

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JUNE 15, 2011**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on June 15, 2011, 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 Jonathan S. Williams, Commissioner Zander Guy and Commissioner Daniel L. Briggs were present at the meeting.

MINUTES OF MAY 18, 2011

Chairman Williams asked for a motion to waive the reading of the May 18, 2011 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the May 18, 2011 meeting. Motion Passed. Commissioner Guy made a motion to approve the minutes from the May 18, 2011 meeting. Motion Passed.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-35, Chairman Williams asked Commissioner Guy and Commissioner Briggs 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. Chairman Williams, Commissioner Guy and Commissioner Briggs stated that they had found no conflicts of interest.

I. HEARING CASES – 99

Chief Counsel Fred Gregory stated that attorney and Representative Tim Moore for hearing case #54, Battleground Petroleum was present to speak on behalf of his client. Mr. Moore stated that the permittee, who doesn't usually run the cash register, was rushing to leave the store for his daughter's debutante ball. He asked the buyer for his identification, looked at it and then returned the identification. Mr. Moore stated that the permittee miscalculated the date. He further stated that the permittee has attended a RASP class and the case was dismissed in criminal court. Mr. Moore asked the Commission for a reduction in the penalty.

Chairman Williams made a motion to reduce the penalty by 25% based upon the fact that the permittee attended a RASP Class. Motion Passed.

Chief Counsel Gregory stated that contested case #1, Hi Way Package Store was the next case to be heard. No one was present to speak on behalf of the permittee.

The permittee failed to comply with the orders of Administrative Law Judge Selina Brooks to file prehearing statements. Judge Brooks recommended that the permittee pay a penalty of \$1,000.00 and the permits be suspended for 15 days.

Chairman Williams made a motion to adopt the recommended decision of the administrative law judge. Motion Passed.

Chief Counsel Gregory stated that the next contested case to be heard was #2, Misundries. No one was present to speak on behalf of the permittee.

The permittee failed to comply with Administrative Law Judge J. Randall May's orders to file Prehearing Statements. Judge May recommended that the permittee pay penalty of \$500.00 and the permits be suspended for 24 days.

Commissioner Guy made a motion to adopt the recommended decision of the administrative law judge. Motion Passed.

Chief Counsel Gregory stated the next case to be heard was case #3, Pit Stop 301 Express. Representatives from the business were present to speak on behalf of the permittee.

The representative for the business stated that the employee who sold to the underage person is now overseas. He went on to state that the permittee never received notification from the Office of Administrative Hearings and that the employee who sold had an attorney, but the attorney is now in Yemen. All the mail that came from the Office of Administrative Hearings and the NC ABC Commission was given to the attorney.

Chairman Williams verified with the representative that the address on file was the correct mailing address.

The representative asked the Commission for some leniency.

Assistant Counsel K. Renee Cowick stated that the Commission could submit an offer in compromise to the permittee and the recommended decision withdrawn.

After some discussion, the Commission allowed the representative to meet with Ms. Cowick and discuss the new offer.

After discussion with the representatives, Assistant Counsel Cowick told the Commission that the permittee has agreed to sign an amended offer in compromise for a 12 day suspension or \$1,200.00 penalty.

Chairman Williams made a motion to accept the modified offer and to reduce the \$1,200.00 penalty to \$900.00 upon stipulation that the permittee and employees attend a RASP Class. Motion Passed.

Chief Counsel Gregory stated that Ms. Bee Carson, owner of hearing case #55, Big Boys Market, was present to speak on behalf of the business. Ms. Carson stated that when she initially received the notice from the NC ABC Commission, she thought that her permits would be suspended effective May 1st. She went on to state that she later received another notice and she stopped all alcohol sales. Ms. Carson further stated that she then called the Commission and was told that her case had to come before the Commission to be ratified. Ms. Carson stated that she has told her employees to follow her instructions, but they won't.

Commissioner Guy made a motion to accept the signed offer as submitted to the Commission. Motion Passed.

Chairman Williams expressed his concern over the number of violations that have occurred at the business and warned Ms. Carson if she didn't get a handle on the situation that there's a possibility that she could lose her ABC permits.

