

BOOK PAGE
3186 1770
VOLUSIA CO. FL

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IN THE COUNTY COUNCIL OF THE
COUNTY OF VOLUSIA, FLORIDA

IN RE: Application of

MAGNOLIA SERVICE CORPORATION

RESOLUTION #88-90

ORDER AND RESOLUTION

GRANTING A REQUEST FOR CHANGE OF ZONING

PLANNED UNIT DEVELOPMENT

The application of Magnolia Service Corporation for rezoning was heard by and before the Volusia County Council, Volusia County, Florida, on June 9, 1988. Based upon the verified Application and other supporting documents, map, charts, overlays, and other instruments; the advice, report, and recommendations of the Planning Department, Legal Department, and other departments and agencies of Volusia County; the testimony and evidence received at the public hearing on this Application by the Planning and Land Development Regulation Commission on April 12, 1988, and otherwise being fully advised, the Volusia County Council does hereby find and determine as follows:

GENERAL FINDINGS

(a) That the Application of Magnolia Service Corporation (sometimes hereinafter referred to as "Applicant", or "Developer",

CAWMS11
XTDH255

Return to: C. Allen Watts
P. O. Box 191
Daytona Beach, FL 32015

BOOK PAGE
3186 1771
VOLUSIA CO. FL

which terms shall be deemed to include the successor(s) in interest to Magnolia Service Corporation) was duly and properly filed herein on February 26, 1988 as required by law.

(b) That all fees and costs which are by law or regulation or ordinance required to be borne and paid by the applicant have been paid.

(c) That the Applicant is the owner of a parcel of land consisting of approximately 755 acres which is situated in Volusia County. This parcel of land is more particularly described in the survey and legal description, a true copy of which is attached hereto as Exhibit "A".

(d) That the Applicant has held a pre-application meeting as required by Ordinance 80-8, as amended, Section 813.05.

(e) That the Applicant has complied with the "Public Notice" requirements of the Volusia County Zoning Ordinance 80-8, as amended.

FINDINGS REGARDING REZONING

(a) That the Applicant has applied for a change of zoning from the present zoning classification(s) of the parcel described in Exhibit "A" from A-3, B-4, R-7 and R-4 to Planned Unit Development (PUD).

(b) That the said rezoning as a PUD is consistent with both the Volusia County Comprehensive Plan and the intent and purpose of Ordinance 80-8, as amended and does promote the public health, safety, morals, general welfare, and orderly growth of the area affected by the rezoning request.

(c) That this Order and associated Developer Agreements provided for herein will assure the availability of public facilities concurrent with the impact of the development.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNTY COURTHOUSE ADDITION, DELAND, FLORIDA, THIS 9th DAY OF June, A.D., 1988 AS FOLLOWS:

(1) That the Application of Magnolia Service Corporation for the rezoning of the subject parcel is hereby granted.

(2) That the zoning classification of the subject parcel described in Exhibit "A" attached hereto is hereby amended from A-3, B-4, R-7 and R-4 to PUD described in Article VII of the Zoning Ordinance of Volusia County, Florida No. 80-8, as amended.

(3) That the Official Zoning Map of Volusia County is hereby amended to show the rezoning of said parcel to PUD.

(4) That Ordinance No. 80-8, as amended is hereby amended in conformity with provisions of the "Development Agreement" as hereinafter set forth in this Order and Resolution and with respect to any conflict between Ordinance 80-8, as amended and the "Development Agreement", the provisions of the "Development Agreement" shall govern. Ordinance No. 80-8, as amended shall govern with respect to any matter not covered by the "Development Agreement." The Volusia County Enforcement Official will ensure overall compliance with this Order and Resolution.

BOOK PAGE
3186 1773
VOLUSIA CO. FL

(5) Article VIII, Supplementary Regulations, of Ordinance 80-8, as amended shall apply to the PUD in the following manner:

- (a) Single family residential areas and low density residential areas in the PUD shall be considered the same as the R-1 through R-6 classifications of Ordinance 80-8, for purposes of the Supplementary Regulations. Where any low-density area or portion thereof is to be developed as a zero-lot line or townhouse plat or project, it shall be separately planned or platted as such, and the supplementary regulations for such uses shall be applicable.
- (b) Medium density residential areas in the PUD shall be considered the same as the R-7 and R-8 classifications of Ordinance 80-8.
- (c) Commercial areas in the PUD shall be considered the same as the B-1 through B-8 classifications of Ordinance 80-8.

