MINUTES
BUILDING BOARD OF REVIEW
Monday, February 10, 2020 at 1:00 p.m.
Omaha/Douglas Civic Center – 1819 Farnam
Third Floor – Jesse Lowe Conference Room

Board Members:
Jack Ryan – Chairman
Ron Feuerbach – Vice Chair
Cheryl Kiel
Michael Naccarato
Kent Therkelsen
Thomas Thibodeau
Dennis Van Moorleghem

Certification of Publication: Board Secretary certifies publication in the Daily Record, the official newspaper of the City of Omaha, on Monday, February 3, 2020.

THE OWNER, OR A REPRESENTATIVE OF THE OWNER, MUST HAVE SIGNED THE APPLICATION OR BE PRESENT AT THE MEETING FOR THE CASE TO BE HEARD.

NOTE: THIS BOARD DOES NOT HAVE THE AUTHORITY TO WAIVE ANY REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT, FEDERAL FAIR HOUSING ACT, OR THE N.F.P.A. 101 LIFE SAFETY CODE; BUT DOES HAVE THE AUTHORITY TO HEAR APPEALS OF THE INTERNATIONAL FIRE CODE, NEBRASKA ACCESSIBILITY GUIDELINES AND THE NEBRASKA FAIR HOUSING ACT.

Mr. Jack Ryan called the meeting to order at 1:00 p.m.

I. Roll Call

Jack Ryan
Ron Feuerbach
Cheryl Kiel
Michael Naccarato
Kent Therkelsen
Thomas Thibodeau
Dennis Van Moorleghem

Others Present:
Anna Bespoyasny, Assistant Director Permits and Inspections Division
Le Nguyen, Plans Examiner
Jennifer Taylor, City Law – arrived late
Don Gerjevic, Chief Electrical Inspector
Capt. Steven Thornburg, Omaha Fire Department

II. Approval of Minutes: Approval of January 13, 2020 minutes.

Motion by Mr. Ron Feuerbach to approve the minutes from the January 13, 2020 meeting. Second by Mr. Kent Therkelsen.

AYES: Feuerbach, Kiel, Naccarato, Ryan, Therkelsen, Thibodeau, Van Moorleghem

Motion carried: 7-0, Approved
III. Cases

<table>
<thead>
<tr>
<th>Electric Guard Dog</th>
<th>LOCATION: Request:</th>
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<tbody>
<tr>
<td>550 Assembly St, 5th Floor Columbia, SC 29201</td>
<td>1301 East Hartman Ave Waiver to code section 43-176</td>
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At the Building Board of Review meeting held on February 10, 2020, Michael Pate and Bobby Miner appeared before the Board in regards to the above request at the above address. Don Gerjevic, Le Nguyen, and Steve Thornburg appeared on behalf of the City.

Mr. Pate detailed their unit, powered off a 12 volt battery, stating that it is outside the purview of the National Electrical Code (NEC). He detailed the specifics of the unit and how it works, electrically. He detailed when and how the alarm is set off and what their procedure is for when an alarm is set off. He explained that it is a verified alarm because of the call list, not calling the police first, and the details of the procedures for the verified alarm. He addressed the report that was submitted by the building officials. He detailed where and how the components of the unit are assessed in a group by TUV Rheinland to the standard of IEC 60335-2-76 for electric security fences. He stated this is similar to a cattle fence and detailed how it works. He explained that their manufacturing site is audited by the Nationally Recognized Testing Laboratory (NRTL) to make sure they are meeting standards. He summarized that their electric fence is always behind an existing permitted wall or fence. He explained that their fences are signed in at least English and Spanish, depending on the location of the fence. He detailed that there are approximately 5,000 fences in use across the United States. He addressed the concern about the fence being exposed on the inside of the parking lot. He stated that the fence would not hurt an individual if they were to touch the fence.

Mr. Miner detailed why they were looking into this fence. He explained they had customers in summer 2019 stating that someone had been in their cars. He detailed that after reviewing video cameras, they discovered that individuals were checking for unlocked cars. He explained how he tried to secure the perimeter with security and police. He detailed that in October 2019, a car was stolen, and the customer had left their keys in their car because the lot is safe. He was told by the police that he was unable to file a report as it was not his property. He explained that there were additional car thefts even with extra security and police patrol. He stated he would have to hire twenty security guards to patrol both lots full time to stop the theft. He stated he would not want the fence here, but he has to because of the safety of his employees and customers.

