

## CHAPTER 3 – LAND USE

### INTRODUCTION

Land use in the Town of Rye has evolved over the centuries. Originally a rural farming and fishing community, our town now supports a variety of seasonal tourism, recreational and retirement purposes while remaining home to many fulltime residents. According to the Economic & Labor Market Information Bureau (ELMIB) Department of NH Employment Security, the Town of Rye contains 12.6 square miles of land area and 24.1 square miles of inland water area.

At the outset of this portion of the Master Plan discussion, it is important to recognize there are a number of physical limitations on land use in Rye. Rye is bound by the Atlantic Ocean to the east and the shoreline is comprised of a mix of sections of rock and of sand landscape. There are large tracts of inter-coastal marsh (half a square mile according to ELMIB) particularly in the northeastern part of Rye, where the land is not suitable for building or development. Its greatest useful value for this land is that of open space land allowed to serve nature and retain the open, rural vistas for which Rye is known.

The Town of Rye administers the orderly use of the land through an elected Planning Board and a Zoning Board of Adjustment. Within the boundaries of the Town of Rye, the Rye Beach Precinct has exclusive authority for planning and zoning. It has its own planning board, zoning board and master plan. These administrative arms of local government are responsible for issuance and enforcement of fair and consistent regulations that respect the laws of State and Federal Governments while ensuring the best and highest valued use of the land to citizens and property owners. There are many laws and regulations that bear on the use of real property, from environmental protections to open space conservation to new laws establishing a need for workforce housing. In some regard these laws are not fully complementary and there is some natural tension between there being a need for tighter housing density so that retirement or workforce housing can be affordable in an area where sewer is not available throughout and rock ledge limits safe septic land allotments. Laws promoting the setting aside of conservation land to protect open space are also somewhat at odds with the concept of high density and/or low cost housing unless such development is combined with open space requirements. In any case, the Town of Rye is committed to legal and fair administration of land use as required by laws.

The information presented below in this paragraph was obtained from the 2010 US Census website.

- Rye occupied housing amounted to 2252 units.
- Median age in Rye is 49.2 while the national average is 38.7.
- 20.6% (465 units) of occupied housing were rented housing, comparing to a 35.4% national average and compared with 29% for the New Hampshire average.

- 21.0% (600 units) of total housing were empty which is 7.9% higher than the national average and 5.4% higher than the New Hampshire average. Rye has a high percentage of seasonal vacancies at 16.5%.
- 0.7% (35 people) of the Household Population (5298 persons) were living in group quarters (nursing homes, dormitories, correctional institutions, Alzheimer/memory care, facilities, assisted living, etc.), compared with 2.6% and 3.0% for the national average and New Hampshire, respectively.
- Labor force population represented 64.2% (2959) of the total population, whereas 64.0% and 69.9% represented the national average and New Hampshire, respectively.
- Workforce reported average travel time of 28.4 minutes, while the national average was 25.4 minutes and New Hampshire average was 26 minutes.
- The Median family income in Rye was \$89,297 in 2011 dollars, which was higher than the national average of \$64,293 and higher than the New Hampshire average of \$78,310.
- Rye had 1787 owner occupied homes (representing a 79.4% owner versus a 20.6% renter occupied ratio).
- Rye's average property value was \$585,000 in 2010, compared to \$186,200 and \$250,000 for national and New Hampshire, respectively.

## VISION

Our vision for land use in Rye includes a community that is comfortable for those who live here, and desirable to those who are looking for a town with a good sense of heritage, open spaces and excellent schools.

Rye's land use policies will be fair and good for the community as a whole. Our decisions will support balances of choices, convenience, safety, security, conservation, environmental protection and a sense of community. We will value our past and present, embracing change when we foresee that it improves the Town according to this plan. Green Spaces will be for conservation of natural resources such as water and to preserve fragile habitats, for viewing of coastline, marshes, fields and forests along our roads and for recreation use by the public.

In this vision we recognize that –

- The purpose of zoning is to safeguard the health, safety and general welfare of our citizens and property owners;
- Rye's current buildings include: single family homes of all sizes, small-lot beachfront homes, multi-family dwellings, vacation homes, manufactured housing, commercial development, in-house apartments, farms, schools, and a regionally recognized Seacoast Science Center; and

- Our ability to incorporate these many land uses and protect significant portions of open space while still maintaining a “semi-rural” ambiance testifies to our ability to plan wisely.

