

FILED
01-31-2025
Sheboygan County
Clerk of Circuit Court
2025CV000072
Honorable Rebecca L.
Persick
Branch 4

STATE OF WISCONSIN: CIRCUIT COURT: SHEBOYGAN COUNTY

Case Code: 30955.30952

ROGER G. MILLER
an adult individual
202 Pioneer Road
Sheboygan, WI 53081

CASE NO.:

25CV72

and

ERIK A. THELEN
and BELLE R. RAGINS
adult individuals
4933 Evergreen Drive
Sheboygan, WI 53081

and

JOHN E. EHMANN
an adult individual
231 Edgewater Road
Sheboygan, WI 53081

and

KENNETH J. LISBERG
and DEBORAH A. LISBERG
adult individuals
415 Timberlake Road
Sheboygan, WI 53081

and

GREGORY P. HOPKINS and
TONI J. DESTEFANO
adult individuals
346 Edgewater Road
Sheboygan, WI 53081

Plaintiffs.

v.

CITY OF SHEBOYGAN PLAN
COMMISSION
a public board
828 Center Avenue
Sheboygan, WI 53081

and

CITY OF SHEBOYGAN ZONING BOARD
OF APPEALS
a public board
828 Center Avenue
Sheboygan, WI 53081

Defendants.

SUMMONS

THE STATE OF WISCONSIN. To each person named above as Defendant:

You are hereby notified that the Plaintiffs named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this Summons, you must respond with a written answer, as that term is used in Wis. Stat. ch. 802, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is Sheboygan County Clerk of Courts, 615 North 6th Street, Sheboygan, Wisconsin 53081, and to Rohde Dales LLP, Plaintiffs' attorneys, whose address is 909 North 8th Street, Suite 100, Sheboygan, Wisconsin 53081. You may have an attorney help or represent you.

If you do not provide a proper Answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 31st day of January, 2025.

ROHDE DALES LLP

Electronically Signed By

s/Kyle Borkenhagen

A Member of the Firm

State Bar No. 1084544

Adam Vanderheyden

A Member of the Firm

State Bar No. 1107906

Attorneys for Plaintiffs

kborkenhagen@rohdedales.com

avanderheyden@rohdedales.com

P.O. Address:

909 North 8th Street, Suite 100

Sheboygan, WI 53081

Telephone: (920) 458-5501

Facsimile: (920) 458-5874

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Defendants.

COMPLAINT

NOW COME Plaintiffs Roger G. Miller, Erik A. Thelen, and Belle R. Ragins (collectively, "Plaintiffs"), by their attorneys, Rohde Dales LLP, and for their complaint against the City of Sheboygan Plan Commission and the City of Sheboygan Zoning Board of Appeals, allege as follows:

1. Plaintiff Roger G. Miller ("Miller") is an adult individual whose address is 202 Pioneer Road, Sheboygan, Sheboygan County, Wisconsin 53081.

2. Plaintiffs Erik A. Thelen ("Thelen") and Belle R. Ragins ("Ragins"), a married couple, are adult individuals whose address is 4933 Evergreen Drive, Sheboygan, Sheboygan County, Wisconsin 53081.

3. Plaintiff John E. Ehmann ("Ehmann") is an adult individual whose address is 231 Edgewater Road, Sheboygan, Sheboygan County, Wisconsin 53081.

4. Plaintiffs Kenneth J. Lisberg and Deborah A. Lisberg ("Lisbergs") are adult individuals whose address is 415 Timberlake Road, Sheboygan, Sheboygan County, Wisconsin 53081.

5. Plaintiffs Gregory P. Hopkins ("Hopkins") and Toni J. DeStefano ("DeStefano") are adult individuals whose address is 346 Edgewater Road, Sheboygan, Sheboygan County, Wisconsin 53081.

6. Defendant City of Sheboygan Plan Commission ("Plan Commission") is a public board that is duly constituted, organized, and existing under the laws of the State of Wisconsin, Wis. Stat. § 62.23(1), and the City of Sheboygan Code of Ordinances, having the duties and responsibilities described therein.

7. Defendant City of Sheboygan Zoning Board of Appeals ("BOA") is a public board that is duly constituted, organized, and existing under the laws of the State of Wisconsin, Wis. Stat. § 62.23(7)(e), and the City of Sheboygan Code of Zoning Ordinances ("Zoning Ordinances"), having the duties and responsibilities described therein.

8. Miller owns a residential property with an address of 324 East Center Avenue, Unit #4, Sheboygan, Wisconsin 53081. This residential property is located in the City of Sheboygan.

9. On December 15, 2020, Kohler Company ("Kohler") was granted a conditional use permit ("CUP") by the Plan Commission to build a golf course just north of Kohler-Andrae State Park between the Black River and Lake Michigan.

10. Thelen and Ragins live approximately three quarters of one mile north of the proposed golf course.

11. Miller lives approximately one third of a mile north of the proposed golf course.

12. Ehman lives approximately one fourth of a mile north of the proposed golf course.

13. Lisbergs live directly adjacent to the northern boundary of the proposed golf course.

14. Hopkins and DeStefano live approximately one-fourth of a mile north of the proposed golf course.

15. The CUP, by its very terms, was ostensibly "tolled" until the time that all litigation regarding Kohler's ability to construct the golf course concluded.

16. The CUP also required, again by its very terms, that any revised site plans be submitted to the Plan Commission as a new application for a new CUP and approval prior to the commencement of construction.

17. The CUP's terms further mandate that Kohler obtain all necessary permits, including but not limited to a wetland fill permit.

18. On December 5, 2023, the Wisconsin Court of Appeals issued a ruling in the final remaining legal action pending relating to Kohler's legal ability to construct the golf course.

19. In that case, the court of appeals upheld the denial of Kohler's application for a wetland-fill permit from the Wisconsin Department of Natural Resources.

20. By the terms of the CUP and the apparent interpretation of City of Sheboygan Ordinance 105-998(i) by the Plan Commission, Kohler's CUP would expire if Kohler did not commence construction of the golf course within 365 days of December 5, 2023.

21. On November 12, 2024, the Plan Commission heard a petition from Kohler to extend the life of the CUP for an additional year.

22. The site plans submitted to the Plan Commission by Kohler with its application for the CUP in 2020 require amendments, for a variety of reasons, including but not limited to environmental changes caused by the changing water levels of Lake Michigan and the denial of a wetland fill permit.

23. Kohler did not submit new plans for the construction of the golf course prior to the Plan Commission's November 12, 2024, hearing to extend the 2020 CUP.

24. Miller spoke at the November 12, 2024, Plan Commission hearing in opposition to Kohler's application for a one-year extension of the CUP.

25. Ragins has a disability protected by the Americans with Disabilities Act ("ADA").

26. The posted agenda for the November 12, 2024, Plan Commission hearing did not list public comments; however, public comments were allowed.

27. The agenda instructed individuals with disabilities to contact the City Development Department for accommodations and required remote participants to request access at least 24 hours in advance.

28. Ragins followed these instructions, submitting an ADA request via phone and email.

29. Ellise Rose ("Rose"), the Associate Planner responsible for ADA compliance, confirmed in writing that she believed the Chair of the Commission would be allowing public comment in the meeting and that the public comment should be available to people attending virtually.

30. Ragins also left a voicemail with the City of Sheboygan Mayor's office, reiterating her request and the city's legal obligation under the ADA.

31. Rose then provided Ragins with a Microsoft Teams link for the meeting.

32. During the November 12, 2024, Plan Commission hearing, Ragins began speaking through the Microsoft Teams application during the public-comment portion of the hearing.

33. The Plan Commission told Ragins that she was not allowed to speak because she was not physically present at the hearing; told Ragins that online participants may only silently watch the hearing; and muted her audio, preventing Ragins from making her oral objections to Kohler's application for a one-year extension of the CUP and claimed that Ragins needed to be in person to convey her statement to the Plan Commission.

