

**State of Iowa  
City Development Board  
Meeting Minutes of March 8, 2017  
Iowa Economic Development Authority  
200 East Grand Avenue, 2<sup>nd</sup> Floor Smart Conference Room  
Des Moines, Iowa**

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

**Present**

Dennis Plautz, Board Chairperson  
Jim Halverson, Board Vice Chairperson  
Barbara Brown  
Jay Howe  
Sarah Beatty

**Others Present**

Matt Rasmussen, Administrator, City Development Board  
Betty Hessing, Administrative Assistant, City Development Board  
Matthew Oetker, Iowa Department of Justice  
Frank Murray Smith, City Attorney, City of Altoona & Attorney representing  
Homeowners Opposing Metro Encroachment (HOME), Ames  
Laura Carstens, City of Dubuque\*  
Wally Wernimont, Planning & Zoning, City of Dubuque\*  
Charlie Kuester, City Planner, City of Ames  
Judy Parks, City Attorney, City of Ames  
Ann Braland, Paralegal, City of Ames  
Kari Carney, 1000 Friends of Iowa  
Clyde Evans, Director, City of West Des Moines  
Gary Gehrke, Citizen  
Lemar Koethe, Citizen, Urbandale  
Nancy Deimerly, Citizen, Cumming  
Katie Hernandez, Business Development Coordinator, City of West Des Moines  
Elizabeth Meyer, The Hawk Eye Newspaper, Burlington  
Joe Rippetoe, Ames Resident  
Martha Atkins, Ames Resident  
Merlin L. Pfannkuch, Ames Resident\*  
John Marek, Mayor, City of Mount Union  
Linda Johnson, Mount Union  
Shelly Barber, Henry County Auditor\*  
Greg Moeller, Henry County Board of Supervisors\*  
Marc Lindeen, Henry County Board of Supervisors\*  
Gary See, Henry County Board of Supervisors\*

\*Participated via teleconference

**Introduction by Chairperson, Dennis Plautz**

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

All Board Members were present in Des Moines.

**Request for amendments to agenda**

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

**Consideration of February 8, 2017, business meeting minutes**

Motion by Jim Halverson  
Motion I move the minutes of February 8, 2017, be approved as submitted.  
Second Barbara Brown  
Roll Call All ayes. Motion approved.

**New Business**

UA17-03  
Dubuque Matt Rasmussen stated this was a five acre, 100% voluntary annexation request for the City of Dubuque. The annexation territory is located between Old Highway Road and US Highway 20/Dodge Street. The property is primarily farmland and contains a 50' W x 90' L steel utility building and three steel grain bins. The five acre annexation territory includes 0.48 acres of County right-of-way included in the annexation.

The owner desires to subdivide a lot into two parcels as part of preparing the land for future changes in ownership. As part of working with the City and County of Dubuque to plat the property as desired, it was found to be most conducive to annex and re-zone the 5-acre parcel and adjoining county right-of-way into the City of Dubuque. The 2030 Future Land Use Map designates this property for single-family or duplex development.

City services provided will include water and sanitary sewer extension in the future, police, fire and emergency response.

Proposed annexation territory is not subject to an existing annexation moratorium agreement and it does appear to be complete and properly filed.

Available from the City of Dubuque to answer questions from the Board were Laura Carstens and Wally

Motion by  
Motion

Wernimont. Barbara Brown thanked Dubuque staff for a very nice packet.

Jay Howe

I move the Board find UA17-03 as complete and properly filed and in the public interest and that it be approved.

Second  
Roll Call

Sarah Beatty

All ayes. Motion approved.

NC17-04  
Ames

Matt Rasmussen explained this was an 80/20 voluntary annexation for the City of Ames. Mr. Rasmussen stated there were a couple minor corrections to the case file brief—the total acreage is 82.693 acres and the non-consenting acres are 14.405 and .098 of right-of-way.

The City of Ames received an annexation petition from Hunziker Land Development LLC, representing this parcel owned by Erben and Margaret Hunziker Apartments, LLC. The owner refers to it as Auburn Trail site. The proposed annexation also includes four parcels of land owned by non-consenting owners. The Auburn Trail development is the last significant development parcel along Hyde Avenue.

The proposed annexation territory is designated urban residential in the Ames Urban Fringe Plan.

