

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DKT. NO. BCD-24-566

GOLDEN ANCHOR L.C.

Plaintiff/Appellee

v.

TOWN OF BAR HARBOR

Defendant/Appellee

CHARLES SIDMAN

Proposed Defendant-Intervenor/Appellant

ON APPEAL FROM THE BUSINESS AND CONSUMER DOCKET
CUMBERLAND COUNTY, DOCKET NO. BCD-CIV-2024-00046

BRIEF OF APPELLEE TOWN OF BAR HARBOR

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INTRODUCTION

This is an interlocutory appeal from an order denying Charles Sidman's motion to intervene in a declaratory judgment action brought by Golden Anchor L.C. against the Town of Bar Harbor relating to a Notice of Violation issued by the Town to Golden Anchor. Because Mr. Sidman failed to satisfy the requirements for intervention as a matter of right, and did not seek permissive intervention, the trial court's decision was well within its discretion. This Court should therefore affirm and remand this case for further proceedings.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Factual Background

In November 2022, the voters of Bar Harbor adopted a citizen-initiated amendment to the Town's Land Use Ordinance, which was codified at Town Code § 125-77(H). (A. 24-25, 89-90, 162.) Charles Sidman was a member of the petitioning committee that initiated the amendment. (A. 58, 108.) Section 125-77(H) adds “[d]isembarking persons from cruise ships on, over, or across any property located within the Town of Bar Harbor” to a list of activities requiring a written permit from the Code Enforcement Officer (CEO). (A. 89-90.) It also provides that “no more than 1,000 persons, in the aggregate, may disembark on a single calendar day from any cruise ship(s) and come to shore on, over, or across any property located within the Town of Bar Harbor.” Code § 125-77(H)(2) (A. 90). The ordinance expressly required rulemaking before it could be implemented and enforced. Code § 125-77(H)(3) (A. 90).

Golden Anchor L.C. operates one of two private piers at which cruise ships disembark passengers in Bar Harbor. Its facility located at

55 West Street is the primary pier used for that activity.¹ (A. 251.) Shortly after passage of section 125-77(H), a group of business interests, including Golden Anchor, filed a federal lawsuit against the Town challenging the ordinance’s constitutionality. (A. 26-27, 163.) Mr. Sidman successfully intervened in that lawsuit as a defendant. (A. 59-60, 108.) A trial was held in July 2023, and on March 1, 2024, the U.S. District Court issued a decision in favor of the Town, upholding the constitutionality of section 125-77(H). (A. 27, 164.) *See Ass’n to Pres. & Protect Local Livelihoods v. Town of Bar Harbor*, 721 F. Supp. 3d 56 (D. Me. 2024) [hereinafter *APPLL*].

On June 18, 2024, following a series of public hearings, the Town Council voted to adopt an ordinance entitled “Cruise Ship Disembarkation Ordinance Amendment,” which was ultimately codified at Chapter 52 of the Town Code (“Chapter 52”). (A. 28-30, 163-66, 177-79.) Chapter 52 is a codification of the rules required by section 125-77(H)(3). Chapter 52 states that its purpose is to “implement the

¹ Mr. Sidman offers no support for his claim that “Golden Anchor’s property is the primary, *and currently only*, location where cruise ship passengers disembark into the town.” (Blue Br. at 10 (emphasis added).)

purpose and intent of § 125-77H of the Town Code.”² Code § 52-1 (A. 164, 177). Chapter 52 requires that Cruise Ship Disembarkation Facilities (CSDFs)—defined as property or structures used for disembarkation of cruise ship passengers, Code § 52-5 (A. 177-78)—obtain a general permit to operate the CSDF (a “CSDF Permit”). Code § 52-6(A) (A. 178). For each day that a CSDF wishes to accept disembarkations, CSDFs are required to file an application with the CEO for a Disembarkation Permit to allow a specific number of disembarkations on a specified day. Code § 52-6(C) (A. 178). If the CEO finds the application to be in order, the CEO then issues a Disembarkation Permit for the maximum number that will not exceed 1,000 disembarkations in the aggregate on a single day. Code § 52-6(C) (A. 178). In this manner, the aggregate 1,000-passenger daily limit is

² Before those rules were adopted, Mr. Sidman filed multiple lawsuits against the Town purporting to challenge a public statement made by the Town Council as to how it intended to proceed with rulemaking and enforcement. (A. 60-61, 164-65 ¶¶ 18-20.) Those matters proceeded in the Business Court under docket numbers BCD-APP-2024-7 and BCD-APP-2024-11. (A. 165 ¶¶ 19-20.) As of the date of the affidavits in the record, only one claim remained in those two suits, with most of Mr. Sidman’s claims having been dismissed for failure to state a claim. (A. 165 ¶ 20; A. 229 ¶ 10.) Mr. Sidman acknowledges that the one remaining claim has since been dismissed. (Blue Br. at 15-16, 42.) These are some of the no less than four lawsuits and two administrative appeals filed against the Town relating to section 125-77(H) and its enforcement, with half of those matters filed by Mr. Sidman himself. (A. 160, 163, 165-66.) Mr. Sidman’s litigation activities have been funded by a GoFundMe fundraiser organized by Mr. Sidman, that, as of November 2024, had raised \$330,000, with \$195,000 (59%) of the funds coming from just 5 anonymous donors. (A. 165, 174-76.)

allocated among disembarkation facilities, and the Town may pursue enforcement action against facilities who disembark passengers without permits or in excess of what their permits allow. (A. 178-79.)

