



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING & ZONING BOARD STAFF REPORT

13029 Barwick Road

Meeting	File No.	Application Type
August 17, 2020	2020-152-ANX-CCA 2020-154-FLM-CCA 2020-153-REZ-CCA	Annexation of Territory Land Use Amendment Rezoning

Property Owner and Applicant	Authorized Agent
Robert and Andrea Keiser	Keiser Legal, PLLC - Andrea M. Keiser

Request

Provide a recommendation to the City Commission on a privately-initiated petition for:

- Voluntary Annexation (Ordinance No. 46-20) of a one-acre parcel from Palm Beach County;
- Land Use Map Amendment (Ordinance No. 47-20) from Palm Beach County Medium Residential 5 dwelling units per acre (MR-5) to City of Delray Beach Low Density 0-5 units per acre (LD); and
- Rezoning (Ordinance No. 48-20) from Palm Beach County Agricultural Residential (AR) to City of Delray Beach Single-Family Residential (R-1-AA).

Background Information

The subject property measures one-acre and is currently vacant. The intended use of the property, which was previously used as a tree farm, is single family residential.

The property is bordered to the north by Canal LWDD L-30; to the east by the approved Banyan Court development, a single family Planned Residential Development (PRD); and to the west and south by the Bexley Park development, a single Family and multi-family Planned Residential Development (PRD), all located within the City of Delray Beach. The subject property is not within a redevelopment area or overlay.



Review and Analysis

Annexation

Land Development Regulations and Florida Statutes Governing Annexations

Pursuant to **Land Development Regulations (LDR) Section 2.4.5 (C)(1), Annexation of territory: Rule**, "the owner of land may seek the annexation of contiguous property, under his ownership" pursuant to Florida Statutes. **Section 171.044** of the Florida Statutes indicates that "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." A petition for voluntary annexation was submitted by Keiser Legal, PLLC (Agent), on behalf of and Robert and Andrea Keiser (Applicant and Property Owner of record).

Pursuant to **F.S. 171.044(5)** "land shall not be annexed through voluntary annexation when such annexation results in the creation of enclaves." Pursuant to **F.S. 171.031, Definitions** – (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."

The subject property is contiguous to the City of Delray Beach boundary line on three sides (south, east and west sides). The only vehicular access to the property is through Barwick Road, which is under the City of Delray Beach jurisdiction. The granting of this request will not create an enclave as it will eliminate an existing enclave located within this area, as shown on Map AD-1, Planning Area (attached).

Comprehensive Plan Regulations Governing Annexation

The subject property is located within the City of Delray Beach Planning Area; see Map AD-1. The Official Planning Area is the area for which most calculations and projections in the City's Comprehensive Plan are predicated upon. It is also considered the City's ultimate boundaries.

Designated Annexation Areas

The territory to be annexed is located within the North Military Trail/Barwick Road Area as identified on Map AD-23, Annexation Areas. Annexation of the subject territory is consistent with the Neighborhoods, Districts and Corridors Element Policy NDC 3.3.1, 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 that is consistent with services provided to other similar properties already in the City (Policy NDC B-3.2.1). The provision of services, with respect to public health, safety, and welfare, is provided below. Full discussion of the availability of services is provided in the analysis of the proposed land use amendment section of this report.

Police: The City of Delray Beach Police Department has approximately 14 cars per shift patrolling the city. The estimated response service time by the City's Police Department in this area is similar to all other locations' response times in Beat 7 (Beat 7 is the northwestern section of City consisting of I-95 on the east, West Atlantic Avenue on the west, West Atlantic Avenue on the south and the city limits on the north). The annexation of this property will not require additional staffing to facilitate service and the future intended development, a single- family unit, will not impact current service demand. Should the property be redeveloped into a different use or a more intense development, manpower allocation would be reevaluated.

Fire and Emergency Services: The Emergency Services Agreement for Mutual Assistance, Automatic Aid, and Dispatch Services, between the Palm Beach County Board of County Commissioners and the City of Delray Beach, 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.114, located at the intersection of Barwick Road and Lake Ida Road. The annexation of this property will not require additional manpower. Should the property be redeveloped into a different use or a more intense development, manpower allocation would be reevaluated.

