

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
JUNE 13, 2018**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on June 13, 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. and Commissioner Michael C. Herring were present. Chairman Guy introduced himself and Commissioner Herring and stated his appreciation for the employees of the ABC Commission.

Chairman Guy recognized Assistant Counsel LoRita K. Pinnix and expressed his sympathies for the recent passing of her father.

Chairman Guy also acknowledged several new employees, Greg Stallings working with the Underage Initiative staff; Jennifer Temple working in the Legal Division; and, Jennifer Carbajal working with the Permits Division.

Chairman Guy also greeted Joel Keith, the General Manager of the Wake County ABC Board and Ike Wheeler the Assistant General Manager.

Chairman Guy stressed the importance of the relationship between the ABC Commission and its partners in education and law enforcement. Chairman Guy recognized Terrence Merriweather, the branch head of Alcohol Law Enforcement and thanked him for his assistance in ensuring the agencies continue to work together. Chairman Guy also thanked him for the work done by Alcohol Law Enforcement.

**MINUTES OF MAY 16, 2018 COMMISSION MEETING**

Chairman Guy asked for a motion to waive the reading of the minutes of the May 16, 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 May 16, 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 – 76**

Chief Counsel Renee C. Metz asked case number 54, Poes Tavern, be removed from the agenda as a manager signed the Offer in Compromise without the knowledge of the owner. The owner wishes to review the offer with Ms. Pinnix and potentially go to hearing.

Commissioner Herring made a motion to remove case number 54 from the agenda. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated representatives were present on behalf of case number 71, My Place. Loretta Towsley was present on behalf of her business accompanied by her brother, Darryl Humphrey. Ms. Towsley stated their restaurant's clientele is mostly of the baby boomer generation so minors really stand out. Ms. Towsley explained the bartender was instructed to check the identification of the minor who had entered the business with an ALE Agent as part of a compliance check. The bartender checked his identification; however, she misread the date of birth. Ms. Towsley added the bartender was criminally charged, but was found not guilty in court. Following the violation, the bartender has attended a class to receive additional training.

Ms. Towsley stated the business makes contributions to many local charities. She expressed the penalty would be a hardship for the business, explaining their insurance agent had informed them their liquor liability policy might be dropped with a violation. Ms. Towsley added the business employs approximately 35 people. Mrs. Towsley also exhibited signs they have posted at the business. Ms. Towsley explained they have a good relationship with the police department.

Darryl Humphrey stated they had not had previous violations or warnings. He explained he is at the business every night and watches over the door and was the person who instructed the bartender to check identification in this instance. He added the bartender accompanied them to the Commission meeting so she could understand the seriousness of the violation. Mr. Humphrey stated they were asking for leniency. Mr. Humphrey explained the officer, upon presenting the violation paperwork, stated they were not a place of interest and did not have problems.

Commissioner Herring asked the age of the minor. The bartender stated his date of birth was July 15, 1999, but she read the date as 1996. Assistant Counsel Missy Welch stated the minor was 18 at the time of the violation.

Chairman Guy conferred with Commissioner Herring and also asked Ms. Welch to come forward.

Chairman Guy stated they presented a convincing case; however, underage sales cannot be tolerated, as mistakes often lead to deaths. Chairman Guy explained the penalty for a sale to underage is usually \$2,000.00 and the penalty had already been reduced to \$1,000.00 in consideration of the information presented to the ABC Commission attorney. Chairman Guy stated the penalty will stand.

Mrs. Metz stated Glenn Lassiter was present on behalf of his client, Food Lion 486, for case number 65. Mr. Lassiter stated the Offer in Compromise had been signed for a penalty of a 3-day active suspension with the payment of a \$3,000.00 fine. Mr. Lassiter stated he wished to request relief regarding the 3-day suspension. Mr. Lassiter acknowledged the sale was made to an 18 year old and the identification was not checked. The clerk had explained the individual was a regular customer and he did not check the identification, which Mr. Lassiter stated was against company policy.

Commissioner Herring stated this was the business' third violation within a three-year period. After conferring with Chairman Guy, Commissioner Herring made a motion to add an offer in compromise for a \$3,000.00 penalty for a failure to supervise violation and increase the penalty for the sale to underage to \$5,000.00. Chairman Guy seconded the motion. Motion Passed.

