

SHORE ACRES IMPROVEMENT ASSOCIATION et al.

v.

BRIAN LIVINGSTON et al.

Submitted on Briefs September 23, 2014

Decided September 30, 2014

Panel: ALEXANDER, SILVER, MEAD, GORMAN, JABAR, and HJELM, JJ.

#### MEMORANDUM OF DECISION

Brian and Sandra Livingston appeal from a judgment entered in the Superior Court (Cumberland County, *Wheeler, J.*) vacating and remanding a decision of the Town of Cape Elizabeth Zoning Board of Appeals (ZBA), in which the ZBA dismissed as untimely Shore Acres Improvement Association's appeal challenging the issuance of the Livingstons' building permit. We do not reach the merits of the Livingstons' argument that the Superior Court abused its discretion in finding, on the limited available record, and without taking any evidence, that the good cause exception applied to allow consideration of Shore Acres Improvement Association's late filed appeal. *See Viles v. Town of Embden*, 2006 ME 107, ¶ 13, 905 A.2d 298; *Brackett v. Town of Rangeley*, 2003 ME 109, ¶ 24, 831 A.2d 422. The Superior Court judgment remanded the matter to the municipal body for consideration on the merits, and, therefore, it is not a final judgment. *See Aubry v. Town of Mount Desert*, 2010 ME 111, ¶¶ 6-7, 10 A.3d 662. Further, contrary to the Livingstons' contentions, none of the exceptions to the final judgment rule apply. *See id.* ¶ 5. Thus, we must dismiss this appeal and remand the matter for further consideration by the ZBA pursuant to the Superior Court's order. The motion for oral argument is denied.

The entry is:

Appeal dismissed.

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**On the briefs:**

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for appellants Brian and Sandra Livingston

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for appellees Shore Acres Improvement Association and  
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