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Coates' Canons Blog: May a City Mow an Overgrown Lot without a Court Order?

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The Town of Manicure has been working hard to revitalize the historic neighborhood adjacent to downtown. As part of the effort to improve conditions in this and other neighborhoods, the town has been more vigilant in enforcing its overgrown lot ordinance, which prohibits property owners from allowing grass and weeds to grow above 18 inches in height. Whenever the town's inspection department verifies that grass and weeds on property located within the corporate limits are more than 18 inches high, the owner receives a citation informing her that, if she doesn't bring the lot into compliance within 15 calendar days, town employees will mow the lot and bill the owner for the cost of corrective action. The town routinely follows through on such warnings without first obtaining a court order authorizing the action taken.

May the town mow a noncompliant lot without first obtaining an order of abatement from the appropriate court?

The Town of Manicure's overgrown lot ordinance is not unusual. Many cities prohibit the dense growth of weeds or grass above a certain height. It's quite common for their ordinances to provide that city employees or contractors will mow overgrown lots if the owners don't bring their property into compliance within a designated number of days. (See here and here for examples of such ordinances.)

When adopting and enforcing overgrown lot ordinances, cities typically rely on their basic authority to abate (diminish or eliminate) public nuisances (property uses that unreasonably compromise the public health, safety, or morals). Two statutes furnish this authority: G.S. 160A-174 (the "police power statute") invests cities with their general police power, that is, their core authority to regulate or prohibit conditions detrimental to the public health, safety, or welfare and "to define and abate nuisances"; G.S. 160A-193 (the "summary abatement statute") grants municipalities the power "to summarily . . . abate . . . everything within the city limits, or one mile thereof, that is dangerous or prejudicial to the public safety."

It's tempting to assume from the presence of the word "abate" in both of these statutes that, if one of the laws permits abatement without a court order, the other does, too. Of course, if things were that simple, I would've written a much shorter blog post.

Overgrown Lots and the Police Power and Nuisance Abatement Statutes Generally

Setting aside for a moment the issue of mowing without a court order, let's examine some of the other factors that might lead a city to prefer one statute over the other as the primary legal basis for its treatment of overgrown lots. (A city can always claim to rely on both.)

Reasons for Preferring the Police Power Statute

Whereas the police power statute refers to nuisances generally, the summary abatement statute refers to nuisances *that prejudice or endanger public health or safety*. The difference in wording implies that not every nuisance rises to the level of a public health or safety nuisance. A city might choose to rely on the police power statute as authority for its overgrown lot measures if the city isn't convinced that overgrown lots in specific cases, or in any case, can meet the standard in the summary abatement statute. I'll come back to this point a little later.

The police power statute mandates that cities exercise their general police power "by ordinance." G.S. 160A-174(a). In contrast, nothing in the text of the summary abatement statute expressly allows for the adoption of ordinances

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implementing its provisions, though a 1919 case involving an earlier version of the statute offers reason to believe such power exists. *Ratchford v. City of Gastonia*, 177 N.C. 375 (1919) (holding that a previous version of G.S. 160A-193 afforded the city sufficient authority for its ordinance requiring outhouses to be cleaned and inspected under the supervision of city personnel).

Regulating nuisances, including overgrown lots, by ordinance offers several advantages, two of which were highlighted by my former colleague Rich Ducker in two excellent blog posts (here and here) on nuisance abatement.

- "[A] local government may use an ordinance to set forth the procedures it intends to follow in dealing with a nuisance and to ensure that it conforms to state and federal law."
    - This matters because, as explained in the second of the two blog posts, the failure to provide nuisance violators with adequate procedural safeguards prior to abatement can expose local governments to liability for violations of property owners' constitutional rights, such as the right to due process and to freedom from unreasonable property seizures.
- "[A]n ordinance provides the local government with the opportunity to define the kinds of conditions that . . . categorically constitute nuisances, that is 'nuisances per se.' For example, an ordinance may define one type of nuisance to be weeds or grass allowed to grow to a height greater on average than 12 inches. Indeed, the police-power authority may well encompass regulation of conditions that do not now constitute a nuisance but might become one if left unregulated."

I see two more advantages to regulating overgrown lots by ordinance.

