

1 2876 --

2 A Okay.

3 Q -- some of its applicability.

4 A Sure.

5 Q You reviewed House Bill 2876?

6 A Yes, I did.

7 Q And you know where it's codified in the  
8 statutes. Is that correct?

9 A Yes.

10 Q Do you recall in House Bill 2876 there was  
11 actually an uncodified section, there was a Section 15  
12 that talked about the applicability of the section?

13 A I don't remember exactly.

14 Q Do you recall that even though the law went  
15 into effect September 1, 2005 it actually only applied  
16 to applications filed after January 1, 2006?

17 A That's correct.

18 Q You do remember that?

19 A I vaguely remember something like that in  
20 there, yes.

21 Q Okay. And now if we look at what was --  
22 what's already been admitted as DLM No. 8, I  
23 believe --

24 MS. WRIGHT: 9.

25 Q (BY MR. RODRIGUEZ) 9, excuse me; DLM-9,

1       excuse me.

2           A       Oh, okay.

3           Q       In Applicant's Exhibit No. 2.

4           A       Okay.

5           Q       You would agree with me that whether it was  
6       either filed or accepted for filing that those dates  
7       both preceded the applicability of House Bill 2876?

8           A       Yes.

9           Q       Okay. And also you would agree with me that  
10       the rules that implement House Bill 2876 did not  
11       actually get approved until January 6, 2007, I  
12       believe. Is that right? I'm sorry 2006; January 5,  
13       2006?

14          A       That's correct.

15          Q       Okay.

16          A       That was -- there was a lot going on that  
17       agenda day, I remember.

18          Q       So regardless of when House Bill 2876 came  
19       into law, it only affected applications that were  
20       filed after January 1, 2006?

21          A       Yes.

22          Q       Okay. And you mentioned during questioning  
23       from Lindsay Pure Water that one of the things in  
24       House Bill 2876 that have since been changed -- and I  
25       wrote it down. Is it something about cities beyond

1 the ETJ?

2 A Uh-huh.

3 Q And you mentioned it has since gone away.  
4 Can you explain that for me, please?

5 A Yes, in 2876, when the legislation was  
6 passed, there was a requirement for landowners outside  
7 the city's ETJ. If the city was actually -- if the  
8 city was applying for a CCN that covered area outside  
9 its ETJ, they had to have individual landowner consent  
10 from those landowners to be included in the CCN. And  
11 since then, actually August 22, 2008, just recently,  
12 the new rules -- the latest rules, not the statute,  
13 but the TCEQ rules were adopted, and they no longer  
14 have that in there.

15 Q Okay. Senate Bill 3 in the 2007 legislative  
16 session removed the requirement of -- well, allows a  
17 city to extend its CCN beyond its extraterritorial  
18 jurisdiction. Is that correct?

19 A That's correct.

20 Q Okay. It's no longer prohibited?

21 A That's correct. It was Senate Bill 3 of the  
22 80th legislative session.

23 Q Now, there were some questions from Lindsay  
24 Pure Water with respect to CCN holders and landowners  
25 that are within the CCN and -- regarding some

1 developments needing a certain level of service and  
2 not being able to get it. Do you recall the question  
3 and answer there generally?

4 A Yes, yes.

5 Q Now, don't the TCEQ rules also provide some  
6 customer service standards for certificate holders to  
7 abide by?

8 A We do.

9 Q And also there are some protections in there  
10 for customers who the certificate holder is not  
11 abiding by those statutes. Is that correct?

12 A That's correct.

13 Q And one of them -- one of the options is to  
14 either complain for an enforcement action for the  
15 certificate holder to take corrective action in a  
16 certain manner. Is that correct?

17 A That's correct.

18 Q One of the other -- if you've got -- if  
19 you've got acreage of any size, you can avail yourself  
20 of Water Code Section 13.254(a) for decertification.  
21 Is that correct? Or maybe it's (b).

22 A Let me turn to that section. That's correct.

23 Q And also if you're a landowner that's got  
24 50 acres or more, you're unplatted and you're not  
25 receiving service from anyone, you can avail yourself

1 of 13.254(a)(1) which -- yeah, (a)(1) -- that would  
2 allow for an expedited release from someone's CCN. Is  
3 that correct?

4 A That's correct.

5 Q Okay. And really kind of the only real  
6 exception to that is if you're located within the city  
7 ETJ -- in a city or the city's ETJ that has a  
8 population of over half a million. Is that right?

9 A That's correct.

10 Q Okay. And regardless of whether you're  
11 inside a city that has more than half a million in  
12 population you still have the -- and you're a  
13 customer, you still have customer service rules you  
14 may be able to avail yourself of if a certificate  
15 holder is not doing what they need to do?

16 A Yes.

17 MR. RODRIGUEZ: Okay. I pass the  
18 witness, Your Honor.

19 JUDGE NORMAN: Okay. I've forgotten  
20 whose turn it is. Mr. Carlton?

21 MR. CARLTON: I'm trying to remember  
22 what Mr. MacLeod asked on redirect.

23 JUDGE NORMAN: What he asked --

24 MR. MacLEOD: The effective date and  
25 stuff.

1 JUDGE NORMAN: -- about the effective  
2 date?

3 MR. MacLEOD: And when filed.

4 MR. CARLTON: I don't think I have any  
5 further questions.

6 JUDGE NORMAN: Okay. And, Mr. MacLeod?

7 MR. MacLEOD: We don't have any more  
8 questions.

9 JUDGE NORMAN: Thank you, Ms. Benter.  
10 Now, is there any more evidence that  
11 anyone wants to produce on this issue?

12 MR. CARLTON: I think I'm up.

13 JUDGE NORMAN: You're up? Yeah, you  
14 are.

15 MR. CARLTON: I'd like to call  
16 Ms. Fleitman.

17 JUDGE NORMAN: Okay. Who is the city  
18 secretary?

19 MR. CARLTON: Yes.

20 JUDGE NORMAN: All right. Is that you,  
21 ma'am?

22 MS. FLEITMAN: Yes, sir.

23 JUDGE NORMAN: Okay. You've been called  
24 to testify. Would you raise your right hand?

25 (Witness sworn)

1 JUDGE NORMAN: Okay. Go ahead.

2 PRESENTATION ON BEHALF OF LINDSAY PURE WATER COMPANY

3 BETSY FLEITMAN,

4 having been first duly sworn as an adverse witness,  
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. CARLTON:

8 Q Good morning, Ms. Fleitman. I'm going to  
9 apologize, first, for putting you on the stand, but  
10 you're here, so I'm going to take advantage of it.

