

DEFENDERS OF CROOKED LAKE
INCORPORATED

OUTSTANDING FLORIDA WATER
SINCE 1981

P.O. BOX 191
BABSON PARK, FLORIDA 33827

January 20, 2008

City of Frostproof
City Commission
111 W. First Street
Frostproof, Florida 33843

Re: Objections to Annexation Ordinance(s) 2008-01, 2008-03, 2008-04, 2008-05,
2008-06, 2008-07

Defenders of Crooked Lake. The Defenders of Crooked Lake was founded in 1971 and charged with a mission to '*preserve the natural beauty, purity of water, ecological value and quality of life that distinguish Crooked Lake.*' Over the years the Defenders have been a diligent guardian against many harmful activities around Crooked Lake such as storm water run-off, sewerage discharge and inappropriate development. The Defenders have had a steady liaison with local, state and federal governments and the numerous regulatory agencies that exercise jurisdiction over water and wildlife.

Because the Defenders have been successful, Crooked Lake has remained one of the few pristine lakes with one of the highest water quality ratings in Florida. In 1987, it was designated an "Outstanding Florida Water" by the Department of Environmental Protection.

Defenders and these individuals will be affected by urban sprawl, cost of governmental services, loss of the rural agricultural character, drinking water sources and surface water quality as set forth in our objections.

Those individuals owning property and residing in the City of Frostproof have statutory standing to seek judicial review by Petition for writ of Certiorari. For purposes of this case, the statute [171.031(5)] provides standing for three classes of parties: (1) persons or firms owning property in the City; (2) persons or firms residing in the City; and (3) persons or firms owning property that is proposed for annexation. City of Tallahassee v. Kovach 733 So.2d 576, 578 (Fla.App. 1 Dist., 1999).

Annexation proceedings are legislative decisions. Martin County v. City of Stuart 736 So.2d 1264, n.1 (Fla. App. 4 Dist., 1999). Challenges to annexations not meeting requirements are by "seeking review by certiorari." Id.

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Annexation - Statutory Requirements.

Where annexation of parcels representing individual lots would result in complicated, confusing and **inefficient services**, parcels may not be lawfully annexed.

Pursuant to Florida Statute § 171.031:

“(11) ‘Contiguous’ means that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality. The separation of the territory sought to be annexed from the annexing municipality by a publicly owned county park; a right-of-way for a highway, road, railroad, canal, or utility; **or a body of water**, watercourse, or other minor geographical division of a similar nature, running parallel with and between the territory sought to be annexed and the annexing municipality, shall not prevent annexation under this act, **provided the presence of such a division does not, as a practical matter, prevent the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services** or prevent their inhabitants from fully associating and trading with each other, socially and economically. **However, nothing herein shall be construed to allow local rights-of-way, utility easements, railroad rights-of-way, or like entities to be annexed in a corridor fashion to gain contiguity;** and when any provision or provisions of special law or laws prohibit the annexation of territory that is separated from the annexing municipality by a body of water or watercourse, then that law shall prevent annexation under this act.

(12) ‘Compactness’ means concentration of a piece of property in a single area and precludes any action which would create enclaves, **pockets**, or finger areas in **serpentine patterns**. Any annexation proceeding in any county in the state shall be designed in such a manner as to ensure that the area will be reasonably compact.

(13) ‘**Enclave**’ means:

(a) Any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or

(b) Any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that **allows the passage of vehicular traffic to that unincorporated area only through the municipality.**”

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Pockets. Annexation of these areas are not sufficiently contiguous and create “pockets.” City of Center Hill v. McBryde 952 So.2d 599, 603 (Fla.App. 5 Dist.,2007). Should the annexations proposed in Ord. 2008-01, 2008-03, 2008-04, 2008-05, 2008-06, 2008-07 proceed, one or more impermissible pockets would be created. Creation of pockets as large as (or even larger than) 100 acres is impermissible under Florida annexation law. The Court in City of Sanford v. Seminole County, 538 So.2d 113 (Fla. 5th DCA 1989). In that case, the circuit court determined that an annexation was impermissible because the proposed annexation “tend[ed] to create pockets of unincorporated property....” *Id.* at 114.

Annexations 2008-01, 2008-03, 2008-04, 2008-05, 2008-06, and 2008-07 impermissibly create pockets, As noted by the Court in *McBryde*, “given the current configuration of the City, the applicants’ properties, and the remaining [unincorporated] parcels, that is precisely what would occur here.” City of Center Hill v. McBryde 952 So.2d 599, *603 (Fla.App. 5 Dist.,2007)

Connection to Existing City Boundary. Section 171.031(11) requires that a substantial portion of a boundary of the territory annexed must be coterminous with the City’s boundary. The following annexations do not share sufficient common boundaries with existing City boundaries:

Ordinance **2008-4** of a **30,030’** total perimeter only approx. **4624’** abuts an existing Frostproof boundary;

Ordinance **2008-05**, of a **6600’** total perimeter only approx. **660’** abuts an existing Frostproof boundary; and

Ordinance **2008-07**, of a **6600’** total perimeter only approx. **1320’** abuts an existing Frostproof boundary.

