

PORTLAND MUSEUM OF ART

v.

TOWN OF SCARBOROUGH et al.

Argued October 24, 2012
Decided November 1, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, MEAD, GORMAN, and
JABAR, JJ.

MEMORANDUM OF DECISION

The Portland Museum of Art (PMA) appeals from a judgment of the Superior Court (Cumberland County, *Cole, J.*) affirming a decision of the Town of Scarborough's Board of Appeals (Board). The Board denied PMA's administrative appeal from a decision of the Town's Code Enforcement Officer to issue a building permit for a new house to Patricia P. Adams and H.M. Payson & Co. (collectively Trustees) in their capacities as trustees of the Doris Homer Revocable Trust.

Contrary to PMA's contention, the Board did not err when it determined that the Trustees established administrative standing to obtain the building permit when they submitted a deed showing that they owned the fee to the lot on which the house was to be built, notwithstanding PMA's ownership of a septic system easement burdening the property to an as yet undetermined extent. See *D'Alessandro v. Town of Harpswell*, 2012 ME 89, ¶ 5, 48 A.3d 786 ("We directly review the operative municipal decision at issue, without deference to the Superior Court's ruling on the intermediate appeal."); *Murray v. Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983) (explaining the concept of administrative standing). Because private land use agreements are not enforceable through the zoning

enforcement process, PMA's potential remedy lies in a separate action to construe and enforce its easement. *See, e.g., Whiting v. Seavey*, 159 Me. 61, 66-68, 188 A.2d 276 (1963).

Furthermore, after carefully reviewing the record, we conclude that the Board's findings were "adequate to indicate the basis for the decision and to allow meaningful judicial review." *Sanborn v. Town of Sebago*, 2007 ME 60, ¶ 14, 924 A.2d 1061 (quotation marks omitted).

The entry is:

Judgment affirmed.

On the briefs:

John C. Bannon, Esq., and John B. Shumadine, Esq., Murray, Plumb & Murray, Portland, for appellant Portland Museum of Art

Catherine R. Connors, Esq., and Matthew D. Manahan, Esq., Pierce Atwood LLP, Portland, for appellees Patricia P. Adams and H.M. Payson & Co., Trustees of the Doris Homer Revocable Trust

Durward W. Parkinson, Esq., Bergen Parkinson LLC, Kennebunk, for appellee Town of Scarborough*

At oral argument:

John C. Bannon, Esq., for appellant Portland Museum of Art

Catherine R. Connors, Esq., for appellees Patricia P. Adams and H.M. Payson & Co., Trustees of the Doris Homer Revocable Trust, and the Town of Scarborough

* The Town of Scarborough joined in the brief of the Trustees pursuant to M.R. App. P. 9(h)