

Minutes
Administrative Board of Appeals
April 30, 2012

MEMBERS PRESENT: Ann O'Connor, Chair
Jose Lopez
Jim Weaver
Bode Labode
Steve Simmonds, Alternate

MEMBERS ABSENT: David Levy, Vice Chair
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

12-3-018 (over from 3/26/12)

Appeal Omaha Police Department denial of firearm registration: Ronnie Hicks, 3123 Marcy 68105

At the Administrative Board of Appeals meeting held on April 30, 2012, Ronnie Hicks appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that on March 15, 2012 Mr. Hicks was denied a firearm registration because of his past criminal history. Sgt. Nordby explained that Mr. Hicks had a carrying a concealed weapon conviction on September 8, 2009. A knife was found in Mr. Hicks' property when he went to jail for a DUI. There was also a gun charge from 1988 and other traffic related offenses on his record.

Mr. Hicks stated that the reason for the appeal was so that he could register his gun.

In response to Mr. Weaver, Sgt. Nordby explained that the type of knife found in Mr. Hicks' possession was a buck knife. In response to Mr. Labode as to the identity of "Bucky" referred to in his appeal, Mr. Hicks explained that "Bucky" is his knife that he has owned for over 20 years.

Referring to the police report, Sgt. Nordby stated that when Mr. Hicks' property was being inventoried, a large fixed blade knife was found hidden in a 3-ring binder at the bottom of Mr. Hicks' bag. Mr. Hicks explained that the bag was his legal case where the knife accidentally ended up.

In response to Mr. Simmonds, Mr. Hicks stated that he was currently employed doing remodeling work.

Mr. Simmonds made a motion to grant the appeal. Seconded by Mr. Labode.

AYES: Labode, Simmonds

NAYES: Weaver, Lopez, O'Connor

Appeal denied 3-2.

12-4-024

Appeal Omaha Police Department denial of firearm registration: Murry E. Moore, 4518 Laurel Avenue 68104

At the Administrative Board of Appeals meeting held on April 30, 2012, Murry E. Moore appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Moore was denied a concealable firearm registration on March 15, 2012 because of the following offenses: possession of marijuana less than an ounce conviction on July 30, 2004; possession of marijuana less than an ounce conviction on April 9, 2006; discharging a firearm in the city conviction on February 24, 2009; possession of marijuana less than an ounce conviction on July 30, 2009; and transporting a firearm conviction on September 16, 2011.

Mr. Moore stated that the reason for his appeal was because he wanted to own a handgun for the protection of his family and also because he works for a security company overnight.

In response to Mr. Simmonds, Mr. Moore explained that the incident on September 16, 2011 occurred when officers searched his girlfriend's car and found a gun in the glove compartment. Mr. Moore stated that he was charged for the gun. Sgt. Nordby explained that the conviction was for carrying a loaded weapon within the city. He also referred to the city ordinance that states that you cannot carry a loaded weapon in the city in any conveyance. Sgt. Nordby further explained that Mr. Moore's girlfriend was in the car and that there were two guns in the car, one gun belonging to Mr. Moore and the other to his girlfriend.

In reference to the February 24, 2009 conviction for discharging a firearm in the city, Sgt. Nordby stated that there was an altercation between Mr. Moore and another gentleman. Sgt. Nordby further explained that Mr. Moore and the other person were both armed and that Mr. Moore fired a couple of rounds into the ground to scare off the other individual.

Mr. Weaver requested an explanation for the firearm discharge in February 2009. Mr. Moore replied that someone was trying to assault him with a firearm. He did not want to shoot the individual, so he fired into the ground. He further explained that he called the police to report the incident. Sgt. Nordby confirmed that the report of the incident supported Mr. Moore's explanation; however, he advised the board that, in Nebraska, a person has a duty to retreat and that Mr. Moore had an opportunity to leave the situation but instead stayed to fight.

In response to Mr. Weaver, Sgt. Nordby stated that the firearm used in the February 2009 incident was registered. Also in response to Mr. Weaver, Sgt. Nordby stated that Mr. Moore's previous gun registration had not been revoked; however, the outcome of Mr. Moore's appeal would determine if the previous registration would be revoked or not.

In response to Ms. O'Connor, Sgt. Nordby stated that Mr. Moore received a \$300 fine for his last marijuana possession charge. Also in response to Mr. Labode, Sgt. Nordby stated that Mr. Moore's last incident was the transportation of a firearm charge in 2011.

