

Minutes
Administrative Board of Appeals
March 25, 2013

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
Andrea Wisniewski, Recording Secretary

I. Roll Call

Ms. O'Connor called the meeting to order at 1:02 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

12-7-54 (From 7/30/12, 10/29/12, 11/26/12, 1/28/13 & 2/25 13

Jonathon Rutten
PO Box 6
Omaha NE 68101

REQUEST: Appeal Nebraska Humane Society Reckless Owner Declaration.

7/30/2012:

At the Administrative Board of Appeals meeting held on July 30, 2012, Jonathon Rutten appeared before the Board.

Mark Langan, Nebraska Humane Society (NHS), stated that this appeal is unique in that it is for both the denial of a Reckless Owner declaration and the denial of two Potentially Dangerous Dog declarations issued by NHS. He submitted into evidence the Investigative Report from NHS, a letter to Mr. Rutten regarding his appeals of the Potentially Dangerous Dog/Reckless Owner declarations, and a copy of the city ordinances which correspond to such declarations (Exhibit 2). The Board decided to hear the Potentially Dangerous Dog declarations and the Reckless Owner declaration separately.

Mr. Langan reported that on June 1st, 2012, NHS was called to Mr. Rutten's address after receiving a report that Mr. Rutten's dogs Bruno (male American bulldog) and Trina (female American bulldog), had attacked a mail carrier. Based on this incident, NHS issued two Potentially Dangerous Dog declarations, one for each of Mr. Rutten's dogs. At the time of this incident, it was determined that neither dog was vaccinated or licensed, nor did Mr. Rutten carry the insurance required under city ordinance for such a breed. Mr. Rutten was also cited for these additional issues.

Mr. Matthew Spanke, mail carrier, appeared before the Board and stated that he was delivering mail to one of Mr. Ruten's neighbors at 3236 North 40th Avenue when he heard the screen door open at Mr. Ruten's house. Mr. Spanke stated that he had been attacked by these dogs previously, and was listening for any noises coming from the direction of Mr. Ruten's home. He could see a woman struggling with Bruno and Trina. Both dogs escaped from this woman, ran towards Mr. Spanke and attacked him, the male dog Bruno on his left and the female dog Trina on his right. He attempted to use his bag and dog spray on both dogs with no effect. At one point, he fell from a 2 ½' retaining wall trying to get away from Bruno and Trina. Mr. Spanke stated that he yelled repeatedly for the owners to come and get their dogs. Mr. Ruten eventually arrived on the scene and collected Bruno and Trina.

Mr. Langan reported that at the time of this incident, NHS was made aware of a second unreported incident which had occurred two weeks previously. During this earlier incident, Mr. Spanke was again delivering mail to a neighbor's house when Mr. Ruten's mother came to the edge of her property to retrieve their mail. While she was waiting for her mail, Trina, the female bulldog, slipped her tether in the front yard, ran down the street, and attacked Mr. Spanke. During this attack, she bit Mr. Spanke on the arm. Mr. Spanke reported that this was the first time he had been attacked by a dog on the job. Mr. Ruten's mother had a difficult time getting control of Trina. Mr. Spanke reported the incident to his postmaster, who chose not to report the incident to NHS. Reporting the incident would have jeopardized Mr. Spanke's employment with the Post Office. Mr. Langan stated that Mr. Ruten filed an appeal of the Potentially Dangerous Dog declarations issued June 1st 2012 with NHS on June 12, 2012.

Ms. O'Connor asked to hear from Mr. Ruten regarding these two incidences. Mr. Ruten stated that he did not understand the first incident in mid-May, commenting that neither NHS nor the police department were called as a result of this incident. He added that he had previously warned Mr. Spanke about Bruno and Trina, advising him not to walk on the grass near his property, and pointing out a sign on his property about the dogs. He told Mr. Ruten to walk around the side of the house to deliver mail, away from the dogs. Mr. Ruten maintained that Mr. Spanke approached his house despite his warnings and was not paying attention to his dogs tethered in the front yard. He stated that Mr. Spanke entered the front yard, turned around, and went back on the sidewalk. He did not comment as to whether or not Trina bit Mr. Spanke as was claimed.

In regards to the second incident on June 1st, Mr. Ruten stated that his mother was opening their side door. Mr. Spanke was in their yard delivering mail at this time. Mr. Ruten stated that his female dog, Trina, slipped her collar, came out of the side door, and ran up to Mr. Spanke, who swung his mail bag at her. Trina nipped at the mail bag before Mr. Ruten could grab her. During this time, the male dog, Bruno, began struggling to get outside as Mr. Ruten was putting Trina back inside the house. Mr. Ruten restated that he had previously told Mr. Spanke to stay off his property and had warned him about the dogs tied up in the front yard.

Mr. Langan stated that an appeal hearing was held at NHS on June 25th, 2012 for the two Potentially Dangerous Dog declarations and the Reckless Owner declaration issued by NHS. At that hearing, Mr. Ruten's appeal was denied. Mr. Levy asked whether the NHS review panel considered only the June 1st, 2012 incident, or if the earlier incident was also included. Mr. Langan replied that NHS based its denial on both incidences, commenting that the June 1st, 2012 incident was sufficient in and of itself to meet the requirements for the issuance of a Potentially Dangerous Dog definition.

Mr. Labode asked for clarification in regards to the numerous citations issued to Mr. Ruten listed in NHS' report. Mr. Langan replied that these included the Potentially Dangerous Dog declarations, the citations for no insurance, vaccination and license, and court appearance citations. Mr. Langan informed the Board that Mr. Ruten has a poor history with NHS and recounted numerous contacts with Mr. Ruten through the years. These incidences include two occurrences in 2005 where Bruno was found to be running loose around the neighborhood and attacked a poodle; a conviction for animal cruelty in 2007 for allowing bulldog puppies to live in filth; a complaint in 2009 about both Bruno and Trina being aggressive; and a 2010 conviction for not licensing his animals or having insurance on his two dogs.

In response to Mr. Langan, Mr. Ruten replied that he was young at the time of these incidences. He asserted that he had only recently gotten Bruno and Trina back from an aunt who lives out of state, and was in the process of obtaining their licenses and insurance when the June 1st, 2012 attack occurred. Mr. Samiev asked Mr. Spanke whether he had spoken to Mr. Ruten about his dogs prior to the June 1st, 2012 incident. Mr. Spanke he had never met Mr. Ruten prior to Bruno and Trina attacking him on June 1st, 2012. He commented that since this attack, Mr. Ruten's mail service has been cut off. Mr. Spanke stated that he takes extra measures to avoid Mr. Ruten's dogs, including crossing the street to avoid the sidewalk in front of Mr. Ruten's house. Mr. Samiev asked whether Mr. Spanke was on Mr. Ruten's grass when the attacks occurred. Mr. Spanke denied being on Mr. Ruten's property, stating that both attacks took place at a neighboring property, 3236 North 40th Avenue.

