

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
APRIL 18, 2018**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on April 18, 2018, 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. was present and Commissioner Michael C. Herring participated through teleconference. Chairman Guy expressed his appreciation for the employees of the ABC Commission. Chairman Guy also stated even when there are problems; the Commission staff makes time to communicate and find a resolution. Chairman Guy stated he was proud of the staff and the Commission.

MINUTES OF MARCH 7, 2018 COMMISSION MEETING

Chairman Guy asked for a motion to waive the reading of the minutes of the March 7, 2018 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 March 7, 2018 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 reviewed the agenda and found no conflicts of interest. Chairman Guy stated he found no conflicts of interest.

I. CONTESTED CASES AND OFFERS IN COMPROMISE – 99

Chief Counsel Renee C. Metz stated case number 1, C Mart, was a contested case and no one was present on behalf of the permittee. Mrs. Metz stated Assistant Counsel Rachel Spears went to hearing for this case regarding a sale to underage. Mrs. Metz added the Administrative Law Judge, Judge Bawtinheimer, was relatively new and issued the Final Decision with a \$500.00 penalty without a suspension. Mrs. Metz requested the Commission approve the Judge's order.

Commissioner Herring made a motion to impose the Administrative Law Judge's decision of a \$500.00 penalty. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated case number 2, Dollar General Store 168, was a sanctions case and assigned to Assistant Counsel Missy Welch. Mrs. Metz explained the case was for sale to underage and added the Administrative Law Judge issued an order imposing a \$500.00 penalty and a 10-day active suspension.

Commissioner Herring made a motion to impose the Administrative Law Judge's decision of a \$500.00 penalty and a 10-day suspension. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated no one was present on behalf of the permittee for case number 82, Proof Wine and Spirits. Mrs. Metz stated staff is asking for guidance and explained the permittee signed the Offer in Compromise; however, there are questions regarding the permits. Chairman Guy asked Mrs. Metz for her recommendation. Mrs. Metz recommended a dismissal because she was not comfortable with proceeding, as the violation was not technically a violation.

Chairman Guy made a motion to dismiss the case. Commissioner Herring seconded the motion. Motion Passed.

Mrs. Metz stated a representative was present on behalf case number 45, M and S. Mahmood Algazzali stated he was present because the penalty was too high. Mr. Algazzali explained the area behind the counter at the business is messy because his 13-year-old son, who is autistic, was often present. Chairman Guy asked if they had held permits since 2007 and have not had violations. Mr. Algazzali confirmed both.

Chairman Guy asked Mr. Algazzali what he was requesting. Mr. Algazzali stated he was asking for a reduction of the penalty, explaining the invoices are maintained in the storage room. His wife keeps the records, but only works a few hours a day. Mr. Algazzali stated they had received a warning and then afterwards were issued a violation.

After conferring with Mrs. Metz, Chairman Guy made a motion to reduce the penalty from \$1,000.00 to \$500.00 as the business had held permits since 2007 without violations. Commissioner Herring seconded the motion. Motion Passed.

Mrs. Metz stated a representative was present on behalf of case number 36, Bills Seafood of Sunset Beach. Paula Knisely stated she was present to request a reduction of the penalty or for it to be waived. Chairman Guy noted the business' permits were issued in 1981, 1988 and 1990 and they have had no previous violations. Chairman Guy stated the violation was for a sale to underage and asked Assistant Counsel LoRita Pinnix if she had any comments. Ms. Pinnix stated this was a first violation and it had occurred during an underage campaign. Chairman Guy stated the Commission takes underage sales very seriously and asked Ms. Pinnix for her recommendations. Ms. Pinnix stated she had none and would agree with the Commission's decision.

Chairman Guy stated underage sales are very serious; however, as this was the business' first violation since 1988, the penalty could be reduced. However, Chairman Guy again stressed to Ms. Knisely, the seriousness of a sale to underage.

Chairman Guy made a motion to reduce the penalty from \$1,000.00 to \$750.00. Commissioner Herring seconded the motion. Motion Passed.

