

The Hartington City Council met for a public hearing and regular meeting on September 23rd, 2024 at City Hall beginning at 5:00 P.M. Notice of time and place of the meeting was given in advance notice by posting. Notice of time and place of the meeting was communicated in the advanced notice to the Mayor and Council.

Present were Mayor Becker; Councilman Sudbeck, Kathol, and Bartling; City Clerk-Treasurer Bencoter, Deputy Clerk Schulte, and Legal Counsel Nikki Brandt. Councilman Christensen was absent.

Mayor Becker opened the public hearing for the fiscal year 2024-2025 budget at 5:01 P.M. He requested everyone be respectful and courtesy and to keep comments to five minutes to allow everyone to have a chance to speak. Marilyn Schumacher asked what current debt payments were included in the budget. Mayor Becker asked Clerk Bencoter to give explanation on current debts we are paying. She stated our current debts are for the UV Sewer Plant Bond, Refunding/Complex/Street Bond, Fire Hall Bond, Fire Equipment, Downtown Revitalization Bond, Water Quality Bond, Radio Read Meters Bond, 2020 Street Improvement Bond, Garbage Truck loan and City Shop Bond. Richard Pedersen asked if we leased or purchased the Skylon at the last meeting. Mayor Becker stated we are discussing the City budget and all questions must pertain to the City budget, and explained public comments pertain to only items that are on that agenda. He stated we are not speaking about the Skylon at tonight's meeting and public comments must relate to only items that are on the agenda. Lee Carl asked if the Library received what they asked for in the budget. Mayor Becker stated yes, they received more money than last year's budget, and Clerk Bencoter elaborated the Library budget was approved for 190,000. Tom Miller asked if the paving project was going to be pushed back because of the Skylon, or have a paving district this year as he had anticipated. Mayor Becker explained we have a one and six year plan that allows Council to be able to do certain paving projects with a one year plan or a six year plan, but they are costly projects that take time to establish and would like to try and piggy back off of another larger paving project that would help in lowering costs. He stated currently we do not have any plans to do any paving this year. Tom Miller asked if we had any estimates on when we would do the paving in the one and five year plan. Mayor Becker corrected that it was the one and six year plan and that those plans are in place to be able to have the option to do those. The one year plan options can be done in the current budget year if council would choose. He was hoping that Norbdy would have gone sooner this year to be able to piggy back, but it has taken longer than expected. Tom Miller asked if the streets would be paved in the Nordby project and Mayor Becker stated they were, except for the winged streets. Councilman Kathol clarified the streets in the Norbdy addition are going to be paved, at the expense of the Nordby developer, not the City. Rena Resig asked how the water treatment facility was and Councilman Bartling clarified we don't treat our water, it's our sewer treatment plant. She asked if the plant needed to be updated soon. Mayor Becker stated it has been being fixed as we go and would like to do a project there. We have been applying for grant money without success and are hoping to do something within the next 5-10 years, hoping to get some grant money to keep the costs down. There were no further comments and Mayor Becker closed the public hearing at 5:13 P.M.

The 2024-2025 property tax is set at 731,035.79 with the general being 516,035.79 and the bond \$215,000.00. The levy decreased from 66.2 last year to 60.8 this year.

Mayor Becker called the regular meeting to order at 5:13 P.M., followed by all present reciting the Pledge of Allegiance.

A motion to approve the minutes from the September 9th, 2024 meeting and September 17th, 2024 Special Meeting was made by Councilman Bartling and seconded by Councilman Sudbeck. A roll call vote was taken. Bartling – yes, Kathol – yes, Sudbeck- yes. Motion carried.

Mayor Becker introduced the next item, Jamie Arens – Improper Procurement Procedures, Insurance Proceeds – Bidding of Insurance Projects. Mayor Becker stated that he has spoken with Jamie Arens in his office, he has talked with Councilman Bartling who is in charge of the swimming pool, Councilman Kathol who is in charge of the parks and they have tried to be as open as they can as far as how the procedure went with fixing those roofs. He has been in contact with Clerk Bencoter, trying our best to answer questions there, have approached our Legal Counsel Brandt and unfortunately made a sort of threat to sue the City of Hartington so we would like Jamie Arens to say what he would like to say, but we have been advised by Legal Counsel Brandt that she will be answering all questions from him.

