ARAPAHOE COUNTY
COLORADO'S FIRST

Administration Building
West Hearing Room
5334 S. Prince St.
Littleton, CO 80120
303-795-4630
Relay Colorado 711



# Study Session

**September 29, 2020**

**The members of the Board of County Commissioners may attend study sessions virtually or in person, but due to social distancing requirements, presenters and the public may only attend virtually. The public may attend the study sessions (listening only) by calling 1-855-436-3656. The Board of County Commissioners may go into executive session during or at the conclusion of the study session as necessary to receive legal advice or discuss other confidential matters.**

The Arapahoe County Board of County Commissioners typically holds weekly Study Sessions on Monday and Tuesday. Study Sessions (except for Executive Sessions) are open to the public and items for discussion are included on this agenda. Agendas (except for Executive Sessions agendas) are available through the Commissioners' Office or through the County's web site at www.arapahoegov.com. Please note that the Board may discuss any topic relevant to County business, whether or not the topic has been specifically noticed on this agenda. In particular, the Board typically schedules time each Monday under "Committee Updates" to discuss a wide range of topics. In addition, the Board may alter the times of the meetings throughout the day, or cancel or reschedule noticed meetings. Questions about this agenda? Contact the Commissioners' Office at 303-795-4630 or by e-mail at commissioners@arapahoegov.com

## Study Session Topics

**9:00 A.M. *Strategic Planning Discussion (WHR)**
*Board of County Commissioners*

**11:00 A.M. *Colorado Commercial Property Assessed Clean Energy (C-PACE) Program Discussion**
Discussion and update with individuals from the Colorado Commercial Property Assessed Clean Energy Program or "C-PACE" on to discuss the current status of the C-PACE program, projects in the pipeline for Arapahoe County, planned changes to Program rules and timeline for implementation, and delinquent projects in Arapahoe County

*Request: Information/Direction*

*John Christofferson, Deputy County Attorney*
*Sue Sandstrom, Treasurer*

Documents:

BSR STUDY SESSION RE C-PACE PROGRAM DISCUSSION 9-29-2020.PDF
200914 CO C-PACE STAKEHOLDER MEMO.PDF

**Break**

**1:30 P.M.    Administrative Meeting - Director Evaluation Process Review**
*Dusty Sash, Total Compensation Manager, Human Resources*

**Break**

**3:00 P.M.    Administrative Meeting - The Equity Project Training**
*Board of County Commissioners*

***To Be Recorded As Required By Law**

*Arapahoe County is committed to making its public meetings accessible to persons with disabilities.*
*Assisted listening devices are available. Ask any staff member and we will provide one for you.*
*If you need special accommodations, contact the Commissioners' Office at 303-795-4630 or Relay Colorado 711.*
*Please contact our office at least 3 days in advance to make arrangements.*

## BOARD SUMMARY REPORT

**Date:** September 18, 2020

**To:** Board of County Commissioners

**From:** John Christofferson, Deputy County Attorney

**Subject:** Colorado C-PACE Program

### Purpose and Recommendation

The purpose of this study session is for the Board of County Commissioners to meet and discuss the current status of the Colorado C-PACE program with individuals from the C-PACE Program and other stakeholders, along with C-PACE projects in the pipeline, planned changes to Program rules and timeline for implementation, and delinquent projects in Arapahoe County.

### Background/Discussion

On May 26, 2020, the Board met to discuss the current status of the C-PACE Program in Arapahoe County, including the impacts of the Program on the Treasurer, Clerk & Recorder, and Assessor Offices. On July 6, 2020, the Board met and received an update from Arapahoe County Treasurer Sue Sandstrom regarding delinquent properties in Arapahoe County and an update from John Christofferson regarding the status of the reserve fund.

The Board directed staff to schedule a meeting with individuals from the C-PACE Program to discuss the current status of the Program in Arapahoe County, projects in the pipeline, planned changes to Program rules and timeline for implementation, and delinquent projects in Arapahoe County. A memo from the Colorado New Energy Improvement District regarding the overview and benefits and processes of the C-PACE Program is attached.

