

Minutes
Administrative Board of Appeals
May 24, 2010

MEMBERS PRESENT: Bode LaBode, Acting Chair
Jose Lopez
Steve Simmonds, Alternate

MEMBERS ABSENT: Ann O'Connor, Chair
David Levy, Vice Chair
Jim Weaver
Jama Samiev, Alternate

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

I. Roll Call

Mr. LaBode called the meeting to order at 1:30 pm.

Motion made by Mr. Simmonds to nominate Mr. LaBode to serve as temporary chair. Seconded by Mr. Lopez.

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.

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

II. Cases

10-3-08 (over from 3/29/10, 4/26/10)

Appeal Omaha Police Department denial of firearm registration: William A. Zimmerman, 16106 Robin Drive 68136

William Zimmerman reappeared before the Board.

Sgt. Mark Hanner, Omaha Police Department, stated that Mr. Zimmerman was denied a handgun registration because of a prior Felony Theft by Receiving charge which was later reduced to a Class I Misdemeanor on April 16, 1999. Another reason for denial was based on a concealed carry weapon, a fixed blade knife, which occurred on September 26, 1997.

In response to Mr. Simmonds, Sgt. Hanner verified that the Felony was dropped down to a Class I Misdemeanor.

Mr. Zimmerman stated that the knife did not belong to him but was under the seat where he was riding in an ex-girlfriend's car.

Mr. Simmonds made a motion to grant the appeal. Second by Mr. LaBode.

AYES: Simmonds, LaBode

NAYS: Lopez

Motion carried 2-1. Appeal granted.

10-5-25

Appeal Omaha Police Department denial of firearm registration: Ivan S. Romero, 6606 N 77 Street 68122

Ivan Romero was not present.

Sgt. Mark Hanner, Omaha Police Department, stated that a firearm registration was denied for Mr. Romero but was based on a prior charge that does not apply because Mr. Romero was a twelve year old juvenile.

Mr. Simmonds made a motion to grant the appeal. Second by Mr. Lopez.

AYES: Simmonds, Lopez, LaBode

Motion carried 3-0. Appeal granted.

10-5-26

Appeal Omaha Police Department denial of firearm registration: Fletcher Young, 4850 Underwood Ave Apt. 302 68132

Fletcher Young appeared before the board with attorney, Patrick Campagna, Lustgarten & Roberts, P.C., 1625 Farnam Street.

Sgt. Mark Hanner, Omaha Police Department, stated that a firearm registration was denied because Mr. Young is the subject of an active protection order until August 19, 2010.

Mr. Campagna requested that this case be laid over until there is a final disposition of the protection order.

Mr. Simmonds made a motion to hold this case over until the August 30, 2010 meeting. Second by Mr. Lopez.

AYES: Simmonds, Lopez, LaBode

Motion carried 3-0. Appeal laid over.

10-5-30

Appeal Omaha Police Department denial of firearm registration: Carl F. Walmer, 1506 S 25 Avenue 68105

Carl Walmer appeared before the Board. Mr. Walmer stated he would like to own a handgun for protection of his home and family.

Sgt. Mark Hanner, Omaha Police Department, stated that Mr. Walmer was denied a handgun registration because of a prior conviction of a concealed weapon charge in 1996. Mr. Walmer was arrested for carrying a concealed weapon, a switchblade-type knife, during a traffic stop.

Mr. Walmer responded that the knife was a fishing knife that was in the console of his car.

Mr. Simmonds made a motion to grant the appeal. Second by Mr. Lopez.

AYES: Lopez, Simmonds, LaBode

Motion carried 3-0. Appeal granted.

10-5-31

Appeal Omaha Police Department denial of firearm registration: Kerry D. Glenn, 3956 N 40 Street 68111

Kerry Glenn appeared before the Board. Mr. Glenn stated he would like to own a handgun for protection of his family because he lives with his grandparents.

