

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
AUGUST 14, 2007**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on August 14, 2007, beginning at 10:25 a.m. The meeting was recorded and the disk is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox, Commissioner Mike Joyner and Commissioner John Lyon were present at the meeting.

MINUTES OF JULY 17, 2007, MEETING

Chairman Fox made a motion to waive the reading of the minutes from the July 17, 2007, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the July 17, 2007, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Lyon and Commissioner Joyner if there were any known 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 and Commissioner Lyon both stated that they found no conflicts of interest. Chairman Fox stated that he had no conflicts.

I. HEARING CASES - 64

Assistant Counsel LoRita K. Pinnix stated that Mr. Alejandro Arroyo, owner of First Offense case #7, La Cabana 2, was present to speak on behalf of the business. Mr. Arroyo stated that one of his employees sold one beer to an underage person. Mr. Arroyo requested a penalty reduction. Chairman Fox stated to Mr. Arroyo that the underage person was sixteen years old. Mr. Arroyo stated that the employee did not pay attention to the date of birth and checked the face of the person.

Chairman Fox asked Mr. Arroyo how long he had been in business. Mr. Arroyo stated he had been in business for 11 years with no violations in either of his two places of business.

Chairman Fox made a motion to reduce the penalty to \$500.00 with the stipulation that Mr. Arroyo and his employees at his two restaurants attend a RASP class within 45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Steve Ikerd, owner of hearing case #36, Park Inn Gateway Conference Center, was present to speak on behalf of the business. Mr. Ikerd stated he was not disputing the four violations but would like to explain. He stated that the business was once a restaurant and now it is currently a wine and gift shop. Mr. Ikerd stated they asked the agent who inspected the premises about the taxpaid beverages at the business. The business had been inspected many times over the last seven or eight years, and this was the first time they had been written up for the violation.

Ms. Kelly Lajoie, the general manager, explained two of the violations. Ms. Lajoie stated there was a social event and the host asked if the business could do shooters for the party. Ms. Lajoie stated she did not realize it was something they had to get approved. Ms. Lajoie stated the other violation happened on a weekend about two years ago when the business ran low on liquor. Ms. Lajoie stated she did go to the local ABC Store and

picked up a couple of liquors and she did not realize everything had to be stamped. The liquor had been in the cabinet for at least two years.

Chairman Fox stated that their permit had been in effect since May, 1996, with no previous ABC violations.

Chairman Fox made a motion to leave the penalty at \$3,500.00 with no active suspension and with further stipulation that Mr. Ikerd and his employees complete the RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Ms. Teresa Smith, owner of First Offense case #32, Harry's Place, was present to speak on behalf of the business. Ms. Smith stated that the employee who sold to the underage person had been an employee there for ten years and this was the first violation. Ms. Smith stated the employee carded the underage person and was confused. Ms. Smith asked the Commission to help with the fine. Ms. Smith stated since the violation her family members and employees had taken the class offered by the Commission.

Commissioner Joyner made a motion to reduce the penalty to \$600.00 with no requirement to take a class because of the prior class taken. Seconded by Commissioner Lyon. So Ordered.

Mr. Joon Lee, owner of First Offense case #21, Bestway, was present to speak on behalf of the business. Mr. Lee stated his employee should not have sold wine to an underage person. Mr. Lee stated this was his first violation and a class was held at the store on July 26, 2007.

Commissioner Joyner asked Mr. Lee if the employee checked the I.D. of the underage person. Mr. Lee requested a reduction in the fine.

Chairman Fox made a motion to reduce the penalty to \$600.00 with no requirement to take a class because of the prior class already taken. Seconded by Commissioner Lyon. So Ordered.

Mrs. Keisha West, owner of First Offense case #25, Makenzies, was present to speak on behalf of the business. Mrs. West stated that the employee, who sold to an underage person, had been employed for four or five months and is no longer employed with them. Mrs. West stated that she, her husband and the employees had taken the class offered by the Commission. Mr. West stated they had implemented a new policy which required the staff to card everyone.

Commissioner Joyner made a motion to reduce the penalty to \$450.00 with no requirement to take a class because of prior class already taken. Seconded by Chairman Fox. So Ordered.

Mr. Andy Lee, manager of First Offense case #30, Eagle Food Market, was present to speak on behalf of the business. Mr. Lee stated they had taken over this business November 2, 2006, and had temporary permits when the violation occurred. Mr. Lee stated that the employee who sold to an underage was his mother and she made a careless mistake by not asking for an identification. Mr. Lee stated his mother received a certificate from Alcohol Law Enforcement on May 17 after a sale was denied.

