



STATE OF MAINE
HANCOCK, ss.

BUSINESS AND CONSUMER COURT
DOCKET NO. BCD-APP-2025-00005

CHARLES SIDMAN)
)
 Plaintiff)
)
 v.)
)
 TOWN OF BAR HARBOR,)
)
 Defendant)
)
 and)
)
 GOLDEN ANCHOR L.C.,)
)
 Party in Interest)

**GOLDEN ANCHOR LC'S MOTION
TO DISMISS APPELLANT,
CHARLES SIDMAN'S, RULE 80B
APPEAL**

MOOT
07/01/2025 
Entered on the docket: 07/01/2025

NOW COMES, Party in Interest, Golden Anchor, LC, and moves pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Maine Rules of Civil Procedure to dismiss the Rule 80B appeal of Plaintiff/Appellant, Charles Sidman, on the grounds set forth below:

I. PROCEDURAL BACKGROUND

On August 5, 2024, the Code Enforcement Officer of the Town of Bar Harbor (the “Town”) issued a Notice of Violation (“NOV”) to Golden Anchor, LC, the owner and operator of a pier located at 55 West Street in Bar Harbor for violating a Town Council-enacted ordinance—“the Disembarkation Ordinance.”¹ Golden Anchor appealed the NOV to the Bar Harbor Board of Appeals (“BOA”) which, on December 18, 2024, voted to deny Golden Anchor’s appeal.

¹ The Town Council passed the Disembarkation Ordinance on June 18, 2024. It was incorporated into the Bar Harbor Town Code as new and separate chapter—Chapter 52. *Sidman Rule 80B Complaint* at ¶ 54. It went into effect 30 days later—July 18, 2024. *Id.*

Charles Sidman, a Bar Harbor resident and property owner, sought to participate in the BOA's hearing as a party. On December 10, the BOA denied Mr. Sidman's request. On December 18, the BOA denied Golden Anchor's appeal.²

On January 24, 2025, pursuant to Rule 80B, M. R. Civ. P., Mr. Sidman appealed both the BOA's December 10 decision rejecting his request for interested party status and the BOA's December 18 vote denying Golden Anchor's appeal.³

The Town moved to dismiss Count II of the amended complaint, which sought declaratory relief, on the grounds that it was duplicative of Appellant's Rule 80B appeal in Count I. By Order dated April 17, 2025, this Court granted the Town's motion to dismiss Count II. Party in Interest Golden Anchor now moves to dismiss Count I.

II. BACKGROUND

Adoption of Ordinance: The origins of the events that led to Mr. Sidman's appeal may be traced back to a local citizen initiative which Mr. Sidman played a prominent role in formulating and presenting to Bar Harbor voters for their approval. *Sidman Rule 80B Complaint* at ¶¶ 24-25.

Among other things, the initiative proposed to amend the Town's Land Use Ordinance to limit to no more than 1,000 persons as the number of persons who, without the imposition of a penalty, could disembark from cruise ships and enter into the Town in a single calendar day. Ch. 125, § 77(H)(3); see also, *Sidman Rule 80B Complaint* at ¶ 28.⁴ The initiative did not impose

² On December 23, 2024, the BOA issued a written decision setting for its findings of fact and conclusions of law supporting its denial of Golden Anchor's appeal.

³ On January 31, 2025, Mr. Sidman filed an amended complaint which is the operative complaint for purposes of this motion.

⁴ The Sidman Rule 80B Complaint describes the penalty as a "fee." *Sidman Rule 80B Complaint* at ¶ 28. This is clearly wrong. The Ordinance provides the imposition of a potentially escalating per-person penalty to be imposed on Golden Anchor and all other private pier owners pursuant to the penalty authority set forth in 30-A M.R.S. 4452(3)(B). Ch. 125, § 77(H)(4).

any sanction on the disembarking persons or the cruise ships that brought them; rather, it limited the imposition of sanctions to privately owned piers by which disembarking persons would enter the Town.

At a Town Meeting held on November 8, 2022, Bar Harbor voters approved the initiative, and it was incorporated into the Town’s Land Use Ordinance—Chapter 125 of the Town Code—at Section 125-77(H) (hereinafter “the Ordinance” or “Section 77(H)”). See, Bar Harbor Town Code, Ch. 125, § 77(H).