Chapter 52 became effective July 18, 2024. (A. 166 ¶ 26.) Golden Anchor did not apply for any of the required permits. (A. 82.) On July 25, 2024, the CEO and Harbor Master observed cruise ship passengers disembarking at Golden Anchor's pier. (A. 32, 82-88.) On August 5, 2024, the CEO issued a Notice of Violation (NOV) to Golden Anchor L.C. for disembarking cruise ship passengers over its property without permits required by section 125-77(H) or Chapter 52. (A. 19, 32-33, 80-94.) The Town has continued to investigate and document violations at Golden Anchor's facility, and the Town Council has approved further enforcement action. (A. 228-29, 232-50.)

Procedural History

On September 16, 2024, Golden Anchor filed a declaratory judgment action against the Town seeking declaratory and injunctive relief with respect to the NOV, and challenging the validity of Chapter 52. (A. 5, 7, 18-56, 79-105.) That action was transferred to the Business

and Consumer Docket on recommendation of the Superior Court. (A. 5-8.)

On October 28, 2024, Mr. Sidman moved to intervene as a defendant as a matter of right.³ (A. 57-67.) Golden Anchor opposed that motion. (A. 184-218.) Although the Town did not oppose Mr. Sidman's motion, it felt compelled to file written responses correcting erroneous or misleading claims in Mr. Sidman's filings. (A. 156-83.)

On November 27, 2024, the Business Court denied Mr. Sidman's motion to intervene. (A. 11-14.) On December 2, 2024, Mr. Sidman filed a motion for reconsideration. (A. 68-78.) Golden Anchor opposed. (A. 219.) The Town did not oppose Mr. Sidman's motion, but once again felt compelled to file a written response to address misstatements of the record in that filing.⁴ (A. 220-29.) On December 18, 2024, Mr. Sidman filed this interlocutory appeal from the denial of his motion to

³ In the alternative, Mr. Sidman requested party-in-interest status, but he does not challenge the Court's denial of that request in this appeal. Mr. Sidman did not seek permissive intervention.

⁴ Although the Town did not oppose Mr. Sidman's motions, it files this brief for two reasons. First, as discussed in more detail below, this Court's review is for an abuse of discretion, and the Business Court's order was well within its discretion. Second, since the time of Mr. Sidman's motions, his continued efforts to insert himself into this and related matters have impeded the Town's efforts to proceed with enforcement of its ordinances, and needlessly delayed and complicated the litigation. The Town does not believe it is fair to ask the taxpayers of Bar Harbor to continue to foot the bill for litigation expenses driven in part by a private citizen with no real interest in the case not already represented by the Town itself.

intervene. (A. 9.) On January 8, 2024, the Business Court denied Mr. Sidman’s motion for reconsideration.⁵ (A. 15-17.)

On May 12, 2025, the Town filed a motion in this Court seeking leave for the trial court to act on a Motion to Dismiss. The basis for that motion was that Golden Anchor had filed a subsequent action under M.R. Civ. P. 80B seeking judicial review of a decision of the Bar Harbor Board of Appeals upholding the same NOV at issue in this case. (Mot. for Leave at ¶ 5 & Ex. A; *see also* A. 166 ¶ 27.) Golden Anchor included in that complaint purportedly independent claims identical to those it raised in this matter. (Mot. for Leave at ¶ 5 & Ex. A.) On April 24, 2025, the Business Court granted the Town’s motion to dismiss Golden Anchor’s purportedly independent counts as subsumed within the Rule 80B appeal. (Mot. for Leave at ¶ 10 & Ex. C.) The Business Court also repeatedly commented on the identical nature of the claims in the two cases. (Mot. for Leave at ¶¶ 9-11 & Ex. B, C.) On April 25, 2025, Mr. Sidman filed a motion to intervene in that case, which is substantively

⁵ Curiously, Mr. Sidman suggests that the Business Court lacked jurisdiction to deny his motion for reconsideration, opining that “the docketing of his [a]ppeal divested the Business Court of jurisdiction to rule on [his] motion for reconsideration.” (Blue Br. at 19.) He is incorrect. *See* M.R. App. P. 3(b), (c)(2) (providing that trial court may decide post-judgment motions identified in M.R. App. P. 2B(c)(2), including motions for reconsideration under M.R. Civ. P. 59, during pendency of an appeal, without leave of the Law Court). In any event, Mr. Sidman cannot plausibly claim harmful error.

identical to the motion at issue in this appeal. (Mot. for Leave at ¶ 12 & Ex. D.) In light of the substantively identical nature of the claims and motion to intervene, the Town sought leave for the trial court to act on a motion to dismiss one of the two duplicative complaints. *See Geary v. Stanley*, 2007 ME 133, ¶¶ 12-16, 931 A.2d 1064 (affirming dismissal of complaint as duplicative of other complaint arising from same transaction, as part of trial court's discretion in supervising and managing pretrial and trial proceedings). This Court, acting through a single justice, denied the motion on May 28, 2025.

On May 14, 2025, Golden Anchor filed an interlocutory appeal of the Business Court's order dismissing its purportedly independent claims in the Rule 80B matter. That appeal is pending in this Court under docket number BCD-25-229 and has not yet been briefed.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the trial court committed an error of law or abused its discretion in denying Mr. Sidman's motion to intervene.

