Minutes  
Administrative Board of Appeals  
February 28, 2011

MEMBERS PRESENT:  Ann O’Connor, Chair  
David Levy, Vice Chair  
Jim Weaver  
Bode Labode  
Steve Simmonds, Alternate

MEMBERS ABSENT: Jose Lopez  
Jama Samiev, Alternate

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

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I. Roll Call

Ms. O’Connor, Chair, called the meeting to order at 1:00 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

11-2-005 
Appeal Omaha Police Department denial of firearm registration: James G. Cummins, 1529 South 189th Court 68130

Jessica Douglas, Schaefer Shapiro, 1001 Farnam Street, appeared before the board to represent James G. Cummins. Ms. Douglas stated that Mr. Cummins does not have a criminal history that would preclude him from getting a firearm permit. The reason Mr. Cummins would like to register a handgun is to target practice with a son.

Sgt. Sherie Thomas, Omaha Police Department, stated the reason for the denial was that Mr. Cummins overdosed in July 1990. Sgt. Thomas stated there are no other items on Mr. Cummins record since 1990.

Ms. Douglas answered Mr. Labode that Mr. Cummins is a medical doctor and has access to medication. In response to Mr. Weaver, Ms. Douglas did not know for sure the length of time that Mr. Cummins has been a medical doctor.

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

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

Motion carried 5-0.
Appeal Omaha Police Department denial of firearm registration: Damon G. Jackson, 4114 North 26 Street 68111

Damon G. Jackson appeared before the board. Mr. Jackson indicated that he has a permit to purchase a firearm and would like to register his firearm for personal protection.

Sgt. Sherie Thomas, Omaha Police Department, stated the reason for the denial was that on February 14, 2008, Mr. Jackson was stopped for not signaling a lane change. At that time, Mr. Jackson alerted the deputy that he had a firearm in the glove box but was ticketed for carrying a concealed weapon. The CCW resulted in a fine for $250.00. Sgt. Thomas stated there are no other criminal records on Mr. Jackson’s record.

Mr. Jackson stated that concerning the CCW incident, he was on his way home and had another passenger in his car. He stated that when he was stopped he indicated he had a firearm in the glove box.

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

AYES: Weaver, Labode, Levy, O’Connor
NAYS: Simmonds

Motion carried 4-1.

Appeal Omaha Police Department notice of nuisance: Chris P. Matt, 2211 South 8th Street 68105

Chris P. Matt appeared before the board. Mr. Matt stated he is self-employed and the vehicles in question are vehicles he is restoring for others. He stated the property is zoned light industrial and he is in the process of installing a fence and a sign. He indicated he does sign work for Habitat for Humanity in exchange for a fence.

Officer William Shaw, Omaha Police Department, submitted photos (Exhibit 2) and stated most of the vehicles are not registered and have not been moved all winter.

Mr. Levy questioned whether the business would be legal with a fence and a sign. Mr. Denker stated the business operation on the property would need to obtain a certificate of occupancy, which could take 4-8 weeks. In response to Mr. Levy, outdoor auto repair is not allowed.

Motion to lay this case over until the March 28, 2011 meeting to allow applicant additional time to obtain information regarding a certificate of occupancy by Mr. Levy. Seconded by Mr. Weaver.

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

Motion carried 5-0. Appeal laid over until the March 28, 2011 meeting.

Appeal Omaha Police Department notice of nuisance: Randall L. Oathout, 459 Beverly Drive 68114

Randy Oathout appeared before the board and submitted several photos (Exhibit 2). Mr. Oathout stated he is in the process of building a garage for the vehicle in question.

Officer Casey Shannon, Omaha Police Department, stated the complaint was for a U-Haul truck that measures over 23 foot in length and is parked on the driveway in the front of the house.
Kevin Denker, Chief City Inspector, stated the permit for the garage has expired. Mr. Oathout agreed to renew the permit and lay the cement for the garage once the weather permits. Mr. Oathout requested 60 days to complete the garage.

