

Minutes
Administrative Board of Appeals
June 29, 2009

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

MEMBERS ABSENT: Jay Incontro

OTHERS PRESENT: RoseMarie Horvath, Law Department
Mike Johnson, Planning Department
Tom Phipps, Planning Department
Jay Davis, Planning Department

I. Roll Call

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

Mr. Mike Johnson 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

9-6-47

Appeal notice of nuisance issued by Parks Maintenance Department on April 17, 2009: Frank Shotwell, 2812 N 49 Avenue 68104

Frank Shotwell appeared before the Board. Mr. Shotwell read a written statement and was concerned about not being able to store items outside, the condemned trees and another tree that needs to be condemned.

Mr. John Wynn, City of Omaha, stated Mr. Shotwell's residence was full of litter and debris. The property was cleaned up and the violations have been corrected (Exhibit 2). Two trees that are condemned on the property are marked for removal and a third tree is not considered a hazard.

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

AYES: Gernandt, Levy, Zabrowski, O'Connor

Motion carried 4-0

9-6-51

Appeal denial of expired 3rd Grade Stationary Engineer certificate: Ronald P. Chapman, 39 Lakewood Villa Street, Council Bluffs, IA 51501

Ronald P. Chapman appeared before the Board. Mr. Chapman admitted that he did not pay for his stationary engineering license for the previous two years due to problems with his mail being forwarded when he was out of town. He stated he worked at Quaker Oats Chemical Plant for 27 years as a supervisor of the boiler operation and presently does consulting.

Mr. Tom Phipps, City Planning, stated that Mr. Chapman's license was not renewed and therefore on March 1st of 2008 his engineering license was denied. Permits and inspections do not have any outstanding complaints or have never received a complaint against Mr. Chapman.

In response to Mr. Levy, Mr. Phipps stated there is no continued education requirement.

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

AYES: Levy, Zabrowski, Gernandt, O'Connor

Motion carried 4-0

9-6-54

Appeal notice of revocation of electronic message sign: Russell S. Daub d/b/a Rockbrook Village Shopping Center, 2800 S 110 Court, Ste #1 68144

O'Connor: Are you going to be the spokesperson?

Daub: I am Madam Chairperson. Just a...four exhibits please to mark (Exhibits 2a-2d). Each page is marked as well but a yellow sticker will work. By way of introduction, my name is Russ Daub, my son Zach is to the rear of me. Our role in life is to keep Rockbrook Village family running and organized. I am here pro se because I do practice law as well but I will be the person who speaks for the application. With me here to my right is Dorsey Olson who is the owner of Neon Products in Omaha. They were the installer of the neon sign in question and to my left is the chief sign erector, who under the ordinance is responsible for compliance and has also been cited for the violation. The gentleman to my left is the person who made out the application. So, to go right to some core issues, you have four affidavits in front of you, they are from all of us. They basically say that starting in 2002 up to 2006 we went through a massive sign, shopping center rebuilding process at Rockbrook. We went through sign ordinance waivers at that time for the pole sign in question. In 2008, we wanted to change the concept of advertising for our center. At that time, the gentleman to my left applied for a permit sign to change the face using the (inaudible) calling a face change and received that permit. Now, you can see from this permit as well that in 2008, at the end of 2008 the chief permit inspection officer was called to get a six- month extension just in March here after putting it up, spending \$134,000 on it and getting 20 of our merchants to rely on this sign as a type of advertising because of the way Rockbrook is, it doesn't have a lot of street frontage, but in any event we received a revocation letter. Now because we are in a city hearing, I think it is proper for me to say what I was told as to why it was revoked. We received no notice in advance it was going to be revoked. It was revoked on the day that my brother was defeated. I was told by Mr. Blair that it was revoked because a member from the Zoning Board of Appeals had called and wanted to know if there was a permit on the sign. There was a permit. Apparently that individual called again and pressed the issue and then we received a revocation notice. The revocation notice is in the exhibits. I have a set for all of you but essentially it explains in the letter that we are to take the sign down. The master sign erector and I can go to jail if we don't. It proceeds to say that this was not a face change, that in fact it was a multi-panel sign change. Proceeds to say in the application that there was no mention of the prior appeal and proceeds to say that in the application we did not disclose that it was going to be a message center, a multi-paneled message center. Now, it does not say in the application that we violated a single law. As a matter of fact, Rockbrook is in a CC zone, which is a lawful place for an electronic sign to be. You know, they are being built all over the city. We know that it says that we did not disclose. It says that on the sign that it was an LED sign. It means that it was an electrical LED sign. We proceed to say that based on the concept of the face change, on the face of the application. It goes on to say that we did not explain that it was going to be an electronic display board. That shows what the old sign was. This proceeds to describe that it was an electronic colored LED electric board sign. It proceeds to say that this is the type of (inaudible) face and this is the type of message center and at the bottom in bold, it says a double-face pole sign message center addition. So, at that point, again in speaking with the city, one of the things it says is, in this block, we did not disclose that the case had been subject to a prior Board of Appeals case. In 2005, when we were finishing the project, we had relocated a massive creek area. We did not have enough setback to accomplish or facilitate the pole sign under the ordinance. We went to the city and got a variance. We got a variance for two things; a variance for setback and a