U.S. District Court Amended Decision: Along with other plaintiffs, Golden Anchor sued the Town in U.S. District Court challenging the constitutionality of the Ordinance. On March 1, 2024, following a compressed period of discovery and a three day bench trial in July of 2023, the District Court issued an Amended Decision ruling on all Plaintiffs’ claims.

Although the District Court ruled against Plaintiffs on most of their claims, it ruled in their favor on their claim that the Ordinance was preempted by a conflicting federal rule protecting the disembarkation rights of crew members. District Court Amended Dec. at 61.⁵ In particular, the District Court ruled that the Ordinance’s undifferentiated and unlimited application to “persons” ran afoul of a U.S. Coast Guard rule—33 C.F.R. § 105.237 (“the Seafarer Rule”)—which guaranteed all crew members the right to disembark in any U.S port. Amended Decision at 61. Accordingly, it entered judgment for all plaintiffs, including Golden Anchor, on this point. *Id.* at 61.

Even though this was the only federal constitutional claim on which Plaintiffs prevailed, the District Court’s preemption judgment was no mere technical ruling. To the contrary, its

⁵ In his Rule 80B Complaint, Mr. Sidman asserts that the District Court “upheld the Ordinance as lawful.” *Sidman Rule 80B Complaint* at ¶ 43. This representation materially misrepresents the Amended Decision. The Amended Decision clearly found that that the Ordinance conflicted with the Seafarer Rule and gave judgment to the Plaintiffs on that point. [District Court Amended Dec. at 61].

implications for the Ordinance were profound. That is because the heart of the Ordinance—its whole purpose—was the daily ceiling imposed on the disembarkation of **persons** from cruise ships. Ch. 125, § 77(H)(3). The words “person” recurred throughout the Ordinance and was its operative term. Ch. 125, § 77(H), *passim*.⁶ Moreover, the Land Use Ordinance (“LUO”) had long included an expansive definition of “persons”. Ch. 125, § 109. Therefore, when the Ordinance became part of the LUO, the meaning of term “person” as used in the Ordinance became governed by Section 109.

The District Court’s judgment in plaintiffs’ favor meant that the word “persons” in the Ordinance was overbroad and, to the extent it clashed with the Seafarer Rule, was unconstitutional. With this ruling, the Ordinance became unenforceable until such time as the Town validly amended Section 77(H) to cure its conflict with the Seafarer Rule.

The Disembarkation Ordinance: It was against this background that on June 18, 2024 the Town Council passed the Disembarkation Ordinance.⁷ It is apparent that the Town Council enacted the Disembarkation Ordinance law. It is equally clear that in certain material respects, it was designed to effectively override, control, and supersede many provisions of the voter-approved Ordinance.

⁶ Without exception, the Sidman Rule 80B Complaint alleges that the Ordinance applies to “passengers.” *Sidman Rule 80B Complaint* at ¶¶ 28-34, 49. This is seriously misleading. The Ordinance was not limited to “passengers.” It applied without limitation to all disembarking “**persons**.” That is why the District Court found the Ordinance to be constitutionally infirm. This Court should not be misled by Mr. Sidman’s attempt to employ his Rule 80B Complaint to retroactively amend the Ordinance to cure its constitutional defect.

⁷ The Sidman Complaint characterizes the Disembarkation Ordinance as the “rules” that the Town Council adopted in order “to enforce the Ordinance.” *Sidman Rule 80B Complaint* at ¶ 54. This characterization, however, is **not** found in the Disembarkation Ordinance. Ch. 52, *passim*. The Disembarkation describes itself as the “Cruise Ship Disembarkation Amendment” and asserts that it “implement[s] the purpose and intent of § 125-77(H). Ch. 52, Ordinance Title; see also, *id.* at § 1. Although whether the Disembarkation Ordinance is a legislative act or merely constitutes implementing “rules” is a disputed point, this Court need not answer that question to decide Golden Anchor’s motion to dismiss.

