

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION
MEETING MINUTES
JUNE 14, 2023**

The following summarizes the North Carolina Alcoholic Beverage Control Commission (hereinafter “Commission”) meeting held at 400 East Tryon Road in Raleigh, North Carolina, on June 14, 2023, beginning at 10:00 AM. The meeting was recorded, and a copy of the recording is on file at the Commission within the Legal Section.

ROLL CALL AND ANNOUNCEMENTS

Chairman Hank Bauer called the June 2023 Commission meeting to order and welcomed those attending. Chairman Bauer introduced himself, Commissioner Norman A. Mitchell, Sr., and Commissioner La’Tanta (L.T.) McCrimmon. He also welcomed Deputy Commissioner Mike DeSilva and General Counsel Stacey Carter-Coley.

MINUTES OF THE MAY 10, 2023, COMMISSION MEETING

Chairman Bauer made a motion to waive the reading of the minutes of the May 10, 2023, Commission meeting into the record. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Chairman Bauer asked for a motion to approve the minutes of the May 10, 2023, Commission meeting. Commissioner Mitchell motioned to approve the minutes and the motion was seconded by Commissioner McCrimmon. A vote was held, and the motion passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. §138A-35, entitled Other Rules of Conduct, Chairman Bauer 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. Chairman Bauer stated he had reviewed the agenda and found no conflicts or appearance of a conflict. Commissioners Mitchell and McCrimmon stated they had also reviewed the agenda and found no conflicts.

I. HEARING CASES AND OFFERS IN COMPROMISE – 111

Chairman Bauer recognized General Counsel Stacey Carter-Coley regarding item one on the agenda, the hearing cases.

Mrs. Carter-Coley started off stating staff recommended a motion to remove three cases from the agenda: #2 (Tenampa Night Club), #84 (La Morena Nightclub and Restaurant) and #95 (Mythic Brewing). She stated this recommendation was based on the permits for these establishments had been cancelled after the Administrative Law Judge’s decision was issued or after the Offers in Compromise were signed. She

reiterated that a motion would be proper to remove those items. Commissioner McCrimmon made the motion. Chairman Bauer seconded. A vote was held, and the motion passed.

Mrs. Carter-Coley asked if there was anyone present who wanted to be heard regarding any of the remaining Offers in Compromise on the agenda. Hearing none, she introduced Assistant Counsel Seth Kandl to summarize case #1, a contested case involving Country Markets Tobacco located in Hillsborough, North Carolina. Mr. Kandl listed the numerous violations against the permittee and explained there was no response from the respondent once the case was petitioned. He stated a motion for sanctions was approved by Administrative Law Judge Karlene S. Turrentine imposing a \$500 fine and a 70-day suspension. Mr. Kandl asked that the Commission adopt the ALJ's Final Decision and Order of Sanctions as written. Chairman Bauer asked for a motion. Commissioner Mitchell made a motion to adopt staff's recommendation. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

Mrs. Carter-Coley took a moment to recognize Assistant Counsels Seth Kandl, Bob Nauseef, and Rachel Spears whom she praised for diligently working closely with permittees who do have violations to make these Offers in Compromise. She added they were doing a phenomenal job. With that said, she recommended the remaining Offers in Compromise be adopted.

Chairman Bauer asked the Commissioners if they had any questions. Hearing none, Commissioner McCrimmon made a motion to adopt staff's recommendation. Chairman Bauer seconded the motion. A vote was held, and the motion passed.

II. ABC STORE LOCATION – GASTONIA ABC BOARD (3840 WEST FRANKLIN BOULEVARD, GASTONIA, NC)

Chairman Bauer recognized Deputy Commissioner Mike DeSilva to present item two on the agenda, a new store request by the Gastonia ABC Board.

Mr. DeSilva stated on April 25, 2023, Executive Director of the Gastonia ABC Board David Fish requested approval from the Commission to purchase property to build a new ABC store at 3840 West Franklin Boulevard, in Gastonia. The new location, he said, would replace the existing store located approximately 200 feet away. Mr. DeSilva stated, if approved, the new store would provide increased retail and warehouse space to better serve the community.

Mr. DeSilva reported ABC Auditor Ralph Ray conducted the investigation and stated the proposed site consisted of several Gaston County tax parcels which were located in a shopping center which had access from US Highway 74 and Edgewood Road. Mr. DeSilva stated Ralph Ray confirmed with Gaston County Land Use Coordinator Laura Hamilton and City of Gastonia Assistant Planning Director Jason Pauling the location was zoned appropriately and allowed for retail sales of alcohol. He stated the property was currently owned by Diane 29 Drive-in Theatre, Inc. and the combined lots totaled approximately 4.7 acres. Mr. DeSilva stated a copy of the proposed purchase agreement, which stated Gastonia ABC Board would purchase the property for \$295,000, was provided. He stated all board members provided financial disclosures, as requested, indicating no financial or personal interest with the property in question. Mr. DeSilva stated the new store, if approved, would total 5,500 square feet utilizing 75% for retail space and 25% warehouse space and other store functions. He confirmed the new building would have a loading dock. If approved, he said, the Board tentatively planned to open the new store in July of 2024 and close the existing store at that time.

