

ANNOTATED OUTLINE -- HISTORY OF LAKESIDE

TABLE OF CONTENTS

PRELIMINARIES:

- Hyperlinks to Documents, By Chapter
- Guide to Format
- About this Document

PREFACE

PART I: THE LAKESIDE PROJECT—PERMITS IN SPITE OF COUNTY REJECTION

- Chapter 1: Genesis To Annexation—County And Town Disagree At Outset. (2000-2003)
- Chapter 2: MDE Processes Discharge Permit In Spite Of Valid Objections.** (Dec '03-'04)
- Chapter 3: Intense Attempt To Obtain S-1 Designation, Which Failed.** (May—Dec '04)
- Chapter 4: MDE Issues Discharge Permit In Spite Of Council Rejection Of R123.** (2005)
- Chapter 5: The Developer And MDE Circumvent The County Altogether.** (2005-'06)
- Chapter 6: Town Attempts To Obtain ARRA (Taxpayer) Funding; A Near Success. (2009)
- Chapter 7: Permits Challenged, "Surrendered;" MDE Investigation Aborted.** ('09-'10)
- Chapter 8: Renewal Of Discharge Permit (2010)

PART II: LAKESIDE RESURRECTED--BASED ON MISREPRESENTATION OF THE HISTORY

- Chapter 9: Preparation For Introduction Of Resolution 281. (2019)
- Chapter 10: Misleading Presentation ("Mistakes") Results In Tainted Review.** (2020)
- Chapter 11: Post-Adoption Developments Lead To A Call For Recission. (2021-2022)

PART III: IMPROPRIETIES REVEALED, BUT COUNTY AND MDE REFUSE TO CORRECT

- Chapter 12:* Petitioners Seek Recission Of R281. (May '21-March '22)
- Chapter 13:* TIP Organized, Sues MDE To Require Recission. ('22--'23)
- Chapter 14:* TIP Seeks Political Solution. (2022)
- Chapter 15:* Ignoring Conflict, Rauch Awarded Contract To Update CWSP (2022-'23)

PART IV: PLANNING COMMISSION PROHIBITED FROM EXERCISING ITS AUTHORITY

- Chapter 16: PIVOT POINT--MDE Directs County To Fix R281 Mapping Mistakes.** (2023)
- Chapter 17: Efforts To Keep Planning Commission From Proper Review.** (Current)

GLOSSARY AND ACRONYMS

* available in v3 release

PRELIMINARIES:

HYPERLINKS TO DOCUMENTS, BY CHAPTER: Hyperlinks available on-line only.

GUIDE TO FORMAT AND LINKS:

- **CHAPTER NAME BOLD IN RED = of greatest importance.**
- **Yellow Highlight** = A document that is hyperlinked in Exhibits; accessible by Chapter and item number.
- **Emphasis** = supplied in this document, not in original.
- [*Indented and bracketed language in italics*] = author's commentary
- Transcripts of any County Council meetings and most work sessions can be found at either https://talbotcountymd.gov/uploads/File/Council_2022/Transcripts/ (2022 and later) or <https://talbotcountymd.gov/uploads/File/council/Transcripts/> (pre 2022).
- Agendas and videos of all County Council, Planning Commission, and PWAB meetings can be found here: https://talbotcountymd.gov/About-Us/County_Council/council-meeting-videos.
- Minutes of meetings can usually be found as a link embedded in the agenda of the subsequent meeting, when the minutes are reviewed and approved.
- Minutes and video of meetings of the Public Works Advisory Board are available here: <https://talbotcountymd.gov/uploads/File/publicworks/Public%20Works%20Advisory%20Board%20Meeting%20Agendas%20and%20Minutes/Public%20Works%20Advisory%20Board%20Meeting%20Agendas%20and%20Approved%20Minutes.pdf>

ABOUT THIS OUTLINE

- **RESPONSIBILITY:** This "ANNOTATED OUTLINE -- HISTORY OF LAKESIDE" was authored by and is the sole responsibility of The Talbot Integrity Project ("TIP").
- **SOURCES:** The documents appended to this outline all relate to the Lakeside project in Trappe, Maryland, and are compiled from materials collected from various sources in various ways at various times for various purposes over 30 months. No particular record was kept as to material sources, and they were not gathered with this consolidation in mind. Many were obtained from Public Information Act requests made to Talbot County, to the Town of Trappe, and to the Maryland Department of The Environment. Other documents, or copies, were provided by citizens and organizations assisting TIP in its mission.
- **ORGANIZATION:** This history is divided into three major Parts, only the first two of which are complete at v1 release. Each Part is organized chronologically into "Chapters," each concerning a particular step in Lakeside's convoluted history of permits and approvals. Each Chapter is presented as a chronological series of enumerated "Items," most containing a hyperlink to the document (sometimes a group of related documents) referred to therein. Some particularly large documents (e.g., the "DRRA Agreement") are not attached in their

entirety, but complete versions of such documents are readily available. A few “Chapters” overlap in time.

- MARKUPS, NOTES, AND HIGHLIGHTS: Because of the manner in which these documents were collected and used prior to this compilation, there are many highlighted passages, marginal notes, and so forth. Most of these are TIP’s. Usually, context or remarks in the text of the Outline itself (pointing out marginalia in the original) make clear if notations are from others.
- SOLICITATION OF ADDITIONAL DOCUMENTS: As with all history, the record is never complete. TIP welcomes any additional documents that anyone believes would shed more light on the history covered by this outline. Contact TIP at danwatson123@verizon.net.

PREFACE:

This is the history of how a developer improperly obtained from Talbot County an approval necessary to develop an enormous subdivision (2500 lots and a half-million sq. ft. shopping center) in the very small town of Trappe (400 homes, one stoplight) in southern Talbot County, MD. Other permits improperly issued by the State of Maryland are what led to the County's approval, but *citizens are still challenging the County's action today*, and that is the issue.

Regulations governing development in Maryland are substantial, and happen at three levels:

- **TOWN:** By far the bulk of regulation of any project within an incorporated municipality are controlled by the municipality, in this case the small Town of Trappe. The Town issues and regulates zoning and many other land-use controls, handles construction inspections, and so much else. The developer arranged for land he optioned to be annexed into Trappe (where 94 voters participated in a recent Town election) and by wielding outsized influence, is unlikely to be hampered by inconvenient regulation as he sextuples the Town's population.
- **STATE:** Various State agencies touch development processes, by far the most important being the Maryland Department of Environment, "MDE," which oversees water and sewer issues. Decisions by MDE remain critically important to the Lakeside development, because the project is of such enormous scale that it required a new sewer plant be built using controversial technology. MDE, therefore had to issue both a discharge permit and actual construction permits for the sewerage plant and connecting lines—and under Maryland law, the latter cannot be issued unless Talbot County formally designated the land within the project as "S-1, immediate priority" for development (1-2 years), requiring affirmation not only by the County Council but also its Planning Commission as described below.

The Lakeside developer handled challenges associated with MDE regulation by hiring very experienced lawyers and, most especially, the pre-eminent engineer in Talbot County, one who has dealt with MDE often in the past.

- **TALBOT COUNTY:** For any project located in an incorporated municipality, large or small, Talbot County exerts almost no control or regulation over any aspect of development; those responsibilities all devolve to the Town. There is ***one exception***, however, and it is the central focus of this history.

No development can take place on any property within Talbot County unless the County Council has amended the County Comprehensive Water and Sewer Plan ("CWSP") and formally designated and mapped the land as "***S-1/W-1, immediate priority***" for development. That decision rests with the County Council, a 5-member elected political body—***except that under Maryland law, no such amendment may be adopted unless***

the County Planning Commission, a non-political body of 5 appointed citizens, has first certified that the project is consistent with the County's master plan (its "Comprehensive Plan.") Maryland state law makes *the County* responsible to coordinate growth and development throughout the County, *including on the land within Towns.*

This history focuses on how the developer was able to get the County erroneously to designate Lakeside as "S-1, immediate priority" for development, the one and only point of control Talbot County has with respect to Lakeside. It reveals how, in 2020, the Talbot County Planning Commission was misled into certifying by a 3-2 vote that the Lakeside projects was consistent with the County Comprehensive Plan (a matter of "fraud, surprise, mistake or inadvertence" in parlance of Maryland law); how the Planning Commission later came to recognize that its certification had been based on mistaken information; how for 2-1/2 years the County Council tried to thwart citizens' efforts to have that mistake reversed; and how ***at this moment, December 2023***, the County and others are still hard at work attempting to protect the Lakeside developer procedurally from a proper review of past improprieties which could threaten the developer's interests but which are required by law to protect the public interest and the integrity of the County's development review process.

The record is replete: factual and legal errors occurring over a 20-year period. These errors unequivocally provide a robust basis for fresh review of the land use approvals currently enjoyed by the Lakeside project.

PART I: THE LAKESIDE PROJECT—PERMITS IN SPITE OF COUNTY REJECTION

CHAPT 1: GENESIS TO ANNEXATION—COUNTY AND TOWN DISAGREE AT OUTSET. (2000-‘03)

1. The developer’s idea for a Lakeside project (originally “Trappe East”) arose prior to mid-2001 when the developer began optioning farmland. (See Spreadsheet.)

[Robert Rauch personally held a 20% stake in the project until approximately 2006, per sworn deposition. In early years he was the primary spokesman for developer.]

2. In April, 2002, the developer and MDE begin “site evaluation” of property (per Aug 12, 2004 letter).
3. On August 15, 2002, the Town of Trappe adopted a NEW Town Comprehensive Plan. In explanation, the developer’s attorney, Ryan Showalter (who would not have been involved at the time, were the story consistent), told the Planning Commission the following: “they [Town officials] looked at the plan and said, ‘Rather than having a concentric ring as our development area, we’re going to make a conscious decision of not growing to the west [honoring the natural Route 50 border] towards the critical area. We’re going to relocate our portion of our growth area east of Route 50.’”

[Capturing the very essence of the entire Lakeside saga, at a meeting on October 6, 2021, Mr. Showalter, told the Talbot County Planning Commissioners this: “That Plan [the Town’s new Comp Plan] is what my clients found, were inspired by, and what caused them to go out and assemble the land.” Never mind that a year earlier the developer had optioned over 800 acres of bean fields remote from the historic town and, most significantly, on the opposite side of Route 50, “Ocean Highway,” the major State artery traversing the Eastern Shore. The developer’s actual influence on the writing of the new Town Comp Plan, through his partners and professional agents, is unknown.]

4. October 22, 2002, Talbot County adopted its 2002 CWSP, (via R100) after certification of consistency by PC; it includes Figures 23 and 24. The second Recital confirmed that the County’s incorporated Towns “have all contributed to this 2002 Report of the Review.”

[There was ample time in 2002, especially after adoption of Town Comp Plan, for Trappe and developer to propose to the County that the Trappe East property be included in the County’s new CWSP as immediate priority for development (“S-1”) or for development in 3-5 years (“S-2”), in which case it could have been considered and adopted as such on Figure 23, the actual Trappe Area Sewer Service map. But Figure 23 in fact shows the Lakeside property as “UNPROGRAMMED.” A supplemental “long range planning map” not integral to a CWSP per COMAR regs (Figure 24) was inserted into the CWSP, the only place where the property is labeled “S-2”.

[A remarkable factor contributing to the problems discussed in this memo is that only eighteen (18) copies of the 2002 CWSP were ever printed, and those were sparsely distributed. The Plan was not put on-line until September, 2021, and even then, it was sized a 453MB. For 20 years, Talbot County CWSP issues were dealt with using only selected excerpts distributed selectively, contributing, for example, to a gross misunderstanding that Figure 24 was NOT the Trappe Area Sewer Service Map. See memo enclosed.]

5. On November 6, 2002, Town Council introduced Annexation Resolution No. 7-2002.
6. January 29, 2003 -- Talbot County Council sent the Town of Trappe a formal 4-page Statement of concerns detailing numerous reasons the County Council opposed the project (schools, traffic, tax impact, public safety, etc.); no known response from Town.

[The issues cited in the Council's 2003 Statement are among the very issues that have never been reviewed and addressed by the Planning Commission (or anyone else) in granting Lakeside approvals. They were, and are today, of no concern to MDE. Lakeside came to the Planning Commission only once--in 2020—and at that time those issues were disregarded because of a false understanding that some prior Planning Commission must have considered them and approved prior to 2007.]

7. February 5, 2003 the Town adopted R7-2002, annexing Trappe East subject to conditions
8. February 5, 2003, the Town and developer also executed 30-page "Annexation Agreement and Public Facilities Agreement." Developer agreed to pay for:
 - a. "revitalization of the existing Town center," including "expansion and improvements to existing administrative offices"
 - b. Public works building and equipment, "including a street sweeper and front-end loader..."
 - c. First year operation of a 3-man "permanent Trappe police department," including vehicles and equipment.
 - d. Substantial contributions to the Trappe Volunteer Fire Department
 - e. Reimbursement for a "development impact study."
 - f. Reimbursement for all costs, including legal and other costs, arising from annexation, and related disputes.
 - g. Agreement also provided for 10-year abatement of certain Town charges (which accordingly should have then been levied beginning 2013).
9. On February 20, 2003 MDE approved Talbot County's 2002 CWSP (an "interim plan" or "Report of Review" that was expressly to be updated within 18 months).
10. The citizens of Trappe petitioned R7-2002 to referendum, which was held April 21, 2003... the developer having lobbied for adoption. Annexation was approved (340 voters) and effective May 5, 2003. [See Thompson May 30, 2003 letter to Clarke.]

[TIP has been told by people who followed that referendum at the time that the Town citizens' vote was not conducted by secret ballot. Also, It has not been determined if the developer continues to reimburse the Town for "all costs, including legal and

other costs, arising from annexation, and related disputes,” or if the Town’s very substantial costs of dealing with Lakeside over decades have been born by local taxpayers.]

