Minutes
Administrative Board of Appeals
March 29, 2010

MEMBERS PRESENT: Ann O’Connor, Chair
David Levy, Vice Chair
Jim Weaver
Jose Lopez

MEMBERS ABSENT: Chris Jerram, resigned

OTHERS PRESENT: RoseMarie Horvath, Law Department
Kevin Denker, Planning Department
Debbie Hightower, Recording Secretary

I. Roll Call

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

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

II. Cases

10-3-07
Appeal Omaha Police Department denial of firearm registration: Patricia A. Forstrom, 908 Hackberry Court #2303, Bellevue, NE 68005

Patricia A. Forstrom appeared before the Board.

Sgt. John Bahle, Omaha Police Department, stated that on May 15, 2009, Ms. Forstrom was placed in emergency protective custody due to threats of suicide. Based on city code, a concealable firearm cannot be registered to any person who has a record of mental disorder which would show the applicant to be dangerous to self or others. On February 6, 2010, a letter was sent to Ms. Forstrom which denied her application to register firearms.

Ms. Forstrom cited numerous personal issues, including the foreclosure of her home, the dissolution of her marriage, and the prospect of homelessness, which occurred simultaneously during the time frame when she was taken into emergency protective custody. Ms. Forstrom described May 15, 2009 as a time of enormous stress. Ms. Forstrom stated that she has had no past mental health issues and no other contact with the law.

Ms. O’Connor inquired whether a Board of Mental Health commitment was filed in the case. Sgt. Bahle replied that he had no record on file. Sgt. Bahle confirmed that there were no other incidences on Ms. Forstrom’s record. When asked why she would like to have a firearm, Ms. Forstrom stated that she is now living on her own, and would like the firearm for protection. Ms. Forstrom confirmed that she would receive instruction in how to use the firearm.

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

AYES: Levy, Lopez, O’Connor

NAYS: Weaver

Motion carried 3-1. Appeal granted.
William A. Zimmerman appeared before the Board.

Sgt. John Bahle, Omaha Police Department, stated that Mr. Zimmerman's application was denied due to past criminal history. According to city code, a concealable firearm may not be registered to any person who has a prior felony conviction or has been convicted of concealment of firearm. Mr. Zimmerman's criminal history includes a felony conviction for use of a financial transaction device. When Mr. Zimmerman was taken into custody, he was found to be in possession of a thirteen-inch fighting-type knife.

Ms. O'Connor inquired whether the felony conviction had been reduced to a lesser charge. Sgt. Bahle confirmed that the felony conviction was later reduced to a misdemeanor on June 18, 1999.

Mr. Levy inquired as to the date of the knife incident. Sgt. Bahle replied that the concealed weapon incident occurred on September 26, 1997.

Mr. Zimmerman stated that the knife in question was located underneath the seat of a vehicle in which he was a passenger. Mr. Zimmerman claimed he had been unaware that the knife was in the vehicle.

Mr. Weaver made a motion to grant the appeal. Motion died for lack of a second.

Mr. Levy made a motion to deny the appeal. Second by Mr. Lopez.

AYES: Lopez, Levy

NAYS: Weaver, O'Connor

Motion tied 2-2.

Mr. Levy made a motion to hold this case over to the next meeting on April 26, 2010. Second by Mr. Weaver.

AYES: Weaver, Lopez, Levy, O'Connor

Motion carried 4-0.

Mr. Victor Moody appeared before the Board. Mr. Moody stated that he has part ownership of a convenience store located at 60th and Ames Street. This store was recently robbed. Mr. Moody would like a firearm for personal protection.

Sgt. John Bahle, Omaha Police Department, stated that Mr. Moody's application for registration of a firearm was denied due to two prior carrying of concealed weapon convictions. These convictions occurred on June 20, 2008 and April 14, 2009. Additionally, an officer alert from February 2, 2010 stated that Mr. Moody had threatened to kill any person who broke into his home.
Mr. Moody stated that he was not arrested for the first offense, and the second offense never went to court. Mr. Moody denied having threatened to kill any person. Sgt. Bahle responded by reading the officer alert report from February 2, 2010. Mr. Moody called and made a report regarding theft at his convenience store. During this report, Mr. Moody stated that he knew the person who had robbed his convenience store, and if this person ever attempted to break into his home, Mr. Moody stated that he would then kill this person.

