Mr. Ryan, Chairman, called the meeting to order at 1:00 p.m., introduced the board members, as well as the staff, and explained the procedures for hearing the cases. Mr. Ryan informed the public that a copy of The Open Meetings Law is available in this board room on the north wall for anyone to review. He noted that only those items on today’s agenda could be discussed at today’s public hearing.

Mr. Ryan requested that speakers limit their presentation to 10 minutes.

Mr. Ryan explained that this Board does not have the authority to waive any requirements of the Americans with Disabilities Act, Federal Fair Housing Act, or NFPA Life Safety Code. This Board does have the authority to hear appeals of the International Fire Code, Nebraska Accessibility Guidelines and the Nebraska Fair Housing Act. Life Safety Regulations are administered by the State Fire Marshal.

Roll call was taken and six members were present. Mr. Santo appeared after roll call was taken and the minutes were approved.

Motion by Ms. Makinster to approve the minutes of the July 9, 2012 meeting as corrected. Mr. Schaefer seconded the motion.

AYES: Wiedenman, Makinster, Kiel, Schaefer, Ryan

ABSTAIN: Feuerbach

MOTION CARRIED: 5-0-1
Case No. 12-025
Dan Tyler, Architect
5430 St. Charles Road
Berkeley, IL 60163

LOCATION: 4302 South 30th Street
REQUEST: Waiver to the requirement for 40’ of open yard for an unlimited area building.

This case was withdrawn at the request of the applicant.
At the Building Board of Review meeting held on Monday, August 13, 2012, Bill Pelton, Petra Ladd, John Chatelain, Attorney, and Mike Zimmerman, appeared before the Board in support of the request.

Yvonne Barna, Housing Inspector – City of Omaha, stated that the applicants filed the appeal for the following reasons: they questioned the validity of the inspection; they denied the shared air code violation; they felt that the violations are an imposition of unfair financial hardship; and, they were requesting that the issue of the anti-scald guard be grandfathered.

Ms. Barna explained that she does not feel that the inspection is invalid, since Mr. Pelton is a registered homeowner. She added that she contacted Mr. Pelton before the inspection to set up a time, and met him at the property. She noted that the issue of shared air occurred when she did not see a furnace for the unit, and when Mr. Pelton stated that there was just one furnace for all of the units. After some research, Ms. Barna discovered that the furnace was never permitted. In regards to the anti-scald guard, Ms. Barna stated that she noted it because there was a newer shower stall put in with dual-handles. (Ms. Barna submitted photos of the property (Exhibit 2)).

In response to Mr. Wiedenman, Ms. Barna stated the structure is a multi-family conversion.

Mr. Pelton stated that he and Ms. Ladd appealed to the Building Board of Review in 2009 (BBR Case # 09-01) for a shared air code violation on another property, and that the Board approved a purification system that was being used at that time. He explained that the system he is proposing to use treats the air and releases it back into the apartments. He also felt that the shared air issue should be grandfathered since the interior of every apartment would be altered if they were to install the system required by the City; he also noted the high cost that they would have to pay to do so. He explained that the system being proposed would be installed by a licensed contractor who would change the filters twice a year and notify the City of the maintenance. (Mr. Pelton submitted letters from 3 of his tenants in support of the air purification system (Exhibit 3)).

Mr. Pelton stated that the inspection was illegal since the person who reported the property was living in it illegally. He further stated that he was not allowed to accompany Mr. Barna during the inspection, because the tenant would not let him in.

In regards to the anti-scald guard, Mr. Pelton stated that it should be grandfathered since it has been that way for some time. He acknowledged that the other violations were legitimate and had already been addressed or would be addressed in the future.

In response to Mr. Ryan, both Mr. Pelton and Mr. Chatelain stated that the furnace system being proposed had been approved by the Building Board of Review in 2009. Also in response to Mr. Ryan, Mr. Pelton stated that there would be no financial hardship with the proposed system since it would cost less than $3,000, as opposed to the $30,000 that it would cost to install a furnace that is approved by city code. Mr. Pelton submitted a letter explaining his feelings about the shared air issue, information printed from the American Lung Association website about bacteria and viruses, an email from Dean Miller from the City Council Department, product information about the proposed system, and an estimate for a new heating system (Exhibit 4).

Mike Zimmerman, Regional Sales Manager – Carrier Corporation, explained that the proposed air system uses a 25,000 volt charge across the filter that captures and kills bacteria. The filter needs to be replaced every 6 – 12 months. He further explained that the product was originally designed for military and hospital use.
In response to Mr. Ryan, Kevin Denker, Chief Housing Inspector – City of Omaha, stated that the issue of the anti-scald guard should be handled through the Plumbing Board.

