

**State of Iowa
City Development Board
Meeting Minutes of June 8, 2022
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200, Helmick Conference Room
Des Moines, Iowa**

Call to order 1:00 p.m.

Present

Jim Halverson, Board Vice Chairperson*
Chris McKee*
Mackenzie O'Hair*
Mari Bunney

Absent

Dennis Plautz, Board Chairperson

Others Present

Matt Rasmussen, Administrator, City Development Board
Betty Hessing, Administrative Assistant, City Development Board
Emily Willits, Iowa Department of Justice
Vicky Clinkscales, IT Department, IEDA
Zeke McCartney, Reynolds + Kenline, P.C., Representing the City of Sageville*
Wayne Kenniker, Mayor, City of Sageville*
Maria Brownell, Ahlers & Cooney, P.C., Representing the City of Dubuque
Wally Wernimont, Planning Services Manager, City of Dubuque
Tawnia Kakacek, City Clerk, City of Swisher*
Nathan Aronson, IDOT*
Lori Judge, IDOT*
Anthony Volz, IDOT*
Steve Seltrecht, Guest*
Crenna Brumwell, Guest*
Brendan Beeter, Legislative Services Agency, State of Iowa*

*Participated via Teams Webinar

Introduction by Vice Chairperson, Jim Halverson

Roll Call by Matt Rasmussen, Board Administrator

Jim Halverson, Chris McKee, Mackenzie O'Hair & Mari Bunney were present.
Quorum was established.

Request for amendments to agenda

Motion by	Mari Bunney
Motion	I move to approve the agenda as presented.
Second	Mackenzie O'Hair
Roll Call	All ayes. Motion approved.

Consideration of May 11, 2022, Business Meeting Minutes

Motion by	Mari Bunney
Motion	I move the Business meeting minutes of May 11, 2022, be approved as printed and distributed.
Second	Mackenzie O'Hair
Roll Call	All ayes. Motion approved.

New Business

Jim Halverson asked Matt Rasmussen to give an overview of the Sageville annexation petitions. Matt Rasmussen stated that there was a motion made by the City of Dubuque to deny Sageville's requests for annexation and then there was a reply from the City of Sageville. Matt Rasmussen asked Emily Willits if the Board should first address these motions. Emily Willits replied we should give the City of Sageville an opportunity to do a general introduction of their four annexations and then give the City of Dubuque a chance to respond or argue their motions and then go through each of the annexation proposals. Jim Halverson suggested Matt Rasmussen would go through our standard staff presentation and then we would give the City of Sageville an opportunity to expand on that and be available to answer questions that might surface; then follow-up with consideration of the motion.

Matt Rasmussen stated he would be more than happy to do that. Matt Rasmussen stated he did talk to Chairperson Dennis Plautz and he expressed sorrow that he was not able to connect to today's meeting. He is familiar with previous Sageville annexations and if he were here, he would like more time to do some investigating regarding the previous annexations before moving forward.

UA22-20 Sageville	Matt Rasmussen reported this is a 100% voluntary annexation consisting of 3.2 acres to the City of Sageville. Kevin D. & Donna M. Schmitt submitted a voluntary annexation application to the City of Sageville. The Schmitt's already own and live on property which lies within the city limits of Sageville. However, Kevin and Donna are considering building a new home on a contiguous parcel, which lies outside of the city limits of Sageville. Kevin is on the City Council for Sageville and would like to remain so and both Kevin and Donna enjoy being residents and part of the community of Sageville and wish to continue to do so.
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In addition, this request is part of a comprehensive development plan implemented by the City of Sageville, its residents and its hopeful residents. If this annexation is approved, it will bring cohesiveness both economically and geographically to the City.

One of the items for discussion, when we come to the attorneys, is the provision of services. I think the City of

Sageville has contracted most of the services; I don't think the City provides any services themselves.

This annexation is not subject to a moratorium agreement. It does include county-owned road right-of-way. Matt Rasmussen stated the Alliant Energy notices were held-up for a week due to a payment issue. Because there is county right-of-way included, the County Attorney was required to be noticed and that notice was provided, but it was after the City Council's approval of the annexation. Other than that, the packet appears to be substantially complete and properly filed.

UA22-21, Parcels 1
& 2 Sageville

Matt Rasmussen explained this is technically two different actions because the parcels are not contiguous. Ehrlich Properties LLC submitted a voluntary annexation application to the City of Sageville. Ehrlich Properties LLC already owns property contiguous to Sageville city boundaries. They are asking that two parcels get annexed into the City of Sageville. If this request is approved, all of the Ehrlich Properties LLC real estate will be within the city limits, as opposed to the current situation where part of such properties is within the city limits and part is not. Total proposed annexation consists of 5.57 acres.