Jamie Arens asked why Council cannot answer and he stated he did not make a threat to sue to the City. Legal Counsel Brandt stated it is her understanding that he is accumulating information and potentially a lawsuit against the City and she has advised Council not to answer his questions going forward and should be advised to her. Jamie Arens asked Legal Counsel Brandt why there was no procurement for bids. She stated that question has been answered previously, but when the bid project came in, the City was not aware of the \$30,000 cut off and unfortunately it was not met and she can assure him moving forward that will not happen. Jamie Arens stated he spoke with Mayor Becker, Councilman Bartling and Kathol on August 26th and made them aware of it and they still proceeded to

move forward. She stated she is not aware of that at this time so she cannot speak to that and has advised them not to answer. Jamie Arens stated they moved forward with procuring bids after they were notified and chose not to stop the process and procure the bids as they should have and the project was completed the Monday after he spoke with them. She stated she would have to go back and look at dates and speak with the Council before answering that question. Legal Counsel Brandt stated she has tried to resolve this with him and asked for a solution and he has offered none. She stated she can assure him it will not happen again, but does not know what resolution he is looking for. He asked if his questions are going to be answered in writing. She stated you may submit a public records request, but the City has no obligation to answer questions further. You have spoken to them and they have answered your questions to the best of their ability. He stated he did not believe they had.

Tom Miller stated there are a lot things done in error that haven't been answered and having the last meeting at noon was a trick. Legal Counsel Brandt stated we have not been hiding anything and have admitted we made a mistake and Tom Miller stated he disagrees with that comment. She stated there are legal avenues to be taken and legal documents that can be filed to request that information if it's wanted, we have explained it was an error. She explained by State statute on bids over 30,000, the City is supposed to publish there are bids being taken which was not done for that project. The Council got a couple bids for the storm damage to the roofs, approved a bid, and the project moved forward. She stated on August 26th, Jamie Arens states he has spoken with multiple people and stated he got different answers, and he is upset with that. She stated she spoke with Jamie Arens and she had not advised City Council of the requirement and the project was just over \$30,000. Had it been done as two separate projects, they were under the \$30,000 and there is nothing further we can do at this point. She stated if you would like to file a civil law suit you would need to contact an attorney as she cannot advise private citizens as the City attorney since she represents the City of Hartington and not the private citizens. She stated she spoke with Jamie Arens, asked if he had any resolutions to offer and he offered none and she is not aware of anyone who has been damaged by this. She stated there has to be a monetary damage by the City violating this rule. Tom Miller stated he wanted Council to be open and didn't want to hear bits and pieces and gossip outside of this meeting. Legal Counsel stated that is why we added Jamie Arens to the meeting because he went around getting bits and pieces from each party independently and so we are giving him his time in front of the Council if he has something to say.

Jamie Arens stated he wanted the City to be transparent. Legal Counsel stated we have explained to him and he doesn't agree with it. Jamie Arens asked Legal Counsel Brandt what she thinks should be a resolution, and she stated she does not know how to resolve this for him in a way he would appreciate. He stated Councilman Kathol and Bartling told him people came to them and that was how the project was bid and asked him if he bid the shelter house siding and have we made that available to the public. Legal Counsel stated all bids are available to the public as it is stated in our minutes when we are taking bids. She stated the agenda states when they are reviewing bids and the City is not responsible to post any projects over \$30,000. Jamie Arens stated the clubhouse was over \$30,000 and Legal Counsel Brandt stated the two projects together were over \$30,000. Jamie Arens asked what Legal Counsel Brandt's hourly rate for the City was. She stated it was contracted and did not know off the top of her head, the complete structure of the billing as it depends on different things they advise and work with the City on. Jamie Arens asked what her cost was for tonight and she stated it was contracted as a flat rate of \$500 a month. Jamie Arens stated he did not threaten the City, and Legal Counsel Brandt stated he did indicate that he potentially would be looking to file a lawsuit. Jamie Arens denied he threatened litigation to Legal Counsel Brandt and stated the comments being made by Council members are not being true as well. Legal Counsel Brandt asked at this point, what resolution can be reached and Jamie Arens stated he is asking her. Legal Counsel Brandt stated she has already responded to him. Jamie Arens asked what the limits of the City's liability policy as he was informed today by Clerk Benscoter that the City does not have a liability of insurance policy. She stated that was correct and they are not required to under the State statute as they are a City of the second class.

