

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
MAY 9, 2012**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on May 9, 2012, 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 Zander Guy and Commissioner Daniel L. Briggs were present at the meeting.

**MINUTES OF APRIL 4, 2012**

Chairman Guy asked for a motion to waive the reading of the minutes of the April 4, 2012 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the April 4, 2012 meeting. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the April 4, 2012 meeting. Commissioner Briggs made a motion to approve the minutes from the April 4, 2012 meeting. Motion Passed.

**CONFLICTS OF INTEREST**

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

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

Administrator Michael Herring stated that the Mecklenburg County ABC Board's request to open a new store in Charlotte, North Carolina had been continued from the April 4, 2012 Commission meeting. An additional 30 days had been given so that the public would have additional time to provide comments and be present at the May Commission meeting.

Mr. Herring went on to state that on February 22, 2012; the Commission received a letter from Mr. Paul A. Stroup, Chief Executive Officer of the Mecklenburg County ABC Board, requesting approval to relocate the store at 14835 Ballantyne Village Way Charlotte, North Carolina. On March 6, 2012, ALE Agent Omar F. Qureshi began an investigation and found that the address for the proposed site is 16051 Lancaster Highway, Charlotte, North Carolina.

The property is a commercial development project called Capstone Commons and the purchase amount is \$1,045,000.00, with the estimated building cost being \$955,000.00. The proposed location would be a self-service store with approximately 6,000 square feet.

There are no conflict of interests between the property owners and Mecklenburg County ABC Board.

The nearest church is Refuge Ranch Ministries located at 16000 Lancaster Highway, Charlotte, North Carolina. This church is located across the street from the Capstone Commons Shopping Center. The property lines are within 300 feet and the proposed site is within approximately 600 feet from the entrance of the Refuge Ranch Ministries.

The nearest school is Ballantyne Elementary School located at 15425 Scholastic Drive, Charlotte, North Carolina and is approximately .4 miles from the proposed ABC Store location.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on February 21, 2012, in compliance with the ABC Commission's 30-day requirement.

Mr. Herring stated that there were objections to the ABC Store location so an additional 30 days were given for Public comment. He went on to state that the Honorable Senator Bob Rucho from Charlotte North Carolina, sent a letter requesting additional information regarding the proposed location, including the qualifying criteria for approving ABC Stores in North Carolina. That information was provided to Senator Rucho.

Chairman Guy asked four times if there was anyone present in opposition of the proposed location to be heard. There was no one.

Mr. Paul Stroup, Chief Executive Officer of the Mecklenburg County ABC Board was present to provide additional information and to answer any questions that the Commission may have. Mr. John Rudolph, the developer, was also present.

Mr. Stroup provided an ariel photo of the proposed location and the land surrounding it. He pointed out the new stores that are set to be constructed and the already existing new businesses in the shopping center. He further pointed out Refuge Ranch Ministries in relation to where the proposed location is planned.

A letter was received from Mr. Ron Batcho, president of the Providence Pointe Homeowners Association, along with their board of directors, endorsing the inclusion of an ABC Store in Capstone Commons. He went on to state that Ms. Susan Schwartz, PTA president and Principal Sharon Demorea of the Ballantyne Elementary School sent a letter stating that they were not in a position to advocate for or against a particular business, but were aware of the shopping center and do monitor such issues. Their concerns were about traffic but they did not believe any real traffic issues had been found. Mr. Stroup stated that traffic would not be an issue because the ABC Store would not be open until 10:00 o'clock in the morning and the ABC Store is not usually busy during mid-afternoon, when schools are released.

A letter was also received from Mr. Bill Saunders, president of the Kingsley Homeowners Association. In the letter Mr. Kingsley stated that he had no issue with the ABC Store being located in Capstone Commons Shopping Center.

A letter was received from Mr. John Hayes, Jr., who owns the property across the street from the proposed location. In the letter Mr. Hayes stated that he supported the move of the ABC Store to Capstone Commons and welcomes the convenience it will bring.

Mr. Larry Snyder, Executive Director of Anuvia, a Substance Prevention Center located in Charlotte, North Carolina sent a letter as well. In his letter Mr. Snyder stated that the Mecklenburg County ABC Board has worked effectively with community partners to minimize the negative effects of alcohol consumption, as well as respecting the views of the community.

