2005-0065 Request for Tentative Preliminary Plat Approval - City File No. 04-011: Grace Parc, a proposed 16-lot subdivision on approximately six acres, located north of South Boulevard between Livernois and Rochester Road, zoned R-4, One Family Residential, known as Parcel Nos. 15-34-402-057 and 15-34-402-035, Grace Street Development, Inc., applicant

(Reference: Memo prepared by Deborah Millhouse, dated January 28, 2005 had been placed on file and by reference became part of the record thereof.)

Mr. Rosen explained the order for the item. He stated that each speaker who had turned in a card would be given three to four minutes, but that there would be no dialogue between them, the applicants or the Planning Commission during that time. Any questions asked or issues raised would be discussed after the public comments.

Present for the applicant were Frank Mancini, Grace Street Development, Inc. 47858 Van Dyke, Shelby Township, MI; Bill Mosher, Apex Engineering Group, 47745 Van Dyke, Shelby Township, MI; Thomas Kalas, Kalas Kadian, P.L.C., 40900 Woodward Ave., Suite 315, Bloomfield Hills, MI 48304.

Mr. Mosher stated that the applicants were seeking Tentative Preliminary Plat (TPP) recommendation for a 15-lot subdivision in Section 34, located on the north side of Grace Ave., west of Hazelton. He noted that the site was zoned R-4, with a minimum lot width of 80 feet, and minimum area of 9,600 square feet. They were proposing to connect to the existing McComb Street to the north and access Grace Ave., a private road to the south, and add a stub street to the west. They believed they had met the Ordinance provisions and were available for questions at that point.

Ms. Millhouse pointed out that there were two actions being requested, including a Tree Removal Permit. She stated that this was an unusual scenario. McComb St. to the north and Grace Ave. from the eastern-most property line of the proposed site were public roads; however, between the western and eastern-most property line there was a private road easement. That private easement extended further to the west on Grace Ave. She stated that when the project first came forward, Staff questioned whether it was permissible for a public street to tie into a private street. Mr. Kalas had answered the question and provided an opinion letter for the Road Maintenance Agreement (Agreement) that was recorded in 1983 for Grace Ave. The City Attorney, Mr. Staran, was asked to review that and he determined that the City was not the party to determine whether this Agreement was binding relative to whether the proposal could go forward. She felt that was one of the key issues for the surrounding residents. She continued that the project had been reviewed by Staff, and they believed it to be in technical compliance based upon the conditions in the pre-printed motion. She noted that Mr. Paul Shumejko, the City's Transportation Engineer, was also in attendance to answer questions.

Mr. Rosen opened the public comments at 8:12, p.m..

John Mallet, 3697 McComb, Rochester Hills, MI 48307 *Mr. Mallet stated*

that no notification was sent to the residents adjacent to the property, and he asked if that was required. He asked why the tree removal was started in 2004 without the Permit and whether the wildlife in that area was being considered.

Tammy Tolon, 3684 McComb, Rochester Hills, MI 48307 *Ms. Tolon said she agreed with what Mr. Mallet said, and added that the applicant was being allowed to removed more than 50% of the existing trees that remained. There were approximately 30 trees left on the property because the applicant came in, with no organization, and tore things down. There was an existing fence on the property line that was taken down, as well as vegetation that belonged to Mr. Mallet. No consideration was given to the wildlife that lived in the trees removed, and there was not enough existing vegetation for the animals that currently lived there to consider removal of more trees. She said they were never notified that their street would be a through street. McComb was a dead end street and that was one of the motivations for purchasing her home. She questioned why no notification was sent to her about the tree removal.*

Greg Farrand, 475 Grace Ave.,Rochester Hills, MI 48307 *Mr. Farrand said he took the opportunity to let the Commission know the personal feelings about what was happening to their private road. When they purchased the property in 1983, they knew about the restrictions to the road. The reason it stayed private was for the safety of the children and so they would not have any through streets. He felt this development would be the beginning of bad things for the property owners. They felt their rights were being infringed upon. He felt very strongly that they did not want this proposal at either end of a private road they had been maintaining, keeping safe, and which was a place of their own. They paid for the upkeep to keep the road to City standards. They understood that if the road in the development started before Grace there would not be much they could do about it, but as far as tying into a private road, they strongly felt they would need to stand up against that.*

Mr. Bill Craig, 349 Grace Ave., Rochester Hills, MI 48307 *Mr. Craig said he lived on the private portion of Grace, and he agreed with everything that had been said. He wondered what precedent currently existed in the City that would allow a public road to connect to a private road, allowing people to utilize the private road as a public thoroughfare. He stated that the Agreement was intended to permit the completion of lots which directly fronted Grace. He believed that establishing the precedent now to allow a public portion to come into the private road would set a precedent in the City to allow the west end of the private portion of Grace to connect to the public portion of Grace to the west, thereby creating a thoroughfare for those people on South Boulevard that did not want to wait as they came east during rush hour. People would not come onto Grace for the purpose of going to a home or for delivering mail, but just to cut through. Additionally, proposed Milano, coming directly south into Grace, drastically would affect three homeowners on the south side of Grace. Headlights would go directly into the living rooms of those homes, reducing the value of the homes. He questioned if the City would require something to mitigate that negative value, such as special landscaping. The Agreement would be rendered ineffective and inequitable. The Agreement read that "the cost of maintenance and repair shall be the responsibility of only*

