City Council Introduction: **Monday**, September 12, 2011
Public Hearing: **Monday**, September 19, 2011, at **3:00** p.m.

Bill No. 11-140

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 11026,** requested by Ben and Nancy Sand, to amend Title 27 of the Lincoln Municipal Code to add "farm winery" as a permitted special use in the AG Agriculture District.

STAFF RECOMMENDATION: Approval.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 08/24/11
Administrative Action: 08/24/11

RECOMMENDATION: Approval, as amended (8-0: Lust, Esseks, Cornelius, Gaylor Baird, Larson, Francis, Taylor and Sunderman voting 'yes'; Partington declared a conflict of interest).

FINDINGS OF FACT:

1. This proposed text amendment is to add "Farm Winery" by special permit in the AG Agriculture District by adding a new section numbered 27.03.225 to add the definition of "farm winery"; amending Section 27.07.040 to allow farm wineries as a permitted special use in the AG Agriculture District; amending Section 27.63.680 to allow a farm winery operating under a permitted special use to be located within 100 feet of a residential district; amending Section 27.63.685 to provide that a special permit or amendment thereto shall not be required for interior expansions of an existing licensed farm winery; adding a new section numbered 27.63.810 to provide conditions for granting a special permit to allow a farm winery in the AG Agriculture.

2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.2-4, concluding that adoption of this amendment will provide a zoning accommodation for "farm winery" in the AG Agriculture District within the City jurisdiction (i.e. three-mile jurisdiction outside the City Limits), similar to the existing County language. The staff presentation is found on p.5-6, offering an amendment to section 27.63.810 (b) as set forth on p.6.

3. The applicant's testimony is found on p.6-7.

4. There was no testimony in opposition.

5. The Planning Commission had considerable discussion about the requirement that a farm winery must produce a minimum of 15% of the its product from fruit or other agricultural products harvested from the premises following five years of business (See Minutes, p.6-8). A motion to amend to eliminate the 15% requirement and associated reporting and certification in its entirety failed 1-7. It was clarified that there is no reporting requirement in the County zoning resolution.

6. On August 24, 2011, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend approval of the text amendment, with an amendment to section 27.63.810 (b) to delete the reporting and certification requirement while retaining the 15% minimum requirement (See Minutes, p.8).

FACTSHEET PREPARED BY: Jean L. Preister **DATE**: September 6, 2011

REVIEWED BY:_____ **DATE**: September 6, 2011

REFERENCE NUMBER: FS\CC\2011\CZ11026 Text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for August 24, 2011 PLANNING COMMISSION MEETING

****As Revised and Approved by Planning Commission: 8/24/11****

PROJECT #: Change of Zone No. 11026

PROPOSAL: An amendment to the City zoning ordinance to add "Farm Winery" by special use in the AG Agriculture District.

TEXT AMEND: Sections 27.03.225 Definitions, 27.07.040(bb) AG Permitted Special Agriculture Uses and 27.63.680 and 27.63.685 Permitted Special Use, sale of Alcoholic Beverages, and 27.63.810 Permitted Special Use: Farm Winery

CONCLUSION: Adoption of this amendment will provide a zoning accommodation for "farm winery" in the City jurisdiction AG district, similar to the existing County language.

RECOMMENDATION: Approval of the attached text

ANALYSIS:

1. In 1985 the Nebraska Legislature adopted legislation encouraging farm wineries with the intent "to encourage the production, use in manufacturing, and consumption of agricultural products grown within the state by providing for the existence of farm winery operations." The Legislature further recognized that "the creation of farm wineries will stimulate the creation of jobs and investment in small communities, encourage the use of lands upon which grapes and other wine related crops may be grown, and provide tax revenue which would not otherwise be realized."

2. In 1997 the Lancaster County Zoning resolution was amended to provide for farm wineries in the AG Agriculture district by conditional use. There are currently five farm wineries in the county.

3. In March of this year, owners of Country Pines (formerly Boss Hogs), at 6305 West Adams, applied for a building permit for a farm winery. The permit was denied as the proposed use is not allowed under current zoning regulations. This location currently holds a special permit for a Community Hall and the owners wished to expand the operation to include a farm winery. The owner intends to operate the two uses, Community Hall and Farm Winery, under two separate Special Permits on two separate parcels. It should be noted that if the owners decide to operate with overlapping or concurrent special permit areas further amended language may be required.

