Minutes
Administrative Board of Appeals
October 31, 2011

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

MEMBERS ABSENT: Steve Simmonds, Alternate
Jama Samiev, Alternate

OTHERS PRESENT: RoseMarie Lee, 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

11-10-056
Appeal Omaha Police Department denial of firearm registration: Richard E. Smolnik, 8206 Elm Drive #4 68128

Richard E. Smolnik appeared before the board.

Sgt. Dave Volenec, Omaha Police Department, stated the denial of the firearm registration was based on two separate incidences. The first incident was an overdose on August 16, 2007. The Douglas County Sheriff reported the second incident as a suicide attempt that occurred on September 5, 2008 over a disagreement with a girlfriend. At that time Mr. Smolnik had consumed a large amount of alcohol and was unresponsive.

Mr. Smolnik stated he would like to have the right to register his gun even though he lives in Sarpy County. Mr. Smolnik referred to a note from a psychiatrist and stated that he has not had a drink in three years. He stated the VA considers him to be an 80% service connected veteran.

Mr. Levy questioned the meaning of “MHC not oked by Dr. Fernandes” on a submitted document. Mr. Smolnik confirmed the comment was from a VA doctor.

Mr. Levy made a motion to approve.

Motion died for lack of a second.

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

AYES: Levy, Weaver, Lopez, Labode

NAYES: O’Connor

Motion carried 4-1. Appeal denied.
 appeals

11-10-057
Appeal Omaha Police Department denial of firearm registration: Joel E. Bisgard, 7618 Mary Street 68122

Joel E. Bisgard appeared before the board.

Sgt. Dave Volenec, Omaha Police Department, stated the denial of the firearm registration was based on two separate incidences. In May 1993, Mr. Bisgard overdosed on a large amount of Tylenol. In July 1995, a report indicates that Mr. Bisgard attempted suicide and again took a large number of pills because he was having problems with a girlfriend.

Mr. Bisgard admitted that he was going through relationship issues and did something stupid. He stated he has seen a counselor over the past several years and has learned how to manage his anger. He stated he has no felonies or violent crimes.

In response to Mr. Labode, Mr. Bisgard stated the drugs that were abused were legal prescription drugs.

Mr. Weaver asked if Mr. Bisgard had any other criminal history. Sgt. Volenec stated that Mr. Bisgard has had other misdemeanors on his record, traffic and false information, but they would not preclude him from registering a firearm.

Mr. Levy made a motion to approve. Seconded by Mr. Weaver.

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

Motion carried 5-0. Appeal granted.

11-10-058
Appeal Omaha Police Department denial of firearm registration: Joseph L. Wachter, 4522 Redick Avenue 68152

Joseph L. Wachter appeared before the board.

Sgt. Dave Volenec, Omaha Police Department, stated the denial of the firearm registration was based on an overdose incident in March 1994 when Mr. Wachter took a large amount of Extra Strength Tylenol.

Mr. Wachter stated he would like to own a firearm for safety in his home. Mr. Wachter stated he was 17 years old and the amount of Tylenol pills taken were a concern to the family. He stated he saw a therapist a couple of times.

In response to Mr. Labode, Mr. Wachter stated there has been no reoccurrence.

Sgt. Volenec verified that there have been no other criminal charges.

Mr. Weaver made a motion to approve. Seconded by Mr. Labode.

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

Motion carried 5-0. Appeal granted.

11-10-059
Appeal Omaha Police Department denial of firearm registration: Letheal L. Cook, 5912 Camden Avenue 68104

Letheal Cook and Eric Chandler, 319 South 17th Street, attorney, appeared before the board.
Sgt. Dave Volenec, Omaha Police Department, stated the denial of the firearm registration was based on an incidence that occurred on June 3, 2011 in which Mr. Cook was arrested for carrying a concealed weapon. The reports indicate that officers stopped Mr. Cook in a vehicle that he was driving and during the course of contact, Mr. Cook told the officers that he had a gun. The firearm was found under the front seat and Mr. Cook was arrested and fined $50.00 on August 23, 2011.

Mr. Chandler stated Mr. Cook was not convicted of a CCW but was convicted of Failure to Notify Law Enforcement. Mr. Chandler indicated that Mr. Cook already possessed a CCW license when he was arrested which makes it impossible to be convicted of a CCW.

Sgt. Volenec stated that the revocation was based on the information from the records indicating that on June 3, 2011, a Class 3 Misdemeanor-Concealed Weapon, and disposition shows conviction for CCW and a fine of $50.00.

