

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DKT. NO. BCD-25-339

CHARLES SIDMAN

Plaintiff-Appellant

v.

TOWN OF BAR HARBOR

Defendant-Appellee

GOLDEN ANCHOR, L.C.

Party in Interest-Appellee

ON APPEAL FROM THE BUSINESS AND CONSUMER DOCKET
CUMBERLAND COUNTY, DOCKET NO. BCD-APP-2025-00005

BRIEF OF APPELLEE TOWN OF BAR HARBOR

Stephen W. Wagner, Esq. (Bar No. 5621)
Jonathan P. Hunter, Esq. (Bar. No. 4912)
Rudman Winchell
Attorneys for Appellee Town of Bar Harbor
Bangor, ME 04402-1401
(207) 947-4501
swagner@rudmanwinchell.com
jhunter@rudmanwinchell.com

TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	4
INTRODUCTION	8
STATEMENT OF FACTS AND PROCEDURAL HISTORY	9
<i>Factual Background</i>	9
<i>Procedural History</i>	12
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	18
SUMMARY OF ARGUMENT	19
ARGUMENT	20
I. The Business Court Properly Dismissed Count II as Duplicative of and Subsumed Within Rule 80B Review.....	20
A. Rule 80B Provides the Exclusive Means to Challenge the Decision of the Board of Appeals.....	20
B. Sidman’s Declaratory Judgment Claim Is Not “Anticipatory”.....	23
C. Sidman Makes No Case That Rule 80B Review Is Inadequate	24
D. The Board of Appeals’ Decision Is Not a “Zoning Decision”	28
E. No Ultra Vires Action Is Alleged in this Case.	29
II. Sidman Lacks Standing to Appeal from a Favorable Decision of the Board of Appeals	30
A. Sidman Suffered No Particularized Injury as a Result of the Board’s Decision	31

B. The Collateral Estoppel Exception Does Not Apply 36

C. Sidman’s Underlying Argument is Irrelevant, Meritless,
and the Subject of Other Proceedings 43

III. The Business Court Did Not Abuse its Discretion in Denying
Sidman’s Motion to Consolidate, and the Issue Is Moot 44

CONCLUSION.....46

CERTIFICATE OF SERVICE47

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Adelman v. Town of Baldwin</i> , 2000 ME 91, 750 A.2d 577	25
<i>Ass'n to Pres. & Protect Local Livelihoods v. Town of Bar Harbor</i> , 721 F. Supp. 3d 56 (D. Me. 2024).....	10, 44
<i>Ass'n to Pres. v. Sidman</i> , 147 F.4th 40 (1st Cir. 2025)	10, 44
<i>Black v. Bureau of Parks & Lands</i> , 2022 ME 58, 288 A.3d 346	30
<i>Brooks v. Town of N. Berwick</i> , 1998 ME 146, 712 A.2d 1050...31, 34, 36	
<i>Cabral v. L'Heureux</i> , 2017 ME 50, 157 A.3d 795.....	28
<i>Cape Shore House Owners Ass'n v. Town of Cape Elizabeth</i> , 2019 ME 86, 209 A.3d 102	20-21, 23-24, 29
<i>Colby v. York Cty. Comm'rs</i> , 442 A.2d 544 (Me. 1982)	20-21, 25
<i>D'Amato v. S.D. Warren Co.</i> , 2003 ME 116, 832 A.2d 794	28
<i>Estate of Anderson</i> , 468 A.2d 612 (Me. 1983)	33, 36
<i>Friends of Lincoln Lakes v. Town of Lincoln</i> , 2010 ME 78, 2 A.3d 284	31-32
<i>F.S. Plummer Co. v. Town of Cape Elizabeth</i> , 612 A.2d 856 (Me. 1992).....	28-29
<i>Gorham v. Androscoggin Cty.</i> , 2011 ME 63, 21 A.3d 115.....	21, 23, 29
<i>Great Cove Boat Club v. Bureau of Pub. Lands</i> , 672 A.2d 91 (Me. 1996).....	37

<i>Great Hill Fill & Gravel, Inc. v. Bd. of Env't Prot.</i> , 641 A.2d 184 (Me. 1994).....	33
<i>High Me., LLC v. Town of Kittery</i> , 2024 ME 76, 327 A.3d 58	9, 30-31
<i>Hossler v. Barry</i> , 403 A.2d 762 (Me. 1979)	40
<i>Indorf v. Keep</i> , 2023 ME 11, 288 A.3d 1214.....	44
<i>In re Children of Bethmarie R.</i> , 2018 ME 96, 189 A.3d 252.....	39-41
<i>In re M.M.</i> , 2014 ME 15, 86 A.3d 622	41
<i>Johnston v. Me. Energy Recovery Co., Ltd. P'ship</i> , 2010 ME 52, 997 A.2d 741	39
<i>Kane v. Comm'r of the HHS</i> , 2008 ME 185, 960 A.2d 1196	21
<i>Larose v. City of Biddeford</i> , No. AP-02-053, 2003 Me. Super. LEXIS 186 (Aug. 29, 2003)	36
<i>Lindemann v. Comm'n on Gov't Ethics & Elec. Pracs.</i> , 2008 ME 187, 961 A.2d 538	33
<i>Macomber v. MacQuinn-Tweedie</i> , 2003 ME 121, 834 A.2d 131	39
<i>Morris v. Hunter</i> , 652 A.2d 80 (Me. 1994)	44
<i>Nergaard v. Town of Westport Island</i> , 2009 ME 56, 973 A.2d 735	33
<i>Norris Fam. Assocs., LLC v. Town of Phippsburg</i> , 2005 ME 102, 879 A.2d 1007	31-32, 37
<i>Rommel v. City of Portland</i> , 2014 ME 114, 102 A.3d 1168	28

<i>Salisbury v. Town of Bar Harbor</i> , 2002 ME 13, 788 A.2d 598	39
<i>Sand v. Town of Newfield</i> , 2025 ME 45, 335 A.3d 626	26
<i>Silsby v. Belch</i> , 2008 ME 104, 952 A.2d 218.....	25
<i>Sold, Inc. v. Town of Gorham</i> , 2005 ME 24, 868 A.2d 1272.....	29-30
<i>Stiff v. Town of Belgrade</i> , 2024 ME 68, 322 A.3d 1167	26
<i>Tominsky v. Town of Ogunquit</i> , 2023 ME 30, 294 A.3d 142	34-36
<i>Town of Mount Vernon v. Landherr</i> , 2018 ME 105, 190 A.3d 249	39
<i>Upstream Watch v. City of Belfast</i> , 2023 ME 43, 299 A.3d 25	31
<i>Witham Family Ltd. v. Town of Bar Harbor</i> , 2011 ME 104, 30 A.3d 811	32, 33, 37, 41

Statutes and Rules

42 U.S.C. § 1983	21
30-A M.R.S. § 2691(3)(G).....	29-31
M.R. Civ. P. 24.....	38
M.R. Civ. P. 80B	14-15, 20- 21, 25, <i>passim</i>
M.R. Civ. P. 80C	21, 30

