

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

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

**Present**

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

**Others Present**

Matt Rasmussen, Administrator, City Development Board  
Betty Hessing, Administrative Assistant, City Development Board  
Eric Dirth, Iowa Department of Justice  
Vicky Clinkscales, IT Department, IEDA  
Chris Schuling, Property Owner, Altoona Annexation  
Frank Smith, Attorney, City of Altoona  
John Shaw, Community Development Director, City of Altoona  
Chad Quick, Economic Development Director, City of Altoona\*  
Natalie Jacobson, City Planner, City of Altoona  
Marketa Oliver, City Administrator, City of Bondurant  
Maggie Murray, Planning Director, City of Bondurant  
Isaac Pezley, City Planner, City of Bondurant  
T.J. Craig, Resident, Bondurant  
Tammi Dillavou, City Administrator, City of Mitchellville\*  
Anthony Volz, IDOT\*  
Nathan Aronson, IDOT\*  
Lori Judge, IDOT\*  
Adam West, West Family Holdings\*  
Bob Rice, Director, Polk County Public Works Department\*  
Brandt Johnson, Assistant to City Manager, City of Ankeny\*  
Derek Silverthorn, Associate Planner, City of Ankeny\*  
Bryan Morrissey, Associate Planner, City of Ankeny\*  
Arash Razizadeh, Hope K Farms, LLC\*  
Christopher Higgins, The Des Moines Register\*  
Bruce Lundquist, Guest\*  
Chris Thomason, Guest\*  
BF, Guest\*  
Adam West, Guest\*

\*Participated via Teams Webinar

**Introduction by Chairperson Dennis Plautz**

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

All Board Members were present.

**Request for amendments to agenda**

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

**Consideration of December 14, 2022 Business Meeting Minutes**

Motion by Jim Halverson  
Motion I move the City Development Board business meeting minutes of December 14, 2022 be approved as printed and distributed.  
Second Mari Bunney  
Roll Call All ayes. Motion approved.

**Elect Board Chair and Vice Chair of City Development Board for 2023**

Motion by Jim Halverson  
Motion I would move Dennis Plautz remain as Chair for 2023.  
Second Mari Bunney  
Roll Call All ayes, except Plautz abstained. Motion approved.  
Motion by Mari Bunney  
Motion I would move Jim Halverson remain as Vice Chair for 2023.  
Second Mackenzie O’Hair  
Roll Call All ayes, except Halverson abstained. Motion approved.

**Old Business**

**NC22-37 Altoona - Amendment to Resistance to Motion to Proceed with Filing of Annexation Records**

Matt Rasmussen explained this is regarding NC22-37, an 80/20 annexation to Altoona that was approved by the Board after a public hearing held on October 17, 2022.

As I am sure the Board recalls, at the December 2022 meeting there was a motion on the table from Altoona regarding the filing of their annexation. The motion that the Board ultimately did approve, was to file the annexation knowing there was a pending appeal of that action.

As background, Iowa Code dictates that an appeal must be filed within thirty days of the filing of a City Development Board annexation decision, so we do not

file the decision until after those 30 days. In this case, an appeal was filed within those 30 days, on November 14, 2022, by Mr. Chris Schuling.

Altoona submitted their Motion to Proceed with Filing of Annexation Records to the Board, on December 6, 2022. On December 12, 2022, Mr. Schuling filed his Resistance to Motion to Proceed with Filing of Annexation Records. On December 14, 2022, shortly before the Board was scheduled to meet, Altoona submitted their Supplement to Motion to Proceed with Filing of Annexation Records and Reply to Schuling Resistance. That same day, the Board approved Altoona's Motion to Proceed with Filing of Annexation Records. After the Board had adjourned on December 14, 2022, Mr. Schuling hand delivered his Amendment to Resistance to Motion to Proceed With Filing of Annexation Records, which asserts (among other things), that "The Schulings were denied due process to plead their case before the City Development Board at their meeting on December 14, 2022 at 1:00 p.m." and "The Schulings were not given notice of a meeting involving the annexation of their property, denying due process." The document further includes, "The Schulings request that the City Development Board hold a new meeting that allows the Schulings to plead their case of resistance before the City Development Board after they have had a chance to review the newly submitted documents from the City of Altoona."

I can report to the Board that neither the Schulings nor Altoona were formally noticed regarding the December 14, 2022 meeting. The only formal notice they would have had would have been the posting of the agenda for the meeting.

So, now before the Board is Mr. Schuling's Amendment to Resistance to Motion to Proceed with Filing of Annexation Records.

