MINUTES
Administrative Board of Appeals
November 28, 2016

MEMBERS PRESENT:
David C. Levy, Chairman
Ann O’Connor, Vice Chair
Brian W. Kruse
Ryne Bessmer, Alternate

MEMBERS NOT PRESENT:
Mark Santo
Jeffrey Beals

STAFF PRESENT:
Timothy Himes, Law Department
Jay Davis, 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. 16-05-032 (heldover from 05/23/16, 08/22/16)
   Robert S. Keith
   Engles, Ketcham, Olson & Keith, P.C.
   1350 Woodmen Tower
   Omaha NE 68102
   REQUEST: Appeal City Fire Department Invoice
   (RE: M’s Pub Fire, January 9, 2016)

   Robert Keith, Engles Ketcham Olson & Keith P.C. and Bernard in den Bosch, City Law, appeared before the Board. Mr. in den Bosch stated that a request was submitted by both parties to layover the request. Mr. Keith then stated that he agreed with a layover and that he was waiting for a final report from the State Fire Marshall to finalize an agreement regarding the incident.

   Motion to HOLD OVER UNTIL THE MARCH 27, 2017 MEETING by Mr. Kruse. Second by Ms. O’Connor.

   AYES: Bessmer, Kruse, O’Connor, Levy

   Motion carried 4-0. Appeal heldover until the March 27, 2017 meeting.
2.

REQUEST: Appeal Public Works Department denial of driveway permit
(RE: UNO Parking Garage, 67th and Pacific Streets)

Scott Hunt, Campus Planner, University of Nebraska at Omaha, appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas stated that the request for a parking garage and concerns were inbound queuing and the left turns in and out of the garage. He then stated that a completed traffic study revealed improvements to 67th Street were necessary to restrict movement in and out of parking garage.

Mr. Hunt added that he worked with the Department regarding improvements to 67th Street and was in agreement with the conditions suggested by the Department. He explained that the parking garage was approximately 1/8 of a mile long and that the building to the south of the site would provide services for the parking garage. He further explained the building to the south required a separate entrance from the garage.

Motion to APPROVE BASED ON THE CONDITION IMPROVEMENTS BE PROVIDED AS IDENTIFIED BY THE TRAFFIC STUDY by Mr. Kruse. Second by Ms. O’Connor.

AYES: Bessmer, Kruse, O’Connor, Levy

Motion carried 4-0. Appeal granted based on the condition improvements be provided as identified by the traffic study.

3.

REQUEST: Appeal Public Works Department denial of driveway permit
(RE: Saint Vincent de Paul, 3701 North 16th Street)

Joseph Saniuk, AO, and Joe Worthing, Saint Vincent de Paul, appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas submitted an aerial view of the site (Exhibit 2) and stated that the wide truck dock driveway access along North 16th Street exceeded the maximum width of 35 feet and required backing onto North 16th Street, which were both non-compliant issues. He then stated that a second driveway along Pratt Street, to access rear parking at the site, was also non-compliant and noted that the request was reuse of the existing building. He added that traffic volumes along North 16th Street were relatively low for a major street.

Mr. Worthing stated that the truck dock was active and useful for operations. He then stated that because of lack of the off-street parking, the proposed off-street stalls at the front and parking to the rear was necessary to meet code requirements.

Mr. Saniuk stated that the site was a donation to Saint Vincent de Paul and the 40,000 square foot structure was necessary for operations while the main warehouse was improved. He then stated that the applicant would occupy approximately half of the building, and that additional tenants in the building would help cover costs of the non-profit organization. He added that the proposed parking was necessary to bring additional tenants to the site.

In response to Mr. Levy, Mr. Saniuk stated that the docking area would be shared and approximately 2 trucks per day would access the dock area.
Motion to APPROVE by Mr. Kruse. Second by Ms. O'Connor.

AYES: Bessmer, Kruse, O'Connor, Levy

Motion carried 4-0. Appeal granted.

4. 16-11-096
Elizabeth Kreher
Lamp Rynearson & Associates Inc.
14710 West Dodge Road, Suite 100
Omaha NE 68154

REQUEST: Appeal Public Works Department denial of driveway permit
(RE: 24th & Farnam Streets)

Ken Hahn, Kenneth Hahn Architects, Matt Ruemker, Facilities Management, Federal Reserve Bank, and Chris Langan, Lamp Rynearson Associates, appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas stated that the proposed plan added additional parking on the east side of the existing site with 2 driveways and that the existing area to the west had a total of 3 controlled or restricted access points. He then stated that the new parking area had unrestricted driveways onto Farnam and Harney Streets, with internally restricted parking. He explained that the applicant requested a total of 5 access points. Mr. Haas stated that the user was unique with a higher need for access restrictions and the Department had no other concerns with the proposed plan on the long, narrow site.

