EVELEIGH, J., concurring in part and dissenting in part. In these cases involving actions filed against, inter alia, the named defendant, the town of Cheshire (town), over a sinkhole that developed near the properties of the plaintiffs, Craig Ugrin, Samantha Ugrin, William Baker and Lisa Baker, I agree with parts I and II of the majority opinion and concur with respect to those two parts. I respectfully disagree with the majority's conclusion in part III of its opinion, namely, "that the trial court properly granted the town's motions for summary judgment . . . ." I further disagree with the majority's conclusion that, "to the extent the town may have had a duty to inform the plaintiffs and the public regarding the information in [reports concerning the presence of a discontinued barite mine and sinkholes caused by the mine underneath, and in the vicinity of, residential properties prior to their purchase by the plaintiffs], the duty was discretionary. The town thus is not liable for its possibly negligent acts or omissions with respect to the reports, and we conclude that the trial court properly granted the town's summary judgment motions . . . ." In my view, the duty to warn was ministerial, and the manner in which the duty was performed was discretionary. Therefore, I respectfully dissent only from part III of the majority opinion.

As noted by the majority, *Violano* v. *Fernandez*, 280 Conn. 310, 323, 907 A.2d 1188 (2006), directs that "ministerial acts are those acts required by a city charter provision, ordinance, regulation, rule, policy, or other directive." Further, in *Martel* v. *Metropolitan District Commission*, 275 Conn. 38, 50, 881 A. 2d 194 (2005), the plaintiff alleged that "the defendants were negligent in their: (1) design, supervision, inspection and maintenance of the trail on which the plaintiff was injured; (2) failure to warn recreational users of the trail's dangerous and unsafe condition; and (3) failure to barricade or close the trail." We stated that, "[a]bsent evidence of such a policy or directive . . . the [defendants], in determining whether to supervise, inspect and maintain the trails . . . and when to mark, close or barricade the trails, if at all, were engaged in duties that inherently required the exercise of judgment." Id.

In the present case, in count one of the plaintiffs' complaint, the plaintiffs alleged that the town "failed to warn the public, including realtors, residents and prospective purchasers, of the existence of the mines, the mine report and all other reports concerning the existence of and dangers posed by the mine." I agree with the majority that "warning of the dangers posed or requiring remediation of the hazardous condition prior to their development was a legal impossibility." I further agree that "although [a letter written by the

town's counsel, John K. Knott, Jr., encouraging the town to make certain reports addressing the sinkholes and the plaintiffs' properties available to the public, but advising the town against placing any information regarding the mines in the town land records] could have formed the basis for a ministerial act . . . the letter contained no directive of the type required to support a finding that the town had a duty to notify the public or the plaintiffs of the information in the report." (Citation omitted.) Indeed, the Knott letter is much too equivocal to be labeled a directive.

On November 9, 2004, Michael Milone, the town manager, sent a memorandum to various department heads containing the following language: "As you know, over the last year there has been significant discussion about the nature and extent of [b]arite [m]ines in [the town]. As a result of discussions with the [t]own [c]ouncil's [s]olid [w]aste [c]ommittee and the full [t]own [c]ouncil, they have directed me to ensure that each of your respective offices have as complete a file as possible on [b]arite [m]ines. To this end, please maintain a [b]arite [m]ine file with the documents being transmitted with this memorandum, even if they are duplicative of existing files. Naturally, please ensure that this file is available to anyone from the public who wishes to know more about the history of [b]arite [m]ines in [the town].