Chief Counsel Gregory stated that Mr. Tegegne Wondafrash, owner of hearing case #4, Abyssinia Ethiopian Restaurant, was present to speak on behalf of his business. Mr. Wondafrash stated that the bottle of Arrow Blue Curacao liqueur had been on the shelf, at the business, for nine or ten years and had never been used. A previous manager had been managing the business for him and was subsequently fired because of his mishandling of the business. He went on to state that he had seen the Peach Schnapps on the shelf, but that it was there to mix with fruit drinks. Mr. Wondafrash went on to state that he didn't realize that the Peach Schnapps shouldn't have been there until he received notification from the NC ABC Commission. He ended by saying that he took full responsibility and asked the Commission for leniency.

Chairman Williams asked Mr. Wondafrash how many employees handle the alcohol at the business. Mr. Wondafrash stated that only two employees handle the alcohol.

Chairman Williams made a motion issue a written warning upon the stipulation that the two employees attend a RASP Class. Motion Passed.

Chief Counsel Gregory stated that Mr. Xianghong Chen, owner of hearings case #98, Champa sushi and Thai Cuisine, was present to speak on behalf of his business. Mr. Gregory stated that case was on last month's May agenda and is a reconsideration case.

Ms. Cowick stated that the permittee had misunderstood that there would be seven active days of the suspension to serve if they paid the fine.

Mr. Chen stated that he usually handles ordering all the alcohol for the business and always orders a big bottle of Gray Goose Vodak, but his sister ordered a small bottle of the vodka. He went on to state that his sister told him it was okay to refill the bottle of alcohol and he thought that it was okay also, but now realizes that he was wrong. Mr. Cheng further stated that he took full responsibility. He asked the Commission for some leniency and stated that being closed for seven days would hurt the business.

Chairman Williams made a motion to waive the seven days active suspension upon the stipulation that all the employees attend a RASP Class. Motion Passed.

Chief Counsel Gregory stated that the next case to be heard was hearing case #95, Yaya Food Mart. A representative for the business was present for the permittee. The representative stated that the owner did not know that the employee had a felony conviction when he was employed at the business. He asked the Commission for some leniency.

Chairman Williams stated that the permittee should have done a background check on the employee before hiring him and this could have been prevented.

After some discussion with the other Commissioners, Chairman Williams made a motion to accept the signed offer in compromise as submitted to the Commission. Motion Passed.

Assistant Counsel Tim Morse stated that hearing case #81, Forest Hills Food Mart would be continued to the July Commission meeting.

Chairman Williams made a motion to approve the remaining offers in compromise, with the exception of the previously ratified cases. Motion Passed.

II. ABC STORE LOCATION – HENDERSONVILLE ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Henderson County. On February 15, 2011, the Commission received a letter from Danny Beddingfield, Supervisor of the Hendersonville ABC Board, requesting approval to build an ABC Store in Hendersonville, North Carolina. On February 22, 2011, ALE Agent D.J. Hales began an investigation and found that the proposed location of the new ABC Store is 755 Upward Road, Hendersonville North Carolina 28731.

The current owner of the proposed location is Mountain Inn and Suites LLC, and the ABC board plans to build a 4,300 square foot store on a half acre of land. The investigation found that the purchase price of the property is \$375,000 and there were no financial conflicts of interest between the property owners and the Hendersonville ABC Board members.

The nearest church is Upward Baptist Church and is located .6 miles from the proposed location.

The nearest school is Upward Elementary School and is located .7 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on February 18, 2011, in compliance with the ABC Commission's 30-day requirement.

Mr. Herring stated the matter had originally been scheduled for the Commission's March 16, 2011 meeting but had to be continued because the proposed location was not within the Hendersonville City limits and was not zoned properly to include operations for an ABC Store.

Mr. Herring stated that on May 5, 2011 at the regular meeting of the Hendersonville City Council a petition was presented on behalf of the property owner, Mountain Inn and Suites LLC, for satellite annexation into the city limits of Hendersonville. The matter was considered and the Hendersonville City Council adopted an ordinance annexing and rezoning the property at 755 Upward Road into the City of Hendersonville.

On May 12, 2011, Agent Hales notified Mr. Herring that the property had been annexed into the City of Hendersonville. On May 17, 2011, Mr. Herring notified Mr. Beddingfield that it had not been the Commission's policy to approve ABC stores in dry areas of a county that had been spot or satellite annexed into a wet city.