## **OVERVIEW**

The very intent of community planning is to lay the groundwork for deliberate and intelligent land use. By combining voices through visioning sessions, citizens guide communities and regions toward desirable landscapes. Legally, these visions must be committed to paper in the form of a Master Plan in order to prevent random rulings about how landowners can use their land. Through zoning, town representatives can protect the health, safety and welfare of the community, but it must be done with respect for individual property rights.

### **1.0 PLANNING BOARD AND ZONING BOARD OF ADJUSTMENT ROLES**

The Planning Board can publicly establish land regulations that address the specifics of project applications and specifications. However, types of projects which are not allowed must be set down in the Master Plan. This document tells the Planning Board and the Zoning Board of Adjustment (BOA) essentially what kind of development Rye wants and where it will be allowed.

It is vital to remember the BOA’s role in the planning process. Developers’ requests for variances and special exceptions must not be granted unless they reinforce the wishes of the Master Plan. This leads to the BOA’s role as an arbiter of disagreements between developers and the Planning Board as to which parts of projects conform to the zoning and which fall outside of the established zoning ordinance parameters. It is a difficult role given that the BOA may grant variances and special exceptions<sup>+</sup> which fall outside the literal zoning guidelines but may fit within the spirit of the ordinance. An old saying is, “Only the BOA can interpret the zoning and the only thing the BOA can do is interpret the zoning.”

Nonetheless, where it can do so without unduly denying property owners the right to reasonably use their land and without causing harm to neighbors, the BOA must adhere to the letter of the law. Allowing “fringe” cases to deviate from the Master Plan on a case-by-case basis allows the sort of piecemeal creep that undermines our planning efforts.

## 2.0 DEVELOPMENT OF RYE THROUGHOUT THE YEARS AND CONSERVATION

The development of Rye has been predominately residential. There is some commercial development found along Route One, and there are small business and commercial districts dispersed throughout town. There is no traditional commercial village center.

Table L-1 provides an interesting look at a study that evaluated aerial photographs produced at various times over the course of 36 years. The Complex Systems Research Center at the University of New Hampshire performed this study<sup>+</sup> of all the communities in Rockingham County in order to quantify land use change. By interpreting aerial photographs from the years 1962, 1974, 1998 and 2010 this study tracked land use changes in a number of different categories to show how the region's landscape had changed. The table shows the breakdown of land use categories for Rye.<sup>+</sup>

This study shows that Rye has maintained a remarkable mix of land use considering its location on the valuable New Hampshire seacoast.

Looking at residential uses, in 1962 the Town had 1,135 acres in residential land use. By 1998 this total had increased to 1,776 acres, a change of 641 acres. That represents an increase in residential development of over 50% during that 36-year period.

Unfortunately for our goal of maintaining the semi rural character of Rye, this increase had to come nearly entirely at the expense of our agricultural sector. The number of acres in agricultural use in 1964 was 679. This total had decreased to 249 acres in 1998, which represents a decrease of 63 percent. However, the town wide total of 3 percent active agricultural use remains high for our region; Rye shows a significant retention of agricultural activity in a county increasingly turning away from its agricultural traditions. With the very high rate of retention for forested land, the Town of Rye is in the enviable position of having been successful in retaining rural character in a region that highly values it but has been losing such character in large measures over the last three decades.

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<sup>+</sup> It is important to note that there are some problems inherent with interpreting aerial photographs taken over a period of thirty years. The scales of the maps differ, leading to varying degrees of quality for interpretation purposes. In addition, the science of aerial photography has improved over this time frame so that more information can be gleaned from the more recent photographs. These factors conspire to create unexplainable differences in some of the categories. These issues notwithstanding, the study offers valuable insight into the trends of land use change in town and provides a solid baseline for future studies as well.