(6) The Applicant will comply with the Volusia County Land Development Code, Ordinance 88-3, and all other applicable Volusia County land development regulations.

DEVELOPMENT AGREEMENT

1. Development Concept: The parcel shall be developed as a PUD in substantial accordance with the (a) Overall Development and (b) the Site Development Plans for each of the phases of the development which

BOOK PAGE
3186 1774
VOLUSIA CO. FL

shall be submitted in the manner provided by Ordinance No. 80-8, as amended, Section 813.00.

(a) The Overall Development Plan consists of this "Development Agreement" and a "Preliminary Plan - PUD" dated February 5, 1988. The Preliminary Plan is hereby approved by this Council as part of the Overall Development Plan, and said map is incorporated in this Order and Resolution by reference as Exhibit "B". The Overall Development Plan shall be filed and retained for public inspection in the office of the County Planning and Zoning Department, and shall constitute a supplement to the Official Zoning Map of Volusia County. All Overall Development Plan amendments other than those deemed by the Enforcement Official to be minor amendments as set out by Ordinance No. 80-8, as amended, Section 813.06, shall require review and recommendation of the Planning and Land Development Regulation Commission and of the Volusia County Council in the same manner as for the original rezoning.

(b) Site Development Plan: After the Overall Development Plan has been filed and prior to the issuance of building permits, one or more Site Development Plans relating to individual phase(s), or (for areas to be subdivided) sketch plans, overall development plans, preliminary and final plats shall be submitted for review and approval under the Volusia County Land Development Code. Performance and maintenance guarantees shall be provided as required by said Code.

BOOK PAGE
3186 1775
VOLUSIA CO. FL

(c) Magnolia Service Corporation or its successors and assigns shall maintain unified ownership of each tract, parcel or phase otherwise subject to the Subdivision regulations of the Land Development Code until after the approval of either the Site Development Plans or Final Plats for areas to be subdivided. The provision of this Order shall thereafter run with the land and bind the successors and assigns of the Developer.

2. Phases of Development: The Single Family, Multi-Family and Commercial tracts within DeBary Plantation will be developed in phases by Magnolia Service Corporation, or its successors or assigns. The phases of this development may be developed in any order, at the discretion of the Developer, provided that the infrastructure necessary to serve the phase in question has been provided or will be provided simultaneously with the demand created by development of such phase. Magnolia Service Corporation contemplates that building sites for approximately 700 dwelling units will be submitted for plat or final site plan review within 5 years from the date of this Order, and the remainder will be submitted within 10 years. Anything to the contrary in this Order and Resolution notwithstanding, Magnolia Service Corporation or its successors shall have the right to down-zone the proposed Commercial areas to medium density, low density or single-family use; any medium-density area to low-density or single-family use; and any low-density area to single family use, if, in the discretion of Magnolia Service Corporation or its successors, the market conditions so dictate.

3. Land Use and Density: The development of the parcel shall be consistent with the limits as follow for land use and density as prescribed for each land use area within the proposed PUD. The location and size of said land use areas are shown on the Preliminary Plan, Exhibit "B".

(a) Land Use Description: The property located within the PUD shall be subject to the following permitted uses:

- 1). Single Family Areas (not more than 3 dwelling units per net acre)
- 2). Residential, Low Density Areas (not more than 6 dwelling units per net acre).
- 3). Residential Medium Density Areas (not more than 13 dwelling units per net acre)
- 4). CLUB COMPLEX - The Club Complex may (but is not required to) include a pro shop, restaurant/dining facilities, bar and lounge areas, health club and all other uses associated with or accessory to a country club complex. The club complex shall be operated by one or more private proprietary owners. Magnolia Service Corporation may elect to operate the Club Complex, or it may engage in contract with one or more third parties to operate all or portions of the Complex. The owners of lots or units in the DeBary Plantation PUD shall have no proprietary interest in the Club Complex

BOOK PAGE
3186 1777
VOLUSIA CO. FL

unless and until the Developer elects to convert the Complex to equity ownership. The Developer has no present plans to convert the Club Complex to equity membership or equity ownership, but reserves the right to do so in the event that, in the sole opinion of the Developer, market conditions so dictate.