Chairman Guy recognized Alex Panko, a student at UNC Greensboro serving as an intern assisting the Underage Initiative.

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 remaining Offers in Compromise. Chairman Guy seconded the motion. Motion Passed.

Chairman Guy recognized Joe Wall and stated his appreciation for the work done by the ABC Boards.

## **II. ABC STORE LOCATION – CONCORD ABC BOARD**

Administrator Robert A. Hamilton stated the Concord ABC Board had requested approval to lease property to open and operate a new ABC Store at 2940 Derita Road Unit 10 in Concord, North Carolina. Mr. Hamilton stated the Board hopes to open the new store by September 2018.

Mr. Hamilton stated the property is zoned MXC-2 (Mixed Commercial) and allows for an ABC Store. The property is owned by Concord Retail Associates of Charlotte and there are no personal or financial interests shared between the property owner and the Concord ABC Board members. Financial disclosure forms have been provided by the Board members. Mr. Hamilton stated the rental price in the letter of intent is \$35.00/SF with a \$5.00/SF CAM.

The proposed location is 2,800 SF, of which approximately 2,100 SF will be used for retail space. Mr. Hamilton explained the proposed store will not offer mixed beverage sales.

Mr. Hamilton stated the nearest school is located approximately 1.4 miles away. The nearest church is located approximately .9 miles away. Mr. Hamilton explained there are three ABC Stores in the area; each located approximately 3 miles away. Two are operated by the Concord ABC Board and the other by the Mecklenburg County ABC Board.

Mr. Hamilton stated the notice to the public was properly posted at the location on April 17, 2018. Mr. Hamilton stated nine comments have been received by the ABC Board. Five were objections and four comments were in support of the store. Mr. Hamilton stated the main objections were either the store would not also offer beer and wine sales or because it might conflict with a taco shop located in the same shopping center.

Mr. Hamilton stated the anticipated first year sales are \$1,311,000.00. Mr. Hamilton stated staff recommended approval of the proposed location and added Gary Walker, the Chairman of the Concord ABC Board, was present to answer questions.

Commissioner Herring commented this would be the seventh store for the Concord ABC Board. Mr. Walker confirmed it would and explained this location is near Concord Mills, the outlet shopping

center. Mr. Walker explained there is a density of population with over a thousand new homes being built in the area. Mr. Walker stated the area continues to grow and the Board believes this store would be appropriate. Mr. Walker added the ABC Store which opened one and one-half years prior has sales of \$160,000.00 per month. With this success, Mr. Walker explained the Board will be able to pay off the cost of the land purchase early, eliminating the debt.

Mr. Walker stated the system's annual sales for this year will be \$17,000,000.00 and next year's annual sales are projected to increase to a little over \$19,000,000.00 with the addition of the new store.

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

### **III. ABC STORE LOCATION – SHALLOTTE ABC BOARD**

Mr. Hamilton stated the Shallotte ABC Board had requested approval to open and operate an ABC Store at 105 Wall Street in Shallotte, North Carolina. Mr. Hamilton explained this would involve a property exchange between the Shallotte ABC Board and the Town of Shallotte. Mr. Hamilton added the store needs to be relocated due to a new traffic pattern proposed by the NCDOT. The new store would open tentatively in the fall of 2019. The existing store would be closed upon the opening of the new store.

Mr. Hamilton explained the property is zoned Central Business and allows for an ABC Store. Mr. Hamilton stated the proposed property is owned by the Town of Shallotte and there are no personal or financial interests shared between the property owner and the Shallotte ABC Board members. Financial disclosure forms have been provided by the Board members. Mr. Hamilton added both properties are less than one acre. Mr. Hamilton explained the Board proposes to construct a building of 7,000 SF of which 5,200 SF would be used for retail sales and 1,800 SF for warehouse and office purposes. The cost to build the proposed building is approximately \$1,500,000.00. The Shallotte ABC Board plans to secure a construction loan for the full amount.

