MICHAEL C. DREWNOWSKI ET AL. *v.* PLANNING AND ZONING COMMISSION OF THE TOWN OF SUFFIELD ET AL.
(AC 44982)

Bright, C. J., and Prescott and Elgo, Js.

Syllabus

The plaintiffs appealed to the Superior Court from a decision of the defendant Planning and Zoning Commission of the town of Suffield, approving the defendant developer's special permit and subdivision applications for a proposed flexible residential development. The proposed development, which was to be located on a dead-end access road, to be known as Madigan Circle, would be accessed via an existing dead-end street, Limric Lane. The plaintiffs, who owned a home on Limric Lane, claimed, inter alia, that the commission improperly approved the construction of a dead-end street to access the new development that was in excess of the 1200 foot length limitation of the town's applicable subdivision regulation (§ 905 (c)). The Superior Court sustained in part the plaintiffs' appeal, concluding that the commission's approval of the applications, which included plans for the proposed Madigan Circle, violated the town's subdivision regulations. On the granting of certification, the developer appealed to this court. *Held*:

1. The Superior Court correctly determined that the commission misconstrued the town's zoning and subdivision regulations in approving the developer's special permit and subdivision applications and, accordingly, correctly sustained in part the plaintiffs' appeal:

a. The flexible residential development provisions of the town's zoning regulations (§ VI) did not supersede the restrictions found in the town's subdivision regulations, including the 1200 foot limitation on the length of dead-end streets and dead-end street systems that access planned subdivisions: the developer was required to obtain both a special permit and subdivision approval to build the proposed flexible residential development and, accordingly, was required to comply with all relevant portions of the zoning regulations and the subdivision regulations; moreover, contrary to the developer's assertion, the language in § VI (B) of the zoning regulations superseded only the dimensional requirements of the underlying zones, which included lot coverage, frontage and setbacks, not the subdivision regulations in their entirety; furthermore, the 1200 foot limit on the length of dead-end streets and dead-end street systems could not reasonably be construed as a dimensional requirement of the underlying zone pursuant to § 905 (c) of the subdivision regulations because such restriction was a general requirement applicable to all zones and to all subdivisions regardless of zone; additionally, permitting a longer access road did not logically further the stated goal of a flexible

residential development in clustering lots closer together, as it was inconsistent with a reduction in associated infrastructure, and such an interpretation also would be inconsistent with the commonsense safety concerns underlying the town's limitation on the length of dead-end streets and dead-end street systems, namely, traffic congestion and access for emergency vehicles.

b. The developer's contention that the length of the proposed access road was within the limit set forth in § 905 (c) of the subdivision regulations was untenable because such an interpretation would render meaningless, and effectively read out of the regulation, the term "dead-end street systems," which would violate well settled cannons of construction: pursuant to the applicable zoning regulation (§ II), Madigan Circle and Limric Lane, as proposed, would constitute a dead-end street system because they were both dead-end streets that were to be connected and were to share a single, common point of entrance and exit; moreover, the combined length of the two streets as measured from the edge of the connecting street, namely, South Main Street, would be in excess of the 1200 foot limitation of § 905 (c) of the subdivision regulations; furthermore, the commission's reliance on the opinion of its land use attorney indicating that Limric Lane, rather than South Main Street, should be considered the "connecting street" from which the length of Madigan Circle should be measured was misplaced because such opinion relied entirely on *Pappas* v. *Enfield Planning & Zoning Commission* (40 Conn. L. Rptr. 668), which interpreted a provision of another town's subdivision regulations that was readily distinguishable from the construction of the regulation at issue in the present case, as it did not include any reference to a dead-end street system; accordingly, the commission's approval of the developer's applications, which included a plan showing access to the development via Madigan Circle, was in contravention of the applicable regulations and, thus, was unreasonable and an abuse of its discretion.

2. The developer's contention that the commission's approval of its applications was independently authorized pursuant to §§ 902 and 905 (a) of the subdivision regulations was unavailing:

a. Section 902 of the subdivision regulations did not provide an alternative basis for reversing the Superior Court and upholding the commission's approval of the developer's applications because, by its clear and unambiguous terms, § 902 addressed only the issue of ingress and egress to a subdivision and contained no language from which to reasonably conclude that it authorized a waiver of the street length requirements set forth in § 905 (c).

b. The developer's argument that the Superior Court improperly invalidated the commission's approval of its applications on the ground that the planned development was not on property that was "rear land surrounded by subdivided land," as required by § 905 (a) of the subdivision

regulations, was unpersuasive because, regardless of whether the property at issue was surrounded by subdivided land, § 905 did not provide independent authority on which the commission could have relied to approve the use of a dead-end street system exceeding 1200 feet and would not alter the fact that the proposed length of Madigan Circle exceeded the regulatory limit; moreover, although § 905 (c) did include express language authorizing the commission to grant a waiver of the 1200 foot limitation, all parties agreed that no such waiver was sought by the developer or granted by the commission.

(*One judge dissenting*)

Argued February 7—officially released July 18, 2023

Procedural History

Administrative appeal from the decision of the named defendant approving the special permit and subdivision applications for a flexible residential development submitted by the defendant Hamlet Homes, LLC, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *M. Taylor*, *J.*, sustained in part the plaintiffs' appeal and rendered judgment thereon, from which the defendant Hamlet Homes, LLC, on the granting of certification, appealed to this court. *Affirmed.*

Timothy S. Hollister, with whom were *Andrea L. Gomes* and, on the brief, *Ryan D. Hoyler*, for the appellant (defendant Hamlet Homes, LLC).

Scott R. Lingenfelter, for the appellees (plaintiffs).

Opinion

PRESCOTT, J. In this certified zoning appeal, the defendant Hamlet Homes, LLC,[1] appeals from the judgment of the Superior Court sustaining the administrative appeal of the plaintiffs, Michael C. Drewnowski and Kelly A. Drewnowski. The plaintiffs brought the underlying appeal from a decision of the Planning and

[1] The Planning and Zoning Commission of the town of Suffield was also named as a defendant in the underlying administrative appeal but has not participated in the appeal to this court. Accordingly, all references to the defendant in this opinion are to Hamlet Homes, LLC.

Zoning Commission of the town of Suffield (commission) approving the defendant's special permit and subdivision applications for a proposed, sixteen lot flexible residential development in Suffield (town). The defendant claims on appeal that the court improperly (1) determined that the length of the proposed dead-end access road for the new development exceeded the maximum length prescribed in § 905 (c) of the Suffield Subdivision Regulations (subdivision regulations) regarding dead-end streets or dead-end street systems, thereby rejecting the defendant's contention that the street length limitation was inapplicable because § VI (B) of the Suffield Zoning Regulations (zoning regulations) pertaining to flexible residential developments explicitly provides that generally applicable "dimensional requirements" are "superseded" with respect to flexible residential developments; (2) concluded that the commission had failed to make a finding of hardship needed to approve the defendant's applications pursuant to § 902 of the subdivision regulations; and (3) determined that the proposed development was not " 'surrounded by subdivided land' " so as to justify approval of the applications pursuant to an exception found in § 905 (a) of the subdivision regulations.[2] We are not persuaded and, accordingly, affirm the judgment of the Superior Court.

The following facts and procedural history are relevant to our resolution of this appeal. The commission is a combined planning and zoning commission with both administrative authority and legislative functions. The town's regulatory scheme includes a set of zoning regulations, of which § VI governs flexible residential

[2] Unless otherwise indicated, all references to the town's zoning regulations and the subdivision regulations are to the revisions of the regulations that were in effect in 2019, at the time the applications at issue were filed. See General Statutes § 8-2h (a); *Michel* v. *Planning & Zoning Commission*, 28 Conn. App. 314, 318, 612 A.2d 778, cert. denied, 223 Conn. 923, 614 A.2d 824 (1992).

developments, and separate subdivision regulations. On September 16, 2019, the defendant filed with the commission a special permit application[3] and an application for subdivision approval. The defendant sought approval of the applications by the commission in order to build a sixteen lot flexible residential development on approximately ten acres of a forty-one acre parcel of land located in an R-25 residential development zone off Limric Lane. Limric Lane is an existing dead-end road off South Main Street that services a ten lot flexible residential development that the defendant built in 2013. South Main Street is one of the town's principal roadways and the nearest major "through" street to the proposed development.[4] In accordance with the town's zoning regulations, the construction of a flexible residential development requires the commission to approve both a special permit application and an application for subdivision. See Suffield Zoning Regs., § VI (A) ("[t]he special permit for [a flexible residential development] would be approved prior to the subdivision approval; however, both would have a common public hearing").

As defined in the town's zoning regulations, a "flexible residential development" is "[a] residential development consisting of at least ten (10) acres with five (5) or more lots that allows smaller lots than those normally required by the underlying zoning district regulations in order to permanently conserve natural, scenic, or historic resources; provide open spaces for active or

[3] "A special permit allows a property owner to put his property to a use which the regulations expressly permit under conditions specified in the zoning regulations themselves." R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 1:6, p. 18.

[4] A "through street" is defined as "a street on which the through movement of traffic is given preference"; Merriam Webster's Collegiate Dictionary (11th Ed. 2014), p. 1303; in other words, a street with the right-of-way over vehicles entering it or crossing over it at intersections.

passive use; and, reduce infrastructure costs and impervious surfaces." Suffield Zoning Regs., § II. The definition of "flexible residential development" in the zoning regulations also contains a cross-reference to the definition for "cluster development," which is defined as follows: "A development design technique that is encouraged under Sec. VI . . . [of the zoning regulations] that permits a *reduction in lot area*, *frontage*, *and setback*, *and a reduction in associated infrastructure needs*, provided there is no increase in the overall density permitted for a conventional development, in return for the preservation of open space to be used for passive and/or active recreation or agricultural purposes, and the preservation of historically or environmentally sensitive features." (Emphasis added.) Id.

On October 21, 2019, the commission, at the defendant's request and in accordance with zoning regulations, held a "pre-application" conference with the defendant. At that time, the commission accepted the applications filed by the defendant and scheduled a public hearing for November 18, 2019.

The initial subdivision plans that the defendant filed with its applications proposed that the lots in the newly proposed flexible residential development would be accessed via a horseshoe shaped road that would begin on Limric Lane and then curve around to end near Limric Lane's existing cul-de-sac. Prior to the public hearing, however, the defendant, in response to informal input that it received from abutting property owners, commission members, and the town's conservation commission, revised its applications. One consequence of these revisions was a conversion of the proposed horseshoe shaped extension of Limric Lane into an irregularly shaped loop road, both ends of which, however, still began and ended on Limric Lane.

In response to inquiries about the defendant's applications made in advance of the public hearing, the

town's director of planning and development, William Hawkins, asked the commission's land use attorney, Carl Landolina, to review § 905 of the town's subdivision regulations and to provide the commission with a legal opinion as to how it properly should interpret and apply § 905 with respect to the defendant's pending applications. At that time, § 905 of the subdivision regulations provided in relevant part: "Dead-End Streets or Dead-End Street Systems will only be allowed under the following conditions:

"(a) To provide access to undeveloped rear land surrounded by subdivided land, or to solve a topographical problem . . . .

"(c) A dead-end street or dead-end-street system(s) shall be limited to twelve-hundred (1,200) feet as measured from the edge of the connecting street to the center of the proposed cul-de-sac unless waived by the Commission for severe topographic reasons or for the purpose of fulfilling Subdivision Regulation Sec. 801 when said street has public water and has no more than a total of . . . twenty (20) lots in the R-25 zone."

By letter dated November 14, 2019, Landolina opined that § 905 of the subdivision regulations permits subdivisions accessed by dead-end streets or dead-end street systems under certain conditions and that § 905 acts as an exception to the requirement, found in § 902 of the subdivision regulations, that a subdivision ordinarily must have two means of ingress and egress.[5] He explained that § 905 (c) limits the length of a dead-end street or dead-end street system to 1200 feet, which is measured from " 'the edge of the connecting street to

[5] Section 902 of the subdivision regulations provides: "Normally a subdivision shall have two means of ingress and egress. *In the case of physical or other hardship*, the Commission shall determine whether a subdivision will require two entrances and exits or a divided roadway for safety purposes." (Emphasis added.)

the center of the proposed cul-de-sac . . . .' " Landolina provided his interpretation of the term "connecting" street, which is not otherwise defined in the town's regulations. He opined that "a reasonable reading of the word 'connecting street' means an 'existing' street into which the proposed dead-end street connects. . . . In my view this would mean that once a dead-end street is proposed, constructed and accepted by the [t]own *it could become the connecting street for another proposed dead-end street*." (Emphasis added.) In reaching this conclusion, Landolina relied on a Superior Court decision that interpreted a similar provision in Enfield's subdivision regulations. See *Pappas* v. *Enfield Planning & Zoning Commission*, Superior Court, judicial district of Hartford, Docket No. CV-05-4010049-S (January 30, 2006) (40 Conn. L. Rptr. 668, 669–70).

Finally, Landolina advised the commission that, because the proposed loop road connected to Limric Lane at two points it "does not appear to meet the definition of a dead-end street . . . ." The town's zoning regulations define the term "dead-end street *or system*" in relevant part as a "street *or connected series of streets* with its only means of entrance or exit through one common point. . . ." (Emphasis added.) Suffield Zoning Regs., § II. Landolina's opinion letter did not address whether the commission properly should view the loop road and Limric Lane, which would share a single, common point of entrance and exit on South Main Street, as a "connected series of streets"; id.; that would constitute a dead-end street system.

At the November 18, 2019 public hearing, the commission's chairman, Mark Winne, indicated that Landolina's opinion regarding dead-end streets "pretty much shocked me. Because that certainly has not been our understanding of how our—how we interpret our regulations here forever." When Winne asked Hawkins during the hearing if, under Landolina's interpretation of

the regulations, this could result in a chain of dead-end streets, Hawkins responded, "Potentially." Hawkins qualified that, with respect to the defendant's current project, there was "no room" to put in any additional roads at a later date, but that he also found Landolina's opinion regarding § 905 of the subdivision regulations "surprising . . . ." A commission member also suggested that the regulations needed to be "tighten[ed] up . . . ."

Michael Drewnowski, who owns a home at 9 Limric Lane, appeared at the public hearing and voiced opposition to the defendant's applications, indicating that he had bought his home believing that the land the defendant now sought to develop would remain open space.[6] Other homeowners living on Limric Lane and South Main Street also appeared and raised additional concerns with the project. The commission continued the public hearing to December 16, 2019.

On December 2, 2019, the defendant revised its applications for a second time. This time, it converted the proposed loop road into a cul-de-sac or dead-end road. The newly proposed cul-de-sac would be named Madigan Circle and would begin at the same point on Limric Lane as the former loop road. Specifically, Madigan Circle would begin six hundred feet up Limric Lane from its intersection with South Main Street and then would run 760 feet to the center of its cul-de-sac rather than looping around to reconnect with Limric Lane

[6] Michael Drewnowski told the commission in relevant part: "We were told we were going to be surrounded by conservation lands and protected woodlands, no one could ever build across the street. We were told we own ten feet across the street, which we now know is a lie. . . . So, we all spent a lot of money to live on the street. Sounded like a great opportunity. And now I'm [in a] house that has a road that will have headlights going directly into my living room. It's really difficult to reconcile what . . . I was told, what I paid to live on this street, everything that we've put into our house to make it our dream house, and then to now have, to be like, thirty feet from a road that will have seventeen houses."

as originally planned. The defendant made this latest change in the plans largely in response to safety concerns voiced by some residents on Limric Lane, who complained that children often played in the existing cul-de-sac at the end of Limric Lane, the very point where the loop road had been designed to reconnect.[7]

On December 15, 2019, Michael Drewnowski sent the commission an email in which he argued that the defendant's revision—changing the access road from a loop road to a dead-end cul-de-sac—violated the town's subdivision regulations, which expressly limited the length of dead-end streets or dead-end street systems to 1200 feet. See Suffield Subdivision Regs., § 905 (c). In addition to the email, Michael Drewnowski appeared at the second public hearing held on December 16, 2019. He told the commission that he was concerned that the new road, which would begin directly across from his driveway, would negatively impact his property value.[8]

[7] The court states in its memorandum of decision that the commission had "reject[ed]" the horseshoe and loop road proposals, "which it deemed less appropriate and less safe than the cul-de-sac proposal . . . ." In support of that statement, the court cites to defendant's exhibits A and B, which are the maps showing the horseshoe and loop road configurations. The court does not cite to anything in the exhibits or return of record that actually supports its statement that the defendant changed the road design at the insistence of the commission. As the defendant states in its appellate brief, the record shows that the change from a horseshoe shaped road to a loop road was done "to remove one awkwardly shaped lot and preserve more trees," not because of safety concerns. The defendant represented to the commission that the change from the loop road to the cul-de-sac primarily was made because of safety concerns voiced by homeowners on Limric Lane. In any event, the record does not support that the changes in the access road were made to accommodate any preference voiced by the commission or that the commission "reject[ed]" the other proposed road designs.

