



## Cover Memorandum/Staff Report

File #: 19-1089

Agenda Date: 11/19/2019

Item #: 9.B.

**TO: Mayor and Commissioners**  
**FROM: Anthea Gianniotis, Development Services Director**  
**THROUGH: Neal de Jesus, Interim City Manager**  
**DATE: November 19, 2019**

ORDINANCE NO. 44-19: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, ANNEXING INTO THE CITY OF DELRAY BEACH THREE (3) PARCELS OF LAND LOCATED ON THE EAST SIDE OF BARWICK ROAD IMMEDIATELY SOUTH OF LAKE WORTH DRAINAGE DISTRICT L-30 CANAL, FOR A PROJECT TO BE KNOWN AS BANYAN COURT, WITH THE SAME BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS HEREIN, COMPRISING APPROXIMATELY 6.68± ACRES IN SIZE AND SITUATED CONTIGUOUS TO THE EXISTING MUNICIPAL LIMITS OF THE CITY OF DELRAY BEACH; PROVIDING FOR INCLUSION OF THESE THREE (3) PARCELS INTO THE CITY AND A REDEFINITION OF THE CITY BOUNDARIES PURSUANT TO SUB-SECTION 171.044(2), FLORIDA STATUTES; PROVIDING FOR CONFORMANCE WITH ALL VOLUNTARY ANNEXATION PROCEDURES AS SET FORTH IN SECTION 171.044, FLORIDA STATUTES; PROVIDING FOR FILING WITH PALM BEACH COUNTY AND THE DEPARTMENT OF STATE; PROVIDING A CONFLICTS CLAUSE; AND A SEVERABILITY CLAUSE, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (FIRST READING)

### **Recommended Action:**

Review and consider Ordinance No. 44-19, a privately-initiated request for voluntary annexation of 6.68± acres, subject to Florida Statutes Section 171 and the City of Delray Beach Land Development Regulations.

### **Background:**

Banyan Court is the project formerly known as "Banyan Cove". Banyan Court is a proposed single-family residential development on 6.68± acres bordered to the north by Canal LWDD L-30; to the east by the Banyan Creek Elementary School; to the south by single family residences located in unincorporated Palm Beach County (the north side of Sabal Lakes Road); and to the west by Bexley Park, a Planned Residential Development (PRD) located within the City of Delray Beach; as well as a single family subdivision known as Golf Club Estates and a single family residence (located south of the L-30 Canal) all located within unincorporated Palm Beach County. The subject property encompasses three parcels: one single-family residence with two accessory structures is located on the northernmost parcel and the remaining two parcels are vacant.

In 2017, the applicant filed an application with Palm Beach County to amend the land use designation from MR-5 to 8 du/acre. During the review process, it was determined by the Delray Beach City Manager, City Attorney, and City Development Services Director that the applicant should file a petition to annex into the City of Delray Beach. In 2018, the applicant filed a petition for annexation into the City, a Future Land Use Map (FLUM) amendment to City MD - Medium Density, 5

-12 du/acre, and a Rezoning to City RM-8 - Multiple-Family Residential to allow 53 townhomes. On October 15, 2018, the Planning and Zoning Board considered the three actions and recommended approval of the annexation (6-0), the FLUM amendment (6-0), and the rezoning (4-2).

On November 27, 2018, the City Commission approved Ordinance No. 27-18 (annexation) on first reading 3-2 (Johnson and Frankel dissenting).

At the December 12, 2018 City Commission meeting, the applicant requested postponement of the annexation (Ordinance No. 27-18), as well as of the first readings of the accompanying FLUM amendment (Ordinance No. 28-18) and Rezoning (Ordinance No. 29-19).

In early 2019, the applicant resubmitted the request for rezoning, but changed the requested zoning designation to Planned Residential Development, 6 du / acre (PRD-6). On October 21, 2019, the Planning and Zoning Board reviewed the request for rezoning to PRD-6 (as Ordinance No. 38-19) and recommended approval (7-0). The requested rezoning to PRD is accompanied by a Master Development Plan (MDP), which includes three waivers, for 40 zero-lot line single-family residences. The Planning and Zoning Board approved the MDP as a final action at its October 21, 2019 (7-0).

All three actions, annexation, FLUM amendment, and Rezoning are now brought forward for City Commission consideration as 2019 ordinances. Ordinance No. 44-19 considers the annexation request.

## Findings

### **Florida Statutes Governing Voluntary Annexations**

Pursuant to the Florida Statutes 171.044, *"the owner or owners of real properties in an unincorporated area of the County, which is contiguous to a municipality and reasonably compact, may petition the governing body of said municipality that said property be annexed to the municipality"*. The voluntary annexation was submitted by Miller Land Planning, agent, on behalf of Andrew V. Podray, the property owner of record. The parcels are contiguous to the City of Delray Beach along the east property line which extends a total of 980.69'. The subject properties are compact as all three parcels abut one another.