4. Farm wineries are agricultural uses that generally support the goals of the Comprehensive Plan to preserve agricultural land and to support the agricultural economy in Lancaster County. Grape cultivation and wine production is a more intensive agricultural use that can

provide a higher income per acre and allow small parcel owners to earn a living wage and even provide jobs for others.

5. An approach similar to that taken by Lancaster County is suggested here for the Lincoln zoning text, but with the use being by special permit to provide the opportunity to assess potential issues when located close to the developing city.

6. All farm wineries are required to hold an annually-renewable license for a farm winery in accordance with the Nebraska Liquor Control Act.

7. This text amendment will allow farm wineries as a special permitted use in the Agricultural district. The following amendments are proposed:

A) Farm Wineries are added to section 27.03 General Definitions, as a new section numbered 27.03.225 to read as follows:

Farm winery shall mean any enterprise which produces and sells wines produced from grapes, other fruit, or suitable agricultural products of which seventy-five percent (75%) is grown in the State of Nebraska, or which has received a waiver of the 75% requirement from the Nebraska Liquor Control Commission.

B) Section 27.07.040, Permitted Special Uses in the Agricultural District, will be amended to include (bb) Farm Wineries.

C) Section 27.63.680, Permitted Special Use: Sale of Alcoholic Beverages for Consumption On the Premises, is amended so that subsection (3) reads: The designated area specified in a license ... (except where such use is accessory to a golf course, ~~or~~ country club, or farm winery).

D) Section 27.63.685, Permitted Special Use: Sale of Alcoholic Beverages for Consumption Off the Premises, is amended so that the final line reads: Notwithstanding the above, no special permit or amendment thereto shall be required for interior expansion of existing licensed liquor premises or for a farm winery.

E) Addition of a new section numbered 27.63.810, Permitted Special Use: Farm Winery, is added to read: Farm wineries may be allowed by special permit in the AG Agriculture District under the following conditions:

(a) No farm winery shall manufacture wine in excess of 50,000 gallons per year;

(b) A farm winery must produce a minimum of fifteen percent (15%) of its product from fruit or other agricultural products harvested from the premises following five (5) years of business. ~~Within ninety (90) days following the fifth anniversary of doing business as a farm winery and on an annual basis thereafter, the permittee shall prepare and submit a report to the Building Official certifying the percentage of the farm winery's product produced from fruit or other agricultural products harvested from the premises;~~ **(Per Planning Commission: 8/24/11**)**

©) Wines produced at the farm winery may be sold on site at wholesale and retail;

(d) Wines produced at the farm winery may be sold at retail for consumption on premises;

(e) Sampling of wine at the farm winery shall be permitted in reasonable amounts;

(f) A farm winery may sell retail items as an accessory to wine sales through a tasting or wine sales room;

(g) A farm winery may only serve food prepared off site by a Health Department licensed establishment in association with sampling and/or on premises consumption of wine. A farm winery shall not act in the capacity of a retail establishment;

(h) Unless waived by the ~~special permit~~ **City Council, parking ~~and paving~~ shall be in conformance with Chapter 27.67; **(**Per Planning Commission, as revised by staff: 8/24/11**)**

(i) The farm winery shall be licensed under the Nebraska Liquor Control Act as a farm winery.

8. There were no objections by any department or agency to this proposed change.

Prepared by:

Sara Hartzell, Planner
shartzell@lincoln.ne.gov
402-441-6371

DATE: August 10, 2011

APPLICANT: Ben and Nancy Sand
6305 W. Adams St.
Lincoln, NE 68524
402-470-3516

CONTACT: Darrell Stock
1115 K ST.
Lincoln, NE 68508
402-474-8690
dstock@inebraska.com

CHANGE OF ZONE NO. 11026

PUBLIC HEARING BEFORE PLANNING COMMISSION: August 24, 2011

Members present: Taylor, Esseks, Larson, Lust, Sunderman, Francis, Gaylor Baird and Cornelius; Partington declared a conflict of interest.

There were no ex parte communications disclosed.

Staff recommendation: Approval.