Motion to deny appeal with 30 days to comply by Mr. Simmonds. Seconded by Mr. Labode.

AYES: Simmonds, Weaver, Labode, O’Connor

NAYS: Levy

Motion carried 4-1. Appeal denied.

11-2-006
Appeal Nebraska Humane Society Reckless Owner declaration: Kathy Bessmer, 9461 Jackson Street 68114

Joel and Kathy Bessmer appeared before the board. Mrs. Bessmer stated her residence has an invisible fence but the black Lab and Saint Bernard continue to get out. She showed fence plans and stated they plan to build a fence in the back yard once the weather permits. The dogs are playful and like to play with the other dogs in the neighborhood. Both dogs passed an aggression test at the Humane Society (as submitted). Mrs. Bessmer stated that her husband is a physician and takes the black Lab to work after it started to become a nuisance. Letters were submitted from Mr. Bessmer’s nurse (Exhibit 2), a neighbor (Exhibit 3) and a behavioral analyst (Exhibit 4). She indicated that in hindsight she would have appealed the tickets because of the hardship on their family with regard to the adoption of two children from Ethiopia. She stated she did not understand the severity of the tickets.

Mark Langan, Nebraska Humane Society, appeared before the board. Mr. Langan produced Exhibit 5 and stated that the Humane Society contracts with the City of Omaha for animal control services and is authorized to enforce Chapter 6 ordinances, issue citations and impound animals. The Reckless Owner Ordinance 6-87, states that if a dog owner receives three animal control citations, they are deemed reckless owners, forfeit their animals to the Nebraska Humane Society and are not allowed to own animals for a period of four years. He stated that in regard to the Bessmer case, conviction number one was based on an offense that occurred on December 2, 2009 when a neighbor complained that her dog was attacked by the Bessmer’s two dogs. The neighbor’s dog did not have any injuries but the neighbor was very upset. Animal control was called a week later at which time the animal control officer observed both dogs unrestrained and a small boy running down the street after the dogs. The first conviction on January 10, 2010 was followed by a post card advising the owner of one strike. The second conviction was based on an offense dated November 3, 2010 when a very upset neighbor called with video footage of the Bessmer’s dogs on her property. The Labrador was barking aggressively at the person taking the video while the Saint Bernard was not acting aggressively. The neighbor was upset and volunteered to testify that she was tired of seeing the dogs loose in the neighborhood. Mrs. Bessmer was issued a citation for improper restraint and was convicted on December 16, 2010, which resulted in conviction number two. NHS policy is to send a post card after the second conviction, which states that one more conviction, would result in the loss of animals. Conviction number three was a result of an offense on October 28, 2010. Again, the Humane Society was called into the area with the report of a black Lab and St. Bernard loose and acting aggressively. The animal control officer observed the Saint Bernard running loose in the neighborhood and the black Lab unrestrained on the property. Mrs. Bessmer was again issued a citation on October 28, 2010 for dog at large resulting in the third conviction, which per City Ordinance 6-87 qualifies Mrs. Bessmer as a Reckless Owner. There have been five additional other calls between November 2009 and October 2010 of the dogs running loose in the neighborhood. Mrs. Bessmer appealed to the Nebraska Humane Society on January 28, 2011 and was denied. Shortly after the appeal, on February 5, 2011, another call was received from another very upset neighbor stating the Bessmer’s dogs again were running loose. As per the ordinance, three convictions per the ordinance qualify Mrs. Bessmer as a Reckless Owner. After a behavior study and aggression test, both dogs were found to not pose a danger to the public. The dogs were
allowed to be re-homed rather than be held at the Humane Society as per the ordinance. Based on
the three convictions, the Bessmer’s are not allowed to have any animals on their property.

Mrs. Bessmer stated the dogs were not re-homed but for the well being of the dogs they are being
kept at the veterinarians. Mr. Bessmer stated that they never received a notice after the first or
second conviction.

