I. Roll Call

Ms. O’Connor called the meeting to order at 1:02 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

11-7-039
Appeal Omaha Police Department denial of firearm registration: Charles D. Points, 2532 Hancock Street, Bellevue, NE 68005

No one appeared in support of this appeal.

Sgt. David Volenec, Omaha Police Department, submitted documentation that was presented by Mr. Point's indicating that his record was expunged effective June 2003 (Exhibit 2).

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

AYES: Levy, Simmonds, Lopez, Labode, O’Connor

Motion carried 5-0. Appeal granted.

11-8-047
Appeal Omaha Police Department denial of firearm registration: Mark D. Wingate, 2047 North 51st Street 68104

Mark D. Wingate appeared before the board.

Sgt. David Volenec, Omaha Police Department, stated the denial of the firearm registration was based on a conviction for a CCW charge in June 1986. Mr. Volenec verified that Mr. Wingate has had no other serious violations since 1986.
Mr. Levy made a motion to grant the appeal. Second by Mr. Simmonds.

AYES: Simmonds, Lopez, Labode, Levy, O’Connor

Motion carried 5-0. Appeal granted.

10-12-101
Appeal Omaha Police Department notice of nuisance: Rafiu Braimah, 4904 Curtis Avenue 68104 for Alasa Braimah d/b/a Brama Auto, 4200 Redman 68111

No one appeared in support of this appeal.

Kevin Denker, Chief Housing Inspector, submitted documentation (Exhibit 2 and 3) that Mr. Braimah has rescheduled a zoning and a building certificate of occupancy for September 13, 2011.

Officer Debra Prososki was present.

Mr. Levy made a motion to deny with 30 days to comply. Second by Mr. Labode.

AYES: Lopez, Labode, Levy, Simmonds, O’Connor

Motion carried 5-0. Appeal denied with 30 days to comply.

11-7-038
Appeal Omaha Police Department notice of nuisance: Steve Vaupell, 1004 South 211th Street 68022

No one appeared in support of this appeal.

Officer Casey Shannon, Omaha Police Department, stated he is not sure that the vehicle in question has been plated in Nebraska. Officer Shannon stated that there has been no contact with Mr. Vaupell since the last hearing.

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

AYES: Labode, Levy, Simmonds, Lopez, O’Connor

Motion carried 5-0. Appeal denied.

11-8-043
Appeal Omaha Police Department notice of nuisance at 5328 North 47th Avenue: Lidoine Djon, 10665 Hamilton Plaza #303 68114

Lidoine Djon appeared before the board. Mr. Djon stated that he recently sold the car with the expired license plates.

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

AYES: Levy, Simmonds, Lopez, Labode, O’Connor

Motion carried 5-0. Appeal granted.
11-8-046
Appeal Omaha Police Department notice of nuisance at 4124 N Street: Max Diggs, 4124 N Street 68107

No one appeared in support of this appeal.

Kevin Denker, Chief Housing Inspector, submitted photos indicating that the vehicles are parking on the driveway (Exhibit 2). He stated the owner indicated that she was parking the vehicles in the backyard to prevent vandalism.

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

AYES: Labode, Levy, Simmonds, Lopez, O’Connor

Motion carried 5-0. Appeal denied.

11-8-048
Appeal Omaha Police Department notice of nuisance at 10607 Fowler Street: Frank Miller, 10607 Fowler Street 68134

Frank Miller appeared before the board.

Mr. Miller stated that he was recently flooded out of his home in Crescent, Iowa. This consequently forced him to move into his Omaha rental property. Mr. Miller presented proof of registration for the vehicles in question. He added that due to the flood, he is not financially able to switch over the licensing for the vehicles on his property.

Officer Stokes with the Omaha Police Department stated that he went to this property after receiving a complaint through the Mayor’s office. During this inspection, he saw more than four vehicles parked at the address with Iowa plates. He has spoken with Mr. Miller regarding the requirement to license his vehicles in Nebraska. Since that time, the officer has received complaints from Mr. Miller’s neighbors, who feel that Mr. Miller should be required to put Nebraska plates on his vehicles.

