

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
JULY 13, 2006**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on July 13, 2006, beginning at 10:00 a.m. The meeting was tape-recorded and the tape(s) are 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 JUNE 9, 2006 MEETING**

Chairman Fox made a motion to waive the reading of the minutes from the June 9, 2006, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the June 9, 2006, 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 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 Lyon and Commissioner Joyner both stated that they found no conflicts of interest. Chairman Fox recused himself from ruling on the New Hanover County ABC Board's request to relocate an ABC store.

**I. HEARING CASES – 94 Listed**

Chief Counsel Fred A. Gregory stated that hearing case #84- Smokers Express 3479 will be carried over to the September 7, 2006, Commission meeting.

Mr. Gregory stated that Mr. George Hyler, attorney for contested case #1- Clubb Biltmore, was present to speak on behalf of his client. Assistant Counsel Renee Cowick represented the Commission.

Ms. Renee Cowick briefly summarized the facts in the case. Guillermo Macias applied for permits in October of 2005 and was granted temporary permits. The permittee was extended temporary permits until rejected via an Official Notice of Rejection dated July, 2005. Administrative Law Judge Beecher R. Gray presided over the hearing on January 4-5, 2006, in Asheville, North Carolina.

Ms. Cowick stated that Judge Gray agreed with two of the five claims in the Official Notice of Rejection and he agreed with the Commission's revocation of the temporary permit and rejection of the application.

Mr. Hyler stated that Mr. Macias was not granted a license and his temporary permit was extended from January 25, 2005 until September 25, 2005. He stated that Mr. Macias was kept on temporary permits during a ten-month period and the impact of that was he could have been severely reprimanded for what are fairly minimum violations.

Chairman Fox asked Mr. Hyler about the dog used for crowd control at the business. Mr. Hyler stated the dog belonged to a gentleman who had 26 years of law enforcement training and used the dog on his job. Mr. Hyler stated the problem with the club is the confined parking lot area. Mr. Hyler stated his client tried to get law enforcement officers both from the City or County to work off duty in the club. The City and County would not allow off duty officers to work in the club.

Commissioner Joyner asked Mr. Hyler how he would characterize this club. Mr. Hyler stated it was a dance club that had originally started with a minimum age of 21 and dropped to 18.

Mr. Hyler stated his client has approached the police and city officials trying to work something out. Mr. Hyler stated his client wants to run a good club. His client offered to change the music, tried to get off duty police officers or private security. Mr. Hyler stated this club does have a very bad past. Mr. Hyler stated his client had spent a lot of money fixing the club up.

Ms. Cowick pointed out 18B-901(d) and 150B-34 to the Commission. Ms. Cowick stated that the Commission was somewhat tied to what the Judge said and if there is evidence supporting the Judge's decision then the Commission is bound by 150B-34. Ms. Cowick submitted to the Commission that there was nothing in the record on which the Commission could overturn the Judge's decision. Ms. Cowick stated the decision of Judge Gray was sound and asked that the Commission should adopt the Judge's findings and facts, the conclusion of laws.

Bob Oast, City Attorney for the City of Asheville, stated that Mr. Hyler identified the most significant issue being the continuation of the temporary permit. Mr. Oast stated that the Commission accurately observed there are good and valid reasons for continuing temporary permits. Mr. Oast stated that Ms. Cowick pointed out it is a matter that is in the Commission's discretion and asked that they support the decision of the Administrative Law Judge.

Chairman Fox stated that the pictures from the videotape, the dog issue and using that type of dog to control a group sends a message that the applicant knew he had a problem. Chairman Fox stated that the public welfare and public safety issues in trying to move people out of the street was a concern. Chairman Fox made a motion to uphold the decision of Judge Gray. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Fred Gray, Owner of Subs Plus, was present to speak, for hearing case #57- Subs Plus. Mr. Gray stated that the bartender sold cocaine to an undercover agent behind the bar. Mr. Gray stated that they had no idea this kind of activity was going on and fired the bartender after the agent told them what had happened. Mr. Gray stated they had a meeting with the staff to let them know this type of activity was not tolerated. Mr. Gray stated he hoped for a reduction in fine. Commissioner Lyon asked how long he had been in business. Mr. Gray stated he thought the restaurant has been there since 1985 and the bar in 1995.

