

Minutes
Administrative Board of Appeals
February 23, 2009

MEMBERS PRESENT: Jay Incontro, Chairman
Garry Gernandt
David Levy
Ryan Zabrowski
Ann O'Connor

OTHERS PRESENT: RoseMarie Horvath, Law Department
Kevin Denker, Planning Department

ABSENT: None

I. Roll Call

Mr. Garry Gernandt 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.

Mr. Garry Gernandt acknowledged the contents of the City's file as Exhibit 1 in each case.

II. Cases

9-1-1 (From 1/26/09)

Appeal Police Department denial of firearm registration; Mitchell Kehm, 12135 Lisa Circle 68137

Mr. Denker stated that Mr. Mitchell Kehm requested a lay over until the March 30, 2009 meeting.

Motion to lay over appeal by Mr. Levy. Second by Mr. Gernandt.

AYES: Gernandt, O'Connor, Levy, Zabrowski

Motion carried 4-0

9-1-4 (From 1/26/09)

Appeal Police Department denial of firearm registration; Greg Bogard, 542 S 87 Circle 68114

Sgt. Jason Menning with the Omaha Police Department stated that Mr. Greg Bogard was denied a handgun registration due to a mental health committal on February 4, 2003. The committal indicated Mr. Bogard was a danger to others and a danger to self. Sgt. Menning stated Mr. Bogard had a DUI conviction in 2006 and other DUI's in the mid to late 1980's.

Mr. Bogard appeared before the Board. Mr. Bogard explained that he was under a lot of stress; his father was dying and he recently lost a job before he spent a week at the Douglas County Health Center (42nd & Woolworth). Mr. Bogard stated he wishes to own a firearm for home protection.

Sgt. Menning stated that Mr. Bogard's brothers took him to the Nebraska Medical Center for emergency committal. The police officer's notes indicate that Mr. Bogard said he was "receiving information from a terrorist organization". The notes also indicate that Mr. Bogard threatened a nurse at the time of his evaluation.

In response to Mr. Levy, Mr. Bogard stated he is not on any medication.

In response to Mr. Incontro, Mr. Bogard stated the letter, as indicated by Exhibit B was obtained in 2003 and signed by Officer Murabito as a good character reference for condition of employment.

Motion to grant appeal by Mr. Gernandt. Motion failed for lack of a second.

Motion to deny appeal by Ms. O'Connor. Second by Mr. Levy.

AYES: O'Connor, Levy, Zabrowski, Incontro

NAYES: Gernandt

Motion carried 4-1

9-2-12

Appeal Police Department denial of firearm registration; Timothy Mechaley, 817 N 47 Street #7
68132

Timothy Mechaley appeared before the Board. Mr. Mechaley indicated that he recently took the concealed carry course and would like to continue on with training and wishes to own a firearm. Mr. Mechaley stated he was 25 years old when he joined the US Marine Corps in 2002. Exhibit 1 shows a copy of the discharge papers and an award for valor in Iraq. He stated that in 2004-2005 he fought in the Battle of Fallujah. After serving time and returning from Iraq, he voluntarily sought counseling for the tragedies he witnessed in Iraq. He feels that the form used by the Omaha Police Department prohibits veterans from owning a firearm because of voluntary treatment after returning from war. The gun registration form is broad and excludes many Omahans from their Second Amendment rights. The form should follow Form 4473 of the ATF, which asks if you are mentally adjudicated or mentally defective. He believes it is wrong that a veteran is denied the right to bear arms, especially after fighting for their country.

Officer Nathan Dickey with the Omaha Police Department stated Mr. Mechaley was denied the firearm registration because of circling "yes" for being treated for a mental disorder. Circumstances that were indicated were PTSD or Post Traumatic Stress Disorder from Iraq for a Marine combat veteran. Officer Dickey stated there was an obstruction/administration of law that was declined in 2008 on Mr. Mechaley's record. The only reason for denial was for PTSD.

