

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 15, 2007**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on November 15, 2007, beginning at 10:10 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, Commissioner Mike Joyner and Commissioner John Lyon were present at the meeting.

MINUTES OF OCTOBER 16, 2007, MEETING

Chairman Fox made a motion to waive the reading of the minutes from the October 16, 2007, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the October 16, 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 Joyner and Commissioner Lyon 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 stated that he found no conflicts of interest. Commissioner Lyon recused himself from #64, Kimbers and #90, Prime Only Steak and Seafood. Chairman Fox stated that he had no conflicts.

Administrator Michael Herring presented Service Awards to the following ABC Commission employees:

Eleanor Johnston – 5 Years
Annette Taylor – 5 Years
Ann Johnson – 30 Years

I. HEARING CASES – 92

Chief Counsel Fred A. Gregory stated that there was a contested case #1, Pleasant Grove Grocery. Mr. Jamal Kamel Hajeh, owner and President of the business, was present to speak. Assistant Counsel LoRita Pinnix represented the Commission at the administrative hearing on August 28, 2007, in Raleigh, North Carolina.

Mr. Hajeh stated he had been in business since 1991 and he had no violations until February, 2007, when an underage person came in, went to the cooler and grabbed a 22 ounce Budweiser. Mr. Hajeh stated the underage person came to the counter and he asked her if she was old enough to be drinking beer. Mr. Hajeh said she nodded her head and asked if she had her driver's license with her. The underage person presented her driver's license and Mr. Hajeh stated the last four digits of her birthdate were rubbed off. Mr. Hajeh said he didn't have his reading glasses with him so he asked her if she was old enough to drink the beer and she nodded her head yes. Mr. Hajeh stated he made the sale by judging the way she looked. Mr. Hajeh stated he was not guilty of deliberately or knowingly selling the beer. He said he was guilty of believing and trusting the young lady. Mr. Hajeh asked the Commission to have some consideration.

Assistant Counsel LoRita Pinnix stated that this was an underage campaign and the underage person used was the daughter of an ALE Agent. The underage person had been trained and age tested. The underage person's testimony in the transcript was when Mr. Hajeh asked about her age she stated that she was born in 1989 and

she did not nod her head yes that she was old enough. Ms. Pinnix stated that the driver's license the underage person presented at the time had the red border around the picture and under 18 on the license.

Chairman Fox asked Mr. Hajeh how bad were his eyes. Mr. Hajeh replied it was his right eye he didn't see very well with. Commissioner Lyon asked Mr. Hajeh if he could see colors. Mr. Hajeh replied "yes." Commissioner Lyon asked Mr. Hajeh if he was familiar with the way a driver's license say "under 18" with a red border.

Chairman Fox made a motion to adopt the Findings of Fact and Conclusions of Law of Administrative Law Judge Fred Morrison. Seconded by Commissioner Lyon. So Ordered.

Mr. Gregory stated that there was a contested case #2, Wagon Wheel. Assistant Counsel LoRita Pinnix stated she spoke with Ms. Johnston two or three weeks ago and she indicated she would be at the Commission meeting today. Ms. Pinnix said she tried to contact her this week and the phone numbers were both disconnected. Ms. Pinnix stated she had filed exceptions to the Judge's recommended penalty and recommended 240-day active suspension of ABC permits and a \$500.00 fine.

Ms. Darlene Johnston, owner, was present later to speak on behalf of the business. Ms. Johnston stated she had been at this business for eleven years with no violations. Ms. Johnston stated there was a customer involved in this incident but she did not give marijuana to the customer but pills. Ms. Johnston stated that a gentleman said his girlfriend was sick and she asked another customer for some medicine. Ms. Johnston stated the gentleman was an undercover officer.

Commissioner Lyon asked about the marijuana being given to the undercover agent. Ms. Pinnix stated that according to the officer's testimony he went into the Wagon Wheel in an undercover capacity and established himself as a customer. Ms. Pinnix stated the officer asked Ms. Johnston for marijuana and according to his testimony she walked over to a customer sitting at the bar, received a package from that customer and handed it to the undercover officer. Ms. Pinnix stated the officer testified that it was marijuana and the substance was tested and found to be marijuana. Ms. Pinnix stated that the officer testified at the hearing that he didn't say anything about a sick girlfriend or needing medicine for her.

Chairman Fox asked Ms. Johnston if the Roanoke Rapids law enforcement had issues with her place of business. Ms. Johnston stated no. Ms. Johnston stated that this business was the only means of making a living.

Chairman Fox made a motion to adopt and leave as is the Administrative Law Judge Joe Webster's recommendation of a 30-day suspension and a \$500.00 fine. Seconded by Commissioner Joyner. So Ordered.

