

Legislative #

200327



CITY OF GAINESVILLE
OFFICE OF THE CITY ATTORNEY

Memorandum

To: Mayor and City Commissioners
From: Sean McDermott, Senior Assistant City Attorney *SM*
Date: February 19, 2020
Re: **Proposed Alachua County Charter Amendment – Post-Annexation Land Use Authority and Application of County Impact Fees**

During evening Commission Comment at the February 6, 2020 Regular Meeting, Mayor Poe commented that the Alachua County Charter Review Commission (ACCRC) was considering a potential amendment that would require land newly annexed into the City to pay County impact fees and that would prohibit the City from changing the County land use or zoning of that annexed property. The City Commission requested this Office provide an analysis to the City Commission before the next Regular meeting.

Summary

ACCRC member James Thompson introduced a proposed charter amendment that would in some yet-undetermined form maintain land use designations under the authority of Alachua County after land areas are annexed into a municipality, and would require yet-unspecified Alachua County impact fees to be collected in such areas post-annexation. The documentation Mr. Thompson submitted, which includes a summary of the amendment and his justification, is attached to this memo as **Exhibit A**. On January 29, 2020, the ACCRC voted to move the subject amendment forward to the “legal research and report” phase, with no definitive date yet established for further discussion.

The primary motive stated for this proposal is to better control urban sprawl occurring within Alachua County. This proposed county charter amendment may be legally sufficient (refer to the legal analysis provided below), but ultimately that will depend on the specifics to be determined as the ACCRC process moves forward. However, as a matter of policy, the City Commission and/or City Management may wish to engage with the ACCRC to encourage them not to move forward with this amendment because it violates the principles and purposes of home rule authority and governing at the lowest and most local level and it will not ensure any particular or better outcome regarding urban sprawl, but merely removes policy-making authority from the municipalities and gives it to Alachua County.

Alachua County Charter Review Commission Process

Alachua County Charter Section 4.2(B) governs the charter amendment process for the ACCRC. Essentially, the ACCRC holds multiple meetings to move forward proposed amendments, which culminates in at least three required public hearings on the proposed amendments and, if approved by the ACCRC at those public hearings, placement by the Alachua County Board of County Commissioners on the 2020 general election ballot. If a majority of the electors voting on the amendments favor adoption, the charter amendments become effective on January 1, 2021. **Exhibit B** attached to this memo describes the ACCRC charter amendment process in detail.

Legal Analysis

Alachua County may legally preempt the City's land use regulation by charter with the approval of a countywide referendum, and no separate or dual referenda is required in the affected municipalities. The County's preemption authority includes establishing applicable land use regulations, such as allowable uses, density, and intensity, but the County may not preempt or assume municipal services such as development and building permitting and enforcement without approval by dual referenda. In addition, the County may, depending on the mechanism, impose certain impact fees throughout the County and within municipalities.

As a charter county, the powers of Alachua County are framed in Article VIII, Section 1(g) of the Florida Constitution as follows:

- **Article VIII, Section 1(g):** Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

This means charter counties have broad powers, including the power to enact regulations of county-wide effect that preempt conflicting municipal ordinances, as long as such county regulations are not inconsistent with applicable general or special law (i.e., state law).

Although Article VIII, Section 4 of the Florida Constitution requires a dual referenda (i.e., approval separately by both county voters and voters of affected cities) to transfer from the City to the County functions or powers relating to *services*, a dual referenda is not required under Section 1(g)'s allowance for *regulatory* preemption by counties.¹ Land use regulation specifically has been held to be a *regulatory* preemption whereby dual referenda are not required.² In addition, Sections 163.3174(1)(b) and 163.3171(2), F.S., establish that the land use planning responsibility between the county and the affected municipalities shall be as stipulated in the county charter and may include the exercise of such authority over municipalities, and Section 163.31801, F.S., grants local governments broad authority to impose impact fees with no limitation on whether counties may impose such fees within municipalities.

Finally, Alachua County Charter Section 4.2(D) is more stringent than state law in that it generally requires a dual referenda even when Alachua County preempts by charter the *regulatory* power of municipalities; however, it provides an exception to this general rule when the charter amendment "expressly declares that it be effective county-wide and the proposing Charter Review Commission, Board of County Commissioners, or citizen initiative petition sponsor has determined that the county-wide amendment fulfills an important county purpose."