On May 25, 2011, Mr. Herring contacted the County Manager in Henderson County and requested that he survey the County Commissioners on any concerns they may have about the satellite annexation of property for the operation of an ABC store in a dry county. On June 7, 2011, J. Michael Edney, Chairman of the Henderson County Commissioners submitted a letter to the Commission in opposition to the operation of a satellite ABC store at the Upward Road location.

Chairman Elect, Charles Byrd of the Hendersonville ABC Board was present to speak to the Commission. Mr. Byrd stated that in his previous position he would ask ABC Boards for money, but in his present position he represent the Hendersonville ABC Board and is now helping to generate money for the community. In 1999, the Hendersonville ABC Board relocated its second store from a shopping and built a new store in the Western part of Hendersonville, North Carolina. The first year that ABC Store generated \$400,000.00 for the community. He went on to state that initially the Hendersonville ABC Board did not realize there was any opposition to the new store. A letter was received in opposition of the proposed ABC Store. The reason provided was they opposed alcohol. A phone call was received in opposition because the caller thought his house would be annexed. A public hearing was held and no one

appeared to speak in opposition. A budget was prepared. He went on to state that he learned of the County Commissioners objection from a newspaper article. Mr. Byrd further stated that no one from this board was aware of any County meeting being held to discuss the ABC store and that he spoke with Mr. Edney and told him that no one from the Hendersonville ABC Board received notification of a meeting being held.

Mr. Byrd went over a letter from Mr. William Carpenter, attorney for the Hendersonville ABC Board. Mr. Byrd highlighted paragraph no. 3, referenced as “The subject property is on the northeast side of the “intersection” of Upward Road and Interstate 26. The properties on the southeast, southwest and northwest of the “intersection” have all been annexed into the City, and all have at least one location that sells alcohol. There are three separate establishments that sell beer and wine within a couple of hundred yards of the proposed ABC store location.” Chairman Williams pointed out the annexed areas of the city of the map that was presented for the Commission. Mr. Byrd stated there were at least three areas that have been annexed into the city for the purpose of selling alcohol.

Mr. Byrd made reference to paragraph no. 5, which addresses the location of the churches and schools and went on to state that the main ABC Store is closer to a high school than where this proposed ABC Store location would be. The convenience stores that sell beer and wine are closer to the Upward Elementary School than the proposed ABC Store location would be.

Chairman Williams stated that it was his understanding that there is no line of sight from the high school.

Mr. Byrd stated that he felt that Hendersonville ABC Board was within the statute for location of an ABC Store, furthermore they were morally doing the right thing.

Mr. Byrd stated that the last point that he wanted to address was the economic reasoning of this proposal. By building the ABC Store there, it would provide access to US 25 and US 26 coming out of South Carolina. The ABC stores in South Carolina close at 7:00 p.m. and the North Carolina ABC stores close at 9:00 p.m. and the Hendersonville ABC Board believes it would be a good business venture. This would provide additional revenues for the county and spoke with Mr. Edney about this. Since 1966, the county has received over 2 million dollars from the ABC Board.

Commissioner Guy asked Mr. Byrd how much additional revenue do they anticipate being able to provide. Mr. Byrd stated they are anticipating at least four to five hundred thousand dollars the first year.

Chairman Williams asked Mr. Byrd if there was a local act that requires the Hendersonville ABC Board to share that revenue with the county. Mr. Byrd stated that there was. It gives the county 25%, library is given 1%, schools get 24% and the city is given 50%. The bottle tax from the mixed beverage goes to rehab. This was discussed with Mr. Edney.

Commissioner Guy asked if he was aware if the counties and towns budget for the upcoming year included a tax increase. Mr. Byrd stated that the county did not propose a tax increase.

Chairman Williams expressed his concern over the fact that Hendersonville is a dry county. The proposed area to build the ABC Store is in a dry area. The store wouldn't serve the residents of Hendersonville, except as a revenue source, but would serve the people driving through. Chairman Williams further stated that the statute states that North Carolina is dry unless the local jurisdiction says otherwise. Per the records, Henderson County has never voted on an ABC Store referendum they only voted on beer and wine in 1955 and that was voted down. The voters of Henderson County have not been given an opportunity since that time and the county has changed a lot. There is a possibility that they may vote another way in 2011 or 2012. Then they would have an opportunity to earn revenue off those sales. This

location seems to be there to serve a dry area. Chairman Williams further stated that he understood the business rationale, but the statute states that we have to consider how the community has voted on alcohol.

