Minutes
Administrative Board of Appeals
July 26, 2010

MEMBERS PRESENT:	Ann O'Connor, Chair David Levy, Vice Chair Jim Weaver Jose Lopez Bode Labode
MEMBERS ABSENT:	Steve Simmonds, Alternate Jama Samiev, Alternate
OTHERS PRESENT:	RoseMarie Horvath, Law Department Kevin Denker, Planning Department Debbie Hightower, Recording Secretary

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Prior to the regular meeting, a firearms discussion took place at 12:30. Present were all board members including the alternates; Bill Mulhern, Omaha Safety Council; Tom Wheeler and Roxanne Nolan, Sheriff Department; and Lt. Mike McGee, Omaha Police Department presented information and answered questions.

I. Roll Call

Ms. O'Connor called the meeting to order at 1:35 pm.

Mr. Denker asked that the board receive as Exhibit 1 in each of this meeting's cases the contents of the City's file on each case.

Ms. O'Connor acknowledged the contents of the City's file as Exhibit 1 in each case.

II. Cases

10-7-53
Appeal Omaha Police Department denial of firearm registration: Robert McCormick, 3052 Whitmore Street 68112

Lt. Mike McGee, Omaha Police Department, stated that Mr. McCormick was denied a handgun registration based on a background check through NICIC with an agency from New York State. A response was received stating a file was sealed and there was no way to gain any information. Mr. McCormick provided the name of the agency where the incident took place. Mr. McCormick was denied the handgun registration until a certified copy of the court record was received verifying that the incident was a misdemeanor and not a felony.

Robert McCormick appeared before the Board. Mr. McCormick stated he does not have a criminal record and has never been convicted of a crime. He stated that approximately 20 years ago he was arrested in upstate New York and was found not guilty therefore the file was sealed. A permit to purchase a handgun, issued by the State of Nebraska, was shown to the board members. Mr. McCormick explained that it would take 8 months to get the required information. He stated he has lived in Omaha for over 10 years and would like to own a handgun for protection for his family.

Mr. Levy stated he understands the position of the Police Department and the frustration of Mr. McCormick.

Ms. O'Connor asked Lt. McGee for the date of the offense. Lt. McGee could not confirm a date. Lt. McGee could not produce a copy of the application form when asked by Mr. Levy.

Mr. Weaver questioned the evidence of Mr. McCormick's criminal history. Lt. McGee stated the NCIC background check showed an incident in New York State that stated, "…our files do not contain any information, which under New York law, can be disseminated."

Ms. Horvath explained that it is illegal to divulge any information that is sealed. Mr. McCormick would be the only person who could request the sealed records.

Mr. Levy questioned why the Douglas County Sheriff issued a permit to purchase after a background check for felonies and the fact that there was a permit to purchase suggests that there was not a felony. Lt. McGee stated there are two different criteria and there could still be reasons to prohibit a gun registration. A decision cannot be made without the proper information from New York State.

Mr. Weaver made a motion to grant the appeal. Second by Mr. Labode.

AYES: Lopez, Levy, Weaver, Labode

NAYS: O'Connor

Motion carried 4-1. Appeal granted.

10-7-60
Appeal Omaha Police Department denial of firearm registration: Timothy Sadle, 5710 Pratt Street 68104

No one appeared before the board.

Mr. Levy made a motion to deny. Second by Labode.

AYES: Levy, Weaver, Labode, Lopez, O'Connor

Motion carried 5-0. Appeal denied.

10-6-49 *(over from 6/28/10)*
Appeal Order to Abate Nuisance issued by City of Omaha: Brian Newman, 4414 N 30 Street 68111

No one appeared before the board.

Ms. Horvath stated she received correspondence from the Captain of the Omaha Police Department requesting that the appeal be cancelled.

Motion to lay this case over until the August 30, 2010 meeting by Mr. Levy. Seconded by Mr. Weaver.

AYES: Weaver, Labode, Lopez, Levy, O'Connor

Motion carried 5-0. Appeal laid over to the August 30, 2010 meeting.

10-7-52
Appeal Omaha Police Department notice of nuisance: Dwayne Mayes, 14312 Patrick Avenue 68164

Mr. Denker, Chief City Inspector, stated the vehicle in question has been registered and license plates are current.

