

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MAY 6, 2015**

The following narrative and summary describes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road, Raleigh, North Carolina on May 6, 2015, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the NC ABC Commission in the Legal Division.

ROLL CALL

Chairman James C. Gardner and Commissioners Joel L. Keith and Kevin M. Green were present. Chairman Gardner called the meeting to order.

MINUTES OF APRIL 8, 2015

Chairman Gardner asked for a motion to waive the reading of the minutes of the April 8, 2015 meeting into the record. Commissioner Keith made a motion to waive the reading of the minutes from the April 8, 2015 meeting. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the April 8, 2015 meeting. Commissioner Green made a motion to approve the minutes from the April 8, 2015 meeting. Commissioner Keith seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. § 138A-35, Chairman Gardner asked if there were any conflicts of interest or any conditions or facts which might create the appearance of a conflict of interest with respect to any matters on the agenda. Commissioner Green stated he found no conflicts of interest. Commissioner Keith stated he found no conflicts of interest. Chairman Gardner stated he found no conflicts of interest.

I. HEARING CASES – 27

Chief Counsel K. Renee Cowick stated there were three contested cases. Hearing case number 1, Bunker Jacks, was Assistant Counsel Tim Morse's case. The applicant was nonresponsive; therefore, the Administrative Law Judge issued a decision of a one-year suspension of the permittee's Mixed Beverages Restaurant permit.

Commissioner Keith made a motion to impose the penalty of the Administrative Law Judge's decision. Commissioner Green seconded the motion. Motion Passed.

Hearing case number 2, Monterrey Mexican Restaurant, was also Mr. Morse's case. The applicant was nonresponsive; therefore, the Administrative Law Judge issued a decision of a \$500.00 penalty and a 15-day suspension of the permittee's ABC permits.

Commissioner Green made a motion to impose the penalty of the Administrative Law Judge's decision. Commissioner Keith seconded the motion. Motion Passed.

Hearing case number 3, Nick and Nates Pizzeria, Inc. was Assistant Counsel LoRita Pinnix's case. Ms. Pinnix stated the 100% stockholder of the company had been convicted of a felony and is no longer eligible to hold an ABC permit. The permittee's ex-wife stated she had a marital interest in the business and should retain the permits. However, as the permit was granted in the 100% owner's name, the ex-wife has no claim to the existing permit, nor is it transferable. The Administrative Law Judge issued a decision of cancellation of the permittee's ABC permits.

Commission Keith made a motion to impose the penalty of the Administrative Law Judge's decision. Commissioner Green seconded the motion. Motion Passed.

Ms. Cowick stated The Pantry, Inc. had recently been purchased by Circle K Stores, Inc. The Pantry, Inc. had seventeen cases on the April 8, 2015 ABC Commission Meeting agenda. However, the payment for the penalties was not accounted for in the sale and Circle K Stores, Inc. requested an extension of the deadline to pay the penalties. Ms. Cowick requested the deadline be extended to the May 6, 2015 ABC Commission Meeting deadlines.

Commission Green made a motion to extend the deadline based upon staff's recommendation. Commissioner Keith seconded the motion. Motion Passed.

Commissioner Green made a motion to ratify the remaining offers in compromise. Commissioner Keith seconded the motion. Motion Passed.

II. ABC STORE LOCATION – CRAMERTON ABC BOARD

Administrator Robert A. Hamilton stated on March 15, 2015, the NC ABC Commission received a request from the Cramerton ABC Board for approval to purchase property to open and operate a second ABC Store. This unaddressed parcel is adjoining the property at 4609 South New Hope Road, Gastonia, North Carolina. On March 23, 2015, ABC Auditor Edwin Strickland and Compliance Officer Mark Hilton met with General Manager Sam Carpenter.

The Audit/Investigators found the proposed location, 4609 South New Hope Road, Gastonia, North Carolina, is an undeveloped lot located near a crossroads with other retail businesses. On April 2, 2015, Mr. Strickland confirmed the property is located within the Cramerton city limits through annexation, zoned B-2, and is approved for ABC sales.

The property is 2.23 acres and is owned by Zebe, LLC of Belmont, North Carolina. All Cramerton ABC Board members submitted financial disclosure forms and have no direct financial interest in the ownership of the property. The tentative price for the property is \$150,000.00. The proposed building will be between 3,600 SF and 6,400 SF. The plans are to use one-third of the space for retail sales and the remainder for storage, administrative space and for fulfillment of retail mixed beverage permit sales, also allowing for possible future expansion of the retail space.