Mr. Rutten protested that the mid-May incident was not reported to NHS or the police department. He insisted that he had previously had a conversation with Mr. Spanke, in which he told Mr. Spanke to stay off the property and made him aware of the sign in his front yard warning people about his dogs. He maintained that his dog Trina never bit Mr. Spanke, only nipped his mail bag. Mr. Samiev and Mr. Labode asked Mr. Rutten what steps he has taken to preserve the safety of the neighborhood in regards to his animals. Mr. Rutten replied that he had purchased muzzles, and was in the process of installing a privacy fence in his backyard for the dogs when the June 1st, 2012 incident occurred.

The Board asked Mr. Langan to explain NHS' issuance of a Reckless Owner declaration to Mr. Rutten. Mr. Langan stated that on June 13th, 2012, just twelve days after NHS issued Potentially Dangerous Dog declarations to Mr. Rutten, NHS and the Omaha Police Department received a report of a dog running around the neighborhood and acting aggressively towards neighbors. Upon their arrival, Mr. Charles Fultz told NHS that Mr. Rutten's female bulldog Trina had been running loose around the neighborhood and had charged his grandchildren who were Mr. Fultz' front yard. It was reported that Trina was acting aggressively; i.e., barking, growling. During this incident, a neighbor by the name of Charles Swanson fired a gun at Trina. Mr. Langan confirmed with the Omaha Police Department that shots were fired in this incident. Animal control officers interviewed Mr. Rutten, who admitted that Trina had gotten loose. Mr. Rutten was again issued citations regarding this incident, including a Reckless Owner declaration. Trina was confiscated by NHS. Bruno was left at Mr. Rutten's house as he was not involved in this particular incident. Mr. Rutten was required to surrender Bruno to NHS within 24 hours of the issuance of the Reckless Owner declaration. Mr. Langan stated that as of today's date, Mr. Rutten still has not surrendered his male dog as is required under city ordinance.

Mr. Samiev asked what typically happens in cases where an owner refuses to surrender an animal. Mr. Langan stated that NHS will typically ask for the owner's cooperation; if unsuccessful, a search warrant is obtained so that they can locate and confiscate the animal. Mr. Samiev asked Mr. Rutten why he did not surrender Bruno as was required. Mr. Rutten maintained that Bruno was not involved in the mid-May, June 1st, or June 13th, 2012 incidences, and that this was the reason why he did not surrender Bruno to NHS.

Mr. Rutten stated that during the June 13th, 2012 incident, his mother had opened the door to bring Trina to the front yard. While she was in the front yard, Trina ran towards a minor, Floyd Wallace, sitting on a neighbor's porch at 3236 North 40th Avenue. Mr. Rutten stated that this was the same address at which Mr. Spanke hit his dog Trina with his mail bag. Floyd Wallace ran across the yard, into his yard, and down the street. Trina began to chase Floyd Wallace, pulling Mr. Rutten's mother behind her. During this incident, Mr. Rutten stated that Trina was muzzled and was on a leash. Floyd Wallace ran into the house. Mr. Swanson came out of the house with his gun and began yelling and shooting. Mr. Rutten claimed that Mr. Swanson at one point grabbed him by the back of his shirt, forced him to the ground, and put a gun in his face.

Mr. Samiev again asked Mr. Rutten why he did not surrender Bruno as is required under city ordinance. Mr. Rutten stated that the animal control officer told him that he needed to surrender Trina; however, he was not told that he needed to surrender Bruno. Mr. Langan rebutted that the Reckless Owner declaration issued to Mr. Rutten on June 13th, 2012 clearly states that the owner must surrender all animals in his possession within 24 hours. Mr. Langan added that Mr. Rutten also received a letter following his NHS appeal on June 25th, 2012 which again stated that Mr. Rutten must surrender all animals in his possession within twenty-four hours. Mr. Levy asked Mr. Langan why NHS has not yet obtained a search warrant and seized Bruno. Mr. Langan stated that NHS was awaiting today's decision by the Board before moving forward.

Mr. Labode asked Mr. Rutten why he had not vaccinated or licensed Bruno and Trina, or obtained the necessary insurance required for dogs of their breed. Mr. Rutten stated that he had been on his way to the insurance office on June 1st, 2012. He stated that his dogs had already been licensed and vaccinated. According to Mr. Rutten, the insurance was the only thing that had not been completed. Mr. Langan countered that neither Bruno nor Trina were vaccinated at the time of the June 1st, 2012 incident, which occurred at approximately at 12:30 in the afternoon. According to records from Mr. Rutten's veterinarian, the dogs were not vaccinated until 4:00 in the afternoon, well after the attack had taken place. Mr. Langan added that Mr. Rutten's insurance policy was dated June 11th, 2012 – eleven days after the attack. In response to Mr. Levy's question regarding the need for insurance, Mr. Langan replied that owners of American bulldogs are required to carry insurance under city ordinance, regardless of whether or not they are ever determined to be Potentially Dangerous Dogs.

Floyd Wallace, the minor who was charged by Trina on July 13th, 2012, appeared before the Board. Mr. Wallace stated that Bruno is a nice dog; he has not known him to bite or bark at people. Mr. Wallace described him as being a “lazy dog” and “lovable”. When asked about Trina, Mr. Wallace stated that she is aggressive.

After some additional discussion, Mr. Levy made a motion to deny the appeal for Potentially Dangerous Dog in regards to the female American bulldog, Trina. Second by Mr. Samiev.

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

Motion carried 5-0; appeal denied.

Mr. Samiev made a motion to grant the appeal for Potentially Dangerous Dog in regards to the male American bulldog, Bruno. Second by Mr. Labode.

Ms. O’Connor asked Mr. Spanke to confirm his statement that Bruno was involved in the June 1st, 2012 attack. Mr. Spanke repeated his statement that both dogs attacked him on that day, and not just the female dog Trina as Mr. Rutten claims.

AYES: Labode, Samiev, Levy

NAYS: Lopez, O’Connor

Motion carried 3-2; appeal granted.

