

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MEETING MINUTES  
OCTOBER 12, 2022**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission (hereinafter “Commission”) meeting held at 400 East Tryon Road in Raleigh, North Carolina, via teleconference, on October 12, 2022, 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 October 2022 Commission meeting to order and welcomed those who were participating. Chairman Bauer introduced himself; Commissioner Norman Mitchell, Sr., and Commissioner Karen Stout, who were both joining the meeting virtually; Deputy Commissioner Mike DeSilva; and General Counsel Stacey Carter-Coley.

The Chairman took a moment to recognize Alcohol Law Enforcement (“ALE”) for being awarded Division of the Year by the National Liquor Law Enforcement Association. He congratulated Director Bryan House and his team for a job well done. He added this was the second year in a row they have won this award.

Chairman Bauer gave a quick sales update. He explained the Commission’s fiscal year began in July. He reported September 2022 sales were \$152 million, which was a 12.2% increase over September 2021. During the first quarter, revenue totaled \$451,763,844 versus almost \$415 million last year, which was an 8.9% increase in sales. The Chairman commented that the Commission was off to a very good start for the fiscal year.

**MINUTES OF THE SEPTEMBER 7, 2022, COMMISSION MEETING**

Chairman Bauer requested a motion to waive the reading of the minutes of the September 7, 2022, Commission meeting into the record. Commissioner Stout made the motion. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Chairman Bauer requested a motion to approve the minutes of the September 7, 2022, Commission meeting. Commissioner Stout made the motion. 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. Commissioner Stout and Commissioner Mitchell also stated they found no conflicts.

## **I. HEARING CASES AND OFFERS IN COMPROMISE – 67**

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

Mrs. Carter-Coley presented the first case on the agenda, a contested case regarding Champion Mini Mart, Inc. T/A Champion Mini Mart. She summarized this violation was for an illegal shotgun on the premises. She stated once the Commission filed their case with the Office of Administrative Hearings, the Permittee failed to prosecute. The Administrative Law Judge ordered a 10-day active suspension and a \$500 monetary penalty enforceable upon dates set by the Commission.

Chairman Bauer asked if there was anyone present who would like to address this contested case. The Chairman repeated himself and, hearing no response, asked General Counsel for staff's recommendation. Mrs. Carter-Coley requested that the Commission impose the Administrative Law Judge's decision, as written, with a payment deadline of November 4, 2022, and suspension beginning November 11, 2022.

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

Mrs. Carter-Coley presented the remaining 66 offers in compromise for consideration.

Chairman Bauer asked if there was anyone who would like to address the Commission regarding any of the offers in compromise on the October agenda. He repeated the inquiry twice more.

Hearing no response, Mrs. Carter-Coley stated that staff recommended the Commission ratify the remaining offers in compromise as presented. Commissioner Stout made a motion to ratify the offers in compromise. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

## **II. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – WHIT BAKER; ANDREW SCHNITZER; STUART ARNOLD; DAVID WILKINSON; STANDARD BEER & FOOD, LLC; BOND BROTHERS BEER COMPANY, LLC; ANCILLARY FERMENTATION PROJECT, LLC; AND FORTNIGHT BREWING, INC.**

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

Mrs. Carter-Coley explained this item was an amendment to an ownership exemption and listed the parties involved: Bond Brothers Beer Company, LLC (retail, commercial); Fortnight Brewing, Inc. (retail, commercial); Standard Beer & Food, LLC (retail, commercial); Ancillary Fermentation Project, LLC (retail, commercial to be submitted); Stuart Arnold; David Wilkinson; Andy Schnitzer and Whit Baker.

She summarized this was a request for an exemption pursuant to N.C.G.S. §18B-1116 based on joint ownership of commercial and retail establishments. Mrs. Carter-Coley asked if there was anyone present who would like to speak regarding this request.

Attorney John Szymankiewicz approached the podium to speak on behalf of the petitioners. He explained that his clients were serial entrepreneurs with a complicated request. He stated that staff had reviewed the petition in an effort to accommodate his client's request. He lightheartedly commented that the wonderful thing about working with alcohol producers, especially small breweries, was that they could be very

creative. He said the downside, also, was that they could be very creative. He stated he looked forward to staff's recommendation.

Mrs. Carter-Coley stated staff recommended granting the exemption with the condition that each brewery would serve only its own product at the adjacent retail location. Mr. Szymankiewicz stated that the petitioners did not have an issue with the condition and gladly accepted staff's recommendation.

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

### **III. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – DANIEL OSBORNE LEONARD**

Chairman Bauer recognized General Counsel Stacey Carter-Coley to present item three on the agenda, another exemption request.

Mrs. Carter-Coley stated this request was for an amendment to an ownership exemption. She listed the parties involved: Gate City Growlers, LLC (retail); Olson and Osborne Development Group, LLC (retail) (T/A Bodega); River Club Concern, LLC (commercial, retail to be submitted) and Daniel Osborne Leonard.

