

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
FEBRUARY 14, 2018**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on February 14, 2018, 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. and Commissioner Michael C. Herring were present. Chairman Guy called the meeting to order; wishing everyone a Happy Valentine's Day. Chairman Guy stated his appreciation for the employees of the ABC Commission and their work for the ABC Commission. He added, at a meeting with a member of the House of Representatives, the Representative complimented Chairman Guy regarding the ABC Commission staff and the quick response he received.

Chairman Guy stated the Commission was also very proud of the Underage Initiative begun by former Chairman Jim Gardner. Chairman Guy also expressed his appreciation of the work done by Kat Haney and Jeff Strickland. Additionally, Chairman Guy introduced Jim Van Hecke, the Deputy Director of Education Outreach.

MINUTES OF JANUARY 17, 2018 COMMISSION MEETING

Chairman Guy asked for a motion to waive the reading of the minutes of the January 17, 2018 meeting into the record. Commissioner Herring made a motion to waive the reading of the minutes. Chairman Guy seconded the motion. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the January 17, 2018 meeting. Commissioner Herring made a motion to approve the minutes. Chairman Guy 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 Herring stated he reviewed the agenda and found no conflicts of interest. Chairman Guy stated he found no conflicts of interest.

Chairman Guy announced the Rowan/Kannapolis ABC Board held a ribbon cutting ceremony for a new ABC Store on Monday.

I. CONTESTED CASES AND OFFERS IN COMPROMISE – 69

Chief Counsel Renee C. Metz requested case number 32 be removed from the agenda to allow the staff more time for investigation and evaluation. Mrs. Metz stated the case should be removed from the agenda

and not continued to the next Commission Meeting. Mrs. Metz stated it would be added to an agenda at the appropriate time.

Chairman Guy explained the violation at Wild Wing Café had been reported in the news. Wild Wing Café had allegedly served a customer 17 shots of spirituous liquor prior. The customer was in a serious car accident on I-85, in which he was killed. Chairman Guy explained the penalty had been \$1,000.00 in accordance with the law; however, the Commission believed the Offer in Compromise should be rejected as the penalty should be higher or heard by an Administrative Law Judge through the Office of Administrative Hearings.

Commissioner Herring inquired if during the four hour period, in which the customer was served the 17 shots, was he drinking anything else.

Mrs. Metz explained the man was watching Monday Night Football with a group and received shots of liquor from the waitress at the table where he and his friends were seated and also at the bar. The other members of the group were also drinking alcoholic beverages; however, he was the only person drinking Makers Mark, a total of 17 within the four hour period. The group's employer paid for the entire check and the group left together.

Commissioner Herring inquired if the man had driven away from the bar. Mrs. Metz stated they all left together and it was not clear if he had driven at that time. Approximately an hour after the payment for the check was processed, this customer was in the deadly accident. Mrs. Metz explained the individual was driving at a high rate of speed and the accident occurred at a ramp. Mrs. Metz stated there had been allegations of racing; however, those had not been verified.

Commissioner Herring made a motion to reject the Offer in Compromise so it could be renegotiated by the Commission's legal staff and if a proper settlement was not reached, the matter would go to the Office of Administrative Hearings. Chairman Guy seconded the motion. Motion Passed.

As no one was present regarding a case, Mrs. Metz asked the Commission to ratify the remaining Offers in Compromise. Commissioner Herring made a motion to ratify the remaining Offers in Compromise. Chairman Guy seconded the motion. Motion Passed.

II. ABC STORE LOCATION – CRAVEN COUNTY ABC BOARD

Administrator Robert A. Hamilton stated the Craven County ABC Board had requested approval to purchase property to construct and operate an ABC Store at the corner of C Street and Pine Street in Bridgeton, North Carolina. The new store would replace an existing store located at 985 Hwy 70 East in James City which is currently being leased. The lease for the existing store expires in June 2019 and would be closed upon the opening of the new store.

Mr. Hamilton stated the property is a .6 acre parcel and located approximately 4 miles from New Bern and James City. He added the property is zoned Highway Commercial and allows for an ABC Store. Mr. Hamilton stated the proposed property is owned by Harborside Mortgage Lender, LLC. He added there are no personal or financial interests shared between the property owners and the Craven County ABC Board members. Financial disclosure forms have been provided by the Board members.

Mr. Hamilton stated the proposed purchase price for the property is \$269,900.00. The purchase of the property would be funded from the Craven County ABC Board's capital fund. The Board tentatively

proposes to construct a store of 5,800 SF of which approximately 4,800 SF will be used for retail sales and the remaining 1,000 SF would be used for an office and a warehouse.

The nearest school is located approximately 2.4 miles away. The nearest church is located approximately .4 miles away. The nearest ABC Store is approximately 4.3 miles from the proposed store in New Bern. The next nearest ABC Store is the existing store is located 4.7 miles away in James City and will be closed upon the opening of the proposed store.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted on November 9, 2017. Mr. Hamilton stated a public hearing was held and no objections have been received. Mr. Hamilton added the chairman and general manager of the Craven County ABC Board were present if the Commission had questions.

