



## CHAUFFEUR'S PERMIT APPEAL HEARING MINUTES

JANUARY 27, 2015

Two Chauffeurs' Permit Appeal Hearings were held on Tuesday, January 27, 2015, at 9:46 am, in the Council Chamber, Third Floor, City Hall.

**PRESENT:** Councillor Carr, Chair  
Councillor Jang  
Councillor Stevenson

**CITY CLERK'S OFFICE:** Leslie Tuerlings, Meeting Coordinator

### 1. David James Astren

A Chauffeur's Permit Appeal Hearing was called to determine whether or not the refusal by the Chief Constable to issue a Chauffeur's Permit to David James Astren, should be upheld or overturned. The Panel had before it for consideration an Evidence Brief, prepared by the City of Vancouver's Legal Department, which contained the following material (*on file in the City Clerk's Office*) and the evidence of witnesses:

<u>Tab</u>	<u>Description</u>
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| 1. | Notice of Hearing  |
| 2. | Email exchange between City of Vancouver and David James Astren, dated September 22-23, 2014   |
| 3. | Memo from Constable Kevin Barker of the Vancouver Police to Chief Constable Jim Chu dated August 27, 2014<br><br>Letter from Chief Constable to David James Astren dated September 2, 2014<br><br>Taxi Unit Interview check sheet completed by Acting Sergeant Mike Gilbert on August 26, 2014 |
| 4. | Letter from Blacktop Cabs Ltd. to VPD Taxi Unit regarding police records check for David James Astren<br><br>VPD Request and Consent for Record Check and Disclosure   |
| 5. | ICBC Driving Record Search pertaining to David James Astren<br><br>Criminal Record of David James Astren   |

Ministry of Justice - Accused History Report pertaining to David James Astren

Occurrence Report - Narrative Text Hardcopy of GO# NW 2006-6475

6. Chauffeur and Vehicle for Hire Permit Application of David James Astren

Adeline Kong, Lawyer, Legal Department, was present on behalf of the City of Vancouver. David James Astren represented himself.

Ms. Kong reviewed the legislation relevant to the circumstances of this Hearing and noted the City has the authority to regulate Chauffeurs under Section 317(1)(l) of the *Vancouver Charter*. She further explained that this was an appeal by Mr. Astren, pursuant to section 36(7) of the *Motor Vehicle Act*, from the refusal by the Chief Constable to issue a Chauffeur's Permit under section 36(5) of the *Motor Vehicle Act* and noted that the rules of natural justice apply.

Ms. Kong advised the Chief Constable refused to issue the Permit pursuant to section 6.1(2A)(a) of the *Vehicles for Hire By-law*, which states that "the Chief Constable must ascertain whether the applicant has at any time within the preceding five years been convicted of any offence under any statute of Canada or the Province of British Columbia or under any city by-law, and the Chief Constable, if of the belief that the nature of the offence relates to the business, trade, profession, or other occupation for which the application has been made, must refuse the permit". The refusal by the Chief Constable was therefore made on the basis that the Applicant has been convicted of Fraud over \$5,000, contrary to section 380(1)(a) of the *Criminal Code of Canada*, as documented in the Notice of Hearing dated December 22, 2014, that was sent to Mr. Astren by Registered Mail.

Ms. Kong noted that after hearing the appeal, Council may uphold or overturn the Chief Constable's refusal to issue a Chauffeur's Permit to David James Astren. She noted the Panel should consider whether the Chief Constable correctly interpreted and applied the applicable legislation to this particular set of circumstances in determining whether or not a refusal of the Chauffeur's Permit was appropriate.

Ms. Kong called Constable Mike Gilbert, Taxi Unit, Vancouver Police Department, as witness in support of the allegations.

Ms. Kong called Constable Kevin Barker, Taxi Unit, Vancouver Police Department, as witness in support of the allegations.

The Panel asked questions of the witnesses.

In opening, Mr. Astren submitted that he is currently employed full-time as a truck driver and was applying for a Chauffeur's Permit in order to continue driving a limo part-time. He also noted that although he was convicted of fraud in 2010, the charges were laid in 2006, almost ten years ago. Mr. Astren admits to making a mistake in the past, but assured the Panel that it was out of character for him and his record is otherwise clean. He provided the panel members with a letter from his current employer as well as contact information for his Parole Officer as references to his character.

Mr. Astren called Jeff Thompson, Pastor, NewHope Church, as a witness. Mr. Thompson vouched for Mr. Astren's character and noted that his time served pales in comparison to the personal price he has paid.

In closing, Ms. Kong submitted that Mr. Astren has been convicted of Fraud over \$5,000 and the *Vehicles for Hire By-law* states that any offence under Provincial statute during the past five years is enough to disqualify an application for a Chauffeur's Permit if it relates to the business or occupation of driving a vehicle for hire. Ms. Kong submitted that the Chief Constable's decision to not issue a permit was in accordance with the By-law.

Mr. Astren, in his closing statement, submitted that he made a poor decision years ago that was out of character and that he is not a threat to society.

The Panel asked questions of Mr. Astren.

#### PANEL MEMBERS DECISION

Prior to making a decision, the Panel members received additional information from both the City's and Mr. Astren's witnesses.

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*The Panel recessed at 10:25 am and reconvened at 10:40 am.*

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In making a decision on this matter, the Panel noted that although they do believe that Mr. Astren's behaviours have changed, they were of the view that his *Criminal Code* conviction did relate to the business or occupation of driving a vehicle for hire. Accordingly, pursuant to the applicable legislation, the Chief Constable's decision must be upheld.

