

**MOTOR VEHICLE DEALER BOARD
MINUTES
April 12, 2012**

The regular meeting of the Dealer Board was held at the Department of Revenue offices, Lakewood, Colorado. The following persons were present:

BOARD MEMBERS:

Philip Harris
Deborah Thompson
Bob Perry
Fred Wegener
John Medved
Eva Wilson
Joe Gebhardt
Jason Wagner
Beau Smith

MEMBERS ABSENT:

**SENIOR DIRECTOR OF
ENFORCEMENT**

George Thomson

EXECUTIVE SECRETARY:

Bruce Zulauf

LEGAL ASSISTANT:

Leland BeBee

**DEPT OF REVENUE,
AID, ENFORCEMENT
DIVISION STAFF**

Chris Rouze
Matt Heap
Margaret Jungmann
Gloria Breedon
Eric Hartsough
John Opeka
Iris Armstrong
Kaye Kopecky

ATTORNEY GENERAL'S OFFICE:

Y.E. Scott
Kit Spalding
Brendon Reese

BUDGET OFFICE:

Jill Vaughan

VISITORS:

Todd O'Connell, CIADA
Mary Marvin, CAPSS
Tammy McCoy, CADA
Frank Elliott, Papa Franks Auto Plaza
Jason Parsons, Go Chevrolet
Dave Tafoya, Papa Franks Auto Plaza
Levi Pollack, Go Nissan South West
Bilal Milli, Nice Buy Auto Sales Inc.
Robert Endter, Ace Design Studio

Richard Roth, O'Meara Ford
Steve Compton, O'Meara Ford
Ahmad Naimi, Auto Palace LLC
Dennis Bothwell, Heritage Ford, Loveland
Stephanie Bothwell
Joe Pernarelli, Carboard
Ricky LaMontagne,
Dominick Mannino, Discount Motors
Ramiro Castro, Discount Motors
Kelley Schaffer, Discount Motors
Joe Oltmann

President of the Board John Medved opened the meeting of April 12, 2012, at 9:15 a.m. Mr. Medved turned the floor over to Executive Secretary, Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCEMENTS

Mr. Zulauf stated that there were no additions or corrections to the agenda.

Mr. Zulauf informed the Board that there is an Exceptions Hearing scheduled for 12:30 so there could be a need to move some items around.

Mr. Zulauf announced to the public and the associations that if there is prior board action or a criminal history it needs to be disclosed. There are several items today to be presented that are only being presented because of a failure to disclose.

There has been a second meeting of the focus group considering the recommendations to the Board regarding net worth. There was discussion about attempting to enhance the training/ education for applicants through the associations. There is a plan to meet once more late in April and hope to have recommendations and options to present at the May or the June meeting.

MINUTES

The minutes of the March 8, 2012, Board meeting were unanimously approved.

BUDGET

Jill Vaughan presented the budget reports. The Division Budget Reports reflect the financial position of the division as of period 8 for FY12.

Gross Revenue Collections for February in the amount of \$171,716. With 67% of the year completed, the Division has collected approximately 64% of the FY12 projected revenue.

Net Revenue Collections total \$172,236 for Period 8 to account for a \$519 adjustment in gross revenue. The YTD Variance percentage shows that the Division is up 5.59% from the collections at the same time last year.

Expenditure Comparisons provide actual expenses by category for the three previous years in total and includes categories for the Direct and Indirect expenses of the Division. The report displays a variance between the current year projections and previous year actuals and includes YTD expenses. Projections on this document, located in the Projected FY2011-12 column, are continually adjusted to reflect budget cuts and restrictions as required by DOR and the Governor's Office. Total expenditures in the amount of 2.6 million shown at the end of this column equal actual expenses through period 8 and projected fund activity for the remainder of the year.

The **Cash Flow Analysis** displays the **cash and fund balance position for FY12 provided all projections hold true for the Division**. February revenue collections were \$33,000.00 more than the projected amount of \$139,000.00. Expenses were more than the revenue collections for the month of February as indicated by the negative net income figure of \$67,000. The EOY fund balance for FY12 is projected to be slightly in excess of the Division need and; the projected fund balance for May is adequate at this time to cover two months of personal services expenses for the Division.

FEE SETTING:

Mr. Zulauf and Ms. Vaughan provided the board with handouts. Mr. Thompson addressed the Board and stated the Division has done a superb job of getting the fund into balance with State requirements and urged the Board to look very carefully at the recommendations. Mr. Thomson reminded the Board that the current fees were run as a deficit to adjust the budget back to where it needed to be.

