

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
DECEMBER 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 December 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 NOVEMBER 9, 2016

Chairman Gardner asked for a motion to waive the reading of the minutes of the November 9, 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 November 9, 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 OF ANNUAL SERVICE AWARDS

Administrator Robert A. Hamilton recognized the six employees who have reached five-year milestones in their long-term investment in the citizens of North Carolina. With the Chairman and Commissioners, Mr. Hamilton presented service award certificates and gifts to the three NC ABC Commission employees who were present. The years of service ranged from five years to thirty years.

I. CONTESTED CASES AND OFFERS IN COMPROMISE – 86

Chief Counsel Renee C. Metz stated case numbers 84 and 85 were addressed during the November 2016 Commission Meeting agenda. Mrs. Metz stated additional issues needed to be resolved and asked they be moved to Other Business to be discussed later in the meeting.

Commissioner Green made a motion to move the cases as requested. Commissioner Herring seconded the motion. Motion Passed.

Mrs. Metz stated the permittee for case number 35, wished to speak to the Commission but was unable to attend due to a medical emergency. Mrs. Metz asked for the case to be continued to the January 2017 Commission Meeting.

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

Mrs. Metz stated Al Bowers was present on behalf of case number 1, Als Burger Shack. Mr. Bowers stated they had been in business for 3 ½ years and this was the first violation. Mr. Bowers explained the violation occurred in September when an employee checked an individual's identification, but did the math incorrectly. Mr. Bowers stated they had completed training and asked if the penalty could be different from the existing \$2,000.00 fine or 20-day suspension.

Chairman Gardner thanked Mr. Bowers for speaking to the Commission, but explained the Commission feels very strongly about sales to underage individuals. The Commission believes the primary responsibility to stop underage sales is with the permit holder. Chairman Gardner stated he understood it was difficult as he had been in the same industry; however, the Commission feels strongly that they must maintain their policies to reduce underage drinking.

Commissioner Green agreed with Chairman Gardner and added in order to gain the attention of the permit holders and their employees, the penalties are necessary.

Chairman Gardner and Commissioner Green thanked Mr. Bowers 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. PETITION TO AMEND PRIOR EXEMPTION REQUEST FOR WINE AND DINING, INC. T/A ON THE SQUARE AND TARBORO BREWING COMPANY OF JULY 10, 2015

Mrs. Metz stated attorney, Laura Collier was present on behalf of her clients. Ms. Collier stated an exemption had been granted approximately one year prior to Inez Ribustello, Stephen Ribustello and Tarboro Brewing Company. The Ribustellos also have an ownership interest in a restaurant in Tarboro, On the Square. At the time, they were unsure of their future distribution plans and requested only the traditional exemption, agreeing not to sell their brewery products in the restaurant which they also partially own.

Ms. Collier explained Tarboro Brewing Company is now working with a third-party independent wholesaler to sell its products and they wish to revise their exemption allowing them to offer those products through the wholesaler at On the Square. The production would be limited to 5,000 barrels annually and an independent manager employed at the restaurant would be responsible for beer sales.

Mrs. Metz stated this would be in compliance with other exemptions previously granted and stated staff recommends approval.

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

III. EXEMPTION REQUEST – NCGS § 18B-1116 – HUNTINGTON’S OF CARRBORO, INC. T/A TYLER’S TAPROOM; PIT BOSS, INC. T/A TYLER’S TAPROOM; T-3 RESTAURANTS, INC. T/A TYLER’S TAPROOM, AND TWO DOORS DISTILLING, LLC, TYLER HUNTINGTON, DANIEL KULENIC AND ROBERT STOVER, JR.

Mrs. Metz asked this exemption request to be held over to the January 2017 Commission Meeting, as the applicants were unsure of the exemptions they wished to request through their attorney.

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

IV. OTHER BUSINESS

Mrs. Metz stated the offer for case number 84, Strike City Bowl, had been approved at the November 2016 Commission Meeting. However, the offense date was missing from the Final Agency Decision and the order needed to be amended.

Commissioner Green made a motion to allow the amendment. Commissioner Herring seconded the motion. Motion Passed.

Mrs. Metz stated the offer for case number 85 had also been approved at the November 2016 Commission Meeting. The order allowed any evidence seized may be destroyed in 45 days. In this case, the violation was the possession of alcohol products not approved by the NC ABC Commission for sale in North Carolina. Mrs. Metz stated the permittee has requested the return of the alcohol seized.

Mrs. Metz stated Alcohol Law Enforcement had seized approximately 100 cases of unapproved products. Mrs. Metz stated the permittee explained he had been lazy and had not gotten around to obtaining approval and has now received approval on those products. The permittee now wished for the return of the products, as they can now legally be sold in North Carolina. Mrs. Metz stated Alcohol Law Enforcement is holding the products in storage and does not have a problem with allowing them to be returned. Mrs. Metz added there were no criminal charges, so a criminal case is not pending. Mrs. Metz stated if the Commission was so inclined, an order allowing the request would be issued.

Commissioner Green asked that the permittee be made to understand this is not the normal operating procedure and this allowance is only a one-time occurrence. He added Alcohol Law Enforcement should destroy any unapproved products if this should occur again. The permittee must follow the rules just as other permittees are required.

Commissioner Herring asked of the 20 different products seized, how many were approved. Mrs. Metz state she did not have that information, but it could be obtained. He added only those approved products should be returned and anything unapproved should be destroyed.

Commissioner Herring made a motion to return any approved products to the permittee and destroy any remaining unapproved products. Commissioner Green seconded the motion. Motion Passed.

Mr. Hamilton and Chairman Gardner both wished everyone a Merry Christmas.

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, January 11, 2017 and asked for a motion for adjournment.

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

Approved at the January 11, 2017 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