

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
SEPTEMBER 9, 2008**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on September 9, 2008, beginning at 10:10 AM. The meeting was recorded and the disk in on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas Fox, Commissioner John Lyon and Commissioner Mike Joyner were present.

MINUTES OF AUGUST 15, 2008, MEETING

Chairman Fox made a motion to waive the reading of the minutes from the August 15, 2008, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the August 15, 2008, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Joyner and Commissioner Lyon if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Joyner stated that he found no conflicts of interest. Commissioner Lyon stated that he had to recuse himself from hearing case #34, Nelsons. Chairman Fox stated that he had no conflicts of interests.

I. HEARING CASES - 36

Chief Counsel Fred A. Gregory stated that Mr. John Dees, attorney for contested case #1, Club 55, was present to speak on behalf of his client. Assistant Counsel Renee Cowick represented the Commission. Administrative Law Judge Melissa Owens Lassiter heard the case in Goldsboro, NC on January 24, 2008.

Mr. Dees asked the Commission to adopt the recommended decision of Administrative Law Judge Melissa Owens Lassiter to reverse the decision of denial of the application for malt beverage permit. He went on to state that his client purchased a track of land, went through the planning process to build his establishment and disclosed that he had applied for ABC permits. All of his paperwork was signed by the appropriate people and his grand opening was planned when his permit was rescinded by the Commission. He further stated that the noise violation that his client might be in violation of should be handled at the local level and should not be regulated by the Commission.

Chairman Fox asked Mr. Dees if Lenoir County was aware that his client would be applying for an ABC Permit. Mr. Dees stated that yes they were aware; it was stated in the application.

Assistant Counsel Cowick read an email to the Commission from a concerned family who was unable to be at the meeting. The email made reference to the noise levels coming from the establishment and how often the family had to call the sheriff's department in reference to it. Assistant Counsel Cowick stated that the building concept was presented to the planning board was for a recreation family entertainment center with go carts. It has since changed to a night club.

Commissioner Lyon asked Assistant Counsel Cowick if the establishment had been cited for noise violation. Assistant Counsel Cowick stated that the business has not been cited by law enforcement, but the neighbors have taken out criminal summons and Mr. Mills has been convicted. She further stated that the permits were approved in error.

Assistant Counsel Cowick stated that there were some numeric errors in the judge's decision that would need to be revised. In the Findings of Fact there were (2) number 11's and number 30 goes straight to number 40.

Reverend Elliot Hill addressed the Commission regarding his concerns for the business. Reverend Hill stated that the noise level was too high and even though his hearing is not that well, it could clearly be heard from inside of his home. He also shared with the Commission the number of times 911 has been called and the nature of the calls.

Reverend Garrett addressed the Commission with his concerns for the business. Reverend Garrett also stated to the Commission that there is a children's play area in the building. The parents can bring their children and leave them in the play area while the parents drink. So once they are through drinking and ready to go home they can get their children and leave. Reverend Garrett stated that it is a great concern to him and the community.

Chairman Fox made a motion to adopt the Finding of Fact and Conclusions of Law of Judge Lassiter. Seconded by Commissioner Joyner. So Ordered.

Chief Counsel Gregory stated that Mr. William Piscitello, co-owner of 1st offense case #6, Breadmens Restaurant, was present to speak on behalf of his establishment. Mr. Piscitello gave the Commission some background information in regard to the violation. The employee who sold to the minor was cited, went to court and was ordered to take an ABC Class and then return to court. Breadmens has their own alcohol policy which this employee did not follow, and she no longer works for the business.

Mr. Piscitello stated that they have never had any violations. He went on to state that after receiving the violation they reviewed their alcohol policy and have now posted forms around the restaurant so the staff can easily see them. After reviewing the alcohol policy, all employees new and current are now required to sign and date it.

Commissioner Lyon made a motion to reduce the suspension from 6 days to 4 days, upon the stipulation that all the employees attend a RASP Class. Chairman seconded the Motion with the amendment that the suspension be two consecutive days of a Monday and Tuesday in two consecutive weeks. So Ordered.

