

**BEFORE THE NORTH CAROLINA BUILDING CODE COUNCIL
RALEIGH, NORTH CAROLINA**

Docket No. 2014-02

IN THE MATTER OF AN APPEAL BY)	
QUALITY BUILT ADVANTAGE, INC.)	
REGARDING THE NORTH CAROLINA)	
BUILDING CODE AND THE)	
TOWN OF ABERDEEN RESIDENTIAL)	ORDER AND FINAL
INSPECTION SCHEDULE)	AGENCY DECISION
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THIS MATTER was heard on 11 March 2015 by the North Carolina Building Code Council ("Council") on appeal by Quality Built Advantage, Inc. ("Quality Built Advantage") of the 28 July 2014 Decision by the Chief Code Enforcement Officer of the Town of Aberdeen ("Aberdeen Decision") and the 3 October 2014 Decision by the North Carolina Department of Insurance ("NCDOI Decision") regarding the North Carolina Building Code and the Town of Aberdeen Residential Inspection Schedule. The Council and the parties deem the appeal of the foregoing Decisions to be a single appeal heard before the Council.

Quality Built Advantage appeared and was represented by attorney W. Austin Morris. The Town of Aberdeen appeared and was represented by attorney T.C. Morphis, Jr. The North Carolina Department of Insurance ("NCDOI") appeared and was represented by Special Deputy Attorney General Daniel Johnson.

Based upon the competent evidence in the record, the arguments of the parties, and the record as a whole, the Council makes the following:

FINDINGS OF FACT

1. The North Carolina State Building Code, Administrative Code and Policies (“Building Code”), Section 107.1 states that an “inspections department shall perform” eight inspections, including:

1. Footing inspection;
2. Under[-]slab inspection, as appropriate;
3. Foundation inspection, wood-frame construction;
4. Rough-in inspection;
5. Building framing;
6. Insulation inspection;
7. Fire protection inspection; and
8. Final inspection.

2. During the 2013 legislative session of the General Assembly, House Bill 120 was introduced, entitled, “AN ACT TO REQUIRE APPROVAL FROM THE NORTH CAROLINA BUILDING CODE COUNCIL BEFORE A UNIT OF LOCAL GOVERNMENT MAY REQUIRE BUILDING INSPECTIONS IN ADDITION TO THOSE REQUIRED BY THE BUILDING CODE;”

3. Passed into law and effective 1 July 2013, House Bill 120 added the following new language to N.C. Gen. Stat. §§ 153A-352 and 160A-412:

N.C. Gen. Stat. § 153A-352(b) - Except as provided in G.S. 153A-364, a county may not adopt a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a county and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the county to require inspections upon unforeseen or unique circumstances that require immediate action. (Emphasis added)

N.C. Gen. Stat. § 160A-412(b) - Except as provided in G.S. 160A-424, a city may not adopt a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a city and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the city to require inspections upon unforeseen or unique circumstances that require immediate action. (Emphasis added)

4. Under N.C. Gen. Stat. §§ 153A-352(b) and 160A-412(b), a county or city may adopt a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code if the county or city requests and receives approval from the Council to perform such additional inspections.

5. During the hearing of this appeal, the Council asked NCDOL's Chief Code Consultant how many local government units have requested the Council to approve additional inspections after House Bill 120 was enacted into N.C. Gen. Stat. §§ 153A-352(b) and 160A-412(b). In response, NCDOL's Chief Code Consultant testified that only "a couple" of local government units have requested the Council to approve additional inspections.

6. The Town of Aberdeen has not requested the Council to approve additional inspections after House Bill 120 was enacted into N.C. Gen. Stat. §§ 153A-352(b) and 160A-412(b).

7. The Town of Aberdeen Residential Inspection Schedule (Effective 2014), Item 3 states: "Foundations or Slab: Call for an inspection after all foundation walls and piers have been erected and open floor is installed. Slab inspection after plastic is down."

Open Floor Inspection

8. An "open floor" is the completed first floor framing minus the floor sheathing. Hereinafter, the Town of Aberdeen's "inspection after all foundation walls and piers have been erected and open floor is installed" is referred to as "open floor inspection."

9. Quality Built Advantage appeals the determinations in the Aberdeen Decision and the NCDOI Decision that an open floor inspection is included as part of a foundation inspection listed under Section 107.1 of the Building Code, and that an open floor inspection is not an additional inspection beyond a foundation inspection.

10. Section 107.1.3 of the Building Code states: "Foundation and crawl space inspections shall be made after all foundation supports are installed. This inspection is to check foundation supports, crawl space leveling, grounds clearances and positive draining when required."