Other Sources

Alexander, *Maine Appellate Practice* (5th ed. 2018)34-36

INTRODUCTION

This is the third in a set of appeals currently pending in this Court involving these parties. Charles Sidman appeals from a decision of the Bar Harbor Board of Appeals against an adverse party, Golden Anchor, L.C, pursuant to Rule 80B of the Maine Rules of Civil Procedure, and joins with his appeal an ostensibly independent claim for declaratory judgment. The Business and Consumer Court dismissed both counts. Because Sidman does not have standing to appeal a decision of the Board of Appeals in his favor, and because his purportedly independent declaratory judgment claim is duplicative of that improvident appeal, the Business Court properly dismissed Sidman's complaint.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Factual Background

When a Rule 80B action is dismissed prior to the submission of the administrative record, this Court looks to the allegations of the complaint to identify the factual predicate for its review.¹ *High Me., LLC v. Town of Kittery*, 2024 ME 76, ¶ 4, 327 A.3d 58.

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. 80.) Charles Sidman, the owner of an art gallery in Bar Harbor, was a member of the petitioning committee that initiated the ordinance. (A. 80, 86-87.) 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. 81, 160-61.) 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

¹ If it wishes, the Court may also look to ordinance provisions appearing in the Appendix without objection. *See High Me.*, 2024 ME 76, ¶ 4 n.1, 327 A.3d 58.

the Town of Bar Harbor.” Code § 125-77(H)(2) (A. 81, 161). The ordinance expressly required rulemaking before it could be implemented and enforced. Code § 125-77(H)(3) (A. 84, 161).

Golden Anchor, L.C., operates a pier located at 55 West Street, which is the principal facility at which cruise ship passengers disembark in Bar Harbor. (A. 79.) 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. 82.) Sidman successfully intervened as a defendant. (A. 82.) 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. 83.) *See Ass’n to Pres. & Protect Local Livelihoods v. Town of Bar Harbor*, 721 F. Supp. 3d 56 (D. Me. 2024) [hereinafter *APPLL I*]. Golden Anchor and its fellow plaintiffs appealed that decision to the First Circuit (A. 83), which issued a decision upholding the judgment of the District Court except as to one part of one claim, which it remanded for further findings. *See Ass’n to Pres. v. Sidman*, 147 F.4th 40, 44, 55, 65, 72 (1st Cir. 2025) [hereinafter *APPLL II*] (“largely affirm[ing]” the District Court but remanding for additional findings on one aspect of Dormant Commerce Clause claim);

see also id. at 72-73 (Kayatta, J., concurring) (describing basis for remand as “dubious,” but agreeing “clarification of details” was best left to District Court).

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. 84, 130-32.) Chapter 52 is a codification of the rules required by section 125-77(H)(3). (A. 81, 84, 130.) Chapter 52, at section 52-1, states that its purpose is to “implement the purpose and intent of § 125-77H of the Town Code.” Code § 52-1 (A. 130). Chapter 52 requires that Cruise Ship Disembarkation Facilities (CSDFs)—defined as property or structures used for disembarkation of cruise ship passengers—obtain a general permit to operate (a CSDF Permit). Code §§ 52-5, 52-6(A) (A. 85, 130-31). 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. 85, 131). 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. 81, 131). In this manner, the aggregate 1,000-passenger daily limit is 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. 81, 130-32.)

Chapter 52 became effective July 18, 2024. (A. 84.) On July 25, 2024, the CEO and Harbor Master observed cruise ship passengers disembarking at Golden Anchor's pier. (A. 128-29.) 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 obtaining the permits required by section 125-77(H) or Chapter 52. (A. 85, 128-29.)

Procedural History

Golden Anchor appealed the NOV to the Bar Harbor Board of Appeals.² (A. 85.) The Board held de novo evidentiary hearings on Golden Anchor's appeal on December 10 and December 18, 2024. (A. 78, 88-97, 128.) On December 10, the Board took up Sidman's argument that he was

² Golden Anchor simultaneously initiated a declaratory judgment action against the Town, seeking declaratory and injunctive relief with respect to the NOV, and challenging the validity of Chapter 52. The Business Court's denial of Mr. Sidman's motion to intervene in that declaratory judgment action is now pending before this Court on an interlocutory basis under docket number BCD-24-566.

an “Interested Party” entitled to full participation as a party to the appeal. (A. 92-95.) The Board concluded that Sidman was not an “Interested Party” because he was not an abutter, and had not shown particularized injury as required by the Town’s ordinances. (A. 94.) Nevertheless, Sidman, through counsel, participated in the appeal as a member of the public, and opposed Golden Anchor’s appeal. (A. 88-89, 92, 96-97.) Golden Anchor presented evidence of past permits under which it claimed to have vested rights to operate its pier, free of the restrictions imposed by section 125-77(H) and Chapter 52. (A. 85, 96-97, 128.)

Following hearing, the Board denied Golden Anchor’s appeal. (A. 97, 128-29.) Based upon the (essentially undisputed) evidence presented by the Town, the Board found that Golden Anchor had disembarked cruise ship passengers without required permits on July 25, 2024, in violation of section 125-77(H) and Chapter 52, as stated in the NOV, and had failed to take the prescribed corrective action (i.e., obtaining permits). (A. 128-29.) As to Golden Anchor’s claim regarding its supposed vested rights, the Board found as follows:

[Golden Anchor] did not present evidence demonstrating a pre-existing permit or right authorizing the unlimited right to disembark “Persons” or vacationing cruise ship passengers. That use is, and has been, a permitted use in the applicable

zoning district. The Applicant presented evidence of a number of permits that it had obtained prior to July 25, 2024, all of which addressed physical improvements to the pier and related structures, and none of which related to cruise ship passenger disembarkation, or a lack of limitations thereon. Based upon those findings, [Golden Anchor] did not establish that, as of July 25, 2024, the unregulated disembarkation of Persons from cruise ships was a lawful nonconforming use as defined within the Land Use Ordinance Section 125-109 and 125-52 through 54.

(A. 97-98, 128-29.)

Despite the fact that Sidman opposed Golden Anchor's appeal, and thus the Board's ultimate decision upholding the NOV was favorable to Sidman, Sidman appealed from the Board's decision pursuant to M.R. Civ. P. 80B.³ In his 213-paragraph complaint, Sidman argues, *inter alia*, that the Board of Appeals erred in denying him "Interested Party" status in Golden Anchor's administrative appeal on December 10, 2024, and further erred in finding in its decision on the merits that disembarkation

³ Golden Anchor filed its own appeal from the Board of Appeals' decision. That appeal is now pending before this Court on an interlocutory basis in BCD-25-229. Although Sidman alleges in his complaint in this matter that "[t]he Board's refusal to allow Mr. Sidman to participate as an Interested Party prevents his participation in 'future proceedings,' including any appeal Golden Anchor takes from the Board's Merits Decision" (A. 99), Sidman later moved to intervene in Golden Anchor's separate Rule 80B appeal, and therefore apparently disagrees with his own argument in this case. Mr. Sidman's motion to intervene in BCD-25-229 has not yet been ruled upon by the Business Court, but is substantially similar to his motion at issue in his other appeal pending before this Court in BCD-24-566.

of cruise ship passengers is a permitted use in the district in which Golden Anchor's property is situated. (A. 79, 98-102.)

