

City of Northfield Planning & Zoning Board
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Minutes: November 20, 2008

Notice of this meeting had been given in accordance with Chapter 231 Public Law 1975, otherwise known as the Open Public Meetings Act. Notice of this meeting had been given to The Press, posted on the bulletin board in City Hall, and filed with the City Clerk, stating the date, time and place of the meeting and the agenda to the extent known.

The regular meeting of the Northfield Planning & Zoning Board, held on Thursday, November 20, 2008 in Council Chambers, City Hall, Northfield, was opened by Chairman Richard Levitt at 7:30 p.m. and the following members were present:

Dr. Richard Levitt-Chairman
Clem Scharff-Vice Chairman-absent
Mayor Vincent Mazzeo
Jason O'Grady, Councilman-absent
Chief Robert James
Lou Milone
John Clifford
Ron Roegiers
Henry Notaro
Jim Shippen
Linda Dyrek

Norman Zlotnick, Solicitor
Matt Doran, PE-Engineer

The application before the Board this evening is a continuation of the hearing which was first heard August 21, 2008. The applicant is Roger B. Hansen of 1300 Argo Lane, Block 175, Lot 38 for a preliminary major subdivision with "C" variances for lots fronting on a non-conforming public street. The zone is R-1, surrounded by CC zone.

Sal Perillo of Nehmad, Perillo & Davis of Somers Point was present to represent the Hansen's. Jack Plackter of Fox Rothschild in Atlantic City was present to represent Dr. & Mrs. Gove, the Hansen's neighbor, and the Atlantic City Country Club.

Mr. Perillo began by stating that the objectors finished examination of their Engineer, Sean Delaney, and it was his turn to cross-examine him. Mr. Perillo said there are three changes to the plan and Mr. Plackter objected that the new plan was being offered without a 10-day notice. Mr. Zlotnick said the hearing can continue beyond tonight if necessary. Chairman Levitt said to see how substantive the plan is. Mr. Perillo presented Exhibit A-9 which is the new plan. Dr. Levitt asked if it was submitted to the Fire Department and he said he just got it today. Mr. Perillo noted the three objections from the Fire Department. The first is Public water, which they addressed. The second is widening the balance of Argo Lane which is under the City's control and the applicant will be obligated to pay their fair share, and the third is trimming the vegetation on Argo Lane for fire apparatus. Mr. Perillo said widening Argo Lane to a 20 ft. width including a 2 ft. shoulder on each side was suggested by the Engineer. Mr. Perillo mentioned off track road

improvements, referring to the Cole Bros. case and said there is no obligation to improve traffic as this would be the City's obligation at a pro rata cost to his client. This cannot be a basis to deny and the Board can only recommend to the City that the street be improved. He continued with a discussion of RSIS standards and its purposes and said if there is a conflict with the city, RSIS would govern. Mr. Perillo brought up the turning radius and the adequateness of 18 ft. and if Mr. Delaney had agreed this was adequate. He said he may have said that. Mr. Perillo said they will widen the interior roadway to 18 ft. and described 35 ft. turning radiuses on the plan. Mr. Delaney said he previously testified that 12 ft. was not adequate and that he did not have figures for 18 ft.

Mr. Perillo addressed other items that Mr. Delaney had previously testified to. Public water to the site has been agreed to. Mr. Perillo discussed hardship testimony and the different types of "C" variances, and the weighing of benefits and detriments. He then spoke about the bi-rite plan (Exhibit A-4), or Concept #1, which was not used, and that it has more impervious surface. Mr. Delaney commented that vegetation will be removed in both plans and that a private driveway could be maintained by the homeowners. Mr. Perillo asked if a Board could impose that on an applicant and Mr. Delaney said he could not speak for the Board. Mr. Perillo added that if the Board imposed that, they would have to grant variances for the two homes in the back that do not front on a public street. Mr. Perillo spoke about the storm water plan and asked if Mr. Delaney was familiar with it. He said he reviewed the plan that was prepared and his testimony was based on that. Mr. Perillo said Mr. Doran indicated the plan complies with the Northfield Ordinance. Mr. Delaney said he feels it does not comply with soil borings in the basin or DEP flood hazard area regulations. He added that the site is in a 100 year flood area and the DEP has elevation criteria. A good portion of the site runs through Elevation 9 with the top of basin in Elevation 7 which is two feet below a flood hazard area. Regulations require the top of the berm to be at or above a flood hazard area to prevent flooding into the basin and compromising the basin. Mr. Perillo acknowledged that Mr. Delaney is a good Engineer, but he did not agree with him. Dr. Levitt asked if the basin held fresh or salt water. Mr. Delaney said it is tidal. Dr. Levitt asked what the hazard would be. Mr. Delaney said there are regulations and runoff from the roadway, which then creates flooding, can spill out into the tidal areas. Dr. Levitt said that any tidal flooding would overwhelm any rain runoff in terms of quantity. Mr. Delaney added that the hazard is sediments, oil and grease can be carried into the tidal water body and can threaten endangered species and compromise that habitat.

