

Minutes
Administrative Board of Appeals
June 25, 2012

MEMBERS PRESENT: David Levy, Vice Chair
Bode Labode
Jose Lopez
Steve Simmonds, Alternate
Jim Weaver

MEMBERS ABSENT: Ann O'Connor, Chair
Jama Samiev, Alternate

OTHERS PRESENT: RoseMarie Horvath, Law Department
Scott P. Benson, Planning Department
Andrea Wisniewski, Recording Secretary

I. Roll Call

Mr. Levy, Acting Chair, called the meeting to order at 1:01 pm.

Mr. Benson 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

12-6-39

Appeal Omaha Police Department denial of firearm registration: Brian D. Newell, 1510 N 113th Ct #4305 68154

At the Administrative Board of Appeals meeting held on June 25, 2012, Brian D. Newell appeared before the Board.

Lt. Staci Witkowski, Omaha Police Department, stated that Mr. Newell's application for registration of a firearm was rejected due to violation of a protection order that took place in Lincoln, Nebraska in 2005. This was the only incident of note on Mr. Newell's record.

Mr. Newell explained that at the time of his protection order violation, he and his wife were going through a separation. He stated that neither he nor his wife fully understood the restrictions of the order. Shortly after the protection order was issued, both of their children became ill; Mrs. Newell asked Mr. Newell to come to the house to help care for the children. A neighbor saw Mr. Newell arrive at the house, and knowing that Mrs. Newell had obtained a protection order, called the police.

Despite his wife's protestations that she had invited Mr. Newell to come to the house, Mr. Newell was found to be in violation of the protection order and was arrested. Mr. Newell stated that he chose not to fight the violation at the time; he added that he wished he had fought the charges, as it has caused him embarrassment and hardship in his profession as a dentist. Mr. Newell's application for appeal included a letter from his ex-wife, which substantiated his story of the event in question. Mr. Newell apologized for the letter's lack of notary stamp, but expressed his gratitude towards his ex-wife for agreeing to provide such a letter.

Mr. Weaver inquired as to how long the handgun in question has been in Mr. Newell's possession. Mr. Newell replied that he recently purchased the handgun, and produced a permit from the sheriff's office at Mr. Weaver's request. The Board members viewed this permit and returned it to Mr. Newell.

Mr. Labode asked Mr. Newell why his ex-wife did not have her letter to the Board notarized. Mr. Newell stated that he and his ex-wife had spoken about the need for a notarized signature; however, she had felt that the letter was sufficient unto itself, and had declined to have it notarized. Mr. Labode inquired as to whether there were any other incidences on Mr. Newell's record. Lt. Witkowski stated that there were no other incidences on Mr. Newell's record.

Mr. Weaver asked Lt. Witkowski whether the incident in Mr. Newell's record could be classified as domestic violence, as it was his understanding that federal regulations precluded citizens with domestic violence charges from owning handguns. Lt. Witkowski stated that the protection order was violated; however, there were no charges of domestic violence attached to the violation. This was a misdemeanor offence.

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

AYES: Lopez, Labode, Simmonds, Weaver, Levy

Motion carried 5-0

12-5-40

Appeal Omaha Police Department denial of firearm registration: Jordan S. Christopherson, 3609 S 49th St 68106

At the Administrative Board of Appeals meeting held on June 25, 2012, Jordan S. Christopherson appeared before the Board.

Lt. Staci Witkowski, Omaha Police Department, stated that Mr. Newell's application for registration of a firearm was rejected due to a possession of marijuana less than an ounce charge and conviction from July of 2008. Current laws require a span of ten years following such a charge before any handgun may be registered. Currently, it has been only four years since Mr. Christopherson's conviction.

Mr. Christopherson stated that he had been on a fishing trip with some friends when they were stopped by the police due to a burned out taillight. During this time, a bag of marijuana was discovered in the vehicle. Mr. Christopherson stated that since his conviction, he has worked as a security guard. He added that he wishes to have the firearm for the protection of his family.

