

SUPREME COURT OF NEBRASKA

McNally v. City of Omaha, 273 Neb. 558

731 N.W.2d 573 (2007) · No. No. S-05-1022 · Decided May 18, 2007

SUMMARY

The Nebraska Supreme Court reviewed a challenge to Omaha code-violation notices issued concerning a rental duplex. The court upheld violations involving cracked exterior walls and an uneven sidewalk, but reversed findings concerning furnaces, cosmetic repairs, and workmanship. It also held that the appeal was properly pursued by petition in error and that the Metropolitan Utilities District had exclusive authority over routine gas-furnace permitting and inspections.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	McCormack, J.; Heavican, C.J.; Connolly, J.; Gerrard, J.; Stephan, J.; Miller-Lerman, J.; Cassel, Judge
JURISDICTION	Nebraska
DECIDED	May 18, 2007
DOCKET	No. S-05-1022
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a Douglas County District Court judgment affirming the City of Omaha Building Board of Review's denial of the property owners' challenge to a notice of code violations.
STANDARD OF REVIEW	On a petition in error reviewing an administrative decision, the district court and appellate court determine whether the tribunal acted within its jurisdiction and whether its decision is supported by sufficient relevant evidence. Evidence is sufficient as a matter of law if the administrative tribunal could reasonably find the facts as it did based on the testimony and exhibits. Interpretation of administrative regulations is a question of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Thomas P. McNally, Trustee, Shirley J. McNally, Trustee v. City of Omaha, City of Omaha Board of Review

TOPICS

judicial review of agency action

appellate procedure

standard of review

municipal law

ordinances

PRACTICE AREAS

municipal law

administrative law

appellate procedure

statutory interpretation

real estate

QUESTIONS PRESENTED

1. What appellate procedure and jurisdictional requirements governed review of the Building Board of Review's decision?
2. Whether sufficient relevant evidence supported findings that the cracked exterior walls and raised sidewalk violated the Omaha Code.
3. Whether the city had statutory authority to require separate city permits and inspections for the gas furnaces despite the Metropolitan Utilities District's inspection authority.
4. Whether Omaha Municipal Code § 48-15 applied to cosmetic repairs performed voluntarily rather than pursuant to enforcement of the code.
5. Whether the Board's failure to issue a separate written decision rendered its decision void.

HOLDINGS

1. A Building Board of Review that is required to conduct a hearing and receive evidence exercises judicial functions, and its decision is reviewable by petition in error under Neb. Rev. Stat. § 25-1901 rather than under the municipal claims appeal provision.
2. Sufficient relevant evidence supported the finding that the cracked brick walls constituted unsafe structures under Omaha Municipal Code § 48-71(1), including the requirement that the owners obtain a structural review.
3. Sufficient evidence supported the finding that the approximately one-inch variance in the sidewalk violated § 302.3 of the International Property Maintenance Code because it presented a pedestrian tripping hazard.
4. The city lacked statutory authority to require separate municipal permits and routine inspections of the gas furnaces because the Legislature granted the Metropolitan Utilities District exclusive authority over gas equipment and appliances on consumers' premises.
5. Omaha Municipal Code § 48-15 did not apply to the unpainted stucco, poorly painted window, and tuck-pointing because those repairs were not caused directly or indirectly by enforcement of the code.
6. The Board's decision was not void merely because it was not issued in a separate written order where the record contained minutes reflecting the Board's decision at the hearing.

KEY QUOTATIONS

“The use of the term “exclusive” in § 14-815 plainly means that the city cannot share with MUD the power granted to MUD to inspect and issue permits for gas furnaces.” (583)

“We agree that § 48-15 is inapplicable in this case because the ordinance clearly limits the “workmanlike” mandate to situations where the work is conducted pursuant to enforcement of the Code.” (585)

FACTUAL BACKGROUND

The McNallys owned and rented a duplex in Omaha that the city declared unsafe, unfit for human occupancy, or unlawful based on seven alleged code violations. The alleged conditions included cracked exterior masonry, a raised sidewalk, cosmetic defects involving stucco, window paint, and tuck-pointing, and gas furnaces installed without city permits or inspections. The furnaces had been inspected by the Metropolitan Utilities District, while city inspectors acknowledged they could not say the furnaces were dangerous merely because they had not received city inspections.

