

Revised per Planning Commission Chair - 3/31/2015

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, March 18, 2015, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jeanelle Lust, Tracy Corr, Michael Cornelius, Cathy Beecham, Lynn Sunderman, Maja Harris, Chris Hove, Dennis Scheer (Ken Weber absent); David Cary, Steve Henrichsen, Brian Will, Sara Hartzell, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission meeting

Chair Jeanelle Lust called the meeting to order at 1:00 p.m. and acknowledged the posting of the Open Meetings Act in the back of the room.

Lust requested a motion approving the minutes for the regular meeting held March 4, 2015. Hove moved approval, seconded by Scheer and carried 6-0: Lust, Cornelius, Beecham, Scheer, Sunderman, and Hove voting 'yes'; Harris abstained; Weber and Corr absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

March 18, 2015

Members present: Lust, Hove, Beecham, Cornelius, Corr, Harris, Scheer, and Sunderman; Weber absent.

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 15003, CHANGE OF ZONE NO. 15006, SPECIAL PERMIT NO. 14008A, and STREET & ALLEY VACATION NO. 15001.**

There were no ex parte communications disclosed.

Beecham moved approval of the Consent Agenda (Item Nos. 1.1 - 1.3), seconded by Cornelius and carried 8-0: Lust, Hove, Beecham, Cornelius, Corr, Harris, Sunderman, and Scheer; Weber absent.

Note: This is final action on Special Permit No. 14008A, unless appealed to the City Council within 14 days.

ANNEXATION NO. 15003, ANNEXING APPROXIMATELY 59.72 ACRES, MORE OR LESS, AND ADJACENT RIGHT-OF-WAY, GENERALLY LOCATED AT SOUTH 84TH STREET AND VAN DORN STREET.

March 18, 2015

Staff Recommendation: Approval

AND

CHANGE OF ZONE NO. 15005, FROM AGR AGRICULTURAL RESIDENTIAL DISTRICT TO R-1 RESIDENTIAL DISTRICT, ON PROPERTY GENERALLY LOCATED AT SOUTH 84TH STREET AND VAN DORN STREET.

March 18, 2015

Staff Recommendation: Approval

AND

SPECIAL PERMIT NO. 872H, AN AMENDMENT TO THE FIRETHORN COMMUNITY UNIT PLAN TO ADD APPROXIMATELY 42 SINGLE-FAMILY LOTS AND AN OUTDOOR RECREATION FACILITY THAT INCLUDES THE SALE OF ALCOHOL FOR CONSUMPTION ON THE PREMISES, ALL LOCATED WEST OF SOUTH 91ST STREET, WITH REQUESTS TO WAIVE BLOCK LENGTH, SETBACKS, CURVE RADIUS, CURB AND GUTTER, ROADWAY WIDTH, ROADWAY CROSS SECTION, SIDEWALKS, STREET TREES AND ORNAMENTAL LIGHTING ON PROPERTY GENERALLY LOCATED AT SOUTH 84TH AND VAN DORN STREETS.

March 18, 2015

Staff Recommendation: Conditional Approval

AND

USE PERMIT NO. 107D, AN AMENDMENT TO THE FIRETHORN OFFICE PARK TO RECONFIGURE THE LOT LAYOUT AND SLIGHTLY EXPAND THE AREA OF THE USE PERMIT, ON PROPERTY GENERALLY LOCATED AT SOUTH 84TH STREET AND FIRETHORN LANE. The Planning Commission action is final, unless appealed to the City Council.

March 18, 2015

Staff Recommendation: Approval

AND

USE PERMIT NO. 15005, AN ALLOW APPROXIMATELY 225,000 SQUARE FEET OF OFFICE FLOOR AREA, WITH A WAIVER TO SETBACKS, ON PROPERTY LOCATED AT THE SOUTHEAST CORNER OF SOUTH 84TH STREET AND VAN DORN STREETS.

March 18, 2015

Staff Recommendation: Conditional Approval

Members present: Lust, Hove, Beecham, Cornelius, Corr, Harris, Scheer, and Sunderman: Weber absent.

There were no ex parte communications disclosed on this item. .

