

Minutes of the Independence City Commission's March 25, 2021 Meeting

The Independence City Commission met for a regular meeting on March 25, 2021 at 5:30 P.M. at the Memorial Hall. Mayor Louis Ysusi, Commissioner Leonhard Caflisch and Commissioner Dean Hayse were present. Others present included:

City Staff

Jeff Chubb, City Attorney
David Cowan, Assistant City Manager
Kelly Passauer, City Manager/Zoning Administrator
David Schwenker, City Clerk/City Treasurer
Brian McHugh, Memorial Hall Supervisor
Jerry Harrison, Police Chief
Shawn Wallis, Fire/EMS Chief
April Nutt, Director of Housing Authority
Lacey Lies, Director of Finance
Dustin Stafford, Police Officer
Angela Anthony, Park and Zoo Director
John Garris, City Engineer/Director of Public Works and Utilities
Byron Corish, Police Officer
Daniel Bowers, Police Officer

Visitors

Larry McHugh
Logan Null
Stacy Boyer
Brad Boyer
Nancy Clubine
Sylvia Augnstine
Mike Hines
Toni Jabben
Ray Rothgeb
Karen Ferrell
Shawn Turner
Linda Hernandez
Gayle Wallingford
Tim Raglin
Vivian Cottrell
Brian Williams
Blane Marklex
Tony Royse

I. REGULAR SESSION

A. Call to Order

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Mayor Ysusi called the meeting to order.

- B. Pledge of Allegiance to the United States of America
- C. Adoption of Agenda

Motion:

On the motion of Commissioner Caflisch, seconded by Commissioner Hayse the Commission adopted the agenda.

Aye: Ysusi, Caflisch, Hayse

Nay: None

II. PRESENTATIONS

- A. Introduction and swearing-in of Independence Police Department's newest officer, Officer Byron Corish.
- B. Recognition of Officer Daniel Bowers as a nominee for Employee of the Year and for receiving a Life Saving Award.

III. CONSENT AGENDA

(*Consent* is that class of Commission action that requires no further discussion or which is routine in nature. All items on the Consent Agenda are adopted by a single motion unless removed from the Consent Agenda.)

- A. Appropriations
 - 1. A-1885
 - 2. D-2013
 - 3. D-2014
- B. Consider authorizing Independence Middle School (IMS) staff to paint mile markers on the public sidewalks around IMS for their Walk Across Kansas competition and other exercise opportunities.
- C. Consider authorizing a transfer of property agreement with Homeland Security for anti-crash barriers received through a Preparedness Grant.
- D. Consider authorizing the annual Easter Egg Hunt on April 3, 2021.
- E. Consider approving a "Subordination Agreement" for 1902 Bradley Court.
- F. Consider awarding a bid to Lee's Heating and Cooling for installation of an HVAC system at AWOL.
- G. Consider approving the revised program guidelines for the Central Business District Commercial Building Grant Program.
- H. Consider scheduling a Special Commission meeting on April 21, 2021 at 9 AM to walk through the Park, Zoo and Cemetery.

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- I. Consider authorizing the City Manager to sign a grant agreement with the FAA for federal assistance for the Independence Municipal Airport under the Coronavirus Response and Relief Supplemental Appropriations Act and any related documents.
- J. Consider authorizing the Mayor to sign the City's Disadvantaged Business Enterprise (DBE) program and all future grant related documents in conjunction with the 2021 Federal Aviation Administration grant for the Independence Municipal Airport.
- K. Consider scope of work for the following Memorial Hall projects:
 - 1. Auditorium Projectors, Screen, and Cyclorama Drop
 - 2. Memorial Hall Rigging Maintenance
 - 3. Memorial Hall Smoke Hatch and Door Repair

Motion:

On the motion of Commissioner Hayse, seconded by Commissioner Caflisch the Commission adopted the consent agenda.

Aye: Ysusi, Caflisch, Hayse

Nay: None

IV. ITEMS FOR COMMISSION ACTION

- A. Consider proclaiming April 10-11, 2021 as Independence Sesquicentennial Osage Days.

The Independence Historical Museum's Sesquicentennial Committee requests the City proclaim April 10-11, 2021 as Independence Sesquicentennial Osage Days.

