

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
APRIL 8, 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 April 8, 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

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

MINUTES OF MARCH 11, 2015

Chairman Gardner asked for a motion to waive the reading of the minutes of the March 11, 2015 meeting into the record. Commissioner Green made a motion to waive the reading of the minutes from the March 11, 2015 meeting. Commissioner Keith seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the March 11, 2015 meeting. Commissioner Keith made a motion to approve the minutes from the March 11, 2015 meeting. Commissioner Green seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. § 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 found no conflicts of interest. Commissioner Green stated he found no conflicts of interest. Chairman Gardner stated he found no conflicts of interest.

I. HEARING CASES – 70

Chief Counsel K. Renee Cowick stated a decision is not necessary regarding hearing case number 1, Gcube Group. Ms. Cowick stated the application for permits was rejected and the applicant had filed a petition for appeal. The applicant was nonresponsive and failed to appear for the hearing; therefore, the Administrative Law Judge dismissed the petition and imposed the ABC Commission staff's decision for rejection of the permit application.

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

II. ABC STORE LOCATION – CATAWBA COUNTY ABC BOARD

Administrator Robert A. Hamilton stated on February 20, 2015, the NC ABC Commission received a request from the Catawba County ABC Board, requesting approval to lease a property to open and operate an ABC Store at 2537 Hwy 70 SE Suites H, I, J in Hickory, North Carolina. The new store would be the 11th store for the ABC Board. On March 11, 2015, ABC Auditor Edwin Strickland and Compliance Officer Mark Hilton met with General Manager Jacob Abernathy.

The Audit/Investigators found the proposed location, 2537 Hwy 70 SE Suites H, I, J in Hickory, North Carolina, is within a shopping center. On March 5, 2015, Mr. Strickland confirmed the property is zoned C-3 Regional Commercial and is approved for ABC sales.

The building is 4,220 SF and will be leased for \$15.00/SF, totaling \$5,275.00 per month. The plans are to use two-thirds of the space for retail sales and the remainder for storage and office space.

The nearest school, Catawba Valley Community College, is approximately .2 miles from the proposed location. The nearest church, New Jerusalem Evangelical Lutheran Church, is approximately 1.1 miles from the proposed location.

The nearest ABC Store is located approximately 4.4 miles from the proposed location and is operated by the Catawba County ABC Board.

Mr. Hamilton stated notice to the public was posted on February 3, 2015; however, Mr. Hilton, upon viewing the sign, discovered the sign did not meet all required criteria. The sign was corrected and reposted on March 3, 2015. No objections have been received.

Mr. Hamilton stated staff recommended approval of the proposed location.

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

III. ABC STORE LOCATION – WAXHAW ABC BOARD

Mr. Hamilton stated on March 9, 2015 the NC ABC Commission received a request from the Waxhaw ABC Board, requesting approval to purchase property to open and operate an ABC Store at 2528 Cuthbertson Road in Waxhaw, North Carolina. The new store would replace an existing store located approximately 1.7 miles south at 1305 North Broome Street in Waxhaw. On March 17, 2015, Mr. Strickland and Compliance Officer Charlie Fuller met with General Manager John Nabors.

The proposed property is currently under construction within a shopping center. The building will be approximately 4,200 SF and will be leased for \$22.50/SF, totaling \$7,875.00 per month. The tentative plan is to use approximately 2,395 SF for retail sales and the remainder for office space, employees and mixed beverage sales. On March 18, 2015, Mr. Strickland confirmed the property is zoned CU-C3 General Commercial and allows for ABC sales.

The nearest school, Kensington Elementary School, is approximately 1.5 miles from the proposed location. The nearest church, Providence Baptist Church is approximately .9 miles from the proposed location.

The nearest ABC Store is located approximately 1.7 miles from the proposed location and is operated by the Waxhaw ABC Board. The Board plans to close this location upon the opening of the proposed store. The next nearest ABC Store is approximately 10.7 miles from the proposed location.

