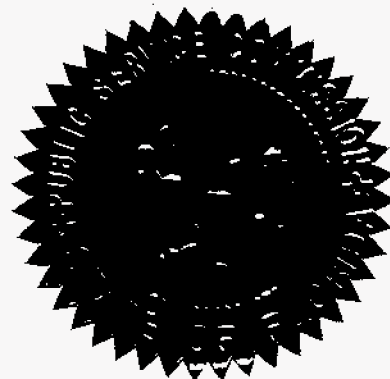


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090478-WS

APPLICATION FOR ORIGINAL
CERTIFICATES FOR PROPOSED
WATER AND WASTEWATER SYSTEM,
IN HERNANDO AND PASCO COUNTIES,
AND REQUEST FOR INITIAL RATES
AND CHARGES, BY SKYLAND
UTILITIES, LLC.



VOLUME 2

Pages 93 through 349

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PROCEEDINGS: TECHNICAL HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP

DATE: Wednesday, July 7, 2010

TIME: Commenced at 10:00 a.m.
Concluded at 8:02 p.m.

PLACE: Southwest Florida Water Management
District's Board Room
2379 Broad Street
Brooksville, Florida 34604-6899

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

APPEARANCES: (As heretofore noted.)

I N D E X

WITNESSES

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	
			NAME:					PAGE NO.																	
			GERALD C. HARTMAN																						
			Cont. Cross Examination by Mr. Hollimon					96																	
			Cross Examination by Mr. McAteer					102																	
			Cross Examination by Mr. Rehwinkel					103																	
			Cross Examination by Ms. Bennett					144																	
			Redirect Examination by Mr. Deterding					155																	
			DANIEL W. EVANS																						
			Direct Examination by Ms. Klancke					176																	
			Prefiled Direct Testimony Inserted					178																	
			Cross Examination by Mr. Wharton					185																	
			Cross Examination by Mr. Kirk					205																	
			Cross Examination by Mr. McAteer					211																	
			Cross Examination by Mr. Rehwinkel					213																	
			Redirect Examination by Mr. Klancke					224																	
			JOSEPH L. STAPH																						
			Direct Examination by Mr. Kirk					229																	
			Prefiled Direct Testimony Inserted					231																	
			Cross Examination by Mr. Wharton					241																	
			Cross Examination by Mr. Rehwinkel					266																	
			RONALD F. PIANTA																						
			Direct Examination by Mr. Kirk					286																	
			Prefiled Direct Testimony Inserted					287																	
			Cross Examination by Mr. Wharton					299																	
			Redirect Examination by Mr. Kirk					326																	
			BRUCE E. KENNEDY																						
			Direct Examination by Mr. Hollimon					330																	
			Prefiled Direct Testimony Inserted					332																	
			Cross Examination by Mr. Deterding					341																	

EXHIBITS

	NUMBER:	ID.	ADMTD.
1			
2			
3	2, 3, 4		170
4	14, 15, 33		171
5	25, 26		228
6	5		281
7	16, 17, 18		286
8	19		326
9	6, 7		329
10	42 3A	330	330
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

P R O C E E D I N G S

(Transcript follows in sequence from
Volume 1.)

CHAIRMAN ARGENZIANO: Okay. We're ready to
go. We'll pick up where we left off.

CONTINUED CROSS EXAMINATION

BY MR. HOLLIMON:

Q. Mr. Hartman, when we left off I was asking you
about two letters that are included within the
application that I have referred to as the need letters.

Are you familiar with what I'm talking about?

A. Yes, sir.

Q. And I'd ask you first to look at the
October 9th letter, if you would, please?

A. Yes, sir.

Q. And if you would, if you can with reference to
Figure 3A, which I believe you have, can you point out
for me where the employee house and office barn are
located?

A. I've forgotten.

Q. You don't know where they're located?

A. I have forgotten where they are located. I
used to know where they are located, but I can't see it
on the map. I don't have a designation on this map.

Q. Okay. Do you know the Trilby property, what

1 does that mean to you?

2 **A.** The Trilby property is what Evans called the
3 collection of properties in this area.

4 **Q.** Okay. So does the Trilby property identify
5 any of these individually numbered parcels on 3A?

6 **A.** Not just one to my knowledge.

7 **Q.** Okay. How far do you think it is from ID 3 to
8 ID 2?

9 **A.** About four and a half miles.

10 **Q.** And ID 1 and ID 4 are approximately the same
11 distance from ID 3?

12 **A.** Yes.

13 **Q.** If you'll look at the other, the October 2nd
14 letter. Do you have that letter?

15 **A.** Yes, I do.

16 **Q.** In that letter it states the most immediate
17 need for water and wastewater services for Evans is in
18 the existing facilities and the first phase of higher
19 intensity agricultural use and retail use. Do you see
20 that?

21 **A.** Yes.

22 **Q.** And the existing facilities, are those the
23 house and the office barn we just discussed?

24 **A.** Well, the existing houses, plural, and also a
25 shop, yes.

1 **Q.** Can you point out on Figure 3A where the most
2 immediate need for the identified retail use is?

3 **A.** I do not have the -- I didn't bring that with
4 me. I have those houses plotted, but I don't have that.
5 The need is phased, and Phase I is the first phase of
6 what we determined is the most important.

7 **Q.** Okay. Well, you relied upon this letter in
8 concluding that there is a need for service, did you
9 not, sir?

10 **A.** Yes, I did.

11 **Q.** In the letter it says the most immediate need
12 for water and wastewater services, and then it goes on
13 to say -- it talks about retail use, correct?

14 **A.** That's correct.

15 **Q.** And so what I'm asking you is where on this
16 map, 3A, is this immediate need for retail use?

17 **A.** Well, it's shown in -- we're looking at ID 1,
18 4, 3, and 2; 1, 2, 3, and 4.

19 **Q.** That is where that need is?

20 **A.** That is where we are having our Phase I
21 facilities.

22 **Q.** Well, I'm asking about the need for the retail
23 use.

24 **A.** Which is the Phase I facilities which have
25 retail. That's what the initial plan is.

1 Q. Okay. So your testimony is that Parcels 1, 2,
2 3, and 4 are what is referred to in this letter?

3 A. Parcels 1, 2, 3, and 4 were designated as the
4 Phase I activities, yes.

5 Q. Okay. And the application also includes a
6 funding agreement, isn't that correct?

7 A. That's correct.

8 Q. And that's another document that was not
9 drafted by you or your firm, isn't that correct?

10 A. The same as with the lease. We provided forms
11 that in our experience that other applicants had
12 approved here at the Commission. I provided those form
13 to the affirmative need as I stated in my deposition
14 with you, and also that I participated in the
15 discussions relative to those funding agreements, but I
16 did not draft the funding agreement, no. That's an
17 attorney function.

18 Q. And you don't have any personal knowledge of
19 Evans Properties finances, do you, sir?

20 A. Well, yes, I do. I have personal knowledge.
21 I discussed them with Ron Edwards. I've looked at
22 certain financial documents as I testified in my
23 deposition. Subsequent to that deposition I went
24 through the final confidential aspect and we maintained
25 the confidentiality with Mr. Edward's associated with

1 that.

2 **Q.** So at the time that you rendered your opinion
3 in your testimony you had not reviewed the confidential
4 financial information that was submitted to the
5 Commission, is that correct?

6 **A.** I had seen other financial information. I
7 knew the owner had about 40,000 acres they owned free
8 and clear and had no debt against that property, and had
9 significant assets, and had been in business for a long
10 time making a significant profit.

11 **MR. HOLLIMON:** Madam Chairman, can I get the
12 instruction asking the witness to answer the question
13 yes or no and then do whatever he's going to do?

14 **COMMISSIONER SKOP:** Can you please the
15 question, please?

16 **MR. HOLLIMON:** Can the court reporter read
17 back that last question, please?

18 (Question read by the reporter.)

19 **MR. DETERDING:** Commissioners, I want to
20 object as to the form of the question. This witness has
21 render his opinion today. That's why he's on the stand,
22 to give his sworn opinion today.

23 **COMMISSIONER SKOP:** Please reframe the
24 question so the witness -- hopefully to get an answer on
25 the record.

1 BY MR. HOLLIMON:

2 Q. Mr. Hartman, prior to July the 1st, 2010 --
3 excuse me, strike that.

4 Prior to June 17th, 2010, had you reviewed the
5 confidential financial information that was submitted in
6 this proceeding?

7 A. I did not know its final form, but I had -- no
8 is the answer. I had not reviewed its final form, but
9 what I had reviewed was financial information of the
10 company, discussed the finances of the company with
11 Mr. Edwards, as I testified in my deposition.

12 So the actual document I had not had that
13 opportunity. Subsequent to that deposition under a
14 confidentiality aspect with Mr. Edwards, I did review
15 the document.

16 Q. In your introductory remarks, did you mention
17 some modification with respect to that confidential
18 financial information?

19 A. No.

20 Q. I wasn't sure. Who's the electrical service
21 provider for the property that's sought to be
22 certificated?

23 A. I believe in this area it's -- well, it's
24 either Progress Energy or Florida Power and Light. I
25 don't recall right now. One of the two.

1 **MR. HOLLIMON:** That's all I have. Thank you.

2 **COMMISSIONER SKOP:** Thank you, Mr. Kirk (sic).

3 Mr. McAteer, you're recognized.

4 **CROSS EXAMINATION**

5 **BY MR. McATEER:**

6 Q. Mr. Hartman, just one question. When you were
7 holding the demonstrative exhibit at the beginning of
8 your testimony, you made a comment. There wasn't a
9 question pending at the time, you made a comment
10 regarding the Brooksville five-mile buffer. That
11 Brooksville five-mile buffer also appears on 3A.

12 Frankly, I just couldn't hear you, and you
13 said something to the term of service versus
14 reservation. Could you clarify your remarks as to that
15 five-mile buffer?

16 A. The five-mile buffer is a reserve area
17 provided for under the 180 statutes, and that is a
18 planning area. It's a reserve area for alternative
19 water supply, wastewater, and reuse services, and not
20 conventional water supply pursuant to that statute. The
21 last time that I recall, I have involved in about 30 of
22 those.

23 **MR. McATEER:** Thank you.

24 **COMMISSIONER SKOP:** I guess next up is Mr.
25 Hollimon.

1 **MR. HOLLIMON:** No, I'm done.

2 **COMMISSIONER SKOP:** I'm sorry. Okay.

3 Public Counsel. Mr. Rehwinkel.

4 **MR. REHWINKEL:** Thank you.

5 **CROSS EXAMINATION**

6 **BY MR. REHWINKEL:**

7 **Q.** Good afternoon, Mr. Hartman.

8 **A.** Good afternoon.

9 **Q.** I'm Charles Rehwinkel with the Office of
10 Public Counsel. Let me ask you to -- do you have
11 exhibit or Appendix X, which has the tariff sheets
12 appended to it?

13 **A.** Yes, I do.

14 **Q.** I'll ask you to turn to original Sheet 4.0,
15 please. It is about an eighth of an inch from the very
16 back.

17 **A.** 4.0.

18 **Q.** Okay. The copy that I have lists three
19 communities. Is that information correct?

20 **A.** You're in Exhibit X?

21 **Q.** Yes.

22 **A.** Original sheet 4.0?

23 **Q.** Yes. Was that amended at some point in time
24 that shows Indian River, Okeechobee, and St. Lucie?

25 **A.** That's a different application, sir.

1 Q. For Skyland Utilities?

2 A. No. That was put in -- this is what was
3 submitted. That was a different application.

4 Q. Okay. But for Skyland, you are not proposing
5 to serve those communities?

6 A. No, absolutely not.

7 Q. Let me ask you a question. I thought that was
8 an error, at least in the version that we have of it.
9 My question to you is could those communities be served
10 under the theory of functionally related utility that
11 the company is proposing?

12 A. By Skyland?

13 Q. Yes.

14 A. That's not the intent and it would be -- that
15 would be a hypothetical, I guess, of some sort.

16 Q. Okay. My hypothetical is could they be?

17 A. Well, I haven't looked at all the
18 circumstances, so I don't think I can answer that.

19 Q. Okay. Are you the consultant for the other
20 two joint concurrently filed applications?

21 A. Yes, I am.

22 Q. Okay. And so you are familiar with the way
23 that those utilities will be served by the intermediate
24 level company?

25 A. Yes.

1 **Q.** Is that correct? Would they be functioning
2 any different and served any different as far as the
3 common functions of billing and management?

4 **A.** Oh, no. They would be following the same type
5 of administration.

6 **Q.** Okay. Do you have a copy of the application
7 with you? And if I could ask you to turn to Paragraph 3
8 at the very beginning. It is on the second page of the
9 application.

10 **A.** Yes.

11 **Q.** In Paragraph 3, there is a term transverse.
12 Do you know what that means? I'm looking in the
13 application that was signed by the Dean Mead attorney?

14 **A.** Oh, Dean Mead. Okay.

15 **Q.** Paragraph 3.

16 **A.** Paragraph 3.

17 **Q.** Do you know what the word transverse means?

18 **A.** Goes across.

19 **Q.** Okay. In your Exhibit D, I believe it is.
20 Actually, Exhibit C. Do you have Exhibit C with you?

21 **A.** Yes, I do.

22 **Q.** About the fourth line down you used the
23 term -- you say that the proposed territory which
24 traverses the boundaries between Hernando and Pasco
25 County. Is there a difference between traverse and

1 transverse in your opinion?

2 A. That means across.

3 Q. Does one mean physically cross and one mean
4 virtually to cross?

5 A. I'm at a loss for that.

6 Q. I was just wondering why the terms were
7 different in here?

8 A. I don't know why.

9 Q. Okay. Page 6 of the application, do you have
10 that before you, the application itself? The one you
11 originally thought I was referring to, this filled out
12 form?

13 A. Yes, I do.

14 Q. Under B for wastewater, Item Number 2, it says
15 the applicant currently is proposing to serve -- I'm
16 sorry, let's go to Item 8 on Page 6. I'm sorry.

17 Typed in there it says service will begin as
18 soon as immediately possible after certification and
19 rate approval by the Commission. Is it Skyland's
20 intention to provide central utility services
21 immediately upon certification?

22 A. It says immediately possible. It takes time
23 to design, permit, and go through the regulatory
24 functions to get all of that done. But, yes, it will
25 begin the process.

1 Q. Okay. I guess service means physical delivery
2 of utility services, is that correct?

3 A. Yes, service to properties.

4 Q. All right. So you would serve with central
5 water and wastewater services as soon as you get your
6 regulatory approvals?

7 A. And once we have our customer aspects all tied
8 down. We have developer agreements as approved by the
9 Commission, and there are some other prerequisites, but
10 once all of that is done, yes.

11 Q. Okay. You would serve with just one or two
12 locations?

13 A. Well, as a start up. You have to start with
14 one and get the next one and the next one. That's the
15 way it happens.

16 Q. In your opening you mentioned a rate of \$89.16
17 combined --

18 A. That's correct.

19 Q. -- bill for water and wastewater service?

20 A. Yes.

21 Q. And is it your testimony here that that price
22 includes all of the costs that would be normally
23 included in the provision of water and wastewater
24 services?

25 A. All of the costs that would be levied for the

1 monthly rates and charges to the customer, yes, because
2 it's based on formulas of 80 percent build-out, the
3 rules and regulations of this Commission.

4 Q. Okay. And I think Ms. Hollimon asked you
5 about, for example, what utility provider provides
6 service to this property and you said it was either FPL
7 or Progress Energy?

8 A. I don't recall right now. And those are the
9 two I mentioned, yes.

10 Q. Okay. Did someone from your office talk to
11 the utility companies about providing service?

12 A. Yes.

13 Q. And isn't it true that the application says
14 that you talked to FPL about providing services?

15 A. It may.

16 Q. Okay. On Roman numeral VIII-2 in Appendix 8.

17 **COMMISSIONER SKOP:** Madam Chair.

18 **THE WITNESS:** Yes, it does.

19 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

20 **COMMISSIONER SKOP:** I have a question on that
21 same page that I have marked. We'll see where this
22 goes.

23 **MR. REHWINKEL:** Okay.

24 **BY MR. REHWINKEL:**

25 Q. My question is it states in here that

1 currently the proposed water and wastewater facility
2 sites -- do you know where those are?

3 **A.** Right now outside of the -- those will be
4 where the need occurs. And because it's going to be
5 where the need occurs, the customers -- based on
6 customer agreements, et cetera, that's why we made that
7 statement.

8 **Q.** Okay. But I think, isn't it -- earlier in
9 your cross-examination I think you indicated that the
10 legal and the lease had not been filled out because they
11 had not tied down exactly where --

12 **A.** Exactly, that's correct.

13 **Q.** Okay. So how did you have discussions with
14 FPL about where to serve with electricity if you didn't
15 know where those --

16 **A.** We identified the parcels. The same thing
17 that we do for most of our large landowners, identify
18 parcels and discuss those parcels with the power
19 companies. I personally did not do that work. Tony
20 Isaacs in my office did, and contacted them under my --
21 contacted the power companies under my direction, and we
22 got feedback relative to their willingness to provide
23 power service.

24 **Q.** Okay. How many acres are there involved in
25 the first phase, did you say? Was it 1,300 or so?

1 **A.** Yes, that's correct.

2 **Q.** Okay. So is it your testimony that Florida
3 Power and Light said that they would run the required --
4 they might run the required services at their own cost
5 to anywhere in those 1,300 acres?

6 **A.** It depends on the location. That's why we
7 used the word might. We have an alternate provision in
8 here for costing out the service if we had to pay for
9 the runs and the impact on rates and charges.

10 **Q.** Okay. So the \$89.16 that are shown in here,
11 do those include an assumption that Florida Power and
12 Light would serve?

13 **A.** We run the lines. If they don't run the
14 lines, it raises that cost I believe in the order of
15 about five dollars a month.

16 **Q.** Okay. But that is a cost that is not included
17 in here?

18 **A.** That is correct.

19 **Q.** And if Florida Power and Light is not the
20 utility provider for Pasco and Hernando County, then did
21 these discussions actually occur?

22 **A.** Well, the problem is that we were preparing
23 three at the same time. There might have been a
24 typographical error. It might be Progress Energy. That
25 could be a typographical error and scrivener's error.

1 Q. Can I ask you to -- you said you have not done
2 the legal description for the lease, is that correct?

3 A. That's correct. We would do that following
4 the final design.

5 Q. All right. And the legal description that is
6 in here for the service territories, does that describe
7 all of the parcels that are shown on Exhibit 3A?

8 A. It should, yes.

9 Q. Okay. Now, there are lines that are drawn --

10 **MR. REHWINKEL:** I'm sorry, Commissioner Skop,
11 did you have a -- before I leave that?

12 **CHAIRMAN ARGENZIANO:** Commissioner Skop, do
13 you want to ask now?

14 **COMMISSIONER SKOP:** I will just briefly cover
15 what Mr. Rehwinkel did -- as Mr. Rehwinkel pointed out
16 on Appendix VIII, Page 2, it stated currently at the
17 proposed water and wastewater facility sites there are
18 not appropriate power sources from Florida Power and
19 Light, FPL, to run the water and wastewater facilities.
20 Initial discussions with representatives from FPL have
21 indicated that they might run the required services at
22 their own cost. For the purpose of the cost study it is
23 assumed that FPL will provide the necessary power
24 requirements. For informational purposes only,
25 Attachment O appended herein contains cost estimates for

1 running power to each of the water and wastewater
2 facilities sites along with figures.

3 The follow-up question to Mr. Rehwinkel,
4 again, obviously there's a key assumption made into the
5 service provider that adequate electrical facilities
6 will be in place, and if not, somebody is going to have
7 to absorb the costs. It seems that if the utility does
8 it they are passing the costs onto the general body of
9 ratepayers whereas if the company does it then its users
10 are paying for that cost of the transmission or
11 distribution, whatever is required to interconnect to
12 the facilities.

13 I guess the question I have is on Attachment O
14 can you specifically point me to the costs of the
15 electrical service or upgrades that may be required to
16 serve the facilities, because I had a little bit of
17 trouble finding it when I tabbed it. And ultimately
18 what I'm trying to ascertain is what is the impact to
19 potential customers that will interconnect to the
20 utility, as Mr. Rehwinkel spoke to.

21 **THE WITNESS:** If you go to Figure 01, it's at
22 the back end of the Appendix X -- VIII, excuse me, and
23 you can see Figure 01 shows a run of about 1,600 feet
24 from the existing power pole.

25 **COMMISSIONER SKOP:** Okay. I see that, but

1 where do you monetize the cost of that additional
2 electrical infrastructure to the extent that it factors
3 into the costs that you projected for providing service
4 to water and wastewater customers that may pay an
5 interconnection charge?

6 **THE WITNESS:** I have not -- I'll have to go
7 back. When I come back in rebuttal I can provide that
8 to you, Commissioner.

9 **COMMISSIONER SKOP:** Thank you.

10 **CHAIRMAN ARGENZIANO:** Mr. Rehwinkel.

11 **MR. REHWINKEL:** Thank you.

12 **BY MR. REHWINKEL:**

13 **Q.** On Exhibit 3A, you show in red the outline --
14 I think the legend on the map says proposed certificate
15 limit, is that correct?

16 **A.** On 3A?

17 **Q.** Yes. The red line that encompasses all of the
18 parcels.

19 **A.** Yes. The line around the parcels themselves.

20 **Q.** Okay. Now, the lines that are around the
21 yellow, blue, red, and green, those lines actually
22 encompass the properties owned by Evans, is that
23 correct?

24 **A.** That's correct.

25 **Q.** Can you tell me what the lines are that go

1 between the parcels?

2 **A.** That is the planning interconnection for
3 pipelines in the future toward build-out, not in Phase
4 I.

5 **Q.** Now, it says certificate -- proposed
6 certificate limit. Are these lines that go between
7 parcels that are double lined, are they actually
8 described anywhere in the legal description?

9 **A.** No, that's not -- thank you for that
10 clarification, pointing that out. Really just the
11 properties are what we have in the certificate, and then
12 the corridors that we have between them are the
13 conceptual plan of interconnecting the parcels later on
14 in the development. Later on, down the road awhile.

15 **Q.** Okay. So if those don't describe the
16 certificate limit -- the certificate is a collection of
17 individually delimited, if you will, parcels; is that
18 correct?

19 **A.** That's correct.

20 **Q.** Now, the lines that you said are corridors, is
21 that what you called them?

22 **A.** They are planning corridors for
23 interconnection.

24 **Q.** So does Evans Properties own any of the rights
25 to use those corridors?

1 **A.** At this time they do not. In my deposition I
2 testified that relative to going between the pieces of
3 property, first, it would look for customers; secondly,
4 look for negotiations; and, thirdly, if there is an
5 out-parcel, there is an ability to obtain the property
6 through the rights to connect.

7 **Q.** What is the rights to connect?

8 **A.** Oh, their need for -- there is a little piece
9 or outparcel, and we need a little bit an easement, that
10 can be taken if right-of-way is not adequate.

11 **Q.** Okay. So if you had to connect Parcels 2 and
12 1, for example, and you used this corridor, you would
13 have to acquire -- there would be a cost involved in
14 acquiring that?

15 **A.** There may be. That's unknown. It's out in
16 the future at some time.

17 **Q.** Well, this is Phase I, correct? I'm looking
18 between ID 1 and ID 2.

19 **A.** As I testified earlier, the Phase I parcels
20 are not interconnected in Phase I.

21 **Q.** Okay. So my question is in Phase I there are
22 no costs of interconnecting the parcels, say, from ID 1
23 to ID 2, is that correct?

24 **A.** That's correct.

25 **Q.** But if you incurred the costs to connect

1 facilities there, that would go into the rate base,
2 would that be correct?

3 **A.** If it's found prudent and appropriate, yes.

4 **Q.** Okay. In fact, are there any costs of
5 interconnection of parcels that are included in your
6 cost of service?

7 **A.** Not in the cost-of-service study, because it
8 is only for the first six years pursuant to the rules
9 and regulations of the Commission, and we are not
10 planning to interconnect the parcels at that time.

11 **Q.** But Parcels ID 1, 2, 3, and 4 are all in the
12 first phase, correct, and that was part of your cost
13 study, is that right?

14 **A.** That's true, on-site facilities in each one of
15 those locations.

16 **Q.** Okay. So interconnection costs, then, for
17 Phase I, just to be clear, are not included in your cost
18 of service study?

19 **A.** That's correct.

20 **Q.** Skyland is a limited liability company, is
21 that correct?

22 **A.** Yes.

23 **Q.** And is it a Subchapter S company? Well, let
24 me strike that question and ask you this: As a limited
25 liability company, does it pay income taxes?

1 **A.** I would think so. They or their parent, one
2 of the two.

3 **Q.** Well, is there income tax expense included in
4 the calculation for utility services for Phase I?

5 **A.** The cost study is at 80 percent occupancy, if
6 you will, or utilization. And based upon that, it's the
7 risk of the company on the costs associated with the
8 operation itself, so the tax consequence has not been
9 shown here.

10 **Q.** Well, if I could get you to look on Roman
11 numeral VIII-16 --

12 **A.** Okay.

13 **Q.** -- under system financial requirements, the
14 third paragraph on that page.

15 **A.** Right.

16 **Q.** It says it should be noted that for purposes
17 of these projections, since Skyland was organized as a
18 limited liability company, it is a nontaxable entity,
19 therefore no state or federal income tax expense has
20 been included in these projections.

21 **A.** Okay. Thank you for that.

22 **Q.** Is that your understanding?

23 **A.** It was our understanding at the time, yes.

24 **Q.** Is that still your understanding?

25 **A.** Yes, it's my understanding at this time.

1 **Q.** Now, does the fact that it is in this
2 application indicate to the Commission that it will
3 always be the case that there will be no income tax
4 expense included in rates?

5 **A.** Well, that's a decision of the owner.

6 **Q.** Okay. So that could change?

7 **A.** Yes, it can change. It depends on how they
8 wish to have their tax structured.

9 **Q.** Okay. Has the tax structure been done this
10 way for purposes of keeping customer rates down, or has
11 it been done for purposes of Evans Properties' internal
12 tax needs?

13 **A.** It was the choice of the owner, and then we
14 just used the choice in our analysis.

15 **Q.** While we're talking about costs, do you have
16 the cost study with you?

17 **A.** Yes, I do.

18 **Q.** Do you have the pro forma -- Schedule 19, the
19 pro forma schedule of expenses for the wastewater
20 utility?

21 **A.** Yes, I do.

22 **Q.** Okay. Is it your testimony that there would
23 be no expenses, for example, for fringe benefits in this
24 utility?

25 **A.** We grossed up into the salary and wages. The

1 overall cost would be contractual, and because it's
2 contractual and we will be contracting to a vendor, we
3 don't have fringe benefits. That is a separate company.

4 Q. Okay. So it would always be the case that
5 this would be contracted by a third party?

6 A. That was the intent and the choice of the
7 owner and it is shown here, so if there are additional
8 costs that would come in that would be at risk to the
9 owner.

10 Q. Okay. There was a discussion earlier about
11 the lease agreement, the water lease agreement. Do you
12 recall that?

13 A. Yes.

14 Q. And I believe in the terms of the lease
15 agreement there's a provision that said if there are
16 annual withdrawals in excess of 4 million gallons of
17 water, then there would be a royalty fee of ten cents
18 per thousand gallons, is that correct?

19 A. I'd have to go back and check that water
20 agreement. Yes, Page 2, 7B.

21 Q. Okay. Now, is that cost for water, is that
22 included in the cost-of-service study?

23 A. Absolutely not, because at the time we don't
24 have that consumption.

25 Q. Okay. If there was a royalty payment of ten

1 cents per thousand gallons paid for excess withdrawals
2 under the water lease, would that constitute a sale of
3 water by Evans Properties to the utility?

4 **A.** It would just be a royalty payment not unlike
5 other royalty payments that have been approved.

6 **Q.** For water?

7 **A.** There have been royalty payments approved
8 here.

9 **Q.** Okay. If Evans made -- I mean, if Skyland
10 went into the bulk sales business, and annual water
11 withdrawals under this lease agreement exceeded
12 4 million gallons, how would the cost of that royalty
13 payment be allocated to residential customers?

14 **A.** Based on the cost-causing behavior of the
15 transaction under M1, the cost-causing behavior is how
16 you allocate costs. So if the cost-causing behavior is
17 for a wholesale rate, then the royalty would be applied
18 to a bulk or wholesale customer.

19 **Q.** So you're saying residential use would never
20 be projected to ever be allocated any of the excess
21 withdrawal fee?

22 **A.** No. As developments or as uses, agribusiness,
23 commercial uses, TMDL uses, other types of uses that are
24 being investigated, biofuel uses, that we are looking at
25 different crops for biofuel production, as those uses

1 occur, if there is a water intensive situation then that
2 royalty fee would be applied to that customer and shown
3 in the customer agreement. It's a way to hold down --
4 conservation, it's a conservation issue.

5 Q. So is the royalty fee that is included in the
6 lease agreement, was that negotiated at arm's-length?

7 A. It was discussed between Skyland
8 representatives and Evans representatives and many of
9 the same people work in both organizations.

10 Q. Well, it was signed by the same person in both
11 capacities, correct?

12 A. That's correct.

13 Q. Is there a market basis for that royalty
14 payment?

15 A. Yes. There are agreements throughout the
16 state that have royalty payments in that.

17 Q. Are they arm's-length or were they with
18 unrelated parties?

19 A. Both.

20 Q. And is that how the ten cents per thousand
21 gallons fee was derived?

22 A. Well, there is a historical record throughout
23 the state of Florida on some of these situations, and it
24 was selected at ten cents by the owner.

25 Q. Okay. You earlier mentioned modifications or

1 offers to modify the water lease agreement, and that
2 document does not exist at least in this hearing today,
3 correct?

4 A. I do not know that. I was asked if I had the
5 revised document. I have been on the road, so I have
6 not seen it.

7 Q. Okay. So were there any costs associated with
8 the modifications?

9 A. To the lease agreement?

10 Q. Were there any costs that the lessee would
11 incur for those modifications?

12 A. Not to my knowledge. The only things were the
13 comments that had been made by the various parties for
14 the duration and the control of the property and others
15 to relieve concerns by the parties.

16 Q. Okay. In your cost-of-service study you show
17 water wells. Are you familiar with that?

18 A. Yes, I am.

19 Q. And I'm looking on Page 1 of 14 of Schedule 5.
20 This is in your -- do you know what I'm talking about?

21 A. Just a second. I'm just getting there. Which
22 page of 14?

23 Q. One of 14. This is the depreciation schedule.

24 A. Yes.

25 Q. And I believe this shows under Account 307,

1 wells and springs, it looks like about eight existing
2 wells, is that correct?

3 A. Yes.

4 Q. And these wells all exist at this time on
5 Evans Properties?

6 A. Yes.

7 Q. And there is a beginning year -- well, let's
8 see. There is a balance of \$135,000 under the column
9 balance year six. Do you see that?

10 A. Yes.

11 Q. What does that represent?

12 A. The current value of those wells.

13 Q. How was that value determined?

14 A. By myself. I'm an accredited senior appraiser
15 for public utilities, ASA Registration Number 7542.

16 Q. Okay. Are these depreciated or undepreciated
17 values?

18 A. Depreciated values.

19 Q. Okay. So how would these wells be conveyed to
20 the utility?

21 A. They'll be provided from the parent to the
22 corporation.

23 Q. Okay. They were not valued -- they were
24 not -- they are not part of the lease agreement?

25 A. No.

1 Q. So they would be conveyed in fee?

2 A. Yes.

3 Q. Will you turn to Page 8-13 --

4 COMMISSIONER SKOP: Madam Chair.

5 Q. -- under estimated O&M costs?

6 CHAIRMAN ARGENZIANO: Excuse me.

7 MR. REHWINKEL: Yes.

8 CHAIRMAN ARGENZIANO: Commissioner Skop.

9 COMMISSIONER SKOP: Mr. Rehwinkel, if you will
10 yield for a moment. On your previous question that you
11 asked the witness about the conveyance of the wells as
12 they are associated with the property, and I think you
13 indicated that the wells would be conveyed to the
14 utility, is that correct?

15 THE WITNESS: Yes, that's the intent.

16 COMMISSIONER SKOP: Okay. Well, then under
17 the water and wastewater lease agreement why would there
18 be a royalty -- and, again, I'm looking at this, but I'm
19 trying to understand everything that's going on. In the
20 royalty payment, and let me see if I can find this,
21 again, here.

22 Mr. Rehwinkel, can you help me?

23 THE WITNESS: That's the ten cents per
24 thousand gallons.

25 COMMISSIONER SKOP: Right. Let me make sure

1 I'm looking at the right grid. That agreement is made
2 between Evans Properties and Skyland Utilities, and
3 Evans is the lessor. So if the wells are going to be
4 conveyed, then why would a royalty payment be paid to
5 the lessor if the lessor has no property interest left
6 in the wells?

7 **THE WITNESS:** They still own the land.

8 **COMMISSIONER SKOP:** But you're conveying the
9 wells over so why would you get a royalty on the --

10 **THE WITNESS:** Land?

11 **COMMISSIONER SKOP:** No. A royalty on the
12 consumption that is withdrawn -- the water withdrawn
13 from the wells? That's what the royalty payment is
14 based upon.

15 **THE WITNESS:** That is a method for
16 water-bearing properties. One of the aspects is looking
17 at the income approach, and it's a special purpose
18 property when it has utility value.

19 **COMMISSIONER SKOP:** Okay. Thank you.

20 **BY MR. REHWINKEL:**

21 **Q.** Following up on Commissioner Skop's question,
22 could Evans Properties sell that water instead of
23 allowing the utility to use it for withdrawals?

24 **A.** To an exempt entity wholesale, yes. I think
25 that's provided for by the statutes the last time I was

1 involved in it.

2 Q. Okay. The funding agreement, can I ask you a
3 question about the funding agreement? Actually, I'm
4 sorry, let's go back to 8-13, Page 8-13.

5 A. Yes.

6 Q. The very bottom of that page, the Table 5
7 reference there.

8 A. Yes.

9 Q. It states that there will be no labor,
10 chemical, transportation, or power costs for the two
11 areas in Pasco County.

12 A. That will be charged to the utility, yes.

13 Q. Okay. And what are those two areas listed --

14 A. They are two start-up, just a couple of units.

15 Q. Okay. Is that ID 3? Is that in Pasco County?

16 A. Yes, ID 3, ID 1, and ID 4 are all in Pasco
17 County, I believe. But those are the three -- and then
18 on the facilities delineation, we have two -- those are
19 for 1 and 4.

