

VIRGINIA: IN THE CIRCUIT COURT OF NORTHAMPTON COUNTY

OLD SCHOOL CAPE CHARLES, LLC
and WAYNE PRESTON CREED,

Plaintiffs/Appellants,

v.

CASE NO.: CL12-_____

CAPE CHARLES TOWN COUNCIL,

Serve: Dora Sullivan, Mayor
Town of Cape Charles
635 Monroe Avenue
Cape Charles, VA 23110

and

Heather Arcos, Town Manager
Town of Cape Charles
1 Plum Street
Cape Charles, VA 23310

and

ECHELON RESOURCES, INC.

Serve: Edwin A. Gaskin
Registered Agent
16215 Wolf Creek Road
Montpelier, VA 23192

Defendants/Appellees.

APPEAL AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COME your plaintiffs/appellants, Old School Cape Charles, LLC ("OSCC") and Wayne Preston Creed ("Creed"), by counsel, and file this Appeal and Complaint for Declaratory and Injunctive Relief for consideration by this Honorable Court, and in support thereof, state as follows:

1. This matter concerns a vote of the Cape Charles Town Council on June 14, 2012, and is filed pursuant to Code of Virginia §§15.2-

2100, 2106, 2285 and other applicable provisions of law. The dispute involves the Cape Charles Town Council's decision to rezone and sell, for a nominal price, real property and a building generally known as Cape Charles School. The subject property is located in the Town of Cape Charles, in Northampton County. A copy of Resolution No. 20120628 reflecting the June 14, 2012 vote is attached hereto as Exhibit A.

2. OSCC is a Virginia limited liability company with a stated interest in protecting and preserving the property at issue in this dispute, and has submitted two unsuccessful proposals to rehabilitate and use the subject property as a public "community center". Creed is an individual who resides in Cape Charles in very close proximity to the subject property. The Cape Charles Town Council is the local governing body for the Town of Cape Charles, and conducted the subject public hearing, regular meeting and vote at issue in this appeal. Echelon Resources, Inc. is named as a party in interest because it entered into the contract and development deal that is in dispute.
3. The underlying contract appears to have been signed on June 28, 2012 by the Cape Charles Town Council Mayor, and a copy is attached hereto as Exhibit B.
4. The proposed sale of the Cape Charles School to a private developer contemplates converting the historic school building into

private residential units, with no public space. The proposal that led to the Cape Charles Town Council vote was unsolicited. After receiving the unsolicited proposal, the Cape Charles Town Council declined to solicit or request any other bids or proposals, and the Cape Charles Town Council has never provided any coherent explanation as to why competing proposals or bids were never solicited or requested.

5. Before the June 14, 2012 vote, a competing unsolicited proposal was provided to the Town Council, and a copy is attached hereto as Exhibit C. The terms were superior to the private development proposal that the Cape Charles Town Council ultimately selected, but the proposal was rejected, without any coherent or logical basis or explanation.
6. After the June 14, 2012 vote, and before the signing of any contract binding the Cape Charles Town Council to a deal with the private developer, another unsolicited proposal was sent to and received by the Cape Charles Town Council, and a copy is attached hereto as Exhibit D. Financially, and in numerous other respects, this unsolicited proposal was clearly superior to the unsolicited proposal that was the subject of the June 14, 2012 vote. However, in a letter from the Mayor dated June 29, 2012 (copy attached as Exhibit E), the proposal was rejected. The rejection letter did not explain any logical basis for the decision.

7. At the June 14, 2012 Cape Charles Town Council meeting, and at the "Public Hearing" immediately preceding the regular meeting on that date, a record was developed that shows numerous flaws with the vote to dispose of the Cape Charles School property for a nominal price for purposes of private residential development, including: (a) procedural errors; (b) non-compliance with the Cape Charles Comprehensive Plan; (c) efforts of a "lame duck" Town Council to bind a future Town Council; (d) noncompliance with notification requirements and public procurement restrictions and (e) decisions that were and are arbitrary, capricious and violative of constitutional rights.
8. The actions and inactions of the Cape Charles Town Council as described herein were and are arbitrary, capricious, contrary to law and fact, violative of equal protection and due process rights, and do not meet the "fairly debatable" standard.

WHEREFORE, for the foregoing reasons, OSCC and Creed respectfully request that this Honorable Court grant the following relief:

- (A) Entry of an order finding and declaring that the actions and inactions of the Cape Charles Town Council described herein are unlawful, invalid, void and violative of OSCC's and Creed's legal and constitutional rights, and entry of an order enjoining the proposed sale and any damage to the subject historic property;

- (B) Entry of an order finding and declaring that based on the record from June 14, 2012 and related documents, the ordinance referenced in Exhibit A does not meet the "fairly debatable" standard or any other standard sufficient to sustain the passage of the ordinance, and that any further actions taken in furtherance of the ordinance/contract are invalid, void and legally prohibited;
- (C) Entry of an order scheduling an evidentiary hearing concerning the matters at issue in this proceeding; and
- (D) Entry of an order granting such other and further relief as deemed appropriate under the circumstances of this appeal.

OLD SCHOOL CAPE CHARLES, LLC
and WAYNE PRESTON CREED

By: 

Of Counsel

Kevin E. Martingayle, Esquire
BISCHOFF MARTINGAYLE, P.C.
3704 Pacific Avenue, Suite 200
Virginia Beach, Virginia 23451
(757) 233-9991 (main)
(757) 416-6009 (direct dial)
(757) 428-6982 (facsimile)
E-mail: martingayle@bischoffmartingayle.com