Policy Analysis

The ACCRC's only discussed justification for moving this proposed charter amendment forward is to prevent alleged municipal urban sprawl and to alleviate the effects of municipal growth on unincorporated areas. The only evidence submitted to support this assertion was the map attached to this memo as **Exhibit C**. When an ACCRC member raised the issue that the proposed amendment would be a preemption of home rule authority, ACCRC member James Thompson countered that claim by introducing the population data attached as **Exhibit D** with the assertion that it is somehow not a home rule preemption because a substantial number of people reside in unincorporated Alachua County (40% of the total county population). In addition, the ACCRC mentioned several Florida counties that have

¹ *Broward County v. City of Fort Lauderdale*, 480 So. 2d 631 (Fla. 1985).

² *Seminole County v. City of Winter Springs*, 935 So. 2d 521 (Fla. 5th DCA 2006).

similar charter provisions, including: Seminole County³; Volusia County⁴; Broward County⁵; and Sarasota County⁶.

Removing land use regulation from municipalities in Alachua County does not ensure any particular good or bad outcome regarding urban sprawl, however that term may be defined, but merely transfers the policy-making authority from the municipal political bodies most closely representing the people to the centralized Alachua County Board of County Commissioners. Consequently, the primary policy consideration here is home rule authority and its proper implementation, including which level of government should most properly be empowered with authority over land use regulation.

³ Seminole County has established in its charter a "Rural Boundary" where land use regulation, including allowable density and intensity, is controlled by the Board of County Commissioners even when located within a municipality.

⁴ Volusia County has established by charter a Growth Management Commission whereby the municipality's Comprehensive Plans (including land use changes) are not effective unless the Growth Management Commission deems it consistent with the County's Comprehensive Plan.

⁵ Broward County has established by charter a Broward County Planning Council that operates substantially the same as Volusia County's Growth Management Commission.

⁶ Sarasota County has established by charter a process whereby the County's Comprehensive Plan controls the density and intensity of development of all areas outside of the Urban Service Area and the Board of County Commissioners must approve all changes to future land use designations of such areas even when located within a municipality.

Proposed Charter Amendment Topic: This proposed amendment to the County Charter stipulates that land use designation remain under the authority of Alachua County for areas annexed in the future by municipalities. County impact fees shall be collected regardless of municipal jurisdiction.

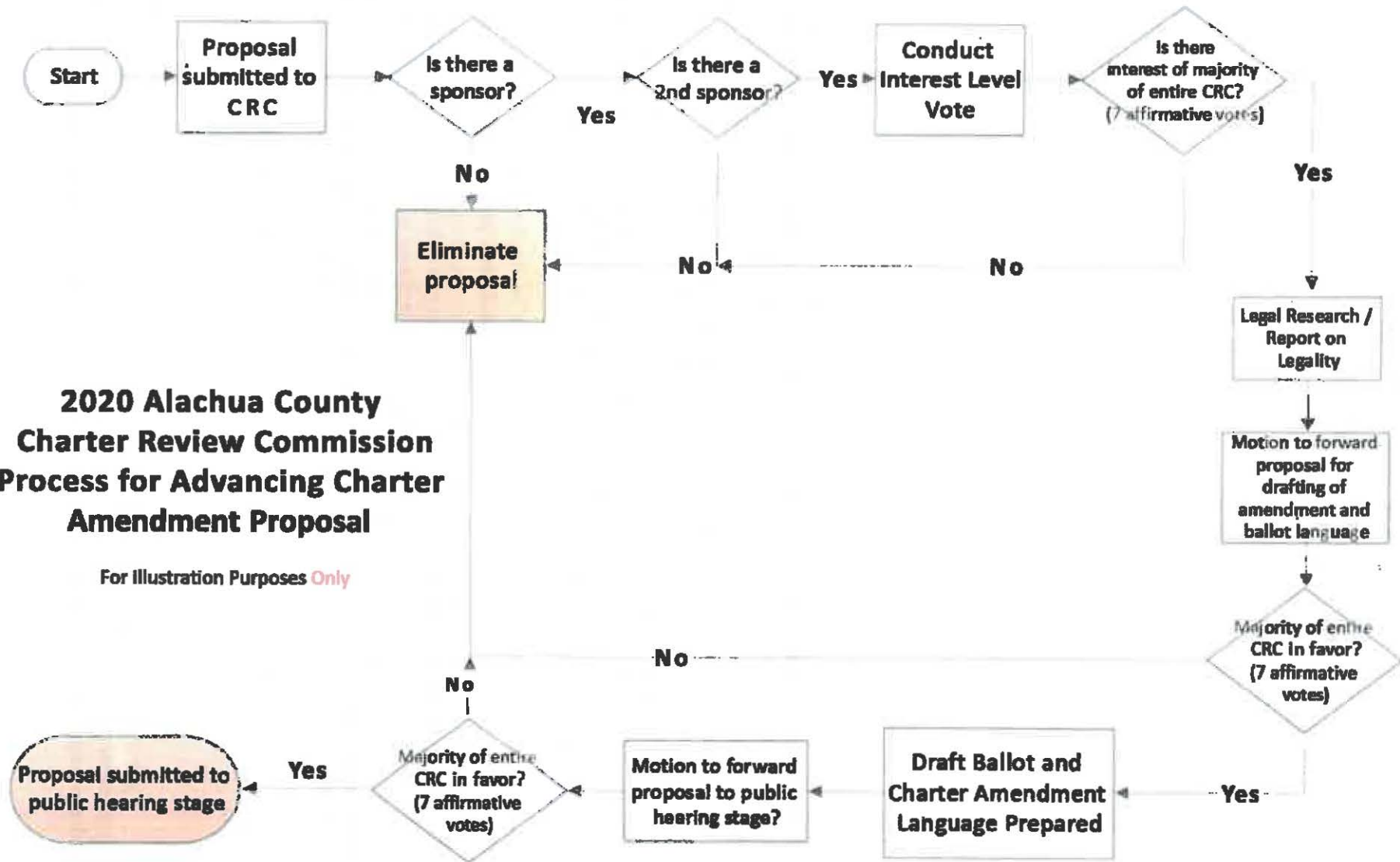
Name: James Thompson
Phone: 3522466863
E-mail: jtconsult@gmail.com