Count I of Sidman's Amended Complaint requests, pursuant to M.R. Civ. P. 80B, that the Court

review the December 10 decision of the Board, find the Board's findings of fact were not supported by the record, hold that the Board erred as a matter of law in its determination that Mr. Sidman is not an abutter to Golden Anchor's property, did not show particularized injury, and did not have standing to participate as an Interested Party, and vacate the Board's December 10 decision and recognize him as an Interested Party, and also vacate the Board's Merits Decision and remand for the limited purpose and with instructions to allow Mr. Sidman's full participation as an Interested Party, thereby allowing Mr. Sidman to participate in all future proceedings related to Golden Anchor's BOA Appeal.

(A. 102.) Count II of Sidman's Amended Complaint seeks a declaratory judgment that he was entitled to participate in Golden Anchor's administrative appeal as an interested party, and that disembarkation of cruise ships is not a permitted use in the district in which Golden Anchor's property is situated. (A. 102-05.) Sidman's complaint, along with several other related matters involving these parties, were ultimately transferred to the Business and Consumer Court by recommendation of the Superior Court. (A. 5, 7.)

On February 7, 2025, Sidman moved to consolidate this matter with Golden Anchor's appeal from the same decision of the Board of Appeals. (A. 106-12.) On February 14, 2025, the Town responded that it supported consolidation of the two appeals, while "[r]eserving its right to seek dismissal or other appropriate relief as to any of the claims in either matter." (Town's Response to Mot. to Consolidate at 1.) Golden Anchor opposed the motion. On April 17, 2025, the Business Court denied Sidman's motion to consolidate. (A. 41-42.) The court reasoned that, while there was overlap between the two cases, the gravamen of Sidman's appeal was the Board's refusal to allow him to participate as an interested party, and that would be the issue the court would address first. (A. 41.)

On February 24, 2025, the Town moved to dismiss Sidman's Count II seeking a declaratory judgment as duplicative of and subsumed within his Rule 80B appeal in Count I. (A. 113-17.) On April 17, 2025, the Business Court granted the Town's motion and dismissed Count II, leaving Sidman's Rule 80B appeal as his only remaining claim. (A. 43.)

On May 16, 2025, the Town moved to dismiss Sidman’s appeal for lack of standing.⁴ (A. 118-26.) On July 1, 2025, the Court granted the motion. (A. 44-48.) Because the Board denied Golden Anchor’s appeal—the result Sidman was seeking—the Court held that Sidman did not suffer a particularized injury as a result of the Board’s decision. (A. 45-46.)

This appeal followed.

⁴ Golden Anchor filed a separate Motion to Dismiss on similar grounds. After granting the Town’s motion, the Business Court denied Golden Anchor’s motion as moot. (7/1/25 Order Mooting Golden Anchor’s Mot. to Dismiss.)

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the Business Court abused its discretion in dismissing Sidman's ostensibly independent count as subsumed within Rule 80B review.

2. Whether the Business Court erred in dismissing Sidman's Rule 80B appeal for lack of standing.

3. Whether the Business Court abused its discretion in declining to consolidate Sidman's Rule 80B appeal with Golden Anchor's Rule 80B appeal.

SUMMARY OF ARGUMENT

The Business Court did not abuse its discretion by dismissing Sidman’s purportedly independent declaratory judgment count as duplicative of and subsumed within his Rule 80B appeal. Far from being “independent,” Sidman’s declaratory judgment count sought the same relief as his Rule 80B appeal—a determination that the Board of Appeals erred—based on the same facts. Likewise, the Business Court properly dismissed Sidman’s Rule 80B appeal for lack of standing. Sidman is not aggrieved by a Board of Appeals decision reaching the very result Sidman sought, simply because Sidman would prefer that the Board had arrived at that decision in a different way. Finally, because Sidman’s appeal was properly dismissed, any issue regarding the denial of Sidman’s Motion to Consolidate is moot.

ARGUMENT

I. The Business Court Properly Dismissed Count II as Duplicative of and Subsumed Within Rule 80B Review.

“When a claim for purportedly independent relief is joined with an administrative appeal and the court strikes the former as duplicative,” this Court “review[s] the judgment for an abuse of discretion.” *Cape Shore House Owners Ass’n v. Town of Cape Elizabeth*, 2019 ME 86, ¶ 7, 209 A.3d 102. The Business Court correctly concluded that Sidman’s purportedly independent declaratory judgment count was duplicative of and subsumed within Count I seeking judicial review pursuant to Rule 80B.

A. Rule 80B Provides the Exclusive Means to Challenge the Decision of the Board of Appeals.

Rule 80B of the Maine Rules of Civil Procedure allows a party seeking judicial review of government agency action to join any number of independent claims for relief as separate counts. M.R. Civ. P. 80B(i). A petitioner raising such independent claims is required to move, within 10 days after filing the complaint, “requesting the court to specify the future course of proceedings, including the timing of briefs and argument and the scope and timing of discovery and other pretrial proceedings

including pretrial conferences.” Although Rule 80B review is generally limited to the administrative record, the Rule provides for discovery on independent claims “as in other civil actions.” M.R. Civ. P. 80B(j).

Independent claims, however, must be truly independent. “[W]hen direct review is available pursuant to Rule 80B, it provides the exclusive process for judicial review unless it is inadequate.” *Gorham v. Androscoggin Cty.*, 2011 ME 63, ¶ 22, 21 A.3d 115. This “exclusivity rule” means that duplicative claims—i.e., claims based on the same facts and seeking the same relief—are subject to dismissal. *See, e.g., Cape Shore*, 2019 ME 86, ¶¶ 8-9, 209 A.3d 102 (affirming dismissal of declaratory judgment count as duplicative of Rule 80B count). This includes claims seeking declarative relief, and claims of deprivation of due process. *See, e.g., Cape Shore*, 2019 ME 86, ¶¶ 8-9, 209 A.3d 102 (declaratory relief); *Colby v. York Cty. Comm’rs*, 442 A.2d 544, 547-48 (Me. 1982) (due process claims); *see also Kane v. Comm’r of the HHS*, 2008 ME 185, ¶¶ 30-32, 960 A.2d 1196 (holding claim under 42 U.S.C. § 1983 was duplicative of M.R. Civ. P. 80C claim and properly dismissed). As this Court explained in *Cape Shore*,

[a] claim for a declaratory judgment is proper in circumstances where a challenge to a regulation or ordinance

is necessary to resolve a dispute regarding a planned action, before the matter actually proceeds and the challenged ordinance is applied to the detriment of the plaintiffs—in other words, as an anticipatory challenge. *After* a municipal agency has adjudicated a matter, however, a contention that the decision was erroneous because it infringes upon some superior legal authority becomes subsumed within the essence of matters that must be brought pursuant to Rule 80B to question whether the particular action of a municipal administrative agency is consistent with the requirements of law. This is true even when a party asserts that the challenged ordinance is inconsistent with statutory or constitutional provisions. Therefore, if, pursuant to Maine Rule of Civil Procedure 80B(i), a complaint contains both a Rule 80B appeal and an ostensibly independent challenge to the law applied by the municipal body, the latter may properly be dismissed as duplicative if it relies on the same factual allegations, and seeks the same relief as the Rule 80B appeal.

