

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

**Minutes of  
October 26, 2010**

The Metropolitan Nashville-Davidson County Transportation Licensing Commission (the "Commission") met in regular session on this date at the Justice A. A. Birch Building. The Commissioners present were Vice Chair Mary Griffin and Commissioners Jennifer Brundige, Tom Turner, and Ed Whitmore (4). Also attending were Metro Legal advisor Corey Harkey; Commission staff members Walter Lawhorn, Milton Bowling, David Deckard, Lisa Steelman, and Kimitha Braden; and Brian McQuiston, Director-Executive Secretary to the Commission.

**Vice Chair Mary Griffin** 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 September 28, 2010 meeting were approved.

**AGREED ORDER: DUKE'S WRECKER SERVICE**

Director McQuiston presented an Agreed Order on a settlement between the Commission and Duke's Wrecker Service related to an appeal filed following the Commission's decision at a disciplinary hearing held on September 22, 2009. He stated that the agreement had been reached in order to avoid the delay, expense, and uncertainty of litigation; and he recommended Commission approval of the Order. He noted that Duke's Wrecker Service was agreeing to a one-year probation, was agreeing not to perform nonconsent towing in Davidson County, and was waiving the option to oppose the reinstatement of the 120-days suspension if it violates nonconsent towing regulations in the future.

Following discussion, **Commissioner Jennifer Brundige** moved to approve the settlement agreement and to give the Chair the authority to sign the Agreed Order. **Commissioner Tom Turner** seconded, and the motion passed (3-0).

**WRECKER COMPANY DISCIPLINARY HEARING: WEST NASHVILLE WRECKER SERVICE**

Director McQuiston reported that this was a hearing in response to a complaint received from Anthony Corley, whose car was towed from private property without his consent by West Nashville Wrecker Service; and he noted that both sides were represented by legal counsel. The director stated that Mr. Corley's complaint alleged nonconsent towing violations by West Nashville Wrecker Service. He noted that many of the claims by both parties were being directly disputed.

Mr. Corley appeared with attorney Adam Dread. Mr. Dread stated that Mr. Corley had parked his car behind Sam's Sports Bar on the night of January 15; when he returned the next morning the car was gone.

Michael McGovern, attorney representing West Nashville Wrecker Service, noted that the court reporter's equipment was not working, and requested that the hearing be deferred until it could be fixed. **Vice Chair Mary Griffin** directed a temporary postponement.

## **PUBLIC HEARING: APPLICATION TO TRANSFER EMERGENCY WRECKER LICENSE**

Director McQuiston reported that the Commission had received an application from Joseph Michael Martin for the transfer of the emergency wrecker service zone license assigned to Bailey's Service Center at the September meeting, and that since that time no other individuals or companies had applied for the license. He stated that the Bailey family desired to sell their business to Mr. Martin. The director stated that public notice had been provided.

Randy Bailey appeared. He thanked the Commission for allowing Bailey's to serve for 37 years. He stated that he desired to sell the company to Mr. Martin. He stated that the agreement included maintaining all of the current equipment and employees. **Vice Chair Mary Griffin** expressed appreciation to the Bailey family.

Mr. Martin appeared. He stated that he had met with all of the employees, and had a ten-year lease on the property. **Commissioner Jennifer Brundige** asked if the contract for the sale had been finalized. Mr. Martin stated that if the Commission approved the transfer the deal would be closed on October 29 and he would begin operations on November 1. **Commissioner Ed Whitmore** asked if the name of the business would change. Mr. Martin responded that the legal name would be Bailey's Wrecker Service, Incorporated. He stated that the employees would also retain their benefits.

**Commissioner Tom Turner** moved to approve the transfer of the license and zone to Mr. Martin. **Commissioner Jennifer Brundige** seconded, and the motion passed (3-0).

## **TRANSFER OF COTTON'S TOWING**

Director McQuiston reported that the business deal between Cottons Towing owners Robert and Joyce Dean and the prospective buyers Alex Miller and Kio Phomthisene had fallen through; he provided Commissioners with copies of signed affidavits to that effect. **Commissioner Tom Turner** moved to rescind the transfer of the license because the conditions of the Commission's April 27, 2010 approval had not been met. **Commissioner Jennifer Brundige** seconded, and the motion passed (3-0).

