

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
FEBRUARY 11, 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 February 11, 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 JANUARY 14, 2015**

Chairman Gardner asked for a motion to waive the reading of the minutes of the January 14, 2015 meeting into the record. Commissioner Green made a motion to waive the reading of the minutes from the January 14, 2015 meeting. Commissioner Keith seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the January 14, 2015 meeting. Commissioner Keith made a motion to approve the minutes from the January 14, 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 Green stated he found no conflicts of interest. Commissioner Keith stated he found no conflicts of interest. Chairman Gardner 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, Green's Market. Ms. Cowick stated this was Assistant Counsel Tim Morse's case. The violation in the case was an underage sale. 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 fifteen (15) 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 no one was present on behalf of hearing case number 2, M & K Investments, Inc. Assistant Counsel LoRita Pinnix stated the business owner filed a petition with the Office of Administrative Hearings; however, the date of filing was beyond the 60-day required deadline. Ms. Pinnix stated the 30-day appeal period had also passed and she had filed a motion to dismiss. The motion

to dismiss was granted by the Administrative Law Judge and the original penalty imposed. The penalty in the signed Offer was a revocation of all the permittee's ABC permits.

Commissioner Green made a motion to impose the penalty as stated in the signed Offer in Compromise. Commissioner Green seconded the motion. Motion Passed.

Ms. Cowick stated Zabi Nazari, owner of the business, was present on behalf of hearing case number 10, E Z Food Mart. Ms. Pinnix stated the Offer in Compromise had been amended to lower the penalty to a ten (10) day suspension or a \$1,000.00 penalty.

Commissioner Green made a motion to follow staff's recommendation to reduce the penalty in the amended Offer in Compromise. Commissioner Keith seconded the motion. Motion Passed.

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

## **II. ABC STORE LOCATION – LINCOLNTON ABC BOARD**

Administrator Robert A. Hamilton stated on December 10, 2014, the NC ABC Commission received a request from the Lincolnton ABC Board, requesting approval to lease a property to open and operate an ABC Store at 627 Riverside Drive in Lincolnton, North Carolina. On January 20, 2015, ABC Audit/Investigator Edwin Strickland and Compliance Officer Mark Hilton met with General Manager Burt Honeycutt and others from the Lincolnton ABC Board and began an investigation. Mr. Honeycutt indicated the proposed location would be more convenient to the citizens.

The Audit/Investigators found the proposed location, 627 Riverside Drive, Lincolnton, North Carolina, is within a small strip of three shops, including surrounding businesses of a dry cleaner, a shoe repair and a Mexican restaurant. On January 23, 2015 Mr. Strickland spoke with the Zoning Administrator for Lincolnton, confirming the property is zoned Neighborhood Business and is approved for ABC sales.

The property is owned by Rodney Ross of Lincolnton. On January 23, 2015, Mr. Strickland spoke with Mr. Ross by telephone. Mr. Ross stated he has no personal or financial interests with members of the Lincolnton ABC Board. All Lincolnton ABC Board members submitted financial disclosure forms and have no direct financial interest in the ownership of the property. There is a one-year lease for the property with an agreed upon price of \$500.00 per month for the first five months and \$700.00 per month for the remaining seven months.

The proposed space is approximately 1,000 SF with plans to use approximately 90% for retail sales and the remainder for storage and an office space. The building does not have a loading dock and would accept deliveries from the existing Lincolnton ABC Warehouse.

The nearest school, Lincolnton High School located at 803 Aspen Street in Lincolnton, North Carolina, is approximately 1 mile from the proposed location. The nearest church, Iglesia Bautista Independiente located at 604 Childs Street in Lincolnton, North Carolina, is approximately 528 feet from the proposed location.

The nearest ABC Store is located approximately 2.4 miles from the proposed location and is operated by the Lincolnton ABC Board. The proposed Lincoln County ABC Store is located approximately 15 miles away.

Mr. Hamilton stated notice to the public was posted on January 6, 2015; however, Mr. Hilton, upon viewing the sign, discovered the lettering was less than the required four inches. The sign was corrected and reposted on January 20, 2015. No objections have been received.

Mr. Honeycutt stated, during the investigation, the projected sales for the first year were approximately \$605,000.

Chairman Gardner asked if the one-year lease was on a trial basis. Mr. Hamilton stated if the store was successful, the ABC Board would purchase or lease another property. Mr. Hamilton recommended approval of the proposed location.

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

### **III. ABC STORE LOCATION – LINCOLN COUNTY ABC BOARD**

Mr. Hamilton stated on December 8, 2014, the NC ABC Commission received a request from the Lincoln County ABC Board, requesting approval to purchase property to open and operate a second ABC Store at 110 North Highway 18 in Vale, North Carolina. On December 8, 2014, Mr. Strickland and Mr. Hilton met with Johnny Helms, the General Manager of the Lincoln County ABC Board and began an investigation.

The proposed property is part of a larger parcel located at 110 North Highway 18 in Vale, North Carolina. The Board plans to purchase 1.25 acres of this property. The property is near the intersection of Highway 18 and Highway 27 and located approximately .25 miles from the eastern boundary of Cleveland County. Currently, a business, West End Sales, also occupies a portion of the parcel.

On December 30, 2014, Mr. Strickland spoke by telephone with a representative of the Zoning Department for Lincoln County, confirming the property is zoned General Business and is approved for ABC retail sales.

The property is owned by Gary and Margret Miller of Vale, North Carolina. On December 30, 2014, Mr. Strickland spoke with Mr. Miller by telephone. Mr. Miller stated he had had some previous real estate business with both Chairman Baker and Commissioner Davis. All Lincoln County ABC Board members submitted financial disclosure forms and have no direct financial interest in the ownership of the property.