11 A Good morning. I'll be glad to leave.

12 (Laughter)

13 Q (BY MR. CARLTON) Would you please state your  
14 name for the record?

15 A Elizabeth Ann Fleitman. I go by the name of  
16 Betsy Fleitman.

17 JUDGE NORMAN: And how do you spell your  
18 last name?

19 A F, like in "Frank," L-E-I-T-M-A-N.

20 JUDGE NORMAN: All right.

21 Q (BY MR. CARLTON) Thank you. And where are  
22 you employed currently?

23 A For the City of Lindsay as the city  
24 secretary.

25 Q And as the city secretary, I believe I've

1     seen your name on a lot of affidavits testifying that  
2     these are copies of documents on some of these  
3     exhibits that came out of your files. Right?

4           A     Yes, sir.

5           Q     Okay. And including an affidavit on top of  
6     this stack of letters that we've been talking about?

7           A     Yes, sir.

8           Q     Are you familiar with those letters?

9           A     Oh, yes, sir.

10          Q     Okay. And when did you first become familiar  
11     with those letters?

12          A     When I typed up this form.

13          Q     Okay. So you prepared the form for these  
14     folks to sign?

15          A     At the request of the people, yes.

16          Q     At the request of the people. Which people?

17          A     The individuals that signed these letters.

18          Q     Okay. Were you involved in the application  
19     process for the city with its CCN at all?

20          A     Yes, sir.

21          Q     Okay. And so why weren't these letters filed  
22     with the application initially?

23          A     I didn't have them initially.

24          Q     And what caused you to go and try to get  
25     them?



1           A       I didn't go and try to get them. People came  
2 to me.

3           Q       Did you have any -- well, strike that.

4                   How many people came to you and said  
5 they needed service?

6           A       I couldn't give you a count, a number,  
7 because I'm at city -- when this was going on, I was  
8 at city hall by myself. I had no one to work with me.  
9 The mayor and city council are all voluntary. They're  
10 not in the office day by day, and so I'm taking care  
11 of everything that comes up. And people would come in  
12 over a period of time and ask, and then some of them  
13 would -- they would ask me if they could have -- "Can  
14 I have a couple of these because I want to talk to my  
15 brother" or "I want to talk to my uncle and I think  
16 they would be interested in signing a request letter  
17 also." And so that's why they have the same dates on  
18 them because I just made a copy of the letter I had,  
19 and then sent them with them. And so they would take  
20 the letters, and then they would bring them back to  
21 me.

22          Q       Do you know what prompted them to come in and  
23 ask you about this?

24          A       I was required by TCEQ -- or the city was  
25 required by TCEQ when we filed our application to put

1 a legal notice in the newspaper and to send a letter  
2 to every property owner within the requested area.  
3 And so we did that, and the letter that we sent out  
4 was prescribed by TCEQ. It followed the wording that  
5 was provided through them. And I had citizens come in  
6 and say they either read the legal notice in the paper  
7 or they received a letter, and what was it all about,  
8 what did it mean, what should they do.

9 Q And what did you tell them it was about?

10 A I told them that the city was requesting to  
11 expand their CCN, which meant that if that area that  
12 we had asked for was granted to the city, then the  
13 city would be the one that would be providing water  
14 service, sewer service to that area when it was needed  
15 or when it was requested by the people that lived in  
16 that area, and that it really changed nothing  
17 currently. If the person had a water well or a septic  
18 tank, they could continue to have a water well or a  
19 septic tank, but they could not sell water to someone  
20 else, and they could not buy water from someone else  
21 if we held the certificate, at least that was my  
22 understanding of what it meant.

23 Q Were the people that came into your office  
24 and talked to you, were those the folks that signed  
25 these letters?

1           A       Yes -- well, I'd have to say I don't think  
2 all of them signed, there were one or two, because  
3 when they asked me what they were supposed to do, I  
4 told them that if they did not want to be included in  
5 this or they did not approve of what the city was  
6 doing, that they should submit a letter, according to  
7 the guidelines, in what they had received to TCEQ  
8 filing a protest. And if they did agree with what the  
9 city was doing, that they really did not have to do  
10 anything at all, but several of them said "Well, you  
11 know, I want to be sure I'm included. How can I be  
12 sure that, you know, I'm going to be part of this?"  
13 And I said "Well, then you can file a letter of  
14 request." And then they said -- they would say,  
15 "Well, can you give me some words" or "What should I  
16 say" or "How should it be written?" And so that's  
17 when I came up with this. I got several examples from  
18 the city consultant, and I wrote up this letter and  
19 said something like -- basically what I said was  
20 "something like this."

21           Q       Okay. And so --

22           A       And then most of them said "Well, will you  
23 type it up? And I'll sign it."

24           Q       So really these letters were prepared after  
25 the application had been filed in order to support the

1 application. Correct?

2 A Yes, that's true.

3 Q How many CCN applications have you been  
4 involved in?

5 A This is it.

6 Q Would you consider dealing with this CCN to  
7 be part of your daily activities as city secretary?

8 A In what way?

9 Q Is this something that you routinely do as  
10 city secretary, routinely deal with CCN requests for  
11 service, or do you routinely deal with other stuff?

12 A I have to do it all. I mean, I'm not quite  
13 sure what you're asking me. If someone came in and  
14 wanted water service from the City of Lindsay and they  
15 came in and said, you know, "We would like to tie into  
16 the city system," or "We would like to get water  
17 service from the city," then, yes, I would be the one  
18 that would take the information that would provide  
19 whatever documentation, you know, they needed. We'd  
20 work with them to get whatever they needed to get in  
21 order to make that presentation to the city.

22 Q Okay. So -- and have you received any of  
23 those types of requests?

24 A I've had -- just recently I've had one  
25 citizen who asked to tie into the system that was not

1 on the system previously, and we just extended water  
2 service to them.

3 Q How long have you been the city secretary?

4 A Since 2001.

5 Q Okay. And how many times has the city had a  
6 request like that other than the one you just  
7 mentioned?

8 MR. RODRIGUEZ: Once again, Your Honor,  
9 I'll object to the difference between a qualified  
10 applicant and these requests for service. I think  
11 we're --

12 JUDGE NORMAN: Okay. I'm going to  
13 permit the question.

14 A The number 55 is floating around. I had all  
15 of these requests to be -- to be provided service  
16 within our CCN at some future date if we got our CCN.  
17 I am aware of that one citizen that asked recently to  
18 have their water service extended.

