

**MAY 27, 2003**

The regular meeting of the Common Council was called to order at 7:30 p.m. by Mayor Fanta with Alderpersons Hatlem, Molland, Frie, Bjerke, Mack, Noble, Suhr, Zastrow and Smith present. A motion was made by Alderman Molland, seconded by Alderman Smith, to approve the minutes of the May 13<sup>th</sup> Council meeting. All ayes, motion carried.

Comment was made by Alderman Suhr, defining the term “night club” from the dictionary as a “restaurant” with food, booze, and dancing. Building Inspector Abt defended his position regarding zoning ordinance 22, not conditional uses (music not mentioned as related to categories), conditional use relates to bars, taverns, night clubs all pertain to music entertainment. Abt stated that he feels he is standing on solid ground and recalled letters written to the Bella Luna Restaurant and reports written to the City Administrator, Troy Brown. Alderman Noble stated that the zoning ordinance does not define what a “night club” is well enough to change a business from a restaurant to a “night club” due to the presence of live music. Noble said, according to City Attorney David Jenkins, Bella Luna was not considered a “night club”. Noble said that a change in interpretation of city code should be brought to the City Council to decide what definitive ruling to take. Noble stated that the situation involving the Bella Luna was confusing and harmful to all parties involved: confusing due to the change in interpretation with the zoning code and harmful to all parties due to the lack of community togetherness; harmful to Brown’s reputation and the public’s perception of his involvement due to Brown living in an apartment upstairs from the Bella Luna Restaurant. Noble states that the Council needs to figure out a valid interpretation of “live music”. Alderman Molland stated that he feels Brown has unfairly taken a beating during the situation involving the zoning ordinance definition. Frank Fasciani, owner of the Bella Luna, stated that the restaurant only plays live music from time to time, between varying hours of 4:00 p.m. until 10:00 p.m., one to two nights per month. Lisa Fasciani stated the live music was Irish music played on Sundays. Fanta stated that he was under the impression that the live music played at the Bella Luna was more than an occasional use. Frank F. asked the Council to define the amount of time in “frequency” written in the zoning ordinance. Brown restated what Frank F. needs to know from the Council regarding the frequency of live music allowed in a restaurant setting. Kermit Craeger stated that the Common Ground provided live music four nights per month and asked the difference between the Common Ground and Bella Luna. A comment was made as to the enforcement of the ordinance compared to the non-enforcement previously. Alderman Smith stated that the City now has a new building inspector and a city administrator and the City now has the man-power to enforce ordinance violations. Smith said that the public cannot deny enforcing ordinance because of past practices. Fanta asks Jenkins how the interpretation of the ordinance is a change from the past. Jenkins said that the change is the fact that the ordinance has never been enforced and the Council needs to talk to the previous building inspector. Smith and Jenkins declared that the ceased and desist order a violation of §712 whereas the building inspector shall report violations to the city attorney and the city attorney will make the decision. Sarah Caldwell is in favor of live music at the Bella Luna. Mary Henry states that she has lived in this community for 19 years and feels that the Council should be trying to entice businesses to take up space on Main Street and should support the local arts. Whibe Dev asked the difference between live music and recorded music. Jenkins stated that there are many differing opinions, not everyone is

wrong. Rollie Hills stated that he agrees with Noble and the situation is only creating riff between the City Council and the public. Alderman Zastrow states that the situation is a zoning question, permitted use versus conditional use and procedures need to take place. Alderman Mack speaks. Hatlen makes a motion to send to the plan board. William Moffitt suggests that we send the issue to the Attorney General. Jenkins said that it won't work. Dan Pepper said that this was a confusing subject and the Council needs a legal process to change laws written for another time; Council should be supporting "quality live music" to bring businesses into the community and tourists to the city; "harp fest" brought many people to the city this past weekend. Joe Reising asks how tonight's dealings will affect the Bella Luna and what will happen next. Motion made by Frie, seconded by Noble to send the issue to the Plan Board. Motion denied 5 to 4.

Alderman Mack asks what is the legality of rescinding something that was already ordered. Noble states that according to Atty Jenkins, it is legally meaningless to rescind an order that was unlawfully ordered. Lisa Solverson states that another order should not be issued. Noble requests that the Council vote on the issue and bring into the right. Rob Drew makes a comment about penalizing one business and not another. Motion made by Alderman Zastrow that the Council should recognize that the cease and desist order as improperly process; therefore, consider it null and void. 2<sup>nd</sup> by Hatlem, roll call, all ayes, motion carried.

Motion made by Alderman Mack, seconded by Alderman Bjerke concerning second reading of Ordinance 547 regarding compression brakes. All ayes, motion carried.

Motion made by Alderman Mack, seconded by Alderman Frie concerning second reading Ordinance 548 regarding dangerous dogs. All ayes, motion carried.

Motion made by Alderman Hatlem, seconded by Alderman Molland regarding Mayor's appointment of Sue Walby to the Viroqua Housing Authority. All ayes, motion carried.

Motion made by Molland, seconded by Zastrow to pay the bills as audited by the Finance Committee. All ayes, motion carried.

Period for public comment: Alderman Mack states that the editorial in the paper regarding the Bella Luna situation was out of line. Mary Henry asks when is something going to be done about the library. Angie, from the library board asks why the library was taken off the agenda. Wayne Gates, WRLS Winding Rivers Library Board regarding status of negotiations with Viroqua on grants for library. Fran Deter states that the library was closed on account of emergency and something needs to be done because people need the library. Lisa Solverson states that the library is unsafe and the workers cannot extract books to move them to a new space if a new space was available.

At 8:42 p.m., a motion made to adjourn by Molland, seconded by Hatlem. Meeting adjourned.

Kathleen A. Sime, Clerk