Minutes
Administrative Board of Appeals
May 18, 2009

MEMBERS PRESENT: Ann O’Connor, Chairman
Jay Incontro
David Levy
Ryan Zabrowski

MEMBERS ABSENT: Garry Gernandt

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

9-4-33
Appeal notice of nuisance issued by Parks Maintenance Department on March 4, 2009; Dianne C. Beltz, 4312 Marcy Street 68105

Dianne Beltz appeared before the Board. Ms. Beltz stated she believes she is not responsible for the cottonwood tree located between the curb and the sidewalk which is owned by the city. The tree is over 100’ high and 16’ wide and is a nuisance. Ms. Beltz submitted photos of the tree (Exhibit 2a-2m).

Mr. John Wynn, City of Omaha, stated the city ordinance (Exhibit 3) states that the homeowner is responsible for removing dead limbs, hangers or hazardous limbs on a city tree even though the tree is located between the curb and the sidewalk.

Mr. Kevin Denker suggested to Ms. Beltz that she could appeal before the Board of Equalization to review the cost of trimming the tree.

Motion to deny appeal with 60 days to comply by Mr. Incontro. Second by Mr. Levy.

AYES: Incontro, Levy, Zabrowski, O’Connor

Motion carried 4-0

9-4-34
Appeal denial of engineering license; Michael J. Simpson; 10507 24 Street, Murray, NE 68409

Michael J. Simpson appeared before the Board. Mr. Simpson admitted that he did not pay for his engineering license on time. He has been an engineer for 18 years and presently works for Omaha Public Schools.
Mr. Tom Phipps, City Planning, stated that under the ordinance if a license is not paid by March 1\textsuperscript{st} of the following year then all licensing certificates are void and any application afterward would be a renewal. He stated Mr. Simpson’s paperwork was received on March 6, 2009. A letter was subsequently sent to Mr. Simpson to explain the appeal process. Permits and inspections do not have any outstanding complaints or have never received a complaint against Mr. Simpson’s license. In response to Mr. Levy, Mr. Phipps stated Mr. Simpson’s license has been current in the past.

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

AYES: Levy, Zabrowski, Incontro, O’Connor

Motion carried 4-0

9-1-1 (From 1/26/09, 2/23/09)
Appeal Police Department denial of firearm registration; Mitchell Kehm, 12135 Lisa Circle 68137

Mitchell Kehm was not present for the hearing.

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

AYES: Zabrowski, Incontro, Levy, O’Connor

Motion carried 4-0

9-3-22
Appeal Police Department denial of firearm registration; Larry T. Pryor, 11202 Potter Street 68142

Larry Pryor appeared before the Board. Mr. Pryor stated that he was denied a firearm registration due to a concealed weapon charge, which was a pocketknife, purchased from Shopko. Mr. Pryor stated he wants to own a firearm for personal protection and wants to register a firearm within the city limits of Omaha. He has lived in Omaha most of his adult life.

Sgt. Lance Harrison with the Omaha Police Department stated Mr. Pryor was granted a full pardon in September 2000 from an aggravated assault and a strong-arm charge in Douglas County in April 1997. Mr. Pryor had a DUI in Riverside, California in August 2003 which was later dismissed. Mr. Pryor was fined $1,100 and 24 months probation for a reckless driving charge in January 2004. The CCW (carrying a concealed weapon) charge was in June 1975 in Pottawattamie County. The reason Mr. Pryor was denied was due to a CCW conviction and being dishonest on the gun registration application.

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

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

AYES: Levy, Zabrowski, O’Connor

NAYS: Incontro

Motion carried 3-1

9-3-25
Appeal Police Department denial of firearm registration; Derrace R. Butler, 11106 Cottonwood #B1 68164

Derrace Butler appeared before the Board.
Sgt. Lance Harrison with the Omaha Police Department stated Mr. Butler was initially denied because of a felony forgery charge in February 2008 that was later dismissed pursuant to a diversion program. Mr. Butler has several driving offenses and one obstructing an officer in January 2006 but was declined by the City Prosecutor. There are several gun denial registrations (May 2008, January 2009, February 2009).

In response to Mr. Incontro, Lt. Colene Hinchey with the Omaha Police Department stated that the reason Mr. Butler was denied because there was no proof of the dismissal.

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

AYES: Levy, Zabrowski, Incontro, O’Connor

Motion carried 4-0

9-3-28
Appeal Police Department denial of firearm registration; Marie Lenton, 3612 N 29 Street 68111

Marie Lenton was not present for the hearing. Ms. O’Connor stated Marie Lenton requested a lay over due to a scheduling conflict.

