

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
JULY 17, 2013**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on July 17, 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 JUNE 12, 2013**

Chairman Gardner asked for a motion to waive the reading of the minutes of the June 12, 2013 meeting into the record. Commissioner Keith made a motion to waive the reading of the minutes from the June 12, 2013 meeting. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the June 12, 2013 meeting. Commissioner Green made a motion to approve the minutes from the June 12, 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 – 52**

Deputy Agency Counsel K. Renee Cowick stated in hearing case number 1, the Administrative Law Judge had issued an amended decision and this case was to be continued to the August 14, 2013 NC ABC Commission Meeting to allow time for a response. Ms. Cowick stated hearing case number 37 was also to be continued to the August NC ABC Commission Meeting.

Ms. Cowick stated there were no contested hearing cases and no one was present to speak on behalf of their business.

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

**II. OTHER BUSINESS – ABC STORE LOCATION – GREENSBORO ABC BOARD**

Administrator Michael Herring stated on May 8, 2013, the NC ABC Commission received a letter from Fred McCormick, General Manager of the Greensboro ABC Board requesting approval to purchase

property for a new ABC Store in Greensboro, North Carolina. Present to represent the Greensboro ABC Board were Mr. McCormick and Michael Fox, attorney for the Greensboro ABC Board.

On June 3, 2013, ALE Special Agent Eric Hill began an investigation and found the proposed location for the Greensboro ABC Board store was 4106 Spring Garden Street, North Carolina 27409. The property is a vacant lot, located approximately 1.5 miles from the ABC store operating at 4639 West Market Street, Greensboro, NC. The proposed store will replace the existing store once it is built and opened.

The property is owned by DDC Properties, LLC. The estimated total cost for the land and the building is \$1,000,000.00. The approximate one acre of land would be purchased for approximately \$275,000.00 and the development and the cost of the building would be the balance. The proposed site is zoned Conditional District – Commercial Medium which would allow for an ABC store. The area consists of commercial businesses.

All Greensboro ABC Board Members submitted financial disclosure forms regarding the property owned by DDC Properties, LLC. Board member James D. Galyon indicated his personal business is general construction through Collins & Galyon General Contractors. Although Mr. Galyon has no direct financial interest in the ownership of the property, he has an indirect financial interest in the construction phase of the project.

Mr. Herring stated the General Statutes state that a conflict of interest occurs unless the member who financially benefits from the transaction abstains from participating in any way, including voting in the decision; minutes of the meeting at which the final decision is reached, specifically note the member who is financially benefitted and the amount involved in each transaction; and the next annual audit of the local board specifically notes the member and the amount involved.

Mr. Herring stated Collins & Galyon General Contractors was engaged as the contractor for the tract of property owned by DDC Properties, LLC prior to the Greensboro ABC Board considering the property for the proposed ABC store location. The proposed ABC store property is a portion of this larger tract. Mr. Galyon immediately disclosed to Mr. McCormick, Mr. Fox and the Greensboro ABC Board his potential conflict from financial interest in the construction phase. Mr. Galyon recused himself from any deliberations or considerations regarding the proposed site.

The planned building will be 4,800 SF. The nearest school is located approximately .3 miles from the proposed location. The school director stated the school had no objections. The nearest church is located approximately .8 miles from the proposed site. The director of facilities stated the church had no objections. Notice of Intent to open an ABC store at the site was properly posted on June 3, 2013.

Mr. Fox confirmed that Mr. Galyon disclosed his potential conflict of interest. Mr. Galyon recused himself from all discussions and decisions regarding the proposed ABC store location. All decisions were made by the remaining Greensboro ABC Board.

Commissioner Keith asked what was involved in the process of selecting the proposed site. Mr. Fox stated the ABC Board had looked at many sites through several real estate brokers as the lease for the existing store on West Market Street terminates in February. The existing store's shopping center was beginning to become rundown and the Greensboro ABC Board was transitioning to purchasing rather than leasing their ABC stores.

Mr. McCormick stated the Greensboro ABC Board had been approached by four brokers and had agreed that the proposed site was the best option as it was in close proximity to the existing store in a good

location and the other properties offered were for lease. Mr. McCormick stated he made the recommendation for the proposed site because it was the best location.

Mr. Fox confirmed DDC Properties, LLC had made arrangements with Collins & Galyon General Contractors prior to any Greensboro ABC Board interest for development of the property. Mr. McCormick added the costs for the proposed ABC Store would be reduced from lease costs of \$60,000.00 per year to mortgage payments of \$40,000.00 per year.

Projected annual sales of the proposed ABC Store are approximately \$2.8 million for the first year of operation with increases each successive year.

