

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
SEPTEMBER 13, 2017**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on September 13, 2017, 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 A.D. Zander Guy, Jr. and Commissioner Michael C. Herring were present. Chairman Guy called the meeting to order, introducing himself and Commissioner Mike Herring.

Chairman Guy added the Commission is fortunate to have its employees and for the role they play in ensuring, first and foremost, the public's welfare and safety. Chairman Guy stated he had a meeting with former Lieutenant Governor and previous ABC Chairman, Jim Gardner soon after he was appointed as Chairman of the ABC Commission. Chairman Guy stated Mr. Gardner had asked about the continuation of the Underage Initiative. Chairman Guy said he confirmed the Initiative would absolutely continue as underage drinking is a problem which needs to be addressed. Chairman Guy added the Initiative had previously secured a grant which enabled it to hire a law enforcement professional, retired ALE Agent Alan Fields. Chairman Guy stated Mr. Fields' last day would be the following Tuesday and thanked him for his contributions to the Initiative, including field training for law enforcement agencies.

MINUTES OF AUGUST 9, 2017

Chairman Guy asked for a motion to waive the reading of the minutes of the August 9, 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 August 9, 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 – 88

Chief Counsel Renee C. Metz stated case number 1, Stop Then Go, was a contested case and assigned to Assistant Counsel Missy Welch. Mrs. Metz stated the case was a sanctions case in which the permittee failed to respond to the Administrative Law Judge's orders to produce documents. The judge issued a sanctions order which imposed a decision of a \$500.00 penalty due by October 16, 2017, a revocation of the permittee's fortified wine permit and a 25-day active suspension of the permittee's ABC permits to

begin October 13, 2017. Mrs. Metz asked it be amended to change the revocation to a cancellation, as a revocation would prevent the permittee from holding any ABC permits for a three-year period. Chairman Guy asked for clarification of the necessary motion. Mrs. Metz stated it was a \$500.00 penalty due by October 6, 2017 and a 25-day suspension to begin on October 13, 2017, including the change from revocation to cancellation of the fortified wine permit.

Commissioner Herring asked about the nature of the violations. Mrs. Metz stated the violation related to the fortified wine permit was failure to maintain an inventory worth \$1,500.00 of staple food items. Mrs. Metz added the other violations included the transfer of glass tubes, failure to maintain invoices, failure to post ABC permits, counterfeit goods and dispensing prescription drugs.

Commissioner Herring made a motion following staff's recommendation for cancellation of the fortified wine permit and the dates for payment and suspension. Chairman Guy seconded the motion. Motion Passed.

Chairman Guy saluted Representative Shelley Willingham of Tarboro, who was recently recognized as a living legend for his community service.

Mrs. Metz asked that case number 48 be removed from the agenda, as Assistant Counsel LoRita Pinnix was working on a new proposed offer in compromise with the permittee.

Mrs. Metz stated regarding case number 32, Ms. Pinnix had negotiated a lower penalty with the permittee. However, the permittee mistakenly signed the original offer in compromise. Mrs. Metz asked the amended offer in compromise replace the offer in compromise presented with the agenda for ratification.

Commissioner Herring made a motion to accept the amended offer in compromise. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated Hadi Abdelhadi, the permittee for case number 52, Tacos Y Mariscos Vallarta, was present on behalf of his business. Mr. Abdelhadi stated his business was a Mexican restaurant and because they forgot to pay the renewal and registration fees on time, they were unable to place an order with their ABC store for liquor for the Mother's Day holiday. He admitted to purchasing liquor at the ABC store which was not tax-stamped so they could offer margaritas. Mr. Abdelhadi stated he paid the renewal/registration fees in person at the ABC Commission; however, the ALE agent had issued a violation for the possession of the non-tax-stamped liquor. Mr. Abdelhadi stated the penalty of \$3,500.00 and the seven days of active suspension were too much. He explained he understood he made a mistake; however, the business has 75 employees who would also be affected by the suspension.

Chairman Guy stated the business has held ABC permits since December 2011 without any violations. Mr. Abdelhadi stated they had not had violations at his previous business also.

After conferring with Commissioner Herring, Chairman Guy made a motion to revise the offer in compromise to no active suspension upon the payment of the penalty which would be reduced to \$2,000.00. Commissioner Herring seconded the motion. Motion Passed.

Mrs. Metz stated representatives of the Washington Moose Lodge 1800 were present for case number 56. Brad Miller stated he was the governor of the Moose Lodge and Max Wilson the general manager was also present. Mr. Miller stated the violation occurred as a result of a benefit held by members on behalf of a relative.

