

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
DECEMBER 6, 2007**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on December 6, 2007, beginning at 10:00 AM. The meeting was recorded and the disk is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commissioner John Lyon were present at the meeting. Commissioner Mike Joyner was not present.

MINUTES OF NOVEMBER 15, 2007 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the November 15, 2007, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the November 15, 2007, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order One, Chairman Fox asked 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 Lyon stated he found no conflicts of interest. Chairman Fox stated that he had no conflicts.

I. HEARING CASES - 84

Chief Counsel Fred A. Gregory stated that there was a contested case #1, El Pujido. Assistant Counsel Renee Cowick briefly summarized the administrative hearing held on September 27, 2007, in High Point, North Carolina. Ms. Cowick stated the permittee was represented by Attorney Kenneth Johnson. Ms. Cowick stated the notice was sent by the Office of Administrative Hearings and she could not verify whether it was sent to the attorney's or permittee's address, but there was proof of service. Ms. Cowick stated that no one appeared at the hearing for the respondent and Judge Chess granted her motion for sanctions. Ms. Cowick asked the Commission to adopt the Judge's Findings of Fact and Conclusions of Law and recommended a ten-day suspension and a \$500.00 penalty.

Mr. Michael Korn, security consultant for El Pujido and Ms. Rosy Cruz, manager, were present to speak on behalf of the business. Mr. Korn told about his prior law enforcement background. Mr. Korn stated he had worked with the managers of this establishment for a long time and to his knowledge they had done everything that they need to do.

Mr. Korn stated he had spoken with Attorney Johnson in reference to this incident and he told him he received the service. Mr. Korn stated that Attorney Johnson said he received the service and he sent notification of the service to El Pujido's address. Attorney Johnson told Mr. Korn that the letters were returned to him.

Chairman Fox asked where the owner was. Mr. Korn replied he lives in Virginia. Chairman Fox asked if the owner works in the establishment. Ms. Cruz replied sometimes here. Chairman Fox said he wanted to know how you can get by serving an eighteen year old. Mr. Korn stated he could not explain the

underage part but a lot of questionable issues have occurred at this location. Mr. Korn said that the security people check the I.D.s at the door when a couple of times the security had been distracted and someone would come around behind a security person to bring a young person into the establishment.

Mr. Korn mentioned other issues concerning the El Pujido. Chairman Fox stated the only issue to be discussed at this meeting was selling to an underage person.

Assistant Counsel Cowick stated to the Chairman that there was another case set for November 29, 2007, that had some other violations which no one appeared for and would come before the Commission at the February meeting. Ms. Cowick stated that at one time she had four files pending for this location. Ms. Cowick stated that some were consolidated, one was settled, one is what was being heard and the other one will be for the February Commission meeting. Ms. Cowick stated that the attorney withdrew because he was given some information that was incorrect and he made the mistake of putting it in writing. Ms. Cowick stated that the attorney felt he could no longer represent this client. Ms. Cowick said the attorney was at the November 29, 2007 hearing and made a motion to withdraw. The judge allowed the motion based on the fact that the attorney had tried to contact the permittee with no response.

Chairman Fox asked Mr. Korn how long had they been in business. Mr. Korn stated two years for this business.

Commissioner Lyon made a motion to adopt the Findings of Fact and Conclusions of Law of Administrative Law Judge Sammie Chess, Jr. Seconded by Chairman Fox. So Ordered.

Mr. Jeong Park, manager of add-on hearing case #83, US Sushi, was present to speak on behalf of the business. Mr. Park stated they had an alcohol beverage violation which they sold to an underage person. Mr. Park stated this was their first business and they did not have the experience to handle the service of alcoholic beverages. Mr. Park stated they had neglected to educate the staff on how to serve alcoholic beverages. Mr. Park stated they are attending class and have a meeting every week to educate the staff on how to serve alcoholic beverages.

Chairman Fox made a motion to reduce the penalty to \$1,200.00 and they were given credit for attending the RASP class. Seconded by Commissioner Lyon. So Ordered.

Mr. Andrew Shoffner, member of Full Sail Investments LLC which owns Rum Runners franchise of hearing case #62, Rum Runners, was present to speak on behalf of the business. Mr. Shoffner stated the alleged incident occurred on July 13, 2007 and they were sorry it occurred. Mr. Shoffner said the reason for the occurrence was the former method that they allowed patrons who had already been in the establishment to return to the establishment by indication of a mark on the hand that they had already been in the establishment previously. Mr. Shoffner stated the patrons were allowed to expedite around the existing line where the I.D.s were being checked. Mr. Shoffner stated that the underage person already had been in an establishment in the basement of the same building and had been stamped there. Mr. Shoffner stated the underage person had used that as a method of entry into their location by holding her hand up as she was walking by the security personnel.

Mr. Shoffner said that since that incident 90% of their current employees have attended the RASP program. Mr. Shoffner stated that there is one main entry and pairs off into main level entry for Rum Runners and the entry way for Inferno, which is a nightclub in the basement of the building. Mr. Shoffner stated that had created some confusion in allowing patrons to enter the building. Mr. Shoffner stated they are using a type of security arm band with their logo on it which all the customers wear that are over 21 years old.

