

Lee County Board Of County Commissioners  
Agenda Item Summary

Blue Sheet No. 20051452

**1. ACTION REQUESTED/PURPOSE:** Conduct first public hearing to consider a proposed development agreement between Lee County and North Point Lake, LLC, (the owners and developers of the North Point DRI) that will govern the mitigation of transportation impacts of the DRI.

**2. WHAT ACTION ACCOMPLISHES:** Finalizes the terms and conditions of the mitigation of transportation impacts for the North Point DRI.

**3. MANAGEMENT RECOMMENDATION:** Direct to second public hearing. Suggested date: November 1, 2005.

**4. Departmental Category:**

*12 9:30 PH 2*

**5. Meeting Date:**

*10-18-2005*

**6. Agenda:**

**7. Requirement/Purpose: (specify)**

**8. Request Initiated:**

<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Statute	163.3220 et seq.
<input type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance	
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code	
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Other	
<input type="checkbox"/> Walk-On	9:30 a.m. or as soon thereafter as may be heard	

Commissioner

Department County Attorney

Division Land Use

By: *Donna Marie Collins*  
Donna Marie Collins

**9. Background:**

The Florida Legislature adopted the Florida Local Government Development Agreement Act to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic costs of development.

Lee County and North Point Lake, LLC, propose to enter into the attached development agreement. The agreement outlines the mitigation protocol for the transportation impacts of the North Point DRI. The proposed mitigation will include the payment of money, impact fees, and construction of certain improvements to Sandy Lane.

Staff recommends direction to second public hearing on November 1, 2005, at 9:30 a.m. or as soon thereafter as may be heard.

Attachment: Draft Development Agreement for North Point DRI dated September 16, 2005

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mer.	
	N/A	N/A	N/A	<i>[Signature]</i>	<i>RK 10/6</i>	<i>10/6/05</i>	<i>10/6/05</i>	<i>10/6/05</i>	<i>[Signature]</i>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: *[Signature]*  
10-5-05  
1:05 pm  
COUNTY ADMIN FORWARDED TO: *[Signature]*  
10/7/05  
4 pm

CO. ATTY. FORWARDED TO CO. ADMIN.  
*[Signature]*

**NORTH POINT LAKE DRI  
DEVELOPMENT AGREEMENT**

The following agreement is between North Point Lake, L.L.C., a Delaware Limited Liability Company, hereinafter referred to as the "Developer", and Lee County, a political subdivision of the State of Florida, hereinafter referred to as "County".

**ARTICLE I. RECITATIONS**

- A.** The Developer is developing a project known as the North Point Lake Development of Regional Impact approved by the Lee County Board of County Commissioners on September 20, 2004. The development order contemplates buildout of the approved development parameters by December 31, 2008.
- B.** Transportation conditions of approval set forth in the DRI Development Order present two mitigation options. Option 2 requires the Developer to enter into a Development Agreement setting forth the details of payment of the proportionate share obligation intended to mitigate the project's traffic impacts based on the development parameters approved in the DRI Development Order.
- C.** The terms set forth in this agreement are defined consistent with the definitions set forth in the Lee County Comprehensive Land Use Plan and the Land Development Code. The plain meaning will control the definition of words and terms not otherwise defined in those documents.
- D.** Lee County conducted two public hearings prior to the adoption of this agreement. Both public hearings were properly noticed by publication in the News Press and by mailed notice to the affected property owners in accordance with Florida Statutes section 163.3225(2).

NOW THEREFORE, for and in consideration of the terms set forth below, the parties to this development agreement agree to the following:

**ARTICLE II. DESCRIPTION OF THE PROJECT**

**A. PROPERTY SUBJECT TO THIS AGREEMENT.**

The property subject to this agreement is commonly known as the North Point Lake Development of Regional Impact and is legally described in Exhibit A.

**B. OWNERSHIP.**

North Point Lake, L.L.C. is the owner of the property described in Exhibit A. All references herein to the Developer are understood to mean North Point Lake, L.L.C., or their successors or assigns.

**C. FUTURE LAND USE DESIGNATION.**

The Future Land Use Map (FLUM) designates the property as Urban Community. Development of the property has been approved pursuant to the DRI Development Order and MPD zoning approval adopted on September 20, 2004.

**D. ZONING DISTRICT DESIGNATION.**

The zoning designation of the property is Mixed Use Planned Development (MPD) pursuant to Resolution No. Z-04-038 . The property was rezoned on September 20, 2004, by the Board of Lee County Commissioners.

**E. DRI DEVELOPMENT ORDER**

The property is subject to a Development of Regional Impact Development Order approved by the Lee County Board of County Commissioners at a public hearing held on September 20, 2004. The Notice of Adoption of the DRI Development Order is located at OR Book 04638, Pages 2725, through 2727. The DRI Development Order is a public record on file with Lee County, the Southwest Florida Regional Planning Council, and the Florida Department of Community Affairs. (Case No. DRI 2003-00002 and DRI Development Order 05-0203-162.) The DRI Development Order was formally executed by the Chairman on February 7, 2005. The obligation to pay the full transportation proportionate share under Option 2 has been extended to February 7, 2006 in recognition of the six month period between the Board's adoption and execution of the North Point DRI Development Order.

