METROPOLITAN NASHVILLE-DAVIDSON COUNTY TRANSPORTATION LICENSING COMMISSION

Minutes of

February 24, 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 Acting Chair Tom Turner and Commissioners Jennifer Brundige, Mary Griffin, Quenton White and Ed Whitmore (5). Also attending were Legal Advisor Jon Michael; Commission staff members Walter Lawhorn, Milton Bowling and Lisa Steelman; and Brian McQuistion, Director-Executive Secretary to the Commission.

Acting Chair Tom Turner called the meeting to order. He 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 January 27, 2009 meeting were approved.

WRECKER COMPANY DISCIPLINARY HEARING: ABLE TOWING

Mark Wayman, owner of Able Towing, appeared before the Commission with attorney Phillip Davidson.

Director McQuistion stated that documents provided by Able Towing at a July 2008 disciplinary hearing had included a copy of a signed tow slip authorizing the tow of a vehicle belonging to Mr. Eric Wilson in April 2008 from the Kinko's parking lot and a letter signed by Debbie Knight stating that she had authorized the tow. He provided copies of those documents. He stated that during the July hearing the Commission had noted that the signature on the tow slip did not match the signature on the letter; and had found Able Towing in violation of the statute for towing without proper authorization. The director added that Mr. Wayman had been asked specifically at that hearing if he had any relationship to Debbie Knight, and that Mr. Wayman had denied the existence of any relationship. Director McQuistion provided copies of an application submitted by Debbie Flowers to the State of Tennessee for an unarmed security guard license. He pointed out that in her application Ms. Flowers had disclosed that she was also Debbie Knight, and that she had listed 299 Kim Marie Way, in Pegram, TN 37143 as her residence from 2004 until 2006. The director provided a copy of Mr. Wayman's driver's license, and noted that the address for Mr. Wayman was also 299 Kim Marie Way, in Pegram. He provided copies of information from the Office of Vital Records, showing that Debbie Sue Flowers was the sister of Robert Thomas Flowers, Jr. The director reminded Commissioners that Mr. Flowers was a driver for Able Towing and had appeared before the Commission before; and that his attorney had indicated that Mr. Flowers was Mr. Wayman's son. The director also provided copies of a receipt for certified mail sent to Mr. Wayman at his home address in April 2008, and pointed out that the receipt had been signed by Yvonne Flowers; he noted that this was the mother of Debbie Flowers. The director read the Commission Rule 24 (Wreckers), as it had been in effect at the time of the towing of Mr. Wilson's vehicle:

24. NONCONSENT TOWING FROM PRIVATE PROPERTY

Prior to towing a vehicle (or personal property) from private property without the vehicle (or personal property) owner's consent, the towing company must have express written authorization for towing of that vehicle (or personal property) from the owner of the private property or designated agent. When an individual is designated by a private property owner to act as an agent to authorize towing from the property, such designation must be in writing and signed by the private property owner. There shall be some relationship between the private property owner and the designated agent, and there may be no relationship between the designated agent and the towing company. Contracts or written agreements between a towing company and private property owners for nonconsent towing must be retained by the towing company, and must include the property owner's signature and the signature(s) of any agent(s) designated by the private property owner. The towing company must make these documents available for inspection by the commission or any designated representative at any time. Maximum allowable rates for nonconsent towing from private property will be as specified in Section 6.80.550(H) of the Metropolitan Code of Laws. (September 25, 2007)

The director concluded that Able Towing had violated Rule 24, in that there was clearly a relationship between designated agent Debbie Knight and Mr. Wayman, the owner of Able Towing.

Mr. Davidson stated that his statement that Mr. Flowers was Mr. Wayman's son at the earlier Commission hearing had been a mistake.

Debbie Flowers appeared. Mr. Davidson asked her who she worked for; she responded that she worked for Big Brothers United. Mr Davidson asked her if the company was a neighborhood watch organization; she answered yes. In response to Mr. Davidson's questions, Ms. Flowers stated that she was not Mr. Wayman's daughter; and that she had not lived at 299 Kim Marie Way, but had used it as a mailing address because her mother lived there.

