

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MARCH 8, 2017**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on March 8, 2017, following the 10:00 AM swearing in ceremony of A.D. Zander Guy, Jr. as the Chairman of the North Carolina ABC Commission. The meeting was recorded and the disc is on file at the NC ABC Commission within the Legal Division.

ROLL CALL

Chairman Zander Guy and Commissioner Michael C. Herring were present. Chairman Guy introduced himself and stated he was proud to be the new Chairman of the NC ABC Commission. Chairman Guy called the meeting to order.

MINUTES OF FEBRUARY 8, 2017

Chairman Guy asked for a motion to waive the reading of the minutes of the February 8, 2017 meeting into the record. Commissioner Herring made a motion to waive the reading of the minutes. Chairman Guy seconded the motion. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the February 8, 2017 meeting. Commissioner Herring made a motion to approve the minutes. Chairman Guy seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. § 138A-35, Chairman Guy 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. Chairman Guy stated he found no conflicts of interest.

I. CONTESTED CASES AND OFFERS IN COMPROMISE – 74

Chief Counsel Renee C. Metz asked for case number 54, Capis Lloyds, to be removed from the Agenda. Mrs. Metz explained the permittee had rescinded the signed Offer in Compromise and wished to go to hearing.

Chief Counsel Renee C. Metz stated no one was present on behalf of the cases on the remaining cases on the agenda and asked the Commission to ratify the Offers in Compromise.

Commissioner Herring made a motion to remove cases numbered 54 and 57 from the agenda to allow Commission staff to revisit them and to ratify the remaining cases. Chairman Guy seconded the motion. Motion Passed.

II. ABC STORE LOCATION – BELMONT ABC BOARD

Administrator Robert A. Hamilton stated a new ABC Board, the Belmont ABC Board, has requested approval to lease a property to open their first ABC Store at 6425 Wilkinson Boulevard in Belmont, North Carolina. The planned opening of the proposed store is June 1, 2017.

Mr. Hamilton stated the proposed property is zoned Highway Commercial and allows for an ABC Store.

The property is owned by Alliance Real Estate III. Mr. Hamilton added the Belmont ABC Board members have submitted financial disclosure forms and there are no personal or financial interests shared between the property owner and the Board members.

The proposed property is 4,506 SF, of which 2,500 SF will be used for retail space. Mr. Hamilton added the location will also provide mixed beverage service.

The nearest school is located approximately .3 miles away. The two nearest churches are both located approximately .2 miles away. The nearest ABC Store is located approximately 2.1 miles away and is operated by the Cramerton ABC Board.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted and, to date, no objections have been received. Mr. Hamilton added the anticipated first year sales are \$1.5 million in product sales.

Mr. Hamilton stated members of the Belmont ABC Board were present to answer questions and staff recommends approval of the proposed location.

Commissioner Herring stated he had no questions and made a motion to approve the proposed location on staff's recommendation. Chairman Guy seconded the motion. Motion Passed.

III. ABC STORE LOCATION – MECKLENBURG COUNTY ABC BOARD

Mr. Hamilton stated the Mecklenburg County ABC Board had requested approval to lease property to open and operate a new ABC Store at 1332-B Central Avenue in Charlotte, North Carolina. The Board tentatively plans to open the new store in June 2017.

Mr. Hamilton stated the property is zoned Business-2 and allows for an ABC Store.

The proposed location is owned by Cole Properties and Investments. Financial disclosure forms have been provided by the Mecklenburg County ABC Board members. There are no personal or financial interests shared between the property owners and the Mecklenburg County ABC Board members.

The lease for the property is \$8,166.67 monthly with annual increases. The building is approximately 4,900 SF of which the Board plans to use 3,185 SF for retail sales. The Board also plans to have mixed beverage account service at this location to help relieve the burden of one of the busiest ABC Stores located approximately 1.4 miles away.

The nearest school is located approximately .5 miles away. The nearest church is located approximately .3 miles away. The nearest ABC Store is the store 1.4 miles away also 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. Mr. Hamilton added one objection had been received stating the proximity to a dialysis clinic.

Mr. Hamilton stated the anticipated first year sales were \$3,300,000.00. Mr. Hamilton added representatives from the Mecklenburg County ABC Board were present if there were any questions and staff recommends approval.

Chairman Guy recognized the Belmont ABC Board members and stated he was sure they liked the Commission's decision. Chairman Guy also greeted the Mecklenburg County ABC Board members and stated they would also like the decision for their ABC Store.

Commissioner Herring made a motion to uphold the staff's recommendation and approve the proposed location. Chairman Guy seconded the motion. Motion Passed.