SUMMARY OF ARGUMENT

The trial court acted well within its discretion in denying Mr. Sidman's motion to intervene. Mr. Sidman has no interest in this enforcement matter between the Town and an alleged violator of the Town's ordinances, and his rights will not be impaired by its disposition. Even if Mr. Sidman had an interest in this matter, any such interest would be more than adequately represented by the Town.

ARGUMENT

This Court has recognized an exception to the final judgment rule for appeals challenging the denial of a motion to intervene. *State v. MaineHealth*, 2011 ME 115, ¶ 7, 31 A.3d 911. This Court reviews the denial of a motion to intervene for an error of law or abuse of discretion. *In re Children of Mary J.*, 2019 ME 2, ¶ 8, 199 A.3d 231; *MaineHealth*, 2011 ME 115, ¶ 7, 31 A.3d 911. When the trial court's decision turns on a question of law, this Court reviews the issue de novo. *In re Children of Mary J.*, 2019 ME 2, ¶ 8, 199 A.3d 231.

When, as is the case here, no statute confers an unconditional right to intervene, Rule 24(a)(2) of the Maine Rules of Civil Procedure permits a nonparty to intervene in an action if, on timely application:

(1) he claims an interest in the property or transaction that is the subject of the action, and (2) he is so situated that the disposition of the action may impair or impede his ability to protect his interest, and (3) his interest is not adequately represented by the existing parties to the action.

Doe v. Roe, 495 A.2d 1235, 1237 (Me. 1985); *see also* M.R. Civ. P. 24(a); *In re Children of Mary J.*, 2019 ME 2, ¶ 6, 199 A.3d 231. Maine's Rule 24 is virtually identical to Rule 24 of the Federal Rules of Civil Procedure. *See Doe*, 495 A.2d at 1237 & n.4. "Intervention may be

claimed as a right when the intervenor ‘will either gain or lose by the direct legal operation and effect of the judgment.’” 2 Harvey & Merritt, *Maine Civil Practice* § 24.1, at 609 (3d, 2012-2013 ed.) (quoting *W.H. Glover & Co. v. Smith*, 126 Me. 397, 400, 138 A. 770, 772 (1927)); *see also Doe*, 495 A.2d at 1237 (noting that Rule 24(a) is “substantially similar” to early “gain or lose” rule in Maine).

The Town does not contend Mr. Sidman’s motion was untimely. However, Mr. Sidman does not satisfy the substantive requirements for intervention as a matter of right, and has failed to carry his burden to show that the Business Court abused its discretion in so holding.

I. Mr. Sidman Does Not Have an Interest In This Matter.

Mr. Sidman throws a number of purported interests justifying his intervention in this matter at the proverbial wall. None stick.

A. Mr. Sidman Does Not Have a Special Legislative Interest in this Matter.

Mr. Sidman suggests he has some form of special interest in this matter as the “principal proponent” of section 125-77(H).⁶ (Blue Br. at 27.) He does not. First, Mr. Sidman did not pass section 125-77(H), the voters of Bar Harbor did. (Sidman Aff. ¶ 30.) *See Wawenock, LLC v.*

⁶ The basis for this characterization is unclear. Mr. Sidman was one member of a seven-member petitioning committee. (A. 108.)

Dep't of Transp., 2018 ME 83, ¶ 16, 187 A.3d 609 (“Interpreting citizen-enacted legislation requires us to ‘ascertain the will of the people’ rather than the will of the Legislature.” (quoting *Opinion of the Justices*, 2017 ME 100, ¶ 7, 162 A.3d 188)). He has no role whatsoever in defending or enforcing the ordinance. See *Hollingsworth v. Perry*, 570 U.S. 704, 707 (2013) (stating “once [an initiated law is] approved by voters,” the proponents of the initiative have “no role—special or otherwise—in [its] enforcement,” and “no ‘personal stake’ in defending its enforcement that is distinguishable from the general interest of every citizen.” (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992))).

Second, Golden Anchor—having failed to invalidate section 125-77(H) in the U.S. District Court, seeks in this case to challenge *Chapter 52*. Chapter 52 was passed by the Council, not citizen initiative. (A. 165 ¶¶ 24-26.) Mr. Sidman suggests that “at the request of the Town Council and staff, he collaborated with the Town and participated in fashioning Chapter 52 and the permit applications.” (Blue Br. at 24.) He provides no record support for this assertion. Mr. Sidman vastly overstates his involvement, which was the same as that of any citizen

offering their views and comments to the Council regarding proposed legislation. (A. 164-66 ¶¶ 14-15, 22-23.)

Mr. Sidman no doubt has a right to express his opinions and use available democratic means to achieve his policy preferences, but that is no truer for Mr. Sidman than it is for any other resident of Bar Harbor, and does not give him any right to intervene.

B. The U.S. District Court Allowing Mr. Sidman to Intervene Does Not Entitle Him to Intervention Here.

Mr. Sidman continues to cling to the U.S. District Court's 2023 decision permitting him to intervene in the federal lawsuit brought by Golden Anchor and others against the Town challenging the constitutionality of section 125-77(H). (*E.g.*, Blue Br. at 14, 28-29, 39.) But, at risk of stating the obvious, this is a different case, with different claims, a different record, and a different judge making a discretionary decision. The Business Court had several important facts before it that the District Court did not have—the Town's defense of section 125-77(H) in federal court, the passage of Chapter 52, and the issuance of the NOV. As the Business Court observed:

through its efforts in the federal litigation, the Town has demonstrated that it is willing and able to defend [Chapter 52]. . . . The Town defended [section 125-77(H)] in the federal

court litigation, despite the judge's initial misgivings, and prevailed. The Town Council then passed [Chapter 52]. The Town then issued a Notice of Violation to Golden Anchor. . . . [T]here is no persuasive evidence that the Town will shirk its duty to defend [Chapter 52] in good faith.

