

**State of Iowa
City Development Board
Meeting Minutes of January 12, 2022
Iowa Economic Development Authority
1963 Bell Avenue, First Floor, Missouri River Conference Room
Des Moines, Iowa**

Call to order 1:06 p.m.

Present

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

Absent

Chris McKee

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
Dan Johnson, Former City of Mount Union
Linda Johnson, Former City of Mount Union
Robert Reding, Attorney, Curtis Dial Law Offices*
Frank Smith, Frank Smith Law Office, Representing Urbandale
Raymond Heitner, City of Iowa City*
Kyle Michel, City of Van Meter*
Joshua Entler, Concise Earth Construction, Cedar Rapids*
Jon Marner, MMS Consultants, Inc.*
Carrie Johnson, Iowa Department of Management*
Lori Judge, IDOT*
Anthony Volz, IDOT*
Steven (Guest)*

*Participated via Teams Webinar

Introduction by Chairperson, Dennis Plautz

Roll Call by Matt Rasmussen, Board Administrator

Four board members were present; one was absent. A quorum was established.

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 8, 2021, Business Meeting Minutes

Motion by Jim Halverson
Motion I move the Business meeting minutes of December 8, 2021, be approved as printed and distributed.
Second Mari Bunney
Roll Call All ayes. Motion approved.

Consideration of December 8, 2021, Closed Session Meeting Minutes

Motion by Jim Halverson
Motion I move the closed session meeting minutes of December 8, 2021, be approved as printed and distributed.
Second Mackenzie O'Hair
Roll Call All ayes. Motion approved.

Elect Board Chair and Vice Chair for 2022

Motion by Jim Halverson
Motion I would nominate Dennis Plautz as Chair for 2022.
Second Mari Bunney
Motion by Mari Bunney
Motion I would nominate Jim Halverson as Vice Chair for 2022.
Second Mackenzie O'Hair
Roll Call for both All ayes. Motion approved.

Old Business

D17-01
Mount Union
Chairperson Plautz stated that yesterday you received a supplemental objection that was filed. Emily Willits stated it was a submission from the Johnsons attorney that went to everyone. Chairperson Plautz stated he was going to open up the conversation to the Board for discussion, rather than taking additional input at this point. Emily Willits stated that we did have oral input at the December meeting. Ms. Willits stated that at this point—unless anyone from the Board wants to hear anything further from the public—the Board could go ahead and discuss. Matt Rasmussen reported that after our last meeting, we provided a timeframe of which people could submit additional information. We didn't receive any additional information until what we received yesterday. What the Board received yesterday and what the Board previously had, should complete the Board's file.

Chairperson Plautz stated you also have some potential formatting for motions—depending on which way the Board wants to go in the various areas. With that, I'm going to open this up to the Board for discussion. Chairperson Plautz asked if there was a motion on if we deliberate today or not.

Motion by Jim Halverson
Motion I move we deliberate today.

Second
Roll Call

Mari Bunney
All ayes. Motion approved.

Chairperson Plautz stated the next thing we need to do is discuss the allowance or disallowance of the Johnsons claim. Emily Willits stated we did put a potential closed session on the agenda in case anyone on the Board felt they needed to have another discussion with counsel. You're certainly not required to do a closed session today, but I just wanted to make the Board aware that that is an option if anyone feels the need. Mari Bunney stated she would feel more comfortable if we did go into closed session to consult with Emily Willits. Jim Halverson agreed.

Motion by
Motion

Mari Bunney
I move we go into closed session for purposes of discussing potential litigation.

Second
Roll Call

Jim Halverson
All ayes. Motion approved.
Emily Willits stated that any action the Board takes will be in open session. Chairperson Plautz stated that sealed minutes are kept of the closed session.

**Time the CDB went
into Closed
Session**

1:16 p.m.

Motion by
Motion

Mari Bunney
I move we go back into our January 12th regular Board meeting and out of closed session.

Second
Roll Call

Mackenzie O'Hair
All ayes. Motion approved.

