STATE OF MAINE
HANCOCK, ss.

BUSINESS AND CONSUMER COURT
Location: Portland
Docket No. BCD-APP-2025-00016

CHARLES SIDMAN, Plaintiff, v. TOWN OF BAR HARBOR, Defendant.	)	**PLAINTIFF'S RULE 80B BRIEF**

Pursuant to Maine Rule of Civil Procedure 80B, Plaintiff Charles Sidman submits his Rule 80B brief. Mr. Sidman respectfully requests that the Court grant his Rule 80B Petition, vacate the Town of Bar Harbor Board of Appeals' ("Board") June 24, 2025 decision denying Mr. Sidman's administrative appeal for lack of standing, hold that the excessive administrative fees in filing his administrative appeal are unconstitutional, and remand to the Board with instructions for it to hear and decide the merits of Mr. Sidman's administrative appeal.

INTRODUCTION

In this appeal from administrative action, Mr. Sidman appeals from the Town's grant of a permit – to itself – authorizing the disembarkation of cruise ship passengers at the Town-owned pier ("Town Pier"), located in a zoning district that neither contemplates nor permits the disembarkation of cruise ship passengers. The landing of cruise ship passengers directly into downtown Bar Harbor causes congestion throughout downtown and disrupts Mr. Sidman's downtown business and his use and enjoyment of his own property, town parks, sidewalks, and the waterfront.

The Board refused to consider the merits of Mr. Sidman's appeal. Instead, disregarding its own procedural rules and governing statutes, the Board summarily concluded that Mr. Sidman

lacked standing to bring his appeal. The Board only allowed Mr. Sidman *two minutes* to make his case, as limited to his standing, refused to let him rebut the Town's and other parties' submissions and arguments, summarily denied his appeal for lack of standing, and extracted a $1,500.00 filing fee for the experience. The hearing was not an adjudication – it was a foregone conclusion, where procedures, rules, and governing statutes were disregarded to arrive at a predetermined conclusion.

The Town also allowed Golden Anchor L.C., to untimely and fraudulently submit materials to the Board, which Mr. Sidman was forbidden from challenging. The Board then compounded these violations when an associate member – who by law cannot vote – moved to deny Mr. Sidman's appeal and proceeded to vote against him. In doing so, the Board outwardly showed its unwillingness to fulfill its obligations as an adjudicative tribunal under the Town Code, its authorizing statutes, and the Maine Constitution. The Board has transformed itself from a neutral arbiter into a gatekeeper whose purpose is to insulate the Bar Harbor Town Council's decisions from scrutiny.

FACTUAL BACKGROUND

Mr. Sidman is a resident of Bar Harbor, an actual and regular user and enjoyer of the downtown areas, including the waterfront and parks, and is a local business owner who opposes the unlawful disembarkation of cruise ship passengers into downtown Bar Harbor. Compl. ¶¶ 70-71, 77; AR0198. The influx of cruise ship passengers directly into downtown has long created recognized problems in Town, including pollution, congestion, safety concerns, and a drain on municipal resources, leading many residents and visitors to avoid downtown altogether during the Town's cruise ship season between May and the end of October each year. Compl.

¶¶ 15-16; AR0198; *Assoc. to Preserve and Protect Local Livelihoods (APPLL) v. Town of Bar Harbor*, 721 F. Supp. 3d 56, 71 (D. Me. 2024).

Mr. Sidman owns two properties in the Town of Bar Harbor, including a commercial property located at 6 Mount Desert Street in downtown Bar Harbor. AR0012-19. His commercial property is approximately a quarter of a mile away from the Town Pier and sits in the same downtown neighborhood as the Town Pier, and adjacent to the Village Green park. Compl. ¶ 85; AR0199. Out of this downtown property, Mr. Sidman and his wife own and operate Argosy Gallery, a fine art gallery. Compl. ¶ 86; AR0199. Mr. Sidman's clientele—collectors of fine art—frequently complain and refuse to come to his business in downtown Bar Harbor on days cruise ships are disembarking passengers into downtown. Compl. ¶ 88; AR0199. Mr. Sidman has observed reduced client visitation to his business on days when cruise ships disembark passengers into downtown. AR0200. In fact, Mr. Sidman's business experienced its "best year ever" financially in 2021, when cruise ships were not visiting Bar Harbor as a result of Covid-19 restrictions. AR0186.

Mr. Sidman used to operate a second commercial property located at 110 Main Street in Bar Harbor, even closer to the Town Pier, where he and his wife operated the original location of Argosy Gallery for 27 years. AR0200. But in 2022, they decided to close the Main Street location in large part because it became too much of a nuisance for him to navigate the crowds caused by cruise ship passengers, as it became too difficult walking the customers back and forth between the two locations. AR0199-200.

In 2022, Mr. Sidman led a campaign to pass a local voter referendum amending the Bar Harbor Land Use Code, Chapter 125, Article VII, § 125-77(H) (the "Ordinance"). AR0201. The Ordinance limits the number of cruise ship passengers allowed to disembark into the Town on a

daily basis and requires property owners disembarking passengers to abide by permitting requirements. AR0666. On June 18, 2024, the Town passed the Ordinance's rules of enforcement, as anticipated and required by the Ordinance. These rules are codified as Chapter 52 of the Town Code and became effective July 18, 2024. AR0519. Both the Ordinance and the rules of enforcement provided for a property owner to obtain a permit to disembark cruise ship passengers prior to disembarking passengers.

On or around January 7, 2025, the Town Council revealed its plan to allow the use of the Town Pier to disembark cruise ship passengers. Pursuant to that plan, on April 4, 2025, the Town entered into a Docking Use Agreement whereby American Cruise Lines agreed to use the Town Pier to disembark passengers directly into downtown. AR0046. The agreement's initial three-year term automatically extends each year for a period of one year. AR0048. Apparently unsure of the legality of the Town's plan, the agreement was "expressly made conditional upon the Town's ability to obtain a CSDF permit for the Docking Facilities." AR0046. The agreement further specified for "force majeures" to include a "decision of any court or other judicial body, including any court order or judgment invalidating this contract, holding that the use contemplated by this Agreement is unlawful, or holding that the Town does not have legal authority to issue the permits, licenses, or reservations anticipated or made necessary by this Agreement." AR0050.

