

MINUTES
Administrative Board of Appeals
October 28, 2013

MEMBERS PRESENT:

Ann O'Connor, Chair
David Levy, Vice Chair
Jim Weaver
Jose Lopez-Nuno
Bode Labode

MEMBERS ABSENT:

OTHERS PRESENT:

Tim Himes, Law Department
Kevin Denker, Planning Department
Todd Shearer, Planning Department
Mike Johnson, Planning Department
Scott Benson, Planning Department
Ryan Haas, Public Works Department
Debbie Hightower, Recording Secretary

ROLL CALL:

Ms. O'Connor called the meeting to order at 1:00 pm. The Board received as Exhibit 1 in each of this meeting's cases the contents of the City's file on each case.

CASES:

13-10-72

Adonus T. Marshall
6525 North 33 Street
Omaha, NE 68112

REQUEST: Appeal Police Department denial of taxicab driver permit

Mr. Marshall was not present.

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

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

Motion carried 5-0. Appeal denied.

13-10-73

Dontavis Johnson
6647 Nebraska Avenue
Omaha, NE 68104

REQUEST: Appeal Police Department denial of firearm registration.

Dontavis Johnson appeared before the Board. Lt. David Sedlacek, Omaha Police Department, reported that Mr. Johnson's application was denied due to a CCW conviction on August 16, 1993. Mr. Johnson was fined \$75.00 for his offense and received six months of probation.

Mr. Weaver asked to see Mr. Johnson's purchase permit which was issued in February 2013. Mr. Johnson stated that he plans on taking a CCW class and wants to purchase a firearm for home protection. Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record which would prevent him from registering a firearm in the City of Omaha.

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

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

Motion carried 5-0. Appeal granted.

13-10-74

Lena Parks
3046 Ernst Street
Omaha, NE 68112

REQUEST: Appeal Police Department denial of firearm registration.

Lena Parks appeared before the Board. Lt. David Sedlacek, Omaha Police Department, reported that Ms. Parks' application was denied due to a conviction of marijuana less than one ounce on April 25, 2010. Ms. Parks was fined \$300.00 for her offense.

Ms. Parks stated that she wants permission to own a firearm because she is a single mother and was assaulted by an ex-boyfriend whom she has filed a protection order against. She further stated that he has not been served and she is fearful for her life and the life of her daughter.

At the request of Mr. Weaver, Ms. Parks showed a purchase permit that was issued on September 24, 2013. Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record which would prevent her from registering a firearm in the City of Omaha.

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

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

Motion carried 5-0. Appeal granted.

13-10-80

Lewis L. Maggett
3307 Corby Street
Omaha, NE 68111

REQUEST: Appeal Police Department denial of firearm registration.

Lewis Maggett appeared before the Board. Lt. David Sedlacek, Omaha Police Department, reported that Mr. Maggett's application was denied due to a conviction of marijuana less than one ounce on September 22, 2010. Mr. Maggett was fined \$300.00 for his offense.

Mr. Maggett stated that he wants permission to own a firearm for protection of his family and that he lives in a neighborhood where gang activity is well documented. He submitted a copy of his purchase permit dated October 2, 2013.

At the request of Mr. Weaver, Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record which would prevent him from registering a firearm in the City of Omaha.

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

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

Motion carried 5-0. Appeal granted.

12-10-77 *From 10/29/2012, 11/26/2012, 5/20/2013 & 6/24/2013*

Peter J. Townsend
12804 Hamilton Street
Omaha NE 68154

REQUEST: Appeal Police Department Notice of Nuisance
(RE: 1336 South 30 Street)

10/29/12:

Mr. Townsend was not present. Mr. Denker stated that the Code Enforcement Division inspected the property this morning; he submitted photos of a crushed rock parking area behind the property. Mr. Denker stated that he has not yet had a chance to pull aerial maps of the area; he suggested that the Board hold this case over to their November meeting in order to allow the City to further research the history of this property.

Motion to hold this case over to the November 26, 2012 meeting of the Administrative Board of Appeals by Mr. Lopez. Second by Mr. Labode.