Mayor Mazzeo asked about the pavers. Mr. Perillo said all interior roadways will have pavers, and referring to the plan and the "P" shaped roadway, will be 18 ft. wide.

Dave McInerney, a Licensed Planner, testified next. He said that Concept #1 is not an engineered plan or concept. He testified that there are no zoning purposes that are furthered and there may be impairments based on the exhibits, land use law, and the Master Plan. He quoted from the Master Plan re-evaluation concerning the golf course and said considering the nature of the country club, the Master Plan says to take care and not destroy this valuable resource. He said the Hansen plan would require the reconfiguration of two golf holes. Mr. Plackter added that the widening of Argo Lane and the cart way would actually affect 6 holes. Mr. McInerney said the Master Plan says not to harm the golf course. He discussed negative criteria and said the proposed subdivision has the potential to impair several purposes of land use law. One is due to the narrow width of Argo Lane and the road within the subdivision since they will constrain the movement of emergency vehicles including fire engines. A second involves the wetlands. In a March letter from the DEP, they stated that since coastal wetlands are in this area, a coastal permit will be required. In a May letter of Interpretation for the DEP, it was noted that there are freshwater wetland and transition areas. A buffer of up to 300 ft. may be imposed adjacent to coastal wetlands. He went further to explain coastal zone management rules and how they relate to the ordinance. He explained the definition of a wetlands buffer and said a 150 ft. to 300 ft. buffer could be required. Mr. McInerney produced a "landscape project map" and labeled it Exhibit 0-8 which showed the subdivision outlined in red. He noted a very large area adjoining the lots as a state endangered species habitat and identified the Black Skimmer, a coastal bird, as

one of the species in question. Another exhibit was submitted as Exhibit 0-9 which was a drawing of a DEP freshwater wetlands map showing saline marshes and wetlands on site. The presence of an endangered species habitat, according to the DEP will necessitate a buffer or transitional area of 150 ft. to 300 ft., but in the Environmental Impact Report, Black Skimmers and endangered species were not included.

Mr. McInerney continued to speak about the DEP and Dr. Levitt reminded him that the Board has no expertise in DEP regulations. Mr. McInerney said in the March 2008 letter from the DEP; they say that a DEP permit will be required. Dr. Levitt said isn't it in their jurisdiction to determine whether the project conforms to their standards. Mr. McInerney said the Board needs to be sure that the project, if approved, does not conflict. Dr. Levitt said that not having the expertise the DEP does, the Board would have to go along with any DEP's decision and refer to the experts. Mr. McInerney said they have mapped freshwater and coast wetlands on and immediately adjoining the site and that any development approved by the city cannot conflict with the general welfare of the state. Mr. Plackter added that their Environmental Impact statement is incomplete since they did not disclose threatened and endangered species such as the Black Skimmer. Mr. Zlotnick added that with the Concept #1 plan, which allows them to build without variances, would have to be engineered with state regulations as to wetlands and may impact the number of lots on the site. Mr. Galetta said they can comply with the items in the DEP letter.

Mr. Plackter said there are differences between regulations. Freshwater regulations require 150 ft. buffer and coastal wetlands would require 300 ft. Mr. Perillo noted that if the DEP commanded a 300 ft. buffer, they would need to change their plans to comply with the DEP and approvals would be contingent upon this. Mr. Clifford asked for clarification on the wording "up to 150 ft. or up to 300 ft." and Mr. Plackter said that the buffer footage could be less, say at 230 ft. Mr. McInerney said that the state referred to a "portion of the site", but it is not clear what that portion is according to the plan since they do not show a delineation line. The NJDEP says any site plans must show this line and label it with the DEP file number. It is difficult to show if this conforms to the May DEP letter of interpretation since their plan has the line labeled 'typical wetlands line' with a 50 ft. buffer.

Mr. McInerney continued discussing the purposes of land use law and said the subdivision should not adversely affect the environment and should promote health and safety. He said that lack of adequate access would impair safety from a fire situation and would adversely affect the wetlands and endangered species. He said that for a hardship "C" variance to be granted, exceptional difficulties and undue hardship have to be proven. He believes none has been demonstrated. Currently the area is a site of viable land use. There exists a pool, tennis court, lovely water views and a large home. It has great value as real estate. He referred to positive criteria and how benefits must substantially outweigh any detriments. He believes none of the ordinance would be furthered by this application and would not outweigh detriments.

Mr. Plackter showed Mr. McInerney Mr. Doran's report and said there is a dispute as to whether RSIS applies to the street and Mr. McInerney referred to page 3, number 1 of the review which says that "All Engineering review will be completed using the Residential Site Improvement Standards as required". It appears the Board Engineer agrees with Mr. Delaney. Mr. Plackter next referred to number 5 in Mr. Doran's report dealing with a turnaround at the end of Argo Lane and the need to service the new lots by emergency vehicles, as well as deliveries and trash removal and how they will safely access the five homes. Also, the width of Argo Lane varies, and the majority does not comply with the 21 ft. paved width requirement. Mr. Plackter asked if the plan complies with this and Mr. McInerney said it does not appear to. Mr. Plackter added that the ordinance 8.39 (actually 8.93) states that no street can be less than 30 ft. and that none of these streets (which apply to private, public and private alley streets) meet that width requirement and that this is superseded by RSIS. Mr. McInerney said he doesn't think the variance should be granted because it disregards the city's ordinance. Chairman Levitt brought up the point that the conforming plan would have a more negative visual impact in reference to Northfield's ordinance and would create more impervious surfaces and would cause more trees to be cut down. He