Chairman Fox made a motion to reduce the penalty to \$500.00 upon the stipulation that all the employees attend a RASP class within the next 30 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Kuntal Gandhi, Chief Operating Officer, was present to speak for hearing case #72- Eagle Park Place. Mr. Gandhi stated it was mandatory for his employees to card every customer under 30 years old for beer or cigarettes. Mr. Gandhi stated they train the employees to look at the driver license color and keep it on the registers. Commissioner Joyner told Mr. Gandhi that on the violation the employee did not ask for I.D. and sold the beer. Mr. Gandhi stated that was correct. Commissioner Joyner stated a 16 year old purchased the beer. Chairman Fox stated there was a violation in June 2005 and employees went to a RASP class.

Chairman Fox stated that because of a violation and class less than a year from the pending violation, he made a motion to ratify the offer in compromise as is. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Yahya Alsaidi, Owner of J and J Fast Mart, was present to speak, for hearing case #29- J and J Fast Mart. Mr. Alsaidi stated that they always check I.D.s but sometimes it might be an oversight because the clerk is tired or it is the end of a day. Mr. Alsaidi stated he taught his employees to check I.D.s by color. Mr. Alsaidi asked the Commission to reduce the penalty.

Chairman Fox asked Mr. Alsaïdi if he was aware that the officer was doing a sting operation based upon complaints they had received. Mr. Alsaïdi stated he was not aware. Commissioner Joyner stated to Mr. Alsaïdi did he understand that he was given a warning for keeping the place disorderly. Mr. Alsaïdi stated that yes he did.

Chairman Fox stated that based upon the failure to check I.D. and because the pending violation is the second one in eighteen months, he made a motion to ratify the offer in compromise as is. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Jerry Oxendine, Owner of Jeco Kwik Stop, was present to speak, for hearing case #66- Jeco Kwik Stop. Mr. Oxendine stated the minor was getting gas and he recognized the people with her as in their forties. Commissioner Joyner asked if she told Mr. Oxendine she was 21 years old. Mr. Oxendine stated he asked for the I.D. and she said she didn't have it. He asked her how old she was. She said she was 21 years old. Mr. Oxendine stated he still needed her I.D. Mr. Oxendine stated he made a poor judgment call by judging her age by the people who were with her.

Chairman Fox stated he had a problem with this violation because it occurred ten days after receiving the permit. Commissioner Joyner stated in the violation report the officer referenced complaints about his store and asked Mr. Oxendine if he was aware of any of those. Mr. Oxendine stated he was not.

Chairman Fox asked Mr. Oxendine about the brown bagging permit and to explain the restaurant operation. Mr. Oxendine stated he has seating for 36 people.

Chairman Fox made a motion to reduce the penalty to \$600.00 upon the stipulation that all the employees attend a RASP class within the next 30 days. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise, with the exception of hearing case #57- Subs Plus, #66- Jeco Kwik Stop, which had been ratified earlier. Seconded by Commissioner Lyon. So Ordered.

## **II. FIRST OFFENSE CASES – 40 Listed**

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on July 13, 2006, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Xpress Mart 36 – 4200 Statesville Avenue, Charlotte, NC 28269
2. Pizza Hut – 1204 School Street, Wilkesboro, NC 28697
3. Han Dee Hugos 41 – 103 West Maynard Road, Cary, NC 27511
4. Honey Pik Foods – 4432 North Center Street, Hickory, NC 28601
5. Han Dee Hugos 71 – 2418 SW Cary Parkway, Cary, NC 27513
6. Fairway Exxon – 8400 Old Statesville Road, Charlotte, NC 28269
7. Exprezit Convenience Store 112 – 225 US Hwy 1, Vass, NC 28694
8. Eckerd Drugs 1004 – 544 Providence Road, Charlotte, NC 28207
9. Cashions Quik Stop 3 – 19733 Statesville Road, Cornelius, NC 28031
10. Vesuvios Italian Restaurant – 1049 Durham Road – Suite H, Roxboro, NC 27573
11. Varsity Ale House – 3019 Auto Drive, Durham, NC 27707
12. Symposium Café – 318 Blackwell Street, Durham, NC 27701
13. Raleigh Road Convenient Mart – 2406 Raleigh Road, Henderson, NC 27537
14. Pilot Travel Center 275 – 3807 Statesville Avenue, Charlotte, NC 28206
15. Kroger 382 – 2750 NC 55 Hwy West Park Place, Cary, NC 27519
16. Han Dee Hugos 50 – 102 Gregson Drive, Cary, NC 27511
17. Fastop Food Mart 302 – 627 Smoky Park Hwy, Candler, NC 28715
18. Eckerd Drugs 8927 – 1945 High House Road, Cary, NC 27513
19. Eckerd Drugs 8008 – 201 Trade Street, Henderson, NC 27536