<b>Table L-1 Land Use Designations from 1962 to 1998, Rye, New Hampshire</b>							
		<b>1962</b>		<b>1974</b>		<b>1998</b>	
	<b>Land Use Category</b>	<b>Acres</b>	<b>% of Town</b>	<b>Acres</b>	<b>% of Town</b>	<b>Acres</b>	<b>% of Town</b>
<b>Developed Uses</b>	Residential	1,135.5	13.5	1,356.8	16.2	1,776.6	21.2
	Industrial/Commercial	49.0	0.6	68.5	0.8	78.9	0.9
	Mixed Urban	37.9	0.5	34.4	0.4	70.5	0.8
	Transportation/Roads	132.9	1.6	143.5	1.7	157.6	1.9
	Railroads	1.0	0.0	1.0	0.0	1.0	0.0
	Auxiliary Transportation	1.1	0.0	0.3	0.0	0.0	0.0
	Playing Fields/Recreation	3.3	0.0	119.5	1.4	185.2	2.2
<b>Undeveloped</b>	Active Agriculture	679.3	8.1	345.0	4.1	249.1	3.0
	Farmsteads	2.0	0.0	0.0	0.0	0.0	0.0
	Forested	4,700.4	56.1	4,582.2	54.7	4,386.7	52.3
	Water	366.2	4.4	372.2	4.4	377.2	4.5
	Open Wetlands	772.8	9.2	774.8	9.2	797.4	9.5
	Idle/Other Open	499.0	6.0	581.9	6.9	299.4	3.6
	<b>Totals</b>	<b>8380</b>	<b>100</b>	<b>8380</b>	<b>100</b>	<b>8380</b>	<b>100</b>
		<b>1962</b>		<b>1974</b>		<b>1998</b>	
	<b>Aggregate Categories</b>	<b>Acres</b>	<b>% of Town</b>	<b>Acres</b>	<b>% of Town</b>	<b>Acres</b>	<b>% of Town</b>
	Developed Uses	1,360.6	16.2	1,724.1	20.6	2,269.8	27.1
	Undeveloped Uses	7,019.7	83.8	6,656.2	79.4	6,109.8	72.9
	<b>Totals</b>	<b>8380</b>	<b>100</b>	<b>8380</b>	<b>100</b>	<b>8380</b>	<b>100</b>

The forested category represented 56 percent of the town's acreage in 1964. Remarkably, this category decreased by less than four percent over the thirty-six year period of comparison. Total forested acres went from 4,700 in 1964 to 4,386 in 1998. Still, it covers an amazing 52 percent of the acreage in town. This fact reflects not only a commitment to "open space" on the part of our community as a whole but it also reflects individual landowner's preference for woodlands on their private lots.

It is important to note that there is an increase over the study period of acreage in the category of "playing fields / recreation". In 1964, 3.3 acres were classified as "playing fields / recreation". By 1998 this total had increased to 185 acres, a nearly 60-fold increase.

There have been sustained efforts by our Conservation Commission, Parsons Park Corporation and the Rye Open Space Committee contributing significantly to these efforts. In addition, the Town and its recreation supporters have committed to creating and conserving recreation facilities. Rye citizens have shown overwhelming support for these groups and their initiatives.

