

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 14, 2018**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held at 400 East Tryon Road in Raleigh, North Carolina on November 14, 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. called the Commission Meeting to order, thanking those present for their attendance. Chairman Guy added he was proud of the ABC Commission staff and their work.

Chairman Guy asked for a moment of silence to remember former ABC Commissioner Ricky Wright who had recently passed away.

Chairman Guy recognized Veterans' Day and those who have served and stated we should not take our freedoms for granted. Chairman Guy asked those in attendance, who are serving in the Reserves or have served in the Armed Forces, to please rise. As they stood, Chairman Guy thanked them for their service.

Chairman Guy welcomed Representative Chuck McGrady's staff member, Harry Riegel.

Chairman Guy explained Administrator Agnes Stevens was absent as she was attending a hearing. Deputy Director Terrance Merriweather would speak in her stead.

Chairman Guy introduced himself and Commissioner Norman A. Mitchell, Sr.

MINUTES OF THE OCTOBER 10, 2018 COMMISSION MEETING

Chairman Guy asked for a motion to waive the reading of the minutes of the October 10, 2018 meeting into the record. Commissioner Mitchell 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 October 10, 2018 meeting. Commissioner Mitchell 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 Mitchell 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 – 95

Chief Counsel Renee C. Metz stated no one was present regarding a case. Mrs. Metz explained case number 17 had previously been on an agenda, but corrections to the compliance dates were necessary and an amended Offer in Compromise was on the agenda. Mrs. Metz asked the Commission to ratify the Offers in Compromise.

Chairman Guy made a motion to ratify the Offers in Compromise. Commissioner Mitchell seconded the motion. Motion Passed.

Chairman Guy recognized Assistant Counsel LoRita Pinnix and her service in the Legal Division. Chairman Guy explained Ms. Pinnix was retiring in December and this meeting would be her last official Commission Meeting. Chairman Guy thanked Ms. Pinnix for her service, stating she would certainly be missed.

II. ABC STORE LOCATION – WHITEVILLE ABC BOARD

Deputy Director Merriweather stated two ABC Boards had requested approval from the NC ABC Commission to open new stores.

Mr. Merriweather stated on September 25, 2018, the NC ABC Commission received a request from the Whiteville ABC Board, requesting approval to purchase property to open and operate an ABC Store at 302 Oak Street in Whiteville, North Carolina. Mr. Merriweather stated on September 26, 2018, Audit Investigator James Casteen met with Gary Bass, the chairman of the ABC Board. Mr. Merriweather explained a new project proposed by the NCDOT required the existing store to be relocated.

Mr. Merriweather stated the proposed property is zoned Highway Business and allows for an ABC store. There are no personal or financial interests shared between the property owner and the Whiteville ABC Board members. Mr. Merriweather stated the proposed building would be 4,000 SF with approximately 2,500 SF used as retail space and 1,500 SF as warehouse space.

Mr. Merriweather added the nearest school, Whiteville High School, is approximately 1.5 miles from the proposed location. The nearest churches are Grace Bible Church and St. James AME Church; each is approximately .8 miles from the proposed location.

Mr. Merriweather explained, currently the nearest ABC Store is located at 112 South J K Powell Boulevard approximately 1.2 miles from the proposed location.

Mr. Merriweather stated notice to the public was properly posted on September 26, 2018 and three objections to the new store had been received. Mr. Merriweather explained one person had made two of the objections and they were concerns regarding traffic and the clients.

Mr. Merriweather stated the predicted first year's sales are to increase \$300,000.00 over the existing store's previous year's sales. Mr. Merriweather stated staff recommended approval of the proposed location.

Chairman Guy asked if anyone was present to speak to the Commission regarding the proposed store. As no one was present, Commissioner Mitchell made a motion to approve the proposed location upon staff recommendation. Chairman Guy seconded the motion. Motion Passed.

III. ABC STORE LOCATION – PERSON COUNTY ABC BOARD

Mr. Merriweather stated on September 21, 2018, the Person County ABC Board requested approval to purchase property to open and operate an ABC Store near Highway 501/Durham Road and NC Hwy 57 in Person County, North Carolina. Mr. Merriweather added Michael Laws was the Chair of the Person County ABC Board. Mr. Merriweather stated the investigation was conducted by ABC Commission Audit/Investigator Edwin Strickland.

