

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 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 November 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. called the November 2019 ABC Commission Meeting to order and welcomed those in attendance. Chairman Guy recognized the Commission staff and stated he was proud of them and the customer service they provide. Chairman Guy stated the ABC Commission's partners were important and acknowledged the suppliers and law enforcement officers present. Chairman Guy asked Special Agent Bryan House, the Branch Head of ALE to introduce the agents present. Special Agent House introduced Senior Special Agent Jason Locklear and Special Agent Israel Morrow.

Chairman Guy recognized Terrance Merriweather, the former ALE Branch Head who is now the Deputy Director of Policy of the ABC Commission.

Chairman Guy introduced Commissioner Norman A. Mitchell, Sr. of Charlotte and Commissioner Karen Stout of Black Mountain. Chairman Guy also thanked the employees of the ABC Commission.

Chairman Guy stated with the upcoming holiday, we should remember to be thankful for what we have and the relationships in our lives.

MINUTES OF THE OCTOBER 9, 2019 COMMISSION MEETING

Commissioner Mitchell made a motion to waive the reading of the minutes of the October 9, 2019 meeting into the record. Commissioner Stout seconded the motion. Motion Passed.

Commissioner Stout made a motion to approve the minutes of the October 9, 2019 meeting. Commissioner Mitchell 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 Stout stated she reviewed the agenda and found no conflicts of interest. 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 – 94

Chief Counsel Renee C. Metz requested several cases be removed from the agenda. Mrs. Metz explained, regarding case number 2, Bua Thai Cuisine, the permittee had arrived and asked Assistant Counsel Stacey Coley if the case could be continued for further discussion. Ms. Metz also requested case numbers 72 and 74 be continued; additionally, case number 74 will ultimately be dismissed as it is related to case number 73.

Commissioner Mitchell made a motion to follow the staff recommendation to remove case numbers 2, 72 and 74 from the agenda. Commissioner Stout seconded the motion. Motion Passed.

Mrs. Metz explained agenda case number one, Discount Tobacco, was assigned to Assistant Counsel Rachel Spears. Mrs. Metz explained it was a contested case with a sanctions order for failure to file a prehearing statement as requested by the Administrative Law Judge. Mrs. Metz stated the underlying charges were related to exterior advertising, unauthorized possession of spirituous liquor, performing services after consuming alcohol, possession of gambling equipment, and maintaining living quarters connected to the premises. Mrs. Metz explained the Final Decision included a \$500.00 penalty to be paid by December 6, 2019 and a 50-day suspension of the ABC permits to begin December 13, 2019. Mrs. Metz requested the Commission impose the Judge's decision.

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

Mrs. Metz asked if anyone was present regarding case number 17, B and B Catering. As no one was present, Mrs. Metz explained the permittee had signed an Offer in Compromise which included a penalty of cancellation of the Mixed Beverage Restaurant permit. Mrs. Metz explained the business would no longer be eligible to hold the Mixed Beverages Catering permit and requested the order be amended to also include this permit.

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

The permittee was present regarding case number 32, Waughtown Grocery. Athar Khan stated they had taken the training class and requested the Commission lower the fine. Chairman Guy explained Mr. Khan had signed the Offer in Compromise agreeing to a penalty of \$3,500.00.

Assistant Counsel Walker Reagan explained Mr. Khan had signed the Offer in Compromise; however, late the previous week, Mr. Khan notified Mr. Reagan that they had taken the training and he had a better understanding. Mr. Reagan explained he had advised Mr. Khan to come before the Commission if he wished to request the fine be lowered. Chairman Guy asked for Mr. Reagan's recommendation. Mr. Reagan stated he believed they were taking the matter seriously with the employees and a reduction would be appropriate.

After conferring with the Commissioners, Chairman Guy stated Mr. Khan appeared to be taking the matter seriously and as he had completed the training, made a motion for the fine to be reduced to \$2,000.00. 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.

