

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JULY 15, 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 July 15, 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 JUNE 10, 2015

Chairman Gardner asked for a motion to waive the reading of the minutes of the June 10, 2015 meeting into the record. Commissioner Keith made a motion to waive the reading of the minutes from the June 10, 2015 meeting. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the June 10, 2015 meeting. Commissioner Green made a motion to approve the minutes from the June 10, 2015 meeting. Commissioner Keith 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 Keith stated he found no conflicts of interest. Commissioner Green stated he found no conflicts of interest. Chairman Gardner found no conflicts of interest.

I. HEARING CASES – 41

Chief Counsel K. Renee Cowick stated hearing case number 25, Willis Mini Mart, was intended for the August 2015 Commission Meeting and asked for it be continued until that meeting.

Commissioner Green made a motion to continue the case to the August Commission Meeting agenda. Commissioner Keith seconded the motion. Motion Passed.

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

II. ABC STORE LOCATION – CUMBERLAND COUNTY ABC BOARD

Administrator Robert A. Hamilton stated on June 2, 2015, the NC ABC Commission received a request from the Cumberland County ABC Board for approval to purchase property to open and operate an ABC Store in Fayetteville, North Carolina. 911 has tentatively addressed the property as 964 Berkley Hall Way. On June 16, 2015, ABC Auditor/Investigators Edwin Strickland and James Casteen met with General Manager Gene Webb.

The new store will replace the existing store in a developing area near a Bojangles restaurant and a large apartment complex, Plantation at Fayetteville.

On June 17, 2015, Mr. Strickland confirmed the property is zoned LC, Limited Commercial, and is approved for an ABC store.

The property is 1.58 acres and owned by PAF Commercial, LLC of Greensboro, North Carolina. All Cumberland 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 \$750,000.00. The proposed building will be tentatively 7,000 SF of which 4,800 SF will be used for retail sales and the remainder for mixed beverage sales.

The nearest school, Fayetteville Technical Community College's automotive repair building, is approximately .9 miles from the proposed location. Ponderosa Elementary is approximately 1.2 miles away. The nearest church, Simon Temple AME Zion Church, is approximately 1 mile from the proposed location. The nearest ABC Store is located approximately 2.8 miles from the proposed location and is operated by the Cumberland County ABC Board.

Mr. Hamilton stated notice to the public was posted on June 3, 2015. No comments have been received. The anticipated first year sales are \$2,000,000.00. Mr. Webb was present and stated all comments regarding the proposed location had been positive. 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 – MECKLENBURG COUNTY ABC BOARD

Mr. Hamilton stated on May 26, 2015, the NC ABC Commission received a request from the Mecklenburg County ABC Board for approval to purchase property to open and operate an ABC Store at 2915 Wilkinson Boulevard in Charlotte, North Carolina. This store is tentatively scheduled to open in August 2017, at which time the existing leased store located at 3120-D5 Wilkinson Boulevard will be closed.

The Audit/Investigators found the proposed location to be an undeveloped lot located at 2915 Wilkinson Boulevard in Charlotte, North Carolina. The property is on a busy boulevard between a wrecker service and a gas station, across from a restaurant. On June 24, 2015, Mr. Strickland confirmed the property is zoned I-2 and allows for an ABC store.

The property is approximately 2.129 acres and owned by Wilkinson Holdings I, LLC, of Charlotte, North Carolina. All Mecklenburg County ABC Board members submitted financial disclosure forms and have no direct financial interest in the ownership of the property. The proposed price for the property is \$925,000.00. The proposed building will be tentatively between 8000 and 8,500 SF with plans to use 70% of the space for retail sales and also provide mixed beverage sales.

The nearest school, Ashley Park Elementary School, is approximately .7 miles from the proposed location. The nearest church, Purcell United Methodist Church, is approximately .2 miles from the proposed location. The nearest ABC Store is located approximately .2 miles from the proposed location and will be closed upon its opening. The next closest ABC Store is located approximately 3.8 miles away and is also operated by the Mecklenburg County ABC Board.

Mr. Hamilton stated notice to the public was posted on May 1, 2015. No objections have been received. The anticipated first year sales are \$6,500,000.00. Mr. Hamilton stated staff recommended approval of the proposed location. No one was present to comment on 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.

IV. ABC STORE LOCATION – ORANGE COUNTY ABC BOARD

Mr. Hamilton stated on June 1, 2015, the NC ABC Commission received a request from the Orange County ABC Board for approval to purchase property to open and operate an ABC Store at 1930 US 15-501 South in Chapel Hill, North Carolina. On June 8, 2015, ABC Auditor/Investigator Edwin Strickland and ABC Compliance Officer Bill Watkins met with General Manager Tony DuBois.