variance for size. That was all. When the city approved of it, 5-1, at the Board of Appeals, the Zoning Board of Appeals placed no prohibitions on it. Didn't say we couldn't change it in the future, because the ordinance says, if you want to make a sign change, face change, apply for a permit. It doesn't say that we are prevented from making changes. It doesn't say we have to go back to the Board of Appeals and it doesn't say that the sign can never be changed again. We all know sign changes over time. So, when we learned that the city basically was rethinking its position and said, 'Oh yes, we did give you a permit before but we want to revoke it.' We also learned from the gentleman named Mr. Grothe that approved the sign, that at the time the sign was approved, right there, that number demonstrates the sign plan for Rockbrook and demonstrates the sign was in fact a Zoning Board of Appeals sign. The facts are that the only two things that were applied for for the Zoning Board of Appeals were setback and waiver. This sign is less size than the earlier sign and so, the Zoning Board of Appeals issue and the matter of it being there and whether the city knew about it. That was a number, according to testimony in our affidavits; they knew that it was subject to zone review. They are citing us for misleading us because we didn't tell them, they knew it. So, what I believe is, this company, Rockbrook Village, for years we are absolutely compliant. We have a great relationship with City Planning, we have a master sign plan down there. So something has happened to change things but we are in a CC zone, we applied for the permit, we got it. The affidavit from this gentleman says that not a single call came from the city. The permit was issued. The letter of revocation says not a face change. Now, under the ordinance there is a definition of face change. When I spoke with Mr. Davis, great guy, we have worked with him for years. He says, 'Look, in our city we have a totally outdated ordinance with regard to electronic signs. We don't recognize the modern nature, we don't recognize the definitions.' This, a face change, which they say is not, in the revocation, is defined as a change of graphics to an existing sign, which is what we have, and putting on new copy. It is clear that it doesn't say electronic, but I point out in the affidavit from this gentleman, I took the time, I have learned more about signs and sign permits here that I would admit that I would ever want to know again. But, I went to the national organization and I said, 'What does the model sign code say? Hopefully Omaha should have one. I shouldn't be in the middle of it, but we should have one.' The model sign code, as attached to his affidavit, defines a face change. And a face change is a change of copy, it can be electrical or graphic, and it can have multiple panels or single panel. The revocation letter refers, actually it's inconsistent, it says that what we did was we converted this to a single face. It did have six panels on it before. We've got 60 merchants there that don't have a way to advertise. When we got this permit, put up 130 grand, we had 20 merchants sign up to participate this and councilman they took down every one of the temporary signs that are cluttering our city under the new ordinance, relying on this as a method to demonstrate their location. So, when I look at it and I say to myself, first the Zoning Board of Appeals is irrelevant, this does not bring up anything that applied in the Zoning Board of Appeals. I say that under the ordinance, under the sign ordinance, we applied, we got a permit. If we had not have gotten a permit, it would have been illegal. It was called a face change. This is what else happens. It says it's not a face change. Mr. Hayden's affidavit shows you, we all know where the Shrine Tangier Temple at 84th and Center. His application points out that that sign, by this company was applied for, they took a panel off and put a LED message center in it, it was called a face change, the city issued a permit. Next one, DNT 90th and Dodge, this company applied, that sign had been subject to a Board of Appeals case before, they assigned, applied for a face change, got a face change permit issued. The reason that is relevant is that there is nothing that says that the Zoning Board of Appeals is an enforcement agency, they handle waivers. The letter says that we should go to the Zoning Board of Appeals, there is nothing to waive, it is a legal sign, it's proper in the ordinance and it's within the meaning of this, now it's (inaudible). Now, two examples from this gentleman point out, it's happened before, been approved as a face change. I think it's about the question that there is multiple disciplines in the city about whether we like LED signs or not. I think it's about the fact that someone years ago in 2005 reviewed it, drove by it, didn't like it and called Mr. Blair. Mr. Blair checked it and got called again, revocation. We didn't hear a thing about it so when all that shakes out, what I think is that if it's a reinterpretation, let's call it that. No one cites us for violating the law. What I found is that in the law and I have the briefs here for all of you. The law says if a sign is illegal in the first place, you can't get a permit for it because it's illegal in the first place. First check, sign is legal. Next place, is there a mistake? If a mistake was made by somebody, it would have to be relevant, material and it would have to change it. If it can be adminiscully corrected, it doesn't apply. What we know is that the city, if they hang their hat on the fact that they weren't told that it was subject to an appeal, they knew it and we have a gentleman that said that he did know it at the time. Now that was Mr. Grothe in permit and inspection. We know that at that point in time the mistake has to be relevant. If it's about something that isn't

