

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MARCH 19, 2014**

The following narrative and summary describes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road, Raleigh, North Carolina on March 19, 2014, 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 JANUARY 15, 2014

Chairman Gardner asked for a motion to waive the reading of the minutes of the January 15, 2014 meeting into the record. Commissioner Keith made a motion to waive the reading of the minutes from the January 15, 2014 meeting. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the January 15, 2014 meeting. Commissioner Green made a motion to approve the minutes from the January 15, 2014 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 Keith stated he had found no conflicts of interest. Commissioner Green stated he had found no conflicts of interest. Chairman Gardner stated he had found no conflicts of interest.

I. HEARING CASES – 105

Deputy Agency Counsel K. Renee Cowick stated no one was present on behalf of hearing case number 1, Campus Store. Assistant Counsel Tim Morse stated this contested case was a surveillance case in which identification was not checked. The Administrative Law Judge issued a decision requiring the permittee to serve a 12-day suspension and pay a \$500.00 penalty.

Ms. Cowick stated no one was present on behalf of hearing case number 2, Fig Café and Wine Bar. Mr. Morse stated the case was regarding the permittee maintaining living quarters on the licensed premises. The Administrative Law Judge issued a decision requiring the permittee to serve a 10-day suspension and pay a \$500.00 penalty.

Ms. Cowick stated no one was present on behalf of hearing case number 3, Republic. Assistant Counsel LoRita Pinnix stated the permittee failed to file audit reports and also failed to file a prehearing statement for the Administrative Hearing. The Administrative Law Judge issued a decision of revocation of the ABC permits. Ms. Pinnix stated no appeal of the decision had been filed.

Commissioner Keith made a motion to impose the penalties of the Administrative Law Judges' decisions. Commissioner Green seconded the motion. Motion Passed.

Ms. Cowick stated hearing case #43 was to be continued to the April NC ABC Commission Meeting.

Ms. Cowick stated Mark Allred, Asset Protection Specialist for the Winston-Salem area, was present on behalf of Lowes Foods, LLC and Lowes Foods 165. Mr. Allred stated Lowes Foods takes underage alcohol sales very seriously. The store manager spoke with the cashier after the citation was issued regarding the incident. The cashier stated he viewed the customer's identification noticing the 21st birthday was the following day. The cashier manually circumvented the cash register's verification system. Mr. Allred stated employees are required to sign paperwork indicating they have completed training several times a year. The employee was terminated after this incident. Chairman Gardner thanked Mr. Allred for attending the Commission Meeting and stated he appreciated Lowes Foods' efforts at controlling underage alcohol sales.

Commissioner 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 C. Herring stated on January 29, 2014, the NC ABC Commission received a letter from Fred McCormick, General Manager of the Greensboro ABC Board requesting approval to lease a property for an additional ABC Store in Greensboro, North Carolina. The proposed location will serve as a mixed beverage and retail outlet.

On January 31, 2014, ABC Audit/Investigator Edwin Strickland began an investigation and found the proposed location for the Greensboro ABC Board store was 2417-C and D Lawndale Drive, Greensboro, North Carolina 27408.

The proposed location consists of two suites as an end unit within a commercial shopping center, Shops at Kirkwood. The shopping center includes many restaurants, a department store, grocery store and other retail businesses. The proposed location is zoned commercial-medium in a commercial district which by right may have an ABC Store. The property is owned by Greensboro Centers, LLC, represented by NAI Piedmont Triad.

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

Suites C and D total 4,723 SF and the Greensboro ABC Board plans to remodel the interiors, combining the suites. The Greensboro ABC Board plans to sign a five-year lease. For years one and two, the board would pay a rate of \$16.00 per SF or \$75,568 annually and for years three through five, a rate of \$17.48 per SF or \$82,558 annually.

The nearest school, Irving Park Elementary School, is approximately .5 miles from the proposed location. The nearest church, Guilford Park Presbyterian Church, is approximately .1 mile from the proposed location.

The nearest ABC Store is located at 115 North Cedar Street in Greensboro, NC approximately 2.7 miles from the proposed location. The next nearest ABC Store is located at 3722 Battleground Plaza in Greensboro, NC approximately 3.0 miles away. The proposed location is located almost directly between the two stores.

Projected annual sales of the proposed ABC Store are approximately \$1.7 million for the first year with sales projected to reach \$3 million annually within approximately 3 years. Mr. McCormick believes the proposed ABC Store will become the premiere sales leader within the Greensboro ABC Board.

Notice to the public was properly posted on January 31, 2014. As no objections had been received, Mr. Herring recommended the ABC Commission approve the proposed location as a suitable location.

Commissioner Green made a motion to approve the proposed location. Commissioner Keith seconded the motion. Motion Passed.

