

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION
MEETING MINUTES
MAY 10, 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 May 10, 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 May 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 (joining via Teams). He also welcomed General Counsel Stacey Carter-Coley, the entire legal team, and Deputy Commissioner Mike DeSilva.

MINUTES OF THE APRIL 12, 2023, COMMISSION MEETING

Chairman Bauer made a motion to waive the reading of the minutes of the April 12, 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 April 12, 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 stated he found no conflicts. Commissioner McCrimmon also found no conflicts or appearance of a conflict.

I. HEARING CASES AND OFFERS IN COMPROMISE – 95

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

Mrs. Carter-Coley started off by addressing hearing case #1 on the agenda, a contested case for Jiffy Mart located in Red Springs, NC. She requested this case be continued to the next meeting. Commissioner Mitchell made a motion to adopt staff’s recommendation. Chairman Bauer seconded the motion. A vote was held, and the motion passed.

Mrs. Carter-Coley presented the remaining 94 Offers in Compromise and asked if there was anyone present who wished to be heard regarding any of the cases on the agenda. Sara Figueroa from Break Time Billiards

located in Cary, NC (00217958AJ – 999) approached the podium. Her case was on the previous month's agenda. The Final Agency Decision had been ratified and the suspension was set to begin Friday, May 12, 2023. She requested her case be re-opened and a reduction considered regarding the violations. Mrs. Figueroa argued that her establishment was unfairly targeted for inspection on suspicion of drug possession and sales. After determining the violations for the establishment were regarding video gaming machines, and it was clarified that the possession of these machines was an ABC violation, the Chairman and Commissioners elected not to re-open the case. Although the payment deadline had passed, Mrs. Figueroa was allowed to pay the penalty payment in lieu of the suspension.

Mrs. Carter-Coley again asked if there was anyone present regarding the 94 remaining cases on the agenda. Hearing none, she stated staff recommended ratifying the remaining Offers in Compromise.

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.

II. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – MICHAEL ADAMS; EDGE CITY BREWERY, LLC; ELIZABETH PIZZA PUB, LLC; HC HAWTHORNE'S, LLC; MH HAWTHORNE'S, LLC; MP HAWTHORNE'S, LLC; AND NS HAWTHORNE'S, LLC

Chairman Bauer called upon Assistant General Counsel Renee Metz to present items two through seven on the agenda, the exemption requests. Mrs. Metz, in turn, recognized attorney John Szymankiewicz who was representing the petitioners.

Mr. Szymankiewicz summarized this request stating it involved his client, Michael Adams, the owner of Edge City Brewery, LLC. He stated Mr. Adams had common ownership in several other LLCs whose ownership included several pizza restaurants in the Charlotte area. He asked that the Commission allow that common ownership, under the staff's recommendation, and that they be able to serve their products in some of those locations not to the exclusion of other malt beverage offerings.

Mrs. Metz further explained that there was a law passed in 2019 that amended the exemption statute ruling that a brewery can have common ownership in as many satellite locations as they like, but they can only serve their own product at an additional three satellite locations. Mrs. Metz stated that the petitioner had yet to determine their three locations. She stated staff recommended approval of the request with the condition that the three locations had yet to be determined. She stated she would amend the order once those specific locations were known. She reiterated that the standard conditions would apply, but they were missing the three specific retail outlets at which the brewery's products would be sold.

Chairman Bauer asked the Commissioners if they had any questions. Commissioner Mitchell asked if this request would come before the Commission again once those locations were determined. Mrs. Metz went over the options. Commissioner McCrimmon asked how quickly the petitioner could make their selections. Mr. Szymankiewicz stated that he needed to confirm with his client, and he could have that information by the end of the day. Commissioner McCrimmon stated that she was fine for the Chairman to sign off on the request if staff would follow up informing the Commission of those three locations.

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) – CHRIS BORRENSON; BBBC, LLC T/A WYE HILL KITCHEN AND BREWING; 629 GROUP, LLC T/A GLASSHOUSE KITCHEN; AND 629 GROUP, LLC T/A TWISTED LADDER

Assistant General Counsel Renee Metz introduced this request stating this petitioner was also represented by Attorney John Szymankiewicz. Mr. Szymankiewicz stated this was a common ownership situation where his client, Chris Borrenson, owned interest in Wye Hill Kitchen and Brewing located downtown as well as other LLCs with retail locations. Mr. Szymankiewicz stated the reason for this exemption was Mr. Borrenson's interest in a new retail location called Twisted Ladder. He requested that the Commission allow this common ownership with the standard conditions. Mrs. Metz stated that staff agreed and recommended approval.

