

**State of Iowa  
City Development Board  
Meeting Minutes of May 12, 2021  
Iowa Economic Development Authority/IFA  
1963 Bell Avenue, Suite 200  
Des Moines, Iowa  
TEAMS/TELEPHONIC MEETING**

**Call to order 1:00 p.m.**

**Board Members Present**

Dennis Plautz, Board Chairperson  
Jim Halverson, Board Vice Chairperson  
Chris McKee  
Mackenzie O'Hair

**Board Member Absent**

Mari Bunney

**Others Present**

Matt Rasmussen, Administrator, City Development Board  
Betty Hessing, Administrative Assistant, City Development Board  
Emily Willits, Iowa Department of Justice  
Kristina Kelley, City Clerk, City of Woodbine  
Clint Fichter, City Attorney, City of Woodbine  
Mayor Louise From, City of University Heights  
Steve Ballard, Leff Law Firm, L.L.P., City Attorney for University Heights  
Sara Greenwood Hektoen, Assistant City Attorney, City of Iowa City  
Anne Russett, Senior Planner, City of Iowa City  
David Kieft, Business Manager for The University of Iowa  
Raymond Heitner, Associate Planner, City of Iowa City  
Erin Clanton, Brick Gentry P.C., Nevada City Attorney  
John Hall, Vice President, Ames Chamber of Commerce  
Frank Smith, Frank Smith Law Firm, Representing Lincolnway Energy LLC  
Dr. Eric Kelly, Presenter for Mr. Frank Smith  
Greg Faith, President, Verbio Nevada LLC  
Rick Vaughan, Innovative Ag Services Co.  
Jeff Kistner, CFO, Lincolnway Energy, LLC  
Ron Jensen, Property Owner & Resident, Nevada, Iowa  
Lori Judge, IDOT  
Anthony Volz, IDOT

**Introduction by Chairperson, Dennis Plautz**

**Roll Call by Matt Rasmussen, Board Administrator**

All Board Members were present via Teams except Mari Bunney.

**Request for amendments to agenda**

Board Chairperson Plautz suggested we move Nevada (UA21-12) to the end of the New Business items because discussion could potentially be longer.

Motion by	Jim Halverson
Motion	I move to approve the amended agenda to move Nevada (UA21-12) to the end of the New Business items.
Second	Mackenzie O'Hair
Roll Call	All ayes. Motion approved.

**Consideration of April 14, 2021, Business Meeting Minutes**

Motion by	Jim Halverson
Motion	I move the Business meeting minutes of April 14, 2021, be approved as printed and distributed.
Second	Chris McKee
Roll Call	All ayes. Motion approved.

**New Business**

S/UA21-14 Iowa City	<p>Matt Rasmussen explained this involves a severance of 3.61 acres of land from the City of University Heights and the annexation into the City of Iowa City. The Board of Regents State of Iowa for the use and benefit of the University of Iowa is the property owner and voluntarily requested these actions. In consideration of these applications by the University of Iowa, Iowa City and University Heights negotiated a 28E Agreement for sharing property tax revenue, and the two municipalities approved the respective applications, as evidenced in petition. The City of Iowa City already provides public services in this area, including public transit, fire, water and sanitary sewer service. The redevelopment will reduce the amount of impervious surface on the site. Storm water management will be reviewed at the subdivision stage. The annexed property is not subject to any existing moratorium agreement and Mr. Rasmussen reported that this petition appears to be complete and properly filed.</p>
------------------------	--

Anne Russett, Senior Planner with the City of Iowa City and staff were present to answer questions of Board. Steve Ballard, City Attorney for University Heights, and Mayor Louise From were also on the call. David Kieft, Business Manager for The University of Iowa and Director of Campus Real Estate and Campus Planning, was on call too. Mr. Kieft stated that this has been a very collaborative process between the Cities of University Heights and Iowa City and the University of Iowa. This property is owned by the Board of Regents/University of Iowa and it will remain so. We are currently working with a developer in building this active adult senior housing complex and in order for someone's living room being in one jurisdiction and their kitchen being in another, we

