

Minutes  
Administrative Board of Appeals  
January 26, 2009

MEMBERS PRESENT: Jay Incontro, Chairman  
Garry Gernandt  
David Levy  
Ryan Zabrowski

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

ABSENT: Ann O'Connor

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**I. Roll Call**

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

**II. Cases**

**8-12-56** (From 12/22/08)

Appeal Police Department denial of firearm registration; Darius Jones, 3136 N 111 Plaza #F2 68164

Darius Jones appeared before the Board. Mr. Jones explained that he in the process of appealing a protection order. He stated he does not have a license to carry a concealed weapon.

Officer Nathan Dickey with the Omaha Police Department stated that Mr. Jones was denied for a protection order on August 13, 2008 but there is still a valid and current protection order against Mr. Jones. The protection order is valid for one year. Mr. Jones served 10 days in jail for carrying a concealed weapon on May 20, 2007.

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

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

**9-1-1**

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

Mitchell Kehm appeared before the Board. Mr. Kehm explained that in 1994 he voluntarily checked himself into a hospital because of death threats by his biological son's mother. Mr. Kehm stated that he has sole permanent custody of his son and is concerned about his emotional and physical well-being.

Officer Nathan Dickey with the Omaha Police Department stated Mr. Kehm was denied the firearm registration due to a Board of Mental Health Order. On June 14, 1994, there was a warrant issued for Mr. Kehm due to criminal activity. Mr. Kehm was located by the sheriff's department and taken to a hospital. A copy of the mental health order is unavailable. Mr. Kehm does have other criminal history but it is not relevant to the appeal. According to ATF regulations (Exhibit #2), a person is prohibited from carrying a weapon if a person is committed to any type of mental institute (does not say voluntarily or involuntarily).

Mr. Kehm replied that he does not believe he would have been given sole custody of his son if he had been committed.

In response to Mr. Levy, Officer Dickey stated someone would have to go before a judge and describe the situation as to why a person would need to be committed; a judge would issue a warrant and the sheriff would execute the warrant.

Mr. Gernandt was concerned about going against the ATF regulation and would recommend a 30-day lay over. Mr. Incontro requested further documentation from Mr. Kehm regarding the hospital stay. Further information was requested from the Police Department regarding the warrant.

Motion to lay this case over to the February 23, 2009 meeting of the Administrative Board of Appeals by Mr. Gernandt. Second by Mr. Zabrowski.

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

**9-1-3**

Appeal Police Department denial of firearm registration; Shaun Francisco, 8323 Sheffield 68122

Shaun Francisco appeared before the Board. Mr. Francisco stated he recently received a firearm as a gift from a relative and was denied a firearm registration due to a protection order violation that occurred during 2000-2001. Mr. Francisco explained that he was trying to end a relationship with a young lady but was presented with a protection order and accused of sexual assault. Mr. Francisco explained that he works the evening shift at UP and wishes to own a firearm for protection for his family.

Sgt. Jason Menning with the Omaha Police Department stated Mr. Francisco was denied the firearm registration for a violation of a protection order that was issued in December 1999. Mr. Francisco was cited for sexual assault but the court later dismissed the charge.

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

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

**9-1-4**

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

Mr. Kevin Denker stated Greg Bogard requested a lay over due to a scheduling conflict.

Motion to lay this case over by Mr. Gernandt. Second by Zabrowski

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

**9-1-5**

Appeal Police Department denial of firearm registration; Michael Reed, 5314 Northwest Drive 68104

Michael Reed appeared before the Board. Mr. Reed explained that he was denied a firearm registration due to a concealed weapon charge over 20 years ago. Mr. Reed was confused due to the fact that he has registered other weapons in the past. Mr. Reed wishes to own a firearm for protection.

Sgt. Jason Menning with the Omaha Police Department stated Mr. Reed was denied the firearm registration for a concealed weapon charge. Mr. Reed was arrested in 1988 and convicted in February 1988 for CCW. Mr. Reed does not have any other criminal history.