2019 ME 86, ¶ 8, 209 A.3d 102 (quotation marks and citations omitted); *see also Colby*, 442 A.2d at 547-48 (concluding that due process claims relating to agency’s failure to hold a public hearing, exclusion of evidence, and lack of opportunity to examine witnesses could be adequately addressed through Rule 80B review).

Sidman’s Count II seeking a declaratory judgment is entirely duplicative of Count I seeking review under Rule 80B. He seeks the same relief (i.e., a determination that the Board of Appeals erred) based on the same facts. This complete overlap is made all the more plain by Sidman’s proposal in his Motion to Specify that “the issues raised by the

independent claim be briefed and decided as part of the Rule 80B briefing.” (Mot. to Specify at 1.) At the risk of stating the obvious, a truly independent civil claim cannot be addressed by Rule 80B briefing—hence why the Rule requires a motion to specify the future course of proceedings in the first place. Where Rule 80B applies, it is exclusive. *See, e.g., Cape Shore*, 2019 ME 86, ¶¶ 8-9, 209 A.3d 102; *Gorham*, 2011 ME 63, ¶ 22, 21 A.3d 115. As such, Count II of Sidman’s Complaint was properly dismissed.

B. Sidman’s Declaratory Judgment Claim Is Not “Anticipatory.”

Seeking to avoid this Court’s holding in *Cape Shore*, Sidman protests that Count II is “anticipatory.” (Blue Br. at 40-41.) A cursory review of Sidman’s complaint belies this contention. Almost every paragraph of Count II specifically refers to the “Board,” the “administrative appeal,” or both. (A. 102-05.) The only substantive paragraphs that do not do so are paragraphs 211 and 212, which suggest that a controversy exists as to whether the Land Use Ordinance allows disembarkation of cruise ship passengers in the Shoreland General Development I district, and request that the court declare that it does not. (A. 104.) But this is precisely the same “error” by the Board of

Appeals that Sidman asks the court to review in Count I, among others. (A. 96, 98-99, 102.) This is not an “anticipatory” challenge, as Sidman suggests, but rather a challenge to an interpretation of the Land Use Ordinance that the Board of Appeals has already made. *See Cape Shore*, 2019 ME 86, ¶ 8, 209 A.3d 102 (“*After* a municipal agency has adjudicated a matter, however, a contention that the decision was erroneous because it infringes upon some superior legal authority becomes subsumed within the essence of matters that must be brought pursuant to Rule 80B . . .”).

C. Sidman Makes No Case That Rule 80B Review Is Inadequate.

Sidman next suggests that Count II is not duplicative because it relies on “facts outside the record” and requires discovery. (Blue Br. at 36-38.) Specifically, Sidman suggests that he wishes to “rely on and develop facts outside the administrative record and through discovery relating to Golden Anchor and the Town’s plan to disembark cruise ship passengers in the Shoreland General Development I District” after the Town “revealed its plan to use the Town Pier—also in the Shoreland General Development I District—to disembark cruise ship passengers.” (A. 98; Blue Br. 37.)

But Sidman’s desire to make arguments outside of the record does not exempt him from the exclusivity rule. Rule 80B is a flexible procedure that allows for discovery and trial on an appropriate showing of need. M.R. Civ. P. 80B(d), (j); *see also Silsby v. Belch*, 2008 ME 104, ¶ 6, 952 A.2d 218 (recognizing the purpose of a Rule 80B(d) trial of the facts “is not to retry the facts but rather to permit the court to obtain facts that are not present in the record”); *Adelman v. Town of Baldwin*, 2000 ME 91, ¶ 7, 750 A.2d 577 (“Rule 80B(d) allows an appellant to add facts to the administrative record for a trial of the facts when an appellant establishes, with sufficient particularity, the need for a trial of such facts.”); *Colby*, 442 A.2d at 547-48 (“[H]ad plaintiff availed himself of the relief provided by Rule 80B, he could have compelled the preparation of a record, including a new hearing if necessary.”). If Sidman believed he could make a good faith case for discovery or a trial of the facts under Rule 80B, it was incumbent upon him to so move. He did not. Rather, he seeks to use a duplicative “independent” count to *avoid* making the showing required by M.R. Civ. P. 80B(d) and (j).

Moreover, Sidman fails to explain how these post-decision facts are any more or less relevant to Count II than to Count I. Indeed, they appear

to have been included in the Complaint in service of a (deeply strained) argument in Count I that his “full” participation as an “Interested Party” before the Board of Appeals was necessary, and the Board erred in “only” allowing him to participate as a member of the public. (A. 98 (“The Town has not argued and cannot argue that Golden Anchor is precluded from using its Pier as a Cruise Ship Disembarkation Facility because the Town itself plans to use the Town Pier for the same activity in the Shoreland General Development I district.”); Blue Br. at 37 (“It is reasonably likely that the CEO sought to preserve the right for the Town to use its own pier to disembark passengers when she argued before the Board that the disembarkation of cruise ship passengers was an allowable activity in the Shoreland General Development I District.”).) Seeking to avoid dismissal of Count II as duplicative of Count I, Sidman now seeks to recast these allegations as an “independent” challenge to the Town’s vaguely alleged “plan” to use the Town Pier to disembark cruise ship passengers that is nowhere evident on the face of Count II.⁵

⁵ Nor is it apparent what additional “facts” would be necessary to a legal interpretation of whether the Land Use Ordinance allows cruise ship disembarkations in the Shoreland General Development I District, or how use of the Town Pier or how that “may have informed the CEO’s position” in this litigation would be at all relevant to that legal determination. *See, e.g., Sand v. Town of Newfield*, 2025 ME 45, ¶ 11, 335 A.3d 626. (“The interpretation of an ordinance is a question of law that we review de novo, with no deference to the local board’s interpretation.” (quoting *Stiff v. Town of Belgrade*, 2024 ME 68, ¶ 12, 322 A.3d 1167)).

As the Town pointed out in the Business Court, even assuming that Sidman would have standing to challenge to the Town’s vaguely alleged “plan” to use the Town Pier to disembark cruise passengers, by the time such a challenge might become ripe, it would itself fall within the Rule 80B exclusivity rule, where the Town, like any other landowner, would have to obtain permits for such use, the approval of which could be appealed.⁶ (A. 81, 85-86, 98, 130-32.) Indeed, that is precisely what occurred.