Staff presentation: **Brian Will of the Planning staff** provided an overview of the five related applications, including Annexation No. 15003, Change of Zone No. 15005, Special Permit No. 872H, Use Permit No. 107D, and Use Permit No. 15005. Referring to the site plan, Will explained that the northwest corner of the project is located at South 84th and Van Dorn Streets, bounded on the south by Pioneers and on the east by 98th Street. The five applications primarily affect the area located in the northwest corner, which currently consists of fairways and a small golf course. Will identified the corporate limits of the city of Lincoln and stated that there are portions of the community unit plan (CUP) that actually extend beyond the city limits; therefore, the request to annex and rezone the property currently outside the city limits to allow for the connection of utilities and services.

Will indicated that the change of zone application is a little complicated, as it does two things: (1) sets the stage for both expansion of the Firethorn CUP from AGR to R-1 to allow for a residential development, and (2) changes the zone on two small pieces of property so they can be included in the use permit and the CUP. The new use permit which involves the area to be rezoned to O-3 office, would allow for 225,000 square feet of office floor area, which includes a setback waiver.

Will further explained that with the original Firethorn Development, there was an associated use permit to reconfigure the lot layout and slightly expand the area of the original use permit.

Will indicated that staff is recommending approval of all five applications. Will noted that the Planning Commission received an email memorandum from the Public Works Department modifying Review Comment No. 2, which provides a little more detail but it does not revise the staff report. Will also stated that under Conditions of Approval for Special Permit No. 872H, the waivers should sidewalks, which was inadvertently omitted.

Commissioner Beecham asked for a quick overview of the curbs and differences between standard curbs and what is being proposed.

Will explained that rollover curbs are being proposed for this development as opposed to standard curbs. Will indicated that rollover curbs are not as well defined and can make it a little more difficult to find the edge when plowing, etc. He also noted that they may not contain drainage as well. In this case, where it is a private development with private roadways, their drainage and grading plan is going to have to accommodate the fact that rollover curbs are being used. Will noted that most improvements were waived in the original Firethorn development, which consists generally of asphalt roadways with ditches.

Commissioner Corr asked for clarification on the proposed decreased of street width from 27 feet to 24 feet.

Will indicated that these are private roadways which are internal to the development where heavy traffic is much less of a concern but explained that the standard street width is 27 feet. Will stated that development constraints had a bearing on some of the roadway widths, especially along South 88th Street, as the majority of that street is existing and widening it out would be challenging. A reduction of three feet has been done internal to community unit plans routinely in the past.

Applicant's Testimony

Danay Kalkowski, representing Firethorn Development II, Inc., the applicant on all five of these applications. She noted that Mark Wibel, a principal with the development, and Brad Marshall with Olsson Associates, are also present today.

Kalkowski explained that the five applications would allow them to permit approximately 60 acres of golf course area currently owned by Firethorn Golf Company, which is occupied by the 9-hole golf course.

There are three main components to the development plan: (1) a change of zone from AGR to O-3, to allow for an office development on approximately 18 acres; (2) amend the existing CUP to allow for a new recreational facility, which is intended to be more family friendly with an outdoor swimming pool, tennis courts, volleyball court, as well some indoor gym facilities and restaurant, as well as reconfiguring the existing 9-hole golf course; and (3) adding additional residential units – they are proposing 34 town home unit and 9 single-family lots.

Kalkowski indicated that the goals of the Firethorn Development are to develop a land uses that are compatible with the existing office uses and residential uses and also to develop a layout that would preserve the character of the existing uses while being sensitive to the wetlands and the vegetative drainage ways. Kalkowski noted that some of the waivers are needed to accommodate the drainage ways. Kalkowski reported that Mark Wibel has done a considerable amount of outreach to the neighborhood and adjacent property owners to give them an opportunity to discuss the proposed development. There was no major opposition to these plans.

Kalkowski thanked that city staff for working though a number of sensitive issues, which required multiple meetings. The developer is in agreement with the Planning Department recommendations and conditions of approval with the exception of one clean-up item.