[8] Hawkins addressed the commission about concerns regarding whether any existing driveways on Limric Lane located near the proposed intersection with Madigan Circle would violate § III (H) (1) (h) of the town's zoning regulations, which provides in relevant part that "[d]riveway openings shall be located no closer than seventy-five (75) feet from any roadway intersection. . . ." Hawkins told the commission that the regulation applied only to new driveways proposed as part of a subdivision plan and that there

The commission again continued the public hearing to January 27, 2020.

A final public hearing was conducted on January 27, 2020. The plaintiffs appeared and renewed their opposition to the defendant's applications. In particular, the plaintiffs indicated their disagreement with the legal opinion given by Landolina regarding § 905 (c) of the subdivision regulations because, in the plaintiffs' opinion, Landolina had disregarded the town's intent in enacting the regulation and its long-standing interpretation. The plaintiffs also maintained that the placement of Madigan Circle directly across from their home would negatively affect its value. Moreover, they challenged Hawkins' viewpoint that the regulations regarding driveway openings near roadway intersections did not apply to existing driveways such as the plaintiffs', which was only forty feet from Madigan Circle as proposed. See footnote 8 of this opinion. The commission then closed the public hearing.

On February 24, 2020, at the commission's next regular hearing, the commission unanimously voted to approve the defendant's applications with specific conditions.[9] The commission did not issue a formal statement of its reasons for granting the applications.[10]

were "several examples of new subdivision roads connecting to streets where existing house's driveways are within seventy-five feet of the new intersection."

[9] We note that the commission's conditional approval of the defendant's applications does not affect the finality of the judgment for purposes of an appeal. See *Finley* v. *Inland Wetlands Commission*, 289 Conn. 12, 23 n.10, 24, 959 A.2d 569 (2008).

[10] We do not disagree with the dissent that, "[i]n the absence of a statement of purpose by the zoning commission for its actions, it [is] the obligation . . . of this court upon review . . . to search the entire record to find a basis for the [zoning] commission's decision." (Emphasis omitted; internal quotation marks omitted.) Nevertheless, that standard of review does not permit this court to affirm a commission's decision that otherwise violates its land use regulations. Such a decision is illegal and cannot stand, regardless of any unstated, possible reasoning the board may have employed. In other words, we do not ascribe error to the commission because it failed to

On March 13, 2020, the plaintiffs commenced the underlying appeal in the Superior Court challenging the commission's approval of the defendant's applications. The plaintiffs claimed that the commission improperly (1) approved the use of a dead-end street or dead-end street system as an access road in excess of the 1200 foot limitation in § 905 of the subdivision regulations; (2) disregarded § III (H) (1) (h) of the zoning regulations by approving a roadway intersection closer than seventy-five feet from the plaintiffs' driveway; (3) acted on incomplete applications because (a) results by an engineer regarding soil drainage tests were missing and (b) the defendant failed to stake the centerline of all proposed streets; and (4) made no effort to protect the value of adjoining properties.

Shortly after the appeal was filed, the commission, acting in its legislative capacity; see *Arnold Bernhard & Co.* v. *Planning & Zoning Commission*, 194 Conn. 152, 164, 479 A.2d 801 (1984); voted to amend § 905 (c) of the subdivision regulations and the definitions in § II of the zoning regulations in an effort to clarify that connecting streets that ended in a cul-de-sac could not exceed 1200 feet in total measured from the nearest connecting "through" street.[11] Certainly, under the regulations as amended, there is no dispute that the commission would have been obligated to reject the defendant's

provide a statement of its reasons nor is the lack of a formal statement the basis for affirming the trial court's judgment overturning the commission's decision. Rather, we simply are unconvinced that the commission's construction of the regulations at issue is entitled to deference under the circumstances of the present case.

[11] Following the 2020 amendment, § II of the zoning regulations provided in relevant part: "DEAD-END STREET OR SYSTEM: A public or private street or connected series of streets with its only means of entrance or exit through one common point whether constructed at one time or not. The common point shall be an existing town or state road having means of ingress and egress through at least two points. (a 'through street'). A dead-end street or dead-end-street system shall be limited to a total length of twelve hundred (1,200) feet. (5-08-20). . . ."

applications as submitted because the center of the cul-de-sac at the end of Madigan Circle was more than 1200 feet from South Main Street.

The court, *M. Taylor*, *J.*, heard oral argument on the plaintiffs' appeal on March 26, 2021. Two days later, the court issued an order requesting "comments and references to the following: What was argued at the hearing, but seems absent from the briefing, is the fact that in fulfilling open space requirements of [§ 801 of the subdivision regulations], the commission appears to be able to waive the 1200 foot dead-end street requirement [if] there is a public water system and no more than twenty lots in an R-25 zone. [Suffield Subdivision Regs.] § 905 (c). Was this a part of the commission's decision to approve the [flexible residential development]? This discretionary waiver is eliminated in the recently amended regulation on dead-end streets. As amended, subsection (c), along with an added subsection (d) provides: 'A dead-end street or dead-end-street system shall be limited to a total length of [1200] feet as measured from the edge of the connecting through street as defined in the Suffield Zoning Regulations (see Dead End Street or System definition) (05/08/20). (d). No new dead-end street or streets may be connected to an existing dead-end street or street system, nor may any existing dead-end road be extended, if the resulting total length of new and existing dead-end streets exceeds 1200 feet in length. (05/08/20).' Is § 905, as amended, a part of the record?"

The parties each filed a memorandum in response to the court's order on April 14, 2021. The defendant stated in its memorandum that it "did not formally request a waiver under § 905 (c) [of the subdivision regulations], nor did the commission grant one." According to the defendant, it was unnecessary for it to request a waiver because the zoning regulation governing flexible residential developments provided that such regulation

superseded any " 'dimensional' " requirements of the underlying zone, which the defendant construes to mean that the commission is authorized to approve "the street layout that best serves the open space layout," even if it exceeded limits set forth in the town's subdivision regulations. The defendant also took the position in its response to the court that any amendments that the commission made to the town's regulations after approving the defendant's applications were properly part of the record before the Superior Court but that the amendments had no bearing on the appeal because any retroactive application is barred by General Statutes § 8-28b.[12]

In their memorandum, the plaintiffs agreed that no waiver was requested or granted and argued in the alternative that, even if the commission considered and implicitly granted a waiver, such action would have been improper because the power to grant a waiver

[12] General Statutes § 8-28b provides: "Notwithstanding the provisions of any general or special act or municipal ordinance, when an application, petition or request for approval of a subdivision plan for residential property has been filed with or submitted or made to the planning commission of any town, city or borough, or to any other body exercising the powers of such commission, accompanied by a subdivision plan and such other documents as may be required by the regulations of such commission or body, in form and content as to all essential matters as is specified in such regulations, or when any modification of such plan or other documents has been subsequently filed or submitted in connection with the same application, petition or request, which modification is in conformance with such regulations as of the time of filing of the original application, petition or request, neither such original application, petition or request nor such subsequent modification shall be required to comply with, nor shall it be disapproved for the reason that it does not comply with, any change in the subdivision regulations or the boundaries of zoning districts of such town, city or borough taking effect after the filing, submission or making of such original application, petition or request. If such subdivision plan or modification thereof is given final approval, any change in the subdivision regulations made between the time of filing, submitting or making of such application, petition or request and the time of such final approval shall, as to such plan or modification thereof and the land shown thereon, be deemed to take effect following such final approval."

lies with the zoning board of appeals, not the commission. The plaintiffs further agreed that the amendments to the regulations were part of the record to be considered by the court on appeal but argued that § 8-28b was inapplicable because the amendments made by the commission were not a " 'change' " but a "clarification so that the subdivision regulation read as intended."

On May 3, 2021, the court issued a memorandum of decision sustaining in part the plaintiffs' appeal. The court first concluded that the commission's approval of the applications with the proposed Madigan Circle cul-de-sac violated the town's subdivision regulations. In addressing the commission's decision to approve a new subdivision without two means of ingress and egress, the court concluded that the commission had discretion pursuant to § 902 of the subdivision regulations to permit a subdivision with a single means of ingress and egress in the " 'case of physical or other hardship . . . .' " The court concluded, however, that the record did not reflect that the commission ever made any finding of hardship, in the absence of which "the exception [in § 902] appears to be inapplicable." The court also determined that, independent of the exception in § 902, § 905 (a) of the subdivision regulations also authorized approval of a dead-end street to solve a topographical problem or to "provid[e] 'access to undeveloped rear land surrounded by subdivided land . . . .' " The court observed, however, that the record did not contain substantial evidence showing that either of these exceptions in § 905 applied to the defendant's applications or that the commission had relied on either exception as a basis for approving the applications.

The court then turned to what it described as the "crux" of the parties' dispute, namely, how the length of a dead-end street is to be measured. Prior to its amendment, § 905 (c) of the subdivision regulations

provided in relevant part that "[a] dead-end street or dead-end-street system(s) shall be limited to twelve hundred (1,200) feet as measured from the edge of the connecting street to the center of the proposed cul-de-sac . . . ." The court rejected the commission's reliance on Landolina's opinion that the " 'connecting street' " in this matter was Limric Lane and, therefore, because the distance from Limric Lane to the center of the Madigan Circle cul-de-sac was only 760 feet, it fell within the regulatory framework.

The court then distinguished the *Pappas* case that Landolina had relied on; see *Pappas* v. *Enfield Planning & Zoning Commission*, supra, 40 Conn. L. Rptr. 668; and concluded that Landolina's analysis of the regulation—which the commission seemed to have adopted—ignored or rendered superfluous the regulation's inclusion of the term "dead-end street 'system.' " See Suffield Subdivision Regs., § 905 (c). The court determined that a dead-end street system "denotes an interdependent network of combined dead-end roads" and that Madigan Circle and Limric Lane met this definition. Measured from the start of Limric Lane at South Main Street to the center of the Madigan Circle cul-de-sac, the length of this dead-end street system was 1360 feet, which was in excess of the 1200 foot limit. The court noted that, although § 905 (c) of the subdivision regulations contained a waiver provision that might have allowed the commission to approve an access road exceeding 1200 feet for a subdivision with a public water system and less than twenty lots in a R-25 zone, the parties were in agreement that such a waiver neither was sought by the defendant nor raised by the commission as a basis for its approval of the defendant's applications. The court rejected the plaintiffs' remaining contentions raised in their appeal.[13] In sum, the court

[13] In particular, the court concluded that the commission had not misinterpreted its regulations with respect to the placement of Madigan Circle less than seventy-five feet from the plaintiffs' existing driveway, effectively defer-

sustained in part the plaintiffs' appeal and reversed the commission's approval of the defendant's applications.

The defendant filed a timely motion to reargue. The defendant argued, inter alia, that the court had failed to address its argument that the zoning regulations governing flexible residential developments contained explicit language superseding any "dimensional" requirements in the subdivision regulations, which, the defendant contends, includes the 1200 foot street length limitation at issue. The court denied the motion to reargue without comment. The defendant timely petitioned for certification to appeal, which this court granted. This appeal followed.

After filing its appeal, the defendant filed a motion for articulation pursuant to Practice Book § 66-5 in which it asked the Superior Court to address its argument regarding the "supersed[ing]" language found in the zoning regulations governing flexible residential developments; namely, that all applicable "dimensional requirements" are "superseded" with respect to flexible residential developments pursuant to § VI (B) of the

ring to the commission's determination that the regulation regarding driveway placement applied only to new proposed driveways, not to existing ones. The court also rejected the plaintiffs' claim that the commission should have rejected the defendant's applications as incomplete, agreeing with the defendant that the particular application requirements at issue were directory, not mandatory, and that any noncompliance was nonetheless harmless. Finally, the court rejected the plaintiffs' claim that, in approving the defendant's applications, the commission abused its discretion by failing to consider four issues raised by the plaintiffs: negative impact on the property values of nearby homes, preservation of existing scenic views, elimination of buffer areas, and the destruction of habitat of the Northern Harrier Hawk. The court concluded that the record reflected that the commission had, in fact, properly considered the first three of these issues and, with respect to the fourth, determined that habitat protection was not within its purview but was in that of the town's conservation commission, which already had approved the plan. The plaintiffs do not challenge these other aspects of the court's decision on appeal as adverse rulings that this court should consider in the event it agrees with the defendant's claims. See Practice Book § 63-4 (a) (1) (B). Accordingly, we need not address them.

zoning regulations. The court granted the defendant's motion and issued an articulation. The court concluded that it was "unclear" whether the term "dimensional requirements" included the 1200 foot street length limitation. The court nevertheless reasoned that the express and specific limitation in the subdivision regulations regarding the maximum length of dead-end streets should control over the more general "supersed[ing]" provision found in the zoning regulation.[14] The court noted that, although the commission had the express authority to waive the subdivision regulation under certain circumstances, it had not followed the requirements for doing so in the present case.

Before turning to our discussion of the defendant's claims raised in the present appeal, we first set forth the governing principles of law, including our standard of review. "In traditional zoning appeals, the scope of judicial review depends on whether the zoning commission has acted in its legislative or administrative capacity." (Internal quotation marks omitted.) *Kaufman* v. *Zoning Commission*, 232 Conn. 122, 150, 653 A.2d 798 (1995). In considering either an application for a special permit or an application for subdivision approval, a commission acts in an administrative capacity. See *Reed* v. *Planning & Zoning Commission*, 208 Conn. 431, 433, 544 A.2d 1213 (1988) (subdivision); *A.P. & W. Holding*

[14] The court stated in relevant part: "In the present matter, the court finds that [the zoning regulation regarding flexible residential developments] encroaches upon a specific provision within the inherent authority of the . . . subdivision regulations, involving the maximum length of dead-end streets. . . . As such, the combined [commission] acted ultra vires, absent a waiver, as specifically provided by the subdivision regulations and as authorized and required by statute." (Citation omitted.) Although the defendant argues on appeal that the court's analysis improperly failed to recognize that a "zoning regulation generally controls over [a] subdivision regulation," we need not wade into that particular swamp because, as discussed subsequently in this opinion, we conclude that the "supersed[ing]" language of § VI (B) of the zoning regulations is inapplicable and, therefore, not in conflict with § 905 (c) of the subdivision regulations.

Corp. v. *Planning & Zoning Board*, 167 Conn. 182, 184–85, 355 A.2d 91 (1974) (special permits). "Generally, it is the function of a zoning board or commission to decide within prescribed limits and consistent with the exercise of [its] legal discretion, whether a particular section of the zoning regulations applies to a given situation and the manner in which it does apply. The [Appellate Court and] trial court . . . decide whether the board correctly interpreted the section [of the regulations] and applied it with reasonable discretion to the facts. . . . In applying the law to the facts of a particular case, the board is endowed with a liberal discretion, and its action is subject to review by the courts only to determine whether it was unreasonable, arbitrary or illegal." (Citations omitted; internal quotation marks omitted.) *Irwin* v. *Planning & Zoning Commission*, 244 Conn. 619, 627–28, 711 A.2d 675 (1998).

"A special permit allows a property owner to use his property in a manner expressly permitted by the local zoning regulations. . . . An applicant may apply for a special permit from a zoning commission . . . and [i]t is well settled that [for a commission to grant] a special permit, an applicant must satisf[y] all conditions imposed by the regulations. . . . [A]lthough it is true that the zoning commission does not have discretion to deny a special permit when the proposal meets the standards, it does have discretion to determine whether the proposal meets the standards set forth in the regulations. If, during the exercise of its discretion, the zoning commission decides that all of the standards enumerated in the special permit regulations are met, then it can no longer deny the application. The converse is, however, equally true. Thus, the zoning commission can exercise its discretion during the review of the proposed special [permit], as it applies the regulations to the specific application before it. . . . In making such determinations, moreover, a zoning commission

may rely heavily upon general considerations such as public health, safety and welfare." (Citations omitted; internal quotation marks omitted.) *Boyajian* v. *Planning & Zoning Commission*, 206 Conn. App. 118, 124–25, 259 A.3d 699 (2021).

To the extent that the defendant's claim requires us to review the Superior Court's interpretation of the town zoning regulations, "our review is plenary. . . . Additionally, zoning regulations are local legislative enactments . . . and, therefore, their interpretation is governed by the same principles that apply to the construction of statutes. . . .

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning . . . [General Statutes] § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Citation omitted; internal quotation marks omitted.) *Moon* v. *Zoning Board of Appeals*, 291 Conn. 16, 20–21, 966 A.2d 722 (2009). "Whenever possible, the language of zoning regulations will be construed so that no clause is deemed superfluous, void or insignificant. . . . The regulations must be interpreted so as to reconcile their provisions and make them operative so far as possible. . . . [If] more than one construction is possible, we adopt the one that renders the enactment effective and workable and reject any that might lead to unreasonable or bizarre results." (Internal quotation marks omitted.) *Kraiza* v.