Mr. Chandler submitted a print out (Exhibit 2) from the justice system obtained earlier in the day. He stated that a CCW is actually a Class 1 Misdemeanor and Mr. Cook was convicted of “Failure to Notify Law Enforcement” which is not even a criminal offense and is not in the municipal code but is actually a State Statute under the CCW law. The Carry Conceal permit regulations in the Statutes, Section 69-2440, states, “Whenever a permit holder who is carrying a concealed handgun is contacted by a peace officer, the permit holder shall immediately inform the peace officer or emergency services personnel that the permit holder is carrying a concealed handgun.” That is what Mr. Cook was found guilty of and fortunately he was nice enough not to try to pursue anything against the City. Also, in the statute, Section B(i) says, “When a peace officer has determined that the permit holder is not a threat to the safety of any person present, they shall return the permit and the handgun to the individual.” Instead Mr. Cook was arrested and booked on charges for a CCW and the City of Omaha still has the CCW permit. Under the municipal code for registration and revocation, Mr. Cook does not meet any of the provisions in Section 20-253 of the Omaha Municipal Code, which would keep him from registering his firearm. He has never been convicted of a felony, never been convicted of CCW or minor in possession of a concealable firearm, no convictions for assault, child abuse or any other municipal codes. Mr. Cook is a professional basketball player who travels overseas to play basketball. Mr. Chandler requested that the board grant the appeal.

Mr. Levy questioned the conflict in the records and asked why Mr. Cook did not notify law enforcement that the gun was under the seat. Mr. Chandler explained that Mr. Cook was set for trial but was scheduled to leave the country to play basketball therefore Mr. Cook plead no contest. The compromise was that Mr. Cook did not tell the law enforcement officers that he had a gun “fast enough”.

Mr. Levy questioned Sgt. Volenec about the conflict in the records. Sgt. Volenec stated the information he presented is based on the information provided to the data entry personnel. Mr. Chandler stated that in defense of the data entry personnel at OPD, the entry is fairly new and Section 69 is not criminal in nature.

In response to Mr. Labode, Mr. Chandler verified that Mr. Cook has a CCW permit in his name but he is not in possession of the actual CCW permit.

Mr. Weaver made a motion to approve. Seconded by Mr. Levy.

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

Motion carried 5-0. Appeal granted.

11-10-061
Appeal Omaha Police Department denial of firearm registration: Lori Preuss, 10834 Cottonwood Lane #5 68164

Lori Preuss Taylor did not appear before the board.

Mr. Denker stated that the case has been determined and was dismissed.
11-10-060
Appeal Omaha Police Department denial of a Peddler Permit: Joseph Alexander Bye, 7211 150th Lane, Ramsey, MN 55303

Mr. Denker stated that the appeal is withdrawn at the request of the applicant.

11-10-067
Appeal Omaha Police Department denial of Taxicab Driver’s Permit: Steve Wilder, 3709 North 44 Avenue 68111

Steve Wilder appeared before the board.

Sgt. Dave Volenec, Omaha Police Department, stated the denial of the taxicab driver’s permit was based on several convictions. The first conviction for robbery in July 1974 indicates a jail sentence. The second conviction for a CCW charge in October 1974 resulted in a fine. Also, in March 1985, Mr. Wilder received a 90-day jail sentence for illegal transportation and possession of a firearm.

Mr. Wilder apologized for his actions that happened 38 years ago and would like a chance to prove himself to society. He stated he has changed his life around, stopped drinking in 1992, is an active member of AA and a deacon in his church. Mr. Wilder stated he possessed a taxicab driver’s permit 16 years ago.

Mr. Labode made a motion to approve. Seconded by Mr. Levy.

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

Motion carried 5-0. Appeal granted.

11-10-070
Appeal Omaha Police Department notice of nuisance at 4228 Larimore Avenue: Mike Dunn, 4228 Larimore Avenue 68111

Mike Dunn did not appear before the board.

Officer Deb Prososki, Omaha Police Department, stated the Notice of Nuisance was issued on August 10, 2011 for five different trailers, jet skis, trailers, boats, etc. She stated that she returned on August 31, 2011 and ordered the tow. She stated the tow truck driver hooked up to the jet ski and the boat. She stated she allowed more time on the other vehicles.

In response to Mr. Levy, Officer Prososki stated the other vehicles were removed the same day. She stated she has not been back to verify if the vehicles are still there but she has not had any other complaints.

