

STATE OF MAINE
PORTLAND, ss.

BUSINESS & CONSUMER DOCKET
DOCKET NO. BCD-APP-2021-05

ELIZABETH MILLS,)	
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING IN PART AND
)	DENYING IN PART RECORD DISPUTE
TOWN OF BAR HARBOR and)	MOTIONS
BHAPTS, LLC,)	
)	
Defendants.)	

Defendant BHAPTS, LLC, (“BHAPTS”) has filed a series of motions disputing the contents of the Record on Appeal. The gist of BHAPTS’ argument is that Paragraph 17 of Complaint the Complaint only appeals the narrow issue of whether the Bar Harbor Planning Board determined the proper number of affordable housing units for BHAPTS’ site plan. BHAPTS also argues that for various reasons, Plaintiff Elizabeth Mills (“Mills”) waived her right to appeal anything other than the proper number of affordable housing units. It follows, argues BHAPTS, that a large volume of material included in the Record of Appeal should be excluded. Mills contends that Paragraph 17 appeals a broader range of issues, that she did not waive any rights to appeal those broader issues, and thus the entire content of the Record of Appeal is necessary.

BHAPTS also argues, and Mills agrees, that Mills’ June 3, 2020 application for administrative appeal should be made a part of the Record on Appeal.

Consistent with Maine’s notice pleading doctrine, a Complaint in a Rule 80B case need only contain a concise statement of the grounds upon which a plaintiff contends he or she is entitled to relief. M.R. Civ. P. 80B(a). Accordingly, the Court is not persuaded by BHAPTS argument that

Paragraph 17 must be narrowly construed to only appeal the proper number of affordable housing units. The Court interprets Paragraph 17 to appeal the broader range of issues asserted by Mills. Whether Mills waived her right to appeal the broader range of issues she asserts are encompassed within Paragraph 17 is a matter for another day.

As a result, the Court grants in part BHAPTS' Restated Motion to Resolve Record Dispute, and orders that Mills' June 3, 2020 application for administrative appeal be made a part of the Record on Appeal. The Court denies in part BHAPTS' Motion to the extent it seeks to exclude material from the Record on Appeal. BHAPTS can address any waiver arguments in its brief.

Regarding its brief, BHAPTS has filed a series of motions asking to be able to supplement its brief if the Court the record dispute in favor of Mills and asking for additional time to supplement. Since the Court has decided the record dispute in favor of Mills, the Court now needs to address BHAPTS' request to supplement its brief.

The Court grants in part and denies in part BHAPTS Motion for Leave to Allow Supplement of Brief After Order on Record Dispute as follows. The Court provides BHAPTS with two options for how to proceed. In Option 1, BHAPTS withdraws its Initial Response Brief, and files a new Response Brief addressing all the issues raised in the appeal. In Option 2, BHAPTS leaves its Initial Response Brief as is, but files a Supplemental Response Brief limited to no more than six pages. By NLT than Friday, February 26, 2021, BHAPTS must notify the Court and the parties which option it selects. BHAPTS must then file its new Response Brief or its Supplemental Response Brief, depending on which option it selects, by no later than March 19, 2021. Thereafter Mills will reply as provided for in M.R. Civ. P. 80B(g) and may ask for reasonable additional time if she needs it.

All other motions relating to the record dispute are denied as moot.