County of Volusia v. City of Deltona 925 So.2d 340, 344 (Fla.App. 5 Dist.,2006) (“We hold that 350 feet out of more than 20,000 cannot constitute a substantial portion of the western boundary of the three parcels annexed together.”)

Enclaves. The proposed annexations also creates “enclaves” of unincorporated areas that impermissibly “**allows the passage of vehicular traffic to that unincorporated area only through the municipality.**”The City and owners attempted shoestring annexation by using a narrow corridor to connect the municipality to an outlying, noncontiguous area it desired to annex. County of Volusia v. City of Deltona at 344 (Fla.App. 5 Dist., 2006).

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The City can not voluntarily annex parcel of property separated from the municipality by a lake and otherwise surrounded by unincorporated land when such annexation would result in creation of a municipal enclave surrounded by unincorporated property and when such property would be geographically isolated from the municipality preventing, as a practical matter, the property to be annexed and the municipality from becoming a unified whole. *F.S. §171.031(11)*

Op. Atty. Gen. 86-43, 5-21-86. ("I am of the opinion, unless and until judicially determined otherwise, that the City of Avon Park may not voluntarily annex a parcel of property separated from the municipality by a lake and otherwise surrounded by unincorporated land when such annexation would result in the creation of a municipal enclave surrounded by unincorporated property and when such property would be geographically isolated from the municipality preventing, as a practical matter, the property to be annexed and the municipality from becoming a unified whole.")

Total Annexation Area. If all proposed annexations would cause the total area annexation by a municipality during any one calendar year cumulatively to exceed more than five percent of the total land area or the population of the municipality, the Annexation Act requires the municipality to conduct a "dual referendum." *Florida Statute § 171.0413(2)*.

In a dual referendum, a majority vote of the electors in both the proposed annexation area and the annexing municipality is required to approve the annexation. How many acres have been annexed, is proposed for annexation later this year and what percentage of the land area and population would these annexations include?

Inefficient Services. Annexations 2008-01, 2008-03, 2008-04, 2008-05, 2008-06, 2008-07 are not driven by the right to availability of City water and sewer services, which are not currently available in these areas, and City water and sewer in these areas is not currently contained in or contemplated in the 5 year capitol improvements schedule.

Because no City services are planned or being provided and City services would have to leap frog through County lands creating an illegal enclave within the County, the Annexation would result in complicated, confusing and inefficient services, therefore, parcels should not be annexed.

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Urban Sprawl & Impacts on Watershed/Recharge.

The annexed areas encompassed by the following annexation ordinances 2008-01, 2008-03, 2008-04, 2008-05, 2008-06, 2008-07 will allow urban/suburban sprawl development patterns to intrude further into the watersheds of Crooked Lake and the 525-acre Crooked Lake Nature Preserve. Both sites are located in environmentally sensitive areas which have high aquifer recharge rates. As noted above, the area encompassing these properties is not yet served by City water, sewer and stormwater systems. Premature development ahead of current growth on these lands at this time will lead to urban/suburban sprawl because it:

- Promotes, allows or designates for development in excess of demonstrated need,

- Promotes allows or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while leaping over undeveloped lands which are available and suitable for development,
- As a result of premature or poorly planned conversion of rural land to other uses, fails adequately to protect and conserve natural resources, such as wetlands, floodplain, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, and other significant natural systems,

- Fails to adequately protect adjacent agricultural areas and activities, as well as passive agricultural activities and dormant, unique and prime farmland and soils,

- Fails to maximize use of existing public facilities and services,

- Fails to maximize use of future public facilities and services,

- Allows for land use patterns or timing which disproportionately increase the cost in time, money and energy of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater, management, law enforcement, education, health care, fire and emergency response, and general government,

- Fails to provide a clear serration between rural and urban uses

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Aquifer Recharge & Surface Water Quality.

The proposed annexations will lead to applications for land use and zoning changes that will adversely impact and reduce the aquifer recharge area and affect the quantity of water in Crooked Lake.

The sandy soils of the Lake Wales Ridge allow rain to drain, filter and recharge the deep Floridian aquifer, our primary source of drinking water.

The Southwest Florida Water Management District estimates a 40 - foot drop in water levels of the underground Floridian aquifer just west of the Ridge since the 1940's.

Since 1991 Crooked Lake has been on SWFWMD's "Stressed Lake List" with chronic fluctuation below normal range of lake levels.

This increase in use of underground water by urban/suburban sprawl would lead to further drastic reduction of the level of Crooked Lake.

Land Use & Zoning Expectations and Impacts.

Zoning by annexation all too often is driven by the need for increased density, intensity and uses that would not be allowable under the County's more restrictive comprehensive plan and land development regulations. Prior annexations have resulted in comprehensive plan amendments for example a small scale CPA to change the land use from ARR to Residential at 4 units/acre on at least one prior parcel annexation.

The Defenders believe this proposed annexation will likely lead to applications and requests for land use and zoning changes to increase the density, intensity and level of inappropriate development in the watershed of Crooked Lake.

