

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MEETING MINUTES
MARCH 15, 2023**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission (hereinafter “Commission”) meeting held at 400 East Tryon Road in Raleigh, North Carolina, on March 15, 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 March 2023 Commission meeting to order and welcomed those attending. Chairman Bauer introduced himself, Commissioner Norman Mitchell, Sr., Deputy Commissioner Mike DeSilva, and General Counsel Stacey Carter-Coley.

Chairman Bauer announced February sales were up 6.3%, making overall growth 8.3% for the fiscal year. He stated mixed beverage sales were up 18% and he was glad to see North Carolina small businesses doing so well. Chairman Bauer stated, of the control states over the rolling twelve, North Carolina was a close second behind Ohio by a margin of 2 million dollars where overall sales were 1.7 billion dollars.

Chairman Bauer took a moment to address the number of “sale to underage” cases on the agenda. He stated that the Board Associations have done a good job checking IDs and not selling to underage, and that private industry needs to make sure they are doing the same.

MINUTES OF THE FEBRUARY 8, 2023, COMMISSION MEETING

Chairman Bauer made a motion to waive the reading of the minutes of the February 8, 2023, Commission meeting into the record. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Chairman Bauer made a motion to approve the minutes of the February 8, 2023, Commission meeting. Commissioner Mitchell seconded the motion. 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. Commissioner Mitchell also stated he found no conflicts.

I. HEARING CASES AND OFFERS IN COMPROMISE – 100

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

Mrs. Carter-Coley stated there were 100 cases on the agenda and praised Legal Section staff for their hard work. Chairman Bauer echoed her sentiments. Mrs. Carter-Coley asked if there was anyone present who would like to be heard regarding any of the hearing cases on the agenda.

Mr. Howard Adams approached the podium on behalf of Neptune's Kitchen and Dive Bar located in Rodanthe, NC. He stated that his bar was cited for serving to an underage minor, among other violations. He stated it was the first violation for his restaurant. He said that the minor had an ID, but it was a fake ID. He asked for a reduction in penalty and if there was any training that he could attend to prevent issues in the future.

Assistant Counsel Seth Kandl summarized the case on behalf of Legal Section. He recounted the ALE Agent's report stated that a fraudulent ID was in the minor's possession, but it was not used at the point-of-sale. The bartender did not ask for ID or age. Mr. Kandl summarized communications between Mr. Adams and Legal Section where training was offered to reduce the penalty by \$200. Mr. Kandl stated that in lieu of training, Mr. Adams wished to attend the meeting to address the Commission.

General Counsel Stacey Carter-Coley stated that a motion would be in order at this time. She stated based on the offer in compromise that was submitted, staff recommended to accept a penalty of \$3,800. She also asked that the Commission to take into consideration what Mr. Adams shared.

Chairman Bauer and Commissioner Mitchell conferred and agreed to reduce the penalty by \$200. Chairman Bauer stated that he did not want to see the Mr. Adams return with another "sale to underage" violation. Mr. Adams stated there was a miscommunication regarding the training and that he would look into further training for his staff.

Mrs. Carter-Coley presented the remaining 99 offers in compromise for consideration. She stated staff recommended the Commission ratify the remaining offers in compromise as presented. Commissioner Mitchell made a motion to adopt staff's recommendation. A vote was held, and the motion passed.

II. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – DAVIS-LEHRMITAGE LLC

For item two on the agenda, an exemption request, Chairman Bauer again called upon General Counsel Stacey Carter-Coley. Mrs. Carter-Coley deferred presentation of the exemptions to Assistant General Counsel Renee Metz.

Mrs. Metz provided a summary of the request stating the petitioner was a California winery who had an ABC Non-Resident Wine Vendor permit and would like to open a retail establishment in North Carolina. Mrs. Metz stated so long as ownership at the California entity was not involved with the day-to-day ordering in the North Carolina retail location and so long as every product coming from California goes through a North Carolina wholesaler, staff recommended approval of the request. She stated that Attorney Erin Mosley was present on behalf of the petitioner.