This Hunziker property was the subject of a pre-annexation agreement in 2013. The owner entered into an agreement with the City of Ames for, among other things, cost sharing on infrastructure and to seek annexation. The proposed annexation is consistent with the 2013 agreement.

Full city infrastructure has been installed. Sanitary sewer and water have been installed and connection districts created to recoup those costs. Individual developers have bought out the Xenia Rural Water rights in order to allow connections to City of Ames public mains. Non-consenting owners are under no obligation to disconnect from Xenia and connect to the Ames water system, but if they do, they are responsible for any fees associated with the buyout of Xenia rights and the connection district fees. Non-consenting owners are not obligated to abandon their private septic systems and connect to the city system unless their system fails and their building is within 200 feet from a public sewer main. If they choose to connect to the Ames sanitary sewer system, they are subject to the connection district fees. Hyde Avenue was recently paved. The City of Ames provides snow removal and maintenance on the entire portion of Hyde Avenue up to 190th Street, although portions of the road still lie

within unincorporated Story County.

The annexation proposal includes county owned right-of-way.

The proposed territory includes non-consenting owners so that future annexations (also under the 80/20 allowances) would allow the future annexation of the remainder of the North Growth Area without further concerns about creating islands or creating awkward 50-foot corridors of unincorporated land. This scenario allows the full incorporation of the North Growth Area and requires the annexation of four non-consenting owners, which allows for more uniform boundaries.

Chairperson Plautz stated we would move to the City of Ames or their representative. We did have one filing by Mr. Frank Smith regarding this annexation. Matthew Oetker stated as matter of procedure, perhaps it makes sense to let Frank Smith go first so he can identify issues he has.

Thank you, Mr. Chairman. Frank Smith, 4215 Hubbell Avenue, Des Moines, Iowa, representing a non-profit corporation whose members are affected by this annexation proceeding. I filed a Motion to Dismiss this annexation as not being either complete or properly filed for the following reasons.

First, technically the application or petition that is filed with you is supposed to include a copy of the City resolution approving the annexation and that resolution is supposed to state the reasons for the inclusion of non-consenting property owners—for example, to provide more uniform boundaries or to avoid the creation of islands. The resolution that was submitted as part of the packet does not include that statement, so technically, on that basis alone, it is not in compliance with the Administrative Code requirements.

Secondly, the annexation on its face, shows and specifically states that the non-consenting property owners are not being included for purposes of avoiding the creation of an island, nor are they being included for purposes of providing more uniform boundaries.

The application as submitted on page six states, and I quote, “The proposed territory includes non-consenting owners so that future annexations (also under the 80/20 allowances) would allow the future annexation of the remainder of the North Growth Area without further

concerns about creating islands or creating awkward 50 foot corridors of unincorporated land.”

I don't know if members of the Board were provided a copy of my motion this morning—okay, you have it—attached to the motion are a series of exhibits. Exhibit 1 shows the plat of survey of the land that is owned by the consenting property owner. The Plat of Survey reflects that as of January 3, 2017—and I think it was recorded either January 7 or 10—that there was a change in the legal description. If we look back, we would find that the original annexation application filed by this property owner back in 2014, included the entire tract of land. That was not attached to the filing from Ames, but my guess is that is the fact of the matter. That annexation agreement that the property owner had, which I don't yet have, but will make a record of later, apparently does include some provision for development terms and provides that if other properties don't voluntarily annex, this land would be reconfigured to provide a fifty-foot corridor. This is what has happened with this Plat of Survey.

If Board members would respectively look at Exhibit 2, Page 1, this is Ames' mapping showing the relationship of the consenting and non-consenting property owners, whose properties lie immediately east of the land owned by the consenting property owner.

As the Board members can see, the City of Ames surrounds these properties, in essence, and the inclusion, just on its face, as a matter of course, cannot be disputed that these property owners who are non-consenting, are not being included to avoid the creation of an island. That's simply not the case at all. Nor, can it really be disputed that including them provides a more uniform boundary to this annexation. The uniform boundary would be the property itself, without the inclusion of these property owners—not the serrated boundary edge that's created by including these property owners.

Exhibit 2, Page 2, reflects highlighting showing the current boundaries of the City of Ames in an orange, in relation to the consenting property owners land and the non-consenting property owners land and the land that's not being annexed as a part of this proceeding, specifically the Sturges property, which is a larger tract of thirty or forty acres, and then there is another property owned by the Eness interest that is not being annexed as well.