Mr. Merriweather stated the proposed location is located approximately 1.2 miles from the existing ABC store. The proposed property was zoned B-1 and allows for an ABC Store. Mr. Merriweather added there are no personal or financial interests shared between the property owner and the Person County ABC Board members.

Mr. Merriweather explained the ABC Board plans to build a 4,500 SF building, of which 2,700 SF would be used for retail space.

Mr. Merriweather stated the nearest school, Helena Elementary School, is located approximately 3.1 miles away from the proposed location. Mr. Merriweather stated the nearest church, Calvary Independent Baptist Church, is located approximately .6 miles away. Mr. Merriweather explained the next nearest ABC Store is located approximately 11.7 miles from the proposed store site.

Mr. Merriweather stated the notice to the public was properly posted at the location as required. Mr. Merriweather stated no objections or concerns had been received by the Person County ABC Board and the anticipated first year sales are \$1,200,000.00.

Mr. Merriweather stated staff recommended approval of the proposed location.

Chairman Guy asked if anyone was present to speak to the Commission regarding the proposed store. As no one was present, Commissioner Mitchell made a motion to approve the proposed location upon staff recommendation. Chairman Guy seconded the motion. Motion Passed.

IV. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – BRANDON RUSSELL; STEPHEN RUSSELL; 580 CRAFT BEER, LLC; AND THIRSTY SKULL BREWING, LLC

Mrs. Metz explained Attorney John Szymankiewicz was present to answer questions on behalf of his clients for this exemption request and the following exemption request. Mrs. Metz provided an overview of the exemption requests.

Mrs. Metz explained Stephen Russell and Brandon Russell each own 50% of 580 Craft Beer, a retail store. Both also own 25% each of Thirsty Skull Brewing and the brewery is projected to open in 2019.

Mrs. Metz stated 580 Craft Beer holds retail permits and does not have commercial permits. Thirsty Skull has obtained its Federal Brewers Notice and plans to brew fewer than 500 barrels per year. Mrs. Metz explained Thirsty Skull will not hold retail permits and does not intend to have a retail operation. Thirsty Skull wishes to sell its brewery products to 580 Craft Beer and any other retailers who are interested in purchasing it.

Mrs. Metz explained an exemption is necessary due to the concurrent ownership between the retail business and the brewery. Mrs. Metz explained staff recommends approval with the condition that an

independent manager at 580 Craft Beer would have the operational control over the ordering of malt beverages. Thirsty Skull products at the retail outlet would not be more than its fair market share. The brewery must make a good-faith effort to find an independent, third-party wholesaler. With this exemption, the brewery must also remain under 5,000 barrels per year and the retailer must continue to offer other products.

Chairman Guy asked if anyone was present to speak to the Commission regarding the proposed store. As no one was present, Commissioner Mitchell made a motion to follow staff's recommendation and approve the exemption request. Chairman Guy seconded the motion. Motion Passed.

V. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – PAUL CASEY; FRENCH BROAD BREWING COMPANY, LLC DBA FRENCH BROAD RIVER BREWERY; FUELING ALPHA, LLC; AND EBC BREWERY, LLC DBA BIG BOSS BREWERY

Mrs. Metz explained both French Broad and Big Boss hold retail and commercial permits. Mrs. Metz stated Paul Casey serves as the manager and owns 51% of French Broad and his wife owns the remaining 49%. Mrs. Metz explained Mr. Casey is also manager and 25% owner of Fueling Alpha. Fueling Alpha has three other 25% owners. Fueling Alpha has purchased a 40% ownership interest of Big Boss. The exemption is necessary due to Mr. Casey's concurrent ownership in the retail businesses and the parent company of the brewery.

Mrs. Metz stated neither retail location will offer other breweries' products and will feature products from its own brewery. Mrs. Metz explained if a retail business were to sell the other brewery's products there must be an independent manager with control over the ordering of malt beverages. Mrs. Metz added good-faith efforts would be made to find an independent, third-party wholesaler. Mrs. Metz stated staff recommends approval of the exemption request with these conditions.

Chairman Guy asked if anyone was present to speak to the Commission regarding the proposed store. As no one was present, Chairman Guy made a motion to follow staff's recommendation and approve the exemption request. Commissioner Mitchell seconded the motion. Motion Passed.

