

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
DECEMBER 11, 2013**

The following narrative and summary describes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road, Raleigh, North Carolina on December 11, 2013, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the ABC Commission in the Legal Division.

**ROLL CALL**

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

**MINUTES OF NOVEMBER 13, 2013**

Chairman Gardner asked for a motion to waive the reading of the minutes of the November 13, 2013 meeting into the record. Commissioner Keith made a motion to waive the reading of the minutes from the November 13, 2013 meeting. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the November 13, 2013 meeting. Commissioner Green made a motion to approve the minutes from the November 13, 2013 meeting. Commissioner Keith seconded the motion. Motion Passed.

**CONFLICTS OF INTEREST**

As required by North Carolina General Statute 138A-35, Chairman Gardner asked if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the agenda. Commissioner Green stated he had found no conflicts of interest. Commissioner Keith stated he had found no conflicts of interest. Chairman Gardner stated he had found no conflicts of interest.

**I. HEARING CASES – 48**

Deputy Agency Counsel K. Renee Cowick stated no one was present on behalf of hearing case number 1, Hector Diaz. Ms. Cowick stated this contested case was regarding the rejection of a mixed beverage permit application. The business did not have the required seating for thirty-six persons. The ABC Commission's rejection was appealed; however, the Administrative Law Judge issued a decision upholding the ABC Commission's rejection. Ms. Cowick stated the Final Agency Decision includes the destruction of any evidence seized.

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

Ms. Cowick stated attorney Jennifer Morgan was present on behalf of hearing case number 4, Bald Head Island Club. Ms. Morgan stated her client wished for the ABC Commission to be aware the management and employees of the business had received training and have made plans to receive future training annually.

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

## **II. OTHER BUSINESS – ABC STORE LOCATION – ROWAN/KANNAPOLIS ABC BOARD**

Administrator Michael C. Herring stated on September 27, 2013, the NC ABC Commission received a letter from Mr. Terry Osborne, General Manager of the Rowan/Kannapolis ABC Board requesting approval for placement of a new ABC Store in Cleveland, North Carolina.

On October 4, 2013, ABC Audit/Investigator Edwin Strickland began an investigation and found the proposed location for the Cleveland ABC Board Store was 11713 Statesville Boulevard, Cleveland, North Carolina. The proposed location is within Third Creek Station, a strip mall located in Cleveland, North Carolina. Other businesses within the shopping center include an IGA Food Store, a Subway and C's Restaurant.

The proposed location is an end unit of one building within the shopping center. The property is the site of a former bank and is owned by Claudia Register. Ms. Register does not have financial or personal interests with the members of the Rowan/Kannapolis ABC Board.

All Rowan/Kannapolis ABC Board Members submitted financial disclosure forms regarding the property and have no direct financial interest in the ownership of the property.

The property is 2,800 square feet and the Rowan/Kannapolis Board is tentatively negotiating an annual lease of \$22,400.00 or \$8.00 per square foot or \$1,867.00 per month.

The nearest school, Cleveland Elementary School, is approximately .9 miles from the proposed location. The nearest church, Cornerstone Baptist Church, is .2 miles from the proposed location. The nearest ABC Store is 10.8 miles away, located at 1312 Garner Bagnal Boulevard, Statesville, North Carolina. The next nearest ABC Store is approximately 12.4 miles away, located in the town of Cooleemee, North Carolina in Davie County. An additional Rowan/Kannapolis ABC Board store is located 14.6 miles away in Salisbury, North Carolina. Also in close proximity are ABC Stores in Mooresville, North Carolina.

Notice to the public was properly posted on November 1, 2013. Numerous emails, letters, telephone calls and petitions have been received by the NC ABC Commission in objection to the proposed location. Mr. Osborne has also received similar objections which he delivered to the NC ABC Commission.

Mr. Herring stated all five of the Rowan County Commissioners have responded regarding the proposed Cleveland ABC Store. Four of the five commissioners, including the chairman, are opposed to the proposed location. The county commissioner in favor of the proposed store applauds the efforts of the Rowan/Kannapolis ABC Board to increase proceeds and local revenues.

