

**State of Iowa
City Development Board
Meeting Minutes of November 8, 2023
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200, Helmick Conference Room
Des Moines, Iowa**

Call to order 1:01 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
Lisa Connell, IEDA Legal Team
Vicky Clinkscales, IT Department, IEDA
Ryan Moffitt, CED Director, City of West Des Moines
Bryce Johnson, Business Devl. Coordinator, City of West Des Moines
Dr. Denny Woodruff, Owner, VCA Avondale Animal Hospital
Rebecca Ohrtman, Consultant, Iowa Water Quality Consulting
Troy Donohoe, Homeowner, Avondale Community
Michael Ludwig, Deputy Director, Development Services, City of Des Moines
Thomas Fisher, Deputy City Attorney, City of Des Moines
Priscilla Ritchey, VCA Avondale Animal Hospital*
Nicole Birrittieri, VCA Avondale Animal Hospital*
Zach Glasser, VCA Avondale Animal Hospital*
Jason Pulliam*
Bob Rice, Retired Polk County Public Works Director*
Evan Johnson, Legislative Services Agency, State of Iowa*
Lori Judge, IDOT*
Anthony Volz, IDOT*
Nathan Aronson, IDOT*
310-906-0872*

*Participated via Teams Webinar

Introduction by Board 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 Thomas Treharne
Roll Call All ayes. Motion approved.

Consideration of October 11, 2023 Business Meeting Minutes

Motion by Jim Halverson
Motion I move the Business meeting minutes of October 11, 2023 be approved as printed and distributed.

Second Thomas Treharne
Roll Call All ayes. Motion approved.

Executive Order 10 – Red Tape Review – Notices of Intended Action

Lisa Connell stated Executive Order 10 was issued by the Governor in January of this year and that Order requires all executive branch agencies to review their Administrative Rules and to complete several tasks associated with the review. The following tasks have been completed on the Board’s behalf: (1) Rule reports completed August 31, 2023. (2) Direction from Administrative Rules Coordinator to rescind chapter 11 received September 22, 2023. (3) Regulatory analyses published for Chapters 1-10 on October 4, 2023. (4) A public hearing was held on October 24, 2023. No public comments were received. (5) Received preclearance from Administrative Rules Coordinator to file a Notice of Intended Action on October 25, 2023.

The next required step is for the Board to approve the publication of Notices of Intended Action for 263 Iowa Administrative Code, Chapters 1 through 11 of Iowa Code 368. Lisa Connell stated she will be rescinding and readopting Chapters 1-10 and Chapter 11 will be permanently rescinded. Ms. Connell stated that part of the direction in the Executive Order was to eliminate any repetition of statute.

Lisa Connell explained the proposed changes from existing rule chapters. See below.

Organization and Administration, 263 IAC Chapter 1

Chapter 1 describes the organization and administration of the Board. The proposed updates remove statutory language throughout the chapter as directed by the Executive Order. Unnecessary detail about the responsibilities of the Board in Rule 263.1.2 will be replaced with references to Iowa Code, the remainder of the Board’s rules and Board manuals available on IEDA’s web site. Rule 263.1.2 will be updated to clarify that communications can be emailed to the Board. Rule 263.3 will be updated to use more concise language as well as clarify voting requirements.

Agency Procedure for Rulemaking, 263 IAC Chapter 2

Chapter 2 describes the Board’s procedures for adoption of administrative rules. The Board has adopted, with amendments and exceptions noted, the Uniform Rules on Agency Procedure applicable to procedures for rulemaking. However, the uniform rules are inconsistent with current statute. The chapter will be replaced with a chapter that incorporates the relevant statute by reference and clarifies how the Board can be contacted regarding rules.

Petitions for Rulemaking, 263 IAC Chapter 3

Chapter 3 describes the process an interested person may use to request the adoption, amendment, or repeal of an administrative rule pursuant to Iowa Code Section 17A.7. The Board has adopted, with amendments and exceptions noted, the Uniform Rules on Agency Procedure applicable to petitions for rulemaking. The introductory language to the rules chapter should be updated to include the link to the Uniform Rules on Agency Procedure. Unnecessary words will be removed throughout the chapter.

Declaratory Orders, 263 IAC Chapter 4

Chapter 4 describes the process a person may use to request that the Board issue a declaratory order pursuant to Iowa Code Section 17A.9. The Board has adopted, with amendments and exceptions noted, the Uniform Rules on Agency Procedure applicable to declaratory orders. The introductory language to the rules chapter should be updated to include the link to the Uniform Rules on Agency Procedure. Unnecessary words will be removed throughout the chapter.

Fair Information Practices, 263 IAC Chapter 5

Chapter 5 describes access to open records, determinations by the Board and its staff with respect to the handling of confidential records and the implementation of the Fair Information Practices Act. The Board has adopted, with amendments and exceptions noted, the Uniform Rules on Agency Procedure applicable to fair information practices. The introductory language to the rules chapter should be updated to include the link to the Uniform Rules on Agency Procedure. Unnecessary words will be removed throughout the chapter.

