, the unplanned growth, the damage to huge areas of environmentally-sensitive lands, the negative impact on regional water planning and modeling, and the disruption to the overall

County growth patterns.**

Supporting Argument:

As previously cited, the Florida Supreme Court has held that “the public interest is the ultimate measuring stick to guide the PSC in its decisions.” Gulf Coast Electric Cooperative, at 264. The County of Volusia suggests that this measuring stick shows Farmton’s Application coming up short. Rather than being in the public interest, the Application would result in negative and long-term damage to the public interest for reasons having to do with damage to natural resources, as well as disruption to the water resource management procedures and overall planning processes with the County.

As argued in Issue 5, the Application is inconsistent with the County’s Comprehensive Plan for multiple reasons, but generally tending toward its likelihood to promote urban sprawl; its disruption of the preferred and encouraged “infilling” to urban areas and the more natural growth from these concentrated urban areas outward, as well as its disregard for the County’s statutorily mandated efforts at natural resource and environmental management of areas previously designated as Natural Resource Management Areas. The Legislature itself has declared its intent to use local governments as the frontline force in preserving and enhancing the quality of life for state residents, through the “Local Government Comprehensive Planning and Land Development Regulation Act.” Section 163.3161, et seq. Florida Statutes. The purpose of that Act is “to strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and control future development.” Section 163.3161(2), Fla. Stat. In that same section, the Florida Legislature provided its specific intent in passing this Act:

(3) It is the intent of this act that its adoption is necessary so that local governments can preserve and enhance present advantages; encourage the **most appropriate use of land, water, and resources consistent with the public interest**; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions. **Through the process of comprehensive planning**, it is intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and avoid undue concentration of population; facilitate the adequate and efficient provision of transportation, housing, and other requirements and services; **and conserve, develop, utilize, and protect natural resources** within their jurisdictions.

(4) It is the intent of this act to encourage and assure cooperation between and among municipalities and counties and to encourage and assure coordination of planning and development activities of units of local government **with the planning activities of regional agencies and state government** in accord with applicable provisions of law.

(5) It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that **no public or private development shall be permitted except in conformity with comprehensive plans**, or elements or portions thereof, prepared and adopted in conformity with this act.

Section 163.3161, Florida Statutes. (Emphasis added).

This legislative purpose and intent, together with the full and complex nature of the statutorily-mandated “comprehensive” planning process, indicate that the Legislature intended that the contents of the adopted comprehensive plans, and adherence thereto, was in the public interest. It also intended that this process would be a cooperative one between the local government and any and all regional or state entities which might have some effect upon planning activities. And while Section 367.045(6) does state that the Commission is not bound by the applicable comprehensive plan, to ignore inconsistencies between the County’s Plan and Farnton’s Application, would, at least in this situation, appear to diverge from the public interest. Rather, the Commission should utilize these previously-established planning principles, documented thoroughly within the County’s

Comprehensive Plan, to determine whether major divergences from the Plan would be in the public interest. If the Commission does so, the conclusion must be that the Application is not in the public interest, as it deviates too far, and in a negative fashion, from the land use, growth and environmental principles of planning set-forth within the Comprehensive Plan.

There is an overriding public interest in maintaining the orderly mechanism and procedures for managing growth set-forth in Chapter 163 and implemented in the County's Plan. The counter-interests of a few corporate individuals (Farmton and its parent company Miami Corp.), in providing centralized water service to a few hundred seasonal campers, rather than utilizing existing and functioning wells, cannot be seen as competent substantial evidence of public interest sufficient to ignore an established, functioning growth management policy of the County. That growth management policy encompassed within the Comprehensive Plan, benefits all within Volusia County, providing the planned, managed and directed growth which is required by the State Legislature; it protects the environmental resources of the County; it ensures economical utilization of existing facilities and infrastructure; it encourages urban infilling and discourages urban sprawl; and it assists in long-term economic and social development. Creating a future enclave of high density, urban uses, through certification of a water utility in the middle of a forested, unpopulated wilderness designated as a Natural Resource Management Area, far from any existing urban development, can only have disastrous effects.