11. NCDOI and the Town of Aberdeen presented evidence and arguments that an open floor inspection is included as part of a foundation inspection under Section 107.1 of the Building Code. Quality Built Advantage presented evidence and arguments that an open floor inspection is not included as part of a foundation inspection, and that an open floor inspection is an additional inspection beyond a foundation inspection.

12. The Council finds that floor framing minus the floor sheathing is not part of foundation support. The Council finds that an open floor inspection is not included as a part of a foundation inspection under Section 107.1 of the Building Code.

13. The Council finds that an open floor inspection is not included as a part of any inspection on the list of eight inspections under Section 107.1 of the Building Code.

Slab Inspection After Plastic Is Down

14. Quality Built Advantage appeals the determinations in the Aberdeen Decision and the NCDOL Decision that an under-slab inspection listed in Section 107.1 of the Building Code includes a slab inspection “after plastic is down,” and that a slab inspection “after plastic is down” is not an additional inspection beyond the list of eight inspections listed in Section 107.1 of the Building Code.

15. Section 107.1.2 of the Building Code states: “Under-slab inspections, as appropriate, shall be made after all materials and equipment to be concealed by the concrete slab are completed.”

16. The type of slab utilized by Quality Built Advantage, that is the subject of the Town of Aberdeen’s challenged slab inspection “after plastic is down,” is a concrete slab with exterior masonry.

17. The reference to “plastic” in Item 3 of the Town of Aberdeen Residential Inspection Schedule is a reference to a vapor barrier or retarder.

18. NCDOL and the Town of Aberdeen presented evidence and arguments that a slab inspection “after plastic is down” is not an additional inspection beyond an under-slab inspection included on the list of eight inspections in Section 107.1 of the Building Code. Quality Built Advantage presented evidence and arguments that a slab inspection “after plastic is down” is not included as part of an under-slab inspection, and that a slab inspection “after plastic is down” is an additional inspection beyond an under-slab inspection listed in Section 107.1 of the Building Code.

19. The Council finds that a slab inspection "after plastic is down" is included as part of an under-slab inspection on the list of eight inspections in Section 107.1 of the Building Code.

Based on the foregoing Findings of Fact, the Council makes the following:

CONCLUSIONS OF LAW

1. This appeal is properly before the Council and the Council has jurisdiction over this matter and the parties.
2. Section 107.1.3 of the Building Code provides: "Foundation and crawl space inspections shall be made after all foundation supports are installed. This inspection is to check foundation supports, crawl space leveling, grounds clearances and positive draining when required."
3. The Council concludes that an open floor inspection is not included as a part of a foundation inspection under Section 107.1 of the Building Code.
4. The Council concludes that an open floor inspection is not included as a part of any inspection on the list of eight inspections under Section 107.1 of the Building Code.
5. The Council concludes that the Town of Aberdeen's open floor inspection is an additional inspection prohibited by N.C. Gen. Stat. § 160A-412(b). Pursuant to N.C. Gen. Stat. § 160A-412(b), the Town of Aberdeen may require a regular, routine open floor inspection as an additional inspection only if the Town of Aberdeen requests and receives approval of the Council for the Town of Aberdeen to require a regular, routine open floor inspection.

6. Section 107.1.2 of the Building Code provides: "Under-slab inspections, as appropriate, shall be made after all materials and equipment to be concealed by the concrete slab are completed."

7. The Council concludes that the Town of Aberdeen Residential Inspection Schedule, Item 3 requirement for a slab inspection "after plastic is down" is included as part of an under-slab inspection under Section 107.1 of the Building Code, rather than an additional inspection.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the 28 July 2014 Decision by the Chief Code Enforcement Officer of the Town of Aberdeen and the 3 October 2014 Decision by the North Carolina Department of Insurance are REVERSED in part and AFFIRMED in part.

The Town of Aberdeen shall not require a regular, routine open floor inspection of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings, unless the Town of Aberdeen first requests and receives approval of the Council for the Town of Aberdeen to require a regular, routine open floor inspection.

The Town of Aberdeen may require slab inspections "after plastic is down" as being included as part of an under-slab inspection listed under Section 107.1 of the Building Code.

SO ORDERED this 16th day of April, 2015.

North Carolina Building Code Council

By: 
Dan Tingen, Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing ORDER AND FINAL AGENCY DECISION upon counsel for the parties via certified mail, return receipt requested, first class postage prepaid, addressed as follows:

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This 16th day of April 2015.

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