

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MARCH 13, 2007**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on March 13, 2007, beginning at 9:30 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 FEBRUARY 8, 2007 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the February 8, 2007, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the February 8, 2007, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order One, Chairman Fox asked Commissioner Joyner and Commissioner Lyon if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Joyner and Commissioner Lyon both stated that they found no conflicts of interest. Chairman Fox recused himself from #3 - Double Happiness Restaurant, #6 - North Shore Golf and Ocean Club and #54 - Buddys Crabhouse and Oyster Bar. Chairman Fox also recused himself from ruling on the Belville ABC Board issue.

I. HEARING CASES – 81 Listed

Chairman Fox asked if anyone was present at the meeting to discuss the approval or nonapproval of ABC Stores in Maggie Valley, Greensboro, Yadkinville, Belville and Rockingham, North Carolina.

Chief Counsel Fred A. Gregory stated that hearing case #6 – North Shore Golf and Ocean Club and hearing case #70 – Six Forks Grocery will be continued.

Mr. Gregory stated that there was a contested case #1, Boom Boom Room Night Club that was heard before Administrative Law Judge Beecher R. Gray on December 29, 2006. Assistant Counsel Renee Cowick represented the Commission at the administrative hearing. Ms. Cowick stated that the permittee was not present at the hearing in High Point, North Carolina. Ms. Cowick stated that the recommended decision of the Judge was that a five-day suspension and \$1,000.00 fine be imposed. Ms. Cowick recommended that the Commission adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge and the penalty recommended.

Chairman Fox stated the violation was a failure to destroy unconsumed alcoholic beverages. Ms. Cowick stated that this was the third incident in which the permittee did not show up for the hearing or the Commission meeting.

Chairman Fox made a motion to approve Judge Gray's Order. Seconded by Commissioner Lyon. So Ordered.

Mr. Pravin Parikh, owner of hearing case #34, Krishna Food Mart, was present to speak on behalf of his business. Mr. Parikh stated the employee asked for I.D., made a mistake by looking at the cigarette age and gave an alcoholic beverage to an underage person. Mr. Parikh asked the Commission to reconsider the penalty. Mr. Parikh stated they sometimes are confused with the cigarettes and the beer, but that is not an excuse.

Chairman Fox stated that the violation report from the officer stated that the clerk asked the young lady how old she was and she replied eighteen. The clerk then asked to see her I.D., the young lady presented her driver's license and the clerk sold the beer.

Chairman Fox made a motion to reduce the penalty to \$750.00 or 20-day active suspension upon the stipulation that all employees of the business attend a RASP class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Abdallah Jallal, owner of First Offense #13, Sandys Convenient 2, was present to speak on behalf of his business. Mr. Jallal stated that the violation in September was committed by his employee and he tells employees not to sell to a minor but they act like they don't understand.

Mr. Jallal stated he had checked identifications of underage persons and had received five or six certificates in his name from ALE. Mr. Jallal asked for consideration.

Chairman Fox asked Mr. Jallal if he had taken a class. Mr. Jallal stated he had taken classes from ALE and ABC. Chairman Fox stated he could not send him to school because they had been twice.

Commissioner Joyner made a motion to reduce the penalty to \$500.00. Seconded by Commissioner Lyon. So Ordered.

Mr. Larry Walker, Exalted Ruler of hearing case #20, Bull City Elk Lodge 317, was present to speak on behalf of the business. Mr. Walker asked that the Commission waive or reduce the penalty. Mr. Walker stated that the two people who rented the lodge were considered employees and another actual employee was there.

Mr. Greg Jones, the financial secretary of the Lodge, stated the violations were valid. The two employees rented the place for a party. Mr. Jones stated they have a contract which is signed that persons who rent the building will not sell tickets while serving alcohol. The employee in charge overlooked the ABC permit not being on the wall.

Commissioner Joyner asked if the person leasing the lodge obtains a temporary permit for the event. Mr. Jones stated yes and they have a bar which sells only beer and wine. Mr. Jones stated they have a special occasion permit which allows someone who rents the place to place alcohol on one table. Mr. Jones stated he understood that regarding the pending violation fliers were sent out in violation of the contract. Mr. Jones stated an ALE agent saw a flier.

Mr. Walker stated he was asking for some leniency because they had held the special occasion permit since August 9, 1976, and have had only two violations.

Chairman Fox stated they had a written warning in 1997 where there were 14 bottles of spirituous liquor during a fundraiser and tickets were sold.