Mr. Tom Nevin, general manager of hearing case #12, Hope Valley Country Club, was present to speak on behalf of the business. Mr. Nevin stated the club had been in business for 80 years. Mr. Nevin stated that some of the members had monthly events and they used to bring their own liquor into the club. Mr. Nevin said most of that had been done away with and now they spend about \$140,000.00 on purchases a year. Mr. Nevin stated they had trained two new managers on the ABC laws.

Chairman Fox asked Mr. Nevin what happened on this occasion. Mr. Nevin stated that the officer checked the store rooms and bars and found two bottles that were missing mixed beverage tax stamps. Mr. Nevin said they were old bottles.

Commissioner Joyner made a motion to reduce the penalty to \$300.00 with no requirement to take a class because of prior class already taken. Seconded by Chairman Fox. So Ordered.

Mr. John Ferren, interim general manager of hearing case #6, Greenville Country Club, was present to speak on behalf of the business. Mr. Ferren stated they did not dispute the facts of the two incidents and asked for

consideration by the Commission on the fine. Mr. Ferren stated that all the staff had taken the RASP class since the incidents, including himself. Mr. Ferren said each new employee is required to take the course and alcohol training is part of the employee handbook. Mr. Ferren said they also put up signs about checking age.

Chairman Fox asked Mr. Ferren how many employees did they have. Mr. Ferren replied about 40 employees, but only about 14 actually had anything to do with alcohol sales. Chairman Fox asked if they had taken a class. Mr. Ferren said "yes."

Chairman Fox made a motion to reduce the penalty to \$1,800.00 and they were given credit for attending the RASP class. Seconded by Commissioner Lyon. So Ordered.

Mr. Zaki Maayah, owner of hearing case #51, Zaks Jiffy Mart, was present to speak on behalf of the business. Mr. Maayah stated that on April 28, 2007, he received a call from his youngest son who stated they had a car accident. Mr. Maayah stated he was distracted and sold to an underage person.

Chairman Fox stated to Mr. Maayah it was the third underage sale in five years.

Chairman Fox made a motion to reduce the penalty to \$1,800.00 with the stipulation that Mr. Maayah attend a RASP class within 45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Brian Lane, manager, and Mark Lane, owner of First Offense case #40, Marcos Pizzeria Restaurant, were present to speak on behalf of the business. Mr. Lane asked the Commission for a reduction in the fine and wanted to make sure it did not hurt him in the future when obtaining permits.

Commissioner Lyon asked Mr. Lane if the person was carded. Mr. Lane replied no and apologized for not doing his job. Mr. Lane stated he had served community service hours.

Chairman Fox made a motion to reduce the penalty to \$700.00 with the stipulation to attend a RASP class within 45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Jihad Lewis Libbus, owner of hearing case #15, Lock Stock and Barrel, was present to speak on behalf of the business. Mr. Libbus stated that at the time of the violation on June 9, 2007, this was a sports bar called MaGoos. He employs a manager, bartender and security guards. Mr. Libbus stated that he was called away when his wife called him about his son being sick. Mr. Libbus stated that at 2:50 AM the officers came and found the two security guards drinking a mixed beverage. Mr. Libbus stated the manager was cleaning the dishes and the bartender was vacuuming.

Mr. Libbus said he closed the business down in June, July and August. He reopened as Lock Stock and Barrel which is a family restaurant with no more drinking. Mr. Libbus stated he felt like they had already paid for this mistake in a different way.

Chief Counsel Gregory asked Mr. Libbus why they were shut down. Mr. Libbus said because of the security guards and the sports bar concept. Mr. Libbus asked the Commission to consider his case.

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 Lyon. So Ordered.

Ms. Ana Celina Brito, owner of hearing case #21, San Miguel Market, was present to speak on behalf of the business. Ms. Brito stated she was not at the business on the date of the violation. She had hired a new employee who did not know much about the beer and did not have a lot of experience.

Commissioner Joyner asked if this was the second violation. Ms. Brito stated the same thing happened and she does not leave anybody to sell beer now. Ms. Brito stated she could not let it happen again.

Commissioner Joyner made a motion to reduce the penalty to \$1,200.00 with the stipulation that all employees attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Ms. Bee Nui Carson, owner of First Offense case #12, Big Boys Market, and First Offense case #21, Panda Panda, was present to speak on behalf of the businesses. Ms. Carson stated the employee said he checked the I.D. and sold a beer. Ms. Carson stated the employee is no longer employed at the store.

Commissioner Joyner asked Ms. Carson if the business was a restaurant or a convenience store. Ms. Carson replied this was a small convenient store.

Chairman Fox asked Ms. Carson if she had a store in Lexington. Ms. Carson replied it is a restaurant called Panda Panda. Ms. Carson stated she was leaving and everyone was busy so she seated a couple that had come in. The couple told her what they wanted to drink and she brought them a drink.