On or around April 9, 2025, the Town applied for a Cruise Ship Disembarkation Facility Permit to disembark cruise ship passengers at the Town Pier. AR0020. The Town Pier sits in the Shoreland General Development I District and is subject to zoning regulations found at Bar Harbor Code Chapter 125, Article III, § 125-47. AR0023. The CEO and Harbor Master approved the Town's application on the same day and granted Disembarkation Facility Permit

2025-166 (the "Permit"). AR0021. Again in apparent doubt about the lawfulness of the Town's plan, the application and approval glaringly fails to identify what use allows the disembarkation of cruise ship passengers within the Shoreland General Development I District.[1] In fact, none of the enumerated uses, activities, or structures permitted in the Shoreland General Development I District allows the disembarkation of cruise ship passengers.

Under the LUO, "any use not specifically allowed as either a permitted use or a permitted use with a site plan approval is specifically prohibited." LUO § 125-7; AR0531. The only use that explicitly allows the disembarkation of cruise ship passengers is a "Passenger Terminal" Use. A Passenger Terminal is defined as:

> A transportation facility where passengers embark on or disembark from carriers such as ferries and buses that provide transportation to passengers for hire by land or sea. Passenger terminals typically include some or all of the following: ticket counters, waiting areas, management offices, baggage handling facilities, restroom facilities, visitor center, *cruise ship operations. A passenger terminal use on the waterfront may include moorage for cruise ships and/or vessels engaged in transporting passengers for hire. Activities commonly found aboard such vessels, whether moored, docked or under way, that are incidental to the transport of passengers shall be considered part of the passenger terminal use and shall not be treated as separate uses*.

LUO § 125-109 ("Passenger Terminal") (emphasis added); AR0687-688. Disembarkation of cruise ship passengers is undoubtedly a Passenger Terminal use, as cruise ships and tender boats servicing cruise ships undeniably transport passengers for a fee, and passengers embark on or disembark from carriers that provide transportation for hire by sea.

The only district that allows a Passenger Terminal use is the Shoreland Maritime Activities District. LUO § 125-49.3(D); AR0595. Even then, a proposed Passenger Terminal

[1] Although the application has references to "existing permanent structure (Pier)," the application repeatedly references Section 125-47(E)(2), which refers to temporary piers, docks, wharfs, breakwaters, and other uses projecting into the water. Additionally, pen notations indicate that someone circled "accessory uses or structures" and "temporary pier, dock, wharf, [and] breakwater" on an appended copy of the LUO. AR0035. But to date, neither the Town nor the CEO has clearly indicated the use implicated in disembarking cruise ship passengers in the Shoreland General Development I District.

use within the Shoreland Maritime Activities District requires a site plan review. LUO § 125-49.3(D); AR0595. And like many other districts, the Shoreland Maritime Activities District additionally allows as permitted uses the use of a temporary pier, requiring a permit from the CEO, LUO § 125-49.3(C); AR0595, and permanent pier, requiring a site plan review, LUO § 125-49.3(D); AR0595. But clearly, those two general uses are not intended to capture the more specific use of a Passenger Terminal, lest that allowable use become superfluous.

The Town Pier sits in the Shoreland General Development I District and is subject to zoning regulations found at Bar Harbor Code Chapter 125, Article III, § 125-47. AR0023. That District does not allow the use of property as a Passenger Terminal. *See* LUO § 125-47; AR0580; LUO § 125-7; AR0531. Rather, the Shoreland General Development I District only allows temporary and permanent piers, which like sixteen (16) other districts within Bar Harbor allowing the same uses, are ill-suited to disembark cruise ship passengers. Indeed, if the use of a temporary or permanent pier allows the disembarkation of cruise ship passengers in the Shoreland General Development I District, property owners in the sixteen other districts that allow temporary or permanent piers would be entitled to receive a permit to do the same. Those districts include:

- LUO § 125-24 Hulls Cove Business
- LUO § 125-28 Indian Point Residential
- LUO § 125-32 Ireson Hill Residential
- LUO § 125-35 Otter Creek
- LUO § 125-36 Resource Protection
- LUO § 125-38 Salisbury Cove Residential
- LUO § 125-39 Salisbury Cove Rural

- LUO § 125-40 Salisbury Cove Village
- LUO § 125-44 Town Hill Residential Corridor
- LUO § 125-45 Town Hill Residential
- LUO § 125-47 Shoreland General Development I
- LUO § 125-48 Shoreland Limited Residential
- LUO § 125-49 Shoreland General Development II (Hulls Cove)
- LUO § 125-49.2 Shoreland General Development IV
- LUO § 125-49.3 Shoreland Maritime Activities District
- LUO § 125-50 Stream Protection
- LUO § 125-51 Marine Research
- LUO § 125-51.1 Educational Institution ("Pier")

AR0074; AR0538-607. Most of these districts are landlocked and are surrounded by the Shoreland Limited Residential District, thus making them unsuitable to directly disembark 1,000 cruise passengers per day. Those districts that are residentially zoned are similarly not suitable to disembark 1,000 passengers per day. Nor are the districts that are dedicated to research and protection of the environment. Additionally, a number of these districts sit far from navigable waters and federally prescribed anchorages. Therefore, the LUO's allowed use of either a permanent or temporary pier cannot be the basis to allow the issuance of a permit to disembark cruise ship passengers in the Shoreland General Development I District or any other district.

In May 2025, the Town began disembarking cruise ship passengers directly into downtown from the Town Pier. On May 9, 2025, Mr. Sidman timely filed an administrative appeal with the Board, paying the $1,500.00 filing fee under protest, and challenging (1) the issuance of the Permit and use of the Town Pier to disembark cruise ship passengers as an

unlawful use not allowed in the Shoreland General Development I District, and (2) the usurious filing fee associated with his appeal.

PROCEDURAL BACKGROUND

Mr. Sidman submitted to the Board his initial appeal materials on May 9, 2025. The Board scheduled an evidentiary hearing for June 24, 2025. *See* LUO § 125-103(D)(2)(a); AR0673. Mr. Sidman timely filed his supplemental materials in support of his administrative appeal on June 4, 2025, prior to 12:00 p.m., in compliance with the Board's Rules of Procedures (the "Board Rules"). AR0006; AR0611; AR0390. Under the Board Rules, the Town and other interested parties were required to file their materials by June 17, 2025, at no later than 12:00 p.m. AR0006; AR0390. The Town and American Cruise Lines timely filed materials opposing Mr. Sidman's appeal. AR0225-296.