Chairman Fox suggested to Mr. Walker the Elk Lodge should obtain all applicable ABC permits. Mr. Walker said they were in discussion about that now.

Chairman Fox made a motion to reduce the penalty to \$500.00 upon the stipulation that the present Board of Trustees attend a RASP class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Ms. Renee Fincher, owner of First Offense case #37, La Dolce Vita Pizzeria, was present to speak on behalf of her business. Ms. Fincher stated she had ABC permits for North Carolina and another state for ten years, however, this was the first infraction. Ms. Fincher stated she had taken the RASP class with the Commission and had made every effort to know the laws. Ms. Fincher stated the officer came in with a minor, asked for I.D. and she did the math calculating the age incorrectly. Ms. Fincher stated she served the minor alcohol and it was human error. Ms. Fincher asked that the Commission dismiss the case or reduce the penalty.

Chairman Fox made a motion to issue a written warning. Seconded by Commissioner Joyner. So Ordered.

Commissioner Joyner made a motion to ratify hearing case #3, Double Happiness Restaurant and hearing case #54, Buddys Crabhouse and Oyster Bar. Seconded by Commissioner Lyon. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of contested case #1, Boom Boom Room Night Club, hearing case #34, Krishna Food Mart and hearing case #20, Bull City Elk Lodge 317, which had already been ratified. Seconded by Commissioner Lyon. So Ordered.

The following were add-on First Offense cases:

#41 – Starmount BP

#42 – Outback Steakhouse 3461

II. FIRST OFFENSE CASES – 42 Listed

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on March 13, 2007, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. R N S Food Mart – 609 North Durham Avenue, Creedmoor, NC 27522
2. Rock Quarry Amoco – 1969 Rock Quarry Road, Raleigh, NC 27610
3. Quaker Steak and Lube – 1621 East Woodlawn Road, Charlotte, NC 28209
4. Pizza Hut 2568 – 3016 North Main Street, Hope Mills, NC 28348
5. Pit Stop 12 – 1309 South Main Street, Lexington, NC 27292
6. Lowes Foods 182 – 5180 Reidsville Road, Walkertown, NC 27651
7. Lucky 7 – 705 North Durham Avenue, Creedmoor, NC 27522
8. Iron Station Country Store – 4718 Hwy 27 East, Iron Station, NC 28080
9. El Tucan Mexican Restaurant – 250 South Bragg Boulevard, Spring Lake, NC 28390
10. Discovery Diving Company – 414 Orange Street, Beaufort, NC 28516
11. Cicciones Pizza – 3352 Robinhood Road, Winston Salem, NC 27104
12. Bay Breeze Seafood Restaurant – 1385 North Horner Boulevard, Sanford, NC 27330
13. Sandys Convenient 2 – 300 Herring Avenue, Wilson, NC 27893
14. Race Way – 1215 Burkemont Avenue, Morganton, NC 28655
15. P Js Coffee and Wine Bar – 5824 Samet Drive – Suite 165, High Point, NC 27265
16. Mongolian House – 300 SE Greenville Boulevard, Greenville, NC 27858
17. Magnolia Grille – 408 Queen Elizabeth Avenue, Manteo, NC 27954
18. El Cazador Mexican Restaurant – 1904 Skibo Road, Fayetteville, NC 28314
19. Asheville Municipal Golf Course – 226 Fairway Drive, Asheville, NC 28805
20. Tony's Chip and Sip – 102 James Love School Road, Shelby, NC 28152
21. Spunky McDoogles – 1908-H South Glenburnie Road, New Bern, NC 28562
22. Qdoba Mexican Grill – 945 Hanes Mall Boulevard, Winston Salem, NC 27103
23. Pure For Sure – 8172 Boone Trail, Purlar, NC 28665
24. Mountain Energy 11 – 701 Champion Drive, Canton, NC 28716
25. Jays Peking Wok – 145 West Plaza Drive, Seven Lakes, NC 27376
26. Musashi – 4330 B-C Arendell Street, Morehead City, NC 28557
27. Lucky Break – 2339 English Road, High Point, NC 27262
28. Highway 42 Citgo Fiddlestix 114 – 3789 NC Hwy 42 West, Clayton, NC 27520
29. Flipside – 421 Blowing Rock Road, Boone, NC 28607
30. Court Street Grille – 113 West Court Square, Lincolnton, NC 28092
31. Wine Cellar and Tasting Room – 241 NE Broad Street, Southern Pines, NC 28387
32. Wine Store – 120 Turner Street, Beaufort, NC 28516
33. Snack N Soda – 3301 High Point Road, Greensboro, NC 27407
34. Strike Zone – 3550 M L King Jr Boulevard, New Bern, NC 28562
35. Reynolda Exxon – 4975 Reynolda Road, Winston Salem, NC 27106
36. River Run Superette 2 – 1050 Old Lenoir Road NW, Hickory, NC 28645