Exhibit 2, page 3, shows the configuration, to the Board, of what this annexation would look like if it was approved. As the Board will be able to see by subsequent exhibits, it leaves a very narrow 50-foot strip, no public service, no road, no nothing—just 50 feet to connect and then reconnect at two junctures—one in the Sturges property on the south and east corner and then the Sturges property in the south and west corner out to unincorporated Story County.

Exhibit 2, page 4, shows Ames' mapping with my orange colors, just to show the current context of boundaries of the City in relation to this area that is not annexed. Again, with Ames' configuration showing land owned by the consenting as well as the non-consenting property owners.

Exhibit 2, page 5, shows a wider range view of what this annexation would look like if completed in relation to the greater area of unincorporated Story County.

I provide the mapping in support of my Motion to Dismiss simply to highlight the fact that on its face, and by the terms of the language in the petition itself, these properties are not being included to avoid the creation of islands or to provide more uniform boundaries. They're being included because of some plan down the road to do another 80/20.

I don't think this case, even at this stage, needs to go to public hearing because based on their own words, this does not meet the statutory definition of an 80/20 annexation, which requires the non-consenting property owners may only be included to avoid the creation of islands or to provide for more uniform boundaries.

There are some other technical things that I found in the annexation application that are not exactly accurate, but at this level, I don't think they rise to the level that this Board would consider rejecting, but I would call to the Board's attention, the filing does not include with the resolution, a map of the annexation territory as is required by your rules, something that could be readily fixed, and I noted that the calculation, and Mr. Rasmussen has corrected that in the record today, of the territory for purposes of calculating consenting and non-consenting, included the public right-of-way. If the Board would look at Exhibit 1, you will see on the east side of Exhibit 1, an example from the survey—it's hatch marked—it's a little bit more than an acre of public right-of-way along the east side, which was included in the original calculations. I

have not gone back through Mr. Rasmussen's calculations, but I'm assuming they are correct because this information was readily attainable through the assessor's website for Story County.

One other technical thing is that this land that's annexed was not the land that's part of the annexation application originally. In other words, they had their township and Board of Supervisors consultation meeting—I think they sent their notices out December 28<sup>th</sup> and they had the meeting on January 4<sup>th</sup>—right over the holidays—so there is only 2-3 days—and the date they had the meeting, this plat of survey had not yet been approved by the auditor and the subdivision accepted. Now again, probably not fatal in the scheme of things and it can be corrected, but I just called it to the Board's attention, that technically it doesn't follow what the rules require when there is a submittal for annexation.

To recap, primarily because on its face, this annexation reflects that it is not including non-consenting owners to create more uniform boundaries or to avoid the creation of islands, I'm respectfully requesting on behalf of my clients, that the Board reject the annexation filing and dismiss it at this stage of the proceedings. Thank you, Mr. Chairman.

Chairperson Plautz stated that Mr. Smith has raised some technical issues and a substantive issue. One question is, on the substantive issue, is that something that's generally considered at the hearing? Matthew Oetker replied that the purpose for inclusion of non-consenting, I tend to believe that ultimately, that's a board inquiry that would be made at the point of hearing. Chairperson Plautz stated he's just throwing it out to get some feedback from everybody. Chairperson Plautz stated the technical points he would defer to Matt. Matthew Oetker stated that as a matter of procedure, perhaps allowing the City an opportunity to respond. Chairperson Plautz agreed.

My name is Charlie Kuester with the Planning Department for the City of Ames. Working backwards here, the legal description of the initial annexation petition was for the entire Cochran Farms piece. It could not be annexed in its entirety because then it would create a very large island. After direction from the City Council, we created a legal description that carved off a fifty-foot corridor at the northwest and then a fifty-foot corridor at the northeast portion. That legal description was based on the initial legal description of the submitted plat, but it

excluded those fifty-foot corridors. That was what we submitted to the Township Trustees and County Supervisors for the consultation. On a parallel tract with that, the applicant was submitting a final subdivision plat to create that out-lot Z, which is the exact same parcel that we created with the initial legal description, minus the fifty-foot corridor. The description has consistently addressed the same parcel of land, although the description may have changed over time. You can describe a parcel of land any number of ways. In this case, it ultimately became a subdivision plat and was recorded with the County.

