

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

**Minutes of
March 22, 2012**

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 Brian Winfrey, and Commissioners Jennifer Brundige, Sal Hernandez, Sam Patel, Tom Turner and Curt Wallen (7). Also attending were Metro Legal advisor to the staff Jenny Howard, Metro Legal advisor to the Commission Theresa Costonis, 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.

LIVERY COMPANY DISCIPLINARY HEARING: METRO LIVERY

Director McQuiston reported that Metro Livery was appearing for a disciplinary hearing because one of its vehicles was observed operating without the required vehicle permit and inspection decal. He explained that uniquely-numbered permit decals were affixed to livery vehicles by Transportation Licensing Inspectors when they passed inspection; therefore, the decal served as both vehicle permit and inspection compliance decal. He reported that on May 9, 2011 Airport Ground Transportation Coordinator Jennifer Swallows had informed the Commission office that decals had been mistakenly removed from two Metro Livery vehicles by Airport staff while they were installing Airport transponder decals. He stated that he had contacted Jeni Williams, manager at Metro Livery, and that she had responded that she would try to identify which vehicles were affected. He provided documentation showing that three affected Metro Livery vehicles were identified and corrections made in May and June 2011. He stated that on September 9, 2011 Inspector Bowling had cited driver Isaac Nabors, who was operating a Metro Livery Lincoln Town Car without a decal. The director stated that it was later learned that the vehicle had been decaled by former Inspector Deckard on March 4 with Permit #0160. He added that on February 14, 2012 Ms. Swallows had provided a list which showed that Airport staff had installed transponder decals on five Metro Livery vehicles on May 5, 2011, including the vehicle driven by Mr. Nabors.

Metro Livery owner Syed Bokhari appeared with attorney David Collins. Mr. Collins stated that the company had purchased the permits and had made every effort to ensure that the decals which the Airport had removed were replaced. He stated that the last two vehicles had been inspected and re-decaled.

Vice Chair Brian Winfrey moved to dismiss the charge. **Commissioner Sam Patel** seconded, and the motion passed (6-0).

**PUBLIC HEARING: APPLICATIONS FOR TRANSFER OF EMERGENCY
WRECKER LICENSE AND ZONE (ANCHOR TOWING & RECOVERY)**

Director McQuiston reported that applications for the transfer of the emergency wrecker license and zone assigned to Anchor Towing & Recovery had been received from A. B. Collier Wrecker Service owner David Dunn, Dad's Towing owner Jim Mitchell, and Victory Towing owner Daniel Adugna.

John Stancil, owner of Anchor Towing & Recovery appeared. He stated that he wanted to sell his business to Mr. Dunn., and requested that the Commission approve the transfer of his license to A. B. Collier. He stated that he was prepared to continue to operate the zone if this was not approved.

Mr. Dunn appeared and provided a packet to Commissioners. He stated that he intended to operate the zone from the storage lot location used by Anchor, and to paint his trucks in a different color from the A. B. Collier trucks so there would be no

confusion between his A. B. Collier trucks and those operated by the new business, designated as A. B. Collier North. He asked Inspector Bowling to comment on his observations of operations at A. B. Collier; the Inspector responded with a favorable report, and noted that A. B. Collier had a GPS dispatch system that enabled them to effectively monitor their vehicles and response times. In response to a question from **Commissioner Jennifer Brundige**, Mr. Dunn emphasized that the wreckers assigned to each zone company would not be used to operate for the other zone company.

Mr. Mitchell appeared and provided a packet of materials. He stated that he was operating only half of a zone, and recounted how the Commission had split the former Nashville Towing & Recovery zone between Anchor Towing & Recovery and Dad's Towing. He showed on a map how the two zones were connected, and emphasized that a reconstituted zone could be supported from Dad's current storage lot. He described the lot, stated that his Class C drivers had been certified or were currently attending certification training, and spoke about the company's Class C Rotator and airbags. He stated that the company had struggled to invest in these improvements, but that they had proved to be invaluable. He stated that, if his application was approved, his intention was to operate the reconstituted zone from his current storage lot as Dad's Towing. He added that he would be willing to hire any of Anchor's permitted employees. **Chair Helen Rogers** asked about his willingness to make a business deal with Mr. Stancil. Mr. Mitchell responded that he had met with Mr. Stancil in an effort to make a deal. He cited a willingness to consider the wrecker equipment operated by Anchor, but stated that the dispatch office and lot were not suitable.