On May 8, 2025, Sidman filed an application with the Board of Appeals challenging the CEO’s approval of a Chapter 52 facility permit for the Town Pier on the grounds that cruise ship disembarkation is not a permitted use in the same zone where Golden Anchor’s pier is located. A copy of that application was attached to the Town’s Motion to Dismiss Count I as Exhibit A. (A. 126 n.6.) This Court can take judicial notice of that application, which is a matter of public record, as well as the fact that Sidman has subsequently taken a Rule 80B appeal that is now pending in the Business Court under docket number BCD-APP-2025-

⁶ If and when Golden Anchor or any other entity seeking to disembark cruise ship passengers seeks such permits, those applications can likewise be challenged by parties with standing. Golden Anchor has simply chosen to knowingly operate without the required permits—hence the NOV at issue in this appeal.

00016. *See, e.g., D'Amato v. S.D. Warren Co.*, 2003 ME 116, ¶ 13 n.2, 832 A.2d 794 (taking judicial notice of meeting minutes of Workers' Compensation Board); *see also Cabral v. L'Heureux*, 2017 ME 50, ¶ 10, 157 A.3d 795 (“Courts may take judicial notice of pleadings, dockets, and other court records where the existence or content of such records is germane to an issue in the same or separate proceedings.”)

D. The Board of Appeals' Decision Is Not a “Zoning Decision.”

Sidman cites *Rommel v. City of Portland* for the proposition that “a declaratory judgment, and not a Rule 80B appeal, is the proper procedure for challenging [a] zoning decision.” 2014 ME 114, ¶ 10 & n.1, 102 A.3d 1168 (citing *F.S. Plummer Co. v. Town of Cape Elizabeth*, 612 A.2d 856, 859 (Me. 1992)). But *Rommel* is inapposite. *Rommel* dealt with a city council's approval of a conditional zoning agreement. 2014 ME 114, ¶ 1, 102 A.3d 1168. Similarly, *F.S. Plummer Co.*, on which *Rommel* relied, involved a challenge to a Town Council's denial of an application for a zone change. 612 A.2d at 858. In both cases, the matter was appropriately brought as a declaratory judgment action, rather than a Rule 80B appeal. *Rommel*, 2014 ME 114, ¶ 10 & n.1, 102 A.3d 1168; *F.S. Plummer Co.*, 612 A.2d at 859. As this Court explained in *F.S. Plummer Co.*, that is

because municipal officers deciding whether or not to rezone property is a “legislative function, as opposed to an administrative or quasi-judicial function.” 612 A.2d at 859 (emphasis added). It should go without saying that a local board of appeals is not a legislative body, and the interpretation and application of a land use ordinance by an administrative board is not a legislative decision to rezone property. Maine law explicitly provides that decisions of local boards of appeals may be appealed under Rule 80B. 30-A M.R.S. § 2691(3)(G). That review is exclusive. *See, e.g., Cape Shore*, 2019 ME 86, ¶¶ 8-9, 209 A.3d 102; *Gorham*, 2011 ME 63, ¶ 22, 21 A.3d 115.

E. No Ultra Vires Action Is Alleged in this Case.

Sidman also cites a number of cases, primarily *Sold, Inc. v. Town of Gorham*, 2005 ME 24, ¶ 12, 868 A.2d 1272, for the proposition that administrative action may be challenged as ultra vires through a declaratory judgment action when the action was beyond the jurisdiction or authority of the administrative body. (Blue Br. at 39.) Again, this is inapposite. Nothing in Sidman’s complaint alleges that the Board exceeded its jurisdiction. Indeed, Sidman himself admits, as he must, that the Board had jurisdiction. (Blue Br. at 13; A. 92.) Rather, Sidman’s

complaint is that the Board did not exercise its jurisdiction in precisely the manner that he would like it to have done. The Board’s interpretation of the Land Use Ordinance did not magically “amend” the ordinance simply because Sidman disagrees with the interpretation. (Blue Br. at 40.) There is no issue of “ultra vires” action here.⁷

II. Sidman Lacks Standing to Appeal from a Favorable Decision of the Board of Appeals.

Although Rule 80B is undoubtedly the correct (and exclusive) vehicle to challenge the decision of the Board of Appeals, 30-A M.R.S. § 2691(3)(G), that does not mean that Sidman—who opposed Golden Anchor’s administrative appeal and does not challenge the ultimate decision of the Board to deny that appeal—has standing to bring such a challenge. *See, e.g., High Me.*, 2024 ME 76, ¶ 13, 327 A.3d 58 (noting standing to file a Rule 80B requires plaintiff to have “suffered a particularized injury as a result of the challenged municipal decision” (quotation marks omitted)). This Court reviews the dismissal of a Rule 80B complaint for lack of standing de novo. *Id.* ¶ 12.

⁷ Even if *Sold* were relevant here, Sidman overstates its holding. As this Court has explained: “Our decision in *Sold* illustrates the principle that ultra vires claims constitute a narrow exception to the Rule 80B (and Rule 80C) exclusivity rule, but only if Rule 80B (or Rule 80C) review is unavailable.” *Black v. Bureau of Parks & Lands*, 2022 ME 58, ¶ 24, 288 A.3d 346.

A. Sidman Suffered No Particularized Injury as a Result of the Board’s Decision.

Sidman—who opposed Golden Anchor’s administrative appeal and *does not challenge the ultimate decision of the Board* to deny that appeal—lacks standing to appeal from that decision. “To establish judicial standing to file an appeal pursuant to Rule 80B, the plaintiff must have both (1) participated in the relevant administrative proceedings and (2) ‘suffered a particularized injury’ as a result of the challenged municipal decision.” *High Me.*, 2024 ME 76, ¶ 13, 327 A.3d 58 (quoting *Norris Fam. Assocs., LLC v. Town of Phippsburg*, 2005 ME 102, ¶ 11, 879 A.2d 1007); *see also Brooks v. Town of N. Berwick*, 1998 ME 146, ¶ 8, 712 A.2d 1050 (“Pursuant to 30-A M.R.S.A. § 2691(3)(G) (1996), any party may appeal the decision of a local zoning board of appeals in accordance with Maine Rule of Civil Procedure 80B. To achieve ‘party’ status within the meaning of section 2691, one must have participated in the ZBA hearing and must demonstrate a particularized injury as a result of the ZBA’s action or inaction.”)⁸

⁸The Town notes that standing to appear before an administrative body and standing to seek judicial review pursuant to Rule 80B are two different, albeit related, inquiries. *See, e.g., Upstream Watch v. City of Belfast*, 2023 ME 43, ¶¶ 24-25, 299 A.3d 25 (distinguishing between “judicial standing” and “administrative standing”); *Friends of Lincoln Lakes v. Town of Lincoln*, 2010 ME 78, ¶¶ 8-17, 2 A.3d 284 (recognizing distinction between standing to