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

II. ABC STORE LOCATION – HIGH POINT ABC BOARD

Chairman Guy recognized Administrator Agnes C. Stevens. Ms. Stevens stated there were three requests from ABC Boards for approval for new stores. Ms. Stevens added representatives of the High Point ABC Board were present. High Point ABC Board Chairman David Wall introduced himself and Rosalind Stewart, the Board manager.

Ms. Stevens stated on October 11, 2019, the High Point ABC Board requested approval to lease property to open and operate an ABC Store at 3318 Brookridge Lane in High Point, North Carolina. Audit Investigation Assistant Director Edwin Strickland corresponded with Ms. Stewart to gather information for this report.

Ms. Stevens explained the property is zoned General Business and allows for an ABC Store. Ms. Stevens added there are no personal or financial interests shared between the property owners and the High Point ABC Board members.

Ms. Stevens stated the nearest school, Shadybrook Elementary School, is located at 503 Shadybrook Road in High Point and approximately 1.4 miles away. The nearest church, Woodlawn Baptist Church located at 3201 North Main Street in High Point, is approximately .1 mile away. Ms. Stevens explained the nearest ABC Store is located approximately 2 miles away at 242 East Parris Avenue and is operated by the High Point ABC Board.

Ms. Stevens stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted on September 20, 2019 and observed by Mr. Strickland on October 21, 2019. Ms. Stevens explained, as of October 22, 2019, the Board had received four calls regarding the proposed store. One was in favor of the site and a second suggested a different site because of a ball field. Two calls were in objection to the proposed store with one citing a nearby daycare. Ms. Stevens stated staff recommends approval of this store.

Chairman Guy asked if anyone was present regarding an objection to the proposal request. No one was present.

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

III. ABC STORE LOCATION – MOORE COUNTY ABC BOARD

Ms. Stevens stated on October 8, 2019, the Moore County ABC Board requested approval to purchase property to open and operate an ABC Store at 10 Blake Boulevard in Pinehurst, North Carolina. On October 25, 2019 Auditor/Investigator Richard Thorsen met with the Moore County ABC Board General Manager Alyson Faulkner. If approved, the Board tentatively plans to open the proposed store in the spring of 2020. Ms. Stevens explained the Moore County ABC Board will have four stores once this location is completed and the Pinehurst location is closed.

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

Ms. Stevens stated the nearest school, Pine Elementary School, located at 10 Rassie Wicker Drive in Pinehurst, North Carolina, is approximately 3.6 miles away. The nearest church, Sandhills Alliance Church, located at 111 Trotter Drive in Aberdeen, North Carolina, is approximately .2 miles away. Ms. Stevens explained the nearest ABC Store is located approximately .3 miles away at 1500 Highway 5 in Pinehurst, North Carolina. Once this location is closed, the next closest ABC Store is located approximately 5.1 miles away at 1408 North Sandhills Boulevard in Aberdeen, North Carolina. Both ABC Stores are operated by the Moore County ABC Board.

Ms. Stevens stated the sign announcing the ABC Board's intention to open an ABC Store was posted at the location on October 8, 2019. The sign was witnessed by Mr. Thorsen on October 25, 2019. Ms. Stevens stated as of October 28, 2019, no objections have been reported and staff recommends approval of this store.

Chairman Guy asked if anyone was present regarding an objection to the proposal request. No one was present. Commissioner Stout asked if the Board would purchase the land and build the store themselves. Ms. Stevens stated the Board would. Commissioner Stout asked if the existing store is rented. Ms. Stevens replied she did not know if it was rented.

