

**METROPOLITAN NASHVILLE-DAVIDSON COUNTY
TRANSPORTATION LICENSING COMMISSION**

Minutes of

September 22, 2009

The Metropolitan Nashville-Davidson County Transportation Licensing Commission (the "Commission") met in regular session on this date at the Metropolitan Courthouse. The Commissioners present were Chair Helen Rogers, Vice Chair Duane McGray and Commissioners Mary Griffin, Tom Turner and Quenton White (5). Also attending were Metro Legal advisors Theresa Costanis and Corey Harkey; Commission staff members Milton Bowling, Walter Lawhorn and Lisa Steelman; and Brian McQuiston, Director-Executive Secretary to the Commission.

Chair Helen Rogers called the meeting to order. She led the Pledge of Allegiance and read the Notice of Appeal statement, advising of the right to appeal decisions of the Transportation Licensing Commission.

The minutes of the August 25, 2009 meeting were approved.

WRECKER COMPANY DISCIPLINARY HEARING: DUKE'S WRECKER SERVICE

Charles Duke, owner of Duke's Wrecker Service, appeared with attorney Joe Haynes. Corporal Tim Preston of the Goodlettsville Police Department appeared. He reported that on July 9, 2009 he had recovered two vehicles from the Duke's Wrecker Service lot. He stated that one had been towed from the Nashville Rescue Mission on February 12, 2009 and the other had been towed on April 26, 2009; both had been towed to Duke's. Corporal Preston noted that when Mr. Duke had applied to the State to get titles for the vehicles, it was learned that both vehicles had been reported as stolen vehicles through the Metropolitan Nashville Police Department. **Chair Helen Rogers** asked why they had been reported as stolen; Corporal Preston responded that he did not have those reports; he had done only the recoveries. Director McQuiston stated that the stolen vehicle reports were in the packets provided to Commissioners. He stated that the issue was not that the vehicles had been stolen; but that Duke's Wrecker Service, which was located outside of Davidson County, and not licensed to perform nonconsent towing, had violated sections of the ordinance by performing nonconsent towing. He noted that, if Duke's did not report the vehicles to the Metro Police Impound Lot at the time they were towed, then that would result in the long period before they were identified as stolen; because the Impound Lot checks all vehicles reported as towed against stolen vehicle reports. **Chair Rogers** asked Corporal Preston if he had been shown documentation from owners that authorized Duke's to tow the vehicles; the officer responded that the authorization had been from the people who had control over the private properties, not from the owners of the vehicles. Commissioners clarified that one of the vehicles had been towed from the Nashville Rescue Mission, and the other from 620 Gallatin Road. Mr. Haynes had no questions for Corporal Preston, and the officer was dismissed.

Responding to questions from Mr. Haynes, Mr. Duke stated that he had held a license to perform nonconsent towing until December 1, 2008. He stated that when he had tried to renew that license it had been denied. He described where his business had been since he began operating in 1994; first in Wilson County, and then in Goodlettsville. He presented a photograph of his current business. **Chair Rogers** asked if his business was in Davidson County or Sumner County; Mr. Haynes responded that it was in Sumner County. Mr. Duke stated that he had been called to tow the two vehicles by managers of the properties. He stated that he had released one of the vehicles to its owner without charge; but that he still had the other vehicle because no one had come to claim it. He stated that he had not reported the towing of these vehicles to the Metro Impound Lot. He stated that since December 2008 they would not accept his tow call-ins because they said he was not a nonconsent company. Mr. Duke stated that he had not been allowed to renew his nonconsent license because he was out of county. He stated that the issue of his location had not been a problem before, until former Transportation Licensing Inspector Larry Ennis passed away. He added that he had been issued a nonconsent license until 2008, however.

Chair Rogers told Mr. Duke that he had known that he did not have a nonconsent license, and asked him why he had not mentioned the problem to the Commission before. Mr. Duke responded that he did not think it would help. **Vice Chair Duane McGray** noted that at a disciplinary hearing held on December 16, 2008 the Commission had directed that any future application by Mr. Duke for a nonconsent license should be forwarded to the Commission. Director McQuiston stated that this was after Duke's had already been issued their current license.