34. Beyond being denied the opportunity to speak, Ragins was also unable to observe the meeting, as the Microsoft Teams cameras remained off, restricting her to audio-only access.

35. John Belanger ("Belanger"), a member of the Plan Commission, is an employee of Kohler.

36. Despite being a Kohler employee and having a conflict of interest, Belanger did not recuse himself from the vote on Kohler's application for a one-year extension of the CUP.

37. Belanger openly voiced strong support for and ultimately voted in favor of the Kohler's application for a one-year extension of the CUP.

38. On November 12, 2024, the Plan Commission granted Kohler's application for a one-year extension of the CUP.

39. On December 16, 2024, Miller paid the filing fee and filed with the BOA a written appeal of the Plan Commission's decision to grant Kohler's application for a one-year extension of the CUP.

40. Miller's written appeal is attached as Exhibit A and is hereby fully incorporated in this complaint by reference.

41. In response to Miller's appeal, Kevin Sampson ("Sampson"), the chairman of the BOA, wrote a letter to Miller, stating that BOA did not have authority to hear Miller's appeal.

42. Sampson's letter is attached as Exhibit B and is hereby fully incorporated in this complaint by reference.

43. Upon information and belief, City Attorney Charles Adams ("Adams") "ghost wrote" the Sampson letter.

44. Adams orally advised the Plan Commission during the November 12, 2024, hearing on Kohler's application for a one-year extension of the CUP.

45. It was inappropriate for Adams to advise both the Plan Commission and the BOA. Because BOA was asked to review a decision of the Plan Commission, Adams should have referred the BOA and Sampson to other legal counsel to respond to Miller's appeal.

**CLAIM FOR RELIEF: COMMON LAW
WRIT OF CERTIORARI AGAINST THE PLAN COMMISSION**

46. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

47. Wisconsin Statute § 62.23(7)(de)5, and City of Sheboygan Ordinance 102-998(n) only create an avenue for the applicant for a conditional use permit to appeal if its application for a conditional use permit is denied.

48. Plaintiffs are not applicants for a conditional use permit and are challenging the actions of the Plan Commission in granting an extension of Kohler's CUP.

49. If there are no specific statutory rules or City of Sheboygan ordinances governing Plaintiffs' challenge of the Plan Commission's actions, Plaintiffs' claims are governed by the common-law writ of certiorari.

50. The CUP had already expired at the time that the Plan Commission ostensibly granted a one-year extension of the CUP, and thus the Plan Commission acted without authority.

51. Additionally, even if the CUP had not expired prior to November 12, 2024, the Plan Commission's decision to grant Kohler's one-year extension of the CUP was deficient, was erroneous, was arbitrary, was oppressive, was unreasonable, was based on incorrect theories of law, included the vote of a member who had a conflict of interest due to his employment with Kohler, was not supported by the evidence, and represented the Plan Commission's will and not its judgment.

**FIRST ALTERNATIVE CLAIM FOR RELIEF: STATUTORY
WRIT OF CERTIORARI AGAINST THE BOA**

52. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

53. Wisconsin Statute § 62.23(7)(e) grants boards of appeals broad authority to review the decisions of municipal actors as those decisions apply to a municipality's zoning ordinances.

54. Wisconsin Statute § 62.23(7)(de)5. and City of Sheboygan Ordinance 102-998(n) only create an avenue for the applicant for a conditional use permit to appeal if its application for a conditional use permit is denied.

55. Plaintiffs are not applicants for a conditional use permit and are challenging the authority of granting of a conditional use permit, and thus the BOA has jurisdiction to hear Miller's appeal under the broad statutory grant of authority to BOA pursuant to Wisconsin Statute § 62.23(7)(e).

56. BOA's failure to hear Miller's appeal was deficient, was erroneous, was arbitrary, was oppressive, was unreasonable, was based on incorrect theories of law, was based on advice made through legal counsel who had a conflict of interest, was not supported by any evidence, and represented Sampson's (or Adams's) will and not the judgment of BOA.

57. Pursuant to Wisconsin Statute § 62.23(7)(e)10.a., the Court has authority to issue a writ of certiorari overturning BOA's decision.

**SECOND ALTERNATIVE CLAIM FOR RELIEF: COMMON-LAW
WRIT OF CERTIORARI AGAINST THE BOA**

58. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

59. If the Court finds that Plaintiffs do not have an avenue pursuant to Wisconsin law to seek a writ of certiorari against the BOA, then the common law provides such an avenue.

60. And again, BOA's failure to hear Miller's appeal was deficient, was erroneous, was arbitrary, was oppressive, was unreasonable, was based on incorrect theories of law, was

based on advice made through legal counsel who had a conflict of interest, was not supported by any evidence, and represented Sampson's (or Adams's) will and not the judgment of BOA.

**THIRD ALTERNATIVE CLAIM FOR RELIEF: COMMON-LAW
WRIT OF MANDAMUS AGAINST THE BOA**

61. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

62. Sampson's letter ostensibly denying Miller's appeal was not an actual decision of BOA, as Miller's appeal was not considered by the whole BOA nor was it voted on by the members of BOA.

63. As outlined in this complaint, Miller has a clear legal right to have his appeal heard by BOA because he timely filed the written appeal and paid the mandatory filing fee.

64. Wisconsin state law and City of Sheboygan ordinances create a positive and plain duty on the part of BOA to hear Miller's appeal.

65. If the Court finds that the writ of certiorari is not a proper remedy in this matter, then Plaintiffs will have no adequate remedy, other than a writ of mandamus.

66. Without the granting of the writ of mandamus, Miller will be substantially damaged because he will have not had a chance to have his appeal heard by BOA, an appeal that he is legally entitled to have heard.

WHEREFORE, Plaintiffs Roger G. Miller, Erik A. Thelen, Belle R. Ragins, John E. Ehmann, Kenneth J. Lisberg, Deborah A. Lisberg, Gregory P. Hopkins and Toni J. DeStefano seek judgment against the Defendants as follows:

A. That this Court issue a writ of certiorari against the Plan Commission declaring Kohler's CUP invalid;

B. In the alternative, that this Court issue a writ of certiorari invalidating BOA's decision to deny Miller's appeal and declaring Kohler's CUP invalid;

C. In the alternative, that this Court issue a writ of mandamus ordering BOA to hear

Miller's appeal; and

D. For such other and further relief as the Court may deem just and proper.

Dated this 31st day of January, 2025.

ROHDE DALES LLP

Electronically Signed By

s/Kyle Borkenhagen

A Member of the Firm

State Bar No. 1084544

Adam Vanderheyden

A Member of the Firm

State Bar No. 1107906

Attorneys for Plaintiffs

kborkenhagen@rohdedales.com

avanderheyden@rohdedales.com

P.O. Address:

909 North 8th Street, Suite 100

Sheboygan, WI 53081

Telephone: (920) 458-5501

Facsimile: (920) 458-5874

December 13, 2024

City of Sheboygan
Building Inspection Department
828 Center Avenue, Unit 208
Sheboygan, WI 53081

Subject: **Application and Petition to City of Sheboygan Board of Appeals to Rescind the One-Year Time Extension Granted to Kohler Company's Conditional Use Permit for a Proposed Golf Course in Section 14, T. 14 N, R 23 E, Sheboygan County, Wisconsin**

Ladies and Gentlemen:

This application and petition requests that the City of Sheboygan Board of Appeals (Board) rescind the one-year time extension recently granted by the City of Sheboygan Plan Commission to the Conditional Use Permit (CUP) that had been issued to Kohler Company for the proposed golf course in Section 14, T 14 N, R 23 E in Sheboygan County. This application is made pursuant to Section 15.912 – Appeals of Zoning Interpretations of the City of Sheboygan Zoning Ordinance, and may be used jointly or severally by any other petitions regarding this issue.

