

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

Minutes of

October 28, 2008

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 and Commissioners Jennifer Brundige, Mary Griffin, and Tom Turner (4). Also attending were Legal Advisor Jon Michael; Commission staff members Walter Lawhorn, Milton Bowling 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 September 23, 2008 meeting were approved.

PRESENTATION BY METRO CODES

Chair Helen Rogers noted that there were several wrecker company-related decisions on the Commission's agenda, and that the issue of Codes approval for these companies could be an important consideration.

Inspector Jim Cantrell of the Metro Codes Department appeared and provided information on the storage lot locations of Custom Towing, Anchor Towing & Recovery (Anchor), and Nashville Towing & Recovery (NTR). He stated that Mike Martin had recently applied for and received approval from Codes to operate a wrecker company storage lot at the Custom Towing location, but that neither Anchor nor NTR had approval for their wrecker company storage lots. He noted that Anchor's location had been re-zoned, and the company could not operate a storage lot there unless they obtained the appropriate Use and Occupancy permit. He stated that NTR's location had not been permitted, and therefore the company also could not operate a lot without the U & O permit. He explained that because of the SP zoning restrictions both companies would have to file for a permit through their Metro Council members. He stated that Anchor had initiated that process, but was not aware if NTR had begun the process.

Councilman Walter Hunt appeared on behalf of Anchor owner John Stancil. He explained that the change to require the SP zoning process would enable the improvement of the Dickerson Road area. He stated that he would assist Mr. Stancil through the Planning Commission and the Council process.

Councilman Rip Ryman appeared on behalf of NTR owner Darrell Greer. He stated that he would be assisting Mr. Greer through the SP process. He noted that because of the Planning Commission's schedule and requirements for public hearings, the application would not be able to receive its third reading until the second Metro Council meeting in January 2009.

Councilman Hunt stated that this timeline would also apply for Anchor's application.

Commissioner Tom Turner noted that the second Council meeting would be on January 20, and that the Commission's January meeting would be the following week.

Chair Rogers thanked the Council members and Mr. Cantrell for their information and participation.

PUBLIC HEARING: TRANSFER OF EMERGENCY WRECKER LICENSE AND ZONE

Director McQuiston stated that Brenda Vanderpool, owner of Custom Towing, had decided to sell her business; and that two applications had been received for the transfer of the emergency wrecker license and zone: one from Mike Martin and his wife Margaret, and the other from Jim Mitchell.

Chair Helen Rogers invited Ms. Vanderpool to appear. Ms. Vanderpool stated that she had decided to retire. She stated that she had come to an agreement with Mr. Martin for the sale of her company.

Mike Martin appeared. He stated his intention to operate the zone as a family business completely separate from Martin's Wrecker Service. He stated that he would keep all of the current employees at Custom Towing, and that he was purchasing all of the company's equipment as well. He stated that Custom Towing previously had not obtained a Codes permit, but that he had secured a new permit for the lot during the past week. He added that he had worked out a three-year lease agreement with the owner of the property, and was prepared to execute that lease within hours of approval of his application. He noted that in the 1990's he had operated two zones with separate companies, without any problems. **Chair Rogers** clarified that the new company would be Mike's Custom Towing, and that the zone did not border on the zone operated by Martin's Wrecker Service.

Jim Mitchell, owner of Dad's Towing, appeared. He stated that he had been in business for thirty-eight years, and that he had sufficient staff and a fleet of tow trucks that was large enough to operate a zone. He added that he had two more tow trucks to be added in the next month, which would bring his total to twelve. Director McQuiston asked Mr. Mitchell where he would operate his storage lot, if approved. Mr. Mitchell responded that he would have to operate from his current location until he could obtain a lot within the zone. Director McQuiston noted that the Commission rules did allow for a company to operate from a storage lot outside of its zone, as long as it could satisfactorily cover the zone.

