



# Windham Rebuttal

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FEBRUARY 10, 2021

# Special Magistrate Report

Criticisms are both  
misleading and  
misplaced

Purpose of the report and findings are NOT to provide an opinion on whether the City Council denial was “illegal” but whether the denial was ***unreasonable and unfairly burdened the property.***

The Special Magistrate referenced the 2019 Staff Report for findings and facts about the Application, but Special Magistrate also received many other documents, heard statements and testimony about the issues in both the 2019 and 2020 proceedings.

Staff reviewed the revised Master Plan through two iterations to be ensure that it addressed TRC standards and concerns.

The Special Magistrate’s Report is competent substantial evidence to support the rezoning.

# Sawgrass comments

**The “Checklist Items”** -- are issues for the Planning Board review and recommendation, not the City Council review. Here Planning Board voted to recommend approval of the project with 105 units, and 40’ buffer with no berm or wall

**Predictability** – Any resident who looked at the Comprehensive Plan would absolutely know that the Property was NOT supposed to develop with 8 units (1 per 5 acres) but would expect 3 units per acre – 119 units – as allowed by the JPA.

**Transportation** – Improvements to the Border/Auburn intersection will be needed to accommodate vested – previously approved – development but are not on the CIE. Approving this project gets the improvements built now to address the current issues.

**Stormwater** – Under the condition in the Binding Master Plan, stormwater from Murphy Oaks will not be permitted to adversely affect offsite properties. That is the competent substantial evidence in the record. Speculation about possible negative impacts is not competent substantial evidence and is irrelevant to the standard for approval – consistency with the comprehensive plan.

# Fox Lea Had Ample Time to Make Suggestions

1. The Master Plan, Developer's Agreement was provided on November 11.
2. Private Agreement made available November 12 - with a Revision on November 25, and then on January 6 after the new groundwater study was available.
3. Developer Agreement and Ordinance conditions later updated and circulated – minor changes to terms and dates.
4. Fox Lea provided comments for the Special Magistrate to consider on Plan on December 11 – Did not identify any of the “mistakes” complained about in presentation; did not provide any of the alternative language or conditions provided yesterday.
5. Fox Lea got the Special Magistrate's report on January 12, the same as everyone else.