The annexation was reduced in size from the initial submittal. I believe the initial submittal noted was 69.9 acres, but it was ultimately reduced with the reduction of those fifty-foot corridors, to 68.19 acres.

If the petition were to be dismissed, we would still go forward with the annexation consenting, which would still result in that fifty-foot corridor. That would be an annexation that would not require Board action. The City could do that; our goal, as the City, is to create a more uniform boundary by bringing in what we can with the 80/20 allowance now and completing that annexation, which I could talk to you more about at the public hearing. I would say this annexation request does create more uniform boundaries. It does bring in both sides of a county road—half of it will be a city road and half of it will be a county road—so bringing in the eastern part of that road to the greatest extent possible, except that little fifty-foot piece to the north, does create a more uniform boundary for the provision of emergency, fire and police services.

We have already brought-out sewer and water to serve the territory. The owners who are non-consenting, are under no obligation to connect.

The certified copy of the resolution, it does include the map—the resolution references the map—I did not include it in the application. I believe that same map is replicated in the submittal in numerous places, so in the interest of brevity, it was not actually attached to the resolution in the submittal, but I have a certified copy that I will give to Mr. Oetker or Barbara, or whoever would like to accept it. Mr. Oetker gave to Betty Hessing to include in case file.

Charlie Kuester stated that public land is defined in the Code of Iowa as owned by the federal government, the



State or political subdivision of the State. The definition is in Section 368 of City Development Board, Code of Iowa. Our argument is that these property owners own land to the centerline of the street. The County has possession of an easement over that road right-of-way. Their ownership by deed is to the centerline of the road. If the road was owned fee simple by the County, we would have excluded that from the calculations, but by the definition of public land, I don't believe this is public land. It is private land upon which a roadway easement is placed.

I will concede that the resolution was incomplete in not stating the reasons for the inclusion of the non-consenting owners. I don't believe that is a fatal error. I believe there is enough evidence in the submittal of the record to demonstrate why we were including that and I would ask the Board to accept it as substantially complete and schedule a hearing.

Matthew Oetker thanked Chairperson Plautz. Mr. Smith E-mailed the motion to me earlier today, but due to other commitments, I haven't had a chance to review it until I got to the meeting this afternoon. So, I'm going to give you my gut reaction to this. With respect to the map and the resolution, I think Mr. Smith would concede that we could fix that as a technical defect. I can't find in the rules where they must be combined. That could be fixed, if it hasn't already. The calculation issue, I think it's been an issue that hasn't been answered as to whether the property owner, or the governmental entity owns to the centerline. I can understand the city's position and ultimately based on my recollection of Mr. Smith's argument, I think he's willing to concede that perhaps the figures are correct one way or another at this point, based on what Mr. Rasmussen read. Mr. Smith stated he would concede only that it doesn't make a difference to the extent of the 80/20 calculations. Mr. Oetker stated we are not going to reach the 20% no matter what. Mr. Smith agreed that was correct, but that he called it to the Board's attention to demonstrate some issues with the filing.

Matthew Oetker stated that Mr. Smith's last point, gives him cause for concern, especially in light of the city's concession that the resolution did not comply with the rules. Rule 7.2(3) says—A City proceeding with an 80/20 petition must provide . . . and then a laundry list of materials, last of which is subsection g, "A statement in the City Council's resolution approving the annexation which sets forth the reason(s) that land is included in the

proposal without the consent of the owner(s).” I think the resolution is on page 40 of Ames’ packet. I couldn’t find a statement in the resolution indicating the reasons for inclusion of the non-consenting. The City argues that the City has not substantially complied with the rules—that must provide, coupled with a specific and explicit statement leaves me to believe that we could have some concern there. If I would be called upon to make an opinion at this point, I would tend to believe it’s not complete and properly filed.

Chairperson Plautz stated he was not following the timing of all these legal descriptions and changes. Could someone give me a time sequence of all these changes, relative to city hearings, filings etc. Frank Smith stated he did raise that as an issue. It appears to me that the one in the packet was dated in 2016. The packet references an annexation agreement from 2013 or 2014, which was not included in the packet and some other agreements that went with that. When the matter went to the Township Trustees and Board of Supervisors, this Plat of Survey, and that’s why I included it because it shows the recording date, had not been recorded at the auditor’s office and therefore, the parcels had not been subdivided as a matter of record. When they had their consultation meeting, as I understand the record and what’s reflected, that had not been corrected. I would have to look back at the date they published their notice, but when they went to Council, it had been. I acknowledge that it is a smaller parcel than the original parcel, and I know what the general rule is as it relates to that, but that’s the sequence as I understand it. Chairperson Plautz stated that helped.