Waiver Rules, 263 IAC Chapter 6

Chapter 6 describes the process for granting individual waivers from rules adopted by the Board. Statutory language and other unnecessary words will be removed throughout the chapter. Definitions will be added to rule 263.6.1 to add clarity throughout the chapter. Rule 263.6.6 will be updated to replace a rule reference with a statutory reference. Rule 263.6.9 will be updated to clarify when contested case hearing procedures will apply to a petition for waiver. Rule 263.6.10 will be restructured to maintain the description of requirements for the issuance of a waiver ruling that are not found within Iowa Code Section 17A.9A. Rule 263.6.11 will be consolidated with the revised rule 263.6.10 so that all subrules pertaining to waiver rulings are contained within one rule.

Voluntary Annexation, 263 IAC Chapter 7

Chapter 7 describes the application and approval procedures for voluntary annexations. Statutory language and other redundant language will be removed throughout the chapter. Rule 263.7.1 will be updated to clarify the purpose of the chapter. Rule 263.7.2 will be updated to clarify roles and responsibilities of landowners, cities and the Board. Rule 263.7.3 will be updated to reduce the number of paper copies of requests submitted to the Board and address electronic submission of documents. A new rule 263.7.7 will be created to address the Board's initial review steps. This rule will replace and consolidate language currently contained in multiple rules in the chapter. The initial review steps are the same regardless of the specific annexation situation and do not

need to be repeated in multiple rules. Rule 263.7.10 will be updated for clarity and consistency with the other rules. A new rule 263.7.13 will be created to address the steps the Board will take following approval or denial of a request. This rule will replace and consolidate language currently contained in multiple rules in the chapter. The post-decision steps are the same regardless of the specific annexation situation and do not need to be repeated in multiple rules.

Petitions for Involuntary City Development Action, 263 IAC Chapter 8

Chapter 8 describes the application and approval procedures for petitions for involuntary board action. Statutory language and other redundant or unclear language will be removed throughout the chapter. Rule 263.8.1 will be updated to clarify the purpose of the chapter.

Committee Proceedings on Petitions for Involuntary City Development Action, 263 IAC Chapter 9

Chapter 9 describes the procedures for involuntary boundary changes considered by a committee created pursuant to Iowa Code Section 368.14. Statutory language and other redundant or unclear language will be removed throughout the chapter. Rule 263.9.2 will be updated to clarify information about meeting formats. Rule 263.9.4 will be updated to remove references to submission of documents by fax. Rule 263.9.11 will be updated to remove language that is redundant of other rules in the chapter and for clarity.

Board Proceedings on Petitions for Involuntary Boundary Change After Committee Approval, 263 IAC Chapter 10

Chapter 10 describes the Board's procedures for involuntary boundary changes following the approval of such changes by a committee created pursuant to Iowa Code Section 368.14. Statutory language and other redundant or unclear language will be removed throughout the chapter. Implementation sentences for individual rules in the chapter should be replaced with a single implementation sentence for the chapter as a whole.

Islands—Identification and Annexation, 263 IAC Chapter 11

Chapter 11 describes the process by which islands (as defined in Iowa Code Section 368.1(10)) were identified by County Boards of Supervisors and annexed to surrounding cities by the Board. The Board was granted authority to annex islands to surrounding cities that were identified prior to January 15, 1992 by 1991 Iowa Acts, House File 182. The legislation also prevented the creation of additional islands after the effective date of the act. The chapter is therefore obsolete and can be permanently rescinded.

Lisa Connell and Chairperson Plautz asked if there were any questions and no questions were asked.

Approval to File Notice of Intended Action to Rescind and Replace Organization and Administration, 263 IAC Chapter 1

Motion by	Thomas Treharne
Motion	Move approval to file Notice of Intended Action to Rescind and Replace Organization and Administration, 263 IAC Chapter 1.
Second	Jim Halverson

Voice Vote All ayes in favor. Motion approved.

Approval to File Notice of Intended Action to Rescind and Replace Agency Procedure for Rulemaking, 263 IAC Chapter 2

Motion by Laura Skogman
Motion Move approval to file Notice of Intended Action to Rescind and Replace Agency Procedure for Rulemaking, 263 IAC Chapter 2.

Second Thomas Treharne
Voice Vote All ayes in favor. Motion approved.

Approval to File Notice of Intended Action to Rescind and Replace Agency Petitions for Rulemaking, 263 IAC Chapter 3

Motion by Laura Skogman
Motion Move approval to file Notice of Intended Action to Rescind and Replace Agency Petitions for Rulemaking, 263 IAC Chapter 3.

Second Thomas Treharne
Voice Vote All ayes in favor. Motion approved.

Approval to File Notice of Intended Action to Rescind and Replace Declaratory Orders, 263 IAC Chapter 4

Motion by Laura Skogman
Motion Move approval to file Notice of Intended Action to Rescind and Replace Declaratory Orders, 263 IAC Chapter 4.

Second Thomas Treharne
Voice Vote All ayes in favor. Motion approved.

