

City of Coral Gables City Commission Meeting
Agenda Item I-2
April 8, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Pat Keon

Commissioner Vince Lago

Commissioner Frank Quesada

City Staff

City Manager, Patrick Salerno

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Public Speaker(s)

Chad S. Friedman, Leading Attorney in PACE (Property Assessed Clean Energy) Program
Joe Spector, Vice President of Operations at Ygrene Energy Fund

Agenda Item I-2: [Start: 11:59:15 a.m.]

Presentation relating to PACE Program and residential properties.

City Attorney Leen: If we could move to I-2 now the PACE Program, we have some representatives from PACE, and I know that Commissioner Lago is our representative on PACE, so I will defer to him too as well. I just wanted to say that the purpose of this item is – you all remember last year there was an item that came before the Commission, in fact, forgive me for one second, I want to give you copies of it, pardon me, it was in 2012. There was an item that came before the City Commission regarding the Property Assessment Clean Energy district and if you take a look at the resolution, it attached a contract, which I have not included with this. The contract was eventually executed and there is a PACE Program now and we are one of the members, but if you look at the “Whereas” clauses, particularly the sixth “whereas” clause, as well as Section 2, you’ll see that the City limited its PACE Program to commercial properties; and I have received questions independently from separate Commissioners as to whether that could be reconsidered now that a couple of years have passed; and I’m going to turn it over to

Chad Frieman and to....to talk a little bit about the program. I want you to know, and I'm going to speak again after they have spoken, but my view is that from a legal perspective you could move to residential properties at this point with very limited risk; and there are a couple of mechanisms you could use to limit that risk even more, which I'll talk about after they've had a chance to present what's been happening with the program and answer any of your questions and Commissioner Lago I know that you're on the...

Commissioner Lago: Yes. I'm going to be very brief. I'm excited to have the gentleman here from the PACE Program.. I've had the pleasure and thank you Commissioners and Mayor, Vice Mayor for appointing me to the PACE Board. It's been a spectacular opportunity to really get involved with the community and get close to a lot of different other elected officials who have the same interest as we do. I asked to speak with Craig in regards to this issue and bring these gentlemen forth, so please stand – because I wanted to clarify some issues in regards to the residential and the commercial components, because currently as we all know the City is only participating in the commercial component of the PACE Program. There are seven cities currently involved Coral Gables being one of them and we are currently the only one, along with the City of Miami which has not adopted the residential portion. I agreed with the Commission's actions prior to me becoming a member of the Commission to hold off and really take a look at to see what was going to happen in regards to some pertinent cases in California, which from my understanding have been resolved or currently in the process of being resolved. So I wanted to schedule this time with these individuals so I can really explain to the residents who may have an interest because I've received a lot of phone calls from residents who are interested in this program, and I want to make sure that interested residents are privy to every single fact in reference to what the program entails, if there's liability?- not a liability?- where does this piece go on?- does it go prior to your first mortgage?- does it go on as a tax?- and that's why I invited these gentlemen here. So thank you for being here and we look forward to hearing from you. Thank you sir.

Mr. Chad Friedman: Good morning every, Chad Friedman, with law offices at 2525 Ponce de Leon Boulevard. I'm here on behalf of the Green Corridor, which Coral Gables is a member and as Commissioner Lago said five out of the seven cites currently do a lot of residential, two do not, which is the City of Coral and the City of Miami. The City of Miami is considering a similar action that you're considering today in a couple of weeks. The concern relating to residential was that a couple of years ago Fannie Mae and Freddie Mac had raised issues with these PACE lien assessments being super priority to the mortgage, and in that there was a whole spin of lawsuits that generated throughout the country. Ultimately, these lawsuits have now been decided and effectively the courts were unanimous in finding that the federal housing finance agency, which is the federal agency that monitors Fannie Mae and Freddie Mac, basically since they are their conservator they can do what they want to do and there isn't federal administrative rule making

procedures required or any other types of actions required that Fannie Mae and Freddie Mac could object as a business owner, not as a quasi-governmental agency, but as a business owner because they own or back these mortgages to having these PACE assessments being in front of their mortgage. Since that time there has been several thousand of these PACE assessments that have been executed across the country and Joe Spector from _____ will speak a little bit about that, and today I'm not aware of any challenges. Currently in the Green Corridor Program we haven't had any challenges. Joe will speak about the numbers, the amount of financing that has occurred, but I know there is a lot of interest from Gables residents and I'm really here today to answer any question regarding the program and what it entails. I believe that the City Attorney is recommending that the City enter into – to allow for residential, but only if there is a mortgage that the mortgagee does not object to this occurring, which is much more restrictive than what the state law allows. The state law allows just to give them notice, here what I believe the City Attorney is recommending is that if there is an objection that the bid deal will not go forward.

City Attorney Leen: I'm not recommending any – that's a policy judgment, I'm just recommending that if you wanted to be without risk that that be the issue, but ultimately – you could do it either way. There is a state statute in place that has a presumption of legitimacy that says that only notice has to be provided, so you would be well within your authority to approve it either way.

Mayor Cason: One's more risky than the other.