Chair Rogers asked Mr. Mitchell how far his lot was from the zone; he responded that the start of the zone was between eight miles and twelve miles from his lot. He noted that his company currently did business throughout the County. **Commissioner Mary Griffin** asked Mr. Mitchell if his company had sufficient staff and drivers; he stated that he did, and would not have to add positions. **Commissioner Griffin** clarified that Dad's Towing would not need any of the current Custom Towing equipment or employees; Mr. Mitchell responded that he would be open to negotiations to expand his staff and equipment. Director McQuiston stated that both companies were familiar with the requirements for nonconsent towing. Mr. Mitchell noted that his company had been operating on a 24-hours per day/7-days per week basis for some time.

Chair Rogers opened the hearing for public comment.

Thomas Jester, driver for Martin's Wrecker Service, supported the application by Mr. Martin.

Doug Williams, owner of Tow Pro, supported Mr. Martin's application.

Jessie Harris, taxicab driver, suggested that the Commission split the zone, to enable both companies to receive a license. Director McQuiston commented that consideration of re-drawing the zone boundaries would require public notice.

David Dunn, manager of A.B. Collier Wrecker Service, supported Mr. Martin's application. The public hearing was closed.

Commissioner Jennifer Brundige stated that both companies appeared to be exemplary. She noted that the agreement between Ms. Vanderpool and Mr. Martin protected the jobs of employees, and that the arrangements for equipment and storage lot transfer would enable an easy transition. She moved to transfer the emergency wrecker license and zone from Custom Towing to Mike's Custom Towing. **Commissioner Griffin** seconded, and the motion passed (3-0). The Commissioners expressed appreciation to both Mr. Martin and Mr. Mitchell. **Chair Rogers** offered best wishes to Ms. Vanderpool.

STAFF REPORT ON STATUS OF EMERGENCY WRECKER ZONE: NASHVILLE TOWING & RECOVERY

Director McQuiston referred to the minutes of the September 23, 2008 show-cause hearing for Nashville Towing & Recovery (NTR), and noted that the Commission had established a deadline of October 13 for owner Darrell Greer to satisfy the commission staff that his company was able to re-assume responsibility for all emergency towing in the zone. He noted that the Commission had temporarily assigned light-duty towing in the zone to adjacent emergency wrecker zone companies.

The director stated that Mr. Greer had provided a current insurance certificate, and that he now had a light-duty wrecker. He reported that Mr. Greer did not have a Codes permit for his storage lot at his 1216B Dickerson Road business address, which effectively prohibited him from operating an emergency wrecker service from that location. The director concluded that NTR was therefore not capable of resuming its emergency towing responsibilities. **Chair Helen Rogers** asked if light-duty emergency calls in the zone were being handled by the other emergency wrecker companies. The director responded that they were; but that the issue before the Commission was to determine whether NTR should continue to hold the license without an approved Codes permit. **Chair Rogers** noted that, based on information provided at this meeting, approval of that permit could not be received until late January.

Mr. Greer appeared with attorney Michael McGovern. Mr. McGovern agreed that the facts presented by Director McQuiston were accurate. He stated that when the company had committed to meeting the October 13 date, his client had not known that there was a Codes permit/zoning issue. He stated that the only course of action now available to Mr. Greer was to obtain the Codes permit; this could not be finalized until late January. He noted that the zone appeared to be serviced adequately with the temporary arrangement, and requested that the Commission preserve the status quo until the Codes process could be completed. Mr. McGovern added that the owner of the property had previously applied for a Codes permit to operate a wrecker company there, but had not followed up to complete the process.

Director McQuiston expressed concern about where NTR was towing heavy vehicles in the meantime. He clarified that the Commission must be notified about any storage lot used, and that any alternative lot would also require the appropriate Codes permit.

John Stancil, owner of Anchor Towing & Recovery (Anchor), appeared. He provided information related to an August 2007 business agreement with Mr. Greer. Director McQuiston stated that the application by Anchor was to be heard later in the meeting. **Chair Rogers** stated that these did not appear to be relevant to the issue currently under consideration.

Mr. Greer stated that Tow Pro had agreed to allow NTR to store vehicles at its facility until a Codes permit was issued. Mr. McGovern added that West Nashville Wrecker Service had extended a similar offer.

