

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MARCH 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 March 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

The Commission Meeting was called to order and Chairman A.D. Zander Guy, Jr. welcomed those in attendance. Chairman Guy stated the NC ABC Commission appreciates the members of the North Carolina General Assembly and their work for the citizens of North Carolina. Chairman Guy stated the General Assembly has a toiling task. The agencies of North Carolina and, in this instance, the ABC Commission have a toiling task to provide the information requested by the General Assembly as they try to answer the questions of their constituents.

Chairman Guy expressed his appreciation for Administrator Agnes C. Stevens and the ABC Commission staff as they provide service to the citizens of North Carolina.

Chairman Guy welcomed Harry Riegel of Representative Chuck McGrady's office and thanked him, as he often attends the Commission Meetings.

Chairman Guy also welcomed the Alcohol Law Enforcement agents present. Chairman Guy explained the Commission works closely with ALE as partners. Chairman Guy greeted Interim Branch Head Bryan House, as well as Special Agent in Charge Omar Qureshi of the Charlotte District and Special Agent in Charge Rodney Beckom of the Greensboro District. Chairman Guy thanked them for attending the Commission Meeting.

Chairman Guy expressed his gratitude to ALE for their service; as well as his appreciation for his opportunity to serve the citizens of our State.

MINUTES OF THE FEBRUARY 13, 2019 COMMISSION MEETING

Commissioner Mitchell made a motion to waive the reading of the minutes of the February 13, 2019 meeting into the record. Chairman Guy seconded the motion. Motion Passed.

Commissioner Mitchell made a motion to approve the minutes of the February 13, 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 – 71

Chief Counsel Renee C. Metz requested case number 51 be removed from the agenda and tabled. The attorney, Woody Webb, wished to address the Commission regarding the matter, but was unable to attend the meeting due to a conflict.

Chairman Guy stated case number 65 was to be removed from the agenda for additional review and to allow the staff attorney to renegotiate the penalty. Chairman Guy explained a death had occurred in this case and the Commission did not feel the penalty was appropriate.

Mrs. Metz stated Scott Dowd was present on behalf of case number 66, Razzoo's Cajun Café. Mr. Dowd stated he was present to request the Commission, in lieu of a penalty, issue a Written Warning for the violation. Mr. Dowd stated this was their first violation and the business was proud of their clean record.

Assistant Counsel Missy Welch stated the violation occurred during a compliance campaign. Mrs. Welch explained a 19 year-old female was able to purchase a malt beverage after the employee did not check her identification. Mrs. Welch stated she had spoken with Mr. Dowd regarding the Offer in Compromise with a penalty of \$2,000.00 or a 20-day suspension. Mrs. Welch informed Mr. Dowd in consideration of the permittee's 17 years without a violation, the penalty could be lowered to \$1,000.00 or a 10-day penalty. Mr. Dowd still requested a Written Warning rather than a fine or suspension; therefore, Mrs. Welch suggested he come before the Commission.

Chairman Guy stated, although the business has held permits for a long time with a good record, underage sales are very serious. Chairman Guy added the ABC Commission appreciates ALE and supports their work. Chairman Guy stated, the penalty would therefore be reduced by half to \$1,000.00 or a 10-day suspension.

Mr. Dowd stated the business had added layers, including cameras and a We Scan system, and additional training for the staff so an underage sale will not happen again.

As no one else was present regarding a case, Mrs. Metz asked the Commission to ratify the Offers in Compromise with the exclusion of the three previously addressed.

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

II. ABC STORE LOCATION – CHATHAM COUNTY ABC BOARD

Ms. Stevens stated on February 7, 2019, the Chatham County ABC Board requested approval from the NC ABC Commission to operate an ABC Store on Highway 64 East in Apex, North Carolina. Ms. Stevens stated on February 7, 2019, Audit Investigation Division Assistant Director James Casteen began to develop the investigative documents related to this request.

Ms. Stevens stated the proposed property is located near the intersection of Highway 64 East and Farrington Road in an unincorporated part of Chatham County known as Wilsonville. The property is zoned Neighborhood Business and allows for an ABC Store. Mr. Casteen spoke with the owner of the property and confirmed there are no conflicts between the property owners and the Chatham County ABC

Board members. Ms. Stevens added financial disclosure forms have been provided by the Board members.