asked wouldn't this justify a variance? Mr. McInerney answered that again, the DEP wetlands line is not shown on the plan, the 150 ft. freshwater transitional area is not shown on the plan, and the 300 ft. wetlands coastal buffer is not shown. It is difficult for him to make a determination as a Planner as to what the potential impacts would be. Mr. Plackter asked Mr. McInerney to approach the Concept #1 plan on display. He asked him about the width of the streets. He answered 18 ft. Mr. Plackter said the plan is not engineered, does not comply with RSIS, and asked the Board Solicitor to advise that they strike this plan. Mr. Zlotnick said he will address this later when called upon.

Mr. Perillo questioned Mr. McInerney next. He said that Mr. Doran indicated that the Board use Criteria for C2 variances. He said unsafe conditions exist now at the site and they are only adding four houses. He quoted a Dunkin Donuts case and said the Board cannot deny due to off-track conditions. He added that the law is that if off-track improvements were made, the cost would have to be allocated on a pro rata basis to all homeowners who would benefit from the improvement. Mr. Perillo continued by saying the Golf Course is zoned CC and residential development is permitted on 15,000 sf lots. The area in question is unique in this area in that it is zoned R-1 and development is required to be built on a minimum of 10,000 sf lots. In determining the appropriate population density, the Board can look to the Zoning Ordinance for the density permitted. Mr. McInerney said the condition of the neighborhood and traffic safety on Argo Lane also has to be considered. Mr. Perillo said the applicant is proposing lots much larger than the requirements at 17,500 sf to 25,710 sf. Mr. Perillo referred to Mr. Doran's report and said in review #5, Mr. Doran is not recommending widening of the street or that the city widen the road. Mr. McInerney said Assistant Chief Lauren Crooks recommend that. Mr. Perillo quoted RSIS and then said the Board, as the Municipal Approving Authority, may require the cart way width, as a continuation of the existing street, to be the same width as the existing street. Mr. McInerney said it could be done if traffic safety issues were ignored. Mr. Perillo showed Mr. McInerney the new plan showing the trash truck K-turn and the emergency easement. He felt what is being proposed would be an improvement on traffic safety. Mr. McInerney did not agree entirely. He said it would improve movement of trash trucks on Argo lane. Mr. Perillo added that other approvals that will be needed can be found on the large plan and that there is a DEP number given in the notes which tells where to go for information. Mr. McInerney said he can't tell from the plans that they are in compliance with the DEP. Mr. Perillo said the applicant will have to satisfy the DEP that they have complied with the Letter of Interpretation. Mr. McInerney agreed. Mr. Perillo addressed the Black Skimmer issue and that the bird could possibly have a habitat in the area in question. Mr. McInerney said the Black Skimmer is a New Jersey State endangered species, not a Federal endangered species. Mr. Perillo asked if he has seen any evidence of Black Skimmers in the area and he answered that this bird is a shore bird located in the shore part of the wetlands and not an interior wetlands bird. Mr. Perillo had no further questions.

Al Litworne, a Traffic Engineer, gave his credentials to the Board. Mr. Plackter questioned Mr. Litworne. He said he has reviewed the plans, Mr. Doran's review, the Fire Department letter, RSIS, and the Northfield Zoning Ordinance. He was asked if the plan was entitled to any variances. He quoted RSIS minimum safety standards. Mr. Plackter said if RSIS standards apply for a 24 ft. cartway and a 20 ft. right of way, does the Board have the ability to grant a variance. Mr. Litworne said the Board would have to ask for an exception to be approved by the Department of Community affairs. He then quoted from a book written in 1992 (before RSIS) called "Managing transportation in your community" which was written by the NJDOT and provided to municipalities and Planning Boards to assist them in handling applications and to ensure that the street hierarchy is correct with clear site triangles. Some of the criteria to consider:

- Does the proposed street work well with the Master Plan?
- Is there good circulation within the site?
- Are there safe and convenient connections from the new street to connecting streets?
- Is the traffic study valid and accurate?
- Are the demands placed on the existing system being considered by the developer?

Are the transportation improvements a guaranteed aspect of the approval?