Summary of proposed charter amendment: This amendment would keep certain environmental protections and wise urban planning controls under the governance of Alachua County, which can better mitigate the effects of sprawl on the economy and environment than detached individual municipalities. It would encourage development to look inward to the urban cores with pre-existing infrastructure and services for growth opportunities. The precedent and model for this proposed item is the court-tested Seminole County plan ("Rural Area" Charter Amendment) passed by that county's residents in 2004
https://www.seminolecountyfl.gov/_resources/pdf/handout_homeruleamendment.pdf).

Please explain why you believe this proposed amendment should be considered: The road, school, public works, and public safety infrastructure and environmental regulations decisions that municipalities make affect a broader network beyond city and town borders. Sprawl from any one city impacts all other cities and unincorporated citizens. Municipal and unincorporated voters within the County should have a right to decide which local governing authority can best manage growth and oversee environmental protections. The County already has authority over air and water quality. Alachua County has a history of placing county governance items before all of its citizens in both incorporated and unincorporated areas--including environmental protections, taxation instruments, and conservation projects. This proposed amendment is in keeping with that democratic practice.

2020 Alachua County Charter Review Commission Process for Advancing Charter Amendment Proposal

For Illustration Purposes Only



**2020 ALACHUA COUNTY CHARTER REVIEW COMMISSION
WORKPLAN and TIMELINE**

Meetings may be cancelled or rescheduled
PH=Public Hearing

Date (2020)	Agenda Release	Backup Materials to Liaison	Time and Location
January 22 Meeting	January 15	January 14	5:30 PM, Jack Durrance Auditorium 12 S.E. 1st Street Gainesville, Florida
January 29 Meeting	January 22	January 21	5:30 PM, Jack Durrance Auditorium 12 S.E. 1st Street Gainesville, Florida
February 12 Meeting	February 5	February 4	5:30 PM, Jack Durrance Auditorium 12 S.E. 1st Street Gainesville, Florida
February 26 Meeting	February 19	February 18	5:30 PM, Jack Durrance Auditorium 12 S.E. 1st Street Gainesville, Florida
March 11 Meeting	March 4	March 3	5:30 PM, Jack Durrance Auditorium 12 S.E. 1st Street Gainesville, Florida
March 25 Meeting	March 18	March 17	5:30 PM, Jack Durrance Auditorium 12 S.E. 1st Street Gainesville, Florida
March 31		Submittal deadline	
April 22 Meeting	April 15	April 14	5:30 PM, Jack Durrance Auditorium 12 S.E. 1st Street Gainesville, Florida
April 29 Meeting	April 22	April 21	5:30 PM, Jack Durrance Auditorium 12 S.E. 1st Street Gainesville, Florida
May 13 PH #1	May 6	May 5	5:30 PM, Jack Durrance Auditorium 12 S.E. 1st Street Gainesville, Florida
May 27 PH#2	May 20	May 19	5:30 PM, Jack Durrance Auditorium 12 S.E. 1st Street Gainesville, Florida
June 10 PH#3	June 3	June 2	5:30 PM, Jack Durrance Auditorium 12 S.E. 1st Street Gainesville, Florida
June 12		Final ballot language to Supervisor of Elections	

