

Tuesday, May 7, 2002

REGULAR PLANNING COMMISSION MEETING held at the City of Rochester Hills Municipal Building, 1000 Rochester Hills Drive, Rochester Hills 48309, Oakland County, Michigan.

Chairperson Eric Kaiser called the meeting to order at 7:30 p.m. in the auditorium.

ROLL CALL:

Present: Chairperson Eric Kaiser; Members William Boswell, Deborah Brnabic, Barbara Holder, Greg Hooper, Nicholas Kaltsounis, Kristen Myers, James Rosen
Quorum Present.

Absent: Audrey Ruggiero

Also Present: Ed Anzek, Planning Director
Deborah Millhouse, Deputy Director
Derek Delacourt, City Planner
Teresa Kamenar, Landscape Architect
Maureen Gentry, Recording Secretary

MINUTES FOR APPROVAL:

Regular Meeting of April 16, 2002.

MOTION by Hooper, seconded by Brnabic, that the Minutes dated April 16, 2002 be accepted as printed.

Ayes: All
Nays: None
Absent: Ruggiero

MOTION CARRIED

COMMUNICATIONS:

1. SEMSCOPE, dated Spring, 2002
2. One-Family Residential Detached Condominiums Ordinance Amendment
3. Planning & Economic Development Services Heritage V Conference Card
4. SEMCOG Regional Update, dated May 6, 2002
5. Letter from Leonard R. Laskowski, dated 05/03/02, regarding North Oaks III

Ms. Holder handed out a report concerning information about the RV Ordinance.
Mr. Anzek introduced Teresa Kamenar, Landscape Architect and newest member of the Planning Department.

NEW BUSINESS:

2. **Final Preliminary Plat - File No. 87-900.3**
Project: North Oaks Subdivision No. 3, an 8-lot Subdivision on 7.391 acres
Request: Final Approval of Preliminary Plat Recommendation
Location: South of Dutton, West of Livernois
Parcel: 15-04-201-003, zoned R-1, One Family Residential District
Applicant: Mr. David Zaitchik
Singh Development Co., Ltd.
7125 Orchard Lake Road, Suite 200
West Bloomfield, MI 48325-3005

(Reference: Staff Report prepared by Deborah Millhouse dated May 3, 2002 has been placed on file and by reference becomes part of the record hereof).

Present for the applicant were David Zaitchik, Singh Development Company, and Mark Landis, Giffels Webster Engineer.

Ms. Millhouse explained that this development involves an eight-lot subdivision on 7.4 acres, located on the south side of Dutton Road, east of the North Oaks Subdivision and west of Paint Creek Hills Subdivision. She continued with a brief background of the project, saying the Planning Commission approved the Tree Removal Permit and recommended Tentative Approval of the Preliminary Plat on October 21, 1997. Subsequent to Tentative Preliminary Plat approval by City Council on January 7, 1998, Council waived the requirement for a sidewalk along the south side of Acorn Glen on February 6, 2002. Two of the proposed conditions of Final Preliminary Plat approval relate to the previous conditions; first, that a 25-foot greenbelt landscape easement is to be dedicated along the entire length of the westerly property line of North Oaks Subdivision No. 3, within which no homes or driveways are permitted. Secondly, the number, type and specific location of replacement trees on adjacent lots within North Oaks Subdivision No. 1 are to be mutually agreed to by the property owner and the applicant, as approved by the City's Landscape Architect. Such agreements are to be in writing, with the applicant agreeing to a time frame for installation of the trees, the applicant guaranteeing survivability for one year, the property owner accepting maintenance responsibilities, and the property owner agreeing not to remove the trees without prior approval of the City. Such agreements are to be submitted by the applicant prior to answer by City Council. Ms. Millhouse noted that the above summarized certain aspects of the Staff Report. She advised that pre-printed condition number 13 should read: Payment of \$31,590.00, as adjusted as necessary by the City, into the Tree Fund, prior to issuance of a Land Improvement Permit. She further advised that this amount would be reduced by Staff based upon the number and size of replacement trees that might be agreed upon for the North Oaks Subdivision No. 1.

Mr. Kaiser asked why the trees being planted on adjacent properties have to be guaranteed for only one year. Ms. Millhouse informed him that applies to all replacement trees. Mr. Kaiser said when the Planning Commission previously required that trees be planted on adjacent properties, they also required a two-year maintenance agreement. Ms. Millhouse said that landscape trees, such as buffer trees and parking island trees, do require a two-year maintenance agreement. Since the minutes indicated that these are to be replacement trees, rather than landscape trees, Staff suggested one year.

Mr. Kaiser asked if the Commissioners needed clarification of any aspects of the Staff Report or Ms. Millhouse's comments.

Mr. Kaiser explained that the Planning Commission's job regarding the Final Approval of the Preliminary Plat is to make a recommendation to City Council, which is the body that will make the decision whether final approval is granted. Council is free to follow, reject or modify the Planning Commission's recommendation. He asked if it was true that the City of Rochester Hills' Ordinance reads that if the Final Plat is essentially in conformance with the Tentative Preliminary Plat, that the Commission is mandated to make a recommendation for approval. Ms. Millhouse replied that is correct. Mr. Kaiser said they could not revisit issues that were discussed at an earlier time. Ms. Millhouse answered that it was her understanding that Tentative Approval gives the applicant certain approvals upon which they can continue the process to this stage, which is the Final Preliminary Plat approval. Mr. Kaiser stated that if the applicant is in conformity with the Tentative Preliminary Plat approval and the law has not changed in any substantial way, the Commission is mandated to recommend approval of the Final Preliminary Plat. Ms. Millhouse said that was her understanding. Mr. Kaiser asked the applicants for comments.

Mr. Zaitchik wanted to bring the Commission up to date because it has been a while since they looked at the Preliminary Plat. He said there were only two major changes to the Preliminary Plat, which were done at the Staff's request to try and save trees, and

the first was that they rerouted the sanitary sewer. It was going along the back, or east, property line, and the City consultant suggested they re-route it through the middle of the property to stay away from some of the better quality trees. The other noticeable change is the buffer of evergreen trees with which they tried to work an agreement with the North Oaks Subdivision No. 1 homeowners. The idea was to add a buffer between the existing subdivision and the new subdivision, and use the replacement trees they were required to plant to put a solid row of evergreen trees within the first 20 feet on the back of the existing North Oaks lots. On the approved Tentative Preliminary Plat it showed a solid row of evergreens across the whole property line, with five to seven trees on each lot. After that, they had to ask for written permission from each of the homeowners. Out of the ten homeowners that back up to the property, they received permission from five. During that time, there was a turnover of City consultants, and between those five people and the City Forester, the existing trees were looked at and in the place they were proposing to plant new trees, the five to seven trees per lot were further reduced.

Mr. Kaiser asked Mr. Zaitchik if he had heard the discussion regarding the guarantee of trees. He advised him that the Commission normally requires a two-year guarantee for trees planted. Ms. Millhouse said that because they are replacement trees, the Ordinance would not necessarily mandate two years. Mr. Kaiser still wished to know what the applicant would do to make sure those trees have at least two years of survivability.