Approval to File Notice of Intended Action to Rescind and Replace Fair Information Practices, 263 IAC Chapter 5

Motion by Laura Skogman
Motion Move approval to file Notice of Intended Action to Rescind and Replace Fair Information Practices, 263 IAC Chapter 5.

Second Thomas Treharne
Voice Vote All ayes in favor. Motion approved.

Approval to File Notice of Intended Action to Rescind and Replace Waiver Rules, 263 IAC Chapter 6

Motion by Laura Skogman
Motion Move approval to file Notice of Intended Action to Rescind and Replace Waiver Rules, 263 IAC Chapter 6.

Second Thomas Treharne
Voice Vote All ayes in favor. Motion approved.

Approval to File Notice of Intended Action to Rescind and Replace Voluntary Annexation, 263 IAC Chapter 7

Motion by Laura Skogman

Motion Move approval to file Notice of Intended Action to Rescind and Replace Voluntary Annexation, 263 IAC Chapter 7.
Second Thomas Treharne
Voice Vote All ayes in favor. Motion approved.

Approval to File Notice of Intended Action to Rescind and Replace Petitions for Involuntary City Development Action, 263 IAC Chapter 8

Motion by Laura Skogman
Motion Move approval to file Notice of Intended Action to Rescind and Replace Petitions for Involuntary City Development Action, 263 IAC Chapter 8.
Second Thomas Treharne
Voice Vote All ayes in favor. Motion approved.

Approval to File Notice of Intended Action to Rescind and Replace Committee Proceedings on Petitions for Involuntary City Development Action, 263 IAC Chapter 9

Motion by Laura Skogman
Motion Move approval to file Notice of Intended Action to Rescind and Replace Committee Proceedings on Petitions for Involuntary City Development Action, 263 IAC Chapter 9.
Second Thomas Treharne
Voice Vote All ayes in favor. Motion approved.

Approval to File Notice of Intended Action to Rescind and Replace Board Proceedings on Petitions for Involuntary Boundary Change After Committee Approval, 263 IAC Chapter 10

Motion by Laura Skogman
Motion Move approval to file Notice of Intended Action to Rescind and Replace Board Proceedings on Petitions for Involuntary Boundary Change After Committee Approval, 263 IAC Chapter 10.
Second Thomas Treharne
Voice Vote All ayes in favor. Motion approved.

Approval to File Notice of Intended Action to Rescind Islands—Identification and Annexation, 263 IAC Chapter 11

Motion by Laura Skogman
Motion Move approval to file Notice of Intended Action to Rescind Islands—Identification and Annexation, 263 IAC Chapter 11.
Second Thomas Treharne
Voice Vote All ayes in favor. Motion approved.

Lisa Connell explained that she will get those notices filed. They will be published in December and twenty days from publication—or more—we have to hold two public hearings. Lisa Connell stated she is tentatively planning those public hearings for January 2nd and January 8th. The first date the Board could possibly adopt those rules is later in January, so Ms. Connell will come back to the Board in February for final action.

Jim Halverson and Chairperson Plautz thanked Lisa Connell for all her work on this and Lisa Connell thanked Matt Rasmussen and Betty Hessing, as well, for their help.

New Business

UA23-28
West Des Moines

Matt Rasmussen reported the City of West Des Moines requests that the City Development Board approve the 100% voluntary annexation petition consisting of 132 acres of property located in Lee Township, Madison County. In general, the proposed annexation territory is along the north right-of-way of Veterans Parkway, the west right-of-way of Woodland Avenue and the south right-of-way of 100th Lane. The annexation territory is just south of the current corporate limits of West Des Moines.

The City of West Des Moines' Comprehensive Plan indicates that the property has a land use category of industrial light. An economic development prospect is proposing the construction of a data manufacturing center. As part of the project, public improvements will be extended to and through the area and the proposed development will be serviced off those facilities. The City of West Des Moines is prepared to provide police, fire, public works and emergency medical services to the annexed area. There is an annexation moratorium agreement and subdivision review agreement with the City of Cumming and this annexation is within that agreement. Mr. Rasmussen stated the petition appears to be complete and properly filed.

Matt Rasmussen displayed maps of the area on screen. Ryan Moffitt, Community Economic Development Director for the City of West Des Moines, was present to explain further and answer questions.

Motion by
Motion

Jim Halverson
I move the Board finds UA23-28 as complete and properly filed and in the public interest and that it be approved.

Second
Roll Call

Laura Skogman
All ayes. Motion approved.

Avondale Veterinary Clinic Discussion

Chairperson Plautz stated that we will not be taking any action on this item today—this is simply fact finding. Before I go to the public, I am going to ask Matt Rasmussen if he has any comments on this.

Matt Rasmussen stated that in February he was contacted by the State of Iowa Office of Ombudsman regarding provision of water service to a property that had been involuntarily annexed into the City of Des Moines. Des Moines had initiated an involuntary annexation in 1998 that was finalized in 2009. The

situation was that the VCA Avondale Veterinary Hospital was part of this involuntary annexation and now wants the City of Des Moines to provide them with city water.