Mr. Miller explained member Sherry Rose was allowed to use the hall for a dance benefit for a family member on December 31, 2016. Mr. Miller read from a letter written by Sherry Rose stating the fundraiser was for the benefit of Crystal Anderson and her family to help with medical bills for her rare condition, cancer. Ms. Rose explained in her letter, Billie Rose and Sherry Rose are both members of the Women of the Moose which helped put on the fundraiser. She stated Crystal Anderson was kin to both of them. Additionally, in her letter Sherry Rose stated the people at the fundraiser were mostly family members and their close friends with the money being given to Crystal Anderson for her medical needs.

Mr. Miller stated the event was not a public event and was advertised to a targeted group of relatives and friends of the host, Sherry Rose. Mr. Miller explained Sherry Rose had everyone sign a book and also indicate in that book if they were a member or a guest upon entering. They were to give a donation upon signing the book at the door. Sherry Rose's daughter, Jackie, had informed Mr. Miller 78 people signed the book. Of those who signed, 14 were Moose members, five were immediate family, 21 were relatives of Crystal Anderson and six were band members. Mr. Miller stated all the proceeds went to the family of Crystal Anderson, an uninsured cancer patient. Mr. Miller added Crystal Anderson sent a thank you card to the Lodge for having the New Year's dance.

Chairman Guy asked Mr. Miller what he was asking of the Commission. Mr. Miller stated he would like the charges to be dropped and if not dropped, the length of the suspension reduced. He added they could not afford to pay the \$2,200.00 penalty.

Chairman Guy explained the Commission hears many cases throughout the year, some with merit and some without. He stated the Commission is there to protect the public welfare and safety in regard to the use of alcohol. He added he is aware Moose Lodges do much to assist their communities. Chairman Guy added the Commission also appreciates the Alcohol Law Enforcement and their efforts to protect the public welfare and safety.

Commissioner Herring stated the pending violation was for being open to the public as the Lodge is a private club. Commissioner Herring added Mr. Miller had presented enough information to show the event was held by a member for their guests. Commissioner Herring suggested a Written Warning.

Mrs. Metz interjected the event was advertised on Facebook as a New Year's bash with live band Hit and Run, doors open at 7:30 on December 31, 2016, \$10.00 per person, a 50/50 drawing, cash bar, hors d'oeuvres. Mrs. Metz added there was with no mention on the Facebook page of a benefit.

Mr. Miller stated Billie Rose, Sherry Rose's daughter, who was there as a guest posted it on her Facebook page as a benefit for her cousin. Mr. Miller added the only other advertisement they had was a banner which advertised a New Year Eve's Bash. Mr. Miller stated there was not a 50/50 drawing and they could not control what someone posted on Facebook.

Ms. Pinnix added the banner was what drew the attention of ABC Law Enforcement. Ms. Pinnix explained a large banner was displayed across the street advertising the event at the private club. Ms. Pinnix added she would be agreeable to removing the active suspension from the penalty.

Chairman Guy conferred with Commissioner Herring. Chairman Guy thanked Mrs. Metz and Ms. Pinnix for bringing the additional information to their attention. Chairman Guy made a motion to change the penalty to no active suspension and a \$750.00 fine. Chairman Guy also stated to Mr. Miller he may want to speak to his members regarding events, as well as social media. Mrs. Metz requested the penalty be a 7-day active suspension or payment of a \$750.00 fine. Commissioner Herring seconded the motion. Motion Passed.

As no one else was present regarding a case, Mrs. Metz asked the Commission to ratify the remaining Offers in Compromise. Commissioner Herring made a motion to ratify the Offers in Compromise. Chairman Guy seconded the motion. Motion Passed.

II. ABC STORE LOCATION – CUMBERLAND COUNTY ABC BOARD

Administrator Robert A. Hamilton stated the Cumberland County ABC Board had requested approval to lease and operate a new ABC Store at 150 Francam Drive, Suite 114/116 in Fayetteville, North Carolina. The tentative opening date for the proposed store is January 2018.

Mr. Hamilton added the property is zoned Community Commercial and allows for an ABC Store. Mr. Hamilton stated the proposed property is owned by FranCam, Inc. He added Cam Stout of FranCam, Inc. stated there are no personal or financial interests shared between the property owners and the Cumberland County ABC Board members. Financial disclosure forms have been provided by the Board members.

The proposed lease for the property is a 10-year lease with the first two years at \$8,500.00 per month. Every two years after, there would be an increase of \$500.00 per month. The proposed space will be 4,650 SF of which the Board plans to use approximately 2,960 SF for retail sales and 1,590 SF for a warehouse and office.