Sgt. Mark Hanner, Omaha Police Department, stated that Mr. Glenn was denied a handgun registration because of prior weapon concealment on December 28, 2002. During the course of investigating a large fight disturbance, Mr. Glenn was charged with being in possession of a sawed off shotgun. The charge was later reduced from a Class Four Felony to a Class I Misdemeanor for weapon concealment. Mr. Glenn was sentenced to 60 days in jail and 12 months probation.

Mr. Glenn stated that during the fight, the weapon was behind the building and he was accused of being in possession of the shotgun.

Mr. LaBode asked Sgt. Hanner if the weapon was dusted for fingerprints. Mr. Hanner stated that there was no crime lab services requested on the weapon.

In response to Mr. Simmonds, Sgt. Hanner stated that Mr. Glenn has had numerous driving offenses. On December 10, 2005, Mr. Glenn was charged with obstructing a police officer and found guilty and fined \$100.00.

In response to Mr. Simmonds, Mr. Glenn stated he is a barber and works part-time at a convenient store.

Mr. Simmonds made a motion to grant the appeal. Second by Mr. LaBode.

AYES: Simmonds, LaBode

NAYS: Lopez

Motion carried 2-1. Appeal granted.

10-5-32

Appeal Omaha Police Department denial of firearm registration: Mussa Muhammad, 6642 Emmet Street 68104

Mussa Muhammad appeared before the Board. Mr. Muhammad stated that he recently received his permit to purchase certificate on March 25, 2010 but was denied his handgun registration.

Sgt. Mark Hanner, Omaha Police Department, stated that Mr. Muhammad was denied a handgun registration because of two prior weapon charges on June 24, 2002 and March 17, 2008. The circumstances of both charges are similar. On June 24, 2002, a search of Mr. Muhammad revealed a loaded handgun in his waistband and he was arrested and booked for carrying a concealed weapon and illegal transportation of a firearm along with a narcotics violation. On March 17, 2008, during a traffic stop, contact was made with Mr. Muhammad and after a search; a loaded firearm was found in Mr. Muhammad's back pocket. He was booked for felony concealed weapon charge and subsequent narcotics charge.

Mr. Muhammad stated he was charged with a misdemeanor carrying a concealed weapon. He stated he was only 22 years old during the first incident on June 24, 2002. He stated he has never done anything illegal with his guns but made a mistake twice by not revealing his handgun. Mr. Muhammad stated he does not understand why he was granted an appeal for a permit to purchase certificate but denied a firearm registration in the City of Omaha.

Ms. Lee, assistant city attorney, City of Omaha, stated that under the Omaha Municipal Code, any person desiring to register a concealable firearm has to meet certain requirements that are set in place by the City Council. She stated that any individual would be disqualified if there were a conviction for a concealed weapon.

Sgt. Hanner stated that the March 17, 2008 charge was dropped from a Class Four Felony to Class I Misdemeanor but was a conviction for the firearm. Mr. Muhammad was sentenced to 90 days.

Mr. Muhammad stated he is not a violent individual. He has six kids that reside with him and his fiancé. He stated he wants to own a gun legally and for protection for his family.

In response to Mr. Simmonds, Ms. Lee stated that the city has stricter requirements than the Douglas County Sheriff. Sgt. Hanner stated that the Douglas County Sheriff issues a permit to purchase a handgun.

In response to Mr. LaBode, Ms. Lee stated that the conviction for a Class I Misdemeanor would still be considered in violation of the city ordinance, which is still in effect.

Sgt. Hanner verified that Mr. Muhammad wanted to register his firearm within the city limits of Omaha. The classes and applications for carrying a concealed weapon are handled through the State Patrol and Health and Safety Council.

Mr. Muhammad stated he does not want to be in trouble again for carrying his "own" gun.

Mr. Simmonds asked if the appeal were denied, would Mr. Muhammad be able to file an appeal in the future. Ms. Lee stated that Mr. Muhammad could appeal a future denial but he could also appeal to District Court.

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

NAYS: Lopez, Simmonds, LaBode

Motion carried 3-0. Appeal denied.

