

Murphy Oaks Proposed Stipulations– Sept 20 2019

Exhibit A to Ordinance 2019-26; Reference in Section 3.

Design and Development Standards.

1. Density shall be limited to 85 single-family detached dwelling units. **[Implements Windham proffer at August 28 hearing].**

2. Lot development standards:

a. There shall be no permanently affixed, wired, southward-facing outdoor speakers on lots 33-52 of the revised Binding Master Concept Plan dated September 6, 2019. **[Revised from November narrative to refer to new lot numbers.]**

b. Maximum height of structures shall be limited to one (1) story. **[From November narrative.]**

3. Developer will submit plans for the following transportation improvements (as depicted on the Binding Master Concept Plan) concurrent with preliminary plat and construction plan approval, and shall construct the improvements, subject to approval from Sarasota County for improvements in County right-of-way, prior to the issuance of the first certificate of occupancy:

a. Eastbound to Southbound right turn lane from Edmondson Road to Auburn Road. If construction of the eastbound to southbound right hand turn lane impacts the existing multi-use path on the south side of Edmondson Road, Developer will restore the multi-use path to existing conditions

b. Right and left hand turn lanes from Auburn to Edmonson; Developer will incorporate on-road bicycle lane(s).

c. The left hand turn lane from Auburn into the project. Installation of the left hand turn lane shall not impede on-road bicycle lanes or sidewalks.

[Implements Windham proffer for settlement].

4. There shall be no vehicular or pedestrian access connecting the subdivision to Fox Lea Drive. **[From November narrative.]**

5. No storm water or other drainage from the developed portion, non-buffer areas, of the subdivision site shall be discharged into the existing ditch that runs east-west within the northern portion of the Fox Lea Drive right-of-way. **[From November narrative.]**

6. The Master Surface Water Management Plan shall be consistent with the Curry Creek Basin Master Plans. **[From November narrative.]**

7. Landscape and Buffer Standards/Landscape Plan. The buffers surrounding the site shall be as shown on the Landscape Plan and the Binding Master Concept Plan, consistent with the following standards (which shall govern in the case of any conflicts).

a. Border Road Buffer: The landscaped buffer area shall be a minimum of 45.7 feet in width measured at right angles to property lines and shall be established along the entire length of and contiguous to the designated property lines and includes a six-foot-high (6') tan PVC fence within the landscaped buffer area to cover the sides of the lots designated as 11 and 12 on the binding concept plan. The remainder of the buffer will be landscaped per the Landscape Plan.

b. N. Auburn Road Buffer: The landscaped buffer area shall be a minimum of 50 feet in width measured at right angles to property lines and shall be established along the entire length of and contiguous to the designated property lines and includes a six-foot-high (6') fence, as depicted in the Landscape Plan, within the fifty-foot-wide landscaped buffer area. The 6' fence will be buffered from the public ROW by a continuous hedge to block the public from the fence. The hedge will continue along the north boundary of the property as depicted on the Landscape Plan. Existing vegetation within this buffer will be maintained as much as possible with exotics being removed and supplemented with plantings per the Landscape Plan.

i. Sidewalk. The public sidewalk depicted in the Binding Master Concept Plan and Landscape Plan shall be included within the fifty (50) foot wide buffer area. The sidewalk shall meander to avoid existing preserved trees wherever possible and be included within a public access easement. The Murphy Oaks HOA shall have maintenance responsibility of the sidewalk.

ii. Opacity. The project landscaping will achieve 90% opacity when viewed from N. Auburn Road to a height to shield the view up to the soffit level within three years of the start of construction.

c. Fox Lea Drive Buffer: The landscaped buffer area shall be a minimum of forty (40) feet in width measured at right angles to property lines and shall be established along the entire length of and contiguous to the designated property line and Fox Lea Drive, and shall include a five foot (5') berm, an eight-foot-high (8') concrete wall, a continuous hedge composed of Wax Myrtles, which will be permitted to grow naturally without trimming, and additional trees and landscaping (including canopy trees) as depicted on the Landscape Plan. Developer, its successors and assigns, shall maintain the berm, wall and landscaping per the described standards in perpetuity.

i. Existing vegetation in Fox Lea Drive ROW. Existing vegetation within in the Fox Lea Drive right-of-way adjacent to the property will be kept in its current condition to the extent practical. Any existing vegetation in the right-of-way damaged during construction by the Developer or its contractors will be replaced as follows: if the damaged vegetation is a tree subject to Sarasota County's tree ordinance, it will be replaced by the required mitigation in the same location or on the berm, as required by Sarasota County; if the damaged vegetation is not protected under Sarasota County's tree ordinance, it will be replaced behind its previously location, on the berm, consistent with the table shown on the landscape plan.

