

**State of Iowa  
City Development Board  
Meeting Minutes of September 13, 2023  
Iowa Economic Development Authority  
1963 Bell Avenue, Suite 200, Helmick Conference Room  
Des Moines, Iowa**

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

**Board Members Present**

Dennis Plautz, Board Chairperson  
Jim Halverson, Board Vice Chairperson\*  
Laura Skogman\*

**Absent**

Thomas Treharne

**Others Present**

Matt Rasmussen, Administrator, City Development Board  
Betty Hessing, Administrative Assistant, City Development Board  
Eric Dirth, Iowa Department of Justice  
Lisa Connell, Legal Counsel, IEDA  
Vicky Clinkscales, IT Department, IEDA  
Daniel Manning, Attorney, Representing City of Fairfax  
Jo Ann Beer, Mayor, City of Fairfax\*  
Cynthia Stimson, City Clerk, City of Fairfax\*  
Shane Wick, Hall and Hall Engineers, Inc., Representing City of Fairfax\*  
Brent Nelson, Senior Planner, City of Sioux City\*  
John Daniels, Attorney, Representing Dorothy R. Moore Trust\*  
Ryan Rusnak, Planning Director, City of North Liberty\*  
Jeff Wozencraft, Planner, City of Cedar Rapids\*  
Noah Zeker, Planner, City of Cedar Rapids\*  
Lisa Wieland, Assistant City Attorney, City of Des Moines\*  
Bob Rice, Polk County Public Works Director\*  
Dustin Kern, DK Land Services\*  
Lori Judge, IDOT\*  
Anthony Volz, IDOT\*  
Nathan Aronson, IDOT\*  
Jace Mikels, Iowa Senate Democratic Caucus Staff\*

\*Participated via Teams Webinar

**Introduction by Chair Dennis Plautz**

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

Three board members were present; a quorum was established.

**Request for amendments to agenda**

Motion by                    Laura Skogman  
Motion                        I move to approve the agenda as presented.

Second Jim Halverson  
Roll Call All ayes. Motion approved.

### **Consideration of August 9, 2023 Business Meeting Minutes**

Motion by Jim Halverson  
Motion I move the Business meeting minutes of August 9, 2023 be approved as printed and distributed.  
Second Laura Skogman  
Roll Call All ayes. Motion approved.

### **Executive Order 10 – Red Tape Review**

Lisa Connell stated she was going to give the Board an overview of Executive Order 10, also known as “Red Tape Review” and then Eric Dirth will explain a particular issue that came-up in the process of this review. The Governor issued an Executive Order in January, calling for all State agencies to review all of their rules. Lisa Connell explained she has worked with Matt Rasmussen, Betty Hessing and Eric Dirth over the past few months to review the Board’s rules. There was a report that was required, so together we completed those reports and we also drafted new rule language for each of those chapters, in most cases. Those reports were due September 1<sup>st</sup> and have been submitted to the Governor’s Office and they are also on IEDA’s website. You should have received an E-mail from me that contained a link to all of those for you to review.

That is where we have been so far. I also wanted to take the opportunity today to let you know what is coming. The next step in this process is going to be to publish what is called a “Regulatory Analysis” on the newly re-written rules. The rule report we did, did sort of a cost benefit analysis as well—that was looking backward—that was looking at the chapters as they existed. What we are doing now is forward looking—looking at what are the cost and benefits of this particular rule chapter. I am expecting to meet the next filing deadline this week so I wanted to have this opportunity here today before those get filed and published on your behalf. Once those are published, we will hold a public hearing for each of those, which has to be twenty days from publication, so that will happen in late October. The plan is to take an entire afternoon to have those hearings. They will either be fifteen or thirty minutes each, depending on the nature of the chapter, so anyone who wants to comment specifically on that regulatory analysis will have the opportunity.