PROCEDURAL HISTORY

Omaha code inspectors issued a notice of violation concerning the appellants' rental duplex. After a hearing, the City of Omaha Building Board of Review denied relief. The Douglas County District Court affirmed. The Nebraska Supreme Court affirmed as to the cracked exterior walls and sidewalk, but reversed as to the cosmetic conditions and furnace violations.

DISPOSITION

other

CASES CITED

- *Nicholson v. Red Willow Cty. Sch. Dist.* No. 0170, 270 Neb. 140, 699 N.W.2d 25 (2005)
- *Hawkins v. City of Omaha*, 261 Neb. 943, 627 N.W.2d 118 (2001)
- *Douglas Cty. Bd. of Comm'rs v. Civil Serv. Comm.*, 263 Neb. 544, 641 N.W.2d 55 (2002)
- *Abboud v. Lakeview, Inc.*, 237 Neb. 326, 466 N.W.2d 442 (1991)
- *Andrews v. City of Fremont*, 213 Neb. 148, 328 N.W.2d 194 (1982)
- *Mogensen v. Board of Supervisors*, 268 Neb. 26, 679 N.W.2d 413 (2004)
- *Schmitt v. City of Omaha*, 191 Neb. 608, 217 N.W.2d 86 (1974)
- *Adams v. City of Omaha*, 179 Neb. 684, 139 N.W.2d 885 (1966)
- *River City Life Ctr. v. Douglas Cty. Bd. of Equal.*, 265 Neb. 723, 658 N.W.2d 717 (2003)
- *McCorison v. City of Lincoln*, 218 Neb. 827, 359 N.W.2d 775 (1984)
- *In re Covault Freeholder Petition*, 218 Neb. 763, 359 N.W.2d 349 (1984)
- *Marcotte v. City of Omaha*, 196 Neb. 217, 241 N.W.2d 838 (1976)
- *Brown v. City of Omaha*, 179 Neb. 224, 137 N.W.2d 814 (1965)
- *Barnett v. City of Scottsbluff*, 268 Neb. 555, 684 N.W.2d 553 (2004)
- *Fraternal Order of Police v. County of Douglas*, 259 Neb. 822, 612 N.W.2d 483 (2000)
- *Dean v. Yahnke*, 266 Neb. 820, 670 N.W.2d 28 (2003)
- *Village of Winside v. Jackson*, 250 Neb. 851, 553 N.W.2d 476 (1996)

- DLH, Inc. v. Lancaster Cty. Bd. of Comm'rs, 264 Neb. 358, 648 N.W.2d 277 (2002)
- Desousa v. Z.H.B. Whitehall Twp., 19 Pa. Commw. 367, 339 A.2d 650 (1975)

OPINION

MCCORMACK, J.

731 N.W.2d 573 (2007) 273 Neb. 558 Thomas P. McNALLY, Trustee, and Shirley J. McNally, Trustee, appellants, v. CITY OF OMAHA and City of Omaha Board of Review, appellees. No. S-05-1022. Supreme Court of Nebraska. May 18, 2007. *576 Andrew D. Strotman and Stanton N. Beeder, of Cline, Williams, Wright, Johnson *577 & Oldfather, L.L.P., Lincoln, for appellants.

Alan M. Thelen, Assistant Omaha City Attorney, for appellees. Daniel G. Crouchley, Susan E. Prazan, and Patrick L. Tripp, Omaha, for amicus curiae Metropolitan Utilities District of Omaha. HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, McCORMACK, and MILLER-LERMAN, JJ., and CASSEL, Judge. *574 McCORMACK, J. I. NATURE OF CASE Thomas P. McNally and Shirley J. McNally appeal from the Douglas County District Court, which affirmed a decision of the City of Omaha Building Board of Review (the Board) denying the McNallys' challenge of a "Notice of Violation" (violations notice) issued by the City of Omaha code inspectors on a rental property.