Ms. Stevens stated the nearest school, Jordan Lake School of Arts, located at 1434 Farrington Road in Apex, is approximately 1.5 miles away. Ms. Stevens stated the nearest church, Ebenezer United Methodist Church, located at 724 Beaver Creek Road in Apex, is approximately .7 miles away.

Ms. Stevens explained the nearest ABC Store, located at 1793 West Williams Street in Apex, is approximately 8.1 miles from the proposed location and operated by the Wake County ABC Board. The next closest ABC store is located at 40120 Moring Drive in Chapel Hill, North Carolina. It is located approximately 8.9 miles away and is operated by the Chatham County ABC Board.

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

Ms. Stevens stated the Chairman of the Chatham County ABC Board, Walter Harris, was present. Mr. Harris deferred to General Manager, Matt Williams who explained the Board wishes to grow with Chatham County and provide for the citizens, especially with the rapid growth in this area.

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

III. ABC STORE LOCATION – WILKESBORO ABC BOARD

Ms. Stevens stated on February 5, 2019, the Wilkesboro ABC Board requested approval from the NC ABC Commission to lease property to build and operate an ABC Store at 185 Brown Ford Road in Wilkesboro, North Carolina. The new store will replace the existing #2 store which is in a leased commercial building located 900 feet to the west of the proposed site.

Ms. Stevens stated on February 6, 2019, ABC Compliance Officer Ralph Ray and Audit Investigation Division Investigator Edwin Strickland contacted the general manager of the Board to research the documentation for the investigation report.

Ms. Stevens stated the proposed location is a portion of the property located at 185 Browns Ford Road in Wilkesboro. Ms. Stevens added businesses within the immediate area include an outbuilding dealer and a carwash. The property is zoned B-2 and allows for an ABC Store. The property is owned by the Town of Wilkesboro and there are no shared interests between the property owner and the Wilkesboro ABC Board members. Ms. Stevens added financial disclosure forms have been provided by the Board members.

Ms. Stevens stated the nearest school, West Wilkes Middle School, located at 1677 NC-16 North near Wilkesboro, is approximately 1.4 miles away. Ms. Stevens stated the nearest church, Pleasant Grove Baptist Church, located at 260 NC-16 North in Wilkes County, is approximately .2 miles away.

Ms. Stevens stated the nearest ABC Store, located at 4061-B US Highway 421 West, is approximately .2 miles from the proposed location and will be closed upon the opening of the new store. The next nearest store is located at 798 Curtis Bridge Road in Wilkesboro approximately 3.7 miles away and is operated by the Wilkesboro ABC Board.

Ms. Stevens stated the notice to the public was properly posted at the location on February 1, 2019. Ms. Stevens stated no objections have been received and staff recommended approval of the proposed location.

The General Manager and the Chief Financial Officer of the Wilkesboro ABC Board were present if there were any questions. They explained the property was owned by the Town and would be leased by the Board from the Town, increasing the Board from one store to two stores.

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) – SKYTOWN BEER COMPANY AND BEER BARRIO COMPANY

Mrs. Metz explained Skytown had previously been granted an exemption in September 2018 regarding concurrent ownership, as long as the Skytown brewery products were not sold in the retail business, Beer Barrio. Mrs. Metz explained Skytown’s business had been affected by the recent hurricane. Mrs. Metz stated, as they try to rebuild, they requested an amendment to the exemption to be allowed to sell Skytown products in Beer Barrio. Mrs. Metz stated the exemption will have the standard conditions of less than 5,000 barrels a year, an independent manager to order the beer, and make a good faith effort to use a third-party wholesaler. Mrs. Metz stated staff recommends approval of an amendment to the exemption.

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

V. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – PINEHURST, LLC (T/A 11 LOCATIONS) AND PINEHURST COUNTRY CLUB, LLC

Mrs. Metz stated this exemption request is an amendment to a previously granted exemption regarding retail establishments.

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

VI. CONSIDERATION OF PROPOSAL OF PERMANENT GENERAL RULES REVIEW – CHAPTER 15A, SECTIONS .0100 THOROUGH .0800 RULES – ABC COMMISSION GOVERNANCE

Chairman Guy recognized Walker Reagan, the rules coordinator, to provide an overview of the proposed Commission Operations Rule Amendments which was before the Commission for consideration.

