

STATE OF MAINE
CUMBERLAND, ss.

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

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

**ORDER DISMISSING COUNT I OF
SIDMAN’S AMENDED COMPLAINT**

Plaintiff Charles Sidman (“Sidman”) brought a two count Amended Complaint seeking to appeal a decision of the Bar Harbor Board of Appeals (the “Board”) that was favorable to Sidman. In Count I, Sidman attempts to appeal the decision pursuant to M.R. Civ. P. 80B, on the grounds that although the outcome was favorable to him, he was denied Interested Person status, and he disagrees with the Board’s reasoning on the merits. In Count II of the Amended Complaint Sidman asked this Court to issue a declaratory judgment. By Order dated April 17, 2025, the Court dismissed Count II of the Amended Complaint on the basis that Count II is subsumed within Count I. Defendant Town of Bar Harbor (the “Town”) now seeks to dismiss Count I for lack of standing. For the reasons discussed below, the Court grants the Town’s Motion to Dismiss Count I.

BACKGROUND

On August 5, 2024, the Town’s Code Enforcement Officer issued a Notice of Violation to Golden Anchor, L.C. (“Golden Anchor”) for disembarking Cruise ship passengers over its

property without required permits. Golden Anchor appealed the Notice of Violation. Hearings on Golden Anchor's appeal were held on December 10 and 18, 2024. Sidman participated in the appeal as a member of the public and submitted a brief on the merits to the Board. Sidman advocated for upholding the Notice of Violation and denying Golden Anchor's appeal. Sidman also asked to participate in the appeal as an "Interested Party," which would give him rights beyond that of the public to submit rebuttal evidence and engage in cross-examination. At the December 10, 2024, hearing the Board voted to deny Sidman's request to participate as an "Interested Party." Nevertheless, on December 18, 2024, the Board denied Golden Anchor's appeal and upheld the Notice of Violation, which is the outcome Sidman was seeking.

The Board later issued a two-page, single spaced, written decision dated December 23, 2024. The Board noted, among its many findings, that Golden Anchor had not demonstrated a pre-existing permit to disembark persons or vacationing Cruise ship passengers. The Board wrote: "That use is, and has been, a permitted use in the applicable zoning district." The Board later determined that Golden Anchor did not prove by a preponderance of the evidence that it was entitled to relief. The Board concluded as follows: "Based upon the above findings and the consideration of all evidence submitted, Golden Anchor, L.C.'s appeal, AB-2024-04, is **Denied** on the grounds that the Applicant did not have permits to disembark 'Persons', or passengers from cruise ships exclusive of crew and staff, as required by Code Sections 125-77H and 52-6." (Emphasis original) Accordingly, the Board upheld the Notice of Violation.

DISCUSSION

To establish judicial standing to file an appeal pursuant to Rule 80B, a plaintiff must have both (1) participated in the relevant administrative proceeding and (2) suffered a particularized injury as a result of the challenged municipal decision. *High Maine, LLC v. Town of Kittery*, 2024

ME 76, ¶ 13, 327 A.3d 58. There is no question that Sidman participated in Golden Anchor’s administrative appeal, and so he has satisfied the first element of standing. The remaining question is whether Sidman suffered a particularized injury as a result of the Board upholding the Notice of Violation and denying Golden Anchor’s appeal—which is the outcome Sidman was seeking.¹

A particularized injury occurs when a judgment or order adversely and directly affects a party’s property, pecuniary, or personal rights. *Id.* If a party’s legal rights and responsibilities are unchanged by a decision, the party will not have standing to challenge the decision. *Id.* ¶ 14. Furthermore, “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. Ogunquit*, 2023 ME 30, ¶ 16, 294 A.3d 142. Here, Sidman would have preferred to have been granted Interested Party status. Sidman also objects to the sentence in the Board’s decision that says, “[t]hat use is, and has been, a permitted use in the applicable zoning district.” Sidman would have preferred that the Board’s decision find that disembarking vacationing Cruise ship passengers is not a permitted use in the zoning district. Nevertheless, the Board’s decision grants the relief Sidman was seeking. Sidman does not have a right to appeal simply because he would have preferred Interested Party status and to have the Board use different reasoning. Accordingly, Sidman has not suffered a particularized injury as a result of the Board’s favorable decision to uphold the Notice of Violation and deny Golden Anchor’s appeal.