Although Sidman confusingly argues that the Board of Appeals declining to give him party status will somehow prevent him from participating in Golden Anchor’s own Rule 80B appeal (A. 99, 102),⁹ there is no serious question that Sidman “participated” in the Board of Appeals proceeding. There is no requirement that an appellant have enjoyed formal party status in an administrative appeal to have standing to file a Rule 80B appeal. *Witham Family Ltd. v. Town of Bar Harbor*, 2011 ME 104, ¶¶ 9-10, 30 A.3d 811; *Norris*, 2005 ME 102, ¶ 16, 879 A.2d 1007. Rather, all that is required for Rule 80B standing purposes is “any participation—formal or informal, whether personally or through an attorney—in the municipal proceedings by, for example, voicing concerns for traffic, noise and aesthetics, or express opposition at a municipal

appear before municipal board and standing to bring Rule 80B appeal). The Town’s motion sought—and the Business Court granted—dismissal on the grounds that Sidman lacks standing to bring a Rule 80B appeal. The Town does not concede that Sidman had standing to appear before the Board of Appeals—that question is part of the substance of Sidman’s appeal, and will be addressed, if necessary, in Rule 80B briefing, should his appeal proceed on the merits.

⁹ Mr. Sidman alleges in his Amended Complaint that “[t]he Board’s refusal to allow Mr. Sidman to participate as an Interested Party prevents his participation in ‘future proceedings,’ including any appeal Golden Anchor takes from the Board’s Merits Decision.” (A. 99.) Mr. Sidman has since moved to intervene in Golden Anchor’s separate Rule 80B appeal from the same decision of the Board of Appeals, currently pending before this Court under docket number BCD-25-229, and therefore apparently disagrees with his own argument in this case.

hearing; no formal appearance is necessary.” *Witham*, 2011 ME 104, ¶ 10, 30 A.3d 811 (cleaned up).

However, Sidman fails the “particularized injury” prong. “A particularized injury occurs when a judgment or order adversely and directly affects a party’s property, pecuniary, or personal rights. A person suffers a particularized injury only when that person suffers injury or harm that is in fact distinct from the harm experienced by the public at large.” *Id.* ¶ 13 (quoting *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶ 18, 973 A.2d 735). “Being affected by a governmental action is insufficient to confer standing in the absence of any showing that the effect is an injury, and an injury is not particularized if it is suffered equally by all citizens.” *Id.* ¶ 14 (quoting *Lindemann v. Comm’n on Gov’t Ethics & Elec. Pracs.*, 2008 ME 187, ¶ 15, 961 A.2d 538). “If a party’s legal rights and responsibilities are unchanged by a decision, the party will not have standing to challenge the decision.” *Id.* (citing *Great Hill Fill & Gravel, Inc. v. Bd. of Env’t Prot.*, 641 A.2d 184, 184-85 (Me. 1994)).

It is a bedrock principle of appellate law that “only a party aggrieved by [an] order may appeal therefrom.” *Estate of Anderson*, 468 A.2d 612, 614 (Me. 1983). It is not enough that a party disagrees with the

reasoning on which a decision rests. “To have standing to appeal from a decision, a party must be ‘aggrieved’ by that decision—that is, the challenged action must operate prejudicially and directly upon a party's property, pecuniary or personal rights.” Alexander, *Maine Appellate Practice* § 204(c) at 268 (5th ed. 2018). The same principle holds true in Rule 80B appeals. “A party lacks standing to appeal a judgment that grants the relief the party sought simply because the party would prefer to have the judgment rest on different reasoning.” *Tominsky v. Town of Ogunquit*, 2023 ME 30, ¶ 16, 294 A.3d 142; *see also Brooks*, 1998 ME 146, ¶ 10, 712 A.2d 1050 (“Although [appellant] might have preferred that the ZBA base its decision on [an] alternative rationale . . . , he nonetheless received exactly what he asked for from the ZBA: an invalidation of the CEO’s decision. [His] dissatisfaction with the ZBA’s reason for invalidating the CEO’s approval . . . does not constitute a ‘particularized injury’ sufficient to confer standing for judicial review.”)

Here, Sidman does not argue that the Board of Appeals should have invalidated the NOV issued to Golden Anchor. To the contrary, Sidman opposed Golden Anchor’s appeal to the Board of Appeals, and admits, as he must, that the decision of the Board of Appeals rejecting Golden

Anchor’s challenge to the NOV is “favorable to Mr. Sidman.” (A. 99.) Rather, Sidman’s grievance with the Board of Appeals is that it “adopted some of Mr. Sidman’s arguments, while not addressing or rejecting others.” (A. 97.) Specifically, Sidman takes issue with the Board denying him “Interested Party” status, and rejecting his argument that disembarkation of cruise ship passengers is not a permitted use in the district where Golden Anchor’s pier is located. (A. 98-100.) But as this Court has made clear, a preference that a municipal board reach its ultimate decision by different reasoning does not confer standing to appeal.¹⁰ *Tominsky*, 2023 ME 30, ¶ 16, 294 A.3d 142. Rather, the decision must be prejudicial to the party seeking to appeal. *See, e.g.*, Alexander, *Maine Appellate Practice* § 204(c) at 268. Sidman is not prejudiced by a decision that upholds a NOV against Golden Anchor—the very result Sidman sought.

Sidman suggests that he satisfies the particularized injury standard by virtue of supposed harms he suffers from “[t]he use of Golden

¹⁰ Sidman’s suggestion that he would have raised arguments not raised by the CEO might theoretically be relevant to a motion to intervene in Golden Anchor’s separate Rule 80B appeal from the Board’s decision, now pending before this Court in BCD-25-229, *see* M.R. Civ. P. 24(a) (disallowing intervention as of right where “the applicant’s interest is adequately represented by existing parties”), but has no relevance here.

Anchor’s property.” (Blue Br. at 31-33.) Setting aside the dubious nature of these claimed injuries, which the Town addressed in Sidman’s other pending appeal in BCD-24-566, Sidman’s burden is not, as he seems to think, to show that cruise ship visitation might affect him in some general way, but rather to show that the *Board of Appeals decision* he seeks to appeal operates prejudicially on his rights.¹¹ It does not. As he admits, that decision was favorable to him. He would simply prefer that the Board reached the same result by a different route. *See Tominsky*, 2023 ME 30, ¶ 16, 294 A.3d 142; *Brooks*, 1998 ME 146, ¶ 10, 712 A.2d 1050; *Estate of Anderson*, 468 A.2d at 614; Alexander, *Maine Appellate Practice* § 204(c) at 268.¹²

B. The Collateral Estoppel Exception Does Not Apply.

There is a limited exception to the general rule that a party may not appeal because it disagrees with the particular route by which a body

¹¹ Again, the question of Sidman’s standing to appear before the Board is separate from his standing to *appeal* from the Board’s decision.

