

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
OCTOBER 9, 2019**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held at 400 East Tryon Road in Raleigh, North Carolina on October 9, 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. called the October 2019 ABC Commission Meeting to order and welcomed those in attendance. Chairman Guy acknowledged the industry members, ALE agents and attorneys present. Chairman Guy recognized the Commission staff and stated he was proud of them and the customer service they provide on a daily basis.

Chairman Guy recognized Tiffany Goodson and thanked her for her service. Chairman Guy explained Ms. Goodson has served the Commission in different capacities for 19 years and is currently part of the Legal Staff. Chairman Guy stated Ms. Goodson has received an opportunity with a different state agency and wished her well in her new endeavors.

Chairman Guy introduced Commissioner Norman A. Mitchell, Sr. of Charlotte and Commissioner Karen Stout of Black Mountain.

MINUTES OF THE SEPTEMBER 11, 2019 COMMISSION MEETING

Commissioner Mitchell made a motion to waive the reading of the minutes of the September 11, 2019 meeting into the record. Commissioner Stout seconded the motion. Motion Passed.

Commissioner Mitchell made a motion to approve the minutes of the September 11, 2019 meeting. Commissioner Stout 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. Commissioner Stout stated she 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 – 97

Chief Counsel Renee C. Metz requested two cases be removed from the agenda. Mrs. Metz explained case numbers 30 and 52 should be removed to allow for further training and negotiations.

Commissioner Mitchell made a motion to follow the staff recommendation to remove the cases from the agenda. Commissioner Stout seconded the motion. Motion Passed.

Mrs. Metz explained agenda case numbers one and two were contested cases. Case number one, 3Y Smoke Shop, was assigned to Assistant Counsel Rachel Spears. Mrs. Metz stated the Administrative Law Judge issued a sanctions order for failure to comply with the Judge's orders. Mrs. Metz explained the underlying charges were related to possession of alcohol for sale without a permit and performing services after consuming alcohol. Mrs. Metz stated the Judge agreed with Ms. Spears' recommendation of cancellation of the permittee's ABC permits. Mrs. Metz requested the Commission impose the Judge's decision of cancellation with an effective date of November 1, 2019.

Commissioner Mitchell made a motion to impose the Judge's decision as recommended by staff. Commissioner Stout seconded the motion. Motion Passed.

Mrs. Metz explained agenda case number two, El Tequila Mexican Restaurant, was Assistant Counsel Missy Welch's case and was also a sanctions motion. Mrs. Metz explained the underlying charges were related to failure to maintain receipts, premixing without prior approval and possession of non-tax paid alcohol. Mrs. Metz explained the Final Decision included a \$500.00 penalty to be paid by November 1, 2019 and a 25-day suspension of the ABC permits to begin November 8, 2019. Mrs. Metz requested the Commission impose the Judge's decision.

Commissioner Mitchell made a motion to accept the Judge's decision. Commissioner Stout seconded the motion. Motion Passed.

Mrs. Metz stated the permittee for case number 14, Har Food Mart, was not present and this was Assistant Counsel Walker Reagan's case. After conferring with Mr. Reagan and the Commissioners, Chairman Guy explained the permittee requested the 7-day suspension be removed. Chairman Guy stated this was the business' third underage violation within three years. Chairman Guy explained the permittee would pay the \$5,000.00 fine and was willing to accept a failure to supervise violation with an additional \$2,000.00 fine.

Commissioner Stout made a motion to remove the suspension and add the additional violation and fine. Commissioner Mitchell seconded the motion. Motion Passed.

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 Mitchell seconded the motion. Motion Passed.

Chairman Guy explained the Commission often hires contractors and welcomed Kelton Brown who would be assisting the Commission.

II. ABC STORE LOCATION – DURHAM COUNTY ABC BOARD

Chairman Guy recognized Administrator Agnes C. Stevens. Ms. Stevens stated on July 24, 2019, the Durham County ABC Board requested approval to purchase property to open and operate an ABC Store at 115 Sherron Road in Durham, North Carolina. On September 3, 2019, Audit Investigation Assistant

Director Edwin Strickland met with Misty Walters, the board's Operations Manager, and Niegel Sullivan, the General Manager, to gather information for this report. Ms. Stevens stated Mr. Sullivan is present if the Commission has any questions.

Ms. Stevens explained the property is zoned appropriately to allow for an ABC Store. Ms. Stevens added there are no personal or financial interests shared between the property owners and the Durham County ABC Board members.

Ms. Stevens stated the nearest school, John W. Neal Middle School, is located at 201 Baptist Road in Durham and approximately .6 miles away. The nearest church, Durham Church of Christ located at 5224 Wake Forest Highway in Durham, is approximately .3 miles away. Ms. Stevens explained the nearest ABC Store is located approximately 4.5 miles away at 1928 Holloway Street in Durham and is operated by the Durham County ABC Board.

Ms. Stevens stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted on July 24, 2019 through August 24, 2019. Ms. Stevens explained the Board received three calls in favor of the store and four in opposition, one of these stated traffic congestion in the area as their objection. Ms. Stevens stated staff recommends approval of this store. Ms. Stevens again stated the General Manager is present if there are any questions.

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

III. ABC STORE LOCATION – MECKLENBURG COUNTY ABC BOARD

Ms. Stevens stated on August 27, 2019, the Mecklenburg County ABC Board requested approval to purchase property to open and operate an ABC Store at 13720 Stealcroft Parkway in Charlotte, North Carolina. Mr. Strickland corresponded with Mike Tully, the Mecklenburg County ABC Board's CFO, to receive the documentation necessary for the investigative report. Mr. Strickland found the proposed property is located at the intersection of Steele Creek Road, Hoover Creek Boulevard and Stealcroft Parkway.

