Minutes
Administrative Board of Appeals
March 26, 2012

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

12-3-014
Appeal Omaha Police Department denial of a Taxicab Driver’s Permit: Abdifatah Yusef Aideed, 1104 North 48th Avenue #8 68132

At the Administrative Board of Appeals meeting held on March 26, 2012, Abdifatah Yusef Aideed appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Aideed was denied a Taxicab Driver’s Permit because he indicated on the application that he did not know the geography of the City, the general geography of the streets, traffic ordinances of the City or motor vehicle laws for Nebraska.

Mr. Aideed explained that he had driven a taxi in Omaha from 2003 to 2004 before moving to Maine. He stated that he moved back to Omaha in 2012.

In response to Mr. Levy, Mr. Aideed answered that he has a current Nebraska driver’s license.

In response to Mr. Weaver, Sgt. Nordby responded that Mr. Aideed did have a current driver’s license and a taxicab permit in 2002.

Mr. Levy questioned Mr. Aideed why he would state on his Taxicab Driver’s Permit application that he was not familiar with the geography of Omaha since he had driven a taxi in the city 10 years prior. Mr. Aideed explained that he had mistakenly answered those questions incorrectly and that he is very familiar with the Omaha area.

In response to Mr. Weaver, Sgt. Nordby responded that the only conviction on Mr. Aideed’s record was for negligent driving in connection with a hit and run accident in 2003. Sgt. Nordby explained that it appeared that Mr. Aideed did stop right away and was cited.

In response to Mr. Levy, Sgt. Nordby responded that he had no information on Mr. Aideed’s driving record from Maine.
Mr. Levy made a motion to grant the appeal. Seconded by Mr. Weaver.

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

Motion carried 5-0

12-3-015
Appeal Omaha Police Department denial of firearm registration: Jacob B. Garvis, 3923 North 56th Street 68104

At the Administrative Board of Appeals meeting held on March 26, 2012, Jacob B. Garvis appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that the denial of a firearm registration to Mr. Garvis was based on several previous convictions. On May 13, 2005, Mr. Garvis was charged with possession of marijuana less than an ounce and for paraphernalia. He added that Mr. Garvis had another marijuana conviction on December 23, 2003 and a conviction for disorderly conduct in 2003. Sgt. Nordby explained that the conviction for disorderly conduct was the result of Mr. Garvis leaving the passenger seat of the vehicle to yell at another driver who was driving erratically. He added that Mr. Garvis took an offensive stance towards the driver while threatening to kill him. Sgt. Nordby further added that Mr. Garvis would not back away when asked while the officer was arresting the erratic drive. He was arrested for having a physical confrontation with the officers.

Mr. Garvis stated that he is a totally different person from who he was in the past. He added that he is married with three children and would like to obtain a firearm as protection for his family.

In response to Ms. O’Connor, Sgt. Nordby responded that Mr. Garvis has had no other convictions since 2005.

In response to Mr. Weaver, Mr. Garvis responded that the 2003 incident was accurate except for the claim that he threatened to kill someone. Mr. Garvis then explained that he was intoxicated at the time and added that he has not had a drink for about three years.

Sgt. Nordby commented that he understood Mr. Garvis’ reason for wanting to obtain a firearm and suggested, as an alternative, that Mr. Garvis could lawfully own a long gun or shotgun as a practical home defense weapon. He explained that those types of weapons do not require a registration.

In response to Ms. O’Conner, Mr. Garvis responded that he does not own any other firearms.

Mr. Labode asked for an explanation of Mr. Garvis’ statement in his appeal, where he stated, “I feel I’ve paid my debt to society, so please don’t make me pay for it anymore.” Mr. Garvis explained that he felt that he had paid his debt and fines in a timely manner.