Attorney Mosley added that the petitioner is really excited about this retail location. She stated the intent to sell alcohol is only a small portion of the overall goal. She explained the retail location is called Highland Wine Provisions and is a two-story building located in Highlands, NC. She stated the first floor will be dedicated to selling local goods: local pottery, wooden bowls, cutting boards, local cheeses, jams, and honey, and they will sell beer and wine for off-premises consumption. The second floor will be dedicated to a tasting room that will have beer and wine. She confirmed that only a small portion of the wine in the tasting room will be the Davis wines and that those wines will be purchased through the 3-tier system from

a North Carolina wholesaler. Ms. Mosley asked if she could answer any questions and thanked the Chairman and Commissioner Mitchell for their time.

Mrs. Metz repeated that staff recommended approval of the exemption request.

Chairman Bauer made a motion to adopt staff's recommendation. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

III. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – FLYING BULL BEER COMPANY, INC.; FBBC, LLC; ANA BLOCH; AND JOHN RICHARDSON

Chairman Bauer again called upon Assistant General Counsel Renee Metz for item three on the agenda, an exemption request.

Mrs. Metz summarized this request as an ownership exemption for Flying Bull Beer Company, Inc. and FBBC, LLC, two corporations owned by the same persons. She stated each is operating as its own entity. Each brewery has its own retail location. She explained the cross-ownership of the brewery and the other entity's retail location is the cause for the exemption request.

Mrs. Metz stated there was a request in the petition that, in staff's opinion, should not be granted. She stated the new taproom location should not be considered a retail location of the other brewery. It is because of the brewery that the retail location exists. She explained the petitioner could not have two breweries, having a retail location at both, and each counting as one of their retail locations. She stated they need to be completely separate and follow the standard conditions such as: using a third-party wholesaler, making a good faith effort to find other products, provide fair market value of products, having an independent third-party manager ordering product. Based on the standard conditions, Mrs. Metz stated staff recommended granting approval so long as the retail locations are not considered retail locations on the other breweries.

Chairman Bauer made a motion to adopt staff's recommendation. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

IV. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – IRONCLAD BREWERY CORPORATION AND SHAKA TACO CORPORATION

Assistant General Counsel Renee Metz presented item four on the agenda, an exemption request.

She stated Ironclad Brewery Corporation has retail and commercial permits. They have a location currently under the ownership but would like to switch that to Shaka Taco. As soon as the exemption is granted, they will switch the permits for this secondary retail location. Ironclad is a very small 10-barrel brewery and Shaka Taco would be one of the three affiliated retailers for Ironclad. They have already agreed to do a reasonable selection of other malt beverage products, Ironclad ownership will not have any direct control over ordering of malt beverages for Shaka Taco. Ironclad mostly does tastings. They are not going to grow over 10 barrels. Shaka Taco will not become an exclusive outlet. Staff recommends approval.

Chairman Bauer made a motion to adopt staff's recommendation. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

V. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – NC TAPS, LLC T/A ULTIMATE ALES; ASS CLOWN BEER & WINE, LLC T/A ASS CLOWN BREWING CO.; AND CHRISTY O’DONNELL

Mrs. Metz presented the final exemption request on today’s agenda. She explained this exemption was a little different from the standard. She summarized that this is an employee/ownership exemption request. She stated, typically if just one person wanted to work for a wholesaler and a retailer, staff would accommodate that request. However, because there is an ownership issue with the cross-employment, the issue is presented before the Commission today.

Mrs. Metz stated the petitioner, Christy O’Donnell, has a salesman permit for Ass Clown Beer & Wine, LLC. Her husband owns retail location Ultimate Ale and has applied for permits. Mrs. Metz explained Mrs. O’Donnell stated she will have nothing to do with the retail location, but Mrs. Metz asked that there be the following condition to granting the exemption: when Mrs. O’Donnell is acting as a salesman for Ass Clown Beer & Wine, she will have nothing to do with the retail location Ultimate Ales. She cannot serve as their salesperson, she cannot have them as her account, and she cannot deliver to them. She simplified that when Mrs. O’Donnell is wearing her wholesaler hat, her husband’s location does not exist. Mrs. Metz stated staff recommended approval of the exemption with this condition.