Chief among Disembarkation Ordinance’s provisions is the new definition of “Person” (with a capital “P”) which, by its plain terms, overrides not only the word “person” (lower case “p”) in the Ordinance but also as defined in the Section 109 of the LUO.⁸ *Cf.*, Ch. 52, § 5, “Persons”; Ch. 125, § 109, “Person”; Ch. 125, § 77(H) *passim* (“person”). The Disembarkation Ordinance’s definition of “Persons”⁹ exempts disembarking crew members from the 1,000 Person daily limit and is intended to remedy the Ordinance’s unconstitutional conflict with the Seafarer Rule.

Notice of Violation—Board of Appeals: On August 5, 2024, the Town’s Code Enforcement Officer issued a Notice of Violation to Golden Anchor for having violated the Disembarkation Ordinance on July 25, 2024.¹⁰ *Sidman Rule 80B Complaint* at ¶ 58. The CEO’s issuance of the NOV to Golden Anchor was an **enforcement action**, undertaken under the authority of the Land Use Ordinance as purportedly authorized by the Disembarkation Ordinance.

Golden Anchor appealed the NOV to the Board of Appeals. *Id.* at ¶ 59. Golden Anchor’s appeal of the NOV was, therefore, an appeal of an **enforcement action** between the Town and Golden Anchor. In its December 10 hearing, the BOA denied Mr. Sidman’s request for “interested party” status. *Id.* at ¶¶ 181-188. In its December 18 hearing, the BOA denied Golden Anchor’s appeal. *Id.* at ¶ 159.

⁸ In its September 10, 2024 declaratory judgment complaint, Golden Anchor challenged this and other provisions of the Disembarkation Ordinance, including the validity of its enactment. Adjudication of those claims is not material to Golden Anchor’s motion to dismiss the Sidman Rule 80B Complaint.

⁹ Unless otherwise indicated, “Person” with a capital “P” set in bold refers to the Disembarkation Ordinance’s definition of that word.

¹⁰ The Disembarkation Ordinance became effective 30 days after its enactment by the Town Council.

III. ARGUMENT

A. FRAMEWORK FOR MOTION TO DISMISS

Golden Anchor moves to dismiss Court I of the Sidman Rule 80B Complaint pursuant to both Rule 12(b)(1)—judgment on the pleadings—and Rule 12(b)(6)—failure to state a claim. The Law Court has instructed that. “[w]hen a motion to dismiss is based on subject matter jurisdiction, we make no favorable inferences in favor of the plaintiff such as we do when reviewing a motion to dismiss for failure to state a claim upon which relief can be granted.” *Tomer v. Maine Human Rights Commission*, 2008 ME 190, ¶ 9, 962 A.2d 335, citing *Francis v. Dana-Cummings*, 2004 ME 4, ¶ 17, 840 A.2d 708; *Davric Maine Corp. v. Bangor Historic Track, Inc.*, 2000 ME 102, ¶ 6, 751 A.2d 1024. If a court lacks subject matter jurisdiction, it has no authority to act. *Ewing v. Maine District Court*, 2009 ME 16, ¶12, 964 A.2d 644. Therefore, a subject matter jurisdiction challenge may be raised at any time and by any party, including the court. *Id.*

A motion to dismiss for failure to state a claim “tests the legal sufficiency of the complaint.” *Richards v. Soucy*, 610 A.2d 268, 270 (Me. 1992). The sufficiency of the complaint presents “a pure question of law.” *Id.* A complaint should not be dismissed unless it “appears to a certainty that the plaintiff is entitled to no relief under any set of facts.” *Id.* Although the sufficiency of complaints is governed by the concept of notice pleading, that rule has “not displaced the requirements of sound legal craftsmanship.” *Id.* at n. 2, citing, Field, McKusick & Wroth, *Maine Civil Practice*, § 8.2at 195 (2d ed. 1970).

1. Court Jurisdiction over Rule 80B Appeals.

This Court has jurisdiction over Rule 80B appeals pursuant to 4 M.R.S. § 105(3). Section 105(3) grants the superior court jurisdiction over appeals under Rule 80B, Rule 80C, and 5

M.R.S. § 11001, *et seq.* (Administrative Procedures Act). 4 M.R.S. § 105(3); see also, *Norris Family Associates, LLC v. Town of Phippsburg*, 2005 ME 103, ¶ 9, 879 A.2d 1007; *cf.*, 4 M.R.S. § 105(1).

