

**CITY OF SOUTH LYON
SPECIAL CITY COUNCIL MEETING
FEBRUARY 26, 2008**

Mayor Doyle called the meeting to order at 7:00 p.m.
Mayor Doyle led those present in the Pledge of Allegiance to the Flag

PRESENT: Mayor Doyle
Council Members: Kivell, Kopkowski, Maida, Morelli, Selden and Wedell
City Manager Cook
Attorney Lee
Attorney Hill
City Clerk/Treasurer Zemke
Police Chief Collins

Attorney Parvin Lee stated that we are here pursuant to notice given on February 14, 2008 to the license holders of Liquor License #162503-2007. This matter is here because the constitution and the rules and regulations of the Liquor Control Commission require that before the City Council make findings or resolution to pass on to the Liquor Control Commission that we hold a public hearing so that issues that we have concerning the license be presented to the license holder and that they be given the opportunity to refute or comment to justify retaining the license and for stalling the action Council is being asked to take. This meeting was scheduled for 7:00 p.m. on this date. It is now 7:05 p.m. and the applicants or their representatives are not present. We will proceed to create the record and give the opportunity for that applicant to appear. The purpose of this meeting is to provide opportunity for the applicant to respond. Notice was sent to Waldenmayer & Coffey, LLC which is the owner of Bella Luna and license holder. The restaurant is located at 134 E. Lake Street.

Attorney Lee stated that we have set forth five specific items that we indicated to the license holder that we would be addressing. He stated that we have a resolution and set of findings of fact that we will ask Council to find. The property at 134 East Lake Street is up for sale. This building was opened as a site for a license approximately two years ago asking for the last license that the City had. That license was given with certain conditions. The license would not be issued until a Certificate of Occupancy was issued for the building. On September 28, 2007 that Certificate of Occupancy was issued by the City. However, the City used the issuance as a natural consequence of a completion of the development and opening of business with the understanding that this building would be open to bring people into South Lyon and enhance the downtown area. Since September 28th, we cannot identify more than five days in which this building has been open as a restaurant. As indicated in an article in the South Lyon Herald, the restaurant has been closed and it identified people having planned and made reservation to have a meeting at the restaurant appear to find the restaurant closed and no notification of unwillingness to honor the reservation. On January 30th, our Police Department received notification by the Liquor Control Commission that the license was suspended, and it remains suspended. The reason given was that they have failed to provide evidence that they have maintained their proper insurance, which is a condition of operating a liquor establishment in the State of Michigan. This is an extremely important protection for the public. He stated that he would like to add to the findings of fact that today Bella Luna has had its water shut-off due to non-payment. The establishment was given until yesterday to pay the bill and failed to do so. The sister establishment was also issued a shut-off notice, but they did come in and paid the bill in full. This is the same license owner. Now Bella Luna stands as a derelict building without water service. There have been a number of calls to the sister establishment indicating police activity. While these reports are not evidence of crimes themselves, they are evidence of police involvement and utilization of City manpower as a result. While that is not direct evidence that the Bella Luna license should be revoked, it is evidence that this license holder perhaps is not

the person the City wishes to hold two licenses in the City. He stated that he is asking Council to make the findings of fact that are presented. He believes that the evidence is clear that the applicant in applying for the liquor license made plans and promises to the City. The City's policy for issuing liquor licenses states in part that "the licenses are for the purposes for enhancing the economic growth and utilization of the downtown area of the City of South Lyon".

Having the business immediately put up for sale after issuance of the license without creating a viable business, having turned people away who have made reservations does nothing to enhance the growth and development of our downtown area. We need this license to attract a business to the City that would increase foot traffic to help not only this business but other businesses downtown to grow and be a designation point. For this reason, he believes that the City needs to have this license back to allow us to offer it to another business when an opportunity presents that meet the stated reasons for licenses as set forth in the City's Liquor Policy. He stated that it should be noted that we have not had any response from the person who should be here to defend or explain their position. He stated that Council may add or subtract to any of the findings of fact. If Council approves the resolution, it will be passed on to the Michigan Liquor Control Commission for their consideration. The City of South Lyon does not control this license. Our actions are only recommendations to the Liquor Control Commission and their decision is final relative to these matters. However, he would expect that upon receiving a proper resolution from this body, that the Liquor Control Commission would hold its own hearing, make use of the record being created here and hopefully follow our recommendation in revoking this license.