Financial Impacts

The following table depicts the current assessed Palm Beach County value and total (shown in blue) taxes for the subject property and provides an estimate of the taxes under the same assessed value if the property is annexed into the City Delray Beach (shown in green):

PROPERTY TAX DETAIL				
13029 Barwick Rd				
Taxable Value \$193,567.00				
	COUNTY TOTAL	COUNTY TOTAL	CITY TOTAL	CITY TOTAL
	TAXES \$	MILLAGE	TAXES \$	MILLAGE
AD VALOREM				
Fire/Rescue MSTU	669.37	3.4581		
Palm Beach County Lib.	106.29	0.5491		
Palm Beach Co.Lib.Debt	7.34	0.0379		
Florida Inland Navigation	6.19	0.032	6.19	0.032
Health Care District	140.55	0.7261	140.55	0.7261
Palm Beach County	925.54	4.7815	925.54	4.7815
Palm Beach County Debt	14.81	0.0765	14.81	0.0765
Children Service Council	125.76	0.6497	125.76	0.6403
Public Schools Loc.Board	748.01	3.248	748.01	3.248
Public Schools State Law	901.85	3.916	901.85	3.916
SFWMD District	22.30	0.1152	22.30	0.1152
SFWMD Basin	24.12	0.1246	24.12	0.1246
SFWMD Everglades Const.	7.68	0.0397	7.68	0.0397
City of Delray Beach Debt			39.37	0.2034
City of Delray Beach			1,289.37	6.6611
NON AD VALOREM				
Solid Waste of PBC	616.00		616.00	
LLDD Maintenance	49.50		49.50	
Delray Beach Stormwater			TBA	
TOTAL	4,365.31	17.7544	4,911.05	20.5644

Ad Valorem Tax Revenue. At the 2019/2020 City operating millage of 6.6611 mills and debt rate of 0.2034 mills, the property will pay approximately \$545.74 more (or 2.81 millage difference) in total taxes (ad valorem and non-ad valorem) per year. Under the annexation, the City will receive approximately \$5,117.42 per year in taxes. The City can also anticipate the receipt of the Communication Service Tax (Cable and Telephone of 5.22%); Electric and Gas Tax of 10% and Utility Franchise Fee on Electric of 6%.

Non-Ad Valorem Tax Revenue: The Lake Worth Drainage District manages the water resources in southeast Palm Beach County and is supported by an annual non-ad valorem assessment. This fee will remain the same with annexation. The Delray Beach Stormwater Utility is a new non-ad valorem tax and will apply upon annexation. This amount is dependent upon the development of the property based upon the percentage of impervious area of the structures, buildings, parking areas, etc.

Land Use Amendment

Pursuant to **LDR Section 2.4.5(A), Amendments to the Comprehensive Plan**, amendments to the Comprehensive Plan must follow the procedures outlined in the Florida Statutes. The land use amendment is being processed as a small-scale Comprehensive Plan amendment pursuant to Florida Statutes, F.S. 163.3184 through F.S. 163.3253, as it consists of less than 10 acres.

Findings

Pursuant to **LDR Section 3.1.1, Required Findings**, “findings shall be made by the body which has the authority to approve or deny the development application.” These findings relate to the Land Use Map Designation, Concurrency, Comprehensive Plan Consistency, and Compliance with the Land Development Regulations.

Land Use Map

The subject property is within the City's Planning Area (see Map AD-1), which is considered the City's ultimate boundaries. The current Land Use Designation is Palm Beach County Medium Residential, 5 units per acre (MR-5). The requested Land Use Designation is Low Density (LD), which allows for a maximum of 5 units per acre. The Neighborhood, Districts, and Corridors Element, of the Comprehensive Plan, Table NDC-1, identifies which zoning districts are preferred and compatible with the Land Use designations. Pursuant to the Table, the proposed Single Family Residential (R-1-AA) zoning district is listed as a preferred zoning designation for the LD land use designation.

Consistency

A finding of consistency requires that the requested designation be consistent with Goals, Objectives, and Policies of the adopted Comprehensive Plan. The applicable Objectives and Policies from the adopted plan are provided below. The proposed land use map amendment is required for annexation into the City of Delray Beach. An analysis of the applicable goals, objectives, and policies in the Comprehensive Plan is provided in this report.