Brad Marshall, Olsson Associates, 601 P Street, reported that there is one item on the conditions for Special Permit No. 872H, relating to the setbacks for the existing CUP, which is zoned R-1. In the original special permit, there was an agreement for an R-3 development, which was changed back to R-1 to accommodate the existing residences while maintaining the R-3 setbacks. In order to keep this consistent, Condition 1.1.1 should be deleted in order to allow the R-3 setbacks to remain for the single-family lots to be developed. This would allow for the current R-3 setbacks to stay as they currently are on the plan (page 78 of the Planning Commission packet).

Commissioner Beecham asked Kalkowski to identify the street where the sidewalk waiver is being requested.

Kalkowski reported that the sidewalk waiver is along 91st Street, which has already been built to rural standards with existing houses along the east side. The waiver would allow the existing character to remain for the nine lots. There is also a sidewalk waiver along the connector road between the office and recreation facility to Firethorn Lane. A portion of the road is existing and is used to service the maintenance facility for the golf course. They are proposing to expand the existing roadway to make the connection. Sidewalks will be included in the new office area, the recreational facility and for the town homes. In terms of the roadway width, Kalkowski explained that this applies primarily to the existing connector roadway.

Commissioner Corr asked if there would still be the same number of buildings if the developer chooses to construct 150 apartments in the northwest corner.

Kalkowski explained that there is a condition on the permit that if they change to an apartment use, they would be required to get an administrative amendment in order to allow staff to see the layout and make sure that the gas line protection area is considered. She also stated that there are private use restrictions that would impact the ability to change to apartments.

Commissioner Corr asked Kalkowski to identify the zero setbacks on Lots 104 - 145.

Marshall indicated that the numbering of the zero setbacks may be off a little bit as some of these were included in the original CUP. Marshall indicated that in the new area, the zero setback only pertains to the town home lots and not the single-family lots.

Commissioner Corr asked if the outdoor recreational facilities are permitted in the R-1 zoning.

Kalkowski reported that it is a special permitted use.

Commissioner Corr asked who is paying for the temporary turn lanes.

Kalkowski indicated that the construction of the temporary turn lanes is addressed in the annexation agreement. She reported that any part of the grading that will be associated with those that meet the future grade study, could be considered a permanent improvement for which they could get some reimbursement. The asphalt for the physical turn lanes, which are considered temporary improvements, will not be reimbursable.

Commissioner Corr stated that there is a limitation on the dwelling units as a result of the sewer treatment and asked about the impact of the recreational facility. .

Marshall explained that they had to equate everything back to the original dwelling units. He considered the different types of uses to come up with the recommendation for square footage of different uses that would equate to a dwelling unit. This formula has been applied throughout to backup to the allowable square feet for the various uses. They are still under 545.

Proponents:

None.

Opponents:

None.

Staff Questions

Commissioner Harris asked if staff is in agreement with the deletion of Condition 1.1.1 on the special permit.

Will indicated that this was an oversight as result of the zoning being changes and he supports the deletion of 1.1.1 on the special permit. In addition, sidewalks should be added into the waivers as well as the additional review comment from Public Works.

Commissioner Corr asked for clarification about the difference in parking requirements for the section of the O-3 that might be changed to apartments.

Will explained that office is 1 stall per 300 square feet of floor area. Parking for apartments is two spaces per dwelling unit. When they apply for a building permit, they will need to meet the required parking either way. The layout that is shown is conceptual at this point.

Commissioner Corr asked staff when they consider the conceptual site plan if there is adequate space for parking if the developer chooses to build apartments.

Will explained that this is a development constraint. They have to consider the setback and the building layout. They will need to consider the number of required parking spaces as part of laying out the site; it may be necessary to reduce the number of apartments to meet the required parking spaces.

ACTION BY PLANNING COMMISSION:

March 18, 2015

ANNEXATION NO. 15003, ANNEXING APPROXIMATELY 59.72 ACRES, MORE OR LESS, AND ADJACENT RIGHT-OF-WAY, GENERALLY LOCATED AT SOUTH 84TH STREET AND VAN DORN STREET.

March 18, 2015

Hove moved to recommend approval of this application; seconded by Beecham.

Commissioner Lust stated that she believes this is a good project for the area. They are keeping the character of the recreation area while expanding the office and residential uses. She plans to support all of the applications.