She stated request was for an exemption pursuant to N.C.G.S. §18B-1116 based on joint ownership of commercial and retail establishments. She explained Mr. Leonard planned to divest himself of his interest in Gate City Growlers, LLC by January 2023. Mrs. Carter-Coley asked if there was anyone who would like to speak regarding this request.

Mr. Daniel Leonard stated that he was present. He explained he is joint owner of two business in Greensboro and part owner in River Club. He stated his business located in downtown Greensboro is a bodega and sandwich shop, which is like a convenience store that serves food and sells convenient household items. He stated that his partners in River Club now have ABC licenses and that he is trying to get rid of Gate City by end of year. He stated that he wanted to continue selling alcohol at Bodega, which this exemption would allow.

Mrs. Carter-Coley stated that Legal Section staff reviewed the petition and recommended granting the exemption with the standard conditions of (1) independent, third-party managers would order all malt beverage products for each retail location, (2) that Mr. Leonard would have no day-to-day operational control of Gate City Growlers or Bodega, and (3) each retail location would offer a reasonable selection of other breweries' products.

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

**IV. ABC STORE LOCATION – DARE COUNTY ABC BOARD  
(47290 NC HIGHWAY 12, BUXTON, NC)**

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

Mr. DeSilva summarized the investigation conducted by ABC Audit Supervisor Darnay Barefoot. He stated on July 29, 2022, Dare County ABC Board General Manager Ted Toler requested approval from the Commission to purchase land, build, and operate an ABC store at the property located at 47290 NC Highway 12 in Buxton, North Carolina. The new location would replace the Dare County ABC store located at 47357 Highway 12 South in Buxton, North Carolina.

Mr. DeSilva added that it was verified the land was designated for C-3 Commercial Zoning, which means the location's proposed use was for retail sales. Mr. DeSilva stated the property was owned by the Dare County ABC Board and there was an Agreement for Purchase for the property from Timothy W. Midgett and Patricia Mills Midgett of Hatteras, North Carolina. There is also a Settlement Statement dated February 1, 2022.

He stated the property was purchased for \$425,000.00 and the ABC Board paid \$10,000.00 earnest money. The earnest money and the land were purchased with monies on hand. The new store build is estimated to cost \$2,699,500.00, which the board is projecting would be paid in full from funds on hand once the store is built and opened. Once the closed store is sold, those monies would be added back into their operating fund for the new store. All Board members have provided financial disclosures as requested.

Mr. DeSilva gave some building details. He stated the total space for the store would be 6132 square feet: 2445 square feet for retail space, 2990 square feet for storage/warehouse space, and 505 square feet for mixed beverage sales. The remaining space would be for offices, restrooms, and meeting rooms.

Mr. DeSilva described the location. He stated there were (2) two schools located near the proposed new store location: Cape Hatteras Secondary School, which was 1.3 miles from the proposed new store and Cape Hatteras Elementary School which was 1.7 miles from the new proposed store. He added there were (3) three churches located near the proposed new store location: Lighthouse Assembly of God, .08 tenths of a mile; Our Lady of the Sea Catholic Church, 1.2 miles; Buxton United Methodist Church, 1.7 miles from the new proposed store. The nearest ABC Store, operating at Osprey Shopping Center, 47357 Highway 12 South in Buxton, North Carolina, was located 0.1 miles away and would be closed and sold upon completion of the new location. The next closest store is located 52 miles away at 506 US Highway 64 in Manteo, North Carolina.

Mr. DeSilva stated, on August 15, 2022, a sign announcing the board's intentions of opening an ABC Store was placed at the location. On August 16, 2022, ABC Auditor/Investigations Supervisor Barefoot witnessed the sign and confirmed its compliance with ABC rules. As of September 23, 2022, General Manager Ted Toler advised that he had not received any objections by phone or e-mail. Deputy Commissioner DeSilva concluded stating, based on the information, staff recommended approval of the new location.

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

## V. WAREHOUSE CONTRACT REVIEW REQUEST

Chairman Bauer stated that item four was a request to review the warehouse contract with LB&B Associates, Inc. (hereinafter "LB&B"). He asked Deputy Commissioner Mike DeSilva to present this item.

Mr. DeSilva began by stating the Commission and LB&B entered into a contract with the contract term beginning July 1, 2021. He stated, at this time, LB&B wanted to address two (2) requests.

Mr. DeSilva stated for the 2021-2022 fiscal year, LB&B initially reported that out of the \$2,350.00 price per load cost, the sum of \$197.69 represented the cost of fuel. However, during the contract year, the price of diesel fuel increased significantly due to various international and economic factors. He continued stating on May 31, 2022, and supplemented on July 13, 2022, LB&B submitted a request for an adjustment in the contract price in the amount of \$405, 818.96 based upon the significant increase in fuel costs. Mr. DeSilva stated the Commission has reviewed this request and negotiated a one-time payment for the extenuating circumstances in the amount of \$339,186.74.