AYES: Lopez, Labode, Weaver, Levy

Motion carried 4-0. Appeal held over to the November 26, 2012 meeting.

11/26/12:

Peter J. Townsend appeared before the Board. Mr. Townsend stated that the parking area behind his property has grandfather rights, and is appropriately segmented from the property by a retaining wall and a fence.

Kevin Denker, Planning Department, stated that crushed rock parking was discontinued by Omaha code in 1977; in order to have "grandfather rights", such parking areas had to be in place as of that time.

Crushed rock parking areas with grandfather rights must be maintained and cannot be enlarged or altered in any size or shape. Mr. Denker reported that in looking at aerial photos of the property, and in inspecting the property, this parking area appears to have been altered in size and does not currently appear to be maintained, as there is grass growing within the parking area. Mr. Denker concluded by stating that the City's position is that any potential grandfather rights that this parking area may have had have been forfeited through alteration and lack of maintenance.

Mr. Townsend asked the Board members to allow his tenants to continue to park in this area while he makes arrangements to have the area paved. Mr. Denker suggested that the Board deny this appeal, but grant Mr. Townsend six months to comply with City regulations.

Motion by Mr. Simmonds to deny the appeal with six months to comply. Second by Mr. Lopez.

AYES: Lopez, Simmonds, Levy, O'Connor

Motion carried 4-0. Appeal denied with six months to comply.

5/20/13:

Mr. Townsend was not present. The Board Secretary stated that Mr. Townsend was given six months to bring his property up to Code. Mr. Townsend's six months are nearly at an end, and he has run into difficulties with the Public Works Department, which is currently planning improvements in the alley behind his property. Mr. Townsend would like the Board to grant him more time to work with the Public Works Department and complete repairs to the parking area behind his building. Mr. Denker confirmed the above statements, adding that he has spoken with Mr. Townsend regarding this issue. An extension would prevent the Police Department from towing vehicles from the property while repairs are underway.

When asked why Mr. Townsend was not present today, the Board Secretary stated that she received confirmation that Mr. Townsend was notified of today's hearing; however, she had not heard from him regarding his absence at the meeting. Mr. Denker suggested that the case be reopened and held over to the next meeting.

Motion to reopen case number 12-10-77 for reconsideration by Mr. Simmonds. Second by Mr. Labode.

AYES: Labode, Simmonds, O'Connor

Motion carried 3-0. Case reopened.

Motion to hold this case over to the June 24, 2013 meeting by Mr. Simmonds. Second by Mr. Labode.

AYES: Simmonds, Labode, O'Connor

Motion carried 3-0. Case held over to June 24, 2013.

6/24/13:

Mr. Townsend appeared before the Board. Mr. Townsend and Kevin Denker, City Planning Department, updated the Board members on the progress that has been made at this site since the applicant's last appearance before the Board. Currently, Mr. Townsend is working with the Public Works Department, which is currently making improvements to the alley behind his property. Mr. Townsend stated that repairs to the alley are nearly complete; he will soon have access to the parking lot behind his property so

that repairs can be made. Mr. Townsend also reported that he is having issues with a neighboring landlord, who has recently diverted all of the runoff for his property onto Mr. Townsend's land. This is causing significant damage to his property; Mr. Townsend stated that he is taking legal action against this neighbor, as the erosion being caused by this drainage would undermine and ruin any concrete that would be poured in the area. He asked the Board for additional time to complete legal action against his neighbor and to pave the parking lot.

Motion by Mr. Weaver to hold this case over to the October 28, 2013 meeting. Second by Mr. Labode

AYES: Labode, Weaver, Lopez, Levy

Motion carried 4-0. Case held over to October 28, 2013.

10/28/13

Mr. Townsend was not present. Kevin Denker, Chief Code Inspector, verified that the alley has not been paved.

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

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

Motion carried 5-0. Appeal denied.

