CITY OF HART
407 S. STATE ST.
HART, MI 49420
SPECIAL MEETING OF CITY COUNCIL - COUNCIL PROCEEDINGS
August 8th, 2023
MINUTES – Approved

PRESENT: Councilors: Mayor Vicki Platt, Catalina Burillo, Dean Hodges, Amanda Klotz, and Kris Trygstad
ABSENT: Justin Adams and Jim Evans
OTHERS PRESENT: City Manager – Rob Splane, City Clerk – Karla Swihart, DPW Superintendent – Brad Whitney, Energy Superintendent – Mike Schiller, Paul Erickson, Sharon Hallack, and John Cavanagh

Mayor Platt called the meeting to order; following the roll call, then led the Council in the pledge of allegiance.

APPROVAL OF AGENDA:

- A. Klotz motioned to approve the agenda and was supported by K. Trygstad
  - Ayes: 5 Nays: 0 Absent: 2

PUBLIC COMMENTS:

- Paul Erickson, 7350 N 128th ave
  The County fair will begin again early this year with the Elliotts bring the carnival on Wednesday Aug 16th for four days, with Micro wrestling being held Saturday and will start up again for Fair Week. Fair week begins Aug 21st with haul in of both large and small animals, Harness racing will begin as well, and a full week of sights sounds and fun. Also Oceana Echo is located downtown Mears at the old township hall.

CORRESPONDENCE, EVENTS, PRESENTATIONS:

- i. State of michigan Department of Environment, Great Lakes, and Energy Administrative consent Order – Historical Review Presentation.
  The Hart Hyrdo Electric Project (Hart Dam) was first constructed in 1927
  The Pentwater river was designated a "Cold Water Fishery" by the DNR in 1997
  In or about 2003 The DEQ engaged the City in discussions regarding non-compliance.
  Does the City have responsibility for water temperatures downstream of the Hart Dam?
  To operate a hydro-electric dam requires a FERC license.
  The FERC license requires that the city seek a "401 Certification" issued by the DEQ.
  The 401 Certification requires the City to meet water quality standards such as those dictating Cold-Water Fishery standards.Over 7-8 years, the City worked with the DEQ to allow time to provide some due diligence. This work included several years of City funded water quality monitoring. The City worked with consultants and engineers to establish a set of ideas that may help to address the water quality issues. In December 2012, City Council chose to authorize City staff to enter into negotiations rather than have an "order" imposed on the City.
  After over two years of negotiation, the final ACO was approved by EGLE and agreed to by the City effective February 2015.
  Legal Input
  At the time the ACO was entered into, Varnum Law City Attorney Matthew Zimmerman descrbed to City Council two available options:
  1 – Sign the ACO, at the time Mr. Zimmerman believed that the terms offered in the proposed ACO were as lenient as they would get.
  1 – Reject the ACO, be prepared to do one or more of the following:
  A: Defend a DEQ enforcement action – the DEQ would likely issue a Notice of Violation (NOV) and a civil fine. The civil fine would cover administrative costs and action by the attorney general. A corrective action plan would be established by the state with their terms.

B: Remove the turbines – If the City stops generating electricity, the 401 certification would not be necessary. (renewable energy portfolio, increased electric rates, water temp, "PART 31")
C: Remove the Dam – The DEQ believes the impoundment is the source of the increased water temperatures. The DEQ would support this option. Water sediment and flow controls would need to be established. Costly legal actions would ensue.
D: Reclassify the Pentwater River as a Warm Water Fishery – The DNR Director would need to reclassify the stream as part of Part 487 authority. This effects many other fishing regulations aside from temperature.
E: Bring contribution actions against other contributors – establish liability of others. Property owners , taxpayers, industries, farmers, electric customers, employers, and litigate against them.
F: Hope the ambient air temperature drops – The "do nothing" option. Argue that past violations were abnormal weather conditions. Enforecement action is subject to a statute of limitations period (likely 5 years). The City would still likely be required to adopt a long-term plan to lower the temperature if accepted.

