MINUTES
Administrative Board of Appeals
March 23, 2020

MEMBERS PRESENT:
David C. Levy, Chairman
Ryne Bessmer
Ronald Bucher, Alternate

MEMBERS NOT PRESENT:
Ann O’Connor, Vice Chair
Brian W. Kruse
Ryan Kuehl
Blake Peterson, Alternate

STAFF PRESENT:
Mike Wilwerding, Planning Department
Tim Himes, Law Department
Clinette Ingram, Recording Secretary

Mr. Levy called the meeting to order at 1:00 pm. The Board received as Exhibit 1 the contents of the City's file on each case.

CASES:

1. 20-03-017
Darren Elliott
Valley Corporation
28001 Ida Circle
P.O. Box 589
Valley, NE 68064

(Re: 5351 North 30th Street)

At the Administrative Board of Appeals meeting held on March 23, 2020, Darren Elliott appeared on behalf of the property owner. Ryan Haas appeared on behalf of the Public Works Department.

Mr. Haas stated that the applicant was proposing to remove and replace existing the driveway returns which triggered the driveway regulations. The three waivers being requested were: 1) a waiver of the maximum number of driveways from 1 to 2; 2) a waiver of the minimum driveway width below 25’ for both driveways; and 3) a waiver to allow a backing maneuver from the southern driveway onto 30th Street. Although Public Works was hesitant to allow backing maneuvers onto 30th Street given its higher speed and higher volume, there was an overhead door on the existing structure at the end of the south driveway. There is a seasonal, tax preparation business on the site that is by appointment only and generates very little traffic. There were no other changes to the site.

Mr. Elliott stated that there was a lot of concrete on the site that was in disrepair. The existing building takes up most of the site.

In response to Mr. Bessmer, Mr. Elliott explained that the owner leases part of the building to the tax business and the other part of the business was used for storage.

Mr. Bucher moved to GRANT the request. Mr. Bessmer seconded the motion.

AYES: Bucher, Bessmer, Levy

MOTION CARRIED: 3-0. Appeal granted.
At the Administrative Board of Appeals meeting held on March 23, 2020, Arturo Nino, Jr. and Hugh Abrahamson (Attorney) appeared before the board. Sgt. Angie Diehm appeared on behalf of the Omaha Police Department.

Sgt. Diehm stated that Mr. Nino had applied to register a firearm but he was not truthful on his application. When asked whether he had ever been convicted of a crime, felony or misdemeanor the applicant answered no when he should have stated yes. In September 2014 he was charged and convicted of possession of a substance and received 1 year probation. There was another conviction from 2008 for obstruction of justice for which he received 1 year of probation. The 2008 incident would not have prevented him from registering a firearm.

Mr. Abrahamson submitted documents (Exhibit “B” and “C”). He believed there was a discrepancy with what was stated by the county attorney. He stated that although Mr. Nino was charged with a felony, it was reduced to a misdemeanor. He was eventually released from probation early.

In response to Mr. Bucher, Mr. Nino explained that he answered “no” to the question because the 2008 incident occurred in school when he was under the age of 18. He also was not aware that the 2014 incident would be an issue because of the amount of time that had passed. He stated that he was applying for a security job with OPPD.

Mr. Abrahamson stated that his client had received notice of the meeting and the only information included in it was from the 2014 and nothing from 2008. Mr. Abrahamson stated that he was not aware of the 2008 incident. He requested a layover of the case so that he could do some research into that incident.

Mr. Bucher moved to LAYOVER until the April 27, 2020 meeting. Mr. Bessmer seconded the motion.

AYES: Bucher, Bessmer, Levey

MOTION CARRIED 3-0.
At the Administrative Board of Appeals meeting held on March 23, 2020, Wayne Watkins appeared before the board. Sgt. Angie Diehm appeared on behalf of the Omaha Police Department.

Sgt. Diehm stated that Mr. Watkins was denied a firearm registration due to a marijuana less than one ounce conviction from October 2012. There were no other items on his record that would prevent him from registering a firearm.

Mr. Watkins briefly stated that reason for his appeal.

Mr. Bucher moved to GRANT the request. Mr. Bessmer seconded the motion.

AYES: Bucher, Bessmer, Levey

MOTION CARRIED 3-0. Appeal granted.