	have been working to get this in one jurisdiction. No questions were asked.
Motion by	Jim Halverson
Motion	I move the Board find S/UA21-14, severance from University Heights and annexation into Iowa City, complete and properly filed and in the public interest and that it be approved.
Second	Mackenzie O'Hair
Roll Call	All ayes. Motion approved.
NC21-13 Woodbine	<p>Matt Rasmussen stated the Board probably recognizes this annexation from last month. There was an issue with the notices and the City ultimately decided to withdraw that request and resubmit. This is an 80/20 annexation to the City of Woodbine with a total of 248.535 acres with 15.67 acres or 6.3% being non-consenting to avoid the creation of an island. The City of Woodbine is looking to annex the property for the growth of Woodbine, providing residential development which will include single-family homes, duplexes and small and large multi-family homes. Municipal services to be provided will be gas and water. The proposed annexation territory is not subject to an existing moratorium agreement and it does appear to be complete and properly filed.</p> <p>Clint Fichter, City Attorney for the City of Woodbine, was present to answer questions, but no questions were asked.</p>
Motion by	Jim Halverson
Motion	I move the Board find NC21-13 as complete and properly filed and that a date for a public hearing be scheduled.
Second	Chris McKee
Roll Call	All ayes. Motion approved.
	The Woodbine Public Hearing was scheduled for June 9, 2021 at 1:30 p.m.
	<p>Matt Rasmussen explained that our office will fully open on July 1<sup>st</sup>, so our June 9<sup>th</sup> City Development Board meeting and Woodbine Public Hearing will be virtual only.</p>
UA21-12 Nevada	<p>Matt Rasmussen explained this is a voluntary annexation proposal for the City of Nevada consisting of 112.51 acres. The applicants are Verbio Nevada, LLC and the Union Pacific Railroad--requesting annexation into the City of Nevada. Current land use in much of the area presented for annexation is industrial. Other land uses currently include Union Pacific Railroad right-of-way. The area is currently served by the Iowa Regional Utilities Association for water services, whom supports the proposed annexation. The City of Nevada services to be provided are ambulance, police and fire. This territory was subject to an annexation moratorium agreement between Ames</p>

and Nevada. They presented an amendment to that agreement which would allow this annexation. As the agreement stood previously, this annexation was on the Ames side of that annexation agreement line. There is no State-owned property or County owned right-of-way included in the annexation request. It was pointed out to me that there does appear to be some county owned right-of-way. Otherwise, this packet does appear to be complete and properly filed.

Chairperson Plautz asked if the Board had any questions for Mr. Rasmussen and they did not.

Frank Smith stated he represents Lincolnway Energy LLC, which is an interested party in this matter. I know procedurally under your rules that the first step is for the Board to find that it is complete and properly filed. Frank Smith made a Power Point presentation on behalf of Lincolnway Energy LLC, which includes some response to that. Mr. Smith noted for the record that we do not believe the annexation is complete and properly filed. I can make those points now for the Board's consideration or reserve the right to make those when we respond to whatever the City's presentation is going to be. Thank you.

Chairperson Plautz stated we would go to the City of Nevada first and then go to Frank Smith and then give Ms. Clanton an opportunity to speak again to that if she prefers. Ms. Erin Clanton, Nevada's City Attorney, thanked Chairperson Plautz. Ms. Clanton stated the City does not have anything in addition to what it has already submitted to the Board.

Chairperson Plautz asked if Board members had any objections to move to Frank Smith's presentation and they did not.

Frank Smith presented a Power Point presentation<sup>1</sup> which is part of the record. Frank Smith also showed three videos to give the Board some perspective of the location of the annexation territory in relation to the City proper and in relation to the Verbio and Lincolnway Energy and Key Cooperative facilities. These videos are a part of the record with the City Development Board. Mr. Smith also showed three photos of area to give the Board various perspectives of the area.

Mr. Smith retained Dr. Eric Kelly. He has his doctorate in

---

<sup>1</sup> Case File, including party's submissions, are maintained by CDB staff and may be viewed by the public upon request.

Public Policy; he has his Law degree and Master's degree in city Planning from the University of Pennsylvania; he is a former faculty member at Iowa State University and then in 1995 he moved to Ball State where he just retired as a Professor Emeritus. In fact, he was a member of this Board back in the early 1990's. Frank Smith asked Dr. Kelly to do an evaluation of this matter and he spoke in opposition of the annexation for various reasons. First, Dr. Kelly didn't think Nevada was going to provide substantial community services and currently not ones that are currently enjoyed by the site. Second, Dr. Kelly stated he thought the dominant motivation for this annexation would be major revenue enhancement for the City of Nevada.

