ELISE PIQUET *v.* TOWN OF CHESTER ET AL.
(SC 18723)

Rogers, C. J., and Palmer, Zarella, McLachlan, Eveleigh, Harper and Vertefeuille, Js.*

Argued April 17—officially released August 28, 2012

William F. Gallagher, with whom, on the brief, were *David McCarry* and *Mark A. Balaban*, for the appellant (plaintiff).

John S. Bennet, for the appellees (defendants).

Mark K. Branse filed a brief for the Planning and Zoning Section of the Connecticut Bar Association as amicus curiae.

Opinion

ZARELLA, J. This is a certified appeal by the plaintiff, Elise Piquet, from the judgment of the Appellate Court, which reversed the trial court's judgment in favor of the defendants, the town of Chester (town) and its planning and zoning commission, and remanded the case with direction to dismiss the action. The plaintiff claims that the Appellate Court incorrectly determined that the trial court lacked subject matter jurisdiction because the plaintiff had failed to exhaust her administrative remedies prior to filing the present declaratory judgment action. The defendants, in response, claim that the Appellate Court properly determined that the trial court lacked jurisdiction. We agree with the defendants and, accordingly, affirm the judgment of the Appellate Court.

The opinion of the Appellate Court set forth the following relevant facts and procedural history. "The plaintiff is the owner of property at 28 South Wig Hill Road in Chester. The plaintiff resided with her husband, Christopher J. Shaboe Doll, at their residence on the property for fourteen years prior to his death on October 13, 2004. The plaintiff . . . and her husband wanted to be buried side by side in Chester, and, accordingly, on October 24, 2004, the plaintiff interred her husband's remains in the backyard of her property under the supervision of a licensed funeral director. On June 8, 2005, [the town's] zoning compliance officer[1] issued a cease and desist order with regard to the burial, for violation of the Chester zoning regulations [cease and desist order].[2] On August 12, 2005, the plaintiff [appealed] from the cease and desist order [to] the Chester zoning board of appeals [board], seeking a variance. On or about September 16, 2005, the zoning compliance officer specifically informed the plaintiff [by letter] that the burial was not permitted as a principal use or a special principal use in the residential district where the plaintiff's property was located, [in accordance with] § 40A of the Chester zoning regulations [September letter].[3] [In the September letter, the] zoning compliance officer, however, withdrew the cease and desist order for the purpose of allowing the plaintiff time to remedy the violation. On October 15, 2005, the plaintiff notified the [board] that she was withdrawing her objection to the cease and desist order, without prejudice.

"On October 26, 2007, the plaintiff commenced an action in the trial court, requesting a judgment declaring that she has the right to use her property for the interment of her [husband's remains] and, upon her death, for [the] interment [of her remains] as well. On April 28, 2008, the defendants filed a motion for summary judgment. On September 30, 2008, the court granted the motion . . . and rendered judgment in favor of the defendants." *Piquet* v. *Chester*, 124 Conn. App. 518,

520–21, 5 A.3d 947 (2010). The plaintiff appealed to the Appellate Court from the trial court's judgment. After oral argument, the Appellate Court, sua sponte, ordered the parties to submit supplemental briefs on the issue of whether the trial court had subject matter jurisdiction over the plaintiff's action. Thereafter, the Appellate Court concluded that the plaintiff had failed to exhaust her administrative remedies by not appealing to the board. The Appellate Court thus reversed the trial court's judgment and remanded the case with the direction to dismiss the plaintiff's action. Id., 524.

We certified the plaintiff's appeal from the Appellate Court's judgment, limited to the following issue: "Did the Appellate Court properly determine that the trial court lacked subject matter jurisdiction over this declaratory judgment action because the plaintiff [had] failed to exhaust her administrative remedies?"[4] *Piquet* v. *Chester*, 299 Conn. 917, 10 A.3d 1051 (2010).

On appeal, the plaintiff makes three claims as to why the Appellate Court incorrectly determined that the trial court lacked subject matter jurisdiction over her declaratory judgment action. First, the plaintiff claims that the Appellate Court incorrectly concluded that she should have appealed to the board prior to filing the present action because there was no decision of the zoning compliance officer from which she could appeal. The plaintiff alternatively claims that, even if there was an appealable decision, any appeal to the board would have been futile, and, thus, she was not required to exhaust her administrative remedies. In that regard, the plaintiff also argues that the board cannot grant her requested relief. Finally, the plaintiff claims that she is challenging the validity of the zoning regulations, and, therefore, a declaratory judgment action is proper.[5] In response, the defendants claim that (1) the cease and desist order and the September letter issued by the zoning compliance officer to the plaintiff represented decisions from which the plaintiff properly could appeal, (2) the plaintiff's futility argument reflects a misunderstanding of the futility exception to the exhaustion doctrine, and (3) the plaintiff is actually challenging the interpretation, not the validity, of a zoning ordinance, and, thus, a declaratory action is not proper.