II. BACKGROUND The McNallys own a duplex in Omaha, Nebraska, which they rent out to tenants. On April 22, 2004, the City of Omaha Planning Department sent the McNallys a violations notice. The violations notice was accompanied by a violations list.

The notice stated that the duplex was in violation of the Omaha Municipal Code (the Code) and was declared to be unsafe, unfit for human occupancy, or unlawful, because of the violations designated in the violations list.

The McNallys were ordered to repair or cure the violations by June 24 or else the property would be placarded and occupancy would be prohibited until the violations were cured and released. There were seven specified aspects of the duplex which the city alleged were in violation of city ordinances: (1) the fact that the furnaces were installed without City of Omaha permits or inspections; (2) large cracks in the brick exterior walls on the north and east sides; (3) an upheaved sidewalk from the front door to the driveway; (4) unpainted stucco where doors were removed on the east side of the second floor; (5) a window at the second floor, west side, not "painted in [a] workman like [sic] manner"; (6) tuck-pointing at the front entry stairs not done in a "workman like [sic] manner"; and (7) loose and missing glazing putty on all sides.

The McNallys appealed the designation to the Board, although the McNallys eventually agreed to repair the loose and missing glazing putty. Mike Johnson, a housing code inspector, responded with a case analysis for the Board which described the reasons Johnson thought the relief requested in the McNallys' appeal should be denied. A hearing was conducted before the Board.

Johnson and Kevin J. Denker, the chief code inspector, presented various photographs of the duplex and made their arguments to the Board. Thomas McNally also presented his evidence and argument. With regard to violations (4) through (6), the evidence presented to the Board showed that a front upper-level paned glass casement window had paint on the glass resulting from painting the trim.

Photographs demonstrated that various cracks in the masonry sidewall of the front stoop were repaired by tuck-pointing, but that the mortar used was uneven in its application. The unpainted stucco violation stemmed from the fact that a back upper door opening onto an awning roof had been cemented in, and the stucco finishing on the cement was never painted to match the rest of the house.

The unpainted stucco, the poorly painted window trim, and the "unworkmanlike" tuck-pointing were alleged to violate *578 § 303.2 of the 2000 International Property Maintenance Code (IPMC), "Protective treatment" (see Omaha Mun.Code, ch. 48, art. I, §§ 48-111 and 48-112 (2003)), and Omaha Mun.Code, ch. 48, art. I, § 48-15 (2003), "Workmanship." At the hearing before the Board, however, the city made it clear that it lacked any evidence that these three elements violated § 303.2.

Denker and Johnson admitted that the poorly painted window trim, the poor tuck-pointing, and the unpainted stucco were cosmetic issues. They asserted that such cosmetic issues violated § 48-15. Section 48-15 states: "Repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this code shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's installation instructions."

Denker later explained: "It's not necessarily a notice of violation, it's just that we're saying the work was done poorly and probably should have been done better and needs to be addressed." As evidence of the exterior cracks in the north and east walls of the duplex, photographs were presented to the Board showing areas where the mortar was cracked and where the bricks lay askew.

Denker explained to the Board that these cracks appeared to him to be structural and that it was his opinion that there was a possibility of partial collapse. Denker also explained that in his opinion, the loose masonry could fall onto someone walking alongside the property.

The exterior cracks were stated to be "unsafe structures" in violation of Omaha Mun.Code, ch. 48, art. I, § 48-71(1) (2003), which states in part: An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally

unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

The violations list, referring to § 303.6 of the IPMC, specified that the McNallys were required to obtain a structural review of the walls by a registered engineer-architect. Denker explained to the Board that the city was requiring some directive by a licensed structural engineer to opine with precision as to what the structural danger was and what needed to be done to fix it.