relevant, it can't be called a mistake. What I know is, from my experience with the Zoning Board of Appeals, a lot of times when the city makes a mistake, they just admit the mistake, that's it, it occurred, time to go home. What I've also learned is I can't get the \$130,000 back. Okay, the law says that if the city made a mistake, no recourse to recover it, except obviously to rip the sign down. If the city gave me \$130,000, I would take it down tomorrow because I don't want to be in this deal. My life is not about argument like this, so what I'm saying is, I also think we have an issue with the ordinances, because they are old, archaic and they are vague but I am within the definition of that as long as you can show that prior experiences applied face change strategies. Now, it could have been the water tower, it could have been called the Empire State Building. If the guy that approved of this had all the facts in front of him, and I honestly, I have trouble saying that with this picture and with that application, there wasn't any doubt what we were doing. So I think what we got is, the city has not cited us for law violation, they've used words in a letter and so that's okay. I don't think the applications misled anybody, I don't think we violated law, I don't think there was a (inaudible) and I learned, as you will see in this case, or in the brief that I give you, there is a current ALR citation, in the 5th edition of the ALR citations on this exact point. And that ALR citation in multiple jurisdictions establishes the concept that if the city has issued something and a citizen has relied on it to their detriment; the city is estopped from changing the position. Then there is a case that went from the City of Omaha to Judge Buckley in District Court, up to the Supreme Court and back, called A. C. Nielsen. It was a case where the city, planning department, issued a permit based on what they thought was the then interpretation of the zoning ordinance. A guy starts selling some trailers in some place on Dodge Street. The city says oops, made a mistake, we don't like this, revoked the permit. Went to District Court. The judge said, 'I cannot find a legitimate mistake made here.' They reversed the ruling. Went to Supreme Court, Supreme Court affirmed it. So we have current law in Nebraska that says that a municipal official can be stopped when there is a situation where a substantial amount of money has been relied upon to an applicant detriment. You just can't come back and rip it. So, I think that being said, what I would do is, there is no hurry here. We have not stopped using the sign. I understand that the city planning department says as long as the sign, as long as we are moving forward. So what I have done here is prepared a brief and given you the cases that I have cited which I believe the city attorney's office should look at and possibly comment on, brief on, do whatever you would like to do. But at least at this point, I've got the law here that can be read. I think our affidavits, there is a packet here for each of you that includes the affidavits are the more detail of what I said. We got a time in this city, it's going forward but one of them is, these retailers in these places, you got to help them. The thing to do is to recognize modern advertising. That's what we have tried to do in Rockbrook to move that property forward and this is a bad time to be taking advertising from them. So, what I have said in my brief is I would like the board to consider overruling the request to revoke the permit.

O'Connor: Thank you.

Daub: That has a full copy of the record in it.

Gernandt: Mr. Daub, the face change permit number #14601, this thing keeps bouncing back and forth in my mind. Are those numbers in a sequence that somebody could quickly recognize that it is what you said it was during your oration?

Daub: Yes

Gernandt: Does the 14 means something or does the 01 mean something?

Daub: Councilman, as I understand it, at the time the application is made the planning department assigns a permit number to it. The permit number for this one is over on the right. This was the permit number that dealt with the sign in 2005 that had the waiver involved in it for setback and size so that code would have been easily recognized in the minds, I believe, of the permit inspector, he would have recognized that it was an older permit because we are up to 33100 now, but he would have been able to reference this. It's my understanding at the time, later the permit officer has indicated that he knew that, he went into the file and learned that the sign had been under appeal before. I believe he concluded that this sign only had a waiver and setback issue and therefore there was no issue with regard to the face change. So he let the permit go through as a face change. But I think it is recognizable, I think the staff knows these numbers and knows that they can refer to them. And if they made me as an owner responsible for knowing what is going on, I would

say, 'Wait a minute. We go to the city on signs all the time. We submit our sign plan with every sign we submit.' I mean, it's got our number, our quota, whether the tenant is entitled to the sign or not. So if we got to have people responsible but that number, as I know it, at the very time the permit was filed, the officer identified it, knew it was subject to a waiver, went in and looked at it and knew that it was only two things and determined that we were not asking about those two. If we were, we would have had to go somebody else. All I could have said is, 'I don't like it.' They could have called us back. I wouldn't have done it. I'm not sure why I am here. I apologize for it but something else is going on but I think it an initiative, maybe it's an initiative. Maybe it's an initiative on the part of the city to make everybody really aware that we need to change our ordinances and I would be 100 percent of that but in the meantime I don't want to get in the middle of it. I would get into trouble.