**F. PARAMETERS OF DEVELOPMENT**

The North Point Lake DRI Development Order approves a total of 150 multifamily condominium dwelling units, 150 hotel rooms, 550,000 square feet of retail gross leaseable area, 120,000 square feet of office gross floor area of which up to 60,000 square feet can be medical office gross floor area, with a buildout in year 2008. The uses and densities of the project are summarized in Exhibit B. Maximum height may not exceed 60 feet.

**G. CONCEPTUAL MASTER PLAN.**

The parties agree that the conceptual master plan of the DRI (Map H) is consistent with the Lee Plan. In addition, the parties find that the conceptual master plan is consistent with local land development regulations.

**H. PUBLIC FACILITIES.**

The DRI will receive water and sanitary sewer service from Lee County Utilities. Fire control and rescue services will be provided by the Estero Fire Control and Rescue Service District.

**I. RESERVATION, DEDICATION, OR CONVEYANCE OF LAND**

All proposed reservations, dedications, or conveyances of land within the project for traffic purposes are identified in Article III. of this agreement under Developer Responsibilities. If other right-of-way dedications are subsequently required by Lee County, the parties must amend this Development Agreement to reference those dedications.

**J. COUNTY DEVELOPMENT PERMITS AND ORDERS.**

The following is a list of the development approvals that have been granted to date and may be required to accommodate this project:

1. DRI Development Order #05-0203-162;
2. Zoning Resolution No. Z-04-038; Case No. DRI 2003-00002;
3. South Florida Water Management Environmental Resource Permit (ERP) #36-05141-P;
4. DEP / HRS permits;
5. Lee County Local Development Order(s);
6. Certificate of Concurrency;
7. Certificates to Dig, Excavation Permits; and
8. Right-of-way Permits.

**K. PROJECT PHASING.**

It is anticipated that the DRI will be constructed in one phase, with project buildout on December 31, 2008.

**ARTICLE III. TERMS OF THE AGREEMENT**

**A. DEVELOPER RESPONSIBILITIES**

**1. GENERAL**

- a) The Developer's total proportionate share obligation is \$4,067,170 and is based on the Project's transportation impacts estimated on the development parameters set forth in Exhibit B and approved in the DRI Development Order.

The total proportionate share obligation of \$4,067,170 is comprised of \$4,032,170 DRI impact proportionate share (road impact fees in effect at time of DRI Development Order approval) and \$35,000 Comprehensive Plan impact proportionate share.

- b) The development parameters set forth in Exhibit B form the basis for the determination of the Project impacts and the mitigation requirements contained herein. The Developer is exercising Option 2 of the transportation mitigation options set forth in the DRI Development Order. Option 2 provides for concurrency vesting for

the entire DRI until December 31, 2008, or the life of any outstanding concurrency certificate, whichever is later.

- c) If changes to the development parameters set forth in the DRI Development Order are approved by the Lee County BOCC, this development agreement will be administratively amended to reflect the BOCC approved parameters.

## **2. CASH PAYMENTS**

- a) On or before the issuance of the first local development order, or February 7, 2006, whichever is earlier, the Developer will pay Lee County \$4,032,170 as the full payment of the DRI transportation proportionate share. The payment will be made by a wire transfer. The County Attorney's office shall provide wiring instructions to the Developer prior to February 1, 2006, or upon a written request from the Developer. The County Attorney's office shall, within 48 hours of receipt of the wire transfer, provide written confirmation of the receipt of the funds to the Developer. The written confirmation must also clearly indicate that with the receipt of the funds the Developer is vested from transportation concurrency and will remain vested until December 31, 2008, or the life of any outstanding concurrency certificate, whichever is later, as long as the Developer continues to comply with the terms of the Development Agreement.
- b) On or before the issuance of the first traffic monitoring report, which is due one year after the effective date of the DRI Development Order or no later than February 7, 2006, the Developer will make a cash payment to Lee County of \$35,000.00.

This cash payment of \$35,000.00 represents full payment of the development's Comprehensive Plan impact proportionate share. The county will provide written confirmation to the Developer that the \$35,000.00 has been received, and that the comprehensive plan transportation mitigation has been paid in full. The payment will be made by a wire transfer. The County Attorney's office will provide wiring instructions to the Developer prior to February 1, 2006, or upon a written request from the Developer. The County Attorney's office will provide written confirmation of the receipt of the funds to the Developer within 48 hours. The written confirmation must also indicate that with the receipt of the funds the Developer is vested from Transportation concurrency and will remain vested until December 31, 2008, or the life of any outstanding concurrency certificate, whichever is later, as long as the Developer continues to comply with the terms of the Development Agreement.

- c) Prior to making the first cash payment, the Developer will have the right to terminate this Development Agreement and utilize traffic mitigation Option 1 as described in the DRI Development Order. Written notice of this election must be provided to the County. The

Project will then be subject to the County's concurrency management regulations. The written notice should be provided to the County Attorney's office, with a copy to Community Development and Department of Transportation.

