THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: November 15, 2022

Subject: Ordinance Annexation Agreement with Town of Woodfin

Staff Resource(s): Jannice Ashley, Sr. Assistant City Attorney
Todd Okolichany, AICP, LEED AP ND, Planning & Urban Design Director

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

Background:

- The Town of Woodfin has received a petition from property owner, Sourwood Land Holdings, LLC, to voluntarily annex a 100.37 acre +/- property, which includes the Sourwood Inn, located at 810 Elk Mountain Scenic Highway and identified in the Buncombe County tax records as PIN #9761-06-4543 which is non-contiguous to the primary corporate limits of both Asheville and Woodfin (the "Property").
- 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.
- Review of City Council meeting minutes and resolutions dating back to 2007 reveal that the City of Asheville and Town of Woodfin contemplated entering into an annexation agreement allowing Woodfin to annex several non-contiguous areas including property along Elk Mountain Scenic Highway, of which the property requesting annexation herein was a part.
- The City and Town appeared close to adopting an annexation agreement and the City of Asheville, via Resolution No. 08-07, set the date for a public hearing to consider the annexation agreement for January 22, 2008.
- However the meeting minutes from the January 22, 2008 hearing reflect that the annexation agreement was not approved at that meeting because an accurate map was not provided and the matter was withdrawn from consideration until a later date undetermined.
- On March 9, 2021, the Town of Woodfin adopted an ordinance annexing the Sourwood Inn property, as described herein.
- It is still necessary that the City of Asheville and Town of Woodfin enter into an annexation agreement so that the annexation can be realized.
- The City and Town are seeking to finalize this process and authorize the requested annexation by entering into an Annexation Agreement.

- 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 of Asheville and the Town of Woodfin would allow Woodfin to annex the non-contiguous property as requested by the property owner and would complete an action that appears to have been contemplated by the City in 2008 and that was approved by Woodfin in 2021.
- 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 Sourwood Inn property located at 810 Elk Mountain Scenic Highway in Buncombe County, a non-contiguous area, as not subject to annexation by the City of Asheville.

Attachment(s)
- Ordinance
- Legal Description
- Property Location Map

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 100.37 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 November 15, 2022 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, 100.37 +/- acre property located a 810 Elk Mountain Scenic Highway and identified in the Buncombe County tax records as PIN 9761-06-4543 which is 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 15th day of November, 2022.

_____ _____

City Clerk Mayor

Approved as to form:

_____

City Attorney