Mr. Zaitchik said they would be willing to work with the Commission. He asked if they would be open to a compromise, and told them that most of their contracts with Landscape Contractors are for 18 months. He wondered if that would be satisfactory. Mr. Kaiser said he would ask Ms. Kamenar later if she felt 18 months would be satisfactory, and it could depend on when they are planted. He then explained the process the speakers from the audience should follow.

Joe Hilger, 1980 Tall Oaks Blvd. Mr. Hilger's lot backs up to the proposed subdivision. He stated there were issues from day one that he did not feel had been resolved. One was the buffer of the trees. He has had a couple of meetings with Mr. Zaitchik and has been involved in other communications. There has been no clarity about what this buffer would mean for the homeowners. For some, obviously there is an open area that would require trees, and other people have trees on their property line now. Mr. Lee (Forestry) and Ms. Kamenar have been to the site to view the situation, and said trees could be planted where Singh Development said they could not. For the homeowners, there is a lack of clarity about what the new subdivision means to the people who live nearby in terms of futures: work to be done and maintenance of the sewer system, work to be done to the entry off of Dutton Road, and retaining wall issues. These concerns have been expressed to Singh Development, but they still need clarity before the project goes too far forward.

David Shellenbarger, 1792 Archers Pointe. He has lived adjacent to the proposed development for about 12 years and believes this is truly one of the beautiful parts of Rochester Hills. However, this property will be one of the most difficult to develop in this City. On the drawings it does not show the severe slopes of the land, the severe slope of Dutton Road, where the entrance to the development will be, or give any indication of the impact of potential erosion. Since he is on the uphill part of the property, it does not concern him, but if he were on the downhill side of the property, he would be concerned that trees would be threatened, and erosion could be substantial, in spite of what a well-meaning contractor could attempt to do to prevent it. If anyone wishes to see what could happen, they should simply drive down Dutton Road tonight and see the depth of the ditch that was cut by the rainstorm over the weekend, and look at the road that has been repaired by the Road Commission with materials intended to prevent erosion. He feels there is a severe risk in developing this property, and he urges caution by the Commission to make sure that all possible steps are taken to protect against these risks. He mentioned the greenbelt discussed by Mr. Hilger. He said that is not a legally defined term in City Code. A greenbelt easement does not really mean anything to the Building Department. He said he would urge that communication of that definition be run by the Building Department before obtaining permits to prohibit any confusion that

could occur. They recognize the right of a property owner to develop, but simply urge caution and hope they would consider the extreme nature of this property, the risk to adjacent properties, the lack of definition in some of the terms used in providing Tentative Approval, and in the end, the threat to the high quality of life in this town.

Tom Carey, 1988 Tall Oaks Blvd. Mr. Carey's home is also adjacent to the proposed development, the second lot in from Dutton Road. He was a little confused about the explanation given that the Commission was at a point where they were obligated to make a recommendation of approval to City Council. If he understood correctly, there were some changes to the Tentative Preliminary Plat, which he believed would not mean they had to recommend approval. He is concerned with some of the same issues raised tonight. He has not signed off on any agreement regarding trees. He has had very little communication from the developer. They have been involved with this for three or four years, and the project was put on hold. He said there is a lot of confusion regarding the 20-foot buffer replacement trees proposed – what would be put in, the quality of the trees, and the type of wall to be installed. He believed it would be a 12-foot wall, stepped down in six-foot increments, but he has not seen finalization about it on the plans. The applicant discussed having a fence on the top of that. He has two young children and is concerned where the liability would be if there is a 12-foot drop-off and they fall. Regarding the shape of the property and what is proposed, the amount of earth moving that would have to take place to re-shape that property would more than likely cause a dramatic change in the topography. He did not feel this issue had been addressed very well.

Cheryl Hilger, 1980 Tall Oaks Blvd. She reiterated the concerns that had been expressed tonight. She said Mr. Zaitchik told her that the Landscaper would meet with each homeowner individually and work out what was mutually agreeable regarding tree plantings. They then met with Mr. Lee and Ms. Kamenar. Mrs. Hilger said her situation is a little different, because there are trees that go to the back of the lot line and they do not want to forgo trees to be planted behind that on a lot with an easement. They discussed that they are not exactly sure where the tree clearing will end when the bulldozers come in, and that would have an impact on what kind of trees they would select. No one has been able to give them a good answer about that. They are not sure what has to be removed for the reinforcement structure at the retaining wall. They mainly want clarification. They are also asking that North Oaks Subdivision No. 3 be a different subdivision from Nos. 1 and 2 because of all the expenses that might occur due to the topography and drainage problems.

Len Laskowski, 1996 Tall Oaks Blvd. He said he appreciated the opportunity to discuss these important issues. One important question that needs further emphasis is whether the Homeowner's Association for the proposed development should be a part of the other subdivisions or not. There are several points he made in his letter to John Staran, the City Attorney, which suggested they should not be part of the first two subdivisions. Those points included that there is a liability for this wall. He is not sure they could tell what it would look like, and wished they had a model to view. He said it probably would be approximately 10-15 feet above the roadway in the new subdivision. He continued that there are reasons for having different kinds of landscaping on different lots along the wall. Some folks will be high above the ground in the existing lots and would, therefore, be on top of the wall. They may argue that perhaps that should be left natural. Where the wall declines and comes back down to ground level, one could argue there should be a buffer zone of trees to protect the area or to diffuse the area from the neighboring homeowners. Also, this subdivision is going to require a massive amount of water detention. There is a potential expense for maintenance for that which is very disturbing to people in the existing Homeowner's Association. They brought this to the attention of Council some time ago. At a City Council meeting on January 7, 1998, Singh had agreed that all costs associated with that detention system would be borne by the new subdivision. There will be other expenses for the new subdivision that ought to be borne by them, including the new entranceway, the wall itself and its maintenance, shrubbery and lawn. There will be a very disproportionate cost per lot in this new subdivision because it has its own entranceway off Dutton Road. Because of that, this subdivision ought to have its own Homeowner's Association. He thought there was some agreement on that last week, but he has not heard anything

about that tonight. The landscaping is a serious issue with the existing homeowners. He concluded by saying they should sit down, as was proposed earlier, with the developer, the Landscape Architect and the homeowners to work out an agreement about where the trees will be planted. Regarding the buffer, he advised Mr. Zaitchik said these will be buffer trees and should, therefore, be entitled to the full extent of a two-year warranty, not an 18-month or one-year warranty.

Michael Moffitt, 1936 Archer's Pointe. He mentioned that he sent a letter to Ms. Millhouse several weeks ago, addressing some of his concerns. He lives on lot 5, which is the one lot which would have a house from the proposed subdivision closest to it. There would be a house 25 feet from his lot. He is most concerned about the situation with the buffer trees. Mr. Kahm of Singh told him personally that they were buffer trees. With his house that close, they would look right out of the room off their kitchen into another house. He wants to be sure there will be screening there. He is also very concerned about the issue of maintenance, and does not feel the new subdivision homeowners should be a part of the existing Homeowner's Association. Having to maintain the common ground and common entry area is a disproportionate cost to be borne. He agrees with the other speakers that they should have a separate Homeowner's Association. He would like to have a meeting with all the affected homeowners, the developer and City Staff to nail down the issue of buffer trees, easements and what is planned and submitted for approval, so they do not have to go through contentious times as in 1997, when it went before City Council. He would appreciate it if they got it settled beforehand.