Mr. Herring stated the NC ABC Commission has received letters from Cooleemee, a town just north of Cleveland. The Chairman of the Cooleemee ABC Board, Brent Cranford, as well as Mayor Lynn Rumley submitted letters asking for reconsideration on the Cleveland ABC Store. Mr. Cranford stated the gross sales for the Cooleemee ABC Store for Fiscal Year 2013 were \$762,672.00 in comparison to the \$10,170,862.00 gross sales for the Rowan/Kannapolis ABC Board. Both Mr. Cranford and Mayor Lumley stated the proposed Cleveland ABC Store would reduce their customer base by 25-40% causing their ABC Store to no longer be profitable. The Town of Cooleemee relies heavily on the income generated by the ABC Store to provide supplemental funds to their community and local government.

Mr. Herring explained, Rowan County ABC, prior to the merger with Kannapolis (Cabarrus County), previously discussed an ABC store in Cleveland, in 1994 and 1997. However, the issue never reached the NC ABC Commission. In 1997, the Town of Cleveland passed a resolution stating an ABC store in Cleveland would affect the health, safety or general welfare of the community. In 2003, the issue came before the NC ABC Commission and Chairman Ann Fulton cited Commission Rule 2R.1204 which

discourages the location of an ABC Store in close proximity to a church, school or similar institution. Chairman Fulton stated an ABC Store would adversely affect the general welfare of Cleveland as the citizens felt so strongly about an ABC Store in their community. The Town of Cleveland had voted against an ABC Store.

The NC ABC Commission in making a decision regarding the location of an ABC Store, as explained by Mr. Herring, may consider 1) whether the health, safety, or general welfare of the community will be adversely affected; 2) how the citizens voted in the last election on the question; and, 3) proximity of the new location to existing ABC stores operated by that board or any other board. Mr. Herring stated the ABC Commission of 2003 found an ABC Store would adversely affect the community and the citizens of Cleveland community voted in opposition of an ABC store. Mr. Herring stated there are four to five ABC stores within a 10-14 mile radius of the proposed location. The Statesville and large ABC Boards in the vicinity would be able to absorb a small loss of business. However, the Cooleemee ABC Store would be adversely affected by the opening of an ABC store in Cleveland. Uniform pricing within ABC stores ensure ABC stores do not compete.

Mr. Herring introduced Terry Osborne who was present on behalf of the Rowan/Kannapolis ABC Board. Mr. Osborne stated the Rowan/Kannapolis ABC Board respects the people present to speak both for and against the proposed ABC store. Mr. Osborne explained there is a process which must be followed once an ABC store is proposed. The North Carolina ABC system allows for control, whereas the alternative, privatization, would not allow the control which enables both sides to be heard.

During the late summer and early fall, the Rowan/Kannapolis Board received notification of interest for a new ABC location through local elected officials and others. The process of investigating a proposed location began with this notification and led to the posting of the public notice as required by law.

Mr. Osborne stated the Rowan/Kannapolis ABC Board has enacted educational programs to inform 9,700 Rowan County students about underage drinking. Chairman Gardner commended Mr. Osborne and the Rowan/Kannapolis ABC Board on their underage drinking educational programs.

Ronald Young was present to voice his objection to the proposed ABC Store. Mr. Young stated Cleveland is a rural town and he had been present ten years prior when the placement of an ABC Store in the town was disapproved. Mr. Young stated he had a petition with 594 signatures objecting to the proposed ABC store.

Mr. Young stated the town was struggling, referring to a bank that had opened then closed in the same location as the proposed ABC store. Gas stations had closed with only one remaining self-serve gas station. The major employer in the area, Freightliner, reduced the number of shifts from three to one. One restaurant on the outskirts of town had alcohol permits and it is no longer open for business.