¹² Sidman suggests that this case is “strikingly similar” to *Larose v. City of Biddeford*, No. AP-02-053, 2003 Me. Super. LEXIS 186, *2-3, 5 (Aug. 29, 2003), in which the Superior Court concluded that a local board of appeals erred in not allowing an abutter to participate in an appeal. Sidman appears to overlook the fact that *the board’s decision in that case was adverse to the abutter*, because it allowed their neighbor to continue the challenged use of his property. *Id.* at *3-4. And, of course, Sidman is not an abutter, nor was he prevented from participating in the hearing.

reached its decision. That exception applies when “an essential finding on which the judgment is based might otherwise prejudice the party through the use of collateral estoppel in the future proceeding.” *Witham*, 2011 ME 104, ¶ 16, 30 A.3d 811 (quoting *Great Cove Boat Club v. Bureau of Pub. Lands*, 672 A.2d 91, 92 n.1 (Me. 1996)). Sidman contends that he falls within that exception. (A. 99-100.) He does not.

As to Sidman’s claim that the Board erred in not granting him “Interested Party” status, that cannot plausibly be argued to be “an essential finding” on which the Board’s decision was based, or one that will prejudice Sidman in any way in future proceedings. Sidman suggests that “[t]he Board’s refusal to allow Mr. Sidman to participate as an Interested Party prevents his participation in ‘future proceedings,’ including any appeal Golden Anchor takes from the Board’s Merits Decision.” (A. 99.) As discussed above, this is simply wrong. The absence of formal party status is irrelevant for purposes of establishing standing to appeal. *Witham*, 2011 ME 104, ¶¶ 9-10, 30 A.3d 811; *Norris*, 2005 ME 102, ¶ 16, 879 A.2d 1007. Moreover, the absence of such status in the Board of Appeals does not prevent Sidman from moving to intervene in

Golden Anchor’s separate Rule 80B appeal pending before this Court, as Sidman has already done.¹³

Sidman also suggests that the collateral estoppel exception applies because the Board’s decision rests on an “essential finding” that cruise ship disembarkation is permitted in the district in which Golden Anchor’s pier is situated. (A. 99.) This claim likewise fails on both prongs of the analysis. First, the Board’s finding was not “essential” to its holding. The NOV before the Board dealt with permitting requirements, not zoning. (*E.g.*, A. 50, 53-54, 57.) The Board made its finding regarding permitted uses in the zone in the context of its rejection of Golden Anchor’s argument that various permits it had received over the years gave it vested rights to disembark an unlimited number of cruise ship passengers, regardless of the Town’s permitting requirements. (A. 128-29.) Had the Board concluded that cruise ship disembarkation was not a permitted use in the zone at all, it would necessarily have reached the

¹³ As he did in the Business Court, Sidman largely ignores the existence of intervention. Of course, like any proposed intervenor, Mr. Sidman must satisfy the requirements for intervention. *See* M.R. Civ. P. 24. The Town does not concede that he does, for many of the same reasons addressed in Sidman’s other appeal pending before this Court in BCD-24-566.

same conclusion—Golden Anchor would still have no vested rights, and would still not be entitled to relief from the NOV.¹⁴

Second, despite Sidman’s repeated declarations that he will be collaterally estopped from raising the question of whether cruise ship disembarkation is a permitted use in future proceedings, he fails to explain how this could possibly come to pass. Collateral estoppel, also known as issue preclusion, prevents the relitigation of issues already decided “if the identical issue was determined by a prior final judgment, and the party estopped had a fair opportunity and incentive to litigate the issue in a prior proceeding.” *Town of Mount Vernon v. Landherr*, 2018 ME 105, ¶ 15, 190 A.3d 249 (quoting *Macomber v. MacQuinn-Tweedie*, 2003 ME 121, ¶ 22, 834 A.2d 131). Among the requirements for collateral estoppel to apply is that the party sought to be estopped was “a

¹⁴ At bottom, Sidman’s problem with the Board’s decision is that the Board did not—via some authority not known to the Town—conclude that the NOV was *underinclusive*, i.e., rewrite the notice to include a zoning violation Sidman believes has occurred. Thus, this case represents a continuation of Sidman’s various efforts across several matters, including several before this Court, to dictate to the Town when and on what terms it can or must bring enforcement action. Sidman continues to lack any such authority. *See, e.g., 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.”); *Salisbury v. Town of Bar Harbor*, 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”).

party or privy to a party in the earlier case.”¹⁵ *In re Children of Bethmarie R.*, 2018 ME 96, ¶ 16, 189 A.3d 252.

Sidman participated in the Board of Appeals, but was not a “party” for purposes of collateral estoppel. Indeed, the Board of Appeals supposedly denying Sidman a fair opportunity to litigate is *one of the explicit bases of his appeal*. (E.g., A. 94, 96-99.) Sidman protests that the Town “conceded” and the Business Court “found” that Sidman was a party to those proceedings. (Blue Br. at 22.) As he did in the Business Court, Sidman misunderstands (or pretends to misunderstand) the distinction between the liberal definition of “party” for purposes of standing to appeal, with the necessarily more limited meaning of “party” for purposes of res judicata. Sensibly, more is required to bar a party from making an argument it did not have a fair opportunity to make than is required for it to have participated in an administrative proceeding for standing purposes. In both contexts, the term “party” is drawn in favor of the plaintiff—for purposes of standing, liberally, to allow plaintiffs to get their foot in the door, and for purposes of res judicata, conservatively,

¹⁵ This is not the only requirement. Even a party or their privy may not have had a “fair opportunity and incentive” to litigate an issue in a prior proceeding. *See, e.g., Hossler v. Barry*, 403 A.2d 762, 768-69 (Me. 1979) (recognizing party may have had “little incentive” to litigate issue vigorously in suit involving small sum, or where future suits were not foreseeable).

to allow plaintiffs to make their arguments on the merits. Perversely, Sidman attempts to wield the *less* favorable definition of “party” against *himself*, because it suits his immediate goal of bringing this ill-advised appeal.¹⁶

Nor is Sidman in “privity” with Golden Anchor or the Town. *See Bethmarie R.*, 2018 ME 96, ¶ 17, 189 A.3d 252 (“Privity exists when two parties have a commonality of ownership, control, and interest in a proceeding.” (quoting *In re M.M.*, 2014 ME 15, ¶ 16, 86 A.3d 622)). Contrary to his contentions, Sidman is in no way at risk of losing the opportunity to argue in a future proceeding that cruise ship disembarkation is not an allowed use in the zone, provided he can establish standing and satisfy other justiciability requirements.

Moreover, as discussed above, Sidman has *already* initiated litigation making the very argument he claims he will be collaterally estopped from making, and *had already done so* at the time of the Town’s

¹⁶ To hold otherwise would mean that every non-party member of the public participating in a local board of appeals proceeding can be collaterally estopped in later litigation. To the extent Sidman suggests, based on *Witham Family Limited*, that a “*five-minute statement*” as a member of the public before a board of appeals is sufficient to raise a collateral estoppel bar down the line (Blue Br. at 29-30), Sidman dramatically misstates the facts of that case. In *Witham*, the party in question had actively participated in the underlying Planning Board proceedings for “an entire year.” 2011 ME 104, ¶¶ 3, 13, 30 A.3d 811.