Mr. Shoffner asked for some leniency from the Commission.

Chairman Fox stated that in the officer's report the employee at the door stamped the back of the underage person's hand showing that she was of lawful age to consume alcohol and did not ask her age or I.D. nor did the waitress ask either.

Chairman Fox made a motion to reduce the penalty to \$900.00 with the stipulation that Mr. Shoffner and the staff attend the ALE class. Seconded by Commissioner Lyon. So Ordered.

Mr. Greg McClinton and Mrs. Simone McClinton, owners of hearing case #55, Green Burro, were present to speak on behalf of the business. Mr. McClinton stated they took full responsibility for everything that happens in their restaurant. Mr. McClinton asked that the Commission take in consideration the fine.

Mr. McClinton said that the server was aware this was an ALE Agent but she could not comprehend that he could be on a sting operation, believed that this was his girlfriend and she knew he was 40 years of age. The server assumed this person he was with was old enough to be served. Mr. McClinton stated the server went back to the bar and told all the bartenders to be careful ALE was in the house. Mr. McClinton said the other bartenders questioned her asking if she carded the person he was with. The server replied "no, I know him, he is a friend of mine."

Mrs. McClinton stated that they require all of their servers and bartenders to attend classes. Mrs. McClinton stated that Mrs. Humble comes in twice a year to ensure everybody has had these classes. Mrs. McClinton said that this particular server is very good at carding everyone.

Chairman Fox stated that with two violations in a year and the underage drinking he would have to leave it.

Chairman Fox made a motion to ratify the Offer in Compromise as is. Seconded by Commissioner Lyon. So Ordered.

Mr. and Mrs. Martin Romero, owners of hearing case #64, Tacos Mexico Restaurant, were present to speak on behalf of the business. Mrs. Romero stated that new girls cleaned the bottles and the stickers came off. Mrs. Romero stated she knew this was the third violation. Mrs. Romero stated it was their fault because they didn't check the bottles every day.

Chairman Fox made a motion to ratify the Offer in Compromise as is. Seconded by Commissioner Lyon. So Ordered.

Mr. Hassan Mousa Alatrash, owner of hearing case #72, Express Way, was present to speak on behalf of the business. Mr. Alatrash stated a patron came into the store showing her I.D. about ten minutes before closing. Mr. Alatrash stated the patron showed an university I.D.

Chairman Fox asked Mr. Alatrash about his previous violations in 2004 and two offenses in 2002.

Chairman Fox asked Mr. Alatrash how long he had owned the business. Mr. Alatrash replied about six or seven years.

Chairman Fox asked Mr. Alatrash if the patron was sixteen years old which he sold to. Chairman Fox asked you don't know how old she was. Mr. Alatrash replied "no sir." Chairman Fox asked Mr. Alatrash

if the officer openly told him that she was sixteen. Mr. Alatrash replied no he didn't. Mr. Alatrash stated she looked like a 22 or 23 year old.

Chairman Fox stated that the officer was in the store with Mr. Alatrash and he said in his statement that nobody asked for I.D., no conversation and no I.D. presented.

Chairman Fox made a motion to ratify the Offer in Compromise as is. Seconded by Commissioner Lyon. So Ordered.

Mr. Adnan Mohd Hamed, owner of hearing case #52, Champions Bars and More, was present to speak on behalf of the business. Mr. Hamed stated they had been in business since 1998. Mr. Hamed stated it was mandatory for their staff to attend ALE training seminars. Mr. Hamed stated they have never had any violations.

Mr. Hamed stated that he sent his employees to an ALE seminar and one of the employees asked the instructor if it was O.K. when they finished their work to have a drink at the bar they are working at. Mr. Hamed stated that the instructor assured that as long as they were not selling to customers anymore and not on the job that they could drink. Mr. Hamed stated he believed it was a misunderstanding between the employee and the instructor.

Mr. Hamed stated an ALE Agent came to the door after they were closed. Mr. Hamed stated the ALE Agent showed his badge and they opened the door. Mr. Hamed said the employees thought they had done nothing wrong and did not hide their alcoholic beverage. Mr. Hamed stated the employees explained the ALE instructor told them it was O.K. after they finished their work and were not on the job.

Commissioner Lyon asked Mr. Hamed if his customers were mainly college students. Mr. Hamed said "yes sir."

Chairman Fox made a motion to reduce the penalty to \$300.00 with the stipulation that Mr. Hamed and staff attend the RASP class within 45 days. Seconded by Commissioner. So Ordered.

Chief Counsel Fred A. Gregory stated that hearing case #2 – E Zee Food Mart, hearing case #21 – Irish Cue and First Offense case #5 – Pops Country Store will be carried over to the January 15, 2008, Commission meeting.

Chairman Fox made a motion to approve the remaining Offers in Compromise, with the exception of add-on hearing case #83, US Sushi, hearing case #62, Rum Runners and hearing case #52, Champions Bars and More, which had been ratified earlier. Seconded by Commissioner Lyon. So Ordered.

