Minutes
Administrative Board of Appeals
August 31, 2009

MEMBERS PRESENT: Ann O’Connor, Chairman
Jay Incontro
Chris Jerram
David Levy
James Weaver

MEMBERS ABSENT: None

OTHERS PRESENT: RoseMarie Horvath, Law Department
Kevin Denker, Planning Department
John Wynn, Parks Maintenance Department

I. Roll Call

Ms. Ann O’Connor called the meeting to order at 1:30 pm.

Mr. Kevin 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. Ann O’Connor acknowledged the contents of the City’s file as Exhibit 1 in each case.

II. Cases

9-8-68
Appeal Police Department denial of firearm registration: Walter Jorgensen, 6234 S 100 Street 68127

Walter Jorgensen appeared before the Board. Mr. Jorgensen stated he has a large gun collection and some pistols are registered to his wife, his father and his grandfather. He uses the guns for target practice and hunting. He is a retired teamster and also spent six years in the Marine Corps as a Weapons Specialist.

Sgt. Lance Harrison, Omaha Police Department, stated that gun registrations have increased and hundreds of firearms are registered on a monthly basis. There are many citizens that register firearms and have criminal records such as disorderly conduct, obstructing, flight to avoid arrest, assaults, etc. There were four people who were denied gun registrations in the past month. The guns are registered in accordance with ordinance #2253. The ordinance states, “The chief of police will conduct an investigation to determine if the applicant is qualified to register the firearm. A concealable firearm may not be registered to any person who is: 1.) is currently the subject of an active protection order, 2.) has provided false information on the registration request, 3.) has a conviction of an offense listed below, any felony, carrying a concealed weapon or being a minor in possession of a concealable firearm, 4.) has been convicted of any charge including stalking and harassment, 5.) has a record of mental disorder which would show the applicant to be a danger to self or others, 6.) a fugitive from justice in this state or any other jurisdiction, 7.) been dishonorably discharged from the United States armed forces, 8.) is a user of or addicted to an unlawful, controlled substance, and 9.) is not a citizen of the United States, and 10.) is under age 21.”

Sgt. Harrison stated that in 1994, Mr. Jorgensen received a DUI, driving under suspension and CCW for transporting a weapon. In 1960, Mr. Jorgensen had the same CCW charge. He was denied the gun registration based on the CCW and he did not indicate on his application that he had been arrested in the past.
In response to Mr. Incontro, Sgt. Harrison stated that since 1994 there have been only traffic violations on Mr. Jorgensen’s record.

In response to Mr. Incontro, Ms. Horvath stated that the board has the ability to override the ordinance. Mr. Incontro stated the board does not change the ordinance but the board considers the time frame and individual circumstances. Mr. Jerram stated the ordinance is discretionary, i.e. may not.

Motion to grant appeal by Mr. Incontro. Second by Mr. Jerram.

AYES: Jerram, Incontro, Weaver

NAYES: Levy, O’Connor

Motion carried 3-2

9-8-69
Appeal Police Department denial of firearm registration: Robert C. Reed, 3215 N 40 Avenue 68111

Robert Reed appeared before the Board.

Sgt. Lance Harrison, Omaha Police Department, stated that in September of 2006, Mr. Reed was arrested for CCW and served a day in jail. In 2002, Mr. Reed was charged with felony false imprisonment and terrorist threats.

In response to Mr. Jerram, Mr. Reed stated he indicated “no” on the application to the question, “Have you ever been convicted of a crime?”

Motion to deny appeal by Jerram. Second by Mr. Incontro.

AYES: Incontro, Levy, Weaver, Jerram, O’Connor

Motion carried 5-0

9-8-70
Appeal Police Department denial of firearm registration: Alonzo L. Williams, 3124 Hamilton Street 68131

Alonzo Williams and Eric Chandler, attorney appeared before the Board. Mr. Chandler stated Mr. Williams was denied the firearm registration because he provided false information on the application. The false information was a CCW conviction that happened five days earlier on July 15, 2009. Mr. Williams was stopped for traffic infractions and had the unloaded firearm on the dashboard, which is in violation of the city ordinance. Mr. Chandler stated that a large majority of people, especially those with firearms in north Omaha, do not know that part of the ordinance. When the permit is granted to purchase a firearm from the Sheriff’s department, a list is provided of things that cannot be done including carrying a concealed weapon. The city ordinance basically says that a person must have a Carry Concealed Weapon (CCW) permit even if the gun is not loaded and carried on the dashboard of a car. Most people do not realize the regulations because they have to go to the Sheriff’s department to get the permit to purchase a firearm (Exhibit 3a), register it at the Omaha Police Department and obtain the CCW permit from the State Patrol (Exhibit 3b). The definition of carrying a concealed weapon is very confusing and says, “If a law enforcement officer can see the handgun, either carry on your person or in your car, it is not concealed. If the officer cannot see the handgun, or portions of it are not visible, it is concealed.” (Exhibit 4).