Motion:

On the motion of Mayor Ysusi, seconded by Commissioner Hayse the Commission proclaimed April 10-11, 2021 as Independence Sesquicentennial Osage Days.

Aye: Ysusi, Caflisch, Hayse

Nay: None

- B. Consider approving an Incentive Agreement between Labette County Medical Center d/b/a Labette Health and the City of Independence for expansion of the Independence Healthcare Center.

On November 19, 2020, the Commission directed City Staff to draft an incentive agreement with Labette Health for the expansion of the Independence Healthcare Center for \$100,000 a year over the next 10 years. The proposed incentive agreement was drafted in accordance with the EDAB's recommended parameters at a rate of \$100,000 per year, totaling a \$1,000,000 incentive.

Motion:

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On the motion of Commissioner Caflisch, seconded by Commissioner Hayse the Commission authorized the Mayor to sign the attached incentive agreement between the City of Independence and Labette Health.

Aye: Ysusi, Caflisch, Hayse

Nay: None

- C. Consider recommendations from the Planning Commission regarding a request to rezone a tract of land from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District; and a request for a Planned Unit Development at 2313 North Pennsylvania Avenue.

On January 5, 2021 the Planning Commission conducted a public hearing to consider rezoning a tract of land from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District at 2313 North Pennsylvania Avenue with conditions. The applicant requested to adjourn the public hearing until the February 2, 2021 Planning Commission meeting to allow them time to file a PUD overlay, as the building they proposed was larger than the maximum 5,000 square foot allowed in a C-1 zone. There was a motion made to adjourn the hearing as requested which died due to a lack of a second. There were several citizens in attendance, all of those that spoke were in opposition to the rezoning. On a 5-2 vote the rezoning request was recommended to be denied.

On January 28, 2021 the Commission asked the Planning Commission to reconsider the rezoning request as the motion approved did not include the reasons for denying the request.

On March 2, 2021 the Planning Commission reconsidered the rezoning and the following motion was approved unanimously:

Mary Jo moved to recommend denying a request to rezone a tract of land located at 2313 North Pennsylvania Avenue from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District. This motion is based on the following findings: Number one, it is out of the Comprehensive Plan which states that all commercial businesses will begin starting at Mulberry on the west side of Penn Avenue, for the second and most prominent reason that I would like to recommend denying this is it is clear that patriachs of our neighborhood and our community do not want this in their neighborhood. They've spoken twice, from their heart, and that it's out of character for the neighborhood, that's the second point it's just simply out of character for this neighborhood for substantial reasons and if I need to document that in this motion I can do that and the third point that I'd like to recommend is that we have discussed intricate details of drainage problems, the outlay of the lighting possibilities and there's been a lot of work done and I respect Dollar General, I am a patron of Dollar General, I just want to say that for this particular neighborhood, with the comments that have been made by people who have lived here a long time and with our comprehensive plan I would recommend that the commission deny this.

Tony Royse recommended amending the motion to include the following additional reasons for denial:

1. *Character of the neighborhood is "residential" not "commercial"*
2. *Current zoning is R-1, Large Lot Single-Family Dwelling District. Properties to the West, North and South are also zoned R-1, Large Lot Single-Family Dwelling District. Property to the East is a Cemetery.*
3. *Subject property is not suitable for commercial use as all properties surrounding it are zoned R-1, Large Lot Single-Family Dwelling District.*
4. *Not compliant with Appendix B – Zoning, Section 509.8. Use limitations (a) – No separate business establishment shall occupy more than 5,000 sq. ft. of floor space. Building to be built is over 9,000 sq. ft.*
5. *Rezoning this property to C-1 would generate additional traffic issues, trash issues, lighting issues and drainage issues.*
6. *Drainage issues – Drainage issues will be maintained with an onsite detention system. Maintenance will always be needed; if maintenance is not done, or not done frequently enough, or properly, there would be unpleasant odors, trash and litter accumulation, mosquitoes and sediment accumulation.*
7. *Rezoning this property to C-1 would also allow a park, military command/communication centers, liquor store, police/fire protection and related services, daycare center for more than 4 children, civil defense/related services and cemeteries.*
8. *Nonconformance the Comprehensive Plan:*
 - a. *The central business district functions as the community-wide shopping center for Independence. When community-wide shopping facilities are divided among a number of locations, none of the facilities can offer a wide enough variety to attract shoppers.*
 - b. *Strip commercial zones cause traffic congestion and generate noise and visual conflicts with surrounding land uses which in this case is residential.*
 - c. *Objective C1 – Encourage the development of businesses downtown.*
 - d. *Policy C11 – The central business district shall be the primary retail center of the City.*

Andy McLenon seconded the amended motion.