Jamie Arens wanted to speak on the Skylon and Legal Counsel Brandt informed him that we can only speak on agenda items per State statute and he requested the specific language he wanted for his agenda item that Council allowed. She stated if anyone wants to speak during public comments, it can only be regarding agenda items, and if they wish to speak on anything else they will need to get with the City Clerk to request to be on the agenda. Marilyn Schumacher asked when those requests would need to be in and Clerk Benscoter stated agenda requests need to be into the City office by 4:30 P.M. on the Wednesday before the Council meeting and it would have to be approved by Council first. Legal Counsel Brandt stated residences can speak during public comments on agenda items and since the Skylon is not on the agenda, we cannot discuss it. Mayor Becker stated he asked to stick to 5 minutes and to be civil and did not believe that was happening and we were not getting anywhere. Marilyn Schumacher asked if they had a policy manual for new incoming directors and Legal Counsel Brandt stated we are working on ways to make sure this doesn't happen again and are taking action. Jamie Arens asked Legal Counsel Brandt if City Council should have reviewed law before taking an action on something they were told they were doing illegally. Legal Counsel Brandt stated that City Council had already taken action on the bids by the time he had spoken with Council members.

Clark Johnson asked about a law suit against the City as he would not like to see that happen, but believed there are too many situations where the City makes the mistake and doesn't care. Legal Counsel Brandt stated nothing about the Skylon was done incorrectly, the City followed State statute, the City deemed it appropriate to move the Skylon, the residents made the decision when they voted them into Council. The City submitted a request for Bonds which was denied, but that does not mean the City voted whether or not the City should do anything else with the Skylon. Legal Counsel Brandt asked if there was a formal civil resolution that did not involve the courts because if there is no formal resolution, we don't know how to fix it.

Jamie Arens asked if the pool house, shelter house, and club house all had damage and Legal Counsel Brandt stated they did. He asked if the City Council should fix all the roofs that they received proceeds for instead of using money from one roof to fund another roof. Legal Counsel Brandt stated it was already discussed at another Council meeting and she stated she was not going to answer the question. Mayor Becker stated we have gone way over 5 minutes on all of that and we are going to move on.

Councilman Sudbeck introduced Resolution 20240923 – Setting the Property Tax Request. A motion to approve Resolution 20240923 was made by Councilman Bartling and seconded by Councilman Kathol. A roll call vote was taken. Bartling – yes, Kathol – yes, Sudbeck- yes. Motion carried.

Mayor Becker introduced the approval of additional 1% increase of restricted funds authority. A motion to approve the additional 1% increase of restricted funds authority was made by Councilman Bartling and seconded by Councilman Sudbeck. A roll call vote was taken. Bartling – yes, Kathol – yes, Sudbeck- yes. Motion carried

Councilman Sudbeck introduced Resolution 20240923A – Budget Resolution Adoption and Appropriations. A motion to approve Resolution 20240923A was made by Councilman Bartling and seconded by Councilman Kathol. A roll call vote was taken. Bartling – yes, Kathol – yes, Sudbeck- yes. Motion carried

Mayor Becker introduced building permits for the City of Hartington City Shop, Matt Sees new home construction, and Hartelco steps for apartment. A motion to approve the building permits for the City of Hartington, Matt Sees, and Hartelco was made by Councilman Bartling and seconded by Councilman Sudbeck. A roll call vote was taken. Bartling – yes, Kathol – yes, Sudbeck- yes. Motion carried

Councilman Sudbeck introduced Resolution 20240923B – Chamber of Commerce Lighted Parade Street Closure. The Chamber of Commerce requested street closure on November 22nd, 2024 of Broadway from Cedar Catholic High School to Elm Street, West on Elm street to Summit Avenue and South to E Centre Street for the lighted parade. A motion to approve Resolution 20240923B was made by Councilman Bartling and seconded by Councilman Kathol. A roll call vote was taken. Bartling – yes, Kathol – yes, Sudbeck- yes. Motion carried