Chairperson Plautz asked if there were any questions for Dr. Kelly and no one had any questions.

Frank Smith continued his presentation. Mr. Smith presented Exhibits A, B, C, D & E which are also included in the record.<sup>1</sup>

Chairperson Plautz asked Ms. Clanton if she would like to respond to what Frank Smith and Dr. Kelly had presented. Ms. Clanton thanked Mr. Smith for sending a copy of his presentation to her an hour before the City Development Board meeting. Erin Clanton wanted to remind the Board that this is a 100% voluntary annexation and I think there is no doubt that a lot of the things that were raised by Mr. Smith and Mr. Kelly are critically important when we are dealing with an involuntary annexation. The City is in a position right now where property owners came to the City and asked to be annexed in. There was no ulterior motive for money for the City to gain "substantial revenue enhancement". None of that was relevant in this decision. Of course, money at the end of the day will be a benefit for everyone involved, but that was not the motive for the City of Nevada. The City has a current existing business relationship with Verbio; they are a property owner currently within the City, as is Lincolnway Energy, and both of whom the City wants to work with and be a good partner with. That's the motive for the City. The City has been working with the City of Ames and Story County from the very beginning of this. The idea that people were not put on proper notice and they didn't know that this was happening, I think it's clear from the record that everybody had proper notice. Story County—we had a request for a consultation meeting this Fall; we had a consultation meeting this Spring; they discussed it at a meeting and decided ultimately to take no action. The presentation alludes to the fact that none of these entities were party to these conversations and they certainly were, and the City

of Nevada is not trying to pull one over on anyone here and certainly is not in this from a financial motivating standpoint. Ms. Clanton stated she would be happy to answer questions and provide additional information. We have a representative for Verbio, one of the applicants, available today if you have questions for them, as well.

Chairperson Plautz asked if the Board had questions. Jim Halverson stated that much of Frank's and Dr. Kelly's presentation was wrapped-up in factors associated with involuntary annexation and I'm curious if that's really warranted in this situation. Chairperson Plautz stated that Jim made a good point and asked Emily Willits if she was prepared to comment on that point. Emily Willits replied that Jim was correct—there is a presumption of validity for a voluntary annexation contained in Iowa Code 368.6. There is an Iowa Supreme Court case called "Pruss" that I'm sure Frank Smith and others are familiar with, that talks about "Presumption of Validity". It says, "Presumption of Validity is specifically bore out in Section 368.7, which outlines the procedures for Voluntary Annexation of territory . . . the Board is required to approve such an annexation unless a preponderance of the evidence shows that the application was filed in bad faith, the annexation is contrary to the best interests of the urbanized area, or services cannot be sufficiently provided within a reasonable period of time. Circumstances for a voluntary annexation application must be denied if it creates an island of unincorporated territory."

Emily Willits stated she did think we need to keep that presumption of validity in mind. The case law, in general, talks about how if there are technical problems with notice, there is a substantial compliance standard that can be applied. That is her two cents from a legal standpoint. Jim Halverson thanked Ms. Willits.

Jim Halverson stated that he did notice, when he was reviewing the packet, that one of the exhibits was prepared by his employer—H.R. Green—so he wanted to make that a matter of the record. He emphasized that he has not been approached by anyone at H.R. Green or the City of Nevada and stated he does plan on participating in this decision.

Chairperson Plautz had a question for the applicant. It is a 100% Voluntary and there has been a lot of discussion about services that can be provided. Why is the applicant voluntarily requesting annexation in their mind? Greg Faith, President of Verbio Nevada LLC, replied that currently, our site is in the jurisdiction of Nevada. We want

to keep both properties—the northwest property and this property—in the same jurisdiction that we are currently in, so that is one of the reasons we are going through the voluntary annexation process.

Chairperson Plautz asked if there were any other questions or comments regarding what was presented today.

This is Ron Jensen. I'm a property owner to the west, to the north, to the northeast and I live within 1,200 feet of this annexation. I question that every taxing authority can't get enough tax revenue. Why not just stay in the County and not go through this and just go through a zoning process? Jim Halverson stated that questions should be directed to us, not to the applicant. Mr. Jensen stated that the letter we were supposed to get to sign, I can confirm that I never got one so I can guarantee you I never signed it. They didn't follow the procedure correctly.