(A. 13-14.)

Mr. Sidman's interest in this litigation is also more attenuated than it was in the federal lawsuit, given that Golden Anchor challenges direct enforcement action against it, and the validity of the Council-enacted Chapter 52. To the extent Mr. Sidman suggests that Golden Anchor will "collaterally attack[]" section 125-77(H), and "relitigate issues already decided by the [U.S.] District Court" (Blue Br. at 22), this presupposes, without basis, that the Business Court will improperly apply any relevant principles of res judicata.

C. Mr. Sidman Has Failed to Show Any Impact on his Business.

Next, Mr. Sidman suggests that he has an interest in this matter by virtue of his art gallery business in Bar Harbor. (Blue Br. at 25-26.) Mr. Sidman asserts, as he has in other proceedings, that cruise ship disembarkations in Bar Harbor harm his business by deterring customers from patronizing his gallery on days that cruise ships are in

port (Blue Br. at 11, 26; A. 107 205-06), but he has failed to actually demonstrate any such harm.

A close reading of Mr. Sidman's claims reveals that he carefully avoids making any actual, quantifiable claims of harm to his business—indeed, he has admitted in testimony that he cannot provide any quantitative evidence of lost business. (A. 211-12.) Instead, Mr. Sidman relies on out of court statements of some unidentified number of unidentified customers, on unidentified dates, on an unidentified number of occasions, “complain[ing]” and “refus[ing]” to patronize the gallery on cruise ship days, and his own subjective observation of “reduced” patronage on such days (Blue Br. 11; A. 107.) Mr. Sidman had admitted that the patrons supposedly making such complaints do not make up a “large proportion of [his] customers.” (A. 208.) Even if one accepts the hearsay statements of unidentified customers that they chose not to come to the gallery on cruise days, or Mr. Sidman's supposed observations to that effect, an alleged change in business *patterns* does not equate to *lost* business—those customers allegedly put off by cruise ships might simply come on other days.⁷ And by Mr.

⁷ Indeed, when asked whether he does less business on cruise ship days than he otherwise would, Mr. Sidman testified: “That's what we infer from the comments made by our

Sidman’s own telling, both in testimony and public statements, they must have.

The gallery had its best year ever commercially in 2021, when there were few cruise ships due to the COVID-19 pandemic. (A. 211, 214.) But the following year, after normal cruise ship traffic resumed, the gallery had another very good year—indeed, it came “tantalizingly close to [2021’s] record.” (A. 195, 214-15; Golden Anchor Opp’n to Mot. to Intervene Attachment A.) In other words, despite a massive fluctuation in cruise ship traffic due to a global pandemic, Mr. Sidman’s business remained basically flat. And the value of Mr. Sidman’s commercial property has increased, not decreased. (A. 215-16.) Contrary to Mr. Sidman’s contentions, his business is, at worst, completely agnostic to cruise traffic.

D. Mr. Sidman Is Not an Abutter.

In a single sentence, and without elaboration, Mr. Sidman characterizes himself as an “abutter” to Golden Anchor’s property, in an apparent attempt to lay claim to the liberal standing requirement

customers *on other days when they come in*, say, *we’re here on Friday because on Thursday we wouldn’t come*, the ship was in, the sidewalks were crowded.” (A. 210 (emphasis added).) Mr. Sidman’s “inference” thus rests on the dubious assumption that a patron who bought art on Friday would have bought art on Thursday *and* Friday, but for a cruise ship visiting on Thursday—even though that is contrary to what Mr. Sidman says his patrons tell him.

applied to such parties. (Blue Br. 27.) *See Roop v. City of Belfast*, 2007 ME 32, ¶ 8, 915 A.2d 966 (noting that standing threshold for abutters is “minimal”). But Mr. Sidman’s property does not abut the piers, nor is it in “close proximity” to the piers as that term has been defined in case law. *See, e.g., Sahl v. Town of York*, 2000 ME 180, ¶¶ 2, 10, 760 A.2d 266 (neighbors directly across street); *Brooks v. Cumberland Farms, Inc.*, 1997 ME 203, ¶¶ 2, 10-11, 703 A.2d 844 (same); *Harrington v. Biddeford*, 583 A.2d 695, 696 (Me. 1990) (neighbors on same side of street, separated by one lot). By contrast, Mr. Sidman avers only that his gallery is “less than one-half mile” from Golden Anchor’s pier. (A. 107.)

E. Mr. Sidman’s “Use” of the Downtown Area Does Not Entitle Him to Intervention.

Finally, Mr. Sidman suggests that he has a sufficient interest to intervene by virtue of his “regular use and enjoyment of the affected downtown area.” (Blue Br. at 27.) Sidman cites no authority supporting this proposition, and this Court’s case law is directly to the contrary. *See Almeder v. Town of Kennebunkport*, 2014 ME 139, ¶ 17, 106 A.3d 1099 (vacating order permitting intervention in beach rights case where the proposed intervenors did not show an interest “beyond that of any

member of the public who has a history of using the [b]each or, even more broadly, of any person who happens to live near a scenic location”).