The Board is considering whether to continue the program for another year. The County may opt out of the program via a resolution de-authorizing the program. If the County opts out, the program will continue until the current projects complete their financing, however, no new projects would be allowed to be approved.

**Fiscal Impact**

In the event projects are delinquent in paying taxes or become in default, the County would not receive property taxes projects unless the developer catches up on the delinquencies or tax liens are purchased.

There should be no working fiscal impacts since the Treasurer's duties are covered by the 1% fee, and the Assessor's Office and Clerk & Recorder's Office stated their impacts are negligible.

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| **DATE:** | September 2020 |
| **TO:** | Colorado County Representatives and C-PACE Stakeholders |
| **FROM:** | Colorado New Energy Improvement District |
| **REGARDING:** | Overview of Benefits and Processes of C-PACE Program |

This memo is intended to provide County representatives and other program stakeholders with an overview of the benefits, underwriting and default processes associated with the Colorado Commercial Property Assessed Clean Energy (C-PACE) program. This document was prepared by the Colorado New Energy Improvement District (the District) and Sustainable Real Estate Solutions, Inc. (the Program Administrator).

This memo first highlights the public benefits that the C-PACE program delivers to Colorado communities. It then describes the public-private partnership established by the C-PACE program between the District, participating Counties, and private property owners. Moreover, it summarizes project underwriting requirements and what happens in the unlikely event of a project default.

**Public Benefits**

C-PACE serves the public good by encouraging commercial property owners to undertake energy improvements, providing several benefits:

- Projects improve commercial and industrial building energy performance and infrastructure for communities across the state resulting in reduced energy consumption and reduced emissions from greenhouse gases and environmental pollutants[1].
- Projects create local job creation[2].
- The program drives economic development in communities across the state.

[1] C-PACE projects financed to date have resulted in projected total carbon emission reductions of 335,277 tons.

[2] C-PACE projects financed to date have resulted in a projected total of 757 job-years created for local business.

**Public-Private Partnership**

The C-PACE program creates a public-private partnership between the District, participating Counties and property owners. It was designed to provide a unique way of financing qualifying energy efficient improvements for commercial buildings that provide measurable public benefits[3] without the use of public funds.

- The C-PACE program enables commercially attractive financing for energy efficiency, renewable energy, and water conservation improvements for existing buildings and new construction.
- C-PACE projects are financed with private capital through qualified capital providers[4].
- Program administration is funded via fees charged to participating private property owners.
- C-PACE provides an innovative financing option for owners of existing buildings and new construction projects with benefits not available with traditional financing:
    - 100% financing for retrofits (including hard and soft costs), and 15-20% of total construction cost for new construction projects.
    - Long-term financing (up to 25 years).
    - Non-accelerating repayment obligation transfers to new owner upon sale.
- The County's role is limited to servicing the C-PACE assessment consistent with the manner in which the County services other assessments, e.g., sewer districts. Following recording of the District's assessment lien in the County real property records, the County:
    - Collects annual assessment payments along with property taxes.
    - Remits assessment funds to the District.
- The County retains 1% of the annual assessment payment to cover its administrative costs[5].

[3] To date 73 projects in Colorado have received C-PACE financing valued at $71.8 million. These projects are projected to save 87.1 million kBtu/year in energy.
[4] 38 capital providers have been prequalified to finance C-PACE projects, including 15 Colorado community banks.
[5] C-PACE projects closed to date are projected to provide Colorado Counties with over $2.5M in total servicing fees.

**Project Underwriting**

Project underwriting is specific to each project. Moreover, underwriting is conducted by three parties based on their respective roles in a transaction. First, the program administrator reviews the project application to ensure it meets eligibility requirements as defined in the program guidelines. This involves at a minimum ensuring that the property is eligible (in a participating County and is zoned as commercial, industrial or agricultural) and:

- For existing buildings, ensuring that the improvements will result in a utility cost savings.
- For new construction, that the proposed design will either meet or exceed the requirements of the 2015 International Energy Conservation Code (IECC).