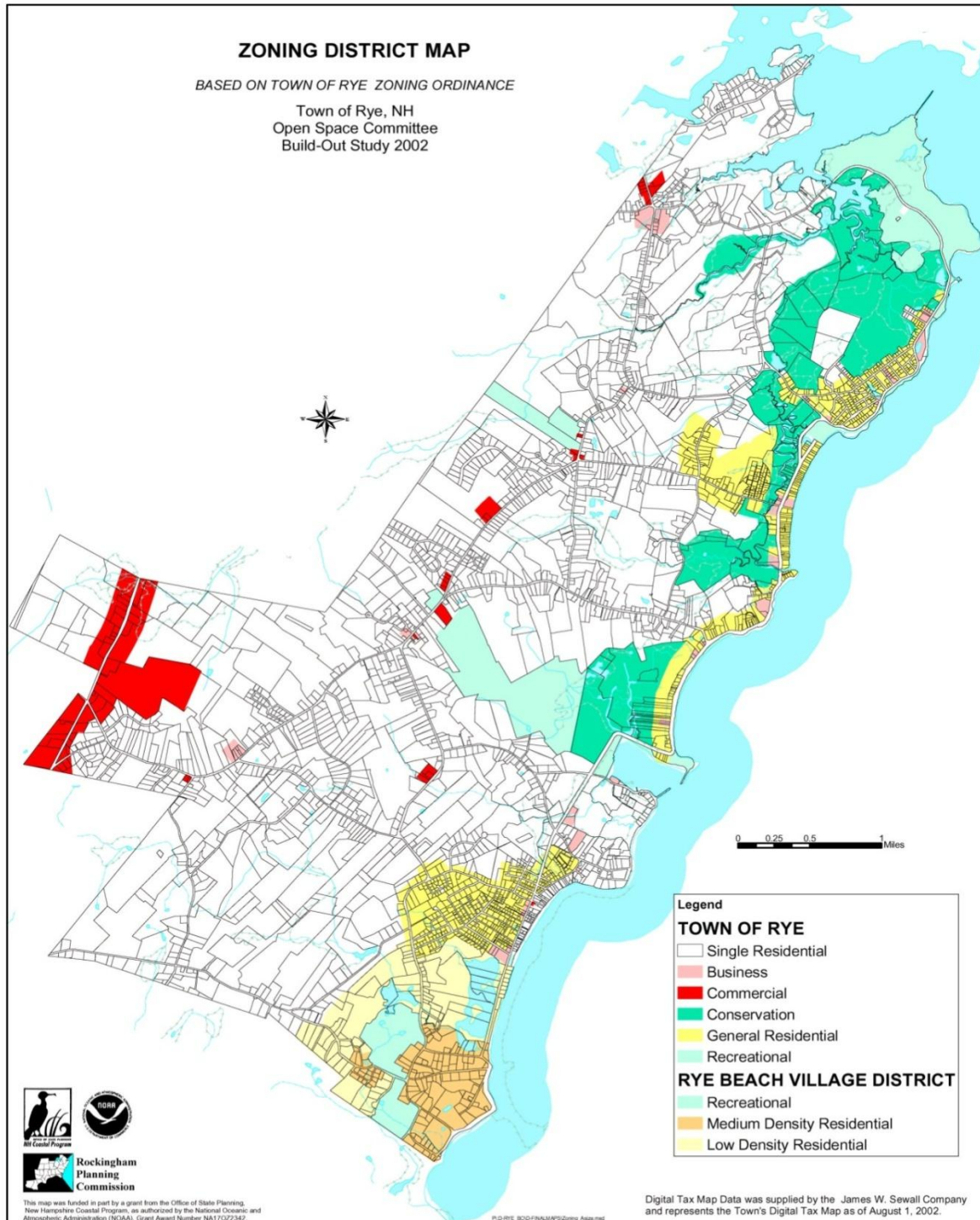
### 3.0 EXISTING LAND USE

The information in Table L-1 was based on the visual interpretation of existing land uses. As such, it was essentially blind to ownership or lot boundaries. Table L-2 presents brief descriptions of Rye's zoning districts and the acreage found in each according to the build-out study completed in 2002 for the Town of Rye by the Rockingham Planning Commission. Further elaboration can be found in Appendix B and in Rye's Zoning Ordinance. The districts discussed are as shown on the zoning map.

Below, are brief descriptions of Rye's zoning and the acreage found in each of the districts. Further elaboration can be found in Appendix C and in Rye's Zoning Ordinance.

<b>Table L-2 Zoning Districts, Their Sizes &amp; Allowed Uses in 2002, Rye, New Hampshire</b>			
<b><u>District</u></b>	<b><u>Acres</u></b>	<b><u>%</u></b>	<b><u>Permitted Uses</u></b>
Single Residence (SRD)	5268	74	Single-family homes, farms, and limited home occupations. And by special exception*: mobile homes, condominium conversions, hospitals, convalescent or nursing homes, and homes for the elderly
General Residence (GRD)	450	6	Same as SRD & two single-family units
Business (BD)	55	1	Same as SRD & small retail, service enterprises, lodging establishments. By special exception*: other expanded uses (including the sale of petroleum products)
Commercial (CD)	221	3	Same as BD but no 1-, 2-family dwellings. Vehicle salesrooms, lumberyards and building supplies; professional offices, financial institutions. Other uses by special exception* provided that they are not detrimental or injurious to the neighborhood
Conservation	650	9	Open space and forestry, trails, picnic areas, minimal walkways and structures to support the same
Public Recreation	443	6	Recreational purposes on lands owned by the Town of Rye, the Rye School district and the State of New Hampshire reserved for those purposes
Total	7087		

# **FUTURE ZONING MAP – (FUTURE LAND USE MAP)**



#### **4.0 FUTURE LAND USE**

We have developed a number of strategies to guide our patterns of development. Zoning has historically been used to establish major areas for residential and commercial development. In the past, these uses have for the most part been segregated. New residential uses have been primarily developed in the interior areas of town. Commercial development has been, with few exceptions, allowed along the US Route 1 corridor.

