

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
AUGUST 10, 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 August 10, 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 JULY 13, 2016

Chairman Gardner asked for a motion to waive the reading of the minutes of the July 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 July 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. CONTESTED CASES AND OFFERS IN COMPROMISE – 94

Chief Counsel Renee C. Metz stated no one was present on behalf of hearing case number 1, Stone Oven Pizza, which was a contested case and assigned to Assistant Counsel Missy Welch. The underlining charge was failure to purchase from a wholesaler. 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 \$500.00 penalty due by September 2, 2016 and a 10-day active suspension of the permittee's ABC permits beginning September 9, 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 asked hearing case number 2 be removed from the docket, as no action was required by the NC ABC Commission.

Commissioner Green made a motion to remove the case. Commissioner Herring seconded the motion. Motion Passed.

Mrs. Metz explained regarding case number 8, Buds Tavern, the business owner stated an unauthorized employee signed the Offer in Compromise and asked for more time to negotiate a settlement with ABC staff. Mrs. Metz asked the case to be held over to the September 2016 Commission Meeting.

Commissioner Herring made a motion to hold the case over. Commissioner Green seconded the motion. Motion Passed.

Mrs. Metz stated attorney Rod Pettey was present on behalf of his client, Green Apple, LLC d/b/a Applebee's, hearing case number 48. Mr. Pettey stated the incident occurred on March 4, 2016 at the Asheville, North Carolina restaurant. A customer who had been served at the bar was cut off by the bartender, by refusing to serve him more alcohol. The customer had become belligerent. A manager approached the customer who refused to have a taxi called or provide information so somebody else could be called. The customer walked outside; the manager followed him and called the police and informed them of the situation. However, the police did not arrive soon enough and the customer drove away and was involved in an accident with two other vehicles.

Mr. Pettey stated the staff collected statements and cooperated with the Alcohol Law Enforcement investigators. The bartender had been the only person to serve the individual and despite the training she had received, continued to serve him and did not follow procedure. The employee was terminated after the incident. Mr. Pettey stated the business has retrained the remaining staff and the business did not have prior violations. The business has agreed to pay the monetary penalty; however, he was present to ask an active suspension not be included in the penalty. Regarding the other two vehicles involved in the accident, Mr. Pettey stated one case had been resolved and the other was still pending as the individual was continuing physical therapy for an ankle injury.

Chairman Gardner stated the ABC Commission is greatly concerned with underage drinking and serving intoxicated individuals. Chairman Gardner expressed his concern that an intoxicated individual continued to be served. He stated the employees had done as much as they could following the individual's departure, but should not have continued to serve him. Chairman Gardner added he understands it is sometimes difficult to tell how intoxicated an individual might be as people have different tolerances. However, it is the responsibility of the business and its employees and servers to serve responsibly. Chairman Gardner stated the Commission must take a strong position regarding underage sales and sales to intoxicated persons and maintain that position.

Commissioner Green agreed with Chairman Gardner and commended the company on their efforts; however, the Commission must stand by its laws. He stated he understood a 3-day suspension would be hard, but it would provide an important step in ensuring this type of incident will not occur again.

Mr. Pettey asked if the 3-day suspension could start on a Monday, rather than the Friday referenced in the Offer in Compromise.

Commissioner Green asked about the timeframe of the suspension. Mrs. Metz stated over the past 13 years, suspensions always began on Friday, allowing notice to be provided to Alcohol Law Enforcement regarding businesses in their districts which must serve suspensions. Mrs. Metz stated there had only been a few occurrences when exceptions were made.

Chairman Gardner stated the Commission's message was not to sell to the underage or intoxicated. He explained as formerly being in the restaurant business, he understood the difference between a Friday and a Monday; however, the Commission must take a tough position. Chairman Gardner stated the penalty would stay as proposed in the Offer in Compromise.

Mr. Pettey added the penalty agreed to was greater than the statute reflected for a first offense and asked again for the suspension to be adjusted.

Commissioner Herring asked how long the patron was in the business. Mr. Pettey stated the individual was at the bar for about 45-50 minutes. Mr. Pettey stated no one recognized him, but they have since learned he is an alcoholic and perhaps that was why nobody noticed his condition. Mr. Pettey added they have provided numerous statements from employees and patrons that once the individual became noticeably intoxicated, he was cut off.