20 Q. Those are the ones that would not require
21 power?

22 A. That's correct.

23 Q. Ever?

24 A. No, just initially. This is the start-up
25 activities. That would be charged to the -- in the

1 utility.

2 Q. Okay. For purposes of pricing services in
3 this entire five phases, would Skyland be proposing a
4 uniform rate for all customers residing in all phases?

5 A. Well, I can't talk about future phases, but in
6 the first phase, yes, it's a uniform rate. And it
7 depends on the situation as you go into the future, but
8 we would expect it to be a uniform rate.

9 Q. The funding agreement, do you have that with
10 you?

11 A. Okay.

12 Q. And that's in Appendix 6, I think.

13 COMMISSIONER SKOP: Seven.

14 MR. REHWINKEL: Seven.

15 THE WITNESS: Yes, I've got it.

16 BY MR. REHWINKEL:

17 Q. Okay. This agreement is, again, signed by
18 Mr. Edwards both on behalf of the parent and the
19 utility, is that correct?

20 A. That is correct.

21 Q. Is there anything about this agreement that is
22 enforceable by the utility to receive funding?

23 A. It says that in Number 1 that it agrees to
24 fund it.

25 Q. Okay. Can this funding agreement be withdrawn

1 at any time by Evans Properties?

2 A. It doesn't say that it can be.

3 Q. If Evans Properties elected not to honor this
4 funding agreement, would the utility -- and the utility
5 was providing utility services, would the utility have
6 to -- where would they receive funds for capital
7 improvements, et cetera?

8 A. Well, in that hypothetical --

9 Q. Yes.

10 A. -- it would be -- first in that hypothetical
11 it would be disadvantageous to Evans not to fund, so it
12 would be something that you would not expect, but if
13 that occurred in that hypothetical situation, they would
14 have to go out to the market and secure funds.

15 Q. Would that be higher or lower cost than the
16 Evans funding agreement?

17 A. It's unknown right now.

18 Q. Is the Evans Properties considered closely
19 held, is it a privately owned company?

20 A. Yes.

21 Q. Is it owned by a family?

22 A. Various individuals, yes.

23 Q. Are they all members of the same family?

24 A. I do not know that they are all members of the
25 same family.

1 Q. Okay. But some are?

2 A. Yes.

3 Q. Do you know if they own shares in a family
4 business? They meaning the members of the family.

5 A. I don't recall right now. I have seen some
6 documents, but I don't recall right now exactly how that
7 is. I didn't come prepared for that. You know, Ron
8 Edwards would be a better person to ask those questions.

9 Q. Fair enough.

10 Mr. Hartman, just the last series of
11 questions. I think it's correct that you did not
12 compare the proposed rates for Skyland that you
13 referenced in your opening statement to the rates that
14 were charged by Pasco or Hernando County, is that
15 correct?

16 A. No, I have not compared them for this aspect.
17 I have compared them to other regulated utilities.

18 Q. Them meaning Skyland's or --

19 A. Skyland's rates to other regulated utilities.

20 Q. Okay. Is it true, generally, that the Skyland
21 rates are higher than the rates that Pasco and Hernando
22 charge their residential customers?

23 A. Are you talking from a monthly rate and
24 charge?

25 Q. Yes.

1 **A.** Not a total financial requirement.

2 **Q.** Just the monthly rate.

3 **A.** Just the monthly and charge, which is just a
4 small component of the overall cost of the utility, that
5 is true.

6 **Q.** Do local governments pay income taxes?

7 **A.** Do local governments pay income tax?

8 **Q.** Yes. Local government utilities, I should
9 say.

10 **A.** Not to my knowledge.

11 **Q.** Do you they pay real estate taxes and property
12 taxes?

13 **A.** Not to my knowledge.

14 **Q.** Do they pay intangible taxes?

15 **A.** No.

16 **Q.** Sales taxes on their purchases?

17 **A.** Some, but mostly not.

18 **Q.** Would it be true that the rates of local
19 governments are determined by elected public officials?

20 **A.** Yes, typically having the jurisdiction in that
21 area. The Board of County Commissioners for Pasco
22 County and Board of County Commissioners for Hernando
23 County.

24 **Q.** Do local government utilities pay regulatory
25 assessment fees?

1 **A.** No, they do not. They have many other --
2 there is a difference between the NARUC and the
3 regulatory cost structure and ratemaking than the
4 public. As I testified in my deposition, there is
5 payment in lieu of taxes, allocated overhead, all kinds
6 of other things like that that go back to the general
7 fund and to fund other aspects. I'll stop. Go ahead.

8 **Q.** But do you know whether the Pasco and Hernando
9 utilities make those payments?

10 **A.** They used to.

11 **Q.** You don't know today?

12 **A.** Today I do not know that.

13 **Q.** Okay. Do they incur litigated rate case
14 expense in their cost of service?

15 **A.** Well, I don't know. It depend if their rates
16 and charges are being challenged or not. They could
17 have civil court litigation relative to the rates and
18 charges, which I participate in cities and counties.

19 **Q.** Do you know if Pasco and Hernando incur those
20 costs?

21 **A.** It depends. Normally I would not think so.

22 **Q.** Do they incur costs of rate regulation such as
23 the filing of annual reports or reporting to regulatory
24 agencies?

25 **A.** Not to the Florida Public Service Commission,

1 but, yes, they have to file their aspects into their
2 capper (phonetic) and the consolidated annual financial
3 statement. They have all kinds of financial reporting
4 requirements. They have to maintain all kinds of
5 situations.

6 Q. For the utility?

7 A. For the utility. They gross that back up into
8 the local government that the local government files
9 compliance.

10 Q. Okay. But they don't do a stand-alone annual
11 report to a ratemaking body?

12 A. It depends which -- I don't know about Pasco
13 and Hernando County. Lakeland used to.

14 Q. Okay. Do local governments generally have a
15 lower cost of debt than private utilities?

16 A. Yes, typically.

17 Q. Do they incur a return on equity or equivalent
18 return on equity component in their cost of service?

19 A. No. They do not have a return on equity.
20 Again, they would have a totally different ratemaking
21 structure with different aspects and categories.

22 Q. Okay. When Evans Properties and Skyland
23 talked about the need for service, was there any
24 discussion about what rate that Skyland would charge
25 would be acceptable to Evans Properties for monthly

1 recurring service?

2 **A.** Yes, there was some discussion between the
3 parties. I think in the meeting I was in there was a
4 discussion that, you know, you can't be just totally so
5 great that the endeavor would never, you know, move
6 forward. So there were those types of discussions.
7 But, you know, rates and charges are not the only
8 determinant between developing central utility systems.
9 The cost of connection, the cost of overall service is a
10 huge aspect. I think there's testimony in this case
11 that shows the study for -- it's in surrebuttal, though,
12 I guess I shouldn't start there yet. In the surrebuttal
13 it is over \$50,000 a connection if you looked at
14 Hernando County.

15 **Q.** Okay. But Evans Properties really didn't care
16 what the rates and charges were that were proposed in
17 this case, did they?

18 **A.** They didn't care? They wanted to know if they
19 were and they approved them.

20 **Q.** But they approved them because they would
21 apply to them in their circumstances and not to
22 unrelated future purchasers of services, correct?

23 **A.** No, it would relate to both. I mean, it's
24 marketability. You don't want rates really high that
25 your business falters.

1 **Q.** So was there a request by Evans Properties to
2 the utility to keep the rates lower than they normally
3 would be?

4 **A.** No. The request was to follow the Commission
5 rules and regulations.

6 **Q.** Okay. But it's not your testimony here that
7 you've included every reasonable and likely to be
8 incurred costs in the development of the cost study?

9 **A.** I have expected -- every expected cost is in
10 the cost study that we expected to have.

11 **MR. REHWINKEL:** I have no further questions.

12 Thank you, Mr. Hartman.

13 **CHAIRMAN ARGENZIANO:** Thank you.

14 Staff.

15 **MS. BENNETT:** Yes, I have several questions.

16 Before I start with the questions, there was a
17 Commissioner question, I believe, earlier about the cost
18 of service if there were power lines run. Mr. Edwards
19 responded to that in some interrogatories, and technical
20 staff wanted me to let you know that that will be
21 something that we can discuss when Mr. Edwards comes on
22 the stand. It's in Exhibit 31.

23 **CHAIRMAN ARGENZIANO:** Okay. Excuse me.

24 Commissioner Skop, did you have a question?

25 **COMMISSIONER SKOP:** Yes, Madam Chair, I have a

1 few questions that I could ask.

2 Good afternoon, Mr. Hartman.

3 **THE WITNESS:** Good afternoon.

4 **COMMISSIONER SKOP:** If I could turn your
5 attention to the document marked as Figure 3A in your
6 prefiled testimony.

7 **THE WITNESS:** Yes.

8 **COMMISSIONER SKOP:** On that figure, do you see
9 what has been identified as ID 6?

10 **THE WITNESS:** Yes, I see ID 6.

11 **COMMISSIONER SKOP:** Okay. That is a piece of
12 property that I believe is located in Pasco County,
13 correct?

14 **THE WITNESS:** That's correct.

15 **COMMISSIONER SKOP:** Okay. Do you know when
16 Evans Property required that parcel of land?

17 **THE WITNESS:** I don't recall right now.

18 **COMMISSIONER SKOP:** Has it been a substantial
19 length of time or recently?

20 **THE WITNESS:** I don't recall.

21 **COMMISSIONER SKOP:** Okay. Do you see the
22 parcel of land just above that marked as ID 10?

23 **THE WITNESS:** Yes.

24 **COMMISSIONER SKOP:** And that is a parcel of
25 land that is in Hernando County, correct?

1 **THE WITNESS:** That's correct.

2 **COMMISSIONER SKOP:** Do you know when Evans
3 Property acquired that parcel of land for ID 10?

4 **THE WITNESS:** I don't recall that. I think
5 Mr. Edwards would be a better person to answer those
6 questions.

7 **COMMISSIONER SKOP:** Okay. But those two
8 pieces of property marked as ID 10 and ID 6 as
9 contiguous pieces of property, would you agree that
10 those in principle form the Petitioner's request for why
11 the Commission has subject matter jurisdiction because
12 the intent is to have service transversing the county
13 line at those two pieces of property at a minimum?

14 **THE WITNESS:** That's but one. Others are that
15 the parcels are in Hernando and in Pasco County is part
16 two, and then thirdly is that the landowner wants to
17 administer this as one utility system.

18 **COMMISSIONER SKOP:** I understand that. But
19 are there any other contiguous pieces of property shown
20 on this figure that cross -- that are in two different
21 counties as a contiguous piece of property?

22 **THE WITNESS:** No.

23 **COMMISSIONER SKOP:** All right. On what has
24 been marked as ID 6, that parcel of land in Pasco
25 County, that's not scheduled to be developed until Phase

1 II, is that correct?

2 **THE WITNESS:** That's correct.

3 **COMMISSIONER SKOP:** Okay. And ID 10 on Figure
4 3A, that's not scheduled to be developed until Phase IV,
5 correct?

6 **THE WITNESS:** That's correct. This is a
7 conceptual plan. The phasing of the various pieces of
8 property could change based upon circumstances that
9 occur.

10 **COMMISSIONER SKOP:** Okay. Now, you're not
11 testifying as an expert witness in urban and regional
12 land use planning, correct?

13 **THE WITNESS:** In water utility planning, yes.
14 And in how water utilities comply with comprehensive
15 plans I have rendered my opinion, yes.

16 **COMMISSIONER SKOP:** Okay. Thank you.

17 Do you see the -- actually, let me ask this
18 other question. Are you aware of the comprehensive use
19 plan for Hernando County?

20 **THE WITNESS:** Yes. Comprehensive land use
21 plan, yes.

22 **COMMISSIONER SKOP:** Are you aware of the
23 interlocal agreement between Hernando County and the
24 City of Brooksville?

25 **THE WITNESS:** Yes.

1 **COMMISSIONER SKOP:** Looking at ID 2 on Figure
2 3A --

3 **THE WITNESS:** Yes.

4 **COMMISSIONER SKOP:** -- would you agree that
5 that is within the city limit five-mile buffer for, I
6 believe, the City of Brooksville?

7 **THE WITNESS:** Yes. It's within the reserve
8 area, yes.

9 **COMMISSIONER SKOP:** Okay. So if the utility
10 were seeking to just serve that one particular parcel
11 and not the remainder of the parcels on this map, you
12 would agree, would you not, that the case would not be
13 properly before the Commission?

14 **THE WITNESS:** In Hernando County and only
15 Parcel ID 2?

16 **COMMISSIONER SKOP:** Yes.

17 **THE WITNESS:** Absolutely, because then it
18 would only be in Hernando County, and Hernando County
19 has their own regulatory staff.

20 **COMMISSIONER SKOP:** Okay. But Parcel 2 is
21 obviously, according to the legend, in Phase I of the
22 development, is that correct?

23 **THE WITNESS:** That's correct.

24 **COMMISSIONER SKOP:** And ID 1, which is in
25 Pasco County, is in Phase I of the development, correct?

1 **THE WITNESS:** Yes.

2 **COMMISSIONER SKOP:** And ID 4 in Pasco County
3 is in Phase I of the development, correct?

4 **THE WITNESS:** Yes.

5 **COMMISSIONER SKOP:** And ID 3 in Pasco County,
6 subject to check, is in Phase I of the development,
7 correct?

8 **THE WITNESS:** Yes.

9 **COMMISSIONER SKOP:** But the two -- as you have
10 previously stated, the two contiguous pieces of property
11 that transverse county lines, ID 10 and ID 6, are not
12 going to be developed any time in the near future, is
13 that correct?

14 **THE WITNESS:** That's unknown. It's just in
15 this conceptual plan we had programmed them out in later
16 phases, but things can change.

17 **COMMISSIONER SKOP:** Now, I believe that you
18 previously testified that the parcel identified as ID 1
19 currently has an existing well on it, is that correct?

20 **THE WITNESS:** I believe so.

21 **COMMISSIONER SKOP:** And on the parcel marked
22 as ID 2, I believe -- I can look at the attachment, but
23 I believe that has two existing wells on that parcel, is
24 that correct?

25 **THE WITNESS:** I believe so.

1 **COMMISSIONER SKOP:** But you would agree, would
2 you not, that per your prior testimony that Parcel 1 and
3 Parcel 2 have not yet been interconnected, is that
4 correct?

5 **THE WITNESS:** That's correct.

6 **COMMISSIONER SKOP:** And with respect to the
7 question that Mr. Rehwinkel presented to you, and if I
8 could draw your attention to ID 1 and ID 4 with the
9 proposed interconnection corridors that appear to be
10 adjacent to what is a road marked as 41, do you see
11 that?

12 **THE WITNESS:** Yes, I do.

13 **COMMISSIONER SKOP:** Those easements or
14 right-of-ways have not yet been acquired to support that
15 interconnection of those two parcels, is that correct?

16 **THE WITNESS:** That's correct.

17 **COMMISSIONER SKOP:** And, Madam Chair, just a
18 few more questions.

19 As you have previously stated, you are not
20 testifying as an expert in urban and regional land use
21 planning, right?

22 **THE WITNESS:** Generally, no. I am testifying
23 as an engineer who has a lot of training and experience
24 relative to utility planning and compliance with
25 comprehensive plans for utility systems as well as

1 Chapter 9J-5, elements for cities, that I have served
2 throughout the state.

3 **COMMISSIONER SKOP:** Okay. Given that the
4 contiguous parcels previously identified on Figure 3A as
5 ID 10 and ID 6 will not be developed in Phase I of the
6 proposed development, and that these parcels provide the
7 basis for the Commission's subject matter jurisdiction
8 in this instance, in your opinion is it reasonable to
9 expect that the intervenors in this case might conclude
10 that the respective comprehensive use plans of their
11 counties and interlocal agreements are effectively being
12 circumvented by this petition?

13 **THE WITNESS:** I don't believe -- well, first,
14 it's may relative to those parcels, and I don't think
15 there is any circumvention. It's the desire of the
16 property owner to have one -- to serve the public and to
17 have his own utility corporation to do so.

18 **COMMISSIONER SKOP:** So if I understand your
19 testimony correctly, you are asserting that you can
20 essentially put a placeholder in place in the specter of
21 future development to circumvent local comprehensive use
22 plans that would otherwise prevent you from proceeding
23 with the Phase I development that would be marked as,
24 for example, ID 2?

25 **THE WITNESS:** I have not rendered any opinion

1 about circumvention of anything, and later on I think
2 Dan DeLisi can answer your questions real well on those
3 types of issues.

4 **COMMISSIONER SKOP:** All right. Thank you,
5 Madam Chair.

6 **CHAIRMAN ARGENZIANO:** Thank you. Staff.

7 **MS. BENNETT:** Prior to me starting with my
8 questions, I would like to have staff pass out the
9 Confidential Exhibit Number 14, which is the financial
10 response, and also to give the witness a copy of the
11 exhibit that is premarked for identification as staff's
12 Exhibit Number 33. We'll be talking about the
13 deficiency letter and the response to the deficiency
14 letter first.

15 We don't need to pass copies to the parties.
16 They have already been given a copy of staff's
17 comprehensive exhibits, just to the witness, and then
18 also everyone will be receiving the confidential
19 records.

20 **MR. KIRK:** Madam Chairperson, this is a point
21 of question and procedure that I'm not familiar. When
22 PSC staff gets done with their questions, are the
23 intervenors allowed to have any rebuttal questions
24 specifically narrowly limited to the discussion that was
25 just raised?

1 **CHAIRMAN ARGENZIANO:** There will be redirect.

2 **MR. KIRK:** Redirect rather. There are a
3 couple of issues that came up specifically in reference
4 to the lease agreement.

5 **CHAIRMAN ARGENZIANO:** My apologies. I'm
6 sorry.

7 **MR. KIRK:** We just had a couple of follow-up
8 questions specifically referencing the lease agreement,
9 and I did not know the proper time, if it's appropriate,
10 to bring those up.

11 **MS. CIBULA:** Well, actually there is like an
12 order. Ya'll went first, and then it went to OPC, then
13 it's going to go to staff, and then it will be redirect.
14 And that's the end of the questioning.

15 **MR. KIRK:** That answered my question. Thank
16 you.

17 **MS. CIBULA:** Redirect by the utility.

18 **CHAIRMAN ARGENZIANO:** Right.

19 **MS. BENNETT:** And I did want to remind
20 everyone, if there are questions about the confidential
21 documents, of course we need to -- the items that are
22 highlighted need to not be verbalized because this is a
23 public meeting, it's being recorded, and so that
24 information would become a public record.

25 May I start?

1 **CHAIRMAN ARGENZIANO:** Yes, please.

2 **CROSS EXAMINATION**

3 **BY MS. BENNETT:**

4 **Q.** Mr. Hartman, you have been offered as an
5 expert witness in water and wastewater matters in
6 Florida, is that correct?

7 **A.** Yes, I have.

8 **Q.** I'm just going to walk us through some
9 procedural matters. Have you ever before this
10 proceeding submitted an application for an original
11 certificate to the Public Service Commission or assisted
12 a client in doing so?

13 **A.** Yes.

14 **Q.** What type of information is required to be
15 filed with the Commission? Can you walk us through
16 briefly what that information is.

17 **A.** There's 20 criterion, and we basically provide
18 the need for service, the consistency with local
19 comprehensive plans, the customers' facilities and
20 services, number of ERCs to be served, land ownership,
21 ERCs for wastewater use and reuse, technical and
22 financial ability. Typically a detailed financial
23 statement of the responsible party. The funding
24 agreement of the utility, the projected cost of the
25 systems, the operating expenses, projected capital

1 structure, cost of service study, the territory
2 description with legal description, the tax assessment
3 maps, the system maps, and affidavits associated with
4 the application of customers and the publication
5 thereof, as well as water and -- in this case, water and
6 wastewater tariff. And typically those are supplemented
7 by documents that have the request for service, the
8 research associated with comprehensive plans, the
9 schematics for service, the leases and funding
10 agreements, the rate design, and the actual documents
11 for the tariffs.

12 Q. And once that application has been filed, what
13 occurs if the Commission determines that it is a
14 deficient application?

15 A. A letter of deficiency is usually sent asking
16 for additional information, or clarifications, or
17 additional research, and those types of things.

18 Q. And have you had a chance to look at Exhibit
19 33?

20 A. Yes, I have.

21 Q. Is that the type of deficiency letter with
22 which you're familiar?

23 A. Yes, I am.

24 Q. And can you tell the Commission what Exhibit
25 33 is in particular?

1 **A.** It's a deficiency letter with regard to
2 the financial ability to provide service as well as
3 financial statements that you're relying on to fund the
4 utility.

5 **Q.** And for which company?

6 **A.** It is for Skyland Utilities, LLC.

7 **Q.** And exhibit -- I believe that's 14, the
8 confidential exhibit, can you identify that document,
9 please?

10 **A.** Okay. It is a consolidated financial report
11 for Evans Properties and its subsidiaries.

12 **Q.** Was that provided to the Commission staff in
13 response to the Commission staff's deficiency letter?

14 **A.** That's correct.

15 **Q.** And once that was provided, is it true that
16 the application was considered complete, in your
17 opinion?

18 **A.** I believe there are a few other informal
19 aspects; but, yes, the application, I believe, was
20 fairly complete at that time.

21 **Q.** Okay. And you recall being deposed on
22 June 17th, correct?

23 **A.** That's correct.

24 **Q.** I'm going to ask you a few questions from your
25 deposition. Fortunately, Mr. Rehwinkel already asked

1 you most of those, but I want to talk about this lease
2 agreement that's part of the application and get some
3 better understanding for the Commission.

4 The lease agreement that's in the application
5 does not have a specific legal description, is that
6 correct?

7 **A.** That's correct.

8 **Q.** And it's my understanding that -- well, let me
9 rephrase that. If the Commission were to grant
10 Skyland's application for a certificate, what would
11 Skyland's next step be?

12 **A.** Well, they would have to detail out the
13 remainder of the activities that are necessary to
14 implement the utility. And one would be to execute and
15 provide, you know, complete agreements and all of those
16 types of things to the Commission, and then they would
17 go out and start their planning, preliminary design, and
18 problem design for customer services that would occur.

19 **Q.** And the executed lease agreement would include
20 a legal description?

21 **A.** Absolutely.

22 **Q.** And that lease agreement is identical to the
23 one that is part of the application, is that correct?

24 **A.** Yes, it would be identical to that. As I
25 proffered here, there's an extension for time period,

1 you know, automatic renewals to give it more than
2 20 years than the one that's here.

3 Q. And the one that is here or the one that you
4 have proposed to offer if someone asks for it?

5 A. I have been authorized by my client to state
6 that they are willing to enter into that extension in
7 time, if that provides comfort relative to the land
8 issues.

9 Q. Okay. But that would not be offered unless
10 someone in particular asked -- the Commission ordered
11 that to be the case, ordered a new lease agreement, is
12 that correct?

13 A. It could be requested, a new lease agreement,
14 or not, that's correct.

15 Q. Okay. And the reason that -- I'm given to
16 understand that the reason that there is no lease
17 agreement with a legal description right now is because
18 there is an application process with the Department of
19 Environmental Protection after a certification is
20 granted, if it's granted, is that correct?

21 A. Yes. And not only to FDEP, but also to the
22 Southwest Florida Water Management District relative to
23 the water. So there's various applications, permitting
24 applications that may change the actual site, if you
25 will, or legal description of what you do.

1 **Q.** Approximately how long before the Commission
2 would receive the executed lease agreement with the
3 legal description if an original certificate was
4 granted?

5 **A.** Well, that could vary. It could be as quick
6 as six months, it could take 18 months. It depends on
7 the DEP and the water management district, their
8 processes.

9 **Q.** Okay. I'm going to move from the application
10 process to the need for service for Skyland's
11 certificated area. In the application there's letters
12 from Ron Edwards and Emmett Evans (phonetic) in support
13 of its requirement to show that there is a need for
14 service in a proposed area. Is Skyland relying on those
15 letters to state its need for service?

16 **A.** Yes, in part. Also, obviously, yes, because
17 there are other very positive aspects associated with
18 potential service. One of the -- I guess it will be in
19 my rebuttal, but there is one of the arsenic
20 contaminated wells within two feet.

21 **Q.** Well, let me ask another question. Are there
22 some existing homes -- and I think you testified to
23 this -- existing homes and a shop in the area that's
24 proposed by Skyland to be certificated?

25 **A.** Yes.

1 Q. Do you believe that the water and wastewater
2 service currently provided to those homes is reliable?

3 A. It's reliable; it's not what's desired.

4 Q. Are you aware of any problems with the
5 existing wells that serve those homes?

6 A. No problems. But we do not have any -- right
7 now we don't know of any contamination in those wells.

8 Q. Okay. I want to turn now to some questions
9 about the technical ability, and this is actually in
10 your direct testimony on Page 4, Lines 5 through 15.
11 Let me ask you the questions. If you need to return to
12 the testimony, that's fine.

13 It indicates in your testimony that Skyland's
14 technical ability is based on Evans Properties' vast
15 experience in water management and efforts with respect
16 to water conservation measures and innovation resource
17 management techniques for use of nonpotable water. Does
18 Skyland currently have the technical expertise to
19 conduct, operate, and maintain water and wastewater
20 utilities that provide potable water to the public?

21 A. Oh, absolutely. Besides Ron Edwards'
22 historical work with Tropicana, they can contract with
23 professionals. Our firm just is but one to provide such
24 services, and many utilities utilize contract operators
25 to operate their facilities.

1 **Q.** Has Skyland entered into any contract with a
2 contract operator to operate the water and wastewater
3 facilities?

4 **A.** Not yet. We're waiting for certification
5 first.

6 **Q.** Okay. I'm going to next talk about the
7 parcels of property that appear to be noncontiguous and
8 the connection of the rights-of-way. Does Skyland
9 currently have the easements necessary to allow the
10 physical interconnection of the water and wastewater
11 systems to the various noncontiguous parcels that
12 Skyland plans to serve?

13 **A.** No.

14 **Q.** Have there been any talks with the owners of
15 the properties adjacent to the Evans Properties to get
16 the easements?

17 **A.** Not at this juncture that I know of, but in
18 the first six years Phase I is within the parcels, and
19 so there's plenty of time to get those things done.

20 **Q.** So it would be in the future, is that correct?

21 **A.** That's correct.

22 **MS. BENNETT:** I have no further questions of
23 this witness.

24 **COMMISSIONER SKOP:** Thank you. Redirect.

25 **COMMISSIONER EDGAR:** Excuse me.

1 **COMMISSIONER SKOP:** I'm sorry.

2 Commissioner Edgar, you're recognized.

3 **COMMISSIONER EDGAR:** I did have a few. Sorry.

4 I want to come back, if I may for a moment, to
5 some questions that you responded to before lunch by
6 counsel for the local governments as to need.

7 On Page 3 of your prefiled testimony -- I
8 don't know that you need to look at it, but if you want
9 to turn to it, fine. In your prefiled testimony you
10 make the statement that the near term need for services
11 for Skyland are several existing properties. So, first,
12 I have a couple of questions about this statement. The
13 first question is when you are referring to existing
14 properties, could you expand on what you're referring to
15 in that statement?

16 **THE WITNESS:** Yes. Those are the properties
17 owned by Evans Corporation which are programmed for the
18 Phase I activities.

19 **COMMISSIONER EDGAR:** Okay. So in the term
20 there of properties, you mean the land holdings not
21 necessarily customers or the equivalent of customers
22 that have a need currently?

23 **THE WITNESS:** Well, until we have certificate,
24 we can't serve, so --

25 **COMMISSIONER EDGAR:** But yet there is a

1 request or a statement of need.

2 **THE WITNESS:** Need, yes. There is a statement
3 of need as shown in the two letters as well as DEP has
4 provided correspondence -- well, an e-mail that came
5 through to us, and then the Department of Agriculture,
6 also.

7 **COMMISSIONER EDGAR:** Okay. Just so I
8 understand, so in this statement the near term need as
9 to several existing properties, you're talking about
10 projected need?

11 **THE WITNESS:** Yes.

12 **COMMISSIONER EDGAR:** Okay. And then that
13 statement goes on to talk about intensified
14 agribusiness.

15 **THE WITNESS:** That's correct.

16 **COMMISSIONER EDGAR:** Okay. And in one of
17 the -- I think it's referred to as letters of need, in
18 the second one there is a statement, which is signed by
19 Ronald Edwards, it says the need for higher intensity
20 agricultural uses is evident.

21 Could you expand on that, that statement of
22 higher intensity agriculture uses is evident, and/or
23 your statement about intensified agribusiness, what is
24 that referring to?

25 **THE WITNESS:** Yes, Commissioner.

1 First, you know, and Mr. Edwards is a great
2 witness to talk about the business climate on the
3 present citrus and the canker and the greening of citrus
4 and the difficulties associated with that business.
5 There has to be a transition from that business to other
6 businesses. And what we're investigating, we're
7 planting crops, checking on beans and grasses for
8 biofuels as well as to generate biofuels because it's a
9 large -- these are large parcels, and so we're looking
10 to work cooperatively in that issue.

11 We're testing the capabilities there and the
12 water needs associated therewith, as well as wastewater
13 needs. And then we're looking at several other aspects
14 involved in leasing smaller parcels for higher intensity
15 agricultural use, and in those leases providing for the
16 variability of the immigration laws. I mean, people now
17 when you sublease an agricultural property it may be
18 that the work force needs to have housing and other
19 capabilities.

20 On 4,000 acres, of course, there will be
21 several leases, and it will be well in excess of 100
22 individuals relative to that situation. So, therefore,
23 you know, those are multiple public entities -- not
24 Evans, other businesses of the public that would have
25 commercial needs, intensified agribusiness. And

1 intensified agribusiness has more economic benefit than
2 passive agribusiness. So, of course, as a business
3 transaction you want to look at intensified
4 agribusiness.

5 **COMMISSIONER EDGAR:** Although I did grow up in
6 a rural community, I would ask you just for my benefit
7 to explain to me what -- because I truly don't know --
8 when you refer to a passive agribusiness versus a more
9 intensified agribusiness?

10 **THE WITNESS:** Low intensity grazing is more
11 passive. Silviculture that is not irrigated is passive.
12 Plum Creek Timber Company is one of my clients, the
13 largest in the United States, and through the Commission
14 I think we have certificated a couple hundred thousand
15 acres there.

16 **COMMISSIONER EDGAR:** I thank you for the
17 clarification.

18 **CHAIRMAN ARGENZIANO:** We are on redirect.

19 **MR. DETERDING:** Yes. Thank you.

20 **REDIRECT EXAMINATION**

21 **BY MR. DETERDING:**

22 Q. Mr. Hartman, does the Public Service
23 Commission normally require an executed lease with the
24 initial filing of an application for original
25 certificates?

1 **A.** It's not absolutely required, but it's desired
2 many times.

3 **Q.** Does the Commission regularly propose changes
4 to a lease after the final order is issued?

5 **A.** Absolutely that can happen.

6 **Q.** Who are you testifying on behalf of in this
7 case?

8 **A.** On behalf of Skyland, LLC.

9 **Q.** Have you been authorized by Evans Properties
10 to speak on its behalf in this proceeding?

11 **A.** Yes, on certain issues, and I have testified
12 to those.

13 **Q.** Have you been authorized to address need for
14 service by Evans Properties?

15 **MR. HOLLIMON:** Madam Chairman, I'm going to
16 object. This is outside the scope of his prior
17 testimony. There has been no testimony -- his only
18 testimony was that he is authorized as an agent and
19 consultant to Skyland Utilities. Nobody followed up on
20 that. That's the extent of his testimony, and now they
21 are going in a new direction.

22 **MR. DETERDING:** But several of these attorneys
23 have inquired of Mr. Hartman about who he was speaking
24 on behalf of, and I'm trying to clarify that because
25 they have brought into question the request for service

1 and whether or not he drafted these items, whether or
2 not he has personal knowledge of these items, and I'm
3 asking him who he's authorized to speak on behalf of.

4 **CHAIRMAN ARGENZIANO:** Ms. Cibula.

5 **MS. CIBULA:** I think it's proper for redirect,
6 and it should be allowed.

7 **CHAIRMAN ARGENZIANO:** I'm going to allow it.

8 **THE WITNESS:** Evans and Skyland Utilities.

9 **BY MR. DETERDING:**

10 **Q.** And specifically I asked you about the
11 question of the need for service, and who you were
12 authorized to speak on behalf of that with that regard.

13 **A.** Skyland Utilities.

14 **Q.** Were you authorized by Evans Properties to
15 speak to their need for service?

16 **A.** Yes.

17 **Q.** Were you authorized by Evans Properties to
18 speak on their financial ability issues?

19 **MR. HOLLIMON:** Objection, leading.

20 **MR. DETERDING:** I don't think it's leading.
21 He can answer yes or no.

22 **MR. HOLLIMON:** That's not the test.

23 **MR. DETERDING:** The answer is not contained
24 within the question.

25 **CHAIRMAN ARGENZIANO:** Would you ask the

1 question once again?

2 **BY MR. DETERDING:**

3 **Q.** Were you authorized by Evans Properties to
4 speak on their financial ability to fund Skyland
5 Utilities?

6 **A.** Yes.

7 **MS. CIBULA:** He might be able to rephrase the
8 question more into a question instead of making a
9 statement. That's all I could suggest.

10 **MR. DETERDING:** I don't know how I can
11 rephrase it other than to ask him if he has been
12 authorized to speak on the question of financial
13 ability.

14 **THE WITNESS:** Yes. I guess that's my answer.

15 **MR. HOLLIMON:** I can help him with that
16 question.

17 **MR. DETERDING:** No, thank you.

18 **CHAIRMAN ARGENZIANO:** All right. Let's move.
19 It has been answered.

20 **BY MR. DETERDING:**

21 **Q.** Was all the information in what were marked as
22 Exhibit 2, 3, and 4 prepared under your direction and
23 control? These are GCH-1, 2, and 3.

24 **A.** Oh, yes.

25 **Q.** Did you discuss the service request letters

1 with the officers of the property owner?

2 A. Yes, I did discuss it with them.

3 Q. Did they authorize you to present those?

4 A. Yes, they authorized me to include them in the
5 application.

6 Q. On Wastewater Tariff Sheet 4.0 that you were
7 referred to, I believe by Mr. Rehwinkel, that refers to
8 Indian River, Okeechobee, and I believe St. Lucie
9 Counties?