Monitoring and Temperatures

Table 6
1999 - 2000, 2004 - 2022 Climate Data
Monthly Average Air Temperature

Month	Average Historic Monthly Temp. 1999-2000,2004-2021	1999	2000	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
												Degrees Fahrenheit										
July	70.0	72.0	68.2	66.7	69.8	72.0		69.8	63.9	73.4	73.4	75.2	69.0	64.3	68.2	71.4	68.7	70.8	71.2	72.8	68.9	70.0
August	68.4	66.7	70.5	62.4	68.4	69.8	69.8	66.7	71.6	71.6	69.8	68.4	66.5	64.6	67.6	71.5	65.5	70.0	66.2	69.1	70.8	68.1
September	62.8			64.0	64.0	58.0									65.5	65.4	63.5	62.6	63.1	59.4	62.6	61.9

Table 7
2004 - 2022 Climate Data
Total Monthly Rainfall

Month	Historic Monthly Rainfall (inches) 2004 – 2021	2004 (inches)	2005 (inches)	2006 (inches)	2008 (inches)	2009 (inches)	2010 (inches)	2011 (inches)	2012 (inches)	2013 (inches)	2014 (inches)	2015 (inches)	2016 (inches)	2017 (inches)	2018 (inches)	2019 (inches)	2020 (inches)	2021 (inches)	2022 (inches)
July	3.13	2.01	4.33	5.96	2.84	0.97	4.25	2.52	4.8	2.47	1.15	2.82	4.39	2.51	1.86	2.36	3.29	4.75	5.6
August	2.74	2.87	2.94	0.33	1.9	3.83	3.09	1.9	1.16	2.24	1.91	1.93	1.33	2.44	5.95	4.68	3.6	4.51	5.51
September	2.98	0.65	5.07	3.86								2.23	5.54	0.79	4.06	4.11	1.57	1.91	2.71

Table 8
Temperature Standards
R323.1075

Month	Warm Water (1) Fishery Max. Temperature	Coldwater (2) Fishery Max. Temperature
July	83°F (28°C)	68°F (20°C)
August	81°F (27°C)	68°F (20°C)
September	74°F (23°C)	63°F (17°C)

Table 9
Average Monthly Water Temperature Monitoring

Month	1999 (°F)	2000 (°F)	2004 (°F)	2005 (°F)	2006 (°F)	2007 (°F)	2008 (°F)	2009 (°F)	2010 (°F)	2011 (°F)	2012 (°F)	2013 (°F)	2014 (°F)	2015 (°F)	2016 (°F)	2017 (°F)	2018 (°F)	2019 (°F)	2020 (°F)	2021 (°F)	2022 (°F)	Cold Water Fishery Water Quality Standard (°F)
Downstream South Branch Pentwater River (72nd Ave) (formerly designated as Site A)																						
July		66.8	68.5	72.3	73	N/A[3]	69.2	68.4	73.6	71.2	75.6	71.8	69.8	69.7	73.8	70.8	73.6	72.5	74.1	71.8	72.7	68
August		67.8	67.4	70.9	72.2	71.2	71	69.9	73.2	71.6	70.9	68	69.8	70.6	73.2	69.2	71.8	70.6	71.7	73.2	69.6	68
September			66.9	68.5	64.4									66.4	68.3	65.2	66.8	65.8	64.4	67.1	66.4	63
Chippewa Creek Main Street (formerly designated as Site F)																						
July			N/A[1]	71.4	70.8	N/A[3]	69.2	66.6	73.7	72.8	74.8	70.8	67.1	70.1[2]	71.9	69.7	71.8	68.7	70.1	70.1	71.4	68
August			65.32	69.4	70.1	72.5	68.9	67.6	72.4	70.6	69.2	67.6	67.5	68.8	70.7	66.5	69.4	68.2	68.4	70.9	68.9	68
September			63.9	66.4	60.3									64.8	65.3	63.9	63.4	63.7	60.4	64.0	64.0	63
Chippewa Creek (Oceana Drive)																						
July						N/A[3]						60.6	59.8	62.2[2]	62.9	62	63	63.0	64.8	62.6	63.5	68
August						62.4						59.2	59.8	60.8	62.5	60.1	63	61.1	62.4	63.2	63.4	68
September														59.4	60.1	57.7	60.6	60.3	56.8	58.4	58.5	63
Russell Creek Diesel Plant (formerly designated as Site E)																						
July			N/A[1]	73.9	72.6	N/A[3]	72.2	68.6	75.7	74.9	77.5	72.8[4]	71.4[4]	73.1[2]	73.3	72	76.6	75.1	77.1	72.8	74.7	68
August			68	72.8	71.7	70.9	72.5	70.1	73.7	72.2	71.6	68.9[4]	71.6[4]	70.9	73	70	73.3	71.1	72.1	74.9	72.0	68
September				69.1										66.7	66.8	66.7	65.9	64.8	63.5	66.8	66.8	63
Russell Creek (High School)																						
July												61.7	57	57.5[2]	60.7	58.1	57.4	57.8	58.2	58.7	59.0	68
August												62.4	56.9	56.9	57.5	56.9	58	57.4	57.0	59.7	58.4	68
September														55.9	57.3	54.6	57	56.9	54.7	56.0	55.2	63