Discussion followed on the possibility of temporarily transferring the zone license to other wrecker companies. Director McQuiston clarified that the Commission could consider a temporary assignment of responsibilities, as it had already done; or it could declare the zone available for permanent transfer of the license, following the procedures for applications and public hearings as defined in the ordinance.

Commissioner Mary Griffin moved to continue the temporary assignment of light duty towing in the zone to Brown's Wrecker Service and to Gary's Garage and Wrecker until the January 27, 2009 Commission meeting. **Commissioner Jennifer Brundige** seconded, and the motion passed (3-0).

APPLICATION FOR GENERAL WRECKER LICENSE TO PERFORM NONCONSENT TOWING: ANCHOR TOWING & RECOVERY

John Stancil, owner of Anchor Towing & Recovery, appeared before the Commission. Director McQuiston stated that, following the September 23 meeting, Mr. Stancil had applied for a general wrecker license. The director stated that he had approved that application; however, because of the difficult history involving its operation as "Anchor NTR" during the past year, the application submitted by the company to perform nonconsent towing from private property was referred to the Commission for decision. The director stated that he would recommend approval, except for the fact that the company did not have the appropriate Codes permit. **Chair Helen Rogers** clarified that the expected resolution on the Codes permit would not be possible until January.

Following discussion, **Commissioner Tom Turner** moved to authorize the staff to approve the application by Anchor Towing & Recovery to perform nonconsent towing when Codes approved a permit for the company's storage lot. **Commissioner Mary Griffin** seconded, and the motion passed (3-0).

APPLICATION FOR TAXICAB DRIVER PERMIT: JOHNNY OWENS

Director McQuiston stated that Mr. Owens had applied for a taxicab driver permit, and had been issued a temporary permit on September 3 pending receipt of the results of a background check. He stated that the background check had revealed two felony convictions within the past ten years, which made Mr. Owens ineligible for a permit. The director stated that he had suspended the temporary permit, and that Mr. Owens had requested to appeal to the Commission.

Mr. Owens appeared. **Chair Helen Rogers** stated that two felonies automatically disqualified him, and that the Commission could not issue him a permit. Mr. Owens stated that the two felony convictions had resulted from the same arrest, and should therefore be considered as one offense.

Chair Rogers asked Legal Advisor Michael for his input. Mr. Michael stated that, although the court had had the opportunity to treat the offenses as a single charge, it had chosen to treat them as separate charges. **Commissioner Jennifer Brundige** moved to disapprove the application. **Commissioner Mary Griffin** seconded, and the motion passed (3-0).

APPLICATION FOR WRECKER DRIVER PERMIT: SHANNON MIDDLETON

Director McQuiston stated that Mr. Middleton had failed to disclose his complete arrest history on an earlier application, which had been disapproved at the September 23 meeting. He added that Mr. Middleton had submitted a new application, which included a full disclosure. The director recommended approval.

Mr. Middleton appeared with Franklin Flair, owner of Rescue Professionals. **Chair Helen Rogers** asked about citations he had been issued for operating a wrecker without a license. Mr. Middleton stated that as a driver he had not known that his company had not applied for the license.

Commissioner Tom Turner asked about the record of Rescue Professionals during the past year. Director McQuiston stated that the company had not been licensed, and this was the reason Inspector Bowling had twice cited Mr. Middleton. Inspector Bowling added that there had been no complaints.

Commissioner Mary Griffin moved to approve the application. **Commissioner Turner** seconded, and the motion passed (3-0).

CARRIAGE COMPANY DISCIPLINARY HEARING: SUGAR CREEK CARRIAGES

Director McQuiston stated that, following the establishment of a new Commission Rule at the September 23 meeting to prohibit carriage sollicitation downtown, a complaint had been received from another carriage company owner that Sugar Creek Carriage was violating the new Rule. He stated that Inspector Bowling had investigated, and would report his findings to the Commission. He asked Sara Williams, owner of Cumberland Carriage to present her complaint.