10 A. Mine doesn't.

11 Q. Wastewater Tariff 4.0?

12 A. Oh, wastewater tariff, I'm sorry. I was in
13 the water. If that is in the wastewater tariff then
14 that is a scrivener's error. Yep. That's a page
15 that -- that is a typographical error.

16 Q. So there is no intention by Skyland to serve
17 those counties?

18 A. Not by Skyland.

19 Q. You were asked about the word traverse versus
20 transverse, I believe. Was there an intention to make
21 that distinction within the wording that you were
22 referenced to?

23 A. No.

24 Q. How do utilities normally run lines to
25 interconnect services?

1 **A.** Down the rights-of-way.

2 **Q.** So road right-of-ways?

3 **A.** Typically, or power easements, those types of
4 things.

5 **Q.** Would you expect Skyland to utilize that sort
6 of method for running lines?

7 **A.** Absolutely.

8 **Q.** I think you also mentioned easements --

9 **A.** That's correct.

10 **Q.** -- as a method?

11 **A.** Yes.

12 **Q.** And would you expect Skyland to utilize that
13 to the extent right-of-ways were not available?

14 **A.** That's correct.

15 **Q.** Is there any intention or expectation for
16 Skyland to interconnect Parcels ID 1, 2, 3, and 4 during
17 Phase I?

18 **A.** No.

19 **Q.** Do local governments have costs in rates that
20 are included in the rates of private utilities?

21 **A.** Yes, they have costs that are not included in
22 the rates for private utilities. They have renewals and
23 replacements that show -- they have capital from payment
24 in lieu of taxes, allocated overhead, they have
25 transfers for lawful purposes, all of those things are

1 aspects that are provided for in public government.

2 Q. Do they include costs for debt service?

3 A. Oh, absolutely. The cost of principal and
4 interest at 100 percent.

5 Q. Do private utilities have costs for debt
6 service included in their rates?

7 A. It depends on the used and useful aspects and
8 then also the interest, I think, but not the principal
9 associated with it.

10 Q. You were referred to the funding agreement.
11 Is there a provision within that funding agreement that
12 allows it to be withdrawn unilaterally?

13 A. When I read it just earlier today I did not
14 see that. There is not.

15 Q. You referred to Chapter 180, Florida Statutes,
16 in several questions about -- I believe it was about
17 Figure 3A?

18 A. As a result, I believe it's .02 relative to
19 the reserve area for alternative water systems,
20 wastewater systems, et cetera.

21 Q. Okay. You are talking about something
22 referenced in Chapter 180, Florida Statutes?

23 A. Yes.

24 Q. And is that a place where this reserve area as
25 you call it, is this a place where service is provided?

1 **A.** It can be provided in the area, but it doesn't
2 have to be provided in the area.

3 **Q.** Is it something that is a specific reservation
4 to the city exclusively?

5 **A.** It is not an exclusive reservation. It is a
6 claiming for planning purposes.

7 **Q.** To your knowledge has the Public Service
8 Commission authorized service by a private utility
9 within the five-mile radius of a city government in the
10 past?

11 **A.** Yes, they have.

12 **Q.** Do you interpret the requirement for a utility
13 to transverse county boundaries to relate only to those
14 properties where physical facilities cross those county
15 boundaries?

16 **A.** No.

17 **Q.** What other type of arrangement would fit
18 within that definition, in your mind?

19 **A.** If there is a grouping of properties that are
20 on both sides of a county line, if there is a
21 consolidated operation that serves both counties,
22 administration building, et cetera.

23 **Q.** Has the Commission granted certificates to
24 utilities based upon that type of definition of
25 transversing county boundaries?

1 **A.** To my recollection, yes.

2 **MR. DETERDING:** I don't have anything further.

3 Thank you.

4 **CHAIRMAN ARGENZIANO:** Okay. Do we have any
5 exhibits?

6 **MR. DETERDING:** Yes. I want to move into the
7 record exhibits that I believe were marked as 2, 3, and
8 4, and the Confidential Exhibit 14, Staff Exhibit 14.

9 **CHAIRMAN ARGENZIANO:** Any objection?

10 **MR. HOLLIMON:** Yes.

11 **CHAIRMAN ARGENZIANO:** State your objection.

12 **MR. HOLLIMON:** For what has been identified as
13 Exhibit 2, Pasco County objects first that the
14 application is hearsay. Second, with respect to the
15 water lease and wastewater lease agreements, Pasco
16 County object to these as being irrelevant. With
17 respect to the funding agreement -- excuse me, and
18 they're hearsay. Well, the whole application is
19 hearsay. The funding agreement, Pasco County objects as
20 to its authenticity, and the confidential document, we
21 object as to the authenticity.

22 **MS. KLANCKE:** Can we take up the non -- the
23 hearsay objection, as we stated, you know --

24 **MR. WHARTON:** And I'll respond briefly
25 consistent with our agreement. First of all, let me

1 address the relevancy objection.

2 **MR. HOLLIMON:** I haven't argued my relevancy
3 objection. I would like to argue it before he addresses
4 it if that is --

5 **MS. KLANCKE:** Absolutely. Let's take them up
6 separately. Let's deal with them one at a time, have a
7 ruling on each nonhearsay objection. Have an
8 opportunity for you to present your non-hearsay
9 objection and the ability to respond by the person who
10 is arguing for admission, and then we will make a
11 ruling.

12 **MR. KIRK:** Hernando would join in as to
13 Exhibit Number 2, the application as to those portions
14 of the application either not authenticated or authored
15 by the deponent.

16 **MS. KLANCKE:** Okay. Let's begin with the
17 lease, your objection with respect to the lease, and
18 then we will go from there.

19 **MR. HOLLIMON:** The objection with respect to
20 both the water lease and the wastewater lease agreement
21 with respect to relevance is relevant evidence is
22 evidence that tends to prove or disprove a material
23 fact. In this proceeding, the material fact is required
24 under 367.1213, the utility must own the land or possess
25 the right to continuous use of the land. These lease

1 agreements do not identify any land. So, therefore,
2 they are irrelevant to the purpose of proving ownership
3 or control of the land. I could produce a lease
4 agreement that I have for a storage facility in Pasco
5 County that will be just as relevant, because neither
6 document addresses which land is owned or is controlled.

7 **COMMISSIONER SKOP:** Madam Chair.

8 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

9 **COMMISSIONER SKOP:** I hate to intercede, but
10 just as a point of clarification. Just a point of
11 clarification to make sure I understood your argument so
12 I could follow along is that it is not relevant to the
13 extent that the lease agreement did not have the legal
14 descriptions attached to it.

15 **MR. HOLLIMON:** Correct. Because the purpose
16 of the lease agreement, or the material fact the lease
17 agreement is offered to demonstrate is ownership or
18 control of land. There is no land identified,
19 therefore, the document is irrelevant to prove that
20 material fact.

21 **MR. WHARTON:** The Commission's interpretation
22 of Chapter 367 is entitled to great weight, that is what
23 the authority says. The Commission in the past has
24 never interpreted that particular subsection as
25 requiring a prospectively certificated utility to go

1 acquire the land, land that it may have no use for if
2 the certificate is, in fact, denied. The form of lease,
3 the testimony has accompanied the lease, and the other
4 evidence we believe is indicative of the satisfaction of
5 that criteria consistent with past Commission practice
6 and we would maintain that it is relevant on that basis.

7 **MS. CIBULA:** I agree with Mr. Wharton. In the
8 past we have never required to have the description on
9 the lease, and that the information is relevant and
10 should be admitted.

11 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

12 **COMMISSIONER SKOP:** Thank you. Just a
13 clarification to staff.

14 At this point in the proceeding I tend to
15 agree with the staff recommendation although I will
16 yield to the Chair. At some future point in time,
17 though, if the Commission were to render an order either
18 granting or denying the requested certificate, the
19 Commission could impose requirements that would require
20 the utility to specify those legal descriptions?

21 **MS. CIBULA:** That's correct, and that is what
22 we normally do.

23 **COMMISSIONER SKOP:** Thank you.

24 **CHAIRMAN ARGENZIANO:** Anything, Commissioner
25 Edgar?

1 I would allow the exhibit. We need to number
2 that, then. I'm sorry, that's right, it is numbered.
3 Which number is that?

4 **MS. KLANCKE:** It has been previously
5 identified as Number 2 on the Comprehensive Exhibit
6 List.

7 **CHAIRMAN ARGENZIANO:** I have it right here,
8 I'm sorry. Thank you. Okay, next.

9 **MR. HOLLIMON:** With respect to exhibits, I
10 guess it's Exhibit 14. The testimony of the witness was
11 that he had never seen the document that was submitted,
12 the confidential document. He had not seen it prior to
13 June 17th, I believe it was, and the document was
14 submitted prior to that. Therefore, there is no way he
15 can authenticate that document.

16 **MS. KLANCKE:** I think we're putting the cart
17 in front of the horse with the objection. We are
18 currently -- it's my understanding that Skyland is
19 trying to move in Exhibits 2, 3, 4 --

20 **CHAIRMAN ARGENZIANO:** And 14.

21 **MS. BENNETT:** Fourteen is on staff -- staff is
22 also moving 14 in. We have not yet done that, so I
23 wonder if maybe we should both talk about it at the same
24 time, since staff would move it in, also.

25 **MR. WHARTON:** Well, and the objection right

1 now to 2, 3, 4, and 14 is hearsay? That's what I'm
2 hearing, but I thought we were going to just state and
3 move on.

4 **MR. HOLLIMON:** I made an objection to 2 on
5 hearsay basis; on 4 on a hearsay basis; and 14 on a
6 hearsay basis.

7 **MR. WHARTON:** Okay.

8 **MS. KLANCKE:** Perhaps if it pleases the
9 Chairman we could hear the objection with respect to
10 Exhibit Number 4, which is what Skyland is trying to
11 move into the record.

12 **CHAIRMAN ARGENZIANO:** Let's do that.

13 **MR. HOLLIMON:** The hearsay objection?

14 **MS. KLANCKE:** Number 4 is with respect to
15 hearsay?

16 **MR. HOLLIMON:** Yes.

17 **MR. WHARTON:** I think all of the remaining
18 ones are hearsay. So I think, Ms. Klancke, that we
19 could do them wholesale, if that is the orderly way to
20 proceed, and I think I should state my position and we
21 can move on.

22 First of all, with regard to 2, 3, and 4, we
23 maintain they are not hearsay. They are statements
24 being made today in this proceeding as is this whole
25 application. The case law says that this is part of the

1 application process, and so we maintain they are not
2 hearsay. We also maintain that they are the type of
3 information commonly relied upon by reasonably prudent
4 persons in the conduct of their affairs and should be
5 admissible on that basis. And also that with regard to
6 14, which I would say is hearsay -- my prior remarks
7 were 2, 3, and 4 -- it clearly is supplementation or
8 explanation of other evidence.

9 You have a plethora of testimony in this
10 proceeding, in the depositions, in the funding agreement
11 from Mr. Hartman's voice, from Mr. Edwards, from one of
12 his exhibits about the funding. The financial
13 statements have been in the Commission's files. They,
14 too, are the kind of information normally relied on, but
15 if they are deemed to be hearsay they should be
16 admissible as supplementation or explanation of other
17 evidence.

18 **MS. KLANCKE:** Okay. Let's get this train back
19 on the tracks. Since we have addressed all of the
20 objections with respect to numbers 2, 3, and 4, if it
21 pleases the Commission, can we move those into the
22 record at this time?

23 **CHAIRMAN ARGENZIANO:** Any comments by my
24 colleagues? I think that's what we need to do. Let's
25 move those into the record and move on.

1 (Exhibit 2, 3 and 4 admitted into the record.)

2 **MS. KLANCKE:** It is my understanding that
3 staff also has some exhibits associated with this
4 witness' testimony.

5 **CHAIRMAN ARGENZIANO:** You're recognized.

6 **MS. BENNETT:** Staff also moves Exhibit 14, 15,
7 and 33 into the record. Fourteen is the confidential
8 document that Skyland wanted to place into the record,
9 15 is the deposition of Mr. Hartman, and 33 is the
10 deficiency letter that staff sent to Skyland at the
11 beginning of the proceeding.

12 **MS. KLANCKE:** I believe that we started to
13 hear -- we heard the response to the objection, but we
14 had only started to hear the objection with respect to
15 14. Is it pure hearsay?

16 **MR. HOLLIMON:** No. There was an authenticity
17 objection with respect to Witness Hartman. He has never
18 seen the document prior to it being submitted to the
19 Commission, therefore he can't authenticate that
20 document.

21 **MS. BENNETT:** Might I? Staff would be
22 offering this as an exception to the hearsay rule as a
23 business record that was submitted as part of the
24 Commission's process.

25 **MR. HOLLIMON:** May I respond to that?

1 **CHAIRMAN ARGENZIANO:** Yes.

2 **MR. HOLLIMON:** There is a well recognized
3 predicate that has to be established for a business
4 record hearsay exception. None of that predicate has
5 been laid here. As a matter of fact, Mr. Hartman is not
6 even competent to lay that predicate. So, respectfully,
7 a business record requires that the record be made
8 during the course of normal business, that it be
9 transcribed by somebody with knowledge. There's four
10 steps that are required, and none of those have been met
11 here.

12 **CHAIRMAN ARGENZIANO:** Staff.

13 **MS. CIBULA:** I would recommend that they be
14 allowed in.

15 **CHAIRMAN ARGENZIANO:** I know you're not happy
16 right now. I think we need to allow that in and move
17 on.

18 **MR. WHARTON:** Both 14 and 15?

19 **MS. BENNETT:** And 33 staff moves into the
20 record.

21 **MR. HOLLIMON:** I'm sorry, what were the other
22 ones?

23 **CHAIRMAN ARGENZIANO:** 14, 15, and 33.

24 (Exhibit 14, 15 and 33 admitted into the
25 record.)

1 **MR. HOLLIMON:** I have a clarification and
2 possibly an objection with respect to 15, if I may.

3 **CHAIRMAN ARGENZIANO:** Okay. You're
4 recognized.

5 **MR. HOLLIMON:** The deposition transcript of
6 Mr. Hartman, which is being moved into the record, the
7 Rules of Civil Procedure define what uses that can be
8 made of a deposition transcript in a proceeding. I
9 understand that the Rules of Civil Procedure with
10 respect to discovery are at play in this proceeding.
11 1.330 is the Rule of Civil Procedure that discusses the
12 use of deposition transcripts at trial. So to the
13 extent that there is a use of a deposition transcript
14 that is not consistent with the requirements of that
15 rule, I object. However, that use has not been made and
16 won't be made until somebody files a brief. So my
17 objection is that any use -- or my statement is that any
18 use of a deposition transcript entered into this record
19 should only be as consistent and allowed by Rule 1.330.

20 **CHAIRMAN ARGENZIANO:** Staff, if you can
21 address that.

22 **MR. WHARTON:** If we may respond briefly.

23 **CHAIRMAN ARGENZIANO:** Yes.

24 **MR. WHARTON:** Rule 1.330, Sub (a), Sub (3),
25 clearly states the deposition of a witness, whether or

1 not a party, may be used by any party for any purpose if
2 the court finds the witness is an expert or skilled
3 witness. By any party for any purpose, and we think it
4 should come in for the truth of the matter asserted. We
5 understand that depositions taken by the other parties
6 are also probably going to come in.

7 **MS. CIBULA:** And that is how we have always
8 interpreted that rule, and Mr. Hartman is an expert so
9 we should allow the deposition in.

10 **MR. HOLLIMON:** Which is exactly why in my
11 motion to compel we ask for identification of which part
12 was expert testimony and which part was not. That's
13 very important.

14 **MR. WHARTON:** I'm more than willing to revisit
15 that issue. I still think that what we did was
16 responsive.

17 **CHAIRMAN ARGENZIANO:** I am going to move to
18 allow. And that was on 15. Did you have an objection
19 on 33?

20 **MR. HOLLIMON:** Excuse me. On Mr. Hartman's
21 deposition it also is hearsay because it is an
22 out-of-court statement offered for the truth of the
23 matter asserted.

24 Okay, 33. No objection to 33.

25 **CHAIRMAN ARGENZIANO:** Okay. Show that being

1 entered into the record.

2 Okay. Are we ready to move on? The next
3 witness.

4 **MR. KIRK:** Madam Chair, we had redirect.

5 **CHAIRMAN ARGENZIANO:** I'm sorry, go right
6 ahead.

7 **MS. KLANCKE:** I apologize. Staff was not
8 clear with respect to their counsel to the Commission's
9 question. It is only the entity or party that is
10 proffering the witness that is afforded the ability to
11 redirect. The parties that are not proffering the
12 witness can cross-examine the witness, whereupon the
13 party who is proffering the witness will have the
14 ability to redirect. In the same way when your
15 witnesses come up, Skyland will not be afforded two
16 attempts to cross-examine the witness.

17 **MR. WHARTON:** And I won't say I have never
18 been in a Commission proceeding where there wasn't
19 recross allowed, but here with the multiplicity of
20 parties I think it would be the best practice not to
21 allow us to do it or them.

22 **MR. KIRK:** Because there was a couple of new
23 issues that was raised specifically related to the water
24 lease agreement; I wanted to just ask a couple of
25 questions about.

1 **COMMISSIONER EDGAR:** Madam Chair, if I may.
2 And I apologize, Ms. Klancke. To this I would, I think,
3 agree with Mr. Wharton. I am familiar with on a few
4 very narrow, very limited, and unusual instances where
5 recross has been allowed and then always re, re, re,
6 whatever we want to term it. But it is unusual and very
7 narrow and has always been. And I agree with the
8 decision of the Chair.

9 Madam Chair, with that in mind, would it be
10 possible to take five minutes?

11 **CHAIRMAN ARGENZIANO:** I was going to do that
12 as soon as we entered the exhibits, but I think since we
13 are going on let's do that, and let's give our
14 transcriber also a break.

15 **COMMISSIONER EDGAR:** Thank you.

16 **MR. HOLLIMON:** Madam Chair, I'm sorry. I just
17 had -- well, has this witness been excused yet?

18 **CHAIRMAN ARGENZIANO:** No. Let's take a
19 five-minute break.

20 **COMMISSIONER EDGAR:** Thank you.

21 (Recess.)

22 **CHAIRMAN ARGENZIANO:** First, off did we get
23 all the confidential packets collected? Okay. And they
24 are all collected? All right. I think, given what I
25 have heard, we're going to disallow any further

1 redirect, but remind you that you have rebuttal where
2 you may be able to ask some of those questions when they
3 come up the next time. Please keep that in mind.

4 And let's from there -- I'm sorry, you are
5 excused. Thank you very much. I forgot you were still
6 there. Thank you. We need to call our next witness.

7 **MS. KLANCKE:** Staff would like to call Dan
8 Evans.

9 **DANIEL W. EVANS**

10 was called as a witness on behalf of Commission staff, and
11 having been duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 **BY MS. KLANCKE:**

14 **Q.** Have you previously been sworn in, Mr. Evans?

15 **A.** Yes, I have this morning.

16 **Q.** Excellent. Would you please state your full
17 name and business address for the record?

18 **A.** My name is Daniel Wade Evans. My business
19 address is 2555 Shumard Oak Boulevard, Tallahassee,
20 Florida.

21 **Q.** By whom are you employed and in what capacity?

22 **A.** I am employed with the Florida Department of
23 Community Affairs. I am employed in the capacity of
24 Principal Planner and Assistant Administrator of the
25 Central Florida Region.

1 **Q.** Would you briefly describe your skills and
2 expertise in the area of land use planning?

3 **A.** I worked for 7-1/2 years at DCA from 2000
4 to -- excuse me, from 2003 to 2010, and I worked at DCA
5 previously from 1984 to 1997, also in similar
6 capacities. I also worked 5-1/2 years as a consultant
7 for Hazard Mitigation Recovery Services, and we did a
8 lot of floodplain management work, a lot of flood loss
9 studies. Some of it got into comprehensive planning, as
10 well.

11 **Q.** Have you Prefiled Direct Testimony in this
12 docket consisting of four pages?

13 **A.** I have.

14 **Q.** Do you have any changes or corrections to that
15 prefiled testimony?

16 **A.** No, I do not.

17 **MS. KLANCKE:** Chairman, at this time I would
18 like to request that the Direct Prefiled Testimony of
19 Daniel Evans be interpreted into the record as though
20 read.

21 **COMMISSIONER SKOP:** The Direct Prefiled
22 Testimony of Witness Daniel Evans will be entered into
23 the record as though read.

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DIRECT TESTIMONY OF DANIEL W. EVANS

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Q. Please state your name and business address.

A. My name is Daniel W. Evans. I am employed by the Department of Community Affairs (DCA). My Business address is 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

Q. Please summarize your educational background.

A. I hold a Bachelor of Arts degree in Social Science Interdisciplinary Studies from the University of West Florida in Pensacola, 1982. My undergraduate field of study was environmental science. I hold a Master of Public Administration degree from the University of West Florida, 1984. My graduate field of study was coastal zone management.

Q. Please describe your work experience.

A. My work experience includes 26 years in the fields of urban and regional planning, floodplain management, and hazard mitigation planning. I worked from 1984 to 1997 for the DCA, Divisions of Community Planning and Emergency Management. I worked from 1997 to 2003 as a partner in the firm of Hazard Mitigation and Recovery Services, Inc. For the last seven years, I have worked for the Department's Division of Community Planning as a community planner, senior planner, and principal planner conducting compliance reviews of comprehensive plan amendments and developments of regional impact. My job has involved the review of land use amendments and activities within Indian River, Dade, Monroe, Pinellas, Manatee, Hernando, and Polk Counties. Specific duties include the preparation of detailed review reports, oral presentations, negotiations with local governments and developers, and the provision of technical assistance to local governments and private citizens.

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

A. My testimony is given pursuant to a Memorandum of Understanding executed between the DCA and the Public Service Commission (PSC) in which the Department provides

1 | information to the PSC concerning local government comprehensive plans and the need for
2 | services in the application area.

3 | Q. Are you familiar with the Skyland Utilities, LLC (Skyland) application for water and
4 | wastewater certificates?

5 | A. I am familiar with the application. I have reviewed the application, relevant portions
6 | of the comprehensive plans for Pasco and Hernando Counties, as well as the pre-filed
7 | testimony of witnesses in this docket who have reviewed the application.

8 | Q. What is the DCA's position with respect to whether the Skyland application is
9 | consistent with the currently approved Pasco County Comprehensive Plan?

10 | A. The application is inconsistent with objectives and policies of the Pasco County
11 | Comprehensive Plan which limit the extension of public facilities in agricultural and rural land
12 | areas, encourage the conversion of private utilities to publicly operated utilities, and encourage
13 | the replacement of package treatment plants with regional wastewater plants. In particular,
14 | Policy SEW 3.2.6 of the Infrastructure Element of the Pasco County Comprehensive Plan
15 | prohibits the extension of central water and sewer services within the Northeast Pasco Rural
16 | Area (most of the proposed service area within Pasco County is located within the Northeast
17 | Pasco Rural Area), except under very limited circumstances, which the application does not
18 | meet.

19 | Q. What is the DCA's position with respect to whether the Skyland application is
20 | consistent with the currently approved Hernando County Comprehensive Plan?

21 | A. The application is inconsistent with objectives and policies in the Hernando County
22 | Comprehensive Plan which discourage the use of public facilities in the Rural Land Use
23 | Category, discourage urban sprawl, require the provision of infrastructure in accordance with
24 | the long range plans of the County, and encourage the consolidation of wastewater and potable
25 | water services within the County.

1 Q. What is the DCA's position with respect to whether the Skyland application is
2 consistent with the currently approved City of Brooksville's Comprehensive Plan?

3 A. The Department's official position stated in its Letter of December 7, 2009, to the PSC
4 which is attached hereto as Exhibit DWE 1 did not identify that the application was
5 inconsistent with any provision of the City of Brooksville's Comprehensive Plan. Further,
6 none of the proposed service territory is contained within the area encompassed within
7 Brooksville's Comprehensive Plan.

8 Q. Has the DCA received a request by either Pasco County or Hernando County to amend
9 the existing comprehensive plan for the area in which Skyland proposes to provide water and
10 wastewater service?

11 A. No.

12 Q. Describe the process to amend a comprehensive plan.

13 A. Generally amendments are transmitted to the Department as a proposed amendment
14 (there are exceptions for some types of amendments). Within 60 days of the receipt of a
15 complete amendment package from the local government, the Department reviews the
16 amendment for consistency with Chapter 163, F.S. and Rule 9J-5, Florida Administrative
17 Code (F.A.C.), and issues an Objection, Recommendations, and Comments (ORC) report.
18 On receipt of the ORC report, the local government generally has 60 days (there are
19 exceptions for DRIs and EAR-based amendments) in which to adopt, adopt with changes, or
20 not adopt the proposed amendment. If the local government adopts the amendment and
21 transmits it to the Department, the Department must issue a notice of intent to find the
22 amendment in compliance or not in compliance with state law within 45 days. Affected
23 parties may file a challenge to the adopted amendment within 21 days of the issuance of a
24 notice of intent. If no challenge is filed, the amendment is in effect.

25 In the review of comprehensive plans, the Department frequently considers such issues

1 as suitability of the site for the intended land use, urban sprawl, the energy efficiency of the
2 land use pattern, the need for the land use based on growth trends in the community, the
3 availability of water facilities and supplies, the availability of sanitary sewer facilities, the
4 adequacy of transportation facilities to accommodate the amendment, the availability of public
5 school facility resources, and consistency with the local government comprehensive plan.

6 Q. Does this conclude your testimony?

7 A. Yes it does.

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1 **BY MS. KLANCKE:**

2 Q. Mr. Evans, did you also file Exhibit Number
3 DWE-1 to your testimony?

4 A. Say it again. What is DWE-1?

5 Q. Your exhibit attached to your Direct Prefiled
6 Testimony?

7 A. That is the letter from DCA, the December 7th
8 letter? Yes, I did.

9 Q. Do you have any changes or corrections to this
10 exhibit at this time?

11 A. No, I do not.

12 **MS. KLANCKE:** Commissioner, I'd like to
13 request at this time that -- let me give you an idea of
14 where I am going with this. One of his exhibits that
15 staff has listed on their prefiled -- on their Composite
16 Exhibit List is his deposition. We are, after the
17 culmination of his cross-examination, going to ask that
18 that exhibit be placed into the record. As a predicate
19 determination, I would like to request that this
20 Commission make a ruling that this witness is an expert
21 in the area of land use planning and that he is a
22 skilled witness representing the Department of Community
23 Affairs.

24 **COMMISSIONER SKOP:** Ms. Cibula.

25 **MS. CIBULA:** I guess we can first see whether

1 any of the parties have objections.

2 **MR. WHARTON:** We do not oppose the request.

3 **COMMISSIONER SKOP:** Thank you, Mr. Wharton.

4 **MR. KIRK:** No opposition from Hernando.

5 **MR. HOLLIMON:** No objection.

6 **COMMISSIONER SKOP:** Hearing no objection, the
7 deposition will be entered into the record.

8 **MS. CIBULA:** At this point we're just saying
9 that he is an expert.

10 **COMMISSIONER SKOP:** Expert, okay. Excuse me.

11 **BY MS. KLANCKE:**

12 **Q.** Have you prepared a summary of your testimony
13 for this Commission?

14 **A.** I have prepared a brief summary basically from
15 our Department's December 2009 letter which basically
16 outlines our position on it. The Department is
17 concerned about the fact that the service area was not
18 wholly contiguous, but was grouped in several clusters
19 in a broad area, and we did not feel that it maximized
20 the use of existing public facilities, which is one of
21 the criteria related to indicators of urban sprawl in
22 Rule 9J-5.

23 We are also concerned with the fact that the
24 proposed utility service area would promote a land use
25 pattern that is inconsistent with the discouragement of

1 urban sprawl and it did not promote energy efficient
2 land use patterns and would help to reduce greenhouse
3 gas emissions. The patterns we saw was just an
4 inefficient land use pattern.

5 The first phase of the proposed application
6 had four parcels which were scattered across two
7 counties that did not appear to us to be connected to
8 one another. It was difficult to see to us how this
9 would help to maximize the use of existing public
10 facilities.

11 Another thing that we were concerned about in
12 the application is the fact that there did not seem to
13 be a demonstrated need for the application as very few
14 people actually live in the parcels that are actually
15 involved.

16 One of the other things that we did with
17 regard to the review of this application is we examined
18 the assertions from Pasco County and Hernando County
19 that the application was inconsistent with the
20 comprehensive plans of both counties based on the fact
21 that the application is inconsistent with policies in
22 both of the plans which discouraged the proliferation of
23 urban sprawl and would actually limit the extension of
24 public utilities into agricultural and rural areas.
25 That is the extent of my --

1 **MS. KLANCKE:** Thank you. Commission, I would
2 like to tender this witness for cross-examination at
3 this time.

4 **COMMISSIONER SKOP:** Granted. Mr. Wharton.

5 **MR. WHARTON:** Thank you, Commissioner.

6 **CROSS EXAMINATION**

7 **BY MR. WHARTON:**

8 **Q.** Good afternoon Mr. Evans.

9 **A.** Good afternoon.

10 **Q.** Do you have a copy of your prefiled testimony
11 in front of you?

12 **A.** Yes, I do.

13 **Q.** Okay. Show me anywhere in your prefiled
14 testimony -- and maybe it's there and I'm just seeing
15 it -- where you discuss this noncontiguous, this
16 non-contiguity issue in either the letter or your
17 prefiled testimony?

18 **A.** The letter mentioned it. Basically, the
19 second paragraph it says -- the last sentence.

20 **COMMISSIONER SKOP:** Mr. Evans, the letter
21 being in your Exhibit 1?

22 **THE WITNESS:** Yes, the letter of December 7th,
23 2009.

24 **COMMISSIONER SKOP:** Thank you.

25 **THE WITNESS:** Okay. That is what I was

1 reading from in my statement. It says in the second to
2 the last sentence in Paragraph 2, it says the service
3 area is not wholly contiguous, but is grouped in several
4 clusters within a broad area. For Phase I, the utility
5 will rely on the use of package treatment plants to
6 provide wastewater services. So it did mention it in
7 the letter.

8 Q. Well, you did mention it, but you didn't
9 express any of the concerns in your testimony or in this
10 letter that you just mentioned in your summary, did you?

11 A. That's true.

12 MR. WHARTON: I move to strike that portion of
13 the summary.

14 COMMISSIONER SKOP: Ms. Cibula.

15 MS. CIBULA: I guess I'd ask staff, first, to
16 respond to that.

17 COMMISSIONER SKOP: Ms. Klancke.

18 MS. KLANCKE: I think that as he has just
19 provided, the letter from the Department of Community
20 Affairs of which he is currently appearing as a
21 representative clearly contemplates the concerns that
22 they just raised, including the contiguous or
23 noncontiguous opinion that is provided in the second to
24 the last sentence of the second paragraph.

25 COMMISSIONER SKOP: Mr. Evans, in rendering

1 your testimony before this Commission, did you
2 reasonably rely upon the letter dated September 7th,
3 2009?

4 **THE WITNESS:** Say that again, sir.

5 **COMMISSIONER SKOP:** In rendering your
6 testimony before this Commission, did you reasonably
7 rely, as an expert witness, on your letter dated
8 September 7th, 2009?

9 **THE WITNESS:** Yes. I read -- when I gave my
10 summary I read from this letter.

11 **COMMISSIONER SKOP:** Ms. Cibula.

12 **MS. CIBULA:** I guess the thing that bothers me
13 is he specifically said that his summary didn't
14 address -- I mean, didn't address the stuff in his
15 testimony, so I don't know whether he wants to clarify
16 that.

17 **MR. WHARTON:** You know what, Commissioner
18 Skop, I'll withdraw the objection. I would have asked
19 him about that in the deposition.

20 **COMMISSIONER SKOP:** All right. Thank you, Mr.
21 Wharton.

22 **BY MR. WHARTON:**

23 Q. All right. Let me ask you something about
24 Exhibit DWE-1. You have said that the certificated
25 territory that Skyland seeks -- I'm looking at the

1 second paragraph in the Hernando County comp plan --
2 allows one unit per ten acres, is that right?

3 A. That's correct. That's my understanding.

4 Q. And under the Pasco County comp plan, it
5 allows one unit per ten acres or in certain areas one
6 unit per five acres as set forth in the letter, correct?

7 A. That's correct.

8 Q. Okay. Isn't it true that the opinions you
9 have given and the letter that you have offered as an
10 exhibit on behalf of DCA are not unique to Skyland? In
11 other words, there's not something about Skyland that
12 you object to, is that true, in particular as a company?

13 A. No, it's the pattern of utility service as
14 extended into rural areas is what we have a problem
15 with.

16 Q. And I'm sorry to interrupt you, sir. So if
17 this was any other entity in the same place proposing
18 the same thing, your objections would be the same?

19 A. Yes.

20 Q. Do you have a copy of your deposition with
21 you?

22 A. Yes, I do.

23 Q. Okay. Well, you don't need to look at it time
24 right now, I'm just checking.

25 A. Okay.

1 Q. All right. So let me understand what we have
2 got here in Exhibit DWE-1, you wrote this letter, right?

3 A. I wrote it in conjunction with my supervisor.

4 Q. Okay. Mr. McDaniel signed it, but you wrote
5 it for him?

6 A. I was the author, yes, sir.

7 Q. All right. Now, isn't it true that before you
8 wrote this letter you contacted the planners in Hernando
9 and Pasco County?

10 A. Well, let me clarify that. What occurred is
11 that I received an e-mail from Hernando County just
12 forwarded to me by my supervisor, Bernard Piawah. After
13 reading that, I already had the application for Skyland
14 Utilities on my desk. After reading their comments, I
15 did contact Hernando County. At that time the e-mail
16 from Hernando County also indicated that Pasco County
17 had filed a document which was available through the PSC
18 website, and I went through the PCS website and I looked
19 up their comments.

20 Q. Let me ask it this way. Isn't it true that it
21 was communicated to you before you wrote this letter
22 that the planners of both counties were of the opinion
23 that the application was inconsistent with the comp
24 plans of their respective counties.

25 A. I had conversations with planners from both of

1 the counties, and they did indicate to me that they
2 believed it was inconsistent.

3 Q. That was before you wrote the letter.

4 A. That was before I wrote the letter.

5 Q. And isn't it true that you told me in
6 deposition that it was difficult for you to say whether
7 you would have written the same letter if they would
8 have communicated to you that they did not believe the
9 application of Skyland was inconsistent with their
10 respective comp plans?

