



# Rochester Hills Master Report

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**File Number: 2005-0065**

**File Number:** 2005-0065      **File Type:** Project      **Status:** In Council  
**Version:** 2      **Reference:** 04-011      **Controlling Body:** City Council  
**Requester:** Planning/Development      **Cost:**      **Introduced:** 01/18/2005  
**File Name:** Grace Parc TPP      **Final Action:**

**Title:** Tentative Approval of the Preliminary Plat - City File No. 04-011 - Grace Parc, a proposed subdivision located north of South Boulevard between Rochester and Livernois Roads, zoned R-4, One Family Residential, known as Parcel Numbers 15-34-402-035 and -057, Grace Street Development, Inc., applicant.

**Notes:** Grace Street Development, Inc.  
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**Code Sections:**

**Indexes:** Plats

**Sponsors:**

**Attachments:** Agenda Summary.pdf, 031505 Staff Report.pdf, 012805 Staff Report.pdf, Memo Depp 20050405.pdf, Memo Dinkins 20050407.pdf, Memo Millhouse 20050211.pdf, Survey Memo.pdf, Plans - Grace Parc.pdf

**Agenda Date:**

**Agenda Number:**

**Enactment Date:**

**Enactment Number:**

## History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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1	Planning Commission	02/01/2005	Discussed				Pass
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**Notes:** *(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.

1 Planning Commission 03/15/2005 Recommended for City Council Pass  
Approval

Notes: (Reference: Staff Report prepared by Deborah Millhouse, dated March 11, 2005 had been placed on file and by reference became part of the record thereof.)

Present for the applicant were Frank Mancini, Grace Street Development, 47858 Van Dyke, Shelby Township, MI; Tom Kalas, Kalas Kadian, P.L.C., 40900 Woodward Ave., Suite 315, Bloomfield Hills, MI 48304; and Bill Mosher, Apex Engineering, 47745 Van Dyke Ave., Shelby Township, MI 48317.

Ms. Millhouse noted that this was the third time the Commission had seen the submittal. The first plan showed a continuation from McComb St. south to Grace Ave. At the Commission's request, the applicant came back with several alternative layouts. One alternative was recommended for further consideration, which the applicant provided for technical review. She advised that Staff recommended approval of the Tentative Preliminary Plat and Tree Removal Permit, and that any conditions of approval were included in the Staff Report. She added that the number of trees onsite and any proposed for removal remained the same from that originally advertised.

Mr. Rosen asked Mr. Mancini if he had received a copy of the Staff Report, which was confirmed, and Mr. Mancini also stated that he had no concerns. Mr. Rosen opened the public comments at 7:37 p.m.

**Cliff Durand, 470 Grace Ave., Rochester Hills, MI** Mr. Durand thanked the Commission for allowing him to speak, and thanked Mr. Mancini for working with the homeowners. He stated that Mr. Mancini came to a conclusion that placed two homes and a detention pond on private Grace Ave. The outcome was beneficial to Mr. Mancini also, because he got an additional lot. Mr. Durand questioned if there would be shielding along the west side of the development to delineate the property boundaries during the home construction, or whether the cost would fall on the current property owners. He believed that without fencing, properties could become dumping grounds for trash. He wondered if Mr. Mancini would be obligated to form a tree line or something similar to keep trash out. He mentioned the western stub for the proposed development, stating that Mr. Mancini assumed that placement would be acceptable by the affected property owners. Mr. Durand's property bordered the western edge of proposed Grace Parc. If the stub were put in where proposed and he wanted to sell his property, he would have to break it into four smaller parcels. He mentioned a proposed development to the west of Grace Parc, noting that the applicant (Mr. Vitale) would like to put a road farther to the north and connect with Mr. Mancini's road. That would allow Mr. Durand and his neighbor to be able to divide their property into two larger lots, which would be more conducive to the area. He would prefer not to be forced into making four small lots at the back of his house. Mr. Durand indicated that Mr. Vitale's property could be developed if the road in Grace Parc were put a little further to the north. McComb and Grace Ave. on the west could be connected, which would eliminate the need for a variance for a long road. The residents on McComb and in Grace Parc would also have the option of two accesses, which would be better for the Fire Department. Mr. Vitale had indicated that he and Mr. Mancini were on the same chapter, but not on the right page yet. Mr. Durand felt it would behoove the City to

direct both developers to work out their problems and find an acceptable compromise. He quoted one of the Commissioners he felt said it best: "If we are going to do this, then we should require it to be done correctly by all concerned." Mr. Durand stated that he was not trying to stop development because it would come with the passage of time regardless, but he was interested in seeing it done right the first time.

Mr. Rosen closed the public comments at 8:43 p.m.