Motion to lay this case over by Mr. Levy until the June 29, 2009 meeting. Second by Zabrowski

AYES: Zabrowski, Incontro, Levy, O’Connor

Motion carried 4-0

9-3-29
Appeal Police Department denial of firearm registration; Clifton Chapman, 5624 William Street 68106

Clifton Chapman appeared before the Board. Mr. Chapman stated an Omaha Police officer filed a protection harassment order against him, which is being appealed. The appeal was filed in the Nebraska Court of Appeals and will be heard on May 20, 2009.

Sgt. Lance Harrison with the Omaha Police Department stated that in August 2008 a detective filed a valid protection order against Mr. Chapman. Mr. Chapman has had a lot of charges that were dismissed. In 2003 there was a felony assault on an officer.

In response to Mr. Incontro, Sgt. Harrison stated the protection order is the reason for the denial of the firearm registration.

Mr. Levy stated he is not in favor of granting an appeal before a ruling from the Nebraska Court of Appeals.

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

AYES: Incontro, Levy, Zabrowski, O’Connor

Motion carried 4-0

9-4-35
Appeal Police Department denial of firearm registration; Michael Lapka, 15203 Rock Creek Drive 68138

Michael Lapka appeared before the Board. Mr. Lapka stated that in 1999 he received voluntary treatment following a Board of Mental Health issue. He admitted to answering no to the question on the gun registration application, “Have you ever received treatment for mental health?” He stated he
can own and purchase firearms according to state and federal laws but would like to possess firearms while traveling through Omaha. Documentation was submitted from his physician regarding mental stability, copy of handgun safety course, letter from employer and letter from State Board of Nursing after receiving a nursing license (Exhibit 2). He stated he has worked at the Red Cross for the past four years.

In response to Ms. O’Connor, Mr. Lapka stated the Board of Mental Health was due to drug use. He stated that in December 2003 he received two DUI’s and since then has been trying to live a life of sobriety.

Sgt. Lance Harrison with the Omaha Police Department stated Mr. Lapka was denied based on checking “no” on the gun registration application. Mr. Lapka was never adjudicated as mentally ill and dangerous as verified by the Douglas County Attorney’s office.

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

AYES: Levy, Zabrowski, Incontro, O’Connor

Motion carried 4-0

9-4-37
Appeal Police Department denial of firearm registration; Ryan Chappelear, 13423 Shirley Street 68144

Ryan Chappelear appeared before the Board.

Sgt. Lance Harrison with the Omaha Police Department stated Mr. Chappelear was denied based on checking “no” on the gun registration application to the question, “Have you been or are you now being treated for a mental disorder?” In June 2000 Mr. Chappelear overdosed. There is no other criminal history.

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

AYES: Zabrowski, Incontro, Levy, O’Connor

Motion carried 4-0

9-4-38
Appeal Police Department denial of firearm registration: Emanuel Jackson, 12304 Stonegate Drive #205 68164

Emanuel Jackson appeared before the Board. Mr. Jackson stated he has a CCW permit through the National Safety Council and was attempting to renew his permit.

Sgt. Lance Harrison with the Omaha Police Department stated Mr. Jackson was denied based on recent criminal history. Lt. Colene Hinchey with Omaha Police Department stated Mr. Jackson was sent a letter on March 24, 2009 stating that his criminal history is the reason for his gun revocation. In August 2008 he was issued an arrest warrant for failure to pay child support. In May 2008 he was charged with possession of marijuana less than 1 ounce. In May 2007 he was charged with carrying a concealed weapon.

Mr. Incontro stated he was concerned about the recent criminal history.

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

AYES: Incontro, Levy, Zabrowski, O’Connor

Motion carried 4-0
9-5-42
Appeal Police Department denial of firearm registration: Curtis Thornton, 3302 N 54 Street  68104

Curtis Thornton appeared before the Board. Mr. Thornton stated that in approximately October 2008 he did not have his license or permit to carry a concealed weapon on his person.

Sgt. Lance Harrison with the Omaha Police Department stated Mr. Thornton was charged and convicted of CCW in November 2008. In November 2007, Mr. Thornton was charged with domestic violence, which was later dismissed. In April 2008, Mr. Thornton was charged with assault and battery, which was dismissed.

