

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
SEPTEMBER 7, 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 September 7, 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 AUGUST 10, 2016

Chairman Gardner asked for a motion to waive the reading of the minutes of the August 10, 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 August 10, 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 – 96

Chief Counsel Renee C. Metz stated no one was present on behalf of hearing case number 1, OM Grocery, which was a contested case and assigned to Assistant Counsel Missy Welch. The underlying charge was a sale to underage. The permittee failed to file prehearing statements, resulting in a motion for sanctions. The Administrative Law Judge granted the sanctions motion and imposed a decision of a \$500.00 penalty due by September 30, 2016 and a 14-day active suspension of the permittee's ABC permits to begin October 7, 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, Sabor Latino, be held over to the October 5, 2016 NC ABC Commission Meeting. Mrs. Metz stated the penalty dates included by the Administrative Law Judge preceded the NC ABC Commission Meeting. The Administrative Law Judge would be asked to amend the order to allow the NC ABC Commission discretion to set the penalty dates. Mrs. Metz added Ms. Welch was also negotiating other matters with the permittee.

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

Mrs. Metz stated the permittee's manager, Luqman Omar, was present regarding case number 88, R and H Mini Mart. Mr. Omar admitted he mistakenly sold alcohol to an underage individual, and added it was the first time. Mr. Omar stated he had been to the training class and had been checking ID's. He explained they had been busy on the day of the violation and asked for a reduction of the penalty.

Chairman Gardner stated the ABC Commission has a strong position regarding sales to the underage. He explained, in the past year, in the State of North Carolina one life per week is lost due to underage drinking. In addition, Chairman Gardner added the effects of underage drinking cost the State one billion dollars each year. Chairman Gardner stated the Commission has to draw a line and it is their responsibility to ensure no sales are made to those under 21 years of age.

Chairman Gardner stated the penalty stands as defined in the signed Offer in Compromise.

Mrs. Metz stated case number 10, Paisans, was assigned to Assistant Counsel LoRita Pinnix. Ms. Pinnix explained Donald Ferstler, a member of Three Big Boyz, LLC and the site manager, was allegedly refilling tax-stamped spirituous liquor bottles. An agent observed Mr. Ferstler from the parking lot through a window refilling a bottle. There was also evidence inside indicating another bottle would be refilled.

Mr. Ferstler stated the restaurant was small with sixty seats and it was a "Mom and Pop" business. Mr. Ferstler stated they had run out of Jack Daniels spirituous liquor and admitted guilt for refilling the bottle. Mr. Ferstler explained the business' checking account was overdrawn, payroll was due and business had been terrible. He added the lease was up on October 31, 2016. He stated the 7-day suspension would put him out of business and he did not have the money for the \$3,500.00 penalty. He also explained his ability to renew the lease for an additional 3-year period would be dependent upon the outcome of the penalty requirement. He asked for the penalty to be reduced to \$1,500.00 and the ability to make payments over a 3-4 month period.

Mr. Ferstler stated they check ID's at the bar, which only has 11 seats. He added the business is not a bar, but a restaurant. He stated he does not have financial options and would have to take the 30-day suspension which would take him to the end of his lease.

Commissioner Herring asked the legal staff if the penalty affected all the ABC permits. Ms. Pinnix confirmed the penalty affects all the ABC permits. Ms. Pinnix added there is the possibility to carry the case over to a later ABC Commission Meeting.

Mr. Ferstler stated carrying the case over would not help. He explained the business was not making much money and he was throwing himself on the ABC Commission's mercy.

Commissioner Herring stated it appeared the business had larger problems than those before the ABC Commission. Commissioner Herring added Mr. Ferstler had been caught refilling the bottles and it was a serious offense.

Mrs. Metz stated there was the option to carry the case over to the December 2016 ABC Commission Meeting to allow Mr. Ferstler more time to decide how he wished to proceed. If the business turned in its permits, the penalty of suspension and fine would no longer be an issue. Or, Mr. Ferstler could decide he wished to continue the business, and take care of the penalty at that later date.