[Implements Windham proffer for settlement, with modifications to address Fox Lea concerns raised September 13].

d. Interstate 75 Buffer: The landscaped buffer area shall be a minimum of 120.9 feet in width measured at right angles to property lines and shall be established along the entire length of and contiguous to the designated property lines and includes a six-foot-high (6') concrete wall on top of a 7' berm. The 6' concrete wall will be buffered from the public ROW by a continuous hedge to block the public from the wall. Also, this buffer will

include additional landscaping in front of the wall and on top of the berm to further block the residence from I-75, as depicted on the Landscape Plans.

8. The Developer shall commence construction of the amenity area within twelve (12) months after issuance of the first certificate of occupancy for the first residence, or upon the closing on twenty five (25) percent of lots to the end users, whichever shall first occur. **[From November narrative.]**

Land Development, Construction Management and Staging Standards.

9. Timing of Land Development and Construction: The Developer shall use its best efforts to limit land development and building construction along the southern boundary during the months of January, February, March, July and August. **[From November narrative.]**

10. No open burning; chipping. The Developer shall not utilize open burning of land clearing material and debris during construction. As part of its land clearing permit, the developer will identify a site in the northeastern portion of the property for a wood chipper, and shall create a temporary berm at least 12' high on the south side of where the chipper is located and shall remain while the chipper is in operation. The chipper and berm will be generally located as depicted on Exhibit _____. **[Windham proffer to address Fox Lea concern raised at mediation, modified to address additional Fox Lea demands on August 23.]**

11. Construction of southernmost berm and wall. The 5' berm along the southern boundary shall be constructed immediately after land clearing is complete. Once the 5' berm is constructed and stabilized, the 8' wall shall be constructed. No construction or land development, other than those activities necessary or ancillary to the construction of the berm and wall, shall occur until the wall and berm are in place. **[Windham proffer to address Fox Lea September 13 demand.]**

12. Construction traffic. Construction access to the site shall be from Auburn Road, and there shall be no construction entrance or construction access to the property from Fox Lea Drive. **[Windham proffer to address Fox Lea concerns raised at August 28 hearing about construction activity on Fox Lea Drive.]**

13. Right-of-way for Fox Lea Drive. Developer shall support any application by Fox Lea Farm to vacate Fox Lea Drive and shall disclaim any rights in the northern half of the street. **[Windham proffer to address Fox Lea concerns raised at August 28 hearing about construction activity on Fox Lea Drive.]**

14. Surficial Aquifer System Monitoring and Mitigation Plan. Fox Lea Farm has expressed concern that dewatering activities associated with the construction of the project's storm water management ponds could adversely affect the ability of Fox Lea Farms to maintain proper footing conditions, by increasing the need for watering the surface of the rings and leaving insufficient water in its irrigation pond or wells to provide adequate watering. The Developer's engineer has provided a study of anticipated short-term effects on ground water levels from the dewatering activities associated with construction of the project's storm water ponds that indicate any affects will be short-term and within a range that should not adversely affect Fox Lea Farms activities, wells and irrigation pond. To ensure these activities do not have an adverse effect on Fox Lea Farms' operation, the Developer will monitor and mitigate any potential impacts to Fox Lea Farm as follows: **[Windham proffer to address Fox Lea August 23 demands and at August 28 hearing, modified to address specific issues raised by Fox Lea's engineer.]**

