



RESOLUTION NO. 2023-0531 (2)

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE FLORIDA PACE FUNDING AGENCY MAKING FINDINGS OF FACT REGARDING THE EXISTENCE OF A SIGNIFICANT THREAT TO THE LEGAL RIGHTS OF THE AGENCY ABSENT IMMEDIATE COURT ACTION, DECLARING THAT AN EMERGENCY SITUATION EXISTS WITH RELATION TO THE THREATENED NON-COMPLIANCE WITH FLORIDA STATUTES BY CERTAIN PUBLIC OFFICIALS, DIRECTING AND AUTHORIZING IMMEDIATE RESOLUTION OF THE THREAT THROUGH LITIGATION WITHOUT DISPUTE RESOLUTION PROCEEDINGS, CLARIFYING THE SCOPE OF THE EMERGENCY WITH RELATION TO OTHER LITIGATION, AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FLORIDA PACE FUNDING AGENCY:

SECTION 1. AUTHORITY AND PURPOSE.

(A) This Resolution of the Florida PACE Funding Agency ("Agency") is adopted pursuant to the Amended and Restated Interlocal Agreement Relating to the Establishment of the Florida PACE Funding Agency, the provisions of sections 163.01, 163.08, and 164.1041(2), Florida Statutes, and other applicable provisions of general law.

(B) The purpose of this Resolution is to make factual findings related to the threat by certain tax collectors in Florida to refuse to perform their ministerial duties under section 197.3632, Florida Statutes, and authorize immediate action to resolve the threats to significant legal rights of the Agency.

SECTION 2. FINDINGS.

(A) It is the policy of the State of Florida and of this Agency to use conflict resolution procedures, including those procedures set forth in Chapter 164 of the Florida Statutes, to resolve conflicts with other governmental entities.

(B) The Florida Statutes authorize bypassing dispute resolution procedures when there is "an immediate danger to the health, safety, or welfare of the public" or where "significant legal rights will be compromised" absent immediate court proceedings.

(C) Certain duly elected or appointed Tax Collectors in the various counties of the State have declared an intent, at a public meeting or in writing, to refuse to collect the



Agency's non-ad valorem assessments. Exemplary copies of such communications are attached hereto as Attachment A.

(D) Tax Collectors have a ministerial duty to collect non-ad valorem assessments of the Agency via the Uniform Method of Collection once the Agency certifies an assessment roll to them as required by statute and Department of Revenue regulation. It is undisputed Florida law that Tax Collectors have no discretion to refuse to collect these assessments, even if they believe the assessments are invalid or lacking authority from a county or city.

(E) The Agency is required by section 163.08 of the Florida Statutes to collect its assessments using the Uniform Method of Collection. The Agency is also obligated to use the proceeds of the assessments to repay certain revenue bonds that the Agency has issued from time to time. A failure by a Tax Collector to collect assessments would cause the Agency to default on its obligations under the bonds.

(F) The Agency has a legal right to enforce the lien of its assessments using the Uniform Method of Collection, and has no alternative legal means to enforce such lien. That legal right will be significantly compromised if a Tax Collector does not collect the assessment as required by law.

SECTION 3. DECLARATION OF EMERGENCY. The Agency hereby finds, determines, and declares that an immediate threat to significant legal rights exists from each and every Tax Collector who has communicated that they intend to refuse to collect the Agency's assessments. Such immediate threats constitute an emergency and require court action to take place before the dispute resolution procedures of Chapter 164 could take place with each noncompliant Tax Collector.

SECTION 4. DIRECTION AND AUTHORIZATION TO EXECUTIVE DIRECTOR AND COUNSEL. The Agency hereby directs and authorizes the Executive Director and counsel for the Agency, as assigned by the Executive Director, to dispense with proceedings under Chapter 164 and immediately file such court actions as are necessary or prudent to enforce the significant legal rights of the Agency and compel the Tax Collectors to perform their ministerial duties.