- 5). GOLF COURSE - The par 72 golf course, designed by noted DeLand golf architect Lloyd Clifton, winds through the residential areas of the DeBary Plantation community. The Golf Course shall be available for use by members of the general public, as well as by residents of the DeBary Plantation Community. Membership fees and greens fees shall be collected both from the general public, and from the DeBary Plantation residents, although the Developer may differentiate between residents and nonresidents in setting the schedule of fees to be charged. At the discretion of the Developer, the Golf Course may either be operated as a commercial venture under contract with a third party, or dedicated and maintained as a common area by the Homeowners Association.
- 6). COMMERCIAL FACILITIES - Commercial facilities shall be located on a 10 acre site in the East

BOOK PAGE
3186 1778
VOLUSIA CO. FL

central portion of the tract. The permitted uses within the commercial area shall be all uses permitted under the B-3 zoning classification, as more specifically set forth in Ordinance No. 80-8, as amended. The commercial tract shall be deemed to be a "corridor overlay zone" as defined in Ordinance No. 80-8, as amended, and the improvements to be constructed shall comply with all required landscape screening provisions with respect to U.S. Highway 17-92. Not more than one (1) entrance drive shall be permitted from U. S. Highway 17-92 directly into the commercial area. Development of the commercial area shall be pursuant to an approved master site plan, and the commercial area may thereafter be subdivided in accordance with the provisions of the Land Development Code, provided that no lot or parcel (including out parcels) created by any subdivision shall have any other independent access to U. S. 17-92

- 7). CHURCH AND CHURCH RELATED ACTIVITIES - This tract, located on a parcel comprising approximately 13.1 acres abutting the commercial facilities and U.S. Highway 17-92, shall be used for all permitted church and church related activities.

Not more than one (1) entrance drive shall be permitted from U. S. Highway 17-92 directly into the church area. The provisions and standards of Section 817.00 of Ordinance 80-8 shall be applicable to all such uses.

(b) Density: The tract of approximately 755 acres will be developed with a maximum of 1,485 DU. The approximate acreage and density for each land use area are as follows:

| <u>Key</u> | <u>Land Use</u> | <u>Acres</u> | <u>Density DU/Acre</u> | <u>%</u> |
|--------------|----------------------------|--------------|----------------------------|--------------|
| SF | Single Family | 306.1 | 2.0-3.0 | 40.6 |
| RLD | Residential Low Density | 133.1 | 3.0-6.0 | 17.6 |
| RMD | Residential Medium Density | 32.5 | 6.0-13.0 | 4.3 |
| C | Commercial | 10.0 | | 1.3 |
| CH | Church | 13.1 | | 1.7 |
| P | Parks & Recreation | 189.4 | | 25.1 |
| | Lakes & Ponds | 42.1 | | 5.6 |
| | Collector Streets | 28.7 | | 3.8 |
| <u>Total</u> | | <u>755.0</u> | <u>1.9</u> | <u>100.0</u> |

4. Special Regulations: The regulations which shall apply to the development of the project are set forth in Table Format on the Preliminary Plan, incorporated herein by this reference. Where zero lot line construction is permitted, each plat shall establish whether such construction will be utilized in that subdivision, and shall assure that each lot contains the minimum side yard(s), with structures required to be placed so that no lot is subjected to greater setbacks by reason of placement of an adjoining structure. Development shall otherwise be in accordance with all regulations contained in Ordinance 80-8, not inconsistent with this Order. Nothing

in this Order shall abridge any regulation other than the Zoning Ordinance.

5. Environmental Considerations: Both during and after construction, the Applicant will strive to maximize retention of natural vegetation and to maximize protection of wetlands and natural surface drainage pathways.

