

December 28, 2012

Senator Ralph Northam
P.O. Box 310
Painter, VA 23420

Dear Senator Northam:

We the undersigned wish to express our concern over business dealings between the Town of Cape Charles and Echelon Resources, Inc. The dealings discriminate against low-income people and disproportionately affect African-Americans in two ways.

1) The contract signed by Echelon Resources' President Edwin Gaskin and Cape Charles Mayor Dora Sullivan expressly states that the building being conveyed to Echelon will not be used for low-income housing.

2) It takes away the town's basketball court, the prime recreational outlet for African-American youth in the Town.

At the September 13th town council meeting, Councilman Tom Godwin expressed surprise to learn that the contract contained this language. "I am very concerned about the exclusion of Section 8 housing vouchers. I want to make sure that we are not discriminating against anyone," he said.

The town has sold their old school to developer Echelon Resources/Charon Ventures, who are applying for federal and state tax credits for up to 45 percent of their total costs to convert the old school into an apartment building.

The sales contract states on page 8: *"To the extent permitted by law, Purchaser shall not operate the Project as a low-income housing facility under any state or federal program."* This language is offensive to all of us who have fought for "fair housing" in Virginia and in Northampton County.

We are supplying e-mails obtained through the Freedom of Information Act that show that the town council wanted to bar low-income individuals from being allowed to utilize the school after it is "rehabilitated" into an apartment house. According to the e-mails between Cape Charles Assistant Town Manager Bob Panek and Echelon Resources partner Edwin Gaskin, copied to Town Manager Heather Arcos and Echelon partner J. David McCormack the town required that the building not be used for low-income housing. (E-mails provided)

We question why, and how, a developer could receive government assistance to build apartments while explicitly excluding people relying on government assistance from living in those apartments.

The Advisory Council for Historic Preservation (which administers parts of the National Historic Preservation Act) in 1995 issued an Affordable Housing and Historic Preservation policy

statement for application to historic preservation standards. It recommended that "Federal and State agencies, local governments, housing providers, and the preservation community in general actively seek ways to reconcile national historic preservation goals with the special economic and social needs associated with affordable housing, given that this is one of the nation's most pressing challenges."

Flying in the face of this policy, Cape Charles Town Council negotiated a contract that specifically excludes low-income individuals, thereby making affordable housing less available.

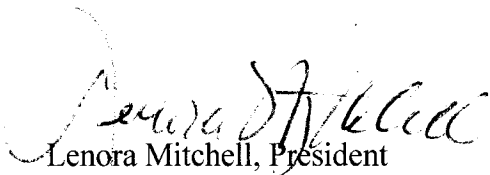
The school's indoor basketball court will converted to "luxury lofts," and the adjacent outdoor basketball court will be converted into a private parking lot for the apartments. To compound this insult, this property was in the town park until it was rezoned for Echelon Resources. And Town Manager Heather Arcos signed Echelon Resources' applications for tax credits to the Department of Historic Resources and the National Park Service.

Just yesterday the basketball hoops were removed from the recreational facility most utilized by African-American youth in Cape Charles. Astoundingly this was done by the town at taxpayer expense even though the town no longer owns the property. (There are two lawsuits outstanding about the sale and rezoning of the property.)

It is not lost on us that the adjacent tennis court will remain with the park. Not only will low-income residents be blocked from living in the apartment complex, but their children will no longer have access to what was the town's only basketball court.

We are asking you as our elected official to show your support for fair housing by urging the Department of Historic Resources not to award publically funded historic tax credits that further discriminatory practices.

Sincerely,



Lenora Mitchell, President
Concerned Citizens
of Cape Charles



Alice Coles, President
Bayview Citizens
for Social Justice



Jane Cabarrus, President
Northampton County
NAACP

Attachments:

- Excerpt of contract page 8
- Bob Panek – Edwin Gaskin e-mails
- Affordable Housing and Historic Preservation handout
- Page one of Part 2 tax credit application

cc:

- Senator Tim Kaine
- Supervisor Willie Randall

State NAACP
Kathleen Kilpatrick Department of Historic Resources
Audrey Tepper National Park Service

Excerpts from contract

SALE AND PURCHASE CONTRACT

THIS SALE AND PURCHASE CONTRACT ("Contract") is made as of the Effective Date (as defined in Section 18(I) below), by and between **THE MUNICIPAL CORPORATION OF CAPE CHARLES, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("Seller"), and **ECHELON RESOURCES, INC.**, a Virginia corporation ("Purchaser").