The motion for approval carried 8-0; Lust, Hove, Harris, Beecham, Cornelius, Corr, Scheer, and Sunderman; Weber absent.

CHANGE OF ZONE NO. 15005, FROM AGR AGRICULTURAL RESIDENTIAL DISTRICT TO R-1 RESIDENTIAL DISTRICT, ON PROPERTY GENERALLY LOCATED AT SOUTH 84TH STREET AND VAN DORN STREET.

March 18, 2015

Hove moved to recommend approval of this application; seconded by Beecham.

The motion for approval carried 8-0; Lust, Hove, Harris, Beecham, Cornelius, Corr, Scheer, and Sunderman; Weber absent.

SPECIAL PERMIT NO. 872H, AN AMENDMENT TO THE FIRETHORN COMMUNITY UNIT PLAN TO ADD APPROXIMATELY 42 SINGLE-FAMILY LOTS AND AN OUTDOOR RECREATION FACILITY THAT INCLUDES THE SALE OF ALCOHOL FOR CONSUMPTION ON THE PREMISES, ALL LOCATED WEST OF SOUTH 91ST STREET, WITH REQUESTS TO WAIVE BLOCK LENGTH, SETBACKS, CURVE RADIUS, CURB AND GUTTER, ROADWAY WIDTH, ROADWAY CROSS SECTION, SIDEWALKS, STREET TREES AND ORNAMENTAL LIGHTING ON PROPERTY GENERALLY LOCATED AT SOUTH 84TH AND VAN DORN STREETS.

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Commissioner Corr stated that she generally has concerns about waivers for sidewalks, street trees, etc. but realizes that in this case the developer is trying to maintain the character of the existing development, which conforms with the comprehensive plan.

Hove moved to recommend approval of this application; seconded by Harris.

The motion for approval carried 8-0; Lust, Hove, Harris, Beecham, Cornelius, Corr, Scheer, and Sunderman; Weber absent.

SPECIAL PERMIT NO. 872H, AN AMENDMENT TO THE FIRETHORN COMMUNITY UNIT PLAN TO ADD APPROXIMATELY 42 SINGLE-FAMILY LOTS AND AN OUTDOOR RECREATION FACILITY THAT INCLUDES THE SALE OF ALCOHOL FOR CONSUMPTION ON THE PREMISES, ALL LOCATED WEST OF SOUTH 91ST STREET, WITH REQUESTS TO WAIVE BLOCK LENGTH, SETBACKS, CURVE RADIUS, CURB AND GUTTER, ROADWAY WIDTH, ROADWAY CROSS SECTION, SIDEWALKS, STREET TREES AND ORNAMENTAL LIGHTING ON PROPERTY GENERALLY LOCATED AT SOUTH 84TH AND VAN DORN STREETS.

March 18, 2015

Hove moved to recommend approval of this application; seconded by Harris.

The motion for approval carried 8-0; Lust, Hove, Harris, Beecham, Cornelius, Corr, Scheer, and Sunderman; Weber absent.

USE PERMIT NO. 107D, AN AMENDMENT TO THE FIRETHORN OFFICE PARK TO RECONFIGURE THE LOT LAYOUT AND SLIGHTLY EXPAND THE AREA OF THE USE PERMIT, ON PROPERTY GENERALLY LOCATED AT SOUTH 84TH STREET AND FIRETHORN LANE. The Planning Commission action is final, unless appealed to the City Council.

March 18, 2015

Cornelius moved to recommend approval of this application; seconded by Corr.

The motion for approval carried 8-0; Lust, Hove, Harris, Beecham, Cornelius, Corr, Scheer, and Sunderman; Weber absent.

USE PERMIT NO. 15005, AN ALLOW APPROXIMATELY 225,000 SQUARE FEET OF OFFICE FLOOR AREA, WITH A WAIVER TO SETBACKS, ON PROPERTY LOCATED AT THE SOUTHEAST CORNER OF SOUTH 84TH STREET AND VAN DORN STREETS.

March 18, 2015

Hove moved to recommend approval of this application; seconded by Harris.

The motion for approval carried 8-0; Lust, Hove, Harris, Beecham, Cornelius, Corr, Scheer, and Sunderman; Weber absent.

