THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: April 11, 2023

Subject: Ordinance Annexation Agreement with Town of Woodfin

Staff Resource(s): Jannice Ashley, Sr. Assistant City Attorney
Will Palmquist, Principal Planner

Action Requested: Adoption of an ordinance approving an Annexation Agreement between the City of Asheville and Town of Woodfin designating three non-contiguous parcels as not subject to annexation by the City of Asheville.

Background:

- The Town of Woodfin has received a petition from property owner, Deva Bhumi, LLC, to voluntarily annex a 96.15 acre +/- property located at 810 Elk Mountain Scenic Highway (1 parcel) and 99999 Mundy Cove Road (2 parcels) identified in the Buncombe County tax records respectively as PINs #9751-97-3287, 9751-97-3475, and 9751-97-5245, all of which are non-contiguous to the primary corporate limits of both Asheville and Woodfin (the "Property").
- This Property is adjacent to the Sourwood Inn property, for which an Annexation Agreement was approved in November 2022. Deva Bhumi, LLC is now the owner of that property as well.
- N.C. Gen. Stat. sec 160A-58.1 permits a city/town to annex a non-contiguous area; however, if the area is closer to the primary corporate limits of another city/town than it is to the corporate limits of the city/town that is being asked to annex, then there must be an annexation agreement between the two municipalities which states that the city/town whose corporate limit is closer, will not seek to annex this area.
- It has been determined that the property for which annexation is requested is closer to the primary corporate limits of the City of Asheville than it is to the primary corporate limits of the Town of Woodfin, and therefore, the two municipalities would need to enter into an Annexation Agreement before Woodfin could consider the requested annexation.
- N.C. Gen. Stat. sec. 160A-58.23 authorizes cities/towns to enter into Annexation Agreements as long as they are of reasonable duration not to exceed 20 years and they are approved by ordinance of the governing board of each municipality.
- The State Legislature repealed the ability of municipalities to involuntarily annex in 2011, so the City does not have the ability to annex this property involuntarily.
- However, voluntary annexation (request by a property owner to be annexed) is still permissible and the process for voluntary annexation of noncontiguous areas remains unchanged and requires an annexation agreement.

Council Goal(s):

- A connected and engaged community
- A well-planned and livable community

Committee(s):

- None

Pro(s):

- The Annexation Agreement between the City and the Town of Woodfin would allow Woodfin to annex the non-contiguous Property as requested by the property owner.
- The request to enter into an annexation agreement is a necessary step in order to be responsive to the petitioner's request for voluntary annexation.

Con(s):

- None noted.

Fiscal Impact:

- This action requires no City resources and has no fiscal impact.

Suggested Motion:

- Motion to adopt an ordinance approving an Annexation Agreement with the Town of Woodfin designating the 96.15+/- Property as described herein, a non-contiguous area, as not subject to annexation by the City of Asheville.

Attachment(s)

- Ordinance
- Property Location Map
- Legal Description

ORDINANCE NO. _____

ORDINANCE APPROVING AN ANNEXATION AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND THE TOWN OF WOODFIN DESIGNATING A NON-CONTIGUOUS AREA AS NOT SUBJECT TO ANNEXATION BY THE CITY OF ASHEVILLE

WHEREAS, the Town of Woodfin has received a petition to annex a 96.15 +/- acre property located in Buncombe County that is non-contiguous to the primary corporate limits of both the City of Asheville and the Town of Woodfin in accordance with the provisions of N.C.G.S. 160A-58.1; and

WHEREAS, it has been determined that the property for which annexation is requested is closer to the primary corporate limits of the City of Asheville than it is to the primary corporate limits of the Town of Woodfin and therefore, does not meet the standard set out in N.C.G.S. 160A-58.1(b)(2) which is one of the standards required in order for a non-contiguous area to be annexed; and

WHEREAS, a city/town may annex a non-contiguous area that does not meet the standard set out in subdivision (b)(2) referenced above, if the city/town has entered into an annexation agreement with the city/town whose corporate limits are closer to the area proposed to be annexed and the agreement states that the other city will not annex the area; and

WHEREAS, Asheville and Woodfin have determined that they would like to enter into an Annexation Agreement in accordance with N.C.G.S. 160A-58.23 concerning future annexation of the property described herein in order to facilitate efficient growth and land use planning; and

WHEREAS, the Town of Woodfin is also holding a public hearing on April 11, 2023 to adopt an ordinance to approve an Annexation Agreement with the City according to the terms and conditions referenced herein; and

WHEREAS, in order to be valid, Annexation Agreements require approval by ordinance of the governing board and execution by the mayor of each municipality;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1. An Annexation Agreement between the City of Asheville and the Town of Woodfin is hereby approved subject to the following terms and conditions:

1. Annexation Area. The proposed annexation area (herein “Annexation Area”) to which this Agreement shall apply is a non-contiguous, 96.15+/- acre property located at 810 Elk Mountain Scenic Highway (1 parcel) and 99999 Mundy Cove Road (2 parcels) and identified in the Buncombe County tax records as PINs 9751-97-3287, 9751-97-3475, and 9751-97-5245 which are shown on the map attached hereto and incorporated herein as Exhibit A (Map showing both corporate limits) and more particularly described in Exhibit B (Legal Description) attached hereto and incorporated herein by reference.

2. Agreement not to Annex. The City of Asheville agrees not to commence any annexation procedure, nor adopt any annexation ordinance the purpose of which is to annex any portion of or all of that Annexation Area described above.

3. Term. The term of the Agreement shall be for twenty (20) years.

4. Waiver of Notice. The City of Asheville agrees to waive the requisite 60 day notice of proposed annexation of the Annexation Area by the Town of Woodfin as allowed by N.C.G.S. 160A-58.24 (5).

Section 2. All ordinances and clauses of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 3. That if any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 4. That this ordinance shall be in full force and effect on the date of adoption.

Read, approved and adopted the 11th day of April, 2023.

_____ _____

City Clerk Mayor

Approved as to form:

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City Attorney