It was apparently the VCA Avondale Veterinary Hospital's position that the City of Des Moines and/or Des Moines Waterworks may be in violation of Iowa Code as it relates to involuntary annexation. I replied to the Ombudsman's Office that, unfortunately, we did not have the annexation records from that annexation and that my opinion, as a non-attorney, was that the City Development Board does not have the authority to order a city to act (in this case, to order a city to provide someone with city water). I said that the only remedy I was aware of was that the City Development Board could order the territory be severed if the Board found that the City failed to provide services per the involuntary annexation proposal. My recommendation was for the party to consult with an attorney since there were legal issues in question.

In March, I was contacted by Becky Ohrtman, on behalf of the property owner that was involuntarily annexed, regarding the same. My response was essentially the same as was to the Ombudsman's Office, and that since there were legal issues, I strongly encouraged consultation with an attorney.

In June, the Ombudsman's Office followed-up and pointed out a portion of Iowa Code regarding involuntary annexation and the provision of services. He requested the City Development Board attorney's interpretation of some legal questions regarding involuntary annexation and this situation. I consulted with the City Development Board attorney, Eric Dirth, and was advised that the request called for legal conclusions and that they should consult with a private attorney. I did also say that "the only way the Board can act in any direction is for the owner to make a formal request of the Board." I said, "I imagine that the property owner would have to provide a copy of an agreement and show where the City is violating the agreement."

As you recall from the last meeting, Dr. Woodruff spoke to the Board regarding this situation and there was brief discussion. It was decided that further discussion was warranted and that we needed to do some information gathering, thus the discussion item on today's agenda.

You will notice in the board packets there is a letter from Dr. Woodruff and a 900 some page document that is the final recorded document regarding the Des Moines involuntary annexation. Becky Ohrtman had provided me with a link to the Polk County Recorder's Office for access to the document, so thank you to Becky for that. The one very important thing we did not have was a copy of the file for the annexation, which contained the city's proposal. We now have a copy of the file as it was recorded and was provided to the Board.

It appears to me that the proposal talks briefly about provision of water to the annexation area containing the subject property. Mr. Rasmussen displayed page 85 of the recorded document, which pertains to the southeast annexation area which contains the Avondale Veterinary Hospital. It says, "Currently this area is not served by any public water system. Existing mains are available at SE 36th Street and Watrous Avenue for extension, as development occurs. New

mains will be installed by developers as needed.” With that, it is on the agenda today as a discussion item.

Dr. Woodruff is here today and he has a Power Point presentation. Chairperson Plautz asked if board members had questions and no one did.

Dr. Dennis Woodruff introduced Ms. Becky Ohrtman, the Water Quality Consultant for VCA Avondale Hospital. She has been working for VCA Avondale Hospital for the last year and has kind of exhausted all of her possibilities as far as trying to find a source of water for the Animal Hospital. I will refer to her as we talk, as she has been involved with this longer than I have.

Dr. Woodruff stated he is the landowner, but he sold the business to VCA Corporation back in 2016 and I continued to work for the Corporation until August 2022. I am a surgeon so I mainly did orthopedic surgeries at that point in time. We have seven doctors in the hospital; we have twelve technicians and a staff of about forty. You can see what the clinic looks like—it is actually quite large now, compared to what it used to be. When I came in 1974, the practice had been built in 1973 and it was an 1,800 square foot ranch style building and it could have passed easily for a house. It was built that way because my partner, Dr. James Wistrom, was somewhat of a pessimist and his feeling was if the practice did not take off, I can always live in it. Fortunately, the practice did take off and it did well. We built a second animal hospital about ten years later on SW 9th Street, which is Mac Rae Park Animal Hospital and he took over that hospital and I took over Avondale.

We have made several additions to the Clinic so in 1989 we wrapped around the front of the building. We were able to go from two exam rooms to four exam rooms and add more waiting rooms for folks. Expanding allowed us to go to three veterinarians. In 1996 I had the wise idea that Des Moines needed a Pet Resort and Cat Hospital. There were concerns when we did that, as we did not know if people would want those services, but we moved ahead.

Dr. Woodruff displayed the VCA Avondale Clinic location on a map. We are located just inside the Bypass—the ring road going around Des Moines. We are on Army Post Road and you can see the red arrow there on the map. I want to point out that water is available at SE 36th Street. I also want to point out SE 45th Street and at that location, that is where old Avon is located, which is a group of houses and so forth that are part of the annexation district and most all of those folks are hauling water. They have a truck and they put a plastic tank in it, fill the tank and bring the water back to their well.

I also want to point out on the other side of the Highway 65 Bypass we get into Avon Lake—about one hundred homes in Avon Lake—we have General Mills; we have an elevator there—CTI Concrete and so forth. This whole area is served by the City of Carlisle. It was part of Polk County and Polk County worked with Carlisle to go ahead and put a water loop and a sewer loop throughout that area. So the folks on the east side of Highway 65 have sewer and water and the folks on the west side of Highway 65 do not have water—only from what we can get from the wells and as you know, we are in a three-

year drought so those wells are getting lower and lower and I see more people hauling water in that area.

