

TAXI COMMISSION MEETING
Minutes of the April 19, 2010 meeting

I. CALL TO ORDER

Chair Frank Daggett called the meeting to order at 9:05 a.m.

II. ATTENDANCE

Present: Members: Chair Frank Daggett; Commissioners, James Feehley, and Joel Look; Councilor Robert Lister; Captain Michael Schwartz; City Attorney Robert Sullivan; Jason Page, Code Enforcement Officer and Deputy City Clerk Dianne M. Kirby

Absent: Commissioner Peter Bresciano

III. ACCEPTANCE OF MINUTES FROM MARCH 15, 2010

Commissioner Feehley moved to approve and accept the minutes of the March 15, 2010, Taxi Commission meeting. Seconded by Captain Schwartz and voted.

IV. APPEAL HEARING – Checker Cab

Chair Daggett stated anyone wishing to speak would be able to do so by taking turns.

City Attorney Sullivan suggested, for the record, Jason Page, Code Enforcement Officer briefly recount his findings regarding the New Years Eve incident. Jason Page, Code Enforcement Officer reviewed the information within his February 4, 2010 report. He stated he was contacted by City Attorney Sullivan in January 2010 to look into the facts that were brought up in the Taxi Commission meeting concerning the incident on New Years Eve. He stated after reviewing the taped recording of the meeting, he contacted all relevant parties mentioned in the meeting. He said he attempted to contact the company in Maine that Mr. Goumas stated he leased the vehicles to, but they never returned his calls. He stated he checked with the State of Maine and Lebanon Town Clerk and was told they had no recollection of a company by that name. He said the Town Clerk did state they believed they knew the person he was talking about, but did not know of any livery business. Mr. Page stated in the meeting, Mr. Goumas had stated he owned the vehicles he leased. He said he checked with Enterprise Rental and was told the vehicles were leased to Mr. Goumas and Mr. Nunez personally and they never leased their vehicles for a livery type business. Mr. Page stated he talked to the hotels stated in the meeting, one said they had been contacted by a company that said they were out of New York and were doing a trial run with New Year's Eve as a test run. The Hotel Manager stated Checker Cab left flyers with phone numbers for any questions concerning the test run. Mr. Page stated the telephone number that was left was for NH Checker Cab Company.

Mr. Page said he looked into the complaint letters sent in by our taxi companies and these complaints were verified as to the fact that these vans were not just dropping passengers off in Portsmouth, but were seen picking up passengers in Portsmouth and delivering them to other areas within Portsmouth, which is against the ordinance. He stated he talked to Mr. Goumas over the telephone concerning dispatching of the vehicles and Mr. Goumas stated he was dispatching via cell phones. Mr. Page asked if he was in contact with the minivans, Mr. Goumas stated he was. Mr. Page stated he believes Mr. Goumas was not only dispatching his vehicles, but the minivans as well.

City Attorney Sullivan stated the status of the situation is that at an earlier meeting in which he was not in attendance, the Commission received this report from Mr. Page, considered it and made the determination that it wished to suspend the taxi medallions of Checker Cab. However, the ordinance says very clearly that before the Commission can suspend anyone's medallions, it has to provide notice to Checker Cab and allow them to respond to the allegations that have been made. He stated that is where we are right now.

He stated it would be appropriate to allow anyone who wishes to appear and speak on behalf of Checker Cab to do so. Chair Daggett asked who was representing Checker Cab. Timothy Goumas, NH Checker Cab stated Attorney Foley was going to sit in the back and that he and Mr. Nunez would do their thing.

City Attorney Sullivan set the ground rules for the hearing. He stated this is a hearing in which Checker Cab will be allowed to say anything relevant that they wish to say. He said it is not a situation for them to question witnesses. He said any questions they might have would need to be directed through the Chair. He said the Chair controls the flow of the hearing, who speaks and who doesn't speak. He said Checker Cab is invited to make a presentation, but it will be their presentation and their response. He further stated if they wish information from anybody else they need to make a request through the Chair.

Timothy Goumas, NH Checker Cab requested to question Mr. Page concerning his investigation. City Attorney Sullivan stated this was not a trial. He encouraged the Chair to allow Mr. Goumas the opportunity to be heard with regard to the report that Mr. Page prepared and not to open this up to a series of questions.

Chair Daggett asked Mr. Goumas if he wanted to make a statement.