Staff presentation: **Sara Hartzell of Planning staff** explained that this is a proposed text amendment to add "farm wineries" to the AG Agriculture District within the 3-mile limits of Lincoln. Farm wineries were first identified in 1985 as an agricultural use in Nebraska that could promote the agricultural industry and the economy of small towns, in particular. In 1997, a text amendment was adopted by the County Board to add farm winery to the AG and AGR districts in the Lancaster County jurisdiction. At this time, the owners of Country Pines (former Boss Hogs) at 6305 West Adams, applied for a building permit for a farm winery, finding that there was no provision for farm winery in the 3-mile jurisdiction of the City.

Hartzell reviewed the text amendment which adds the definition to the general definition sections based on the state definition. The provision that 75% of the produce must be grown in the State of Nebraska comes from the state definition, "to encourage the production, use in manufacturing and consumption of agricultural products grown within the state by providing for the existence of farm winery operations." The provisions allow an exemption from the 100' spacing requirement for expansion of the farm winery, the same as a golf course or country club. The conditions for the special permit require that the farm winery shall not manufacture wine in excess of 50,000 gallons per year (this is language from the state permit provisions). The provisions also provide that a farm winery must produce a minimum of 15% of its product from fruit or other agricultural products harvested from the premises following 5 years of business. That 15% provision came from the County language in 1997, which was adopted at that time for the James Arthur Vineyards. The five year time limitation is because it takes about three years from the time the vines are planted before they actually start producing. At the end of five years, the provisions require a report by the farm winery certifying the percentage of product produced from fruit or other agricultural products harvested on the premises.

Hartzell further explained that the provisions of the proposed ordinance allow the wine produced at the winery to be sold on-site at wholesale or retail; wines produced may be sold at retail for consumption on the premises (open container regulations are covered by the state licensing requirements); sampling of wine at the winery is permitted in reasonable amounts; the farm winery may sell retail items as an accessory to wine sales; the winery can serve food that is prepared off-site at a Health Department licensed establishment so that the winery does not become a restaurant; the City Council has authority to waive the parking requirements; and the farm winery shall be required to have the necessary license under the Nebraska Liquor Control Act.

Lust understands the 50,000 gallons per year limitation which is set by state statute; however, she wondered where the 15% limit comes from. Hartzell explained that the intent was to maintain the agricultural site of the winery so that it was not just a place to which the grapes were sent. We want the agricultural activity to be going on in that district. Lust wondered whether someone who reported producing 14.5% of the products on the winery site would just be out of the luck.

Hartzell then proposed an amendment to 27.63.810 (b) as follows:

> A farm winery must produce a minimum of fifteen percent (15%) of its product from fruit or other agricultural products harvested from the premises following five (5) years of business. Within ninety (90) days following the fifth anniversary of doing business as a farm winery and on an annual basis thereafter, the permittee shall prepare and submit a report to the Building Official certifying the percentage of the farm winery's product produced from fruit or other agricultural products harvested from the premises; <u>or certifying that due to weather or other unforeseen events which caused substantial loss to the Permittee's crop grown on the premises, the available product harvested was below the established minimum of fifteen percent (15%). Upon receipt of satisfactory evidence of such crop loss, the Building Official may grant a waiver of this condition for such year.</u>

Lust noted that the city rules would be different from the county rules if this amendment is adopted. Hartzell clarified that there is no reporting requirement in the county.

Rick Peo, City Law Department, approached suggesting that if there is a violation of the special permit, the Building & Safety Department would report that to the City Council, which could then bring an action to terminate the special permit. It is not automatically shut down. His concern is with the reporting requirement resulting in an enforcement problem down the road. Will we be able to accurately measure the 15% and continually follow up? The 15% requirement is not in the state statute.

Esseks inquired whether the winery may still be in business during the first five years as long as they meet the 75% requirement. Hartzell explained that they would need to meet the 75% requirement to get the special permit, and during that five years it would be assumed that the vines would come into production. Esseks clarified that after the five years, 15% of the produce must be produced on the premises. Hartzell agreed.

Gaylor Baird pointed out that the Commission has recently spent a lot of time thinking about the growth of the city. She wondered whether the staff has confirmed that this type of permitted special use does not cause any potential conflicts with the growth of the city as it moves forward. Hartzell suggested that the 20-acre requirement leaves the land in large enough parcels that development should not be a problem in the future.