- The adoption of an overgrown lot ordinance puts more enforcement tools at a city's disposal. General Statute 160A-175 authorizes an array of remedies for ordinance violations, most notably misdemeanor charges, civil penalties, and judicial intervention. (To access my blog post on the fundamentals of ordinance enforcement, click here.) On the other hand, when a city acts not pursuant to an ordinance but directly under the summary abatement statute, its enforcement powers are limited to the actual abatement and obtaining a lien for the cost of corrective action. G.S. 160A-193(a)&(b).
- The adoption of an overgrown lot ordinance allows a city to take advantage of G.S. 160A-200.1. That statute appears to authorize a city to mow an overgrown lot without further notice to the owner, and presumably without first obtaining a court order, when (1) the owner qualifies as a "chronic violator" of the city's overgrown lot ordinance and (2) the city has satisfied the statute's notice requirements. (Click here for a blog post that analyzes the statute's notice requirements and definition of "chronic violator.")

In short, by basing its overgrown lot measures on the police power statute, a city (1) avoids concerns about the scope of the summary abatement statute and (2) ensures it may reap the benefits that flow from acting by ordinance.

Reasons for Preferring the Summary Abatement Statute

So why, aside from whatever power it confers to act without a court order, might a city wish to depend on the summary abatement statute rather than the police power statute when it comes to overgrown lots?

- The word "summarily" in the summary abatement statute signals that cities may take action under the statute without delay, so long as they provide whatever procedural protections are constitutionally required.
- Nuisance ordinances generally are not enforceable outside the city limits. When a city acts directly under the summary abatement statute, however, it may abate any nuisances covered by the statute up to one mile beyond its corporate boundaries.

Mowing Lots without Court Orders under the Police Power Statute

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Now let’s return to the question of whether a city may mow an overgrown lot without a court order. The answer may well be “no” under the police power statute. Paragraph (e) of G.S. 160A-175, the ordinance enforcement statute, allows a city to obtain an injunction and abatement order from the appropriate court in response to a violation of an ordinance that “makes unlawful . . . condition[s] existing upon or use[s] made of real property.” If the offender fails or refuses to obey the court’s order, he may be cited for contempt, and the city may execute the abatement order and obtain a lien for the cost of abatement.

According to the first of Rich Ducker’s blog posts mentioned earlier, the “clear implication” of paragraph (e) is that, “in order for a local government to abate a nuisance pursuant to an ordinance adopted under [the police power statute], the local government must file suit against the owner and obtain the appropriate court order.” If this assessment is accurate, the police power statute doesn’t support the non-judicial abatement of overgrown lots.

Certainly the safest course is to assume that a court order is needed for an abatement conducted pursuant to an ordinance adopted under the police power statute. I have implied as much in my chapter on the general police power of cities and counties in the current edition of County and Municipal Government in North Carolina. Still, I see plausible arguments for interpreting the police power statute to allow nuisance abatement, including the mowing of overgrown lots, without a court order.

Arguments for Abatement without a Court Order under the Police Power Statute

As quoted above, the text of the police power statute authorizes cities to “define *and abate*” nuisances. G.S. 160A-174(a) (emphasis added). Nuisances can be defined by ordinance, and ordinances can be used to establish the procedures for abatement, but abatement itself doesn’t occur until a nuisance is actually reduced or eliminated. The words “and abate” seem rather empty unless viewed as a grant of real authority to take corrective action. Moreover, if the police power statute does confer abatement authority independent of, or supplemental to, the judicial abatement process set out in G.S. 160A-175, then it seems reasonable to infer that no court order is necessary to exercise this power. Otherwise the words “and abate” in the police power statute are just shorthand for the longer abatement provision in paragraph (e).

This expansive interpretation of the police power statute’s abatement provision strikes me as consistent with *King v. Town of Chapel Hill*, 367 N.C. 400 (2014), which holds that the police power statute must be broadly construed. *See also State v. Beacham*, 125 N.C. 652, 654 (1899) (“There can be no doubt, generally, of the authority of the town, through its agencies, to . . . regulate and abate nuisances, and such authority is liberally construed by the courts for the benefit of the citizens.”)

