

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JANUARY 14, 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 January 14, 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

Commissioners Kevin M. Green and Joel L. Keith were present. Commissioner Green called the meeting to order.

MINUTES OF DECEMBER 10, 2014

Commissioner Green asked for a motion to waive the reading of the minutes of the December 10, 2014 meeting into the record. Commissioner Keith made a motion to waive the reading of the minutes from the December 10, 2014 meeting. Commissioner Green seconded the motion. Motion Passed. Commissioner Green asked for a motion to approve the minutes of the December 10, 2014 meeting. Commissioner Keith made a motion to approve the minutes from the December 10, 2014 meeting. Commissioner Green seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. § 138A-35, Commissioner Green 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 found no conflicts of interest. Commissioner Green stated he found no conflicts of interest.

I. HEARING CASES – 42

Chief Counsel K. Renee Cowick stated no one was present on behalf of hearing case number 1, Noa Noa. Assistant Counsel Tim Morse stated the permittee was nonresponsive and failed to file a prehearing statement for the Administrative Hearing. The Administrative Law Judge issued a decision of a \$500.00 penalty and a thirty (30) day suspension of the permittee's ABC permits.

Commissioner 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 David Cole, the owner of the business, was present on behalf of hearing case number 35, Hurricane Alleys. Mr. Cole was present to ask for leniency on the penalty as stated in the Offer in Compromise. Mr. Cole explained he owns two restaurants in close proximity and a bottle of spirituous liquor from one location was mistakenly transferred to the other location. He stated he did not know if the bottle had been misplaced at the time orders were picked up from the ABC Store. Mr. Cole also stated

the violation regarding the placement of the sign advertising drink specials was placed inside the business' garage-style door; however, it was visible to those outside the establishment.

Commissioner Keith asked how long the businesses have been in operation. Mr. Cole stated 7 years and 3 years. Commissioner Keith asked if the businesses had had previous violations. Mr. Cole stated the other location had two prior violations, one for over-serving, as well as a tax stamp violation. Mr. Cole also stated the location with the current violation may have previously had an issue with a tax stamp.

Assistant Counsel LoRita Pinnix stated there was some flexibility in the penalty and confirmed the misplaced bottle of spirituous liquor did seem to be a mistake rather than an intentional action. Ms. Pinnix also stated the sign was inside the business, but was turned to face outside the business. Ms. Pinnix stated the penalty could be lowered \$200.00.

Commissioner Keith made a motion to follow staff's recommendation to reduce the penalty \$200.00 to \$700.00. Commissioner Green seconded the motion. Motion Passed.

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

II. OTHER BUSINESS – ABC STORE LOCATION – MOORE COUNTY ABC BOARD

Administrator Robert A. Hamilton stated on November 10, 2014, the NC ABC Commission received a request from Pam Smith, the General Manager of the Moore County ABC Board, requesting approval to purchase property to open and operate an ABC Store at 1408 North Sandhills Boulevard in Aberdeen, North Carolina. On November 18, 2014, ABC Audit/Investigators Edwin Strickland and Michael Arcangel met with Ms. Smith and began an investigation. Ms. Smith indicated the proposed location is approximately .2 miles from an existing store located at 1810-B North Sandhills Boulevard in Aberdeen, North Carolina. The Moore County ABC Board wishes to own the property as the existing store is currently leased. The existing store will be closed upon the opening of the proposed location.

The Audit/Investigators found the proposed location, 1408 North Sandhills Boulevard, Aberdeen, North Carolina, is a .97-acre property located on a main thoroughfare in a highly commercial area between a motel and a grocery store, across from restaurants. The existing approximate 4,000 SF building is currently occupied by a Pizza Hut restaurant. Mr. Hamilton stated the existing space would be used for approximately 2,400 SF of retail space and the remaining 1,600 SF would be used for storage. Additionally, future mixed beverage sales were being considered.

On November 19, 2014, Mr. Strickland confirmed with the Planner for Aberdeen, the property is zoned Highway Commercial and is approved for ABC retail sales.

The property is owned by Huntley-Bradley Limited Partnership of Fernandina Beach, Florida. On November 18, 2014, Mr. Strickland spoke with William Huntley by telephone. Mr. Huntley stated he has no personal or financial interests with members of the Moore County ABC Board. A signed purchase agreement has an agreed upon sales price of \$1,195,000. All Moore County ABC Board members submitted financial disclosure forms and have no direct financial interest in the ownership of the property.

The nearest school, Southern Middle School located at 717 Johnson Street, in Aberdeen, North Carolina, is approximately .7 miles from the proposed location. The nearest church, Bethesda Presbyterian Church located at 1002 North Sandhills Boulevard, in Aberdeen, North Carolina, is approximately .5 miles from the proposed location.

Currently, the nearest ABC Store is located approximately .2 miles from the proposed site at 1810-B North Sandhills Boulevard, Aberdeen, North Carolina. This location will be closed upon the opening of the proposed location. The next closest ABC Store is located at 273 NE Broad Street, Southern Pines, North Carolina, approximately 2.4 miles away and is also operated by the Moore County ABC Board.

Mr. Hamilton stated notice to the public was properly posted on November 10, 2014. The sign was temporarily down and was reposted on November 13, 2014 and was properly posted for the required 30 days. Mr. Hamilton stated the Moore County ABC Board and the NC ABC Commission have not received any objections to the proposed location. However, Mr. Hamilton stated he had received correspondence from a law firm representing the current Pizza Hut franchisee. The Pizza Hut corporate office had extended the current lease to the franchisee without the property owner's knowledge. Currently, there is some conflict between the three parties and a resolution has not been documented at this time.

Mr. Hamilton recommended approval of the proposed location pending the outcome of any civil proceedings.

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

III. OTHER BUSINESS – FUTURE NC ABC COMMISSION MEETING DATES

Mr. Hamilton recommended the Commission approve Wednesday, April 8, 2015, as the date of the April NC ABC Commission Meeting; Wednesday, May 6, 2015, as the date of the May NC ABC Commission Meeting; and, Wednesday, June 10, 2015, as the date of the June NC ABC Commission Meeting.

Commissioner Keith made a motion to approve the dates as future NC ABC Commission meeting dates. Commissioner Green 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 February 11, 2015 Commission Meeting

/S/ Kevin M. Green
Kevin M. Green, Commissioner
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

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