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

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

**9-1-8**

Appeal Police Department denial of firearm registration; Ryan Pegel, 6318 S 142 Street 68137

Ryan Pegel appeared before the Board. Mr. Pegel stated he was denied a handgun registration due to carrying a concealed weapon charge. Mr. Pegel explained that he served probation and has not been in trouble since the CCW charge. Mr. Pegel stated the conviction has been set aside as evidenced by the order that was submitted. Mr. Pegel explained that he has attended a handgun and safety course sponsored by the Health & Safety Council. Mr. Pegel stated he is concerned about his privileges and rights to own a firearm that would be used for protection.

Sgt. Jason Menning stated Mr. Pegel was denied the firearm registration due to a concealed weapon charge. In response to Mr. Levy, Sgt. Menning stated marijuana/drug paraphernalia convictions were in 2005, a DUI in May 2005 and the probation violation was in 2006. The CCW charge was in 2007.

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

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

**9-1-10**

Appeal Police Department denial of firearm registration; Kenneth Holland, 4501 Camden Avenue 68104

Kenneth Holland appeared before the Board with attorney, John Carter. Mr. Holland explained that he was denied a firearm registration due to a felony on his record from 32 years previously. Mr. Holland wishes to own a firearm for protection of his home and business. Mr. Holland stated he owns a lawn service/snow removal business.

Sgt. Jason Menning with the Omaha Police Department stated Mr. Holland was denied the firearm registration for past criminal history; robbery in 1982, disorderly conduct in 1985, 1986, 1987, 1988, 1990, 1991, trespassing, resisting an officer in 1989, DUI in 1989, obstructing an officer in 1990 and a fugitive in state warrant in 1994. Sgt. Menning verified that the most recent charge for Mr. Holland was for a different agency in 1994. Mr. Holland does not have any criminal history since 1995.

Mr. Carter stated Mr. Holland was charged with the burglary charge as a juvenile. He is presently working with the county attorney to rectify the charge. Mr. Carter explained that since 1994, Mr. Holland has operated his business and been a descent member of society, working and paying his taxes and trying to do the right thing by registering his firearm.

Mr. Gernandt commended Mr. Holland for attempting to clear his record. Mr. Incontro stated Mr. Holland has the time difference on his side. In response to Mr. Gernandt, Mr. Holland assured the board that his present conduct would stay consistent with what the law requires and he would continue clearing his record.

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

AYES: Gernandt, Levy, Incontro

NAYS: Zabrowski

Motion carried 3-1

**9-1-9**

Appeal Police Department denial of taxicab driver's permit; Ricky J. Mitchell, 4336 Bedford Avenue 68111

Ricky Mitchell appeared before the Board regarding a denial of a taxicab driver's permit. Mr. Mitchell stated he was denied a taxicab driver's permit due to his past criminal record. Mr. Mitchell explained that he was 19 years old when he was arrested for robbery and spent some time in jail. He stated he plead guilty and had two years of probation. He was told that the robbery would be removed from his record when he was 21 years old.

Sgt. Jason Menning with the Omaha Police Department stated Mr. Mitchell was denied a taxicab driver's permit due to a past felony/robbery conviction in 1978. Mr. Mitchell had a marijuana possession in 1985, DUI in 1988 and a CCW conviction in March 1992. There is no criminal history since March 1992.

Mr. Mitchell stated he is presently unemployed. His primary job will be a taxicab driver if the appeal is granted.

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

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

**9-1-11**

Appeal Police Department denial of taxicab driver's permit; Wynn A. Jennings, Jr., 501 Park Ave #208 68105

Wynn Jennings appeared before the Board regarding a denial of a taxicab driver's permit. Mr. Jennings stated he was arrested in 2002 for a possession charge and was convicted in 2006 for the same charge. He explained he has been to several rehabilitation centers starting with the Campus of Hope and graduated from Williams Prepared Place in December 2007. Mr. Jennings stated that prior to 2008 he was in violation of probation because he no longer wanted to continue to do certain things. Mr. Jennings stated he had a steady job working at Lumberman's at 137<sup>th</sup> & Industrial Road prior to the violation of probation. Mr. Jennings stated he went to jail for 30 days for the violation of probation and has not been able to find stable and gainful employment. Mr. Jennings stated he does work for Labor Ready when possible.