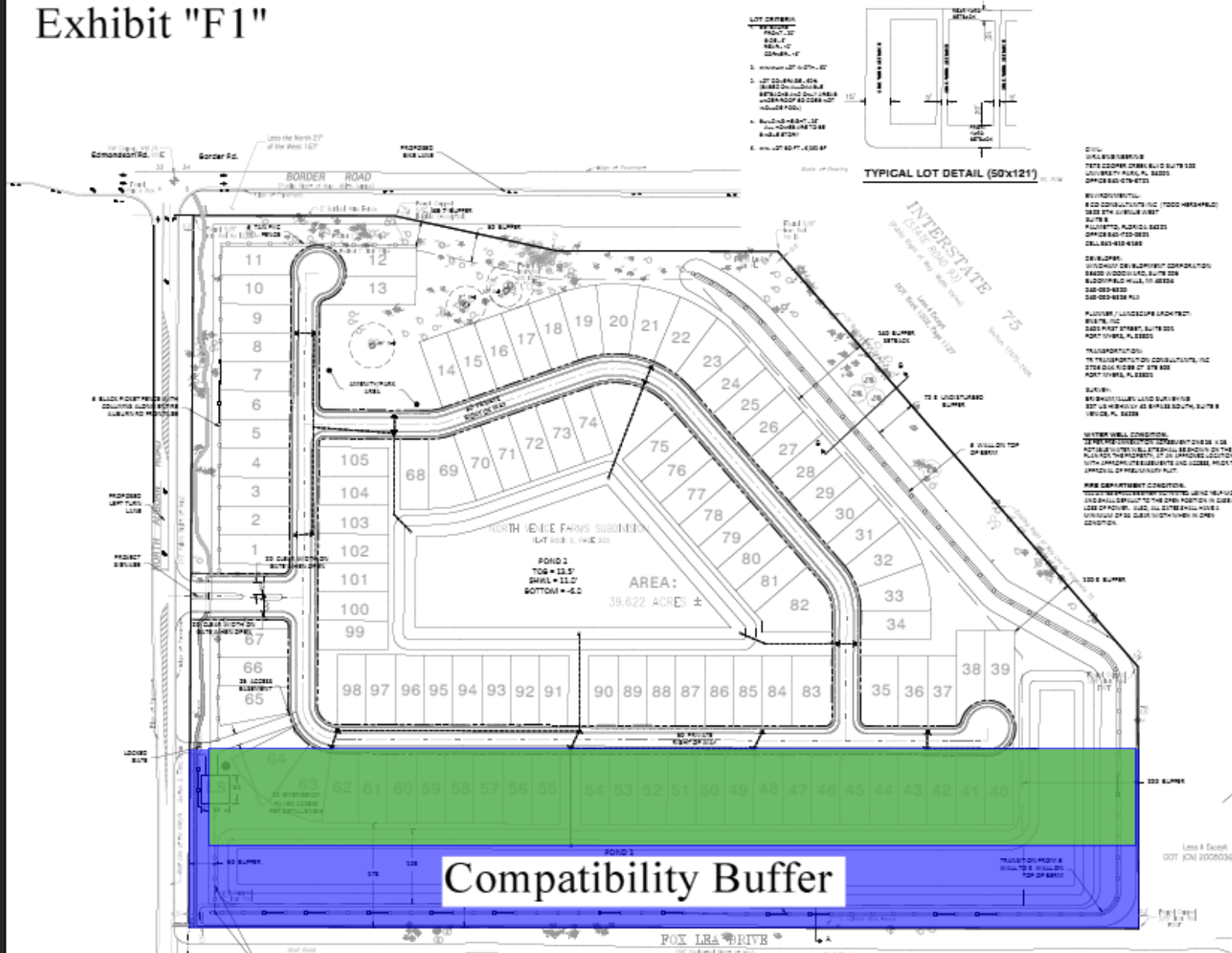
# “Issues” with the Master Plan

Minor internal inconsistencies are common.

## Fox Lea Landscape Buffer –

- Text condition states requirements
  - Clearly 134’ from Fox Lea Drive to the back of the berm; ` 118’ to face of wall; berm is 20’ on each side
    - Single 40’ reference from last version of plan is clearly a mistake. No one would think it altered the requirements.
  - Code requires removal of “invasive plants” – Use of slightly different terms from different codes is irrelevant and understood by all staff. .
  - Additional landscape planting required by code will be calculated at Preliminary Plat; additional trees located in that area.
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- **Open space –**
    - **Total amount of open space is correctly identified;** “type” of open space is not specifically identified but minimum requirement is far surpassed and not fairly at issue – Staff confirmed.
  - **Acreage –** Reported with size in sq ft – and as 39.63 (site table) or 39.64 acres (landscape table) – rounding when dividing by 43,560.

**300' clear space cannot  
be accommodated by the  
plan or any feasible  
modification to the plan**



# Fox Lea's Proposed Ordinance Conditions

Note – Ordinance currently has 6 conditions, next one would be 7.

#1 – Screen. Will accept as modified. – Specifications for fence, ties development restriction/time out to construction plan approval

# 2 – Right of way vacation – will accept as presented.

# 3 - Water Table Monitoring and Mitigation Plan – will accept as presented modified.

- Changes to labels/names for internal consistency and reflect updated 2020 water study.
- Change to 1' trigger – requires constant monitoring, not constant presence on-site
- Change to adverse impact -- provides “restart” condition – return of levels to .5' over compliance level
- Clear enforcement

# 4 - Enforcement --- Either keep current enforcement condition (#6) or swap Fox Lea language into that condition.



# Construction Screen

7) Construction Screen. Fox Lea Farm shall obtain three quotes for the installation, rental, maintenance and removal of up to 450 linear feet of 6' screening (at 90% opacity) on 12' posts (the Construction Screen) to be installed along the northern property line of Fox Lea Farm during land development and construction of the Property, and these quotes shall include all permitting costs necessary for installation of the construction screen (the "Construction Screen Quotes"). Fox Lea Farm shall present the quotes to the Developer no later than sixty (60) days after this ordinance becomes effective unless a longer period is agreed to by Developer. Developer shall thereafter deliver a check for the lowest bid to Fox Lea Farm within fourteen (14) days, and Fox Lea Farm shall immediately commence contracting and permitting for the installation of the Construction Screen. Construction plan approval for land clearing or grubbing, earthwork or any other site construction activity shall not be effective for sixty (60) days after the delivery of the check or until the Construction Screen is completely installed and secured on Fox Lea's property, whichever comes first.



# Fox Lea's Proposed BMP Modifications

## Accepted:

3 - B) NO BURNING; MANAGEMENT OF CHIPPING.

3 - C) CONSTRUCTION TRAFFIC.

## Rejected:

1 (C) - No Stormwater into Fox Lea Ditch. Proposed language would prevent any minor additional flow from berm and area south of berm into the Fox Lea ditch, but no improvements are to be placed in that area, so there is no way to manage or redirect any such increases.

3.A. - Berm and Wall on South to be Constructed First. Proposed language so severely limits the time frame for constructing the berm/wall as to make entire project unbuildable – 16 week estimated construction time, only provides a single, 16-week window, during hurricane season. Also would prevent construction of the 12-berm for the chipper necessary to operate the chipper and manage the wood and trees that must be removed during this process.