In addition, this request is part of a comprehensive development plan implemented by the City of Sageville, its residents and its hopeful residents. If this annexation is approved, it will bring cohesiveness both economically and geographically to the City. This particular request involves a company with land both outside and inside Sageville. It is not subject to a moratorium agreement and county-owned road right-of-way is not involved in the request.

Matt Rasmussen noted that Alliant Energy notices were held-up for a week due to a payment issue. However, UA22-21, Parcels 1 and 2, appears to be complete and properly filed.

UA22-22
Sageville

Matt Rasmussen stated this is a 100% voluntary annexation for the City of Sageville consisting of 26.80 acres. The City of Sageville received 100% voluntary annexation applications from John & Karla Scherf; Alice Laaker; Jason & Molly Laaker; and Dubuque County. All parcels are contiguous with the City of Sageville. They included the county-owned parcel to make it contiguous with the City.

Again, the services are provided by contract; the City

itself does not provide any specific services. The same two notes for this annexation—Alliant Energy notices were held-up for a week due to a payment issue and the County Attorney's notices were late, as previously noted in UA22-20. Matt Rasmussen stated this annexation does appear to be complete and properly filed.

Jim Halverson thanked Matt Rasmussen for the overview of each annexation petition.

Jim Halverson invited the City of Sageville to add any additional detail. Zeke McCartney, on behalf of Sageville, shared his screen on computer, showing the various maps and explaining each annexation property proposed to be annexed.

With the Schmitt application, they would like all of their property to be in one jurisdiction—Sageville. Another issue, because the City of Dubuque is involved, pursuant to a 2016 agreement with the City, Dubuque is precluded from ever attempting to annex any property already in Sageville. There is no outcome here wherein the Schmitt properties all end up under one jurisdiction, unless that's Sageville; Dubuque is not an option.

Zeke McCartney talked about the second application, which was Ehrlich Properties LLC. Again, the same kind of oddity here regarding the Sageville boundaries. He showed on map, the parcels owned by Ehrlich Properties LLC. The driveway actually goes inside Sageville to outside Sageville to back inside Sageville. Again, just for rational and simplistic reasons, we are wanting to get this all in one jurisdiction.

Zeke McCartney talked about the third application, which is owned by Alice Laaker who is the parent of Jason Laaker and Molly Laaker; the Scherf's own two parcels and the county is part of this annexation—which is a very minuscule parcel. These are all north of Sageville and north of Dubuque. In fact, the Scherf and county parcels are over two miles away. All of these residents have lived in this area for years and consider themselves a part of the Sageville family; they have just never been official residents. Some of the Scherf's and Jason and Molly Laaker have young children and they ran into issues with the lack of high speed internet, which is provided within Sageville, and this is what started this whole process. They came requesting to get high speed internet and basically, Mediacom's answer was if you are within Sageville, we would allow it, but if not, you can't get it.

That's an overview of the three different petitions. I will note that all of these applications are 100% Voluntary and are entitled to deference. Sageville is a very small town and they are not going to provide every city service that's available, but Sageville is in a position to better the lives of these residents—meaning they are open to more services being residents of Sageville as opposed to not being residents of Sageville. That's the key here and that's why these applications are appropriate.

Board members had no questions for the applicant.

Jim Halverson turned to the Motion that was filed by the City of Dubuque.

Emily Willits stated that Dubuque filed this as a Motion to Deny Annexations; typically the City Development Board doesn't have motion practices in these voluntary annexation proceedings, but would consider objections to an annexation. Ms. Willits suggested the Board consider this as an objection to the annexations, but the Board does not need to rule on the motion.

Vice Chair Halverson turned it over to representatives of Dubuque.

The filer of the objection to the pending annexations was Maria Brownell, Attorney with Ahlers & Cooney, P.C., representing the City of Dubuque. Wally Wernimont, Planning Services Manager for the City of Dubuque, was also present at meeting. Maria Brownell stated you received our materials and have reviewed them. We would stand on the information there and answer questions. I briefly have some comments after reviewing Mr. McCartney's response and resistance to the City of Dubuque's Motion to Deny or Object to the four Sageville annexations. Ms. Brownell stated she would summarize where we agree and where we disagree and where the framework lies for the Board's decision making.

