

**TOWN OF VICTORY  
BOARD OF CIVIL AUTHORITY  
102 Radar Road  
Victory, Vermont 05858**

**RE: MITCHELL V. TOWN OF VICTORY**

**NOTICE OF DECISION**

This matter was brought before the Town of Victory Board of Civil Authority on the appeal by Ms. Patricia Mitchell and the Elizabeth H. Brown Humane Society (hereinafter "Humane Society") of the decision of the Victory Listers to assess taxes against the real property owned by the Humane Society.

The property in dispute is owned by the Humane Society, of which Ms. Mitchell is the president, and has been owned by the Humane Society since 2010. In 2010, the Humane Society sought tax abatement from the Victory Board of Civil Authority on the basis that its property was exempt from property taxes. From 2011 to 2013 the property was listed as tax exempt under 32 V.S.A. § 3802(15) but no hearings or evidentiary process was held to review this determination. According to available town records, no actual review of the property was ever conducted by the Town apart from the 2010 abatement hearing.

In June of 2014 the Board of Listers (hereinafter "Listers") conducted a review of the Humane Society property and made a determination that the property should no longer be considered tax exempt. The Humane Society duly grieved the Listers' decision to the Victory Board of Civil Authority (hereinafter the "Board"). The Board initially stated that it did not believe it could review a tax exemption issue and indicated that it was not inclined to entertain the appeal on this technical issue. The Humane Society then indicated that it would withdraw the grievance. The Humane Society appealed to the Essex County Superior Court (Docket No. 33-7-14 Excv).

By order of the Superior Court, dated October 3, 2014, the taxation issues within the Humane Society's appeal were remanded to the Board to consider on the merits. The Board interprets this remand to be the question of whether the Humane Society's property is exempt from property taxes under 32 V.S.A. § 3802 (15) and if not what portion of the property is taxable. In furtherance of this remand, the Board held a hearing on December 15, 2014. Ms. Mitchell attended on behalf of the Humane Society with counsel, Deb Bucknam, Esq. At the election of the Humane Society, the hearing was conducted in public, and the Humane Society called several witnesses. No Listers attended the hearing, but the Board took note of their prior decision not to consider the property as exempt.

The Board has strictly considered the question presented on the evidence from the December 15th hearing, and the site visit conducted on January 2, 2015 by three members of the Board. The Board now issues this decision in accordance with 32 V.S.A. § 4404(c).

#### **FINDINGS OF FACT**

1. The Humane Society is a registered domestic non-profit corporation in Vermont. It was first incorporated in 1985.
2. Its corporate and non-profit statuses are current with the Vermont Secretary of State and the United States Internal Revenue Service.
3. The Humane Society works with several organizations, agencies, and individuals in Essex and Caledonia Counties to rescue abused, abandoned, or mistreated animals.
4. Essex County Sheriff Trevor Colby testified that he uses the Humane Society when he is faced with animal control situations where the animal has to be removed from the owner. He testified that he believed that this use was long-standing in his office and preceded his election as Sheriff.

5. The Board received a number of letters from other individuals and groups expressing similar reliance on and use of the Humane Society.
6. The Humane Society relies largely on private donations, rental income from the Property, and donation, both monetary and in-kind from its members.
7. Despite its widespread service and stated importance to communities in both Essex and Caledonia counties, the Humane Society does not seek or receive appropriations from any of these communities or organizations that it serves.
8. While very active in animal rescue and care, the Human Society does not have a formal adoption program and relies largely on word-of-mouth.
9. The evidence and testimony indicates that the Humane Society acts largely an animal rescue shelter that focuses on providing a safe and healthy environment for rescued animals without necessarily seeking to place them in new homes.
10. Patricia Mitchell is the current president of the Humane Society. She has served in that role since 2008, but she has been active with the Humane Society for a much longer time. The Humane Society currently has three officers in addition to Ms. Mitchell, and a 5-member Board of Directors.
11. The Humane Society purchased the real property located at 1814 Masten Road, Victory, Vermont (hereinafter the "Property") in 2010 in a foreclosure sale.
12. The Property consists of approximately five acres, with a single-story ranch-style house, a barn with an attached garage addition, a small metal shed, and a small, detached building that appears to have been a pool house. There is a large fenced-in area around the barn that is separate from other fenced-in area directly behind the house.
13. Animals rescued by the Humane Society are housed on the property. The number and type of animal varies but has included rabbits, donkeys, goats, horses, llamas and

