FLYNN, C. J., dissenting. This case raises questions about the deference to be given to local zoning agencies when undertaking a judicial review of their findings and conclusions. I respectfully dissent from the majority opinion and would conclude that the court improperly allowed the introduction of eight separate documents into evidence at the Superior Court hearing on the zoning appeal of the plaintiff, Christopher Parslow, although those documents had never been introduced before the zoning board of appeals of the town of Middletown. I do so because judicial review of the actions of a zoning board is limited generally to a review of the record evidence the board had before it, and the plaintiff in this case has not shown good reason for failing to present before the board the evidence he produced only before the Superior Court.[1]

I agree that the language of General Statutes § 8-8 (k) is broad insofar as subdivision (2) of it permits the Superior Court in an appeal from a decision of a zoning board to "allow any party to introduce evidence in addition to the contents of the record if . . . (2) it appeals to the court that additional testimony is necessary for the equitable disposition of the appeal. . . ." This statutory breadth, however, has been limited by judicial decisions that recognize that the court's usual role on judicial review is to review the record that the zoning authority had before it and to decide whether, on that record, the board acted arbitrarily, unlawfully or in abuse of the discretion vested in it on the basis of the evidence. See *Beach* v. *Planning & Zoning Commission*, 141 Conn. 79, 80, 103 A.2d 814 (1954).

The majority cites *Troiano* v. *Zoning Commission*, 155 Conn. 265, 268, 231 A.2d 536 (1967), as authority for a court to allow the admission of additional evidence in the exercise of its discretion. *Troiano*, however, seems to fall into one of those narrow exceptions that would not apply here. *Troiano* held that, when a due process confiscation claim was made, it was error for the Superior Court to bar new evidence of the effect of new regulations on an existing gravel mining operation. There was no constitutional claim in the present case, and, accordingly, *Troiano* is inapposite. See *Gevers* v. *Planning & Zoning Commission*, 94 Conn. App. 478, 490, 892 A.2d 979 (2006) (*Troiano* involved claims of constitutional dimension and is inapposite to case in which no constitutional claim advanced).

I agree with Fuller's scholarly treatise, in which he summarizes the narrow exceptions permitting the admission of new evidence. See R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (3d Ed. 2007) § 32.8, pp. 209–12. These exceptions include claims of constitutional confiscation, fraud and other

such narrow situations. Id. I agree with the majority that the disputed evidence in the present case does not fall into any of those recognized narrow exceptions. Fuller also opines that new evidence should not be admitted at the Superior Court trial unless there is a good reason for the failure of the party to present the evidence in the original proceeding. Id. "The trial court has discretion on whether to take additional evidence, but should ordinarily allow it only when the record is insufficient or when there is an extraordinary reason for it, and before allowing additional evidence the court should (1) determine that the additional evidence is material and (2) that there was a good reason for the failure to present the evidence in the original proceeding." Id., p. 207–208. I agree.

I disagree with the majority, however, that there was any good reason for the plaintiff's failure to introduce this known evidence to the zoning board of appeals in this case. The only reason advanced by the plaintiff was that he had not been represented by a lawyer and, therefore, was ignorant of the importance of the eight documents. Carving an exception for such a reason will open the "barn door," and the exception will swallow the rule of reliance on the record before the board when undertaking judicial review. Accordingly, I would conclude that the admission of the new evidence was not a proper exercise of the court's discretion. Therefore, I respectfully dissent.

[1] I also find it problematic that the cease and desist order of the Middletown zoning and wetlands officer, which the trial court and the majority believe properly was issued and should be upheld, ordered the defendant Seventeen Oaks, LLC, to stop the commercial food vending service at 980 South Main Street, Middletown. The plaintiff, himself, contended, and the trial court agreed, that the food vending trailer actually is located at 1277 Randolph Road. The court also found, however, that there was some evidence that a food vending service had existed at 980 South Main Street prior to the adoption of zoning regulations. The court stated further that because the food vending activity was not now taking place at 980 South Main Street, it need not determine whether the prior food vending activity would be sufficient to support the validity of a nonconforming use at 980 South Main Street. In reality, the question before the board in this case was whether it should uphold the cease and desist order, which it voted to overturn. On appeal, the Superior Court was to review the decision of the board, which overturned a cease and desist order for 980 South Main Street. The Superior Court then reversed the board's decision, effectively reinstating the cease and desist order, which the majority on appeal also finds proper. I question how a cease and desist order issued to 980 South Main Street can be upheld and enforced against an activity taking place at 1277 Randolph Road.