MINUTES
Administrative Board of Appeals
December 19, 2016

MEMBERS PRESENT:
David C. Levy, Chairman
Ann O’Connor, Vice Chair
Brian W. Kruse
Mark Santo
Jeffrey Beals

MEMBERS NOT PRESENT:
Ryne Bessmer, Alternate

STAFF PRESENT:
Timothy Himes, Law Department
Kevin Denker, Planning Department
Rikki Flott, Recording Secretary

ROLL CALL:
Mr. Levy 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:

1. 16-12-101
   Joe Dethlefs
   Thompson Dreessen & Dorner Inc.
   10836 Old Mill Road
   Omaha NE 68154
   REQUEST: Appeal Public Works Department denial of driveway permit (RE: 50th & Dodge Streets, Dundee Theatre)
   Joe Dethlefs, Thompson Dreessen & Dorner, Inc., appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas stated that the proposed project included improvements to the west parking area and demolition of an existing home. He then stated that proposed improvements brought more conformity along Capitol Avenue, Dodge Street and North 50th Street. He added that the requested waivers were 4 proposed driveways and the width of the driveways along Capitol Avenue.

   Mr. Levy stated that his firm was involved in the project and that he would not participate in the approval process.

   Mr. Dethlefs stated that the east portion of the site would not be improved and that the request was to keep the existing driveways. He added that improvements to the west portion of the site eliminated 4 of the 8 driveways within the 5 lots contained on the site. Mr. Haas added that the multiple lots were under common ownership and were seen as one site.

   Motion to APPROVE by Mr. Beals. Second by Mr. Kruse.

   AYES: Beals, Santo, Kruse, O’Connor

   ABSTAIN: Levy

   Motion carried 4-0-1. Appeal granted.
2.  

16-12-102  

REQUEST: Appeal Public Works Department denial of driveway permit  
(RE: 5010 South 118th Street)

Rob Olson, The Clark Enersen Partners, appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas stated that the site was bounded on all sides by public right-of-way and that the requested waiver was 3 driveways. He added that hardships were a circular site and significant grade changes. He then stated that the applicant avoided access points along the busier South 118th Street.

Mr. Olson stated that the site was Farm Bureau Services of America and that the waivers accommodated extra parking and truck traffic for the business. He added that the grade change created hardship and that the proposed plan was the safest for traffic through the site. He then stated that the 2 driveways to the north and south were one-way in and one-way out. Mr. Levy confirmed with Mr. Olson that the additional waiver requested was driveway distances from South 118th Street.

Motion to APPROVE by Mr. Kruse. Second by Mr. Santo.

AYES: Beals, Santo, Kruse, O’Connor, Levy

Motion carried 5-0. Appeal granted.

3.  

16-12-103  

REQUEST: Appeal Police Department denial of firearm registration

James Ficke appeared before the Board. Lt. David Sedlacek, Omaha Police Department, appeared before the Board. Lt. Sedlacek stated that Mr. Ficke applied to register a firearm on November 23, 2016 and was denied for a carry concealed weapon charge dated March 18, 2001. He added that Mr. Ficke failed to disclose the conviction on his firearm registration application.

Mr. Ficke stated that he recently had an attempted break-in at his home, he was assaulted outside his home and that he wanted the firearm for home protection. He added that he forgot about the conviction that occurred approximately 15 years prior. In response to Mr. Kruse, Mr. Ficke stated that his father taught him how to handle weapons, but that he has not taken classes.

Motion to APPROVE by Mr. Kruse. Second by Ms. O’Connor.

AYES: Beals, Santo, Kruse, O’Connor, Levy

Motion carried 5-0. Appeal granted.
4.  
16-12-104
David K. Bell Jr.  
746 North 77th Avenue  
Omaha, NE 68114  
REQUEST: Appeal Police Department denial of firearm registration

David Bell appeared before the Board. Lt. David Sedlacek, Omaha Police Department, appeared before the Board. Lt. Sedlacek stated that Mr. Bell applied to register a firearm on November 25, 2016 and was denied for an unlawful possession, firearm transportation, conviction dated November 4, 2016. He added that Mr. Bell was on probation until May 4, 2017. He then briefly explained the possible road rage incident that occurred August 16, 2016 and that responding officers, upon approaching Mr. Bell’s home, noticed a firearm on the front passenger seat of Mr. Bell’s vehicle parked in the driveway.

Mr. Bell stated that he agreed with Lt. Sedlacek statement and then explained that he did not pull the firearm out until he was in his own driveway. He briefly explained the court proceedings and that as a condition of his probation, he was allowed to have possession of a firearm because he was employed as a firearms instructor. He then stated that at the time of the incident he was in the application process for the carry conceal weapon process. In response to Mr. Kruse, Mr. Bell stated the gun was given to him by his father and he had not taken the time to register the weapon.

