

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 17, 2009**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on November 17, 2009, beginning at 10:05 AM. The meeting was recorded and the disk is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Jonathan S. Williams, Commissioner J.D. Lyon and Commissioner Zander Guy were present at the meeting.

MINUTES OF OCTOBER 15, 2009, MEETING

Chairman Williams made a motion to waive the reading of the minutes from the October 15, 2009, meeting into the record. Seconded by Commissioner Guy. So Ordered. Chairman Williams made a motion to approve the minutes from the October 15, 2009, meeting. Seconded by Commissioner Lyon. So Ordered.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-15, Chairman Williams asked Commissioner Lyon and Commissioner Guy 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 Guy both stated that they found no conflicts of interest. Chairman Williams stated that he had to recuse himself from hearing case #41, Hasty Mart 45.

I. HEARING CASES - 67

Chairman Williams stated that contested cases would be heard. Chairman Williams said that only arguments could be heard from the parties and no new evidence.

Chief Counsel Fred A. Gregory stated that contested case #1, Tienda La Unica, was handled by Assistant Counsel Tim Morse. No one was present on behalf of the business. Mr. Morse stated this case was assigned to Administrative Law Judge Selina Brooks. Judge Brooks issued an order granting sanctions because the permittee failed to respond to two orders for prehearing statements and imposed a penalty of \$500.00 and a 15-day suspension.

Commissioner Lyon made a motion to adopt the Findings of Fact and Conclusions of Law of Administrative Law Judge Brooks. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that contested case #2, Bizzy Bee 1, was handled by Assistant Counsel LoRita K. Pinnix. No one was present on behalf of the business. Ms. Pinnix stated an administrative hearing was scheduled for August 14, 2009, before Administrative Law Judge Selina Brooks and the respondent did not appear. Ms. Pinnix stated she sent in motions for sanctions on April 27, 2009. Judge Brooks on her own motion dismissed the case based on the fact that the permittee failed to file a prehearing statement. Ms. Pinnix stated that Judge Brooks recommended a penalty of a 12-day suspension of permits and a \$500.00 fine.

Commissioner Lyon made a motion to adopt the Findings of Fact and Conclusions of Law of Administrative Law Judge Brooks. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that contested case #3, Broad Street Bar and Grill, was handled by Assistant Counsel LoRita K. Pinnix. Mr. Leo Daughtry, attorney for the respondent, was present to speak on behalf of his client. Ms. Pinnix stated this hearing was held on October 20, 2008, before Administrative Law Judge Augustus B. Elkins II on the charge that the permittee possessed a gaming device. Ms. Pinnix said after hearing the evidence in the case, Judge Elkins issued a decision of findings of facts and conclusions of law that the Commission had not proved its burden that the machines were at the location with the intent of being used. Ms. Pinnix did not object to the Judge's final conclusion, but asked the Commission to strike parts of the decision based on Judge Elkins' ruling at the hearing regarding certain testimony. Ms. Pinnix said that to leave paragraphs number 9 and 12 in the findings and facts and, paragraph number 8 and the last sentence of paragraph 10 in the conclusions of law treats that testimony as true instead of just to show what the witness did next.

Mr. Leo Daughtry stated the judge heard all of the evidence and the evidence was that the machines were within the law and were not a violation of the law. Mr. Daughtry stated that to strike the paragraphs requested would strike part of the testimony that shows the games or machines were within the law. Mr. Daughtry said he would like to keep it in and if they knew that Ms. Pinnix objected or had made exceptions, they could have responded.

Chairman Williams asked Mr. Daughtry if he would disagree with Ms. Pinnix's position that even with those portions struck the result would be the same. Mr. Daughtry replied that was correct, the result would be the same. Mr. Daughtry stated he would like to keep the case as it is.

Commissioner Lyon asked Ms. Pinnix what was the purpose in striking portions of the transcript. Ms. Pinnix replied to make a more clear record of what really happened at the hearing, but it did not change the outcome. Commissioner Lyon and Commissioner Guy agreed that they needed to think about this case some more.

Commissioner Lyon asked Mr. Gregory what they needed to do. Mr. Gregory suggested that the Commission hear the exceptions at the December Commission meeting. Chairman Williams stated that without objections this could be carried over to the December docket.