EVALUATION PROCESS (from adopted Rules of Procedure, as amended)

Submission/consideration of proposals: Any member of the Commission, the public, or other interested party may submit one or more proposed Charter amendments. Submittals are not expected to be in final form. Proposals may be submitted via the Charter Review Commission website, mail or email. Each proposal should address only one subject.

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Commission staff shall compile a list of submitted proposals. The list of proposals shall be emailed to each Commission member weekly and staff will provide each Commission member with the proposals list along with backup materials respectively as part of the agenda materials for each meeting.

On March 31, 2020, the Charter Review Commission shall no longer consider new submittals. The online submission form shall be removed from the website on this date.

Narrowing of submitted proposals: Only proposals on the above-noted list shall be considered by the Commission for further discussion. A proposal may be placed before the Commission if a member makes a motion to consider a listed proposal and the motion is properly seconded ("Commission sponsors.") The member's motion may combine two or more proposals on the list if their subject matter is the same.

Beginning with the January 29 meeting until March 31, the agenda shall list proposals within topic area for advancement or elimination. The procedure shall be as follows:

- Commission Chair presents topic (or proposal, if only one submitted in the topic area);
- A motion and second to advance a topic/proposal to the next stage, or eliminate from further consideration;
- Commission discussion of the motion;
- Public comment on the motion; and
- Final Commission discussion and vote, which shall require an affirmative vote of a majority of the entire Commission.

When evaluating proposals, a proposed amendment: must not be in conflict with the Constitution; cannot establish, amend or repeal the County budget, existing debt obligations, the comprehensive plan, or zoning or re-zoning of land; should avoid specific dollar amounts that can only be changed by charter amendment; should not reference actual statute numbers; should not duplicate statute provisions; should avoid usurping the authority of the Board of County Commissioners; should avoid matters that would be more appropriate as ordinances; should be clear, concise and understandable; should embrace only one subject matter; should be limited in number.

If, during this initial phase, a proposal (as amended) receives the affirmative vote of a majority of the entire Commission, the proposal shall be submitted for legal review and research. Action by the Commission at this point does not necessarily imply that the proposal will be submitted to the voters for their consideration.

Drafting phase:

Step 1. Legal counsel will review the proposal and provide a report to the Charter Review Commission concerning the legality of proposal.

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Step 2. After an affirmative majority vote of the entire Commission, the CRC forwards the proposal to legal counsel for the drafting of the amendment and ballot language.

The Commission shall then consider the actual proposed amendment and ballot language. After consideration, the Commission shall vote whether or not to move the proposal forward to the public hearing phase. If the proposal receives an affirmative vote of a majority of the entire Commission, the Chair shall place it on the agenda for the public hearings. If the proposal does not receive a favorable vote of the Commission, the proposal shall no longer be considered.

Public Hearing Phase/Final Report: The Commission shall hold three public hearings. At the conclusion of the final public hearing, the Commission shall consider the proposals for a final vote. Those proposals receiving a majority vote of the entire Commission shall be forwarded to the Board of County Commissioners in a final report requesting that the proposals be placed on the ballot.