VI. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – LEGION CAPITAL TOWERS, LLC; LEGION BREWING COMPANY, LLC; PHILIP BUCHY, IV; JOSEPH NEWTON CARVER, II

Mrs. Metz stated attorney Christian Staples was present to answer questions on behalf of his clients. Mrs. Metz stated she would provide an overview of the exemption request.

Mrs. Metz explained Philip Buchy owns 51% and Joseph Craver owns 49% of Legion Brewing Company which holds commercial and retail permits. Legion Brewery anticipates producing approximately 8,000-9,000 barrels in 2019.

Mrs. Metz explained they are trying to open a second retail location and potentially a second brewery. Mrs. Metz explained because of personal liability and guarantor issues, they formed a new entity, Legion Capitol Towers, LLC. Mrs. Metz stated they were not anticipating it to be an independent and separate business, but it was necessary because of lease terms. Mr. Buchy owns 51% and Mr. Craver owns 49% of Legion Capitol Towers. Mrs. Metz explained they wished Legion Brewing SouthPark to be part of the brewery permit as the second retail location of the brewery.

Mrs. Metz explained the allowance is for a brewery to have three external retail locations. Mrs. Metz stated this exemption is necessary as the business will be operated under a different LLC. Mrs. Metz stated they are still working out issues with TTB, so it is possible this exemption will become moot in the future.

Mrs. Metz stated staff recommends approval of the exemption request with the condition the additional retail outlet is treated as the second retail location for Legion Brewing.

Chairman Guy asked if anyone was present to speak to the Commission regarding the proposed store. As no one was present, Chairman Guy made a motion to follow staff's recommendation and approve the exemption request. Commissioner Mitchell seconded the motion. Motion Passed.

VII. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – BILLY BEER, INC.; ON THE WATERFRONT, LLC; UPTOWN BREWING COMPANY, LLC; BILLY R. DUNN; DONALD DUNN; AND BENJAMIN SELF

Mrs. Metz stated no one was present on behalf of this request. Mrs. Metz explained Billy Dunn owns 80% of On the Waterfront, a restaurant which has held retail permits for seven years. Mrs. Metz explained, additionally, Billy Dunn owns 1/3 of Uptown Brewing Company which holds retail and commercial permits. Donald Dunn and Benjamin Self each own 1/3 of Uptown Brewing. Mrs. Metz explained Billy Dunn also owns 33.3% of Billy Beer which has applied for commercial permits. Donald Dunn and Benjamin Self also each own 10.4% of Billy Beer.

Mrs. Metz explained the exemption request is for the concurrent ownership in Billy Beer and Uptown Brewing by Billy Dunn, Donald Dunn and Benjamin Self; and, Billy Dunn's additional concurrent ownership in On the Waterfront.

Mrs. Metz stated staff recommends approval of the exemption request with the following condition. Billy Beer products, as well as Uptown Brewing products, will be sold through a third-party, independent distributor. Mrs. Metz stated there will not be any direct shipments from the producers to the retail businesses.

Chairman Guy asked if anyone was present to speak to the Commission regarding the proposed store. As no one was present, Commissioner Mitchell made a motion to follow staff's recommendation and approve the exemption request. Chairman Guy seconded the motion. Motion Passed.

VIII. CONSIDERATION OF ADOPTION OF PERMANENT HOMEBREW RULES – RULES 14B NCAC 15A .2301 - .2307

Chairman Guy recognized Walker Reagan, the rules coordinator to provide recommendations for the proposed permanent homebrew rules up for consideration. Mr. Reagan provided drafts of the proposed rule to the Commission. Mr. Reagan explained the homebrew rules were proposed by the ABC Commission at its meeting on August 8, 2018.

Mr. Reagan stated the proposed rules, the notice of public hearing and notice of the public written comment period were filed with the Office of Administrative Hearings on August 13, 2018. The proposed rules were posted on the ABC Commission website and emailed to the ABC Commission rulemaking mailing list, also on August 13, 2018; and, were published in the NC Register on September 4, 2018.

Mr. Reagan stated the public hearing was properly noticed and held October 10, 2018 at 10:00 am. The public comment period was noticed to end on November 5, 2018. Mr. Reagan stated the statutory time periods for holding a public hearing of at least 15 days after publication and the receiving of written comments of at least 60 days after publication have been complied with.

