

OFFICIAL NOTICE
DECISION OF BOARD OF CIVIL AUTHORITY
TOWN OF SHELBURNE, VERMONT

Re: Property Tax Grievance Appeal of Shelburne Farms

The appeal of Shelburne Farms to the Board of Civil Authority (“Board”, or “BCA”) concerning the appraisal of its property, identified in the Grand List Book as 1674 North Gate Road, Shelburne Farms, Shelburne (Parcel/I.D. No. 354.1674) (the “Property”) has been given careful consideration. The decision of the Board is that the Property, while having a Grand List value of \$512,200, is exempt from taxation under 32 V.S.A. §3802(4), based on the findings and reasons articulated below.

Date Appeal Filed: July 3, 2020.

BCA Hearing Notice Date: July 7, 2020.

Hearing Dates: July 13, 2020 and August 31, 2020.

Excerpt of Minutes. The follow excerpt of the approved Minutes of the BCA’s August 31, 2020 meeting is presented here to provide factual and other background information for the BCA’s decision.¹

**TOWN OF SHELBURNE
BOARD OF CIVIL AUTHORITY
MINUTES OF MEETING
August 31, 2020**

***Meeting by Zoom video and teleconference platform**

MEMBERS PRESENT: Tom Little (Chair); Nancy Baker, David Webster, Jennifer Leopold, Bill Deming, Lee Suskin, Randy Rowland, Mike Donohue, Peter Gadue, Cate Cross, Joan Lenex, Laura Gannon-Murakami, Jaime Heins, Rebecca Moore, Town Clerk Diana Vachon.

ADMINISTRATION: Ted Nelson, Town Assessor, Courtney Brown, Assistant Assessor.

OTHERS PRESENT: Alec Webb, Megan Camp, Spencer Knapp.

[Note: Minutes reflect the order of the revised agenda.]

1. CALL TO ORDER

¹ The BCA considered other business at its August 31, 2020 meeting. A copy of the full Minutes is available at the BCA’s website: <https://www.shelburnevt.org/168/Board-of-Civil-Authority>.

Chair Tom Little called the teleconference meeting to order at 7:05 PM and read the following: As Chair of the Shelburne Board of Civil Authority, I find that, due to the State of Emergency declared by Governor Scott as a result of the COVID-19 pandemic and pursuant to Addendum 6 to Executive Order 01-20 and Act 92, this public body is authorized to meet electronically.

In accordance with Act 92, there is no physical location to observe and listen contemporaneously to this meeting. However, in accordance with the temporary amendments to the Open Meeting Law, I confirm that we are:

- a) Providing public access to the meeting by video with additional access offered through audio. We are using Zoom for this remote meeting.² All members of the Board of Civil Authority (BCA) have the ability to communicate contemporaneously during this meeting through this platform and the public has access to contemporaneously listen and, if desired, participate in this meeting by Zoom.
- b) Providing public notice of instructions for accessing the meeting. We previously gave notice to the public of the necessary information for accessing this meeting, including how to access the meeting using video in our posted meeting agenda on the Shelburne BCA webpage. Instructions have also been provided on the Town website at Shelburnevt.org.
- c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access. If anybody has a problem, please call 802-238-4989; and
- d) Continuing the meeting if necessary. In the event the public is unable to access this meeting, it will be continued to a time and place certain.

Please note that all votes taken during this meeting that are not unanimous will be done by roll call vote, in accordance with the law.

Roll call attendance of all members participating in the meeting was done.

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5. HEARING ON TAX GRIEVANCE APPEAL: Shelburne Farms, 1674 North Gate Road, Parcel ID #354.1674

Chair Little swore in those individuals to give testimony and confirmed the Appellant received a copy of the Rules of Procedure and had no questions.

INTRODUCTION OF PROPERTY

Treehouse, 1674 North Gate Road, Shelburne Farms

Ted Nelson introduced the 1.3 acre property under appeal at 1674 North Gate Road, Shelburne Farms, commonly known as “the Treehouse”, Tax ID 354.1674. The land value is \$483,600 and the building value is \$28,600 for a total value of \$512,200.