19 On a regular basis, we have subdivision  
20 developments where additional lines are put in by the  
21 developer, and they are attached onto our water  
22 system. So I mean, we have several subdivisions  
23 within our city limits that are expanding and getting  
24 additional service. We have had some properties that  
25 have annexed into the city, but have not yet requested

1 service.

2 Q (BY MR. CARLTON) Have you had any requests  
3 where you've been asked to provide service outside the  
4 city limits?

5 A We do provide service to some citizens  
6 outside the city limits currently, about ten taps.

7 Q And you said there was one -- one subdivision  
8 that had been annexed that hadn't -- or one property  
9 that had been annexed that hadn't gotten service yet?

10 A We've had several properties annexed recently  
11 that don't have service at this time and haven't  
12 requested it. They have inquired about it. They've  
13 asked, you know --

14 Q Right.

15 A -- if it could be provided, but they haven't  
16 actually come in and said "Now we're ready. We want  
17 to tie into the system."

18 Q Were any of those property owners part of the  
19 group that submitted these letters, or do you remember  
20 who it was? Maybe that's the easier way to say it.  
21 Who has come in and asked for that?

22 A No, I can't. I don't know. I would have to  
23 go through all these letters again. And considering  
24 that I do all this other stuff for the city, I  
25 don't -- I couldn't -- without going through here, I

1 can't tell you for sure everybody that signed the  
2 letter.

3 Q But you said there was a few folks who had  
4 recently requested annexation, that they would request  
5 service in the future. Do you know who those property  
6 owners are?

7 A Two years ago, three years ago, we did annex  
8 some property, and some of those property owners asked  
9 about that, about service --

10 Q Who was that?

11 A -- on the north side of town.

12 Q Who was that?

13 A Well, I know the properties that were  
14 annexed. I can't tell you for sure which ones asked  
15 what at the time that we annexed.

16 Q Does the property have some common name that  
17 you use when you refer to it or subdivision?

18 A Just the property owners that live out there.

19 JUDGE NORMAN: And who were they is what  
20 he's asking. Who are the property owners?

21 A Okay. Chris Neu, Harold Owens, Frances  
22 Zimmerer, Louie Gieb, Ed Schad, Harold Nortman, all of  
23 those were properties that were annexed in the city in  
24 2003 -- 2002, 2003. I'm not that good on --

25 Q (BY MR. CARLTON) Is that the area on the

1 city map that extends up on the northeast --

2 A Yes, sir.

3 Q -- side of the city?

4 A Yes, sir, it is.

5 Q Okay. All right. So apart from that, you  
6 haven't had any requests for annexation?

7 A For annexation?

8 Q Right.

9 A We just annexed a ten-foot-wide strip going  
10 north out of the city limits all the way to Moss Lake  
11 and going south out of the city limits all the way to  
12 1630.

13 Q Okay. In order to extend your ETJ and at the  
14 request of those landowners?

15 A Well, we cannot just go out and annex.  
16 People have to petition, voluntary petition for  
17 annexation, yes.

18 MR. CARLTON: No further questions.  
19 Thank you, Ms. Fleitman. I appreciate it.

20 JUDGE NORMAN: Mr. MacLeod, any  
21 questions?

22 MR. MacLEOD: We don't have any  
23 questions for this witness.

24 JUDGE NORMAN: Any more questions?

25 MR. RODRIGUEZ: No questions, Your



1 Honor.

2 JUDGE NORMAN: Thank you very much.

3 And let me remind you-all again that  
4 this evidence that I'm taking right now is for the  
5 purpose, as I said in the beginning, to determine  
6 whether or not this is going to be admissible. It's  
7 not for any other purpose at this point. Okay?

8 All right. So is that all the evidence  
9 that we had?

10 (No response)

11 JUDGE NORMAN: I'm going to admit  
12 the DLM-10 for -- as some evidence on need. It's not  
13 determinative, but I am going to admit it for the  
14 purpose -- all.

15 MR. CARLTON: And just for purposes of  
16 the record --

17 JUDGE NORMAN: Okay.

18 MR. CARLTON: -- I appreciate your  
19 ruling. We had objected on the grounds that it was  
20 hearsay, that it didn't fall under 803(6) or 803(8) as  
21 far as exceptions, and that it hadn't been properly  
22 authenticated as required under -- that's the wrong  
23 book -- 902, Self-authentication. Thank you.

24 JUDGE NORMAN: I'm admitting it on the  
25 basis of your objection and your prefiled objections,

1 which was a hearsay objection, as I recall.

2 MR. CARLTON: Right. And  
3 Mr. Rodriguez's response to that was it had been an  
4 affidavit attached --

5 JUDGE NORMAN: That was the  
6 certification.

7 MR. CARLTON: -- so that that overcame  
8 the hearsay objection under 803(6) and 803(8).

9 JUDGE NORMAN: But it did not. But I'm  
10 admitting it over the -- I'm overruling your hearsay  
11 objection under 2001.081.

12 MR. RODRIGUEZ: Thank you, Your Honor.  
13 At this time, we would call Mr. Metzler back to the  
14 stand.

15 JUDGE NORMAN: All right. Mr. Metzler,  
16 you're still under oath. Go ahead.

17 PRESENTATION ON BEHALF OF THE CITY OF LINDSAY  
18 (CONTINUED)

19 DONALD METZLER,  
20 having been previously sworn, continued to testify as  
21 follows:

22 FURTHER REDIRECT EXAMINATION

23 BY MR. RODRIGUEZ:

24 Q Thank you, Mr. Metzler --

25 A You're welcome.

1 Q -- for staying here.

2 (Laughter)

3 MR. RODRIGUEZ: I believe at this point,  
4 it's appropriate to I guess kind of start at the  
5 beginning and allow the witness --

6 JUDGE NORMAN: Sure.

7 MR. RODRIGUEZ: -- some time to --

8 JUDGE NORMAN: Right, to summarize his  
9 testimony, and then it will be tendered for cross.  
10 Sorry.

11 (Simultaneous discussion)

12 MR. RODRIGUEZ: -- provide some summary  
13 of his testimony. Is that appropriate at this time  
14 your Honor?

15 JUDGE NORMAN: Correct. And you just  
16 stop me whenever you need to. Okay?

17 THE REPORTER: Okay.

18 JUDGE NORMAN: All right.

19 Q (BY MR. RODRIGUEZ) Mr. Metzler, can you just  
20 go ahead and provide us a summary of your testimony?

21 A I'm here today as a representative of the  
22 City of Lindsay serving as mayor pro-tem, presenting  
23 this application for a water CCN and supporting all  
24 the documentation that I have already previously filed  
25 in the prefiled testimony. I've reviewed all of the

1 additions that we made in the last week due to the  
2 September 30th hearing and the changing of maps. I've  
3 reviewed all of the information that was struck based  
4 on rulings from last Thursday. Everything in this  
5 updated, amended testimony, I'm here to say is still  
6 accurate and true.