Mr. Levy asked Mr. Rutten whether he would be willing to accept Trina’s permanent surrender to NHS if the Board granted his appeal for Reckless Owner today. Mr. Rutten stated that he would accept this requirement. In response to Mr. Samiev’s question, Mr. Rutten stated that a privacy fence will still be installed at his residence. Mr. Levy asked Mr. Langan whether he had any more input on the matter of the Reckless Owner appeal. Mr. Langan asked that the Board condition the Reckless Owner motion so that Mr. Rutten is required to attend Owner Responsibility and Dog Behavior classes, and to require Mr. Rutten to install a 6’ privacy fence on his property to contain Bruno. Mr. Levy asked Mr. Rutten whether he would comply with these stipulations. Mr. Rutten replied that he would agree to these requirements.

Motion by Mr. Levy to grant the appeal for Reckless Owner declaration, subject to the following conditions: 1) that Mr. Rutten surrender Trina to the Nebraska Humane Society, and that he make no attempt to challenge her permanent surrender; 2) that Mr. Rutten attend “Owner Responsibility” and “Dog Behavior” classes offered by the Nebraska Humane Society by no later than September 30, 2012; and 3) that Mr. Rutten install a 6’ privacy fence on his property for the purpose of containing Bruno within twenty days. Second by Mr. Samiev.

After some discussion regarding the height and style of the fence to be installed at Mr. Rutten’s property, Mr. Levy declined to modify his motion further. Ms. O’Connor called the question.

AYES: Labode, Samiev, Levy

NAYS: Lopez, O’Connor.

Motion carried 3-2.

10/29/2012:

Mark Langan, Nebraska Humane Society, appeared before the Board. Mr. Langan reported to the Board that Mr. Rutten has not complied with all of the terms stipulated by the Board at the July 30th, 2012 meeting of the Administrative Board of Appeals:

From 7/30/2012 Minutes: Motion by Mr. Levy to grant the appeal for Reckless Owner declaration, subject to the following conditions: 1) that Mr. Rutten surrender Trina to the Nebraska Humane Society, and that he make no attempt to challenge her permanent surrender; 2) that Mr. Rutten attend "Owner Responsibility" and "Dog Behavior" classes offered by the Nebraska Humane Society by no later than September 30, 2012; and 3) that Mr. Rutten install a 6' privacy fence on his property for the purpose of containing Bruno within twenty days. Second by Mr. Samiev.

Mr. Langan confirmed that Mr. Rutten surrendered his female American bulldog, Trina, to the Humane Society, and that she had been euthanized due to aggression issues. Mr. Langan stated that Mr. Rutten had attended an owner responsibility class and dog behavior classes as required. However, Mr. Langan reported that Mr. Rutten had not complied with the third part of the Board's motion, which required him to erect a 6' privacy fence on his property within twenty days. Mr. Langan stated that Mr. Rutten has instead chosen to erect a dog kennel on his property. He has covered this kennel with a tarp in order to block view of the dog. Mr. Langan submitted photos of the property which show this kennel in Mr. Rutten's backyard; he added that Mr. Rutten reported to animal control officers that he cannot afford to erect a 6' privacy fence in his backyard.

Mr. Langan stated that two other incidences involving Mr. Rutten and his dog Bruno have occurred since his appearance before the Board in July. The first incident occurred on August 1st, 2012 – one day after his appearance before the Board. The Humane Society received a call from Mr. Rutten's mail carrier (who testified at the July 30th meeting – please see minutes), who claimed that Mr. Rutten had come outside of his house when he attempted to deliver mail to the property. According to the mail carrier, Mr. Spanky, Mr. Rutten stood with his dog in a threatening fashion, glaring at the postal worker. A citation was issued to Mr. Rutten for not having Bruno muzzled. At the time of this citation, animal control officers heard Mr. Rutten threaten the mail carrier. All mail service to Mr. Rutten's house has been discontinued as a result of this incident. A trial was scheduled to take place regarding this incident today. Mr. Rutten failed to appear at this hearing, and a bench warrant was issued for his arrest.

A second incident occurred on October 1st. Mr. Rutten called the Nebraska Humane Society and asked them to come to his house. He stated that he was walking his dog down the street when the neighbor's dog attacked his dog. Mr. Rutten claimed that his dog was muzzled; the neighbor disputed this fact. Mr. Langan stated that there was some debate over where the attack actually took place; the Humane Society learned from eyewitnesses that the neighbor's dog has been unrestrained and issued citations accordingly.

After hearing the facts presented by Mr. Langan, the Board came to a general consensus that Mr. Rutten needed to appear before them in order to explain his actions since his appearance before them in July. Mr. Levy commented that it was disappointing to hear that Mr. Rutten has not availed himself appropriately of the chance given to him by the Board. In response to Mr. Denker's question, Ms. Horvath stated that it was within the Board's power to call Mr. Rutten back before them and to potentially revoke their earlier approval if they deemed it to be appropriate.

The Board Secretary asked Ms. Horvath how she can notify Mr. Rutten of the hearing on November 26th if mail service has been suspended. Mr. Denker offered to send one of his inspectors out to Mr. Rutten's house to place the meeting notice on his front door.

Mr. Weaver stated that he was not in attendance at the July 30th meeting. He clarified that the main item up for discussion at the November 26th hearing would be the issue of the 6' privacy fence. He asked Mr. Langan to speak in regards to the difference between a 6' privacy fence and the kennel that has been erected on Mr. Rutten's property. Mr. Langan responded that he had been told by the Board to install a 6' privacy fence on his property; common sense would dictate that a kennel covered by a tarp differs from a privacy fence, which would cover the entire back yard. Mr. Langan stated that the structure erected on Mr. Rutten's property does not meet his definition of a 6' privacy fence. Mr. Levy asked whether there were any other issues besides the privacy fence which would be of concern and would also be under the Board's jurisdiction. Mr. Langan confirmed that the only item under the Board's jurisdiction at the November 26th meeting would be the matter of the 6' privacy fence. He stated that he had informed the Board of the two incidences involving Mr. Rutten since his appearance before the Board in order to illustrate his uncooperativeness with other entities outside of the Administrative Board of Appeals.

Mr. Labode stated that at the time of his appearance before the Board in July, Mr. Rutten seemed to be willing to construct a 6' privacy fence as directed. Mr. Labode stated that he would like to see Mr. Rutten reappear before the Board to explain why he did not implement the agreement reached at that meeting. Mr. Weaver countered that the structure on Mr. Rutten's property does measure 6' in height and contains Bruno; although the matter of "privacy" could be debated. Mr. Denker stated his belief that the City could produce a definition of "privacy fence" if needed. Mr. Levy stated that as the person who made the motion at the July 30th meeting, it had not been his intention to allow the structure now shown to be on Mr. Rutten's property.

