

**MOTOR VEHICLE DEALER BOARD
MINUTES
April 16, 2013**

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

BOARD MEMBERS:

Beau Smith
Jason Wagner
John Schenden
Deborah Thompson
Stan Martin
Joe Gebhardt

MEMBERS ABSENT:

Fred Wegener
Chris Hefty

**SENIOR DIRECTOR OF
ENFORCEMENT:**

Ron Kammerzell

EXECUTIVE SECRETARY:

Bruce Zulauf

LEGAL ASSISTANT:

Leland Bebee

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

Chris Rouze
Matt Heap
Gloria Breedon
Margaret Jungmann
Ellen Hardman
John Opeka
Erika Garcia
Kaye Kopecky
Eric Hartsough
Bud Heinrich
Brenda Fredricey

ATTORNEY GENERAL'S OFFICE:

Y.E. Scott

BUDGET OFFICE:

Jill Vaughan
Curtis Tremble

Mary Marvin, CAPSS
Todd O'Connell, CIADA
Tammi McCoy, CADA
Art Erwin, Christopher's Dodge World
Mark Striegnitz
Bonnie Craycraft-Thurman
Alejandro Aldaco

Adam Beal
Mohammed Khater – Crown Auto Sales
James Richardson-The Car Guy-Maaliki Motors

President of the Board, Beau Smith, opened the meeting of April 16, 2013, at 10:51 a.m. (late start due to the weather.) Mr. Smith turned the floor over to Executive Secretary Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCEMENTS

Mr. Zulauf informed the Board that there were no corrections to the agenda. Due to the late start and the need for other meetings, the agenda would be “flipped” and the quarterly Budget presentation and fee setting would be done first.

Mr. Hefty will not be in attendance due to a court date; and Sheriff Wegener will not be present due to the weather.

Calendar:

The August Board meeting will be held on Thursday, August 15th; Mr. Zulauf, Mr. Heap and Ms. Rouze will be out of town on the 20th for a training conference.

Please reserve the 2nd meeting date for September, October and November. We will be working on rulemaking on those dates. We are required to update 20% of the rules by November.

Board meeting dates are:

September 17th and 26th

October 15th and 24th

November 19th and 26th

The Board meeting for May will be held on Thursday, May 16th.

Dealer List

The dealer list is now available on the website. We will try to get this on at the beginning of each month.

Salesperson Application

Mr. Zulauf will go over the proposed application line by line with the Board.

MINUTES

The minutes of the March 19, 2013, Board meeting were unanimously approved.

BUDGET

The Division Cash Flow Analysis received reflects the financial position of the Auto Industry Division as of period 8 for FY13 provided all projections hold true. February revenue collections were \$27,201 more than the projected amount of \$202,000 and expenses were less than the projections of February as indicated by the positive net income figure of \$3,400.00. The end-of-year fund balance for FY13 is projected to exceed the division need by \$296,000. The

Division expenditure projections are continually adjusted to reflect budget cuts and restrictions as required by DOR and the Governor's Office.

Fee Setting

Mr. Zulauf gave a brief financial history of the Division to the new Board members and explained C.R.S. 12-6-110. This statute, in part, states that the Board shall propose part of the annual budget a fee adjustment in an amount that shall reflect the direct and indirect costs of the division. Mr. Zulauf explained that all of the fees have to fit into the statute. The Board has the ability to recommend the fees, but the final authority rests with the Executive Director. (Appropriation is commonly referred to as spending authority. Appropriation is set by the JBC. The Board has no control over spending authority. They do have the power of suggestion.)

Mr. Zulauf explained that in the past, the fees were either raised or lowered straight across the board. Last year, fees were raised by a 24% increase, with a doubling of the Off Premise Permit fee. There was discussion of whether the Off Premise Permit fee could be tiered based upon the type of sale. Mr. Zulauf stated that while "tiering" the Off Premise Permit fees would probably be the right thing to do, he doesn't think that we can do it without rulemaking. Moving forward with rulemaking we need to look at this because we do have different types of shows: we have Trade shows, National Western Stock Show, you have the off premise permits where dealers set up in a different location and then you have the off premise permits that are horror stories.

About 4-5 years ago, this was a huge issue before the board. There were franchise dealers getting off-premise permits across the street from other franchise dealers. There were also sales tax issues not being properly collected. We also had one of the out of state salesperson organizations come in and make a mess of another Off Premise Permit sale. At that time, the Board made a motion to put a moratorium on the issuance of all Off Premise Permits, but AG's office came back and said this couldn't be done without rulemaking, as we could not impact commerce. At one work session there was discussion about increasing the fee. Significant fee increases were discussed at that time.