Darryl Chimko, 1613 Scenic Hollow. He did not want to belabor any points and said they are not kidding themselves about people building on this land, because the current residents did it on theirs. When this subdivision was marketed, and he was one of the original purchasers, it was marketed as Phase 1 and Phase 2. There was no Phase 3. He knows everyone should check out their property and has a duty to review who owns what, but there is only so far one need go and one would never have known there was a Phase 3 planned at the time he purchased his property. There is language in the covenants that state that other property could be part of their Association, but based on that language, he could presume property in Saginaw could be part of their Association. He did not think that was contemplated by many. Certainly his neighbors did not contemplate it when they purchased lots. He mentioned there is also the issue of cost. The only part of this property that is part of the first subdivisions is where it touches it, but no more and no less than Vintage Estates does. Subdivision No. 3 is not part of what is currently there, but maybe now it can be marketed that the costs, which will be major, can be absorbed by the other 99 lots in Phases 1 and 2. They do not want to share that cost. The Homeowner's Association costs they incur are high enough because they are blessed with some very nice areas they have to maintain. The new subdivision is an area they never contemplated maintaining.

Mr. Kaiser asked to have the applicant's representatives and Staff respond to the comments just made, and said they would then hear from the Commissioners.

Mr. Zaitchik responded that there were some common themes that emerged from the comments. One issue everyone is concerned about is that the Homeowner's Association for Phase 3 should be separate. He said Singh would make the commitment now that the Homeowner's Association from Phase 3 will be separate from 1 and 2. That is not one of the conditions that Staff has listed, but he would agree to that being a condition. Next, he heard several of the homeowners complain about a lack of clarity regarding the buffer plantings or trees on the lots. He agreed with them and they have since made several changes. They started with a solid row of evergreens and it has been changed over and over again. They would like to finalize this matter. Staff has made a condition of approval that the developer, along with the Landscape Architect and Forester, will meet with homeowners and resolve exactly how many replacement trees will go on each lot, and have it finalized before it goes to City Council. He then addressed Mr. Shellenbarger's comments about the extreme slope and risk of erosion, and it being very important when considering developing this property. He agrees with that. He thought Mr. Shellenbarger said it was not shown on the plans, but it is shown very clearly on the plans. There is a topography sheet that

shows there is extreme topography, and they are taking that into account with a soil erosion plan. He told them they could be sure that City Staff is very concerned about that and will not let them start without a very clear plan of attack. Mr. Shellenbarger was also concerned about the definition of a greenbelt easement. Mr. Zaitchik explained that this is a plat and the Final Plat will show a greenbelt easement so any plot plan that goes to the Building Department will show that greenbelt easement and the footprint of the house would not be allowed to extend into it. Additionally, there will be covenants and restrictions, which will further define what this easement is. Mr. Carey said he was concerned there was no finalization of the plans and about the type of wall to be installed. Mr. Zaitchik said when the Preliminary Plat was approved, they had been directed to step it and that is how it was approved. There were two six-foot steps. Another concern was the distance of the top of the wall away from the west property line. The neighbors who back up to it were concerned about where it would be. He said it was indicated on the approved plan as 18 feet. That is the way it was four or five years ago, and it is that way now. The type of fence on top of the wall is something that was to be addressed in meetings with adjacent homeowners, but they could not come to an agreement. In the latest meeting with homeowners, they acknowledged that is a safety issue that would concern the Building Department. The fence will have to be adequate to meet all City codes. As far as the type of fence that would be placed, he made a commitment to meet with the homeowners from North Oaks No.1, who back up to that proposed fence, before anything is installed.

Mr. Kaiser asked what would happen if he did not get people to agree. Mr. Zaitchik said he would have to get back with Staff for direction. Mr. Kaiser asked Ms. Millhouse if the type of fence allowed is defined in the Ordinance. She replied that the height is defined. She said that Mr. Zaitchik is correct that the fence would have to be reviewed by Engineering Services and the Building Department, relative to the safety factor. The type of fence is something Staff would like the applicant to present in detail on the Plan. Mr. Kaiser explained he meant in terms of the types that are possible, and if they are detailed in the Ordinance. Ms. Millhouse said she did not believe so, because this is just a fence, not a buffer, berm or wall. Mr. Kaiser asked if the City allows people to put up just any kind of fence. Ms. Millhouse answered they cannot put up barbed wire, it cannot be over eight feet in height, etc., but she did not know if the Ordinance specifically says it has to be a particular type. Mr. Kaiser responded he did not mean a particular type, but he thought there was a range of which type could be installed. Whatever that range is, whether it is 2-6 types, they still may not get unanimity.

Mr. Kaiser noted there was a question of liability raised, which he did not think would be impacted by what would be done by the Commissioners, or what City Council could do later. The liability would fall on the owner on whose property someone might be injured. Mr. Zaitchik said that question related to whether No. 3 would be separate from Nos. 1 and 2, and it will be.

Mr. Kaiser brought up the question about how much earth would be moved and what impact it might have. Mr. Zaitchik replied it was his impression that they would be only moving a moderate amount of dirt in the areas where the retaining wall and roads would go. He said Mr. Carey's comment would lead someone to believe that Singh is going to mass grade the entire site. Mr. Landis said that initially all that would be done is the earthwork to construct the infrastructure – the roads, utilities, retaining walls – and then individual building permits would be pulled for the homes. The individual builder would construct the home and have to comply with erosion needs. It will not be completely stripped and mass graded as you would normally see in a subdivision.

Mr. Kaiser said Mrs. Hilger asked about the extent of clearing in terms of proximity to her property. Mr. Zaitchik said when they met it was a primary concern of Mr. Hilger and at that time, it was his understanding that the construction of the wall would be 18 feet from the property line to the edge of the wall. There are tiebacks that go from the wall back into the earth to support the wall. The design is on the plat, and it shows that the longest tiebacks are six feet, which would leave another 12 feet to the property that he thought could be left natural. However, in the time since he met with Mr. and Mrs. Hilger, his construction workers indicated that they would need room behind the wall to backfill the wall. They need to get a bobcat in there. If this will be a 12-foot wall with a

6-foot step and four feet back and then another six-foot wall, they need a way to get the material behind the wall. That would necessitate clearing an additional 12 feet to the property line.

Mr. Kaiser asked about water detention. Mr. Zaitchik replied that because this site has severe topography and is partially heavily wooded, the detention was designed in the storm system without a normal above-ground detention pond. They did not want to take down a lot of trees to allow for the pond so they oversized the storm sewer. Where the pipes would normally be 15-24" in diameter, they put a portion in at six feet in diameter, which is oversized. The storm water detention requirements of the City are being met underground.

Mr. Kaiser asked if the costs for that would be borne by the new subdivision and/or the developer. Mr. Zaitchik said the developer bears the cost of installing it. The homeowners in North Oaks No. 1 and 2 are concerned that there may be a large maintenance cost down the road, but it is not an issue because No. 3 will be separate.

