

**Minutes**  
**Administrative Board of Appeals**  
**June 27, 2011**

MEMBERS PRESENT: David Levy, Vice Chair  
Jim Weaver  
Jose Lopez  
Bode Labode  
Jama Samiev, Alternate

MEMBERS ABSENT: Ann O'Connor, Chair  
Steve Simmonds, Alternate

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

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**I. Roll Call**

Mr. Levy 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.

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

**II. Cases**

**11-6-034**

Appeal Omaha Police Department denial of Peddler Permit: Francine Flegg, 12016 William Plaza #315 68144

Sgt. Dave Volenec, Omaha Police Department, stated the denial of the peddler permit application was based on two issues. First, a forgery report from Tacoma, Washington from June 1980 was found when a criminal background check was conducted and indicates an active felony warrant for larceny still exists. Secondly, a local case from 1978 shows that Ms. Flegg was convicted for unlawful use of a credit card, a Class IV Felony. Ms. Flegg was convicted and received 2 years probation and 60 days in jail.

Francine Flegg appeared before the board. Ms. Flegg stated she was not aware that a warrant existed in Washington State until she applied for the permit. She indicated she has worked for ADT for 12 years and now needs the peddler permit because she supervises and trains the door-knocking department. She stated she would be working with a local public defender to take care of the warrant from Washington State.

Mr. Weaver asked Ms. Flegg if the accuracy of the 1980 felony from Omaha was correct. She answered she was not aware she was a convicted felon but in 1978, when she was a kid, she used her mother's credit card.

In response to Mr. Weaver, Sgt. Volenec stated there are no other criminal charges against Ms. Flegg.

Mr. Weaver made a motion to layover for 60 days to allow time to hear back from the Washington State court regarding a disposition. Motion failed for lack of a second.

Rosemarie Horvath, City of Omaha, Legal Department, asked Ms. Flegg the status of the warrant from Washington State. Ms. Flegg stated she has received the record from Washington and will be meeting with the public defender.

Mr. Levy indicated that if the Washington State warrant were not an issue, there would still be the 1978 conviction to consider.

Sgt. Volenec stated the warrant from Washington State is still active in Washington and the surrounding states.

Ms. Horvath stated the peddler permit ordinance reads: "Upon receipt of application for door to door sales, the application shall be referred to the police department who will investigate the statements contained on the application to determine if they are true and correct. If after the police investigation, it is found that statements are material untrue or incorrect or if it is found that an applicant has been convicted in the past ten years of a felony or violation of any municipal ordinance or state law, the police department shall indicate that on the application and can deny it."

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

AYES: Weaver, Lopez, Labode, Samiev, Levy

Motion carried 5-0. Appeal granted.

**11-6-037**

Appeal Omaha Police Department revocation of Taxicab Permit: Shawwna Hilmer, 116 South 38<sup>th</sup> Street #22 68131

Sgt. Dave Volenec, Omaha Police Department, stated the revocation of the taxicab permit was based on a Class IV felony conviction from 2003. The original taxicab permit was issued because the officer who ran the background check neglected to locate a previous felony conviction dated December 2003 regarding a forgery. Ms. Hilmer was found guilty of a Class IV felony and served 14 months in jail with one-year probation.

Shawwna Hilmer appeared before the board. Ms. Hilmer stated that when she applied for the taxicab permit she informed the officer that she had a felony conviction that was eight years old. She stated the officer said that the statute of limitations was seven years and approved the application. She stated she has been driving a taxi since April 2011.

Rosemarie Horvath, City of Omaha, Legal Department, stated that the ordinance reads: "A denial of a permit shall be based upon prior felony conviction shall be directly or reasonably related to the occupation of taxicab driver."

Mr. Levy asked Ms. Hilmer to describe the circumstances of the forgery offense. Ms. Hilmer stated that she forged one of her grandmother's checks for \$750.00 when she was 19 or 20 years old.

Ms. Horvath verified that there is no timeline for a taxicab permit.

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

AYES: Lopez, Labode, Samiev

NAYS: Weaver, Levy

Motion carried 3-2. Appeal granted.

**10-12-101** (over from 12/27/10, 1/31/11, 3/28/11, 5/23/11)

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

Rafiu Braimah did not appear before the board.

Kevin Denker, Chief Housing Inspector, indicated that Mr. Braimah is working on receiving a certificate of occupancy and has several inspections scheduled. Mr. Denker suggested laying the case over until the August 29<sup>th</sup> meeting.

Motion to lay this case over until the August 29, 2011 meeting by Mr. Weaver. Seconded by Mr. Samiev.

