



STAFF REPORT

Agenda Title: Public Hearing – Annexation Agreement

Staff Contact: Shannon Tuch

Meeting Date: November 15, 2022

Summary:

An annexation agreement between the Town of Woodfin and the City of Asheville regarding property located at 810 Elk Mountain Scenic Highway, PIN: 9761-06-4543.

Background:

The Town of Woodfin received a petition from property owner, Sourwood Land Holdings, LLC, to voluntarily annex a 100.37 acre +/- property in 2021. The subject property 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 subject property is closer to the primary corporate limits of both the City of Asheville and the Town of Weaverville, 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. An annexation agreement with the Town of Weaverville was adopted in 2021, however, it was misunderstood that an annexation agreement with Asheville had already been in place when, in fact, there was no such annexation agreement. 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, which included the subject property. However, an agreement was never reached. This ordinance seeks to correct the oversight or misunderstanding and establish the required annexation agreement.

Staff Analysis:

N.C. Gen. Stat. sec. 160A-58.23 authorizes cities/towns to enter into Annexation Agreements if 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The State Legislature repealed the ability of municipalities to involuntarily annex in 2011, so neither the Town nor the City of Asheville have the ability to annex this property involuntarily. As a result, it was only necessary for the agreement to include the subject property.

Staff Recommendation:

Staff recommends adoption of the annexation agreement between the Town of Woodfin and the City of Asheville.

Attachments:

- (1) Draft Ordinance
- (2) Exhibit A Map
- (3) Exhibit B – Legal Description

810 Elk Mountain Scenic Highway Annexation

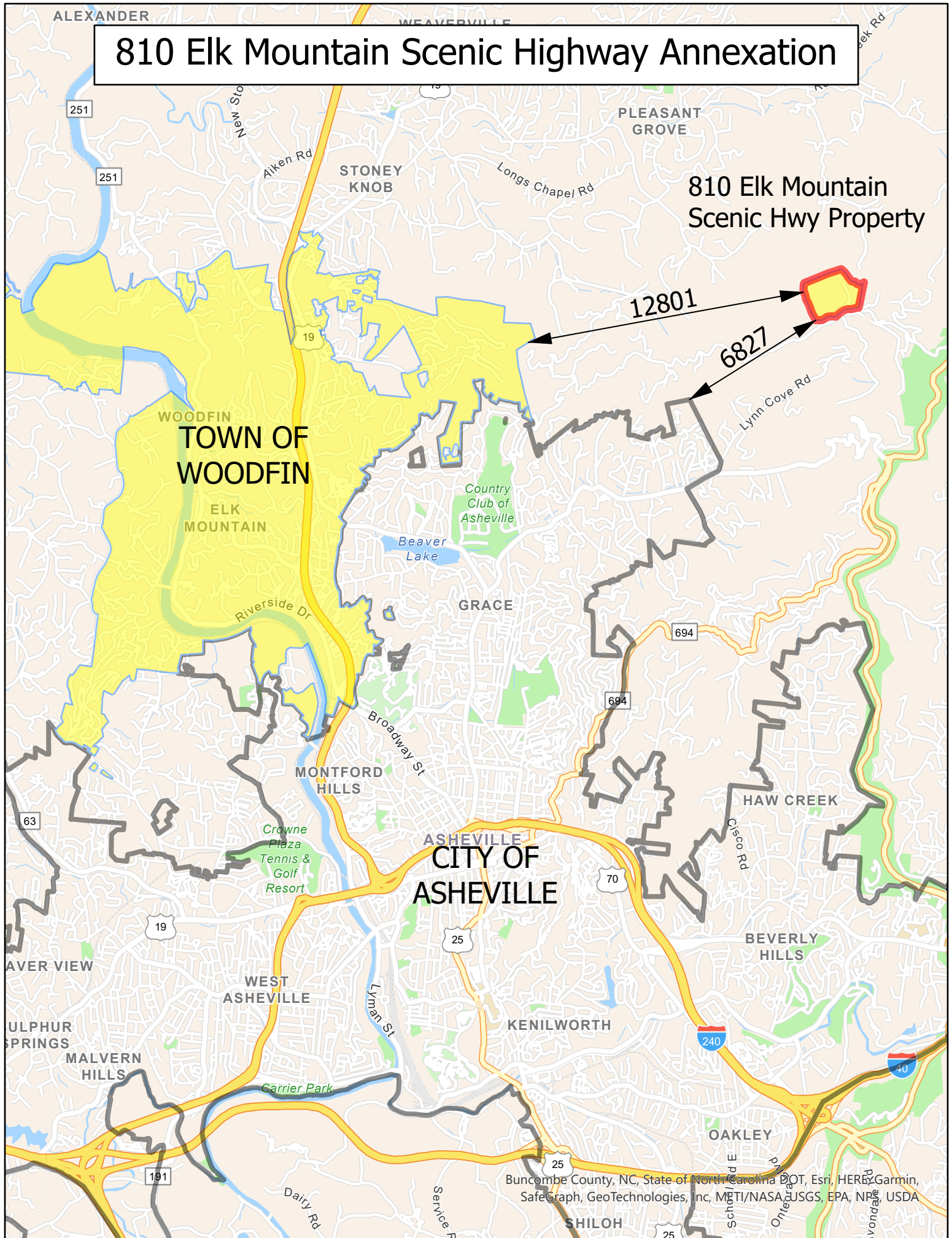


EXHIBIT B
Legal Description

Known as 810 Elk Mountain Scenic Highway, Asheville, NC and being PIN 9761-06-4543:

Tract 1:

Being all that 93.502 acre parcel on the north side of Elk Mountain Scenic Highway described in a deed from Mary Louise Swift Mantle, et. al, to Nathan L. Burkhardt and wife, Anne M. Burkhardt recorded August 25, 1987 in Deed Book 1488 page 607 and shown on plat recorded in Plat Book 55 at page 47, Buncombe County Registry.

Tract 2:

BEGINNING at a 10-inch locust post at a fence corner, Beginning corner of that certain tract or parcel of land described in deed recorded in Deed Book 277, Page 406, said post being located at the southwest corner of that certain tract or parcel of land shown on plat recorded in Plat Book 55, Page 47, Buncombe County Registry and proceeding thence with the line of property shewn on said plat South 88° 04' 42" East 204.09 feet to an iron pin; South 88° 57' 23" East 150.48 feet to a 26-inch birch on a large rock at an old wire fence; North 55° 47' 12" East 321.86 feet to an iron pin; North 66° 49' 18" East 507.15 feet to an iron pin; South 35° 59' 59" East (crossing an old road grade) 159.54 feet to an iron pin; South 35° 59' 59" East 20.00 feet to a point in the centerline of Elk Mountain Scenic Highway; thence with the centerline of Elk Mountain Scenic Highway South 54° 21' 57" West 101.34 feet to a point; a curve to the left with a radius of 327.89 feet, an arc length of 73.77 feet to a point located South 47° 55' 14" West 73.61; thence with the centerline of an old soil road bed South 63° 13' 09" West 66.28 feet to a point; South 77° 21' 01" West 21.34 feet to a point; South 80° 11' 14" West 37.93 feet to a point; South 85° 34' 01" West 27.17 feet to a point; North 88° 23' 51" West 31.36 feet to a point; North 79° 04' 58" West 39.53 feet to a point; North 79° 03' 26" West 27.71 feet to a point; South 89° 34' 46" West 28.15 feet to a point; South 82° 47' 30" West 49.73 feet to a point; South 83° 56' 12" West 35.99 feet to a point; South 76° 33' 56" West 100.75 feet to a point; South 70° 25' 26" West 37.25 feet to a point; South 64° 29' 55" West 39.66 feet to a point; South 54° 29' 24" West 43.91 feet to a point; South 52° 32' 08" West 41.10 feet to a point; South 64° 20' 27" West 30.94 feet to a point; South 73° 22' 46" West 27.57 feet to a point; South 84° 02' 24" West 24.58 feet to a point; South 88° 45' 49" West 66.22 feet to a point; North 83° 19' 33" West 27.09 feet to a point; North 68° 33' 17" West 25.96 feet to a point; North 84° 29' 46" West 29.98 feet to a point; North 86° 28' 00" West 39.87 feet to a point; South 67° 32' 11" West 35.09 feet to a point in the line of the Weaverville Watershed, Eller Cove property; thence with the line of said property North 32° 07' 49" West 141.98 feet to the point and place of BEGINNING, containing 3.652 acres more or less and being more particularly shown on that certain plat or map entitled "Dr. Nathan Burkhardt" dated May 15, 1991 prepared by Gerald W. Stevenson, R.L.S.

Being all of Deed from Carroll James Short and wife, Bobbie Y. Short dated June 13, 1991 and recorded in Deed Book 1654 page 156.