- d) In lieu of all or a portion of the cash payment(s) identified above, the Developer may, at the Developer's option and with the prior concurrence of Lee County, transfer to the County road impact fee credits owned or controlled by the Developer.

### **3. LAND DEDICATION**

- a) Acceptance Requirements

- (1) The County will require clear and unencumbered fee title. All submittal documents must be reviewed and approved by the County Attorney's Office prior to acceptance. The Parties acknowledge that certain public utilities are permitted within County right of way. Public Utilities may be located within the right of way, and this will be an exception in the title. If there are limitations or restrictions of any kind which the County would normally impose on a public utility in County right of way, the County shall advise the Developer of those restrictions at the time of local development order application, or upon written request by the Developer, to enable the Developer to put the public utility on notice of all restrictions or limitations that will be applicable upon dedication of the property to the County.
- (2) The value of the right-of-way to be dedicated shall be determined as of the date of the dedication.

- b) Sandy Lane Extension

- (1) The Developer must dedicate additional right-of-way for the Sandy Lane Extension from Williams Road to the Seminole Gulf Railroad, consistent with the attached Exhibit D.
- (2) The County will issue roads impact fee credits for 100% of the agreed upon appraised value of the right-of-way and the required costs(survey, title opinion, etc.) associated with the right-of-way dedication. The costs must be documented.

### **4. IMPACT FEE PAYMENTS**

- a) The payment of the proportionate share in accordance with this Agreement addresses the project's impacts on the transportation network, and is in lieu of the payment of road impact fees on a building permit by building permit basis. Accordingly, no builder or contractor within North Point Lakes DRI is obligated to pay road

impact fees, except for building permits obtained prior to the effective date of this Agreement.

- b) After the payment of the proportionate share assessment is received, building permits applied for within the DRI will not be issued until the County receives notarized documentation from the Developer stating credits have been granted to the applicant consistent with the sample statement attached as Exhibit C. Lee County will issue building permits for the type and amount of development authorized in the documentation. The Developer may assign the benefit of this agreement to a third party. Assignments must be in writing, with two witnesses, and notarized. Written evidence of assignment must be provided to Lee County. Specifically, it is understood that only the Developer or their designees, are permitted to proceed through the building permit process without paying roads impact fees.

## **B. COUNTY RESPONSIBILITIES**

### **1. CASH PAYMENTS**

- a) All proportionate share payments will be used as set forth in Section II.C.2.b(2)(c) of the North Point Lake DRI D.O. adopted by the Board on September 20, 2004.
- b) A properly established uniform community development district may fund all or any portion of the road improvements identified in the DRI D.O. in accordance with the terms of this agreement. All provisions set forth in this Agreement as to the Developer's rights and obligations will be applicable to contributions, payments and dedications made by a community development district to discharge the obligations identified in this Agreement or the North Point Lake DRI D.O.

### **2. CONCURRENCY**

If the transportation mitigation is provided in accordance with this Agreement, then North Point Lake DRI will be deemed concurrent as to transportation through December 31, 2008 for the build-out level of development set forth in Exhibit B or for the life of any concurrency certificate issued prior to December 31, 2008, whichever is later.

## **ARTICLE IV. OTHER PROVISIONS**

### **A. EFFECT OF AGREEMENT**

The failure of the Development Agreement to address a particular permit, condition, term or restriction, does not relieve the Developer of the necessity of complying with the law governing those permitting requirements, conditions, terms or

restrictions. The terms of this Development Agreement may not supersede the procedural requirements of State law under Chapter 380.06 and 163.3220 *et seq.*

**B. DURATION OF AGREEMENT**

**1) GENERAL**

This Agreement will be effective upon execution of all parties and will continue in force until December 31, 2011. It may only be terminated, amended, or extended as provided herein.

**2) FUTURE EXTENSIONS OF AGREEMENT CONTEMPLATED**

This Agreement is executed in order to address the concurrency requirements of the Project through build out. Section 163.3229, Florida Statutes, currently limits a Development Agreement to a maximum term of ten (10) years. However, provided that there are no prior acts of default or termination, the Parties contemplate that this Agreement may be renewed at regular intervals until the Project is built out. The Development Agreement may be extended by mutual consent of the governing body and the developer, subject to a public hearing in accordance with Section 163.3225, Florida Statutes.

If the Developer has fully complied with the terms of this agreement upon the termination date, and Lee County has not yet performed its obligations on the termination date, Lee County is obligated to perform in accordance with the terms of the agreement as though it had not expired.

**C. NOTICE**

All Notices required by this agreement shall be provided in writing. All notices shall be provided to the parties at the address set forth below:

Donna Marie Collins, Esq  
Lee County Attorneys' Office  
2115 Second Street  
P.O. Box 398  
Ft. Myers, FL 33902-0398

Mr. Frank Scarlati  
Northpoint Lake LLC  
2 Transam Plaza, Suite 200  
Oakbrook Terrace, IL 60181

Neale Montgomery, Esq.  
Pavese Law Firm  
P. O. Box 1507  
Fort Myers, FL 33902

Should the entity entitled to receive notice change, written notice must be sent to the other Party providing the name and address of the new entity that is to receive notice.



