

VIRGINIA:

IN THE CIRCUIT COURT OF CITY OF ALEXANDRIA

HISTORIC ALEXANDRIA )  
 FOUNDATION, *et al.*, )  
 )  
 Petitioners, )  
 )  
 v. )  
 )  
 CITY OF ALEXANDRIA, *et al.* )  
 )  
 Respondents )

Case No. CL19002249

BY  
DEPUTY CLERK

EDWARD SEMONIAN, CLERK

2019 OCT 16 PM 3:08

FILED  
CLERK OF COURTS  
CITY OF ALEXANDRIA

**Petitioner Historic Alexandria Foundation’s Brief in Opposition to Respondent City of Alexandria’s Motion Craving Oyer**

Petitioners Historic Alexandria Foundation, *et al.* (“HAF”), by counsel, pursuant to Rule 4:15 of the Rules of Supreme Court of Virginia, hereby files its Opposition to the Motion Craving Oyer filed by Respondents City of Alexandria, *et al.* (the “City”).

**Background**

On June 13, 2019, Petitioner HAF filed a Petition with this Court. HAF seeks the reversal of the City Council’s decision to issue a certificate of appropriateness and a permit to demolish to the owners of the home located at 619 South Lee Street (the “Black Home”). The City Council was taking up on review the earlier decision by the Alexandria Board of Architectural Review (“BAR”) to issue the certificate and the permit. In its petition, HAF included the following documents as exhibits:

1. Open Space Easement, Signed by Justice Hugo Black and his wife, Dated December 26, 1969
2. City of Alexandria Board of Architectural Review Action Docket for December 19, 2018

3. Board of Architecture Review Staff Report regarding the Black Home dated February 6, 2019.
4. Letter from Historic Alexandria Foundation to Alexandria City Council regarding the Black Home, Dated April 2, 2019
5. Letter from Historic Alexandria Foundation to Alexandria City Council regarding the Black Home, Dated May 10, 2019
6. Alexandria City Council Staff Report regarding the Black Home dated May 14, 2019.
7. Letter from Mark Vaughan, Stone Mason employed by Vowell, LLC., to the Alexandria City Council regarding the Black Home, dated May 10, 2019.

These exhibits are what HAF considered a complete record necessary for the Court to make its decision. In its Motion Craving Oyer, the City seeks to include every document considered by both BAR and the City Council. *See Generally* City of Alexandria's Memorandum in Support of Motion Craving Oyer

These documents are redundant to what has been submitted to the Court already and unnecessary for the Court to make its decision. Accordingly, the Court should deny the City's Motion's to Crave Oyer.

#### **Legal Standard**

Respondent can "crave oyer of any documents that form the basis of the" Petition. *Culpeper National Bank v. Morris*, 168 Va. 379, 382 (1937). "This includes documents sued upon or collateral documents that are necessary to the [Petitioner's] claim". *Ragone v. Waldvogel*, 54 Va. Cir. 581, 582 (Roanoke 2001). "At common law, the Oyer Doctrine could only incorporate deeds or letters of probate and administration." *Antigone v. Taustin*, 98 Va. Cir 213, 213 (2018) (citing *Langhorne v. Richmond Ry. Co.*, 91 Va. 369, 372 (1895)).

Respondents may crave Oyer of documents if “no intelligent construction of any writing or record can be made unless all of the essential parts of such paper or record are produced.” *Culpeper Nat'l Bank v. Morris*, 168 Va. 379, 382-83 (1937). A variety of Virginia circuit courts have held that craving oyer should be limited to those documents that are necessary to a plaintiff’s claim. *Bagwell v. City of Norfolk*, 59 Va. Cir. 205, 208 (Norfolk 2002) (quoting two other circuit courts in Virginia for this proposition).