11 A. I did say that at the deposition.

12 Q. Okay. Do you stand by that testimony?

13 A. Yes.

14 Q. All right. So part of the reasoning in your
15 letter reflected the fact that you had received these
16 communications with local planners that the two county
17 governments said they objected, true?

18 A. That is true.

19 Q. Now, you are aware of other cases where DCA
20 has written similar letters as DWE-1, and yet in those
21 cases the Commission ultimately certificated the
22 utility, correct?

23 A. That's correct. I'm aware of at least three
24 case.

25 Q. And the three cases that you mentioned to me

1 in deposition were Babcock Ranch, Sun River Utilities
2 and NFMU, correct?

3 **A.** Yes.

4 **Q.** Now, there might be others, but if there are,
5 you don't know about them as we sit here today?

6 **A.** That's correct.

7 **Q.** Okay. And yet isn't it true that you are not
8 aware of any instances in which the Department wrote a
9 similar letter and the PSC granted a certificate and
10 urban sprawl actually occurred within those certificated
11 territories?

12 **A.** Well, what you're referring to, the examples
13 that you are referring to are fairly recent. In the
14 case of North Florida Utility, the amendment was just
15 reviewed, they were still in the proposed phases.

16 In that context, I can't say there is urban
17 sprawl on the ground, but the Department has raised
18 objections relating to two of those which I know, which
19 is Sun River and North Florida Utilities relating to
20 urban sprawl.

21 **Q.** As we sit here today, are you aware of any
22 cases in which the Department made a similar objection
23 and the PSC certificated the utility and urban sprawl
24 resulted?

25 **A.** In the context you're saying, I can't say

1 that.

2 Q. Now, you talked a little bit in your summary
3 about need. But isn't it true that to the extent the
4 letter talks about need, you are only repeating there
5 what Pasco and Hernando County told you in their
6 e-mails, that there was a lack of need?

7 A. Well, that's partially true, but I also read
8 the application. I did not see a justification of need
9 in the application, except for the letters.

10 Q. So this is something that you did subsequent
11 to the writing of the letter?

12 A. I did. I reviewed the application and I also
13 reviewed the comprehensive plans of both of the
14 counties. I examined all of the policies that were
15 cited in there, and we came up with our own independent
16 assessment of what the county said was legitimate.

17 Q. I thought you said you did those things before
18 you wrote the letter?

19 A. We did do those things before we wrote the
20 letter.

21 Q. Well, do you recall that I took your
22 deposition on June 9th, 2010?

23 A. Yes.

24 Q. And on Page 38, Line 24 thereof:

25 "Question: So, in other words, you are just

1 repeating there what Pasco and Hernando County had told
2 you in the e-mails and the conversations we talked
3 about?

4 "Answer: At the time I wrote this letter,
5 yes, I would say that is correct."

6 Do you stand by that testimony?

7 A. I suppose I have to, since I said it.

8 Q. I mean, we're talking about need there,
9 weren't we, the line of the letter referring to need?

10 A. That's true, but I just wanted to clarify that
11 we did review the applications, we did review all the
12 policies, and we agreed with them.

13 Q. Fair enough.

14 Now, in this letter, you have referred to --
15 let me see if I can find that reference. Ah! In the
16 first line of the third paragraph, you have said -- and
17 by you, I mean, first of all, you wrote this letter,
18 correct?

19 A. Right.

20 Q. You drafted the first draft?

21 A. Right.

22 Q. You are also here representing the Department
23 of Community Affairs today?

24 A. That's correct.

25 Q. The first line says, "The Department is

1 concerned about the provision of utility services to
2 these rural and agricultural areas because it will lead
3 to premature conversion of rural, agricultural land to
4 urban uses and promote urban sprawl."

5 Rather than go round and round like we did in
6 your deposition, will you admit now that that sentence
7 should say it may lead to those things rather than will
8 lead?

9 **A.** May may have been a better way to phrase it,
10 but that is the Department's official position.

11 **Q.** But you don't know that it will lead to those
12 things, do you?

13 **A.** Only what I have said earlier, that it has
14 lead in those two cases to objections being filed by the
15 Department against the amendments which increased
16 intensities and densities as a result of a PSC action.

17 **Q.** But, once again, you don't know that even in
18 that circumstance that it will lead to urban sprawl, do
19 you, you are --

20 **A.** They haven't been built, that's all I can say
21 at this point.

22 **Q.** But you would agree the answer to my question
23 is yes?

24 **A.** I can't really contradict the Department's
25 official position. We have an ORC report out there that

1 says -- raised a concern related to urban sprawl, I
2 can't really contradict that here.

3 Q. Well, you have an ORC report for what area?

4 A. For Charlotte County 10-1, which was the north
5 utility the North Fort Myers Utility, and we have a
6 previous ORC report concerning Sun River as well.

7 Q. Well, maybe I've confused you. We talked
8 about those utilities earlier. I'm now referring to the
9 sentence in DWE-1 where you say the Department is
10 concerned with the provision of utility services to
11 these rural and agricultural areas -- is concerned about
12 the provision of these utilities services to these rural
13 and agricultural areas because it will lead -- you gave
14 me such a good answer at the beginning and now you are
15 backtracking. You don't really know that the provision
16 of utility services to these particular areas will lead
17 to the things you mentioned in the letter, do you?

18 A. Well, I think there is a fairly well-defined
19 correlation between the provision of infrastructure and
20 land use development and intensity. As I mentioned in
21 the deposition also, I did some research on-line prior
22 to writing the letter, and I found a number of articles,
23 you know, by various -- some from the University of
24 Florida, some through the United Nations, some through a
25 Canadian website that all pointed to the fact that the

1 provision of infrastructure does make land more valuable
2 and makes it more -- enables it to be developed. I
3 think there is an established correlation between the
4 two, and I think that is why it is in Chapter 163,
5 stresses such an importance on the provision of
6 infrastructure as relating to planning.

7 **MR. WHARTON:** I would ask that the Chairman
8 allow me to restate my question with specificity, which
9 I will do, and then instruct this witness to answer yes
10 are no. It's really a simple point.

11 **COMMISSIONER SKOP:** Mr. Wharton may reframe
12 the question, and the witness will answer to the best of
13 his ability.

14 **BY MR. WHARTON:**

15 **Q.** Isn't it true, sir, that as we sit here today
16 you don't know whether or not the provision of utility
17 services to these rural and agricultural areas will lead
18 to premature conversion of rural agricultural land to
19 urban uses and promote urban sprawl?

20 **A.** I can't say that. I can't say that it will be
21 what I'm saying.

22 **Q.** Thank you. Now, I asked you earlier a
23 question that was limited to cases in which the DCA has
24 made the type of objection or at least had written a
25 letter similar to the letter that's attached to your

1 testimony. Let me ask you a different question now.

2 Isn't it true that you can't think of any
3 instances where the granting of a PSC certificate has
4 resulted in urban sprawl?

5 A. I don't have any personal knowledge.

6 Q. Now, isn't it true that local governments have
7 a measure of control over growth in rural areas?

8 A. Yes, they do.

9 Q. What are they?

10 A. The comprehensive plan land development
11 regulation.

12 Q. What about things like zoning?

13 A. Well, that's partially what I'm referring to,
14 land development regulation.

15 Q. Permitting?

16 A. Uh-huh.

17 Q. And you do agree, don't you, that after the
18 issuance of a PSC certificate, local governments retain
19 that measure of control?

20 A. They maintain the measure of control, but as I
21 stated also in my deposition, you take away the issue of
22 infrastructure, the argument for making a case against
23 urban sprawl is a lot significantly reduced in my
24 opinion.

25 Q. Okay. Let me make sure that I understand what

1 you're saying?

2 A. Uh-huh.

3 Q. Basically, what you are saying, correct, is
4 that if the lands are certificated, the land owner might
5 be in a position to make a more persuasive argument to
6 the governmental body that will be making that decision.
7 Is that a correct characterization of the concern you
8 just expressed?

9 A. That is a correct characterization. And it
10 would also be easier for the Department, being the
11 reviewer, in my case, if I was trying to make an
12 argument for urban sprawl or against urban sprawl, if
13 there was utilities provided, it would be harder for me
14 to make an argument that that amendment was, in, fact,
15 urban sprawl.

16 Q. You know, that's an interesting point. If you
17 as the reviewer were looking at something that you
18 thought was going to cause urban sprawl, would the fact
19 that the person making that application had a PSC
20 certificate persuade you to determine the other way?

21 A. Not a PSC certificate, per se, but the fact
22 that utility services were available would be a factor.

23 Q. Let's talk about the service area issue.

24 Now, you talked some in DCA's letter, and I'm
25 looking at the top paragraph on Page 2?

1 **A.** Uh-huh.

2 **Q.** And in the third line there it says, for
3 example, the Hernando County Comprehensive Plan future
4 land use policy, do you see that sentence.

5 **A.** Yes.

6 **Q.** And you have put in quotes, the County will
7 not provide water, sewer, transportation, et cetera; do
8 you see that?

9 **A.** I see, yes, sir.

10 **Q.** Isn't it true that you interpret that word,
11 county, to apply to Skyland equally to Hernando County,
12 even though it has a capital C?

13 **A.** Yes, we do interpret that to mean it applies
14 to Skyland.

15 **Q.** Why do you think it has a capital C like that,
16 if it applies to Skyland?

17 **A.** I always capitalize county.

18 **Q.** But you think that phrase, the County, as used
19 in that sentence, also refers to a private utility.

20 **A.** Well, frequently in comprehensive plans there
21 are policies that say the county will develop land
22 development regulations, which guide development that
23 does such and such. It is a fairly common term. And I
24 don't think the use of the term county really basically
25 waives the applicability of that policy, you know, for

1 private development.

2 Q. Do you agree that Hernando County's government
3 is bound by the Hernando County Comprehensive Plan?

4 A. Yes, I do.

5 Q. And you agree that Pasco County's government
6 is bound by the Pasco County Comprehensive Plan?

7 A. Yes, I do.

8 Q. And you believe that the Comp Plan should
9 be interpreted the same in both instance, that is, where
10 any provision of the comp plan means one thing as it
11 applies to the county government, it means the same
12 thing as it apply to a private entity?

13 A. Generally, most policies in the plans are
14 applied that way. There are exceptions.

15 Q. Well, I want you to assume, for the purposes
16 of my question, that the Hernando County Utilities
17 Department and the Pasco County Utilities Department
18 have both promulgated service areas that encompass much,
19 if not all, of the same land that Skyland has proposed
20 to certificate, okay?

21 A. Uh-huh.

22 Q. Now, you think that Skyland's proposed
23 certificated territory violates the comprehensive plans
24 of Hernando and Pasco County, don't you?

25 A. Yes, I do.

1 **Q.** But you don't think the promulgation of a
2 service area by the government utilities in Hernando and
3 Pasco County in those exact same areas violates the
4 comprehensive plan, do you?

5 **A.** Well, the reason I don't think it's a problem,
6 the Comprehensive Plans of Pasco and Hernando County
7 direct where those services can go. And in this
8 particular case, the Skyland Utilities is doing the
9 exact opposite of what the comprehensive plan says.

10 **Q.** Okay. Let's make sure the record is clear.

11 It's your opinion that the promulgation of
12 service areas by the county utilities is consistent with
13 the comp plan, but the same act by Skyland is
14 inconsistent with the comp plan, correct.

15 **A.** Would you restate the question, please?

16 **Q.** Sure. Isn't it true that it's your opinion
17 that the promulgation of service areas by the county
18 utilities is consistent with their respective
19 comprehensive plans, but the same act by Skyland is
20 inconsistent with the comprehensive plans of each
21 county?

22 **A.** Stated in that context, I'd have to agree.
23 But I've already stated the reason why I think the
24 situation of the county governments is different.

25 **Q.** Now, if either Hernando County or Pasco County

1 was proposing to provide service to these areas, DCA
2 would take the position that that service would be
3 inconsistent with the comprehensive plans, am I correct
4 there?

5 A. If it came across my desk that they're
6 proposing to extend utility service area into those
7 areas and the county had policies in it that said they
8 were not to do so, yes, I would say it's inconsistent.

9 Q. Now, in point of fact, when Hernando County
10 and Pasco County want to extended their service, they
11 don't come in and have it reviewed by DCA, do they?

12 A. Well, we do receive a request to extend urban
13 service boundaries, and they do wind up in comprehensive
14 plan amendments, and the Department does review them.

15 Q. Well, do you recall that I took your
16 deposition on June 9, 2010.

17 A. Yes, sir.

18 Q. And on Page 9 thereof I say at Line 12:

19 "Question: You know, that's an interesting
20 point. When Hernando County or Pasco County want to
21 extended their service, they don't come up and have it
22 reviewed by DCA, do they?"

23 And Ms. Klancke objects to form and there is a
24 discussion there.

25 A. Uh-huh.

1 Q. I then say, "So to your knowledge, you do
2 not?"

3 Your response, "Yes."

4 "Question: Do you agree on behalf of DCA that
5 a comprehensive plan" -- well, I then say, again, I'm
6 sorry, I confused you with that. Page 59, Line 25, "So,
7 to your knowledge, they do not?" And your answer was
8 yes.

9 Do you stand by that testimony?

10 A. Yes. Is there something else added there,
11 though. I thought I further clarified that.

12 Q. No. I mean, you've got your deposition in
13 front of you. Then you and I began to talk about
14 whether the comp plans are a work in progress.

15 Your deposition is going into evidence, so I
16 don't think there's any problem.

17 A. Okay.

18 Q. Now, you haven't reviewed either the master
19 plans of the Pasco County Utility Department or the
20 Hernando County Utility Department, have you?

21 A. No, sir, I have not.

22 Q. What is a clustered development?

23 A. A cluster development is where a development
24 is clustered in a certain portion of property. In other
25 words, if you have a provision in an allowable density,

1 for example, one unit per five acres, and, say, you have
2 50 acres, a 50-acre site, you cluster the development.
3 You have the same overall density, but yet you cluster
4 the development into a portion or a corner or an area of
5 that 50-acre parcel to make it more efficient.

6 Q. And you would agree that clustering is a
7 desirable growth management tool?

8 A. Yes, we encourage clustering.

9 Q. Isn't it true that developments could be
10 clustered upon the properties that Skyland seeks to
11 certificate in either Hernando or Pasco County under
12 those comprehensive plans, couldn't it?

13 A. It is possible, if they specify, you know,
14 through policies how they will do it, which I haven't
15 seen.

16 Q. Okay. Now, you mentioned, I think, packaged
17 plants in your testimony. Isn't it true that nothing in
18 your testimony is intended to offer any opinions about
19 the efficiency or adequacy of packaged plants from an
20 operational standpoint?

21 A. That is correct.

22 Q. Okay. Now, do you agree with me that
23 Comprehensive Plans are works in progress?

24 A. Yes, I would.

25 Q. They were continuously changing and altering?

1 **A.** Well, there is almost a duality there. They
2 do change, they do change, but they are also supposed to
3 be a certain degree of permanence to it, as well.

4 **Q.** And they are intended to evolve, correct?

5 **A.** I would say that, yes.

6 **Q.** Now, there is no explicit reference to PSC
7 certification in either of the comp plans of Pasco or
8 Hernando County that you were aware of, is there.

9 **A.** No, I'm not aware.

10 **Q.** And there is no reference explicitly to PSC
11 certification in any of the statutes of rules of DCA, is
12 there?

13 **A.** Not that I'm aware.

14 **MR. WHARTON:** If I will just give me one
15 moment.

16 That's all we have.

17 **COMMISSIONER SKOP:** Thank you, Mr. Wharton.

18 Mr. Kirk.

19 **CROSS EXAMINATION**

20 **BY MR. KIRK:**

21 **Q.** Good afternoon, Mr. Evans.

22 I know it's getting kind of late. My name is
23 Geoff Kirk, and I represent Hernando County, and we
24 appreciate you coming down from Tallahassee.

25 When you inject, or when a centralized water

1 is located or admitted into a largely urban, rural,
2 undeveloped area, in your professional planning opinion
3 what are some of the potential consequences?

4 **A.** Potential consequences is that --

5 **MR. WHARTON:** Well, I'm going to object at
6 this point, if I may. The prehearing order says any
7 party conducting what appears to be friendly cross of a
8 witness should be prepared to indicate why that witness'
9 testimony is adverse to its interest.

10 **COMMISSIONER SKOP:** A response --

11 **MR. KIRK:** The witness.

12 **COMMISSIONER SKOP:** Hold on, Mr. Kirk.

13 **MR. KIRK:** The witness is being tendered by
14 PSC staff, who is purportedly neutral. We believe that
15 we should be allowed to cross this witness. A couple of
16 instances where, on direct examination, Mr. Wharton
17 asked the witness some questions but did not allow
18 basically yes are no questions, and I'm asking the
19 witness to elaborate.

20 **MR. WHARTON:** That was cross-examination.

21 **COMMISSIONER SKOP:** Let's keep it civil. I've
22 heard the objection, I heard the response, I'll look to
23 staff, to the extent that this is a staff witness and
24 subject to cross-examination.

25 Ms. Cibula.

1 **MS. CIBULA:** I would just remind the parties
2 that there is a requirement in the order establishing
3 procedure in the prehearing order that there is not
4 supposed to be friendly cross-examination. So you need
5 to limit those types of questions.

6 **COMMISSIONER SKOP:** And, Ms. Cibula, to the
7 extent that this witness is a neutral witness proffered
8 by Staff, presented by Staff?

9 **MS. CIBULA:** Again, they have to show that
10 it's not friendly cross, and that there is some sort of
11 adverse interest.

12 **COMMISSIONER SKOP:** Okay.

13 Mr. Kirk, I'd ask you to limit your friendly
14 cross-examination. If you can, perhaps, restate the
15 question in a manner that is less friendly and more
16 direct towards answering your concerns.

17 **MR. KIRK:** In as much as the witness has
18 testified that he believes that Skyland's, location of
19 Skyland's utilities is inconsistent, I will withdraw the
20 question.

21 **BY MR. KIRK:**

22 **Q.** I will ask you another question, Mr. Evans.

23 Supposing that based upon Hernando County's
24 Comprehensive Plan as you have reviewed if --

25 **A.** Uh-huh.

1 **Q.** -- and a request was made to the Board of
2 County Commissioners to either -- to allow the
3 introduction of central water into the area that is
4 currently proposed to be certificated by Skyland, what
5 would your opinion be?

6 **A.** If the policies in the Hernando County
7 Comprehensive Plan were the same as they are now, I
8 would have to disagree with it.

9 **Q.** Okay. If the decision was made by the Board
10 of County Commissioners --

11 **MR. WHARTON:** I'm sorry, Madam Chair, once
12 again, I will back off because it's a staff witness, but
13 I want to maintain my ability to do some -- this is
14 cross, we know that, this is not an adverse witness to
15 them, we know that. But Commissioner Skop has said the
16 fact that it's a staff witness deserves special
17 consideration.

18 **MR. KIRK:** Let me finish the question.

19 **COMMISSIONER SKOP:** Don't put words in my
20 mouth --

21 (Simultaneous conversation.)

22 **COMMISSIONER SKOP:** Hold on one second.

23 Here is how we're going to handle objection.
24 If you have an objection, state the objection, just
25 don't interpret. We'll hear the objection, we'll hear a

1 response, and the presiding officer will make a ruling,
2 okay.

3 So we're trying to, you know, conduct our
4 proceedings, make a full record, there's broad latitude
5 provided. I understand we don't need to get -- you
6 know, objections when they are warned are certainly to
7 be made, but if we can get through this -- it's late in
8 the day and I know tensions are running high, but let's
9 try and limit friendly, keep on point, ask relevant
10 questions, and hopefully there wouldn't be any more
11 objections.

12 Mr. Kirk, you're recognized.

13 **BY MR. KIRK:**

14 Q. If the local government body makes a decision,
15 as you outlined and you answered, and DCA objected, what
16 can DCA do?

17 A. If DCA objected to it, basically an objection
18 is, I guess, a potential advisory to the local
19 government that what the local government has done is
20 potentially inconsistent with state law, and the local
21 government has a certain same time with which to repair
22 that, to fix it or not act on it. In other words, the
23 choice is the local governments. They can either adopt
24 the amendment with changes, not adopt it, not do
25 anything about it, or they can rescind it.

1 And within a certain period of time they will
2 transmit the adopted amendment to the Department. And
3 if they comply with our objection, they attempt to
4 reasonably address it, then most likely we will find the
5 amendment in compliance. If they ignore that provision,
6 then the possibility exists that we might make a
7 determination to find the amendment out of -- not in
8 compliance.

9 **Q.** If the Public Service Commission takes the
10 same action, does DCA have any kind of review?

11 **A.** Well, the review that we do of Public Service
12 Commission certificates for application is related to a
13 technical memorandum that we have with them. Our role
14 in that is largely advisory. We write letters to the
15 PSC, and we advise them, you know, in a manner, whether
16 we think something should be denied or not denied or
17 whether it is a good idea or not a good idea.

18 **Q.** And can DCA take any other action besides a
19 technical letter?

20 **A.** I'm not aware of -- the only other venue
21 available to us would be if the -- if a land use change
22 occurs within that service district, like there's an
23 intensification of use, then the Department has the
24 option to raise a potential objection based on urban
25 sprawl or an objection of that sort.

1 **MR. KIRK:** Thank you, I have no further
2 questions.

3 **CHAIRMAN ARGENZIANO:** Thank you.

4 Commissioner Skop, you're recognized.

5 **CROSS EXAMINATION**

6 **BY MR. McATEER:**

7 Q. Mr. Evans, Derrill McAteer of the Hogan Law
8 Firm for the City of Brooksville.

9 Did you raise the issue of bulk water in
10 either your testimony or the letter.

11 A. No, we did not.

12 Q. Why not?

13 A. It was an issue that we just didn't feel
14 comfortable addressing. We focused mostly on the issues
15 of urban sprawl.

16 Q. Wouldn't bulk water sales encourage urban
17 sprawl?

18 **MR. WHARTON:** Objection. It's outside of
19 the -- it's odd for me to object, but it's outside the
20 scope of direct.

21 A. We were mostly concerned about the development
22 patterns --

23 **CHAIRMAN ARGENZIANO:** Hold on second.

24 **THE WITNESS:** I'm sorry.

25 **CHAIRMAN ARGENZIANO:** To the objection.

1 **MR. McATEER:** I think my point is, it's not
2 outside the scope of -- the point is his testimony and
3 the letter, and what was and was not in the letter. And
4 the City of Brooksville is concerned -- primarily the
5 reason I'm here is the bulk water sales. Where is this
6 water going? We look at that map, this map --

7 **MR. WHARTON:** I will restate my objection.
8 Friendly cross.

9 **MR. McATEER:** May I continue or --

10 **CHAIRMAN ARGENZIANO:** No, not yet.

11 **MS. CIBULA:** I think it's within the scope of
12 his testimony, and I don't think it's friendly cross.

13 **CHAIRMAN ARGENZIANO:** Continue.

14 **THE WITNESS:** So answer the question?

15 **CHAIRMAN ARGENZIANO:** Yes, please.

16 **THE WITNESS:** We are primarily concerned with
17 the extension of the utility, I mean, the creation of
18 the utility service area, where they were, the effect
19 that would have on land use patterns. We did not look
20 at the issue of bulk sales, as to whether that was a
21 good thing or bad thing. I can't say; we didn't do it.

22 **BY MR. McATEER:**

23 **Q.** Have other certificated utilities that DCA has
24 analyzed or objected to contained bulk sales requests in
25 their certificate applications and subsequent approvals?

1 **MR. WHARTON:** Objection; friendly cross. It's
2 soliciting a whole new direction.

3 **CHAIRMAN ARGENZIANO:** Can you rephrase that
4 without being so friendly.

5 **MR. McATEER:** I could take my coat off.
6 (Laughter.)

7 **CHAIRMAN ARGENZIANO:** And, if not, let's move
8 on to another question.

9 **MR. McATEER:** I've made my point about bulk
10 sales, I'll end my friendly cross, or cross, or whatever
11 you want to call this evening.

12 **CHAIRMAN ARGENZIANO:** No other question?

13 **MR. McATEER:** No other question.

14 **CHAIRMAN ARGENZIANO:** Thank you. Pasco
15 County?

16 **MR. HOLLIMON:** Pasco County has no questions.

17 **CHAIRMAN ARGENZIANO:** Mr. Rehwinkel.

18 **MR. REHWINKEL:** I just have maybe one or two.

19 **CROSS EXAMINATION**

20 **BY MR. REHWINKEL:**

21 **Q.** I'm Charles Rehwinkel with the Office of
22 Public Counsel.

23 **A.** Okay.

24 **Q.** Let's see, I think it's on the second full
25 page of your testimony.

1 **A.** Okay.

2 **Q.** Well, the Q&A that starts on Line 8?

3 **A.** Line 8, okay.

4 **Q.** The question is what's the DCA's position with
5 respects to whether the Skyland application is
6 consistent with the currently approved Pasco County
7 Comprehensive Plan. Do you see that?

8 **A.** Am I looking at the right -- I'm not sure.
9 You're at page what?

10 **Q.** I meant your Direct Testimony. Did I say
11 deposition? I apologize.

12 **A.** That's all right. What page was it?

13 **Q.** It's the second page.

14 Do you see that Q&A that starts on Line 8?

15 **A.** Line 8.

16 **Q.** What is the DCA's position?

17 **A.** I don't know if the version I have is
18 numbered, the Q&A version.

19 **Q.** Do you have that Q&A before you?

20 **A.** What is the Department's position with respect
21 to whether Skyland's application is consistent with the
22 currently approved Pasco County Comprehensive Plan?

23 **Q.** Yes.

24 **A.** Okay.

25 **Q.** All I want to do is understand whether the

1 opinion here is just offered as to the consistency of
2 the application with the Pasco plan, or does DCA agree
3 that the conversion of private utilities to public
4 utilities and encouragement of the replacement of
5 package treatment plants with regional wastewater plants
6 is a good thing or not; are you just expressing an
7 opinion about consistency?

8 **A.** We're expressing an opinion about consistency,
9 but we also, in policy, have discouraged the
10 proliferation of package treatment plants partially
11 because they can encourage urban sprawl is one of the
12 reasons we don't like them.

13 **Q.** Are there any reasons other than urban sprawl
14 that you express that opinion, you the Department?

15 **A.** Sometimes there is also an issue with -- it's
16 not so much the function of package treatment plants,
17 but the fact of who administers them, who monitors, who
18 takes care of it.

19 **Q.** In what respect?

20 **A.** In one respect, which I offered in the
21 testimony that I read, it mentioned 71 package treatment
22 plants operating in Pasco County, 36 of them were judged
23 by DEP not be consistent with minimal standards. In
24 that context, that's similar to other things we have
25 heard around the state.

1 **MR. REHWINKEL:** That's all the questions I
2 have. Thank you.

3 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

4 **COMMISSIONER SKOP:** Thank you, Madam Chair.
5 Good afternoon, Mr. Evans. I have a few
6 questions for you pertaining to the letter that is in
7 Exhibit DWE-1.

8 **THE WITNESS:** Okay.

9 **COMMISSIONER SKOP:** And, also, it would be
10 helpful to me as I ask the questions -- would you happen
11 to have a copy of Witness Hartman's Figure 3A map, or
12 can somebody --

13 **THE WITNESS:** I don't have copy of it. I'm
14 sorry. I do now.

15 **COMMISSIONER SKOP:** Looking at Exhibit DWE-1,
16 the second paragraph of the first page of that letter?

17 **THE WITNESS:** Uh-huh.

18 **COMMISSIONER SKOP:** You specified the proposed
19 service area and the zoning densities defined in the
20 respective comprehensive use plans for both Pasco and
21 Hernando County, is that correct?

22 **THE WITNESS:** Uh-huh, that's correct.

23 **COMMISSIONER SKOP:** Now, Mr. Wharton asked you
24 a line of questions, and I think that, you know, in the
25 beginning of your testimony you stated some previous

1 cases that the Commission had decided, Sun River,
2 Babcock Ranch that dealt with original certificates, and
3 I know since I've been on the Commission we've dealt
4 with certificate amendments which have been
5 controversial at times --

6 **THE WITNESS:** Okay.

7 **COMMISSIONER SKOP:** -- but focusing on Mr.
8 Wharton's concern about the local government having a
9 measure of control to enforce the comprehensive use plan
10 and zoning laws of the respective counties, if a
11 property had a zoning density, and in looking at this in
12 isolation, not look at other provisions of the
13 comprehensive use plan, but say you had a parcel of
14 property that was zoned for one unit in ten acres?

15 **THE WITNESS:** Okay.

16 **COMMISSIONER SKOP:** And that person wanted to
17 have service provided by a utility --

18 **THE WITNESS:** Uh-huh.

19 **COMMISSIONER SKOP:** -- and, again, just
20 focusing on that, would that person not be entitled, if
21 it were in accordance with the specified zoning, not
22 considering other things outside of that, the preference
23 for public over private utilities, but just looking at
24 the zoning density, if the person requested service,
25 would that person be legally entitled to, in your

1 professional opinion, under the rules that exist?

2 **THE WITNESS:** Well, the Department really only
3 looks at amendments at land use changes. In other
4 words, if there was no proposed amendments being offered
5 as the result of it, the Department would have no review
6 authority over it. If they wanted to intended services
7 to that entity, there is nothing that we could really
8 say about it one way or another.

9 **COMMISSIONER SKOP:** Fair enough. But the
10 zoning was in accordance with the existing comprehensive
11 use plan and there was no expansion of that, then
12 somebody could that -- that had a house there could
13 logically request service under the controlling
14 statutes, would you agree with that?

15 **THE WITNESS:** I would agree with. The only
16 thing I would say is we don't usually see services
17 extended one unit per ten acres. I mean, most of the
18 utilities that I deal with, I have seen comp plans that
19 are usually gravity related, it usually takes a higher
20 density to --

21 **COMMISSIONER SKOP:** I understand, and I'll
22 expand upon that. Assume for the sake of discussion,
23 Bill Gates lived on the property, and he had to have --
24 didn't want well water, and wanted, you know, some sort
25 of either public or private service, he could request

1 service if it was in accordance with the approved zoning
2 density, is that correct?

3 **THE WITNESS:** That would be correct, yes.

4 **COMMISSIONER SKOP:** Now, if a developer that
5 had that service wanted to expanded the density on that
6 property, that would require local intervention by
7 changing the zoning, but that would have to be in
8 accordance with the comprehensive use plan, is that
9 correct?

10 **THE WITNESS:** By expanded, you increase the
11 density.

12 **COMMISSIONER SKOP:** Increase the density, yes.

13 **THE WITNESS:** If you were to increase the
14 density on the site that would -- well, it would
15 increase the density on the site, it depends on whether
16 the increase is actually consistent with the land use
17 category that it is currently designated as. If it will
18 allow, if it will accommodate the additional increase,
19 then the land use change wouldn't be needed. But if
20 he's proposing an increase that basically changes the
21 fundamental nature of the land use, it would probably
22 require some type of a comprehensive plan amendment.

23 **COMMISSIONER SKOP:** And that's where the local
24 government measure or control that Mr. Wharton addressed
25 his questions to you comes into play, by granting or

1 denying such changes in zoning densities?

2 **THE WITNESS:** That would come into play, but I
3 believe you can also say that infrastructure planning is
4 the most basic part of comprehensive planning. And if
5 you take that away, you are sort of dealing with what's
6 left, you are sort of taking the most effective part
7 away and dealing with what's left.

8 **COMMISSIONER SKOP:** All right. Madam Chair,
9 just two or three more additional questions.

10 Mr. Evans, you spoke to the comprehensive use
11 plans of Hernando and Pasco County; you're generally
12 familiar with those plans, is that correct?

13 **THE WITNESS:** Yes.

14 **COMMISSIONER SKOP:** So would it be fair to say
15 that for Hernando County that, again, the plan generally
16 discourages urban sprawl, wants to have preferred -- has
17 preference or stated preference for public, I mean,
18 public utilities over private utilities, and seeks to
19 control development in accordance with the comprehensive
20 use plan, is that a fair broad --

21 **THE WITNESS:** I would say generally that is
22 correct. I will would caveat that the plans direct
23 population concentration to certain areas, in other
24 words.

25 **COMMISSIONER SKOP:** Okay. Again, I'm being

1 very general about it.

2 **THE WITNESS:** Yes.

3 **COMMISSIONER SKOP:** The same would hold true
4 for Pasco County?

5 **THE WITNESS:** Yes.

6 **COMMISSIONER SKOP:** If I could just ask you
7 briefly to take a look at Exhibit 3A.

8 **THE WITNESS:** Okay.

9 **COMMISSIONER SKOP:** And if you see the
10 contiguous piece of property identified at ID Number 10
11 in red, and ID Number 6; do you see those?

12 **THE WITNESS:** ID-10 in red and Number 6; I do
13 see both of those, yes.

14 **COMMISSIONER SKOP:** And I believe those
15 parcels form at least the basis for the Commission
16 having subject matter jurisdiction in granting the
17 original certificate, but by virtue of the legend on
18 that map, neither one of those parcels is set for
19 development in the near term, it's not scheduled for the
20 first phase of the development --

21 **THE WITNESS:** I have heard that.

22 **COMMISSIONER SKOP:** Does that give you any
23 concern as the basis for granting original certificate
24 that those contiguous parcels would not be developed and
25 other parcels would be developed -- outlying parcels

1 would be developed first.

2 **THE WITNESS:** I don't know. This isn't the
3 way we originally reviewed it, you know, but just
4 looking at this, I would say our concerns generally were
5 about the entire, the entire service area as proposed
6 and the way it was introduced into a relatively rural
7 area and the way that some of the parcels were generally
8 scattered in several groups.

9 **COMMISSIONER SKOP:** All right. Let me,
10 instead of getting into a protracted line of questions,
11 one specific question as a hypothetical on that.

12 **THE WITNESS:** Uh-huh.

13 **COMMISSIONER SKOP:** Not looking at the entire
14 Figure 3A but just look at ID 10 and ID 6 which is a
15 contiguous piece of property that, essentially, as a
16 contiguous piece of property would transverse county
17 lines between Pasco and Hernando County.

18 **THE WITNESS:** All right.

19 **COMMISSIONER SKOP:** If the land owner wanted
20 service to that property and the zoning density was
21 consistent with the comprehensive use plan in terms of
22 zoning density, is there anything within either
23 comprehensive use plan, to your knowledge, in either
24 county that would preclude the Commission from granting
25 an original certificate for that particular piece of

1 contiguous property?