After discussion regarding the incident resulting in the conviction, Mr. Bell explained the weapon was cased and properly stored in the trunk, but when he arrived at his home he placed the weapon on the front seat for protection from the driver of the vehicle that followed him. He also explained why he needed the firearm for closing purposes at his job and that he reported to his probation officer regularly. He added that he planned to appeal the denial of the carry concealed weapon permit. Lt. Sedlacek confirmed that if a carry concealed weapon permit was obtained registration was not required within the City.

Motion to APPROVE by Mr. Kruse. Second by Mr. Levy.

AYES: Santo, Kruse, Levy

NAYS: Beals, O’Connor

Motion carried 3-2. Appeal granted.

5.  
16-12-105
Edward E. Spencer  
2507 South 49th Street  
Omaha NE 68106  
REQUEST: Appeal Police Department denial of Taxicab driver’s permit

Edward Spencer appeared before the Board. Lt. David Sedlacek, Omaha Police Department, appeared before the Board. Lt. Sedlacek stated that Mr. Spencer applied for a taxicab permit on December 2, 2016 and was denied for multiple Driving Under the Influence (DUI) convictions. He explained the first DUI offense was dated November 3, 1989, a second conviction was January 11, 1995, another second offense on August 5, 2004, and a third offense on February 2, 2006.

Mr. Spencer stated that he needed the taxicab permit for employment and that he is now sober. He briefly explained past incidents in his life resulting in his alcohol abuse, positive results from probation and that he was sober since 2006. In response to the Board, he explained that he had a pending job with the taxicab company and that his driver license was current.

Lt. Sedlacek that Mr. Spencer had no other convictions since 2006.
Motion to APPROVE by Mr. Kruse.  Second by Mr. Beals.

AYES:  Beals, Santo, Kruse, O’Connor, Levy

Motion carried 5-0.  Appeal granted.

6.

16-12-106
Dr. Terry Bolamperti
American Italian Heritage Society (AIHS)
15713 Woolworth Avenue
Omaha NE 68130

REQUEST:  Appeal Police Department Notice of Nuisance (RE:  5110 North 132nd Street, AIHS)

Dr. Bolamperti was not present when his case was called.  Steve Andersen, Planning Department, and Officer James Stokes, Omaha Police Department appeared before the Board.

Officer Stokes stated that a complaint was received through the Mayor’s office regarding a large semi-trailer parked on the grass, enclosed box rental storage on the property over the 30-day limit and an enclosed box trailer with expired registration.  He explained that Dr. Bolamperti informed him he needed additional time to become compliant.  Officer Stokes stated that the site was now in compliance.  Mr. Andersen confirmed Officer Stokes’ statement.

Motion to DENY WITH ONE DAY TO COMPLY by Mr. Beals.  Second by Mr. Kruse.

AYES:  Beals, Santo, Kruse, O’Connor, Levy

Motion carried 5-0.  Appeal denied with one day to comply.

7.

16-12-107
Carrie Long
4936 South 95th Avenue
Omaha NE 68127

REQUEST:  Appeal Police Department Notice of Nuisance (RE:  4936 South 95th Avenue)

Carrie Long was not present when her case was called.  Todd Shearer, Planning Department, and Officer James Stokes, Omaha Police Department appeared before the Board.

Mr. Shearer stated that the black PT Cruiser and Chevrolet Monte Carlo were non-compliant (Exhibit 2) with expired registration as of Friday December 16, 2016 and that an individual at the residence informed him the Ford Econoline van was sold.  Officer Stokes stated that he received numerous complaints regarding this location and that upon denial the vehicles in non-compliance would be towed or the applicant cited.

Motion to DENY by Mr. Beals.  Second by Mr. Kruse.

AYES:  Beals, Santo, Kruse, O’Connor, Levy

Motion carried 5-0.  Appeal denied.
8.

REQUEST: Appeal Police Department Notice of Nuisance (RE: 8316 Decatur Street)

John Franklin appeared before the Board. Kevin Mulcahy, Planning Department, and Officer James Stokes, Omaha Police Department appeared before the Board.

Officer Stokes stated that a complaint was received through the Mayor’s office regarding 3 vehicles at the residence registered in the state of New Mexico. He briefly explained the City ordinance relating to new residents to the state of Nebraska registering out-of-state vehicles within 30-days and that a Red Honda Fit and White Chevy SUV at this location had New Mexico plates. He then stated that the home was owned by Barbara Franklin with a guarantor listed at John Franklin, Mr. Franklin worked part-time in Omaha with a mailing address at the subject site, and had a cell phone number with Omaha area code, which qualified him as a resident of Omaha. Mr. Mulcahy stated submitted recent photos of the vehicles (Exhibit 2) and that both vehicles had New Mexico plates.