Motion to Dismiss in the Business Court. On May 8, 2025—approximately a week before the Town moved to dismiss Sidman’s Rule 80B appeal—Sidman filed an administrative appeal to the Board of Appeals from the CEO’s approval of Chapter 52 facility permit for the Town Pier on the grounds that cruise ship disembarkation is not a permitted use in the zone. (*See supra* Part I.C.) He has since taken a Rule 80B appeal from the Board of Appeals’ denial of his administrative appeal. (*See id.*) Although Sidman conspicuously fails to note this pending litigation in his brief to this Court, he acknowledged it in a footnote in the Business Court, admitting that he was seeking a “determination on what explicit uses presently allow the disembarkation of cruise ship passengers [in the zone], which is very much a live issue not previously decided by the Board.” (Opp’n to Mot. to Dismiss Ct. I at 9-10 n.6.) If whether cruise ship disembarkation is an allowed use in the zone is a “live issue not previously decided by the Board” that Sidman can challenge in another administrative appeal, he is plainly not at risk of losing the ability to make that argument, as he inexplicably continues to suggest.

Sidman’s attempt to invoke the collateral estoppel exception fails.

C. Sidman's Underlying Argument is Irrelevant, Meritless, and the Subject of Other Proceedings.

Sidman, for reasons unclear to the Town, continues to argue the substance of his claim that disembarkation of cruise ship passengers is not an allowed use in the relevant zoning district. (Blue Br. at 26 n.6, 38.) The merits of Sidman's argument have no relevance whatsoever to his standing to appeal, or indeed any other issue before this Court, so the Town will not belabor the point. But as Sidman has seen fit to raise the issue, the Court should be aware that the Town's Land Use Ordinance permits a "[p]ier, dock, wharf, breakwater or other use projecting into the water" in this zone. Code § 125-47(D)(2) (A. 147). Sidman suggests that cruise ship disembarkation is only permitted at a "passenger terminal," but points to nothing in the ordinance to support that theory. This argument is especially dubious where the term "passenger terminal," and the "Shoreland Maritime Activities District" with which it is associated, were only adopted in 2017. Code § 125-109 (Sidman Supp. Legal Authorities at 13) (definition of "passenger terminal" adopted June 13, 2017); Code § 125-49.3 (A. 149-50) ("Shoreland Maritime Activities District," adopted June 13, 2017). Cruise passenger disembarkation in Bar Harbor predates "passenger terminals" by several decades.

See APPLL I, 721 F. Supp. 3d at 68-70 (discussing history of cruise visitation in Bar Harbor, including significant growth since the 2000s); *see also APPLL II*, 147 F.4th at 46 (same). In any event, as discussed above, Sidman has made precisely the same argument in a Rule 80B appeal from a CSDF permit issued for the Town Pier, which is now pending before the Business Court. (*See supra* Part I.C.)

III. The Business Court Did Not Abuse its Discretion in Denying Sidman’s Motion to Consolidate, and the Issue Is Moot.

Because the Business Court properly dismissed Sidman’s appeal, any issue regarding the court’s denial of Sidman’s motion to consolidate that appeal with Golden Anchor’s appeal is moot. *See, e.g., Morris v. Hunter*, 652 A.2d 80, 81 (Me. 1994) (noting grant of summary judgment mooted motion to consolidate). Even if this issue were live, this Court’s review is only for an abuse of discretion. *See, e.g., Indorf v. Keep*, 2023 ME 11, ¶ 9, 288 A.3d 1214. As this Court has noted, trial courts have broad—albeit not unlimited—discretion as to management of their dockets. *Id.* ¶ 10.

Here, the Town supported consolidation of the two appeals, consistent with its efforts to streamline the bombardment of lawsuits brought by Golden Anchor and Sidman, and thereby move forward with

enforcement of its ordinances as expeditiously and efficiently as possible. However, contrary to Sidman's suggestion, that does not render the Business Court's decision not to consolidate the cases an abuse of its discretion. The Business Court correctly noted that although there was overlap between the two appeals, the issues Sidman raised were different from those raised by Golden Anchor—as Sidman himself must admit. (Blue Br. at 9, 45 (suggesting he is raising arguments that will “otherwise go unmade” and issues that will “otherwise go unlitigated”).) And, of course, there has from the beginning been a serious question as to Sidman's standing to bring his separate appeal in the first place. (A. 41.)

Intentionally or not, Sidman and Golden Anchor have unnecessarily complicated what should be a fairly straightforward case, dramatically slowing and increasing the cost of the Town's efforts to enforce its ordinances against Golden Anchor. The Business Court thoughtfully engaged with the parties on how best to move these cases forward and reach the substantive issues, but Golden Anchor and Sidman have proven largely immune to those efforts, as evidenced by the three appeals currently pending before this Court. The Business Court's decision not to consolidate the two Rule 80B matters, particularly at this

early stage,¹⁷ was reasonable and not an abuse of its broad discretion as to how to begin to tame the procedural thicket Sidman and Golden Anchor placed before it. In any event, the issue is now moot where Sidman’s appeal has been properly dismissed.

CONCLUSION

For all of the foregoing reasons, the Town respectfully requests that this Court affirm the decision and judgment of the Business Court.

Respectfully submitted, dated at Bangor, Maine this 8th day of December, 2025.

/s/ Jonathan P. Hunter

Stephen W. Wagner, Esq. (Bar No. 5621)

Jonathan P. Hunter, Esq. (Bar. No. 4912)

Rudman Winchell

Attorneys for Appellee Town of Bar Harbor

Bangor, ME 04402-1401

(207) 947-4501

swagner@rudmanwinchell.com

jhunter@rudmanwinchell.com

¹⁷ The Town does not read the Business Court’s order as forever foreclosing the possibility of consolidation. Implicit in the court’s order was the idea that consolidation might become appropriate in the future, if Sidman’s appeal survived its (ultimately fatal) defects. (A. 41 (“Whether and to what extent other issues in Sidman’s case which might have some commonality with Golden Anchor’s case are reached, the Court will first focus on the Interested Party issue.”).)

CERTIFICATE OF SERVICE

I, Jonathan P. Hunter, certify that I served this Brief of Appellee Town of Bar Harbor upon the other parties in this matter in accordance with Appellate Rule 1E, through their counsel indicated below:

Timothy C. Woodcock, Esq. twoodcock@katahdin-law.com
Janna L. Gau, Esq. jgau@katahdin-law.com

Robert J. Papazian, Esq. bpapazian@gklegal.com
David P. Silk, Esq. dsilk@curtisthaxter.com

Dated: December 8, 2025 /s/ Jonathan P. Hunter
Jonathan P. Hunter, Esq. (Bar No. 4912)