2 **THE WITNESS:** I'm not aware of anything that
3 would preclude it from -- I'm not aware of anything that
4 would be necessarily inconsistent with the comprehensive
5 plans, if it did say within the densities that were
6 prescribed, but that's that one of the reason the
7 Department has a concern about this. We are not sure
8 they are going to stay within the existing land use
9 intensities. We believe that development potential
10 frequently follows infrastructure, and we did not fight
11 the extension of the infrastructure into these rural
12 areas, and we think it is inconsistent with some of the
13 policies in the comp plan.

14 **COMMISSIONER SKOP:** Two briefly follow-ups,
15 Madam Chair.

16 **CHAIRMAN ARGENZIANO:** Uh-huh.

17 **COMMISSIONER SKOP:** On Parcel ID 6 which is in
18 Pasco County, but also appears to be within the Dade
19 City five-mile buffer, to your knowledge would Dade City
20 utilities have the first right to serve that particular
21 parcel.

22 **THE WITNESS:** I wouldn't really know about
23 that, I'm sorry.

24 **COMMISSIONER SKOP:** And okay. I think that's
25 my only question.

1 **CHAIRMAN ARGENZIANO:** Okay. Thank you.
2 Staff, redirect.

3 **MS. KLANCKE:** Staff does have a few brief
4 questions on redirect.

5 **CHAIRMAN ARGENZIANO:** You're recognized.

6 **REDIRECT EXAMINATION**

7 **BY MS. KLANCKE::**

8 Q. Mr. Evans, in your cross-examination conducted
9 by Mr. Wharton, he asked you about a page of your
10 deposition, in particular Page 38. Would you please
11 pull up Page 38 of your deposition.

12 A. Okay. I am at it right now.

13 Q. I'd like you to have that page, and in this
14 line of questioning in your deposition he is referring
15 to your letter that is contained in Exhibit DWE-1.

16 A. Okay.

17 Q. So I'd like you to have both of those.

18 A. Okay. I have the letter, and I'm on Page 38.

19 Q. Beginning on Line 1 of Page 38, Mr. Wharton
20 during your deposition asked you about the, quote, next
21 to last paragraph, end quote, in your letter, is that
22 correct?

23 A. Yes, it does say that.

24 Q. In fact, on Line 9, he has you quote the
25 paragraph in its entirety, is that correct?

1 **A.** Yes.

2 **Q.** And in that paragraph you are stating that
3 both Pasco and Hernando Counties have indicated that
4 they have some concerns, is that correct?

5 **A.** That's correct.

6 **Q.** And that is the predicate to the question at
7 the bottom of that page beginning on Line 24 in which
8 Mr. Wharton asked you, quote, "So, in other words, you
9 are just repeating there what Pasco and Hernando County
10 have told you in the e-mails and in the conversations we
11 talked about," end quote, is that correct?

12 **A.** Yes, that's correct.

13 **Q.** And beginning on Line 2 of Page 39, you do
14 agree that with respect that paragraph alone, that, yes,
15 that that assertion was correct?

16 **A.** Yes.

17 **Q.** Is that characterization of you're just
18 repeating there what Pasco and Hernando County have told
19 you applicable to the other six paragraphs of your
20 letter? Are they merely -- is that merely a repetition
21 of what these counties have told you, or is it based on
22 DCA's own opinion?

23 **A.** Well, I certainly believe that we listened to
24 what the counties say, that's an integral part of our
25 review. We contact them and find out their concerns

1 about it, that's something that's very important to the
2 Department. But also we were directed to examine all of
3 those policies and see if we thought they had merit, to
4 conduct our own independent assessment. And I might
5 add, it wasn't just me, my supervisor, Bernard Piawah
6 was in on it and also the Bureau Chief -- the letter
7 that we sent out was signed by the Bureau Chief.

8 Q. And you specified earlier that you, in fact,
9 as you reiterated, researched and, in fact, wrote the
10 vast majority of this letter, is that correct?

11 A. That is correct, I did.

12 Q. Could you go over a little bit and just
13 explain a little bit, what analysis and research, other
14 than talking to the counties, went into the formation of
15 the Department of Communities Affairs' opinion as
16 specified in this letter?

17 A. Well, we read the entire application from
18 start to finish. And I guess one of the things I was
19 struck with was the -- there just weren't a lot of
20 details about certain things. The latter phases, for
21 example, there wasn't a lot of detail in it. We did
22 read it; we had some concern about that as well. We
23 read the statements of Pasco and Hernando Counties, both
24 to the planners for both of them, that formed also some
25 of the basis of our research. We looked at the

1 comprehensive plans of both Pasco and Hernando Counties,
2 we didn't just take their word for it, we read the plans
3 and had our own opinion as to whether, what the County
4 was saying was correct or not. And we agree with both
5 Hernando and Pasco Counties that the provisions they
6 cited, we thought the application was inconsistent with.
7 Some of them, the provisions may have held more weight
8 for us than others. For example, the provisions about
9 discouraging the use of central sewer and water services
10 in rural areas, the rural Pasco area was something that
11 we put more stoke in than, for example, discouragement
12 of private utilities in counties. There were certain
13 aspects of those policies that weighed more with us.

14 Q. And is that all the research that you
15 conducted with respect to this?

16 A. I believe those were the major things that we
17 looked at. We contacted the counties; we spoke with
18 them; we reviewed the application; reviewed the
19 comprehensive plans of both counties. We went on-line
20 with the PSC website and looked at some information
21 there. I think that concludes the basis of most of our
22 review.

23 MS. KLANCKE: Thank you.

24 I have no further questions for this witness.

25 CHAIRMAN ARGENZIANO: Thank you. Are there

1 any exhibits we need to enter into the record?

2 **MS. KLANCKE:** Yes. I have two exhibits for
3 this witness, Exhibit Number 26, comprising the
4 deposition transcript and Exhibit Number 25, the letter
5 which is attached and identified as DWE-1.

6 **CHAIRMAN ARGENZIANO:** Any objections?

7 **MR. KIRK:** No objection from Hernando.

8 **MR. HOLLIMON:** No objection.

9 **CHAIRMAN ARGENZIANO:** Did you say no objection
10 or --

11 **MR. HOLLIMON:** No objection.

12 **MR. KIRK:** No objection.

13 **CHAIRMAN ARGENZIANO:** Hearing none, show them
14 entered into the record, Exhibits 25 and 26. Okay.

15 (Exhibit 25 and 26 admitted into the record.)

16 **MR. KIRK:** And what number was the Direct
17 Testimony.

18 **MS. KLANCKE:** His Direct Testimony has been
19 inserted into the record as though read.

20 With that, if it would please the
21 Commission --

22 **CHAIRMAN ARGENZIANO:** Excuse the witness?

23 **MS. KLANCKE:** Yes.

24 **CHAIRMAN ARGENZIANO:** Thank you.

25 And we have about, a little more than

1 20 minutes, so let's move on to our next witness and see
2 far we go. At six o'clock we will be stopping to start
3 the public portion, again, and see who's here, if any,
4 to speak. If not, we'll continue with the technical.

5 Our next witness?

6 **JOSEPH L. STAPH**

7 was called as a witness on behalf of Hernando, and having
8 been duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 **BY MR. KIRK:**

11 **Q.** Please state your name on it the record?

12 **A.** My name is Joseph Lester Staph.

13 **Q.** Mr. Staph, where are you employed?

14 **A.** I'm employed by Hernando County as its
15 Utilities Director.

16 **Q.** Mr. Staph, what is your address?

17 **A.** My business address is 21030 Cortez Boulevard,
18 Brooksville, Florida 34601.

19 **Q.** Mr. Staff, did you give Direct Testimony in
20 this matter?

21 **A.** Yes, I did.

22 **Q.** As we sit here today, are there any changes or
23 corrections to your Direct Testimony.

24 **A.** Yes, one minor change that I'd like to
25 mention. On Page 12, Line 3, I stated that -- I

1 referenced County Road 50, that should have been State
2 Road 50.

3 **MR. KIRK:** Thank you.

4 At this time, I'd like to ask that his Direct
5 Testimony be admitted into the record.

6 **COMMISSIONER EDGAR:** Excuse me a minute. I'm
7 sorry, that correction, did you say Page 12.

8 **THE WITNESS:** I believe it's Page 12, Line 3.

9 **COMMISSIONER EDGAR:** Of the Direct Testimony?

10 **THE WITNESS:** Yes. It's in my deposition.

11 **COMMISSIONER EDGAR:** The deposition.

12 **CHAIRMAN ARGENZIANO:** The deposition, not the
13 Direct Testimony.

14 **THE WITNESS:** I'm sorry.

15 **COMMISSIONER EDGAR:** I didn't have 12 pages,
16 so I have a little confused. Thank you.

17 **CHAIRMAN ARGENZIANO:** And that was just a
18 change from State Road --

19 **THE WITNESS:** I inadvertently referenced it as
20 County Road, and it should have been State Road.

- 1 Q. Please state your name.
- 2 A. Joseph Staff.
- 3 Q. Where are you currently employed?
- 4 A. Hernando County Utilities Department.
- 5 Q. What is your employment address?
- 6 A. Hernando County Utilities Department, 21030 Cortez Blvd., Brooksville, FL 34601.
- 7 Q. What is your position?
- 8 A. Utilities Director.
- 9 Q. Briefly summarize your present duties.
- 10 Manage and oversee administration of Hernando County Utilities Department (HCUD),
- 11 which includes potable water supply, wastewater collection and treatment, and solid
- 12 waste management (landfill and recycling). The HCUD includes 228 employees, an
- 13 operating budget of approximately \$40,000,000, and a multi-year Capital Improvements
- 14 Program of \$150,000,000.
- 15 Q. I will hand you what is marked as Exhibit JS-1, do you recognize this document?
- 16 A. Yes, this is a copy of my resume as last updated.
- 17 Q. Are you familiar with the Application filed by Skyland Utilities, LLC?
- 18 A. Yes.
- 19 Q. How are you familiar with it?
- 20 A. I was asked to review the document/application following its filing.
- 21 Q. Based upon your review of Skyland Application, can you describe its proposed location
- 22 relative to Hernando County?
- 23 A. The parcels of property within Hernando County are generally located in southeastern
- 24 Hernando County, and is predominantly rural in nature.
- 25 Q. Do you know who owns the property where Skyland proposes to locate?

- 1 A. Yes, it is owned by Evans Properties, Inc. or I shall refer to as Evans.
- 2 Q. How do you know that?
- 3 A. Based upon my review of Skyland's Application, specifically Exhibit E to the
4 Application.
- 5 Q. During the time that you have been with the Hernando County Utilities Department has
6 anyone on behalf of Evans Properties, Inc. approached the Utilities Department
7 requesting to have public water service?
- 8 A. During the time I have been employed with the Hernando County Utilities Department, I
9 am not aware of any request for new water service by or for the Evans property.
- 10 Q. Is it possible for a request to have been made and you not made aware of it.
- 11 A. All new requests for water service, especially if lines have to be run any distance or a
12 new public water supply well must be drilled, have to be approved by me.
- 13 Q. Within the area surrounding the Evans property, are you aware of any of the other
14 surrounding property owners making any request to the Hernando County Utility?
- 15 A. There have been some isolated inquiries for service over the past several years. During
16 this time we have received no petitions or organized requests for water supply system
17 installation in this area.
- 18 Q. Do you have any knowledge as to the number of new residential connections that
19 Skyland is proposing over the next 5 to 6 years?
- 20 A. Yes.
- 21 Q. What is your understanding?
- 22 A. I understand that Skyland is only proposing between 20 to 33 new connections a year
23 over the next 6 years.
- 24 Q. What do you base your knowledge on.
- 25 A. Skyland's Application, specifically, Exhibit D to the Application which sets forth a table

1 of proposed new service connections over a 5 year period.

2 Q. Based on Skyland's Exhibit D, how many new connections are Skyland proposing during
3 this 6 year horizon?

4 A. 155.

5 Q. Do you have a professional opinion as to whether this is an efficient way to provide new
6 water service?

7 A. Yes.

8 Q. What is your professional opinion?

9 A. In my experience, and in my professional opinion, attempting to provide water and
10 wastewater service to such a comparatively small number of customers is difficult at best.
11 There is little opportunity to achieve any significant and meaningful economies of scale.
12 In fact it is quite the opposite. There are few customers over which to spread large
13 infrastructure cost.

14 Q. As of this day, if someone in the area where Skyland is proposing to operate desires
15 public water service, who is the current service provider?

16 A. Hernando County Utilities Department.

17 Q. How do you know this?

18 A. It is included in the Hernando County Utilities Department Water and Sewer master
19 plans, each of which is accessible to the public on the County's web site. The link is
20 www.hernandocounty.us/utills/engineering/index.asp

21 Q. Hypothetically, if someone wants water supply and they own property in the general area
22 that Skyland is proposing to locate in, can Hernando County Utilities Department be able
23 to provide such service.

24 A. Yes. We would ask the requesting party to circulate a petition among other neighboring
25 property owners seeking additional support, and thereby allowing us to assess in a

1 meaningful way the degree of interest. If the level of interest is consistent with
2 established County policy, or there is deemed to be a public health hazard, HCUD would
3 recommend to the County Board the formation of a Municipal Service Benefit Unit
4 (MSBU). Presumably, the BOCC would proceed with advertising and holding the
5 required public hearings. Depending on the outcome, work on the installation of the
6 water and/or sanitary sewer system would proceed, with the cost being assessed to the
7 benefiting properties. These assessments are typically paid over a period of time
8 (perhaps 10 years, or more), or they can be paid off in lump sum at any time. In addition,
9 the County has the ability to pursue alternative means of financing, such as grants or low
10 interest loans through various state and federal funding agencies. We have one such
11 application pending for another isolated area in north central Hernando County, which is
12 currently served by a privately owned water supply system serving approximately 40
13 homes. The residents of this area did, in fact, submit a petition asking the County to
14 become their water supplier. We have been actively pursuing methods and means of
15 economically providing county water service to this isolated area.

16 Q. Can you tell from your review of Skyland's Applicant if Skyland has had any written
17 requests to provide water or wastewater service?

18 A. Yes, Skyland's Application contains two requests for service. There was one request for
19 service from Ronald Edwards, as President of Evans Property, Inc. and a second request
20 from J. Emmett Evans, as Vice President of Evans Property, Inc. and I am referring to
21 Exhibit E and Appendix I to Skyland's Application.

22 Q. Do you have any understanding as to the relationship of Evans Property, Inc. to Skyland
23 Utilities, LLC.

24 A. Yes.

25 Q. What is your understanding of their relationship?

DIRECT TESTIMONY OF JOSEPH STAFF

- 1 A. Skyland Utilities, LLC is wholly owned by Evans Utilities, Inc., which in turn, is wholly
2 owned by Evans Properties, Inc.
- 3 Q. In your review of Skyland's Application, did you see any requests for service from
4 anyone other than representatives of Evans Properties, Inc.?
- 5 A. No, I did not. It appears from Skyland's Application that the only two written requests
6 for service they had received when they filed their Application was from Ronald Edwards
7 and J. Emmett Evans, as President and Vice President of Evans Properties, Inc. In my
8 opinion, this does not suggest any outcry for public water supply service in this area, or in
9 any of the surrounding area.
- 10 Q. Is the Evans property where Skyland is proposing to locate with the Hernando County
11 Utilities Department service area?
- 12 A. Yes. Other than the unincorporated area of Hernando County included in the interlocal
13 utility service agreement between Hernando County and the City of Brooksville, all of
14 Hernando County is considered to be the Hernando County Utility Service area. This is
15 reflected in the County's water and sewer master plans.
- 16 Q. In your opinion, is Skyland Utilities attempting to locate a water/wastewater utility in
17 Hernando County Utilities Department service district?
- 18 A. Yes.
- 19 Q. Does Hernando County Utilities have any outstanding bonds if you are aware?
- 20 A. Yes.
- 21 Q. Do you know what the bond or bonds were for.
- 22 A. Some of the bonded indebtedness is related to the County's 2004 purchase of another
23 investor-owned water and sewer utility, and the other portion is related to the
24 expenditures on new infrastructure, including the \$14,000,000 renovation, rehabilitation,
25 and expansion of the Glen Wastewater Treatment Plant currently under construction.

DIRECT TESTIMONY OF JOSEPH STAFF

1 Q. Do you have an opinion if another water/wastewater utility was allowed to operate in
2 southeastern Hernando County, what would the consequence be on the Utilities future
3 customer base in that area.

4 A. Yes.

5 Q. What is that opinion?

6 A. It would diminish Hernando County Utilities future customer base, thereby inhibiting the
7 County's ability to achieve the economies of scale so important to water and sewer
8 infrastructure financing.

9 Q. Do you know what was pledged to back the County's Utility Bonds?

10 A. Yes.

11 Q. Can you describe what was pledged?

12 A. The net revenues—including that from future utility customers—which is gross revenues
13 less operating expenses of the Hernando County water and sewer system.

14 Q. Do you have an opinion as to the effect, if any, that permitting Skyland to operate a
15 water/wastewater utility in southeastern Hernando would have on the Utilities'
16 outstanding bonds?

17 A. It could potentially jeopardize Hernando County's ability to repay current and future
18 bonds, and therefore potentially jeopardizes the County's Bond Rating, as well as its
19 capacity to effectively implement its ongoing Capital Improvements Program.

20 Q. Do you have a professional opinion as to whether granting Skyland's request to operate a
21 water/wastewater utility where they are proposing in southeastern Hernando County is in
22 the public interest?

23 A. Yes.

24 Q. What is your professional opinion?

25 In my professional opinion it is NOT in the public interest. This proposal is a long term

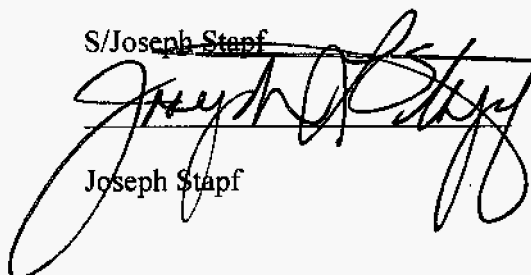
DIRECT TESTIMONY OF JOSEPH STAPF

1 threat to the integrity and financial viability of the already established Hernando County
 2 Water and Sewer System which serves approximately 125,000 water customers and
 3 65,000 sewer customers. This system is governed by the Hernando County Board of
 4 County Commissioners serving as the Board of the Water and Sewer District. These
 5 Commissioners are elected at large in the County, and are directly accountable to the
 6 voters/taxpayers/utility customers. The lack of accountability presented by a private
 7 utility provider was a major factor in the County's acquisition of the Florida Water
 8 System in 2004. The County has made and will continue to make significant
 9 improvements to the former Florida Water physical plant in order to establish and
 10 maintain an effective and necessary level of service mandated by federal and state
 11 regulatory agencies. Moreover, providing (or attempting to provide) water sewer service
 12 in an area in which the maximum allowed density is one house per ten acres is generally
 13 cost prohibitive, and in my professional experience and opinion impractical.

14 **End of Testimony**

15 Dated this 30th day of April, 2010

16 S/Joseph Stapf

17 

18 Joseph Stapf

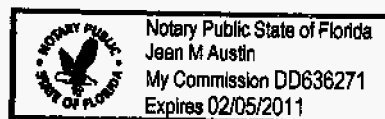
19 STATE OF FLORIDA

20 COUNTY OF HERNANDO

21 The foregoing instrument was sworn to and acknowledged before me this 30th day of April, 2010, by
 22 Joseph Stapf, who is personally known, and who took an oath.

23 

24



1 BY MR. KIRK:

2 Q. Mr. Stapf, for clarification, do you have any
3 changes to your Direct Testimony.

4 A. No, not to my Direct Testimony. Sorry.

5 Q. Thank you.

6 Mr. Stapf, within five minutes, can you
7 briefly summarize your Direct Testimony in this matter.

8 A. I believe I can.

9 First of all, Hernando County is committed
10 and, in fact, as reflected in its water and sewer master
11 plan, to provide public water and sewer service
12 throughout the county in a manner that's consistent with
13 the adopted and Florida Department of Consumer Affairs
14 approved Comprehensive Land Use Plan.

15 Evans Properties has never made a request,
16 formal or informal, to Hernando County for water and
17 sewer service for its property. In fact, I find the
18 absence of that request conspicuous by its absence.
19 Evans Properties has apparently only made a request of
20 Skyland Utilities of which it is the parent company, and
21 that, too, seems at best self-serving and contrived.

22 There have been identified in southeastern
23 Hernando a number of private wells with detectable
24 levels of arsenic. Some of them exceed the maximum
25 contaminant level which is ten parts per billion, and

1 many more or less than that MCL. It's my understanding
2 that there are, that there have been in excess of 1200
3 private wells tested over the last several years and
4 approximately 25 percent show arsenic levels in excess
5 of the MCL.

6 In response to those Health Department and
7 FDEP findings, my department prepared what's called a
8 request for inclusion, and that was submitted to the DEP
9 in hopes of obtaining grant funds to mitigate this water
10 supply problem. That request was submitted in a rather
11 hurried fashion because of the deadline, and after it
12 was submitted we took it to our Board of County
13 Commissioners for endorsement.

14 Following discussion at that meeting, which
15 was extensive, and publicity in local newspapers, our
16 Board of County Commissioners decided to table or set
17 aside the proposal for the time being because there was
18 no interest. It was not denied; no decision was made
19 never or ever to serve the area. It was set aside for
20 the time being, pending the development or expressions
21 of interest by concerned parties.

22 Had Evans Properties come forward with a
23 request for public utility service, it could have made
24 this issue and its outcome a lot different. I can't say
25 that it would or wouldn't, but I think it certainly

1 would have affected the discussion. I also believe that
2 this proposal to create Skyland Utilities infringes on
3 the County's already established service area, and it is
4 a potential duplication of service. This diminishes the
5 potential for the county to achieve maximum economies of
6 scale for the county's future and necessary water
7 improvements.

8 The possible establishment of Skyland
9 Utilities has potentially more negative impact upon the
10 ability to finance future improvements, a Ridgemanor
11 Wastewater Treatment Plant expansion and renovation, the
12 Ridgemanor auxilliary water tank and some additional
13 water supply wells, rather than jeopardizing an already
14 existing bond issue dating back to 2004 that was sold
15 for the purchase of the Florida Water Services Utility.

16 It's my belief that the authorization of
17 Skyland Utilities would erode the County's future rate
18 base and therefore jeopardize that future funding for
19 those future improvements. The establishment of Skyland
20 Utilities also raises the possibility that
21 infrastructure resulting therefrom will be of a nature
22 maximizing return on investment rather than long-term
23 utility service needs at some point. And as our recent
24 history suggest, Hernando County may well be eventually
25 asked by the ratepayers of that system to take over

1 and/or acquire the system, because it's not meeting the
2 standards of the County. It's our goal to provide
3 uniform service throughout the County, where it is to be
4 provided and at uniform rates.

5 In summary, in my professional opinion,
6 granting of this certificate is contrary to the public
7 interest of Hernando County residents.

8 That concludes my summary.

9 **CHAIRMAN ARGENZIANO:** Pasco County, anybody.

10 **MR. KIRK:** I'm done with --

11 **MR. HOLLIMON:** I have no cross of this
12 witness.

13 **CHAIRMAN ARGENZIANO:** I've lost my track here.
14 Hold on. Yes, I see what I've done, okay.

15 **MR. WHARTON:** Here I am.

16 **CHAIRMAN ARGENZIANO:** There you are. Let's go
17 for it.

18 **CROSS EXAMINATION**

19 **BY MR. WHARTON:**

20 **Q.** Mr. Stapf, good evening.

21 **A.** Nice to see you again, sir.

22 **Q.** First of all, you've got master plans, right,
23 for water and wastewater?

24 **A.** Yes, sir, we do.

25 **Q.** Do your master plans say you will serve these

1 areas?

2 **A.** Our master plans say we will serve the entire
3 county, and as needs develops we will extend utilities
4 into those areas. There are not specific plans for
5 extension of utilities into that area right now other
6 than the transmission line suggested along Powell Road
7 and Hammond Road over to Spring Lake Highway. That
8 would serve as a link between the east and western
9 Hernando systems, and which was one of the elements that
10 we would have pursued had the mitigation of arsenic well
11 problems been approved by our board.

12 **Q.** So that's a project that you described as
13 being on hold?

14 **A.** Yes, sir.

15 **Q.** Okay. So your master plans don't have any
16 specific tenants or sections to provide service to this
17 property, and yet you testify that it will have a
18 negative effect on the county if Skyland is
19 certificated, correct?

20 **A.** Yes.

21 **Q.** Okay. Don't you agree that absolutely nothing
22 about any present county bonds or county finance
23 instruments has depended on revenues from the properties
24 that Skyland seeks to certificate?

25 **A.** Any present bonds or financing does not depend

1 upon revenues from this property, no, sir.

2 Q. You're speculating about some future financing
3 instrument or bond issue when you render that testimony
4 in your summary, aren't you?

5 A. I'm not sure that I would agree that really
6 that's speculation.

7 Q. Well, you don't even have anything like that
8 proposed, do you?

9 A. We have applications before the Florida
10 Department of Environmental Protections Bureau of Water
11 Facilities Financing for both wastewater improvement
12 projects and for, soon to be for drinking water
13 improvement projects. Questions typically asked by
14 those who review those investigating our capacity,
15 meaning our capacity to repay those instruments, is what
16 is the condition of your rate base, what is your service
17 area. So in that sense I believe it does impact it.

18 Q. Have you represented to them with any
19 specificity whatsoever that revenues from the areas
20 Skyland seeks to certificate would be supportive of that
21 request?

22 A. We have not, because we have not been asked
23 that question.

24 Q. All right. So you talked about the effort on
25 behalf of yourself, at least, the county utility

1 department to respond to the problem the county is
2 experiencing with contaminated wells, and you said,
3 well, if Evans Properties would have come in and asked
4 for service, that might have made that effort turn out
5 differently. Is that a fair characterization of what
6 you said in your summary?

7 **A.** Yes, sir.

8 **Q.** If I asked you to show me right now where you
9 say anything to that effect in your direct testimony,
10 will you be able to do it? Is it in there?

11 **A.** I'd have to look at my direct testimony.

12 **Q.** I'd like you to do that.

13 **A.** It was in my deposition.

14 **Q.** Is it in your direct testimony? (Pause.)

15 **CHAIRMAN ARGENZIANO:** Depending on how many
16 pages he has to review, I'm going to take a break.

17 **MR. WHARTON:** You know, that's a good point.
18 We're obviously going to be taking a break; I'll come
19 back to that point.

20 **CHAIRMAN ARGENZIANO:** Okay.

21 **MR. WHARTON:** Is that fair enough? I will
22 move on, and then Mr. Stapf can review it a little
23 later.

24 **CHAIRMAN ARGENZIANO:** Maybe he can take a look
25 at that.

1 **BY MR. WHARTON:**

2 Q. All right. Mr. Stapf, I'm going to go back
3 and start asking some more questions.

4 A. I've got to make myself a note to remember
5 that.

6 Q. Isn't it true, Mr. Stapf, that it is the
7 county's policy to provide utility service to the areas
8 of the county that seek such service as opposed to
9 private utilities?

10 A. Yes.

11 Q. Okay. Now, isn't it also true that the
12 objection of the county to Skyland is categorical, isn't
13 it? It's not something unique or particular to Skyland?

14 A. I think that I agree that's a fair
15 characterization.

16 Q. Okay. There is nothing else that Skyland
17 could have done or proposed in terms of their
18 application that would have caused the county not to
19 oppose the application, correct?

20 A. I believe that's -- the answer to your
21 question, again, is yes, and that is consistent with
22 previous --

23 Q. Isn't it true, sir, that you feel that private
24 utilities are just as capable of delivering services
25 that are as safe and efficient and as economic as public

1 utilities, don't you?

2 A. I believe that some private investor-owned
3 utilities have very clearly demonstrated that ability.

4 Q. You don't categorically believe that public
5 utilities are better than private or the other way
6 around, do you?

7 A. No, sir.

8 Q. All right. Now, forgive me for asking this
9 question backwards, but I asked it backwards in the
10 deposition. It's not your opinion, is it, that ceasing
11 utilities services at a political boundary is
12 necessarily efficient? You don't think that, do you?

13 A. I don't think that; yes, sir.

14 Q. Okay.

15 A. And as I stated in my deposition, that's an
16 important topic, I think, that needs broader acceptance
17 and understanding.

18 Q. Okay. You can see a beneficial approach to
19 the type of service that can be delivered across county
20 boundaries, right?

21 A. Absolutely.

22 Q. Do you think that if Skyland were certificated
23 and it was a well-run and well-operated utility that it
24 might be able to work in concert with Hernando County to
25 solve some of the county's water and wastewater

1 concerns?

2 A. That's a possibility. I don't know that.

3 Q. Now, there's actually three different points
4 on the borders of Hernando and Pasco County where you --
5 and by you I mean the county utilities department -- has
6 had discussions with Pasco County about Pasco County
7 sending untreated wastewater to Hernando County for
8 treatment, right?

9 A. That's correct.

10 Q. And is that Ridge Manor, is that one of those
11 places?

12 A. One of those is the Ridge Manor wastewater
13 plant, and the discussions there include sending
14 wastewater from, I believe it's the Lacoochee -- Pasco
15 County Lacoochee Facility.

16 Q. And that's the one that you said would require
17 a force main to be constructed close to the Skyland
18 properties?

19 A. Yes.

20 Q. So is it a fair statement that to your
21 knowledge Pasco County has a wastewater treatment
22 concern down in that area that they'd like to get
23 satisfied with central facilities?

24 MR. KIRK: Madam Chairperson, Mr. Wharton is
25 asking questions outside of direct. I mean, if he's

1 going to object to Mr. Stapf's testimony here because
2 it's based deposition testimony as opposed to direct, I
3 think it's only fair that he follows his own rules. I
4 haven't been objecting, but I was also going to note
5 that he has been asking questions based upon deposition
6 testimony, not based upon his direct testimony, prefiled
7 testimony.

8 **MR. WHARTON:** Well, I specifically am asking
9 about a force main that he mentioned in his summary.

10 **MR. KIRK:** I'm going to withdraw my objection,
11 but I think Mr. Wharton should follow the same rules
12 that he is trying to seek to invoke.

13 **MR. WHARTON:** I would agree with that.

14 **CHAIRMAN ARGENZIANO:** Okay. We're in
15 agreement. Let's go.

16 **THE WITNESS:** May I ask a question of
17 clarification?

18 **CHAIRMAN ARGENZIANO:** Yes, certainly.

19 **THE WITNESS:**

20 **A.** You're asking about a force main I mentioned
21 in my summary?

22 **Q.** Right. I thought you said that a facility
23 would be required that would run near the Skyland
24 property.

25 **A.** I believe that was in reference to that water

1 main on Powell Road.

2 Q. It could be. It could be.

3 All right. Let me go on to another subject.
4 You have talked about the county's experience with
5 Florida Water, correct?

6 A. Yes.

7 Q. And that is certainly one of the reasons that
8 you personally seem to have some skepticism about
9 private utilities, is that fair enough?

10 A. I have skepticism about their performance here
11 in Hernando County.

12 Q. All right. Now, you don't believe that the
13 county's experience with the Florida Water system was
14 typical of private utilities, do you?

15 A. I'm not prepared or able to comment on whether
16 it's typical or atypical. I'm familiar with private
17 utilities that run well and set the standard nationally,
18 and I'm familiar with those that do not. I wouldn't
19 care to characterize them either way.

20 Q. Now, the Florida Water system was actually a
21 system that was regulated by Hernando County for six or
22 eight years before it was acquired by the county, right?

23 A. Yes.

24 Q. As opposed to being regulated by the PSC?

25 A. Yes.

1 **Q.** Now, you agree that if Skyland began to
2 operate that it would be accountable to the PSC?

3 **A.** Yes.

4 **Q.** And accountable to DEP?

5 **A.** Yes.

6 **Q.** And accountable to the water management
7 district?

8 **A.** Yes.

9 **Q.** Do you agree that to the extent you are
10 concerned that the certification of Skyland could be
11 setting the stage for a repeat of the county's
12 experience with Florida Water, that that is speculative?

13 **A.** That is the basis -- one of the bases of my
14 concern.

15 **Q.** But it is speculative, you will agree with
16 that?

17 **A.** Certainly it is.

18 **Q.** And, again, that concern is not because of
19 anything unique to Skyland or its application, you would
20 have that concern regarding any investor-owned utility
21 because of the county's experience with Florida Water,
22 correct?

23 **A.** Yes.

24 **Q.** Don't you agree that Skyland would have to
25 obey the same rules and regulations that apply to the

1 county with regard to the operation of its utility under
2 DEP and water management district rules?

3 **A.** Yes, as did Florida Water.

4 **Q.** Now, the county doesn't have any facilities in
5 or adjacent to the properties that Skyland seeks to
6 certificate in Hernando County now, does it?

7 **A.** I'm not clear what would be considered close,
8 the closest we have is Cedar Lane water system, which is
9 a very small system serving a small development. It's
10 some distance away.

11 **Q.** When you say some distance, do you know about
12 how much?

13 **A.** Without looking at a map, I'm going to say it
14 is probably about three to four miles.

15 **Q.** Okay. Now, I think you testified earlier that
16 the county considers the entirety of Hernando County to
17 be its service area, unless and except some areas that
18 are being served by Brooksville?

19 **A.** That's correct.

20 **Q.** Okay.

21 **A.** There are some small homeowners association
22 owned utilities scattered around the county of
23 relatively small consequence. But, generally, yes, the
24 rest of the county is our service area.

25 **Q.** Now, you agree, don't you, that having a

1 defined service area is helpful to a utility in terms of
2 planning its activity on a going-forward basis?

3 A. Absolutely.

4 Q. It is absolutely essential?

5 A. Yes, it is.

6 Q. And the current service territories of the
7 county utility include areas for which no service is
8 provided, correct?

9 A. That is correct.

10 Q. It also includes areas for which service would
11 not be economical, correct?

12 A. Speculative. It's possible. It's possible.

13 Q. All right. It also includes areas for which,
14 apparently, the county planners who work for Hernando
15 County believe that service would be in violation of the
16 comprehensive plan?

17 A. I'm not qualified to comment relative to
18 planners opinions.

19 Q. You don't know whether or not they have that
20 opinion, then?

21 A. I can't say that I do, no, sir.

22 Q. All right.

23 A. I do have some disagreements with our planners
24 occasionally about different issues.

25 Q. And we'll talk about that as it relates to

1 some of the wells that you talked about earlier.

