THE FOLLOWING DECISIONS WERE RATIFIED BY THE HAMILTON LICENSING TRIBUNAL:

1. **APPEAL HEARING: Renewal Application for a Residential Care Facility Licence for Cain’s Partnership operating as Sunrise Lodge, located at 164 Park Street South, Hamilton, Ontario (File No. 10 279022) (Item 4.1)**

   (Clark/Pasuta)

   That, as an appeal of the matter is premature to the process, the request for a hearing, respecting the application for a Residential Care Facility (Establishment) License, submitted by Cain’s Partnership operating as Sunrise Lodge, located at 164 Park Street South, Hamilton, Ontario, be denied. CARRIED
2. **APPEAL HEARING: Michael Taylor – Application for a Taxi Cab Driver Licence (File No. 12 283669 2M) (Item 4.2)**

   *(Clark/Duvall)*
   That the Taxi Cab Driver Licence application submitted by Michael Taylor be accepted and a licence issued, contingent upon the following condition; and, providing that the applicant satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended:

   (i) That Michael Taylor be required to submit a current police record check to the Issuer of Licenses every six (6) months for a two (2) year period.

   **CARRIED**

3. **APPEAL HEARING: Syed Bakht – Renewal Application for a Taxi Cab Driver Licence (File No. 11 282310 2M) (Item 4.3)**

   *(Clark/Duvall)*
   (a) That the Taxi Cab Driver Licence renewal application submitted by Syed Bakht be accepted and a licence issued, contingent upon the following condition; and, providing that the applicant satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended:

   (i) That Syed Bakht be required to submit a current driver abstract to the Issuer of Licenses every three (3) months for a one (1) year period.

   (b) That the Taxi Cab Driver Licence issued to Syed Bakht, be suspended for a sixty (60) day period to commence on Thursday, December 06, 2012 and be reinstated on Monday, February 4, 2013.

   **CARRIED**

4. **SHOW CAUSE HEARING: Lutfor Rahman Miah –Taxi Cab Driver Licence (File No. 11 275467 2M) (Item 4.4)**

   *(Clark/Duvall)*
   That the adjournment request, respecting the Show Cause hearing for Lutfor Rahman Miah, Taxi Cab Driver Licence, submitted by the City of Hamilton, be granted to the January 10, 2013 hearing date, in order that the City may have additional time to prepare.

   **CARRIED**

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**FOR THE INFORMATION OF THE TRIBUNAL:**

(a) **CHANGES TO THE AGENDA (Item 1)**

   There were no changes to the agenda.
(Duvall/Clark)
That the December 6, 2012 agenda for the Hamilton Licensing Tribunal be approved, as presented.

CARRIED

(b) DECLARATIONS OF INTEREST (Item 2)

There were no declarations of interest.

(c) APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING (Item 3)

(i) November 8, 2012 (Item 3.1)

(Clark/Pasuta)
That the Minutes of the November 8, 2012 meeting of the Hamilton Licensing Tribunal be approved, as presented.

CARRIED

(d) APPEAL HEARING: Renewal Application for a Residential Care Facility Licence for Cain’s Partnership operating as Sunrise Lodge, located at 164 Park Street South, Hamilton, Ontario (File No. 10 279022) (Item 4.1)

On July 11, 2012, the Director of Municipal Law Enforcement sent correspondence to W. Cain, Administrator/Partner of Cain’s Partnership operating as Sunrise Lodge, located at 160-164 Park Street South, Hamilton, Ontario; more specifically 164 Park Street South, advising that in accordance with the City of Hamilton Licensing By-law 07-170, as amended, clauses (12)(1)(b)(i), (12)(1)(c)(vi) paragraphs 2 and 3, the renewal of the above noted licence for the premises is refused, based on the following grounds:

1. Refusal to permit an inspection as per the City of Hamilton Licensing By-law 07-170, as amended, Section 11(4), which allows the Issuer of Licenses to conduct reasonable inspections for the purpose of licensing; you have denied the Issuer of Licensing an opportunity to conduct an inspection on the premises, as requested.