13-10-75

Aaron and Na Mee Delacruz
4869 C Street
Omaha, NE 68106

REQUEST: Appeal Police Department Notice of
Nuisance
(RE: 4869 C Street)

Aaron and Na Mee Delacruz appeared before the Board. Mr. Delacruz explained that the Titon pickup is registered to his mother-in-law whom lives in Council Bluffs, Iowa and they are using it in the process of renovating the property. Mr. Delacruz further explained that the Scion was involved in an accident and he was told that the bumper would need to be repaired before it can be registered in Nebraska. In response to Mr. Weaver, Mr. Delacruz asked for additional time.

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

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

Motion carried 5-0. Case held over to November 25, 2013.

13-10-76

Lyle Porter
5248 South 49 Avenue
Omaha, NE 68117

REQUEST: Appeal Police Department Notice of
Nuisance
(RE: 5248 South 49 Avenue)

Lyle Porter appeared before the Board. Todd Shearer, City Code Inspector, submitted a copy of the driveway permit (Exhibit 2) and photos (Exhibit 3) of the completed driveway. Kevin Denker, Chief Code Inspector, verified that the camper is licensed and registered in Nebraska.

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

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

Motion carried 5-0. Appeal granted.

12-11-89 *From 11/26/12, 2/25/2013 & 6/24/2013*

Daniel C. Pape
McGrath North Mullin & Kratz PC LLO
First National Tower Suite 3700
1601 Dodge Street
Omaha NE 68102

REQUEST: Appeal Planning Department Notices of Violation
(RE: H & Q Properties, Inc., 6625 North 87 Street; 6701 North 87 Street; and 6727 North 87 Street)

11/26/12:

Kevin Denker, City Planning Department summarized the case, in which construction and landscape materials are being dumped on a parcel of land by someone other than Mr. Pape's client.

Daniel C. Pape appeared before the Board. He stated that his firm has successfully received a temporary restraining order which prevents this third party from any future dumping on this site. He asked for time to work with the courts in order to get their property cleaned up.

Motion to hold this case over to the February 25, 2012 meeting of the Board by Mr. Levy. Second by Mr. Simmonds.

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

Motion carried 4-0. Case held over to the February 25, 2012.

2/25/13:

Daniel C. Pape reappeared before the Board. Mr. Pape updated the Board in regards to the ongoing clean-up efforts on this site. He stated that their court date had been moved and asked for additional time to work with the courts to prevent any further illegal dumping on their property. Kevin Denker, City Planning Department, reported to the Board in regards to his divisions recent contact with Mr. Doll, who is responsible for the items dumped at this location, and submitted updated photos of the site in question (Exhibit 1).

Motion by Mr. Weaver to hold this case over to the May 20, 2013 meeting. Second by Mr. Levy.

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

Motion carried 5-0. Appeal held over to May 20, 2013.

6/24/13:

Daniel C. Pape appeared before the Board with Mike Johnson of the City Planning Department. Mr. Pape, Mr. Johnson, and Kevin Denker, City Planning Department, updated the Board members as to progress made on this site since the applicant's last appearance before the Board. It was determined that additional time was still needed in order to clear the property of all debris and construction materials currently located there.

Motion by Mr. Weaver to hold this case over to the October 28, 2013 meeting. Second by Mr. Lopez.

AYES: Lopez, Labode, Weaver, Levy

Motion carried 4-0. Case held over to October 28, 2013.

10/28/13

Daniel C. Pape appeared before the Board and stated that a plea hearing for the criminal complaint will be heard on November 21, 2013. Mr. Pape asked that the appeal be laid over until February 2014. Mike Johnson, City Code Inspector, verified that progress has been made.

Motion by Mr. Levy to hold this case over to the March 2014 meeting. Second by Mr. Weaver.

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

Motion carried 5-0. Case held over to the March 2014 meeting.

13-4-29 *From 4/29/2013 & 6/24/2013*

PJ Morgan Real Estate
7801 Wakeley Plaza
Omaha NE 68114

REQUEST: Appeal Planning Department Notice of
Nuisance
(RE: 6243 Binney Street)

4/29/13:

Zoe Baumel and Ryan Ellis of PJ Morgan Real Estate appeared before the Board. Scott Benson, City Planning Department, submitted photos of the site in question. He stated that his department had received a complaint about this property, which has been used as a dirt parking lot for the past forty years. According to Mr. Benson, the property managers have been very compliant with the order to shut this parking lot. They would like the Board to grant them some additional time to decide how best to utilize this property, whether it be to continue its use as a parking lot (albeit with repairs and beautification) or to develop the site for another use. Mr. Benson stated that the process of making improvements to this site, including conditional use permits and zoning approvals, will take approximately six months to complete.

