MINUTES
Administrative Board of Appeals
December 18, 2017

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
Bernard in den Bosch, Law Department
Jay Davis, Planning Department
Clinette Ingram, Board Secretary

ROLL CALL:
Mr. Levy called the meeting to order at 1:00 pm. The Board received as Exhibit 1 the contents of the City's file on each case.

Cases:

1. 16-05-32 (heldover from 5/26/16, 8/22/16, 11/28/16, 3/1/17 & 9/25/17)
   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)

At the Administrative Board of Appeals meeting held on December 18, 2017 Bernard in den Bosch (City Law Department) and Robert Keith appeared before the board.

Mr. in den Bosch stated that the case had become more complicated over time. He entered a stipulation where all parties involved had agreed that the matter should be continued indefinitely while other cases were pending. It also reserved the right of either party to bring the case before the board with 30 days’ notice (Exhibit 2). Mr. Keith added that many of the issues would most likely be settled during litigation. Mr. Levy believed that a time should be set for the continuance.

Motion to LAYOVER until the December 2018 meeting of the board by Mr. Kruse. Mr. Beals seconded the motion.

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

MOTION CARRIED: 5-0 Appeal granted.
2.  
17-12-109
Matthew J. Hubel, P.E.
Schemmer
1044 North 115th Street, Suite 300
Omaha, Ne 68154

REQUEST: Appeal Public Works Department denial of driveway permit
(RE: OPS Columbian Elementary – 330 South 127th Street)

At the Administrative Board of Appeals meeting held on December 18, 2017 Ryan Haas (Public Works) and Matthew Hubel appeared before the board.

Mr. Haas stated that a new elementary school was being proposed for the site. He explained that bus pick-up/drop-off would be located on 127th Street. An access was proposed for the north end of the site for pre-school drop-off/pick-up and visitor parking. Another access was proposed for the southern end where the main pick-up/drop-off would be located for parents. He stated that the applicant had worked with Public Works and had made changes based on the Department’s suggestions. He believed that the plan was acceptable, especially when taking into consideration the constraints and traffic patterns of the site.

Mr. Hubel stated that the two driveways would contribute to the safety of the students and would help to eliminate congestion in and around the site.

In response to Mr. Santo, Mr. Hubel stated that community meetings had been held throughout the design process and that adjustments had been made based on those discussions.

Motion to APPROVE by Mr. Beals. Mr. Santo seconded the motion.

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

MOTION CARRIED: 5-0. Appeal granted.

3.  
17-12-110
Kyle Haase
E & Consulting Group, Inc.
10909 Mill Valley Road
Omaha, NE 68154

REQUEST: Appeal Public Works Department denial of driveway permit
(RE: Loveland Flats – 88th Street and West Center Road)

At the Administrative Board of Appeals meeting held on December 18, 2017 Ryan Haas (Public Works) and Kyle Haase appeared before the board.

Mr. Haas stated that the proposed driveway would provide access for an 18-unit, multi-family project. The site plan showed a through driveway that connected 87th Avenue to 88th Street. He noted that both streets are low-speed/low-volume residential streets. He noted that the only other non-conformity with the plan was that the end of returns exceeded the limits of the property line on the north side of the site.

Mr. Haase that the site would consist of 2 buildings with 9 apartments in each for individuals aged 55 and over. He indicated that there meeting were held with the neighbors and that the project had been approved by City Council at its July 25, 2017 meeting. He explained that the two accesses would allow emergency vehicles to safely enter and access the site and would provide a secondary egress if needed. It would also help with trash collection since trucks would not need to back up to exit the site.

Motion to APPROVE by Mr. Kruse. Mr. Beals seconded the motion.

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

MOTION CARRIED: 5-0. Appeal granted.
4.

17-12-111
Eddie J. Walker, V
1608 Lake Street
Omaha, NE 68110

REQUEST: Appeal Police Department denial of firearm registration

At the Administrative Board of Appeals meeting held on December 18, 2017 Lt. Dave Sedlacek (Omaha Police Department) and Eddie J. Walker V appeared before the board.