AYES: Labode, Samiev, Weaver, Lopez, Levy

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

**11-5-024** (over from 5/23/11)

Appeal Omaha Police Department notice of nuisance: Jimmy Kisner, 8029 Manderson Circle 68134

Jimmy Kisner did not appear before the board.

Kevin Denker, Chief Housing Inspector, indicated that it was determined that there is not enough room in the driveway to park an R.V. Mr. Denker indicated that Mr. Kisner is aware that he will need to park the R.V. elsewhere.

Officer James Stokes, Omaha Police Department stated there are other inoperable vehicles on the property.

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

AYES: Samiev, Weaver, Lopez, Labode, Levy

Motion carried 5-0. Appeal denied.

**11-6-028**

Appeal Omaha Police Department notice of nuisance: Marilyn Walton, 5216 North 126<sup>th</sup> Street 68164

Marilyn Walton did not appear before the board.

Officer James Stokes, Omaha Police Department, recommended to the board to deny the appeal because of a dangerous situation with the way the cutaway camper, which is too long, is parked with blocks under jacks on the sloped driveway. Also, when the camper is parked in the driveway, another vehicle is parked on the sidewalk.

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

AYES: Weaver, Lopez, Labode, Samiev, Levy

Motion carried 5-0. Appeal denied.

**11-6-029**

Appeal Omaha Police Department notice of nuisance: Ken York, 5522 South 123<sup>rd</sup> Street 68127

Ken York did not appear before the board.

Officer Casey Shannon, Omaha Police Department, stated several vehicles have been taken care of and it looks like a fence is being built.

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

AYES: Lopez, Labode, Samiev, Weaver, Levy

Motion carried 5-0. Appeal denied.

**11-6-030**

Appeal Omaha Police Department notice of nuisance: Jeremiah L. McKeeman, 5710 South 96<sup>th</sup> Court 68127

Jeremiah McKeeman appeared before the board.

Officer Casey Shannon, Omaha Police Department, stated a complaint was received regarding a vehicle that was not registered in Nebraska.

Mr. McKeeman stated he does not have the money to pay for the license plates and presently does not have a driver's license and is unemployed. He stated he is presently helping his mother move because of the flood. He confirmed that the vehicle is operable, registered and insured. The vehicle is currently registered in Iowa but he has lived in Nebraska for approximately eight months.

Mr. Weaver questioned why Mr. McKeeman did not have a valid driver's license. Mr. McKeeman answered that he had an accident with no insurance.

Wanda McKeeman, mother, requested that her son have an additional two weeks. She stated she is trying to help her son get the money to make it right by plating the vehicle in Nebraska.

Mr. Samiev made a motion to deny the appeal with 30 days to comply. Second by Mr. Labode.

AYES: Labode, Samiev, Lopez, Levy

NAYS: Weaver

Motion carried 4-1. Appeal denied with 30 days to comply.

**11-6-031**

Appeal Omaha Police Department notice of nuisance: James A. Morris, 9218 Redman Avenue 68134

James A. Morris did not appear before the board.

Kevin Denker, Chief Housing Inspector, indicated that information was received from Mr. Morris that the vehicle has been removed from the property.

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

AYES: Samiev, Weaver, Lopez, Labode, Levy

Motion carried 5-0. Appeal denied.

**11-6-032**

Appeal Omaha Police Department notice of nuisance: Monte R. Caster, 2532 North 62<sup>nd</sup> Street 68104

Monte R. Caster, appeared before the board.

Officer James Stokes, Omaha Police Department, stated he has received numerous complaints concerning the property with unlicensed trailers, inoperable and unlicensed vehicles and vehicle parts lying on the ground.

Mr. Caster requested an additional two weeks or 30 days to license the trailers/vehicles.

Mr. Samiev made a motion to deny the appeal with 30 days to comply. Second by Mr. Labode.

AYES: Weaver, Lopez, Labode, Samiev, Levy

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

**11-6-035**

Appeal Potentially Dangerous Dog designation issued by the Nebraska Humane Society: Charles Peck, 14623 Jefferson Street 68137

Charles Peck appeared before the board.

Mark Langan, Nebraska Humane Society, stated the definition of a Potentially Dangerous Dog under Omaha City Ordinance 6-149 (Exhibit 6) states the following: A potentially dangerous animal is defined as one who meets one or more of the following conditions: "1) Any animal that when unprovoked: (a) inflicts an injury on a human being that does not require medical treatment, (b) injures a domestic animal, or (c) chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack; or 2) Any specific animal with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals." If a Potentially Dangerous Dog declaration is issued the owner must do the following: "1) The dog must be spay/neutered and micro-chipped within 30 days at the owner's expense; 2) A Potentially Dangerous dog license must be purchased from the Nebraska Humane Society; 3) Proof of a \$100,000 public liability insurance policy must be shown to the Nebraska Humane Society; 4) The dog owner must attend a responsible pet ownership class and dog behavior class (at NHS's discretion) within 90 days; and 5) When the dog leaves the owner's property it must be harnessed, muzzled, under the control of a person 19 or older, and on a leash no longer than 6 feet long."