Chairman Bauer asked if there were 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.

IV. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b.) – TRIBECA HOSPITALITY, LLC; VIM HOLDINGS, LLC; ROBERT FRAME; AND JEFFREY SCHENK

Assistant General Counsel Renee Metz summarized this request stating it involved Tribeca Hospitality, LLC and two gentlemen who owned various interests in a winery, a brewery, and several new retail locations. She stated, for now the order would read that none of the winery products or brewery products would be sold at the VIM Holdings retail locations, but if the petitioner decided to select three out of those, then they would come back before the Commission for an amendment. For now, none of the producers' products would be sold at the retail locations of the affiliated LLCs.

The attorney for the petitioner, Mr. Hardy Lewis, reiterated his client owned interest in a brewery, two taprooms, a cidery, and twenty-three First Watch restaurants. He explained First Watch was a breakfast/brunch type concept and added, among those businesses, his client employed about 750 people in North Carolina. He stated the First Watch restaurants would not sell beer. They would only serve wine and liquor for breakfast cocktails. Mr. Lewis asked the Commission that his client be allowed this exemption. He stated his client did not plan to serve any of the Mash House beers or cider from their winery in their restaurants. Mrs. Metz stated that staff recommended approval and added that they would come back if amendments needed to be made.

Chairman Bauer asked if there were 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.

V. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – BILLY DALE OVERBEE, BLACKBEARD'S TRIPLE PLAY, LLC, AND TRIPLE PLAY OASIS RESTAURANT AND SPORTS BAR

Assistant General Counsel Metz stated that the petitioner was not present. She summarized the request stating Mr. Overbee had a brewery called Barrel's Brewhouse, was the sole proprietor of a restaurant called Triple Play Oasis, and of a retail location called Blackbeard's. She stated he simply needed an exemption

for the ownership between his two retail locations and his brewery/distillery location. Based on the following conditions: Mr. Overbee not be involved in the retail locations as far as ordering products, the spirituous liquor would have to go through the ABC system in order to get to the retail locations, a good faith effort be made to find a third-party wholesaler, as long as the brewery not exceed 5,000 barrels of beer, and a reasonable selection of other spirituous liquor and malt beverage products were offered at all of the retail locations, Mrs. Metz stated that staff recommended approval.

Chairman Bauer asked if there were 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.

VI. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – SUMIT VOHRA; LONERIDER BREWING COMPANY; HUB AT OKI, INC.; LONERIDER SPIRITS, LLC; AND LONERIDER SPIRITS-DURHAM, LLC

Assistant General Counsel Metz introduced this request as an amendment to an order that was issued in June of 2022. She explained the petitioner was basically adding a new spirits location.

Attorney John Szymankiewicz reiterated this request was to amend a previous order where the Commission granted the common ownership exemption with respect to Lonerider Brewing Company as well as other locations including a Lonerider Spirits distillery and distillery tasting room. He stated they were opening a second location for the distillery and wished to have the exemption extended to that location as well.

Mrs. Metz explained this exemption was one where Lonerider Brewing Company already had the maximum number of retail locations where it could serve its product. She stated, along with other standard conditions, the Commission would need to add: Lonerider beer could not be sold at the three Lonerider Spirits locations, because it would exceed the three maximum satellite locations where their product could be sold. She stated Lonerider Spirits was fine to still sell beer, it just could not sell Lonerider Brewing Company products because it was already being served in Wake Forest, Raleigh, and Oak Island. She concluded that staff recommended approval.

Chairman Bauer asked if there were 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.

**VII. ABC STORE LOCATION – CONCORD ABC BOARD
(3055 Dale Earnhardt Boulevard, Lot 2, Kannapolis, NC)**

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

Mr. DeSilva stated on March 28, 2023, the Concord ABC Board requested approval from the Commission to purchase property to open and operate a new ABC store at 3055 Dale Earnhardt Boulevard in Concord, NC. He reported the new store would replace an existing leased store located approximately 0.4 miles away. He stated ABC Audit Section Team Leader Edwin Strickland compiled the information for the investigative report and Concord ABC Board General Manager Lorraine Trexler provided the information therein.