Chief Counsel Gregory stated that contested case #4, By-Lo Citgo 3, was handled by Assistant Counsel LoRita K. Pinnix. Ms. Pinnix said that Mr. Mahmood, the owner, was present at the Commission meeting. Ms. Pinnix stated that Mr. Mahmood was at the administrative hearing on December 1, 2008, with his attorney. Ms. Pinnix said that after hearing the evidence of the petitioner, the respondent decided not to put on any evidence. Ms. Pinnix stated that Judge Webster made a decision that there was an underage sale. Judge Webster recommended the penalty of a 24-day active suspension of ABC permits and a \$750.00 fine.

Chairman Williams asked Mr. Mahmood if he would like to be heard. Mr. Mahmood stated he fired his attorney and he wanted to get it over because it had been going on for two years.

Ms. Pinnix made a suggestion to Mr. Mahmood if he was willing they could go back to the original Offer in Compromise with a choice between a 24-day suspension and a \$2,400.00 fine. Mr. Mahmood stated he would appreciate it. Ms. Pinnix said instead of 24-day active suspension just give Mr. Mahmood a chance to accept the original Offer in Compromise.

Chairman Williams made a motion to return to the original Offer in Compromise which was offered two years ago to resolve the matter. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that contested case #6, S K NetCafe, was handled by Assistant Counsel LoRita Pinnix. No one was present on behalf of the business. This was an application case concerning the permittee applying for a mixed beverage private club permit and the application being denied. After an administrative hearing, the Administrative Law Judge issued a decision that the business did not qualify as a private club and upheld the Commission's rejection of the mixed beverage permit. Ms. Pinnix recommended the Commission accept the decision of the Administrative Law Judge.

Chairman Williams made a motion to accept the recommended decision. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Don Vaughan, attorney for hearing case #44 on the October docket, J P Looneys, was present to speak on behalf of his client. Chairman Williams stated he understood his client did not receive notice of the October meeting. Mr. Vaughan replied it was correct and Mr. Kevin McCallister was present also. Mr. Vaughan asked for reconsideration of the decision. Mr. Vaughan said Mr. McCallister searched his office files and to the best of his knowledge did not receive a notice of the October 15, 2009, meeting.

Chairman Williams asked Assistant Counsel Renee Cowick about the procedure of sending out notification of the Commission meeting. Ms. Cowick stated that notices were sent out to each person on the docket and were not sent certified mail so there was no proof that the notice had been received.

Chairman Williams stated to the Commissioners that they could not say with confidence that notice was provided for this matter that he would recommend they re-open this case for reconsideration. Chairman Williams asked if there was any objection. Commissioner Lyon replied none.

Ms. Cowick stated this violation was an underage campaign in which ALE sent a person under the age of 21 into the business and the sale was completed. Ms. Cowick said it was their third offense within three years, so the recommended penalty was a 30-day suspension or a five-day suspension and \$3,500.00.

Chairman Williams asked Mr. Vaughan if he would like to be heard on a modification to the Offer in Compromise which had already been signed. Mr. Vaughan replied he would. Mr. Vaughan stated that J P Looney's is an establishment in Greensboro and opened 365 days a year. Mr. McCallister had a letter to the Commission asking if the fine could be doubled in order to avoid the active suspension during his peak time. Since the March, 2009 incident they had gone through training and had already paid the \$3,500.00 fine.

All three of the restaurants they own are working with Jane Humble in RASP classes and changing the way training is done between management and employees.

Chairman Williams made a motion for the business to pay an additional \$3,500.00 with no five-day active suspension.

Ms. Cowick stated she would draft a separate offer for failure to superintend. Chairman Williams asked Mr. Vaughan if his client would consent to fail to superintend as a second omitted offense. Mr. Vaughan replied absolutely. Chairman Williams included that in his proposal. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that contested case #5, Locklears Snacks and Games, was handled by Assistant Counsel LoRita K. Pinnix. This underage sale violation came before Administrative Law Judge Melissa Lassiter on January 14, 2009. Ms. Pinnix said the permittee did not appear at the hearing she filed motions for sanctions. Judge Lassiter accepted the motion and granted an order proposing sanctions against the business with a 35-day active suspension and a \$1,000.00 fine. Chairman Williams asked if Mr. Locklear was present and the respondent was not present.

