

Minutes
Administrative Board of Appeals
August 27th, 2012

MEMBERS PRESENT: Ann O'Connor, Chair
David Levy, Vice Chair
Jim Weaver
Jose Lopez

MEMBERS ABSENT: Bode Labode
Steve Simmonds, Alternate
Jama Samiev, Alternate

OTHERS PRESENT: RoseMarie Horvath, Law Department
Kevin Denker, Planning Department
Andrea Wisniewski, Recording Secretary
Kenton Duncan, City of Omaha Code Inspector

I. Roll Call

Ms. O'Connor called the meeting to order at 1:00 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

12-7-46 From 7/30/2012

Appeal Omaha Police Department denial of firearm registration: Erica R. Ozuna, 2030 N 18th St., 68110

7/30/2012:

Ms. Ozuna was not present. The Board Secretary confirmed that notice of today's meeting was sent to Ms. Ozuna via certified mail; however, it was never claimed by the applicant. After some discussion, the Board members agreed to wait to hear this case until the end of the meeting.

After the conclusion of all other cases on today's agenda, Ms. Ozuna was not present.

Motion to hold this case over to the August 27, 2012 meeting by Mr. Levy. Second by Mr. Samiev.

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

Motion carried 5-0.

8/27/2012:

Erica Ozuna appeared before the Board.

Sgt. Eric Nordby, Omaha Police Department, stated that Ms. Ozuna's application for registration of a firearm was rejected due to a conviction for marijuana less than one ounce from September 7th, 2005.

Ms. Ozuna stated that her previous conviction for marijuana was a one-time offense; she added that she had taken responsibility for another person who had marijuana in her vehicle. She stated that she lives close to the Siena Francis House and has had to have the water spigots removed from the outside of her house due to repeated attempts by homeless persons to use these fixtures in the

middle of the night. Ms. Ozuna stated that she lives alone with her three children; she wishes to have a firearm for protection should someone attempt to break into her home.

Sgt. Nordby contested that at the time of Ms. Ozuna's marijuana violation, the police report states that a bicycle cop approached her vehicle and observed Ms. Ozuna rolling a marijuana cigarette. Ms. Ozuna denied that this was an accurate account of the situation. In response to Mr. Weaver and Mr. Levy's question, Sgt. Nordby confirmed that Ms. Ozuna has had no other contact with the law.

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

AYES: Levy, Weaver, Lopez, O'Connor

Motion carried 4-0.

12-7-48 From 7/30/2012

Appeal Omaha Police Department denial of firearm registration: Christen Harrington, 7810 Blondo St Apt#310, 68134

7/30/2012:

At the Administrative Board of Appeals meeting held on July 30, 2012, Christen Harrington appeared before the Board.

Sgt. Eric Nordby, Omaha Police Department, commented that this case was for the revocation of firearm registration. He stated that Mr. Harrington's registration was revoked due to two protection orders being filed against him.

Mr. Harrington explained that it was his children's mother who had taken out the protection orders; she is now willing to drop the protection orders, but this process has not been completed yet. He added that he is currently going through custody proceedings for his two children, stating that these arrangements are to be finalized by the courts on August 14th, 2012.

Mr. Harrington stated that the reason for his appearance before the Board today was to request that his case be held over for thirty days. This would allow him time to finalize arrangements for the custody of his children, and for the protection orders to be dropped. He brought documents with him showing that he is currently working with the courts on this matter. The Board members viewed these documents and returned them to Mr. Harrington.

Mr. Harrington informed the Board that he had been before them previously; at his last appearance, his appeal was denied due to a CCW charge dating from 2001 (Note: this appeal was granted, not denied – please see minutes from 6/29/2009, case number 9-6-50 for more information). Since his last appearance before the Board, Mr. Harrington's CCW charge has been set aside; he brought documents with him as proof of his claims. The Board viewed these documents and returned them to Mr. Harrington.

When asked by Mr. Levy, Sgt Nordby confirmed that once Mr. Harrington's protection orders have been dropped, his rights to register a handgun would be restored. He confirmed that Mr. Harrington's CCW charge was set aside.

Some concern was raised by both Mr. Samiev and Mr. Labode as to whether a thirty day extension would be enough time for Mr. Harrington to conclude his business with the courts. Mr. Harrington stated that all arrangements for his children should be finalized by August 14, 2012.