CONTINUED PUBLIC HEARING AND ACTION:

**COUNTY SPECIAL PERMIT NO. 15006, TO ALLOW
THE DEVELOPMENT OF THE COYOTE RIDE ADDITION
COMMUNITY UNIT PLAN (CUP), CONSISTING
OF 9 SINGLE-FAMILY ACREAGE LOTS, INCLUDING
ON PROPERTY GENERALLY LOCATED AT N.W. 70TH STREET
AND W. ROCK CREEK ROAD :**

March 18, 2015

Members present: Lust, Hove, Beecham, Cornelius, Corr, Harris, Scheer, and Sunderman:
Weber absent.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

On March 4, 2015, the Planning Commission agreed to defer this item for two weeks with continued public hearing and action.

Staff presentation: **Sara Hartzell of Planning staff** provided an overview of the project at the March 4, 2015, meeting. She noted that the property is located at N.W.. 70th and Rock Creek Road. The developer is proposing nine dwelling units on this property, of which seven would be allowed with two dwelling units added by the 25 percent clustering bonus. There have been concerns expressed about the ground water, which have been provided to the Planning Commission. John Chess of the Lincoln-Lancaster County Health Department is present to address some of the water concerns and how the reports are analyzed.

John Chess, Water Quality Supervisor for the Lincoln-Lancaster County Health Department, indicated that two documents were provided to the Planning Commission, including an overview of the sections and the research conducted identifying the wells and their related gallons per minute (gpm) of pumping. Based on the review of this information, it appears there is ample water for this proposed development. The memo identifies the logic and standards used, such as water pumping at 5 gpm, review of the test well data, hardness of the water, etc. Mr. Chess addressed questions of the commission.

Lust stated that the last sentence of the analysis indicates “The review should not be considered as a guarantee that adequate quantity and quality of water will be available at any specific lot”. She asked if that means that the review does not really allow determination as to whether this development will affect other development in the area.

Chess indicated that is not true. They consider the wells in the section of the area. It appears that the formation is water bearing and it has adequate water to meet the domestic needs of the proposed nine units. Chess further stated that there is no way to know what the usage will be of anyone in those sections. If someone in the subdivision puts in a pond in, they cannot perceive what an individual's water usage is. Chess noted it is impossible to predict if this development will affect existing neighbors.

Hove asked Mr. Chess if he might be aware of why some existing property owners may be having issues with their wells.

Chess indicated that this is pretty typical of Lancaster County; it is not unusual.

Beecham asked if they typically consider the concerns of neighbors or individuals when doing the analysis of an area.

Chess indicated that it depends on the data that is available. If they don't have the availability of the NRD and other well logs, they would consider that information. However, in this case, this data is available. In some cases, it is necessary to drill additional test wells. In this case, the one test well is sufficient for all nine lots.

Beecham asked for clarification on having to drill wells to different depths.

Chess indicated that test wells are drilled to indicate where the water is. When wells are drilled for individual residence, as they drill down, it is variable based on the lot dynamics – the lot, formation, uphill/downhill, etc. Once they hit the static water level, they will drill deeper depending on the pumping rate, screening, etc. The deeper you drill below the static water level, the better water you will get. This is the choice of the individual water well contractor and costs associated with the drilling depth.

Beecham asked if agency tries to predict the water impact.

Chess stated that he is not aware of anyone doing this, as it would be difficult to predict the variability of how people use their water.

Beecham asked about what right existing landowners have.

Brittany Behrens, Deputy Lancaster County Attorney, provided general information with regard to water rights and the commission's role in regard to those rights. She explained that in regard to domestic use of ground water, there is no priority or preference. As additional dwelling units are developed, it is essentially equal share and equal rights to beneficial use of the water on their property. Behrens indicated that they courts have recognized cause of action between landowners and groundwater users and domestic

groundwater users. The test is based on reasonableness of use. In summary, the test states that an owner cannot extract and appropriate groundwater in excess of a reasonable and beneficial use, upon the land which he owns, especially if that would be injurious to adjacent property owners. This is a test of reasonable use so the analysis is going to be on a case-by-case basis. There is not any recent case law on similar developments and groundwater disputes. Because of the speculative nature, it makes it difficult to provide adequate information to address these concerns.