- a. Timing. The monitoring and mitigation activities and facilities shall be in place and operating no less than two weeks prior to the commencement of site construction work on the stormwater ponds and shall remain in place for 180 days after the new ponds are constructed and filled to their design level, or until ground water levels at Fox Lea Farm have returned to their pre-construction state, whichever is later.
- b. Monitoring wells and staff gauge.
- i. Number and location of monitoring wells. At least one monitoring well shall be established on the subject property, south of Pond 1 (as depicted on the Binding Development Concept Plan) near the Fox Lea Drive property line. If Fox Lea Farms agrees to execute such consents and easements as may be necessary upon request by the Developer, three monitoring wells shall be established on Fox Lea Farm's property at the location previously identified by Fox Lea Farms. If Fox Lea Farm does not agree to place the proposed monitoring wells on its property, at least two other monitoring wells shall be established along the subject property's southern property line.
 - ii. Specification of monitoring wells. The construction of the shallow monitor wells will meet all applicable standards set by ASTM international, the Florida Department of Environmental Protection (FDEP), the Southwest Florida Water Management District (SWFWMD), and/or applicable Sarasota County regulations, respectively and if required by law. Each monitor well would extend to a depth of 15 feet below land surface (ft. BLS) and will be constructed with 10 feet (ft.) of 10 slot PVC screen (0.01-in.) and, at a minimum, approximately 7-ft. of Schedule 40 PVC well casing. The wells are proposed to be installed by direct push methodology to assure plumbness and, prior to monitoring, be developed to remove fine sediments that may have been introduced into the screens during installation. Each monitor well will have a lockable, metal protective casing extending approximately 2.5 to 3 feet above land surface (ft. ALS) and a 2-ft. by 2-ft. concrete well pad. Following well installation and development, a Florida licensed land surveyor will measure and provide elevations for: (1) ground surface at the well pad; (2) top of metal protective casing (lid down); (3) top of PVC well casing at an identifiable notch.
 - iii. Staff gauge. If Fox Lea Farms agrees to execute such consents and easements as may be necessary upon request by the Developer, a staff gauge shall be installed on the northern shoreline of the irrigation pond on Fox Lea Farms' property. The staff gauge will be constructed with 5 ft. of 10 slot PVC screen (0.01-in.) resting on the bottom of the pond clamped to a black steel pipe¹ driven into the pond bottom for vertical support of the well screen. Following staff gauge installation, a Florida licensed land surveyor will measure and provide the elevation for the top of PVC well screen at an identifiable notch.
- c. Monitoring equipment and monitoring. pressure transducers at each monitor well and staff gauge will be installed along with a telemetry system. This will allow for the collection of water level data without interfering with Fox Lea Farm activities. The Diver® system by Van Essen, or a similar system, be installed for this project, to allows

water level measurements to be monitored via a desktop web interface. The pressure transducers will be programmed for hourly measurements with telemetry data uploaded to the web interface every four (4) hours. Water levels will be monitored for no less than two (2) weeks prior to initiating construction dewatering and will continue until all construction dewatering activities have been terminated and the newly excavated ponds rebound back to approximate static water table conditions. Manual measurements will be made at the beginning of monitoring, during dewatering of Pond 1, and during construction dewatering of Pond 2 as a means of Quality Assurance.

d. Data collection and sharing. The Developer's engineers shall monitor, collect and save the data from the monitoring wells and staff gauge. The data and real-time access to viewing the measurements will be provided to a representative of Fox Lea Farm, to Windham, and to the site dewatering contractor. Based on the modeling evaluation completed using the SWFWMD District-Wide Regulatory Model version 3 (DWRMv3), the monitoring system cloud interface will be set-up such that notifications are sent to Fox Lea Farm, Windham, and the site dewatering contractor if drawdown approaches 0.5-ft. of the simulated drawdown at the assigned well locations, if drawdown approaches the simulated drawdown at the assigned well locations, and if the drawdown exceeds the simulated drawdown at the assigned well locations. At least weekly during pond construction, the Developer's engineers shall review and assess the data to determine whether an adverse impact to water levels at Fox Lea Farm has occurred or is likely to occur, and shall report on the conditions to the Developer and, on request, to Fox Lea Farm's representative. Additionally, precipitation data will be collected on site by the Developer provided during the weekly update submittal to Fox Lea Farm's representative.

e. Avoidance and mitigation of adverse impacts to Fox Lea Farm.

i. Adverse impact. An adverse impact is identified as the measured drawdown exceeding the simulated DWRMv3 drawdown at the agreed upon well locations and staff gauge and shall be considered corrected if the measured water levels returns to levels that would not be an adverse impact.

ii. Avoiding or mitigating adverse impacts.