III. OTHER BUSINESS – ABC STORE LOCATION – GRANVILLE COUNTY ABC BOARD

Mr. Herring stated on January 27, 2014, the NC ABC Commission received a letter via email from G. Russell Murray, General Manager of the Granville ABC Board requesting approval on the purchase of property for a new ABC Store in Butner, North Carolina to function as a warehouse, retail and mixed beverage store.

On February 5, 2014, ABC Audit/Investigators Edwin Strickland and Michael Arcangel began an investigation and found the proposed location for the Granville ABC Board Store was 2595 West Lyon Station Road, Butner, North Carolina. The proposed store will replace an existing ABC Store operating approximately .1 mile away at 2576 West Lyon Station Road, Butner, North Carolina.

The proposed location is a parcel of approximately 1.695 acres. The proposed location is zoned Highway Business which includes all types of retail businesses. The town planner of Butner confirmed the zoning allows for an ABC store. The property is owned by Hudson Properties of Durham, North Carolina. The sale price for the property will be \$325,000.

All Greensboro ABC Board Members submitted financial disclosure forms regarding the property and have no direct financial interest in the ownership of the property. The Granville County ABC Board does not have building information available at this time but plans to build a new building in the next two years which will include a loading dock and be modeled after existing ABC stores with similar volume.

The nearest school, Vance-Granville Community College, is approximately 1.0 miles from the proposed location. The nearest church, Concord Baptist Church, is approximately 1.9 miles from the proposed location.

The nearest ABC Store is located approximately .1 mile away and will be closed upon the opening of the proposed store. The next closest store is approximately 15.3 miles away.

Projected annual sales of the proposed ABC Store are approximately \$2.5 million.

Notice to the public was properly posted on January 29, 2014. 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. Commissioner Green seconded the motion. Motion Passed.

IV. OTHER BUSINESS – ABC STORE LOCATION – MECKLENBURG COUNTY ABC BOARD

Mr. Herring stated on February 17, 2014, the NC ABC Commission received a letter from Paul Stroup, CEO of the Mecklenburg ABC Board requesting approval on the purchase of property for a new ABC Store in Charlotte, North Carolina to relocate an existing ABC Store.

On February 28, 2014, ABC Audit/Investigator Edwin Strickland and ABC Compliance Officer Charlie Fuller began an investigation and found the proposed location for the Mecklenburg ABC Board store was at the tentatively named 13451 Loganville Drive, Charlotte, North Carolina 28268. Mr. Herring stated he received a letter on March 14, 2014, from the Mecklenburg ABC Board stating the address will be Prosperity Church Road instead of Loganville Drive.

The proposed location is located in an area being developed for a variety of new commercial businesses adjacent to the under-development Interstate 485. The proposed parcel is listed as 1.62 acres and is zoned Commercial-Conditional. The City of Charlotte Zoning Department confirmed the zoning allows for an ABC Store. Currently near the proposed location are a grocery store, restaurant and other commercial businesses.

The property is owned by Highland Creek Retail, LLC. The proposed purchase price for the property is \$900,000.

All Mecklenburg ABC Board Members submitted financial disclosure forms regarding the property and have no direct financial interest in the ownership of the property. The Mecklenburg ABC Board plans to build a free-standing 6,000 – 6,500 SF building on the site housing retail sales, a warehouse and mixed beverage sales with a loading dock.

The nearest ABC Store is approximately .8 miles away. Upon opening in July or August 2015, the proposed store will replace this existing ABC Store operating at 13024 Eastfield Road, Suite C-7, Huntersville, North Carolina. The next nearest ABC Store is approximately 3.5 miles away.

The nearest school, Countryside Montessori School, is approximately .7 miles from the proposed location. The nearest church, Prosperity Church is approximately .2 miles from the proposed location.

Notice to the public was posted on September 16, 2013 on the Prosperity Church Road side of the property. On October 14, 2013, the same sign was moved to the Loganville Road side of the property where it remained until October 21, 2013. On February 28, 2014, Audit/Investigator Strickland was shown the sign that had been previously posted at the location. The sign was sized larger than the required sign; however, the lettering was smaller than the required lettering size. (The sign has since been corrected.) The investigator and the ABC Commission verified the sign was suitably visible. Mr. Herring provided photographs of the sign.

Three telephone calls and one email were received regarding concerns about the proposed location. Mr. Herring stated the concerns did not provide evidence the health, safety, or general welfare of the community were at risk, so he recommended the ABC Commission approve the proposed location as a suitable location.

Projected annual sales of the proposed ABC Store are approximately \$2.3 million upon opening.

Commissioner Green made a motion to approve the proposed location. Commissioner Keith seconded the motion. Motion Passed.