Commissioner Mitchell asked of Mrs. Metz, “Who makes sure there are no violations in this situation?” She answered Alcohol Law Enforcement (ALE). She stated, in general the local ALE Agent knows who’s who in the area and would monitor the situation. She stated that a copy of the order would be available to Mrs. O’Donnell to have in her possession should anyone have a question. Commissioner Mitchell thanked Mrs. Metz for her response.

Chairman Bauer made a motion to adopt staff’s recommendation. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

**VI. ABC STORE LOCATION – GREENE COUNTY ABC BOARD
(412/414 Kingold Boulevard, Snow Hill, NC)**

Chairman Bauer recognized Deputy Commissioner Mike DeSilva to present item six on the agenda, a request for approval of a new ABC store location by the Greene County ABC Board.

Mr. DeSilva stated on December 22, 2022, the Greene County ABC Board requested approval from the Commission to purchase a portion of a parcel to build and operate a new ABC Store in Snow Hill. He stated the new location would replace two existing Greene County ABC stores located in Snow Hill. The new store would have more storage and sales area of approximately 6,000 square feet. If approved, the Board tentatively plans to open the new store in September of 2023 and close both existing stores at that time.

Mr. DeSilva stated the proposed location is part of a parcel located at 402 Kingold Boulevard in Snow Hill. The area is zoned commercial with a variety of different businesses. The land is designated for Highway Commercial use. The entire parcel is approximately 7.85 acres and is currently owned by Townsend Ridge Properties, L.L.C. The purchase price will be \$130,000.00, plus an additional \$550,000.00 in estimated construction costs. A stand-alone store will be constructed on the property. The construction costs would be financed through a bank loan and repaid as a mortgage payment from the operation of the new store. The old stores will close upon the opening of the new store, and once sold, the monies will be applied to the new mortgage payment.

The Deputy Commissioner stated all Board members provided financial disclosures as requested. He explained Board Chairman Robert Taylor, Jr. is the current owner of the property, and he provided a letter disclosing his family ownership of the property. He stated Mr. Taylor recused himself from the Board's vote on purchasing the property and hired an independent real estate firm to represent Townsend Ridge Properties, LLC, during the purchase process.

Mr. DeSilva summarized the building will consist of approximately 6,000 square feet, 2,400 square feet of which will be designated as retail sales area, 600 square feet will be office/workspace, and 3,000 square feet will be warehouse/storage space. There will be a loading dock at the back of the warehouse.

Mr. DeSilva described the area stating the nearest school is West Greene Elementary School, located at 303 Kingold Boulevard, which is approximately 331 feet away across a two-laned highway from the new store location. The Greene County Board of Education is located approximately 0.2 miles away. The nearest church is New Life Outreach Center, located 0.3 miles away. The nearest ABC Stores are located 1.1 miles and 1.3 miles away and will be closed at the time the new store opens.

Mr. DeSilva stated notice to the public was properly posted and witnessed as required. He stated there have been four (4) comments or objections such as: 1) when will the new store start being built?, 2) what are the plans for the first store? will it close?, 3) are you planning to purge both stores?, and 4) we don't need a third store or a larger store (anonymous).

Mr. DeSilva asked if there was anyone attending the meeting who would like to address this request. Hearing none, Mr. DeSilva stated that after reviewing all N.C.G.S. §18B requirements staff has concluded that all elements had been satisfied and recommended the Commission consider the information shared today.

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

VII. ABC STORE LOCATION – LAKE LURE ABC BOARD *(2568 & 2570 Memorial Highway, Lake Lure, NC)*

Chairman Bauer recognized the Deputy Commissioner to present item seven on the agenda, a request for approval of a new ABC store location by the Lake Lure ABC Board.

Mr. DeSilva stated on January 12, 2023, the Lake Lure ABC Board requested approval from the Commission to lease space to open and operate an ABC Store at 2568 and 2570 Memorial Highway in Lake Lure. He stated the Board is planning to relocate their existing store approximately 0.2 miles away and do not anticipate any major impact on sales or operations because of the relocation.

Mr. DeSilva summarized the proposed location is in a strip mall that is close to the commercial area of Lake Lure. He stated it is within the Commercial General zoning district which allows for retail sales, including an ABC Store. Regarding property ownership, he stated all members of the Lake Lure ABC Board supplied financial disclosure forms indicating no financial or personal interests with the property.