Chairperson Plautz asked if there were any questions in regard to what Matt Rasmussen presented. The Board had no questions. Chairperson Plautz asked Mr. Schuling if he felt he had new information that he would like to present today. Mr. Schuling replied, "Yes". Chairperson Plautz then opened the floor to any objections to hearing that. Jim Halverson replied that being that we have already held a hearing on this case, I do not want to have to reiterate the same hearing that we held and then a subsequent decision meeting. I think Mr. Schuling has an ability of being heard so long as the focus of his message is not about the substance of the annexation, but rather

the substance of his desire to protract the publishing of the decision. Chairperson Plautz completely agreed with Jim Halverson and stated that is why he asked if there is new information to be presented.

Frank Smith stated that what we have before you today is not a complaint that he did not have an opportunity to appear at the hearing. In fact, the record will reflect and I am sure the board members recall, that Mr. Schuling presented at the hearing—he had a PowerPoint presentation and he had an equal opportunity to present their objections. This is not a Motion for Reconsideration regarding the hearing, at least as I read it. He had notice of the public hearing that was held in October an opportunity to appear and did. I understood this motion to be that the Schulings did not believe that they had sufficient notice of the motion that Altoona had filed to proceed with the filing, which was a separate post-hearing matter. It was not a motion to reconsider at all. The Board has already heard the case and resolved the issues. His time for filing a motion for reconsideration has long passed. To file a motion for reconsideration and the parallel would be what is called “The Rules of Civil Procedure”; you have to show that there is some damage or harm—that there is new evidence that was not available at the time of the hearing and could not have been reasonably presented. His motion here, as I understand it, asks that the Board reconsider—not sure if it is even asking that—but it is saying we did not get notice of the motion, which basic due process requires notice and an opportunity to be heard. Mr. Schuling was given Altoona’s motion; he filed a written response to that motion in advance of the hearing. Altoona did supplement it prior to the hearing—that is true, but his now request is that he needed additional time—there is something new or additional. If that is the case, that should have been included in his motion to the Board today, so you know what you are being asked to act on and Altoona has full opportunity to respond.

A further point that I would make is Mr. Schuling, as well as Altoona, both semi-vigorously participated in the matter of the resolution of the motion at the December 14th meeting. So, even though perhaps neither of us had technical notice of the proceedings, we appeared, so Altoona obviously knew, as did Mr. Schuling, and was given full opportunity by this Chair to allow someone who has a concern or comment, to voice those. I felt at that time, the record was closed—everyone had their say and the Board moved on. If his intent today is to re-open the public hearing, Altoona would vigorously object to that for

reasons I just articulated, Mr. Chairman.

Chairperson Plautz stated that what I said earlier, I should have added to that, is there new information that would have been presented, but for the notice issue at the past meeting. I was under the impression that once we got through with this, that one of the motions would be whether or not to reconsider. I appreciate you mentioning that. I would defer back to Matt Rasmussen and Eric Dirth. Mr. Rasmussen replied he would defer to Eric Dirth as the attorney, but I would think the Board would be free to make any motion it would choose to make. Eric Dirth stated that he thought that was correct. I think the Counsel for the City of Altoona is correct in identifying that what is being presented from Mr. Schuling is not a motion to reconsider, but the Board would certainly have the discretion to take that up based on the information, because if they read this amendment or hear that additional information was not able to be presented because of for whatever reason, the information wasn't shared and they hear that upon their own motion, they could take a motion to reconsider.

Chairperson Plautz stated that would be information that would have otherwise been presented—new information—but for the notice issue. Eric Dirth stated that would materially alter the Board's consideration of the underlying motion to file. What is in front of the Board at this point is not the motion to vote—that has already been determined—it is essentially to consider what evidence was not made available to the Board at the last meeting.

Chairperson Plautz stated that the issue before the Board now is whether or not we should listen to additional information from the objector. Chairperson Plautz asked for thoughts from Board members. Do you want to hear from Mr. Schuling on any additional information he feels was precluded last time.

Jim Halverson stated that hearing from Mr. Schuling to the extent that his remarks are limited as to why we should delay the filing of the decision. Chairperson Plautz emphasized that point—he does not want to go through everything again and be redundant. Is there objection from the Board to hearing Mr. Schuling today? If not, then I will open it up.