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

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

AYES: Lopez, Levy, O’Connor

NAYES: Weaver, Labode

Motion carried 3-2
12-3-016
Appeal Omaha Police Department denial of firearm registration: Jamison L. Leesley, 1503 Buck Drive #146, Bellevue, NE 68005

At the Administrative Board of Appeals meeting held on March 26, 2012, Jamison Leesley appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Leesley was denied a firearm registration based on a domestic violence charge from Sarpy County/Bellevue. Sgt. Nordby explained that he was arrested for third degree assault, domestic violence and disturbing the peace. He further explained that Mr. Leesley was found guilty on the disturbing the peace charge but the other charges were dismissed. In response to Mr. Weaver, Sgt. Nordby responded that the arrest was in 1997 with the conviction in March 1998.

Mr. Leesley explained that the reason for his appeal is to get his gun out of pawn. Mr. Leesley pointed out that a couple of years earlier, Sarpy County Sheriff gave him a permit to buy without the need for a registration.

Sgt. Nordby explained to the Board, that there were different types of permits that could be obtained. The type of permit Mr. Leesley was referring to was a purchase permit, which is issued by the Sheriff’s Department and sanctioned by state statute. Sgt. Nordby stated that the threshold for the purchase permit for Sarpy County is lower than the one for gun registration in the City of Omaha, which causes problems for some applicants, especially if they do not live in the city. He further stated that Mr. Leesley was denied based on the city ordinance with regard to the domestic violence issue and is prohibited under Federal code from possessing a firearm.

In response to Mr. Weaver, Sgt. Nordby stated that there were no other incidences on Mr. Leesley’s record besides the conviction in 1998.

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

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

Motion carried 5-0

12-3-017
Appeal Omaha Police Department denial of firearm registration: Chase Schmielau, 9610 Binney Street 68134

At the Administrative Board of Appeals meeting held on March 26, 2012, Chase Schmielau appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Schmielau was denied a firearm registration based on several offenses. In April 2004, Mr. Schmielau was arrested for assault, disorderly conduct and possession of marijuana. He was convicted for the marijuana charge while the two other charges were either declined or dismissed. Sgt. Nordby added that in December 2002, Mr. Schmielau was charged with marijuana and paraphernalia charges. He was convicted for the marijuana charge but the paraphernalia charge was dismissed. Sgt. Nordby added that the marijuana charge in April 2004 was for 8.3 ounces of marijuana. It was Sgt. Nordby’s opinion that when someone is charged with possessing over ½ pound of marijuana, it was usually not for personal use.

Mr. Schmielau stated that the reason for his appeal is because he wants to own a gun for the protection of his family and because he wants to learn to use a firearm. He explained that the reason he had over ½ pound of marijuana in the April 2004 incident was because he and some of his friends decided to pitch in together and get it cheaper.

Sgt. Nordby explained that Mr. Schmielau could lawfully own a long gun or shotgun as a more practical weapon for home defense since, in his opinion, they are easier to use and
more precise. In regards to learning how to use a handgun, Sgt. Nordby advised that Mr. Schmielau did not necessarily need to buy or register a handgun to learn to use one. He suggested that the Bullet Hole in Sarpy County would allow him to rent a handgun and there are classes that would allow him to learn to use a handgun.

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

AYES: Levy, Weaver, Lopez, O’Connor

NAYES: Labode

Motion carried 4-1

12-3-018
Appeal Omaha Police Department denial of firearm registration: Ronnie Hicks, 3123 Marcy 68105

No one appeared before the Board in support of this appeal.

Mr. Levy made a motion to layover until the next meeting on April 30, 2012. Seconded by Mr. Labode.

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

Motion carried 5-0

12-3-019
Appeal Omaha Police Department denial of firearm registration: Michael E. Letzring, 669 North 45th Street 68132

At the Administrative Board of Appeals meeting held on March 26, 2012, Michael E. Letzring appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Letzring was denied a firearm registration based on possession of marijuana less than an ounce from July 2003. Sgt. Nordby also stated that there were other arrests from 1998, 1999, 2001 and 2006, but he explained that charges from those incidents were either dismissed or declined.