Dwayne Mayes appeared before the Board. Mr. Mayes questioned the notice of nuisance. Mr. Denker explained that all vehicles parked on private property need to be registered and operational.

Mr. Weaver made a motion to deny. Second by Levy.

AYES: Lopez, Levy, Weaver, Labode

NAYES: O'Connor

Motion carried 4-1. Appeal denied.

10-7-56
Appeal Omaha Police Department notice of nuisance: Larry A. Cook, 12704 Leavenworth Road 68154

Larry Cook appeared before the Board. Mr. Cook stated his motor home is parked on concrete located in the side yard of his property next to the garage. The motor home is parked 55' from the center of the street to the front bumper of the motor home and 58' from the center of the street to the rear bumper of the motor home (Exhibit 1). Mr. Cook indicated that he has lived at this address for 18 years and has always parked a motor home in the same location. He is concerned about storing his motor home at another location because of theft, vandalism and rodent issues.

Mike Johnson, City of Omaha, submitted photos indicating the location and measurement of the motor home when parked in the driveway (Exhibit 2).

Kevin Denker, City of Omaha, Chief Housing Inspector, stated that according to Section 55-742, a vehicle shall not exceed 20' in length and parking is not permitted within 20' of the street side yard setback.

Officer James Stokes, Omaha Police Department, stated that he measured 23' from the curb to the front bumper of the motor vehicle.

Mr. Denker suggested a lay over to allow time to research and determine the side property line and determine the exact measurement.

Motion to lay this case over until the August 30, 2010 meeting by Mr. Levy. Seconded by Ms. O'Connor.

AYES: Labode, Lopez, Levy, Weaver, O'Connor

Motion carried 5-0. Appeal laid over to the August 30, 2010 meeting.

10-7-55
Appeal notice of violation issued by Parks Maintenance Department on June 7, 2010; Barbara J. Horan, 4115 N 79 Street 68134

Victor and Barbara Horan appeared before the Board. Ms. Horan stated the tree in question is a live ash tree and she believes it should not be removed. Mr. Horan stated several outside sources have said the tree is healthy. Since the complaint and during recent storms, other trees have dropped limbs but this tree remained in tact.

Josh Frey, City of Omaha, Parks Maintenance Department, stated the ash tree was inspected on May 27, 2010 and marked for removal. The ash tree suffers from many defects including large deadwood boar damage and previous limb breakage resulting in major injuries. After further inspection, the removal of the tree can be avoided if the tree is professionally trimmed and the

injuries are repaired thus preventing additional damage by insects and decay. Mr. Frey suggested a lay over to allow the applicant additional time.

Mr. Levy questioned if there is any imminent danger to any person or property. Mr. Frey stated there are some dead limbs but the major defects are located within the trunk. The tree was marked for removal because there was no evidence of the tree being repaired.

Motion to lay this case over until the August 30, 2010 meeting by Mr. Weaver. Seconded by Mr. Levy.

AYES: Levy, Weaver, Labode, Lopez, O'Connor

Motion carried 5-0. Appeal laid over to the August 30, 2010 meeting.

10-7-59
Appeal notice of violation issued by Parks Maintenance Department on June 18, 2010; Eugene Pappan, Sr., 4421 N 61 Street 68104

Eugene Pappan, Sr. appeared before the Board. Mr. Pappan, Sr. stated the reason for his appeal is that he cannot afford to remove the dead tree limbs or branches.

Josh Frey, City of Omaha, Parks Maintenance Department, stated the property owner was given 90 days from June 18, 2010 to trim the two ash trees in question (Exhibit 2). The trees are in violation of Municipal Code 37-11 which states, "It shall be unlawful for any property owner or occupant to permit to stand upon his property any dead part of a tree, any fatally disease or structurally weak tree, any structurally weak part of a tree…." A work order will be produced after 90 days if the trees are not made safe. The property owner would have the opportunity to appear before the equalization board to protest the bill regarding financial situations. There have been no attempts by Mr. Pappan to produce an estimate from a private tree service.