37. La Dolce Vita Pizzeria – 301 West Center Street, Holly Springs, NC 27540
38. Big Daddy Wesleys – 317 Cedar Street, Beaufort, NC 28516
39. Memories Beach and Shag Club – 128 East Fort Macon Road, Atlantic Beach, NC 28512
40. Bottom Dollar Food 2900 – 3136 East Kivett Drive, High Point, NC 27260

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases with the exception of First Offense cases #13, Sandys Convenient 2 and case #37 La Dolce Vita Pizzeria, which had been earlier ratified. Seconded by Commissioner Joyner. So Ordered.

III. ABC STORE LOCATION – MAGGIE VALLEY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC store in Haywood County. The Commission received a request from Maggie Valley ABC Board in October, 2006, to build a new store but at that time the property was outside the city limits of Maggie Valley. In December, 2006, the Commission gave approval for the Maggie Valley ABC Board to purchase the property upon annexation. On February 12, 2007, the Maggie Valley ABC Board requested the Commission approve the store because the property had already annexed by the Town of Maggie Valley on March 18, 2003. The proposed store location is 2721 Dellwood Road, Maggie Valley, North Carolina.

The Maggie Valley ABC Board has entered into a contract to purchase the property for \$355,000.00.

No financial conflicts of interest exist between the Maggie Valley ABC Board and the property owner.

The nearest church is Calvary Road Baptist Church and is approximately 1.2 miles from the proposed location.

The nearest school is Jonathon Valley Elementary School and is approximately 1.6 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent had been posted since October 16, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this proposed location.

The ABC store building will be approximately 3,680 square feet.

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

Commissioner Joyner made a motion to approve the new ABC Store location. Seconded by Chairman Fox. So Ordered.

IV. ABC STORE LOCATION – GREENSBORO ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC store in Guilford County. On January 30, 2007, the Commission received a request from Katie Alley, General Manager of the City of Greensboro ABC Board for a proposed new ABC store in eastern Greensboro. On February 7, 2007, ALE Agent Michael Yates began an investigation and found that the proposed location for the ABC Store is 3919 Burlington Road, Greensboro, North Carolina.

The ABC Store will be in a currently vacant building in a strip mall.

The property is owned by Phil Bryant and Richard Bryant of Bryant Properties, Inc.

No personal or business relationships between the Greensboro ABC Board and the property owners.

The terms of the lease include an initial five years with two five year options to renew. The rent is \$10.25 per square foot each month for a total of \$3,608 per month for the first three years and \$10.50 per square foot for a total of \$3,696 per month for the final two years.

The nearest church is Anointed Tabernacle Ministries and is approximately .8 of a mile from the proposed location.

The nearest school is Guilford Technical Community College and is approximately .8 of a mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on January 28, 2007, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this proposed location.

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

Chairman Fox asked if the sign size met the statute. Mr. Herring replied it did for a sign inside a window at a strip mall location.

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

V. ABC STORE LOCATION – TRIAD MUNICIPAL ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Yadkin County. Mr. Herring stated James R. Waddell, President of Triad Municipal ABC Board, was requesting a new ABC Store in Yadkinville. On December 14, 2006, the Commission approved the merger request for Yadkinville to merge with the Triad Municipal ABC Board. On February 14, 2007, ALE Agent R.T. Beckom began an investigation and found that the site for this location is the corner of Highway 601 North at Highway 421 South, Yadkinville, North Carolina.

The property is zoned B-2 (Highway Business) and an ABC store would be allowed on this property.

The purchase of the property for the proposed location is approximately \$250,000. Commissioner Lyon asked if they had a contract. Mr. Herring stated they had not officially signed the contract but had agreed to \$250,000.

The Board is planning a 5,000 square foot modern building with columns in front.

The nearest church is Yadkinville Baptist Church and is approximately .9 miles north from the proposed location.

The nearest school is the Yadkinville Elementary School and is approximately 1.4 miles from the proposed location.