   This determination is part of the licensing process; the last inspection conducted on the premise of 164 Park Street South, Hamilton, Ontario was conducted on May 9, 2011. A determination with compliance with Section 11(4) will require an inspection of 164 Park Street South by a Municipal Law Enforcement Officer (Licensing & Permits Officer), a Public Health Nurse Inspector and a Public Health Environmental Health Inspector. This information was previously requested in the June 21, 2011 and December 22, 2011 correspondence.

2. Refusal to supply the names, ages and number of staff working in the Residential Care Facility at 164 Park Street South, Hamilton, Ontario.
Ultimately, the City will require the information on employees as set out in the City of Hamilton Licensing By-law 07-170, Schedule 20, Section 6(b) and Schedule 20, Sections 14 and 17 along with the Guidelines relating to Section 17.

This would include details of how many staff reside at the premises at any given time, and confirming who their employer is, if not Cain's Partnership; and, details of staffing schedules that show the number of staff working or residing at the premises on a daily and weekly basis.

3. Failure to supply a certificate from the Medical Officer of Health indicating approval, as required by the City of Hamilton Licensing By-law 07-170, Schedule 20, Section 6(b). If the certificate is still pending approval by the Medical Officer of Health, this approval may require their inspection. This information was previously requested in the December 22, 2011 correspondence.

4. Refusal to supply an updated Single Facility Incident Plan, approved by the Medical Officer of Health for the premises, as required by the City of Hamilton Licensing By-law 07-170, Schedule 20, Section 7. The content and requirements for the plan are further detailed in the Guidelines under the heading “Part II: Licensing”, Section 5 and Appendix “A” to the Residential Care Facilities Guidelines. To-date, a single facility incident plan for 160 Park Street South has only been provided. This information was previously requested in the December 22, 2011 correspondence.

5. Refusal to supply a sample tenancy agreement in use at the premises. For this purpose please refer the City of Hamilton Licensing By-law 07-170, Schedule 20, Section 36 and the related Guidelines for this Section, in particular, the Guideline requirements for the content of this agreement and the Residential Care Facility Information Package. This information was previously requested in the December 22, 2011 correspondence.

6. Refusal to supply details and a copy of your agreement with the Good Shepherd for the premises; the date when the arrangement for Good Shepherd commenced and the provisions of the agreement, as required and required by the City of Hamilton Licensing By-law 07-170, Section (6)(1)(c). This information was previously requested in the December 22, 2011 correspondence.

On August 10, 2012, an appeal of the decision of the Issuer of Licenses was submitted to the Office of the City Clerk, for the Tribunal’s consideration.

On August 17, 2012, a Notice of Hearing was sent to both Winsome Cain and Calvin Cain advising of the September 20, 2012 hearing date. Subsequently, the
Cain’s requested an adjournment of that hearing in order to have additional time to prepare. The adjournment was granted by the Tribunal.

A second Notice of Hearing was sent to the Cain’s advising of the December 6, 2012 hearing date.

December 6, 2012 Hearing:

Mr. Burtis provided his Opening Statement, which included, but was not limited to, the following:

- Mr. Burtis stated that, although there is an Agreed Statement of Facts, between the parties; he is unsure why this matter is currently before the Tribunal.

- 160 Park Street South currently contains a Residential Care Facility for a maximum of 10 residents.

- That 164 Park Street South is recognized as a four unit multiple dwelling and is not operating as a Residential Care Facility.

- That the proposal put before the Committee of Adjustment to permit the expansion of the existing Residential Care Facility at 160 Park Street South from a capacity of ten (10) residents to a maximum capacity of fourteen (14) residents and to legalize the expansion of an existing legal non-conforming four (4) unit multiple dwelling at 164 Park Street South to a six (6) unit multiple dwelling (not a residential care facility) was approved.

Therefore, as the matter of a Residential Care Facility Licence is not before the Tribunal, what is the purpose of today’s hearing?

Ms. Winsome Cain, one of the three Partners in Cain’s Partnership addressed the Tribunal. Ms. Cain’s comments included, but were not limited to, the following:

- Ms. Cain is before the Tribunal today to contest the decision of the Issuer of Licences respecting the refusal of her application for a Residential Care Facility Licence.