Mr. Wayman appeared. He stated that he was not related to Debbie Flowers, and that she had never lived at his address in Pegram. **Acting Chair Tom Turner** asked if Ms. Flowers' mother had lived at his address; Mr. Wayman answered no, but asked if the Commissioner wanted a list of the names of everyone else with whom he had had sexual relations.

Commissioner Quenton White questioned Ms. Flowers about her listing 299 Kim Marie Way on her application.

Commissioner Mary Griffin stated that there was sufficient evidence to show that there was a relationship in violation of the Rule, and moved to revoke Able Towing's license. **Commissioner White** seconded, and the motion passed (4-0).

WRECKER COMPANY DISCIPLINARY HEARING: BROWN'S WRECKER SERVICE

Director McQuistion stated that he had received a telephone call from Gary W. Brown, owner of Brown's Wrecker Service, on December 5, 2008 in regard to the seizure and subsequent handling of an arrest-related vehicle by Brown's Wrecker Service on November 18, 2008. He provided copies of a memorandum for record concerning the call. He stated that the same afternoon he had received a telephone call and visit from Sergeant Scott Billingsby of the Metropolitan Police Department related to the same

incident. He provided copies of reports he had received from Sgt. Billingsby and Officer Justin Pachciarz.

Sgt. Billingsby and Officer Pachciarz appeared before the Commission. Officer Pachciarz reported that he had stopped the vehicle, and had arrested the owner Casey Dement for felony drug charges. He stated that he had called for an emergency wrecker to impound the vehicle, and that a Brown's wrecker had arrived. He stated that Gary Brown, Jr. was riding in the wrecker. He provided a copy of the Vehicle Towing Report issued to the wrecker driver, ordering the seizure of the vehicle. He stated that the wrecker had departed with the vehicle in tow at about 1230 hours. He stated that two weeks later, the Police received information that there were more drugs in the vehicle than had been seized at the scene. He stated that, when he went to the Impound Lot to examine the vehicle, the dashboard had been removed and the spare tire was missing. He provided pictures of the vehicle. He stated that he had checked the tow slip, and noted that the vehicle had been delivered to the Impound Lot at 1505 hours – two and one-half hours after it had been towed. He stated that he had gone to Brown's Wrecker Service, where Gary Brown, Jr. explained that he had removed some clothing items and a camcorder from the vehicle at the company storage lot to return them to Mr. Dement.

Sgt. Billingsby stated that the information received in early December about the overlooked drugs in Mr. Dement's vehicle had indicated that they were hidden in the dashboard and spare tire. He stated that these two areas had not been disturbed before the vehicle was towed. He stressed that the vehicle should have been taken to the Impound Lot, but that Brown's Wrecker Service had interrupted the chain of custody by taking it to their company lot.

Director McQuistion stated that there were three possible violations by the company to be considered at this hearing:

- that Gary Brown, Jr., who does not have a wrecker driver permit, was in the wrecker. Permits are required for all drivers and helpers;
- that the vehicle was not towed as directed to the Metro Police Impound Lot, but was instead towed to the company's storage lot, where it was kept for several hours; and
- that the company allowed the release of seized property from the car to the owner.

Acting Chair Tom Turner asked if the tow had been from a location within the NTR zone. Director McQuistion responded that Brown's had been temporarily assigned towing responsibilities within that zone, but that the towing of Mr. Dement's vehicle had been from within the Brown's zone. Commissioner Quenton White asked when Mr. Dement had recovered his personal property from his vehicle. Sgt. Billingsby responded that Mr. Dement had not been released until some time after the vehicle had been received at the Impound Lot. Commissioner White asked who had informed the officers about the possibility of overlooked drugs in the vehicle. Officer Pachciarz responded that the information came from Officer Turbeville. Commissioner White asked if he was sure that the dashboard had not been removed before the vehicle was towed. Officer Pachciarz stated that he was sure, and would remember if he had ripped a dashboard out of a vehicle and put it in the back seat.