Sgt Bahle continued, and stated that on August 20, 2009, Mr. Moody was sentenced to three days in prison for the second concealed carry offense. Mr. Moody stated that the three days in prison were for missing a court date relating to a traffic violation, not for carrying a concealed weapon.

Mr. Levy inquired whether the felony conviction had been reduced to a lesser charge. Sgt. Bahle confirmed that the felony conviction was later reduced to a misdemeanor.

Mr. Weaver made a motion to deny the appeal. Second by Mr. Levy.

AYES: Lopez, Levy, Weaver, O'Connor

Motion carried 4-0. Appeal denied.

10-3-10
Appeal Omaha Police Department denial of firearm registration: Timothy Jon Garnett, 13545 Miami Street 68164

Timothy Jon Garnett, applicant, and John Weis, legal representation for Mr. Garnett, appeared before the Board.

Mr. Weis stated that Mr. Garnett’s concealed weapons charges occurred over ten years ago. Mr. Garnett has matured during those ten years. He has married, has a family, and has held the same job for the past eleven years; in fact, Mr. Garnett is now the manager of the facility where he works. Mr. Weis stated that Mr. Garnett does not live within the Omaha city limits; however, Mr. Garnett purchased this firearm from a City of Omaha Police officer. Mr. Weis stated that Mr. Garnett made the application to register the firearm at the police officer’s request. Mr. Garnett has friends in the police department, and has gone to target practice with these friends.

Ms. O'Connor inquired whether the police department had any legal jurisdiction in retaining Mr. Garnett’s firearm. RoseMarie Horvath of the City of Omaha legal department confirmed the City’s jurisdiction, since Mr. Garnett intends to use the firearm for target practice within City limits.

Sgt. John Bahle, Omaha Police Department, stated that on June 27, 1997, Mr. Garnett was stopped by the Sioux City police department. Mr. Garnett was twenty-one years old at that time. A concealed weapon was found in the car, along with a small bag of marijuana. The drug charge was dismissed; Mr. Garnett received one year probation and community service for the misdemeanor concealed weapon charge. Mr. Weis stated that the concealed weapon was located in a tackle box in the trunk of the vehicle.

Ms. O’Connor inquired whether Sgt. Bahle’s record showed whether Mr. Garnett successfully completed his probation. Sgt. Bahle replied that on October 29, 1998, Mr. Garnett was found guilty of violation of probation. He was fined $1,950.00 and served seven days in jail. On March 10, 1999, Mr. Garnett was found guilty of absence from custody. He was fined $325.00 and served three days in jail. Mr. Garnett stated that these fines were due to his failure to complete community service.
Mr. Weaver made a motion to grant the appeal. Second by Mr. Lopez.

AYES: Levy, Weaver, Lopez, O’Connor

Motion carried 4-0. Appeal granted.

10-3-11
Appeal Omaha Police Department denial of firearm registration: Joseph E. Hesse, 4906 Hamilton Street 68132

Joseph E. Hesse appeared before the Board.

Sgt. John Bahle, Omaha Police Department, stated that on April 25, 2002, Mr. Hesse was convicted for carrying a concealed weapon and carrying a dangerous weapon in Fairbanks, Alaska. Mr. Hesse served 15 days in jail and was given one year of probation for this conviction. According to city code, a concealable firearm may not be registered to any person who has a prior felony conviction or has been convicted of concealment of firearm.

Mr. Hesse contended that he did not serve jail time for this conviction; rather, he paid a fine of $200.00 and completed his year of probation. Sgt. Bahle confirmed that there were no other offences on Mr. Hesse’s record.

Mr. Levy made a motion to grant the appeal. Second by Mr. Weaver.

AYES: Weaver, Lopez, Levy, O’Connor.

Motion carried 4-0. Appeal granted.

10-3-12
Appeal Omaha Police Department denial of firearm registration: Oscar Ortega, 17903 Margo Street 68136

Oscar Ortega, applicant, and Joshua Weir, legal representation for Mr. Ortega, appeared before the Board.