those parcels which have homes on and for which the private road is the primary access to the homes." Grace would not be the primary access for the new homeowners, therefore, they would not have to pay for road maintenance for it. He wondered how the City would address this inequity. There were other things within the Agreement that clearly identified that the intent of the road was not for spider streets but for the purpose of maintaining and keeping private that portion of Grace. He brought up that there were also some drainage issues. He said he had no problems that homes might need to get into the area, stating it was a free country and everyone had to make a buck. He felt there could be some things to mitigate the extent of the negativity that would be created by the proposal. The contractor had not been contacting those most negatively involved in the process. He suggested that the developer consider fronting two homes on Grace, putting the detention pond immediately behind them, and the rest of the homes behind that. That would satisfy the Grace homeowners and it would still give the developer 14 or 15 lots.

Mr. Cliff Durand, 470 Grace, Rochester Hills, MI 48307 *Mr. Durand noted that the back part of his property was adjacent to the proposal. He was also President of the Homeowners Association for Grace Ave. and was present to express some concerns on behalf of all the people that lived on Grace. He questioned the notification requirements because he did not receive a notification until Friday, January 29. He believed there should be seven days' notice. The notice did not speak to plat development, only tree removal and he believed that both should have been represented in the notice. The hearing was the beginning of a public review for Grace Parc and to have a discussion about tree removal and replacement was premature, in his opinion. They believed there were alternatives to be considered and or developed before this was approved. To approve the tree issue would suggest that the City was in support of the development before anyone got to say his or her peace. The Homeowner's Association suggested there were pitfalls with the development as proposed, which warrant further discussion and resolution. He noted, for instance, the presumed access to a private road, Grace; the location of the detention pond; and the ability to handle additional watershed runoff, which was directly to an area that was already under stress. The water table was high and he also mentioned the sanitary load on the sewer, the traffic, the impact on the Association for maintenance and legal advice and the impact to the adjoining properties, i.e., the roadway stub. They were personally familiar with an alternative and did not feel they could accept Mr. Mancini's plan as ideal and the sole solution. He said that Mr. Vitale, a property owner to the west end of Grace, tried to get together with Mr. Mancini. There were some personality problems, but he felt they could work out a development for the east and west side of Grace that would solve a lot of problems and give them more than 15 homes. To date, they had been unwilling to do so, but if the City had the power, they should direct the two property owners to get together and try to work something out that would be satisfactory to everyone on Grace. He stated that the citizens trusted, as stewards of the land, that the Planning Commissioners had the power to make this happen and they would all benefit from having the bigger resolved before moving forward prematurely.*

Arlis Hall, 341 Grace Ave., Rochester Hills, MI 48307 *Mr. Hall stated that he lived on the first parcel of land on the south side of Grace, east of the proposed development. His concern was public traffic coming across a private piece of land. He still owned the easement to the centerline of the road - the City had not taken control of it in any way. He agreed with what had been stated, but it really concerned him that it would be possible to run a public road over a private road or private property without some sort of legal solution. Based on that, he would like this matter tabled until the legal portion was resolved. They could talk all they wanted about the plan, but eventually, if this proceeded, it would go to a judge to decide. It was also his understanding that Mr. Kalas had looked at the Agreement and had rendered his opinion that the developer had the right to come out onto Grace. Mr. Hall did not know where it said that in the Agreement because it was not there. He was one of the first people to sign the Agreement and the intent was that Grace would stay a private road with homes on it. They were not trying to deprive Mr. Mancini of ingress and egress to the property. He was entitled to build three homes on Grace, but he was not entitled to open the property up to McComb St. and the whole neighborhood. They needed a reasonable solution or, he reiterated, it would go to court.*

Mr. Rosen closed the public comments at 8:31 p.m.

Mr. Rosen asked Ms. Millhouse the requirements for notification. Ms. Millhouse said the requirements were only applicable to the request for a Tree Removal Permit. The Tree Conservation Ordinance required that all adjacent property owners be notified within seven days. The notification was sent out eight days prior to the meeting. Mr. Rosen asked about requirements for plat notification.

Mr. Staran replied that although the residents were given an opportunity to speak, the meeting officially was not a public hearing. There was nothing in the State law or the City's Ordinance that required notification or a public hearing in regard to the review and approval of plats. Those requests were held at public meetings and the Planning Commission and City Council routinely allowed anyone who wanted to speak to do so. That had been applied to every subdivision in the City. There were some items that required public notices, such as a Tree Removal Permit or Wetland Use Permit. She noted that it had been the City's policy to notify residents of further meetings, if they wished.

Mr. Rosen asked if the City was aware of the trees removed in 2004. Ms. Millhouse deferred to Mr. Mosher.