In response to Mr. Incontro, Lt. Colene Hinchey with the Omaha Police Department stated an identification card issued after a safety class allows an individual to carry a registered weapon but not concealable. Under no circumstances does the identification card from the Greater Omaha Safety Council allow an individual to carry a concealed weapon. Mr. Thornton did not have the CCW state authorized identification card.

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

AYES: Levy, Zabrowski, Incontro, O’Connor

Motion carried 4-0

9-5-44
Appeal Police Department denial of firearm registration: Magino Arteaga-Marroquin, 2629 S 120 Street  68144

Magino Arteaga-Marroquin and Joseph S. Daly, attorney appeared before the board. Mr. Daly stated that Mr. Marroquin was denied the gun registration because he is not a U.S. citizen. Mr. Marroquin is a permanent citizen, has a valid driver’s license, a social security number and has been in the U.S. since 1997. He lived in Maryland for 10 years and now lives in Omaha. He owns an all cash dry-cleaning business with 13 employees and is open from 7 a.m. to 7 p.m. He desires to own a gun for security and protection at his place of business. The gun was purchased in Maryland and Mr. Marroquin took a firearm’s training course conducted by the Maryland Police Training Commission.

Sgt. Lance Harrison with the Omaha Police Department stated that Mr. Marroquin was denied because he is not a citizen of the United States. Lt. Colene Hinchey with the Omaha Police Department stated Mr. Marroquin was denied under the ordinance; he is not a U.S. citizen.

In response to Mr. Incontro, Sgt. Harrison stated they track an individual’s criminal history through a national and local database. In response to Mr. Levy, Sgt. Harrison stated that if Mr. Marroquin had an offense before he was issued a social security number there would be no way to track it.

In response to Mr. Incontro, Mr. Marroquin stated he has had a social security number for five years.

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

Lt. Hinchey stated that granting the appeal would go against the city ordinance.

AYES: Zabrowski, Incontro, Levy

NAYS: O’Connor

Motion carried 3-1

9-5-45
Appeal Police Department denial of firearm registration: Samuel Bandiera, 1801 N 58 Street #2  68104
Samuel Bandiera appeared before the Board. Mr. Bandiera admitted to being treated for a mental disorder on the gun registration application. He stated that since 1995 he has been treated for depression. He stated he has never been adjudicated as “mental defective”. He submitted relative information for review only. He would like to possess a handgun for security purposes. In response to Mr. Incontro, Mr. Bandiera stated he has not taken any gun safety courses but intends to in the future.

Sgt. Lance Harrison with the Omaha Police Department stated Mr. Bandiera was denied because he checked “yes” to the question regarding treatment for mental health. The only items Mr. Bandiera has on his record are traffic violations. Lt. Colene Hinchey stated Mr. Bandiera’s self-omission to depression is a record of mental health but does not prove danger. It is standard practice to not make a split decision at the front desk.

Mr. Incontro stated he would like to see more from Mr. Bandiera’s doctor stating that his depression is not a concern. Mr. Levy suggested to Mr. Bandiera to get a letter from his doctor that states he is not a danger to his self or others.

Motion to lay this case over by Mr. Zabrowski for 30 days to allow the applicant to provide additional information. Second by Incontro.

AYES: Incontro, Zabrowski
NAYS: Levy, O’Connor

Motion failed 2-2. (Three affirmative votes are required for an appeal to be granted).

Motion to grant appeal by Mr. Levy. Second by O’Connor.

AYES: Levy, O’Connor
NAYS: Incontro, Zabrowski

Motion failed 2-2. (Three affirmative votes are required for an appeal to be granted).

Motion to lay this case over by Mr. Incontro until the June 29, 2009 meeting. Second by Zabrowski.

AYES: Levy, Zabrowski, Incontro
NAYS: O’Connor

Motion carried 3-1

9-5-46
Appeal Police Department denial of firearm registration: Paul Marchio, 4315 Cass Street  68131

Kevin Denker stated the legal representative for the applicant has requested a lay over until the next meeting.

Motion to lay this case over by Mr. Incontro until the June 29, 2009 meeting. Second by Zabrowski.

AYES: Zabrowski, Incontro, Levy, O’Connor

Motion carried 4-0

The chairman requested a five-minute break.
9-3-23  
Appeal Police Department notice of nuisance issued on February 8, 2009 to Yolanda Soriano; Heriberto “Eddie” Bravo, 13711 Jefferson Circle 68137

Mr. Kevin Denker submitted photos (Exhibit 2) indicating that there was an unlicensed vehicle parked in the driveway at 13711 Jefferson Circle.