Mr. Frey questioned Mr. Pappan if he has contacted any agencies for assistance. Mr. Pappan stated he is not aware of any agency that "might" help.

Ms. O'Connor asked Mr. Frey for an estimate of the repairs. Mr. Frey stated the estimates can vary but he suggested that the property owner get five estimates.

Mr. Levy made a motion to deny. Second by Weaver.

AYES: Weaver, Lopez, Levy, O'Connor

NAYES: Labode

Motion carried 4-1. Appeal denied.

10-7-57
Appeal denial of dance permit; Jeffery Rothlisberger, Omaha Keno King, 6553 Ames Avenue 68104

Jeffery Rothlisberger and Nicholas Scalise appeared before the Board. Mr. Rothlisberger stated he has applied for a dance permit on five separate occasions but recently received communication on the last application which was denied. He stated he would like clarification for the denial and remedy any deficiencies.

Captain Keith Harris, Omaha Police Department, stated that in 2007 the location in question was identified as a "hot" spot in the northwest precinct with a high-density level of criminal activity and violent crime. In 2009, the City Council and Keno King agreed that dances would no longer be held. The City Council has the authority to suspend, revoke or limit dance permits. In August of 2009, Keno King opened a new dance area in the basement called "The Crown Royal Lounge" and

dances picked up again without a dance permit. There were large-scale disturbances and parking issues with the neighbors. The police department cited the location several times for no dance permit as per the agreement with the City Council. Keno King has been requested to file the long form and will appear before the State Liquor Commission on Thursday, July 29, 2010.

Mr. Levy questioned what activity causes a dance permit to be required. Captain Harris stated that a dance permit would be required if there is a dance in a dance hall that is owned, dances that are advertised or drink specials are advertised to get individuals to attend a dance or if a "DJ" is present.

Mr. Levy asked Mr. Rothlisberger if he agreed with the City Council to not hold dances. Mr. Rothlisberger stated he agreed to not have "dances". Keno King is a bar and keno operation and there is "dancing" going on. He stated he has worked desperately with the police department to work better and at times has requested police assistance in crowd control after the establishment has closed. He further stated that this is an attempt to pressure the license, chase off the good business and incriminalize individuals which leads to more violence. The 911 reports are a true test whether an area is becoming safer or more violent. The homicide map shows there are fewer homicides in the area since the opening of Keno King which is a legal lawful business. He stated he believes this is a zoning issue and the building is zoned for dance. Dancing does not cause violence – consumption of alcohol, irresponsibly, causes violence.

Mr. Levy asked Mr. Rothlisberger why he was applying for a dance permit if there are no dances being held. Mr. Rothlisberger replied that there are no dances but there is "dancing".

Mr. Rothlisberger confirmed for Mr. Labode that the City Council agreed that there be no dances.

Captain Harris stated the city ordinance has language on the City Council's ability to restrict, revoke or limit a dance permit. The City Council and police department worked hard to abate some of the criminal activity with the restrictions therefore there was a lower level of violence. Since August 2009 when the dance parlor opened in the basement of Keno King, there has been an increase in violence with a shooting incident including three victims as recently as two weeks ago.

Nicholas Scalise, manager on duty, stated the word "dance" or "DJ" has never been advertised. The lounge is a multi-functional lounge that includes live music, poetry, comedy and positive events. There is no area set aside for dance and there are tables across the "dance" floor. There is a jukebox in the downstairs area. He stated that two of the largest dance clubs in Omaha do not possess dance permits. If the dance permit is granted there will be no change in business and it will not be a dance club but is an attempt to stop getting tickets for not having a dance permit.

Mr. Rothlisberger reiterated that the violence has decreased but every business and resident in north Omaha is affected by violence.

Captain Harris emphasized that the decrease in violence "was" working when Keno King was abiding by the restrictions from the City Council. He stated that the City Council requested that Keno King abide by the dance restrictions before considering a dance permit but Keno King was reluctant. This has resulted in a request for revocation of the Keno King liquor license before the Liquor Commission. The police department has been expending a sizeable amount of manpower in the recent days at Keno King since the last incident on July 17, 2010 and breaking up large scale disturbances in the parking lot and assisting with traffic control. There were advertisements for the event on July 17, 2010.

