

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Building C, Florida Room
Viera, FL 32940*



Minutes

Wednesday, November 18, 2020

6:00 PM

Florida Room

Call To Order

Approval of Minutes - January 8, 2020

H. Public Hearings

H.1. Port St. John Small Area Study

Attachments: [Small Area Study](#)

Maureen Rupe stated she was not present at the meeting when the approved the study, and asked the reasoning for putting the fire station on Grissom Parkway.

Vaughan Kimberling stated he believes the committee, with the assistance of the County, reviewed the available locations and the property that was identified is owned by the County, so there would not be a cost in purchasing the land.

Ms. Rupe asked if there was other rationale, because it is out of the way where it is and she didn't know how much of a traffic hazard there would be at the proposed location.

Mr. Kimberling stated it is just a recommendation, and studies would have to be done in order to move forward.

Mr. Rupe stated she didn't know if it had anything to do with the 2,000 houses being planned for Grissom Parkway. Mr. Kimberling stated the committee reviewed the available land use in Port St. John, and there was discussion about putting in a second fire station, but the costs involved in building another building and purchasing property was quite expensive. He said when it was presented that there is property along Fay Boulevard that the County could use, should it opt to, it would be cheaper to move the fire station and equipment than to build a brand new building.

Carmella Chinaris asked if there is a map in the study materials that shows the location of the parcels recommended for Neighborhood Commercial from Residential 4 in Recommendations 3 and 4.

Jeffrey Ball stated there was a PowerPoint presentation that was inadvertently left out of the board's packages, and it included a map of the parcels. There were two properties that staff focused on either changing the land use or the zoning. The first property was the existing barber shop located on the northeast corner of Grissom Parkway and Fay Boulevard; and the second property was just north of the school on Fay Boulevard. He said another recommendation was that no change in zoning or land use was required along U.S. Highway 1 and Fay Boulevard.

Ms. Chinaris asked what action the board is supposed to take on the small area study. Mr. Kimberling stated the study was a six-month process approved by an appointed committee, and the study was then forwarded to this board for consideration.

Ms. Chinaris stated the study seems very comprehensive and it looks like the committee did excellent work, but she would like to see where the properties are located.

Mr. Ball stated he will send the board the PowerPoint presentation that was presented to the committee and it will be clear which properties were included in the overall recommendation.

Ms. Chinaris asked if any of the properties are on the west side of Grissom Parkway. Mr. Ball replied no, they are not.

Mr. Rupe stated the study states that a funding source for the fire station could be a combined MSTU and MSBU, and asked about the status of the Parks MSTU. Mr. Ball stated the goal of the study was to make recommendations and there has not been any more work done on the location of the fire station. He stated Steven Darling, one of the committee members, discussed at one of the meetings that the County is in the process of doing a countywide Needs Assessment, which will look at the level of service and where, if any, new fire stations would be located, and until that is done everything is on hold.

Randy Rodriguez noted for the record that the corner of Fay Boulevard and Adams Place is either a Circle K or a Family Dollar, and asked if the area in Recommendation 1 is on the opposite side of Fay Boulevard, either at the Sheriff's station or the ballpark. Mr. Ball replied the fire station was a separate recommendation and did not have anything to do with the land use change being requested, and the PowerPoint presentation will highlight the three areas being discussed as far as land use and zoning changes.

Mr. Kimberling called for a motion.

Motion by Randy Rodriguez to approve the small area study.

Ms. Chinaris stated she would like to table the small area study recommendation until the board can see the map.

Mr. Kimberling asked staff if there was a timeframe for approval of the study, and asked if it could be tabled to the board's January 6, 2021, meeting. Mr. Ball replied that is a decision for the board.

Mr. Kimberling noted there is a motion on the floor to approve the small area study. The motion died for lack of a second.

Mr. Kimberling called for a second motion.

Motion by Carmella Chinaris, seconded by Maureen Rup, to table the small area study recommendation to the January 6, 2021, meeting. The motion passed 6:1, with Randy Rodriguez voting nay.