Matthew Oetker stated all the issues are fixable or issues the Board can take under consideration at the hearing, except for the resolution. Charlie Kuester stated he would argue that the last point is not in need of a fix. It’s always been described differently, but it’s always been mapped as the same territory. What became Out Lot Z was described differently when it went to the Township Trustees. Mr. Oetker agreed except when we’re talking about the legal description, the size and things like that. What I get hung-up on is the statement within the resolution for the inclusion of the non-consenting owners.

Chairperson Plautz asked if there were any other comments and then he would go back to Board for questions and comments.

Mr. Frank Smith stated he would only make a record on

one other point, and I certainly respect the opinion of Mr. Oetker, but this particular situation is not unlike a motion for summary judgement in a case, where the facts are undisputed and it's a matter of simply interpreting the law and here they're by their own statements in the application—they say, "It's included, not for purposes of avoiding the creation of islands and not for purposes related to providing more uniform boundaries, but so that future annexations essentially can be done." Well that's not why you do an 80/20 and that's what I want to make for my record. The Board may take a different view of it and I certainly understand, it may well. Mr. Oetker responded he equates this more to perhaps a motion to dismiss, which this is entitled in which case factual resolutions are—we take the anomaly parties facts at face value and resolve it at a hearing. Mr. Smith said Mr. Oetker's point is well taken. Mr. Oetker thanked Mr. Smith.

Chairperson Plautz asked if the Board had any questions.

Jim Halverson stated that like Dennis, he drew a similar conclusion almost to the point where you could bifurcate these issues—Matt, you elude to a "must requirement" or a "mandatory requirement" that the provision must be within the resolution that the Council approves—that is omitted. Nobody is refuting the fact that is omitted. On its face, we have no choice but to render this as incomplete and not properly filed. The balance of the issues outlined in Mr. Smith's motion would be more appropriate to hear at hearing and discuss more thoroughly. Barbara Brown and Chairperson Plautz agreed with Mr. Halverson.

Chairperson Plautz stated we've seen a lot of these cases that end up going to court over technicality things and I don't think it's in anybody's best interest when we have a reservation here. I wouldn't think the City would necessarily want to do that. I would be on the side of voting on this being incomplete and not properly filed.

Jim Halverson stated that it does create an opportunity for the City to refile as a non-urbanized voluntary annexation instead of an 80/20. That's obviously the city's prerogative.

Charlie Kuester asked if the City could refile in the future if it were to be dismissed and the Board replied that they could. Matthew Oetker suggested that the City would have to do over and get a new resolution. Chairperson Plautz asked for more comments and there were none.

Motion by Jim Halverson  
Motion I move the Board find NC17-04 as incomplete and improperly filed and should not proceed to public hearing.

Second Jay Howe  
Roll Call Beatty-abstain; Howe-aye; Brown-aye; Halverson-yes; Plautz-yes. Motion approved.

UA17-05 Matt Rasmussen explained this is a 350.62 acre 100%  
West Des Moines voluntary annexation petition for the City of West Des Moines. The property is encompassing land located along the east right-of-way line of Interstate 35 generally between SE Adams Street and Cumming corporate limits. The annexation consists of eight parcels, all of which are considered to be agricultural property, according to the Warren County and Madison County Assessors. The City of West Des Moines's Comprehensive Plan indicates that the property has land use categories of Office and Support Office. In creating the Comprehensive Plan, which was approved in 2010, the City employed Smart Planning Principles.

The purpose is regarding Microsoft which is purchasing a 200-acre site just south of the current corporate limits of the City of West Des Moines on which they are proposing the construction of a 1.7 million square foot data center. The City is extending streets, water and sewer lines to service the site. All of the infrastructure work will be completed by the end of 2018. The City of West Des Moines is prepared to provide police, fire, public works and emergency medical services to the annexed area. There is a 28E Annexation Agreement between the City of West Des Moines and the City of Cumming. This annexation falls within that agreement. Mr. Rasmussen reported to the Board that this paperwork appears to be complete and properly filed.