Mr. Weaver inquired about the policy of Mr. Moore's employer regarding carrying a weapon on the job. Mr. Moore responded that it is left up to the individual as to whether they want to carry a weapon or not, as long as it is properly registered and permitted. Also in response to Mr. Weaver, Mr. Moore stated that he did not have any documents from his employer to support that policy. He also explained that he would not be comfortable asking his employer for written authorization stating that he could carry a firearm.

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

AYES: Lopez, Labode, Simmonds, Weaver

NAYES: O'Connor

Appeal denied 4-1.

12-4-025

Appeal Omaha Police Department denial of firearm registration: Ray Eugene Jones, 2710 South 9th Street 68108

At the Administrative Board of Appeals meeting held on April 30, 2012, Ray Jones appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that on March 6, 2012, Mr. Jones was denied a firearm registration based on two convictions. One conviction was for possession of drug paraphernalia in July 2008 and the other conviction was for possession of marijuana.

Mr. Jones stated that the reason for his appeal was so that he could register the gun he purchased.

In response to Mr. Weaver, Sgt. Nordby stated that Mr. Jones had a larceny conviction in 2009 and other traffic related offenses. He added that prior to the registration refusal the police had not had any contact with Mr. Jones since April 2010. In response to Mr. Simmonds, Sgt. Nordby stated that in 2010, Mr. Jones was arrested on a warrant for the shoplifting/larceny charge and paid a fine.

Mr. Jones stated that he had registered another gun in December of 2011 with no problems. Sgt. Nordby explained that was about the time that the gun ordinance changed and that Mr. Jones was eligible to register the firearm until the new law was passed and put into place.

In response to Mr. Weaver, Sgt. Nordby responded that July 2008 was when Mr. Jones was charged with paraphernalia and marijuana less than an ounce.

Mr. Simmonds made a motion to deny the appeal. Seconded by Mr. Lopez.

AYES: Simmonds, Weaver, Lopez, O'Connor

NAYES: Labode

Appeal denied 4-1.

12-4-026

Appeal Omaha Police Department denial of firearm registration: Carlos A. Alvarez, 6827 South 73rd Avenue 68127

At the Administrative Board of Appeals meeting held on April 30, 2012, Carlos Alvarez appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that on March 20, 2012, Mr. Alvarez was denied a firearm registration based on a carrying a concealed weapon charge and conviction from 1992. Sgt. Nordby explained that Mr. Alvarez and another gentleman were having an altercation in a car when officers heard shots fired. When officers stopped the car, they found a firearm inside.

Mr. Alvarez responded that he did not know he was being charged with carrying a concealed weapon. He stated that his attorney had informed him that he would be fined for discharging a firearm in city limits. Mr. Alvarez explained that he has recently been trying to join the police department, and that the incident from 1992 was never brought up in his background investigation or interviews with the police. He further explained that around the time of the incident he had just gotten out of the marines and was still young and immature. Mr. Alvarez stated that reason he was registering another gun was because officers from the Ralston Police Department and the LaVista Police Department encouraged him to register any

firearms he had with the Omaha Police Department, since he had experienced a theft from his home of other firearms.

In response to Ms. O'Connor, Sgt. Nordby stated that there was nothing else on Mr. Alvarez's record.

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

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

Appeal granted 5-0.

12-4-027

Appeal Omaha Police Department denial of firearm registration: Michael Moten, 6055 Country Club Road 68152

At the Administrative Board of Appeals meeting held on April 30, 2012, Michael Moten appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that on March 19, 2012, Mr. Moten was denied a gun registration based on a marijuana conviction in June of 2002.

Mr. Moten explained that if he had known about the new gun law, he would not have purchased the firearm. He stated that he viewed the Police Department's website and found that the information regarding the new amendment was not readily available. Mr. Moten's request was that since he was so close to the expiration of the 10-year waiting period to register his handgun that his appeal might be granted.

In response to Mr. Weaver, Mr. Moten explained that he purchased the weapon and went to the Police Department to register the gun. Also in response to Mr. Weaver, Sgt. Nordby stated that prior to the 2002 offense, Mr. Moten failed to show up to court a few times and had some traffic offenses on his record.

Given the fact that Mr. Moten was so close to the 10-year date for registering his handgun, Mr. Simmonds made a motion to grant the appeal. Seconded by Mr. Weaver.

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

Appeal granted 5-0.

12-4-028

Appeal Omaha Police Department denial of firearm registration: Kareem A. Kelley, 3344 North 48th Avenue 68104

At the Administrative Board of Appeals meeting held on April 30, 2012, Kareem Kelley appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that on March 21, 2012 Mr. Kelley was denied a firearm registration based on a conviction in September 2006 for possession of marijuana less than an ounce and a second conviction for possession of drug paraphernalia in April 2007.