1. If monitoring indicates ground water levels measured at the agreed upon monitoring well locations and/or staff gauge have dropped to within 0.5-ft. of the predicted DWRMv3 drawdown at an approved monitoring points Fox Lea Farm and Windham will be notified with that information and the site dewatering contractor will be required to be present on site.

2. If monitoring indicates ground water levels measured at the agreed upon monitoring well locations and/or staff gauge are within the predicted DWRMv3 drawdown at approved monitoring points and water levels trends indicate a continued decline the site dewatering contractor will reduce the construction dewatering rate by 10 percent and direct construction dewatering water to the Fox Lea Drive ditch, unless already full.

3. If monitoring indicates ground water levels measured at the agreed upon monitoring well locations and/or staff gauge continue to decline below the

predicted DWRMv3 drawdown at approved monitoring points, the construction dewatering contractor shall reduce the construction rate to 50 percent or a rate reduction such that the monitored water levels begin to demonstrate an increase in head while directing construction dewatering water to the Fox Lea Drive ditch, unless already full.

4. If monitoring indicates ground water levels measured at the agreed upon monitoring well locations and/or staff gauge are at levels that would constitute an adverse impact as defined above for more than eight (8) hours after first mitigation pumps will be turned off and water levels will be allowed to rebound to levels above the predicted DRWMv3 drawdown before construction dewatering is reconvened.

15. Inspection by Fox Lea Farms. Fox Lea Farms may name a licensed and insured professional engineer or contractor, or an officer or employee of Fox Lea Farm, as an inspector, and identify that representative to the Developer, or the construction manager on-site. Fox Lea Farm's Inspector will be permitted to enter and inspect the subject property upon reasonable notice to, and permission from, the construction manager, which shall not be unreasonably withheld. Fox Lea Farms and its Inspector shall indemnify Developer and any contractor working on the property against any claims based on injury suffered by the Inspector while on the subject property prior to conducting any inspection. **[Windham proffer to address Fox Lea August 23 demands and at August 28 hearing, modified to address specific issues raised by Fox Lea.]**

16. Communication and coordination of development activities. To ensure that Fox Lea Farms may maintain effective communications with the contractors working on the site during construction, and that contractors are aware of the activities at Fox Lea Farm, the Developer shall do the following: **[Windham proffer to address Fox Lea August 23 demands.]**

a. Contact information. The Developer shall provide Fox Lea Farm with the name, phone number, and email address of the representative of the contractor or engineer in charge of construction on the property (the "Construction Manager"), the phone number for the construction trailer on site, and the identity (name, license, address and company phone number) of the contractor and any major subcontractors (site work, land clearing, excavation, utilities) working on site.

b. Construction schedule information. No fewer than 30 days before the commencement of site development work, the Construction Manager shall provide Fox Lea Farms with the proposed schedule of construction activities. The Construction Manager shall provide an updated schedule at least every 60 days after construction commences until all horizontal site and development work is complete.

c. Provision of Fox Lea Farm information to contractors. The "Fox Lea Description and Information" included in the Developer's Agreement shall be provided to all contractors and subcontractors working on the property, shall be posted and available in the construction trailer, and shall be posted on the Permit Board during site construction activities.

Post-Land Development and Post construction Development and Use Standards.

17. The Developer shall comply with all terms of the Developer's Agreement offered by the Developer concurrent with the rezoning, and shall demonstrate that any required off-site improvements and recorded documents have been completed prior to the approval of the final plat. **[Windham proffer to implement settlement].**

18. Additional provisions in the declarations and covenants for the subdivision. Developer will submit deed restrictions for the Property to the City for review prior to the application for final plat approval, as required by Section 86-232(4) of the Land Development Code. The deed restrictions shall include:

a. A Notice of Proximity for I-75, Fox Lea Farm and the Fox Lea Operations (which also will be recorded in the public records separately), as set forth in Exhibit B to the Developer's Agreement. The deed restrictions will require every purchaser or renter to execute an acknowledgement of the Notice of Proximity, and copies of the acknowledgements will be maintained by the homeowners' association and provided to Fox Lea Farm and the City upon request.