Last year we had a Pueblo franchise dealer who brought in an out of state salesperson company. We received 16 applications a day or two before the sale. As they were being processed, Ms. Kopecky noticed that the signatures all looked the same. Investigations took over and found that all 16 signatures were forged. Of the 16, there were only 4 without with criminal history, 6 had significant criminal history and 2 had mandatory disqualifying convictions. The Pueblo dealer said they messed up. We allowed the sale to go on; and we eventually approved 3-5 of the applications to allow temporary licenses so the dealer could continue his sale. After going through the BIT team, all 16 applications were denied by the Board for permanent licensure.

Recently we had a Colorado dealer pull an Off Premise Permit and set up a sale on the Colorado/Wyoming border. The Wyoming dealer had his Colorado attorney beating on our doors wanting fraud charges or an investigation because of where the sale was. The Division does not have any control as to where these sales are.

Mr. Zulauf stated that will all these problems there is a need for the Board to take up this issue through the rulemaking process.

Mr. Zulauf said at this time, he would recommend that the Board consider cutting the Off Premise Permit fee from \$500 to \$300. This will be a significant drop in revenue, but with what Ms. Vaughan is proposing, we would be okay.

Ms. Vaughan presented several different spreadsheets showing the various Net Income and Fund Balances in relation to the Target Fund Balance based on different projections of decreasing fees with a license count variance for FY 13-14 through FY 15-16. (The reduction of Off Premise Permit fees from \$500 to \$300 has been figured in already)

Mr. Zulauf made a recommendation regarding the Reissue/Transfer fee of \$100. A reissue is simply a reprint. Mr. Zulauf's recommendation is to separate the two and call a reissue a reprint as it just requires a few keystrokes and the transfer requires paperwork. We would lower the charge to \$25 for the reissue. He would also recommend that the late fee be left at \$50.

The Board discussed the overall health of the industry and the recommendations before them.

Motion made for a 5% decrease across the board with the following exceptions: Separate Reissue/Transfer Fees and lower the reissue fee to \$25; Decrease the Off Premise Permit Fee to \$300; Late Fee is to remain \$50 – approved unanimously.

ATTORNEY GENERAL'S OFFICE REPORT

Y.E. Scott did not have any Stipulations to present.

EXECUTIVE SECRETARY'S REPORT

Mr. Zulauf presented the following to the Board:

- **Proposed Stipulation and Final Agency Order & Affidavit – William L. Bunch, Salesperson #22405** – Motion to accept the Proposed Stipulation and Final Agency Order– approved unanimously.
- **Proposed Stipulation and Final Agency Order & Affidavit – Boulder Motors, Wholesale Dealer #41866** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

Ms. Scott recused herself and left the room.

- **Initial Decision – Craycraft-Thurman, Bonnie, License #182233** - Motion to accept the Findings of Fact, Conclusions of Law and the Hearing Officer's recommendation to approve a license – approved unanimously.
- **Initial Decision – Delvescovo, Franklin A., License #33277** – Motion to accept the Findings of Fact, Conclusions of Law and the Hearing Officer's recommendation to deny the license – approved unanimously.

- **Initial Decision – Ehrhart, Jenny Rae, License # 181563** – Motion to accept the Findings of Fact, Conclusions of Law and the Hearing Officer’s recommendation to approve a license – approved unanimously.
- **Initial Decision – Everingham, Charles Clayton, License #182293** – Motion to accept the Findings of Fact, and Conclusions of Law and modify the Hearing Officer’s recommendation to issue a conditional license; conditioned upon a letter from the employing dealer, upon transferring a letter from the new dealer is required – approved unanimously.
- **Initial Decision – Juhasz, Steven Josh, License #176838** – Motion to accept the Findings of Fact, Conclusions of Law and the Hearing Officer’s recommendation to approve a license – approved unanimously.
- **Initial Decision – Pennington, David Reed, License # 164030** – Motion to accept the Findings of Fact, Conclusions of Law and modify the Hearing Officer’s recommendation to issue a conditional license; conditioned upon a letter from the employing dealer, upon transferring a letter from the new dealer is required – approved unanimously.
- **Initial Decision – Robles, Oscar Alexander, License #182880** – Motion to accept the Hearing Officer’s recommendation and deny the license – approved unanimously.
- **Initial Decision – Trail, Cody Lou, License #182716** – Motion to accept the Findings of Fact, Conclusions of Law and modify the Hearing Officer’s recommendation to issue a conditional license, conditioned upon a letter from the employing dealer, upon transferring a letter from the new dealer is required – approved unanimously.

Ms. Scott returned to the room.

BACKGROUND INVESTIGATIONS TEAM

Matt Heap presented the following:

- **Dealer Applications: Boricua Auto Sales #42550** – Motion to deny the license on the basis of unfitness of financial character; lack of capital and the applicant does not meet the net worth requirements of the Board – approved unanimously.
- **Crown Auto Sales LLC #42586** – Motion to approve a dealer license – approved unanimously.
- **Pawn King #42507** – Motion to approve a dealer license – approved unanimously.
- **Stanwood Motorsports West LLC #42543** – Motion to deny the license on the basis of unfitness of criminal character, failure to disclose and C.R.S. 12-6-118(3)(d) having been convicted of or pled nolo contendere to any felony, or any crime pursuant to article 3, 4, or 5 of title 18 C.R.S. – approved unanimously.