Gary W. Brown appeared with attorney Phillip Davidson. Mr. Davidson stated that the Impound Lot record indicated that the dashboard had already been removed when the vehicle was checked in. **Acting Chair Turner** noted that the officers had testified that the dashboard had not been removed when it was in their custody, but that the vehicle had been in the custody of Brown's Wrecker Service for several hours before it was turned in to

the Impound Lot. Mr. Davidson asked who C. Lara was, noting that C. Lara had filled out the Vehicle Towing Report. Officer Pachciarz responded that Officer Lara was a police officer who filled out the tow slip. Mr. Davidson noted that the tow slip was filled out at 1200 hours, but asked when the vehicle was actually towed. Officer Pachciarz responded that it was towed about thirty minutes later. Mr. Davidson asked when the officers had received the information that there might be other drugs in the vehicle; Officer Pachciarz responded that it was on December 3.

Acting Chair Turner asked that the company respond to the specific charges before the Commission. Mr. Davidson asked Gary W. Brown to respond. Mr. Brown blamed Director McQuistion for refusing to issue his son a permit because he did not have a TN driver's license, but admitted that his son did not have a permit. Mr. Davidson asked Mr. Brown why the vehicle was not taken directly to the Impound Lot. Mr. Brown stated that the vehicle had not been towed until after 1300 hours. He stated that he had insurance adjusters at his lot, and they could not get vehicles moved; so he told his driver to come back to the lot to help at about 1320. He stated that the driver parked the wrecker out front, helped him move cars until about 1430 hours, and then left to take the car to the Impound Lot. Mr. Brown stated that he had been unaware of any problem until the Police showed up at his company in December. He stated that nothing was removed from the car while it was at the company lot. He stated that about two weeks after the vehicle was towed, he had noticed a pile of clothes on the floor, and asked his son when he was going to remove them. He stated that his son had told him that they were not his, but belonged to Casey Dement.

Commissioner Ed Whitmore asked Mr. Brown why his son did not have a driver's license. Mr. Brown responded that he had had two DUI's.

Commissioner Jennifer Brundige moved to find Brown's Wrecker Service in violation of M.C.L. 6.80.310; Commission Rule 21; M.C.L. 6.80.580(N); and M.C.L. 6.80.580(O). **Commissioner Mary Griffin** seconded, and the motion passed (4-0).

Following discussion, **Commissioner Brundige** moved to suspend the company's license for ninety days. **Commissioner Whitmore** seconded, and the motion passed (4-0).

Commissioner Brundige moved to remove Brown's Wrecker Service from the temporary assignment to provide towing within the "NTR" zone. **Commissioner Griffin** seconded, and the motion passed (4-0).

TAXI COMPANY DISCIPLINARY HEARING: DIAMOND TAXI

Diamond Taxi owner Roy Gillespie appeared with attorney George Thompson.

Director McQuistion reported that Mr. Gillespie had failed to comply with the conditions required by the Commission when it allowed him to renew his Certificate in September 2008, as follows:

- o In October 2008 he failed to turn in the required monthly progress report, and failed to turn in the required current list of vehicles when he paid for his quarterly decals. On four separate spot checks of the Diamond Taxi radio system during the period September 29 October 18, 2008 his dispatch office failed to respond to calls from his taxicabs.
- o In November 2008 he failed to turn in the required monthly progress report.
- In December 2008 he failed to turn in the required monthly progress report.
 The vehicle list turned in on December 4, required for the annual public hearing, did not provide insurance expiration information critical for ensuring

- public safety, in that the report indicated only "2008" as the policy expiration date for all of the vehicles.
- At the annual taxicabs public hearing on December 16, he denied that he needed any management assistance, directly contradicting the case he had presented when asking for leniency at the September disciplinary hearing.
- o In January 2009 he failed to pay for his quarterly decals on time. Payment was due January 1; his payment was not submitted until January 9. This was the fifteenth late payment (out of sixteen) since January 2006. The vehicle list submitted to renew decals still showed "2008" expiration dates for all of his vehicles. He turned in his first progress report, but only after receiving a notice to appear for this hearing.

Mr. Gillespie stated that he had made a decision to sell his company. Mr. Thompson added that the application for the transfer of the certificate was on the agenda for this meeting.