Mr. Stroup stated that Mr. Rosel, with the Refuge Ranch, has a faith based addiction ministry. He spoke with Mr. Rosel twice and stated that Mr. Rosel's view is that putting an ABC Store in Capstone Commons, which is located across the street from his ministry, would be a slap in the face would be at cross purposes to his ministry and people attending his ministry may see the store and be tempted. Mr. Rosel also questioned why the ABC Store would be located at the proposed location.

Mr. Stroup stated there were two stores across the street that already sell alcohol. He went on to state that the local board has blocked the view of the ABC Store from the Refuge Ranch. The current ABC Store location is undersized, the parking is inadequate and a smaller truck is used to deliver to this location because of the size. Other locations had been considered. One site that was considered was empty; but the owner wanted the property to be used as a restaurant. The current proposed property just became available. Mr. Stroup thanked the Commission for their time and for allowing him to speak.

Chairman Guy asked four times if there was anyone present that wished to speak in regard to the proposed Mecklenburg ABC Store location. There was no one present.

Mr. Herring stated that when the Commission issues ABC permits to a business, one of the things the Commission considers is the distance of the business to churches and schools. The standard distance is 50 feet, but when considering ABC Stores the Commission does consider the standard distance but it is not a requirement of the statute. What the Commission has to consider when approving ABC store locations is how health, safety and general welfare will be affected. Mr. Herring stated that he did not think an ABC store at this location would negatively affect health, safety and general welfare. The second consideration is whether the community or citizens of the city where the proposed ABC Store is to be located voted for or against ABC Stores in the last election. The citizens did vote for ABC Stores in the last election years ago. Finally, the other consideration is the proximity of the nearest ABC Store. The nearest Mecklenburg ABC Store is seven miles away.

Mr. Herring recommended that the Commission approve the proposed location on the condition that the Commission will limit and approve all exterior signage.

After conferring, Commissioner Briggs made a motion to approve the Mecklenburg ABC Store location with the condition that the Commission will approve all exterior signage. Motion Passed.

## **I. HEARING CASES – 77**

Chief Counsel Fred Gregory stated that Mr. Phillip Isley, attorney for contested case #1, Eight Balls Pizza, was present to speak on behalf of his client.

Mr. Isley asked the Commission to Stay the Summary Suspension of his client, Eight Ball Pizza. Significant improvements have been made to the establishment since the Summary Suspension. Paint has been removed from all the windows, so there is a clear view into the establishment. Security has been added 24 hours a day, 7 days a week. A new manager has been hired and has a good relationship with the Jacksonville Police Department. Because of the language barrier at the owner, he was introduced to the Jacksonville Police Community Resource Officer, who patrols the area.

Mr. Isley stated that his client is willing to do whatever the Commission and the Jacksonville Police Department asks.

Chairman Guy made a motion to Stay the Summary Suspension, contingent upon the stipulations addressed in the letter to Assistant Counsel K. Renee Cowick from Chief of Police for the City of Jacksonville. Motion Passed.

Chief Counsel Gregory stated that next case to be heard was contested case #2, Dirty T's Tavern. Mr. Gregory asked if there was anyone present from the business to speak. No one was present.

Mr. Gregory stated that Assistant Counsel Cowick represented the Commission. Administrative Law Judge J. Randall May issued an order for Prehearing Statements from both parties. The respondent failed to file its Prehearing Statements. Ms. Cowick filed a Motion for Sanctions for failure to submit Prehearing Statements and Administrative Law Judge May granted the Motion for Sanctions.

Commissioner Briggs made a motion to adopt the recommended decision of Administrative Law Judge J. Randall May. Motion Passed.

Chief Counsel Gregory stated that the next case to be heard was contested case #3, Pit Stop 2. Mr. Gregory asked if there was anyone present to speak on behalf of the business. No one was present.

Assistant Counsel Tim Morse represented the Commission and stated that Administrative Law Judge J. Randall May issued an order for Prehearing Statements from both parties. The respondent failed to file its Prehearing Statements. Mr. Morse further stated that he filed a Motion for Sanctions for failure to submit Prehearing Statements and Administrative Law Judge May granted the Motion for Sanctions.

Commissioner Briggs made a motion to adopt the recommended decision of Administrative Law Judge J. Randall May. Motion Passed.