Vice Chair Brian Winfrey asked if it was possible to transfer a license to one company if a business deal had already been made with another company. Director McQuiston stated that the purpose of the public hearing was to consider applications for transfer, and not simply to endorse a business deal. **Chair Rogers** noted that Mr. Stancil had expressed a preference for a transfer to A. B. Collier. Discussion followed on interpretation of the Code section 6.80.545.D.

Chair Rogers asked Mr. Adugna to appear. He stated that he was applying to operate the zone, and that his company Victory Towing had been licensed as a general wrecker company since 2007. He stated that if his application was approved he had already identified a lot which could be permitted for a wrecker company storage lot, and which could hold 40 vehicles.

Chair Rogers invited public comment.

Leon Kimble spoke in support of Mr. Dunn's application.

Jose Hall, Dad's Towing employee, spoke in favor of Mr. Mitchell's application.

Buddy Eddy, Dad's Towing employee, spoke in favor of Mr. Mitchell's application.

Chase Mitchell, Dad's Towing employee, spoke in favor of Mr. Mitchell's application.

Kim Wright, Dad's Towing employee, spoke in favor of Mr. Mitchell's application.

There was no other public comment, and the public hearing was closed.

Commissioner Brundige stated that she had reviewed the Commission's decision – included in the Commissioner's packets – to split the Nashville Towing & Recovery zone between Anchor Towing & Recovery and Dad's Towing. She stated that after looking at the road network it did not make sense to have divided the zone.

Director McQuiston noted that the economic recession had also affected the zone licensees; some contraction in the number of companies was to be expected, and had already occurred. He then asked Mr. Dunn how long it would take him to become operational with A. B. Collier North, if approved. Mr. Dunn responded that it would take only a short time.

Vice Chair Winfrey returned to the question of interpretation of the Code, and whether it would be appropriate for the Commission even to consider transferring the license against the business interests of Anchor Towing. Director McQuiston referred to the last sentence of section 6.80.545.D: "Other applicants for the zone assignment will be charged a nonrefundable fee of two hundred fifty dollars," and suggested that consideration of other applicants was significant in determining the Commission's role. **Chair Rogers** stated that it appeared to be a risk accepted by the company owner, and that it could be possible for the Commission to find no applicant acceptable. Director McQuiston recommended that the Commission get an opinion from legal advisor Ms. Costonis.

Following a short recess, Ms. Costonis stated that based on a review of Code Section 6.80.545 as a whole, it appeared that the Code gave the Commission

latitude in making a decision about assignment of an emergency wrecker zone, as long as adequate notice that assignment of the zone was to be considered at a public hearing was posted in advance, and the commission determined the assignment to be appropriate to serve the traffic and safety needs of the community, and divided the emergency wrecker business equitably among those persons licensed to provide emergency wrecker service. She also noted that the specific allowance in Code Section 6.80.545.D for other applicants to apply supported the conclusion that other applicants contending for the transfer of the assignment was contemplated in that Metro Code section.

Discussion followed about the road network in the zone and the Code section's implications for future assignment of zones.

Vice Chair Brian Winfrey moved to approve the transfer of the Anchor Towing & Recovery license and zone to A. B. Collier. There was no second, and the motion failed.

Vice Chair Brian Winfrey moved to approve the transfer of the Anchor Towing & Recovery license and zone to Dad's Towing. **Commissioner Jennifer Brundige** seconded, and the motion passed (5-0, with one abstention).