Mr. Mosher explained that the site was brushed and that there was one diseased ash tree removed. They met with the City and talked to the Landscape Architect. He did not feel anything was done unknowingly or against regulations. They removed the underlying vegetation to be able to study the topography.

Ms. Millhouse said the City got a notification from residents and sent the City's Landscape Architect to the site, and she confirmed that none of the regulated trees, except for the ash, were removed. There had already been a tree survey submitted for the project and there was a record of what regulated trees existed

and they remained as existed. Mr. Staran added that the City regulated the removal of trees; however, there was a minimum requirement for which trees were regulated. The City regulated trees that measured six inches or greater in diameter at four feet above ground. Usually when the City heard about someone removing trees without a Permit, they would check it out, but it was usually vegetation being removed.

Mr. Rosen stated that after listening to the residents, he felt the predominant questions were about how a public road could join and cross over a private road. There was another question about what would be done for the homes facing the headlights and he suggested that the Commission had in the past required an applicant to plant something to stop the glare. He asked Mr. Staran to address the road issue.

Mr. Staran responded that there were numerous private streets in the City that intersected with a public street, and that virtually every private street intersected with a public street at some point. Whether Milano (proposed in Grace Parc) was public or private, there would be the same issues about who would use it. The City's Ordinances would strongly encourage Milano to be a public street. He acknowledged that it was an unusual situation. At first glance he thought the applicant could probably not connect to a private road, and he referred to a common law: "One who is a user of private road or easement could not do something to increase the burden on it." He stated that common law did not come into play in this instance, however, because the creation and use of the street was governed by an Agreement among the homeowners. That Agreement would take the form of the maintenance Agreement and was entered into in 1983 and recorded at the County. He pointed out that because this was a private Agreement and road, from a legal standpoint it had somewhat the same standing as private deed restrictions or declarations and restrictions. The City could look at those, but could not, by law, enforce or administer them. The people who were subject to the Agreement had to work these things out and if they had a problem, they had private legal recourse. Because the City was being asked to consider the plat, he looked at the Agreement and found that it actually appeared to contemplate that some lots along Grace would be divided and subdivided. He read, "The cost of maintenance and repair shall be the responsibility of only those parcels which have homes and for which the private road is the primary access to the home. The term "users of the road" hereinafter employed in this Agreement shall refer only to these parcels. In the event one or more of the parcels is split or subdivided in the future into one or more additional parcels and sold, the cost, the maintenance and repair shall be the responsibility of only those parcels which are the users of the road...furthermore, any subdivided or split parcel which is vacant and does not cause substantial use of the road shall not be responsible for the cost and maintenance and repair." He stated that the document seemed to expressly contemplate that some of the parcels on Grace would be subdivided and would have the right to use the road. Based on that, the City believed that they had no basis to determine that there was nothing in the City's Ordinances that would prohibit the subdivision of the parcel and the use of Grace by the resulting lots. In terms of the connection to McComb, there was nothing in the Ordinances that would prohibit that, but he felt it would be very difficult for the City to prevent any parcel from accessing an adjoining

public road. That would be legally difficult, and given the subdivision design standards, accessibility for the fire department, etc., the City would encourage a development to have a second access and the connection to McComb would be the principal access to the subdivision. The City made the determination that the developer probably had the ability to connect to Grace. He did not see anything in the document that led him to conclude that the layout proposed would not be allowed by the private road agreement.

Mr. Rosen said that what Mr. Staran read clearly applied to a parcel that fronted Grace. Mr. Staran said the Agreement included a property description and all the lots within that description were parties to the Agreement and the users of the road. It was his understanding that the description did include the applicant's entire parcel.

Mr. Rosen asked if Milano were to become City property, if that would make the City party to the Agreement. Mr. Staran replied that no, the City was not a party to the Agreement. Mr. Rosen said that if the road was included in the property described, and the road were owned by the City, he questioned if that would make the City a party as well. Mr. Staran said the City would not be a party to the Agreement, only those who signed the Agreement and their successors and interest would. If the plat was ultimately approved and the road dedicated, the City would maintain the road, but the City would not have maintenance responsibilities for the private portion of Grace unless Grace became a public road.

Mr. Rosen asked if the proposed detention pond would participate. Mr. Staran said the entire parcel and future owners of the resulting lots would be subject to the Agreement.

Ms. Brnabic clarified that when the applicant purchased the property, the Agreement was a part of the property. Mr. Staran said it ran with the land. Ms. Brnabic questioned whether the intent of the Agreement was to cover the houses Grace and whether Grace was to be considered the primary access and if, therefore, people signed the Agreement for those reasons. She wondered if having a parcel split with a road down the middle would be in conflict with what the Agreement intended.

Mr. Staran said that the City was not a party to the Agreement and noted that he just read it. One of the cardinal rules of construing an Agreement or document was applying plain meaning to unambiguous words. He was simply stating that there was black and white language that expressly contemplated that the lots would be divided and subdivided. There might or might not have been an intent that only folks whose lots fronted directly on Grace and required it for their primary access could use it, but he did not see anything in the Agreement that said that. He thought that some comments by the residents reflected what people understood was the case and what was the past practice, but he was giving his opinion about the actual text of the Agreement.

