

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MAY 4, 2016**

The following narrative and summary describes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road, Raleigh, North Carolina on May 4, 2016, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the NC ABC Commission within the Legal Division.

ROLL CALL

Chairman James C. Gardner and Commissioners Kevin M. Green and Michael C. Herring were present. Chairman Gardner called the meeting to order.

MINUTES OF APRIL 13, 2016

Chairman Gardner asked for a motion to waive the reading of the minutes of the April 13, 2016 meeting into the record. Commissioner Green made a motion to waive the reading of the minutes. Commissioner Herring seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the April 13, 2016 meeting. Commissioner Green made a motion to approve the minutes. Commissioner Herring 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 Herring 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 – 50

Chief Counsel Renee C. Metz stated hearing case number 1, Mazatlan Mexican Restaurant, was a contested case and assigned to Assistant Counsel Missy Welch. The permittee failed to file prehearing statements, resulting in a motion for sanctions. The Administrative Law Judge granted the sanctions motion and issued a decision of a three-month suspension of the permittee's Mixed Beverage Restaurant ABC permit with a suspension date of June 3, 2016.

Commissioner Herring asked if the permittee had renewed its permits. Mrs. Metz stated she did not know the status of the renewal. Commissioner Herring was concerned the business may simply not renew the permits to avoid the penalty. Mrs. Metz stated that was a possibility, but the penalty had been set some time before.

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

As no one was present on behalf of the other cases, Mrs. Metz asked the Commission to ratify the remaining hearing cases, if there were no further questions.

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

II. ABC STORE LOCATION – CHATHAM COUNTY ABC BOARD

Administrator Robert A. Hamilton stated the Chatham County ABC Board had requested approval to lease and operate a new ABC Store in Suites 4120 and 4130 at 40100 Morning Drive, in Chapel Hill, North Carolina. The new store would replace an existing store within the same development.

The development, Governors Village, has residential, retail and commercial buildings. The proposed opening would be in October 2016. The proposed store would combine two suites located within a strip of shops currently being constructed.

Mr. Hamilton stated the property is zoned commercial and allows for an ABC Store. The property is owned by G V Commercial. Lisa Adams of Domicile Realty, which represents the property owners, confirmed there are no financial or personal interests between the property owners and the ABC Board members. Each member of the Chatham County ABC Board provided financial disclosures. The proposed rent for the property will be \$4,284.00 per month for the first year. The monthly rent will increase minimally over years 2-5 of the lease.

However, the Chairman of the Chatham County ABC Board recused himself from the vote on the relocation of the store because of his wife's involvement on an economic development board. A realtor with Domicile Realty also serves on this economic development board. He represents the property as a realtor and also has an ownership interest in the property.

The proposed property, still currently under construction, will be part of a building with six commercial suites. Two suites will be combined for a space of 2,779 SF. Of this space, 1,870 SF will serve as retail space and the remainder will be utilized for storage, offices and a common area.

The nearest school, Willow Oak Montessori Charter School, is located approximately 95 feet from the proposed location. However, it is the back of the school which faces the proposed ABC Store. The nearest church, Mt. Carmel Baptist Church is approximately .7 miles away. The existing ABC Store is located 800 feet from the proposed location. After this store is closed and replaced by the proposed ABC Store, the next nearest ABC Store is located approximately 5.6 miles away and is operated by the Orange County ABC Board.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was posted at the site on April 2, 2016 and no calls had been received regarding the proposed location at the time of the report. Mr. Hamilton stated the projected first year sales were \$768,000.00.

Mr. Hamilton added General Manager Matt Williams and Chairman Walter Harris were present on behalf of the Chatham County ABC Board and were available for questions. Chairman Gardner welcomed the gentlemen and asked if they would like to comment.

Mr. Williams stated the Board was seeking approval for the new, larger location as the current 1,200 SF store only provides 900 SF of retail space and 250 SF of storage space. Mr. Williams stated the board would be better able to serve the growing community and offer a larger variety of products.

Chairman Gardner asked about the volume of the existing store. Mr. Williams stated, during the previous year, they had \$560,000 in sales and would be able to increase sales and available products with more space. Commissioner Herring asked if the board had plans to offer service for mixed beverage sales. Mr.

Williams stated currently there were no plans, as they only have nine customers. He added, with the growth anticipated for the Briar Chapel community, it is a possibility for the future.

Commissioner Herring asked if the board had received any objections from the community or the school because of the proximity. Mr. Williams stated he had received one telephone call the previous evening from a parent of a child attending the school. It was acknowledged the school was only a temporary location as a new campus is under construction.

Commissioner Green asked about the decision of leasing versus build-to-suit, as building was the more common next step. Mr. Williams stated the location is ideal and is well-known and within walking distance for many of their customers. The board had searched for a location to purchase and build; however, availability was low and the cost was too high. Also, under their lease which is currently month-to-month, they can move within the same development to a larger unit without penalty.

Chairman Gardner confirmed with Mr. Williams, the scheduled opening date was October 1, 2016.

Commissioner Herring made a motion to approve the proposed location. Commissioner Green seconded the motion. Motion Passed.

III. ABC STORE LOCATION – TROUTMAN ABC BOARD

Mr. Hamilton stated the Troutman ABC Board is a new board, currently without an ABC Store. The Troutman ABC Board had requested approval to purchase property to build and operate an ABC Store. The proposed property is two lots located at the corner of Goodman Road and North Main Street in Troutman, North Carolina. Currently, there are residences across the street and behind the proposed location and a Walgreens to the right of the property, which possesses off premise ABC permits.