(a) Sinkholes. During the development review process, due care shall be taken to preserve major sinkholes by incorporation into public parks, golf course design, buffer areas, parks and open space. Minor sinkholes and hollows may be reshaped or filled during the construction process, consistent with all other applicable regulations and review processes.

(b) Environmental Easements. All lakes and retention areas located within residential areas shall be surrounded by an Environmental Easement if such an easement is determined to be necessary by the Development Review Committee during the review process.

(c) DRI Status. The project has been determined by Volusia County not to be within the threshold for classification as a Development of Regional Impact, and the County has accordingly not requested the State of Florida to conduct the Development Approval required of a DRI project.

6. Sewage: The Developer will obtain sanitary sewer services for the project from Volusia County Utilities. A Developer Agreement for the total project must be negotiated to assure availability of

BOOK PAGE
3186 1781
VOLUSIA CO. FL

utilities. Separate Developer Agreements pertaining to the construction of water and sewer facilities may be executed at the time each phase within DeBary Plantation is platted or site-planned. The Developer agrees, subject to DER or other applicable Regulations, to provide for the reception of approximately five hundred thousand gallons per day of treated sewage effluent, whether generated within the project or transmitted from other service areas of Volusia County Utilities, which shall be applied to the golf course located within the DeBary Plantation project. The Agreement for reception of treated effluent shall have a minimum term of 20 years.

7. Water. Water service will be provided by means of tie-ins with the existing Volusia County utility system. A separate Development Agreement for the project, and one or more individual Developer Agreements for individual phases or site-plans, shall be negotiated prior to development.

8. Utilities. The utility distribution system for electricity, telephone, cable television and related services shall be constructed underground; provided that feeder lines for electrical service, and any lines adjacent to existing overhead utility lines, need not be underground.

9. Stormwater Drainage: Sufficient acreage within the site will be utilized for the establishment of detention/retention areas. The project will contain several large ponds and lakes, the approximate locations of which are set forth in Exhibit B, attached hereto. In the residential and commercial areas, storm sewers will be

constructed to collect and transport rainfall runoff to the ponds and lakes. Natural drainage ways and swales, supplemented by a series of culverts will perform this function within the open areas of the project. Any stormwater discharge into the ponds and lakes will be filtered in compliance with the requirements of Ordinance 88-3 and other applicable ordinances and regulations, and if applicable, the requirements of the St. Johns River Water Management District.

10. Roadways:

(a) Collectors. The Developer will construct collector roads according to Volusia County's criteria for design and pavement width of such roads along or near the western boundary of the property, and from Highway 17-92 to the western boundary, as shown on the Preliminary Plan. The Developer will also provide right of way along the northeast corner of the site (adjoining the present Terra Alta utility plant site) for a proposed collector road as depicted on the Preliminary Plan. To the extent that such collector roads provide right of way widths or capacity in excess of that needed to service the DeBary Plantation project (as provided in the Land Development Code), the Developer shall be entitled to impact fee credits as provided in the Volusia County road impact fee Ordinance.

(b) Offsite improvements. The Developer shall also construct those off-site improvements (not constructed by the County or others) identified in memorandum from the County Traffic Engineer, File PW-TE-88-251 dated March 15, 1988, which is incorporated herein and made a part hereof by reference. Such improvements shall be

constructed at such times, established during the development review process under County Ordinance 88-3,, as will maintain the County's prescribed levels of service on the affected roadways, concurrent with the impact of development. The County may cooperate in the provision of any right-of-way necessary to the construction of such improvements. The cost to the Developer of such off-site improvements shall likewise become a credit against road impact fees to the extent provided in the road impact fee Ordinance.

(c) Impact Fee Credits. All such credits shall be assignable among and between the various phases of the project, at the Developer's option, to the extent and in the manner provided in the Road Impact Fee Ordinance.

(d) Traffic Separation. To provide separation of vehicular traffic from pedestrian and golf cart traffic, the collector roads shall not traverse the golf course to be located within the project.