Commissioner Lyon made a motion to adopt the Findings of Fact and Conclusions of Law of Administrative Law Judge Owens. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Milton Brooks, owner of hearing case #31, Wings and Things, was present to speak. Mr. Brooks stated he was charged with allowing employees to drink alcoholic beverages. Mr. Brooks said on that night he was not on duty and not working and he had a cheeseburger and one beer.

Commissioner Lyon asked Mr. Brooks if his name was on the permit. Mr. Brooks replied yes.

Chairman Williams asked Mr. Brooks about the second offense regarding the operation of a game of chance. Mr. Brooks replied that every Tuesday night they played Texas Hold'em with 15 to 16 people. Mr. Brooks said they played with chips and each person paid \$20.00 to play which includes cheeseburgers, hamburgers, hotdogs, pizzas, chicken wings and soft drinks.

Chairman Williams asked Mr. Brooks if there were cash winnings which people take home. Mr. Brooks replied no and when they paid the \$20.00 it paid for the food. Mr. Brooks said players received a stack of chips and anything left goes back to the players.

Assistant Counsel Morse said he briefly reviewed the violation report and did agree there was an entry fee of \$20.00 and that there were possible winnings at the end.

Chairman Williams stated that the agent's report said about 11:30 PM, Mr. Brooks started paying out cash to the winners of the poker game with \$20.00 to the third place winner in an envelope and \$120.00 each to two other people. Chairman Williams asked if the cash was divided equally among the players. Mr. Brooks replied you have a winner and a second place winner and that is where the money went.

Chairman Williams made a motion to reduce the penalty from \$3,000.00 to \$2,000 upon the stipulation that Mr. Brooks attend a RASP class. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. John Clark, Director of Operations of hearing case #61, Han Dee Hugos 63, was present to speak. Assistant Counsel Tim Morse stated that this case was a charge of selling fortified wine without a fortified wine permit. Mr. Clark stated that Sampson Bladen Oil Company and United Energy are two companies in North Carolina which both have operated Han Dee Hugos convenient stores. Mr. Clark said the two companies were combined and Sampson Bladen Oil Company was the remaining company. When the companies were combined all of the stores which were operated under United Energy had to apply for new permits. Mr. Clark said that Han Dee Hugos 63 had a fortified wine permit and when they applied for new permits, they did not apply for a fortified wine permit. Mr. Clark stated they made a mistake within the company.

Chairman Williams made a motion to reduce the penalty from \$1,000.00 to \$400.00. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Marcus Gonzalez, owner of hearing case #39, Diesel Downtown, was present to speak. Assistant Counsel Renee Cowick stated this case was a location where they received several violations while they were on temporary permits. Ms. Cowick said they were suspended seven days while on temporary permits and then were given permanent permits. Ms. Cowick stated that there were some concerns about this location but Mr. Gonzalez is more actively involved in this club. Ms. Cowick said there have not been problems since the original violations from January, 2009 and permits were obtained in July, 2009.

Chairman Williams asked if the prior violations were not resolved because of the interruptions of meetings of the Commission. Ms. Cowick replied when they have a temporary permit the violations are processed when the temporary permit becomes a permanent permit.

Commissioner Lyon asked Mr. Gonzalez if he was trying to have the penalty reduced. Mr. Gonzalez replied he decided to pay but came to the meeting to tell why things happened. Mr. Gonzalez said there were two owners and he was not there in the beginning. The other owner was running the business and when they noticed he was doing things wrong they took over the business. Mr. Gonzalez said the other owner was charged with embezzlement.

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

Chief Counsel Gregory stated that Mr. Joseph Mason, owner of add-on hearing case #64, Club International, was present to speak. Assistant Counsel LoRita K. Pinnix stated it was a business with on premise permits. Ms. Pinnix said that on October 18, 2008, Cumberland County ABC officers went in at 2:45 AM with customers consuming alcoholic beverages and tables contained containers of alcoholic beverages. Ms. Pinnix stated that according to the violation report the agents and Mr. Mason had an altercation.