Ms. Brnabic noted that one condition of approval specified that the Grace Parc Homeowners Association would be responsible for the repair and maintenance to the private portion of Grace. She wondered whether they would take full

responsibility for the private portion of Grace.

Ms. Millhouse said the intent of that condition dealt only with the portion of Grace that was adjacent to the development - about 220 feet. The reason for that was that the City required the road to be upgraded from gravel to a paved road, consistent with a public street. The City should not be required to maintain a private road; but in reality, if a snowplow came down McComb, the driver would probably continue along the private portion of Grace and not turn around and go back up McComb. The condition was intended to hold the City harmless. It would be the new Association's responsibility because of the upgrades; the City would also be held harmless because in 10-20 years down the road, individuals might say that the City's snowplows damaged the asphalt.

Ms. Brnabic did not feel that the portion they were responsible for was clearly stated in condition six and that it might need clarification.

Ms. Hill said she derived from the Agreement that if there were a potential for lot splits, that the properties abutting Grace would be responsible for maintenance. Mr. Staran said the portion he read referred to parcels that were split off and vacant and did not cause substantial use of the road, and that the owners of those would not be responsible for costs of maintenance and repair. Ms. Hill said that it appeared to her that, even though there might be a large lot owned by someone, which was part of the original Agreement and had the potential to be split and divided off, that the Agreement only referred to lots fronting Grace. Mr. Staran replied that a fairly standard provision in a maintenance agreement was that those with improved lots would pay the maintenance and if not, they would not pay because they were not using it. As more and more lots were improved, the cost would be apportioned over more users.

Ms. Hill recalled a couple of examples with private/public road situations in the City. One was in Knorrwood Hills, and between Apple Lane and Peach Tree there was a private segment, which caused quite a bit of contention regarding snowplowing. The City eventually claimed the road and it became public. Mr. Staran said that the City would much prefer that section of Grace to be public, but the applicant only had ownership rights to half of the street. The plat showed a 30-foot right-of-way, which was being reserved in the event the street ever became public. The applicant did not have control over the south side of Grace and moreover, the entire stretch of Grace was subject to the private Agreement, so it was not necessarily up to any one party to determine it should be public.

Ms. Hill referenced Walnut Brooks Estates, which tied in at the north end into Rockhaven. The subdivision road came off South Boulevard into a private road and then went out to a public road. The homeowners there did not want the public coming onto the private road so they put up a gate that only the Fire Department could access. She thought the proposal would be problematic, and it was difficult for her because she understood how the private road owners were upset about their road becoming a public accessway.

Mr. Staran said it was a concern, but he did not see anything that would

prohibit the road access from happening, whether it would be a good idea or not. Ms. Hill questioned whether the property owners who were part of the Agreement could oppose this as a private matter.

Mr. Rosen recalled that Mr. Staran said the Agreement was similar to deed restrictions, in the sense that the City could not do anything with the Agreement. Mr. Staran agreed it was a private contract and said that if the people subjected to the contract had a disagreement, it would be up to them, and it would be their right, to do what was necessary to resolve it. It would not be the City's place to resolve it, but in the proposed case, they had to find out by what right the applicant proposed to connect to the private portion of Grace and the applicant showed it through the Agreement. Mr. Rosen clarified that the City could not require that the connection to Grace be made. Mr. Staran advised that if they had no right to do it the City could not require it, but if the applicant had a right, he did not know what basis the City would have to tell them they could not, and that was the dilemma.

Mr. Rosen said the applicant was showing it on the plat and if it appeared to the Commission they had a right to do it, the City might approve the plat and the applicant could proceed. However, if other parties to the Agreement successfully challenged it, the applicant would no longer have a plat. Mr. Staran advised that was correct. He said it would really not be that much different than when the City approved a development and it was stopped at another governmental agency. The applicant would be back at the beginning. The answer to whether something the City could do would override the residents' rights under the private Agreement, would be that he did not think so. Mr. Rosen noted that if the City approved the TPP, the applicant would be able to submit engineering drawings. If there was some type of court action that prevented that entrance from Grace, the plat would not occur and the applicant would have to re-submit. Mr. Staran said that would be correct. Mr. Rosen asked if the Commission was obligated to consider the plat, noting there was a time limit for plats. Mr. Staran agreed there were requirements under the City Ordinance and State law that required the City to review and make decisions on plats within a certain time period. Mr. Rosen said the Commission could not request the applicant to postpone the matter until the issue of the road was resolved. Mr. Staran said that even if the Commission recommended approval, it would not create any vested rights to development. The recommendation would continue on to City Council and there would be three additional steps after that, so he said there was a fairly extensive process before an applicant could even put a shovel in the ground.

Mr. Hooper asked if the developer could unilaterally make improvements to the portion he owned without Homeowner Association approval. Mr. Staran said that what he owned was subject to the Agreement. Mr. Hooper asked if majority rule would determine if improvements could be made. Mr. Staran replied presumably so, but it would require interpretation of what the Agreement did or did not say. Mr. Hooper thought there would be showstoppers - either the State would turn it down because of the half-road width; the Homeowner's Association would turn it down, or the applicant would be unable to obtain the easement. Mr. Rosen said there was nothing the City could do about that and Mr. Hooper agreed.