Mr. DeSilva stated there was no shared personal or financial interests between property ownership and any of the board members. All board members had provided financial disclosures as requested. He stated the proposed property was an improved lot and the area was zoned C-2, which would allow for an ABC store. He stated the property backed up to Interstate 85 in a highly commercial area that was currently undergoing improvements for other potential development. He stated there would be a loading dock to receive deliveries.

Mr. DeSilva stated the property was listed with the Cabarrus County Register of Deeds as currently owned by Celanese Road Properties, LLC. The purchase price for the 1.76-acre property would be \$792,000. He stated the lease at the existing store would expire in 2027. Mr. DeSilva explained the board wished to purchase the property for the future store as there is no other property available in the area. The board planned to construct a building of approximately 6,000 square feet. If approved, they hoped to open the new store in 2027 and close the existing store.

Mr. DeSilva described the area stating the nearest school was Concord Lake STEAM Academy located approximately 1.1 miles away. Two churches, River of Life and Crosspointe Baptist, were both located approximately 0.3 miles away. The Concord ABC Board had another store located approximately 3.5 miles away.

Mr. DeSilva concluded stating on March 28, 2023, a sign announcing the board's intentions of opening an ABC store was placed at the location. Edwin Strickland witnessed the sign saying that he determined that all ABC Commission rules were met. As of April 11, 2023, he stated, there were no objections to the store and none since.

Mr. DeSilva asked if there was anyone present who would like to be heard regarding the Concord ABC Board request. Hearing none, Mr. DeSilva stated that after reviewing §18B requirements, all elements had been satisfied. He stated staff recommended the Commission take into consideration the information shared today.

Chairman Bauer asked if the Commissioners had any questions. They both stated they did not. Commissioner Mitchell made a motion to adopt staff's recommendation. Chairman Bauer seconded the motion. A vote was held, and the motion passed.

VIII. ABC STORE LOCATION – HIGHLANDS ABC BOARD *(322 Oak Street, Highlands, NC)*

Deputy Commissioner DeSilva summarized this request stating on March 23, 2023, the Highlands ABC Board requested approval from the Commission to lease a space to open and operate a new ABC store at 322 Oak Street in Highlands, NC. The new location would replace the existing Highlands ABC store located approximately 0.5 miles away.

Mr. DeSilva stated the location was part of 4.55 acres owned by the Town of Highlands, included a stand-alone structure that was formerly the town fire department, and was within the Governmental/Institutional (G/I) zoning district which allowed for retail sales. He stated the area was a recreational tourist destination with a fluctuating population and visitors.

Mr. DeSilva reported all board members had provided financial disclosures as requested indicating no financial or personal interest with the property in question. He stated a model lease for the property was provided indicating a yearly rent of \$1.00.

Mr. DeSilva stated the new store would be a total of 6,700 square feet. If approved, he stated, the board tentatively planned to start the lease in July of 2023 to begin remodeling the building. Highlands ABC Board General Manager Kevin Vinson anticipated the project would take 12-18 months.

Mr. DeSilva described the area stating the nearest school was Highlands School located approximately 0.6 miles away. The nearest church was Highlands United Methodist Church located approximately 0.3 miles away. The Jackson County ABC Board had a store located 11 miles away. To be clear, he stated, Highlands was in Macon County. The Highlands ABC Board's existing location would close with the opening of the new store.

Mr. DeSilva concluded on April 3, 2023, a sign announcing the board's intentions of opening an ABC store was placed in front of the proposed location. ABC Compliance Officer Melissa Hand witnessed the sign on April 11, 2023, and determined it met the ABC Commission rules. He stated as of April 20, 2023, there had been no objections to the proposed store and no complaints or comments had been received.

Mr. DeSilva asked if there was anyone present who would like to be heard regarding this request. Hearing none, Mr. DeSilva stated that after reviewing §18B requirements, all elements had been satisfied. He stated staff recommended the Commission take into consideration the information shared today.

Chairman Bauer asked if the Commissioners had any questions. They both stated they did not. Commissioner Mitchell made a motion to adopt staff's recommendation. Chairman Bauer seconded the motion. A vote was held, and the motion passed.

IX. REQUEST BY LB&B ASSOCIATES INC.

Chairman Bauer introduced item number nine on the agenda, a request by LB&B Associates Inc. (hereinafter "LB&B"). Deputy Commissioner Mike DeSilva began summarizing the request by providing some background. He stated the Commission and LB&B negotiated the current warehouse and distribution contract in 2020, finalizing the details in the spring of 2021 with an effective date of July 1, 2021. He stated the contract allowed for LB&B to request adjustments to compensation.