Mr. Mason stated he had been the owner and manager of the club for approximately nineteen years. Mr. Mason said the establishment is mainly for retirees and military patrons. Mr. Mason stated the inspector, Mr. Tracy, came in at 2:25 AM and Mr. Tracy said it was 2:30 AM. Mr. Mason stated he went by his clock and he told Mr. Tracy the customers have five more minutes to consume their alcoholic beverage. Mr. Mason said that there were no containers on the table but only liquor in the glasses in front of them.

Assistant Counsel Pinnix stated that this case went to an administrative hearing and at the close of evidence Judge Gray suggested that Mr. Mason might like to settle the case.

Chairman Williams asked Ms. Pinnix what was the evidence about everyone's clock and watch. Chairman Williams stated that the violation report received said that the agent arrived at 2:35 AM and Mr. Mason said he arrived at 2:25 AM. Ms. Pinnix stated it was the policy of officers before they think about violating a business for after hours they call and check the time.

Chairman Williams asked Mr. Mason what he was charged with when he was arrested. Mr. Mason said he was charged with assault. Chairman Williams asked how it was resolved. Mr. Mason stated he went to court and the case was dropped.

Chairman Williams told Mr. Mason he had only one violation in 1996 since he had been in business.

Chairman Williams made a motion to reduce the penalty from \$4,000.00 to \$400.00 upon the stipulation that Mr. Mason attend a RASP class. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. David Chun, owner of add-on hearing case #66, Bethelinus, was present to speak. Mr. Chun stated that this incident happened on a Saturday evening around 6:40 PM which was one of the busiest times. Mr. Chun said that five to ten people come at one time and they slowed down to try and check identifications. Mr. Chun stated he was not at the store but Rene Rivera was there. Mr. Chun said this was their first violation since they opened in April, 2004. Mr. Chun asked for leniency on this matter because it was a human mistake.

Chairman Williams asked Mr. Chun if Mr. Rivera or any other employees attended classes offered by Alcohol Law Enforcement or by the ABC Commission. Mr. Chun replied he didn't think they went to it. Commissioner Lyon made a motion to reduce the penalty from \$1,200.00 to \$600.00 upon the stipulation that Mr. Chun and employees attend a RASP class. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that hearing case #107, Statesville Elks Lodge 1823, and hearing case #17, Tee Time Sports and Spirits, were on the October 15, 2009, and requests for reconsideration had been made. No one was present to be heard on either case.

Chairman Williams deferred taking a motion on the balance of the violation cases until after dealing with the ABC stores and other matters.

II. ABC STORE LOCATION – ASHEVILLE ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Buncombe County. On September 11, 2009, the Commission received a letter from Curtis Canty, Chief Executive Officer, requesting approval to locate an additional ABC Store in the city limits of Asheville, North Carolina. On September 23, 2009, ALE Agent Matt Davis began an investigation and found that the proposed site of the new ABC Store is located at 3933 Sweeten Creek Road in Asheville. The property is accessible from Hendersonville Road and is adjacent to Buck Shoal Road.

The property is currently owned by Gladys Lance. The Board plans to purchase this property for \$275,000.00.

The investigation found there were no financial conflicts of interest between the property owner and the ABC Board.

The ABC Store will be 3,500 square feet in a single story building with 2,600 square feet retail space.

The nearest church is Lutheran Church of the Nativity and is located .3 miles from the proposed site.

The nearest school is Arden Christian School and is located .6 miles from the proposed site.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on September 11, 2009, in compliance with the ABC Commission's 30-day requirement.

There have been some objections to this site. The investigation found that there were twelve objections which were received by the ABC Board at the time of the investigation. The objections were mostly due to traffic concerns and low income housing in the general vicinity of the proposed site. Also, the Commission received letters from the Town of Fletcher and Fletcher ABC Board. They wrote letters objecting to this

location because they have an ABC Store located two miles from the proposed site. They were concerned the additional store in the area would generate very little additional sales and would reduce the sales of the Fletcher ABC Store. The Commission has received one phone call and two e-mails came in objecting to the site due to traffic concerns and low income housing. The Commission requested and heard from the Association of NC ABC Boards on this site and they concluded, there was no reason why the Commission should disapprove the site.

Commissioner Lyon asked Mr. Herring if the letter from Mr. Joe Wall could be part of the record. Mr. Herring replied he thought it could be.