Mr. Litworne discussed the driveway and the definition according to RSIS. He said the driveway connects five dwelling units and the common driveways are connected by the easement. Since RSIS says that not more than four dwellings are allowed, this is not a driveway, but really a roadway. RSIS says 27 ft. roadway, within a 50 ft. right of way and a turnaround of 40 ft. within a 48 ft. right of way would be required. He looked at Concept #1 with the two cul-de-sacs and the right of way and said it is 25 ft. and 40 ft. in different spots. This would be considered a low intensity by RSIS standards and would require a 28 ft. cartway, 1 sidewalk and one graded area within a 50 ft. right of way. He discussed definitions of rural lanes and alleyways and said they apply here since alleyways typically serve the back of homes and rural lanes are for lower densities than what exists here. Mr. Litworne does not agree that Concept #1 is a bi-right since it is not following RSIS standards or the City Ordinance due to extra street width required and the addition of the roadway. There are safety issues due to the road width and there could be problems if an accident were to occur and block the right of way keeping emergency personnel from getting into the subdivision. He said that RSIS standards should be followed. He said Argo Lane will need improvement and will increase traffic at 48 to 50 trips per day. The speed limit on Argo Lane at the beginning of the street is 25 mph, but the end of Argo Lane could be a statutory 50 mph. He added that homeowners will not want to maintain the road and will want trash pick up since they are taxpayers.

Chairman Levitt asked about what he feels are conflicting statements. If there is a deviation from RSIS, does this require approval for the exception from the Department of Community Affairs and if so, do they intend to apply for this. Mr. Perillo contended that what they have submitted applies to RSIS. If anyone disagrees with that judgment, an appeal can be made to the Division of Community Affairs who will ultimately decide. Dr. Levitt asked Mr. Galetta about Concept #1 being a bi-rite plan. Mr. Galetta stated that the Concept #1 plan is over a year old at a time when two different plans were discussed. Since then RSIS standards have been updated and the plans were to show how they could comply with RSIS. He contends that a subdivision plan for four new homes and the existing dwelling can be prepared to comply with RSIS standards, for example, the 40 ft. right of way has been shown to be widened to 50 ft. and they have increased the radii within the subdivision. Chairman Levitt asked if a plan for four new lots could be done that does not require a variance to be approved and he would like to see that demonstrated. Mr. Galetta said he has such a plan, but so as not to complicate the issue, he did not bring out the plan since it was not submitted 10 days prior for review. No one has had the opportunity to see it. He said it conforms to the wetlands setback and they would need to go back to the DEP with preliminary approval to make sure all approvals are met prior to any final approval. Mr. Galetta brought out the plan and Mr. Plackter objected saying this is unfair and he wants to respond. Mr. Plackter said the concept plan is a cartoon which has not been engineered. Dr. Levitt said it is important to the Board, when considering variances, to know if the variances will be an improvement over what is required and does the applicant have a bi-right to build what is required. Mr. Plackter repeated that no one has seen this plan and Mr. Doran has not had the opportunity to review it. Dr. Levitt said the Board does not have a requirement for an applicant to submit two plans with an application and he believes this plan to be informational and he is interested in seeing it.

Mr. Perillo labeled the plan Exhibit A-10. Mr. Galetta said it is an alternative plan and it is his professional opinion that it can be done. Mr. Galetta said as a professional planner, he likes to study alternatives. At issue is a 50 ft. right of way, 40 ft. radii within the cul-de-sac, can they have a 150 ft. buffer for wetlands, can they meet road frontages as required by ordinance and can they have a bi-rite subdivision with no variances and no waivers. He believes they can. He said this plan is a graphic exhibit and he is not presenting a plan, which is not engineered, and that this is a professional interpretation of what can be done. Mr. Shippen asked if the right of way is 28 ft. and Mr. Galetta clarified that the cartway is 28 ft. wide and the right of way from the center line is widened to 25 ft. on one side, in essence half of 50 ft. right of way, and remains 7.5 ft. on the other side of the center line as existing on Argo Lane. Dr. Levitt commented that the applicant's Traffic Expert has testified that he felt people would drive slower because they know the road. Mr.

Litworne said people in a hurry tend to go faster and the road is not geared to extra speed and is not well illuminated. He added that visitors won't be as careful. Mr. Litworne's figure for trips per day is about 12 trips per day per new lot and is consistent with RSIS. Dr. Levitt asked if the applicant's traffic expert agrees with this figure and he said he thinks the trips per day would be 40 trips over a 24 hour period. Dr. Levitt suggested that the city could post a speed limit. Mr. Litworne said there is not one there now and that would require state approval.

Mr. Litworne said the new plan shows a 28 ft. width which is really what is needed in a new development. The current plan has inter-connections that are too narrow. If someone were to have a party, there would not be enough parking on the inside driveways and there is no parking lot or street and this would cause circulation problems. Parking would have to overflow onto the street. Mr. Perillo said that his expert testified that this is more in the nature of a rural street where 20 ft. width would be required. They could add an easement along the driveways to prohibit any development or landscaping along the driveway. Dr. Levitt asked about the circulatory part within the driveway and whose responsibility it would be. Mr. Perillo said it would be the homeowner's responsibility though an association and would be common ground for use by the properties that border it. Mr. Shippen commented on the easement beside the driveways which it was stated could be used for parking. His concern is that during inclement weather, rain and snow, he cannot see people pulling onto the grass and getting out of their cars in that. Mr. Perillo said there is substantial parking available in the longer driveways. Mr. Galetta said there is hard surfaced grass area that is used now for parking in inclement weather and there will be adequate area for parking in the 50 ft. easement. The back driveways are 50 to 60 ft.