After some discussion, Mr. Levy made a motion to hold this case over to the August 27, 2012 meeting. Second by Mr. Samiev.

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

Motion carried 5-0.

8/27/2012:

Christen Harrington appeared before the Board.

Sgt. Eric Nordby, Omaha Police Department, commented that he had checked on the status of the two protection orders that were taken out against Mr. Harrington. As of this morning, these protection orders were still active. Sgt. Nordby was informed by Mr. Harrington that his court case had been pushed back.

Mr. Harrington confirmed that he had gone to court on August 14th, 2012 to resolve the custody of his two children. At this hearing, Judge Burns pushed Mr. Harrington's case back to October 29th, 2012. Mr. Harrington stated that he wasn't certain how best to proceed with today's appeal. Mr. Levy asked Mr. Harrington where his firearm is at this time. Mr. Harrington stated that he has gotten rid of the gun.

Sgt. Nordby informed Mr. Harrington that if he has given his firearm to another person, he would no longer need to apply for registration, as registration is specific to the firearm and not the owner. Mr. Levy commented that getting rid of the firearm essentially renders Mr. Harrington's appeal as moot. He suggested that the Board could deny Mr. Harrington's appeal today.

After some discussion, Mr. Harrington inquired as to the status of his application fee if the Board chose to deny his appeal today. The Board Secretary stated that if Mr. Harrington would not receive a refund of his application fee if the Board chose to deny the appeal; however, he would receive a refund if he chose to withdraw his application and allow the Board to place the case on file. Ms. Horvath confirmed this statement. Mr. Harrington requested to withdraw his application.

Motion to acknowledge withdrawal of application and to place case on file by Mr. Levy. Second by Mr. Weaver.

AYES: Levy, Weaver, Lopez, O'Connor

Motion carried 4-0.

12-8-55

Appeal Omaha Police Department revocation of firearm registration: Jeffrey Spencer, 9314 Polk St, 68127.

Jeffrey Spencer, applicant, and Glenn Shapiro, attorney, appeared before the Board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Spencer's denial consists of two separate issues. He stated that Mr. Spencer had an open carry permit issued by the City of Omaha; when he applied for renewal of this permit, the Police Department discovered a May 16, 2009 charge for disturbing the peace stemming from a domestic incident on Mr. Spencer's record. Mr. Spencer was convicted on the charge for disturbing the peace; he was not convicted for the domestic violence assault charge. Mr. Spencer's application for renewal of his open carry permit was denied based on this conviction, as was an application for the registration of a firearm.

Mr. Shapiro stated that his client works at a high-end car dealership, where he routinely deals with carrying money and closing the business for the evening. Mr. Spencer is also employed by the Armored Knights, a job which requires him to carry a firearm while he supervises bank employees and moves money to and from the city's financial institutions.

Mr. Shapiro pointed out that his client was issued a permit for open carry by the City on August 19, 2009 – well after Mr. Spencer's May 16, 2009 charge for disturbing the peace/domestic violence assault. Mr. Shapiro requested that the Board grant Mr. Spencer's appeal, taking into account that his client was not convicted of any type of domestic violence. Mr. Weaver asked Sgt. Nordby whether Mr. Spencer had had any additional contact with the law. Sgt. Nordby stated that there were prior offenses; however, these were not of concern.

Mr. Levy asked Sgt. Nordby whether the Board needed to make a decision based solely on the denial of firearm registration, or whether a decision was also needed on the denial of Mr. Spencer's open carry permit. Sgt. Nordby replied that both issues were before the Board for a decision today. Mr. Shapiro agreed with Sgt. Nordby's assessment. Sgt. Nordby explained that in his study of the municipal code, he couldn't find that this Board had purview over the issuance or denial of open carry permits. However, he was also unable to discover where Mr. Spencer could turn to for recourse if the Administrative Board of Appeals did not hear his appeal for denial of renewal of an open carry permit. Mr. Levy agreed with this statement, noting that the Administrative Board of Appeals generally has purview over cases where there is no clear entity for a citizen to apply to for relief or reconsideration of their cases.

Mr. Levy made a motion to grant the appeal. Second by Mr. Lopez.

AYES: Lopez, Levy, Weaver, O'Connor

Motion carried 4-0.

12-8-56

Appeal Omaha Police Department denial of firearm registration: Dustin A. Mackey, 5741 N 115th Cir, 68164.