Mr. Zulauf reminded the Board that the last two years were in deficit spending. He then went on to recap FY05-FY07, the addition of FTE based on an overestimate of licenses to be issued. Fees during that period of time were based on a 3.5% increase. However, the decline of the economy and the decline with license issuance in late 08/09, hit dealers as hard as any other business. The Division transferred 9 investigators and 1 admin for 120 days. When the Division transferred staff there were 400 open cases, they returned to 900 open cases. The industry members advised that we could suffer a 20% loss of licenses. This resulted in the Executive Director making a determination of a need for a 90% fee increase. The industry didn't suffer to the expected degree and only lost 10%. The Board realized a significant overage in the budget and to get the target off our fund, so the fees were cut 35% the following year and continued for two years in deficit spending. Today it appears that things are going a lot better at dealerships, but not yet at the Division level.

Mr. Zulauf directed the Board members to the documents he handed out. The documentation marked "-4" is last years ending numbers. We lost 4% of overall license count.

The document marked "-5" compares last fiscal year through the end of March to this year's year to date through the end of March; we are down 5% of overall licenses. Salesperson licenses are still down. At the Division level we haven't seen a licensing increase.

Mr. Zulauf is proposing a fee increase because after 2 years of deficit spending we are close to getting the budget where we want it.

Ms. Vaughan stated the document titled Auto Industry Division Fee Setting FY13 lists the appropriation spending authority as established in HB12-1335 which is the FY13 Long Bill for Colorado pot allocations, essentially all areas where the Division will experience expenses. The total FY13 total expected expenditures comes to \$2.9 million; less the projected FY12 ending fund balance of \$574,000. So on the cash flow budget reports we have looked at, we are projecting to end this fiscal year with a fund balance of \$574,000. We are anticipating \$2.9 million in expenditures for next year.

Ms. Vaughan provided spreadsheets reflecting fee increase projections of 16.5%, 18% and 20% using variables of a 0%, 3%, and a 5% license decrease.

Mr. Wagner stated the spreadsheets show a 20% increase is what we need based on the numbers. Ms. Vaughan stated 20% is what the budget office is recommending. Mr. Wagner did some additional calculations and felt that the numbers reflected a need for a 24% increase.

Mr. Zulauf stated the figures indicate at a 5% loss of licenses and a 20% increase of fees the balance is going to be short. He believes the figures indicate a 20-25% increase would be better.

A motion was made to increase fees 24% across the board - approved unanimously.

A motion was made to increase Off Premise Permit fees to \$500 – approved unanimously.

EXECUTIVE SECRETARY'S REPORT

Mr. Zulauf moved item 6, a Court of Appeals Case to the first position of his presentation. Mr. Zulauf asked if the Board wanted to go into Executive Session to hear the results of this case and to get advice from the Attorney General's Office. The advice received may make an impact on the cases heard today. Ms. Scott advised the Board that they still have a Court of Appeals case from last month that they still need to make a decision on. A motion was made to enter Executive Session for the purpose of discussing disputes that are the subject of pending or imminent litigation pursuant to C.R.S. 24-6-402 (3)(a)(II) including discussion with counsel from the Attorney General's office regarding the Stan Ford case and the Joel James Woltjen case; both Court of Appeals cases.

The Board went into Executive Session at 10:09 a.m.

The Board resumed open meeting at 11:10 a.m.

Ms. Scott announced that the Board's discussions were limited to discussing the Ford and Woltjen cases.

A motion was made to allow Joel Woltjen to apply for a salesperson license and that that application be reviewed to determine that it is fully and completely presented and filed appropriately and if need be it can be brought before the Board. If it meets all of the application requirements it can be approved – approved unanimously.

A motion was made on the Stan Taran Ford's case to obtain a full transcript of the hearing and all exhibits that were presented at the hearing so that the Board could determine the appropriate manner to proceed based upon the Court of Appeals. – approved unanimously.

Mr. Zulauf presented the following to the Board:

- **Proposed Stipulation and Final Agency Order, Metro Auto Line, LLC, d/b/a Metro Auto Link, LLC #38409** – Motion to accept the Proposed Stipulation and Final Agency Order – approved 5-3 (Wilson, Harris, Thompson)

Motion that the Executive Secretary negotiate for money held in abeyance be due and payable upon any relicensure – approved 5-3

Ms. Scott recused herself and left the room.

- **Initial Decision – Joshua Todd Jenkins #179914** – Motion to accept the Hearing Officer’s recommendation for a conditional license, but amend it to include that upon change of employer the applicant submit a letter from the new dealership acknowledging knowledge of the reason for a conditional license – approved 7-1 (Wilson)

Mr. Harris recused himself and left the room.

- **Initial Decision - Jorge Miranda #16191** – Motion to deny the license on the basis of unfitness of criminal character, noting the particular criminal history that is not a single instance, but spans 8 years which also includes financial crimes such as fraud and theft which directly relate to the sale of motor vehicles although these didn’t, they could in abstract; and there is no evidence presented of rehabilitation, there is as noted by the Hearing Officer concerns he will reoffend – approved unanimously.