We address these claims under a plenary standard of review. See, e.g., *Hurley* v. *Heart Physicians, P.C.*, 298 Conn. 371, 383, 3 A.3d 892 (2010) ("[w]e have long held that because [a] determination regarding a trial court's subject matter jurisdiction is a question of law, our review is plenary" [internal quotation marks omitted]).

I

In the present case, the Appellate Court concluded that the plaintiff was required to exhaust her administra-

tive remedies by appealing to the board and that only after taking that appeal and obtaining an adverse decision could she properly file the present declaratory judgment action. See *Piquet* v. *Chester*, supra, 124 Conn. App. 524. The Appellate Court reasoned that the plaintiff failed to exhaust her administrative remedies because she withdrew her variance application and did not otherwise appeal from the cease and desist order or the zoning compliance officer's September letter, and, therefore, the trial court did not have jurisdiction over her action. See id., 522–24.

"It is a settled principle of administrative law that if an adequate administrative remedy exists, it must be exhausted before the Superior Court will obtain jurisdiction to act in the matter. . . . [B]ecause the exhaustion doctrine implicates subject matter jurisdiction, we must decide as a threshold matter whether that doctrine requires dismissal of the . . . [action]." (Citations omitted; internal quotation marks omitted.) *Stepney, LLC* v. *Fairfield*, 263 Conn. 558, 563, 821 A.2d 725 (2003). Thus, "exhaustion of remedies serves dual functions: it protects the courts from becoming unnecessarily burdened with administrative appeals and it ensures the integrity of the agency's role in administering its statutory responsibilities." (Internal quotation marks omitted.) Id., 564–65.

On appeal, the plaintiff first, and principally, argues that there was no decision by the town's zoning compliance officer from which she could appeal to the board. In support of this argument, the plaintiff relies on the fact that the zoning compliance officer's September letter expressly withdrew the previous cease and desist order, which, according to the plaintiff, was the only order or decision in this case from which the plaintiff could have appealed to the board. See footnotes 2 and 3 of this opinion. Thus, the plaintiff argues, there was no "decision," within the meaning of General Statutes § 8-7[6] and § 140G.1 of the Chester zoning regulations,[7] from which the plaintiff could appeal, and, therefore, the Appellate Court incorrectly determined that the trial court lacked jurisdiction over her action on the ground that she had failed to exhaust her administrative remedies. We conclude, for the reasons that follow, that the September letter constituted a decision from which the plaintiff could appeal to the board.

There is no prior decision by this court defining what constitutes an appealable decision of a zoning compliance officer.[8] Recently, however, the Appellate Court was presented with a similar question in *Holt* v. *Zoning Board of Appeals*, 114 Conn. App. 13, 968 A.2d 946 (2009).[9]

In *Holt*, the plaintiff, Carol F. Holt, had purchased a lot in an area zoned for residential use. Id., 16. The previous owner of the lot had obtained a letter from the local zoning enforcement officer informing the previous

owner of the maximum allowable size for a single-family residence on the lot, and the previous owner had transferred this letter to Holt. Id., 15–16. In apparent reliance on this letter, Holt filed with the zoning enforcement officer building plans for the lot and requests for a building permit and a certificate of zoning compliance. Id., 16. Around this time, the defendant abutting landowner contacted the zoning enforcement officer and asked the officer to reconsider his previous letter regarding Holt's lot. Id., 16–17. Holt withdrew her requests for a building permit and a certificate of zoning compliance, and published a copy of the zoning enforcement officer's letter in a local newspaper. Id., 17. Shortly thereafter, the abutting landowner filed an appeal from the zoning enforcement officer's letter to the defendant zoning board of appeals. Id. The zoning board of appeals sustained the appeal, concluding that Holt's lot could not properly be developed under local zoning regulations notwithstanding the zoning enforcement officer's previous letter. Id. The plaintiff appealed from the decision of the zoning board of appeals to the Superior Court, which dismissed the appeal on the ground that the zoning board of appeals lacked jurisdiction over the appeal because the letter was not an appealable decision pursuant to § 8-7 and § 8.10.2 of the Stonington zoning regulations.[10] Id.

