

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

Minutes
November 19, 2009
1:30 p.m.

The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Thursday, November 19, 2009 in Nashville, Tennessee at 1:30 p.m. Chairman Jones, Commissioner Harlan Mathews and Commissioner Cynthia Bond were present. Executive Director Danielle Elks, Assistant Director Carolyn Smith, CLEO Mark Hutchens and SAC Mike Cawthon were present.

1. Approval of Minutes for October 22, 2009 Commission Meeting

2. RETAIL

**A. MULLIGAN'S WINE & SPIRITS
CLARKSVILLE, TENNESSEE (MONTGOMERY COUNTY)**

Applicant: Mulligan's Wine & Spirits, LLC
Member: Todd Morris

Before the Commission is a request for a transfer of location from 2273 Wilma Rudolph Boulevard, in Clarksville, Tennessee to 2255 Wilma Rudolph Boulevard. The licensee, LLC will be leasing the new property from Morris Properties at \$11,000/month for a period of five years. All documentation has been submitted with the exception of the following:

- a. Deed to Morris Properties;
- b. Use and Occupancy permit;
- c. TABC Inspection;
- d. Written reason for re-location.

Discussion/Action Taken:

Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the following documentation:

- a. Deed to Morris Properties;
- b. Use and Occupancy permit;
- c. TABC Inspection;
- d. Written reason for re-location.

Chairman Jones stated that the Commission had requested Assistant Director Smith to contact Todd Morris for his reason to relocate. Assistant Director Smith stated after conferring with Todd Morris, he stated business is good and is doubling the size of the store and moving less than 1/16th mile from the address of his present retail store.

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

**B. THE LIQUOR CABINET
GAINESBORO, TENNESSEE (JACKSON COUNTY)**

Applicant: Jeannie Lee

Before the Commission is a request for a new retail store to be located at 571 South Grundy Quarles Highway in Gainesboro, Tennessee. Ms. Lee intends to initially invest approximately \$50,000 to operate the business. Financing is based upon existing personal funds. Ms. Lee owns the property where the business will be located. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules/regulations;
- c. Use and Occupancy permit.

Discussion/Action Taken:

Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the TABC Inspection and Acknowledgement of the rules/regulations.

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

**C. WASHINGTON STREET WINE AND LIQUOR
RIPLEY, TENNESSEE (LAUDERDALE COUNTY)**

Licensee/Seller: Washington Street Wine and Liquor, LLC
Members: Phillip P. Webb, Sr. and Phillip P. Webb, Jr.
Applicant/Buyer: Washington Street Wine & Liquor, Inc.
Stockholders: Ramesh Patel

Before the Commission is a request for a transfer of ownership of the retail store located at 282 Washington Street, in Ripley, Tennessee. Mr. Patel intends to initially invest \$120,000, of which \$90,000 is the purchase price. Financing is based upon existing personal funds. The corporate applicant is leasing the property from Sejal Patel for a period of two years at \$600/month. All documentation has been submitted with the exception of the following:

- a) TABC Inspection;
- b) Acknowledgement of the rules/regulations;
- c) Relationship between Sejal Patel and Ramesh Patel.

Discussion/Action Taken:

Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the TABC Inspection and Acknowledgement of the rules/regulations and the relationship between Sejal Patel and Ramesh Patel.

Commissioner Bond made a motion to approve upon submission of the pending documentation. Commissioner Mathews seconded the motion and it passed with 3 ayes.

**D. SOUTH END LIQUORS
ATOKA, TENNESSEE (TIPTON COUNTY)**

Licensee/Seller: Christopher Joyner
Applicant/Buyer: Daniel Pickard

Before the Commission are two requests: 1) Request for a transfer of ownership of the retail store located at 15888 Highway 51 South in Atoka, Tennessee; and 2) Request for a transfer of location. Mr. Pickard wishes to initially invest approximately \$150,000, of which \$25,000 is for good will and the remaining balance for existing inventory. Financing is based upon a line of credit with Patriot Bank. If approved, Mr. Pickard wishes to transfer location from 15888 Highway 51 South to 14366, Suite B, Highway 51 South in Atoka. Mr. Pickard and Alysia Pickard own this property. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules/regulations;
- c. Bill of Sale;
- d. Lease from Alysia and Daniel Pickard to Daniel Pickard;
- e. Line of credit document.