Lt. Witkowski stated that Mr. Christopherson has several other incidences on his record which concern her. These incidences include an assault arrest in 2009 (these charges were not prosecuted), 2 DUIs (2010), a park curfew violation (2011), a careless driving charge, and refusal to submit to DUI testing (2011 – charges were also dropped in this case). Lt. Witkowski pointed out to the Board members that all of these incidences occurred within the past three years.

Lt. Witkowski added that current City regulations allow citizens to possess a shotgun or rifle without being required to obtain a permit. Mr. Christopherson could purchase such a weapon instead of a handgun and still be able to protect his family.

Motion to deny appeal by Mr. Weaver. Mr. Weaver explained that his motion to deny was based on the fact that current handgun ordinance requires a waiting period of ten years following charges/convictions for marijuana less than an ounce. He added his opinion that he feels the Board has an obligation to uphold this ten-year requirement. Second by Mr. Lopez. Mr. Levy opened the floor to the Board members for discussion.

Mr. Simmonds inquired as to whether any of Mr. Christopherson's other offenses would prevent him from registering a handgun. Lt. Witkowski replied that they would not; however, she stated that the assault charges are of concern since they show a propensity towards violence. She added that the marijuana conviction, along with the other incidences in Mr. Christopherson's record, show a disregard for the law. Lt. Witkowski commented that other individuals with marijuana charges have come to the board with far less on their criminal records, and have been denied due to the fact that City regulations require a span of ten years following charges/convictions for marijuana less than an ounce. She stressed the fact that Mr. Christopherson does not need a handgun for the protection of his family, as City regulations allow citizens to possess a shotgun or rifle without being required to obtain a permit.

Mr. Simmonds argued that if Mr. Christopherson's marijuana charge had occurred this year rather than four years ago, it would be considered a civil offense as opposed to a criminal offense, and therefore would not have appeared on his criminal record. Lt. Witkowski stated that this was incorrect; conviction for marijuana less than an ounce is still considered to be a criminal offense. She explained the recent addition of marijuana less than an ounce to those violations which cause a person's application for firearm registration to be denied.

Mr. Simmonds stated that there have been cases in the past where this Board has granted appeals for individuals with drug charges occurring less than ten years in the past. Mr. Levy supported Mr. Simmonds' statement, but added that in the case of marijuana less than an ounce, the ordinance gives a very clear time period (10 years) before an individual may seek to register handguns. Mr. Levy stated that in cases where such a clear time period is not given, the Board has more leeway to view an individual's charges in totality, and can make allowances for individual situations. In reading the ordinance, Mr. Levy stated that he agrees with Mr. Weaver's opinion that the Board's hands are somewhat tied in this matter.

Mr. Simmonds expressed his frustration at the idea of the Administrative Board of Appeals hearing cases for which they have no apparent discretion to act upon. Mr. Simmonds stated his opinion that the Board must have some discretion in these cases; otherwise, they should not be able to be placed before the Board for consideration. Lt. Witkowski countered this argument, stating that city ordinance states that such marijuana charges require a ten-year waiting period; however, any citizen has the right to appeal a denial of firearm registration. Lt. Witkowski restated that Mr. Christopherson can purchase a shotgun for home protection without being in violation of city ordinance.

Mr. Labode stated that despite Mr. Christopherson's marijuana charge, he was concerned about the other charges which have occurred since 2008. Mr. Levy stated that there was a motion to deny on record and second to that motion; he asked the Board whether they wished to take a vote at this time.

AYES: Simmonds, Weaver, Lopez, Levy

NAYS: Labode

Motion carried 4-1.

12-6-41

Appeal Omaha Police Department denial of firearm registration: Dana J. Graham, 1401 Fort St 68110

At the Administrative Board of Appeals meeting held on June 25, 2012, Dana J. Graham appeared before the Board.

Lt. Staci Witkowski, Omaha Police Department, stated that Mr. Graham's application for registration of a firearm was rejected due to a possession of marijuana less than an ounce charge and conviction from 2005.

