



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

OFFICE OF CHIEF PUBLIC DEFENDER

30 TRINITY STREET - 4th Floor
HARTFORD, CONNECTICUT 06106
(860) 509-6405 Telephone
(860) 509-6495 Fax

DEBORAH Del PRETE SULLIVAN

LEGAL COUNSEL/
EXECUTIVE ASSISTANT PUBLIC DEFENDER
deborah.d.sullivan@jud.ct.gov

Deborah Del Prete Sullivan
Legal Counsel - Office of Chief Public Defender

Raised Bill 5502

**An Act Concerning Standing to Appeal a Zoning Decision and
Municipal Power to Obtain a Search Warrant**

Judiciary Public Hearing - March 19, 2012

The Office of Chief Public Defender is opposed to *Raised Bill 5502, An Act Concerning Standing to Appeal a Zoning Decision and Municipal Power to Obtain a Search Warrant*. The Raised Bill as drafted would grant authority to a municipality to obtain an administrative search warrant of residential properties to enforce ordinances or regulations adopted pursuant to certain statute and other statutory provisions related to "municipal enforcement or regulation." Search warrants of properties and homes of a person are typically only utilized in criminal investigations. Warrants in the criminal context trigger 4th amendment protections for a person to be protected from unreasonable searches and seizures. As a result, a determination of probable cause is necessary before such a search can be authorized. The concern is that if this Raised Bill is adopted, this broad and sweeping power to conduct an administrative search could be utilized to gain access to residential properties without notice to the property owners and without an opportunity for them to be heard in a court as all such search warrant applications would be made exparte.

In Town of Bozrah, et al vs. Anne D. Chmurynski et al (SC 18424), (SC 18354), (SC 18355) and (SC 18356), released on February 14, 2012, the Connecticut Supreme Court held that when a "proposed search is not part of a periodic or area inspection program . . . the reasonableness requirement of the fourth amendment applies and is satisfied when a judicial officer orders a search upon a showing by municipal authorities that probable cause exists to believe that a zoning violation will be discovered upon

inspection of the premises.” In the Bozrah case, the town had sought to “inspect” a residential property for unregistered motor vehicles and “other junk”. When the property owners would not consent to the search, the Town filed for an injunction against the property owners to stop them from refusing to consent. The Supreme Court held in Bozrah that “before a court may issue an order permitting a zoning enforcement officer to enter and search a particular property, there must be a preliminary showing of facts within the knowledge of the zoning officer and of which that officer has reasonably trustworthy information that are sufficient to cause a reasonable person to believe that conditions constituting a violation of the zoning ordinances are present on the subject property.” Id. The language of the Raised Bill is much broader and vague as drafted than the standard enunciated in Bozrah.

In addition, the Supreme Court in Bozrah found that “an injunction is an appropriate procedural vehicle through which a municipality may seek judicial authorization to conduct a zoning inspection.” It stated that “the conditions that constitute zoning violations are, in general, continuing conditions, thereby rendering an immediate ex parte hearing unnecessary.” Id. The court found that there was no undue burden placed upon a municipality if an injunction hearing were held. A hearing on a request for an injunction is adversarial in nature. All of the parties, including the residential property owners receive notice and are able to be represented by counsel. The adversarial hearing is held before a Judge in an open court. As a result, more safeguards exist to protect against unreasonable searches.

As drafted, however, the Raised Bill would permit a municipality to merely apply to a court, ex parte, for an administrative search warrant. The Judge either signs the warrant or not. The residential property owner, or tenants, if any, does not receive any notice that the municipality is seeking a warrant to search his/her property. There is no court hearing and the property owners never have an opportunity to be heard regarding the issuance of the search warrant of their home or property. In fact, the property owners never know that an application has been made or that the court has signed a search warrant until the municipality shows up at the property with the search warrant. At that point, it is too late for the property owner to contest the warrant. And with this ex parte process, it is possible that municipalities could utilize an administrative search warrant in a criminal investigation.

In conclusion, this Office opposes the Bill as drafted, supports a process that complies with the decision in the Bozrah case which affords constitutional protections and prefers a process that allows for an adversarial proceeding where all of the parties can be heard from.