## **APPLICATION FOR WRECKER DRIVER PERMIT: PHILLIP COTTON**

Mr. Cotton appeared with Jennifer McCoy, counsel for Mr. Cotton and Nashville Limo Bus. She stated that Mr. Cotton had been an exemplary employee for over two years. Director McQuiston reported that Mr. Cotton had applied for an initial wrecker driver

permit on September 29. He stated that Nashville Limo Bus had been cited for operating without a license, and had only recently obtained a license to operate a wrecker service. He provided a report on Mr. Cotton's criminal background check, and noted that it included a number of drug-related felony convictions. Referring to the statement by Ms. McCoy about Mr. Cotton's exemplary performance in the past two years, the director noted that his record included a 2009 conviction for reckless driving and a simple assault arrest that same year. Inspector Bowling stated that he had issued citations to Nashville Limo Bus for operating a wrecker company without a license two years before, but the company had continued to operate without a license until he had written citations to Mr. Cotton and another company driver in recent months.

**Vice Chair Mary Griffin** asked Mr. Cotton about his felony convictions. Mr. Cotton stated that he had served his sentences and was on parole. **Vice Chair Griffin** asked if the parole included random drug testing; Mr. Cotton responded that it did, and that his employer also conducted random drug tests. **Commissioner Tom Turner** asked how much longer he would be on parole; Mr. Cotton responded that his parole period was until 2017. **Vice Chair Griffin** asked about an arrest for reckless endangerment. Mr. Cotton stated that he had attempted to perform a repossession at a gas station; because of the location he had been charged with reckless endangerment, which was later reduced to reckless driving.

**Vice Chair Griffin** asked if the company owner was present. Jan Miles appeared. She stated that she was the office manager for Nashville Limo Bus. She stated that Mr. Cotton had not been driving a wrecker when he was cited during the repossession incident. She stated that the company had been informed that they did not have to possess a license if they were not using the wrecker for hire. **Vice Chair Griffin** asked how often the company screened Mr. Cotton for drugs; Ms. Miles responded that they were doing that once per year. She stated that she also talked to his probation officer. She added that Mr. Cotton supervised other drivers who drove cars for the company's business. Director McQuiston asked Ms. Miles who she was required to notify if they repossessed a vehicle; she responded that the company was required to notify the Metro Police.

**Commissioner Jennifer Brundige** moved to approve Mr. Cotton for a wrecker driver permit, restricted to Nashville Limo Bus, with the conditions that the employer perform quarterly random testing and provide the results to the director. **Commissioner Tom Turner** seconded, and the motion passed (3-0).

### **WRECKER COMPANY DISCIPLINARY HEARING: WEST NASHVILLE WRECKER SERVICE (continued)**

Mr. McGovern reported that the court reporter's equipment could not be repaired, and agreed to continue the disciplinary hearing.

Mr. Dread stated that Mr. Corley's vehicle, which also contained study materials and donated charity items, was missing when he came to pick it up on January 16, 2010. He stated that Mr. Corley had immediately contacted the owner of Sam's Sports Bar, who informed him that he had not authorized its removal. He stated that Mr. Corley called the Impound Lot, and also called every wrecker service listed in the phone book. He stated that on January 17 Mr. Corley filed a stolen vehicle report with the police. He stated that for several weeks Mr. Corley continued to call wrecker companies to try to

locate his car; and on February 22 purchased another vehicle. He stated that on March 26 Mr. Corley received a certified letter from West Nashville Wrecker Service, informing him that they had had his car since January 22, and that he could claim it upon payment of the towing and storage fees, or it would be auctioned. He stated that West Nashville Wrecker Service had not notified the Impound Lot, as required by law. He stated that there was also no authorization to tow the vehicle. He stated that after contacting the attorney representing West Nashville Wrecker Service, an affidavit was produced; signed by a representative from South Street, a restaurant over a mile from where Mr. Corley had left his car. He referred to an affidavit, dated April 13 and signed by Otis Smith, which stated that Mr. Smith had authorized West Nashville to tow the vehicle from South Side restaurant on January 22, and was providing a duplicate written authorization for that tow. **Vice Chair Mary Griffin** noted that Commissioners had copies of two affidavits in their meeting packets, and that this was the first of those. Mr. Dread stated that he had then contacted Mr. Smith, an employee at South Street restaurant. He referred to the second affidavit, also signed by Mr. Smith and dated May 13; and noted that in this second affidavit, Mr. Smith recanted his earlier statement that he had signed a written authorization for the tow.