In reviewing Holt's appeal from the trial court's decision, the Appellate Court noted that "[t]he issue before [the court was] . . . whether [the zoning enforcement officer's] . . . letter was a 'decision' . . . ." Id., 19. "[N]o Connecticut court . . . has addressed the issue of whether all letters issued by zoning enforcement officers automatically are appealable to zoning boards of appeals." Id. "[The court does] not think that a bright line rule has been so far established in evaluating this category of cases. [The court] conclude[s], therefore, that the determination of whether the action of a zoning enforcement officer amounts to a decision appealable under § 8-7 depends on the particular facts and circumstances of each case." Id., 20.

The Appellate Court then turned to the facts of the case before it. "[A] review of the regulations leads [the court] to conclude that the final determination that a single-family residence could be constructed on [Holt's] lot is made by the issuance of appropriate permits, such as a building permit or a certificate of zoning compliance. . . . [The zoning enforcement officer's] letter that [Holt's] lot qualified for construction of a single-family residence was an advisory letter informing [the previous landowner] that a single-family residence could be built on it if the necessary permits were obtained." Id., 21–22. Thus, the Appellate Court concluded that, "in light of the zoning regulations involved and the language used in the letter, and under the specific facts and circumstances of the . . . case, the [trial] court correctly concluded that the letter was a

preliminary, advisory opinion and not a decision subject to appeal under . . . § 8-7 and § 8.10.2 of the [Stonington zoning] regulations." Id., 29.

Significantly, in reaching this conclusion, the Appellate Court clarified that it was "not conclud[ing] that all letters issued by zoning enforcement officers interpreting zoning regulations, and applying them to specific situations, are not appealable pursuant to § 8-7. [Holt] cite[d] the statement by zoning commentator Robert A. Fuller that the 'zoning enforcement officer has initial authority to interpret the zoning regulations, but the interpretation made is subject to review of the zoning board of appeals and on appeal by the Superior Court.' R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (2d Ed. 1999) § 12.5, p. 284. [The court does] not disagree with [Holt's] argument that zoning enforcement officers often interpret zoning regulations. Appeals are often taken from actions of zoning enforcement officers that involve interpretation of regulations, the issuance of cease and desist orders . . . or the granting or denying of building permits and certificates of zoning compliance." (Citations omitted.) *Holt* v. *Zoning Board of Appeals*, supra, 114 Conn. App. 22. "Unlike the situation in cases involving cease and desist orders or approvals and denials of applications, however, [the court is] left to speculate what legal effect or consequence, if any, [the zoning enforcement officer's] letter [had under the circumstances of the] case." Id. We agree with the Appellate Court in *Holt* that, when a zoning enforcement officer's letter is contingent on future events—that is, a proposed future use of the landowner's property—that letter is not a decision from which a landowner can appeal.

We distinguish *Holt* from the present case, however. In *Holt*, the zoning enforcement officer's letter clearly advised the landowner on a hypothetical situation. It was advisory, in the literal sense, "informing [the previous landowner] that a single-family residence could be built on it if the necessary permits were obtained."[11] Id., 22. In other words, notwithstanding the letter, the landowner was required to obtain permits and a certificate of zoning compliance in order to build a single-family residence. Thus, from a procedural and prudential standpoint, the Appellate Court reasoned, it would be improper to allow an appeal from a letter premised on a future use that had yet to occur, especially when the landowner could appeal from a future denial of a permit or a certificate of zoning compliance. By comparison, the September letter in the present case concerned an existing use of the plaintiff's property, namely, the burial of her husband. The zoning compliance officer's letter set forth her (1) interpretation of the zoning regulations pertaining to the plaintiff's *existing* and *ongoing* use and (2) determination that the use violated the Chester zoning regulations. In order to remedy the violation, the only real options that the plaintiff was left

with after the September letter were to exhume her husband's remains or to appeal the zoning compliance officer's interpretation of the zoning regulations to the board. Thus, in contrast to the letter in *Holt*, the zoning compliance officer's interpretation of the zoning regulations in the September letter was not predicated on any future, contingent event.[12]

Accordingly, we hold that, when a landowner receives notice from a zoning compliance officer that the landowner's existing use of his or her property is in violation of applicable zoning ordinances or regulations, that interpretation constitutes a decision from which the landowner can appeal to the local zoning board of appeals pursuant to § 8-7 and, when applicable, pursuant to local zoning regulations. Put differently, when a landowner obtains a clear and definite interpretation of zoning regulations applicable to the landowner's current use of his or her property, the landowner properly may appeal that interpretation to the local zoning board of appeals. Conversely, when a zoning enforcement officer provides an interpretation that is contingent on future events, that interpretation will not be appealable, and the landowner must await a subsequent, final determination following that interpretation—e.g., the issuance of a certificate of zoning compliance—in order to appeal to the local zoning board of appeals.[13] In sum, when a zoning enforcement officer issues a letter notifying a landowner that he or she is in violation of the applicable zoning regulations, the landowner may appeal that interpretation regardless of whether the letter is accompanied by a cease and desist order or other remedial action.