Dr. Woodruff stated they did a third addition on the Clinic and now they have about 19,000 square feet and there are forty staff members. Dr. Woodruff displayed a couple pictures of the Pet Resort. I had the bright idea in 1996 that if people wanted to board their animals and they wanted to go to Disney World or Disney Land, they would want to keep their dog in a Disney suite and if they wanted to go to Turks and Caicos Islands, they would want a tropical suite; a fishing trip they would want a fishing suite; Las Vegas—a Las Vegas suite and so forth. The question is, this is Des Moines, Iowa in the mid-90's and would Des Moines support something like this and fortunately, they did. These have been full since the very beginning.

Dr. Woodruff showed the latest addition—this is an underwater treadmill. We do a lot of work with animals that have back problems, arthritis problems and various surgeries. Dr. Woodruff showed pictures of the orthopedic surgery room and the central treatment area. It gives you an idea of some of the folks that work there. We would meet every day at 8:15 a.m. and go through the upcoming cases for the day. This is a referral facility, so we took in cases from all over the State and out-of-State for surgery, for rehab and for dentistry. It is not your typical hospital from that standpoint.

We were annexed into the City of Des Moines in 2005 and final annexation was done in 2009. This was an involuntary annexation. John Anderson, who lived in the annexation area, challenged it and went all the way to the Supreme Court and eventually lost at the Supreme Court and so the annexation proceeded.

Currently, after fifteen years, we are still paying city taxes, which are about 40% higher than they were as a part of Polk County. We have no water service from the City of Des Moines; no sewer service from the City of Des Moines; and no fire hydrants/no adequate fire protection from the City of Des Moines.

Dr. Woodruff showed a picture of how they haul water since they do not have water from Des Moines Water Works. You can see a pick-up truck with a 500-gallon tank in it. The last four months that I worked at the vet clinic, I hauled water in a 350-gallon tank every morning, when we were dry. I would drive from my house in Carlisle to the Carlisle Water Plant, put my quarters in the meter and fill the tank and back-up to the two-inch PVC pipe and hook-up and dump the water directly into the well. This is what we are still doing, but what has changed is Des Moines Water Works, who have gotten involved, now requires that we become a public water system. That is because we have more than twenty-five employees. That brings a whole lot of additional effort and expense to us. We have already spent about \$100,000 just hauling water and water specialists drilling a test well that went 100 feet deep in which they did not find any water bearing capacity.

What we are looking at is as a public water system. We have contracted with a Licensed Water Operator—Tom Thorpe. Mr. Thorpe also provides monthly water testing; we are paying for water hauling and currently we are hauling three of those 500-gallon loads every Monday, Wednesday and Friday to serve

the Clinic. We have IDNR reporting; we have water storage that we are developing and we had to work on our existing wells to bring them higher to make sure there is no way any contaminated water could get into them.

Dr. Woodruff displayed a picture of five 300-gallon tanks that he picked-up in Minnesota. They will be plumbed together and this is something Tom Thorpe will do as he designs the public water system. He has already provided the IDNR with what he wants to do and we are waiting for a response from them to approve or deny what he is recommending. We will either have a chlorination system or a UV light system. The chlorination system is the most honourous because it will require someone on staff to daily check residual chlorine levels. The water we are getting currently from Carlisle is treated water so it is already chlorinated. We do not know, at this point, how much water we are actually getting from the wells so it will be hard to balance that out.

We have two local residents, and Troy Donohoe is here today, who have built their homes and were required to provide their own fire protection. They had to put water tanks in their basement, put a pump on those and then install sprinklers on their whole ceiling. The City Building Inspectors for Des Moines require that because the City of Des Moines Fire Department is not able to come out and fight a fire. That is very different than what was written in the initial annexation agreement, where the City of Des Moines provided all kinds of information on all the fire protection equipment that they had from tanker trucks to pumpers to ladder trucks and the fact that they were going to build a new fire station on Indianola Road—Station 10—which they have done—and they are about 2½ miles from us. Development in this area is not going to happen if you have to put in your own fire suppression system. They were told because there are no hydrants to hook-up to, they would need to protect themselves.

In closing, because our annexed area is not provided water, sewer or fire protection and we pay taxes to the City of Des Moines, we request cooperation and recourse. We would like a timeline for when water, sewer and fire services will be provided. We want to ensure that Des Moines Water Works and the City of Des Moines will talk with each other to help resolve this issue. Becky Ohrtman and I have talked to Scott Sanders and Joe Gatto from the City of Des Moines and Ted Corrigan and his crew from the Des Moines Water Works and each one points a finger at the other. Des Moines Water Works says that they sell water to the City of Des Moines—we are separate from the City of Des Moines and we did not annex you—you need to talk to the City of Des Moines. The City of Des Moines says they do not provide water and that they buy water from Des Moines Water Works—you need to talk to them. We go in a circle. That is why Becky Ohrtman has reached out to the IDNR, the State Ombudsman and any other organization that she could possibly think of to try to resolve how we can get water. We cannot get rural water or Carlisle's water because we are part of the City of Des Moines. We cannot get rural development grants or other grants or funding because we are part of Des Moines. The City of Des Moines can do that and Des Moines Water Works can do that, but we cannot. So, please help all the people in the Avondale area who are having to haul water.