Mr. Dennis Van Moorleghem asked if the fence shocks people. Mr. Pate confirmed saying that the shock was less than the shock for cattle. Mr. Van Moorleghem asked about the structure of the fence. Mr. Pate detailed how it is built as well the height. Mr. Thomas Thibodeau asked about the set back from the fence. Mr. Pate stated that the standard is 100-200 mm behind the fence and the reason why. Mr. Van Moorleghem stated there is a risk to his customers being shocked. Mr. Pate confirmed. Mr. Ryan asked if this system was covered under the National Electric Code. Mr. Pate confirmed that they cover 50 volt and above only. Mr. Ryan asked if the same was applicable to the local code. Mr. Pate confirmed that it is an alarm system. Mr. Thibodeau asked about other types electrical fences as it pertains to how the local code is written. Mr. Pate detailed how they work. He stated that there used to be a UL listing that applied just to livestock that he's not sure when this code was written. He stated that never in the history of pulsed electric fences has there been a fatality.

Mr. Ryan stated he was missing something. He asked if they don't fall under the local code, why are they here. Mr. Gerjevic stated that that is incorrect. He read NEC 90.4 Enforcement into the record and NEC 90.2. He stated that all electrical equipment is covered regardless of voltage. He stated all of article 725 covering circuits would be under what would be classified as “low voltage.” He detailed the threshold as well as what the NEC covers. Mr. Thibodeau asked about what is under the control of the local jurisdiction and exceptions. Mr. Gerjevic stated that there is no exception for items under 50 volts. He read from the NEC, summarizing that a piece of electrical equipment is up to the jurisdiction. He asked to submit Exhibit 2 into the record, a statement he’s prepared with those code sections included. He read Exhibit 2 into the record. He explained that if there is no listing or labeling for NEC 90.4, then NEC 110.3 would kick in. He
concluded that the City of Omaha is not in possession of documentation that the fences have been tested on humans and listed and labeled as such. He stated that the secondary reaction from the shock has not been assessed. He stated he understands where the applicant is coming from, but he is concerned about an individual cutting the electric fence.

Mr. Thibodeau asked what happens when the electric fence is cut. Mr. Pate stated that the alarm goes off because the circuit will not be complete. Mr. Ryan asked if they would be shocked. Mr. Pate stated that they could be if they are on the threshold. He stated that they are verified by a national testing agency. He stated this is a plug and play device. Mr. Ryan asked for clarification on what Section 43-176 was. Mr. Gerjevic stated that was in the building code. Ms. Le Nguyen stated that Section 43-176 applies to the electric fence and how it is zoned. Mr. Pate stated that it is in regards to the zoning. Ms. Nguyen stated the code is only applicable to livestock only. Mr. Thibodeau clarified the code. Mr. Van Moorleghem asked about what the point of electrocuting someone is. Mr. Pate stated they are not electrocuting, as that is killing someone. Mr. Van Moorleghem asked why they don’t just alarm the first fence. Mr. Pate stated it is alarmed for the second fence.

Mr. Feuerbach asked if someone could be injured. Mr. Pate stated no, that they are tested and labeled to the IEC standard. Mr. Feuerbach asked if it was an impossibility. Mr. Pate stated that it has been tested, that people do not want to be shocked so they will get shocked then leave. He stated that, by law, he is not able to test on humans. He explained that is standard procedure. Mr. Thibodeau asked about the listing. Mr. Pate gave it to him, IEC 60335-2-76. Mr. Thibodeau asked what that is for. Mr. Pate stated it is for electric security fences.

Mr. Mike Naccarato asked how close the fence is to a parked car. Mr. Pate stated he doesn’t know. Ms. Nguyen stated that the parked cars are right by the electric fence. She stated there is a hazard. She stated that she consulted with the zoning department and they would need to have a zoning waiver, set back, to park right next to the fence. Mr. Thibodeau asked if they would be have a problem with parking too close to the fence. Mr. Miner explained the parking lot’s layout. Ms. Nguyen stated that a lot of the perimeter parking is a big lot, unmanaged in terms of the size, and cars are parked to the fence. Mr. Miner stated that he could use the spots close to the fence be for valeting cars only because he doesn’t want his customers to hit this fence.