"The documents that I am transmitting consist of the following:

"1. 'Nature & Extent of 19th Century Mining Operations, William Peck Barite Mine, Skabeikis Property, Cheshire, Connecticut' for Robert L. Jones & Assoc[iates] by Ronald M. Hedberg, 11 May 1992

"2. 'Chesire Town-Wide Investigation of Mines and Adits' [p]repared by: Robert Jones & Assoc[iates], September 30, 1993

"3. 'Subsidence Information for Underground Mines—Literature Assessment and Annotated Bibliography,' Information Circular 9007, United States Dep[artment] of the Interior, Bureau of Mines

"4. 'The Barite Mines of Cheshire,' by C. E. Fritts, by the Cheshire Historical Society, September 1962

"5. 'Landscape Archeology of the Jinny Hill Mining District, Town of Cheshire, Connecticut,' [a] final report submitted to the [Connecticut] [s]tate [h]istorical [c]ommission and the National Park Service, by Robert M. Thorson and Greg Brick, June 10, 1996

"Please note, and make this clear to anyone making an inquiry, that the [t]own makes no assurance that this file represents the full extent of all reports dealing with [b]arite [m]ines in [the town]. Please also note that there are maps of the referenced sites on file in the [p]lanning [d]epartment, but they are simply too expensive to duplicate and include with each of these files.

Mining leases are also on file in the [p]lanning [d]epartment. Please make the public aware of these additional pieces of information. Also, please note that if any further information is made available to any of your departments, please let me know so that it can be duplicated and transmitted to each of the other departments among us.

"Thank you for your assistance and cooperation to ensure that each department's files are identical." This memorandum was attached to Milone's affidavit submitted in connection with the town's motion for summary judgment.

When Milone instructed the department heads to "[p]lease make the public aware of these additional pieces of information," I would interpret this phrase as a directive. In accord with *Violano* and *Martel*, I would conclude that Milone's memorandum constituted a directive to warn the public.[1] Thus, the duty to warn was ministerial. The manner in which each department performed this ministerial duty was discretionary. See *Soderlund* v. *Merrigan*, 110 Conn. App. 389, 955 A.2d 107 (2008). The department heads, however, were required to act in some manner to carry out Milone's directive. In my view, placing these materials in a file cabinet, without more, would not comply with Milone's memorandum. The directive instructed the department heads to please make the public aware of these additional pieces of information; the directive did not state that the department heads should only tell those members of the public who had a question or specifically inquired of the departments regarding the mines. At the very least, once it was determined that the duty was ministerial, as I would conclude, the issue of whether the department heads' actions complied with that memorandum is one of fact for the jury, and the actions are not the proper subjects for summary judgment.

Accordingly, I would conclude that the trial court should not have granted summary judgment on the ground of governmental immunity on count one of the plaintiffs' complaint. I would therefore reverse the judgment of the trial court as to count one and remand the matter to the trial court for further proceedings. Therefore, I respectfully dissent.

[1] The majority asserts that, "[o]n appeal, the exclusive basis for the plaintiffs' claim that there was a directive creating a ministerial duty to act was Knott's letter to the solid waste committee . . . . Neither party mentioned Milone's memorandum in their briefs and arguments before [the trial] court or in their briefs to this court except in connection with the town's contention that it had made the mine report available to the public in various town offices. Accordingly, the dissent's reliance on the . . . memorandum is misplaced . . . ." See footnote 6 of the majority opinion. Milone's affidavit and memorandum were attached to the town's motion for summary judgment and were, therefore, before the trial court in deciding the motion for summary judgment and are now part of the record before this court. On appeal, the plaintiff asserts, inter alia, that the trial court improperly granted summary judgment for the town. In conducting our plenary review of the plaintiff's claim, it is proper to look to the entire record before the trial court when deciding the motion for summary judgment, including Milone's affidavit and

memorandum.

The majority further claims that, "even if Milone's memorandum had been the basis for the plaintiffs' claim, Milone made clear in his affidavit dated July 29, 2008, which was submitted in connection with the town's motion for summary judgment, that the only directive he gave to the other town officials was 'to maintain copies of the reports described in the memorandum in their departments and to make sure that those documents were available to the public.' " Id. The majority relies on Milone's self-serving affidavit written years after the memorandum in preparation for litigation as determinative of whether it constituted a directive and created a ministerial duty to warn the public of the information contained in the reports. Such reliance is misplaced. The memorandum speaks for itself and, in my view, constitutes a directive.