Our vision for land in the Coastal area is one of limited commercial development that utilizes the best practices of low impact development concepts. While we understand that growth will occur, our vision is for growth without over bulking of lots and with minimal increase in impervious surfaces.

Aside from the Lafayette Road corridor, there are two areas in Rye where limited, well planned business development should take place. The first is the Town Center where small retail businesses and offices that are compatible with the objectives of the Historic District should be encouraged. (See Vision Statement, p. 1-1). The second area is Foyes Corner and Sagamore Road to the north which has historically been an area of commercial development and which is being gradually upgraded and which will continue to be upgraded as sewer service is extended from Portsmouth.

The future land use map found in this chapter is a representation of the desired direction of future development in town based on the Open Space Use Committee of 2002. It is a useful tool for visualizing the recommended development pattern but is not intended to be a formal zoning map. The boundaries are general guidelines that will change as zoning is changed by the townspeople.

#### **5.0 WETLANDS, SHORELANDS AND OTHER LAND USE**

To understand all kinds of development in our town, one must understand that we have always put a high priority on protecting natural resources. The Town's wetlands, shorelands, and other land use ordinances influence nearly every development proposal that is reviewed by the Planning Board.

Wetlands and Flood Zone Ordinances regulate development around our wetlands and rivers. These resources perform vital ecological functions, provide open space, wildlife habitat and passive recreation opportunities, all of which contribute to the town's rural character. In addition, by avoiding the disruption of our wetlands we safeguard our water quality, public health, and natural ability to handle excess water during flood events.

Floodplains are undesirable locations for development because of the associated risks to life and property. In addition, construction in the floodplains worsens flood hazards downstream. For example, the inundation of septic systems can cause water pollution and public health hazards. Further, due to ledge and water concerns, Rye has very limited opportunities for traditional development.



Rye citizens have also taken non-zoning actions to preserve the Town's rural flavor. Both the Open Space Committee and Conservation Commission have undertaken programs to purchase easements or land in order to insure against future development. Due to the Town's extensive holdings, these properties are shown in Appendix B. The town should continue to aggressively acquire easements and property in order to protect open space.

Our extensive commitment to publicly held conservation land complements the zoning in promoting the rural feeling. The fair treatment of landowners, older citizens and new families requires innovative approaches to development. Rye simply does not have much buildable land (i.e., outside of environmental buffers, not on ledge) to sustain long road frontages and large lot development.

## **6.0 HOUSING**

There are a number of in-house apartments and multi-family units in Town that provide housing diversity. There are also multiple dwellings on a single lot. However, some of these multiple residences and all of the multi-dwelling lots exist as non-conforming lots with respect to zoning in which they are located. Zoning is intended to discourage non-conforming use. Thus, over time many of these non-conforming multi-family sites may disappear and be replaced by structures that conform to zoning.

It is not in the best interest of the town to lose this housing variety. Rye desires as much affordable housing as is possible in view of the physical limitations of/and the cost of land.

Developable backlands in residentially zoned areas may be appropriate for new alternative approaches. Some of the alternatives we can consider are: planned unit residential developments, retirement communities, and workforce housing.

On March 13, 2006, we passed a new zoning classification called "Retirement Community Development" (RCD), Section 401 of the Zoning Ordinance. This new classification requiring 10 or more acres, allows for 8-16 detached or attached (town houses) with reduced side and front setbacks. Additional units may be allowed (up to 22) if a project provides at least 15% affordable housing units. One or two additional units may be allowed for "excellence in design".