Chairman Fox made a motion to reduce the penalty to \$600.00 with the stipulation that all employees attend a RASP class within 45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Chris Settle, owner of hearing case #23, Philosophers Stone, and Mr. Josh Settle were present to contest the fine for a violation that occurred on February 4, 2007. Mr. Settle stated that when ALE raided the bar at 4:00 a.m. there was one manager and two employees inside the business. The manager was searched and marijuana was found on him.

Mr. Settle stated he had no knowledge of the marijuana and they do not pat down their employees when they walk into the restaurant. Mr. Settle stated the manager was fired immediately.

The restaurant had a lot of publicity for this violation and suffered a \$25,000.00 loss in the month of February.

Chairman Fox asked how long they had been in business. Mr. Settle stated a little over two years.

Chairman Fox made a motion to reduce the penalty to \$600.00. Seconded by Commissioner Lyon. So Ordered.

Mr. Justin Tabick, general manager of First Offense case #41, Cinellis Pizzeria Restaurant, an add-on case which was not on the agenda, was present to speak to the Commission. Mr. Tabick stated he was not there to dispute the violation, but asked the Commission to lower the penalty. Mr. Tabick stated that on February 3, 2007, while on temporary permits, one of the staff served a malt beverage to an underage person.

Chairman Fox made a motion to reduce the penalty to \$450.00 with the stipulation that all employees attend a RASP class within 45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Pedro Mendoza, son of Pedro Teutle Mendoza, owner of hearing case #64, El Chicano Bar and Night Club, was present to speak on behalf of the business. Mr. Mendoza stated they were not there to dispute the charges. The employee involved in the violation was there temporarily because his father had to leave on family business. Mr. Mendoza stated that there was only one bottle which was not cleaned up. Mr. Mendoza asked the Commission to lower the fine.

Chairman Fox asked Mr. Mendoza how long had they been in business. Mr. Mendoza stated eight months.

Chairman Fox made a motion to reduce the penalty to \$750.00 with the stipulation that all employees attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Assistant Counsel Timothy W. Morse stated that hearing case #58, Quick Shoppe, was initially a summary suspension for multiple underage sales. Mr. Morse stated the permits were suspended for about six months and now they are out of business. Mr. Morse stated he thought the business would be sold.

Chief Counsel Fred A. Gregory stated that the violation for hearing case #49, Jack Rabbits Bar and Grill, was selling to an intoxicated person and resulted in a death. Mr. Gregory stated that the person left the parking lot, hit a concrete barrier and was killed.

Chairman Fox asked Mr. Gregory if there was any action needed on that. Mr. Gregory stated the permit had been suspended almost immediately.

Assistant Counsel Timothy W. Morse stated that hearing case #54 – Circle K Store 5102, hearing case #55 – Circle K Store 5102 and hearing case #56 – Circle K Store 5102 will be carried over to the September 11, 2007, Commission meeting.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of hearing case #36, Park Inn Gateway Conference Center, hearing case #23, Philosophers Stone, hearing case #64, El Chicano Bar and Night Club, which had already been ratified. Seconded by Commissioner Lyon. So Ordered.

The following were Add-On Hearing cases:

- #59 – Franks Food Center
- #60 – Pop Shoppe 116
- #61 – Thee Playhouse
- #62 – Clydes Place
- #63 – K and D Mini Mart
- #64 – El Chicano Bar and Night Club

The following were Add-On First Offense cases:

#40 – Renaissance Falls

#41 – Cinellis Pizzeria Restaurant

II. FIRST OFFENSES - 41

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on August 14, 2007, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Clayton Mart – 208 East Main Street, Clayton, NC 27520
2. Wake Cross Roads Express – 3501 Forestville Road, Raleigh, NC 27616
3. Franks Pizza – 1117 North Lake Park Boulevard, Carolina Beach, NC 28428
4. El Paraiso – 225 East Sugar Creek Road, Charlotte, NC 28215
5. Europe Market – 4604 West Market Street – Unit 110, Greensboro, NC 27407
6. Ellerbe Pantry – 270 North Main Street – Ellerbe, NC 28338
7. La Cabana 2 – 1204 North Horner Boulevard – Sanford, NC 27330
8. Keyfood – 1805 Wayne Memorial Drive – Goldsboro, NC 27534
9. Pennys Restaurant – 727 West Main Street – Jamestown, NC 27283
10. Northview Amoco – 2629 Hawkins Avenue, Sanford, NC 27330
11. Red Sea Grocery II – 5606 East Independence Boulevard – Suite 101, Charlotte, NC 28212
12. Rocky River Golf Club at Concord – 6900 Speedway Boulevard, Concord, NC 28027
13. Tippetts Grocery – 15218 Taylors Mill Road, Zebulon, NC 27597
14. Golden City – 1250 Western Boulevard N-4, Jacksonville, NC 28546
15. Nantucket Café and Grill – 5925 Farrington Road, Chapel Hill, NC 27517
16. Qdoba Mexican Grill – 8152-G South Tryon Street, Charlotte, NC 28273
17. Wilton Grocery – 3596 Hwy 96, Franklinton, NC 27525
18. Bos Food Store 19 – 406 East Broad Street, St. Pauls, NC 28384
19. Cities Grill and Bar – 2438 South Stratford Road, Winston Salem, NC 27103
20. Grand China Buffet and Grill – 3500 North Roxboro Road – Suite 4, Durham, NC 27704
21. Bestway – 113 Walker Avenue, Greensboro, NC 27403
22. Montego Bay – 4536 West Market Street, Greensboro, NC 27407
23. Mountain Island B P – 2211 Vinnies Way, Charlotte, NC 28214
24. Horns Express II – 1441 US Hwy 601 South, Mocksville, NC 27028
25. Makenzies – 1206 West Franklin Boulevard, Gastonia, NC 28052
26. Quick N Easy 8 – 4191 Old Hwy 421, Bonlee, NC 27213
27. Riders in the Country – 5701 Randleman Road, Greensboro, NC 27317
28. Rosemart 15 – 3901 Outer Loop Road, Oxford, NC 27565
29. Rim Rna Food Mart – 873 South Salisbury Street, Mocksville, NC 27028
30. Eagle Food Market – 501 Burlington Avenue, Gibsonville, NC 27249
31. Horns Ambest Travel Center – 1670 US Hwy 601 North, Mocksville, NC 27028
32. Harry's Place – 135 Front Street, Elkin, NC 28621
33. Luigi's – 1010 Main Street, Scotland Neck, NC 27874
34. Longhorn Steakhouse of Burlington – 153 Huffman Mill Road, Burlington, NC 27215
35. Snack N Soda 5 – 3028 High Point Road, Greensboro, NC 27403
36. Wine Guy South – 1200 Hendersonville Road – Unit A, Asheville, NC 28803
37. Tap Room – 1740 Battleground Avenue, Greensboro, NC 27408
38. Chilis Grill and Bar – 170 Partner Circle, Southern Pines, NC 28387
39. Cicciones Ristorante – 156 Lowes Food Drive, Lewisville, NC 27023

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases with the exception of First Offense case #7, La Cabana 2, First Offense case #32, Harry's Place, First Offense case #21, Bestway, First Offense case #25, Makenzies, First Offense case #30, Eagle Food Market, First Offense case

#41, Cinellis Pizzeria Restaurant, which had been ratified earlier. Seconded by Commissioner Joyner. So Ordered.

III. ABC STORE LOCATION – BRUNSWICK COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Brunswick County. On June 21, 2007, John Ramsey, Chairman of the Brunswick County ABC Board, requested Commission approval to relocate their ABC Store. The Brunswick County ABC Board operates two ABC Stores and their request is to relocate the Holden Beach Road Store in Supply, North Carolina. On July 12, 2007, ALE Agent Jacob Scott began an investigation and found that the ABC Board wanted to move the main store located at 2567 Holden Beach Road in Supply to a new location 6/10 of a mile northeast of the Holden Beach Road current location. The proposed location is currently a vacant lot and does not have a physical address but it is beside 2821 Holden Beach Road in Supply. The area is a mix of residential and commercial buildings with retail businesses nearby.

The Brunswick County Zoning Department stated the property was zoned commercial, low density and meets the zoning requirements.

The property is owned by the Brunswick County ABC Board.

The property was purchased from Island View at Holden Beach, Inc. on March 24, 2006. The purchase price of the property was \$820,000.00.

No conflicts of interest exist between the Brunswick County ABC Board and Island View at Holden Beach, Inc.

The proposed lot for the ABC Store is approximately 4.4 acres and only 2.1 acres will be utilized for the new ABC Store.

The board plans to build a modern self-service store on the lot and will be approximately 6,000 square feet.

The nearest church is Bible Baptist Church and is approximately 1.7 miles south from the proposed location.