Mr. Franklin explained that he was employed as a part-time physician at Methodist Physician Clinic and also had a residence and part-time employment in New Mexico. He added that his wife was employed full-time in New Mexico and that tax statement revealed both Nebraska and New Mexico employment. In response to the Board, Mr. Franklin stated that both vehicles were used to travel between both states.

After discussion regarding dual state residency, Officer Stokes stated that dual registration was illegal in Nebraska and that most states had the same registration requirements. He added that the New Mexico residence was a PO Box address. Mr. Franklin explained the PO Box was to prevent mail fraud in the New Mexico residence and that he preferred to maintain residency in both states. Mr. Denker stated that full-time students and military personnel were exempt from the requirement to register out-of-state vehicles in Nebraska and that driver’s licenses were reciprocal between states.

Motion to DENY by Mr. Kruse. Second by Ms. O’Connor.

AYES: Beals, Santo, Kruse, O’Connor, Levy

Motion carried 5-0. Appeal denied.

9.

REQUEST: Appeal Nebraska Humane Society Potentially Dangerous Dog Declaration

The Board moved to reconsider the case denied on November 28, 2016. Dennis Kennedy appeared before the Board. Mr. Kennedy explained that he was aware of the November 28, 2016 meeting but was ill and did not receive the email notification regarding the meeting. The Secretary explained that the certified mail notification was signed and received by Patti Kennedy one day after the meeting.

Mark Langan, Nebraska Humane Society (NHS), appeared before the Board. Mr. Langan submitted a copy of the Investigative Report (Exhibit 2) and explained the series of events leading to Mr. Kennedy’s appeal. He explained that on August 13, 2016 his staff was advised by Patricia Kelly that she was walking her Dachshund, Woody, on a leash when Lucy, a Weimaraner owned by the applicant, was running loose and approached her and her dog Woody. She then explained that Lucy attacked Woody and knocked herself to the ground as she tried to pick up Woody. A witness, Susan Rensch, grabbed Lucy and confined the dog in her yard. Ms. Kelly suffered bruises and scrapes to her knee and Woody was taken to the vet, suffering significant puncture wounds to his neck. Mr. Kennedy was issued a
citation for improper restraint, dog damaging property and menacing behavior and was issued a Potentially Dangerous Dog declaration. On September 20, 2016 Mr. Kennedy appealed the declaration to the Nebraska Humane Society Appeal Board and was unanimously was denied. The NHS Board determined Mr. Kennedy’s dog Lucy fit the definition of a Potentially Dangerous Dog and the 2-year probationary period and requirements were necessary for public safety. In response to the Board, Mr. Langan explained that during the NHS hearing, Mr. Kennedy informed the Board he saw his dog jump the fence, was looking for him when the incident occurred and did not argue the facts of the case.

Mr. Kennedy explained that he recently moved to Kentucky and that the dog would return with him to Omaha upon holiday visitations. He was informed that the majority of the requirements for the Potentially Dangerous Dog declaration were void with out-of-state residency, but that the dog was required to be muzzled upon his return to Omaha.

In response to the Board, Mr. Langan stated the 2-year probationary period would begin today upon denial by the Board. He explained the Potentially Dangerous Dog declaration requirements and that Mr. Kennedy would be subject to only the harness/muzzle requirement upon returning to Omaha. Mr. Kennedy agreed to contact NHS upon returning to Omaha.

Motion to DENY by Mr. Beals with a waiver of the required pet ownership and dog behavior classes, but classes would be required if residency within the city is resumed during the 2 year probationary period. Mr. Kennedy is required to contact NHS if he resumes residency in Omaha within 2 years. Second by Ms. O’Connor.

AYES: Beals, Santo, Kruse, O’Connor, Levy

Motion carried 5-0. Appeal denied with a waiver of the required pet ownership and dog behavior classes, but classes would be required if residency within the city is resumed during the 2 year probationary period. Mr. Kennedy is required to contact NHS if he resumes residency in Omaha within 2 years.

APPROVAL OF MINUTES:

Motion by Mr. Kruse to approve the minutes from October 24, 2016. Second by Mr. Beals.

AYES: Beals, Santo, Kruse, O’Connor

ABSTAIN: Santo

Motion carried 4-0-1.

ADJOURN:

Motion to adjourn by Mr. Kruse. Second by Mr. Beals.

AYES: Beals, Santo, Kruse, O’Connor, Levy

Motion carried 5-0. Meeting adjourned at 2:51 pm.