Minutes
Administrative Board of Appeals
July 25, 2011

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

MEMBERS ABSENT: Jama Samiev, Alternate
Steve Simmonds, Alternate

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 1:00 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

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

Charles Points appeared before the board.

Lt. Colene Hinchey, Omaha Police Department, stated the denial of the firearm registration was based on a domestic violence charge in 2001 in Pottawattamie County, Iowa. Lt. Hinchey submitted Mr. Point’s criminal history (Exhibit 2).

Mr. Points indicated that he took a diversion class and the domestic violence charge was to be removed from his record. Mr. Points referred to a court document that was previously submitted and signed by Sarpy County Judge Hutton that indicates the matter was exonerated.

Lt. Hinchey stated an attempt was unsuccessfully made to confirm the dismissal of the charge. Lt. Hinchey questioned why there is an expunged document from Sarpy County when the charge was in Pottawattamie County. She recommended that a certified letter be faxed to her from Pottawattamie County stating that Mr. Point’s record has been expunged.

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

AYES: Weaver, Lopez

NAYES: Levy, Labode, O’Connor

Motion fails 3-2.
Motion to lay this case over for 30 days until the August 29, 2011 meeting by Mr. Levy. Seconded by Mr. Labode.

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

Motion carried 5-0. Appeal laid over for 30 days until the August 29, 2011 meeting.

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

Steve Vaupell appeared before the board.

Officer Casey Shannon, Omaha Police Department, stated a complaint was received regarding a vehicle with South Dakota license plates.

Mr. Vaupell explained that he resides in Nebraska and has other vehicles registered in Nebraska. He stated he works for a telecommunications company and is responsible for maintaining a large company in Sioux Falls, South Dakota. Mr. Vaupell stated that in the state of South Dakota if a vehicle and/or boat are in South Dakota for more than 90 days then the license plates have to be registered in South Dakota. Mr. Vaupell stated that he chose to register his Ford Excursion in South Dakota because he spent a majority of time in South Dakota. He stated that when the contract in South Dakota ended, he questioned if he could register the vehicle in Nebraska but was told that he would need to pay in excess of $2,800.00 for past taxes and penalties.

Motion to lay this case over for 30 days until the August 29, 2011 meeting by Mr. Weaver. Seconded by Mr. Levy.

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

Motion carried 5-0. Laid over for 30 days until the August 29, 2011 meeting.

11-7-042
Appeal Omaha Police Department notice of nuisance: James D. Bogensberger, 1810 Northwest Radial Highway 68104

James Bogensberger appeared before the board. Mr. Bogensberger stated that the flood was an issue but the boats have been removed. He stated he is restoring two Landcruisers that are stored in his covered garage. He indicated that neither Landcruiser is in running condition. The garage does not have a garage door and one Landcruiser extends outside of the front of the garage.

Kevin Denker, Chief Housing Inspector, stated that Code 55-742 (b) Section 1 states that, “Parking is permitted within any closed structure when the structure otherwise conforms to the requirements of a specific district.” Mr. Denker stated that the garage is not a closed structure because it does not have a garage door.

Mr. Levy questioned if the issue was parking and could the vehicles be parked on the driveway. Mr. Denker answered that the vehicles would have to be licensed and in running condition.

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

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

Motion carried 5-0. Appeal denied with 30 days to comply.
Appeal Reckless Owner declaration issued by the Nebraska Humane Society: Jill Jones, 7624 North 30th Street 68112

Jill Jones appeared before the board.

Mark Langan, Nebraska Humane Society, 8920 Fort Street, stated a Potentially Dangerous Dog Declaration was issued in November 2008 based on an incident that occurred on November 9, 2008. On that day, four separate phone calls were received from different citizens with regard to a pit bull charging citizens near Forest Lawn Cemetery with the last call indicating that the pit bull had just attacked another dog in a yard. The pit bull charged at the animal control officers in an aggressive fashion and metal catchpoles were used to secure the dog. Brian Smith and Eldon Forest both reported that the pit bull had charged them in an aggressive fashion and attacked Mr. Smith’s dog in his yard. Mr. Smith’s dog sustained injuries at a cost of $345.00. The pit bull (Kaynoe) was owned by Davon Lovelace and Jill Jones. Davon was convicted of a dog damaging property and received a $50.00 fine. A Potentially Dangerous Dog Declaration was issued to Davin Lovelace and Jill Jones requiring them to abide by the Potentially Dangerous Dog requirements: license dog with a Potentially Dangerous Dog license, microchip the dog, spay and neuter the dog, attend pet responsibility classes and do not take the dog off property unless leashed, muzzled and harnessed.