Mr. Kelley stated that the reason for his appeal was because he owns a barbershop and works long hours from early morning to late at night. He explained that he was not aware of the changes to the gun laws.

In response to Mr. Labode, Mr. Kelley stated that he did not remember the conviction from April 2007. Regarding that incident, Sgt. Nordby noted that officers were called to the report of an armed abduction and found Mr. Kelley along with the person he supposedly abducted. It was determined

that the person who called in the incident misinterpreted what they saw but during the investigation, the drug paraphernalia was found.

Sgt. Nordby suggested that if Mr. Kelley did not win the appeal, he would have the option of purchasing a shotgun or rifle for protection as long as he followed all the laws. Sgt. Nordby also informed Mr. Kelley that he had 30 days to transfer the gun to an individual who could register it.

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

AYES: Weaver, Labode

NAYES: Lopez, Simmonds, O'Connor

Appeal denied 3-2.

12-4-029

Appeal Omaha Police Department denial of firearm registration: Timothy Kucera, 1360 South 75th Street #7 68124

At the Administrative Board of Appeals meeting held on April 30, 2012, Timothy Kucera appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that on March 26, 2012, Mr. Kucera was denied a firearm registration because of a conviction in June 2005 for possession of marijuana less than an ounce.

Mr. Kucera stated that the reason for his appeal was because he is currently a law-abiding citizen. He explained that since 2005 he has turned his life around, has taken some handgun training classes and is now currently employed. Mr. Kucera submitted into evidence a letter explaining that he is a safe handgun handler, a hunter safety certificate, his resume and a letter of recommendation from his current employer (Exhibit 2). Mr. Kucera explained that he would be graduating the following week with his Bachelor's degree and would begin a new job with a trucking company.

In response to Mr. Weaver, Sgt. Nordby stated that Mr. Kucera was arrested for manufacturing marijuana in 2006; however, the charges were dismissed. Mr. Kucera explained that at that time he was living with his brother who was growing marijuana. Mr. Kucera pointed that he was charged, but the charges were dropped. Sgt. Nordby stated that Mr. Kucera has some traffic offenses in 2006 and 2008.

Mr. Kucera explained that his main reason for wanting to own a handgun is for target shooting.

In response to Mr. Labode, Sgt. Nordby clarified that Mr. Kucera would have to wait 10 years from his last arrest to register a handgun.

Mr. Simmonds commented that although the 10-year law is clear-cut, the board should not ignore the fact that they could use their discretion to accept or deny an appeal. Mr. Labode agreed, but noted that the board has used the law in several cases to deny appeals for handgun registrations. Mr. Weaver stated that, considering Mr. Kucera's age, seven years was a long time for not having any problems with law enforcement. He pointed to the evidence (Exhibit 2) that Mr. Kucera submitted to show that he had changed his life around, adding that those facts should be taken into consideration.

Mr. Simmonds made a motion to grant the appeal. Seconded by Mr. Weaver.

AYES: Simmonds, Weaver, O'Connor

NAYES: Lopez, Labode

Appeal granted 3-2.

12-4-030

Appeal Omaha Police Department denial of firearm registration: Todd J. Snyder, 6126 South 96th Court 68127

At the Administrative Board of Appeals meeting held on April 30, 2012, Todd Snyder appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that on April 7, 2012, Mr. Snyder was denied a gun registration based on a possession of drug paraphernalia conviction from September 2007. Sgt. Nordby added that there have been four traffic offenses on Mr. Snyder's record since that time.

Mr. Snyder stated that the reason he would like to own a firearm is for protection for his family.

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

In response to Mr. Simmonds, Mr. Snyder stated that he has been employed with a nursery for the last five years. Mr. Simmonds requested that Mr. Snyder describe the incident that resulted in his conviction for drug paraphernalia in September 2007. Mr. Snyder explained that he was driving westbound on Maple Street from 50th to 52nd Street. He was doing 10 miles over the speed limit and was stopped by the police who found the drug paraphernalia in his car. In response to Ms. O'Connor, Mr. Snyder stated that the police found a marijuana pipe.

Mr. Simmonds made a motion to deny the appeal. Seconded by Mr. Lopez.

AYES: Simmonds, Lopez,

NAYES: Labode, Weaver, O'Connor

Appeal denied 3-2.