Mr. Kaiser asked Ms. Kamenar if she had any thoughts about the neighbors' concerns. Ms. Kamenar brought up the question raised regarding tree maintenance, and said that plant materials, especially trees, need two growing seasons. If trees were planted in the fall, they would need the following two years of overseeing tree growth. If the trees were planted in the spring, they would possibly need only eighteen months of maintenance to insure the viability of the trees. If evergreen trees are being planted, it should be done in the spring. They do not do well after a fall planting. Mr. Kaiser asked the applicants if they would agree on two full growing seasons and they replied they would.

Mr. Kaiser said the only way to fully resolve the issue of location and types of trees would be to meet with the neighbors prior to going to City Council. He thought Ms. Kamenar was probably willing to attend such a meeting or comment on what the applicant and neighbors came up with before City Council sees the plan. She answered she would. Mr. Kaiser strongly urged the neighbors and applicant to try and set up a time and place to meet. He said this would be on City Council's agenda in four to six weeks and these things need to be resolved. Ms. Kamenar said one of the major concerns of the property owners had to do with the retaining wall. She asked if there was some way that area could be staked or demarcated, and if the area being disturbed behind it could be staked also. She said it should not take very long and would help the residents determine which kind of trees they would like. There are a couple of trees behind the retaining wall that they found have grown to six inches or larger and are considered regulated trees. If the area was staked they could see whether those could be saved. She realized there has to be a happy medium between everyone, but even brush is very important to the residents.

Mr. Zaitchik said that before he met with the homeowners, the engineers from Giffels Webster did stake the property lines. Using that, the residents could pace off 18 feet and see where the wall would be. He can understand why the neighbors would want it more apparent. Mr. Kaiser said that even with the prior engineering, it should be easy to use a tape measure and visualize what is needed. Mr. Zaitchik said they did that once, but it was not good enough. He said he would be happy to stake the top of the wall so it is clear. Ms. Kamenar said that perhaps every 25 feet would be enough.

Mr. Anzek suggested that rather than staking the area, if they could run a couple of sections of snow fencing along the areas where the wall would be, the residents could view it from their backyard easily.

Mr. Kaltsounis mentioned he went through the initial plan approved in 1997 and there was a Tree Removal Permit issued. According to Section 126-367 of the Ordinance, a Tree Removal Permit shall remain in effect for one-year or the duration of the approved Site Plan, Preliminary Subdivision Plat or Condominium Plan. He wondered if the Tree Removal Permit would still be in effect as approved. He also went to the site and noticed new trees, which were not listed on the original Site Plan, and wondered how that would affect the Commissioners' decisions tonight. Under Preparation for Final

Approval Submission, in Section 122-157, it reads, "Submission within one year after having received Tentative Approval of the Subdivision Preliminary Plat as prescribed in the Subdivision, the proprietor shall submit a Preliminary Plat for Final Approval." He said it has been almost five years since that date. He asked Staff where they stand with the plat that has been submitted, if the Ordinances have changed over this time frame, and if it would change what should be submitted. He was also concerned about condition #10, which regarded the applicant and property owners agreeing to replacement trees. He read it and concluded, "Such agreement to be submitted by the applicant prior to action by City Council." He commented that the applicant did not have approval from all of the residents for tree removal and has not had it for five years. He wondered if this should be recommended to City Council if in three or four weeks they still did not have this approval.

Ms. Millhouse said that regarding the one-year approval of the Tentative Preliminary Plat, the applicant did apply for the Final Approval of the Preliminary Plat in July of 1998, well within the one-year requirement. It has been through nine separate reviews for consideration, which is what has taken so much time. As far as the agreements for trees are concerned, Ms. Kamenar and the Forestry Manager did meet with several of the neighbors on April 30. They understand what the neighbors want. Staff feels they can finalize something rather quickly after meeting with the individual property owners. The reason there has been something going on since 1997 is that the original approved Tentative Preliminary Plat had a row of replacement trees along the rear of the lots in North Oaks No. 1, which is heavily wooded. If that plan were followed, it would necessitate cutting down trees to plant trees. That is why Staff and the Forestry Manager took the effort to meet with the applicant and the property owners and explain this. The applicant said they did not care, and would be glad to pay for replacement trees, but the City said it does not make a lot of sense to cut down trees to plant trees. Staff will continue to meet with the neighbors to come to an agreement and get the trees they want, put where they want. They were also concerned about survivability because only certain trees can be planted under the canopies of existing trees. The City does have a responsibility to consider the viability of the replacement trees. That is also why Staff asked the applicant to re-negotiate with the existing property owners.

Mr. Anzek commented that he discussed this matter with John Staran, the City Attorney, and the Tree Removal Permit is active within the process for approval of the Plat as long as the Preliminary Plat Approval is active. In this case, Singh Development did apply for the Final Preliminary Plat well within the year's time frame. It has been the City's efforts that have actually delayed this matter this long. The City tried to work out engineering design details for a more regional drain system that falls to the east of this site and services the entire Livernois/Dutton Road area. It was a very long and cumbersome process.

Mr. Kaiser asked him if he meant that the Tree Permit, by virtue of the Plat being active, is also active. Mr. Anzek replied that it is. Mr. Kaiser said that the Tree Removal Permit allows the removal of regulated trees as defined by the Ordinance. Since that Permit was issued, there could be more regulated trees on the property, and that Permit would not allow removal of those. Mr. Kaiser said the Commissioners approved the removal of the regulated trees which have been surveyed and identified. He asked if other trees have become regulated because of their growth, how the applicant could expect to remove those trees, unless the area was re-surveyed. Mr. Zaitchik replied that it is a natural system. New trees grow into the system, and old trees get attacked by bugs or die. He said he understood what Mr. Kaiser meant. Mr. Kaiser said he was following-up Mr. Kaltsounis' concern. Common sense tells him that there were trees that were not regulated but now probably would be. With the Permit they were issued, the applicant could take down the trees allowed. If there are more regulated trees because of the natural events that have occurred in the last five years, they could not be touched without an amended permit. He asked Ms. Kamenar if she would expect that since 1997 there were now trees on the site that were not regulated when the Permit was first issued.

Ms. Kamenar agreed that could very well be the case. Mr. Kaiser suggested that prior to issue of a Land Improvement Permit, the applicant be required to obtain a new tree

survey and amend the Tree Removal Permit as necessary. He clarified for those in the audience that the request for a Tree Removal Permit is not in front of the Commissioners tonight. He said that Mr. Kaltsounis logically brought up they could assume there are new regulated trees on the site and those cannot be taken down. He asked Ms. Kamenar if it would make sense to add a condition that a new tree survey and/or Tree Removal Permit be required prior to a Land Improvement Permit. Ms. Kamenar said it would make sense. He asked Mr. Anzek if that would make sense. Mr. Anzek replied he thought it would be fine and he wanted the Commission to know that Mr. Zaitchik and he met about this about nine or ten months ago to discuss this issue and they did take into consideration both the growth of trees into regulation size, as well as trees dying. He thinks now because of the time frame, if the Commissioners determine it should be done before the Land Improvement Permit is issued, they should validate those which have died, as well.