Commissioner Herring asked how many drinks the individual consumed in 45 minutes. Mr. Pettey stated he had two beers and three shots, all served by the same bartender who was also serving other people. Mr. Pettey stated the company has a zero tolerance policy and the bartender was terminated.

Chairman Gardner stated the penalty will stand with a \$3,000.00 monetary penalty and a 3-day suspension to begin on the Friday indicated in the Offer in Compromise. He thanked Mr. Pettey for attending and the efforts the company has made, but added the employee should have recognized the individual's intoxication earlier and not served him two beers and three shots.

Mrs. Metz stated William Potter was present on behalf of his client, Gibby's Dock and Dine, case number 17. Dave Gibson, the owner of the business was also present. Mr. Potter stated his client is the primary owner of the business and takes responsibility for the violations and is not disputing the facts. Mr. Potter stated the business is in a resort area and hospitality is important. He explained the violations occurred over an eight-month period with undercover law enforcement agents. Mr. Potter stated his clients did not understand what performing services after consuming could entail and hoped the Commission might diminish part of the active suspension.

Mr. Gibson stated they are in a resort area and he and his wife are really active within the restaurant and have recently opened a second location. Once they were off for the day, Mr. Gibson stated he and his wife knew they were not allowed to return to work after consuming. However, they would stay at the business to sit at the bar and have a drink or dinner with their customers. Mr. Gibson stated they did not return to the kitchen or go behind the bar and if customers had requests, they directed them to the general manager or another employee. They did not realize if they asked an employee to change the television channel or adjust the music, or if his wife emptied a full ashtray outside, these actions would characterize acts of work. Mr. Gibson stated they did not dispute these acts. Mr. Gibson stated for three years prior they had not had violations in this resort area which is busy and seasonal.

Commissioner Herring asked if the charges were actually for employees emptying the ashtray and changing the television channel. Mr. Gibson stated they were.

Assistant Counsel Rachel Spears stated the signed Offer in Compromise was the result of months of negotiation. Ms. Spears explained there were a number of other employees performing services and in violation. She added the incidental violations just described by Mr. Gibson and Mr. Potter were dismissed and removed from the violations reflected in the Offer in Compromise and were not included in the penalty. Mr. Gibson stated he was not sure, but now understands they cannot perform work.

Chairman Gardner inquired about the sale to an underage individual listed as item number six of the Offer in Compromise. Mr. Gibson said he would dispute that and stated the individual had an ID belonging to his cousin, who looked very much like him and he had been carded. Mr. Gibson stated they were unaware of the incident until an officer returned with both the individual's ID and his cousin's ID. Mr. Gibson stated the individual was carded, but the photo on the cousin's ID looked like him. Mr. Gibson maintained his server did card the individual.

Ms. Spears confirmed the individual had possessed two ID's; however, she stated the cousin may have been under 21 also.

Chairman Gardner asked Mr. Potter if they had agreed to the Offer in Compromise. Mr. Potter stated this was their first offense and the business is located in a resort area with a lot of under-aged individuals. Mr. Potter stated only one offense was commendable in a resort area as there were so many young people. He also added there was a female over the age of 21 with the underage individual who was sold an alcoholic beverage. Mr. Potter stated the settlement had been agreed upon; however, the issue was the eight months during which the incidents occurred and that his client had not been told by law enforcement. He stated usually the offender is informed more quickly. Mr. Potter stated his clients were taking responsibility for their actions, but added there had not been previous violations or violations since they received the notice. Mr. Potter added he thought the Offer in Compromise was reasonable, but Mr. Gibson wished to speak to the Commission and ask for leniency and a reduction of the active suspension.

Commissioner Green told Mr. Gibson the Commission appreciated his attendance, but the Offer in Compromise had been agreed upon. Commissioner Green stated the Commission would be willing to amend the offer and made a motion to change the last 43 days to the last 47 days could be avoided by payment of the penalty, reducing the active suspension to 3 days. Commissioner Herring seconded the motion. Motion Passed.

