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A REPUTATION FOR RESULTS

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September 20, 2012

VIA FEDERAL EXPRESS

Traci L. Johnson, Clerk
Northampton Circuit Court
5229 The Hornes
Eastville, VA 23347

Re: Old School Cape Charles, LLC, Wayne Preston Creed,
Laura Hickman McSpedden and John L. ("Jack") Hickman
v. Cape Charles Town Council, Town of Cape Charles,
and Echelon Resources, Inc.

Dear Ms. Johnson:

Enclosed please find a Civil Cover Sheet, a Circuit Court Civil Filing Fee Calculation printout, and an original and six copies of an Appeal and Complaint for Declaratory and Injunctive Relief concerning the above-referenced matter which I ask that you file and then forward to the sheriff for service on Ms. Sullivan and Ms. Acros. Please return the service copies to be served on Echelon Resources to my office in the enclosed self-addressed, stamped envelope so that I may forward them to the Sheriff of Hanover County for service.

I have enclosed a check in the amount of \$106 for your filing fee and the Northampton Sheriff's Office fees.

Should you have any questions or concerns, please do not hesitate to give me a call. Thanking you for your assistance, and with kind regards, I am,

Very truly yours,


Kevin E. Martingayle

KM/kls

Enclosures

cc: Dora Sullivan, Mayor
Heather Arcos, Town Manager
Michael L. Sterling, Esquire
Collin J. Hite, Esquire
Clients

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No.
(CLERK'S OFFICE USE ONLY)*

Northampton County

Circuit Court

Old School Cape Charles, LLC, Wayne Preston Creed,

v./In re:

Cape Charles Town Council,

PLAINTIFF(S)

DEFENDANT(S)

Laura Hickman McSpedden and John L. "Jack" Hickman

Town of Cape Charles and Echelon Resources, Inc.

I, the undersigned [] plaintiff [] defendant [x] attorney for [x] plaintiff [] defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

- [] Accounting
[] Administrative Appeal
[] Adoption
[] Adoption - Foreign
[] Adult Protection
[] Aid and Guidance
[] Annexation
[] Annulment
[] Annulment - Counterclaim/ Responsive Pleading
[] Appeal Decision of ABC Board
[] Appeal Decision of Board of Zoning
[] Appeal Decision of Comp Board
[] Appeal Decision of Employment Commission
[x] Appeal Decision of Local Government
[] Appeal Decision of Marine Resources Commission
[] Appeal Decision of Voter Registration
[] Appointment of Church Trustee, Substitute Fiduciaries
[] Approval of Right to be Eligible to Vote
[] Asbestos Litigation
[] Attachment
[] Bond Forfeiture Appeal
[] Child Abuse and Neglect - Unfounded Complaint
[] Civil Contempt
[] Claim Impleading Third Party Defendant - Monetary Damages
[] Claim Impleading Third Party Defendant - No Monetary Damages
[] Complaint - (Miscellaneous)
[] Compromise Settlement
[] Condemnation
[] Confessed Judgment
[] Conservator of Peace
[] Construe Will
[] Contract Action
[] Contract Specific Performance
[] Correct/Erroneous State/Local Taxes
[] Counterclaim - Monetary Damages
[] Counterclaim - No Monetary Damages
[] Cross Claim
[] Custody/Visitation/Support/ Equitable Distribution
[] Declaratory Judgment
[] Declare Death
[] Delinquent Taxes
[] Detinue
[] Divorce
[] Divorce - Counterclaim/ Responsive Pleading
[] Ejectment
[] Encumber/Sell Real Estate
[] Enforce Vendor's Lien
[] Escheat
[] Establish Boundaries
[] Expunge
[] Forfeiture of U.S. Currency
[] Freedom of Information
[] Garnishment
[] General Tort Liability (other than motor vehicle)
[] Grievance Procedures
[] Guardian/Conservator Appointment
[] Impress/Declare a Trust
[x] Injunction
[] Interdiction
[] Interrogatory
[] Intentional Tort
[] Judgment Lien-Bill to Enforce
[] Judicial Review
[] Landlord/Tenant
[] Law Enforcement/Public Official Petition
[] Mechanics Lien
[] Medical Malpractice
[] Motor Vehicle Tort
[] Name Change
[] Order to Sever
[] Partition
[] Petition
[] Product Liability
[] Quiet Title
[] Referendum Elections
[] Reformation of Trust
[] Reinstatement of Driving Privileges
[] Reinstatement (General)
[] Removal
[] Separate Maintenance
[] Separate Maintenance - Counterclaim/Responsive Pleading
[] Standby Guardian/ Conservator
[] Termination of Mineral Rights
[] Unlawful Detainer
[] Vehicle Confiscation
[] Will Contested
[] Writ of Certiorari
[] Writ of Habeas Corpus
[] Writ of Mandamus
[] Writ of Prohibition
[] Writ of Quo Warranto
[] Wrongful Death
[] Petition for Authorization to Celebrate Rites of Marriage
[] Other