Clyde Evans with the City of West Des Moines was present to explain further and answer questions of the Board.

Mr. Evans pointed out that there is a 50-foot strip at the south end of this property that is not going to be annexed to avoid the creation of an island to the properties back to the east. The point of connection up where these corporate boundaries are is 300 feet, which is the right-of-way for the interstate. Mr. Evans displayed area on map. It is consistent with annexation agreement. One of the issues of why we need to leave the 50-foot strip there is because there is an 80-acre parcel there that would go into the City of Cumming so it would require Cumming to also do an annexation and they're not ready to do that at

this time.

Chairperson Plautz asked if Board members had questions. Jay Howe asked about the desirability of jumping over the interstate highway in terms of contiguity and extending into, what appears to be, natural areas and farmland areas. Could you give us some picture of the potential development opportunities other than this for an industry of that type in West Des Moines.

Clyde Evans explained the City of West Des Moines worked very closely with the Microsoft people. We identified thirty potential sites for them to look at and this is the site they settled on. With the public improvements we are going to do for the Microsoft project, you're going to see a lot of urbanization occurring in that area because of the extension of Veterans Parkway as well as municipal water and sanitary sewer into that area. To the west, there is already a development that does reach into Madison County that will be occurring here within the next year. That property owner has bought an additional three hundred acres that's unincorporated right now, but will be added to their property to the west. This area is within our area of interest. It's been the City's intent that this be developed at a more urban scale in the future, as we've identified in our Comprehensive Plan. Veterans Parkway is a major arterial roadway that provides a very significant loop of the arterial road system throughout this portion of Madison and Warren Counties.

There were no more questions from the Board. Chairperson Plautz asked if any others would like to speak.

Nancy Deimerly, 1136 N. 60<sup>th</sup> Street, Cumming, which is just on the other side of the fence of this Microsoft project. Ms. Deimerly spoke in opposition of the annexation. Chairperson Plautz explained to Ms. Deimerly that the issues she brought-up are local issues, which the City Development Board has no control over. Matthew Oetker explained to Ms. Deimerly what the duties of the City Development Board are.

My name is Kari Carney and I'm with 1000 Friends of Iowa. My address is 5912 25<sup>th</sup> Avenue, Norwalk. Ms. Carney stated she understands it's not the Board's authority, but the sentiments that were spoken by Nancy Deimerly are shared by a lot of people. This is a beautiful area of ground—it's natural farmland—there are endangered species of plants in this area. Ms. Carney spoke against the annexation and gave her reasons why

she and 1000 Friends of Iowa think it's a bad idea to annex this property.

Chairperson Plautz thanked Ms. Carney and asked if anyone else in the audience would like to speak and no one did. He then asked the City for comments based on what they just heard.

Clyde Evans responded by saying most of the issues raised were more of land use issues or infrastructure issues. They are not really dealing with what is before this Board. The annexation we've presented to the Board is consistent with Board policy and State law. In terms of the point of connectivity and not creating an island for the area to the east of I-35. We have never asked for funding from the MPO for Veterans Parkway because we were not ready to start construction of it at that point in time. All the road improvements are being financed through a development agreement that we have with Microsoft. Microsoft asked for a delay in the project. They received funding from IEDA, but that's only because they would have three projects under construction at the same time. It has delayed this project for a short period of time, however, they have full intentions to go forward with the project. Microsoft actually signed the annexation papers in January.

Chairperson Plautz went back to the Board for questions and Mr. Evans answered a couple questions from Board.  
Jim Halverson

Motion by  
Motion

I move the Board find UA17-05 as complete and properly filed and in the public interest and that it be approved. Mr. Halverson gave his reasons for the motion. My basis for the motion is largely due to some things that have not been eluded to. It's clearly part of an urbanized area. I would say that even if Microsoft is on or off the table, it's somewhat immaterial. The fact is, this application is a voluntary application; it is part of an urbanized or urbanizing area and is also in compliance with a 28E Agreement entered into between the City of West Des Moines and Cumming and that is why I'm supporting it.