With regard to the two gas furnaces located in the basement of the duplex, the city argued that the furnaces fell under the definition of "unsafe structures" in § 48-71(1), for the sole reason that they had not been inspected by the city. They also were alleged to violate Omaha Mun.Code, ch. 40, art. II, § 40-106 (2003), which provides that "[t]he installation, alteration, repair or replacement of any air conditioning/air distribution system or exhaust system shall not be undertaken within the jurisdiction of the city without a permit issued by the permits and inspections division prior to said installation."

Omaha Mun.Code, ch. 40, art. II, § 40-117 (2003), similarly states: "It shall be unlawful for any person to operate any air conditioning/air distribution or ventilating system installed, altered or repaired until such systems have been inspected and approved by the permits and inspections division."

The McNallys countered with evidence that the furnaces had passed inspection by the Metropolitan Utilities District (MUD). The chief mechanical inspector with the city explained that under the Code, it is required that the city make an inspection *579 of the furnace regardless of whether the furnace has been inspected by MUD.

The inspector explained that it was not customary for the city to recognize a MUD inspection in lieu of a city inspection, and evidence was presented that each entity had different inspection criteria. Evidence regarding the sidewalk violation showed that a portion of the sidewalk had an approximate 1-inch variance at the joint between two sections.

The sidewalk was cited as being in violation of § 302.3 of the IPMC. The commentary to that section states: Sidewalks and driveways. All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions....

The code official is authorized to require that all sidewalks, walkways, stairs, driveways, parking spaces, etc., are usable and kept in proper repair. Walking surfaces that have deteriorated to a condition that presents a hazard to pedestrians must be repaired or replaced to eliminate the hazard and thus reduce the potential for accidents or injuries. Denker explained to the Board that the sidewalk presented a tripping hazard.

At the end of the hearing, the Board voted to deny the McNallys' requests for relief as to the items described above. The McNallys appealed to the district court, which affirmed the decision of the Board. The McNallys now appeal to this court. III. ASSIGNMENTS OF ERROR The McNallys assert, consolidated and restated, that the district court erred in affirming the Board's decision because (1) its determination that there were violations was not supported by competent evidence; (2) if any applicable ordinance or other provision establishes a workmanship standard based on appearance, then such provision is unconstitutional because it is vague, bears no reasonable relation to public health or safety, and is arbitrary; (3) the city lacks authority to require permits and inspections of the furnaces because Neb.Rev.Stat. § 14-815 (Reissue 1997) gives unfettered, exclusive, and paramount powers to MUD; (4) the city lacks authority to order the McNallys to obtain a structural review by a registered engineer or architect with respect to the cracked masonry in the north and east walls of the property; and (5) the Board's decision was erroneous and illegal because it was not issued in writing as required by Omaha Mun.Code, ch. 43, art. I, § 43-65 (2003).

IV. ANALYSIS 1. PROPER MODE OF APPEAL Before reaching the McNallys' assignments of error, we first consider which statute controls the McNallys' appeal. The resolution of this question determines the jurisdictional prerequisites for perfecting the appeal, as well as the applicable standard of review.

The history of this case presents some confusion as to whether the appeal from the Board was brought pursuant to Neb.Rev.Stat. § 14-813 (Reissue 1997), Neb.Rev.Stat. § 25-1901 (Cum. Supp.2006), or even the catchall provision, Neb.Rev.Stat. § 25-1937 (Reissue 1995).

We conclude that the McNallys' appeal is controlled by § 25-1901. Section 25-1901 states in relevant part that "[a] judgment rendered or final order made by any tribunal, board, or officer exercising judicial functions and inferior in jurisdiction to the district court may be reversed, vacated, or modified by the district court...."

Accordingly, where a board or tribunal decides no question *580 of adjudicative fact and no statute requires it to act in a judicial manner, the orders are not "judicial" and are not reviewable by error proceedings.[1] But, when the board or tribunal is required to conduct a hearing and receive evidence, it exercises "judicial functions" in determining questions of fact.[2] As relevant to this case, § 43-65 of the Code, "Conduct of hearing," states in part that "[t]he board shall hear all arguments and review all evidence submitted by the applicant, the building official, and any other person(s) interested in the case, and shall render its opinion."