In addition to the inconsistency with the Comprehensive Plan, the Application falls short of the public interest as a result of the negative effect it will have on the County's water resource management and planning efforts. As pointed out by Gloria Marwick, the

County's Director of Water Resources and Utilities, the St. John's River Water Management District has designated most of Volusia County as a "Priority Resource Caution Area," meaning that under current usage, groundwater supplies will not sustain the demand by 2020.³⁶ This is significant because the County has attempted to resolve this problem by creation of the Volusian Water Alliance (WAV). WAV is a intergovernmental planning body created by interlocal agreement³⁷. It is designed to minimize the construction of new systems through management of current assets and resources,³⁸ oversee management of Volusia County's water supply through implementation of a Water Supply Plan, implement a well field management plan to provide for optimization of existing water supply facilities, promote conservation and plan for alternative water sources.³⁹ In effect, it is an attempt at unification of all existing public water suppliers into one organization to be more efficient in utilization of the County's limited water resources.⁴⁰ It is attempting to resolve water supply problems on a coordinated, regional basis.⁴¹

As part of its planning efforts, WAV has created a computer modeling to determine the adequacy of water resources, and together with the Water Management District,

³⁶Gloria Marwick, pre-filed testimony, p. 2, lines 8 through 12.

³⁷Gloria Marwick, pre-filed testimony, p.2, lines 12 through 18.

³⁸Gloria Marwick, pre-filed testimony, p.2, lines 18 through 20.

³⁹Gloria Marwick, pre-filed testimony, p.3, lines 7 through 12.

⁴⁰Re-direct of Gloria Marwick at PSC hearing, p. 389, lines 18 through 25 and p. 390, lines 1 through 3.

⁴¹Gloria Marwick, pre-filed testimony, p. 4, lines 21 through 22.

resolve issues as to water supply and demand.⁴² However, Farmton is not, and cannot be a part of WAV, as WAV is created by interlocal agreements, and only sovereign entities can joint an interlocal agreement.⁴³ With Farmton and its 42,000+ acres with Volusia County not involved in the process of water resource modeling, coordination, sharing, etc., a major piece of the puzzle will be missing. This will have severe negative impacts upon the efforts of WAV and its goals. This again, is not in the public interest.⁴⁴

In sum, the Application is not in the public interest. It violates and is inconsistent with basic principlesteneents of the County's Comprehensive Plan, it encourages urban sprawl, it duplicates existing or potential infrastructure, it conflicts with the County's previously declared water service area, it is located in the middle of an environmentally-sensitive area, and it frustrates the County's and other local government's efforts at consolidating and coordinating the limited water resources.

ISSUE 12. WHAT IS THE APPROPRIATE RETURN ON EQUITY FOR FARMTON?

County of Volusia takes no position on this issue. However, to the extent that City of Titusville, or Brevard County, choose to make arguments on this issue, County of Volusia does not oppose such arguments or positions

ISSUE 13. WHAT ARE THE APPROPRIATE POTABLE WATER, FIRE PROTECTION, AND BULK WATER RATES AND CHARGES FOR FARMTON?

⁴²Gloria Marwick, pre-filed testimony, p. 2, lines 14 through 20.

⁴³Gloria Marwick, pre-filed testimony, p. 3 lines 23 through 25, and p.4 lines 1 through 5.

⁴⁴Re-direct of Gloria Marwick at PSC hearing, p. 389, lines 16 through 25, and p. 390, lines 1 through 3.

County of Volusia takes no position on this issue. However, to the extent that City of Titusville, or Brevard County, choose to make arguments on this issue, County of Volusia does not oppose such arguments or positions

ISSUE 14. WHAT ARE THE APPROPRIATE SERVICE AVAILABILITY CHARGES FOR FARMTON?

County of Volusia takes no position on this issue. However, to the extent that City of Titusville, or Brevard County, choose to make arguments on this issue, County of Volusia does not oppose such arguments or positions

ISSUE 15. WHAT IS THE APPROPRIATE AFUDC RATE FOR FARMTON?

County of Volusia takes no position on this issue. However, to the extent that City of Titusville, or Brevard County, choose to make arguments on this issue, County of Volusia does not oppose such arguments or positions

**COUNTY OF VOLUSIA
Legal Department**

By: s/William J. Bosch
WILLIAM J. BOSCH
Assistant County Attorney
123 West Indiana Avenue
DeLand, Florida 32720-4613
wbosch@co.volusia.fl.us
Telephone: (386)736-5950
Florida Bar No. 456470

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-Hearing

Statement was served on all parties and interested individuals listed below, this 29th day of July, 2004 via Federal Express.

**COUNTY OF VOLUSIA
Legal Department**

By: s/William J. Bosch
WILLIAM J. BOSCH
Assistant County Attorney
123 West Indiana Avenue
DeLand, Florida 32720-4613
wbosch@co.volusia.fl.us
Telephone: (386)736-5950
Florida Bar No. 456470