

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JULY 13, 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 July 13, 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 JUNE 8, 2016

Chairman Gardner asked for a motion to waive the reading of the minutes of the June 8, 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 June 8, 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.

PRESENTATION

Chairman Gardner asked Wake County ABC Board General Manager Joel Keith and one of his employees, Justin Calcaterr, to come forward. Mr. Keith stated one day a person known to be homeless, entered the Wake County ABC Store where Mr. Calcaterr works. This gentleman made a small purchase and left. Shortly afterwards, someone entered the store and stated a person was on fire in the lot next door. Mr. Calcaterr did not hesitate. As a veteran who had served three tours in Iraq, Mr. Calcaterr knew to act quickly. He took two fire extinguishers and a water bucket and was able to extinguish the fire on the gentleman outside. Mr. Keith explained if he had hesitated and called 911 rather than act quickly, the gentleman would have perished. For an unknown reason, the gentleman had set himself on fire using the alcohol he had purchased harming himself severely. Mr. Keith added, though it is likely he will lose his feet, his life was saved by Mr. Calcaterr's prompt actions.

Chairman Gardner thanked Mr. Calcaterr for his service to our country and for assisting the person without hesitation. Chairman Gardner stated the ABC Commission also thanked him and presented him with a certificate recognizing his actions.

I. CONTESTED CASES AND OFFERS IN COMPROMISE – 73

Chief Counsel Renee C. Metz stated there had been issues which prevented the posting of the July 2016 ABC Commission Meeting agenda on the ABC Commission website. She stated the August Commission Meeting agenda would hopefully be posted in advance of the meeting.

Mrs. Metz stated no one was present on behalf of hearing case number 1, D and S Kwik Stop, which 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 40-day active suspension of the permittee's ABC permits beginning August 12, 2016 and a \$500.00 penalty due by August 5, 2016.

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

Mrs. Metz stated no one was present on behalf of hearing case number 2, Two Doors Down, which was a contested case and assigned to Assistant Counsel Rachel Spears. 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 15-day active suspension of the permittee's ABC permits beginning August 12, 2016 and a \$500.00 penalty due by August 5, 2016.

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

Mrs. Metz stated there was a person present on behalf of case number 73, Toledos, of Durham, North Carolina; however, they were waiting for a bilingual ABC Commission employee to assist with Spanish translation.

II. ABC STORE LOCATION – ORANGE COUNTY ABC BOARD

Administrator Robert A. Hamilton stated the Orange County ABC Board had requested approval to purchase property to construct and operate a new ABC Store at the corner of Oakdale Drive and Churton Street in Hillsborough, North Carolina. The new store would replace an existing store located approximately .8 miles away from the proposed site at 112 John Earl Street in Hillsborough, North Carolina. The Orange County ABC Board plans to have the new store operational by January 2018.

The proposed store is located in the Oakwoods Village complex. Other businesses located in the complex include a salon, two medical offices, a credit union, a gas station and some state-owned property. The property is zoned entrance way special use and has a special use permit to include retail sales and allows for an ABC Store.

The proposed property is owned by Oakdale/Hillsborough, LLC in the care of Ticon Properties, LLC. There are no personal or financial interests shared between the property owners and the Orange County ABC Board. Financial disclosure forms have been provided by the Orange County ABC Board members.

The purchase price for the property is \$1,000,000.00 and it is approximately 1.5 acres. The Board plans to build a building approximately 5,000-6,000 SF, which will allow for retail space and mixed beverage sales.

The nearest school, Pinewood Montessori School, is located approximately .3 miles away. The nearest church, Resurrection Church, is located approximately .6 miles away. The nearest ABC Store is located .8

miles away and the Board plans to list this property for sale as the opening date of the new store nears. The next nearest ABC Store is located 2.5 miles away and is also in Hillsborough and 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 properly posted at the site on May 31, 2016. As of the date of the report, seven calls had been received in opposition to the new store with general complaints.

Mr. Hamilton stated the estimated sales were \$1.52 million for the first year. Mr. Hamilton stated Angela Willoughby, assistant General Manager of the Orange County ABC Board, was present to answer any questions regarding the proposed location.

Commissioner Herring asked what the projected costs for the new store were. Ms. Willoughby stated the anticipated construction costs are approximately \$1.5 million.

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

III. ABC STORE LOCATION – ONSLOW COUNTY ABC BOARD – (1055 WEST CORBETT STREET, SWANSBORO NC)

Mr. Hamilton stated the Onslow County ABC Board had requested approval to build and operate a new ABC Store at 1055 West Corbett Avenue in Swansboro, North Carolina. The new store would replace an existing store located approximately 400 feet from the proposed store, tentatively opening in September or October 2017. Upon the opening of the new store, the existing store would be sold. The property is near the site of a proposed Walmart. The Onslow County ABC Board purchased the property on March 1, 2016 for \$950,000.00 from Donna and Gerald Strickland. The property was leased to North Shore Auto Sales from March 15, 2016 through July 1, 2016.

