

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.: AP-17-05

BARBARA COLMAN,

Plaintiff,

v.

ORDER

DAVID PRECOURT, et als,

Defendants.

I. Background

a. Procedural History

Plaintiff Barbara Colman filed a so-called “motion—appealing of December 5, 2016 City of Saco, ME—Vote on Contract Zone Agreement between the City of Saco, Me and Thornton Academy, Saco, ME.”¹ The “motion” is in effect a Rule 80B appeal. Plaintiff named as defendants the six members of the Saco City Council, the Mayor, and the City Administrator.² Plaintiff also named the headmaster and another employee of Thornton Academy as a parties-in-interest. Defendants moved to dismiss the complaint. Their motion argues that plaintiff lacks standing to bring this appeal, failed to name a necessary party, and improperly sought monetary damages. In response, plaintiff filed a motion to amend her complaint. The proposed complaint names three additional plaintiffs, substitutes the City of Saco for the original eight defendants,

¹ The file does not contain proof of service upon defendant or parties-in-interest. M. R. Civ. P. 3, 4, 80B(a). Pro se plaintiff did include with her original complaint a signed (not notarized) statement that she mailed the complaint to all the defendants and parties-in-interest. It states the method of mailing was U.S. Mail and does not indicate whether it was certified mail or whether she included a summons with the motion.

² Defendants requests the City of Saco, a municipal corporation, be substituted as the sole defendants. The proposed amended complaint makes the requested substitution.

and substitutes Thornton Academy as party-in-interest for the two original named parties-in-interest.

b. Facts

In 1996, the City of Saco entered into a contract zone agreement with Lucy and Phil Hatch. (Compl. ¶¶ 1, 2.) Thornton Academy recently purchased the subject property from the Hatches. (Compl. ¶ 11.) On December 5, 2016, the Saco City Council voted six to one in favor of amending the contract zone agreement. (Compl. Intro., ¶¶ 3, 9, 11.) Plaintiff maintains that the City Council did not follow proper procedure or notice requirement in approving the amendment to the CZA. (Compl. ¶ 3.) Plaintiff testified at the public hearing on December 5, 2016, that the amended CZA would change Thornton Academy's property tax status and the lost revenue would impact all taxpayers in the City. She alleges that this will increase the amount of taxes her landlord has to pay and thereby the amount she has to pay in rent. (Compl. ¶ 3.) Plaintiff lives at 45B Stockman Avenue.³

II. Discussion

a. Motion to Amend

The court must decide a motion to amend the complaint before ruling on dispositive motions such as defendants' motion to dismiss. *Sherbert v. Remmel*, 2006 ME 116, ¶ 10, 908 A.2d 622. "A court does not abuse its discretion when it denies a motion for leave to amend when the moving party falls to show how it could cure the complaint or when the motion to amend does not change the basis of the complaint." *In re Sen*, 1999 ME 83, ¶ 10, 730 A.2d 680 (internal citation omitted). For the reasons discussed below, plaintiff's motion to amend her

³ Defendants assert this address is over a mile a way from the property subject to the contract zone agreement. In her original and proposed amended complaint, plaintiff does not allege that she abuts the property or would suffer any other particularized injury other than a potential increase in her rent payment.

complaint and proposed amended complaint does not cure her lack of standing.

b. Standing

“It is well established that in order to have standing to file an 80B appeal in the Superior Court, the appellant must prove (1) that it was a party at the administrative proceeding, and (2) that it suffered a particularized injury as a result of the agency’s decision.” *Norris Family Assocs., LLC v. Town of Phippsburg*, 2005 ME 102, ¶ 11, 879 A.2d 1007. Plaintiff appeared before the Saco City Council and testified against the contract zone change on December 5, 2016 (Compl. ¶ 27.) Thus, the first standing requirement is met.

“A particularized injury occurs when a judgment or order adversely and directly affects a party’s property, pecuniary, or personal rights.” *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶ 18, 973 A.2d 735. “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.* (quoting *Ricci v. Superintendent, Bureau of Banking*, 485 A.2d 645, 647 (Me. 1984)).

The only harm plaintiff has alleged is the decrease in tax revenue the City will receive as a result of the City Counsel’s decision to amend the CZA and her assumption that her rent will increase as an indirect result of that decrease in revenue. This harm is not distinct from the harm experienced by the public at large.

Plaintiff’s motion to amend and proposed amended complaint do not state what, if any, injury the three other individuals she seeks to add as additional plaintiffs will suffer. Nor does it state whether they were parties at the administrative proceeding. Therefore, plaintiff fails to establish standing to bring this 80B complaint.

c. Necessary Parties

Because the court finds that plaintiff lacks standing, it is unnecessary to address whether

there are other necessary parties that must be joined in this action.

III. Conclusion

In light of the foregoing, plaintiff's motion to amend is DENIED. Defendants' motion to dismiss is GRANTED.

The Clerk is directed to incorporate this Order into the docket by reference pursuant to M.R. Civ. P.79(a).

DATE: May 12, 2017

ENTERED ON THE DOCKET ON: 5/12/17



John H. O'Neil, Jr.
Justice, Maine Superior Court

AP-2017-005

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