Eddie Bravo appeared before the board. Mr. Bravo stated he is using the Ford Expedition with out-of-state (Florida) plates, which is owned by his mother who lives out of town.

Officer John Schmitt stated an out-of-state vehicle is required to have Nebraska license plates within 30 days.

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

AYES: Zabrowski, Incontro, Levy, O’Connor

Motion carried 4-0

9-3-24  
Appeal Police Department notice of nuisance issued on February 12, 2009; Juaquez Johnson, 2575 Pierce Street 68105

Mr. Kevin Denker submitted photos (Exhibit 2) indicating that there was a van parked in the driveway at 2575 Pierce Street with no license plates.

Juaquez Johnson was not present at the hearing.

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

AYES: Incontro, Levy, Zabrowski, O’Connor

Motion carried 4-0

9-3-26  
Appeal Police Department notice of nuisance issued on February 18, 2009 to occupant/owner; Rose Hurst, 1416 S 5 Street 68108

Mr. Kevin Denker submitted photos (Exhibit 2) indicating that there were no vehicles parked in the grass at 1416 S 5 Street.

Rose Hurst was not present at the hearing.

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

AYES: Levy, Zabrowski, Incontro, O’Connor

Motion carried 4-0

9-3-27  
Appeal Police Department notice of nuisance issued on February 24, 2009; George H. Smith, 9915 Q Plaza #3D 68127

Mr. Kevin Denker submitted photos (Exhibit 2) indicating that there was a vehicle parked at 9915 Q Plaza with out-of-state (Wyoming) license plates.
Jason Smith appeared before the board. Mr. Smith stated the vehicle is registered and licensed to his father, George Smith but he is the primary driver. He is in the state of Nebraska as a former college student and graduated in May 2008. He lived in Wyoming during the summer and has been in Omaha since July 2008 to attend additional classes at UNO. He had to withdraw from classes due to financial restrictions. He plans to live in Omaha and apply for graduate studies in the fall of 2010.

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

In response to Mr. Incontro, it was verified that a person who is in the military or is a full-time student could only obtain a wheel tax sticker.

AYES: Zabrowski, Incontro, Levy, O’Connor

Motion carried 4-0

9-3-30
Appeal Police Department notice of nuisance issued on February 24, 2009; Nora E. Lopez, 9945 Q Plaza #3D 68127

Nora Lopez was not present for the hearing.

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

AYES: Incontro, Levy, Zabrowski, O’Connor

Motion carried 4-0

9-3-31
Appeal Police Department notice of nuisance issued on February 27, 2009; Teresita Mismanos, 12308 Stonegate Drive 68164

Mr. Kevin Denker submitted photos (Exhibit 2) indicating that there was a vehicle with out-of-state (Illinois) and expired license plates at 12308 Stonegate Drive.

Ms. Laarni Bulchand appeared before the board. Ms. Bulchand stated she is the daughter of Teresita Mismanos. She stated she is no longer a full-time student at Creighton University and recently dropped out due to financial constraints. She stated she would be moving back to Chicago on approximately July 1, 2009.

Motion to deny appeal with 45 days to comply by Mr. Incontro. Second by Mr. Levy.

AYES: Levy, Zabrowski, Incontro, O’Connor

Motion carried 4-0

9-3-32
Appeal Police Department notice of nuisance(s) issued on February 27, 2009 and March 31, 2009 at 5324 S 38 Street 68107; Dale F. Kudera, 1374 280th A, Tabor, IA 51653

Mr. Kevin Denker submitted photos (Exhibit 2) indicating that there was a vehicle with out-of-state (Iowa) license plates parked at 5324 S 38 Street.

Mr. Dale Kudera appeared before the board. Mr. Kudera stated he is in the process of remodeling and selling the house at 5324 S 38 Street, which he resided at for 25 years. He stated he moved to Tabor, Iowa approximately one year ago and transferred the license plates to Iowa in August of 2008. He indicated that he and his wife stay at the house in Omaha for two or three nights during the week while working on the house. He expects to get the house on the market in the summer of 2009. He stated he is retired and his wife works in Bellevue.
In response to Mr. Levy, Mr. Kudera stated his vehicle is the Hyundai and his wife drives a Blazer. The blue Dodge Ram is used as a moving vehicle.

Motion to deny appeal with 45 days to comply on the Hyundai and blue Dodge Ram by Mr. Levy. Second by Mr. Incontro.