Mr. Reagan explained the public comments on the proposed rules were received at the public hearing from everyone who requested to speak. Twelve individuals, including persons representing homemakers, competition organizers, competition judges, brewers, homebrewer associations, and homebrew clubs, spoke at the public hearing. Mr. Reagan added forty-eight sets of written comments from forty different individuals were received during the written comment period and were provided to the ABC Commission for review.

Mr. Reagan stated, as a result of the comments heard at the public hearing and the written comments received by the Commission, the staff was recommending the following non-substantive changes to the published proposed rules:

- a. Elimination of the requirement that a homemaker club collect a membership fee.
- b. Clarify that a homemaker club membership application and membership list may be produced or maintained electronically.
- c. Allow identified stewards to consume at competitions.
- d. Allow competition areas in retail permitted premises to be segregated by curtains, partitions, or other structures in addition to doors, that visibly separate the competition areas from areas open to the general public at that time.
- e. Allow competition areas in commercial permitted premises to be in areas of the premises without active production.
- f. Elimination of the requirement that attendees of a home product production education meeting be dues paying members of the organization sponsoring the education meeting.
- g. Clarify that possession of homemade product not held on retail or commercial permitted premises for competition purposes can be transferred to an individual acting on behalf of the organizer or sponsor of the competition by a written acknowledgment and assumption of custody, control and liability by the person taking possession.
- h. Clarify that fees can be charged for entering into the site of a competition, for entering homemade products in a competition to be judged, and for participating in a home product production education meeting.

Mr. Reagan stated the Commission may consider the adoption of the rules and recommended that the Commission adopt the Permanent Homebrew rules as published in the NC Register, with the changes presented; direct these rules be filed with the Office of Administrative Hearings for approval by the Rules Review Commission and publication in the NC Administrative Code; and authorize staff to make any non-substantive changes in the adopted rules as needed prior to publication.

Commissioner Mitchell made a motion that the ABC Commission adopt the permanent homebrew rules as published in the NC Register with the changes presented and the recommendations of the staff regarding the rules as presented. Chairman Guy seconded the motion. Motion Passed.

IX. CONSIDERATION OF PROPOSAL OF PERMANENT REISSUE NONPROFIT SPECIAL PERMITS – RULE 14B NCAC 15B .0114

Chairman Guy recognized Mr. Reagan to provide an overview of the proposed reissue nonprofit special permit rule. Mr. Reagan provided drafts of the proposed rule to the Commission. Mr. Reagan explained in

the past legislative session, the General Assembly enacted G.S. 18B-903A authorizing the Commission to reissue certain limited special occasion permits and special one-time permits to nonprofit organizations if the same person representing the organization requests the reissuance for the same location within 18 months of the initial issuance. The reissue process requires an abbreviated application and the payment of a permit fee equal to the initial fee.

Mr. Reagan explained rules are needed to define how the 18-month time period is calculated under this statute; what previous permit serves as the basis for purposes of a reissuance for the 18-month time period; and, how often a permit can be reissued based on the initial issuance. Mr. Reagan stated the statute became effective on October 1, 2018.

Mr. Reagan stated staff recommends the Commission propose the Nonprofit Special Permit Rule as presented. Mr. Reagan requested the proposed rule be filed with the Office of Administrative Hearings for publication in the NC Register; copies be sent to the ABC Commission rulemaking committee email list and, posted on the Commission website. Mr. Reagan also requested the Commission schedule a public hearing for February 13, 2019; set a public comment period be open through February 15, 2019; and, authorize staff to make non-substantive changes to the proposed rules as needed.

Commissioner Mitchell made a motion for the ABC Commission to propose the Reissue Nonprofit Special Permit Rule as presented and the recommendations of staff. Chairman Guy seconded the motion. Motion Passed.

X. OTHER BUSINESS –

No one else was present to address the Commission. Chairman Guy wished everyone a Happy Thanksgiving and thanked those in attendance, as well as the ABC Commission staff. And with no further business, the meeting was adjourned by Chairman Guy.

A.D. “Zander” Guy, Jr., Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

Caroline Y. Washburn for the Legal Division