
Coates' Canons Blog: Targeting Troubled Neighborhoods for Housing Code Inspections

By Tyler Mulligan

Article: <https://canons.sog.unc.edu/targeting-troubled-neighborhoods-for-housing-code-inspections-2/>

This entry was posted on March 20, 2012 and is filed under Administration & Enforcement, Affordable Housing & Minimum Housing Codes, Community & Economic Development, Community Development & Redevelopment, Land Use & Code Enforcement

Along Broken Dreams Boulevard, not far from Main Street, an abandoned mill overlooks a troubled neighborhood. Once a thriving residential area with inexpensive mill housing (single family homes and duplexes), the neighborhood is now typical of a declining mill village. Many of the dwellings are substandard, owned primarily by absentee landlords who are either unable or unwilling to maintain their properties. The neighborhood's decline has recently attracted the attention of local officials, who are in the midst of planning a comprehensive effort to clean up and revitalize the historic neighborhood.

While the planning process unfolds slowly, impatient community leaders demand immediate action in the interim. Specifically, they want the local inspections department to conduct a housing code inspection sweep of the entire neighborhood—immediately. Can the inspections department conduct a program of housing code inspections that targets this particular neighborhood? Under G.S. 153A-364 (counties) and G.S. 160A-424 (cities), statutes which were revised by S.L. 2011-281, the answer is “yes, but exercise caution.”

Background

For decades, city and county inspection departments possessed authority to conduct periodic inspections of residential and nonresidential structures without cause. However, as discussed in a prior post, the General Assembly recently placed some limitations on the authority of inspection departments to inspect residential structures. Specifically, an inspection department must first establish reasonable cause prior to inspecting a residential structure (for a more detailed discussion of the reasonable cause requirements, see this School of Government bulletin). The requirement to obtain reasonable cause prior to an inspection would seem to preclude a code enforcement “sweep” of all residential buildings in the neighborhood.

However, there is an exception to the reasonable cause requirement. Reasonable cause is not required when periodic inspections are conducted as part of a “targeted effort within a geographic area that has been designated” by the governing board. In order to take advantage of this exception, the statutory procedures for designating a targeted area must be followed closely. This post discusses three important issues for local governments to consider before conducting inspections within a targeted geographic area.

1. Designating an area to be targeted ... without discriminating in the selection of areas?

In the Broken Dreams Boulevard scenario above, local leaders want the inspections department to target the troubled mill neighborhood specifically. Relying upon either G.S. 153A-364(b) (counties) or G.S. 160A-424(b) (cities), the neighborhood can be designated for targeted inspections. However, those same statutes impose a countervailing consideration: the governing board “shall not discriminate in its selection of areas ... to be targeted.”

The statutes do not explain how to avoid discrimination in the selection of areas. The very act of selecting an area, after all, involves discriminating between areas. One way to avoid discrimination completely is to divide the entire jurisdiction into zones and assign targeted areas on a rotating basis at some regular interval, such as annually. For example, a city could be divided into ten zones, and each year two zones could be designated as target areas. The first two zones could be targeted during the first year, the next two zones targeted in the second year, and so on, such that every zone will have been targeted by the end of a five-year period. In this way, every neighborhood in the entire jurisdiction would eventually be subject to targeting and therefore no discrimination between areas would occur. We'll call this the “rotating zone” system.

An objection to the rotating zone system described above is that it would waste time and resources on geographic areas

of no concern. A more practical approach—but one that requires a looser reading of the statute—would permit the establishment of neutral criteria for selecting areas at some specified time interval, without predetermining which areas will be targeted. For example, a local government could establish a program in which at the beginning of each year, the three neighborhoods with the highest numbers of housing code complaints in the prior year will be selected for targeting in the coming year. Let's call this the “neutral criteria” system. The concern is that so-called “neutral criteria” can be manipulated to obtain a pre-determined result, so if challenged in court, the criteria could be found to be discriminatory and therefore in violation of the statute.