WITNESSETH: For and in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. Property. Subject to the terms and conditions hereof, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following described property:

A. That certain tract or parcel of land located at the intersection of Plum Street and Madison Avenue in the Town of Cape Charles, Virginia being a portion of Tax Parcel 083A3-(01)-00-281 and commonly known as the old Cape Charles School, as more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein, together with the school building and other improvements located thereon owned by Seller (the "Improvements") (said tract of land and Improvements being hereinafter collectively referred to as the "Real Property"); and

B. The equipment, furniture, furnishings, and other personal property and fixtures located on or attached to the Real Property and which are owned by Seller, as more particularly described on Exhibit "B" attached hereto and by this reference incorporated herein (the "Personal Property").

The Real Property and Personal Property are hereinafter collectively referred to as the "Property".

2. Purchase Price. The purchase price to be paid by Purchaser to Seller for the Property is Ten and 00/100 Dollars (\$10.00) (the "Purchase Price"). An amount equal to the Purchase Price (the "Deposit") shall be deposited by Purchaser with the Seller within three (3) days after the Effective Date.

3. Review Period; Inspection.

A. Subject to the requirements of this Section, during the period commencing on the Effective Date and terminating one hundred eighty (180) days thereafter (the "Review Period"), Purchaser, its agents, employees, representatives and contractors, at Purchaser's sole cost and expense, may perform such tests, inspections and examinations of the Real Property and Personal Property as Purchaser deems advisable, including without limitation investigations with regard to title, physical condition, environmental matters, matters of survey, flood plain, utilities availability, zoning and building code and other applicable governmental requirements, and development requirements. Notwithstanding the foregoing, prior to entry on the Property by Purchaser or its agents, employees, or contractors, Purchaser shall provide evidence of liability insurance naming

F. To the extent permitted by law, Purchaser shall not operate the Project as a low-income housing facility under any state or federal program.

16. Survival of Covenants. All covenants, representations, warranties, and obligations made by or imposed upon Seller or Purchaser shall survive Closing.

17. Notices. All notices, requests or other communications permitted or required under this Contract shall be in writing and shall be communicated by personal delivery, nationally recognized overnight delivery service (such as Federal Express), or certified mail, return receipt requested, to the parties hereto at the addresses shown below, or at such other address as any of them may designate by notice to each of the others. Notice given by electronic mail shall be effective as of receipt by the addressee, but only if notice is simultaneously sent by another method permitted by this Section.

Seller: MUNICIPAL CORPORATION OF
CAPE CHARLES
2 Plum Street
Cape Charles, Virginia 23310
Attn: Town Manager
Phone: 757-331-3259 x12
Email: heather.arcos@capecharles.org

Copy to: VANDEVENTER BLACK LLP
101 W. Main Street
500 World Trade Center
Norfolk, Virginia 23510
Attn: Michael L. Sterling, Esq.
Phone: 757-446-8600
Email: msterling@vanblk.com

Purchaser: ECHELON RESOURCES, INC.
16215 Wolf Creek Road
Montpelier, VA 23192
Attn: Edwin Gaskin
Phone: 804-767-5990
Email: gaskin@echelonresourcesinc.com


Copy to: DAVID L. ARNOLD, PENDER &
COWARD, P.C.
160 W. Washington Street
Suffolk, VA 23434
Attn: David L. Arnold
Phone: 757-490-6260
Email: darnold@pendercoward.com

IN WITNESS WHEREOF, Purchaser and Seller have caused this Contract to be executed on their behalf and any party executing this Contract warrants that such party has the authority to do so.