In response to Mr. Simmonds’ question, Mr. Miller stated that he intends to return to his home in Crescent as soon as he can. Mr. Simmonds said that he views this situation as being similar to that of an out-of-state college student. He added that he feels that this case involves special circumstances, and calls for some kind of dispensation. He asked for input from the other Board members, adding that he would be willing to make a motion to grant Mr. Miller’s appeal until such time as the floodwaters recede.

Ms. O’Connor inquired as to whether Mr. Miller knew when he would be able to move back to Crescent. Mr. Miller stated that he could not truthfully say when he would be able to move, since he is not certain if there are any roads leading to his property that are in driving condition.

Mr. Levy stated that he agreed with Mr. Simmonds’ opinion regarding the circumstances of this appeal; however, he added that he was concerned about setting a precedent. He stated that he had no doubts as to the veracity of Mr. Miller’s claims, and sympathized with his situation. Mr. Levy acknowledged that Mr. Miller is in a tough situation. He suggested that the Board deny Mr. Miller’s appeal, yet vote to refund his $35.00 appeal fee.

After discussing the various options for the dispensation of this case, Mr. Simmonds made a motion to lay this case over for the term of one year. Motion died for lack of a second.

Mr. Levy made a motion to deny the appeal, with 18 months to comply. Mr. Miller’s appeal fee of $35.00 is to be refunded to him. Second by Mr. Simmonds.

AYES: Lopez, Labode, Levy, Simmonds, O’Connor

Motion carried 5-0. Appeal denied with 18 months to comply and a refund of the $35.00 appeal fee.
Josh Frey, City of Omaha Code Enforcement, addressed the Board. Mr. Frey stated that his department has met with the appellant and have gone over her plans for her back yard. He has also had the opportunity to walk around the area and view the plants that are currently in place. Mr. Frey noted that the goldenrod on this property needs to be reduced. He stated that Ms. Schreur maintains her yard, and is able to identify all of the plants within it; however, Mr. Frey stated that he is concerned that approving this appeal for a naturalized yard will set a precedent that other homeowners, who do not take care of their properties, will try to take advantage of in the future.

Ms. Schreur stated that she didn’t feel that she should be held responsible for other homeowners’ yards and how they maintain their properties. She presented information regarding the plants that can be found in her back yard. She also discussed plans to put in a garden, which would consequently reduce the amount of goldenrod in the yard by more than half. This information was entered into the file as exhibits 2 and 3.

Mr. Frey stated that it is obvious that Ms. Schreur spends a great deal of time maintaining her yard. He noted that it is evident that she takes care to ensure that her yard does not encroach upon the neighboring yards. He stated that the reduction of the goldenrod in this yard would result in making the other flowers more visible and would improve the appearance of this space. Mr. Frey noted that Ms. Schreur needs to make sure that plants remain within her fence line.

Mr. LaBode agreed with the applicant that the Board cannot hold her responsible for the potential future actions of other citizens. He stated that the Board must focus on the present case at hand. Mr. LaBode asked Mr. Frey if his department had an objection to this property’s condition.

Mr Frey stated that his department has received complaints on this property and is currently classified as a nuisance under the current code. Mr. Frey stated that the only way in which he could see this vegetation as being a nuisance would be if it were encroaching on the roadway, which it is not. The code states only that grass cannot be over twelve inches tall. He stated that his department has no problem with Ms. Schreur’s property at this time, and added that they will need to work to get language put into their code which will deal with naturalized yards. Mr. Frey stated that he has spoken to the neighbors, and assured them that there are no noxious weeds in Ms. Schreur’s yard. He has seen no evidence of mice or snakes.

Mr. LaBode stated again that the Board should not hold this applicant responsible for the actions of others. He asked Mr. Frey if he was satisfied with the plan that Ms. Schreur submitted today. Mr. Frey replied in the affirmative. Mr. Levy asked the applicant if she was willing to carry out the plan that she submitted to the Board today. Ms. Schreur replied in the affirmative.