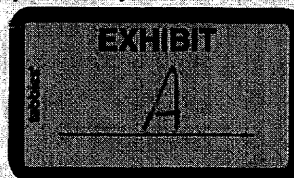
The subject CUP had been issued to Kohler Company on December 15, 2020, approximately four years ago. Section 15.905(9) on page 283 – **Time Limits on Development of Conditional Use**, on page 283 of the Zoning Ordinance, states that:

The start of construction of any and all conditional uses shall be initiated within 365 days of their approval by the Plan Commission and shall be operational within 730 days. Failure to initiate development within this period shall automatically constitute a revocation of the conditional use. Any request for extension of time must be made prior to such revocation. **Kohler's request for time extension is three years too late.**

Because construction has not started, there was no CUP in effect for the Plan Commission to recently extend in time. **The Plan Commission's recent granting of time extension was illegal.**

Additional violations of Zoning Ordinance have been previously identified by petitioner Thelen's June 16, 2021, letter to Mayor Ryan Sorenson as well as verbally by the author during the November 12, 2024, Plan Commission meeting. That was preceded by the author's written comments to the Plan Commission dated December 10, 2020, that were verbally summarized at the December 15, 2020 Plan Commission meeting during which time the subject CUP was approved. Additionally, Pines Bach's December 14, 2020 twenty pages of Written Comments outlined in detail many defects in the CUP application. These documents, as well as Midwest Environmental Advocates December 12, 2020 comments, **comprise Appendix A.**

Kohler Company just recently requested this time extension in order to develop a new Site Plan for the proposed golf course that avoids any filling of wetlands because **nearly six years ago** (on March 15, 2019), the **Wisconsin Division of Hearings and Appeals (DHA) REVERSED Kohler's permit** with DNR to fill 3.7 acres of wetlands (refer to **Appendix B**) **due to the extensive adverse environmental effects that would be caused by the project as a whole.** And DNR's March 31, 2017, **Endangered Resource Review (Appendix C)** identifies some of the species at risk.

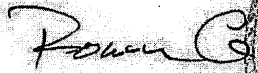


City of Sheboygan
December 13, 2024
Page 2 of 2

This petition also applies to the Board for adjudication regarding the numerous violations of Zoning Ordinance during review and issue of the subject 2020 CUP that will need to be reviewed if Kohler Company applies for a new CUP, or for any other type of development that may be subsequently proposed.

The remainder of this document summarizes information necessary to make an informed decision in response to this application as well as responding to any other parties petitioning on the subject CUP.

Respectfully submitted,



Roger G. Miller, PE, Environmental Engineer
202 Pioneer Road
Sheboygan, WI 53081



12/16/2024

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INTRODUCTION

In addition to identifying the specific portions of the City of Sheboygan Zoning Ordinance that are most pertinent to the proposed golf course project that have been violated, **this petition offers recommendations for appropriate action by the Board.** It also offers more general recommendations to the city on how to **begin applying the Natural Resource Protection Regulations** (Subchapter 15-5) of the Zoning Ordinance relevant to the subject land as well as future projects involving wetlands, woodland, and shorelands, **and not affirm precedent for continuing to set them aside** as has been consistently done throughout the city's involvement with the subject proposed development.

This may also be useful for the Planning Department now and in the future as they're required to interpret the city's Zoning Ordinances and advise the Plan Commission. Further, it briefs City of Sheboygan elected officials, commissioners, and employees on the background of this case so that similar violations of Zoning Ordinance might be avoided in the future. While many people may not realize, Wisconsin Statute Chapter 946.12 makes it clear that it's important to not ignore ordinances because that constitutes official misconduct, which is a Class 1 felony.

Proposed Golf Course Project Description

The development proposed by Kohler Company on the subject land is an 18-hole championship grade golf course. This would become the company's fifth course in the vicinity of Sheboygan which, along with The Bull at Pinehurst Farms nearby, would provide a sixth high grade course in the area. Together with five other courses around Sheboygan that are less challenging and are used by most local golfers, **the proposed development would become the ninth golf course with 18 holes within 6 miles of downtown Sheboygan,** and there are two additional nine-hole courses. Refer to Figure 1 – Golf Courses within 6 miles of Downtown Sheboygan. Appendix D provides additional information on these courses and how the state rates in attracting visiting golfers. **All of these existing local courses were constructed in areas of formerly tilled agricultural land** having predominantly clayey soils and involved few, if any, protected (by state law) wetlands.

In contrast, the proposed golf course location is comprised of mature mixed deciduous-coniferous forest, river flood fringe wetlands, and isolated wooded wetlands, all of which are Protected Natural Resources under City of Sheboygan Zoning Ordinances. Refer to Figure 2 – Proposed Golf Course Location. This project came under the jurisdiction of the City of Sheboygan Zoning Ordinances through Kohler's request for annexation of their land along with a substantial portion of the state park (refer to Figure 3).

The 2020 Site Plan for **the proposed golf course covers the eastern 184 acres** of the approximately 247-acre sum of the area of the Tax Key Parcels that are outlined in red in Figure 4 – Tax Key Parcel Map and tabulated below:

Tax Key Number	Area Composition (acres)		
	Wetland	Woodland	Total
59281328015	2.4	60.6	63.0
59281328016	10.2	19.5	29.7
59281328017	2.1	47.4	49.5
59281328018	6.5	71.9	78.4
59281328029	14.2	10.8	25.0
59281328027	0.0	1.3	1.3
	Wetland: 35.4	Woodland: 211.5	246.9 Total
	(10%)	(90%)	

This land has about 3/4's of a mile of Lake Michigan shoreline that is required by City Zoning Ordinance to remain in its "undisturbed state". The project is bounded by state park to the south and Black River and state park to the west, a large lot wooded residential subdivision to the north, and Lake Michigan shoreline to the east (refer to Figure 5 – State Property Map). Figure 6 shows the DNR mapped wetlands in the area, some of which are shown in the 2020 Site Plan to be filled, and woodlands would be clear cut adjacent to the wetlands that remain. The Site Plan also shows filling within the Flood Fringe of the Black River that is mapped in Figure 7, which is not allowable at either state or local levels of regulation.

The Site Plan for the course in the 2020 CUP is provided in Figure 8. It's described by Kohler to be a "minimalist" design that "may require more than 50% clear cut" as mentioned in the project's Environmental Impact Report (EIR). However, the Site Plan indicates approximately 75% "clear cut" of the project's woodland area, which is highlighted in pink on Figure 9 – Annotated 2020 Site Plan.

Kohler advises that the proposed course location is "ideal" because it's near Riverdale Country Club, and admirably compares it to the publicly owned golf course at Peninsula State Park that was started about 100 years ago on previously deforested land. That location is perched high on top of the Niagara Escarpment in an area that contains no wetlands, and its edges are high above the rocky and erosion-resistant shoreline of Green Bay. It has little in common with the proposed course.

Although not shown in the 2020 Site Plans, the Initial Site Plans prepared by Kohler Company had shown quarry stone revetment along about 2/3's of the shoreline in segments along the area marked with dashed black line on Figure 4. Because a revetment of that scale would require an Individual Chapter 30 Permit with DNR and the Army Corps of Engineers, which would be a permitting obstacle in addition to those the golf course project already faced, that issue has been deferred by not showing revetments on subsequent plans. Photos in Appendix E show the extensive revetments along Whistling Straits. In the meantime, several portions of the 2020 Site Plan's course of play are located lakeward of the present Ordinary High Water Mark (O.H.W.M.), extending beyond Kohler's riparian property boundary and onto shoreline that is held in trust by the state.

Because Kohler's permit to fill over 40 small wetlands and some of wetland area comprising the east edge of the flood fringe of the Black River (summing to 3.7 acres) was "REVERSED" in 2019 by the State of Wisconsin Division of Hearings and Appeals (DHA), Kohler recently informed the Plan Commission they will soon provide a revised Site Plan that will avoid filling any wetlands. This plan would need to accommodate the present O.H.W.M., which is at the toe of the erosion scarp caused by the 2016 through 2022 high water level period. However, that is moot for a golf course on the subject land for the reasons described in the next section.