[] Damages in the amount of \$ are-claimed.

September 20, 2012

DATE

[] PLAINTIFF

[] DEFENDANT

[x] ATTORNEY FOR [x] PLAINTIFF

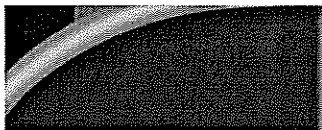
[] DEFENDANT

Kevin E. Martingayle, Esquire

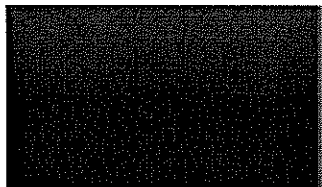
PRINT NAME

3704 Pacific Avenue, Suite 200, Virginia Beach, VA 23451, (757) 416-6009

ADDRESS /TELEPHONE NUMBER OF SIGNATOR



- [Home](#)
- [Virginia's Court System](#)
- [Online Services](#)
- [Case Status and Information](#)
- [Court Administration](#)
- [Directories](#)
- [Forms](#)
- [Judicial Branch Agencies](#)
- [Programs](#)



Home>Virginia's Court System>Circuit Courts> Circuit Court Civil Filing Fee Calculation

Circuit Court Civil Filing Fee Calculation

This is the civil filing fees calculation system for circuit courts in Virginia.

IMPORTANT! Limited information about the calculation of fees for civil processes is located at "[How to Calculate Civil Filing Fees for Circuit Courts](#)." If you have specific questions about the calculations or if the case type is not listed, contact the civil division of your local circuit court.

Note: This site is intended for general public use only. Commonwealth, Local, or Federal Agency filers should contact your local circuit court to determine applicable filing fees for your agency.

Forms for civil cases:

*Please note that most civil cases filed in the Circuit Court are commenced by a complaint or petition, not a standard form. However, there are some Circuit Court forms that may be utilized. For a list of Circuit Court forms, click here: [Circuit Court Forms: Civil](#)

The only District Court form that may be used in Circuit Court for civil cases is Form DC-472. If this form is needed, click here [Form DC-472- Petition for Reinstatement of Driving Privileges -Failure to Satisfy Judgment](#)

Call the circuit court to see if [FORM CC-1416 Cover Sheet For Filing Civil Actions](#) required. If so, click here [FORM CC-1416](#)

If a form is not available for your filing type, you may need to seek the advice of an attorney.

[Help](#)

Circuit Courts: Northampton Circuit

Step 1: What type of civil case do you want to file?
Declaratory Judgment - No Monetary Damages

Note: Contact your local [circuit court](#) for any filing fees associated with a civil process that is not listed above.