(e) Local Streets. Residential areas within the DeBary Plantation project shall be served by local streets connecting with the collector road. The depiction of local streets on the Preliminary Plan is conceptual only, and actual locations, curves and grades shall be determined during the development review process of individual phases.

(f) Thoroughfare Plan. The Thoroughfare Plan of Volusia County provides for the extension of an arterial corridor westward from Saxon Boulevard to a future arterial corridor along or near the Seaboard Coast Line Railroad. The Developer will provide the necessary

right of way for such an extension through the developer's lands, approximately coinciding with and replacing the western portions of the Developer's proposed east - west collector road, as depicted on the Preliminary Plan. To the extent that the right of way so provided exceeds the right of way necessary for roads serving only this development, the Developer shall be entitled to impact fee credits in accordance with the provisions of the road impact fee Ordinance.

11. Homeowners Association: A property owners' association will be created. Common areas within the development will be owned and maintained by the homeowners association, which shall enact regulations governing the use and enjoyment of the common areas. The owner of each unit or lot within DeBary Plantation shall be liable for (and subject to a lien securing the payment of) annual and special assessments for the improvement, maintenance, enhancement, enlargement and operation of the common areas, and for payment of taxes, governmental assessments, insurance and payment of costs to acquire materials, equipment, labor, professional services, management and supervision necessary to carry out the authorized functions of the Association, and for payment of principal, interest and other charges connected with loans made to or assumed by the Association. The County of Volusia shall not be responsible for enforcing the Articles of Incorporation or By-Laws of said association.

With respect to the enforcement of said agreements, covenants, easements or restrictions entered into between the Applicant and the owners or occupiers of property within the DeBary Plantation PUD, the

BOOK PAGE
3186 1785
VOLUSIA CO. FL

County of Volusia shall only enforce the provisions of the "Development Agreement" or Ordinance No. 80-8, as amended, whichever is applicable and not the private agreements entered into between the aforementioned parties.

12. Binding Effect of Plans: Recording: The provisions of the foregoing "Development Agreement", including any and all supplementary orders and resolutions, and all Site Development Plans shall bind and insure to the benefit of the Applicant or its successor in title or interest. The PUD zoning, provisions of the "Development Agreement" and all approved plans shall run with the land and shall be administered in a manner consistent with Article IX of Ordinance No. 80-8, as amended. This order and Resolution and all subsequent orders and resolutions shall be filed for record in the Official Records of Volusia County, Florida.

13. Reverter Provision: Within twelve (12) calendar months from the effective date of this Order and Resolution, the Applicant shall submit a Site Development Plan as described in Section 1(b) of this "Development Agreement", covering at a minimum the first phase of the PUD. In the event that the Site Development Plan is not submitted on or before the date indicated, the parcel shall revert to the prior zoning classification(s), unless the County Council, or its successor agency, for good cause shown, shall extend the time period indicated in this paragraph.

BOOK PAGE
3186 1786
VOLUSIA CO. FL

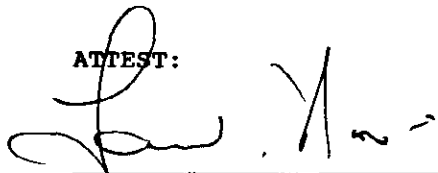
DONE and ORDERED by the County Council of Volusia County,
Florida, this 9th day of June, 1988.

VOLUSIA COUNTY COUNCIL


Chairman

MAGNOLIA SERVICE CORPORATION

By: 

ATTEST:

County Manager

BOOK PAGE
3186 1787
VOLUSIA CO. FL

EXHIBIT A

DESCRIPTION:

The East 1/2 of Section 21, Township 18 South, Range 30 East, Volusia County, Florida, LESS the following portions thereof, The North 3/8 of the Northeast 1/4 and the East 885.00 feet of the South 1/2 of the Southeast 1/4 of the Northeast 1/4,

AND the West 1/2 of the Southwest 1/4 of Section 22, Township 18 South, Range 30 East, Volusia County, Florida, LESS the following portion thereof, the West 1/2 of the North 1/2 of the South 1/2 of the North 1/2,

AND the Southeast 1/4 of the Southwest 1/4 and that part of the Southwest 1/4 of the Southeast 1/4 lying West of U.S. Highway No. 17-92 right of way line, all in Section 22, Township 18 South, Range 30 East, Volusia County, Florida,

AND the Northwest 1/4 of the Northwest 1/4 and the Southwest 1/4 of the Northwest 1/4 and the East 3/4 of the North 1/2 lying West of U.S. Highway No. 17-92 right of way line, LESS and except the South 330.00 feet thereof, all in Section 27, Township 18 South, Range 30 East, Volusia County, Florida.