Result: TABLED

Mover: Carmella Chinaris

Second: Maureen Rupe

- H.2.** 4725 Fay Blvd Land Trust (Carmine Ferraro) requests a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC to CC. (20PZ00088) (Tax Account 2309941) (District 1)

Attachments: [Administrative Policies of the Future Land Use Element.pdf](#)
[Staff Comments](#)
[GIS Maps](#)

Carmine Ferraro stated he and his clients purchased the property in 2008 with the hopes of a Walgreens deal, and after a lot of discussion with the board and neighbors he agreed to a Binding Development Plan (BDP), but the Walgreens never happened. He said in 2014 he

came back to the board for the Family Dollar store, and he worked with the board as well as the neighbors, and re-formulated the BDP, and now Family Dollar is established and doing well. He said since then, they tried a few times to rezone the remaining 1.59 acres with other uses that did not make sense and did not make it beyond the initial stages. He stated one attempt to rezone was withdrawn by the applicant right before the meeting because it was a controversial use. He said the proposed use before the board now is a good use, which is an ACE Hardware and he believes it is a good fit as a neighborhood hardware store. He stated the current zoning is BU-1-A with a BDP, but he has to modify the BDP again because when they met with ACE Hardware, the franchisee had to get it approved by corporate, and in looking at traffic circulation and patterns, corporate saw that the adding of delivery truck traffic to the existing Family Dollar entrance was not a good idea. They preferred to have a separate driveway farther down the road at the Adams Place driveway. [Mr. Ferraro distributed a proposed conceptual site plan to the board. The plan can be found in file 20Z00031, located in the Planning and Development Department]

Mr. Ball noted staff has not reviewed the proposed site plan for compliance with County Code, and when the site plan is formally submitted it will be reviewed. He further noted that Mr. Ferraro is asking for removal of the condition that the Adams Place driveway be closed. He pointed out that Public Works has said the spacing between the existing driveway and the proposed driveway does not meet FDOT setbacks.

Mr. Ferraro stated the concept plan is the beginning of a long process, but it will follow County Code. He said ACE Hardware wants the driveway re-opened. He said FDOT is considering pushing traffic as far back from an intersection as possible, because the closer to an intersection, the more dangerous situations can become from congestion. He stated he has created a circular path, and he has been told by ACE Hardware that deliveries will be once a week unless there is a special event. Family Dollar has one delivery per week and the truck is making the left-hand turn into the existing Family Dollar driveway. He is proposing the deliveries come in through the back driveway and come around so there will be a circular path of traffic. The second requirement of ACE Hardware was an outdoor garden center, which is consistent with most of their stores; they can do them indoors, but they prefer them outdoors because it allows them to bring in the types of plantings and supplies typically seen at an ACE Hardware. He said he knew they could address the first requirement by modifying the BDP. He has ordered a traffic study by an independent traffic engineer and will submit it to staff before the County Commission meeting. He went on to say that he thought the outdoor garden center would be easy to accomplish, but found out that under the current zoning of BU-1-A all activities have to be within enclosed walls, so that meant no garden center. He said he went back to ACE Hardware and said he would submit the application for a BDP, and got them to agree to an indoor garden center. He stated when he submitted the application he was told that a hardware store is not a permitted use in the BU-1-A zoning classification. He read a portion of the BU-1-A zoning classification, "The following uses, or other uses of similar nature that are compatible with the character of uses specifically set forth in this subsection are permitted. All business uses and product shall be confined within substantial buildings completely enclosed with walls and a roof." He said from reading that, he thought it would not be a problem to bring in a retail store similar to Family Dollar. He noted some of the uses under BU-1-A include antique shops, bakeries, bookstores, computer sales, confectionaries, ice cream stores, drug stores, florist shops, jewelry stores, luggage shops, and paint and wallpaper stores, which he thought was similar to a hardware store. He stated he did not see the words 'hardware store' but figured he had a similar type of retail use. Staff told him that was not the case and that he can't do a hardware store in BU-1-A, and he would need BU-1 zoning. He stated once he knew that in BU-1 there was not a restriction on outdoor sales, he could bring back the outdoor garden center, so he applied for BU-1. He went on to say that staff informed him that BU-1

