

## **SALE OF CHURCH REAL PROPERTY FOR DEVELOPMENT In the Episcopal Diocese of Long Island**

### **Policies, Procedures and Practices**

There are specific procedures that must be followed in order for a parish to sell church real property for development. Selling church property for development also includes selling property via a long-term ground lease e.g. 99-year lease. These procedures are based on National and Diocesan Canons, The Religious Corporations Law of the State of New York, and diocesan administrative requirements.

The goal of this document is to clarify these canonical and legal procedures as well as the particular requirements of this Diocese and to make what can be a sometimes-complex process as user-friendly as possible.

### **INITIAL STEPS AND IMPORTANT CONSIDERATIONS**

#### **Property is Held in Trust**

All real and personal property held by or for the benefit of any parish, mission, or congregation is held in trust for the Episcopal Church and the Diocese in which such parish, mission, or congregation is located. (See Title I, Canon 7, Section 4 of the National Canons, Title II, Canon 7, Sec 4 of the National Canons, Title V, Canon 3, Sec IV of the Diocesan Canons, and Article 3, Sec 42-a of the Religious Corps Law of the State of NY). A local congregation cannot of its own accord encumber property without the consent of the Diocesan Bishop and Standing Committee.

#### **Consent of the Bishop and Standing Committee**

Parishes, missions or congregations seeking to encumber property (sell, mortgage or lease) must seek the written consent of The Bishop and the Standing Committee. (cf. Title I, Canon 7, Section 3 and Title II, Canon 7, Section 2 of the National Canons, and Title V, Canon 3, Section III of the Diocesan Canons). It is the ultimate responsibility of the Bishop and the Standing Committee to ensure that the deal being proposed is in the best interest of the church and will contribute to the short and long-term good of the church.

#### **Requirements of New York State Law**

In addition to the consents of the Bishop and the Standing Committee, application to and permission of the Supreme Court of the State of New York is required for any sale of real property. (See Article 2, Section 12, Paragraph 1 of the Religious Corporations Law of the State of New York.).

#### **Vetting and Reviewing Proposals**

A parish shall communicate to the Bishop, preferably in writing, their intention to sell property with the intent for it to be redeveloped by others. This initial step opens the lines of communication

between the Bishop's Office and the local congregation and makes it possible for the Bishop and the staff of the diocese to be of assistance to the process. At this juncture, the Bishop will generally ask for a brief overview of and rationale for the sale of property together with an abstract of the development deal being considered by a given parish.

The Bishop will early on involve the Real Estate Manager, the Chancellor and the Canon to the Ordinary and other designees as may be appropriate. Complicated real estate development proposals are fraught with legal, financial and business-related complications and risks, and these are best sorted out in initial meetings, conversations, and discourse, ensuring a solid vetting process.

In most cases it is best to discuss the initial proposal with the Real Estate Manager first who is available to assist with the initial feasibility review and by providing guidance on the redevelopment process to the vestry.

### **Vestry Resolution**

The rector/priest-in-charge (if there be one) of the parish must be present at any meeting of the Vestry authorizing the sale of its real property. (See Article 2, Section 12, paragraph 2 of the Religious Corporations Law, and Article 3, Section 42, Section 3 of the Religious Corporations Law.) The sale of real property must be approved by at least a 2/3 vote of the entire Vestry. (See Section 509 of the Not-For-Profit Corporation Law.) A formal vestry resolution and secretary's certificate should be crafted, conveying the terms of the deal. The resolution generally always contains a clause that grants permission for the rector or presiding officer to sign documents on behalf of the vestry. An example of a formal vestry resolution is appended further on in this document.

The Chancellor of the Diocese should prepare the vestry resolution, or at least vet the wording, prior to its submission for approval.

### **Legal Agreements**

The congregation seeking to sell property for redevelopment will require a legal agreement specifically tailored for the deal. The document needs to be created by a qualified attorney. In order to present the contract for consents, it must be fully executed, signed by all parties. A clause similar to the one that follows must ALWAYS appear at the conclusion of the document: **"CONSENTS: This Sale shall not be binding upon either the Seller or the Buyer until the consents in writing of the Bishop of the Diocese of Long Island and the Standing Committee of the Diocese of Long Island have been obtained"**. The Chancellor can provide specific wording for this clause.

### **The Standing Committee**

When the Bishop and the Chancellor have determined that a sale / development agreement is complete, the Bishop will bring the matter to the Standing Committee for their consent (The Standing Committee generally meets on the second Tuesday of each month). The rector or coordinating vestry officer shall be in contact with the Executive Administrative Assistant to the Bishop who will coordinate with the Secretary of the Standing Committee to ensure that the congregation's matter is placed on the agenda of the next Standing Committee meeting. Unless otherwise requested, parish representatives do not attend Standing Committee meetings.

## **PROCEDURE FOR THE SALE OF CHURCH PROPERTY FOR DEVELOPMENT**

### **Feasibility, review and bid process**

The following steps should be undertaken to fully understand the development project scope and opportunity prior to committing the parish to the sale.