Chairman Williams asked if anyone was from Fletcher was present. No one was present from Fletcher.

Commissioner Lyon asked about the traffic flow. Mr. Canty replied from the study the road was heavily traveled. Mr. Canty stated he talked with the architect as they were planning the site and they were proposing to have an entrance and exit off both roads.

Chairman Williams asked if anyone else would like to be heard on this site. No one else was heard.

Mr. Herring recommended that the Commission approve the location.

Chairman Williams made a motion to approve the new ABC Store. Seconded by Commissioner Guy. So Ordered.

IV. ABC STORE LOCATION – CUMBERLAND COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Cumberland County. On October 13, 2009, the Commission received a request from Gene Webb, Director of the Cumberland County ABC Board, requesting approval to relocate an existing leased store to a nearby property which the Board plans to purchase and construct a new modern store. On October 21, 2009, ALE Agent Derwin Brayboy began an investigation and found that the ABC Board was planning to build a new store on the corner at the intersection of Raeford Road and Cliffdale Road in Fayetteville. There was not a street address at the time of the investigation and there is still not an address.

The proposed site is zoned as commercial and an ABC Store is permitted on this property.

The property is currently owned by Granite/Raeford LLC, Mt. Airy, North Carolina.

The proposed site is about 1.9487 acres and the purchase price is \$750,000.00.

The board plans to begin construction in November, 2009, and open the new store by October, 2010.

The investigation found there were no financial conflicts of interest between the property owners and the ABC Board.

The nearest school is Loyd Auman Elementary School and is located .4 miles from the proposed site.

The nearest church is Calvary Chapel and is located .1 miles south from the proposed site.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on October 13, 2009, in compliance with the ABC Commission's 30-day requirement.

The projected sales at this location will be approximately 1.7 million a year.

Investigation found no objections to this site which included the ABC Board and the Commission.

Mr. Herring recommended the Commission approve the relocation of the ABC Store.

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

VI. ABC STORE RE-OPENING – PEMBROKE ABC BOARD

Administrator Michael Herring addressed the Commission concerning the re-opening of the ABC Store by the Pembroke ABC Board. On October 20, 2008, Alcohol Law Enforcement submitted a report to the Commission concerning missing monies and inventory at the Pembroke ABC Store. Mr. Herring stated that the report indicated there was a lack of physical control to safeguard public monies and unacceptable management practices for conducting public business in accordance with the ABC laws. Mr. Herring said that based on the report in accordance with General Statute 18B-801(c)(2) the Commission ordered the Pembroke ABC Board to cease retail operations and close their store. The Commission ordered Alcohol Law Enforcement to take possession of the store and its contents until the Commission could determine if the operation of the ABC Store was warranted. The remaining inventory was removed from the ABC Store with several ABC Boards purchasing the inventory. The ABC Board had monies left over in bank accounts.

On May 18, 2009, the Pembroke City Council appointed three new members to the local ABC Board. Mr. Herring stated the new Board came to Raleigh on May 26, 2009 to meet with the staff and him. Mr. Herring said he had several conversations with Chairman Malcolm and he believed that the Pembroke ABC Board is now in the position to provide the proper management to successfully operate the ABC Store in accordance with the ABC laws.

Mr. Herring recommended that the Commission allow this ABC Store to re-open and the Commission to ship liquor back to Pembroke when the store is remodeled and open for business.

Chairman Williams made a motion to recognize the appointment of a new Board, selection of new management and recognize that they are prepared to go forward to engage in operations. Seconded by Commissioner Guy. So Ordered.

At this time, the Commission took a recess and then reconvened the meeting.

VIII. OTHER BUSINESS – ABC WAREHOUSE CONTRACT (LB&B REQUEST FOR PRICE ADJUSTMENT)

Administrator Michael addressed the Commission regarding the warehouse operations. Mr. Herring gave background information about the warehouse contract. In April, 2004, LB&B Associates purchased the warehouse contract from the previous contractor, J.A. Jones from Charlotte, North Carolina. The contract LB&B bought from J.A. Jones was to expire in 2007, but the Commission approved a five year extension in 2006. In accordance with Part III, Paragraph 28 of the contract, the warehouse contract could submit a request for an equitable adjustment in the contract price in June of each year. On June 23, 2009, the Commission received a request for an adjustment along with a request for a five year extension of the

current contract. Mr. Herring introduced Mr. Graham Thompson, the Project Manager of LB&B Associates, to outline their requests.