Lust asked if the current owner of the property as it stands today would be allowed to put in an irrigation well.

Hartzell indicated that she contacted Dick Ehrman of the NRD regarding this matter of putting an irrigation well on the property. It was indicated that the NRD would require a permit and they consider the pumping rate, the depth, static water level, etc. Mr. Erman indicated that this area is not restricted; however, there is an area to the north of this property that does have some restrictions. Mr. Erman indicated that if an irrigation well goes over 250 gpm, information is required on the affect on the aquifer that is being pumped from.

Beecham asked if there are any regulations in terms of agricultural versus domestic water usage.

Behrens indicated that there is a hierarchy which differentiates between domestic users and agricultural, commercial and industrial users. The domestic user does have priority and preference over these over uses; however, there are other variables which are considered.

Applicant's Testimony

1. **Dan Rosenthal, REGA Engineering Group, 601 Old Cheney Road, and Gene Benes, 5580 W. Mill Road, applicant,** came forward and provided additional information regarding the test well. The closest well to the proposed development is about 1,000 feet away. With this development, there would be a new well placed approximately 800 feet from that well. Mr. Rosenthal indicated that they did some research and contacted Allan Moser of Moser Well Drilling and Service Inc. In looking at the test well data, they drilled down approximately 165 to 170 feet to an aquifer layer. The existing closest well is down about 105 feet, so they are in the clay area, which restricts their ability to pump water.
2. **Allan Moser, Moser Well Drilling and Service Inc.,** Hickman, Nebraska, 68372, distributed a handout to the commission identifying specific pump information of the wells in this area. Mr. Moser indicated that this is a family business and they have

been involved with drilling water wells for the past 115 years. With this experience, they are familiar with the geology of the area. He explained that some of the information obtained from the State's website, which indicate 0 gallons registered on some wells, is because they are abandoned wells. In the grid he provided, four or five are abandoned. Mr. Moser reported that there is a total of 30 registered wells identified on the grid, of which 7 are agricultural irrigation wells. Mr. Benes' land is in the middle of the seven irrigation wells. Moser indicated that an AG irrigation well typically pumps up to 500 gpm or 30,000 gallons per hour. A domestic well for four people living in the residence generally uses 200 gallons per day during non-lawn watering months and an additional 5,400 gallons per cycle for an automatic sprinkler system. Therefore, for nine dwelling units, it is estimated they would use a total of 3.6 million gallons a year and one irrigation well uses 7.2 million gallons in 10 days – one irrigation well will use twice the amount of water that the nine houses will use in a year. On the handout, Mr. Moser highlighted the sections in this area and identified the geology of where the aquifer is that they are drawing water from. For example, for Section 24, there are three wells. The first well is 108 feet deep with an aquifer of good sand from 78 to 108 feet. He explained that when the State's registration shows pumping capacity, it only refers to the pump that is registered in the well and how much that particular pump produces. The registration on the website does not indicate the capacity of the well. The only way to identify the capacity of well, is when the driller makes the well and test pumps it. Page three of the handout identifies the capacity of Mr. Benes' test well and provides a complete geology of the well. The water level is 87 feet and the pumping water level tested with air measured at 30 gpm. The total depth of the aquifer starts at 98 feet down to 160 feet or 60 foot of aquifer. He indicated that the clay in this region needs to be taken into consideration, as it serves as a blocker. Rainwater does not go through 50 feet of clay, which the depth of the clay in this well. As identified in the report provided by Mr. Moser, there are one or two wells that have a marginal aquifer, one of which is located to the west of Mr. Bene's property. Mr. Moser indicated that this well was done by an irrigation driller not familiar with this area. The log for this particular well shows that the well has good sand from 90 to 105 feet but provides no pumping information; however, it indicates that the water level is 20 feet. Mr. Moser indicated that this is likely an error on the report because the well is uphill from Mr. Benes' well and the water level at Mr. Benes' is 87 feet. There are three irrigation wells located northwest of Mr. Benes' property which are feed from outside underground sources. Mr. Benes' test well in located in the northwest corner of Lot 1 and is located at the highest point, as the remaining property goes downhill. As the wells are drilled for the remaining lots, they will be hitting the same aquifer because it generally stays pretty level and they will be going downhill, thus drilling to less depth.