APPLICATION FOR BOOTING SERVICE LICENSE: PARKING ENFORCEMENT, LLC

Director McQuiston reported that this was a hearing on an application by Parking Enforcement LLC to renew its booting service license, which was to expire on March 24, 2012. He noted that the company had been licensed for two years and had submitted this application to renew on February 28, 2012. He stated that the application was being forwarded to the Commission for decision because staff had received a complaint in January; and investigation showed that Parking Enforcement had executed a contract to boot from a parking lot at the Fiesta Azteca restaurant, which did not qualify as an attended or unattended commercial parking lot; and had then booted a vehicle parked on that lot. He provided copies of the applicable sections of Metro Code Chapter 6.81, and noted that booting was allowed only on lots or in garages which were used for the temporary storage of cars or trucks for a fee.

Terry Johnson appeared for Parking Enforcement. He stated that the original ordinance regulating booting had not made the distinctions clear, and as a result the company had not known that it could not perform booting at the Fiesta Azteca lot. He stated that the company had reimbursed the money to the complainant, and was no longer booting at the lot.

Chair Helen Rogers stated that she was familiar with the area, and that illegal parking there was a common problem. **Commissioner Tom Turner** asked if the company had been patrolling the lots, looking for violators; Mr. Johnson responded that the company operated a pay-for-parking lot nearby. He restated that the company was not booting at the Fiesta Azteca lot anymore. Inspector Lawhorn stated that Parking Enforcement had been very cooperative and professional in responding to the complaint. **Commissioner Turner** stated that he would expect the company to check its records and ensure that any others who had been booted at the lot were reimbursed.

Commissioner Tom Turner moved to approve renewal of the company's license. **Commissioner Jennifer Brundige** seconded, and the motion passed (6-0).

APPLICATIONS FOR WRECKER DRIVER PERMITS:

Robert Campbell: Mr. Campbell failed to appear. **Commissioner Jennifer Brundige** moved to disapprove the application. **Vice Chair Brian Winfrey** seconded, and the motion passed (6-0).

Trinity Vittitoe: Mr. Vittitoe failed to appear. **Commissioner Jennifer Brundige** moved to disapprove the application. **Vice Chair Brian Winfrey** seconded, and the motion passed (6-0).

Edward Marks: Mr. Marks appeared. Director McQuiston reported that Mr. Marks had applied for a wrecker driver permit on February 21, 2012, to drive for Tow Pro. The director provided a copy of Mr. Marks' application and background check report, which revealed convictions for reckless driving, stalking, and reckless endangerment. **Chair Helen Rogers** questioned Mr. Marks about his most recent conviction for reckless driving; Mr. Marks responded that it had to do with something blowing out of his pickup truck. **Chair Rogers** asked if there was someone from Tow Pro to appear with Mr. Marks; no representative appeared in support of his application. **Commissioner Sal Hernandez** moved to disapprove the application without prejudice. **Vice Chair Brian Winfrey** seconded, and the motion passed (6-0).

WRECKER COMPANY DISCIPLINARY HEARING: TOW PRO

Director McQuiston reported that this was a disciplinary hearing for two separate incidents, both involving Tow Pro wreckers being driven by drivers who did not have wrecker driver permits. He stated that Roadmaster d/b/a Tow Pro – partners Douglas Williams and David Williams – was licensed as an emergency wrecker service, and at the time of the incidents the corporation was licensed as Tow Pro, Inc.

The director reported that the first incident was on July 18, 2011, when driver Ronnie Caldwell drove a Tow Pro wrecker and picked up a vehicle from Chapman's Wrecker Service. He stated that at that time Mr. Caldwell did not have a wrecker driver permit. He referred to exhibits provided by Mr. Graham, owner of Chapman's Wrecker Service. He also referred to documents from Mr. Caldwell's driver's permit file which indicated that Mr. Caldwell's last permit had expired at the end of 2010.