SECTION 5. CLARIFICATION OF SCOPE OF EMERGENCY. Declarations by certain Counties that they disagree with the Second Circuit Court's ruling in *Florida PACE Funding Agency v. State*, No. 2022-CA-1562 (Fla. 2d Cir. Ct. Oct. 6, 2022) do not rise to the level of an emergency because such counties do not have the power, without court action, to impact significant legal rights of the Agency. The Executive Director and counsel shall confer and determine an appropriate course of action with regard to resolving disputes initiated by Counties to overturn any bond validation judgment obtained by the Agency. The Executive Director and counsel



continue to have full authority to respond to such lawsuits as necessary to expeditiously and efficiently resolve such disputes, including defending lawsuits or insisting on Chapter 164 proceedings, as they deem appropriate.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY A THREE-FOURTHS VOTE this 31st day of May, 2023, in a duly noticed public session of the Board of Directors of the Florida PACE Funding Agency.



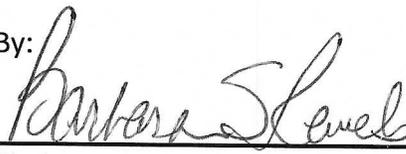
**BOARD OF DIRECTORS OF THE FLORIDA
PACE FUNDING AGENCY**

Attest:



Secretary

By:



Chair



ATTACHMENT A



YOUNG QUALLS, P.A.
Attorneys and Counselors at Law

May 4, 2023

Via E-Mail & U.S. Mail

Mike@FloridaPACE.gov

Michael A. Moran, Executive Director
Florida Pace Funding Agency
6650 Professional Parkway West, Ste. 102
Sarasota, FL 34240

RE: Collection of PACE Assessments in the Sarasota County Political Subdivision

Dear Executive Director Moran:

This is a follow up to my client's, the Honorable Barbara Ford-Coates, letter to you dated March 1, 2023.

After review of the correspondence, bond validation order from Leon County, applicable Sarasota County Ordinances, and Florida Law, we write to inform you of the following:

1. My client will collect those assessments levied and imposed by your Florida Pace Funding Agency prior to the expiration of the Interlocal Agreement and which became a lien against the relevant properties as of January 1, 2023 (this includes assessments certified to my client for the 2021 and 2022 tax rolls, and those to be certified for the 2023 tax roll);
2. My client has no authority under General Law to collect Florida Pace Funding Agency assessments in 2024 as the Interlocal Agreement between your Agency and your Board of County Commissioners was terminated in March of 2023; and
3. My client has no authority under General Law to collect future assessments so long as no Interlocal Agreement exists between your Florida Pace Funding Agency and your Board of County Commissioners. See §163.01 and §197.3632, Florida Statutes.



Michael A. Moran, Executive Director
Florida Pace Funding Agency
May 4, 2023
Page 2

Thank you and please do not hesitate to contact us with any questions, comments, concerns, etc.

Sincerely,



Timothy R. Qualls, Esquire
Young Qualls, P.A.

cc: Hon. Barbara Ford-Coates



PINELLAS COUNTY
OFFICE OF COUNTY ATTORNEY

PHONE (727) 464-3354 · FAX (727) 464-4147 · 315 COURT STREET · CLEARWATER, FLORIDA · 33756

JEWELWHITE
COUNTY ATTORNEY

May 10, 2023

VIA ELECTRONIC MAIL

wendi@FloridaPACE.gov

Wendi Leach
Florida PACE Funding Agency
411 Bee Ridge Road, #134
Sarasota, FL 34233

RE: PACE Funding Agency (FPFA) – Use of Uniform Collection Method

Dear Ms. Leach,

I represent the Pinellas County Property Appraiser, who is in receipt of your letter of April 20, 2023, on behalf of Florida PACE Funding Agency (FPFA) concerning the use of the Uniform Collection Method under Section 197.3632, Florida Statutes. Your letter, in part, requests data file requirements and other information necessary for you to submit PACE non-ad valorem assessments to be added to the tax roll for “collection for the first time this summer.”