7 Q So, Mr. Metzler, you're still the mayor  
8 pro-tem for the city?

9 A I still am.

10 Q You're on the city council?

11 A Yes, sir.

12 MR. RODRIGUEZ: Okay. Your Honor, at  
13 this point, I would tender the witness for  
14 cross-examination.

15 JUDGE NORMAN: Okay.

16 MR. RODRIGUEZ: I believe -- and just to  
17 make it clear, both APP-1 and APP-2 were offered and  
18 admitted previously. Is that --

19 JUDGE NORMAN: Yes, subject to the  
20 previous objections.

21 MR. RODRIGUEZ: Okay.

22 JUDGE NORMAN: And, Mr. MacLeod?

23 MR. MacLEOD: Yeah, I've got one area I  
24 want to do a little cross-examination on.

25 JUDGE NORMAN: Okay.

1 FURTHER RECROSS-EXAMINATION

2 BY MR. MacLEOD:

3 Q Do you have a copy of DLM-1 in front of you?

4 MR. RODRIGUEZ: Your Honor, will the  
5 order of witnesses be -- or the order of  
6 cross-examination be that the ED goes second in all  
7 cases?

8 JUDGE NORMAN: It's going to be from  
9 less friendly -- I mean more friendly to less  
10 friendly.

11 MR. RODRIGUEZ: Okay.

12 JUDGE NORMAN: That's the way it's going  
13 to go. So the person at the end, who is Mr. Carlton,  
14 will have --

15 MR. RODRIGUEZ: The least friendly of  
16 everyone here?

17 JUDGE NORMAN: Right.

18 MR. CARLTON: Ah, that hurts; that  
19 hurts.

20 (Laughter)

21 JUDGE NORMAN: He'll have the benefit of  
22 all that before he crosses. So that will make it  
23 efficient rather than having him go after you and then  
24 go after Mr. MacLeod.

25 Q (BY MR. MacLEOD) You do have a copy of your

1 prefiled testimony --

2 A Yes, I do.

3 Q -- and the attached exhibits? At DLM-1,  
4 could you look at Bates Stamp APP-1002? I think  
5 that's part of the application.

6 MR. CARLTON: You're talking about  
7 APP-1?

8 MR. MacLEOD: Yeah, his --

9 MR. CARLTON: APP-1.

10 MR. MacLEOD: I'm talking about --  
11 right, the application.

12 MR. CARLTON: DLM-1 is his resume.

13 MR. MacLEOD: Okay. All right. Then  
14 that's what I want.

15 JUDGE NORMAN: 1002. Is that right?

16 MR. MacLEOD: Yeah, and one of the  
17 subtitles on there is, yes, APP-1002, and it's part of  
18 APP-2. It's kind of confusing because it was before  
19 the -- it was provided in front of the actual  
20 testimony.

21 Q (BY MR. MacLEOD) But we're on the same page  
22 now. Right?

23 A I think so.

24 Q Yeah, No. 2 says Location Information on that  
25 page?

1           A     Yes, sir.

2           Q     If you go down to D, you indicate there that  
3           there is an overlap with the city of Gainesville --

4           A     Yes.

5           Q     -- in your requested area. Is that right?

6           A     Correct.

7           Q     And you said that there was a verbal  
8           agreement to have the overlapped area served by the  
9           City of Lindsay. Was that an agreement for dual  
10          certification?

11          A     I'm not aware of whether or not it was.

12          Q     You also said that you would supplement the  
13          application -- at least the application says that the  
14          application will be supplemented with the agreement  
15          once it was excused. Was that agreement ever  
16          executed?

17          A     It has not been at this time.

18          Q     Did your application or petition state that  
19          Gainesville has never provided, is no longer providing  
20          or is incapable of providing or has failed to provide  
21          continuous and adequate service in that overlap area?

22          A     Are you finding that somewhere in particular?

23          Q     No. That's the language that's required for  
24          decertification. I just want to make sure that can't  
25          be decided in this case because that wasn't in the

1 application, unless it is in the application.

2 A I don't think it's in the application, and  
3 I've not heard anything that would indicate a "yes"  
4 answer to your question.

5 Q All right. Are you still -- are you going to  
6 provide -- have you provided maps that are excluding  
7 that overlap area in this application at this point?  
8 Do you know?

9 A No, I don't think so. I think it shows the  
10 overlapped area.

11 Q So you still are requesting the overlap area.  
12 Is that right?

13 A Yes.

14 Q Do you have a map available so you can show  
15 us where this overlap area is? Because the ED is  
16 going to have to resist decertifying an existing CCN.

17 A I believe in DLM-13 -- and, Mr. Rodriguez,  
18 you may have to help me with that. It's that little  
19 portion up here, the portion that looks like a small  
20 factory with the two smokestacks on it that's outlined  
21 in red, yellow inside of it.

22 Q Where there's an overlap between the red dots  
23 and the yellow, is that what you're talking about?

24 A Possibly red stripes -- well, maybe dots.

25 MR. RODRIGUEZ: He's pointing at it



1 right here, Brian.

2 A Right. Mr. MacLeod, right here, that little  
3 portion.

4 JUDGE NORMAN: But the record can't pick  
5 that up.

6 MR. MacLEOD: Let me go take a look and  
7 see if I can figure out how to get that in the record.

8 THE WITNESS: Okay.

9 MR. CARLTON: Can we go off the record?

10 JUDGE NORMAN: Certainly.

11 (Discussion off the record)

12 JUDGE NORMAN: We're back on the record.

13 Q (BY MR. MacLEOD) Let's go to -- now, DLM-13  
14 is already in the record. Is that right?

15 A Yes.

16 Q And then I don't think I need to admit that  
17 into evidence. Well, let's make it really clear. I'm  
18 going to go ahead and admit this as an exhibit. I'm  
19 handing you what's been marked ED-1 for  
20 identification.

21 (Exhibit ED No. 1 marked)

22 Q (BY MR. MacLEOD) And could you identify what  
23 that is?

24 A That is a map of our extraterritorial  
25 jurisdiction with an overlay of the water CCN

1 application. It also shows the city limits of the  
2 City of Lindsay, both the stripes running south and  
3 north, the areas that were annexed in 2002, 2003, and  
4 then this portion right here that is at the north end  
5 of that annexed from 2002, 2003.