could not be approved under the current Future Land Use designation of Neighborhood Commercial, and he was told he needed to change the land use to Community Commercial in order to allow BU-1. [Mr. Ferraro showed the board photos of the current Family Dollar store, an ACE Hardware store, and a Sherwin Williams store and informed the board that all three structures are the same metal buildings with stucco finish. The photos can be found in file 20Z00031, located in Planning and Development.] He stated all three structures are the same, but he cannot have an ACE Hardware in BU-1-A. He said he advised ACE Hardware that he was going to ask the County to change the Future Land Use Map, which is not an easy thing to do. It is a very serious consideration to change the land use map because a precedent is being created. He said he decided to ask for BU-1 and restrict it to hardware only in a BDP. He stated the proposed ACE Hardware is a great use for Port St. John, but it currently can't be done because of the land use, and his interpretation is that the code is in default and he should be able to have a hardware store in BU-1-A. He suggested there may need to be a conversation with the County Commission that it may be time to re-visit the code because it may be antiquated. He asked what the difference is in selling a hammer in Family Dollar and selling a hammer in a hardware store. He pointed out there are some negative staff comments about the request, but he wanted the board to know why he is frustrated. He noted he found one supporting property in Port St. John that at one time was going to be a Dollar General, and the property was rezoned from another zoning to BU-1, but in order to do that they changed the Future Land Use Map to Community Commercial, so there is a precedent four parcels away.

Ms. Chinaris asked if the parcel Mr. Ferraro is referring to is the strip between the church and the back of the strip center. Mr. Ferraro replied yes. Ms. Chinaris pointed out that the Port St. John board recommended denial of that change, and the County Commission voted in favor for it to happen, and this board was not happy about that precedent. Mr. Ferraro said he wishes he could rezone without changing the land use, and staff has been very cooperative, but there is not much they can do within the scope of the code. He said he would like to move on to part two of his requests.

Mr. Kimberling asked if Mr. Ferraro wanted to talk about Item H.3. Mr. Ferraro replied yes.

Mr. Ball stated it is up to the Chair as far as how the board hears the requests.

Mr. Kimberling stated he would like to first address the land use change. He said the small area study talks about Community Commercial properties, and the proposed location for the ACE Hardware is in violation of the study. The small area study has a requirement that Community Commercial developments have to be two miles apart. The proposed ACE Hardware location is 1.32 miles away. He said it is an example of how the study is trying to help the board. The small area study recommends three locations where these developments can go; one is at Port St. John Parkway and Grissom Parkway; one is at Curtis Boulevard and Fay Boulevard; and one is at Fay Boulevard and U.S. Highway 1. Those are the areas the study recommended for Community Commercial. He said if the board moves forward on the rezoning, it would be in contradiction with the small area study. He said the small area study also talks about where the Community Commercial developments are to be located; for example, they need to be located on a collector and arterial highway intersection, and the subject property is on a collector and intersection, so it does not meet that criteria either. He stated he believes the reason for that criteria are the type of traffic going into the property.

Mr. Ferraro stated he agrees with Mr. Kimberling, and that is what is frustrating about needing the requested changes.

Mr. Kimberling stated he wants the board to be aware that the subject property does not fall

into the criteria of where the study recommends Community Commercial, and it is too close to another Community Commercial designation. He reminded the board that if it approves Item H.2., it will put all the work that was done on the study in jeopardy, and he doesn't know the County's position on that.

Ms. Chinaris stated the small area study is great work and she wouldn't personally want to contradict anything in it. She said she wanted to table the small area study recommendation for clarification, but she is adamantly opposed to the Future Land Use change. She said they do not have the traffic study and that was one of the things that was the hold up with the Family Dollar store, and when he gets the traffic study, if it's not within the next few months, the traffic is going to increase by one-third when the kids who are homeschooling right now go back to Challenger Elementary. She said she doesn't think it is a precedent the people of Port St. John want, which is a land use of Community Commercial at that location.