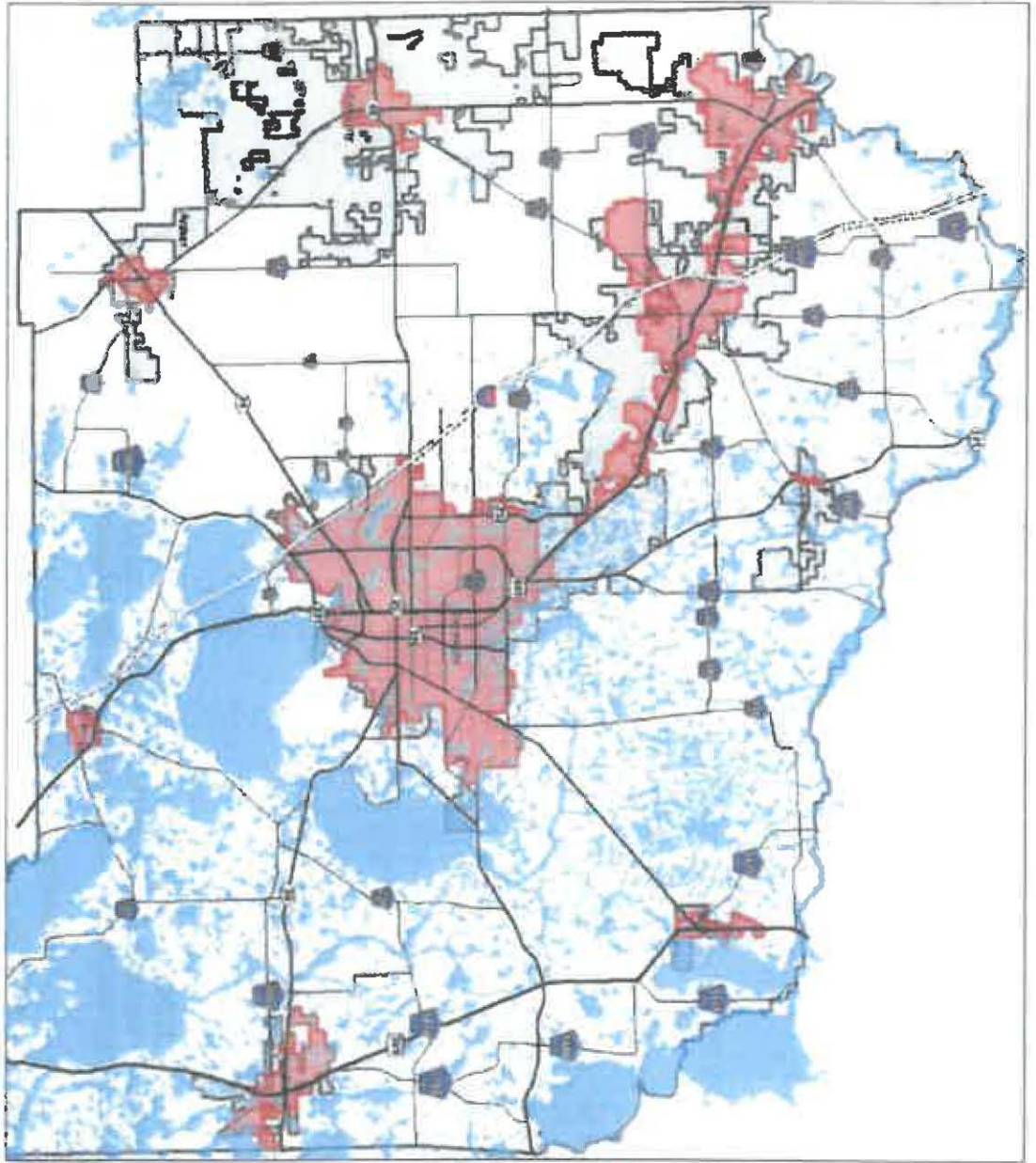


Figure 77.21.1

- Municipal Urban Core Exclusion Areas
- Municipal Boundary
- Wetlands and Surface Waters*

Municipal Urban Core Exclusion Areas are based on the following criteria. Areas of contiguous properties with municipal boundaries that are already zoned multi-family, medium or high density residential, planned development, non-residential (including industrial and commercial), or already developed low-density single-family residential areas at the time of code adoption.

*Wetland layer is based on multiple sources that have not been ground verified and may not be accurate



DISCLAIMER: This map and the spatial data contained therein are provided as a public service to the user for reference purposes only. The City of Springfield is not responsible for any errors or omissions in this information and is not liable for any damages or consequences resulting from its use. The accuracy of the data is dependent on the source from which it was obtained.

Alachua County Population
Data from Bureau of Economic and Business Research - Florida Estimates of Population 2019

	Population	Square Miles	People/Sq.mile	% of Total County Population
Alachua County Unincorporated	106299	769	138	39.77%
Gainesville	133068	65	2047	49.78%
Alachua	10298	37	278	3.85%
Newberry	6573	55	120	2.46%
High Springs	6444	22	293	2.41%
Hawthorne	1456	7	208	0.54%
Waldo	960	2	480	0.36%
Archer	1201	6	200	0.45%
Micanopy	615	1	615	0.23%
La Crosse	392	5	78	0.15%
Total Alachua County	267306	969	276	100.00%