- The previous owners had been issued a Residential Care Facility Licence; and, although Cain Partnership is not currently in the position to immediately comply with the By-law, Ms. Cain was asking that the City provide her with a written guarantee that Cain Partnership will be provided with a Residential Care Facility Licence in the future.
The Tribunal advised Ms. Cain that it is not within their jurisdiction to provide anyone with a guarantee that they would receive a licence of any kind in the future. It was suggested to Ms. Cain that she continue to work with staff to meet the requirements of the Licensing By-law 07-170, as amended, and when Cain Partnership is ready use the property at 164 Park Street South as a Residential Care Facility, she should then apply for a licence.

If at that time, the application for a Residential Care Facility licence for 164 Park Avenue South is refused by the Issuer of Licences, Cain Partnership would be provided an opportunity to appeal the decision before the Hamilton Licensing Tribunal. However, at this time, an appeal of the matter is premature to the process.

(e) APPEAL HEARING: Michael Taylor – Application for a Taxi Cab Driver Licence (File No. 12 283669 2M) (Item 4.2)

On October 24, 2012, the Director of Municipal Law Enforcement sent correspondence to Michael Taylor advising that, in accordance with the City of Hamilton Licensing By-law 07-170, as amended, his application for the above-noted licence was refused and a licence would not be issued, based on the following grounds:

1. Section 12(1)(a)(i), of the City of Hamilton Licensing By-law 07-170, as amended, a policy under Section 15 requires refusal.

2. Section 15(1) and Appendix “A”, Section A, of the City of Hamilton Licensing By-law, as amended, an application for a Taxicab Driver Licence shall be refused if there are 2 or more criminal convictions within 2 years of the application date.

   Namely:


December 6, 2012 Hearing:

Prior to hearing the matter, Mr. Taylor was asked if he preferred his matter to be heard in Open Session or Closed Session, as his police record would be discussed.

Mr. Taylor advised that he had no objection to the matter being heard in Open Session.

Mr. Burtis provided his Opening Statement, which included, but was not limited to, the following:
• As outlined in the refusal letter of October 24, 2012, the City of Hamilton Licensing By-law requires a refusal of a (mobile) licence if the applicant has two (2) or more criminal convictions within two (2) years of the application.

• Mr. Taylor has two convictions: (1) Failure to Comply with Recognizance (Adult) on April 30, 2012; and, (2) Assault Level 1 (Adult).

• As well there is a history of other convictions dating back from 1985 to 2001.

Mr. Taylor provided his Opening Statement, which included, but was not limited to, the following:

• I have had a taxi cab driver licence in the past, but I let it slide.

• I have reference letters from Steve Jones and Anthony Rizzuto (copies submitted by the City on behalf of the Appellant)

• It’s (taxi cab driver) a tough job. I helped to take people off the streets who were drinking or drove people home who didn’t have enough money. You don’t hear about the good things cab drivers do.

• I’m currently on social assistance and don’t want to be.

• Events of my personal life have caught up with me.

Mr. Burtis entered the following exhibits for the record and provided an overview of same:

**Exhibits**


4. Taxi Academy Certificate, Mr. Michael Taylor.

5. Correspondence to Mr. Michael Taylor dated October 24, 2012 (Licence Application Refusal.)
6. Request for refund of licence fee from Mr. Michael Taylor, received October 25, 2012.


8. Correspondence to Mr. Michael Taylor dated November 19, 2012 (Notice of Appeal Hearing.)

9. Correspondence from Steve Jones, Taxi Academy Instructor, dated November 30, 2012; and, Correspondence from Anthony Rizzuto, Vice President of Blue Line Transportation Ltd. (*was submitted earlier on behalf of Michael Taylor*)

10. Appendix “A” to the General Provisions of the Hamilton Licensing By-law, 07-170, as amended.

Michael Taylor was solemnly affirmed, prior to providing his testimony. Mr. Taylor’s comments included, but were not limited to, the following:

- In 1985, I was 19 or 20 years old. I was young and dumb.
- I don’t believe I am a danger to the public.
- I have driven young girls who are out late at night and don’t have enough money to get all the way home. I don’t refuse for safety reasons.
- People have left their cell phones in the car – I have returned them and not charged a fare for the return.
- Things are going well with my spouse. We are even back together and stronger than before.
- When asked by the Tribunal why his spouse wasn’t in attendance with him, Mr. Taylor replied that she is shy and was nervous about being in front of the Councillors.
- Mr. Taylor advised that he and his spouse have gone for counseling (for their relationship) and have lived common law for approximately 2 years.
- Mr. Taylor stated that he was driving a cab in 1989; he had a criminal record back then and it wasn’t an issue.
- When I previously drove a taxi, I was not on social assistance. You can make pretty good money if you work at it.