The Property Appraiser administers the Uniform Collection Method for non-ad valorem PACE assessments when there is an existing interlocal agreement between the PACE agency and a Pinellas County taxing authority pursuant to Pinellas County Code s. 42-445 et seq. When such a contract is in effect, and there are parcels subject to the non-ad valorem assessment at issue, the Property Appraiser will enter into an agreement with the PACE agency pursuant to Section 197.3632. Such agreement will outline the duties of the parties and the timelines and technical requirements for submission of the non-ad valorem assessment roll.

While FPFA did enter into an interlocal agreement with Pinellas County on August 14, 2019, which allowed the agency to offer the PACE program to non-residential property owners in the County, FPFA terminated that agreement by letter to Pinellas County dated January 20, 2023. Therefore, to our knowledge FPFA does not have the authority to operate the PACE program in Pinellas County, and the Property Appraiser cannot enter into an agreement with FPFA to implement the Uniform Collection Method for non-ad valorem PACE assessments.

We are aware of the bond validation judgment rendered in by the 2nd Judicial Circuit Court in Leon County (case 2022-CA-1562), concluding that FPFA could operate independent of local government regulation on a Statewide basis. However, that decision is not binding as to Pinellas County or the Pinellas County Property Appraiser— neither of which was a party to or provided noticed of the case prior to the ruling— as, among other concerns, that ruling is beyond the authorized scope of a bond validation proceeding and infringes upon the constitutional authority of Pinellas County government agencies. Additionally, FPFA is currently in active litigation with Pinellas County (6th Judicial Circuit Court for Pinellas County case 23-006631-15) in relation to the PACE assessments that are the subject of your letter.

The Property Appraiser's role in administering non-ad valorem tax rolls is ministerial but is governed by Florida law. Until we receive documentation that the litigation between FPFA and Pinellas County has concluded *and* that FPFA is legally authorized to offer the PACE program in Pinellas County as to the specific properties to which the PACE non-ad valorem assessments purportedly attach, the Property Appraiser will take no action on this matter.

Please do not hesitate to reach out if/when these concerns have been resolved.

Sincerely,



Amanda S. Coffey
Managing Assistant County Attorney

Wendi Leach

From: Mike Fasano <mfasano@pascotaxes.com>
Sent: Friday, February 10, 2023 2:47 PM
To: Michael Moran
Cc: Wendi Leach

I'm in receipt of your most recent email regarding our phone conversation. The summary of our phone conversation by you is totally incorrect and inaccurate. I have made it clear that we will continue to put the PACE assessment/loan on the tax notice as long as you have a signed contract with us as required by the Pasco County Board of County commissioners. In that contract it requires that you have your customers sign a disclosure. You and the other PACE providers have been doing that for the past few years and it has worked just fine. I have been advised by my County Attorney, Attorney of our Association, and from other legal counsel, the Leon County decision does not have jurisdiction in Pasco County. You only need to do what has been done for the past three years and that is have the customer sign the disclosure and forward to our office. Again, I am required to have a contract with all PACE providers according to the County resolution. And as you may know, the County refers to them as subscription agreements. I would also ask that next time we speak on the phone, you act like a gentleman. There's no need to shout and yell at me. I want my customers and my constituents in my County to be protected and I will do everything I need to make it happen.

Thanks and God bless,
Fasano.

From: Michael Moran <Mike@FloridaPACE.gov>
Sent: Friday, February 10, 2023 2:11 PM
To: Mike Fasano <mfasano@pascotaxes.com>
Cc: Wendi Leach <Wendi@FloridaPACE.gov>
Subject: Your call...

Confirming the substance of your immediate call after sending my email at 1:56pm dated 2/10/2023. The call came from (727)858-2959.

You made it clear in an unwavering manner that you will not be putting PACE assessments on the tax roll.

In addition, you stated you were directed by the Pasco County Board of Commissioners to take this position.