Mr. Perillo questioned Mr. Litworne and quoting the Cox manual, specifically the Dunkin Donuts case, he said the Board cannot deny an application for off-track improvements and that most of Argo Lane is off track. Mr. Litworne said the Board should make sure that improvements are made that off track improvements are funded. Mr. Perillo asked if it was not true that the City could improve Argo Lane and pass on the cost to the homeowners. Mr. Litworne agreed that this is true and that 2/3 of the cost of Argo Lane improvements should be a function of this development. Mr. Perillo discussed the interior streets, driveways and easements. He asked Mr. Litworne if he testified to a 28 ft. cartway requirement. He said yes. Mr. Perillo said there is an RSIS provision allowing an exception when more than four lots are serviced by private driveways and Mr. Litworne said that is correct. Mr. Perillo said that Mr. Litworne has contended that the exception doesn't apply in this case because the grass emergency access easement between the main house and Lots 38.04 and 38.05 constitutes a connection of roadway between the upper portion of the subdivision and the two lots fronting on Argo Lane. Mr. Litworne said that RSIS in respect to common driveways established by easements and shared by more than one lot and not more than four dwelling units, doesn't say 'emergency easements' specifically, but all easements that connect. Mr. Perillo says RSIS defines driveways as being a road connecting property to a public street. This is not designed as such, but exclusively as an emergency access easement. Mr. Litworne said no, it does connect them to a public street and doesn't need the test of RSIS regulations. Mr. Perillo said ultimately, this will be up to the Department of Community Affairs.

Mr. Perillo continued by saying that rural street and rural lanes are determined by the total average daily traffic. Rural streets are determined by 500 trips per day on the average. He asked Mr. Litworne if these driveways will generate 500 trips per day. He answered he did not look at that aspect, he looked at Rural Lanes which are streets that serve lots that are over two acres, which does not qualify in this case.

Mr. Perillo and Mr. Litworne argued back and forth concerning the private drive/emergency access issue and whether or not RSIS applies. Chairman Levitt said the Board will ultimately have to decide whether the easement is for emergency access only or part of the driveway and further argument was not necessary. At this point the Chairman asked for a 5 minute recess at 9:40 p.m.

The hearing reconvened at 9:48 p.m. Mr. Perillo asked Mr. Canter, the Hansen's Traffic Engineer to address three specific points. Mr. Canter first addressed de-minimous exception in meeting DCA approval as spelled out in RSIS and said it is the Board who approves this and sends this to the DCA for filing. The reasoning behind the approval is attached by resolution and sent to DCA. One item that the Board can grant approval for is cart way width. The second point concerns speed limit. Since this is a total self-contained municipal street, the city can pass an ordinance without DOT approval, but they would send the information to DOT with the Engineer's certification. The city could go out tomorrow and post an advisory speed limit such as 'Narrow Road 10 mph' without approvals or an ordinance, but tickets could not be issued. The third point is that the Board needs to look at what they determine and classify, from both sides of testimony, Argo Lane to be. The Hansen's believe Argo Lane to be a rural street even though he feels no category actual truly fits this road. The maximum volume of 500 vehicles per day would produce a fair share formula of 40-48/500 if Argo Lane is improved. The opposing party feels the road is a residential access route which produces a formula of 40-48/1500, which he feels is not appropriate as the vehicles using this road would never be near 1500 trips per day.

Mr. Plackter asked for rebuttal testimony from Mr. Litworne. He said there are two types of exceptions. There are de-minimous exceptions which require a resolution which is recorded with the Site Improvement Advisory Board and there are waiver exceptions that are granted by the Site Improvement Advisory Board from a waiver request from the developer and the city. They can approve such waivers if a danger to the public would be created by adhering to the standards. Mr. Litworne does agree that Argo Lane needs to be improved and that the road within the development needs greater street width for parking, sidewalks, etc. Mr. Zlotnick asked Mr. Litworne if the Board can condition approval on the improvement of a public street by resolution. He said they can do it that way, but would have to call for the pro-rata share for the improvement. Mr. Zlotnick asked what if the city does not want to improve the public street. Mr. Litworne questioned granting the variance which will create additional traffic. Mr. Zlotnick asked if his answer was that you really can't condition approval by this Board for the improvement of a public street. Mr. Litworne said you can call for improvements across site frontage (on site) and off site, at a pro rata share. Conditions of approval are generally from outside agencies which require the improvements.

Dr. Levitt commented on Atlantic City Country Club's concerns and the visual impact. He asked what the applicant would be willing to do to provide buffering where houses would be visible and what landscaping would be provided to soften the impact on this unique aspect of the city. Mr. Perillo said property could be sold to them to add more buffering and he said they really have done all they can as Mr. Galletta has testified to. Within the confines that they are dealing with on the site, they want to maintain as much existing vegetation as possible between the development and the golf course. Mr. Perillo added that in the future, the Board may see a by-rite alternative which would include less of a buffer for Harrah's and the adjacent property owners with a 28 ft., 21 ft. or 20 ft. cartway along the border of the property. His client doesn't want this which is why they are offering this alternative. Dr. Levitt asked if they were then not willing to provide more buffering. Mr. Perillo said perhaps his client would be willing to plant additional trees or row of evergreens. All parties involved would have to meet to speak on this and agree to satisfy everyone. He added that the area is heavily vegetated now.