Mr. Hamilton stated the anticipated amount of the first year sales was \$754,000.00. This figure was amended from the initial estimate to allow for sales drawn from the existing store.

The nearest school, New Hope Elementary School, is approximately .8 miles from the proposed location. The nearest church, New Hope Church of God, is approximately .2 miles from the proposed location. The nearest ABC Store is located approximately 4.2 miles from the proposed location and is also operated by the Cramerton ABC Board.

Mr. Hamilton stated notice to the public was posted on March 18, 2015. However, there were concerns from the ABC Commission staff and the general public regarding vegetation blocking the view of the sign. The Cramerton ABC Board received permission from the property owner, and cut the obscuring vegetation on April 2, 2015.

The Cramerton ABC Board received over seventy-five comments regarding the proposed ABC Store. More than one-half of these comments were from non-residents of Cramerton.

Mr. Hamilton stated staff recommended approval of the proposed location. No one was present to comment on the proposed location.

Commissioner Green made a motion to approve the proposed location based upon staff's recommendation. Commissioner Keith seconded the motion. Motion Passed.

III. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) CAROLINA BREWING COMPANY, LLC; HOLLY SPRINGS BASEBALL, LLC

Ms. Cowick stated attorney Laura Collier was present on behalf of her client, Carolina Brewing Company. Ms. Collier stated her client wishes to purchase advertising space at the Holly Springs Park. The baseball park is owned by the Town of Holly Springs; however, it is leased to Holly Springs Baseball, LLC, the company which owns and manages the Holly Springs Salamanders baseball team. The concessions at the park are contracted to Double-Play Concessions, LLC. Five of the six owners of Double-Play Concessions also own an interest in Holly Springs Baseball, LLC.

Ms. Collier is requesting the exemption to allow Carolina Brewing to purchase advertising to be displayed in the park from Holly Springs Baseball through a non-exclusive and non-preferential contract. If Double-Play Concessions wishes to purchase Carolina Brewing Company products to be sold at the park, it would make the purchase through a third-party wholesaler. The managers of Double-Play Concessions and Holly Springs Baseball are independent and do not have ownership interests in either company.

Ms. Cowick stated the advertising contract must be presented to the ABC Commission legal staff 3 days prior to placement of the advertisements. Ms. Cowick stated there were no objections, and based upon the precedent set by the Commission, recommended the ABC Commission grant the exemption

Commissioner Green made a motion to grant the exemption based upon the defined conditions. Commissioner Keith seconded the motion. Motion Passed.

IV. FINAL REPORT FOR MANDATORY REVIEW OF 04 NCAC 2R

Ms. Cowick explained the NC General Assembly passed a law requiring a mandated review of rules by State agencies. Ms. Cowick stated the ABC Commission legal staff had made an evaluation and will present the final report regarding the review of Subchapter 2, the organizational rules of the NC ABC Commission, to the Rules Review Committee on June 16, 2015. The report was posted on the NC ABC Commission website and the Office of Administrative Hearings website for a 60-day public comment period.

Ms. Cowick asked that the determination of the following rules be changed from “Unnecessary” to “Necessary without Substantive Public Interest”. The changes were primarily based upon comments received by the North Carolina Beer and Wine Wholesalers Association.

The 04 NCAC 02R rules whose determinations were to be changed were: .0101 – Purpose; .0201 – Commission; .0204 – Administrative Functions; .0205 – Legal Functions; .0303 – Distribution, Inspection and Copies of ABC Laws; .0403 – Administrative Action; .0502 – Revocation or Suspension of Permit; .0602 – Issuance: Grounds (declaratory rulings); .0610 – Effect of Declaratory Ruling; .0611 – Alteration of Declaratory Ruling; .1204 – New Stores Prohibited in Certain Areas; .1404 – Special Orders (*originally Necessary without Substantive Public Interest, but received a comment from a private citizen.*); and, .1705 – Hours of Sale.

Commissioner Green made a motion to approve the changes based upon the staff recommendations. Commissioner Keith seconded the motion. Motion Passed.

Commissioner Keith made a motion to approve the final determination upon the staff recommendations. Commissioner Green seconded the motion. Motion Passed.

Chairman Gardner announced the next NC ABC Commission meeting will be held on June 10, 2015.

Commissioner Green made a motion to adjourn. Commissioner Keith seconded the motion. With no further business, the meeting adjourned.

[SIGNED]

James C. Gardner, Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

[SIGNED]

Caroline Y. Washburn for the Legal Division