Mr. Chandler stated that Mr. Williams is 25 years old and works at O’Reilly Auto Parts, has four children and is a law-abiding citizen. Mr. Williams obtained a permit to purchase a firearm and had an unloaded gun on the dashboard of his vehicle when he was pulled over. He was also cited at the same time for having a knife (see receipt-Exhibit 2) that is used, at his place of employment. On Wednesday, July 15, 2009, Mr. Williams plead to two charges and spent a day in jail. When Mr.
Williams was released from jail he went to OPD to register the handgun. At that time, Mr. Williams asked the officers if he needed to mention the incident that happened five days earlier.

Mr. Chandler stated the language in the ordinance is may and not shall. These factors should be taken into consideration by OPD upon their investigation and should not deny a firearm because one of the factors exist. The new carrying concealed laws are very confusing and seem to punish a person for doing the right thing. Mr. Williams lives in a rough neighborhood and many who live north of 30th Street carry guns for their own safety. Mr. Williams is trying to do the right thing by getting a valid permit.

In response to Mr. Jerram, Sgt. Harrison stated that if a gun is purchased at Guns Limited, the gun is not released until the gun is registered.

Sgt. Harrison stated that on Wednesday, July 15, 2009, two veteran officers stopped Mr. Williams for speeding. Mr. Williams advised the officers that he had a gun on the dashboard. Upon padding down, a knife was found in Mr. William's jacket pocket along with a loaded magazine for the handgun in his right rear pocket. Mr. Williams was also wearing a holster in his front waistband. Mr. Williams was booked for improper transport of firearm, CCW for the knife and traffic charges.

Motion to deny appeal by Jerram. Second by Mr. Incontro.

Mr. Levy asked for more discussion. In response to Mr. Levy, Sgt. Harrison stated a person does not intentionally carry an inside-the-waistband holster. Nebraska is one of the last states to allow a Concealed Carry Weapon (CCW) law.

In response to Mr. Incontro, Sgt. Harrison stated other charges against Mr. Williams are misdemeanor assault in 1998, cruelty to animals in 2003, disturbing the peace in 2007 and several traffic tickets.

Mr. Jerram had to leave and excused himself.

In response to Mr. Incontro, Ms. Horvath stated that if an appeal is denied it can be taken to District Court. Sgt. Harrison stated the gun registration for Mr. Williams was denied because of the CCW on the knife and false information.

In response to Mr. Incontro, Mr. Williams stated that before completing the application for a handgun, he asked an officer about the situation which happened five days previously. He stated he was confused because the CCW was for a knife and not a handgun. Mr. Chandler stated the holster that Mr. Williams was wearing did not fit the handgun on the dashboard.

In response to Mr. Weaver, Mr. Williams stated he was wearing the holster under his work pants, which has a clip for his phone and knife. The holster is made up of foam-like and cotton material that bends with the waist. He stated he was pulled over when he was leaving work.

In response to Ms. O'Connor, Mr. Williams stated the receipt submitted is not the actual receipt for the knife.

Mr. Incontro withdrew his second.

The motion died due to a lack of a second motion.

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

AYES: Levy, Weaver, Incontro, O'Connor

Motion carried 4-0

In response to Sgt. Harrison, Mr. Incontro stated the board tries to understand and be fair on both sides. The board takes what OPD says as very important and it is not the board against OPD.
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**9-8-71**
Appeal Police Department denial of firearm registration: John M. Wrather, 7106 N 65 Street  68152

John Wrather appeared before the Board. Mr. Wrather stated he registered and received a permit to carry a concealed weapon. He stated that he answered "no" to the question, "Have you ever been convicted of a crime, felony or misdemeanor?" He assumed the questionnaire for the city was the same as the state because he answered "no" on the state questionnaire because his CCW charge was over 10 years ago. Mr. Wrather stated he runs a beauty salon at 6912 Maple Street and needs a gun for protection because he carries large sums of money.

Sgt. Lance Harrison, Omaha Police Department, stated that in 1994 Mr. Wrather was arrested for CCW. Since 1994 he has had no other criminal charges on his record.