Director McQuiston stated that in 2007, after Inspector Bowling had been hired, the staff began to look at wrecker company storage lot locations. He stated that he had asked Inspector Bowling to verify that the Duke's lot in Goodlettsville was within Davidson County, and that Inspector Bowling had learned that it was not within the county. The director stated that on March 2, 2007 Mr. Duke had provided a letter from the owner of a property at 450 Edenwold in Madison, and had said that he was going to use that property for a storage lot; as a result, he was issued a nonconsent license. Director McQuiston stated that when Duke's had applied to renew in December 2008 the only address listed was the Sumner County address, and that a check on the status of the 450 Edenwold address showed that it was not approved by Codes for use as a wrecker storage lot; as a result, Duke's was simply not eligible for a nonconsent license. Director McQuiston noted that other out-of-county wrecker companies had been in a similar position, and that they had chosen to move into Davidson County and to get appropriate permits in order to be able to get licenses to perform nonconsent towing here. The director noted that one of the two identified vehicles had been reported as stolen in 2008, when Duke's did have a nonconsent license; but that the other had been towed out of county by Duke's in April 2009, when the company did not have a license to perform nonconsent tows.

Chair Rogers asked Mr. Duke when the last time had been that he had done nonconsent towing; he responded that it had been recently.

Mr. Duke stated that he was located six tenths of a mile outside of Davidson County. Responding to questions by Mr. Haynes, Mr. Duke denied that he had tried to mislead the Commission staff about his location.

Vice Chair McGray stated that Mr. Duke had to comply with the ordinance, and that he could not justify doing nonconsent towing just because he was only slightly outside of the county. He moved to suspend the company's license for six months. **Commissioner Tom Turner** moved to amend the suspension to 120 days. **Commissioner Mary Griffin** seconded the amendment, which passed. **Vice Chair McGray** seconded the amended motion, and it was passed (4-0).

CARRIAGE COMPANY DISCIPLINARY HEARING: HAT CREEK CARRIAGE TOURS

Inspector Bowling reported that, in response to telephonic complaints about the physical condition of a horse used by Hat Creek, he had gone downtown on July 14, 2009 to observe the horse. He stated that the horse had a bandage around its hoof, but that the bandage had fallen off. He stated that a lady on the street rewrapped it in his presence. He stated that the horse's leg was also swollen, and the animal did not appear able to put weight on that leg. He stated that he directed the driver to remove the horse from operation until the horse could be examined by a Metro veterinarian.

Director McQuiston stated that, after receiving Inspector Bowling's report, he had sent a certified letter to Hat Creek owner Sam Roberts on July 16, directing removal of the horse from service, and notifying him to contact Metro Animal Control to arrange for the inspection of all of the company's carriage horses. The letter specified that the horse "Birdy" was to remain out of service until Metro Animal Control notified the Commission staff that she could be returned to service. The director stated that on August 2, the horse was observed working again downtown, without authorization to return to service.

Kristen Ellsworth appeared. She stated that she had seen the horse with a visible open wound. She stated that the horse appeared emaciated. **Chair Helen Rogers** asked Ms. Ellsworth why she was downtown on that day. Ms. Ellsworth responded that she had come downtown to show Nashville to visiting friends from New York. She stated that after noting the condition of the horse, they had notified the police and animal control, and eventually had submitted a written complaint to the Commission; a copy of this complaint was provided in the Commissioners' packets.

Director McQuiston clarified that Ms. Ellsworth's experience had taken place on August 2. He stated that on August 3 Metro Animal Control veterinarian Dottie Diveley examined Birdy at Mr. Roberts' farm and determined that the horse should not be returned to service. The director summarized that the horse had been removed from service in mid-July, and

that Hat Creek had returned the horse to service without authorization.

Mr. Roberts appeared. He questioned Ms. Ellsworth about the wound she had observed and her experience with horses. He stated that he understood that the horse was not supposed to be on the street after Inspector Bowling removed it from service on July 14. He explained that he had been out of town on the last weekend of July, and that his neighbor had transported Birdy downtown. He stated that when he got the call from Metro Police that his horse was operating on August 2, he immediately told his driver to take Birdy to the loading area, and he drove back from Chattanooga. He stated that he took full responsibility. Mr. Roberts explained how Birdy had received her leg wound. **Chair Rogers** read Doctor Diveley's report. Mr. Roberts responded that he did not understand how the veterinarian could have come to some of her conclusions. He gave a lengthy report on how he cared for his horses, and especially his pasture.

Commissioner Tom Turner departed.

Mr. Roberts expressed concern that he had not yet received clearance from the Commission staff for his other horses to be returned to service. **Chair Rogers** reminded him that the issue before the Commission involved only Birdy. Mr. Roberts stated that it was clear that Birdy would have to be retired.

Vice Chair Duane McGray moved to suspend Hat Creek Carriage from operating downtown for sixty days, and to require all Hat Creek horses to be submit to a Metro Animal Control veterinarian inspection once each six months for eighteen months. **Commissioner Mary Griffin** seconded, and the motion passed (3-0).