Mr. Levy questioned the charge for the tickets that were issued where there was no conviction. Mr. Scalise responded that the charges were for dance without a permit, the charges were set aside and the judge viewed it as harassment.

Captain Harris stated that recently there was a challenge to the entrance to Keno King. When officers showed up for an inspection for dancing or other liquor violations, the doors were locked. Officers entered when a patron left and there was a citation issued for dancing. There was a tavern

report completed for drinking violations such as drinking in the parking lot. Multiple other tavern reports were subsequently completed. Mr. Scalise responded that the doors were closed at 12:30 a.m. to prevent entrance of undesirable patrons before the bar closings of 1:00 a.m. Lighting, cameras and security are utilized to keep the establishment and area safe. There have been no major liquor violations.

Captain Harris submitted advertisements (Exhibit 4) indicating venues with the Keno King address. Mr. Rothlisberger responded that the advertisements included an actress and a sporting event and not a rapper. He stated that this is a liquor issue and not a zoning issue.

Captain Harris pointed out that if there is dancing without dance permits at other taverns, the police would conduct checks at those taverns. There is a huge outcry from the neighborhood and neighbors because of the violent events and quality of life issues. There is no good comparison with other taverns because there is not the same type of shootings and large-scale disturbances.

Mr. Levy asked what the date was when the agreement was made with the City Council meeting to not issue a dance permit. In response to Mr. Levy, Mr. Rothlisberger stated that the Dwayne Wade event was after the agreement with the City Council but there was no “DJ” and was part of a clarification of a legitimate issue regarding what is “dance” and what is “dancing”.

Captain Harris stated that the City Council agreement date was on March 2, 2009. The City Council also agreed to a monitoring period between March 2, 2009 and May 9, 2009 but there were violations therefore the current City Council reasserted the former agreement.

Mr. Rothlisberger questioned if there have been so many problems and violence, then why have no tickets been issued for fighting.

Mr. Weaver asked Captain Harris that if the same gentlemen were denied a dance permit in another establishment within the proximity of theirs were granted a dance permit, would you have the same problems at the new establishment that there is at this establishment. Captain Harris answered that the police department has no problem with Keno King or with the operation of Keno King but the police department and the City Council are concerned with the violent activity in the neighborhood.

Mr. Rothlisberger submitted homicide maps for 2008, 2009 and 2010 (Exhibit 3). The age of individuals that are involved in violence has been getting younger but violence for 21 years or older (bar age) is much lower. The 911 calls, which is a generally acceptable method of measuring increased or decreased violence in an area, clearly show that the violence has gone down in the area. This is a liquor issue that needs to go before the liquor commission and if the liquor license if revoked then the business will close. Mr. Scalise stated that within two months Keno King was involved in 25 stings for tavern reports/dance permit.

Mr. Levy questioned that if the appeal for the dance permit was granted, will the operation of the business remain the same. Mr. Scalise verified that they would not hold dances but patrons do dance.

Mr. Weaver questioned who issues the dance permit. Captain Harris stated the police department is part of the process for a dance permit and a dance permit is approved if the location is not a problem.

Ms. O’Connor stated that if the liquor license is denied the dance permit would be a moot point. Ms. O’Connor made a motion to lay this case over until the August 30, 2010 meeting by Ms. O’Connor. Seconded by Mr. Weaver.

AYES: Labode, Lopez, Weaver, O’Connor

NAYES: Levy

Motion carried 4-1. Appeal laid over to the August 30, 2010 meeting.

10-7-58
Appeal notice of nuisance issued by Public Works Department on June 18, 2010; Haibo Huang, 15820 California Street 68118

Haibo Huang and Fang Tang appeared before the Board. Mr. Huang stated he purchased his home in Barrington Park approximately one year ago and was not aware of a sump pump discharging from the curb into the street. He does not believe the pipe is located on his property and he is concerned about cutting the curb, which is located on the adjacent neighbor's property at 15814 California Street.