b. The following restrictions to protect Fox Lea Farm:

i. The use of outdoor speakers or outdoor amplified music are prohibited on Lots 33-52, as depicted on the Binding Master Plan. Speakers for fire or burglar alarms oriented to the north are excepted.

ii. The use of fireworks, as defined in Florida Statutes, are prohibited.

iii. The launching or operation of drones or radio-controlled aircraft from the Property which fly over Fox Lea Farm is prohibited, unless permission is received in writing from Fox Lea Farm.

iv. The burning of trash or yard waste, and other outdoor burning such as bonfires, is prohibited, but this prohibition shall not apply to outdoor barbeques for cooking, outdoor propane heaters, or small fire pits/fire tables.

[Windham proffer to implement settlement; Windham has accepted Fox Lea proposed changes to developer agreement and notice of proximity sent September 16 to include renters.]

FOX LEA DEMANDS TO WHICH WINDHAM HAS NOT AGREED

DEVELOPMENT STANDARDS

1. There shall be no pools permitted on those lots closest to the Property's southern property line, which are designated on the PUD Concept plan as lots 33-50. **[Fox Lea demand on August 23; Windham cannot agree.]**

2. Lots 33-50 on the revised Binding Master Concept Plan shall be removed from the area south of the internal roadway, and there shall be no lots south of that road at all. **[Fox Lea demand on September 13 revised September 18; Windham has revised the Binding Master Concept Plan to reduce the number of lots south of the internal road by 5, but Windham cannot otherwise agree].**

3. The southernmost pond must be moved further north. **[Fox Lea demand on September 18; Windham cannot agree.]**

4. The wall and berm must be moved further north. **[Fox Lea demand on September 18; Windham cannot agree.]**

LAND DEVELOPMENT, CONSTRUCTION MANAGEMENT AND STAGING

5. Southern Property Line Wall, Berm and Construction Screen. Prior to commencement of land development and construction activities on the Property for any other purpose, Developer shall complete construction of the five foot (5') berm and eight-foot-high (8') concrete wall located along the entire length of and contiguous to the southern property line and

Fox Lea Drive. Additionally, prior to commencement of land development and construction activities on the Property, Developer shall erect a temporary construction screen to be located along the southern property line, whereas the location, composition, and terms for installation and removal of the screen are more specifically depicted in Exhibit “_” attached hereto. The temporary construction screen shall be fully installed and erected before construction of the aforementioned berm and wall can begin, and further, the site work performed, including machinery used and brought on-site, shall be limited to only that necessary for the installation of the temporary construction screen until the time of such temporary construction screen’s completion. It is understood that the land development and construction activities permitted prior to the wall, berm and temporary construction screen’s completion shall be limited to only those activities absolutely necessary for the wall, berm and temporary construction screen’s construction; therefore, any additional or indirectly-related land development or construction activities are expressly prohibited until the wall, berm and temporary construction screen are completely constructed. **[Fox Lea demand on September 13, further revised September 16; Windham has proffered Stipulation 11 to address construction of the berm, but cannot agree to Fox Lea’s demand for a visual screen].**

6. Monitoring System. **[Fox Lea demand on August 23; Windham has proffered Stipulation 14 to address this, including modifications to address concerns raised by Fox Lea’s engineer; Fox Lea has directed its engineer to provide new/revised terms].**

7. Bond for Monitoring Program. **[Fox Lea demand September 18 – Fox Lea demand Windham provide a bond in Fox Lea’s favor to guarantee performance of the monitoring program; Windham cannot agree.]**

8. Inspection. **[Fox Lea August 23 demand; Windham Stipulation 15 - Fox Lea wishes to be able to name a contracted inspector who is not a licensed contractor or engineer; Windham would be agreeable but Fox Lea has not provided language to include.]**

9. Notification and Communication. **[Fox Lea demand on August 23; Windham has proffered Stipulation 16 to address the issues raised; Fox Lea has indicated it wants further changes but has not yet provided language].**