City Attorney Leen: One is a little more risky than the other.

Commissioner Quesada: Here's what happens practical...I want to hold off till Bill gets back, but I guess I'll start. When this came before us back in 2012, I was the vocal one at that meeting, you guys probably remember that, I mean, I do real estate law. I know what closings are like, I know how banks react, I represent banks, so I know that if you give them the option, I think, 99 times out of 100 they are going to say no, just because they don't want any other potential encumbrance of any nature. At that time it wasn't developed enough, there weren't that many cities implementing it, I believe you guys had mentioned there were some cases in the Ninth Circuit out in California related to this. I'd like to know how those cases played out, because again, the biggest concern that I have is, if that recommendation that Craig is giving us observation, trying to make it more palatable for us, I guess. I think it's going to be pointless really in effect because I think the banks won't allow it.

Mayor Cason: But it will only be for those houses with many that don't have any mortgages, probably a lot of houses don't have mortgages.

Commissioner Quesada: No, that's true, that's absolutely true. I think 99 percent of the population gets a mortgage when they purchase a house.

City Attorney Leen: You know ultimately Commissioners, interesting particularly considering the last item; it's the same sort of thing. There hasn't been a case rarely on point...

Commissioner Quesada: I know, I don't want to say cause havoc, but I mean, I'm in favor of the PACE program, I think we're all in favor of the PACE program. I want it structured in a way that makes sense that the practical impact is going to work. So I guess my first question is, what were the results of those cases out in California?- do you know?

Mr. Friedman: They were in the federal and Ninth Circuit as you said. The District Court ruled that Fannie and Freddie had not followed the Administrative Procedures Act of the Federal Code and that they were in violation and they had to initiate Rule Making, so that was initiated. Then they took, Fannie and Freddie took an appeal to the Ninth Circuit Court of Appeals, which then reversed the District Court opinion and found that because Fannie and Freddie are underneath the umbrella of the Federal Housing Finance Agency at the Conservator. They didn't have to go through Rule Making procedures. So Fannie and Freddie withdrew their Rule Making procedures and the court basically they said they dismissed the lawsuits and said that Fannie and Freddie as a business decision, not as a legal, because there is no federal law that prohibits this, but as a business decision because they own or back these mortgages can chose to object to having these types of liens prime their mortgage.

Commissioner Quesada: OK.

Mr. Friedman: So the cases are over, the Rule Making has been rescinded and PACE programs are still going forward very strong across the country and as the Mayor said, there are two different people in this category: people that don't have mortgages and the people that do, and the people that don't have mortgages won't have to deal with this issue and people that do may the less risky position, as the City Attorney mentioned is to provide that if there is no objection from the mortgagee then to go forward.

Mayor Cason: And isn't there a sub-category those that have Fannie Mae purchase mortgages and those that don't or are they all the same?

Mr. Friedman: Yes, that's correct, but I don't know the numbers, but it's a very high percentage are backed...

City Attorney Leen: I'd like to make one point and then maybe follow up on a question that may help the Commissioners as well in considering this. You know my concern has always been that we are putting together a government program that provides a special assessment, uses our special assessment authority, pardon me, the PACE Special Assessment Authority, but we're a part of that, and that one of our residents will sign up, will do it and then have their mortgage accelerated or some terrible occurrence. They told me it's never happened. Now, I'm curious, you did tell me that when notice has been provided that you did have one bank that objected once and then I believe also, I'm curious, have you provided these special assessments, and this is for the Commission, but have you provided these special assessments on Fannie or Freddie mortgaged homes?- and what has happened?

Mr. Joe Spector: Yes sure, I can address that issue. We have out of the almost 400 applications we receive now in the Green Corridor District. We've probably sent out about 300 notifications, and we did receive one letter back from a bank. I won't say the name unless you guys need to know, and basically the property owner gave me that letter and I wrote a letter back to the bank on the property owners behalf explaining what this is and explaining the state statute that allows for it. The property owner said, I have every right to do this and he moved ahead and did it and there was absolutely no issue.

Commissioner Quesada: Was it a community bank or it was a large bank?

Mr. Spector: It was a large national bank.

City Attorney Leen: Could you elaborate on Fannie Mae and Freddie Mac too.

Mr. Spector: They are actually very supportive. I'm sorry; my name is Joe Spector, I've Vice President of Operations for Ygrene Energy Fund.

City Attorney Leen: And Fannie Mae and Freddie Mac would you talk to the Commission about that too.

Mr. Spector: Yes. It's a bit of a misconception because the reality that we are seeing in the market, the fear was that they would accelerate the mortgages and that simply hasn't happened....

Commissioner Quesada: That was my fear.

Mr. Spector:...and they can't do that legally, they would have to challenge the state law, and so I think the banks understand that they can't do that, so we've seen now in California there are

almost 10,000 residential projects done. Here like I said, we've sent out 300 notifications, we've already financed almost 100 projects all residential, and there has been no issues.

Commissioner Quesada: OK.