Councilman Wedell asked what method was used to serve Waldenmayer & Coffey, LLC the letter. Attorney Lee stated that they used first class mail, which is what is required in the State of Michigan. He further noted that the owners of Bella Luna have acknowledged that this hearing was imminent.

Councilman Wedell stated this is a public hearing and asked if anyone in the audience wishes to speak should they be given the opportunity. Attorney Lee stated that Council is not obligated. This is a public meeting for a limited purpose, but Council can choose to allow that. The consensus of Council was that they would allow public comment after Council had opportunity to ask questions.

Council Member Kopkowski asked if this is the license holders' only opportunity to make explanation. Attorney Lee stated that they have the right to boycott this meeting and wait to make presentation at the Liquor Control Commission, but he would hope that it will be taken into consideration their failure to come here and answer the City's questions. Council Member Kopkowski asked how long the process would take. Attorney Lee stated that he believes that the process would be concluded prior to the date in which licenses are typically renewed, which is March 30th.

Councilman Kivell stated that at a prior meeting, Attorney Lee had stated that he could not find evidence of another community taking similar action. Attorney Lee stated that they have not found an instance where this has occurred. There are numerous instances where a City has taken action to ask that a license be revoked after the business has been in place and numerous violations have been built up. In this case, you cannot get violations if you are not open.

Councilman Kivell stated that it has been indicated that there is evidence of the restaurant only being open five days, but he has been there three times. He asked how five days was determined. Attorney Lee stated that this is based on observation by the Building Department. He was hoping that Mr. Waldenmayer would be here to clarify that information.

Councilman Selden stated that he cannot comprehend why there is nobody here to represent Bella Luna given the severity of the situation.

Councilman Morelli asked Attorney Lee if he would be present at the hearing that the Liquor Control Commission will conduct. Attorney Lee stated that he would be and they would be bringing a record of this meeting.

Mr. Roger Tikkanen of 893 Village Way stated that the economy is so bad and asked how you can keep a business open if you do not have the money. He stated that we have good people trying to do good with these restaurants. You cannot kick a dog when it is down. You do not know what you will get next. He stated that more businesses will be lost when Meijers is opened.

Margaret Kurtzweil of 939 West Hills Drive stated that she is an attorney that deals with a lot of businesses and she would vehemently disagree with the gentleman's statements blaming the demise of Bella Luna on the economy. The economy may not be the best, but there are businesses in the area that are doing very well. She believes that what we have here is a business owner that made a bad business decision. It was not a good decision to think that you can open a restaurant across the street from another restaurant in a community that does not have the demographics to support that type of restaurant. We do not have that many people coming downtown every week where there are a variety of restaurants and expect to stay open. To miss the very basic demographics when this restaurant opened up adds credence and credibility to the fact that they made a very bad business decision. The fact that they are not here tonight is also evidence of their refusal to accept responsibility for the decisions and the way they have managed the endeavor. It is shameful that they are not here. If they want to be a part of this community, they want to defend their business practices then they should have been here. This is a civil community. She stated that she does not think that they were up front with this Council when they made certain representations. She stated that one time when she was there and wanted to use her credit card, they had to run across the street in order to charge her dinner. They have gone in there and have had to get their own silverware, water, etc. and the gentleman who waited on them was honest and stated that he had never waited on tables before and was simply doing it as a favor. They did not even have professional adequate staffing. What she has observed does not indicate to her that this was a business owner that intended to run a very viable business. The liquor license has value and as long as he has that license and it is not suspended, it has value and if he sells that property with an attached liquor license, he stands to possibly walk out with a nice "chunk of change" leaving this community with nothing. She further discussed the proposed business plan, expectant volume, etc. She stated that she would recommend that Council consider this community and consider the facts and conduct. If you were a business owner serious about your business and how it is run and how you approach the community, then you have an obligation to come before your peers and defend your business practice.

Councilman Selden stated that there is another Italian restaurant in town that has been successful with just a beer and wine license so it is not just the economy.

Councilman Morelli stated that when the request came before Council, they did indicate that they did not intend to be open seven days per week. He further stated that he does believe that they were open more than five days. They may have only been open five days after they received the liquor license. They were open two to three weeks before they even got the liquor license.