Lisa Richard – We need to make sure that we have included the fact that almost doubling the size of the building makes it inconsistent with the Comprehensive Plan of what this type of store is supposed to be. I would also add that something Mr. Heckman said that the variety store is not permitted in a C-1 zone. I think in our code it is just called a variety store. Whether that is a prohibition that would stop this, I do not know that is a legal question, but it would be subject to factually developing whether it was a variety or clothing store. I feel he is right in that it is a variety store and prohibited in a C-1 Zone, I would like that included with the reasons unless anyone objects.

Kendall Neill – It has been moved and seconded to deny the request based on all of the conditions that were just laid out as amended twice. Motion carried 9-0.

After the public hearing for the Planned Unit Development, the following motion was approved unanimously:

Mary Jo moved to recommend denying a preliminary plat as part of a PUD for Dollar General Independence due to the required rezoning to C-1 was not recommended by the Planning Commission. Barb seconded. Motion passed 9-0.

The City Commission has the following options:

1. Approve the recommendation(s) of the Planning Commission (this would be a denial of the zoning request and/or PUD).
2. Disapprove the recommendation of the Planning Commission with a statement specifying the basis for disapproval and such recommendation shall be considered in like manner as that required for the original zoning recommendations returned to the Planning Commission.

Motion:

On the motion of Commissioner Hayse, seconded by Commissioner Caflisch the Commission accepted the recommendation of the Planning Commission to deny a request to rezone a tract of land from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District at 2313 North Pennsylvania Avenue.

Aye: Ysusi, Caflisch, Hayse

Nay: None

Motion:

On the motion of Commissioner Hayse, seconded by Commissioner Caflisch the Commission accepted the recommendation of the Planning Commission to deny a request for a preliminary plat as part of a PUD for Dollar General Independence due to the required rezoning of C-1 was not approved.

Aye: Ysusi, Caflisch, Hayse

Nay: None

D. Consider two requests to modify the following previously approved conditional use permits:

1. Parking Lot at the SW Corner of Wald Avenue and Myrtle Street
2. Children's Home at 517 S. 4th Street

We have received the above two requests to modify previously approved conditional use permits.

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Regarding the conditional use permit for a parking lot at the southwest corner of Wald Avenue and Myrtle Street we wish to provide the following timeline:

1. The City Commission on February 4, 2010 approved the attached conditional use permit for a supplementary parking lot at the southwest corner of Wald Avenue and Myrtle Street. The original conditional use permit indicated that all the requirements had to be met within one year of approval, or by February 4, 2011. The City Commission agenda packet for the February 4, 2010 City Commission meeting is also attached which includes a layout for nine vehicles on a 50' X 90' parking lot.
2. On December 8, 2016 the City Commission extended the timeframe to meet the requirements of the conditional use permit originally approved until December 31, 2017. Section 902.4. Time Limit states; *"The planning commission may recommend to the governing body a time limitation on the conditional uses specified in appendix "A" of this ordinance. Said conditional use permit shall be renewable at the discretion of the governing body."* Article IX – Processing Procedures for Conditional Uses is attached.
3. On April 27, 2017, the County requested certain conditions of the conditional use permit be waived by the City Commission relating to hard surfacing, screening, lighting, service drives, drainage, approved plan, minimum parking space dimensions, etc. The Commission took no action and tabled this item.
4. On December 28, 2017 the City Commission provided the County an additional extension to meet the conditions of a conditional use permit for a supplementary parking lot at the southwest corner of Wald Avenue and Myrtle Street until December 31, 2018. The conditional use permit expired on December 31, 2018 and remains expired as the applicant is not in compliance with the requirements.
5. On January 24, 2019 the City Commission denied text amendments recommended by the Planning Commission that would have modified the off-street parking requirements, leaving the ordinances as they currently exist.
6. On May 15, 2019 City staff contacted the County to ask for an update of their intentions and offered the following options:
 - a. Ask the Commission to provide another extension.
 - b. Ask the Commission to waive the requirements (which was previously tabled).
 - c. Ask the Commission to reconsider modifying the code.
 - d. Come into compliance with the conditional use permit.
7. On June 25, 2019 City staff inquired again, as no response was received from the May 15, 2019 email. Jim Wright indicated that the County was "actively researching our options."
8. On October 29, 2020 City staff contacted Jim Wright at the County for an update, advising them that the Planning Commission was inquiring on the status. Mr. Wright replied that they did not have any additional information, but they would bring it up at the next County Commission meeting.
9. On January 5, 2021 City staff contacted Jim Wright at the County for an update for the Planning Commission meeting that evening, and Mr. Wright indicated he did not have anything new to report.
10. On January 8, 2021 City staff contacted Jim Wright at the County to ask if someone from the County could be present at the next Planning Commission meeting on February 2, 2021 at the board's request.