Mr. Kaltsounis asked if it was customary for the City to establish a 50-foot wide road. He questioned what type of precedent that would set.

Mr. Shumejko replied that the City had existing 50-foot roads in some of the older subdivisions. The proposal showed a 30-foot wide right-of-way, which would actually be a private easement. In the future, if the whole width were obtained, it would be turned into a public road. He did not believe the State allowed half-width right-of-ways in plats. He added that the road would be dedicated as a private road easement.

Mr. Kaltsounis said that if the developer only owned the north part of Grace, it would allow a half-width right-of-way. The south portion was owned by the person across the street and he wondered if the City would have to pay the person on the south side of Grace for his property.

Ms. Millhouse explained that the private Agreement was for roughly a 50-foot width. That meant 25 feet of the southern portion of the subject site, and 25 feet of the northern portion of the two adjacent properties to the south. That was the existing recorded easement, regardless of who owned it, for the 50-foot width. The applicant was proposing to add an additional five feet as an outlot so that the southern 30 feet of the subject site would be an outlot for the purposes of ingress, egress and utilities. At the City's request, by doing that, if and when the southern 25-30 feet of the property would become available for a public street, the Homeowner's Association that owned the outlot would be able to transfer it via quick claim deed to the City as a public right-of-way.

Mr. Rosen said they had established it was shown that Milano would provide access to or from Grace and that the City could not require it or prevent it because of the private road. The people who could allow or prevent it would have to do it on their own. The Commission would try to determine if there was anything else with the plat that would be a showstopper.

Ms. Brnabic referred to the concern about headlights coming from Milano and she wondered if some type of barrier or landscaping would be proposed to help with that.

Mr. Mosher said that Milano was purposely moved westward to line up with a driveway. They did not want to direct it into the living room on the south side of Grace. There had been no proposed landscaping, however, he felt it could be discussed. Ms. Brnabic agreed they should have some discussion with the homeowners.

Mr. Rosen said the parallel concern was the shifting of the road to the west, which would bring it very close to the first house to the west. He did not feel it was a very smart idea and would create a problematic situation for that homeowner. Having a subdivision street on the side of a house might create a corner lot without the normal setbacks. He asked how wide the green strip on the north end was.

Mr. Mosher replied that it was 28.9 feet. That would meet the setback

requirements. In addition there would be an open space buffer where the proposed replacement trees would be added. An engineering concern was that a taper and the apron for the approach would encroach in the easement, so they obtained an easement from the property owner to extend the curb return in front of the property line. Mr. Rosen said he was not so sure that having the drive jog to the west was as good an idea as having it go straight with a buffer on the opposite side of the road. That might mean the detention pond would have to be moved and one lot lost.

Mr. Kaltsounis said it was customary in the planning process to involve neighboring citizens, and he asked what type of meetings or correspondence the applicant had with the neighbors.

Mr. Mosher said they sat down with Mr. Vitale in 2002 to try to create a loop street. They had been working on this project in conjunction with Mr. Vitale for three years. They have had numerous conversations with the neighbors and have provided numerous plans. Mr. Durand and he had spoken on the phone numerous times and met. He had concerns about the stub street. They had not spoken with anyone in particular on the south side of Grace, but they made sure there was a 30-foot easement. During the conceptual plan meetings it was discussed that they should connect to McComb and they tried to address the concerns of the neighbors on that street.

Mr. Kaltsounis said that unfortunately, by the presence of the neighbors, the job was not done. He felt there were a lot of what ifs with the development in regards to the State and the easement and that the development might end up in court for a long time. Mr. Mosher said that the parameters for the TPP, the roadway, layout, lot sizes, configuration and drainage were the basis for the plat. They did the engineering to ensure that the layout stayed true. If something at that level changed the layout, it would be noted at Final Preliminary Plat. The MDEQ and the State Highway Department would not even address it until the City granted approval of the TPP, so they were a little stuck.

Mr. Kaltsounis said the Planning Commission had to look at all the details and what surrounded the development. He referred to the headlight problem and said he did not note any buffering for the neighbors to the south. He asked how they would protect Mr. Craig, and said those were the things he would like addressed. He questioned whether they could add a cul-de-sac before Grace, acknowledging that might put pressure on McComb, but if the applicant did not get the State approvals or approval from the people on Grace, that might be an option.

A motion was made that this matter be Discussed. The motion carried unanimously.

Discussed

Mr. Mosher said the Fire Department frowned upon adding a cul-de-sac because Grace did not go through currently and they had concerns with emergency access and respond times. Grace was never intended to be the main access point. The Fire Department approved the layout proposed and he commented that they spent considerable time trying to keep them happy. Mr. Kaltsounis asked if they would be willing to work with the residents that would be affected by the headlights and to have that added as a condition.

Mr. Kalas said they would be willing to talk to them and provide plantings within reason, but they did not feel that should be a reason to tie up the TPP. Mr. Kaltsounis remarked that there might be other things that could tie it up.