However, an exception to the principle that a Rule 80B plaintiff does not suffer a particularized injury from a favorable board decision “applies ‘when an essential finding on which the judgment is based might otherwise prejudice the party through the use of collateral estoppel in

¹ In his discussion regarding particularized injury, Sidman argues that he would suffer a particularized injury if persons were allowed to disembark onto Golden Anchor’s pier from cruise ships anchored in the harbor. But that is not the appropriate analysis before the Court, which is simply whether Sidman suffered a particularized injury from the Board’s decision upholding the Notice of Violation and denying Golden Anchor’s appeal.

the future proceedings.”” *Id.* ¶ 16 n. 3 (quoting *Witham Fam. Ltd. P’ship v. Town of Bar Harbor*, 2011 ME 104, ¶ 16, 30 A3d 811). Sidman argues the exception resuscitates his appeal, but the Court is not persuaded.

The Board’s decision to deny Sidman Interested Party status is not an essential finding on which its decision was based, and thus it would seem the exception does not apply. And the Board’s comment that disembarking passengers is a permitted use in the zoning district is not an essential finding. Since Golden Anchor did not have a permit, the Board did not need to address the zoning issue. Even if the comment were essential to the Board’s decision, it would not matter. Since Sidman was not a party before the Board, collateral estoppel would not preclude him from making any arguments in future proceedings in which he is involved. *See Town of Mount Vernon v. Landherr*, 2018 ME 105, ¶ 15, 190 A.3d 249. Accordingly, the exception does not save Sidman’s appeal.

Not to be deterred, Sidman contends the net effect of the Board’s decision is to prevent him from doing what he really wants to do, which is to in some fashion appeal the Board’s decision on the grounds that disembarking passengers is not a permitted use in the zoning district at all—not merely that Golden Anchor did not have the necessary permit. Relying on a footnote in *Boston & Maine Corp. v. State Tax Assessor*, 2005 ME 114, ¶ 7 n.3, 884 A.2d 1165, Sidman argues that being deprived of the opportunity to make his zoning argument is a “sufficient collateral consequence” to fit within the exception. Opp’n at 10. But Sidman’s reliance on *Boston & Maine* is misplaced. *Boston & Maine* is a summary judgment case which involved ongoing tax credits in which both parties contended the court erred. *Id.* ¶ 7. The case started as a tax credit case and remained a tax credit case throughout the appeal. *Id.* ¶¶ 7-17. Sidman’s zoning argument more appropriately belongs in a different case, which Sidman reports he has already commenced at the

administrative level. Opp'n at 9-10, n.6. Applying the exception in this case, which would effectively transform the nature of the present action from a permitting case into a zoning case, would allow the exception to swallow the rule. Sidman does not have grounds to appeal a judgment that grants the relief he sought simply because he would prefer the Board's decision to rest on different reasoning.

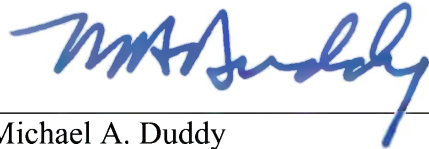
CONCLUSION

For all of these reasons, the Town's Motion to Dismiss for lack of standing is GRANTED, and Count I is dismissed. Since both counts have been dismissed, judgment is entered on the Amended Complaint in favor of the Town and against Sidman.

SO ORDERED.

The Clerk is instructed to enter this Order on the Docket, incorporating it by reference pursuant to M.R. Civ. P. 79(a).

Date: **07/01/2025**



Michael A. Duddy
Judge, Business & Consumer Court

Entered on the docket: 07/01/2025