The proposed location will combine two parcels of land for an approximate total of 1.33 acres. The purchase price for the property is listed as \$575,000.00. The property is located approximately 581 feet from a sign indicating the Chatham County line. The proposed property is located at the intersection of Smith Level Road and 15-501 South with access from either road. Existing businesses close to the intersection include a gas station and truck rental. A large shopping center including a Wal-Mart is located approximately .1 miles away.

On June 11, 2015, Mr. Strickland confirmed with Chapel Hill zoning that a portion of the property is zoned Residential Commercial, and is approved for an ABC store. However, a portion of the property would require rezoning or a special use permit to allow for an ABC store.

Both parcels are owned by Gordon and Madeline Mitchell of Chapel Hill, North Carolina. All Orange County ABC Board members submitted financial disclosure forms and have no direct financial interest in the ownership of the property. However, the property owners are acquainted with one of the board members through their PTA. The proposed building will be tentatively 4,000 SF of which 2,650 SF will be used for retail sales and the remainder for storage and office space.

The nearest school, Mary Scroggs Elementary School, is approximately 1.7 miles from the proposed location. The nearest church, Lighthouse Baptist Church, is approximately .6 miles from the proposed location. The nearest ABC Store is located approximately 1.4 miles from the proposed location and is operated by the Chatham County ABC Board.

Mr. Hamilton stated notice to the public was properly posted on June 3, 2015.

Mr. Hamilton stated five negative comments from the public had been received. The Chatham County ABC Board submitted a letter of objection to the ABC Commission regarding the proposed location and provided an income statement projection which anticipated a decrease in sales of 25%. The proposed store would be 1.4 miles from the existing Chatham County ABC store. Representatives of the Orange and Chatham County ABC Boards were present to speak on behalf of their respective boards.

Lisa Stuckey, the Chair of the Orange County ABC Board, was present on behalf of the board, as well as, Keith Bagby, a board member, Tony DuBois, the General Manager, and Angela Willoughby, Assistant General Manager. Also present were Mark O'Neal and Gary Payne, realtors for the Orange County ABC Board. Ms. Stuckey stated an ABC Store is needed in the southern part of Orange County; however, available property in this area is scarce. Mr. DuBois, stated the Orange County ABC Board had previously had a store near the proposed location; however, the store was closed approximately twenty

years ago because the area had a more rural population. The same property is not currently available and the proposed property is the only available property in close proximity.

Greg Payne, realtor for the Orange County ABC Board, stated southern Orange County, including Chapel Hill and Carrboro, are fast growing, particularly the 2.5 mile corridor from the Highway 54 Bypass to the Chatham county line. Mr. Payne stated commercially zoned property in this area is limited, especially the last 1.5 miles. Mr. Payne stated rezoning in this area can be difficult and is usually a lengthy process. In addition, regulations concerning watershed protection areas and floodplains further limit the availability of commercial sites.

Mr. Payne stated the proposed property is on the boundary of the Orange Water & Sewer Authority's service area. Properties to the north and east do not have service. Mr. Payne stated the proposed property is the only undeveloped property in southern Chapel Hill with dual access to US Hwy 15-501 and another main road. Additionally, a nearby traffic light will allow for safe access. There are three public schools located further north of the proposed location.

Chairman Gardner asked if Mr. Payne was saying there are no other available properties in this area. Mr. Payne stated it is very limited and they do not have a back-up site. Other properties are located in mixed-use developments with only lease options. Commissioner Green stated the existing Chatham County ABC store is close to the site, and asked how close the nearest Orange County ABC store might be to the site. Mr. Payne stated it was approximately 3 miles. Commissioner Keith asked for confirmation that the store would take 3-4 years to be operational, and also asked about the rezoning process and how long it would take. Mr. Payne stated it could take 1.5-2 years.

Chairman Gardner stated the ABC Commission's concern was the Chatham County ABC Store. He stated in the past, the Commission has not allowed two stores in such close proximity, especially if one of the stores will be adversely affected, especially if part of another county's ABC Board.

Walter Harris, Chairman of the Chatham County ABC Board, was present to speak on behalf of the Board. Mr. Harris stated the proposed location would be economically harmful to the Chatham County ABC Store. Mr. Harris stated their location is between the entrances to the Brier Chapel development which will include approximately 2,800 homes upon completion. Commissioner Keith asked Mr. Harris about the size of the Chatham County ABC Store. Mr. Harris stated it is a currently leased 5,000 SF space. The retail space is accommodated in approximately 3,000 SF and the remainder provides office space and warehouse space for the additional ABC stores. The store had been in this location for approximately 3 years after moving from a nearby store which was much smaller.