Golden Anchor filed its materials late, opposing Mr. Sidman's appeal, and attempted to fraudulently cover up its late filing by manually changing the timestamps on its electronic submission. AR0297-326; Compl. ¶¶ 122-23. The Board Rules state that if materials are submitted late, they shall be "conspicuously marked 'LATE' and dated," and that "unless the Board or Chair orders otherwise, late submittals shall not be considered by, or distributed to, the Board." AR0007. Despite this Rule, the Bar Harbor Planning Department accepted Golden Anchor's late materials, did not conspicuously mark them "LATE," and distributed the late materials to the Board, over the objection of Mr. Sidman. AR0399. Members of the Board then proceeded to review and consider Golden Anchor's untimely materials, which consistent with Golden Anchor's historical practices, were designed to misguide, rather than inform the Board concerning Mr. Sidman's standing. Compl. ¶ 120.

The Board held its evidentiary hearing on June 24, 2025. AR0382. After voting that it had jurisdiction to hear Mr. Sidman's appeal, the Board only provided Mr. Sidman a "two-minute synopsis" to argue that he had standing to bring his appeal, which the Board's attorney Daniel Pileggi described as a "courtesy." AR0354. Associate Board Member Michael Siklosi timed Mr. Sidman and stopped him from continuing at the two-minute mark, cutting him off at exactly two minutes and refusing to let him continue speaking. The Board then outwardly instructed the Town that it also had two minutes to argue against Mr. Sidman's standing, but did not cut the Town off from continuing beyond two minutes. The Board then refused to let Mr. Sidman respond to opposing counsels' arguments, refused to let Mr. Sidman introduce rebuttal evidence, refused to let Mr. Sidman address the materials submitted by the Town and Golden Anchor, and repeatedly cut him off every time he attempted to speak.

During its deliberations, the Board again refused to hear from Mr. Sidman, and discussed how Mr. Sidman was required to show something more than direct or indirect harm. Board Attorney Pileggi framed the issue of whether Mr. Sidman has standing as whether "every business in Town ha[s] standing." AR0365. Associate Member Siklosi introduced the motion that Mr. Sidman does not have standing, and the Board, including Associate Member Siklosi, voted (5-0) that Mr. Sidman did not have standing. The Board then denied Mr. Sidman's appeal for lack of standing.

On June 30, 2025, the Board issued its written decision denying Mr. Sidman's appeal, finding that Mr. Sidman was not an abutting property owner to the Town Pier, did not demonstrate particularized injury, and would not be "sufficiently affected by the permitted activity to convey standing." AR0382. The Board never addressed the merits of Mr. Sidman's administrative appeal.

On August 8, 2025, Mr. Sidman timely appealed the Board's decision to Superior Court. On September 9, the Superior Court *sua sponte* recommended transfer of this appeal to the Business and Consumer Docket. On September 29, this Court accepted transfer to the Business and Consumer Docket. In lieu of a trial of the facts, the parties stipulated to the inclusion of agreed-upon materials that do not otherwise appear in the administrative record.

STANDARD OF REVIEW

Courts review a local board's decision to deny standing for "errors of law, abuse of discretion, or findings not supported by substantial evidence in the record." *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶ 11, 973 A.2d 735. "[T]he question of whether a party has standing to bring an administrative appeal depends on the language of the governing ordinance," and courts are required "to interpret and apply the relevant sections" of the Ordinance, "which is a question of law that [courts] review de novo." *Id.* 2009 ME 56, ¶ 12. Although courts review a municipal board's factual determinations with deference, courts are not bound by a board's findings when "the administrative record . . . clearly establishes [a plaintiff's] status as an aggrieved person as a matter of law." *Upstream Watch v. City of Belfast*, 2023 ME 43, ¶ 21, 299 A.3d 25.

ARGUMENT

1. *Mr. Sidman is an aggrieved party and has standing to appeal the CEO's issuance of the Permit.*

"[S]tanding has been liberally granted to people who own property in the *same neighborhood* as the property that is subject to a permit or variance." *Nergaard*, 2009 ME 56, ¶ 18, 973 A.2d 735 (citing *Singal v. City of Bangor*, 440 A.2d 1048, 1050 (Me. 1982)) (emphasis added). To establish *administrative* standing, a party has "far less formal" requirements than those imposed by the Rules of Civil Procedure. *See Witham Family Ltd. P'ship v. Town of Bar*

Harbor, 2011 ME 104, ¶ 9, 30 A.3d 811; *accord Upstream Watch*, 2023 ME 43, ¶ 24, 299 A.3d 25 (contrasting requirements for judicial standing and commenting how "a municipality can set its own *more liberal rules* for *administrative* standing") (first emphasis added). Standing before a local appeals board depends on the language of the governing ordinance. *Nergaard*, 2009 ME 56, ¶ 12, 973 A.2d 735. Under Bar Harbor's LUO, "an aggrieved party" may appeal "any [written] decision or enforcement action by a municipal . . . official who . . . interprets this chapter." LUO § 125-103(A); AR0671. Although "aggrieved party" is not defined by the LUO, "Aggrieved Person" is defined as:

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

LUO § 125-109 ("Aggrieved Person") (emphasis added); AR0678. While that term is never used again in the LUO, the term "aggrieved party" is used throughout the Town Code reflecting this definition as a person who may bring an appeal challenging an order, decision, permit, or enforcement action to the Board.

Here, Mr. Sidman has clearly proved that he is aggrieved because he: (1) is an "owner of land whose property is directly or indirectly affected" by the CEO's granting of the Permit; (2) owns land that abuts land for which the Permit has been granted; and (3) has suffered particularized injury as a result of the granting of the Permit.

a. Mr. Sidman owns land that is directly and indirectly affected by the grant of the Permit which allows the Town to disembark cruise ship passengers directly into downtown.