As no objections had been received, Mr. Herring recommended the ABC Commission approve the proposed location as a suitable location.

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

### **III. OTHER BUSINESS – ABC STORE LOCATION – JACKSON COUNTY ABC BOARD**

Mr. Herring stated in May 2012, Jackson County voters approved all ABC sales. On June 4, 2013, the ABC Commission received a letter from David Noland, the Chairman of the Jackson County ABC Board, requesting approval to open the first ABC Store in Cashiers, North Carolina. Mr. Noland was present to address the NC ABC Commission.

On June 18, 2013, ALE Special Agent Steven D. Myers began an investigation. The proposed site is located along US Hwy 64 in Cashiers, NC across from a shopping center which contains an Ingles grocery store.

Mr. Herring stated the proposed location property is owned by Louis E. Darre and Joni Darre. The Darre's will construct a 4000 SF building on the site and lease the building and property to the Jackson County ABC Board for \$2,000.00 per month upon approval by the NC ABC Commission. All Jackson County ABC Board Members submitted financial disclosure forms indicating no financial interest in the property owned by Louis E. Darre and Joni Darre.

The nearest church is located approximately .7 miles from the proposed site. The nearest school is located approximately 1.0 miles from the proposed location.

Mr. Herring stated projected sales for the proposed ABC store are \$1.6 million per year. Notice of Intent to open an ABC store at the site was properly posted on June 4, 2013. However, the Jackson County Manager's Office has received some objections to the proposed site regarding traffic concerns.

Mr. Noland stated a public notice was posted in the local newspaper regarding the Jackson County ABC Board's search for a building in Cashiers. The Jackson County ABC Board received nine proposals, including seven for existing structures which needed renovation, one for a land sale with the ABC Board constructing the building, and the lease proposal from the Darres for land and a building to be built to the ABC Board's specifications.

Mr. Noland stated the Jackson County ABC Board signed a 10-year lease with two options for 5-year extensions contingent upon the NC ABC Commission's approval.

Mr. Noland stated the concerns over constructing a new building rather than choosing an existing building were considered. However, the existing buildings which were offered were either too small, cost prohibitive, required the ABC Board to complete the renovation, offered inadequate parking, or unable to allow access to an 18-wheeler truck.

Mr. Noland stated regarding the issues of traffic congestion, the Jackson County ABC Board has met with the Department of Transportation (DOT). Mr. Noland provided a map depicting the turn lane DOT added to this portion of the highway for the shopping center. Mr. Noland stated at this time, there are no plans for a traffic light, as the DOT does not feel it is necessary. DOT does not expect the proposed ABC store to impact traffic greatly, as it would not generate the same volume of traffic as a fast food establishment.

Mr. Noland added Cashiers, North Carolina is a small community which is a seasonal destination for summer visitors. Traffic is at its heaviest for only those three months. The closest ABC store is in Highlands, located in Macon County. Mr. Noland also provided an editorial from the local newspaper commending the Jackson County ABC Board's decision to build an ABC store which will be an asset to their community.

Mr. Noland stated the Jackson County ABC Board believes this property is the best location. The location is convenient and accessible with a new building built to their specifications, providing the best value for the Board's money. Jackson County has 16 private clubs and golf courses and other mixed beverage businesses that purchase alcohol in Sylva. The revenue from these sales will be a projected \$1.6 million per year.

Mr. Herring recommended the ABC Commission approve the proposed location.

Commissioner Green made a motion to approve the proposed location. Commissioner Keith seconded the motion commending the Jackson County ABC Board's efforts to work with their community. Motion Passed.

**IV. OTHER BUSINESS – CONSIDERATION OF PROPOSED TEMPORARY AND AMENDMENTS TO PERMANENT RULES 04 NCAC 02S .0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS; 04 NCAC 02T .0302 LABELS TO BE SUBMITTED TO COMISSION; 04 NCAC 02T .0303 LABEL CONTENTS: MALT BEVERAGES; 04 NCAC 02T .0308 GROWLERS; AND, 04 NCAC 02T .0309 GROWLERS: CLEANING, SANITIZING, FILLING AND SEALING**

ABC Deputy Administrator Robert Hamilton stated recent NC General Statute changes regarding growlers and in-stand malt beverage sales at professional sporting events required the proposed rule changes.

Mr. Hamilton stated the changes to the beginning sections of 04 NCAC 02S .0102 Applications for Permits: General Provisions were suggestions by the Rules Review Commission and were minor and did not change the meaning of the rules. Mr. Hamilton read Section (l) into the record and explained the amendment was necessary upon the change in the General Statute regarding professional sporting events. Mr. Hamilton explained the permittee or the permittee's employees were not allowed to wear or display alcoholic beverage advertising and also described at which point in-stand sales shall cease.