II. Nothing In This Case Will Impede Mr. Sidman’s Ability to Protect Any Interest.

Even if Mr. Sidman could be deemed to have an interest in this action, this avails Mr. Sidman nothing, because he cannot show that disposition of the action may impair or impede his ability to protect any such interest. This is an appeal from an enforcement action by the Town against Golden Anchor. Either the courts will affirm that action, or they will not. In either case, Mr. Sidman will be no more affected than any member of the public, because Mr. Sidman is neither the party against whom enforcement is sought, nor a party with any right to enforce the Town’s ordinances. *See Johnston v. Me. Energy Recovery Co., Ltd. P’ship*, 2010 ME 52, ¶ 13, 997 A.2d 741 (“[O]nly municipalities may bring actions arising under land use regulations.” (citing 30-A M.R.S. § 4452(2))); *Charlton v. Town of Oxford*, 2001 ME 104, ¶ 19, 774 A.2d 366 (“[Title 30-A M.R.S. § 4452] gives a municipality, and only a municipality, the authority to enforce land use regulations. Accordingly, only municipalities may bring an action for violations of such

regulations.”); *see also Salisbury v. Town of Bar Harbor*, 2002 ME 13, ¶ 11, 788 A.2d 598 (cautioning that courts are prohibited from intruding “into municipal decision-making when a municipality decides whether *or not* to undertake an enforcement action.”). Mr. Sidman will neither “gain [n]or lose by the direct legal operation and effect of the judgment” in this case. *See Doe*, 495 A.2d at 1237; *W.H. Glover*, 126 Me. at 400, 138 A. at 772.

III. Any Interest Mr. Sidman Might Have in this Matter Is More Than Adequately Represented by the Town.

Even if a party has an interest that would otherwise be sufficient for intervention as a matter of right, intervention is not available if the proposed intervenor’s interests are already adequately represented by the existing parties to the case. *See* M.R. Civ. P. 24(a)(2). A moving party faces a more significant burden when it seeks to intervene alongside a government entity, because the government is presumed to adequately represent related private interests. *Victim Rights Law Ctr. v. Rosenfelt*, 988 F.3d 556, 561 (1st Cir. 2021). “A successful rebuttal requires a strong affirmative showing that the agency (or its members) is not fairly representing the applicants’ interests.” *Id.* (quotation marks omitted). Mr. Sidman has not made any such showing.

A. Mr. Sidman's Factual Claims Are Inaccurate and Misleading.

In an effort to satisfy his burden of showing the inadequacy of the Town's representation, Mr. Sidman recites a laundry list examples of the Town's supposed favor for the cruise industry. These claims are inaccurate, oversimplified, and misleading, as comprehensively addressed by the Town's responsive filings in the Business Court.⁸ (A. 156-83, 220-53.) The Business Court—quite reasonably—did not credit Mr. Sidman's factual claims, and concluded that the Town had acted “responsibly.” (A. 16-17.)

Mr. Sidman takes issue with the Town opposing his intervention in the federal case while simultaneously “welcoming more plaintiffs to intervene to challenge the lawfulness of the Ordinance.” (Blue Br. at 37.) The notion that the Town “welcomed” more plaintiffs to sue the Town is absurd on its face, but even more absurd when one remembers that the Town actively defended against that suit and *prevailed*. The additional plaintiff to which Mr. Sidman refers is the Penobscot Bay and River Pilots Association, which could plainly make the showing

⁸ Mr. Sidman appears to take issue with the Town filing these responsive materials despite not opposing his motions. (Blue Br. at 18-19.) But the inaccuracies in Mr. Sidman's filings compelled the Town to respond, in order to correct the record and prevent the trial court or the public from being misled as to the facts. (A. 156, 220.)

required to intervene given that its business entails piloting cruise ships and their tenders into Bar Harbor. *APPLL*, 721 F. Supp. 3d at 67 (discussing Pilots’ direct financial interest in cruise traffic to Bar Harbor). Objecting to the Pilots’ intervention would have been futile and a waste of public funds. Mr. Sidman has evidently not considered that the Pilots’ case for intervention in a case regarding limits on cruise ship disembarkation might be considerably less tenuous than that of an art gallery owner.

Mr. Sidman suggests that the Town “voluntarily suspended the enforcement of the Ordinance while the [U.S.] District Court case was pending, all while delaying any progress toward enacting the Ordinance’s rules until after the Federal Litigation was over.” (Blue Br. at 37-38.) Not so.

Mr. Sidman conveniently fails to note that section 125-77(H) expressly required the Town to develop and adopt rules before it could be enforced, including creating a reservation system, a method for counting disembarkations, procedures for reporting violations, and other necessary rules. (A. 90, 156-57.) *See also APPLL*, 721 F. Supp. 3d at 71-72, 82 n.21 (noting necessity of rulemaking). The Town agreed not

to enforce the Ordinance during the pendency of the U.S. District Court proceedings so long as discovery and trial proceeded on an expedited basis—a time during which it was not possible to enforce the Ordinance anyway due to the necessity to first develop and adopt the necessary rules. (A. 157, 163-64.) In this way, the parties were able to expedite the litigation and avoid the cost of preliminary injunction proceedings, while still allowing the Town to move forward with rulemaking during the lawsuit, which was necessary before it could enforce the Ordinance. (A. 90, 104-05, 157, 163-64, 171-73.) Mr. Sidman is well aware of this, as he participated in the mediation that resulted in this arrangement, and provided input on the development of the rules during the pendency of the federal case.⁹ (A. 104-05, 157, 163-64, 223-24.)