Mr. Hamilton stated notice to the public was posted on March 9, 2015. Mr. Fuller, upon viewing the sign, discovered the lettering on the sign was 3-13/16 inches, slightly smaller than the required 4 inches. The Waxhaw ABC Board has received eighteen objections to the proposed location. They mostly state more restaurants serving alcohol were desired over an ABC Store. Other objections were against alcohol sales in general and proximity to schools. The projected sales for the first year are \$2,300,000.

Mr. Hamilton stated staff recommended approval of the proposed location.

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

IV. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) OLDE MECKLENBURG BREWERY; GREAT WAGON ROAD DISTILLING, LLC; JOHN AND BIRGIT MARRINO; OLIVER AND LORRAINE MULLIGAN; MAXIMILLIAN AND CAROLINE KLINK; LAKE SOUTHPOINT HORIZON, LLC AND FILIANA, LLC

Ms. Cowick stated attorney Jennifer Morgan was present on behalf of her clients. Ms. Morgan stated Oliver Mulligan, an owner of Great Wagon Road Distilling, and John Marrino, an owner of Olde Mecklenburg Brewery, were also present. Ms. Morgan stated the requested exemption would allow affiliated ownership interests and partial concurrent ownership interests in a new retail establishment which would hold NC ABC permits. Ms. Morgan explained Great Wagon Road Distillery is planning to move to a new location within the building Olde Mecklenburg Brewery leases for its secondary storage facility. Great Wagon Road Distillery will sublease the space from Olde Mecklenburg Brewery. However, the businesses would be separated and have separate entrances.

Ms. Morgan stated John and Birgit Marrino and Oliver and Lorraine Mulligan have formed Broken Spoke, LLC, a new LLC formed to operate a restaurant and bar. The Broken Spoke will also be located within the same space as the Great Wagon Road Distillery and the Olde Mecklenburg Brewery storage space. Great Wagon Road Distillery will sublet space to Broken Spoke for the retail business.

Ms. Morgan stated public welfare is protected as there will be no tying of products between the distillery, brewery and retail business. The owners would not have any management decisions in the ordering for the retail business, as decisions on product selection will be made by a general manager.

Ms. Cowick stated there were no objections, and based upon the precedent set by the Commission, recommended the ABC Commission grant the exemption under these terms.

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

V. EXEMPTION REQUEST – N.C.G.S. § 18B-1116 JR MOTORSPORTS, LLC

Assistant Counsel Tim Morse stated this exemption was requested as Dale Earnhardt, Jr. is the owner of DEJ Holdings, LLC and DEJ Holdings owns 100% of Hammerhead Entertainment, LLC. Hammerhead Entertainment owns 56.54% of Hammer Night, LLC which owns and operates Whisky River, a restaurant

and bar which holds ABC permits. Also, through DEJ Holdings, Mr. Earnhardt owns 25% of JR Motorsports, LLC.

The exemption is requested as JR Motorsports wishes to enter into a sponsorship agreement with Oskar Blues Brewery for the promotion of its craft beer products. The Oskar Blues logo will be displayed on a race car owned by JR Motorsports. This car will be driven by someone other than Mr. Earnhardt and will also race in a different racing circuit than the one in which Mr. Earnhardt competes. Mr. Earnhardt will not have any promotional appearances or affiliation with Oskar Blues Brewery or its products.

Mr. Morse recommended the ABC Commission grant the exemption under these terms.

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

VI. OTHER BUSINESS – FUTURE NC ABC COMMISSION MEETING DATES

Mr. Hamilton introduced Angel Menendez as the new Deputy Administrator for the NC ABC Commission.

Mr. Hamilton recommended the Commission approve Wednesday, July 15, 2015, as the date of the July ABC Commission Meeting; Wednesday, August 12, 2015, as the date of the August ABC Commission Meeting; and, Wednesday, September 9, 2015, as the date of the September 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.

Chairman Gardner welcomed Mr. Menendez and, also, Cheryl Cook to the Legal Division. Chairman Gardner announced the next NC ABC Commission meeting would be held on May 6, 2015.

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

Approved at the May 6, 2015 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