At the Administrative Board of Appeals meeting held on March 23, 2020, Jason Liekhus appeared before the board. Sgt. Angie Diehm appeared on behalf of the Omaha Police Department.

Sgt. Diehm stated that Mr. Liekhus was not truthful when filling out his firearm registration. She explained that when asked if he had been convicted of any crimes he mentioned only drug paraphernalia when in fact he had been convicted for possession of marijuana in November 2014. There were no other charges on his record that would prevent him from registering a firearm.

Mr. Liekhus stated that he wanted a handgun to protect his family. He explained that he believed the question on the registration form only applied to felonies and not misdemeanors. He indicated that he remembered only being charged with possession of drug paraphernalia.

Mr. Bucher moved to GRANT the request. Mr. Bessmer seconded the motion.

AYES: Bucher, Bessmer, Levey

MOTION CARRIED 3-0. Appeal granted.
At the Administrative Board of Appeals meeting held on March 23, 2020, Benjamin Bossung appeared before the board. Officer James Stokes appeared on behalf of the Omaha Police Department.

Officer Stokes stated that the Police Department received a call regarding a stolen vehicle that was used in a hit-and-run incident. Officers believed that the red pick-up owned by the applicant was the vehicle used during the crime since it had damage that was consistent with a hit-and-run. When Mr. Bossung was stopped he did not have proof of insurance or ownership. Since there was no proof of insurance or ownership, Officer Stokes explained that the vehicle was considered a nuisance and could be immediately impounded. The vehicle was impounded for an accident investigation. Officer Stokes added that the Mayor’s Hotline received several complaints about another vehicle parked at Mr. Bossung’s home that had not been plated in over 2 years (Exhibit B). The red pickup was shown to be purchased in January and had not been registered within the required 30 days.

Mr. Bossung stated that after the Police Department performed its investigation on his truck, it was determined that it had not been involved in the hit-and-run and was released the next day. He explained that he couldn’t license the truck because he was having trouble obtaining the title from the person he purchased it from. He was reimbursed $60 (the actual tow amount) of the $155 that he paid to retrieve his vehicle. He wanted to be reimbursed for the full amount. He also believed that his truck was damaged after it was towed so he thought he might scrap it. He explained that he did not want to register a vehicle that he was probably going to get rid of.

There was some discussion about what the applicant was cited for.

Mr. Bucher moved to GRANT the appeal. Motion died for lack of a second.

Mr. Bessmer believed that mistakes were made by both parties (the applicant and the Omaha Police Department) but he noted that the applicant did not possess insurance or have actual ownership of the vehicle which gave the police the right to tow the vehicle. He also noted that Mr. Bossung was refunded part of the money he paid for the tow.

Mr. Bessmer moved to DENY request. Mr. Levy seconded the motion.

AYES: Bessmer, Levy

NAYES: Bucher

MOTION CARRIED: 2-1. Appeal denied.
At the Administrative Board of Appeals meeting held on March 23, 2020, Joshua Swigart and Ben Peters (ProPlumb) appeared before the board. Martin Gomez (Acting Chief Plumbing Inspector) appeared on behalf of the Planning Department. David Miller (Chair - Omaha Plumbing Board) was also in attendance.

Mr. Gomez stated that Mr. Swigart was appealing the score he received on the plumbing test. Mr. Swigart’s test with another plumbing inspector. The test was also reviewed by the Plumbing Board.

Mr. Levy questioned how the Administrative Board of Appeals would challenge the score that the applicant received on his test.

Mr. Miller explained that the board has a system for grading plumbing tests. Portions of the test are scanned and graded electronically. The drawing portion of the test is reviewed by the Chair and Vice-Chair of the Plumbing Board to determine the grade for that section. He stated that when the applicant’s test was reviewed, it was determined that the initial grade was correct. In response to Mr. Bessmer, Mr. Swigart stated that plans section of the test was subjective.

Mr. Swigart stated that he brought a third party to the meeting with him to review his test. He explained that he had not been able to successfully pass the plans portion of the test and there was no indication as to what he did incorrectly. He added that the person who grades the test also reviews it with no direction as to how to pass the section he failed.

Mr. Bucher inquired as to why the Plumbing Board does not disclose the reason why someone would receive a failing grade. Mr. Miller explained that if a plumber was told the reason they failed they would then have the answers to the test. He added that if a plumber has gone through 4 years of schooling and an apprenticeship program, they should be able to look at a plumbing system and see what’s wrong. He added that testing was by minimum standards. In response to Mr. Bucher, Mr. Miller stated that when the Plumbing Board reviewed Mr. Swigart's test, they unanimously agreed that the grade he received was correct.