Mr. Graham explained that in 2005, he was driving with a friend when he was pulled over for speeding. During this traffic stop, some marijuana was found in his car. Mr. Graham stated that the marijuana belonged to his girlfriend; however, she was not in the vehicle at the time. He took responsibility for the drugs in the car. Mr. Graham stated that he is aware that citizens can possess long barrel guns without a permit; however, he currently owns a rifle, and would like to have a handgun for home defense.

Lt. Witkowski submitted a copy of the police report from that incident to the Board and asked that it be accepted to the file as Exhibit #2. She read from the report that the marijuana in question was pulled directly from Mr. Graham's pants. According to the report, Mr. Graham told the officer who stopped him that he had a bag of marijuana in his pocket. A marijuana pipe was located in the car's ashtray and rolling papers were pulled from Mr. Graham's pants' pocket.

Mr. Levy asked whether Mr. Graham had anything else he wished to say to the Board. Mr. Graham stated that he has not been in trouble since his marijuana violation, with the exception of a stop sign violation. Mr. Weaver asked Lt. Witkowski whether the police had had any other contact with Mr. Graham outside of the incident in question. Lt. Witkowski commented that Mr. Graham received a DUI approximately one year after the marijuana charge, for which he received a fine, jail time and probation. The stop sign violation Mr. Graham mentioned occurred shortly thereafter.

Mr. Weaver asked Mr. Graham if there was anything else that he would like to tell the Board about his marijuana conviction and subsequent DUI. Mr. Graham stated that he has grown up a little bit since his marijuana conviction. He now has a family, and doesn't associate with the same people he used to associate with. He stated that he didn't know that his marijuana charge would constitute a denial when he tried to register his handgun, adding that he had thought the permit to purchase that he obtained from the Sherriff's office from wouldn't have been issued to him if there were a problem.

Mr. Simmonds asked Lt. Witkowski whether the Sherriff's Office notifies those applying for a purchase permit about the potential for denial once they try to register their new gun in the City of Omaha. Lt. Witkowski stated that she had no knowledge of what Douglas County does. Mr. Graham asserted that he was given no information about his potential for denial, and added that, had he known, he might not have purchased a gun in the first place.

Motion by Mr. Labode to deny. Second by Mr. Levy.

AYES: Simmonds, Lopez, Levy

NAYS: Weaver, Labode

Motion carried 3-2.

12-6-42

Appeal Omaha Police Department denial of firearm registration: Travis A. Weller, 7156 N 80th St 68122

At the Administrative Board of Appeals meeting held on June 25, 2012, Travis A. Weller appeared before the Board.

Lt. Staci Witkowski, Omaha Police Department, stated that Mr. Weller's application for registration of a firearm was rejected due to a conviction for carrying a concealed weapon (not a firearm) and possession of marijuana less than an ounce, possession of a gun and transporting a non-explosive device from January of 2005. He received seven days' of jail time for this conviction.

Mr. Weller stated that he was nineteen at the time of the above conviction. When he was pulled over for pulling a stop sign, the officer discovered marijuana in his vehicle, along with a BB gun and a butterfly knife in the tool box located in his cab. Mr. Weller stated that he was unaware that the knife was in his vehicle. Mr. Weller asserted that his life has changed significantly since that time, and he has had no further contact with the police since that time. He enjoys hunting and fishing, and spends time at shooting range. He wishes to have a handgun for home defense. Lt. Witkowski confirmed that Mr. Weller has had no contact with law enforcement either before or since 2005.

Motion by Mr. Simmonds to approve. Second by Mr. Weaver.

AYES: Weaver, Labode, Simmonds

NAYS: Lopez, Levy

Motion carried 3-2.

12-6-43

Appeal Omaha Police Department denial of firearm registration: Lloyd H Smith Jr., 2500 B St Apt 410 68105

At the Administrative Board of Appeals meeting held on June 25, 2012, Lloyd H. Smith Jr. appeared before the Board.