Mr. Goumas stated he did not want to make a statement. He said he wanted to talk about the investigation Mr. Page claims he made in front of this board. He stated he cross-examined everyone Mr. Page talked to and he wants to question Mr. Page on each of his statements. He stated it is his right. He said Mr. Page is making very bold statements and he is looking to nail them down. City Attorney Sullivan stated he respectfully disagrees with Mr. Goumas' statement that he has a right to cross examine Mr. Page. He said what Checker Cab has is a reasonable opportunity to respond to the Commission as to the information received from Mr. Page. He suggested that if Checker Cab has conducted an investigation with the individuals that Mr. Page spoke to then Checker Cab needs to present the results of that investigation to the Commission. The Commission can weigh and balance what it has heard and determine if

they want to take any action with regard to the New Year's Eve matter. Chair Daggett requested Checker Cab tell the Commission what they found out. Mr. Goumas stated on March 8, 2010, he spoke with Michael Garjewlo of Enterprise. He said Mr. Garjewlo knows his cousin very well. He stated this is how he gets his lease vehicles with Enterprise. He said his cousin is the Vice President of Operations for the entire company and he gets the vehicles at a discounted rate. Mr. Goumas stated because he is a family member, he is allowed to do whatever he wants with these vehicles as long as he covers the cost of the vehicles.

Councilor Lister requested Mr. Goumas change his demeanor a little bit and not maintain eye contact with Mr. Page.

Mr. Goumas stated he is trying to be as civil as possible. He said he feels they have been railroaded and even though things have been rescinded he feels a really bad taste in his mouth with the City of Portsmouth. He said he has invested a lot of money in the company and Mr. Nunez runs the company and is the owner. He said he is upset that things have gone the way they have. He stated he is trying to get this situation open ended with this Commission and he wants this resolved today or he will just spend more money and take it in the other direction.

Mr. Goumas stated he talked with John Byrns, General Manager of the Court Yard Marriott and Richard Nickerson who runs the front desk. He said he asked Mr. Nickerson about various things that happened on New Year's Eve. He stated both Mr. Byrns and Mr. Nickerson said there was no evidence of Checker Cab doing anything wrong. He stated the phone number Mr. Page claims people called on that evening was not even active. He produced a letter from Fairpoint stating the phone number in question was not in affect and working until January 8th. He said he had a very lengthy conversation with Mr. Byrns about the City Investigation and his discussion with Mr. Page regarding New Year's Eve. Mr. Goumas stated everything was claims. He stated there was nothing of any factual evidence at all. He said he asked Mr. Byrns about the sign up sheets for his company and was told he never heard about any sign up sheets. Mr. Goumas stated Mr. Byrns said he was handing out Checker Cab flyers and when he saw the letter from Fairpoint stating the phone number was not even working on New Year's Eve he immediately rescinded anything he said to Mr. Page. He asked Mr. Byrns to give a sworn statement to that fact and he stated he would rather not talk about it anymore. He stated he has had lengthy e-mails to Mr. Byrns but Mr. Byrns has not responded to any of them.

Mr. Goumas stated on March 8th he also contacted Laura Brag, Lebanon, Maine Town Clerk. Ms. Brag stated DK & M Livery Services was not licensed in the State of Maine nor do they have to be as they are a livery service and not a taxi service. Ms. Brag stated she doesn't know why Mr. Page said she didn't know of DK & M Livery because she does. He asked her who lives in town and pays taxes for these vehicles and she said it is under Monica & Richard Peters. Mr. Goumas said they have an e-mail address which has been verified as a true company. He said they have owned this e-mail address for 15 years. He further stated he also has the lease agreement with DK & M Livery, which Ms. Peters mailed back to him.

Mr. Goumas said he will not speak concerning any of the other complaints/statements. He said he feels it is a conflict of interest, and he feels if he was doing something wrong they should have followed proper procedures that evening and contacted the police immediately, but they did not. He said he feels the Commission has failed to prove that he dispatched these vehicle and he feels the Commission is putting this together as $1 + 1 =$ let's try and squeeze a 2 out of this. He said that is the problem he has with this.

Mr. Goumas said he did not make any misstatement to Mr. Page over the phone. He said he tried to be as helpful as possible. He said Checker Cab will never lease vehicles to anyone ever again. He said what he is looking at is shame on me for leasing these vehicles out and not clearing it with the Commission and advising the other companies. However, we were not even warned. He said they didn't do anything wrong. He said they didn't even get a warning, written probation or anything. He said the Commission took the most severe, irrational punishment that could ever be heard of. He said yes the Commission gave the medallions back to them, but he lost 3 days of money coming in. He said he has spent a lot of money on attorney's fee. He said he looks at it, if anything, as time served. He said time served and his other complaints will go away, otherwise he will put an injunction in. He said he is not trying to go round and round on this, but Checker Cab did nothing wrong. He asked why they are being subjected to these harsh, severe punishments. He asked why everything else is being overlooked. He said there are derogatory statements being made in writing, slander to his company, you name it and nothing is being done about that, however the Commission is going to talk about these two black mini vans, slam Checker Cab with the most severe punishment, try to railroad them out of town so all the other companies can make money. He said that is what it seems like to him. He said he is really up set with the way it is being handled. He said his personal recommendation is to let it go. Drop it. Time served or he will proceed with legal action.