Mayor Becker stated he would like to table the issue on discussion of propane tank vehicles in residential areas until Councilman Christensen could be present. A motion to table the issue of propane tank vehicles in residential areas was made by Councilman Bartling and seconded by Councilman Kathol. A roll call vote was taken. Bartling – yes, Kathol – yes, Sudbeck- yes. Motion carried

Mayor Becker presented the September, 2024 Sheriff's report for the month of August, 2024. There were 329 ¼ hours patrolled. School traffic was 1 ¾ hours. Calls of service were, 1 EMS Assists, 3 Welfare Checks, 1 Accident, and 1 Disturbance. Traffic stops were 0 Verbal Warning, 3 Written Warning, and 0 citations. 1 Arrests were made.

Department Reports:

Park – Councilman Kathol: Received another bid for siding of Shelter House. We have a couple so far.

Pool –Councilman Bartling: none.

Complex/Auditorium – Councilman Sudbeck: none.

Fire/Ambulance– Councilman Christensen: absent.

General – Mayor Becker: none.

Legal Counsel Nikki Brandt: none.

Clerk Bencoter: none.

Deputy Clerk Schulte: none.

Public Comments: Jamie Arens asked what the bids were procured for. Councilman Kathol stated it is well under the \$30,000 so we did not post it. Jamie Arens asked who he received bids from. Councilman Kathol stated by word of mouth, people came up to him and asked if they could bid because they read it in the minutes. He stated he asked Jamie Arens if he wanted to bid during the conversation he had with him and that is when he was notified which is more notice than most other people got. Councilman Kathol stated he doesn't even know what Jamie Arens does for a living. He asked if he was supposed to go out and contact every single person, do you even live in Hartington or around here, this is the first time I have met you.

Marilyn Schumacher asked if the City could keep a contractor list of those wanting to be on a list. Mayor Becker and Councilman Kathol stated they would love that. Clark Johnson asked if these were advertised in paper or if you have to come to a City Council meeting or read meeting minutes. Legal Counsel Brandt stated by State law there is no formal bidding process for projects under \$30,000 and we will take bids from anyone who is willing to give them. She stated it is not our job to make sure that every contractor in the State is aware we are doing a project. Our minutes and Agendas are always posted and that is our advertisement. That is how second-class cities in Nebraska work.

Jamie Arens asked if it is standard business to have work done on City buildings with no contracts. Legal Counsel Brandt stated the bid is the contract so when it is approved, that is the contract. Jamie Arens asked if they checked anything with liability or workman's comp insurance on these individuals. Councilman Sudbeck and Mayor Becker stated they use local contractors that they are familiar with and know that they have insurance.

Councilman Kathol stated he tries to do what is best for this community based on his knowledge. He stated he is not an expert at this along with anyone else and we are trying to do the best. He stated he did not deliberately go out and break the law per Jamie Arens' statement. He stated he is trying to make the best decisions he can based off of the decision the people made to vote him in. He stated he is trying to the best job he can for this City and we went over by \$2,000 on the bid you are disputing. He stated they found out that they have not raised the limit on bidding in years and the bottom line is he tried to talk to Jamie Arens and be fair to him. He stated he is still going to try and do the best job he can and if you have a problem with that then don't give me your vote.

Tom Miller asked if he could ask questions after this meeting and Legal Counsel Brandt stated they could not because of Open Meeting laws. Tom Miller asked how to get on the next agenda and Legal Counsel Brandt stated she requested a written request for her to review. Jamie Arens stated he let Council know they were wrong and Legal Counsel Brandt stated that was after the bids had been approved. Councilman Bartling stated we have circled this issue all night. Jamie Arens asked if the minutes approved for the September 17th meeting were accurate as approved. Councilman Kathol stated to the best of his recollection. Legal Counsel Brandt stated they were approved by the City Council.

Clark Johnson asked if there was a limit how much Council can spend without going to the people. Mayor Becker stated he is not aware of what that would be and would need to check into that and would get back to him. He stated we have tried to be fiscally responsible, not waste money, and shop local. He stated they all donate their time, live here, have businesses here, pay taxes here, and support all the local things. He stated everyone that sits on this board tries to do their best for this City. He stated we spoke with our Auditor before we did the budget regarding the Skylon and there were no red flags with him.

