

Protection of Historic Public Assets

January 7, 2014

Background

The Town of Cape Charles has “sold” our historic old school in Central Park for the “nominal” price of \$10. The sale, rezoning and conditional use permit granted to put an apartment house in our park were appealed to the Virginia Supreme Court. The Writ Hearing was held and the decision that we do not have standing as residents of Cape Charles to oppose the giveaway of Town assets was upheld. We have asked for further review but are not hopeful that the Court will hear our case. That is galling, to say the least.

Everything about the so-called sale of our school was done in an underhanded way. We have been fighting this since we learned about it in February 2012, days before a public hearing was held to sign a contract to sell the school. This is not the first time this kind of vulture development has been attempted on the Eastern Shore.

At an open meeting in our Town when the developers came to tell us the plans for our school, a man asked if ours were the only school that they were interested in because he had noted a tendency of developers to go after public assets. They assured him that ours was the only school they want on the Eastern Shore. We will always regret that we did not introduce ourselves and find out who that man was.

Here is a list of historic schools that Echelon Resources has taken from various localities at rock bottom prices: James E. Mallonee High School, Hopewell; Maury Commons, Fredericksburg; Chatham Elementary School, Chatham. They have also taken an old hospital in Richmond, which was probably a public asset. To our knowledge Cape Charles is the only place where they were paid to take a public asset.

The president of Echelon Resources, Edwin Gaskin, is also the Director of Economic Development of Hanover County Virginia. That makes his secretive interactions with our government officials and staff as a private investor a conflict of interest.

In Cape Charles, he and his partner David McCormack met with staff and Town Council to negotiate the purchase of our school without the knowledge of town residents. The meetings with Town Council were in executive session. But there was no competition for a contract.

There follows our proposed changes to Virginia Code so that we can save other communities from the kind of experiences we have had. Please note we have cited the entire section of law but there are two paragraphs of changes that are in different type. All the other text remains unchanged.

We look forward to working with any State legislator on this matter. We are calling for Patrons for these bills. We hereby declare our intention to undertake lobbying efforts on behalf these bills; please contact us via our e-mail oldschoolcapecharles@gmail.com.

Protection of Historic Public Assets

HOUSE/SENATE BILL NO. XXXX

Offered January XX, 2014

A BILL to amend and reenact § [15.2-2306](#) of the Code of Virginia, relating to preservation of historical sites and architectural areas.

Patron --

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That § [15.2-2306](#) of the Code of Virginia is amended and reenacted as follows:

§ [15.2-2306](#). Preservation of historical sites and architectural areas.

A. 1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality as established by the Virginia Board of Historic Resources, and any other buildings or structures within the locality having an important historic, architectural, archaeological or cultural interest, any historic areas within the locality as defined by § [15.2-2201](#), and areas of unique architectural value located within designated conservation, rehabilitation or redevelopment districts, amending the existing zoning ordinance and delineating one or more historic districts, adjacent to such landmarks, buildings and structures, or encompassing such areas, or encompassing parcels of land contiguous to arterial streets or highways (as designated pursuant to Title 33.1, including § [33.1-41.1](#) of that title) found by the governing body to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures or districts therein or in a contiguous locality. A governing body may provide in the ordinance that the applicant must submit documentation that any development in an area of the locality of known historical or archaeological significance will preserve or accommodate the historical or archaeological resources. An amendment of the zoning ordinance and the establishment of a district or districts shall be in accordance with the provisions of Article 7 (§ [15.2-2280](#) et seq.) of this chapter. The governing body may provide for a review board to administer the ordinance and may provide compensation to the board. The ordinance may include a provision that no building or structure, including signs, shall be erected, reconstructed, altered or restored within any such district unless approved by the review board or, on appeal, by the governing body of the locality as being architecturally compatible with the historic landmarks, buildings or structures therein.

2. Subject to the provisions of subdivision 3 of this subsection the governing body may provide in the ordinance that no historic landmark, building or structure within any district shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board.

3. The governing body shall provide by ordinance for appeals to the circuit court for such locality from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and shall specify therein the parties entitled to appeal the decisions, which parties

Protection of Historic Public Assets

shall have the right to appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the action of the governing body, provided the petition is filed within thirty days after the final decision is rendered by the governing body. The filing of the petition shall stay the decision of the governing body pending the outcome of the appeal to the court, except that the filing of the petition shall not stay the decision of the governing body if the decision denies the right to raze or demolish a historic landmark, building or structure. The court may reverse or modify the decision of the governing body, in whole or in part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the governing body.