Pursuant to F.S. 171.044 (5) *"land shall not be annexed through voluntary annexation when such annexation results in the creation of enclaves"*. F.S. 171.031 (13) defines "Enclave" as: (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.

Florida Statutes allows for voluntary annexation that reduces an enclave area. With the annexation of the Bexley Park development, located on the west side of Barwick Road, that portion of the development that abuts Barwick Road was identified as Parcel "K", PCN: 00-42-46-12-00-000-3180 in the adopted ordinance. Parcel "K" as described within Ordinance No. 31-02 excluded a portion of the Barwick Road right-of-way and is described as: 12-46-42 NE ¼ of NE ¼ of NW ¼ (less E 40 ft. Barwick Rd R/W, N 140 ft. L-30 Cnl /R/W & S 159 ft. of N 299 ft. of W 209 f.t of E 249 ft. Barwick Road is an 80 feet right-of-way. The west one-half (40') of Barwick Road was not included in the annexation action. Therefore, the resulting impact maintains the continued passage of vehicular traffic to the unincorporated areas to the south through the County, thus the proposed action

reduces the enclave area remaining in Palm Beach County.

### **Land Development Regulations Governing Annexations**

Pursuant to the Land Development Regulations Section 2.4.5 (C)(1), *"the owner of land may seek the annexation of contiguous property, under his ownership"* pursuant to Florida Statutes. The voluntary annexation petition was submitted by Andrew V. Podray, property owner, in accordance with Chapter 171, Florida Statutes and the subject property is contiguous to the City of Delray Beach as noted above.

### **Consistency With The City's Comprehensive Plan**

Upon adoption of the 1989 Comprehensive Plan, the City's "reserve annexation area" was replaced by the boundaries of its "Official Planning Area". The Official Planning Area is the area for which most calculations and projections in which the City's Comprehensive Plan are predicated upon. It is also considered the City's ultimate boundaries. The Planning Area is specifically delineated on Map #1, Future Land Use Element.

### **Designated Annexation Areas**

The territory to be annexed is located within designated Annexation Area "E" (North Military Trail/Barwick Road Area) as identified in the Future Land Use Element of the Comprehensive Plan. Annexation of the subject territory is consistent with the Future Land Use Element Policy B-3.5, which calls for annexation of eligible properties through voluntary annexations as the opportunities arise.

### **Provision of Services**

When annexation of property occurs, services are to be provided in a manner which is consistent with services provided to other similar properties already in the City (Future Land Use Element Policy B-3.1). The provision of services with respect to Public Safety and Emergency Services is provided below. Other services with respect to concurrency is addressed under the Future Land Use Analysis portion of this report.

**Police:** The City of Delray Beach Police Department has 14 cars per shift patrolling the city and there may be an improvement in response time. Initially, annexation may not require additional manpower. However, once full development is realized, manpower allocation will have to be reevaluated.

**Fire and Emergency Services:** On February 3, 2015, the Palm Beach County Board of County Commissioners approved Board Resolution R2015-0232. The Resolution entitled, Emergency Services Agreement for Mutual Assistance, Automatic Aid, and Dispatch Services, allows for mutual assistance in aid and dispatch service between the City and the County. Currently, the property is served by Palm Beach County Fire Department located at Woolbright Road, just west of Military Trail, and Fire Station No.115, located at the intersection of Barwick Road and Lake Road. The annexation of this property will not require additional manpower.

### **Financial Impacts**

At the 2018 operating millage of 6.7611 mills and a debt rate of 0.2108 mills, the subject properties will pay approximately \$2,518.16 in ad valorem taxes per year - assuming the development of the site does not change. As a part of the Palm Beach County, the subject properties pay \$14,834.98 in ad valorem taxes. With annexation, the projected ad valorem tax is approximately \$17,353.14 (2018 values) - a tax increase of \$2,518.16. Under annexation, the City will receive approximately \$6,004.85 per year in ad valorem taxes - assuming the development of the site remains the same.

Because 40 single-family homes are proposed on the subject properties, the City can expect a greater increase in tax revenue than the analysis reflects. The City will also receive additional revenue from the storm water assessment, the Communication Service Tax (Cable and Telephone of 5.22%), Electric and Gas Tax of 10%, and 6% Utility Franchise Fee on Electric.

**City Attorney Review:**

Ordinance No. 44-19 was approved to form and legal sufficiency.

**Funding Source/Financial Impact:**

If the annexation is approved, the City will receive approximately \$6,004.85 per year in ad valorem taxes.

**Timing of Request:**

NA