Mr. Hahn stated that connecting both ends of the site with parking was impossible and that the expanded parking area included 135 stalls. He then stated that traffic to the north and south of the 4-block long site flowed one-way and that the proposed plan eased access and traffic flow issues. He added that visitor access was located in the new parking area and that the plan allowed bus traffic to flow straight through the proposed parking lot.

Mr. Ruemker stated that the objective was minimal impact on traffic flow and that the two additional driveways for the east parking lot dispersed traffic safely onto 2 roads.

Mr. Langan stated that the user required various levels of security within each parking area and that the public sidewalk running north and south across the lot would be kept but shifted.

In response to Mr. Levy, Mr. Ruemker stated that the use was the same, but an additional business line acquired by the user added jobs at this facility and required additional parking. He noted that landscaping would be added to the new parking area, with some existing trees along the east of the site retained.

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

AYES: Bessmer, Kruse, O'Connor, Levy

Motion carried 4-0. Appeal granted.

5. 16-11-097
Pyerre D. Barnes
10015 Ogden Plaza #4
Omaha NE 68134

REQUEST: Appeal Police Department denial of firearm registration

Pyerre Bares appeared before the Board. Lt. David Sedlacek, Omaha Police Department, appeared before the Board. Lt. Sedlacek stated that the applicant applied to register a handgun on November 3, 2016, but was denied due to 2 marijuana less than one ounce convictions dated February 14, 2014 and October 28, 2014. He then stated that the applicant was fined $300 FOR each conviction.
Mr. Barnes stated that he received a firearm purchase permit from the Douglas County Sheriff Department and purchased a firearm and a rifle, but was denied registration of the firearm.

In response to the Board, Lt. Sedlacek stated that rifles were not required to be registered, but that concealable firearms required registration. At the request of the Board, Mr. Barnes presented his Nebraska Purchase Permit received from the Sheriff Department and Mr. Levy confirmed the validity. Lt. Sedlacek confirmed that denial of the firearm registration for Mr. Barnes was regulated under Omaha City Ordinance and that the state purchase permit was valid outside city limits.

In response to the Board, Mr. Barnes stated that he wanted the firearm for camping and that he no longer used marijuana. He then stated that he received the purchase permit and was not a threat to society. Mr. Levy noted the ordinance terms and that the offenses were approximately 2 years prior.

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

AYES: Bessmer, Kruse, O’Connor, Levy

Motion carried 4-0. Appeal denied.

6. 16-11-098
Zachary W. Ahlf
5117 South 129th Street
Omaha NE 68137

REQUEST: Appeal Police Department denial of firearm registration

Zachary Ahlf appeared before the Board. Lt. David Sedlacek, Omaha Police Department, appeared before the Board. Lt. Sedlacek stated that the applicant applied to register a handgun on November 8, 2016, but was denied due to a carry concealed weapon conviction dated April 28, 1999. He then stated that the applicant was fined $25.00 and that the weapon was not a firearm.

Mr. Ahlf submitted a certificate of completion for a handgun training course and a letter from the Bureau of Alcohol Tobacco Firearms and Explosives (ATF) approving Mr. Ahlf to transport, ship, receive and possess explosives (Exhibit 2). He explained that he was a pyro-technician and displayed his purchase October 18, 2016 purchase permit issued by the Douglas County Sheriff Department. Mr. Levy confirmed the validity of the purchase permit. Mr. Ahlf stated that the weapon during the conviction was a pocket knife and that he wanted the firearm for protection and shooting at the range.

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

AYES: Bessmer, Kruse, O’Connor, Levy

Motion carried 4-0. Appeal granted.

7. 16-11-099
Randal Watson Sr.
10724 Old Maple Road
Omaha NE 68134

REQUEST: Appeal Police Department denial of Taxicab driver’s permit

Randal Watson Sr. appeared before the Board. Lt. David Sedlacek, Omaha Police Department, appeared before the Board. Lt. Sedlacek stated that the applicant applied for a taxicab driver’s permit on October 3, 2016, but was denied due to 2 driving during suspension convictions dated January 4, 2012 and January 2, 2013. He added that the applicant was fined $25 for each conviction and noted that the reason was driving prior to license reinstatement.
Mr. Watson stated that he wanted to regain his taxicab driver’s permit and that he recently purchased a home when he moved back to Omaha. He added that he enjoyed working with people and the permit allowed him to work and provide for his family. In response to the Board, Mr. Watson stated that he drove during his suspension because his wife was disabled and he was the sole provider of transportation for his children. He explained that he realized his mistakes and currently had a job offer with the cab company. He also explained that his license was previously suspended due to owed child support when he was unemployed, but that he was now current on his child support payments. Lt. Sedlacek confirmed Mr. Watson’s driver’s license was reinstated.