Mr. Lopez asked Mr. Langan for the date of his organization's last contact with Mr. Rutten. Mr. Langan replied that NHS' last contact with Mr. Rutten had been on October 1st. In response to Mr. Levy's question, Mr. Langan stated that it could be up to a two year process (or longer) in order to convict Mr. Rutten as a Reckless Owner in the event that he avoids arrest for his warrant. Mr. Levy thanked Mr. Langan, adding that relying on Mr. Rutten's warrant could result in a lengthy procedure. Mr. Langan agreed with that statement. Mr. Levy stated that the Board attempted to work with Mr. Rutten in July in order to allow him to keep his dog, and it now appears that Mr. Rutten is not holding up to his end of the bargain.

Mr. Labode made a motion to require Mr. Rutten to appear before the Board on November 26, 2012. Second by Mr. Levy.

AYES: Labode, Levy

NAYS: Lopez

ABSTAIN: Weaver

Motion carried 2-1-1.

11/26/2012:

Jonathon Rutten appeared before the Board.

Mark Langan, Nebraska Humane Society, summarized the case again for the Board members, and concluded by stating that Mr. Rutten had not complied with all of the terms stipulated by the Administrative Board of Appeals at their July 30th, 2012 meeting (see above). Mr. Rutten was to install a 6' privacy fence in the backyard of his property; this fence was to be for the purpose of containing his male American bulldog, Bruno. Mr. Langan stated that Mr. Rutten has installed a makeshift chain link dog kennel on the property in lieu of the required fence and covered it with blue tarps (for photos, see file).

Mr. Rutten stated that he had been unaware that a dog kennel would not be sufficient. He stated that the kennel is 6 feet in height, and is not left in this kennel for long periods of time. Mr. Rutten stated that he would be willing to install a privacy fence on the property if the Board requires him to do so.

In response to Mr. Levy's question, Mr. Rutten confirmed that he has attended the Humane Society's dog behavior and owner responsibility classes as required by the Board. He added that Bruno has arthritis in his legs and is a very laid-back animal; he is not aggressive.

Mr. Levy stated that a dog kennel was not what he had in mind when he made a motion requiring Mr. Rutten to install a 6' privacy fence on his property at the July 30, 2012 meeting. He stated that the dog kennel installed on Mr. Rutten's property does not meet the intent of the agreement made between Mr. Rutten and the Administrative Board of Appeals at that meeting. Mr. Rutten again stated that he would be willing to install a 6' privacy fence in his backyard; he added that he would need to discuss this with his landlord, as he rents his home.

Motion by Mr. Levy to reopen case number 12-7-54. Second by Mr. Simmonds.

AYES: Lopez, Levy, Simmonds, O'Connor

Motion carried 4-0. Case reopened.

Motion by Mr. Levy to clarify the Board's July 30th, 2012 motion; stating that a 6' privacy fence is a fence that encloses the entire rear yard, regardless of whether this fence is made of wood or metal (chain link). Mr. Rutten must erect a 6-foot fence which encloses the entire perimeter of his back yard in order to contain the male American Bulldog, Bruno by no later than December 31, 2012. Second by Mr. Simmonds.

AYES: Simmonds, Levy, Lopez, O'Connor

Motion carried 4-0.

1/28/2013:

Kristie Biodrowski, Nebraska Humane Society appeared before the Board and reported that Mr. Rutten was not in compliance with the terms stipulated by the Administrative Board of Appeals at their November 26, 2012 meeting. Ms. Biodrowski reported that Mr. Rutten has installed a 25 foot long by six foot wide wooden privacy fence along the north side of his house. This fence runs from the front of the house to the back, and does not encompass the entire perimeter of the yard as was stipulated by the Board.

After some discussion, Mr. Weaver made a motion to require that Jonathon Rutten appear before the Administrative Board of Appeals on February 25, 2013. Second by Mr. Labode.

AYES: Weaver, Lopez, Labode, Levy

NAYS: Samiev

Motion carried 4-1. Mr. Rutten is required to appear before the Administrative Board of Appeals on February 25, 2013.

2/25/2013:

Mr. Rutten was not present. Kevin Denker, City Planning Department, asserted that a member of his staff had gone to Mr. Rutten's residence and had posted notice of today's meeting on his front door. The Board Secretary commented that she had sent a second copy of this notice by certified mail to Mr. Rutten, and had received confirmation that the item had been picked up and signed for, although not by Mr. Rutten.

Mark Langan, Nebraska Humane Society, appeared before the Board. Mr. Langan summarized the case against Mr. Rutten, including the fact that he was directed by the Board to install a six foot privacy fence around the perimeter of his back yard. To date, there is no privacy fence in Mr. Rutten's back yard. Mr. Rutten instead fenced in a small area of his side yard on the north side of his house. Mr. Langan stated that Mr. Rutten was due in court last Friday for another animal control violation citation; he failed to appear, and now has a warrant out for his arrest.

Mr. Levy asked RoseMarie Horvath, City Law Department, whether the Board had jurisdiction to change their previous agreement with Mr. Rutten in light of present circumstances. Ms. Horvath confirmed that the Board had jurisdiction to act in this case.

Motion by Mr. Levy to revoke the partial approval of Mr. Rutten's previous appeal and to deny this appeal in its entirety.

AYES: Lopez, Simmonds, Levy, O'Connor

ABSTAIN: Weaver

Motion carried 4-0-1. Appeal denied

3/25/2013:

Mr. Rutten was not present when called. Kevin Denker, City Planning Department, stated that a member of his staff had hand-delivered notice of today's hearing. He submitted photos of the notice being delivered directly to Mr. Rutten. The Board Secretary stated that notice had also been sent by Certified Mail.

Mark Langan, Nebraska Humane Society, appeared before the Board. Mr. Langan stated that this is the sixth time that his department has come before the Board in regards to Mr. Rutten. He added that the Humane Society had driven by Mr. Rutten's property one hour ago – no changes have occurred.

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

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

Motion carried 5-0. Appeal denied.

Mr. Langan offered to remain at the meeting for a few minutes in case Mr. Rutten arrived late. Mr. Rutten arrived at 1:25 pm. Neither Ms. O'Connor nor Mr. Levy wished to reopen the case, stating that a disposition had already been reached. RoseMarie Horvath, Law Department, stated that she had received a phone call from Mr. Rutten following the February 25, 2013 meeting. He claimed that he had been unable to attend that meeting due to the fact that he had been out of town. This case was placed back on the agenda for today's meeting at her request in order to provide another attempt for Mr. Rutten to receive due process.

Motion to reopen case number 12-7-54 by Mr. Levy. Second by Mr. Labode.