The decision of the North Carolina Supreme Court in *Rhyne v. Town of Mount Holly*, 251 N.C. 251 (1960), seems likewise to weigh in favor of reading the police power statute to permit the mowing of overgrown lots without judicial involvement. In that case, an ordinance adopted by the town directed owners of vacant lots to cut down “all weeds, grass or other noxious growth” to within four inches of the ground at least twice each year. The ordinance warned that the town could do the mowing itself if owners failed to comply.

Taking an extremely zealous approach to removal of noxious growth, town employees bulldozed the plaintiff’s vacant lot to bring it into compliance with the ordinance. The total clearing of the plaintiff’s lot removed more than grass and weeds: it destroyed in excess of 100 oak trees, prompting the plaintiff to sue the town. The trial court instructed the jury that (1) the ordinance allowed town employees to enter upon the plaintiff’s vacant lot and cut down all weeds, grass, or other noxious growth, and (2) the oak trees did not qualify as weeds, grass, or noxious growth within the meaning of the ordinance. The jury found for the plaintiff and awarded him $400 in damages.

On appeal the town essentially argued that, because the trees had been destroyed incidental to the enforcement of the overgrown lot ordinance, it wasn’t liable for their loss. The state supreme court rejected the town’s argument. In rendering its decision, the high court assumed that the legal basis for the ordinance was G.S. 160-55 (now repealed), which authorized cities to adopt ordinances “for abating or preventing nuisances of any kind, and for preserving the health of [their] citizens.” The court noted its approval of the jury instruction that the ordinance didn’t cover the plaintiff’s oak trees. It interpreted the jury’s verdict to establish that town employees, “having lawfully entered [onto the plaintiff’s property],” proceeded to damage the plaintiff’s property “by acts in excess of the authority conferred by the provisions of the ordinance.” *Rhyne*, 251 N.C. at 524. The court concluded that the town was liable for the loss of the trees since their

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destruction wasn’t necessary to remedy the ordinance violation.

Although the validity of the ordinance wasn’t squarely at issue in *Rhyne*, the supreme court’s opinion at a minimum suggests that the ordinance amounted to a legitimate exercise of the town’s abatement power under G.S. 160-55. The court, for instance, probably wouldn’t have described the entry of town employees onto the plaintiff’s lot as lawful if it had regarded the ordinance as a blatant overreach. Inasmuch as G.S. 160-55 is a forerunner of the police power statute’s nuisance provision, if G.S. 160-55 allowed abatement without a court order, the same should be true of the police power statute.

What about the chronic violator statute? Does it tell us anything about the scope of nuisance abatement authority under the police power statute? One might argue that an apparent goal of the chronic violator provisions is to relieve cities of the obligation they would otherwise have to obtain court orders prior to abating nuisances on the property of chronic violators. I find this argument unpersuasive. Although the statute permits non-judicial abatement in the case of a chronic violator, the burden it aims to reduce isn’t that of having to obtain abatement orders; rather the statute’s purpose is to spare cities from having to notify chronic violators each and every time the need arises to abate nuisances on their property. If I’m right, the chronic violator statute tells us little, if anything, about whether or when a judicial abatement order is required when a the offender is not a chronic violator.

It’s impossible to say with confidence that the police power statute encompasses the power to mow overgrown lots without court orders. The more cautious approach is to assume that the law grants no such authority, but reasonable arguments can be made in favor of interpreting it to permit cities to mow overgrown lots without first going to court.

Mowing Without a Court Order under the Summary Abatement Statute

As you’ve probably guessed, the summary abatement statute authorizes abatement without a court order. It would be something of a contradiction to say that the statute allows cities to abate nuisances “summarily” but that cities must delay abatement long enough to file and successfully prosecute abatement actions in the court system. Moreover, given that the statute concerns nuisances prejudicial or dangerous to public health or safety, it’s easy to see why the legislature would choose to permit abatement without judicial involvement on the front end.