Thus, § 43-65 required the Board to conduct a hearing and receive evidence. The Board did, in fact, receive photographs and other evidence concerning the alleged violations of the McNallys' duplex. The Board also considered the statements of Thomas McNally and of city officials before making its determination of whether violations were in fact presented.

We conclude that the Board exercised "judicial functions." While we have said that a petition in error may not be applicable where the Legislature has adopted another specific method for appeal, [3] we find that § 14-813 does not apply to the McNallys' appeal. Section 14-813 describes the mode of appeal for claims against the city that are described by Neb.Rev.Stat. § 14-804 (Reissue 1997).

Claims under § 14-804 are claims filed with the city comptroller seeking monetary compensation. [4] The McNallys simply appealed a determination by the city that they were in violation of the Code. This is not a claim under § 14-804.[5] In order to perfect a petition in error, Neb.Rev.Stat. § 25-1903 (Reissue 1995) directs the petitioner to file the petition to the district court setting forth the errors complained of.

In addition, Neb. Rev.Stat. § 25-1905 (Reissue 1995) directs the petitioner to "file with his or her petition a transcript of the proceedings or a praecipe directing the tribunal, board, or officer to prepare the transcript of the proceedings."

We have held that compliance with §§ 25-1903 and 25-1905 is jurisdictional.[6] Under Neb.Rev.Stat. § 25-1931 (Cum.Supp.2006), the filings required by §§ 25-1903 and 25-1905 must be made within "thirty days after the rendition of the judgment or making of the final order complained of." While the parties debate whether a written order was rendered by the Board, we have repeatedly held that it is the administrative body's pronounced vote that is the final order to be appealed from, not any entry of that vote on the record.[7]*581 The record shows that within 30 days of the Board's pronouncement, the McNallys filed with the district court a praecipe for a transcript directing the Omaha city clerk and the Board to prepare a transcript of the Board's proceedings.

In *River City Life Ctr.*,[8] we explained: "After the 1991 amendment [to § 25-1905], filing of the praecipe for transcript with the clerk of the district court satisfied the 30-day appeal requirement, even if the tribunal did not timely prepare and furnish the transcript to the appellants for filing with the clerk of the district court."

We determine that the jurisdictional requirements for the timely filing of a petition in error were met for the McNallys' appeal to the district court, and this court has jurisdiction over the McNallys' timely appeal from the district court. 2. SUFFICIENCY OF VIOLATIONS EVIDENCE We now consider the McNallys' assignments of error.

In reviewing an administrative decision on a petition in error, both the district court and the appellate court review the decision of the tribunal to determine whether it acted within its jurisdiction and whether the decision of the tribunal is supported by sufficient relevant evidence. [9] The evidence is sufficient, as a matter of law, if an administrative tribunal could reasonably find the facts as it did on the basis of the testimony and exhibits contained in the record before it.

[10] The interpretation of administrative regulations presents a question of law.[11] (a) Cracked Brick Walls With regard to the cracked brick walls, the McNallys argue that the evidence was insufficient to support the alleged dangerous condition because the city stated only that collapse was "possible" and that this "possibility" was not based upon any specified evidence.[12] In support of this contention, the McNallys point to Denker's statement that the structural integrity of the masonry "should be evaluated by somebody that is professionally educated and trained to do so."

The McNallys argue that the city essentially shifted its burden of proof to the McNallys to disprove the mere allegation of structural damage. The McNallys also argue that, regardless, the city was generally without authority to require the opinion of a structural engineer at the McNallys' expense.

The city, in contrast, asserts that the demand for a structural engineer's professional opinion was not in the context of the inspector's uncertainty that a dangerous condition existed, but only with regard to the details of how such condition should be repaired.

We agree and find that the evidence was sufficient to support the Board's finding that the cracked brick walls constituted "unsafe structures" in violation of § 48-71(1). Referring to various pictures of the exterior of the duplex, Denker explained to the Board that it was his opinion that the cracks appeared structural and that there was a possibility of partial collapse.