Mr. Harris returned to the room. Mr. Perry recused himself and left the room.

- **Initial Decision – Joseph Michael Pernarelli #34507** – Motion to set aside the Hearing Officer’s recommendation and deny the license on basis of unfitness of criminal character and unfitness of financial character, additionally, it appears attempts to clear the fines are very recent. It appears applicant was gainfully employed and there does not seem to be a reasonable basis to avoid paying fines – approved unanimously.

Mr. Perry returned to the room.

- **Initial Decision – Michael Clinton Shaw #179930** – Motion to accept the Hearing Officer’s recommendation and deny the license on the basis of unfitness of financial character due to outstanding costs and fees, unfitness of criminal character – seriousness of offenses, applicant has not provided evidence of seeking treatment for alcohol abuse or domestic violence counseling – approved unanimously.

Ms. Scott returned to the room.

BACKGROUND INVESTIGATIONS TEAM

Matt Heap presented the following:

Dealer Applications –

- **Denver Motor Company** – Motion to deny the license application on the basis of financial character – approved unanimously.
- **Nice Buy Auto Sales** – Motion to approve the license application – approved unanimously.
- **Papa Frank’s Auto Plaza Inc.** – Motion to deny the Change of entity application on basis of unfitness of financial character and failure to disclose prior board action – approved unanimously.

Salesperson Applications

- **Jeremy J. Armstrong #178539** – Motion to deny the license application on basis of failure to disclose, material misstatement, and unfitness of criminal character – approved unanimously.
- **Dennis C. Bothwell #159497**– Motion to deny the license application on basis of unfitness of criminal character and failure to disclose – approved unanimously.
- **Michael Wesley Bowers #27772** – Motion to deny the license application on basis of failure to disclose prior board action, unfitness of criminal character and criminal record – approved unanimously.
- **Derek Steven Brown #180156** – Motion to approve the license application – approved 7-1 (Wilson).

Mr. Harris recused himself and left the room.

- **Stephen Keith Compton #24649** – Motion to deny the license application on basis of unfitness of criminal character and prior board action – approved unanimously.

Mr. Harris returned to the room.

The Board took a break at 12:10 p.m., returning at 12:25 p.m.

Mr. Harris recused himself and left the room.

On Review of Initial Decision of the Hearing Officer, Upon Filing of Exceptions by Respondent Case # BD 11-016 regarding the respondent licensee Rick L. Samu., Salesperson License #34455

(Note: This review was conducted pursuant to the Colorado Administrative Procedure Act, 24-4-105 of the Colorado Revised Statutes. The purpose of this review was to determine what action the Board should take with respect to the Initial Decision.

Brendon Reese representing the State and Mike McKinnon representing licensee Rick L. Samu made oral arguments.

A motion was made to adopt the Findings of Fact, Conclusions of Law and revoke the salesperson license of Rick Samu, license #34455 the respondent acted as an unlicensed, unbonded dealer who employed an unlicensed salesperson – approved 5-1 (Smith)(Wagner abstained)

Mr. Harris returned to the room.

Mr. Heap continued with the Background Investigation Team report:

- **Cole S. Crocker #153832** – Motion to deny the license application on basis of failure to disclose – approved unanimously.
- **Dean David Dahl #180251** – Motion to deny the license application on basis of unfitness of criminal character, unfitness of financial character and failure to disclose – approved unanimously.
- **Robert Nelson Davis #32288** – Motion to deny the license application on basis of a material misstatement, failure to disclose prior board action and unfitness of criminal character – approved unanimously.
- **Christopher Duran #179715** – Motion to deny on basis of unfitness of criminal character – approved unanimously.
- **Patrick B. Fitzgerald #158946** – Motion to deny the license application on basis on unfitness of criminal character and a material misstatement – approved unanimously.
- **Travis Virgil Froehlich #180712** – Motion to deny the license application on basis unfitness of financial character and unfitness of criminal character – approved unanimously.
- **Nicole Noreen Garcia #180855** – Motion to deny the license application on basis of unfitness of financial character – approved unanimously.
- **Benjamin James Howarth #180799** – Motion to approve the license application – approved unanimously.
- **Thomas A. Jones #165134** – Motion to deny the license application on basis of unfitness of financial character, unfitness of criminal character and prior board action – approved unanimously.

Mr. Harris recused himself and left the room.

- **Michael James Kern #180809** – Motion to deny the license application on basis of unfitness of criminal character – defeated 2-5, Motion to approve the license application – approved 5-2 (Wilson, Wegener)
- **Robert Eugene LaMontagne #180575** – Motion to approve the license application – approved 6-1 (Wilson)

- **Justin Paul Pastine #180799** – Motion to approve the license application – approved unanimously.