Mr. McGovern stated that companies who perform nonconsensual tows are required to call those tows into the Impound lot within one hour of the tow. He explained the procedures followed by West Nashville Wrecker Service. He showed Commissioners a log book used by to record nonconsent tows. He stated that the logs were available for inspection, and that they included detailed information for all vehicles towed and the control numbers received when they reported them to the Impound Lot. He stated that these logs clearly showed that West Nashville had recorded control numbers on hundreds of these tows. Mr. McGovern admitted that there was a mistake made in this particular case; but he stated that the company's policies and practices were in place to ensure compliance with the requirements of the law. He also explained the procedures required by State law for wrecker companies to notify vehicle owners and lien holders after towing. He stated that the process, which required sending a form to the State to identify the owner and lien holders, was very slow at the State; often taking weeks or months before the wrecker companies were provided with that information. He stated that the companies were then required to send certified letters to the vehicle owners and lien holders; these advised them of the tow and how to obtain release of the vehicle, including any towing and storage fees required. He stated that the delays at the Department of Revenue were frustrating to both the towing companies and the vehicle owners. Referring to the tow of Mr. Corley's vehicle, Mr. McGovern pointed out that it was not towed on January 15 or 16 from Sam's Sports Bar, but was towed on January 22 from the South Street restaurant. He stated that Mr. Corley had been drunk on the night of January 15, and that was the reason he had not driven home. Mr. McGovern stated that he did not know how Mr. Corley's vehicle got to South Street, but that several days later the restaurant had called to have the car towed. He noted that the driver's call sheet and the company's GPS tracking report on the tow truck proved that the vehicle had been towed on January 22 from the South Street restaurant. He added that the vehicle did not appear to have been entered and was locked when it was picked up. Referring to the authorization for the tow, Mr. McGovern stated that the Commission had two competing affidavits from Mr. Smith. He stated that Mr. Smith had authorized many tows by West Nashville Wrecker Service, and showed the Commissioners a tow slip signed by Mr. Smith authorizing another tow. Referring to the Impound Lot

notification, Mr. McGovern stated that when the vehicle was brought to the company's storage lot, the Impound Lot was called by the dispatcher, but no one answered the phone; he noted that this communications problem was a common predicament for all wrecker companies. He stated that in this case it was also time for shift changeover; the dispatcher left the tow record for the next dispatcher to complete the call for the Impound Lot control number, but for some undetermined reason the next dispatcher did not make the call. He stated that, because of the telephone difficulties at the Impound lot and the mistake made in the shift change of dispatchers, the resulting failure to get the control number was an isolated case resulting from an unintentional error. Mr. McGovern concluded that the company had waived all the storage fees.

**Vice Chair Griffin** reminded both attorneys that the Commission would not comment on financial damages. She stated that the issue before the Commission was whether there had been a violation of the code – specifically, the requirement to notify the Impound Lot. Mr. McGovern stated that he agreed, adding that he appreciated the opportunity to address the other problems with the State reporting and notification requirements and process, which his client had followed.

Mr. Dread responded that the company also had not obtained proper authorization before they towed Mr. Corley's vehicle.

**Commissioner Ed Whitmore** asked Mr. McGovern how the company could be certain when the vehicle was towed, without having the copy of the tow slip. Mr. McGovern cited the driver's work log, the GPS record of the tow truck's whereabouts, and the other tows by the driver on January 22 listed into the company log. Inspector Bowling stated that he had checked these records when he conducted his investigation. Mr. Dread stated that he had obtained the second affidavit from Mr. Smith after that initial investigation. **Commissioner Tom Turner** asked about the tow slip authorizing the tow. Director McQuiston stated that during the investigation into the complaint, the replacement tow slip and the first affidavit signed by Mr. Smith, with the GPS information on the wrecker, had been accepted as proof that the tow had been properly authorized.

**Commissioner Jennifer Brundige** moved to find West Nashville Wrecker Service in violation of the requirement to notify the Impound Lot, and to place the company on probation for sixty days. There was no second, and the motion failed.