SELLER:

MUNICIPAL CORPORATION OF CAPE CHARLES,
a political subdivision of the Commonwealth of Virginia


Date: 6/28/2012

By:  (SEAL)
Name: Dora Sullivan
Title: Mayor

PURCHASER:

ECHELON RESOURCES, INC.,
a Virginia corporation

Date: 6/20/2012

By:  (SEAL)
Name: Edwin Gusten
Title: President

Bob-

Thanks for getting back with us.

No problem on the Section 8 prohibition, and you should phrase it like that "HUD Section 8" financing or something like that specifically.

The \$165K limit issue with the tap fees waiver is an issue. One, the gap has widened by at least \$15K now, so that needs to be factored in. Two, I don't see the 2 issues being at odds (the Town agreed to the tap fee waiver, the insurance piece is closing the gap). Three, how would you even begin to write that up? The required detail would add pages on to our simple contract, not even accounting for now there are other parties to be involved (and an asynchronicity with then insurance funds materialize versus when tap fees are demanded). I respect their good intentions, but their innocent desires are impossible to memorialize into legal language, without immobilizing the project with complexity.

Respectfully, I think we need to keep this simple, and all focus on just making the project viable. That second requested edit demands a level of financial specificity that we simply do not have at this stage.

Those are my thoughts, but I am open to ideas! Thanks.

--Edwin Gaskin

On Feb 27, 2012 10:21 AM, "Bob Panek" <bob.panek@capecharles.org> wrote:

Edwin,

Heather is out of town today so I'll give you an update. I was out of town for the Council's executive session, but Heather told me that it went well. Council still would prefer scenario B (no public space) but realizes that it is dependent on adequate insurance proceeds. We hope to have an answer from our insurance carrier by the end of this week.

Heather indicated that Council does want a few refinements to the purchase contract language. The two significant things seem to be:

1. Prohibition for using the building for Section 8 subsidized housing.
2. Less than 100% waiver of water/sewer connection charges if the insurance proceeds with tax credit leverage exceed the \$165K gap.

Do you have any issue with the above?

Heather will return tomorrow and I'll get a full read on the language issues so I can revise the draft.

6/25/2012

for the sole use of the individual and entity to whom it was addressed. This e-mail may contain information which is privileged and confidential and which may be protected from disclosure. If you are not the intended recipient you are hereby notified that you have received this communication in error and any review, disclosure, dissemination, distribution or copying of it, or its contents is strictly prohibited. If you think you have received this message in error please e-mail the sender and destroy all copies of this communication and any attachments.

On Thu, Mar 1, 2012 at 5:20 PM, Bob Panek <bob.panek@capecharles.org> wrote:
Edwin,

Please take a look at the attached revision to the draft contract. Council was uncomfortable with the fairly lengthy periods of due diligence and construction duration. Some had suggested requiring reporting milestones, but I think we still ought to strive for simplicity. So, I've shortened the periods instead of imposing reporting requirements. How do these sit with you?

I've also included language prohibiting HUD low income housing as previously discussed.

Still no word on insurance settlement, so that part still needs to evolve to see if scenario B is achievable.

Bob

6/25/2012

Bob Panek

From: Edwin Gaskin [gaskin@echelonresourcesinc.com]
Sent: Thursday, March 01, 2012 6:20 PM
To: Bob Panek
Cc: J. David McCormack, Jr.; Heather Arcos
Subject: Re: Old Cape Charles School

Bob-

Just a few thoughts.

- I don't really have a problem with the shortened construction period. The combined 15 months should be more than enough.
- The word expeditiously I think it misspelled.
- Good work on the HUD language, all OK there.

I understand why the Town Council would want a shorter due diligence period, but please allow me to explain why that doesn't really serve their interests. We can certainly close within 90 days of signing the contract, but 90 days won't be sufficient time to gather all the approvals needed to start construction (or to close on our construction financing). Here are some of the things needs to have in hand to close on construction financing: LLC formation, syndication agreement with the historic tax credit investors, Part 1/2/3 approvals from the National Park Service and the VA Dept of Historic Resources, site plan approval, subdivision approval, building permit approval, conditional rezoning approval. That's all we need to get financing!

My point here is that we can close on the property...and still fail to get going. How does that help the Town?