Table 9.1
Average Temperature (°F) Comparison
Upstream vs. Downstream

Location	July	August	Sept.
Upstream Pentwater (Peterson)	66.7	64.5	59.7
72nd Avenue (Downstream)	72.7	69.6	66.4
Difference	6.0	5.1	6.7

Table 9.2
Hourly Temperature Comparison
Upstream and Downstream

	Location					
	72nd Avenue Bridge (Downstream)			Peterson Property (Upstream)		
Month	Number of Temperature Readings	Number of Temperature Readings Above Standard	Percentage of Samples Not Meeting Temperature Standard	Number of Temperature Readings	Number of Temperature Readings Above Standard	Percentage of Samples Not Meeting Temperature Standard
Jul-22	744	744	100%	744	221	30%
Aug-22	744	513	69%	744	66	9%
Sep-22	720	599	83%	720	200	28%

Table 10
Continuous Dissolved Oxygen Monitoring Summary

		Upstream (Peterson)		Downstream (72nd Avenue)	
Month	Min Daily Avg. D.O. Standard (mg/L)	Min Daily D.O. (mg/L)	# of Days less than D.O. Standard	Min Daily D.O. (mg/L)	# of Days less than D.O. Standard
July	7	1.0	5	4.7	30
August	7	6.57	0	2.3	31
September	7	6.9	2	2.8	30

Table 10.1
Hourly Dissolved Oxygen Monitoring Summary

	Location					
	72nd Avenue Bridge (Downstream)			Peterson Property (Upstream)		
Month	Number of DO Readings	Number of DO Readings Below Standard (7mg/L)	Percentage of Samples Not Meeting DO Standard	Number of DO Readings	Number of DO Readings Below Standard (7mg/L)	Percentage of Samples not Meeting DO Standard
Jul-22	744	358	48%	744	36	5%
Aug-22	744	656	88%	744	0	0%
Sep-22	720	665	92%	720	9	1%

Table 11
Days Less Than Standard DO

Month	2004	2005	2006	2015	2016	2017	2018	2019	2020	2021	2022
July	0	14	11	16	20	20	31	20	30	22	30
August	0	31	19	25	31	25	31	28	31	31	31
September	3	13	20	28	30	28	28	26	18	28	30

As part of the Long-Term Plan, the City of Hart proposed to conduct a Water Quality Improvemens and Feasibility Study to evalute the feasibility of potentail improvements that could be implemented to achieve temperature and D.O. standards at the Pentwater River downstream monitoring location.

The Following alternatives were considered:

Ground water discharge to Pentwater River;

Removal of restrictions on Russell Creek;

Removal of restriction on Chippewa Creek;

Dredging sediment and removing dam remnant from Hart Lake impoundment;
Employment of storm water best management practices (BMPs) for temperature reduction;
Delivery of hypolimnic water from the Hart Lake Impoundment into the Pentwater River
Including a combined alternative which blends groundwater with hypolimnic water; and
A Hart Lake bypass
Mechanical Aeration at the Hart Dam Tailrace

Each alternative as evaluated for the following:

Technical feasibility;
Ability to meet water quality standards at downstream monitoring point;
Probable construction costs and ongoing operation and maintenance expenses;
Adbantages and disadvantages; and
{Permitting requirements.

The ONLY alternative considered that can meet the water quality standards is the bypass of Hart Lake. However, the cost of this alternative at over $16,000,000 makes it economically infeasible for the City.

And now

Each year, the City performs water quality monitoring at multiple points above and below the Hart Dam
The City also performs annual dam safety monitoring
All results are shared with the State and Federal Government to keep the City in licensing compliance with required reporting.

May 25, 2023, a representative from FERC came to Hart to perform a project structure safety inspection. No deficiencies were observed that require immediate action and the Hart Dam passed with flying colors. Some housekeeping items were sidcussed and agreed to upon by the City including remobal of a large tree and some vegetation near the dam.

June 8, 2023, EGLE filed a letter with FERC identifying that between 2005 and 2003, the number of daily exceedances in water temperature had increased. EGLE concludes the letter asking FERC to investigate and remediate ongoing compliance issues.