Mr. Langan stated that on May 5, 2011, a call was received from the Omaha Police that they were also enroute to the area of 146<sup>th</sup> and Jefferson Street in regard to two dogs chasing kids in the area. The animal control officer reported that two dogs were running in the area. A German Shepard ran full speed toward the animal control officer who stated he felt he would have been bitten if not for the metal catchpole. An OPD police officer responded in the area and the same German Shepard came toward the officer, barking and snarling therefore forcing the officer to draw his weapon and coming close to shooting the dog. The animal control officer was able to get both dogs in a back yard at 14623 Jefferson Street and then impounded both dogs. Contact was later made with Charles Peck and numerous citations were issued regarding the incident. The Potentially Dangerous Dog Declaration was issued on the most aggressive dog, Mika, the German Shepard.

Mr. Peck stated that on May 5, 2011 an event took place involving Mika, a dog that belongs to his son. He stated that Mika was staying at his home temporarily. As a result of this event, a label of Potentially Dangerous Dog has been applied to Mika. He stated the label was not given when the animal control officer met with him initially and later at 9:30 p.m. During the conversation, the animal

control officer explained how the dog acted and kept asking questions. The animal control officer made notes and kept tapping his pencil and said Mika had growled at him and he felt that he needed to hit the dog on the head at two different times and that the OPD officer had to pull his gun on the dog because the dog was acting in a vicious manner. I started to say, "This dog did not... This dog has never acted in an aggressive manner." The animal control officer said, "So, you condone this behavior. I am going to write a Dangerous Dog citation." I feel the officer wrote the citation because of me and that he felt I condoned and promoted the behavior. Mika has at no time acted or shown an inclination to act in this manner. Mika was running away from the house as if someone or something had scared her. The animal control officer said that he had to get out of his vehicle and yell loudly at the dog to get her attention. Mika lives in Lincoln with his son, is licensed in Lincoln and has a veterinarian in Lincoln. Mika is treated as a housedog and has been in the house the majority of the time. Somehow Mika got out of the yard and was in unfamiliar territory. I believe that the officer's actions added to the confusion and put Mika in a defensive mode. Mika did bark and did growl but did not bite. Mika has been around strangers and has been in unfamiliar territory with no behavioral issues. Mr. Peck submitted several letters from individuals and professionals including the Nebraska Animal Medical Center and Dr. Burbach who can attest to Mika's demeanor and behavior (Exhibits 2-5). An independent evaluation was completed by Dr. Burbach at the Ralston Veterinary Clinic and indicated that Mika was a healthy animal with no signs of aggressive behavior. Because the animal control officer confronted Mika vigorously, Mika felt she was in some sort of danger and tried to communicate to the animal control officer her discomfort. The animal control officer misinterpreted Mika's communication and reinforced her discomfort when he hit her on the face and muzzle with his pole. This miscommunication has resulted in Mika being mislabeled as a Potentially Dangerous Dog. Mr. Peck requested that the board grant the appeal based on the amount of positive input from doctors, professionals and individuals attesting to Mika's mild behavior.

Mr. Samiev questioned if Mika's shots are up to date. Mr. Peck stated Mika was not wearing her tags at the time of the incident but Mika is up to date on her license and all her tags are out of Lincoln.

Mr. Weaver asked Mr. Peck if he said that the dog would never enter the city limits of Omaha again. Mr. Peck verified that he agreed that Mika would live with his son if she is declared a Potentially Dangerous Dog.

In response to Mr. Levy, Mr. Langan stated that no kids were ever located to talk to regarding the incident. Mr. Langan pointed out that the arrangement made by the appeals board of the Nebraska Humane Society was that if the hearing was lost, the dog would stay in Lincoln and not come back into the city limits of Omaha, but if they chose to bring the dog to Omaha they would have to immediately abide by all the Potentially Dangerous Dog conditions that were previously outlined. The Dangerous Dog ordinance does not necessarily deal with dogs that bite. It is the position of the Humane Society that the dog is dangerous if it has the potential to bite by its actions and is a danger to the citizens of Omaha. The Lincoln animal control authorities were also notified.