SUMMARY OF ZONING ORDINANCE VIOLATIONS AND BASIS OF APPEAL

In addition to Plan Commission illegally recently extending the CUP for the course, the previous Planning Department staff had violated the portions of the Zoning Ordinance most pertinent to the proposed use and characteristics of the subject land.

Development of a privately owned golf course (defined as *Outdoor Institutional* for which use classifications are cited in Table 15.204: Land Uses in Permanently Protected Green Space, page 113 of the Zoning Ordinance) is not permitted either by right, Special Use, or Conditional Use. And according to the 2020 Site Plan, the entirety (100%) of the planned course is Permanently Protected Green Space consisting of either Wetland, Woodland, or Lakeshore, none of which are allowed to be disturbed according to Table 15.204 and Subchapter 15-5. Additionally, all of the land is recharge.

As mandated by Table 15.204 as just described, a golf course on privately owned land is simply not allowable at the subject location. If the land was to be "publicly" owned (in this case by the city), its development could become allowable under CUP, but only if it didn't result in adverse environmental impacts. And that's not physically possible here.

In evaluation of the 2020 CUP application, the **Planning Department's Request for City Plan Commission Consideration** (refer to page 7 of Appendix F) **incorrectly treated the subject land that is privately owned, as public.** Zoning Ordinance affords more latitude for any city owned golf courses that are meant to be closely accessible to residents and economical enough for much of the public to afford.

Subsection (4) Natural Resource and Green Space Regulations and Requirements of Section 15.205 – **Regulations Applicable to All Land Uses** (page 114) requires that: "**All land use and/or development of land shall comply with the regulations and requirements of Subchapter 15-5** (refer to Appendix G), **pertaining to the protection of sensitive natural resources and required green space areas.** Such regulations and requirements address issues such as absolute protection, partial protection, and mitigation, which are directly related to, and a critical component of, the protection of natural resources and the protection of health, safety, and general welfare of the residents of the City of Sheboygan and its environs."

The city's **Natural Resource Protection Regulations** (Subchapter 15-5, pages 197 through 206) of the Zoning Ordinance are specifically regulated "overlays" as **Permanently Protected Green Space.** In spite of these overlay requirements being **superior to all other layers of ordinance, the Plan Commission continues to set aside most of Subchapter 15-5** in the course of administering the subject CUP.

In order for the city to come into compliance with applicable zoning ordinances regarding the subject CUP, **each of the following violations outlined below justify and necessitate the Board in rescinding the Plan Commission's November 12, 2024, action to extend its time limit:**

- 1) **Section 15.905(9)** on page 283 - **Time Limits** on the Development of Conditional Use requires that construction shall start within 365 days to start construction, and the use shall be operational within 730 days, neither of which has been met. Because it had always been anticipated by the city and applicant that the project faced a number of permitting hurdles and potential for lawsuits, **in 2020 the Plan Commission should have instructed the applicant to defer application of the CUP until those were all resolved.**
- 2) **Section 15.008(2)** on page 3 – States that "no land shall be developed or used, and no structure erected or maintained in violation of any state or federal regulations". **DNR Wetland Ecologist (Patricia Trochell)** during the Wisconsin Division of Hearings and Appeals (DHA) hearings that resulted in REVERSAL of Kohler's permit to fill some wetlands testified (in Appendix B) that "**the project would not be in compliance with either S. 281.36, Stats. or ch. NR 103, Adm. Code.**"
- 3) **Section 15.306** on pages 183 through 186 - **Detailed Instructions for Density and Intensity Regulations:**

15.306(1) For Both Residential and Nonresidential Development:

(a) **Check Planning Recommendations** for the Subject Property

- 1) Check Comprehensive Plan Recommendations – City of Sheboygan Comprehensive Master Plans **had never anticipated the subject land to be annexed.**

- (b) **Check the Zoning of the Subject Property** – Upon annexation, the Planning Department assigned SR-5 (single family dwellings on lots of at least 6,000 square feet) zoning to the subject land. Although the proposed land use being a **golf course on privately owned land, which is an Outdoor Institutional Use (15.206(3)(d) on page 126), is an allowable Conditional Use In SR-5 zoning, see (c) below.**
- (c) **Complete a Natural Resources Site Evaluation** for the Site (pages 177 through 179): While recognizing 241 acres of the 247 acres of "proposed golf course property" is comprised of floodplain (58 acres), wetlands (6 acres), lakeshore (7 acres), woodlands (170 acres), the Worksheet (Exhibit 8 of the Planning Department's report "*Request for City Plan Commission Consideration*", in Appendix F, "*subtracts portions of natural resources made developable by using approved environmental mitigation techniques*" to provide a conclusion that the Net Developable Area (NDA) for the golf course is 172 acres. However, **the only provision provided by Kohler Company is a proposed payment into DNR's wetland mitigation fund for proposed filling of just 3.7 acres of wetland.** Correspondingly, the arithmetic on this Worksheet should have shown somewhere between 8 and 10 acres of NDA. However, **the entire area of the 2020 Site Plan is Permanently Protected Green Space, providing an actual NDA of 3.7 acres** by a proposed payment into a mitigation fund. But that doesn't make up for elimination of the globally rare interdunal wetlands being filled by this Site Plan. A "**Corrected**" *Site Evaluation Worksheet* tabulating conditions before any mitigation provisions are attributed is included in **Appendix G, Indicating zero NDA.**
- 4) **Section 15.204** (pages 112 and 113, refer to Appendix H) - **Table of Land Uses Permitted in Permanently Protected Green Space Areas** (page 113) **does not allow Conditional Uses for Outdoor Institutional land use, as a golf course on privately owned land is classified, in wetlands, woodlands, or lakeshore.** Because these comprise entirety of the subject land, **the proposed development was and is not even eligible for any consideration under a CUP, much less meeting the criteria for granting a CUP.**
- 5) **Section 15.205 - Regulations Applicable to All Land Uses, Subsection (4) Natural Resources and Green Space Requirements** (page 114, included in Appendix H): "*All land use and/or development of land shall comply with all the regulations and requirements under Subchapter 15-5, pertaining to the protection of sensitive natural resources and required green space area. Such regulations and requirements address issues such as absolute protection, partial protection, and mitigation, which are directly related to, and a critical component of, the protection of natural resources and the protection of the health, safety, and general welfare of the residents of the City of Sheboygan and its environs.*" **The Planning Department's report to the Plan Commission for their consideration in issuing the subject CUP in 2020 functionally set these aside by misrepresenting how the regulations are to be applied.**
- 6) **Subchapter 15-5: Natural Resource Protection Regulations** (pages 197 through 206, Appendix G): "*The purpose of this Subchapter is to set forth the requirements for the mandatory protection of natural resources and permanently protected green space area within the jurisdiction of this Subchapter to ensure the implementation of the City of Sheboygan Comprehensive Master Plan and State of Wisconsin Statutes 62.231 and 87.30.*" **Refer to Section 15.504 Wetland Overlay Zoning District, 15.505 Lakeshore Overlay Zoning District, 15.507 Woodland Overlay Zoning District, 15.508 Steep Slope Overlay Zoning District, and Section 15.509 Detailed Site Analysis, all of which were set aside by issuing the subject CUP in 2020.** The topography and pattern of wetlands, woodlands, and shoreline of the subject parcel is a globally rare and of regional significance and the woods have

been left undisturbed long enough to have acquired a substantial degree of "old growth" ecologic functionality. **These characteristics fully warrant the degree of specific protection provided by the City of Sheboygan Subsection 15-5 Natural Resource Protection Overlay requirements.** And if not, no land that exists in Sheboygan County, or even the state, does.