AYES: Levy, Lopez, Labode, O'Connor

NAYS: Weaver

Motion carried 4-1. Case reopened.

Jonathan Rutten appeared before the Board. Mark Langan, Nebraska Humane Society, reviewed the case at hand; namely, the fact that Mr. Rutten was directed by this Board to erect six foot privacy fence around the entire perimeter of his backyard. At this time, Mr. Rutten has not complied with this requirement.

Mr. Rutten stated that he lives in a rental property; his landlord did not wish him to fence the entire backyard. The side yard fence was suggested by Mr. Rutten's landlord as a possible compromise for the larger fence stipulated by the Board. Mr. Rutten stated that he has spent a great deal of money in trying to comply with the Board's wishes; including taking out permits and hiring a fencing contractor. He stated that he believes that the current fence is what the Board wished him to install. He asserted that his dog has been secured and cannot leave this fenced area. Mr. Rutten stated that he saw no reason not to dismiss this case, as he has done everything he could to comply with the Board's stipulations.

Mr. Levy stated that Mr. Rutten last appeared before the Board in November 2012. He asked Mr. Rutten whether he received notice of the January and February 2013 meetings. Mr. Rutten replied that he had. Mr. Levy asked Mr. Rutten if he had declined to appear at these meetings. Mr. Rutten replied in the affirmative. Ms. Horvath stated that this was not the conversation that she had had with Mr. Rutten in February. Mr. Rutten revised his statement, saying that he had been out of town. Mr. Levy asked Mr. Rutten if he had notified anyone that he would be unable to attend the January and February meetings. Mr. Rutten claimed not to have been able to call, citing family emergencies.

Ms. O'Connor asked Mr. Langan whether the current fence was in compliance. Mr. Langan replied that the current fence was not in compliance with the Board's stipulation; stating that Mr. Rutten had been directed to install a six-foot privacy fence that encompasses the entire rear yard. He reminded the Board that this matter began in July of 2012, when the Board granted an appeal to Mr. Rutten for Reckless Owner based on certain conditions.

Mr. Rutten protested that there have been no further incidences involving his dog, commenting that he had surrendered his female bulldog as directed. Mr. Rutten stated that if there were any further issues with his dog he would be happy to come before this Board again. He stated that he has paid as much money as he possibly can afford in order to fix this issue, restating the fact that he rents his home. Mr. Rutten stated that plans to live in Omaha for approximately the next year before moving. Mr. Rutten stated that a fence such as that stipulated by the Board would be more money than he could afford to pay.

Mr. Levy stated his opinion that, intentionally or not, Mr. Rutten has placed this Board in a difficult position. He stated that the Board has tried to work with Mr. Rutten. However, Mr. Rutten's repeated failures to appear at hearings and failure to notify anyone that he would not be present puts the Board in a position where the adequacy of the installed fence is not the only concern at hand. Mr. Levy stated that it appears to him that Mr. Rutten has not taken this process seriously. He stated that if Mr. Rutten had come to the Board and told them of his difficulties in fencing the backyard, this would be a very different circumstance. Mr. Levy stated that the Board's options may be potentially limited at this point. Mr. Rutten apologized for not keeping in better contact with the Board.

Mr. Rutten stated that he loves his dog and considers him to be a family member. He offered to sign a statement promising to sign his dog over if there were any further incidents in the next six months. He asked for a chance to show the Board that the current fence is secure. Mr. Levy stated that this would not be necessary, as Mr. Rutten would already be required to surrender his animal to the Humane Society if there was another incident. Mr. Langan countered this statement, citing the fact that as per this Board's decision in July of 2012, Bruno is no longer considered to be a Potentially Dangerous Dog. Mr. Levy asked Mr. Langan whether there were a sufficient number of incidences involving Bruno on record that would result in a new Reckless Owner declaration if another incident were to take place. Mr. Langan stated that Mr. Rutten is very close to having three convictions within a twenty-four month period. Mr. Langan stated that Mr. Rutten has a court case pending; this became a warrant for his arrest after he failed to appear in court. He was arrested and a new court date has been set for April 17th, 2013. Mr. Langan stated that if Mr. Rutten is convicted on that date, he will become a Reckless Owner based on the three convictions in a twenty-four month period.

Mr. Labode stated that the issue before the Board today is not the dog, but rather the fence that has been erected on Mr. Rutten's property. The Board discussed the November meeting, at which the Board clarified their earlier motion regarding the type of fence to be erected on the property by no later than December 31, 2012. Mr. Rutten agreed to this arrangement at the time, and then failed to appear at the next two scheduled hearings. Mr. Labode asked Mr. Langan to identify the ways in which the current fence is in conflict with the stipulations set by the Board. Mr. Langan stated that the current fence does not encompass the entire perimeter of the back yard as was directed. The current fence covers a small portion of the side of the house and measures approximately seven feet by twenty-five feet.

Mr. Rutten protested that fencing the entire backyard of his house would cost over five thousand dollars. He stated that he is a renter and is not planning to live in Omaha more than one and a half years. Mr. Rutten again offered to sign a statement today promising to give up his rights to Bruno and to surrender him to the Humane Society if there were any further incidences in the next six months. He stated that he couldn't afford to put up a six foot privacy fence in the backyard, so he installed a dog kennel, which cost him four hundred dollars. Upon learning that this was not sufficient, he then installed the current fence on the side yard of the house. Mr. Rutten stated that did what he could afford to do, adding that Bruno has arthritis and is not a dog which runs around or would need the entire backyard. Mr. Rutten claimed that his landlord did not support fencing the entire backyard and told him at the time to see if fencing the side yard would be acceptable to the Board. Mr. Labode asked Mr. Rutten if he received the clarification of the Board's motion at the November meeting. Mr. Rutten denied being told that the fence had to be as long as the entire backyard; he claimed that he was only told that it must be a wood fence. He confirmed that he was present at this meeting. The Board secretary confirmed Mr. Rutten's presence at the November meeting of the Board, stating that the clarification of the Board's wishes in regards to the fence had been made directly to Mr. Rutten.

Mr. Rutten claimed that his aunt and mother are usually at home. Bruno is not left alone all day, as some other dogs are. He claimed to be a good dog owner. Ms. O'Connor asked Mr. Langan what would have happened if the Board had not compromised with Mr. Rutten at the July 2012 meeting. Mr. Langan stated that both Tina and Bruno would have been confiscated; Mr. Rutten would then have had an ability to appeal the Board's denial in District Court. He confirmed Ms. O'Connor's statement that the Board could have declared Mr. Rutten to be a reckless owner at their July meeting.