Mr. Levy asked Officer Dickey for a copy of the form that was completed by Mr. Mechaley. Mr. Levy questioned Ms. RoseMarie Horvath concerning the code. Mr. Levy stated the question on the form at the Police Department is more broad than the code. In response to Mr. Incontro, Mr. Levy stated the code reads, "A concealable firearm may not be registered to any person....who has a record of mental disorder which would show the applicant to be a danger to self or others." Ms. Horvath stated the form is broad because the personnel at the front desk of the Police Department are not to make decisions that are supposed to be reserved for the board. In response to Mr. Levy, Ms. Horvath stated that answering "yes" on the form automatically disqualifies a person from registering a handgun. Mr. Gernandt stated the question on the form reads, "Have you ever been or are you now being treated for a mental disorder?"

In response to Ms. O'Connor, Mr. Mechaley stated he initially received treatment and is still receiving counseling from the VA. Mr. Mechaley stated he went through numerous combat stress groups. After being diagnosed with PTSD he was qualified with a 9mm pistol. Mr. Mechaley stated that during a second deployment he trained marines to shoot a 50-caliber machine gun as well as a M4 and M16. In response to Mr. Levy, Mr. Mechaley confirmed the training was after the PTSD diagnosis.

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

AYES: Levy, Zabrowski, Gernandt, O'Connor, Incontro

Motion carried 5-0

9-2-15

Appeal Police Department denial of firearm registration; William G. Moore, 700 N 40 Street #6
68132

William G. Moore appeared before the board. Mr. Moore stated he previously enlisted for the carrying a concealed license. He stated he wishes to register his firearm for protection for his family.

Sgt. Jason Menning with the Omaha Police Department stated that Mr. Moore was arrested in August 2008 and convicted of carrying a concealed weapon in October 2008. Sgt. Menning stated that previous to 2008 there were other convictions for marijuana use. Mr. Moore also has a warrant history. Prior to 2008, Mr. Moore was convicted several times for driving during suspension and improper display of plates. Sgt. Menning stated there have been no other incidents since October 2008.

Motion to deny appeal by Mr. Gernandt. Second by Mr. Zabrowski.

AYES: Zabrowski, Gernandt, O'Connor, Levy, Incontro

Motion carried 5-0

9-2-16

Appeal Police Department denial of firearm registration; Mark D. Loschaivo, 14111 O Street 68127

Mark Loschaivo appeared before the board. Mr. Loschaivo stated he wishes to own a firearm for personal protection. He stated he is a former Marine and has been trained with weapons.

Officer Nathan Dickey with the Omaha Police Department stated that Mr. Loschaivo was denied for a firearm registration because he marked "yes" to the question, "Have you ever been or are now being treated for a mental disorder?" The circumstances indicated on the form were PTSD or Post Traumatic Stress Disorder from military. Officer Dickey stated Mr. Loschaivo's record shows nothing but missing property.

Mr. Loschaivo made reference to a note from his physician at the VA Hospital that was previously submitted.

Motion to grant appeal by Mr. Zabrowski. Second by Ms. O'Connor.

AYES: Gernandt, O'Connor, Levy, Zabrowski, Incontro

Motion carried 5-0

9-2-17

Appeal Police Department denial of firearm registration; Joshua U. Fletcher, 4111 N 55 Avenue
68104

Joshua Fletcher appeared before the board. Mr. Fletcher stated he purchased a firearm and wishes to own a firearm for personal protection. He stated that in 1993 he was charged with misdemeanor CCW. He would like to get a pardon and pursue a career in law enforcement.

Sgt. Jason Menning with the Omaha Police Department stated that Mr. Fletcher was denied for a firearm registration because of a concealed weapon conviction in December 1993. In 2000, Mr. Fletcher was cited for not having a motorcycle license.

Motion to grant appeal by Ms. O'Connor. Second by Mr. Incontro.

AYES: O'Connor, Levy, Zabrowski, Gernandt, Incontro

Motion carried 5-0

9-2-18

Appeal Police Department denial of firearm registration; Daniel W. Karnish, 4530 Harrison Street 68157

Daniel Karnish appeared before the board. Mr. Karnish stated he had a CCW conviction but wishes to own a firearm for business and personal protection.