Ms. Millhouse recalled that adding a cul-de-sac, rather than a direct connection to Grace, came from the Planning Department, because they were also concerned about a public road onto a private road. The first review recommended a cul-de-sac with an ingress and egress for emergencies; however, she reiterated that the applicant had the right to access Grace Ave.

Mr. Mosher said that in 2002 they brought in a plan with more assembled parcels, including Mr. Vitale's. The Master Plan provided for stub streets and they were asked by the Fire Department to go through to Grace.

Mr. Rosen read an additional condition to address the issue of glaring headlights. Mr. Kalas responded that the applicant would show good faith in working out screening requirements with the homeowners, but that nowhere in the Land Division Act were they required to provide it. He did not think the applicant should be put in a predicament where they had a plan and everyone might have an opinion as to what might be a better layout, but what was at issue was whether they had complied with the Ordinance, and they believed they had. They would do whatever was necessary to appease the homeowners because that was in their best interest, but he did not want conditions attached to a plat approval that were not required by law. He represented that they would meet with the homeowners and try to work out some type of agreement, but he did not want it as a condition.

Mr. Rosen commented that try and try were sometimes different things. He did not want to see that six months later the applicant had only one meeting where the homeowners asked for something and the applicant said no. That was what the Commission would try to prevent. The headlights were a legitimate concern they had dealt with in the past and developers usually worked something out. Most neighbors were reasonable, if treated fairly. He asked Mr. Kalas how he thought the condition should read.

Mr. Kalas said there was no condition. They were making a representation that they would meet with the homeowners and discuss the issue with them within reason. If a homeowner was unreasonable and they had not met the condition, it would put them in a bind.

Mr. Rosen agreed it worked both ways, but the difference was that the Commission got to make the decision. At some point, reasonable efforts were just that. If the applicant worked for three months and had five meetings and

were at a total impasse, the Commission would step in.

Mr. Mancini said that his partner approached the southerly residents a few times to discuss the option of getting the 60 foot right-of-way and they asked to not be involved in expanding the road to make it public. He said they respected that and did not push that effort. The question about reasonableness arose. Mr. Mancini agreed to plant some evergreens, but said that if someone wanted 50 feet of arbor vitaes or fencing, it would not be reasonable. He stated that if there was a condition, it would create an open-ended problem for him and he agreed with Mr. Kalas, and would not want a condition for that issue.

Ms. Hill asked, hypothetically, if the road never went through to Grace and the development had access off of McComb, if it would bother the development.

Mr. Mosher said that McComb was approximately 540 feet and a cul-de-sac length could only be 600. Ms. Hill asked whether they would have a problem without that connection, regardless of the Ordinance. Mr. Mosher said they would be afraid the public safety issues would be diminished and that the Fire Department would not recommend approval. At some point, the neighboring properties would be developed, and he thought it was a major concern that the connection to Grace was tantamount for the property to be developed. No one felt that the east-west Grace connection would ever be made. That was the conundrum of trying to get around the dead ends.

Ms. Hill said that eventually, somewhere off the proposed west stub street a connection could be made and the traffic could flow through in that direction. Mr. Mosher said that was the catch-22 for them. Ms. Hill referred to using a gate and said she had seen surrounding communities' developments with cul-de-sacs and pavers that allowed trucks to go through. She felt there were a number of different things that could happen that would be less expensive than a court battle. She indicated there was not much willingness on the part of the applicant. Regarding buffers, she advised that the Commission had numerous applicants before them who had been much more cooperative about providing them for certain situations. She continued that it concerned her that there were too many questions about the access and whether Grace would go public. They had to review the plan by looking at it as a private road and determining the alternatives that would make the development compatible for everyone in the area. She would not mind a plan with one or two homes having access to Grace and the rest of the development using McComb.

Mr. Mosher said they submitted a plan in April 2004, which the Staff reviewed, and people had various opinions, so he guessed the chips would fall where they would. Ms. Hill asked if an alternative plan was ever submitted to the City showing a few homes on Grace and the rest using McComb north only (cul-de-sac or dead end). Mr. Mosher replied that they had never submitted that to the City, and they felt the detention basin, where located, would fit the topography of the site and they felt the residents would rather have a landscaped detention basin rather than two homes. Ms. Hill asked why they believed that and Mr. Mosher said he was directed by the developer.

Mr. Staran reminded the Planning Commission that they spent a lot of time

discussing specifics about the private road Agreement, but regardless of that, they still retained the discretionary authority under State law and City Ordinance to determine whether this proposed plat presented a reasonable street layout and lot orientation. The design should include the Commission's comfort level about the effect on neighboring property owners. He disagreed with Mr. Kalas to some extent, because he felt it was within the Planning Commission's prerogative to consider what impact a development would have on neighboring properties and to try to mitigate those impacts. He addressed the access onto Grace and said they discussed the idea of a cul-de-sac at the Staff level. One of the principal issues was that, although the City did look at Grace access as a potential secondary access for emergency vehicles, it was not inhibited by having some type of break-away barrier. There were instances in the City where that had been required. To just put a barricade at the end of the road would create another difficulty. Plows and buses had to be able to turn around, so it was not so simple.