In addition to the right of appeal hereinabove set forth, the owner of a historic landmark, building or structure, the razing or demolition of which is subject to the provisions of subdivision 2 of this subsection, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure provided that: (i) he has applied to the governing body for such right, (ii) the owner has for the period of time set forth in the same schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell the landmark, building or structure, and the land pertaining thereto, to the locality or to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the landmark, building or structure and the land pertaining thereto, and (iii) no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from the decision of the governing body, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from shall not affect the right of the owner to make the bona fide offer to sell referred to above. No offer to sell shall be made more than one year after a final decision by the governing body, but thereafter the owner may renew his request to the governing body to approve the razing or demolition of the historic landmark, building or structure. The time schedule for offers to sell shall be as follows: three months when the offering price is less than \$25,000; four months when the offering price is \$25,000 or more but less than \$40,000; five months when the offering price is \$40,000 or more but less than \$55,000; six months when the offering price is \$55,000 or more but less than \$75,000; seven months when the offering price is \$75,000 or more but less than \$90,000; and twelve months when the offering price is \$90,000 or more.

4. The governing body is authorized to acquire in any legal manner any historic area, landmark, building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of the governing body should be acquired, preserved and maintained for the use, observation, education, pleasure and welfare of the people; provide for their renovation, preservation, maintenance, management and control as places of historic interest by a department of the locality or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use thereof or admission thereto; lease, subject to such regulations as may be established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the condition that the historic character of the area, landmark, building, structure or land shall be preserved and maintained; or to enter into contracts with any person, firm or corporation for the management, preservation, maintenance or operation of any such area, landmark, building, structure, land pertaining thereto or interest therein so acquired as a place of historic interest; however, the locality shall not use

Protection of Historic Public Assets

the right of condemnation under this subsection unless the historic value of such area, landmark, building, structure, land pertaining thereto, or estate or interest therein is about to be destroyed.

The authority to enter into contracts with any person, firm or corporation as stated above may include the creation, by ordinance, of a resident curator program such that private entities through lease or other contract may be engaged to manage, preserve, maintain, or operate, including the option to reside in, any such historic area, property, lands, or estate owned or leased by the locality. Any leases or contracts entered into under this provision shall require that all maintenance and improvement be conducted in accordance with established treatment standards for historic landmarks, areas, buildings, and structures. For purposes of this section, leases or contracts that preserve historic landmarks, buildings, structures, or areas are deemed to be consistent with the purposes of use, observation, education, pleasure, and welfare of the people as stated above so long as the lease or contract provides for reasonable public access consistent with the property's nature and use. The Department of Historic Resources shall provide technical assistance to local governments, at their request, to assist in developing resident curator programs.

Amendment begins here:

No historic property owned by any town, county or city may be sold at a nominal cost to a private developer when a group of community residents of the town, county, or city where the historic property is located wish to rehabilitate it for a public use. In such cases, the governmental entity shall partner with the community group to rehabilitate the structure to return it to a public use through adaptive reuse, if the previous use is no longer needed. No Local or State Park property may be sold to any developer for private gain.

B. Notwithstanding any contrary provision of law, general or special, in the City of Portsmouth no of any governmental agency or review board shall be required for the construction of a ramp to serve the handicapped at any structure designated pursuant to the provisions of this section.

C. Any locality that establishes or expands a local historic district pursuant to this section shall identify and inventory all landmarks, buildings, or structures in the areas being considered for inclusion within the proposed district. Prior to adoption of an ordinance establishing or expanding a local historic district, the locality shall (i) provide for public input from the community and affected property owners in accordance with § [15.2-2204](#); (ii) establish written criteria to be used to determine which properties should be included within a local historic district; and (iii) review the inventory and the criteria to determine which properties in the areas being considered for inclusion within the proposed district meet the criteria to be included in a local historic district. Local historic district boundaries may be adjusted to exclude properties along the perimeter that do not meet the criteria. The locality shall include only the geographical areas in a local historic district where a majority of the properties meet the criteria established by the locality in accordance with this section. However, parcels of land contiguous to arterial streets or highways found by the governing body to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures, or districts therein, or in a contiguous locality may be included in a local historic district notwithstanding the provisions of this subsection.

Protection of Historic Public Assets

(1973, c. 270, § 15.1-503.2; 1974, c. 90; 1975, cc. 98, 574, 575, 641; 1977, c. 473; 1987, c. 563; 1988, c. 700; 1989, c. 174; 1993, c. 770; 1996, c. [424](#); 1997, cc. [587](#), [676](#); 2009, c. [290](#); 2011, c. [237](#); 2012, c. [790](#).)

