


Staff Report  Zoning and Land Regulation Committee	Public Hearing: December 13, 2022		Petition 11909
	<u>Zoning Amendment Requested:</u> NR-C Natural Resource Conservation District TO RE Recreational District		<u>Town/Section:</u> ROXBURY, Section 2
	<u>Size:</u> 78 Acres	<u>Survey Required:</u> No	<u>Applicant:</u> CRYSTAL LAKE PARK LLC
	<u>Reason for the request:</u> TOWN-INITIATED REZONE FOR CONSISTENCY WITH PREVIOUS ZONING DISTRICT.		<u>Address:</u> SOUTH OF N550 GANNON ROAD



DESCRIPTION: The Town of Roxbury and landowner Steve Bodenschatz of Crystal Lake Park LLC request to rezone approximately 78 acres from NR-C Natural Resource Conservation to RE Recreational, to re-establish the previous zoning regulations that were applicable prior to the 2019 Dane County Zoning Ordinance overhaul. The rezone petition was revised with the help of the Town after the first petition submitted in August was found to lack the required information. It is Mr. Bodenschatz’s intention to redevelop a currently flooded area of the campground by filling the submerged area and using it for additional parking of recreational campers.

Understanding the water-based regulations is critical to this petition review. This report addresses the current site conditions, and what can be rezoned based on the applicable regulations, as well as the steps that would be needed to rezone additional areas that are currently underwater.

OBSERVATIONS: Crystal Lake Park has been a resort community since 1966. The resort consists of a mixture of permanent and temporary recreational home sites. The zoning ordinances regarding the RE Zoning District changed in the late 1970s making campgrounds a conditional use. This ordinance change made the resort a legal non-conforming land use. The entire operation has had nonconforming-use status for years.

The waters of Crystal Lake have been consistently rising for decades at a rate of approximately 2/10ths a foot per year. In 2018, the lake had risen to a point which made a good portion (3.1 acres) of the campground becoming submerged.

The recreational campers were evacuated from this area. Given that this area has not been used for camping in years, the area lost its non-conforming status due to the use being discontinued for more than a year. As of 2020, the lake elevation currently rests at 873.4 feet ALS.

In 1966, the land area of this section of the town was zoned RE for the purposes of creating the campground. In 2019, the area was inadvertently rezoned to NR-C during the rezoning rewrite process. The NR-C designation was intended for the surface waters but was assigned to the upland areas as well. The Town did notice this error during the zoning map drafts, but the designation for the upland areas was never changed on the final maps.

The RE district is intended “to allow for a mix of environmental conservation and both passive and active outdoor recreation activities.” Campgrounds are a conditional use in the RE district. In contrast, the purpose of the NR-C district is “to protect, maintain, and enhance natural resource and open space areas.” The NR-C district generally allows passive open space uses.

This petition requests RE zoning on two tax parcels, the first is 36 acres and contains most of the current dry land and structures, the other is 42 acres and is almost entirely under water. (See comparison of 2014 and 2020 aerial photos.)



Information on the water-based regulations is in the Resource Protection section below.

TOWN PLAN: This property is in the Open Space & Environmental Corridor planning area in the Town of Roxbury Plan; this generally designates areas requiring protection from development. New building development is prohibited (p. 55) but recreational activities are allowed. (For questions about the town plan, contact Senior Planner Curt Kodl at (608) 266-4183 or kodl@countyofdane.com)

RESOURCE PROTECTION: The property is subject to Dane County Shoreland and floodplain regulations. The DNR has established Crystal Lake’s Ordinary High Water Mark (OHWM) as 868 feet (per March 2022 docket # INF-SC-2022-11-00926). Only the areas above 868 feet would be minimally appropriate to rezone at this time. Areas underwater are considered to be lands in the “public trust”; the ZLR Committee does not have the authority to rezone these areas. The regulations that apply in relation to the OHWM are outlined below.