Mr. Simmonds stated that he realizes that prairie grasses have become popular lately due to the fact that they conserve water. However, he stated that he would not want that type of wild landscaping, which is currently being used around large commercial enterprises, to be present next door to his home. He stated that he is concerned about creating a precedent by granting this waiver, and commented that many people would see Ms. Schreur’s yard as something that would decrease the value of the neighborhood.

Mr. Frey stated that the definition of what decreases the value of an area is subjective. Ms. Schreur added that her neighbors to either side of her use chemicals on their lawns, which she views as decreasing the value of their property. Mr. Frey stated that the submitted plan to reduce the amount of goldenrod in the yard would give the area a more tidy appearance.

Mr. Labode made a motion to grant the appeal, with the stipulation that the plan submitted by the applicant be implemented. At Mr. Levy’s request, Ms. Schreur reported on the amount of time she
would need in order to implement the proposed improvement plan. This amounted to a term of roughly one year. Motion died for lack of a second.

Mr. Levy made a motion to deny the appeal, with the stipulation that the applicant must implement the proposed garden plan as the growing season allows. After some additional discussion, Mr. Simmonds seconded this motion.

AYES: Levy, Simmonds, Lopez, O’Connor

NAYS: Labode

Motion carried 4-1. Appeal denied subject to the submitted plan to be implemented as the growing season allows.

11-8-044
Appeal denial of renewal for Third Grade Stationary Engineer certificate: William A. Kortum, 3811 Old Highway 8, Fremont, NE  68025

William A. Kortum appeared before the board.

Mr. Kortum stated that he held a Third Grade Stationary Engineer certificate from 1992 through 2005. He also held a State of Nebraska journeyman electrician’s license. Last fall, he sustained an injury on the job that has left him unable to position his hands above his head. He is now seeking work in the mechanical field, and needs his Third Grade Stationary Engineer certificate to be reinstated in order to obtain work. Mr. Kortum stated that he simply forgot to renew this license when the renewal period came in 2005.

Thomas Phipps, Chief Mechanical Inspector for the City of Omaha Planning Department, stated that Mr. Kortum contacted his office requesting the renewal of his certificate. According to section 41-97 of the Omaha Municipal, Mr. Kortum’s license became invalid when he failed to renew within sixty days of the expiration date. According to the municipal code, Mr. Kortum is required to retake the examination for licensure if he wishes to have it reinstated. Mr. Phipps noted that according to his records, he has not received any complaints regarding Mr. Kortum from previous employers or from the general public. He stated that should the Board grant Mr. Kortum’s appeal, that they require him to pay renewal fees for 2006, 2007, 2008, 2009, 2010 and 2011 before this license will be issued.

Mr. Levy inquired as to whether this license carries any requirements for the completion of continuing education. Mr. Phipps replied that no such hours are required at this time, and at Mr. Levy’s request, outlined the renewal process currently in place for license holders. This process includes a courtesy notification from the City of Omaha Finance Department.

Mr. Labode inquired as to whether there is another Board which deals with licensing issues. Mr. Phipps replied that if there had been complaints in regards to Mr. Kortum, these complaints would then be investigated by the Permits and Inspections Division. If violations were discovered, there would be a hearing with another board for the possible suspension or revocation of Mr. Kortum’s license. However, Mr. Phipps reiterated, no complaints have been filed against Mr. Kortum’s license. Failure to pay for a license renewal is not a revocable offense; the license simply becomes invalid.

Mr. Simmonds inquired about the four years in which Mr. Kortum did not have a license. He asked the applicant why he did not renew his license at the appropriate time. Mr. Kortum stated that he did not realize that he had missed the renewal period, and since he was working as an electrician at the time, he did not realize that his Third Grade Stationary Engineer certificate had lapsed.

Mr. Simmonds asked Mr. Phipps whether his department believed that Mr. Kortum is not qualified to hold a Third Grade Stationary Engineer license. Mr. Phipps stated that his department has not received any complaints against Mr. Kortum’s license.