Mr. Langan stated that on May 28, 2011, Junell Taylor contacted the Nebraska Humane Society and stated she was walking her dog near 7624 North 30th Street when a pit bull (Kaynoe) attacked her dog on the sidewalk in front of 7624 North 30th Street. She stated that her dog sustained minor injuries. Ms. Taylor stated that two males came outside and secured the pit bull and took it back inside. It was determined at that time that Kaynoe was not licensed per city ordinance, not vaccinated per city ordinance and did not have the proper insurance as per city ordinance. Jill Jones was charged with dog damaging property and dog nuisance and received $75.00 for both charges. Ms. Jones was declared a Reckless Owner due to the fact that Kaynoe had violated the Potentially Dangerous Dog requirements as set forth from November 9, 2008. That being, the dog came off property, was not properly muzzled or harnessed and resulted in another attack on another dog.

Ms. O’Connor questioned if a dog is declared a Potentially Dangerous Dog, is the dog declared a Potentially Dangerous Dog for the rest of the dog’s life. Mr. Langan answered that a Potentially Dangerous Dog declaration is for the rest of a dog’s life but there is a clause in the City Ordinance that allows a Potentially Dangerous Dog owner, after two years from the declaration date, to reapply to the Humane Society to have the declaration dropped. It was not done in this case and based on the numerous violations found in May 2011 (i.e. not having a Potentially Dangerous Dog Declaration, not properly licensed, and not properly vaccinated) it is highly doubtful that the declaration would have been dropped.

Ms. Jones admitted everything that happened in 2008 was true. She stated she did everything that the Humane Society asked her to do. The insurance is current with her homeowner’s insurance. However, on May 28, 2011, Kaynoe bit another dog in her driveway. Ms. Jones stated that Kaynoe’s shots were eight days late but she stated she had an appointment to get the shots. Ms. Jones stated she does the best she can to comply with the Humane Society and has a Humane Society issued muzzle and there are padlocks on the gates. Ms. Jones stated that Kaynoe has been removed and is living in Bennington with an uncle. She stated that in her defense, the Potentially Dangerous Dog Declaration was a new ordinance in November 2008. Kaynoe is people friendly but is a threat to other dogs. She was not aware that she had to file an appeal to have the Potentially Dangerous Dog Declaration dropped but assumed that the declaration would drop off after two years. She stated she was not present when the dog attacked the other dog on May 28, 2011. She stated she is a responsible dog owner and does not feel that she is a Reckless Owner and has done everything that she needs to do. She stated she cannot always be home and does not have any intention of bringing Kaynoe back but she would like her children to be able to have another pet. It is unfortunate, but she does not believe that reckless people do what she has done by taking the responsibility for Kaynoe by owning up to mistakes and paying all the fees.

In response to Mr. Levy, Mr. Langan stated that the Humane Society has no record of any other incidences regarding Ms. Jones or her property or Kaynoe between the November 2008 and May 2011 incident.
In response to Mr. Levy, Ms. Jones stated she no longer has the dog and is not sure if the license has been renewed or vaccinations have been given to Kaynoe.

In response to Mr. Weaver, Mr. Langan stated the dog was not taken into custody and euthanized and Ms. Jones was not cited under the Dangerous Dog ordinance due to the fact that the incident in May 2011 met the definition of the Potentially Dangerous Dog ordinance which reads, “A potentially dangerous dog is one who inflicts injury on another animal.” In this situation, a person was not bitten and the bite was not severe to the other dog. The Dangerous Dog ordinance is the top level and a Potentially Dangerous Dog ordinance is below that with no citations.