Denker further explained that the loose masonry could fall onto somebody walking alongside the property. A structural engineer was required to set forth the danger with more precision and to specify what *582 would need to be done to fix it.

The city points out that Omaha Mun.Code, ch. 48, art. I, § 48-43 (2003), provides in part: Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the code official shall have the authority to require tests to be made as evidence of compliance at no expense to the city.

As already set forth, an "unsafe structure" under § 48-71(1) of the Code includes one where "partial or complete collapse is possible." (Emphasis supplied.) There was sufficient relevant evidence to support a violation of § 48-71(1).

We find nothing in the record to indicate that it is illegal for the city to impose the burden on the homeowner to employ the proper experts in the repair of a proven violation. The district court was thus correct in affirming the Board's decision that the cracked mortar constituted a violation under the Code and its decision to uphold the requirement for a structural review by a registered engineer or architect. (b) Sidewalk We next consider the sidewalk violation.

Pictures presented to the Board show that a portion of the sidewalk has an approximate 1-inch variance at the joint between two sections of the sidewalk. Denker stated that this was a tripping hazard. We find the evidence was sufficient to support the Board's finding that the sidewalk violated § 302.3 of the IPMC, because it presented a hazard to pedestrians. (c) Furnaces With regard to the furnace violations, we note that the city did not allege any violation relating to the ductwork or other air distribution structural elements of the home.

It construed §§ 40-106 and 40-117 of the Code to require the city inspection of the gas furnaces connecting into those systems. Even though the furnaces were already inspected by MUD, the city points out that its furnace inspections have different elements than the MUD inspections.

The McNallys argue that there was no competent evidence that the furnaces in the duplex were dangerous. They assert that there can be no violation simply on the basis of an ordinance mandating routine city inspection and permits for gas furnace installation, because any such ordinance is preempted by statutory law giving this power exclusively to MUD.

We agree that there was no showing that the furnaces were dangerous and that the application of the municipal ordinance inspection and permit requirements in this case is not authorized by statute. As such, there was insufficient evidence to support a finding that the furnaces were in violation of the Code.

First, there was no showing that the gas furnaces were unsafe equipment as alleged in the violations list. Section 48-71(2) of the Code, "[u]nsafe equipment," provides that unsafe equipment includes any heating equipment "which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure."

The city inspectors admitted to the Board that since the furnaces had not been inspected, they could not affirmatively say they were dangerous. In contrast, the McNallys presented evidence that the furnaces had passed inspection by MUD. Nor can a violation be premised simply in the McNallys' failure to adhere to §§ 40-106 and 40-117 insofar as the city construes these as requiring separate *583 city inspections and permits of the furnaces.

A municipality's police powers can operate only within legislative limits because the power of a municipality to enact and enforce any ordinance must be authorized by state statute.[13] The plain meaning of the applicable statutes grants to MUD exclusive authority over the routine inspection of gas furnaces. It follows that if the Legislature granted this power exclusively to MUD, then the city lacked statutory authority over the same matter.

Section 14-815, titled "Utilities district; powers and duties exclusive," states: Nothing in sections 14-101 to 14-138, 14-201 to 14-229, 14-360 to 14-376, 14-501 to 14-556, 14-601 to 14-609, 14-702, 14-704, and 14-804 to 14-816 shall be construed so as to interfere with the powers, duties,

authority, and privileges that are conferred and imposed upon the metropolitan utilities district as prescribed by law, but all matters relating to the powers, duties, authority, and privileges of such metropolitan utilities district so far as elsewhere conferred, imposed, and defined by law shall be exclusive and paramount.

(Emphasis supplied.) Elsewhere, Neb. Rev.Stat. § 14-2124 (Reissue 1997) confers upon the board of directors of a metropolitan utilities district the power to "adopt rules and regulations, in the interest of public health and safety and the conservation of gas, relating to the use, installation, and maintenance of piping, equipment, and appliances for gas on the premises of consumers."