Mr. Labode asked Mr. Langan to explain why the animal control officer said, "The dog almost bit me." Mr. Langan stated the animal control officer is of the opinion that the dog would have bit if aggressive action were not taken.

Mr. Samiev questioned if the dog was possibly aggravated by the kids previously and was in a defensive mode. Mr. Langan stated the declaration was based on two witnesses based on the dog's actions. Mr. Samiev indicated he is not comfortable with denying the appeal because the kids were never located and Mika is six years old and has never bit and did not bite during this situation.

Mr. Weaver had concern because there were other complaints in the past regarding dogs barking and too many dogs. Mr. Peck answered that the complaints happened when his children were visiting with their dogs.

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

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

AYES: Lopez, Labode, Weaver

NAYS: Samiev, Levy

Motion carried 3-2. Appeal denied.

**11-6-033**

Appeal denial of renewal for 1<sup>st</sup> Class Arborist License: Todd C. Babbell, 32612 Havelock Avenue, Elmwood, NE 68349

Todd C. Babbell appeared before the board.

Josh Frey, Chief Field Inspector, City of Omaha Code Enforcement stated that under Section 37, Item 36 states that, "If any license is not renewed within 90 days of the expiration, the holder will be required to file a new application and take a new examination." The city cashier sent Mr. Babbell an invoice on November 30, 2010 with a due date of December 31, 2010 (Exhibit 2), which is the expiration of the 2010 license. There is a 90-day grace period to accept renewals but the renewal payment was not received until April 27, 2011. It is noted that there have been no complaints against Mr. Babbell since his license was issued in 1999 but there are no exceptions for the 90-day rule unless the board approves the appeal.

Mr. Babbell stated he was late because he had moved from Omaha to the City of Elmwood. He stated he forwarded the mail through the post office but some mail was not being forwarded properly. He indicated he was not aware of the 90-day grace period. He stated he has been doing tree work in Omaha since the early 90's without any accidents, problems or complaints.

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

AYES: Labode, Samiev, Weaver, Lopez, Levy

Motion carried 5-0. Appeal granted.

**11-6-036**

Appeal denial of building permit BLD-11-01468 for the construction of a parking lot at 5414 South 36<sup>th</sup> Street; Scott L. Taylor, Trasco LLC, 820 Key Circle, Carter Lake, IA 51510

Scott L. Taylor appeared before the board.

Christ Faulk and Mike Paukert, Public Works Department, City of Omaha, appeared before the board. Mr. Faulk stated the key issue of the proposed parking lot is that the construction of a driveway entrance on 36<sup>th</sup> Street does not meet the requirements set forth by the City of Omaha guidelines and regulations for driveway application design and construction. The regulation states that the minimum driveway corner clearance required on an undivided major street from a stop sign controlled intersection is 115'. 36<sup>th</sup> Street is considered a minor arterial and also considered a major street with respect to the driveway guide. The site plan with the building permit showed the proposed driveway as having only a corner clearance of 35' from the stop sign controlled intersection of "T" Street. Also, there is only a total clearance of 90' from the south side of the existing building therefore there is insufficient clearance to construct the driveway with the building permit.

Mr. Taylor indicated that the lot is only 119' wide as are the majority of the lots in the area. The building was built in 1912 and sits right on the alley and cannot be moved. Due to the topographic nature of the lot, it would be cost prohibitive to have a driveway from "T" Street as recommended by Mr. Faulk. The best option would be to eliminate 10 parking spaces and add the approach on 36<sup>th</sup> Street.

Mr. Paukert stated the two nearest intersections were investigated regarding accident history and from a safety perspective, there is no concern that a driveway on 36<sup>th</sup> Street would be a safety hazard.

Mr. Faulk stated the proposed site is basically flat and would only require a minimum amount of grading if the entrance was on 36<sup>th</sup> Street. The subject lot is too narrow to meet the regulations but the city would be in favor of allowing a 10' radius and a driveway entrance to be a minimum of 42' from "T" Street.

Mr. Labode made a motion to grant the appeal subject to the driveway entrance on 36<sup>th</sup> Street to be a minimum of 42' from "T" Street. Second by Mr. Samiev.

AYES: Samiev, Weaver, Lopez, Labode, Levy

Motion carried 5-0. Appeal granted.

### **III. Adjournment**

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

AYES: Lopez, Labode, Samiev, Weaver, Levy

Motion carried 5-0. Meeting adjourned at 2:50 PM.

Debbie Hightower, Planning Department  
Recording Secretary

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<http://co.douglas.ne.us/omaha/planning/boards/administrative-board-of-appeals>