Levy: Do we have somebody from the city?

O'Connor: Is anybody here from the city?

Johnson: I don't know if anyone is upstairs that would...

O'Connor: And Mr. Daub, you submitted this with your application?

Daub: That is the second page of the application.

O'Connor: Okay.

(Mike Johnson left the hearing to get Jay Davis and/or Mike Grothe)

Gernandt: To the board's pleasure, everybody knows that Omaha by Design has started to do a lot of things, council has approved some and they are still working on the master plan and all of those things. I'm not sure that this got caught up in some of this.

Daub: Councilman, I can tell you that I volunteered for that process and went to all its meetings and sat on the committees to develop the draft wording for the remodeled program. Through all those meetings, the electronic sign message boards never hit the deck so it is not in any of the suggested ordinance pre-drafts. Mr. Davis told me recently here that he is very much in favor of the concept of modern signage this way. It needs to be and he recognized that the ordinances are pretty outdated and said that they were going to initiate a program to look at revising those. He said he was going to have this lady sit on the panel to consider that but in all the work that I did, all the way through our entire committee with Connie's leadership, the sign ordinances were never a part of it. They should be. Based on what has happened to me, they should be. I would have known the rules then.

Levy: Last winter, the council did change the sign ordinance in some respects but I don't know that it dealt with the on premise signage or not or if there were any....The purpose of that was off premise signage. I don't know if there were changes in the definitions or otherwise but the permit was issued, is that correct, on June 4th of 2008?

Daub: Correct

Levy: So that would have predated the changes anyway.

Daub: I think there was a time too where the city kind of said we are going to have a kind of moratorium on permits. I mean, we are not going to look at issuing them anymore for a while but that was after this was issued and then I think they recently opened it up. I think they do issue them now.

Levy: Electronic sign permits? Yes.

Daub: And that was the Lamar issue. And I think it was, it's true, there is a trend. There is a lot of companies from outside the city that come in and slam up some electronic message centers and they are out of there the next day, no permit. Then you have the Lamar issue that was out there and have differences of opinions on that so it should be addressed as a policy.

O'Connor: (inaudible)

Levy: While we wait, I should disclose I guess that I am on the board of Omaha by Design and represented Omaha by Design with respect to the off premise sign issue. I think I can deal with this case independent of that and fairly. I am going to continue to sit and hear the matter but I do want to disclose that for the record.

O'Connor: Did you want to pull up a chair?

Davis: I can if you want me to.

O'Connor: That would be great.

Davis: I'm Jay Davis, Chief Building Inspector for the City of Omaha.

O'Connor: And are you familiar with the issue we are discussing?

Davis: I am. Yes.

O'Connor: Do you have a question for him?

Levy: No, usually we have a presentation from the appellant and then one from the city as respondent. There is a lot here and I would be interested to hear the city's response.

Davis: Our current response or our current, the reason why they are here at the board evolves around a technicality in the ordinance right now-what is a face change. When the permit was applied for as a face change, we consider that to be the plastic or the flex or the flexible material for the face to be changed with a copy on it but not necessarily installing a whole new sign which requires a different type of...well not really, it still requires the same wiring. A flex base sign for example, a flexible substrate, the sign faces apply to it. In this case, these are actually individual panels of what we call pixels or LED lights and they have to be inserted into the cabinet as well. The whole mechanism as to how they actually operate is different from the sign that was permitted on the site originally. So our question came about is, was it actually permitted as a face change because under the ordinance, we don't think so at this point.

Levy: How did this come about procedurally in the city. The permit was issued about a year ago?

Davis: Yes

Levy: And the letter of revocation was sent a couple of months ago?

Davis: Correct

Levy: What happened in between?

Davis: It came to my attention actually from a member of the Zoning Board of Appeals. There was a waiver issued by the Zoning Board of Appeals on this sign. I don't remember how many years ago that was. I apologize for that but that was issued for the enlargement of the sign that was there. That sign had individual, I can't remember if it had one face or individual faces that were in there but it actually outlined the number of businesses that were in the property. Once they took that away, when this came through as a face change they put in an electronic message center which in turn...you know, from a personal feeling, may be okay but the Zoning Board of Appeals members did not feel so and they wanted us to at least bring attention to the fact that this came through as a face change and not something that they had already approved.