Lisa Connell stated she will come again to the November CDB meeting, after we have done the previous publication and done those public hearings. The November meeting is when you will be asked to actually approve filing a “Notice of Intended Action”. The normal first step in the rulemaking process is for this body to approve those going forward. That is also one of the deadlines that is set in the Executive Order. Those notices need to be filed by December 31<sup>st</sup>. So, you approve them at your November meeting and you will be ahead of that December 31<sup>st</sup> deadline. There will be additional public hearings after those are published—we are required to do two public hearings on each of those rule chapters. After those are done, Lisa Connell explained she will come back to

the Board again and then that is your final actual adoption of those rules. That is the process that has to happen and has already happened. It is a lot, but fortunately for you, we will only ask the Board for those two formal approvals later this year.

Lisa Connell explained the stated goals of this endeavor are to reduce the page and word count and reduce restrictive terms—in the rules, reducing the regulatory burden, which your rules are not really regulatory in nature. We are also trying to eliminate rules that repeat Iowa Code.

Lisa Connell stated that we did come-up with one thing that Eric Dirth and I thought would be worth getting some feedback from this body on and that is whether we should or should not make a change. Ms. Connell turned it over to Mr. Dirth to explain.

Eric Dirth stated that Lisa has carried 99.99% of this weight so all the gratitude should be directed to Lisa Connell in doing this. Mr. Dirth explained that as Lisa went through these and sent these proposed rules changes to you, she also sent them to me so I got a quick review just as you did. As Lisa said, we are still in the discussion phase; we are not in the rulemaking phase. There will be opportunities down the line for public hearing on this; for the Governor's Office to weigh-in on this; and more public comment, so we have a couple other steps. Today's meeting is just a discussion on how you feel about this one very small issue that we see in the City Development Board's Administrative Rules. Your rules, like Lisa said, are not regulatory like many other agencies rules are. Your rules just generally provide a roadmap of how the different processes are used, depending on the type of annexation, which is incredibly useful.

That being said, one of the aspects of your Administrative Rules discusses the filing of annexation paperwork prior to any exhaustion of an appeal. Your Administrative Rules do not specify either way. When you get an annexation, you approve it here. Typically, the process is there is a thirty-day appeal window where someone is allowed to appeal. Traditionally, we held that annexation paperwork, if there was an appeal, until the conclusion of that appeal. That has been the general process since I have started and before I started with the Board. Most recently, we have had two appeals where both the appellants have requested that we move forward with the filing of that paperwork. One was the City of Altoona case, which was in January, and the other was an Ankeny case, which was in February. Both cities sought approval by the Board to move forward with filing of the paperwork to the Secretary of State and record with the County Recorder of each county containing a portion of the city or territory involved in annexation, prior to that appeal unfolding. There are benefits and drawbacks of that. It has been different potentially from what has happened. Ultimately, why Lisa is here today and why we are raising this issue is because your rules are unclear on this issue. You have the opportunity to make that clear, but to make that clear, you are going to have to make a decision either way on how to handle that rule. The specific rule is 263—7.7(7) and it identifies how this should unfold—it is a gray area. I have stated to the Board previously, and my predecessor has also stated to the Board, that we feel comfortable defending the Board on either grounds—whether you want to hold on to the documentation until after the appeal is exhausted or if you want to move forward

with filing that documentation while the appeal is pending.

Now you can maybe see how all of this is converging with all the work Lisa Connell has been doing. When Lisa Connell sends me this rule 263—7.7(7), she asks if we should remove this entirely or do we change this and if so, are we adding a new rule which then would require some different requirements to go through the Governor's Office. A decision does not have to be made today, but basically I wanted to get feelers today on whether we should continue to pursue working with the Governor's Office on making a new rule and if we do add a new rule here, we will have to decide at some point, whether or not to make it clear whether we should have this exhaustion requirement of appeal before we file the documentation or we allow the Board to decide case-by-case whether to file.

Eric Dirth stated that because this is a discussion item, there is no decision being made today. The options are to do nothing—we can leave it as it is—and that makes Lisa's job a lot easier, and then I will have to handle these on a case-by-case basis moving forward, or if you would like some type of certainty on this, then we will probably have another discussion later, on which of those two you would like and I would assume you would have some interested parties also weigh-in—just simply because they have recently made statements about wanting to move forward with the annexation.

