

**CITY OF SHEBOYGAN**

**REQUEST FOR CITY PLAN COMMISSION CONSIDERATION**

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**ITEM DESCRIPTION:** Kohler Co. time extension request to a previously approved conditional use permit to construct a new golf course on Kohler Co. property north of Kohler-Andrae State Park between Black River and Lake Michigan.

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**REPORT PREPARED BY:** Ellise Rose, Associate Planner

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**REPORT DATE:** November 1, 2024

**MEETING DATE:** November 12, 2024

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**FISCAL SUMMARY:**

**STATUTORY REFERENCE:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

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Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

On December 15, 2020, the City of Sheboygan Plan Commission approved a conditional use permit to construct a new golf course on Kohler Co. property north of Kohler-Andrae State Park between Black River and Lake Michigan. The Plan Commission approved the conditional use permit with 40 conditions of approval.

The Plan Commission incorporated a tolling provision in the conditions of the approved Conditional Use Permit to allow for the resolution of the seven lawsuits challenging Kohler’s golf course plans. All seven of the lawsuits brought to challenge Kohler’s golf course plans were resolved, six of them in Kohler’s favor. Kohler Co. had one year from the date that all lawsuits were resolved to either initiate development or request an extension. All lawsuits were resolved by December 4<sup>th</sup> 2023. Kohler Co. is now requesting an extension to their Conditional Use Permit approved on December 15<sup>th</sup>, 2020.

The applicant states the following:

- Kohler Co. respectfully requests the City Plan Commission (“CPC”) to extend the time limits for conditional use permit issued for its proposed new golf course north of Kohler-Andrae State Park between Black River and Lake Michigan. 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, for the duration of lawsuits relating to the golf course project which have now concluded.
- 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 wetland as permitted by the U.S. Army Corps of Engineers and the Wisconsin Department of Natural Resources and swapping 4.59 acres of former parkland with DNR.

- City Plan Commission incorporated the tolling provisions 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.
- Six of the seven lawsuits brought to challenge Kohler's previous golf course plans were resolved in Kohler's favor. 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 plan 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.
- 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..."

**STAFF COMMENTS:**

Section 105-998, Conditional Use Review and Approval, of the City of Sheboygan Zoning Ordinance states:

*The start of construction of any and all conditional uses shall be initiated within 365 days of their approval by Plan Commission and shall be operational within 730 days of said approval. Failure to initiate development within this period shall automatically constitute a revocation of the conditional use. **Prior to such a revocation, the applicant may request an extension of this period.** Said request shall require formal approval by Plan Commission and shall be based upon a showing of acceptable justification (as determined by Plan Commission).*

Today, the Plan Commission is reviewing the attached Kohler Co. time extension request letter. The letter has been forwarded to the Plan Commission because Kohler Co. is in the process of redesigning its golf course plans due to the fact that a Wisconsin Court of Appeals held that the DNR did not have sufficient information to issue the wetland individual permit which authorized Kohler to fill 3.69 acres of wetland.

### **ACTION REQUESTED:**

Staff recommends approval of the Kohler Co. time extension request and would recommend a new deadline date of **Dec 4, 2025**.

The City Plan Commission approved the Kohler Co. golf course conditional use permit with the following conditions and exceptions:

1. Prior to issuance of a building permit, the applicant shall obtain all licenses/permits as well as meet all required codes including but not limited to building, plumbing, electrical, HVAC, fire, water, sewer, storm drainage, alcohol, food, health, Federal, State of Wisconsin DNR, etc. (Applicant shall be in contact with building inspection, fire, police, etc.). An occupancy permit will be granted only at such time as the applicant has met all requirements.
2. The applicant has submitted a proposed landscape plan as Exhibit 13 of its application. That submittal has not yet been reviewed. If the plan is approved by the Manager of Planning and Zoning, the applicant shall comply with the plan. If the plan is not approved, the applicant shall resubmit a plan that is acceptable to the Manager of Planning and Zoning. In any case, applicant shall comply with the provisions of Subchapter 15-6 of the Sheboygan Zoning Ordinance and shall comply with the terms of an approved landscape plan.
3. The applicant's operations shall comply with Section 15.206(3)(b)(2)(a), SZO, ("Active Outdoor Public Recreation"), which requires facilities using night lighting and adjoining a residentially zoned property to install and continually maintain a bufferyard with a minimum opacity of 0.60. Said bufferyard shall be located at the property line adjacent to said residentially zoned property (except for approved exceptions and except that the bufferyard and fencing between the golf course and state park maintenance facilities shown on Landscape Plan 7A in Exhibit 13 are approved). If the staff has concerns about the proposed lighting or landscaping, the photometric and/or landscape plans can be brought back to the Plan Commission for review.
4. Dumpster(s) shall be screened/enclosed and constructed of like materials and colors as the building served and shall be completed prior to issuance of an occupancy permit for said building.

5. The applicant shall properly submit to and receive approval from the Director of Public Works for a stormwater management plan in compliance with the City's Post-construction Stormwater Management Zoning Ordinance (Appendix E to the Sheboygan Municipal Code) prior to issuance of a building permit.
6. Outdoor storage of materials, products or equipment shall be prohibited or completely screened from public view by fencing and landscaping.
7. Fencing/retaining wall shall be installed per Section 15.720(3)(c), SZO, except those granted an exception. Applicant shall work with staff with regard to constructing appropriate and well-designed fence/retaining wall and shall obtain the necessary permits prior to installation. If staff has any concerns with proposed fencing/retaining wall design, the matter may be brought back to the Plan Commission for their consideration.
8. Maximum height of fence is eight (8) feet high (peak of fence to grade).
9. Fence shall be located on the Kohler property. It is the applicant's responsibility to know where their lot lines are and to insure the fence meets the required setbacks.
10. All ground level and rooftop mechanicals shall be screened and/or enclosed and constructed of like materials and colors of the nearest building.
11. All new lighting shall be installed per Section 15.707, SZO.
12. The uses shall meet all performance standards pursuant to Subchapter 15-7, SZO, including but not limited to noise, lighting, vibration, etc., and except for exceptions specifically set forth in the application.
13. All areas used for parking or maneuvering of licensed vehicles shall be paved. Golf course operation and maintenance vehicles may traverse on gravel or grass throughout the course.
14. All parking areas that are not required to be paved shall be landscaped with grass and/or landscaping consistent with the landscape plans included in Exhibit 7.
15. Absolutely no portion of the new building and/or site improvements shall cross the exterior property line (buildings, parking, retaining walls, signs, landscaping, etc.), except those granted an exception.
16. Applicant shall meet Section 15.206(3)(b)(2)(b), SZO, Active Outdoor Public Recreation, which states all structures and active recreational areas shall be located a minimum of 50 feet from any residentially zoned property, except those granted an exception.
17. Applicant shall obtain the necessary sign permits prior to installation.
18. Applicant shall work with staff with regard to appropriate signage. Only at such time as the sign package has been reviewed, all necessary variances approved as provided in the Sheboygan Zoning ordinance and finally approved by the Manager of Planning and Zoning may the applicant obtain sign permits to install the proposed signage. If staff has any concerns with proposed signage design, the signs may be brought back to the Plan Commission for their consideration.
19. Applicant shall install individual letter signs – no cabinet or flat panel signs.
20. Applicant shall be permitted a freestanding monument sign for the site. The minimum setback of the monument sign is 12 feet. The maximum height of the monument sign is 8 feet. The sign shall comply with Chapter 98 of the Sheboygan Municipal Code, be approved by the Manager of Planning & Zoning, and be located outside of the 15 foot vision triangle.
21. Applicant shall immediately clean any and all sediments, materials, tracking, etc. that may be spilled off-site on private or public lands and streets.