6 JUDGE NORMAN: When you say "right  
7 here," though, the record is not picking that up.

8 A How do I word that?

9 Q (BY MR. MacLEOD) Let me ask another  
10 question. Could you -- is this an exact copy of  
11 DLM-13 --

12 A Yes, it is.

13 Q -- that's already been admitted into  
14 evidence? Could you take this pen I'm handing you now  
15 and circle the overlap area which you've described as  
16 looking like a factory?

17 A (Complied)

18 Q And that area that you've just marked on  
19 the -- on ED-1 is the area where your CCN request  
20 overlaps the existing CCN of the city of Gainesville.  
21 Is that correct?

22 A It is correct.

23 JUDGE NORMAN: And that's where --  
24 that's the little area that's outlined in red and has  
25 red dots and a yellow background. Is that right?

1           A       Yes, it is, Your Honor.

2                   JUDGE NORMAN:   And the two little  
3 smokestacks there, the two little things --

4           A       Uh-huh.

5                   JUDGE NORMAN:   All right.   Two little  
6 rabbit ears.   Right?

7           A       Correct.

8                   JUDGE NORMAN:   Okay.

9                   MR. MacLEOD:   I want to go ahead and  
10 offer ED-1 into evidence.

11                   JUDGE NORMAN:   Any objection?

12                   MR. RODRIGUEZ:   No objections.

13                   MR. MacLEOD:   Pass the witness.

14                   JUDGE NORMAN:   Any objection to that,  
15 Mr. Carlton?

16                   MR. CARLTON:   No, I don't.

17                   JUDGE NORMAN:   It's admitted.

18                   (Exhibit ED No. 1 admitted)

19                   JUDGE NORMAN:   And I want to state for  
20 the record just for my own records that I've just  
21 marked on my copy that little area as ED Exhibit 1.

22                   I also want to state for the record so  
23 that I don't forget it, you know, I note that in the  
24 new rules, 291.102(d)(2)(D) that the words are written  
25 "application or requests for service."   It's in the

1 distinctive. That's for me for the record. Thank  
2 you. Go ahead.

3 MR. CARLTON: Oh, I'm up?

4 JUDGE NORMAN: Yes.

5 MR. CARLTON: Well, delightful.

6 FURTHER RECROSS-EXAMINATION

7 BY MR. CARLTON:

8 Q Good morning, Mr. Metzler, again.

9 A Good morning.

10 Q How long have you been in the Lindsay  
11 community?

12 A Well, I'm 53 years old and outside of six  
13 years, so 47 years.

14 Q Forty-seven years. So -- and your family,  
15 did they -- were they in the community before you?

16 A Yes, they were one of the original founding  
17 families in 1892.

18 Q Okay. How many founding families were there?

19 A There were only four or five.

20 Q Oh. Which ones are they?

21 A Oh, I can't recall four or five. I just know  
22 we're listed as one of the original settlers.

23 Q Okay. You were -- you've had some history as  
24 serving the City of Lindsay as council member and  
25 mayor previously. Right?

1 A Correct.

2 Q And I'm going to have to ask you some of this  
3 stuff again because -- what was your involvement with  
4 preparing what has been admitted as APP-1, the  
5 application?

6 A This was done previous to my latest time on  
7 the council. And even though it's received  
8 August 31st, which technically would have had me as a  
9 P&Z member a couple of months, I had nothing to do  
10 with the application itself.

11 Q So when you're testifying about the  
12 application, that's solely based upon you having  
13 reviewed the document?

14 A Reviewing all of this document and all of  
15 these other documents that have been supplied by the  
16 city.

17 Q And I think you testified earlier that the  
18 reason you're here giving this testimony is because  
19 the mayor isn't able to do that?

20 A Correct.

21 Q And was the mayor the one who was involved  
22 for the city in preparing the application or  
23 overseeing that?

24 A The mayor would have been.

25 Q Would you turn with me to 1002, APP-1002 in

1 the Exhibit APP-1, in the application? And the  
2 application indicates that there were verbal requests  
3 for service. Correct?

4 A Yes.

5 Q And did the application, when it was  
6 originally filed, attach a list of those requests?

7 A It doesn't appear to on a cursory review of  
8 it.

9 Q Is there a map attached to the application  
10 that shows where those requests are?

11 A Well, there's maps on APP-1014, APP-1015, but  
12 in looking at them, it would be very difficult to pick  
13 up that small red dot, if it's there, because the  
14 background is almost the identical same color.

15 Q So Page 1014 and 1015 don't identify any  
16 specific areas where these requests might have been  
17 from, do they?

18 A No, they do not.

19 Q In your role on the city planning and zoning  
20 commission from 2005 to 2007, what kind of  
21 applications did you deal with, or what kind of  
22 matters did you deal with?

23 A Oh, some variances to, you know, planning and  
24 zoning to subdivision ordinances, looking at some  
25 street repairs, park improvements. Those are the ones

1 that pop up quickly in my head.

2 Q During your what appears to be two years on  
3 the planning and zoning commission, how many variances  
4 to subdivision ordinances did you have to deal with?

5 A It wouldn't have been more than four or five.

6 Q Is that because there were only four or five  
7 subdivision applications filed during that two-year  
8 period that you were on the commission?

9 A There were one or two of those, and then  
10 there would have been a couple of variances for  
11 individual property owners wanting to do something out  
12 of the norm.

13 Q Do you recall the two subdivision  
14 applications that were filed?

15 A Well, we would have dealt with the one  
16 located north of 82, the Nortman addition. He was  
17 adding ten lots at a time to it. There was some  
18 initial discussion about another one on the southeast  
19 side of town. It's an extension of one that was  
20 started by Ronnie Hess. I don't know the official  
21 name of it. Blue Ribbon.

22 MS. FLEITMAN: Yes.

23 A The Blue Ribbon addition.

24 Q (BY MR. CARLTON) How many lots are in the  
25 Nortman addition?

1           A       I think he has as many as 150, 160 potential  
2 lots out there.

3           Q       How many lots are in the Blue Ribbon  
4 subdivision?

5           A       Oh, there's two streets that are in place  
6 with the third proposed one, each street having 16  
7 to 20 homes on it, and the third street would have  
8 been similar in nature to that with some possible  
9 homes. There's supposed to be a loop on the backside  
10 of that connecting all three streets that would have  
11 had some homes on the east side of it, which could  
12 have been another ten to fourteen.