Mr. Rutten stated that he has made a big effort to deal with this situation to the tune of three thousand dollars. Ms. O'Connor asked Mr. Rutten whether he understood that the Board could have declared him to be a Reckless Owner back in July of 2012. Mr. Rutten stated that he understood this fact. Ms. O'Connor stated that the Board is still dealing with this issue, eight months after granting Mr. Rutten an appeal. She stated that it felt to her as if the Board is working harder to resolve this situation than Mr. Rutten is. Mr. Rutten replied that he is doing everything he can to pay his rent, care for his ten month old daughter, and pay all fines and fees associated with his dogs. Mr. Levy interjected, stating that Mr. Rutten failed to appear at the last two scheduled hearings. Mr. Rutten again stated that he had been out of town; apologizing again for his absence.

Mr. Weaver asked the Board Secretary whether Mr. Rutten was notified to appear at today's meeting. The Board Secretary stated that she has contacted Mr. Rutten via Certified Mail of meeting dates and times; she added that a second copy of this notice was taken directly to his house. She stated that the case file contains a photo of Mr. Rutten personally accepting notice for today's meeting at his front door. She confirmed that this information contained a copy of today's agenda which stated the time at which today's meeting would start. The Board Secretary stated that the decision to also put notice for meetings on Mr. Rutten's door in addition to using Certified Mail came about when Mr. Rutten's mail service to his home was terminated by the United States Postal Service. She was given a Post Office Box number by Mr. Rutten; this proved to be unsuccessful, as mail sent to that address went unclaimed. Pinning notice to Mr. Rutten's door was done in an effort to find some way to notify him that he needed to appear before the Board.

Ms. O'Connor asked Mr. Langan again to confirm that a conviction in District Court would result in a total of three convictions against Mr. Rutten. Mr. Langan confirmed this statement. Ms. O'Connor asked if there was a possibility that this case could then reappear before this Board. Mr. Langan confirmed this statement, stating that there would first be opportunity for appeal through the Humane Society. Mr. Levy commented that if the Board chose to deny Mr. Rutten's appeal today, he would have recourse to District Court. Mr. Langan confirmed this statement. Mr. Levy stated that to deny Mr. Rutten's appeal today could then result in a separate case through District Court that may end up conflicting with the hearing scheduled for April 17th, 2013. Mr. Rutten stated that the case currently in District Court is based on hearsay, and involves whether or not his dog was properly muzzled. Ms. O'Connor stated that this matter was not up for discussion today. She asked the Board whether there were any further questions for Mr. Rutten, or whether the Board would like to make a motion at this time.

Mr. Weaver asked Mr. Rutten whether or not he had any additional dogs in his home at this time. Mr. Rutten stated that Bruno is the only dog in his home. Mr. Labode stated that the biggest problem in his opinion is the fact that Mr. Rutten was present at the November meeting when clarification was made about the fence on his property. He asked Mr. Rutten why he agreed to this clarification if he did not agree with it. Mr. Rutten stated that he had not realized how much fencing the entire backyard would cost. He stated that he instead chose to do what best suited his landlord and the amount of money that he could afford to spend.

Mr. Rutten denied ever agreeing to put up a fence of a specific size on his property; stating that he had agreed to surround the side door of the house. Mr. Levy stated that he respectfully disagreed with Mr. Rutten; stating that the motion made in November had included a provision specifying that the fence must encompass the perimeter of the backyard. He added that if Mr. Rutten had come before the Board and notified them that he could not afford the type of fence specified, and presented the current fence as an alternative solution, then a different conversation might have taken place. Mr. Levy stated that Mr. Rutten had not done so; instead, he failed to appear at meetings and was late to today's hearing. He stated that there are many factors not in Mr. Rutten's favor; however, he is reluctant to take an action which would result in Mr. Rutten losing Bruno. Mr. Rutten replied that losing Bruno would be very upsetting to both him and his mother.

Mr. Labode stated that Mr. Rutten's behavior does not confirm any of his statements regarding his or his mother's love for Bruno. He stated that Mr. Rutten did exactly what he wanted to do, rather than what he was instructed to do. Mr. Labode continued by stating that Bruno appears to be at the end of his life expectancy; adding that if he chose to do anything today, it would not be based on Mr. Rutten's behavior, but rather because he feels for the dog. In response to Mr. Levy's request, Mr. Langan confirmed that the only item up for decision at today's hearing was the Reckless Owner declaration against Mr. Rutten.

Mr. Labode made a motion to grant the Reckless Owner appeal. Second by Mr. Levy.

Before a vote was taken, Mr. Levy asked Mr. Labode to clarify any conditions in regards to the fence currently on Mr. Rutten's property. Mr. Labode declined to make any such stipulations, stating that Bruno appears not to be very mobile, and the current fence appears to be enough to contain this animal. He also stated that Mr. Rutten is a difficult situation as he rents his home. Mr. Labode clarified that the fence is mandatory; the current fence on the property must remain in place. Mr. Weaver asked for clarification on the matter of whether or not, after this appeal were granted today, Mr. Rutten would be classified as a Reckless Owner if he were convicted of a third offence in District Court. Mr. Langan confirmed this statement.

After some discussion, Ms. O'Connor called for a vote on the proposed motion and second.

AYES: Weaver, Labode, Levy

NAYS: Lopez, O'Connor

Motion carried 3-2. Appeal granted.

13-2-6 *From 2/25/2013*

Casey W Lamaster
5026 S 79th Av
Ralston NE 68127

REQUEST: Appeal Omaha Police Department denial of
firearm registration.

2/25/2013:

Casey W Lamaster was not present. The Board Secretary stated that she had received a request from Mr. Lamaster that this case be held over to the next meeting. He was unable to get time off from work so that he could be present today.

Motion to hold this case over to the March 25, 2013 meeting by Mr. Weaver. Second by Mr. Lopez.

AYES: Lopez, Simmonds, Levy, Weaver, O'Connor.

Motion carried 5-0. Appeal held over to March 25, 2013.

3/25/2013:

Casey Lamaster appeared before the Board. Lt. David Sedlacek, Omaha Police Department, stated that Mr. Lamaster's application was denied due to a drug paraphernalia conviction dating from November 13, 2006.

Mr. Lamaster stated that this charge occurred some time ago, adding that he has had no further issues with the law. He has also made significant changes in his life since 2006 and is no longer involved with drugs. He has undergone drug testing both with his current job and his previous job and passed.

Mr. Weaver asked Mr. Lamaster when drug testing occurred. Mr. Lamaster replied that a clean drug test was required during the hiring process; company policy dictates that he can be tested again at any time.