The property is approximately 3.16 acres and is zoned B1 Highway Business in which an ABC Store would normally be allowed with approval. However, all new businesses in Swansboro are now required to submit a special use application and the town commissioners would approve/disapprove the business. At this time, the Board has not applied for the special use permit.

The purchase of the property was funded by the Onslow County ABC Board's capital fund. Each member of the Onslow County ABC Board provided financial disclosures. The Board plans to model the building after the existing Onslow County ABC Store located at 419 South Marine Boulevard in Jacksonville, North Carolina. The building is 8,000 SF with 5,000 SF being used as retail space and the remaining 3,000 SF being used for mixed beverage sales and warehouse space. The proposed building cost is approximately \$1-1.3 million.

The nearest school, Swansboro Middle School, is located approximately .4 miles from the proposed location. The nearest church, Grace Church, is located approximately .5 miles away. After the existing ABC Store is closed and replaced by the proposed ABC Store, the nearest ABC Store is located approximately 5.2 miles away in Cape Carteret, North Carolina and is operated by the Carteret 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 May 9, 2016. No objections had been received at the time of the report regarding the proposed store. Mr. Hamilton stated the projected first year sales were \$3,500,000.00.

General Manager Neta Grady was present on behalf of the Onslow County ABC Board to answer any questions. Ms. Grady apologized on behalf of the Board for purchasing the property prior to gaining approval from the NC ABC Commission. Ms. Grady stated special circumstances did not allow the Board to request prior approval. She explained the Board had been seeking a suitable property for the past 3 to 4 years and the reluctant seller of this property wanted the transaction to be completely confidential. In addition, North Shore Auto Sales had been located at the site for 20 years, and the owner wanted to allow the business 3-6 months to relocate. The site has been vacated.

Commissioner Green asked if the Onslow County ABC Board was aware they needed prior approval before purchasing the property. Ms. Grady stated the Board was aware the statute stated they needed permission for a new store location; but purchased the property anyway. Commissioner Green stated the purchase agreement for this property was a standard one-page form; however, the contract provided for the second Onslow County ABC Board proposed location clearly stated in section 3(f) "The Property has to be approved by the North Carolina Alcohol Beverage Commission as a suitable site for the Onslow County ABC Board." However, the Board has also already purchased the second property.

Commissioner Green stated he did not understand why the Board acted as it did. Commissioner Green further stated he understands sellers want private transactions, but at the closing, the sale becomes public record. However, until the closing, the sale can be confidential. He added he was not happy with the process and the Onslow County ABC Board should have come to the Commission and this requirement should have been part of the purchase contract. He stated Boards cannot choose which rules they will abide by.

Commissioner Herring asked if there was a potential buyer for the existing store. Ms. Grady stated it was a corner lot at a stoplight. The property was not on the market yet as property values were increasing because of the Walmart coming nearby. Commissioner Herring asked whether the existing property was better than the purchased property. Ms. Grady stated the existing property was a good location; however, the building was twenty years old and could not be enlarged because of the size of the lot and parking. She added the Board believes it will be able to offer 500 new items to their customers in a larger store.

Chairman Gardner asked what the sales were for the existing location. Ms. Grady stated they were over \$2 million. Commissioner Herring asked when the construction on the new store would begin. Ms. Grady stated the Board had not yet completed the permitting process with Swansboro and Walmart. They have had preliminary talks with the town.

Chairman Gardner asked for a motion to approve the location with reservations. Chairman Gardner stated the Board's actions put the Commission in a difficult position. He explained the ABC Commission could disapprove of the location even though the property had already been purchased.

Commissioner Green made a motion to approve the proposed location with the stipulation a sign is erected and stays in place so other building projects in the vicinity will be aware of the ABC Store. Ms. Grady stated the sign will stay in place until the start of construction. Commissioner Herring seconded the motion. Motion Passed.

IV. ABC STORE LOCATION – ONSLOW COUNTY ABC BOARD – (1 BACON PLACE, HOLLY RIDGE, NC)

Mr. Hamilton stated the Onslow County ABC Board had also requested approval to build and operate a new ABC Store at 1 Bacon Place in Holly Ridge, North Carolina. The new store would tentatively open in 2019-2020. Mr. Hamilton stated the Onslow County ABC Store had previously had a store in Holly Ridge; however, it was closed in 1984 due to a lack of sales.

The property is situated in the 150 acre Camp Davis Industrial Park campus and it is located on a corner lot on the main business corridor along Highway 17. The property is zoned Light Industrial and allows for an ABC Store.

