

# Connecticut Law Tribune

March 12, 2012

An **ALM** Publication

## Guest Commentary

### *A Landmark Ruling On Property Inspections*

Connecticut Supreme Court clarifies procedure by zoning enforcement officers



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In a landmark decision released Feb. 14, the Connecticut Supreme Court held that when a zoning enforcement officer desires to inspect a property for possible zoning violations and is denied access by the owner, the enforcement officer must seek a court order which can only issue after the officer establishes “probable cause” at a hearing before the Superior Court. The court ruled that Connecticut General Statute Section 8-12, Connecticut’s zoning enforcement statute, is not invalid on its face and does not violate the Fourth Amendment of the U.S. Constitution, but also held that any court order permitting an inspection of real property must satisfy all constitutional requirements.

In *Town of Bozrah, et al. v. Anne D. Chmurynski, et al.*, the landowners appealed a trial court’s order that

approved an application under Section 8-12 for a temporary injunction effectively granting permission to the town’s zoning enforcement officer to search the landowners’ property for a possible zoning violation (whether unregistered motor vehicles were being improperly stored at the property). In their appeal, the landowners challenged the validity of the court’s order, and the validity and constitutionality of Section 8-12. The state Supreme Court held that Section 8-12 requires that a town’s zoning enforcement officer establish “probable cause” at a court hearing before a trial court may issue an order permitting the zoning enforcement officer to enter and search real property for a possible zoning violation. The court found in this case that there was no “probable cause” to support the trial court’s order authorizing a search and reversed the trial court’s decision.

The Connecticut Chapter of the American Planning Association

(CCAPA), and the Connecticut Association of Zoning Enforcement Officials (CAZEO), filed an amicus brief. Specifically, the amici curiae argued that Section 8-12: (a) is Connecticut’s essential zoning enforcement statute; (b) is not invalid on its face; and (c) does not violate the Fourth Amendment of the U.S. Constitution by allowing warrantless searches.

#### **The Decision**

The Bozrah decision clarifies the procedure for a municipal zoning enforcement officer to inspect real property when denied access by the owner. The court held that when denied access to a property for an inspection, a zoning enforcement officer must seek an order from the court to perform an inspection as provided by Section 8-12. The process afforded by Section 8-12 must satisfy all constitutional requirements, including the Fourth Amendment of the U.S. Constitu-

tion, which protects against unlawful searches. The court held that to satisfy applicable constitutional requirements, a search order may only issue after a court hearing and only when the zoning enforcement officer establishes “probable cause” for such inspection. This “administrative search” process effectively replaces the need for an enforcement officer to establish irreparable harm or lack of an adequate remedy at law for an injunction. In other words, if the enforcement officer establishes probable cause, then a search order may issue — the enforcement officer does not have to establish anything more. However, in addition to providing some form of evidence of a zoning violation, a zoning enforcement officer must also address: (a) the type of search proposed; (b) the nature of the premises to be searched; and (c) the public policies that justify the search.

In dicta, the court noted that the aforementioned process under Section 8-12 affords more protection than the process for obtaining a criminal search, which is usually based upon affidavits without a hearing. The court further noted that Connecticut criminal law does not authorize the issuance of search warrants to municipal zoning enforcement officers. However, because Section 8-12 provides criminal sanctions for “willful” offenses, the Court recognized that “[t]here

may be circumstances in which a zoning officer may involve the criminal justice system in enforcing zoning regulations.”

Citing to *Camara v. Municipal Court*, 387 U.S. 523, 87 S. Ct. 1727, 18 L.Ed.2d 930 (1967), the court also noted that an inspection of property may be permitted without the need to obtain an order pursuant to Section 8-12 if the inspection is part of a general administrative town-wide inspection plan that provides for “reasonable legislative or administrative standards for conducting an area inspection” where there is a demonstrated “valid public interest.” However, any search that targets an individual property as the result of a complaint must comply with Section 8-12.

### **Unresolved Issues**

The Bozrah decision is limited to municipal zoning inspections under Section 8-12. The decision leaves unresolved a number of significant questions in other areas of municipal land use enforcement. For example, what procedure must be utilized by a municipal wetlands enforcement officer if denied access to property to perform an inspection for a possible wetlands violation? Does the decision impact how a municipality establishes and enforces blight ordinances? Can a municipal land use department create a general administrative town-wide inspec-

tion plan for the enforcement of its zoning and wetlands regulation that satisfies constitutional requirements and, if so, how can this be accomplished?

Although the Bozrah decision creates a number of questions going forward, the Connecticut Supreme Court has made it clear that municipal zoning enforcement officers who do not comply with the requirements of Section 8-12 by seeking a court order to inspect real property when denied access by the owner put themselves and their municipalities at legal risk. •

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