Mr. Hamilton stated the property is zoned Highway Business and allows for an ABC Store. The property is owned by Rice Partners, LLC. Johnson Rice, one of the owners confirmed there are no financial or personal interests between the property ownership and the ABC Board. All Troutman ABC Board members have submitted financial disclosures.

The purchase price for the .91 acre property is \$200,000.00. The Board plans to build a 4,000 SF building, utilizing 2,500 SF for retail sales. The Board plans to offer mixed beverage sales.

The nearest school, Iredell-Statesville Career Academy Technical School, is located approximately .5 miles from the proposed location. There are three churches in the vicinity; each is located approximately .5 miles away. The nearest ABC Store is located approximately 5.3 miles away and is operated by the Statesville ABC Board.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was posted at the site on March 18, 2016 and no calls had been received regarding the proposed location. Mr. Hamilton stated the estimated sales were \$770,000.00 for the first year. Mr. Hamilton added no one was present representing the Troutman ABC Store, but he would answer any questions.

Commissioner Herring asked if the statewide growth rate for sales was approximately 5% last year. Mr. Hamilton stated it was a little higher. Commissioner Herring stated the Troutman ABC Board was projecting growth of 9% per year in sales and asked if that was ambitious. Mr. Hamilton stated it might be ambitious, but the growth rates are higher in some areas of the state. As a new ABC Store, this location has the potential for a higher growth rate for the first years.

Chairman Gardner asked about the nearest stores and their volumes, projected sales and profits. The Troutman ABC Board has predicted a \$13,000.00 loss during the first year. Mr. Hamilton stated there are possible issues with loss. Mr. Hamilton stated Laurie Lee, Director of the Local ABC Board and Pricing Division, had worked extensively with the board regarding the projection numbers.

Ms. Lee stated it was not unusual for a board to expect a loss during the first year and they have planned for a loss. Ms. Lee stated both the Statesville ABC Board which is north of the proposed location and the Mooresville ABC Board which is south of the proposed location, have sufficient sales. Ms. Lee added, if 10% of the sales from each location were transferred to the Troutman ABC Board, revenue of \$1,000,000.00 would be created. This amount is the ultimate projection for the Troutman ABC Board and the reason for the 9% growth estimation.

Commissioner Herring stated new ABC Boards this size usually initially lease rather than purchase, as the cost to build is higher and affects the profits. Ms. Lee stated the Board was aware of that and the Town of Troutman supports them.

Commissioner Green stated he also questions why the Board is buying rather than leasing. Ms. Lee stated the Troutman ABC Board searched for a property to lease, but could not find a suitable location to lease. Commissioner Green stated the cost might be harmful for a new ABC Board and did not want potential financial issues or even bankruptcy in the future because of the large initial debt.

Mr. Hamilton stated the ABC Commission would maintain a close watch over the Troutman ABC Board's annual sales. He added there are a couple of ABC Boards in the state operating at a loss and the ABC Commission was working with them to find solutions, possibly merging with other boards or offering additional services.

Commissioner Green stated the land, building and fixtures costs would be \$900,000.00, with lower anticipated annual sales. Commissioner Green added he was concerned as this was an unproven new location, not a second location or a replacement location. He stated he was concerned the community could not support the business necessary for the Board to earn a profit with such a high initial debt. His concern was with the debt, not the location of the property.

Chairman Gardner asked Ms. Lee what the effect would be on the Statesville ABC Board if it lost 10% of its business. Ms. Lee stated the Statesville ABC Board would still be profitable. Chairman Gardner asked if there was a fallback plan if the Board was unable to achieve the necessary numbers. Ms. Lee stated she had tried to encourage a merger; however, it could not be worked out as Statesville did not offer enough to Troutman to be helpful.

Commissioner Herring asked how close the Mooresville ABC Board was to this location. Ms. Lee stated it was 6-7 miles to the closest store in Mooresville.

Chairman Gardner asked if it was possible to reopen the negotiations on a merger between the Statesville and Troutman ABC Boards. Ms. Lee stated a merger could be encouraged, but not be forced.

Commissioner Herring asked if the land had already been purchased. Mr. Hamilton stated a purchase agreement had been signed, but was contingent upon the ABC Commission's approval.

Commissioner Herring asked if the approval request could be tabled one month to allow for additional consideration. Both Commissioner Herring and Commissioner Green expressed a desire to speak with members of the Troutman ABC Board and town officials to learn more about the financial expectations.

Commissioner Green stated he would feel more comfortable with a lease rather than a purchase creating a large loan for a smaller town.

Commissioner Herring made a motion to continue the decision to the next Commission Meeting. Commissioner Green seconded the motion. Motion Passed. Commissioner Gardner asked Ms. Lee to discuss a merger with the ABC Boards again.

IV. OTHER BUSINESS

Mr. Hamilton asked the Commission to consider Wednesday, July 13, 2016, Wednesday, August 10, 2016 and Wednesday, September 7, 2016 for future ABC Commission meetings.

Commissioner Green made a motion to schedule the meetings as requested. Commissioner Herring seconded the motion. Motion Passed.

V. OTHER BUSINESS

Mrs. Metz stated in August 2015, the Commission had ratified an Initial Report of classifications for the rules in 04 NCAC 02S, now 15B. A public comment period was held from January 14, 2016 through March 18, 2016. The only comment received was in support of the designations.

Because two rules had received comments in the past years, their designation was “necessary with substantive public interest.” All other rules were “necessary without substantive public interest.” Mrs. Metz stated no discussion was necessary on the individual rules and asked the Commission to ratify the designations for the Final Report to be submitted to the Rules and Review Commission.

Commissioner Herring made a motion to ratify the rules based upon staff recommendations. Commissioner Green seconded the motion. Motion Passed.

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, June 8, 2016.

Commissioner Green made a motion to adjourn. Commissioner Herring 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