community members, reports issued by the decision making body, whether less discriminatory avenues were available and so on.

Here, the District Court had bypassed consideration of circumstantial evidence that might have supported the Chabad's claim and instead considered only the Chabad's cited comparators. While such evidence was germane to a selective enforcement analysis, it is not necessary to establish a nondiscrimination claim. "Because the district court did not look beyond religious comparators in weighing the Chabad's nondiscrimination claim, we vacate the grant of summary judgment to the defendants on this claim and remand for consideration of whether the Chabad established a prima facie nondiscrimination claim, cognizant of the fact that such discrimination must be "on the basis of religion" and not other, legitimate factors."

http://www.ca2.uscourts.gov/decisions/isysquery/95483e87-0591-4dfc-b29f-c0457f17ac2a/3/doc/12-1057_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/95483e87-0591-4dfc-b29f-c0457f17ac2a/3/hilite/ (last accessed September 24, 2014).

Trials: Landowner Challenging Zoning Board Action Must Exhaust All Administrative Remedies to Establish Subject Matter Jurisdiction

Holt v. Town of Stonington, No. 12-4878-cv (2d Cir. Aug. 29, 2014).

A landowner challenging the local zoning board's overrule of an enforcement officer's unofficial opinion letter that had allowed development on her property cannot bring an action in court until she has exhausted all administrative remedies—and must consider all conceivable responses by the locality before concluding that no remedies exist.

Stonington, Connecticut land use regulations require a minimum lot size in order to construct single-family houses. However, if an undersized lot is nonconforming under applicable regulations, a home may potentially be built. In May 2005 a Stonington zoning enforcement officer provided an unofficial opinion letter to the owner of an undersized lot stating that it could be suitable for a single-family home due its nonconforming status. Plaintiff Carol Holt subsequently bought the lot in question based on the enforcement officer's opinion. She began development, but a neighbor objected, challenging the 2005 letter and arguing that in 1981 a ten-foot strip of land had been sold from Holt's property, depriving it of nonconforming status. Holt withdrew her development application and awaited the zoning board's response to the challenge. The zoning board overruled the enforcement officer's letter and Holt immediately filed suit in state court. The Connecticut court held the zoning board lacked jurisdiction to review the opinion letter as it was an advisory opinion and thus not reviewable. Holt then filed suit in federal District Court seeking to enjoin the Town from preventing her from building on her land. The District Court granted Holt's request for an injunction. The Town appealed.

HELD: The Second Circuit overruled, holding Holt's failure to exhaust her administrative remedies deprived the District Court of subject matter jurisdiction.

DISCUSSION: Courts require that parties exhaust administrative remedies in order to foster orderly administrative and appellate review. Connecticut recognizes narrow and limited exceptions to this rule,

including in cases when the administrative remedies available are demonstrably futile or inadequate. The Circuit Court found that Holt clearly failed to exhaust her remedies since she withdrew her development application before Stonington officials had even acted on it, not to mention that the opinion letter was not a final decision. Holt countered that she was not required to exhaust her remedies in this case or, alternatively, that it would have been futile to do so.

The Second Circuit disagreed. Because Stonington has a zoning process that includes procedures for issuing, denying, and reviewing development permits, there clearly exists an administrative mechanism that Holt was required to utilize prior to coming to federal court. Although Holt argued that since she sought an injunction and the Town could not grant that relief because it was the party against whom the injunction was sought—thereby excusing her from exhausting her administrative remedies – the Circuit Court again disagreed. Administrative remedies are not inadequate because the specific type of remedy sought is unavailable to a plaintiff if the ultimate relief sought could be achieved. Although Holt had asked for an injunction, what she ultimately sought was approval to build a single-family residence on her property. Since Stonington had the authority to grant that ultimate request, Holt had to exhaust the administrative channel.

The Circuit Court noted Holt had not demonstrated that the administrative process would be futile. While Holt had alleged that town officials displayed the *appearance* of impropriety and partiality, such a charge did not overcome the presumption that the authorities are not biased; she had to show actual bias, not the appearance of bias. Lastly, the Court pointed out that even if Holt had wound her way through the administrative process while her case was on appeal she still would not get the relief sought from the courts because Connecticut law requires parties exhaust administrative remedies *before* seeking judicial relief. Holt filed her suit long before the administrative process ran its course. Her case was dismissed without prejudice.

http://www.ca2.uscourts.gov/decisions/isysquery/6cc7b43b-6dc5-4196-9093-1ab515ff0107/2/doc/12-4878_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/6cc7b43b-6dc5-4196-9093-1ab515ff0107/2/hilite/ (last accessed September 24, 2014).

Trials: Reopening Dormant Child Abuse Case Against Officer Who Files Section 1983 Action Against City Is Grounds for Prosecutorial Misconduct

Marshall v. City of Farmington Hills, No. 13-2011 (6th Cir. Aug. 27, 2014).

The Sixth Circuit has held that where the City of Farmington Hills (Michigan) reopened a dormant child abuse case against an officer who had brought a Section 1983 excessive force action against the City relating to his arrest on other grounds, the issue of prosecutorial misconduct had been sufficiently raised. The court also found that because the parties had not agreed on the text of a press release, a release-dismissal agreement between the officer and the City was not final and the office was not collaterally estopped from further litigation.

In December 2006 Officer David Marshall was heading home in his police uniform from work in Detroit when he was pulled over by the Farmington Hills Police – his hometown police force. He was ordered