**D. AMENDMENT OF AGREEMENT**

This agreement may be amended or canceled by mutual consent of the parties or by their successors in interest. If State or Federal laws are enacted after the execution of this agreement that are applicable to, and preclude the parties' compliance with the terms of the Development Agreement, the agreement will be modified or revoked as necessary to comply with the relevant State or Federal laws after a public hearing. Any amendment must comply with the applicable provisions of Florida Statutes.

**E. TIME EXTENSIONS**

Except as otherwise provided herein, extensions of the time of performance of any time-certain commitment in this Agreement may be granted provided the time extensions comply with the terms of the DRI Development Order approvals and Section 380.06, Florida Statutes.

**F. ANNUAL REVIEW OF DEVELOPMENT AGREEMENT**

This Agreement will be reviewed annually by Lee County and the Developer, commencing one (1) year after its effective date, as follows:

**1) INITIATION OF REVIEW**

The annual review will be initiated by the Developer submitting the Annual Monitoring Report to the Lee County Director of Community Development. The Annual Monitoring Report must be submitted one year after the acceptance of this Development Agreement by Lee County and will analyze peak season conditions.

**2) REVIEW PROCESS**

The Directors of Community Development and Department of Transportation must commence the review upon receipt of the Annual Report and complete it within thirty (30) calendar days.

**3) COMPLIANCE DETERMINATION**

If the Directors of Community Development and Department of Transportation concludes that the Developer has complied in good faith with the terms and conditions of the Agreement during the period under review, the Directors will conclude the review and provide written notice of this determination to the Developer if, and only if, the project is in non-compliance.

**4) BREACH OF AGREEMENT; PUBLIC HEARINGS REQUIRED TO REVOKE OR MODIFY**

If the Directors of Community Development or Department of Transportation makes a preliminary finding that there has been a failure to comply with the

terms of this Agreement, the Director will provide written notification of failure to the Developer, and the Developer will have a reasonable time (90 days) to resolve the alleged non-compliance. If the Developer refuses to address the non-compliance, or if the Developer disagrees with the findings of the Director of Community Development, then such finding, and any written response of the Developer, will be referred to the Lee County Board of County Commission. The County Commission will conduct a public hearing, at which the Developer may demonstrate good faith compliance with the terms of the Agreement. The County will provide the Developer with reasonable notice (30 days) of the date and time of the public hearing. If the County Commission concludes during the public hearings, on the basis of substantial competent evidence, that the Developer has not complied in good faith with the terms and conditions of the Agreement during the period under review, the County Commission may revoke the Agreement.

#### **G. REVOCATION OR TERMINATION OF AGREEMENT**

This Agreement will terminate upon the first to occur of the following events:

- a) Revocation of the Agreement by the County Commission as provided in Article IV.F.4) above; or
- b) Revocation, abandonment or termination of the Development Order approving the Project; or
- c) Final build out or declared build out of the Project, provided all monies or credits have been paid; or
- d) Mutual consent of the Parties; or
- e) If prior to the cash payment, the Developer, in its sole discretion, elects to implement traffic mitigation Option 1 of the DRI Development Order.

If this agreement is terminated by the County pursuant to Section G.a) above, the Developer will have the right to implement traffic mitigation Option 1 of the DRI's Development Order and all monies paid and improvements constructed will be credited to the project's mitigation obligation; or

- f) December 31, 2011.

#### **H. ASSIGNMENT**

Developer may assign the benefit and obligations of this Development Agreement to a third party. Assignments must be in writing, with two witnesses and notarized. Written evidence of assignment must be provided to the County. The County will provide written acknowledgement of the assignment to the parties identified in Article IV.C as well as to the assignee identified in the notice.

**I. SEVERABILITY**

If any part, term, or provision of this Agreement is found by a court of competent jurisdiction to be illegal, the validity of the remaining portions and provisions will not be affected and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.

**J. BINDING EFFECT**

All terms, conditions, responsibilities, duties, promises and obligations of the parties are binding upon the parties, their successors and assigns.

**K. RECORDATION IN PUBLIC RECORDS AND EFFECTIVE DATE**

In accordance with Florida Statutes Section 163.3239, the County will record this Development Agreement with the Clerk of the Circuit Court promptly after the Chairman's signature, but in no event later than 14 days of its execution. The County will submit a copy of the recorded agreement to the Department of Community Affairs. This Development Agreement is not effective until it is properly recorded in the public records of Lee County and until 30 days after receipt by the Department of Community Affairs.

**L. ENFORCEMENT**

Any party, any aggrieved party, or adversely affected person as defined in Section 163.3215(2) or the Department of Community Affairs may file an action for injunctive relief in the Twentieth Judicial Circuit Court to enforce the terms of this Development Agreement or to challenge compliance of the agreement with the provisions of the Florida Local Government Development Agreement Act.

IN WITNESS WHEREOF, the undersigned have executed this agreement below on \_\_\_\_\_, 2005.