This distinction aligns with the underlying purposes of requiring parties to exhaust administrative appeals before bringing actions in the Superior Court. See, e.g., *Stepney, LLC* v. *Fairfield*, supra, 263 Conn. 564 ("A primary purpose of the [exhaustion] doctrine is to foster an orderly process of administrative adjudication and judicial review, offering a reviewing court the benefit of the agency's findings and conclusions. It relieves courts of the burden of prematurely deciding questions that, entrusted to an agency, may receive a satisfactory administrative disposition and avoid the need for judicial review. . . . Moreover, the exhaustion doctrine recognizes the notion, grounded in deference to [the legislature's] delegation of authority to coordinate branches of [g]overnment, that agencies, not the courts, ought to have primary responsibility for the programs that [the legislature] has charged them to administer." [Citations omitted; internal quotation marks omitted.]). For example, in the present case, if the plaintiff had appealed to the board, and if the board had decided in the plaintiff's favor, she would not have needed to file the present action. If the board had decided the case against the plaintiff, the Superior Court would be presented with the reasons for the board's decision and

would have been able to make an informed decision as to whether the board had acted arbitrarily. See, e.g., *Bloom* v. *Zoning Board of Appeals*, 233 Conn. 198, 205–206, 658 A.2d 559 (1995) ("[w]e must determine whether the trial court correctly concluded that the . . . act [of the zoning board of appeals] was not arbitrary, illegal or an abuse of discretion").

Moreover, this distinction makes sense from a practical standpoint. The plaintiff was made aware on two occasions that the zoning compliance officer considered the ongoing use of her land a violation of the Chester zoning regulations. Although the zoning compliance officer withdrew the cease and desist order and did not inform the plaintiff of whether any further action actually would be forthcoming, the threat remained that the officer might take further action. In these and similar circumstances, a landowner would be best served if he were able to remove that threat by obtaining a final, binding determination from the zoning board of appeals regarding the use of the landowner's property, which, if necessary, the landowner could then appeal to the Superior Court.

Nevertheless, the plaintiff claims that the September letter was not a decision from which she could appeal. In support of her argument, the plaintiff adopts the reasoning of the dissenting opinion of the Appellate Court, in which the dissenting judge concluded as follows: "The word 'decision' . . . [in § 8-7] should be read . . . as implying an element of command and definiteness that is amenable to the filing of an appeal with the [board] and be framed in such a way that the property owner can reasonably understand, from reading the zoning regulations, that her next step is to file such an appeal. The zoning compliance officer's [September] letter . . . utterly fails this test.

* * *

"[Instead], the plaintiff was left in a position in which the only administrative sanction that had been issued—the cease and desist order—had been specifically withdrawn, yet the public official with responsibility to enforce the zoning regulations had expressed her opinion that the plaintiff's burial of her husband's remains violated those regulations and had advised the plaintiff to proceed by seeking a variance from the [board] 'or otherwise . . . .' "[14] *Piquet* v. *Chester*, supra, 124 Conn. App. 532–33 (*Borden*, *J.*, dissenting).

The plaintiff's reliance on this reasoning is misplaced because it construes the September letter too narrowly and selectively. Although we agree that the zoning compliance officer made it clear in the September letter that she was revoking the cease and desist order, nothing in the September letter indicated that the zoning compliance officer was also revoking, altering or amending her opinion that the plaintiff was violating the applicable

zoning regulations. Instead, the September letter provided that the applicable zoning regulation "does not specifically permit private burial or private cemeteries as a permitted . . . [u]se." The September letter further provided that the zoning compliance officer was withdrawing the previously issued cease and desist order "[i]n order to allow [the plaintiff] . . . sufficient time to remedy the situation . . . ." The final paragraph of the September letter reiterated the zoning compliance officer's opinion that "the purpose of the [w]ithdrawal [of the cease and desist order was] to give the parties time to remedy the *violation*. If the *violation* is not remedied, it may be necessary . . . to revisit the matter and determine what . . . further action . . . to take to *appropriately enforce* the Chester zoning regulations." (Emphasis added.)