2 Well, heck, let's talk about it now. You
3 believe that water quality concerns like the
4 contaminated wells that you have talked about should
5 trump concerns over urban sprawl, don't you?

6 **MR. KIRK:** Madam Chairperson, I believe in
7 Mr. Stapf's discussion about the wells -- nevermind. I
8 withdraw that objection.

9 **THE WITNESS:** I believe as I stated in my
10 deposition, yes, I do.

11 **BY MR. WHARTON:**

12 **Q.** Okay. And you think the same thing is true of
13 wastewater services; there are times when the need for
14 that service is more important than the tenants of
15 comprehensive planning?

16 **A.** I think the overriding concern is public
17 health. And if a septic system is failing and a
18 centralized system is a viable option, then, yes, it
19 should be considered.

20 **Q.** Okay. Isn't it true that --

21 **CHAIRMAN ARGENZIANO:** Mr. Wharton, may I? It
22 looks like we have no one to sign up, but just to be
23 safe, I'd like to take a five-minute break and see if
24 anybody comes. Would that be ample if anybody was
25 coming, or should we give it ten minutes? Let's give it

1 ten minutes. I hate to cut you off, but let's do that.
2 Let's take a ten-minute break and see if anybody signs
3 up. If there is no one to sign up, we will just go
4 right back into where we left off. We're on a
5 ten-minute break.

6 (Recess.)

7 * * * * *

8 **CHAIRMAN ARGENZIANO:** You're recognized.

9 **MR. WHARTON:** Thank you, Madam Chair.

10 **BY MR. WHARTON:**

11 Q. Isn't it true, Mr. Stapf, that given the
12 existence and location of the county facilities as they
13 exist now, that if this territory is granted to Skyland,
14 the county will be able to incorporate that fact into
15 its master plan?

16 A. Yes.

17 Q. And you agree that if Skyland is certificated
18 it will not render unusable or any less usable any
19 existing facility of the county?

20 A. Yes.

21 Q. I'm trying to remember if I asked you this,
22 but it's quicker probably just to ask you again. There
23 are large parts of Hernando County that the county
24 utilities have no present plans to serve, correct?

25 A. I'm not sure that that's a question that I can

1 answer yes or no to. It's a difficult question to
2 answer, because our decisions to serve areas are
3 dependent upon service requests that we may receive both
4 from existing homeowners and possibly from developers
5 who own property. A case in point is the Quarry Reserve
6 project that you may or may not have heard about.

7 Q. Do you agree there are large parts of Hernando
8 County that the county utilities have no present or
9 specific plans to extend service to?

10 A. There are parts of the county for which we
11 have no specific current plans for utility extensions.

12 Q. And this is one of them?

13 A. Yes.

14 Q. And there are areas of Hernando County
15 presently that, in your opinion, it would not be
16 economical for the county to provide service to?

17 A. There are areas of the county where it may not
18 be economical to provide service. Without having an
19 opportunity to review the specifics of any given area, I
20 can't answer that yes or no. And the case in point is
21 Skyland Utilities' proposal.

22 Q. Do you recall that I took your deposition on
23 May 27th, 2010?

24 A. Yes, I do.

25 Q. And on Page 58 thereof, at Line 3, I said,

1 "Do you agree that there are areas of Hernando County
2 presently that, in your opinion, it would not be
3 economical for the county to provide service?" Your
4 answer was, "There are areas of the county that are,
5 that it would not be economical right now to serve."

6 Do you stand by that testimony?

7 A. What page was that on?

8 Q. Page 59, Line 3, sir.

9 A. I think the key part of that response is right
10 now.

11 Q. Okay. Fair enough.

12 A. It may change in the future.

13 Q. But given that qualification, do you stand by
14 the testimony?

15 A. Yes.

16 Q. All right. Don't you agree that Skyland is
17 one of those areas?

18 A. I don't know that because we were not afforded
19 an opportunity to review a request for service and see
20 if it was feasible.

21 Q. So you don't know, as we sit here today, how
22 much it would cost the county utilities department to
23 extend service to Skyland?

24 A. I do not.

25 Q. And you don't know, as we sit here today,

1 whether or not the planners that are also employed by
2 Hernando County would consider that service to be
3 consistent with the comprehensive plan?

4 A. I do not, because I have not talked to them
5 about that.

6 Q. All right. Now, it is not your testimony that
7 certification of Skyland would jeopardize Hernando
8 County's ability to pay any current bonds, is it?

9 A. Current bonds as they are currently
10 structured, I think my answer is yes to your question.

11 Q. Okay. So you have debt service properly
12 funded with your current rates?

13 A. Yes, we do.

14 Q. All right. The customers that you have now
15 and the rate structure you have in place supports
16 whatever bonds and other financing instruments the
17 county operates under, correct?

18 A. Correct.

19 Q. And you can't quantify to what extent
20 Skyland's proposal might diminish the county's ability
21 to repay future bonds, can you?

22 A. No, but it will, and it could.

23 Q. It could?

24 A. It could. I have been involved in too many
25 rating agency discussions over the years where there

1 have been questions asked about the security of our
2 service area.

3 Q. But you would agree with me that as we sit
4 here today, you're not sure what those future bonds will
5 be for or how they will be structured?

6 A. I wouldn't say I'm not sure. I know that we
7 have a \$154 million capital improvements program on the
8 books for which we have made significant effort for
9 planning and to address the debt service needs that will
10 come out of that. It was part of our most recent rate
11 revision that was approved by our county board of
12 commissioners approximately one year ago. So I'm not
13 totally in the dark in that regard, but it's always
14 subject to change as conditions change, and I think
15 there are a lot of people in the room that would
16 understand that.

17 Q. Well, do you recall that I took your
18 deposition on May 27th, 2010?

19 A. I believe I answered yes to that once before.

20 Q. Okay. At Page 61, Line 9, I asked you, "Can
21 you quantify to what extent Skyland's proposal
22 diminishes the county's ability to repay future bonds,"
23 and you said no.

24 A. No, I cannot.

25 Q. I then asked you, "You don't know how many

1 customers will be out there and what type, right?" And
2 then at Line 20 I said, "Another is that you really are
3 not sure what those future bonds will be for or how they
4 will be structured, correct?" And your answer was,
5 "That's correct."

6 A. There is more to my answer.

7 Q. But your answer does say that's correct,
8 doesn't it?

9 A. There's more to my answer.

10 Q. Well, I'll let your lawyer bring that out on
11 redirect.

12 A. Okay.

13 Q. Do you stand by the testimony?

14 A. I stand by my deposition testimony.

15 Q. Now, you can't quantify, can you, to what
16 extent your ability to render service to your customers
17 as economically and safely as possible will be impaired
18 or diminished if Skyland is certificated, isn't that
19 true?

20 A. Could you state that again, please?

21 Q. Sure. You cannot quantify, can you, to what
22 extent, if any, your ability to render service to your
23 customers as economically and safely as possible will be
24 impaired or diminished if Skyland is certificated?

25 A. No more than I can definitively identify the

1 cost of a project to be bid tomorrow; no, sir.

2 Q. Now, the Hernando County utilities department
3 recently prepared a cost estimate to expand a water
4 distribution system network into southeastern Hernando
5 County pretty close to some of the areas proposed to be
6 serviced by Skyland?

7 A. Yes.

8 Q. And that was just for water service, right?

9 A. That's correct.

10 Q. And the cost estimates you had for that
11 extension was \$15 million?

12 A. That's correct.

13 Q. All right. And the reason you did that is
14 because there is an excess of 200 wells out there that
15 have been identified as having arsonic contamination,
16 correct?

17 A. Again, there is more to that answer than just
18 yes or no. We did so because we were asked to do so by
19 the FDEP, and to submit a request for inclusion for
20 funding under their grants program.

21 Q. Why did DEP ask you to do that. Is it because
22 there are arsonic contaminated wells out in that area?

23 (Simultaneous conversation.)

24 A. (Inaudible) -- contaminated wells of some
25 significance in the area, yes.

1 **Q.** Some of these wells are very close to the
2 Skyland certificated territory, aren't they?

3 **A.** Define close.

4 **Q.** Within a mile?

5 **A.** Yes.

6 **Q.** Within half a mile?

7 **A.** I can't say if they're within half a mile,
8 because the last data I saw from the DEP, or I'm sorry,
9 the Department of Health identified 214 wells. Very
10 recently I was told that there are now identified 300
11 wells, so I don't know where those additional wells may
12 be. And I have asked for clarification in that regard,
13 but I can't say for certain.

14 **Q.** Are these wells approximately located within
15 the Hernando County's present facilities and the
16 territories of Skyland?

17 **A.** I'm not aware of any of these wells being
18 located within the property or on the property of
19 Skyland.

20 **Q.** It was a poor question; let me ask again.

21 Are some of these wells located in between the
22 existing facilities of Hernando County and the
23 properties that Skyland seeks to certificate?

24 **A.** I believe that many of them are.

25 **Q.** Now, the source of that contamination hasn't

1 been identified, right?

2 **A.** I guess I'd say no, it has not.

3 **Q.** Now, DEP has actually been providing people
4 with bottled water or some type of point-of-use devices
5 out there to help them deal with this problem, right?

6 **A.** For those that want it, yes.

7 **Q.** Okay. And DEP has indicated to you, the
8 Hernando County utilities department, that they would
9 welcome you to provide service to this area, haven't
10 they?

11 **A.** Yes.

12 **Q.** And you went to the Board of County
13 Commissioners with a proposal to render such service,
14 didn't you?

15 **A.** I did.

16 **Q.** And there was a lack of public support for
17 that particular proposal, wasn't there?

18 **A.** There was no public support expressed at the
19 meeting.

20 **Q.** I think you told me the silence was deafening.

21 **A.** That's correct.

22 **Q.** And the decision of the board was that the
23 county would continue to monitor the problem, correct?

24 **A.** That's correct.

25 **Q.** So right now that issue is on hold?

1 **A.** It is on hold.

2 **Q.** Isn't it true that you were going to run a
3 trunk out there, and then some extensions to the north
4 and south as necessary to serve the affected areas?

5 **A.** That's correct.

6 **Q.** And one of the concerns the board had when
7 they decided not to take action on this issue was that
8 there was no way to pin down what the actual cost was
9 going to be to the persons who would receive the
10 service?

11 **A.** That was one of several concerns they
12 expressed, yes.

13 **Q.** Now, there has never been a similar proposal
14 to extend wastewater services to that part of the
15 county, has there?

16 **A.** Not that I'm aware of.

17 **Q.** All right. Back to the issue of the water
18 main. We are talking about eight or ten miles worth of
19 water main you would have to run out there to serve
20 those areas?

21 **A.** Yes, sir.

22 **Q.** Now, you think it's in the public interest
23 that those persons who had those contaminated wells
24 receive water service, right?

25 **A.** If it's in the public interest?

1 **Q.** Yes.

2 **A.** If you define the public as those individuals,
3 I would say that it could be, but it's also dependent
4 upon their wishes. And they have clearly expressed, in
5 a number of different ways, that they do not want public
6 water nor do some of them want bottled water or
7 point-of-use devices. That has also been their
8 expression.

9 **Q.** Do you think there is a demand for central
10 water out there?

11 **A.** I'm not sure that there is, and I'm not sure
12 that there isn't.

13 **Q.** Do you think there is a need for central water
14 out there?

15 **A.** I believe there is a need for centralized
16 water out there.

17 **Q.** But it's one right now that Hernando County is
18 just not able to meet, correct?

19 **A.** I did not say that, nor have I implied that.

20 **Q.** Well, you just said --

21 **A.** It's on hold right now pending a change in the
22 public desire. The public desire meaning those people
23 who live in that area, and it's also dependent upon
24 available funding. The uncertainty over the grant funds
25 available is also a factor that influences the local

1 cost. In other words, the cost that would likely be
2 assessed to benefiting property owners, and we have no
3 way of knowing that at this time. It's not a simple
4 answer, sir.

5 Q. Are there any present plans right now to take
6 that back in front of the board?

7 A. Yes, there are.

8 Q. And do you have any more public support than
9 you had before?

10 A. We have more information than we had before.

11 Q. Have you come up with how much it's going to
12 cost per person to run those eight to ten mile lines out
13 there?

14 A. No, we have not.

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

16 CHAIRMAN ARGENZIANO: Okay.

17 Mr. Rehwinkel and then staff. And just let me
18 say this, I'm planning to go to about 8:00 o'clock this
19 evening, and then cut off and start tomorrow at 10:00,
20 okay?

21 Mr. Rehwinkel.

22 MR. REHWINKEL: Thank you. I think I just
23 have a few.

24 **CROSS EXAMINATION**

25

1 **BY MR. REHWINKEL:**

2 **Q.** Good evening, Mr. Stapf. My name is Charles
3 Rehwinkel with the Public Counsel's Office.

4 **A.** Hello.

5 **Q.** Hi. Do you know, with respect to the need
6 that is at issue in this case, or do you have any
7 knowledge of where the barn and the house is, whether
8 it's in Hernando or Pasco County?

9 **A.** I only know that I have heard there is a barn
10 and house, I do not know where they are.

11 **Q.** Okay. Have you compared the rates that
12 Hernando County utilities would charge for service, the
13 monthly rates for service if they served Phase 1 of the
14 proposed area to the Skyland rates?

15 **A.** Yes.

16 **Q.** What is your comparison?

17 **A.** Based on the 5,000 gallons per month
18 identified by Mr. Hartman, our bill, if I recall
19 correctly, would be \$35.38 per month. I believe that
20 the Skyland bill would be \$89 and change.

21 **Q.** That's combined water and wastewater?

22 **A.** Yes. Another interesting consideration, if I
23 may offer it, is that the average -- most of our water
24 customers in Hernando County use 8,500 gallons per
25 month. So I'm not sure that using 5,000 gallons per

1 month in this particular setting necessarily provides
2 the appropriate depiction of the monthly bill. These
3 are proposed to be large lots, and who knows what type
4 of development. I would assume it's a high end, and
5 high-end users typically use more water.

6 Q. Have you made any judgment as the utilities
7 director for Hernando County -- is that the right title?

8 A. Yes, sir.

9 Q. Have you made any judgment based on your
10 expertise as the utilities director for Hernando County
11 about the realistic nature of the rates that Skyland is
12 proposing for the territory that they propose to serve
13 and the density?

14 A. I've expressed my opinions. I'm not sure that
15 is the same as judgment. We haven't engaged in a
16 detailed analysis, but it has been my experience that
17 providing centralized water and sewer service to any
18 given area requires much higher density of development
19 in order to be economical to provide for adequate
20 cost-recovery.

21 Q. I'm going to do what lawyers are trained not
22 to do and ask you another question that I don't know the
23 answer to: But can you tell me if Hernando County
24 utilities is ready, willing, and able to provide service
25 to what has been identified as Phase 1, the green plots

1 and parcels on Exhibit 3A over the five-year horizon
2 that is contained in Skyland's application?

3 **A.** I'm not prepared to say that we are, because
4 we have not been afforded an opportunity to evaluate
5 this service area. They have made to request of us
6 informal or otherwise.

7 **Q.** You can say neither yes or no?

8 **A.** I can't say yes or no. However, I would like
9 to add that as we have begun to pursue the renewal of
10 our consumptive water use permits with SWFWMD over these
11 past two and a half years worth of discussion, it has
12 been made eminently clear to us that we need to move our
13 water withdrawals east and to the north. East could
14 include the pursuit of developing water resources in
15 this part of the county. Because of concerns over the
16 minimum flows and levels in the Weeki-Wachee Spring
17 Shed, specifically the Springhill area, the water
18 withdrawals have been maxed out in that area, and we
19 would have been interested in discussing service, water
20 service or water resource development options.

21 **Q.** In your professional experience, have you
22 encountered the experience of taking over private
23 utilities where the developer sold lots and then left
24 the physical plant to deteriorate?

25 **A.** I have not personally taken over those types

1 of utilities. We have, however, two requests for such
2 action pending as we speak. I do not believe either one
3 of these is Public Service Commission regulated.

4 Q. In your opinion, if Skyland were to allow the
5 one per ten acre density to be built in the service
6 territory, or proposed service territory, and were to
7 serve customers at that level of density, would the cost
8 structure lead to sustainable rates if those utilities
9 were independently operated separate from Evans
10 Properties?

11 A. I'm not privy to the confidential financial
12 statements of Evans Properties, so I do not know what
13 sort of resources they have that may, in fact, be used
14 to subsidize a water utility. I have no idea. I can't
15 answer your question.

16 Q. Okay. I want to ask you a series of questions
17 that I asked Mr. Hartman based on your personal
18 knowledge of Hernando utilities: Does Hernando
19 utilities pay income taxes or incur income tax expense?

20 A. No, we do not.

21 Q. Does Hernando utilities incur any real estate
22 or property taxes?

23 A. No, sir.

24 Q. Do you make any payment in lieu of real estate
25 taxes?

1 **A.** We pay a sum of money to our general fund for
2 financial services, payroll, preparation, the like. In
3 some places it's called payment in lieu of taxes. Here
4 it is not. It's referred to here in Hernando County as
5 cost allocation, and the amount of money that we pay in
6 total is about -- between 1 and \$1.1 million out of the
7 \$24 million of annual revenue.

8 **Q.** Do you pay or incur any intangible taxes?

9 **A.** No, sir.

10 **Q.** Sales taxes for your purchases?

11 **A.** Generally, no. There are probably occasions
12 when we have to buy something that is too much hassle to
13 try to avoid the sales tax. Our county clerk recently
14 determined that for purchases under a certain dollar
15 amount, go ahead and buy them and don't worry about the
16 sales tax. It was too costly to chase the few cents
17 related to the sales tax.

18 **Q.** And are the rates in Hernando County
19 determined by public officials elected and accountable
20 to the citizens and customers?

21 **A.** Yes, sir.

22 **Q.** Is there anything akin to a regulatory
23 assessment fee that the customers pay?

24 **A.** No, sir.

25 **Q.** Is there any litigated rate case expense that

1 is borne by the customers for determining of the rate
2 levels?

3 **A.** If your question is are we being sued about
4 our water rates --

5 **Q.** Well, do you have regulatory proceedings or
6 administrative proceedings where your rates are
7 challenged by customers, something analogous to the
8 Public Service Commission?

9 **A.** If we are going to revise our rates, it is
10 revised through public hearings held before the Board of
11 County Commissioners with the opportunity for public
12 input and comment prior to any decision that they
13 make -- that they may make. I'm not sure, does that
14 answer your question?

15 **Q.** Yes. And just a follow-up, are there any rate
16 case expense, like legal fees, that are occasioned by
17 those hearings that are then included in rates?

18 **A.** No. That's not an easy answer, either. My
19 department funds one full-time equivalent in the county
20 attorney's office, because we are the largest department
21 and we have a multitude of legal requests related to
22 many of the things we do. And whenever we get into the
23 issues of ratemaking, that attorney also is assigned to
24 review and handle those. So, yes, we do pay for it, but
25 it is not -- I can't identify a specific expense

1 associated with any given rate case.

2 Q. There is not any additional -- what you're
3 saying is there is not an incremental cost above the
4 salary cost?

5 A. No. We cover one full-time equivalency out of
6 the present attorneys staffing, and there are four
7 attorneys and four or five clerical people, I believe.

8 Q. Is your cost of debt lower than the public
9 utility's cost -- a private utility's cost of debt?

10 A. If you're referring to the interest rate, I
11 believe it is. I don't know what the cost of debt is
12 for a private utility. Our most recent financing was
13 3.25 percent for some stimulus money that's on one of
14 our wastewater plant projects.

15 Q. And there is not a component in your cost of
16 service that is akin to a return on equity?

17 A. No.

18 MR. REHWINKEL: Those are all the questions I
19 have.

20 Thank you, Mr. Stapf.

21 CHAIRMAN ARGENZIANO: Thank you. Staff.

22 MS. BENNETT: I may be able to make this very
23 quick. Staff has three exhibits, Exhibit 16. There are
24 some responses from Hernando County.

25 THE WITNESS: Excuse me. Staff as in F-F or

1 P-F?

2 **MS. BENNETT:** Commission staff.

3 **THE WITNESS:** Okay. I didn't bring any
4 exhibits.

5 **MS. BENNETT:** I have had a hard time with this
6 all week trying to say your name and then Commission
7 Staff.

8 But, 16, 17, and 18 are staff exhibits,
9 S-T-A-F-F exhibits that we would like to enter into the
10 record. One is Hernando County's Response to Staff's
11 First Set of Interrogatories Number 4 and 5. Number 17
12 is Hernando County's response to Staff's First
13 Production of Documents, Number 2, which is the final
14 water supply master plan. And 18 is the deposition of
15 Mr. Stapf.

16 If there are no objections to the entry of
17 those exhibits into the record by any of the parties,
18 then I don't have any questions of this witness.

19 **MR. KIRK:** Hernando County has no objection.

20 **CHAIRMAN ARGENZIANO:** Any objections?

21 **MR. REHWINKEL:** No.

22 **CHAIRMAN ARGENZIANO:** Hearing none, then there
23 are no questions, is that what you indicated?

24 **MS. BENNETT:** That's correct.

25 **CHAIRMAN ARGENZIANO:** Okay. Well, any other

1 exhibits --

2 **MR. KIRK:** Redirect?

3 **CHAIRMAN ARGENZIANO:** Redirect, I'm sorry.

4 **COMMISSIONER EDGAR:** I have questions.

5 **CHAIRMAN ARGENZIANO:** I'm sorry. Commissioner
6 Edgar, I didn't see you there.

7 **COMMISSIONER EDGAR:** Thank you. Mr. Stapf, I
8 am looking at your direct testimony, Pages 6 and 7.

9 **THE WITNESS:** Okay.

10 **COMMISSIONER EDGAR:** And at the very top of
11 the page you were asked a question about your opinion
12 regarding if another utility were allowed to operate in
13 southeastern Hernando County, and your response is that
14 it would diminish the county utility's future customer
15 base. I'm just a little unclear, and so I'd like you to
16 explain for my benefit.

17 We have heard earlier today concerns by the
18 local governments about the potential, as it has been
19 labeled, of urban sprawl in the area that the
20 application were to cover. So with that concern that
21 has been raised, how would -- let me back up. That's
22 kind of my background for asking this question.

23 The first is when you say that you have a
24 concern that it would diminish Hernando County
25 utilities, are you responding to this application

1 specifically of Skyland, or is it more generic than
2 that? And I know it's late, and I didn't state that
3 very clearly, so if you want me to start over I will.

4 **THE WITNESS:** No, I'll take a shot at
5 answering it as I understand your question. I'm
6 concerned about any private investor-owned utility being
7 established within our service area in areas in which
8 there is not now service, but there could be service in
9 the future, given current county policies and procedures
10 regarding extension of service. We'd look at the county
11 in total, and what may be suitable for one isolated area
12 may provide or may not provide adequate service for
13 adjoining areas.

14 Of particular concern with this proposal is
15 the isolated or the separated nature of the parcels and
16 the areas in between. What happens to them?

17 **COMMISSIONER EDGAR:** So when you said that you
18 look at your entire service area, are you considering
19 the entire county as your potential service area or your
20 existing service area?

21 **THE WITNESS:** Yes. Yes.

22 I do not get into expressing concerns about
23 urban sprawl. That's within the purview of our
24 planners. We address issues of a technical nature
25 relative to can we provide service or not. Does it make

1 sense, can we make it happen.

2 **COMMISSIONER EDGAR:** Okay. And then at the
3 bottom of the page, the same Page 6, you were asked for
4 your direct testimony as to your opinion as to whether
5 this project, as proposed, would be in the public
6 interest, and your response is that your opinion is that
7 it is not in the public interest.

8 One of the points that you raised as backup or
9 as reasoning for that opinion begins on Line 6, and you
10 go on to say the lack of accountability presented by a
11 private utility provider was a major factor in the
12 county's acquisition of the Florida Water System.

13 Can you elaborate on the relevance of that
14 sentence as to this project not being in the public
15 interest?

16 **THE WITNESS:** We have had -- we meaning
17 Hernando County utilities -- has had numerous bad
18 experiences having to take over what were once privately
19 owned investor-owned utilities, and having done so
20 because of significant service deficiencies and
21 significant deficiencies in infrastructure. And Florida
22 Water was a good example of that in my experience with
23 all of the time and effort we have had to spend just in
24 the last three and a half years to correct those
25 deficiencies. We still have a long way to go.

1 And I do not believe that the performance of
2 investor-owned utilities in this particular county
3 measure up to those that I have seen and worked with on
4 some American Waterworks Association committees, for
5 example. There's some really good people out there in
6 the investor-owned utilities. American Waterworks
7 Service Company is one of the best. So it can be done
8 right; there is no question about that. But the
9 performance of the investor-owned utilities here in the
10 county, in my opinion, has been not even marginal. It
11 has been very poor, and that's the nature of my concern.

12 **COMMISSIONER EDGAR:** So just to kind of round
13 that out, your opinion, as expressed in this direct
14 testimony, that this proposed application is not in the
15 public interest is based in part on your experience with
16 other privately owned water utilities in the county?

17 **THE WITNESS:** It's based in part on my
18 utilities experience and some of my own here.

19 **COMMISSIONER EDGAR:** Okay. And then I just
20 have one more question. In response to a question from
21 Mr. Wharton just shortly ago, I think you said that you
22 had been a party to many rating discussions where the
23 security of the county service area was questioned. I
24 think that was part of your response.

25 **THE WITNESS:** Yes.

1 **COMMISSIONER EDGAR:** Could you just elaborate
2 on that.

3 **THE WITNESS:** I have been involved in this
4 business actively in one way, shape, or form since 1972.
5 Now, back in 1972, I was so green you could stick me in
6 the ground and I'd grow. But I've learned a few things
7 over the years, and I've participated in discussions
8 with Moody's and Standard and Poor's and a couple of
9 other bond rating agencies. And one of their concerns
10 always in every discussion I have ever had with them is
11 they have interviewed the utility, interviewed me on
12 behalf of the utility I have worked for has been what is
13 the nature of your service obligations and the
14 commitment from the people that you serve.

15 And that relates to, many times, in wholesale
16 service contracts. And my previous utility served a
17 number of wholesale customer communities, and we had
18 exclusive service provisions in those contracts.
19 Guaranteeing a revenue stream, basically guaranteeing
20 the demand from a given area and not having them develop
21 their own or seeking service from another competing
22 utility was always a concern to the bond rating
23 agencies, and it reflected upon our ultimate bond
24 rating, which in turn reflects upon the interest rate
25 that we get when we sell bonds.

1 Erosion of your customer base is not a good
2 thing. I think that's one of the truisms in this
3 business, and we need be protective of that, or we begin
4 to jeopardize our ability to sell bonds that are either
5 used to finance improvements or to refinance existing
6 bond issues.

7 **COMMISSIONER EDGAR:** Thank you.

8 **CHAIRMAN ARGENZIANO:** Commissioner Skop, any
9 questions?

10 **COMMISSIONER SKOP:** No questions.

11 **CHAIRMAN ARGENZIANO:** Redirect.

12 **REDIRECT EXAMINATION**

13 **BY MR. KIRK:**

14 **Q.** Mr. Stapf, you indicated that you have a
15 full-time salaried attorney dedicated to utilities.
16 Does that have any effect on the utility's cost
17 allocations?

18 **A.** It is not counted in our cost allocation.

19 **Q.** Does it increase or decrease?

20 **A.** It is not part of the cost allocation. It's a
21 separate cost. The cost allocation is \$1.1 million.
22 I'd have to check to see what the cost to us is for the
23 attorney. Perhaps another \$100,000.

24 **Q.** Do you have any knowledge if the cost
25 allocation would be greater or lesser than what the

1 utility would pay -- a private utility would pay in lieu
2 of taxes?

3 A. I have no idea.

4 Q. Mr. Stapf, counsel for Skyland asked you a
5 number of questions about the 200-some-odd wells that
6 have been identified by either DEP or the Department of
7 Health. Over what kind of area are these wells? Are
8 they concentrated or scattered?

9 A. They're clustered, but scattered over a large
10 area that extends from U.S. 41 on the west to beyond
11 Spring Lake Highway almost to I-75 on the east, and
12 State Road 50 on the north, perhaps down to the county
13 line.

14 Q. I'm going to go somewhere and I'm going to
15 probably make the same mistake that Public Counsel did
16 and I'm going to ask you a question I don't know. If
17 there was a water supply facility on the property being
18 certificated by Skyland, and Skyland wanted to serve --
19 provide potable water to all the properties that had
20 identified wells with arsenic, would Skyland be in a
21 better position, or worse position, or the same position
22 that the county would be in?

23 A. As far as obtaining certification?

24 Q. No, in terms of the costs, I mean, being able
25 to run lines and the cost to provide centralized water?

1 **A.** I would expect for their own property they
2 would be in a position to move quicker than we could.

3 **Q.** But going outside of the property to the other
4 properties that have arsenic wells?

5 **A.** I don't think that they would be in any worse
6 or better position. They would have to go through the
7 same steps that we would for developing a water
8 distribution system of that nature.

9 **Q.** And in terms of costs, would they incur the
10 same types of costs?

11 **A.** Yes.

12 **MR. KIRK:** I have no further questions.

13 **CHAIRMAN ARGENZIANO:** If there are no other
14 questions, do we have any other exhibits?

15 **MR. KIRK:** Excuse me. We got his deposition
16 in.

17 **CHAIRMAN ARGENZIANO:** We did. Staff, keep me
18 straight here.

19 **MR. KIRK:** Exhibit Number 5, JES-1, his
20 resume. I'd like to go ahead and offer that into
21 evidence.

22 **CHAIRMAN ARGENZIANO:** Any objections? Hearing
23 none, it's to be admitted.

24 (Exhibit Number 5 admitted into the record.)

25 **MS. BENNETT:** Staff would like to move

1 Exhibits 16, 17, and 18 into the record.

2 **MR. WHARTON:** I did forget the thing you told
3 me I could do after the break with this witness.
4 Remember, he was going to look through his testimony.
5 Can I ask -- does this fit the circumstance?

6 **CHAIRMAN ARGENZIANO:** That would mean that we
7 can allow redirect on that question? Okay. Go for it.

8 **MR. KIRK:** I would object.

9 **CHAIRMAN ARGENZIANO:** We have an objection.
10 The nature of your objection?

11 **MR. KIRK:** Well, this would be like a -- when
12 I attempted to try to do a follow-up on Mr. Hartman, I
13 was told that to try to open up recross, and what Mr.
14 Wharton is trying to do is basically a recross.

15 **MS. CIBULA:** I would say normally that was the
16 case, but since Mr. Wharton was already promised ahead
17 of time that he could ask those questions, and we kind
18 of put him off at that point to come back to that.

19 **CHAIRMAN ARGENZIANO:** Well, we will let you do
20 redirect.

21 **MR. KIRK:** My understanding is he was -- I
22 thought he said he could put evidence on regarding some
23 of the testimony of Mr. Radacky. I don't recall that he
24 was promised anything in connection with --

25 **MR. WHARTON:** I'm going to do that later.

1 **CHAIRMAN ARGENZIANO:** No, I think there was a
2 different question, and we are going to allow the
3 question and then allow redirect.

4 **FURTHER RECROSS EXAMINATION**

5 **BY MR. WHARTON:**

6 **Q.** Mr. Stapf.

7 **A.** Yes, sir.

8 **Q.** Do you recall that you and I were having an
9 exchange about that part of your summary where you said
10 if Evans Property would have come forward before the
11 county was facing this issue, it might have made a
12 difference in our ability to extend the lines out there
13 to assist the people with the contaminated wells. Do
14 you generally recall that?

15 **A.** Yes, sir.

16 **Q.** Did you look through your direct testimony?

17 **A.** Yes, I did.

18 **Q.** Did you find anything like that?

19 **A.** On Page 2, about Line 5 through Line 19, is
20 general reference to that concept of how we evaluate
21 areas that may be seeking service. There is not in that
22 direct testimony, however, any specific comment about
23 the arsenic contaminated wells.

24 **Q.** All right. Read to me the part on Page 2 that
25 you were summarizing when you put that in your summary?

1 **A.** Is it possible -- this is your question.

2 **Q.** Well, you mean -- you are reading from your
3 deposition.

4 **A.** I'm reading from my direct testimony.

5 **Q.** Oh, I'm sorry.

6 **A.** Page 2.

7 **Q.** Okay. What line?

8 **A.** Beginning with Line 5.

9 **Q.** All right.

10 **A.** Your question, "During the time that you have
11 been with Hernando County utilities department, has
12 anyone on behalf of Evans Properties" -- this isn't your
13 question; this is a question. "During the time that you
14 have been with Hernando County utilities department has
15 anyone on behalf of Evans Properties approached the
16 utilities department requesting to have public water
17 service? During the time I have been employed with
18 Hernando County utilities I not aware of any request for
19 new water service by or for the Evans Properties. Is it
20 possible for a request to have been made and you not be
21 aware of it? All new requests for water service,
22 especially if lines have to be run any distance where a
23 new public water supply well must be drilled have to be
24 approved by me. Within the area surrounding the Evans
25 Property are you aware of any other surrounding property

1 owners making a request to the Hernando County
2 utilities? There have been some isolated inquiries for
3 service over the past several years. However, during
4 this time we have received no petitions or organized
5 requests for water supply system installation in this
6 area."

7 And that specific statement was in reference
8 to those who might have -- we thought might have sought
9 service because of arsenic contaminated wells. It
10 doesn't say that. I will admit that.

11 **MR. WHARTON:** I move to strike the portion of
12 Mr. Stapf's summary where he indicated that if Evans
13 would have come forward and requested service at the
14 time that Hernando County was investigating a way to
15 render service to the persons who have contaminated
16 wells that it might have made a difference. I don't
17 think that is a summary of the testimony he just read.

18 **MR. KIRK:** In response, based upon the
19 questions asked by Mr. Wharton during his initial cross
20 and the answers provided by Mr. Stapf, his question and
21 answer has already been covered in the testimony you
22 have all heard in the last 30 or 40 minutes, and we
23 believe that their objection would now be moot.

24 **MS. CIBULA:** I recommend that the motion to
25 strike be denied.

1 **CHAIRMAN ARGENZIANO:** We will deny the motion.
2 And if you are done with questioning, move to redirect.

3 **MR. KIRK:** I have no redirect.

4 **CHAIRMAN ARGENZIANO:** No redirect. Okay.