IV. EXEMPTION REQUEST – G.S. § 18B-1116(b) – WRIGHT BROTHERS MERCANTILE COMPANY, LLC T/A SANCTUARY VINEYARDS; WRIGHT VINTAGE, LLC T/A SANCTUARY VINEYARDS IV

Mrs. Metz stated no one was present on behalf of the permittees. Mrs. Metz explained the winery, Wright Brothers Mercantile Company, currently has the allowed maximum of three retail locations. Mrs. Metz stated they wish to add a fourth location through a newly formed corporation. Mrs. Metz explained the fourth location would require an exemption approval. Mrs. Metz stated they included the standard exemption; a good faith effort to find a third party wholesaler to distribute to the fourth location and carry comparable, competitive products. Mrs. Metz added staff recommends approval.

Commissioner Herring inquired what was the maximum number of retail locations the Commission had previously approved for exemptions. Mrs. Metz stated three; however, one business had five as they were restaurants first and then a brewery was added at a later date.

Commissioner Herring made a motion to approve the request for exemption based on staff's recommendation. Chairman Guy seconded the motion. Motion Passed.

V. EXEMPTION REQUEST – G.S. § 18B-1116(b) – BISCUITPIG, LLC T/A MAYBELLE'S BISCUITS AND BARBECUE; TWO DOORS DISTILLING, LLC; AND TYLER HUNTINGTON

Mrs. Metz stated attorney Kathie Russell was unable to be present on behalf of Biscuitpig and Two Doors Distilling due to a scheduling conflict in criminal court. Mrs. Metz stated Tyler Huntington, 56% owner of the distillery, would like to open Maybelle's Biscuits and Barbecue, a retail location which would ultimately hold mixed beverage restaurant permits. Mrs. Metz added, because it involves spirituous liquor, it would require the standard approval, transfer to the ABC warehouse, then to an ABC Store before reaching the restaurant. The ownership issue, not the distribution issue, requires an exemption. Mrs. Metz stated staff recommended approval of the exemption.

Commissioner Herring made a motion to approve the exemption request based upon staff's recommendation. Chairman Guy seconded the motion. Motion Passed.

VI. REVISED EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – WINE AND DINING, INC. T/A ON THE SQUARE; TARBORO BREWING COMPANY (TARBORO, NC); TARBORO BREWING COMPANY (ROCKY MOUNT, NC) AND RIBUSTELLO MANAGEMENT, LLC

VII. REVISED EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – LOCAL MINDED BREWING, LLC T/A ANGRY TROLL BREWING; ELKIN CREEK WINERY, LLC T/A ELKIN CREEK VINEYARDS

Mrs. Metz stated items VI and VII would be presented together as attorney Laura Collier was present on behalf of both of her clients regarding previously approved exemptions. Mrs. Collier explained Tarboro Brewing has partial co-ownership in a retail business in Tarboro. Mrs. Collier stated Tarboro Brewing wishes to continue the conditions of the granted exemption to open a second brewery location in the Rocky Mount brew mill location.

Commissioner Herring stated he had no questions and made a motion to add the second location to the exemption. Chairman Guy seconded the motion. Motion Passed.

Mrs. Collier stated the current Angry Troll Brewing exemption was for two owners and allows for two retail locations. Mrs. Collier explained the brewery no longer has an ownership in one of the retail locations and wished to remove it from the exemption and revise other terms accordingly.

Commissioner Herring made a motion to approve the exemption request. Chairman Guy seconded the motion. Motion Passed.

VIII. MANDATORY RULES REVIEW – FINAL DETERMINATION 15C

Mrs. Metz stated the Commission staff is performing the rules review as mandated by the General Assembly. Mrs. Metz stated the review had been completed on the first two chapters and only chapter 15C remained. Mrs. Metz stated the initial determination has been made; was posted for public comments and none were received. Mrs. Metz asked the Commission to adopt the report as it had been originally issued and make it the Commission's final determination so it may be forwarded to the Rules and Review Commission.

Commissioner Herring made a motion to adopt the report as presented. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated another issue regarding rules was not on the agenda. Mrs. Metz explained if a rule is determined to be necessary with substantive public comment, the agency has to readopt the rule. Mrs. Metz stated in the first two chapters, the Rules and Review Commission had declared three rules necessary with substantive public comment. She explained 15A .1403 (regarding special orders) and 15B .0102 and .1003 required no language changes. Mrs. Metz asked the Commission to adopt the language of the rules as they are to proceed with the re-adoption process.

Commission Herring made a motion to follow counsel's recommendation and readopt the rules. Chairman Guy seconded the motion. Motion Passed.

