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October 9, 2024

**Chairman Oliver G. Gilbert III**

Board of County Commissioners

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**VIA EMAIL**

Dear Chairman Gilbert,

As a long-time Doral resident and licensed Florida attorney, I have opposed the rebuilding of the Waste-to-Energy (WTE) facility in Doral since before Covanta's lease was renewed. In addition to challenging Covanta's air permit renewal application with the FDEP, I demanded an injunction against the Miami Dade County Commission's (BCC) initial vote to rebuild the WTE in Doral. Then, on September 19, 2023, the BCC approved a resolution to consider sites outside of Doral, contingent on Doral contributing to the cost through an Interlocal Agreement. This is acceptable to many residents, provided the cost division is fair. Under Florida law, both Doral and the County are required to negotiate in good faith (Fla. Stat. § 163.01, § 125.01, Fla. Const. Art. VIII, § 4).

The resolution states Doral's contribution should be an amount tied to the growth in property values for those who reside within a mile of the Doral site. However, as raised by several commissioners, it's been over a year, and there's still ambiguity on what this "amount" will be. From a legal perspective, Doral should not bear the full cost of the WTE's construction, as this facility will benefit the entire county. A litany of Florida Supreme Court cases collectively support the argument that municipalities or its taxpayers should only pay for services or improvements that provide a direct and proportionate benefit to them. If the benefit primarily serves the county or other areas outside the municipality, the municipality should not be obligated to bear the cost. These rulings rely on the rational nexus test, requiring a logical connection between the cost imposed and the benefit received. *See* Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997), City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992), St. Lucie County-Fort Pierce Fire Prevention & Control Dist. v. Higgs, 141 So. 2d 744 (Fla. 1962).

The estimated \$1 billion cost to build the new WTE facility would apply regardless of where it's located. Doral's contribution should be limited to the incremental costs over and above the \$1 billion associated with not building the facility in Doral. One of your colleagues suggested \$400 million, but Doral cannot be expected to pay 40% of the cost for a facility that must be built regardless and which will benefit 100% of the county's population.



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**The site selection and negotiation of an Interlocal Agreement deserve a dedicated meeting to clarify these costs and ensure transparency.** Doral residents will not hesitate to seek legal remedies if the County pursues this project irresponsibly. Additionally, the proximity of the WTE facility to residential areas raises significant permitting issues, especially after the fire that caused an environmental health crisis. Doral has a wealth of data on the negative impacts of the WTE facility on our city and its residents, which will be crucial in challenging any future permits.

I urge you to call for a special meeting, in advance of the site-selection vote, to discuss the incremental cost of building the new WTE facility outside of Doral and to ensure the process remains transparent and legally sound. Reaching a fair agreement is in everyone's best interest. Doing so would avoid costly litigation and unmanageable delays in resolving the County's current waste management problems.

People often criticize government for not being forward-thinking enough or for a lack of vision in planning for the future. Florida's population is projected to grow 57% by 2070<sup>i</sup>. The County cannot build a garbage incinerator massive enough to serve 3 million (and growing) residents (who each produce 6 pounds of garbage daily), a mere 500 feet from so many of our neighbors' backyards. We will not allow our city's future air quality and public health to be compromised for another 40 years.

Sincerely,

Ivette Gonzalez Petkovich, Esq

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<sup>i</sup> This information comes from the "Sea Level 2070" project by the University of Florida's GeoPlan Center, which studies future land use and population changes in Florida