V. OTHER BUSINESS – ABC STORE LOCATION – LENOIR COUNTY ABC BOARD

Mr. Herring stated on February 17, 2014, the NC ABC Commission received a letter from Brantley Uzzell, General Manager of the Lenoir County ABC Board requesting approval on the purchase of property for a new ABC Store in Kinston, North Carolina and relocation of an existing ABC Store.

On February 24, 2014, ABC Audit/Investigators Edwin Strickland and James Casteen began an investigation and found the proposed location for the Lenoir County ABC Board store was 2918 North Heritage Street, Kinston, North Carolina 28501. The proposed store tentatively plans to open in July or August 2014 and will replace the existing ABC Store operating at 701 Phillips Road, North Carolina which is currently leased through September 2014.

The proposed location is approximately 1.0 acres and is zoned B-1 General Business. The Planning Director for the City of Kinston confirmed the zoning allows for an ABC Store. The property is currently owned by Division One Foods, Inc. The proposed purchase price is \$490,000.

All Lenoir County ABC Board Members submitted financial disclosure forms regarding the property and have no direct financial interest in the ownership of the property. The property includes a 5,061 SF building with an additional 140 SF of canopy space and was most recently used as a restaurant. The Lenoir County ABC Board plans to leave the building intact with significant inside remodeling, including a large retail space, storage, office space and a break room.

The nearest school, Kinston High School, is approximately .4 miles from the proposed location. The nearest church, Immanuel Baptist Church, is approximately .7 miles from the proposed location. First Presbyterian Church is also approximately .7 miles from the proposed location.

The nearest ABC Store is approximately .5 miles away and will be closed upon the opening of the proposed store. The next nearest ABC Store is approximately 2.5 miles away.

Projected annual sales of the proposed ABC Store are approximately \$1.1 – 1.3 million.

Notice to the public was properly posted on February 17, 2014. 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. Commissioner Green seconded the motion. Motion Passed.

VI. OTHER BUSINESS – FUTURE NC ABC COMMISSION MEETING DATES

Mr. Herring stated the next Commission Meeting is scheduled for Wednesday, April 16, 2014. Mr. Herring recommended the Commission approve Wednesday, May 7, 2014, as the date of the May 2014 NC ABC Commission Meeting; Wednesday, June 18, 2014, as the date of the June 2014 NC ABC Commission Meeting; Wednesday, July 16, 2014, as the date of the July 2014 NC ABC Commission Meeting; and, Wednesday, August 13, 2014, as the date of the August 2014 NC ABC Commission Meeting.

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

VII. OTHER BUSINESS – EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – NEW EARTH, INC., BIVALVE BEVERAGE COMPANY, LLC AND MANNING LEE MOXLEY

Ms. Cowick stated Manning Lee Moxley, a 33.3% owner of Bivalve Beverage Company, LLC, was unable to attend the meeting. However, Ms. Cowick stated she could relate the exemption request to the Commission or the matter could be postponed to the next Commission Meeting. The Commissioners allowed Ms. Cowick to explain Mr. Moxley is a 20% owner of New Earth, Inc. which intends to open a live music and event space in Asheville, North Carolina in June 2014 and will be applying for malt

beverage, unfortified wine and mixed beverages permits. Bivalve Beverage Company, LLC operates Oyster House Brewing, a restaurant, bar, and craft malt beverage brewery holding brewery and malt beverage wholesaler permits, as well as malt beverage on premises, unfortified wine on premises and mixed beverages restaurant permits.

The concurrent partial ownership in both companies was the subject of Mr. Moxley's exemption request. Mr. Moxley asked the NC ABC Commission allow his ownership in both businesses and allow New Earth, Inc. to obtain ABC permits. Bivalve products will not be sold at the New Earth venue.

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

VIII. OTHER BUSINESS – EXEMPTION REQUEST – N.C.G.S. § 18B-1116 – GREAT GRAPES, INC., END OF THE VINE, EUGENE NICHOLAS SALERNO AND LEE CHRISTOPHER SCANLON

Ms. Cowick stated Eugene Nicholas Salerno and Lee Christopher Scanlon were present to request an exemption regarding ownership of the End of the Vine, Inc. Ms. Cowick stated Mr. Scanlon owns 100% of End of the Vine, Inc., a wine distributor, and Mr. Salerno owns 100% of Great Grapes, Inc., a wine shop.

Ms. Cowick explained the purpose for the exemption request was Mr. Salerno's proposed concurrent 50% ownership interest in End of the Vine, Inc. If the exemption is granted, End of the Vine, Inc. will not sell any products to Great Grapes, Inc.

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

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

Approved at the April 16, 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