Councilman Kivell stated that when they originally made the request we were trying to extend as much to them as we could. They created some energy downtown and had good customers at the existing restaurant. We took a leap of faith and it did not turn out. He stated that he would

have like to have seen them here, but it may have been a business decision. It may make more sense to make their argument to the people who actually control the license. He would have liked to have them explain to our community and the people who entrusted them with this benefit.

Mr. Roger Colissimo stated that he did do advertising for Don Waldenmayer. He is not here to stick up for him because he does believe that he should be here to do that for himself. The restaurant opened in April and were consistently open April through June with a few days closed when things started to fall apart. He ate there several times and there were some service issues and they were going through some trials with the cooks and staff overall. There were some financial issues so there were some business practices that were short-sided. The bottom line is that it is his operation and his responsibility. He did spend a lot of money in those buildings to update and upgrade them including the theatre. He stated that he believes that he had the right intentions just mismanagement of business. The decision that is made for this group will not only impact Bella Luna but also the Bistro and the Theatre.

Attorney Lee stated that we need to make a distinction. We are not shutting down the restaurant. They can continue to operate. He stated that he was not aware that the restaurant operated as a restaurant in April and May when they did not have a liquor license. We are talking about a liquor license that was issued after September 28th after a Certificate of Occupancy.

Council Member Kopkowski asked how this will affect Mr. Waldenmayer's ability to get a beer and wine license. Attorney Lee stated that if the Liquor Control Commission rescinds this license, it would only preclude him from making application for another one for two years. After that point, he is free to start over and any application would stand alone. As we speak, he could apply for a beer and wine license.

Councilman Selden stated that Council in no way is trying to harm anyone, but rather protect a very valuable asset of the community.

CM 2-1-08 – STATEMENT OF FINDING OF FACT – LIQUOR LICENSE – BELLA LUNA RESTAURANT

Motion by Kopkowski, supported by Selden

This matter having been brought on before the South Lyon City Council on February 26, 2008, notice and opportunity to be heard having been given to the Licensee Waldenmayer & Coffey, LLC, the South Lyon City Council makes the following finding of facts:

1. The property 134 East Lake Street is up for sale.
2. The Licensee does not intend to use the liquor license as originally set forth in its application to the City of South Lyon.
3. The Licensee has failed to open its business as originally outlined and presented to the City Council.
4. The Licensee has acted to the City's detriment in fostering economic growth by providing unreliable service in failing to open for a previously scheduled event.

5. The Licensee has violated the rules established by the Michigan Liquor Control Commission as set forth in the notices provided by the Michigan Liquor Control Commission.
6. A member of the Licensee has filed numerous complaints with the Police Department of illegal conduct transpiring on properties also owned by the Licensee.
7. The City of South Lyon Water Department shut off the water to the Bella Luna establishment as of February 26, 2008 as the result of unpaid water bills.

VOTE:

MOTION CARRIED UNANIMOUSLY

CM 2-2-08 – RESOLUTION - REQUESTING THAT THE MICHIGAN LIQUOR CONTROL COMMISSION REVOKE LIQUOR LICENSE NUMBER 162503-2007

WHEREAS a public hearing was conducted on February 26, 2008 regarding the Class C Liquor License number 162503-2007 held by Waldenmayer & Coffee, LLC; and

WHEREAS proper notice of the hearing was given to the licensee, and the licensee being given its due process rights including notice of the allegations, the ability to examine and present evidence, confront adverse witnesses and be represented by an attorney; and

WHEREAS the South Lyon City Council having examined all the facts and being otherwise fully advised; and

WHEREAS, the South Lyon City Council finds that the Liquor License is not being used to foster economic growth, or in the best interest of the City; and

WHEREAS, the License is not being utilized within the limitations of the laws of the State of Michigan; and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of South Lyon hereby makes the finding of facts set forth in Exhibit A.

NOW BE IT FURTHER RESOLVED that the City Council of the City of South Lyon does hereby request that the Michigan Liquor Control Commission revoke the license of the above-mentioned licensee.

VOTE:

MOTION CARRIED UNANIMOUSLY

ADJOURNMENT

CM 2-03-08 – ADJOURNMENT

Motion by Selden, supported by Morelli

To adjourn the meeting at 7:37 p.m.

VOTE:

MOTION CARRIED UNANIMOUSLY

Respectfully Submitted,

John Doyle, Jr.
Mayor

Julie C. Zemke
City Clerk/Treasurer