Mr. Ryan asked Mr. Thibodeau if this would be safe, in his opinion. Mr. Thibodeau stated that he doesn’t know the product, and there may not be anything in the code about how to put in an electric fence. He stated that if the listing was accurate, then it would be safe. Mr. Feuerbach asked if Mr. Gerjevic would agree. Mr. Gerjevic stated he would agree, but would want something that was approved and tested under OSHA or a NRTL, as far as the standard, to be used. Mr. Thibodeau asked about the standard that is utilized. Mr. Pate explained who they utilize for testing. Mr. Gerjevic stated he doesn’t doubt the fence is a tested product, the City’s claim is that it is not listed to be used on people. He continued that he would have a difficult time qualifying this piece of equipment. Mr. Pate stated the standard is the same as a security fence.

Ms. Cheryl Kiel stated that there is a vandalism problem, too. Mr. Naccarato asked about the similarities between this product and invisible dog fences. Mr. Pate explained the difference. He stated he doesn’t know the specifics on the invisible dog fence.

Mr. Gerjevic stated there were previous case files from 2002 and 2003 where injuries were reported from those electric fences installed then. Ms. Kiel asked if there was an option for a secondary barrier to protect customers but would prevent the vandalism. Mr. Pate stated that is not the standard. Mr. Miner stated that the cost would be prohibitive. Ms. Kiel asked if they could put the electric fence on the outside. Mr. Miner stated that he thought it could be. Mr. Pate stated it would not meet the standard to put the electric fence exterior of the existing fence. He detailed what the standard would be.

Ms. Anna Bespoyasny asked about a barrier on the inside, a vehicle guard rail, as a possibility. Mr. Miner stated he looked into it. Mr. Pate stated there is a mote in place as well. Mr. Thibodeau asked if Mr. Pate was at the cases in 2002 or 2003. There is discussion about the previous cases. Mr. Thibodeau asked about the
original cases and what the Building Board of Review approved it for. He stated that the ordinance does not appear to be amended as was so motioned in those cases. Mr. Pate stated that they would be glad to work with building officials to amend the code. Mr. Thibodeau asked if it is the same as in 2002 and 2003. Mr. Pate stated it is even better now.

Mr. Naccarato asked about where it is installed in Council Bluffs and Lincoln, as stated by Mr. Pate. Mr. Pate detailed the uses and locations. There is discussion about installation.

Mr. Therkelsen asked if the City would want some kind of barrier. Mr. Gerjevic stated that it would make it much safer for the public inside the perimeter. He wondered about the reaction and liability on the City of Omaha if an individual were to get injured with a waiver being issued. He stated he could inspect it further. Mr. Pate stated he has that. He explained they are only connecting to batteries.

Mr. Thibodeau asked if the City assumes any liability. Ms. Jennifer Taylor stated that she doesn’t believe, but that the City would most likely be named in a lawsuit. Mr. Miner asked if the waiver were not granted would the City of Omaha be named in a lawsuit. Ms. Taylor stated no.

Mr. Feuerbach asked about liability insurance. Mr. Pate stated that they have a six million dollar insurance policy. Mr. Feuerbach asked if the client would need to have liability insurance. Mr. Pate detailed his role and cost. Mr. Feuerbach asked how frequently it is tested and inspected. Mr. Pate stated they can inspect it remotely daily. Mr. Thibodeau asked about it being off the batteries. Mr. Pate confirmed.

Mr. Ryan asked Mr. Gerjevic if a concern was that a person could be shocked and then be injured by falling down. Mr. Gerjevic confirmed. Mr. Feuerbach asked about a turn off switch and for the fire department if need be. Mr. Pate stated there would be a KnoxBox that would allow them to enter unharmed. Mr. Thibodeau asked if the fence is registered with the fire department. Mr. Pate stated they go through the fire department to get that. Capt. Steve Thornburg stated that in Omaha you can purchase a KnoxBox. He detailed how it is utilized.