Authority for appeals from municipal enforcement decisions is also provided by statutory law which expressly authorizes such appeals. More particularly, statutory law specifically provides for this appeal: “a notice of violation or an enforcement order by a code enforcement officer under a land use ordinance is reviewable on appeal by the board of appeals and in turn by the Superior Court under the Maine Rule of Civil Procedure, Rule 80B.” 30-A M.R.S. § 2691(4). The LUO provides its own limitation by confining the BOA’s jurisdiction to “interpretations” of the LUO, itself. Ch. 125, § 103(A).

2. Claims Raised in Sidman Rule 80B Complaint.

Count I of the Sidman Rule 80B complaint alleges two claims: 1) that BOA erred in denying him interested party status and 2) that the BOA erred in failing to find that Golden Anchor never had a lawfully nonconforming use to disembark cruise ship passengers. *Id.* at ¶¶ 181-195, 197; *id.* at ¶ 196. Although the merits of the latter claim are not at issue in this motion to dismiss, the merits of Mr. Sidman’s claim that the BOA should have granted him interested party status are intertwined with his lack of standing to maintain this appeal.

Boiled down to their bare essentials, Mr. Sidman’s claims to maintain this appeal come down on two points: The first is that Mr. Sidman was the principal leader in the development of the original Ordinance¹¹ and its ultimate adoption by Bar Harbor voters in their November 8,

¹¹ The original Ordinance is not the subsequent Disembarkation Ordinance adopted by the Town Council on June 18, 2024.

2022 Town Meeting. *Id.* at ¶¶ 24-35. The second is that Mr. Sidman is an “abutter” to the Golden Anchor property. *Id.* at ¶¶ 12, 84, 121, 185-186, 192-194.¹²

B. APPELLANT SIDMAN IS NOT AN “AGGRIEVED PERSON” WITHIN THE MEANING OF THE TOWN’S LAND USE ORDINANCE

The Disembarkation Ordinance purports to invoke and apply the enforcement authority provided in Chapter 125—the Land Use Ordinance—for the issuance of the NOV. Therefore, the BOA considered Golden Anchor’s appeal of the NOV pursuant to standards and procedures in the Land Use Ordinance.¹³

1. Golden Anchor’s Rule 80B Appeal did not concern a Permit or Variance.

In his appeal, Mr. Sidman contends that he is an “aggrieved party” within the meaning of the Land Use Ordinance and that the BOA erred in failing to accord him this status. *Sidman Rule 80B Complaint* at ¶¶ 179-183. The BOA did not err in so ruling.

The Town’s Land Use Ordinance defines an “Aggrieved Person” as follows:

An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this chapter; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Ch. 125, § 109, Aggrieved Person.

From its plain terms, this definition applies only to Town actions which concern the granting or denial of a permit or variance. It does not mention enforcement actions. Golden Anchor’s appeal to the BOA did not concern the issuance of a permit or variance—it concerned

¹² In Count II of his Rule 80B Complaint, now dismissed, Mr. Sidman also alleged that he was an abutter. *Sidman Rule 80B Complaint* at ¶¶ 199-202.

¹³ Golden Anchor has challenged the validity of the Town Council’s adoption of the Disembarkation Ordinance on the grounds that it violated procedure required by the Town Charter. *Golden Anchor Rule 80B Complaint* at Count II.

an NOV issued to Golden Anchor by the CEO without any hearing or other quasi-adjudicatory process.

To the extent the Sidman Rule 80B Complaint is dependent on Mr. Sidman qualifying for “aggrieved party” status, it must fail the subject matter test because Mr. Sidman does not and cannot come within that the LUO’s definition of that term. For the same reason, the failure of Mr. Sidman’s claim for “aggrieved party” status means, on that point, he has failed to state a claim upon which relief can be granted. Therefore, as to Mr. Sidman’s aggrieved party claim, his Rule 80B Complaint should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(6).

2. Appellant Sidman’s Rule 80B Appeal is not in Order because the Town Prevailed in its Defense of the Notice of Violation before the Board of Appeals.