Commissioner Lust asked Mr. Moser that based on all the wells he has drilled in this area and the test wells he has drilled, if nine domestic wells can be put in without affecting the neighbors' water supply.

Mr. Moser stated yes, with the type of sand aquifer in this area.

Have asked if anyone else in this area would be able to access the same aquifer if they redrilled their well.

Mr. Moser indicated that as you go further west, he is uphill and his aquifer begins to dip down. He does not feel that the neighbors will be affected because they are in a different aquifer if the log is accurate of that driller.

Opponents

1. **Don Olson, 318 County Road 29, Valparaiso**, testified in opposition to the proposed development.

Mr. Olson stated that he testified about the groundwater at the last meeting. Today, he testified about concerns regarding the excess runoff from the roofs and the concrete roads. He noted that when there is high water, the creek gets completely full and backups onto the railroad track. There will be less ground absorption as a result of this development. He questions whether the railroad bridge and the culvert on Highway 79 will be big enough to withstand the runoff of this area. In terms of the irrigation wells, he contacted the NRD which indicated that Nebraska State Law states that water does not belong to one individual, it belongs to everyone in the state, unlike Texas law, which indicates that if you own the land, you own the water under it. In Nebraska, property owners are supposed to make sure that groundwater does not run off your property. Mr. Olson also questioned whether consideration was given by the developer to provide bigger culverts to handle the excessive runoff from the roads so as not to impact the property owners down the road. Mr. Olson stated that this is an issue on N.W. 84th Street and Rock Creek Road currently. All the water comes out of field, across the road, in addition to all the surface water from all the houses – the property owner's shed is getting washed away.

2. **Elaine Olson, 318 County Road 29, Valparaiso**, testified in opposition to the proposed development.

Ms. Olson stated that she owns farm ground on Sec 15-12-5 E, which she recently purchased from her parents. Historically, she predicts that this development will create a lot of work for well drillers. She indicated that individuals in the area have had to dig several different wells in the area and in some cases drill water from farther away. There

are situations where people have not had adequate water to wash clothes and take showers due to slow regeneration rates. The water in the area has been smelly and funny tasting and many use filtering systems to get drinking water. In addition, some submersible pumps have been filled with sediment and rust from sucking air. How will nine more houses in the middle of this surrounding area impact the water to existing property owners. Ms. Olson is also concerned about additional power lines in the area. Many have spent their life savings to live in the country and what will happen to their property value if they don't have any water.

3. Mary Barry, 17700 NW 70th Street, Raymond, testified in opposition to the application.

Ms. Barry lives one half south of the proposed development. She is concerned about the well water in the area. She owns five acres and she states that they have had four wells drilled. The first one went dry, the second one was salt water, the third one was pumping sand and the fourth one – she has to buy drinking water because the water smells and tastes bad. However, she is very happy to have water. She believes that several new wells could impact her water well. One of the irrigation wells is located on her property; she stated that it hasn't been used for 30 years. The NRD checks it regularly. Since it was drilled, the water level has fallen 25 feet.

4. Sharon Kratochvil, 19000 N.W. 84th Street, testified in opposition to the development.

Ms. Kratochvil stated that she has lived at this location for 50 years. She is against the building of this development due to water issues. They have drilled three wells since they built. Their well driller indicated that water is hard to find in the area. The water is stinky and hard. Neighbors are complaining of wells being short of water and have indicated that their wells have changed since they built. They get air in their lines. Some have two wells running their household and they can't use their water outdoors because of shortage. She noted that if a storm destroys your property, you can rebuild, but running out of water destroys everything you have worked for all your life.

5. Bob Cadek, 7800 W. Rock Creek Rd., testified in opposition.

Mr. Cadek lives one half mile from the proposed development. His family has lived at this location for 25 years. Years ago they never had smelly water. Within the mile that he lives, there have been about 15 house built and their water has gotten more and more offensive with the smells. In addition, they have had air in their lines. They don't generally water their grass but did when seeding it in recent and the sprinkler system ran for four hours and starting popping because he was getting air. He is concerned that the water level is dropping. He doesn't want to have to drill another well. His current well is 120 feet.