Mr. Kimberling stated he was on the board when the Family Dollar was being discussed, and when there was going to be a liquor store with a drive-up window at the subject property's location, but the client withdrew his request.

Mr. Ferraro stated the applicant at that time wanted to do a farm store, and the liquor store idea was blown out of proportion. The applicant wanted to do a farm store where people could drive up and buy milk and eggs, and he wanted to sell alcohol as well. He said what happened was that the newspaper heard about it and when he showed up at the zoning meeting there were a lot of people there and he called the applicant who said to withdraw the request.

Mr. Kimberling reminded the board that the access road Mr. Ferraro wants to re-open through a change to the BDP was closed because of the school and the students who walk down the sidewalk, and Family Dollar had to modify their site plan to accommodate the concerns this board had, and they closed the Adams Place driveway. He noted Mr. Ferraro is now asking to change the BDP to re-open that driveway, and the school is still there, so he doesn't see that the situation has changed.

Mr. Ferraro stated he would like to address that during the rezoning request discussion, unless the board would like to hear them together.

Mr. Kimberling said he would like to keep them separate because if the board doesn't get past H.2., there is no point hearing H.3. He stated he wants to make sure the board is aware of the history and what the small area study did and how it affects the requested land use change.

Mr. Ferraro stated he was the vice chair of the small area study committee, and he was surprised at the last meeting because there were a lot of recommendations in the study that had to do with citizen input of people who took their time to come to the meetings. He said at the last meeting the committee was told that it had gone off the rails, and that the recommendations the committee spent so much time on now needed to be reconsidered because they weren't meeting the scope of the study. He said he felt somewhat pressured to go with the flow and remove some of the recommendations, and he felt it was a little manipulative. He also felt that at the last minute there was a presentation by Mr. Ball about the three zoning items out of the blue, and he had no idea what the three zoning items had to do with the small area study. He noted that the final item said 'no recommendation', and he asked why the committee would put a recommendation in a study to go to the County that said 'no recommendation'. He suggested it was in there to try to keep some other zoning matters from going forward. He said he was planning on speaking at the County Commission about it because he wasn't happy with the outcome of the study, and he doesn't feel that the study

reflects or represents the citizens input. He stated almost every recommendation that had to do with greenspace, parks, and other things, was voted out of the study. He said he doesn't believe the board should consider the study whatsoever. He said he thinks it was manipulated and put together for a purpose, and he will find out what the purpose is, because he doesn't like to be manipulated, and he felt very manipulated when he left that meeting. He asked why the committee spent six months getting together to talk about things if there are just a few items in the study. He said the committee was told not to put too much in the study and that it should pick the top three recommendations. He asked the board not to give the small area study any consideration.

Mr. Kimberling stated he would like to keep the focus on the requests to be heard by the board and not the small area study.

Mr. Ferraro said if it is being used to defend against the board looking at ACE Hardware, then he wants the board to understand what he believes occurred at the last meeting.

Mr. Kimberling stated it has been tabled until January, and he knows what is in there because he read it and he and Mr. Ferraro were both on the committee and they know it talks about Community Commercial. He said he wants the board to fully understand what the small area study said as opposed to the request tonight for an ACE Hardware.

Mr. Ferraro stated he understands the board is concerned about the traffic and it is a consideration for the Community Commercial request.

Ms. Chinaris stated she doesn't see the benefit to making the land use Community Commercial at that location, and all she sees is the downside. She said it does not fit with the surrounding area, and the traffic study will prove it is inappropriate so close to a school by opening up the back driveway for tractor trailers.

Mr. Kimberling asked what would prevent customers from using the Adams Place driveway.