Mr. Graham appeared. He stated that on the date of the incident a Tow Pro driver came to pick up a car. He stated that it was his policy to check to see if wrecker drivers had permits before he would release vehicles to them, and that he had found that Mr. Caldwell did not have a permit. Mr. Graham stated that he had his son print out a picture of the wrecker from the security system camera.

David Williams, partner in Roadmaster d/b/a Tow Pro, appeared with Michael McGovern, attorney. Mr. McGovern stated that the company had been an emergency wrecker service for over twenty years, and that the Williams' had been operating the company since 2000. Mr. McGovern stated that in addition to emergency towing the company did other work – including work outside of Davidson County. He stated that at the time of the incident Tow Pro had a contract to pick up wrecked vehicles for Copart in Lebanon. He presented information on Tow Pro's system to ensure that all drivers had files which included permits. **Chair Helen Rogers** asked him to address the charge. Mr. McGovern stated that the system was important to understand. **Chair Rogers** asked him to make his point as briefly as possible. Mr. McGovern stated that, in addition to the information kept in the drivers' files, the company maintained a notebook which contained information on all current drivers – which included the driver's permits. He explained that in 2011 the company policy was that the company would not hire a driver to work from point to point in Davidson County until he had applied for a wrecker driver permit. He stated that the application process usually took a few days; in the meantime, the company would put the driver to work on the Copart contract outside of the County. He noted that this was no longer the practice, and that now the company would not allow a driver to operate at all without a wrecker driver permit. He explained that the company also had a system to remind their drivers to renew their permits. He presented Mr. Caldwell's company file, and noted that Mr. Caldwell had received a permit in 2009. He stated that Mr. Caldwell had applied to renew his permit in 2010, but simply did not pick it up. He stated that Mr. Caldwell had assured the company that he had taken care of his renewal; as a result, the company believed that he had his permit. He stated that the company fired Mr. Caldwell when they learned that he had operated without a permit. He added that Mr. Caldwell's folder also noted that he had quit in March 2010, and had been re-hired in May 2010. Mr. McGovern stated that the reason he had presented such detailed information was to assure the Commission that the incident was not indicative of a lack of concern on the part of the company. **Chair Rogers** asked if there was anything else to be presented related to the incident involving Mr. Caldwell. Mr. McGovern stated that the record included a receipt showing that Mr. Caldwell had applied and paid for his background check.

Director McQuiston stated that the company was required to ensure that drivers had permits and that there was no “point to point” distinction related to the requirement for a wrecker driver permit. He stated that Mr. Caldwell had paid for a background check, but had not paid for nor picked up his permit. The director noted that in August 2006, after police had cited three Tow Pro drivers for operating wreckers without permits, the Commission had held a show-cause hearing, and had ordered that a letter be placed in the company’s file, directing that any similar incidents would automatically be placed on the Commission’s agenda for consideration of further action. In response to questions from Mr. McGovern, the director explained notations and initials on Mr. Caldwell’s application form.

Chair Rogers asked that copies presented by Mr. McGovern of the company’s file and notebook be made for the record.

Director McQuiston stated that on July 22, 2011 Metro Police Officer Christopher Augustin had investigated an accident at a gas station on Brick Church Pike. The director provided a crash report prepared by the officer which revealed that a Tow Pro wrecker driven by Mark Bain had damaged a fuel pump when the car he was towing struck the pump. He also provided a copy of Mr. Bain’s application for a wrecker driver permit, submitted on July 21, 2011 – which also indicated that Mr. Bain had not been issued a permit when he had the accident.

Officer Augustin appeared. He reported that he had identified and spoken to the wrecker driver at the incident scene. He described the wrecker and the findings of his investigation. **Chair Helen Rogers** asked if the driver had a wrecker permit. Officer Augustin responded that he had not been shown a permit, but was shown the driver’s license.