Commissioner Green asked if the 30-day suspension with the last 23 days avoided by the payment of the \$3,500.00 penalty was the standard penalty for this violation. Mrs. Metz stated it was the standard and had been for some time when caught refilling spirituous liquor bottles.

Mr. Ferstler stated in the summertime, Cary, North Carolina is like a ghost town and business is usually better in the months of November through March.

Commissioner Green stated he did not know if the Commission would be doing the business a favor by extending the case to a later meeting. Commissioner Green stated as the lease was up on October 31st, an extension until the December Commission Meeting would not help. He added he was not sure why the business had agreed to the Offer in Compromise.

Mr. Ferstler stated he had been told by Commission staff, after signing the offer, he would be able to speak to the Commission regarding the penalty.

Commissioner Herring stated they were sympathetic to the business' issues. Commissioner Herring made a motion to uphold the penalty as stated in the Offer in Compromise. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner explained the penalty would remain the same and thanked Mr. Ferstler for attending.

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 – NASH COUNTY ABC BOARD

Administrator Robert A. Hamilton stated the Nash County ABC Board had requested approval to purchase real property and construct a new ABC Store at the corner of Benvenue Road and Falls at Tar Court in Rocky Mount, North Carolina. Mr. Hamilton explained the store would eventually replace two existing ABC Stores. An ABC Store currently located at 426 West Thomas Street in Rocky Mount, North Carolina is on a month-to-month lease and would be closed after the opening of the new ABC Store. The existing store located at 1123 Jeffries Road in Rocky Mount, North Carolina would be closed at the end of the 2 years remaining on its lease. Mr. Hamilton stated March 2017 was the tentative opening date for the proposed ABC Store.

Mr. Hamilton stated the proposed location is a corner lot on a 14.75 acre parcel of land located at Falls of Tar Court and Benvenue Road, approximately .2 miles from a junction with Highway 64. The property is zoned B-5 and allows for an ABC Store. It is owned by Falls at the Tar, LLC, and the purchase agreement lists the property as .77 acres with a purchase price of \$200,000.00.

Mr. Hamilton stated the purchase would be funded by the Nash County ABC Board's Capital Fund. There are no conflicts of interest between the property owner and the members of the Nash County ABC Board. All board members have provided financial disclosure forms.

The proposed building will be 5,000 SF, with 3,000 SF used for retail sales and the remaining 2,000 SF will be used for mixed beverage sales and warehousing. The building cost is approximately \$1-1.1 million.

The nearest schools, Rocky Mount Middle School and New Life Christian Academy, are located approximately 1.8 miles away. The nearest church, Tar River Primitive Baptist Church, is located approximately .2 miles away. The closest ABC Store is located approximately 1.0 miles away and will be

closed at the end of its lease agreement. The next nearest store is located approximately 1.6 miles away and will be closed upon the completion of the proposed ABC Store.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted at the site on July 20, 2016 and it was relocated to another part of the property on August 4, 2016 in order to be more visible. As of this date, no objections had been received.

Mr. Hamilton stated a representative of the Nash County ABC Board was present if the Commission had any questions. Chairman Gardner greeted Mike Murray, the Nash County ABC Board Manager. Chairman Gardner stated he was familiar with the proposed site and it was an excellent location.

Commissioner Herring asked how many stores were in the Nash County ABC Board system. Mr. Murray stated there were nine and there would be eight after the new store was completed and other stores were closed. Commissioner Herring stated the move seemed efficient, eliminating expenses at the two stores. Mr. Murray stated both of the locations to be closed are currently leased, and the Board would own the new location.

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

Mr. Murray asked about documentation reflecting the approval as the closing on the property was contingent upon the ABC Commission approval. Mr. Hamilton stated he would provide the documentation.