Mr. Young stated there were three issues with the proposed ABC store. Saturation, as three existing ABC Stores are located within approximately 10-12 miles. Mr. Young believes 175 prospective customers will be served by the proposed store. He also stated there are already five local businesses which sell alcohol. Mr. Young's second issue is sincerity, as he questioned the location two doors from a pediatrician's office, across the street from a daycare and 500 feet from a church. Mr. Young's third issue was sin. He questioned adding an ABC store to a community which already produces underage drinking, homicide and suicide.

Gerald Osborne, a town commissioner, was present to voice his objection to the proposed ABC Store. Mr. G. Osborne stated he was also present in 2003 to object to a proposed ABC Store in Cleveland. He stated he does not see a gain for Cleveland as there is no financial justification due to the proximity of other

ABC stores. Either hoping to increase alcohol consumption in Cleveland or taking business from the other ABC stores does not appear to be an economic gain.

Harold Cutler asked whether an economic study is conducted when considering a new ABC store location. Mr. Herring stated the research including economic impact is the responsibility of the local ABC Board. The NC ABC Commission is only part of the final consideration. Mr. Cutler stated people who wish to purchase alcohol will make the effort even if it means driving a little further to an ABC store.

Roy Huss as a founder of the Cornerstone Baptist Church was present to voice his objection to the proposed location and supply additional documentation. Mr. Huss stated the Cleveland area churches and others in Western Rowan County have supported Bible Teachers in the schools since 1949. The West Rowan Bible Teaching Association raises funds to support the salaries of six teachers within area schools. Mr. Huss stated values, faith and heritage are especially important to the area schools, if not to all within the school system. Mr. Huss maintained the citizens are speaking quietly about their values through their support of the Bible study in the schools.

Mr. Huss added the number of individuals within the community grows during the daytime hours as students are bused in or drive to the schools and employees commute to work at Freightliner. Mr. Huss stated the concern for more DUI drivers. He also stated he did not want to make the purchase of alcohol too convenient, as fewer impulse purchases would occur if one had to drive 10-12 miles to an ABC store.

Mr. Huss, as an employee of the local schools, voiced his appreciation to Terry Osborne and the Rowan/Kannapolis ABC Board and their efforts to provide alcohol education in the schools.

Shannon Grady was present with his wife and two of his five children to voice his concern regarding the lack of adult responsibility in the poverty-stricken areas of their community. Mr. Grady stated he sees problems with alcohol without an ABC Store and is concerned about what might happen if a store is opened.

Tony Chastain was present to voice his objection to the proposed ABC Store. Mr. Chastain stated he had lived in western Rowan County all his life, growing up in Cleveland and currently residing nearby. Mr. Chastain is an employee of Freightliner, the company located across the street from the proposed location. Mr. Chastain stated he had spoken with the COO of the North America Daimler, who voiced his concerns to Mr. Chastain regarding the proposed ABC store location.

Richard Shaver, the owner of a lumber business located one mile outside Cleveland was also present to state his objections to the proposed ABC store. Mr. Shaver stated his business has been a part of the Cleveland community for 40 years and he would like to see additions to the local economy. However, Mr. Shaver would rather see a tenant that would benefit the majority of the community. Mr. Shaver stated he had spoken with a number of citizens and business people and an ABC store is not the choice of the people. Mr. Shaver stated his business employs 70 individuals and he is concerned for their safety as the store would be located a block from the highway and the connecting roads are crooked, country roads.

Don Cover, a town commissioner from the Town of Cooleemee, was present to voice the town's opposition to the proposed Cleveland ABC Store. Mr. Cover stated the Cooleemee ABC Board is a small ABC board and the town relies heavily on the revenue the board generates. Mr. Cover stated an ABC store in Cleveland would cause great economic harm to Cooleemee.

Jason Josey was present to express his opposition to an ABC store in Cleveland. As a parent of children treated at the pediatrician's office next door to the proposed location, he voiced his concern and unwillingness to frequent the practice if he had to park at an ABC store. He also stated his family would no longer frequent the shopping center.