Mr. DeSilva described the area stating the nearest school was Dr. Edward D. Sadler Jr. Elementary School, located approximately 0.5 miles away. He stated the nearest church was Christ Worship Center located approximately 0.25 miles away. He stated the nearest ABC store was operated by the Bessemer City ABC Board and was located approximately 3 miles away. He repeated the fact that Gastonia ABC Board's existing store location would close when the new store opened.

Mr. DeSilva concluded stating on April 24, 2023, a sign announcing the Board's intentions of opening an ABC store was placed at the location. He stated Ralph Ray witnessed the sign and determined it to meet Commission rules. He stated there were no objections to the proposed store and asked if there was anyone present who would like to be heard regarding the Gaston County ABC Board request. Mr. DeSilva stated, after reviewing 18B requirements, it was concluded that all elements had been satisfied. He stated staff recommended the Commission consider the information shared.

Chairman Bauer asked the Commissioners if they had any questions. Hearing none, Commissioner McCrimmon made a motion to adopt staff's recommendation. Chairman Bauer seconded the motion. A vote was held, and the motion passed.

III. ABC STORE LOCATION – PITT COUNTY ABC BOARD (1400 CHARLES BOULEVARD, GREENVILLE, NC)

Deputy Commissioner Mike DeSilva summarized this request stating on April 18, 2023, the Pitt County ABC Board requested approval from the Commission to lease property to open a new ABC store at 1400 Charles Boulevard, in Greenville. He stated ABC Audit Officer India Smith-Gray conducted the investigation and Pitt County General Manager Adam Sullivan provided the information for the report.

Mr. DeSilva stated the proposed location was in the Charles Boulevard Shopping Center and there were several other retail stores located in the shopping center. He stated Lead Planner for Greenville, Bryan Jones, confirmed the property was zoned appropriately and allowed for an ABC store. He stated the property was currently owned by Sterling Rental Company. He added all ABC Board members had provided financial disclosures, as requested, indicating no financial or personal interest with the property in question.

Mr. DeSilva stated the annual lease would be approximately \$155,000. He stated the new store would be a total of 10,000 square feet, 5,000 square feet of which would be used for retail sales. He stated a loading dock would be available. He stated, if approved, the Board tentatively planned to open the new store in October or November of 2023.

Mr. DeSilva described the area stating the nearest school was East Carolina University, located approximately 0.6 miles away and the next closest school was C.M. Eppes Middle school, located approximately 1 mile away. He stated the nearest church was Greenville Christian Fellowship Church, located approximately 0.1 miles away. He stated the nearest ABC store was located approximately 1.5 miles away and the next nearest ABC store was located about 2.5 miles away. He added both stores were operated by the Pitt County ABC Board.

Mr. DeSilva concluded stating on April 19, 2023, a sign announcing the Board's intentions of opening a new ABC store was placed at the location and was witnessed by Audit Officer India Smith-Gray on April 25, 2023. Mr. DeSilva stated the sign met Commission rules and there were no objections reported regarding the proposed store. Mr. DeSilva asked if there was anyone present who would like to be heard

regarding the Pitt County ABC Board request. Hearing none, he stated after reviewing 18B requirements, staff concluded all elements had been satisfied. He stated staff recommended the Commission consider the information shared.

Chairman Bauer asked the Commissioners if they had any questions. Hearing none, Commissioner McCrimmon made a motion to adopt staff's recommendation. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

IV. REQUEST BY LB&B ASSOCIATES INC.

General Counsel Stacey Carter-Coley asked the Commission to consider a motion to continue these matters, including the most recent May 30, 2023, request made by the vendor, to give staff more time to consult with DOA (NC Department of Administration). She stated a continuance would provide an opportunity to consult with counsel on any litigation matters related to the warehouse contract that may be currently pending or anticipated.

Chairman Bauer asked the Commissioners if they had any questions. Hearing none, Commissioner Mitchell made a motion to adopt staff's recommendation. Chairman Bauer seconded the motion. A vote was held, and the motion passed.

V. HICKORY LEASE SETTLEMENT

General Counsel Stacey Carter-Coley requested a motion to move into closed session pursuant to N.C.G.S. §143-318.11(a)(3) for the Commission to consult with counsel regarding a proposed settlement of a lease in Hickory, North Carolina. Chairman Bauer made a motion to go into closed session. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

CLOSED SESSION

After returning from closed session, Mrs. Carter-Coley stated that staff recommended the Commission accept the proposed lease termination and settlement agreement as proposed that would end the lease as of July 31, 2023. Commissioner Mitchell motioned to adopt staff's recommendation. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

VI. OTHER BUSINESS

Chairman Bauer asked General Counsel Stacey Carter-Coley and Deputy Commissioner Mike DeSilva if there was any other business. They both indicated that there was none.

Chairman Bauer announced the next ABC Commission meeting would be held on Wednesday, July 12, 2023, at 10:00 AM at the Commission.

Chairman Bauer made a motion to adjourn the June 2023 Commission meeting. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Approved at the July 12, 2023 Commission meeting

/S/ Hank Bauer
Hank Bauer, Chairman
NC Alcoholic Beverage Control Commission

Respectfully submitted by,

/S/ Jennifer Temple
Jennifer Temple for the Legal Section