Step 2: If you are filing a civil action for the award of monetary damages, enter the amount you are seeking to recover (i.e., lawsuit amount). 0

Step 3: Do you want to have the Virginia sheriff or high constable serve (deliver) a copy of the civil case to the Defendant/Respondent at the address you provide?
 Yes No (proceed to Step 5)
 If Garnishment or Interrogatory, is a new levy of FiFa needed?
 Yes No

Step 4: How many defendants/respondents are to be served by the Virginia sheriff or high constable?
 In State 2

Note: Click for more information regarding Interrogatories and Garnishments [before completing this step.](#)

Step 5: Press the **Calculate** button to display the total filing fees required based on the information provided above.

Step 6: Press the **Show Calculation Details** button to display fee calculation detail with option to print.

Northampton Circuit Total Fees: \$ 106.00 [Calculate]

[Show Calculation Details] [Change Court/Reset]

View or Print Individual Circuit Court Civil Filing Fee Schedule:
Select Court

Office of the Executive Secretary
Supreme Court of Virginia
100 North Ninth Street
Richmond, Virginia 23219
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WAI Level A Compliant

VIRGINIA: IN THE CIRCUIT COURT OF NORTHAMPTON COUNTY

OLD SCHOOL CAPE CHARLES, LLC,
WAYNE PRESTON CREED,
LAURA HICKMAN MCSPEDDEN
and JOHN L. ("JACK") HICKMAN,

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

TOWN OF CAPE CHARLES,

Serve: Dora Sullivan, Mayor
and Heather Arcos, Town Manager

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"), Wayne Preston Creed ("Creed"), Laura Hickman McSpedden
("McSpedden") and John L. Hickman ("Hickman"), by counsel, and file this

Appeal and Complaint for Declaratory and Injunctive Relief ("Appeal") 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 August 23, 2012, and is filed pursuant to the provisions of Code of Virginia §§15.2-2204, 2285, 2286 and other applicable provisions of law. The dispute stems from a "Public Hearing" and "Special Meeting" of the Cape Charles Town Council held on August 23, 2012. The subject matter of the Public Hearing and Special Meeting related to proposed rezoning from O-S (Open Space) to R-1 (Residential) of parcels of land owned by the Town of Cape Charles and located in the vicinity of Madison Avenue and Plum Street at and adjacent to the "Old Cape Charles High School building", as described in the attached agenda document labeled Exhibit A. After the Town Council Special Meeting, the Council passed Ordinance #20120823, a copy of which is attached hereto as Exhibit B ("ORDINANCE TO AMEND THE ZONING MAP AS TO THE PROPERTY GENERALLY LOCATED AT THE CORNER OF MADISON AVENUE AND PLUM STREET"). Additionally, the Town Council passed Ordinance #20120823A, a copy of which is attached hereto as Exhibit C ("ORDINANCE TO GRANT A CONDITIONAL USE PERMIT TO ECHELON RESOURCES, INC. FOR THE PROPERTY GENERALLY LOCATED AT THE CORNER OF MADISON AVENUE AND PLUM STREET").

2. OSCC is a Virginia limited liability company with a stated interest in protecting and preserving the property at issue in this dispute, and previously submitted two proposals to rehabilitate and use the subject property as a public "community center". Neither proposal received any meaningful consideration by the Town or Town Council.
3. Creed is an individual who resides in Cape Charles in very close proximity to the subject property, and is on record as objecting to the ordinances passed on August 23, 2012, and attached hereto.
4. McSpedden and Hickman are owners of property located on the corners of Plum Street and Madison Avenue, and Peach Street and Madison Avenue, both of which are adjacent to the property involved in this dispute, separated only by Madison Avenue. Neither McSpedden nor Hickman received proper notification relating to the August 23, 2012 Public Hearing and Special Meeting, nor did they participate in the Public Hearing or Special Meeting. McSpedden and Hickman object to the ordinances approved on August 23, 2012 and have been denied fair notice and rights guaranteed by law and the Constitution of Virginia.
5. The Cape Charles Town Council is the local governing body for the Town of Cape Charles, and conducted the subject Public Hearing, Special Meeting and votes at issue in this Appeal.