Planning & Zoning Commission, 304 Conn. 447, 454, 41 A.3d 258 (2012).[15] With these principles in mind, we turn to the defendant's claims.

I

The defendant first claims that the court improperly overturned the commission's approval of its applications on the ground that the length of the proposed access road for the new development unlawfully exceeded the 1200 foot maximum length prescribed in § 905 (c) of the town's subdivision regulations regarding dead-end streets or dead-end street systems. The defendant argues that language found in § VI (B) of the town's

[15] The dissent suggests that, in the present case, some degree of deference must be given to the board's interpretation of its land use regulations. We disagree. First, as the dissent acknowledges, we apply plenary review when interpreting the language of a town's legislative enactments, including land use regulations. See part II of the dissenting opinion. Furthermore, as the dissent also concedes, a board's interpretation of a regulation that has never been subject to judicial scrutiny is not entitled to deference. Id. The town's flexible residential development regulation has not been the subject of prior judicial scrutiny, so deference to the board regarding construction of its regulations is not warranted here. Although the dissent, quoting *Wood* v. *Zoning Board of Appeals*, 258 Conn. 691, 699, 784 A.2d 354 (2001), argues that we "should" give deference to the board's interpretation of its regulation to the extent we determine that its construction of the regulation is equally plausible to our own, we do not agree that we are faced in the present case with two equally plausible interpretations of regulatory language. Furthermore, *Wood* does not compel deference to a board's construction, stating only that we "may" give deference. *Wood* v. *Zoning Board of Appeals*, supra, 699. We perceive no reason to do so here. Such deference is particularly ill-advised here given that the record suggests that the board's approval of the present applications was perceived by some members of the board, including the chairman, as departing from how the board has interpreted its regulations in the past. This notion is further bolstered by the fact that, soon after approving the present applications, the board, acting in its legislative capacity, amended its regulations in a manner that would have made the approval of a similarly designed plan in the future unlikely. Finally, it is difficult to defer to a construction purportedly adopted by the agency in the present case in which, as noted by the dissent, we have no statement by the board about how it came to its decision to approve the applications, including whether its approval turned on a particular construction of the provisions at issue in the present case.

zoning regulations pertaining to flexible residential developments explicitly supersedes the street length limitation in § 905 of the town's subdivision regulations and, alternatively, that the length of the approved new access road was, in fact, less than the 1200 foot length permitted under the subdivision regulations. We are not persuaded by either contention and, instead, agree with the Superior Court that the commission misconstrued both the subdivision and zoning regulations.[16]

A

The defendant first contends that the flexible residential development provisions of the town's zoning regulations contain language that effectively supersedes restrictions found in the town's subdivision regulations, including a 1200 foot limit on the length of a dead-end street or dead-end street system used to access a planned subdivision. Our plenary review of the relevant regulatory provisions, however, leads us to a contrary conclusion.

The town's zoning regulations governing flexible residential developments provide that the town's purpose in authorizing this type of development is to provide an opportunity for "cluster or smaller lots than those normally required by these regulations" in order to, inter alia, preserve and provide open spaces for the present and future benefit of the town and its residents. Suffield Zoning Regs., § VI (A). A developer seeking to

[16] We note, at the outset, that we share the dissent's view that there are significant public policies that favor the construction of flexible residential developments and similar types of cluster developments. Nothing in the statutes cited by the dissent, however, authorizes a town's land use agencies to approve plans for a cluster development that would otherwise violate the existing and applicable land use regulations of the town. To the contrary, General Statutes (Rev. to 2019) § 8-2 (b) (3), although encouraging towns to "provide for cluster development," provides that towns should do so only "to the extent consistent with soil types, terrain, infrastructure capacity and the plan of conservation and development for the community . . . ."

build a flexible residential development must obtain both a special permit *and* subdivision approval. Id. In other words, a flexible residential development must comply with all relevant portions of both the zoning regulations and the subdivision regulations.[17]

In order to facilitate the smaller clustered lots needed to fulfil the stated purpose of a flexible residential development, the zoning regulations provide in relevant part that, if "the Commission approves a special permit for a [flexible residential development], the *dimensional requirements of the underlying zones* are hereby superseded in their entirety, except [as to the maximum number of units permitted] . . . ."[18] (Emphasis added.) Id., § VI (B). This language in the flexible residential development zoning regulations cannot, as suggested by the defendant, reasonably be read to mean that, with the one stated exception, the town's subdivision regulations are superseded "in their entirety . . . ." Id. If that were the case, there would be no need to obtain subdivision approval as required. Rather, the zoning regulation's "supersed[ing]" language is far more limited, providing only that the "dimensional requirements *of the underlying zones*" are superseded. (Emphasis added.) Id. The defendant insists that the term "dimensional requirements" must be construed to include the

[17] The defendant argues that zoning regulations have a hierarchical relationship to subdivision regulations in that a subdivision regulation that conflicts with a zoning provision is effectively unenforceable. See R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 10:7, pp. 300–301. Because, in our view, the relevant subdivision regulations and zoning regulations are not in conflict, we need not engage in an extensive discussion of this issue. We nevertheless take this opportunity to note that the 1200 foot limitation on the length of dead-end roads or dead-end road systems is not confined to the town's subdivision regulations but is also found in the town's zoning regulations in the definition for "dead-end street or system." Suffield Zoning Regs., § II.

[18] The precise parameters of this exception and the manner for calculating the number of permissible lots is detailed in the zoning regulations but is not relevant to the issues on appeal. See Suffield Zoning Regs., § VI (B).

1200 foot limit on the length of dead-end streets or dead-end street systems. We disagree.

Although the term "dimensional requirements" is not expressly defined in the zoning regulations pertaining to flexible residential developments or elsewhere in the town's zoning or subdivision regulations, that term is found in § IV (D) (4) of the zoning regulations, which is titled "General Dimensional Requirements." This is significant because, in construing the meaning of a regulatory provision, our rules of statutory construction direct us to consider not only the text of the particular regulation under review but also its relationship to other regulations. Subdivision (4) of § IV (D) consists of a chart listing the applicable dimensional requirements for each of the town's residential zones, including R-25. It must be noted that the term "dimensional requirements" as used in § VI (B) of the zoning regulations is immediately and directly qualified by the phrase "of the underlying zones." This creates a clear relationship between "dimensional requirements" and § IV (D) (4), which contains the dimensional requirements of the zone. The dimensions or dimensional requirements listed involve the minimum allowed size of the lot, the developmental area of the lot, lot coverage, frontage, the height of the residence, and the length of front, side, and rear setbacks. Suffield Zoning Regs., § IV (D) (4). Allowing adjustments to these particular dimensional requirements understandably would further the goal of allowing developers to cluster smaller lots together in a manner not normally allowed in a particular zone. These dimensional requirements of the various zones do not include any regulatory provisions regarding the length of roadways or any other aspects regarding ingress to and egress from the development. See id.

The limit on access road length cannot reasonably be construed as a dimensional requirement of the *underlying* zone, which, in this case, was R-25, because

it is a general subdivision requirement applicable in *all* zones and to all subdivisions regardless of zone. See Suffield Subdivision Regs., § 905 (c). Moreover, permitting a *longer* access road, unlike allowing smaller lot dimensions, does not logically further the stated goal of clustering lots closer together. We are aware that the zoning regulation's definition of "cluster development" refers to "associated infrastructure needs," which term arguably could be construed to include any access road servicing a cluster development; the definition nonetheless provides that flexible residential developments permit "a reduction" in such associated infrastructure. Suffield Zoning Regs., § II. Construing the town's regulations to permit the use of a dead-end road in a flexible residential development that *exceeds* mandated length limitations is inconsistent with a *reduction* in associated infrastructure. Additional road length increases both infrastructure costs and impervious surfaces, results that, as the dissenting opinion points out, flexible residential developments are intended to avoid. Although the dissent is correct to note that developers are required to submit plans showing all proposed roads and that road layout is part of the design process for a flexible residential development, these facts do not support a conclusion that the inclusion of design guidelines in the zoning regulations is in any way intended to supersede road length limitations. In other words, preferences for curvilinear street layouts and preservation of scenic views do not authorize noncompliance with road length limitations. Indeed, a development could have these features while still complying with the required road length limitations by avoiding the use of dead-end street systems. Nor is it common sense or obvious that the only means of following the guidelines is to increase road length beyond the maximum length allowed under the zoning and subdivision regulations. In sum, we reject the defendant's argument that the

flexible residential development zoning regulations superseded the subdivision regulation limiting the length of a dead-end street or dead-end street system to 1200 feet.[19]

Our construction is further buttressed by the fact that it is consistent with the commonsense safety concerns underlying the town's limitation on the length of a dead-end street or dead-end street system. Because such a street or street system provides only a single means of ingress and egress to the properties it serves, zoning authorities generally disfavor and seek to limit the length of such roads in order to reduce the number of residences or other structures, thereby reducing possible traffic congestion and safety concerns such as adequate and redundant access for emergency vehicles. See *Federline* v. *Planning Board*, 33 Mass. App. 65, 68–69 n.5, 596 N.E.2d 1028 (explaining that land use regulatory authorities often limit length of dead-end streets " 'because of a concern that the blocking of a dead-end street, as by a fallen tree or an automobile accident, will prevent access to the homes beyond the blockage particularly by fire engines, ambulances, and other emergency equipment' "), review denied, 413

[19] The dissent asserts that the board reasonably concluded that the "generally applicable dimensional requirement set forth in both the [zoning regulations] and the [subdivision regulations]" was completely superseded. We disagree because such a position stretches the language of the zoning regulation beyond jurisprudential limits. If the drafters had intended to completely supersede and render inapplicable any and all dimensional requirements found anywhere within the zoning and subdivision regulations, they presumably would have used more explicit language and/or defined the term "dimensional requirement" to ensure its intent was understood. Instead, the regulation provides only that if the commission approves a permit for a flexible residential development, "the dimensional requirements *of the underlying zones* are . . . superseded in their entirety," with one enumerated exception. (Emphasis added.) Suffield Zoning Regs., § VI (B). This language plainly and unambiguously directs the reader to look for the specific dimensional requirements of the particular zone in which the planned development will be built, not, more broadly, to any dimensional requirements found elsewhere in the town's regulatory scheme.

Mass. 1105, 600 N.E.2d 171 (1992). The defendant, on the other hand, would have us conclude that the commission, by enacting its flexible residential development scheme, intended to permit the commission to authorize the construction of a series of such developments, each accessed by a dead-end street branching from the previously approved development's existing dead-end street, thus resulting in a chain of dead-end streets, each street unlimited by regulation in total length. This would be an unreasonable and absurd result given the obvious traffic and safety concerns and, therefore, is an improper interpretation of the regulatory scheme before us.

B

The defendant argues in the alternative that the 1200 foot limitation is not implicated in the present case because, as the town's attorney, Landolina, opined before the commission, § 905 (c) of the subdivision regulation provides that the length of a dead-end street must be measured "from the edge of the connecting street," which the defendant argues in the present case is Limric Lane, the street onto which Madigan Circle connects. Measured from its starting point on Limric Lane, it is undisputed that Madigan Circle is only 760 feet in length. The access road for the new development exceeds the regulatory limit only if it is measured from the nearest through street, which, here, is South Main Street. Measured from South Main Street to the center of the cul-de-sac at the end of Madigan Circle, the road is 1370 feet in length. For the reasons that follow, we agree with the Superior Court that the defendant and Landolina's interpretation of § 905 (c) is untenable because it would render meaningless and effectively read out of the regulation the term "dead-end-street system(s)," which would violate well settled cannons of construction.

As previously noted, at the time of the commission's approval of the defendant's applications, § 905 (c) of the subdivision regulations provided in relevant part: "A dead-end street *or dead-end-street system(s)* shall be limited to twelve-hundred (1,200) feet as measured from the edge of the connecting street to the center of the proposed cul-de-sac unless waived by the Commission . . . ." (Emphasis added.) The dispute between the parties is the proper meaning of the term "connecting street."

"It is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions. . . . [I]n construing [regulations], we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a [regulation] is superfluous. . . . Because [e]very word and phrase [of a regulation] is presumed to have meaning . . . [a regulation] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant." (Internal quotation marks omitted.) *PJM & Associates, LC* v. *Bridgeport*, 292 Conn. 125, 138, 971 A.2d 24 (2009).

The regulation at issue instructs that measurements should begin "from the edge of the connecting street . . . ." Suffield Subdivision Regs., § 905 (c). It does not expressly state that the "connecting street" must be a *through* street. See id. Nevertheless, the regulation must be read as a whole; see *Borrelli* v. *Zoning Board of Appeals*, 106 Conn. App. 266, 270, 941 A.2d 966 (2008); and, thus, the term "connecting street" must be construed in conjunction with the additional language indicating that the 1200 foot limitation applies not only to a solitary dead-end street or cul-de-sac but to "dead-end-street system(s) . . . ." Suffield Subdivision Regs., § 905 (c). The town's zoning regulations define a "dead-end-street system" in relevant part as a "connected series of streets with its only means of entrance or exit

through one common point. . . .'' Suffield Zoning Regs., § II. Limric Lane and Madigan Circle are both dead-end streets that are connected and that share a single, common point of entrance and exit off South Main Street. As such, we agree with the court's conclusions that ''[a] dead-end street system denotes an interdependent network of combined dead-end roads'' and, ''therefore, that Madigan Circle and Limric Lane are a dead-end street system. . . . [T]he combination of these two dead-end streets [is] in excess of the 1200 foot limitation of § 905 (c) [of the subdivision regulations], as measured from the edge of the connecting street, which is South Main Street.'' (Footnote omitted; internal quotation marks omitted.) Accordingly, we reject the defendant's argument that the 1200 foot limitation in the regulations is not implicated in this case. To do so would be to read the term ''dead-end street system'' out of the regulations.

We also reject the commission's reliance on Landolina's legal opinion that Limric Lane, rather than South Main Street, was the ''connecting street'' and, thus, that the new access road's length properly was measured from Limric Lane. Landolina's opinion was made wholly on the basis of his interpretation of a Superior Court case construing a somewhat similar provision in Enfield's subdivision regulations. See *Pappas* v. *Enfield Planning & Zoning Commission*, supra, 40 Conn. L. Rptr. 669–70. Although the holding in *Pappas* is not binding on this court, we agree with Judge Taylor that *Pappas* is readily distinguishable and, thus, is not persuasive authority as to the proper construction of the regulation at issue.

In *Pappas*, the regulation provided that a cul-de-sac or dead-end street ''shall not be longer than [six hundred feet] measured from the center of the turnaround to the nearest street intersection.'' Id., 669. Enfield's commission interpreted the regulation as requiring that the

nearest street intersection must be a "through" street and not a preexisting cul-de-sac. Id. On appeal, the court in *Pappas* concluded that the Enfield commission had unreasonably construed the regulation because it effectively, and impermissibly, added into the regulation the word "through" to the term "street" and, by doing so, improperly rejected the application before it. Id., 669–70.

Landolina suggested that the commission here should avoid the error recognized in *Pappas* and measure the length of the proposed access road in the present case from its intersection with Limric Lane instead of from its intersection with South Main Street, which is a through street. The commission elected to follow Landolina's recommendation despite the fact that the result would be contrary to how the commission had interpreted the same regulation in the past, as evidenced by the comments of both the commission's chairman and the town's chief zoning official. The commission's decision to rely on Landolina's interpretation of the holding in *Pappas* was misplaced because, as aptly explained by the court in the present case, the decision in *Pappas* is readily distinguishable given the differences in the language of the two regulations at issue.

In *Pappas*, by interpreting the term "street" to mean "through street," the Enfield commission added an additional and substantively significant term to its regulatory framework. See id., 669. In the present matter, the same argument might be true but for the additional language in the town's subdivision regulations that was not in the regulations under review in *Pappas*. Specifically, as we have previously indicated, § 905 (c) of the subdivision regulations provides in relevant part that "[a] dead-end street *or dead-end-street system(s)* shall be limited to twelve-hundred (1,200) feet as measured from the edge of the connecting street to the center of the proposed cul-de-sac . . . ." (Emphasis added.)

Although the regulation refers to measurements from a "connecting street," not a "connecting through street," it also contains additional language that the 1200 foot limitation applies not only to "dead-end street[s]" but also to "dead-end-street system(s)"; Suffield Subdivision Regs., § 905 (c); which is language not found in the regulation under consideration in *Pappas*. See *Pappas* v. *Enfield Planning & Zoning Commission*, supra, 40 Conn. L. Rptr. 669. By following Landolina's recommendation, the commission effectively ignored or rendered superfluous the regulation's express applicability not only to dead-end streets but also to "dead-end-street system(s) . . . ." Suffield Subdivision Regs., § 905 (c).