Objective NDC 3.4, Land Use Map Amendments: *Use a consistent set of standards to evaluate amendments to the Land Use Map.*

Policy NDC 3.4.1: *Amend the Land Use Map only when a demonstrated need for the requested land use is based upon circumstances that are verified and supported by data and analysis, such as shifts in demographic trends, changes in the availability of land, changes in the existing character and Land Use Map designations of the surrounding area, fulfillment of a comprehensive plan objective or policy, annexation into the municipal boundaries, or similar circumstances, and the following findings can be determined:*

- *That the requested land use designation is consistent with the goals, objectives, and policies of the most recently adopted Comprehensive Plan.*
- *That development at the highest intensity possible under the requested land use designation meets the adopted concurrency standards; and,*
- *That the requested land use designation is compatible with the land use designations of the surrounding area; and,*
- *That the requested land use designations are compliant with the provisions and requirements of the Land Development Regulations.*

The consistent set of standards, as identified by Policy NDC 3.4.1, are similarly provided as part of the required findings in Section 3.1.1 and are further analyzed below. Regarding compatibility, the land use designation of the surrounding area consists of Residential Medium Density (MD) to the east and Residential Low Density (LD) to the west and south. Canal L-30 is located to the north, which does not have a land use designation.

Policy NDC 3.4.3: *Apply the advisory land use designation to parcels as they are annexed into the municipal city limits; the findings in Policy 3.4.1 must be made to apply an alternative land use designation.*

Both the advisory and requested land use designation is Low Density (LD).

Policy CSR 4.2.3: *Require the submission of a biological survey and a habitat analysis with land use requests for plan amendments, rezonings, and site plan approval, with an exception where it is apparent that no such resources exist, as determined by staff.*

A field review of the subject property was conducted by staff to determine whether there are any significant habitats or biological communities. Based upon the existing conditions of the property, it was determined that a biological survey and a habitat analysis are not required. However, a tree survey was submitted to document the existing trees located within the property. Subsequent to annexation, a tree removal permit would be required to remove any trees associated with the development of a single-family detached residence and conformance with respect to preservation of the existing trees will be addressed during the site plan review process, as applicable.

Concurrency: Concurrency as defined by the adopted Comprehensive Plan must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements to maintain the standards of the adopted Comprehensive Plan.

The one-acre property is intended to be developed as a single-family residence; however, under the requested land use designation of LD, a maximum of 5 units per acre is allowed. Under the proposed Single Family Residential (R-1-AA) zoning district, a subdivision of the existing property into a maximum of four fee simple lots would be feasible based on the overall lot size and the minimum development standards listed in LDR Section 4.3.4(K). If a subdivision is proposed after the annexation, land use designation and zoning designation requests are approved, consideration of the applicable concurrency standards would be further analyzed as part of the subdivision review process. Given the low intensity of the highest development intensity possible under the requested land use and rezoning, no concerns pertaining to the adopted concurrency standards are anticipated as indicated below under concurrency review of traffic, schools, utilities, and solid waste.

Streets and Traffic. The property can be accessed via Barwick Road, which extends from West Atlantic Avenue on the south and terminates at Coconut Lane in the City of Boynton Beach to the north. The segment of Barwick Road that is located within the City's Planning Area is under the jurisdiction of the City of Delray Beach for associated maintenance responsibility and will not change upon annexation. Barwick Road extending from the LWDD L-30 Canal to Lake Ida Road accommodates two-lanes (with turn lanes at intersections). The right-of-way of Barwick Road that abuts the subject property is 80 feet wide, which is the ultimate right-of-way for this portion of Barwick Road, per the Mobility Element Table MBL-1. Dedication of additional right-of-way is not required.

The City has determined that a traffic study is not necessary and has waived this requirement, as the applicant is requesting land use and rezoning designations of the lowest intensity, and given the size of the property and the intended use of one single family detached residence, no impacts in the traffic demand are anticipated. Given that the subject property is located within the City's Planning Area, and the requested land use is the same as the advisory land use, projections of development demands have been accounted for as part of the Comprehensive Plan and services offered by the City. Should the property be subdivided into multiple parcels or developed with a use in higher intensity, review of potential impacts, including traffic, will be evaluated.

Schools. The intended use of the property is one residential dwelling unit. Submittal of a School Capacity Availability Determination is not required. Should the property be subdivided in the future into more lots, impacts on the public school system will be evaluated.

Utilities, Policy NDC 3.2.3, PFE 2.4.4, PFE 3.4.3: Provide water and sewer facilities to unincorporated areas upon demand in a manner consistent with City policies with an agreement to voluntarily annex upon eligibility; if the property is already eligible, annexation shall precede the provision of services.