Mr. Sidman's business is directly and indirectly harmed by the unlawful disembarkation of cruise ship passengers directly into downtown. By its very nature, the impact of disembarking

cruise ship passengers is not isolated to the Town Pier property or adjoining properties, but rather is felt throughout the broader downtown. In fact, the Town and Mr. Sidman had an entire trial before the U.S. District Court for the District of Maine ("Federal Court") over the impacts of cruise ship disembarkations on the downtown area and recently submitted briefs in Federal Court describing the impacts on congestion and safety that the disembarkation of cruise ship passengers have *throughout the broader downtown area*.[2] As the Federal Court explicitly found, cruise passengers' "spillover impact on the Town more widely is best described as cumulative . . . in an already taxed ecosystem," being felt "even further up Main Street and in public areas [where] the impact is real and tangible to locals who visit the downtown." *APPLL*, 721 F. Supp. 3d at 73-74. A map of the downtown area, showing high, medium, and low cruise visitor pedestrian activity, establishes the migration and concentrations of cruise passengers as they move throughout downtown. AR0436. At the Federal Court trial, witnesses described at length the congestion and safety concerns caused by passengers and their avoidance of downtown on cruise ship days. As one witness described, "if you sit and watch the traffic, . . . most of the activity is on a quarter mile strip of Main Street that runs from the pier to the Village Green and maybe a little beyond." ECF 185 at 7/13/2023 Tr. 226:2-5. Witnesses described similar impacts throughout the downtown area, with the greatest congestion at the waterfront area. *APPLL,* 721 F. Supp. 3d at 73.

Mr. Sidman's commercial property sits in the "Medium Pedestrian Activity" zone attributable to cruise visitor pedestrian movement, AR0436, adjacent to the Village Green, and is

[2] Mr. Sidman respectfully requests that this Court, pursuant to Maine Rule of Evidence 201, take judicial notice of the relevant filings in and findings of the Federal District Court, including but not limited to the parties' briefs recently filed following remand, ECF Nos. 248 and 249, in *Association to Preserve and Protect Local Livelihoods v. Town of Bar Harbor*, U.S. District Court for the District of Maine, Case No. 1:22-cv-00416-LEW. *See 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.").

directly and indirectly impacted by the influx of cruise ship passengers into downtown. Chapter 144 of the Town Code is dedicated to parks, including the Village Green. AR0698. Section 144-7 explicitly states that "[n]o person shall unreasonably disturb the peace of . . . businesses located adjacent to or in the neighborhood of the parks." AR0700. Allowing cruise ship passengers to overrun the Village Green and surrounding areas unreasonably disturbs the peace of Mr. Sidman's business. Clients of his business complain and refuse to patronize his store on days when cruise ships are disembarking passengers because the downtown is overrun with passengers. This harm is evidenced by the fact that Mr. Sidman's business experienced its "best year ever" financially in 2021, when virtually *no* cruise ship passengers disembarking into the downtown as a result of Covid-19 restrictions. AR00186, 455.

The Board did not appear to wrestle with these direct and indirect impacts to Mr. Sidman, his property, and his business. Instead, members of the Board appeared to require a "quantifiable" showing of the economic harms to Mr. Sidman. AR0358-359; AR0360. This heightened standard is contrary to law, which only requires "*potential* economic injury that results from government action is sufficient to confer standing." *Nergaard*, 2009 ME 56, ¶ 18, 973 A.2d 735 (emphasis added); *accord Halfway House, Inc. v. City of Portland*, 670 A.2d 1377, 1381 (Me. 1996) ("[W]e have held that economic injury (*or its prospect*) from government action is sufficient to confer standing.") (emphasis added); *cf. Upstream Watch*, 2023 ME 43, ¶ 26, 299 A.3d 25 (plaintiffs aggrieved because of concerns regarding the "*potential* impact . . . aquifer could have on members' wells" and "*potential* impact . . . on members' actual enjoyment of the local environment") (emphases added); *Norris Fam. Assocs., LLC v. Town of Phippsburg*, 2005 ME 102, ¶¶ 19-20, 879 A.2d 1007 (standing to challenge *potential* construction that *"may"* displace water).

Board Attorney Pileggi compounded the Board's confusion by framing the issue as whether "every business owner in town ha[s] standing" to challenge the Town's Permit. AR0365. Board Chair Durand latched onto this misguided standard and reasoned that the Board had to determine whether Mr. Sidman "has a particularized injury *to his business*," and appeared to want to poll "all the business owners" downtown to determine if his business's injuries were unique to his business. AR0367-368. First, the Board's contrived standards are very far afield from determining whether Mr. Sidman is an "owner of land whose property is directly or indirectly affected" by the Permit. Second, not every business in Bar Harbor is harmed by cruise ship visitation, as made clear by the Chamber of Commerce's membership in APPLL and t-shirt shops' frenetic defense of the cruise ship industry. Third and most importantly, the definition of "Aggrieved Person" makes it clear that other business owners, if they are directly or indirectly harmed by cruise ship visitation, *do* have standing to challenge a permit that allows a property owner to continue that harm.

As discussed in *Halfway House, Inc. v. City of Portland*, governmental action "may affect a wide variety of different groups," including "other businesses whose prospective business activities have been . . . interfered with." 670 A.2d at 1381. In fact, APPLL's standing to challenge the Ordinance in Federal Court is based on the same concept of standing, where downtown business owners purported that the citizens' desire to reduce cruise ship disembarkations interfered with their businesses. The same basis allows Mr. Sidman to seek administrative and judicial review of a permit that allows the disembarkation of passengers directly into downtown and interferes with his business. *See, e.g.*, *Roop v. City of Belfast*, 2007 ME 32, ¶¶ 3-4, 915 A.2d 966 (holding plaintiffs who own property they rent to business had standing to challenge zoning regulation that would allow large retail structures in neighborhood);

cf. Britton v. Town of York, 673 A.2d 1322, 1325 (Me. 1996) (neighbors' plan to construct pier would "disturb[] and obstruct[]" access to intervenor's business).

b. Mr. Sidman owns land that abuts land for which the Permit has been granted.