In sum, we are not persuaded by the defendant's overbroad interpretation of "dimensional requirements" or by its contention that the length of the proposed access road properly fell within regulatory limits. Rather, we conclude that the commission's approval of the defendant's applications, which included a plan showing access to the development via a dead-end street system in excess of the 1200 foot limit was in contravention of applicable regulations and, thus, unreasonable and an abuse of its discretion.

II

Our conclusion in part I of this opinion does not end our review, however, because the defendant contends that the commission's approval of its applications was independently authorized under two other provisions of the subdivision regulations, §§ 902 and 905 (a).[20] We are not persuaded.

[20] The plaintiffs do not respond to these additional claims in their appellate brief. In its reply brief, the defendant argues that this failure to respond amounts to a waiver and a concession to the inaccuracy of the trial court rulings. The case the defendant cites in support of this argument, however, addressed the failure of the appellants in that case to adequately brief a claim of error they had raised on appeal. See *Connecticut Coalition Against Millstone* v. *Connecticut Siting Council*, 286 Conn. 57, 86–87, 942 A.2d 345 (2008). It is axiomatic that the appellant has the burden to prove any claim of error raised on appeal; the appellee has no concomitant or corresponding

A

First, the defendant claims that the commission had discretion to approve Madigan Circle, the planned access road, pursuant to § 902 of the subdivision regulations and that the court wrongly determined that the commission improperly exercised that discretion because the commission failed to make a finding of hardship. We are not persuaded.

As previously noted, § 902 of the subdivision regulations provides that "[n]ormally a subdivision shall have two means of ingress and egress. *In the case of physical or other hardship*, the Commission shall determine whether a subdivision will require two entrances and exits or a divided roadway for safety purposes." (Emphasis added.) The Superior Court agreed with the defendant's construction of the regulation to the extent that it grants the commission the discretion to determine, in light of the circumstances presented, if a single means of access, rather than the preferred two, will suffice. The court concluded that the commission's determination to approve access to the planned development via a dead-end street was not per se an abuse of its discretion in the present case because the commission reasonably could have concluded that any alternative plan, such as the abandoned horseshoe and loop roads, would, comparatively, have been less safe.[21] The court nevertheless concluded that the record does not

burden to disprove a claim. See *Harris* v. *Commissioner of Correction*, 271 Conn. 808, 842 n.24, 860 A.2d 715 (2004) ("[t]here is no rule . . . that an appellee's failure to reply in its brief to an issue raised by the appellant is an implicit concession that the appellant's claim is meritorious and that the claim should be decided in the appellant's favor"). Accordingly, the failure of an appellee to address or adequately brief a claim will not result in a "default" ruling in favor of the appellant; rather, we ordinarily will consider the claim solely on the basis of the appellant's brief and the record.

[21] As we previously noted in footnote 7 of this opinion, the court's statement in its decision that the commission "rejected two proposed plans with two means of access" is not borne out by the record.

reflect that the commission ever made any initial finding of hardship and that, without such a finding of hardship, any discretion or exception afforded the commission pursuant to § 902 was simply inapplicable.

The defendant maintains on appeal not only that the discretion afforded to the commission by § 902 of the subdivision regulations includes the discretion to authorize a subdivision with a single means of ingress and egress on the basis of land conditions and design considerations but also that this discretion "necessarily encompasses layout, design, *and dimensions* with safety being the ultimate criterion." (Emphasis added.) Thus, the defendant appears to argue that § 902 authorized the commission to approve a road that exceeds the limitation contained in § 905 (c) of the subdivision regulations by exercising its discretion to allow a single means of ingress and egress. The defendant also contends that it was improper for the Superior Court to invalidate the commission's approval on the ground that the commission never made a finding of physical or other hardship because the regulation does not mandate the making of such an express finding.

It is unnecessary for us to decide in the present case whether the commission in fact implicitly exercised discretion under § 902 of the subdivision regulations, or whether, in so doing, it implicitly made a finding of hardship because we disagree with the defendant's premise that § 902 provided the commission with independent authority to disregard the 1200 foot limit on the length of dead-end street systems. As we determined in part I of this opinion, the subdivision regulations prohibit a dead-end street system from exceeding 1200 feet. Suffield Subdivision Regs., § 905 (c). By its clear and unambiguous terms, § 902 addresses only the issue of ingress and egress to a subdivision and authorizes a commission to approve a subdivision having a single point of entrance and exit "[i]n the case of physical or

other hardship . . . .” Despite the defendant’s suggestion to the contrary, § 902 contains no language from which to reasonably conclude that it also authorizes a waiver of street length requirements. Accordingly, we reject the defendant’s claim that § 902 provides an alternative basis for reversing the Superior Court and upholding the commission’s approval of its applications.

B

Second, the defendant claims that the court improperly invalidated the commission’s approval of its applications on the ground that the planned development was not on property that is “rear land surrounded by subdivided land” as provided in § 905 (a) of the subdivision regulations. Again, we find the defendant’s arguments unpersuasive because we do not agree with the underlying premise that § 905 provides independent authority on which the commission could have relied to approve the use of a dead-end street system exceeding 1200 feet.

As previously noted, § 905 of the subdivision regulations provides in relevant part that the commission can approve a subdivision accessed via a dead-end street or dead-end street system but only if one of a few express conditions applies. One such condition is “[t]o provide access to undeveloped rear land surrounded by subdivided land . . . .” Id., § 905 (a). Another is “to solve a topographical problem . . . .” Id. The court agreed with the defendant that these provisions in § 905 (a) provided the commission with authority, independent of § 902 of the subdivision regulations, to authorize a subdivision accessed via a dead-end street but found that “there appears to have been no finding in the record of an approval based upon rear land surrounded by subdivided land or to solve a topographical problem.” The court noted that the defendant appeared to rely on

a map attached as exhibit C to its brief as supporting its assertion that the new development would be built on "rear land surrounded by subdivided land." The court concluded, to the contrary, that the map of the area showed only rear land "that is partially surrounded by subdivided land on three sides. The record, therefore, does not reflect substantial evidence that this exception would be applicable or that it was the specific basis of the commission's decision to approve the [applications]."

As with § 902 of the subdivision regulations, the defendant argues that § 905 of the subdivision regulations provides an independent basis to uphold the commission's approval of its applications. The defendant's argument falters, however, on the fact that subsection (a) of § 905, grants the commission the authority to approve the use of a dead-end street system only to access a planned subdivision that consists of "undeveloped rear land surrounded by subdivided land . . . ." It does not provide that any such dead-end street system does not have to comply with other regulations, such as the 1200 foot limitation. Accordingly, even if the defendant were correct that the Superior Court improperly determined that the land at issue was not "surrounded by subdivided land"; Suffield Subdivision Regs., § 905 (a); this would not alter the determinative fact that the length of the proposed access road exceeded regulatory limits. Furthermore, although subsection (c) of § 905 does include express language authorizing the commission to grant a waiver of the 1200 foot limitation, all parties agree that a waiver pursuant to this provision neither was sought by the defendant nor granted by the commission.

To summarize, we agree with the Superior Court that the commission improperly misconstrued the subdivision regulations by approving a dead-end street system in excess of 1200 feet. We also reject the defendant's

arguments that §§ 902 and 905 of the subdivision regulations provide alternative legal bases on which to uphold the commission's approval of the defendant's applications. Because the commission's approval of the applications was contrary to the town's regulations regarding the length of a dead-end street system, the court properly sustained the plaintiffs' appeal. Accordingly, we affirm the judgment of the Superior Court.

The judgment is affirmed.

In this opinion BRIGHT, C. J., concurred.

ELGO, J., dissenting. Flexible residential development, known also as cluster development,[1] is a land use practice intended "to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open lands . . . ." (Citation omitted; internal quotation marks omitted.) *Penfield Panorama Area Community, Inc.* v. *Penfield Planning Board*, 253 App. Div. 2d 342, 346, 688 N.Y.S.2d 848 (1999). It is a practice expressly authorized by our General Statutes; see General Statutes (Rev. to 2019) § 8-2 (a); General Statutes § 8-25 (c); which define a cluster development as "a building

[1] The Suffield Zoning Regulations (zoning regulations) define "cluster development" as "[a] development design technique that is encouraged under Sec. VI. Flexible Residential Development regulations, that permits a reduction in lot area, frontage, and setback, and a reduction in associated infrastructure needs, provided there is no increase in the overall density permitted for a conventional development, in return for the preservation of open space to be used for passive and/or active recreation or agricultural purposes, and the preservation of historically or environmentally sensitive features." Suffield Zoning Regs., § II. The zoning regulations similarly define "flexible residential development" as "[a] residential development consisting of at least ten (10) acres with five (5) or more lots that allows smaller lots than those normally required by the underlying zoning district regulations in order to permanently conserve natural, scenic, or historic resources; provide open spaces for active or passive use; and, reduce infrastructure costs and impervious surfaces. (See also 'Cluster Development'.)." Id.

pattern concentrating units on a particular portion of a parcel so that at least one-third of the parcel remains as open space to be used exclusively for recreational, conservation and agricultural purposes . . . .'' General Statutes § 8-18.

The principal issue in this appeal concerns the application, in the specific context of a cluster development, of a generally applicable dimensional requirement set forth in both the Suffield Zoning Regulations (zoning regulations) and the Suffield Subdivision Regulations (subdivision regulations). Because I believe that the Planning and Zoning Commission of Suffield (commission) properly could conclude that the dimensional requirement in question was superseded by those regulations, I respectfully dissent.

The relevant facts are not in dispute. The defendant Hamlet Homes, LLC,[2] owns a forty-one acre parcel of land in Suffield (parcel) that is located in the R-25 residential zoning district. As the Superior Court noted in its May 3, 2021 memorandum of decision, because the zoning regulations permit 25,000 square foot lots in the R-25 zone; see Suffield Zoning Regs., § IV (A) (1); the parcel qualified for ''standard development of between thirty (30) and forty (40) lots.''

The defendant did not pursue that standard development option. Instead, it sought a special permit for a flexible residential development in accordance with § VI of the zoning regulations, as well as subdivision approval therefor.[3] Notably, the subdivision regulations

[2] The Planning and Zoning Commission of Suffield was also named as a defendant in the underlying administrative appeal but has not participated in the appeal to this court. Accordingly, all references to the defendant in this dissenting opinion are to Hamlet Homes, LLC.

[3] As one commentator has noted, ''[c]luster development may be allowed under the regulations in most residential zones as an alternative form of development, or it may require property to be specially zoned . . . or [may be] allowed only with a special permit . . . .'' R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 4:44, p. 178; cf. *109 North, LLC* v. *Planning Commission*, 111 Conn. App. 219, 221, 959

do not contain *any* specific regulations or requirements regarding flexible residential development. Rather, the subdivision regulations incorporate by reference § VI of the zoning regulations.[4]

In its application, the defendant proposed a flexible residential development that consisted of sixteen residential lots and the deed of thirty-two of the forty-one acres to the town of Suffield as open space. As a result, 78 percent of the parcel would be dedicated to open space. Although various access configurations were proposed by the defendant and discussed with the commission and members of the public, the defendant ultimately settled on an access plan that would result in the creation of a dead-end street with a cul-de-sac known as Madigan Circle.

The zoning regulations provide in relevant part that "[a] dead-end street or dead-end-street system shall be limited to twelve-hundred (1,200) feet as measured from the edge of the connecting street to the center of the proposed cul-de-sac . . . ." Suffield Zoning Regs., § II. The subdivision regulations contain an identical provision that mirrors that requirement verbatim.[5]

The zoning regulations define a "dead-end street or system" in relevant part as "[a] public or private street or connected series of streets with its only means of

A.2d 615 (2008) (appeal involving municipality with specially zoned "cluster conservation subdivision districts"). In Suffield, a special permit is required for cluster development. See Suffield Zoning Regs., § VI (A).

[4] Section 703 of the subdivision regulations is titled "Flexible Residential Development (FRD)." It provides: "For subdivisions proposed in the R-90 and R-45 and R-25 zones on parcels of ten (10) or more acres with five (5) or more lots, or for those choosing to utilize Flexible Residential Development subdivision procedure, reference is made to Section VI of the Zoning Regulations." Suffield Subdivision Regs., § 703.

[5] Section 905 (c) of the subdivision regulations provides in relevant part: "A dead-end street or dead-end-street system(s) shall be limited to twelve-hundred (1,200) feet as measured from the edge of the connecting street to the center of the proposed cul-de-sac . . . ."

entrance or exit through one common point. . . .'' Id. Under the defendant's proposal, Madigan Circle would connect with Limric Lane, an existing dead-end street, 600 feet from where Limric Lane intersects South Main Street, a major thoroughfare in Suffield. The proposed length of Madigan Circle would run 760 feet from its connection with Limric Lane to the center of its cul-de-sac. Although the commission did not make any express findings when it acted on the defendant's applications, the court, in its May 3, 2021 memorandum of decision, concluded that the defendant's proposal would create a 1360 foot dead-end street system, in excess of the 1200 foot limitation contained in the regulations.[6] Neither party disputes that determination on appeal.

The commission held a public hearing on the defendant's applications for a special permit for a flexible residential development and subdivision approval over the course of three nights. At that hearing, Patrick Keane, vice chairman of the commission, explained in response to comments from members of the public that ''one of the benefits of [flexible residential development] and why [the commission] encourage[s] the developers to use that route, is we get more . . . open space, which is part of [Suffield's] allure . . . culture and heritage. So, we get more of that, the houses [in the development] get closer together and that's a win, potentially for [Suffield] and the adjacent neighbors if you see it that way. Remember, [in] the underlying [R-25] zone, this developer could put thirty or forty houses here, which [is] not what anybody really wants. So, there's tradeoffs that are happening here, and that's what the [flexible residential development] is for.'' During the public hearing, members of the public also raised the issue of whether the proposed length of Madigan

[6] As a result, this appeal, distilled to its essence, concerns the extension of Madigan Circle 160 feet beyond the general limitation for dead-end street systems contained in the regulations.

Circle exceeded the 1200 foot limitation for dead-end streets and dead-end street systems.

At its February 24, 2020 meeting, the commission conducted its deliberations on the defendant's applications. In those deliberations, commission members discussed a variety of issues, including the deed of the open space portion of the parcel to the Suffield Land Conservancy, the zoning regulations pertaining to driveways, and the potential presence of the Northern Harrier Hawk on the parcel. The issues of access to the proposed development, the length of the dead-end street to be known as Madigan Circle, or its connection to Limric Lane were not raised by any commission member, nor did the commission discuss the 1200 foot limitation contained in both the zoning regulations and the subdivision regulations. The commission then voted unanimously to approve the defendant's application for a special permit for a flexible residential development and its related application for subdivision approval.[7]

The plaintiffs, Michael C. Drewnowski and Kelly A. Drewnowski, owners of real property on Limric Lane, appealed from that decision to the Superior Court, claiming that the commission improperly approved the use of a dead-end street or dead-end street system as an access road in excess of the 1200 foot limitation set forth in the regulations.[8] In response, the defendant maintained that the flexible residential development

[7] Pursuant to § VI (A) of the zoning regulations, the commission was obligated to act on the defendant's application for a special permit for a flexible residential development prior to granting subdivision approval.

[8] The plaintiffs also claimed that the commission (1) improperly approved a roadway intersection closer than seventy-five feet from their driveway in contravention of § III (H) (1) (h) of the zoning regulations, (2) acted on incomplete applications and (3) failed to afford due consideration to existing property values, the preservation of scenic views, the habitat of the Northern Harrier Hawk, and the elimination of buffer areas. In its May 3, 2021 memorandum of decision, the Superior Court rejected those claims. The plaintiffs have not appealed the propriety of those determinations.

regulations, and § VI (B) of the zoning regulations in particular, superseded all dimensional requirements of the underlying zone, which authorized the commission to approve the dead-end street known as Madigan Circle proposed by the defendant. In its May 3, 2021 memorandum of decision, the court concluded "that Madigan Circle was approved by the commission in violation of the [subdivision] regulations," as it constituted a dead-end street system "in excess of the 1200 foot limitation as measured from the edge of the connecting street, which is South Main Street." The court did not address the defendant's claim regarding the applicability of the flexible residential development provisions of the zoning regulations.

The defendant filed a timely motion for reargument and reconsideration, claiming that the court's memorandum of decision "makes no mention of, and therefore does not decide, the . . . first and primary argument as to the source of the commission's authority to approve the street layout at issue in this appeal: the Flexible Residential Development . . . provision of the [zoning regulations] . . . ." (Emphasis omitted.) By order dated June 8, 2021, the court summarily denied that motion.

The defendant then filed a petition with this court for certification to appeal pursuant to General Statutes § 8-8 (o). This court granted the defendant's petition on September 8, 2021.