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

AYES: Bessmer, Kruse, O’Connor, Levy

Motion carried 4-0. Appeal granted.

8.
16-10-091 (heldover from 10/24/16)
Dennis Kennedy
1432 South 54th Street
Omaha NE 68106

REQUEST: Appeal Nebraska Humane Society Potentially Dangerous Dog declaration

*Case number 16-09-091 was corrected and changed to 16-10-091.

Dennis Kennedy was not present when his case was called. Mark Langan, Nebraska Humane Society (NHS), appeared before the Board. The Secretary confirmed an email with the meeting Agenda and case file was successfully delivered to Mr. Kennedy, but a return receipt for certified mail was not received.

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.

In response to the Board, Mr. Langan stated he was informed by Mr. Kennedy that he was possibly relocating out of state, but would periodically bring the dog back to Omaha. He also stated Mr. Kennedy’s dog would be subject to the Potentially Dangerous Dog requirements when in city limits, with the exception of the dog behavior or owner responsibility class. He explained the dog was spayed as required, but was required to be harnessed and muzzled, walked on a leash no longer than 6 feet by an individual 19 years of age or older when outside of an enclosed yard when within city limits and that Mr. Kennedy was required to purchase the Potentially Dangerous Dog license.

The Board briefly discussed Mr. Kennedy’s absence at the meeting and Mr. Himes, City Attorney, stated that due process was followed in this case.

Motion to DENY by Mr. Kruse. Second by Ms. O’Connor.
AYES: Bessmer, Kruse, O'Connor, Levy

Motion carried 4-0. Appeal denied.

9. 16-11-100
Amber Kimble
2612 Z Street
Omaha NE 68107
REQUEST: Appeal Nebraska Humane Society Reckless Dog Owner Declaration

Amber Kimble and Nancy Kimble, Amber’s mother, appeared before the Board. Mark Langan, Nebraska Humane Society (NHS), appeared before the Board. Mr. Langan submitted a copy of the Investigative Report (Exhibit 2) detailing ordinances and the series of events leading to Ms. Kimble’s appeal. He explained that Ms. Kimble failed to meet the requirements of the January 25, 2016 Potentially Dangerous Dog (PDD) Declaration for her dog Duce and violated the September 27, 2016 Reckless Dog Owner Declaration as described: the dog was found running loose on two separate occasions, she failed to attend the required Dog Behavior Class and failed to purchase the required license and insurance until 9 months following the PDD Declaration. He briefly discussed the multiple incidents leading to the Reckless Owner Declaration, as detailed in the NHS Investigative Report, and then stated that Ms. Kimble appealed the Reckless Owner Declaration to the NHS Appeals Board and was unanimously denied on October 11, 2016.

Ms. Kimble stated that she accepted the Reckless Owner Declaration and attempted to meet the requirements of the Ordinance. She then stated that her dog was 10 years old and never hurt a person or an animal and discussed an incident that supposedly occurred between her dog and another dog in March 2015. She explained that she did not believe her animal attacked the dog and that although her dog was previously never leashed, she currently abides by the regulations of the ordinance. She further discussed her attempts to meet the requirements of the ordinance and that she was unaware an unleased dog was a criminal offense.

Mr. Langan stated that if the appeal was denied, the dog would be euthanized and Ms. Kimble would not be allowed to own animals for an additional 4 years.

Nancy Kimble appeared before the Board and stated that she took the dog to behavior classes and purchased insurance. She also stated that dog never harmed a person, but admitted that the dog ran loose. Amber Kimble stated that she installed a fence and kept the dog in the yard.

After repeated discussion regarding the events leading up to the Potentially Dangerous Dog Declaration and the Reckless Owner Declaration, Ms. O’Connor noted Ms. Kimble’s repeated excuses for not meeting the regulations and the repeated number of hours the Nebraska Humane Society put in for this case. Mr. Langan noted the continued lack of cooperation with Ms. Kimble throughout the case.

Tim Himes, City Law, explained that the duty of the Board was to determine grounds for overturning or not overturning the decision of the NHS Board to deny and that upon denial of the appeal, the case could be taken to District Court. Mr. Langan noted that upon a denial of today’s appeal, the dog would be held for 30 days to determine if the case would be appealed to District Court.

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

AYES: Kruse, O’Connor, Levy

NAYS: Bessmer

Motion carried 3-1. Appeal denied.
APPROVAL OF MINUTES:

Motion by Mr. Kruse to approve the minutes from September 26, 2016. Second by Ms. O’Connor.

AYES: Kruse, O’Connor, Levy

ABSTAIN: Bessmer

Motion carried 3-0-1.

ADJOURN:

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

AYES: Bessmer, Kruse, O’Connor, Levy

Motion carried 4-0. Meeting adjourned at 2:54 pm.