- 7) **Section 15.905 Conditional Use Review and Approval** (pages 279 through 284, Appendix I): "The purpose of this Section is to provide regulations which govern the procedure and requirements for the review and approval, or denial, of proposed conditional uses." 15.905(d) on page 280: "Under this Chapter, a proposed Conditional Use shall be denied unless the applicant can demonstrate, to the satisfaction of the City Plan Commission, that the proposed Conditional Use will not create major undesirable impacts on nearby properties, the environment, nor the community as a whole." **The applicant has not demonstrated this.** In fact, ecologist testimony in the DHA Reversal documents in detail myriad adverse impacts the proposed construction would have on the site's wetlands as well as the state park lands. To the neglect of this, Kohler's Environmental Impact Report (EIR) for the Site Plan of the proposed golf course that was submitted to the Planning Department (under staff that are no longer present) for their review and recommendation to the Plan Commission admitted there would be "some" adverse impact. Based on the environmental attributes of the subject land as documented in the extensive appendix of the EIR, and my review of the Site Plan and familiarity of the land, it is my opinion as a Professional Environmental Engineer with extensive experience in site and community planning and environmental resource preservation, enhancement, and restoration design that the adverse impacts on the wetlands, woodlands, and shoreland of the subject property would be major. And Section 15.905(1)(d) on page 280 states that "a proposed Conditional Use shall be denied unless the applicant can demonstrate, to the satisfaction of the Plan Commission, that the proposed Conditional Use will not create major undesirable impacts on nearby properties, the environment, nor the community as a whole". The Division of Hearings and Appeals March 15, 2019, record (Appendix B) that Reversed Kohler's permit to fill some wetlands describes in detail the manner and degree of adverse environmental impact that clear cutting the woodlands adjacent to the wetlands would have. Further, "clear cutting" (see page 123) is only allowable under Section 15.206(2) – Agricultural Land Uses (not Outdoor Institutional), and only if it "will improve the level of environmental protection on the subject property". As documented in Appendices A and B, the proposed clear cutting will not improve the level of environmental protection.
- 8) **Section 15.905(11)** on pages 283 and 284 require that "Modification, alteration, or expansion of any conditional use in violation as approved per (5)", which is Review by the Plan Commission and Public Hearing, "without approval by the Plan Commission, shall be grounds for revocation of said conditional use approval per (8)" (below) – Termination of an approved Conditional Use. During the November 12, 2024, Plan Commission meeting, Kohler Company reported that within several months they would be submitting to the Plan Commission a Site Plan that avoids filling any wetlands. Admirable as this may seem, the purpose is to avoid being held up any longer by the state. That's why they requested a time extension of one year of the CUP that had been granted in 2020. The scattered pattern of the isolated wetlands that the new plan will be intended to avoid filling will require major modification and alteration of the Site Plan that had been approved by the Plan Commission in 2020. The Plan Commission's recent granting of time extension in effect approved Carte Blanche that a new Site Plan (which has yet to be seen) meets applicable ordinances, with the City Attorney instructing the Plan Commission that they must provide Kohler's requested extension. This circumvents the required certification by the Zoning Administrator attesting that a Site Plan meets all applicable requirements. Because the Plan Commission cannot legitimately approve something that doesn't yet exist, this by itself is firm basis to revoke the time extension granted by the Plan Commission.

- 9) **Section 15.905(8)** on page 283 – **Termination of an approved Conditional Use:** states that "Any conditional use found not to be in compliance with the terms of this Chapter shall be considered in violation of this Chapter and shall be subject to all applicable procedures and penalties." Violations 1 through 8 above, in combination with Appendices A and B, clearly describe how the subject CUP is not in compliance.

Appealing to the Board and How the Appellants and Others Are Aggrieved

The subject appeal is being brought to the Board primarily by those living closest to the subject land that would be most directly affected by a development that violates applicable zoning ordinances. And from familiarity with the area, the appellants may be more environmentally aware of the adverse effects of habitat destruction and lakeshore encroachment than some urban residents. However, **the proposed project would have broad effects on all of our community and well beyond**, more so than any other case I expect this Board has previously been presented with. Just legally, the decision of this Board in response to this appeal will either:

- A) **Affirm precedence for the future for continuation of setting aside (violating) Subchapter 15-5: Natural Resource Protection Regulations** of the City of Sheboygan Zoning Ordinances, as has persistently been done to date for the subject proposed golf course project, or conversely.
- B) **Require that city administration consistently and correctly apply resource protection "overlay" land use regulations** of the Zoning Ordinance, as mandated by City Common Council legislation.

While the land subject to this appeal has the greatest degree and area of environmental significance of any other tract I've seen over 40 years of environmental engineering practice in this state, the generic subject at hand (of either following zoning ordinances or violating them) is also pertinent to future developments which at some time will include the wooded land the city has for decades owned in Section 10 just south of the city. More importantly, **the pending Board decision on the Kohler-owned land subject to this appeal will affect the community and the state park for many generations to come** in the manner described in more detail in subsequent sections of this report.

The Wisconsin Division of Hearings and Appeals REVERSAL of Kohler's wetland fill permit (**Appendix B**) summarizes the many ways in which the Site Plan for the proposed golf course will have very substantial adverse environmental impacts on the subject land, adjacent lands, and also the region. This includes testimony from DNR wetland ecologist Patricia Trochlell, UW Madison Lecturer Emeritus ecologist Quentin Carpenter, and ornithologist William Mueller. Mueller describes how the 243 bird species known to be present, many of which are Conservation Priority Species, will be adversely affected. **Appendix B is essential reading to understand the magnitude and degree of how the proposed golf course is a wholly unsuitable use**, which is consistent with City of Sheboygan Zoning Ordinances as previously itemized.

The simple question this appeal brings to the Board comes down to: **Did the Plan Commission (PC) recently apply applicable ordinances in their duties, procedures, and requirements under Sections 15.905 through Sections 15.933 in administering the subject project's Conditional Use Permit (CUP)?** Before getting into explanation of that, it's reasonable to first examine a question of: **what matter is it to the City of Sheboygan Board of Appeals to listen to local residents that can't vote in the city?**

City of Sheboygan Zoning Ordinance, Section 15.934(4) answers: "Appeals to the Board of Appeals may be taken by **any person aggrieved** or by any officer, department, board, or bureau of the city of Sheboygan **affected by any decision of the administrative officers.**" Allowing "any

person" to appeal is much broader "standing" than a civil court action requires. This is liberally appropriate for the Board's quasi-judicial role and process that most efficiently resolves zoning issues. The following is a summary of my professional opinion as an environmental engineer of some of the ways that the appellants, as well as other people in this area, are actually aggrieved.

The nature and basis of how the appellants and others are aggrieved, is best described by the legislated basis of the city's regulations that are paramount to the physical characteristics of the land on which the subject golf course is proposed; Subchapter 15-5: Natural Resource Protection Regulations of the Zoning Ordinances. Under Section 15.502 – How to Use this Subchapter; "This Subchapter recognizes the important and diverse benefits which natural resource features provide in terms of protection of the health, safety, and general welfare of the community".

The consequences of the extent and degree of natural resource and habitat destruction that's inherent in clear cutting much of the mature forest covering the subject land will range from **substantial to major**. And the adverse effect on the ecology of adjacent wetlands on the subject land and adjacent state park land will vary by specific location from major to devastating. The adverse effects of massive clear cutting of woodlands adjacent to wetlands that have not been planned to be filled is a major reason why DOA had REVERSED Kohler Company's permit with DNR to fill over forty rare and ecologically valuable small, isolated wetlands totaling 3.7 acres.

Wetlands and Woodlands Work Together

Wetlands lose much of their ecologic function if the adjacent woodlands are disturbed because the species that depend on wetlands at the beginning of their life cycle depend on the woodlands during the adult phase. Extensive clear cutting of the woodlands along the entirety of the extensive wetland perimeters exposes the wetlands to very different physical conditions; including amount of sunlight, micro-climate, and predation of amphibians, which are all adverse impacts.