I think we will get there, but that 90-day period will almost certainly result in us being transferred the property without being ready to start construction. We are men of honor, and will not do you wrong. However, we run into many buildings in Virginia owned by out-of-town failed developers that closed without all their ducks in a row. We don't operate like that, and we've said from the beginning - we don't want to own it unless we can renovate it!

My suggestion is to shorten up the construction period as you did, but keep the due diligence period at 180 days.

If you think it is politically important to agree to this, then we will agree to the 90 days...just understand the above risks please, so that we might always be friends! Thanks!

Edwin Gaskin
Echelon Resources, Inc.

Tel: (804) 767-5990
Fax: (866) 889-3708

Email: gaskin@echelonresourcesinc.com
Website: www.echelonresourcesinc.com

Confidentiality Notice: The information in this e-mail message, and any attachment, is intended

6/25/2012



CERTIFICATE of RECOGNITION

By virtue of the authority vested by the Constitution in the Governor of the Commonwealth of Virginia, there is hereby officially recognized:

FAIR HOUSING MONTH

WHEREAS, equal housing opportunities are essential for supporting vibrant communities and economic vitality throughout the Commonwealth of Virginia; and

WHEREAS, illegal barriers to equal opportunity in housing, no matter how subtle, diminish the rights of all; and

WHEREAS, the policy of Virginia is to prohibit discriminatory housing practices in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and insured; and

WHEREAS, April 2012 marks the 40th Anniversary of the passage of the Virginia Fair Housing Law; and

WHEREAS, the federal Fair Housing Act, an historic component of the Civil Rights Act of 1968, affirms the right of all citizens to equal housing opportunities free from discrimination based on race, color, religion, national origin, sex, disability, or familial status; and

WHEREAS, our Commonwealth's own fair housing law affords even greater opportunities and ensures equitable treatment of older Virginians by also prohibiting discrimination based on elderliness; and

WHEREAS, the Virginia Fair Housing Office at the Department of Professional and Occupational Regulation operates to enforce fair housing law and educate the public that there can be no place for discrimination, whether in rental housing, home buying, lending, or insurance; and

WHEREAS, in partnership with non-profit and private-sector organizations involving in housing transactions, Virginia is committed to educating the public about fair housing rights and responsibilities; and

NOW, THEREFORE, I, Robert F. McDonnell, do hereby recognize April 2012 as **FAIR HOUSING MONTH** in our **COMMONWEALTH OF VIRGINIA**, and I call this observance to the attention of all our citizens.



Affordable Housing and Historic Preservation

National policy encompasses both preserving historic resources and providing affordable housing. The National Historic Preservation Act (NHPA) of 1966, as amended, directs the Federal government to foster conditions under which modern society and prehistoric and historic resources can exist in productive harmony and “fulfill the social, economic, and other requirements of present and future generations.” Similarly, affordable housing legislation like the Cranston-Gonzalez Act of 1990, which aims to “expand the supply of decent, safe, sanitary, and affordable housing,” anticipates historic preservation as a tool for meeting its goals. Actively seeking ways to reconcile historic preservation goals with the special economic and social needs associated with affordable housing is critical in addressing one of the nation’s most pressing challenges.

In issuing this policy statement, the ACHP, consistent with Section 202 of the NHPA, offers a flexible approach for affordable housing projects involving historic properties. Section 106 of the National Historic Preservation Act (Section 106) requires Federal agencies to take into account the effects of their actions on historic properties and afford the ACHP a reasonable opportunity to comment. This policy provides a framework for meeting these requirements for affordable housing.

Federal tax incentives provide opportunities for historic preservation and affordable housing to work together, including the Low-Income Housing Tax Credit and the Historic Rehabilitation Tax Credit. Projects taking advantage of the Historic Rehabilitation Tax Credit must be reviewed by the National Park Service (NPS) for adherence to the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Secretary’s Standards) in a separate and distinct process. Review of these projects is more comprehensive than Section 106 review and necessitates early coordination with NPS and the State Historic Preservation Officer (SHPO) since work must adhere to the Secretary’s Standards to obtain the tax credit. Nonetheless, coordination with Section 106 consultation and these reviews frequently occurs.