Mr. Weir stated that Mr. Ortega lives in Sarpy County. He purchased a firearm at Cabela’s and attempted to register for a firearm safety class in the City of Omaha. Mr. Ortega would like the Board to grant his appeal so that he may register his firearm and sign up for firearm safety classes in Sarpy County.

Sgt. John Bahle, Omaha Police Department, stated that on February 22, 2010, Mr. Ortega was denied his application for firearm registration. Mr. Ortega answered “no” on the registration form when asked if he was an American citizen. According to city code, a concealable firearm may not be registered to any person who is not a citizen. Mr. Weir suggested that the Board grant the appeal and stipulate that the firearm be handed over to a third party, who would hold the weapon until Mr. Ortega appeared in Sarpy County to register his firearm.

After some discussion, Mr. Levy made a motion to grant the appeal. Second by Mr. Weaver.

AYES: Lopez, Levy, Weaver, O’Connor.

Motion carried 4-0. Appeal granted.
10-3-13
Appeal Omaha Police Department denial of firearm registration: Philip J. Marsh, 7610 Hartman Avenue 68134

Philip J. Marsh appeared before the Board. Mr. Marsh stated that his application for registration was denied due to previous felony convictions. Mr. Marsh stated that both convictions were dropped to misdemeanor charges.

Sgt. John Bahle, Omaha Police Department, stated that on December 21, 2001, Mr. Marsh was convicted for carrying a concealed weapon. Mr. Marsh’s record includes an April 2, 2001 conviction for third-degree burglary in Iowa. This charge was reduced to trespassing. Mr. Marsh served two years in prison; one year of probation was transferred to Nebraska for this offense. Mr. Marsh completed his probation successfully. Mr. Marsh was arrested on March 10, 2005, when a shotgun and ammunition was discovered in his home. Both felony charges were dropped to a misdemeanor charge. According to city code, a concealable firearm may not be registered to any person who has a prior felony conviction or has been convicted of concealment of firearm.

Mr. Weaver inquired whether Mr. Marsh had a copy of his registration from the Sheriff’s office. Mr. Marsh replied that his registration was retained by the Police Department when his application was denied.

Mr. Levy inquired whether the charges in Iowa were tried as felonies or misdemeanors. Mr. Bahle stated that he had no information at this time. The Board discussed Mr. Marsh’s criminal history, and agreed that all charges appear to have been reduced to misdemeanor charges.

Mr. Weaver made a motion to grant the appeal. Second by Mr. Levy.

AYES: Levy, Weaver, Lopez, O’Connor

Motion carried 4-0. Appeal granted.

10-3-14
Appeal notice of nuisance issued by Parks Maintenance Department on February 22, 2010; Sandra Mabbitt, 7402 N 57 Street 68152

Sandra Mabbitt appeared before the Board. Ms. Mabbitt stated that she realized that the cottonwood tree on her property was in need of attention. Ms. Mabbitt stated that she is a retired, handicapped senior citizen on a fixed income. She cannot afford to have the tree removed.

Josh Frey with the Parks Maintenance Department stated that the tree in question was condemned during the Park Department’s annual street tree survey. The Parks department travels each street in Omaha and identifies any hazards to the streets and/or sidewalks. Mr. Frey stated that the tree was condemned due to the fact that it is over seventy percent dead, and poses a hazard to power lines, traffic, and neighboring properties in the area. Mr. Frey submitted pictures of the tree and asked that they be accepted as Exhibit 2. Mr. Frey stated that Ms. Mabbitt was given a deadline of May 22, 2010 to have the tree removed.

Mr. Frey stated that the Parks Department can work with Ms. Mabbitt to try to reduce to cost of removal, or can remove the tree entirely; however, removal would result in an assessment against her property.
Kevin Denker with the Codes and Violations Department spoke to the Board regarding Board of Equalization procedures, and suggested that Ms. Mabbitt could appeal to the Board of Equalization for potential relief from the assessment charge.

Mr. Levy made a motion to deny the appeal, and asked that the City work with Ms. Mabbitt in regards to the removal of her tree. Second by Mr. Weaver.

AYES: Weaver, Lopez, Levy, O’Connor

Motion carried 4-0. Appeal denied.