1. Consult with the Diocesan Real Estate Manager who will meet with the vestry, inspect the property and advise on the potential issues and risks
2. Determine the ministry plan implications – Is the development to provide space for ministry expansion, or is it to provide revenue for ministry needs elsewhere?
3. Undertake a feasibility assessment that examines characteristics of the available property, the local development codes, the ministry needs, the development yield and the development economics. The Real Estate Manager can guide the parish with regard to this report
4. Review the outcome of the feasibility study with the Real Estate Manager
5. Write to the Bishop and Canon to the Ordinary setting out the desire of the parish to sell church property for development and setting out the steps taken to date
6. If support for the plan is forthcoming from the Bishop a suitably qualified real estate broker is to be engaged to manage the sale process. The process begins by the crafting of a detailed project brief which defines the expectations of the parish from the developer
7. The broker will manage the procurement of suitable bids from developers. Once the process has closed the bids are to be reviewed with the Real Estate Manager, interviews can then be held and a preferred bid selected
8. Once a preferred bid is selected the parish is to engage a suitably qualified real estate attorney to prepare the contract
9. The parish is to then engage an appraiser to value the property ‘as of right,’ and to value the property based on the proposal of the preferred developer. If necessary the appraisal is to provide the ground rent value for a long-term ground lease sale
10. Contracts are then negotiated. Once final the parish attorney is to review the contract with the Chancellor of the Diocese for final vetting and approval.

### **Diocesan Approval process**

The following items should be submitted to the Chancellor in duplicate no less than 8 weeks in advance of the Standing Committee meeting in which the agreement is scheduled to be reviewed.

1. Appraisal of property showing fair market value, and if necessary the rental value for a long-term ground lease;
2. Copy of contract of sale with provision conditioning contract upon approval of Bishop and Standing Committee and receipt of Court Order authorizing sale;
3. Resolution of Vestry approving contract of sale;
4. Letter from Rector (Priest in charge) explaining why the Church wants to sell the Property and what the Church intends to do with the proceeds. The letter should also contain evidence that the Church has paid its Diocesan Tithe over the last three years.

The Chancellor will review the materials. If there are no concerns or problems detected, the Chancellor will craft a memorandum for the Bishop and the Standing Committee outlining the

salient points of the agreement and data that supports what the congregation proposes. If the Chancellor identifies any problems with the agreement the parish representatives and/or the attorney representing the congregation will be apprised of the concerns. The congregation can generally expect the Chancellor to work with the local congregation as they seek to remediate any deficiencies. On some occasions, the Chancellor will rule that a given agreement is either not sustainable or in some manner undermines the best interest of the Church and will counsel the Bishop and the Standing Committee to reject the plan. The likelihood of this happening is rare if the congregation has worked closely with the Bishop's Office from the very beginning.

If consent of the Standing Committee is granted, the petition will be returned to the Chancellor who prepares the consent document for the bishop, who then signs. All executed consent documents will be forwarded to the church. It is then the responsibility of the church to have their legal counsel apply for Supreme Court approval. Once approvals are received, the congregation is asked to inform the diocesan offices.



**APPENDIX**

**A SAMPLE VESTRY RESOLUTION**

*nb. This resolution is only an example. Each vestry resolution must contain the details of the legal sale/mortgage/ or lease agreement. The particulars of a resolution may be drawn-up by the attorney representing the parish.*

**RESOLVED**, that St. Swithen's Episcopal Church (St. Swithens), Garden City New York, enter into an agreement with \_\_\_\_\_ for the sale of the premises located at \_\_\_\_\_ New York for the agreed upon sum of \_\_\_\_\_ in the form submitted to the Vestry of St. Swithens on \_\_\_\_\_, and, be it further

**RESOLVED**, that from the net proceeds of the sale of \_\_\_\_\_ shall be invested with the Trustees of the Estate Belonging to the Diocese of Long Island and held in trust for St. Swithens as permanent endowment, the interest of which may be used at the parish's discretion and, be it further

**RESOLVED**, that should the parish wish access the principal of said one million dollars they must have the consent of the bishop, and, be it further

**RESOLVED**, that The Rev. \_\_\_\_\_, Rector, be and he hereby is authorized to execute said agreement of sale on behalf of St. Swithens \_\_\_\_\_ New York, and all further documents as may be required to effectuate the sale, and, be it further

**RESOLVED**, that the Vestry consents and authorizes the submission by St. Swithens, of a petition to the Standing Committee of the Diocese of Long Island for it's consent to the sale transaction and be it further

**RESOLVED**, that the Vestry of St. Swithens consents to the submission to the Bishop of the Diocese of Long Island of a request for the Bishop's consent to the sale transaction, and be it further

**RESOLVED**, that the Vestry of St. Swithens, hereby authorizes of the filing of an application for approval of the sale transaction of the Supreme Court of the State of New York, \_\_\_\_\_ County.



**SAMPLE SECRETARY'S CERTIFICATE**

I, \_\_\_\_\_, Clerk of the Vestry of St. Swithen's Episcopal Church (St. Swithen's), Garden City, New York, do hereby certify that the Resolution attached hereto is a true copy of a Resolution duly adopted by the Vestry of St. Swithens, on the \_\_\_\_ day of \_\_\_\_\_, and that such resolution has not been amended, modified, or rescinded and remains in full force and effect and such resolution is the only resolution adopted by the Vestry of St. Swithen's relating to the matter set forth therein.

IN WITNESS WHEREOF, I have hereunto signed my name and signature.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(name of clerk)  
Title: Clerk of the Vestry

I, \_\_\_\_\_, Rector/Priest-in-Charge of St. Swithen's Episcopal Church (St. Swithen's), Garden City New York hereby certify that \_\_\_\_\_ is the duly appointed, qualified, and acting Clerk of the Vestry of St. Swithens and that the signature appearing above is her signature.

IN WITNESS WHEREOF, I have hereunto signed my name.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(rector/priest-in-charge's name)  
Title: Priest-in-Charge