Chairman Guy asked if James City was incorporated or if it was a part of New Bern. Wilfred Chagnon, the chairman, stated the property was currently unincorporated and part of the county. He added it will be annexed as a part of Bridgeton. Mr. Chagnon expressed his appreciation for the assistance the Board received from the ABC Commission staff, adding they did a good job.

Commissioner Herring made a motion to approve the proposed location upon staff recommendation. Chairman Guy seconded the motion. Motion Passed.

III. EXEMPTION REQUEST – G.S. § 18B-1116(a)(2), (3), (b) – BULL DURHAM BEER CO., LLC; BULL CITY HOSPITALITY, LLC AND THE HOLLY SPRINGS BASEBALL CLUB, LLC

Mrs. Metz stated attorney Jennifer Morgan was present on behalf of her clients. Mrs. Metz added Ms. Jennifer Venable was also present on behalf of Capitol Broadcasting Company. Mrs. Morgan stated she was with the firm Williams and Mullins and they represent Bull Durham Beer Co., LLC, Bull City Hospitality, LLC and The Holly Springs Baseball Club, LLC.

Mrs. Morgan explained the exemption was necessary due to the ownership affiliation through Capitol Broadcasting Company. Mrs. Morgan stated Bull Durham Beer is owned by American Campus V, LLC which is owned by Capitol Broadcasting Company. Bull City Hospitality which has retail permits is owned by Blackwell Street Management Company, which is also owned by Capitol Broadcasting Company.

Mrs. Morgan stated Capitol Broadcasting Company recently purchased interest in the Holly Springs Salamanders, a collegiate summer baseball team playing in Holly Springs. The exemption is requested due to the ownership affiliation through Capital Broadcasting.

Mrs. Morgan stated the Commission had granted an exemption in 2014 for the Bull Durham Athletic Park allowing Bull Durham Beer to be located there. Mrs. Morgan explained Bull City Hospitality operates the retail concessions at the Durham Bulls Athletic Park. She added a second brewery is located in Rocky Mount, North Carolina. Additionally, Bull Durham Beer has a second retail location in Durham.

Mrs. Morgan explained Bull City Hospitality wishes to serve as the retail concessionaire for the Holly Springs Baseball Park. Mrs. Morgan explained Bull City Hospitality employs its own staff with an independent manager. Bull Durham Beer will not have any decision making authority with Bull City Hospitality. Additionally, Bull City Hospitality will not receive revenue from Bull Durham Beer.

Mrs. Morgan stated Capitol Broadcasting is a North Carolina company with diversified interests in media outlets and real estate. Mrs. Morgan explained an exemption is requested under NCGS § 18B-1116 to allow the affiliated ownership and to allow the Holly Springs Baseball Club to have sponsorships with other breweries, including those with whom the previous concessionaire had agreements.

Mrs. Metz stated this is a standard exemption request for sports venues holding separate concessionaire agreements. Mrs. Metz added the team is allowed to work with the venue and advertising as long as they do not have any involvement with the concessionaire. Mrs. Metz explained as long as there is separation, the exemptions have been approved several times in the past. Mrs. Metz added the Holly Springs Baseball exemption is essentially being melded into the existing exemption for Bull Durham Beer and Bull Durham Hospitality for the Durham Bulls baseball park. Mrs. Metz addressed Kris Gardner, attorney for the North Carolina Beer and Wine Wholesalers Association, who stated it was a standard exemption.

Commissioner Herring made a motion to approve the exemption request. Chairman Guy seconded the motion. Motion Passed.

IV. OTHER BUSINESS – CONSIDERATION OF THE TOWN OF TROUTMAN’S REQUEST TO CHANGE THE TROUTMAN ABC BOARD FROM FIVE MEMBERS TO THREE MEMBERS

Mr. Hamilton stated the Town of Troutman has requested the Troutman ABC Board be granted permission to reduce the number of board members from five members to three members. Mr. Hamilton explained the Troutman ABC Board was created in January 2016 with five members. Since that time two members had resigned for personal reasons. Mr. Hamilton stated as the members’ terms had expired, the Troutman ABC Board requested a reduction of the number of board members.

Chairman Guy asked if anyone was present on behalf of the Troutman ABC Board or if Mr. Hamilton or Laurie Lee, the Pricing Director, had any comments. Commissioner Herring asked if the Board or its appointing authority had requested the reduction. Mr. Hamilton stated it had been requested by both the Chairman of the ABC Board and the town manager for the appointing authority, the town council and the mayor.

Chairman Guy made a motion to approve the request. Commissioner Herring seconded the motion. Motion Passed.