Director McQuistion advised that the disciplinary hearing should be resolved before considering a transfer of the company's certificate. He stated that a decision to enable Mr. Gillespie to sell his company and to transfer his 16 permits would have the effect of maintaining 559 permits during a time when economic conditions in the industry favored reducing the number of taxicab permits overall.

Following discussion, **Commissioner Ed Whitmore** moved to take no action. **Commissioner Quenton White** seconded, and the motion passed (4-0).

Acting Chair Tom Turner stated that he had to leave; he turned the meeting over to Acting Chair Jennifer Brundige.

TAXICAB DRIVER DISCIPLINARY HEARING: TERRY FAIR

Mr. Fair appeared with Doug Trimble, President of Yellow Cab.

Director McQuistion stated that at its August 26, 2008 meeting, the Commission had approved a temporary permit for Mr. Fair, until February 26, 2009, restricted to Yellow Cab. He stated that on January 7, 2009 Metro Police (Warrants) had notified the commission staff that Mr. Fair had been booked on a charge of driving with a suspended driver's license. He stated that, because the suspension of a driver's license automatically invalidated the taxi driver permit, he had notified Yellow Cab that Mr. Fair was not to drive a taxicab and had notified Mr. Fair that he was required to appear before the Commission.

Acting Chair Jennifer Brundige asked Mr. Fair if he now had a valid Tennessee driver's license. Mr. Fair responded that it had been reinstated. Mr. Trimble stated that Mr. Fair was a good driver, and had not been a problem. Director McQuistion asked why the driver's license had been suspended; Mr. Fair responded that it had to do with not paying child support. Inspector Lawhorn verified that he had a current driver's license.

Commissioner Mary Griffin moved to reinstate his current permit, and to extend the temporary restricted permit for six months. **Commissioner Quenton White** seconded, and the motion passed (3-0).

<u>PUBLIC HEARING: APPLICATIONS FOR TRANSFER OF EMERGENCY WRECKER</u> LICENSE AND ZONE

Director McQuistion stated that there were four applications for the transfer of the emergency wrecker license assigned to A.B. Collier Wrecker Service, LLC.

Tommy Graham, special trustee, appeared on behalf of the LLC. He stated that David Dunn had been managing the company since August 2007. He stated that he had decided to sell the company to Mr. Dunn. He provided documents demonstrating his authority to make that decision, and stated that he had negotiated the terms of the sale. He stated that the employees of the company had signed a statement in support of Mr. Dunn's application for the transfer of the license.

Acting Chair Jennifer Brundige noted that the Commissioners had been provided with copies of the four applications, and asked the applicants to appear, in turn.

West Nashville Wrecker Service: Larry Boggs, general manager, appeared. He stated that the company was withdrawing its application. He added that he had a good working relationship with Mr. Dunn and A.B. Collier, which bordered on the West Nashville Wrecker zone; and he supported the application by Mr. Dunn.

David Dunn: Mr. Dunn appeared. He stated that his motivation to buy the company was to keep his employees working; and he intended to keep everything operating as it had been.

Chapman's Wrecker Service: John Graham, owner, appeared. He stated that his was the smallest zone. He noted that the new Police impoundment policy had reduced the number of vehicles towed by the zone operators.

Easy Towing: Earl Garvin, Jr., owner, appeared. He stated that his company had been operating for ten years, and had been providing emergency wrecker service for the City of LaVergne and the Tennessee Highway Patrol rotation list. He stated that he had recently established a storage lot within the A.B. Collier zone, and had the necessary Codes permits. He provided a notebook with additional information. In response to questions, he stated that he would need more employees, and would welcome applicants currently working at A.B. Collier. He stated that the company would reduce its operations in LaVergne, and would have five wreckers operating from the new lot in Davidson County.

Acting Chair Brundige invited public comment.

Mike Woodard appeared. He stated that he was an employee at A.B. Collier; and he supported Mr. Dunn's application.

There were on other public comments; **Acting Chair Brundige** closed the public hearing.