- **Salesperson Applications: Aldaco, Alejandro A. #183499** – Motion to approve a conditional license, conditioned upon a letter from the employing dealer, upon transferring a letter from the new dealer is required – approved unanimously.
- **Anderson, Jesse D. #182457** - Motion to deny the license on the basis of unfitness of criminal character, unfitness of financial character and 12-6-104(3)(g)(10) information submitted shall be given fully, faithfully, truthfully and fairly – approved unanimously.
- **Beal, Adam M. #183603** - Motion to approve a conditional license; conditioned upon a letter from the employing dealer, upon transferring a letter from the new dealer is required – approved unanimously.
- **Gandora, Freddy J. #183469** - Motion to deny the license on the basis of unfitness of criminal character, unfitness of financial character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Garcia-Irlando, Fernando E. #182482** – The application has been pulled, the applicant is in the middle of the appeal process.
- **Gordon, Amanda L. #151029** – Motion to deny the license on the basis of unfitness of criminal character and failure to disclose – approved unanimously.
- **Kortgaard, Brandon L. #178930** - Motion to approve a conditional license; conditioned upon a letter from the employing dealer, upon transferring a letter from the new dealer is required – approved unanimously.
- **Mann, Robert M. #152500** – Motion to deny the license on the basis of 12-6-104(3)(g)(10) information submitted shall be given fully, faithfully, truthfully and fairly, unfitness of criminal character, unfitness of financial character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Richardson, Christopher R. #183406** – Motion to deny the license on the basis of unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Schulz, William R. #183536** – Motion to deny the license on the basis of unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.

INVESTIGATION REPORT:

Agent in Charge Chris Rouze presented the following:

Statistical Reporting – Ms. Rouze informed the Board that we started with 409 cases, 147 new cases were opened and 136 cases were closed for the month, giving the Division a balance of 420 open cases. 314 background inquiries were completed

Affidavits of Probable Cause:

- **Bob Penkhus Mitsubishi, Dealer #42289** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Bob Penkhus Mitsubishi, dealer #42289; 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.
- **Shifrin, Leonid, Salesperson #170147**- Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Shifrin, Leonid, salesperson #170147; that the case be assigned to the Colorado Motor Vehicle Hearing Section for a hearing on the merits – approved unanimously.

The Board took a short break.

New Salesperson Application

Mr. Zulauf went over the new salesperson application line by line with the Board, stressing that the applicant has to prove that they are fit to hold a salesperson license.

Mr. Zulauf explained that there is a letter attached to the application which tells the applicant what to expect and what some of the common misconceptions are.

Page 2 has an application checklist to make sure everything needed is attached.

Page 3 has the same information as the current application, the boxes are just bigger.

The application contains bits and pieces from Medical Marijuana’s application, the Gaming application and also from some of DORA’s applications.

Page 4 is basically the current “question 16”.

- Question 1 - We are not concerned with arrests, but convictions.
- Question 2 - Any misdemeanor in the last 10 years. Includes all serious traffic offenses.
 - **The application states the applicant is responsible for obtaining certified court documents for the criminal history.** Failure to provide court documents results in an incomplete application. The application will be rejected and no temporary license will be issued. Ms. Scott explained that the AG’s office has run into delays in getting the certified court documents in time for hearings not to mention the cost of obtaining the records.
- Question 3 – Asking for any current charges
- Question 4 – Asking for any judgments, civil action involving fraud, misrepresentation or conversion.
- Question 5 – Asking financial character – delinquent with the filing of taxes, delinquent in the payment of taxes, or delinquent in the payment of any judgments

Pages 5 and 6 – Space to disclose criminal history

Page 7 – Investigation Authorization, Authorization to Release Information

Page 8 – Dealer certification, Bond information, Applicant’s Statement of Understanding

The plan is to get the application on the website once it is approved. For 60 days, there will be an educational and phase in period. During this time, both applications would be accepted. Starting July 1st, only the new application will be accepted.

There was discussion about the renewal process for salespeople. Mr. Zulauf informed the Board that Ms. Kopecky came up with a postcard idea to send to the dealer saying these people are due for renewal and to go online to get the renewal application. Mr. Zulauf said this would probably be a one page renewal per person instead of six people on one page.

Motion made to approve the new salesperson application – approved unanimously.

New Business – There was no new business.

Public Comment – Ms. Marvin asked how soon a copy of the salesperson application could be obtained. Mr. Zulauf said she could have one immediately, with the caveat that we don't know when it will actually start.

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 1:47 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