March 2, 2015

TO: Town Clerk, Town Council
FROM: Gary Crosby, Town Planner
RE: Zoning Ordinance amendment – Agriculture

Title: Proposed amendment to the Portsmouth Zoning Ordinance: Agriculture – Special Events. 
Action requested: set a date for a public hearing and authorize the Town Clerk to advertise.

Per Article XV, Section B of the Portsmouth Zoning Ordinance, I hereby request the Town Council select a date for a Public Hearing and authorize the Town Clerk to advertise once each week for three (3) successive weeks as notification for such a hearing to consider the attached proposed amendment to the Portsmouth Zoning Ordinance.

The above referenced section of the ordinance requires the Town Council to seek an advisory opinion from the Planning Board. As of this writing, this proposed zoning amendment will be on the Planning Board’s agenda for their meeting on Wednesday, March 11, 2015. Unless the Board takes more than one meeting to consider this proposed amendment, their advisory opinion should be available to the Town Council by the date the Council sets for a Public Hearing, should it choose to do so.

The ordinance also requires the Planning board to seek the advice of the Town Planner on all proposed zoning amendments. Attached for your consideration, please find my review and comments to the Planning Board regarding the proposed zoning amendment.

For reference I have attached a copy of R.I.G.L §2-23-4 as applicable state law.

To aid the Town Clerk’s office I attach a draft copy of the ad to be run as notification for the Public Hearing (date omitted, of course).

Thank you for your time and I look forward to the Town Council’s consideration of this matter,

Gary Crosby
Town Planner
PROPOSED AMENDMENT TO THE PORTSMOUTH ZONING ORDINANCE

February 27, 2015

ARTICLE II – DEFINITIONS

Amend the definition of Agriculture to read:

_Agriculture_ - Any commercial enterprise which has as its primary purpose farming, cultivation of crops, husbandry, horticulture, viticulture, viniculture, floriculture, forestry, ranching, stabling of horses, dairy farming, or aquaculture, or the raising of livestock, including for the production of fiber, furbearing animals, poultry, or bees, along with the necessary accessory uses for packing treating, or storing the farm product, provided that the operation of any such accessory use shall be secondary to that of the principal agricultural activity. The mixed-use of farms and farmlands for other forms of enterprise including, but not limited to, the display of antique farm equipment, retail sales, tours, classes, petting, feeding and viewing of animals, hay rides, crop mazes, festivals and other special events are hereby recognized as a valuable and viable means of contributing to the preservation of agriculture.

Amend the definition of a roadside stand to read:

_Roadside Stand_ – A structure of no greater than 300 sq. ft. for the sale of agricultural or horticultural products, the major portion of which are grown or produced on the premises or an adjacent parcel and must provide off-street parking.

Add:

_Agriculture-Promotion Use_ - A use of land or of a building, or portion thereof, which tends to support, sustain, promote, or encourage agriculture or farming activity. An agriculture-promotion use shall have limited or no impacts to surrounding properties and shall not be permitted without the principal agricultural use to which it is related. In no case shall such agriculture-promotion use dominate, in area, scale, extent or purpose, the existing principal agricultural use of the land and/or buildings. Agriculture-promotion uses may include, but are not limited to: the display of antique farm equipment, farm tours, educational classes, petting, feeding and viewing of animals, and hay rides.
Agriculture – Special Events - A use of land or of a building, or portion thereof, for a social occasion or activity which tends to support, sustain, promote, or encourage agriculture or farming activity and which contributes to revenue derived from agriculture or farming activity. An agriculture special event shall have a limited, defined duration and shall be permitted only on parcels participating in either the state or the local farm tax exemption program. In no case shall such agriculture special event use dominate, in area, scale or extent, the existing principal agricultural use of the parcel and/or buildings on the parcel. Agriculture special events may include, but are not limited to events such as harvest fairs and festivals, indoor or outdoor concerts, weddings and receptions and corporate or private functions.

ARTICLE V – USE REGULATIONS
Amend the use tables in Article V, Section C to include Agriculture-Promotion Uses as a principal use and permit such uses in all Districts by right (Y), except the Town Center District where they are prohibited (N).

Amend the use tables in Article V, Section C to include Agriculture-Special Events as a principal use and permit such uses in all Districts by Special Use Permit (S), except the Town Center District where they are prohibited (N).

ARTICLE VII – SPECIAL USE PERMITS
Add Agriculture-Special Events to ARTICLE VII, Section A, paragraph 1
TOWN PLANNER REVIEW AND COMMENTS:
March 2, 2015

Per Article XV, Section B of the Portsmouth Zoning Ordinance, the Planning Board shall seek the advice of the Town Planner on all amendments to the Portsmouth Zoning Ordinance. For the Board’s consideration, I present the following comments and justification for this proposed amendment.