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

IV. ABC STORE LOCATION – NASH COUNTY ABC BOARD

Ms. Stevens stated on October 1, 2019, the Nash County ABC Board requested approval to purchase property to build and operate an ABC Store at the corner of North Carolina Highway 97 and South Halifax Road in Rocky Mount, North Carolina. Mr. Thorsen reported the new location would replace the Sharpsburg ABC Store located at 200 Sharpe Road in Sharpsburg. If approved, the proposed store would open on April 1, 2021. Ms. Stevens explained the Nash County ABC Board will have eight stores after this location is opened and the Sharpsburg location is closed.

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

Ms. Stevens stated the nearest school, G. R. Edwards Middle School located at 720 Edwards Street in Rocky Mount, North Carolina, is approximately 4.8 miles away. Additionally, Rocky Mount High School located at 1400 Bethlehem Road in Rocky Mount, North Carolina, is approximately 5 miles away. The nearest church, Mill Branch Church, located at Woodcrest Park in Rocky Mount, North Carolina, is approximately .4 miles away. Ms. Stevens explained the nearest ABC Store is located approximately 3.1 miles away at 200 Sharpe Road in Sharpsburg and will be closed. The next closest ABC Store is located approximately 4.4 miles away at 1322 Westwood Drive in Rocky Mount, North Carolina. Both stores are operated by the Nash County ABC Board.

Ms. Stevens stated the sign announcing the ABC Board's intention to open an ABC Store was posted at the location on October 1, 2019. The sign was witnessed by Mr. Thorsen on October 3, 2019. Ms. Stevens

stated as of October 28, 2019, no objections have been received and staff recommends approval of this store.

Chairman Guy asked if anyone was present regarding an objection to the proposal request. As no one was present, Commissioner Stout made a motion to approve the proposed location upon staff recommendation. Commissioner Mitchell seconded the motion. Motion Passed.

V. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – JOHN KELLY; STEPHEN PYE; SEABOARD BREWING COMPANY, LLC; AND ZILLA VENTURES, LLC

Mrs. Metz stated this exemption request by John Kelly, Stephen Pye, Seaboard Brewing Company, LLC and Zilla Ventures, LLC. Zilla Ventures operates The Portrait Gallery, a restaurant with ABC permits; Mr. Pye owns 50% and Mr. Kelly owns 30% of the membership interest. Mrs. Metz explained Seaboard Brewing operates a brewery with ABC permits and Mr. Kelly owns 80% and Mr. Pye owns 20% of the membership interest.

Mrs. Metz explained the basis for the exemption is the businesses are owned and operated by two different LLCs, but have common ownership. Mrs. Metz stated neither Mr. Kelly nor Mr. Pye conduct the daily operations of either business.

Mrs. Metz stated Seaboard distributes its malt beverages to various taprooms. Mrs. Metz added the Portrait Gallery offers malt beverages on tap and in cans and bottles from at least 15 producers at any given time and at no time, more than four of these are produced by Seaboard.

Mrs. Metz stated the exemption will have the standard conditions of production 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 the exemption request.

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

VI. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – MATTHEW GANZERT; COLD CRAFT BEVERAGE PARTNERS, LLC, BM CARY, LLC d/b/a HIGHCRAFT BEER MARKET; AND HC CARY, LLC d/b/a AMBERLY LOCAL

Mrs. Metz requested this exemption request be continued. Mrs. Metz explained she is not sure if they are comfortable with some of the conditions imposed by the exemption, therefore requiring further discussion.

Commissioner Stout made a motion to continue the exemption request to the next Commission meeting. Commissioner Mitchell seconded the motion. Motion Passed.

VII. PUBLIC HEARING ON PROPOSED PERMANENT INCREASE MAXIMUM RETAIL DISCOUNT RULE – 14B NCAC 15B .1004

Chairman Guy opened the public hearing on the permanent Increase Maximum Retail Discount Rule proposed on August 14, 2019. The proposed rule, the notice of public hearing and notice of the public written comment period were filed with the Office of Administrative Hearings on August 14, 2019 and were published in the NC Register on September 16, 2019. Copies of the notice of text and proposed rule were posted on the ABC Commission website and emailed to the ABC Commission rulemaking mailing list on August 19, 2019.