Standing as an abutter is not a standalone inquiry but merely lowers the standard to establish particularized injury. *Norris Family Assocs., LLC*, 2005 ME 102, ¶ 19, 879 A.2d 1007; *Nergaard*, 2009 ME 56, ¶ 18, 973 A.2d 735 (citing *Roop*, 2007 ME 32, ¶ 8, 915 A.2d 966). Unless an ordinance says otherwise, "'abutter' means a person who possesses land *in close proximity to an affected piece of land*, and thus is not limited to a direct abutter or adjoiner." *Upstream Watch*, 2023 ME 43, ¶ 17, 299 A.3d 25 (emphasis added). "[S]tanding has been liberally granted to people who own property in the *same neighborhood* as the property that is subject to a permit. . . ." *Nergaard*, 2009 ME 56, ¶ 18, 973 A.2d 735 (emphasis added).

Here, there is no coherent municipal definition of "abutter." Although the LUO defines "abutting" as "[h]aving a common border with," LUO § 125-109; AR0678, the LUO's repeated and distinct use of the word "abutter" is not constrained by this definition. For instance, § 125-74(A) requires notice of a Planning Department meeting to "[a]butters within 300 feet of the application parcel." AR0665. Section 125-9(A)(2)(d) requires notice of Planning Board meetings to "abutters within 600 feet of the subject property." AR0532. Section 125-69(S)(3)(c) requires notice of the Planned Unit Development Village process to "[a]butters within 300 feet of the application parcel." AR0664. Section 125-69(M)(3)(d) requires notice of Planning Department meetings to "abutter[s] within 600 feet of the application parcel." AR0659. It goes without saying, but one cannot have a common border with a property 300+ feet away. In contrast, the LUO uses the word "abutting" when discussing structure orientation outside the context of notice and accompanying rights to object to and/or appeal a municipal decision. *See,*

e.g., LUO § 125-67(B)(3)(a) (vehicles may not park within five feet of abutting property), AR0610; LUO § 125-67(B)(5)(a) (abutting property owners must consent to location of fence), AR0611; LUO § 125-67(G)(4)(a) (street names must share names among abutting properties), AR0624. Clearly, the LUO's generic definition of "abutting" does not control what an "abutter" is, or what rights abutters have, under the LUO.

In the absence of a coherent municipal definition of "abutter," an abutter may be a person who possesses land in close proximity to an affected piece of land, including those "who own property in the same neighborhood." *Nergaard*, 2009 ME 56, ¶ 18, 973 A.2d 735; *accord Upstream Watch*, 2023 ME 43, ¶ 17, 299 A.3d 25. Mr. Sidman's 6 Mount Desert Street property is in the "same neighborhood" as the Town Pier and approximately one-quarter mile away from the Town Pier. Indeed, both properties are located in downtown Bar Harbor, where the negative impacts of the Town's use of its pier can be felt throughout the downtown neighborhood. His property is thus "near enough . . . to qualify as [an] abutter[]." *See Upstream Watch*, 2023 ME 43, ¶ 26, 299 A.3d 25; *Plass v. Town of Kennebunk*, BCD-APP-2025-00002, 2025 WL 1714662, * 2 (Me. B.C.D. June 9, 2025) (Duddy, J.) ("By any standard 800 feet qualifies as close proximity, whether measured by driving or as the crow flies. . . . It is difficult to imagine that a person who lives that close would be denied standing . . . .").

Relatedly, Mr. Sidman's commercial property is inexorably in "close proximity to an *affected piece of land*," as the use of the Town Pier to disembark cruise ship passengers "affects" the broader downtown, including Mr. Sidman's property itself. As discussed above, the impacts are not isolated to the Town Pier property itself. Like a shooting range spraying buckshot onto properties a few blocks away, Mr. Sidman is an abutter to affected pieces of land by virtue of being in the same neighborhood – and indeed, inhabiting a property – where the very impacts are

felt. Accordingly, as an abutter to affected land, Mr. Sidman's threshold for demonstrating standing is minimal.

c. Mr. Sidman has suffered particularized injury from the continued disembarkation of cruise ship passengers directly into downtown.

"A particularized injury occurs when a judgment or order adversely and directly affects a party's property, pecuniary, or personal rights." *Nergaard*, 2009 ME 56, ¶ 18, 973 A.2d 735. A particularized injury must be an injury or harm that is "distinct from the harm experienced by the public at large." *Id*. There are many ways to establish particularized injury. "[P]otential economic injury that results from government action is sufficient to confer standing." *Id.* (citing *Halfway House, Inc.*, 670 A.2d at 1381). "[I]njuries other than economic harm are sufficient to confer standing." *Roop*, 2007 ME 32, ¶ 8, 915 A.2d 966. "[T]he threat of increased public use that may result from the placement of a business or commercial structure near the plaintiff's property is a sufficiently particularized injury to confer standing." *Id.* (citing *Laverty v. Town of Brunswick*, 595 A.2d 444, 446 (Me. 1991)). "Users of affected property may have standing," as long as "the party's injury [is] distinct from that suffered by the public at large." *Friends of Lincoln Lakes v. Town of Lincoln*, 2010 ME 78, ¶ 14, 2 A.3d 284. The "mere visibility" of transmission lines to users of affected property is sufficient to confer standing. *Black v. Bureau of Parks & Lands*, 2022 ME 58, ¶ 28, 288 A.3d 346. Impacts to a party's personal right to use and enjoy a park is sufficient to confer standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 197 (Me. 1978) ("[A] direct and personal injury suffered by the plaintiffs to their interest in Baxter State Park which, although not an economic interest in the sense of involving their livelihood or financial liability, is nonetheless worthy of the protection of the law."). Breathing the same air that would be impacted is the "kind of particularized injury . . . [that] constitutes an aggrievement . . . sufficient" to invoke appellate standing. *In re Int'l Paper Co.,*

Androscoggin Mill Expansion, 363 A.2d 235, 238-39 (Me. 1976). Even passing by a property regularly and deriving "spiritual and emotional fulfillment" from the property is sufficient to confer standing. *Conservation Law Found., Inc. v. Town of Lincolnville*, No. AP-00-3, 2001 WL 1736584, *8 (Me. Super. Ct. Feb. 28, 2001) (organization has standing because single member was resident who '"uses' the property [by passing] by it regularly and because its unique physical characteristics are 'critical' to her spiritual and emotional fulfillment").