Second

Barbara Brown

I feel the landowners, as we well know, and as our attorney and the City of West Des Moines has indicated, that the rubber is going to meet the road when Microsoft comes before West Des Moines and decides what they want to do with that property. That's when the neighboring landowners come to them and make sure and do just exactly what you did today—to keep as much of your country as you have now, possible. As you well

know and have indicated, it's going to take several years for them to get this particular project done. That gives you that much time to work with them and the City of West Des Moines and also work through Cumming to make sure that your property is not unduly damaged to a point that you are not happy with. Nancy Deimerly replied that she just wanted them to do what they said they were going to do. Kari Carney stated it is not an urban area right now—it's all farmland. Ms. Brown stated like other places that we do this kind of annexation for. It's coming at you—it may be years—but it will happen.

Chairperson Plautz stated we have a motion and a second and asked if other Board members had further comments and they did not.  
All ayes. Motion approved.

#### Roll Call

#### D17-01 Mount Union

Matt Rasmussen explained that before you today is a discontinuance for the City of Mount Union. I met with the Mayor of Mount Union a couple weeks ago, and he delivered me a packet of information. Just a little background, the City had passed, per Iowa Code, a resolution of intent to discontinuance. The City did subsequently hold a public hearing regarding discontinuance, providing the proper notice, which was indicated in the packet. The City held a hearing on the discontinuance and the City Council passed a resolution of discontinuance. Also within Iowa Code is a provision where within twenty days of that resolution, members of the City can petition the City, requesting that the issue be put to a vote. That did occur, and it did go to a vote. That vote was held on November 8, 2016, and the result was 32 in favor of discontinuance and 31 opposed. That one vote in favor came in as an absentee vote a week or so after election day. Before the Board today is that discontinuance.

You have several items in the Board packet regarding finances—an agreement that the City has with RUSS and something in there regarding the Des Moines Area Regional Solid Waste Commission. Those are items that this Board would adjudicate as claims against the City. Matt Rasmussen stated that it appears to him that the City has followed Iowa Code in the discontinuance process and I believe all the paperwork is in order.

Mayor John Marek was present to address the Board and answer questions from the Board.

Mayor Marek stated it's never been the idea that when you run for an office that you would be the one to be the

last one in that office. Being a small Iowa town with a lot of roots in the area, it's a very hard and difficult thing. It wasn't taken lightly by any means; it was a very close vote. It was the largest voting outcome that we've seen in many years. It takes strong leadership to look at what the reality is as far as future finances—where are City debt increases by 23% and our revenues drop by 17%. Two opposite ends. At this point in time, we have the money to pay off our debts. If we waited any longer, where it's forced to be done, we would become a burden to the communities around us. Now, we have the means to do so.

We're looking at approximately \$60,000 by the end of the month sitting in the accounts to pay our bills. There are the contract issues between RUSS and Des Moines. We have researched those and I have gathered more information since I sent packet. We could not find a contract with the Des Moines Solid Waste Commission—I'm not saying it doesn't exist—we just don't have a copy. Mayor Marek went to the Council minutes and he found that the Council did not approve a contract with the Des Moines Solid Waste Commission. The City sent a letter of intent only and so we basically had a thirty-year gentleman's agreement.

The RUSS debt is unconstitutional because it exceeds the City's debt limit established by Title 11, Section 3. As a City with our current level of income, we can only go into debt \$160,000. The debt that has been put upon us by the contract is \$270,000. It exceeds the constitutional debt limit. Also, RUSS does not have the legal right to pass on that debt to the City. It must be approved by the USDA who holds the loan. As we close out, we'll be a better community than we were as a city. We've gotten too small to financially go on. The City of Mount Union is turning over a city maintenance building, a plow truck and a community center. Mayor Marek stated he was here to assist.

Matt Rasmussen stated that one of the issues before the City is a defamation lawsuit filed against the City. A hearing was to be held on Monday, March 6. Matt Rasmussen didn't know the outcome of that hearing, but it's apparently been set for trial in December of this year. Matthew Oetker stated the City has filed a motion trying to substitute itself as a named defendant with this Board, so if there is a judgement entered, it will be entered against this Board. Mr. Oetker explained he has filed a resistance—we are not a party to that case—no Board action has been taken. We're statutorily immune from



defamation claims.