Chief Counsel Gregory stated that Mr. Fernando Salamanca, manager of hearing case #2, Dos Taquitos, was present to speak on behalf of the business. Mr. Salamanca stated that they are a family business and have been in business for over 10 years. This is their first violation. Mr. Salamanca gave the Commission some background information regarding the violation. Mr. Salamanca stated that he went to an ABC Store and bought a couple of bottles of alcohol to make sure they had enough for that particular night.

Commissioner Lyon asked Mr. Salamanca why he didn't place an order for the alcohol. Mr. Salamanca stated that he didn't realize until later that he could have made an express order. That is why he didn't place an order.

Commissioner Lyon made a motion to waive the active suspension and to reduce the penalty from \$3,500.00 to \$700.00 upon the stipulation that all the employees attend a RASP Class. Seconded by Chairman Fox. So Ordered.

Chief Counsel Gregory stated that Mr. Bharat Patel, owner of 1st Offense case #7, Sunset Mart, was present to speak on behalf of his business. Mr. Patel gave the Commission some background information regarding the violation. Mr. Patel stated that the cashier paid his fine and did some community service, he didn't think it was fair that he also received a fine.

Commissioner Lyon told Mr. Patel that as the permit holder he is held responsible for whatever happens at the business whether he is there or not. Commissioner Lyon asked Mr. Patel if the cashier still works for him. Mr. Patel stated that yes he does.

Chairman Fox made a motion to reduce the penalty from \$1,200.00 to \$600.00 upon the stipulation that all the employees attend a RASP Class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Hezam Alwadei, was present to speak on behalf of 1st Offense Case #2, Sam's Grocery. Mr. Alwadei gave the Commission some back ground information regarding the violation. Mr. Alwadei stated that he has been working for the business since 1995. He further stated that he always asks for identification when selling alcohol.

Chairman Fox made a motion to ratify the case for the amount in the Offer in Compromise. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. John Powers, owner of hearing case #34, Nelsons, was present to speak on behalf of his business. Mr. Powers gave the Commission some background information regarding the violations. Mr. Powers stated that since these three violations his staff has had alcohol training with Alcohol Law Enforcement Agent Bissette. He asked the Commission for some leniency.

Chairman Fox made a motion to reduce the penalty from \$1,500.00 to \$200.00 upon the stipulation that all the employees attend a RASP Class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise excluding cases #1 Club 55, #10 Dos Taquitos and #34 Nelsons. Seconded by Commissioner Joyner. So Ordered.

II. FIRST OFFENSE CASES - 21

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on September 9, 2008, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Wilco 1857 – 105 East Water Street, Windsor, NC 27983
2. Sam's Grocery – 4072 Bruce Garner Road, Franklinton, NC 27525
3. Rodeo Bravo Taqueria – 483 Skyland Drive, Sylva, NC 28779
4. 553 West Main – 553 West Main Street, Sylva, NC 28779
5. Food Stop 1 – 513 West Prospect Avenue, Raeford, NC 28376
6. Breadmens Restaurant – 334 West Rosemary Street, Chapel Hill, NC 27514
7. Sunset Mart – 9800 Holly Springs Road, Holly Springs Road, Holly Springs, NC 27540
8. San Remo Restaurant – 4439 Central Avenue, Charlotte, NC 28205
9. Leonards Corner – 2770 White Level Road, Castalia, NC 27816
10. Liberty + Plus Convenient – 3305 North Liberty Street, Winston-Salem, NC 27105
11. Carlie C's I G A - 607 East Cumberland Street, Dunn, NC 28334
12. Coopers Ale House – 5340 West Market Street, Greensboro, NC 27409
13. El Carreton – 948 West Walker Avenue, Greensboro, NC 27403
14. Navassa Mini Mart – 110 Navassa Road, Navassa, NC 28451