Mr. Sidman asserts particularized injury on two grounds: (1) economic injury to his business; and (2) injury to his use and enjoyment of his property, the broader downtown area, and specifically town parks, sidewalks, and waterfront, which are part of the downtown area. First, the economic injury to his business is distinct to him, as members of the public at large do not all own downtown businesses that are harmed by cruise ship visitation. As discussed above, Mr. Sidman's customers refuse to come to his business in downtown Bar Harbor on days cruise ships are disembarking passengers into downtown. His business's "best year ever" was in 2021, when virtually no cruise ships were visiting Bar Harbor, and at a time when other businesses were struggling because of Covid-19 restrictions. AR00186; 455. The outsized impacts of cruise ship visitation on his business are glaring, where even difficulties in welcoming customers during a pandemic did not eclipse the benefit to Mr. Sidman of not having cruise passengers disembark directly into downtown that year. Mr. Sidman even closed his Main Street location in 2022, after 27 years, because of the congestion caused by disembarking passengers directly into downtown. AR0200, AR0455. Such injuries are concrete and particularized.

The injury to Mr. Sidman's use and enjoyment are also distinct to him, as members of the public at large do not all own downtown properties that are made inaccessible by cruise ship visitation, do not own properties adjacent to the Village Green that is overrun by cruise ship

passengers, and do not actually and regularly use and enjoy downtown parks, sidewalks, and roads that become overrun by cruise ship passengers, the enjoyment of which are critical to Mr. Sidman's spiritual and emotional fulfillment. AR0198-200; AR0700 (Town Code § 144-7) ("No person shall unreasonably disturb the peace of homeowners or businesses located adjacent to or in the neighborhood of the parks."); *Conservation Law Found., Inc.*, No. AP-00-3, 2001 WL 1736584 at *8.

As demonstrated by the many court decisions allowing parties to establish particularized injury on minimal grounds, the continued disembarkation of cruise ship passengers directly into downtown Bar Harbor particularly injures Mr. Sidman and his business. *See, e.g., Black*, 2022 ME 58, ¶ 28, 288 A.3d 346 (sufficiently pleading standing based on specific harm of transmission line's mere visibility); *Fox Islands Wind Neighbors v. Dep't of Env't Prot.*, 2015 ME 53, ¶ 21 n.9, 116 A.3d 940 (neighborhood organization had standing because neighbors demonstrated a particularized injury in experiencing excessive noise from wind energy development); *Fitzgerald*, 385 A.2d 189 (standing to sue where agency's actions would adversely affect plaintiffs personal rights to the use and enjoyment of Baxter State Park); *In re Int'l Paper Co., Androscoggin Mill Expansion*, 262 A.2d at 238-39 (finding organizations to be aggrieved parties because members breathed the air that would likely be affected by the proposed development); *Conservation Law Found., Inc.*, 2001 WL 1736584 at *8 (collecting cases of standing based on injuries to use and aesthetics).

The Board appeared to determine that Mr. Sidman lack of standing was an inevitable outcome of a tragedy of the commons: that because everyone has to deal with congestion in the downtown, no one can have standing to challenge facilitators of the congestion. But "[t]o deny standing to persons who are in fact injured simply because many others are also injured, would

mean that the most injurious and widespread Government actions could be questioned by nobody." *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 688 (1973). "[S]tanding is not to be denied simply because many people suffer the same injury." *Id.* at 687. The Law Court agrees, and consistently holds that particularized injury may still exist, even among users of shared resources, when a plaintiff's harm is personalized, i.e., whether it "adversely and directly affects a party's property, pecuniary, or personal rights." *Nergaard*, 2009 ME 56, ¶ 18, 973 A.2d 735.

For instance, in *Fitzgerald*, five individual plaintiffs who used Baxter State Park had standing to obtain injunctive relief against a state agency's proposed program which would have injured their use and enjoyment of Baxter State Park and its resources. 385 A.2d at 197. Such injuries were "direct and personal" enough to convey standing, despite the program injuring other members of the public in the same way. The Court distinguished the plaintiffs, who actually used the park, from "any person in the State of Maine." *Id.* at 197. As the Court explained,

> That sub-group of Maine people who are actual users of the Park, itself substantial in number, is sufficiently large to assure that the public's interest in administration of the Park . . . will be adequately represented. Any citizen of Maine who shows himself to have suffered "particularized injury" as a result of action of the Baxter State Park Authority has standing to obtain judicial review and to seek injunctive relief against that proposed action.

Id. at 197.

Similarly in *Upstream Watch*, the Law Court held that "Upstream presented a number of concerns . . . sufficient to demonstrate that at least one of its members was an aggrieved person due to owning land that would be directly affected by the project, such as the potential impact that the project's *drawing large amounts of water from a local aquifer* could have on members' wells that draw water from that aquifer." 2023 ME 43, ¶ 26, 299 A.3d 25 (emphasis added).

Although a draw by the proposed project would impact everyone who shared that aquifer, plaintiffs who were concerned about the drain on *their* wells were particularly injured. *Id.*; *see also Sahl v. Town of York*, 2000 ME 180, ¶ 10, 760 A.2d 266 (proposed motel expansion's potential to cause additional traffic impacting plaintiffs who lived nearby a factor "sufficient to confer standing" despite additional traffic impacting everyone who utilized those roads).

Both the Town and Golden Anchor continue to want to relitigate standing issues already decided by two different courts. Mr. Sidman's standing has been adjudicated and upheld by both Federal and State courts. As the Federal Court found:

> Mr. Sidman is connected to this very localized controversy based on a personal investment in the Town of Bar Harbor, including an investment in its commercial downtown. Given this basic reality, it is reasonable to infer that he has a concrete, personal stake in the local commons that is impacted by the influx of cruise ship passengers throughout an extended season . . . Given the plausible scope of the impact of the land use in issue, even under Maine law Mr. Sidman appears to have viable standing given his regular actual use of the downtown area, his ownership of a business in the vicinity of the use, and the fact that he is among the persons whom the ordinance is designed to protect. For these reasons, and solely to appease the Town's demand for a finding, I find that Mr. Sidman clears the Town's standing obstacle.