Have a good weekend. Mike



Michael A. Moran, CIC
(850)400-PACE Main
(941)400-1140 Cell

Wendi Leach

From: Shirley Jenkins <sjjgulfcotxcoll@gulfcounty-fl.gov>
Sent: Thursday, May 11, 2023 8:56 AM
To: Wendi Leach
Subject: Pace

Categories: Follow up items

I will not collect due to assessments not being placed on trim notice.

Shirley

Wendi Leach

From: Janet Rufas <Janet.Rufas@SeminoleCounty.tax>
Sent: Thursday, May 18, 2023 11:24 AM
To: Wendi Leach
Cc: Angie Haws; Dana Murphy; Juli Vandehey; Keesha Richardson; Laura Zielinski; Maribel Walker; Paula Prevatt; support@seminolecountytaxcollector.zohodesk.com
Subject: RE: Florida PACE Funding Agency

Hello Wendy,

The Seminole County Tax Collector's Office does not recognize the Florida PACE Funding Agency liens as an Ad Valorem Tax. Unless you have an Inter-local agreement with Seminole County or the City jurisdictions located within Seminole County (where the tax is being paid by them) the Tax Collector's Office cannot enforce it as a tax, and therefore will no longer collect for these liens. The Inter-local agreement with the County/City is required to be signed every year there are taxes to be assessed.

If you have any questions, please let me know.

Thank you,



Janet Rufas

Janet Rufas, Manager
Tax Department
Seminole County Tax Collector

P: (407)-665-7644

F: (407)-665-7615

E:

Janet.Rufas@seminolecounty.tax
www.seminolecounty.tax

This is perfect! I have now updated our 'county response' sheet so that we will make sure the files come to you in the manner that you preferred. Thanks so much!

Regards,

Wendi Leach

Director of Operations
(850) 400-PACE(7223)
(941)724-4678 Cell

Florida PACE Funding Agency
www.FloridaPace.gov



From: Angie Haws <sctcit@seminolecounty.tax>
Sent: Monday, May 1, 2023 3:30 PM
To: Janet Rufas <janet.rufas@seminolecounty.tax>
Cc: Wendi Leach <Wendi@FloridaPACE.gov>; angie haws <angie.haws@seminolecounty.tax>; dana murphy <dana.murphy@seminolecounty.tax>; keesha richardson <keesha.richardson@seminolecounty.tax>; support@seminolecountytaxcollector.zohodesk.com; juli vandehey <juli.vandehey@seminolecounty.tax>; laura zielinski <laura.zielinski@seminolecounty.tax>; maribel walker <maribel.walker@seminolecounty.tax>
Subject: Re:[## 25763 ##] Florida PACE Funding Agency

Good afternoon all.
Please see my answers below in blue.
Angie

---- On Mon, 1 May 2023 15:16:42 -0400 "Janet Rufas" <janet.rufas@seminolecounty.tax> wrote ----

Hi Angie and Dana,

I received the attached letter from Wendi with Florida PACE Funding asking for our requirements for the 2023 tax year.

1. Our data file requirements - **parcel, code, amount - Comma delimited text file or Excel Spreadsheet**
- 2.. If their Taxing District has been assigned a special code by our office, what is that code? **FLP1**
3. Our County's process (if files go to the PA office, or if no filings are sent to the PA office) **Files are sent directly to the Tax Collector**
4. Filing deadline- **September 15th**
5. Contact person (name, phone, email) who will be receiving the electronic files from PACE - **Angie Haws**
6. The fee our office charges = **The Tax Collector shall be entitled to deduct and retain half of a percent (0.50%) of the amount of all Agency special assessments annually collected and remitted.**

Wendi has also included her email address for tax distributions, and their ACH banking information, which Dana will need

If you will supply Wendi with the information she is requesting, and copy me on the email, I would appreciate it.