10-2-03 (over from 2/22/2010)
Appeal Omaha Police Department notice of nuisance: Alice M. Baker; 1516 N 94 Street 68114
ACTION: Appeal denied.

Alice M. Baker appeared before the Board. Ms. Baker stated that her husband passed away in November of last year, and it was his vehicle that was parked on the street. Ms. Baker stated that she has contacted a mechanic to repair the vehicle, but the car was towed by the Police Department before her ten day appeal period was up. The second car belongs to her son who has a disability. The license plates on this vehicle are current; however, they need to be mounted on the vehicle. The plates are currently being displayed in the window of the vehicle. The third car has been towed to a mechanic; it will be repaired and sold. Ms. Baker asked the Board to grant her additional time to resolve the situation.

Kevin Denker with the Codes and Violations Department confirmed Ms. Baker’s statements, and added that the other vehicles on the property appear to be licensed and in working order.

Mr. Levy made a motion to deny Ms. Baker’s appeal, and based on the fact that the situation appears to be resolved. Ms. Baker stated that a denial would not allow her to retrieve her husband’s vehicle from the Police Department’s impound lot.

Officer John Schmitt with the Omaha Police Department suggested that Ms. Baker contact the Police Department regarding the early towing of her vehicle. If indeed the officer marked the ticket incorrectly, Ms. Baker would then have a possibility of getting her vehicle back. Mr. Levy withdrew his motion to deny the appeal.

Mr. Weaver suggested that Mr. Levy reinstate his motion to deny the appeal, as this would ensure that license plates were mounted on the second vehicle and that the third vehicle would not be left on the property.

After some discussion, Mr. Levy reinstated his motion to deny the appeal. Second by Mr. Weaver.

AYES: Lopez, Levy, Weaver

NAYS: O’Connor

Motion carried 3-1. Appeal denied.
10-2-06
Appeal Omaha Police Department notice of nuisance: Robb N. Gage, attorney representing property owner, 1308 S. Saddlecreek 68106

Kevin Denker submitted to the Board pictures of the property in question (Exhibit 2), which were taken this morning. Mr. Denker stated that he had spoken to Codes and Violations inspector Kenton Duncan. Mr. Duncan confirmed that there are still unlicensed vehicles on the property as of this morning.

Dan Karnish, owner of the Import Connection, and Robb Gage, attorney representing the property owner, appeared before the Board. Mr. Gage stated that the property owner had been present earlier during this meeting, but had to leave before the case was called.

Mr. Karnish explained that the situation was the result of a dispute with his neighbor, who made a complaint regarding access being cut off to the side of his property. Mr. Karnish admitted that he had contacted some owners of vehicles currently on the property, and asked that they bring updated license plates or tags in order to bring those vehicles into compliance. Mr. Karnish stated that some vehicles on the property are currently awaiting title transfer, which can take up to 120 days. Mr. Karnish also added that some of the vehicles on his property are being repaired for other auto businesses, and are only there temporarily.

Mr. Weaver inquired as to an earlier discussion regarding the fencing of the property. Mr. Gage stated that in discussion with the property owner, it was decided that fencing such a small property and creating a viable entry and exit would not be feasible. Mr. Denker stated that if their department continues to receive complaints regarding the property, it might require Mr. Karnish to identify “repair-only” vehicles.

Mr. Levy made a motion to grant the appeal. Second by Mr. Weaver.

AYES: Levy, Weaver, Lopez, O’Connor

Motion carried 4-0. Appeal granted.

III. Approval of Minutes from February 22, 2010

Motion to approve minutes from the February 22, 2010 meeting by Mr. Levy. Second by Mr. Weaver.

AYES: Weaver, Lopez, Levy

ABSTAIN: O’Connor

Motion carried 3-0-1
IV. Adjournment

Motion to adjourn meeting by Mr. Levy. Second by Mr. Weaver.

AYES: Lopez, Levy, Weaver, O’Connor.

Motion carried 4-0. Meeting adjourned at 3:07 PM.

Debbie Hightower, Planning Department
Recording Secretary

Visit the Planning Department’s Site on the Internet at http://co.douglas.ne.us/omaha/planning/boards/administrative-board-of-appeals