15. Sushi Republic – 329 South Tate Street, Greensboro, NC 27403
16. Bloom 1351 – 9323 North Tryon Street, Charlotte, NC 28262
17. Food Lion 1561 – 6307 Burlington Road, Stoney Creek, NC 27377
18. Petro Express 3985 – 3006 Old Charlotte Hwy., Monroe, NC 28110
19. Kangaroo Express 3120 – 4450 Gumbranch Road, Jacksonville, NC 28540
20. Birkdale Golf Club – 16500 Birkdale Commons Parkway, Huntersville, NC 28078
21. Satisfaction Restaurant and Bar – 905 West Main Street, First Floor, Suite 19-J, Durham, NC 27701

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases excluding cases #6 Breadmens Restaurant and #7 Sunset Mart. Seconded by Commissioner Joyner. So Ordered.

III. ABC STORE LOCATION – DURHAM COUNTY ABC

Administrator Michael Herring addressed the Commission concerning the proposed location of a new ABC Store location in Durham, North Carolina. On June 11, 2008, the Commission received a request from Mr. Randy Mills, General Manager of the Durham County ABC Board. On June 16, 2008, Alcohol Law Enforcement Supervisor Jeff Lasater began an investigation and found that the Durham County ABC Board plans to open a new ABC Store located at 121 Sherron Road, Suite 106, Durham, North Carolina.

The proposed location is located within a shopping center which currently holds a Food Lion grocery store, a bank, restaurants and other retail outlets. The proposed location is approximately 1,400 square feet. The monthly rent will be \$2,216.67 with a 3% increase each year beginning the second year of the lease. The shopping center is owned by Weingarten Realty Investors. There is no conflict of interest between the property owners and the Durham County ABC Board.

The nearest church is Durham Church of Christ and is approximately .7 mile from the proposed location. The nearest school is John W. Neal Middle School and is approximately .7 mile from the proposed location.

Pursuant to ABC Commission Rules 30-day requirement, Notice of Intent was properly posted on June 11, 2008.

Objections to the new location were heard at the Durham City Council meeting.

Mr. Herring recommended that the Commission approve the location.

Chairman Fox made a motion to approve the location. Seconded by Commissioner Lyon. So Ordered.

IV. ABC STORE LOCATION – GREENSBORO ABC

Administrator Michael Herring addressed the Commission concerning the proposed location of a new ABC Store location in Greensboro, North Carolina. Mr. Herring stated this would be carried forward to the next Commission meeting.

V. ABC STORE LOCATION – ASHEVILLE ABC

Administrator Michael Herring addressed the Commission concerning the proposed location of a new ABC Store location in Asheville, North Carolina. On July 31, 2008, the Commission received a request from Mr. Curtis Canty, General Manager of the Asheville ABC Board. On August 6, 2008, Alcohol Law Enforcement Agent John Pace began an investigation and found that Asheville ABC Board plans to open a new ABC Store located at 582 Hendersonville Highway, Asheville, North Carolina.

The proposed location is approximately 4,500 square feet. The rent will be \$4,875 per month for a period of one year and will increase by a Consumer Price Index, as agreed between both parties. The proposed location is owned by Modaff Properties, LLC. There is no conflict of interest between the property owners and the Asheville ABC Board.

The nearest church is Biltmore Church of Christ and is .1 mile from the proposed location. The nearest school is Asheville High School and is 1.6 miles from the proposed location.

Pursuant to ABC Commission Rules 30-day requirement, Notice of Intent was properly posted on July 31, 2008.

No objections have been received by the Commission.

Mr. Herring recommended that the Commission approve the location.

Chairman Fox made a motion to approve the location. Seconded by Commissioner Lyon. So Ordered.

Chairman Fox stated that he wanted to send a letter of appreciation to Alcohol Law Enforcement Agents Brian Ogle and Mark Lesassier regarding 1st Offense case #3, Rodeo Bravo Taqueria. This was a case where an underage person purchased alcohol from the permittee and was killed in a traffic accident. These two Agents did a six-month investigation trying to track down the underage sale.

With no further business, the meeting adjourned.

Douglas A. Fox, Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany Goodson, Legal Division