

**State of Iowa  
City Development Board  
Meeting Minutes of October 11, 2023  
Iowa Economic Development Authority  
1963 Bell Avenue, Suite 200, Helmick Conference Room  
Des Moines, Iowa**

**Call to order 1:05 p.m.**

**Board Members Present**

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

**Others Present**

Matt Rasmussen, Administrator, City Development Board  
Betty Hessing, Administrative Assistant, City Development Board  
Eric Dirth, Iowa Department of Justice  
Mike Hogan, IT Department, IEDA  
Jeff Wozencraft, Planner, City of Cedar Rapids  
Noah Zeker, Planner, City of Cedar Rapids\*  
Wally Wernimont, Planning Services Manager, City of Dubuque\*  
Dr. Dennis Woodruff, Avondale Veterinary Healthcare Complex\*  
Becky Ohrtman, Water Quality Consulting, L.L.C.\*  
Dustin Kern, DK Land Services\*  
Anthony Volz, IDOT\*  
Nathan Aronson, IDOT\*  
Evan Johnson, Legislative Services Agency, State of Iowa\*  
Jace Mikels, Iowa Senate Democratic Caucus Staff\*

\*Participated via Teams Webinar

\*\*Participated via Teams Webinar; joined meeting at 1:07 p.m.

**Introduction by Chair Dennis Plautz**

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

Plautz, Skogman and Halverson were present. A quorum was established.

**Request for amendments to agenda**

Motion by	Jim Halverson
Motion	I move to approve the agenda as presented.
Second	Laura Skogman
Roll Call	All ayes. Motion approved.

**Consideration of September 13, 2023 Business Meeting Minutes**

Motion by Laura Skogman  
Motion I move the Business meeting minutes of September 13, 2023 be approved as printed and distributed.  
Second Jim Halverson  
Roll Call All ayes. Motion approved.

**New Business**

UA23-26  
Dubuque  
Matt Rasmussen reported this is a 100% voluntary annexation for the City of Dubuque consisting of 18.717 acres. The property is comprised of undeveloped forest land just north of the Dubuque Arboretum in Dubuque County. The submitted annexation request is to allow the development of the Butler Children's Garden, known as The Wanderwood Gardens. To facilitate that connection and to ensure provision of City of Dubuque services and utilities, the applicant is seeking annexation. The territory in this proposed annexation is not subject to a moratorium agreement. Mr. Rasmussen stated the petition appears to be complete and properly filed.

Chairperson Plautz noted that Tom Treharne was now connected to the meeting via Teams.

Wally Wernimont, Planning Services Manager for the City of Dubuque, was present via Teams to explain further and answer questions. No questions were asked.

Motion by Laura Skogman  
Motion I move the Board finds UA23-26 as complete and properly filed and in the public interest and that it be approved.  
Second Jim Halverson  
Roll Call All ayes. Motion approved.

UA23-27  
Cedar Rapids  
Matt Rasmussen stated this is a 100% voluntary annexation petition for the City of Cedar Rapids consisting of 251.8 acres which includes 6.8 acres of county road right-of-way. The annexation is consistent with the City's Future Land Use Map laid out by EnvisionCR, the City's Comprehensive Plan which was developed incorporating the State's Smart Planning Principles. The City's Future Land Use Map identifies the land to be annexed as "Employment Reserve", which the Comp Plan and the Zoning Code identify as being suitable for large scale employers. This area is part of the State-approved Big Cedar Industrial Park. The application was reviewed by all city departments. No concerns with municipal services were raised. The site is adjacent to the City limits and service extensions are planned for the

area. The proposed annexation area is not subject to an annexation agreement with the City of Fairfax or any other moratorium agreement and Mr. Rasmussen stated the packet appears to be complete and properly filed.

Jeff Wozencraft, with the City of Cedar Rapids, was present to answer questions, but no questions were asked.

Motion by  
Motion

Jim Halverson  
I move the Board finds UA23-27 as complete and properly filed and in the public interest and that it be approved.

Second  
Roll Call

Laura Skogman  
All ayes. Motion approved.

### **Staff Reports**

Matt Rasmussen stated Administrative Rules will be on the November 8<sup>th</sup> agenda, so hopefully everyone can participate in that meeting. Also, Mr. Rasmussen stated he inquired with the Governor's Office for a replacement for Chris McKee, but he has not heard back. We will have at least a couple annexations to bring to the Board in November.

Matt Rasmussen asked Eric Dirth if there would be any substantive changes to the Administrative Rules and Mr. Dirth replied this is part of the change in the rules to comply with Executive Order 10. There will be significant changes throughout the regulations, but the goal is consolidating and shrinking the number of rules, but not too much substantive.

Eric Dirth gave an update on the Campbell vs. the City Development Board matter, which was heard in Polk County where the City Development Board received a favorable verdict. That decision is being appealed by Mr. Campbell and so that case will be moving up the ladder to the Court of Appeals.