13          Q       And is the Blue Ribbon subdivision within the  
14 city limits?

15          A       Yes.

16          Q       Okay. And the city limits is already within  
17 your CCN. Correct?

18          A       Yes.

19          Q       And the Nortman subdivision, is it within the  
20 city limits?

21          A       I believe all of that territory is inside our  
22 city limits.

23          Q       And the Nortman subdivision is within the  
24 area for which the order was just recently issued  
25 correcting where your CCN is located. Correct?



1           A       North of 82, yes.

2           Q       Okay. So you're not -- during that time you  
3 were on the planning and zoning commission, you didn't  
4 receive any subdivision applications for anything  
5 outside those two?

6           A       No, we did not.

7           Q       Okay. And have you had any that you've  
8 considered since you've been on the city council?

9           A       No.

10          Q       How many subdivisions are in the city's ETJ?

11          A       I would think two, one being the north side  
12 of town, Kupper-Fuhrmann or whatever their name is,  
13 and the other one would be the South Ridge of Lindsay  
14 that would now be inside of our ETJ, parts of it  
15 anyway.

16          Q       So those are the only other two subdivisions  
17 in your -- in the town of Lindsay's ETJ?

18          A       Correct.

19          Q       Is the rest of your property in your ETJ  
20 family farms?

21          A       The vast majority of it would be, yes.

22          Q       And would it be safe to say that the vast  
23 majority of those farms are owned by descendents of  
24 those founding fathers of Lindsay?

25          A       That would be a fair statement to make.

1           Q     Are you familiar with -- well, let me ask it  
2 this way: Are you aware of whether any of those  
3 family-owned farms have been sold or conveyed to  
4 anyone who is not a family member?

5           A     I'm not aware of any, and I don't keep track  
6 of that personally. So I'm not aware of any.

7           Q     Do you -- are you aware of any of those  
8 families that are wanting to subdivide their property  
9 and have water service from the City of Lindsay in the  
10 next year?

11          A     There is one family that owns some property  
12 inside of our ETJ that has sold off two or three small  
13 lots along Highway 82, but they have not requested  
14 water or sewer from us.

15          Q     And which family is that?

16          A     The Block family. They could be under Mary  
17 Jean Fleitman and Others may be the legal description  
18 of it.

19                   JUDGE NORMAN: And how do you spell the  
20 Blog, or Block?

21          A     B-L-O-C-K.

22                   JUDGE NORMAN: B-L-O-C-K, okay.

23          Q     (BY MR. CARLTON) And is that in your ETJ or  
24 your city limits?

25          A     That's inside of our ETJ.

1 Q On Highway 82?

2 A West.

3 Q West?

4 A Part of their property on the very east side  
5 of it is inside our city limits, but the three spots  
6 that were sold off on 82 are outside the city limits,  
7 but inside the ETJ.

8 Q How does -- how do people who are outside --  
9 or not on the city's utility system, how do they get  
10 service? How do they get water or wastewater service?

11 A I would assume most of them drill a water  
12 well and put in a septic tank of some kind.

13 Q I turn your attention to Page 1006 of APP-1  
14 and look at F. And the question is, "What is the  
15 effect of granting or amending a certificate on a  
16 recipient of the certificate and on any retail public  
17 utility of the same kind already serving the  
18 approximate area?" And the answer is "There are no  
19 other utilities providing service within the requested  
20 area except for the small overlap with Gainesville."  
21 And that's not a correct statement, is it?

22 A Well, is Mr. -- is the Lindsay Pure Water a  
23 retail public utility?

24 Q Yes, it is.

25 A Then it would not be a correct statement.

1 Q So there is potentially an impact on Lindsay  
2 Pure Water Company as a result of your application.  
3 Correct?

4 A Well, I'm not a financial person. So I don't  
5 know if there would be or not.

6 Q Let me represent to you that if the City of  
7 Lindsay is awarded the CCN in the area around where  
8 Lindsay Pure Water is currently certificated, that  
9 Lindsay Pure Water would be prohibited from serving in  
10 that area, and that would be an impact on Lindsay Pure  
11 Water, wouldn't it?

12 JUDGE NORMAN: Assuming those facts.

13 A I would think so, but I also don't know what  
14 his business plan showed he needed to recapture his  
15 original investment and maintain it.

16 Q (BY MR. CARLTON) And I'm certainly not  
17 asking you to testify about the extent of the impact.  
18 I agree, I don't think you have enough information to  
19 be able to testify about that.

20 (Discussion off the record)

21 Q (BY MR. CARLTON) I believe in your testimony  
22 you indicated that there are four contract operators  
23 for the city's water and wastewater systems, and that  
24 two of those are water operators.

25 A Yes.

1           Q     Is that correct? When you say they're  
2 contract operators, they don't -- they're not  
3 employees of the city?

4           A     No, they are -- the two water?

5           Q     Correct.

6           A     One of them is an employee of the city, the  
7 other would be a purely contractual arrangement.

8           Q     Okay. And which -- who are those?

9           A     Frank Joe Geray is the city employee who has  
10 obtained his Class D and is working towards his  
11 Class C. And then Robert Walterscheid would be the  
12 other one who has a Class C, I think.

13          Q     And is Charles Young an operator for the  
14 city, too?

15          A     Yes, he is.

16          Q     Does he just do wastewater, or does he do  
17 water?

18          A     Well, I think he holds both licenses and  
19 would oversee primarily the wastewater and would be  
20 available for help with the city water system. And  
21 then Claude Tamplin is the fourth operator who I think  
22 has a Class C wastewater license. And then there's a  
23 fifth one we're training right now, Lori Geray, on  
24 water.

25          Q     In your testimony, in particular the

1 testimony you updated today, you indicated that  
2 Lindsay has approximately 399 water connections?

3 A Yes, sir.

4 Q But you had also in your testimony indicated  
5 that Lindsay had three wells from which it was able to  
6 provide 306 additional customers. Now, I don't recall  
7 what the old number was, but is that 306 still  
8 accurate, or are there now fewer customers that you're  
9 able to provide service to in addition to the ones  
10 you're already serving?

11 A Since I'm not an engineer, I may defer that  
12 question to Mr. Maroney.

13 Q So how did you determine how many  
14 customers --

15 A In a conversation earlier, four or five  
16 months ago, with Mr. Maroney.

17 Q So I'm going to ask it so it's on the record.  
18 So how did you determine how many additional customers  
19 Lindsay could serve?

