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To: jeffrey E. <jeevacation@gmail.com>
Subject: SH Meadow Lane-unimproved lot merger
Date: Sat, 13 Sep 2014 15:13:06 +0000

Hi Jeffrey,

I was concerned that Leon and Debra's transfer of the unimproved lot to SH Meadow Lane in exchange for membership interests in the LLC would trigger the New York State Transfer Tax (paid by seller) and the Community Preservation Fund Tax (a/k/a the Peconic Tax paid by buyer). I posed this question to Leon's Long Island attorney who consulted with the title company. According to counsel for the title company, Leon and Debra's receipt of the membership interests would constitute consideration triggering both transfer taxes (he noted a possible exception if the beneficial owners of the trust that owns the LLC were the same as the individuals now contributing the unimproved lot, but that is not our case).

Given that taxes must be paid for the LLC contribution, shouldn't we reconsider having the LLC simply buy the lot from Leon? Of course, we would first have Debra transfer her ownership interest to Leon so that the sale would be disregarded for income tax purposes.

The sale approach would not only remove future appreciation on the residence from Leon's estate but will avoid the complexities (and potential gift tax issues) of having to true-up capital accounts when the APO2 Trust makes additional capital contributions (to build the new residence). It also removes the obligation going forward to collect pro-rata contributions from the Trust, Leon and Debra for ongoing maintenance and operating expense of the new residence (oil, gas, electric, water, etc.) .

What do you think?

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