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11. On January 11, 2021 Jim Wright replied and stated that he and Commissioner McManus would be present at the February 2, 2021 Planning Commission meeting.
12. On February 2, 2021 the Planning Commission questioned why the requirements of the conditional use permit had not been met, and the County provided copies of the request to modify the conditional use permit that was tabled by the City Commission on April 27, 2017. The Planning Commission requested a strike out copy be provided when this item was reconsidered so that they could see what had been changed.
13. City staff in consultation with the City Attorney reviewed the requested modifications and determined at least a portion were less restrictive than the minimum requirements for supplementary parking, in which case the Planning Commission would not have authority to approve such modifications. Additional options were provided to the County, including that they could start the process over since the conditional use permit was expired and this would provide due process for the property owners within 200'; or they could request the Commission extend the conditional use permit and then consider the modifications in the interest of the "public good" which is found in 1013.2 Minimum standards; *"All off-street parking lots permitted under the provisions of this ordinance must meet the following minimum standards, unless the City Commission deems it in the public good to waive such requirements."* Section 1013 regarding Supplementary parking is attached.
14. On March 18, 2021 Jim Wright representing Montgomery County requested that the City Commission extend the conditional use permit, and also consider the modifications as requested in a strike-out document which is attached.

Regarding the conditional use permit for a Children's Home at 517 S. 4th Street, we wish to provide the following timeline:

1. The City Commission on February 27, 2020 approved the attached conditional use permit for a Children's Home at 517 S. 4th Street. The conditional use permit is current, and City staff is not aware of any issues of noncompliance.
2. On March 9, 2021 the applicant requested to modify one of the requirements in the conditional use permit to allow children outside of Southeast Kansas to reside in the home. Their request is due to their new focus on children with developmental disabilities, and there are not enough children in that category in Southeast Kansas to fill the home. The specific section they request to modify is #6 which states:
 - a. *The residents shall be from the local region serving Independence and classified as a child in need of care by the Kansas Department of Children and Family Services.*

The City Commission should note the following:

- While both requests are to modify an existing conditional use permit, one conditional use permit is expired and not in compliance and the other is current and in compliance.
- Section 1001.1 in Article X. – Special Provisions Applying to Miscellaneous Conditional Uses indicates the purpose of this section is: *"In granting a conditional use, the city may impose such conditions, safeguards and restrictions upon the premises benefited by the conditional use as may be necessary to reduce or minimize any potentially injurious effect of such conditional uses upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations. Any lessening or subverting of those limitations*

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and requirements constitutes a variance and must be treated accordingly. The following additional conditions shall be a requirement for the approval of the following conditional uses."