Ms. Nguyen asked about it being just a shock and how it would be on a wet day. Mr. Gerjevic stated that it’s all about conductivity and resistance. Mr. Pate stated that it would be the same. He detailed that the snow cuts it off so they have to remove the wire. Ms. Nguyen asked what would happen if it weren’t monitored. Mr. Pate stated it would incapacitate the system, snow, until the wiring was addressed. He compared it to the south and the rain and growth. Mr. Therkelsen asked if they would have to physically send someone or if it could be remotely. Mr. Pate stated that remotely would be in the future, but that he has technicians in the field that are within twenty-four (24) hours of the systems that are installed and they are growing. He stated that it behooves them to ensure that the system is maintained.

Ms. Bespoyasny asked about the history of lawsuits. Mr. Pate stated it happens occasionally, and it can be in their best interest to settle sometimes. Ms. Bespoyasny asked about deaths associated with the system. Mr. Pate stated you could look at OSHA for that information, and if it happens it is when people use the device incorrectly. Mr. Thibodeau asked about the possible motions that could be made.

Motion by Mr. Thibodeau to grant the waiver provided this is installed in strict accordance with manufacturer’s recommendations and that the parking is laid out in such a way that will minimize the opportunity for the public to come in contact with the fence which could be through curb stops or moving valet parking and that a KnoxBox is provided for Fire Department control.

Ms. Taylor stated that parts of the motion are not clearly enforceable.

Mr. Thibodeau withdrew his motion.

Motion by Mr. Thibodeau to grant the waiver provided that the equipment is installed in strict accordance with the manufacturer’s instructions and that curb stops or other similar devices are installed to prevent cars from coming in contact with the fence and that a KnoxBox is provided for Fire Department control.
Ms. Taylor stated that if those barriers are not installed, the waiver would become invalid. There is discussion about other devices to be installed.

Mr. Thibodeau modified his waiver to include a Jersey barrier as follows: Motion by Mr. Thibodeau to grant the waiver provided that the equipment is installed in strict accordance with the manufacturer’s instructions and that Jersey barriers or other similar devices are installed to prevent cars from coming in contact with the fence and that a KnoxBox is provided for Fire Department control.

Mr. Therkelsen asked about a City approved barrier. Ms. Kiel stated with children to have a Jersey barrier would be safer. Mr. Van Moorleghem asked what a Jersey barrier is. Mr. Pate detailed. Mr. Ryan asked if the Fire Department is concerned.

Second by Mr. Therkelsen.

AYES: Kiel, Naccarato, Ryan, Therkelsen, Thibodeau, Van Moorleghem
NAYES: Feuerbach

Motion carried: 6-1, Approved
At the Building Board of Review meeting held on February 10, 2020, Michael Pate and Bobby Miner appeared before the Board in regards to the above request at the above address. Don Gerjevic, Le Nguyen, and Steve Thornburg appeared on behalf of the City.

Mr. Pate stated it is the same case.

Motion by Mr. Thibodeau to grant the waiver provided that the equipment is installed in strict accordance with the manufacturer’s instructions and that Jersey barriers or other similar devices are installed to prevent cars from coming in contact with the fence and that a KnoxBox is provided for Fire Department control.

AYES: Kiel, Naccarato, Ryan, Therkelsen, Thibodeau, Van Moorleghem
NAYES: Feuerbach

Motion carried: 6-1, Approved

IV. Review Board Policy and Procedures

Ms. Taylor stated that there are a few things that need to be revised, but the rules have been given to them and she can answer questions at the next meeting if they’d like. Mr. Thibodeau asked about the Property Maintenance Appeals Board reference. Ms. Taylor clarified that they would be removed from their purview because of the creation of the Property Maintenance Appeals Board. She stated she’ll clean them up, bring them back to the board to approve.

Ms. Kiel asked about limiting the size of plans for the application. There is discussion.

Mr. Feuerbach asked about the public hearing and if it was handled appropriately. Ms. Taylor stated it was. Ms. Bespoyasny stated that even though Ms. Kiel’s motion to meet with stakeholders didn’t pass, she did meet with them and there are some modifications that have been made prior to being sent to City Council.

V. Adjournment

Motion by Mr. Feuerbach to adjourn. Second by Ms. Kiel.

AYES: Feuerbach, Kiel, Naccarato, Ryan, Therkelsen, Thibodeau, Van Moorleghem

Motion carried: 7-0, Adjourned at 2:10 p.m.