**Commissioner Turner** moved to find West Nashville Wrecker Service in violation of the requirement to notify the Impound Lot, and to place the company on probation for six months. **Commissioner Whitmore** seconded, and the motion passed (3-0).

#### **OTHER APPLICATIONS FOR WRECKER DRIVER PERMITS:**

**Carl Heard:** Mr. Heard did not appear. **Commissioner Tom Turner** moved to disapprove the application. **Commissioner Jennifer Brundige** seconded, and the motion passed (3-0).

**Sherman Howard:** Mr. Howard did not appear. **Commissioner Tom Turner** moved to disapprove the application. **Commissioner Ed Whitmore** seconded, and the motion passed (3-0).

**Phillip Kirby:** Mr. Kirby did not appear. **Commissioner Tom Turner** moved to disapprove the application. **Commissioner Jennifer Brundige** seconded, and the motion passed (3-0).

### **TAXICAB DRIVER SHOW-CAUSE HEARING: ABDIAZIZ MAHDI**

Director McQuiston reported that Mr. Mahdi had held a taxi driver permit since September 2004. He stated that when Mr. Mahdi applied to renew his permit in September 2010, he was required to get a 5-year update on his fingerprint-based background check; the report revealed drug-related charges in 2006, which Mr. Mahdi did not disclose on his applications submitted in September 2006, 2007, 2008, or 2009. The director stated that when questioned in September 2010 about his failure to disclose, Mr. Mahdi claimed not to have understood the requirement, citing language difficulties. The director noted that if Mr. Mahdi had disclosed the charges in September 2006 he would have been required to appear.

John Webb, attorney, appeared with Mr. Mahdi. He stated that his client was from Somalia, and language difficulties had played a part in his failure to disclose. He stated that the cases had been resolved under the State's diversion statute. **Vice Chair Mary Griffin** stated that she was familiar with the statute, but asked that he refer to Mr. Mahdi's failure to disclose the arrests. Mr. Webb stated that his client had not yet applied to have the record expunged, but had completed the probationary period. **Vice Chair Griffin** noted that the record had not been expunged, so the applicant should have disclosed. **Commissioner Tom Turner** noted that the charges had not been expunged for the four years during which he had not disclosed on several applications. Director McQuiston pointed out that a large percentage of all permitted taxi drivers were from Somalia and understood the requirement for disclosure. He stated that applicants had to pass an English language proficiency test to obtain a permit, and had to sign that they had read and understood the ordinance. **Vice Chair Griffin** asked the director if it would help Mr. Mahdi to go through the Taxi Pro class. Director McQuiston responded that it would be an appropriate requirement. He noted that Taxi Pro, which was administered by the Tennessee Foreign Language Institute, had replaced the earlier language test, and included instruction and testing in English on the ordinance, geography, and other key subjects. He stated that Taxi Pro sessions were held at least monthly for new driver applicants. The director recommended that Mr. Mahdi be required to attend the course. **Commissioner Ed Whitmore** asked how long the Taxi Pro course was; Director responded that it was a three-day program. He explained that there was a pre-test to determine if the applicants could meet the English language proficiency level necessary to understand the instruction. He added that there was training and testing each day, all in English.

**Commissioner Jennifer Brundige** moved to suspend Mr. Mahdi's taxicab driver's permit until he successfully completed the Taxi Pro program. **Commissioner Turner** seconded, and the motion passed (3-0).

### **ELECTION OF OFFICERS**

**Vice Chair Mary Griffin** noted that elections of officers were required by Commission

Rules, and opened the floor for nominations. **Commissioner Tom Turner** nominated **Chair Helen Rogers** and **Vice Chair Mary Griffin** to continue in their current offices. There were no other nominations. **Chair Rogers** and **Vice Chair Griffin** were re-elected to two-year terms.

**OTHER BUSINESS:**

Director McQuiston provided copies of a decal that was to be provided to drivers who successfully complete Taxi Pro, and copies of the recent amendment to the Booting ordinance.

Director McQuiston introduced new Transportation Licensing Inspector David Deckard.

**Vice Chair Mary Griffin** stated that she and **Commissioner Jennifer Brundige** had attended a recent demonstration on vehicle recovery, and recommended that all Commissioners attend a future session.

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

ATTEST:

APPROVED:

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Brian E. McQuiston  
Director-Executive Secretary

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Helen S. Rogers  
Chair