Reading from section 3.10 of the proposal submitted by LB&B, Mr. DeSilva stated, "*LB&B reserves the right to request annual adjustments to compensation where necessary due to market conditions, labor costs and other circumstances increasing the cost of performance. If approved, adjustments shall be made on a negotiated effective date.*"

Mr. DeSilva stated this was a firm fixed price contract which does not account for fuel price volatility. He explained this type of contract placed a disproportionate amount of risk on the contractor. He reasoned when prices rise, the contractor suffers the higher price impact and when prices decrease, the Commission may perceive they overpaid for fuel. In the current state, he said, everything pertaining to the higher fuel costs has been absorbed by the contractor, LB&B. Conversely, when fuel prices go down, he said, there was no provision for the Commission to benefit from the lower fuel prices. Mr. DeSilva stated the entire burden for the increased fuel costs was on LB&B and LB&B was relying on the State to fairly consider adjustment requests.

Mr. DeSilva stated LB&B's revised fuel request to the Commission stated the following, "*If the NCDPS and the ABC Commission will agree to monthly adjustments (up or down) in the price per load based upon the changes to the cost of diesel fuel in accordance with the Department of Energy (DOE) fuel table (the "monthly adjustment"), then LB&B will agree to withdraw its \$405,818.96 lump sum fuel adjustment request (for the increase in the cost of fuel during the first year of contract performance). LB&B will also*

agree not to seek any further adjustments in the contract price based upon fuel price fluctuations for the balance of the contract period. The monthly adjustment would be effective as of July 1, 2022, using a specific formula.

LB&B has proposed using \$3.21 as the initial contract index rate at the start of the contract on July 1, 2021. The initial rate would then be used to calculate the percentage change in fuel price from month to month. The resulting revised per load fuel contract rate would then be multiplied by the number of loads shipped to establish the amount of the monthly fuel price adjustment, whether an increase or decrease. Again, the monthly adjustment would be effective as of the second year of contract performance beginning July 1, 2022.”

Mr. DeSilva expressed the fact that LB&B was requesting dynamic up and down fluctuations be fixed into the contract was an important and noteworthy component. He stated LB&B was acknowledging that there may be circumstances where the price of fuel goes down and the proposed formula would ensure that the Commission received the benefit of a lower fuel cost per load. He stated the proposal was not just asking for additional money for a fuel adjustment but would also improve the contract for operation realities. By using this formula, he stated, and having a real-time monthly adjustment in the current fiscal year would eliminate negotiating any future fuel adjustment requests from LB&B for the remainder of the contract. As previously stated, Mr. DeSilva reiterated, the current contract had no provision to provide a credit back to the Commission. “When the fuel price drops below \$3.21, only LB&B benefits,” he stated. He concluded the proposed method addressed this issue and benefited the Commission.

Mr. DeSilva continued stating for the current fiscal year period of July 1, 2022, through April 30, 2023, the requested fuel adjustment amount was \$575,423.30. This represented the total of the monthly adjustment requests from July 1, 2022, through April 30, 2023. May 1st through June 30, 2023, he stated, would also be included once the DOE fuel table announced the monthly amount. If the proposal is approved, he stated, the formula would be used for the remaining eight (8) years of the contract. Mr. DeSilva reported from November 2022 (\$5.18/gallon) through April 2023 (\$4.04/gallon), the DOE fuel table recorded a steady decline in the per gallon price of diesel fuel.

Mr. DeSilva added world events such as the war in Ukraine and continued recovery from the COVID-19 pandemic impacted many businesses causing fuel prices to be highly volatile. He stated the Commission and LB&B were seeking an approach that shared the risk of the fuel price fluctuation.

Mr. DeSilva stated the DOE table allowed dynamic adjustments every month rather than waiting until the end of the fiscal year and being in the position of a lump sum request. From a budgeting standpoint, he said, this proposal would allow the State to account for adjustments in real-time in the appropriate fiscal/contract year.

“We all know it is difficult to predict fuel prices,” Mr. DeSilva stated, “which is why a written plan for how to account for the increase or decrease in the price of fuel may be beneficial to both the Commission and LB&B.” He stated this one-time change would live for the life of the contract on fuel. The rise in fuel cost, he reiterated, was beyond LB&B’s control and if nothing was done, only LB&B benefited when fuel prices went down.

