

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JANUARY 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 January 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.

PRESENTATION OF ANNUAL SERVICE AWARDS

Chairman Gardner called Administrator Robert A. Hamilton forward. With the Chairman and Commissioners, Mr. Hamilton presented service award certificates and gifts to fourteen NC ABC Commission employees. Their years of service ranged from five years to thirty years.

MINUTES OF DECEMBER 16, 2015

Chairman Gardner asked for a motion to waive the reading of the minutes of the December 16, 2015 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 December 16, 2015 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 stated he found no conflicts of interest.

I. HEARING CASES – 89

Chief Counsel Renee C. Metz stated hearing cases number 1 and number 2 were sanctions cases. Hearing case number 1, Double K Sports Bar, was originally a summary suspension case, based upon a knife assault which occurred at the business. The property owner was able to assist in the cancellation of the permits though the permittee was nonresponsive. The Administrative Law Judge issued an order of sanctions for a revocation of the permittee's ABC permits. The revocation will prevent the permittee from holding ABC permits for three years.

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 hearing case number 2, Caldwell Corner Store, was regarding a sale to underage violation. The permittee failed to respond to the Administrative Law Judge's requests, which resulted in a motion for sanctions. The Administrative Law Judge granted the motion and issued a decision of a 20-day suspension of the permittee's ABC permits. The suspension is to begin on February 12, 2016 and a penalty of \$750.00 is due before February 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 hearing cases numbered 5, 6, 7, 12, 14, 22, 23, 38, 53, 59, 72 and 78 required further review and asked the Commission to continue the twelve cases to the next ABC Commission Meeting. Commissioner Green made a motion to remove the twelve cases from the agenda and continue them to the next ABC Commission Meeting. Commissioner Herring seconded the motion. Motion Passed.

No one was present for the remaining cases. Mrs. Metz asked the Commission to ratify the remaining hearing cases, if there were no further questions.

Chairman Gardner stated he had questions regarding hearing case numbers 90a, 90b and 90c, all regarding He's Not Here in Chapel Hill. Chairman Gardner asked for clarification due to erroneous news reports regarding the penalties.

Mrs. Metz stated there were three separate offense dates. Case number 90a was for violations which occurred on April 2, 2015. The penalty shall be either a 50-day suspension of the permittee's ABC permits or payment of a \$5,000.00 penalty. Mrs. Metz stated case number 90b was for a violation which occurred on June 5, 2015. The agreed upon penalty shall be payment of a \$5,000.00 penalty to avoid a 50-day suspension of the permittee's ABC permits. Mrs. Metz stated case number 90c was for violations which occurred on July 19, 2015. The permittee has agreed to pay a \$5,000.00 penalty and take a 21-day suspension to avoid a 30-day suspension of their ABC permits. Mrs. Metz stated the total penalty is \$15,000.00 and a 21-day suspension of the permittee's ABC permits or 130 days of suspension of the permittee's ABC permits. The penalty payment would be due by February 5, 2016 and the suspension would begin on February 12, 2016.

Chairman Gardner expressed this case had greatly concerned him and was reluctant to accept the Offers in Compromise. He stated he hoped to send a clear message to other establishments holding ABC permits that it is their responsibility to ensure they do not sell alcohol to the underage. Chairman Gardner stated the location had a history of violations and hoped the business would not come before the Commission again. However, if the business incurred another violation, their resulting penalty would not be the same.

Chairman Green stated the penalty for the violations was a difficult decision and hoped a clear message has been sent to this establishment and all others in North Carolina that they must do a better job.

Chairman Gardner stated, unfortunately, sixty percent of the violations on the Commission Meeting agenda were for underage violations. Chairman Gardner continued, stating the Commission is working hard to reduce these occurrences; however, stopping underage sales must start with permittees taking responsibility for selling and serving alcohol to underage individuals.

Commissioner Herring made a motion to ratify the remaining offers in compromise, less the twelve previously removed cases. Commissioner Green seconded the motion. Motion Passed.

II. ABC STORE LOCATION – LOCUST ABC BOARD

Mr. Hamilton stated the Locust ABC Board had requested approval to lease and operate a new ABC Store at 1008 West Main Street in Locust, North Carolina. The new store would replace an existing store located .7 miles away at 1772 West Main Street. The proposed store would be located within the Stanly Plaza Shopping Center. The property is zoned Highway Commercial and allows for an ABC Store.

The proposed property is owned by Stanly Plaza, LLC. There are no personal or financial interests shared between the property owners and the Locust ABC Board members. Financial disclosure forms have been provided by the Locust ABC Board members.

The rent for the property will be \$4,000.00 per month for the first year, increasing to \$5,000.00 per month for years 2-5; \$5,200.00 per month for years 6-8; and, \$5,512.00 per month for years 9-10. The property is approximately 8,450 SF of which 4,000 SF will be used for retail space and the remaining space will be used for warehouse, administrative and mixed beverage account sales.

The nearest church is approximately .3 miles away. A branch of the local community college is approximately .8 miles away and an elementary school is located approximately 1.2 miles away. The existing ABC Store is located approximately .7 miles away and will be closed upon the opening of the new ABC Store. The next nearest ABC Store is located approximately 13.2 miles away in Mt. Pleasant and is operated by the Mt. Pleasant 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 November 10, 2015. As of this date, no calls had been received regarding the new store. No one was present on behalf of the Locust ABC Board.

Mr. Hamilton stated staff recommended approval of the new location. Chairman Gardner asked if this location was previously brought before the ABC Commission. Mr. Hamilton stated it was to have been presented at the December 2015 Commission Meeting; however, it was continued to the January 2016 ABC Commission Meeting. Questions regarding the lease verbiage and definitive lease costs were raised. The Locust ABC Board was asked to consult with their board members and attorney to clarify the lease terms.

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

IV. OTHER BUSINESS

Mr. Hamilton asked the Commission to consider Wednesday, April 13, 2016, Wednesday, May 4, 2016 and Wednesday, June 8, 2016 for future ABC Commission meetings.

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

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