Discussion/Action Taken:

Daniel Pickard was present at the meeting. Director Elks reviewed the application to the Commissioners and recommended approval.

Commissioner Bond made a motion to approve the transfer of ownership. Commissioner Mathews seconded the motion and it passed with 3 ayes.

Commissioner Bond made a motion to approve the transfer of location. Commissioner Mathews seconded the motion and it passed with 3 ayes.

SAM RIDLEY WINE AND SPIRITS

E. SMYRNA, TENNESSEE (RUTHERFORD COUNTY)

Applicant: Sam Ridley Wine and Spirits, Inc.

Stockholder: D. Lee Nettles

Before the Commission is a request for a new retail store to be located at 611 President Place in Smyrna, Tennessee. Mr. Nettles intends to initially invest \$2,000,000 for the purchase of the property and to operate the business. Financing is based upon a loan with Cap Star Bank. Mr. Nettles is leasing the property to the corporate applicant for a period of three years at \$11,000/month. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules/regulations;
- c. Use and Occupancy permit;
- d. Loan agreement with Cap Star Bank.

Discussion/Action Taken:

Director Elks stated that Mr. D. Lee Nettles requested that the application be continued to the January, 2010 Commission meeting. Director Elks stated Mr. Nettles had concerns that the retail store may not be completed within 90 days.

Commissioner Mathews made a motion to approve the continuance. Commissioner Bond seconded the motion and it passed with 3 ayes.

**F. BUCCANEERS IMPORTED WINE AND SPIRITS
PORTLAND, TENNESSEE (SUMNER COUNTY)**

Applicant: BCAL, Inc.
Stockholder: Howard Austin

Before the Commission is a request for a new retail store to be located at 6074 Highway 31 West North in Portland, Tennessee. If approved, Mr. Austin will invest approximately \$300,000 to operate the store. Financing is based upon a small business (SBA) loan. The corporate applicant is leasing the property from Constance DeCarl for a period of five years at \$3000/month. All documentation has been submitted with the exception of the following:

- a. Copy of SBA loan.

Discussion/Action Taken:

Howard Austin was present at the meeting. Director Elks reviewed the application to the Commissioners. Director Elks asked Mr. Austin if he was looking for other investors. Mr. Austin stated that he would be the sole investor. Director Elks stated to Mr. Austin that if anyone else were to invest in the retail store that they would need to be approved by the Commission. Mr. Austin stated that he would notify the agency if that were to change. Director Elks recommended approval upon confirmation of the approval of the SBA loan.

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

**G. PORTLAND WINE AND SPIRITS
PORTLAND, TENNESSEE (SUMNER COUNTY)**

Applicant: Angela Robertson

Before the Commission is a request for a new retail store to be located at 144 Knight Street in Portland, Tennessee. If approved, Ms. Robertson will invest approximately \$150,000 to operate the business. Financing is based upon a loan with Clayton Bank and Trust. Edward Plunk is a co-signer for the loan. Ms. Robertson is leasing the property from Portland Station, LLC for a period of three years with a monthly rent of \$1062/month plus CAM, taxes and insurance of approximately \$200, plus 2% of the gross sales of the business. All documentation has been submitted with the exception of the following:

- a. Use and Occupancy permit;
- b. Written acknowledgement of the landlord that the 2% rental provision constitutes an indirect interest in the retail business.

Discussion/Action Taken:

Angela Robertson was present at the meeting. Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the following documentation:

- a. Use and Occupancy permit;
- b. Written acknowledgement of the landlord that the 2% rental provision constitutes an indirect interest in the retail business.