James Kee, Public Works Department, City of Omaha, Environmental Control Division, stated that a notice of nuisance was issued regarding a pipe that originates at 15820 California Street and crosses over to the neighboring property and into the street. The pipe that discharges at the street is a nuisance condition as defined in the Omaha Municipal Code, "Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, alley, highway, sidewalk, stream, ditch or drainage". Additionally, the City could find no record of a permit being granted to alter the curb allowing the discharge pipe to empty onto the street, as required…."It also shall be unlawful for any person to cut, deface, break out or remove any curbing or gutter of any street without first having obtained a permit therefore it shall also be unlawful for a person to make a land change…." Based upon complaints, there have been seven injuries reported over the past five years involving children falling from a bike because of the black film that builds up from the water discharge. There is damage to the street from the water discharge and the ice builds up in the wintertime. On several occasions, Public Works has been out to scrap the ice buildup and clean the street. The adjacent neighbor is more than agreeable to remove the pipe but they are concerned that the neighbor needs to be made aware of the issue.

Mr. Huang commented that the discharge pipe is joined from both properties and daylights at the curb on the neighbor's property. He is concerned that the discharge pipe is not located on his property therefore he has no authority to restore the curb or get a permit to have the pipe removed.

Mr. Levy questioned Mr. Huang if some of the water is coming from his property. Mr. Huang admitted that, after further investigation involving the recent videotape, some of the water does come from his property.

Mr. Levy questioned whether the pipe should join the storm sewer instead of flowing out into the street. Mr. Kee responded that according to city code, any type of subsurface drainage needs to be either tied into the storm sewer system or day lighted on the owner's property which does not adversely affect any other property owner. Mr. Levy commented that in theory both property owners should split the cost of putting the pipe to the storm sewer or daylight the pipe.

Mr. Kee stated that part of what the video revealed was that the first 16' of the pipe is white 4" PVC and at the split there was a corrugated black pipe and more white PVC. In all likelihood, based upon the construction materials used, the white PVC goes toward 15820 and one person tied into the other person's line. In talking with the adjacent property owner, the roof drains and sump pump has been disconnected therefore the black PVC pipe may be abandoned but the only way to know for sure is to do a lot of digging. The best remedy is to remove the pipe.

Mr. Labode questioned why Mr. Huang was cited. Mr. Kee stated the pipe is gravity fed and Mr. Huang's property sits at a higher level than the other properties. The adjacent neighbors at 15814 California are ready to change the drainage situation.

Mr. Huang stated there are more than 12 other pipes that discharge water into the street in the same manner within Barrington Park. Mr. Kee explained that a notice of nuisance is issued on a complaint basis because of the injuries to the public. This discharge pipe causes a hazard in the summer and

the winter because it continually discharges onto the street and fans out causing a moss-like and slick condition.

Ms. Tang stated she does not believe there is a problem because the sun will dry up the water that is discharged.

Mr. Weaver questioned who would be liable if a child is further injured by this hazard. Mr. Levy questioned if the adjacent homeowner was cited and what would happen if the adjacent homeowner declines to take corrective action. Mr. Kee stated that the adjacent neighbor would also be cited and put through the same process.

Ms. Therese Pogge, Public Works Department, City of Omaha, Environmental Control Division, stated that the black corrugated pipe was dry when it was being videotaped.

Mr. Huang stated he does not have a problem doing the corrective action but he does not want to deal with the neighbor. He does not believe the proper investigation and research was done.

Mr. Levy made a motion to deny the appeal with 60 days to comply. Seconded by Mr. Labode.

AYES: Lopez, Levy, Weaver, Labode, O'Connor

Motion carried 5-0. Appeal denied with 60 days to comply.

10-7-61
Appeal Nebraska Humane Society Potentially Dangerous Dog designation: Vicki Monasmith, 4626 N 80 Street 68134

Vicki Monasmith and Joshua Monasmith appeared before the Board. Ms. Monasmith stated she does not believe her dog, Marley, is a potentially dangerous dog. The dog was adopted from the Humane Society and she was assured that the dog was territorial but not aggressive. There is an electric fence and a "Beware of Dog" sign in the front yard. Marley is territorial and she does not believe anyone should trespass in her yard. There would be no problem if people would not enter the yard and attempt to feed or interact with the dog. Mr. Monasmith stated that the bite victim would not have been in danger if she would not have entered the yard and initiated the interaction with Marley.