Water. The subject property is located within the City of Delray Beach Utility Service Area, which includes the City's Planning Area, for the provision of water and sewer services. Municipal water service is available via connection to an eight-inch water main located along Barwick Road. Further evaluation of utility access provisions will be performed during the review process of the site development proposal. The Public Utilities Department has determined that sufficient water capacity is available to serve this site.

Sewer. Pursuant to the Comprehensive Plan, treatment capacity is available at the South Central County Waste Water Treatment Plant for the City at build-out. Sewer services for a single-family residence can be accommodated via a lateral connection to the eight-inch sewer line located on Barwick Road. The extension of the City's sewer system will be required to provide sewer service to the subject property. Should the property be subdivided in the future into more lots, sewer services and connection locations will need to be further evaluated.

Solid Waste. The Solid Waste Authority (SWA) is the waste collector for both the City and the County. Potential impacts will be evaluated, as necessary, as part of any subsequent development requests.

Drainage. The City will review drainage plans upon receipt of a building permit for the single-family residence. At site plan submittal, the applicant will be required to provide a signed and sealed drainage report indicating the proposed system's ability to meet storm water requirements in accordance with the South Florida Water Management District regulations and the LDRs.

Compliance: That the requested land use designations are compliant with the provisions and requirements of the Land Development Regulations.

Compliance of the land use in relation to the applicable Land Development Regulations are analyzed within this staff report; a building permit for the anticipated single-family residence will be specifically reviewed for compliance with the applicable development regulations.

Rezoning

Pursuant to **LDR Section 2.4.5(D)(1)**, the City Commission may amend the Official Zoning Map by ordinance after review and recommendation for approval by the Planning and Zoning Board. The submitted application complies with these requirements.

Findings | LDR Section 2.4.5(D)

LDR Section 2.4.5(D)(2) outlines the procedures for a zoning change, which includes the standard application items in Section 2.4.3. Valid reasons for approving a change in zoning, pursuant to **LDR Section 2.4.5(D)(2)** are:

- That the zoning had previously been changed, or was originally established, in error;
- That there has been a change in circumstance which makes the current zoning inappropriate;
- That the requested zoning is of similar intensity as allowed under the Land Use Map and that it is more appropriate for the property based upon circumstances particular to the site and/or neighborhood.

The application fulfills the last two criteria. The change of circumstance (annexation from Palm Beach County and land use map amendment) necessitates the adoption of City zoning. Additionally, concurrent with annexation, an initial zoning designation must be applied to the property consistent with the requested Land Use designation and match the intensity of the proposed land use. The proposed Single Family Residential (R-1-AA) zoning designation is consistent with the proposed LD land use. The purpose and intent of the Single Family Residential Districts is to provide areas where the traditional single family detached residence can be established and maintained and be protected from the unwarranted intrusion of other inappropriate uses [LDR Section 4.4.3(A)]. The intended use of the one-acre property is a single family residence. Compatibility with the existing land use designations and the adjacent development pattern and zoning designations must be evaluated with respect to density and intensity of the proposed use.

Section 3.2.2, Standards for Rezoning Actions

Rezoning requests must meet five standards, which are described below as they relate to the proposed rezoning under consideration.

- (A) *The most restrictive residential zoning district that is applicable given existing development patterns and typical lot sizes shall be applied to those areas identified as "stable" and "stabilization" on the Residential Neighborhood Categorization Map. Requests for rezonings to a different zoning designation, other than Community Facilities, Open Space, Open Space and Recreation, or Conservation shall be denied.*

Since the subject property is located in unincorporated Palm Beach County, a category on the Residential Neighborhood Categorization Map (Map AD-5) has not been assigned. However, the incorporated neighborhood surrounding the subject property, which the property is part of, is identified as "stable".

- (B) *Rezoning to AC (Automotive Commercial) to accommodate auto dealerships shall not be permitted west of I-95.*

Not applicable. The proposed zoning designation is Single Family Residential (R-1-AA).

- (C) *Zoning changes that would result in strip commercial development shall be avoided. Where strip commercial developments or zoning currently exists along an arterial street, consideration should be given to increasing the depth of the commercial zoning in order to provide for better project design.*

Not applicable. Commercial developments are not in the Single Family Residential zoning districts.

