

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION
MEETING MINUTES
APRIL 12, 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 April 12, 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 April 2023 Commission meeting to order and welcomed those attending. Chairman Bauer introduced himself, Commissioner Norman A. Mitchell, Sr., Commissioner La’Tanta (L.T.) McCrimmon (swearing-in ceremony prior to meeting), Deputy Commissioner Mike DeSilva, and General Counsel Stacey Carter-Coley.

Chairman Bauer announced the updated numbers for March. He stated the sales revenue was up 7.86% for a total of \$157 million in sales in North Carolina for the month of March. He thanked the ABC Boards for their service in making that happen. He also thanked suppliers and brokers for the \$100 million in inventory sitting in the warehouse. Finally, Chairman Bauer thanked the team at LB&B Associates Inc. for shipping almost 733,000 cases out of the Raleigh warehouse and transferring nearly 450,000 cases from the Clayton warehouse in March.

MINUTES OF THE MARCH 15, 2023, COMMISSION MEETING

Chairman Bauer made a motion to waive the reading of the minutes of the March 15, 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 March 15, 2023, Commission meeting. Commissioner McCrimmon 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.

I. HEARING CASES AND OFFERS IN COMPROMISE – 101

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

Mrs. Carter-Coley presented case number one on the agenda, a contested case regarding a sale to underage. She stated staff recommended upholding the administrative law judge’s conclusions of law and findings of fact. She requested a payment deadline of May 5, 2023, and a suspension date of May 12, 2023.

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.

General Counsel Stacey Carter-Coley then addressed cases #79, #80, #81, and #82 recommending that they be continued to the next meeting due to technical issues. Chairman Bauer made the motion to continue cases #79, #80, #81, and #82 to the next meeting. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

Of the remaining offers in compromise, Mrs. Carter-Coley called attention to cases #61 and #70. She stated the Final Agency Decisions were slightly different from typical FADs. For case #61, legal staff verified the permittee had already served the suspension and was given credit in the FAD. For case #70, legal staff received notice from the Mecklenburg County District Attorney that the permittee may coordinate with Mecklenburg County ABC for the return of the seized alcohol. Whereas a typical FAD would order the destruction of any evidence seized in an investigation. Mrs. Carter-Coley stated staff recommended ratification of the remaining offers in compromise noting the modifications discussed.

Chairman Bauer asked if the Commissioners had any questions. Commissioner McCrimmon asked for clarification on case #61. Mrs. Carter-Coley responded.

Mrs. Carter-Coley asked if there was anyone present who would like to address any of the remaining offers in compromise on the agenda. Hearing none, she repeated staff recommended ratifying the offers in compromise with the noted modifications.

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

II. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – TOBACCO WOOD BREWING COMPANY, LLC (OXFORD); TOBACCO WOOD BREWING COMPANY, LLC (DURHAM); OXFORD OAKS DISTILLERY, LLC; PIERRE GINGUE; AND CHRIS BARROW

For item two on the agenda, an exemption request, Chairman Bauer called upon Assistant General Counsel Renee Metz.

Mrs. Metz stated this request was between Tobacco Wood Brewing Company, LLC ("Tobacco Wood Brewing") and Oxford Oaks Distillery, LLC ("Oxford Oaks Distillery"). She stated John Szymankiewicz, the attorney representing the petitioners, was not present.

Mrs. Metz summarized there were minority shareholders in Tobacco Wood Brewing, which holds a brewery permit and two retail permits, who were also taking minority ownership in Oxford Oaks Distillery, which was applying for commercial and retail permits.

She explained that each were going to have retail locations which would require the commercial permit for the distillery to get an exemption for the retail permit at the brewery and the commercial permit at the brewery to get an exemption for the retail permit at the distillery. She reiterated they would need cross-exemptions between the industry members and each other's retail locations.