Mr. Chatelain stated that Mr. Pelton and Ms. Ladd both acknowledge and understand the violations that need to be fixed. However, in regards to the shared-air violation, Mr. Chatelain quoted Section 040-918.8 – Return-Air limitation which states that “return air from one dwelling unit shall not be discharged into another dwelling unit”. He stated that Ms. Barna did not determine where the return air was discharged. He suggested that the current request also be approved since the proposed system had already been approved by the Board in 2009.

Tom Phipps, Chief Mechanical Inspector – City of Omaha, stated that a single-family dwelling would have just one system. In this case, however, the same air would be constantly circulated throughout all of the units in the building. He explained that this building is currently a commercial building that is required to have outside air continuously brought in to create a clean and pure system. In response to Mr. Ryan, Mr. Phipps explained that in 2009 the Board allowed Mr. Pelton to use an ERV (Energy Recovery Ventilator) system, which completely removed all the air from the building and brought in outside air. He stated that the system failed to work, which led Mr. Pelton and Ms. Ladd to request a device similar to what was currently being requested.

Mr. Feuerbach stated that the infiltration system with a UV light had been approved by the Board in the past. He expressed concern over the issue of maintenance, explaining that the systems are useless if not maintained properly. He did agree that the filtration system cleans the air better than the filter in a furnace, and suggested that a UV light be installed as well. Mr. Zimmerman stated that a UV light could be installed with the filtration system.

In response to Ms. Makinster, Mr. Phipps stated that maintenance reports for the filtration system approved previously were to be sent to the City by the contractor who performed the installation. He noted that Permits and Inspections had never received any of those reports. Mr. Phipps suggested that Permits and Inspections, the Housing Division, or the Board Secretary could receive the maintenance reports if that request was included in the Board’s motion.

Mr. Pelton stated that SOS Heating & Cooling had agreed to provide the City with maintenance reports when he appeared before the Board with the same issue in 2009.

In response to Ms. Makinster, Mr. Zimmerman recommended that the filter be changed every six months, taking into consideration that there were four units in the building. He also explained that the UV light would help to eliminate noxious odors.

Mr. Feuerbach moved to APPROVE subject to the installation of UV lighting in the furnace; replacement of the filter every six months; and, maintenance reports being submitted to the City. Mr. Wiedenman seconded the motion.

Ms. Kiel suggested that Mr. Pelton submit the required paperwork to the City himself. Mr. Pelton agreed to do so.

Kevin Denker, Chief Housing Inspector, suggested that more time be given to the applicant to allow him time for repairs.

In response to Mr. Schaefer, Mr. Phipps stated that Permits and Inspections would monitor a case if they were instructed to do so by a Board.

Mr. Chatelain suggested that the Board require the applicant to submit maintenance records for a period of time and to have them on file upon request by the City.

Mr. Feuerbach amended his motion to include that the maintenance reports shall be submitted upon request for up to 3 years and that an extension of 90 days be granted to allow the applicant time to complete repairs.
AYES: Feuerbach, Wiedenman, Makinster, Kiel

NAYES: Schaefer

ABSTAIN: Santo

Motion carried: 5-1-1
At the Building Board of Review meeting held on Monday, August 13, 2012, John Malone, appeared before the Board in support of the request.

Kurt Holmstrom, Housing Inspector – City of Omaha, stated that the applicant was appealing because he felt that the information listed in the Notice of Violation was obtained illegally. He explained that the City received a call from the tenant living in the house, informing them that there had been a fire. After some research it was confirmed that there was a fire and that the property owner had obtained electrical and plumbing fire repair permits; however, there was no general fire repair permit for construction. He and another inspector, Todd Shearer, went to evaluate the property. Mr. Holmstrom noted that Mr. Malone was not appealing the list of violations, only that the information was obtained illegally. He suggested that the complaint be limited to the violation list and not the applicant’s claim that the information was obtained illegally. He stated that Mr. Malone did not feel that he had been given proper notification of the visit to the property, although Mr. Holmstrom explained that he sent Mr. Malone an email the morning of the inspection. Mr. Holmstrom submitted a copy of the email to Mr. Malone (Exhibit 2); a record showing that a plumbing and electrical permit for fire damage had been obtained for the property (Exhibit 3); a copy of the complaint form, which included Mr. Holmstrom’s comment that he called Mr. Malone (Exhibit 4); and, an Incident Report from the Omaha Fire Department stating that there had been a fire at the property. Mr. Holmstrom stated that they would like to ensure that the work done on the house had been done properly.

Mr. Ryan clarified that the only issue before the Board was whether or not the information had been obtained illegally.