Lt. Staci Witkowski, Omaha Police Department, stated that Mr. Smith's application for registration of a firearm was rejected due to several incidences with the police. These charges include carrying a concealed gun in 1985, which is an automatic denial for registration. Mr. Smith was convicted on this charge and received a fine. Mr. Smith had a second conviction for carrying a concealed gun in 1991. He received 30 days of jail time for this offense.

Mr. Smith stated that the charges mentioned by Lt. Witkowski occurred quite some time ago. He has turned his life around. During the twenty-seven years that have elapsed since his conviction, he has had a speeding ticket and a citation for driving without registration. Mr. Smith stated that at the time of his concealed weapons charge he did have a gun in his car; however, the bullets were in the trunk of the vehicle. If granted his appeal, Mr. Smith intends to take gun safety classes.

Lt. Witkowski cited other incidences in Mr. Smith's record, including a park curfew involving liquor in 2007, and a DUI charge in 1995/1996. She stressed the fact that Mr. Smith has had two prior convictions for carrying a concealed gun, and that this is an automatic denial for firearm registration according to the handgun ordinance.

Mr. Labode asked for more information regarding the park curfew violation. Mr. Smith explained that he was in discovered to be in a park after it was closed with a female companion. An open container was discovered in the back of the truck. Mr. Labode asked whether any vandalism of the park took place. Mr. Smith stated that no damage was done to the premises.

Motion to approve by Mr. Labode. Second by Mr. Simmonds.

AYES: Lopez, Labode, Simmonds, Weaver, Levy

Motion carried 5-0.

12-6-44

Appeal Omaha Police Department denial of taxicab driver permit: Eric McBeath, 8312 Underwood Av #209 68114

At the Administrative Board of Appeals meeting held on June 25, 2012, Eric McBeath appeared before the Board.

Lt. Staci Witkowski, Omaha Police Department, stated that Mr. McBeath's application for taxi cab license was rejected due to past drug charges. Mr. McBeath was convicted of possession with intent to deliver in 1996 and received 20 months of jail time for this offense.

Mr. McBeath stated that he is trying to seek employment. He has been promised a job with a taxi company; provided that he can obtain his permit. He stated that he hasn't had a job in approximately five years; this is the first opportunity he has had to gain employment.

Motion to approve by Mr. Weaver. Second by Mr. Lopez.

AYES: Labode, Simmonds, Weaver, Lopez, Levy

Motion carried 5-0

12-6-45

Appeal City Code Enforcement notice of nuisance at 5402 S 17th St 68107: Michelle D Jones

At the Administrative Board of Appeals meeting held on June 25, 2012, Michelle Jones appeared before the Board.

Todd Shearer, City of Omaha Housing Inspector, stated that he issued a notice of nuisance to Ms. Jones due to the fact that she was parking on gravel in the City right-of-way. Mr. Shearer's presence at the property was due to a complaint that was received by his office.

Ms. Jones explained that the gravel parking area had been "grandfathered" last fall by the Public Works Department. The previous owners of the property had parked in this gravel area for the past 45 years. Ms. Jones stated that this notice of nuisance came about when she called in a complaint on a neighbor, who was parking multiple non-operational vehicles in the grass behind her property. When Mr. Shearer came out to inspect her neighbor's property, she was informed that her own parking area was in violation of City code.

Ms. Jones stated that after she had been informed of the violation last fall, she contacted the City to begin the process of installing a parking pad at her property. She claimed to have spoken with Mike Gaughen of the City of Omaha Public Works Department. Ms. Jones stated that she was verbally granted permission to pour concrete in the right-of-way by Mr. Gaughen's department. She was told to contact Mr. Gaughen if there were any problems. In the meantime, she began to obtain estimates for the new parking pad. Ms. Jones received a notice of nuisance regarding her gravel parking area from the City Planning Department May 3rd, 2012.

Mike Gaughen, City of Omaha Public Works Department, and Michael Carter, City of Omaha Planning Department, appeared before the Board. Mr. Shearer stated that he had asked Mr. Gaughen and Mr. Carter to be present at today's meeting. He explained that Mr. Carter deals with leases of City right-of-way areas, and Mr. Gaughen has had previous contact with Ms. Jones. Both gentlemen were here to answer any questions that the Board might have regarding Ms. Jones' appeal.