Ms. Baumel stated that her organization would like to develop this site as a parking area. She cited the high volume of development currently happening in Benson, and submitted bids for proposed improvements, which includes landscaping, entry gates and asphalt. She stated that they have been in contact with the Benson Improvement District, and funds may be available to assist in the conversion of this property. Ms. Baumel stated that there are a number of businesses in Benson who rely on this space for parking; following improvements, the new parking lot will provide free parking for all in the Benson business district.

Mr. Weaver asked Mr. Benson if he was aware of a solution that would be agreeable to all parties. Mr. Benson replied that he had been informed that the Planning Department would like to see this property become a parking area for Benson; however, this would require a conditional use permit. The parking lot would also be required to conform to design standards. No matter the solution agreed upon, it will take time to bring this area into compliance. Mr. Weaver proposed laying this case over in order to allow time for PJ Morgan Real Estate to work with the Benson Improvement District and the City Planning Department. They could then report back to the Board on their progress.

After some additional discussion, Mr. Weaver made a motion to hold this case over to the June 24, 2013 meeting. Second by Mr. Labode.

AYES: Labode, Weaver, Lopez, O'Connor

Motion carried 4-0. Case held over to 6/24/2013.

6/24/13:

Zoe Baumel of PJ Morgan Real Estate appeared before the Board with Scott Benson of the City Planning Department. Ms. Baumel reported that since her last appearance before the Board, the Benson Improvement District has declined to contribute funds towards the improvement of the parking lot in question. She stated that she has met with several parties in Benson who may wish to purchase the lot and improve it; however, she has not received any firm offers as of today's date. Ms. Baumel stated that she has been working with the Planning Department to try to obtain a permit to pave the parking lot; however, landscaping and design requirements render paving the lot to be impractical.

Mr. Benson reported that since the issuance of the notice of nuisance, PJ Morgan has been very cooperative with the Planning Department, and has attempted to keep people from parking on this lot. He suggested that Ms. Baumel be given additional time to work with the Planning Department to find a workable solution to her problem. After some discussion, the Board agreed to grant the applicant the requested additional time.

Motion by Mr. Weaver to hold this case over to the October 28, 2013 meeting, with the stipulation that the applicant is required to build fences conforming to City ordinance covering all entrances to the parking lot within thirty days. Second by Mr. Lopez.

AYES: Weaver, Lopez, Labode, Levy

Motion carried 4-0. Case held over to October 28, 2013.

10/28/13

No one was present for the hearing. Scott Benson, City Code Inspector, submitted several photos of the site (Exhibit 2), verified that the fencing has been installed and the property is in compliance.

Motion by Mr. Levy to place on file. Second by Mr. Labode.

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

Motion carried 5-0. Case placed on file.

13-9-71 *From 9/30/2013*

Cheri Minshall
6253 South 37 Street
Omaha, NE 68107

REQUEST: Appeal Planning Department Notice of
Nuisance
(RE: 6253 South 37 Street)

9/30/13

Cheri Minshall and Walter Castro, tenants, appeared before the Board. Todd Shearer, City Planning, stated a zoning notice was mailed to the tenant and the owner and was followed up with an inspection at the property on August 27, 2013. Photos from September 30, 2013 (Exhibit 2), September 27, 2013

(Exhibit 3), and August 27, 2013 (Exhibit 4) were submitted. He stated that the notice sent to the owner of the property was returned as unclaimed. There has been no change since the original inspection. Mr. Shearer stated the definition of "outside storage" is anything stored outside. In response to Ms. O'Connor, Mr. Shearer stated that the non-code shed is another issue and that he is only dealing with the trailers and outside storage items which includes a snowplow blade stored behind the garage and covered with a tarp, truck/camper on sawhorses with lawn mowing equipment beneath, trailer with items covered with a tarp, a pallet jack, and a steel cabinet sitting outside. He stated that Ms. Minshall is uncooperative and will not allow a full inspection of the property.