V. OTHER BUSINESS – CONSIDERATION OF PROPOSAL OF READOPTION OF PERMANENT APPLICATIONS FOR PERMIT RULES – 14B NCAC 15B .0102

Walker Reagan, the rules coordinator, stated two existing rules must be readopted. Mr. Reagan explained the General Assembly, a few years ago, had passed a law requiring agencies to review their rules every ten years. Mr. Reagan stated these two rules must be readopted by May 31, 2018. Mr. Reagan stated 15B .0102 regarding applications for retail and commercial permits had been modified deeming place of birth as unnecessary. Mr. Reagan explained the rules are being revised to meet the application process in practice with the ABC Commission. The processing fee for credit card transactions and electronic funds transfers would be eliminated. Applicants are required to meet training requirements which are also available on the Commission website for free. Additionally, the Commission has approved some in-house training programs for corporations. Mr. Reagan explained because the policies were regarding expenditures of State monies, a Fiscal Analysis of the Proposed Rules was required. Mr. Reagan provided copies of the analysis to the Commission.

Mr. Reagan stated staff recommends the readoption of the rules identified as 15B .0102 and the related rules and they be filed with the Office of Administrative Hearings for publication in the NC Register. Mr. Reagan also requested the proposed rules be emailed to the Rulemaking Committee list and posted on the ABC Commission website. Additionally, Mr. Reagan asked a public hearing be scheduled for April 11, 2018 during the Commission's meeting. Mr. Reagan also requested the public comment period of 60 days be open until May 14, 2018 and the Commission allow staff to make non-substantive changes to the adopted rules as needed. Mr. Reagan also asked the Commission to adopt the Financial Analysis of Proposed Rules dated February 12, 2018 for the rules as presented.

Commissioner Herring made a motion to adopt the proposed readoption of the applications for permit rules with the financial analysis as presented and the recommendations of the staff. Chairman Guy seconded the motion. Motion Passed.

VI. OTHER BUSINESS – CONSIDERATION OF PROPOSAL OF READOPTION OF PERMANENT PROHIBITED STATEMENTS IN ADVERTISING OR ON LABELS RULES – 14B NCAC 15B .1003

Mr. Reagan provided drafts of the proposed Prohibited Statements in Advertising or On Labels rules to the Commission. Mr. Reagan explained some of the language in the existing rules was arcane as they were last amended in 1992. Mr. Reagan stated many of the provisions were identical to the federal guidelines governing advertising and labels. Mr. Reagan stated staff recommends the Commission adopt and incorporate by reference the federal regulations to promote uniformity and consistency of enforcement. Mr. Reagan explained there were four or five rules unique to North Carolina and recommended they be kept with clarification of the language of those rules.

Mr. Reagan stated staff recommends the readoption of the rules and they be filed with the Office of Administrative Hearings for approval by the Rules Review Commission and publication in the NC Register. Mr. Reagan requested the proposed rules be emailed to the Rulemaking Committee list and posted on the ABC Commission website. Additionally, Mr. Reagan requested a public hearing be scheduled for April 11, 2018 during the Commission's meeting. Mr. Reagan also requested the public comment period of 60 days be open until May 14, 2018 and the Commission allow staff to make non-substantive changes to the rules as needed.

Commissioner Herring stated it was nice to see unnecessary rules eliminated and made a motion to adopt the proposed readoption of the prohibited statements in advertising or on labels rules as presented and the recommendations of the staff. Chairman Guy seconded the motion. Motion Passed.

VII. OTHER BUSINESS – CONSIDERATION OF PROPOSAL OF READOPTION OF AN AMENDMENT TO CORRECT THE ABC COMMISSION EMAIL ADDRESS RULE – 14B NCAC 15A .0102

Mr. Reagan stated the email address provided for the NC ABC Commission in rule 15A .0102 no longer existed and needed to be updated with the Commission's correct email address. Mr. Reagan explained, because it is a technical correction, it would not be required to be published in the North Carolina Register or require public hearings.

Commissioner Herring made a motion to adopt the amendment to correct the ABC Commission's email address as presented by staff. Chairman Guy seconded the motion. Motion Passed.

VIII. OTHER BUSINESS – FUTURE NC ABC COMMISSION MEETING DATES

Mr. Hamilton requested the Commission consider and confirm Wednesday, April 18, 2018, Wednesday, May 9, 2018, Wednesday, June 13, 2018 and Wednesday, July 11, 2018 as the dates of the April, May, June and July 2018 NC ABC Commission Meetings.

Mrs. Metz suggested the May ABC Commission meeting date be moved to May 16, 2018 to eliminate the need for a special meeting to comply with deadlines.

Commissioner Herring made a motion to follow staff recommendations and approve April, 18, 2018, May 16, 2018, June 13, 2018 and July 11, 2018 as future meeting dates. Chairman Guy seconded the motion. Motion Passed.

Chairman Guy asked if anyone else was present to address the Commission. As no one was present, Chairman Guy thanked those in attendance, including Kris Gardner, for their contributions.

Chairman Guy made a motion to adjourn. Commissioner Herring seconded the motion. Motion Passed. With no further business, the meeting adjourned.

Approved at the March 7, 2018 Commission Meeting

/S/ A.D. “Zander” Guy, Jr.
A.D. “Zander” Guy, Jr., Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

/S/ Caroline Y. Washburn
Caroline Y. Washburn for the Legal Section