CHAPT 2: MDE PROCESSES DISCHARGE PERMIT IN SPITE OF VALID OBJECTIONS. (DEC '03-'04)

1. On **November 6, 2003 the Town of Trappe executed** an MDE groundwater permit application for a new 540,000 wastewater plant to serve the Lakeside development.
2. **Dec 4, 2003 -- MDE acknowledged receipt** of Application 04-DP3460 for a discharge permit and advised the Town that the proposed facility “must be in compliance” with the County CWSP before permit would be issued. Rauch and Town Consultant Roach were copied, and MDE’s Dr. Tien referenced. (Robert Rauch is the designated “Contact Person” on application.)
3. **Dec 5, 2003 -- MDE’s Anderson transmits** the Application to Tien, stating “The principal concern to us is **whether or not**, as stipulated in COMAR 26.08.04.02A(3), this project is in compliance with the approved county water and sewerage plan adopted pursuant to Article 43 Section 387C, Annotated Code of Maryland. This project must be in compliance with county water and sewerage plan *prior to the issuance of a groundwater discharge permit.*”

*[Note—per Guidelines, should have said “**prior to any processing of application,**” as discussed below.]*

4. **Dec 5, 2003 -- MDE’s Tien faxed Rauch** advising that a tentative determination will not be published until the “**County** notifies MDE that the project will be incorporated into CWSP,” and cites pg. 11 of MDE “Guidelines” that were attached.

*[Note however that **page 13 of these Guidelines** states not just that a tentative determination will not be published, but that “**State processing of a groundwater discharge permit application for a new development project will not be started until the development project is incorporated into the approved County Water and Sewerage Plan as indicated in the ‘Introduction’ Section of this document.**” In turn, **the “Introduction” says** a project is in the plan if it “**specifically identifies the wastewater treatment plant and its capacity, and identifies the area to be served by it as S-1,**” i.e., **immediate priority**. Accordingly, it appears MDE should not have begun processing the discharge application in 2003, especially given the County Council’s well known and deep-seated opposition, as evidenced in Item 1-6 above.]*

5. **Dec 5, 2003 -- Rauch faxes Tien** p 43 of County 2002 CWSP referring in Table 21 to “New 0.6 MGD+ WWTP for Trappe East District,” but makes no reference to sewer service classification of property
6. **December 9, 2003 -- Ray Anderson sends a form Memo** to Tien with a box checked saying the permit application “**IS consistent**” with the CWSP, and referring specifically to page 43-- which contains Table 21, the capital improvement schedule noting a “0.6 mgd” plant. On that page (attached to Anderson’s memo) was a handwritten note from Tien to Anderson “Is this good enough to say “**Trappe East**” is in the County Plan?” [MDE then proceeded to review the discharge permit application.]

*[Note regarding Metamorphosis: on December 9, 2003 Anderson declared that because of Table 21, the Trappe East wastewater plant was referred to in the County CWSP; i.e., **the plant** was “the project” referred to in the discharge permit application. But Tien’s note asked about “Trappe East” being in the County Plan. In short order, as subsequent correspondence shows, “the project” MDE was saying was in the County CWSP **was not just the plant shown in Table 21, but the entire development**, notwithstanding its UNPROGRAMMED classification and County opposition.]*

7. On February 3, 2004, a “public information hearing” was held by MDE (referred to in the Oct 27, 2004 hearing transcript, (See Item 20 below.)
8. **On Feb 20, 2004, Attorney Hoon**, on behalf of certain citizens, wrote MDE (Tien) a 5-page letter to “correct the record,” asserting that due to “incomplete information” MDE had made an “erroneous determination” that the project had been included in the CWSP when it had not.
 - a. **His very first comment is that Trappe East is not “S-1”** under the CWSP, and “MDE is under the misimpression that it is.”
 - b. He pointed out that **“Mr. Rauch does not represent the ‘County,’ but rather is “a principal member of the development team,”** and that Rauch did “not include all of the relevant pages of the CWSP, “particularly ...**Figure 23.”**
 - c. He noted **“Figure 23 shows the existing... ‘Trappe Sewer Service’. As Figure 23 clearly shows, there is no sewer service (S-1 or otherwise) currently allocated to the Trappe East area.”**
 - d. He requested “that MDE place a voluntary hold and stay on all of its Trappe East proceedings and processes until it receives the proper “County” approval ... requested and as required by law.”
9. **Tien responded to Hoon on February 26, 2004.** Pointing to Anderson, he claimed that “Trappe East was included in the County CWSP **and was Mapped as S-2,”** attaching Figure 24 and MDE’s Feb. 20, 2003, approval letter.

[MDE knew that in Talbot County’s CWSP, it used a 3-tier system where only “S-1” areas were “immediate priority. MDE used (and still uses) a 6-tier system elsewhere in the state, where both “S-1” and “S-2” areas are “immediate priority”. This point of possible confusion was interjected several times in correspondence.]

10. **On March 1, 2004 Mr. Hoon wrote to Tien** (copying the County) emphatically reemphasizing MDE error; pointing out that MDE was required to obtain and rely on information **directly from the County** and requesting that MDE do so; and formally “appealing’ the conclusion in Tien’s Feb 26th letter.
11. **On March 2, 2002, Phillip Foster, President** of the Talbot County Council, wrote Tien citing Hoon’s Feb 20th letter and confirming that the “statements made by Mr. Hoon are correct.”
 - a. Importantly, Foster writes **“While the Trappe East WWTP has been included in the CWSP as a capital improvement project [see commentary above], the developer is yet to take the next step, that is to make application with the**

County to amend the CWSP maps for this project and therefor has not been given a determination of S-1 status by the County.”

[Mr. Foster’s one sentence identified the Lakeside failure that has encompassed over two decades of trouble, and untold cost and expense to Talbot County and others.]

- b. Foster’s letter also recited Chapter 3 of the CWSP identifying the one and only legal means for a sewer service classification to be changed—by affirmative vote of the Council after a determination by the Planning Commission that such change is consistent with the County Comp Plan.

[This point is of great significance as respects unfounded claims repeatedly made afterwards that somehow the classification was changed due to “the passage of time,” or some “interpretation” by MDE or others.]

- c. The letter was sent to Tien but also copied to the Town and Robert Rauch. There is no evidence MDE acknowledged President Foster’s letter.

- 12. **On March 3, 2004**, Anderson sent [*an unusual*] memo to Tien advising that he had faxed to Ryan Showalter a copy of Tien’s Feb 26th letter to Hoon, and providing Showalter contact info.
- 13. **On March 3, 2004, the Town attorney sent MDE’s Tien** an amended permit application adding the developer as a Co-Applicant on the permit, as they “will be co-owners of the completed facility” until the Town accepts dedication. The Town Attorney also asserts “that the proposed WWTP and related spray irrigation area **are consistent...with Talbot County’s CWSP. The current politics of Talbot County are such that the Town anticipates resistance to the reclassification to S-1 and W-1 of the area to be served...**”

[The Town’s distinction between the two issues—the WWTP on the one hand and the classification of land to be served on the other—is exactly the point addressed by President Foster in his March 2nd letter. While arguably a discharge permit relates only to the former issue, under Maryland law construction permits for the ‘installation and extension’ of systems unquestionably require an immediate priority classification of the land...a distinction the Town, the developer, and MDE came to ignore in 2005 and 2006.]

- 14. **On March 23, 2004 the developer’s attorney Ryan Showalter wrote Dr. Tien** to quarrel with the points in Mr. Hoon’s letter, and insisting that the discharge permit could be processed **even though the land had not yet been classified S-1.**

[Neither he nor anyone else made reference to the requirement in the MDE Guidelines that such compliance was required before “**State processing** of a discharge permit application” could begin. See Item 4 above.]

15. On July 6, 2004...
 - a. The Town of Trappe wrote MDE Secretary Philbrick (referred to in July 29th letter.)
 - b. On that same day, July 6, 2004, MDE’s Bob Summers (then Director Water Management, then Deputy Secretary in 2007-2011, and Secretary of MDE in 2011-2015) wrote Anderson asking “What action if any has been taken by MDE to move this along?” Anderson replied “**MDE has done everything possible** to move the project along.” Anderson advised (inaccurately) that under the CWSP the property was classified S-2, but (accurately) “**that to proceed with construction a project must have a W-1 and a S-1 category**”.
 - c. Troublingly, it appears that the Town of Trappe’s attorney may have faxed to MDE’s Dr. Tien a draft of a letter that the Secretary might sign in reply to the Town’s letter, or received for review and comment a draft of a proposed letter from the Secretary.
16. In any event, on July 29th, 2004, MDE Secretary Philbrick wrote the Town of Trappe about the Lakeside application (closely tracking the Town Attorney’s possible draft referred to above), copy to Mr. Rauch). Secretary Philbrick noted that “the Talbot County Council will process the proposed CWSP amendment...and **anticipates continued political resistance to the ultimate approval of Trappe’s plan.**” She advised that “The Department is prepared to publish a Notice of Tentative Determination **once the appropriate CWSP classifications are in place,**” i.e., the County designated the property “S-1.”
17. The Town and developer then **enlisted political help from Annapolis** to aid the developer in its effort to get MDE to disregard the legal requirement that the property must be designated S-1 by the County in order for MDE to issue construction permits.
 - a. Senator Richard Colburn sat on the Senate’s powerful **Education, Health and Environmental Affairs Committee** with oversight of MDE.
 - b. Rauch and his wife **raised campaign funds** for Senator Colburn.
 - c. Rauch’s wife worked as **administrative assistant** to Senator Colburn.
 - d. On August 12, 2004 the Town’s attorney **faxed to Senator Colburn’s office** a copy of a letter that on that day had been **FedExed to Secretary of MDE Philbrick**. A copy of that letter was also **faxed to Ryan Showalter**, attorney for developer.
 - e. The next morning, **August 13th**, Senator Colburn **faxed to MDE Secretary Philbrick an articulate letter** transmitting to the Secretary another copy of the Town’s August 12th letter, stating “**It does not appear that any CWSP Amendment is necessary for the pending Trappe Agreement,**” and complaining that “**it appears that the project has become stalled due to erroneous administrative policy.**” Senator Colburn then stated, contrary to fact, that “**there appears to be no disparity between the Town and the County.**” Senator Colburn requested that the Secretary take action. Neither his letter nor the County’s August 12th letter were copied to Talbot County.

18. The August 12th, 2004, letter from Town's lawyer was a 3-page argument that MDE should proceed with steps to issue the discharge permit without requiring the County's reclassification to "S-1, immediate priority."
 - a. Among other things, (a) *it confuses "the project," conflating the idea that the 540,000 gpd wastewater plant was referenced in Table 21—and thus was in the County's CWSP—with the idea that the entire subdivision was integral to the CWSP*; (b) it incorrectly asserts that the property is classified S-2 (quoting Dr. Tien's Feb 6, 2004 letter (Chapt 2-7 above)), when it was actually UNPROGRAMMED; and (c) in its 4th and 5th paragraphs *invites confusion* by applying MDE's 6-tier sewer classification system to Talbot County, which has a 3-tier system.
 - b. It does quote the developer's attorney acknowledgment that the developer **"recognizes that the "S-1" designation will be applied to all or portions of Trappe East service area prior to extension of sewer service,"** a position discarded by 2006.
19. On September 21, 2004 MDE Secretary Philbrick wrote the Town—with a copy to Senator Colburn but, again, not Talbot County. Citing among other things fact that Talbot County had **"scheduled R123 for public hearing"**, the Secretary agreed to publish a Notice of Tentative Approval of the discharge permit in spite of the County's known opposition, and expressed the Secretary's appreciation for **"the cooperation of the Town in bringing this matter to a successful conclusion."**
20. On October 27, 2004, MDE held a public hearing concerning the discharge permit, and proceeded to process the permit all the while R123 was being considered by the County.

CHAPT 3: THE ATTEMPT TO OBTAIN S-1 DESIGNATION, WHICH FAILED. (MAY—DEC '04)

1. On June 1, 2004, the Town submitted an application to County to designate Trappe East as “S-1, immediate priority.” Both the application and transmittal letter asserted that the property was “S-2” as shown in Figure 24, and not UNPROGRAMMED as shown in the operative Sewer Service map, Figure 23. The Town sent the application to MDE directly on June 8th.
 - a. The Application form itself states “Sanitary [sewer] construction permits... will not be issued or executed without an enacted CWSP amendment process for the requested scope of new service.”
2. October 26, 2004, Talbot County Council held a public hearing on R123 CWSP Amendment; continued over till November 23rd. The Council did not send R123 to the Planning Commission for evaluation for consistency with Comprehensive Plan.
3. On November 5, 2004, the Town of Trappe sent the County a 6-page letter of comments on matters arising at Oct 26th public hearing.
 - a. It stated that no Lakeside wastewater will go to existing plant
 - b. It repeatedly claimed incorrectly that all Trappe East property was S-2, disregarding Figure 23 which shows it as UNPROGRAMMED.
4. On December 21, 2004 (10 am), the Town of Trappe hand delivered a letter requesting withdrawal of CWSP amendment because of known Council opposition.
5. On December 21, 2004, Talbot County denied the Town’s request for withdrawal, as R123 had become a County matter. R123 was then unanimously defeated, 5-0. Council issued a 21-page “Findings of Fact” detailing problems. The Lakeside property was not classified “S-1, immediate priority” (or S-2), and remained UNPROGRAMMED.
6. The County Engineer sent MDE official notice of the County’s rejection on February 4, 2005.