The program's underwriting oversight efforts begin early on in the financing process, during the prescreening and continuing throughout the project development process. The program uses the following guidelines to direct this oversight effort:

- Total property-related debt (including mortgage debt, the C-PACE financing, and any other obligations secured by the property) is not to exceed 80 percent of the property's value. This value may be established either (a) as the assessed value of the property, or (b) its appraised value, as supported by a recent appraisal. In either case, the property's value may include the enhanced value of the property resulting from the installation of the energy improvements being financed with the C-PACE assessment.
- The property owner has been current on its property tax and assessment payments with respect to the property for at least three years.
- The property owner must not have any involuntary liens, defaults, or judgments applicable to the subject property. A property owner may be able to participate if they can demonstrate that there is an acceptable reason for the lien, default, or judgment and provide supporting documentation.
- The property owner(s) or their affiliated companies have not been a debtor in a bankruptcy proceeding during the past seven years and the property proposed to be subject to the contractual assessment must not currently be an asset in a bankruptcy proceeding.
- The cash flow generated by the property during the past 12 months exceeds 1.25 times the sum of the amount of the annual assessment plus any interest expense associated with any mortgage debt for the past 12 months.

The mortgage holder (in the case of an existing building) or construction lender (in the case of a new construction project) conducts its own underwriting, and typically requires a combined loan-to-value percentage of no greater than 80%, with the C-PACE financed amount equaling no more than 20% of the building's value (for existing building retrofit projects) or total construction costs (for new construction projects). The underwriting criteria a mortgage holder or construction lender applies to support a C-PACE consent decision is generally consistent with its underwriting practices for other forms of financing.

The C-PACE capital provider also conducts its own underwriting effort, similar to the mortgage holders and construction lenders described above, applying its own experience, best practices and risk evaluation. To support their underwriting efforts, capital providers may request the following:

- A copy of the most recent mortgage statement and appraisal.
- The current year (year-to-date) income/expense statement for the property.
- The previous two years' income/operating statements, statements of cash flows, and balance sheets for the property.
- The previous two years' audited (if available) income/operating statements, statements of cash flows, and balance sheets (audited or reviewed, if available) for the tenants' business.
- A table listing all tenants, their monthly (or annual) lease payments, the percentage of the building they occupy, and the end date of their existing leases
- The previous year's federal tax returns if the property is planning to claim the value of the federal Investment Tax Credit or MACRS depreciation.

As part of the underwriting process, the Program Administrator prepares a Financial Projections Report for the mortgage holder's and capital provider's review. This report provides a summary of the project's key assumptions, financial metrics, and projected cash flows to facilitate the consent request and underwriting efforts.

In cases where a mortgage holder or construction lender is not involved in a project, or if the construction loan is to be closed after the C-PACE financing is secured, the program has developed enhanced underwriting guidelines and requirements, including a hard cap on the C-PACE financing amount tied to available equity in a project, with available equity to be determined by a certified appraisal obtained by the C-PACE capital provider and provided to the District, conducted by a qualified appraiser within twelve months of the C-PACE project pre-qualification submission.

Ultimately, three different entities must underwrite a prospective C-PACE project from their own perspective and projects must pass this underwriting scrutiny to close financing.

**Project Default**

A C-PACE project default is highly unlikely. Of approximately 2,400 C-PACE projects financed across the U.S. over the last decade, there have only been two documented cases of a project owner defaulting on its C-PACE payments (less than 1 in 1,000). One of these default events recently occurred here in Colorado in Fremont County. The Fremont County project is discussed in more detail below.

