

## Appendix

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### Appendix A: Denial of Review by First Circuit

#### United States Court of Appeals For the First Circuit

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No. 19-1643

JOHN S. BARTH, Plaintiff - Appellant, v. CITY OF PEABODY, Defendant - Appellee,  
RK REALTY TRUST; RICHARD DIPIETRO, Defendants.

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Before

Torruella, Lynch and Barron,  
Circuit Judges.

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JUDGMENT

Entered: June 15, 2020

Appellant David Barth [sic] appeals the entry of judgment in favor of Appellee following a jury trial. To the extent that this appeal is properly before the court, review of the parties' submissions and relevant portions of the record reveals that summary affirmance is in order.

First, the denial of Barth's pre-trial motions for summary judgment are not subject to appellate review. Our precedent establishes that "an order denying summary judgment typically does not merge into the final judgment and therefore is not an independently appealable event *if the case thereafter proceeds to trial.*" *Rivera-Torres v. Ortiz Velez*, 341 F.3d 86, 92 (1st Cir. 2003) (emphasis added) (quoting *Iacobucci v. Boulter*, 193 F.3d 14, 22 (1st Cir. 1999)). Barth identifies no exception to that principle that might apply here.

Second, the record before us does not include a transcript of the jury trial proceedings. As the appellant, Barth had the duty to produce the record on appeal in order to support his claims.

See *Campbell v. Ackerman*, 913 F.3d 14, 18 (1st Cir. 2018) (citation omitted); see also Fed. R. App. P. 10(b) (outlining the procedure by which appellants either order transcripts or certify that a transcript is unnecessary). At least twice Barth certified that transcripts were unnecessary to adjudicate this appeal; he then proceeded to advance claims focused on events at trial. Without the trial transcript, we cannot analyze Barth's arguments concerning the trial, and he, as the appellant, must "bear the brunt of an insufficient record" under these circumstances. *Real v. Hogan*, 828 F.2d 58, 60-61 (1st Cir. 1987).

Barth's other arguments are unavailing. We AFFIRM the district court's entry of judgment in favor of Appellee. All pending motions are DENIED.

Affirmed. See 1st Cir. Local R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

**Appendix B: Jury Verdict Form**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

John Barth, Plaintiff

v.

CIVIL ACTION NO.

City of Peabody, Defendant.

15-13794-MBB

**VERDICT FORM**

**I. TAKING CLAIM**

1. DO YOU FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF ESTABLISHED ALL OF THE NECESSARY ELEMENTS OF HIS FIFTH AMENDMENT TAKING CLAIM AGAINST THE DEFENDANT? ANSWER: no (YES OR NO).

If you answered yes to the above question, proceed to the next question. Otherwise, proceed to question 3....

**II. EQUAL PROTECTION CLAIM**

3. DO YOU FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF ESTABLISHED THAT INDIVIDUALS SIMILARLY SITUATED TO HIM IN ALL RELEVANT ASPECTS WERE TREATED DIFFERENTLY? ANSWER: no (YES OR NO).

If you answered yes to the above question, proceed to the next question. Otherwise, proceed to question 7....