Ms. Minshall stated that this has been an ongoing issue since June 2013 when Parks and Recreation cited the property. She stated that she videotaped Dave Austin, Parks and Recreation, when he approved the structure for storage and stated that the snowplow was fine. She explained that several improvements have been met but the most recent citing was for parking on the grass. All vehicles are licensed and insured and the insurance has never lapsed. She explained that she asked for a copy of the violations and has not yet received them therefore the appeal was filed. At one point, a notice was produced by Mr. Austin but it was dated two weeks prior. She stated that she attempted to file an appeal but was told that she did not file in a timely manner. She does not understand why anyone is on her property. She explained that the steel cabinet is used for storage of gardening items and to keep them away from pets and children. Ms. Minshall asked what she needs to do to be in compliance.

Kevin Denker, Planning Department, explained that Dave Austin is with Parks and Recreation in the weeds and litter division and has no jurisdiction regarding any type of building or parking. A snowblade is considered to be commercial equipment and must be stored in a storage facility or in a garage. Mr. Shearer submitted the code for "outdoor storage" (Exhibit 5).

In response to Mr. Weaver, Mr. Shearer admitted that there were no parking violations and agreed to remove it from the notice.

In response to Mr. Weaver, Ms. Minshall agreed to a 30 day layover in order to be compliant with the City as long as the agreement is concrete and the law states what she needs to get rid of.

In response to Mr. Weaver, RoseMarie Lee, City Law Department, stated that the Planning Department can state what items can be outside or inside of the shed and Ms. Minshall would need to comply within the allotted time as motioned by the Board.

Mr. Labode suggested that the city identify the specific requirements. Mr. Levy questioned whether Ms. Minshall is sincere and would allow the inspectors to look under the tarps to determine if everything is compliant. Ms. Minshall stated that she does not allow anyone to look under the tarps when she is not home. Mr. Shearer pointed out that tarps are not allowed in the City.

Mr. Castro submitted additional photos (Exhibit 6). Ms. Minshall submitted the original appeal that was filed from the Parks and Recreation department (Exhibit 7).

Mr. Levy explained that he is tempted to deny the appeal but he would like to lay over the case so both parties can work it out within 30 days.

Motion to hold this case over to the October 28, 2013 meeting by Mr. Levy. Second by Mr. Weaver.

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

Motion carried 5-0. Case held over to October 28, 2013.

Ms. Minshall asked the Board for an itemized copy of the items that need to be taken care of. Mr. Levy answered that enforcement is up to the Planning Department. Mr. Shearer stated that he is willing to meet with Ms. Minshall and show what needs to be removed but the shed is on an IPMC (International Property Maintenance Code) file.

10/28/13

Cheri Minshall and Walter Castro, Jr. appeared before the Board with Todd Shearer, City Code Enforcement. Mr. Shearer submitted several photos (Exhibit 2) and reported that the property is still not in compliance. As indicated in the photos, taken at 9:18 am on October 28, 2013, there was a vehicle parking over the sidewalk, a tarp is covering a trailer that is stored outside and there are several other items store outside that are not permissible. Mr. Shearer also submitted several e-mails/correspondence with the applicants (Exhibits 3 and 4).

After Ms. Minshall explained her position and the misunderstanding of the code, she submitted e-mails/correspondence (Exhibit 5); copies of the code (Exhibit 6); photos of deficiencies of her residence (Exhibit 7); and the Notice of Violation for the property dated September 6, 2013 (Exhibit 8). Mr. Shearer responded that the Notice of Violation has nothing to do with the Notice of Nuisance appeal request.

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

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

Motion carried 5-0. Appeal denied.

13-10-78

Mike McIntosh
Lamp, Rynearson & Associates
14710 West Dodge Road
Omaha, NE 68154

REQUEST: Appeal Public Works Department denial of driveway permits
(RE: Capitol District Development, 10th Street & Capitol Avenue)

Mike McIntosh, Lamp Rynearson & Associates and Michael Moylan, Shamrock Development, appeared before the Board with Ryan Haas, Public Works Department.