Mr. Hamilton stated the property was purchased on June 23, 2015 for \$157,500.00. The purchase of the approximately 2.13 acre property from Camp Davis Industrial Park was funded by the Onslow County ABC Board's capital fund. Financial disclosure forms have been provided by the Onslow County ABC Board members.

The Board plans to model the new store using the plans for the existing Onslow County ABC Board Store located at 419 South Marine Boulevard in Jacksonville, North Carolina. The building is 8,000 SF with 5,000 SF being used as retail space and the remaining 3,000 SF being used for mixed beverage sales and warehouse space. The proposed building cost is approximately \$1-1.3 million.

The nearest school, Dixon High School, is located approximately 8 miles away. The nearest church, Victory Baptist Church, is located approximately .3 miles away. The closest ABC Store is located approximately 5.5 miles away in Surf City, North Carolina and is operated by the Pender 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 May 9, 2016. As of the date of the report, Mr. Hamilton stated no objections had been received. Mr. Hamilton added the projected sales were \$2,500,000.00 for the first year.

Commissioner Herring inquired if the area has grown sufficiently since 1984 to support the proposed store. Ms. Grady stated it had with new housing areas, and a Marine Corps Special Operations command was located nearby. Ms. Grady added the Chair of their appointing authority sits with the Onslow County ABC Board as a liaison and had been instrumental in negotiating the purchase. Ms. Grady agreed the Onslow County ABC Board was at fault for not putting the purchase on the NC ABC Commission agenda at the time of the purchase. She stated the priority had not been in opening a new store, but instead securing the property was more important.

Commissioner Green asked if the Chair was still part of the Onslow County ABC Board. Ms. Grady stated she was until December 2016. Commissioner Green stated the purchase contract/offer included in section 3(f), the property must be approved by the NC ABC Commission; however, this was not followed.

Commissioner Herring asked, with a 2019 opening, when the construction would begin. Ms. Grady stated the date would be dependent upon the sale of the current ABC Store property in Swansboro, as they wished to sell it so they could use the cash for the costs of construction. Commissioner Herring also asked if the area would be able to support an 8,000 SF store. Ms. Grady stated she believed it can as there is a lot of traffic along Highway 17 and not far from a main road leading to Interstate 40, Surf City and the beaches. Ms. Grady added, in the past the Board had purchased stores which were too small and then were not able to expand the locations. The Board would be able to use the footprint for which they already have plans.

Commissioner Herring asked if there would be loading docks at both proposed Onslow County ABC Board locations. Ms. Grady stated there would be loading docks for direct deliveries.

Commissioner Herring made a motion for approval of the proposed location contingent upon a sign remaining posted at the location announcing it as a future site of an ABC Store. Commissioner Green seconded the motion. Motion Passed.

CONTINUATION OF OFFERS IN COMPROMISE CASES

At this time, ABC Commission employee, Maria Soto, was present to act as translator for the permittee of case number 73, Toledos. Maria Guadalupe, an employee of the business, was present to explain the violation which occurred on July 22, 2015. Through Ms. Soto, Ms. Guadalupe explained they were surprised by the visit from an Alcohol Law Enforcement officer. She stated they had never done anything wrong with the ABC laws and would not break any laws. The officer submitted documentation regarding illegal Hispanic products. Ms. Guadalupe stated every Hispanic business carries those products and the orders were placed in the United States. They had purchased the products and did not realize this was a violation and were surprised to learn so. They were sorry it had happened and were not aware they were illegal products. She added they will no longer purchase the products and they have been discontinued at the store. Ms. Guadalupe would appreciate it if the Commission would understand her position.

Chairman Gardner asked if they were drugs from Mexico. Ms. Soto explained for Ms. Guadalupe that they were vitamins and not drugs. When Chairman Gardner asked if they required prescriptions, the reply was they were cough medicine and in Mexico, no prescription was necessary. However, it seems prescriptions are needed in the United States for these.

Assistant Counsel LoRita Pinnix stated the agent found more than a dozen boxes of the medicine, which clearly labeled in Spanish on the outside of the boxes, that prescriptions were required. Ms. Guadalupe stated again they were not aware.

Commissioner Green stated they must follow United States laws and if the boxes were labeled prescriptions necessary, the ABC Commission must also abide by these laws.

Ms. Guadalupe, through Ms. Soto, stated they realize it now and they are sorry and had not been aware.

Chairman Gardner asked about the name of the company from which the medicine was purchased and if the agent has that information. Ms. Guadalupe stated the agent took the information. Mrs. Metz stated the agent does have the invoices, but they were not provided to the Commission with the violation report. Chairman Gardner stated the invoices should be provided to law enforcement so the company could be informed it is illegal and not to sell the products to other stores. Mrs. Metz stated they would see if the agent could provide that information. Chairman Gardner thanked Ms. Guadalupe and stated other businesses would be informed so this would not continue to happen. Ms. Guadalupe thanked the Commission.