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

AYES: Weaver, Incontro, Levy, O'Connor

Motion carried 4-0

**9-8-72**
Appeal notice of nuisance issued by Parks Maintenance Department on July 14, 2009: Lois Schreur, 2544 N 61 Street  68104

Lois Schreur appeared before the Board. Ms. Schreur stated she grows prairie plants in her back yard and for the last 25 years she has not sprayed so the prairie plants have revived. Several photos were submitted of the prairie plants (See Exhibits 2a-2t). In 2008 she received a notice of nuisance for weeds. The city agreed that the plants were not weeds but alternative plants. The front yard is mowed and maintained. Some of the prairie plants include goldenrod, brown-eyed susan, echinacea, prairie aster, flocks, hollyhocks and plantane (medicinal plant).

Mr. John Wynn, City of Omaha, stated the complaint from neighbors were due to the tall vegetation, and mice and snakes. The city ordinance regarding mice and snakes was submitted (Exhibit 3). Photos of the back yard were submitted (Exhibit 4a-4b).

In response to Mr. Incontro, Mr. Wynn stated a flower bed is usually surrounded by a border and is maintained with a grassy area in the yard. Grass in a flower bed is considered "worthless vegetation". Mr. Wynn stated there probably are a lot of plants in the back yard but the whole yard is not maintained. If the entire yard is not maintained then it is considered "worthless vegetation".

Mr. Incontro stated the photos show that the flower garden/yard is not defined. There seems to be a lot of wild growing.

Mr. Wynn stated the whole yard should not be one big "goldenrod" but there should be borders and defined and maintained flower beds with a maintained grassy area.

In response to Mr. Levy, Ms. Schreur stated she will soon be installing a privacy fence along one side and a chain link fence along another side.

Mr. Wynn suggested working with Ms. Schreur to come up with a landscaping plan. Ms. Schreur stated she is not open to eliminating the prairie plants.

Motion to lay over for 30 days until the next meeting on September 28, 2009 to allow applicant time to work with the city to devise a landscaping plan by Mr. Incontro. Second by Mr. Levy.

AYES: Incontro, Levy, O'Connor

NAYES: Weaver

Motion carried 3-1
9-8-66
Appeal Police Department notice of nuisance: Andrew Bennett, 2710 Wyoming Street  68112

Andrew Bennett appeared before the Board. Mr. Bennett stated he is not in compliance but is making progress by cleaning up the yard and vehicles. He stated he would like additional time. He will use crushed coal for a pavement for several trailers that are parked in the back yard.

Mr. Denker stated there is a transition between personal and commercial use. Chapter 55 of the zoning code allows home-base occupation by a resident only with no outside employees, no retail sales, no commercial deliveries on a regular basis and no commercial vehicles that disturb the peace of the neighborhood.

In response to Mr. Incontro, Mr. Bennett stated the 1967 truck located in the back yard is in running condition but is not licensed or insured. Mr. Denker stated the truck would need to be parked on a paved surface. The crushed coal would be acceptable as long as it is installed correctly.

Motion to deny with 30 days to comply by Mr. Levy. Second by Mr. Incontro.

AYES: Levy, Weaver, Incontro, O’Connor

Motion carried 4-0

9-8-73
Appeal Police Department notice of nuisance: Luis Montoya, 1101 S 10 Street  68108

Luis Montoya appeared before the Board. Mr. Montoya stated he is in the process of making the needed repairs to obtain a Certificate of Occupancy for an auto body repair business. Several cars have been removed and the parking area has been cleaned up.

Mr. Denker stated there is a transition between personal and commercial use. Chapter 55 of the zoning code allows home-base occupation by the resident only but no outside employees, no retail sales, no commercial deliveries on a regular basis and no commercial vehicles that disturb the peace of the neighborhood.

Ms. Barna stated the health department received a complaint regarding car parts and debris in the parking area. As of this date, the parking lot has been cleaned up.

In response to Mr. Incontro, Mr. Denker stated the certificate of occupancy is the responsibility of the planning department.

Motion to deny with 5 days to comply by Mr. Incontro. Second by Mr. Weaver.

AYES: Weaver, Incontro, Levy, O’Connor

Motion carried 4-0

III. Approval of Minutes from July 27, 2009

Motion to approve minutes from the July 27, 2009 meeting by Mr. Incontro. Seconded by Ms. O’Connor.

AYES: Incontro, O’Connor

ABSTAIN: Levy, Weaver

Motion carried 2-0
IV. **Adjournment**

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

AYES: Incontro, Levy, Weaver, O’Connor

Motion carried 4-0

Meeting adjourned at 2:55 PM.

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