Protection of Historic Public Assets

HOUSE/SENATE BILL NO. XXXX

Offered January XX, 2014

A BILL to amend and reenact § [58.1-339.2](#) of the Code of Virginia, relating to Historic Rehabilitation Tax Credits.

The following is a related request for a change in legislation regarding tax credits.

58.1-339.2 Historic rehabilitation tax credits

Additional clause below to be added to the end of this section.

G. Tax credits may not be provided for any project that removes a public asset from public use for a nominal cost paid by a private developer when residents of a community where the historic property is located wish to rehabilitate it for a public use. No Local or State Park property may be sold for a nominal fee to any developer for private gain.

§ 58.1-339.2. Historic rehabilitation tax credit.

A. Effective for taxable years beginning on and after January 1, 1997, any individual, trust or estate, or corporation incurring eligible expenses in the rehabilitation of a certified historic structure shall be entitled to a credit against the tax imposed by Articles 2 (§ [58.1-320](#) et seq.), 6 (§ [58.1-360](#) et seq.) and 10 (§ [58.1-400](#) et seq.) of Chapter 3; Chapter 12 (§ [58.1-1200](#) et seq.); Article 1 (§ [58.1-2500](#) et seq.) of Chapter 25; and Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26, in accordance with the following schedule:

Year	% of Eligible Expenses
1997	10%
1998	15%
1999	20%
2000 and thereafter	25%

If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount that exceeds the tax liability may be carried over for credit against the taxes of such taxpayer in the next ten taxable years or until the full credit is used, whichever occurs first. Credits granted to a partnership or electing small business corporation (S corporation) shall be passed through to the partners or shareholders, respectively. Credits granted to a partnership or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Director of the Department of Historic Resources.

Protection of Historic Public Assets

B. Effective for taxable years beginning on and after January 1, 2000, any individual, trust, estate, or corporation resident in Virginia that incurs eligible expenses in the rehabilitation of a certified historic structure in any other state that has in effect a reciprocal historic structure rehabilitation tax credit program and agreement for residents of that state who rehabilitate historic structures in Virginia shall be entitled to a credit to the same extent as provided in subsection A and other applicable provisions of law; however, no eligible party shall receive any credit authorized under this subsection prior to taxable years beginning on and after January 1, 2002.

C. To claim the credit authorized under this section, the taxpayer shall apply to the Virginia Department of Historic Resources, which shall determine the amount of eligible rehabilitation expenses and issue a certificate thereof to the taxpayer. The taxpayer shall attach the certificate to the Virginia tax return on which the credit is claimed.

D. When used in this section:

"Certified historic structure" means a property listed individually on the Virginia Landmarks Register, or certified by the Director of the Virginia Department of Historic Resources as contributing to the historic significance of a historic district that is listed on the Virginia Landmarks Register or certified by the Director of the Virginia Department of Historic Resources as meeting the criteria for listing on the Virginia Landmarks Register.

"Eligible rehabilitation expenses" means expenses incurred in the material rehabilitation of a certified historic structure and added to the property's capital account.

"Material rehabilitation" means improvements or reconstruction consistent with "The Secretary of the Interior's Standards for Rehabilitation," the cost of which amounts to at least fifty percent of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses, unless the building is an owner-occupied building, in which case the cost shall amount to at least twenty-five percent of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses.

"Owner-occupied building" means any building that is used as a personal residence by the owner.

E. The Director of the Department of Historic Resources shall establish by regulation the requirements needed for this program, including the fees to defray necessary expenses thereof, and, except as otherwise prohibited by this section, the extent to which the availability of the credit provided by this section is coextensive with the availability of the federal tax credit for the rehabilitation of certified historic resources.

F. Any gain or income under federal law from the allocation or application of a tax credit under this section shall not be (i) taxable gain or income for purposes of the tax imposed pursuant to Article 2 (§ [58.1-320](#) et seq.), (ii) taxable gain or income for purposes of the tax imposed pursuant to Article 6 (§ [58.1-360](#) et seq.), or (iii) taxable gain or income for purposes of the tax imposed pursuant to Article 10 (§ [58.1-400](#) et seq.). However, nothing in this subsection shall be construed or interpreted as allowing a subtraction or deduction for such gain or income under

Protection of Historic Public Assets

federal law if the gain or income is otherwise excluded, deducted, or subtracted in computing the respective tax set forth under clauses (i) through (iii).

(1996, c. [520](#); 1998, cc. [371](#), [372](#); 1999, cc. [152](#), [183](#), [213](#); 2000, cc. [356](#), [367](#), [429](#); 2012, cc. [92](#), [639](#).)