We sincerely hope these additional annexations are not simply an attempt to obtain approval of increased density and intensity in areas not currently served by municipal services, (including no water, sewer or stormwater systems), simply to obtain increased density and development approvals through what is commonly referred to as "zoning by annexation."

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Zoning by annexation would violate state growth management laws and regulations (ch. 163 and F.A.C. 9J-5) and should not be allowed to create unrealistic development expectations for the landowners/applicants in this case(s).

We respectfully request that these lands not be annexed or in the alternative, that the land use, zoning and land development regulation constraints on these properties remain the same as they are in the County for the foreseeable future (i.e., for the next 10 year planning cycle).

We are concerned that these approvals will set a precedent for increased density, unrealistic development expectations and additional inappropriate development.

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Petition/Referendum Option

In the event that annexations such as those proposed are simply approved despite our concerns and objections, we will likely support **an independent Citizen's Petition Initiative Referendum** the following changes to the Polk County Charter. *Atty Gen Op 07-41 to the Polk County Attorney dated Oct 8, 2007:*

Growth Management: Shall Polk County's Charter be amended to read?

ARTICLE 1

Creation, Powers and Ordinances
of Home Rule Charter Government

1.9 Exception to Municipal Powers.

1.9.1 Growth Management.

In order to preserve agricultural lands, protect wetlands and environmental resources, ensure the efficient use of public resources, and discourage urban sprawl, unincorporated Polk County and Polk County municipalities shall limit the total density of all residential land use types to those totals described in the County and its municipalities Comprehensive Plans as of November x, 2008. To the extent allowed by law, densities may be transferred into the Urban Growth Area and may be aggregated between comprehensive plans occurring within the Urban Growth Area. No amendments to Comprehensive Plans within Polk County shall exceed this total density. Residential densities of the Comprehensive Plans within the Urban Growth Area may be increased by densities transferred.

1.9.2 Urban Growth Area

Any proposed comprehensive plan amendment increasing the size of the Urban Growth Area of Polk County shall be subject to referendum of the general electorate of Polk County. "Urban Growth Area" means municipal boundaries and those areas depicted on the future land-use map in Polk County's Comprehensive Plan where urban land-use densities and intensities are allowed as of November x, 2008 and where the County or municipalities are obligated to provide certain infrastructure and services needed for private development. The required referendum shall be held after other comprehensive planning steps required by general law.

_____ FOR THE GROWTH MANGEMENT CHARTER AMENDMENT

_____ AGAINST THE GROWTH MANGEMENT CHARTER AMENDMENT

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Conclusion.

In closing, this annexation is premature in service ability. It represents urban sprawl and is detrimental to the surrounding natural resources such as Crooked Lake, aquifer recharge areas, and Polk County's Crooked Lake Prairie.

Annexation proceedings are legislative decisions. Martin County v. City of Stuart 736 So.2d 1264, n.1 (Fla.App. 4 Dist.,1999).

We respectfully request that you exercise your legislative authority and DENY the annexation requests 2008-01, 2008-03, 2008-04, 2008-05, 2008-06, 2008-07

We further respectfully request that the land use and zoning constraints equal to those imposed by the County's Comp Plan FLUM designations and land development regulations remain in place on all of these lands.

Sincerely yours,

Thomas Schotman
Defenders of Crooked Lake, President
And Board of Directors

and the following nearby Landowners owning property and residing within City of Frostproof, as individuals:

1. Linda Smith
145 Maxcy Lane
Frostproof, FL
2. Michele Battice
1044 Stewart Ave.
Frostproof, FL
3. Jim and Carolyn ("Dee Dee") Lefils
16 Wall St. W.
Frostproof, FL

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and the following additional nearby Landowners owning property and residing within Unincorporated Polk County, as individuals:

4. John and Martha Krohn
855 Wes Mann Road
Babson Park, FL 33827
5. Lee F. Rawlings/ Gwen Rawlings
973 Wes Mann Road
Babson Park, FL 33827
6. Janis and Jacque Woodward
1377 Hollister Road
Babson Park, FL 33827
7. Ken and Helen Morrison
1351 Hollister Road
Babson Park, FL 33827
8. Virginia Johnston and Gerald Bergstrom
1345 Hollister Road
Babson Park, FL 33827
9. Jim and Nancy Smith
1722 Seminole Road
Babson Park, FL 33827
10. Elaine Lilly
255 Wes Mann Road
Babson Park, FL 33827
11. Dale and Sara Fair
1329 Hollister Road
Babson Park, FL 33827
12. Rick and Cindy Ritehison
971 Ohlinger Road
Babson Park, FL 33827

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13. Jane Kirlin
1075 Sunset Trail
Babson Park, FL 33827

14. Bob and Lee Luther
953 We Mann Road
Babson Park, FL 33827

15. Howard Barnhart
720 Ohlinger Road
Babson Park, FL 33827

cc:

Florida Department of Community Affairs (*Issue: future CPA*)

Polk County, Board of County Commissioners (*Issue: Annexations*)

Regional Planning Council (*Issue: Expansion of development into areas not concurrent with municipal services*)