Lt. Sedlacek stated that on November 15, 2017, the applicant applied to register a firearm and was denied due to two marijuana less than one ounce convictions. The first was a marijuana more than one ounce conviction from September 9, 2008 for which he was fined $300. The second was from February 24, 2012 for marijuana less than one ounce for which he was fined $300. The first conviction resulted from a traffic stop and the second was the result of a probation visit to the home. He had other marijuana less than one ounce convictions that were more than 10 years old.

Mr. Walker stated that while on probation in 2012, he received counseling for marijuana addiction and that he had been drug free since that time. He added that he was married with children and that he had been employed as a chef at a hotel for almost three years. He indicated that he also had taken steps to educate himself about the responsibilities that come with gun ownership.

Motion to APPROVE by Mr. Kruse. Ms. O’Connor seconded the motion.

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

MOTION CARRIED: 5-0. Appeal granted.

5.

17-12-112
Davell D. Hardy
4432 Decatur Street
Omaha, NE 68114

REQUEST: Appeal Police Department denial of firearm registration

At the Administrative Board of Appeals meeting held on December 18, 2017 Lt. Dave Sedlacek (Omaha Police Department) and Davell Hardy appeared before the board.

Lt. Sedlacek stated that on November 16, 2017 the applicant applied to register a firearm and was denied due to a marijuana less than one ounce conviction from February 18, 2014 for which he was fined $300. The conviction was the result of a traffic stop.

Mr. Hardy explained that since the incident he had graduated from Job Corp and enrolled in Metro Community College so that he could obtain his CDL license. He added that he and his brother liked to shoot at the range for recreation.

In response to Mr. Beals, Mr. Hardy stated that he was currently employed driving a truck locally. He stated that drug testing was a condition of his employment.

Mr. Levy explained that the board had an issue with how recent the conviction was.
Motion to DENY by Mr. Santo. Mr. Kruse seconded the motion.

AYES: Santo, Kruse

NAYES: Beals, O’Connor, Levy

MOTION FAILED: 3-2

Motion to APPROVE by Mr. Beals. Ms. O’Connor seconded the motion.

AYES: Beals, O’Connor, Levy

NAYES: Santo, Kruse

MOTION CARRIED: 3-2. Appeal granted.

6.
17-12-113
James K. Moore
2117 Benson Garden Boulevard
#5L
Omaha, NE 68134

REQUEST: Appeal Police Department denial of Taxicab Driver’s Permit

At the Administrative Board of Appeals meeting held on December 18, 2017 Lt. Dave Sedlacek (Omaha Police Department) and James Moore appeared before the board.

Lt. Sedlacek stated that on November 22, 2017 the applicant applied for a Taxicab Driver’s Permit but was denied due to two Driving under Suspension convictions from May 2013 and July 2014. He was denied since both offenses were within five years of the date his application. He also had a marijuana less than one ounce conviction from 2012 and a domestic violence conviction from October 2017. The actual arrest for the domestic violence conviction was May 2015.

Mr. Moore stated that he wanted to create more opportunities for his children. He explained that he violated probation in 2016 and turned himself in in October 2017.

In response to Mr. Kruse, Mr. Moore stated that his driver’s license was suspended because he was driving without insurance.

Motion to DENY by Mr. Kruse. Mr. Beals seconded the motion.

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

MOTION CARRIED: 5-0. Appeal denied.
At the Administrative Board of Appeals meeting held on December 18, 2017 Mark Langan (Nebraska Humane Society), Alan Backman and Ana Cruz appeared before the board.

Mr. Langan stated that on October 17, 2017 when NHS was called to Papillion South High School. A young man stated that he was walking on school grounds when he approached the applicant and his dog, Titan. He indicated that when both parties passed each other, the dog bit him on his arm and left a wound and a tear in his jacket. When NHS officers found the applicant they issued a citation for no pet license and a Dangerous Dog Declaration for an incident from September 5, 2017. Mr. Langan stated that on that day, Titan bit a man that was jogging on a neighborhood trail behind its home. During that incident, Titan was on a leash that was being held by a young girl. The jogger indicated that the dog ran up behind him and bit him on the leg and knocked him over. He stated that he only wanted the bite documented in NHS records.