Dustin A. Mackey, applicant, and Glenn Shapiro, attorney, appeared before the Board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Mackey had three offenses on his record which prevent him from registering a firearm in the City of Omaha. Mr. Mackey was convicted for carrying a concealed weapon in March of 2000. He was convicted for Possession of marijuana/Possession of paraphernalia in September of 2002. Mr. Mackey was again convicted for Possession of marijuana less than two ounces under South Dakota state statutes in August of 2006.

Glenn Shapiro, attorney, requested that the Board hold this case over to their next meeting. He stated that he intends to ask the court that Mr. Mackey's convictions be set aside, but needs additional time to file such motions with the court system. Mr. Levy inquired as to whether sixty days would be enough time for Mr. Shapiro to have Mr. Mackey's convictions set aside. Mr. Shapiro stated that thirty days might be enough time; however, sixty days would be more prudent. The Board Secretary informed those present that the Board's October 29th, 2012 meeting would take place in Room 702 of the Civic Center. Mr. Shapiro made note of this change.

Motion by Mr. Levy to hold this case over to the October 29th, 2012 meeting of the Administrative Board of Appeals, to take place in Room 702 of the Civic Center. Second by Mr. Weaver.

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

Motion carried 4-0.

12-8-57

Appeal Omaha Police Department denial of firearm registration: Michael W. Nicolosi, 635 N 41st St, 68131.

Michael W. Nicolosi appeared before the Board.

Sgt. Eric Nordby, Omaha Police Department, stated that Ms. Nicolosi's application for registration of a firearm was rejected due to warrants for his arrest and extradition issued by the State of Florida for a marijuana charge in 1998. Sgt. Nordby commented that Mr. Nicolosi was using a different name at that time, and has several aliases. Sgt. Nordby stated that Mr. Nicolosi's application was rejected due to the fact that he is a fugitive.

Ms. O'Connor inquired as to why Mr. Nicolosi's warrant had not been dealt with. Sgt. Nordby stated that the Omaha Police Department contacted the State of Florida regarding Mr. Nicolosi's presence; however, The State of Florida declined to extradite him. Sgt. Nordby stated that the Omaha Police Department is not able to arrest Mr. Nicolosi since the State of Florida is unwilling to extradite him.

Ms. O'Connor asked the applicant why he wanted to own a firearm. Mr. Nicolosi stated that he had recently become interested in owning a gun; if his appeal is granted today, he intends to use said gun for sport. He stated that he is a productive member of the community, and believes that a mistake made sixteen years ago should not preclude him from owning a gun. Mr. Nicolosi commented that his criminal record does include a marijuana charge; however, he believed that his warrants were for passing worthless checks. In response to Ms. O'Connor's question, Mr. Nicolosi stated that he has lived in Omaha for the past sixteen years.

Mr. Nicolosi stated that he has taken care of the fines associated with his warrants; and has only to complete community service hours for these warrants to be released. He stated that he has spoken to officials in Florida, who are willing to let him complete his community service hours here in Omaha. In response to Mr. Levy's question, Mr. Nicolosi stated that he is required to complete a total of 120 community service hours for the warrants to be lifted.

Mr. Weaver made a motion to deny the appeal, based on Mr. Nicolosi's active warrants and need to complete community service hours. Second by Mr. Lopez.

AYES: Weaver, Lopez

NAYS: Levy, O'Connor

Motion failed 2-2.

Mr. Weaver made a motion to hold this case over to the December 31, 2012 meeting of the Administrative Board of Appeals in order to allow time for Mr. Nicolosi to complete his community service hours. Second by Mr. Levy.

AYES: Lopez, Levy, Weaver, O'Connor

Motion carried 4-0.

Mr. Nicolosi asked whether he would be able to appear before the Board before December 31st if he is able to complete his community service hours before that date. Mr. Nicolosi was told that this would be acceptable, and was directed to contact the Board Secretary once his community service hours have been completed in order to arrange for his appearance before the Board.

12-8-58

Appeal Omaha Police Department denial of firearm registrations: Jared J. Anderson, 9923 Ames Av, 68134.

Jared J. Anderson, applicant, and Nicole Cavanaugh, attorney, appeared before the Board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Anderson's application for registration of three firearms was rejected due to two charges for marijuana less than one ounce and paraphernalia. Sgt. Nordby commented that the paraphernalia charge was dismissed; Mr. Anderson's was convicted of possession of marijuana less than one ounce in July of 2009. Sgt. Nordby stated that Mr. Anderson has currently two firearms registered to him, and added that he was prepared to issue a notice revoking Mr. Anderson's registrations on these weapons depending on the outcome of today's hearing.