Mr. DeSilva shared some of the Commission’s recent successes. In fiscal year 2022, he stated, there was an 8.3% increase in sales over fiscal year 2021. In the current fiscal year, he stated, sales continued to grow from approximately \$1.2 billion in sales so far for the year. He added that North Carolina was now the number two control state in sales out of the seventeen (17) control states. Mr. DeSilva stated LB&B was the Commission’s business partner and was part of the reason for the success the NC ABC system was

experiencing. He stated the Commission and LB&B were both critical components of the system in addition to the ABC Boards and suppliers.

To summarize, Mr. DeSilva concluded, if the ABC Commission agreed to the proposed method, LB&B would withdraw the \$405,818.96 lump sum fuel adjustment request for the first year of the contract. LB&B would also agree not to seek any further fuel adjustments in the contract price for the balance of the contract period. Up and down fluctuations fixed in the contract, he stated, was an important component. He reasoned using the DOE table was doing something incrementally every month rather than waiting till the end of the fiscal year and being in the position of a lump sum request. He stated this proposal was about improving the contract for operational realities and strengthening the Commission's business partnership with LB&B. He reiterated it was difficult to predict fuel prices. Mr. DeSilva stated this proposed adjustment would provide a written plan for how to account for an increase or decrease in the price of fuel. This one-time change, he explained, would live for the life of the contract on fuel. He stated staff recommended the Commission consider the information shared today.

Chairman Bauer asked if the Commissioners had any questions.

Commissioner Mitchell indicated that he would like to speak. He asked Mr. DeSilva why there was no representative from LB&B present at the meeting. Mr. DeSilva replied indicating, to his knowledge, they would not be attending.

Commissioner Mitchell continued stating he would like to read an excerpt from DPS Contract Specialist Angela Wainwright's April 6, 2023, response to Benjamin N. Thompson, the attorney for LB&B:

"Good afternoon Mr. Thompson,

We are in receipt of your letter and appreciate your concerns. The concerns you have outlined are matters that involve terms that were based on business decisions made by the ABC Commission and agreed upon by the vendor at the time of the contract formation.

When a disagreement as to this interpretation of contract terms arises, the Commission reviews the issue and makes a decision and recommendation. Parties to the disagreement are given an opportunity to present their interpretation(s) of the terms at issue at Commission meetings. It is my understanding that LB&B forfeited an opportunity to present their requests surrounding this contract to the Commission by failing to appear at a recent meeting; however, LB&B has been given another opportunity to present and is included in the next Commission meeting agenda. Following the Commission's recommendation based on that meeting, DPS Purchasing & Logistics will review and approve or make recommendations. If approved, DPS' next step is to seek approval from the State Division of Purchase and Contract."

Commissioner Mitchell then made the statement that LB&B refused to come before the Commission again and asked Mr. DeSilva why he, as a state employee, was bringing LB&B's recommendation before them. Commissioner Mitchell commented that they worked for the State of North Carolina, not LB&B. Mr. DeSilva stated that he understood, that he was bringing the proposal that was sent to the Commission. Commissioner Mitchell interjected stating LB&B should be there to present their own proposal. He stated this was the third time [on the agenda]. Chairman Bauer made the comment that the proposal was one that LB&B worked on with Commission staff.

Commissioner Mitchell stated the Commission paid \$1,407,846.89 to LB&B for fuel. LB&B spent \$1,106,516.70, which left a total of \$301,330.19. "That money did not come back to the State. They kept that money," he exclaimed. He then asked, "Why would they come to us asking for money for fuel and they have kept the \$300K?"

Mr. DeSilva stated he believed Commissioner Mitchell was referring to year one of the contract and his numbers sounded correct. He stated the amount LB&B budgeted for fuel was much more than their original budget and that is why they were making this request. Commissioner Mitchell exclaimed, "That is not good enough, Mr. DeSilva."

Commissioner Mitchell took a moment to provide some history. He stated he came to the Commission four (4) years ago during the time of the contract negotiation. He stated he was brought on to make sure the Commission monitored this contract.

He began reading from an article published on August 9, 2018, entitled *McGrady: Audit of ABC warehouse waste shows need for major changes* written by John Trump and Kari Travis, where the authors interviewed State Auditor Beth Woods regarding the ABC audit results which were published that same day. The article states, "The audit released Thursday, Aug. 9, in short, found that poor contract administration cost North Carolina taxpayers at least \$11.3 million over 13 years. Unused warehouse space potentially cost the state \$2.1 million over seven years, and lack of monitoring left the state underpaid by at least \$297,537 over two years."