The following bills were presented for payments:

General:	EMC Insurance Companies 8,859.07, Level Up Builders, LLC 28,775.00, SHIFTR 15.30.
Streets:	Barco Municipal Products, Inc. 2,547.58, Black Hills Energy 129.94, Bomgaars 189.91, EMC Insurance Companies 1,351.12, Fischer Feed & Supply 566.00, Hartelco Computers 32.00, Miller Painting & Decorating 20,625.00, Mutual of Omaha 14.40, Nebraska Public Power District 3,180.43, Usable Life 87.00.
Water:	Bomgaars 15.99, Cedar-Knox Public Power District 2,190.02, EMC Insurance Companies 1,013.34, Hawkins, Inc. 1,616.72, Nebraska Public Power District 920.81.
Sewer:	Black Hills Energy 66.42, EMC Insurance Companies 1,458.60, Midwest Laboratories, Inc. 437.57, Nebraska Public Power District 3,283.57.

Sanitation: EMC Insurance Companies 1,243.65, L.P. Gill, Inc. 14,370.42, Mutual of Omaha 7.20, NP Mart 24 722.93, Usable Life 14.50.

Fire: Black Hills Energy 20.04, Dearborn National Life Insurance Company 123.16, Dixie Fischer 75.00, EMC Insurance Companies 537.38, H & N Repair, LLC 140.00, Leise Lawn Care 130.00, Nebraska Public Power District 185.27.

Ambulance: Avera Sacred Heart Hospital 3.90, Ambill Associates, LLC 525.00, Black Hills Energy 20.05, Dixie Fischer 75.00, EMC Insurance Companies 353.14, Katelyn Fischer 278.05, Leise Lawn Care 130.00, Nebraska Public Power District 153.68, Northeast Community College 3,044.70, Tri-State Communications, Inc. 4,680.55.

Recreation: Hartington Baseball 3,920.00, Nebraska Public Power District 63.16, School Photos NE 105.00.

Pool: Black Hills Energy 41.56, Nebraska Public Power District 1,069.64.

Parks: Bomgaars 192.44, D. Raasch 75.00, Nebraska Public Power District 893.06, Pomp's Tire Service, Inc. 53.91, Zimco Supply Company 363.00.

Complex: Nebraska Public Power District 134.73, Tri-State Turf & Irrigation, LLC 582.25.

Cemetery: Central Valley Ag 383.95.

Library: Tami Anderson 325.00, Black Hills Energy 40.09, Dixie Fischer 225.00, Ingram 863.25, Midwest Tape 62.23, Mutual of Omaha 14.40, Nebraska Public Power District 515.77, Nebraska Library Commission 500.00, Usable Life 29.00, X-Pert Lawn and Landscaping 875.00.

City Hall: Black Hills Energy 50.34, Hartelco Computers 95.99, Mutual of Omaha 14.40, Nebraska Public Power District 245.51, Usable Life 43.50.

Auditorium: Black Hills Energy 100.82, Nebraska Public Power District 101.80.

Economic Development: Hartelco Computers 32.00, Mutual of Omaha 7.20, Usable Life 14.50.

Transfer Station: Cedar-Knox Public Power District 152.39, EMC Insurance Companies 537.38, Gill Hauling, Inc. 2,734.64, Nebraska Department of Environment and Energy 500.00.

Vets Memorial: Nebraska Public Power District 51.12.

August, 2024 payroll was \$66,482.53.

Clerk Benscoter added four additional checks for approval. Check #64763 to Dearborn National Life Insurance Co. for 123.16, check # 64764 to EMC Insurance Companies 15,353.68, check # 64765 to Mutual of Omaha for 57.60, and check # 64766 to Usable Life for 188.50. A motion to pay the bills including additional check # 64763, 64764, 64765, and 64766 was made by Councilman Bartling and seconded by Councilman Sudbeck. A roll call vote was taken. Bartling – yes, Kathol – yes, Sudbeck – yes. Motion carried.

A motion to adjourn was made by Councilman Bartling and seconded by Councilman Kathol. A roll call vote was taken. Bartling – yes, Kathol – yes, Sudbeck – yes. Motion carried.

The meeting was adjourned at 6:22 P.M. The next scheduled meeting is October 15th, 2024.

Respectfully Submitted,

Brittini Benscoter
City Clerk-Treasurer