Nicole Cavanaugh, attorney for Mr. Anderson, stated that since the denial of his application for registration of three firearms, the courts have set aside Mr. Anderson's conviction for marijuana less than one ounce. Ms. Cavanaugh submitted a certified copy of said order to the Board (Exhibit #2). She stated that her client is the father of two children and is currently completing a master's degree in business administration; he also has a permit to purchase a firearm issued by Douglas County. Ms. Cavanaugh requested that the Board grant her client's appeal.

After some discussion, Mr. Weaver made a motion to grant the appeal. Second by Mr. Lopez.

AYES: Levy, Weaver, Lopez, O'Connor

Motion carried 4-0.

12-8-59

Appeal Omaha Police Department denial of firearm registration: Lennell W. Phillips, 10711 Hartman Av, 68134.

Lennell W. Phillips appeared before the Board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Phillip's application for registration of a firearm was rejected due to a conviction for marijuana less than one ounce dating from July 17, 2007. This was the only reason for Mr. Phillip's denial.

Mr. Phillips stated that he regretted his actions leading up to his conviction. Since this time, he has married and has been employed by the same company for the past five years. Mr. Phillips stated that he has four children; he also cares for a grandchild. Mr. Phillips concluded by stating that he would like to have a firearm for the protection of his family.

Both Mr. Weaver and Mr. Levy inquired as to other incidences on Mr. Phillips' record which may have prompted a denial. Sgt. Nordby stated that there is a charge for bribery dating from eighteen years ago; this was this only other item of note on Mr. Phillips' record

After some discussion, Mr. Weaver made a motion to grant the appeal. Second by Mr. Levy.

AYES: Weaver, Lopez, Levy, O'Connor

Motion carried 4-0.

12-8-60

Appeal Omaha Police Department denial of firearm registration: Ryan S. Forte, 4420 N 21st St, 68110.

Ryan S. Forte appeared before the Board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Forte's application for registration of a firearm was rejected due to a conviction for marijuana less than one ounce dating from 2004. Sgt. Nordby commented that there are other convictions on Mr. Forte's record; however, these earlier marijuana convictions are old and were not considered in Mr. Forte's denial. Sgt. Nordby stated that Mr. Forte currently has additional firearms registered with the Police Department; the registrations for these firearms may be revoked, depending upon the outcome of Mr. Forte's appeal.

Mr. Forte stated that he has four children and lives on North 21st Street. He and his wife are very concerned about the things that happen in his neighborhood. Mr. Forte added that he also runs a small car stereo business; his wife is concerned for his safety while he is at work.

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

AYES: Lopez, Levy, Weaver

Motion carried 4-0.

12-8-61

Appeal Omaha Police Department revocation of firearm registration: Jache Thompson, 211 Spencer St, 68110

Jache Thompson appeared before the Board.

Sgt. Eric Nordby, Omaha Police Department, stated that Ms. Thompson has property, including a firearm, at the Omaha Police Department's evidence property division. Ms. Thompson came to the Police Department to retrieve these items, as they are no longer needed for evidence. During this time, it was determined that the firearm in question could not be released to Ms. Thompson, as she has a conviction for marijuana less than one ounce dating from July of 2006. Sgt. Nordby stated that Ms. Thompson currently has an additional firearm registered with the Police Department; the registration for this weapon may be revoked depending upon the outcome of today's appeal.

Mr. Weaver inquired as to whether Ms. Thompson was the victim in the crime which required the gun to be taken into evidence. Sgt. Nordby stated that Ms. Thompson's husband was a victim of criminal homicide; this weapon was not the homicide weapon, but was taken along with many other items as a part of the police investigation.

Ms. O'Connor asked Ms. Thompson why she wished to have a firearm. Ms. Thompson stated that at the time of her marijuana conviction, she had just graduated from high school. Since this conviction, she has become a home health provider for the mentally challenged. Ms. Thompson stated that she lives alone on 21st and Spencer streets with her children and would like to have a firearm for the protection of her children.

Motion to grant appeal by Mr. Weaver. Second by Mr. Lopez.

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

Motion carried 4-0.

12-8-62

Appeal Omaha Police Department notice of nuisance: Ermal S. Overton, 5453 S 50th St, 68117.

