

Item # 79

ADDITIONAL MATERIAL
Regular Meeting
December 7, 2021

SUBMITTED AT THE REQUEST OF

OFFICE of the COUNTY
ATTORNEY

Andrew J. Meyers
County Attorney



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MEMORANDUM

TO: Board of County Commissioners

FROM: Maite Azcoitia, Deputy County Attorney /s/ Maite Azcoitia

DATE: November 29, 2021

RE: **Motion to Approve Transmittal to the Planning Council of Proposed County Land Use Plan Amendment 20-M1, Waste Management, Inc.; Item No. 79 on the December 7, 2021, County Commission Meeting Agenda (Deferred From August 24, 2021)**
CAO File: 99260-0001

This is an update to my previous memorandum dated October 11, 2021 ("October 11 Memorandum"), regarding the request from Waste Management, Inc. ("WMI"), to transmit to the Planning Council its application to amend the land use designation of property within the Broward Municipal Services District from its current designation of "Electrical Generation Facility" to "Industrial." Speakers addressing the item ("Item") when it initially came up in August alleged that the amendment would expand the footprint of the landfill on the property, contrary to assertions WMI had previously made, and would be inconsistent with previous WMI commitments regarding the processable waste that would be placed in the landfill. WMI and the City of Coconut Creek ("City") were asked to submit their positions and relevant documentation to our Office for our analysis. The October 11 Memorandum was based on information received from WMI and pertinent videos that are available on Commissioner Bogen's website. This memorandum will address the position of the City, as contained in a letter from its City Manager to the Board dated November 18, 2021 ("City's Letter").

In addressing the expansion of the footprint of the landfill, the City's Letter indicates that a lateral expansion of the landfill could result in an increase in the height of the landfill and includes a 3-D graphic model and a photograph of the landfill at Powerline Road to demonstrate this point. The City is correct in that a lateral expansion of the landfill would allow WMI to seek an increase in the height of the landfill beyond the current maximum of 225 feet National Geodetic Vertical Datum ("NGVD"). While WMI agreed in a 2010 settlement agreement with the City, as amended in 2011 (collectively, the "Settlement Agreements"), not to seek a lateral expansion of the landfill beyond Wiles Road to the north, Sample Road to the south, Powerline Road to the east, and Florida's Turnpike to the west, the Settlement Agreements do not prohibit WMI from seeking to increase the height of the landfill after January 1, 2018.

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With regard to processable waste, the City's Letter cites the Settlement Agreements wherein WMI agreed to divert processable waste to Wheelabrator "so long as [Wheelabrator] has capacity." By closing the Waste-to-Energy Plant and seeking to change the land use, the City's Letter states that WMI is thereby limiting options for disposal of processable waste and not following through on promises made to the public. While the elimination of the Waste-to-Energy Plant would result in an increased amount of processable waste being placed at the landfill, the City's Letter affirms that the Settlement Agreements have been superseded by a subsequent settlement agreement between WMI and the City ("2015 Settlement Agreement"). Section 2.2 of the 2015 Settlement Agreement contemplates the closure of the Waste-to-Energy Plant.

The City's Letter also indicates that at a September 2010 City Commission meeting, a WMI representative indicated that WMI would not deposit processable waste in the landfill. Pursuant to the audiotape of that meeting, it appears that the representative was referring to Section II.4.b. of the 2010 Settlement Agreement that prohibited the placement of processable waste at the landfill if WMI obtains approval to increase the height of the landfill above 225 feet NGVD.

The same WMI representative is referenced in the City's Letter as having made a statement at a December 21, 2011, County local planning agency public hearing that processable waste would cease to be placed in the landfill "in a very shortened timeframe." This statement is consistent with the Settlement Agreements, which required WMI to "commence a process to divert all processable waste...that can be diverted from the existing landfill waste disposal process." But the Settlement Agreements were superseded by the 2015 Settlement Agreement that allows the placement of up to 175,000 tons per year of processable solid waste at the landfill.

Finally, with regard to the issue of processable waste, the City's Letter references a letter from late State Representative Kristin Jacobs stating that "going back to the 1980's there were discussions with [WMI] providing that no more processable waste will be placed in the landfill." Neither WMI nor the City has provided a copy of Representative Jacobs' letter. However, it would appear that Section V.2. of the 2010 Settlement Agreement, incorporating all prior negotiations, correspondence, conversations, agreements, and understandings, would have incorporated Representative Jacobs' letter into the 2010 Settlement Agreement.

The City's Letter also addresses the following:

- States that WMI has failed to address the ultimate desired end use of the property subject to the Land Use Plan amendment application. The Staff Analysis included with the Item indicates on Page 1, Section I, that WMI seeks to change the future land use designation "...to allow for the future expansion of the existing, adjacent

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landfill once the power generation facility is dismantled." Additionally, Page 3, Paragraph 2, indicates that "[w]hile not part of the current process, [WMI] does foresee taking down the closed waste-to-energy plant in the future and seeking additional approvals and permits to complete the footprint of the Monarch Hill landfill to provide additional landfill capacity for Broward County municipalities and businesses."

- States that the Land Use Plan amendment would allow further ground contamination to occur. The environmental impact of the proposed Land Use Plan amendment will be considered during the review process. The landfill is also subject to solid waste management permitting requirements, and the environmental impact of the site will be considered as part of the solid waste management permit modification process.
- States that the proposed amendment conflicts with numerous goals, objectives, and policies of the County Comprehensive Plan, and adoption of the amendment would create internal inconsistencies in violation of the Community Planning Act. The City's Letter provides numerous points that it asks the County to consider whether WMI's future plans to expand the landfill conflict with the goals, objectives, and policies of the Comprehensive Plan. While the Board could ultimately determine that the Land Use Plan amendment is inconsistent with one (1) or more provisions of the Comprehensive Plan, these determinations need to be made pursuant to the processes of Sections 163.3174 and 163.3184, Florida Statutes, which first require transmittal of the amendment to the Planning Council, as the local planning agency for the Land Use Plan.
- States that it would be premature to move for approval of this Land Use Plan amendment before the Solid Waste Disposal and Recycling Processing Authority ("Authority") has had the opportunity to establish itself and opine on this matter. There are no statutory or regulatory provisions that would prohibit the Board from further deferring the application, with certain caveats the County Attorney or I will explain during Agenda briefings. While WMI submitted its Land Use Plan amendment application for the Broward Municipal Services District Future Land Element in February of 2020, due to the ongoing Covid-19 pandemic, the Item for the corresponding County Land Use Plan amendment application was not brought before the Board until August of 2021. The Board may recall from statements made at the Board meeting of August 24, 2021, that it is not anticipated that the Authority will finalize its work for eighteen (18) months to twenty-four (24) months.

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In conclusion, after having reviewed the materials submitted by both WMI and the City, and based on the facts as we currently understand them, it remains our opinion that WMI's pending application is not inconsistent with any binding contractual commitment or representation made by WMI.

Please contact the County Attorney or me with any questions or concerns or if we may be of further service on this matter.

MA/gmb

c: Bertha Henry, County Administrator
Bob Melton, County Auditor
Leonard L. Vialpando, Jr., Director, Environmental Protection and Growth
Management Department
Andrew J. Meyers, County Attorney