<u>Proponents</u>

1. Darrell Stock, attorney for the applicant, appeared to answer any questions. Ben and Nancy Sand are the owners and operators of Country Pines. In their situation, the vines are already planted and are developing as we speak. The five-year phase-in is not an issue to them.

Larson thought that food is prepared at Country Pines. Stock explained that there are several steps in this process. Country Pines is a special permitted community hall, which is separately licensed

for liquor. Technically, the liquor statutes are going to require two separate licenses. Country Pines will continue to be operated as a separate operation from the vineyard operation. The winery will not prepare food, but Country Pines will be allowed to continue to prepare food. He believes the Liquor Commission will require separate specified licensed premises for each of the two operations.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: August 24, 2011

Larson moved approval, with the amendment proposed by staff, seconded by Gaylor Baird.

Motion to amend #1. Lust moved to amend to eliminate subsection (b) from 27.63.810, seconded by Francis.

Lust explained that her proposed amendment eliminates the 15% requirement. She does not think it is necessary when there is already a limitation established by state statute that only 50,000 gallons of wine can be produced a year and 75% of what is produced there has to come from the State of Nebraska. She sees no reason to adopt an additional regulatory requirement making sure that 15% of the grapes used in the wine are grown there and why we would adopt further regulating requirements that Building & Safety would have to monitor. There are already limits on the amount of wine so it will not be a distillery, and there is already a requirement that Nebraska products be used in the wine. She also suggested that the staff ask the county to consider eliminating the 15% limitation.

Larson suggested that perhaps that regulation was implemented to keep it from being just a wine producing facility with no vines or no vineyards. He is not opposed to the amendment but there must have been a reason for that language.

Esseks suggested that keeping the 15% encourages the growth and cultivation of vineyards. You don't need that many acres to produce the 15%. He believes that those wineries particularly close to the city are a nice addition and attraction to the community. He thinks we should follow the County model. If we are going to have an agricultural use, it should be producing some of its own grapes, at least in part.

Sunderman agreed with Esseks. The 15% is a good part of this text. He does not want to end up with two different regulations between the city and county. He suggested eliminating the reporting requirement.

Francis concurred that it is going to be hard to keep track of the 15% in the reporting aspect and that puts a burden on the city/county inspectors. That is more work that would be harder to prove. She supports the amendment. She likes that we want agricultural activity on these wineries, but how do you account for the 15%?

Esseks suggested that the 15% is a very small proportion of the likely production of grapes needed for a winery. In the absence of this requirement, he is fearful that there will be no vineyards. The 15% at least guarantees some significant vineyards. He agrees the enforcement is perhaps unnecessary.

Lust asked Esseks if he would support the amendment if it only eliminated the reporting requirements. Esseks indicated that he would.

Taylor believes there is a reason for the 15% and he does not think it is a good time to eliminate it, especially since the applicant is not requesting it. He will vote no on the amendment.

Cornelius stated that by and large he agrees with the opposition to the amendment for the reason that we want to insure an agricultural use and the existence of vines on the premises.

Motion to amend #1 to delete subsection (b) of 27.63.810 failed 1-7: Lust voting 'yes'; Taylor, Esseks, Larson, Sunderman, Francis, Gaylor Baird and Cornelius voting 'no' (Partington declared a conflict of interest).

Motion to amend #2. Lust moved to amend to delete the reporting requirements in subsection (b) of 27.63.810, seconded by Esseks.

Gaylor Baird suggested that the permittee should at least certify the 15% once, and maybe not annually thereafter. Otherwise, does it even matter that we have the 15%?

Esseks also suggested that the enforcement could be through neighbor complaint if there are no vineyards there.

Sunderman indicated that he would prefer having both the city and county text amended at the same time.

Cornelius stated that he is more comfortable with this amendment because it does, through the ordinance, encourage the vineyard to have vines and that is an important part of this application.

Motion to amend #2 to retain the 15% minimum, but to delete the reporting requirements, carried 7-1: Esseks, Larson, Lust, Sunderman, Francis, Gaylor Baird and Cornelius voting 'yes'; Taylor voting 'no' (Partington declared a conflict of interest).

Cornelius believes this is a good addition to the ordinance.

Main motion for approval, as amended, carried 8-0: Taylor, Esseks, Larson, Lust, Sunderman, Francis, Gaylor Baird and Cornelius voting 'yes' (Partington declared a conflict of interest). This is a recommendation to the City Council.