**Time the CDB went
back into Open
Session**

1:44 p.m.

D17-01
Mount Union

Chairperson Plautz stated we are back into open session. Based on the discussion we just had in closed session—the discussion seemed to revolve around a couple different topics. One was legal authority to do certain things and the other was the practicality of doing certain other things. I would like to open it up to the Board for discussion about both legal and other practical matters given this case. Mr. Halverson asked Chairperson Plautz if he would be okay in considering a motion which we could base a discussion on. Chairperson Plautz replied it's whatever the Board chooses.

Motion by
Motion

Jim Halverson
I move that the Board disallow the Johnsons' claim because the claim is based on a series of allegations and the Board does not have the authority to conduct a jury trial; second, the Board does not have the authority to award damages; third, the former city would be left without a defense; and fourth, there are limited funds remaining in

Second
Roll Call

the city's account and the cost to conduct a defamation trial would exceed the remaining funds. I would also direct the Board's counsel to work with staff to issue a written order consistent with this motion.

Mr. Halverson also wanted to emphasize that this motion comes with an acknowledgement that this decision isn't a decision on the merits of the Johnsons defamation claim. It's rather a disallowance based on the Board's conclusion that it lacks the authority to preside over a defamation trial and award damages, as the Johnsons have requested.

Mari Bunney

All ayes. Motion approved.

Chairperson Plautz stated the Board has concluded everything that would need to be done in that singular motion, in terms of directing staff and counsel on what to do and laying out the reasons for your disallowance motion.

Dan Johnson raised his hand and Chairperson Plautz directed him to go ahead. Mr. Johnson stated that in hearing the motion, you state that you do not have the authority, yet you just stated that you have the authority to disallow it. Aren't those two opposites? We don't have the authority to decide, but we're going to decide anyway. Chairperson Plautz responded that what the motion was is we don't have authority to make determinations in this type of defamation case. Dan Johnson stated that is what the motion should be—not to disallow it.

This is Robert Reding, attorney for the Johnsons. The courts—both district and court of appeals—indicated that that is what needs to happen. They've remanded the case back down for you to make a decision. To say that you don't have the authority, when the courts have told you that's what you need to do under the law, I don't understand. Emily Willits replied that is something that you submitted in your written submission and the Board has received that and considered it. If the Board wants to respond to that, you're welcome to. Chairperson Plautz stated that is precisely the discussion we've had in the last couple closed sessions. What is the evidence that we do or don't have the authority; what's the recourse if we disallow the claim; what are the practical parameters that aren't clear in the State Code that would help guide us? It's really not clear. I've been on this Board for over twenty years and we have never had anything like this come to us. I think the Board—went into closed session because there is pending litigation and could be additional litigation—thought this through to the best of their ability and considered all the factors that they had questions on. It seems to me that we

have thought this through to the best of our ability.

Dan Johnson—if you say that you do not have the authority, then how do you have the authority to disallow it? Chairperson Plautz replied that he's not going to argue legal status because with pending litigation, I'm not going to pretend that I'm an attorney, and if our legal counsel thinks that the motion should be made in a more direct way, that's fine. Emily Willits asked Betty Hessing if we have had a vote on the motion and Betty Hessing responded that the Board did vote on the motion.

Emily Willits stated that when the Board issues its Written Order, that is subject to judicial review under Chapter 368, so if you wish to appeal the Board's Order and you think the Board got it wrong, you can do that.

Mr. Johnson asked if you believe you do not have the authority, who do you believe does? Chairperson Plautz stated that was not for him to say. Again, you are going against saying you disallow it. Mr. Johnson stated the county is holding over \$28,000 that was left over from the sale of everything in the city. Can that not be allowed for us to take? Emily Willits stated that part of the Mount Union item we have on the agenda today, is to close out the discontinuance and so I don't know if you want to move onto that, Dennis . . . Chairperson Plautz replied that we could. One of the items of discussion was how much money is there and let's say we decide to appoint an Administrative Law Judge—where would the funds come from? Would there be enough funds to cover everything? Those are the practical elements of this . . . we don't necessarily have the power to convene a jury. Emily Willits stated that Matt Rasmussen was going to provide an update on the funds that are remaining in the account because the Code says that after the discontinuance is complete, those funds would revert to the county.

