

Minutes
Administrative Board of Appeals
September 24th, 2012

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

MEMBERS ABSENT: Steve Simmonds, Alternate
Jama Samiev, Alternate

OTHERS PRESENT: RoseMarie Horvath, Law Department
Kevin Denker, Planning Department
Andrea Wisniewski, Recording Secretary

I. Roll Call

Ms. O'Connor called the meeting to order at 1:03 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

12-9-65

Appeal Omaha Police Department denial of firearm registration: Courtney L Patterson, 3620 Laurel Av, 68111.

Courtney Patterson appeared before the Board. Lt. Staci Witkowski, Omaha Police Department, stated that Mr. Patterson's application was rejected due to a CCW conviction dating from March 10, 1989. Lt. Witkowski commented that Mr. Patterson currently has a firearm registered to him; the Police Department was prepared to issue notice to Mr. Patterson to surrender said firearm depending upon the outcome of today's appeal.

Mr. Patterson stated that he has owned a firearm for quite some time; his current firearm has a tendency to jam. His appeal today was based on a desire to replace this malfunctioning weapon with something that is more reliable and safer to handle. Mr. Patterson explained that he would like to have a firearm for his own protection; adding that he is ill and is at home much of the time.

Mr. Weaver asked Lt. Witkowski if there was anything else on Mr. Patterson's record which would prevent him from having a firearm. Lt. Witkowski stated that there was nothing else on Mr. Patterson's record that would be of concern. Mr. Levy inquired as to what Mr. Patterson intended to do with the old firearm; specifically, if he had plans to sell it. Mr. Patterson responded that he would not sell this weapon to someone else, as he did not feel that it was safe to operate. Lt. Witkowski commented that Mr. Patterson may turn his old weapon into the Police Department for disposal if he so wished.

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

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

Motion carried 5-0.

12-9-66

Appeal Omaha Police Department denial of firearm registration: Jamia L Smith, 3017 Franklin St, 68111.

Jamia Smith, applicant, and Matt Kahler, legal representation for Ms. Smith, appeared before the Board. Lt. Staci Witkowski, Omaha Police Department, stated that Ms. Smith's application was rejected due to a conviction for marijuana less than one ounce dating from April 6, 2006. She added that there were additional charges relating to this incident; they were dropped and Ms. Smith was convicted only for the marijuana charge.

Mr. Kahler described Ms. Smith's marijuana conviction as an infraction. He stated that his client has nothing serious on her record, such as charges involving weapons. Mr. Kahler added that Ms. Smith works at a dental office and has three children. She has had nothing of significance on her record since her marijuana conviction in 2006.

Lt. Wistkowski responded to Mr. Kahler, pointing out that although marijuana less than one ounce may be seen as an infraction, it is in direct violation of the city ordinance passed in January of 2012 which prohibits those with marijuana convictions from registering firearms. Lt. Witkowski disputed Mr. Kahler's statement regarding his client's record, adding that Ms. Smith had been arrested in 2007 for destruction of property related to a domestic violence case. Ms. Smith was not convicted on the domestic violence charge, but did serve one day in jail for this offense, which involved attempting to run over another person with her vehicle. Ms. Smith replied that the other person involved in this incident was someone that she was no longer in a relationship with; adding that she had been the victim of abuse from this person. Lt. Witkowski acknowledged this, stating that there were several incidences in which the role of victim alternated. Ms. Smith continued, stating that she does not use marijuana; however, at the time when the police pulled her over, she was the driving a vehicle in which the passengers were smoking marijuana. Ms. Smith stated that she has three children and wants the gun for protection. She added that three people have been shot on her street in the last two weeks, and she is concerned for her family's safety.

Mr. Levy pointed out that the gun registration ordinance uses the term "violation" when referring to drug offenses. Those without a conviction for marijuana still fall under the ten-year waiting period before being able to register a firearm. Lt. Witkowski pointed out that there are other ways for Ms. Smith to defend her family, including the purchase of a long gun. Ms. Smith stated that in her opinion, registering a handgun is taking responsibility for it. She pointed out that a person could buy a handgun off the street and never register it. Mr. Levy stated that one of the things troubling him is the fact that the gun ordinance seems to punish those who are trying to do the right thing by registering their firearms.

Mr. Weaver made a motion to grant the appeal. Motion died for lack of second. Mr. Weaver stated that in the past, the Board has chosen to grant appeals in cases where the offense occurred more than five years ago. He pointed out that Ms. Smith's violation occurred six years ago.

Mr. Weaver made another motion to grant the appeal. Second by Mr. Labode.

AYES: Weaver, Labode

NAYS: Lopez, Levy, O'Connor

Motion failed 2-3; appeal denied.

12-9-67

Appeal Omaha Police Department denial of taxicab driver permit: John K Willis, 1923 S 17th St, 68108.

John K. Willis appeared before the Board. Lt. Staci Witkowski, Omaha Police Department, stated that Mr. Willis' application was rejected due to several reasons. She stated that Mr. Willis claimed on his application that he had no prior convictions; this was not the case. Lt. Witkowski cited three DUI convictions on Mr. Willis' record, along with several "moral turpitude" charges.

Ms. O'Connor inquired as to the dates of Mr. Willis' DUI convictions. Lt. Witkowski stated that these convictions occurred in 1985, 1990, and 1995. In response to Ms. O'Connor's question, Mr. Willis stated that he was on probation for one year. Ms. O'Connor asked Lt. Witkowski if there was any other information on Mr. Willis' record of concern. Lt. Witkowski replied that Mr. Willis' record contains two offenses for lewd conduct and one offense involving indecent exposure. She added that these types of charges are of concern when a person intends to carry passengers in a vehicle. Ms. O'Connor asked for the dates of these offenses. Lt. Witkowski stated that the first lewd conduct offense occurred in April of 2001; Mr. Willis was fined for this offense. In May of 2001, Mr. Willis was cited for indecent exposure and received a fine. In February of 2004, Mr. Willis was again cited for lewd conduct; he spent sixty days in jail for this offense.