Mr. Jensen stated that living out there, the whole situation we fight now is the railroad. We had a couple incidents this Spring where the Union Pacific Railroad sat for 6.5 hours at both crossings—580<sup>th</sup> and 600<sup>th</sup>—the next time it was over 8 hours—both crossings blocked. There is your emergency response—you get out there and discover you have to drive all the way around. It's a big concern out there and you start adding more. I always assumed you have to have a site plan of what you are going to do with the property. Has anybody seen a site plan? I think now is the time, before you annex it, somebody has to answer those questions because this is the first chance I've had to ask a question.

Chairperson Plautz asked Mr. Jensen if he was aware that any of this was going on and he replied he got a single page letter two to three weeks ago that said they were doing it and that was it. There was no meeting where we would have a chance to ask questions. I wouldn't have known about this meeting if I hadn't heard from another source. It wasn't from the City of Nevada or the people involved.

Chairperson Plautz asked if there is a separate requirement—that 50% requirement that is in another City ordinance in terms of offsite notice? Erin Clanton replied that she acknowledged that that is at the bottom of the application, and she will certainly be recommending that it be removed. It is not in the City's ordinances to answer that question. It's not a notice requirement that is required under Iowa law and it's not found in the City of Nevada's

ordinances. It is listed at the bottom of that application, but to my knowledge, I don't know that they have ever required that. I will be recommending that form be changed.

Frank Smith asked Chairperson Plautz if he could speak to that as well and Chairperson Plautz approved. Mr. Smith stated that Ms. Clanton is probably correct—I have not checked—but I suspect it's not in their ordinances, but it's emblematic of this whole annexation process and this notion that these rules don't mean anything. Why have rules if they're not going to be followed? Contrary, meaning no disrespect to Mr. Halverson or Chairperson Plautz, I know this has not been raised in any of the prior annexation cases I have done, but the reference to that you must find that the annexation is not statutorily barred, is in your Administrative Rules. It's not something Frank Smith made-up or anyone else made-up. It says specifically that you shall deny it if it's statutorily barred. The statutory bars are (1) lack of contiguity, (2) not providing municipal services or (3) solely for motive. I know you don't throw common sense out the window because I have been in front of you many times. It's just a real practical consideration here. As Ms. Willits cited, the "Pruss" case, you have to show that you can provide services. We are not suggesting that they filed in bad faith—the suggestion is that this is simply incomplete on multiple levels and has not been properly filed. There simply is not enough information here for this Board to make an informed decision of whether this is in the public interest. I respectfully submit, notwithstanding Ms. Willits opinion, that these rules do mean something—particularly as it relates to Iowa Code 263—7.7(368) and those requirements. I certainly concur with her statement regarding the "Pruss" opinion that essentially echoes that, regardless of whether it's a 100% Voluntary or not. Just because it's a 100% Voluntary doesn't mean it's in the public interest. Clearly under the zoning for the County, its Comp Plan called for this industrial development to be south of the railroad, which makes a lot of sense for a number of reasons—not north—not an appendage into Ames—not going to be surrounded by Ames—and not in an area where the City can't otherwise provide services. I did want to speak to those points and thank you Mr. Chairman.

Chairperson Plautz stated he's not suggesting anything here, but the primary reason is to avoid multiple jurisdictions for this company. Is there an impending issue regarding to when this would need to be done? If this were delayed thirty days, would that be an impediment? Jim



Halverson stated he was going to ask the same question. Erin Clanton stated she thought that was a question for the applicant. Ron Jensen replied that thirty days would delay our efforts on what we want to do from a business standpoint, so yes, it would have an impact.

Chairperson Plautz stated Mr. Jensen had his hand raised again and asked if he had an additional comment. Mr. Jensen stated this isn't where a city is annexing a piece of property, hoping to find a potential business to go in there. The business is coming there; they should have a plan and know what they are doing with this property. Everybody around there should have a right to live there; I have a right to know what's going there and if it jeopardizes my life and livelihood. So far, they have tried to avoid that. If they would have asked the county, I'm sure the county would have been happy to take their tax revenue. Why didn't the county accept them? There must be a zoning problem they can't meet, or they wouldn't be asking to go into the city and get it annexed and zoned automatically to what they want. Chairperson Plautz thanked Mr. Jensen.

