

SUPREME COURT REVISES TAX EXEMPTION TEST

The Vermont Supreme Court recently issued a decision that has the potential to significantly expand the class of landowners entitled to receive an exemption from property taxes under the public, pious and charitable use exemption set forth in 32 V.S.A. § 3802(4). *Sigler Foundation v. Town of Norwich*, Docket # 2001-433 (July, 2002). The decision is problematic for municipalities for two main reasons.

First, the Court reinterpreted the second criteria of the three-part test it previously created to determine whether a property is exempt as a public, pious or charitable use. See *American Museum of Fly Fishing, Inc. v. Town of Manchester*, 151 Vt. at 110 (February, 1989). The second criteria of the so called “Fly Fishing” test is whether the primary use of a property will “directly benefit an indefinite class of persons who are part of the public” In its decision, the Court has redefined “indefinite class” in such a broad manner as to open the door for many property owners to take advantage of the tax exemption provided for in 32 V.S.A. § 3802(4). This creates the potential for a serious weakening of the tax base of every municipality.

Second, in redefining “indefinite class,” the Court has now created a confusing standard that will be difficult for listers to apply. In this article, VLCT will attempt to explain the redefined test for determining whether an indefinite class of people benefit from the use of property. However, the revised test is such that it will undoubtedly make it more difficult for listers to determine whether a property qualifies as exempt under 32 V.S.A. § 3802(4).

The case arose out of a question as to whether the Andrew C. and Margaret R. Sigler Foundation, Inc., a § 501(c)(3) charitable foundation that operates the Dream & Do Farm on 5.26 acres of land in the Town of Norwich, is tax exempt property under 32 V.S.A. § 3802(4). The Foundation’s mission is to encourage the preservation, survival and advancement of dairy farms in New England. As stated in its Articles of Association and Bylaws, the Foundation’s specific goals are: to develop advanced farming techniques and improved dairy animals, to make available the benefits of advanced farming techniques to commercial dairy farmers and consumers, and to improve the economic performance of family-run dairy farms and small producers. An additional goal of the Foundation is education.

The trial court found that the Foundation met parts one and three of the Fly Fishing Test. Part one of the test requires that the use be public, and part three of the test requires that the property be owned and operated on a not-for-profit basis. However, the trial court ruled that the Foundation did not meet part two of the test because it served a definite class of people – those affiliated with or interested in dairy farming.

The Vermont Supreme Court reversed the trial court and, in so doing, re-defined the test for determining whether an indefinite class of people are served by a public use. The Vermont Supreme Court seemed to be swayed by the fact that the Dream & Do Farm is open to the public without any limitations. For example, an application is not required to visit the Farm, nor are there any criteria that the public must meet to be able to visit the facility.

The facts of the case indicate that school students at all levels of education have visited the facility. However, the Town and the trial court relied on the fact that while students may make field trips to the Farm, the Farm principally benefits experts and

academics conducting research relating to dairy farming. The trial court concluded that these academics and experts constitute a definite class of people that are benefited by use of the farm.

In revising the second part of the Fly Fishing test, the Vermont Supreme Court seems to be saying it no longer matters whether the public at large “actually” uses the property. What matters seems to be whether the property owner makes the use “available” to the public without placing any restrictions on access. The Court appears to have shifted its attention from the character and nature of the class benefited to the mere consideration of the intent of the taxpayer. The Court’s apparent conclusion that actual public use is not required to meet the test broadens the pool of landowners who may be able to qualify for a property tax exemption. Theoretically, any landowner who does not make a profit may now attempt to make the argument that the public has access to the property and the property should be exempt, regardless of whether the public actually uses the property. Time will tell if this restatement of the test leads to an increased volume of exemption litigation under 32 V.S.A. § 3802(4).

The best advice we can give to listers is to focus first on whether the use benefits society at large. This is still part of the second criteria of the Fly Fishing test, as the court did not alter it. If a use meets this part of the test and it is shown to be operated on a not-for-profit basis, listers must examine whether there are any restrictions placed on who in the public may avail themselves of the use. For example, applications to use the property, charging a fee and other threshold criteria that must be met for the public to use the property may cause the landowner to fail the test. However, if there are no such restrictions on use, the property will likely qualify as exempt.

Conversely, listers need not inquire whether the public actually uses the property. Such evidence may no longer be relevant to the Fly Fishing test as long as it is established that use is public and the public may use the property. As with all complicated local decisions, listers should simply do their best they can to evaluate exemption requests under the revised standard, and consult the town attorney or the VLCT Law Center if you have questions.

- Jon Groveman, Director, VLCT Municipal Law Center

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