Sidman suggests that a few days after the District Court upheld section 125-77(H), the Town Council “announced that it would keep the vast majority of the 2024 cruise ship season intact, unapologetically contradicting the explicit terms of the Ordinance.” (Blue Br. at 38.) Mr. Sidman suggests that this “resulted in an additional 34 ships

⁹ The District Court’s decision identified an area of potential preemption problems that the Court could avoid via rulemaking. *See APPLL*, 721 F. Supp. 3d at 82 n.21. This result validates the Town’s careful approach to implementing the Ordinance, rather than heedlessly rushing ahead simply to satisfy Mr. Sidman.

disembarking an estimated 72,729 passengers in 2024.” (Blue Br. at 15.)¹⁰ This is a gross distortion of reality.

Mr. Sidman refers to a public statement by the Town Council on March 6, 2024, indicating its pleasure that the U.S. District Court had upheld section 125-77(H), and informing the public as to how it intended to proceed with implementation and enforcement in the near and long term. (A. 115-16, 164.) The Council indicated that enforcement of the Ordinance would begin immediately upon promulgation of the necessary rules.¹¹ (A. 115.) However, given the timing of the court’s decision, with the 2024 cruise season imminent, the Council indicated that it would honor cruise ship reservations for the 2024 season made before the Ordinance was adopted. (A. 115.) The Council explained:

Most of the ships in question are scheduled to arrive in less than 90 days. Canceling the bulk of the 2024 season now would be fundamentally unfair, would potentially expose the Town to additional legal liabilities, and would have a drastic fiscal impact on an already strained and nearly complete municipal budget.

¹⁰ In a footnote, Mr. Sidman suggests the total is actually 93 ships disembarking 101,278 passengers. (Blue Br. at 15 n. 2.) Both sets of figures are inaccurate, as discussed below.

¹¹ Mr. Sidman suggests that the Council’s March 6 statement directed Town staff to “begin” drafting the rules implementing section 125-77(H). (Blue Br. at 16.) No such language appears in the Council’s statement, and rulemaking had begun during the pendency of the federal case, as Mr. Sidman is well aware. (A. 104-05, 115-16, 223-24.)

(A. 115.) Mr. Sidman filed two lawsuits against the Town based on this public statement, under docket numbers BCD-APP-2024-7 and BCD-APP-24-11. (A. 165, 229.) Both have been dismissed. (A. 165, 229; Blue Br. at 15-16, 42.)

As to Mr. Sidman's claims regarding numbers of "additional" ships and passengers that the Council "allowed," those claims were based on an outdated list of ship arrivals that did not reflect the ships that actually visited Bar Harbor in the 2024 season, and did not even purport to reflect the actual number of passengers on board the ships, much less that number of passengers that actually disembarked. (A. 224, 252-53.) Moreover, the rules necessary for enforcement of section 125-77(H) did not go into effect until midway through the 2024 season. (A. 224, 253.) The Town issued the NOV at issue in this case to Golden Anchor within 18 days of the rules going into effect. (A. 80-81.)

Mr. Sidman suggests that the Town Council "attempted to repeal the Ordinance and Chapter 52 in November 2024" and "sought to replace the Ordinance with contracts negotiated directly with Golden Anchor and the cruise line industry" without public input. (Blue Br. at 16-17, 38.) Again, not so.

In June 2024, the Council announced that it would be taking a “dual track” approach to regulating the negative impacts of cruise ship visitation. (A. 117-22, 227-28.) In “Track 1,” it would proceed with rulemaking and enforcement of the Ordinance. In “Track 2,” it would engage in a public process to create an alternative regulatory scheme that would meet the same objective of meaningful reduction in cruise visitation while addressing enforcement problems and legal risks posed by the Ordinance. These two tracks would run in parallel, and it would ultimately be up to the voters to decide whether to further amend the Town’s Land Use Ordinance. (A. 111, 117-22, 222, 227-28.)

Following that “Track 2” public process, at the Town Meeting on November 5, 2024, voters rejected the proposed alternative by a vote of 1,776 to 1,713—a margin of 63 votes, or 1.81%. (A. 222, 228, 320.) A subsequent recount placed the final tally at 1,779 to 1,714—i.e., a margin of 65 votes, or 1.86%.¹² (A. 222, 228, 231.)

The Town Council’s decision to propose an alternative solution to achieve the broader policy objectives—reducing the number of cruise ship passengers disembarking and mitigating the impact of cruise ship

¹² Mr. Sidman’s commentary on the substance of the alternative proposal that voters narrowly voted down (Blue Br. at 17 n.3) is entirely irrelevant to this appeal.

tourism—was a pragmatic response to the divided public sentiment reflected in the narrow margin of the vote. These political realities underscore the challenges inherent in balancing competing interests within the community. The Town, at the direction of its elected officers, has taken a measured and pragmatic approach to implementation and enforcement of section 125-77(H) aimed at exploring potential political resolution that might have avoided further costly litigation. Nevertheless, the Town Council has not wavered in its duty to enforce section 125-77(H) in a fair and balanced manner and hold violators accountable. The Town—as it had indicated it would from the beginning—continued to implement and enforce the ordinance both before and after the vote on November 5, 2024, promulgating the required rules and issuing the NOV that resulted in this case.