The nearest school is located approximately 1,200 feet away. The nearest church is located approximately .9 miles away. The nearest ABC Store is located 1.7 miles away.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted on July 18, 2017. Mr. Hamilton stated no objections have been received.

Mr. Hamilton stated the projected first year sales are \$3,500,000.00. Mr. Hamilton added staff recommends approval of this proposed store. General Manager David Horne and Chief Bill Belvin of the Cumberland County ABC Board were present if there were any questions.

Commissioner Herring asked Mr. Horne if the existing store located 1.7 miles from the proposed store would be closed. Mr. Horne stated there are no plans to close the store. Commissioner Herring stated they are projecting \$3.5 million for the new store in addition to the \$2.9 million sold last year at the existing store. Commissioner Herring inquired if the new store would take away business from the existing store. Mr. Horne stated the existing store would lose some sales to the proposed store. Mr. Horne continued by explaining the existing store is in an economically challenged location and the surrounding area has been declining over the last 20 years. The new store would be in a commercial area with more growth. He added the current location does have a good client base so they think the store will continue to have satisfactory sales so the county will still profit. Commissioner Herring asked if the new store was not opened, would the sales at the existing store increase. Mr. Miller stated the existing store is one of a few commercial properties in the area along with a Family Dollar store. Mr. Horne stated the traffic flow around the current location has dwindled due to traffic pattern shifts. With the proposed store, Mr. Horne added, the citizens of the county would be better served in the two completely different economic and demographic areas.

Commissioner Herring made a motion to approve the proposed location for the Cumberland County ABC Board upon staff recommendation. Chairman Guy seconded the motion. Motion Passed.

III. ABC STORE LOCATION – NEW HANOVER COUNTY ABC BOARD

Mr. Hamilton stated the New Hanover County ABC Board had requested approval to exchange a current ABC Store property at 6730 Wrightsville Avenue in Wrightsville Beach, North Carolina for a new property located at 7000 Wrightsville Avenue in Wilmington, North Carolina. Upon the opening of the new store, the existing store at 6730 Wrightsville Avenue would be closed.

Mr. Hamilton explained the proposed property is .75 acres and is approximately .25 miles from the existing store. The new property is currently zoned in the City of Wilmington. However, upon completion, the proposed property will be de-annexed from the City of Wilmington and annexed into the Town of Wrightsville Beach. The existing ABC Store is currently annexed in the Town of Wrightsville Beach.

The proposed property is currently zoned Urban Mixed Use and allows for an ABC Store. Mr. Hamilton stated the property is owned by SSG-2, LLC. The investigator spoke with Jefferey Kentner of SSG-2, LLC and there are no personal or financial interests shared between the property owners and the New Hanover County ABC Board members. Financial disclosure forms have been provided by the Board members.

Mr. Hamilton explained the New Hanover County ABC Board would lease the current ABC Store property at no cost until the completion of the new store. Appraisals were conducted for both properties and the existing store was appraised for \$732,400.00 with the existing 4,000 SF building. The proposed property appraised for \$760,000.00 with a 6,000 SF concrete building pad. Mr. Hamilton added the proposed building will be 6,500 SF with 5,500 SF used for retail and 1,000 SF used for a warehouse and an office. The cost of the proposed building is approximately \$1,200,000.00.

The nearest school is located approximately 1.8 miles away. The nearest church is located approximately 750 feet away. The nearest ABC Store is the existing store which will be closed upon the opening of the proposed store. The next nearest ABC Store will be approximately 3.8 miles from the proposed store in Wilmington.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted on July 6, 2017. Mr. Hamilton stated 18 comments, including some objections, have been received. Mr. Hamilton explained most of the objections were regarding the removal of oak trees and the traffic patterns. The City and State are working to make adjustments to accommodate the traffic flow.

Mr. Hamilton stated the anticipated first year sales are \$5,500,000.00. Mr. Hamilton added staff recommends approval of this store. General Manager Marnina Queen was present as well as other members of the New Hanover County ABC Board if there were any questions. Mr. Hamilton added the proposed store and exchange creates a win/win solution due to other circumstances which have arisen and he commends the Board on finding a solution.

Commissioner Herring asked, regarding the objections, were there any from the church located 750 feet away. Ms. Queen stated she spoke with the church officials and they do not have objections. Ms. Queen added the Board will do its best to preserve the trees. In addition, she explained some of the objections were from individuals who wanted the property to be a park. Ms. Queen stated the roads around the property are narrow and they are working with the Mayor and the Town on solutions. Additionally, they do not plan to begin building for two years.