Thank you,

| *Janet Rufas*

Janet Rufas, Manager
Tax Department
Seminole County Tax Collector

P: (407)-665-7644
F: (407)-665-7615
E: Janet.Rufas@seminolecounty.tax

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The Palm Beach Post

LOCAL

Palm Beach County sues PACE provider after it refuses to abide by consumer protection rules

Mike Diamond Palm Beach Post

Published 5:00 a.m. ET May 19, 2023

County lawyers are seeking an emergency injunction to prevent Florida Pace Funding Agency (FPA) from doing business in Palm Beach County after the agency refused to abide by new rules designed to protect consumers.

The Property Assessed Clean Energy (PACE) program allows low-and-moderate income homeowners to improve their homes without upfront costs. But those loans are not free and they have to be paid back through one's tax bill. Eligible projects include solar panels, roofs, air-conditioning systems and even seawalls.

The Florida Pace Funding Agency, one of the PACE providers operating in Palm Beach County, obtained a ruling from a circuit court judge in Leon County that said it is free to operate in Florida without having to comply with county ordinances. County lawyers say the Leon County Circuit Court judge overstepped his bounds and did not have the right to make such a ruling.

In November, Palm Beach County commissioners added consumer protections and oversight to the program in response to complaints from homeowners that they were unaware of the impact the loans had on their property tax bills. Failure to make payments could result in a home being foreclosed upon.

Jamy Dinkins, FPA's lawyer, said he does not understand what the emergency is. Palm Beach County knew for months that FPA was going to terminate its agreement with the county, he said.

FPA is the only provider in Palm Beach County that has decided not to comply with the new set of rules. There are three other providers. Between March 12 and April 11, FPA originated

136 loans worth \$4.4 million without complying with the new consumer protections. The new set of rules require disclosures to homeowners that:

A lien will be recorded against their properties and that PACE assessments will be collected the same way as real estate taxes.

Failure to make payments could result in the home's loss through foreclosure.

Regenia Herring, the executive director of Palm Beach County's Criminal Justice Commission, has questioned whether PACE providers are preying on the vulnerable, particularly people of color. She told The Post she had an elderly relative that nearly lost his home because he was unable to keep his tax bill current, thanks to the impact on the tax bill because of a PACE loan.

Editorial: We ask the experts when property insurance bills will drop. The answer's bad.

County commissioners unanimously voted to seek the injunction. They also called on staff to issue a news release cautioning homeowners to not seek PACE loans through Florida Pace Funding Agency. The news release was never issued, and efforts to seek comment from the county attorney were unsuccessful.

As for telling consumers not to do business with it, Dinkins said: "There could be consequences down the line for that." Dinkins called the county's lawsuit an effort to get around a judge's opinion.

How does the PACE program work?

PACE providers tout the program as an easy way to finance home improvements. Eligibility is determined by the equity in one's home; credit scores are not a factor. The program offers a way for low-and-moderate income homeowners to make needed property improvements that they otherwise would not be able to do, according to Dinkins.

But sometimes the PACE portion of a tax bill can be higher than that part of the tax bill to support government operations.

The Florida Pace Funding Agency, in its letter to the county, called the provisions in the new ordinance "overreaching" and accused the county, "at the behest of Tax Collector Anne Gannon," of imposing stringent regulations on PACE providers.

Pinellas County is also seeking an emergency injunction to block FPA from operating there.

More: West Palm Beach Washington Road debacle forces city to activate \$5.6 million bond
Tax Collector Gannon has been a long-time critic of the program, objecting to the requirement that her office collect payments for PACE agencies through tax bills. Other tax collectors throughout the state have also criticized PACE agencies for the same reason. Gannon told county commissioners that she will no longer process the loans for Florida Pace Funding Agency since it is not adhering to the new ordinance.

As to when the courts will take up the issue, County Attorney Denise Coffman told county commissioners it is not clear how quickly that will happen, noting that it depends on the court's schedule. Dinkins said FPA wants to have the case heard quickly as well but noted that it will not allow "the county to railroad its rights."

Mike Diamond is a journalist at The Palm Beach Post, part of the USA TODAY Florida Network. He covers Palm Beach County government and transportation. You can reach him at atmdiamond@pbpost.com. Help support local journalism. Subscribe today