Mrs. Metz asked the Commission to ratify the remaining cases. Commissioner Green made a motion to ratify the remaining Offers in Compromise. Commissioner Herring seconded the motion. Motion Passed.

II. ABC STORE LOCATION – MECKLENBURG COUNTY ABC BOARD – (1426 SOUTH TRYON STREET, SUITE B, CHARLOTTE, NC)

Administrator Robert A. Hamilton stated the Mecklenburg County ABC Board had requested approval to lease property to open and operate a new ABC Store at 1426 South Tryon Street, Suite B in Charlotte, North Carolina. The Board tentatively plans to open the new store in November 2016. Mr. Hamilton stated the location is in an existing building in an upscale, busy urban area. The large building also includes a postage store, electrician, a yoga studio, a brewery, a lounge, a tile and flooring business, a realtor and a restaurant. At least three existing businesses hold ABC permits.

The property is zoned general industrial and allows for an ABC Store.

The proposed location is owned by 1426 South Tryon Street, LLC. There are no personal or financial interests shared between the property owners and the Mecklenburg County ABC Board. Financial disclosure forms have been provided by the Mecklenburg County ABC Board members.

The lease for the property is \$103,158.00 annually or \$8,596.50 monthly for a term of five years with an option to extend the lease for another five years. The building is approximately 4,690 SF of which the Board plans to use 2,680 SF for retail sales and the remainder for storage and office space. The Board also plans to have mixed beverage sales at this location.

The nearest school, Dilworth Elementary School, is located approximately .5 miles away. The nearest church, Pritchard Memorial Baptist Church, is located approximately .4 miles away. The nearest ABC Store is located 1.7 miles away at 125 Cherry Street also in Charlotte, North Carolina and operated by the Mecklenburg 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 June 2, 2016 meeting the ABC Commission rules. One email had been

received requesting mini bottles not be offered at the proposed location. Mr. Hamilton stated mini bottles would not be available on the sales floor, but would be located behind the sales counter.

Mr. Hamilton stated the estimated sales were \$5.4 million for the first year. Mr. Hamilton added representatives from the Mecklenburg County ABC Board were present if there were any questions. Jason Hughes, CEO of the Mecklenburg County ABC Board, stated the ABC Board had reached out to the South End Community leaders to determine what they would want for the ABC Store.

Chairman Gardner thanked Mr. Hughes and the Mecklenburg County ABC Board for the great job they have done on their work with the underage initiative. Chairman Gardner stated they had been involved from the very start. Chairman Gardner also recognized the Mecklenburg County ABC Board for their usage of a false ID detector app and for printing the Talk It Out program's information on their bags.

Commissioner Green stated the lease mentioned a unit next door sharing restrooms with the ABC Store and asked if there was a way to secure the store and prevent access. Mr. Hughes stated in just the past few days the situation had been resolved and the restrooms will be separated by a wall.

Commissioner Herring asked if the projected sales would be from other ABC Stores or would be new business. Mr. Hughes stated a portion of the business would come from other stores, but especially the Cherry Street location which is the next closest store and is currently overwhelmed and at capacity. He stated the new store would greatly relieve the burden of the Cherry Street ABC Store's mixed beverage sales and a number of those accounts are near the proposed location. Commissioner Herring inquired about the annual sales of the Cherry Street ABC Store. Mr. Hughes stated they were between \$10-12 million.

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

III. ABC STORE LOCATION – MECKLENBURG COUNTY ABC BOARD – (9841 ROCKY RIVER ROAD, CHARLOTTE, NC)

Mr. Hamilton stated the Mecklenburg County ABC Board had requested approval to purchase property to operate a new ABC Store at 9841 Rocky River Road in Charlotte, North Carolina which they propose to open in November 2016. The property is an existing free-standing building which was previously a tire store. The property is located in a commercial area which includes a convenience store, a self-storage business, an auto service center and a pharmacy. There is also a large shopping center on the opposite side of Plaza Road Extension. The proposed location is 350 feet from the Cabarrus County line.

Mr. Hamilton stated the property is zoned Commercial Center and allows for an ABC Store. The property is owned by Halle Properties, LLC of Scottsdale, Arizona. There are no personal or financial interests shared between the property owners and the Mecklenburg County ABC Board. Financial disclosure forms have been provided by the Mecklenburg County ABC Board members.