Mr. Levy made a motion to deny the appeal. Seconded by Mr. Weaver.

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

Motion carried 5-0. Appeal denied.

11-10-064
Appeal Omaha Police Department notice of nuisance near 16910 Frances Street: Kyle E. Nordquist, 310 West Maple, Beresford, SD 57004

Kyle E. Nordquist appeared before the board. Mr. Nordquist stated he started commuting from South Dakota when he stated a new job in March 2011. He stated he is currently staying with an uncle during the week and returns to his residence in South Dakota on the weekends.
Officer Casey Shannon, Omaha Police Department, stated that according to City ordinance the applicant has 30 days to be in the City of Omaha before obtaining Nebraska license plates.

Mr. Norquist replied that the ordinance states, “30 consecutive days.” He stated he is still trying to decide whether he will be staying in Omaha for good.

Mr. Levy made a motion to deny the appeal with 60 days to comply. Seconded by Mr. Lopez.

AYES: Levy, Weaver, Lopez, Labode

NAYES: O'Connor

Motion carried 4-1. Appeal denied with 60 days to comply.

11-10-063
Appeal Omaha Police Department notice of nuisance at 5420 North 117th Court: Cedric S. Gibb, 5420 North 117th Court 68164

Cedric S. Gibb did not appear before the board.

Mr. Denker stated that Mr. Gibb recently called to confirm that he has renewed the license plates. Officer James Stokes confirmed that information.

No action taken.

11-10-065
Appeal Omaha Police Department notice of nuisance at 4223 North 127th Court: Patrick M. O'Malley, 4223 North 127th Court 68164

Patrick M. O'Malley did not appear before the board.

Officer James Stokes, Omaha Police Department, stated the Notice of Nuisance was the result of a Mayor’s Complaint and was issued to several vehicles in an apartment complex. Officer Stokes stated the vehicle in question was listed as not having Nebraska license plates for approximately six months. He stated that he has been through the apartment complex and the vehicle is no longer parked in the complex.

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

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

Motion carried 5-0. Appeal denied.

11-10-066
Appeal Omaha Police Department notice of nuisance at 1326 Turner Boulevard: Frank J. Rizzuto, 1326 Turner Boulevard 68105

Frank J. Rizzuto appeared before the board.

Officer William Shaw, Omaha Police Department, stated that a Mayor’s Complaint was received regarding a camper shell being stored on blocks. According to City code the camper needs to be attached to a vehicle.

Mr. Rizzuto submitted proof of registration and indicated that he thought he was in compliance. The camper is parked on a concrete slab, the stand is manufacturer approved and the blocks are for extra support. He stated that he intends on selling the camper next summer.
Mr. Denker stated that if a camper is being stored on a residential lot then the camper must be on a vehicle or stored elsewhere.

Mr. Labode made a motion to deny the appeal. Motion died for lack of a second.

Mr. Levy made a motion to deny the appeal with 60 days to comply. Seconded by Mr. Lopez.

AYES: Labode, Levy, Lopez, O'Connor

NAYES: Weaver

Motion carried 4-1. Appeal denied with 60 days to comply.

11-10-069
Appeal Omaha Police Department notice of nuisance at 5126 South 45th Street: Greg M. Waszgis, 5126 South 45th Street 68117

Greg M. Waszgis appeared before the board.

Officer William Shaw, Omaha Police Department, stated a Mayor’s Complaint was received regarding a vehicle that has been parked at 5126 South 45th Street for several months with out-of-county plates.

Mr. Waszgis stated he owns property and resides in Saunders County (Ashland). The vehicle is licensed in the State of Nebraska but not Douglas County. He stated he owns 5126 South 45th Street and has been staying in Omaha because his wife has been sick and he has been active in planning a daughter’s wedding. He indicated that he does not stay overnight in Omaha very often unless he has an early morning appointment.

Mr. Levy pointed out that Mr. Waszgis would need a wheel tax sticker if he resides in Saunders County and works in Douglas County. Mr. Waszgis stated that he purchased the property in Saunders County approximately two years ago.

Mr. Weaver made a motion to layover until the November 28, 2011 meeting to allow the applicant time to obtain a wheel tax sticker. Seconded by Mr. Labode.

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

Motion carried 5-0. Laid over until the November 28, 2011 meeting to allow the applicant time to obtain a wheel tax sticker.

11-10-062
Appeal Omaha Police Department notice of nuisance at 5935 South 115 Street: Dwight R. Zahnow, 5935 South 115 Street 68137

Dwight and Adrian Zahnow appeared before the board.