On November 15, 2021, the defendant filed a motion for articulation pursuant to Practice Book § 66-5, in which it asked the Superior Court to address the defendant's argument regarding the applicability of the flexible residential development provisions of the zoning regulations. On February 10, 2022, the court issued a memorandum of decision on that motion, in which it

concluded that the flexible residential development section of the zoning regulations "encroaches upon a specific provision within the inherent authority of the . . . subdivision regulations, involving the maximum length of dead-end streets." For that reason, the court concluded that the commission's "approval of the [defendant's special permit and subdivision] applications is . . . contrary to law." The defendant thereafter filed with this court an amended preliminary statement of the issues to include a challenge to that determination.

I

Resolution of the present appeal begins with the "threshold question regarding the proper scope of our review" of the action taken by the commission, as "[i]t is well settled that [w]hen a zoning [commission] states the reasons for its action, the question for the court to pass on is simply whether the reasons assigned are reasonably supported by the record and whether they are pertinent to the considerations which the commission is required to apply under the zoning regulations. . . . The court should not go behind the official statement of the [commission]." (Internal quotation marks omitted.) *Verrillo* v. *Zoning Board of Appeals*, 155 Conn. App. 657, 672–73, 111 A.3d 473 (2015). At the same time, "[i]n the *absence* of a statement of purpose by the zoning commission for its actions, it [is] the obligation of the [Superior Court], and of this court upon review of the [Superior Court's] decision, to search the entire record to find a basis for the [zoning] commission's decision." (Emphasis added; internal quotation marks omitted.) *Harris* v. *Zoning Commission*, 259 Conn. 402, 423, 788 A.2d 1239 (2002). That obligation stems from the "strong presumption of regularity" that attaches to municipal land use agency decision making.[9]

[9] The majority opines that "it is difficult to defer to a construction purportedly adopted by the [commission] . . . [when] we have no statement by the [commission] about how it came to its decision to approve the applications . . . ." Yet that necessarily is always the case when a commission has not provided "a formal, official, collective statement of reasons for its

Murach v. *Planning & Zoning Commission*, 196 Conn. 192, 205, 491 A.2d 1058 (1985); see also *Wood* v. *Zoning Board of Appeals*, 258 Conn. 691, 697–98, 784 A.2d 354 (2001) (plaintiff in administrative land use appeal bears

action"; *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, 220 Conn. 527, 544, 600 A.2d 757 (1991); as required by General Statutes § 8-3c (b). As this court has observed, "[w]e are hesitant to ascribe fault in that regard, as noncompliance with that statutory imperative is commonplace in practice and condoned by decades of appellate authority." *Parker* v. *Zoning Commission*, 209 Conn. App. 631, 684, 269 A.3d 157, cert. denied, 343 Conn. 908, 273 A.3d 694 (2022); see also *Rapoport* v. *Zoning Board of Appeals*, 301 Conn. 22, 34, 19 A.3d 622 (2011); *Harris* v. *Zoning Commission*, supra, 259 Conn. 420–23; *Paige* v. *Town Plan & Zoning Commission*, 235 Conn. 448, 464, 668 A.2d 340 (1995); *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 544–45; *Ward* v. *Zoning Board of Appeals*, 153 Conn. 141, 144, 215 A.2d 104 (1965); *Turek* v. *Zoning Board of Appeals*, 196 Conn. App. 122, 136–37, 229 A.3d 737, cert. denied, 335 Conn. 915, 229 A.3d 729 (2020); *Verrillo* v. *Zoning Board of Appeals*, supra, 155 Conn. App. 672–76; *Malone* v. *Zoning Board of Appeals*, 134 Conn. App. 716, 724, 39 A.3d 1233 (2012); *200 Associates, LLC* v. *Planning & Zoning Commission*, 83 Conn. App. 167, 177–78, 851 A.2d 1175, cert. denied, 271 Conn. 906, 859 A.2d 567 (2004). As one commentator notes, "Connecticut's various land regulation statutes all provide . . . that commissions 'shall' state the reasons for their decisions on the record. However, Connecticut courts have consistently refused to void decisions made without a statement of reasons, even though all these statutes use 'shall' rather than 'may.' " (Footnote omitted.) T. Tondro, Connecticut Land Use Regulation (2d Ed. 1992) pp. 473–74; cf. *Gagnon* v. *Inland Wetlands & Watercourses Commission*, 213 Conn. 604, 611, 569 A.2d 1094 (1990) (public policy reasons make it "practical and fair" for reviewing court to search record of "a local land use body . . . composed of laymen whose procedural expertise may not always comply with the multitudinous statutory mandates under which they operate").

In this regard, it bears emphasis that, in a land use proceeding like the present one, the commission is not a party to the proceeding; it is the trier of fact and ultimate decision maker. See *River Bend Associates, Inc.* v. *Zoning Commission*, 271 Conn. 1, 24, 856 A.2d 973 (2004); *Gardiner* v. *Conservation Commission*, 222 Conn. 98, 115 n.2, 608 A.2d 672 (1992). In all such cases, "the burden of overthrowing the [commission's] decision . . . rest[s] squarely upon the appellant." (Internal quotation marks omitted.) *St. Joseph's High School, Inc.* v. *Planning & Zoning Commission*, 176 Conn. App. 570, 602, 170 A.3d 73 (2017); see also *Clifford* v. *Planning & Zoning Commission*, 280 Conn. 434, 451, 908 A.2d 1049 (2006) (party challenging action of zoning commission bears burden of proving commission acted improperly); *Chouinard* v. *Zoning Commission*, 139 Conn. 728, 731, 97 A.2d 562 (1953) ("[t]he burden of proof is always on the plaintiff" who challenges zoning commission determination).

burden of demonstrating that land use agency acted improperly); *Hills* v. *Zoning Commission*, 139 Conn. 603, 608, 96 A.2d 212 (1953) (zoning commission action is entitled to "every reasonable presumption of validity"); *Levine* v. *Zoning Board of Appeals*, 124 Conn. 53, 57, 198 A. 173 (1938) ("[t]here is a presumption that [zoning agencies] have acted . . . upon valid reasons" (internal quotation marks omitted)); *Parker* v. *Zoning Commission*, 209 Conn. App. 631, 684–85, 269 A.3d 157 (in light of strong presumption of regularity applied to municipal land use proceedings, reviewing court presumes that land use agency made "all necessary findings that are supported by the record" when decision lacks specificity), cert. denied, 343 Conn. 908, 273 A.3d 694 (2022).

As our Supreme Court has explained, "[t]he principle that a court should confine its review to the reasons given by a [land use] agency" applies only "where the agency has rendered a formal, official, collective statement of reasons for its action." *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, 220 Conn. 527, 544, 600 A.2d 757 (1991); see also *Harris* v. *Zoning Commission*, supra, 259 Conn. 420–21 (noting that "cases in which we have held that the agency rendered a formal, official, collective statement involve circumstances wherein the agency *couples its communication of its ultimate decision with express reasons behind that decision*" (emphasis added)); *Verrillo* v. *Zoning Board of Appeals*, supra, 155 Conn. App. 673–74 (discussing collective statement requirement). In the present case, the commission did not render an official, collective statement of the reasons for its action. As a result, this court is obligated to search the record to ascertain whether a proper basis exists for the commission's decision to grant the defendant's applications. See *Double I Ltd. Partnership* v. *Plan & Zoning Commission*, 218

Conn. 65, 73, 588 A.2d 624 (1991) ("[i]t is well established . . . that if the commission fails to state clearly the reasons for its decision, the [Superior Court], and this court on appeal, must search the record to find a basis for the commission's decision"); *Grillo* v. *Zoning Board of Appeals*, 206 Conn. 362, 369, 537 A.2d 1030 (1988) (Superior Court properly searched record in attempt to find basis for action taken by zoning board); *Azzarito* v. *Planning & Zoning Commission*, 79 Conn. App. 614, 618, 830 A.2d 827 (reviewing court must search record to find basis for decision when commission "did not make specific factual findings to support its approval of the application"), cert. denied, 266 Conn. 924, 835 A.2d 471 (2003).

II

Having determined the proper scope of appellate review, I turn now to the applicable legal principles that govern our review.[10] The present case concerns

[10] "Scope of review and standard of review are often—albeit erroneously—used interchangeably. The two terms carry distinct meanings and should not be substituted for one another. Scope of review refers to the confines within which an appellate court must conduct its examination. . . . In other words, it refers to the matters (or what) the appellate court is permitted to examine. In contrast, standard of review refers to the manner in which (or how) the examination is conducted." (Internal quotation marks omitted.) *Verrillo* v. *Zoning Board of Appeals*, supra, 155 Conn. App. 672 n.10.

Our Supreme Court's collective statement jurisprudence implicates the scope of review conducted by the appellate courts of this state, as well as the Superior Court. See, e.g., *Purnell* v. *Inland Wetlands & Watercourses Commission*, 209 Conn. App. 688, 692 n.4, 269 A.3d 124 ("[i]n hearing appeals from decisions of an inland wetlands agency, the Superior Court acts as an appellate body"), cert. denied, 343 Conn. 908, 273 A.3d 694 (2022); *North Haven Holdings Ltd. Partnership* v. *Planning & Zoning Commission*, 146 Conn. App. 316, 319 n.2, 77 A.3d 866 (2013) ("[i]n hearing appeals from decisions of a planning and zoning commission, the Superior Court acts as an appellate body"). Asking, as a threshold matter, whether the land use agency in question has rendered "a formal, official, collective statement of reasons for its action"; *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 544; serves to define the parameters under which review of the decision of a land use agency is conducted. When such a statement is provided by the agency, the reviewing court may not "go behind the official

the proper construction of the regulations at issue and their application to undisputed facts. To the extent that we must interpret language in those regulations, our review is plenary.[11] See *Lime Rock Park, LLC* v. *Planning & Zoning Commission*, 335 Conn. 606, 648, 264 A.3d 471 (2020); see also *Putnam Park Apartments, Inc.* v. *Planning & Zoning Commission*, 193 Conn. App. 42, 47, 218 A.3d 1127 (2019) ("when [an] agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference" (internal quotation marks omitted)). "[Z]oning regulations are local legislative

statement of the [land use agency]," as "the question for the court to pass on is simply whether the reasons assigned are reasonably supported by the record and whether they are pertinent to the considerations which the [agency] is required to apply under the [municipal land use] regulations." (Internal quotation marks omitted.) *Chevron Oil Co.* v. *Zoning Board of Appeals*, 170 Conn. 146, 152–53, 365 A.2d 387 (1976); see also *Gibbons* v. *Historic District Commission*, 285 Conn. 755, 771, 941 A.2d 917 (2008) (Supreme Court noted "the traditional rule that when a reason is given, we should not search beyond it" and stated "[w]e reaffirm that this is the appropriate *scope of review* for municipal land use appeals" (emphasis added)).

[11] Although the proper interpretation of a zoning regulation is subject to plenary review, our precedent also instructs that, because "[a] local board or commission is in the most advantageous position to interpret its own regulations and apply them to the situations before it . . . the position of the municipal land use agency is entitled to some deference . . . ." (Internal quotation marks omitted.) *Watson* v. *Zoning Board of Appeals*, 189 Conn. App. 367, 383, 207 A.3d 1067 (2019). To my mind, that deference manifests itself when the regulation in question is susceptible to more than one plausible interpretation, in which case a reviewing court generally should defer to the construction that supports, rather than undermines, the decision reached by the land use agency. See *Wood* v. *Zoning Board of Appeals*, supra, 258 Conn. 699 ("[a] court that is faced with two equally plausible interpretations of regulatory language . . . properly may give deference to the construction of that language adopted by the agency charged with enforcement of the regulation"); *Chouinard* v. *Zoning Commission*, 139 Conn. 728, 731, 97 A.2d 562 (1953) ("because circumstances and conditions affecting zone regulations . . . are matters of local concern and peculiarly within the knowledge of the local authorities . . . [n]either the [Superior Court] nor this court can substitute its own discretion for that of the commission" (citation omitted)).

enactments . . . and, therefore, their interpretation is governed by the same principles that apply to the construction of statutes. . . . Moreover, regulations must be interpreted in accordance with the principle that a reasonable and rational result was intended . . . . The process of statutory interpretation involves the determination of the meaning of the . . . language . . . as applied to the facts of the case, including the question of whether the language does so apply." (Internal quotation marks omitted.) *Lime Rock Park, LLC* v. *Planning & Zoning Commission*, supra, 648–49; see also *Smith* v. *Zoning Board of Appeals*, 227 Conn. 71, 89, 629 A.2d 1089 (1993) ("[i]n construing regulations, the general rules of statutory construction apply"), cert. denied, 510 U.S. 1164, 114 S. Ct. 1190, 127 L. Ed. 2d 540 (1994).

To the extent that the task before us requires consideration of whether a particular section of the regulations apply, a degree of deference to the municipal land use agency is warranted. As our Supreme Court repeatedly has observed, "it is the function of a [land use agency] . . . to decide within prescribed limits and consistent with the exercise of [its] legal discretion, whether a particular section of the zoning regulations applies to a given situation and the manner in which it does apply. The [Superior Court] had to decide whether the [land use agency] correctly interpreted the section [of the regulations] and applied it with reasonable discretion to the facts. . . . In applying the law to the facts of a particular case, the [land use agency] is endowed with . . . liberal discretion, and its action is subject to review . . . only to determine whether it was unreasonable, arbitrary or illegal." (Internal quotation marks omitted.) *Wood* v. *Zoning Board of Appeals*, supra, 258 Conn. 697; see also *Farmington-Girard, LLC* v. *Planning & Zoning Commission*, 339 Conn. 268, 283, 260 A.3d 428 (2021) (land use agency "charged

with reviewing special permit application has reasonable discretion to decide whether a particular section of the zoning regulations applies in a given situation and how it applies" (internal quotation marks omitted)).

Finally, it bears repeating that when a land use agency has not rendered "a formal, official, collective statement of reasons for its action"; *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 544; reviewing courts are "obligated, pursuant to well established precedent, to search the entire record to ascertain whether the evidence reveals *any proper basis* for the commission's decision . . . ." (Emphasis added.) *Parker* v. *Zoning Commission*, supra, 209 Conn. App. 650 n.21; see also *Clifford* v. *Planning & Zoning Commission*, 280 Conn. 434, 452, 908 A.2d 1049 (2006) ("[i]f *any* reason culled from the record demonstrates a real or reasonable relationship to the general welfare of the community, the decision of the commission must be upheld" (emphasis in original; internal quotation marks omitted)); *Harris* v. *Zoning Commission*, supra, 259 Conn. 423 ("[i]n the absence of a statement of purpose by the zoning commission for its actions, it was the obligation of the [Superior Court], and of this court upon review of the [Superior Court's] decision, to search the entire record to find a basis for the [zoning] commission's decision" (internal quotation marks omitted)). That obligation is rooted in the "strong presumption of regularity" that attaches to municipal land use agency decision making; *Murach* v. *Planning & Zoning Commission*, supra, 196 Conn. 205; and the related presumptions that land use agencies have acted upon valid reasons; see *Levine* v. *Zoning Board of Appeals*, supra, 124 Conn. 57; and have "acted with fair and proper motives, skill and sound judgment." *Strain* v. *Mims*, 123 Conn. 275, 285, 193 A. 754 (1937). Accordingly, the appellate courts of this state are obligated to

review the decision of a municipal zoning commission with an eye toward affirmance and may reverse only when a plaintiff has demonstrated that the commission acted improperly. See *Clifford* v. *Planning & Zoning Commission*, supra, 451.

III

With those legal principles in mind, I begin by noting that the record before us contains copies of both the zoning regulations and the subdivision regulations that were in effect when the commission acted on the defendant's applications. See General Statutes § 8-2h (a). I respectfully submit that, when read together, those regulations are dispositive of the present appeal.

Section VI of the zoning regulations is titled "Flexible Residential Development."[12] The "statement of purpose" contained in § VI (A) explains that "Flexible Residential Developments . . . [provide] opportunity for cluster or smaller lots than those normally required by these regulations in order to permanently conserve natural, scenic, or historic resources; to permanently preserve or provide open spaces for active or passive use that will benefit present and future generations of Suffield residents; to enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, or other open spaces; to reduce infrastructure costs and impervious surfaces; and, to promote development that is compatible with surrounding areas and is in harmony with the natural site features, while at the same time maintaining the density limitations of the

[12] Pursuant to General Statutes (Rev. to 2019) § 8-2, the commission is vested with authority to "provide for cluster development" in a given municipality. In accordance with that statutory grant of authority, the commission enacted the flexible residential development scheme set forth in the zoning regulations. See Suffield Zoning Regs., § VI. The statement of purpose contained therein provides in relevant part that the zoning regulations were adopted and amended by the commission "for the following purposes . . . (13) [t]o promote cluster development . . . ." Suffield Zoning Regs., § I (B).

particular district. . . .'' Section VI (A) also requires, as a prerequisite to such development, the issuance of a special permit by the commission.