ATTEST:

LEE COUNTY BOARD OF  
COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

Approved as to form:

\_\_\_\_\_  
Lee County Attorney

North Point Lake L.L.C.

By: Estero Lakes Development III, Inc.  
Its Managing Member

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Printed Name

By: \_\_\_\_\_  
Frank S. Scarlati, Jr.  
President

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Printed Name

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing development agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2005, by Frank S. Scarlati, Jr., President of Estero Lakes Development III, Inc., Managing Member of North Point Lake, LLC, who is personally known to me or has produced \_\_\_\_\_ as identification.

Exhibits:

- A. Legal Description
- B. Development Parameters
- C. Form Authorization to Obtain Building Permits
- D. Sandy Lane Right-of-Way

**EXHIBIT A**  
**NORTH POINT LAKE DRI**  
**LEGAL DESCRIPTION**

EXHIBIT A  
Legal Description,  
Property located in Lee County,  
Florida

HM PROJECT #1997079

10/5/2005

REF. DWG. #B-5554

Page 1 of 2

LEGAL DESCRIPTION:

PARCEL A:

A PARCEL OF LAND LOCATED IN A PORTION OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, EASTERLY OF FLORIDA STATE ROAD NO. 45 (U.S. HIGHWAY 41), A 200.00 FOOT WIDE RIGHT-OF-WAY, LOCATED WESTERLY OF THE SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY, A 130.00 FOOT WIDE RIGHT-OF-WAY, AND LOCATED NORTHERLY OF WILLIAMS ROAD, A 100.00 FOOT WIDE RIGHT-OF-WAY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 33, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, THE SAME POINT BEING A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WILLIAMS ROAD, A 100.00 FOOT WIDE RIGHT-OF-WAY; THENCE RUN S.88°21'07"W., ALONG THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 33 AND ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF WILLIAMS ROAD, FOR A DISTANCE OF 125.14 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE CONTINUE S.88°21'07"W., ALONG THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 33 AND ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF WILLIAMS ROAD, FOR A DISTANCE OF 512.65 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF PROPOSED SANDY LANE, A 100.00 FOOT WIDE PROPOSED RIGHT-OF-WAY; THENCE RUN N.01°39'07"W., ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID PROPOSED SANDY LANE, FOR A DISTANCE OF 332.13 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE SOUTHEASTERLY; THENCE RUN NORTHEASTERLY ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID PROPOSED SANDY LANE AND ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 666.00 FEET, THROUGH A CENTRAL ANGLE OF 61°23'46", SUBTENDED BY A CHORD OF 680.00 FEET AT A BEARING OF N.29°02'46"E., FOR A DISTANCE OF 713.66 FEET TO THE END OF SAID CURVE; THENCE RUN N.59°44'39"E., ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID PROPOSED SANDY LANE, FOR A DISTANCE OF 24.08 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF THE SEABOARD COASTLINE RAILROAD, A 130.00 FOOT WIDE RIGHT-OF-WAY; THENCE RUN S.10°29'23"E., ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID SEABOARD COASTLINE RAILROAD, FOR A DISTANCE OF 939.57 FEET TO THE POINT OF BEGINNING; CONTAINING 7.949 ACRES, MORE OR LESS.

AND

PARCEL B:

A PARCEL OF LAND LOCATED IN A PORTION OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, EASTERLY OF FLORIDA STATE ROAD NO. 45 (U.S. HIGHWAY 41), A 200.00 FOOT WIDE RIGHT-OF-WAY, LOCATED WESTERLY OF THE SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY, A 130.00 FOOT WIDE RIGHT-OF-WAY, AND LOCATED NORTHERLY OF WILLIAMS ROAD, A 100.00 FOOT WIDE RIGHT-OF-WAY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 33, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, THE SAME POINT BEING A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WILLIAMS ROAD, A 100.00 FOOT WIDE RIGHT-OF-WAY; THENCE RUN S.88°21'07"W., ALONG THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 33 AND ALONG