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

**H. NASHVILLE WINE AND SPIRITS
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Licensee/Seller: David Hart
Applicant/Buyer: Nashville Wine & Spirits, LLC
Members: William Bryant

Before the Commission is a request for the transfer of ownership of the store located at 4556 Harding Pike in Nashville, Tennessee. Mr. Bryant wishes to initially invest approximately \$340,000. The purchase price for the business is \$210,000, plus existing inventory. Financing is based upon a home equity loan and loans from Deborah Bryant and David White. The LLC applicant is leasing the property from BMP, LLC for a period of three years at \$5394.66/month. All documentation has been submitted with the exception of the following:

- a. Bank credit check;
- b. Resignation from ME Wine and Liquor (Costco)
- c. TABC Inspection;
- d. Acknowledgement of the rules/regulations;
- e. Loan agreements (home equity loan and loan with David White);
- f. Payment of outstanding citation of current licensee.

Discussion/Action Taken:

William Bryant and Stephen Montgomery, attorney, were present at the meeting. Director Elks reviewed the application to the Commissioners

and recommended approval upon payment of outstanding citation of current licensee.

Commissioner Mathews made a motion to approve upon payment of the citation. Commissioner Bond seconded the motion and it passed with 3 ayes.

**I. EAST END LIQUOR SHOPPE
KNOXVILLE, TENNESSEE (KNOX COUNTY)**

Licensee: East End Liquor Shoppe, Inc.
Stockholder: Eugene Hankins, Jr.
New Stockholder: Comrie Hankins

Before the Commission is a request for a transfer of ownership of the retail business located at 5406 Asheville Highway in Knoxville, Tennessee. Mr. Hankins was the sole stockholder of the business; however, he passed away on or about July 29, 2009. Mr. Hankins' will leaves all his assets and property to his wife, Comrie Hankins. All documentation has been submitted with the exception of the following:

- a. Certificate of Compliance for Ms. Hankins;
- b. Newspaper Affidavit and Notice.

Discussion/Action Taken:

Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the Certificate of Compliance for Ms. Hankins and a copy of the Newspaper Affidavit and Notice.

Chairman Jones made a motion to approve upon submission of the pending documentation. Commissioner Mathews seconded the motion and it passed with 3 ayes.

**J. HIGH NOTE LIQUORS
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Licensee: ESH, Inc.
Stockholder: Elizabeth Hobbs
New Stockholder: Joseph E. Hobbs

Before the Commission is a request for a transfer of ownership of the retail business located at 2471 B. McGavock Pike in Nashville, Tennessee. Ms. Hobbs was the sole stockholder of the business; however, she passed away on June 15, 2009. Mr. John Hobbs, as Executor of her estate, has sold

her 100% of the stock to his son, Joseph E. Hobbs for \$125,000. Financing is based upon a loan from John Hobbs. The issue is that John Hobbs is the holder of the on-premise consumption license db/a John A's. Thus, the loan to Joseph Hobbs constitutes at the very least, an indirect interest in the retail business. All documentation has been submitted with the exception of the following:

- a. Newspaper Affidavit and Notice;
- b. Loan agreement with independent source.

Discussion/Action Taken:

Director Elks reviewed the application to the Commissioners and recommended approval upon submission of a copy of the Newspaper Affidavit and Notice and the Loan agreement with independent source. Director Elks stated that because John A. Hobbs is loaning Joseph Hobbs the money for the purchase of High Note Liquors. Since Mr. John A. Hobbs is loaning the money that would cause an indirect interest in the business. Because John A. Hobbs owns an on-premise business, that would prohibit John Hobbs from having a direct or indirect interest in the retail store. Director Elks stated that the staff requested independent financing for Joseph Hobbs.

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

**K. POUR BOYS LIQUOR STORE
COWAN, TENNESSEE (FRANKLIN COUNTY)**

Applicant: Larry George

Before the Commission is a request for a new retail store to be located at 504 W. Cumberland Street, Suite B, in Cowan, Tennessee. Mr. George wishes to initially invest \$60,000 to operate the business, and if approved, will operate it as a sole proprietorship. Financing is based upon a loan from Select Investments, LLC (which is owned by Mr. George). Select Investments has obtained a loan from Wells and Tate Pension Fund in this same amount. Mr. George is leasing the property from Cordell and Betty Garner for a period of one year at \$400/month, with an option to extend. Mr. George has an option to purchase the property for \$105,000 for two years. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;

Discussion/Action Taken:

Larry George was present at the meeting. Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the TABC Inspection.