The adverse environmental impact of clear cutting along both sides of the remaining rare swale wetlands that aren't shown to be filled in the 2020 Site Plan will be **ecologically devastating**. So even though they can no longer be legally filled, clear cutting adjacent to them will be just as bad. Appendix J includes some information on some of the species that require woodlands adjacent to wetlands for survival. Life span for many of the salamanders range from as long as 10 to 25 years.

These ridge and swale wetlands are "areas of special natural resource interest" that warrant rigorous protection from both direct and indirect adverse impacts as provided by enforcement of the City of Sheboygan Natural Resource Protection Regulations. Wetland ecologist Patricia Trochell in her testimony to DHA summarized "floristic integrity is rate high to exceptional", and "the wetlands on the site that would be impacted by the project include hardwood swamp, Great Lakes ridge and swale, southern sedge meadow, alder thicket and interdunal wetlands." Further, "The wetland and upland plant communities on this site are extremely rare and require the specific environment and geographical location the Kohler site provides in order to survive. **The extremely rare intact wetland complex is irreplaceable**. The wetlands rank high to exceptional for functional values and the direct, secondary and cumulative loss of these functional values would be significant."

The record (Appendix B) of DHA's REVERSAL of Kohler's wetland fill permit contains information that is essential reading for the Board members and any other officials in making any decisions regarding the subject CUP or any other proposed development on this land. Decision without that will constitute an action not based on adequate information, similar to the reason DHA revoked the wetland permit that had been issued under political pressure in contrast to very strong recommendation by DNR staff to not issue.



Looking south into the northern edge of the woodlands that would be clear cut to accommodate the proposed golf course.



The proposed golf course site plan shows clear cutting of the woods directly adjacent to both edges (left and right) of the elongated interdunal wetland in the photo center. This would expose the wetland to full sunlight, which would have devastating adverse effects on its ecologic functions.

Woodlands and Air Quality

The effects of extensive clear cutting aren't just ecological. **Forests everywhere on the planet are the primary scrubbers of atmospheric carbon dioxide from the atmosphere as photosynthesis harvests carbon and discharges oxygen.** That's why you feel more energized walking through a forest mid-day to mid-afternoon on a calm summer day. While taking in carbon dioxide, **trees also sequester air pollutants. This is critically important along our lakeshore.**

The reason **Sheboygan County is an ozone "non-attainment"** zone has little to do with the relatively limited local emissions. It's primarily from auto exhaust from the large metro area from Chicago and through Milwaukee channeling along the lakeshore by a "shore breeze" from the southeast (as it appears to us at land elevation) underneath vertical confinement of the gentle westerlies that are common during summer. While sailing far out in the lake on days like that you can often see a tan smudge at low elevation along the entire visible shoreline. **Clear cutting thousands of trees for the proposed golf course at this location is not trivial in terms of local air quality.**

Another attribute of woodlands is **the topsoil that develops over time in temperate climates is a net carbon "sink"**. A golf course that attracts players from around the county and globe, which shifts a substantial amount of fossil carbon to the atmosphere to get them here, in combination with reduction of carbon sequestration on the site they play due to deforestation, is not "carbon friendly". The U.S and China have caused 2/3's of the anthropogenic increase in atmospheric carbon to date. Both continue to do so. And the U.S. expels about 2/3's of that. While we live in relative luxury climate and food security-wise even though we're nearly half the cause of carbon dioxide increase, the adverse effects of this are most exerted on the geographic regions elsewhere that are naturally more climate stressed.

Lakeshore

The sandy shores of Lake Michigan naturally respond dramatically to the large range (six feet vertically) of water level variations (refer to Historic Lake Michigan-Huron Water Levels and the ACOE schematic cross sections in Appendix K), resulting in the position of the calm water level changing as much as 100 yards. Private riparian land ownership ends at Ordinary High Water Mark (O.H.W.M.). The O.H.W.M. *"is the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristic"*. Appendix K includes the method required by DNR to determine the O.H.W.M. at any location.

The 2020 Site Plan that had been approved by the Plan Commission used an O.H.W.M. that was surveyed in 2012 when the water level was at an historic low, with the O.H.W.M. correspondingly being at an easterly extreme. This is why that Site Plan showed some eastern edges of the course of play extending eastward beyond the present O.H.W.M. that developed during the 2016 through 2022 high water period. **This defect in the 2020 Site Plan, as well as some of the other violations of Zoning Ordinance, are summarized in the author's December 10, 2020, Written Public Comment – Conditional Use Permit Application provided to the Plan Commission included in Appendix A.** The correct present position of the O.H.W.M. along the subject shoreline is mapped on Figures 8 and 9.

Beginning in about 1980, DNR's guidance for minimum setback of development from the O.H.W.M. of Lake Michigan was 100 feet to provide a nominal service life of 50 years in consideration of average long term natural shore erosion rates. Soon thereafter all lakeshore counties adopted this in their Shoreland Ordinances, including Sheboygan County. And statutory minima are not optima. In general, capital improvements should be located as far inland from the O.H.W.M. as feasible to avoid having to construct a revetment in the future.

More recently, the 100 feet setback was unadvisedly reduced by the state legislature to 75 feet to match that of inland lakes, which aren't subject to the natural recession of Lake Michigan shores. Accordingly, Section 15.505 - Lakeshore Overlay Zoning District parts (1) and (4) on pages 200 and 201 of the city's Zoning Ordinance requires that "all areas within 75 feet of the ordinary high water mark" "shall remain in an undisturbed state". And the 50 feet setback that applies to the urban areas of the city, as cited by the Planning Department's review of the 2020 Site Plan, is not applicable.

Where revetments become needed to protect structures that have been built too close to the lakeshore, they must be tucked into the toe of the most recent wave erosion scarp so they only go to work during onshore storms during high water levels. The rest of the time, they become buried by dune development.

A better alternative to revetments is "beach nourishment", which is the only method of erosion protection that is sustainable along sandy shorelines of this magnitude. It is substantially less cost than revetments, and can maintain the shoreline in an "undisturbed state" by allowing dune formation. In addition to beach nourishment enhancing the functionality and desirability of any property, the adjacent reaches of shoreline both north and south likewise benefit.

An example of similar scale of beach nourishment is the area where sand dredged from the entrance of Sheboygan's Outer Harbor was deposited along the shoreline to the south which has maintained a wide beach since then. Prior to that, during the 1985-1987 high water period, there was little to no beach, and storm waves washed into the east end of Indiana Avenue. Aerial photos of this area in 1971 through 2022 in Appendix L show how effective beach nourishment can be.

RECOMMENDED BOARD OF APPEALS ACTION

Without the state's wetland fill permit, Kohler's 2020 project Site Plan became obsolete. Consequently, **the present tactic to further pursue construction of the proposed golf course is to avoid filling any wetlands** so the project can no longer be held up by the state. The state NR regulations can only disallow the filling of wetlands, and they don't regulate woodlands. However, the City of Sheboygan Zoning Ordinances do, as previously outlined.

In any case, **not filling any wetlands necessitates development of a new Site Plan**, which Kohler company has said they expect to submit to the Plan Commission in several months. However, **that endeavor is moot because the proposed use of the land as a privately owned golf course is specifically disallowed by municipal ordinance in Permanently Protected Green Space (Wetlands, Woodlands, Shoreline)** that comprise all of the subject land, as previously described.

That's where things presently stand regarding the subject CUP. **This places the issue of whether or not the city will continue to violate its Natural Resource Protection Regulations entirely in the hands of the Board, and nobody else.** This appeal is justified for any one of the reasons outlined in the previous section of this report. These document how **city administration has thoroughly and persistently violated mandatory minimum requirements** of the City of Sheboygan Zoning Ordinance in relation to the subject CUP.