Claudia Register, a property owner of Third Creek Station and the general partner in charge of making leasing decisions, and local pharmacist was present to speak in favor of the proposed ABC store. Ms. Register stated the ABC store would be a responsible tenant and would also offer benefits to the community such as, additional hours for off-duty law enforcement officers and draw additional customers to the shopping center and its other tenants.

Ms. Register stated the pediatrician whose office would neighbor the proposed ABC store, Dr. Paula Franklin who was not present, was also in favor of the ABC store. Also, according to Ms. Register, the mayor of Cleveland is in favor of the proposed ABC store.

Ms. Register stated an ABC store in Cleveland would draw customers from Iredell County and the Mooresville ABC Store. Ms. Register stated they want to give people in Cleveland a choice. They are not trying to coerce anyone to drink, but want to give those who wish to drink alcohol responsibly a choice.

Judy Hutchison was present to speak in support of the proposed Cleveland ABC Store. Ms. Hutchison stated she has been a resident of Cleveland for 48 years and supports the ABC store if all the profit goes back to the town, schools and community. Ms. Hutchison stated she did not believe you can stop an individual from drinking alcohol. She stated she would rather see the profits from alcohol sales go back to the community of Cleveland than to other communities and schools.

Ashley Perry, a local college student with family ties to Cleveland stated she hopes to return to West Rowan County as a teacher. She voiced her support for the ABC Store as she believed it would help teachers.

Charlotte Cutler of Bath, North Carolina was present to speak on behalf of Claudia Register, the property owner of the proposed ABC store location. Ms. Cutler stated alcohol exists and children should be taught to be responsible about alcohol. Ms. Cutler stated there is an individual responsibility regarding alcohol. Ms. Cutler further asked that Cleveland not be denied the revenue because people are afraid of change.

Chairman Gardner thanked those who addressed the Commission, as well as all who attended the Commission Meeting. Chairman Gardner remarked Cleveland must be a wonderful community.

Mr. Herring stated since 1947, every time the issue of an ABC store in Cleveland has arisen, the majority of the citizens have spoken against the proposed store. There are five ABC stores within a 10-15 mile radius of Cleveland. Within the controlled alcohol system, another location in this area would economically harm the existing stores as the system must be profitable to maintain control.

The two neighboring Statesville ABC Stores generate \$5,000,000 in annual sales or 7% profit to sales, the three Mooresville ABC Stores generate \$8,000,000 in annual sales and a 12% profit margin, the seven Rowan County ABC Stores generate \$10,000,000 in annual sales, operating at a 4% profit ratio, and the Cooleemee ABC Store generates \$750,000 in annual sales, operating at 1% profit to sales. After expenses are paid, distributions are paid to the local cities or counties. Mr. Herring added the Statutes do not state the ABC funds received by the communities and cities go directly to the schools, rather the revenue raised is returned to the general fund of the city or county for which the board is established.

Commissioner Keith asked how the board members were appointed. Mr. Herring stated they were representatives of the various municipalities and four of the five Rowan County Commissioners were against the proposed location.

Commissioner Green repeated the statement of Terry Osborne, the General Manager of the Rowan/Kannapolis ABC Board, when interest is expressed by members of a community in an ABC Store

location, a store is considered. Commissioner Green expressed his hope that a tenant will be found to benefit everyone in the community.

It was Mr. Herring's opinion the health, happiness and general welfare of the community would be adversely affected by the addition of the proposed ABC Store and recommended the ABC Commission disapprove the proposed location.

Commissioner Green made a motion to accept Mr. Herring's recommendation to disapprove the proposed location. Commissioner Keith seconded the motion, commending the impartiality of Terry Osborne and the ability of the local community to participate. Motion Passed.

Chairman Gardner asked for a five-minute recess.