Commissioner Mitchell paused. He stated, "How much money has LB&B lost?" Mr. DeSilva stated he was unable to answer that question. The Chairman stated he had no idea. Commissioner Mitchell continued, "So, if we don't know how much money they have lost, why would we be giving them any more money?"

Chairman Bauer replied explaining the request was based on a fuel table. He stated, "The price of fuel back when the contract started was \$3.21 per gallon. It's been almost \$5 per gallon throughout the year. Per this chart, if fuel goes below \$3.21, we actually save money." Chairman Bauer concluded by stating, "DPS and DOA have challenged us to make a business decision and, in the long run, the Commission benefits from doing this fuel chart."

Commissioner Mitchell continued paraphrasing the audit article stating: "Auditors found the Commission failed to "procure, administer, and monitor the LB&B contract for the warehousing and distribution of spirituous liquor in accordance with state policies and best practices." "LB&B was given pay increases upon demand without documentation or proof," the auditor said. "In some cases, LB&B misled the state about fuel cost increases, asking the ABC for money they didn't really need, she said. Whatever they asked for, they got. Without any question, without any verification, without any consultation or proof or justification. And in some cases what they said was their reasoning was not true. In 2008 they asked for an increase the next year, and said it was due to price increases for their fuel," Wood said. "When we examined their fuel cost, it actually went down. Same thing in 2016. When we had examined it, it had gone down. The power of this vendor and this contractor was just amazing to me that they had this much power and the commission didn't validate or verify anything."

Deputy Commissioner DeSilva stated that might have been the case, if that is what her report says, in 2016. He stated it was now 2023 and the Commission had an excellent team that monitored the contract and checked what LB&B provided each month for the number of loads and number of cases they ship.

Commissioner Mitchell asked, "How much money has LB&B lost? Is our finance person here?" Monique McLean stood up from her seat. "Do you know?" he asked. She indicated that she did not. Commissioner Mitchell stated that he requested that Legal and Finance be given the information that they need. He stated that he does not need their annual report, but the finance team does. Commissioner Mitchell stated, "I suggested that they have it. I am requesting that it be given to them so they can tell us how much money they have lost. When we determine how much money they lost, then we can justify giving them more money." He stated, "As far as the adjustment fuel cost, for the \$301,330.19 that wasn't spent for fuel that

they kept, as far as I am concerned, that is their fuel adjustment cost there.” Commissioner Mitchell stated that he, “could not see any way where he could support any recommendation for LB&B.” He stated he believed the Commission did not need to accept their request.

Chairman Bauer asked Commissioner McCrimmon if she had any comments. She stated that she wholeheartedly agreed with Commissioner Mitchell’s statements. She stated their responsibility to the Commission, as well as the taxpayers of our great state, was to do their due diligence. She stated she was very thankful for staff and thanked Deputy Commissioner DeSilva for his hard work. However, she stated, she was disheartened that LB&B was not before the Commission to present their own case. Commissioner McCrimmon stated she found it difficult to make a decision on how to best proceed when she was not speaking directly to LB&B. She continued saying, “We are trying to make the best decision for our partner and our partner is not before us. We need more information, more financials, see how the money has been spent, and how the money will be spent going forward.” She stated she was sympathetic, but we had no control over the war in Ukraine. She stated, “the people of North Carolina will hold us accountable.” She called for due diligence, that LB&B be present and accounted for and present on their own behalf. She recommended tabling the issue until LB&B could present themselves regarding their needs and how they could best spend taxpayer dollars.

Commissioner Mitchell stated that staff was tired, and he did not think we needed to, “kick this on down the road.” He stated LB&B had three chances to come before the Commission to present their case and they did not. He stated, “I don’t think we should even entertain their recommendation.”

Chairman Bauer asked General Counsel Stacey Carter-Coley to lay out the options. She stated that there was a motion on the floor, made by Commissioner McCrimmon, to table the issue. Chairman Bauer seconded that motion. A vote was held resulting in two “Ayes” and one “Nay.” The motion passed.