APPELLANT TESTIMONY AND COMMENTS

Spencer Knapp, attorney for the Appellant, and Alec Webb and Megan Camp with Shelburne Farms, appeared on behalf of the appeal and did a presentation on the Treehouse cottage and why the property should be exempt. The following was noted:

- Prior to 2019, the Treehouse was privately owned and paid taxes. After December 2019, the property became part of Shelburne Farms for public use.
- The Treehouse is a small, wood-frame structure that is part of the 1,400 acre Shelburne Farms campus and part of the National Historic Landmark status for Shelburne Farms.
- There are two other cottages used as an annex to Shelburne House.
- Privately owned parcels on Shelburne Farms pay close to \$1 million per year in taxes.
- The Glasshouse, Pottery Cottage, and Treehouse (used seasonally) are used for guest accommodation at Shelburne Farms.
- In 2001-2002 discussions were held with the Town Assessor on the use of each building on Shelburne Farms and it was determined that virtually all the land and buildings on campus should be tax exempt per 32VSA3802(4) Public Use. The state was involved in the meetings and accepted the Town's decision.
- Since 2002, Shelburne Farms which is the legal name, not Shelburne Farms, Inc., has been a non-profit corporation, and a tax exempt organization. Uses on the property have not changed except that the number of people coming to the Farms has grown. The site is open to the public for educational uses and public enjoyment. Schools and colleges use the property as an educational resource. There are over 140,000 visitors in a normal year.
- Shelburne House and the cottages adjacent to it are unchanged in terms of their uses. Shelburne Farms is like a public park maintained entirely by private donations.
- Case law and local law pertaining to the tax exempt status have not changed since 2002. Only the ownership of the Treehouse cottage changed from private and paying taxes to Shelburne Farms and public use.
- The Treehouse is operating and used like the Glasshouse and Pottery Cottage consistent with the Shelburne Farms mission. Revenue from the cottages is used to support the Shelburne Farms mission.
- The Treehouse should be treated the same as the glasshouse and pottery cottage.
- There is disagreement with the opinion of the Town Attorney that because the Treehouse produces income then taxes should be paid, but Vermont law does not prohibit non-profit organizations from generating income to support its tax exempt operation and qualify for Section 3204. Shelburne Museum generates revenue and is tax exempt. UVM Medical Center generates revenue and is tax exempt. The American Museum of Fly Fishing generates revenue and is tax exempt.
- If property taxes were to be applied to other tax exempt properties on Shelburne Farms the impact would be catastrophic.
- Shelburne Farms requests the BCA grant the request to determine the Treehouse cottage as tax exempt.

David Webster asked what the Town's rationale was for exempting some Shelburne Farms properties but not others. Spencer Knapp said the Town's rationale for excluding properties such as the carriage barn is not known. The Appellant did not agree with the Town's decision but felt it not appropriate to appeal and did not appeal. Shelburne Farms appreciated the Town's position on the balance of the property. Alec Webb explained prior to 1992 there was a tax stabilization

agreement in place with the Town which was thought to be appropriate and allowed development of the non-profit. Then the Town transitioned due to Act 60, but the amount being paid on the Carriage Barn was close to the amount being paid under the tax stabilization agreement, so it was felt that was appropriate. David Webster asked what else was not included in the tax stabilization agreement. Alec Webb said the two cottages on Depot Road are not part of the campus and are subject to property taxes. Spencer Knapp added the tax stabilization agreement expired in 1992.

Lee Suskin referred to the email from the Town Attorney, Brian Monahan, dated 6/23/20, regarding the basis for the tax exemption decision being the property is not dedicated unconditionally to public use, the primary use does not benefit an indefinite class of persons who are members of the public, and the property is not operated on a not-for-profit basis. Spencer Knapp said the Vermont Supreme Court decision does not agree with the Town Attorney's opinion. The property is generating profits for a third party. Shelburne Farms, Inc. is a subsidiary of Shelburne Farms and any revenues generated go back to Shelburne Farms (owner). Shelburne Farms is a non-profit supported by private donations. The Supreme Court decision says tax exempt property can generate revenue over expenses without losing non-profit status. Revenue from the cottages supports the operation of the non-profit Shelburne Farms.

It was noted the Town Attorney was not in attendance for the appeal hearing. Diana Vachon said an email was received from Brian Monahan indicating he would not be attending the hearing and advising the Town Assessor will handle the appeal at the BCA level.

Laura Gannon-Murakami asked for clarification of the name of the Appellant. Spencer Knapp said Shelburne Farms is the Appellant and owner of the property. Shelburne Farms is a non-profit tax exempt organization. Shelburne Farms operates businesses that are taxable, so a subsidiary was created called Shelburne Farms, Inc. All revenue runs through Shelburne Farms, Inc. to Shelburne Farms. Shelburne Farms, Inc. does not own anything and is controlled by Shelburne Farms and nominally operates the Inn, restaurant, and cheesemaking operation. Laura Gannon-Murakami asked if other property has been purchased since 2002. Alec Webb said there have been several parcels that were privately owned and are now part of Shelburne Farms and tax exempt. Two properties on Depot Road are not tax exempt.