10-5-37

Appeal Omaha Police Department denial of firearm registration: Patrick A. Hendrickson, 4059
Vernon Avenue 68111

Patrick Hendrickson appeared before the Board. Mr. Hendrickson submitted several military documents (Exhibit 2). He stated that the reason he was denied was that the Omaha Police Department does not understand the implications of military law. According to municipal code, there cannot be a dishonorable discharge which is a felony. He stated he received an "other than honorable" discharge which is not a felony.

Sgt. Mark Hanner, Omaha Police Department, stated that Mr. Hendrickson was denied a handgun registration because of a military charge in the Marine Corp. for narcotic possession subject to a reduced rank and a fine. A reason for denial is if a person has been discharged from the armed forces. He verified that the DD-214 shows that the discharge is for "other than honorable" discharge as opposed to a dishonorable discharge.

In response to Mr. LaBode, Mr. Hendrickson stated that approximately 12 years ago he used crystal meth a few times when he was in the military.

Mr. Simmonds made a motion to grant the appeal. Second by Mr. Lopez.

AYES: Simmonds, Lopez, LaBode

Motion carried 3-0. Appeal granted.

10-5-33

Appeal Omaha Police Department denial of Taxicab Driver's Permit: Elena Mourzaeva, 17507 J Street 68135

Elena Mourzaeva appeared before the Board. Scott Mertz, Legal Aid of Nebraska, 1904 Farnam Street, appeared on behalf of Ms. Mourzaeva. Mr. Mertz verified that the reason for denial should not be "past criminal history". Mr. Mertz asked Sgt. Hanner for the exact reason for denial.

Sgt. Mark Hanner, Omaha Police Department, stated that the reason for denial originally stated "past criminal history" but was in error and should have been "past history". He stated that Ms. Mourzaeva's past history included that on November 25, 2008 a warrant was issued to the Board of Mental Health. The municipal code states that a taxicab permit to drive a cab would not be issued to a person who has an infirmative mind or body, is unfit to operate a taxicab.

Mr. Mertz submitted a 90-day continuance dated September 29, 2009 issued by Ms. Mourzaeva's physician (Exhibit 2) stating that she has stabilized without medication and is not a danger to herself or others and a 90 day continuance dismissal order dated December 28, 2009 (Exhibit 3).

Sgt. Hanner stated that the city does not have anything else based on the date of Exhibit 3.

Mr. Simmonds made a motion to grant the appeal. Second by Mr. Lopez.

AYES: Lopez, Simmonds, LaBode

Motion carried 3-0. Appeal granted.

10-5-35

Appeal Omaha Police Department denial of Taxicab Driver's Permit: Jason D. Abrams, 4747 S 154 Plaza 68137

Jason Abrams appeared before the Board. Mr. Abrams stated that from 1995 to 2000 he drove a taxicab in Omaha without any incidents.

Sgt. Mark Hanner, Omaha Police Department, stated that the reason for denial was based on past criminal history. On May 4, 2000, Mr. Abrams was arrested and subsequently convicted of a Class Four Felony for possession and transportation and sentenced to three years probation. The weapons that were associated with the crime were an automatic machine gun and a short rifle. In reading the report, the intent of purchasing the gun was to subsequently sell to another individual but the gun had to be modified to a full auto capability. Denial of a taxicab permit is based on any felony conviction.

Mr. Abrams stated he is currently a truck driver and would like to drive a taxicab locally so that he no longer has to travel over the road. He stated he is a hobbyist and has owned the rifle for 14 years but he agreed that he should not have had anything that is illegal.

Mr. Simmonds asked if the permit could be denied based on felony conviction unless the moral character of the individual could be attested to. He verified the section of the code by reading, "Denial: No permit required by the provisions of this division shall be issued if the applicant therefore has been convicted of a felony unless the police chief shall satisfy himself that the applicant is otherwise qualified and is of good morals, character and reputation in which event said conviction may be waived and a permit issued. Denial of a permit based upon prior felony

conviction shall be directly or reasonably related to the occupation of taxicab driver. However, any such applicant may be approved for temporary employment to drive a taxicab during such period of time that shall be necessary for the police chief or his authorized representative to conduct such investigation. It shall be necessary to attain whether or not said applicant has ever been convicted of a felony. Temporary authority will be at written direction of the police chief or his authorized representative." In response to Mr. Simmonds, Sgt. Hanner stated that his commanding lieutenant has recommended denial.

