

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JANUARY 15, 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 January 15, 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 DECEMBER 11, 2013

Chairman Gardner asked for a motion to waive the reading of the minutes of the December 11, 2013 meeting into the record. Commissioner Keith made a motion to waive the reading of the minutes from the December 11, 2013 meeting. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the December 11, 2013 meeting. Commissioner Green made a motion to approve the minutes from the December 11, 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. OTHER BUSINESS – EMPLOYEE AWARDS

Administrator Michael C. Herring, with the assistance of Chairman Gardner and Commissioners Keith and Green, presented awards to seven NC ABC Commission employees for years of service.

II. HEARING CASES – 62

Deputy Agency Counsel K. Renee Cowick stated no one was present on behalf of hearing case number 1, Community Store. Assistant Counsel Timothy Morse stated the permittee, Alvin Boyd Turner, was convicted in criminal court for an 18B offense and was no longer eligible to hold ABC permits.

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

Ms. Cowick stated no one was present to speak on behalf of hearing case number 2, Neal's Deli. Mr. Morse stated this was a sanctions case for a Sale to Underage violation, as the permittee failed to file a

prehearing statement. The Administrative Law Judge issued a decision requiring the permittee to serve a 20-day suspension and pay a \$500.00 penalty.

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

Ms. Cowick stated Danny McPherson was present to speak on behalf of hearing case number 25, King Neptune. Mr. McPherson stated they did not dispute the charges as they misunderstood the rules regarding serving multiple beverages to a patron. Mr. McPherson also stated they had added a late night menu and asked for additional clarification on the guidelines. Ms. Cowick agreed to meet with Mr. McPherson following the meeting to answer questions regarding the late night menu.

Mr. McPherson stated their business worked to prevent underage drinking and had recovered falsified driver's licenses. Mr. McPherson presented a stack of licenses accumulated over the last eight months to the NC ABC Commission.

Chairman Gardner stated the penalty would remain as stated in the signed offer, but thanked Mr. McPherson for his efforts in preventing underage drinking. Commissioner Green also commended Mr. McPherson in this regard, as did Commissioner Keith. Commissioner Keith asked Mr. McPherson to leave the collected licenses so they could be turned over to Alcohol Law Enforcement.

Ms. Cowick stated William Satterfield was present to speak on behalf of hearing case number 19, Dive Restaurant Bar and Grill. Assistant Counsel LoRita Pinnix stated the violation occurred when an undercover agent asked the two bartenders for the food menu and was told the kitchen was closed and food was not available. The bartenders suggested nearby restaurants instead.

Mr. Satterfield stated food is available and is listed on a sign posted within the establishment. However, it is the responsibility of the bartenders or a manager to prepare the food after 10:00 pm.

Commissioner Keith stated the penalty should remain as stated in the signed offer. Chairman Gardner thanked Mr. Satterfield for attending the Commission Meeting.

Ms. Cowick stated hearing case number 60 was to be removed from the agenda as the permittee's attorney had filed a petition for a hearing.

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

III. OTHER BUSINESS – CONSIDERATION OF PETITION FOR RULE MAKING – PIEDMONT FOOD AND AGRICULTURAL PROCESSING CENTER CORPORATION AND CHATHAM CIDER WORKS, INC.

Deputy Administrator Robert Hamilton stated a Petition for Rule Making had been submitted by Piedmont Food and Agricultural Processing Center Corporation ("PFAP") and Chatham Cider Works, Inc. Attorney Jeremy Browner was present on behalf of PFAP and was accompanied by James Crawford, Vice President of Chatham Cider Works, Inc.

Mr. Hamilton stated prior to the last legislative session, the NC ABC Commission met with the representatives of the interested parties and Senator Kinnaird to determine if their proposal would be allowed in the State of North Carolina. Mr. Hamilton stated a legislative change would be required and

NC ABC Commission staff assisted the parties with their efforts to present a bill to the legislature. However, the bill was not introduced.