5 **MS. BENNETT:** I'd like to move staff --
6 S-T-A-F-F Exhibits 16, 17, and 18 into the record.

7 **CHAIRMAN ARGENZIANO:** Any objections?

8 **MR. KIRK:** Hernando County has no objection.

9 **CHAIRMAN ARGENZIANO:** Hearing none, show those
10 moved into the record.

11 (Exhibit Numbers 16, 17, and 18 admitted into
12 the record.)

13 **CHAIRMAN ARGENZIANO:** Thank you very much.

14 **MR. KIRK:** Is the Commission ready?

15 **CHAIRMAN ARGENZIANO:** Yes.

16 RONALD F. PIANTA

17 was called as a witness on behalf of Hernando, and having
18 been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 **BY MR. KIRK:**

21 **Q.** Please state your name for the record.

22 **A.** Ronald Pianta.

23 **Q.** Mr. Pianta, where are you employed?

24 **A.** I am employed as the Planning Director for
25 Hernando County.

1 Q. And what is your address?

2 A. 20 North Main Street, Brooksville, Florida.

3 Q. Did you give Direct Testimony in this matter?

4 A. I did.

5 Q. As we sit here today, do you have any changes
6 or corrections to your Direct Testimony?

7 A. I do not.

8 MR. KIRK: At this time I would like to offer
9 his Direct Testimony into the record.

10 CHAIRMAN ARGENZIANO: It is moved into the
11 record. Thank you.

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- 1 Q. Please state your name.
- 2 A. Ronald F. Pianta.
- 3 Q. Where are you currently employed?
- 4 A. Hernando County, a political subdivision of the State of Florida.
- 5 Q. What is your employment address?
- 6 A. Hernando County Government Center, 20 N. Main Street, Brooksville, FL 34601.
- 7 Q. What is your position?
- 8 A. I am the Planning Director for Hernando County.
- 9 Q. Briefly summarize your present duties.
- 10 A. As the Planning Director for Hernando County I am responsible for the oversight of the
- 11 following activities: environmental planning and sensitive lands acquisition program,
- 12 comprehensive planning in accordance with the requirements of the State of Florida
- 13 Growth Management Act, subdivision review, the drafting and implementation of land
- 14 development regulations, the review of zoning and special use applications,
- 15 development of regional impact review, and transportation planning under the
- 16 Metropolitan Planning Organization.
- 17 Q. Briefly summarize your professional background as a planner.
- 18 A. I have a Bachelor's Degree in Sociology for the University of Florida and a Masters
- 19 Degree in Urban and Regional Planning from the University of Memphis, and have been
- 20 continuously employed as a professional planner for 29 years. In addition I possess a
- 21 professional certification from the American Institute of Certified Planners.
- 22 Q. I will hand you what is marked as Exhibit RFP-1, do you recognize this document?
- 23 A. Yes, it is a copy of my resume as last updated.
- 24 Q. Are you familiar with the Application filed by Skyland Utilities, LLC?
- 25 A. Yes.

- 1 Q. How are you familiar with it?
- 2 A. I have reviewed material related to the Application filed by Skyland Utilities, LLC.
- 3 Q. Based upon your review of Skyland Application, can you describe its proposed location
4 relative to Hernando County?
- 5 A. The application is to create a potable water and sanitary sewer service area in eastern
6 Hernando and Pasco Counties. Approximately 791 acres is located in Hernando
7 County, an area around Haymen Road that is rural in nature.
- 8 Q. Do you know who owns the property where Skyland proposes to locate?
- 9 A. Yes, it is owned by the Evans Properties, Inc. which I will refer to as Evans.
- 10 Q. How do you know that?
- 11 A. I reviewed Skyland's Application, specifically Exhibit E to the Application, and also
12 verified ownership on the Property Appraiser's website.
- 13 Q. When a property owner wishes to have a particular use on his or her property, what does
14 the Planning Department look for in advising whether the requested use is allowed on
15 that property?
- 16 A. Generally, the requested use is reviewed for compliance with the County land
17 development regulations and consistency with the County comprehensive plan.
- 18 Q. Would a water/wastewater utility at the location proposed be consistent with the adopted
19 comprehensive plan for Hernando County.
- 20 A. Based upon my review of the goals, objectives and policies of the County's adopted
21 Comprehensive Plan, a water/wastewater utility would not be consistent with the
22 Hernando County Comprehensive Plan at this location.
- 23 Q. What provisions of the County's Comprehensive Plan are you relying upon?
- 24 A. The proposed utility service area is located in an area that is designated as Rural by the
25 Comprehensive Plan. The purpose of the Rural designation is to allow the continuation

1 of agricultural pursuits and retain the rural nature of those portions of the County so
2 designated by the Comprehensive Plan. Infrastructure in the Rural area is to be consistent
3 with the level of development allowed, and the County will not provide infrastructure
4 that will support urban development (Future Land Use Policy 1.01B6). Services and
5 infrastructure are to be provided adjacent to areas of concentrated growth to limit the
6 potential for urban sprawl (Future Land Use Policy 1.01T1 and 2), and development
7 patterns indicative of urban sprawl are discouraged (Future Land Use Policy 1.01T4).
8 Planning for water and sewer facilities must be consistent with the areas designated by
9 the Comprehensive Plan for urban development (Future Land Use Policy 1.01T8) and the
10 location of major public facilities such as well fields and sanitary sewer facilities must
11 consider the impact on natural resources and land use (Future Land Use Policy 1.01U2).

12 Q. In your professional opinion, would the siting of the proposed water/wastewater utility on
13 the Evans property as proposed conform to or violate the County's Comprehensive Plan?

14 A. In my professional opinion, the proposed utility would not be consistent with the adopted
15 goals, objectives and policies of the Comprehensive Plan and would violate the intent of
16 the Plan to direct future development to urban areas, discourage urban sprawl as an
17 unwanted and inefficient land use, and protect the character of rural areas from
18 incompatible development trends.

19 Q. Is there any regional or state agency that oversees a county's comprehensive planning?

20 A. Yes.

21 Q. What agency is that?

22 A. The Florida Department of Community Affairs.

23 Q. What role does the Florida Department of Community Affairs play in county government
24 comprehensive planning?

25 A. The Florida Department of Community Affairs is charged with oversight of the State of

1 Florida Growth Management Act and the compliance of local jurisdictions with the
2 provisions of the Act.

3 Q. Do you know if the Department of Community Affairs has reviewed the instant request
4 by Skyland Utilities?

5 A. Yes, they have.

6 Q. How do you know that?

7 A. I understand that the Public Service Commission requests the Department of Community
8 Affairs review proposed water and wastewater applications for consistency with the
9 respective local government's comprehensive plans.

10 Q. Do you know if the Department of Community Affairs has reached any opinion in
11 connection with the instant application of Skyland Utilities?

12 A. Yes.

13 Q. What was that opinion.

14 A. The Florida Department of Community Affairs issued an opinion letter in December of
15 2009 stating that the siting of the Skyland Utilities at the location proposed would lead to
16 the conversion of rural land to urban uses and promote sprawl. This type of land use
17 pattern would not be consistent with the requirements of the State Growth Management
18 Act and provisions contained in the Hernando County Comprehensive Plan.

19 Q. Have you seen this letter?

20 A. Yes.

21 Q. I will hand what is marked as Exhibit RFP-2. Have you seen this document?

22 A. Yes. This is a letter signed by Mike McDaniel, Bureau Chief, Department of Community
23 Affairs wherein he states that the Skyland Utility where proposed would not be in
24 compliance with the County's adopted Comprehensive Plan and Florida Statutes as it
25 relates to the discouragement of urban sprawl.

- 1 Q. Do you have any professional opinion regarding the letter identified as Exhibit RFP-2.
- 2 A. Yes.
- 3 Q. What is that opinion.
- 4 A. In my professional opinion, I concur with the concerns expressed and the conclusions
5 reached by the Florida Department of Community Affairs in their letter dated December,
6 2009.
- 7 Q. Generally, can the County allow development that is inconsistent with the County's
8 adopted Comprehensive Plan?
- 9 A. No.
- 10 Q. Why?
- 11 A. State law, as well as the adopted comprehensive plan and land development regulations
12 of the County require that all future development be consistent with and promote the
13 provisions of the Comprehensive Plan.
- 14 Q. If a development is allowed to go forward which is inconsistent the County's
15 Comprehensive Plan, do you have any professional opinion on how that may affect
16 public policy?
- 17 A. Yes.
- 18 Q. What is that opinion?
- 19 A. It would undermine the stated goals objectives and policies of the County as they relate
20 to future development patterns and undermine public confidence in their elected and
21 appointed officials who are charged with protection of the public interest.
- 22 Q. Earlier in your testimony, one of the policies you referenced mentioned Urban Sprawl.
23 Can you describe Urban Sprawl?
- 24 A. Yes.
- 25 Q. Briefly describe Urban Sprawl.

DIRECT TESTIMONY OF RONALD A. PIANTA, AICP

1 A. Urban sprawl generally leads to an inefficient and unwanted development pattern. Urban
2 sprawl is characterized by leap frog development not contiguous to existing urban
3 development, linear development that expands along a major roadway beyond the
4 existing limits of developed and planned infrastructure, tends to be single dimensional in
5 nature, is premature and lacking the necessary facilities and services, and tends to inhibit
6 infill development and the redevelopment of existing developed areas.

7 Q. In your professional opinion, if Skyland Utility begins a water/wastewater utility
8 operation at the location proposed on the Evans property, would this constitute or
9 promote urban sprawl.

10 A. Yes.

11 Q. How?

12 A. The provision of water and wastewater facilities and services in a rural area will
13 encourage development that is not compatible with existing land uses in terms of density,
14 intensity and land use type.

15 Q. If a development promotes Urban Sprawl, what types of effects can be expected?

16 A. The premature conversion of agricultural and rural land to suburban and urban uses, thus
17 negatively impacting the character of the area and lifestyle of existing residents.

18 Q. Are there any public policy implications if property develops in a manner that constitutes
19 Urban Sprawl and, if so, can you briefly describe them.

20 A. Yes, scattered development patterns are expensive to serve with the necessary public
21 services and facilities. The demand for services to support these populations tend to be
22 costly to the public and inefficient from a service delivery standpoint.

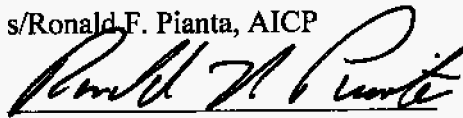
23 Q. In closing, do you have a professional opinion on Skyland's proposed operation of a
24 water/wastewater utility on the Evans property as proposed and, if so, what is that
25 opinion?

A. In summary, in my professional opinion is that the request to operate a utility at that location is inconsistent with the adopted comprehensive plan for Hernando County related to the provision of services, the protection of the character of rural areas, the discouragement of urban sprawl and would not be in the public interest.

End of Testimony

Dated this 30th day of April, 2010

s/Ronald F. Pianta, AICP

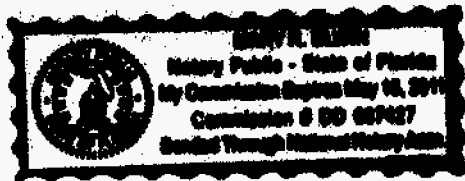


RONALD F. PIANTA, AICP

STATE OF FLORIDA

COUNTY OF HERNANDO

The foregoing instrument was sworn to and acknowledged before me this 30th day of April, 2010, by Ronald F. Pianta, who is personally known, and who took an oath.



(Signature of person taking acknowledgment)

(Name typed, printed or stamped)

(Title or rank)

(Serial number, if any)

1 **BY MR. KIRK:**

2 **Q.** Mr. Pianta, within about no more -- within
3 five minutes, could you please summarize your testimony.

4 **A.** I can. Excuse me. It has been a long day.

5 **CHAIRMAN ARGENZIANO:** I know. I almost forgot
6 you were the next witness.

7 **THE WITNESS:** You couldn't find me there for a
8 minute. Yes. My testimony was related to two issues.
9 Issue Number 3, consistency with Hernando County
10 Comprehensive Plan. Based upon my review of the
11 application, I have testified that the request for
12 certification by the Florida Public Service Commission
13 is inconsistent with the following provision of the
14 comprehensive plan of Hernando County.

15 The area proposed for service is designated
16 rural by the Hernando County Comprehensive Plan future
17 land use map. The classification is rural as enumerated
18 in the mapping criteria of Section D of the
19 comprehensive plan is intended to provide for the
20 continuation of agricultural pursuits and retain the
21 rural nature of the area so designated. As stated by
22 the mapping criteria, areas designated rural are outside
23 the anticipated residential growth patterns without
24 urban service facilities; areas have some level of
25 agricultural use and not expected to experience

1 development pressures beyond what would be normally
2 consistent with the rural nature.

3 The request for certification by the Florida
4 Public Service Commission is inconsistent with the
5 following goals, objectives, and policies of the adopted
6 comprehensive plan for Hernando County.

7 Goal 101 of the future land use element
8 requires a coordinated distribution of land use
9 intensities and discourages the proliferation of urban
10 sprawl.

11 Objective 101(b) of the future land use
12 element requires compatible and coordinated land use
13 arrangement promoting the retention of agricultural
14 activities, natural resources and open space.

15 Policy 110(b)(6) of the future land use
16 element provides that development in the rural category
17 be consistent with the level of services provided and
18 that the county not provide infrastructure to support
19 urban development in the rural area, and that urban
20 development be directed to those areas planned to
21 receive services.

22 Policy 101(t)(1) of the future land use
23 element limits the potential for urban sprawl by
24 establishing services in areas adjacent to concentrated
25 growth.

1 Policy 101(t)(2) of the future land use
2 element provides that infrastructure for future
3 development be provided in the categories designated for
4 development. It further provides that the county may
5 manage the timing and location of the development
6 through infrastructure availability.

7 Policy 101(t)(4) of the future land use
8 element provides that Hernando County shall discourage
9 urban sprawl. It further defines the characteristics of
10 sprawl to include leap-frog and single-dimension
11 development.

12 Policy 101(t)(8) of the future land use
13 elements provides that planning for water and sewer
14 facilities will be consistent with the areas planned for
15 urban development and designated by the future land use
16 map.

17 Policy 401(a)(5), sanitary sewer element
18 provides that all future wastewater collection and
19 treatment systems be owned and operated by the county or
20 municipality in the county.

21 And Policy 413(a)(4), potable water element
22 provides that the county, with the exception of cities,
23 shall be the sole franchiser of water protection or
24 supply.

25 The second issue that I have testified for is

1 that is it in the interest, the public interest for
2 Skyland to be granted water and wastewater certificates
3 for the territory proposed in its application. I have
4 testified that the territory proposed for water and
5 wastewater utility by the application for certification
6 includes a development schedule and customer base does
7 not require provision of centralized water and
8 wastewater services. It is not in the public interest
9 to certify a utility or one that's not warranted based
10 on projected need and demand.

11 I have testified that the area proposed in the
12 Skyland application is not consistent with the future
13 land use map's, stated goals, objections and policies of
14 the adopted comprehensive plan for Hernando County.

15 **THE REPORTER:** Will you please slow down a
16 little bit.

17 **CHAIRMAN ARGENZIANO:** Slow down.

18 **THE WITNESS:** Slow down? I'm trying to do it
19 in five minutes.

20 The adopted comprehensive plan expresses the
21 will and intent of the Board of County Commissioners on
22 behalf of the citizens of the county and it would not be
23 in the public interest to violate the adopted
24 comprehensive plan.

25 I have testified that the territory proposed

1 for a water and wastewater utility by the application
2 for certification is located in a rural area. I have
3 testified the granting of a certificate will enable
4 unforeseen development and service opportunities that
5 are not consistent with the stated intent of the
6 Hernando County Comprehensive Plan. (Pause.)

7 **CHAIRMAN ARGENZIANO:** Are you done?

8 **THE WITNESS:** I am done.

9 **CHAIRMAN ARGENZIANO:** Mr. Wharton.

10 **CROSS EXAMINATION**

11 **BY MR. WHARTON:**

12 **Q.** Good evening, Mr. Pianta.

13 **A.** Good evening, Mr. Wharton.

14 **Q.** You are the Planning Director for the County?

15 **A.** Yes, sir.

16 **Q.** And you have never provided testimony as an
17 expert on behalf of the County, correct?

18 **A.** I have not in these types of proceedings.

19 **Q.** Did you just hear the testimony of Mr. Stapf
20 about the Hernando County utilities department ability
21 or willingness to serve the territories that Skyland
22 seeks to certificate?

23 **A.** I did.

24 **Q.** Now, you think that would be a violation of
25 the comprehensive plan, right?

1 **A.** I think that would not be consistent with the
2 goals, objectives, and policies of the comprehensive
3 plan, correct.

4 **Q.** Is there a difference when I say a violation
5 of the comp plan and you say something is not
6 consistent?

7 **A.** The term not consistent is the normal term of
8 accepted professional practice.

9 **Q.** Okay. It's a preferable term.

10 Now, the county utilities department doesn't
11 get an opinion from DCA before they extend their
12 services into another area, do they?

13 **A.** No, they would not.

14 **Q.** And now, the county service territory is the
15 entire county, right?

16 **A.** That's correct.

17 **Q.** And you believe Skyland's proposal to create a
18 certificated territory on the lands which are the
19 subject of this application is inconsistent with the
20 comp plan, correct?

21 **A.** I do.

22 **Q.** But you don't believe the fact that the
23 county's water and wastewater service area encompasses
24 the land on which Skyland proposes to certificate a
25 utility is inconsistent with the comp plan, do you?

1 **A.** I do not.

2 **Q.** Do you believe the comp plan applies equally
3 to Skyland and to the county?

4 **A.** I do.

5 **Q.** All right. Now, you believe the comp plan has
6 the force and effect of law in Hernando County?

7 **A.** Yes.

8 **Q.** And you interpret the law in Hernando County
9 as embodied in the comprehensive plan that there will be
10 no new private wastewater and water utilities in the
11 county, don't you?

12 **A.** There are two policies which I stated in my
13 introductory statement which do state that, correct.

14 **Q.** Which would have that effect?

15 **A.** Which would have that effect, correct.

16 **Q.** I forgot to ask you the first question I was
17 supposed to ask you, and that is the information in your
18 testimony and the opinions that you have rendered are
19 not unique to Skyland, they are categorical, aren't
20 they?

21 **A.** That's correct.

22 **Q.** All right. Any private utility company that
23 was seeking to locate in that area, your opinions would
24 be the same?

25 **A.** That's correct.

1 **Q.** And, in fact, your opinions would basically be
2 the same if there were a proposal by any private utility
3 to get a PSC certificate in any rural part of the
4 county, correct?

5 **A.** Essentially correct, but it depends on the
6 circumstances of the certificate and where the request
7 was made, the location.

8 **Q.** They would certainly be the same with regard
9 to you interpret the comprehensive problem to say no new
10 private utilities in Hernando County, correct?

11 **A.** That would be inconsistent with those
12 particular policies, that's correct.

13 **Q.** Now, you agree, don't you, that from a
14 planning standpoint there's a preference for centralized
15 services?

16 **A.** Yes, sir.

17 **Q.** And Hernando County has actually codified in
18 its comp plan that all water and wastewater utility
19 services will be provided by government, hasn't it?

20 **A.** Yes, sir.

21 **Q.** Do you know, as we sit here today, whether the
22 county is providing any central service in any areas
23 that are designated rural under the future land use
24 plan?

25 **A.** I do not know that for a fact. And as I

1 stated in my direct testimony, in my deposition to you,
2 we have areas in the comprehensive plan that are called
3 transition areas which are adjacent to areas designated
4 for development that could be designated rural, but do
5 allow for development consistent with the residential
6 land use designation. So there could be some areas that
7 are adjacent to developed areas that are designated
8 rural that could be served or have the potential for
9 development.

10 Q. Okay. So there are places that the county
11 could be serving that are designated rural, but that
12 service would still be consistent with the comp plan?

13 A. That is correct.

14 Q. Okay. Now, on the other hand, you would
15 agree, wouldn't you, that in your opinion a private
16 utility that was providing service only within current
17 entitlements under the comp plan as it exists now would
18 still be inconsistent with the provisions of the
19 comprehensive plan?

20 A. I do. It would be consistent with the density
21 provisions of the comprehensive plan, but would be
22 inconsistent with the other provisions that we have
23 discussed.

24 Q. Okay. The fact that it was a private utility?

25 A. The fact that it was a private utility, the

1 fact that it is in an area not designated for growth,
2 the fact that areas not designated for growth are not to
3 receive public facilities, and the public facilities are
4 supposed to be provided in areas designated for growth
5 and adjacent to areas designated for growth.

6 Q. Now, isn't it true that under the existing
7 comprehensive plan there could be agricultural,
8 agricultural/commercial, recreational, and residential
9 densities no greater than one unit per ten acres out on
10 the lands Skyland seeks to certificate?

11 A. That's correct.

12 Q. Okay. Now, agricultural/commercial could
13 include things like packing houses and things of that
14 nature?

15 A. I believe that's what I testified to in my
16 deposition.

17 Q. And can it include living quarters for
18 agricultural workers?

19 A. Potentially. I would have to look at the
20 zoning ordinance to see what was permitted.

21 Q. Let me ask you something. Is there a copy
22 sitting up here of Exhibit 3A that some of the witnesses
23 have been referring to today?

24 A. Yes, I have a copy of it.

25 Q. Okay. You do have a copy?

1 **A.** I do.

2 **Q.** I was a little confused about some of the
3 questions that Mr. Kirk asked Mr. Hartman about the
4 densities that are allowed. Do you agree that under the
5 comprehensive plan 3A accurately depicts the number of
6 units that are allowed on the properties?

7 **A.** And you are talking about the figure itself
8 and those properties that are located in Hernando
9 County?

10 **Q.** Right. Let's say if ID 2 says 35DU?

11 **A.** If we are referring only to the comprehensive
12 plan designation, it would be a correct depiction. I
13 believe Mr. Kirk was referring to the current zoning,
14 which would allow less units without going through
15 specific procedures to develop at that entitlement.

16 **Q.** Okay. In other words, you might have to file
17 some kind of appropriate application to get these lots
18 platted to allow the densities allowed under the comp
19 plan, correct?

20 **A.** That's correct.

21 **Q.** All right. I just wanted to understand that
22 myself. Now, you're not categorically opposed to
23 amendments to the comp plan in the future that would
24 allow higher densities in any of the rural areas, are
25 you?

1 **A.** Categorically, no.

2 **Q.** That would be evaluated on a case-by-case
3 basis on the merits?

4 **A.** That's correct.

5 **Q.** Did you hear Mr. Evans talk about clustering
6 this morning?

7 **A.** I heard Mr. Hartman speak about clustering
8 this morning.

9 **Q.** Let you ask you, what is clustering?

10 **A.** Clustering is -- Mr. Evans from DCA, yes, I
11 did hear him testify to that. Clustering is, in effect,
12 concentrating units on a certain portion of the property
13 which would allow portions of the property to remain in
14 open space.

15 **Q.** Now, the county allows clustering of rural
16 areas now, don't they?

17 **A.** We do under very strict circumstances.

18 **Q.** There have been instances in which areas that
19 were designated rural in Hernando County were changed to
20 higher densities just during your brief time with the
21 county, isn't that true?

22 **A.** That's correct.

23 **Q.** One of those was a change to a rural cluster
24 overlay?

25 **A.** There were two instances. Both of those

1 instances required a comprehensive plan amendment.

2 Q. Now, you believe clustering developments is a
3 sound planning method, don't you?

4 A. It can be.

5 Q. Okay. And whether or not clustering could
6 occur in areas of the county currently designated rural
7 would depend on the circumstances and would be reviewed
8 on a case-by-case basis?

9 A. That's correct.

10 Q. Now, do you agree that urban sprawl -- well,
11 strike that. Let me ask it this way.

12 You agree, don't you, that urban sprawl isn't
13 just a function of how the property is developed, but
14 whether it's developed in accordance with sound planning
15 and management as opposed to a lack of the same, that is
16 also a function of urban sprawl?

17 A. Well, not necessarily. I mean, urban sprawl
18 has very specific criteria that is attached to it. That
19 criteria is outlined in our comprehensive plan. It's
20 also outlined in the rule, the state rule, and there is
21 very specific criteria that apply to urban sprawl or
22 describe urban sprawl. Just because something is
23 developed with sound planning principles does not mean
24 it does not constitute urban sprawl.

25 Q. Well, let me ask this, urban sprawl is not

1 just a function of density, is it?

2 A. No, it's not only a function of density.

3 Q. And you would agree that even if Skyland
4 receives this certificate, if the property that is
5 within that area that is certificated or developed
6 consistent with the comprehensive plan, urban sprawl
7 will not result. You agree with that statement, don't
8 you?

9 A. Would you repeat that statement again, please?

10 Q. Yes. You would agree with me that if Skyland
11 receives the certificate and then these properties
12 within that certificated area are developed consistent
13 with the comprehensive plan, urban sprawl will not
14 result, there will be no urban sprawl?

15 A. The provision of utilities in this particular
16 area is not consistent with the comprehensive plan. My
17 understanding of this application for a certificate is
18 to provide utilities to a rural area. Developing those
19 properties at one unit per ten acres with the provision
20 of utilities would be inconsistent with the
21 comprehensive plan. It would be consistent with the
22 density provisions, but it would be inconsistent with
23 other provisions that we have in the plan providing for
24 directing growth to areas designated to receive growth.

25 Q. Okay. Then let me remove Skyland,

1 understanding what you have said about what the
2 comprehensive plan says about private utilities from the
3 equation.

4 Do you agree that if the properties that
5 Skyland seeks to certificate are developed consistent
6 with the comp plan, there won't be urban sprawl out
7 there?

8 A. Well, that's a hypothetical question, and that
9 is -- at this point I cannot see how they could be
10 developed to be consistent with the comprehensive plan,
11 absent amendments to the plan or other circumstances.

12 Q. Well, the comprehensive plan allows some
13 densities out there now. You have already testified to
14 that.

15 A. That's correct.

16 Q. So, once again, I ask you if these properties
17 were developed consistent with the way the comp plan
18 reads now, that could not result in urban sprawl, don't
19 you agree with that?

20 A. I don't necessarily agree with that, no.

21 Q. All right. Well, do you recall that I took
22 your deposition?

23 A. Yes, and I believe you asked me that same
24 question, and I believe I gave you the same answer.

25 Q. Well, which answer, the answer that you are

1 not -- well, let's just do this the right way.

2 Have you got your deposition up there? Do you
3 remember I took your deposition --

4 **A.** I do, yes.

5 **Q.** -- on May 5 of 2010, and on Page 67 when I
6 said what about -- at Line 15. Are you there, sir?

7 **A.** I'm not there yet.

8 **Q.** Okay.

9 **A.** Page 67?

10 **Q.** Yes, on Line 15.

11 **A.** Okay.

12 **Q.** "Question: What about an area like the
13 properties which Skyland seeks to certificate, do you
14 agree that if those properties are developed consistent
15 with the comprehensive plan they cannot result in urban
16 sprawl?

17 "Answer: I'm not sure how they could be."

18 Do you stand by that testimony?

19 **A.** That's correct; yes, sir.

20 **Q.** And this may seem self-apparent, but isn't it
21 true that you also agree that if the comprehensive plan
22 is amended and then development occurs after the
23 amendment that it is consistent with the amendment, then
24 obviously there is no inconsistency with the plan,
25 right?

1 **A.** That's correct, because there would be a
2 finding of consistency in order to adopt the amendment.

3 **Q.** Okay. Now, you agree, don't you, that if
4 there is ever a change in the comp plan that allows the
5 land which Skyland seeks to serve to achieve greater
6 densities, that means the county has made a
7 determination that that particular pattern of growth is
8 consistent with the comp plan, correct?

9 **A.** That's correct.

10 **Q.** And you agree that Skyland's proposed service
11 in Phase I is consistent with the density provisions of
12 the comp plan, correct?

13 **A.** That's correct.

14 **Q.** But it's still inconsistent with the comp plan
15 as whole because of the provisions that you have
16 testified about earlier?

17 **A.** That's correct.

18 **Q.** Now, in your opinion, the fact that a
19 private -- well, strike that. I think we've asked that
20 again and again.

21 You can't name a single instance, as we sit
22 here today, can you, of any example in the state of
23 Florida where the certification of a private utility by
24 the PSC has lead to urban sprawl?

25 **A.** I'm not familiar with actions that the PSC may

1 have taken or not taken.

2 Q. Okay. You're not aware of any instance in the
3 state of Florida where holding a PSC certificate or
4 being in a PSC-certificated territory played a role in
5 the amendment of a comprehensive plan, are you?

6 A. I'm not aware of any, no.

7 Q. Now, there are a variety of methods that the
8 county has to control growth, aren't there?

9 A. That's correct.

10 Q. And there are regulatory tools available to
11 the county to prevent urban sprawl that are in place
12 now?

13 A. That's correct.

14 Q. Zoning is one?

15 A. Zoning is one.

16 Q. Land use processes as you have been
17 describing?

18 A. Land use is another.

19 Q. The comprehensive plan?

20 A. The comprehensive plan is another.

21 Q. The future land use map?

22 A. The future land use map is another.

23 Q. There are also permits which would have to be
24 gained on the local level in order to develop on the
25 properties that Skyland seeks to certificate, correct?

1 **A.** That's correct.

2 **Q.** And those are within the control of the
3 county?

4 **A.** That's correct.

5 **Q.** Now, you agree that in order for development
6 to occur out on the properties that Skyland seeks to
7 certificate in a way that would become urban sprawl, the
8 county would have to acquiesce to that particular
9 development at different stages, those stages being what
10 you just described, correct?

11 **A.** That's correct. But I believe I also told you
12 that in this particular case you are kind of putting the
13 cart before the horse. This is being done backwards,
14 because they are being certificated to provide utilities
15 prior to the county making an overt or conscious
16 decision to allow development to occur in that part of
17 the county.

18 **Q.** But you do agree with me that the kind of
19 growth about which you expressed concern in your
20 testimony and which you described as urban sprawl won't
21 occur unless the county allows it to occur, correct?

22 **A.** The county would have to allow growth to
23 occur, that's correct.

24 **Q.** The kind of growth that you have expressed
25 concern about?

1 **A.** That's correct.

2 **Q.** All right. Now, you agree, don't you, that
3 the county would retain every single tool, power, and
4 authority to regulate the development of growth on the
5 lands proposed to be certificated by Skyland after
6 Skyland gets a certificate as the county would have in
7 its arsenal before Skyland gets the certificate?

8 **A.** That's correct, with the exception of one
9 tool, which would be the provision of water and
10 wastewater. That is a tool that is used to direct
11 growth, so we would no longer have that tool in our
12 arsenal.

13 **Q.** Well, that's an interesting point. I mean,
14 you are planning staff for the county, correct?

15 **A.** I'm the planning director. I am one of them,
16 yes.

17 **Q.** Okay. You essentially embody that part of the
18 county that makes recommendations about whether
19 development should be allowed, or comp plan changes, or
20 zoning changes?

21 **A.** We do.

22 **Q.** Okay. Are you going to be any more less
23 likely to recommend that the Board of County Commission
24 approve one of those types of changes for these lands if
25 Skyland is certificated?

1 **A.** I may or may not, but I will tell you that we
2 had an application on this particular piece of property,
3 and one of the reasons or justifications that they used
4 in their application was to provide or facilitate public
5 services.

6 **Q.** And that's the application you talk about in
7 your surrebuttal testimony?

8 **A.** Yes, sir; that's correct.

9 **Q.** And you and I will talk about that later.

10 **A.** Yes, sir.

11 **Q.** Now, you would agree with me that I'm standing
12 in front of the county commission asking for a change to
13 the comp plan, and I'm the landowner out there, it
14 doesn't matter whether Skyland has a certificate or not,
15 does it?

16 **A.** Would you repeat that, please?

17 **Q.** Yes. You would agree with me that if I come
18 before the Board of County Commission, and I'm in front
19 of the county commission asking for a change in the
20 comprehensive plan, it doesn't matter whether or not
21 Skyland has been certificated?

22 **A.** It may or may not.

23 **Q.** Well, the same criteria would still apply,
24 wouldn't they?

25 **A.** That's correct. It may not -- it may not

1 matter to me or my staff, but it may matter to the
2 decision-makers, it may matter to others. It may matter
3 to the person who holds the certificate.

4 Q. And I would still have to satisfy the same
5 rules and regulations as if I didn't have the
6 certificate, correct?

7 A. That's correct.

8 Q. And I would still have to go through the same
9 process whether or not Skyland had been certificated,
10 correct?

11 A. That's correct.

12 Q. Isn't it true that you told me in deposition
13 you couldn't predict how the policies and the plan would
14 be interpreted or whether there would be other policies
15 that would -- having a certificate would cause the
16 request to be looked upon more favorably because there's
17 dynamics involved there?

18 A. That's correct.

19 Q. All right. So as we sit here today, you just
20 can't quantify to what extent certificating these
21 territories might alter the outcome of a request to
22 change the comprehensive plan by the landowner out
23 there, can you?

24 A. Or change the dynamics of the request,
25 correct.

1 Q. You just aren't able to quantify that today?

2 A. Yes, sir.

3 Q. All right. Now, you agree with me the comp
4 plan is not going to be modified unless county
5 government decides it is going to?

6 A. That's correct.

7 Q. And the zoning laws aren't going to be changed
8 unless the county government decides that they should be
9 changed?

10 A. That's correct.

11 Q. And the permits aren't going to be issued that
12 would be necessary for Skyland to develop more intensely
13 unless the county makes the decision to issue them,
14 correct?

15 A. Those permits within our purview, correct.

16 Q. And you would agree with me that urban sprawl
17 isn't going to occur on these exact lands unless
18 Hernando County allows them to occur?

19 A. Hernando County would have to allow for
20 development of the property to occur, correct.

21 Q. And, ultimately, it would be up to the board
22 to decide whether they should allow a particular
23 increase in density to occur and to what extent or what
24 weight they should consider the certificate, correct?

25 A. That is correct.

1 Q. Now, if there was ever actually a request for
2 a change in the comprehensive plan for these properties,
3 you don't know as we sit here today whether that request
4 would be granted or denied, do you?

5 A. I do not.

6 Q. That would be up to the board on that day?

7 A. That would be up to the Board of County
8 Commissioners after they decide to transmit it to the
9 state, receive comments from the state, address those
10 comments and objections, and then determine whether or
11 not to adopt the amendment, correct.