1. Comprehensive Community Plan
There is currently no provision in the Portsmouth Zoning Ordinance that adequately manages an emerging and important aspect of Portsmouth economic life, the conduct of non-farm activities on lands principally used for agriculture. It has become a widely accepted belief that farmers are increasingly relying on these non-farm activities to help their farms remain economically viable. The Portsmouth Comprehensive Community Plan touches on this in a number of places in the plan (see below) and calls for measures to develop orderly and rational ways to manage this growth without compromising the community’s aesthetic, environmental and cultural values. This amendment is a step in that direction and brings the Zoning Ordinance into closer compliance with the Comprehensive Community Plan as mandated by State law.

Land Use Element Goals

- Develop an orderly and rational land use plan designating the general distribution, location and interrelationship of land uses, for residential, commercial, industrial, open space, agriculture, recreational, community facilities, and other categories of public and private land use.

- Manage development to ensure that it has a positive impact on the Town, that it occurs in an orderly fashion, fiscally enhances the Town, is aesthetically and environmentally compatible, that infrastructure capacity and municipal services are adequate, and that Portsmouth's quality of life and coastal and rural resources are protected.

- Preserve the rural character of Portsmouth as both an aesthetic and fiscal goal.
Economic Development Element Goals

- Attain a balanced structure of population, environment, job opportunities, services and facilities, and recreational and cultural resources. An overriding guideline for the community should be to maintain that amount of economic growth necessary to sustain the desired employment and local tax base by the encouragement of forms of industry and commerce whose impact on the environment and on the social, aesthetic, and cultural environment will be within acceptable limits.

Agriculture Element Goals

- Maintain agriculture as a vital part of the community as a way of life, open space value, land use, and economic activity.

- Agriculture Element Objectives:
  
  o Maintain the agricultural industry in Portsmouth at the highest level possible.

  o Promote financial incentives and programs that assist in the economic viability of active farms.

  o Actively assist farmers and owners of farm acreage to plan for continued utilization of farmlands in the future.

2. Special Use Permit regulations provide ample safeguards

Article VII, Section A, paragraph 5 of the Portsmouth Zoning Ordinance lists items to be considered by the Zoning Board of Review in granting a Special Use Permit. These items include, but are not limited to, the following:

a) The desired use will not be detrimental to the surrounding area;

b) It will be compatible with neighboring land uses;
c) It will not create a nuisance or a hazard in the neighborhood;

d) Adequate protection is afforded to the surrounding property by the use of open space and planting;

e) Safe vehicular access and adequate parking are provided;

f) Control of noise, smoke, odors, lighting and any other objectionable feature is provided;

g) Solar rights of the abutters are provided for;

h) The proposed special use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth; and,

i) The health, safety and welfare of the community are protected.

The applicant must specifically address each and every one of these items in his/her application for a Special Use Permit and the Board, in its decision, must provide in writing, findings of fact and conclusions of law that it has considered each specific item. There is no ambiguity in the Zoning Ordinance regarding this procedure.

In addition, as in any public decision-making process, in considering each specific item, the Board provides an opportunity for abutters and other interested parties to provide testimony either in support of or opposition to the applicant, providing for a full and inclusive discussion of the matter. Permitting these uses by Special Use Permit provides the proper and lawful opportunity for community discussion and careful considerations of impacts to our residential neighborhoods, an essential role of municipal land use regulation.

3. Purposes of Zoning

Article XV, Section C of the Zoning Ordinance requires the Planning Board, in consideration of an amendment to the ordinance, to demonstrate “recognition and consideration of each of the applicable purposes of zoning, as presented in Article I.” Of course not all of the 16 purposes of zoning so listed apply to every proposed amendment but it is the Planning Board’s responsibility to consider each one and its relevance to the matter at hand. As guidance for the Planning Board,
the purposes of zoning that I regard as relevant in this case, along with a short comment, are listed below:

1. **Promote the public health, safety, and general welfare.**
   
   *By permitting Agriculture - Special Events by Special Use Permit, a legal and proper forum for discussion of the health, safety and general welfare of the community is established. All interested parties are invited to participate and all views are heard. This form of land use regulation most assuredly promotes the health, safety, and general welfare of the community.*

2. **Provide for a range of uses and intensities of use appropriate to the character of the town, reflecting current and expected future needs, with reasonable consideration of the character of the districts and their peculiar suitability for particular uses.**
   
   *This amendment expands the ranges of land uses in the community and again provides a legal and proper forum to discuss the character, appropriateness, and suitability of these expanded uses.*

3. **Provide for orderly growth and development...........
   