Basically, it is about this one specific rule and whether or not we want to clarify how annexation paperwork should be handled in the event of an appeal in District Court—that is the issue.

Chairperson Plautz asked Matt Rasmussen what the reasons are, that cities have given, for wanting to proceed prior to the expiration of an appeal. Matt Rasmussen replied the biggest reason is so they can move forward with their development, at their own risk. Obviously, if it were reversed, then they could have started their development and then they would be under the jurisdiction of the county and potentially, the county could make them tear down whatever they started.

Chairperson Plautz stated he was thinking about what the real impacts are one way or the other. There really are not any, but for the risk that somebody would take by moving forward or would they not be allowed to move forward—I am all for clarity—but I am not sure that there is a real impact here. What is it that precludes them from moving forward anyway—whether it is filed or not filed? Eric Dirth replied that in our rules, it defines completion as the final stage—it is the conclusion of all appeals and it becomes part of the City. Chairperson Plautz stated it is who is controlling the zoning and Mr. Dirth agreed.

Eric Dirth stated that those two appeals we faced earlier this year—as Matt said, they wanted to move forward with their development and they argued to the Board saying these cases probably won't have a lot of merit—we will be successful and if you don't file, it could be a year or two before we actually get to start this development. Eric Dirth stated that the Board does not have to make the decision today. Basically, I think it would be most useful to identify if this is something that the Board would be interested in clarifying in rule because

it is ambiguous in statute and so in the rule, Lisa can either strike-it or leave it the way it is, but if we want to change it, that will be something that we will have to tackle as part of this new rulemaking and I don't know the specific process for adding new rules with the Red Tape Review.

Chairperson Plautz asked that by leaving it the way it is and doing it one of two different ways, depending on a case-by-case basis, is there any liability that you see on our part in making that discretionary judgement? Eric Dirth replied that as far as liability in a traditional sense, where someone could seek damages from the Board—what I see is potentially a certain case going through and perhaps a judge—especially one that has considerable merit—we have said you could move forward and seeing a District Court's Judge asking how have you moved forward because we have not had a Court of Appeals or Supreme Court decision on it, so it is a gray area. From the Board's perspective, the risk would be primarily that the decision could be kicked-back or cause some type of an issue with that approval process. Mr. Dirth stated that he thought the risk to the Board overall is relatively minimal, which is why, in January and February, we supported your decision either way.

Lisa Connell stated the rule moratorium will be over once we finish the process. That was one idea we had floated—that maybe we do not address it as part of this review with all this other stuff going on and all these things that have to be completed. Maybe we hold and get through all that and then come back after the rule moratorium and add or change your rules, basically following the normal process of changing a rule.

Matt Rasmussen explained the process of filing and completing an annexation, since Laura Skogman is new to the Board. Normally, after thirty days, we file it with the Secretary of State and Recorder's Office; if there is an appeal, we would hold on to it and not file it. With the Altoona and Ankeny cases that Eric's talking about, we have gone ahead and filed them. Technically, they are complete. Eric Dirth stated that was correct, but when we do send them to the Secretary of State, we identify that there is pending litigation. Matt Rasmussen stated they are complete, but there is potential for a reversal. Eric Dirth stated that is more accurate.

Eric Dirth stated the question today is do we leave as is for the Red Tape review and address this later through a traditional rulemaking process or include a change to this rule in the Red Tape review. Mr. Dirth's advice to the Board is not make a decision today because that is something you should think about it and then there will be opportunity for public comment. Today, we need to decide if you want to make this part of the Red Tape Review process or not. After the Board discussed, it was decided to not make it part of the Red Tape Review process, but to address it after we get through the Red Tape Review process. Status quo on this rule for now.