Simply put, the September letter unequivocally provided that the zoning compliance officer (1) considered the plaintiff's ongoing use of her land a *violation* of the Chester zoning regulations, and (2) was revoking the previous cease and desist order for the sole purpose of allowing the plaintiff to pursue other remedies for the *violation*.[15] There can be no question that the September letter is replete with statements by the zoning compliance officer that the plaintiff's ongoing use of her land *violated* the Chester zoning regulations. Thus, the plaintiff had received, in the September letter, a clear and definite interpretation of the Chester zoning regulations regarding an existing use of her land. This interpretation constituted a decision, pursuant to § 8-7 and § 140G.1 of the Chester zoning regulations, from which the plaintiff could appeal to the board.[16] Accordingly, the plaintiff's failure to pursue this appeal and, thereby, to exhaust her administrative remedies left the trial court without jurisdiction over her action for a declaratory judgment.[17]

II

Alternatively, the plaintiff argues that, even if she could have taken an appeal to the board, she was excused from exhausting her administrative remedies because doing so would have been futile. See, e.g., *O & G Industries, Inc.* v. *Planning & Zoning Commission*, 232 Conn. 419, 429, 655 A.2d 1121 (1995) ("we consistently have recognized an exception to the exhaustion requirement [when] the available relief is . . . futile" [internal quotation marks omitted]); see also *Johnson* v. *Statewide Grievance Committee*, 248 Conn. 87, 104, 726 A.2d 1154 (1999) ("[F]utility is more than a mere allegation that the administrative agency might not grant the relief requested. In most instances, [this court has] held that the failure to exhaust an administrative remedy is permissible only when the administrative remedy would be useless." [Internal quotation marks omitted.]). In support of this claim, the plaintiff contends that the defendants clearly have stated their posi-

tion that private burial grounds are not permitted in the town. The plaintiff, however, misunderstands the proper application of the futility doctrine to her case.

The plaintiff has failed to allege adequately that an appeal to the board would be useless. Instead, the plaintiff's futility argument turns solely on the fact that the town and the planning and zoning commission already have expressed an intent not to approve or allow the burial site. The plaintiff has not asserted that an appeal to the board would be futile. Cf. *O & G Industries, Inc.* v. *Planning & Zoning Commission*, supra, 232 Conn. 429 ("[O]ur review of the record [and the procedural posture of the plaintiff's claim reveal] that the plaintiff's belief that it necessarily would be unavailing to [bring an administrative appeal is] purely speculative. It is futile to seek a remedy *only* when such action could not result in a favorable decision and invariably would result in further judicial proceedings." [Emphasis added.]). As the board, and not the planning and zoning commission, is the final administrative body that interprets and applies the Chester zoning regulations, the plaintiff's futility argument fails.[18]

III

Finally, the plaintiff claims that a declaratory judgment action is proper because she is challenging the validity of an ordinance or regulation and, therefore, is not required to exhaust her administrative remedies. Closer examination of the plaintiff's argument, however, reveals that she is challenging whether the use of her land is an accessory use under the Chester zoning regulations.

The plaintiff raised the same claim and reasoning before the Appellate Court, which held as follows: "The plaintiff . . . argues that she is contesting the validity, rather than the interpretation, of [the Chester] zoning regulations and that such a determination is excluded from the doctrine of administrative remedy exhaustion. Although the plaintiff asserts . . . that a declaratory action is the proper forum in which to challenge the validity of an ordinance or regulation . . . '[t]he only issue before the [trial] court was the clarity of the Chester zoning regulations on the issue of accessory use.' The issue clearly before the [trial] court was the zoning compliance officer's interpretation of the regulations concerning accessory use, not the validity of the regulations concerning accessory use." *Piquet* v. *Chester*, supra, 124 Conn. App. 521–22.

The plaintiff phrases this argument slightly differently before this court, but we find that it raises the same underlying question, that is, whether the plaintiff's use of her land was a permissible accessory use. "Generally, it is the function of a zoning board [of appeals] . . . to decide . . . whether a particular section of the zoning regulations applies to a given situation and the manner

in which it does apply. [In turn] [t]he [Superior] [C]ourt [must] decide whether the [zoning] board correctly interpreted the section [of the regulations] and applied it with reasonable discretion to the facts." (Internal quotation marks omitted.) *Alvord Investment, LLC* v. *Zoning Board of Appeals*, 282 Conn. 393, 408, 920 A.2d 1000 (2007). We agree with the Appellate Court that the plaintiff is actually challenging the proper interpretation of the Chester zoning regulations, which is a function of the board in the first instance. Accordingly, we reject this claim.

For the foregoing reasons, we conclude that the Appellate Court correctly concluded that the trial court lacked subject matter jurisdiction over the plaintiff's action for a declaratory judgment because the plaintiff had failed to exhaust her administrative remedies prior to bringing that action.

The judgment of the Appellate Court is affirmed.