In response to Ms. O’Connor, Sgt. Nordby explained that the charges in the 2006 arrest were for disorderly conduct and that the charges were dismissed.

Mr. Letzring stated that he would like to obtain his target pistol and explained that he is currently registered as a handgun owner and possesses a purchase permit.

In response to Mr. Levy, Mr. Letzring responded that his current gun registration is for a different gun that was registered in February 2007.

Sgt. Nordby stated that in 2007, Mr. Letzring would have been allowed to register a handgun, but because of the new ordinance his registration would now be revoked. Sgt. Nordby explained that Mr. Letzring would eventually receive a letter stating that his gun registration was revoked and that he would have to dispose of the firearm lawfully as he sees fit.

In response to Mr. Labode, Sgt. Nordby explained that the handgun that Mr. Letzring attempted to register on February 20, 2012 is now in the possession of the Omaha Police Department. If the appeal were granted then the handgun could be registered and Mr. Letzring would be allowed to take possession. However, if the appeal were not granted, Mr. Letzring could transfer ownership of the handgun to an individual who could register it. If that were not done then, according to City law and state statutes, the handgun would eventually be destroyed by the Omaha Police Department.
In response to Mr. Weaver’s question as to how Mr. Letzring’s 2007 registration would be affected if the appeal were granted, Sgt. Nordby explained that Mr. Letzring’s name could be flagged so that a revocation letter would not be sent to him.

In response to Mr. Weaver, Sgt. Nordby stated that there had been contact with law enforcement since 2003 but that Mr. Letzring was usually the victim or they were traffic related incidents.

Mr. Levy asked Mr. Letzring to explain the 2006 incident that led to the disorderly conduct notation. Mr. Letzring responded that it was from a DUI because he was parked with the keys out of the ignition at a gas station waiting for a ride when one of the clerks identified him as the owner of the vehicle.

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

AYES: Weaver, Lopez, Labode

NAYES: Levy, O’Connor

Motion carried 3-2

12-3-020
Appeal Omaha Police Department denial of firearm registration: Brandon Dasher, 3810 South 13th Street #32 68107

At the Administrative Board of Appeals meeting held on March 26, 2012, Brandon Dasher appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Dasher was denied a firearm registration based on a December 2009 offense for drug paraphernalia that was found during a traffic stop. Sgt. Nordby added that Mr. Dasher was also convicted for possession of marijuana less than an ounce in February 2005.

Mr. Dasher stated that the reason for his appeal is that he would like his gun returned. He explained that the drug charges were when he was transitioning from a juvenile to an adult. He further stated that he has a daughter and is attending school to become a police officer. Mr. Dasher further explained that he no longer smokes marijuana.

In reference to Mr. Dasher’s letter to the Board, Mr. Weaver asked for clarification of Mr. Dasher’s statement that he received a charge for possession of marijuana in 2009. Mr. Dasher explained that he was told by the police officers that the charge was for marijuana, but confirmed that the charge was actually for paraphernalia.

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

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

Motion carried 5-0

12-3-021
Appeal Omaha Police Department denial of firearm registration: Johnnie M. Green, 6114 Belvedere Blvd 68111

At the Administrative Board of Appeals meeting held on March 26, 2012, Johnnie M. Green appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Green was denied a firearm registration based on two marijuana convictions. The first was in January 2007 for
possession of marijuana less than an ounce, and the second was in September 2005 for possession of marijuana over an ounce but less that a pound.

Mr. Green stated that he purchased a firearm in December 2010 for home protection but the firearm has since been stolen and was reported to the police. He explained that he recently bought another gun and was denied the registration based on the new ordinance.

In response to Mr. Weaver, Mr. Green stated that he did not have the registration for the gun he purchased in December 2010. In response to Mr. Weaver, Sgt. Nordby responded that there is a record of the registration for the gun that was stolen.