CHAPT 4: MDE ISSUED DISCHARGE PERMIT IN SPIE OF COUNCIL REJECTION OF R123 (2005)

1. On February 7, 2005, the developer's attorney, Mr. Showalter, wrote MDE following up on "recent discussions" to "briefly summarize" the situation, including the County's unanimous rejection of a S-1 designation for Trappe East. Among other things
 - a. He asserted that the State recognized the Trappe East property as a "Priority Funding Area," which on the proper Sewer Service Map (Figure 23) it was not.
 - b. He ended by requesting a meeting; Robert Rauch and the Town's attorney were copied.
2. On May 16, 2005 MDE issued a formal "Response to Public Comments" concerning the discharge permit that had been applied for in December 2003.
3. On May 18, 2005 MDE published its "Final Determination," **making no reference to the sewer priority classification of the Lakeside property.** MDE issued Discharge Permit #04-DP-3460 to the Town of Trappe and Trappe East LLC jointly with an effective date of December 1, 2005. (On October 13, 2005 it re-issued the permit, change unclear.)
4. Citizens and citizen groups were troubled by the issuance of the discharge permit, but **thinking they could rely on the fact that Maryland law prohibited the project proceeding without County designation of land as S-1**, opponents of Lakeside who had previously been represented by counsel by July 19th decided not to spend money to appeal the permit judicially.

[Citizen participation largely ceased, not to be restarted until 2009 when it was discovered MDE had issued actual sewer construction permits.]

CHAPT 5: THE DEVELOPER AND MDE CIRCUMVENT THE COUNTY ALTOGETHER. (2005-'06)

1. On May 5, 2005, the Town submitted a proposed "Subsidiary Plan" to County.
2. On May 24, 2005, the County held a work session on the Town Subsidiary Plan.
3. On June 24, 2005, citing rejection of R123 and the "Statement of Facts," the County advised the Town that due to "two-year rule" (Resolution 77) the County would not process the Town's request to amend the County CWSP to incorporate the Town's Subsidiary Plan until March, 2007. The County also advised that it intended to introduce a resolution, R126, on June 28th to update the timing of the CWSP capital improvement Table 21.

[R126 only meant that the Town had to delay re-applying for reclassification of Lakeside to "S-1, immediate priority" for two years.]

4. On July 26, 2005, Town of Trappe wrote the County to say it "strongly disapproves" of R126, and presented objections.
5. On November 7, 2005, the Town of Trappe's attorney, David Thompson, sent to MDE Secretary Philbrick (copy to the Secretary of the Maryland Department of Planning and five Senior staff at MDE, but not to Talbot County) a six-page letter recapping the entire history of the conflict between the warring parties—the Town of Trappe and Talbot County-- regarding Lakeside, from the early 1990's right up to date.
 - a. The letter is intense, a "summary of the proceedings" exclusively from the Town's point of view.
 - b. It expressly confirmed again that **"before the collection system infrastructure can begin...and the collection system installed, the Trappe East area must be reclassified to S-1/W-1..."**

[This is a critical requirement circumvented within a year by MDE, the Town and the developer without the knowledge of Talbot County or the public.]

- c. It noted , correctly, that MDE itself **"has the authority to require that the County amend"** its CWSP, citing Environment Article 9-503(c)(2), and opining that "the Commissioners of Trappe believe that MDE intervention is warranted, if not required."
- d. The letter concluded thus: "Please consider this a **request that MDE take formal action to adopt or approve the Trappe Subsidiary Plan** as a subsidiary plan component of the Talbot County" CWSP, and asking that "MDE move the process forward administratively."

[Notwithstanding its authority and the Town's explicit request, MDE neither directed the County to amend its CWSP to designate Lakeside as S-1, nor did it "adopt or approve" the Town's Subsidiary Plan.]

- e. The Town's attorney noted that in view of the County's intense opposition, litigation would be the only alternative, and requested "a formal response at your earliest convenience." (Litigation indeed followed.)
6. On November 9, 2005, the County Council unanimously adopted R126, 5-0, along with a related 7-page Findings of Fact also adopted by the Council on November 9th.

[Demonstrating the intensity of the conflict between the parties, the Town of Trappe appealed the adoption of R126 to the Talbot County Board of Appeals, which refused to consider it. The Town then sued the Circuit Court to require the BOA to hear the matter. The case was dismissed as moot in November 2007 because the two-year period had passed.]

7. On January 6, 2006, the County delivered R126 to MDE together with the Findings of Fact.
8. On January 16, 2006 two lawyers for the Town of Trappe, supplementing the letter of November 7th, wrote MDE to "object to the approval of R126 by MDE," copying many senior staffers at MDE and the Secretary and staffers at MDP...but not Talbot County.
9. On January 16, 2006 the Assistant Attorney for the Town of Trappe sent a PIA request to MDE seeking information on all the County's communications with MDE.
10. On January 31, 2006 the MDE sent a letter to Trappe's lawyer (copying the Secretary of MDP) to acknowledge recent of the November 7th and January 16th letters.
 - a. MDE noted that Trappe's submission of its Subsidiary Plan was **the first time a municipality had ever submitted a water and sewer plan directly to MDE.**
 - b. MDE clearly sought consensus: "MDE is mindful of the need for municipalities and counties cooperatively," and "urges the Town and County to reach an agreement." The Secretary forwarded a letter it had sent to Talbot County urging the county to work with the municipalities [sic] in the County.
11. On that same date, January 31, 2006, MDE also sent a letter to Talbot County to advise that the Town had submitted its Subsidiary Plan directly to MDE (which till then the County had not known).
 - a. Importantly, the letter also said this: "MDE **fully respects the local nature of land use decisions** and anticipates that issues between the County and municipal governments [sic] will be locally resolved. However, Environment Article 9-504 requires that the County plan incorporate subsidiary plans of each town, municipal corporation, or other agency that has existing or planned development within that County, **to the extent that the incorporation will promote the public health, safety, and welfare.** Since Trappe is responsible for the water and wastewater public health, safety and welfare of its citizens, MDE expects the County to work cooperatively with Trappe to include appropriate aspects of the Town's plan in the final County plan." (The next paragraph began, "MDE urges Talbot County to work cooperatively with all of its towns....")

[MDE's reference to 9-504 was a close paraphrase, not a direct quote. MDE did not distinguish that the reference to "public health, safety, and welfare" in 9-504 referred to the "public health, safety, and welfare" of the citizens of the entire

county for which the County Council and Planning Commission are responsible, not just interests of the municipality and its citizens. Ascribing responsibility solely to Trappe and not the County was therefore misplaced.

*[Though later documents hint at it, it is difficult to believe that MDE actually understood that by this letter it had formally directed the County to adopt the Town's Subsidiary Plan. To wit, (1) the language was far from a direct instruction (note the lead concerning "local nature of land use" plans, and the highlighted proviso as well); (2) events that followed clearly show the County **did not take it as an instruction**; (3) **the County did not in fact adopt the Town's Subsidiary Plan, as MDE well knew**. As that became evident in following weeks (days, actually,) MDE could have been much more direct; had it been its intent, MDE could have directed the County to adopt Trappe's Subsidiary Plan under Environment Article 9-503(c)(2) as the Town noted in its Nov 7th letter.*

12. On February 22, 2006, the Maryland Department of Planning wrote Mr. Anderson of MDE (copying Secretaries of MDE and MDP both) suggesting extension of the "90-day" window for MDE's action on R126 (and noting that "the MDE approval decision on the Trappe Subsidiary Plan is [still] pending.")
13. On March 1, 2006, the Talbot County Attorney wrote Mr. Anderson of MDE reporting that, in a manner "highly unusual", before receiving a copy of MDP's February 22nd letter, "no one in Talbot County government had any notice that the Town of Trappe was lobbying MDP concerning the County's Plan or Resolution 126." The County requested that no action be taken without the County's participation.
14. March 1, 2006, the Town of Trappe and the developer executed a 131-page Developer Rights and Responsibilities Agreement (DRRA). (The DRRA, which among other things governed developer's delivery to Town of benefits promised in original 2003 Annexation Agreement, was substantially amended in Dec, 2021.)
15. On March 3, 2006 MDE responded to the Town's January 16th PIA request; most but not all, documents on a 'List of Enclosures' are enclosed here.
16. On March 3, 2006, MDE's Mr. Anderson responded to Talbot County Attorney's March 1st letter by "**returning**" R126 to the County, stating that "The County may resubmit the amendment (R126) when it has had the time to review what has taken place and **decide how to proceed**." He also recited that "The Department believes that this planning belongs at the local level," and that the County and municipal governments [sic] have a duty to "work together."

[Surely an agency's act of "returning" legislation under cover of those remarks is unusual. In any event, the County responded decisively; see March 24th letter.]

17. On March 8, 2006, the Talbot County Attorney responded to MDE's January 31st letter (Item #10 above) , copying the Secretaries of MDE and MDP, requesting that no action be taken on the Town's request for adoption of its Subsidiary Plan and asking for a meeting. There is no evidence MDE responded to the latter request.

18. On March 24th, 2006, the County Attorney wrote MDE's Anderson regarding his March 1st letter. Mr. Pullen pointedly returned R126 right back to MDE "for continued processing," and otherwise making the County's viewpoint clear.
19. Unbeknownst to the County, **on May 30, 2006, MDE issued construction Permit #6-25-1104**—not the *discharge permit*, but an actual construction permit—for construction of the new Trappe wastewater plant.

*[Application for construction of the plant must have been made during the exchanges above, but no mention of that construction permit application was made in any of the correspondence referred to above; the County was unaware that the application had been filed or was being processed and was not notified when the permit was issued. The relevant section of the Environment Article (Section 9-511) does not expressly address "discharge permits," but it quite plainly says "**the following systems and facilities may not be installed or extended: sewerage system**" without the County having designated the land as "S-1, immediate priority."]*

20. On July 7, 2006, *also unknown to the County and public*, the developer completed an application for a permit to construct "a force main and wastewater pumping stations, together with all appurtenances" to serve Lakeside. (See Item 22 below.)
21. **On July 10, 2006, MDE wrote Talbot County** to report that it had completed its review of R126, advising that "MDE disapproves this amendment known as Resolution 126."
 - a. MDE noted that "the groundwater discharge permit for Trappe East has already been issued" as well a construction permit for a *water* tank—but nothing related to construction of a sewerage system.
 - b. And... "MDE strongly urges Talbot County and the Town of Trappe to work together to resolve any outstanding planning and land development issues."
 - c. And..."MDE believes that the desires and intentions of the municipality, within which the water and sewer improvements will occur, have significant weight. It is MDE's interpretation that R126 would adversely affect the Town of Trappe...."

[This is the sentence Mr. Showalter quoted at the October 4, 2023, Planning Commission meeting, and previously, without context.]

*[MDE's disapproval simply nullified R126, such that **the Talbot County CWSP reverted to the status prior to its adoption**—reinstating the target dates in Table 21 adopted in October 2002 notwithstanding that those dates had passed. It had no effect whatsoever on sewer service priority classifications of the Lakeside property, which remained "UNPROGRAMMED." Applicants could have re-applied for "S-1, immediate priority" status at any time, but never did, and so Lakeside remained UNPROGRAMMED. After MDE's rejection of R126, no further action took place regarding the Talbot County CWSP.]*

22. On **November 27, 2006 MDE issued construction permit 6-22;23-1165** for a force main and sewerage pumps, also unknown to Talbot County.

23. At closings from March 12 through April 23, 2007, the developer actually settled on Lakeside properties optioned as early as 2001. Option periods were running out, and a number had had to be extended during all of the processing outlined above. No mortgage(s) were recorded on the property at these closings.

[Settlement did not occur until after MDE construction permits were issued and in hand.]

CHAPT 6: ARRA MANEUVER. (2009-2010)

[Real Estate market conditions began to progressively deteriorate as months went by after MDE's disapproval of R126. The Town and developer did not reapply to reclassify Lakeside to "S-1, immediate priority status." The Lakeside developer had just closed on the purchase of the property, and if he was at this time seeking to arrange financing, it would have been difficult.

[Meanwhile, the County and public were unaware that MDE had issued any construction permits for Lakeside's sewer system, given that the County had not reclassified the property as S-1, MDE had not mandated a reclassification as requested by the Town's Nov 7, 2005 letter, and the Town and developer had not reapplied for such a change.]

1. On February 20, 2009, in an attempted to get Federal money from the Obama \$4.1 billion American Recovery and Reinvestment Act ("ARRA"), the Town submitted an application for a grant of \$18,000,000 from MDE to fund construction of infrastructure at Lakeside, and \$3,000,000 for the Trappe East water system, both of which had been the financial responsibility of the developer.
 - a. As part of its application, the Town misrepresented that the project was "'shovel ready,' and was included in the County CWSP and was consistent with the local Land Use Plan."
 - b. The application shows the developer would not only have been relieved of obligations to pay for this infrastructure, but \$1.8mm was labeled for "land." That line item as a project cost seems to imply it is money the developer would have been paid in exchange for the land under the WWTP and spray irrigation fields.
2. MDE ranked ARRA applications, and placed the Trappe East \$18mm grant FIRST on the waiting list.
3. April 7, 2009 MDE Secretary sent a memo seeking information from staff.
4. A Memo dated April 8th was produced, author unknown...
 - a. the first sentence purported that "***the development is shown in the 2002 Talbot County Water and Sewer Plan.***" (Figure 24 was attached as an exhibit, not Figure 23.)
 - b. And then... "MDP [*the MD Dept of Planning*] had advised MDE that the Plan was consistent with the **Talbot County Comprehensive Plan.**"

[No record has come to light showing MDP to have said that; in its February 22nd, 2006 letter to MDE, MDP had said the Subsidiary Plan was consistent with the TOWN'S Comprehensive Plan.]