20 A By working with the city engineer.

21 Q So you don't have any particular expertise in  
22 being able to make that calculation yourself?

23 A No.

24 Q And where did you get your information in  
25 your testimony regarding the lines that are -- the

1 size and lengths of the lines that are owned by the  
2 city?

3 A The city -- city hall, the records we have.

4 Q So you went through those individually and  
5 read all those and added up the length of pipe?

6 A City staff did.

7 Q And when you say "city staff," who was that?

8 A Well, that would have been either  
9 Ms. Fleitman, or it would have been Mr. Maroney, or it  
10 could have been Mr. Swinggi, Kelly Swinggi, who also  
11 works with the city as an engineering consultant.

12 Q Is Mr. Maroney the city's engineer on a  
13 routine basis, or has he been hired especially for  
14 this process?

15 A Hired especially for this. Mr. Swinggi would  
16 be the one we deal with.

17 JUDGE NORMAN: On a routine basis?

18 A Uh-huh.

19 JUDGE NORMAN: Correct?

20 A Yes.

21 JUDGE NORMAN: Okay.

22 Q (BY MR. CARLTON) So you're not familiar with  
23 the capacity of the wells that you have?

24 A No. That would be a question best left for  
25 Mr. Maroney.

1 Q And you --

2 MR. CARLTON: Sorry?

3 JUDGE NORMAN: How do you spell Swinggi?

4 A Z-W-I-G-G-N-I (sic).

5 MR. CARLTON: Just like it sounds.

6 JUDGE NORMAN: Okay. Thank you.

7 (Laughter)

8 Q (BY MR. CARLTON) And likewise, you wouldn't  
9 be familiar with what improvements the city might need  
10 to make in order to provide additional service?

11 A Correct.

12 Q Does the city's existing CCN boundary as  
13 shown on what is Exhibit DLM-17 include all of the  
14 property that's within the city limits except for the  
15 two ten-foot strips that had been annexed to the north  
16 and south along 3108 and 1199?

17 A Well, it certainly doesn't include those two  
18 ten-foot strips, and there could be some question over  
19 whether or not it would include the overlapped area  
20 between our proposed -- our CCN proposal on water and  
21 Gainesville's CCN. And since I don't have a scale in  
22 front of me to work all the footages out, that's a  
23 just-looking-at-it answer.

24 Q I have one if it would be helpful.

25 JUDGE NORMAN: Would it be helpful?



1           A       Well, I could try.

2           Q       (BY MR. CARLTON)   So --

3           A       But I can't -- since I don't do this for a  
4 living, it's hard to answer that question exactly.

5           Q       So your concern would be that this doesn't  
6 show the area where there is overlap with the  
7 Gainesville CCN that was identified on DLM-13, now  
8 ED-1, where you circled in red?

9           A       Correct. It would be nice if the DLM-17 had  
10 a better -- I'm having a hard time reading this -- if  
11 the city limits, which I'm assuming are the yellow  
12 broken line, but I can't say that for sure because  
13 there's no rows on here to tell us that. So the map  
14 to show that possible area that's overlapped by the  
15 two CCNs from the two different cities, it doesn't  
16 depict it very well in DLM-17.

17          Q       Okay. But would it be safe to say but for  
18 any area that overlaps the Gainesville CCN, all of the  
19 city limits are within the town -- City of Lindsay's  
20 existing CCN?

21          A       It does appear to be that way.

22          Q       Okay. And is the Nortman subdivision based  
23 on DLM-17 within the existing CCN?

24          A       I don't know if Mr. Maroney wouldn't be a  
25 better person to ask that question of.

1 Q Okay. So DLM-13, you didn't prepare that?

2 A Did I personally prepare it?

3 Q Yes.

4 A No, I did not personally prepare this.

5 Q Who prepared it? Do you know?

6 A Well, I would --

7 MR. RODRIGUEZ: It's on the other map.

8 A Oh, this one.

9 MR. RODRIGUEZ: Yeah.

10 A No, I can't answer you specifically who  
11 called for this to be prepared.

12 Q (BY MR. CARLTON) Do you know who Engineering  
13 Concepts and Design, L.P. is?

14 A No, I do not.

15 Q The Blue Ribbon subdivision that we talked  
16 about earlier --

17 A Yes.

18 Q -- can you tell whether it's within the  
19 city's CCN area on DLM-17?

20 A Yes, it would appear to be.

21 Q And is the -- is Kupper subdivision?

22 A Yes, spelled K-U-P-P-E-R.

23 Q Okay. Is that within the city's CCN?

24 A It would appear to be. It's located right  
25 north of 82 on 1199, the west side of it, left side of

1 Farm-to-Market 1199.

2 Q Okay. And then the South Ridge of Lindsay is  
3 where the Lindsay Pure Water Company's CCN is located.  
4 Correct?

5 A I'm not -- not an expert on what their CCN  
6 looks like, but I'm assuming -- I'm assuming it is.

7 Q Okay. But that's the location of the South  
8 Ridge subdivision?

9 A Correct.

10 Q To your knowledge, are there any other  
11 subdivisions or is there any development occurring  
12 outside the town of Lindsay's existing CCN except  
13 South Ridge of Lindsay?

14 A I'm not aware of any.

15 Q Can I get you to turn to Exhibit DLM-3 in  
16 your testimony? Have you found it?

17 A Yes.

18 Q And could you identify that document?

19 A City Ordinance 0607-1, annexing properties.

20 Q And is this the ordinance that annexed what  
21 I'm going to call the -- kind of the finger that goes  
22 up on the northeast side of town?

23 A The ten-foot strip, yes.

24 Q Oh, it's the ten-foot strip, okay.

25 A Uh-huh.

1           Q       Now, there's a service extension policy  
2 for -- or there's an explanation about how to get  
3 water services attached to this ordinance, isn't  
4 there?

5           A       Section 3, the service plan providing.

6           Q       Okay. Would you turn to -- and they're not  
7 numbered. So I'm going to apologize, but there's a  
8 subsection in Exhibit B with the title Water Services.

9           A       All right. I have it.

10                   MR. CARLTON: Your Honor, I believe  
11 that's about six pages in.

12                   JUDGE NORMAN: I've got it.

13           Q       (BY MR. CARLTON) And that states that anyone  
14 who wants water service from the city has to bear the  
15 costs of construction of those facilities that are  
16 necessary to provide them service. Correct?

17           A       Correct.

18           Q       So if I'm now annexed into this territory and  
19 I'm in that ten-foot strip and I want water, I have to  
20 pay for it?