Ms. Williams stated that on the Saturday and Sunday following the Commission's decision on the new Rule, she saw James, an employee of Sugar Creek, and several other people standing on the street corners with slips of paper labeled "Sugar Creek" and solliciting rides. She stated that Joey Stanley, a Sugar Creek driver, had parked his carriage on the corner of Second Avenue and Broadway; and that she saw James bring a group to that carriage for rides. Director McQuiston asked Ms. Williams to confirm the dates of the incidents, which her written complaint had specified as September 27 and 28. He also asked if there was a carriage stand at Second and Broadway; she responded that there was not. She provided pictures she had taken with her cell phone, and stated that these showed Mr. Stanley and James. She also provided a copy of a newspaper clipping favorable to Sugar Creek Carriages, and indicated that this had been given to her by employees solliciting at Mike's Ice Cream Shop.

Inspector Bowling reported that he had spoken with other companies' carriage drivers who were working downtown at the time of the incidents. He provided a copy of a statement from driver William Lewis, and stated that Mr. Lewis was present and was prepared to testify. Inspector Bowling stated that while he was downtown conducting his investigation the sollicitors were questioning him and attempting to eavesdrop while he was questioning other carriage drivers. He added that he had to direct two of them to leave the carriage stand.

Mr. Lewis appeared. He stated that he had been at the September 23 meeting, and understood the rules. He stated that on September 27 he had observed James solliciting two passengers on the street, and then took them around the corner to Second Avenue. He stated that he also saw that Sugar Creek had signs on their carriages depicting "Free Carriage Rides" and in small print "with Limo Ride". He stated that a couple told him later that they had asked about the limo rides, and were told that it was busy, but they could get a carriage ride.

Inspector Bowling continued his report. He stated that the week after his conversations with the drivers he had received a number of telephone calls indicating that there was a security guard posing as a state inspector, and who was asking drivers to show him their driver permits and inspecting their carriages. Inspector Bowling stated that he had gone downtown to the carriage stands and met with the individual, who was not with the state, but was a private security guard hired by Johnny Smith, owner of Sugar Creek Carriages. Inspector Bowling stated that the individual told him that he had been asked to come downtown to inspect carriages and check drivers' permits.

Melody Robinson, driver for Southern Comfort Carriage, appeared. She stated that the first time she had seen the security guard he had approached her carriage, asked her for her name, and told her that he was going to be checking for licenses and permits, making sure that drivers followed the rules, and keeping the homeless people from bothering the carriage drivers. She stated that he had then asked "How about if I smacked this horse on the (rear)?"

Samuel Roberts, owner of Hat Creek Carriage, appeared. He related that Sugar Creek owner Mr. Smith had been attempting to intimidate other companies' drivers for some time. Mr. Smith appeared with attorney Martha Child. Ms. Child asked the security guard to testify.

Gary Biggs appeared. He stated that he was licensed as a security officer, working for Hays and Associates. He stated that he had been hired by Mr. Smith to keep the homeless people out of the area. He stated that he was asked to observe Mr. Smith's carriages, and take notes on what he saw. He denied the allegations that he had impersonated an official, stating that he had never asked any carriage driver for anything. He accused Inspector Bowling of intimidating him. **Commissioner Mary Griffin** clarified that he had no standing as a government official, and asked if he carried a weapon. Mr. Biggs responded that he had worked for Mr. Smith as an unarmed guard. Ms. Child asked if he had been asked to observe Mr. Smith's own carriages, to ensure that they were in compliance for lights and so forth; Mr. Biggs stated that he had been asked to observe and document. He added that, even if he was not acting as a security guard, he should be allowed to look at a carriage and document whether or not there was a permit displayed.

Mr. Smith appeared. He stated that the other carriage companies were jealous of him, in part because he has a dog, and because his was the best company. He stated that he and other owners and employees had filed numerous complaints against other carriage companies, but these had not been brought before the Commission. Mr. Smith stated that he had discontinued hiring homeless people to solicit downtown three weeks before the Rule was passed in September. He stated that the people Ms. Williams had identified in her complaint were his sister, his brother-in-law, and two others who had previously been solicitors, but were not working for him on that day. He denied soliciting rides.

