

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
DECEMBER 12, 2003**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on December 12, 2003. The meeting was tape-recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Acting Chair Ann Scott Fulton was present for the meeting, along with Commissioner Mike Joyner and Commissioner Ricky Wright.

MINUTES OF NOVEMBER 7, 2003 MEETING

The Chairman asked Commission Member Mike Joyner and Commission Member Ricky Wright if they had any corrections or additions regarding the Commission minutes from the November 7, 2003, meeting. Neither Commissioner Joyner nor Commissioner Wright had any corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Joyner. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, the Chairman asked Commissioner Joyner 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 had no conflict of interest with regard to the cases. Commissioner Wright stated that he had to recuse himself from case #15, Burkenstocks Wake Forest. The Chairman stated she found no conflict of interest with regard to herself.

I. HEARING CASES – 97 listed.

Chairman Ann Fulton stated that in the interest of time and since there were a number of people present in regard to the Rowan County ABC Board proposed new store location, that the Commission would go ahead and hear both sides. Administrator Michael Herring gave some background information regarding the new proposed location. General Manager of the Rowan County ABC Board Terry Osborne presented some information to the Commission regarding privatization to give some understanding. Chairman Fulton asked Mr. Osborne how many members there were on the board. Mr. Osborne stated that there were three members, and of those, how many were members of the Rowan Board when there was a proposal in 1997 to locate a store in Cleveland. There was at least

one current member who was a member then. Cleveland Mayor James Brown spoke regarding the opposition felt by himself and many of the citizens of Cleveland. The proposed store is located across from a day-care center, and adjacent to a church and church school (K-5), although separated by a street. Mayor Brown read a portion of the minutes of the town board meeting of December 8, 2003. He read as follows: "Town Commissioner Steel moved to oppose the location in Third Creek Station Shopping Center for a ABC Store. Commissioner Fleming Akins seconded the motion, with all voting in favor." The Chairman asked how many Commissioners there were. Mayor Brown stated that there were five Commissioners, four voted and one was unable to attend due to their work schedule. The Commission Members of Cleveland asked the Rowan ABC Board that they conduct a town meeting to give the citizens a chance to be heard. Mayor Brown stated that they were not given a chance to have that town meeting. He stated that Mr. Osborne later contacted him as to whether they could get together without the citizens and discuss it. They did get together but Mayor Brown stated that he felt that nothing was solved. He said that Mr. Osborne provided that same educational material that he had provided to the ABC Commission today. The mayor further stated that it wasn't a smart economic move and the climate in the community hasn't changed. The Chairman stated that the North Carolina ABC Commission is a State Agency, with the authority to approve or disapprove the selection of ABC store sites. She further stated that the ABC Commission did not select the location, recommend the location nor did the commission discuss it with the Rowan ABC Board prior to them entering into negotiations for this location. The Chairman noted that the Rowan ABC Board afforded no hearing to the citizens of Cleveland although Mr. Osborne took time out to meet with them. The Chairman stated that the last time Cleveland voted on this issue it was in 1947 and the voting results were 66 in favor and 166 against. Two years later in 1949 it was 142 in favor and 144 against. The Chairman cited that Chapter 18B authorized the Commission to consider whether the "health, safety, or general welfare of the community will be adversely affected" by a local ABC board's placement of a store in a particular area, and whether the community voted for or against ABC stores in previous elections. The Chairman also pointed out that Commission Rule 2R .1204 discourages the location of an ABC store "in close proximity to a church, school, or similar institution." Chairman Fulton cited that the definition of "general welfare" in the dictionary meant "health, happiness and general well-being", and stated that she felt that the happiness and general well being of Cleveland would be adversely affected by placing an ABC store in this community because of the community's strong feelings against the sale of package liquor, even though the majority of the citizens of their county or state are in favor of such stores. The Chairman made a motion to disapprove the store location. Seconded by Commissioner Wright. So Ordered.

Re: Application of Carolina Live, Fayetteville, NC. The Chairman stated that the reasons for delaying the Final Agency Decision were that parts of the proposed recommended decision needed to be changed. The Chairman said that they

would issue the permits that the applicant applied for. Commission Joyner made a motion to approve the Recommended Decision. Seconded by Commission Wright. So Ordered. Mr. Clarke stated that they would do all that they could to deal with the community and to do everything that the Commission requires and will continue to do so. Commissioner Joyner asked how long had they been closed. Mr. Clarke stated that they had been closed for six months. Commissioner Joyner asked what happened to his lease. Mr. Clarke stated that he is at the point of his lease where they have put him on notice to be evicted because he hasn't been able to make payments.