MOVED by Councillor Carr  
SECONDED by Councillor Stevenson

THAT the Chauffeur's Permit Appeal Panel uphold the Chief Constable's decision to refuse to issue a Chauffeur's Permit to the Applicant, David James Astren, based on evidence of fraudulent behaviour that indicates he is unfit to act as a Chauffeur.

CARRIED UNANIMOUSLY

## 2. Raymond Lui

A Chauffeur's Permit Appeal Hearing was called to determine whether or not the Chief Constable's decision to suspend Raymond Lui's Chauffeur's Permit from December 16, 2014 to March 16, 2015, should be upheld or overturned. The Panel had before it for consideration an Evidence Brief, prepared by the City of Vancouver's Legal Department, which contained the following material (*on file in the City Clerk's Office*) and the evidence of witnesses:

Tab      Description

1. Letter from Raymond Kong Man Lui dated December 17, 2014  
  
Letter to Raymond Kong Man Lui from the City of Vancouver dated December 17, 2014
  
2. Memo from Constable Kevin Barker of the Vancouver Police to Chief Constable Jim Chu dated December 16, 2014;  
Letter from Chief Constable to Raymond Kong Man Lui dated December 16, 2014  
  
Taxi Unit Interview check sheet completed by Constable Mike Gilbert on December 16, 2014
  
3. November 2014 Chauffeur and Vehicle for Hire Permit Application  
  
Letter from Blacktop Cabs Ltd. to VPD Taxi Unit regarding police records check for Raymond Kong Man Lui  
  
VPD Request and Consent for Record Check and Disclosure  
  
ICBC Driving Record Search pertaining to Raymond Kong Man Lui
  
4. November 2012 Chauffeur and Vehicle for Hire Permit Application  
  
Letter from Blacktop Cabs Ltd. to VPD Taxi Unit regarding police records check for Raymond Kong Man Lui  
  
VPD Request and Consent for Record Check and Disclosure  
  
ICBC Driving Record Search pertaining to Raymond Kong Man Lui
  
5. Chauffeur's Permit issued to Raymond Kong Man Lui

Adeline Kong, Lawyer, Legal Department, was present on behalf of the City of Vancouver. Raymond Lui represented himself.

Ms. Kong reviewed the legislation relevant to the circumstances of this Hearing and noted the City has the authority to regulate Chauffeurs under Section 317(1)(I) of the *Vancouver Charter*. She further explained that this was an appeal by Mr. Lui, pursuant to section 36(7) of the *Motor Vehicle Act*, from the decision of the Chief Constable to suspend Mr. Lui's Chauffeur's Permit under section 36(5) of the *Motor Vehicle Act* and noted that the rules of natural justice apply.

Ms. Kong further advised that the *Vehicles for Hire By-law* states that "the Chief Constable must ascertain whether the applicant has at any time within the preceding five years been convicted of any offence under any statute of Canada or the Province of British Columbia or

under any city by-law, and the Chief Constable, if of the belief that the nature of the offence relates to the business, trade, profession, or other occupation for which the application has been made, must refuse the permit". The suspension by the Chief Constable was made on the basis that the Applicant has, since he was last issued a Chauffeur's Permit, been convicted of the following offences under the *Motor Vehicle Act*, as documented in the Notice of Hearing dated December 16, 2014, that was sent to Mr. Lui by Registered Mail:

- Provincial driving convictions under BC MVA

Ms. Kong noted that after hearing the appeal, Council may uphold or overturn the Chief Constable's refusal to issue a Chauffeur's Permit to Raymond Lui. She noted the Panel should consider whether the Chief Constable accurately and correctly interpreted and applied the legislation to this particular set of circumstances in determining whether or not a refusal of the Chauffeur's Permit was appropriate.

Ms. Kong called Constable Mike Gilbert, Taxi Unit, Vancouver Police Department, as witness in support of the allegations.

Ms. Kong called Constable Kevin Barker, Taxi Unit, Vancouver Police Department, as witness in support of the allegations.

The Panel asked questions of the witnesses.

In opening, Mr. Lui submitted that he is a safe driver and that he has had no major accidents in the past five years. He noted that it is not out of the ordinary to see vehicles making U-turns during quiet traffic hours. Mr. Lui also submitted that he is the sole provider for his family and has been out of work since December. He asked that his suspension be reduced.

The Panel asked questions of Mr. Lui.

In closing, Ms. Kong submitted that Mr. Lui has a number of Provincial offences in the last few years and that the Chief Constable's decision to not issue a permit was entirely appropriate.

#### **PANEL MEMBERS DECISION**

In making a decision on this matter, the Panel noted that the numerous infringements of the *Motor Vehicle Act* would lead them to uphold the Chief Constable's decision.

MOVED by Councillor Carr

SECONDED by Councillor Stevenson

THAT the Chauffeur's Permit Appeal Panel uphold the Chief Constable's decision to suspend Raymond Lui's Chauffeur's Permit from December 16, 2014 to March 16, 2015, based on evidence of numerous infringements of the *Motor Vehicle Act* over the last five years that indicate he is unfit to act as a Chauffeur.

CARRIED UNANIMOUSLY

**ADJOURNMENT**

MOVED by Councillor Jang  
SECONDED by Councillor Stevenson

THAT the meeting be adjourned.

CARRIED UNANIMOUSLY

The Chauffeur's Permit Appeal Hearing adjourned at 11:41 am.

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