Mr. Smith stated that he believed there was a conspiracy against him by other owners. He specifically complained about Mr. Roberts. Ms. Childs asked Mr. Smith about Ms. Williams. **Chair Helen Rogers** interrupted, and noted that these accusations on unrelated charges were neither helpful nor welcome. Mr. Smith stated that he needed to respond to the false accusations. He denied soliciting any business or paying anyone else to solicit business after September 23.

Commissioner Tom Turner referred to the photo provided by Ms. Williams showing a carriage standing on Second Avenue, where there is no carriage stand. Mr. Smith responded that the carriage was standing in an open parking slot, and that there was nothing in the photo to indicate that anyone was soliciting. He stated that all the carriage companies used this parking space when all the carriage stands were full.

Chair Rogers asked Mr. Smith why he had hired a security guard. Mr. Smith responded that Inspector Bowling had told him that he was going to start parking carriages that were out of compliance; and Mr. Smith wanted to ensure that his carriages were in compliance by getting an independent observer. He stated that he knew the security guard had no authority over other companies, and had been specific about that in his instructions. He denied that the guard had done any of the things of which he was accused. **Chair Rogers** asked why he would hire someone to make sure his own carriages were in compliance; Mr. Smith responded that he was concerned because of Inspector Bowling's warning.

Chair Rogers stopped to address Brenda Smith, who was disrupting the hearing, and warned her that she was out of order.

Mr. Smith continued. He stated that following the September 23 meeting he had asked Inspector Bowling if he could continue to have people solicit for his limousine service, and that the inspector had told him that this would not be permissible. He stated that he did not want to risk losing any of his carriages, so he had hired the security guard. He added that he had also hired the guard to be an independent observer, to protect him against false accusations.

Ms. Child asked about another photo. Mr. Smith stated that it showed James, a formerly homeless person who now lived at his farm. He added that the photo did not depict solicitation. Mr. Smith stated that he had given James a handler's permit, and was assisting him with obtaining social security. He stated that he often brought James to Nashville, so that James could socialize with his friends. Referring to Mr. Lewis' observation, Mr. Smith stated that the two passengers had been customers who had already asked him for rides, and he had asked James to show them where the ATM was nearby. Mr. Smith stated that he sometimes had James hold his horses at the carriage stand.

Mr. Stanley appeared. He stated that he had neither solicited nor accepted rides brought by solicitors since he had been working for Sugar Creek. He stated that carriage companies often used the space on Second Avenue for overflow parking when the stands on Broadway were full on weekends.

James Lynch appeared. He stated that he had not solicited rides since September 23. He stated that he did go downtown to visit with friends.

John Collins appeared. He stated that he had formerly solicited for Sugar Creek, but that had been four or five months earlier. Ms. Child asked if he knew Ms. Williams; he responded that Ms. Williams had told him she filed the complaint because Mr. Smith had stolen her driver.

Ms. Child introduced affidavits. These had been already been provided to the Commissioners.

John Graham, owner of Chapman's Wrecker Service, stated that Metro police officer Foster Hite had called him at night a few weeks earlier to get Inspector Bowling's cell phone number, because of problems with the carriage companies downtown.

Inspector Lawhorn asked if the number of carriages was limited. Director McQuiston stated that the number was limited by their licenses, and that there were more carriages than carriage stands.

Director McQuiston expressed concern about the presence of a security guard, and about the advisability of retaining or closing the downtown carriage stands.

Commissioner Griffin moved to place Sugar Creek Carriages on probation for six months. **Commissioner Turner** seconded, and the motion passed (3-0).

ELECTION OF OFFICERS

Chair Helen Rogers and **Vice Chair Duane McGray** were re-elected to their positions for two more years.

OTHER BUSINESS

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

ATTEST:

APPROVED:

Brian E. McQuiston
Director-Executive Secretary

Helen S. Rogers
Chair