Mr. Thompson stated he submitted a request for an equitable adjustment on June 22, 2009. The first component was a request for an equitable adjustment in the contract price based upon increase in the volume of gallons of diesel fuel and the contract bid price of \$2.69 per gallon. LB&B has incurred increased costs of diesel fuel in the amount of \$68,960.38. The second component was a request for an equitable adjustment in the contract price based upon the number of cases handled and delivered over the previous twelve months. The total requested amount for volume increase is \$93,413.33. LB&B is requesting a lump sum increase in contract price for July 1, 2008 through June 30, 2009 in the total amount of \$162,373.71.

Commissioner Lyon asked Mr. Thompson how much additional income for the extra charges on deliveries were received last year and he would like the answer to this question at the next Commission meeting.

Chairman Williams stated Mr. Herring had been working with LB&B to examine each item and its justification for increase. Also, Mr. Herring had been discussing how the Commission could pay for an increase because the bailment/surcharge roughly equals the current contract price and additional income is not generated to pay for the increase at this time.

Mr. Thompson stated the third component of the request was a five year extension beginning July 12, 2011 through July 11, 2016 at the contract price of \$5,600,000.

Chairman Williams asked if there was anything further in the report. Mr. Herring stated he was in negotiations with Graham Thompson and in the process of discussing a couple of changes to the contract. One is the 180 day notice that the Commission gives the contractor to terminate the contract and the other is to reduce the amount of money LB&B originally requested. Mr. Herring stated they were trying to work things out so the contract could be approved and extend the Commission's relationship with LB&B.

Mr. Herring stated he sent a request to Joe Wall of the Association of NC ABC Boards to ask the Board of Directors about funding for this contract and to consider would the Association support the Boards paying for the service that they receive instead of the flat \$1.10 per case.

Mr. Herring was directed to work out the contract between the Commission and LB&B.

III. ABC STORE LOCATION – CLAY COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Clay County. On October 19, 2009, the Commission received a letter from Gary Reffit, Chairman, requesting approval to open the first ABC Store in Hayesville, North Carolina. On October 23, 2009, ALE Special Agent S.D. Myers began an investigation and found that the proposed location of the ABC Store is in the Creekside Shopping Plaza. The property is accessible from Highway 69 and the address is 48 Creekside Circle, Hayesville, North Carolina.

The property is owned by Creekside Management Corporation. The ABC Board plans to lease 4,200 square feet of retail space for a period of 24 months with a one year option at a rate of \$1,590.00 per month.

The site is zoned properly for an ABC Store.

The investigation found there were no financial conflicts of interest between the landlord and the ABC Board members.

The nearest church is Fort Hembree Baptist Church and is located .3 miles from the proposed site.

The nearest school is Hayesville Elementary School and is located .5 miles from the proposed site.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on October 19, 2009, in compliance with the ABC Commission's 30-day requirement.

The Commission has received no objections. The investigation found no objections.

The projected sales volume at this new location will be approximately \$620,000.00. They are trying to open before the holidays.

Mr. Herring recommended that the Commission approve this site.

Commissioner Lyon made a motion to approve the new ABC Store. Seconded by Commissioner Guy. So Ordered.

V. ABC STORE LOCATION – MARION ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in McDowell County. On December 26, 2008, the Commission received a letter from Jim Isaacs, Chairman, requesting approval to open a second store in Marion, North Carolina. On January 13, 2009, ALE Agent W.A. Happoldt began an investigation and found that the proposed site was not in the city limits of Marion. The request was withdrawn by the ABC Board until the site could be annexed into the Marion city limits. On September 3, 2009, the Commission received a second letter from Jim Isaacs, Chairman, requesting site approval. The investigation found that the proposed location is at 2961 Highway 221 North, Marion, North Carolina. It is within the city limits of Marion and is accessible from Highway 221 North. On August 18, 2009, the Marion City Council adopted the annexation of this property and it went into effect on August 31, 2009.