Mr. Simmonds stated that he further noted that the felony conviction should be directly related to operation of a taxicab.

Ms. Lee reiterated that the decision to grant the appeal is before the board.

In response to Mr. Simmonds, Mr. Abrams stated that he did not stop driving a taxicab in the past because of the felony conviction.

Mr. Simmonds questioned the circumstances involving the weapon. Mr. Abrams stated he wanted to sell the gun and was talking to an individual about the purchase of the weapon but the weapon had been modified years previously.

Mr. Lopez made a motion to grant the appeal. Second by Mr. Simmonds.

AYES: Simmonds, Lopez

NAYS: LaBode

Motion carried 2-1. Appeal granted.

10-5-28

Appeal Omaha Police Department notice of nuisance: Timothy C. Torek, 5604 S 36 Street 68107

Timothy Torek appeared before the Board. Mr. Torek stated he has sold the boat and is cleaning up his yard.

Todd Shearer, Inspector, City of Omaha, showed "before" and "after" photos of the debris and unlicensed vehicles. He stated that the boat is gone, the camper/trailer is licensed and the majority of the debris has been cleaned up.

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

Motion by Mr. Lopez to deny with 30 days to comply. Second by Simmonds.

AYES: Lopez, Simmonds, LaBode

Motion carried 3-0. Appeal denied with 30 days to comply.

10-5-29

Appeal Omaha Police Department notice of nuisance: Rodney Hamilton, 5420 S 53 Street 68117

Rodney Hamilton appeared before the Board. Mr. Hamilton stated the reason for his appeal is allow his vehicles to remain in the driveway on the rock/dirt driveway because the property has never had a hard surface driveway. Mr. Hamilton stated he is a tenant and rents the property from his mother-in-law.

Todd Shearer, Inspector, City of Omaha, submitted recent photos showing the condition of the driveway (Exhibit 2) which has not been maintained.

Mr. Denker stated that the last significant change to the Omaha Municipal Code was in 1977 regarding permanent hard surface driveways. If a driveway was in existence before 1977 and is maintained then it may have grandfather's rights but the driveway cannot be enlarged or altered. This driveway has not been maintained therefore the grandfather's rights have expired.

In response to Mr. LaBode, Mr. Denker stated that Lucille Diekman is the owner of the property and was the person who filed the appeal therefore she is aware of the notice.

Motion by Mr. Simmonds to deny with 90 days to comply. Second by Lopez.

AYES: Simmonds, Lopez, LaBode

Motion carried 3-0. Appeal denied with 90 days to comply.

10-5-27

Appeal Nebraska Humane Society Potentially Dangerous Dog designation: Robert Haffke, 5114 Q Street 68117

Robert Haffke appeared before the Board.

Mark Langan, Vice President of Field Operations for the Nebraska Humane Society appeared before the Board. Mr. Langan stated that his organization contracts with the City of Omaha to provide animal control services that consist of animal control officers enforcing the Chapter 6 animal control ordinances of the City of Omaha. The Potentially Dangerous Dog Ordinance, Section 6-149, provides a specific definition for a potentially dangerous dog. A potentially dangerous animal is defined as one who meets one or more of the following conditions: a.) any animal when unprovoked: (i) inflicts an injury on a human being that does not require medical treatment, (ii) injures a domestic animal, or (iii) chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack. The Nebraska Humane Society has the authority to declare an animal to be dangerous or potentially dangerous without a court proceeding. If a dog meets the definition based on an incident, a declaration is issued to the dog's owner. The dog's owner is then required to: 1) have the dog spayed or neutered and micro-chipped at the owner's expense, 2) purchase a potentially dangerous dog license, 3) show proof of a \$100,000 liability insurance policy, 4) attend a pet ownership class and a dog behavior class, and 5) whenever off their property, the dog must be muzzled, harnessed and leashed and under the control of a person nineteen years of age or older. Mr. Langan concluded by stating that these requirements must be placed on Mr. Haffke's dog to avoid any further injuries to the citizens of Omaha.