Mr. Shumejko said that the dead end road would be more than 600 feet. He noted that another alternative looked at was to have a street come off private Grace and be a private cul-de-sac, and then McComb could be extended to the south as a public cul-de-sac. That would mean separating the two streets and having a private Milano off private Grace and extending public McComb as the cul-de-sac to the south.

Mr. Rosen asked how many cul-de-sac waivers the Commission had approved and Ms. Millhouse said she had seen several. She pointed out that if that were something the Commission might contemplate, they might consider an eyebrow, rather than a cul-de-sac, to allow the stub street. The Subdivision Ordinance allowed for consideration of future development to unplatted parcels, which was what the stub street to the west would allow. Mr. Rosen said he thought it would be better to have two houses front Grace and have Milano as a cul-de-sac. They would have to look at that carefully. They had to remember that all of the easy parcels were gone. Ms. Millhouse pointed out there was a significant wetland on the property to the west, and that there would be the ability to go to the west, but at a certain point they would have to consider a wetland crossing or dead-ending at that point.

Mr. Kaltsounis recalled the Southwind Estates development, which was approved for a cul-de-sac waiver, and at the end of the cul-de-sac was a reinforced, grass covered grate fire trucks could access from the Pine Trace Golf Course drive. He thought the applicant might consider that, acknowledging that they would have to move things around on the plat. He felt that would cover a lot of the issues. Regarding the trees, he asked the applicants to reconsider their stand. He mentioned several developments in the City, including Hazelwood, where the developers worked with the neighbors to add buffering. Mr. Kalas said they had not objected to that, and they intended to do that, he just took issue with making it a condition. His client would do what he said. Mr. Mancini asked for some direction, stating that subdivisions all had intersection streets. He acknowledged this would not be a typical subdivision, of course, and he wanted an idea before being handcuffed to something.

Mr. Kaltsounis said "handcuffed" was a strong word and the Commission would like a condition that said the applicants would work with the neighbors and Staff. Mr. Mancini said that Ms. Millhouse had been great, but he did not want it left to the homeowner to decide. Mr. Kaltsounis added that the Commission would have the final answer.

Ms. Millhouse asked Mr. Staran if the applicant were to work with the property owner to the south, if it would be appropriate to address the specifics of that at Final Preliminary Plat, since TPP was basically the street and lot layout.

Mr. Rosen agreed that a plan could be provided at Final Preliminary. Mr. Staran added that the TPP was a conceptual review stage. When the Final came in, that was when they would dot the i's and cross the t's and prescribe specific conditions. He agreed that things could be more tied down at that point if they wished.

Ms. Brnabic indicated that the applicant was before them with a plan and for feed back and suggestions, and that the Commission had offered valid suggestions, including putting a couple of houses on Grace and adding a cul-de-sac. She felt that the Commissioners would be interested in seeing alternative plans incorporating some of those suggestions. Since it was a Preliminary Plat, if they recommended approval but did not really feel it was the best plan, at the Final stage they would not be able to really make changes. She felt that there was definitely some unrest about the plan at this stage.

Mr. Staran replied that they should not go to another stage if they were not satisfied. He advised against granting a TPP if the intent was that when the plan came back for Final that they would change things around. He stated that the Commission should not do that and if the inclination was that some things needed to be changed, that would be the discussion the Commission should have. If the Commission was dissatisfied with what was presented, they should consider denying it, or working with the developer - perhaps involving a tabling and coming back with different concepts before a decision was made. If the Commission felt it should be changed later that would be unlikely if it the TPP were approved.

Mr. Rosen questioned if the development had a reasonable street and lot layout. He was very concerned that the plan was not a good idea and wanted to see a few different alternatives. He asked the other Commissioners, who agreed they would like to see other plans.

Mr. Kalas said he appreciated the concerns, but he agreed with Mr. Staran. The purpose of TPP was to look at street layout and lots. As long as they were not violating the Land Division Act, he did not feel that the Planning Commission had the discretion to alter the plat or tell the applicant how to design the plan. If the City's process was to go through TPP approval and tell the applicant they needed to change the road pattern or to reconfigure the lots, he wondered why the applicant had to go through a year of engineering, departmental reviews and comments and thousands of dollars in expenses. If they came in initially with a TPP and the Commission said they did not like it and that it should be reconfigured, at that point it would not be a problem. They

had been working on the project for a long time before they submitted, and it had gone through numerous reviews in the past year, to try to appease the City Staff. The Commission was asking them to redesign the layout, and he did not feel that was something that could be required unless they violated an Ordinance. Otherwise, every developer that came before a Commission would be subjected to the different tastes of those members. He wondered why people had to go through such a lengthy process before they got to the Commission. He stated that their plan was almost engineered, and that thousands of dollars had been incurred, yet now the Commission was telling them to draw a different layout.