The CEO’s issuance of the NOV triggered an enforcement process and the BOA’s decision continued that enforcement process. Golden Anchor’s Rule 80B appeal of the BOA decision is another phase of the Town’s enforcement process with this Court assuming the role of an intermediate appellate court. See, e.g., *Baker’s Table, Inc. v. City of Portland*, 2000 ME 7, ¶ 9, 743 A.2d 237.

Here, the Town’s enforcement of an ostensible land use ordinance is at issue.¹⁴ Maine statutory law provides that only a municipality can enforce a land use ordinance. See, 30-A MRS §4452(3); see also, *Johnston v. Maine Energy Recovery Co, Ltd. Ptrshp*, 2010 ME 52, ¶ 13, 997 A.2d 741. The Town, of course, could not have been compelled to bring this enforcement action; it chose to do so. This enforcement action manifests its intent to vindicate the interests underlying the Disembarkation Ordinance.

¹⁴Golden Anchor denies that the Disembarkation Ordinance is a valid land use ordinance. Golden Anchor’s contention on this point is not at issue in its motion to dismiss Count I of the Sidman Rule 80B Complaint.

That is the situation here. The Town has clearly taken the initiative to cite Golden Anchor for allegedly violating the Disembarkation Ordinance; it has defended its NOV before the BOA; and it is defending it before this Court on Golden Anchor’s Rule 80B appeal. Put another way, had the Town not chosen to enforce the Disembarkation Ordinance, Mr. Sidman would have no BOA decision from which to appeal.

The foregoing discussion underscores the fundamental point that the Town not only defended the NOV before the BOA, but it also **prevailed** in its defense. Mr. Sidman sought to intervene in the BOA proceeding for the same reason—that is, to defend the NOV against Golden Anchor’s appeal. The BOA’s decision upholding the NOV means that, notwithstanding the BOA’s rejection of his claim for “aggrieved party” or “interested party” status, Mr. Sidman cannot appeal. That is because when the Town prevailed before the BOA, as a practical matter, Mr. Sidman prevailed, too. As the equivalent of a prevailing party, he has nothing to appeal.

Because the Town prevailed in its defense of the NOV—the result that Mr. Sidman, himself, sought, he lacks the adversity of interest necessary to maintain his **appeal**. Without that adversity of interest, this Court has no subject matter jurisdiction over his appeal and his complaint has failed to state a claim upon which relief can be granted. Therefore, as to Mr. Sidman’s Rule 80B Complaint should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(6).

C. APPELLANT SIDMAN HAS FAILED TO SUFFICIENTLY ALLEGE HE HAS SUSTAINED OR IS AT RISK OF SUSTAINING A “PARTICULARIZED INJURY”

Mr. Sidman contends that he demonstrated to the BOA that he was an “interested party” and that the BOA erred in ruling otherwise. *Sidman Rule 80B Complaint* at ¶¶ 6, 194, 197. As a remedy, Mr. Sidman asks this Court to remand the BOA’s decision on Golden Anchor’s appeal

to the BOA with instructions to conduct its hearing on Golden Anchor’s appeal anew with Mr. Sidman participating as an “interested party.” *Id.* at 197.

It is black letter law that to have standing in an appeal from the decision of a municipal land use board, “the appellant must prove (1) that it was a party at the administrative proceeding, and (2) that it suffered a particularized injury as a result of the agency’s decision.” *Norris. Family*, 2005 ME ¶ 11, citing, *Lewis v. Town of Rockport*, 2005 ME 44, ¶ 8, 870 A.2d 107, 100. The party seeking to maintain his or her status as an appellant bears the burden of proof. *Friends of Lincoln Lakes v. Town of Lincoln*, 2010 ME 78, ¶ 8, 2 A. 3d 284, citing *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶ 11, 973 A.2d 735.

Mr. Sidman clearly participated in the BOA consideration of the Golden Anchor appeal. He did not, however, show that he “suffered a particularized injury or harm.” *Friends of Lincoln Lakes*, 2010 ME 78, ¶ 11.

1. Appellant Sidman does not have Legislative Standing.

Mr. Sidman’s Rule 80B Complaint sets forth a detailed account of his involvement in the development of the citizen initiative that, on November 8, 2022, Bar Harbor voters, meeting in a Town Meeting, approved as an amendment to the Land Use Ordinance. *Sidman Rule 80B Complaint* at ¶¶ 24-36. It appears that Mr. Sidman may be resting his status as a bona fide Rule 80B appellant on his participation in and successful advocacy for enactment of the original Ordinance. *Id.* at ¶ 182.