In an effort to better focus Section 106 reviews for affordable housing, the ACHP encourages Federal and State agencies, SHPOs, Tribal Historic Preservation Officers (THPOs), local governments, housing providers, and other consulting parties to use the following principles in Section 106 consultation.

“Providing affordable housing is a growing national need that continues to challenge housing providers and preservationists. Providing affordable housing is a growing national need that continues to challenge housing providers and preservationists.”

Historic buildings provide affordable housing to many American families. Affordable housing rehabilitation can contribute to the ongoing vitality of historic neighborhoods as well as of the businesses and institutions that serve them. Rehabilitation can be an important historic preservation strategy. Federal agencies that help America meet its need for safe, decent, and affordable housing, most notably the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture’s (USDA’s) Rural Development agency, often work with or near historic properties.

The ACHP considers affordable housing for the purposes of this policy to be Federally-subsidized, single- and multi-family housing for individuals and families that make less than 80% of the area median income. It includes, but is not limited to, Federal assistance for new construction, rehabilitation, mortgage insurance, and loan guarantees.

NPS copy
2012-148
10/26/12



UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

OMB Approved
No. 1024-0009
Form 10-168
Rev. 2011

HISTORIC PRESERVATION CERTIFICATION APPLICATION
PART 2 - DESCRIPTION OF REHABILITATION

NPS Project Number

Instructions: This page of the form must appear exactly as below and must bear the owner's original signature. Other sections may be expanded as needed or continued on blank pages. The National Park Service certification decision is based on the descriptions in this application form. In the event of any discrepancy between the application form and other, supplementary material submitted with it (such as architectural plans, drawings and specifications), the application form takes precedence. A copy of this form will be provided to the Internal Revenue Service.

1. Property Name Cape Charles School
 Street 423 Plum Street
 City Cape Charles County Northampton State VA Zip 23310
 Name of Historic District Cape Charles Historic District
 Listed individually in the National Register of Historic Places; date of listing _____
 Located in a Registered Historic District; name of district _____
 Part 1 - Evaluation of Significance submitted? Date submitted Aug 21, 2012 Date of certification pending

2. Data on building and rehabilitation project
 Date of construction 1912 Cost of rehabilitation (estimated) \$2,600,000.00
 Type of construction masonry Floor area before / after rehabilitation 18,067 sq ft , 18,795 sq ft
 Start date (estimated) January 2013 Use(s) before / after rehabilitation vacant , apartments
 Completion date (estimated) December 2013 Number of housing units before / after rehabilitation 0 , 17
 This application covers phase number 1-2 of 2 phases Number of low-moderate income housing units before / after rehabilitation 0 , 0

3. Project Contact (if different from Owner)
 Name Paige Pollard
 Street PO Box 11083 City Norfolk
 State VA Zip 23517 Telephone (757) 923-1900

4. Owner
 I hereby attest that the information I have provided is, to the best of my knowledge, correct and that I own the property described above. I understand that falsification of factual representations in this application is subject to criminal sanctions of up to \$10,000 fines or imprisonment for up to five years pursuant to 18 USC 1001.
 Name Heather Arcos Signature Heather Arcos Date 10/1/12
 Organization Town Manager, Cape Charles Social Security OR Taxpayer ID Number _____
 Street 2 Plum Street City Cape Charles
 State VA Zip 23310 Telephone (757) 331-3259

NPS Official Use Only

The National Park Service has reviewed the Historic Certification Application - Part 2 for the above-named property and has determined that:

- the rehabilitation described herein is consistent with the historic character of the property and, where applicable, with the district in which it is located and that the project meets the Secretary of the Interior's Standards for Rehabilitation. This letter is a preliminary determination only, since a formal certification of rehabilitation can be issued only to the owner of a 'certified historic structure' after rehabilitation work is complete.
- the rehabilitation or proposed rehabilitation will meet the Secretary of the Interior's Standards for Rehabilitation if the attached conditions are met.
- the rehabilitation described herein is not consistent with the historic character of the property or the district in which it is located and that the project does not meet the Secretary of the Interior's Standards for Rehabilitation.

Date _____ National Park Service Authorized Signature _____
 See Attachments