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

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

Motion carried 5-0. Appeal granted.

13-3-10

David G Enenbach
1421 Madison St
Omaha NE 68107

REQUEST: Appeal Omaha Police Department denial of
firearm registration.

David G. Enenbach appeared before the Board. Lt. David Sedlacek, Omaha Police Department, stated that the firearm application in question was denied due to a conviction for marijuana less than one ounce dating from March 31, 2007. He was fined one hundred dollars for this offense.

Mr. Enenbach stated that he would like to have a firearm for him protection. He stated that there have been a string of break-ins in his neighborhood, and he lives next door to a known gang member. Mr. Enenbach stated that he has improved himself and no longer associates with the same people. He added that his employer does random drug testing. Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record.

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

AYES: Weaver, Lopez, Labode

NAYS: Levy, O'Connor

Motion carried 3-2. Appeal granted.

13-3-11

Joshua J Raess
5071 S 106th Av
Omaha NE 68127

REQUEST: Appeal Omaha Police Department denial of
firearm registration.

Joshua J. Raess appeared before the Board. Lt. David Sedlacek, Omaha Police Department, stated that the firearm application in question was denied due to a conviction for drug paraphernalia and marijuana less than one ounce dating from March 31, 2007. He was fined a total of two hundred dollars for these offenses (\$100.00 per offense).

Mr. Raess stated that he would like to have a firearm while working. He is a manager for U-Pull-It and is in charge of making deposits. He has held this position for the last four years. In response to Mr. Labode's question, Mr. Raess stated that his employer paid for the gun; however, the registration must be in the name of the individual carrying it, and not the company. He added that the company used to employ off duty police officers to accompany deposits; however, due to budget cutbacks this is no longer possible. His company is considering a contract with the Armored Knights; however, in the meantime, deposits are now his responsibility. Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record.

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

AYES: Labode, Weaver, Lopez

NAYS: Levy, O'Connor

Motion carried 3-2. Appeal granted.

13-3-12

Daniel V Floyd
5813 Grand Av
Omaha NE 68104

REQUEST: Appeal Omaha Police Department denial of
firearm registration.

Daniel V. Floyd appeared before the Board. Lt. David Sedlacek, Omaha Police Department, stated that the firearm application in question was denied due to a conviction for marijuana less than one ounce dating from April 3, 2005.

Mr. Floyd stated that he was 21 at the time of his conviction; he has had no further trouble with the law. He commented that he would like to have a handgun for home protection. Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record.

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

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

Motion carried 5-0. Appeal granted.

13-3-13

Turrell A Partee
6052 Park Lane Dr
Omaha NE 68104

REQUEST: Appeal Omaha Police Department denial of
firearm registration.

Mr. Partee was not present. The Board Secretary stated that Mr. Partee had been sent notice to appear at today's hearing; upon checking with the Postal Service, she discovered that he had not picked up the notice.

Motion to hold this case over to the April 29, 2013 meeting by Mr. Levy. Second by Mr. Weaver.

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

Motion carried 5-0. Case held over to April 29, 2013

13-3-14

Christopher D Greenawalt
8516 Fowler Av
Omaha NE 68134

REQUEST: Appeal Omaha Police Department denial of
firearm registration.

Christopher D. Greenawalt appeared before the Board. Lt. David Sedlacek, Omaha Police Department, stated that the firearm application in question was denied due to a conviction for marijuana less than one ounce dating from October 30, 2004.

Mr. Greenawalt stated that he has three children and would like to have a firearm for home protection. He cited recent criminal activity in the neighborhood and a past incident in which someone tried to kidnap one of his children which makes him concerned for his family's safety. Mr. Greenawalt commented that he works for Vrana Construction, which conducts random drug testing. He has passed all such tests. He also holds a CDL license, which also requires drug testing. Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record.

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

AYES: Weaver, Lopez, Labode

NAYS: Levy, O'Connor

Motion passed 3-2. Appeal granted.

13-3-15

Brandon Bushon
1817 N 81st St
Omaha NE 68114

REQUEST: Appeal Omaha Police Department denial of
firearm registration.

Brandon Bushon appeared before the Board. Lt. David Sedlacek, Omaha Police Department, stated that the firearm application in question was denied due to a conviction for drug paraphernalia dating from February 25, 2008. Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record.

Mr. Bushon stated that he was a senior in high school at the time of his conviction. He added that he would like to have a firearm for home protection. Mr. Bushon cited criminal activity in his neighborhood which makes him concerned for his safety and that of his parents.

Mr. Weaver asked Mr. Bushon whether he was employed. Mr. Bushon replied that he has worked as a cook at Icehouse Sports Bar for the past five years. In response to Mr. Labode's question, Mr. Bushon stated that he currently lives with his parents and is saving for a home of his own. He intends to take this firearm with him to his new home.

Mr. Weaver commented that it has been just over five years since Mr. Bushon's conviction. He stated that given the recent nature of the conviction, in combination with Mr. Bushon's age and current living situation, he was reluctant to grant his appeal at this time.

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

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

Motion carried 5-0. Appeal denied.

13-3-16

John P Smithberg
6420 Lake St
Omaha NE 68104

REQUEST: Appeal Omaha Police Department denial of
firearm registration and revocation of firearm
registration.

John P. Smithberg appeared before the Board. Lt. David Sedlacek, Omaha Police Department, stated that the firearm application in question was denied due to a conviction for discharge of an explosive device dating from August 12, 2012. He also received a letter for revocation of firearm registration for the other firearms registered under his name as a result of this conviction.

Mr. Smithberg stated that he has collected guns for over forty years. He has lived at his current address for over twenty years, and has had issues in the past with his property being stolen. Mr. Smithberg told the Board that on the day in question, he was driving down the street with his son. There was an altercation between him and another driver that escalated to such a point that Mr. Smithberg was awoken later that evening by his son, who had been beaten outside their home by the gentlemen in the other vehicle. He was told by his son that these people were waiting for him outside and intended to both beat him and smash his truck. Mr. Smithberg stated that he called the police; following that, he went outside his home and fired a shot into the air immediately outside his front door. He did not pursue the people on his property; rather he waited for the arrival of the police.

Mr. Smithberg admitted he did the wrong thing in firing his gun without seeing who was around at the time; however, he asserted that he was half-asleep and was fearful for his family's safety. He stated that he has had no further issues with these people since scaring them off his property. Mr. Smithberg again admitted his wrongdoing in this matter, but maintained that the guns in his possession did exactly what they were meant to do – they protected his family.