There is no dispute that pursuant to this section, MUD adopted a rule relating to permits and inspections of gas furnaces, under which the McNallys' furnaces were inspected in this case. Absent anything to the contrary, statutory language is to be given its plain meaning, and a court will not look beyond the statute or interpret it when the meaning of its words are plain, direct, and unambiguous.[14] We cannot escape the plain language used in § 14-815 that the power, duties, authority, and privileges of a metropolitan utilities district "shall be exclusive."

The term "exclusive" is defined as "excluding or not admitting other things" and "restricted or limited to the person, group, or area concerned." [15] The term has been described as precluding any idea of coexistence.[16] The use of the term "exclusive" in § 14-815 plainly means that the city cannot share with MUD the power granted to MUD to inspect and issue permits for gas furnaces.

The city argues that Neb.Rev.Stat. § 14-102(33) (Cum.Supp.2006) expresses the Legislature's intent that this inspection and permitting power not be exclusive to MUD. Section 14-102(33) grants the city authority and the power to enact "[b]uilding regulations" to "prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, and heating appliances used in or about any building or a manufactory and to cause the same to be removed or placed in safe condition when they are considered dangerous."

(Emphasis supplied.) Section 14-102(33) is specifically referenced by § 14-815 as not to interfere with MUD's exclusive powers. Moreover, *584 we find that because § 14-102(33) refers to the more generic term "heating appliances," it does not create any ambiguity in the statutory scheme in which § 14-815 gives exclusive powers to MUD over the more specific realm of gas appliances and equipment.

Even assuming a gas furnace could otherwise be considered a "heating appliance," to the extent that § 14-102(33) grants the city authority over "heating appliances," it does so only as to those heating appliances that are not for "gas on the premises of consumers." [17] Rules and regulations "relating to the use, installation, and maintenance of piping, equipment, and appliances for gas on the premises of consumers" are, according to the Legislature, a power "exclusive" to the

metropolitan utilities districts.[18] The city also relies on Neb.Rev.Stat. § 18-2314 (Reissue 1997) and points out that, unlike § 14-102, § 18-2314 is not listed as expressly preempted by § 14-815.

This lack of specific mention in § 14-815 notwithstanding, we find nothing in the language of § 18-2314 that changes the unambiguous grant in § 14-815 of exclusive power to MUD. Section 18-2314 deals with the authority of the city to employ inspectors to work for the "air conditioning air distribution board." It does not specifically grant the city power to inspect and permit gas furnaces, nor could it.

To the extent that any of the other provisions of chapter 18, article 23, of the Nebraska Revised Statutes allow for city "furnace" inspectors, they do not specify "gas" furnaces. The provisions of chapter 18, article 23, must likewise be read in conjunction with the plain mandate of § 14-815, making "exclusive" the power granted to MUD in sections such as § 14-2124. (d) Stucco, Tuck-Pointing, and Window Paint Finally, we address the three cosmetic issues found by the Board to be in violation of the workmanlike manner of § 48-15.

Because Denker and Johnson admitted to the Board that these aspects of the duplex were really appearance issues and that they had never inspected them closely enough to know if there were any protective treatment violations, there is clearly insufficient evidence that these items were in any other way unsafe, unfit, or unlawful under the Code. Section 48-15 states: "Repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this code shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's installation instructions."

Workmanlike is defined elsewhere in the commentary of the IPMC as: Executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged and without marring adjacent work.... To be workmanlike, maintenance or repair work must be performed in a manner consistent with work done by a skilled craftsman.

In general, floors should be level, walls plumb and square, and windows installed so that they operate easily and fit within the rough opening to exclude the elements. The use of proper tools, methods, and materials is usually necessary for workmanlike repairs. Whether or not the unattractiveness of the repairs could fall under this *585 definition of "workmanlike," the McNallys argue that § 48-15 is inapplicable.

The McNallys point out that none of the items were "caused directly or indirectly by the enforcement of this code." [19] Instead, the window trim painting, the stucco, and the tuck-pointing were repairs which the McNallys conducted on their own accord.