6. Echelon Resources, Inc. is named as a party in interest because it entered into a contract for the acquisition of the property in dispute, is the developer in the development deal that is a part of this dispute, and is the beneficiary of the vote reflected in the ordinances attached hereto.
7. The Public Hearing, Special Meeting and ensuing Town Council votes leading to the ordinances attached hereto were and are legally and constitutionally defective for any or all of the following reasons:
 - A. Proper legal notification was not provided to all of the adjacent property owners with a material interest in the subject hearings and votes, including, but necessarily limited to, McSpedden and Hickman.
 - B. The legally required application documents submitted in order to effectuate the ordinance votes were defective and incomplete. At least some of the defects were raised during the Public Hearing and/or Special Meeting, and were ignored by the Town Council.
 - C. The ordinances at issue violate applicable zoning requirements, and violate the provisions set forth in the Cape Charles Comprehensive Plan.
 - D. The votes demonstrated in the attached ordinances constitute unlawful "contract zoning".

E. The subject ordinance votes were and are arbitrary and capricious, as demonstrated by, *inter alia*, (1) the refusal to consider and vote on at least one superior offer relating to the subject property, (2) the rejection of an unanimous vote of the Historic Review Board disapproving of the zoning proposals and the project, (3) the procedure of placing the Public Hearing and Special Meeting back-to-back without any time for meaningful consideration or investigation of information related by the public in the Public Hearing, and (4) the numerous false justifications articulated by the Council and staff in support of the zoning changes and project. Regarding the last point, one of the explanations for refusing to give serious consideration to any public use for the property was a claim that there is a lack of need for more municipal space and a lack of money to fund any municipal space projects, yet it is well known that the Town of Cape Charles recently agreed to purchase and renovate the comparatively expensive former Bank of America building located less than one mile away from the subject property, and an expense/budget associated with the Bank of America property deal exceeding \$300,000. Similarly, one repeatedly articulated basis for entering into the subject deal with Echelon and making the zoning changes was that is

necessitated by the dilapidated condition of the Cape Charles High School building, which has fallen into disrepair because the Town of Cape Charles itself violated its legal duties to maintain and preserve the structure (i.e., the Town created the exact problem of which it complains).

F. The votes at issue in this Appeal are the product of a contract resulting from agreements to discriminate based on socio-economic considerations, which constitutes intentional economic discrimination and has a disproportionate impact on racial and ethnic minorities, in violation of law.

G. The procedures and votes at issue violate equal protection and due process rights, and the votes do not meet the "fairly debatable" standard.

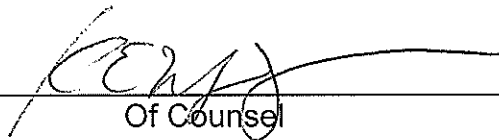
8. Accordingly, the votes reflected in the ordinances attached hereto should be overturned and the ordinances should be declared unlawful, invalid and void.

WHEREFORE, for the foregoing reasons, plaintiffs/appellants respectfully request that this Honorable Court grant the following relief:

(A) Entry of an order finding and declaring that the ordinances attached hereto are unlawful, invalid, void and violative of legal and constitutional rights, and declaring that any further actions taken in furtherance of the subject ordinances are unlawful, invalid, void and legal prohibited;

- (B) Entry of an order scheduling an evidentiary hearing concerning the matters at issue in this proceeding; and
- (C) Entry of an order granting such other and further relief as deemed appropriate under the circumstances of this Appeal.

OLD SCHOOL CAPE CHARLES, LLC,
WAYNE PRESTON CREED,
LAURA HICKMAN MCSPELLEN
and JOHN L. ("JACK") HICKMAN

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

Town Council

Public Hearing

&

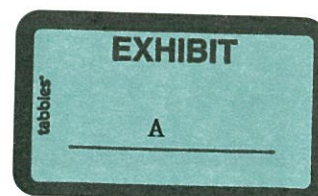
Special Meeting Agenda

August 23, 2012

Cape Charles Fire Hall

6:00 P.M.