IX. OTHER BUSINESS

Mrs. Metz stated the next matter was not scheduled on the agenda and was at the Commission's discretion. Mrs. Metz explained attorney William Potter, had requested to speak to the Commission on behalf of one of his clients. Mrs. Metz explained under the NC General Statutes, if a business is located within an Urban Redevelopment Area, that business cannot have alcohol sales exceed 50% of the business's total annual sales. During an audit, the business could not locate receipts regarding the sales so the audit could not be conducted. Therefore, Mr. Hamilton was given authority by the prior Commission to automatically suspend the business's ABC permits. Mrs. Metz asked if the Commission would allow this matter to be added to the agenda today or if it should go through the regular agenda process.

After conferring with Commissioner Herring, Chairman Guy allowed Mr. Potter to address the Commission.

Mr. Potter stated he represented Mr. Fufa Edessa Duressa and his business. Mr. Potter explained the City had requested the NC ABC Commission conduct an audit of the business to determine if the sales were at the appropriate levels. An ABC Commission auditor visited the business and reported the business did not have sufficient records to conduct a complete audit. Mr. Potter stated the auditor pointed out the owner used the register tapes to make notes in other records, and then discarded the register tapes. The auditor stated without the register tapes, an audit could not be conducted.

Mr. Potter explained the ABC Commission has since suspended the permits. He added, after this occurred; the owner has kept clearer records from September 2016 through February 2, 2017, the date of suspension. Mr. Potter had asked Mrs. Metz if the ABC auditors could re-audit the business. However, they confirmed the NC General Statutes allow the auditors to visit a business only once a year.

Mr. Potter added he had an accountant conduct an audit of the business's records. This independent audit shows alcohol sales as 24% of total sales. Mr. Potter asked if the ABC Commission could accept this audit information and vacate the suspension.

Commissioner Herring asked if the City of Raleigh had requested the audit. Mr. Potter stated it had. Commissioner Herring asked if there was a problem with the location. Mr. Potter stated the city had asked for audits of two locations. Mrs. Metz confirmed there is a letter dated August 11th from the City Manager requesting the ABC Commission conduct audits of two businesses.

Mr. Potter stated there was no evidence the alcohol sales were over 50% and did not know the reason the business should be audited. Mr. Potter stated again, the City can only request an audit once a year and the Commission can only conduct an audit at the request of the City. Mr. Potter explained again, they could only ask an accountant to conduct the audit. Mr. Potter stated his client was present and had the records with him.

After conferring with Chairman Guy, Commissioner Herring stated this seemed to be a reasonable request if the permittee is now selling more food than alcohol. However, Commissioner Herring added, if the City of Raleigh had made this request, the Commission would like to hear from the City indicating they are satisfied with the results of the audit. Commissioner Herring asked Mrs. Metz if they had heard anything from the City. Mrs. Metz stated they had not.

Commissioner Herring made a motion to continue the matter to the next ABC Commission Meeting to allow time to contact the City of Raleigh for a statement indicating there were no objections.

Mr. Potter again continued, stating this would mean another 30 days of suspension and there is no other relief. Mr. Potter stated the City had had some problems in the area. Mr. Potter added this was an old statute which may have been applied two times previously. Mrs. Metz confirmed it had been applied twice in her memory.

Mr. Potter continued, stating he had three pages of signatures from people from the area surrounding the business in support of reinstating the permits; not only for alcohol, but because they think it is an important part of their community as a place to shop. Additionally, Mr. Potter asked the Commission to enter a stipulation that if the City wished to be heard, the Commission could hear them and it could be discussed at the next Commission Meeting. Mr. Potter stated it was the first time the Statute had been used and asked Mrs. Metz for confirmation. Mrs. Metz stated it was to her knowledge.

Chairman Guy stated the Commission was pro-business; however, the Commission had a responsibility to get all the information. Chairman Guy stated he concurred with Commissioner Herring and seconded his motion to obtain more information from the City of Raleigh prior to making a decision. Motion Passed.

Mr. Potter continued by asking the Commission to delegate to the ABC Commission staff, the authority to reinstate the permits if the City had no objections.

Again, Chairman Guy stated the Commission required more information from the City and dismissed Mr. Potter.

Mr. Hamilton stated there was no further business.

Commissioner Herring stated it was a pleasure to have Chairman Guy back at the Commission and it was an honor to be back with him in this capacity and looked forward to working with him. Commissioner Herring made a motion to adjourn.

Chairman Guy stated it was his pleasure to be back. Chairman Guy thanked everyone for their role in helping the Commission with their statutory responsibilities and making the right decisions. Chairman Guy seconded the motion. With no further business, the meeting adjourned.

Approved at the April 12, 2017 Commission Meeting

/S/ A.D. "Zander" Guy, Jr.
A.D. "Zander" Guy, Jr., Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

/S/ Caroline Y. Washburn
Caroline Y. Washburn for the Legal Section