The attached “shoreland regulatory zones” map shows a visual of where shoreland regulations apply. From the OHWM of 868 feet (blue line):

- The green line 35 feet landward of the OHWM, is the “vegetative buffer zone”. This area by definition is to be vegetated and only exempted structures are allowed.
- The orange line 75 feet from the OHWM is the “shoreland setback” area. In this area, no permanent or temporary structures are allowed, including driveways and parking pads (considered structures). Only 200 square feet of minor structure could be permitted within this area, and this would require a shoreland mitigation permit. Additionally, allowing any impervious surfaces within the shoreland setback would be counter

to the purpose of shoreland zoning which is to protect shoreland areas and preserve water quality, water quantity, habitat.

- The pink shading is the “regulatory floodplain”. This represents all lands between 868 feet (the OHWM) and 874.6 feet (the Base Flood Elevation or BFE). While we could not confirm the maximum elevation that Crystal Lake has risen to in recent years, it was confirmed at 873.4 in April of 2020.
- The red line is 300+/- feet from the OHWM; lands between this and the OHWM are within the “primary shoreland zone”. Impervious surface limits apply to lands within this area.

TOWN ACTION: On November 7, 2022 the Town recommended approval of the rezone with no special conditions.

STAFF RECOMMENDATION: Staff would support RE zoning only for the upland areas at this time, Floodplain zoning has several purposes, among which are to “minimize the occurrence of future flood blight areas in the floodplain” and to “discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.” Given that there is no evidence that the lake water elevation will recede, Staff recommends only upland areas above 874.6 feet be rezoned at this time.

In order for staff to recommend rezoning of the underwater areas that the owner wants to fill, the owner would first need to obtain approvals from WDNR and FEMA (Shoreland Erosion Control and Floodplain Development permits), to re-establish these areas as upland. Unless such permits are obtained, staff does not view the inundated areas as suitable for rezoning.

As of the time of writing, there is still an active violation on the site related to ground disturbance activities within the Shoreland Zone. The property owner is aware of the necessary steps for corrective action, and has applied for the Floodplain Development permit, but it will not be issued until they obtain a Shoreland Erosion Control Permit from Dane County. An initial application was submitted for the Shoreland EC permit but was missing certain information; LWRD is awaiting a revised application including this scope of work for “after the fact” disturbance. The applicants have not yet submitted the information needed in order to obtain permits to fill the submerged areas.

The legal description and exhibit map provided with this rezone petition should be updated to reflect a consistent and approvable zoning boundary. The legal description and “rezone exhibit” in packets submitted by Grothman and Associates on 8/18/22 is mismatched with the original exhibit map the applicants provided in early August (which is still included in the petition docs and shows “Parcel A” as 9.22 acres). Due to the complexity of the request and the different options for designating the rezoning boundary, all of the submitted documents are included with this petition.

Staff recommends approval of the rezone to RE subject to the following:

1. The rezone shall apply only to the areas currently above 874.6 feet in elevation (the established Base Flood Elevation). A new petition could be submitted later to rezone additional areas, after they are removed from the flood hazard area.
2. The applicants shall provide an updated Legal Description of the area being rezoned.

Other options available to the ZLR Committee are:

1. Conditionally approve the rezone as requested, requiring all rezoned land currently in the floodplain (below 874.6 ft) to be filled to at least the BFE of 874.6 feet. The petition would not become effective until any required fill is in place.
2. Postpone or deny the petition in order to give the landowner time to submit the proposal for the full scope of work they wish to do on site, after the shoreland and floodplain permits are obtained. This would enable the ZLR Committee to consider the entire request at the appropriate time. The County would still need to consider the appropriateness of specific land uses proposed at various elevations.

Any questions about this petition or staff report please contact Rachel Holloway at (608) 266-9084 or holloway.rachel@countyofdane.com

Shoreland Regulatory Zones



Town of
Roxbury

Zone AE

Zone X

868

OHWM

868

Shoreland Setback
Vegetative Buffer Zone

Shoreland Setback
Vegetative Buffer Zone

868

OHWM

868

Shoreland Setback
Vegetative Buffer Zone