Chairman Fox asked if the permits were in her name. Ms. Carson replied yes, but she doesn't work at the restaurant.

Chairman Fox made a motion to ratify both Offer In Compromises as is. The Big Boys Market's penalty was \$1,200.00 and Panda Panda's penalty was \$600.00. Seconded by Commissioner Joyner. So Ordered.

Hearing case #87, E Zee Food Mart, was continued until the next Commission Meeting.

Chairman Fox made a motion to ratify hearing case #64, Kimbers and hearing case #90, Prime Only Steak and Seafood. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of hearing case #12 Hope Valley Country Club, hearing case #6, Greenville Country Club, hearing case #51, Zaks Jiffy Mart, hearing case #15, Lock Stock and Barrel, hearing case #21, San Miguel Market, which had already been ratified. Seconded by Commissioner Joyner. So Ordered.

The following were add-on Hearing cases:

- #90 – Prime Only Steak and Seafood
- #91 – Ashford Suite Hotel
- #92 – West Green Market

II. FIRST OFFENSES – 42

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on November 15, 2007, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. I H Food Mart – 4700 High Point Road, Greensboro, NC 27407
2. Kitchen Connection – 309 Sanford Drive, Morganton, NC 28655
3. Bogarts Restaurant – 35 East Main Street, Sylva, NC 28779
4. Pizza Hut of Hickory 3 – 1625 Clement Boulevard NW, Hickory, NC 28601
5. Pirates Choice Exxon – 100 SE Greenville Boulevard, Greenville, NC 27858
6. Quick Shop – 1600 Fallston Road, Shelby, NC 28150
7. Royal China Buffet – 2105 East Millbrook Road, Raleigh, NC 27604
8. Sabor Latino – 3738-E Farmington Drive, Greensboro, NC 27407
9. Taste of Buffalo Pizzeria – 9610-B Sherrill Estates, Huntersville, NC 28078
10. Wilmar Store – 11780 North Hwy 17, Vanceboro, NC 28586

11. Bi Rite Market – 5128 Hathaway Street, Battleboro, NC 27809
12. Big Boys Market – 5401-A West Market Street, Greensboro, NC 27409
13. Food Lion 757 – 1100-122 Raleigh Boulevard, Raleigh, NC 27610
14. El Tapatio Mexican Restaurant – 4511 New Bern Avenue – Suite 120, Raleigh, NC 27610
15. Kangaroo Express 3299 – 3106 South Horner Boulevard, Sanford, NC 27330
16. La Pinata – 2103 East Cone Boulevard – Suite 111, Greensboro, NC 27405
17. La Paloma – 116 South Main Street – Huntersville, NC 28078
18. Library Food and Spirits – 603 Blowing Rock Road, Boone, NC 28607
19. Mountain Breeze Mart – 1593 West Main Street, Sylva, NC 28779
20. Pizza Hut – 100 Claire Drive, Edenton, NC 27932
21. Panda Panda – 416 Piedmont Drive, Lexington, NC 27292
22. Quick Trip – 589 Brevard Road, Asheville, NC 28806
23. Rite Aid Store 11355 – 4001 Battleground Avenue, Greensboro, NC 27410
24. Tin Can – 561 West King Street, Boone, NC 28607
25. Hwy 158 B P – 943 US Hwy 158 West, Warrenton, NC 27589
26. Church Street B P 172 – 2750 North Church Street, Greensboro, NC 27405
27. Don Juans Mexican Restaurant – 43 South Talbert Boulevard, Lexington, NC 27292
28. Don Jesus – 103 Roxboro Street, Haw River, NC 27258
29. Elizabeths Pizza – 2824 University Parkway, Winston Salem, NC 27107
30. Five Star International Market – 3015 Waughtown Street, Winston Salem, NC 27107
31. Surf City Supermarket – 106 South Topsail Drive, Surf City, NC 28445
32. Mill and Main – 462 West Main Street, Sylva, NC 28779
33. On the Border Mexican Grill & Cantina – 8315 North Lake Commons Boulevard, Charlotte, NC 28216
34. P Js – 237 Asheville Hwy, Sylva, NC 28779
35. Peking Gourmet II – 385 Jackson Plaza, Sylva, NC 28779
36. Radisson High Point – 135 South Main Street, High Point, NC 27260
37. Youngs Exxon – 5511 West Friendly Avenue, Greensboro, NC 27410
38. Westside Food Mart – 615 North Enochville Avenue, Kannapolis, NC 28081
39. Residence Inn Charlotte Uptown – 404 South Mint Street, Charlotte, NC 28202
40. Marcos Pizzeria Restaurant – 946 Merrimon Avenue, Asheville, NC 28804
41. World Coffee Café – 18 Battery Park Avenue, Asheville, NC 28801
42. Peace Mini Mart – 411 West Hines Street, Wilson, NC 27893

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases with the exception of First Offense case #40, Marcos Pizzeria Restaurant, which had been ratified earlier. Seconded by Commissioner Joyner. So Ordered.