It is hard to believe that the City Development Board had that in mind when the

Board okayed the annexation 15 or 18 years ago and so we are bringing it back to you. We have been encouraged to do that by the IDNR and the State Ombudsman to see what can be done about this situation.

Dr. Woodruff asked Becky Ohrtman if she wanted to add anything. Ms. Ohrtman stated that the continuation of accessing water from Carlisle and depositing it into the existing wells is not going to be continued. IDNR and EPA will not allow that—that is called well injection. It is going to take up a lot of storage now that will take up space within the VCA Avondale Animal Hospital to put in all these storage tanks. When this first came to my attention, I was going to help with some of the paperwork with IDNR, but initially, IDNR replied for Avondale Vet Clinic to just connect to Des Moines Water Works—you are within Des Moines city limits. Further investigation, that is not an option from Des Moines Water Works at this time. We then talked to IDNR again and they had said the reason that you should connect is that in Iowa Code 368.1, it states that within three years of being annexed, the annexing city is supposed to be providing those services. IDNR stated that it was not in their purview to enforce that, but the City Development Board of Iowa should enforce that since they are the ones who approved the annexations. So, that is partly why we are bringing this to you today because we were given that direction from another State agency.

Chairperson Plautz thanked Becky Ohrtman and stated that for full disclosure, Becky Ohrtman did reach out to him by phone and he did call her back. Their discussion was about whether or not the City Development Board would take action today so it was nothing substantial that we talked about.

Chairperson Plautz stated that one of the issues is what are the rules and what authority does the City Development Board have. I do not know if Eric Dirth is prepared yet in regard to those two questions. Chairperson Plautz asked City of Des Moines staff if they had anything they would like to add to the discussion today.

Good afternoon, City Development Board. I am Michael Ludwig and I am the Deputy Director for Development Services for the City of Des Moines. I have been with the City of Des Moines for twenty-two years. When this annexation petition was initially filed, it was 1998. I was the Planning Director in Marion, Iowa at that time. I came to Des Moines in 2001, three years after the annexation had been filed, and we proceeded for another eight years in processing that application for involuntary annexation through the State of Iowa. There were numerous lawsuits—very lengthy process; a referendum vote on the annexation and so when the annexation was approved in 2005 by the City Development Board, it took another four years of lawsuits, challenges and election, before that annexation became effective. So, it has officially been in the City of Des Moines for fourteen years even though it was approved in 2005.

Michael Ludwig introduced Thomas Fisher, Deputy City Attorney for the City of Des Moines. We were not prepared to have a public hearing today—that is not our purpose—but we certainly feel the plight of the Animal Hospital. They are a member of our city and we understand they have concerns and we are willing to try and assist them.

Mr. Ludwig stated he has had numerous conversations this summer via E-mail with Becky Ohrtman. I sent her the link to the recorded document, which I believe was provided to you, which was the reported document that was recorded in Polk County and in Warren County after the annexation was complete. As was stated, it is a 990 some page document you have access to. There was reference to a page number in that and I am prepared to provide some additional context if you would want that. In 2005—so the initial petition was filed and so that reference to page 85 was the initial petition that was filed by the City in 1998. In 2005, the City Development Board requested that the City of Des Moines provide an update to that document. We had thirty days to reproduce the entire annexation petition for the City Development Board and basically take out all lands that had been voluntarily annexed since 1998—from that involuntary petition—and update the document. We updated all of our maps; updated all our projections and filed that with the City Development Board in July of 2005. In that updated document there are numerous pages that I think need to be referenced if you are wanting to look into it more. These are recorded page number references in the actual recorded document. Again, it was 990 pages--on page 427 of that document, is the beginning of that updated petition/document that we had submitted to the State.

On page 463 is the beginning of the section that talks about costs and detailed information regarding municipal services to be provided to annexation areas. I want to point out that on page 463, there is a statement that says, "In some instances, services are tied to development and in such instances, the services description should be considered best estimates based upon projected development scenarios. Variations in actual development from projected development scenario would cause changes in the timeframe which these services are provided to a specific annexation area."

Going to page 511—that is the beginning of the section on the Des Moines Water Works—so in that document, we had to provide a specific section on each individual service. For Water Works, again it states, "Des Moines Water Works owns, operates and maintains the water system within the corporate limits of the City of Des Moines."

Page 512 was specific information regarding the services that would be provided in the southeast annexation area, which Avondale Hospital is a part of, and that stated, "Currently this area is not served by any public water system. Existing mains are available at SE 36th Street and Watrous Avenue for extension as development occurs. New mains would be installed by developers, as needed."

All of those documents regarding the water, there was a statement there that we have not provided sewer to this area. That is not a correct statement. The City built the SE Ridge Trunk Sewer. It comes all the way along Highway 5 and crosses over Highway 69 as it heads down towards Indianola and then comes up under the bypass into the property that is south of Army Post Road and SE 45th Street, so it is right in this vicinity. We do not require properties to connect to the sewer if they are on septic and that septic is still functioning. If it fails and they are within 300 feet of a sewer, our Code requires connection to our public sewer. So, sewer is available to this area and I believe that sewer was

completed prior to the effective date in 2009 of the annexation because we started that construction to prove to the City Development Board that we could provide sewer service to the area.