Mr. Spector: The upshot of the opinion of Fannie Mae and Freddie Mac or FHFA was that they are saying now that they won't purchase, they won't loan money to buy a house with a PACE assessment on it, and we clearly warn every property owner that this may be an issue, but the truth of the matter is that's an issue with any type of home equity line of credit or anything you put against...

Commissioner Quesada: It limits the market.

Mr. Spector:...it needs to be paid off at the time of sale of the property. So in those situations the PACE assessment really just converts into a home equity line and it's paid off...

Commissioner Quesada: You've quelled my concern, the acceleration which was my biggest thing, and I'm going to support it, I'm going to support it.

Mayor Cason: I think it's a wonderful program. Unfortunately, doesn't sound like on the commercial side it's gone anywhere, at least in Coral Gables.

Mr. Spector: Commercial is complicated. What we're finding is a lot of commercial properties cross collateralize and they these issues and that issues, those issues, and we are getting a lot of commercial come in. It's just taking a long time to underwrite. In some cases, for example, with a couple of bid retailers that have come to the program. We are actually getting consent from their lenders, the lenders are actually signing the paperwork. Once the banks understand what this is, they don't really oppose it very much. The commercial is working just very slow.

Mayor Cason: Can you talk about sort of the average project, I mean dollars.

Mr. Spector: The average residential project is \$22,000 - \$21,770-something.

Mayor Cason: And for the public who is watching can you explain very quickly what it covers?- why it's a good thing?- well I think it's a good thing, but explain.

Mr. Spector: Sure. What this does is, it allows the property owner to access cash capital for the long term financing on energy efficiency, renewable energy, and hurricane hardening upgrade measures to the properties. So now we can get money to replace your roof, to put a stronger

hurricane roof on that. You can get high efficiency air conditioners, you can get impact glass, you can do many things to your properties to make it more efficient and better protected and pay it back over a long period of time, and the real benefit of that is it makes the annual payment extremely affordable.

Commissioner Lago: Another important fact which is what a lot of the residents have told me is that when you make a lot of these upgrades and you harden your home or your commercial property, you see immediate dividends in regards to your insurance payment. So for example, I save close to about \$4,000 a year. I know you can't apply that to – you can to some degree apply that to the fact that you've made these upgrades in your home, you are enjoying these upgrades. Obviously, it's a lot safer for families when you put impact windows, but you are also benefiting in regards to your cost savings for your insurance, and you are also being more sustainable and helping the environment. So there are a few different aspects which are beneficial.

Mr. Spector: We did not promise anyone anything with this program. We don't tell them you will save...speak to your insurance agent you may get some savings from this because you don't want Citizens anymore, they may say, oh you only did your roof you didn't do your windows, so we encourage them to speak to their insurance agents about that, but you're right, you can have great savings and the nature of this because it's paid on your property tax bill. In most cases if you don't have to make that first payment for a year possibly even two years based on the timing of when it goes on the property tax, so you get all that energy savings, all that insurance savings potentially up to two years before you even have to make the first payment.

Mayor Cason: But the very least for certain people maybe of lower income is an option that otherwise they wouldn't have to be able to fix their home.

Mr. Spector: That's correct. We get many elderly people on fixed income calling us because this is their only option.

Commissioner Keon: I would think it's a great opportunity for young couples buying their first home to be able to – they are generally tapped out by the time they move in...

Mr. Spector: That's exactly right.

Commissioner Keon:...to be able to then make some improvements to their homes.

Mr. Spector: That's right. They have to put the 20 percent down payment and when they don't have any excess capital, they can't go back...

Commissioner Keon: Yes, there is not a lot of money left over for a lot of young families.

Mayor Cason: Why don't we look at this from two parts? The first part, do we agree we want to add residential?- and the second could be at what degree of risk?

Commissioner Quesada: I'm going to make a motion to add residential properties to that resolution number 2012-105, which is the one that Craig passed out to us, which is essentially adopting the PACE program and expanding to residential properties.

Mayor Cason: Do you want to add anything about the on the risk side?- just like it is – residential.

Commissioner Quesada: I want to leave it just like that. I think the state statute; I got comfort based on the opinions of the other courts out there as well as...

City Attorney Leen: All I ask is that you add to it that you enable the City Manager, enable City staff to take whatever actions necessary with the contractor with the agreement with PACE to implement it.

Commissioner Quesada: Well that's implied in the motion, isn't it?

City Attorney Leen: I know.

Commissioner Quesada: But OK, yes that's fine.

City Attorney Leen: Usually, say that because it approves it in advance, so we don't have to bring it back.

Commissioner Quesada: That's fine, that's the motion.

Mayor Cason: Commissioner Quesada makes the motion, do we have a second?

Commissioner Lago: I'll second the motion.

Mayor Cason: Commissioner Lago seconds.

City Clerk

Vice Mayor Kerdyk: Yes

Commissioner Lago: Yes
Commissioner Quesada: Yes
Commissioner Keon: Yes
Mayor Cason: Yes
(Vote: 5-0)

Mayor Cason: Thank you very much.

Vice Mayor Kerdyk: Thank you very much.

Commissioner Lago: Thank you gentlemen, I appreciate you being so diligent and continuing the effort.

[End: 12:17:22 p.m.]