- c. The memo contains a remarkable, abbreviated and inaccurate "**CHRONOLOGY OF EVENTS AND ACTIONS FOR TRAPPE EAST**" FROM 2004 THROUGH 2006.
 - i. First entry cites **Trappe East as "S-2" in County CWSP**, when the actual Sewer Service Map (Figure 23) showed it UNPROGRAMMED.

- ii. Remarkably in view of The County's February 4, 2005 letter (Chapter 3, Item 6), it asserted that as of April 29, 2005, "**Resolution 123 was still a draft, i.e., it has not been adopted by the Talbot County Council.**" In fact MDE well knew that R123 had been rejected 5-0 on December 21, 2004, with a 21-page Findings of Fact explanation. The Council's opposition to R123 could not have been more firmly established.
 - iii. It cited the MDE letter to County of Jan 31, 2006 above, stating that it advised "the County Council that State Law requires County to adopt/incorporate subsidiary plans into County W/S Plan..." The proviso regarding "health, safety and welfare" was omitted, and no reference made to the County's response—which had been to NOT adopt the Subsidiary Plan.
 - iv. It claimed that "MDP [*Planning*] advised MDE on February 1, 2006 "that Trappe Subsidiary Plan is consistent with the **Talbot County** Comprehensive Plan." (See commentary at b above.)
 - v. It concluded by recounting MDE's disapproval of R126, which had only reverted the CWSP to its prior status in which Lakeside remained Unprogrammed.
5. On April 10, 2009, a Star Democrat article reported that "Talbot County Council President Foster said he didn't know how the project was even accepted by MDE [*for ARRA money*], as it's not included in the Talbot County CWSP."
 6. On April 21, 2009 the County Council wrote MDE Secretary Wilson to unequivocally document that the Trappe East project was not part of the County CWSP.
 7. On April 30, 2009 the Town wrote MDE Secretary Wilson and withdrew its application, including another recitation of the history of Trappe East beginning with annexation, claiming the County's position that "the project" is not int the County CWSP 'is simply untrue,'" claiming the Lakeside land was "S-2" (rather than UNPROGRAMMED), and further compounding misinformation by citing the COMAR "six-tier" definition of "S-2" rather than the definition in the Talbot County CWSP. The letter was signed by all members of the Town Council and copied to the Governor.
 8. On May 11th, 2009, articles ran in both the Washington Post and Star Democrat reporting on the matter. County Engineer Ray Clarke is quoted to say, "There's a lot of political issues here."

CHAPT 7: PERMITS CHALLENGED, "SURRENDERED;" MDE INVESTIGATION ABORTED. ('09-'10)

[Having been alerted by the ARRA dispute, in the Spring of 2009 the Talbot Preservation Alliance ("TPA"), a citizens' group, sought additional information via PIA requests. It learned that in spite of the County's 2004 rejection of R123 and no other effort ever having been made to obtain reclassification of Trappe East to "S-1" status--such reclassification being a legal prerequisite to MDE's issuance of permits--the Town and developer somehow had obtained from MDE actual construction permits for the wastewater plant, force main and sewerage pumps. TPA requested a formal investigation, and the Talbot County Council did also. (At the time, Mr. Alspach of TPA also misunderstood the property to have been classified "S-2" rather than its actual "Unprogrammed," but to no consequence since the County CWSP 3-tier system requires "S-1" classification for the issuance of a permit.)]

1. On July, 15, 2009 Tom Alspach wrote Secretary Wilson providing information and asking for a meeting.
2. On July 16th Mr. Alspach also wrote the Talbot County Council, enclosing his letter to MDE.
3. On August 27, 2009 Mr. Alspach wrote MDE's Planning Director to thank her for a meeting and to deliver information requested in their "candid conversation."
4. Mr. Alspach communicated with the County Council also on September 3rd and provided MDE additional information on September 9th and 11th, 2009.
5. On November 16, 2009 the Center For Public Integrity in Washington DC published a detailed article entitled "**Town Bypasses Normal Channels To Aid Major Development.**"
 - a. The article said it was based on "5-year's-worth of State and Local records," many quoted verbatim.
 - b. The article corroborates the history set forth in this narrative, including that "on May 30, 2006 MDE issued the town a construction permit" even when "as early as 2004 MDE officials knew that Trappe did not have the required Talbot County approval."
 - c. Trappe East developer Robert Rauch was quoted to say, "**We have our permits, and that is all I know.**"
 - d. An email from an unnamed MDP [Planning] official to MDE was quoted to say, "How can you (and we) act on an amendment that has not been locally adopted? What's up with that?"
6. Per a Star Democrat article on December 11, 2009, the Town Council President Crosswell announced "that **MDE officials** at a recent meeting [not one known to TPA or anyone at the County] **suggested the Lakeside development use Trappe's existing plant** instead of building one."

[It seems curious that this idea came from MDE at this moment. Per documents below, it did lead to the aborting of the purported internal investigation of the circumstances around issuing the invalid permits in 2006. Neither TPA nor anyone at the County knew of the meeting that Crosswell revealed.]

7. On December 30, 2009 the President of the Talbot County Council wrote MDE Secretary Wilson to reiterate its interest in Trappe's permits, noting that in mid-August MDE indicated a reply "within two weeks," but that MDE had not been heard from.
8. On February 3, 2010 the Town of Trappe wrote to both the MDE and the Town of Trappe, announcing that it had **abandoned its intention** "to construct a separate wastewater treatment plant to serve" Trappe East, and that "the Lakeside Development **can be served through the existing wastewater treatment plant.**" Accordingly, the Town formally surrendered Permit #6-25-1104 pertaining to construction of a new wastewater treatment plant. (The letters were silent as to the Town's discharge permit and the MDE construction permit for force mains and sewerage pumps.)
9. On February 16, 2010 MDE's Planning Director responded to Mr. Alspach on behalf of Secretary Wilson "regarding the validity of the permit."
 - a. She stated that "**At your request and the request of Talbot County, MDE began a review of whether the...permit had been validly issued.**"
 - b. She advised of the abandonment of Permit #6-25-1104, concluding that "**this development makes it unnecessary for MDE to take any action with respect to this permit...**"

[Alspach's request for an investigation expressly related to both construction permits; see subject line, August 27th letter, Item 3 above.]

[In response to a 2023 PIA request for all documents related to the "review" referred to in the February 16th letter, MDE advised that there are none.]

CHAPT 8: NON-RENEWAL OF DISCHARGE PERMIT (2010)

1. On July 27, 2010 MDE's Dr. Tien sent a letter to Robert Rauch advising that the Lakeside discharge permit 4DP3460 "is due to expire on December 1, 2010," and included a renewal form.
2. On October 14, 2010 the Town Attorney submitted to MDE a "Renewal Application" for the discharge permit, copying the developer's attorney and Mr. Rauch. MDE acknowledged receipt on October 27th
3. The processing of the renewal application was later abandoned, and the discharge permit lapsed.

* * * * *

[As the great recession of 2009-10 unfolded, the Lakeside development essentially lapsed. Virtually no activity occurred, in the field or with regard to County and State approvals or MDE permits. In the public consciousness, Lakeside was remembered only by that tall, weather-beaten sign that stood for years along Route 50.

[In the Spring of 2019 the developer restarted the project, communicating with MDE and, on December 17, 2019, introducing Resolution 281 requesting that Talbot County designate Lakeside as "S-1, immediate priority" for development. It was in fact the County's first consideration of Lakeside since the County Council had unanimously rejected it in December, 2004 without it ever having been considered by the Planning Commission.

[In the intervening years, the County had changed Planning Officers four or five times; the County Attorney had retired; many different Commissioners had come and gone on the Talbot County Planning Commission; four elections to the County Council had rolled past; members of the Public Works Advisory Board had changed often. In Trappe, not only had Commissioners changed many times, but the Town manager had also moved on. Similarly, many changes in personnel had occurred within MDE, and Administrations changed several times in Annapolis. Within County government, the County Engineer remained in place from that earlier period.

[By 2019, when the Lakeside project came back to the County for approval, virtually the only party around who had been present in the 2000-2010 period (other than the County Engineer) was the developer, represented by his principal agents—the lawyer Ryan Showalter and engineer Robert Rauch. Those individuals had been here the whole time, were central participants in the earlier process, and were expert in the technical aspects of land use, permits and development approvals. Official meeting transcripts demonstrate that it was they to whom the County turned to explain the background of Lakeside and its approval status.]

PART II: LAKESIDE RESURRECTED--BASED ON MISREPRESENTATION OF THE HISTORY

CHAPT 9: PREPARATION FOR INTRODUCTION OF RESOLUTION 281. (2019)

1. On January 21, 2019, the Town of Trappe and developer jointly submitted an application to MDE for a 540,000 gpd spray irrigation discharge permit (#19DP3460) as a replacement (or 'renewal,' in spite of the prior lapse) of the discharge permit issued by MDE in May, 2005.
2. On April 23, 2019, the County Engineer, having learned Lakeside was proceeding, advised developer's attorney of the need to "update the County CWSP's language and maps
3. As revealed in a lengthy email chain involving the County Engineer, Ray Clarke(from bottom)
 - a. On July 28, 2019 County Engineer emailed the Town of Trappe's attorney and its Town Manager that "the Developer of the 'Trappe East' Development is planning on breaking ground in February 2020."
 - b. On July 9th, Mr. Clarke raised Lakeside in an email to MDE, and, among other things, asked about "MDE's position on the classification of the Trappe East (Lakeside) Development."
 - c. When MDE responded on September 10th, Ms. Pellicano advised that "*they have been in a planned service area since at least 2002 and if they are ready to proceed then they are ready to proceed, to us at this point it does not matter what designation they have since they are planned for service.*"
 - d. Mr. Clarke promptly replied with concerns about "the water and sewer service areas as Immediate Priority Status." He noted "there has not been any Resolution introduced by the County Council to reclassify the areas in the Town of Trappe as S-1/W-1 from S-2/W-2....***In addition, the Talbot County Planning Commission has never voted for a motion noting the proposed Resolution to amend the water/sewer service area for the Town of Trappe is consistent with the Talbot County Comp Plan.***"

[Evidently, the County Engineer had lost track of the fact that Figure 23, and not Figure 24, was the Trappe Area Sewer Service map, but otherwise well understood the status of the County's approval of Lakeside.]

4. On August 30 and September 6, 2019, MDE published its Tentative Determination to issue the Draft Discharge Permit.
5. On Sept 5, 2019, Mr. Clarke reported to the County Manager and County Attorney concerning an August 27, 2019 letter from MDE's Dr. Tien [no copy in hand]
 - a. Dr. Tien represented to the effect that ***the developer was already, at that date, authorized to proceed with Section 1A of Lakeside.***

- b. Mr. Clarke had reviewed that letter with the PWAB and reported also on its “legitimate questions and concerns.”
 - c. He concluded, “Since the County has not received any feedback from MDE on ***the issue of consistency of the proposed development to the Talbot County Comprehensive Water and Sewer Plan***, it would be, in my opinion, extremely helpful for the County to learn how MDE is proceeding with this project.”
6. On September 10, 2019 **the Assistant County Attorney sent to the County Engineer, Mr. Clarke, a link** to the Center for Public Integrity’s 2009 article (Chapter 7, Item 5 above) detailing the applicants’ past evasions in obtaining MDE permits.
 7. **On September 18, 2019, the County requested** MDE hold a public hearing on the Tentative Discharge Permit, as did other groups.
 8. **On September 23rd, 2019**, the Town of Trappe advised the County they intended to request a CWSP Amendment at the last legislative day of the year.
 9. On **October 1st**, MDE’s Ms. Pellicano in an email to the County Engineer noted that ***“MDE had issued permits before for the S-2 areas and has approved a discharge permit before for this area.”***

[Apparently Ms. Pellicano, and perhaps others at MDE, had no knowledge of the 2009 challenge to the validity of earlier permits, or the purported investigation MDE aborted in February 2010, per Chapter 7 above. Beyond the existence of earlier permits, there is no evidence that the detailed history of earlier approvals presented in PART I was known to individuals at MDE.]

[Notably, at no point in this exchange of emails and correspondence is there any evidence that Ms. Pellicano or anyone at MDE stated that MDE had determined, or “deemed,” or “interpreted,” that Lakeside—much less all of the land within the municipal boundaries of Trappe--was “S-1, immediate priority” for development.]

10. **On November 5, 2019 the County submitted comments on the Tentative Discharge permit, and on November 19 2019** MDE held a public hearing on the Draft Permit. The County (and a few others, such as CBF and ShoreRivers) offered comments at the hearing.
11. **On December 4 and 5, 2019 the developer’s attorney** delivered to the County Engineer draft text for use in R281, introducing it by...
 - a. re-asserting that “The 2002 Report of the Review identified this land area as the “Trappe East District”, designated it as S-2/W-2...” and
 - b. emphasizing again MDE’s imprimatur—“Based upon the provisions of the 2002 Report of the Review, the Maryland Department of the Environment previously issued groundwater discharge, wastewater treatment construction permit and groundwater appropriation permits for the infrastructure necessary to serve the Trappe East District. Those permits either remain in effect or are being reinitiated...”

[The 2006 permits cannot have remained in effect, as MDE construction permits have a fixed termination date, typically 18 months.]

The maps attached to R281 were completed by December 9th.