Ms. Stevens explained the property is zoned Commercial Central District and allows for an ABC Store. Ms. Stevens added there are no personal or financial interests shared between the property owners and the Mecklenburg County ABC Board members.

Ms. Stevens stated the nearest school, Southwest Middle School, located at 13624 Steele Creek Road, is approximately .5 miles away. The nearest church, Christ the King Church, located at 13501 South Tryon Road, is approximately .3 miles away. Ms. Stevens explained the nearest ABC Store is located approximately 2.8 miles away at 1800 Gold Hill Road in Fort Mill, South Carolina. The next closest ABC Store is located approximately 5 miles away at 8130 South Tryon Road and is operated by the Mecklenburg County ABC Board.

Ms. Stevens stated two signs announcing the ABC Board's intention to open an ABC Store were posted at the location on August 27, 2019. The signs were placed at opposite ends of the property to maximize visibility from all three public roads. The signs were witnessed by Mr. Strickland on August 30, 2019. Ms. Stevens stated no comments or objections have been received and staff recommends approval of this store.

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

IV. PETITION FOR MODIFICATION OF EXEMPTION UNDER G.S. § 18B-1116(b) – PIG POUNDER, LLC d/b/a PIG POUNDER BREWERY; KOTIS HOLDINGS, LLC; WILLIAM M. KOTIS, III; AND THE 2012 WILLIAM M. KOTIS, III IRREVOCABLE TRUST f/b/o ALEXANDER WILLIAM KOTIS AND DESCENDANTS

Mrs. Metz stated this exemption request was a modification to an exemption previously granted which allowed four affiliated retail outlets. Mrs. Metz explained they wished to change one of the locations. The Traveled Farmer is to be replaced by the restaurant, The Painted Plate Catering. Mrs. Metz added staff recommends adoption of the modification to the exemption.

Commissioner Mitchell made a motion to follow staff's recommendation regarding the exemption request. Commissioner Stout seconded the motion. Motion Passed.

V. PETITION FOR MODIFICATION OF EXEMPTION UNDER G.S. § 18B-1116(b) – THE UNKNOWN BREWING COMPANY, LLC; THE UNKNOWN BARREL WORKS, LLC AND JAMES B. SHELL

VI. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – MARCELLO GIANCATERINI, MPW WINE DISTRIBUTORS; FLOGAN, LLC, d/b/a ANGELAS PIZZERIA AND RESTAURANT

Mrs. Metz requested Agenda item V be continued in response to recent law changes and the need to determine how the situation is affected under the new law. Mrs. Metz requested Agenda item VI be removed from the agenda as the applicant wished to withdraw the request because he decided not to buy into the retail business.

Commissioner Stout made a motion to continue Agenda item V and to remove Agenda item VI. Commissioner Mitchell seconded the motion. Motion Passed.

VII. CONSIDERATION OF ADOPTION OF PERMANENT LOCAL BOARD ADMINISTRATION RULES – 14B NCAC 15A .0901 THROUGH 15A .1406

Chairman Guy stated the matter before the Commission is a consideration of the Adoption of the Permanent Local Board Administration Rules Amendments. 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 the ABC Commission proposed the permanent Local Board Administration Rules Amendments at its Commission Meeting on June 12, 2019. Mr. Reagan stated the proposed rules, the notice of public hearing, and notice of public written comment period were filed with the Office of Administrative Hearings on June 21, 2019 and were published in the NC Register on July 15, 2019. Mr. Reagan stated copies of the notice of text and proposed rules were posted on the ABC Commission website and emailed to the ABC Commission rulemaking mailing list on June 24, 2019.

Mr. Reagan stated the public hearing was properly noticed and held on September 11, 2019 at 10:00 a.m. and the public comment period was noticed to end on September 13, 2019. Mr. Reagan explained the statutory time periods after publication for holding the public hearing of at least 15 days and the receiving of written comments of at least 60 days have been complied with. Mr. Reagan stated, since the proposed rules were published, no comments were received at the public hearing; however, written comments had been received from the Asheboro ABC Board.

Mr. Reagan explained, as a result of the comments received from the Asheboro ABC Board, staff has incorporated some of the suggested changes in the version of the rules presented. Mr. Reagan added the changes made were conforming to current practices and operations and are non-substantive. Mr. Reagan stated the Commission may now consider adopting the rules.

Mr. Reagan stated staff recommends the Commission adopt the Permanent Local Board Administration Rules Amendments as published in the NC Register with the changes as presented. 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 non-substantive changes to the adopted rules as needed prior to publication.

Chairman Guy asked if anyone wished to comment on the rules. As no one wished to comment, Commissioner Stout made a motion that the Commission adopt the Permanent Local Board Administration Rules Amendments as published in the NC Register, with the changes after publication as presented and the recommendations of the staff regarding the rules. Commissioner Mitchell seconded the motion. Motion Passed.

VIII. OTHER BUSINESS

Mrs. Metz asked the Commission to issue a Destruction Order for approximately 100 bottles of fortified wine found and seized in Asheville. The wine remained from a transition of permittees and the new permittee did not have the proper permits.

Commissioner Stout made a motion to approve the Destruction Order. Commissioner Mitchell seconded the motion. Motion Passed.

As no one else was present to address the Commission, Chairman Guy again thanked Tiffany Goodson for her service and also thanked those in attendance. The meeting was adjourned.

Approved at the November 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