My name is Chris Schuling. I live at 7157 NE 56th Street in Bondurant and I am a non-consenting resident landowner to the annexation that we have been talking

about, NC22-37. Just a brief outline of what I wanted to talk about was a brief history of how we got here. I have a couple of slides and a couple of responses to Altoona's Motion to File. Chairperson Plautz stated this needs to be kept to what you did not have an opportunity to present before that we do not already know. So please try to limit it to that. Chris Schuling replied that he would.

Mr. Schuling stated that a brief history was that he went to John Shaw back in August to be left out of the annexation for Altoona . . . Frank Smith posed an objection that we are rehashing what this Board has heard before. I think the Chair clearly asked, "What is new?". Chairperson Plautz agreed with Mr. Smith and asked if anyone on the Board disagreed with that position. Jim Halverson replied that he did not at all. This should be only about why we are compelled to push the date of publishing the decision. This was addressed at the hearing. Chairperson Plautz stated to Mr. Schuling that we do not want to go through anything that we have heard before.

Mr. Schuling stated we are back to 369.20 where it states that any appeal pending the proceedings cannot be filed. There is still an appeal pending in District Court so it cannot be filed until that is complete. In Frank's motion that he brought-up that we are talking about, he had referenced a case, Cedar Rapids vs. Pruss . . . Chairperson Plautz stated that again, we are starting to rehash . . . Mr. Schuling stated he was responding to Frank's motion that was discussed in the meeting of which he was not notified. It was in his motion and it is what we are talking about. Chairperson Plautz stated that we are not reconsidering discussions that we had then; we are looking for new evidence that you did not have an opportunity to present to the Board at that time. Mr. Schuling replied that he is responding to what Mr. Smith gave to you at the meeting that he was not in attendance of. Frank Smith asked Chairperson Plautz if he could respond to that. Mr. Schuling is correct that there was a filing that morning in advance because frankly, time was of the essence, but we did articulate and address all of these things at the meeting. Each one of these issues was addressed. He has filed an appeal because he thinks the Board's decision was wrong; it seems to me his remedy is on appeal. Mr. Smith stated he does not think the Board's decision was wrong in any way for all the reasons the Board articulated.

Chairperson Plautz stated to Mr. Schuling that he was going to let him go a little bit, but this, that is on the

screen now, we fully discussed at a prior meeting, so I don't want to go through that again. Mr. Schuling stated that just leads up to Mr. Smith's discussion of the Supreme Court Case, Cedar Rapids vs. Pruss. That case had completely different circumstances—it was two cities—Chairperson Plautz stated that again, we discussed all of that . . . Mr. Schuling stated he was not at the meeting . . . I did not hear any of this . . . I was not a party to this . . . I am responding to the motion that Frank Smith filed at a meeting that I was not notified of and he filed a supplement an hour and forty minutes before the meeting via E-mail to my personal E-mail account that I do not sit and monitor and had never been contacted via E-mail before by Smith or Altoona.

Chairperson Plautz deferred back to Matt Rasmussen. Mr. Rasmussen stated that was accurate. We received Mr. Smith's "Supplement to his Motion" at 11:30-11:40 a.m. that morning before the hearing. Mr. Schuling stated he had no chance to see that. Chairperson Plautz told him to go ahead. Mr. Schuling went back to the Iowa Supreme Court case of Cedar Rapids vs. Pruss; it was two completely different circumstances. There were two cities involved and one resident that had created an island with one of the cities—completely different circumstances than what we have here. Also, Frank Smith had stated that the chance of me winning this case in District Court—the chances were nil. He reported that in his motion he filed with the District Court case against the City Development Board, he did not include Altoona in the lawsuit. Since then, Frank Smith has filed a Motion to Join the Lawsuit in District Court. If the chances are nil that I am going to win, I am not sure why he joined that lawsuit if the Attorney General's Office is already representing the City Development Board. That is it, since I was cut short. I do have one question for Mr. Smith, if I could, and one closing statement. In the motion that he had filed that I missed the meeting on . . . he said that the Schulings use of their property would be grandfathered in; the annexation would not curtail or restrict the current use of their property so long as such uses are continued. I would like for them to confirm that I will be able to legally discharge firearms, if in fact I am annexed into Altoona. That is a yes or no please. Mr. Smith replied that Mr. Schuling may think it is a yes or no answer, but I need to articulate the background here. This is not the time or place for Altoona to make anything other than the commitments that were made on the record at the public hearing and that commitment was articulated that you will be grandfathered-in, as is always the case in terms of zoning and other uses until your use is abate or changed.

The use of firearms in an urbanized area is regulated by State statute and there are certain rules in terms of how near or far you have to be from buildings and structures related to that. Off the top of my head, I do not remember exactly what those rules are, but the rules are what they are. I do not have authority to make any binding commitment for anyone in terms of representation in that regard other than to say the law will be followed.