Street layout and design is an essential aspect of a flexible residential development application. Section VI (A) of the zoning regulations, as well as the definitions of ''flexible residential development'' and ''cluster development'' contained in the zoning regulations; see footnote 1 of this dissenting opinion; all expressly pertain to ''infrastructure.'' See, e.g., *In re Thomas H. Gentry Revocable Trust*, 138 Haw. 158, 163, 378 P.3d 874 (2016) (''[i]nfrastructure includes, but is not limited to, roads''); *Guiliano* v. *Brookhaven*, 34 App. Div. 3d 734, 735, 826 N.Y.S.2d 100 (2006) (noting that ''streets'' are ''enumerated categor[y] of infrastructure'' under New York law). Moreover, § VI (C) requires ''all applicants,'' as part of the flexible residential development application process, to submit a conceptual plan that includes, inter alia, ''all proposed roads'' in the development.[13] The zoning regulations also specifically authorize the commission to attach conditions to its approval of a flexible residential development to ''minimiz[e] the impact of [the] proposed development on traffic volumes and congestion in the area including the adequacy and *safety* of existing State and Town roads expected to serve or to be affected by the proposed development . . . .''[14]

[13] That requirement is consistent with the mandate of General Statutes (Rev. to 2019) § 8-2 (a), which authorizes municipal zoning commissions to enact cluster development regulations in light of, inter alia, ''infrastructure capacity . . . .''

[14] It is well established that a zoning commission may attach conditions to its approval of a special permit to address safety concerns. See General Statutes (Rev. to 2019) § 8-2 (a) (authorizing commission to impose ''conditions necessary to protect the public health [and] safety'' when granting special permit); *International Investors* v. *Town Plan & Zoning Commission*, 344 Conn. 46, 60–61, 277 A.3d 750 (2022) (same). Alternatively, ''general considerations such as public health, safety and welfare . . . may be the basis for the denial of a special permit.'' *Irwin* v. *Planning & Zoning Commission*, 244 Conn. 619, 627, 711 A.2d 675 (1998). The zoning regulations likewise allow the commission to deny a special permit when the following

(Emphasis added.) Suffield Zoning Regs., § VI (I) (8). In addition, the "design guidelines" set forth in § VI specify that "[t]he development shall . . . be laid out to . . . layout streets in a curvilinear fashion" and to "preserve scenic views and vistas, as seen from public roads." Suffield Zoning Regs., § VI (G) (5) and (6).

The defining characteristic of a cluster development is its flexibility with respect to land use regulation. To achieve its salutary aim of preserving open space for conservation, recreation and agricultural purposes; see General Statutes § 8-18; requirements otherwise applicable to a given parcel are relaxed.[15] This flexibility

standard is not met: "The impact of the proposed use on traffic safety and circulation on nearby streets will not be negative and the ability of such streets to adequately accommodate the traffic to be generated by the proposed use will be adequate." Suffield Zoning Regs., § XIV (B) (1) (b) (3); accord *Bethlehem Christian Fellowship, Inc.* v. *Planning & Zoning Commission*, 73 Conn. App. 442, 462–63, 807 A.2d 1089 ("[T]he commission [is not required], in every case, [to] grant a special [permit] application. The [zoning] regulations . . . [authorize] the commission [to] consider the effect a special [permit] will have on a neighborhood when exercising its discretion in considering an application for a special [permit]."), cert. denied, 262 Conn. 928, 814 A.2d 379 (2002). Because the commission retains the authority under both Connecticut decisional law and the municipal zoning regulations to deny a special permit application due to traffic and safety concerns, I believe that the commission is well equipped to respond to such concerns, such as the hypothetical, ever expanding chain of cul-de-sacs alluded to by the majority. For that reason, I concur with the defendant's observation that "speculation about what a commission might theoretically do [in the future], and an assumption that it would ignore safety, should not play a role in regulatory interpretation."

[15] Cluster development "permits a developer to design a subdivision which departs from the grid pattern essentially mandated if orthodox zoning regulations must be observed. More leeway is available for the creation of a variety of neighborhoods, and for the consideration of aesthetic objectives. The flexibility of arrangement of dwellings makes possible the preservation of open spaces." 4 P. Salkin, American Law of Zoning (5th Ed. 2011) § 31:20, p. 31-105; see also *New Seabury Corp.* v. *Board of Appeals*, 28 Mass. App. 946, 948, 550 N.E.2d 405 ("the concept of flexibility . . . underlies cluster zoning"), review denied, 407 Mass. 1102, 554 N.E.2d 851 (1990); *Bayswater Realty & Capital Corp.* v. *Planning Board*, 149 App. Div. 2d 49, 53, 544 N.Y.S.2d 613 (1989) ("cluster zoning [is] perceived as a means of encouraging flexibility in regulating the development and growth of residential communities"), as modified by 76 N.Y.2d 460, 560 N.E.2d 1300, 560 N.Y.S.2d 623 (1990).

is memorialized not only in the designation of cluster development in Suffield as "flexible residential development" but, more specifically, in § VI (B) of the zoning regulations, which provides in relevant part: "When the Commission approves a special permit for a [flexible residential development], the *dimensional requirements of the underlying zones* are hereby *superseded in their entirety* . . . ."[16] (Emphasis added.) That regulation plainly and unambiguously indicates that *all* dimensional requirements applicable to the zoning district in question except the maximum unit limitation are superseded when the commission grants a special permit for a flexible residential development.[17] Suffield Zoning Regs., § VI (B).

Accordingly, when a property owner or developer applies for a special permit for a flexible residential development in Suffield, the relevant inquiry is twofold and asks (1) in which zoning district is the property located and (2) what dimensional requirements apply to that zoning district.

[16] Although not applicable in the present case, § VI (B) of the zoning regulations contains one exception regarding "the maximum number of units permitted in any" flexible residential development. The inclusion of that exception to the supersession of the dimensional requirements of the underlying zones demonstrates that the commission, acting in its legislative capacity, knew how to exempt certain requirements from § VI (B) and chose not to do so with respect to other dimensional requirements contained in the zoning regulations. See *Scholastic Book Clubs, Inc.* v. *Commissioner of Revenue Services*, 304 Conn. 204, 219, 38 A.3d 1183 ("it is a well settled principle of statutory construction that [a legislative body] knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so" (citation omitted)), cert. denied, 568 U.S. 940, 133 S. Ct. 425, 184 L. Ed. 2d 255 (2012); *AvalonBay Communities, Inc.* v. *Zoning Commission*, 280 Conn. 405, 417–18, 908 A.2d 1033 (2006) (legislative body knows how to enact limitations if it intends to do so).

[17] In their appellate brief, the plaintiffs acknowledge that, "[b]ased on the plain language of [§ VI] of the zoning regulations . . . the *dimensional requirements* in the *underlying zone* [are] superseded when an applicant is awarded a special permit for a flexible residential development." (Emphasis in original.)

The parcel here is located in the R-25 residential zoning district. Dead-end streets or dead-end street systems in that zone are limited to 1200 feet in length. See Suffield Zoning Regs., § II. Recourse to dictionaries is unnecessary to establish both that length is a dimension and that the phrase "shall be limited to twelve-hundred (1,200) feet"; id.; is a limitation.[18] Because the 1200 foot limit on dead-end streets and dead-end street systems is a dimensional requirement that applies in all zoning districts, including the R-25 zone, it necessarily falls within the purview of § VI (B) of the zoning regulations. As a result, that requirement was superseded when the commission granted the defendant's application for a special permit for a flexible residential development.[19]

[18] I note that the definitions section of the zoning regulations imposes additional dimensional requirements beyond those contained in the definition of "dead-end street or system." For example, "aquaculture" is permitted only "on a parcel of land containing a minimum of five (5) acres. . . ." Suffield Zoning Regs., § II. Although a farm is a use "permitted as of right" in all residential zones; Suffield Zoning Regs., § IV (D) (2); the definition of a "farm" provided in § II imposes a dimensional requirement, as it requires "[a] tract of land containing five (5) or more acres . . . ." The zoning regulations define a "farm stand" as "[a] structure used for the sale of agricultural and homemade products which are produced on the premises" and then mandate that such structure must be "setback a minimum of twenty (20) feet from the front lot line and fifty (50) feet from any street intersection, and [is] not to exceed ten (10) feet in height unless part of an existing structure." Suffield Zoning Regs., § II.

[19] The majority concludes that § VI (B) of the zoning regulations pertains *only* to the dimensional requirements contained in the "General Dimensional Requirements" subdivision of the zoning regulations. See Suffield Zoning Regs., § IV (D) (4). Section VI (B) contains no such limitation; it supersedes "the dimensional requirements of the underlying zones . . . in their entirety . . . ." Had the commission, when it enacted the flexible residential development regulations, intended to confine application of § VI (B) to *only* those dimensional requirements contained in § IV (D) (4), it would have said so. See *Scholastic Book Clubs, Inc.* v. *Commissioner of Revenue Services*, 304 Conn. 204, 219, 38 A.3d 1183 ("it is a well settled principle of statutory construction that [a legislative body] knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so" (citation omitted)), cert. denied, 568 U.S. 940, 133 S. Ct. 425, 184 L. Ed. 2d 255 (2012); *AvalonBay Communities, Inc.* v. *Zoning Commission*, 280 Conn. 405, 417, 908 A.2d 1033 (2006) (legislative body knows how to enact limitations if it intends to do so).

"It is well established that, in construing individual regulations, we do not read them in isolation, but rather in light of the entire [legislative] act." *Wozniak* v. *Colchester*, 193 Conn. App. 842, 857, 220 A.3d 132, cert. denied, 334 Conn. 906, 220 A.3d 37 (2019); see also *Borrelli* v. *Zoning Board of Appeals*, 106 Conn. App. 266, 271, 941 A.2d 966 (2008) ("[w]e consider the [regulation] as a whole with a view toward reconciling its

In exercising its legislative authority here, the commission chose not to do so. Instead, it elected to supersede "the dimensional requirements of the underlying zones . . . in their entirety . . . ." Suffield Zoning Regs, § VI (B). I respectfully submit that this court should defer to the commission's legislative prerogative in this regard, particularly on a matter of local concern. See *P. X. Restaurant, Inc.* v. *Windsor*, 189 Conn. 153, 160, 454 A.2d 1258 (1983) (regulation of "health, safety and welfare factors" are "zoning matters of local concern and thus are within the expertise of local authorities"); *Larsen* v. *Zoning Commission*, 153 Conn. 483, 489, 217 A.2d 715 (1966) (adhering to "the principle that zoning questions are matters of local concern which are usually best determined by the zoning authority" and concluding that there was "no reason in this record for substituting our judgment for that of the commission"); *Luery* v. *Zoning Board*, 150 Conn. 136, 146, 187 A.2d 247 (1962) ("[Z]oning is primarily a matter of local concern. The local authorities are conversant with the needs of the community as a whole. They are in the best position to plan the orderly growth and expansion of the community for the general welfare. The courts should not and will not override the local boards unless there is a clear and definite breach of duty."); *Chouinard* v. *Zoning Commission*, 139 Conn. 728, 731, 97 A.2d 562 (1953) ("because circumstances and conditions affecting zone regulations . . . are matters of local concern and peculiarly within the knowledge of the local authorities . . . [n]either the [Superior Court] nor this court can substitute its own discretion for that of the commission" (citation omitted)); cf. *Griffith* v. *Berlin*, 130 Conn. 84, 86, 32 A.2d 56 (1943) ("the obligations of towns for any roads or other avenues of travel . . . are of only local concern" (internal quotation marks omitted)).

In addition, I note that the zoning regulations contain other dimensional requirements applicable to specific residential zones beyond those contained in § IV (D) (4). See, e.g., Suffield Zoning Regs., § IV (M) (setting forth specific dimensional requirements for, inter alia, accessory buildings and in-ground pools in residential zones). The majority does not construe § VI (B) of the zoning regulations in light of those additional dimensional requirements of the underlying residential zones, in contravention of the precept that "[r]egulations are to be construed as a whole." *Smith* v. *Zoning Board of Appeals*, supra, 227 Conn. 91. It likewise does not construe § VI (B) in light of the various dimensional requirements set forth in § II of the zoning regulations, including the 1200 foot dead-end street limitation. See footnote 18 of this dissenting opinion.

parts in order to obtain a sensible and rational overall interpretation" (internal quotation marks omitted)); *Field Point Park Assn., Inc.* v. *Planning & Zoning Commission*, 103 Conn. App. 437, 440, 930 A.2d 45 (2007) ("[r]egulations must be viewed to form a cohesive body of law"). The design guidelines for flexible residential developments in Suffield require, as "objectives," an applicant to "preserve and maintain all or part of any existing forests, fields, pastures and other land in agricultural use," to "layout streets in a curvilinear fashion," and to "preserve scenic views and vistas, as seen from public roads." Suffield Zoning Regs., § VI (G) (2), (5) and (6). The obvious result of a curvilinear street that contours to preserve open space and scenic views is a street of greater length. In construing regulations, "common sense must be used." *Smith* v. *Zoning Board of Appeals*, supra, 227 Conn. 92. The fact that the flexible residential development approval procedure requires applicants to submit a plan of "all proposed roads" in the development; Suffield Zoning Regs., § VI (C); and aims to have such roads designed in a curvilinear fashion; see id., § VI (G) (6); further supports the conclusion that the 1200 foot limitation for dead-end streets contained in § II of the zoning regulations does not apply to flexible residential developments approved by special permit by the commission.[20]

[20] Whether it is appropriate to supersede the 1200 foot dead-end street limitation in the context of flexible residential development applications is quintessentially a matter "within the discretion of the commission, which is presumed to know regional conditions and the general characteristics of the area and is better qualified to pass upon such matters than the courts, which will not usurp the judgment of the local zoning agency." *Dupont* v. *Planning & Zoning Commission*, 156 Conn. 213, 222, 240 A.2d 899 (1968). In this regard, I note that this is not a case in which a land use agency is tasked with interpreting a regulation promulgated by a different municipal agency entrusted with legislative authority. See, e.g., *Lawrence* v. *Zoning Board of Appeals*, 158 Conn. 509, 514, 264 A.2d 552 (1969) (noting that zoning board "was not acting in a legislative capacity as would a zoning commission"); *Mountain Brook Assn., Inc.* v. *Zoning Board of Appeals*, 133 Conn. App. 359, 362 n.2, 37 A.3d 748 (2012) ("In deciding an appeal to it concerning interpretation of the zoning regulations as applied to a particular

In its February 10, 2022 memorandum of decision on the defendant's motion for articulation, the Superior Court concluded that the flexible residential development section of the zoning regulations "encroaches upon a specific provision within the inherent authority of the . . . subdivision regulations, involving the maximum length of dead-end streets." For that reason, the court concluded that the commission's "approval of the [defendant's special permit and subdivision] applications is . . . contrary to law." That decision reflects a fundamental misunderstanding of the regulatory scheme enacted by the commission for flexible residential developments in Suffield.

Both the zoning regulations and the subdivision regulations were promulgated by the commission in its legislative capacity. See *Lord Family of Windsor, LLC* v. *Planning & Zoning Commission*, 288 Conn. 730, 735, 954 A.2d 831 (2008) (planning commission acts in legislative capacity when adopting subdivision regulations); *Hayes Family Ltd. Partnership* v. *Planning & Zoning Commission*, 98 Conn. App. 213, 231, 907 A.2d 1235 (2006) ("[w]hen a zoning entity adopts regulations, it acts in a legislative capacity"), cert. denied, 281 Conn. 903, 916 A.2d 44 (2007). The subdivision regulations here provide in relevant part that "[a]ll subdivision plans must conform to the [z]oning [r]egulations . . . ." Suffield Subdivision Regs., § 305; accord General Statutes § 8-26 (a) ("nothing in this section shall be deemed to authorize the commission to approve any . . . subdivision or resubdivision which conflicts with applicable zoning regulations"); R. Fuller, 9 Connecticut Practice

piece of property, the zoning board of appeals acts in a quasi-judicial capacity. The zoning board of appeals has the authority to interpret the town's zoning ordinance and decide whether it applies to a given situation." (Internal quotation marks omitted.)). Rather, in this case, the same commission that enacted the flexible residential development regulations at issue was tasked with interpreting and applying those regulations in acting on the defendant's applications.

Series: Land Use Law and Practice (4th Ed. 2015) § 22:6, p. 708 ("[t]he planning commission does not have the legal authority to enact subdivision regulations which amount to or conflict with the zoning regulations"); 2 J. Kushner, Subdivision Law and Growth Management (2nd Ed. 2023) § 7:4 ("the subdivision plan should be consistent" with zoning regulations).