Mr. Hamilton stated the nearest school is located approximately .9 miles away. The nearest church is located approximately 380 feet away. The nearest ABC Store, located approximately 80 feet from the proposed store, will be closed upon the opening of the proposed store. The next two nearest ABC Stores are each located approximately 7 miles away. One store is operated by the Brunswick County ABC Board and the other by the Ocean Isle ABC Board.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was posted on May 1, 2018 and no objections had been received to date. Mr. Hamilton stated the projected first year sales are \$2,000,000.00 and staff recommended approval. Mr. Hamilton added general manager Artie Duncan was present with Joel Lovette, if the Commission had any questions regarding the proposed store.

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

#### **IV. ABC STORE LOCATION – WAKE COUNTY ABC BOARD**

Mr. Hamilton stated the Wake County ABC Board requested approval to purchase property and either build a new store or upfit the existing building to open and operate an ABC Store. The proposed store would replace an existing store located approximately 200 feet across the street. Mr. Hamilton explained the existing store is only 3,000 SF which limits the retail sales and storage abilities. The new store located at 6809 Davis Circle in Raleigh, North Carolina would tentatively open in July 2020.

The property is zoned Mixed Use Commercial and allows for an ABC Store. Mr. Hamilton added the proposed property is owned by Troxler Associates, Ltd. Mr. Hamilton stated there are no personal or financial interests shared between the property owners and the Wake County ABC Board members. Financial disclosure forms have been provided by the Board members. The purchase price is \$1,050,500.00 and the property is approximately .92 acres. Mr. Hamilton added there is an existing building on the proposed property of 14,760 SF and explained the Board will research whether to upfit the building or demolish it and build a new one.

Mr. Hamilton stated the nearest school is located approximately 1 mile away. The existing building on the proposed property is currently leased by a church and the next nearest church is located approximately 700 feet away. Mr. Hamilton explained the board intends to allow the church to continue to use the property rent-free until the ABC Board determines how they will proceed with the property. The nearest ABC Store will be closed upon the opening of the proposed store and the next nearest ABC Store is located 2.5 miles away and is also operated by the Wake County ABC Board.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted at the site on April 26, 2018 and no objections have been received. Mr. Hamilton stated the projected first year sales were \$5,700,000.00 and staff recommended approval.

Mr. Hamilton added General Manager Joel Keith had conversations with the current tenant, who understood, regardless of who purchases the property, the church would need to relocate.

Chairman Guy welcomed Mr. Keith and assistant general managers Ike Wheeler and Brian Hicks.

Mr. Wheeler explained the existing store is only able to offer 1,300 brands and the proposed store would be able to offer 1,800 brands. Additionally, the proposed location would have a loading dock which would allow the staff to unload the trucks more efficiently, in 45 minutes. Mr. Wheeler stated of the top 20 ABC Stores in North Carolina, eight are located in Wake County. Mr. Wheeler stated the existing store is ranked number 18 with \$4.7 million in sales. The Board anticipates the sales volume will increase 20% in the new store. Mr. Wheeler stated the sales volumes for the stores in Wake Forest and Cameron Village grew with their new stores. Mr. Wheeler thanked Audit Investigator Edwin Strickland for his work on the report.

Commissioner Herring asked how the Board would use 14,760 SF if they decided to upfit the property. Mr. Wheeler stated they would like to demolish the building and build a store with 8,000 SF which would allow 5,000 SF to be used for retail space and 3,000 SF for storage.

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

**V. CONSIDERATION OF ADJUSTMENTS – DECREASE BAILMENT SURCHARGE AND INCREASE LOCAL ABC BOARD MARKUP TO BE EFFECTIVE NOVEMBER 1, 2018 – G.S. §18B-203(a)(3) AND (14); 18B-208(b); 18B-804(b)(3) AND (6a)**

Mr. Hamilton stated staff continuously reviews revenues and expenditures as the ABC Commission is a receipt funded agency. Mr. Hamilton stated the Commission ensures proper funds are available to provide the highest level of service to the public.