Mr. Hamilton explained the in-stand sales of malt beverages would cease at a pre-determined point of baseball, football, basketball, soccer, and hockey games. Sales would cease at the final 25% of the

distance scheduled for automotive races and at the final hour of all other contests and events. These guidelines were based on the suggestions of health professionals and the practices of professional sporting venues around the country.

Commissioner Green asked about advertising and whether in-stands sales items would be marked in a way that would allow the consumer to determine which malt beverages were being sold. Mr. Hamilton explained because North Carolina is a three-tier state, an individual selling the malt beverage must be separate from the manufacturer; however, the cups can have the logo of the product. Ms. Cowick explained the in-stand sales carrier/holder can have a logo or malt beverage name on it if the same carrier/holder is given to all venues and is not customized for any venue. Ms. Cowick stated the purpose of this rule is to prevent any special relationship which would provide advantages to a particular retailer. Ms. Cowick stated questions regarding any particular items can be forwarded to the NC ABC Commission for approval. Ms. Cowick also stated further clarification for the employee carrying or displaying a logo might be necessary.

Chairman Gardner asked who is responsible for checking identification for in-stand sales. Mr. Hamilton replied it would be the responsibility of the in-stand sales person to determine age of the purchaser at the time of the transaction.

Mr. Hamilton stated 04 NCAC 02T .0302 Labels to be Submitted to Commission was amended to reflect the labels that would be affixed to growlers by retailers would not be submitted to the NC ABC Commission for approval.

Regarding 04 NCAC 02T .0303 Label Contents: Malt Beverages, Mr. Hamilton detailed the requirements for the labels that will be affixed by the manufacturer for prefilled growlers and the retailer for growlers that are filled or refilled on demand. Section (a) was amended to refer to prefills and reflect the alcoholic beverage health warning statement as required by the Federal Alcohol Administration. Section (b) was added to reflect the label rules as related to growlers that are filled or refilled on demand, including allowing for the name of business that filled or refilled the growler. Mr. Hamilton stressed the importance of the label including the statement, "This product may be unfiltered and unpasteurized. Keep refrigerated at all times," as well as the Federal alcoholic beverage health warning statement. Mr. Hamilton stated the 4" x 6" label did fit on either size growler. Mr. Hamilton stated it was important for the label to contain all information as the bottles themselves were not regulated by the NC ABC Commission.

Mr. Hamilton read 04 NCAC 02T .0308 Growlers and stated the rule clearly defined that a growler is a refillable rigid glass, aluminum or stainless steel container with a flip-top or screw-on lid that is no larger than 2 liters (0.5283 gallons). Growlers may only be prefilled by breweries. Holders of a brewery permit with retail permits and holders of retail permits may fill or refill growlers for off-premises consumption, affixing the label as required. Holders of retail permits may at their discretion, refuse to fill or refill a growler, except in matters of discrimination.

04 NCAC 02T .0309 Growlers: Cleaning, Sanitizing, Filling and Sealing was read by Mr. Hamilton and proposed for adoption to define the required methods to manually or hand-clean or use an automatic glass washing machine to clean growlers. Mr. Hamilton also explained the guidelines included in the proposed rule for cleaning and sanitizing the equipment used to fill or refill growlers was largely gleaned from the Brewers Association's Draught Beer Quality Manual. The rule also states the growlers shall only be filled or refilled by the permittee or permittee's employee and they must seal the growler with a cap. Also, up-to-date documentation of line cleaning and servicing records must be maintained.

Andy Ellen, President and General Counsel of the North Carolina Retail Merchants Association was present to speak on behalf of the retailers' association. Mr. Ellen stated there is excitement for the

growlers among retailers. However, Mr. Ellen stated the required cleaning and sanitizing of the growlers might be onerous for some small businesses. Mr. Ellen also stated the required 4" x 6" label may be too large for growlers and asked if some information could be permanently affixed to the bottles and eliminated from the label or if the font size could be standardized, not the label size. Mr. Ellen suggested more of the onus should be on the consumer rather than the retailer for clean growlers.

Chairman Gardner suggested a 30-day delay regarding a decision on the proposed rules to allow communication with the Health Department to clarify the sanitizing and cleaning of the growlers. Chairman Gardner asked Mr. Hamilton if the responsibility for cleaning the growlers could be placed more heavily on the customer. Mr. Hamilton replied this is problematic because the statute places the responsibility to clean and sanitize the growlers on the retailer.

Chairman Gardner announced the next ABC Commission meeting will be held on Wednesday, August 14, 2013.

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

*Approved at the August 14, 2013 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