This brings us back to the scenario with the mill neighborhood along Broken Dreams Boulevard. The “rotating zone” system might offer a workable solution. The governing board could split its entire jurisdiction into zones and ensure that the zone containing the mill neighborhood was inspected in the first year. Other zones would be targeted in later years to ensure that the selection of areas was not discriminatory.

Employing the “neutral criteria” system in this scenario raises some real concerns. Given that local leaders have expressed their intent to target the mill neighborhood, it would not be hard for opponents to argue that any so-called “neutral” criteria were manipulated to target—or discriminate against—the mill neighborhood area. A court might agree and invalidate the effort (and award attorney's fees to the plaintiffs pursuant to G.S. 6-21.7).

2. No discrimination in the “housing types” to be targeted

As part of a targeted effort, a local government is not permitted to discriminate in its selection of “housing types to be targeted.” The statute does not define what is meant by “housing types.” A reasonable interpretation is that “housing type” refers back to subsection (a) of G.S. 153A-364 and G.S. 160A-424, where discrimination between single-family and multi-family buildings is prohibited. Under this interpretation, it would be improper for the governing board in the scenario above to target only the duplexes for inspection and leave single-family homes out of the inspection program.

Would it be permissible for the local government in our scenario to target residential *rental* properties as opposed to *owner-occupied* structures? The answer is probably yes for two reasons. First, an early draft of S.L. 2011-281 contained language to prohibit discrimination “between owner-occupied and tenant-occupied buildings or structures,” but that clause was removed prior to enactment. We can only speculate as to the reason for removal of that clause, but it must be noted that S.L. 2011-281 is replete with references to “rental property” and “residential rental property,” thereby suggesting that the General Assembly was acutely aware of the distinction between rental property and owner-occupied property but declined to prohibit discrimination between them. Second, distinctions based on tenancy—between rental property and owner-occupied property—are not ordinarily understood to be “housing type” distinctions. Rather, distinctions based on tenancy are described in the law as the “manner of ownership” of property. See, e.g., *City of Wilmington v. Hill*, 189 N.C. App. 173 (2008).

Even if we grant that discrimination on the basis of manner of ownership is not explicitly prohibited by statute, the inquiry does not end there. Equal protection law dictates that a local government must have a rational basis for discriminating on that basis. A rational basis for treating rental housing differently from owner-occupied dwellings might be supplied, for example, by evidence showing that the overwhelming majority of past housing code complaints in the target neighborhood had originated from rental properties, not owner-occupied properties.

3. Procedural requirements



Once a geographic area is selected for targeted periodic inspections, notice must be provided “to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan.” The specific requirements for proper notice under this clause are not described, so we must look elsewhere for guidance—preferably to a notice requirement that appears similar in form and scope. One such notice provision might be G.S. 160A-384, which requires, prior to a zoning map amendment, that a notice of public hearing be mailed by first class mail to the owner of an affected parcel and to “the owners of all parcels of land abutting that parcel of land.” This appears similar in form to the targeted inspection provision, which requires notice to be provided to “all owners and residents of properties in the affected area.” Given these similarities, it would be reasonable to adopt the mailed notice procedures of G.S. 160A-384 when providing notice of targeted inspections. However, in the absence of more specific guidance, we cannot be certain whether such notice would be considered adequate by a court.

A final procedural consideration with geographically-targeted inspections is the development of a plan to address the ability of low-income residential property owners to comply with minimum housing code standards. The necessary components to include in the plan are not enumerated, and the statutes offer no guidance on how to develop such a plan. As a practical matter, a plan developed in consultation with and approved by low-income owners and organizations in targeted neighborhoods would presumably meet the statutory requirements and would probably minimize the risk of a legal challenge.

For more on the law governing periodic inspections, see this School of Government bulletin.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-364
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-424
- www.ncga.state.nc.us/Sessions/2011/Bills/Senate/PDF/S683v6.pdf
- www.sog.unc.edu/publications/bulletins/residential-rental-property-inspections-permits-and-registration-questions-and-answers
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_6/GS_6-21.7.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-384