

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 18, 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 November 18, 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 Commissioner Kevin M. Green were present. Chairman Gardner called the meeting to order.

MINUTES OF OCTOBER 14, 2015

Chairman Gardner asked for a motion to waive the reading of the minutes of the October 14, 2015 meeting into the record. Commissioner Green made a motion to waive the reading of the minutes from the October 14, 2015 meeting. Chairman Gardner seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the October 14, 2015 meeting. Commissioner Green made a motion to approve the minutes from the October 14, 2015 meeting. Chairman Gardner 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 which might create the appearance of a conflict of interest with respect to any matters on the agenda. Commissioner Green stated he found no conflicts of interest. Chairman Gardner stated he found no conflicts of interest.

I. HEARING CASES – 123

Chief Counsel K. Renee Cowick stated hearing case number 1, Brasilia Churrasco Steakhouse, was a contested case and Assistant Counsel Tim Morse represented the ABC Commission. No one was present on behalf of the business. Ms. Cowick stated the permittee failed to respond to the Administrative Law Judge's requests. The Administrative Law Judge issued a decision of a one-year suspension of the permittee's Mixed Beverage Restaurant permit.

Commissioner Green made a motion to impose the penalty of the Administrative Law Judge's decision. Chairman Gardner seconded the motion. Motion Passed.

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

II. ABC STORE LOCATION – WAYNE COUNTY ABC BOARD

Administrator Robert A. Hamilton stated on September 30, 2015, the NC ABC Commission received a request from the Wayne County ABC Board for approval to purchase property to open and operate an ABC Store at 3370 Wayne Memorial Drive in Goldsboro, North Carolina. The proposed store will be the Wayne County ABC Board's sixth store.

Mr. Hamilton stated the new store will be located in a developing area in the vicinity of the new US Highway 70 Bypass. Currently, there is a Wal-Mart Neighborhood Grocery Store located beside the proposed location. The rear property line of both the proposed location and the Wal-Mart store meet the property line of Tommy's Road Elementary School. However, the rear proposed property line is approximately 266 feet from the closest corner of the school building. The fronts of the proposed store and the Wal-Mart are on the opposite sides of the buildings facing away from the school. Mr. Hamilton stated the investigators had been unable to contact the principal of the school.

Mr. Hamilton confirmed the property is zoned as a shopping center and allows for an ABC store. The 1.89 acre property is owned by Triangle East Timber Company of Mt. Olive, North Carolina. All Wayne County ABC Board members submitted financial disclosure forms and have no direct financial interest in the ownership of the property. The purchase price for the property is \$360,000.00. The proposed building will tentatively be 3,500 SF of which 2,000 SF will be used for retail sales. There are no plans for mixed beverage sales.

The nearest church, Best Grove Missionary Baptist Church, is approximately .3 miles from the proposed location. The nearest ABC Store is located approximately 2.9 miles from the proposed location and is operated by the Wayne County ABC Board.

Mr. Hamilton stated as of November 3rd, there have been no objections and the two calls received were positive. The anticipated first year sales are \$2 million.

Mike Myrick, the Business Manager of the Wayne County ABC Board was present to speak on behalf of the board. Mr. Myrick stated the store would be the sixth location for the board, as a store located in Fremont had been previously closed due to robberies and poor sales. Mr. Myrick stated the proposed store would be located on the north side of Goldsboro along the new bypass. The positive calls were received from citizens of Pikeville who welcomed the store as it would be much more convenient for them. Mr. Myrick stated the location was a good site and he believed the store would be good for the board.

Chairman Gardner asked about average sales of stores within the Wayne County ABC Board. Mr. Myrick stated the largest store has about \$3 million in annual sales; the Mt. Olive location has \$1.5 million; and, the other stores each have about \$1 million. Mr. Myrick stated the sales at the largest location will probably decrease upon the opening of the new store, but that would provide relief to that location.

Commissioner Green asked whether any ABC store signs would be placed near the elementary school. Mr. Myrick confirmed there would not be any signs, as the properties back each other. The school and the proposed store face in opposite directions and each has an address on a different road.

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

III. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – GRAIN RALEIGH, LLC, T/A TROPHY BREWING; TROPHY ON MAYWOOD, LLC, T/A TROPHY BREWING; 225 SOUTH WILMINGTON TENANT, LLC T/A BUSY BEE CAFÉ AND RESTAURANT; AND STATE OF BEER, LLC, T/A STATE OF BEER

Ms. Cowick stated Laura Collier, attorney for Trophy Brewing was present to ask for an exemption amending an exemption granted at the October 2015 ABC Commission Meeting. Ms. Collier explained Trophy Brewing had previously obtained an exemption and the request was to extend the exemption to a second brewery location. Ms. Collier stated the terms of the initial exemption would remain the same and simply include the new location. The two locations would not exceed 5,000 barrels annually. Ms. Collier stated the new brewery location would be the third location of the four allowed under the exemption.

Commissioner Green asked for clarification of the current locations. Ms. Cowick explained there are the brewery and two retail locations under the current exemption. The new brewery would be the third of the four allowable locations under the brewery ownership affiliation exemption. Ms. Cowick recommended the ABC Commission grant the exemption under these terms.

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

IV. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – HENDERSON LEISURE PROPERTIES, INC. T/A MIKE’S PIZZA & PASTA; CAROLINA LEISURE PROPERTIES, INC., T/A BIG MIKE’S; AND MICHAEL G. KURIMSKY

Ms. Cowick stated no one was present regarding the request. Ms. Cowick explained Mike Kurimsky owns Mike’s Pizza & Pasta with his sons and is also a partial owner of another retail establishment, Big Mike’s. Mr. Kurimsky wishes to produce malt beverages at the Mike’s Pizza & Pasta location. The production would be one barrel and would not exceed 200 barrels per year. Mr. Kurimsky requires an exemption to apply for a commercial permit. The malt beverages would only be sold at the Mike’s Pizza & Pasta location.

Ms. Cowick recommended the ABC Commission grant the exemption under these terms.

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

V. OTHER BUSINESS

Ms. Cowick stated the minutes of two NC ABC Commission Special Meetings, held August 27, 2015 and September 24, 2015 had been reviewed and requested the minutes be ratified.

Commissioner Green made a motion to approve the minutes of the August 27, 2015 and September 24, 2015 Special Meeting minutes. Chairman Gardner seconded the motion. Motion Passed.

VI. OTHER BUSINESS

Ms. Cowick requested hearing case number 102 be removed from the offers previously ratified. Assistant Counsel Missy Welch stated the permittee had obtained counsel and wished to discuss the matter with their counsel prior to proceeding with the Offer in Compromise.

Chairman Gardner asked if it is customary to allow a signed offer to be removed. Ms. Cowick confirmed it does happen occasionally when permittees consult with counsel after the fact. Commissioner Green asked when the request for removal from the agenda had been received. Ms. Welch stated it had been received the previous week.

After discussion with Ms. Cowick, Commissioner Green made a motion to remove hearing case number 102 from the previously ratified cases. Chairman Gardner seconded the motion. Motion Passed.

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, December 16, 2015.

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

Approved at the December 16, 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