Mr. Sidman suggests that the Town Council is “currently seeking to disembark cruise ship passengers at the Town Pier during the 2025 cruise ship season to keep the flow of passengers into downtown uninterrupted.” (Blue Br. at 38.) First, Sidman notably cites no record evidence to support this claim, because there is no such evidence in the

record.¹³ Second, it is unclear what Mr. Sidman thinks this would prove. In Mr. Sidman’s estimation, this shows that the Town is secretly in league with the cruise industry or unwilling to vigorously defend and enforce its ordinances, despite overwhelming evidence to the contrary. It is unclear how the Town allowing disembarkations on public property in accordance with its ordinances—which limit, but conspicuously do not prohibit, cruise ship disembarkations—suggests anything of the sort. The very existence of this lawsuit—challenging enforcement action brought by the Town against an alleged violator—demonstrates the opposite. Mr. Sidman’s argument is also completely at odds with his claim earlier in his brief that section 125-77(H) “sought to *broaden participation* in the landing of cruise ship passengers beyond the current monopoly controlled by Golden Anchor.” (Blue Br. at 12 (emphasis added).)

Mr. Sidman suggests that one member of the Town Council made a disparaging comment about Mr. Sidman (Blue Br. at 38.) Again, Mr.

¹³ Several pages later, in a footnote, Mr. Sidman finally recognizes that “these developments fall outside of the appellate record,” and asks the court to take judicial notice of certain linked agendas of the Town Council and Harbor Committee. (Blue Br. at 41 n. 13.) Mr. Sidman cites no authority, and in the absence of a prior motion requesting judicial notice, reference to these extraneous materials in his brief was in violation of the rules. *See* M.R. App. P. 7A(a)(2) (“A brief shall not include . . . any documents . . . that are not a part of the trial court file or the record on appeal.”)

Sidman cites no record evidence for such a proposition, and instead cites non-record materials (a blog post) in his brief, in violation of the rules. *See* M.R. App. P. 7A(a)(2) (“A brief shall not include . . . any documents . . . that are not a part of the trial court file or the record on appeal.”) In any event, the supposed personal comments of one Councilor have no bearing on whether the Town adequately represents any interest Mr. Sidman has in this proceeding.

Finally, although not raised in the Business Court, Mr. Sidman also appears to take issue with the Town not joining his cross-appeal from the District Court’s decision on the issue of seafarer shore access. (Blue Br. at 14-15, 42 n.14.) Notably, Mr. Sidman provides no record support for this, nor requests that the court take judicial notice of specific facts or documents—he simply generally references First Circuit docket numbers. In any event, it is not apparent what Mr. Sidman thinks this proves. As the District Court noted in its decision, all parties, *including Mr. Sidman*, agreed that section 125-77(H) could not be applied in a manner that would interfere with seafarer shore access. *APPLL*, 721 F. Supp. 3d at 81-82 & n.21 (agreeing “with Plaintiffs and Plaintiff-Intervenor (*and evidently with Defendant and*

Defendant-Intervenor) that the Ordinance cannot stand as a barrier to seafarers' shore access," but declining to award plaintiffs "any meaningful relief" where this limited, hypothetical conflict could be avoided through rulemaking (emphasis added)). It is unclear why the Town—or anyone—would cross-appeal to preserve the right to do something it never intended to do, nor even claimed to have the right to do.

B. Mr. Sidman's Self-Interest Does Not Entitle Him to Intervention.

Having failed to show that—contrary to the evidence—the Town is secretly in league with the cruise industry, Mr. Sidman takes a different tack. He suggests that the Town, because it represents the entire community, cannot represent his "narrower" self-interest. (Blue Br. at 35-36.) This claim is curious because Mr. Sidman suggested in his motion to intervene that he, and not the Town, represents the "interests of [Bar Harbor's] citizens" (A. 66), and continues to make similar pronouncements in this Court (Blue Br. at 37 (claiming that the Town is at odds with the "repeatedly expressed demands of Mr. Sidman and the

voting public”)).¹⁴ In any event, while it is certainly true that, unlike Mr. Sidman, the duly elected representatives of the voters of Bar Harbor must act in the public interest rather than their own self-interest, “perfect identity of motivational interests between the movant-intervenor and the government” is not necessary to a finding of adequate representation. *Rosenfelt*, 988 F.3d at 562 (citing *Mass. Food Ass’n v. Mass. Alcoholic Bevs. Control Comm’n*, 197 F.3d 560, 567 (1st Cir. 1999)). Nor does the government’s interest in the concerns of practical governance—such as regulatory flexibility or minimizing future legal challenges—create a conflict sufficient to require intervention of a private party. *Id.*

Mr. Sidman relies heavily on *Conservation Law Foundation, Inc. v. Mosbacher*, 966 F.2d 39 (1st Cir. 1992). In that case, the Secretary of Commerce was found not to adequately represent the proposed intervenor fishing groups in a suit brought by environmental conservation groups against the Secretary seeking more stringent fishing regulations. *Id.* at 40, 44. The situation in *Conservation Law Foundation* is easily distinguishable however, because the fishing

¹⁴ The basis for this claim is unclear. Mr. Sidman has twice run for Town Council; voters rejected his bid on both occasions. (A. 166, 180-83.)

regulations sought by the plaintiffs would operate *directly* upon the intervenors' fishing businesses. *Id.* at 43 ("The fishing groups seeking intervention are the real targets of the suit and are the subjects of the regulatory plan.") No comparable dynamic is present here. More importantly, the government *was not defending the suit*. The Secretary "did not file an [a]nswer to [plaintiffs'] complaint, but instead accepted [a] consent decree which provides for virtually all the relief sought." *Id.* at 44. There are no such facts here. The Town has answered (A. 8), and has repeatedly demonstrated its commitment to enforcing and defending its own ordinances in this and other matters, as found by the Business Court.