### Argument

The Respondent’s Motion Craving Oyer fails to meet the standard articulated by Virginia courts. None of the documents requested form the basis of the Petition or are necessary to the intelligent construction of the record. The documents requested “bear no resemblance to [those] envisioned at common law.” *Goff v. Alexandria*, Case No. 18003477 (Cir. Ct. Alexandria, Apr. 17, 2019). At common law, motions to crave oyer were contained within the scope of “deeds or letters of probate and administration.” *Lewis v. City of Alexandria*, 2019 Va. Cir. LEXIS 205, at \*15 (Cir. Ct. Apr. 17, 2019). The Virginia Supreme Court has never explicitly expanded oyer to include anything beyond the common law limitation. *Antigone v. Taustin*, 98 Va. Cir 213, 215 (2018).

The City relies upon the case of *Resk* to support its argument. The case is similar to the present in the sense that both challenge government decisions as being “arbitrary, capricious, .... and unreasonable.” *Resk v. Roanoke Cty.*, 73 Va. Cir. 272, 273. However, in doing so, the City ignores that the documents being sought in *Resk* are the documents that are already contained within the record—the reports and decisions of the various governmental bodies. The Petition herein already contains all the relevant information needed for the court to make an intelligent

construction of the record without any additional incorporations. *Culpeper Nat'l Bank v. Morris*, 168 Va. 379, 382-83 (1937).

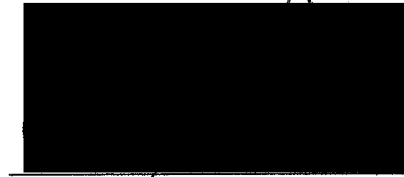
A more appropriate point of comparison would be *Lewis v. City of Alexandria*, 2019 Va. Cir. LEXIS 205, (Cir. Ct. Apr. 17, 2019). The Plaintiffs in *Lewis* were combating a land use determination by the City, specifically the placement of lights at a high school football field. *Id.* at \*1. Here the Court denied the City's motion to crave Oyer that requested legislative records for the Developmental Special Use Permit, Zoning Ordinance Amendment, and Master Plan Amendment and Rezoning. *Id.* at 12. The motion craving Oyer was denied because the records sought to be introduced had no resemblance to the case at hand or the common law application of Oyer. *Id.* at 16.

The City's proposed documents under its Oyer motion essentially represent a discovery request of every record related to the City's decision – of course, these are documents that the City already possesses. While these documents may be relevant to the underlying case, they are hardly fundamental to the requested relief, unlike the instrument in a broken lease or a contested will. In fact, the requests are needlessly redundant, unnecessary, and would create confusion about the operative documents in this case.

#### Conclusion

As the documents requested by the Respondents in their Motion to Crave Oyer are redundant and otherwise unnecessary for the Court to make an intelligent construction of the record, the Court should deny the Respondent's Motion to Crave Oyer.

Historic Alexandria Foundation  
By Counsel



J. Chapman Petersen, Esq., VSB #37225  
David L. Amos, Esq., VSB #87271  
Chap Petersen & Associates, PLC  
3970 Chain Bridge Road  
Fairfax, Virginia 22030  
(571) 459-2521 (direct dial)  
(571) 459-2307 (facsimile)  
jcp@petersenfirm.com  
dla@petersenfirm.com  
*Counsel for Historic Alexandria Foundation*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16th day of October 2019, a true and correct copy was served through First Class U.S. Mail and email upon:

Gifford R. Hampshire  
James R. Meizanis, Jr.  
Blankingship and Keith, PC.  
4020 University Drive, Suite 300  
Fairfax Virginia 22030  
[ghampsire@bklawva.com](mailto:ghampsire@bklawva.com)  
[jmeizanis@bklawva.com](mailto:jmeizanis@bklawva.com)  
*Counsel for Vowell, LLC.*

Travis S. MacRae, Esq.  
Office of the City Attorney  
301 King Street, Suite 1300  
Alexandria, Virginia, 22314  
[travis.macrae@alexandria.gov](mailto:travis.macrae@alexandria.gov)  
*Counsel for City of Alexandria, Alexandria City Council,  
and the Alexandria Board of Architecture Review*

A large black rectangular redaction box covers the signature area. A handwritten checkmark is visible above the box, and another checkmark is visible below the name 'David Lee Amos'.

David Lee Amos