Mr. Byrd stated that they felt that this ABC store would be a convenience to those residents. Chairman Williams stated that it would be a convenience; however, those residents chose to live in a dry part of the state and ABC laws don't encourage trying to reach out and put stores in areas that are dry.

Mr. Byrd further stated that Mr. Edney told him that they may revisit this issue.

Chairman Williams stated that he wanted to know what the County Commissioners thought about this issue because there had not been a vote in decades and they seemed surprised that this was up for debate.

Mr. Byrd stated that the signs were posted and no one contacted them about it. The Hendersonville ABC Board can't develop a budget now and everything is on hold until there is a decision.

Chairman Williams asked Commissioner Briggs if he had any questions or comments. Commissioner Briggs stated that he did not.

Chairman William asked Mr. Herring if he had a recommendation for the ABC store location.

Mr. Herring recommended that the Commission disapprove the ABC Store location.

Chairman Williams asked Mr. Byrd if there were any residents residing in these annexed areas or is it commercial property. Mr. Byrd stated that it was commercial property.

Chairman Williams asked Mr. Byrd if he would like a vote today so they have an answer today or would he like to have it tabled until he can meet with County Commissioners and see if they will withdraw the objection or give you more guidance. The Chairman stated that he knew that he would not vote in favor of the proposed ABC Store location if having to vote today.

Mr. Beddingfield asked the Commission if the County Commissioners repealed their objections to the location, would the Commission approve the location.

Chairman Williams stated that he didn't know, but would be a lot more open to it. It's hard when you look and see that the areas are to serve non residents of Hendersonville.

Mr. Byrd asked the Commission to continue this matter so that they may meet with the County Commissioner.

After some discussion, Commissioner Guy made a motion to table the decision. Motion Passed.

III. ABC STORE LOCATION – DURHAM ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Durham County. On May 4, 2011, the Commission received a letter from Randy Mills, General Manager of the Durham ABC Board, requesting approval to relocate an ABC Store located at 6209-A Falconbridge Road Chapel Hill, North Carolina. On May 11, 2011, ALE Agent Roy McKeithan began an investigation and found that the proposed location of the new ABC Store is 4717 Hope Valley Road, Durham North Carolina.

The current owner of the proposed location is Security Federal Savings and Loan Association. The building is 2,340 square feet and is located on the front portion of Woodcroft Shopping Center. There were no financial conflicts of interest between the property owners and the Durham County ABC Board members.

The nearest church is Christ King Moravian Church and is located .5 miles from the proposed location.

The nearest school is Charles E. Jordan High School and is located .2 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on May 4, 2011, in compliance with the ABC Commission's 30-day requirement.

The Durham County ABC Board has received comments for and against the new ABC Store from members of the community. Eleven emails received opposed the construction of the new ABC Store. Some of the reasons for opposition were the location being close to the Charles E. Jordan High School, additional traffic congestion in the immediate area and the possibility of people loitering around the area where the new ABC Store location will be. Eight emails received supported the new ABC Store.

Mr. Herring recommended that the Commission approve the ABC Store location.

Chairman Williams made a motion to approve the ABC Store location. Motion Passed.

IV. OTHER BUSINESS – CONSIDERATION OF THE PUBLICATION OF THE PROPOSED RULES

Rules Coordinator Bob Hamilton asked the Commission to approve the following rules amendments: **04 NCAC 02R .0902, MAINTENANCE OF WORKING CAPITAL, 04 NCAC 02R .1703 STORES: APPEARANCE AND STATE LIST, 04 NCAC 02R .1706, CUSTOMER SERVICE, 04 NCAC 02R .1711, SHELF MANAGEMENT, 04 NCAC 02S .0201, GENERAL GUIDELINES and 04 NCAC 02S .1011, ADVERTISING OF SPIRITUOUS LIQUORS.** Mr. Hamilton also stated that **2S .1010** needed, **ADVERTISING MIXED BEVERAGES** to be repealed.

Chairman Williams made a motion to approve the rules. Motion Passed.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Tiffany Goodson, Legal Division