20. Shiv Mart – 1106 Second Street NE, Hickory, NC 28601
21. 67 Service Station – 7915 Reynolda Road, Pfafftown, NC 27040
22. Super Stop – 1701 Neuse Boulevard, New Bern, NC 28562
23. Sams Mart 12 – 10700 Reames Road, Charlotte, NC 28269
24. Sams Mart 11 – 9701 Sam Furr Road, Huntersville, NC 28078
25. Ruscho Food Stores 16 – 1518 East Innes Street, Salisbury, NC 28144
26. Hussco I – 2905 Hillsborough Road, Durham, NC 27705
27. Handi Foods – 518 East Trinity Drive, Durham, NC 27702
28. Hams of Kinston – 3021 North Heritage Street, Kinston, NC 28501
29. Eckerd Drugs 8963 – 244 Central Park Avenue, Taylortown, NC 28374
30. Bobs Wine Shoppe – 2828 Raeford Road, Fayetteville, NC 28303
31. Sams Mart 58 – 8101 Old Concord Road, Charlotte, NC 28213
32. Rays Lounge and Billiards – 3205 University Drive, Durham, NC 27707
33. Ingles Market 130 – 301 Long Shoals Road, Arden, NC 28704
34. Ingles Markets 30 – 1865 Hendersonville Road, Asheville, NC 28803
35. Hope Valley B P 285 – 4148 Old Chapel Hill Road, Durham, NC 27707
36. Carrboro Mini Mart – 502 West Main Street, Carrboro, NC 27510
37. Jays Mart – 124 B and C Carnival Street, Charlotte, NC 28262
38. Wilco 306 – 514 Gallimore Dairy Road, Greensboro, NC 27409
39. Lowes Foods 196 – 3480 Kildaire Farm Road, Cary, NC 27511
40. Harris Teeter 97 – 20623 Torrence Chapel Road, Cornelius, NC 28031

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases. Seconded by Commissioner Lyon. So Ordered.

### **III. ABC STORE LOCATION – MECKLENBURG COUNTY ABC BOARD**

Administrator Michael Herring addressed the Commission concerning a proposed location of an ABC store in Mecklenburg County. On June 7, 2006, the Commission received a request from Calvin McDougal, Chief Executive Officer, requesting approval to purchase property for a new store in Charlotte, North Carolina. On June 19, 2006, ALE Supervisor Richard Griffin began his investigation and found that the ABC Board wants to purchase 1.64 acres for \$622,500.00 to construct a new store on this site. The board will close existing Store #10 which is located on 2728 Beatties Ford Road and relocate the store to this site. The proposed location will be located around the 4300 Block of Sunset Road near the intersection of Sunset Road and Beatties Ford Road, Charlotte, North Carolina.

The property is owned by RMP Sunset, LLC, in Charlotte, North Carolina.

No conflict of interest exists between the Mecklenburg County ABC Board and the property owners.

The new store will be a modern self-service store and 6,000 square feet in size.

The nearest church is Williams Memorial Presbyterian Church and is .6 of a mile from the proposed location.

The nearest school is Hornets Nest Elementary School and is 1.5 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on May 31, 2006. Mr. Herring had a conversation with Calvin McDougal and they had about six phone calls in opposition to this site. The ABC Commission has received no objections on this new site.

Mr. Herring recommended the ABC Commission approve the new store location.

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

#### **IV. ABC STORE LOCATION – NEW HANOVER COUNTY ABC BOARD**

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in New Hanover County. On June 8, 2006, the Commission received an e-mail from Billy Williams, General Manager, requesting approval to relocate an ABC Store in Wilmington, North Carolina. On June 16, 2006, ALE Agent Jacob Scott began an investigation and found the ABC board wants to relocate a store currently located at 215 South Kerr Avenue to a proposed location at 5414 Market Street, Wilmington, North Carolina.

The property is owned by BEF REIT, Inc., an Ohio based corporation. The purchase price the board is paying for the property and structure is \$2,000,000.

No conflict of interest exists between the New Hanover County ABC Board and the property owners.

The building on the property is approximately 5,600 square feet and formerly housed a Bob Evans Restaurant.

The nearest church is College Acres Baptist Church and is .9 of a mile from the proposed store location.

The nearest school is Blair Elementary School and is 1.8 miles from the proposed store location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on June 8, 2006. The ABC Commission has received no objections to this relocation.