Mr. Hamilton explained, due to the increase in revenues, staff recommends the bailment surcharge, currently \$1.40 per case, be reduced to \$1.15 per case, for a \$.25 per case reduction. Mr. Hamilton stated, with the historical record of increased case shipments and estimating the future growth of case shipments, the Commission’s annual revenues would be reduced by \$1,646,000.00. Mr. Hamilton added the estimated revenues for the year following this recommended reduction would be \$7,572.00.00. Mr. Hamilton stated staff recommends this reduction be effective November 1, 2018 to coincide with the quarterly price changes.

Mr. Hamilton explained, along with the review of the bailment surcharge, staff reviewed the ABC Boards’ local markup percentage. It is currently 39.5%. With the bailment surcharge reduction, Mr. Hamilton stated staff recommends increasing the Boards’ markup percentage to 39.6%. Mr. Hamilton explained, this increase would allow the Boards to return more funds to their local communities without the need for suppliers to increase their pricing. Mr. Hamilton added the consumers would not experience an increase to their cost for liquor as a result of the increase in the markup percentage. Mr. Hamilton stated staff recommends the reduction of the bailment surcharge from \$1.40 to \$1.15 per case and the increase of the markup percentage from 39.5% to 39.6%.

Chairman Guy stated the ABC Commission had been working on this for some time. He added this is a way for the Commission to show its appreciation for the work of the ABC Boards. Joe Wall of the North Carolina Association of ABC Boards stated they support the increase and appreciate the NC ABC Commission.

Mr. Hamilton explained the recommended changes would benefit the Boards and their communities, not the manufacturers. Commissioner Herring stated the result of reducing the bailment surcharge and increasing the markup percentage would create more profits for the Boards and North Carolina without increasing the costs for the public. Mr. Hamilton confirmed this was the intent of the adjustments.

Commissioner Herring made a motion to follow staff recommendation and decrease the bailment surcharge from \$1.40 to \$1.15 per case and to increase the markup percentage from 39.5% to 39.6%. Chairman Guy seconded the motion. Motion Passed. Chairman Guy stated again this was to give back to the Boards for their hard work.

**VI. CONSIDERATION OF A MERGER OF ABC SYSTEMS BY THE COOLEEMEE ABC BOARD AND THE TOWN OF MOCKSVILLE**

Mr. Hamilton stated under § 18B-703, a merger between ABC Boards must be approved by the Commission. Mr. Hamilton stated the Town of Mocksville and the Town of Cooleemee wish to merge their ABC Systems to create the Mocksville-Cooleemee ABC Board. The Cooleemee ABC Board currently has one ABC Store. Mocksville, by virtue of their vote, is interested in operating an ABC Store.

Mr. Hamilton explained economically, the merger benefits both systems as they would be able to reduce staffing costs. If merged, each system would not be required to employ both a general manager and a finance manager as required by law. Mr. Hamilton stated Laurie Lee had spent a large amount of time with the towns and assisted with the negotiations to create the proposal being submitted.

Mr. Hamilton explained the merger would create a new ABC Board and the Cooleemee ABC Board would be dissolved. The Mocksville-Cooleemee ABC Board would have five members, three appointed by the Town of Mocksville and two appointed by the Town of Cooleemee. Mr. Hamilton explained for the first five years, the profits would be divided equally. Following this period, the mixed beverage sales would be divided 70% to Mocksville and 30% to Cooleemee. The in-store profits would be distributed as a percentage of sales made by each individual store.

Mr. Hamilton stated staff recommends approval of the merger. Mr. Hamilton added, hopefully other Boards will also consider mergers to benefit their localities.

Commissioner Herring stated he knew how difficult it is to negotiate a merger and thanked Ms. Lee for her work. He added the merger will benefit the ABC Board system, as well as the two Boards. Commissioner Herring made a motion to follow staff recommendations and approve the merger. Chairman Guy also thanked Ms. Lee for her dedication and seconded the motion. Motion passed.

**VII. EXEMPTION REQUEST – G.S. § 18B-1116(b) – THE UNKNOWN BREWING COMPANY, LLC; THE UNKNOWN BARREL WORKS, LLC AND JAMES B. SHELL**

Mrs. Metz stated James B. Shell is an owner and manager of both the Unknown Brewing Company and the Unknown Barrel Works. Mrs. Metz explained the distillery has not yet opened, but will lease space in the basement of the brewery and intends to apply for ABC distillery permits. Mrs. Metz explained the co-ownership of Mr. Shell, as well as the co-management of the distillery and the brewery, as the reason for the exemption request.