We agree that § 48-15 is inapplicable in this case because the ordinance clearly limits the "workmanlike" mandate to situations where the work is conducted pursuant to enforcement of the Code. The McNallys also argue that if § 48-15 were interpreted to mean that the city could pass

out violations notices for "unwork-manlike" repairs done on the owner's own accord when there is no danger presented by the repairs, then the ordinance would be unconstitutional.

Having already determined that § 48-15 does not in fact grant such authority and that no violation was shown as to these items, we do not reach this issue. (e) Failure to Render Decision in Writing The McNallys assign as error that the Board failed to render a decision in writing. This, argue the McNallys, was contrary to § 43-65 of the Code, and therefore, its decision is void.

Because the record contains a copy of the minutes reflecting the Board's decision at the hearing, we find no merit to this argument. V. CONCLUSION We affirm the district court's decision with regard to the cracked exterior walls and the upheaved sidewalk as being in violation of the Code.

We reverse the district court's decision as to the violations stemming from the unpainted stucco, the poorly painted window, the unsightly tuck-pointing, and the furnaces. AFFIRMED IN PART, AND IN PART REVERSED. WRIGHT, J., not participating. NOTES [1] See, *Nicholson v. Red Willow Cty. Sch. Dist. No. 0170*, 270 Neb. 140, 699 N.W.2d 25 (2005); *Hawkins v. City of Omaha*, 261 Neb. 943, 627 N.W.2d 118 (2001).

[2] See, *Douglas Cty. Bd. of Comrs. v. Civil Serv. Comm.*, 263 Neb. 544, 641 N.W.2d 55 (2002); *Abboud v. Lakeview, Inc.*, 237 Neb. 326, 466 N.W.2d 442 (1991); *Andrews v. City of Fremont*, 213 Neb. 148, 328 N.W.2d 194. 213 Neb. 148, 328 N.W.2d 194 (1982).

[3] See *Mogensen v. Board of Supervisors*, 268 Neb. 26, 679 N.W.2d 413 (2004). [4] See *Schmitt v. City of Omaha*, 191 Neb. 608, 217 N.W.2d 86 (1974). [5] See *Adams v. City of Omaha*, 179 Neb. 684, 139 N.W.2d 885 (1966).

[6] See, e.g., *River City Life Ctr. v. Douglas Cty. Bd. of Equal.*, 265 Neb. 723, 658 N.W.2d 717, 265 Neb. 723, 658 N.W.2d 717 (2003). [7] See, *McCorison v. City of Lincoln*, 218 Neb. 827, 359 N.W.2d 775 (1984); *In re Covault Freeholder Petition*, 218 Neb. 763, 359 N.W.2d 349 (1984); *Marcotte v. City of Omaha*, 196 Neb. 217, 241 N.W.2d 838 (1976); *Brown v. City of Omaha*, 179 Neb. 224, 137 N.W.2d 814 (1965).

[8] *River City Life Ctr. v. Douglas Cty. Bd. of Equal.*, supra note 6, 265 Neb. at 727, 658 N.W.2d at 721. [9] See *Barnett v. City of Scottsbluff*, 268 Neb. 555, 684 N.W.2d 553 (2004). [10] *Id.* [11] *Fraternal Order of Police v. County of Douglas*, 259 Neb. 822, 612 N.W.2d 483 (2000).

[12] Brief for appellants at 21. [13] See, *Dean v. Yahnke*, 266 Neb. 820, 670 N.W.2d 28 (2003); *Village of Winside v. Jackson*, 250 Neb. 851, 553 N.W.2d 476 (1996). [14] *DLH, Inc. v. Lancaster Cty. Bd. of Comrs.*, 264 Neb. 358, 648 N.W.2d 277 (2002).

[15] *Concise Oxford American Dictionary* 311 (2006). [16] See *Desousa, et al. v. Z.H.B. Whitehall Twp.*, 19 Pa.Cmwlt. 367, 339 A.2d 650 (1975). [17] § 14-2124. [18] *Id.* See, also, § 14-815. [19] Brief for appellants at 27.