APPLL v. Town of Bar Harbor, No. 1:22-cv-00416-LEW, 2023 WL 2273949, *3 & n.3 (D. Me. Feb. 28, 2023); AR0179-180. Next, in Maine Superior Court, Judge McKeon similarly found that Mr. Sidman had standing to challenge the Town Council's March 6, 2024 edict that largely kept intact the 2024 cruise ship season, resulting in approximately 21,224 additional passengers disembarking directly into downtown during the 2024 cruise ship season. The Court rejected the Town's arguments against Mr. Sidman's standing and found that Mr. Sidman

> has sufficiently alleged particularized injury here. Sidman alleges he is a business owner in downtown Bar Harbor and that non-enforcement of the disembarkation ordinance during the 2024 season will hurt his business interests because his clientele often complain and refuse to come to his business on days cruise ship

> passengers are in town. The particularized injury requirement is met because Sidman has alleged that his personal, pecuniary, or property rights will be directly and adversely affected.

Sidman v. Town of Bar Harbor, BCD-APP-2024-0007 (Me. B.C.D. July 10, 2024 Order on Pending Motions); AR0170. If Mr. Sidman could meet the higher standards necessary to judicially challenge the unlawful disembarkation of cruise ship passengers directly into downtown, he has also met the "far less formal" standards to challenge the same actions before a local board of appeals.

2. The Board deprived Mr. Sidman his right to present his case and submit rebuttal evidence that is required for a full and true disclosure of the facts.

30-A M.R.S. § 2691(3)(D), which governs "all boards of appeals," entitles "[e]very party . . . the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct any cross-examination that is required for a full and true disclosure of the facts." *See also* LUO § 125-103(D)(2)(b); AR0673 ("[T]he appellant . . . may present oral testimony at the hearing."). The Board prevented Mr. Sidman from presenting his case, even his case to establish his standing, by limiting his presentation to <u>*two minutes*</u> and barring him from speaking further. In so doing, the Board violated Mr. Sidman's due process rights.

In *Jusseaume v. Ducatt*, the Law Court made clear that it is not harmless error when an adjudicatory body prevents a party from presenting rebuttal evidence. The Law Court stated:

> Because parties in adjudicatory proceedings have due process rights to introduce evidence, to present witnesses, and to respond to claims and evidence, GENUJO LOK Beteiligungs GmbH v. Zorn, 2008 ME 50, ¶ 18, 943 A.2d 573, 579, we have also safeguarded the right of parties to present rebuttal evidence. Rebuttal evidence is evidence that "contravenes, antagonizes, confutes, or controls the inference sought to be drawn by new facts introduced by the adverse party at the next previous stage." Payson v. Bombardier, Ltd., 435 A.2d 411, 413 (Me. 1981) (quotation marks omitted). "[I]t is beyond the discretion of a trial judge to exclude genuine rebuttal testimony . . .

> ." Rich v. Fuller, 666 A.2d 71, 74 (Me. 1995); *see also* M.R. Civ. P. 43(j) (authorizing a party who has rested to later offer evidence in rebuttal).

2011 ME 43, ¶ 15 n.6, 15 A.3d 714.

Despite Board Attorney Pileggi's commentary as to the Board's generosity in even allowing Mr. Sidman those *two minutes*, *a "right" is not a "courtesy*." Further, the Board's briefing schedule required Mr. Sidman to submit his administrative submissions to the Board before the Town, American Cruise Lines, Golden Anchor, and Board Attorney Pileggi all submitted their sometimes-purposely misguided and unsound materials, providing Mr. Sidman with no opportunity to respond to these materials. Accordingly, when the Board repeatedly silenced Mr. Sidman at the June 24 hearing, it prevented him from rebutting these erroneous materials, from submitting rebuttal evidence, and from conducting cross-examination that is required for a full and true disclosure of the facts, including but not limited to his standing to bring his appeal. By doing so, the Board's procedural actions were unlawful and in complete disregard of Mr. Sidman's due process rights.

The Board made it clear at the hearing that it had no interest in ever hearing from Mr. Sidman, or his attorney, at his own administrative appeal. The Board's misconduct culminated at the close of the June 24 hearing, when Mr. Sidman's attorney attempted to fulfill his *mandatory ethical obligation* to disclose a fraud upon the Board relating to Golden Anchor's untimely submission, pursuant to the Maine Rules of Professional Conduct Rules 3.3(b) and Reporter's Notes to Rule 1.6. *See* Compl. ¶¶ 122-123. The Board again prevented Mr. Sidman's attorney from speaking, talked over him, cut his microphone, and *ran out of the room* before he could disclose the fraudulent conduct to the Board. Compl. ¶¶ 144.

3. The Board erred by allowing Associate Member Siklosi to introduce the motion and vote against Mr. Sidman's standing.

Bar Harbor Code, Chapter 31, Article II, § 31-20 states that "[t]he associate member may not hold any office on the Board and does not have voting rights unless designated by the Chair to act in the stead of a member who is unable to act due to interest, physical incapacity, or any other reason satisfactory to the Chair." Associate Member Siklosi introduced the vote to deny Mr. Sidman standing and voted against Mr. Sidman's standing. Chair Durand did not designate Associate Member Siklosi to act in the stead of any member that would have allowed him to exercise voting rights. In fact, there were no members who were unable to act at the hearing.

In the past, Associate Member Siklosi has similarly voted to stymy Mr. Sidman at Board proceedings. In Golden Anchor's December 2024 Board appeal, it was again Associate Member Siklosi who allowed Golden Anchor to submit untimely and erroneous submissions and legal memoranda, fashioned as "rebuttal materials," to argue against Mr. Sidman's participation in those proceedings. *Sidman v. Town of Bar Harbor*, Dkt. No. BCD-APP-2025-00005 (Am. Compl. at ¶¶ 112, 114, 118, 123-133).[3] Associate Member Siklosi again refused to allow Mr. Sidman to respond to those arguments. *Sidman v. Town of Bar Harbor*, Dkt. No. BCD-APP-2025-00005 (Am. Compl. at ¶ 128). And it was Associate Member Siklosi who instituted the vote and voted to not let Mr. Sidman participate in Golden Anchor's administrative appeal. *Sidman v. Town of Bar Harbor*, Dkt. No. BCD-APP-2025-00005 (Am. Compl. at ¶ 136). Associate Member Siklosi noted then that he was persuaded by Golden Anchor's attorney, who had again presented several

[3] Mr. Sidman respectfully requests that this Court, pursuant to Maine Rule of Evidence 201, take judicial notice of the contents in his Amended Rule 80B Petition in *Sidman v. Town of Bar Harbor*, Dkt. No. BCD-APP-2025-00005. *See 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.").

erroneous arguments designed to misguide the non-lawyer members of the Board. *Sidman v. Town of Bar Harbor*, Dkt. No. BCD-APP-2025-00005 (Am. Compl. at ¶ 138).