AND the Northeast 1/4 of Section 28, Township 18 South, Range 30 East, and the Southeast 1/4 of Section 28, Township 18 South, Range 30 East, LESS right of way line of Highbanks Road, Volusia County, Florida,

LESS AND EXPECT THE FOLLOWING DESCRIBED PROPERTIES:

The South 365.00 feet of the East 1450.00 feet of the Southeast 1/4 of Section 28, Township 18 South, Range 30 East, Volusia County, Florida, (11.1412 acres).

The North 1/2 of the Northwest 1/4 of the Southwest 1/4 of the East 1/2 of the North 1/2 of the South 1/2 of the Northwest 1/4 of the Southwest 1/4 of Section 22, Township 18 South, Range 30 East, Volusia County, Florida,

From the South 1/4 corner of Section 22, Township 18 South, Range 30 East, Volusia County, Florida, run N.00°50'03"W. along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 22 a distance of 64.42 feet to the point of beginning; thence run S.61°59'00"W. 65.10 feet; thence run [redacted] parallel with said East line 1298.39 feet to a point on the North line of said Southeast 1/4 of the Southwest 1/4 of Section 22; thence run N.89°41'48"E. along said North line 57.92 feet to the Northeast corner of the Southeast 1/4 of the Southwest 1/4 of Section 22; thence run N.89°43'14"E. along the North line of the Southwest 1/4 of the Southeast 1/4 of said Section 22 a distance of 1012.18 feet to the Westerly right of way line of U.S. Highway No. 17-92 (S.R. #15 & #600); thence run S.13°49'08"W. along said Westerly right of way line 1305.00 feet to a point on a curve concave Northerly and having a radius of 100.00 feet; thence leaving said Westerly right of way line, from a tangent bearing of S.63°31'49"W. run Westerly along the arc of said curve 159.50 feet through a central angle of 91°23'22" to a point of reverse curvature of a curve concave Southwesterly and having a radius of 200.00 feet; thence run Westerly along the arc of said curve 324.41 feet through a central angle of 92°56'11" to the point of tangency; thence run S.61°59'00"W. 307.86 feet to the point of beginning.

From the Southeast corner of the Southwest 1/4 of Section 22, Township 18 South, Range 30 East, Volusia County, Florida, run N.00°50'03"W. along the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 22 a distance of 64.42 feet; thence run S.61°59'00"W. 65.10 feet to the point of beginning; thence continue S.61°59'00"W. a distance of 218.60 feet; thence S.89°41'48"W. a distance of 93.74 feet; thence N.08°54'05"W. a distance of 213.76 feet; thence N.00°50'03"W. parallel with the East line of the Southeast 1/4 of the Southwest 1/4 of said Section 22 a distance of 887.10 feet to a point on a curve concave Northeasterly having a radius of 370.00 feet; thence from a tangent bearing of N.15°16'43"W. through a central angle of 14°26'40", run Northwesterly along the arc of said curve a distance of 93.28 feet to a point of tangency; thence N.00°50'03"W. a distance of 209.41 feet to a point on the North line of the Southeast 1/4 of the Southwest 1/4 of said Section 22; thence N.89°41'48"E. along said North line a distance of 329.90 feet; thence S.00°50'08"E. a distance of 1298.40 feet to the point of beginning.

ALL OF THE ABOVE CONTAINING HEREIN A NET TOTAL
755.6816 ACRES, MORE OR LESS.