WRECKER DRIVER PERMIT APPLICATION: KENNETH CURRIE

Mr. Currie appeared. **Chair Helen Rogers** noted that Mr. Currie had appeared before the Commission for a wrecker driver permit in August, and that it had been disapproved. She asked Mr. Currie what had changed since the previous month. Mr. Currie stated that he had changed his application, to include disclosure of all the offenses shown in his background check. **Chair Rogers** noted that the application listed 27 charges, including convictions for 13 misdemeanors and 3 felonies, as well as 11 charges which had been dismissed or retired. She asked about the felonies. Mr. Currie stated that he had not been convicted on any charges since 2005. **Chair Rogers** asked about a 2008 charge; Mr. Currie explained that he had been charged with facilitation of cocaine, but the charge was dropped. He stated that he was going to NA meetings at several locations, and Drug Court meetings twice each week. **Commissioner Quenton White** asked Mr. Currie if he had attempted to get a job driving for any other wrecker services. Mr. Currie stated that he had not, because of his background. **Chair Rogers** asked if he had been driving a wrecker; Mr. Currie responded that he had. She asked how he could be doing that, if he did not have a license. He stated that before he came in to apply, he had been driving a wrecker, and there had been an incident at Gary's Wrecker Service; he had notified his insurance company. **Commissioner White** asked who he had been driving for at the time; Mr. Currie responded that he had been driving for himself. **Commissioner White** asked if he had had a license to drive the wrecker; Mr. Currie stated that he did not. **Commissioner White** noted that he had violated his probation 3 times; Mr. Currie explained that he was on probation until 2020, and that he would not have been reinstated if the violations had been anything serious. Asked about his work history, Mr. Currie stated that he had done sheet metal work for 26 months.

Commissioner White advised Mr. Currie to seek a position with another company, and moved to disapprove this application. **Commissioner Mary Griffin** seconded, and the motion passed (3-0).

CARRIAGE DRIVER PERMIT APPLICATION: THOMAS HAMS

Mr. Hams appeared, with Johnny Smith, owner of Sugar Creek Carriage. Mr. Hams' previous permit application had been disapproved by the Commission on May 26, 2009. He stated that he had resubmitted his application, fully disclosing his past arrests and convictions.

Chair Helen Rogers noted that there had been a drug-related felony conviction in 2000. Mr. Hams stated that he had completed his probation. He stated that he would be willing to submit to frequent random drug testing. **Commissioner Quenton White** asked about the expungement of the drug conviction, which had been an issue at the earlier hearing. Mr. Hams stated that he had learned that the conviction could not be expunged.

Mr. Smith spoke on Mr. Hams' behalf. He stated that Mr. Hams had been working for him for almost a year, driving a limousine in Davidson County and driving one of his carriages outside of the county.

Commissioner Mary Griffin expressed concern that Mr. Hams' disclosure appeared to blame others for his arrests. Mr. Hams stated that he accepted responsibility. **Commissioner White** clarified that it was possible to obtain an expungement, and asked why the Commission should consider this application when nothing had changed since the previous disapproval. Mr. Smith stated that he had not testified at the earlier hearing; but that, after working with Mr. Hams for several more months since then, he was now testifying on Mr. Hams' behalf. **Vice Chair Duane McGray** asked Mr. Smith if he was willing to ensure that Mr. Hams submitted to random drug testing; Mr. Smith responded that he would do so, if required. **Commissioner Griffin** moved to approve a permit, restricted to Sugar Creek Carriage, until March 1, 2010; with the additional condition that Mr. Hams would submit to random drug testing as directed by the commission staff. **Vice Chair McGray** seconded, and the motion passed (2-0, with one abstention).

TAXI DRIVER PERMIT APPLICATION: JOE D. BROWN

Mr. Brown appeared, with Johnny White, co-owner of American Music City Taxi. Director McQuiston reported that Mr. Brown had fully disclosed his arrest history. **Chair Helen Rogers** asked Mr. Brown about his history of alcohol-related offenses. Mr. Brown stated that most of this had been decades ago. He admitted that he had an alcohol-related problem in early 2008, when his wife filed for divorce and he lost his house and his job. In response to questions by Commissioners, he stated that he was going to AA at least twice a week, had a sponsor, and was being treated at the VA hospital. Mr. White spoke on Mr. Brown's behalf. He explained that Mr. Brown was recommended to him by the Campus for Human Development, a recognized VA program, and was supervised daily by the program staff. Mr. White stated that he was personally supervising the night shift at the cab company, and that Mr. Brown would be working that shift.

Vice Chair Duane McGray moved to approve a permit, restricted to American Music City Taxi, with random drug tests for six months as directed by the Commission staff. **Commissioner Quenton White** seconded, and the motion passed (3-0).

OTHER BUSINESS:

There was no further business, and the meeting was adjourned.

ATTEST:

Brian E. McQuiston
Director-Executive Secretary

APPROVED:

Helen S. Rogers
Chair