6. John Benes, 7704 West Davey Road, testified in opposition to the development.

Mr. Benes stated that he lives on the home place that his parents bought over 50 years ago. Their well pumps about 5 gpm but to get that, they had to put in a 60-inch irrigation well casing that is approximately 200 feet deep. Water is extremely hard to get in their area. He feels that by adding nine more houses, it is going to put more pressure on their water system.

Questions of Staff:

None.

Response by the Applicant:

Beecham asked the developer that based on the grid provided by Mr. Moser regarding the various depths, clay, etc., if they are proposing to drill the wells at a standard depth.

Dan Rosenthal indicated that the test well was drilled at 160 feet and the water depth is about 60 feet. They would need to drill below the clay layer that Mr. Moser referred to.

Beecham indicated that the Health Department has recommended that individual test wells be drilled prior to selling the property. Is the intent?

Mr. Rosenthal indicated that they have provided one test well. Each additional well will be drilled and tested. If it is good, they will use that well. The original test would be used as an permanent well.

Rosenthal indicated that in terms of paving, there won't be any paving. There may be a driveway approach put in but otherwise the roads will all be gravel. Mr. Chess indicated that there is a minimum requirement of 5 gpm. Mr. Rosenthal stated that in the information they could find, no one has gone below 5 gpm. As for the rust, it could that the screens are getting old and need to be replaced. In terms of the power lines, they will go off the existing power lines and then connect to a feed at the site with underground service. Rosenthal indicated he did meet with Burlington Northern Santa Fe Railroad last week and talked about the possibility of doing a site observation of the railroad and Nebraska Department of Roads to cut the site distances for that crossing. This is probably more of a concern for the region as opposed to just the subdivision.

Scheer asked about the proposed size of the houses will be put on these lots.

Mr. Benes indicated that the maximum size would be approximately 2,000 square feet on 3 to 5 acre lots.

ACTION BY PLANNING COMMISSION:

March 18, 2015

Cornelius moved to recommend approval of this application; seconded by Sunderman.

Cornelius thanked everyone who testified regarding the issues of this application. The primary issue related to the availability of water in this area, as is the case with similar developments throughout the region. He understands that this is a real concern. He stated that he intends to support this application on the testimony indicating that the water that is present in the area is sufficient for this development. He understands that the quality of the water is not great, but there are technologies available to make it potable. In addition, he noted that an irrigation well could be dug today, which would dominate the extraction rate of these nine proposed residences. Cornelius noted that at one point, the Planning staff had developed a system rating and prioritizing rural land in the county for residential development, and one of things considered was the availability of water. The County Board at the time did not feel that this was appropriate for use in determining whether or not these applications should be approved or not. As part of gathering this data, they could see that in northern Lancaster County there were water issues. Cornelius recommended that the residents of the area ask their County Board representative about that information and how it could be used in the future to help in allocating the resources that exist. Cornelius indicated that they Planning Commission's action today is not final; therefore, there is another opportunity to address the issue of water and residential development in the county to the County Board if they continue to have concerns after today's testimony.

Beecham stated that this is a tricky issue, as farming is important in Nebraska. She appreciates hearing about the water rights, which is a factor in her decision. It appears that the water rights are not being violated in this case, and she intends to support the application.

Lust stated that she is going to support the application. She noted she is a little troubled about the fact that Health Department's analysis does not include whether a proposed subdivision may have an affect on adjoining wells, and the NRD's jurisdiction is primarily over agricultural irrigation, which they are currently just monitoring in this area. Since they could put in an agricultural irrigation well right now and more than double the amount of water use that the nine houses would have. Based on that, they might be actually improving the current water situation by allowing this particular development to go through.

Motion for recommending approval carried 8-0; Lust, Hove, Harris, Beecham, Cornelius, Corr, Scheer, and Sunderman; Weber absent.

There being no further business to come before the Planning Commission, the meeting was adjourned at 2:46 p.m.

Please Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, April 1, 2015.