Mr. McGovern stated that this had been Mr. Bain’s first day on the job; that he had a class A driver’s license; and that this incident had occurred during the period when Tow Pro was hiring drivers and allowing them to go out of the county, but not to do point-to-point driving within the county. He stated that Mr. Bain had gone to Kentucky to pick up a vehicle as part of Tow Pro’s contract with Copart, and was on his way back when he stopped for fuel. He noted that as a result of the accident, Mr. Bain had been fired. Mr. McGovern emphasized that this incident had occurred when Tow Pro was allowing unpermitted drivers to work outside of Davidson County, and before they had implemented the new requirement for all drivers to have wrecker driver permits.

Director McQuiston stated that Mr. Bain’s background check report had not been received when the incident occurred. The director explained notes he had written on the bottom of Mr. Bain’s application. He stated that he had received the background check results a few days after the application had been submitted, and that he initially had approved Mr. Bain for a permit; but added that when he learned that Mr. Bain had been involved in an accident he had annotated that a permit should not be issued.

Mr. McGovern asked to present a closing statement. **Chair Rogers** stated that unless he was going to present something new, it would not be appropriate. Mr. McGovern stated that it was Tow Pro’s position that there had been no violation in Mr. Bain’s situation. He stated that Tow Pro, on the advice of counsel, did not believe the driver was subject to the ordinance requirements because he was not towing from point to point in Davidson County. **Chair Rogers** argued that point to point did not apply. Mr. McGovern clarified that in the Bain case his client had based their decision on the advice from counsel, but the Caldwell case had been a case of a mistake being made – which had been corrected. Mr. McGovern stated that he would have preferred to have Mr. Caldwell and Mr. Bain present under subpoena because under oath both would have confirmed everything that had been presented. **Chair Rogers** asked if the case had not been granted a continuance in order for him to get subpoenas. He stated that he had been unable to get them. Ms. Costonis stated that the request had been made, but the question had been raised about whether blank subpoenas could be issued by a commission. **Chair Rogers** asked why they would need to be issued as blank subpoenas, when it was known who would be required to appear. Ms. Howard stated that it had been months since Mr. McGovern had been offered the subpoenas, but he did not provide any names. Director McQuiston stated that it did not appear that the testimony of the two drivers would make any difference to the case for Tow Pro.

Mr. McGovern asked for consideration on sanctions. Following a short recess, Ms. Costonis reported that the Commission could impose a fine.

Following discussion, **Chair Rogers** asked the Commissioners to consider whether there was a finding in the incident involving Mr. Caldwell.

Commissioner Curt Wallen moved to find a violation by Tow Pro, and to suspend the license of Roadmaster d/b/a for thirty days. There was no second, and the motion failed.

Commissioner Sal Hernandez moved to find an infraction, to fine the company \$50, and to suspend the company's license for seven days. There was no second, and the motion failed.

Commissioner Jennifer Brundige moved to find that there had been a violation of Metro Code Section 6.80.310, because the driver was operating without a permit; and a violation of Metro Code Section 6.80.320; and to suspend the company's license for thirty days. **Commissioner Curt Wallen** seconded, and the motion passed (3-1).

Chair Rogers asked the Commissioners to consider whether there was a finding in the incident involving Mr. Bain.

Commissioner Jennifer Brundige moved to find that there had been a violation of Metro Code Section 6.80.310, because the driver was operating without a permit; and a violation of Metro Code Section 6.80.320; and to suspend the company's license for thirty days, to run concurrently with the other suspension. **Commissioner Curt Wallen** seconded, and the motion passed (4-0).

Chair Rogers stated that the Commission needed to make a decision about how the Tow Pro zone would be supported during the period of the suspension.

Commissioner Sam Patel moved to authorize Director McQuiston to make arrangements for assignment of the zone during the suspension period. **Vice Chair Brian Winfrey** seconded, and the motion passed (4-0). Director McQuiston announced that the effective date for initiation of the temporary reassignment of the Tow Pro zone would be March 29, at noon, in order to avoid disruption during peak traffic hours.

OTHER BUSINESS

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

ATTEST:

Brian E. McQuiston
Director-Executive Secretary

APPROVED:

Helen S. Rogers
Chair