The property is owned by Gurley Properties, LLC. The ABC Board plans to lease the property from Gurley Properties, LLC and the owner plans to build a 5,000 square foot building that Marion ABC Store will hopefully occupy. The lease document has not been drawn up yet and Gurley Properties, LLC is waiting on approval on this location from the Commission.

The property is zoned C-2 General Business to include an ABC Store.

The nearest church is Maranatha Baptist Church and is located .4 miles from the proposed site.

The nearest school is West McDowell Junior High School and is located 1.3 miles from the proposed site.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on October 2, 2009, in compliance with the ABC Commission's 30-day requirement.

The Commission has received no objections. The investigation found no objections.

Mr. Herring stated that he thought they were ambitious to project sales at about two million dollars. The current store does two million in sales and Mr. Herring said he thought it was possible that they may be closing the other store and the new store would be the main store.

Mr. Herring recommended that the Commission approve this site.

Chairman Williams made a motion to approve the new ABC Store. Seconded by Commissioner Guy. So Ordered.

VII. JOINT STORE AGREEMENT – SYLVA/BRYSON CITY ABC BOARDS

Administrator Michael Herring addressed the Commission concerning a joint store agreement between Sylva and Bryson City ABC Boards. Mr. Herring stated he received a letter requesting that Sylva ABC Board and Bryson City ABC Board work together to service the Eastern Band of Cherokee Indians at their Harrah's Casino and hotel. The reservation is in both counties where the Sylva and Bryson City ABC Boards are located.

On August 13, 2009, Mr. Herring had a phone conference with the Eastern Band and talked about permitting Harrah's Casino. On September 16, 2009, representatives of the Eastern Band met with staff and had the required application documents. Permits were issued to begin alcohol sales. Mr. Herring stated that it was determined in the meeting and discussions with Bryson City that they were projecting about 300 cases a day to be needed at the Casino. Mr. Herring stated that based on that amount Sylva does not have the facility to handle the amount. Bryson City does have a new warehouse and a loading dock. Mr. Herring stated it would be more convenient and efficient for the warehouse to ship there and have Bryson City to deliver to the reservation.

Mr. Herring stated that the two towns joined together in accordance with 18B-703(h), which allows ABC Boards to operate joint stores. The two Boards came up with an agreement to operate a joint mixed beverage store just to service this one location. Mr. Herring stated that everything would be handled by Bryson City and the two boards will split the profits and expenses. They also agreed to fund Eastern Band law enforcement by giving 5% of their profits back to law enforcement. This agreement was entered into October 16, 2009 by the two towns.

Mr. Herring recommended that the Commission approve this merger agreement for joint store operations.

Chairman Williams made a motion to approve the joint store agreement between Sylva and Bryson City ABC Boards. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that the following cases will be continued: hearing case #8, Country Jeffs Grocery and Gameroom, hearing case #11, Mexicali Rose Restaurant and hearing case #25, Food Lion 106. Hearing case #32, Bistro Forty Two, will be continued at the January Commission Meeting.

Commissioner Lyon made a motion to ratify hearing case #41, Hasty Mart 45. Seconded by Commissioner Guy. So Ordered.

Chairman Williams made a motion to approve the remaining Offers in Compromise with the exception of contested case #1, Tienda La Unica, contested case #2, Bizzy Bee 1, contested case #3, Broad Street Bar and Grill, contested case #4, By-Lo Citgo 3, contested case #6, S K NetCafe, hearing case #44 on the October docket, J P Looneys, contested case #5, Locklears Snacks and Games, hearing case #31, Wings and Things, hearing case #61, Han Dee Hugos 63, hearing case #39, Diesel Downtown, add-on hearing

case #64, Club International and add-on hearing case #66, Bethelinus. Seconded by Commissioner Guy.
So Ordered.

Administrator Michael Herring asked Chairman Williams, Commissioner Lyon and Commissioner Guy about a future date for a February Commission meeting. Commissioner Lyon asked for two tentative dates and would call to confirm. Chairman Williams stated they would adopt February 17, if not, February 18; and if not, the matter would be resolved in December.

With no further business, the meeting adjourned.

Jonathan S. Williams, Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Dottie L. Taylor, Legal Division