1. Call Public Hearing and Special Meeting to Order; Roll Call
 - a. Read advertisement
 - b. Hear Public Comment on the following:
 - i. The proposed rezoning from O-S (Open Space) to R-1 (Residential) of the area bounded on the north by Madison Avenue, on the east by Plum Street, on the south by parcel 83A3-1-23 and on the west by parcel 83A3-1-287 (lot 287) – the area contains parcels 83A3-1-281, 83A3-1-282, 83A3-1-283, 83A3-1-284, 83A3-1-285, 83A3-1-286 (lots 281 through 286), a portion of the area that was originally North Park Row, and the Old Cape Charles High School Building (collectively, the “Old School Area”).
 - ii. The Conditional Use Permit submitted by Echelon Resources Inc. to rehabilitate and use the Old School Area for an Adaptive Reuse. The proposed Adaptive Reuse includes the historic rehabilitation of the Old School Area for use as 17 residential apartments in accordance with applicable guidelines.
2. Close Public Hearing portion and move to Special Meeting
3. Order of Business
 - a. Whether to enact an ordinance rezoning the Old School Area from O-S to R-1 as described above and a vote thereon by the Town Council; and
 - b. If the ordinance rezoning the Old School Area is enacted, whether to grant the Conditional Use Permit for Adaptive Reuse as described above and a vote thereon by the Town Council.
4. Adjourn



ORDINANCE 20120823
ORDINANCE TO AMEND THE ZONING MAP AS TO THE PROPERTY
GENERALLY LOCATED AT THE CORNER OF MADISON AVENUE
AND PLUM STREET

WHEREAS, the Town Council of Cape Charles, by Ordinance No. 20120614, approved the sale of certain real property owned by the Town, described below, to Echelon Resources, Inc. (“Echelon”) substantially in accordance with the form of the contract attached to such Ordinance; and

WHEREAS, the subject real property is the southwest corner of Madison Avenue and Plum Street, the area being bounded on the north by Madison Avenue, the east by Plum Street, on the south by parcel 83A3-1-23 and on the west by lot 287—the area contains lots 281 through 286, a portion of the area that was originally North Park Row, and the Old Cape Charles High School building (collectively, the “Old School Area”); and

WHEREAS, Echelon intends by adaptive reuse to rehabilitate the Old School Area and convert it to seventeen residential apartment units and surrounding grounds (the “Old School Rehabilitation”); and

WHEREAS, the current zoning of the Old School Area for Open Space does not allow for the Old School Rehabilitation; and

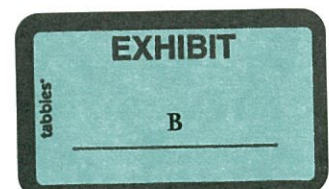
WHEREAS, zoning district R-1 allows, by conditional use permit, for the Old School Rehabilitation as an Adaptive Reuse and allows for other compatible uses; and

WHEREAS, the Town Council, by Resolution 20120628, referred amendment of the zoning map to rezone the Old School Area from Open Space to R-1 to the Planning Commission for an appropriate recommendation following a public hearing; and

WHEREAS, the Planning Commission has presented the Town Council with a report and recommendation in favor of an amendment of the zoning map to rezone the Old School Area from Open Space to R-1; and

WHEREAS, the Town Council held a public hearing after proper notice on the proposed rezoning on August 23, 2012; and

WHEREAS, the Town Council finds that the amendment of the zoning map is compatible with surrounding uses and is consistent with the Town of Cape Charles Zoning Ordinance and the land use elements of the Town’s Comprehensive Plan; and



WHEREAS, public necessity, convenience, general welfare, and good zoning practice require rezoning of the Old School Area from Open Space to R-1.