The public hearing was properly noticed for November 13, 2019 at 10:00 a.m. and the public comment period was noticed to be open through November 15, 2019. The statutory time period after publication for the public hearing of at least 15 days had been complied with. One written comment had been received from the NC Retail Merchants Association. As the public comment period runs through November 15, 2019, the Commission could not consider the adoption of the rule during the November meeting, but would be able to do so at its December 2019 meeting.

Chairman Guy asked rules coordinator Walker Reagan if he had any comments. Mr. Reagan stated he had none. Chairman Guy asked if there was anyone present who wished to address the Commission regarding the proposed rule. Andy Ellen, President and General Counsel of the NC Retail Merchants Association commended the Commission for bringing the rule forward as it had been adopted ten years prior. Mr. Ellen also thanked Mr. Reagan for his work on the rule. Chairman Guy stated Mr. Ellen did a good job representing his clients.

As no one else was present, Chairman Guy closed the public hearing.

VIII. RECONSIDERATION AND WITHDRAWAL OF A CERTAIN PERMANENT LOCAL BOARD ADMINISTRATION RULE

Mr. Reagan provided drafts of the rule to the Commission. Mr. Reagan stated on October 9, 2019, the ABC Commission adopted the permanent Local Board Administration rules. The rules were filed with the Office of Administrative Hearings for review and approval by the Rules Review Commission.

Mr. Reagan explained, as part of the Rules Review Commission review, the RRC legal staff issues a Request for Technical Changes on certain rule drafting criteria set forth in Chapter 150B, the Administrative Procedures Act. Based upon the submitting agency's response to the Request for Technical Changes, the RRC legal staff makes recommendations as to whether adopted rules comply with Chapter 150B and whether the RRC should approve the rules.

Mr. Reagan stated, during the Request for Technical Changes review process, the RRC staff raised questions about one rule, 14B NCAC 15A .1101 adopted in October, as to whether the rule was necessary. Mr. Reagan explained, after further review, the ABC Commission legal staff concurred with the RRC staff's analysis and believes the rule should be reviewed further by the ABC Commission for possible future action.

Mr. Reagan stated staff recommends the Commission reconsider the vote by which 14B NCAC 15A .1101 was adopted; withdraw this rule from consideration of approval by the RRC; direct the RRC be notified of this action; and direct staff to review the rule in light of the staff's opinion and to recommend to the Commission any further action which might be needed on this rule.

Commissioner Mitchell made a motion for the ABC Commission to reconsider the vote by which the Commission adopted a certain permanent Local Board Administration Rule, namely 14B NCAC 15A .1101 as adopted at the October 2019 Commission Meeting. Commissioner Stout seconded the motion. Motion Passed.

Commissioner Stout made a motion for the ABC Commission to withdraw from consideration for approval by the Rules Review Commission a certain permanent Local Board Administration Rule, namely 14B NCAC 15A .1101, as adopted at the October 2019 Commission Meeting and the Rules Review Commission be so notified. Commissioner Mitchell seconded the motion. Motion Passed.

IX. AMEND JANUARY 2020 COMMISSION MEETING DATE

Mrs. Metz stated, previously the Commission had granted future Commission Meeting dates through April 2020 and explained there is a conflict for the January 2020 Commission Meeting date. Mrs. Metz requested the Commission change the date from January 8, 2020 to January 15, 2020.

Commissioner Stout made a motion to change the date of the January 2020 Commission meeting to January 15, 2020. Commissioner Mitchell seconded the motion. Motion Passed.

Chairman Guy confirmed with Ms. Stevens there was no additional business and as no one else was present to address the Commission, Chairman Guy again thanked those in attendance. Chairman Guy also wished everyone a nice Thanksgiving and the meeting was adjourned.

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

Respectfully submitted by,

Caroline Y. Washburn for the Legal Division