Motion to grant appeal by Mr. Simmonds. Second by Mr. Labode. After some discussion regarding Mr. Kortum’s fees for the previous years, Mr. Simmonds amended his motion.
Motion by Mr. Simmonds to grant the appeal, with the stipulation that Mr. Kortum must pay renewal fees for 2006, 2007, 2008, 2009, 2010 and 2011. Second by Mr. Labode.

AYES: Levy, Simmonds, Lopez, Labode, O’Connor

Motion carried 5-0. Appeal granted subject to paying the license fees for six years to include 2006, 2007, 2008, 2009, 2010 and 2011.

11-8-045
Appeal denial of permit (re: parking stalls) at 4606-4612 Chicago Street: Dave Schreiner on behalf of James Tonsfeldt (PO Box 266, Elkhorn, NE 68022), 1819 Farnam Street 68183

No one appeared in support of this appeal.

Mr. Denker commented that Mr. Schreiner works in this building. He speculated that Mr. Schreiner must be ill, and suggested that the Board lay this case over to next month’s meeting. Mr. Levy inquired as to whether Mr. Denker was familiar with the facts of this case.

Mr. Denker stated that this appeal stemmed from a complaint regarding vehicles parking on crushed rock. The owner claimed grandfather rights for this parking area. After research, it was discovered that this area does not meet the requirements for grandfather rights. After some discussion regarding this case and this Board’s jurisdiction, it was decided that Mr. Schreiner needed to take his case before the Zoning Board of Appeals.

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

AYES: Levy, Simmonds, Lopez, Labode, O’Connor

Motion carried 5-0. Appeal denied.

11-8-049
Appeal denial of proposed driveway locations at 33rd & Q Streets: Douglas Dreessen, Thompson, Dreessen & Dorner, Inc. on behalf of Dillon Real Estate d/b/a Kwik Shop #652, 10836 Old Mill Road 68154

Douglas Dreessen appeared before the board. Mr. Levy asked that it be noted in the minutes that he has a mutual client with Mr. Dreessen. He stated that he hasn’t done any work for this client recently, and does not feel that this association would prejudice his decision. However, he felt that it was necessary to disclose this fact.

Mr. Dreessen stated that his client would like to build an expanded gas station on the same site. Mr. Dreessen explained the various hardships that his client faces in completing this project, including restrictions on driveway widths. He mentioned that this area of town also carries restrictions in regards to driveway location; specifically, that driveways must be at least 230 feet from the intersection on 33rd Street. This property is 160 feet deep; therefore, there is no way to meet this requirement on this street. On Q Street, driveways are required to be 175 feet from the intersection. His client can meet this requirement. Mr. Dreessen went on to explain that there are additional problems in getting enough space for tanker trucks to be able to refuel the gas station safely.

The Board reviewed the submitted plans. Ryan Haas of the City of Omaha Public Works department addressed the Board regarding the various issues facing this applicant’s proposed expansion. He concluded by stating that after research, the Public Works department does not oppose this request.

Mr. Dreessen stated that his client would like to increase the driveway width from 35’ to 42’. This additional seven feet will allow tanker truck drivers more room to maneuver. Mr. Haas stated that the 35’ driveway width restriction was put into place following problems with businesses which installed driveways that ran across their entire frontage, creating a traffic hazard. Mr. Haas stated that his department did not have a problem with allowing this applicant a slightly wider driveway.
After some discussion, Mr. Levy made a motion to grant the appeal; to approve the driveway locations as listed, and to increase the driveway widths from 35’ to 42’. Second by Mr. Labode.

AYES: Lopez, Labode, Levy, Simmonds, O’Connor

Motion carried 5-0. Appeal granted to include the driveway locations and the driveway width from 35’ to 42’.

III. Approval of Minutes from July 25, 2011

Motion to approve the minutes from the July 25, 2011 meeting by Mr. Labode. Second by Mr. Lopez.

AYES: Labode, Levy, Lopez, O’Connor

ABSTAIN: Simmonds

Motion carried 4-0-1.

IV. Adjournment

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

AYES: Levy, Simmonds, Lopez, Labode, O’Connor

Motion carried 5-0. Meeting adjourned at 2:32 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