- The option to waive requirements in the "public good" is only found in Article X. Miscellaneous conditional uses, Section 1013 Supplementary parking, and therefore would not apply to conditional use permits that do not directly relate to supplementary parking. Section 1013.2. Minimum standards state: *"All off-street parking lots permitted under the provisions of this ordinance must meet the following minimum standards, unless the city commission deems it in the public good to waive such requirements."*
- Section 901.2 talks about the authority to grant permits: *"The governing body shall have the authority to grant conditional use permits, subject to such conditions of design and operation safeguards and time limitations as it may determine for all conditional uses specified in appendix "A" of this ordinance and for all permitted uses for which the planning and zoning commission has found that by their nature or in their operation have characteristics listed in clauses (1), (2), (3) and (4) of section 901.1 of this article, provided, however, that said conditional use permits for permitted uses shall not establish standards or conditions that are less restrictive than those set out in the district regulations for the district in which said use is located."*
 - o The parking lot is in an R-2 zone. The district regulations regarding parking regulations in an R-2 zone state: *"Off-street parking: Two spaces for each single-family dwelling. (See article VII for additional parking requirements.)"* The R-2 district regulations and the Off-Street Parking Regulations in Article VII are attached. Many of the requirements listed in the conditional use permit for the parking lot in question are also found in the Off-Street Parking Regulations in Article VII.
 - o The children's home is in an R-3 zone. The district regulations for an R-3 zone are attached, however, the applicant is not requesting to modify any district regulations.
- Section 902.3 talks about Additional requirements: *"In consideration of requests for any conditional use permits the planning commission shall recommend to the governing body such conditions of use as it deems necessary to protect the best interests of the city, and the surrounding property and to achieve the objectives of this ordinance. These additional requirements shall include, but not be limited to, those special provisions applying the miscellaneous conditional uses, specified in article X. A violation of a requirement, condition, or safeguard shall be considered a violation of this ordinance, and grounds for the zoning administrator to terminate and cancel such conditional use permit."*
- Section 902.5 talks about Action by the governing body: *"Upon hearing and consideration of the proposed conditional use, the planning commission shall at the earliest date possible, submit its recommendation and endorsed copy of the plans to the governing body for final action. Within 30 days of receipt of the report from the planning commission, the governing body shall adopt, modify or deny the planning commission recommendation. The action of the governing body shall be final."*

The City Attorney has reviewed these requests and wishes to make the following "big picture"

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points:

1. The early "extensions" were really to allow time for compliance, not delays to allow the county to avoid compliance.
2. Then it did evolve into the county wanting to avoid compliance by submitting proposed amendments.
3. There is no provision in the zoning code for later amendments of a CUP once it has been approved by the City Commission. City commission approval is considered to be the City's final action—the only recourse is a timely appeal to district court.
4. What we could do on all, or selected, CUP cases is add a condition in the CUP that says something to the effect that the City Commission retains jurisdiction to amend the CUP in the future for good cause shown or do a text amendment of the zoning code that allows a CUP to be amended.

City staff is recommending that the applicants be requested to restart both conditional use processes for the following reasons:

1. Although Section 902.4. Time Limit allows the City Commission to renew a conditional use permit at their discretion, Section 902.5. Action by the Governing body indicates the authority to modify a conditional use permit expires after 30 days of receipt of the report from the Planning Commission. City staff was unable to find any language that addressed modifications after this time period.
 - a. Section 902.4. Time Limit: *"The planning commission may recommend to the governing body a time limitation on the conditional uses specified in appendix "A" of this ordinance. Said conditional use permit shall be renewable at the discretion of the governing body."*
 - b. Section 902.5. Action by the governing body: *"Within 30 days of receipt of the report from the planning commission, the governing body shall adopt, modify or deny the planning commission recommendation. The action of the governing body shall be final."*
2. Modifying a conditional use permit after final approval of the governing body without restarting the conditional use publication and public hearing process would not provide the property owners within 200' the opportunity to be heard or to protest such modifications.

It is suggested whatever action is taken should be consistent, as this action will set a precedent in the future.

Motion:

On the motion of Commissioner Hayse, seconded by Commissioner Caflisch the Commission denied the requests to modify conditional use permits previously approved and finalized in accordance with section 902.5 of the zoning code, and to advise the applicants to reapply and to waive the associated fees.

Aye: Ysusi, Caflisch, Hayse

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Nay: None

- E. Consider authorizing locations to include in the planned City paving for 2021 into Montgomery County's bid for 2021 road improvements.