Mr. Hamilton stated in consideration of the possibility of the 25% decrease in sales at the Chatham County ABC Store and its impact on the Board's ability to disperse funds to local agencies, staff could not recommend approval of the proposed location. Mr. Hamilton also added the proposed location was 1-2 miles from the closest residential area in Chapel Hill. In the future, Mr. Hamilton suggested, if the residential area expands to the county line, another ABC store might be needed. It would also be possible for the Orange County ABC Board to buy the proposed property and hope for later approval.

Chairman Gardner asked if the Orange County ABC Board had researched the possibility of leasing a property further away from the county line. Mr. DuBois stated they had, and had not found any property inexpensive enough or large enough to accommodate an ABC store.

Commissioner Green stated it was a difficult decision and he understood the availability of property would not improve; however, the existing store was of concern to the Commission.

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

V. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – FOOD AND WINE 1, INC. d/b/a ONE RESTAURANT; FOOD AND WINE II, INC. d/b/a G2B RESTAURANT; MOMENTUM RESEARCH, INC.

Ms. Cowick stated attorney Sam Slater was present on behalf of his clients. Ms. Cowick explained Momentum Research, Inc. is the parent company of One Restaurant and G2B Restaurant, both with retail ABC permits. G2B has applied for the following commercial permits, malt beverage wholesaler, malt beverage special event, and brewery to operate a micro-brewery.

The exemption request is to allow the concurrent ownership of One Restaurant and G2B which holds both commercial and retail permits. G2B products will not be sold at One Restaurant.

Ms. Cowick recommended the ABC Commission grant the exemption under the defined terms. Commissioner Keith made a motion to grant the exemption based upon the defined conditions. Commissioner Green seconded the motion. Motion Passed.

VI. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – TIPPING POINT TAVERN, LLC; TIPPING POINT TAVERN RESTAURANT, LLC; DDJ OF NC, LLC d/b/a SWEET ONION RESTAURANT

Ms. Cowick explained Tipping Point had previously obtained an exemption, however it did not allow the brewery to sell its products to a retail establishment with concurrent ownership.

Their request is for the exemption to be amended to allow Tipping Point to sell its products to Sweet Onion. The products will be sold through a third-part wholesaler or allow Tipping Point to sell its products only to Sweet Onion.

Ms. Cowick stated staff had no objections, and based upon the precedent set by the Commission, recommended the ABC Commission grant the exemption.

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

VII. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – SOUTHERN WINE & SPIRITS MID-ATLANTIC, INC.; MELANIE HOLDRIDGE

Assitant Counsel Tim Morse stated attorney, Mark Anderson, was present on behalf of his clients. Mr. Morse stated Southern Wine & Spirits Mid Atlantic, Inc. wishes to employ Melanie Holdridge to represent Southern and promote its products to retail businesses holding ABC permits. Ms. Holdridge's husband, Brian Holdridge, is employed by Natty Green's Pub and Brewing Company as a general manager. Mr. Holdridge does not have any financial or ownership interest in Natty Greene's; however, he does purchase alcohol products for the business.

Ms. Holdridge will not solicit orders from or promote Southern's products to Natty Greene's, which already carries Southern products.

Mr. Morse stated staff had no objections, and based upon the defined conditions, recommended the ABC Commission grant the exemption

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

VIII. EXEMPTION REQUEST – N.C.G. S. § 18B-1116(a)(3),(b) – PANTHERS FOOTBALL, LLC

Ms. Cowick stated this request was an exemption request regarding advertising. The Panthers Football, LLC contracts with a concessionaire with retail permits. Private Club seats and Private Suites are located within the 300 and 400 levels of the Panthers’ stadium. Panthers Football, LLC wishes to contract advertising to industry members on these levels. Additionally, advertising may be in areas in which a separate entity with retail permits will be selling alcohol.

Ms. Cowick stated staff had no objections, and based upon the precedent set by the Commission, recommended the ABC Commission grant the exemption.

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

IX. OTHER BUSINESS

Ms. Cowick asked the Commission to schedule a Special Call-In Meeting on Thursday, August 27, 2015 at 10:00 am to consider approval of the temporary rules. The rules are to be filed with the Office of Administrative Hearings prior to September 1, 2015.

Commissioner Green made a motion to schedule the meeting. Commissioner Keith seconded the motion. Motion Passed.

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, August 12, 2015.

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

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

Respectfully submitted by,

Caroline Y. Washburn for the Legal Division