The county equivalent to the summary abatement statute, G.S. 153A-140, confirms this interpretation. In G.S. 153A-140, the General Assembly took a more restrictive approach to the abatement of public health and safety nuisances. The statute omits the word “summarily” and expressly forbids a county from exercising the power that it confers unless the offender receives adequate notice, the right to a hearing, and the right to appeal to the appropriate court. Note, though, that even under G.S. 153A-140, the county doesn’t have an affirmative obligation to seek a judicial order of abatement. Abatement may occur without a court order unless the offender appeals the county’s abatement decision. If a judicial abatement order isn’t mandatory under G.S. 153A-140, and it isn’t, then plainly it’s not required under the summary abatement statute. *See* G.S. 153A-140 (“Nothing in this section shall be deemed to restrict or repeal the authority of any municipality to abate or remedy health nuisances pursuant to . . . [G.S.] 160A-193.”)

It follows that, if an overgrown lot qualifies as a public health or safety risk, the summary abatement statute authorizes a city to mow it without a court order, though likely not without notice to the owner. As I’ve already observed, the presence of the word “summarily” in the statute doesn’t absolve cities of their constitutional obligation to provide property owners with due process. *See*, *e.g.*, *Monroe v. City of New Bern*, 158 N.C. App. 275, 278 (2003) (Due process ordinarily requires a city to refrain from demolishing a dilapidated building until the owner has been afforded “‘sufficient notice, a hearing, and ample opportunity to demolish the building or to do what suffices to make it safe or healthy for use or occupancy.’”). For a detailed discussion of the constitutional limitations on nuisance abatement, see Rich Ducker’s blog post here.

Can an Overgrown Lot Be a Public Health or Safety Nuisance?

The abatement of an overgrown lot may take place under the summary abatement statute only if the lot is a public health or safety nuisance. If it’s not, then the lot must be dealt with under the police power statute, and the city’s ability to mow the lot without first going to court isn’t as obvious.

Once again *Rhyne* is instructive, if not decisive. When *Rhyne* was decided, the summary abatement statute’s immediate predecessor, G.S. 160-234, was in effect. Like its successor, G.S. 160-234 authorized each city “summarily to . . . abate .

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. . everything in the city limits, or within a mile of such limits, which [was] dangerous or prejudicial to the public health." The town didn't cite G.S. 160-234 in its defense, but the court took the law's potential relevance to the case into account anyway. While most of the town's evidence tended to prove nothing more than that the plaintiff's lot had been unsightly, the court opined that "some evidence" supported the town's allegation that the lot presented "'a menace to the general health'" of the town's residents. 251 N.C. at 525. The town nonetheless owed the plaintiff compensation because "ample evidence" showed that "conditions on [his] lot that might [have been] considered detrimental to the public health could have been corrected without destroying [his] trees." *Id.* at 530.

The good news for cities is that *Rhyne* appears to leave open the possibility that the summary abatement statute applies to overgrown lots in certain situations. The bad news is that *Rhyne* offers no description of the types of conditions that transform an overgrown lot from an eyesore into a public health or safety threat. I do think that a city must show more than that a lot was overgrown to justify mowing under the summary abatement statute. The city should be prepared to articulate the specific risk(s) to the public posed by a particular lot. Perhaps it could make the necessary showing by demonstrating that overgrown grass and weeds obscured piles of garbage likely to attract rats, snakes, or vermin. Or perhaps it's sufficient to prove that noxious and invasive weeds were growing on the property. While I can't be sure, I suspect that these are the kinds of conditions that make an overgrown lot eligible for mowing under the summary abatement statute.

I take comfort from the fact that my hometown apparently interprets the summary abatement statute the same way I do. Lumberton's overgrown lot ordinance doesn't merely forbid the growth of grass or weeds above a certain height. Instead it prohibits the "uncontrolled growth of noxious weeds or grass to a height in excess of 18 inches *causing or threatening to cause a hazard detrimental to the public health or safety.*" (Emphasis added.)

Conclusion

The Town of Manicure's authority to mow overgrown lots without first going to court isn't clear-cut. Although the town has the power to regulate overgrown lots under the police power statute, it may be that any abatement performed in reliance on that law must occur pursuant to a judicial abatement order. The summary abatement statute permits abatement in the absence of a court order, but it likely doesn't apply to overgrown lots unless they present identifiable threats to public health or safety. Other than when the owner consents, the one instance in which a city plainly may mow an overgrown lot without a court order is when it acts pursuant to the chronic violator statute.

This post was previously published on the School of Government's Community Economic Developmentblog.

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