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Easton, MD. 21601**

February 10, 2022

Ben Grumbles, Secretary
Maryland Department of the Environment
ben.grumbles@maryland.gov
1800 Washington Blvd.
Baltimore, MD 21230

RE: Confusing Public Accounts of MDE Positions

Dear Secretary Grumbles:

You are well aware of the disunity here in Talbot County between the County Council and the Planning Commission, and among members within each of those bodies, regarding the Resolution 281 ("R281") amendment to our Comprehensive Water and Sewer Plan ("CWSP"). Your unusual letter of February 4th to those bodies, which has had wide distribution here, shows the impact of that discord.

At root, many problems stem from unexplained conflicts reported authoritatively about MDE's past actions that do not seem to comport with what law and regulations require. I bring this to your attention in hopes you will provide clarity so that all Council Members and Planning Commissioners truly understand MDE's position on these fundamental matters. That will no doubt help move towards some resolution of problems with approvals of the Lakeside subdivision.

ACTIONS REPORTEDLY TAKEN BY MDE OFFICIALS:

The Council and the Commission (and our Public Works Advisory Board and the public) have been led to believe repeatedly, on multiple occasions, in formal public hearings beginning in 2019 and as recently as last Monday night, that officials at MDE took the actions and positions enumerated below with regard to our CWSP *prior to adoption of Resolution 281 in August 2020.*

These understandings, mostly about the sewer service priority classification ("classification") of certain properties, were conveyed by the Applicant in writing and in testimony on the record, and corroborated by our County Engineer who we understand participated in at least some of the relevant meetings, calls, and correspondence with MDE. Accordingly, this all seems highly reliable, but causes considerable confusion when trying to reconcile with regulations.

The key points, paraphrased from the record, are enumerated below:

1. MDE determined that Figure 24, and not Figure 23, showed the designated classification of properties in the Trappe area established by the Talbot County when it adopted the CWSP on October 22, 2002.
2. MDE determined that the passage of time alone was sufficient to change the classification of a property from one status to another; that is, a property "programmed for progress" automatically moves from one category to another once the specified time passes, without legislative action.
3. MDE "interpreted," in some unexplained manner, that all of the property within the Town of Trappe had a classification of S-1 in the period from 2006 (or earlier) through adoption of R281.
4. MDE does NOT require that a property's sewer service priority classification be immediate priority ("S-1 or S-2" in most counties; "S-1" in Talbot under an MDE-approved exception) prior to issuance of construction permits for sewer facilities to serve such property; it can "conform" without being immediate priority.
5. Construction permits for sewer infrastructure can be validly issued even when MDE has knowledge that a County Council recently rejected a requested amendment to designate the relevant property with an immediate priority classification (S-1 in Talbot).
6. Construction permits for sewer infrastructure can be validly issued even when MDE has knowledge that a County Planning Commission has not found, or considered whether, that a proposed amendment to the CWSP changing the classification to S-1 is consistent with the County's Comprehensive Plan.

All of the points above were highly relevant to the adoption of R281 in 2020, as they framed the County's understanding of the history of the Lakeside approval process and the evaluation of the CWSP amendment in R281.

CONFUSION DUE TO CONFLICTS WITH LAWS AND REGULATIONS:

There is unnecessary conflict and confusion in Talbot County which you can readily alleviate with communication. Apparently MDE did take those positions, since the Applicant and the County Engineer were so emphatic on that point and, indeed, MDE did issue construction permits in 2006. The purpose of this letter is to end the paralysis and confusion by simply requesting an explanation from MDE of how those positions square with law and regulations perhaps we all misunderstand. The questions related to each point, as enumerated above, are as follows:


1. Given its "Sewer Service Area" label, why is Figure 23 (which comports with Figure 6), not the relevant reference showing each parcel's classification as of the date the CWSP was adopted?
 - a. What are we to deduce from the fact that Figure 23 was expressly referenced by MDE in its approval of the CWSP amendment contained in Talbot County Resolution 259 also related to Trappe?

- b. When corrections are made to errors or mistakes with the Sewer Service Area map approved by R281, does the classification revert to that shown on Figure 23 or Figure 24, and why? If Figure 24, what if it is clear that the Planning Commission never found such classification consistent with the County's Comprehensive Plan, and that aggregate sewer capacity is not adequate?
2. How does "the passage of time" square with the process set forth in Chapter 3 of the Talbot County CWSP? Is MDE's position identical with regard to all parcel classifications in Talbot County? Is it applicable Statewide?
3. How does that "S-1 interpretation" square with the fact that on both Figure 23 AND Figure 24, there are various properties in the Town of Trappe that are shown with classifications other than S-1?
4. It is widely understood in Talbot County that, prior to construction or extension of sewer infrastructure to a parcel, Maryland regulation requires that the property first receive an "immediate priority" classification in the CWSP—again, S-1 or S-2 in most counties, S-1 in Talbot under the mentioned exception). What regulation demonstrates that the local understanding is wrong?
5. If an immediate priority classification is indeed a requirement for extending sewer to a parcel, and MDE knows the County Council expressly rejected just such a request for such classification from a property owner in recent months, what regulation or rationale says such determination should be ignored?
6. With respect permits for sewer extensions to a particular parcel, how can the absence of a finding of consistency with the Comprehensive Plan by the Planning Commission be squared with Environment Article 9-511, which seems to make such a finding a precondition?

Mr. Secretary, these inconsistencies, given the Applicant's reports on MDE's positions over the years, have many in Talbot County confused and unsettled, including Council members and Commissioners. To help move the County beyond this impasse, I urge that the Department make arrangements to clarify matters, most importantly with the County Planning Commission, and Council, as soon as practicable.

Thank you for considering this suggestion.

Sincerely,



Dan Watson

CC: Lee Currey -MDE- lee.currey@maryland.gov
Talbot County Council Members
Talbot County Planning Commissioners
Talbot County Staff Members