Mr. Haffke stated that he felt that the requirements of the dangerous dog ordinance to be too harsh of a punishment. Mr. Haffke stated that it is true that his dog did run out of the yard. However, Mr. Haffke stated that his dog is not vicious. Mr. Haffke stated that his dog is less than two years old and is still considered to be a puppy. He does not wish to have the dog neutered. Mr. Haffke stated that he is a truck driver and is not home very often, but assured the Board that he does have a fenced backyard and that his dog has plenty of room to run and play in. Mr. Haffke described his dog being loose on the day in question as a "freak little deal", stating that the dog was on his way into the house with the family, saw the child down the street and ran off. Mr. Haffke theorized that on the day in question, his dog wished to play, not to attack the child in question.

Mr. Langan stated that on March 23, 2010, Mr. Haffke's dog, a 60-pound Doberman Pinscher, ran up to a seven year old boy accompanied by two adults. Mr. Haffke's dog was running loose in the area. According to witnesses, the dog ran up to the seven-year-old child and bit him in the left buttocks and left ankle. None of the child's injuries required medical attention. Mr. Langan stated that the vaccinations on this animal were found to have expired roughly eight days before the

incident. The dog was taken to the Humane Society and quarantined for ten days to verify that the dog did not show signs of having rabies. Investigators at the Humane Society reviewed this case and determined that the requirements were met to declare Mr. Haffke's dog a potentially dangerous dog. A declaration to this fact was issued to the owner. Mr. Haffke must abide by the requirements of Section 6-149 (listed above). Mr. Langan stated that Mr. Haffke's objects to neutering his animal, Mr. Langan stated that experts at the Nebraska Humane Society will testify that neutered dogs display less aggression and are less prone to get out of a yard, especially when female dogs are in heat. It is for this reason that the requirement to spay or neuter a potentially dangerous dog is included in the requirements of the ordinance. Mr. Langan concluded that public safety should not be impacted by a dog owner who does not wish to spay or neuter his pet.

Mr. LaBode asked if all dogs adopted through the Humane Society are spayed or neutered. Mr. Langan stated that all animals, dogs and cats, are spayed or neutered and micro-chipped.

Mr. Haffke restated that this was not a vicious attack. Mr. Langan agreed that this was not a vicious attack, and stated that if the Humane Society had determined that the attack was vicious, the dog would have been declared a dangerous dog, not a potentially dangerous dog, and this matter would have been handled through the court system. Mr. Haffke inquired whether this determination had more to do with the size of his dog, rather than the damage he actually inflicted. Mr. Haffke asked whether a small dog that bit a child in the same manner would be subject to the same requirements. Mr. Langan stated that he could not deal with a hypothetical situation, and restated that the incident met the requirements of the potentially dangerous dog ordinance.

Mr. LaBode stated that it does not appear that Mr. Haffke is a bad dog owner. Mr. Haffke stated that he does care for his dog, and since the incident, his family is much more careful to make sure that the dog is never able to run off. Mr. Langan stated that Mr. Haffke has been very cooperative with the Humane Society, but asked that his reports be entered as exhibits into the case file.

Motion to deny appeal by Mr. Simmonds. Second by Mr. LaBode.

AYES: Lopez, Simmonds, LaBode

Motion carried 3-0. Appeal denied.

10-5-34

Appeal Nebraska Humane Society Potentially Dangerous Dog designation: Bob Pierson, 4209 S 39 Avenue 68107

Bob Pierson appeared before the Board. Mr. Pierson stated that he does not wish to put his dog through a major operation. He stated that he feared that neutering his dog would change the dog's personality. Mr. Pierson stated that on the day in question, when his dog jumped a six-foot high fence, he was not aware that the dog was capable of doing such a thing. Mr. Pierson stated his intention to reinforce his dog's kennel, citing that he will add a chain-link ceiling to the kennel to prevent the dog from jumping over the kennel fence. At this time, the dog is not allowed out of the house unless he is accompanied by Mr Pierson. Mr. Pierson stated that he has spoken to the owners of the dog that was bitten by Caesar, and claimed that it was not a vicious attack. Mr. Pierson has apologized to the owners of the other dog, and has paid all veterinary expenses for their animal. Mr. Pierson concluded that it is his intention to breed Caesar with Caesar's mother. Mr. Pierson stated that Caesar is a good dog, and is not dangerous.