Mr. Hamilton stated there were no plans for the building at the time, but they were expecting to construct a building between 2,500 and 3,500 SF with approximately 80% retail sales and 20% storage. The proposed building would also include a loading dock.

The nearest school, Northbrook Elementary School located at 642 NC 274 in Vale, North Carolina, is approximately 4.4 miles from the proposed location. The nearest church, Bingham Memorial Church located at 6517 Falston Road in Lawndale, North Carolina, is approximately .3 miles from the proposed location.

Currently, the nearest ABC Store is located approximately 14.2 miles from the proposed site at 112-A North Cherry Street in Cherryville, North Carolina in Gaston County. There is also a prospective store in Lincolnton, which would be located approximately 15 miles to the east of this location.

Mr. Hamilton stated notice to the public was properly posted on November 29, 2014 and verified by Mr. Hilton on December 12, 2014. Mr. Hamilton stated the Lincoln County ABC Board has received numerous objections to the proposed location. Several petitions against the proposed location were received, including Concerned Citizens of Western Lincoln and Eastern Cleveland Counties with 29 signatures and concerns regarding increased traffic and accidents; a petition from Concerned Citizens of Lincoln County listed 59 signatures with concerns regarding traffic and impaired drivers; Mulls Chapel Baptist Church submitted a petition with 102 signatures and concerns regarding traffic and impaired drivers; West Lincoln United Methodist Charge submitted 24 signatures with concerns of traffic and accidents; and, Hebron United Methodist Church with six signatures concerned with traffic and accidents. Also, the Board received numerous telephone calls, including ten against the sale of alcohol in the area, three against the proposed store's traffic, and four asking for information.

Mr. Hamilton stated the NC ABC Commission had received a letter from the Chairman of the Cherryville ABC Board opposing the proposed location. Chairman Beam stated their store located 12 miles from the proposed site would lose approximately 15-20% of its business.

Mr. Hamilton stated a proposed budget had been submitted including a mortgage expense of \$9000 and a net income of \$24,690. The price of the land is \$125,000 and Mr. Hamilton stated the cost for the construction of the building could possibly be between \$300,000 and \$400,000.

Mike Baker, the Chairman of the Lincoln County ABC Board, was present to answer questions from the Commission. Chairman Gardner asked about the \$9000 indicated on the projected budget as mortgage expense. Mr. Baker stated the Board has a cash reserve to buy the property and to pay for a portion of the construction expenses. Additionally, the Board expects income from the store sale; however, the Board would require a loan for the balance of construction costs.

Commissioner Keith stated objections are routine to proposed ABC Stores; however, he asked if the population of the community would support the new ABC Store. Mr. Baker stated there were approximately 30,000 people within a ten mile radius of the proposed location. Mr. Baker also stated the location was on a main thoroughfare at the intersection of Highway 27 and Highway 18 with approximately 7,500 cars passing each day. Mr. Baker also stated they had made projections based upon the sales of nearby stores.

Commissioner Keith also asked from where the customers would come. Mr. Baker stated Cherryville, with the closest ABC store, was approximately 14 miles away, the Shelby store was 19-20 miles away, and, Morganton, Hickory and Valdese stores were all approximately 18-20 miles away. Mr. Baker added the new store opened recently in the eastern portion of Lincoln County had been successful and the proposed store would serve the residents of the western portion of the county. Lincoln is located centrally in the county. Mr. Baker stated the only other viable intersection was across from the high school and would not serve.

Commissioner Green asked if the proposed location was the only commercial business in the area. Mr. Baker stated there were currently two businesses located nearby, a tractor implement store and a business selling food and antiques. In addition, Mr. Baker stated the Planning Department's planned use for the property is for retail/commercial businesses.

Mr. Hamilton asked Mr. Baker if a feasibility study had been completed regarding the proposed location. Mr. Baker stated the Board did not complete an outside study.

Mr. Hamilton recommended a decision regarding the proposed location be postponed until the next ABC Commission meeting allowing additional information and a feasibility study to be obtained due to the number of objections received, including the objection from the Cherryville ABC Board.

Commissioners Keith and Green expressed concerns about approving a location without more information regarding the feasibility of the proposed location and whether the business could be financially successful. Mr. Hamilton asked if the contract would allow for another thirty days. Mr. Baker stated there was a 30-day option beyond the expiration of the contract. Chairman Gardner stated a feasibility study, as conducted by other boards, would provide more assurance to the Commission.

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

**III. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) HAPPY & HALE, LLC; MICHAEL D. OLANDER, JR.; AND, LONERIDER BREWING COMPANY**

Ms. Cowick stated attorney Laura Collier was present on behalf of her clients. Ms. Collier stated Michael Olander owns a 0.9% interest in Lonerider Brewing Company and also owns 55% of Happy & Hale, LLC. The requested exemption would allow Happy & Hale to sell Lonerider products. Ms. Cowick stated there would be a 5,000 barrel cap and the business would offer other malt beverage products. Ms. Collier added Mr. Olander would not have any management decisions in the ordering of the Lonerider products and Happy & Hale would use a third-party distributor/wholesaler for the purchases.

Ms. Cowick stated there were no objections, and based upon the precedent set by the Commission, recommended the ABC Commission grant an amendment to the exemption granted in October 2014 under these terms.

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

Chairman Gardner announced the next NC ABC Commission meeting would be held on March 11, 2015.

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

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James C. Gardner, Chairman  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

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Caroline Y. Washburn for the Legal Division