12. On December 17, 2019, at the request of Co-applicants the Town of Trappe and the developer, R281 was introduced to amend the County CWSP to designate all of Lakeside as “S-1, immediate priority” for development.
13. The Applicants’ overall position on the CWSP amendment process during this entire period is revealed clearly by an email, dated February 12, 2020, from the developer’s attorney to the Chairman of the County Public Works Advisory Board, (“PWAB”). Notwithstanding the submission of R281 and the clear language of the CWSP including Chapter 3, the developer’s and Town’s contention was that an **“S-1 and W-1 designation on the CWSP map is not required** for infrastructure construction...and **sewer infrastructure for the Lakeside project can be installed today throughout the project site...**” To prove the point, Mr. Showalter then cited **“MDE’s prior issuance of discharge and construction permits...”**

[In that manner, the long-ago improprieties evident in PART 1 of this narrative were brought forward. They were the Applicants’ justification, the foundation, for the adoption of R281 in 2020. They continue to be referenced even today, as the County tries to respond to MDE’s directive to correct “mistakes” in the Trappe Area Sewer Service Map. (On October 4, 2023, as sole comment regarding R348, the developer’s attorney read to the Planning Commission a particular selection from a 2006 MDE letter.)]

CHAPT 10: MISLEADING PRESENTATION (“MISTAKES”) RESULTS IN TAINTED REVIEW. (2020)

1. While “Items” below supplement the record, the presentation, consideration and review of R281--the first request since 2004 to reclassify Lakeside for sewer system development--are set out in the following official transcripts of County Planning Commission and Council meetings. Video of each meeting is also available on the County website.
 - County Council Meetings;
 - December 17, 2019—introduction
(<https://talbotcountymd.gov/uploads/File/council/Transcripts/December%2017,%202019%20County%20Council%20Meeting.pdf>)
 - February 11, 2020—amendment
(<https://talbotcountymd.gov/uploads/File/council/Transcripts/February%2011,%202020%20Council%20Meeting.pdf>)
 - July 21, 2020—public hearing
(<https://talbotcountymd.gov/uploads/File/council/Transcripts/July%2021,%202020%20Council%20Meeting.pdf>)
 - August 11, 2020—adoption
(<https://talbotcountymd.gov/uploads/File/council/Transcripts/August%2011,%202020%20Council%20Meeting.pdf>)
 - County Planning Commission
 - February 5, 2020—rejection of original Resolution (no transcript or video)
 - May 20, 2020—public hearing
(<https://talbotcountymd.gov/uploads/File/PlanningPermits/PZ/Planning%20Commission/Minutes/May%2020%20Transcript.pdf>)
 - June 3, 2020—discussion
(<https://talbotcountymd.gov/uploads/File/PlanningPermits/PZ/Planning%20Commission/Minutes/June%203%20Transcript.pdf>)
 - June 10, 2020—finding of consistency of R281AA
(<https://talbotcountymd.gov/uploads/File/PlanningPermits/PZ/Planning%20Commission/Minutes/June%2010%20Transcript.pdf>)
2. On December 17, 2019, at the request of Co-applicants the Town of Trappe and the developer, **R281 was introduced** to amend the County CWSP to designate all of Lakeside as “S-1, immediate priority” for development. While in fact all of that land was at the time “Unprogrammed” as shown on the Trappe Area Sewer Service Map (Figure 23), in the title and text of R281 all of the property was represented to have an “S-2” classification. Also, Exhibit F to R281 stated *“No wastewater capacity of the existing Trappe District wastewater treatment plant will be allocated to serve the Trappe East Sewer District.”*

3. It is unclear if the PWAB made recommendations on the original R281 prior to the Planning Commission Meeting on February 5, 2020.
4. On Feb 5, 2020 R281 was considered by the Planning Commission and not approved; phasing was recommended.
5. At the Feb 11, 2020, Council meeting an amendment to R281 was introduced
 - a. As a “compromise,” Applicants consented to having the southernmost portion of Lakeside (approximately 40%) “remain” as “S-2” (eligible for development in 3-5 years), and so R281 was amended so that *no change was made respecting that land.*

[Consequently, that portion today remains UNPROGRAMMED, contrary to the proposed new Sewer Service Map attached to R348, introduced on September 12, 2023 in response to MDE’s outstanding directive to fix mistakes.]

- b. Exhibit F was also amended, albeit with virtually no discussion or notice, to permit the first Lakeside’s first 84 houses to connect to the existing Trappe wastewater plant.

[Inexplicably, “84 houses” seems to have morphed into 120 houses, or more.]

6. At its May 20 meeting (delayed by the outbreak of Covid) the PWAB considered Resolution 281 As Amended (“R281AA”) and recommended against adoption. It sent a lengthy memo to the Planning Commission and Council setting forth its reasons in detail.
7. The Planning Commission held a public hearing on R281AA on May 20, 2020.
8. On June 3, 2020 the PC took further testimony from Applicants and discussed issues.
9. Consideration carried over to a June 10, 2020 Commission Meeting, where a motion to certify R281AA to be consistent with the Comp Plan carried by 3-2 vote.
10. On July 21, 2020 the Applicants presented R281AA to the County Council at a public hearing.
11. On August 11, 2020 R281AA came to a vote and was adopted, 4-1.

12. ***[A Letter to The Editor published in the Talbot Spy on August 9, 2023, spelled out how “falsehoods” (or in the phraseology used for the same concept under Maryland law, “fraud, surprise, mistake or inadvertence”) in the Applicants’ presentation of R281 were the foundation and framework for the Planning Commission’s certification of consistency, permitting its subsequent adoption by the County Council. The letter and its Exhibits provided detailed evidence from the official record showing a grossly inaccurate recounting of the actual history of Lakeside review and approvals which is set out in PART I of this narrative. That “fraud, surprise, mistake, inadvertence” tainted the entire process.***

[While official transcripts linked above report the entirety of every meeting, for convenience Exhibits to the letter provided four lists of excerpts from the transcripts, each on a different aspect of the false telling of this history. These excerpts are available here:

- A: Lakeside was "S-2" since 2002, when in fact it was Unprogrammed.*
- B: MDE had determined that Lakeside was "S-1," immediate priority.*
- C: False implication of MDE permits, that Lakeside had been approved earlier.*
- D: Evidence that Commissioners had indeed been misled by falsehoods.*

CHAPT 11: POST-ADOPTION DEVELOPMENTS LEADING TO A CALL FOR RECISSION. (2021-'22)

1. In September 2020 the County sent R281AA to MDE for MDE's required review and decision to approve, disapprove, or modify. MDE transmitted it to other agencies for comment.
2. On October 2, 2020, MDE's Regulatory and Compliance Engineer wrote the following regarding the CWSP provision permitting 84 residential lots (now 120?) in Phase 1 of Lakeside to connect to the existing Trappe wastewater system:
 - a. "The schedules attached to R281 are not being met. The existing WWTP does not yet even have a draft Preliminary Engineering Report available for MDE to review, let alone them completing the ENR construction in 2021. The upgrade to the collection systems have not been completed...They have not provided confirmation that there is adequate capacity to the existing collection system to convey the additional sewage from the 84 homes. They included the capacity analysis of the WWTP from 2004, not the present..."
 - b. Noting that the ENR upgrade [of the existing WWTP] is "expected to be completed by 2021," the Director of Legislative and Intergovernmental Affairs on October 30, 2020, requested Applicants to provide "as soon as possible...a Draft Preliminary Engineering Report for the existing Trappe WWTP for MDE to review" and "a Capacity Analysis confirming that there is adequate capacity..."
 - c. On November 2nd, Robert Rauch, the developer's engineer and former Lakeside partner responded (copying MDE Deputy Secretary Dorsey), saying in part, "The Town has provided to MDE a timeline for the EDU upgrade of a proposed construction phase of 11/2021 to 5/2023. I will forward you a draft PER for the upgrade, hopefully later today."

[The Town's Attorney in an August 17, 2021 email reported that a PER was actually submitted to MDE "in May," rather than later on November 2, 2020.]

[As of this writing in November 2023, not only has no upgrade commenced, in fact no PER for an upgrade has been accepted by MDE and no plan for the existing WWTP has been settled upon. On June 7, 2021, MDE appropriated \$7,105,000 of grant and loan funds for the Trappe WWTP ENR Upgrade project. That appropriation has been terminated by MDE or lapsed because no PER was approved, much less were final plans and specifications submitted by the December 1, 2021 deadline. The Town of Trappe has held public meetings to discuss radically different alternatives for both treatment and effluent discharge-including the possibility of abandoning the existing WWTP altogether, treating all Trappe waste at Lakeside and using spray irrigation there, fully or periodically, as a means of discharge. Meanwhile, (a) 120 homes may be flushing waste into the existing system, that effluent being discharged into La Trappe Creek (with a nitrogen concentration of 38 mg/L, 12 times the ENR standard) in violation of

that waterway's TMDL parameters, and (b) MDE and Talbot County have authorized a 2500-unit subdivision when wastewater infrastructure for the area is fundamentally uncertain.]

3. On November 4, 2020, MDE approved R281.
4. In December, 2020 MDE issued a Final Determination with respect to the Trappe East spray irrigation waste water Discharge Permit, the Permit 19-DP-3460 having an Effective Date of February 1, 2021.
5. On January 11, 2021, the developer executed a Wastewater Capacity Allocation Agreement with the Town of Trappe, providing the developer "exclusive right" to discharge 30,000 gallons per day of waste into Trappe's existing plant (120 EDU's at 250 gpd). The price was \$630,000, with 20% to be paid within 60 days.
6. On March 24, 2021 ShoreRivers filed a Motion to Remand MDE's Final Determination of the Lakeside Discharge Permit 19DP3460 due to improprieties regarding the MDE's public hearing process and material changes made to the Permit between the Tentative Determination and MDE's Final Determination. (CBF filed a similar suit on or about the same date.)
7. On April 23, 2021 the Applicants consented to ShoreRivers' Motion to Remand, which the Court granted on April 27th.
8. On May 7, 2021 Dan Watson, in his own name but for the benefit of all Talbot citizens and taxpayers, petitioned the Talbot County Council to adopt a Resolution rescinding R281.

END PART II

* * * * *

[Part III of this narrative has not been completed as of the November 6, 2023 release of V1.]

GLOSSARY AND ACRONYMS

1A: The first platted portion of Lakeside. “Phase 1” has been divided into subsections as it is platted of record: 1A, 1B, 1C and so forth. Phase 1A contained 95 residential lots.

ARRA: The “American Recovery and Reinvestment Act,” enacted in 2009 providing almost \$890 Billion Dollars for infrastructure nationwide.

CBF: Chesapeake Bay Foundation

COMAR: Code of Maryland Regulations

Comp Plan: The Talbot County Comprehensive Plan, a master plan for the County based on very substantial citizen input and revised every 10 years (most recently, 2016).

CWSP: Comprehensive Water and Sewer Plan, functionally a subcomponent of the Comp Plan. No amendment to the CWSP can be adopted by the County Council unless the Planning Commission has certified that it is consistent with the Comp Plan.

DNR: Maryland Department of Natural Resources

ENR: Enhanced Nutrient Removal, currently the highest level of pollution removal technology in Maryland wastewater treatment systems.

MDE: Maryland Department of Environment

MDP: Maryland Department of Planning

MGD: Million Gallons per Day, a measure of capacity at a sewer treatment plant

PWAB: Public Works Advisory Board, a Talbot County panel of citizens appointed to advise the Public Works Department, the Planning Commission, and the County Council on matters affecting public works, especially sewer and water.

PER: Preliminary Engineering Report, typically required as first step in evaluating a proposed public work project

R100: Resolution 100 by which Talbot adopted the CWSP in 2002, the most recent version since amended about 70 times. The CWSP is technically a “Report of the Review” of a 1993 plan.

R123: Resolution 123 unanimously rejected by the County Council on December 21, 2004. That was the only time prior to R281 that a request to change Lakeside to “S-1, immediate priority” came before the Council.

R126: Resolution 126 adopted by the County Council in November 2005 but disapproved by MDE (thereby nullifying it) in July, 2006. R126 proposed only to change certain dates for proposed capital improvements in the Trappe area, and did deal with any sewer service classifications. The County and Town had intense dispute over R126, as the Town lobbied MDE.

R281: Resolution 281 was the critical legislation at the center of the Lakeside dispute. Adopted on August 11, 2020, it was introduced December 17, 2019 for purpose of designating all of Lakeside (all 2500 lots and the large commercial development) from “Unprogrammed” to “S-1, immediate priority”...meaning for development in 1-2 years.

R281AA: Resolution 281 As Amended. R281 was amended in February 2020 so that only the northern 60% of Lakeside was reclassified (as S-1). It was adopted on August 11, 2020 after the Planning Commission was led to certify it “consistent with the Comp Plan” by 3-2 vote on June 10, 2020 (a decision it reversed in November, 2021).

S-1: A sewer service classification under the CWSP essentially meaning “immediate priority” for development. Only land properly classified S-1 can be developed in Talbot County, and such designation requires the Planning Commission’s certification that such designation is consistent with the Comp Plan.

S-2: A sewer service classification under the CWSP essentially meaning the property is expected to be eligible for reclassification to S-1 (and development) in 3-5 years. Such reclassification is not automatic as a function of the passage of time, but requires formal action as described in Chapter 3 of the CWSP.

TIP: The Talbot Integrity Project, a citizen’s organization created in 2022 as a result of the Lakeside dispute and focused on adhering to proper approval processes and protecting the Comp Plan.

TPA: Talbot Preservation Alliance, an established citizens’ organization committed to sound growth.

W-1 and W-2: The same as S-1 and S-2, but relating to water systems rather than sewerage.

WWTP: A wastewater treatment plant

PART IV: PLANNING COMMISSION PROHIBITED FROM EXERCISING ITS AUTHORITY

CHAPT 16: KEY PIVOT POINT—MDE DIRECTS COUNTY TO FIX R281 MAPPING MISTAKES.