Mr. Green also stated that he had another gun that he had registered earlier in 2010 but it was sold to a pawnshop.

Sgt. Nordby explained that Mr. Green did have a firearm registered with the Omaha Police Department, although that should not have occurred based on the new city ordinance.

In response to Mr. Levy, Mr. Green answered that the last time he was involved with marijuana was in 2007 when he was 19 or 20 years old. He explained that since that time he is enrolled in school and is currently employed at a job where he is periodically tested for drug use. He further stated that he has not had any involvement with drugs for the last five years.

In response to Mr. Weaver, Sgt. Nordby responded that Mr. Green has only been involved in traffic related offenses since 2007.

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

AYES: Labode, Levy, Weaver

NAYES: Lopez, O’Connor

Motion carried 3-2

12-3-022
Appeal Omaha Police Department revocation of a concealable firearm registration: Douglas Larson, 4816 Harney Street 68132

At the Administrative Board of Appeals meeting held on March 26, 2012, Douglas Larson appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Larson was sent a revocation letter on February 20, 2012. Sgt. Nordby stated that Mr. Larson had two firearms that were registered with the Omaha Police Department and were revoked due to the issuance of a protection order against him on September 6, 2011. Sgt. Nordby explained that the issuance of the protection order would prohibit Mr. Larson from owning a firearm under local, state and federal law. Sgt. Nordby added that due to the change in city ordinance, Mr. Larson would not be able to register a handgun because of a paraphernalia charge from April 2004. In connection with the paraphernalia charge, there was a conviction for a failure to appear in May 2005. There was also a paraphernalia charge that resulted in a conviction in September 2002.

In response to Ms. O’Conner, Sgt. Nordby responded that protection orders are valid for one year, although they could be renewed or dropped at the request of the petitioner.

Mr. Larson stated that he believed that the protection order had been dropped.

RoseMarie Horvath, City of Omaha Law Department, asked Mr. Larson if he had requested that the protection order against him be dropped. Mr. Larson responded that he did not realize that the protection order would have anything to do with his gun registrations. Mr.
Larson further explained that he felt that the protection order would be beneficial for both parties involved.

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

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

Motion carried 5-0

12-3-023
Appeal City of Omaha Public Works Department denial of driveway access to Leavenworth Street at 3031 Leavenworth Street: Mark Sanford d/b/a Mark Sanford Group LLC, 1306 North 162nd Street 68118

At the Administrative Board of Appeals meeting held on March 26, 2012, Mark Sanford, Architect, appeared before the board to represent Kermit Engh of Fashion Cleaners located at 3031 Leavenworth Street. Mr. Sanford explained that Mr. Engh is currently in the process of remodeling the facility. He stated that there is no existing curb and currently customers drive right up to the front of the building but have to back out directly onto Leavenworth Street. Mr. Sanford stated that the owner would like to change the area in front of the business to a circular drive. The current existing access to the property would be the entry and the proposed exit would be on the east side of the property. Mr. Sanford explained that there is a safety issue but the owner would like to continue to have pickup in front of the building.

Chris Faulk, Public Works Department, stated that the reason for the denial of the driveway access is because the proposed design does not meet the Public Works Department’s guidelines for driveway construction. He referred to the two specific reasons that were listed in a letter mailed to Mr. Sanford dated March 7, 2012 which stated, “There would not be sufficient separation between the entrance and exit approaches of the circle driveway”. Mr. Faulk stated that Public Works regulations require a minimum separation of 125’ on any arterial street that has a posted speed limit of 35 or more miles per hour. The proposed plan would only provide 35’ of separation. Mr. Faulk added that the second reason for the denial was because there is not enough room on the property between the street and the building to be able to properly fit in a circle driveway. He explained that a total setback from the curb is 60’, which would include: a 15’ radius for the driveway enabling vehicles to turn in and out; 20’ for the typical length of a vehicle; enough room so that the vehicle could stop before the radius at a 90° angle permitting a driver to properly turn their head and see oncoming traffic; 25’ to accommodate a 180° turn to get around the circle of the driveway. Mr. Faulk stated that in his letter to the applicant, he indicated that there was only 22’ of setback. In reference to the aerial map (Exhibit 2), he explained that the setback footage would be more because the edge of the building was actually the edge of the overhang canopy. This would add an additional 14’ of setback, but would still only be at 36’ of separation. In addition, Mr. Faulk noted that, according to the driveway guidelines, driveways should be aligned at 90° angles with the street, although they could be adjusted to a 60° angle. He explained, however, that in this case there would still not be enough room to work with for the property.