Re: Case #41. Chief Deputy Counsel Fred A. Gregory stated that Andrew Lassiter, Director of Food and Beverage, R. David Thomas Center, Duke University, was present. Mr. Lassiter stated that a bottle of alcohol was found in the lobby and the manager who found it put it in a locked area. Agent Butler had been inspecting the tax stamps and found the bottle. He further stated that the manager put it in the locked area because he didn't know where to put it. The bottle was found in the open lobby area during a period of time when a group of Swedes were staying at the center. Mr. Lassiter stated that they did not purchase the alcohol. Mr. Gregory confirmed that that particular alcohol product couldn't be purchased at an ABC store in NC. The Chairman made a motion to modify the penalty that was agreed to and issue a warning. Seconded by Commissioner Wright. So Ordered.

Mr. Gregory stated that Clarence Hawks, was present to speak on behalf of case# 40, Reece E. Nifong Post 6367. Mr. Hawks stated that he was asking for a reduction in penalty. He stated that Butch Jarvis, the intoxicated person in violation number one, was a member of the post and has a metal plate in his head and is in and out of the hospital. Mr. Jarvis was there because he was supposed to be meeting someone there. They had rented out the post for a party and there was only suppose to be only 144 people there and it got larger than that. He stated that Mr. Jarvis said that he would stay there while Mr. Hawks went to get something to eat. When he left everything was going fine, but upon his return the party had gotten out of hand. He went in to get them to move their cars from the adjacent areas. The party was a Hispanic party and they didn't understand English. Mr. Hawks had started to clean up some because they had stuffed tissue and sanitary napkins in the toilet to stop them up. Water had backed up on the floor. The police showed up because the neighbor next to him called the police because they had started parking on their property. The Chairman asked who was the person that was supposed to be in charge of the VFW. Mr. Hawks stated that he was in charge. The Chairman stated that she wasn't inclined to reduce the penalty because of the fact that there could have been tragic circumstances from accidents that might have occurred, and that the VFW had to supervise groups using their premises at all times. The Chairman made a motion to ratify the offer. Seconded by Commissioner Wright. So Ordered.

The Chairman made a motion to ratify the offer in compromise of case #96, Chasers. Seconded by Commissioner Joyner. So Ordered.

The Chairman made a motion to ratify the offer in compromise of case #33, Mazatlan Mexican Restaurant. Seconded by Commissioner Joyner. So Ordered.

REMAINING OFFERS IN COMPROMISE

The Chairman made a motion to ratify all offers in compromise with the exception of the ones that were earlier ratified. Seconded by Commissioner Joyner. So Ordered.

II. The following is a list of first offense violation cases, in which Orders were signed by the Chairman on December 12, 2003, pursuant to the Commission's authorizing resolution dated November 8, 2002:

Breakers Grill and Arcade – 12 East First Street, Ocean Isle Beach, NC 28469
Duncans – 275 Rosalyn Road, Rockingham, NC 28379
Food Mart – 330 Roxboro Street, Haw River, NC 27258
G N S Express – 1637 Barnes Street, Rocky Mount, NC 27801
Guadalajara – 108 Midway Drive, Salisbury, NC 28147
Halifax Super Saver – Hwy 301 and Hwy 301-B, Halifax, NC 27839
Handy Mart 137 – 143 South Old Bridge Street, Jacksonville, NC 28540
Kelsey's Steakhouse – 8802-5 Reed Drive, Emerald Isle, NC 28594
Kill Devil Hills Amoco - 2301 North Croatan Hwy., Kill Devil Hills, NC 27948
Lowe's Food Store 418 – 103 South Fifth Street, Mebane, NC 27302
Lowe's Food Store 429 – 231 Burke Street, Gibsonville, NC 27249
North 49 Texaco – 2668 North Hwy. 49, Burlington, NC 27217
Pizza Hut 2835 – 709 West Main Street, Jamestown, NC 27282
Plantation Pantry – 898 Roberdel Road, Rockingham, NC 28379
Ruby Tuesday 3237- 563 Huffman Mill Road, Burlington, NC 27215
South 17 Fuel Market – 3524 Hwy. 17 South, New Bern, NC 28560
Servco – 5727 High Point Road, Greensboro, NC 27407
Servco - 2406 Neuse Boulevard, New Bern, NC 28560
Shaks – 4756 Pagetown Road, Burlington, NC 27217
Taylor's Crispac – 12430 US Hwy 258 South, Macclesfield, NC 27852
Trade Mart 53 – 1915 South Glenburnie Road, New Bern, NC 28560
West Webb Ave Curb Market – 825 West Webb Avenue, Burlington, NC 27215
Westside B P – 3511 Hillsborough Road, Durham, NC 27705
Eaton Ferry Marina – 76 River Road, Littleton, NC 27850
Amoco Food Shop Graham – 924 East Harden Street, Graham, NC 27253
Peadens 3 – 103 East Greene Street, Macclesfield, NC 27852
Pizza Hut - M L King Jr Boulevard, New Bern, NC 28560
One Stop Mart – 312 Providence Road, Graham, NC 27253
Moa Cash and Carry – 307 Main Street, Bayboro, NC 28515