Mr. Rosen asked him if that was a no. Mr. Kalas replied that they had presented different layouts and that the proposed plan met City Ordinances. He stated that much time and expense had gone into the plan and that, financially, they could not just scrap it and redesign it.

Mr. Staran said that the reason it took a long time for projects to go through was that they had to undergo technical review. There were a number of Ordinance requirements and State laws that required specific dimensional issues - lot widths, lot lengths, road widths, engineering requirements, etc. Neither the Planning Commission nor City Council were rubber stamps for Staff. Rather, this was where the discretionary authority was and that was why there were nine people on the Commission. He felt both bodies had considerable discretion under the law to determine what would constitute a reasonable street layout and lot orientation. The Planning Commission had the option of denying the plan or working with the developer and considering alternative layouts. If the developer did not want to consider different layouts, the Commission could make their decision based on the plan submitted.

(Mr. Anzek asked people to turn in their names and addresses if they wished to be notified of subsequent meetings).

Recess: 10:03 p.m. to 10:09 p.m.

MOTION *by Hardenburg, seconded by Brnabic, in the matter of City File No. 04-011 (Grace Parc Subdivision), the Planning Commission* ***recommends*** *City Council* ***disapprove*** *the* ***tentative approval*** *of the* ***preliminary plat****, based on plans dated received by the Planning Department on January 21, 2005.*

1. *The applicant has only presented one street and lot layout for consideration. The applicant has indicated that they have looked at alternatives but have declined to review those with the Planning Commission.*

2. *The lot and street layout does not appear to be reasonable or the best for this property.*

Mr. Boswell recalled that a few weeks ago the Planning Commission was presented with a more traditional layout for a Planned Unit Development, which looked very similar to the proposal. At that time he said it looked like everything else in the City. He wondered how they could deny the proposal

and say the layout was not reasonable. He questioned what they would determine was not reasonable, but he could understand adding that it did not fit in with the neighborhood.

Mr. Rosen answered that reasonable implied that it fit in with the neighborhood and was reasonable in light of all the circumstances. Mr. Boswell said that the main objection the Commission probably had was the cavalier way the developer was treating the private road easement. He was not sure they could consider the plan unreasonable.

Mr. Rosen thought that would take care of itself. Given the neighborhood and the circumstances, it was an unusual situation that might make sense if there were two houses on Grace and a cul-de-sac to the north. They would have to deal with the long road stub street because of the possible future connection to the west. It was about doing the right thing and he did not feel this would be the right thing; but without going through the alternatives, he would not know.

Mr. Boswell clarified that he did not mean he did not want to see the alternatives and he liked Mr. Rosen's suggestion about the cul-de-sacs. He was just questioning the word "reasonable." Condition two was reworded:

2. The lot and street layout does not appear to be compatible with the surrounding neighborhood or the best for this property.

Mr. Kaltsounis pointed out that the applicant before them faced a situation where they were asked to move things around on their plan. They really took the Commission's comments to heart and the development turned out much better and it benefited the applicant and the City. He suggested that the current applicant keep that in mind.

Mr. Hooper proposed tabling the item and having the applicant come back in several weeks to present alternatives. Mr. Mosher said they had gone far with the plans and would not be able to do full-blown engineering drawings. Mr. Hooper said he was not suggesting that, just to present a schematic layout of the lots. Mr. Mosher said he worked in 35 communities and Rochester Hills put developers through the ringer. He said an applicant did not have the ability to come before the Commission until they had done complete plans and had a complete review - and he said they had been working on them for three years without the Commissioners ever seeing the plans. He stated that this put a tremendous burden on the applicant and he felt that if the City relaxed some of the standards they would get much better developments.

Mr. Hooper responded that it was just a suggestion. Mr. Kalas said they discussed it during the break and since they had previously prepared layouts, they would be willing to have the matter tabled and to come back in two weeks. They would not want to go through the entire review process again, which took about 8 months. They would meet with the homeowners also and present something at the next meeting. Mr. Hooper commented that they might very well end up with the same plan as proposed, but at least the discussion would be out. Mr. Kalas agreed he would recommend that.

Ms. Hill indicated that she was glad to see the direction the applicants were taking. She hoped they would take what they heard from the Commissioners into consideration. Mr. Rosen observed that if it turned out that the applicant did go in a different direction, that they would probably realize why at the end.

Mr. Rosen asked Ms. Hardenburg if she wanted to withdraw her motion, but Mr. Staran advised that a motion to table would supercede an active motion.

***MOTION** by Hooper, seconded by Schroeder, in the matter of City File No.04-011 (Grace Parc Subdivision) the Planning Commission **postpones** the request for **Tree Removal Permit and Recommendation of the Tentative Preliminary Plat** to bring it back at the next available Planning Commission meeting with proposed alternative layouts as discussed, plus other plans previously prepared by the applicant.*

Voice Vote:

Ayes:	*Boswell, Brnabic, Hill, Hooper, Kaltsounis, Rosen, Schroeder*	
Nays:	*Hardenburg*	
Absent:	*Kaiser*	***MOTION CARRIED***

Mr. Rosen strongly recommended that the applicants meet with the neighbors to try and work things out.

DISCUSSION