[In its lawsuit against MDE, described in Chapter 15, TIP detailed the several ways in which the Trappe Area Sewer Service Map was fundamentally flawed. The errors in the Sewer Service Map were in two discrete categories:

- The portion of Lakeside (the northern 60%) which was reclassified under R281 to be “S-1, immediate priority,” was improperly certified because the Planning Commission, the public, and the County Council had been completely misled by falsehoods about the property...in other words, by “fraud, surprise, mistake or inadvertence” in legal terminology. That history, documented in Parts I and II of this outline, included the misrepresentation that in 2002 the land had been classified “S-2,” intended for development in 3-5 years...and (as seemingly proven by the fact that MDE had issued sewer construction permits in 2006--improperly issued, it turns out), Lakeside was already “S-1” according to MDE. Ergo, some Planning Commission at some earlier time must have already reviewed issues relevant to the Comp Plan and approved Lakeside in full. Consequently, in 2020 the Commission did not perform a proper review of R281 (timing with regard to roads, schools, etc.) with regard to the Comp Plan.*
- Secondly, some 70 or 80 parcels, mostly on the west side of Route 50, were changed on the map but they were not related to Lakeside in any way, were not recited as being changed in the text of R281, and their reclassification was never considered or reviewed by the Planning Commission or anyone else. (In drafting legislation introduced on September 12, 2023, (R348) the County Attorney even created a new defined term for lots affected by this one class of errors: “Unintended Parcels.” See Chapter 17, Item 35.)*

In the Spring of 2023, TIP’s Petition for Mandamus was dismissed by the Court on the basis that MDE’s decision was discretionary, and “plaintiffs have no right to mandate MDE’s disapproval” of R281 and its maps. It was simply up to MDE.]

1. Faced with pleadings detailing the reasons why the Sewer Service Map adopted by R281 was clearly incorrect, on April 24, 2023 MDE sent a letter to Talbot County declaring that the maps “needed to be corrected.” Citing Section 9-505(c) of the Environment Article of the Annotated Code of Maryland that provides for serious sanctions for inaction, MDE instructed the County, “within 90 days of receipt of this letter” to issue a new Sewer Service map “for all of the parcels within the Town of Trappe including the Lakeside development.” (The MDE letter was copied to another State official in Talbot County, the Environmental Health Officer, among to whom MDE delegated the duty to reviewing proposed plats to determine if they conform to the CWSP.)

MDE's directive was explicit as to **how** the corrections should be made: **"...the County should submit the new Amendment [to the CWSP] to MDE within 90 days."**

[TIP believes this important pivot was initiated within the Office of The Secretary of MDE, because only the senior Departmental level was involved with litigation described in Chapter 15 (where the mapping flaws were front and center), not staff within the Water and Science Administration Division; deference to the developer's interests had been characteristic of that staff level for two decades; and it is unlikely that a sub-departmental staffer would cite the sanctions of Section 9.506(c) without authorization or direction from senior officials.]

2. There followed immediately a rapid series of emails between the County Engineer and mid-level staff of MDE's Water and Science Administration Division (hereinafter, "Staff"). Emails reveal:
 - a. The County's staff had as early as 2022 prepared, a CWSP Resolution to make corrections dealing with parcels **other than Lakeside**, i.e., what in September came to be defined as the "Unintended Parcels." Those maps had been "reviewed by Town of Trappe," presumably approved.

[The staff's 2022 draft Resolution and maps had never been made public or introduced; there is no evidence that anyone other than staff and the Town—not a Council person, or Member of the Planning Commission or PWAB--was even aware of the Resolution and maps.]

- b. The County Engineer's emails to MDE were copied to fourteen people, including the Town of Trappe's attorney and administrator. Missing on any communications was any member of the Talbot County Council, the Talbot County Planning Commission, or even the Talbot County Public Works Advisory Board, whose advisory domain includes water and sewer issues.

[In December, 2013, TIP learned that all legal bills for the Town of Trappe's attorneys, currently Lindsey Ryan, have been paid by the developer since at least 2004. (Similarly, all consulting to the Town by engineers related to Lakeside have been paid for by the developer.) No professional services related to Lakeside have been independent of the developer. Yet in dealings with the County, great distinction is made as to whether an attorney addressing the Planning Commission or Council is representing the developer or Town of Trappe.]

- c. The County Engineer readily acknowledged to MDE what the County, and he in particular, had repeatedly denied in 2021 and 2022 to the public, the Council, the PC, and the PWAB when TIP raised the issue (as did the developer's attorney and the attorney for the Town of Trappe): **"Figure 23, the Town of Trappe's ... Sewer Service Area, should be the Figure that is updated, not the Long-Range Planning..." map [Figure 24]."**
 - d. MDE and the County Engineer agreed that when the County responded to MDE's requests **"there will no longer a Figure...24,"** and MDE asked "should any reference to...Figure 24 be removed from the Text" [of the CWSP]?"
 - e. In an understatement, in an email of May 4th, 2023, Mr. Clarke, the County Engineer wrote MDE, **"Figures 12 and 24 have created a huge mess."**

3. On **May 9, 2023, MDE Staff sent** the County another formal directive confirming:
 - a. As to form, it reiterated that its “request” was “**for an Amendment** to the Talbot County CWSP,” although two separate amendments would be acceptable.
 - b. As to substance, that the amendment “will include maps which will incorporate **any changes**...that the County may deem as necessary.”
 - c. That Figure 24, the Long-Range Planning map, was to be deleted: “moving forward, **there will be one map**...to resolve any confusion.”

*[In conversations before May 9th, the County staff requested to split the County response into two amendments, one addressing the key question of maps and the second concerning “Equivalent Dwelling Units, or EDUs”, the second issue MDE required addressing. The purpose of splitting the County’s response was not at first evident, but became clear when the “Developer’s Plan” described below surfaced: the **maps** would be fixed in manner avoiding an actual CWSP amendment that would require Planning Commission review, while EDUs would be addressed in the conventional, proper manner.”]*

4. On May 17, 2023, an on-line **conference call** was held that included the County Attorney, the County Engineer, and three representatives of MDE.
5. On May 18, 2023, the County Engineer held **a regular monthly meeting** with the Public Works Advisory Board (“PWAB”), a 5-member panel of citizen volunteers tasked with considering and advising the Engineer, his department, the Planning Commission and Council on matters such as sewer service maps. The Engineer made no mention whatsoever of MDE’s letters or matters related to the Trappe area sewer service map. Meeting minutes and video available at: <https://talbotcountymd.gov/uploads/File/publicworks/Public%20Works%20Advisory%20Board%20Meeting%20Agendas%20and%20Minutes/Public%20Works%20Advisory%20Board%20Meeting%20Agendas%20and%20Approved%20Minutes.pdf>.

[There is no evidence in the record that any County Council person (other than President Callahan to whom MDE’s letters were directed) or any member of the Planning Commission or PWAB had been advised of, or consulted, regarding MDE’s letters.]

6. On May 23, 2023, the **Talbot Spy published a Letter to Editor** from TIP alerting citizens to MDE’s directive and briefly explaining its significance.
7. Between May 26th and June, a small group of citizens organized the “Ad Hoc Citizens Committee to Fix Lakeside” to work alongside and in support of TIP’s mission. This Citizens Committee circulated an on-line **petition demanding** that, for now, the County Council adopt a CWSP amendment **limiting the “S-1 immediate priority area”** to the portion of Lakeside already under construction. The petition effort took off rapidly, and by autumn **850 citizens** of Talbot County (3% of the adult population) had formally signed on in full support to TIP’s mission. **See list enclosed**

CHAPTER 17: EFFORTS TO KEEP PLANNING COMMISSION FROM PROPER REVIEW.

[This Chapter is divided into four sub-parts, each describing in chronological order a separate attempt by supporters of Lakeside to avoid or interfere with the Planning Commission's exercise of its authority and responsibility--delegated to it directly from the legislature, not the County--to review the sewer service classification of Lakeside as shown on the Sewer Service Map.]

TACTIC #1: JUST SWAP OUT MAPS, NO PLANNING COMMISSION REVIEW:

1. On **May 25, 2023, Ryan Showalter, attorney for the developer, wrote to Patrick Thomas**, the Attorney for the County with copy to Lyndsey Ryan, Attorney for the Town of Trappe, concerning "Lakeside—MDE Response." Showalter presented an idea (herein referred to as "Developer's Proposal"), and a court case he suggested supported it, that *County staff* could correct the sewer service map on their own—i.e., without the need for a CWSP amendment. This proposal would mean changes to the Sewer Service Map would never be reviewed by the Planning Commission for consistency with the Comprehensive Plan.

Quoting from the case, Showalter said, "**...employees may, indeed must, correct, as revealed, drafting errors...**" We believe the same is true in this case...Happy to answer any questions."

2. The first evidence that MDE's directive was presented to the Council are notes of the **June 13, 2023, closed executive session** after a regular meeting where minutes reveal that MDE's letter the Council received privileged legal advice on the matter, with staff present.
3. On **June 15, 2023 the County Engineer held the regular PWAB meeting** which was attended by Councilman Leshner also. For the first time, the MDE directive was disclosed and discussed at length, though no decision was sought or reached. (**Video is available here.**)
4. On June 17, 2023, the Talbot **Spy published a letter** from a citizen, Mr. Wenneson, describing the PWAB meeting and raising alarm. "The County Engineer described a very unsettling process where, apparently without any guidance...his office has been moving forward independently, consulting primarily with lawyers from the Lakeside applicant...**the County Engineer asserted that his emails to MDE constituted the County's official response...**" to MDE. (Emphasis in original.) The letter engendered many reader comments.
5. On June 19th, **TIP wrote to both MDE and the Talbot County** Council formally requesting meetings "to offer the County, and MDE, relevant information we believe can contribute to the proper and swift resolution of current issues."
6. Though the Council had never discussed corrections to the maps in any way, the PWAB had only discussed the matter in a preliminary fashion, and Planning Commission had not even been told of MDE's directive, on June 20, 2023, the County staff sent MDE "updated maps" for "initial review."
7. On June 21, 2023, the Talbot Spy **published a TIP letter** explaining how "Figure 24" fundamentally misled Talbot County officials into approving Lakeside.

8. On June 26th TIP emailed the County encouraging the Council to receive information from other parties in addition to the County Attorney and Engineer.
9. A work session of the County Council with just the staff and the Town of Trappe's lawyer was held on June 27th, 2023 to discuss the MDE directive. It was an open meeting, but the public was not permitted to speak, nor were Planning commissioners or the PWAB members invited to attend. The work session, video and transcription available here, was actually a **presentation by the County Attorney and Engineer of the Developer's Plan**—that is, to request that MDE agree to simply swap out maps and avoid going through the CWSP Amendment process—which would require Planning Commission review. The proposed new Sewer Service Map corrected only the errors outside on Lakeside, leaving Lakeside completely untouched. MDE's apparent "90-day deadline" was part of the discussion, a reason to submit the request for a swap immediately.
10. On June 30 TIP wrote all Council Members (and copied the Chairmen of the Commission and PWAB) urging that the Council hear from others.
11. On July 3, 2023, the Talbot Spy published a letter from TIP with headline "County Council Railroaded To Not Fix Lakeside Maps?" It too generated many citizen comments.
12. On July 5th, Mr. Thomas, the County Attorney, sent a letter to TIP's Baltimore attorney rejecting TIP's June 21st request and instructing that, as to Lakeside, "all further correspondence regarding this matter should be through counsel."
13. On July 5th, the law firm of McGuireWoods delivered to TIP an eight-page opinion letter in response to two questions TIP had posed earlier concerning two topics: the nature of the apparent "deadline" in MDE's April 24th letter and the proper legal process for modifying the Sewer Service Map—i.e., the efficacy of the Developer's Plan.
14. Also on July 5th, TIP's Chairman, Dan Watson met with Les Knapp of MDE to discuss MDE's request. In a follow-up email on July 6th, TIP noted, "It is obviously in everyone's best interest that this all be done right, as it would only be wading into deeper trouble to make changes to the CWSP improperly. Not only would controversy over correcting maps not be resolved, there would be an uproar, legal and "political" over the procedure...and MDE, who must approve all CWSP amendments, would inevitably be drawn into it."
15. On July 7th, in anticipation of action by the Council at its July 11th to effect the Developer's Plan, TIP sent all members of the Council, and the County Attorney, an email detailing why an attempt to swap maps without going through the proper amendment process with Planning Commission review was improper. (Such action had been telegraphed by the County Attorney at the June 27th work session, although the Council had taken no action at that time.) Enclosed with the email was the McGuireWoods opinion letter, a transcript of their work session, and a copy of Showalter's May 25th memo introducing the Developer's Plan (Item 1 above)...--so that it was clear to Council Members where the scheme had originated.
16. Whereas TIP had expected that the Council would effect the Developer's Plan at the July 11th meeting by adoption of an Administrative Resolution, there was no discussion of the matter at all, nor a vote by Council Members on how to proceed. Instead, at the very end of the meeting, in "Council Members Comments," Ms. Mielke read a lengthy prepared announcement that the Council had instructed the County Attorney to request MDE swap maps. Video and transcripts are here.

17. The next morning, July 12th, the County Attorney sent MDE Staff a letter requesting that it “accept” new water and sewer service maps the County Engineer had delivered earlier in fulfillment of MDE’s directive concerning maps.
18. On July 12th, TIP replied directly to Mr. Thomas regarding his July 5th instruction to communicate regarding Lakeside only “through counsel,” copying the Council, Planning Commission, MDE and others. TIP rejected the notion as an effort “to restrain TIP’s rights as a civic organization to interact with our elected representatives.”
19. On July 14th TIP sent a brief objecting to the process to the County Council, MDE, Planning Commissioners and PWAB members, citing Section 9-506 of the Environment Article.
20. On July 16th, TIP sent Les Knapp (with copy to Secretary McIlwain and others at MDE and the County) a 3-page letter detailing its objections, along with a copy of McGuireWoods opinion letter and the Showalter May 25th email first proposing the Developer’s Plan.
21. On July 18th TIP received an acknowledgement from the Secretary’s Executive Assistant advising that “Someone from our team will reach back out to you soon.” On July 25th, not receiving any further response, TIP emailed Mr. Knapp (copy to the Secretary and others) making inquiry, but on the matter of “swapping out maps,” TIP received no further reply.
22. On August 1, 2023, TIP filed an Open Meetings Act Complaint against the Talbot County Council for its closed-door decision on July 11th to authorize the County Attorney to proceed with a request to swap maps. The complaint, response, reply and rebuttal documents are all available. The Compliance Board issued a 5-page formal opinion on October 13th, concluding that **“Because the Council did not provide enough information** to decide,... We thus cannot determine conclusively whether a violation occurred.”