Mr. Shearer submitted a report from the Permits and Inspections Division showing that no applications for permits have been submitted as of today's date. Ms. Jones claimed to have been told by Mr. Gaughen that she was not required to take out permits, as she was in a land-locked area that had been "grandfathered". Mr. Gaughen refuted this statement. He stated that Ms. Jones initially contacted him about a fence issue and about the neighbor behind her property who was parking cars on the grass. During this conversation, Ms. Jones commented that she would like to pave the gravel parking area located in the right-of-way. Mr. Gaughen denied that he had ever told Ms. Jones that she was approved in any way; rather, he told her to call him if any problems arose while his Department was researching Ms. Jones' request to pave her parking area.

Mr. Gaughen commended Ms. Jones for the improvements that she has made to her property, stating that it was obvious to him that she was trying to maintain her home. However, Ms. Jones needs to apply either to lease the right-of-way from the City, or make an application to pour a traditional driveway on the property. Neither of these things has been done as of today's date. In response to Mr. Gaughen's comments, Ms. Jones insisted that Mr. Gaughen had indeed given her permission to pave over the gravel parking area in their conversations the previous fall.

Mr. Levy asked Ms. Jones whether she is willing to go through whatever process is deemed necessary to bring this matter to a close, be it obtaining a lease of the right-of-way from Planning so that a parking pad may be installed, obtaining a zoning determination, or submitting an application for the construction of a traditional driveway on the property. Ms. Jones affirmed that she was willing to work with the City to resolve the situation. She added that she had submitted an application for a driveway to the Public Works Department last fall.

Mr. Weaver asked Mr. Shearer, Mr. Carter, and Mr. Gaughen how best to proceed with the matter at hand. Mr. Gaughen replied that Ms. Jones needs to apply for a lease of the right-of-way area with Mr. Carter. Mr. Gaughen stated that his department had not received Ms. Jones' application for a driveway as she claims. Mr. Benson interjected, stating that an application for driveway would typically be submitted to the Planning Department. Ms. Jones insisted that she had turned an application in to Mr. Gaughen.

Mr. Levy stated that this Board could not grant Ms. Jones a waiver of the requirement for permits or a lease of right-of-way; however, they could grant Ms. Jones additional time to work through the process, be it for the installation of a parking pad or a driveway. Mr. Shearer assured Ms. Jones that he would not tow any vehicles parked in the gravel while this process was taking place.

In response to Mr. Weaver's earlier question, Mr. Carter explained the process for leasing of right-of-way space to those present. Mr. Weaver asked Mr. Carter how long he thought this application process could typically take to complete. Mr. Carter replied that the Planning Department's portion of the process could be completed in a matter of weeks; however, the applicant also has to work with the Public Works Department to settle on the concrete work to be done. Mr. Carter postulated that the previous owners most likely began parking in the right of way without obtaining the permission of the City.

Mr. Levy inquired as to whether there was any safety concern with Ms. Jones parking her vehicle in the right-of-way. Mr. Shearer replied that Ms. Jones's vehicle does not block the view of other drivers; he did not believe that her vehicle's presence in the right-of-way would prove to be a hazard.

After some additional discussion regarding the various options available to Ms. Jones, Mr. Weaver made a motion to deny with 120 days to comply. Second by Mr. Labode.

AYES: Simmonds, Weaver, Lopez, Labode, Levy

Motion carried 5-0

III. Approval of Minutes from May 21, 2012

Motion to approve by Mr. Lopez. Second by Mr. Simmonds.

AYES: Lopez, Simmonds, Levy

ABSTAIN: Weaver, Labode

Motion carried 3-0-2.

IV. Adjournment

It was the consensus of the board to adjourn the meeting at 2:24 p.m.

Andrea Wisniewski, Planning Department
Recording Secretary