### **New Business**

UA23-21  
Sioux City

Matt Rasmussen introduced this 100% voluntary annexation for the City of Sioux City. The Dorothy L. Moore Family Trust owns a 122.14 acre tract of land fronting on 235th Street. The Trust has negotiated a sale

of this land to the City of Sioux City. Terms have been agreed verbally and the parties are working on preparation and execution of a written purchase agreement. In order to facilitate completion of the sale/purchase transaction, the Trust requests that this land be annexed into the City. The reason for the annexation is expansion of Sioux City's premier Industrial Park, rail extension. Services proposed to be provided to the territory include water, sanitary sewer, storm sewer, fire and police protection and rail access. This property is not subject to any annexation moratorium agreement.

Mr. Rasmussen stated this packet appears to be complete and properly filed. Matt displayed the proposed annexation area on a map.

Brent Nelson, Senior Planner for the City of Sioux City, was present to answer questions. John Daniels, attorney representing the Dorothy R. Moore Trust, stated they support the annexation. No questions were asked.

Motion by  
Motion

Laura Skogman  
I move the Board finds UA23-21 as complete and properly filed and in the public interest and that it be approved.

Second  
Roll Call

Jim Halverson  
All ayes. Motion approved.

UA23-22  
North Liberty

Matt Rasmussen stated this is a 100% voluntary annexation request from the City of North Liberty consisting of 2.51 acres. The property contains a residence, an agricultural pasture and drainage features. The City has been in discussions with this property owner and the property owner to the north about combining this property with the three contiguous properties to the north and redeveloping them with a mixed-use development. This property would be utilized for area stormwater development. Water, sanitary and storm sewer infrastructure are adjacent to the property. All other typical city services will be provided upon annexation, including police, fire, refuse pickup and others.

Mr. Rasmussen stated the southern boundary of the annexation parcel respects the agreed upon line between the Cities of North Liberty and Coralville and the packet appears to be complete and properly filed.

Ryan Rusnak, Planning Director for North Liberty, was present to answer questions, but no questions were asked.

Motion by

Jim Halverson

Motion I move the Board finds UA23-22 as complete and properly filed and in the public interest and that it be approved.

Second Laura Skogman  
Roll Call All ayes. Motion approved.

UA23-23 Matt Rasmussen reported that the City of Fairfax has  
Fairfax received an application from Iowa Land and Building Company, for annexation of property totaling 170.1 acres, located east of Lefebure Road and north of 76th Avenue. The majority of the land proposed to be annexed into Fairfax is currently agricultural land, with a small portion of this area being a homestead and a small portion of it is an existing drainage way. The proposed area to be annexed into the City of Fairfax is located within the City's industrial land use area and is located just west of the recently established Big Cedar Industrial Center. The property being annexed into Fairfax is anticipated to be developed as light industrial use. Within the proposed annexation area there is a request to develop approximately 10 acres for production / warehousing use. The remaining area of this annexation is anticipated to be developed as large site warehousing/production/ manufacturing. The City of Fairfax shall extend sanitary sewer for wastewater and watermain for water supply and fire protection to the annexed property.

Mr. Rasmussen stated the City of Fairfax and the City of Cedar Rapids had established a 28E Agreement in March of 2001 with the intent of this agreement to “establish a policy instrument regarding the provision of sanitary sewer by Cedar Rapids to Fairfax, and the annexation of unincorporated land by Fairfax and Cedar Rapids.” The duration of this agreement is from the date of execution by both parties in March of 2001 until the year 2025, unless shorter or longer duration is mutually agreed upon by City Councils of both jurisdictions. This proposed annexation territory is located completely within the area that the City of Fairfax is allowed to annex per this 28E Agreement.

Matt Rasmussen stated that the packet appears to be complete and properly filed.

Representing Fairfax was Attorney Daniel Manning. Also present via Teams was Jo Ann Beer, Mayor of Fairfax; Cynthia Stimson, City Clerk of Fairfax; and Shane Wick, with Hall and Hall Engineers. No questions were asked.