Where we agree is whether Sageville can provide the urbanized territory substantial municipal services that are not benefits previously enjoyed by those residents. We think the Board's Rule 7.7 would be the starting point for factors to consider in implementing that standard. We agree the standard does not require the Board to compare services that Dubuque could provide versus services Sageville could provide. There is a separate Code Section on competing annexation proposals and Dubuque has not presented a competing annexation proposal today.

The intent with sharing Dubuque's planning information is Dubuque has undertaken significant expenditure of resources and time and infrastructure to provide utility services outside city limits and within that two-mile area. We thought it would be important for the Board to know what services are currently available outside that two-mile area of Dubuque and within the two-mile area that these residents could be enjoying at some point in time. Not a competing annexation, but we are looking at the question of whether there are substantial services not previously enjoyed. We talk about a "presumption of validity" in the Pruss case. We have a different view on that standard and how that applies here. There is a presumption of validity that the requirements are being met for voluntary applications submitted by owners and that is because the law wants to favor voluntary annexation applications and move those forward. So, we agree there is a presumption of validity for those applications. There is also a general preference for voluntary annexations instead of involuntary ones.

Honestly, the Board still has to consider whether Sageville is able to provide substantial municipal services that are not currently enjoyed by these urbanized territory residents. As we have outlined in our documents, the City of Dubuque is not aware of any services being provided by Sageville currently that are not currently enjoyed by those urbanized county residents. One thing that was mentioned was the high-speed internet. There was a March 2019 notice from Mediacom. Maria Brownell stated that her understanding of what that notice is under 477A in the Iowa Utilities Board requirement, anytime a cable operator intends to serve, that cable operator—in this case Mediacom—must provide notice to the city it intends to provide service to, as well as the Iowa Utilities Board. 477A does not apply to internet services. All services provided by Mediacom would be provided by contract, essentially with a third party—Mediacom and any residents it chooses to serve or not. This would not be a municipal telecommunications service being offered by Sageville to residents. That said, the Board may want Mediacom's position and whether they have denied service to all or any of these residents as a consequence of them not residing in the City limits.

Maria Brownell stated the other important thing is fire service. With these properties being slated as residential or even some commercial, fire service is very important. Currently, there is a year-to-year contract with Sherrill, Iowa. Because that contract may not go on forever, there needs to be a contingency plan.

Maria Brownell stated a Comprehensive Plan was mentioned, but we were not able to find it. If Sageville or the applicant could share additional information, that would be helpful to know.

Ms. Brownell asked if anyone had questions. Mari Bunney stated that what stands out in her mind is some comments Maria Brownell made about Dubuque has undertaken significant costs to provide services outside of Dubuque or within two miles of that. It kind of sounds like that at some point you would like to annex these properties so it was worth those costs that you have undertaken, but from what Zeke McCartney was saying, there is already an agreement with Dubuque that you cannot ever annex. Ms. Brownell replied that Dubuque is not permitted to annex properties within Sageville without some sort of disincorporation or severance process. We would agree with that. I would defer to Zeke McCartney about what he was referencing there. My thought is what he was saying is that for certain property owners, they have some property within city boundaries and some not within city boundaries. Dubuque would not be able to annex all of that land because part of it is within city limits.

Mari Bunney asked why Dubuque wants to stop the Sageville annexations. Ms. Brownell stated that currently Dubuque is objecting because there is not a demonstration of substantial municipal services that can be provided that are not currently being enjoyed by those properties.

Jim Halverson stated that there is not a Moratorium Agreement or a Fringe Area Agreement in place. If the City of Dubuque does not have any intentions of annexing this property, I still do not understand what the concern would be with Sageville moving ahead with its own plan independently. Does it create an adverse effect on the City of Dubuque's future growth plans?

Wally Wernimont, Planning Services Manager for the City of Dubuque, replied that included in the documents we provided was an annexation study. We do annexation studies for all areas within two miles of our corporate limits. As we look and grow in our community, we expand; annexation occurs adjacent to our limits, which pushes our two-mile jurisdiction out a little further. Also, what comes into play is when we get involved in situations where subdivisions are within two miles of Dubuque, but they are also within two miles of another incorporated property and typically, those subdivisions will be reviewed by a municipality that is closest to them. In the future, as we

look at our annexation study, as we move forward, what we are looking for is when a municipality is looking at annexing property, they have the ability to provide substantial services to that area. We have some services that have been extended to this area, but as you can see, we are growing in all areas of our community.

Mari Bunney asked if Dubuque is providing services currently to the property proposed to be annexed by Sageville. Wally Wernimont replied that they are not providing any services to properties requesting to be annexed into Sageville. Mari Bunney asked a question regarding Dubuque's water distribution system and watermain loop and Wally Wernimont explained analysis to Ms. Bunney.