Tract 3:

BEGINNING at an iron pin in cap set in the center of an old road bed in a mound of stones with an 8" forked chestnut oak located South 75° West 14.9 feet and a 3" locust located South 30° East 5.7 feet, said iron pin being located at the northern common corner of the property of Dr. Nathan Burkhardt described as Tract No. 8 in deed recorded in Deed Book 503, Page 488, and the property of Douglas and Mary Bradley described in deed recorded in Deed Book 1046, Page 95, Buncombe County Registry; thence with the common line of Burkhardt and Bradley South 00° 00' 00" West 363.00 feet to a bolt set in a rock with a 10" black tupelo located South 66° East 7.3 feet, an 8" sourwood located South 60° West 6.8 feet, and a branch located South 50° West 10 feet; thence North 47° 00' 00" East 817.24 feet to an iron pin in cap set in the center of an old soil road bed on top of the ridge with a 10" red oak located North 80° East 18.2 feet, a 12" white oak located North 43° East 13.9 feet and a 6" sourwood located South 8° East 28 feet, said pin being located at the northern common corner of property of Dr. Nathan Burkhardt described as Tract No. 5 in deed recorded in Deed Book 503, Page 448, and the Bradley property described above; thence a new line South 71° 59' 12" West 628.50 feet to the point and place of BEGINNING, containing 2.49 acres, more or less, and being more particularly shown on that certain plat or map entitled Dr. Nathan Burkhardt, dated August 8, 1987 and revised July 17, 1992, prepared by Webb A. Morgan, R.L.S. as Map L-207.

Being all of Deed from Douglas L Bradley and wife, Mary M. Bradley dated June 2, 1993 and recorded in Deed Book 1747 page 300, also deed recorded in Deed Book 1800 page 654.

Tract 4:

Being the western one-half acre of Lot 1 shown on Buncombe County Plat Book 60 at page 40, being a tract of .5 acres per Webb Morgan & Associates, and being more particularly described as follows:

Beginning at a stake in the right of way of Elk Mountain Scenic Highway, which stake stands North 35° East 32.3 feet from the northwest corner of Tract B shown on Plat Book 57 at page 194, and which beginning stake is the westernmost corner of said Lot 1 and running with the North line thereof and with the centerline of a roadway the following eleven courses and distances, to wit: North 35° East 86.09 feet to a stake, North 41° 36' East 23.18 feet to a stake, North 51° 7' 31" East 26.34 feet to a stake, North 57° 14' 6" East 113.05 feet to a stake; North 65° 43' 9" East 11.19 feet to a stake, North 69° 31' 9" East 32.76 feet to a stake, North 77° 42' 5" East 38.43 feet to a stake, South 84° 13' 1" East 31.4 feet to a stake, South 76° 1' 13" East 52.61 feet to a stake, South 89° 6' 9" East 34.79 feet to a stake and North 76° 45' 32" East 13.75 feet to a point; thence leaving said north line and running a new line, South 10° 6' 33" East 33.89 feet to a point in the center of Elk Mountain Scenic Highway; thence with said center of said Highway in a westerly direction to the Beginning. Excepting and reserving from the foregoing unto the Grantor, for the benefit of Lots 1, 2 and 3 shown on Plat Book 60 at page 40, a non-exclusive right of way for ingress, egress and regress over and across all portions of said roadway shown on Plat Book 60 at page 40 included within the above, which roadway lies within the old road bed, as it is shown on said Plat extending eastwardly from its intersection with the centerline of Elk Mountain Scenic Highway, together with the right to maintain said roadway.

Being all of Deed from Susan Doloboff DiChiara and husband, James DiChiara dated March 28, 1994, and recorded in Deed Book 1791 page 3.

TRACTS 1 through 4 are also all of the property as conveyed by deed recorded in Book 2067, at Page 767 and as subsequently conveyed to the Sourwood In, LLC by deed recorded in Deed Book 2203, at page 567 of said Registry.



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

Ordinance: 2022-xxx

Passed _____

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 at 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 2: If any provisions of this Ordinance are for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, independent provision and such holding shall not affect the validity of any other provision thereof, and to that end, the provisions of this Ordinance are hereby declared to be severable.

Section 3: This Ordinance shall be effective on this 15th day of November, 2022.

Ayes _____

Nays _____

Abstains _____

Attest:

M. Jerry Vahaun, Mayor

Town Clerk