Mr. Overton was not present. Kenton Duncan, City of Omaha Code Inspector, appeared before the Board. Mr. Duncan stated that Mr. Overton mistakenly thought that his notice of violation was a parking ticket, not an appeal. Mr. Duncan stated that he had spoken to Mr. Overton regarding the situation, which stems from a misunderstanding regarding Mr. Overton temporarily parking his car underneath a tree for shade while he changed the oil in the vehicle. Mr. Duncan assured the Board that the vehicle is now parked on cement and is properly plated.

Motion to grant appeal by Mr. Weaver. Second by Mr. Lopez.

AYES: Weaver, Lopez, Levy, O'Connor

Motion carried 4-0.

12-8-63

Appeal Omaha Police Department notice of nuisance: Theresa M. Vacek, 5237 S 52nd St, 68117.

Theresa Vacek appeared before the Board. Ms. Vacek stated that she had in her possession certified mail receipts that she would like to submit to the Board; however, these receipts were not submitted to the Board as exhibits.

Kenton Duncan, City of Omaha Code Inspector, stated that he had visited Ms. Vacek's property at noon today. He reported that the white Chevy truck in question is still on the property and is not plated. Mr. Duncan also made note of two other unlicensed vehicles on the property, and submitted photos of the site to the Board (Exhibit #2).

Ms. Vacek stated that she is in the process of trying to get a clear title for her late husband's truck. She stated that she is interested in selling the vehicle, and was unaware that the truck needed to have current license plates, since she wasn't driving it. Ms. Vacek stated that the company that she and her late husband financed the truck through in Indiana went out of business. She has been attempting to get a title for the truck since her husband's death. Ms. Vacek was advised by the Nebraska Department of Motor Vehicles to send a certified letter to the now-defunct Indiana title company. She was told that if the letter comes back unclaimed that she may make an application for a new title through the State of Nebraska. Ms. Vacek brought with her certified mail receipts showing that such a letter had been sent. Ms. Vacek stated that she didn't realize that she was breaking the law; and asked the Board to give her more time to obtain a clear title for the vehicle in question.

Motion by Mr. Weaver to hold this case over to the October 29, 2012 meeting of the Administrative Board of Appeals, to take place in Room 702 of the Civic Center. Second by Mr. Lopez.

AYES: Weaver, Lopez, Levy, O'Connor

Motion carried 4-0.

12-8-64

Appeal Public Works Department denial of drive approach permit: Katie Underwood, Olsson Associates, 2111 S 67th St, Suite 200, 68106 (Kum & Go #365 – 42nd & Leavenworth Streets)

Pat Regan of Investors Realty appeared before the Board on behalf of Kum & Go and Katie Underwood of Olsson Associates. Mr. Regan stated that the applicant would like the Board to grant them additional time, due to the need to complete discussions with the Planning Department in regards to this project. Mr. Levy asked Mr. Regan how much time he thought that the applicant would need in order to reach a consensus with the Planning Department. Mr. Regan stated that he believed that the applicant originally wished to withdraw their application from today's agenda, but were unable to do so.

The Board Secretary responded that she had spoken to Ms. Underwood on the phone, and was told that the applicant had some issues to resolve as regards design standards with the Planning Department. At that time, Ms. Underwood was unsure as to how much time they would need in order to get these issues resolved. The Board Secretary continued, stating that she had spoken to Ms. Horvath in the Law Department regarding this matter. It was suggested by Ms. Horvath at that time that the Board could grant an extension to the applicant in order to allow them time to work with the Planning Department to resolve their issues. Ms. Horvath confirmed this statement.

Motion by Mr. Levy to hold this case over to the November 26, 2012 meeting of the Administrative Board of Appeals. Second by Mr. Weaver.

AYES: Levy, Weaver, Lopez, O'Connor

Motion carried 4-0

III. Approval of Minutes from July 30th, 2012

Motion to approve by Mr. Lopez. Second by Mr. Levy.

AYES: Levy, Lopez, O'Connor

ABSTAIN: Weaver

Motion carried 3-0-1.

IV. Discussion

- The Board discussed and updated their roster with the Board Secretary.

V. Adjournment

Motion to adjourn by Mr. Levy. Second by Mr. Weaver.

AYES: Lopez, Levy, Weaver, O'Connor

Motion carried 4-0. Meeting adjourned at 2:08 p.m.