Mr. Peters stated that there were several different versions of the test that were never given back-to-back. He believed that it would be beneficial for all parties involved if plumbers were told what they had done incorrectly on the test. He also believed that when a plumber reviewed their test, someone should be allowed to go with them.

Mr. Levy stated that the Administrative Board of Appeals did not have the legal authority to overrule the Plumbing Board with no evidentiary basis to do so. Neither he nor Mr. Bessmer believed that the board had the authority to order the Plumbing Board to tell the applicant what he had done wrong.

Mr. Swigart stated that he wanted a third party to look at the test so that he could determine where he was having issues so he could pass the test. Mr. Wilwerding responded that the Plumbing Board was that third party.

Mr. Himes explained that the Administrative Board of Appeals reviewed the decisions of other parties which helps to reduce the number of cases that go into the court system. He added that what the applicant wanted would probably need to be court ordered. He agreed that the board did not have the authority tell the Plumbing Board what to do.
Mr. Wilwerding stated that he had taken several national standards and certification tests and it was not uncommon for a tester not to be able to review their test. Mr. Peters responded that he held licenses for jurisdictions around the city and he was able to review his tests because they were graded electronically. He indicated that the plumbing test issued by the Omaha left room for human error. His issue was with the current process.

In response, Mr. Miller stated that after a plumber takes the test they are able to attend the next scheduled Plumbing Board meeting to review their test. He explained that no one, including instructors, was allowed to review the test with the plumber because it would not be fair to other test takers. Mr. Gomez added that it was the job of the Plumbing Board to interpret the code, not other parties.

In response to Mr. Levy, Mr. Swigart stated that he did take the opportunity to review his tests with the Plumbing Board with no markings on it.

Mr. Levy suggested that the board could decide to ask the Plumbing Board to take a good-faith, second look at the plans portion of the test. Mr. Miller agreed to do so at the next Plumbing Board meeting; however, he objected to the test being viewed by anyone else but the applicant.

Mr. Bessmer asked Ms. Ingram about previous decisions that were made by the board in these types of cases. Ms. Ingram stated that she would look research information about those cases and present it to the board.

Mr. Bucher stated that he could not see himself voting to overturn the decision of the Plumbing Board since they are the experts and they had the right to make their determination. He did believe that the process was unfair since the applicant could not be told what was done wrong so that they could be given the opportunity to improve. He questioned the motive behind the process and he believed that there was a basis for the argument to be made in front of a court.

Mr. Bessmer moved to LAYOVER the case until the April 27, 2020 meeting to give the Plumbing Board another opportunity to review the applicant’s test and to give the board time to review previous Plumbing Board cases. Mr. Bucher seconded the motion.

AYES: Bucher, Bessmer, Levey

MOTION CARRIED 3-0.
REQUEST: Appeal of the Plumbing Board’s decision dated March 9, 2020.

At the Administrative Board of Appeals meeting held on March 23, 2020, Josh Balcom appeared before the board. Martin Gomez (Acting Chief Plumbing Inspector) appeared on behalf of the Planning Department. David Miller (Chair - Omaha Plumbing Board) was also in attendance. Mr. Balcom was appealing the score he received on the plumbing test.

Mr. Balcom stated that he told that there would be someone at the Administrative Board of Appeals meeting to review his test. He indicated that when he was given the opportunity to review his test, he found nothing wrong but he was not told what he had done wrong.

In response to Mr. Bessmer, Mr. Balcom stated that he did not pass the practical portion of the test which is graded electronically. He also got an item wrong in the plans portion of the test.

Mr. Miller stated that the Plumbing Board also reviewed the portions of the test that are graded electronically to ensure accuracy.

Mr. Bessmer moved to LAYOVER the case until the April 27, 2020 meeting to give the Plumbing Board another opportunity to review the applicant’s test and to give the board time to review previous Plumbing Board cases. Mr. Bucher seconded the motion.

AYES: Bucher, Bessmer, Levey

MOTION CARRIED 3-0.

MINUTES:

The February 24th minutes were moved to the next scheduled meeting.

ADJOURN:

It was the consensus of the board the ADJOURN the meeting at 2:21 p.m.