Motion by Laura Skogman

Motion	I move the Board finds UA23-23 as complete and properly filed and in the public interest and that it be approved.
Second Roll Call	Jim Halverson All ayes. Motion approved.
UA23-24 Cedar Rapids	<p>Matt Rasmussen reported the City of Cedar Rapids received an application request for annexation from First Assembly of God Church for property located at 3241 Blairs Ferry Road NE. This is for .61 acres. The proposed parcel to be annexed is currently low density residential. The Future Land Use Map designation for the property is Medium Intensity Urban, which would be suitable for a variety of residential and commercial uses. The proposed annexation site is adjacent to Cedar Rapids' city limits and therefore near existing service areas for all city services.</p> <p>Mr. Rasmussen stated the area to be annexed is not subject to an annexation agreement and the packet appears to be complete and properly filed. Matt Rasmussen noted that it appears to him that this is an existing island so this would eliminate an island.</p> <p>Jeff Wozencraft, Planner for the City of Cedar Rapids, was present to explain further and answer questions. Jeff Wozencraft stated this is an existing island of county between Cedar Rapids and Hiawatha and falls on the Cedar Rapids side of Blairs Ferry Road in our growth area. This would be a good map cleaning-up application. No questions were asked.</p>
Motion by Motion	<p>Jim Halverson I move the Board finds UA23-24 as complete and properly filed and in the public interest and that it be approved.</p>
Second Roll Call	Laura Skogman All ayes. Motion approved.
UA23-25 Des Moines	<p>Matt Rasmussen reported this request is for a 100% voluntary annexation for the City of Des Moines consisting of .360 acres. The City of Des Moines has given local approval to the application of Shree Hari Inc. for voluntary annexation of their property located north of and adjoining 4845 Merle Hay Road. The property is located in unincorporated Polk County, adjacent to the current boundaries of the City of Des Moines and within two miles of the boundaries of the Cities of Urbandale and Johnston.</p> <p>This annexation is needed in order for the owner to develop the annexed property with their property to the</p>



south. The property to be annexed is currently functioning as part of the 4845 Merle Hay Road site and serves as the only vehicular access to the rear of the site. While the Merle Hay Road site is within the City of Des Moines, this parcel to be annexed is in unincorporated Polk County. The applicant requested annexation of its property at this time to permit the properties to be redeveloped together as one site. The owner plans to redevelop the property with an apartment project to be known as Monarch Apartments. Solid waste collection service (garbage pickup) is currently provided to the territory by private collectors. Public water service is currently provided to the territory by Des Moines Water Works.

The territory proposed to be annexed is not subject to a moratorium agreement and Matt Rasmussen stated the packet appears to be complete and properly filed.

Lisa Wieland, Assistant City Attorney for Des Moines, was present to explain further and answer questions. No questions were asked.

Motion by  
Motion

Laura Skogman

I move the Board finds UA23-25 as complete and properly filed and in the public interest and that it be approved.

Second  
Roll Call

Jim Halverson

All ayes. Motion approved.

### **Staff Reports**

Matt Rasmussen stated he regrets to inform the Board that he received a resignation letter that effective immediately, Chris McKee is no longer on the Board. She is dealing with health issues.

Matt Rasmussen stated that we do not have anything currently for the October Board meeting, but we expect to receive a couple items for the October meeting.

Eric Dirth gave updates on the current litigation. We had the hearing on the Schuling vs. the City Development Board regarding the City of Altoona annexation. The primary issue raised by Mr. Schuling in the hearing was that inclusion of his property was not necessary to establish more uniform boundaries. A ruling should be made this fall.

The hearing on the Campbell matter, which is regarding the City of Ankeny annexation, is scheduled for September 15 so I will have an update next month.

In the City of Sageville matter, we received an affirmative judgement about a month ago. This was where six

property owners sought voluntary annexation to the City of Sageville. The Board approved this on July 13, 2022. The City of Dubuque appealed to District Court and the hearing was held earlier this year. A positive judgement came back in the City Development Board's favor affirming the Board's decision to approve the annexation has now been appealed by the City of Dubuque. That will go to the Court of Appeals or to the Iowa Supreme Court for further review of that annexation. At this time, I do not know exactly what their appeal is, but just so you are aware, that case will continue on for probably six months to a year before that case is closed.

**Future Meeting**            October 11, 2023 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**                    1:47 p.m.

Respectfully Submitted,  
Betty Hessing, Administrative Assistant