III. ABC STORE LOCATION – WAKE COUNTY ABC BOARD

Mr. Hamilton stated the Wake County ABC Board requested approval to purchase properties located at 11340 and 11360 Capital Boulevard in Wake Forest, North Carolina. The proposed store would replace the existing store located at 881 Falcate Drive in Wake Forest, North Carolina. Upon completion of the new store, the existing store would be closed and the property would be listed to be sold.

Mr. Hamilton stated the property was two parcels, each .93 acres, totaling 1.86 acres. The properties are zoned Highway Business and allow for an ABC Store.

The proposed property is owned by Weingarten Investments, Inc. The proposed purchase price is \$1,050,000.00 and will be funded by the Wake County ABC Board's Capital Fund. There are no personal or financial interests shared between the property owners and the Wake County ABC Board members. Financial disclosure forms have been provided by the Wake County ABC Board members.

The proposed building will be 8,000 SF, of which 5,500 SF will be used for retail space and 2,500 SF will be used for mixed beverage sales and warehouse space. The proposed building will cost approximately \$1,024,000.00 to build.

The nearest school, North Forest Pines Elementary, is located approximately .4 miles away. The nearest church, Christ Our Hope Church is located approximately .9 miles away. The nearest ABC Store is located 2.1 miles from the proposed location and will be closed upon completion of the proposed ABC Store. The next nearest ABC Store is located approximately 7.0 miles away at 6301 Towne Center Drive in Raleigh, North Carolina.

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 30, 2016. As of this date, no objections had been received.

Mr. Hamilton stated representatives of the Wake County ABC Board were present to answer questions. Chairman Gardner greeted Joel Keith, the ABC Board Manager. Commissioner Herring asked at 8,000 SF, would the proposed location be the largest store in the Wake County ABC Board system. Mr. Keith replied the store would be comparable to the Sandy Forks Road ABC Store. It will be across the street from a Sam's Club store. The current location is on a dead end street and is not visible from the highway and there are no other businesses nearby.

Mr. Keith added the new store will have a loading dock which will enable the staff to easily and safely unload the trucks bringing cases of spirituous liquor. Mr. Keith further stated new stores will have loading docks and be larger in size to better serve the customers of Wake County.

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

IV. CONSIDERATION OF THE GARLAND ABC BOARD'S REQUEST TO CLOSE THE ABC SYSTEM

Mr. Hamilton stated a recommendation had been received from the Garland ABC Board to formally close the only ABC Store within their system. Mr. Hamilton stated the store has been closed, the locks changed and the employees terminated. The Board stated their expenditures exceeded their revenue. Mr. Hamilton stated the remaining assets are a little less than the remaining expenses.

Mr. Hamilton explained the Statutes allow for insolvent ABC Board systems to apply to the Commission to close the system. Mr. Hamilton stated the NC ABC Commission has conducted an investigation and a determination of inventory and assets. Mr. Hamilton stated the Town Manager and Finance Director of the Town of Garland will ensure any outstanding invoices are paid. Mr. Hamilton added the Statutes allow the ABC Commission to represent the local board with creditors and other interested parties.

Chairman Gardner asked about the estimated assets and expenses. Mr. Hamilton stated the expenses were \$27-28,000.00 and the assets were only \$25,000.00. Mr. Hamilton stated staff has arranged for the liquor inventory to be sold to other ABC Systems.

Commissioner Green asked how long ago the Board had been established. Mr. Hamilton referred to Moniqua McLean, ABC Board Auditor, who was not sure. Commissioner Herring stated it would have been more than 25 years ago.

Mr. Hamilton stated the recent elections approving beer and wine sales in the area may have reduced the ABC Store sales. He added the Board had financial problems in the past and the Clinton ABC Board had helped run the Garland ABC Store. Mr. Hamilton stated the surrounding ABC Boards had not been interested in absorbing the Garland ABC Board.

Commissioner Green inquired about the gap between ABC Stores once the Garland ABC Store was closed. Mr. Hamilton stated the Clinton ABC Store was approximately 10 miles away and the next town is probably 10 miles also.