The nearest school is Virginia Williamson Elementary School and is approximately 5.4 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on June 5, 2007, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this proposed location.

Mr. Herring stated that during the General Assembly's session this year there was a law passed that allowed Brunswick County to relocate within seven miles of another ABC Store.

Mr. Herring stated that Mr. John Ramsey, Chairman of the ABC Board, was present to answer any questions which needed to be addressed. Chairman Fox asked Mr. Ramsey why the property was purchased before it was approved by the Commission. Chairman Fox asked what they were planning to do with the property behind the ABC Store.

Commissioner Joyner asked Mr. Ramsey how did they determine how large to design the new ABC Store. Mr. Ramsey stated they had a designer to come in to show them what they needed.

Commissioner Lyon asked Mr. Ramsey how would they be able to receive their product. Mr. Ramsey stated there would be a loading dock on the side.

Chairman Fox asked how much storage space they would have. Mr. Ramsey stated between 2,500 to 2,800 square feet of warehouse.

Chairman Fox made a motion to approve the proposed relocation of the ABC Store. Seconded by Commissioner Lyon. So Ordered.

IV. ABC STORE LOCATION – CARTERET COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Carteret County. On July 11, 2007, Bob Shipp, Administrator of the Carteret County ABC Board, requested approval for an ABC Store relocation in the Town of Newport. On July 16, 2007, ALE Agent Matt Knight began an investigation and found that the ABC Board plans to relocate their Newport ABC Store into Courtesy Town Square, a shopping center on the other side of the road approximately .6 of a mile from the current location. The new location is at the intersection of Highway 70 and Nine Foot Road.

The property is zoned correctly for general business and Newport officials have no problems with this proposed location.

The property does not have an address, but is located between a retention pond and Cowell's Cleaners on a service road in Courtesy Town Square.

The property is approximately 200 feet by 99 feet and the lot size is approximately .55 acres.

The property is owned by the Conner-W, LLC of Morehead City and managed by Conner Properties located on Bridges Street in Morehead City.

No financial conflicts of interest exist between the Carteret County ABC Board and the property owners.

The projected sales volume for this new location is \$700,000.00 a year.

This location would operate as a mixed beverage or a LBD store for liquor by the drink permittees in the area.

The Carteret County ABC Board plans to build a 5,000 square foot facility and the space will be utilized for retail and storage space.

The nearest church is Mt. Pilgrim Missionary Baptist Church and is approximately .8 of mile from the proposed location.

The nearest school is Newport Elementary School and is approximately 1.4 miles from the proposed location.

The nearest ABC Store is in Morehead City.

Pursuant to ABC Commission Rules, Notice of Intent was posted on June 15, 2007, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this proposed location.

Mr. Herring stated that Mr. Bob Shipp, Administrator of the Carteret County ABC Board, was at the Commission meeting to answer any questions. Commissioner Lyon asked Mr. Shipp if the ABC Store had two intersections to access to the ABC Store. Mr. Shipp answered "yes."

Commissioner Joyner asked Mr. Shipp how many stores did they have. Mr. Shipp replied six.

Mr. Herring stated this was the last store that they would remodel.

Commissioner Lyon made a motion to approve the proposed relocation of the ABC Store. Seconded by Chairman Fox. So Ordered.

V. OTHER BUSINESS -

A. Commission Activity

Administrator Michael Herring presented the Commission activity for the month of July, 2007. The Permit Division had increases in business. There were 667 wines approved compared to 401 wines in July, 2006. Wines approved were up 66.33% from last year. This calendar year 4,104 new wines have been approved. The Legal Division received 129 violations compared to 135 violations in July, 2006. The Education/Training Division was busy with the RASP Programs. The warehouse shipments were up about 15% and shipments were up 46,000 cases over the previous July. The case shipments were 119,928 year-to-date.

B. Town of Woodfin ABC Board

Mr. Herring addressed the Commission concerning a letter from the Town of Woodfin ABC Board, located in Buncombe County, requesting to operate a commercial freezer in their ABC Store. They want to sell spirituous liquor cold to the public and have bought a freezer for \$5,000.00. Mr. Herring stated he thought the Commission could approve or disapprove the policy pursuant to G.S. 18B-203(10), which gives the Commission to approve or disapprove rules adopted by any local ABC Board.

Mr. Herring recommended that the Commission disapprove of this request to operate a commercial freezer in the ABC Store.

Chairman Fox made a motion that they request removal of the cooler from the ABC Store. Seconded by Commissioner Lyon. So Ordered.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Dottie L. Taylor, Legal Division