Mr. Malone objected to not being given notification of a specific date, time, and property location of the inspection from Permits and Inspections. Mr. Malone referred to the Code Enforcement Division Policies and Procedures during his objection.

Kevin Denker, Chief Housing Inspector – City of Omaha, explained that policies and procedures change regularly to adapt to the changes in the code and in technology.

In response to Mr. Schaefer, Mr. Denker stated that there is no requirement that the owner be present at the time of the inspection. He quoted the code which states that “the code official should make a good-faith effort to communicate with the owner of the property or his/her authorized agents in person, or by telephone, or by electronic mail if requested by the owner, prior to inspecting or re-inspecting a building or structure, provided that this duty shall take effect only if the Owner or Agent has first supplied the City Housing Division with the following: the Owner’s name, the Owner’s current address, the Owner’s current phone number or electronic email address that can be contacted for purposes of this section, and a statement that the owner owns the property at issue.” He further explained that if a complaint is received regarding the property of a registered owner, they are to contact the owner to set up the appointment. He noted that frequently the appointment will be made with the tenant since they are generally the person who will let the inspector in the building.

Mr. Malone challenged the definition of what a “good-faith effort” is on the part of the City Inspectors.

Ms. Kiel stated that, in her opinion, appropriate notification was given according to what was read by Mr. Denker from the Code Enforcement Division Policies and Procedures.

Mr. Shaefer asked Mr. Malone to explain why he felt that the inspection was done illegally. Mr. Malone responded that he was not properly notified. He stated that if an owner is registered, they should be contacted to schedule an inspection. Mr. Malone played a phone message left by Mr. Holmstrom, which stated that he would be inspecting the property at 2558 Camden at 10:30. Because Mr. Holmstrom could not make the appointment, Mr. Malone
stated that he should have contacted him and not the tenant, since he wanted to be present at the time of the
inspection.

Motion by Mr. Schaefer to DENY the appeal. Seconded by Mr. Feurbach.

Mr. Makinster stated that she believed that it is reasonable for a landlord to expect the City to contact them for an
inspection, and that in this case the City did make an effort to contact Mr. Malone.

AYES: Feuerbach, Wiedenman, Makinster, Santo, Kiel, Schaefer, Ryan

Motion carried: 7-0

The Board decided to reconsider this case to give Mr. Malone the opportunity to have his witness heard.

Motion by Mr. Wiedenman to reconsider case 12-023. Seconded by Ms. Makinster.

AYES: Feuerbach, Wiedenman, Makinster, Santo, Ryan

NAYES: Kiel, Schaefer

Motion carried: 5-2

Marty Conboy, City Prosecutor, stated that Code Enforcement issues very often become criminal matters. He
explained that Mr. Malone is registered with the City and noted that one of the ordinances of the Code
Enforcement Division Policies and Procedures states that a good-faith effort should be made to notify a registered
landlord that a search will be conducted. Mr. Conboy added that the code does not define what a good-faith effort
is, and advised the Board to articulate what a good-faith effort is. He noted that in criminal cases, the judge tends
to favor the defendant when there is a question of the construction of language. Mr. Conboy advised the Board to
make a determination of the definition of a good-faith effort in terms of time, manner, and specifications of the
notice. He noted that not many landlords are registered with the City, and the ones that are do so because they
want to be contacted by the City if the need arises. Taking into account Mr. Malone’s case, Mr. Conboy advised the
Board to decide on clear guidelines as to what is appropriate or not, which could then be used as a basis for
similar cases in the future, and to assist in guiding all of the parties involved, including other departments within
the City. He explained that having a policy in place would be a benefit to the City, since it would provide proof that
a particular protocol was taken in the handling of a case.

In response to Mr. Wiedenman, Mr. Denker stated that Code Enforcement would schedule another inspection if the
Board decided to grant Mr. Malone’s request. He then explained that in Mr. Malone’s case, the inspection was
scheduled for early morning. He noted that, according to Nebraska state law, a landlord has to give 24-hour
written notice before they can gain access to their rental property. If they had arrived at the property, and the
tenant decided not to allow Mr. Malone access, the inspectors could still inspect the property.

In response to Mr. Ryan, Mr. Denker stated that if the Board voted in favor of Mr. Malone, the tenant would then
need to file another complaint with the City so that the inspectors would be able to enter the property. Mr.
Holmstrom noted that since he had a report from the Fire Department which showed that there was a fire at the
property, he could obtain a search warrant allowing him to search the property. Mr. Holmstrom also mentioned the
report that showed that plumbing and electrical permits were pulled for 2558 Camden Avenue because of fire
damage.