Mr. Willis stated that he has made some bad judgment choices in his life. He added that he has paid for these choices; and wishes to be able to work and support himself. Mr. Labode asked Mr. Willis if he had anything to say about his past record. Mr. Willis restated that he had made some bad choices. Mr. Labode asked whether Mr. Willis denied any of the offenses described by Lt. Witkowski. Mr. Willis stated no denial of the facts presented by Lt. Witkowski.

In response to Mr. Levy's question, Mr. Willis stated that he is currently employed by Costco; however, this is a part-time job; he stated that he needs to find a job that can offer him more hours. He stated that he has a provisional offer of work from a taxicab company; but must obtain his permit in order to work for them. Mr. Levy asked Mr. Willis whether he has made any changes in his life that would give the Board some assurance that the incidences described by Lt. Witkowski would not happen again. Mr. Willis stated that he had learned from his mistakes; and is now trying to live his life in the best way that he can. In response to Mr. Weaver's question, Mr. Willis confirmed that he still uses alcohol.

Mr. Willis protested that the incidences described today by Lt. Witkowski were not mentioned to him at the Police Department when he initially went to register his firearm. Mr. Willis asserted that the police told him that his application was being denied due to a charge for receiving stolen property during the 1980's. Lt. Witkowski responded that the Police Department cited "past criminal history" only on Mr. Willis' denial; it makes no mention of a specific charge or incident. Mr. Willis stated that he returned to the police department later to request a copy of the police report(s) that was responsible for his denial; his request was denied. Lt. Witkowski clarified that the charge that Mr. Willis was referring to a felony conviction for receiving stolen items in 1980. Mr. Willis stated that this conviction was the only offense identified to him at the time of his application. Lt. Witkowski restated that Mr. Willis had stated on his application that he had no prior convictions, to which Mr. Willis replied that he did not check "yes" due to the fact that he received only probation for the conviction, not jail time.

Mr. Weaver stated that the three DUI convictions on Mr. Willis' record, and the fact that Mr. Willis still uses alcohol are of major concern, especially since he wishes to be responsible for transporting passengers.

Motion to deny appeal by Mr. Weaver. Second by Mr. Levy.

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

Motion carried 5-0; appeal denied.

12-9-68

Appeal Omaha Police Department notice of nuisance: Kimberly Wynne, 3803 Franklin St, 68131.

Ms. Wynne was not present. Officer J.V. Stokes, Omaha Police Department, appeared before the Board. He submitted a photograph of Ms. Wynne's property (Exhibit #2), and stated that he had spoken with Ms. Wynne regarding this situation. Officer Stokes stated that Ms. Wynne has a vehicle on her property without proper license plates, adding that the plates on the car are both expired and registered to another vehicle. Office Stokes stated that Ms. Wynne had put air in the tires on the car as cited, and it is sitting on a paved surface; only the license plates remain an issue. Officer Stokes stated that he is willing to continue to work with Ms. Wynne through the week in order to resolve the situation if the Board chose to deny her appeal.

Mr. Weaver stated that according to the picture submitted by Officer Stokes, the vehicle appears to be sitting on the grass. Officer Stokes assured the Board that the vehicle is sitting on a paved area in the picture; this paved area is off a non-paved alley and is surrounded by grass.

Motion to deny appeal by Mr. Levy. Second by Mr. Weaver.

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

Motion carried 5-0; appeal denied.

12-9-69

Appeal Nebraska Humane Society Potentially Dangerous Dog designation: Brad & Amy Price, 723 N 41st Av, 68132.

Mr. and Mrs. Price were not present. Mark Langan, Nebraska Humane Society, appeared before the Board. Mr. Langan explained that since the Price family filed their appeal to the Board, there was a further incident involving their dog Buddy. During this incident, the dog got out of the Price's yard, and attacked another dog, causing severe injuries to the animal. This incident resulted in the Humane Society seizing the Price's dog as a Dangerous Dog under City ordinance, and issuing citations for Reckless Owner to Brad and Amy Price.

Since this occurrence, the Humane Society has worked with the Prices, agreeing to drop the Reckless Owner charge. The Prices agreed to turn Buddy over to the Nebraska Humane Society; he was euthanized due to aggression issues. Dropping the Reckless Owner charge allows the Prices to adopt a new dog. Mr. Langan stated that adopting a new dog was of particular importance to this family, as they have a terminally ill child in the home who was very attached to Buddy. This was the reason behind allowing the Prices to adopt another dog.

Mr. Langan stated that this was a tough case for the Humane Society to deal with, as there was a great deal of emotion involved. He pointed out that the result of the matter is that Buddy is no longer a threat to other animals in the neighborhood. He asked the Board whether they had any questions regarding the events of recent weeks.

Motion by Mr. Levy to place this case on file. Second by Mr. Weaver.

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

Motion carried 5-0; case placed on file.

III. Approval of Minutes from August 27th, 2012

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

AYES: Weaver, Lopez, Levy, O'Connor

ABSTAIN: Labode

Motion carried 4-0-1.

IV. Discussion

- The Board Secretary reminded the Board members that next month's meeting, set for October 24, 2012, will take place in room 702.

V. Adjournment

Motion to adjourn by Mr. Labode. Second by Mr. Weaver.

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

Motion carried 5-0. Meeting adjourned at 1:34 p.m.

Andrea Wisniewski, Planning Department
Recording Secretary