Mr. Ludwig stated that overall, I believe we are in full compliance with the annexation petition that was approved by the State. Again, this is not a hearing today, but those are the basis that we have. We have had conversations with them about alternatives for getting water to the property. We do provide fire and emergency services to this area. The Building Code requires differences for protection—fire protection of units, for residential structures—and if it is outside of a delivery range, those are options for building, so those individual property owners elected to build and they are subject to our Building Codes.

Ultimately, when water is extended, there would be fire hydrants there and then it would no longer be necessary for private water that is stored on the property to support their suppression system on their structure.

We are certainly willing to listen to the City Development Board, answer questions and try to provide any additional information we can. Again, we were not prepared for a hearing today, but we wanted to address some of the items that were stated and why we believe we are in compliance with the annexation petition.

Dr. Woodruff asked Chairperson Plautz if he could ask Mr. Ludwig a question and Chairperson Plautz replied that he could. Dr. Woodruff stated that you mentioned that the sewer runs by there; are there people that are hooked-up to that sewer? Mike Ludwig replied that he can't speak to who is connected to our sanitary sewer system in that area, but we could provide mapping that shows the exact routing of that sewer and where it exists, but just know that we did extend that—I believe there is a pump station that is on the north side of Army Post Road at SE 45th. That is sewer to the area that has been provided. Dr. Woodruff stated he is not aware that anyone uses that sewer and we have never been approached that it is available as an alternative because we probably would have hooked-up to the sewer service. My understanding was that it was not being used, but I cannot prove that. That is what I have heard—that it is there, but not functional. Mr. Ludwig replied that it is a functional sewer that exists in the ground and can be connected to—there are connection fees, by district, for connecting into that. It is basically paid on an acreage basis when connection is made.

Chairperson Plautz thanked Mr. Ludwig and asked if the Board members or anyone else had questions for the City of Des Moines. Troy Donohoe asked who he should talk to about getting connected to Des Moines sewer and Mr. Ludwig replied the City's Sanitary Sewer Division and he would send him their phone number.

Becky Ohrtman stated she had one more thing—it was in the letter that Dr. Woodruff sent—the concern too, is in order for the hospital to get a water line from Des Moines Water Works, the estimate was \$1.5M to \$2M that the hospital would incur on their own and reiterating from Casey's Corporation that owns the land across the road, they will not be developing there and their reply was also

because they usually negotiate on a price. Some of those things seem odd—like one entity would have to foot the bill--\$1.5M to \$2M—and also the size would be larger than just the one entity would use. So, the cost to do that and then the \$15,000 to connect on top of that to this one entity. Each entity would have to spend \$15,000 for the connection. I just wanted to make that clear that yes, you do have an option to get a water main out there if you want to spend \$2M, which is not feasible for any one landowner in that area.

Becky Ohrtman stated they did go to the Iowa Geological Survey and talked to the well forecasters about drilling a well in the interim of getting Des Moines water, but their hydrogeologists stated this area is a dead zone as far as well permitting. People do not ask for a well permit in this area because the water quantity is very questionable and the water quality will require a lot of treatment. They indicated it is not feasible to drill a deeper well and that is why Des Moines Water Works utilizes the Raccoon River and the Des Moines River. Being annexed seemed like it was going to be a great thing to supply sustainable drinking water supply to those in the annexed area. But, given the amount of time that has gone by, it is questionable. We hope that in the future, if there are other annexations, that Iowa Code is adhered to so that not everybody is waiting indefinitely to get a sustainable water supply.

Chairperson Plautz thanked Ms. Ohrtman.

Thomas Fisher, Deputy City Attorney with the City of Des Moines, stated he did not have much to add. Michael Ludwig covered the history of this. As far as connecting to existing water mains, that is what a developer would do. All of these questions are money questions. I do want to emphasize that those water mains are Des Moines Water Works mains and not the City of Des Moines. It is Des Moines Water Works that provides the funding and there has not been development in the area, which is really the cause of them not doing a water main, which is in the annexation itself.

Dr. Woodruff pointed out that he is in Carlisle in Warren County and I know what I hear from the State all the time is what communities want is shovel-ready sites. You want water, sewer, gas, electricity and so forth to those sites and people and businesses will come. That is not what is happening out there, so I do not know how it is going to work for development to take place unless the City of Des Moines decides to take some of their tax revenues and put them back into water services, in this case, since sewer services are available. We hear from Des Moines Water Works that Des Moines does not give us money to do this so why should we do this. It is he said-she said and that is why it is so difficult for us.