Mr. Weaver questioned if the board was to grant the appeal, would Ms. Jones be able to bring the dog back to her property. Mr. Langan answered the dog could return but if the dog was involved in another similar situation, the process would start over again with a Reckless Owner declaration and any other citations would be issued. Ms. Jones would have another chance for an appeal. The dog would be taken care of by the Humane Society if the dog bit a person or a very severe injury on another animal. If a Potentially Dangerous Dog is found unlicensed, the Humane Society does not have the authority to confiscate the dog.

Ms. Jones stated that her dog, Kaynoe, has never bit a person. She stated she would like to move forward and possibly own another animal for her children.

Mr. Labode questioned the damage to the animal on the second incident. Mr. Langan submitted photos (Exhibit 2) of the injury to the dog that included a laceration to the left eye, a small cut on the nose and several small cuts on his tongue.

Mr. Levy questioned RoseMarie Horvath, City of Omaha, Law Department, if there could be conditions to an appeal. Ms. Horvath answered that it would depend on the conditions.

Mr. Levy stated his biggest concern is that there is a dog out there that may not have its rabies vaccination, may not be licensed, and may not be muzzled but is a danger to other animals. He stated his opinion is that this situation does not rise to the level of a Reckless Owner. Mr. Weaver agreed that the dog is a threat.

Mr. Langan suggested granting the appeal on the condition that the dog is not allowed within the city limits of Omaha.

Mr. Levy made a motion to grant the appeal subject to: 1) the dog is not allowed within the City of Omaha or the three mile jurisdiction of the City of Omaha; 2) Ms. Jones must provide written sworn evidence to the Humane Society within 30 days that the dog has up to date rabies vaccinations and up to date license in the jurisdiction that the dog is residing; 3) the owner of the dog is complying with the muzzle and harness requirements of the City of Omaha’s Potentially Dangerous Dog ordinance; and 4) provide the location of the dog to the Humane Society. Second by Mr. Labode.

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

Motion carried 5-0. Appeal granted subject to: 1) the dog is not allowed within the City of Omaha or the three mile jurisdiction of the City of Omaha; 2) Ms. Jones must provide written sworn evidence to the Humane Society within 30 days that the dog has up to date rabies vaccinations and up to date license in the jurisdiction that the dog is residing; 3) the owner of the dog is complying with the muzzle and harness requirements of the City of Omaha’s Potentially Dangerous Dog ordinance; and 4) provide the location of the dog to the Humane Society.

11-7-040
Appeal notice of nuisance issued by Parks Maintenance Department on June 15, 2011 for 2544 North 61st Street: Lois Schreur, PO Box 4376 68104

Lois Schreur appeared before the Board.

Mr. Josh Frey, City of Omaha, Code Enforcement, stated that a complaint was filed concerning weeds at 2544 North 61st Street on June 8, 2011. After an inspection on June 9, 2011, the yard was
determined to be in violation of Section 18 of the City of Omaha Municipal Code. A notice of violation was sent to Ms. Schreur on June 18, 2011. There are several other complaints on record for weeds at this address dating back to 2008. In 2009, Mr. Frey stated that he and John Wynn, Code Enforcement, met with Ms. Schreur along with her neighbor to discuss her yard and problems that the plants pose to the community. He stated that he explained to Ms. Schreur that she should be able to grow the native plants in her yard however they would need to be kept under control and there needs to be a border around the landscaped areas so the wild plants keep from spreading. This decision was made to avoid any violation of Section 18, specifically 18-3A which states, “The maintaining, using, placing, depositing, leaving, or permitting to be or remain on public or private property of any of the following items, conditions or actions is hereby declared and to constitute a nuisance: a) any condition which provides harborage for rats, mice, snakes and other vermin. Section 18-2F states, “A nuisance exists when a person fails to perform a duty or permits any condition or thing to exist and (f) interferes with the quiet enjoyment of life and property and tends to depreciate the value of property to others.” He stated that the complaints are directly concerned with the two codes as well as the spreading of these plants into the neighbor’s yards. Several photos dated July 25, 2011 were submitted (Exhibit 2). Mr. Frey stated that 11 of the 30 plants that Ms. Schreur mentioned in her appeal could be found in the book, “Weeds of the Great Plains” published by the Nebraska Department of Agriculture. The common definition of a weed is “a plant growing out of place” and a more contemporary alternative definition of a weed is, “a plant that interferes with the management objective of an area at a given point of time.” In an urban setting, most of the plants in Ms. Schreur’s yard are sprayed for with herbicides by homeowners and are considered invasive species to common urban yards. After listening to the concerns of the neighbors on this block and the conversations with Ms. Schreur in 2009, the yard continues to be a nuisance to the community and Ms. Schreur is not holding up her end of the agreement to keep the wild native plants under control in her yard. A lot of the plants are under control but the Goldenrod is an issue.