Mr. Hamilton added closing the ABC Store would still allow the Garland ABC Board to reopen, if the population grew or conditions changed, without another vote. The Board would be dissolved as there

would not be a need for an active Board and Board members. Mr. Hamilton requested the ABC Commission allow the system to close and allow Commission staff to represent the Board as needed with creditors and other interested parties. Mr. Hamilton stated the Commission may also need to represent the Board if bankruptcy became necessary.

Mrs. Metz suggested a motion be made to allow the ABC Commission staff the authority to take the steps necessary as provided in NCGS § 18B-801(d).

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

V. CONSIDERATION OF THE TOWN OF SUNSET BEACH'S REQUEST TO CHANGE THE SUNSET BEACH ABC BOARD FROM FIVE MEMBERS TO THREE MEMBERS

Mr. Hamilton stated the Town of Sunset Beach requested permission to reduce the number of the Sunset Beach ABC Board members from five members to three members. Mr. Hamilton explained the Town of Sunset Beach is the appointing authority for the Board. They had previously requested to increase the number of Board members from three to five members; but, this did not require the approval of the Commission. However, to reduce the number of Board members, Mr. Hamilton explained, the Commission must grant permission. Mr. Hamilton stated the public had been noticed in the Commissions agenda in case there were objections. Mr. Hamilton stated the Mayor of Sunset Beach issued this request to the Commission.

Commissioner Green asked if the Town Board could once again increase the number from three to five members in the future. Mr. Hamilton stated this could occur, but there would be discussions between the Commission staff and the Town Board members regarding the reason for the increase.

Commissioner Herring made a motion to approve the request to reduce the number of members. Commissioner Green seconded the motion. Motion Passed.

VI. OTHER BUSINESS

Mrs. Metz stated Fidel Torres was now present to speak on behalf of hearing case number 91, Texas Discotheque. Mr. Torres did not dispute the charges, but asked if the monetary penalty could be increased rather than serve an active suspension of the ABC permits. Mr. Torres explained the business is only open on Saturdays.

Commissioner Herring made a motion to increase the monetary penalty to \$4,000.00 and waive the active suspension. Commissioner Green seconded the motion. Motion Passed.

Mr. Torres thanked the Commission. Chairman Gardner stated they did not wish to see the business before the Commission again. Commissioner Green added this would be the only time this allowance would be made.

Mrs. Metz asked the Commission to revisit case number 31 from the July 13, 2016 NC ABC Commission Meeting agenda, Food Lion 515. Mrs. Metz explained the Offer in Compromise and subsequent Order were issued on the basis of a violation which had previously been dismissed, but had been reflected, perhaps through a computer error.

Commissioner Herring made a motion to add this case to the current agenda. Commissioner Green seconded the motion. Motion Passed.

Mrs. Metz stated the violation listed for an underage sale on June 4, 2014 had been dismissed due to the unavailability of the underage individual. However, the violation was included in the Offer in Compromise and the June 19, 2015 sale to underage was established as a second sale to underage offense by the legal staff, resulting in a higher penalty. Mrs. Metz stated attorney Glenn Lassiter was present on behalf of his client and had asked for a reduction of the penalty. Mr. Lassiter stated Food Lion was working hard to eliminate underage sales and has few which are not undercover operations.

Chairman Gardner asked Mr. Lassiter to speak with his client, Food Lion, LLC, regarding the Talk It Out program. Chairman Gardner displayed a sample of the Talk It Out bumper sticker and asked if Food Lion would be the first chain in North Carolina to add the stickers to their entrance and exit doors. Mr. Lassiter stated he would discuss the signs with his clients and recommend they add them to their doors.

Mrs. Metz asked the Commission to amend the Final Agency Decision.

Commissioner Herring made a motion to amend the penalty and reduce the monetary penalty to \$2,000.00. Commissioner Green seconded the motion. Motion Passed.

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, October 5, 2016.

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

Approved at the October 5, 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