THOMAS HACKETT *v.* J.L.G. PROPERTIES, LLC
(SC 17871)

Borden, Norcott, Katz, Palmer and Vertefeuille, Js.*

Argued May 17, 2007—officially released February 19, 2008

Scott R. McCarthy, for the appellant (substitute plain-

tiff Kathy Castagnetta).

Peter C. Hunt, for the appellee (defendant).

Ted D. Backer filed a brief for the Housatonic Valley Council of Elected Officials as amicus curiae.

Opinion

VERTEFEUILLE, J. The sole issue in this appeal from a zoning enforcement action is whether the trial court properly rendered judgment in favor of the defendant, J.L.G. Properties, LLC, on the basis of its determination that the zoning regulations of the town of New Milford (town) were preempted by the Federal Power Act (act), 16 U.S.C. § 791a et seq. We affirm the judgment of the trial court.

The relevant facts are undisputed. The defendant owns a commercial marina on the shore of Candlewood Lake in the town. Candlewood Lake is an artificial pumped storage reservoir. It is owned and operated by Northeast Generation Company (Northeast) and is used to generate hydroelectric power pursuant to a license issued to Northeast by the Federal Energy Regulatory Commission (commission) under the provisions of the act. The property owned by Northeast and licensed for use by the commission includes the property below Candlewood Lake up to 440 feet above sea level. The boundary between the defendant's property and the property owned by Northeast commonly is referred to as the 440 foot contour line. Without first obtaining a zoning or building permit but with a license from Northeast, the defendant began building a sixteen by fifty foot deck off of the marina and on the lake, beneath the 440 foot contour line. Thereafter, Thomas Hackett, the town's assistant building official, received complaints from several residential neighbors, who were concerned that the deck was being built without a building permit. Hackett then issued a written order directing that all construction on the deck cease until the defendant obtained a building permit. The defendant halted construction temporarily in order to apply to the town zoning office for the zoning permit it needed to acquire a building permit. The town denied the defendant's application because the project was not in compliance with town setback requirements. The defendant never appealed from the decision and a building permit was never issued for the defendant's project. Nevertheless, the defendant completed construction of the deck without a zoning or building permit.

Thereafter, Hackett[1] brought this action in Superior Court pursuant to General Statutes §§ 8-3 (f)[2] and 8-12,[3] seeking temporary injunctive relief to prevent the use of the deck and permanent injunctive relief seeking removal of the deck. The plaintiff also sought removal of a lighthouse that the defendant had previously constructed around a flagpole, which was located below the 440 foot contour line, because the defendant had not obtained a zoning or building permit for its construction. In the trial court, the defendant conceded that the deck and lighthouse violated the town's zoning regulations. The defendant asserted, however, that it was not required to obtain a zoning or building permit for these

projects because they were built within a federal hydropower project under a license from Northeast. The trial court agreed with the defendant and concluded that the act impliedly preempted the town's zoning regulations and that, as a result, the defendant was not required to comply with local zoning regulations. This appeal followed.[4]

As a threshold matter, we note that the trial court's conclusion that the town's zoning regulations are preempted by the act is a question of law and, therefore, our review is plenary. "[W]here the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct . . . ." *Pandolphe's Auto Parts, Inc.* v. *Manchester*, 181 Conn. 217, 221, 435 A.2d 24 (1980). Thus, where the "issues present questions of law, [they are] subject to our plenary review." *Commission on Human Rights & Opportunities* v. *Sullivan Associates*, 250 Conn. 763, 786, 739 A.2d 238 (1999).

"The ways in which federal law may pre-empt state law are well established and in the first instance turn on congressional intent. . . . Congress' intent to supplant state authority in a particular field may be express[ed] in the terms of the statute. . . . Absent explicit pre-emptive language, Congress' intent to supersede state law in a given area may nonetheless be implicit if a scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the [s]tates to supplement it, if the [a]ct of Congress . . . touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject, or if the goals sought to be obtained and the obligations imposed reveal a purpose to preclude state authority. . . . Even when Congress has not chosen to occupy a particular field, pre-emption may occur to the extent that state and federal law actually conflict. Such a conflict arises when compliance with both federal and state regulations is a physical impossibility . . . or when a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress . . . ." (Citations omitted; internal quotation marks omitted.) *Wisconsin Public Intervenor* v. *Mortier*, 501 U.S. 597, 604–605, 111 S. Ct. 2476, 115 L. Ed. 2d 532 (1991).