June 22,2023, the City called a meeting incliuding representatives from Mika Meyer, City attorney, Lawson Fisher, City environmental consultant, and Prein and Newhof, City engineer to discuss the appropriate response to FERC and EGLE accordingly. It was determined that a meeting with EGLE to discuss the ACO is appropriate. To date the City has made great strides in adhering to the Administrative Consent Order and implemented several projects to help reduce the temperature issues the impoundment may pose. [reference 2022 progress report #7], these steps have had little effect on the goals set in the ACO. The meeting with EGLE will be to review the order, projects completed to date, and discussion on future goals/priorities.

CONSENT AGENDA:

- Approval of minutes from July 25th, 2023.
- Bills, Claims, Payroll
- Reports of Boards, Commissions, and Committees
- Department Reports – Police/BioPure/Public Works/Energy/C&E Dvlp
    - C. Burillo motioned to approve Consent Agenda and supported by A. Klotz
        - Ayes: 5 Nays: 0 Absent: 2

ACTION ITEMS:

- Resolution 2023- 37 Fiscal Year 2023 Budget Amendment
  WHEREAS, the City Council may amend the annual budget to reflect changes in purchasing patterns or revised objectives; and
  WHEREAS, during year end review, City accountants found a conflict in the action of a previous budget amendment regarding the ability to transfer ACT51 road funding from major street to local street use; and
  WHEREAS, this conflict creates a fund deficit in the local streets fund due to State restricted funds; and

WHEREAS, the City Council desires to secure the benefits of efficient self-governance and to promote and protect our common interests and welfare; and
NOW THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL

Amends the FY2023 Annual Budget as follows:
1 – Transfer of $105,000 from Major Street Fund to Local Street Fund

- C. Burillo motioned to approve Resolution 2023-37 and supported by K. Trygstad
  - Ayes: 5 Nays: 0 Absent: 2

- Resolution 2023-38 Resolution to Cancel August 22nd, 2023, Council Meeting
  WHEREAS, the second Council meeting in August is scheduled for August 22nd; and
  WHEREAS, the City manager has a commitment to travel with friends and family as approved by City council during the time of the normal City council meeting; and
  WHEREAS, Council will plan to hold a special meeting on August 15th at _____time if there are action items for the agenda at that special meeting or other City business to be discussed; and
  WHEREAS, as written in the City charter, the Clerk shall call a special meeting at any time by the written request of the Mayor or any tow members of the Council on at least twelve hours of written notice delivered to all Council members and posted to the general public; and
  WHEREAS; the City Council desires to secure the benefits of efficient self-governance and to promote and protect our common interests and welfare; and
  NOW THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL:

  The City Council's regularly scheduled August 22, 2023, meeting is cancelled unless reinstated by request of two Council members or the Mayor to complete urgent business

  - C. Burillo motioned to approve Resolution 2023-34 and supported by A. Klotz
    - Ayes: 5 Nays: 0 Absent: 2

DISCUSSION ITEMS:

- City Manager Performance Review – review
  Overall, pleased with the evaluation. Regarding our current 1-5 performance scale, striving 5's, celebrate 4's, and can be satisfied with 3's, The 2's are defined as areas that need improvement, I take these very seriously and will be working to identify those concerns and improve on those areas that can use it.
  It has been a very fast paced two years with some significant challenges. Between the excellent City staff, we have in place and the strong support from the Council, those challenges have all been met with good success.
  In reviewing both 2018 and 2021 job postings for Hart City Manager, three goals were listed as priority goals:
  1. Spur new housing development.
     A. The City has helped to facilitate construction of 6 new dwellings with an additional 4 currently underway. The developer has committed to build an additional 14 units pending required zoning changes.
     B. TIFA has committed to redeveloping the site formerly used as the North Central Co-op and then Ceres Solutions on Main Street. This likely mixed-use development will likely offer opportunities to address our current housing shortage. By using our new County Brownfield Authority, we can leverage tax dollars into a project that will be attractive to developers. One developer has already reached out with interest in the site.
     C. A new investor has committed to renovate four second story rental units downtown as part of a $400,000 investment. Seeking middle to upper-middle income residents.
  2. Review options to plan for sustainable infrastructure maintenance.
     A. The City has purchased and began to implementing use of fixed asset tracking that integrates with our BS&A software platform. As the City continues to replace capital assets, they are entered into this tracking software to plan for future expenses decades into the future.
     B. The City has been certified by the Michigan Infrastructure Council into the Asset Management Champion Program. This program allows the City access to a statewide database that tracks planned projects by any entity that may be doing work on, under, or adjacent to Michigan public rights-of-way. As this program grows, we will see savings in coordinating projects with other entities.