Mr. Burtis stated that he had no further questions; Mr. Taylor’s criminal record speaks for itself.
In Closing, Mr. Taylor’s comments included, but were not limited to, the following:

- The day-to-day good things are not recorded.
- I have never had an incident on the job and that’s what counts.

In Closing, Mr. Burtis’ comments included, but were not limited to, the following:

- Mr. Taylor has two recent convictions and a prior criminal history.
- He is not in compliance with the By-law; therefore, staff is recommending that he wait the mandatory period and not apply for two years until his criminal record has been cleared.

(Pasuta/Clark)
That the Hamilton Licensing Tribunal move into Closed Session, at 10:40 a.m., to deliberate upon the submissions of the parties, respecting the application for a Taxi Cab Driver Licence, submitted by Michael Taylor.

CARRIED

Members of the Public were invited to return to hear any further deliberations upon the Tribunal reconvening in Open Session.

The Tribunal reconvened in Open Session at 10:50 a.m.

Having heard the submissions of the parties, the Tribunal provided their decision, which is shown as Item 2 above.

(f) APPEAL HEARING: Syed Bakht – Renewal Application for a Taxi Cab Driver Licence (File No. 11 282310 2M) (Item 4.3)

On November 12, 2012, the Acting Director of Municipal Law Enforcement, sent correspondence to Syed Bakht, advising that, in accordance with the City of Hamilton Licensing By-law 07-170, as amended, his application for the above-noted licence was refused and a licence would not be issued based on the following grounds:

1. That in accordance with Section 12(1)(a) of the City of Hamilton Licensing By-Law 07-170, as amended, a policy under Section 15 requires refusal.

2. That in accordance with Section 15(1) and Appendix “A”, Section H, of the City of Hamilton Licensing By-law 07-170, as amended, an application for a Taxicab Driver licence shall be refused if either 6 demerit points have been lost or there are 4 driving convictions within 1 year of the licence application.
Namely:


December 6, 2012 Hearing:

Prior to hearing the matter, Mr. Bakht was asked if he preferred his matter to be heard in Open Session or Closed Session, as his driving record would be discussed.

Mr. Bakht advised that he had no objection to the matter being heard in Open Session.

Opening Statements:

Mr. Burtis provided his Opening Statement, which included, but was not limited to, the following:

- Mr. Bakht failed to stop for a school bus.
- There are no witnesses to be heard today with respect to this matter. Mr. Bakht's renewal application was refused based on his driving conviction.
- Mr. Bakht has 6 demerit points; therefore, according to Section “H” of Appendix “A” to the By-law a (mobile) licence must be refused if there are either 6 demerit points or 4 driving convictions within 1 year of the application or renewal date.

Mr. Syed Bakht was solemnly affirmed, prior to providing his testimony.

Mr. Bakht provided his Opening Statement, which included, but was not limited to, the following:

- I have had my driver’s licence for 25 years and haven’t had a single ticket.
- I took the driving course for taxis and did very well.
- On that date (September 17, 2012), I was on the mountain and it was very foggy with zero visibility. I saw the school bus from the left side and the school bus did not have its red lights on, and I didn’t see the sign.
- As I drove past the school bus, I got pulled over by a police officer on a motor cycle (Garth and Mohawk).
At the time, I paid the ticket ($490) as it was the easiest thing to do. I believed if I just paid the ticket everything would be fine. I did not realize it would affect my licence.

If I thought it was going to affect my licence I would have fought the ticket. It is my only source of income and I have a wife and three children.