Commissioner Lyon made a motion to approve the relocation of the store. Seconded by Commissioner Joyner. So Ordered.

#### **IV. OTHER BUSINESS**

Administrator Michael Herring presented the Commission with a request from the warehouse contractor. On June 28, 2006, the Commission received a letter from Graham Thompson, Project Manager for LB&B Associates, Inc. Mr. Herring stated that in accordance with Part III, Paragraph 28 of the Warehouse Contract, LB&B may submit a request for a compensation adjustment each year.

Mr. Herring stated that July 12, 2006 marked the first day of the last year of the contract which will expire on July 11, 2007 and requested LB&B to consider an extension to the contract in addition to the compensation adjustment. Mr. Herring stated that over the last decade there has been tremendous growth at the warehouse. Mr. Herring presented to the Commission members a handout of the case shipments for the last twenty years. Mr. Herring stated that over the past two years LB&B has provided the best service possible to the ABC Boards and to the State. Mr. Herring asked that the Commission consider extending our relationship with this fine company.

Mr. Herring introduced Graham Thompson, Project Manager for LB&B and Ben Thompson, Corporate Attorney for LB&B. Mr. Ben Thompson explained the details of LB&B's compensation adjustment request and extension.

Mr. Thompson stated that LB&B upgraded the fleet of trucks and they are providing a safe service to the Commission and various boards. Mr. Thompson stated that they agreed to implement a new hardware and software program.

Mr. Thompson stated that they have provided a proposal for an equitable adjustment annually. Mr. Thompson stated that it is in two component parts. Mr. Thompson stated the request was for \$233,421.21. Mr. Thompson stated the first component was the increase in diesel fuel and propane.

Mr. Thompson stated that LB&B has incurred an increase in diesel fuel in the amount of \$46,610.07 and LB&B has incurred an increase in propane in the amount of \$12,777.14. Mr. Thompson stated the total sum for the equitable adjustment for fuel is \$59,387.21.

Mr. Thompson stated the second component was the significant total number of cases handled and delivered through the warehouse. Mr. Thompson stated the total amount requested for this component of the request is \$174,034.00. Mr. Thompson stated that the two components together total \$233,421.21.

Mr. Thompson stated LB&B presented a rolling five-year contract extension to be effective July 1, 2006. He stated LB&B was proposing a cost-saver to LB&B and Commission. Mr. Thompson stated the insurance requirements had been discussed and the liability insurance coverage could be reduced from \$50,000,000 to \$30,000,000. Also, he stated the public liability coverage for the product in the warehouse should be reduced from \$50,000,000 to \$30,000,000. Mr. Thompson stated that LB&B would like the Incidental Services to be divided equally between the Commission and LB&B. Mr. Thompson stated he used the term a rolling five-year contract but they had proposed a seven year contract with a fixed price and it would continue for an additional two years.

Mr. Thompson stated that LB&B does share a good relationship with the Commission and would like to continue to provide the service in years to come.

Mr. Herring stated that at the last meeting he presented to the Commission the request from the local boards for an increase to their markup and this meeting was a presentation for a request from LB&B to adjust the contract. Mr. Herring stated the Commission would need to finalize a decision by the next meeting.

At this point, pursuant to NCGS 143.318.11 the Commission went into closed session to discuss the approval of the warehouse contract.

The Commission came back into open session. Chairman Fox discussed the approval of the contract with LB&B. Chairman Fox stated the following negotiations were to add \$233,421.21 to the base increase, insurance adjustment of approximately \$40,000.00, increase base number in the delivery system number an additional \$626,835.00 for a new total contract new base beginning this month \$4,638,240.00. The Commission and LB&B will continue to split the Incidental Services.

Mr. Ben Thompson stated the liability insurance coverage would be reduced from \$50,000,000 to \$30,000,000 and the public liability coverage would be reduced from \$50,000,000 to \$30,000,000. Mr. Thompson stated the contract would be five years and if it continues on a rolling basis thereafter it would be subject to a five percent increase over the previous twelve months.

Administrator Michael Herring recommended the bailment charge to be adjusted from \$.90 a case to \$1.10 a case. Also, adjust the surcharge from \$.80 to \$.85.

Mr. Herring recommended raising the Local Markup from 38.2% to 39%.

Chairman Fox made a motion to approve the new contract and bailment/surcharge increases. Seconded by Commissioner Joyner. So Ordered.

With no further business, the meeting adjourned.

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

Respectfully submitted by

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Dottie L. Taylor, Legal Division