Chair Daggett told Mr. Goumas not to threaten the Commission. He told Mr. Goumas and Mr. Nunez when they came before the Commission to get their medallions in December 2009 he believed in free enterprise and he got on their side and pushed for them, then the New Year's Eve incident and all the evidence he has seen points to Checker Cab operating their taxi's with liveries that are not even supposed to be used as liveries. He said he is very disappointed in the way NH Checker Cab has handled themselves.

Timothy Goumas, NH Checker Cab stated he was sorry; he was just trying to make a buck and help someone else out. He said he wasn't trying to put cars in the City nor was he trying to operate any cars in the City. He said he has tried to follow the rules all the way through this. He said everything the Commission has asked him to do he has done. He thanked Chair Daggett for helping get them started, but the Commission should have let them into the City. It is free enterprise and there were medallions available. He asked why the City is being so harsh on them. He said it looks to them that no one wanted them in the City to begin with. Chair Daggett stated it was not that Portsmouth didn't want Checker Cab in the City; it was that business was so poor the more competition hurt the present companies business. Mr. Goumas said he agrees with him, but he is not hurting anyone's business. He stated he gives business to Blue Star, Portsmouth Taxi and all the other companies when they are not operating. He said his point is he thinks this should all just go away.

Chair Daggett asked if any of the Commissioners had any questions.

Captain Schwartz asked Mr. Goumas if he had any bullet points written out that might help them make their decision. Mr. Goumas asked if he could e-mail them to the Commission as he does not have any copies. City Attorney Sullivan stated Deputy City Clerk Kirby could make the copies right now. Councilor Lister asked if there was any receipts or contracts for the two vans. Mr. Goumas stated he has the contract, but he doesn't have the receipts. He said he paid \$32.00 a day to Enterprise and he re-leased them out for upwards of \$350.00 a day. Captain Schwartz stated he does not understand why the leasing company was reluctant to cooperate with Mr. Page or the Commission. Mr. Goumas stated they were not answering his calls either. He said he actually drove to their place and he was told that Checker Cab put them in a very bad situation. Captain Schwartz asked what their reason was. Mr. Goumas said they feel there is going to be a fine given to them. Captain Schwartz asked Checker Cab what they knew about the people they leased the vehicles to. Mr. Goumas said they came to them. He said Checker Cab has a mechanic that does body work for them. He said his mechanic contacted him asking if he can get some cars for a livery company he knows. His mechanic said they were already booked for New Year's Eve and they had all this business, but needed a couple cars. Mr. Goumas said he contacted them and made a deal. He said he got with his cousin, got the cars and dropped them off and that was it. He said he told them that anyone that they were dropping off in the Dover, Portsmouth, Rochester area they had to call them for pick up. He said that is why they were handing out their business cards. He said the cards they were handing out were temporary cards with their cell phone number on them. Mr. Nunez stated these cards said temporary phone number on them because they did not have Checker Cab's physical phone number until January 8th. He said on December 31st all the cards handed out were with a temporary number.

Chair Daggett asked what the temporary number was. Mr. Nunez said it was their cell phone numbers. He said they used temporary business cards that night.

Captain Schwartz asked Mr. Goumas if, prior to the mechanic asking for the vehicles for this livery company, had he had any relationship with this company. Mr. Goumas stated he did not. Captain Schwartz asked if Mr. Goumas knew these people on a personal level and did he have any idea the names of the drivers of the vehicles on December 31st. Mr. Goumas said from what he was told, the drivers were Stephanie and Larry. He said he tried to get their Livery licenses, but found out there is no requirement in Maine to have any licensing for Livery drivers. Captain Schwartz asked Mr. Goumas if his association with this Livery Company was solely a business deal. Mr. Goumas stated that is correct.

City Attorney Sullivan asked Checker Cab to briefly respond to the bullet points in Mr. Page's report.