Chief Counsel Gregory stated that the next case to be heard was contested case #4, Fat Cats Grill and Oyster Bar. Mr. Gregory asked if there was anyone present to speak on behalf of the business. No one was present. Assistant Counsel Cowick represented the Commission. Administrative Law Judge Selina M. Brooks issued an order for Prehearing Statements from both parties. The respondent failed to file its Prehearing Statements. Ms. Cowick filed a Motion for Sanctions for failure to submit Prehearing Statements and Administrative Law Judge Brooks granted the Motion for Sanctions.

Commissioner Briggs made a motion to adopt the recommended decision of Administrative Law Judge Selina M. Brooks. Motion Passed.

Chief Counsel Gregory stated that contested case #5, Misundries, was the next case to be heard.

Mr. Morse represented the Commission stated that Administrative Law Judge Selina M. Brooks issued an order for Prehearing Statements from both parties. The respondent failed to file its Prehearing Statements. Mr. Morse further stated that he filed a Motion for Sanctions for failure to submit Prehearing Statements and Administrative Law Judge Brooks granted the Motion for Sanctions.

Commissioner Briggs made a motion to adopt the recommended decision of Administrative Law Judge Selina M. Brooks. Motion Passed.

Chief Counsel Gregory stated that contested case #6, Quick Mart, was continued to the June 13<sup>th</sup> Commission meeting.

Chief Counsel Gregory stated that Mr. Sultan Jamileh was present to speak on behalf of hearing case #72, Sal's Corner.

Mr. Jamileh stated that since this violation occurred, they have purchased an extensive software system. He further stated that they have added We ID calendars. The store policy has now changed and all the employees have been re-trained.

Chairman Guy asked Mr. Jamileh how many employees he had. Mr. Jamileh stated that he had three employees in one location and four employees at another location. Chairman Guy asked Mr. Jamileh if

his employees had taken the RASP Class. Mr. Jamileh stated that he believed some of the employees had taken the Commission's class as recent as eight months ago.

Commissioner Briggs made a motion to reduce the penalty by 25% upon the stipulation that all the employees take the RASP Class. Chairman Guy added that the RASP Class be taken within 45 days. If the class is not taken within 45 days, then the Commission will re-instate the originally agreed upon Offer in Compromise that was signed by the permittee. Motion Passed.

Chief Counsel Gregory stated that Mr. Oscar Fiallos, owner of hearing case #35, El Caracol, was present to speak on behalf of his business.

Mr. Fiallos stated that he sold to an underage person. He further stated that only he and his wife run the business. He asked the Commission for a reduction in the penalty.

Chairman Guy asked Assistant Counsel LoRita Pinnix if she had any comments. Ms. Pinnix stated that the violation happened during an underage campaign by the Smithfield Police Department. The 19 year old buyer went into the store and purchased a Bud Light beer and her identification was not checked. The permittees have had their permits since 2006 and this is their first violation. Ms. Pinnix ended by stating that she wasn't opposed to training if that was the Commission's wish.

After conferring with Chairman Guy, Commissioner Briggs made a motion to reduce the penalty by 25% upon the stipulation that Mr. Fiallos and his wife attend the RASP Class within 45 days. If the class is not taken within 45 days, then the Commission will re-instate the originally agreed upon Offer in Compromise that was signed by the permittee. Motion Passed.

Chief Counsel Gregory stated that Mr. Jonathan Bridges, attorney for hearing case #20, Levels, was present to speak on behalf of his client.

Mr. Bridges presented the Commission with copies of certificates for educational training classes taken. The class was taken November 10, 2011. He further stated that his clients wanted to take the 12 day suspension over the monetary penalty.

Ms. Cowick stated that there was some flexibility in the penalty. The business has held permits since 2004 with no violations. Violation #2, performing services after consuming alcoholic beverages, was essentially that an employee opened the door for the officer after he had consumed alcoholic beverages. The employee was not serving to patrons after consuming alcoholic beverages.

Chairman Guy asked Ms. Cowick if she had a recommendation. Ms. Cowick stated the standard 25% reduction would be appropriate or even half the original penalty.

Commissioner Briggs made a motion to reduce the suspension to six days or the monetary fine to \$600.00. Motion Passed.

Chief Counsel Gregory stated that the next case to be heard was hearing case #48, Zapatas Mexican Restaurant and Cantina.