Mrs. Metz stated there would not be tied house issues as the distillery products would not be sold to the brewery as it only holds malt beverage permits. Additionally, the distillery would not be able to have permits to sell the brewery products. Mrs. Metz stated staff recommended approval of the exemption request.

Commissioner Herring inquired what the distillery would be producing. Mrs. Metz stated gin and rum products of less than 5,000 barrels per year.

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

**VIII. EXEMPTION REQUEST – G.S. § 18B-1116(b) – DURHAM DISTILLERY, LLC AND THIRTY-THREE HOLDINGS, LLC, d/b/a THE CORPSE REVIVER**

Mrs. Metz stated the owners of the distillery, Lee and Melissa Katrincic, wish to own and operate a retail business operating as a private club. Mrs. Metz explained the retail business will offer a wide variety of North Carolina spirits and other spirits, as well as North Carolina beer and wine. Any products produced by the distillery would be a minor percentage of alcohol sales at the retail business

and would be purchased through the designated ABC Store. Mrs. Metz stated staff recommended approval of the exemption request.

Lee Katrincic stated he was the distiller and a cofounder of Durham Distillery and was available to answer questions. Commissioner Herring inquired what products they will produce. Mr. Katrincic stated the distillery is currently operating in North Carolina, producing gin, cucumber vodka and liqueurs.

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

**IX. OTHER BUSINESS – LOUISBURG ABC BOARD**

Mrs. Metz requested this item be removed from the agenda as a temporary solution had been reached.

Commissioner Herring made a motion to remove this item from the agenda. Chairman Guy seconded the motion. Motion Passed.

**X. PUBLIC HEARING ON PERMANENT GROWLER AMENDMENT RULES – RULES 14B NCAC 15B .0217, .0220; 15C .0302, .0303, .0304, .0307, .0308 AND .0403**

Chairman Guy opened the public hearing on the permanent growler rules proposed on March 7, 2018. Chairman Guy stated no comments have been received.

Walker Reagan, rules coordinator stated the temporary rules were adopted last fall and this process is to convert the temporary rules into permanent rules. Mr. Reagan stated the permanent growler rules were proposed on March 7, 2018. The notice of public hearing and notice of the public written comment period were published in the NC Register on April 2, 2018 and posted on the ABC Commission's website and emailed to the rulemaking committee also on April 2, 2018. The public hearing was properly noticed for June 13, 2018 at 10:00 am. The public comment period was also noticed to end on June 13, 2018 at 10:00 am. The statutory time periods of public hearing at least 15 days after publication and receiving written comments for at least 60 days after publication have been complied with. Mr. Reagan stated no comments have been received to date.

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

**XI. CONSIDERATION OF ADOPTION OF PERMANENT GROWLER AMENDMENT RULES – RULES 14B NCAC 15B .0217, .0220; 15C .0302, .0303, .0304, .0307, .0308 AND .0403**

Mr. Reagan stated after the rules were proposed and published in the NC Register, it was discovered there were some nonconforming issues relevant to the malt beverage labels in 15C .0303 and the wine labels in 15C .0304. Mr. Reagan stated staff recommends the Commission adopt the Permanent Growler Amendment rules as published in the NC Register with the changes presented today including the non-substantive changes made to the rules regarding the labels. Mr. Reagan recommended the Commission direct the rules be filed with the Office of Administrative Hearings for approval by the



Rules Review Commission and publication in the NC Administrative Code. Mr. Reagan also recommended the Commission authorize staff to make any non-substantive changes in the adopted rules as needed prior to publication, including spelling, punctuation, grammar and other technical changes and corrections.

Chairman Guy made a motion to adopt the Permanent Growler Amendment rules as recommended and presented by staff. Commissioner Herring seconded the motion. Motion Passed.

Chairman Guy thanked those in attendance, as well as the ABC Commission staff. With no further business, the meeting adjourned.

*Approved at the July 11, 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