Mr. DeSilva summarized the second request stating the contract allowed for a potential one percent (1%) increase in the price per load based on meeting certain Key Performance Indicators, also known as KPIs. He stated three of the five KPIs were met during the 2021-2022 contract year. Additionally, he stated, the contract calls for LB&B to deliver 468 loads per month, or 5,616 loads per year. LB&B exceeded the annual load delivery by 1,713 loads and increased the delivery rate to the local ABC Boards by approximately nine percent (9%) over the previous contract year. Although excess shipments are not part of KPIs, Mr. DeSilva stated the Commission would like to acknowledge the number of shipments above the base contract requirement.

Mr. DeSilva explained that the today's meeting was addressing only the excess diesel fuel expense and the KPIs. He stated that any future adjustments would need to be addressed via contract amendment.

Deputy Commissioner DeSilva recommended, in consideration of the LB&B's increased fuel expenses due to extenuating circumstances, the Commission agree, for this year only, to grant a one-time lump sum payment of \$339,186.74. He also recommended, in consideration of LB&B's deliveries, both cases and loads above the contract requirement, the Commission grant the full one percent (1%) discretionary annual per load increase.

Ben Thompson, attorney for LB&B, made a statement. He thanked the Commission and local ABC Boards, on behalf of LB&B, for their excellent working relationship and partnership. In addition, he thanked General Counsel Stacey Carter-Coley and Assistant General Counsel Renee Metz for their excellent work in negotiating these requests. He stated it was always a pleasure to work with them, they were always professional, and he appreciated the way they go about their tasks.

Mr. Thompson continued, stating LB&B had just completed the first year of contract and the actual number of loads far exceeded the estimate that was contained in the request for proposal. He stated, at the same time, local ABC Boards have enjoyed substantially increased sales. He said even with the additional loads and the increased sales, LB&B has been able to obtain a fulfillment rate which substantially exceeded the depletion rate with the local boards, which at best was three to one (3:1) in excess of the depletion rate.

Mr. Thompson asked Commissioners to recall that the contract required a four-month implementation period. He stated, at that time, LB&B had introduced a new cloud-based computer platform system. He admitted it took some time to work out the kinks, but LB&B worked with the Commission to address those issues. He continued, stating LB&B took it upon itself, for the first four months of the contract period, to

reduce its per load price from \$2,350.00 per load to \$2,150.00 per load in recognition that the implementation caused certain inefficiencies.

Mr. Thompson was glad to report that those issues are now resolved. He added, LB&B is now proceeding in an excellent fashion taking into the consideration the challenges of having two warehouses. He stated, to make all this work, LB&B transports back and forth between its two warehouses about seventeen (17) tractor trailer loads per day in order to make the shipments necessary to meet local ABC Board requirements.

Mr. Thompson concluded by stating, while staff may feel not all KPIs were substantially met, he believed the performance record took into account all the factors that they have dealt with and the fact they provided an excellent service to the State of North Carolina. Mr. Thompson stated he appreciated the Commission's consideration of these requests.

Chairman Bauer thanked Mr. Thompson and echoed the sentiment stating the Commission does have a great working relationship with LB&B. Mr. Bauer praised LB&B for doing a great job getting product out to our Boards and exceeding sales by a large amount. He stated that he appreciated the effort.

Chairman Bauer asked the Commissioners if they had any questions. Commissioner Mitchell stated that he had numerous questions. He said that he was aware of the contract review but was not prepared nor had any information regarding the numbers. Chairman Bauer asked Commissioner Mitchell if his questions could be answered during the meeting. Commissioner Mitchell stated that he had several questions, more than we had time for, and that he wanted to be very comfortable in this vote. He concluded stating, until he received some more information, he would abstain from this vote. Commissioner Stout echoed Commissioner Mitchell's concern. She asked to table the matter until it could be discussed.

Assistant General Counsel Renee Metz approached the podium. She stated that unfortunately there could not be a conversation regarding this matter except in open meeting. She explained that anytime two or more Commission members meet to discuss Commission business, it can be deemed a meeting, which must be open to the public. She stated that now would be the time to have a conversation. Otherwise, staff would have to address each member individually regarding the questions. She apologized but stated that a meeting between the Commission members was not possible except in open meeting.

Commissioner Stout requested a discussion on processes and how information is shared prior to being asked to vote. Chairman Bauer stated that since the Commissioners were asking for more information, to continue this issue until the next meeting. He asked for a motion to continue the issue.

Commissioner Stout made a motion to continue this issue until the next Commission meeting. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