Mr. Ferraro replied he was hoping to get some feedback from this board and the County Commission. He said he is willing to put up signage and even put into the BDP that it will be limited to delivery traffic only, and they are also going to ask Family Dollar to use it because that will remove those large trucks from the front of the property making the left-hand turn off of Fay Boulevard onto Adams Place and then making a sharp left about 75 feet in from the corner. He said he would be willing to put whatever language in the BDP that he needs to. Mr. Kimberling stated when Family Dollar presented their site plan, the orientation of the loading dock was set to accommodate the entrance that they have, so if the trucks came in the other way, they wouldn't be able to get to the loading dock the way it was designed. Mr. Ferraro stated Family Dollar would have to modify their site plan.

Mr. Kimberling stated in his opinion, it's the wrong store to be in that location. He said a sign is not going to stop anybody from driving through the driveway to the hardware store, but a barricade of some kind would.

Mr. Ferraro stated he would be willing to consider whatever the board wants to offer as a recommendation. With Family Dollar, he offered to put up a gate and close the driveway, but when he met with the School Board and the Principal of Challenger Elementary they both said they didn't want to do that. When the application went before the County Commission, they said to design it the best way possible and people would understand that when children come out of the school, the crossing guards would be there, and there have not been any incidents that he knows of since Family Dollar has been open.

Mr. Kimberling stated that is what this board looked at with Family Dollar because it is a legitimate concern having kids walk through there with no crossing guard in that area, but there would be truck and car traffic going into those stores, and that's why the BDP was done the way it was done and the entrance was moved up and the configuration of the store was such that a truck could come in from up front and back up to the loading dock. What Mr. Ferraro is proposing, to allow Family Dollar to use the back driveway, will not help the trucks unless they re-design the loading dock area. It would help customers coming and going, so what would keep the cars from using the back driveway, which was the concern this board had several years ago.

Mr. Ferraro stated it would have to be in the BDP and it would have to be enforced by ACE Hardware, and it would be a requirement for them to open the store and they would have to self-police it. [Mr. Ferraro presented a turning radius to the board. The turning radius can be found in file 20Z00031, located in Planning and Development].

Mr. Ball noted for the board's edification, staff has handed out the PowerPoint presentation that was presented to the small area study committee with the three areas identified.

Greg Messer stated in looking at the back driveway, he can see people coming out of the school and making a right-hand turn into the hardware store parking lot to try to get to Fay Boulevard and avoid the stoplight.

Mr. Kimberling noted there are also children walking down the sidewalk.

Mr. Ferraro stated currently, under the BU-1-A zoning, he can operate any of the other uses, so if ACE Hardware doesn't work and Sherwin Williams wants to come in, they are permitted to do so. He said when you look at the turning radiuses, tractor trailer trucks have a very large turning radius, and a typical truck is 45 – 50 feet, and when that truck is trying to make a left-hand turn right now into that property, it crosses over the full-access driveway and has to stop if there is traffic there. He said what he is proposing is to alleviate that and make it a better situation, to allow limited traffic to go toward the back driveway in additional language in the BDP, it will make the intersection and the driveway safer. He said he believes what the traffic study is going to show is not that the intersection is not going to be less busy, but that by alleviating tractor trailer traffic and pushing it down the road to the next driveway, it will make it less congested.

Ms. Chinarris asked if Mr. Ferraro is saying that increasing exponentially the tractor trailer traffic on that street, and making the turn from a two-lane street, where there is no leeway on the right-hand side into the driveway beyond, is a better scenario than fewer tractor trailers making a sharp left where there is leeway to go out to the right-hand side.

Mr. Ferraro stated he is saying there will be additional tractor trailer traffic there at some point in the future. Under the current BDP, there is no choice for tractor trailer traffic to make the sharp left 75 feet from the corner of Fay Boulevard going down Adams Place to make the left to get into Family Dollar to access the property next door, and that is a worse scenario than allowing a truck to go down the road where there is less traffic and execute the left-hand turn safely.

Ms. Chinarris mentioned the recommendation of the small area study of Neighborhood Commercial.