**III. DUE PROCESS CLAIM**

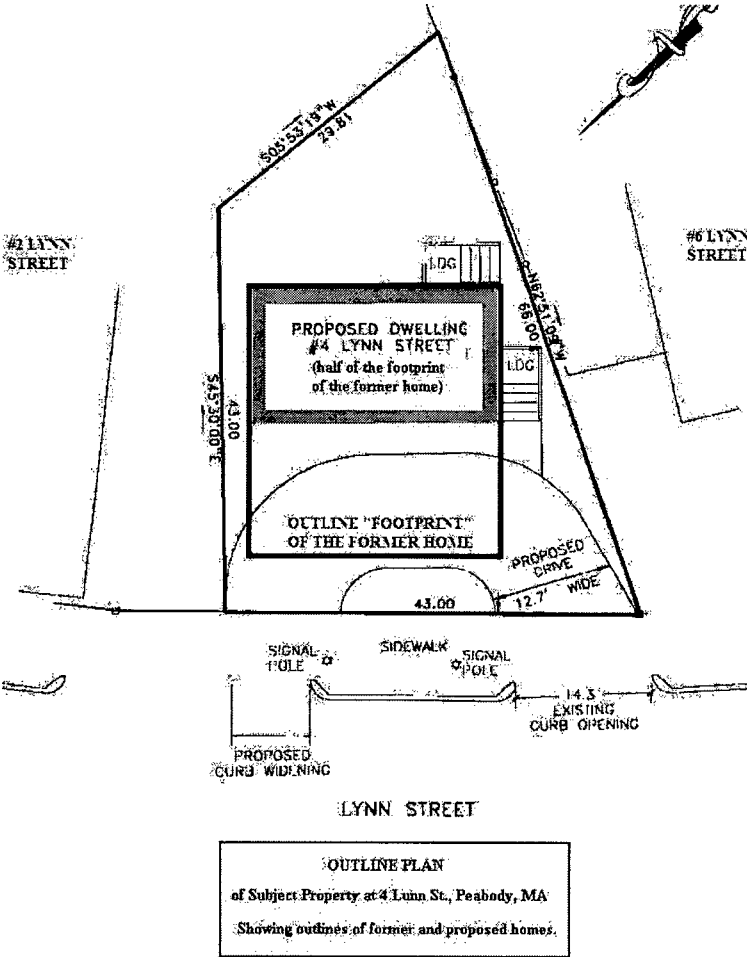
7. DO YOU FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF ESTABLISHED ALL OF THE NECESSARY ELEMENTS OF HIS DUE PROCESS CLAIM AGAINST THE DEFENDANT?

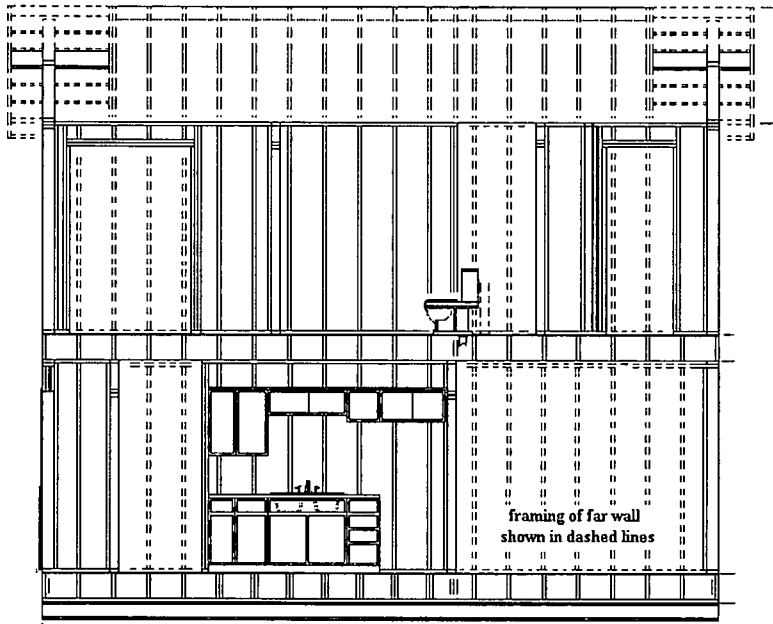
ANSWER: no (YES OR NO).

If you answered yes to the above question, proceed to the next question. Otherwise, do not answer question 8.

...DATE: 6/5/2019 FOREPERSON OF THE JURY

Appendix C: Proposed Rebuilding of the Home





**Appendix D: Denial of Rehearing**

**United States Court of Appeals  
For the First Circuit**

No. 19-1643

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JOHN S. BARTH  
Plaintiff – Appellant  
v.  
CITY OF PEABODY  
Defendant – Appellee,  
RK REALTY TRUST; RICHARD DIPIETRO,  
Defendants.  
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Before  
Torruella, Lynch and Barron,  
Circuit Judges.  
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**ORDER OF COURT**  
Entered: July 30, 2020

This matter is before the court on Appellant John Barth’s “Motion to Reconsider,” which the court construes as a petition for panel rehearing. The petition is DENIED.

By the Court:  
Maria R. Hamilton, Clerk