As an initial matter, it is important to emphasize that if a property owner fails to make a C-PACE payment, neither the County nor any taxpayer within the County (other than the owner of the property) will be obligated, under any circumstance, to contribute funds for the purpose of paying off the C-PACE financed amount or servicing the C-PACE assessments. *The C-PACE program does not require any use of public or taxpayer dollars and is funded and repaid solely with private dollars.*

If a property owner fails to make a C-PACE payment, the District has the right per the C-PACE statute to declare a delinquency, in which case the County Treasurer must include the delinquent installment amount as part of a tax lien sale. Per the statute, the County treasurer must advertise and hold the sale at the same time and in the same manner as provided by law for sales of real property tax liens in default of payment. Following the sale, the successful bidder, or if there is no bidder, the County will be issued a certificate of purchase for the lien. If the County becomes the holder of the certificate, it will *not* be required to pay the delinquent C-PACE payments.

The holder of the certificate of purchaser may apply for a tax deed for the property at any time after three years from the date of issuance of the certificate. Such deeds are issued as provided by law for issuance of tax deeds for the nonpayment of general property taxes or other special assessments.

It is important to note that while the potential for default is unlikely, the program recognizes that default is a possibility. The program has developed a "tax lien sale assistance" process in which the program and the District can respond and assist the stakeholders involved (the County, the owner/developer, and the capital provider) with a default scenario to work toward a positive resolution, as described in this next section.

***Fremont County Project***

As mentioned previously in this memo, one of the two known cases of default on a C-PACE financed project in the past decade occurred in Fremont County. In this case a property owner obtained C-PACE financing to improve a derelict building in downtown Florence. The project involved improvements to the envelope, HVAC equipment, lighting, electrical upgrades, and installation of a roof-mounted 26 kW solar photovoltaic system. The project was financed over a 19-year period and is estimated to result in $805,883 in energy cost savings over the life of the equipment.

The developer of this project incurred both financial and personal hardships during the course of the construction, which ultimately led to the property running into default prior to the completion of the installation of all of the energy efficiency improvements. As a result, the County currently holds the certificate of purchase that was issued following the 2019 tax lien sale.

The process to find a solution to this default scenario is currently underway, and there are a number of options available. Since the default, the District, the Program Administrator, and the C-PACE capital provider have been working together to modify the amortization schedule to make the property more attractive to an investor at the 2020 tax lien sale or facilitating the transfer of the subject property to a third-party purchaser[6]. In either case, the District and the Program Administrator are committed to continuing to work with the C-PACE capital provider and the property owner to assist with the completion of this project in downtown Florence.

Additionally, in response to this default event, the District implemented stronger underwriting guidelines, including requirement of an updated appraisal to establish the

[6] As of September 10th, 2020, a letter of intent was recently signed by a prospective buyer, and a revised amortization schedule is currently be approved for recording with Fremont County.

C-PACE lien to value in cases where a mortgage holder or a construction lender is not involved with the project, as previously described.

**Conclusion**

Risks associated with financing improvements to commercial buildings may never be completely eliminated. Having said that, the underwriting approach and process applied to the development of C-PACE financed projects has proven to be effective and to mitigate risk to the extent possible. The success of these underwriting efforts is evidenced by the thousands of successful projects financed across the country over the past decade.

The project default in Fremont County has resulted in the program revisiting the existing underwriting process and criteria. In cases where a mortgage holder or construction lender is not involved in a project, like the Fremont County project, there is one less party underwriting the project. In these cases, the program has implemented updated underwriting standards to help minimize the risk of a project default.

As a program that uses private capital exclusively to fund projects that benefit private property owners and the public alike, C-PACE is intended to be a smart method of financing energy efficient improvements within Colorado's commercial and industrial market segment – benefitting communities across the State, without the imposition of public funds and with minimal impact on County resources.

The District and the C-PACE Program Administrator look forward to a continued partnership with Colorado Counties and communities, building owners, developers, contractors, mortgage holders and capital providers. Together, using this tested and innovative financing tool, the C-PACE program will continue to grow and provide a method to improve Colorado's present and future.