Mark Langan, Vice President of Field Operations for the Nebraska Humane Society, appeared before the Board. Mr. Langan stated that the Nebraska Humane Society contracts with the City of Omaha to provide animal control services and patrol 24 hours per day, 7 days a week, responding to over 30,000 calls annually ranging from animal cruelty, sick or injured animals and dog bites. On June 15, 2010 the Humane Society responded to a dog bite at Immanuel Hospital. The victim indicated that she was walking down the street in front of Ms. Monasmith's house where her dog is allowed to run loose in the front yard contained by an electric fence which is not visible to passer-bys. The victim mentioned that she has gone into the yard on several other occasions to feed and/or pet the dog. On this particular occasion, she entered the yard, without permission, and fed the dog a treat and the dog bit her in the leg. She bent down to stop the dog and the dog bit her in the face (as shown in the photos in Exhibit 2). Ms. Monasmith was cited on a city ordinance charge of pet damaging property. The dog was set up on home quarantine for 10 days and did not test positive for rabies. Mr. Langan reminded the board that they are not here to decide if the dog should be euthanized. There is no violation of city ordinance to let a dog run loose in the front yard with an electric fence. In January 2009, a UPS worker was bitten who entered the yard. A postal carrier indicated that he or she was almost bitten when they entered the yard. If Ms. Monasmith feels that her dog is a danger and she has to post a "Beware of Dog" sign then the dog should not be kept in the front yard and there should be some restraints put on the dog. Electric fences do not prevent people or kids from entering a yard and possibly being attacked by a dog. If the dog is declared potentially dangerous then Ms. Monasmith will be required to: 1) have the dog spayed or neutered; 2) the dog must be micro-chipped at the owner's expense; 3) purchase a potentially dangerous dog

license which is bright orange; 4) maintain $100,000 liability insurance policy; 5) attend an ownership responsibility class and a dog behavior class to identify what has happened to the dog since being adopted by Ms. Monasmith; and 6) whenever off their property, the dog must be muzzled, harnessed on a leash no longer than 6' and under the control of a person nineteen years of age or older. Mr. Langan concluded by stating that these requirements must be placed on Ms. Monasmith's dog to avoid any further injuries and public safety hazards to the citizens of Omaha. There is nothing in the city ordinance that prevents electric fences.

Mr. Levy asked Mr. Langan if the six conditions (listed above) are special conditions determined by the Humane Society board or are the six conditions enumerated in the city ordinance. Mr. Langan confirmed that the six items are enumerated in the city ordinance 6-149 and the board does not have discretion of the six items. The dangerous dog designation can be lifted after two years if there are no other incidents with the dog.

In response to Mr. Levy, Ms. Monasmith stated that the dog has not been aggressive to family members.

Mr. Weaver stated that in light of the dog's history, the six elements of compliance do not impose a hardship in protecting the public's safety.

Motion to deny appeal by Mr. Weaver. Second by Mr. Levy.

AYES: Levy, Weaver, Lopez, O'Connor

NAYS: Labode

Motion carried 4-1. Appeal denied.

III. Approval of Minutes from May 24, 2010 and June 28, 2010

Mr. Simmonds was present for the approval of the May 24, 2010 minutes.

Mr. Simmonds made a motion to approve the minutes from the May 24, 2010 meeting. Second by Mr. Lopez.

AYES: Lopez, Simmonds, Labode

Motion carried 3-0.

Mr. Weaver made a motion to approve the minutes from the June 28, 2010 meeting. Second by Mr. Lopez.

AYES: Weaver, Labode, Lopez, Levy, O'Connor

Motion carried 5-0.

IV. Adjournment

Motion to adjourn meeting by Mr. Labode. Second by Mr. Weaver.

AYES: Weaver, Labode, Lopez, Levy, O'Connor

Motion carried 5-0. Meeting adjourned at 4:10 PM.

Debbie Hightower, Planning Department
Recording Secretary

Visit the Planning Department's Site on the Internet at
http://co.douglas.ne.us/omaha/planning/boards/administrative-board-of-appeals