To conform with Zoning Ordinances applicable to the CUP issued to Kohler Company for construction of a proposed golf course, **this petition recommends that the Board of Appeals consider the following actions which amount to no more than requiring the Planning Department and Plan Commission to not violate applicable ordinances:**

- a) Pursuant to Section 15.905(9); **affirm that the subject CUP had automatically become revoked on December 15, 2022**, thus rendering the Plan Commission's action on November 12, 2024, null, void, and moot.
- b) **Affirm that Subchapter 15-5 Natural Resource Protection Regulations are, due to the natural characteristics of the subject and the adjacent land and shoreline, applicable mandatory minimum requirements for any type of land use or development that must go through planning procedures required by applicable provisions of the Zoning Ordinance.** Administration of zoning ordinance for any type of development on it **requires evaluation by qualified ecologists** to determine the necessary habitat protective distances that any land disturbance must be kept away from wetlands, as well as any additional habitat considerations. In this case, this should be retained by the Planning Department in collaboration with the Town of Wilson Plan Commission (because the subject land is entirely surrounded by Town land) but reimbursed by the landowner in accordance with ordinance). This is warranted because the applicant has proven that direct retention by them does not result in an Environmental Impact Report providing objective and actionable quantification of potential adverse environmental impacts of a proposed development.
- c) Pursuant to Section 15.505(4); **affirm that the Lake Michigan shoreline shall remain in its "undisturbed state, except for uses permitted in Section 15.204 per the requirements of Subsection 15.206(10)".** And for this intent and purpose, **no revetments should be constructed.** Revetments can interfere with natural beach and near shore sand bar dynamics throughout the large range (six feet in elevation) of Lake Michigan water levels. **If protection from wave erosion is desired or needed in the future, it should consist only of "beach nourishment" designed and permitted in accordance with DNR and Army Corps of Engineers standards.**

Why These Violations Occurred

Most instances of violation of law occur due to competing values, in this case golf and some income vs the environment and the law. However, the **monetary benefits anticipated from a project are not an aspect of consideration in zoning administration.** That's why there is no mention of it in zoning ordinances. If that was a criterion, there would be no traction for zoning law and therefore no need for zoning ordinances because no owner applies for a permit for a project they expect to be an economic disadvantage. And examination of Kohler's emphasis on the economic impacts of the proposed course reveals it to be a miniscule increase in Sheboygan County's healthily growing \$7 billion gross annual economy, while exerting about a 0.1% increase in demand for labor in an already labor short market. So not only are these factors irrelevant with respect to zoning ordinance administration, they're unsubstantial to slightly negative.

In contrast, **the city's Natural Resource Protection Regulations are mandatory.** This is particularly germane to the subject land that may be the most unique and important tract of relatively undisturbed natural environment that exists in the county, if not the state.

The applicant touts the unobstructed view of the lake for the course's golfers provided by the project's necessary massive clear cutting of the forest. That view can more easily and economically be enjoyed by anyone visiting Kohler-Andrae State Park, or walking along the subject land's shoreline. It doesn't necessitate clear cutting of trees or destruction of natural habitat. Earliest origins of golf date back to the late 1200's on open grounds in Holland, with further development of the game along the east coast of Scotland in the 1500's on grassy dunes that aren't agriculturally productive and were considered "wastelands". Golf is not suited to woodlands, thus the proposed 75% clear cut.

Upon Pete Dye seeing the location of the subject proposed golf course some years ago, he had been quoted as saying something to the effect that this location is a "sandbox to play in"; that is provided you get most of the trees out of the way. Kohler comforts that clear cutting much of the forest will get rid of the profusion of barberry (an invasive ornamental shrub) they've avoided controlling. Young barberry shoots are easily pulled up by gloved hand. Mature bushes require more handwork.

Examination of golf publications and websites reveals little interest beyond just the game and scenic views from courses. However, beauty is in the eye of the beholder. It was reported that some of the young DNR staff that were on site to verify its natural conditions had tears in their eyes upon seeing what would be destroyed. Those were not tears of joy. From an environmental engineering perspective, **clear cutting mature forest to build a golf course is a very poor use of woodland natural resources, not to mention the adverse effects on the wetlands.**

Mankind is perpetrating the greatest rate of mass extinction of plants and animals since a sizable meteor struck the planet just north of the Yucatan peninsula about 65 million years ago. It is the increments of habitat destruction that we are conducting individually and cumulatively that are the cause. The purpose of the Natural Resource Protection Regulations of the City of Sheboygan Zoning Ordinance is to avoid contributing to that here.

In addition to all of the preceding content of this application, the next section provides some general perspective on habitat destruction **for consideration by the Zoning Administrator as required by Section 15.912(5)** on pages 296 through 297 **to provide a report to the Board summarizing if the appeal is "in conflict with the provisions of the City's Comprehensive Master Plan or Zoning Ordinance"** as relating to the Board's pending consideration of the appeal regarding the Plan Commission's recently granted time extension to the subject CUP.

COMPLEX INTERACTIONS OF HABITAT DESTRUCTION

The Wisconsin Division of Hearings and Appeals' reversal of Kohler's permit to fill some wetlands was based more on the adverse effects of the project's planned clear cutting and bulldozing of mature forest along the extensive edges of the wetlands that remain rather than just the filling of 3.7 acres of rare wetland type. This is because **wetlands lose much of their ecologic function if the adjacent uplands are disturbed** because the life cycle of many amphibian species depends on undisturbed woodlands adjacent to wetlands.

Small wetlands that are shown on the 2020 Site Plan have, by virtue of diminutive size and isolation, unusually high and unique ecologic function. They provide amphibian spawn, egg, and larvae stage habitat free from larger amphibian and fish predation. The small salamanders that inhabit this area live from 5 to 25 years, depending on the species. By day they hide and stay moist under undisturbed forest floor leaf detritus, rotting logs, and rocks, most emerging at night to feed on insects, worms, spiders, and slugs.

Replacing woodlands adjacent to the wetlands with mowed turf has almost as much adverse impact as filling the wetlands. Due to their mostly unseen existence, there's little public awareness of our local salamanders. Appendix J includes excerpts from a book available for purchase in the state park's office that provides some more information on these secretive little critters, as well as a surprising number of different woodland frog species. Some of these are nocturnal and seldom seen.

While small, isolated wetlands surrounded by undisturbed woodlands can have enhanced habitat value, **forest fragmentation by clear cutting wide swaths and leaving small, isolated patches generally has a negative effect on woodland habitat value.** Information on other mammals native to this area is provided by books available for purchase at the state park office or by loan from

Mead Library. Individuals of each species have their own territories, and habitat range and wildlife corridors are important.

Bird species are much more varied than the mammals, amphibians, and reptiles here, considering both year-round residents and migratory species along the lakeshore. Moving on down the food chain, the variety of native habitats provided by the subject land hosts a wide variety of insects, spiders, slugs, worms, and a few types of snails, not to mention many types of plants and fungi comprising the ground floor of the ecosystem. Mostly unseen below are the many sub-microscopic species of "animals" and thousands of microscopic flora and fauna that occupy woodlands. All of these work together, and each part is interdependent, to form the fabric of natural life. **And these woodlands, which have been left undisturbed for approximately 150 years, have developed a substantial portion of "old growth" ecologic value.**

In contrast, **mowed monoculture lawns provide relatively little natural habitat value.** This is why the city has Subsection 15-5 in its Zoning Ordinance. Further, golf course maintenance requires closer cut and more fertilizer and pesticide application than common lawns. This additionally diminishes habitat value. In contrast to clayey soils elsewhere, it not possible to prevent leaching of fertilizer and pesticides into the sandy soils comprising all land east of the Black River, **so some contamination of the shallow ground water table would be inevitable.** There are many reasons why golf courses are required to be under the control of Conditional Use Permits.

THIS PROJECT'S BROADER ISSUES OF LAND USE ADMINISTRATION

I had personally advised the Planning Director at that time of the non-feasibility of a golf course at the subject location some years ago, upon first hearing of public notice of Kohler's impending annexation request. His response was, "It's premature for me to evaluate that because the land is not yet in my jurisdiction." I next asked: "Why assign SR-5 dense residential zoning when the proposed use is a golf course?", to which he responded, "That will give them the greatest flexibility in developing the land." It's not plausible to be unaware of the ordinances that one's department is responsible for administering any more than it's plausible to be unaware that the land is all heavily and contiguously forested. The aerial photos comprising Figures 2 through 7 clearly show that.