Mr. Harris returned to the room.

- **Patrick D. McNamara #180861** – Motion to approve a conditional license with a letter of acknowledgement from employer, upon changing employment, another letter is required – approved 7-1 (Wilson)
- **Larry A. Mondragon #31685** – Motion to deny the license application on basis of unfitness of licensing character – approved unanimously.
- **Gabino Nieto #153026** – Motion to deny the license application on basis of unfitness of financial character and unfitness of criminal character – approved unanimously.
- **George D. Papadoyiannis #167576** – Motion to deny the license application on basis of unfitness of licensing character and unfitness of criminal character – approved unanimously.
- **Jason Lee Parson #179891** – Motion to approve the license application – approved unanimously.
- **Levi T. Pollack #180775** – Motion to approve the license application – approved unanimously.
- **Michael Omylee Sink #180789**– Motion to approve the license application – no second received; Motion to deny the license application on basis of unfitness of criminal character – defeated 3-5, Motion to approve the license application – approved 5-3 (Wilson, Gebhardt, Wegener)
- **Johnny D. Swayze #176466**– Motion to deny the license application on basis of unfitness of licensing character, unfitness of criminal character and a material misstatement – approved unanimously.
- **Bradley L. Turner #180683** – Motion to deny the license application on basis of unfitness of criminal character – approved 7-1 (Harris)
- **Joshua Lewis Viles #180656** – Motion to deny the license application on basis of unfitness of financial character and unfitness of criminal character – approved unanimously.
- **Kenneth Wayne White #180790** – Motion to approve the license application conditioned upon a letter from the owner of existing dealership, upon a change of employment the applicant would need to obtain another letter conditional license – (Ms. Wilson left the room before the vote) approved 7-0 with Ms. Wilson abstaining)

Salesperson affidavits

- **Jeremy Jay Armstrong #178539** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today

respectively to Jeremy Jay Armstrong; that the case be assigned to the Colorado Department of Revenue Hearing Division for a hearing on the merits – approved unanimously.

- **Dean David Dahl** – WITHDRAWN
- **Robert Nelson Davis #32288** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Robert Nelson Davis; that the case be assigned to the Colorado Department of Revenue Hearing Division for a hearing on the merits – approved unanimously.
- **Johnny Dwayne Swayze #176466** – Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Johnny Dwayne Swayze; that the case be assigned to the Colorado Department of Revenue Hearing Division for a hearing on the merits – approved unanimously.

INVESTIGATION REPORT:

Agent in Charge Chris Rouze presented the following:

Statistical Reporting – Ms. Rouze informed the Board that 176 new cases were opened and 200 cases were closed for the month, giving the Division a balance of 605 open cases. 273 backgrounds were completed in March.

Affidavits of Probable Cause:

Mr. Harris recused himself and left the room

- **Daniel Eaton #31573** – Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Daniel Eaton #31573; that the case be assigned to the Hearings Division for a hearing on the merits – approved unanimously.

Mr. Harris returned to the room. Ms. Wilson returned to the room.

- **Adesa Colorado Springs #40823** – Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Adesa Colorado Springs #40823; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.
- **Mondragon Auto Sales, Inc. #40982** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Mondragon Auto Sales, Inc #40982; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits and that the

Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.

- **Quest Motors, LLC #39595** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Quest Motors, LLC; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.

Mr. Gebhardt recused himself and left the room.

- **Davidson-Gebhardt Chevrolet #58** Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Davidson-Gebhardt Chevrolet #58; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.
- **Proposed Stipulation and Final Agency Order re: Davidson-Gebhardt Chevrolet #58** – Motion to accept the Proposed Stipulation and Final Agency order – approved unanimously.

Mr. Gebhardt returned to the room.

New Business – Mr. Perry commented on the size of the Board packet and wondered if there was some way to provide it in 2 parts to give the Board members time to read everything. It was determined that Board members would really like to have the thumb drive in hand by Friday to give them time to read it all.

Public Comment – Dominick Mannino stated he has been in business for 23 years. He has a lot of concerns about dealers that are advertising “1/2 price” without giving any basis. Mr. Leno stated he has complained to the Auto Industry Division, but does not feel anything is being done to resolve the issue.

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 2:10 p.m.

(Note: The Minutes of the Motor Vehicle Dealer Board summarize the contents of the meeting. They are not verbatim transcripts and are based principally upon the digital recording of the meeting and upon the later collaboration of staff attendees to ensure that the summary faithfully captures the matters before the Board and the actions the Board took. The digital recording of the meeting is a permanent record of the Board, retained in the electronic filing system of the Auto Industry Division, and is available as a resource for review, as needed.)

Bruce Zulauf
Executive Secretary