21           A       That would be my understanding based on the  
22 wording here.

23           Q       Now, turn with me to -- if you have LPWC-8,  
24 which has been admitted, and I guess it's probably  
25 going to come in as JES-13, but it's not in yet.

1 JUDGE NORMAN: Okay. LP --

2 MR. CARLTON: LPWC-8.

3 JUDGE NORMAN: Okay.

4 MR. CARLTON: It is the ordinance on the  
5 utility service outside the city.

6 JUDGE NORMAN: All right. I got it.

7 MR. CARLTON: So do I need to offer it  
8 again?

9 JUDGE NORMAN: Yes. You know, because  
10 I'm trying to keep it all -- I obviously took in some  
11 inadmissible evidence.

12 MR. CARLTON: So can I just re-offer it  
13 as --

14 JUDGE NORMAN: Sure.

15 MR. CARLTON: -- 8 again?

16 JUDGE NORMAN: Yes. And you do. Is  
17 there any objection?

18 MR. RODRIGUEZ: No, but I think at some  
19 point, Your Honor, can we go through and see what's  
20 been admitted for all purposes and what's been  
21 limited?

22 JUDGE NORMAN: Well, you know, we spent  
23 a long time this morning -- you know, I'm trying to  
24 caution you on that on whether or not to admit the  
25 names and the map, you know, that shows the places.

1 MR. RODRIGUEZ: Sure.

2 JUDGE NORMAN: And I tried to make clear  
3 that I was not going to limit myself to admissible  
4 evidence, as I'm not required to do under Rule 104(a)  
5 of the Texas Rules of Evidence.

6 So I think in order to be real clean.  
7 about that, then, you know, anything else -- anything  
8 that came up within that context, you know, you  
9 probably would be better off, if you wanted it as part  
10 of your case, to retender that evidence, either in the  
11 form of testimony -- now, what Mr. Metzler said at  
12 first, you know, when he came in and you first  
13 tendered his exhibit --

14 MR. RODRIGUEZ: That's what I was  
15 concerned with.

16 JUDGE NORMAN: Yeah, that came in, and  
17 then we got to the issue of whether or not those --

18 MR. RODRIGUEZ: So I don't -- just to be  
19 clear, I do not need to re-offer --

20 JUDGE NORMAN: You don't have to do  
21 that.

22 MR. RODRIGUEZ: -- APP-1 or APP-2?

23 JUDGE NORMAN: Correct, you do not.

24 MR. RODRIGUEZ: Okay. Those have been  
25 admitted?

1 JUDGE NORMAN: They have been admitted  
2 subject to the objections.

3 All right. Okay. LPWC-8 is admitted.

4 (Exhibit LPWC No. 8 admitted)

5 Q (BY MR. CARLTON) So, Mr. Metzler, would you  
6 turn to the first page of that exhibit in Paragraph  
7 (A)(1)? Do you find that paragraph?

8 A Yes, sir.

9 Q Does this ordinance say that once the city  
10 starts providing utility service that it can terminate  
11 those services at any time if it's beyond the  
12 corporate limits?

13 A Yes.

14 Q And so the city, if it's providing service  
15 outside its city limits, would not consider itself to  
16 be obligated to continue to provide those services?

17 A Yes.

18 Q And the second paragraph says that the city  
19 reserves a right to basically provide service to who  
20 it wants to. And if they don't want to, they don't  
21 have to, and it's in the city's discretion. Is that  
22 correct?

23 A That could be one reading of it, yes.

24 Q The third paragraph appears to require that  
25 the folks who are outside the city limits who are

1 getting service have to maintain -- well, have to  
2 construct those facilities at their own expense, and  
3 that the city doesn't assume any responsibility for  
4 the quality of that construction. Is that correct?

5 A Yes.

6 Q In Paragraph (3), I'm confused, and I need  
7 your help with understanding what is intended here.  
8 The last part of that paragraph says that "The city  
9 assumes no responsibility or liability for  
10 satisfactory service maintenance, pressure or wastage  
11 until it acquires sole ownership as part of its  
12 utility system." When would the city acquire sole  
13 ownership of the line as part of its utility system?

14 MR. RODRIGUEZ: I'll object, Your Honor.  
15 The ordinance speaks for itself. It's the best  
16 evidence of it.

17 JUDGE NORMAN: Overruled.

18 A Well, not being an attorney, it might be a  
19 little difficult for me to answer, but based on this  
20 and reading some of the others, it would seem that  
21 once these people have asked to be completely -- or be  
22 annexed into the city and we take in all the property  
23 that's being served with the sewer system or the water  
24 system, at that point in time after they are annexed,  
25 then we would begin to look at becoming responsible



1 for the system and its upkeep.

2 Q (BY MR. CARLTON) So once the property is  
3 annexed into the city, the city will then take over  
4 operation and maintenance of the lines?

5 A I would think that would be an accurate  
6 statement.

7 Q And is it a precondition to getting service  
8 outside the city that you file a petition for  
9 annexation based on this ordinance in Paragraph (A)?

10 A Paragraph (A)?

11 Q 1(A).

12 A 1(A).

13 Q I apologize.

14 MR. RODRIGUEZ: I'll also object, Your  
15 Honor, it's not the best evidence. The document  
16 speaks for itself.

17 JUDGE NORMAN: Oh, okay. Sustained.

18 A It would have.

19 MR. RODRIGUEZ: That's okay.

20 JUDGE NORMAN: The objection is  
21 sustained.

22 A Oh, okay.

23 JUDGE NORMAN: It's the best evidence  
24 rule objection.

25 Q (BY MR. CARLTON) Based on this ordinance,

1 would the city refuse to provide service if somebody  
2 who was requesting service didn't file a petition for  
3 annexation?

4 A I really don't know what the full council  
5 would decide to do.

6 Q Would you turn to the next page, Section  
7 (B)(1)? And what is the minimum size of line that is  
8 required to be constructed in order to obtain service  
9 from the city?

10 A Six inches.

11 Q So regardless of the location of service, how  
12 far away, how close, the six-inch line is the minimum  
13 size that's required?

14 MR. RODRIGUEZ: I'll object to asked and  
15 answered, and the document speaks for itself. It's  
16 the best evidence of what's required.

17 JUDGE NORMAN: I think he's just getting  
18 a clarification. I'm going to let him ask questions  
19 about interpretation of the document, his  
20 interpretation, if you make that clear, Mr. Carlton.  
21 But based on what the document itself says, the best  
22 evidence of what a document says is the document  
23 itself.

24 MR. CARLTON: I agree, and I think the  
25 issue really becomes how is it applied by the city.