4. The administrative fee is arbitrary and capricious, excessive, prevents access to the courts, and is designed to insulate the Town Council's decisions from administrative and judicial scrutiny.

"The imposition of a substantial fee with no opportunity for a waiver . . . implicates multiple provisions of the Maine Constitution, including the open courts provision; the Due Process Clause; and . . . the prohibition against excessive fines." *City of Lewiston v. Verrinder*, 2022 ME 29, ¶ 35, 275 A.3d 327 (Connors, J., dissenting). The open courts provision, Article I, Section 19, provides for the "**Right of redress for injuries**. Every person, for an injury inflicted on the person or the person's reputation, property or immunities, shall have remedy by due course of law; and right and justice shall be administered *freely and without sale*, completely and without denial, promptly and without delay." Me. Const. art. I, § 19 (emphasis added). The Due Process Clause, Article I, Section 6-A, provides "**Discrimination against persons prohibited**. No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of that person's civil rights or be discriminated against in the exercise thereof." Me. Const. art. I, § 6-A. And the prohibition against excessive fines, Article I, Section 9, provides "**Sanguinary laws, excessive bail, cruel or unusual punishments prohibited**. Sanguinary laws shall not be passed; all penalties and punishments shall be proportioned to the offense; excessive bail shall not be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted." Me. Const. art. I, § 9.

As discussed in Justice Connors' dissent in *City of Lewiston v. Verrinder*, "Maine common law is robust with decisions concluding that bonds and other monetary burdens imposed to appeal or to obtain access to the courts are unconstitutional . . . ." 2022 ME 29, ¶ 36, 275 A.3d 327. While certain case law discusses protecting indigent parties' access to the courts,

see, e.g., *Harrington v. Harrington*, 269 A.2d 310, 313-16 (Me. 1970), the same protections apply to nonindigent parties alike. *See Verrinder*, 2022 ME 29, ¶ 37, 275 A.3d 327 (collecting cases); *Bennett v. Davis*, 90 Me. 102, 104-05, 37 A. 864 (1897) (constitutional protections against requiring exorbitant deposit to contest tax assessment); *Woods v. Perkins*, 119 Me. 257, 263, 110 A. 633 (1920) ("It may well be that an alleged offender may find himself unable to procure the necessary sureties and to give the requisite bond, in which case the provision affords him no assistance whatever. No unlawful condition or restraint can be imposed upon the constitutional privilege of every person to have his legal rights adjudicated in accordance with the law of the land."); *State v. Gurney,* 37 Me. 156, 157, 163-64 (1853) (holding that a statute requiring the posting of a bond as a condition to appeal was unconstitutional); *Inhabitants of Saco v. Wentworth*, 37 Me. 165, 170-76 (1853) (same).

The Planning Department assessed a $1,500.00 filing fee for Mr. Sidman to file his administrative appeal, based on its understanding that Mr. Sidman was appealing a use related to a "small commercial" property under the effective fee schedule. AR0054-56. The Bar Harbor Town Council sets the administrative fees and public notice fees associated with bringing administrative appeals. LUO § 125-103(B)(2); AR0671. On or about July 1, 2024, the Town Council chose to *nearly double* the fees to bring an administrative appeal, raising the fee from $856 to $1,500 for an appeal involving a "small commercial" property. AR0009; AR0054. These exorbitant fees effectively serve as a bar for litigants seeking legal redress within the municipality, and because of exhaustion requirements, blocks their access to the courts.

Second, because the fees are set by the Bar Harbor Town Council, these excessive fees appear to be designed to deter citizens from scrutinizing the Town Council's own actions and the actions of the Town Manager. This is particularly relevant here, as the Town Council and Town

Manager have conspired to unlawfully utilize the Town Pier to disembark cruise ship passengers in a zoning district that does not allow that activity.

Third, the valuation of "small commercial" properties, defined in the fee schedule as "less than 1 million," and "large commercial" properties, defined as "more than 1 million," arbitrarily and unjustly saddles an applicant like Mr. Sidman who derives no benefit from the valuation of the Town Pier property. AR0054. Subjecting the same fee structure to the owner of a subject property, who directly benefits from owning valuable property, and those opposed to the owner of a subject property, who do not benefit from the property's valuation, creates an imbalance untethered to logic where, for example, an impoverished neighbor has to pay the excessive fees of a robber baron just to vindicate his rights. *See Verrinder*, 2022 ME 29, ¶ 40, 275 A.3d 327 (Connors, J. dissenting) ("[N]othing in the record indicates that the $150 fee is related to any actual cost incurred by the City to hear an appeal before a volunteer board of appeals or to advance any legitimate state goal.").

Finally, the Town Pier is not a "commercial" property at all – it is owned by the public, is tax exempt, and serves a public use. AR0020; AR0036-43. Accordingly, appeals concerning the Town Pier property fall outside of the fee rubric designed for residential and commercial properties.

Ultimately, the Town forced Mr. Sidman to pay $1,500.00 under protest to receive the opportunity to appear before a *discourteous* Board for two minutes to present his case. And even then, the Board refused to engage Mr. Sidman, summarily decided he lacked standing without hearing his arguments, never addressed the merits of his appeal, and continued to avoid determining the legality of the Town's own actions. Such unreasonable fees are self-protective and designed to block complainants' access to legal redress and the courts.

CONCLUSION

For the foregoing reasons, Mr. Sidman respectfully requests that the Court grant his Rule 80B Petition, vacate the Bar Harbor Board of Appeals' June 25, 2025 decision denying Mr. Sidman's administrative appeal for lack of standing, hold that the administrative fees are unconstitutional, and remand the matter to the Board to hear and decide the merits of Mr. Sidman's administrative appeal.

Dated: December 16, 2025

/s/Robert Papazian

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