The following were Add-On Hearing cases:

- #81 – Sports Fan Grill & Pub
- #82 – T Mart
- #83 – US Sushi
- #84 – Kangaroo Express 3175

II. FIRST OFFENSE CASES – 33

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on December 6, 2007, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. China Garden – 1027 North Spence Avenue, Goldsboro, NC 27534
2. Greenville Hilton – 207 Southwest Greenville Boulevard, Greenville, NC 27834
3. Han Dee Hugos 90 – 3029 Western Boulevard, Raleigh, NC 27606
4. Mikes General Store – 2168 Hwy 903 South, Snow Hill, NC 28580
5. Pops Country Store – 5285 US Hwy 601 North, Salisbury, NC 28147
6. Thelmas Mountain Store – 1804 Memorial Hwy, Lake Lure, NC 28746
7. Toms Food Store 3 – 1117 Bessemer City Road, Gastonia, NC 28052
8. Sams Mart 54 – 2415 Little Rock Road, Charlotte, NC 28214
9. Fuji Japan Steak House – 204 SW Greenville Boulevard, Greenville, NC 27834
10. Eagle Food Mart – 8411 Capital Boulevard, Raleigh, NC 27616
11. Biscoe Mart – 519 South Main Street, Biscoe, NC 27209
12. Big Ben Pub – 801 Providence Road, Charlotte, NC 28207
13. Bi Rite Galaxy – 8632 Hwy 158, Stokesdale, NC 27537
14. Attitudes Pub and Grille – 32 Shoreline Drive – Unit 32, New Bern, NC 28562
15. Mexico Lindo Restaurant – 363 Concord Parkway North, Concord, NC 28025
16. Open Kitchen Restaurant – 1318 West Morehead Street, Charlotte, NC 28208
17. High Point Country Club – 800 Country Club Drive, High Point, NC 27262
18. Huffs Glenwood – 3503 South Church Street, Burlington, NC 27215
19. La Michoacana – 218 East Main Street, Clayton, NC 27520
20. Plaza Garibaldi Mexican Restaurant 3 – 5051 Main Street, Shallotte, NC 28459
21. Texaco Food Mart – 3223 Battleground Mart, Greensboro, NC 27408
22. Sav Mor 850 – 74 Sylva Plaza, Sylva, NC 28779
23. Red Robin Americas Gourmet Burgers and Spirits – 5324 Durham Chapel Hill Boulevard, Durham, NC 27707
24. Raffaldini Vineyards and Winery – 450 Groce Road, Ronda, NC 28670
25. Quick Stops – 4432 Hwy 220 North, Summerfield, NC 27358
26. Black Pelican Seafood Company – 3848 Virginia Dare Trail, Kitty Hawk, NC 27949
27. Bragtown B P 130 – 3101 Roxboro Road, Durham, NC 27704
28. Carriage Room – 2141-F Statesville Boulevard, Salisbury, NC 28147
29. Han Dee Hugos 70 -1401 West Main Street, Carrboro, NC 27510
30. Holden Beach Seafood – 2224 Holden Beach Road SW, Supply, NC 28462
31. Ingles Markets 50 – 32 Webster Road, Sylva, NC 28779
32. Bella Roma Italian Restaurant and Pizzeria – 1070 Skyland Drive, Sylva, NC 28779
33. Park N Shop 2 – 444 South Hughes Boulevard – Elizabeth City, NC 27909

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 – WAYNE COUNTY ABC

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Wayne County. On November 7, 2007, the Commission received a letter from Mike Myrick, General Manager of the Wayne County ABC Board, requesting approval to open a new ABC Store in Wayne County. On November 19, 2007, ALE Agent David Williams began an investigation and found that the proposed location is 2924 US Highway 70 West, Suite D, Goldsboro, North Carolina.

The proposed site is located in the Wal Mart Shopping Center west of Goldsboro at the northwest corner of US 70 West and NC 581.

The Wayne County ABC Board plans to lease this property which is 1,500 square feet. They have a three year term with the rent at \$2,666.67 per month. The lessor is WRS Inc. of Aiken, South Carolina.

No financial conflict of interest exist between the Wayne County ABC Board and the property owner.

The projected sales volume at this new location will be approximately \$600,000.00 per year.

The nearest church is the Spring Hill Free Will Baptist Church and is approximately 1.8 miles from the proposed location.

The nearest school is the Rosewood Middle School and is approximately 1.2 miles from the proposed location.

The nearest ABC Store to the new site is a Wayne County store in Goldsboro and is located 3.5 miles east of the location.

No objections to this site have been received at the ABC Commission. The property is properly zoned.

Mr. Herring stated that Mr. Mike Myrick, General Manager of the Wayne County ABC Board, was present to answer any questions about the proposed location.

Mr. Herring recommended the ABC Commission approve this request for this new ABC Store location.

Chairman Fox asked Mr. Myrick if the store was going to be big enough. Mr. Myrick said "yes sir." Mr. Myrick stated he thought it was big enough for what they hoped to sell.

Chairman Fox made a motion to approve the new 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