PFAP is a co-op facility located in Hillsborough in Orange County, North Carolina. Multiple food manufacturing businesses lease kitchen space for manufacturing purposes. Mr. Hamilton stated Statute changes would be required to allow alcohol to be produced in this setting. Mr. Hamilton stated the definition of premises would have to be redefined to allow a permit to be issued to Chatham Cider Works or a similar business to operate at the PFAP or a similar facility.

Mr. Hamilton explained the concerns are with the permittee's possession of the property. Some areas would be occupied and controlled by the permittee 100% of the time and other areas would only be occupied by the permittee a portion of the time; therefore, the permitted area would be moved. Other businesses would be using the same areas. Mr. Hamilton stated issues would also arise during Alcohol Law Enforcement inspections, as warrants would be required to inspect shared areas.

As PFAP was unable to have their request included in the last legislative session, Mr. Hamilton stated they were present to ask for a rule making change to the NC ABC Commission Rules.

Mr. Browner stated PFAF, a food business incubator, is the project of four counties Alamance, Chatham, Durham and Orange. Mr. Browner presented a PowerPoint presentation providing diagrams of PFAP and more description of the facility. Chatham Cider Works wishes to process North Carolina apples at the facility to manufacture hard cider.

Mr. Browner stated PFAP helps new businesses until they grow and are able to develop their own manufacturing facilities. Mr. Browner stated there is a similar food business incubator located in Asheville, North Carolina and several other similar facilities are being considered at various locations in North Carolina.

Mr. Browner showed photographs of the leased fence units available for a lessee to lock their property in the facility when not on the premises. Mr. Browner stated fenced areas are not currently located in the refrigerator and freezer units, but could be placed in those units if required. The diagrams showed four kitchens, one of which would be used by Chatham Cider Works on an hourly basis when needed.

Mr. Browner stated PFAF is only interested in the production of fermented alcohol and does not foresee ever becoming involved with distilled alcohol. Commissioner Green asked if the manufacturing of alcohol was included in the original plan for the facility. Mr. Browner replied that it had not been included and did not realize there would be an issue with the NC ABC Commission until their first client began the permit application process. Mr. Browner stated the current ABC Rules are an impediment to startups that wish to create alcohol.

Ms. Cowick explained the definition of premises is part of a NC General Statute, therefore it would require a legislative decision to change the definition rather than a rule. Ms. Cowick stated alcohol is more highly regulated than a food facility and there are two constitutional amendments regarding alcohol. Ms. Cowick explained there are also logistical issues; including if the facility is open, Alcohol Law Enforcement should be able to conduct an inspection of the facility. However, if the permittee is not present, the inspection would not be possible.

Commissioner Keith stated the ABC Commission wishes to help, but as the legal staff had explained there are issues that will require legislative changes. Mr. Hamilton stated the NC ABC Commission staff will be available to assist with the legislative procedures.

Ms. Cowick stated she believed the creation of a new permit type would be required because of the uniqueness of the premises and because manufacturing is involved.

Chairman Gardner commended PFAF on their facility and stated this type of business is necessary and beneficial to many small business owners across the state of North Carolina, but the NC ABC Commission is unable to make changes without legislative action.

Commissioner Green made a motion to postpone a decision on the petition until more information could be gathered. Commissioner Keith seconded the motion. Motion Passed.

IV. OTHER BUSINESS – CONSIDERATION TO BEGIN PERMANENT RULE MAKING PROCESS 04 NCAC 02S .0102, 04 NCAC 02T .0302, 04 NCAC 02T .0303, 04 NCAC 02T .0308, 04 NCAC 02T .0309 AND OTHERS

Mr. Hamilton requested the NC ABC Commission begin the process to implement and make permanent the five temporary rules adopted in October 2013. Mr. Hamilton also requested a review of the other rules for any necessary changes due to the last legislative session.

Commissioner Keith made a motion to begin the process for permanent rule making. Commissioner Green seconded the motion. Motion Passed.

Chairman Gardner announced the next ABC Commission meeting will be held on Wednesday, February 12, 2014.

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

Approved at the March 19, 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