Levy: And then based on that, your department made the decision that the permit had been issued in error and sent the revocation?

Davis: Correct

Levy: Okay. Thank you.

Gernandt: In the mean time, the sign has been installed and has been operating.

Daub: True. Jay, when the, if I may?

O'Connor: Yes

Daub: When the Zoning Board of Appeals objected to it, did they object to it because we violated a law or did they say that they don't like the LED signs? What was the, did they object because they wondered if we didn't have a permit?

Davis: That was the first question they asked was if you had a permit which we obviously determined that you did have a permit. The second part of it was that they had approved it for the sign with the faces that were in there and when they do that that they tend to say okay, we approved it in this manner but now it's not there any longer and so they felt it was a violation of their Zoning Board of Appeals approval to allow the sign to be the way it was.

Daub: And based on your career, do you feel that the ordinance, as it exists, gives an owner a good definition of a double-faced or an electronic message center or panel? Are we possibly talking about situation where the board does not like LED signs but we have ordinances that don't tell people what the definitions are?

Davis: I think the problem is that technology has changed and as technology changed the code has not necessarily come with it. I think electronic message centers are defined in the code currently as they were written back in 1987 when we had the single (inaudible) type of configuration. Unfortunately, I was in the sign business at one time too so I've watched the technology change but the ordinance doesn't necessarily come with it.

Daub: My experience is normally what happens is that when applicants do apply, even though we may have outdated ordinances, what happens is there is a dialogue and the dialogue usually solves the question before anyone does anything and many times definitions are not covered, you need to go to the Board of Appeals to ask about it. That's usually how it gets sorted out, its just as strange as heck that now we are doing it in reverse, after someone has spent a lot of money on a sign.

Davis: I don't disagree and I think if you would come down to the jest of the matter outside of the Zoning Board, I myself feel that maybe a face change was, should I say, possibly a misrepresentation of what actually happened. I mean in the industry, we think of a face change as changing the substrate that was there. This is a cabinet change, whether they changed the cabinet or not, how they put the technology in there is different from what they did if they just put a flex or flexstrate back in there and that is really of a big concern.

Daub: You weren't here during my presentation but I submitted two applications that Neon Products submitted before, one was for the Shriner's sign at 84th & Center, the moon face with the Shriner's emblem and below it there is a panel. The panel was removed and they put in an electronic message sign as a face change and it was approved. So, the issue in the past is the DTN sign at 90th & Dodge face change after the matter had gone to the Zoning Board of Appeals on another issue. What I am saying is that over time we had different interpretations and we may have out of date ordinances but...

Olson: We have always used the word "face change"

Daub:the company here has two prior examples of applications using face change. Face change here was used and not a word said in terms of application, nothing came back to the owner to tell me where to go and what to do and it just went through as approved.

Davis: There are two things I need to look at. Well, the face change could be an issue, yes I agree. We have been through three sign inspectors under my watch. Not that that is a good excuse for anything, but the reality is everybody has a little bit different interpretation. And to appease that, I am in the process of putting together a task force, Councilman Gernandt is aware of that, because

we need to change two ordinances, Chapter 55 which is a zoning ordinance dealing with sign regulations and Chapter 51 which deals with licensing and installing of signs. And that change is really necessary for a lot of reasons.

Daub: Well, we all know that when that happens and it has happened in billboard signs and all kinds of signs throughout the city, when that happens, a sign ordinance revision adopts a non-conforming criteria. So, if you do have signs and in this case Rockbrook comes out to be a non-conforming sign or illegal or unsafe or something like that, the revised ordinances will deal with it. They will address it and say you have so many years to come into compliance. We may be model, we may be an example, we may be a good model. I don't know. It depends on the cycle but if that were true, I assume every sign in the city that's got LED authority today may come under supervision, may come under monitoring. And again, that may be a more logical way to do it than, I heard the gentleman here earlier, I was impressed with what he said. I wonder if what we should do, is be doing this to all signs because what I have learned is that all the city has to do is revoke the permit. There is no statute, the owner does not have to pay anything back so we have non-conforming signs in the city, all we have to do is revoke the permit but the right way to do it would be through a redue process where you develop non-conformance. I've got clients that got billboards, I know they are non-complying and we know we have to take them down in a few years. We are not going to be able to keep them up because new ordinances came in and said we need to have better signs.