"The question of preemption is one of federal law, arising under the supremacy clause of the United States constitution. . . . Determining whether Congress has exercised its power to preempt state law is a question of legislative intent. . . . [A]bsent an explicit statement that Congress intends to preempt state law, courts should infer such intent where Congress has legislated comprehensively to occupy an entire field of regulation, leaving no room for the [s]tates to supplement federal law . . . or where the state law at issue conflicts with

federal law, either because it is impossible to comply with both . . . or because the state law stands as an obstacle to the accomplishment and execution of congressional objectives . . . .'' (Internal quotation marks omitted.) *Barbieri* v. *United Technologies Corp.*, 255 Conn. 708, 717, 771 A.2d 915 (2001).

A brief review of the act provides context for our analysis. ''The [f]ederal [g]overnment took its greatest step toward exercising its jurisdiction in [the field of hydroelectric power] by authorizing federal licenses, under the Federal Water Power Act of 1920 . . . for terms of [fifty] years for the development of water power in the navigable waters of the United States. [The Federal Water Power] Act was limited in 1921 by the exclusion from it of water power projects in national parks or national monuments . . . [and] it received the name of the Federal Power Act [in 1935 and] . . . was then made [p]art I of Title II of the Public Utility Act of 1935. . . .

''[The act was further] amended . . . so as expressly to require a federal license for every water power project in the navigable waters of the United States. It also made mandatory, instead of discretionary, the filing with the Federal Power Commission of a declaration of intention by anyone intending to construct a project in non-navigable waters over which Congress had jurisdiction under its authority to regulate commerce. It continued its recital of permission to construct such projects upon compliance with the state laws, rather than with the [act], provided the projects were not in navigable waters of the United States, did not affect the interests of interstate or foreign commerce and did not affect the public lands or reservations of the United States. These amendments sharpened the line between the state and federal jurisdictions and helped to make it clear that the [f]ederal [g]overnment was assuming responsibility through the Federal Power Commission for the granting of appropriate licenses for the development of water power resources in the navigable waters of the United States.'' (Citations omitted.) *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, 328 U.S. 152, 172 n.17, 66 S. Ct. 906, 90 L. Ed. 1143 (1946). Accordingly, ''the [act] . . . establishes a federal licensing and regulatory scheme for water power projects utilizing the navigable waters of the United States or other waters over which Congress has jurisdiction.'' *Springfield* v. *Environmental Board*, 521 F. Sup. 243, 248 (D. Vt. 1981).

On appeal, the plaintiff claims that the trial court improperly concluded that the town's zoning regulations were preempted by the act. Specifically, the plaintiff asserts that neither field nor conflict preemption applies to the present case and that the construction of the defendant's deck—even though such construction is on property owned by Northeast and subject to federal

licensing by the act—must comply with local zoning regulations. The defendant responds that Congress has demonstrated a clear intent to occupy the field of regulating licensed hydroelectric power projects, including recreational development within those projects. We agree with the defendant and conclude that implied field preemption applies to the present case. Accordingly, we conclude that the defendant did not have to comply with the town's zoning regulations because they are preempted by the act.

In the present case, the trial court concluded that the town's zoning regulations are impliedly preempted by the act and therefore inapplicable to structures within the hydropower project. Specifically, the trial court concluded that: (1) the act demonstrates Congress' intent to occupy the field of hydroelectric power generation; and (2) the town's zoning regulations actually conflict with the congressional purpose of the act because any development along the shore of the lake would violate the fifty foot setback requirement imposed by the town's regulations, contrary to the act's purpose of developing recreational uses within the project. In support of its conclusion, the trial court relied on *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, supra, 328 U.S. 152, and *California* v. *Federal Energy Regulatory Commission*, 495 U.S. 490, 110 S. Ct. 2024, 109 L. Ed. 2d 474 (1990).