He continued stating the warehouse portion of the new store will be approximately 990 square feet, and the retail portion will be approximately 1650 square feet. He said there is no loading dock or possibility to build one. However, LB&B did a site assessment and concluded the new location could be serviced with a liftgate.

Mr. DeSilva described the area, stating the nearest school is Lake Lure Classical Academy, which is approximately 2.4 miles away. The nearest church is Chimney Rock Baptist Church, which is approximately 1.2 miles away. The nearest ABC Store is the current location, located approximately 0.2 miles away, which will close when the new location opens if approved. The next closest store is in Columbus, NC which is 16.5 miles away.

Deputy Commissioner DeSilva stated he was aware of no objections at this time and asked if there was anyone attending the meeting who would like to be heard regarding the Lake Lure ABC Board request. Hearing none, Mr. DeSilva stated after reviewing the N.C.G.S. §18B requirements, all elements have been satisfied. He stated staff recommended the Commission consider the information shared today.

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

VIII. REQUEST BY LB&B ASSOCIATES INC.

Chairman Bauer introduced this request and stated that he did not see anyone present from LB&B Associates Inc.

Deputy Commissioner Mike DeSilva summarized the request. He stated DPS, on behalf of the Commission, and warehouse vendor, LB&B Associates, Inc. (LB&B), entered a 10-year contract with an effective date of July 1, 2021. He stated the contract authorizes annual compensation adjustments up or down related to services provided under the contract.

Mr. DeSilva stated such a request was submitted by the vendor on May 31, 2022, with an amended request submitted in July 2022. He stated the request for additional compensation was based only on the increased price of diesel fuel and thus is the only matter before the Commission today.

He stated during the months following the vendor's original request for additional compensation, other requests were raised by the vendor, including a January 2023 request to lower the metrics of the online delivery KPIs from 99% to 97.5%. Commission staff has asked LB&B to provide justification for the proposed lower metric. ABC staff has also reached out to NABCA for info about industry standards and what other control states have for on-time delivery metrics. Once this info is received, Mr. DeSilva stated it will be shared with LB&B and will be presented to the Commission for consideration.

Again, Mr. DeSilva stated, the only matter before the Commission today is the vendor's request for additional compensation based on the increased price of diesel fuel. Keeping in mind that the vendor receives an automatic annual 2% increase in the per load price, Mr. DeSilva explained the methodology to calculate diesel fuel cost was the main hurdle to resolve the vendors request. He stated after numerous meetings and conversations between the vendor and Commission staff, as well as a review of the proposed calculation method shared by the vendor, the calculation method was simplified to: 1) how much did the vendor spend on diesel fuel for the fiscal year 2021-22?, and 2) how much of what the Commission paid to the vendor for that fiscal year was attributed to fuel, which was based on the vendor's own allocation of the per load amount? LB&B reported actual fuel costs for the 2021-22 fiscal year were \$1,106,516.70. Mr. DeSilva stated based on the total number of loads, which was 7,329 delivered by LB&B, the Commission paid \$1,407,846.89.

Mr. DeSilva stated LB&B, through its counsel Mr. Ben Thompson, was made aware that its request for additional compensation based on the increased price in diesel would go before the Commission for consideration at today's meeting. He stated the vendor was informed of the opportunity to present any

additional documents in support of their request. Mr. DeSilva stated on March 13, 2023, LB&B counsel emailed a letter to the DPS contract leads Angela Wainwright and Tim Pendergrass for the purpose of invoking the dispute resolution provisions contained in section 6.4 of the contract regarding LB&B's requests. He concluded we are waiting for DPS to share the next steps with the Commission.

Because more information was needed and there was not a representative present for LB&B, Chairman Bauer made a motion to table the issue. He said he could not decide based on the information presented. Commissioner Mitchell echoed the Chairman's concerns and stated he had several questions. The Chairman and Commissioner Mitchel agreed to continue the issue to the next meeting.

IX. OTHER BUSINESS

Chairman Bauer asked Mrs. Carter-Coley and Mr. DeSilva if there was any additional business. They indicated there was none.

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

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

Approved at the April 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