Ms. O'Connor asked Lt. Sedlacek how Mr. Smithberg's conviction was disposed of. Lt. Sedlacek stated that Mr. Smithberg's sentence was suspended; he received only a fine. In response to Mr. Levy's question, Lt. Sedlacek stated that this was a misdemeanor charge, not a felony. Mr. Smithberg maintained that the only reason he pled guilty to the charge was that he had an opportunity to become employed at the nuclear power plant; any pending charge would have made his employment impossible.

In response to Mr. Weaver's question, Mr. Smithberg confirmed that he called the police, exited his home, and shot a round from his gun around the corner of the house in order to scare the intruders off of his property. In response to Mr. Levy's question, Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record. Mr. Weaver expressed an opinion regarding the applicant's decision to fire off a weapon before he was truly aware of what was happening on his property or who might have been present. He stated that the applicant's volatility concerned him.

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

AYES: Weaver, Lopez, Levy, O'Connor

NAYS: Labode

Motion carried 5-0. Appeal denied.

13-3-17

Timothy Hickman-Smith
5616 N 29th St
Omaha NE 68111

REQUEST: Appeal Omaha Police Department revocation of
firearm registration.

Timothy Hickman-Smith appeared before the Board. Lt. David Sedlacek, Omaha Police Department, stated that the firearm registration in question was revoked due to a protection order issued January 14, 2013. Lt. Sedlacek stated that he has been informed that this protection order has since been withdrawn. Lt. Sedlacek reported another incident in which a firearm and marijuana was discovered in the applicant's vehicle during a traffic stop. This incident took place September 6, 2012; Mr. Hickman-Smith was arrested and charged with carrying a concealed weapon and marijuana less than one ounce. It was later discovered that Mr. Hickman-Smith has a CCW permit; thus rendering the CCW charge moot. All charges were dropped, and Mr. Hickman-Smith was charged with violation of a CCW permit and fined due to his failure to inform officers at the time that there was a weapon in his vehicle. Lt. Sedlacek stated that it is likely that the State of Nebraska has since revoked Mr. Hickman-Smith's CCW permit as a result of this incident.

Matthew Knowles, legal representation for the applicant, stated that he had been unaware of the September 6, 2012 incident. He stated that he and his client came before the Board today prepared to address the protection order; he was not aware that the September 2012 incident would be under discussion. Mr. Knowles stated that he had represented Mr. Hickman-Smith during this time, and stated that his client was not convicted of the marijuana charge. He stated that he did not believe that there were sufficient grounds to deny this appeal, adding that to this date, his office has not been notified that Mr. Hickman-Smith's CCW permit has been revoked by the State of Nebraska. Mr. Knowles stated that to his knowledge, revocation of a CCW permit is not sufficient grounds for revocation of a firearm registration. Lt. Sedlacek stated that he was not aware of the current status of Mr. Hickman-Smith's CCW permit at this time; he added that according to the police report from this incident, Mr. Hickman-Smith admitted to officers that he occasionally uses marijuana.

After some discussion, it was determined that a vote on this case would be moot due to the fact that there is no active protection order against Mr. Hickman-Smith. Motion to place case on file by Mr. Weaver. Second by Mr. Labode.

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

Motion carried 5-0. Appeal placed on file.

13-3-18
Taylor Garvis
5720 Fowler Av
Omaha NE 68104

REQUEST: Appeal Omaha Police Department denial of firearm registration and revocation of firearm registration.

Taylor Garvis appeared before the Board. Lt. David Sedlacek, Omaha Police Department, stated that the firearm application in question was denied due to a conviction for discharge of an explosive device dating from February 23, 2012. He also received a letter for revocation of firearm registration for the other firearms registered under his name as a result of this conviction. Lt. Sedlacek stated that this incident occurred when Mr. Garvis' shotgun accidentally went off while he was cleaning it.

Mr. Garvis admitted his mistake in this matter. Since this incident, he has completed CCW training in order to ensure that he knows the proper ways to handle, transport and clean a weapon. Mr. Garvis stated that target shooting is a hobby of his; he would like to have a gun for target practice. In response to the Board's question, Mr. Garvis stated that he immediately called the police and informed them of what had just occurred. Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record.

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

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

Motion carried 5-0. Appeal granted.

13-3-19
Ryan Broermann
2632 N 112th Av
Omaha NE 68164

REQUEST: Appeal Omaha Police Department revocation of firearm registration.

Ryan Broermann appeared before the Board. Lt. David Sedlacek, Omaha Police Department, stated that the firearm application in question was denied due to the issuance of a protection order. Lt. Sedlacek stated that he has been informed that this protection order has since been withdrawn. Mr. Broermann confirmed that the protection order has been lifted, and commented that he does have a CCW permit through the State of Nebraska.

Motion to approve by Mr. Weaver. Second by Mr. Lopez. Before a vote was taken, Mr. Levy suggested that this motion be withdrawn and the case placed on file in order to remain consistent with the ways in which the Board has dealt with such cases in the past. Ms. O'Connor called for a vote due to the fact that there was a motion and a second on the table.

AYES: none

NAYS: Levy, Weaver, Lopez, O'Connor

ABSENT: Labode

Motion failed 0-4-1.

Motion to place case on file by Mr. Weaver. Second by Mr. Lopez.

AYES: Weaver, Lopez, Levy, O'Connor

ABSENT: Labode

Motion carried 4-0-1. Appeal placed on file.

13-3-20

Lee Franklin
12417 Shirley St
Omaha NE 68144

REQUEST: Appeal Omaha Police Department notice of
nuisance (re: catering van)

Lee Franklin and Montoya Johnson appeared before the Board. Officer Steve Williams, Omaha Police Department, stated that Mr. Franklin has a catering van parked in the driveway of his home which measures greater than twenty feet in length. Kevin Denker, City Planning Department, explained regulations regarding vehicles parked in residential driveways. Photographs of the vehicle were submitted for the file.

After some discussion regarding available parking solutions, it was determined that Mr. Franklin must find an alternative location for this vehicle as there is no way to store it on the property. The Board agreed to give Mr. Franklin time to make arrangements for the storage of his vehicle when not in use.

Motion to deny with 120 days to comply by Mr. Levy. Second by Mr. Weaver.

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

Motion carried 5-0. Appeal denied with 120 days to comply.

III. Approval of Minutes from February 25, 2013

Motion by Mr. Weaver to approve the minutes from February 25, 2013. Second by Mr. Lopez.

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

Motion carried 5-0.

IV. Adjournment

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

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

Meeting adjourned at 3:18 pm.

Andrea Wisniewski, Planning Department
Recording Secretary