Mr. Haas stated that the site plan, as submitted, does not meet the City's driveway requirements. The maximum allowable throat width of the proposed driveway on Davenport Street is 30 feet. The site plan shows a width of 92 feet. Also, for the pair of proposed driveways on 10th Street, the corner clearances are 40 feet for the northern drive and 72 feet for the southern drive, but the required minimum clearance for each is 115 feet.

Mr. McIntosh stated that the proposed hotel driveway along 10th Street will be used by the proposed full service hotel. The driveway configuration shown is necessary for this type of hotel to conduct business. The proposed 92 foot wide driveway along Davenport Street is needed to serve the loading dock area for the Capitol District. It is important to note that Davenport Street ROW is to be vacated as part of this project and Davenport Street will become a private street with a public access easement.

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

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

Motion carried 5-0. Appeal granted.

13-10-79

Jeffrey Lake
Olsson Associates
2111 South 67 Street Suite 200
Omaha, NE 68106

REQUEST: Appeal Public Works Department denial of
driveways and stacking requirements
(RE: Proposed Coffee Shop, Lot 1, 1130
Sterling Ridge Drive)

Jeffrey Lake, Olsson Associates and Bob Begley, Lockwood Development, appeared before the Board with Ryan Haas, Public Works Department.

Mr. Haas stated that the stacking requirements of an on-site drive-through is a minimum of 275 feet but the plan, as submitted, has only provided 210 feet for stacking. He further explained that there are concerns that stacking could back up into the nearby round-about. Mr. Haas also noted that this request only reflects the review of the driveway and drive-through in questions but the remainder of the site is subject to site plan review by the City.

Mr. Lake submitted additional site plans (Exhibits 2 through 5) indicating that the drive-through entrance is well in excess of 300 feet away from Pacific or any intersection with the turn lanes leading up to Pacific Street from Sterling Ridge Drive. Furthermore, if there happens to be any cars that back into Pierce Street, this should not impact the operations of Pacific Street or any other major thoroughfare.

Mr. Weaver questioned if it was possible to have two stacking lanes. Mr. Lake answered that two stacking lanes would impede into the required pass through lane which would require the need for additional waivers with regard to landscaping, parking, etc.

Motion to approve by Mr. Levy. Motion died for lack of a second.

After further discussion by Board members, a motion to approve was made by Mr. Weaver. Second by Mr. Levy.

AYES: Levy, Weaver, Lopez-Nuno, O'Connor

NAYS: Labode

Motion carried 4-1. Appeal granted.

13-10-77

Michaela Marshall
4011 North 97 Street
Omaha, NE 68134

REQUEST: Appeal Nebraska Humane Society Reckless
Owner Declaration

Melissa Matthes, Micheala Marshall-Kavanaugh and Dustin Kavanaugh appeared before the Board with Mark Langan of the Nebraska Humane Society (NHS).

Mr. Langan explained that Michaela Marshall was declared a Reckless Owner because Ginger, a blue brindle Pit Bull, was determined to be dangerous or potentially dangerous and Ms. Marshall has not complied with the PDD requirements. Ginger has a current Omaha PDD License for 2013 and is micro-chipped. Michaela and Ginger successfully completed both the required Owner Responsibility class and an Owly Growly obedience class. He further stated that liability insurance on the house had expired as of September 1, 2013 and the rabies vaccination for Ginger expired as of April 19, 2013.

Mr. Langan stated that on April 7, 2012, Ginger attacked two dogs and a citation was issued to John Ellison. In June 2012, Ginger was deemed a Potentially Dangerous Dog under Omaha Ordinance 6-149 after she got under the fence and into the neighboring yard and attacked a Siberian Husky named Wrigley. On July 30, 2012, John Ellison purchased a 2012 PDD license for Ginger and proved liability insurance. In September 2012, ownership was transferred to Melissa Matthes (Michaela Marshall's mother) and she took over all responsibilities of owning Ginger as a PDD dog. In an effort to help Melissa, NHS allowed the recently purchased PDD license to be transferred into her name and also gave her an extension for the remaining requirements (spay, micro-chip and the two classes). On December 22, 2012 a Reckless Owner declaration was issued to Melissa Matthes for non-compliance. On January 2, 2013, Melissa Matthes stated that her adult daughter, Michaela Marshall, now had Ginger and she thought that Michaela had taken care of all the requirements. On January 16, 2013, the Reckless Owner appeal was heard and it was agreed upon that Ginger would be given a second chance. Melissa showed proof of spay and micro-chip and agreed to take the required classes within 30 days. The Ownership Responsibility class was satisfied in March 2013 but the Owly Growly class was not completed until August 2013.

