

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

**\*Meeting by teleconference**

**DRAFT**

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

**ADMINISTRATION:** Diana Vachon, Town Clerk; Ted Nelson, Town Assessor, Courtney Brown, Assistant Assessor.

**OTHERS PRESENT:** Alex Webb, Megan Camp, Spencer Knapp.

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

**1. CALL TO ORDER**

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.<sup>1</sup> 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.

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<sup>1</sup> Many public bodies are using video teleconferencing technology, such as GoToMeeting, to ensure the remote meeting complies with the Open Meeting law. If you have any questions about the appropriateness of the technology you are using to conduct your meeting, please consult VLCT's Municipal Assistance Center (MAC) at 1-800-649-7915 or [info@vlct.org](mailto:info@vlct.org).

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

## 2. PUBLIC COMMENTS

None.

## 3. DISCLOSE CONFLICTS OF INTEREST

It was noted Randy Rowland and Bill Deming will recuse for the Shelburne Farms appeal and listen to the meeting via audio only. Lee Suskin noted he has no conflict of interest or personal or financial interest in the outcome of the appeal, but there may be the appearance of a conflict of interest because he has made charitable contributions to Shelburne Farms and served as campaign treasurer for Kate Webb. Mr. Suskin said he feels he can act fairly, objectively, and in the public interest and will not recuse unless the BCA requests this.

Jaime Heins said he was not present at the July BCA meeting, but will view the tape.

Ted Nelson said the town has no objection to anyone participating in the grievance hearing who has had involvement with Shelburne Farms or supports Shelburne Farms if the individual feels they can participate objectively and ethically.

Following discussion, there was agreement to take action on the minutes prior to beginning the grievance appeal hearing.

## 4. MINUTES

*July 13, 2020*

**MOTION by Pete Gadue, SECOND by David Webster, to approve the 7/13/20 minutes as circulated. VOTING: all ayes except one abstention (Jaime Heins); motion carried.**

## 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 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 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, tax exempt organization. Uses on the property have not changed except to expand. 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. 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 the rationale for not including properties as not exempt. 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. Alex 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 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 heat. 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 questioned if the BCA use the three criteria to determine whether the inn is taxable with the reappraisal if the BCA accepts the Town Attorney's opinion.

Ted Nelson suggested working with Alex 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-scene tours of the treehouse, glasshouse, and pottery cottage, but the primary use is lodging.

Laura Gannon-Murakami asked if the public can 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 deliberation.

#### 6. OTHER BUSINESS

##### *Request for Registration*

Diana Vachon will forward material from the Secretary of State's Office for discussion on 9/21/20.

##### *Request for Abatement*

Information on the request for abatement by a small motel owner unable to pay taxes due to the impact of the pandemic will be forwarded for discussion on 9/21/20.

#### 7. ADJOURNMENT

**MOTION by Rebecca Moore, SECOND by David Webster, to adjourn the meeting.  
VOTING: unanimous; motion carried.**

The meeting was adjourned at 9:05 PM.