Mrs. Metz stated a representative was present on behalf of case number 15, Johns Food Express. David Chun stated this was the first violation and his employee made a mistake. Mr. Chun stated the purchaser was wearing a hat and she could not see his face. Chairman Guy inquired if the employee

looked at the purchaser's identification. Mrs. Metz explained the case was assigned to Mrs. Welch, but referred to Mrs. Welch's notes to explain the clerk did not ask to see identification. Chairman Guy stated it was important to ask for identification and match the person to it. Mrs. Metz added the violation occurred during a compliance check conducted by the Burlington Police Department. Mrs. Metz explained the purchaser was 17 years old and was able to purchase a can of malt beverage. Additionally, the clerk did not ask for identification and the business has held permits for three years.

Commissioner Herring stated the penalty which was agreed to in the Offer in Compromise was appropriate and made a motion for the penalty to remain as offered. Chairman Guy seconded the motion. Motion Passed. Chairman Guy added it is the responsibility of the seller to check a purchaser's age and they may request them to remove a hat for clearer identification. Mrs. Metz explained to Mr. Chun he would have the choice of paying the penalty or serving the suspension; additionally, he could pay half the penalty and serve half the suspension.

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

II. ABC STORE LOCATION – MARSHVILLE ABC BOARD

Administrator Robert A. Hamilton stated Mayor Franklin Reese, ABC Board Chairman Bob Morgan and board members Stephanie Baumer and Olin Marsh were present on behalf of the Marshville ABC Board. Mr. Hamilton stated the Marshville ABC Board had requested approval to purchase property to operate an ABC Store at 201 West Main Street in Marshville, North Carolina. Mr. Hamilton explained the town of Marshville voted to allow mixed beverage sales and ABC stores on November 5, 2013. In that election, there were 167 votes or 63.5% in favor of an ABC store and 96 votes or 36.5% opposed to an ABC store. Mr. Hamilton added the Town of Marshville has 2,600 residents currently and this would be the Board's first ABC store.

The board plans to lease the building for the ABC store from the Town of Marshville. The board plans to open the ABC store on September 1, 2018. Mr. Hamilton added there are no financial conflicts between the board members and the town council. The property is zoned MS (Main Street) and allows for an ABC store. Mr. Hamilton stated Mayor Reese had provided a letter reflecting the rental fee would be \$2,000.00 per month with no set term for the lease. The property is .539 acres and the building, which was built as a bank is 3898 SF. The board plans to use 65-70% for retail sales and there is one mixed beverage permittee in the town.

The nearest school is located approximately .4 miles away and the nearest church is located approximately 53 feet away, building to building. The reverend of the church has verbally stated the church does not have objections to the ABC store. The nearest ABC Store is located approximately 4.4 miles from the proposed store in Wingate, North Carolina. There are currently four ABC Boards in Union County besides the Marshville ABC Board.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted on February 16, 2018. Mr. Hamilton stated as of April 16, 2018, 20 calls from town residents with objections to the ABC store have been received. Mr. Hamilton added 27 additional were received opposing the store, but those were determined to be from non-residents or duplicate calls. Additionally, the ABC Commission had received one email opposing the ABC store.

Mr. Hamilton stated the projected first year sales were \$986,000.00. Mr. Hamilton explained staff had reviewed the investigation report, the election results and the opposition information and staff recommended approval. Mr. Hamilton added the Mayor of Marshville and the Chairman of the ABC Board were present to answer any questions.

Commissioner Herring asked whether anyone was present to speak in opposition to the store. Chairman Guy asked if anyone was present who wished to speak to the Commission regarding opposition to the proposed location and no one was present. Commissioner Herring stated the sales and expenses were border-line of being profitable or unprofitable and asked if the town had considered foregoing the rent if the ABC Board had difficulty meeting expenses, particularly the payments of the liquor invoices. Mayor Reese stated he did not know if the town council would forego the rent, but stated they are entirely in support of the store and will do whatever they can to help the store succeed. Mayor Reese added if it was necessary to reduce or forego the rent, he stated they would do whatever they could to ensure the store is profitable.

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

Chairman Guy recognized Terrance Merriweather, the Branch Head of the ALE Headquarters in Raleigh, who was also present.

III. ABC STORE LOCATION – MECKLENBURG COUNTY ABC BOARD

Mr. Hamilton stated the Mecklenburg County ABC Board had requested approval to purchase property to open and operate an ABC Store at 1625 Windsor Square Drive in Matthews, North Carolina. The proposed store will eventually replace a store located approximately 2.6 miles away at 7212 East Independence Boulevard in Charlotte, North Carolina. Mr. Hamilton explained they anticipate the NCDOT will purchase the property and the store will be closed due to a NCDOT expansion.