Mari Bunney asked Wally Wernimont if Dubuque objected to all the proposed Sageville annexations even though you said a couple are not within two miles of Dubuque. Mr. Wernimont replied that the Dubuque County and the Scherf parcels are not within two miles of Dubuque so they have no say over those. Based on annexation codes with the State of Iowa, that could be a 100% Voluntary annexation not within an urbanized area, which would not go through the process that we are going through right now. For some reason, they decided to include that in their annexation request—I do not know if it is for connectivity or some other reasons.

Jim Halverson asked Ms. Brownell to conclude her presentation. Ms. Brownell stated she did not have anything further, but she could provide additional responses in writing, based on what was sent from the City of Sageville. Jim Halverson thanked Ms. Brownell.

Mari Bunney asked Mr. Halverson if we should go with Chairperson Plautz's suggestion to table this until next month so we would all have more time to review comments submitted by Maria Brownell and Zeke McCartney, representing the City of Sageville.

Jim Halverson asked Zeke McCartney if this decision were deferred to next month, would that put a burden on your client. Zeke McCartney asked the Mayor of Sageville to jump in if he was incorrect, but he did not believe so.

Jim Halverson stated that when he went through the materials, one item that stood out for him was the City of Dubuque had included in their summary that the City of Sageville had filed an annexation in 2005 that had been denied. He would like to know the reasons for denial and what materialized. Matt Rasmussen replied that Betty

Hessing did look back in the minutes and the Board had decided the annexation was not in the public interest. Emily Willits stated that if you look at Dubuque's motion, they have attached the Findings of Fact for the Sageville 2005 case.

Jim Halverson stated that quite a few items identified in the City of Dubuque's motion, I have read in other cases. Obviously, the City of Dubuque does have an option to file a competing application for this area with the City Development Board, which they have not done. Jim Halverson stated that in his experience, the presumption of validity has quite often prevailed in these situations. The City Development Board focuses on urbanized areas and urbanizing areas. Based on our past case history, if a city contracts virtually all of their services, there is nothing that precludes a city from doing that. That, on its face, does not create a lot of concern for me. However, Sageville does not do a great deal to urbanize itself. It appears that they are perpetuating a rural subdivision type of arrangement which does create some concern for me. Having a Comprehensive Plan in place is fairly fundamental. In fact, a city cannot have a zoning ordinance if they do not have a Comprehensive Plan in place. Those things can be fairly routine as a municipality goes.

I would really like to know what happened with the two cases that were denied for Sageville in the past.

Jim Halverson noticed that Wayne Kenniker, Mayor of the City of Sageville, raised his hand to speak and Mr. Halverson told him to go ahead. Mayor Kenniker stated he has been the Mayor of Sageville for 2½ years. One of the comments was made about property being under the jurisdiction of two governmental entities. It is not only a challenge for the property owners, but it is a challenge for those entities as well, so that is part of the reason that drives this. I think there is some continuity that comes from both parties with parcels being under the same jurisdiction.

Second, I wanted to mention that granted you are referencing a proposed annexation from back a few years ago. Within the last 2½ years, the face of Sageville has changed and I will even go back a little further than that. The population of Sageville has been reduced significantly due to flooding. So, without control, our population was shrinking. Within the past 2½ years, we have two new Council members and a new Mayor and folks that want to become engaged, which is part of what

is driving this. It was mentioned that this is a non-compete thing. I understand from a paperwork standpoint, I believe that is an accurate statement. From a real standpoint, I do not believe that is true. Sageville wants to become more engaged in what a city does. Obviously, the citizens have spoken to that by changing their Council members and so I really think that needs to be taken into consideration. Again, we cannot go back and change that decision in the past, but I do believe that played into the decision at that time—that it was big government over little government.

Also, a couple things were mentioned about the cable T.V. It made it sound like there was a separation as far as Mediacom is concerned, with what utilities they would bring in to serve cable and internet. That is not correct. The same cable that would provide cable T.V. would also provide internet. I do not see a company putting a cable wire in and not offering internet for those same customers and that is one of the things that drove those folks for pursuing the voluntary annexation. They do want to have internet capabilities. They are located in an area where they have no other good options for internet. Due to that, they had some challenges during COVID with their children doing school and also working from home.

The comment about fire protection—the Sherrill fire protection is not going to change because of this annexation. Those homes and properties will be protected in the same manner they have been for years. The difference is, Sageville actually provides the cost for that protection. Sageville is really trying to get their wheels underneath them and do something as a small community. Granted, it may not have appeared that way in the past, but at this point in time, we have many plans that I have listed out. We are becoming an engaged community and we have people who want to be part of that engaged community.