12 Q. There's a whole process that would apply?

13 A. That's correct.

14 Q. Now, you agree that the Hernando County
15 Comprehensive Plan is a document that should be
16 continually adapted to present reality and one that
17 should revolve, right?

18 A. I agree, yes, sir.

19 Q. Do you believe there are land use categories
20 that an applicant can request the property to be changed
21 to that they would not be able to request those changes
22 for unless there was central utility service available?

23 A. Yes, I agree with that.

24 Q. And the same thing would be true of actual
25 facilities in the ground, that might entitle the

1 landowner to request certain changes to land use
2 categories that he could not request if there weren't
3 facilities in the ground?

4 A. Yes, sir, I would agree with that statement.

5 Q. And the circumstances -- go ahead, you were
6 saying something?

7 A. No. I was going to get a drink.

8 Q. Okay. Let's talk about the DCA letter for a
9 second. Now, you said that you heard Mr. Evans'
10 testimony, correct?

11 A. I heard Mr. Evans' testimony today, correct.

12 Q. And you have attached that same letter to your
13 testimony?

14 A. I'm going to get it out, but I believe it was
15 attached to my testimony, correct.

16 Q. Now, isn't it true that you don't agree with
17 Mr. Evans' testimony this morning that where the
18 Hernando County Comprehensive Plan says the county will
19 not provide water, sewer, transportation, or other
20 infrastructure to support urban development, that the
21 word county is referring to Hernando County there? Did
22 you hear Mr. Evans testify that he believed that was
23 also referring to Skyland?

24 A. I heard Mr. Evans' testimony, yes. And if I
25 may turn to the particular policy that we're talking

1 about; is that permissible?

2 Q. You can do that, or you can either have a look
3 at his letter.

4 A. I'm going to answer your question.

5 Q. Okay.

6 A. I believe what I said in my deposition to you
7 was that the term county was capitalized, and it would
8 infer you to believe that it applies to the county.
9 However, if you look at that policy, there is two parts
10 to that policy, and the first part is to allow
11 development within the rural land use category which is
12 compatible with the level of public services provided.

13 The definition of public services both in
14 Chapter 163 and our local land development code does not
15 imply ownership. Those are services that are regulated
16 by government, but supplied to the public, and does not
17 infer that the public owns them.

18 So there's two parts to that policy, and the
19 other thing I would say about this particular policy is
20 it is being taken out of context because you have to
21 look at it in context with the other policies in the
22 plan that apply. And the plan also does assume, as you
23 have stated and we talked about earlier, that the county
24 would be the sole provider of water and wastewater.

25 Q. So you mean that Mr. Evans' letter takes it

1 out of context?

2 **A.** I would have to read Mr. Evans' letter, but I
3 believe Mr. Evans' testimony this morning took it out of
4 context. My interpretation of how this applies is
5 different than his.

6 **Q.** Okay. But the bottom line is if the
7 comprehensive plan refers to the county with a capital
8 C, you think that is a reference to Hernando County,
9 correct?

10 **A.** I do.

11 **Q.** In terms of planning in your testimony, you
12 don't attach any significance to the fact that the
13 entity that controls the utility also owns the land, do
14 you?

15 **A.** No, I do not.

16 **Q.** Now, you would agree as a planner that there
17 are advantages to master planning for utilities?

18 **A.** I would.

19 **Q.** And those are that you can have facilities and
20 services in place to support growth to keep up with the
21 demand of your customers, and have modern facilities,
22 and up-to-date treatment mechanisms?

23 **A.** Well, and also to direct growth to areas where
24 you want growth to occur.

25 **Q.** And there are also advantages to property

1 owners, in that regard, that have access to the master
2 plans of utilities, aren't there?

3 A. Yes, sir.

4 Q. Now, you're aware of this issue of the
5 contaminated wells that Mr. Stapf testified about,
6 right?

7 A. I'm generally aware of it, yes, sir.

8 Q. And isn't it true that in your opinion
9 Hernando County extending service such that the owners
10 of those contaminated wells would receive water service
11 from the county would violate the comprehensive plan?

12 A. We expressed a concern to Mr. Stapf that it
13 could potentially lead to urban sprawl and additional
14 development in an area which is currently designated as
15 rural and not designated really to have any development
16 for the foreseeable future.

17 Q. What you advised the utility department was
18 that providing that service would not be consistent with
19 the comprehensive plan, true?

20 A. It would be inconsistent with the policies
21 that we have to discourage urban sprawl. That could
22 potentially load to urban sprawl, correct. I believe
23 that is what I told them.

24 Q. Okay. So I'm asking you now does that mean --

25 A. I'm telling you, in my own words, what I told

1 them, and I believe that is what I said.

2 **Q.** Well, let me get the question out. Does that
3 mean right now, as we sit here, that it is your opinion
4 that the county providing service, extending service to
5 provide central service to the persons who have those
6 contaminated wells would be inconsistent with the
7 comprehensive plan?

8 **A.** I believe that it could be, yes.

9 **Q.** That it could be or would be?

10 **A.** That it could be.

11 **Q.** So you just don't know, as we sit here today?

12 **A.** No, I believe that it could be. It absolutely
13 could be, because it could lead to urban sprawl, provide
14 facilities in an area not designated to have facilities,
15 so I believe that it could be inconsistent with the
16 comprehensive plan, those specific provisions.

17 **MR. WHARTON:** That's all we have, Madam Chair.

18 **CHAIRMAN ARGENZIANO:** Mr. Rehwinkel.

19 **MR. REHWINKEL:** (Indicating no.)

20 **CHAIRMAN ARGENZIANO:** Staff.

21 **MS. KLANCKE:** I think I can make this pretty
22 quick.

23 Madam Chair, if the parties do not object to
24 the admission of Staff's Exhibit Number 19 on the
25 Comprehensive Exhibit List, then staff has no questions

1 for this witness.

2 **CHAIRMAN ARGENZIANO:** Any objection?

3 **MR. KIRK:** No.

4 **CHAIRMAN ARGENZIANO:** Hearing none.
5 Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you, Madam Chair.
7 Just a few quick questions for the witness. Good
8 evening.

9 **THE WITNESS:** Good evening, Mr. Skop.

10 **COMMISSIONER SKOP:** Referring back to Figure
11 3A that I believe that you have a copy of in front of
12 you, and Mr. Wharton on cross-examination asked you some
13 questions in the line regarding clustering. In relation
14 to Parcel ID 6 that is the parcel in Pasco County, and I
15 guess the density on that, I think, is about ten units,
16 or the zoning density, is that your understanding?

17 **THE WITNESS:** Well, looking at the exhibit,
18 they are saying it is 255 acres, and the build-out
19 condition is 26 dwelling units.

20 **COMMISSIONER SKOP:** Right. So one dwelling
21 per ten acres.

22 **THE WITNESS:** That is approximately one per
23 ten, yes, but that's in Pasco County, so I'm not
24 familiar with their regulations outside of what they
25 have testified to.

1 **COMMISSIONER SKOP:** Okay. All right, fair
2 enough.

3 With respect to clustering, are there certain
4 zoning densities that come into play? I mean, would the
5 existing comprehensive use plan have to be amended to
6 address clustering, or can you expound upon clustering a
7 little bit more?

8 **THE WITNESS:** You could cluster units based on
9 the current comprehensive plan entitlements, which is
10 one per ten. You could cluster them. You would have to
11 go through a zoning process to cluster them, but you
12 could cluster them, and by clustering them you would not
13 necessarily need to provide centralized services.

14 But you could either cluster them through a
15 zoning change under the current comprehensive plan
16 designation as long as you are not increasing the number
17 of units, or, if you were increasing the number of
18 units, you would have to go through a plan amendment
19 process.

20 **COMMISSIONER SKOP:** Okay. So, essentially,
21 clustering is just taking the existing zoning density
22 and putting them closer together on the same type of
23 parcel?

24 **THE WITNESS:** That's correct.

25 **COMMISSIONER SKOP:** All right. Thank you,

1 Madam Chair. No further questions.

2 **CHAIRMAN ARGENZIANO:** And, Staff, that was
3 Exhibit 19?

4 **MS. KLANCKE:** Exhibit 19, that is correct.

5 **CHAIRMAN ARGENZIANO:** Showing no objection,
6 that is entered into the record.

7 (Exhibit Number 19 admitted into the record.)

8 **CHAIRMAN ARGENZIANO:** Okay. Thank you very
9 much. Oh, I'm sorry. Go right ahead. I'm just trying
10 to get out of here, I guess. I'm sorry. You can take
11 all the time you want until 8:00 o'clock.

12 (Laughter.)

13 **REDIRECT EXAMINATION**

14 **BY MR. KIRK:**

15 **Q.** Mr. Pianta, Mr. Wharton asked you about -- he
16 referred you to Exhibit 3A, and specifically the parcel
17 that is in Hernando County consisting of approximately
18 349 acres.

19 **A.** Yes, sir.

20 **Q.** And you testified that under the comp plan
21 that could potentially be up to 35 dwelling units
22 without changing the comp plan?

23 **A.** That's correct.

24 **Q.** Do you know if that property is platted?

25 **A.** To my knowledge, it is not planted.

1 Q. What is the process to go through platting?

2 A. The process is to submit an application to the
3 county, it would be processed, reviewed in accordance
4 with the county regulations, processed with a
5 recommendation to the planning and zoning commission,
6 and ultimately to the Board of County Commissioners at
7 different stages of the process.

8 Q. So the Board of County Commissioners would
9 have to approve the platting process?

10 A. They would, that's correct.

11 Q. As we sit here today, if the property owner
12 wanted to pull residential building permits, do you have
13 any opinion as to how many building permits he could
14 pull today?

15 A. Based upon current zoning?

16 Q. Current entitlements without getting any
17 subsequent approvals other than pulling a building
18 permit?

19 A. To my understanding, if it's a single parcel
20 that is greater than 40 acres, they would be entitled up
21 to three units.

22 Q. Mr. Pianta, as a professional planner, do you
23 have to deal with utility siting issues?

24 A. Yes, sir.

25 Q. I'm going to ask you a two-part question: Do

1 you have a professional planning opinion as to providing
2 centralized water -- sticking just to potable water --
3 service to three homes on 349 acres, and the same
4 question as to 35 homes on 349 acres?

5 **MR. WHARTON:** Objection. It's outside the
6 scope of cross. I never asked for an opinion about
7 densities and central service from this witness.

8 **MR. KIRK:** He did discuss, and he did ask
9 about densities in the context of the comprehensive
10 plan, and Exhibit 3A does reference 35 units, which we
11 have been discussing, does reference the 35 dwelling
12 units. So I'm asking him does he have a platting
13 opinion as to providing centralized water to 35 dwelling
14 units on 349 acres.

15 **CHAIRMAN ARGENZIANO:** Samantha?

16 **MS. CIBULA:** I think it should be allowed.

17 **CHAIRMAN ARGENZIANO:** It is allowed. Please
18 answer the question.

19 **THE WITNESS:** My opinion is that it would not
20 be necessary.

21 **BY MR. KIRK:**

22 **Q.** And I will ask you the same question as to
23 three houses on 349 acres?

24 **A.** Central water facilities would not be
25 necessary.

1 **MR. KIRK:** I have no further redirect.

2 **CHAIRMAN ARGENZIANO:** Okay. For the parties,
3 any exhibits to be entered into the record?

4 **MR. KIRK:** The only thing -- have we admitted
5 Number 6 and Number 7, RFP-1 and RFP-2? If not, I'd
6 like to move them into evidence.

7 **CHAIRMAN ARGENZIANO:** Any objection? Hearing
8 none, so them moved into the record. Thank you very
9 much.

10 (Exhibit Numbers 6 and 7 admitted into the
11 record.)

12 **CHAIRMAN ARGENZIANO:** We have, like, 14
13 minutes left, but we are going to move forward and start
14 and end at 8:00.

15 So, for Pasco County, if you want to call your
16 first witness, Mr. Kennedy.

17 **MR. HOLLIMON:** Madam Chairman, while Mr.
18 Kennedy comes to the stand, maybe it's something we
19 could deal with in the morning, but I wonder if we
20 shouldn't mark this as Exhibit 3A. It keeps being
21 referred to as Exhibit 3A, but actually it is part of
22 big Exhibit 2, and I just --

23 **MS. KLANCKE:** Perhaps we can call it Number 42
24 for identification purposes.

25 **MR. KIRK:** We have no objection to that.

1 **CHAIRMAN ARGENZIANO:** Okay. Show that exhibit
2 as Exhibit 42.

3 **MR. HOLLIMON:** And just say on the record that
4 all references --

5 **CHAIRMAN ARGENZIANO:** That that is 3A.

6 **MS. KLANCKE:** In the description, we'll give
7 it a short title as 3A.

8 (Exhibit 42 marked for identification and
9 admitted into the record.)

10 **COMMISSIONER SKOP:** You took the arsenic one
11 away from us, so --

12 **MR. HOLLIMON:** Are we ready?

13 **CHAIRMAN ARGENZIANO:** Yes.

14 **BRUCE E. KENNEDY**

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

17 **DIRECT EXAMINATION**

18 **BY MR. HOLLIMON:**

19 **Q.** Would you please state your name?

20 **A.** Bruce Kennedy.

21 **Q.** Mr. Kennedy, were you previously sworn as a
22 witness?

23 **A.** Yes, I was.

24 **Q.** And have you prefiled testimony in this
25 proceeding?

1 **A.** Yes, I have.

2 **Q.** Do you have any changes or corrections to your
3 prefiled testimony?

4 **A.** No, I do not.

5 **Q.** And did you offer any exhibits with your
6 testimony?

7 **A.** Yes; I believe there were three exhibits.

8 **Q.** What were those exhibits?

9 **A.** I think my resume, the most recent bond
10 report, and I think a copy of our comp plan map.

11 **Q.** Mr. Kennedy, if I asked you the same questions
12 in your prefiled testimony tonight, would your answers
13 remain the same as stated in your prefiled testimony?

14 **A.** Yes, they would.

15 **MR. HOLLIMON:** Pasco County moves to have the
16 Direct Testimony of Bruce Kennedy inserted into the
17 record.

18 **CHAIRMAN ARGENZIANO:** Show that moved into the
19 record without objection.
20
21
22
23
24
25

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS**

2 A. Bruce Kennedy, Pub. Wks./Utilities Bldg., S-213, 7530 Little Road, New Port
3 Richey, FL 34654-5598.

4 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT POSITION DO YOU HOLD?**

5 A. Pasco County, Assistant County Administrator, Utilities Services.

6 **Q. PLEASE DESCRIBE YOUR DUTIES AND RESPONSIBILITIES IN THAT**
7 **POSITION.**

8 A. The focus of responsibility of my position is in directing the County service for
9 water, wastewater, reclaimed water, solid waste management, and streetlight
10 assessments. The programs and services include management of an annual
11 budget in excess of \$250,000,000.00. In addition to managing the Utilities
12 Services Branch Administration, the position includes service as a member of the
13 County Development Review Committee.

14 **Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL**
15 **EXPERIENCE.**

16 A. For over 30 years, I have worked in the area of public water and wastewater
17 utility system management, planning, expansion and operations. I am a
18 registered, professional engineer in the State of Florida, and have been
19 registered since 1977. I obtained a BS in Engineering from USF in 1972. My
20 resume is attached as exhibit BEK-1.

21 **Q. ARE YOU SPONSORING ANY EXHIBITS IN THIS CASE?**

22 A. In addition to my resume, I am sponsoring exhibit BEK-2, which is a 2009
23 engineering report ("Report") that was prepared in furtherance of a revenue bond
24 issuance.

25 **Q. WHAT IS THE NATURE OF YOUR TESTIMONY IN THIS PROCEEDING?**

1 A. My testimony relates to the water and wastewater utility services provided by
2 Pasco County and the deficiencies in Skyland's application from a utility and
3 engineering perspective.

4 **Q. DESCRIBE THE SERVICES PROVIDED BY PASCO COUNTY.**

5 A. Pasco County, Florida, established in 1887, contains approximately 745 square
6 miles located along the Gulf of Mexico immediately north of the Tampa Bay area.
7 The Pasco County Utilities Services Branch (PCUSB) was established in 1979
8 for the purpose of constructing, operating, and maintaining public potable water
9 and centralized wastewater treatment facilities (WWTFs). PCUSB provides
10 water, wastewater, and reclaimed water service as further described in BEK-2.

11 **Q. DESCRIBE THE POTABLE WATER SUPPLY FACILITIES USED BY PASCO
12 COUNTY TO PROVIDE POTABLE WATER TO ITS CUSTOMERS.**

13 A. Since October 1998, PCUSB has been receiving potable water from Tampa Bay
14 Water (TBW), the regional bulk water provider. Of the approximately 39.9 million
15 gallons per day (MGD) of permitted potable water (including water purchased
16 from TBW) supplied to the unincorporated areas of the county, an estimated 29.7
17 MGD, or 74 percent, comes from public water systems and 10.2 MGD, or
18 26 percent, comes from private water systems. Although PCUSB obtains
19 approximately 80 percent of its raw water from TBW, the County owns and
20 operates several groundwater supply wells with treatment that are transmitted
21 directly into the distribution system, or provides raw water supply to PCUSB's
22 water treatment facilities (WTFs). Raw water and water treated by TBW enters
23 PCUSB's water storage and distribution system by four interconnects located at
24 New Port Richey Maytum Plant (Starkey), US 41 (Cypress Creek), State Road
25 54 (Odessa), and Lakebridge. PCUSB also has three interconnects to obtain
26 water from the City of Zephyrhills and Dade City, when needed, at Joylan, Florida

1 Estates, and Elred. PCUSB owns and operates 58 water supply wells and 12
2 treatment facilities to meet its existing average daily consumption of 29.26 MGD.
3 The water distribution system consists of approximately 4,000 miles of water
4 distribution lines, varying in diameter between 2- to 36-inches, 4,730 fire
5 hydrants, 14,323 valves and associated appurtenances. Approximately 13 million
6 gallons of storage provides adequate system flow, storage, and pressure.

7 **Q. DESCRIBE THE WASTEWATER FACILITIES USED BY PASCO COUNTY TO**
8 **PROVIDE WASTEWATER SERVICES TO ITS CUSTOMERS.**

9 A. PCUSB owns and operates approximately 550 wastewater pump stations
10 throughout its service area. The wastewater system currently serves a land area
11 of more than 280 square miles, which is approximately 38 percent of the total
12 area of the County. In 2008, there were approximately 77,598 wastewater
13 service connections within the system with an average daily demand of 19.09
14 MGD. PCUSB's collection system consists of approximately 1,200 miles gravity
15 lines, 867 miles of force mains, 18,404 manholes, 1,135 valves, and associated
16 appurtenances. PCUSB owns and operates an interconnected system of
17 WWTFs that collectively treat the sewage generated within its service area.
18 There are approximately 77,598 wastewater and 11,315 water reuse connections
19 within the County wastewater system, as of September 30, 2008. In 2008,
20 PCUSB served approximately 77,598 wastewater service connections, which
21 include single-family, multi-family, and commercial customers.

22 **Q. ARE YOU FAMILIAR WITH THE SERVICE TERRITORY IN WHICH SKYLAND**
23 **SEEKS TO PROVIDE WATER AND WASTEWATER SERVICES?**

24 A. Yes.

25 **Q. DOES PASCO COUNTY PROVIDE WATER OR WASTEWATER SERVICES IN**
26 **THE SERVICE TERRITORY PROPOSED BY SKYLAND?**

1 A. No.
2

3 **Q. WHY NOT?**

4 A. There are numerous reasons why we are not serving this area. We have not
5 received any requests for service. The area is adequately and appropriately
6 served by private water wells and individual septic tanks. The Comprehensive
7 Plan does not forecast any need for central water and sewer service in the area
8 and the Plan also prohibits such service in the area for numerous reasons as
9 explained by Richard Gehring, Planning and Growth Management Administrator,
10 in his testimony. Additionally, it is not efficient, cost-effective, good utility
11 practice, or in the public interest to provide central water and sewer to such low
12 density (one unit per 10 acres) as is proposed by Skyland. Skyland's proposed
13 water and sewer rates will be substantially higher than those charged by Pasco
14 County Utilities. It is not efficient, cost-effective, good utility practice, or in the
15 public interest to provide central water and sewer to such widespread, non-
16 contiguous parcels of property. Generally, density of at least 2 units per acre is
17 necessary for central water and sewer service to be economical.

18 **Q. HAS PASCO COUNTY RECEIVED ANY REQUEST FROM A PERSON OR**
19 **ENTITY WITHIN THE PROPOSED SERVICE TERRITORY TO PROVIDE**
20 **WATER OR WASTEWATER SERVICES?**

21 A. No.

22 **Q. HAS PASCO COUNTY RECEIVED ANY INQUIRY FROM A DEVELOPER**
23 **REGARDING THE AVAILABILITY OF WATER/WASTEWATER SERVICES IN**
24 **THE PROPOSED SKYLAND SERVICE TERRITORY?**

25 A. No.

1 Q. ARE YOU AWARE OF ANY EFFORTS TO DEVELOP THE PROPERTY
2 WITHIN THE PROPOSED SKYLAND SERVICE TERRITORY?

3 A. No.

4 Q. WHERE IS THE PROPOSED SKYLAND TERRITORY IN RELATION TO THE
5 AREAS CURRENTLY SERVED WITH WATER AND WASTEWATER BY
6 PASCO COUNTY?

7 A. PCU maintains an existing water system less than 0.5 miles to the East from the
8 proposed area and PCU maintains other water facilities within 1.53 miles from
9 the Skyland proposed area and wastewater facilities with 2.54 miles from the
10 proposed area.

11 Q. DOES PASCO COUNTY HAVE PLANS TO PROVIDE WATER AND
12 WASTEWATER SERVICES IN THE PROPOSED SKYLAND SERVICE
13 TERRITORY?

14 A. We have no plans to serve most of these parcels because they would be
15 adequately and efficiently served by individual well and septic consistent with the
16 Comp Plan but one of the parcels (Parcel ID 4) of the proposed service area is
17 within a designated Employment Center for which PCU plans to provide water
18 and wastewater service consistent with the Pasco County Strategic and
19 Comprehensive Plans. The proposed certificate, if granted, will result in private
20 water and wastewater utility service to County citizens that will be significantly
21 more costly than service that could be provided through individual wells and
22 septic systems or that could be provided by Pasco County Utilities.

23 Q. IN YOUR OPINION, IS THERE A CURRENT NEED FOR
24 WATER/WASTEWATER SERVICE IN THE PROPOSED SKYLAND SERVICE
25 TERRITORY?

26 A. No.

1 **Q. WHAT IS THE BASIS OF THIS OPINION?**

2 A. Again, we have not received a request for service in the area or nearby and the
3 existing buildings and land uses are adequately served by individual wells and
4 individual septic tanks. Skyland's application contains no specific information as
5 to need and the future development and bulk sales noted in the application is
6 purely speculative at this time. The only development projects (Trilby Estates,
7 Saran Ranch and Pine Ridge Estates) approved in the vicinity of Skyland's
8 proposed service area will be developed on individual well and septic, consistent
9 with the Pasco Comprehensive Plan. Furthermore, there are numerous private
10 residences that would be encircled by Skyland's proposed service area
11 (particularly Parcels ID 9, 11, 12A and 12B) and these property owners, currently
12 on private well and septic, have not asked for central service.

13 **Q. IF SKYLAND'S APPLICATION IS GRANTED, WOULD THE RESULTING**
14 **SKYLAND SYSTEM BE IN COMPETITION WITH, OR BE A DUPLICATION**
15 **OF, ANOTHER SYSTEM?**

16 A. PCU maintains an existing water and wastewater system less than 0.5 miles
17 from the proposed area and PCU maintains other water facilities within 1.53
18 miles from the Skyland proposed area. These facilities could be extended to
19 provide service to proposed service area, if service was needed. Additionally,
20 one of the parcels (Parcel ID 4) of the proposed service area is within a
21 designated Employment Center for which PCU plans to provide water and
22 wastewater service consistent with the Pasco County Strategic and
23 Comprehensive Plans. See Exhibit 3, Northeast Pasco Future Land Use Map.
24 Furthermore, Pasco has established as its service territory the entire
25 unincorporated area of the County not currently served by a legally existing

1 private utility. See, § 110-28, Pasco County Code. Accordingly, Skyland's
2 proposed service will be in competition with, or a duplication of, the PCU system.

3 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

4 **A. Yes.**

5

6

1 **BY MR. HOLLIMON:**

2 Q. Mr. Kennedy, would you briefly summarize your
3 Prefiled Direct Testimony, please.

4 A. Yes. Essentially, my testimony focuses on
5 summarizing, you know, our utility system, its capacity,
6 its scope, its capability. You know, Pasco County has
7 been in the utility business since 1979. We started by,
8 essentially, correcting deficiencies with existing
9 investor-owned utilities. We have significant
10 facilities now spread across the entire county.

11 Certainly our goal, consistent with that of
12 Hernando County, is to be the sole provider of public
13 utilities in all areas of the county consistent with our
14 comp plan and consistent with a reasonable need to
15 provide those services.

16 We are also part of the Tampa Bay Regional
17 Water Supply Authority, and we want to continue to
18 promote water supply development use and so forth
19 throughout the tri-county area, and particularly within,
20 you know, within Pasco County.

21 We also have an extensive reuse system now.
22 We have that capability across most of the county, as
23 well. My testimony also addresses the need that has
24 been put forth by Skyland. We just don't see any need
25 that can't be either met through the existing facilities

1 that they have, i.e., the wells and septic tanks that
2 are there. They have never -- as with Hernando, they
3 have never formally applied for service from the county
4 for the development that they have talked about and
5 outlined in their application which, you know, which
6 just seemed to be inconsistent with the whole concept of
7 central services.

8 The proposed development at one to ten acres,
9 which, in my opinion, is just simply not an appropriate
10 level of density to support central utilities. You
11 know, from our perspective at Pasco County, usually the
12 threshold for that is at least two units per acre to be
13 financially feasible and economical. So what will
14 happen is that the customers of this system will pay
15 very high rates for their services if this goes forward.

16 And I guess, finally, I address our ability to
17 meet service needs. We do have facilities located
18 within reasonable distances, within half a mile,
19 three-quarters of a mile to some of these areas. So if
20 there was an actual need, we could look at working out
21 and serving from those existing facilities. Or, if
22 necessary, install or acquire new facilities that could,
23 you know, that we think could provide the service at a
24 more economical basis than what Skyland is proposing.
25 So I think that was essentially the essence of my

1 testimony that I have provided.

2 **MR. HOLLIMON:** We tender the witness for
3 cross.

4 **MR. DETERDING:** I can assure you I won't be
5 done by 8:00.

6 **CHAIRMAN ARGENZIANO:** That's okay. We'll
7 continue; we'll pick it up tomorrow morning.

8 **CROSS EXAMINATION**

9 **BY MR. DETERDING:**

10 **Q.** Good evening, Mr. Kennedy.

11 **A.** Good evening, sir.

12 **Q.** Have you ever testified in a judicial or a
13 quasi-judicial proceeding on behalf of the county
14 before?

15 **A.** I don't recall a specific instance in this
16 regard.

17 **Q.** Okay. Is it true that the genesis of the
18 county's creation of the utility system was to eliminate
19 and discourage private utility systems?

20 **A.** Well, I think originally they had to step in
21 and address, you know, problematic situations. You
22 know, the county was starting to grow and, you know,
23 there was a need to establish a public utility system.
24 And, you know, over the years it was a series of
25 isolated systems which have now been integrated into a

1 county-wide utility system. We also, you know, we have
2 grown. We are approaching in excess of 95,000 service
3 connections for water and more than 78,000 service
4 connections for wastewater. We have over 12,000
5 reclaimed water customers in our system.

6 So the system has matured as the county has
7 matured, and we want to continue to do that. We are
8 very actively engaged in acquiring, when possible,
9 within reason the existing private utility facilities
10 that are out there. We have joined, you know, become a
11 member of the FUA to facilitate some of those
12 activities. So I hope that addresses your question.

13 Q. Actually, I don't think it does.

14 You were asked about whether -- do you recall
15 my taking your deposition on May 28th, 2010?

16 A. I recall you being there. I think John did
17 most of the asking of questions.

18 Q. You are correct; Mr. Wharton taking your
19 deposition on May 28th.

20 Do you recall when he questioned you about the
21 existence of an ordinance that discouraged the addition
22 of private franchise systems?

23 A. Yes.

24 Q. I'll refer you to Page 15 of that deposition,
25 and he asked you about --

1 "Question: Can you tell me to what extent you
2 are aware of that, whether there is such an ordinance?

3 "Answer: I would have to review the
4 ordinance.

5 "Question: But do you think there is such an
6 ordinance?

7 "Answer: There's probably a reference in
8 there, because the whole genesis of the whole utility
9 system creation was to eliminate and discourage private
10 utility systems."

11 **MR. HOLLIMON:** Madam Chairman, before he
12 answers, I just have a question. Obviously this is not
13 my primary forum that I practice in, so I have a
14 question regarding the use of a deposition transcript on
15 cross-examination. Typically in forums that I'm
16 familiar with you can use the deposition transcript to
17 impeach a witness, and I just want to make sure that you
18 can't just lead off with a question out of the
19 deposition, you have to be impeaching. Is that the
20 process here, as well?

21 **MR. DETERDING:** I asked him what I believe to
22 be the same question that was asked of him in the
23 deposition and I got a different answer. I got some
24 long answer, and all I was looking for is yes or no to
25 the exact statement he made.

1 **CHAIRMAN ARGENZIANO:** Well, can we maybe --
2 can we get a yes or no to that question?

3 **MR. DETERDING:** Should I repeat the question?

4 **MR. HOLLIMON:** I'm also asking a more general
5 question.

6 **CHAIRMAN ARGENZIANO:** Okay. Can we answer
7 that question?

8 **MS. CIBULA:** You're not supposed to, but he
9 does appear to be impeaching the witness.

10 **MR. HOLLIMON:** And I wasn't suggesting he
11 wasn't; I was actually asking the question to clarify
12 for further issues.

13 **CHAIRMAN ARGENZIANO:** Understood.

14 **MR. DETERDING:** All right. I'll repeat the
15 question, and see if we can get the answer that way.

16 **BY MR. DETERDING:**

17 **Q.** Isn't it true that the genesis of the county
18 utility system creation was to eliminate and discourage
19 private utility systems?

20 **A.** Yes.

21 **Q.** Part of the county's goals and objective is to
22 not have any additional private utilities in Pasco
23 County, correct?

24 **A.** Yes.

25 **Q.** And to eliminate the ones that do exist

1 presently?

2 **A.** To acquire them, yes.

3 **Q.** So it's the county's official position to
4 oppose the creation of private water and wastewater
5 utilities, regardless of whether there is a need or
6 whether there is an ability to serve that need by a
7 private utility?

8 **A.** Yes.

9 **Q.** So no matter what Skyland had proposed, no
10 matter how much money they said they had, no matter what
11 the needs for service were, the county would be opposed
12 to that application?

13 **A.** Yes.

14 **Q.** Your two closest systems to the proposed
15 territory are what you referred to as the Trilby system
16 to the east, and I believe the Blanton system to the
17 south, is that correct?

18 **A.** Yes.

19 **Q.** Can you show me on that map where the Trilby
20 system is?

21 **A.** Yes.

22 **Q.** Roughly.

23 **A.** It's shaded in in pink, basically, the
24 beginning of our Trilby service area. The Blanton
25 system is located, I believe, generally right in this

1 area right here.

2 Q. Okay. How far is the Trilby system, from the
3 nearest portion of the proposed territory of Skyland?

4 A. I know I gave a specific answer to that. I
5 think it was in the range of a half to a mile, something
6 like that, to the east; and I believe the Blanton system
7 I probably referenced a mile to a mile and a half to the
8 south.

9 Q. And based on what you just showed me on that
10 map, that would be due east of Parcels 7A, B, and C,
11 approximately a half to a mile?

12 A. Yes. Parcel 3, Parcel 7A, 7B, and, you know,
13 I guess Parcel Number 8.

14 Q. I don't think they are labeled on there. You
15 would have to refer to 3A.

16 (Simultaneous conversation.)

17 A. Basically, I think we are talking about the
18 long interconnected properties that begin at the top
19 with ID Number 3, I think 7A, 7B, and is that Parcel 8
20 or 9, you know, as well as the one in red, which is 11.
21 Those are in close proximity to the Trilby system. The
22 parcels -- you could say Parcel Number 6, the one that
23 borders the corner and is contiguous with the parcel in
24 Hernando County along with, I believe those are 12B and
25 A are probably within a while or so of the Blanton

1 system.

2 Q. Okay. What is the capacity of the -- well,
3 first of all, are these both water and wastewater
4 systems?

5 A. Primarily water in the Trilby system. Further
6 to the east we have wastewater services available in
7 what is more of the Lacoochee area. So those wastewater
8 facilities are further -- a little further to the east.

9 Q. How much farther to the east?

10 A. Maybe another mile, mile and a half. You need
11 to get over to the 301 corridor to hit the wastewater
12 facilities that we have in the Trilby area, the
13 Lacoochee/Trilby area.

14 Q. And what is the capacity of the wastewater
15 treatment plant in that area?

16 A. To my recollection, I think it's probably
17 about a 60,000-gallon per day facility, probably
18 processing about and running about half capacity,
19 30,000 gallons a day.

20 Q. So that has the ability to serve how many
21 additional ERCs?

22 A. Well, let's see.

23 Q. 30,000 gallons a day.

24 A. That would be in the range of probably about
25 500 or so units, ERCs.

1 **CHAIRMAN ARGENZIANO:** Wait. Let me do this.
2 We are at 8:00 o'clock, and I want to ask if you want to
3 get to a certain point in this line of questioning
4 before we break. Is it better for you or --

5 **MR. DETERDING:** We can stop wherever you'd
6 like. Now is fine.

7 **MS. CIBULA:** Also, before we break, I don't
8 think Mr. Kennedy's testimony was inserted into the
9 record, so we might want to take care of that.

10 **MR. HOLLIMON:** I think I asked for it to be
11 inserted.

12 **CHAIRMAN ARGENZIANO:** We did. I think we did,
13 but show it inserted into the record a second time just
14 in case. Okay. And what we will do is we are going to
15 recess until tomorrow morning at 10:00 o'clock.

16 Thank you.

17 (The hearing adjourned at 8:02 p.m.)

18 (Transcript continues with Volume 3.)

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STATE OF FLORIDA)
 :
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 23rd day of July, 2010.



JANE FAUROT, RPR
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