In *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, supra, 328 U.S. 156–57, the petitioner applied to the commission's predecessor, the Federal Power Commission, for a license under the act to construct a power plant on navigable waters in Iowa. The state intervened, claiming that the petitioner's application should be denied because of its failure to comply with state regulations, which required a state permit to construct a dam on state waters. Id., 159, 161. The United States Supreme Court rejected this argument, concluding that such a requirement "would vest in the [state board] a veto power over the federal project . . . [and that] [s]uch a veto power easily could destroy the effectiveness of the [f]ederal [a]ct." Id., 164. The United States Supreme Court further noted that, "[i]n the [act] there is a separation of those subjects which remain under the jurisdiction of the [s]tates from those subjects which the [c]onstitution delegates to the United States and over which Congress vests the Federal Power Commission with authority to act. . . . The duality [of control] does not require two agencies to share in the final decision of the same issue. Where the [f]ederal [g]overnment supersedes the state government there is no suggestion that the two agencies both shall have final authority. . . . A dual final authority, with a duplicate system of state permits and federal licenses required for each project, would be unworkable. 'Compliance with the requirements' of such a duplicated system of licensing would be nearly as bad.

Conformity to both standards would be impossible in some cases and probably difficult in most of them. The solution adopted by Congress, as to what evidence an applicant for a federal license should submit to the Federal Power Commission, appears in § 9 of [the act] . . . [and] permits the [Federal Power] Commission to secure from the applicant '[s]uch additional information as that commission may require.' This enables it to secure, in so far as it deems it material, such parts or all of the information that the respective [s]tates may have prescribed in state statutes as a basis for state action." Id., 167–69.

The United States Supreme Court determined that the act was intended to enact "a complete scheme of national regulation which would promote the comprehensive development of the water resources of the [n]ation, in so far as it was within the reach of the federal power to do so . . . ." Id., 180. The court then concluded that "[t]he detailed provisions of the [a]ct providing for the federal plan of regulation leave no room or need for conflicting state controls." Id., 181.

The court in *First Iowa Hydro-Electric Cooperative* did recognize, however, that state authority is preserved in one area under the act. Id., 175. Section 27 of the act as originally enacted in 1920, now codified at 16 U.S.C. § 821, provides that: "Nothing contained in this chapter shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective [s]tates relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein." See 41 Stat. 1065, 1077 (1920). In interpreting that section, the court concluded that "[t]he effect of § 27, in protecting state laws from supersedure, is limited to laws as to the control, appropriation, use or distribution of water in irrigation or for municipal or other uses of the same nature." *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, supra, 328 U.S. 175–76.

The United States Supreme Court revisited the federal preemption issue in 1990 in *California* v. *Federal Energy Regulatory Commission*, supra, 495 U.S. 498. In that case, the court considered whether a hydroelectric power project licensed by the commission was required to follow federal or state requirements for water flow into the stream. Id., 494–96. The United States Supreme Court acknowledged that "[i]n the [act] . . . Congress clearly intended a broad federal role in the development and licensing of hydroelectric power. That broad delegation of power to the predecessor of [the commission], however, hardly determines the extent to which Congress intended to have the [f]ederal [g]overnment exercise exclusive powers, or intended to pre-empt concurrent state regulation of matters affecting federally licensed hydroelectric projects. . . . [Resolution

of this] issue turns principally on the meaning of § 27 of [the act], which provides the clearest indication of how Congress intended to allocate the regulatory authority of the [s]tates and the [f]ederal [g]overnment." Id., 496–97. Recognizing that this was not an issue of first impression, the United States Supreme Court recalled that in *First Iowa Hydro-Electric Cooperative*, it had "interpreted § 27's reservation of limited powers to the [s]tates as part of the congressional scheme to divide state from federal jurisdiction over hydroelectric projects, and 'in those fields where rights are not thus "saved" to the [s]tates . . . to let the supersedure of the state laws by federal legislation take its natural course.' " Id., 498, quoting *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, supra, 328 U.S. 176. The United States Supreme Court "decline[d] . . . to revisit and disturb the understanding of § 27 set forth in *First Iowa* [*Hydro-Electric Cooperative*]." *California* v. *Federal Energy Regulatory Commission*, supra, 498. Finding that California's minimum stream flow requirement did not fall within the narrow reservation of state power provided by § 27, the United States Supreme Court concluded that the act preempted the state regulations regarding stream flow requirements. Id., 498–99, 506–507.

The plaintiff in the present case asserts that the trial court improperly relied on *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, supra, 328 U.S. 152, and *California* v. *Federal Energy Regulatory Commission*, supra, 495 U.S. 490, because those cases involved claims related to water flow relevant to a hydroelectric power project and that, therefore, those cases are distinguishable from the present case, which involves a recreational use within a hydroelectric power project. We disagree, and conclude that the two cases relied on by the trial court require us to conclude that the town's zoning regulations are preempted in the present case.