Chairman Guy asked if anyone was present with an objection to the proposed store. No one was present. Mr. Hamilton stated staff recommends approval of the property exchange and the new ABC store.

Commissioner Herring made a motion to approve the proposed location upon staff recommendation. Chairman Guy seconded the motion. Motion Passed.

IV. EXEMPTION REQUEST – G.S. § 18B-1116(b) – PIG POUNDER, LLC d/b/a PIG POUNDER BREWERY; KOTIS HOLDINGS, LLC; WILLIAM M. KOTIS, III; AND THE 2012 WILLIAM M. KOTIS, III IRREVOCABLE TRUST f/b/o ALEXANDER WILLIAM KOTIS AND DESCENDANTS

Mrs. Metz stated this exemption request was actually for an amendment to an exemption previously granted in 2014. Mrs. Metz explained Mr. Kotis had three retail establishments in addition to his brewery permit, but because he was a restaurateur first, the exemption allowed a fourth affiliated retail location. Mr. Kotis has essentially closed one of the affiliated locations, Marshall Freehouse, and has renovated it and plans to reopen the restaurant as The Traveled Farmer. This exemption request is to change the name of a retail establishment in the exemption. Mrs. Metz added staff recommends granting the exemption request.

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

V. OTHER BUSINESS – CONSIDERATION OF PROPOSED TEMPORARY GROWLER RULES FOR PUBLICATION. RULES 14B NCAC 15C .0302, .0303, .0307, .0308 AND .0403

Walker Reagan provided drafts of the proposed rules to the Commission. Mr. Reagan explained the General Assembly had recently made modifications to the rules related to growlers. The temporary rules presented for consideration are necessary to implement the modifications.

Mr. Reagan stated the ABC Commission had previously adopted rules for malt beverages. The proposed rules include malt beverages and wine being served or sold in one-time use containers, as well as refillable containers. Mr. Reagan state the rules are regarding the requirements for labeling, filling and sanitation. He added the rules for wine are parallel to the rules for malt beverages. Mr. Reagan stated drafts of the proposed rules have been made available for review and comments were received from the Retail Merchants Association, Brewers Guild, Wine Institute and Lowes Foods. After this review, the address requirement on wine labels has been removed as it is from malt beverages. Also, for wine blends, the percentages of foreign and domestic wines are not required.

Chairman Guy asked Mrs. Metz and Mr. Hamilton if they had comments. Mr. Hamilton stated staff recommends approval of the proposed rules with the allowance for staff to make minor grammatical changes and corrections.

Mr. Reagan stated this approval is the first step as the proposed rules will still need to be posted by the Office of Administrative Hearings on their website to allow for public review. Mr. Reagan suggested the Commission hold a public hearing at the next ABC Commission meeting on October 11, 2017. Mr. Reagan explained only a certain number of days are allowed for public comments to be completed by October 20, 2017. He added the deadline is October 28, 2017 for the adoption of the temporary rules. Mr. Reagan also requested the Commission authorize staff to make any nonsubstantive changes to the draft rules including spelling, punctuation, grammar and conforming changes and corrections.

Chairman Guy asked Kris Gardner, attorney for the North Carolina Beer and Wine Wholesalers Association if he had any comments. Mr. Gardner stated he had reviewed the proposed rules and the association was fine with them. Elizabeth Robinson of the NC Retail Merchants Association stated they appreciated the work by the ABC Commission staff and are also fine with the proposed rules.

As no one else was present to make any comments, Commissioner Herring made a motion to follow staff's recommendation and proceed as outlined. Chairman Guy seconded the motion adding allowances for minor changes. Motion Passed.

VI. OTHER BUSINESS

Mr. Hamilton requested the Commission consider Wednesday, January 10, 2018 as the date for the January 2018 ABC Commission Meeting.

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

Chairman Guy expressed his excitement for the Underage Initiative; stating it was important for today's society and young children as family units are not always the same. He also recognized Kat Haney, the Director of the Underage Initiative and Jeff Strickland, for their energy and work with the Underage Initiative. Chairman Guy also recognized Agnes Stevens, the Public Relations Director for her contributions. Chairman Guy thanked the legal staff for their assistance with the Moose Lodge case previously heard. He also thanked the ABC Boards for all they do to make alcohol available at a fair price and responsibly selling it. He also thanked Representative Willingham for attending.

Commissioner Herring made a motion to adjourn. Chairman Guy seconded the motion. Motion Passed. With no further business, the meeting adjourned.

Approved at the October 11, 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