III. ABC STORE LOCATION – WAKE COUNTY ABC

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Wake County. On October 16, 2007, the Commission received a letter from Craig Pleasants, General Manager of the Wake County ABC Board, requesting approval to purchase property in North Raleigh to relocate the store at 7200 Sandy Forks Road. On October 23, 2007, ALE Agent Bill Berryhill began an investigation and found that the proposed new location would be 7112 Sandy Forks Road, Raleigh, North Carolina. It is next door to the existing ABC Store.

The location is approximately a 14,000 square feet facility. The board needs only 6,000 square feet of the space at this time. This doubles their current ABC Store size. The board, in the future, plans for the remaining space to include retail or warehouse expansion or may possibly sell or lease some of the space.

The projected sales volume in this location is approximately \$4.5 million per year. This is Wake County's number one store in sales volume.

The property is owned by Fatboy, LLC. The purchase price for this property is \$1,650,000.00.

The nearest church is the Saint Raphael Catholic Church and is approximately one mile from the proposed location.

The nearest school is the Ravenscroft School and is approximately .9 of a mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on October 16, 2007, in compliance with the ABC Commission's 30-day requirement.

No conflicts of interest exist between the Wake County ABC Board and the property owner.

No objections to this site have been received at the ABC Commission.

Mr. Herring stated that Mr. Craig Pleasants, General Manager of the Wake County ABC Board, was present to answer any questions about the proposed location.

Mr. Herring recommended the ABC Commission approve this request for relocation of their ABC Store.

Chairman Fox asked about allowing rental space. Mr. Herring stated the leasing of property has been allowed when it is a large space and the Board is uncertain on selling, leasing or expanding.

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

IV. OTHER BUSINESS –

Administrator Michael Herring stated that at the last couple of Commission meetings the warehouse expansion had been discussed. Mr. Herring presented a proposal from Pease Architects-Engineers in Charlotte, North Carolina, several months ago. Mr. Herring introduced Mr. John Duncan and Mr. Don Garbrick with Pease Associates to make a presentation on their proposal to continue the study of expanding the ABC warehouse.

Mr. John Duncan stated they developed a report that was submitted and their effort was put into trying to figure out what was the least expensive thing they could do. Mr. Duncan stated that bulk storage was the main issue and the system has grown to 4 million cases a year. Mr. Duncan stated that the assumption is that they will grow 200,000 cases a year and bulk storage needed to grow at that rate. Mr. Duncan said that Mr. Herring and he had met with Greg Driver at State Construction office. Mr. Duncan stated that if bulk storage was the issue to use the existing site and figure how much bulk storage is needed.

Mr. Duncan stated they looked at the existing site to see what they could do with it and they also looked at a new site. Mr. Garbrick stated they were planning modifications to the existing site. Mr. Duncan stated they had suggested a conveyor system and cranes for the bulk storage. The existing warehouse is a good building but could have a little more ceiling height. Mr. Duncan said as far as stacking pallets three high it works fine and another option shows a high rise type crane system. Mr. Duncan stated they had two proposals in the spring. One was 12 million dollars which was the bulk storage on the existing site, the other was the new site which was 29 million dollars. Mr. Duncan stated after looking at the new site it would probably not cost 29 million dollars because the warehouse might not need to be as big as they first proposed. Mr. Duncan said the advantage of a new site is you can lay it out exactly the way you want it, you can put in as much or as little automation as you want. Mr. Duncan stated that the automation costs less than building warehouse space but he did not know what the difference was. Mr. Duncan stated more information was needed to make an accurate decision and to do that a consultant was needed who knows the math and computer programs for the

Commission. Mr. Duncan said he thought in a couple of months or before April, they could come back with a presentation with the consultant.

Mr. Herring stated that the warehouse has been operating here for 24 years and was about to reach maximum capacity. Mr. Herring stated the growth was 150,000 to 200,000 cases a year at the warehouse and we need to make the decision now in order to be prepared in the near future.

Commissioner Lyon asked Mr. Duncan to revise the proposal and provide it to Mr. Herring.

Mr. Duncan stated he would like to get the RFP for the consultant and to extend his existing contract.

Chairman Fox made a motion to continue this until Mr. Duncan gets the appropriate paperwork to the Commission and then it can be done by conference call to adopt or disapprove. Seconded by Commissioner Joyner. 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