Mr. Ball noted the subject property was not contemplated in the study.

Ms. Chinaris stated she doesn't believe that changing the Future Land Use to Community Commercial is going to help the tractor trailer traffic going in and out of that spot. If the BDP is in place and the Future Land Use is not changed, then the chances of having a commercial property going in there that requires a lot of tractor trailer traffic is reduced, and that is what the board should be concerned about, what fits in that area, and it is not this.

Mr. Messer asked if there is a possibility of putting two entrances off of Fay Boulevard, where the truck traffic can come in and make a U shape around the building. Mr. Ferraro replied he does not believe so, because it would have to line up with the traffic light. Mr. Messer noted that would eliminate the Adams Place issue. Mr. Ferraro stated if the traffic was coming from I-95 they might be able to execute a right-hand turn, but coming from U.S. 1 it would be a problem.

Mr. Kimberling noted Port St. John Parkway is already zoned appropriately and has room for this type of business. Mr. Ferraro stated that is not where ACE Hardware wants to be.

Mr. Kimberling stated the issues are going to be access and the back driveway, and to avoid all of the issues the store should move somewhere else. They can move 1.3 miles down the street to an area that can accommodate it.

Motion by Carmella Chinaris to deny the change to the Future Land Use. The motion failed for lack of a second.

Motion by Kevin Shropshire, seconded by Wendy Porter-Hyde, to table the item until after the small area study is approved and when a traffic study is submitted.

Mr. Rodriguez stated what the board hasn't talked about is that the property doesn't meet the criteria for Community Commercial, and when the board looks at that it needs to look at everything about the property. At the far end of the block, which the board hasn't talked about at all, there are residential homes, and when the zoning is lifted up to Community Commercial and BU-1, it is that much closer to those homes. It lessens the potential for downzoning and he doesn't think it should be on that block.

Mr. Ferraro stated he needs to stay on the current public hearing schedule and he would accept a denial from the PSJ board.

Vaughan Kimberling called for a vote on the motion as stated, and it failed 5:2, with Kimberling, Chinaris, Messer, Rupe, and Rodriguez voting nay.

Motion by Carmella Chinaris, seconded by Randy Rodriguez, to deny the Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC to CC. The motion passed unanimously.

Result: DENIED

Mover: Carmella Chinaris

Seconded: Randy Rodriguez

- H.3.** 4725 Fay Blvd Land Trust (Carmine Ferraro) requests a change of zoning classification from BU-1-A with a BDP to BU-1 and an amendment to the existing BDP. (20Z00031) (Tax Account 2309941) (District 1)

Attachments: [Administrative Policies of the Future Land Use Element.pdf](#)
 [Staff Comments](#)
 [GIS Maps](#)
 [Existing BDP](#)
 [Proposed BDP](#)

Motion by Carmella Chinaris, seconded by Greg Messer, to deny the change of zoning classification from BU-1-A with a BDP to BU-1 and an amendment to existing BDP. The motion passed 6:1, with Randy Rodriguez voting nay.

Result: DENIED

Mover: Carmella Chinaris

Second: Greg Messer

Public Comment

Adjournment

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in the proceedings, please notify the Planning and Development Department no later than 48 hours prior to the meeting at (321) 633-2069.

Assisted listening system receivers are available for the hearing impaired and can be obtained from SCGTV staff at the meeting. We respectfully request that ALL ELECTRONIC ITEMS and CELL PHONE REMAIN OFF while the Planning and Zoning Board is in session. Thank You.

This meeting will be broadcast live on Space Coast Government Television (SCGTV) on Spectrum Cable Channel 499, Comcast (North Brevard) Cable Channel 51, and Comcast (South Brevard) Cable Channel 13 and AT&T U-verse Channel 99. SCGTV will also replay this meeting during the coming month on its 24-hour video server nights, weekends, and holidays. Check the SCGTV website for daily program updates at <http://www.brevardfl.gov>. The Agenda may be viewed at: <http://www.brevardfl.gov/Board Meetings>