Referring to the aerial map (Exhibit 2), Mr. Weaver questioned what would happen with other parking on the property. In response, Mr. Sanford stated that other parking on the property would not be affected and that the circle drive would be safer for customers. He added that the circle drive would be a convenience for customers who pick up their laundry without getting out of their vehicles.

Also referring to the aerial map (Exhibit 2), Mr. Levy asked what would happen to the area in front of the store. Mr. Sanford responded that landscaping could possibly be added to the inside of the circle so that customers would not get the impression that they could pull up to the front of the store and park. He added that there were no plans to put in a curb since there is not one there currently.
Mr. Sanford referred to a drawing of the property (Exhibit 3) to show the probable location of the City right-of-way. He explained that when customers park in front of the building they are crossing the sidewalk as well. Mr. Sanford clarified that the proposed parking would be across from the City right-of-way.

In response to Mr. Levy, Mr. Sanford responded that there was no existing curb and there are no plans to install one; although, he added, a curb could assist in preventing customers from pulling up and parking.

Mr. Faulk stated that the two issues are the separation between the two proposed driveways and that there has to be a minimum setback from the signalized intersection at the corner of the property and explained that there is an even greater requirement from the setback to the next driveway, which is 230’. He added, that in this case, the lot is only 150’ so no driveways would be allowed. Mr. Faulk further added that if the lot were developed, no new access would be allowed onto Leavenworth Street.

Mr. Levy stated that his concern with the request was the suburban feel of the project. He added that if Mr. Sanford’s client were to add a curb and landscaping, then he would not have a problem with the project from a traffic standpoint. Mr. Sanford responded that his client would do what was required to add to the appearance of the business, including adding a curb and landscaping. In response to Mr. Levy, Mr. Sanford confirmed that signage would be added to advise customers that there would be one way in and one way out.

Mr. Weaver stated that he felt the circular drive would be safer than having customers pulling into the front of the property and backing out onto Leavenworth Street.

In response to Mr. Faulk’s question as to the amount of stacking space on the property; Mr. Sanford responded that there would be room for two cars, which he felt would be sufficient for the number of customers he has witnessed visiting the business at one time. Mr. Weaver noted that if stacking were an issue, there would be additional parking to the west side. Mr. Sanford added that they would be adding a door on the west side of the building.

Mr. Labode expressed concern about the setback issue. Mr. Sanford agreed that the plan was less than perfect because of not being able to get a 90° turning radius, but added that vehicles would still be able to turn into the driveway.

There was some discussion by the Board for clarification of the parking situation at the business and other access points in and out of the property.

Mr. Levy made a motion to grant the appeal subject to the installation of a curb and landscaping. Seconded by Mr. Weaver.

AYES: Weaver, Lopez, Levy

NAYES: Labode, O’Connor

Motion carried 3-2
III. Approval of Minutes from February 27, 2012

Mr. Levy made a motion to approve the minutes from the February 27, 2012 meeting. Seconded by Mr. Lopez.

AYES: Lopez, Labode, Levy, Weaver

ABSTAIN: O'Connor

Motion carried 4-0-1

IV. Adjournment

It was the consensus of the board to adjourn the meeting at 2:20 p.m.

Debbie Hightower, Planning Department
Recording Secretary