DEBARY PLANTATION

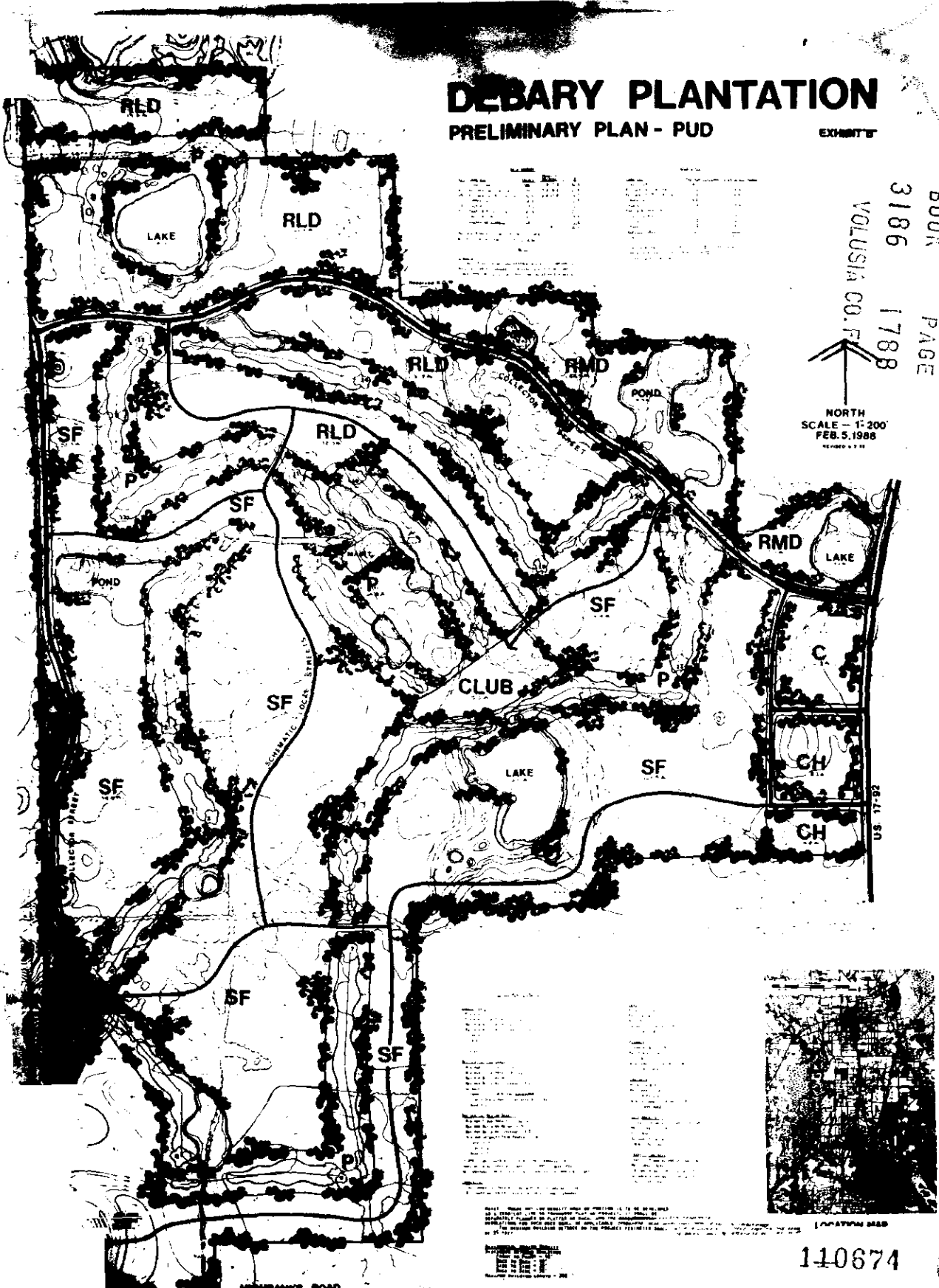
PRELIMINARY PLAN - PUD

EXHIBIT 'B'

BOOK 3186
PAGE 1788

VOLUSIA CO., FL

NORTH
SCALE - 1" = 200'
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