Chairperson Plautz asked if there was any other business anyone would like to bring to the Board before we adjourn.

Dennis Woodruff stated his intent is to attend the November 8<sup>th</sup> City Development Board meeting. I own property at 4318 East Army Post Road. The business there is Avondale Veterinary Healthcare Complex and we have a serious situation in that we are on two wells and those wells are dry, as I am sure you know we are in a three-year drought period. We have tried working with the City of Des Moines and also with the Des Moines Water Works to obtain water and to this point, we have not been

successful in doing that. Our intent would be to address the City Development Board to look back since 2005 when an involuntary annexation took place of the area we are talking about—4318 East Army Post Road—the old Avon area and so forth. There are probably 25 to 30 residences there and pretty much everyone there is having to haul water. We really want to take a look and see if the City of Des Moines, in doing that annexation, has fulfilled their duties, realizing we are eighteen years later and we still do not have water available. Avondale has been working with Becky Ohrtman, a water quality specialist, who is working with the Iowa Department of Natural Resources. Avondale has been declared a public water system because we have over twenty-five employees; there are forty employees there. We will not be able to continue hauling water in and adding it to the wells, which is what everybody else says in that area. It is what I have done over the years. I have been retired for the past year, but this has been a year-long process. Becky has been involved and was hired to try to solve the water issue.

We have talked to the State Ombudsman and they recommended that we come to your Board and discuss this and get an opinion on this matter. I will say that we are currently working with Joe Gatto and Scott Sanders with the City of Des Moines. We are also working with the Des Moines Water Works Board to try to come to some sort of solution. The real problem is because Avondale is now a part of the City of Des Moines and we cannot apply for any City Development Betterment Grants; there are no opportunities to go after any of those Grants. Rural Water will not come into that area; Carlisle will not serve that area and so we are stuck. We are looking at bringing in storage tanks for water; we will have to chlorinate and go through the whole process of water treatment. Tom Thorpe has been hired to go ahead and manage the water system so he has been on board for about the past year. They have drilled a six-inch test well on the property to see if more water can be found. That went 100 feet down and it was just shale and that sort of thing—no good rock formations where more water might come from.

We do have a lot of land across the road from us to the south that is potential development ground. The Reves family owns 213 acres directly south of the Clinic. Casey's is right next to that property, but Casey's is not developed because water is not available. The Reves family also owns 60 acres directly west of the Clinic and they own another 18 acres to the north—all of that is

currently farm ground, but was bought with the idea that it is development ground. We have talked to a lot of different people—Becky Ohrtman will be available at the November meeting to address this situation, but it is a very, very serious problem that we have.

Chairperson Plautz asked if the issue with Des Moines and the Des Moines Water Works is its cost in running water and Dennis Woodruff replied yes—\$1.5M to \$2M was the estimate to run water from SE 36<sup>th</sup> Street, which is three-fourths of a mile to the west on Army Post Road, on down to where we are located and on down to Casey's.

Chairperson Plautz stated that this was part of the big annexation that started in the 1990's and finished in 2005 and that was post change in the Iowa Code that added the three year provision. Is that correct? Matt Rasmussen replied he was not sure. Dennis Woodruff replied that the Iowa Code required services within three years. However, your Committee made a sub-agreement that services would not need to be provided until after development took place and paid for it. That was eighteen years ago and we have been paying taxes that whole time as has everybody in that area, but we really do not have services commensurate with that.

Eric Dirth stated that if they are going to bring this up at the November meeting, it may be more appropriate to have this as an agenda item to be discussed and allow more opportunity to gain information and provide information to the Board in advance, if the Board chooses. Chairperson Plautz stated he agreed with Eric Dirth and this will come down to whatever that petition said and what motions were made at the time—it is a lot of historical recollection that will have an impact on what we would do, so I would completely support what our Counsel just said. Jim Halverson stated the City of Des Moines should be provided notice so that we can have a more thorough discussion on the topic.

Jim Halverson stated he understands that once the area has been annexed, people pay property taxes, but I also want to be sure that we are not mixing-up property tax supported services with those that are utility oriented. I think it is important that the City of Des Moines and regional utilities are able to be represented at a meeting like that. Dennis Woodruff stated he certainly agreed with that; he merely wanted to bring this up today to make sure it is on the agenda and explain why it is on the agenda just to give you a heads-up. Matt, I know that

Becky Ohrtman has talked with you a number of times and so I know you are well aware of what is going on here, but I just wanted to make sure that we were officially on the meeting agenda so we could explain our situation. I do not think it is our intent to bring legal counsel with us, but we would like you to understand the situation that we are in. It is much more involved than the very little bit that I have shared. A lot of money has been spent and we are still just treading water. Very soon the Iowa Department of Natural Resources is going to file a plan that says we have to comply and we have very few choices. Frankly, the IDNR has not pushed us because they have never seen this situation before. Dennis Woodruff asked if the City Development Board has ever seen a situation like this before and Jim Halverson replied he has been around a long time and the City Development Board has never seen a situation like this before. Jim Halverson stated to Mr. Woodruff that he appreciated him bringing up this topic.