Ms. Millhouse said she had a copy of the Fence Ordinance, and said Mr. Kaiser was correct, and read, "Any natural or synthetic material that is all-weather resistant and is engineered and designed to be used for permanent installation as a fence or screening material" and also read "Chain link fences may be supplemented with woven metal (that is, aluminum, galvanized or other material with protective coating), insertable slats." She suggested that is not an acceptable option. She said the Chairman's point was well taken that if the neighbors will not agree, the City Staff should be responsible for determining the type of fence. Mr. Zaitchik said that although they disagree on many things, he felt that the adjacent homeowners are fairly reasonable people they can talk to and by meeting with the three adjacent homeowners, they should come to a meeting of the minds, but would not know 100% until it happened.

Mr. Kaiser asked if the type of fence was listed as a condition. Ms. Millhouse said it actually was. It says, "to be approved by the City" but does not say from where the recommendation would come. Mr. Kaiser said he thought the wording of that condition (#5) could remain as it was, because there would be a meeting with the neighbors to see if they could reach a consensus.

Ms. Holder mentioned she went to Dutton Road today and saw that it is severely eroded, to the point of being dangerous, and she wondered what type of improvements could be made, because there will be added traffic in and out of the new subdivision. Where there are hills on each side of the entranceway, it seems to be worst.

Mr. Landis said they would install rock check dams in the road right-of-way to help prevent erosion. That installation is required by the City and the County Road Commission. It is a natural beauty road. Mr. Kaiser said he would assume that the applicant, who has a great reputation in this community as well as others, knows marketing homes which appear to have an insurmountable problem would not be in their best interest.

Ms. Myers said she also drove near the property, and since she was not on the commission in 1997, asked if the applicant could explain why Eastway and Acorn have no connectivity. Mr. Zaitchik replied it was because of the big drain through the middle. Ms. Myers asked if there was anything they could do to go over the drain. Mr. Zaitchik said a bridge could be built over anything, but there would be a trade off. They would have to decide if they want to disturb a natural drain and determine the cost and benefit of going across the drain. Since Eastway is available, their engineers decided it was best to solve the problem in the manner they did. Ms. Myers said she would worry about access and not having enough. A bigger concern occurred when she went up the hill and braked, and when she lifted her foot, immediately started sliding backwards downhill. She said she has tried traveling this road in the wintertime, and it is hard, but she really has safety concerns for the entry point. It really bothered her. If there is an accident, there is no way to get people in and out so another access would be favorable. She asked if there were any plans for islands in the cul-de-sacs.

Mr. Zaitchik answered that in some cities they do not allow islands. He asked if that were the case in Rochester Hills. Mr. Kaiser answered that lately, Rochester Hills has

been promoting islands. Mr. Zaitchik said he really could not answer Ms. Myers' question because he was not involved in the project from the beginning.

Ms. Brnabic asked about the Note of Intent on the Plan. She said she knew the amount for landscaping would change. She said the amount on the plan showed \$29,970 and wondered if that amount was including replacement and the installation or how they decided on that amount.

Mr. Zaitchik said it had to do with the Staff review of the Plan and there was some confusion as to whether right-of-way trees were included or not. Ms. Millhouse left it that Singh would work it out. He said one of the issues that had not been worked out 100% was the number of trees to go on adjacent homeowners' lots. That cannot be finalized before the right-of-way number gets resolved. At that time, they would do the final accounting of how many trees would be planted and how much money would be paid into the Tree Fund.

Ms. Millhouse said that is exactly correct. She said it is like hitting a moving target. At the present time they would see a lot of different figures. What she has attempted to do is show \$31,590 as a worst-case scenario, and that also means none of the residents on adjacent lots want trees. The applicant understands they would make necessary adjustments after written agreements are obtained from the neighbors.

Ms. Brnabic asked if the cost for the Tree Fund is separate from the installation costs. Ms. Millhouse said that is correct, and there are two items. The replacement of right-of-way trees, which are under a separate Tree Conservation Ordinance, makes it difficult to try and figure an exact amount at this time. It does take care of all replacement trees, both onsite and within the right-of-way. What the Ordinance reads is that the applicant gets credit for all the replacement trees on site or on adjacent lots. That amount is deducted if they cannot get all the replacement trees on site, which is the case here because it is so heavily wooded. The only option left, then, would be to pay into the tree fund. It is quite a process to come up with the final amount, and there is a performance guarantee required, because there will be some replacement trees.

Mr. Boswell mentioned that Mr. Zaitchik initially said that behind the wall they would only have to clear out six feet. Now he says they would have to clear the complete 18 feet to the property line. There was discussion about trees which have grown into regulated trees in that same area. He asked if, instead of using a bobcat and clearing out a lot of trees and brush, they could get some shovels, put it out to six feet and fill it in using manual labor, rather than the bobcat. He asked why they have to take out all the extra brush.

Mr. Zaitchik replied that he was trying to deal with the realities of construction. It could be cleared manually. They have to deal with the economics at hand. He is not the construction person who would make the call about this. Mr. Boswell said he knows, but Mr. Zaitchik is the one saying all the trees would be removed. Mr. Zaitchik replied they were not talking about trees before. At the time this was approved, there were no regulated trees, so they were talking about brush. Now they have acknowledged there are some regulated trees there, and they understand they have to work around them. Whether that means working around them with a bobcat or manually would have to be worked out. He said he did not have enough experience to know what is available. If they tell the contractors available to them that the only way they can work is with wheelbarrows and shovels, he was not sure they would want to do that or if it could realistically be done. He was not really in the position to know whether this is realistic or not.

Mr. Boswell remarked that brush makes a pretty nice buffer. If people are worried about safety and little kids, actually they are more likely to stay away if the brush and trees have not been cleared. Mr. Zaitchik said they are clearing to be able to construct the wall, but then there would also be a row of trees along the top of the wall.

Mr. Kaiser asked Mr. Boswell if they should propose a condition or wait until they see the Tree Survey. Mr. Boswell answered they could probably wait until the survey,

although because this is a Site Plan issue, he decided it probably should not. He added he would like to see things left as natural as possible between the two subdivisions, especially with the wall being installed.

Mr. Rosen said the Commissioners usually do not approve trees between residential development areas. In this particular case, it was approved on the Tentative Preliminary Plat from 1997 because there was a need to shield the homes from the roads. As he recalled, the discussion largely revolved around a lot fronting to a road and backing to a road, and it was a difficult issue. He said the original plan approved in 1997 seemed to have the right measure of buffer. It concerns him that this plan showed a change in the number and density of trees that would be between the homes and the road. He understands about the re-engineering of the drains and that the drain is large, but a long period of time has elapsed and a lot of trees have grown. What seems to happen with development is that as the engineers and builders get involved, the scope of the physical size of the construction grows. They went from a simple wall with some trees on top to a full eighteen feet. He voted in favor of the Tentative Preliminary Plat in 1997 because he felt assured all this would work out. What is being heard is telling him that the plan is beginning to change, and it is not working out like it was supposed to.