Mr. Sidman suggests that his interests and the Town's diverge because he wishes to make an additional argument, not made by the Town, that cruise ship disembarkation is not a permitted use in the zone where Golden Anchor's pier is located. (Blue Br at 40.) Here again, Mr. Sidman again improperly relies upon matter not in the appellate record.¹⁵ It is also unclear how this argument is even relevant to this

¹⁵ See *supra* n.12. Mr. Sidman also refers to materials—provisions of the Town's Land Use Ordinance—not in the appellate record, in violation of the rules. See M.R. App. P. 7A(a)(2) ("A brief shall not include . . . any documents . . . that are not a part of the trial court file or the record on appeal."); see also *Good v. Town of Bar Harbor*, 2024 ME 48, ¶ 36, 319 A.3d

case, where the NOV Golden Anchor challenges was based on permitting violations, not zoning violations.¹⁶ In any event, a proposed intervenor's interest in making additional arguments in defense of government action does not render the government's representation inadequate. *Rosenfelt*, 988 F.3d at 562 (citing *Mass. Food Ass'n*, 197 F.3d at 567). Mr. Sidman's absence from this action will not prevent him from pursuing this argument separately in an appropriate proceeding, provided he can establish standing and satisfy other requirements of justiciability. *See MaineHealth*, 2011 ME 115, ¶ 11, 31 A.3d 911 (affirming denial of intervention where proposed intervenor could "protect its own interests through independent litigation").

C. The Business Court Acted Well Within its Discretion.

Faced with this record, the Business Court quite reasonably concluded that the Town—having just vigorously and successfully defended section 125-77(H) in federal court, passed rules implementing

1030 ("We have consistently held that the existence of municipal ordinances must be proved and that they are not subject to judicial notice." (quoting *Odiorne Lane Solar, LLC v. Town of Eliot*, 2023 ME 67, ¶ 16 n.9, 304 A.3d 253)).

¹⁶ In essence, Mr. Sidman appears to suggest that the NOV was *underinclusive*. But neither he nor the courts have any authority to dictate to the Town when and on what terms to bring enforcement action. *See, e.g., Johnston*, 2010 ME 52, ¶ 13, 997 A.2d 741 ("[O]nly municipalities may bring actions arising under land use regulations."); *Salisbury*, 2002 ME 13, ¶ 11, 788 A.2d 598 (prohibiting judicial intrusion "into municipal decision-making when a municipality decides whether or not to undertake an enforcement action").

the ordinance in the form of Chapter 52, and actively brought enforcement action against the owner of the primary pier at which cruise ship passengers disembark (hence the existence of this very lawsuit)—had acted “responsibly” and adequately represented any interest Mr. Sidman might have in seeing the Town’s ordinances enforced. (A. 13-14, 16-17.) The Business Court was therefore well within the bounds of its discretion to deny Mr. Sidman’s motion to intervene.¹⁷

CONCLUSION

Contrary to Mr. Sidman’s contentions, the Town has acted expeditiously and responsibly in implementing and enforcing its ordinances, while navigating no less than a half-dozen civil and administrative actions filed against the Town relating to section 125-77(H) and its enforcement, half of those matters brought by Mr. Sidman himself. The very existence of this lawsuit—and several other related

¹⁷ Mr. Sidman did not seek permissive intervention under Rule 24(b). Even if he had, such a request would have been properly denied for much the same reasons as his motion seeking intervention as a matter of right. *See Rosenfelt*, 988 F.3d at 564 (noting that whether the existing parties adequately represent the interests of the party seeking intervention remains a relevant consideration in permissive intervention). Moreover, permissive intervention is improper where intervention would unduly delay or prejudice the original parties. M.R. Civ. P. 24(b); *see also In re Children of Mary J.*, 2019 ME 2, ¶ 6, 199 A.3d 231. Mr. Sidman’s participation in this matter would unduly delay and complicate the litigation—and has, in fact, has already done so. *See Almeder*, 2014 ME 139, ¶ 17, 106 A.3d 1099 (vacating order granting intervention as abuse of discretion where addition of intervenors “served only to add to [the litigation’s] expense and delay”).

proceedings—highlights the Town’s efforts to enforce section 125-77(H) and its implementing rules and to see that noncompliant landowners are held accountable. Continuous diversion of resources to respond to ancillary litigation and motion practice lacking substantive merit delays enforcement and jeopardizes the Town’s ability to efficiently allocate scarce public resources that could otherwise be focused on enforcement and compliance efforts. Rather than advancing the goals of section 125-77(H), such repeated interjections are a costly and time-consuming distraction from those efforts.

For all of the foregoing reasons, the Town respectfully requests that this Court affirm the decision and judgment of the Business Court, and remand this matter for further proceedings.

Respectfully submitted, dated at Bangor, Maine this 25th day of June, 2025.

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CERTIFICATE OF SERVICE

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