Gernandt: Okay, just so I am clear, let's just say that one of these businesses decides to close or move and they take their, panel goes out and a new business comes in. Does that require a permit?

Daub: Face change

Davis: Yes that's a face change permit by definition, yes.

Gernandt: By definition.

Daub: And that's this one here, existing sign, you change graphics or if you change copy. Now, what you find under the model act, published by somebody in Washington, copy can be electronic or printed. Structure is a defined structure which is the frame and the thing that Jay pointed out. You could have discussions about that. It's existing sign graphic or copy and then the question is, was this a copy change? It was definitely a change to an electrical graphic. Are you inside the ordinance? If you are by interpretation. If the city is not clear about it's ordinance, who is responsible? And then you get into estoppel. Even if it was wrong, there are cases that say, 'Too late, we spent too much money on it, we can't go backward.'

Levy: For what it's worth, for me that's what it comes down to. I'm not sure this is a face change, just personally. I don't think it is. I agree with you that the ordinance is not very clear about that. I understand that other permits in the past have been called face change that have been the same kind of change but I don't think from a legal standpoint that is precedent. Every permit decision stands on its own but you've got a permit that was issued and you relied in good faith, presumably on that permit and you spend a lot of money in that reliance. And so to me, that is what it comes down to, had the city said, 'oops, time out, we made a mistake. This is not a face change' before you put the sign up, I would have no problem supporting the city's decision to say, 'hey we made a mistake, sorry we gave you a permit in error, we are going to revoke that permit.' But here we are now a year later, it's different than a non-conforming use because that's something that comes about when the law changes. But the law in that case is that then the city has got to give you time to get your money back out of it, to amortize your investment before they make you come into compliance with the new law. So, there is sort of a parallel here. You've had this sign up for a year, I don't think you could say you amortized your investment in a year's time. It comes down to a legal question almost as to, almost purely a legal question as to estoppel and whether the city can be estopped at this point from revoking the permit when you've relied, do you have a vested right is to me what it comes down to and I don't know without reading your brief or hearing from the city law department.

Daub: Judge Buckley in his case said, essentially that kind of that same approach. Judge Buckley said, 'look, it's a matter of fairness between the city's interest and the business person's interest and

you have to determine what's fair and you have to really say, did somebody really intend to defraud or deceive somebody and be unfair about it.

Gernandt: I will make a motion to grant the appeal.

O'Connor: Is there a second?

(Pause)

Zabrowski: I'll second.

O'Connor: Call the roll please.

Hightower: Levy?

Levy: No, because I would like more information.

Hightower: Zabrowski?

Zabrowski: Yes

Hightower: Gernandt?

Gernandt: Yes

Hightower: Madam Chairman?

O'Connor: Yes

Daub: I appreciate it. Thank you very much. Be excused?

O'Connor: Yes, thank you.

Summary:

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

AYES: Levy, Zabrowski, Gernandt, O'Connor

Motion carried 4-0

9-6-48

Appeal Police Department denial of a Taxicab Driver's Permit: Mohamed El Bana, 7230 Pinkney Street 68134

Mohamed El Bana appeared before the Board. Mr. El Bana stated he has lived in Omaha for approximately three years and is familiar with Omaha.

Sgt. Lance Harrison, Omaha Police Department, stated Mr. El Bana was denied a taxicab driver's permit because he marked "no" to the question about being generally familiar with the location of all streets and business places in the city.

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

AYES: Zabrowski, Gernandt, Levy, O'Connor

Motion carried 4-0

9-3-28 *(From 5/18/09)*

Appeal Police Department denial of firearm registration: Marie Lenton, 3612 N 29 Street 68111

Marie Lenton was not present for the hearing.

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

AYES: Gernandt, Levy, Zabrowski, O'Connor

Motion carried 4-0

9-5-45 (From 5/18/09)

Appeal Police Department denial of firearm registration: Samuel Bandiera, 1801 N 58 Street #2
68104

Samuel Bandiera appeared before the Board. Mr. Bandiera provided additional information from his doctor stating he is not a harm to himself or others (Exhibit 2).

Sgt. Lance Harrison, Omaha Police Department, stated Mr. Bandiera was denied because he checked the "no" box that asks, "Have you ever been or are you now being treated for a mental disorder?"

In response to Mr. Levy, Mr. Bandiera stated he has been under a doctor's care since approximately July 2008.