Mrs. Metz stated based on the minority interest and the standard conditions of hiring independent third-party managers to be in charge of ordering the alcoholic beverage products at the retail locations, not having more than the fair market share of the producer's products, and having other brands available at reasonable competitive prices, staff recommended approval.

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

III. ABC STORE LOCATION – GREENSBORO ABC BOARD *(3707 Battleground Ave, Ste D&E, Greensboro, NC)*

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

Mr. DeSilva stated on January 27, 2023, the Greensboro ABC Board requested approval from the Commission to lease property to open and operate an ABC store located at 3707-D&E Battleground Avenue in Greensboro. He stated the proposed store would replace an existing ABC store located across the street at 3716-A Battleground Avenue. He advised the existing store's shopping center was slated to be torn down in the future and he added the proposed store would be larger and more accessible. He stated the board tentatively planned to open the new store in January 2024.

Mr. DeSilva stated ABC Audit Section Compliance Officer Kiesha Forbes corresponded with Greensboro ABC Board General Manager Niegel Sullivan for the purpose of the investigation. He stated the property was currently owned by Weaver Investment Company, leased to Deep River Partners, and the space for the proposed store would be leased by Greensboro ABC for \$178,560 annually. He added all board members had provided financial disclosures as requested.

Mr. DeSilva described the proposed location as two suites in the existing Brassfield Shopping Center, which is located near the intersection of Battleground Avenue and New Garden Road. He stated there are many commercial businesses in the shopping center and general vicinity. He reported the property is zoned Commercial and allows for an ABC store. He stated the proposed store would be approximately 6,400 square feet if approved.

The Deputy Commissioner stated the nearest school was Nobel Academy, located 1.8 miles away and the nearest church was Fellowship Presbyterian Church, located just under half a mile away. He stated the nearest ABC store was across the street and would close when the new store opens. He stated the next nearest ABC store was approximately 3 miles away at 2417 Lawndale Drive and was operated by the Greensboro ABC Board.

Mr. DeSilva stated on January 26, 2023, a sign announcing the board's intentions of opening an ABC store was placed at the location and was witnessed by Mrs. Forbes on February 7, 2023. He stated there were two calls/emails objecting to the proposed store. He stated both communications originated from the same optometrist's office located in the shopping center of the proposed location.

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

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

IV. REQUEST BY LB&B ASSOCIATES INC.

Deputy Commissioner Mike DeSilva provided a quick update regarding this item. He stated since the last Commission meeting on March 15, 2023, a letter from LB&B legal, dated March 13, 2023, was reviewed by the North Carolina Department of Public Safety ("DPS"). On April 6, 2023, DPS representatives responded to the letter. On April 11, 2023, a letter from LB&B attorney Ben Thompson was sent to Angela Wainwright and Tim Pendergrass with DPS. Mr. DeSilva stated LB&B Vice President Graham Thompson was present to address the Commission.

Mr. Graham Thompson introduced himself and stated that LB&B's legal counsel, Ben Thompson, could not attend the meeting due to a medical procedure. He stated the contract adjustment request submitted by LB&B was still being discussed with DPS, legal counsel for the Commission, and Deputy Commissioner DeSilva. He stated the discussions were ongoing and LB&B respectfully requested to continue this matter to the May meeting so that both parties may complete these discussions.

Chairman Bauer made a motion to continue this to the May 10th meeting. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

V. OTHER BUSINESS

Chairman Bauer asked Mrs. Carter-Coley and Mr. DeSilva if there was any additional business. Mr. DeSilva stated he had none.

Mrs. Carter-Coley proposed the following future Commission meeting dates for consideration: Wednesday, July 12, 2023; Wednesday, August 16, 2023; and Tuesday, September 12, 2023. Chairman Bauer made a motion to adopt those meeting dates. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

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

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

Approved at the May 10, 2023 Commission meeting

Hank Bauer, Chairman
NC Alcoholic Beverage Control Commission

Respectfully submitted by,

Jennifer Temple for the Legal Section