Although the Sidman Rule 80B Complaint is not entirely clear on this point, Mr. Sidman may be seeking what some courts have characterized as “legislative standing.” *Yniguez v. Arizona*, 939 F.2d 727, 733 (9th Cir. 1991); *cf.*, *Raines v. Byrd, Raines*, 521 U.S. 811, 828-829 (1997). If so, the Sidman Rule 80B Complaint fails to allege sufficient facts to support such a

claim. In fact, the Sidman Rule 80B Complaint shows that, in contrast to his role development and passage of the Ordinance, Mr. Sidman had only marginal involvement in the Town Council's development and enactment of the subsequent Chapter 52 Disembarkation Ordinance. It alleges only that "[a]t the request of the Town Council and staff, Mr. Sidman collaborated in fashionising (sic) Chapter 52 [the Disembarkation Ordinance] and the permit applications." *Sidman Rule 80B Complaint* at ¶ 55.

This Sidman Rule 80B Complaint contains no other allegations regarding his involvement in the Town Council's development and adoption of the Disembarkation Ordinance. Given this insufficiency, if, in fact, Mr. Sidman is seeking to support his right to bring his Rule 80B appeal based on his involvement with the adoption of the Disembarkation Ordinance, his claim must fail.

Since Mr. Sidman lacks legislative standing to bring his Rule 80B appeal, his Rule 80B Complaint should be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim.

2. Appellant Sidman is not an Abutter to the Golden Anchor Pier.

Assuming, arguendo, that Mr. Sidman may maintain his appeal even though the Town (and he) prevailed before the BOA, the Sidman Rule 80B Complaint does not show a particularized injury to his property interests. At numerous points in this complaint, Mr. Sidman asserts that his property abuts the Golden Anchor property at 55 West Street, rendering him an abutter. *Sidman Rule 80B Complaint* at ¶¶ 12, 84, 121, 185-186, 192, 194.¹⁵

The Sidman Rule 80B Complaint is short on details supporting these allegations. Indeed, the complaint contains only two allegations identifying the location of Mr. Sidman's commercial

¹⁵ See also, *Sidman Rule 80B Complaint*, at ¶¶ 201-202 (allegations in now dismissed Count II).

property. Not until Paragraph 74 of the complaint does Mr. Sidman identify the properties that support his standing claims. There, he alleges that he owns two properties in Bar Harbor, “including a retail property located at 6 Mount Desert Street in downtown Bar Harbor.” *Sidman Rule 80B Complaint* at ¶ 74; see also, *id.* at ¶ 77.¹⁶

The complaint alleges that the 6 Mount Desert Street property is “less than a quarter of a mile away from Golden Anchor’s Pier and is in the same neighborhood as the Pier.” *Id.* at ¶ 75.¹⁷ The complaint provides no more detail than this.

Where land use issues are concerned, proximity matters. Consistent with this principle, Court decisions have consistently found “particularized injury” when those seeking party status are abutters. Indeed, the Law Court has set a low bar for owners of immediately abutting properties, allowing them standing “if there is any conceivable injury.” *Norris Family Associates, LLC v. Town of Phippsburg*, 2005 ME 103, ¶ 19, 879 A.2d 1007, citing *Lewis v. Town of Rockport*, 2005 ME 44, ¶ 8, 870 A.2d 107.

The LUO’s definition of “Abutting” is consistent with this standard, defining it as: “[h]aving a common border with, or being separated from such common border by an alley, easement, street, road, public way or private way.” Ch. 125, § 109.

Despite these clear guideposts to attaining standing, the Sidman Rule 80B Complaint ignores them. It sets forth no allegations from which Mr. Sidman’s 6 Mount Desert Street property could be shown to abut the Golden Anchor Pier at 55 West Street. The 6 Mount Desert

¹⁶ The location of the second Sidman property was not alleged and remains a mystery.