The United States Supreme Court's construction of § 27 in *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, supra, 328 U.S. 152, and *California* v. *Federal Energy Regulatory Commission*, supra, 495 U.S. 490, is not limited to water flow issues, but is instructive on all matters in which states seek to impose requirements on hydroelectric power projects. Indeed, other courts examining the Supreme Court's interpretation of § 27 repeatedly have recognized its broad application. For instance, the United States District Court for the Eastern District of California concluded that, "[t]he Supreme Court in *First Iowa Hydro-Electric Cooperative* held that the effect of [§] 27 in protecting state laws from supersedure is limited to those regarding the control or use of water in irrigation or for municipal or other uses of the same nature. The [Supreme Court] concluded that § 27 does not save for the states the power to impose project permit require-

ments." *Mega Renewables* v. *Shasta*, 644 F. Sup. 491, 495 (E.D. Cal. 1986).

Similarly, in *Sayles Hydro Associates* v. *Maughan*, 985 F.2d 451, 456 (9th Cir. 1993), the Ninth Circuit Court of Appeals concluded that the permitting regulations of the California state water resources control board (board) were preempted by the act. In that case, the California state board would not issue a permit to the hydroelectric power project until it met the board's requirements regarding recreation, aesthetics, archaeology, sport fishing, cultural resources, and cost of capital and estimated revenues. Id, 453. The Ninth Circuit recognized that "[t]he Supreme Court has read the broadest possible negative pregnant into this 'savings clause.' . . . The rights reserved to the states in this provision are all the states get." (Citation omitted.) Id. Relying on *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, supra, 328 U.S. 152, and *California* v. *Federal Energy Regulatory Commission*, supra, 495 U.S. 490, the Ninth Circuit concluded that "the only authority states get over federal power projects relates to allocating proprietary rights in water. *First Iowa Hydro-Electric Cooperative* said that the separation of authority between state and federal governments does not require two agencies to share in the final decision of the same issue." (Internal quotation marks omitted.) *Sayles Hydro Associates* v. *Maughan*, supra, 455. The Ninth Circuit further concluded that the United States Supreme Court had based its decisions in *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, supra, 152, and *California* v. *Federal Energy Regulatory Commission*, supra, 490, on Congress' intent in the act to occupy the field and create a "broad and paramount federal regulatory role . . . ." *Sayles Hydro Associates* v. *Maughan*, supra, 455.

In a case involving a recreational use, the United States District Court for the District of Vermont concluded that the act preempted the permitting requirements of the state of Vermont's environmental protection board, even as it pertained to corollary aspects of the project, such as recreational uses. *Springfield* v. *Environmental Board*, supra, 521 F. Sup. 249. In doing so, the District Court rejected the state environmental protection board's "contention that preemption under the act applies only to state regulation of those aspects of a project directly related to the construction and operation of the hydroelectric generating facility but does not extend to the regulation of corollary aspects . . . ." Id. The District Court concluded that "[t]he [a]ct creates no such dichotomy of project elements," but instead "reflect[s] a clear Congressional intent to bring all aspects of the hydroelectric project within the purview of the federal regulatory scheme." Id.

Other courts also have recognized the inclusion of

recreational uses within the purview of the commission's exclusive authority. For instance, in *Coalition for Fair & Equitable Regulation of Docks on Lake of the Ozarks* v. *Federal Energy Regulatory Commission*, 297 F.3d 771, 778 (8th Cir. 2002), the Eighth Circuit Court of Appeals determined that the commission's licensee could assess user fees on docks at a lake that was the site of a hydroelectric power project. The plaintiff, a coalition of lake-front property owners, challenged the imposition of the fees, claiming, inter alia, that the commission did not have the power to regulate the use of project lands by anyone other than its licensee. Id., 774. The Eighth Circuit rejected the plaintiff's claim, concluding that the act "commands [the commission] to see to it that projects are developed to serve various public needs, including recreation . . . [and that] Congress gave [the commission] the means to accomplish its tasks through statutory provisions vesting [the commission] with power and discretion." (Citation omitted.) Id., 778.