Commissioner Herring stated he appreciated Ms. Guadalupe attending and providing the information. Commissioner Herring, after conferring with the Commission, made a motion to reduce the penalty to \$1,000.00 or a 10-day suspension. Commissioner Green seconded the motion. Motion Passed. Ms. Guadalupe stated she accepted the new penalty.

No one else was present on behalf of the other cases; therefore, Mrs. Metz asked the Commission to ratify the remaining Offers in Compromise.

Commissioner Green made a motion to ratify the remaining Offers in Compromise. Commissioner Herring seconded the motion. Motion Passed.

V. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – MOLLEY CHOMPER, LLC d/b/a MOLLEY CHOMPER HARD CIDER AND, BENT APPLE RESTAURANTS, LLC d/b/a PIE ON THE MOUNTAIN

Mrs. Metz stated Kathleen Cordell Arscott-Mills, along with her brother, Matthew Bayles Cordell, operate a cidery in the mountains. Neither is available, but could be reached by telephone if there are any questions. Mrs. Metz stated Molley Chomper Hard Cider holds unfortified winery, wine wholesaler, wine shipper and salesman commercial permits in Ashe County, North Carolina. Molley Chomper, LLC is owned 100% by Ms. Arscott-Mills. Bent Apple Restaurants, LLC operating as Pie On the Mountain is 85% owned by Ms. Arscott-Mills and 15% by Mr. Cordell.

Recently, the street on which Pie On the Mountain is located was designated a North Carolina scenic byway. This designation allows a business to hold ABC Permits in an otherwise dry area. Pie on the Mountain wishes to apply for On-Premise Malt Beverage and Unfortified Wine retail permits. Mrs. Metz stated this is a small business and they do not anticipate a large amount of sales, but wish to offer the products to their customers. Because Arscott-Mills has ownership in both entities, an exemption would be necessary for permits to be issued.

Mrs. Metz stated there will be a good faith effort to find a third-party distributor for their products. Molley Chomper Hard Cider production does not exceed 20,000 gallons per year. Molley Chomper will offer products from other malt beverage and wine producers at competitive prices.

Mrs. Metz recommended approval of the exemption request.

Commissioner Herring made a motion to grant the exemption. Commissioner Green seconded the motion. Motion Passed.

VI. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – STARPOINT BREWING, LLC, GO BRITTON GO, LLC d/b/a BEER STUDY, AND AJ RAGOSTA

Mrs. Metz stated Jennifer Morgan was present on behalf of Starpoint Brewing with Timothy Harper, its owner. Ms. Morgan explained Starpoint Brewing, which is located in Chapel Hill, North Carolina, holds brewery, malt beverage wholesaler and brewery special event commercial permits. Starpoint Brewing plans to open a second location in Durham, North Carolina and also plans to sublease a portion of the new location to Beer Study, a retail permittee holding malt beverage and unfortified wine on-premise permits at its existing location in Chapel Hill, North Carolina. This would also be a second location for Beer Study. Each business would have a separate defined area with no shared space. The Durham Zoning Department requires the property be used for retail uses.

AJ Ragosta has a minority ownership in Go Britton Go, LLC d/b/a Beer Study. Mr. Ragosta proposes to hold a partial concurrent interest in Starpoint Brewing. Mr. Ragosta will not have an ownership interest in Starpoint, but has provided a loan for equipment and installation expenses at the new location. Mr. Ragosta will not have management or decision-making authority over alcoholic beer sales of Starpoint Brewing or Beer Study. The businesses will be operated by separate general managers who will handle all decision-making authority over alcohol beverages sold at the locations.

Ms. Morgan stated Starpoint Brewing sells its products through Mims Distributing to a number of different retailers. Its current production is 250 barrels. The new location's production would be approximately 350 barrels. There will be no tie-ins or exclusivity as Beer Study offers hundreds of products. Mr. Harper confirmed the distribution would be 100% managed by Mims Distributing.

Mrs. Metz recommended approval of the exemption request.

Commissioner Herring made a motion to grant the exemption. Commissioner Green seconded the motion. Motion Passed.

VII. OTHER BUSINESS – CONSIDERATION OF A WAREHOUSE CONTRACT ADJUSTMENT AND CONTRACT AMENDMENT

Mr. Hamilton stated this matter was for the consideration of a warehouse contract adjustment and a contract amendment. Mr. Hamilton asked this matter be tabled to allow time to conduct additional research prior to making a presentation regarding the contract.

Commissioner Green made a motion to table this matter. Commissioner Herring seconded the motion. Motion Passed.

VIII. OTHER BUSINESS – FUTURE COMMISSION MEETING DATES

Mr. Hamilton asked the Commission to consider Wednesday, October 5, 2016, Wednesday, November 9, 2016 and Wednesday, December 7, 2016 for future ABC Commission meetings.

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

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, August 10, 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