THEREFORE BE IT ORDAINED by the Town Council of Cape Charles this 23rd day of August, 2012 that:

1. The zoning map of the Town of Cape Charles be amended to change the Old School Area from Open Space to R-1.
2. The Town Manager and staff are authorized to take all actions necessary or proper to implement the amendment of the zoning map in accordance with this Ordinance.

Adopted by the Town Council of Cape Charles on August 23, 2012

By: _____
Mayor

ATTEST:

Town Clerk

ORDINANCE 20120823A
ORDINANCE TO GRANT A CONDITIONAL USE PERMIT TO ECHELON
RESOURCES, INC. FOR THE PROPERTY GENERALLY LOCATED AT THE
CORNER OF MADISON AVENUE AND PLUM STREET

WHEREAS, the Town Council of Cape Charles, by Ordinance No. 20120614, approved the sale of certain real property owned by the Town, described below, to Echelon Resources, Inc. (“Echelon”) substantially in accordance with the form of the contract attached to such Ordinance; and

WHEREAS, the real property to be sold pursuant to the contract is the southwest corner of Madison Avenue and Plum Street, the area being bounded on the north by Madison Avenue, the east by Plum Street, on the south by parcel 83A3-1-23 and on the west by lot by 287—the area contains lots 281 through 286, a portion of the area that was originally North Park Row, and the Old Cape Charles High School building (collectively, the “Old School Area”); and

WHEREAS, Echelon intends by adaptive reuse to rehabilitate the Old School Area and convert it to seventeen residential apartment units and surrounding grounds (the “Old School Rehabilitation”); and

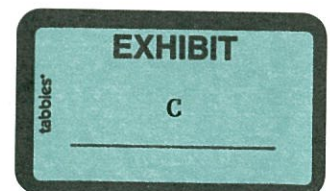
WHEREAS, the Town Council, by Ordinance 20120823 amended the zoning map of the Town of Cape Charles to change the Old School Area from Open Space to R-1; and

WHEREAS, Echelon submitted an application for a Conditional Use Permit for Adaptive Reuse of the Old School Area to perform the Old School Rehabilitation; and

WHEREAS, the Planning Commission has presented the Town Council with a report and recommendation stating that, if the Old School Area were rezoned from Open Space to R-1, the Planning Commission would recommend granting a Conditional Use Permit for Adaptive Reuse of the Old School Area pursuant to the application submitted by Echelon; and

WHEREAS, the Town Council held a public hearing after proper notice on the proposed grant of the Conditional Use Permit on August 23, 2012; and

WHEREAS, the Town Council finds that the proposed conditional use will not adversely affect the health, safety or welfare of the persons residing or working in the neighborhood of the proposed use or adversely affect other land uses within the particular surrounding neighborhood; and



WHEREAS, the Town Council finds that the proposed conditional use will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and

WHEREAS, the Town Council finds that the proposed conditional use is consistent with the intent of the land use elements of the Town's Comprehensive Plan and will not be in conflict with the purpose of the Comprehensive Plan; and

WHEREAS, the Town Council finds that the proposed conditional use is compatible with surrounding uses and is consistent with the Town of Cape Charles Zoning Ordinance.

THEREFORE BE IT ORDAINED by the Town Council of Cape Charles this 23rd day of August, 2012 that:

1. A Conditional Use Permit be granted to Echelon for an Adaptive Reuse of the Old School Area for up to 17 residential apartment units pursuant to Echelon's application, conditioned on the following:
 - a) Echelon closing on its acquisition of the Old School Area in accordance with the purchase contract between Echelon and the Town; and
 - b) Echelon's continued compliance with the Town's Zoning Ordinance and all applicable statutes, ordinances, rules, and regulations.

Adopted by the Town Council of Cape Charles on August 23, 2012.

By: _____
Mayor

ATTEST:

Town Clerk