Mr. Smith stated the second point he would like to make is the Pruss case, that he cited, was not the case that he cited to the Board. The issue before the Board was, could you proceed with filing. I pointed out that that appeal does not preclude you. There is nothing in the Administrative Code that says you cannot proceed with filing just because there is an appeal. The Code says the annexation is not complete until the appeal is resolved. I also pointed out to the Board, the City of Dubuque's case from 2004 or 2005 that I am personally familiar with and there may be other cases where the Board has done just exactly what it approved at the December 14<sup>th</sup> meeting. It authorized proceeding with the filing notwithstanding the fact that there was an appeal pending, so there is certainly prior precedence for this Board's actions.

The third thing I pointed out was that . . . and meaning no disrespect to Mr. Schuling . . . everyone is entitled to make their case . . . but he claimed Mr. Halverson had made misstatements in support of his motion, that is simply not correct. Mr. Halverson's statements to the Board were accurate. Mr. Schuling stated that we were rehashing . . . Mr. Smith replied to the extent that you are rehashing this issue. Mr. Smith deferred to Chairperson Plautz; if the Chair thinks I am rehashing, then I will certainly abate my comments. Chairperson Plautz replied to Mr. Smith that he has made his point. Mr. Smith thanked Chairperson Plautz.

Mr. Schuling stated his last comment is the next item on the agenda, which is Bondurant, and it is the same scenario that he is in right now. Two non-consenting landowners that are being left out of the annexation because Bondurant's policy is they do not include non-consenting landowners. Chairperson Plautz replied that is clearly something that will come later and it is not under our purview to talk about today.

Chairperson Plautz stated the question to the Board is have you heard anything that would warrant changing what was done at the last meeting, to the extent that you might want to reconsider. Jim Halverson replied that, no,



he had not heard anything that would make him want to reconsider. The decision was made to file and we are within our purview to do that; it is consistent with past practice and Mr. Schuling has filed an appeal already and that can play itself out.

Chairperson Plautz stated he agreed with Jim Halverson and he did not know what value it would be in reconsidering it at this point. I am going to call for the question . . . even though Mr. Schuling disagrees . . . which would be a motion as to whether or not we should look at reconsidering the motion to file from the previous meeting.

Motion by  
Motion

Jim Halverson

I move to not reconsider our decision made in December regarding the filing of NC22-37 with the Polk County Recorder's office.

Second  
Roll Call

Mari Bunney

All ayes. Motion approved.

**New Business**  
**NC23-01**  
**Bondurant**

Matt Rasmussen explained this is an 80/20 annexation request for the City of Bondurant consisting of 970.57 total acres, including ROW; 952.061 not including ROW and 16.15 non-consenting acres or 1.70%.

In September 2022, the City purchased a 2.27 acre parcel located along NE 88th Street for the purposes of constructing a water tower at this location in 2023 to assist with current and future water storage needs of residents and businesses of Bondurant. The majority of the annexation territory is currently used for farming purposes. There are also nine acreage-type dwellings located within the annexation territory.

New City of Bondurant services that will be provided to this annexation area include public safety, public works, planning and other general municipal services. A water tower and the associated water mains will be constructed within the annexation territory. Sanitary sewer mains and storm sewer mains will be reviewed in detail at the time development is proposed within the annexation territory.

The City of Bondurant is unaware of any annexation moratorium agreements currently in existence for this annexation area. County-owned roadway is included as part the annexation area. Notice requirements of Iowa Code 368.5 are in the filing.

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

Marketa Oliver, City Administrator, and Maggie Murray, Planning Director for the City of Bondurant, were present to answer questions.

Motion by  
Motion

Mari Bunney

I move the Board finds NC23-01 as complete and properly filed and that a date for a public hearing be scheduled.

Second  
Roll Call

Mackenzie O'Hair

All ayes. Motion approved.

A public hearing was scheduled for 1:30 p.m. on February 8, 2023.

**Staff Reports**

Matt Rasmussen stated we will have a few items on agenda for our February City Development Board meeting.

**Future Meeting/  
Public Hearing**

February 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

February 8, 2023 at 1:30 p.m., Bondurant (NC23-01) Public Hearing at IEDA, 1963 Bell Ave., Suite 200, Helmick Conference Room, Des Moines or via Teams Webinar

**Adjourn**

1:32 p.m.

Respectfully Submitted,  
Betty Hessing, Administrative Assistant