

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
FEBRUARY 13, 2019**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held at 400 East Tryon Road in Raleigh, North Carolina on February 13, 2019, 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. welcomed those in attendance. Chairman Guy stated he was proud of the ABC Commission's employees and their work. Chairman Guy added customer service and innovations are very important to the Commission. He stated the Commission strives to improve daily in the ways it serves the various agencies and permittees across the State. Chairman Guy thanked the staff.

Chairman Guy welcomed the approximately twenty agents present. Chairman Guy thanked them for their service and stated he felt the ALE relationship with the ABC Commission is better than it has ever been before. Chairman Guy stated the Commission was glad to have as Deputy Director, Terrance Merriweather, who was the former Branch Head of the ALE headquarters; and thanked him for creating the dialogue with ALE.

Chairman Guy called the Commission Meeting to order.

MINUTES OF THE JANUARY 16, 2019 COMMISSION MEETING

Commissioner Mitchell made a motion to waive the reading of the minutes of the January 16, 2019 meeting into the record. Chairman Guy seconded the motion. Motion Passed.

Commissioner Mitchell made a motion to approve the minutes of the January 16, 2019 meeting. 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 – 76

Chief Counsel Renee C. Metz requested case numbers 1 and 2 be removed from the agenda. Mrs. Metz explained they were contested cases; however, there had been service issues with both. Additionally, the Administrative Law Judge has ordered the reopening of case number 1 for further negotiation. Mrs. Metz stated the Legal Division had reached a tentative settlement with the attorney for case number 2 who had asked for the matter to be addressed at the April Commission Meeting.

Chairman Guy made a motion to remove case numbers 1 and 2 from the February 13, 2019 agenda. Commissioner Mitchell seconded the motion. Motion Passed.

Chairman Guy stated the General Assembly is in session and welcomed Harry Riegel, an aide for Representative Chuck McGrady. Chairman Guy thanked him for attending the meetings and for the work they do.

As no one was present regarding a case, Mrs. Metz asked the Commission to ratify the remaining Offers in Compromise.

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

II. ABC STORE LOCATION – WHITEVILLE ABC BOARD

Administrator Agnes C. Stevens stated on January 8, 2019, the Whiteville ABC Board requested approval from the NC ABC Commission to operate a temporary ABC Store at 32 Hill Plaza in Whiteville, North Carolina. Ms. Stevens stated on January 9, 2019, Audit Investigation Division Assistant Director James Casteen delivered investigative documents to the Board.

Ms. Stevens explained the Whiteville ABC Board was established in 1967 and has only one store operating at this time. In November 2018, the NC ABC Commission approved a location for a new store. Additionally, the existing store must be vacated by March 2019 for a NCCOT project. The proposed store will be temporary until the new store can be built.

Ms. Stevens stated the proposed property is zoned Highway Commercial and allows for an ABC Store. The property is owned by Hill's South Whiteville Village Shopping Center, LLC. Ms. Stevens explained on January 24, 2019, Mr. Casteen spoke with an agent of the shopping center and confirmed there are no conflicts between the property owners, the Town of Whiteville and the Whiteville ABC Board members. Ms. Stevens added financial disclosure forms have been provided by the Board members.

Ms. Stevens stated the nearest school, Whiteville High School, is located at 413 North Lee Street in Whiteville approximately 1.5 miles away. Ms. Stevens stated the nearest church, Grace Bible Church, located at 1846 South J K Powell Boulevard in Whiteville is approximately .9 miles away.

Ms. Stevens stated the nearest ABC Store, located at 112 South J K Powell Boulevard in Whiteville, is approximately 1.2 miles from the proposed location. The next closest store is located at 1493 Vincent Boulevard in Brunswick, North Carolina. It is located approximately 2.2 miles away and is the only store operated by the Brunswick ABC Board.

Ms. Stevens stated the notice to the public was properly posted at the location on January 4, 2019 and witnessed by Mr. Casteen on January 9, 2019. Ms. Stevens stated no objections have been received and staff recommended approval of the proposed location.

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

III. ALAMANCE MUNICIPAL ABC BOARD MERGER AGREEMENT

Mrs. Metz explained the General Statutes require any merger agreement between ABC Boards must have the approval of the NC ABC Commission. Mrs. Metz stated this merger agreement from Alamance County is between Burlington, Graham, Mebane and Swepsonville. Mrs. Metz stated the town attorney for Swepsonville, Paul Koontz, is present to answer any questions. Mrs. Metz added there is a lot of history set forth in the agreement. Mrs. Metz stated, as they have come to an agreement, staff recommends the Commission's approval.

Commissioner Mitchell made a motion to approve the proposed merger agreement. Chairman Guy seconded the motion. Motion Passed.

Chairman Guy thanked Mr. Koontz for attending the Meeting as well as a representative of Whiteville.

IV. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – STEM CIDERS, LLC; STEM CIDERS DURHAM, LLC

Mrs. Metz explained this is an out-of-state cidery which has joint ownership in a Durham restaurant. Mrs. Metz stated as an out-of-state cidery, an in-state wholesaler is required for Stem Ciders. Mrs. Metz added the exemption will be a standard exemption, requiring there not be a greater percentage of Stem Cider products offered than their fair market share. Mrs. Metz stated staff recommends approval.

Attorney Jennifer Morgan stated Stem Ciders acquired Black Twig Cider Company in Durham. Ms. Morgan explained the request was necessary due to their ownership interest in a retail business. Mrs. Morgan stated the restaurant plans to open in the Spring and added the trade name will be changed to Northern Spy.