More importantly, § 703 of the subdivision regulations[21] incorporates by reference § VI of the zoning regulations. See footnote 4 of this dissenting opinion. Because the subdivision regulations expressly incorporate § VI of the zoning regulations and do not otherwise address that statutorily authorized form of land use development, this is not a case in which the zoning regulations and subdivision regulations conflict. Rather, it is one in which the commission, acting in its legislative capacity, has made the reasoned determination that, with respect to the regulation of flexible residential developments, § VI of the zoning regulations controls. For that reason, the subdivision regulations here are best viewed as a complement to the zoning regulations, rather than in conflict.

Although our interpretation of municipal land use regulations generally is plenary; see *Lime Rock Park, LLC* v. *Planning & Zoning Commission*, supra, 335 Conn. 648; *Putnam Park Apartments, Inc.* v. *Planning & Zoning Commission*, supra, 193 Conn. App. 47; it is "the function of a zoning [agency] . . . to decide within prescribed limits and consistent with the exercise of [its] legal discretion, whether a particular section of the zoning regulations applies to a given situation and the manner in which it does apply. . . . In applying the law to the facts of a particular case, the board is endowed with . . . liberal discretion, and its action is

[21] Section 703 contains the only reference to flexible residential development in the subdivision regulations.

subject to review . . . only to determine whether it was unreasonable, arbitrary or illegal." (Internal quotation marks omitted.) *Wood* v. *Zoning Board of Appeals*, supra, 258 Conn. 697; see also *Farmington-Girard, LLC* v. *Planning & Zoning Commission*, supra, 339 Conn. 283 (land use agency "charged with reviewing special permit application has reasonable discretion to decide whether a particular section of the zoning regulations applies in a given situation and how it applies" (internal quotation marks omitted)); *Doyen* v. *Zoning Board of Appeals*, 67 Conn. App. 597, 609, 789 A.2d 478 (concluding that Superior Court "improperly substituted its own judgment for that of the board in rejecting the board's implicit conclusion that [the regulation in question] does not apply under the circumstances of this case"), cert. denied, 260 Conn. 901, 793 A.2d 1088 (2002).

Mindful that "regulations must be interpreted in accordance with the principle that a reasonable and rational result was intended"; *Wood* v. *Zoning Board of Appeals*, supra, 258 Conn. 699; and that a legislative body "is always presumed to know all the existing [regulations] and the effect that its action or non-action will have upon any one of them"; (internal quotation marks omitted) *AvalonBay Communities, Inc.* v. *Zoning Commission*, 280 Conn. 405, 417, 908 A.2d 1033 (2006); I believe that the commission reasonably could conclude that, to the extent that a particular dimensional requirement is contained in both the zoning regulations and the subdivision regulations and is applicable to the residential zone in question, § VI (B) of the zoning regulations controls. See *Egan* v. *Planning Board*, 136 Conn. App. 643, 656 and n.14, 47 A.3d 402 (2012) ("[t]he subdivision regulations and zoning regulations must be read together" when "[t]he subdivision regulations incorporate the zoning regulations by reference"). In such instances, that dimensional requirement is superseded by the commission's approval of a special permit, which

approval must occur *prior* to subdivision approval. See Suffield Zoning Regs., § VI (A). At the same time, any dimensional requirements set forth in the subdivision regulations that are *not* contained in the zoning regulations, such as the minimum "turn-around diameter of [a] cul-de-sac"; Suffield Subdivision Regs., § 905 (b); continue to apply and are prerequisites to subdivision approval. In my view, that is a sensible and rational interpretation of the flexible residential development scheme set forth in the regulations that govern such development in Suffield.

Because the zoning regulations and the subdivision regulations contain identical 1200 foot limitations on the length of dead-end streets or dead-end street systems, I believe that the commission reasonably could conclude that § VI (B) of the zoning regulations applies to the facts of this case and that, as a result, the 1200 foot limitation was superseded by its approval of the defendant's special permit application.[22]

Moreover, to the extent that an ambiguity is present and another equally plausible construction of the regulations exists, I respectfully submit that this court should "give deference to the construction of that language adopted by the agency charged with enforcement of the regulation." *Wood* v. *Zoning Board of Appeals*, supra, 258 Conn. 699; see also footnote 11 of this dissenting opinion; cf. *Planning & Zoning Commission*

[22] The majority states that "[t]he dissent asserts that the board reasonably concluded that the generally applicable dimensional requirement set forth in both the [zoning regulations] and the [subdivision regulations] was *completely superseded*." (Emphasis added; internal quotation marks omitted.) It mischaracterizes my position. To be clear, my view is that § VI (B) of the zoning regulations supersedes only (1) the dimensional requirements contained in the zoning regulations that are applicable to the residential zone in question and (2) any dimensional requirement contained in the subdivision regulations that is identical to a dimensional requirement set forth in the zoning regulations and applicable to the residential zone in question.

v. *Gilbert*, 208 Conn. 696, 706, 546 A.2d 823 (1988) ("[w]hen more than one construction [of a land use regulation] is possible, we adopt the one that renders the enactment effective and workable and reject any that might lead to unreasonable or bizarre results"). To conclude otherwise, particularly when the subdivision regulations are silent as to flexible residential development save for their incorporation of § VI of the zoning regulations by reference; see footnote 4 of this dissenting opinion; would frustrate the essential purpose of cluster development and its salutary objectives.

As a final matter, I note that the commission was *required* under the zoning regulations to give due consideration to "the health, safety, and welfare of the public in general and the immediate neighborhood in particular" as a prerequisite to special permit approval. Suffield Zoning Regs., § XIV (B) (1) (b). The commission also was required to find that "[t]he impact of the proposed use on traffic safety and circulation on nearby streets will not be negative and the ability of such streets to adequately accommodate the traffic to be generated by the proposed use will be adequate." Suffield Zoning Regs., § XIV (B) (1) (b) (3). In granting the defendant's application for a special permit, the commission necessarily considered those safety concerns and made the requisite findings. See *Parker* v. *Zoning Commission*, supra, 209 Conn. App. 684–85 (in light of strong presumption of regularity applied to municipal land use proceedings, reviewing court presumes that land use agency made "all necessary findings that are supported by the record" when decision lacks specificity); *North Haven Holdings Ltd. Partnership* v. *Planning & Zoning Commission*, 146 Conn. App. 316, 332, 77 A.3d 866 (2013) (zoning commission "necessarily considered 'the public health, safety and general welfare' " as required by zoning regulations for special permit approval).

The record indicates that safety concerns regarding the street system proposed by the defendant as part of its flexible residential development was a significant issue at the public hearing. As the majority notes, the defendant originally proposed a horseshoe shaped street that connected to Limric Lane at two points but abandoned that plan in response to safety concerns raised at the hearing. On the documentary and testimonial evidence in the record, the commission reasonably could conclude that the revised dead-end street design, which connected to Limric Lane at only one point and exceeded the general limitation on dead-end streets and systems by only 160 feet; see footnote 6 of this dissenting opinion; did not compromise the "the health, safety, and welfare of the public in general and the immediate neighborhood in particular"; Suffield Zoning Regs., § XIV (B) (1) (b); and, thus, did not warrant denial of the defendant's application. See *Irwin* v. *Planning & Zoning Commission*, 244 Conn. 619, 627, 711 A.2d 675 (1998) ("general considerations such as public health, safety and welfare . . . may be the basis for the denial of a special permit"); *Bethlehem Christian Fellowship, Inc.* v. *Planning & Zoning Commission*, 73 Conn. App. 442, 462–63, 807 A.2d 1089 ("[T]he commission [is not required], in every case, [to] grant a special [permit] application. The [zoning] regulations . . . [authorize] the commission [to] consider the effect a special [permit] will have on a neighborhood when exercising its discretion in considering an application for a special [permit]."), cert. denied, 262 Conn. 928, 814 A.2d 379 (2002).

In the present case, the commission did not render a formal, official, collective statement of reasons for its decision to grant the defendant's applications. As a result, this court is "obligated, pursuant to well established precedent, to search the entire record to ascertain whether the evidence reveals any proper basis" for

that decision. *Parker* v. *Zoning Commission*, supra, 209 Conn. App. 650 n.21; see also *Harris* v. *Zoning Commission*, supra, 259 Conn. 423. Because the record before us contains a basis on which the commission properly could predicate its decision to grant the defendant's applications, I would conclude that the Superior Court improperly reversed the decision of the commission.[23] For that reason, I respectfully dissent.

STEPHANIE NETTER *v.* DONALD NETTER (AC 44803)

Alvord, Suarez and Seeley, Js.

Syllabus

The defendant husband appealed to this court from the pendente lite order of the trial court permitting the plaintiff wife to access the former marital residence to retrieve certain personal property and from the judgment of the trial court holding him in contempt for his failure to comply with a provision of the court's pendente lite parenting plan. During the pendency of the defendant's appeal, the trial court issued a memorandum of decision dissolving the parties' marriage, which included language that largely mirrored that in the pendente lite order at issue in this appeal. *Held*:

1. The defendant's claim that the trial court abused its discretion when it entered a pendente lite order related to the plaintiff's access to the former marital residence was moot: because a pendente lite order ceases to exist once a final judgment has been rendered, there was no practical relief that this court could afford to the defendant, and the defendant's proper redress was to challenge the propriety of the final dissolution judgment; moreover, the defendant's claim was not properly subject to appellate review under the "capable of repetition, yet evading review" exception to the mootness doctrine, as the defendant failed to demonstrate that there was a reasonable likelihood that the issue presented would reoccur and, therefore, his concerns were purely speculative; accordingly, this court lacked subject matter jurisdiction to consider the defendant's claim.
2. The trial court did not abuse its discretion in finding the defendant in contempt for violating the provision of the parenting plan regarding

[23] In light of that conclusion, it is unnecessary to address the defendant's alternative claim regarding the allegedly improper application of §§ 902 and 905 of the subdivision regulations by the Superior Court.

certain summer vacation parenting time: the provision at issue was clear and unambiguous, and the defendant failed to provide a factual basis to explain his noncompliance with the court's order.

Argued May 24—officially released July 18, 2023

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Heller*, *J.*, granted the plaintiff's pendente lite motion to access the former marital residence and the plaintiff's motion for contempt, and the defendant appealed to this court. *Appeal dismissed in part*; *affirmed.*

John G. McCarthy, with whom, on the brief, was *Harold R. Burke*, for the appellant (defendant).

James P. Sexton, with whom was *John R. Weikart*, for the appellee (plaintiff).

Opinion

ALVORD, J. In this marital dissolution action, the defendant, Donald Netter, appeals from the trial court's order on the pendente lite motion of the plaintiff, Stephanie Netter, requesting access to the marital residence to retrieve her personal belongings and from the judgment of the court holding him in contempt for his failure to comply with a provision of the court's pendente lite parenting plan.[1] On appeal, the defendant claims that the court improperly (1) issued the order permitting access to the marital residence, and (2) granted the plaintiff's motion for contempt.[2] We conclude that the appeal is moot as to the defendant's first claim and

[1] The defendant was self-represented at the time of these motions and their respective hearings but is represented by counsel during this appeal.

[2] Specifically, the defendant claims (1) that the pendente lite access order violated his constitutional rights, and (2) that the court abused its discretion in issuing the pendente lite access order.

dismiss that portion of the appeal. We affirm the court's judgment of contempt.

The following facts and procedural history are necessary to our resolution of this appeal. The parties were married on July 9, 2005, in New York, New York. They have two minor children. At the time of their marriage, the defendant resided on Round Hill Road (Round Hill Road property or marital residence) in Greenwich. After their marriage, the parties primarily resided in New York City and continued living there after the birth of their children. When the children began school, the parties lived full-time at the marital residence. On March 1, 2017, the plaintiff commenced this marital dissolution action, vacated the marital residence, and moved into an apartment in Greenwich.

Many pendente lite motions have been filed in this highly contentious dissolution action. The resolution of two pendente lite motions are at issue in this appeal. First, on February 6, 2019, the plaintiff filed a motion to access the marital residence to retrieve her personal belongings. Second, on August 8, 2019, the plaintiff filed a motion for contempt alleging that the defendant had violated a provision of a pendente lite parenting plan ordered by the court on October 25, 2018 (parenting plan). The court, *Heller*, *J.*, held a hearing on these and several other motions on October 23 and December 11, 2019, and February 10, 2021. On June 9, 2021, the court issued a memorandum of decision in which it granted the plaintiff's motion to access the marital residence for retrieval of her personal belongings and the motion for contempt relative to the parenting plan. This appeal followed. On January 23, 2023, during the pendency of this appeal, following a fifty-seven day trial spanning seventeen months, the court issued a memorandum of decision dissolving the parties' marriage. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims on appeal that the court improperly granted the plaintiff's pendente lite motion to access the marital residence to retrieve her personal belongings. Oral argument before this court was scheduled for May 24, 2023. On May 15, 2023, this court notified the parties to "be prepared to address at oral argument whether the portion of this appeal challenging the June 9, 2021 pendente lite order concerning the plaintiff's supervised access to the Round Hill [Road] property is moot in light of the January 23, 2023 dissolution judgment. See *Sweeney* v. *Sweeney*, 271 Conn. 193, 201 [856 A.2d 997] (2004)." At oral argument, the defendant's counsel conceded that his appeal from the pendente lite access order was moot but argued that this court could hear his claims under the capable of repetition, yet evading review exception to the mootness doctrine. The plaintiff's counsel argued, inter alia, that the claims are not "evading review" because the final dissolution judgment superseded the pendente lite access order, and the defendant has filed an appeal from the final judgment of dissolution. See *Netter* v. *Netter*, Connecticut Appellate Court, Docket No. AC 46484 (appeal filed May 5, 2023). We conclude that the appeal from the pendente lite access order is moot.

We begin by setting forth the relevant legal principles that guide our review. "Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [this] court's subject matter jurisdiction . . . . Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable. . . . Pendente lite orders are temporary orders of the court that are necessarily extinguished once a final judgment has been rendered. . . . Once a final judgment has been rendered, an issue with respect to a pendente lite order is moot because an appellate

court can provide no practical relief. . . . As a result, an appellate court lacks subject matter jurisdiction over a pendente lite order after the trial court has rendered a final judgment." (Citations omitted; internal quotation marks omitted.) *Altraide* v. *Altraide*, 153 Conn. App. 327, 332, 101 A.3d 317, cert. denied, 315 Conn. 905, 104 A.3d 759 (2014).

The following additional facts and procedural history are necessary for our resolution of this claim. On June 9, 2021, the court granted the plaintiff's motion to access the marital residence.[3] The pendente lite access order stated: "The plaintiff shall have access to the Round Hill Road property to retrieve her clothing and shoes, personal and professional belongings, and kitchen and office items (collectively, the plaintiff's belongings) as follows: The plaintiff shall have access to the Round Hill Road property between 9 a.m. and 5 p.m. on two days during the period June 21, 2021, to July 21, 2021. On or before June 14, 2021, the plaintiff shall propose six dates on which she is available to retrieve her belongings from the Round Hill Road property during that time period. The plaintiff shall communicate these dates to the defendant via Our Family Wizard.[4] The defendant shall select two of the six dates and notify the plaintiff of his selection on Our Family Wizard on or before June 16, 2021. The two dates selected by the

[3] The plaintiff had filed two motions to access the marital residence prior to filing the motion at issue in this appeal. First, on May 15, 2017, the plaintiff filed a motion to access the marital residence to retrieve her summer clothing. At a hearing that same day, the trial court, *Tindill*, *J.*, orally granted the plaintiff's motion. Second, on November 21, 2017, the plaintiff filed a subsequent motion to access the marital residence to retrieve her winter clothing. The court did not rule on this motion. These motions are not at issue in this appeal.

[4] "Our Family Wizard is a website offering web and mobile solutions for divorced or separated parents to communicate, reduce conflict, and reach resolutions on everyday coparenting matters . . . ." *Buehler* v. *Buehler*, 211 Conn. App. 357, 361 n.3, 272 A.3d 736, cert. denied, 343 Conn. 917, 274 A.3d 869 (2022).

defendant shall be the dates on which the plaintiff shall have access to the Round Hill Road property to retrieve her belongings. The plaintiff shall be accompanied by an off-duty Greenwich police officer who shall remain at the Round Hill Road property at all times while the plaintiff is in the former marital residence. The plaintiff shall pay for the services of the Greenwich police officer without prejudice to seeking reimbursement from the defendant in the final orders to be issued in the dissolution action. The plaintiff may be accompanied by up to two other individuals to assist her in retrieving her belongings, neither of whom shall be the defendant's mother, Barbara Netter. These individuals shall be permitted to enter the Round Hill Road property and the former marital residence with the plaintiff. If the defendant is at home while the plaintiff is retrieving her belongings from the Round Hill Road property, he must remain in the pool house and shall not be in the residence. The children shall not be present at any time while the plaintiff is retrieving her belongings from the Round Hill Road property. The defendant shall arrange for the former marital residence at the Round Hill Road property to be unlocked and opened when the plaintiff arrives. The security system shall be unarmed. The lights and the air conditioning shall be working. The defendant may have a representative present to observe the plaintiff's retrieval of her belongings from the Round Hill Road property. Neither the defendant nor his representative shall photograph, record (by audio or visual means), or monitor by security camera or other means of surveillance the plaintiff's retrieval of her belongings from the former marital residence. The defendant shall not interfere with the plaintiff's access to the Round Hill Road property or to her belongings. The defendant shall not remove, move or hide any of the plaintiff's belongings to prevent her from retrieving them. The plaintiff shall promptly notify the defendant by Our

Family Wizard when she has completed the retrieval of her belongings from the Round Hill Road property." (Footnote added.)