X. OTHER BUSINESS

Chairman Bauer asked Mrs. Carter-Coley and Mr. DeSilva if there was any additional business. Mrs. Carter-Coley advised that Attorney Jennifer Morgan was present and would like to address the Commission on behalf of her client, Beach Road Bottle Shop, LLC (T00308723).

Mrs. Morgan introduced herself and stated that she was present with a request under 18B-900(a) asking the Commission to keep temporary permits in place for a business where the owner received a felony conviction and, as a result, permits were revoked at the end of last week.

Chairman Bauer asked if this was normal business and asked, “Shouldn’t it be on the agenda?” Assistant General Counsel Renee Metz stated that the Commission must first decide to entertain the request and if so, hear the proposal. Chairman Bauer asked if there would be a staff recommendation. Mrs. Metz informed the Chairman that ABC Director of Programming, Attorney Missy Welch would be the best person to make an informed recommendation.

Mrs. Morgan explained that the revocation occurred on Friday, May 5, 2023, and she had been trying to work out the issue with Permit staff. She stated her client was requesting the Commission decline to take action based on an undue hardship. Mrs. Morgan stated that Mrs. Welch indicated that undue hardship requests needed to come before the Commission.

Mrs. Welch stated that the business was no longer selling alcohol and had to cancel some events over the weekend due to the rejection. She stated that was why Mrs. Morgan was asking to be heard on this agenda.

She stated the permittee and staff were being adversely affected by the permits being rejected. She stated it was ultimately at the Commission's discretion for the issue to be heard or not.

Mrs. Morgan stated her client's business shut down on Friday, May 5, 2023, and was currently not selling alcohol. She reiterated they already had to cancel weekend events and had weddings scheduled for the following weekend. She added they just hired six new employees. She explained the reason they were there was because statute stated the Commission may decline to take action for three specific situations: if an owner or manager has a felony conviction, a misdemeanor, or alcohol violation in 18B-900. The Commission could allow a business to continue operating, such as this situation where her client had a felony conviction, if the Commission found an undue hardship. She stated she was requesting to be heard today so that they could get her client's business back open based on that statute that provides for an undue hardship exception. She stated Mr. Gonzales, the owner, was there to answer any questions if the Commission wanted to entertain the request today.

Mrs. Welch provided some additional context stating the criminal record the Commission received from the SBI showed that the owner was convicted of felony strangulation in 2022. Because of that conviction, the owner became ineligible to hold a permit for at least three years. Temporary permits were withdrawn. Mrs. Welch stated last year the Commission's resolutions were updated to allow these type of hardship requests to be presented before the Commission at a meeting.

Mrs. Morgan stated that she agreed that the statute stated the owner was ineligible to hold ABC permits but stated statute also provided that exception for the undue hardship provision. She asked that the Commission consider a 30-day reprieve so that the owner could transition the business to a new owner and, under the undue hardship, would allow the events to continue and the employees to remain employed.

Missy Welch stated staff recommended the temporary permit be reinstated for 10 days, at this point, to allow the owner to discuss any other transfer issues including possibly selling the business so that a new owner could hold permits and the events could be held. Mrs. Morgan stated that would be acceptable.

Chairman Bauer asked if there were any questions. Commissioner McCrimmon asked how long this transfer would take. Mrs. Morgan stated her client had already identified a new company that was working on meeting the inspection requirements and having fingerprinting done to get new permits. She said she could get it done in ten days if they pushed. Mrs. Welch added that she has been in contact with Mrs. Morgan. She stated Permits was aware of the situation and that staff would work with her with regard to receiving a completed packet and getting a temporary permit issued as quickly as possible. As a follow up, Commissioner McCrimmon asked if the transfer was not completed in 10 days, would they be coming back to ask for an extension. Mrs. Morgan indicated they would not. Mrs. Welch added after 10 days the permit would be withdrawn again.

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

Chairman Bauer asked for any other business. Commissioner Mitchell stated he had a request. He stated two months ago, in a staff briefing, he suggested a survey to be conducted for the warehouse performance distribution to the boards, distributors, and to all stake holders. Commissioner Mitchell stated that he would like this request to be recorded into the minutes that he was requesting the survey be completed within 30 days if staff was permitted to do so. He also wanted to draw attention to the fact that he has an open-door policy and stated that if any staff member wished to talk by mail, text, letter, or conversation they should feel free to contact him.

Chairman Bauer announced the next ABC Commission meeting would be held on Wednesday, June 14, 2023, at 10:00 AM at the Commission.

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

Approved at the June 14, 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