12-4-031

Appeal Omaha Police Department denial of firearm registration: Colleen B. Dudley, 1908 Spencer Street 68110

At the Administrative Board of Appeals meeting held on April 30, 2012, Colleen Dudley appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that on April 6, 2012, Ms. Dudley was denied a gun registration based on a conviction for carrying a concealed weapon in October 1994. Sgt. Nordby added that there have been some traffic and larceny issues since that time.

Ms. Dudley stated that the reason for her appeal was because her husband assaulted her on March 24, 2012. She stated that she was granted a protection order against her husband on April 19, 2012 and that he was getting out of jail on April 30, 2012. Ms. Dudley stated that she was afraid for her safety since she and her husband have businesses that are next door to each other. Ms. Dudley presented as proof a copy of the protection order against her husband.

In response to Mr. Weaver, Ms. Dudley stated that she had not had any firearm training. She added that if her appeal was granted she would take the class and register for a CCW. Mr. Weaver inquired as to whether there were any violent crimes in her husband's history. Ms. Dudley claimed that in 1991 her husband was charged for assault on a woman in North Carolina and he had assaulted her several times. With regard to the incident on March 24, 2012, Ms. Dudley explained that while she was driving, her husband assaulted her on their way to work.

In response to Mr. Simmond's inquiry as to the specifics of the carrying a concealed weapon charge in 1994, Sgt. Nordby stated that officers were called to a residence for an armed disturbance. When they arrived, they found Ms. Dudley, who matched the description. He stated that the officers

searched and found a handgun in Ms. Dudley's purse. Ms. Dudley explained that she had gone to retrieve a car that belonged to her from her boyfriend at the time. She added that when the boyfriend saw that she was coming to get her car, he then called the police.

Sgt. Nordby stated that for clarification, Ms. Dudley would be eligible for a concealed carry permit and if she obtained the permit, she would not need to register her firearm with the City of Omaha. He further explained that the way the ordinance and state laws are written, State Patrol would only go back into an individual's criminal history for the past 10 years whereas the City does not have a time limit on a person's past criminal history.

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

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

Appeal granted 5-0.

12-4-032

Appeal Omaha Police Department notice of nuisance at 3601 North 24 Street: Elton Foster, 3959 North 40th Avenue 68111

At the Administrative Board of Appeals meeting held on April 30, 2012, Elton Foster and Reverend Paul Chatmon appeared before the board.

Kevin Denker, Planning Department, submitted photos (Exhibit 2) that were taken by Scott Benson, Housing Inspector, who had been out to the property on April 30, 2012. Mr. Denker commented that it appeared as if all the vehicles had been properly plated, although not all of the plates were properly displayed. Some plates were sitting on the dashboards instead of on the bumper of the vehicle.

Mr. Foster explained that he was appealing because of all the illegal activity that occurs at the property during the night. He added that he puts the plates on the dashboard of some of the vehicles to prevent some family members from removing the plates and illegally putting them on other vehicles. Mr. Foster wanted to know why the city put stickers on his vehicles when he keeps them plated, aired up and running. Mr. Denker explained that a complaint was probably taken through the Mayor's Hotline.

In response to Mr. Weaver, Mr. Denker restated that when Mr. Foster's property was checked on April 30, 2012, it appeared that all of the vehicles were plated although some of the plates were sitting on dashboards.

Reverend Chatmon stated that he has lived across the street from Mr. Foster's property for the last 15 years and that there were problems with prostitution at a bus stop near Mr. Foster's property but when the police stopped the activity from occurring at the bus stop; it began to occur close to Mr. Foster's property. When a fence was put around the property, the activity moved to the sidewalk outside of the property. Reverend Chatmon stated that he did not agree with the City removing Mr. Foster's vehicles from the property causing him to lose money. He added that Mr. Foster is a law-abiding citizen and a hard worker.

In response to Mr. Labode, Mr. Denker stated that Mr. Foster had come into compliance with all of the requirements of the notice that had been sent to him. Mr. Labode advised Mr. Foster that when his plates are stolen, he should report them as missing.

Officer James Stokes, Omaha Police Department, explained that the license plates are required to be on the bumpers of the vehicles when they are driven on the street.

Mr. Labode made a motion to grant the appeal. Seconded by Mr. Simmonds.

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

Appeal granted 5-0.

III. Approval of Minutes from March 26, 2012

Mr. Weaver made a motion to approve the minutes from the March 26, 2012 meeting. Seconded by Mr. Lopez.

AYES: Weaver, Lopez, Labode, O'Connor

ABSTAIN: Simmonds

Motion carried 4-0-1

IV. Adjournment

It was the consensus of the board to adjourn the meeting at 2:25 p.m.

Debbie Hightower, Planning Department
Recording Secretary