- chickens. On the December 15, 2014 at the hearing before the Board, Ms. Mitchell testified that there were then approximately 44 animals being housed on the Property.
14. The animals rescued by the Humane Society are housed in the barn and fenced-in areas on the Property. Ms. Mitchell testified that she houses additional rescue animals in her own barn when there is no room on the Property. She testified that there are currently several rescue animals that she is housing.
15. The barn and surrounding penned areas consist of approximately three acres. This farm area is separated from the house and residential portions of the property by a wide driveway, which runs between and delineates the residential and farm sides.
16. During the site visit on January 2, 2015, members of the Board observed very little evidence of animals being kept or cared for on the residential side of the Property. They observed precisely one rabbit cage and one bag of feed being stored in the basement of the house but no other evidence of the Humane Society's work or purpose in the house.
17. Ms. Mitchell's son, daughter-in-law, and grandchildren have lived in the house on the Property since 2012. They currently pay \$700 per month in rent. That money is paid directly to the Humane Society and is applied towards the operating expenses of the Humane Society.
18. Ms. Mitchell is the primary caretaker and custodian of the animals housed on the Property. While her son and daughter-in-law and grandchildren, as well as other members of the community, occasionally provide assistance or support in caring for the animals on the property or picking up animals that have come under the custody of the Humane Society, Ms. Mitchell is primary caretaker and custodian overseeing the care and safety of the animals on a daily basis.

19. According to the testimony provided, Ms. Mitchell's son and daughter-in-law have full-time employment in work that is not related to the Humane Society.

20. This is consistent with the observations of the Board members who viewed the house, which appears by all respects, to be a normal single family residence dedicated entirely to a residential purpose.

### CONCLUSIONS OF LAW

Between 2010 and 2013, the Town Listers appear to have found the Property to be tax exempt under the provisions of 32 V.S.A. § 3802 (15) of the Vermont Statutes, which states that the following property shall be exempt from taxation:

"Real and personal property owned by a charitable, nonprofit organization devoted to the welfare, protection, and humane treatment of animals, including any premises of a custodian or caretaker which is attached to or is located on the grounds of such an animal shelter."

The question presented to the Board is whether the Property as a whole qualifies as tax exempt under this exemption, given that Ms. Mitchell's son and his family live in the house on the Property, and portions of the property are not devoted to the purposes of the humane society. Because the Property's exemption is based narrowly on the language of Section 3802 (15), related to humane societies, the question is whether the Property qualifies under the language of subsection (15), not whether it qualifies under the general Public Use Test, which is found under 32 V.S.A. § 3802 (4).<sup>1</sup>

As a preliminary matter, there is no question of whether the Humane Society is a "charitable, nonprofit organization devoted to the welfare, protection, and humane treatment of animals." The organization is a registered nonprofit recognized by state and federal agencies as

<sup>1</sup> Part of the reason that the Listers made an initial determination that the entire property was not tax exempt appears to stem from the confusion between the elements necessary to prove an exemption under subsection and the more involved elements of a subsection (4) claim. See *American Museum of Fly Fishing, Inc. v. Town of Manchester*, 151 Vt. 103, 110 (1989) (outlining the elements of a public use tax exemption).

such, and its mission statement establishes that the mission of the Humane Society is “to provide safe refuge for unwanted, neglected, or abandoned farm animals.” Testimony given at the December 15<sup>th</sup> hearing supported the contention that Humane Society provides a much-needed service of housing and caring for abused and abandoned farm animals in the Northeast Kingdom. There is also no question as to whether Humane Society owns the Property. It is the holder of record title. Finally, there is also no question that a portion of the Property is dedicated to the Humane Society’s purpose. Both through testimony and the Board’s site visit, it was well-established that the barn building and attached and fenced-in acreage provides housing, storage, and support for the rescued animals

The question is whether the entire property should be considered tax exempt, since the residential house on the property is occupied by individuals who are not custodians or caretakers of the animals on the property.

The Use of the Property is Paramount in Determining Whether an Exemption Applies

While there is no case law in Vermont specifically examining the humane society tax exemption, there is extensive case law related to property tax exemptions in general. The Vermont Supreme Court determined in *Delta Psi Fraternity v. City of Burlington* that it is the actual use of the property, not just the ownership of the property, which determines tax exempt status. *Delta Psi Fraternity v. City of Burlington*, 2008 VT 129, ¶ 14. In *Delta Psi*, the Court determined that a property owned by a fraternity did not qualify for the tax exemption for residential fraternity properties because although the property was owned by the fraternity, it had not actually been used as a residential property to house students in years. *Id.*

In the case before us, it is undisputed that the Humane Society owns the property, but only certain sections of the property are being used for the purposes of the humane society. Based on the testimony provided by Ms. Mitchell at the hearing, her son and daughter-in-law

who occupy the house on the property occasionally provide assistance caring for the animals on the property or help pick up an abused animal, but Ms. Mitchell is the primary caretaker and custodian of the animals. The son and daughter-in-law both have full-time jobs unrelated to the Humane Society. Ms. Mitchell testified that while her son and daughter-in-law and grandchildren will assist her when she needs help, Ms. Mitchell herself is providing care to all the animals on the property on a daily basis. Furthermore, the inspection of the Property, which took place on January 2, 2015, confirmed that the animals being housed on the property are kept in the large barn on the property, and the residential house contained only nominal evidence of any Humane Society activities beyond a single rabbit cage and a single bag of feed in the basement. Because Ms. Mitchell is the primary caretaker of the animals, and the occupants of the residential house do not provide regular care or shelter for the animals, the house on the Property cannot be considered the “premises of a custodian or caretaker,” as permitted by the statute.