Mr. Burtis entered the following exhibits for the record and provided an overview of same:

Exhibits:

1. Licence Renewal, Mr. Syed Bakht, dated November 12, 2012
2. Province of Ontario, Ministry of Transportation 3 Year Driver Record Search, Mr. Syed F. Bakht, Ministry No. 088-8-1113, dated November 8, 2012
3. Correspondence to Mr. Syed Bakht dated November 12, 2012 (Notice of Refusal)
4. Appeal, Mr. Syed Bakht, dated November 19, 2012
5. Correspondence to Mr. Syed Bakht dated November 19, 2012 (Notice of Appeal Hearing)

In Closing, Mr. Bakht’s comments included, but were not limited to, the following:

- Mr. Bakht had no further comments or questions.

In Closing, Mr. Burtis’ comments included, but were not limited to, the following:

- Mr. Bakht was convicted.
- Based on his application date he would not be able to reapply until October 2013.
- In the interest of public safety, and because he should be able to operate his vehicle safely in all conditions, we recommend that the by-law be upheld and Mr. Bakht be required to wait the mandatory time before he reapply.

(Clark/Pasuta)

That the Hamilton Licensing Tribunal move into Closed Session, at 11:13 a.m., to deliberate upon the submissions of the parties, respecting Syed Bakht’s renewal application for a Taxi Cab Driver Licence.

CARRIED
Members of the Public were invited to return to hear any further deliberations upon the Tribunal reconvening in Open Session.

The Tribunal reconvened in Open Session at 11:27 a.m.

Having heard the submissions of the parties, the Tribunal provided their decision, which is shown as Item 3 above.

(g) **SHOW CAUSE HEARING: Lutfor Rahman Miah – Taxi Cab Driver Licence (File No. 11 275467 2M) (Item 4.4)**

On November 14, 2012, the Acting Director of Municipal Law Enforcement sent correspondence to the Legislative Coordinator, Office of the City Clerk, requesting that, pursuant to Section 12(1) of the City of Hamilton Licensing By-law 07-170, as amended, a show cause hearing be scheduled before the Hamilton Licensing Tribunal to determine whether or not the above reference license should be revoked, suspended or have conditions imposed upon it.

Pursuant to Section 8 of the **Statutory Powers Procedure Act**, R.S.O., c. S22, the grounds for revocation, suspension or the imposition of conditions at that hearing will be:

1. City of Hamilton Licensing By-law 07-170, Section 12(1)(c)(vi)1., as amended: In the opinion of the Issuer of Licenses, the operation of the applicant’s or licensee’s business would put the public safety at risk; and,

2. City of Hamilton Licensing By-law 07-170, Section 12(1)(c)(vi)3., as amended: In the opinion of the Issuer of Licenses, the conduct of the applicant or licensee affords reasonable grounds for belief that the applicant or licensee will not carry on or engage in the business in accordance with the law or with honesty or integrity.

Namely:

Mr. Lutfor Rahman Miah was convicted of Sexual Assault on October 22, 2012. The incident occurred while Mr. Miah was operating a taxi cab.

The licence expires on May 22, 2013. If the hearing has not been completed before the licence expires; and,

- the licence holder has not submitted a completed application for a renewal, then we will request that the hearing be cancelled. If this is the case and the licence holder keeps operating without a licence, they will be doing so contrary to the Licensing By-law; or,

- the licence holder has submitted a completed application for a renewal, then we will request that the hearing proceed under
Section 12(1) of the Licensing By-law as a refusal of the licence rather than as a recommendation to revoke or suspend the licence.

December 6, 2012 Hearing:

Mr. Burtis provided his Opening Statement, which included, but was not limited to, the following:

- The City requires additional time to properly prepare for this matter, and as Mr. Miah has been convicted and sentenced to 45 days in jail to be served intermittently; and, has voluntarily surrendered his Taxi Cab Driver Licence, there is no immediate concern for public safety with respect to Mr. Miah driving a Taxi in Hamilton.

Having heard the submissions of the parties, the Tribunal provided their decision, which is shown as Item 4 above.

(g) ADJOURNMENT (Item 7)

(Clark/Pasuta)
That, there being no further business, the Hamilton Licensing Tribunal be adjourned at 11:34 a.m.

CARRIED

Respectfully submitted,

Councillor C. Collins, Vice Chair
Hamilton Licensing Tribunal

Stephanie Paparella
Legislative Coordinator
Hamilton Licensing Tribunal