Mrs. Bessmer proposed to be allowed to get the fence built and let the kids have their dogs back.
She stated she would forfeit the dogs if they get loose from the fenced back yard. She requested
more time until the fence is built. In response to Ms. O’Connor, Mr. Bessmer stated the black Lab is
four years old and the Saint Bernard is two years old.

Mr. Bessmer stated that the dogs would continue to be boarded by Dr. Langley until the fence is built.
He stated that the black Lab is very intelligent and has literally gotten out of his locked clinic, he has
the ability to open doors.

Mr. Weaver commented he has a problem with the willingness to throw money at paying a ticket
rather than solving a problem that was created by the dogs. He indicated that he is concerned with a
backyard fence with 14 children and the intelligence of the black Lab that has the ability to escape his
new found confinement. Mrs. Bessmer answered that she would like to have the dogs trained after
the fence is erected.

Mr. Levy stated he appreciates the demeanor of the Bessmer’s but commented that the fence would
not solve the problem of a dog going out the front door.

Mr. Langan stated that with regard to the citations coming in bunches; the citations were initiated by
neighbors and confirmed by the Nebraska Humane Society. Violations were based on what the
animal control officers witnessed.

Mr. Bessmer stated he would throw money at building a fence and to train the dogs. The problem is
not the Saint Bernard but the black Lab. In response to Mr. Levy, Mr. Langan confirmed that there is
no indication that the black Lab is aggressive.

Motion to grant appeal by Mr. Simmonds. Second by Mr. Labode.

Mr. Levy suggested that the appeal be granted on a condition that it incorporates one more strike.
Mr. Weaver stated he would be inclined to vote for the appeal if the black Lab was re-homed and the
fence was built.

Motion amended to grant appeal contingent to no additional violations occurring by Mr. Simmonds.
Second by Mr. Labode.

Mr. Levy suggested adding a time limit.

Motion amended to grant appeal contingent to no additional violations occurring within the next one-
year period by Mr. Simmonds. Second by Mr. Labode.

AYES: Levy, Labode, Simmonds

NAYS: Weaver, O’Connor

Motion carried 3-2. Appeal granted.
Grant Forsberg appeared before the board. Mr. Forsberg stated he recently purchased the property in September 2010. The parks department pointed out four or five dead branches that are problematic. He stated the trees are not in very good shape therefore he had Jack Phillips, arborist, view the trees in question. Mr. Forsberg stated that Mr. Phillips concluded that the trees are dying and need to be removed. He stated he would rather pay someone to remove the trees instead of paying someone to trim the branches.

Josh Frey, City of Omaha, Code Enforcement, submitted several photos (Exhibit 2) and a copy of Chapter 37 (Exhibit 3). It is the responsibility of the property owner to maintain the trees on the right-of-way of his property. The trees are healthy and viable and any tree has a potential hazard or defect. The hackberry trees in question have dead limbs that are over 2” in diameter and pose a threat to public safety. Mr. Frey explained that there is concern because a school is located across the street from the property. He stated Mr. Forsberg is not allowed to remove the trees without a permit (Section 37-5), the trees must be removed by a licensed arborist and replaced by new trees with at least a 2” caliper or a new tree planted in a city park.

Mr. Forsberg stated he is concerned about the health of the existing trees and would like to keep only one of the hackberry trees in the front of the property.

Motion to deny by Mr. Weaver. Seconded by Mr. Simmonds.

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

Motion carried 5-0. Appeal denied.

III. Election of Officers

Motion was made to retain the present officers, Ms. Ann O’Connor as Chairman and Mr. David Levy as Vice Chairman of the Administrative Board of Appeals by Mr. Weaver. Second by Labode. Ms. O’Connor accepted the nomination.

AYES: Weaver, Labode, Simmonds

Motion carried 3-0.

IV. Approval of Minutes from December 27, 2010

Motion to approve the minutes from the December 27, 2010 meeting by Mr. Levy. Second by Mr. Weaver.

AYES: Levy, Weaver, Labode

ABSTAIN: Simmonds, O’Connor

Motion carried 3-0.
V. Adjournment

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

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

Motion carried 5-0. Meeting adjourned at 2:30 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