Ms. Pinnix stated that since the permittee was unable to be present, he sent a letter for the Commission's consideration. The manager and the permittee's employees had taken training. Ms. Pinnix stated that after talking to the permittee, it appeared the mistake was because of a lack of training.

Commissioner Briggs made a motion to reduce the penalty by 25% upon the stipulation that all the employees take the RASP Class within 45 days. If the class is not taken within 45 days, the Commission will re-instate the originally agreed upon offer in compromise that was signed by the permittee. Motion Passed.

Chief Counsel Gregory stated that Ms. Peggy Rohm, managing member of hearing case #11, Bodi, was present to speak on behalf of the business.

Ms. Rohm stated that once she received notification of the violation, she personally went to pick up the liquor order. She went on to state that the first box that was handed to her contained six bottles, but there were no tax stamps on them. After going through the remaining order, she caught a few other bottles that did not have tax stamps. By the time she finished going through the order of liquor there were two bottles of liquor missing but were on her list. Ms. Rohm stated that she only purchased alcohol from Wake County ABC and felt that this violation was unfair. She asked the Commission for a reduction in the penalty.

Ms. Cowick stated that this violation was found during a routine inspection. She went on to state that the reason why she did not ask for a lower penalty or issue a written warning was because the permittee had been made aware of the tax stamp not sticking, so she felt that there was a higher burden on their part. Ms. Cowick stated that she didn't have a problem with the Commission issuing a written warning.

Commissioner Briggs made a motion to issue a written warning. Motion Passed.

Chief Counsel Gregory stated that Ms. June Gammon, was present to speak on behalf of hearing case #9, B and S Country Store and Dairy Bar.

Ms. Gammon asked the Commission for reduction in the penalty. The employee who committed the violation no longer works at the business. She went on to state that she purchased software to help the clerks. She ended by stating that she was very sorry and would not want anyone to sell alcohol to her teenage daughter.

Chairman Williams asked Ms. Gammon how many employees she had. Ms. Gammon stated that she had three employees.

After conferring with Chairman Guy, Commissioner Briggs made a motion to reduce the penalty by 25% upon the stipulation that all the employees take the RASP Class within 45 days. If the class is not taken within 45 days, then the Commission will re-instate the originally agreed upon offer in compromise that was signed by the permittee. Motion Passed.

Chief Counsel Gregory asked the Commission to continue hearing case #43, Mitchells Catering, to the June 13<sup>th</sup> Commission meeting.

## **II. ABC STORE LOCATION – CONCORD ABC BOARD**

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Kannapolis, North Carolina. On March 28, 2012, the Commission received a letter from Ms. Lorraine Trexler, General Manager of the City of Concord ABC Board, requesting approval to relocate the ABC Store located at 2210 Roxie Street, Kannapolis North Carolina to a new site within the same shopping center. The property address is 2243 Spider Drive Kannapolis North Carolina in the Northlite Shopping Center. On March 29, 2012, ALE Agent Stacy J. Cox began an investigation and

found that the proposed site will be approximately 2,700 square feet, which will provide an additional 700 square feet than the current location.

The proposed property is owned by Spider Properties LLC. The lease payment will be \$53,379.00 annually. The current property owners will cover the cost of necessary building renovations prior the Concord ABC Board taking ownership up to \$30,000.00. Any additional expenses occurred will be cover by the Concord ABC Board.

There are no conflicts of interest between the current property owners and the Concord ABC Board.

The nearest ABC Store is located approximately 3.03 miles away from the proposed location.

The nearest church is Bethel Baptist Church Ministries and is .2 miles away from the proposed location.

The nearest school is Royal Oaks Elementary School and is approximately 1.3 miles away.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on March 28, 2012, in compliance with the ABC Commission's 30-day requirement.

No objections to the proposed location have been received.

Mr. Herring recommended that the Commission approve the proposed location.

Chairman Guy asked twice if there was anyone present who opposed the proposed location. There was no one present.

Commissioner Briggs made a motion to approve the ABC Store location. Motion Passed.

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

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

Mr. Herring stated that the June 13, 2012 Commission meeting will start at 9:30 a.m.

With no further business, the meeting adjourned.

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A.D. "Zander" GUY, JR., Commissioner  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

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Tiffany Goodson, Legal Division