Ms. Schreur stated her yard is well weeded and well maintained. Mr. Frey stated the neighbors complain about the large areas of the tall plants that create the harborage for small rodents and there are also concerns for allergies.

Ms. Schreur stated the plants are trimmed back from the fence.

Mr. Frey stated the main concern is the Goldenrod, which needs to be trimmed back and reduced dramatically.

Ms. Schreur stated there are no mice or snakes in her yard but it might be that the neighbors may possibly see snakes or mice due to their own trash pile up. Ms. Schreur stated she is appealing because she does not have weeds. She submitted a letter (Exhibit 3) from a naturalist that volunteers at Fontenelle Forest. She stated that the plants in her garden are the same plants that are at Fontenelle Forest, Neal Woods and the same plants that are planted to get the prairie back. She stated that the only animals in her yard are the butterflies and bees and a lot of fledglings. She admitted that there is a lot of Goldenrod but she indicated that it is weeded and contained and is less than two years ago. She indicated she is working on having less landscaping and more vegetable gardens.

In response to Mr. Levy, Ms. Schreur answered that she could reduce the Goldenrod by 30% but the Goldenrod is not an allergen.

Ms. Schreur stated she has a “Wildlife Habitat” certificate and needs the plants for the butterflies. Mr. Frey stated he understands the need for the plants but they are native to prairies and forests and not in urban settings. Ms. Schreur stated that there are organizations like Omaha by Design that encourage people to be more sustainable and have actual prairie in their yards because it is more “green”, uses less water and is much more natural. She stated her garden is very modified, weeded, maintained and controlled. In response to Mr. Labode, Ms. Schreur stated that the garden is mixed in with the prairie plants.

Mr. Lyle Chase appeared before the board. Mr. Chase stated he worked for 30 years at the Council Bluffs Parks and Recreation Department. He indicated that Ms. Schreur lives in Benson where you can barely drive down the alleys. He stated he believes one neighbor is the complainer and has harassed Ms. Schreur. Ms. Schreur has also received a death threat. He stated he believes there is nothing in the regulations against Ms. Schreur’s yard.
In response to Ms. O’Connor, Mr. Frey suggested that the Goldenrod be reduced by 50% because it creates a visual hazard from Lake Street and from the alley. The complainant was anonymous and complained because they thought the property was vacant.

In response to Mr. Levy, Mr. Frey confirmed that after an inspection the complaint was warranted.

Motion to lay over for 30 days until the next meeting on August 29, 2011 to allow applicant time to submit a current site plan of the yard and a proposed site plan of the proposed project by Mr. Levy. Second by Mr. Labode.

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

Motion carried 5-0

III. Approval of Minutes from May 23, 2011 and June 27, 2011

Motion to approve the minutes from the May 23, 2011 meeting by Mr. Lopez. Second by Ms. O’Connor.

AYES: Lopez, O’Connor

Motion carried 2-0.

Motion to approve the minutes from the June 27, 2011 meeting by Mr. Weaver. Second by Mr. Levy.

AYES: Lopez, Labode, Levy, Weaver

ABSTAIN: O’Connor

Motion carried 4-0.

IV. Adjournment

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

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

Motion carried 5-0. Meeting adjourned at 2:35 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