Dan Johnson stated that in a mailing we got, it says that at the meeting, the Board will discuss—on your agenda—it's under "Old Business". My thoughts are if it's an action item that takes a vote, it must be on the agenda so those parties concerned can have representation. It's not on the mailing; it's not on the agenda. We did not notify our representative to be here to talk for us. To me, the motion and the vote was out of order. Emily Willits asked Mr. Johnson if he got the agenda with the case number on it and Linda Johnson replied they just picked one up here—we didn't get an agenda in the mail. We and our attorney only got the Notice of Meeting in the mail. Emily Willits stated that case number is the district court case number

that's remanded that is about your claim and defamation case. I think your attorney is on the phone. Is that not your attorney? Dan and Linda Johnson replied it's a representative of our attorney—Mr. Reding—he's not our attorney. Emily Willits asked if he worked at the Curtis Dial Law Office and the Johnsons stated that they believe so. Ms. Willits asked Betty Hessing if she sent out a notice to Curtis Dial's Law Office and she replied that she did. Dan Johnson stated the Notice of Meeting did not say anything about a vote being taken or being an action item where someone would need to be there.

Jim Halverson stated that our agendas have never had "action anticipated"; it's just simply a listing of items to be considered at a given meeting. That is how our agendas have read historically. Dan Johnson stated that he didn't mean to offend the Board, but they could frivolously add something and make a motion to vote for it and vote for it and do it without those being affected, being notified. Jim Halverson stated that we published a notice. Mr. Johnson stated we were not notified there was going to be a vote—it just happened. Emily Willits stated there will be a vote on all the items on the Board's agenda and Jim Halverson agreed. Dan Johnson replied that it does not state that. Emily Willits stated this has been a long, difficult process and the Board does need to move on and as I said, their decision is subject to appeal.

Mr. Johnson stated that on the statement "you do not have the authority" and then saying, "you do have the authority to disallow"—two opposites. Jim Halverson stated that he finds his argument to be very circular. When a city has been discontinued, our involvement has been taking over the assets of that community; disposing of any outstanding claims and then whatever remains reverts to the county jurisdiction. Historically, that's all there has been to it. But, adjudicating a claim by two - third parties—we are an Executive Branch agency or Board and so we have never been granted that authority specifically. Candidly, we are not administratively or even from an appointment perspective, capable or competent to consider something of that nature. That's what the judicial system is there for. Dan Johnson stated that Mr. Halverson just backed-up his argument. You stated that you have never been appointed or advocated the authority. You stated that and then you act like you have the authority, but you stated that you do not have the authority. Chairperson Plautz stated he thought this could go on for the rest of the afternoon, but we did make a motion and unless legal counsel has an issue with that, it's done and it can be appealed and there are avenues. I don't think anything we discuss here is

going to change that.

Chairperson Plautz added as a clarification, if you recall after last month's meeting, you asked me if that would be the end of it next time and I said I fully expected so—we would vote and be done with it. Dan Johnson replied that he did remember that, but I expected to see something on the agenda that would say that. Dan Johnson stated that he has spent many hours going through things since the last meeting and I have documented proof that the unincorporation of Mount Union was directed for this ending. I have newspaper clippings, etc. that the mayor and at least one council member, worked so this would be the end—so we would not be paid. That has nothing to do with your decision, but Chairperson Plautz stated that one thing that is clear, which Jim included in his motion, which we've all talked about, we are not sitting in judgement on the merits of your case. That was not part of the motion that he made. I think it is important to make that clear. We're not suggesting, in any way, that there are not some merits to your case nor are we suggesting that there are, because we don't know. Mr. Johnson stated he would like to suggest, if possible, the motion be changed to the Board does not have the authority—and that is it. That is the beginning of the motion—the Board does not have the authority. Emily Willits stated the motions have been voted on and decided so it's done. We will issue a written order consistent with the Board's discussion today that you can review with your legal counsel.