   *See my comments at 1 and 2 above. The entire purpose of this amendment is to provide for “orderly growth and development.”*

5. **Provide for the protection of the natural, historic, cultural, and scenic character of Portsmouth and areas therein;**
   
   *Portsmouth’s farms have long been known for their scenic beauty and preservation of valuable open space. Indeed, farms are the primary source of the rural character the citizens of Portsmouth so highly prize. The best way for our community to continue to enjoy these benefits is to support programs and policies that keep Portsmouth’s farmers farming. This amendment gives farmers an important tool for doing just that without compromising the rights of the farmer’s neighbors.*

6. **Provide for the preservation and promotion of agricultural production, forest, silviculture, aquaculture, timber resources, and open space;**
   
   *As previously stated, It has become a widely accepted belief that farmers are increasingly relying on non-farm activities to help their farms remain economically viable. This amendment
provides for the orderly regulation of non-farm uses vital to the promotion and preservation of agricultural production.

12. Promote implementation of the comprehensive plan of Portsmouth adopted pursuant to Chapter 45-22.2 of the Rhode Island General Laws;
See a discussion of the Portsmouth Comprehensive Community Plan at the beginning of this document. In my opinion, this amendment brings the Zoning Ordinance into closer compliance with the Comprehensive Community Plan as mandated by State law.

14. Provide for efficient review of development proposals, to clarify and expedite the zoning approval process;
This amendment provided a clear and concise definition of Agriculture – Special Events and the conditions under which they are permitted. The approval process is improved and the Zoning Board of Review is now provided clear guidance to aid them in making decision regarding these types of proposed uses.

15. Provide for procedures for the administration of the zoning ordinance, including, but not limited to, variances, special-use permits, and, where adopted, procedures for modifications;
See 14 above.

In summary, I believe this amendment to the Zoning Ordinance brings the ordinance closer into compliance with the Comprehensive Community Plan, as is mandated by state law, provides ample safeguards in the regulation of non-farm activities on Portsmouth’s farms by bringing them under the regulatory framework of the Special Use Permit, and is aligned with all of the relevant purposes of zoning as expressed in Article I of the zoning ordinance. For the above reasons, I believe the Planning Board should make a positive recommendation to the Portsmouth Town Council regarding its adoption. Thank you for your time and I look forward to the Planning Board’s consideration of this matter,

Gary Crosby
Town Planner
Town of Portsmouth, RI
NOTICE OF PUBLIC HEARING
Proposed Amendments to Articles II, V and VII of the Portsmouth Zoning Ordinance
Regarding Agriculture – Special Events

A Public Hearing will be held on XXXXXXX at 7:00 pm in the Town Council Chambers, Portsmouth Town Hall, 2200 East Main Road, Portsmouth, RI to consider adoption of amendments to the Portsmouth Zoning Ordinance regarding the regulation of non-farm activities on parcels where agriculture is being conducted as a principal use. The intent of these amendments is principally to establish a definition of Agriculture – Special Events and permit such uses by Special Use Permit (S) in all Districts except the Town Center District, where they are prohibited (N).

The full text of the proposed amendments along with review and comment by the Town Planner is available at the Portsmouth Town Clerk’s office, Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m. Those persons wishing to speak should plan to attend and express their views.

Portsmouth Town Hall is handicapped accessible. TDD/Voice/Hearing Impaired: Please call 683-2101 three business days prior to hearing.
TITLE 2
Agriculture and Forestry

CHAPTER 2-23
Right to Farm

SECTION 2-23-4

§ 2-23-4 "Agricultural operations" defined. – (a) As used in this chapter, "agricultural operations" includes any commercial enterprise that has as its primary purpose horticulture, viticulture, viniculture, floriculture, forestry, stabling of horses, dairy farming, or aquaculture, or the raising of livestock, including for the production of fiber, furbearing animals, poultry, or bees, and all such other operations, uses, and activities as the director, in consultation with the chief of division of agriculture, may determine to be agriculture, or an agricultural activity, use or operation. The mixed-use of farms and farmlands for other forms of enterprise including, but not limited to, the display of antique vehicles and equipment, retail sales, tours, classes, petting, feeding and viewing of animals, hay rides, crop mazes, festivals and other special events are hereby recognized as a valuable and viable means of contributing to the preservation of agriculture.

(b) Nothing herein shall be deemed to restrict, limit, or prohibit nonagricultural operations from being undertaken on a farm except as otherwise restricted, regulated, limited, or prohibited by law, regulation, or ordinance or to affect the rights of persons to engage in other lawful nonagricultural enterprises on farms; provided, however, that the protections and rights established by this chapter shall not apply to such nonagricultural activities, uses or operations.

History of Section.