- ❖ On December 31, 2009, Mr. Goumas controlled and operated two black minivans in the City; one minivan had a sign indicating "LIVERY" and the other minivan had a "TAXI" dome on the vehicle, which he rented from Enterprise Rent-a-Car. The drivers listed were Timothy Goumas and Jose Nunez.

City Attorney Sullivan said it is his understanding Checker Cab's answer to this would be the allegation was false and that you leased the vehicles to a company from Maine and you will provide us with a copy of the agreement. Mr. Goumas stated yes.

- ❖ Mr. Goumas has not provided any documentation that there was a second livery company.

City Attorney Sullivan stated Checker Cab has responded by saying they have spoken with the Livery Company and they simply don't want to respond to Mr. Page. Mr. Goumas stated they actually didn't want to respond to them either.

- ❖ The State of Maine; Town of Lebanon, Maine; Google; Anywho.com, and any other search engines used to find the "other" livery company turned up no information.

City Attorney Sullivan stated Checker Cab indicated Mr. Goumas went to DK & M Livery and there was a sign out front. Mr. Goumas said there is a sign between 202 and Center Road that says DK & M Livery Services. He said they are also listed under whois.com along with their website.

- ❖ In review of the written statements provided by the complainants and conversations with them indicate that they and or their employees had seen the minivans picking people up downtown and dropping them off within the City at hotels. Therefore, the destination of the minivans was under the control of passengers (i.e., which hotel they were going to. etc.).

Mr. Nunez said he can not respond as this was not under his control, but the control of DK & M Livery Service.

- ❖ Picking up passengers "downtown" is contrary to statements made by Mr. Goumas.

Mr. Nunez said he can not respond as this was not under his control, but the control DK & M Livery Services.

- ❖ The minivans were not permitted vehicles by the City of Portsmouth.

City Attorney Sullivan stated Mr. Page was referring to the fact they were not permitted to operate as a taxi and he gathered there are no disagreements on that. Mr. Goumas stated this statement is correct.

- ❖ The drivers of the minivans handed out the business cards of NH Checker Cab Company to contact to be picked up.

City Attorney Sullivan stated Checker Cab's response is the business cards were handed out so if these people needed a cab late at night they would call Checker Cab. Mr. Goumas said this is exactly how it was.

- ❖ Mr. Goumas was in communication with the drivers of the minivans.

Mr. Goumas stated he did not even know the drivers until after the fact when he got an e-mail from them.

- ❖ NH Checker Cab Company made arrangements with the Courtyard Marriot, contrary to statements made by Mr. Goumas.

Mr. Goumas stated that was not true. City Attorney Sullivan asked if earlier this morning, Checker Cab stated Mr. Byrns was not interested in communicating with anybody further. Mr. Goumas said Mr. Byrns made it clear that he did not want anything to do with Portsmouth or Checker Cab about this incident.

- ❖ Mr. Goumas' "deal" was to take the people back out of the City. "And they did call, and they were transported in our taxi cabs, that have medallions, out of town." But, he does not know where he brought them?

Mr. Goumas stated Checker Cab did pick up passengers and transport them out of the City.

- ❖ Mr. Goumas' statement that he has had problems with other taxi companies threatening his drivers is puzzling as there are only two drivers permitted, Mr. Goumas and Mr. Nunez.

Mr. Goumas said this has nothing to do with the New Year's Eve incident. He said it was just a general statement that was made later in January. Mr. Nunez said Mr. Goumas and himself were the only ones driving that night.

City Attorney Sullivan said he understands what has been said. He said the Commission is obligated to proceed in public under the State's Right to Know Law in this matter. He said there are some exceptions. He said one thing the Commission can do, if it wishes, is to meet with him as legal counsel and adjourn into a non-meeting and come back into a public session to make a motion and take their vote. He stated he recommends the Commission proceed in this way.

Councilor Lister moved to enter into a non-meeting with counsel. Seconded by Commissioner Look and voted.

At 9:52 Attorney Sullivan requested that everyone, with the exception of the Commission, leave the room to allow the Commission to go into a closed session. He stated everyone would be called back when the Commission has made their decision.

At 10:13 a.m., Chair Daggett reconvened the meeting.

City Attorney Sullivan stated the Commission has determined procedurally the way it wants to approach the issue is to allow for a motion and vote to be taken on the question of whether or not NH Checker Cab “has engaged in the taxi cab business in the City of Portsmouth without first having obtained a permit for each taxi to be used.” He stated a motion will be made to this effect and the Commission will vote. He stated if the answer to this question is no, these deliberations are over. He said if the answer is yes, then a motion will be made as to what, if any, further penalty should be assessed against NH Checker Cab. He said after these two motions are completed, the issue of New Year’s Eve is resolved. He said the Commission will then decide what if anything it wishes to do regarding the complaints that have been filed by NH Checker Cab against the other cab companies on April 19, 2010.

