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SENT BY E-MAIL

Diane McGinnis-Casey, Director
Elise Rose, Associate Planner
City of Sheboygan
828 Center Avenue
Sheboygan, WI 53081

Dear Mses. McGinnis-Casey and Rose: Re: Extension of Time Limit for Conditional Use Permit for Kohler Golf Course

Kohler Co. respectfully requests the City Plan Commission (“CPC”) to extend the time limits for the conditional use permit issued for its proposed new golf course north of Kohler-Andrae State Park between Black River and Lake Michigan (the “CUP”) (copy enclosed). Specifically, condition no. 38 on page 20 of the CUP tolled the time limits under what is now Section 105-998(i) of the Sheboygan Zoning Ordinance (“SZO”), for the duration of lawsuits relating to the golf course project which have now concluded.

1. The CUP as Issued. The City issued the CUP for outdoor institutional use, a privately-owned golf course and for clear cutting based on plans submitted November 20, 2020. Those plans included, among other things, filling 3.69 acres of wetlands as permitted by the U.S. Army Corps of Engineers and the Wisconsin Department of Natural Resources (“DNR”) and swapping 4.59 acres of former parkland with DNR. The CPC’s assessment of those previous plans, including the wetland fill and the land swap, was documented on pages 7-10 of the CUP as a detailed analysis and application of the City’s Natural Resources Site Evaluation. CPC made the following specific findings in the CUP:

- On page 8 of the CUP, CPC concluded that Kohler’s previously proposed golf course plan “significantly exceeds each of the applicable regulations in the SZO...” and would “...permanently protect much more green space than would be protected if the site were developed for permitted single-family housing...”
- On page 9 of the CUP, CPC observed “The frequent location of golf courses in parks which are rich in protected natural resource areas, as well as the location of Riverdale Country Club within one-half mile of this Property, demonstrates the appropriateness of Kohler’s proposed golf course use on this Property.”

- And, CPC noted on page 10 of the CUP that “Golf courses in and of themselves are permanently protected green spaces and an appropriate means to preserve natural resources and promote recreation.”

CPC incorporated the tolling provision in condition no. 38 of the CUP to allow for resolution of the seven lawsuits challenging Kohler’s golf course plans which, undoubtedly, delayed Kohler’s plans and had the potential to necessitate changes to those plans.

2. Justification for Extension of CUP Time Limits. Six of the seven lawsuits brought to challenge Kohler’s previous golf course plans were resolved in Kohler’s favor. (Most notably for the City, the challenge by the Town of Wilson to the City’s annexation of the underlying golf course land was unanimously upheld by the Wisconsin Supreme Court, and a challenge to the CUP subject to this request was dismissed with prejudice by the Sheboygan County Circuit Court.) However, a Wisconsin Court of Appeals held that DNR did not have sufficient information to issue the wetland individual permit which authorized Kohler to fill 3.69 acres of wetland.

Kohler is in the process of redesigning its golf course plans to achieve all of the economic, recreational and tourism benefits described in the CUP while reducing impacts on natural resources. Most notably, Kohler is revising its golf course plans to:

- *eliminate all direct impacts on wetlands and avoid all wetland filling;*
- *relocate the golf course maintenance facility from former parkland to land currently owned by Kohler; and*
- *further reduce impervious surfaces.*

Kohler has commenced and will continue to pursue permits for its revised plans with the appropriate regulatory authorities, including DNR.

The CUP specifically accommodates adjustments to Kohler’s golf course plans arising from subsequently issued permits. Language on pages 8 and 10 of the CUP provides: “Recognizing that the Wisconsin Department of Natural Resources and the U.S. Army Corps of Engineers have specialized expertise and jurisdiction over permitting relating to various natural resources, the City’s application of its natural resource protection regulations shall be subject to, conditioned upon, and automatically adjusted to conform to, any and all permits required from, and as issued by, those State and Federal authorities with jurisdiction over the Property.” When revised golf course plans are available and have been vetted with the appropriate regulatory authorities, Kohler will submit the revised plans to City staff as described on page 7 of the CUP and consistent with Section 105-852, SZO.

3. Applicable Standards for Review. As explained on page 14 of the CUP, the City had very limited discretion not to grant the CUP based on the previous plans. Under Wis. Stat.

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sec. 62.23(7)(de), “if an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance...the city SHALL grant the conditional use permit.” CPC found that Kohler’s proposed golf course plans met all requirements and conditions when the plans called for filling 3.69 acres of wetlands and swapping 4.59 acres of former parkland with DNR.

CPC’s discretion to refuse to extend the CUP or to disapprove of any golf course plans which have lesser natural resources impacts was further eroded with CPC’s decision to issue the CUP. See the findings cited above.

With this request, Kohler reaffirms its commitment to comply with all conditions and requirements of the CUP and applicable provisions of the SZO. Specifically, Kohler agrees to meet condition no. 34 on page 20 of the CUP which requires Kohler to obtain “official approval documentation/permits from the required governmental authorities including...DNR...”

Also relevant, as CPC noted on page 14 of the CUP, “the City committed in the [Pre-Annexation and Development] Agreement [copy enclosed] not to oppose any necessary governmental approvals for the Kohler golf course project.”

Accordingly, based on Wis. Stat. 62.23(7)(de), the Pre-Annexation and Development Agreement and the terms of the CUP itself, CPC should extend the time limits for the CUP as Kohler processes revised plans for its proposed new golf course which will have lesser impacts on natural resources.

Please do not hesitate to contact me at 414-298-8331 with any questions or concerns. We look forward to the City Plan Commission’s consideration of our request at their November 12 meeting.

Yours very truly,



Deborah C. Tomczyk

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Encs.

cc Charles Adams, Esq. (via email w/encs.)
Jess Barley (via email w/encs.)
Casey Bradley (via email w/encs.)
Jonathan Hoekstra (via email w/encs.)
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