TACTIC #2: BURY THE NEW MAPS IN THE CWSP UPDATE MORASS:

23. TIP's efforts may have helped or not, but MDE **did not to accept** a map swap as a legal way for the County to respond to its directive to correct the Sewer Service Map with a CWSP Amendment making **"any changes the County deems as necessary."** (TIP has never seen MDE's direct reply to the County's July 12th letter, if there was one.)
24. On July 21, 2023, Ms. Dalmasy of MDE Staff sent the Council President a letter regarding its "request for an Amendment to" the CWSP. She went on, **"Based on the initial review, these maps [submitted June 20] appear to meet the intent of the reclassification request."**

[MDE Staff did not take note that "these maps" she was approving (albeit based on initial review) included new "Figures 12 and 24"--the ones MR. Clarke said created a "huge mess"—even though MDE had confirmed were to be removed from the CWSP "to resolve any confusion." They were not removed, nor was any text changed that referred to them, a point MDE Staff raised earlier.]

Whereas in both the April 24, and May 9th 2023 directives MDE had explicitly called for **"a CWSP Amendment" (which would require Planning Commission review)**, and even though "an Amendment" was cited at the beginning of this July 21st letter, MDE Staff now offered the County an alternative means of fulfilling its directive—presumably accommodating a request from the County Attorney or Engineer, as it is unlikely Ms. Dalmasy on her own initiative would have decided the County needed an alternative to simply amending the CWSP as directed. Ms. Dalmasy now said the County could **either** amend the CWSP **or "submit the updated maps as part of the County's 2023 CWSP Update (what the County refers to as the Report Of The Review)."** August 31 was the deadline given for either releasing the Report Of The Review or introducing a Resolution to amend the CWSP.

25. MDE's original "90-day deadline," when a letter initiating a sanction process was intimated to begin, passed on July 23, 2023.
26. At its August 8th, 2023, regular meeting, the County Attorney and County Engineer presented the Council with MDE's July 21st letter and, being clearly directed by staff to that conclusion, the Council decided that its response to MDE would be through the "CWSP Update" alternative. **Video and transcripts of the meeting are here.**
27. On August 9, 2023, the Talbot Spy published **a TIP letter to editor** detailing how "Falsehoods Led to Lakeside's Approval" as evidence by excerpts from official transcripts attached.
28. Having learned about the July 21st Staff letter, on August 14, 2023, **TIP wrote Les Knapp** of MDE with subject line **"Did MDE Intend to Abandon its Directive?"** TIP alerted MDE that Staff had been misled: "Obviously MD believes those two terms— "Report Of The Review" and "CWSP Update"—mean the same thing. That is wrong; they are two completely different documents to be prepared for different purposes, one following the other. This is a crucial mistake requiring immediate attention...." TIP concluded, "We implore MDE to

immediately withdraw that alternative and continue to require the County to proceed with a proper amendment to its CWSP.” Secretary McIlwain and others at MDE were copied.

*[The “Report Of The Review” and the “2023 CWSP Update” are to be prepared as Parts 1 and 2 of the Contract Talbot County awarded to the Lakeside developer’s engineer (and former partner), Rauch, Inc. in 2022 without regard to conflicts of interest. TIP is currently suing the County and Rauch, Inc. to have the contract set aside because of those allegations and evidence that Rauch, Inc. assisted the County in preparation of the RFP. The suit is on-going. The County Engineer stated at the June 15th PWAB meeting that the Report Of The Review would be released within days, and again in September, 2023 its release was imminent. As of December 13, 2023 it has not been released for anyone’s review, and the “2023 CWSP Update” is far from commencing. (Note: the CWSP Update must conform to **the County’s 2016 Comp Plan**, which will be revised by 2026...necessitating a new Update so that it conforms to the revised 2026 Plan.)]*

29. The morning of August 15th, TIP emailed Mr. Knapp excerpts from Contract 22-07 proving the disparity between the Report Of The Review and the CWSP Update. A second email alerted to the need for swift action, as the County was about to proceed with the alternative not requiring a stand-alone CWSP amendment and Planning Commission review.
30. On August 23rd, after having spoken with Mr. Knapp by phone regarding the implication of a response using the CWSP Update alternative, TIP sent Mr. Knapp a confirming email regarding the process.
31. Mr. Knapp responded on August 24th, advising that MDE intended to wait until August 31st to act, and was expecting to receive the County’s Report Of The Review by then.
32. Many in Talbot County, aside from TIP, also were bringing to Council Members’ attention the fundamental misunderstanding embedded in MDE’s “alternatives” for a response, especially the implications as to timing of a final resolution of the matter. At its meeting on the evening of August 22th, on a motion of Ms. Mielke to reconsider, the Council reversed its position by a 3-2 vote, and instructed staff to handle the remapping through a stand-alone Resolution to amend the CWSP—what would become Resolution R348 (and, similarly, as to responding to MDE’s EDU question with another Resolution, which became R347). Video and transcripts of the August 22th meeting are here.

[That the emails described in Items 23 and 24 above followed after the August 22nd meeting and change of direction seems curious, but no explanation comes to hand.]

33. Related only indirectly to MDE’s directive to the County to fix the Trappe Area Sewer Service Map, on August 27th, TIP wrote to the Talbot County Environmental Health Officer (a State official) concerning “Lakeside Plats, and Monitoring.” Lakeside had constructed over 84 homes in Phase 1A of the subdivision, but the CWSP permitted only that number to be connected to the existing Trappe wastewater plant, and TIP inquired how that conflict was being monitored so excessive connections did not occur. The second, more important reason, was to remind the Environmental Health Officer that because MDE had determined that the Sewer Service Map was incorrect, no plat could properly be certified as consistent

with the County CWSP until a new map was adopted and approved by MDE. Senior officials at MDE and Talbot County were copied on the letter. As of December 10, 2023 there has been no response, notwithstanding TIP's follow up efforts. At least 109 houses are currently connected to the existing plant (130% of number permitted), and two weeks after the letter a plat for 180 new lots in Lakeside was recorded in the land records of Talbot County, certified by the Environmental Health Officer, a State official delegated duties by MDE, as being consistent with the CWSP.

34. On August 28, 2023, Ms. Dalmasy of **MDE Staff emailed the County Attorney**. Again, she offered gratuitously, "Based on informal review, **MDE believes the maps will meet the request**, but cannot officially approve..." She acknowledged the County's decision to proceed with two "stand-alone" resolutions for the maps and EDU information respectively, and set a **September 12th** "deadline" for their introduction.

[It appeared to TIP and others that this second effort to avoid a timely and meaningful, legitimate review of the Sewer Service Map as it pertains to Lakeside had been thwarted.]

35. On September 6th, the Talbot **Spy published a TIP letter to editor** explaining to the public how MDE's action and the County's reversal meant a Resolution to correct errors in the Lakeside sewer service map was imminent, and that the Planning Commission would fulfill its duty to review that new map for consistency with our Comprehensive Plan. Optimism proved pre-mature.

TACTIC #3: DRAFT A RESOLUTION SIMPLY DECLARING LAKESIDE CLASSIFICATIONS CORRECT:

[MDE's directive in its April 24th and May 9th letters called for the County to do two different things: provide information on projected EDU's for each Phase of Lakeside, and correct errors in the Trappe Area Sewer Service Map, including Lakeside, as the County deems necessary. At the outset, the County sought to deal with these not in a single CWSP amendment, but in separate actions (TIP believes so that the mapping issue could be dealt with through a "swap" as discussed in Section 1 above.)

[Per the Council's August 22nd decision to respond with stand alone resolutions rather than via the CWSP Update, the County Attorney prepared two separate resolutions-- "R347" dealing with EDU information and "R348" dealing with the new Trappe Area Sewer Service Map.

*[Discussion of R347 and the issue of "EDUs" is omitted from this History for the time being; the topic is confusing by design and would unnecessarily distract from an understanding of **the central issue in the proper regulation of Lakeside—R348 and the Sewer Service Map.** (R347 does embody some important concepts, most significantly the developer's claim that the word "Phase" has no relationship to sequence or relative timing, but is synonymous with "area" or "neighborhood.")]*

36. At the Council's September 12, 2023, meeting ([video and transcripts here](#)), two Members of the Council, Mr. Stepp and Ms. Haythe, introduced Resolution 348 ("R348") which had been drafted by the County Attorney. There is no record of involvement, if any, of any Council Member in preparation of the legislation.
37. **R348** was instantly controversial:
 - a. Citizens--focused on Lakeside's problems for 3 years and knowledgeable about MDE's directive to adopt a CWSP amendment (a) to fix past errors "that **the County** may deem as necessary," (b) to **remove Figures 12 and 24** so the CWSP shows a single water service map and sewer service map, (c) and to provide a new Sewer Service Map "**with the corrected classifications for all of the parcels within the Town of Trappe including the Lakeside development**"—saw R348 as yet another quite obvious attempt to deny the Planning Commission the ability to fulfil its legitimate responsibility with regard to the County Comp Plan.
 - b. **Directly contrary to MDE's directive**, R348 was carefully drafted to assure that no classification of any portion of the Lakeside development could be challenged, whether or not mistakes had been made when the Planning Commission had certified R281AA and its accompanying maps as consistent with the Comp Plan-- which certification the Commission had already rescinded once because of errors. (Though incidental to the central point, R348 also failed to remove Figures 12 and 24.)

- i. R348 for the first time created two new defined terms for lands within the Trappe Sewer Service Area: “Properties” which refers to Lakeside, and “Unintended Parcels” which include no property within Lakeside.
 - ii. R348 simply *declared* Lakeside to be error-free: **“the Properties’ [i.e., Lakeside’s] water and sewer classifications were correctly shown.”** [Eighth Recital]
 - iii. **R348 then blatantly misstated MDE’s directive**, which actually directed that “the County [our *corporate entity*, not identical to *the County Council*] to provide a new Sewer Service Map “with the corrected classifications for all of the parcels within the Town of Trappe **including the Lakeside development.”** In stark contrast, the County Attorney drafted the Ninth Recital to state that MDE’s letters directed **“that the County Council address the Unrelated Parcels’ incorrect water and sewer classifications.”** Section Four goes on to say **“The sole purpose of this Resolution is to clarify and confirm the water and sewer classifications of the Unrelated Parcels.”**
38. A public hearing by the Planning Commission on R348 was scheduled for October 4th, 2023, after which the Commission would vote on certifying its consistency with the County Comp Plan. Advance written comment from interested parties was submitted by various parties prior to the meeting.

*[Resolution 348 has not been amended since introduction, and so **“Tactic #3,” the audacious drafting of the legislation to exclude Lakeside from review when MDE expressly directed that it be included, REMAINS TODAY a serious challenge to a proper review** of R348 by the Planning Commission with regard to the consistency of the Trappe Area Sewer Service Map, and correcting mistakes made when it was adopted under R281.*

TACTIC #4: DENY THE PLANNING COMMISSION’S AUTHORITY TO REVIEW “MISTAKES”

*[R348 was also carefully drafted in an **attempt to deny the Planning Commission the authority to meet its State-granted duty** to assure the CWSP is truly consistent with the Comp Plan. The Commission has actual knowledge of evidence that the sewer service map respecting Lakeside, adopted by R281 and unchanged by R348 was may have been certified consistent with the Comp Plan due to “fraud, surprise, mistake or inadvertence.” Commissioners have expressed repeatedly the desire to fulfill that duty and consider the evidence of such mistakes—but the language of R348 is unclear that they can do that.*

[“Tactic #4” is an effort to render the Planning Commission impotent and powerless, thereby assuring that the Lakeside developer’s interests remain completely protected.]

[Leading up to the Planning Commission’s October 4th meeting to which R348 would be heard, the PWAB and many others worked to assure the Commission had all relevant information for its consideration.]

39. The PWAB met on September 14, 2023, but discussion of R347/348 was postponed until a Special Meeting could be held (Oct 2nd), as one member was not present.
 - a. **Per minutes** the PWAB did discuss “the sewer...classification system, particularly the Town of Trappe’s classification maps and R281.” **Video** shows that discussion lasted 55 minutes, The PWAB and Mr. Clarke agreed its authority is to review Lakeside related to “what it good for public health” and all public infrastructure (“bigger questions...roads, traffic, demand on EMS”). The scope of its recommendations is not limited.
 - b. The PWAB noted problems cause by Figures 12 and 24 in the CWSP (“we need to get them out of there”), to which the County Engineerth agreed. **Mr. Clarke confirmed that Figure 23, which prior to R281 showed Lakeside as Unprogrammed, was the actual sewer servicer map, and Figure 24 was irrelevant, “should come out.”** Mr. Lane expressly confirmed the consensus on that point.
 - c. Mr. Clarke advised that the **Town is contemplating a fundamental change to its overall sewer system**: possibly shutting down the existing plant and treating everything at Lakeside.
40. On September 20, 2023, **TIP emailed comments** to the PWAB for their Oct 2nd meeting.
41. ON September 25th TIP **sent the Planning Commissioners a letter**, copied to officials at MDE and MDP, regarding the Commission’s authority to review matters raised by R348.
42. On September 25, the **Committee to Fix Lakeside sent a letter** to the Planning Commission expressing concerns about Lakesides impact on traffic, pollution, schools, and infrastructure generally. The list of 833 citizens who had formally signed CFL’s Petition was attached.
43. On September 26th, Mr. Mike Pullen, the **former Talbot County Attorney** for over 20 years, **sent the Planning Commissioners (copied to MDE and others) a three-page opinion** letter detailing the Planning Commission’s unfettered authority—and responsibility delegated to it by the Legislature—to review Lakeside’s sewer service maps and R281. Pullen cited statues

and specific Maryland case law fixed by Maryland's highest court, concluding the Commission had the authority and duty to correct known "fraud, surprise, mistake, and inadvertence."