ASSESSOR TESTIMONY AND COMMENTS

Ted Nelson said the Town Attorney's opinion is clear on the property being taxable, but a subsequent clarifying memo can be requested if wanted by the BCA. The properties on Depot Road are separate from the appeal. The assessment practice for the past ten years has been correspondence regarding taxable and tax exempt status of buildings on Shelburne Farms. The three properties within Shelburne Farms noted in the letter from the former Town Assessor (Potter) are still taxable. The Town has recognized and honored having a good part of Shelburne Farms property fall under the 'fly fishing' test. Shelburne Farms has been a good neighbor and has secured zoning permits to change properties. The caretaker's house, herdsman's house and the president's residence have all been renovated for residential use.

Spencer Knapp said it is not clear how the Town determined Shelburne House to be exempt and the Treehouse as taxable when both are used exactly the same way. The Glasshouse and Pottery Cottage are recognized by the Town as tax exempt.

David Webster asked how the Treehouse will be treated with the reappraisal, and if deemed taxable, will the Glasshouse and Pottery Cottage be treated the same. Ted Nelson said the glasshouse was not part of the deliberation in 2002. The property was acquired by Shelburne Farms in 2004. There are no notes on how the previous assessor made the decision to treat the Glasshouse as tax exempt. David Webster asked if the Treehouse being rented for accommodations qualifies for the property being open to the public. Spencer Knapp said renting for accommodation is allowed. The Treehouse is an important piece of the larger property that is rented out for accommodation and all revenue comes back to Shelburne Farms which is consistent with the Town's previous treatment of the property and case law. Ted Nelson said he does not know the threshold for privately used or open to the public. The preliminary opinion which is the basis of the decision used at the grievance level can be clarified. The more formal opinion addresses the change of appraisal.

Tom Little asked about the low value assigned to the structure versus the land. Ted Nelson said the building is 400 s.f. set on piers or a crawlspace with space heaters. The building is seasonal.

Cate Cross asked if there will be reassessment of the entire Shelburne Farms before 2023. Ted Nelson said Mr. Webb has been advised to meet with the Town Assessor to discuss the properties on Shelburne Farms in light of the reappraisal.

Lee Suskin asked if the BCA agreed with the Town Attorney's opinion, would the Assessor, during the upcoming reappraisal, use that to find that the inn is taxable.

Ted Nelson suggested working with Alec Webb to set up mechanisms to avoid this situation in the future. Good communication is needed between Shelburne Farms and the Town.

Nancy Baker asked for further explanation of the use of the cottages and renting to educators or the public at a cost of \$450 to \$550 per night. Alec Webb said the Farm is an educational campus that is shared as widely as possible with the public. The goal is to have a learning experience while on the Farm. The guest houses are open to anyone to rent. Megan Camp added in a normal year in June Shelburne Farms hosts a number of gatherings for the graduate level courses for educators from all over the world. The events are supported by the USDA and private funders. The Treehouse is used seasonally, but the programs run year-round. There are also behind-the-scenes tours of the Treehouse, Glasshouse, and Pottery Cottage, but the primary use is lodging.

Laura Gannon-Murakami asked if the public could go onto the property by the Treehouse. Alec Webb said the public can go on the property, but the Treehouse is in the woods, off the road.

There was no further testimony and the hearing was closed.

DISCUSSION/DELIBERATION

Tom Little stated an in-person site inspection is not required per Act 92, but the taxpayer can provide a video walk through of the property. The Shelburne Farms appeal is mainly legal questions so a site visit may not be necessary in this case. Both the Town and Appellant could be given the opportunity to file follow-up legal advice or memoranda with the BCA as well as

any visual information (needs to be filed with the Town Clerk by 9/12/20). The BCA could appoint a drafting subcommittee to work up a consensus-based proposed decision for the BCA and provide the draft at least five days before deliberative session. A follow up meeting and deliberative session could be scheduled on 9/21/20.

Spencer Knapp said there would be nothing further to add to what the Appellant has already presented, but the Appellant would like the opportunity to respond to what the Town Attorney might submit. The Appellant took seriously the preparation for the hearing and was in contact with the Town Attorney. Tom Little stated the meeting was duly warned and all parties notified so there may not be need for another opportunity to submit information. Lee Suskin said the Town's legal position was heard through the Town Assessor's testimony. Unfortunately, the BCA did not have opportunity to ask the Town Attorney questions and the Appellant did not have the opportunity to respond to the Town Attorney's answers because the Town Attorney was not in attendance. Jaime Heins said it is not certain what specifically would be requested from Brian Monahan beyond what was submitted. Ted Nelson said if the Town Attorney changed his opinion after watching the meeting tape then Shelburne Farms might withdraw the appeal. Tom Little said the Town should advise the BCA if this is the conclusion.