In this opinion ROGERS, C. J., and PALMER and McLACHLAN, Js., concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] The zoning enforcement officer acts as the agent of the local planning and zoning commission, and, in the present case, the zoning compliance officer was acting on behalf of the defendant planning and zoning commission; *Piquet* v. *Chester*, 124 Conn. App. 518, 520 n.1, 5 A.3d 947 (2010); apparently, after the planning and zoning commission received notice of the burial from the state department of public health. In this opinion, we refer interchangeably to zoning compliance officers and zoning enforcement officers.

[2] Specifically, the cease and desist order provided in relevant part: "The Chester [z]oning [r]egulations do not allow for private burials on residential property." The cease and desist order further advised the plaintiff that, "upon receipt of this [order] you have [thirty] days to [comply] with the Chester [z]oning [r]egulations or [to] appeal [from] this [order] to the Chester [z]oning [b]oard of [a]ppeals."

[3] In the September letter, the zoning compliance officer notified the plaintiff of the zoning compliance officer's belief that the plaintiff's pending appeal to the board was untimely. The zoning compliance officer further stated: "In issuing [the] [c]ease [and] [d]esist order, I relied [on] provisions of [§] 40A of the Chester [z]oning [r]egulations which provide that 'except as expressly and specifically permitted by these [r]egulations, no land or improvement thereon within the [t]own shall be used for any purpose.' As I pointed out to your prior attorney, [§] 60 of the Chester [z]oning [r]egulations (which applies to the [r]esidential [d]istrict in which [your] property is located) does not specifically permit private burial or private cemeteries as a permitted [p]rincipal [u]se or as a [s]pecial [p]rincipal [u]se. A cemetery of a church or of a cemetery association having its principal office in the [t]own . . . is a [s]pecial [p]rincipal [u]se under [§] 60A.2 (I) of the Chester [z]oning [r]egulations, but I do not consider [your] property to qualify under that section of the [r]egulations.

"I have made the decision, however, that I do not wish to rely [on] the claimed untimeliness of your appeal or my interpretation of the [z]oning [r]egulations as the basis of further legal action . . . . Rather, I would prefer that the legal issues relating to your husband's burial on [your] property be resolved by the real parties in interest . . . .

"In order to allow you . . . sufficient time to remedy the situation, whether by your pending application for a [v]ariance or otherwise, I am hereby withdrawing the . . . [c]ease [and] [d]esist order.

* * *

"I must emphasize that the purpose of the [w]ithdrawal is to give the parties time to remedy the violation. If the violation is not remedied, it may be necessary for me to revisit the matter and determine what, if any, further action I would need to take to appropriately enforce the Chester [z]oning

[r]egulations."

[4] We also granted permission to the Planning and Zoning Section of the Connecticut Bar Association to file an amicus curiae brief. See footnote 9 of this opinion.

[5] The plaintiff makes one other claim, namely, that "[t]here is no factual basis in the record for an inference that the [t]own has no interest in disinterring the plaintiff's husband." It appears, however, that this argument challenges only a portion of the reasoning found in Chief Judge Flynn's concurrence to the Appellate Court's decision. See *Piquet* v. *Chester*, supra, 124 Conn. App. 526 (*Flynn*, *C. J.*, concurring). Because that aspect of the Appellate Court's decision is not implicated by our resolution of this appeal, we need not address the plaintiff's claim.

[6] General Statutes § 8-7 governs appeals to zoning boards of appeals and provides in relevant part: "The concurring vote of four members of the zoning board of appeals shall be necessary to reverse *any order*, *requirement or decision* of the official charged with the enforcement of the zoning regulations . . . . An appeal may be taken to the zoning board of appeals by any person aggrieved . . . ." (Emphasis added.)

[7] Section 140G.1 of the Chester zoning regulations provides that the board shall have the authority "[t]o hear and decide appeals where it is alleged that there is an error in any *order*, *requirement or decision* made by the [z]oning [c]ompliance [o]fficer . . . ." (Emphasis added.)

[8] We have determined previously, however, when the decision of a zoning board of appeals satisfies General Statutes § 8-8 for the purpose of bringing an appeal to the Superior Court from a decision of a zoning board of appeals or its equivalent.

General Statutes § 8-8 (a) provides in relevant part: "(1) 'Aggrieved person' means a person aggrieved by a decision of a board . . . .

"(2) 'Board' means a municipal zoning commission, planning commission, combined planning and zoning commission, zoning board of appeals or other board or commission the decision of which may be appealed pursuant to this section . . . ."