Mr. Rosen said the issue of separating the two subdivision also concerns him. It has been the policy of the city to encourage interconnection among subdivisions, for safety and other reasons, particularly when it has a Phase 1 and 2 in the same subdivision. The lesson here, he thinks, is that the City did not enforce the requirement that developers must show the total scope of the development. When Planning Commission and City Council looked at Subdivisions No. 1 and 2, No. 3 was not there and the stub was left at Archer's Court because they thought someone would do something someday. It did not turn out that way. It turned out to be a much more difficult piece to develop and, given the way this one has played out, although it seems contrary to the general policy and the operating practice of the City, it probably is appropriate to place the financial burden of the difficult development onto the lots being developed. A lot more money will go into this piece and the lots will be more expensive. It will be more difficult to recover. He is hearing that things have changed, and it is not the normal situation where the streets and homes are in the same place, and the conditions are not the same. He would like to get comfortable that it will all work out. They might postpone the location of trees offsite, and the type of fence, to some future time, but hopefully before City Council meets regarding this.

Mr. Kaiser asked Ms. Millhouse what response she had to Mr. Boswell's or Mr. Rosen's concerns.

Ms. Millhouse said that she apologized because she was not sure where Mr. Rosen was going. To answer Mr. Boswell, she pointed out that the Tentative Approval of the Preliminary Plat was conditioned that not only replacement trees be placed on adjacent lots, but also that the applicant work in good faith to preserve trees. She did not think they were necessarily working at odds on the construction aspect versus the need to save trees. She asked if the applicant had a problem agreeing to maintaining as much natural vegetation along the western property line as is possible, given the parameters of the construction approved.

Mr. Kaiser commented that if he were the applicant, he would agree to that in a minute. He said he was asking for better language from Staff because he thought Mr. Boswell's concerns were appropriate. Ms. Millhouse said again, like the Tentative Preliminary Plat, it is a very difficult thing to nail down. She said Mr. Kaiser referenced the recommendation relative to Final Approval, which says, "If the Planning Commission finds that the submitted plat documents are in close agreement with the Tentatively Approved Preliminary Plat and are in compliance with this Code, it shall recommend approval, with or without conditions." Mr. Kaiser said that is right, and that is why he did not think the Ordinance helped to address Mr. Rosen's concerns very much. He thought the Tree Permit would drive the new survey and result in a request for an amended Tree Removal Permit. This would address some of Mr. Rosen's comments. He was not sure they could deal with much else, based on the changed conditions.

Mr. Rosen suggested that condition #10, third line, should read, "such agreements to be in writing before Final Plat Approval. Ms. Millhouse said that was in the end, and read it. Mr. Rosen said Mr. Anzek thought it would be four to six weeks for potential Final Plat Approval and asked if four to six weeks was reasonable to have agreements from the neighbors. Mr. Zaitchik replied he thought it was, and said all they have to do is put up some snow fence showing where the proposed wall would be, and put some stakes on the property line, and this can be done in a couple of days. It is a matter of setting a date and in one meeting with Singh, the adjacent homeowners, the City's Landscape Architect and Forestry, they could resolve that issue. Mr. Kaiser asked if that addressed Mr. Boswell's concern about the method the applicant is talking about using.

Mr. Hooper said it was his opinion that for the six-foot area that is going to be disturbed to put the lattice tieback in and establish the snow fence, that they should use whatever method is necessary to leave the 12-foot area undisturbed. He asked if the revised Tree Removal Permit would be a condition or separate motion. Mr. Kaiser recommended adding a condition.

Ms. Millhouse said she was not sure if condition #4 would be necessary since this is a platted subdivision. She thought that should be handled on the Final Plat, as previously mentioned by the applicant, and then in the deed restrictions and covenants. She was not sure if there was a separate landscape easement document.

Mr. Rosen asked who owned the easement and added he did not believe it was in the City right-of-way. Ms. Millhouse said it was part of the subject site. Mr. Zaitchik answered it is a subdivision common area, which would be owned by the Homeowner's Association. Ms. Millhouse clarified that only the area west of Acorn Glen would be a common area. The area on lots 104, 105 and 107 would not. She asked if that was correct. Mr. Zaitchik agreed that was correct. Those lots represent a separate landscape easement. Mr. Kaiser said, if the common area is all in North Oaks No. 3, and is consistent with the plat, Ms. Millhouse is correct, it would be redundant to say there needs to be a separate easement as referenced in pre-printed condition number four.

Mr. Hooper said that several of the residents brought up the point about the definition of a greenbelt. He said one person could say it means it could be mowed or someone could play soccer on it, and someone else might think it means existing grasses, which are never to be touched. He asked if this subject should be pursued further. Ms. Millhouse clarified that they are talking about two different things. There is the common area, which will be the 25-foot "greenbelt" west of Acorn Glen. On lots 104, 105 and 107, there will be a 25-foot landscape easement, which is part of the lot. The minimum side yard setback for this zoning district is only 15 feet. The two new homes could actually be located within 15 feet of the rear lot lines of North Oaks No. 1. The applicant has agreed to a 25-foot separation so that the homes and/or the driveways would not be located closer than 25 feet to the property line. The question was raised about how that could be done - how they would make the Building Department aware of that so when someone applies for a Building Permit, it would show a 25-foot setback. That is apparently where the idea of the landscaped easement came about.

Mr. Hooper said they could not do anything to Dutton Road, other than west of lot 104. He asked if the intent was to plant the trees, as shown on the plan, and then leave the rest as native. He asked if the common area was to be determined by the Homeowner's Association. Ms. Millhouse replied it was her understanding that the 25-foot strip west of Acorn Glen would be planted according to this plan, if it is approved, and it would be the responsibility of the Homeowner's Association to maintain that area.

Mr. Boswell suggested the condition say for the western most property line, behind the walled area, that ten feet be left in its natural state. That gives the applicant eight feet to work on the wall. Mr. Zaitchik asked if two feet is enough for the college students in wheelbarrows to work. Mr. Boswell changed it to 12 feet. Mr. Zaitchik thought that was reasonable and they could work with that. He then realized it should go two feet the other way because now there is only six feet to work with behind the wall. He said they need six feet for tiebacks and another four feet to work. He said it should read that the western most eight feet, rather than 12 feet, be left natural. Mr. Zaitchik said he

neglected to mention something else the construction people pointed out to him. When they are excavating something, they cannot excavate a sheer wall, because it is very unsafe and pieces can break off and bury someone. There has to be a certain angle of repose back in order to make an excavation safe. If they need six feet for tiebacks, they cannot over-excavate six or eight feet and have a sheer wall of dirt or sand. There has to be an angle back towards the property line, at least a one on one.

Mr. Kaiser asked how continuous the tiebacks are for this construction. He was told the whole length of the wall. He asked for an explanation and Mr. Landis said there were four tiebacks per tier along the height, which would go the full length of the wall and extend back behind the wall eight feet. The entire area has to be excavated. Mr. Kaiser asked if there could be more of those per segment or tier of the wall, so they would not have to go back eight feet. Mr. Landis did not believe so. It would run continuously the whole length. Mr. Kaiser said they could not ask them to not clear everything behind the wall but said that no one really took into account what the reality would be when someone starts to excavate. Mr. Zaitchik said the 18 feet behind the wall was part of the Preliminary Plat Approval also and one time it was even closer to the property line. It has been moved away. They are landscaping that whole area to try to buffer the two subdivisions.