- (D) *That the rezoning shall result in allowing land uses which are deemed compatible with adjacent and nearby land use both existing and proposed; or that if an incompatibility may occur, that sufficient regulations exist to properly mitigate adverse impacts from the new use.*

Under the proposed Low Density (LD) land use, Single Family Residential (R-1) is considered a preferred/compatible zoning district. Furthermore, the proposed zoning is compatible with the existing and approved uses surrounding the property, as follows:

	Zoning Designation	Land Use	Use
North	Canal L-30	N/A	N/A
South	PRD	LD	Single Family Detached Residences
East	PRD-6	MD	Single Family Detached Residences/ Approved, undeveloped site (Banyan Court)
West	PRD	LD	Multiple Family and Single Family Detached Residences - Bexley Park

(E) Remaining, isolated infill lots within the coastal planning area shall be developed under zoning which is identical or similar to the zoning of adjacent properties; and, the resulting development shall be of a design and intensity which is similar to the adjacent development.

Not applicable. The proposed development is not within the coastal planning area.

Review By Others

The subject property is not within a redevelopment area or overlay.

Palm Beach County Notice: On April 15, 2020, the Palm Beach County Planning Division was notified of the intent to annex this property. A letter was received from Palm Beach County stating that there are no objections with the proposed annexation.

Interlocal Plan Amendment Review Committee (IPARC): On April 15, 2020, notice of the Land Use Map Amendment was provided to the IPARC, which distributes the information to adjacent municipalities. No opposition has been noted.

The item is anticipated to go before the City Commission on September 22, 2020 for first reading.

Board Action Options

Annexation

- A. Move a recommendation of **approval** of Ordinance No. 46-20, a privately-initiated request to annex the property located at 13029 Barwick Road into the City of Delray Beach from Palm Beach County, by finding that the annexation request is consistent with the Comprehensive Plan and meets the Land Development Regulations.
- B. Move a recommendation of **denial** of Ordinance No. 46-20, a privately-initiated request to annex the property located at 13029 Barwick Road into the City of Delray Beach from Palm Beach County, by finding that the annexation request is not consistent with the Comprehensive Plan and does not meet the Land Development Regulations.
- C. Continue with Direction

Future Land Use

- A. Move a recommendation of **approval** of Ordinance No. 47-20, a privately-initiated request for a Land Use amendment for the property located at 13029 Barwick Road from Palm Beach County MR-5 – Medium Residential to City of Delray Beach Low Density (LD), by finding that the amendment request is consistent with the Comprehensive Plan and meets the Land Development Regulations.
- B. Move a recommendation of **denial** of Ordinance No. 47-20, a privately-initiated request for a Land Use amendment for the property located at 13029 Barwick Road from Palm Beach County MR-5 – Medium Residential to City of Delray Beach Low Density (LD), by finding that the amendment request is not consistent with the Comprehensive Plan and does not meet the Land Development Regulations.
- C. Continue With Direction

Rezoning

- A. Move a recommendation of **approval** of Ordinance No. 48-20, a privately-initiated request to rezone the property located at 13029 Barwick Road from Palm Beach County Agricultural Residential (AR) to City of Delray Beach Single Family Residential (R-1-AA), by finding that the rezoning is consistent with the Comprehensive Plan and meets the Land Development Regulations.
- B. Move a recommendation of **denial** of Ordinance No. 48-20, a privately-initiated request to rezone the property located at 13029 Barwick Road from Palm Beach County Agricultural Residential (AR) to City of Delray Beach Single Family Residential (R-1-AA), by finding that the rezoning and approval thereof is not consistent with the Comprehensive Plan and does not meet the applicable criteria set forth in the Land Development Regulations.
- C. Continue with Direction

Public and Courtesy Notices

City of Boynton Beach

Palm Beach County

Lake Worth Drainage District

Bexley Park

Public Notice was posted at the property 7 calendar days prior to the meeting.

Public Notice was mailed to property owners within a 500' radius 10 days prior to the meeting.

Public Notice was published in the Sun Sentinel July 5, 2019, 10 calendar days prior to the meeting.

Public Notice was posted to the City's website 10 calendar days prior to the meeting.

Public Notice was posted in the main lobby at City Hall 10 working days prior to the meeting.

Agenda was posted on Monday, August 7, 2020, at least 5 working days prior to meeting.