Chairperson Plautz stated he was bringing this back to staff and the Board for discussion. Emily Willits stated a couple options for the Board would be to (1) under 263—7.7(3) if you want to request additional information from either the affected cities, county, or any individuals, you can certainly do that, or (2) vote today.

Chairperson Plautz stated he has a whole series of things, but he's not sure what would be germane or what would cause the necessity for more information. I know time is money to a company. Chairperson Plautz asked what the other board members thought. Mr. Halverson stated he did not want to create a hardship for the applicant, however, we did receive information—not with our normal packet—but at a later date. I think it would be in our interest, as well as the city's interest, to have an opportunity to respond back to those observations. We would have more time to analyze some of the findings submitted by Mr. Smith, with the idea that there could be valid reasons why—when Matt Rasmussen observed that there was county land included, but not noted in the application, or notice wasn't provided. Mr. Halverson thought it would be in everyone's best interest to have some time to respond back to Mr. Smith's observations and then we can collectively consider them.

Chairperson Plautz stated that's where he was leaning also. Normally I don't like to delay, but this could be litigated. After further discussion, the following motion was made.

Motion by Motion	Jim Halverson I move the Board continue UA21-12 until the June 9, 2021 Board meeting and the Board submit questions for the City by May 14 <sup>th</sup> and request a response from the City regarding the Board's questions and regarding Mr. Smith's presentation, by May 24 <sup>th</sup> and Mr. Frank Smith's response of the City be submitted to the Board by June 2 <sup>nd</sup> .
Second Roll Call	Mackenzie O'Hair All ayes. Motion approved.

### **Pending Mount Union Litigation (D17-01)**

Emily Willits stated that the Board received, in their Board Packet, the Iowa Supreme Court Opinion on the Mount Union litigation. This is one of two lawsuits that was filed against the Board after the Board approved payment of a judgment that was issued by the District Court in a defamation case against the City of Mount Union as a part of the city dissolution process. The first lawsuit was a petition for judicial review and our position has always been that that is the proper way to challenge a decision of the City Development Board. The second lawsuit, which is this lawsuit that the Supreme Court just issued an opinion on, was a direct lawsuit suing the Board and some other entities. I had filed a motion to dismiss that lawsuit. The argument was "No, you can't file a direct lawsuit to challenge this decision of the Board. You have to do this judicial review process which is really like an appeal up to the District Court". That went up to the Court of Appeals; the Court of Appeals disagreed with our position and said they thought we could actually file a direct lawsuit against the Board, so we sought further review to the Supreme Court and I'm happy to share that the Supreme Court agreed with our view of the world, which is that you really have to use this judicial review/appeal process as the exclusive way to challenge a decision of the Board. Then there is a discussion about the grounds that you can challenge a Board decision also in the opinion. This opinion is a good for the Board—it's the result we were looking for. It's not about the merits of the underlying defamation case. We didn't take a position on that as part of any of this litigation. Now that this case is finally over, what I intend to do is go back to lawsuit #1, which is the proper judicial review case. That case has been stayed this entire time while the other case was being litigated. The Courts have now reversed the District Court judgment in the defamation case and the Board's decision to pay that judgment was grounded in respect for the judicial process and the Board's decision that it really needed to defer to the Courts judgment. Now that that judgment has been reversed, what I'm going to do is ask the Court in lawsuit #1 to remand that matter back to the Board. Ms. Willits stated that she didn't think it's something that the Board has to vote on, but she did want to let the Board know that she plans to do that. Ms. Willits did have Betty Hessing put a closed session item on the agenda today in case there was anything that people wanted to discuss as part of litigation strategy in closed session. Chairperson Plautz asked if anyone had anything they would like to discuss in closed session other than what Emily Willits has said she anticipates doing. The Board had no questions.

### **Staff Reports**

Matt Rasmussen stated that Covid related restrictions in the office have been removed. We will have our June 9<sup>th</sup> meeting/Public Hearing via Teams/Telephonic only and

then we will meet again in-person at the July 14<sup>th</sup> City Development Board meeting.

**Future Meeting/  
Public Hearing**

June 9, 2021, at 1:00 p.m., City Development Board Business Meeting via Teams/Teleconference.

June 9, 2021, at 1:30 p.m., Woodbine (NC21-13) Public Hearing via Teams/Teleconference.

**Adjourn**

2:50 p.m.

Respectfully Submitted,  
Betty Hessing, Administrative Assistant