In the present case, the plaintiff does not claim that the local zoning regulations relate to the proprietary rights that are reserved to state regulation, but instead claims that the act does not preempt the zoning regulations because they are being applied to a recreational use within the hydroelectric power project. We disagree. The commission licensed Northeast to create a hydroelectric power project on Candlewood Lake, and the defendant's deck is located on Northeast property within the hydroelectric power project. As part of its license, Northeast was not only authorized to grant permission to use project property for recreational uses, but was required to develop and submit a recreation plan to the commission. Northeast granted the defendant permission to build the deck pursuant to the authority granted to it under that license. The construction of the defendant's deck, therefore, was within the hydroelectric power project.[5] We agree with the reasoning of the other courts that have considered this issue and conclude that the town's zoning regulations were preempted because the act demonstrates Congress' intent to create "a complete scheme of national regulation"; *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, supra, 328 U.S. 180; for all aspects of hydroelectric power projects, including recreational uses within the project.

The plaintiff claims that 18 C.F.R § 2.7 (2007), which governs recreational development at licensed projects, supports its position that the town zoning regulations are not preempted by the act. Section 2.7 provides in relevant part: "The [c]ommission will evaluate the recreational resources of all projects under [f]ederal license or applications therefor and seek, within its authority, the ultimate development of these resources, consistent with the needs of the area to the extent that such development is not inconsistent with the primary

purpose of the project. . . . The [c]ommission expects the licensee to assume the following responsibilities . . . (f) (1) [t]o comply with [f]ederal, [s]tate and local regulations for health, sanitation, and public safety, and to cooperate with law enforcement authorities in the development of additional necessary regulations for such purposes. . . .'' 18 C.F.R § 2.7 (2007).

The plaintiff asserts that the town's zoning regulations at issue in the present case fall within the ''[f]ederal, [s]tate and local regulations for health, sanitation and public safety'' enumerated in 18 C.F.R. § 2.7. The plaintiff's cursory argument is based on the principle that the general purpose of zoning regulations includes the protection of public health and safety, and § 2.7 therefore requires compliance with local zoning laws. We do not read that section so broadly.

''According to the [doctrine] of ejusdem generis, unless a contrary intent appears, where general terms are followed by specific terms in a statute, the general terms will be construed to embrace things of the same general kind or character as those specifically enumerated. 2A J. Sutherland, Statutory Construction (4th Ed. Sands [1986]) § 47.17.'' (Internal quotation marks omitted.) *Scrapchansky* v. *Plainfield*, 226 Conn. 446, 455, 627 A.2d 1329 (1993). It is well established that ''[w]e . . . construe agency regulations in accordance with accepted rules of statutory construction.'' (Internal quotation marks omitted.) *Teresa T.* v. *Ragaglia*, 272 Conn. 734, 751, 865 A.2d 428 (2005). The application of this doctrine of construction to 18 C.F.R. § 2.7 does not persuade us that the commission intended to include the town's zoning setback requirements as regulations with which it expects a licensee to comply. The list of regulations enumerated in § 2.7 indicates that the commission was concerned with those that directly address health and sanitation within the recreational use. The regulations at issue are those involving ''health, sanitation, and public safety . . . .'' 18 C.F.R. § 2.7 (f) (1) (2007). We read the term public safety in the context of health and sanitation, and therefore conclude that only those town regulations directly affecting health and sanitation are included in § 2.7. The town's setback requirements do not fall within the confines of § 2.7.

Moreover, as the United States Supreme Court concluded in *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, supra, 328 U.S. 168–69, ''[w]here the [f]ederal [g]overnment supersedes the state government there is no suggestion that the two agencies both shall have final authority. . . . A dual final authority, with a duplicate system of state permits and federal licenses required for each project, would be unworkable. 'Compliance with the requirements' of such a duplicated system of licensing would be nearly as bad. Conformity to both standards would be impossible in some cases and probably difficult in most of

them. The solution adopted by Congress . . . permits the [c]ommission to secure from the applicant '[s]uch additional information as the commission may require.' This enables it to secure, in so far as it deems it material, such parts or all of the information that the respective [s]tates may have prescribed in state statutes as a basis for state action." As the United States District Court for the District of Vermont recognized, "[t]his does not mean that the [state] has no role in the licensing process. Both the [act] and the [commission regulations] require the presentation of evidence satisfactory to [the commission] showing that the applicant has complied with any of the requirements for a state permit that [the commission] considers appropriate to effect the purposes of the federal license. . . . Moreover, the [a]ct requires that notice of a license application be given to any state or municipality likely to be interested in or affected by the application . . . and [the commission's] rules provide for liberal intervention by interested persons." (Citations omitted.) *Springfield* v. *Environmental Board*, supra, 521 F. Sup. 250. Indeed, as the United States Supreme Court concluded, "the [c]ommission acts on behalf of the people of [the town], as well as others, in seeing to it that the interests of all concerned are adequately protected." *Federal Power Commission* v. *Oregon*, 349 U.S. 435, 449, 75 S. Ct. 832, 99 L. Ed. 1215 (1955). We conclude, therefore, that although 18 C.F.R. § 2.7 (f) (1) allows the commission to consider compliance with local health regulations in evaluating recreational uses within a hydroelectric power project, it does not require that the licensee obtain local zoning and building permits for the development of recreational resources.