AYES: Zabrowski, Incontro, Levy, O'Connor

Motion carried 4-0

Motion to deny appeal with 15 days to obtain a wheel tax sticker for the Blazer by Mr. Zabrowski. Second by Mr. Incontro.

AYES: Zabrowski, Incontro, Levy, O'Connor

Motion carried 4-0

9-4-36
Appeal Police Department notice of nuisance issued on March 22, 2009; Kari Tanner, 8322 Webster Street 68114

Mr. Kevin Denker submitted photos (Exhibit 2) indicating that there is no longer a boat parked in the driveway at 8322 Webster Street.

Mr. Rob Tanner appeared before the board. Mr. Tanner stated Kari Tanner is his spouse. He stated his boat, which is over 20' long, has been parked in his driveway for 29 years and he is in the process of selling the boat. He would like to request an additional six months.

Motion to deny appeal with 90 days to comply by Mr. Levy. Motion failed for lack of a second motion.

Motion to deny appeal with 45 days to comply by Mr. Incontro. Second by Mr. Zabrowski.

AYES: Incontro, Zabrowski, O'Connor

NAYS: Levy

Motion carried 3-1

9-4-39
Appeal Police Department notice of nuisance issued on April 2, 2009; Bernard Osthoff, 4744 N 64 Street 68104

Mr. Kevin Denker submitted photos (Exhibit 2) indicating that the items in violation have been moved at 4744 N 64 Street. The pop up camper in the driveway is plated and is parked on a hard surface.

Bernard Osthoff was not present for the hearing.

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

AYES: Levy, Zabrowski, Incontro, O'Connor

Motion carried 4-0

9-4-40
Appeal Police Department notice of nuisance issued on April 6, 2009; Patricia Cooley, 5309 S 29 Street 68107
Mr. Kevin Denker submitted photos (Exhibit 2) indicating that there is a vehicle with out-of-state
(Ohio) license plates parked at 5309 S 29 Street.

Ms. Patricia Cooley appeared before the board. Ms. Cooley stated she moved to Omaha from
Alabama and has Ohio license plates. She stated she had to pay a ticket in Alabama and is in the
process of getting a reinstatement form.

In response to Mr. Incontro, Ms. Cooley stated she cannot license her vehicle because her driver’s
license was suspended in Alabama by mistake. She stated she could not register her vehicle in
Nebraska because she does not have a valid driver’s license.

Motion to deny appeal with 45 days to comply by Mr. Incontro. Second by Mr. Zabrowski.

AYES: Zabrowski, Incontro, Levy, O’Connor

Motion carried 4-0

9-5-41
Appeal Police Department notice of nuisance issued on April 2, 2009; Kevin Hansen, Sr., 8019
Northridge Drive 68112

Mr. Kevin Denker stated Kevin Hansen requested more time to finish the cleanup.

Kevin Hansen was not present for the hearing.

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

AYES: Incontro, Levy, Zabrowski, O’Connor

Motion carried 4-0

9-5-43
Appeal Police Department notice of nuisance issued on April 10, 2009; Shirley Klusman, 5605 N 80
Street 68134

Mr. Kevin Denker submitted photos (Exhibit 2) indicating that there is a motor home parked in the
driveway at 5605 N 80 Street.

Ms. Shirley Klusman appeared before the board and would like to request additional time. She
stated she is in the process of getting bids for additional concrete. Photos were submitted with the
application. Proposed plans were submitted (Exhibit 3) but there is an issue with the natural flow of
the water.

In response to Mr. Levy, Mr. Denker stated there would be no zoning issue if the motor home is
parked behind the front yard setback and parked on a paved surface. The front yard setback is 35’
but the right-of-way has to be taken into consideration.

Motion to deny appeal with 90 days to comply by Mr. Levy. Second by Mr. Incontro.

AYES: Levy, Incontro, O’Connor

NAYS: Zabrowski

Motion carried 3-1
III. Approval of Minutes from February 23, 2009

Motion to approve minutes from the February 23, 2009 meeting by Mr. Incontro. Seconded by Mr. Zabrowski.

AYES: Incontro, Levy, Zabrowski, O’Connor

Motion carried 4-0

Discussion regarding firearm issues with Lt. Colene Hinchey, Omaha Police Department and Ms. Michelle Peters, City Law Department.

IV. Adjournment

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

AYES: Zabrowski, Levy, Incontro, O’Connor

Motion carried 4-0

Meeting adjourned at 4:15 PM.

Visit the Planning Department’s Site on the Internet at www.ci.omaha/ne.us/planning