## EXHIBIT A

HM PROJECT #1997079

10/5/2005

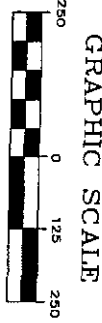
REF. DWG. #B-5554

Page 2 of 2

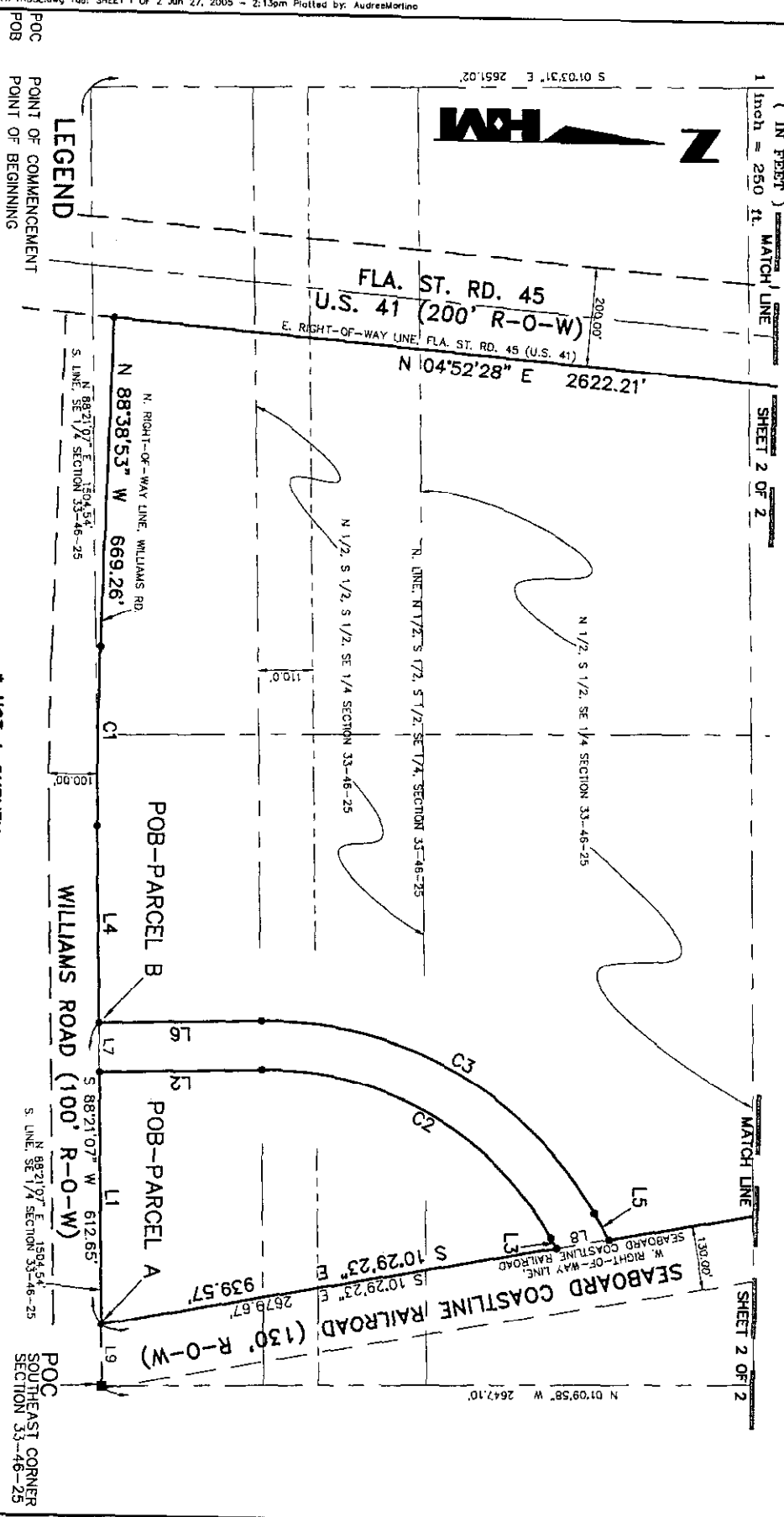
SAID NORTHERLY RIGHT-OF-WAY LINE OF WILLIAMS ROAD, FOR A DISTANCE OF 737.79 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE CONTINUE S.88°21'07"W., ALONG THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 33 AND ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF WILLIAMS ROAD, FOR A DISTANCE OF 401.53 FEET TO THE BEGINNING OF A TANGENTIAL CURVE, CONCAVE NORTHERLY; THENCE LEAVING THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 33, RUN WESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF WILLIAMS ROAD AND ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 6950.00 FEET, THROUGH A CENTRAL ANGLE OF 03°00'00", SUBTENDED BY A CHORD OF 363.86 FEET AT A BEARING OF S.89°51'07"W., FOR A DISTANCE OF 363.90 FEET TO THE END OF SAID CURVE; THENCE RUN N.88°38'53"W., ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF WILLIAMS ROAD, FOR A DISTANCE OF 669.26 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF FLORIDA STATE ROAD NO. 45 (U.S. HIGHWAY 41), A 200 FOOT WIDE RIGHT-OF-WAY; THENCE RUN N.04°52'28"E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF FLORIDA STATE ROAD NO. 45 (U.S. HIGHWAY 41) FOR A DISTANCE OF 2622.21 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 33; THENCE RUN N.88°26'11"E., ALONG SAID NORTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 33 FOR A DISTANCE OF 1336.52 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF THE SEABOARD COASTLINE RAILROAD, A 130.00 FOOT WIDE RIGHT-OF-WAY; THENCE RUN S.10°29'23"E., ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF THE SEABOARD COASTLINE RAILROAD, FOR A DISTANCE OF, FOR A DISTANCE OF 1,633.84 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF PROPOSED SANDY LANE, A 100.00 FOOT WIDE PROPOSED RIGHT-OF-WAY; THENCE RUN S.59°44'39"W., ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID PROPOSED SANDY LANE FOR A DISTANCE OF 60.02 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE SOUTHEASTERLY; THENCE RUN SOUTHWESTERLY ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID PROPOSED SANDY LANE AND ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 766.00 FEET, THROUGH A CENTRAL ANGLE OF 61°23'46", SUBTENDED BY A CHORD OF 782.11 FEET AT A BEARING OF S.29°02'46"W., FOR A DISTANCE OF 820.82 FEET TO THE END OF SAID CURVE; THENCE RUN S.01°39'07"E., ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID PROPOSED SANDY LANE, FOR A DISTANCE OF 332.13 FEET TO THE POINT OF BEGINNING; CONTAINING 91.991 ACRES, MORE OR LESS.

THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

BEARINGS SHOWN HEREON ARE STATE PLANE FOR FLORIDA WEST ZONE, NAD 1983, 1990 ADJUSTMENT WITH THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AS BEING S.88°21'07"W.



NOTE: SEE SHEET 2 OF 2 FOR LINE AND CURVE DATA



LEGEND

POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
SEC-TM-RGE:	33-46-25
DRAWN BY:	AM
CHECKED BY:	ALR
DATE:	08/05
DRAWING NO.:	B-5554



95D Engore Way  
Naples, FL 34110  
Phone: (239) 254-2000  
Florida Certificate of  
Authorization No. 1772

NOT VALID WITHOUT  
THE SEALING AND  
SEAL OF A FLORIDA  
LICENSED SURVEYOR  
AND MAPPER

SKETCH TO ACCOMPANY LEGAL DESCRIPTIONS

PROJECT NO.:	02.105
REFERENCE NO.:	NPTABSL

EXHIBIT A

\* NOT A SURVEY \*



**GRAPHIC SCALE**



( IN FEET )  
1 inch = 250 ft.



**CURVE TABLE**

CURVE	RADIUS	DELTA	CHORD	BEARING	LENGTH
C1	6950.00'	03°00'00"	363.86'	S 89°51'07" W	363.90'
C2	666.00'	61°23'46"	680.00'	N 29°02'46" E	713.66'
C3	766.00'	61°23'46"	782.11'	S 29°02'46" W	820.82'

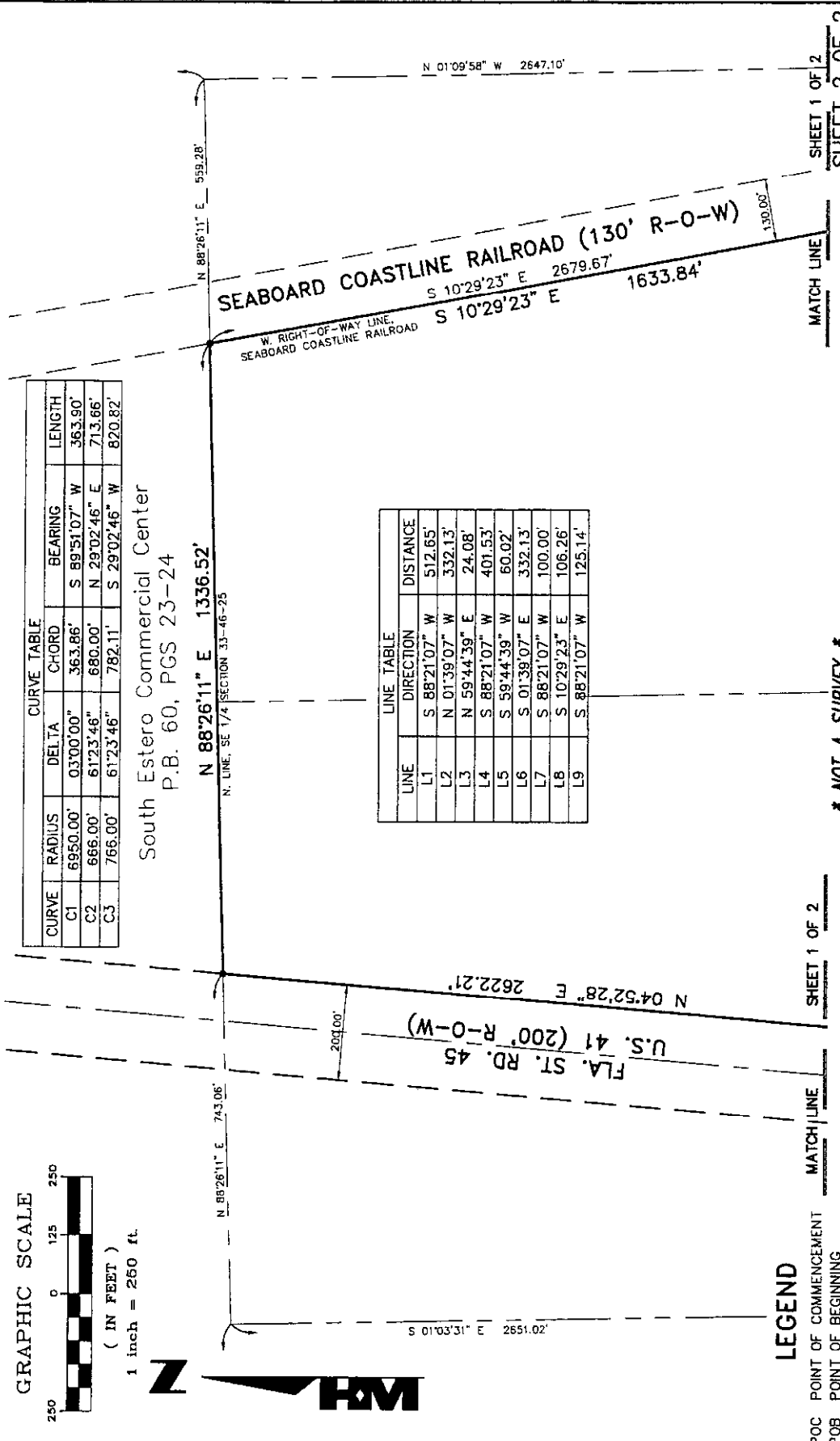
South Estero Commercial Center  
P.B. 60, PGS 23-24