Violation of City of Sheboygan's Natural Resource Protection Regulations have occurred on each occasion that any issue relating to the Conditional Use Permit (CUP) for the proposed golf course has come before city administration since the application for the proposed golf course project was submitted by Kohler Company to the city in 2020. This bias of seeing fit to violate ordinances was predisposed by the annexation initiative and agreement between Kohler Company and the city in 2017.

Kohler's purpose for annexation was to bring the golf course into the zoning administration jurisdiction of the city even though the city's very thorough, thoughtful, and detailed specific *Natural Resource Protection Regulations* functionally preclude any feasibility of the proposed project as has been explained herein. These ordinances set much greater restriction on the subject land than it was subject to while in the Town of Wilson. **So the basis for Kohler Company's request for annexation was confidence in the city setting aside applicable ordinances. While this has been a reliable assumption to date, it has been in violation of law.**

The Mayor and Planning Director at the time Kohler Company approached the city responded by concertedly promoting what they perceived as very expansive potential for additional annexations. This, and Kohler's project, were apparently considered to be more important than local land use law, particularly **the Natural Resource Protection Regulations which are most germane to municipal expansions onto undeveloped land.**

It will be in the public interest for the present remaining and any new Planning Department staff, the Plan Commission, as well as the present and any future mayors, **to chart a course for lawful administration of Zoning Ordinance.**

CLOSURE

From having analyzed and designed many dozens of projects, both large and small, throughout and around the City of Sheboygan and hundreds throughout the eastern half of the state, I advise that **there has not been in the past, and there will not be in the future, a more important need for due diligence administration of the City of Sheboygan Natural Resource Protection Regulations** than the issue herein presented to the Board.

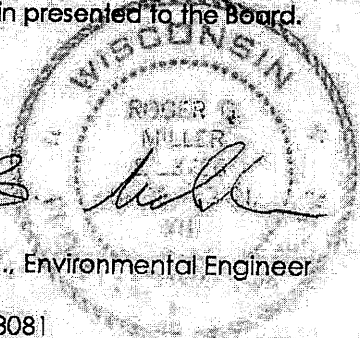
Sincerely,



Roger G. Miller

Roger G. Miller, P.E., Environmental Engineer
202 Pioneer Road
Sheboygan, WI 53081

12/16/2024



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 - Figure 6: DNR Mapped Wetlands Map
 - Figure 7: Flood Fringe Map
 - Figure 8: 2020 Site Plan
 - Figure 9: Annotated 2020 Site Plan
- A) Prior Comments During CUP Process Reciting Violations
 - B) Wisconsin Division of Hearings and Appeals 3-15-2019 REVERSAL of DNR Wetland Fill Permit, including ecologist testimony.
 - C) DNR 3/31/2017 Endangered Resources Review
 - D) Information on other golf courses and Wisconsin status as a golfing destination
 - E) Whistling Straits shoreline photos
 - F) 12-11-2020 Planning Department Request for City Plan Commission Consideration, and Kohler Company CUP application
 - G) Subchapter 15-5: Natural Resource Protection Regulations of the City of Sheboygan Zoning Ordinance
 - H) Pertinent excerpts of the City of Sheboygan Zoning Ordinance:
 - Section 15.008(2) Application (pg 3), "no land shall be developed in violation of state law"
 - Table 15.204 Land Uses Permitted in Permanently Protected Green Space (pg 113)
 - 15.205(4) Regulations Applicable to Natural Resources and Green space (pg 114)
 - 15.206 Selective and Clear Cutting only a Conditional Use in Agricultural (pg 122)
 - 15.206(3) Active Outdoor Public Recreational and Outdoor Institutional (pg 124-126)
 - 15.206(8) Filling not allowed in Permanently Protected Green Space (pg 160)
 - 15.206(10)(d) Natural Resource Disruption and Required Mitigation (pg 169-170)
 - 15.908 Site Plan Review and Approval (pg 286-291)
 - 15.912 Appeals of Zoning Interpretation (pg 296-298)
 - 15.931 Purpose of Administrative Regulations (pg 326-327)
 - 15.934 Zoning Board of Appeals (pg 328-332)
 - I) Section 15.905: Conditional Use Review and Approval of the City of Sheboygan Zoning Ordinance
 - J) Excerpts from Reptiles & Amphibians Field Guide
 - K) Lake Michigan Water Levels, ACOE shore cross section schematics, and OHWM
 - L) Aerial Photos of Beach Nourishment



January 3, 2025

Roger Miller
 202 Pioneer Road
 Sheboygan, WI 53081

Dear Mr. Miller:

I serve as the chair of the City of Sheboygan's zoning board of appeals. As such, I work with staff to set meetings of the Board and create the agendas for those meetings. The Board's authority, set forth in § 105-1011(a), Sheboygan Municipal Code ("Code"), is to review and determine all matters relating to requested variances from the provisions of the city's zoning ordinance or appeals regarding an interpretation of the zoning administrator of the zoning ordinance.

On December 16, 2024, the City received an appeal from you of the November 12, 2024, decision by the Sheboygan Plan Commission to grant an extension of a Conditional Use Permit to the Kohler Property for its property located on the south side of Sheboygan near Lake Michigan and Kohler-Andrae State Park. I have consulted with legal counsel for the City in determining the appropriate procedural response to your appeal.

You describe your appeal as being pursuant to Section 15.912 of the City of Sheboygan Zoning Ordinance. No such ordinance presently exists, but I suspect you are referring to § 105-1003, Code, which descends from the former 15.912.

The code section to which you refer relates to appeals of zoning interpretations by the zoning administrator, who is the person the City authorizes to make administrative decisions under its zoning ordinance.

The matter to which your appeal refers was not decided by the zoning administrator or any other administrative official. Conditional use permits are governed by Wis Stat. § 62.23(7)(de) and § 105-998, Code. The provisions of those laws do not authorize a zoning board of appeals to hear appeals related to conditional use permits. Rather, they provide that such appeals are made to the circuit court by certiorari. (See Wis Stat. § 62.23(7)(de)(5) and § 105-998(n), Code.) The appeal process parallels the appeal process for matters heard by the zoning board of appeals.

As such, the zoning board of appeals does not have the authority to hear your appeal and I will not be placing it on the agenda for hearing. Your proper appeal should have been to file a certiorari petition with the circuit court.

Thank you for your concern for the City.

Sincerely,

Kevin Sampson
 Chair, Zoning Board of Appeals
 828 Center Ave., Suite 308
 Sheboygan, WI 53081

DEPARTMENT OF
 PLANNING AND
 DEVELOPMENT

828 Center Avenue
 Sheboygan, WI 53081

cc: Roger Miller - miller.r@city.sheboygan.wi.us



STATE OF WISCONSIN

CIRCUIT COURT

SHEBOYGAN

Roger G Miller et al vs. City of Sheboygan Plan Commission et al

Electronic Filing Notice

Case No. 2025CV000072
Class Code: Petition for Writ of Mandamus

FILED
01-31-2025
Sheboygan County
Clerk of Circuit Court
2025CV000072
Honorable Rebecca L. Persick
Branch 4

CITY OF SHEBOYGAN PLAN COMMISSION
828 CENTER AVE.
SHEBOYGAN WI 53081

Case number 2025CV000072 was electronically filed with/converted by the Sheboygan County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at http://efiling.wicourts.gov/ and may withdraw as an electronic party at any time. There is a fee to register as an electronic party. This fee may be waived if you file a Petition for Waiver of Fees and Costs Affidavit of Indigency (CV-410A) and the court finds you are indigent under §814.29, Wisconsin Statutes.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: 889100

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 920-459-3068.

Sheboygan County Circuit Court

Date: February 3, 2025