Mr. Hamilton explained the property is currently zoned B-1 CD (Neighborhood Business Conditional District) and will require rezoning to allow for an ABC Store. Mr. Hamilton added there is a clause in the purchase contract stipulating the rezoning.

The proposed property is owned by FGLW Properties, LLC of Roanoke, Virginia. There are no personal or financial interests shared between the property owners and the Mecklenburg County ABC Board members. Financial disclosure forms have been provided by the Board members.

The proposed property is approximately 1.88 acres with a purchase price of \$1,700,000.00. The property has an existing building of approximately 5,578 SF. The board plans an investment of approximately \$750,000.00 for the renovation of the property and existing building. The Board plans to use approximately 67% for retail sales with the remaining space used for storage, mixed beverage and administrative space.

The nearest school is located approximately .8 miles away. The nearest church is located approximately 1 mile away. The nearest ABC Store is the existing store located at 7212 East Independence Boulevard and will be closed before or upon the NCDOT expansion scheduled for 2020. The next closest ABC Store is approximately 4.5 miles away in Matthews, North Carolina. An

additional ABC Store is approximately 5.2 miles away in Mint Hill, North Carolina and all are owned and 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 on March 5, 2018. Mr. Hamilton stated two calls had been received; one was an objection and the other was questions regarding the plans.

Mr. Hamilton stated the anticipated first year sales are \$3,000,000.00. Mr. Hamilton added staff recommends approval of this store.

Commissioner Herring asked if any other objections had been received or comments from Chick-Fil-A. Investigator Edwin Strickland indicated none had been received.

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) – JOHN R. RICHARDSON AND BLACK MOUNTAIN BREWING & DISTILLING, LLC (BM BREWING)

Mrs. Metz stated John Richardson owns 100% interest of Fidalgo, LLC which holds ABC retail permits as Black Mountain Ale House. Mr. Richardson also owns 51% of Black Mountain Brewing & Distilling, LLC which does not yet hold ABC permits, but will apply for ABC commercial permits. Mrs. Metz explained the exemption was requested to allow Mr. Richardson's ownership in the brewery and distillery and the retail entity under G.S. 18B-1116(b).

Mrs. Metz explained Mr. Richardson will not have any day-to-day operational control over the Ale House which has a general manager who controls the products purchased and served at that business. Mrs. Metz stated, in the standard exemption, if the brewery produces more than 5,000 barrels per year this exemption will not apply. Additionally, if they distribute to their retail business, they will attempt to use a third-party wholesaler first. Mr. Richardson will not have any control from either side to have their products in their retail business.

Mrs. Metz stated Kris Gardner, the attorney for the North Carolina Beer and Wine Wholesalers Association, did not have objections and staff recommends approval.

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

V. EXEMPTION REQUEST – G.S. § 18B-1116(b) – CAROLINA BACKYARD BBQ, INC. AND PETROPOULOS IMPORTS, INC.

Mrs. Metz stated Petropoulos Imports, Inc. is not a manufacturer, but a wine importer and wholesaler. As an industry member, an exemption is still required though they are not producing product. Mrs. Metz stated Dimitri Petropoulos owns 100% of Carolina Backyard BBQ, Inc. and 100% of Petropoulos Imports. Mrs. Metz explained Mr. Petropoulos would not be in charge of any product they import or promote at the retail location. He will have no day-to-day control over Carolina Backyard BBQ and has hired independent managers for the restaurant. Mrs. Metz stated Mr. Petropoulos will manage Petropoulos Imports only.

Chairman Guy asked Mr. Gardner if he had any comments. Mr. Gardner stated the NC Beer and Wine Wholesalers Association recognize many exemptions have been previously granted by the Commission. Mr. Gardner stated his understanding of previous exemptions granted to wholesalers were with the condition in which the wholesaler did not sell their products to their retail business. Mr. Gardner stated their concerns were to maintain consistency and to ensure the exemptions are not expanded any further.

Commissioner Herring stated, based upon the concerns of the NC Beer and Wine Wholesalers Association, the request should be continued to the next Commission meeting to allow all parties to work to have an exemption in proper form, satisfactory to all.