Chairman Levitt opened the public session. Donald Wadsworth was the first to speak. He is a 32 year resident of the city and lives at 3105 Cedarbridge Road, Block 9.01, Lot 4. He was a social member of the club when the Frasier's owned the Country Club. He appears tonight as a taxpayer and feels there are no benefits to the development and no benefit to Argo residents. He objects to the taxpayers having to pay for the widening of Argo Lane, sidewalks, tree removal and the alteration of the landscaping. He felt the property is appropriate as it is. He said the Board needs to make a decision which will benefit all and wonders why the applicant is pursuing this when the housing market is so depressed. He felt Mr. Hansen is trying to get the maximum out of his property, and since the casino won't buy it, is looking for taxpayers to bail him out so he can go to Florida.

The next person to speak was Madeline Goldenberg of 1707 Shore Road, Block 100, Lot 1 and she agreed with Mr. Wadsworth. She feels the traffic exiting Argo Lane onto Shore Road is bad now and affects Northfield Plaza. She asked that the site not be changed.

Joe Rodgers spoke next. He resides at 11 Argo Lane, Block 175, Lot 37.02. He has spoken before on this application and he commented that his son had a wedding at his property and he hired the police to guide guests to his home and had to seek other parking areas for the event. He feels parties or other functions would block the narrow portion of Argo Lane and create difficult situations. Mr. Perillo commented that parking on Argo Lane is prohibited by state law and Dr. Levitt said so is parking on private property.

Dr. Ronald Gove of 1000 Argo Lane, Block 175, Lot 1.05 spoke next. His property is next to the Hansen's and he has lived there for 24 years. He loves the lush, beautiful area and the privacy. He said homes that have been constructed have increased the traffic and he has concerns with the area that is only 10 ft. in width. He said emergency situations require many units and medical emergencies are ordinary occurrences today. He does not want to see the tax base increase. Argo Lane would have to be widened and there are currently many people, golfers, joggers and dog walkers. He feels the increase in houses could cause the City to have serious litigation problems and that the Board should talk to police and emergency personnel to find out if they would feel comfortable going down Argo Lane in an emergency. Mr. Perillo asked Dr. Gove if he objects to Argo Lane being widened and improved and he answered yes, as a taxpayer. Mr. Perillo asked if he objected to additional development there and Dr. Gove said as it exists, it is impossible.

Roger Hansen spoke next. He is the applicant residing at 1300 Argo Lane, Block 175, Lot 38. He stated that Dr. Gove is exaggerating the situation. Mr. Hansen said he has lived there for 30 years. He said the Gove property was previously a subdivision and there are four other lots further down the street which came from a subdivision at some time. He said ACCC uses Argo Lane as a cart path and that is the traffic problem. Argo Lane traffic is extreme due to the golf carts. They park behind the 12th tee. Otherwise the road is lightly traveled. Mr. Hansen said Mr. Gove and himself paved the road together at one point, and he maintains the road including plowing and has brought electric and gas down to the end of the road. He is trying to build a development sensitive to the environment. He previously sold his property at Shore Mill and the new owner cut down all the trees and he agrees it was a disaster. He added that 40 more car trips a day will not make the area more unsafe.

Chairman Levitt asked if they thought the new owners would want to cut down trees to improve the view. Mr. Perillo said they can work to solve this. They will have a homeowner's association and can have a tree save plan. Mayor Mazzeo discussed the widening of the road and asked if this had to be done through the governing body. He said the city is trying to save money and at the same time, preserve ACCC and it would be a burden to the city to widen the street. He has concerns with public safety in the community and worries about the problems that might be caused. Public safety has to be weighed drastically and he doesn't think the governing body would want to widen the road. Mr. Perillo said nobody can force the town to do anything to Argo Lane. They have the right to maintain it and can keep it as it is. If Argo Lane were deemed unsafe, the Board cannot deny the right to development due to the conditions off of their property. It is not the basis to deny an application. Mr. Hansen said the current use is moderate and they could slow down traffic and post suggested speed limits or approve ordinances for the limiting of speeds. They could also add golf cart crossways. Mr. Plackter disagreed with Mr. Perillo and agrees with the Mayor. His experts and the Fire Department feel that Argo Lane is unsafe and he referred to Assistant Chief Lauren Crook's letter. The applicant is making an unsafe situation worse.

Chairman Levitt asked Mr. Perillo how the proposal furthers the intent of the Master Plan. He said with the C2 variance there is a balancing test where the advantages must outweigh the detriments. Mr. Perillo said one of the first things the Board has to look at is zoning. The total property is over 200,000 sf in a zone which says you can put one house on 10,000 sf and they are only asking for four additional homes and are willing to take the remaining 110,000 sf and deed restrict it forever against any further subdivision even though the ordinance allows it. The property is an island of R-1 surrounded by country club zoning. They are not maximizing their investment and are seeking two variances that are technical in nature because two lots do not abut on a public street. They will be bringing in public water which is positive and at the suggestion of the Fire Department. He also noted that there will be a by-right if this application is not approved. The application proposes private driveways and a homeowner's association and they can deed restrict the area to keep vegetation intact. The amount of impervious surface is much less on this plan than the bi-right plan. They will be providing adequate light, air, and open space and will promote and establish population density. They will maintain a desirable visual environment and have all the elements for a C-2 variance approval.