Officer Nathan Dickey with the Omaha Police Department stated that Mr. Karnish was denied for a firearm registration because of a concealed weapon conviction and "no" was marked on his registration card to the question, "have you ever been convicted of a crime, felony and/or misdemeanor?" In November 1997, Mr. Karnish was cited for carrying a concealed weapon (knife) and later fined \$75.00.

In response to Mr. Gernandt, Mr. Karnish stated he has owned Import Connection (an automotive repair business) at 1308 S Saddlecreek for 7-8 years.

Motion to grant appeal by Ms. O'Connor. Second by Mr. Zabrowski.

AYES: Levy, Zabrowski, Gernandt, O'Connor, Incontro

Motion carried 5-0

9-2-20

Appeal Police Department denial of firearm registration; Lynn Siedlik, 3107 Myrtle Avenue 68131

Lynn Siedlik appeared before the board. Ms. Siedlik stated she wishes to register a firearm for protection and take gun classes.

Sgt. Jason Menning with the Omaha Police Department stated that Ms. Siedlik was denied a gun registration due to a suicide attempt in 1995. In 1996, Ms. Siedlik attempted to stab a sister with a butcher knife. Since 1996, Ms. Siedlik has had a history of failure to appear. July 2008 was the most recent contact with law enforcement when Ms. Siedlik was stopped for no vehicle lights but was cited and fined for no insurance or valid registration. Two warrants were issued for Ms. Siedlik in 2005.

In response to Mr. Gernandt, Sgt. Menning confirmed that there were no inappropriate answers marked on the gun registration application but "no" was marked next to the question, "Have you ever been or are being treated for a mental disorder?"

In response to Mr. Gernandt, Ms. Siedlik stated she voluntarily went to Richard Young as an inpatient for a couple of months in 1995. She was unable to obtain any documentation from Richard Young. She is not receiving any treatment at this time. She stated she was trying to protect herself during the knife incident with her sister in 1996. Ms. Siedlik stated she has been employed at Arne Hanson's for 4 ½ years and has been attending school for the past two months.

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

AYES: Zabrowski, Gernandt, O'Connor, Levy, Incontro

Motion carried 5-0

9-2-21

Appeal Police Department denial of firearm registration; Jon T. Fouraker, 11043 X Street 68137

Jon T. Fouraker appeared before the board. Mr. Fouraker stated he wishes to own a firearm for personal protection. He stated he is presently on workman's comp because of an injury. He was previously an automotive technician and worked for National Car Rental for over 12 years.

Officer Nathan Dickey with the Omaha Police Department stated that Mr. Fouraker was denied for a firearm registration due to "no" was marked on his registration card to the question, "have you ever been convicted of a crime, felony and/or misdemeanor?" In November 1988, Mr. Fouraker was cited for DUI and flight to avoid arrest. In March 1989, Mr. Fouraker was convicted of another DUI. The most recent contact with the police department is disorderly conduct in 1995 and a traffic violation in 1996.

In response to Mr. Levy, Officer Dickey stated the disposition for the disorderly conduct was a fine for \$150.00.

In response to Mr. Gernandt, Mr. Fouraker stated he remembered the DUI's but did not remember the flight to avoid arrest. Mr. Fouraker stated he does not recall any details regarding the disorderly conduct and did not obtain a copy of his police reports.

Mr. Fouraker showed his conceal carry card to the board. He stated he attended a course at Gun Safe Academy and is qualified to use a gun.

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

AYES: O'Connor, Levy, Incontro

NAYES: Gernandt, Zabrowski

Motion carried 3-2

8-12-51 (From 12/22/08)

Appeal Police Department notice of nuisance; April & Bryan Gregory, 9417 Manderson Street 68134

Mr. Kevin Denker stated Zoning Board of Appeals Case #09-018, waiver of Section 55-742, variance to allow the overnight parking of a commercial vehicle in a residential district at 9417 Manderson Street with R3 zoning was heard at the meeting on February 19, 2009. The Zoning Board of Appeals denied the waiver with an allowance to relocate the vehicle by June 1, 2009.