Makin Tracks IV – 1706 West Fifth Street, Washington, NC 27889
McPhersons Bar and Grill – 5710 North High Point Road, Greensboro, NC 27407
Latin Mix – 931 South Fulton Street, Salisbury, NC 28144
Dunleavys - 2715 East Ash Street, Goldsboro, NC 27531
Kyles Spring Valley Amoco – 2435 Randleman Road, Greensboro, NC 27406
Arrowhead Texaco – Mebane Oaks Road, Mebane, NC 27302
Goat Bar – 5111 Western Boulevard, Raleigh, NC 27606
Jack Daniels Grocery – 305 Jones Franklin Road, Raleigh, NC 27606
Hux Grocery – 103 East Grand Avenue, Rocky Mount, NC 27801
Garys Kwik Korner – 119 East Hamlet Street, Pinetops, NC 27864
Food Plus 3 – 909 East Broad Street, Elizabethtown, NC 28337
4 Seasons Express Mart – 1105 Mebane Oaks Road, Mebane, NC 27302
E Z Shop 49 – 102 McPherson Church Road, Fayetteville, NC 28303
Bessemer Curb Market – 932 East Bessemer Avenue, Greensboro, NC 27405
Coastal Mart – 7902 Emerald Drive, Emerald Isle, NC 28557
Alco 14 – 1408 Fayetteville Road, Rockingham, NC 28379
Winn Dixie Store 2069 – 807 South Main Street, Graham, NC 27253
Trade Mart 51 – 208 South US Hwy 64, Manteo, NC 27594
Star Value Supermarket – 118 South US 64-264, Manteo, NC 27594
Salon America – 7700 Boeing Drive, Greensboro, NC 27409
Stop Quick – 2112 South Croatan Hwy., Nags Head, NC 27959
Sagebrush Steakhouse and Salon – 101 Steakhouse Rd, Morganton, NC 28655
Lowe's Food Store 425 – 807 Main Street, Scotland Neck, NC 27874

IV. ABC Store Location – City of Greensboro ABC Board – ABC Administrator Michael Herring presented information regarding the relocation of an existing ABC Store to the Stanley Road location. ALE Agent Alan Fields conducted an investigation. He found that the Greensboro ABC Store plans to move its store located at 4405-C Lanview Drive to 1700 Stanley Road in Greensboro. The nearest church is .8 mile and the nearest school is more than a mile from the proposed location. Pursuant to ABC Commission Rules, the 30 day Notice of Intent to open an ABC store was posted. Neither Greensboro ABC Board Manager Katie Alley, Chairman Brown nor Councilwoman Carmany has received any objections. Mr. Herring stated that he has not received any objections. There is no conflict of interest. Mr. Herring recommended that the Commission approve this location. The Chairman made a motion to approve the store location. Seconded by Commissioner Wright. So Ordered.

Commissioner Joyner made a motion to approve all remaining offers in compromise, with the exception of the ones that were earlier ratified. Seconded the Chairman. So Ordered.

No other business, new or old, was heard. The Chairman made a motion to adjourn the meeting. Seconded by Commissioner Joyner. So ordered.

With no further business, the meeting adjourned.

Ann Scott Fulton, Acting Chair
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany C. Goodson, Legal Division