Annually the City has gotten bids for paving along with the County in order to get the most advantageous price. Below are the locations recommended for 2021:

- West Maple, 10th to 17th Street: 2" mill, 2" overlay.
 - o Estimated Cost: \$140,000.
- Intersection of 11th and Chestnut and patching at N. 19th Place and Beech: 2" mill, 2" overlay.
Estimated Cost: \$20,000

On the motion of Commissioner Caflisch, seconded by Commissioner Hayse the Commission authorized incorporating paving of West Maple from 10th to 17th Street; the intersection of 11th and Chestnut; and patching at North 19th Place and Beech into the Montgomery County's 2021 paving bid.

Aye: Ysusi, Caflisch, Hayse

Nay: None

- F. Consider authorizing TranSystems to prepare and submit a KDOT Cost Share Program grant application for improvements to Sycamore Street from 10th Street to 21st Street.

Kansas Department of Transportation (KDOT) Cost Share applications for state fiscal year 2022/2023 are due on April 9, 2021.

4" mill, 2" overlay, new sidewalk ramps, addition of a 10'x5' box culvert at Sycamore.

Estimated Cost	Estimated City Match – (10%)	Non-Participating Costs	Total City Cost
\$650,000	\$65,000	\$160,000	\$225,000

Staff believes we should resubmit this application for state fiscal year 2023, (July 1, 2022 – June 30, 2023).

Motion:

On the motion of Commissioner Hayse, seconded by Commissioner Caflisch the Commission authorized TranSystems to prepare and submit an application for KDOT's Cost Share Program

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for improvements to Sycamore Street from 10th Street to 21st Street..

Aye: Ysusi, Caflisch, Hayse

Nay: None

V. REPORTS

A. TranSystems Project Report

Shawn Turner gave an update on various city projects.

B. AAA Traffic Safety Award-Gold

Chief Harrison reported that the City has received this award three out of the last five years.

C. City Board Minutes

VI. CITY MANAGER'S COMMENTS

City Manager Passauer asked the Commission if they would like to schedule a Special Commission Meeting for April 8th, 2021 at 4:00 p.m. for a walk-thru of the 1916 City Hall.

Motion:

On the motion of Commissioner Hayse, seconded by Commissioner Caflisch the Commission set a Special Commission Meeting for April 8th, 2021 at 4:00 p.m. at 120 N. 6th.

Aye: Ysusi, Caflisch, Hayse

Nay: None

City Manager Passauer informed the Commission the City is having trouble keeping up with the mowing of city owned lots and would like approval to receive bids from outside contractors for this work.

On the motion of Commissioner Caflisch, seconded by Commissioner Hayse the Commission authorized city staff to submit for bids for mowing services.

Aye: Ysusi, Caflisch, Hayse

Nay: None

VII. COMMISSIONERS' COMMENTS

Commissioner Caflisch inquired about the status of the RFQ for Construction Manager At-Risk and

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the draft of the RFP for marketing Building D.

City Manager Passauer stated that she has been in meetings all day and did not get a chance to review those items before the meeting.

VIII. PUBLIC CONCERNS

There were no public concerns.

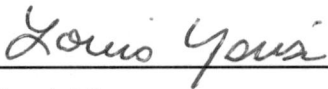
IX. ADJOURNMENT

Motion:

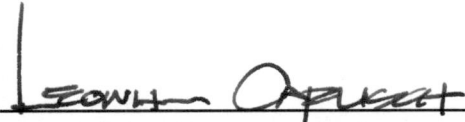
Commissioner Caflisch moved to adjourn. Commissioner Hayse seconded.

Aye: Ysusi, Caflisch, Hayse

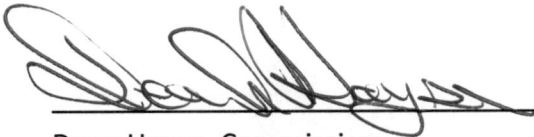
Nay: None



Louis Ysusi, Mayor



Leonhard Caflisch, Commissioner



Dean Hayse, Commissioner

Attest:



City Clerk/Treasurer