Mr. Johnson asked the motions to be read back to him. Betty Hessing read the motions back to him—"I move that the Board disallow the Johnsons claim because the claim is based on a series of allegations and the Board does not have the authority to conduct a jury trial; second, the Board does not have the authority to award damages; third, the former city would be left without a defense; and fourth, there are limited funds remaining in the city's account and the cost to conduct a defamation trial would exceed the remaining funds; and direct the Board's counsel to work with staff to issue a written order consistent with this motion."

Mr. Johnson stated it is a little confusing. I don't see where it's the Board's worry whether the City has defense or not. Are you going to talk about the remaining money that the City has now? Chairperson Plautz asked Mr. Rasmussen if he was prepared to talk about that and Mr. Rasmussen stated he could report to the Board that there is approximately \$24,000 in the Mount Union account right now. Mr. Rasmussen met with IEDA's CFO. There is one

bill for \$1,428 that we think might have been double paid so we need to look into that. Other than that, we are in good order—it's approximately \$24,000.

Emily Willits stated that IAC Section 368.21 says that after the discontinuance is complete, any remaining balances shall be deposited in the County Treasury where the former city was located. The Johnsons claims was the last outstanding claim in the City of Mount Union discontinuance matter, as far as I'm aware, so if the Board wishes to do so today, you could close out that matter and transmit remaining funds to Henry County. Chairperson Plautz asked if we needed a motion for that.

Motion by
Motion

Jim Halverson

I move we close out the Mount Union matter and send the remaining balance to Henry County.

Second

Mackenzie O'Hair

Mr. Rasmussen stated that once everything is accounted for, we will forward the remaining balance to Henry County Treasurer.

Chairperson Plautz asked if there was further discussion. Linda Johnson stated, "So we get nothing—bottom line—we get nothing. That's what you're saying by making this motion—we get nothing." Chairperson Plautz replied, "Yes, unless the Court would order it." Linda Johnson replied, "The court did order it." Chairperson Plautz replied, "And the court took it away." Linda Johnson stated, "They gave it back to you and put it in your hands". Chairperson Plautz asked for a roll call.

Roll Call

All ayes. Motion approved.

Chairperson Plautz stated that we are done with that. Again, very unusual case; we are just trying to follow the Iowa Code. Linda Johnson replied that you have no Code to follow—that's your problem. It's not in the Code except the last one she quoted. Chairperson Plautz thanked the Johnsons and stated he was sorry it wasn't a better result in their favor. Dan Johnson said that it may be yet.

New Business

UA22-01
Van Meter

Matt Rasmussen introduced this as a 100% voluntary annexation proposal for the City of Van Meter consisting of 4.47 acres. A preliminary plat has been submitted and approved by Van Meter's City Council to develop this territory, enabling the connecting of the existing subdivisions and provides a connected street system and adjacent water and sewer services of the City. Additional utility extension will be installed as part of the proposed development project on this property. Additionally, the development of this territory will enable storm water management improvements to be made that will benefit

existing homes adjacent to the property. Developing this property will provide for connected streets to existing subdivisions that will reduce traffic congestion and facilitate better traffic circulation, alternative points of access for emergency vehicles and future road extensions for subsequent development projects. This annexation and proposed development project will also facilitate the looping of infrastructure systems to provide for redundancies in sewer and water systems should the City experience main breaks that require a portion of the neighborhood infrastructure to be taken offline for repair.

This annexation is not subject to a moratorium agreement and it does not include county-owned road right-of-way. Mr. Rasmussen stated that the packet does appear to be complete and properly filed.

No comments or questions were asked.

Motion by
Motion

Jim Halverson
I move the Board finds UA22-01 as complete and properly filed and in the public interest and that it be approved.

Second
Roll Call

Mackenzie O'Hair
All ayes. Motion approved.