Mr. Perillo said the only detriment is the problems on Argo Lane and this cannot be put on the property owner. It is the city's problem to remedy. They will agree to pay their pro rata contribution.

Mr. Plackter gave his summary. He said that the ACCC and the neighbor's objections are not limited to traffic safety. There will be a significant increase in density and they will be changing the exclusive nature of Argo Lane. He said the Board can only act upon what is in front of them and this is a plan with variances with three lots that do not front on a public street. He agrees with the Board Engineer about lot width not conforming and waivers for curbs and sidewalks. He said the street do not comply with RSIS in that street widths have to have a 28 ft. cart way and 50 ft. of right of way. He continued to summarize all that was testified to. He said a productive use of the property exists and there is no reason for the variances to be granted. He noted that Mr. Doran completed his review using RSIS standards as required. The internal street does not comply with the city ordinance or RSIS. The standards of RSIS are more restrictive in some cases and less in others, but the city ordinance says that streets need to have a minimum width of 30 ft. and a local street serving only single family homes should be a cul-de-sac or loop street. He summarized the problems with Argo Lane and the fact that it is seriously undersized in areas (as little as 10 ft. in sections) and is not safe for emergency traffic or emergency vehicles. They believe that the widening of Argo Lane necessary for safety purposes would have an adverse impact on 65 trees, many of which are specimen trees. There are too many variances for the purposes of maximizing their property. He added that since the purposes of zoning can be met with the right plan, and according to the applicant they have a bi-right plan, this will eliminate the justification for the variances. He said this plan has not been engineered and his clients cannot evaluate it as such and he added that Mr. Galletta is an employee of Mr. Hansen and is not an engineer. They believe this is not a safe situation for emergencies and that there is no benefit. They do not believe they have met the criteria for C2 variances. He also added that they were willing to meet with the applicant and they were not willing to meet with them. Mr. Plackter summarized by saying that there is substantial detriment to the public good and the zoning ordinance and this plan will affect the viability of the Country Club and will hurt the aesthetics of a world class golf course that both the City of Northfield and Harrah's are proud of.

Chairman Levitt said that due to the lateness of the hour, the Board will vote on the variances tonight and consider the site plan at another visit if the variances are approved.

Mr. Perillo gave his summary. He said he has only two points to make. The first involves RSIS and the concept of private driveways. The city ordinance allows private driveways in subdivisions of up to 25 lots and the ordinance encourages private driveways. He said the Board needs to consider the emergency access easement (grass paved area) and decide if the driveway, within the meaning of RSIS, is a driveway or not. If the Board decides it is a driveway, RSIS applies and the Board has the ability to grant de-minimus exceptions, including reducing the

cart way width. In the Board decides it is not a driveway, RSIS does not apply. Mr. Perillo added that technically, Mr. Plackter is correct about the lot width variances and the only reason they are necessary is because they are developing on private lanes and the ordinance measures lot width on the street and since they don't have any street frontage, they need lot width variances.

Mr. Perillo urged the Board in their deliberations to review Mr. Doran's review. He said Mr. Doran does not make exception to the interior roadway system and doesn't argue that RSIS would require 28 ft., 21 ft., or 20 ft. cart ways. He refers to Argo Lane but doesn't say it should be widened. He says if widened it should be 21 ft. The applicant's engineer has said that Argo is substandard but not unsafe.

Chairman Levitt asked Mr. Doran for an explanation of the variances and waivers. He said there are six variances associated with the street and 1 for lots fronting on a public street and the waiver for a public street including design standards. The lot width variances could be put together as one variance for three lots that front on a private drive or a public street. The Board discussed how they would handle the vote whether splitting the variances and site plan vote between this evening and December 4th or voting on everything at this hearing. Mr. Shippen had a question about the Homeowner's Association and asked if the city had any recourse if they didn't form the association. Mr. Zlotnick said that could always be a problem, but since it is private property, it would be a private dispute between the people in the association. Mr. Perillo said that they would build into the association documents that if the City has to do anything, they could lien the property.

Dr. Levitt commented that if the variance was approved tonight, he asked the applicants to meet with the neighbors and provide details of the Association, where the areas of parking would be, detail what trees would be removed, buffering, and disturbance of vegetation. He said this is critical in the minds of the Board members and the neighbors. He then asked Mr. Doran to summarize the variances. He said before the Board votes on the street, they need to vote on three lots on a private drive, exempt from RSIS, or five lots on a public street. He quoted RSIS concerning driveways, shared easements and number of lots. Basically this said that these rules do not apply to driveways on private property including common driveways established by easements shared by more than one and not more than four dwelling units on private property. He said one side argued that there are five lots, and the other argued for three lots. If the Board votes for three lots on a private drive, RSIS do not apply, and you can do away with the six waivers with regard to pavement width and other waivers. This would be a vote for a private drive which would not include the two lots on Argo Lane, only the three interior lots.