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

AYES: Levy, Gernandt, O'Connor

NAYES: Zabrowski

Motion carried 3-1

9-5-46 (From 5/18/09)

Appeal Police Department denial of firearm registration: Paul Marchio, 4315 Cass Street 68131

Brian Munnely, representing Paul Marchio, appeared before the Board. Mr. Munnely stated that Mr. Marchio was issued several protection orders on December 4, 2008 but the protection orders were dismissed and vacated without prejudice on May 20, 2009 by Judge Batallion (Exhibit 2). Dr. O'Sullivan saw Mr. Marchio voluntarily at the Douglas County Outpatient Treatment facility. The Board of Mental Health Order was then dismissed. Mr. Marchio surrendered the firearm and now resides in California.

Sgt. Lance Harrison, Omaha Police Department stated Mr. Marchio had his handgun registration revoked on April 20, 2009. The protection orders were dismissed however Mr. Marchio had a record of mental disorder as "being a danger to self or others". Mr. Marchio has a BMH order from the Douglas County Sheriff's office that was issued on December 5, 2008. On December 3, 2008 an officer alert was issued because Mr. Marchio's mother called OPD and advised them that Mr. Marchio had homicidal thoughts towards doctors at UNMC. Mr. Marchio was denied because he provided false information by marking "no" on the gun registration application to the question, "Have you ever been or are you now being treated for a mental disorder?" The disposition of the Board of Mental Health is unknown.

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

AYES: Levy, Zabrowski, Gernandt, O'Connor

Motion carried 4-0

9-6-50

Appeal Police Department denial of firearm registration: Christen Harrington, 600 S 27 Street #708
68105

Christen Harrington appeared before the Board. Mr. Harrington stated that he received a carry-concealed weapon charge in August 2001 when he was pulled over by the police during a routine traffic check and had a knife in his glove box. He plead guilty to the charge. He stated that since 2002 he has had a clean record, graduated from college, is a father and more responsible.

Sgt. Lance Harrison, Omaha Police Department, stated that on August 30, 2001, Mr. Harrington was cited for CCW, possession of drug equipment and improper display of plates. In November 2001 he had a felony warrant from Mills County for third degree sexual abuse but that was later reduced to a misdemeanor. There has been minimal contact with the police since 2001.

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

AYES: Zabrowski, Gernandt, Levy, O'Connor

Motion carried 4-0

9-6-52

Appeal Police Department denial of firearm registration: Jason Boryca, 3969 S 150 Plaza #256 68144

Jason Boryca appeared before the Board. Mr. Boryca stated he would like to legally purchase and own firearms. In 1991, he received a concealed weapon charge for illegally transporting a weapon.

Sgt. Lance Harrison, Omaha Police Department, stated that in 1991 Mr. Boryca was cited for CCW. There has been minimal contact with the police since 1991.

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

AYES: Gernandt, Levy, Zabrowski, O'Connor

Motion carried 4-0

9-6-53

Appeal Police Department denial of firearm registration: Edward King, 415 N 41 Ave #206 68131

Edward King and Tom Lund, attorney appeared before the Board. Mr. Lund stated Mr. King is appealing the revocation of the firearm permit due to the original notice of revocation and the reason given by the Police Department should be specific. A second notice was received from the city after the appeal was filed stating there was a mental health record. A letter was submitted from Mr. King's psychiatrist in Jacksonville, Florida (Exhibit 2) stating that there is no mental disorder.

Lt. Colene Hinchey, Omaha Police Department stated Mr. King was revoked possession of 37 handguns because he illegally took control of the guns, denied that he had them and reported them stolen. The police subsequently found the handguns and then took possession of the handguns. The first revocation was sent due to a protection order, which has since been dropped. On October 6, 2008 there was an officer alert naming Mr. King as a possible armed party. A report from the Florida Police Department dated September 27, 2007 was submitted indicating that Mr. King is a danger to himself and others (Exhibit 4). Lt. Hinchey stated she has spoken to Mr. King's ex-wife on several occasions and she is still fearful of him. The second notification, with a reason for revocation, was sent due to an inadvertent clerical error.

Mr. Lund stated the protection order was dismissed by a judge after a hearing. The protection order was filed because the police suggested to Mr. King's ex-wife that she file the protection order. Mr. King's ex-wife did not testify to any threats. There is no evidence of threats to Mr. King's ex-wife or anyone else. Mr. King is a gun collector. Mr. King has suffered from mild depression in the past and presently is not under any doctor's supervision or taking any medication.

In response to Ms. O'Connor, Mr. King stated he is on disability and now lives in Omaha, as does his ex-wife.

Mr. Lund stated Mr. King made a report of the stolen handguns because he was to receive the weapons in the divorce proceeding but he was unable to locate the handguns. A copy of the order

from Judge Bazis dated November 4, 2008 was submitted stating the weapons were to be returned to the defendant (Exhibit 3). There has been no appeal filed by the city.