Mayor Kenniker stated they have cooperated with Dubuque County in an effort to generate some revenue for Sageville so we can do some projects. We sold to the County a five-acre parcel that is now campgrounds that was part of a FEMA buyout. We also donated a five-acre parcel that was part of a FEMA buyout, again in cooperation with Dubuque County. So, we do like to cooperate with other entities. We do not like to be stepped on. We may be small, but we exist.

Jim Halverson thanked Mayor Kenniker. Mr. Halverson asked if there were any others who wanted to be heard.

Wally Wernimont, Dubuque's Planning Services Manager, stated that he thinks it would be beneficial if you would go back to the records and see the previous requests that Sageville submitted and some of the reasonings behind that. A lot of the topics we provided in Item 14 (see below) in the motion and objection regarding Sageville annexations, some of that discussion involved still providing rural level of services in their community. However, Sageville levies no property tax, so there are situations where adjoining property owners, which are paying county property tax, if they are annexed, will actually be paying less property tax, as opposed to being in the County, but still receiving the same level of services for that area.

That is one item I would like to bring forward to you. As we move forward, we have heard about these plans, but have not seen any of these plans. Just one other item I wanted to bring to your attention.

Item 14 - Sageville cannot demonstrate it is capable of extending substantial municipal services and benefits to the territories that are the subject of its application before the Board.

See *Dickinson*, 521 N.W.2d at 471 The following facts weigh heavily toward the Board denying Sageville's application:

- a. Sageville has no independent law enforcement.
- b. Sageville has no volunteer fire department. Upon information and belief, Sageville receives fire protection services from the City of Sherill.
- c. Sageville has no public road improvement or maintenance program, and it receives public road services from Dubuque County pursuant to a 28E Agreement.
- d. Sageville has no sanitary sewer system, or plans or means to provide for a sanitary sewer system.
- e. Sageville has no storm water system, or plans or means to provide for a storm water system.
- f. Sageville levies no property taxes.
- g. Dubuque is not aware of nor could it locate within public records a comprehensive plan for Sageville's future growth or development.
- h. Sageville has no professional planning staff, public works staff, library, zoning code or building code enforcement, public recreation program, street lighting, building inspections or zoning.
- i. Dubuque is not aware of nor could it locate within public records a capital improvement program for Sageville to provide municipal services to its citizens.

j. Sageville has a declining population.

Jim Halverson thanked Mr. Wernimont. He then asked Emily Willits if she had any insight or feedback to share. Emily Willits stated that in process, you have a couple of options. You could call for a motion today and go ahead and vote or you could table this until the July meeting if any Board members would like additional time with the documents. It sounds like Sageville would be okay with a delay; they do not have any pressing items. Matt Rasmussen and Betty Hessing and I were looking at each other when you mentioned the recordings. I suspect we are well beyond the record retention schedule. Jim Halverson understood. Mari Bunney stated that Dennis Plautz signed off on these so he may have more recollection of the Board's reasoning. Matt Rasmussen stated we do not have any recordings from then.

Jim Halverson stated he is willing to entertain a motion that the Board would like to offer. However, I would like to encourage the Board to table this item. I do think there are quite a number of details that are worth looking over. I will be the first to admit that in cases of this type, quite often because they are a unanimous consenting application, the presumption of validity is the prevailing issue and so quite often, these are generally approved. But at the same token, I think there have been a number of questions and issues that have surfaced that I think would be worth our time to analyze a little further. What I am trying to do is encourage the Board to make a motion to table these Sageville annexations until our July meeting.

Motion by
Motion

Mari Bunney

I move we table the Sageville annexations until our July City Development Board meeting.

Second
Roll Call

Mackenzie O'Hair

All ayes. Motion approved.

Staff Reports

Matt Rasmussen did not have a staff report.

Emily Willits stated the Mount Union lawsuit is pending in the Henry County District Court. This is the case where the Johnsons are challenging the Board's decision not to adjudicate their claim. It has just been sitting there in the Court. Maybe because there is not a motion pending, it might not be on the Court's radar. We have requested a scheduling conference with the Judge so we can figure out what needs to happen next to keep that case moving.

Future Meeting

July 13, 2022, at 1:00 p.m., City Development Board
Business Meeting at IEDA, 1963 Bell Ave., Suite 200,
Helmick Conference Room, Des Moines or via Teams
Webinar.

Adjourn

2:01 p.m.

Respectfully Submitted,
Betty Hessing, Administrative Assistant