Furthermore, General Statutes § 8-8 (b) provides in relevant part: "[A]ny person aggrieved by any decision of a board . . . may take an appeal to the superior court for the judicial district in which the municipality is located . . . ."

"In *East Side Civic Assn.* v. *Planning & Zoning Commission*, 161 Conn. 558, 290 A.2d 348 (1971), [we] held that the trial court acted properly in dismissing for lack of subject matter jurisdiction the plaintiff's appeal from an approval of a site plan by the local planning and zoning commission. . . . [We] based [our] holding on the fact that [t]he action of the planning section [of the planning and zoning commission of the town of Hamden] in approving the revised site plans was merely one step to be taken in the scheme of the regulations; id., 561; and, therefore, the planning section's action, being preliminary and advisory, was nonbinding. Id., 561–62. . . . *East Side Civic Assn.* relied on the proposition from *Sheridan* v. *Planning Board*, 159 Conn. 1, 10, 266 A.2d 396 (1969), that no appeal lies from a planning board unless its action is binding without further action by a zoning commission or other municipal agency. . . . *East Side Civic Assn.* v. *Planning & Zoning Commission*, supra, 558." (Internal quotation marks omitted.) *Holt* v. *Zoning Board of Appeals*, 114 Conn. App. 13, 23–24, 968 A.2d 946 (2009).

[9] The Planning and Zoning Section of the Connecticut Bar Association filed, with our permission, a brief as amicus curiae, asking this court to resolve a perceived inconsistency between the Appellate Court's decisions in *Holt* and in this case. As our analysis in this opinion demonstrates, we do not view the reasoning in the two cases as inconsistent. In any event, our holding in the present case, which clarifies when a letter from a zoning compliance officer properly may be appealed to a zoning board of appeals, addresses the core concern of the amicus.

[10] "Section 8.10.2 of the [Stonington zoning] regulations . . . provides that '[a]ny person claiming to be aggrieved by any order, requirement, or decision made by the [z]oning [e]nforcement [o]fficer may appeal to the [z]oning [b]oard of [a]ppeals.' " *Holt* v. *Zoning Board of Appeals*, supra, 114 Conn. App. 18–19.

[11] Moreover, as the Appellate Court noted, "[u]nlike the situation in cases involving cease and desist orders or approvals and denials of applications . . . [the court was] left to speculate what legal effect or consequence, if any, [the zoning enforcement officer's] letter ha[d] [under the circumstances of the] case. [Holt did] not argue that she [could] construct a single-family

residence on her lot solely on the basis of the letter. She also [did] not argue that the letter was the equivalent of a building permit or a certificate of zoning compliance. [Holt], most importantly, [did] not even argue that [the zoning enforcement officer's] . . . letter had any binding effect on his power subsequently to approve or to deny her requests for a building permit or a certificate of zoning compliance in accordance with the zoning regulations." *Holt* v. *Zoning Board of Appeals*, supra, 114 Conn. App. 22–23.

[12] The September letter, unlike the cease and desist order, did not state that these options were available to the plaintiff. Nevertheless, as we explain further in this opinion, we conclude that the cease and desist order put the plaintiff on notice of these options, and nothing in the September letter suggested that they were no longer available to her.

[13] Thus, our clarification in this opinion of the proper interpretation of zoning enforcement officer letters does not overrule or otherwise alter the reasoning of the Appellate Court's decision in *Holt*.

[14] Additionally, we note that the dissent in the present case argues that, to ensure clarity, a zoning enforcement officer must announce in any letter interpreting zoning regulations whether the interpretation may be appealed. In other words, the dissent wants zoning enforcement officers to determine the subject matter jurisdiction of the Superior Court through talismanic language in a letter. We can dispose of this argument in one sentence. It is fundamental that the legislature, not an agency official, establishes the jurisdiction of the Superior Court; see, e.g., *Keller* v. *Beckenstein*, 305 Conn. 523, 537, 46 A.3d 102 (2012); and that a court must independently determine its jurisdiction over a case. See id., 531.

[15] We therefore reject the dissent's interpretation of the September letter because it conflates the revocation of the cease and desist order with the zoning compliance officer's interpretation of the zoning regulations. The zoning compliance officer's statements concerning a remedy must be viewed separately from the officer's statements that the plaintiff was in violation of the Chester zoning regulations.