Michael Ludwig stated we have numerous sites for development in the City of Des Moines and this, unfortunately, is not one of them with all services provided to it. If there was a development proposal in this area, we would be open to utilizing urban renewable authority to establish a TIF district which could help fund infrastructure extension and that is still on the table, but to date, there has not been a development proposal. That does not mean that the City of Des Moines would not consider that in the future—we will. If we can be a partner in a development proposal that would include extension of utilities, that is what we

do, but at this time there has not been a proposal considered in the area. I do know that at this time, there is not money programmed in our capital improvement budget for this water main.

Chairperson Plautz thanked Mr. Ludwig and stated the real issue is what authority does the City Development Board have—what is the recourse and what does that section of the Code say regarding the three years and what does that really mean. This is the first time it has come before this Board.

Becky Ohrtman stated that in talking about the State Revolving Fund—that is something a municipality can apply for—for low interest loans and grants. We found that Avondale Hospital is not eligible because it is within a city limit, but the city is eligible for those SRF grants, so that might be another recourse. Chairperson Plautz replied that the ideal would be to find a way that it can be worked out between the parties, but in any case, I do not know if that is a consideration that we are faced with. I envisioned that at our meeting today, and I will defer to other board members, was to be strictly fact finding and that our staff can then take back the information and do reviews on not only the Iowa Code, but what was done previously, what the courts have said and any precedents that are out there. Jim Halverson agreed.

Troy Donohoe, homeowner in Avondale community, spoke of the perils of living with the terrible quality of water they are enduring now. Chairperson Plautz stated there is no question that this is a difficult situation going on here.

Chairperson Plautz asked if the Board or anyone had questions that would be helpful in what we are going to look at between now and our next meeting. Everyone has provided very good, detailed information.

Eric Dirth stated he could address the 368.25 provision and again, I cannot provide legal advice to any private party, this is just general guidance to the Board. I think the provision that is being cited is “if a city fails to provide municipal services or fails to show substantial and continued progress to the provision of municipal services to territory and voluntarily annexed according to the plan for extending municipal services filed to this Subsection 3, Paragraph n”—there is the provision I think is being identified. Then if you go to 368.11, subparagraph n, it says that it really does not define what a plan for municipal services is, it just says “a plan for extending municipal services to be provided”. Then if we look to our Administrative Rules, which does define what should be included in the plan for municipal services and the plan states “the petition shall also include information regarding the city’s proposal for providing municipal services, including, but not limited to water supply, sewage disposal, street and road maintenance and police and fire protection”. But there is no requirement under the current law for any of those to be provided and I think it is important to also note that I am only looking at this law as it is today. The law that applied in 1999, 2002, 2005, 2008—all changed. So, the law governing this particular annexation would potentially be different, which is why I am not making any specific determination here. But I will say, in my brief research, the law has only developed to help protect those being involuntarily annexed. Prior to 2002, there was no failure to provide municipal service provision at all—not to say that there is not something different as the law has changed. I believe, though, as we look

at it today, this is probably the most protection that a landowner being involuntarily annexed has and under the law as it currently states, there is no requirement under the statute that specific municipal service be provided—all that is required is a plan to be provided that identifies the services. What we have seen today is a plan that the City of Des Moines was required to provide in 2005 and in that plan, there was nothing that promised water. If the folks that were involuntarily annexed have some type of plan or proposal or promise that water service was one of the municipal services promised, then I think it warrants a further investigation into what law would have been applicable at that time and did the City of Des Moines comply with their promise. But as it currently sits, Iowa Code 368, Section 25 and administrative rules and the other associated statutes do not do anything to require water to be provided unless that was promised by the City.

Chairperson Plautz stated that continuing progress refers to what was promised and when it was promised in the plan. So, it is what, when and what is the certainty or proof of what was required that we have to look at. Then the question is still what is the recourse? Mr. Dirth replied that I am glad you brought that up because it does go on to say that the City Development Board may initiate proceedings so that is not a requirement—there is discretionary authority for what the City Development Board can do and I think there are a variety of factors to consider in that, including the creation of an island. If this is the issue that is before the Board for discussion, I think the information that is most relevant for the Board to consider is what were the promised municipal services; when were those municipal services promised; and has there been a failure to provide those promised services and if so, what would be the recourse?

Chairperson Plautz stated that is what our tremendous staff are going to work on between now and the next meeting.

Jim Halverson stated he wanted to direct his comment to Dr. Woodruff. One of the things I think is a very important distinction is that you are a property taxpayer. Many of the services you are lacking—with the exception of fire protection—are operated as a utility, which is not part of your property tax bill. I think that is a very important distinction to make. It is a service you are not receiving, but it is also one you are not paying for.

Chairperson Plautz stated he was going to move on to the next agenda item. Dr. Woodruff asked if it would be appropriate for them to be at the next City Development Board meeting and Chairperson Plautz replied that he should check with Matt Rasmussen to see if the subject is on the agenda.

Staff Reports

Matt Rasmussen reported we currently have four board members. He has contacted the Governor's Office regarding their appointment of a fifth member, but has not heard back from them.

We have no pending annexations so we most likely will not have a meeting in December.

Future Meeting January 10, 2024 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 2:34 p.m.

Respectfully Submitted,
Betty Hessing
City Development Board Administrative Assistant