¹⁷ This Court may take judicial notice of Mr. Sidman’s Motion to Intervene in *Golden Anchor v. In Town of Bar Harbor*, Docket No. BCD-CIV-2024. In that motion, he asserted that his commercial property at 6 Mount Desert Street “is **less than one-half mile**, just a few blocks from the [Golden Anchor] pier located at 55 West Street in Bar Harbor...” *Sidman Motion to Intervene*, at 2 (emphasis supplied). Thus, it would appear that in Mr. Sidman’s view, in the three months intervening between Mr. Sidman’s motion to intervene and his Rule 80B Complaint, the distance between two fixed points has narrowed.

Street property is either approximately “a quarter of a mile away” or “less than one half mile” away and does not even nearly abut the waterfront and from the 55 West Street pier specifically. Indeed, the Sidman Rule 80B Complaint does not even acknowledge much less address, the LUO’s definition of “Abutting.” *Sidman Rule 80B Complaint, passim.*

Since Mr. Sidman has not sufficiently alleged a particularized injury, his Rule 80B Complaint should be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim.

3. Appellant Sidman has otherwise Failed to Allege an Impact that is Different from that Experienced by the Public at Large.

The Sidman Rule 80B Complaint alleges that if passengers from cruise ships are allowed to disembark into Bar Harbor in excess of the daily 1,000 Person ceiling in the Disembarkation Ordinance, the Town and Town residents will experience more congestion, more demand for municipal services, a decrease in public safety, interference with the Town residents’ use and enjoyment of their properties. *Sidman Rule 80B Complaint* at ¶¶ 66-69. The complaint goes onto allege that cruise ship passenger—that is, “Person”—disembarkations in such numbers would conflict with his “use and enjoyment of the downtown and waterfront areas [which use is] critical to his spiritual and emotional fulfillment.” *Id.* at ¶¶ 70-71.

He also alleges that the disembarkation of Persons in numbers greater than the daily 1,000 limit would adversely affect Argosy II, the “fine art gallery” that he owns and operates at 6 Mount Desert Street. *Id.* at ¶¶ 77-83.¹⁸ These allegations are insufficient to meet the standards required to sustain a claim of particularized injury in a complaint.

¹⁸ The complaint does not explain how, notwithstanding the much higher level of Person visitation to the Town in years preceding the enactment of the Ordinance in 2022 and the Disembarkation Ordinance in 2024, Argosy II managed to continue in business for 30 uninterrupted years. *Sidman Rule 80B Complaint* at ¶ 78.

Mr. Sidman's claims of injury do not differentiate him from the effect that cruise ship visitation has on the public at large. As the Law Court has explained, "[a] particularized injury occurs when a judgment or order adversely and directly affects a party's property, pecuniary, or personal rights." *Nergaard*, 2009 ME 56, ¶ 18. Mr. Sidman's claims of injury from the daily disembarkation of Persons in numbers greater than 1,000 are no different in kind from the risk of exposure to hazardous driving conditions alleged by the plaintiffs in *Nergaard*. As to those claims, *Nergaard* observed, "[t]hey only assert the harm they will suffer as member of the driving public" and that was not enough to establish standing. *Id.* at ¶ 19.

Since Mr. Sidman's Rule 80B Complaint has failed to sufficiently allege that he has sustained an injury from the disembarkation of Persons that is different from that experienced by the public at large, his complaint should be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim.

IV. CONCLUSION

For the reasons set forth above, Count I of the Sidman Rule 80B Complaint fails to meet the preconditional requirements for an "aggrieved party" under the LUO; fails to allege a particularized injury of any type with sufficient clarity and support to meet the standards necessary to this Court's retention of jurisdiction and the Sidman Rule 80B Complaint's obligation to set forth the essential and necessary elements of the claims it has set forth in support of this Rule 80B appeal.

WHEREFORE, Party-in-Interest Golden Anchor, LC moves pursuant to Rule 12(b)(1) and Rule 12(b)(6) to dismiss the Sidman Rule 80B Complaint.

Dated at Bangor, Maine this 30th day of April, 2025.

GOLDEN ANCHOR, L.C.

By /S/ Timothy C. Woodcock

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NOTICE

If you intend to oppose this motion, you must file a response no later than 21 days from the date this motion was filed pursuant to Rule 7(c) of the Maine Rules of Civil Procedure. Failure to file a timely opposition to this motion will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.