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

VI. EXEMPTION REQUEST – G.S. § 18B-1116(b) – MOON BREW, LLC; THE FULL MOON, INC.; RHR, LLC; RANDALL H. RUSSELL; F M HOLDINGS, LTD; ROBERT D. LEE; ELIZABETH NISBET; TYRONE CARETHERS; KATHY & DOUG BRIGGS; TIMOTHY HARTMAN; T.J. ANZULEWICZ; ROB & KAREN BOSTIC; ROBERT D. FOX AND FLAKE KOURY

Mrs. Metz stated a number of the people owning interest in Moon Brew, LLC also have ownership interest in a variety of retail businesses. These individuals all wish to be part of the ownership of Moon Brew, LLC which has applied for and received temporary ABC commercial permits. Breweries have been allowed to wholesale to as many as four affiliated retail establishments, as long as the production is less than 5,000 barrels annually. Mrs. Metz stated Moon Brew had requested an exemption to allow six different retail locations, but the limit is four. They have now eliminated a retail location in Concord from the request, as well as a location which has not yet been opened. Mrs. Metz stated the four remaining businesses are listed in the order and the businesses have independent managers. Mrs. Metz explained those requesting the exemptions are investors and do not have significant ownership interest and are not involved in the day-to-day activity of the businesses.

Mrs. Metz recommended the exemption request be granted with the four affiliated retailers as long as they first make good-faith attempts to work with independent wholesalers. Additionally, the exemption will be granted for as long as the maximum brewing capacity remains below 5,000 barrels per year.

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

VII. EXEMPTION REQUEST – G.S. § 18B-1116(b) – MICHAEL ALEX NOTCHEY AND BAD BISHOP BREWING, LLC

Mrs. Metz stated Michael Notchey owns 100% of Bad Bishop Brewing which intends to apply for ABC commercial permits. Mr. Notchey wishes to join the ownership of Trackside Market which holds retail permits, but will have no day-to-day operational control as it has already been established. Mrs. Metz recommended the exemption request be granted as long as the maximum brewing capacity remains below 5,000 barrels per year and as long as they make a good-faith attempt to work with an independent wholesaler.

Mrs. Metz recommended the exemption be granted under the standard conditions. Commissioner Herring made a motion to follow staff's recommendation and approve the exemption request. Chairman Guy seconded the motion. Motion Passed.

VIII. OTHER BUSINESS – PUBLIC HEARING ON READOPTION OF PROPOSED PERMANENT RULES FOR APPLICATION FOR PERMITS. RULES 14B NCAC 15A .0104; 15B .0102, .0103. .0113 AND .1104

Chairman Guy opened the public hearing on the readoption of Application for Permits permanent rules which were proposed on February 14, 2018 and for which notice of the hearing was published on March 15, 2018.

Walker Reagan, the rules coordinator, explained the public comment period will expire on May 24, 2018 and the Commission could not take action until that time. Mr. Reagan stated no one has submitted comments or requested to speak at the public hearing. Chairman Guy asked if anyone was present who wished to speak regarding the rules.

As no one was present to speak regarding the proposed rules, Chairman Guy declared the public hearing was closed.

IX. OTHER BUSINESS – PUBLIC HEARING ON READOPTION OF PROPOSED PERMANENT RULE FOR PROHIBITED STATEMENTS IN ADVERTISING OR ON LABELS. RULE 14B NCAC 15B .1003

Chairman Guy opened the public hearing on the readoption of Prohibited Statements in Advertising or on Labels permanent rules which were proposed on February 14, 2018 and for which notice of the hearing was published on March 15, 2018.

Mr. Reagan explained the public comment period will expire on May 24, 2018 and the Commission could not take action until that time. Mr. Reagan stated no one has submitted comments or requested to speak at the public hearing. Mr. Reagan added he had received a telephone call late the previous afternoon from the Wine Institute with concerns regarding advertising as related to people under the age of 21. The Wine Institute sent Mr. Reagan some suggestions and he stated they would be reviewed and presented to the Commission. Chairman Guy asked if anyone was present who wished to speak regarding the rules.

As no one was present to speak regarding the proposed rules, Chairman Guy declared the public hearing was closed.

X. OTHER BUSINESS

Mr. Hamilton stated there was no further business. Chairman Guy thanked the ABC Commission staff again. Chairman Guy also thanked Vera Smith and Edwin Strickland of the Audit Division for their investigative reports of the proposed ABC Stores. Chairman Guy also again recognized Terrance Merriweather and thanked him for attending.

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

Approved at the May 16, 2018 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