Tom Little stated the Appellant will provide further visual information on the property in lieu of an in-person site inspection by the inspection committee, and the BCA will meet on 9/21/20 to either agree on a written decision or have further deliberations.

[End of Excerpt of Minutes]

Site Inspection. A few days after the August 31 hearing, the Appellant submitted photographs of the Property. The photographs are part of the record of the appeal. The Board considered the photographs in reaching its decision, and under the provisions of Act 92 is dispensing with an in-person site inspection of the Property – in no small part because the issue on appeal is mainly a legal issue and not a dispute over the fair market value of the Property.

Drafting Committee. The Chair appointed a drafting committee of BCA members to prepare the initial draft of this decision: David Webster, Nancy Baker, Jennie Leopold, Jaime Heins, Lee Suskin and Tom Little.

Reasons and Bases for Decision.

Introduction. In this appeal, the Appellant challenges the taxability of the Property, not the Property's Grand List value, believing that the property is exempt from real property taxes for the same reasons as most of the Appellant's other lands and buildings are exempt. Hence, the evidence presented at the two hearings did not focus on the typical facts and concerns of square footages, numbers of bathrooms, location and desirability of the property and comparable sales or income production. Indeed, the Appellant does not dispute the Assessor's \$512,200 assessment for the Property's Grand List value. Accordingly, the hearing, and the BCA, focused on whether the Property's use entitles it to the same tax exempt status as that the Town has for years granted to most of Appellant's other properties on Shelburne Farms proper.

Burden of Proof. In any grievance appeal, the burden is on the Appellant taxpayer to demonstrate that the Property is entitled to the tax exemption under 32 V.S.A. §3802(4). In evaluating and deciding the appeal, we must strictly construe the exemption against the Appellant. (See *Berkshire School v. Town of Reading*, 172 Vt. 440 (2001).

Discussion. The Board reviewed and carefully considered the competing legal memoranda of the Assessor’s legal counsel, Brian P. Monahan, Esq. (dated May 20 and June 23, 2020), and the Appellant’s legal counsel, Spencer R. Knapp (dated March 8, 2002 and July 30, 2020), each of which construes the pertinent state statute, 32 V.S.A. §3802(4) and a decision of the Vermont Supreme Court construing that statute, *American Museum of Fly Fishing, Inc. v. Town of Manchester*, 151 Vt. 103 (1989)(“*American Museum of Fly Fishing*”).

Section 3802(4) provides an exemption from property taxation to real estate used for public, pious, or charitable purposes. The *American Museum of Fly Fishing* decision established a three-part test for determining eligibility for the exemption. To qualify for the exemption “(1) the property must be dedicated unconditionally to public use; (2) the primary use must directly benefit an indefinite class of persons who are part of the public, and must also confer a benefit on society as a result of the benefit conferred on the persons directly served; and (3) the property must be owned and operated on a not-for-profit basis.” *American Museum of Fly Fishing* at p. 110. The Appellant argues that the Property satisfies each part of this test. The Assessor disagrees as to the first two prongs of the test but not as to the third one (although Mr. Monahan’s May 20, 2020 memorandum, at pp. 3-4 concedes that the Property satisfies the third prong of the test, his June 23, 2020 memorandum comes to the opposite conclusion).

The Appellant’s clear testimony asserts that there are no legal or factual bases to distinguish the Property from Shelburne House and the nearby Glasshouse and Pottery Cottage - properties that have been exempted by both the Town and the State of Vermont since the 2001-2002 property tax year. The question for the Board is whether the Assessor provided any contrary testimony or facts to adequately rebut Appellant’s legal and factual conclusions.

“Dedicated Unconditionally to Public Use.” Appellant asserts that the entire Shelburne Farms property – including the Property under appeal, is an assemblage of a variety of property types and uses, dedicated unconditionally to public use. The Assessor counters that the Property is a primarily a general lodging facility, making it not unconditionally dedicated to public use.

In deciding whether the Property is dedicated unconditionally to public use, the Board has considered the statutory purpose of the exemption, as set forth in 32 V.S.A. 3800 (b):

The statutory purpose of the exemption for public, pious, and charitable property in ... subdivision 3802(4) of this title is to allow these organizations to dedicate more of their financial resources to furthering their public-service missions.