The judgment is affirmed.

In this opinion BORDEN, NORCOTT and PALMER, Js., concurred.

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

[1] The action initially was filed by Hackett, however, Kathy Castagnetta, the New Milford zoning enforcement officer, was later substituted for Hackett pursuant to General Statutes § 52-108 and Practice Book § 9-19. References herein to the plaintiff are to Castagnetta.

[2] General Statutes § 8-3 (f) provides: "No building permit or certificate of occupancy shall be issued for a building, use or structure subject to the zoning regulations of a municipality without certification in writing by the official charged with the enforcement of such regulations that such building, use or structure is in conformity with such regulations or is a valid nonconforming use under such regulations. Such official shall inform the applicant for any such certification that such applicant may provide notice of such certification by either (1) publication in a newspaper having substantial circulation in such municipality stating that the certification has been issued, or (2) any other method provided for by local ordinance. Any such notice shall contain (A) a description of the building, use or structure, (B) the location of the building, use or structure, (C) the identity of the applicant, and (D) a statement that an aggrieved person may appeal to the zoning board of appeals in accordance with the provisions of section 8-7."

[3] General Statutes § 8-12 provides: "If any building or structure has been erected, constructed, altered, converted or maintained, or any building, structure or land has been used, in violation of any provision of this chapter or of any bylaw, ordinance, rule or regulation made under authority conferred hereby, any official having jurisdiction, in addition to other remedies,

may institute an action or proceeding to prevent such unlawful erection, construction, alteration, conversion, maintenance or use or to restrain, correct or abate such violation or to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. Such regulations shall be enforced by the officer or official board or authority designated therein, who shall be authorized to cause any building, structure, place or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereon in violation of any provision of the regulations made under authority of the provisions of this chapter or, when the violation involves grading of land, the removal of earth or soil erosion and sediment control, to issue, in writing, a cease and desist order to be effective immediately. The owner or agent of any building or premises where a violation of any provision of such regulations has been committed or exists, or the lessee or tenant of an entire building or entire premises where such violation has been committed or exists, or the owner, agent, lessee or tenant of any part of the building or premises in which such violation has been committed or exists, or the agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation exists, shall be fined not less than ten nor more than one hundred dollars for each day that such violation continues; but, if the offense is wilful, the person convicted thereof shall be fined not less than one hundred dollars nor more than two hundred and fifty dollars for each day that such violation continues, or imprisoned not more than ten days for each day such violation continues or both; and the Superior Court shall have jurisdiction of all such offenses, subject to appeal as in other cases. Any person who, having been served with an order to discontinue any such violation, fails to comply with such order within ten days after such service, or having been served with a cease and desist order with respect to a violation involving grading of land, removal of earth or soil erosion and sediment control, fails to comply with such order immediately, or continues to violate any provision of the regulations made under authority of the provisions of this chapter specified in such order shall be subject to a civil penalty not to exceed two thousand five hundred dollars, payable to the treasurer of the municipality. In any criminal prosecution under this section, the defendant may plead in abatement that such criminal prosecution is based on a zoning ordinance or regulation which is the subject of a civil action wherein one of the issues is the interpretation of such ordinance or regulations, and that the issues in the civil action are such that the prosecution would fail if the civil action results in an interpretation different from that claimed by the state in the criminal prosecution. If the court renders judgment for such municipality and finds that the violation was wilful, the court shall allow such municipality its costs, together with reasonable attorney's fees to be taxed by the court. The court before which such prosecution is pending may order such prosecution abated if it finds that the allegations of the plea are true."

[4] The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we subsequently transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[5] The defendant built the lighthouse years prior to building the deck, and there is no evidence in the record indicating whether Northeast ever issued the defendant permission to build the lighthouse. The record does indicate, however, that Northeast did not object to its presence. We conclude, and the parties agree, that the lighthouse should be treated in the same manner as the deck.