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May 18, 2023

Sally Rubin, Executive Director
Great Swamp Watershed Association
P.O. Box 300
New Vernon, NJ 07976

Re: LaMorgese Transaction

Dear Ms. Rubin,

Schenck, Price, Smith & King has been asked to offer an opinion on a real estate donation from Michael LaMorgese to the Great Swamp Watershed Association that was completed in 2018. The Land Trust Accreditation Commission has requested that said opinion analyze “the risk the \$155,000 payment to LaMorgese, without it being disclosed as a good or service or bargain sale payment, conferred an impermissible private benefit and has the potential to jeopardize the land trust’s tax-exempt status.”

In the opinion of Schenck, Price, Smith & King, LLP, there is no material risk to the Great Swamp Watershed Association’s tax-exempt status.

The documents reviewed in this analysis include the following:

1. Correspondence to Mr. LaMorgese dated December 8, 2016
2. Correspondence from Mr. LaMorgese dated July 10, 2017
3. Correspondence to Mr. LaMorgese dated August 2, 2017
4. Contribution Agreement between Mr. LaMorgese and Great Swamp Watershed Association dated September 29, 2017
5. Recorded Deed
6. Settlement Statement
7. Appraisal of the Real Property obtained by Mr. LaMorgese
8. Correspondence dated May 9, 2018 to Philip Meo including a copy of IRS Form 8283

From the outset, all communications with Mr. LaMorgese and his representatives had one central theme: generous donation of his real property to the Great Swamp Watershed Association. On July 10, 2017, Mr. LaMorgese wrote regarding his donation of the property to the Association. On August 2, 2017, the Association responded expressing gratitude for Mr. LaMorgese’s interest in a donation.

The final agreement between the parties noted the transaction was a contribution. The second Whereas Clause of the Contribution Agreement noted “Grantor desires to donate the Property to Grantee...”. Article 1.2 of the Contribution Agreement stated “Grantor is donating the Property to Grantee.” The Grantor is

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defined as Michael J. LaMorgese. The Grantee is defined as the Great Swamp Watershed Association. The Deed to the donated property, dated November 9, 2017, stated the consideration for the donation to be TEN AND 00/100THS DOLLARS (\$10.00).

As part of donation, Mr. LaMorgese requested reimbursement for certain expenses incurred during the time period preceding the donation. The expenses were defined as “soft costs, engineering and other soft costs incurred by Grantor, but not appraisal costs...”. See Article 1.3 of the Contribution Agreement. For example, the cost of Boswell Engineering plotting the house and septic systems. Said reimbursement of expenses was not payment for the real property as part of a bargain sale. It was also not considered a payment of a good or service in return for said property.

Section 501(c)(3) of the Internal Revenue Code governs public charities. Said public charities are required to operate for exempt purposes. Exempt status under Section 501(c)(3) prohibits self-dealing, private inurement, and private benefit. Private benefit, while not specifically defined under the Internal Revenue Code, prohibits substantial activities that do not further the organization’s exempt status. See Treasury Regulation 1.501(c)(3)-1(d)(1)(ii) (“It is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, or persons controlled, directly or indirectly, by such private interests.”).

In other words, the charitable organization cannot provide a benefit to a private individual that is more than incidental qualitatively and quantitatively. A quantitative private benefit is an amount that is not insubstantial. A qualitative private benefit is more than a “mere byproduct of the public benefit.” See 2001 EO CPE Text.

Quantitatively, the reimbursement of expenses to the donor, Mr. LaMorgese, is insubstantial in amount. The expense reimbursement of \$155,000 is less than five (5%) percent of the higher of the two appraised values of the donated property. The expense reimbursement is incidental to the donation of a substantial swathe of land which substantially furthers the Great Swamp Watershed Association’s mission.

Qualitatively, the reimbursement is an incidental benefit flowing from the Great Swamp Watershed Association’s operations. The public use and public benefit from the additional land far outweighs the negligible amount reimbursed to the donor of the land. The transaction remains very favorable to the Great Swamp Watershed Association.

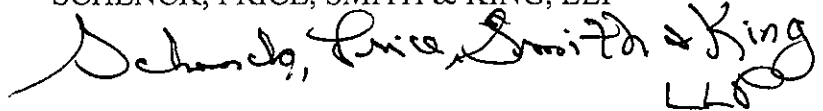
IRS Form 8283 was completed by the Donor, Mr. LaMorgese. The Great Swamp Watershed Association did not complete the form. It simply fulfilled its obligation to acknowledge the date of the donation and its status as a qualified organization under Section 170(c) of the Internal Revenue Code. The Donor included the appraised value used on Form 8283. The Great Swamp Watershed Association played no role in the appraisal process, the selection of the appraiser, the final appraised values, or the Donor’s use of the appraised values.

With that said, and while there is no material risk of tax-exempt status loss, several transactional errors must be noted:

1. The Settlement Statement incorrectly recorded the reimbursement as the "Sales Price of the Property."
2. Additional detail regarding the exact allowable soft costs and engineering services should have been outlined in the Contribution Agreement.
3. The Great Swamp Watershed Association's letter of May 9, 2018 stated "...we did pay Mr. LaMorgese \$155,000 for the property which he indicated was a reimbursement for expenses." A clearer description of the exchange of funds, such as "we reimbursed Mr. LaMorgese \$155,000 for his incurred expenses," would have been helpful.

Going forward, steps should be taken to use correct terminology, review all settlement statements for real estate donations, and ensure clarity and detail in contribution or similar agreements.

Very truly yours,
SCHENCK, PRICE, SMITH & KING, LLP

A handwritten signature in cursive script that reads "Schenck, Price, Smith & King" with "LLP" written below it.