The Courts construe tax exemption statutes “most strongly against those claiming the benefits.” *Trustees of Vermont Wild Land Foundation v. Town of Pittsford*, 137 Vt. 439, 444 (1979). The courts also prefer to limit tax exemptions to those properties used for the public benefit. *Delta Psi Fraternity v. City of Burlington*, 2008 VT 129 at ¶ 14. Given the Courts’ narrow construction of tax exemptions, and the evidence that substantial portions of the property, including the house its surrounding yard, and the former pool house are not dedicated to furthering the purposes of the human society, it makes sense that the portions of the Property that are not used to further the mission of the humane society should not be tax exempt under 32 V.S.A. § 3802(15).

There is No Prohibition on the Granting of Partial Tax Exemptions

There is no prohibition in statute or common law in Vermont on the bifurcation of property for the purposes of tax exemption. In the case of *Vermont Youth Conservation Corps., Inc. v. Town of Richmond*, the town listers had granted a partial tax exemption to the VYCC, exempting only 7.6 acres of the VYCC's property. The VYCC eventually appealed the listers' decision and was granted an exemption over the entire property on the grounds that the entire property qualified for an exemption under the three-part "public use" test, but the court made no statements to the effect that the original partial exemption was improper. *Vermont Youth Conservation Corps., Inc. v. Town of Richmond*, No. 1125-10-12 Cncv, (2013). The question of a partial tax exemption was also raised in the case of *Ice Center of Washington West, Inc., v. Town of Waterbury*, where the owners of an ice rink asked for a 75 percent tax exemption since 75 percent of the rink's use was public-school-related. The plaintiff in that case failed to raise the issue in superior court and so the Supreme Court did not address it, but the Court also did not reject the idea of a partial tax exemption. *Ice Center of Washington West, Inc., v. Town of Waterbury*, 2008 VT 37, ¶ 10 (mem.).

Based on the site visit, it is readily apparent that portions of the Property, such as the barn and surrounding penned areas, are dedicated to the use of the Humane Society, while the residential house and surrounding land is not. Furthermore, the split between the two uses is established geographically. Everything to the north, north-east side of the large driveway on the property is connected to the Humane Society's purpose. Everything south-southeast is residential in nature and separate from the Humane Society's function.

The language of the statute itself suggests such a bifurcation allowance in that only property used for a humane society's purposes is to be considered exempt. The statute clarifies that this can include a custodian/caretaker's residence. 32 V.S.A. § 3802(15). Such a specific inclusion reasonably implies that the residential buildings owned by a humane society but not



used for the purpose of housing a caretaker/custodian, such as in this case where two acres are being used as an income-producing rental property, should not be included in the exemption.

Given that there is no prohibition on the bifurcation of property for the purposes of determining tax exemptions, the Property can be bifurcated and a tax exemption granted to those portions of the property qualifying for the exemption under 32 V.S.A. § 3802(15). The remainder of the property is residential in nature, does not house a custodian or caretaker, and it should be taxed as such.

### DECISION

Based on the findings and conclusions laid out above, This Board finds that the Property should be bifurcated for the purposes of property taxes and granted a tax exemption under 32 V.S.A. § 3802(15) on those portions of the property dedicated to the use of the Humane Society. The portion of the Property north, northeast of the driveway that sits between the barn and house said portions to including the barn and attached structures, the fenced-in animal runs, and the driveway itself shall be tax exempt. From the evidence, the Board understands this exempt portion to comprise 3 acres of land. The remaining 2-acre portions of the Property south, southwest of the driveway, including the residential house, yard, and the surrounding outbuildings (the metal shed and former pool house) shall be taxed according to the Lister's 2014 evaluation of the property and its value.

Dated at Victory, Vermont, this 14th day of January, 2015

  
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Dawn Peters, Chair  
Town of Victory Board of Civil Authority

NOTICE: This decision may be appealed to the Essex County Superior Court. Such appeal must be taken within 30 days of the date of this decision, pursuant to 32 V.S.A. § 4461 and Rule 74 of the Vermont Rules for Civil Procedure.