



OLR RESEARCH REPORT

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OLR BACKGROUNDER: SEARCHING PRIVATE PROPERTY FOR ZONING VIOLATIONS WHEN CONSENT IS WITHHELD

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This report summarizes the Connecticut Supreme Court's decision in *Town of Bozrah, et al., v. Anne D. Chmurynski, et al.* (303 Conn. 676 (2012)) and a related 2012 bill, HB 5502.

SUMMARY

In *Bozrah v. Chmurynski*, property owners who refused to allow Bozrah's zoning enforcement officer to inspect their property for zoning violations appealed a trial court's order that would have allowed the town to search the property.

The trial court had analyzed the United States Supreme Court decision in *Camara v. Municipal Court*, 387 U.S. 523 (1967) and issued an injunction based on the town's interest in stabilizing property values and protecting the general welfare of residents. The Connecticut Supreme Court reversed the trial court's decision because it had not made a traditional probable cause finding before issuing the injunction. The Supreme Court held that while an injunction is the proper remedy for a town seeking the court's authorization to conduct a zoning inspection, the injunction issued was a violation of the Chmurynskis' Fourth Amendment rights. The court ruled that the town of Bozrah should have been required to show that it had particularized suspicion of a zoning violation; merely asserting an important governmental interest in conducting the search was not enough.

Following this decision, in the 2012 legislative session, the Judiciary Committee considered Raised Bill 5502, which would have created an avenue for municipalities to seek a search warrant for administrative enforcement actions. The committee reported a substitute bill to the floor that did not contain this provision.

BOZRAH V. CHMURYNSKI

Facts

In August 2007, Bozrah's first selectman instructed the town's zoning enforcement officer to search the Chmurynskis' property "for unregistered motor vehicles and other junk." Storing or maintaining unregistered or junk vehicles is a non-criminal offense under Bozrah's ordinances.

When the enforcement officer arrived at the property, he was explicitly denied access. He returned to the property in September but again was refused access. After the second visit, the property owners erected a fence blocking certain portions of the property from street view. As permitted by CGS § [8-12](#), the town sought an injunction to prevent the property owners from refusing to consent to the search.

Proceedings Below

The trial court granted the injunction based on state law, local zoning regulations, and federal case law. It noted that state law and local zoning regulations authorize zoning enforcement officers to inspect and remedy zoning violations and "the only way a zoning enforcement officer can execute [his or her] duties when a property owner has refused to consent to a search is to conduct an inspection of the property pursuant to a judicial order" (303 Conn. at 681). The court found that although the statutes establish a procedure for applying for search warrants, the procedure does not apply in an administrative context. Thus, the court issued the injunction to achieve the same result as a warrant.

Relying on the United States Supreme Court decision in *Camara v. Municipal Court*, 387 U.S. 523 (1967), the court found that property inspections in nonemergency situations must be justified by a reasonable government interest, such as securing compliance with fire and housing codes. In *Camara*, the Court said, "[i]f a valid public interest justifies the intrusion contemplated then there is probable cause to issue a suitably restricted search warrant" (387 U.S. at 539). Here, the court issued the injunction citing the municipality's interest in stabilizing property values and promoting the general welfare.

Issues on Appeal

The Chmurynskis appealed the injunction on the ground that it violated their Fourth Amendment right to be free from unreasonable searches and seizures. They claimed that Bozrah officials should have had a warrant based on probable cause before searching their property.

On appeal, the state Supreme Court considered whether (1) seeking an injunction to enable a zoning inspection is procedurally proper, (2) the reasonableness requirement of the Fourth Amendment applies to zoning inspections, and (3) that requirement is satisfied if the town demonstrates that the search furthers a reasonable government interest.