Mr. Rosen referred to the comment about putting a barrier between the properties and advised that Rochester Hills did not require or encourage a formal barrier between residential properties. He understood the concern about trash, but indicated that it was something the neighbors had to work out privately. He also understood the concern about Mr. Vitale's proposal, realizing it would make sense to work with Mr. Mancini; however, he advised that the City had no authority to force both developers to do anything together because they were at such a disparity in the progress - one was well behind the other. If Mr. Mancini completed his development, Mr. Vitale would have to accept that he was first. Mr. Rosen indicated that it was not something the Commission could control, even though they would rather see both plans, and he noted that the City would ask them to work together. He suggested that if the developers were able to work something out, Mr. Mancini might wish to submit a revision.

Mr. Hooper referred to Condition five, which talked about eliminating the sidewalk ramp on the east side of McComb proposed to go south, and asked why they would eliminate it.

Mr. Mosher said he had talked about that with the City's Traffic Engineer, and since there would not be a ramp on the south side and it would be a cul-de-sac, he felt the crossing should be prohibited at Verona Drive. It would still go east and west to be able to cross McComb safely.

Mr. Hooper questioned why there should not be a safe way to cross the street, even with a cul-de-sac. Mr. Mosher replied that the Traffic Engineer advised that it should not be eliminated and that he had erred. Mr. Hooper asked if the same held true for Condition six - that it should show a sidewalk ramp on the south side of Verona for the sidewalk crossing west of McComb. Mr. Mosher believed it was shown, and said it was either/or, and that the City's Traffic Engineer made the decision to eliminate any connection.

Ms. Millhouse explained that Engineering Services felt there was no need for a north/south crossing on both the east and west side of McComb. Condition five spoke to that - to eliminate the ramp on the east side heading south because there would be one on the west side heading south. Condition six asked the applicant to show a ramp on the south side to make the connection to the west side. Engineering did not believe two cross accesses were needed for both the east and west side of McComb for the sidewalk.

*One would suffice, and they suggested it be on the west side. For anyone coming down the west side of McComb and going straight across, they would pick up the sidewalk on the south side of Verona. Following that explanation, Mr. Kaltsounis moved the following motion.*

Aye: Boswell, Brnabic, Hardenburg, Hill, Kaltsounis, Schroeder, Rosen and Hooper  
Absent: Kaiser

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### **Text of Legislative File 2005-0065**

**..Title**

Tentative Approval of the Preliminary Plat - City File No. 04-011 - Grace Parc, a proposed subdivision located north of South Boulevard between Rochester and Livernois Roads, zoned R-4, One Family Residential, known as Parcel Numbers 15-34-402-035 and -057, Grace Street Development, Inc., applicant.

**..Body**

**Resolved** that the Rochester Hills City Council hereby grants Tentative Approval of the Preliminary Plat for Grace Parc Subdivision (City File No. 04-011), based on the plat dated received by the Department of Planning and Development on March 22, 2005, with the following six findings and subject to the following ten conditions. The affected property is zoned R-4, One-Family Residential and identified as Parcel Numbers 15-34-402-057 and 15-34-402-035.

Findings:

1. Upon compliance with the following conditions, the preliminary plat meets all applicable requirements of the Zoning Ordinance and Subdivisions Ordinance.
2. Adequate utilities are available to properly service the proposed development.
3. The preliminary plat represents an acceptable comprehensive plan for future development to the west.
4. The preliminary plat represents a reasonable street and lot layout and orientation.
5. The Environmental Impact Statement shows that this development will have no substantially harmful effects on the environment.
6. The City acknowledges that Shortridge is the only access point for lots 3 thru 16 until such time as the stub street is extended westerly to a second access point.

CONDITIONS:

1. Provide a performance guarantee in the amount of \$8,085, as adjusted if necessary by the City's Landscape Architect, to ensure the proper installation of replacement trees. Such

- guarantee to be provided by the applicant prior to issuance of a Land Improvement Permit.
2. Tree protective fencing must be in place, inspected, and approved by the City's Landscape Architect prior to issuance of a Land Improvement Permit for this development.
  3. Indicate all trees on adjacent properties that will be affected by construction operations, including any trees with branches that overhang the limits of this development, prior to approval of the Tree Replacement Plan (Sheet 5 of 5) by staff.
  4. Show tree protective fencing at the actual dripline of all trees on adjacent properties that will be affected by construction operations prior to approval of the Tree Replacement Plan (Sheet 5 of 5) by staff.
  5. If necessary, relocate the storm drain lines further away from the adjacent properties to avoid any grading, digging, trenching or boring within the dripline of trees located on adjacent properties, as approved by staff.
  6. Determine and correct the proposed lot averaging table (Sheet 1 of 5) to accurately reflect the "lot width" at the setback line of all lots, as defined by Section 138-3 (page CD138:15) of the City's Zoning Ordinance.
  7. Correct the width of lot 11 at the right-of-way line on the lot averaging table (Sheet 1 of 5).
  8. Correct the name of the stub street to the west to read Verona Drive on Sheet 1 of 5.
  9. Address the applicable geometric concerns referenced by the City's Survey Technician in his memorandum dated April 5, 2005.
  10. Refer to Grace "Avenue" on all sheets of the preliminary plat.