Commissioner Quenton White asked John Graham if he would need more equipment or employees to operate the zone, if approved. Mr. Graham responded that he had enough tow trucks, but would hire as many employees as necessary to operate the zone. **Commissioner White** asked about the potential advantages of zone consolidation or changes to zone boundaries. **Commissioner Mary Griffin** asked if the June annual public hearing could be the appropriate time for this. Director McQuistion responded that this was one of the purposes of that public hearing.

Commissioner White expressed appreciation to the applicants and to the trustee, and moved to approve the transfer of the license and zone to David Dunn. **Commissioner Griffin** seconded, and the motion passed (3-0).

PUBLIC HEARING: APPLICATION FOR TRANSFER OF TAXICAB CERTIFICATE

Jim Church and Jim Burrow of Taxi USA of Tennessee, LLC appeared with counsel Guilford Thornton. Director McQuistion stated that Taxi USA of TN was the only applicant for the transfer of the certificate of public convenience and necessity assigned to Diamond Taxi. Mr. Church stated that the company would continue to operate as Diamond Taxi. Director McQuistion stated that, if the application were to be approved, Taxi USA of TN should not be adversely affected by previous Commission disciplinary action against Mr. Gillespie. Inspector Lawhorn expressed confidence that the compliance problems would not continue.

Acting Chair Jennifer Brundige invited public comment.

Doug Trimble, President of Yellow Cab, opposed the transfer, stating that it would reward Diamond Taxi for longstanding noncompliance. He also stated that there were too many permits, and that disapproval of the transfer would help the current drivers in a difficult economy by reducing that number. He recommended that the Commission allow companies to add more ADA-accessible taxicabs, but not more regular taxicabs.

Johnny White, co-owner of American Music City Taxi, opposed the transfer. He stated that economic conditions did not support the industry's retention of the permits. He pointed to the difficulties some companies, including his own, had been experiencing in filling their current permits.

There were on other public comments; Acting Chair Brundige closed the public hearing.

Responding to a question from **Commissioner Mary Griffin**, Mr. Church stated that Taxi USA did not intend to convert any of the current Diamond Taxi permits to ADA-accessible vehicles.

Commissioner Ed Whitmore moved to approve the transfer. Commissioner Quenton White seconded, and the motion passed (3-0).

SCHEDULE DATE FOR PUBLIC HEARING, RE: REASSIGNMENT OF EMERGENCY WRECKER ZONE

Director McQuistion requested that the Commission establish a date for a public hearing to consider applications for the operation of the emergency wrecker service zone currently assigned to Nashville Towing & Recovery (NTR). He provided the following summary:

O In September 2008 the Commission determined that NTR owner Darrell Greer had assigned responsibility for light-duty towing in the emergency zone to an unlicensed wrecker company. The Commission temporarily reassigned responsibilities for emergency wrecker support in the zone, and gave Mr. Greer until October 13 to satisfy the commission staff that NTR was able to re-assume full responsibility for the zone.

- NTR failed to meet the deadline, because it became evident that the company did not have the proper Codes permit to enable it to operate a storage lot. At the October 2008 hearing, Mr. Greer stated that he was trying to get a permit, but the re-zoning process could not be completed until January. As a result, the Commission extended the temporary assignments for towing in the zone until the January meeting.
- o In December 2008, Mr. Greer informed commission staff that he was not going to pursue the re-zoning effort.
- At the January Commission meeting, Mr. Greer informed the Commission that he had decided not to try to resume light-duty vehicle towing. The Commission extended the temporary towing assignments.

The director stated that it was necessary to hold a public hearing to reassign the zone on a more permanent basis. In order to meet the timelines required by the ordinance and the Rules, he recommended that the Commission establish April 28 as the date of the public hearing. He also recommended that the Commission establish the March 24 meeting date as a deadline for all applications to be submitted for consideration.

Commissioner Mary Griffin moved to set March 23 as the deadline for submission of applications to be considered for assignment of the zone, and to set April 28 as the date of the decision public hearing. **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. McQuistion	APPROVED: Helen S. Rogers
Director-Executive Secretary	Chair