Ms. Makinster suggested since Nebraska law requires that a landlord give a tenant 24-hour written notice before
gaining access to their rental property, then a landlord who has registered with the City should be given 24-hour
notice, which includes a date and a specified window of time, from the City of Omaha to allow them time to notify
their tenant. In response, Mr. Denker expressed concern over safety and liability issues that could occur if Code Enforcement delayed responding to a complaint. Ms. Makinster then suggested that the City provide a 24-hour notice with a date and specified window of time, unless it was determined that a more timely response is required. Ms. Makinster inquired of Mr. Malone as to whether he would give the City access under those circumstances, to which he responded that he no intentions of letting them into the property. Mr. Malone further explained that he would give access to the Fire and Police Department, but not Code Enforcement, because they are unreasonable.

Mr. Denker explained that complaints are prioritized, and that complaints that include fire and structural failure are given the highest priority. In those cases, they respond within 24 – 48 hours. In response to Ms. Makinster, Mr. Denker stated that one reason that a landlord registers a property is so they can be aware that Code Enforcement has taken a complaint on their property.

Mr. Feuerbach confirmed with Mr. Conboy his request that the Building Board of Review set a policy in regards to the details of what a good-faith effort on the part of the City would entail. Mr. Denker added that he would make modifications to the procedures in the very near future.

Motion by Mr. Wiedenman to DENY the request. Seconded by Ms. Kiel.

AYES: Feuerbach, Wiedenman, Makinster, Santo, Kiel, Schaefer, Ryan

Motion carried: 7-0
At the Building Board of Review meeting held on Monday, August 13, 2012, John Chatelain, Attorney, Matt Saathoff, Attorney, Josh Scott, and Matt Maderios appeared before the Board in support of the request.

Mr. Chatelain requested that Case 12-020, 12-021, and 12-026 be consolidated. Kevin Denker, Chief Housing Inspector – City of Omaha, had no objections to the cases being consolidated. He explained that Mike Johnson, Housing Inspector, was not available, but that Yvonne Barna, Housing Inspector, did assist with locating property lines.

Mr. Wiedenman moved to CONSOLIDATE case numbers 12-020, 12-021, and 12-026. Seconded by Ms. Kiel.

AYES: Feuerbach, Wiedeman, Makinster, Santo, Kiel, Schaefer, Ryan

Motion carried: 7-0

Mr. Chatelain motioned to suppress the evidence from case numbers 12-020 and 12-021. He stated that since Mr. Johnson was not present, the cases should be dismissed.

Mr. Schaefer moved to NOT SUPPRESS the evidence from case numbers 12-020 and 12-021. Seconded by Mr. Wiedenman.

AYES: Feuerbach, Wiedeman, Makinster, Santo, Kiel, Schaefer, Ryan

Motion carried: 7-0

In response to Mr. Saathoff, Mr. Wiedenman stated that, in his opinion, the search warrant was executed properly. He explained that he did not agree with combining case numbers 12-020, 12-021, and 12-026, then separating them in order to suppress the evidence for two of those cases. Mr. Chatelain responded that consolidation of the cases was for the purposes of appealing to the District Court.

In response to Mr. Saathoff's claim that the search warrants were six months old and invalid, Mr. Denker stated that delays were caused by the attorneys for the property owners, and were not the fault of the City.

RoseMarie Horvath, City Law Department, advised the Board that it was at their discretion to decide whether or not they felt that a matter had been handled legally or illegally. She explained that if the applicant disagrees, they could appeal to the District Court.

Ms. Kiel moved to DENY the appeal for 12-020, 12-021, and 12-026. Seconded by Mr. Schaefer.
AYES: Feuerbach, Wiedeman, Santo, Kiel, Schaefer, Ryan

ABSTAIN: Makinster

Motion carried: 6-0-1
Case No. 12-027
John Comstock
5021 Nicholas Street
Omaha, NE 68132

LOCATION: 1302 South 30th Avenue – Multi-Family Dwelling, Entire Structure
REQUEST: Appeal International Property Maintenance Code
Notice of Violation dated May 22, 2012

At the Building Board of Review meeting held on Monday, August 13, 2012, no one appeared before the Board in support of the request.

The Board decided to lay this case over until the September 10, 2012 meeting.

Mr. Wiedenman moved to LAYOVER until the September 10, 2012 meeting of the Board. Seconded by Mr. Feuerbach.

AYES: Feuerbach, Wiedenman, Makinster, Santo, Kiel, Schaefer, Ryan

Motion carried: 7-0
DISCUSSION:
There was no discussion at this meeting.

ADJOURNMENT:
Motion to adjourn made by Mr. Feuerbach. Seconded by Mr. Wiedenman.
AYES: Feuerbach, Wiedenman, Makinster, Santo, Kiel, Schaefer, Ryan
Motion carried: 7-0
Meeting adjourned at 3:12 p.m.