In response to Mr. Levy, Mr. King stated he shoots recreationally and has had safety training. He formerly worked for an armored car company for approximately four years.

In response to Mr. Gernandt, Lt. Hinchey stated the Police Department is in favor of denying the appeal for Mr. King.

In response to Mr. Gernandt, Mr. King stated he plans to sell most of the handguns if they are returned and a few would be kept in his apartment.

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

AYES: Zabrowski, Gernandt, Levy, O'Connor

Motion carried 4-0

9-6-56

Appeal Police Department denial of firearm registration: Olanders D. Nelson, 8240 Blondo Street #258 68134

Olanders Nelson appeared before the Board. Mr. Nelson stated he had a concealed weapon charge in South Dakota in late 2008.

Sgt. Lance Harrison, Omaha Police Department, stated that in September 2008, Mr. Nelson was charged with a concealed weapon charge in South Dakota. There has been minimal contact with the police.

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

AYES: Levy, Zabrowski, Gernandt, O'Connor

Motion carried 4-0

9-6-49

Appeal Police Department notice of nuisance: Gilbert Sanchez, 3316 S 54 Street #208 68106

Gilbert Sanchez was not present for the hearing.

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

AYES: Zabrowski, Gernandt, Levy, O'Connor

Motion carried 4-0

9-6-55

Appeal Police Department notice of nuisance: Penni Gist, 13063 Taylor Circle 68164

Mike Johnson submitted photos taken on June 25, 2009 (Exhibit 2) but the trailer in question was not present.

Penni Gist and Doug Gist appeared before the board. Ms. Gist stated they are in the process of moving. Mr. Gist stated that the vehicle in question is a 26' trailer that is gone most of the time.

In response to Mr. Gist, Mr. Johnson stated that a vehicle over 20' cannot be parked in the driveway but he is not sure if it could be parked in the street. If a vehicle is in a major state of disrepair it cannot be parked in the driveway area.

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

AYES: Gernandt, Levy, Zabrowski, O'Connor

Motion carried 4-0

9-6-57

Appeal Police Department notice of nuisance: Diana Atkinson, 3315 Forest Lawn Avenue 68112

Mike Johnson submitted photos showing vehicles parked on the gravel and recent photos taken on June 24, 2009 (Exhibit 2) that show no vehicles parked on the gravel. In 1958 the ordinance was changed to not allow parking on crushed rock or gravel driveways.

Diana Atkinson appeared before the Board. Ms. Atkinson stated her house was built in 1962. She has lived at the subject property for 15 years and has always parked on the gravel.

In response to Ms. Atkinson, Mr. Johnson stated the ordinance states the driveway has to be a hard surface; blacktop, concrete or brick.

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

AYES: Zabrowski, Gernandt, Levy, O'Connor

Motion carried 4-0

9-6-58

Appeal Police Department notice of nuisance: Abby L. Scott, 405 Walnut Street, Salix, IA 51052

Mr. Zabrowski recused himself from the subject case.

Abby Scott appeared before the Board. Ms. Scott stated she is a permanent resident of Iowa and her vehicle is licensed in Iowa. She stated she is a consultant and has had an apartment in Omaha for approximately three years which she stays at 30 percent of the time.

Motion to deny with 5 days to comply by Mr. Gernandt. There was no second motion.

Motion to deny appeal subject to applicant is required to obtain a wheel tax sticker for an out-of-state resident who works in Nebraska by Mr. Gernandt. Second by Ms. O'Connor.

AYES: Levy, Gernandt, O'Connor

ABSTAIN: Zabrowski

Motion carried 3-0-1

9-6-59

Appeal Police Department notice of nuisance: Jacon R. White, 5706 S 114 Street 68137

Mike Johnson submitted photos dated June 26, 2009 that do not show the vehicle in question (Exhibit 2).

Jacon White appeared before the Board. Mr. White stated the vehicle in question is parked in the garage. He is unable to get license plates for the vehicle because a finance company in Colorado

will not forward the paperwork needed to register the vehicle. A lawsuit has recently been filed against the finance company.

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

AYES: Zabrowski, Gernandt, Levy, O'Connor

Motion carried 4-0

III. Approval of Minutes from May 18, 2009

Motion to approve minutes from the May 18, 2009 meeting by Mr. Levy. Seconded by Mr. Zabrowski.

AYES: Gernandt, Levy, Zabrowski, O'Connor

Motion carried 4-0

IV. Adjournment

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

AYES: Gernandt, Levy, Zabrowski, O'Connor

Motion carried 4-0

Meeting adjourned at 4:10 PM.

Mr. Gernandt announced that this will be his last meeting and Council member, Chris Jerram will take his place.