Dennis Woodruff stated that everyone has been very amicable as we have worked on this problem and had meetings with Scott Sanders and Joe Gatto. We are trying our darndest to get along and figure something out, but we are starting to get really pressured and we are making plans now on how we are going to change the buildings so we can bring water storage inside; how can we set-up chlorination; who is going to monitor that . . . and so forth. It is a very expensive process and a lot of money has already been spent. Anyway, I just wanted to give a little background on why we are on the agenda.

Chairperson Plautz thanked Mr. Woodruff. Matt Rasmussen asked Eric Dirth that in lieu of a formal request, is it okay if I just take this as a request to be placed on agenda as a discussion item. Mr. Dirth stated that was appropriate. Matt Rasmussen stated he has Mr. Woodruff's, Becky Ohrtman's and Prescilla Richey's E-mail addresses and I will make sure that you folks are noticed regarding that meeting via E-mail, as I do not have addresses for you, but you will certainly get an E-mail from me. Dennis Woodruff replied that would be great.

Chairperson Plautz stated that prior to the meeting, it would also be helpful, rather than just hearing from the partners, for you, Matt and staff, to do some research on past information on the Des Moines annexation. This started in 1995 or 1996. Matt Rasmussen replied that we will do some deep digging to see what we can find. Matt Rasmussen will also contact the County Recorder's

Office to see what was exactly recorded. Chairperson Plautz stated it will be imperative that we find the original petition and minutes from the various meetings.

Dennis Woodruff stated that Becky Ohrtman is on the line and she has copies of those records so we have that information so I know it is available, just for reference. Chairperson Plautz asked if there were any Board members or staff to add to this. Matt Rasmussen stated that if Becky Ohrtman has copies, if she could scan those and E-mail them to me, that would be great and then I can compare those to what I come-up with.

Becky Ohrtman stated she did reach out to the City of Des Moines and talked with Mike Ludwig there and he provided a link to that annexation agreement so I can forward that on. I believe the request would be to ask the legal staff of the City Development Board of Iowa to look at the Iowa Code and determine if the City Development Board has the authority to enforce that Iowa Code that IDNR has looked at. IDNR has indicated that it is not in their realm to enforce the Iowa Code that indicates that within three years of annexation that the annexing city provides water and sewer services. The IDNR indicated it would be your legal staff to review that and determine, legally, if it is the City Development Board that is to enforce that Iowa Code.

Chairperson Plautz stated that what was said in the petition and how that reconciles with the Iowa Code is very germane to this. But there has to be a lot of research done. Eric Dirth stated that Chapter 368.25 is within the City Development Board's Code Chapter. There is authority to the City Development Board to do certain things when a failure to provide municipal services exists, whether or not those circumstances apply here and to the extent in which the City Development Board chooses to apply and how the City Development Board interprets Section 25, all is going to be dependent on a whole variety of information that I don't believe we currently have. So that is where it would be useful to have this information gathering and then to discuss to see what the Board decides at the upcoming meeting.

Chairperson Plautz stated he is guessing that it doesn't mean all services; it is the services identified in the public hearings and so on to be provided and so . . . Eric Dirth stated the section is entitled "Failure to provide municipal services". Chairperson Plautz stated that to Jim Halverson's point, this is the first time that section of the Iowa Code has ever been brought to this Board. Jim

Halverson stated that it is often referred to as “services that have not previously been enjoyed”. Jim Halverson stated he looks forward to the research that is going to be done so we can draw some conclusions from that. By the same token, maybe the limits of our abilities would be to initiate a severance, but I am just doing that from memory when that rule came into play.

Chairperson Plautz stated that Mr. Dirth just said that section of the Iowa Code was passed through the legislature in 2005. Eric Dirth stated it has been modified from 2002 to 2005. Dates are also going to be important here so there is a whole variety of factors here. That is why my recommendation, and I appreciate Mr. Woodruff being on, but my legal counsel is to gather information and to have an actual conversation more fully informed than what we currently are on this issue at an upcoming meeting. Jim Halverson agreed.

Chairperson Plautz stated to Mr. Woodruff that generally your problems are over that nobody wants to spend the money to provide the services. Is also part of that, Rural Water will not provide it because you are in the City or is it again, cost? Mr. Woodruff replied that it is because we are in the City of Des Moines. Chairperson Plautz replied so that is the issue with rural water. Mr. Woodruff agreed and also said the loan and grants that I had mentioned earlier—those are just not available to us because we are in the City of Des Moines.

Chairperson Plautz asked if there were any other questions or comments on this and there were none. It looks like you will be on the November agenda and the City Development Board staff will do some due diligence between now and then. We are adjourned.

**Future Meeting** November 8, 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** 1:36 p.m.

Respectfully Submitted,  
Betty Hessing  
City Development Board Administrative Assistant