Mr. Langan stated that on September 27, 2013, Ginger attacked the same dog, Wrigley, which was attacked in 2012. Wrigley sustained puncture wounds on the nose/muzzle area, neck and under the front leg as indicated in the photos that were previously submitted. Michaela Marshall was issued a Reckless Owner declaration and citation for: 6-202 (rabies vaccination), 6-148 (property damage), 6-147 (restraint), 6-163 (muzzle violation), and 6-149 (dangerous animal). On October 7, 2013, the Reckless Owner appeal was heard at NHS and denied based on the fact that Ginger escaped its yard which is in violation of the main requirement of a PDD, that being keeping the dog confined so as not to pose a danger to the public or other animals. The NHS Appeals Board considers the dog, Ginger, a danger to the community and also considers the dog's owner, Michaela Marshall, an irresponsible dog owner.

Mr. Langan explained that Ginger is being held at the Humane Society and submitted documentation showing that Ginger was never given an evaluation because of aggressive behavior (Exhibit 2).

Ms. Matthes explained that John Ellison, the first owner of Ginger, was her daughter's former boyfriend and that when he left town, she agreed to take over ownership until her daughter, Michaela Marshall, was able to care for Ginger. She stated that Michaela was unable to complete the required classes in a timely manner because of a difficult pregnancy. Ms. Matthes stated that 4011 North 97th Street is owned by her mother and submitted proof of liability insurance (Exhibits 3 and Exhibit 4).

Ms. Marshall stated that she was told by Mr. Ellison that Ginger had a three year vaccination and she was never sent a reminder therefore she believed Ginger was still vaccinated. She explained that Ginger would never hurt anyone and if she is outside, she is always tied up in the front yard. She further explained that Ginger she did not get along with the Siberian Husky next door and it was an accident that she got out and went through the fence and got into the neighbor's back yard the second time. She further stated that the fence belongs to the neighbor and is in need of repair.

Mr. Weaver expressed sympathy to the dog owner(s) but pointed out that the Humane Society extended class times and gave the applicant a second chance but because Ginger was the dog that got into the neighbor's yard and because of public safety, a motion was made to deny. Second by Mr. Levy.

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

Motion carried 5-0. Appeal denied.

APPROVAL OF MINUTES:

Motion by Mr. Levy to approve the minutes from September 30, 2013. Second by Mr. Weaver.

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

Motion carried 5-0.

ADJOURN:

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

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

Motion carried 5-0. Meeting adjourned at 3:10 pm.

The Administrative Board of Appeals agenda and other information regarding the Administrative Board of Appeals and the Planning Department are available on the Internet at <http://www.ci.omaha.ne.us/planning>. The agendas available on the Internet are subject to change and are for convenience purposes only. The agenda may be altered no later than 24 hours before the scheduled commencement of the meeting. A copy of the official agenda, kept continually current, shall be available for public inspection at the City of Omaha Planning Department, 1819 Farnam Street, Suite 1100, Omaha, Nebraska, during normal business hours.

Prior to the hearing, the applicant may schedule a time to review the City's case file during normal business hours by contacting the Board Secretary at (402) 444-5150 Ext. 2005. If an alternative (audio version) to this agenda is necessary, please notify the Board Secretary at (402) 444-5150 Ext. 2005, 72 hours in advance.

CERTIFICATION OF PUBLICATION

The Secretary to the Administrative Board of Appeals certifies publication in The Daily Record, the official newspaper of the City of Omaha, on October 21, 2013.