The developed area envelope would be set back on the sides, front and rear with natural screening vegetation. Each unit would have no more than 2 bedrooms and would have covered parking. If sewers were not available at a road adjacent to the property, a single development-wide septic system would be recommended. Access roads and driveways would be private and maintained by an owner's association. The entire RCD would be limited to occupants over 62 years of age.

Adopted in 2006, the RCD is an example of a cluster style development that addressed affordable housing for the elderly. Recognizing the need for affordable housing for its aging population, the residents of Rye voted to support a cluster type development. We see this cluster style of development as an example of a strategy to provide additional workforce housing.

On the traditional Single Residence lots, the larger sizes of homes built in Rye in recent years have been more compatible with large lots. However, there have been concurrent surface water drainage management problems which has manifested in recent years and warrant review of density and coverage requirements.

On March 9, 2010 the town passed three zoning amendments to further opportunities for workforce housing. One amendment provides for multi-family dwellings and multi-family developments in a Multi-Family Dwelling Overlay District. Another provides for Conservation Land Developments (CLDs) in the Single Residence and Commercial District. The third amendment enlarged the Commercial District in which CLDs may be developed. (See Chapter 4A, p. 4A-2).

Environmental, health and safety issues have arisen with the expanded use of retention and detention ponds to control surface water flow in developments and on individual lots. Ponds have, at times, become stagnant mosquito breeding areas. In some areas they have inadvertently served as collectors of lawn chemicals, animal wastes and other pollutants. Storms flush the pond's polluted water into our surface waters. These activities impact abutters and the Town after the development has been completed.

These issues should be recognized in any proposed future development by requiring an environmental escrow account which would be held by the Town for three to five years following completion of the development to ensure that any remedial measures function correctly as designed.

## **7.0 SALT MARSHES & MOSQUITO CONTROL**

Mosquito control is very important in any town on the New Hampshire seacoast. Salt marshes are of prime importance as a place for natural predation of mosquito larvae.

Restoration is being pursued in Rye based on a 1994 study prepared by the USDA Soil Conservation Service. The primary approach in the marsh restoration process is to restore the natural tidal flow of salt water into and throughout the marsh. This is accomplished by replacing all blocked or undersized culverts and by dredging channels. Through our Conservation Commission, we will continue to compete for grants from federal and state environmental agencies. These funds will complement those which we will raise from individual contributions and private environmental foundations. To assure the effectiveness, a program of increased frequency of sampling both the streams and in-shore coastal waters should be funded. Results would be used to document and better locate what are now viewed as “non-point” sources of pollution.

## **8.0 HISTORY AND OUR HISTORIC DISTRICT**

Rye's Historic District should be maintained with only modest expansion beyond its present coverage. There are only a few additional historic buildings in any area contiguous to the present district. Other historically and architecturally significant structures are dispersed

throughout Rye. The goal of preserving our heritage has been advanced by the formation of a Heritage Commission.

In addition, to honoring our natural heritage, we also want to recognize and protect elements that combine to recall history that makes Rye unique. Every community has a distinctive sense of character resulting from the way that life has been lived there over time. This sense of place gives stability to the town and thus enhances its attractiveness for residents.

### **Next Steps:**

## **9.0 HOUSING**

A number of specific land use items for discussion and action are covered more specifically in other chapters herein. Building upon an established record of planning that predominately supported the construction of single-family homes; we need to ensure that Rye continues to provide balanced coverage of the housing spectrum, in accordance with applicable Local and State laws.

- We will address the suitability of the US Route 1 area. This area is already a high use area due to its being a major transportation artery for the area. The atmosphere along that corridor already differs significantly from that found nearer the Town Center or near the coast.
- We will aggressively address options for conservative development. Given that most desirable lots suitable for construction with a 200-ft frontage have already been exhausted, we need to develop alternate methods for ensuring that future development takes advantage of existing constraints to create desirable housing options. Among these will be the introduction of innovative subdivisions where various parameters intended to safeguard green space and privacy are shared within the development rather than on a parcel-by-parcel basis.
- Our manufactured housing area is unprotected from future development. We will address the safeguarding of this existing use through zoning changes. These mobile homes are already an established part of the face of Rye and they represent an important piece in the provision of a diversity of housing options.
- We will further explore mixed-use options in our zoning.