Todd Shearer, Code Enforcement, City of Omaha stated the property is located within the three-mile extra-territorial jurisdiction of the City of Omaha. Mr. Shearer stated the camper is currently in compliance (see photos, Exhibit 2) but the camper could be towed if it is parked in the driveway again.

Ms. Zahnow stated the camper was parked on property owned in Tekamah, Nebraska but has been displaced due to the flood. It was difficult to find adequate storage for the camper because of the availability due to the flood. She stated the storage facility is only open Monday thru Friday from 8:00 a.m. to 5:00 p.m. She stated the camper has sat in the driveway for several days in order to do the necessary cleaning, loading and unloading.
Mr. Denker stated that under Section 55-742 (Parking of Personal Vehicles on a Residential Lot) an exception states, "... Temporary parking of personal vehicles on a driveway within the front yard setback is permitted for loading and unloading purposes. Such temporary parking shall not exceed 24 hours during individual week."

Mr. Weaver made a motion to deny. Motion died for lack of a second.

Mr. Levy made a motion to deny the appeal with 210 days to comply until June 1, 2012 subject to leaving the camper in storage. Seconded by Mr. Labode.

AYES: Lopez, Labode, Levy, O'Connor

NAYES: Weaver

Motion carried 4-1. Appeal denied with 210 days to comply until June 1, 2012 subject to leaving the camper in storage.

11-10-068
Appeal City of Omaha Public Works denial of a proposed driveway location at the southeast corner of 144th and "Q" Streets: Katie Underwood, Olsson Associates, 2111 South 67th Street, Suite 200 68106, on behalf of Kum & Go, L.C.

Katie Underwood, Olsson Associates, 2111 South 67th Street and Joshua House, Kum & Go appeared before the board.

Ryan Haas, Public Works, City of Omaha, stated the proposed plan was received for a Kum & Go with two proposed driveways. The driveway along "Q" Street meets the guidelines and regulations for driveway location but the driveway on 144th Street along the west side of the development does not meet the minimum required buffer distance between the driveway and the adjacent signalized intersection of 144th and "Q" Street. The accident history was investigated and the current accident level is right at the threshold of what is acceptable. There is a significant amount of traffic carried by 144th and "Q" Street and for that reason any driveway near an intersection will have upstream and downstream influence on traffic creating conflicts with vehicles slowing down, turning or weaving. For a number of reasons, the risk for accidents will increase with the proposed driveway. The driveway is existing but the current use is an office use but the proposed use, as a convenience store, will generate a significant increase in traffic.

Mr. House stated the corner would be redeveloped for a new convenience store. He stated that one reason the site was chosen was because of the existing access point along 144th Street and without the existing access point the project would be infeasible. Mr. House pointed out that he would be willing to work with the City to come up with a reasonable solution and possibly move the 144th Street driveway further to the south. Mr. House offered to answer any questions.

Mr. Levy questioned if there is a setback requirement that would not allow the driveway to be moved all the way to the southern property line. Mr. Haas answered that the requirement for commercial driveways states that the end of the radius has to be within the extended property line.

Mr. House suggested that Kum & Go design and install a decel lane along 144th Street to allow traffic that is heading north to slow down and merge before turning onto the site. Mr. Haas agreed to evaluate the possibility of a decel lane. Ms. Underwood pointed out that the decel lane would have to be on the property to the south because the right-of-way has not been dedicated.

Mr. Labode made a motion to layover for 60 days. Motion died for lack of a second.

Mr. Levy made a motion to grant the appeal by waiving: 1) the requirement that the radii of a commercial driveway shall not begin closer than the property line extended; and 2) the minimum required clearance between a commercial driveway and an adjacent signalized intersection (230'). Seconded by Mr. Weaver.

AYES: Lopez, Levy, Weaver, O'Connor
NAYES: Labode

Motion carried 4-1. Appeal granted by waiving: 1) the requirement that the radii of a commercial driveway shall not begin closer than the property line extended; and 2) the minimum required clearance between a commercial driveway and an adjacent signalized intersection (230').

III. Approval of Minutes from September 26, 2011

Motion to approve the minutes from the September 26, 2011 meeting by Mr. Levy. Seconded by Mr. Lopez.

AYES: Levy, Lopez, O'Connor

Motion carried 3-0 with Mr. Weaver and Mr. Labode abstaining.

IV. Adjournment

Motion to adjourn meeting by Mr. Levy. Seconded by Ms. O'Connor.

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

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