Dr. Levitt asked for a discussion on the affect of a positive or negative vote. A 'yes' vote would be for 3 lots on a private drive and 2 lots on a public street. They would be allowed to do a private drive exempt from these standards and the Board can discuss the improvements necessary for a private drive. The applicant should come up with another standard for the private drive. A 'no' vote would be for 5 lots on a private drive necessitating the 6 design waivers and lot width variance and has to comply with RSIS standards.

Mr. Roegiers made the motion and Mr. Shippen seconded. The roll call vote was as follows:

Mayor Mazzeo-Yes
Chief James-No
Mr. Milone-No
Mr. Clifford-No
Mr. Roegiers-Yes
Mr. Notaro-Yes
Mrs. Dyrek-No
Mr. Shippen-No
Chairman Levitt-Yes

The vote was 5-4 in favor of the "NO" vote.

Chairman Levitt stated that the vote says these are streets within the subdivision. Mr. Doran stated that it has to be voted on as if a public right of way of 50 ft. and a 28 ft. cart way are needed plus all the waivers and lot frontages. The subdivision requires public streets and the vote said the Board did not make the interpretation that allows a waiver from RSIS; now they have to comply with RSIS. Dr. Levitt asked Mr. Doran if this means they are dedicated city streets and he said they have to be constructed that way. Dr. Levitt said the vote for the variances at this point is whether or not to comply with design standards not whether or not these will be private streets. Mr. Doran said if you vote yes to the variances or waivers, then they can build the private drive. If you vote no, they have to build the public right of way (the full street). He continued by saying that the first vote was an interpretation of what it was, now the Board has to decide whether you want to do a driveway or a public street.

Mr. Doran discussed the design criteria and what would be required. This includes: a 50 ft. right of way, a 28 ft. cart way of which 21 ft. is travel way and 7 ft. is a parking lane with a sidewalk on one side. He said they are asking you to waive the 6 design criteria along with lot frontage to build the driveway plan. A 'yes' vote waives the design criteria and they can build the driveway and a 'no' vote would have them come back with a plan that complies to street design. Mr. Zlotnick said he would rather see the variances as a separate vote. Mr. Doran said then the vote would be for street design.

Mr. Zlotnick asked for clarification and Mr. Doran repeated the waivers. Mr. Zlotnick said this has nothing to do with the variances with regard to lots fronting on a public street and Mr. Doran said now there is another decision, if it is deemed a public street, a variance is not necessary. If it is a private street to these standards, there is still the need for a variance. Mr. Zlotnick said the Board needs to determine if it is a public street or not and it could also be a private street built to these standards and would need three variances for lot width. He continued by saying if the Board deems it a private street, this raises the need for the variances because they are not fronting on a public street.

Mr. Perillo interjected and said he does not want to complicate the issue, but Mr. Doran talked about rural lanes which have different standards than what they are discussing. Mr. Doran said that would be the 18 ft., this is a rural access lane, which is this criteria and also, they don't have 2 acre lots and that terminology probably doesn't comply.

Chairman Levitt explained that a 'yes' vote grants the variances so that the Board can consider the site plan at the next meeting. A 'no' vote would deny the variances for the streets. Mr. Zlotnick clarified by saying the first vote was for compliance with RSIS and now the next step is whether or not the streets are public or private. If it is deemed a public street, the need for a variance for lots fronting on a private street is not necessary after that. Mr. Doran said as long as they build the street according to these criteria. Mr. Zlotnick added that they would need to come back with a new alternative plan.

Discussion and clarification of the vote continued. Mr. Doran said there are two separate issues. One is what the street is going to look like and if you want the street to be private or public. Chairman Levitt said they are both still to be determined and the hour is getting late. He asked that before the next meeting, since the vote is still unclear, Mr. Zlotnick will very clearly state the issues and email them to the secretary to forward. This will include what each vote will entail and the consequences of each vote. He added that the issues are complicated and people are tired and not thinking as clearly as they can. Mr. Perillo asked Chairman Levitt to consider rescinding or reconsidering the first vote for the same reasons. Chairman Levitt asked if anyone on the Board did not have proper understanding of the first vote. All members of the Board understood. Dr. Levitt said the first vote was a simple issue interpreting whether the road was an emergency access or part of the road system. He said the next issue is not as clear and will need some

consideration. He asked Mr. Zlotnick to send his explanation of the vote to both Attorneys so that all agree on the interpretation. Mr. Zlotnick said he would work on it with Mr. Doran.

Mr. Perillo asked if the December 4, 2008 continuation could begin at 8:00 p.m. There is another applicant who has already advertised for 7:30 p.m. on that date and the Board will hear that application first and will continue the Hansen vote at 8:00 p.m.

Chairman Levitt closed the meeting at 11:15 p.m. with a motion from Mr. Clifford and a second from Mr. Shippen.

Respectfully submitted,

Robin Atlas, Secretary to the Board