Mr. Rosen asked if the wall was 12 feet high with two six-foot jumps. He was told yes. He noted that they need eight feet for their tiebacks and one on one for excavation to be able to avoid cave-ins, etc. He asked if that was right. Mr. Zaitchik said yes, which he realized puts them at 20 feet. Mr. Rosen said that is what he added but said the area between the top of the wall and the property line shows 18 feet on the plan. Obviously, they have not worked all this out or it would not have come out in the discussion tonight. It concerns him that this is either not the same plan, or they do not have enough information to tell it is the same plan. Mr. Zaitchik said that he thought it occurred because they generally never get into so much detail before those things are worked out in the construction field, and they also never addressed the subject with so much detail in the past. They never actually put themselves in the position of building the wall and trying to determine how they would specifically do it at this stage.

Mr. Rosen said Mr. Zaitchik had to understand his position. He has sat through an hour and a half and they just now got to the point where it was relatively clear that everything from the property line behind the wall needs to be clear cut. It was not presented until just now. He asked Mr. Zaitchik if he is supposed to agree it is essentially the same plan and that it should breeze right through the approval process. He said if it were essentially the same plan, the Commissioners would have been done in 20 minutes.

Mr. Zaitchik said that when they presented this plan as the Preliminary Plat, it was the exact same plan and showed the wall in the exact same place and showed landscaping on top of the wall. It was not discussed how it would be constructed in detail at the time. He agreed that to dribble out information is not a good idea, but said the angle of repose is not set in stone, either. There are other ways to handle that problem. There may be other ways to protect things during excavation.

Ms. Millhouse said she had a copy of the stamped, Tentative Preliminary Plat and the applicant is correct that for the layout and required tiering, the drawing is identical, except it had a wooden fence on top and now the fence is undefined. It showed the 18-foot separation from the property line. It showed the two 6-foot tiers with four feet in between; as far as the clearing, she asked the engineer if he used the same legend from the previous approval. He replied he had.

Mr. Boswell asked Mr. Zaitchik if he said at one point the wall was closer to the property line. He replied yes. Mr. Boswell observed that five years ago it was moved out. He asked Mr. Zaitchik if they were originally going to dig 15 feet into the neighbor's property to build the wall. Mr. Zaitchik said that it was originally a solid 12-foot wall, and then a request was made to tier two six-foot walls. When it got moved back, they did not notice that it was getting too close to the property line to actually build. Mr. Boswell commented that people who sit on this Commission are citizens who may be engineers or may not. They are asked to approve things for which they are not given all the

information. It seemed very reasonable to him that they could maintain ten feet of natural area behind the wall, abutting the neighbor's property. Now he is being told the ten feet cannot be maintained because they have to go two feet into the neighbors' property to get the one on one. He can understand that five years ago things were a little more preliminary than now. He does not like finding out that what he approved five years ago is not what he thought was approved. He agreed with Mr. Rosen that things were not exactly the same.

Mr. Kaiser urged Mr. Hooper to adopt Mr. Boswell's view of this site and add a condition that no work at all will take place within ten feet of the western property line along the length of the wall, and that said ten feet is to be demarcated by snow fence at the time of the request for a Land Improvement Permit. Between now and when this matter goes to City Council, if the applicant determines this cannot be done, and if they can convince Council that it cannot be done, Council will have to decide about it. The applicant may even come up with a better way to resolve this whole issue. He does not see how Planning Commission will resolve this tonight. He supposed this could be postponed or taken up another night, but he did not feel that was necessary. If the Commission makes it a condition, and the applicant goes to Council and advocates it cannot be done, so be it.

Mr. Hooper wished to discuss the wall further. The top retaining wall, six feet back for the tie back, and a one on one for OSHA makes 12 feet behind the wall and he suggested they can maintain a six foot clear zone from the property line towards the retaining wall, and construct that wall with normal methods. He asked what the applicant thought about that.

Mr. Zaitchik said the plan shows a five-foot tie back. He said they would further discuss the tiebacks and what would work or not. If they were given a condition that it has to be done a certain way, they can drive pilings in the ground so they do not have to do the angle of repose. There are ways of doing it, although it is very expensive. They worked on an office building which had similar constraints, so it can be done. Regarding the Ordinance requirements for a subdivision next to another subdivision, he feels they are going over and above what is required. There was nothing said at the previous meeting about leaving everything in its natural state, although a certain amount will be left natural to the property line. They are already doing other things, and he was having a hard time trying to understand why they are being pushed to do this. Mr. Hooper asked if they would agree to a six-foot clear zone. Mr. Zaitchik replied they would.

Mr. Rosen said that homes backing up to a road makes a plan fundamentally different in all but a very limited number of circumstances in the City. Such plans are always controversial and what makes this plan different and unusual. If this property had been developed with Sub. Nos. 1 and 2, Nos. 1, 2, and 3 probably would not look like they do today. It would have been a much different layout, it would have been smarter, it would have been a lot cheaper, and they could have avoided all kinds of problems. That was Singh's doing. It was not anything the City did. Fortunately, there are some parameters. He asked Mr. Zaitchik what changed with the storm water detention from 1997. Mr. Zaitchik answered nothing changed – what he described was the detention system for this subdivision in lieu of an above-ground detention pond, where they would have to clear off a lot of trees and make a bowl in the ground. They did not want to do that. Their detention is within the oversized pipes in the ground. That has not changed since 1997.

Ms. Millhouse informed them that was not exactly correct. The one thing that has changed, and one of the reasons the condition for the completion of drain improvements is on there, is that even though the on-site detention remains the same, how it will get out is different. She asked Mr. Zaitchik if part of the drain project is to enclose the area, which will become the outflow for the project. He replied that it is part of the City Drain Project and is not on Singh's property. There is an existing outlet now, and they are out-flowing at agricultural flow, which is what is allowed by Ordinance. It will go through the existing drain. There is a problem at Livernois Rd., and the City is doing a drain improvement project for that, and part of that will come up to the edge of Singh's property and provide a better outlet. It has not been resolved yet whether that will be

an enclosed outlet. It might just be a drainage ditch that is lined with cobblestone. They are still talking with the Oakland County Drain Commission about that. It is not part of North Oaks No. 3.

Mr. Kaiser asked Mr. Zaitchik if City Council did not make them put in a 60-foot right-of-way road, if they would have resistance to moving the wall further from the property line. Mr. Zaitchik said a smaller right-of-way would be fine. Mr. Kaiser said that between now and when they goes to City Council, whether they go with a recommendation for or against, they might want to talk with the Planning Staff and consider presenting that request to City Council as an alternative to resolving the wall issue. Mr. Zaitchik thanked him and said it was a good idea. Mr. Kaiser believed that City Council, through the minutes, would figure out that this is a significant topic, and he did not think the Planning Commission needed to make a recommendation concerning what Council should do about the right-of-way change.

Mr. Hooper referenced Sheet LS-2, and asked how far off the property line the trees that are shown for planting in the easement would be. Mr. Landis said that the intent was to center them between the property line and the wall, for as much room for growth as possible.