## **10.0 WASTE WATER TREATMENT**

Several issues related to waste treatment need our consideration.

- We will consider the extension of Portsmouth provided and user-financed sewerage service in Rye along Route One to support further development within the Lafayette

Road corridor. We acknowledge that we are pushing limits of what septic options we have.

- The sewerage needs of the remainder of Rye’s coastal area which are not served by public sewerage should be studied.
- Pursuant to the authority of RSA 149-I:19, the Board of Sewer Commissioners of the Town of Rye re-adopted the Rye Sewer Use Ordinance, enacted by the Rye Board of Selectmen on December 17, 1990, amended in 1993.
- In response to problems of detention and retention ponds, following the completion of recent projects, we will consider requiring an environmental escrow account of developers. The Town would hold funds for three to five years following completion of development to ensure that all remedial measures function correctly as designed.
- A program of increased frequency of sampling both the streams and in shore coastal waters should also be funded. Any negative results would feed back into a septic improvement plan.
- In 2013, the Town voted for Article 13 which was in favor of the expansion of the City of Portsmouth Sewer System (at no cost to the Town of Rye and pursuant to an Intermunicipal Agreement to be negotiated between the Rye Sewer Commission and the City of Portsmouth) in order to provide public sewer service by the City of Portsmouth from the Rye/Portsmouth boundary on Sagamore Road ending at Pioneer Road at Foyes Corner.

## **11.0 REUSE OF BUILDINGS**

We will consider the uses of the former police station within the global parameters of municipal space requirements.

## **12.0 CONSERVATION AND LAND PROTECTION**

We will maintain our interests and activities in regard to safeguarding Rye’s naturally beautiful landscape.

- The town should continue to aggressively acquire easements and property, thus expanding existing protected areas. Landowners should be educated on their options for contributing to the Town’s conservation resources while simultaneously safeguarding their individual investments.
- Sound management of all protected areas should provide for desirable wildlife habitat and extend wildlife corridors.

- The town should also strive to protect remaining agricultural activities whenever the opportunity arises. In instances where agricultural uses may be abandoned, efforts to preserve these lands with the goal of potential future agricultural use should be pursued.
- The town should promote the use and maintenance of the acquired properties. Paths and trails should be maintained and marked for public use. Uses that benefit the community should be encouraged on town property.

### **13.0 SUBDIVISIONS**

Conventional cookie cutter subdivisions do not meet the standards of rural character and open space that give Rye its distinct character. Rather than conventional empirical area and frontage dimensions we should consider a design based approach as outlined in the book *Conservation Design for Subdivisions: A Practical Guide to Creating Open Space Networks*, by Randall Arendt (Island Press, 1996). This approach would not increase density but would look at conserving natural features and building in appropriate areas.

Town ordinances should allow for flexibility in the layout of subdivisions. Allowing a clustered development would promote open space and avoid the “checkerboard” development that only creates larger house lots and more streets. Conservation design would better match the traditional historic town roads and open fields that Rye has. Conservation design subdivision should not require any special exception that would discourage developers from proposing this instead of conventional subdivisions.

### **14.0 LOW IMPACT DEVELOPMENT**

Low Impact Development is an innovative approach to stormwater management based upon the principal of managing rainfall at the source. Residential areas contribute road based pollutants from vehicles such as oil, grease, polynuclear aromatic hydrocarbons (PAH's), lead, zinc, copper, cadmium, sedimentary soil particulates and road salts as well as herbicides pesticides nutrients from fertilizers, bacteria and viruses from animal waste. All of these contaminants can impair beneficial uses of receiving waters. Rye is approximately 80% residential and stormwater management needs to be applied in a holistic approach in order to protect our water quality.

Engineered stormwater conveyance, treatment, and detention systems should attempt to cause minimal disruption of the natural hydrological cycle. Traditional practices such as detention ponds and retention basins are not cost-effective and the results will not meet water quality goals. Future land use needs to consider reducing impervious surfaces such as roads and parking areas, altering road construction standards, alternative transportation systems that do not require extensive impervious surfaces (bike and walking paths). By incorporating Low Impact Development, we will work toward protecting surface and ground water quality, maintaining ground water quality, maintaining integrity of aquatic living resources and ecosystems, and preserving the physical integrity of receiving streams