Pursuant to ABC Commission Rules, correspondence was received from Triad Municipal ABC Board that Notice of Intent was posted in compliance with the ABC Commission's 30-day requirement.

The projected sales volume for this new store in Yadkinville is \$750,000 per year.

The ABC Commission has received no objections to this proposed location.

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

Chairman Fox made a motion to approve this request for a new ABC Store subject to the Commission receiving a contract dated prior to April 3, 2007. Seconded by Commissioner Joyner. So Ordered.

VI. ABC STORE LOCATION – LINCOLNTON ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Lincoln County. Mr. Herring stated he spoke with the manager and this will be postponed until the April Commission Meeting.

VII. ABC STORE LOCATION – BELVILLE ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Brunswick County. On February 12, 2007, the Commission received a letter from Howard Armistead, Chairman of the Belville ABC Board for what would be the second store. On February 20, 2007, ALE Agent Jacob Scott began an investigation and found that the Belville ABC Board wanted to add an additional store at 105 Drager Drive, Belville, North Carolina at the intersection of Old Ocean Highway (US Highway 17) and Olde Waterford Way.

The property is zoned HB (Highway Business) and an ABC Store would be allowed on this property.

The property is owned by the Exum Family, LLC and the lease price has not been determined.

No conflict of interest exists between the Belville ABC Board and the property owners.

There is no building on the property. The proposed ABC Store building will be built similar to the ABC Store located in Sneads Ferry, North Carolina but will be 400 square feet larger.

The nearest church is Blackwell Chapel A.M.E. Zion Church and is approximately 1.4 miles from the proposed location.

The nearest school is Belville Elementary School and is approximately 2.9 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on February 12, 2007, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this proposed location.

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

Commissioner Lyon asked about the lease price. Mr. Herring stated the lease price had not been determined. Also, the Belville ABC Board is trying to get this done quickly.

Chairman Fox stated his law office has done work for the Exum Family and some work for the Belville ABC Board. Chairman Fox recused himself.

Commissioner Lyon asked Mr. Herring if it made a difference what the Board pays. Mr. Herring stated he didn't think the statute said it made a difference.

After discussing the lack of a lease, Commissioner Lyon made a motion to approve the proposed site subject to a satisfactory lease in 90 days. Seconded by Commissioner Joyner. So Ordered.

VIII. ABC STORE LOCATION – ROCKINGHAM ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Richmond County. On February 16, 2007, the Commission received a letter from Jason Deane, Chairman of the Rockingham ABC Board, to open a new store which would be their second. On March 1, 2007, ALE Agent Michael Yates began an investigation and found that the board wanted to lease a building at 2124 Fayetteville Road, Suite D, Rockingham, North Carolina.

The building is currently vacant and located in a small strip mall.

The property is owned by Riddle Properties, LLC.

No personal or business relationships between the Rockingham ABC Board and the property owners.

The Rockingham ABC Board will pay \$12.00 per square foot and the initial lease will be for two years. The Board will have options for additional years but those terms have not been agreed upon.

Chairman Fox asked Mr. Herring which part had not been agreed upon. Mr. Herring stated it looked like the options for additional years but there is not a copy of a signed lease.

The nearest church is The Church of Jesus Christ of Latter Day Saints and is approximately .5 miles from the proposed location.

The nearest schools are Richmond Senior High School, Washington Street School and Rockingham Junior High School and are approximately 1.3 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on January 13, 2007, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this proposed location.

Mr. Herring recommended the ABC Commission approve this request for a new ABC Store contingent on receiving a signed copy of the lease.

Chairman Fox made a motion to approve the proposed site subject to receiving a lease in 90 days. Seconded by Commissioner Joyner. So Ordered.

IX. OTHER BUSINESS -

Administrator Michael Herring presented the Commission activity for the month of February, 2007. In February, the Legal Division received 90 violations compared to 163 in February, 2006, which was an 81% decrease. The Education/Training Division presented 51 Responsible Alcohol Seller Programs to 331 participants compared to 99 Responsible Alcohol Seller Programs to 464 participants in February, 2006. The Permit Division issued 676 permits compared to 569 in February, 2006.

The warehouse's monthly shipments in February, 2007, were 330,120 cases compared to 299,216 cases in February, 2006. Warehouse shipments were up about 10.33% or 30,904 cases.

Chief Counsel Fred Gregory asked the Chairman and Commission Members about dates for future Commission meetings. Chairman Fox stated he would notify the Legal Division of the future dates.

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