Bryan Gregory questioned the code regarding a personal or commercial vehicle. He stated he understands the 25 foot long vehicle in question is a commercial vehicle but he owns a personal business and is a franchise owner. The only time the vehicle is parked in the driveway is during the evenings and weekends.

In response to Mr. Gregory, Mr. Denker stated that Chapter 55 defines personal vehicles as cars, trucks and vans. A commercial vehicle under 20 feet would be allowed to park in a residential district but a vehicle over 20 feet cannot park in the front yard setback within a residential area.

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

AYES: O'Connor, Levy, Zabrowski, Gernandt, Incontro

Motion carried 5-0

9-2-13

Appeal Police Department notice of nuisance; Frank Mitchell, 14042 O Street 68137

Mr. Kevin Denker stated that most vehicles have been removed from the subject property but there is some debris lying around.

Frank Mitchell appeared before the Board regarding a notice of nuisance. Mr. Mitchell asked for an additional 30 days to remove the remainder of the debris and to license two operable vehicles.

In response to Mr. Gernandt, Mr. Mitchell stated he does not operate a business from his residence.

Motion to deny with 15 days to comply by Mr. Levy. Second by Mr. Gernandt.

AYES: Levy, Zabrowski, Gernandt, O'Connor, Incontro

Motion carried 5-0

9-2-14

Appeal Police Department notice of nuisance; James J. Malloy, 1203 S 54 Street 68106

Mr. Kevin Denker stated the original notice of nuisance was issued by the police department for numerous vehicles in and around the subject property. Upon a recent inspection, the only vehicle in the driveway was a Ford pickup with current license plates.

James J. Malloy appeared before the Board regarding a notice of nuisance. Mr. Malloy explained that he still has a vintage vehicle that is being stored on a trailer in a separate driveway on his property. Mr. Denker stated the vintage vehicle (operable or inoperable) on the trailer would be considered outdoor storage and would need to be stored inside a garage. In response to Mr. Malloy, Mr. Denker stated the inoperable vehicle is still considered outdoor storage even though it is covered with a tarp.

Mr. Malloy stated he purchased the inoperable vehicle and trailer from a friend. He cannot afford to pay storage for the vehicle at another site.

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

AYES: Zabrowski, Gernandt, O'Connor, Levy, Incontro

Motion carried 5-0

9-2-19

Appeal Police Department notice of nuisance; Vincente Guerrero, 6201 S 34 Avenue 68107

Vincente Guerrero did not appear before the board. Proof of new license plates and registration is in the case file (Exhibit 2).

Motion to deny by Mr. Levy. Second by Mr. Gernandt.

AYES: Gernandt, O'Connor, Levy, Zabrowski, Incontro

Motion carried 5-0

III. Approval of Minutes from January 26, 2009

Motion to approve minutes from the January 26, 2009 meeting by Mr. Gernandt. Seconded by Ms. O'Connor.

AYES: O'Connor, Levy, Zabrowski, Gernandt, Incontro

Motion carried 5-0

IV. Election of Officers

Ms. Ann O'Connor requested the Chairman position of the Administrative Board of Appeals.

Motion was made to nominate Ms. O'Connor as Chairman of the Administrative Board of Appeals by Mr. Incontro. Second by Zabrowski.

AYES: Levy, Zabrowski, Gernandt, Incontro

ABSTAINED: O'Connor

Motion carried 4-0

Motion was made to nominate Mr. David Levy as Vice Chairman of the Administrative Board of Appeals. Second by Incontro. Mr. Levy accepted the nomination.

AYES: Zabrowski, Incontro, Gernandt, O'Connor

ABSTAINED: Levy

Motion carried 4-0

V. Discussion

VI. Adjournment

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

AYES: Zabrowski, Gernandt, O'Connor, Levy, Incontro

Motion carried 5-0

Meeting adjourned at 3:05 PM.