Mark Langan, Vice President of Field Operations for the Nebraska Humane Society appeared before the Board. Mr. Langan stated that on April 2, 2010, Mr. Pierson's pit bull Caesar scaled Mr. Pierson's six-foot privacy fence, ran across to the neighbor's six-foot privacy fence, scaled it, entered the backyard, and attacked their collie. The collie was not badly injured, but required veterinary attention. When the Humane society responded, Caesar was still in the neighbor's

backyard. When the animal control officer entered the backyard, Caesar, apparently hearing dogs barking down the street, turned and scaled the six-foot privacy fence again. The animal control officer tracked down the dog, and found it on the front porch of another neighbor's house. The dog was lunging at the door and windows of the residence, where two dogs were present in the windows and were barking. It is the opinion of the animal control officer responding to the situation that Caesar would have attacked these neighboring dogs had he been able to get to them.

Citations were issued to Mr. Pierson, and he was found guilty in court of improper restraint of his dog. Based on this court decision, and the animal control officer's observation of the dog's aggressive behavior on the day in question, the Humane Society declared Caesar to be a potentially dangerous dog. Notification was sent to Mr. Pierson.

Mr. Pierson restated that Caesar is not a dangerous dog, and perhaps he needs to make more effort to socialize Caesar with other dogs. Mr. Pierson stated that he has friends who have brought their dogs to his home in the past, and Caesar has gotten along with them.

Mr. Langan stated that due to the potentially dangerous dog declaration issued to Mr. Pierson, he must neuter Caesar. As long as Mr. Pierson abides by the requirements of the potentially dangerous dog ordinance, the Humane Society will allow him to keep his dog. Mr. Langan stated that the public safety is more important than maintaining a bloodline of an animal. Mr. Langan asked that his reports be entered as exhibits into the case file.

Mr. LaBode remarked that the neighbor whose dog was attacked by Caesar thought that their dog was safe in his backyard due to the six-foot privacy fence.

Mr. Pierson stated again that he will not neuter Caesar, and stated that the dog will not get loose again. He will send Caesar to Pit Bull Rescue in Oklahoma before he allows the Humane Society to neuter Caesar. He wishes to breed Caesar with the dog's mother in six to seven years in order to preserve the bloodline.

Mr. Simmonds stated that while he appreciated Mr. Pierson's feeling for his animal, he understood the Humane Society's position regarding this incident.

Motion to deny appeal by Mr. Simmonds. Second by Mr. Lopez.

AYES: Simmonds, Lopez, LaBode

Motion carried 3-0. Appeal denied.

10-5-36

Appeal denial of driveway permit by Public Works Department: (University of Nebraska Omaha, Scott Village II Residence Halls, 6510 Pine Street) – R. Jeffery Lake, P.E., Olsson Associates, 2111 S 67 Street, Suite 200 68106

Jeffery Lake, Olsson Associates, 2111 South 67th Street, appeared before the Board. Mr. Lake asked that the case be laid over until the next meeting.

Mr. Simmonds made a motion to layover this case over until the June 28, 2010 meeting. Second by Mr. Lopez.

AYES: Lopez, Simmonds, LaBode

Motion carried 3-0. Appeal laid over.

III. Approval of Minutes from April 26, 2010

Mr. Simmonds made a motion to layover the approval of the minutes from the April 26, 2010 meeting. Second by Mr. Lopez.

AYES: Simmonds, Lopez, LaBode

Motion carried 3-0.

IV. Adjournment

Motion to adjourn meeting by Mr. Simmonds. Second by Mr. Lopez.

AYES: Lopez, Simmonds, LaBode.

Motion carried 3-0. Meeting adjourned at 3:45 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>