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

4. WHOLESALE MATTERS

**A. ALEKSEY'S IMPORTS
CHATTANOOGA, TENNESSEE (HAMILTON COUNTY)**

Licensee/Seller: Alexsey's Imports Chattanooga, LLC
Member: Alexei Knimenico
Applicant/Buyer: Stan Reed

Before the Commission is a request to transfer membership interest of the wholesale business located at 4295 Cromwell Road, Suite 414, in Chattanooga, Tennessee. Mr. Reed wishes to purchase the 100% of the membership interest of the LLC for \$100,000, plus the cost of inventory. Financing is based upon a promissory note with the seller and a home equity loan with Suntrust Bank. All documentation has been submitted with the exception of the following:

- a. Exhibit A to Bill of Sale (promissory note);
- b. Lease and deed to property;
- c. Charter of LLC;
- d. Membership ownership list;
- e. Surrender of non-resident seller's permit.

Discussion/Action Taken:

Stan Reed was present at the meeting. Director Elks reviewed the application to the Commissioners and recommended approval.

Chairman Jones made a motion to approve. Commissioner Mathews seconded the motion and it passed with 3 ayes.

5. BUDGET – Director Elks advised the Commission that the staff met with Mr. Bradley and he advised the staff that due to the current economic conditions that

TABC must revert a \$400,000. Director Elks stated that Mr. Bradley is willing to work with the TABC to fill the vacant positions that are subject to the reversion. Director Elks stated that the staff is in the process of hiring a cashier that their sole responsibility will be to receipt all money received by TABC. Director Elks further stated that the staff no longer accepts cash except for the Server Permit cards. Director Elks stated that the server permit program continues to run at a deficit.

6. **CONSENT ORDERS**

7. **PENDING MATTERS LIST**

8. **MISCELLANEOUS**

- A. **Definition of Restaurant/Food Audits:** TABC staff is requesting direction of the Commission in determining how to consider certain sources of income of restaurant licensed premises for the purpose of food audits. Specifically, the TABC staff provides every restaurant licensee a memorandum explaining how the TABC interprets the definition of a “restaurant” licensee found at T.C.A. §57-4-102(27)(a). A copy of this memorandum has been included in the agenda materials.

When TABC staff conducts a food service investigation on an establishment to determine the principle business of that establishment, one of the factors considered is the percentage of sales from various sources of revenue. These sources of revenue include the following: food, alcohol sales; concessions; door, etc. Issue: How should the staff treat low alcoholic beer for the purposes of a food audit? Should beer sales be included as part of alcohol and wine sales, or should that be considered as a separate and distinct source of income? It should be noted that, by statutory definition, beer containing less than 5% alcoholic content by weight is not considered to be an alcoholic beverage.

Discussion/Action Taken:

Commissioner Mathews made a motion to have beer containing less than 5% alcoholic content by weight and liquor considered as a separate source of income for food audit purposes. Chairman Jones seconded the motion and it passed with 3 ayes.

B. Summary of the Joint Alcohol Study Committee Meeting Conducted on October 28, 2009

Discussion/Action Taken:

Director Elks stated that on October 28, 2009 there was a Joint Alcohol Study Committee Meeting conducted to updating the alcohol laws in the State of Tennessee. The meeting concentrated on wine in grocery stores with testimony from both sides of the issue. The next meeting is scheduled for December 8, 2009.

C. Request by Server Trainer Brad Green to discuss the prohibition of someone other than the applicant submitting and obtaining server permits

Discussion/Action Taken:

Assistant Director Smith stated that the staff received a written request from Brad Green requested to withdraw his request to come before the Commission.

D. Monthly Summary of TABC Activity

- 8. DATE OF NEXT MEETING** – Thursday, December 17, 2009 and Thursday, January 21, 2010 at 1:30 p.m...

John A. Jones
Chairman

Shari Danielle Elks
Executive Director