Ms. Cruz stated that they were appealing because they felt that the dog did not meet the definition of a Potentially Dangerous Dog. She stated that during the October 17th incident, the young man ran towards the dog and made it feel threatened. She believed that the dog was provoked into biting. She added that the dog is a shepherd mix and that it is in his nature to try and stop the young man but not necessarily to hurt him. She stated that after the September 5th incident, they met with a trainer.

In response to Ms. O’Connor, Mr. Langan explained that a Dangerous Dog Declaration was not issued for the first incident because the victim asked that no enforcement action be taken. He added that in the future any confirmed bites that are reported to NHS would receive appropriate action for the public’s safety. In response to Mr. Kruse, Mr. Backman stated that he and his wife were not originally aware that the dog needed to be licensed. He indicated that they did so as soon as they were informed that it was a requirement.

Mr. Langan stated that if the declaration were upheld the dog would need to meet the following requirements: 1) must be spayed/neutered (which the dog already was); 2) microchipped within 30 days (which had already been done); 3) a Potentially Dangerous Dog license must be purchased from NHS; 4) the owner must show that a $100,000 public liability policy had been purchased; 5) the owner must attend a responsible pet ownership class and a dog behavior class; and 6) the dog must be harnessed, muzzled and under the control of a person 19 years of age or older and on a leash no longer than 6’ long for the next 2 years anytime the dog left the home. He added that if no incidents occurred during the 2 years the dog would be removed from the Potentially Dangerous list.

Ms. Cruz stated that the issue was having a psychological impact on her children and was hurting their ability to train the dog.

Motion to DENY by Mr. Kruse. Mr. Beals seconded the motion.

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

MOTION CARRIED: 5-0. Appeal denied.
At the Administrative Board of Appeals meeting held on December 18, 2017 Mark Langan (Nebraska Humane Society) appeared before the board. The applicant did not appear. It was determined that Ms. Costello received proper notification of the meeting.

Mr. Langan stated that on November 11, 2017, NHS received 2 calls around noon about 2 dogs later identified as Kash and Bella. The first incident involved a mother and her two girls who were walking their small dog on the sidewalk. As Kash and Bella ran up to them, the mother picked up her dog. Kash and Bella attempted to jump up and bite the dog and knocked the two girls down causing minor injuries to the dog and both girls. The second incident involved Kash and Bella attacking a dog in its yard. The dog sustained some lacerations. The applicant was contact and was issued several citations including Dangerous Dog Declarations for both dogs. Mr. Langan noted that there were five additional complaints about the applicant’s dogs running loose between March 2016 and October 2017. Ms. Costello appealed to the NHS board on November 30, 2017; however, her appeal was denied which made of her dogs Potentially Dangerous Dogs.

In response to Mr. Kruse, Mr. Langan stated that Ms. Costello was still in possession of the dogs. He explained that the other incidents of dogs running loose involved other dogs that Ms. Costello owned. He also noted that a neighbor sent a video to NHS which showed one of the applicant’s dogs circling him.

Mr. Santo mentioned that it did not appear that either of the dogs had been vaccinated for rabies which caused additional safety concerns.

Motion to DENY by Mr. Kruse. Mr. Beals seconded the motion.

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

MOTION CARRIED: 5-0. Appeal denied.

APPROVAL OF MINUTES:

Motion by Mr. Beals to approve the minutes from October 23, 2017. Second by Mr. Kruse.

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

Motion carried 5-0.

Motion by Mr. Beals to approve the minutes from November 27, 2017. Second by Mr. Santo.

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

Motion carried 5-0.

ADJOURN:

It was the consensus of the board the ADJOURN the meeting at 2:13 pm.