The purchase price for the property is \$1,375,000.00 and it is approximately 1.2 acres. The building is approximately 7,100 SF of which the Board plans to use 4,615 SF for retail space and the remainder for storage and office space. The Board also plans to service mixed beverage accounts at this location.

The nearest school, Reedy Creek Elementary School, is located approximately 2.7 miles from the proposed location. The nearest church, Grace Crossing, is located approximately .5 miles away. The nearest ABC Store is located approximately 3.8 miles away at 9740 University City Boulevard also in

Charlotte, North Carolina and operated by the Mecklenburg County ABC Board. The nearest ABC Store not operated by the Mecklenburg ABC Board is located 6.7 miles away at 7000 Hudspeth Road in Concord, North Carolina and is operated by the Concord 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 June 29, 2016. Three telephone calls with objections, which were general in nature, had been received regarding the proposed store.

Mr. Hamilton stated the projected first year sales were \$3.12 million and recommended approval of the proposed store.

Chairman Gardner asked Mr. Hughes how many stores were in the Mecklenburg County ABC Board system. Mr. Hughes stated the new stores would bring the total to 25 retail locations and one Mixed Beverage Sales location. Chairman Gardner asked what the total of the sales was at year-end in June. Mr. Hughes stated they were approximately \$140 million.

Commissioner Green asked if Cabarrus County had an ABC Board system, would there be an issue with the store being located 350 feet from the county line. Mr. Hamilton stated it would be dependent upon where Cabarrus County had stores at that point. He added Harrisburg is between the proposed ABC Store and the Concord ABC Store. The population density of Mecklenburg County would support the new ABC Store.

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

IV. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – BIDA MANDA, LLC d/b/a BIDA MANDA, PLENTY, LLC, VANSANA NOLINTHA, AND VANVISA NOLINTHA

Mrs. Metz stated attorney Laura Collier was present on behalf of her clients. Ms. Collier stated she represented Vansana Nolintha and Vanvis Nolintha, a brother and sister who own Bida Manda, LLC which operates a Laotian restaurant in Raleigh. Bida Manda is a retail permittee holding ABC permits. Ms. Collier stated Mr. Nolintha and Ms. Nolintha are also investors in Plenty, LLC with a third party. Plenty plans to apply for commercial ABC permits as a brewery. Ms. Collier states the restaurant does not plan to sell any of the brewery products.

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

V. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – LOCAL MINDED BREWING, LLC d/b/a ANGRY TROLL BREWING, LOUIS A. JERSLOW AND JEFF GIBBS

Mrs. Metz stated no one was present regarding the exemption request. Mrs. Metz explained Louis Jeroslow has an ownership interest in Elkin Creek Winery which holds commercial permits and Jeff Gibbs has an ownership interest in 222 Public House which is a restaurant and retail permittee holding ABC Permits.

Mr. Jeroslow and Mr. Gibbs each own a 16.7% interest in Local Minded Brewing, LLC which wishes to operate a brewery. Mrs. Metz stated the ownership in the restaurant requires an exemption to have ownership in the brewery. This would be the contemporary exemption request allowing them to self-

distribute as long as their production is less than 5,000 barrels annually. They will make a good faith effort to find an independent third-party wholesaler to distribute their products.

Mrs. Metz explained the decision making authority for ordering will be through General Managers. Approval of the exemption request was recommended based upon contemporary conditions.

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

VI. OTHER BUSINESS – MERGER AGREEMENT BETWEEN THE TOWN OF DALLAS AND THE CITY OF GASTONIA

Mr. Hamilton stated ten years prior, the Town of Dallas and the City of Gastonia had decided upon a merger agreement for their ABC Boards. The agreement approved by the Commission had a 10-year term which has come to an end. Mr. Hamilton stated they would like to extend the merger agreement for another 10 years with the same terms. He added staff recommends the extension.

Commissioner Herring made a motion to approve the extension of the merger agreement. Commissioner Green seconded the motion. Motion Passed.

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, September 7, 2016.

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

Approved at the September 7, 2016 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