Analysis and Holding

The court first considered how the Fourth Amendment relates to zoning inspections under CGS § [8-12](#). Like the trial court, the Supreme Court cited *Camara* in determining that administrative searches must comply with the Fourth Amendment. However, unlike the trial court, the Supreme Court distinguished the administrative search in *Camara* from the search sought by Bozrah. In *Camara*, where the administrative search at issue was part of a routine area-wide search, the U.S. Supreme Court found that administrative searches are reasonable when “aimed at securing city-wide compliance...” (387 U.S. at 535). In this case, the search was targeted; only the Chmurynskis’ property was to be inspected. The court argued that “a targeted administrative search demands a more particularized showing of probable cause than the relaxed version in *Camara*...” because a targeted administrative search “more closely resembles a search for specific evidence of a crime in a criminal investigation” (303 Conn. at 692, 688).

Next, the court considered whether an injunction is a proper procedure for authorizing a zoning violation search. It concluded that an injunction is “the functional equivalent of a warrant” and thus serves the purpose of a warrant requirement (303 Conn. at 693). The court determined that CGS § [54-33a](#), which authorizes search warrants, does not apply outside the criminal context. However, CGS § [8-12](#) allows municipalities to seek an injunction from the Superior Court if necessary to enforce zoning laws and ordinances. Consequently, the court held that Bozrah correctly sought an injunction after being denied access to the property. The court recognized that an injunction hearing to determine probable cause for a zoning inspection is a higher burden for municipalities than an ex parte hearing for a search warrant, but argued that it would not unduly hinder enforcement actions (303 Conn. at 696-7).

The state Supreme Court reversed the trial court's decision because that court had not required the town to show probable cause of a zoning violation before issuing the injunction. It held that to comply with the Fourth Amendment, municipal authorities must (1) have "particularized suspicion," and (2) demonstrate it through "reasonably trustworthy information that [is] sufficient to cause a reasonable person to believe that conditions constituting a violation...are present on the subject property" (303 Conn. at 691, 693). Accordingly, the court held that the traditional probable cause standard that applies to criminal search warrants also applies to administrative zoning enforcement injunctions, such as the one the town sought in this case.

RAISED BILL 5502

Introduced bill

During the 2012 session, the Judiciary Committee raised a bill that would have authorized municipalities to obtain search warrants in order to carry out their enforcement duties ([Raised Bill 5502, Sec. 2](#)). Specifically, the bill would have allowed a municipality to obtain a search warrant in the judicial district in which it is located to enforce a municipal ordinance or regulation adopted under the municipal powers, historic districts, zoning, subdivision, inland wetlands, or any other statutes related to municipal administration or enforcement. The committee held a public hearing on the bill on March 19th, 2012, but did not include the administrative search warrant provision in the substitute bill it reported out.

Public Hearing Testimony

Supporters. The town attorney, Dennis O'Brien, who suggested the bill to his legislator noted that under current law, the procedure for seeking a court order to search private property for a zoning violation is more onerous than the procedure for getting a search warrant related to a criminal investigation. A search warrant is issued *ex parte*, meaning that only the party seeking the warrant is heard by a judge. An injunction, on the other hand, is issued after an adversarial hearing, meaning that both parties present evidence before a judge.

Attorney Mark Branse testified that the procedure endorsed by the court in *Chmurynski* was "an unworkable 'Catch-22'." Supporting the bill, he said that the "[b]ill merely establishe[s] the same procedure for civil enforcement actions as the one now existing for criminal actions."

The Connecticut Conference of Municipalities (CCM) asked the legislature to overturn the Supreme Court's decision and lower the burden of proof a municipality must meet before getting a warrant for zoning enforcement inspections. CCM asserted that the probable cause standard required by the court "unnecessarily compromises the public health and safety of residents."

Connecticut's Division of Criminal Justice supported the bill but said that "it simply does not go far enough." The division noted that the bill did not authorize municipal officers to obtain warrants for enforcement of state codes and statutes, even though they often enforce state laws. It raised similar concerns over the failure to give state enforcement authorities the power to obtain administrative search warrants.

Opponents. Deborah Del Prete Sullivan from the Connecticut Division of Public Defender Services testified that the safeguards associated with an adversarial hearing should be maintained. The division maintained that "[t]he language of the Raised Bill is much broader and vague as drafted than the standard enunciated in *Bozrah [v. Chmurynski]*". Attorney Del Prete Sullivan was concerned that the probable cause standard enunciated in *Chmurynski* would not apply to administrative search warrants.

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