Mr. Reagan provided drafts of the proposed amendments to the Commission. Mr. Reagan stated, in 2017 the Commission legal staff began a comprehensive review of the ABC Commission’s rules for the purpose of updating, modernizing and conforming the Commission’s rules to the operations of the ABC Commission. Mr. Reagan explained many of the rules have not been amended since 1984, and some not since 1982. Mr. Reagan stated the presented proposed amendments to rules in Chapter 15A, Section .0100 through .0800 are the first set of proposed changes arising from the review.

Mr. Reagan explained most of the changes being proposed are technical, clarifying, or conforming to current law or to Commission policy or practice. Mr. Reagan added none of the proposed changes make any significant substantive changes to current rules.

Mr. Reagan stated the two most significant proposed changes are the consolidation of two sets of definitions applicable to the entire Chapter into a single rule and the elimination of an annual \$15.00 fee for inclusion on the Commission's rulemaking mailing list. Mr. Reagan explained the two sets of definitions are proposed to be consolidated into Rule 15A .0103. The definitions being added to 15A .0103 are recodifications of current definitions in 15C .0101 and no new definitions are being added.

Mr. Reagan explained the proposed change to 15A .0403(c) repeals the rule authorizing the Commission to charge \$15.00 per year to any person asking to be included on the Commission's rulemaking mailing list, which the Administrative Procedures Act requires the Commission to maintain. Mr. Reagan added, despite the fact this rule has authorized the charge since at least 1992, it does not appear a fee has ever been charged or collected for this purpose. Mr. Reagan explained the mailing list is currently maintained electronically and notices to the mailing list are now normally sent by email not US Mail.

Mr. Reagan stated copies of the proposed amendments were circulated to the ABC Commission's rulemaking mailing list in December 2018. Mr. Reagan stated, since that time, only one question or comment had been received and was addressed in the proposed amendments.

Mr. Reagan stated staff recommends the Commission propose the Commission Operating Rule Amendments as presented. Mr. Reagan requested the Commission direct the proposed rules be filed with the Office of Administrative Hearings for publication in the NC Register. Mr. Reagan requested the Commission direct Copies of the proposed rules be sent to persons on the ABC Rulemaking emailing list and be posted on the ABC Commission's website. Mr. Reagan also requested the Commission schedule a public hearing to be held at the Commission's meeting on June 12, 2019 and set a public comment period on the proposed rules to be open until June 14, 2019. Mr. Reagan also requested the Commission authorize staff to make non-substantive changes to the adopted rule as needed.

Commissioner Mitchell made a motion for the ABC Commission to propose the Commission Operations Rule Amendments as presented and the recommendations of staff regarding the rules. Chairman Guy seconded the motion. Motion Passed.

VII. OTHER BUSINESS – AMENDMENT TO THE WAREHOUSE CONTRACT

Ms. Stevens stated the additional business is regarding the excess shipments from the ABC Warehouse to the ABC Boards. Ms. Stevens explained the number of case shipments, spirituous liquor sales, and revenues have increased 4-6% each year for North Carolina's ABC System. Ms. Stevens stated in order to maintain the pace of growth, the 170 North Carolina ABC Boards need regular shipments of products for a growing number of locations. The Contractor, LB&B Associates, has been asked to accommodate these growing delivery needs. Ms. Stevens explained the delivery schedule outlined in the current 2011 contract establishes a flat fee for 333 deliveries as the baseline for deliveries from the warehouse to the Boards. This number has grown in the eight years since to 453 deliveries per month, a 36% increase without an increase in compensation for the shipments.

Ms. Stevens stated in recent months, several ABC Boards have requested additional deliveries from the Contractor, as they add new stores to their systems. Ms. Stevens stated, in response to the needs of the growing ABC System, the ABC Commission staff has requested a proposal from the Contractor to

accommodate deliveries in excess of the 333 agreed upon under the current delivery schedule. Ms. Stevens explained the proposal presented to the Commission amends the existing contract and allows an additional \$2,000.00 fee for each excess delivery. Ms. Stevens stated this cost for each additional load is within \$175.00 of the cost per load established in the 2011 contract. Ms. Stevens explained the Commission proposes to use bailment funds as payment for the excess deliveries requested by the Boards from April 1, 2019 through the contract end on June 30, 2021. Ms. Stevens stated staff recommends approval of the proposal.

Commissioner Mitchell made a motion to approve the amendment to the contract as recommended by staff. Chairman Guy seconded the motion. Motion passed.

As there was no further business and 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 April 10, 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