Chairperson Plautz asked who filed to attach the City Development Board and Mr. Oetker replied the City had. Mayor Marek stated that the City did. As the City is winding down, the only two options that the City saw was that we would replace the City with the Board since they would be overtaking the City properties and such. We never thought it would go anywhere. The other action is that the case would be dropped because there is no longer a City of Mount Union, so therefore, the legal case would be dropped. Mr. Oetker had spoken with the City's attorney at one point and he thought that was the direction they were headed, but things did not happen as I thought. At this point, I've filed a resistance on behalf of the Board even though we're not a party to this case.

Chairperson Plautz asked what insurance a defamation lawsuit would come under. Mayor Marek stated the City funds were illegally taken from the City of Mount Union. We're cash basis only, so we missed the deadline of paying our city insurance. While the insurance was not cover, the insurance company has refused to cover such action. At the meeting on Monday, the judge postponed the hearing until after this City Development Board meeting to see if the City was unincorporated. Once it unincorporates, then the judge will make his final ruling.

Chairperson Plautz asked Mr. Oetker if he could foresee any issues with the Board taking action today. Matthew Oetker stated he expected that someone would file something with this Board to ask this Board to do something, but that has not happened. Discontinuance has been going on for some time and the lawsuit has been going on for some time. From what I'm hearing today, there are more issues that the Board was not apprised of in the process. Chairperson Plautz asked if we should table action today on discontinuing until the unknowns sort themselves out. Matthew Oetker replied he expected someone to file something asking for that, but in light of the fact that we have nothing, I don't see any reasons why we should deviate from our normal practice. In Mr. Oetker's resistance to the Court, in a footnote he put that he anticipated the Board would formally discontinue the City of Mount Union.

Chairperson Plautz asked if there were any questions from Board and there were none. He then asked if anyone present wanted to comment.

I am the one who filed the defamation lawsuit against the

City. My name is Linda Johnson. I'm a citizen of Mount Union. We thought this would be settled before this came to the City Development Board. I know we can't stop this discontinuance; we tried. The only good thing is the Council and all the administration will be gone and we can start to heal our wounds. It wouldn't be this way if it hadn't been for them.

Chairperson Plautz thanked Ms. Johnson and asked if anyone else had an opinion or comment and no one did. He then directed it back to the Board for deliberation.

Barbara Brown stated it was a very good, thorough packet—more than anyone would ever want to know. It's always sad when a City comes to us for discontinuance. This is not the first time that we've looked into eyes that have lived in a city for generations and it's tough to see it slip away. There comes a time when economics plays a big part. In one instance, we had IDNR come to a city and say you must do this and there was no way they could do that. I'm sure everyone feels sad to lose a city in Iowa, but when everybody has been everything and the money has dribbled out, it's a sad situation. Thanks for the packet.

Mayor Marek stated he did receive one piece of information yesterday in the mail. The city's insurance company has given their 60-day notice—we were looking for the city's insurance to end in April, however they have given notice that it's going to end today. On February 20<sup>th</sup>, we gave the insurance company a letter of a 60-day notice and our insurance is up in April and so when we got this letter yesterday saying March, I needed to let the Board know this came up. This is not what our intention was, but it's something the insurance company decided on their own to do. Matt Rasmussen stated the letter reads the City's insurance is to end on March 13, 2017. Mayor Marek stated it's still earlier than what we had expected.

Jim Halverson asked if there were any exposure related concerns that we may have in light of this information. What we do today is initiate a process—it doesn't mean that it's just ended and that all assets are disposed of. Matthew Oetker replied that by law, once the Board makes its motion, that City ceases to exist. We will have a period which we are to accept claims against the City, adjudicate those claims and then pay them. The only action we're taking today is agency action and should anyone wish to challenge our action, it's under 17A.  
Barbara Brown

Motion by

Motion I move the Board acknowledge that the City of Mount Union, Iowa, has been discontinued and direct staff to take appropriate steps to complete the process for adjudication of claims.

Second Jim Halverson  
Roll Call All ayes. Motion approved.

**Staff Reports** Matt Rasmussen reported upcoming annexations may include Marion and Ankeny.

**Future Meeting** April 12, 2017, at 1:00 p.m., City Development Board Business Meeting at IEDA, 200 E. Grand Ave., 2<sup>nd</sup> Floor Main Conference Room, Des Moines, Iowa.

**Adjourn** 2:35 p.m.

Respectfully Submitted,  
Betty Hessing, Administrative Assistant