We further note that the dissent claims that the September letter was ambiguous, even though it contained ample language advising the plaintiff of an ongoing violation of the Chester zoning regulations. See footnote 3 of this opinion. Indeed, the dissent fails to explain the import of the word "violation" in the September letter. It is immaterial that the September letter contained additional language indicating that the zoning compliance officer was not taking action despite the violation because we are concerned solely with the definiteness of the officer's interpretation of the zoning regulations as they pertained to the plaintiff's existing, ongoing use of her land. The dissent does not dispute the definiteness of this language, and, therefore, the dissent's focus on the language indicating that the zoning compliance officer was withdrawing the cease and desist order is irrelevant. Moreover, the dissent's analysis focuses on the plaintiff's subjective understanding of the September letter. Indeed, the dissent states that "the September letter . . . did not unequivocally constitute a final decision from which *the plaintiff would reasonably understand* that *her* next step would be to file an appeal"; (emphasis added); and that "the plaintiff reasonably believed that there was nothing left to appeal . . . ." Even if it were possible to divine the plaintiff's understanding from the sparse record in this case, the dissent's argument is misplaced because only the objective, reasonable person test standard applies. See, e.g., *Bozrah* v. *Chmurynski*, 303 Conn. 676, 692–93, 36 A.3d 210 (2012) (reasonable person standard applies to zoning enforcement officer's belief that zoning violation exists). Accordingly, we reject this aspect of the dissent's argument as unsupported by precedent.

Moreover, the dissent's reasoning creates an untenable problem. For example, a zoning enforcement officer could issue a letter, like the one in the present case, that clearly states that a violation exists but leave open the remedial action to be undertaken. Under the dissent's rationale, the landowner could not appeal from that letter because, taken as a whole, the letter would be too indefinite. Nevertheless, the landowner's title would be clouded by the zoning enforcement officer's determination that the landowner's use of his or her property constituted a violation of the applicable zoning regulations. We reject the dissent's rationale because it is both unfair and unworkable.

[16] Furthermore, when the September letter is read in conjunction with the cease and desist order, it is evident that the plaintiff had adequate notice of the procedures available to her. The cease and desist order provided the plaintiff with notice of (1) the zoning compliance officer's interpretation of the zoning regulations, as it applied to the plaintiff's property, and (2) the

remedial option of appealing from the order to the board. We acknowledge the plaintiff's argument that the zoning compliance officer's September letter was conditional in the sense that the officer stated that, if the violation were not remedied through other means, it might "be necessary for [the officer] to revisit the matter and determine what, if any, further action" the officer would need to take to enforce the zoning regulations. Under the reasoning set forth by the Appellate Court in *Holt* v. *Zoning Board of Appeals*, supra, 114 Conn. App. 23–25, it might appear that this type of conditional language would not constitute a final decision from which the plaintiff could appeal to the board. For the reasons set forth in this opinion, simply because a letter or other notice from a zoning compliance officer contains conditional language does not necessarily render the notice unappealable. Only when conditional language concerns a future, rather than ongoing, use of a landowner's property will that interpretation be unappealable.

[17] We pause very briefly to address the dissent's remaining counterarguments. The dissent argues that, in light of our holding, it is improper for this court to resolve the issue on appeal because the trial court could adduce additional facts relevant to whether the zoning compliance officer intended the September letter to be an appealable decision. The dissent's argument is unsupported by precedent and the posture of this case. First, in support of the need to remand the case, the dissent relies entirely on *criminal* cases implicating due process concerns. In the present case, no due process claim has been made and no new rule has been promulgated. We are merely interpreting a letter from the zoning compliance officer and determining that it constituted a decision and was therefore appealable to the board. We are not changing the law as we did in *State* v. *Salamon*, 287 Conn. 509, 531–32, 542, 949 A.2d 1092 (2008). Moreover, it is entirely unclear what the dissent expects that a remand would accomplish. The dissent suggests that the trial court could receive the testimony of the zoning compliance officer regarding her subjective intent. Again, the dissent disregards the objective, reasonable person standard applicable to the case. What the author of the letter subjectively believes does not matter. Only the understanding of a reasonable reader matters, which is a question of law. More importantly, we are perplexed why the dissent is advocating a process that neither party has suggested in this case and, accordingly, reject this approach.

Notwithstanding the dissent's contention that a remand is proper, the dissent concludes that the September letter was not a decision. In reaching this conclusion, the dissent fails to comprehend the meaning of the term "contingent." We refer the dissent to footnote 16 of this opinion. In any event, we find it incomprehensible that the dissent can conclude that the September letter was not appealable immediately after contending that such a conclusion is improper at this juncture. The dissent apparently believes that "it really is possible to have one's cake and eat it too . . . ." *Electrical Contractors, Inc.* v. *Dept. of Education*, 303 Conn. 402, 471 n.8, 35 A.3d 188 (2012) (*Harper, J.*, concurring in part and dissenting in part).

[18] For the same reason, the plaintiff's argument that the board cannot grant her requested relief must be rejected.