

STATE OF MAINE  
CUMBERLAND, ss.

FILED  
CLERK OF SUPERIOR COURT  
2000 SEP -7 A 9:57

SUPERIOR COURT  
CIVIL ACTION ✓  
DOCKET NO. AP-99-90  
DONALD L. CARBRECHT  
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ALLEN BAUER,

Plaintiff

vs.

TOWN OF GRAY,

Defendant

ORDER ON DEFENDANT'S MOTION  
FOR A TRIAL OF THE FACTS

OCT 11 2000

TDW-CUM-9/7/2000

Defendant Town of Gray has moved for a trial of the facts pursuant to Rule 80B(d). After review of the submissions of the parties, the court denies the motion.


The Law Court has stated that Rule 80B(d) "is not intended to allow the reviewing court to retry the facts that were presented to the governmental decision maker." Baker's Table Inc. v. City of Portland, 2000 ME 7 ¶9, 743 A.2d 237, 240-41. The implication of that decision and other decisions relating to Rule 80B(d) is that trials pursuant to Rule 80B(d) should be limited to claims of procedural irregularity or other issues on which there was no opportunity to make a record below. See id.; Palesky v. Secretary of State, 1998 ME 103, ¶¶5-8; 711 A.2d 129, 131-32.

In this case, all parties had an opportunity to make a record on the issues on which the Town now seeks a trial before the Planning Board. Bauer is correct that if the record does not contain substantial evidence to support the Board's decision, the granting of the Town's Rule 80B(d) motion would provide the Town with an unjustified opportunity to bolster the record after the fact. Nor is this conclusion altered by the fact that the issue in this case may turn on intent to evade the

subdivision law. The Planning Board made a finding on that issue, and the issue in the case is whether there is substantial evidence to support that finding. Although the Planning Board did not have subpoena power, it was also not constrained by the rules of evidence. M.R.Evid. 1101(a).

In light of the disposition of the instant motion, plaintiff's brief and the filing of the record shall be due within 30 days of the date this order is filed and briefing shall thereafter be governed by Rule 80B(g). The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: September 6, 2000

  
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Thomas D. Warren  
Justice, Superior Court

Date Filed 10-25-99

CUMBERLAND  
County

Docket No. AP 99-90

Action APPEAL - 80(B)

ALLEN BAUER

TOWN OF GRAY

vs.

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Date of  
Dated: 10-25-99

Thomas D. Warren  
Justice, Superior Court

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