The Board is persuaded that the Property satisfies this prong of the *American Museum of Fly Fishing* test, based upon the Appellant’s testimony, exhibits and legal memoranda. The Property (and its use and revenues) are integrated into the mission and operations of Shelburne Farms and thus are now part of a National Historic Landmark. The close geographic proximity of the

Property to the tax-exempt Glasshouse and Pottery Cottage, as well as the intended use of the Property being operated in conjunction with tax-exempt Shelburne House further support the Board's determination that the Property is dedicated unconditionally to public use. The public usage of Shelburne Farms was well documented in the Appellant's testimony and supporting materials. On point here is the Vermont Supreme Court decision cited at page 4 of Mr. Knapp's July 30, 2020 letter, *Medical Center Hospital of Vermont v. City of Burlington*, 152 Vt. 611, 615 (1989).

"Primary Use Benefits an Indefinite Class." Likewise, while it is true that the Property will generate revenue by being rented to paying members of the public (at significant rates), by virtue of the Property's proximity to the other lodging resources at Shelburne Farms, and the dedication of those revenues to support the charitable education and environmental missions of the organization, the Property does benefit a broad segment of the public sufficient to satisfy this use for the other lodging properties on the site and neither the Town nor the Assessor has ever challenged this. Appellant's testimony that the primary public renters of the Property are guests who are participating in and contributing to the broader programming, mission and operations of Shelburne Farms further supports the Board's finding that the Property's primary use benefits an indefinite class.

"Owned and Operated on a Not-For-Profit Basis." It is not disputed that the Appellant is a nonprofit corporation with tax-exempt status under the Internal Revenue Code. While the Assessor and his counsel believe the Property is being operated on a for-profit basis, the Board finds otherwise. The Board is persuaded that the Property is being appropriately used for income-producing purposes since its revenues are dedicated exclusively to the tax exempt purposes of Shelburne Farms, as are other similar properties on the Shelburne Farms "campus." See the cases cited at page 4 of Mr. Knapp's July 30 letter. *American Museum of Fly Fishing* is directly on point here and clearly holds that the requirement of nonprofit operation *does not* mean that Property may never operate in the black but, rather, that any excess of income over expenses must be derived incidentally from, and not as a deliberate goal of, operation of the Property, and must benefit the broader public objectives of Shelburne Farms. Appellant's written submissions and testimony confirmed that the Property's rental revenues are used to support and offset Shelburne Farms' overall operating costs. In other words, income generation to support a tax-exempt purpose is not prohibited and is in fact necessary to support the overhead and related operating expenses associated with the broader mission and operations of Shelburne Farms.

While the Board finds that the Appellant made a clear and convincing case that satisfies the American Fly Fishing three part test, the evidence that tipped the balance in favor of the Appellant – and which satisfied the Appellant's burden of proof – was the testimony that the use of the Property is indistinguishable from and identical to the use of two nearby properties that have been tax exempt for nearly 20 years. We also conclude that the Appellant's use of the Property meets the statutory purpose – it enables Shelburne Farms to dedicate more of its financial resources to furthering its public-service missions.

Conclusion. For the reasons presented above and based on all of the evidence, the Board grants the appeal, finding that the Property is entitled to tax exempt status under 32 V.S.A. §3802(4).

Date: September 22, 2020.

Signed:



Thomas A. Little, Chair
Board of Civil Authority

Participating in the Decision, which was unanimous: Tom Little, Nancy Baker, David Webster, Jennifer Leopold, Lee Suskin, Mike Donohue, Peter Gadue, Cate Cross, Joan Lenes, Laura Gannon-Murakami, Jaime Heins, Rebecca Moore, Diana Vachon

Pursuant to Title 32, V.S.A. §4461, if a party is aggrieved by this decision, the party may appeal either to the Director of the Division of Property Valuation and Review or to the Superior Court of Chittenden County.

The appeal to either the Director or the Superior Court is governed by Rule 74 of the Vermont Rules of Civil Procedure and is commenced by filing a notice of appeal with the Town Clerk within 30 days of the day this decision was mailed to you by the Town Clerk. The Town Clerk transmits a copy of the notice to the Director or to the Superior Court as indicated in the notice and shall record or attach a copy of the notice in the Grand List Book.

Be sure your appeal indicates which avenue of appeal you wish to pursue (Superior Court or Director), clearly identifies the property under appeal, and is accompanied by the correct filing fee. If the property under appeal is enrolled in the use value appraisal program, please indicate that in your appeal. If the property under appeal contains a homestead, please include that information.

The appeal to the Superior Court must be accompanied by a \$295.00 fee for each individual property being appealed which is separately listed in the grand list; the fee is \$70.00 per parcel on appeal to the Director.