THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: February 25, 2020

Subject: Ordinance Annexation Agreement with Town of Fletcher

Staff Resource(s): Jannice Ashley, Sr. Assistant City Attorney
Shannon Tuch, Principal Planner/Zoning Administrator

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

Background:

- The City has received a petition from property owner, Butel Two, LLC, to voluntarily annex a 2.01 acre property developed as a Holiday Inn and Suites and located at 9 Brian Boulevard (PIN #9643-85-3550), near the airport, in Buncombe County which is non-contiguous to the primary corporate limits of Asheville (the "Property").
- N.C. Gen. Stat. sec 160A-58.1 permits a city 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 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 Town of Fletcher than it is to the primary corporate limits of the City of Asheville, and therefore, the two municipalities would need to enter into an Annexation Agreement before the City could consider the requested annexation.
- N.C. Gen. Stat. sec. 160A-58.23 authorizes cities to enter into Annexation Agreements as long as they are of reasonable duration not to exceed 20 years (maximum time allowed by statute) and they are approved by ordinance of the governing board of each city.
- The Town of Fletcher has expressed its willingness to enter into an Annexation Agreement, valid for a period of 20 years, in which they agree not to seek to annex the Property. The Town adopted Ordinance No. 0-20-01 approving the Annexation Agreement at its February 3rd, 2020 Town Council meeting.
- Approval of the Annexation Agreement by the City of Asheville does not bind it to annex the Property and the actual annexation would be considered at a later date and following a separate public hearing. The property would also need to be rezoned (Lodging Expansion Conditional Zoning) in order to be annexed into the City. The annexation and rezoning process would be handled concurrently.

Council Goal(s):

- A financially resilient City

Committee(s):

- None

Pro(s):

- The Annexation Agreement with the Town of Fletcher would allow the City to annex the non-contiguous property if it so desires.

- 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.
- The annexation of the Property, if approved, will provide the City with new property tax revenue.

Con(s):

- None noted.

Fiscal Impact:

- If the property is annexed, the City would receive approximately $56,000 in property tax revenue based on the current value and tax rate. We will have information about the cost to serve this site by the time we consider the actual annexation.

Suggested Motion:

- Motion to adopt an ordinance approving an Annexation Agreement with the Town of Fletcher designating the property at 9 Brian Boulevard, a non-contiguous area, as not subject to annexation by Fletcher.

Attachment(s)

- Ordinance
- Property Location Map

ORDINANCE NO. _____

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

WHEREAS, the City of Asheville has received a petition to annex a 2.01 acre property located in Buncombe County that is non-contiguous to the primary corporate limits of the City of Asheville 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 Town of Fletcher than it is to the primary corporate limits of the City of Asheville 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 may annex a non-contiguous area that does not meet the standard set out in subdivision (b)(2) referenced above, if the city has entered into an annexation agreement with the city 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 Fletcher have determined 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, at a public hearing on February 3, 2020, the Town of Fletcher adopted Ordinance No. 0-20-01 approving 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 city;

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 Fletcher 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, 2.01 +/- acre property located a 9 Brian Boulevard and identified in the Buncombe County tax records as PIN 9643-85-3550 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 Town of Fletcher 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 Town of Fletcher agrees to waive the requisite 60 day notice of proposed annexation of the Annexation Area by the City of Asheville 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 declared 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 25th day of February, 2020.

_____ _____

City Clerk Mayor

Approved as to form:

_____

City Attorney

Context Map for 9 Brian Blvd

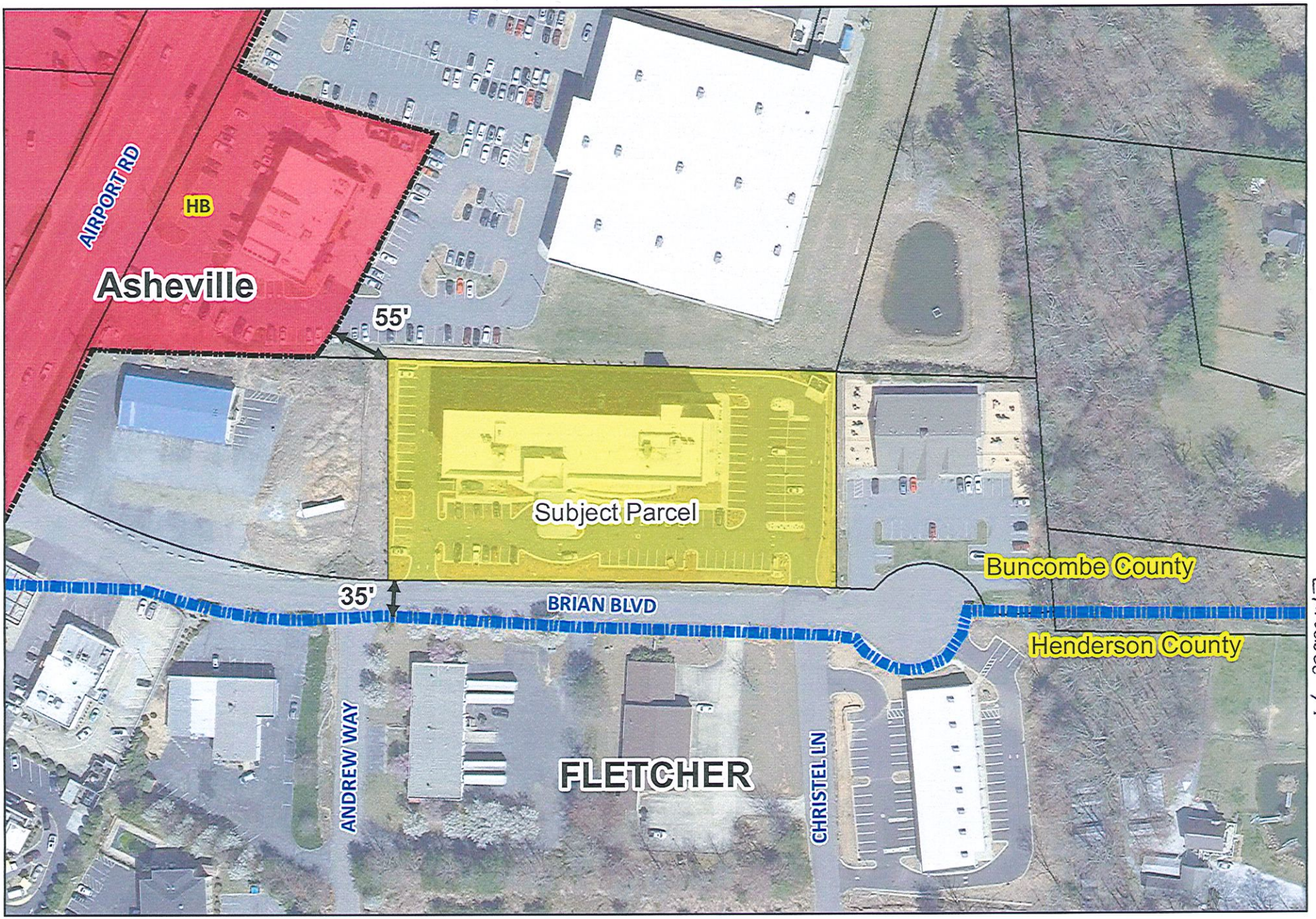


Exhibit A

EXHIBIT B

Boundary Description
Butel Two, LLC
Voluntary Annexation by the City of Asheville NC

Beginning on an iron rod set in the northern margin of the sixty foot right of way of Brian Boulevard, said iron rod is a common corner of Lots 13 and 14 of Asheville Airport Plaza as shown on plat book 61 page 51 of the Buncombe County Register of Deeds, said iron rod has North Carolina Grid System coordinates of: N635354.13' NAD 27, E948249.85' NAD 27 and N635409.97' NAD 83-2011, E948321.74' NAD 83-2011, said iron rod stands N 43° 42' 02" E 1729.15' from North Carolina Grid System monument "Port", "Port has North Carolina Grid System coordinates of: N634104.17' NAD 27, E947055.34' NAD 27 and N634160.01' NAD 83-2011, E947127.23' NAD 83-2011; thence from said Beginning point and with the northern margin of Brian Boulevard and the southern line of said Lot 14, N 88° 04' 55" W 189.58' to an iron rod found; thence leaving the northern margin of Brian Boulevard and the southern line of said Lot 14, with the east line of the Sheppard Legacy, LLC property as described in deed book 5173 page 65 and shown on plat book 126, page 29, N 1° 50' 39" E 200.00' to an iron rod found; thence leaving the Sheppard Legacy, LLC and with the Bayrock Ringling Exchange, LLC property as described in deed. 5468, page. 635 and shown as lot 1-B of plat book 160, page 141 and the north line of said Lot 14, S 88° 04' 55" E 183.14' to an iron pipe found a common corner of said Lots 13 and 14; thence with the north line of said Lot 13, S 88° 04' 55" E 250.14' to an iron pipe found, the common corner of Lots 12 and 13; thence leaving the line of Bayrock Ringling Exchange, LLC and with the common line of said Lots 12 and 13, S 0° 00' 00" E 200.11' to an iron pipe found the common corner of said Lots 12 and 13in the northern margin of the aforesaid right of way of Brian Boulevard; thence with said right of way and the southern line of said Lot 13, N 88° 04' 55" W 250.14' to the point and place of Beginning.
Containing 2.00 Acres and being the property of Butel Two, LLC described in deed book 5392, page 1949, and being the property designated by the Buncombe County GIS Department by Parcel Identification Number (PIN) 9646853550
The Bearings of the foregoing description are oriented to the North Carolina Grid System reference NAD 27,the distances are horizontal ground lengths expressed in US Survey feet, the coordinates are also expressed in US Survey feet, the combined scale factor to obtain North Carolina Grid distances is 0.99987802.