C. More aggressive review of Capital Improvement Projects and utility rates will also help to align on-going maintenance and system improvements with yearly budgeting. Overall reducing the occurrence of surprises.

3. Tackle blight and code enforcement issues.
   A. After spending over a year working with local public entities in an effort to establish a mutual code enforcement department, the focus was made locally to launch a self-funded program in coordination with the Hart Police Department. Enforcement efforts began in June of 2023 with more structure to be added in September when a new officer will join the department allowing for more flexible scheduling in the property maintenance code enforcement area.
   B. Training will take place to certify a rental inspector prior to implementation of a City rental inspector certification program.

My Goals for this year are;

- Better manage unrestricted general fund balance to better cushion that fund in case of a catastrophic event.

- Increased active management of City staff to help facilitate professional growth and maximize labor costs.
- Re-focus on City efficiency and continuous improvement efforts. WE need to continue to ask, "Why do we do it this way?", or "Is there a better way?". I am seeking to reduce waste by 10% across all departments. Waste can be defined in many ways including inefficient use of time/effort, underutilized talent/skills, unnecessary movement (email instead of hand delivery or have the scanner at your desk instead of in the next room), unnecessary spending, reducing utility costs, consolidation of spaces or work tools, ext.
- Continue to clarify the budget process and provide more financial transparency.
- Increase efforts to become a more diverse and inclusive public entity. Our town has a lot of talented and interesting residents that can bring value to our community. We need to continue to find new ways to help engage them and continue to build on our community pride!

I am happy to serve as your City Manager, thank you for your confidence. Let's keep up the good work and make this a great year!

CITY MANAGER'S REPORT:

UPDATES:

- The Great Lakes Packing tour was well represented by City Council.
- Audit scheduled for early September.
- Griswold Street and Polk Rd utility Improvements projects have begun. Griswold Street is the first phased closure. Prein and Newhof are maintaining a website for construction updates.
- Weekly Thursdays on Main – 6pm Makers Market and Main Street Market opens. Music – 7pm.
- Attendance of MPPA Board of Directors meeting tomorrow morning in Lansing.
- Attending the National Brownfield Conference in Detroit, to train on opportunities available to support redevelopment projects in Hart. Only the second time the conference has been in Michigan in over 25years.
- MMRMA grant awards of over $11,000 are expected this month, reimbursing the City for 50%-70% of qualifying training and security expenses over the past year. More grants are inline for financial support this fiscal year.
- Next Thursday, Friday, and Saturday, I will be attending the Michigan Municipal Risk Management Authority annual meeting. It is always packed with applicable information that helps us to reduce our liabilities and better plan for inevitable losses and damage. The MMRMA functions similar to a mutual insurance company owned by it's members. Each year the City of Hart is a member, we qualify for a larger refund from the state pool account. This year the City was awarded a refund of $8500, or about 10% of our total annual premium costs.

Legacy Topics:

- The Charter review committee has requested a meeting with the City attorney to discuss how aggressively to proceed with additional recommended changes to the charter. The amendments will be processed for ballot approval at the next general election.
- Safe Routes to School trail project – pending state approval projected start date June 2024.

Upcoming Topics:

- Adoption of 2022-2026 Park and Rec Master Plan
- Veteran's Memorial Park final design approval
- Water, Wastewater, and Energy rate studies
- Council adoption of code enforcement policies, procedures, and implementation.
- BioPure biosolids hauling contract RFQ
- City IT support consultant RFQ.
- * Special City Council Meeting to be held in lieu of August 22nd meeting as necessary. Tentatively Aug 15th will be holding a special meeting at 5:30pm

COMMUNICATIONS FROM THE MAYOR AND COUNCIL:

- C. Burillo, been asked a couple of times if the City is responsible for taking care of the Co-op block? Also the Hart Village Market who is responsible for taking care of their yard.

ADJOURN:

- There being no further business to come before the Council, the meeting adjourned upon a motion by C. Burillo and supported by A. Klotz. The next regularly scheduled meeting will be on September 12th, 2023, at 7:30 pm.

Respectfully Submitted

Karla Swihart

Karla Swihart, City Clerk