Sgt. Jason Menning with the Omaha Police Department stated Mr. Jennings was denied for the taxicab driver's permit due to his past criminal record. Mr. Jennings tried to harm himself in 2003 and had an emergency protective custody order. In 2004, Mr. Jennings served 30 days in jail for a crack possession conviction. Also, in 2004, Mr. Jennings had a conviction for leaving the scene of a property damage accident. There were several tickets for suspension, improper display of plates and violation of probation in December 2007 and January 2008. Mr. Jennings has a careless driving conviction in 2002, DUI conviction in 1991 and assault of an officer in 1990.

In response to Mr. Gernandt, Mr. Jennings stated he was fully aware of the consequences and made the decision to not follow the program. When he was arrested in 2002, and while the case was ongoing, he resided at a number of halfway houses and rehabilitation centers. Mr. Jennings stated he wanted to start a new life and face the consequences of the violation of probation so he could have a new life and a new start. He stated he had an attorney that assisted him in delaying the conviction while he was living at halfway houses and going through rehabilitation.

Mr. Incontro explained to Mr. Jennings that the timing was not on his side. In response to Mr. Incontro, Mr. Jennings stated he has proof that he graduated from Campus for Hope and Williams Prepared Place.

Mr. Jennings stated he graduated from college in 1996 and is presently enrolled in the WIA (Work Force Investment Act) at the Blue Lion Center. In response to Mr. Gernandt, Mr. Jennings stated he has a valid driver's license.

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

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

**9-1-2**

Appeal Police Department notice of nuisance; Zachary Thomas, 1506 N 70 Avenue 68104

Zachary Thomas appeared before the Board regarding a notice of nuisance. Mr. Thomas stated he believes the notice of nuisance is regarding a boat and truck. He is concerned that his truck will be towed if he parks the truck on the street due to improper licensing. Mr. Thomas explained that he recently moved from Kansas City and had his license revoked due to an unpaid ticket. He has since paid for the ticket and will have his license reinstated. He cannot insure the truck without an appropriate license. The 1983 boat trailer is self-made and does not have a registration. Mr. Thomas requested more time.

Mr. Kevin Denker stated there is no driveway at the subject property but the truck is parked in the yard. Mr. Denker stated there are three issues: plating of the vehicle, plating of the trailer and parking on an unpaved surface. The property is a rental property; the landlord would be responsible for the paving of the driveway.

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

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

**9-1-7**

Appeal Police Department notice of nuisance; Evelyn Mayah, 13128 D Plaza 68144

Evelyn Mayah appeared before the Board regarding a notice of nuisance. Ms. Mayah stated her vehicle is properly registered in Nebraska but when the license plates come back as unknown. Ms. Mayah submitted her registration to the board members for review. She stated she has a title and insurance.

Mr. Kevin Denker stated the vehicle could not be located at 2:46 p.m. on January 23, 2009; the address is located in an apartment complex. In response, Ms. Mayah stated she works during the daytime.

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

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

**9-1-6**

Appeal denial of engineering license; Gerald J. Wees; 7547 Polk Street 68127

Gerald Wees appeared before the Board regarding a denial of engineering license. Mr. Wees stated he has been a stationery engineer since 1990. In November 2007 he was informed that his company was closing. He explained that he obtained a job at the University of Nebraska Med Center and was not required to have an engineer's certificate so he overlooked the 2008 renewal of his license. Mr. Wees explained that he realized the fee for his 2008 engineer's license was not paid when he did not receive a renewal notice for 2009.

Mr. Tom Phipps, Chief Mechanical Inspector, stated that when Mrs. Wees attempted to renew Mr. Wee's license in December 2008, it was discovered that there was no license to renew because the 2008 license was not valid.

In response to Mr. Incontro, Mr. Phipps explained that a waiver could only be obtained through the Administrative Board of Appeals. Mr. Phipps stated the permit department has never received any complaints regarding Mr. Wees.

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

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

### **III. Approval of Minutes from December 22, 2008**

Motion to approve minutes from the December 22, 2008 meeting by Mr. Gernandt. Seconded by Mr. Zabrowski.

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

### **IV. Discussion**

Election of officers will be held at the next meeting, February 23, 2009.

Mr. Zabrowski stated it was very helpful to receive data well in advance. Mr. Zabrowski suggested that it would also be helpful to receive the police data in advance. Mr. Incontro stated there might be a concern as to a public record perspective.

### **V. Adjournment**

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

AYES: Gernandt, Levy, Zabrowski, Incontro

Motion carried 4-0

Meeting adjourned at 3:10 PM.

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