44. On September 27, MDE Deputy Secretary Dorsey, recipient of most the letters and emails cited here, advised TIP that she and MDE Secretary McIlwain "are monitoring" the situation.
45. On September 27, 2023, TIP submitted a written public comment to the Planning Commission, with copies distributed broadly, detailing many ways in which R348 and the accompanying Sewer Service Map were inconsistent with the County Comprehensive Plan.
 - a. The letter cited thirteen enumerated Policies in the Comp Plan that were violated.
 - b. The letter cited specific violations of others of the "Seven Standards" by which the State requires the Commission to judge consistency.
 - c. Extensive documentation of each point was attached, a total of 50 pages.
46. On September 28, 2023, the Baltimore law firm of Gallagher Evelius and Jones sent TIP a 3-page letter fully endorsing Mr. Pullen's legal opinion that the Commission's authority to review R281 for "fraud, mistakes" etc. was unlimited, and supplementing it with additional Maryland case law. TIP circulated the Gallagher opinion widely, including the Commission, the Council, the County Attorney, MDE and MDP.
47. On September 28th, TIP emailed Les Knapp and Ms. Dorsey of MDE about concerns over improper limitations on the PC's authority.
48. On September 29, 2023, the Spy published a letter headlined "Talbot County Defying MDE on Lakeside, Undermines Planning Commission," alerting the public to the fact that R348 was drafted *excluding* Lakeside from review, when MDE's directive was explicitly said "*including* the Lakeside subdivision," and also to the effort to emasculate the Commission's authority to even look at Lakeside.
49. As a courtesy, before the Spy piece was published, TIP advised Mr. Knapp that it was coming. By return email (September 29th), Mr. Knapp expressed thanks and forwarded also an email that *MDE Staff Pellicano sent to Lyndsey Ryan, Attorney for Town of Trappe (and also to the County Attorney and County Engineer and Mr. Knapp), saying Resolution 348 "appears responsive."*
50. Oct 2nd the PWAB held a special meeting to review R347 and R348 (video here.) Two County Council members and two Planning Commissioners were present, as well as the County Attorney, other staff, the developer's attorney, and six members of the public.
 - a. Discussion was along the lines of it September 14th meeting, **with a strong recommendation that Figure 24 must be removed** from the CWSP, and related text as well.
 - b. Referring to parcels other than Lakeside, Mr. Clarke stated, "...because under the 2002 CWSP *it was unprogrammed, we're leaving it unprogrammed.*" He failed to note the same applied to the lower 40% of the Lakeside property.
 - c. Mr. Alspach, of TPA, pointed out to the PWAB that, like the parcel referred to by Mr. Clarke, *the southernmost 40% of Lakeside (over 300 acres!) was never reclassified by the language of R281, and so remained as it was under the 2002 CWSP—Unprogrammed.* The sewer service map attached to R348, accordingly, is wrong in that respect.

- d. The meeting lasted 2 hours, concluding with the PWAB recommending against R347 unanimously, and voting to table R348.

51. The Planning Commission held its highly anticipated Public Hearing on Resolution 281 on October 4th, 2023.

- a. Ten citizens spoke (video) and 21 submitted written comments in advance:
- i. Tom Alspach of TPA demonstrated unequivocally that the southernmost 40% of Lakeside (over 300 acres) was not reclassified by R281 or any other legislation, and so remains today “Unprogrammed” as shown in the 2002 CWSP. The sewer service map attached to R348 shows it incorrectly as S-2. (This was an entirely new point, uncaught by TIP or anyone else to that point.)
 - ii. Mike Pullen, the former County Attorney, explained the Commission’s authority to review R281 for errors caused by past “fraud, surprise, mistake, and inadvertence.”
 - iii. The developer’s attorney, Mr. Showalter, alluded to an obscure 2006 letter from MDE to the County that suggested that MDE will again, as it did in 2006, defend the developer’s position from whatever decision the Commission and County might take.
- b. Transcripts of the Commissioners’ discussion contain many very strong and direct statements **showing that all Commissioners recognized mistakes were made** in the Lakeside sewer service classifications adopted by R281, and the Lakeside portion of the sewer service map matter should be thoroughly reviewed. Some excerpts :
- i. Mr. Stranahan:
 - “There are some **troubling things throughout** this.”
 - “Whoever passed that information on to everyone involved—**from the State** to the County to the developer to the Town of Trappe—they made a mistake....**Prior to 281, all these lands were Unprogrammed.**”
 - “...we’re talking about a single sewer map...**we need to make sure the entire map...is consistent--not say “but excluding Lakeside.”**”
 - ii. Mr. Boicourt:
 - “...**we never considered** the whole process of the seven standards and the impact of this project on the County as a whole.”
 - “...the primary problem with 348, it says exactly what we want it to do **except ...the exclusion of Lakeside parcels. That’s unacceptable.**”
 - “And what the verbiage said [R348]...it appears to **exclude Lakeside. And that’s not correct**, and that’s not something we should approve of...”
 - iii. Mr. Corson (the only member who was not on the Commission during consideration of R281)
 - “...a responsibility...makes sure these maps are correct going forward...**have to get that right going back to 2002.**”
 - iv. President Councill:

- If Chip Councill knew it was Unprogrammed, would I have made the leap from unprogrammed to S-1/W-1? I don't know...***I need to go back and look at the record...***
 - "I agree with Mr. Alspach. It says, refers back to our Comprehensive Plan ***and the seven standards that take in the whole array of things.***"
 - ***"I do not know why the entire map was not included...why was Lakeside explicitly excluded?"***
- ii. Mr. Spies
- [Responding to Mr. Councill's remark immediately above] ***"I agree. I have a list of about 20 questions through this whole process that I feel like have been done wrong."***
 - ***"I have to put blinders on with the rest of the map [Lakeside]."***
 - ***"...[that] we've done this wrong and they didn't submit the right information back then is...correct."***
- c. The transcript also show that ***"Tactic #4"*** was clearly the reason the Planning Commission did not simply open discussion of possible "fraud, surprise, mistakes or inadvertence" in the adoption of R281 and its sewer service map—which, as regards the Lakeside subdivision, is identical to that attached to R348:

Mr. Spies:

- "So, a point of clarification: Are we able to make a determination if the maps are right or wrong...?"
- "I have to put blinders on with the rest of the map [i.e., Lakeside]."
- "We're ruling on...these few things, blinders on of other things..."
- "We all know there are other issues, but ***I don't think that's what I'm legally allowed to*** [consider]..."
- ***"...legally, do we have the ability to say no..."***
- ***"I just don't feel like we have the ability legally to make a determination if the maps are right or wrong..."***

Mr. Spies concluded, "I'd like to request a legal determination...of our right or ability...to determine if the...mapping that's passed and submitted to us, ***are we legally allowed as Commissioners to determine*** that they are incorrect or not.

The Commission's designated attorney asked, "Are you asking for a legal determination regarding your scope of review...?" Mr. Spies replied, ***"...something that had legally passed was incorrect and thus not legal."***

[At the time, the Commission's designated attorneys (two were present) and all of the Commissioners had received Mr. Pullen's three-page opinion on the matter, as well as the Gallagher endorsement...but no reference was made to either.]

- d. The highly anticipated public hearing on R348 concluded with the Commission:
 - i. Postponing any action on Resolution 348 (and R347 and R338, all of which relate to the Lakeside subdivision);
 - ii. Accommodating Mr. Spies' request, asking their designated counsel to furnish such an opinion.
 - iii. Requesting a joint work session with the County Council--if possible, to include the PWAB and MDE—to describe why a review of R281 and the Lakeside sewer service map should be part of evaluating R348.

[That joint work session was finally held six weeks later, on November 20, 2023 (without MDE of the PWAB), a schedule that will not bring R348 back to the Planning Commission for review until its January 3, 2024 meeting.]

52. On October 24, the law firm of McGuireWoods sent TIP its evaluation, after independent research, of Pullen's opinion concerning the Commission's duty and authority to correct past errors ("fraud, surprise, mistake, inadvertence"). McGuireWoods concurred without qualification. On October 30th TIP sent to McGuireWoods opinion to the Commission, copying the County Attorney, MDE, and others
53. At the Nov 1st regular Planning Commission Meeting it was announced that the joint work session would take place on November 20th, but no other action was taken regarding R347/348. The Commission scheduled an internal work session for Nov 8th to prepare for the joint work session.
54. On November 2nd TIP emailed Les Knapp concerning the impact of MDE Staff's Sept 29th email on the ability of the Commission to conduct a fair and untainted review of R348.
55. On Nov 7, 2023, the Town of Trappe Council moved formally to apply to MDE for permits and funding to abandon its existing 200,000 gpd wastewater treatment plant and to consolidate treatment at Lakeside.

[While having no direct bearing on R348, this radical and unexpected change to the entire sewerage treatment scheme for southern Talbot County is of enormous importance. It signifies maximum uncertainty in the face of which development approvals for the Lakeside subdivision, the biggest project ever developed on the Eastern Shore, are being made. No one has any idea of the full the implications of this scheme. The Town is making application to MDE for funding and revised permits even though none of this is a part of the County's CWSP. These actions were taken in consultation with Rauch, Inc. who presented his report to the Town on October 17, 2023 while being paid by the developer and while acting as the County's consultant on Contract 22-07.]

56. At the Commission's internal work session on November 8th (video here)
 - a. Regarding the review of R281 for mistakes, Mr. Boicourt stated "it's something that we have to get resolved and **not just sweep under the rug** because it's underpinning a lot of what we do." To which Commission President Councill responded, "Yep."

- b. Regarding the opinion letter from the attorneys designated to advise the Commission regarding its authority, Mr. Councill said "We will talk about it, and **we will release it. We are not trying to hide anything from anybody; we are going to be completely transparent.** That was a draft document. I have some questions...we will address that at our December meeting."
57. On November 15, the Talbot Spy published a TIP letter to editor entitled "Orwell Was Right", showing how the developer's attorney continues to misrepresent the past history of Lakeside approvals to manipulate current decisions. The article was hyperlinked to v1.1 of "Annotated History of Lakeside Approvals," making information available to the public.
58. On November 15, TIP distributed version 1.1 of this "Annotated History," by separate email to Planning Commissioners, County Council Members, MDE, and others.
59. November 15th, 2023, TIP sought assistance from the Moore Administration.
60. November 16th TIP communicated with Mr. Knapp of MDE suggesting a means to assure, prior to the Nov 20th joint work session, that the Talbot County Planning Commission would not be impeded in exercising its responsibility and authority to consider whether mistakes may have been made in sewer service classifications related to Lakeside.
61. On Nov 16th, the attorney for the Planning Commission sent MDE two questions relevant to the joint work session.
62. On Nov 17th MDE responded to those questions. It did not take the opportunity in that letter to implement TIP's suggestion of November 16th, but it did interject a sort of disclaimer for responsibility as to the possible impact of the Staff's September 29th email, saying "Any guidance MDE provides at this time is preliminary and technical in nature."
63. The joint work session between the Planning Commission and County Council and requested on October 4th occurred on Nov 20th and concluded in 30 minutes. (Video here.) Little was accomplished, and there was no discussion of the Commission's authority to review R281 and Lakeside's sewer service classifications which remain unchanged on the map attached to R348. There was brief and inconclusive discussion of a different Resolution(R338) also affecting the Lakeside development, one that does not affect the sewer service map however.
64. On November 29, 2023, TIP met with the Talbot County Environmental Officer, a State official, seeking information concerning the process for certification of plats as consistent with the CWSP, and reiterating its requests in its letter of August 27th (Item #31 above).

[In a December 11th follow-up phone call, TIP learned that no response to its August 27th letter can be expected, and there appears to be no impediment to additional plats being certified by the State and recorded, notwithstanding MDE's April 24, 2023 determination that there are errors in the Trappe Area Sewer Service Map. The recordation of a plat is virtually irrevocable. TIP learned that two more plats "are in the works."]

65. At its regular December 6th meeting, the Planning Commission deferred any consideration of R348 until its Jan 3, 2024 meeting because it wishes to receive recommendations from the PWAB (as is customary) which does not meet until Dec 21st. At the meeting:
- a. Notwithstanding assurances given the public on November 8th, it declined to release the full opinion letter from the attorneys the County designated to provide the

Commission with legal advice. Instead, after discussion in executive session with those attorneys, the Commission announced it would release an *abbreviated version*. That **abbreviated opinion letter** was released on December 8th.

- b. The Planning Commission considered an amended version R338 (first introduced in February 2023) which also affects aspects of the timing of development at Lakeside. The Planning Commission found the Amended R338 to be consistent with the County's Comp Plan. [*The County Council has not yet scheduled a public hearing or vote on the amended R338, and its prospects are uncertain.*]

66. On December 7, 2023, Council President Chuck Callahan **suddenly fired the long tenured and highly respected President of the PWAB**, Bill Anderson. No explanation was given, but such action could only have been taken on authority of three or more members of the Council. The matter has raised much **public reaction in the Talbot Spy** and elsewhere.

End of v2.0 of Annotated History, Dec 13th, 2023.