MOTION by Hooper, seconded by Brnabic, in the matter of City File No. 87-900.3 (North Oaks Subdivision No. 3), the Planning Commission **Recommends** City Council **Grant Final Approval** of the **Preliminary Plat**, based on plans dated received by the Planning Department on April 16, 2002, with the following 2 findings and subject to the following 18 conditions.

FINDINGS:

1. The Preliminary Plat is in substantial compliance with the previously approved Tentative Preliminary Plat street and lot layout.
2. The Preliminary Plat and associated documents conform to all applicable City ordinances, standards, regulations, and requirements.

CONDITIONS:

1. Completion of the Charles R. Moon Drain improvements, and indication on the North Oaks Subdivision No. 3 construction plans of connection to the completed drain in order to obtain a Land Improvement Permit.
2. The 25-foot greenbelt landscape easement indicated west of Acorn Glen and along the westerly property line of Lot 104 be extended along the westerly property line of Lots 105 and 107.
3. The building footprints for Lots 105 and 107 be located outside the 25-foot greenbelt landscape easement and the driveways be indicated on the east side of the home.
4. Inclusion of a detail indicating the type and height of the fence to be installed west of Acorn Glen, as approved by the City.
5. Correction of the tree conservation calculations as indicated in the Parks and Forestry memorandum dated April 30, 2002.
6. The Redspire pears on the Dutton Road right-of-way be changed to red or white oak, as approved by the City.
7. Submittal of a tree planting plan, to be approved by the Forestry Division, indicating the planting of trees in the Dutton Road right-of-way to replace eleven trees to be removed from the city-owned portion of the Dutton Road right-of-way

- or payment of \$2,860 into the Tree Fund prior to issuance of a Land Improvement Permit.
8. A note be added to the preliminary plat indicating that the applicant acknowledges the responsibility for replacing the trees on an inch-for-inch basis, if development of the project (including lot grading and installation of check dams) results in the total number of existing regulated trees dropping below 37 percent.
 9. Number, type, and specific location of replacement trees on adjacent lots within North Oaks Subdivision No. 1 be mutually agreed to by the property owner and applicant, as approved by the City's Landscape Architect. Such agreements to be in writing, with the applicant agreeing to a time frame for installation of the trees; the applicant guaranteeing survivability for two full growing seasons; the property owner accepting maintenance responsibilities; and, the property owner agreeing to not remove the tree(s) without prior approval of the City. Such agreements be submitted by the applicant prior to action by City Council.
 10. The six (6) Redspire pears along Acorn Glen be changed to white spruce.
 11. Provision of a performance guarantee in the amount of \$8,819.00, as adjusted if necessary by the City, to ensure the proper installation of replacement trees. Such guarantee to be provided by the applicant prior to issuance of a Land Improvement Permit.
 12. Payment of \$31,590.00, as adjusted if necessary by the City, into the City Tree Fund prior to issuance of a Land Improvement Permit.
 13. Provision of a performance and maintenance guarantee in the amount of \$4,520.00, as adjusted if necessary by the City, to ensure the correct installation and maintenance of the proposed landscaping. Such guarantees to be provided by the applicant prior to issuance of a Land Improvement Permit.
 14. Payment by the applicant of \$1,600.00, as adjusted if necessary by the City's Forestry Division, for one street tree per lot. Such payment to be provided prior to issuance of a Land Improvement Permit.
 15. The applicant provide documentation by letter and/or addition to the plat submitted for approval by City Council that there will be a separate Homeowner's Association for North Oaks Subdivision No. 3.
 16. An area be staked between the retaining wall and the adjacent neighbors' property to demonstrate and allow for visioning what kinds of trees and where trees can go prior to the homeowner's meeting, which is to take place consistent with condition number 9.
 17. A new Tree Removal Permit be obtained, as necessary, after an updated tree survey is conducted and submitted to the City. Such Tree Removal Permit, if needed, to be obtained prior to issuance of a Land Improvement Permit.
 18. No work will occur within six feet of the western property line in an area equal to the length of the retaining wall, and a snow fence will be placed along that same six-foot line. Such snow fence to be installed prior to, during, and until utilities, the wall itself, and pavement are completed and re-vegetation has begun.

Roll call vote:

Ayes: Holder, Boswell, Rosen, Kaltsounis, Brnabic, Hooper
Nays: Kaiser, Myers
Absent: Ruggiero

MOTION CARRIED

Mr. Kaiser informed them that City Council would get this recommendation for approval. He urged the applicant to work out some parameters and meeting times with the neighbors before they leave tonight or in the next day or two, so their meeting is meaningful when it gets to City Council.

Recess 9:45 for 10 minutes

3. Site Plan Approval - File No. 01-022

Project: Polker Industrial Buildings, two industrial buildings totaling approximately 40,000 square feet on 3.075 acres
Requests: Buffer Modification
Site Plan Approval
Location: East of Crooks Rd., North of M-59
Parcel: 15-28-717-032, zoned I-1, Light Industrial District
Applicant: Polker Properties, L.L.C.
1773 Star-Batt Drive
Rochester Hills, MI 48307

(Reference: Staff Report prepared by Derek Delacourt dated May 7, 2002 has been placed on file and by reference becomes part of the record hereof).

Present for the applicant were Mark Abanatha, Vice President of Alexendar V. Bogaerts Associates, Architects, Tim Germain, Nowak & Fraus, Civil Engineers, Jim Ludwig, Ludwig and Associates, Landscape Architects, and Arthur Polker, Polker Properties, L.L.C., the owner of the project.

Mr. Delacourt first advised the Commission that pre-printed condition number two should be changed to \$20,935.00. There should also be a condition added that the applicant reduce the parking stalls along the southern property line to 18 feet, increasing the required Type B Buffer width 25 feet. That change is based on the recent Ordinance change in parking lot requirement sizes. They would have originally needed to seek a Buffer Modification for the two-foot width needed along the property line in that area. They are requesting a Buffer Modification to meet IVO requirements for the grouping of trees in that area.

Mr. Abanatha stated that the design goal for the project was to create a unique, high-tech design for the overall development. It is a unique site, in that there is frontage on both sides of the project, on Star Batt, as well as M-59. That gave them a design parameter to be able to enhance the overall elevation on both sides. One of the requests by Mr. Polker was that they design two separate structures, which would give him flexibility in terms of marketing and leasing. The architects suggested they could do that and create a look of one unifying project. They created a large, arched element which will be on both roads, but be linked together, thus giving the image of one large building. They reinforced that image with horizontal lines, which go around the entire building. He went into a little more detail about the elevation and said they finally pulled everything together with the windows by using a square, glass block pattern and square paneling at various locations along the entire perimeter of the project. This further enhances the vertical facade, as well as the horizontal design. He informed them that the materials for the project would be a split face block, and the balance of the main part of the building would be a white split face and the glass block and frames would be green, with green reflective glass. They tried to maximize the vehicular and pedestrian circulation with perimeter circulation, and they provided that also through the service core area. There are walks provided from the parking area to the doors of the buildings. He continued that the parking was based on a worst-case scenario, 50 percent for office and 50 percent for manufacturing and warehousing. 25 percent of the project would be for Mr. Polker's business, Polker Design, and the balance would be spec. Sheet 1 of the plan notes that all future building tenants will meet the City's I-1 permitted uses.