### **III. OTHER BUSINESS – REQUEST FROM THE NORTH CAROLINA ASSOCIATION OF ABC BOARDS FOR A REDUCTION OF THE BAILMENT CHARGE**

Mr. Herring stated on November 6, 2013, the NC ABC Commission received a letter from Joe Wall, Executive Director and General Counsel for the North Carolina Association of ABC Boards. The letter served as a formal request to reduce the bailment charge \$.08 per case from \$1.60 to \$1.52 commencing on May 1, 2014. Mr. Herring stated General Statute 18B-203(a)(14)(15) gives the ABC Commission the authority to fix the amount of bailment charges and bailment surcharges to be assessed on liquor shipped from a Commission warehouse and collect bailment charges and bailment surcharges from local boards.

Sara Brewer, the President of the North Carolina Association of ABC Boards was present to formally request the reduction on bailment charges on behalf of the Association. Ms. Brewer stated this reduction on the fees for the delivery of the 5,000,000 cases projected to be delivered in the next fiscal year would save the local ABC Boards approximately \$400,000. For many of the smaller boards, the actual savings may only be a few hundred dollars, but for those small budgets that amount could be used elsewhere for items such as maintenance or computer software upgrades.

Ms. Brewer stated the local boards are operated on a local basis; however, 75% of the revenue generated is returned to the North Carolina General Revenue Fund. Ms. Brewer is hoping to retain more of the revenue generated at the local level.

Mr. Herring explained General Statute 18B-203(b) states all moneys from bailment fees shall be deposited with the NC ABC Commission to cover operating expenses and to carry out the provisions of the ABC Law. The bailment fees and the bailment surcharge fees are part of the markup of the distillers case cost on a case of liquor. These fees are two of the eight levies charged on a case of liquor. This also includes a 39% markup for the local ABC Boards.

Mr. Herring added a reduction of \$400,000 would leave the NC ABC Commission unable to cover operating expenses. Mr. Herring also stated the bailment charges were decreased \$.10 per case in August 2012, affecting the Commission's revenues by approximately \$500,000. In July 2013, the Commission's obligations to the warehouse increased by \$400,000 to \$7,700,000 per year. This year the Commission has expanded its resources and operations to more effectively administer the ABC laws in the areas of ABC permits and alcohol education. Case shipments this year have increased approximately 62,000 cases through the end of November. Mr. Herring stated this increase of case shipments, with a successful December, will net the NC ABC Commission fund approximately \$149,000. However, a \$.08 reduction in fees based on current shipments would reduce the fund by \$400,000.

At fiscal year-end on June 30, 2013, the local ABC Boards' net profits increased by a little more than 10%. Funds spent on local ABC law enforcement increased by 2.5%. Monies spent on alcohol education increased by 15%. In addition, local county and city distributions increased by approximately 2%.

Mr. Herring recommended based on the Commission's needs and the \$.10 reduction in the bailment fees from last August, the Commission make no changes until the issue can be studied further.

Commissioner Keith asked if the fees were reduced as requested, would the bailment charges need to be increased later to cover the operating expenses. Mr. Herring stated it would be necessary to later increase the fees. Commissioner Green stated a change to the bailment charges could not be made without additional review of the costs.

Commissioner Green made a motion to continue the bailment charge at \$1.60 per case. Commissioner Keith seconded the motion, adding the ABC Commission would continue to review the bailment charges to ascertain if any reductions can be made to return more funds to the local boards. Motion passed.

#### **IV. OTHER BUSINESS – FUTURE NC ABC COMMISSION MEETING DATES**

Mr. Herring recommended the Commission approve Wednesday, February 12, 2014, as the date of the February 2014 NC ABC Commission Meeting; Wednesday, March 19, 2014, as the date of the March 2014 NC ABC Commission Meeting; and, Wednesday, April 16, 2014, as the date of the April 2014 NC ABC Commission Meeting.

Commissioner Green made a motion to approve these dates as future NC ABC Commission meeting dates. Commissioner Keith seconded the motion. Motion passed.

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, January 15, 2014.

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

*Approved at the January 15, 2014 Commission Meeting*

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

Respectfully submitted by,

/S/ Caroline Y. Washburn  
Caroline Y. Washburn for the Legal Section