N 88°26'11" E 1336.52'

N. LINE, SE 1/4 SECTION 33-46-25

**LINE TABLE**

LINE	DIRECTION	DISTANCE
L1	S 88°21'07" W	512.65'
L2	N 01°39'07" W	332.13'
L3	N 59°44'39" E	24.08'
L4	S 88°21'07" W	401.53'
L5	S 59°44'39" W	60.02'
L6	S 01°39'07" E	332.13'
L7	S 88°21'07" W	100.00'
L8	S 10°29'23" E	106.26'
L9	S 88°21'07" W	125.14'



SHEET 1 OF 2  
SHEET 2 OF 2

MATCH LINE

SHEET 1 OF 2

MATCH LINE

\* NOT A SURVEY \*

PROJECT NO.  
**02.105**  
REFERENCE NO.  
NTP/TABSL

**SKETCH TO ACCOMPANY LEGAL DESCRIPTIONS**

950 Encore Way  
Naples, FL 34110  
Phone: (239) 254-2000  
Florida Certificate of  
Authorization No. 1772



SEC-TWN-RGE: 33-46-25  
DRAWN BY: AM  
DATE: 06/05  
CHECKED BY: B-5554  
J.R.

POC POINT OF COMMENCEMENT  
POB POINT OF BEGINNING

**LEGEND**

U:\1992\1992079\WPTABSL.dwg Tab: SHEET 2 OF 2 Jun 22, 2005 - 2:14pm Plotted by: AudraKorin

EXHIBIT A

**EXHIBIT B**  
**NORTH POINT LAKE DRI**  
**DEVELOPMENT PARAMETERS AND PHASING SCHEDULE**

**DEVELOPMENT PARAMETERS**

Multi-family Condominium	150 d.u.
Hotel	150 rooms
Retail	550,000 sq. ft. (gla)
Office	120,000 sq. ft. (gfa) of which up to 60,000 sq. ft. may be medical office

**PHASING SCHEDULE**

This project will be completed in one phase concluding on December 31, 2008.

**EXHIBIT C**

**NORTH POINT LAKE DRI**

**AUTHORIZATION TO OBTAIN RESIDENTIAL BUILDING PERMIT  
WITHOUT THE PAYMENT OF ROAD IMPACT FEES  
(SAMPLE)**

The XYZ Corporation is hereby authorized by \_\_\_\_\_, to obtain a residential building permit in Tract \_\_\_\_\_ within the North Point Lake DRI. A legal description of this parcel is set forth in Exhibit A, attached hereto. The building permit is limited to \_\_\_\_\_ multifamily units. Building permits in excess of the units identified or for uses other than identified above are expressly prohibited.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
North Point Lake, LLC  
By Estero Lakes Development III, Inc.

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by \_\_\_\_\_ of Estero Lakes Development III, Inc., Managing Member of North Point Lake, LLC, who is personally know to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

(SEAL)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Commission Expiration Date

**EXHIBIT C (Continued)**

**NORTH POINT LAKE DRI**

**AUTHORIZATION TO OBTAIN NON-RESIDENTIAL BUILDING PERMIT  
WITHOUT THE PAYMENT OF ROAD IMPACT FEES  
(SAMPLE)**

The XYZ Corporation is hereby authorized by \_\_\_\_\_ to obtain a building permit in Tract \_\_\_\_\_ of the North Point Lake DRI. A legal description of this parcel is set forth in Exhibit A, attached hereto. The building permit is limited to \_\_\_\_\_ square feet or \_\_\_\_\_ hotel rooms. Building permits in excess of the square footage or rooms identified or for uses other than identified above are expressly prohibited.

The amount of square footage or rooms is as follows:

- \_\_\_\_\_ General Office
- \_\_\_\_\_ Medical Office
- \_\_\_\_\_ Hotel
- \_\_\_\_\_ Other:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
North Point Lake, LLC  
By Estero Lakes Development III, Inc.

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by \_\_\_\_\_ of Estero Lakes Development III, Inc., Managing Member of North Point Lake, LLC, who is personally known to me or has produced \_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Commission Expiration Date

**EXHIBIT D**  
**NORTH POINT LAKE DRI**  
**SANDY LANE RIGHT-OF-WAY**

# EXHIBIT D