City Attorney Sullivan framed the question for the Commission to vote.

Does the Commission find that NH Checker Cab engaged in a taxi cab business in the City of Portsmouth on New Year’s Eve last without first having obtained a permit for each taxi to be issued?

Councilor Lister moved that the Commission has found that NH Checker Cab has, in fact, violated the ordinance and any further violation will be dealt with swiftly and severely. Seconded by Commissioner Look and voted.

City Attorney Sullivan stated that the Commission now having found that NH Checker Cab has violated the ordinance on New Year’s Eve, the questions now is:

What if any penalty does the Commission desire to impose in this matter.

Captain Schwartz stated the City Council and the Commission have worked very hard on this ordinance and the work that went into this ensures that everybody is safe. He said because of this he feels this to be a very serious issue and with that:

Captain Schwartz moved to access a suspension of one week, with the three days the medallions have already been suspended credited as time served, to start immediately. Seconded by Councilor Lister and voted.

V. NEW BUSINESS

1. Letter of Request to Add Two Additional Taxi Medallions – Portsmouth Taxi

Councilor Lister moved to allow Portsmouth Taxi to obtain two additional Tax Medallions. Seconded by Captain Schwartz and voted.

2. Formal Complaints by NH Checker Cab Company

Chair Daggett stated the next item to be discussed is the formal complaints made by NH Checker Cab Company against Portsmouth Taxi Companies. Mr. Nunez, NH Checker Cab stated he would like to rescind these complaints. He stated he just wants this matter to go away.

VI. OLD BUSINESS

1. Review of Ordinance

Chair Daggett stated since Commissioner Bresciano is the one who is working on this item and he is out of town he suggested this item be tabled until the May 17, 2010 meeting.

Captain Schwartz moved to table this matter until the May 17, 2010 meeting. Seconded by Commissioner Feehley and voted.

VII. MISCELLANEOUS/UNFINISHED BUSINESS

Chair Daggett requested the taxi companies report any taxi violations directly to the Police Department at the time of the incident and call him the next day. City Attorney Sullivan stated that members of the Commission have no authority to take any action out on the street if a violation has occurred. He stated only the police can do that. He requested any complaints be directed to the Police Department. Chair Daggett stated he doesn't mind being informed of any incident, in fact, as Chair he should be informed about what is going on, but the driver's and owners should contact the police immediately concerning any incidents.

Councilor Lister stated everyone is trying to make a living and we should all work together to keep our residents safe and happy.

City Attorney Sullivan stated years ago there were large confrontations between the Portsmouth taxi companies. He said this was the reason the Taxi Commission was formed and the ordinance written. He said from then until January 1, 2010 we have not had any problems. He stated the taxi business in Portsmouth will not go back to where it was. He said hopefully what happened today will be a lesson to everybody and in the future businesses will be run fairly and in a way that provides the citizens with safe and economical transportation. He said if that is not the case, the City will take very strong action against anybody who violates any provisions of this ordinance. He said this is a guarantee.

Mr. Goumas stated he does have a few scheduled pickups that are going out of the City in the next few days, one to New Castle and one to Portland, otherwise, his cars will not be in the City at all. Mr. Goumas asked if they need to turn the medallions into the City Clerk for those 4 days. City Attorney Sullivan stated yes. Captain Schwartz asked if Mr. Goumas could supply him with a list of these scheduled pickups so he will not have to field complaints. Mr. Goumas said he would.

Alan Ladd, Sunshine Taxi stated he sent in a letter requesting an additional taxi medallion. Chair Daggett asked Deputy City Clerk Kirby if we have received it. Deputy City Clerk Kirby stated she has not received the letter. Mr. Ladd asked if he could get it added to this agenda.

City Attorney Sullivan said it would call for the Commission to suspend the rules.

Councilor Lister moved to suspend the rules to allow consideration of a request for an additional medallion by Sunshine Taxi which is not on the agenda. Seconded by Commissioner Look and voted.

Commissioner Look moved to grant Sunshine Taxi an additional medallion. Seconded by Councilor Lister and voted.

VIII. ADJOURNMENT

At 10:30 a.m. Commissioner Feehley moved to adjourn. Seconded by Captain Schwartz and voted.

Respectfully submitted by:

Dianne M. Kirby, Deputy City Clerk