UA22-02
Iowa City

Matt Rasmussen introduced this as a 100% voluntary annexation request for the City of Iowa City consisting of 70.39 acres. The property owner is requesting a voluntary annexation and rezoning of the subject property, along with an amendment to the City's Comprehensive Plan, to allow for development of a future intensive commercial use (CI-1). The City's Southwest District Plan identifies the subject area as being appropriate for annexation and development upon provision of sanitary sewer service. A sanitary sewer main line can be extended to the west from its current end-point near the Johnson County Poor Farm property, along the south side of IWV Road. The extension could service the properties that would be rezoned to Intensive Commercial zoning. The property seeking Interim Development Commercial zoning to the west will likely need a lift station for future sanitary sewer service to be provided. The City's 2021 Capital Improvement Plan has budgeted over \$5,000,000 for improvements to Melrose Avenue between Highway 218 and Hebl Avenue. These improvements will bring this stretch of roadway into compliance with the City's Urban Design Standards. As a part of these improvements, the City will also be extending its water main west to the City landfill site, allowing for future development between Highway 218 and the landfill to tap into the water main. The applicant will be responsible for extension of utilities

to the site.

The annexed property is not subject to any existing moratorium agreement and county owned right-of-way is included in this boundary line adjustment. Matt Rasmussen stated the packet appears to be complete and properly filed.

Motion by
Motion

Ray Heitner with the City of Iowa City was in attendance to answer questions, but no questions were asked.

Mackenzie O'Hair

I move the Board find UA22-02 as complete and properly filed and in the public interest and that it be approved.

Second
Roll Call

Mari Bunney

All ayes. Motion approved.

S/UA22-03
Urbandale

Matt Rasmussen introduced this as a voluntary severance/annexation, as provided for by Iowa Code Subsection 368A.25. Grimes seeks approval of a voluntary severance of land adjacent to Urbandale and Urbandale seeks approval of the voluntary annexation of the severed tract of land to Urbandale. Grimes received, and approved, a written severance petition and Urbandale received, and approved, a written voluntary annexation petition from Maplewood Farms L.C. This severance/annexation is for 30.2 acres, which includes .5 acres of public street right-of-way. The proposed severance/annexation territory is to be developed as single family residential. The area immediately adjoining the severance/annexation territory is compatibly zoned. This voluntary severance/annexation adds much needed land to Urbandale's developable residential land inventory and assures compact, efficient development to urbanized standards. The City of Grimes provides no municipal services to the proposed severance/annexation territory. Urbandale presently provides no municipal services to the severance/annexation territory but has the fiscal and physical capability of extending substantial municipal services to the severance/annexation territory upon annexation. Services will include wastewater treatment; public water supply; law enforcement; fire and EMS; public works; building, zoning, engineering, planning and related services; library, parks & recreation; and fiscal wherewithal to provide substantial municipal services to the territory.

The annexed property is subject to a moratorium agreement with Grimes that was approved by both cities December 14, 2021. Matt Rasmussen stated the packet appears to be complete and properly filed.

Frank Smith, Attorney representing Urbandale, was present to answer questions, but no questions were asked.

Motion by
Motion

Jim Halverson
I move the Board finds S/UA22-03, severance from Grimes and annexation into Urbandale, as complete and properly filed and in the public interest and that it be approved.

Second
Roll Call

Mari Bunney
All ayes. Motion approved.

Staff Reports

No staff reports.

**Future Meeting &
Public Hearing**

February 9, 2022, at 1:00 p.m., City Development Board Business Meeting at IEDA, 1963 Bell Ave., First Floor, Missouri River Conference Room, Des Moines or via Teams Webinar.

February 9, 2022, at 1:30 p.m., Ames - NC21-37 – Tabled Public Hearing, at IEDA, 1963 Bell Ave., First Floor, Missouri River Conference Room, Des Moines or via Teams Webinar.

Adjourn

2:16 p.m.

Respectfully Submitted,
Betty Hessing, Administrative Assistant