On January 23, 2023, during the pendency of this appeal, the court, *Heller*, *J.*, issued a memorandum of decision dissolving the parties' marriage. In its memorandum of decision, the court stated: "As previously ordered by this court on June 9, 2021 (. . . on appeal to the Appellate Court at AC 44803), the plaintiff shall have access to the Round Hill Road property between the hours of 9 a.m. and 5 p.m. for two days to remove her personal property from the Round Hill Road property."[5]

[5] The access order in the final dissolution judgment provides, in full: "As previously ordered by this court on June 9, 2021 (. . . on appeal to the Appellate Court at AC 44803), the plaintiff shall have access to the Round Hill Road property between the hours of 9 a.m. and 5 p.m. for two days to remove her personal property from the Round Hill Road property. The plaintiff shall propose six dates between January 25, 2023, and February 24, 2023, on which she is available to remove her personal property from the Round Hill Road property. The plaintiff shall propose these dates to the defendant by email. The defendant shall select two of the six dates. He shall notify the plaintiff of his selection by email within twenty-four hours of receiving the plaintiff's email with her proposed dates. The two dates selected by the defendant shall be the dates on which the plaintiff shall have access to the Round Hill Road property to remove her personal property. The plaintiff shall be accompanied by an off-duty Greenwich police officer when she is at the Round Hill Road property to remove her personal property. The Greenwich police officer shall remain at the Round Hill Road property at all times while the plaintiff is at the property. The plaintiff shall pay for the services of the Greenwich police officer. The plaintiff may be accompanied by up to two other individuals to assist her in removing her belongings, neither of whom shall be Barbara Netter. These individuals shall be permitted to enter the Round Hill Road property with the plaintiff. The defendant may be present while the plaintiff is at the Round Hill Road property. The children shall not be present under any circumstances. The defendant shall arrange for the property to be unlocked and opened when the plaintiff arrives. The security system shall be unarmed. The lights shall be working. The heat shall be on. The defendant shall not photograph, record, or monitor by security camera or other means of surveillance the plaintiff's removal of her personal property from the Round Hill Road property. The defendant shall not interfere with the plaintiff's access to the Round Hill Road property or to her personal property. The defendant shall not remove, move, or hide any of the plaintiff's personal property to prevent her from removing it

The court's order largely mirrored its pendente lite access order, except that it permitted the defendant to "be present while the plaintiff is at the Round Hill Road property."[6]

At oral argument before this court, the defendant's counsel conceded that the final dissolution judgment rendered the pendente lite access order moot. The plaintiff's counsel agreed. We conclude that there is no practical relief that we may afford the defendant as to the pendente lite access order because it was superseded by the access order contained within the final dissolution judgment. See *J. Y.* v. *M. R.*, 215 Conn. App. 648, 662, 283 A.3d 520 (2022) (when interim order becomes superseded by final order, proper redress is to challenge final order). Therefore, the defendant's claims with respect to the pendente lite access order are moot. The defendant's redress is to challenge the propriety of the final dissolution judgment. He has filed an appeal from that judgment. See *Netter* v. *Netter*, Connecticut Appellate Court, Docket No. AC 46484 (appeal filed May 5, 2023). The defendant's preliminary statement of issues filed in that appeal includes a claim as to the access order in the dissolution judgment.

The defendant further contends that, even if his claims are moot, they are properly subject to appellate review under the "capable of repetition, yet evading review" exception to the mootness doctrine. We are not persuaded.

"[F]or an otherwise moot question to qualify for review under the capable of repetition, yet evading review exception, it must meet three requirements.

from the Round Hill Road property. The plaintiff shall promptly notify the defendant when she has completed removing her personal property from the Round Hill Road property." (Footnote omitted.)

[6] The pendente lite access order provided: "If the defendant is at home while the plaintiff is retrieving her belongings from the Round Hill Road property, he must remain in the pool house and shall not be in the residence."

First, the challenged action, or the effect of the challenged action, by its very nature must be of a limited duration so that there is a strong likelihood that the substantial majority of cases raising a question about its validity will become moot before appellate litigation can be concluded. Second, there must be a reasonable likelihood that the question presented in the pending case will arise again in the future, and that it will affect either the same complaining party or a reasonably identifiable group for whom that party can be said to act as surrogate. Third, the question must have some public importance. Unless all three requirements are met, the appeal must be dismissed as moot." (Internal quotation marks omitted.) *J. Y.* v. *M. R.*, supra, 215 Conn. App. 662–63.

The second prong of the exception requires us to analyze "(1) whether the question presented will recur at all; and (2) whether the interests of the people likely to be affected by the question presented are adequately represented in the current litigation. A requirement of the likelihood that a question will recur is an integral component of the capable of repetition, yet evading review doctrine. In the absence of the possibility of such repetition, there would be no justification for reaching the issue, as a decision would neither provide relief in the present case nor prospectively resolve cases anticipated in the future. . . . The second prong does not provide an exception to the mootness doctrine when it is merely *possible* that a question could recur, but rather there must be a *reasonable likelihood* that the question presented in the pending case will arise again in the future . . . ." (Citation omitted; emphasis in original; internal quotation marks omitted.) Id., 663.

In the present case, the defendant's counsel argued (1) that his claims are capable of repetition because the plaintiff could seek access to the marital residence in the future, and (2) that access orders are typical in

dissolution actions, so it is possible that other individuals will raise similar claims. Although it is possible that the questions presented in this case will reoccur, the defendant has not demonstrated that there is a reasonable likelihood that they will. His concerns are purely speculative. See id. (concluding that defendant failed to satisfy second prong of "capable of repetition, yet evading review" exception where defendant failed to demonstrate reasonable likelihood that issue would recur); see also *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 502, 510, 970 A.2d 578 (2009) ("speculation and conjecture . . . have no place in appellate review" (internal quotation marks omitted)). The defendant has not satisfied the second prong of the "capable of repetition, yet evading review" exception, and, therefore, we dismiss the portion of his appeal in which he has raised the present claims as moot.[7]

II

The defendant next claims that the court improperly found him in contempt for violating the 2019 summer vacation provision of the parenting plan (2019 summer vacation provision). Specifically, he argues (1) that the provision did not clearly and unambiguously require him to propose his 2019 summer vacation dates on or before April 15, 2019, and (2) if the order did require him to propose his 2019 summer vacation dates by April 15, 2019, his failure to do so was not wilful. We are not persuaded.

We begin by setting forth the standard of review and relevant legal principles. "First, we must resolve the

[7] Because the defendant does not satisfy the second prong of the "capable of repetition, yet evading review" exception, we need not address the first and third prongs. See *J. Y.* v. *M. R.*, supra, 215 Conn. App. 662–63 ("[u]nless all three requirements are met, the appeal must be dismissed as moot").

threshold question of whether the underlying order constituted a court order that was sufficiently clear and unambiguous so as to support a judgment of contempt. . . . This is a legal inquiry subject to de novo review. . . . Second, if we conclude that the underlying court order was sufficiently clear and unambiguous, we must then determine whether the trial court abused its discretion in issuing . . . a judgment of contempt, which includes a review of the trial court's determination of whether the violation was wilful or excused by a good faith dispute or misunderstanding." (Footnote omitted; internal quotation marks omitted.) *Keller* v. *Keller*, 158 Conn. App. 538, 545, 119 A.3d 1213 (2015), appeal dismissed, 323 Conn. 398, 147 A.3d 146 (2016). To the extent that the claim requires us to examine findings that were based on witness testimony, we note that "[t]he credibility of witnesses, the findings of fact and the drawing of inferences are all within the province of the trier of fact. . . . We review the findings to determine whether they could legally and reasonably be found, thereby establishing that the trial court could reasonably have concluded as it did." (Internal quotation marks omitted.) *Kirwan* v. *Kirwan*, 187 Conn. App. 375, 392, 202 A.3d 458 (2019).

The following additional facts and procedural history are necessary for our resolution of this claim. After the parties filed competing motions for a pendente lite parenting plan and the court held a hearing thereon, the court issued a parenting plan on October 25, 2018. The parenting plan set forth a detailed parenting schedule, including the 2019 summer vacation provision as follows: "Each party shall have ten consecutive days of vacation with the children during the school summer vacation. Each party's summer vacation parenting time shall begin on a Friday at 4 p.m. and shall end on the second Monday thereafter at 4 p.m., for a total of ten days. The parties shall exchange proposed vacation

dates in writing no later than April 15, 2019. In the event that the parties cannot agree on dates, the plaintiff shall have the right of first selection in 2019 for her summer vacation parenting time. If the plaintiff does not notify the defendant in writing of her chosen summer vacation dates by April 15, 2019, the defendant may select the dates for his summer vacation parenting time in writing, and that selection shall be binding on both parties. The plaintiff may not schedule summer vacation parenting time that would interfere with the defendant's Father's Day parenting time."

On August 8, 2019, the plaintiff filed a motion for contempt alleging that the defendant violated the parenting plan by failing to propose his 2019 summer vacation dates by April 15, 2019. Her motion stated, in relevant part: "On April 15, 2019, the plaintiff provided her summer vacation days to the defendant of Friday, August 2, 2019, at 4 p.m. to Monday, August 12, 2019, at 4 p.m. The plaintiff later informed the defendant that she was taking the children to California for her vacation. On April 16, 2019, the defendant responded to the plaintiff that he had no objection to her summer vacation dates. The defendant failed to propose or otherwise select his summer vacation dates by April 15, 2019. On May 27, 2019, the defendant admitted to the plaintiff that he had not made a selection for his summer vacation days. Also on May 27, 2019, the defendant led the plaintiff to believe that he was selecting, as his summer vacation, the ten days immediately following the plaintiff's summer vacation. This was the first time that the defendant in any way indicated the dates on which he was planning to take his summer vacation. On August 6, 2019, nearly four months after the April 15, 2019 deadline, the defendant told the plaintiff that his summer vacation would begin on Friday, August 23, 2019, at 4 p.m. until September 2, 2019, rather than the ten days following the plaintiff's summer vacation. The

minor children begin school on September 3, 2019, and the defendant's newly chosen summer vacation days conflict with the children's back-to-school routine and activities." (Emphasis omitted.) In response, on August 16, 2019, the defendant filed a motion for enforcement of his 2019 summer vacation and clarification of court orders. In support of his motion, the defendant stated that he began discussing possible 2019 summer vacation destinations as early as December, 2018. He included several Our Family Wizard messages dated in May and June, 2019, that discuss the possibility of taking the children to London or Hawaii for summer vacation. The defendant contends that his ability to select vacation dates depended on the plaintiff's consent to London and/or her travel plans to California. At the hearings, the court heard testimony and received documentary evidence on the motion for contempt.

In its June 9, 2021 memorandum of decision, the court found the defendant in contempt for violating the 2019 summer vacation provision of the parenting plan. The court then set forth the relevant language contained within the parenting plan, specifically, that the parties "shall exchange proposed vacation dates in writing no later than April 15, 2019." The court found that "[t]he defendant did not advise the plaintiff until August 6, 2019, that his summer vacation parenting time would be from August 23, 2019, until September 2, 2019." The court further found "by clear and convincing evidence that the defendant had notice of the provisions of [the] October, 2018 parenting plan regarding 2019 summer vacation parenting time and that these provisions of the parenting plan are clear and unambiguous." Finally, the court found "that the defendant wilfully violated the clear and unambiguous orders of the court by failing to select his 2019 summer vacation period on or before April 15, 2019. The defendant has offered no evidence to justify or excuse his violation of the court's order."

We first address whether the court properly determined that the 2019 summer vacation provision of the parenting plan is clear and unambiguous. The defendant claims that the parenting plan does not clearly and unambiguously require him to propose his 2019 summer vacation dates by April 15, 2019. Rather, the defendant asserts that the parenting plan, at most, requires the parties to begin "to try to reach an agreement on summer vacation periods" by April 15, 2019. We are not persuaded. As previously discussed, the 2019 summer vacation provision states that "[t]he parties shall exchange proposed vacation dates in writing no later than April 15, 2019." This order is clear and unambiguous. The 2019 summer vacation provision does not require the parties to provide their vacation travel plans by April 15, 2019. The location to which the parties intend to travel during their vacation is wholly unrelated to the requirement that they provide each other with their proposed vacation dates by April 15, 2019. Accordingly, the court properly determined that the parenting plan clearly and unambiguously requires the parties to exchange their proposed 2019 summer vacation dates by April 15, 2019.[8]

We next turn to the question of whether the defendant wilfully violated the parenting plan. "To impose contempt penalties, whether criminal or civil, the trial court

[8] In further support of his position that the contempt finding was improper, the defendant directs our attention to three other provisions in the parenting plan: the parenting plan requires the parties to consult and make reasonable efforts to agree about parenting time, the plan requires each party to seek consent of the other party before traveling internationally with the children, and, finally, the plan addresses the parties' 2019 spring vacation time with the children. Although we recognize that we should interpret individual provisions of the parenting plan ordered by the court mindful of its "construction as a whole"; see, e.g., *Tannenbaum* v. *Tannenbaum*, 208 Conn. App. 16, 25, 263 A.3d 998 (2021); the defendant fails to demonstrate how the existence of these three provisions as part of the multifaceted parenting plan renders the trial court's contempt finding with respect to the requirement to propose vacation dates "no later than April 15, 2019," improper.

must make a contempt finding, and this requires the court to find that the offending party wilfully violated the court's order; failure to comply with an order, alone, will not support a finding of contempt. . . . Rather, to constitute contempt, a party's conduct must be wilful. . . . A good faith dispute or legitimate misunderstanding about the mandates of an order may well preclude a finding of wilfulness. . . . Whether a party's violation was wilful depends on the circumstances of the particular case and, ultimately, is a factual question committed to the sound discretion of the trial court. . . . Without a finding of wilfulness, a trial court cannot find contempt and, it follows, cannot impose contempt penalties." (Internal quotation marks omitted.) *Hall* v. *Hall*, 182 Conn. App. 736, 747, 191 A.3d 182 (2018), aff'd, 335 Conn. 377, 238 A.3d 687 (2020). "[T]his court will not disturb the trial court's orders unless it has abused its legal discretion or its findings have no reasonable basis in fact. . . . It is within the province of the trial court to find facts and draw proper inferences from the evidence presented. . . . [E]very reasonable presumption will be given in favor of the trial court's ruling, and [n]othing short of a conviction that the action of the trial court is one which discloses a clear abuse of discretion can warrant our interference." (Internal quotation marks omitted.) *Giordano* v. *Giordano*, 203 Conn. App. 652, 657, 249 A.3d 363 (2021).

In the present case, the court found that "[t]he defendant did not advise the plaintiff until August 6, 2019, that his summer vacation parenting time would be from August 23, 2019, until September 2, 2019. . . . [T]he defendant wilfully violated the clear and unambiguous orders of the court by failing to select his 2019 summer vacation period on or before April 15, 2019. The defendant has offered no evidence to justify or excuse his violation of the court's order." The defendant contends that his delay in providing 2019 summer vacation dates,

however, was not wilful.[9] We conclude that the court properly determined that the defendant's violation of the 2019 summer vacation provision of the parenting plan was wilful. As discussed previously, the parenting plan requires the parties to provide their proposed 2019 summer vacation dates no later than April 15, 2019. The court found that the defendant did not comply by April 15, 2019, and instead delayed until August 6, 2019, nearly four months after the April 15, 2019 deadline, to propose taking the children on vacation beginning August 23, 2019. This finding is supported by the record. Accordingly, we conclude that the court did not abuse its discretion in finding the defendant in contempt of its clear and unambiguous order in light of the defendant's failure to provide a factual basis to explain his noncompliance with that order.

The portion of the appeal challenging the pendente lite access order is dismissed as moot; the judgment of contempt is affirmed.

In this opinion the other judges concurred.

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[9] The defendant argues that in December, 2018, he began discussing the possibility of taking the children to London for their 2019 summer vacation but could not have solidified dates without the plaintiff's consent. He further claims that when he learned the plaintiff would be taking the children to California, he began discussing the possibility of meeting the children in California and taking them to Hawaii, but he could not have provided the plaintiff with proposed vacation dates until knowing the plaintiff's travel plans. As previously stated, these contentions go to the issue of travel plans, which is unrelated to the requirement that the defendant provide his proposed 2019 summer vacation dates by April 15, 2019.