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

V. PUBLIC HEARING ON PROPOSED PERMANENT NONPROFIT SPECIAL PERMITS RULE – 14B NCAC 15B .0114

The public hearing on the permanent Nonprofit Special Permits Rule was opened. Chairman Guy recognized Walker Reagan, the rules coordinator, to provide an overview. Mr. Reagan provided drafts of the proposed rule to the Commission. Mr. Reagan explained on November 14, 2018, the Commission proposed the permanent Reissue Nonprofit Special Permits Rule. Mr. Reagan stated the proposed rule; the notice of public hearing; and, notice of public written comment period were filed with the Office of Administrative Hearings on that same date and were published in the NC Register on December 17, 2018. Mr. Reagan stated copies of the notice of text and the proposed rule were posted on the Commission website on November 14, 2018. They were emailed to the ABC Commission rulemaking committee mailing list on November 15, 2018.

Mr. Reagan stated the public hearing was properly noticed for February 13, 2019 and the public comment period was noticed to be open through February 15, 2019. Mr. Reagan explained the statutory time period after publication for the public hearing of 15 days had been complied with. Mr. Reagan stated no written comments have been received since the proposed rule was published. Mr. Reagan explained, as the public comment period runs through February 15, 2019, the Commission could not consider the adoption of the rule during the February meeting, but would be able to do so at its March 2019 meeting.

Chairman Guy asked if there was anyone present who wished to address the Commission regarding the proposed rule. As no one was present, Chairman Guy closed the public hearing.

VI. CONSIDERATION OF ADOPTION OF PERMANENT PERMITTEE SAMPLING LIMITATION RULE – RULE 14B NCAC 15B .0209

Chairman Guy recognized Mr. Reagan to provide an overview of the proposed permanent Permittee Sampling Limitation Rule.

Mr. Reagan provided drafts of the proposed permanent rule to the Commission. Mr. Reagan stated the permanent Permittee Sampling Limitation Rule was proposed by the Commission at its meeting on October 10, 2018. Mr. Reagan explained the proposed rule was submitted to the Office of Administrative Hearings on October 10, 2018. The proposed rule, the notice of public hearing and notice of the public written comment period were posted on the ABC Commission website and emailed to the ABC Commission rulemaking mailing list on October 10, 2018 and were published in the NC Register on November 1, 2018.

Mr. Reagan stated the public hearing was properly noticed for and held on January 16, 2019. The public comment period was also noticed to be run until January 16, 2019. Mr. Reagan explained the statutory time periods after publication for the public hearing of at least 15 days and the receiving of written comments of at least 60 days, had been complied with. Mr. Reagan stated no written comments have been received since the proposed rule was published.

Mr. Reagan stated, at the public hearing on January 16, 2019, the ABC Commission heard comments from Richard Greene, Executive Director of the NC Craft Brewers Guild. Mr. Greene asked the Commission to consider amending the proposed rule before adoption to allow for permittees and their employees to pour or serve samples under certain conditions after having sampled alcoholic beverages for quality assurance purposes; including testing to be sure any detergent in dispensing lines was cleared before samples were given to the public.

Mr. Reagan explained the Commission could now consider the adoption of this rule. Mr. Reagan stated Mr. Greene was present and explained staff had worked with the NC Brewers Guild and the revised proposed rule with those changes was presented at this meeting. Mr. Reagan stated staff recommends the adoption of the permanent Permittee Sampling Limitation Rule as published in the NC Register with the changes presented at this meeting. Mr. Reagan requested the Commission direct this rule 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 requested the Commission authorize staff to make non-substantive changes to the adopted rule as needed.

Chairman Guy asked Mr. Greene if he had any questions or comments. Mr. Greene thanked Mrs. Metz and Mr. Reagan, as well as their staff, for their work on the proposed rule. Mr. Greene thanked ALE who also had input in the proposed rule. Mr. Greene stated this proposed rule was fair to the industry and serves the public well. Mr. Greene thanked everyone again and stated he appreciated the Commission's consideration.

Commissioner Mitchell made a motion for the ABC Commission to adopt the Permanent Permittee Sampling rule as published in the NC Register with the changes presented and with the recommendations of staff. Chairman Guy seconded the motion. Motion Passed.

VII. OTHER BUSINESS –

Ms. Stevens stated the Commission had received a request from Mt. Pleasant. Ms. Stevens explained the Town of Mt. Pleasant had recently increased the number of members on its ABC Board from 3 to 5 members. Ms. Stevens explained the mayor had asked a local business owner to apply for one of the vacant seats. Ricky L. Lambert owns Ricks Food Mart and Café which holds an off-premise malt beverage permit. Ms. Stevens stated the Board has requested an exemption from the Commission to allow Mr. Lambert to fill one of the vacant seats. Ms. Stevens stated the Board believes Mr. Lambert has no conflicts of interest, as he does not sell wine or spirituous liquor at his establishment. Ms. Stevens stated staff recommends the exemption be granted.

Chairman Guy made a motion to grant the exemption as requested and recommended by staff. Commissioner Mitchell seconded the motion. Motion passed.

Chairman Guy confirmed with Ms. Stevens and Mrs. Metz there was no further business. As no one else was present to address the Commission, Chairman Guy thanked those in attendance. The meeting was adjourned by Chairman Guy.

Approved at the March 13, 2019 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