22. All vehicles, equipment, materials, products, etc. shall be located on the Kohler property (no storage on public rights-of-way).
23. City Development staff will issue a building permit only if the applicant has adequately satisfied all applicable municipal regulations and terms of the related to the Sheboygan Water Utility.
24. City Development staff will issue a building permit only if the applicant has adequately installed fire protection measures approved by the Sheboygan Fire Department, including but not limited to fire lane access at the site, sprinkler systems, hydrants, water pressures, etc. consistent with Exhibit 7.
25. Applicant will provide adequate public access along all public streets and will take all appropriate actions to minimize the time period that these streets will be closed/affected, unless otherwise approved by the Director of Public Works.
26. Applicant is responsible for constructing all required public infrastructure improvements to properly service the site prior to occupancy (including, but not limited to, new street improvements, new and/or closed ingress/egress driveway openings, curb, gutter, sidewalk, pavement, utilities, retaining walls, street trees, street lights, street signs, etc.) as described in the Agreement. Any work within City of Sheboygan Public rights-of-way shall be discussed with the City Engineering Department and constructed to standard City specifications.
27. Applicant is responsible for all costs associated with the construction/installation of all required public infrastructure improvements for the project as set forth in the Agreement.
28. Streets and infrastructure damaged and/or disturbed during construction of all private and/or public improvements shall be promptly repaired by the applicant.
29. It will be the applicant's responsibility to work with all private and public utilities in order to provide easements and/or relocate utilities as necessary.
30. Applicant will take all appropriate actions to minimize the time period that adjacent properties are impacted by the development (utilities, streets, etc.).
31. Building permits shall be issued only at such time as the applicant has obtained all necessary permits from the Wisconsin Department of Natural Resources.
32. Applicant shall meet the 50 foot building setback under Subsection 3.0(1) of the City of Sheboygan Shoreline Zoning Ordinance and the 75 foot structure under Section 72.15(1)(a) of the Sheboygan County Code.
33. It is the applicant's responsibility to insure all construction takes place outside of the areas designated wetlands. Applicant may only impact areas designated as wetlands if and only if they have written documentation (license, permit, etc.) from the DNR permitting them to do so.
34. Building permits shall be issued only at such time as the applicant has obtained official approval documentation/permits from the required governmental authorities including but not limited to the Army Corp of Engineers (ACOE), US Fish and Wildlife Service (USFWS), National Park Service (NPS), Wisconsin Department of Natural Resources (WDNR), Wisconsin State Historical Society (WHS), Wisconsin, Public Service Commission (WPSC), Sheboygan County, etc.
35. Building permits shall be issued only at such time as the applicant can provide documentation that the lots have been combined into one (1) parcel which has been officially recorded by Sheboygan County.

36. Prior to issuance of a building permit, the applicant is responsible for providing all shared agreements/easements necessary for golf course development and operation between the Kohler Company and adjoining properties including but not limited to ingress/egress, shared access, utilities, etc.
37. The applicant shall submit plans to the City of Sheboygan Architectural Review Board for review. Building permits shall be issued only at such time as the Architectural Review Board has approved the proposed architectural plans.
38. The conditional use permit time limits shall be tolled for the duration of any lawsuits relating to the golf course project provided the applicant proceeds to develop the property consistent with the approved conditional use permit and site plan. At such times as all lawsuits are completed, the conditional use permit time limits shall begin.
39. Applicant shall comply the terms of the Developer's Agreement.
40. If there are any amendments to the approved conditional use permit, site plan, etc., the applicant will be required to submit a new conditional use application reflecting those amendments.

Exceptions granted:

1. To authorize a taller observation tower, the Lake Michigan observation tower will be approximately 60 feet above the surrounding grade with an overall height of 80 feet to the top of the structure.
2. To avoid the use of curb adjacent to landscaped areas, maintaining the existing rural setting in the adjacent State Park.
3. To install an eight (8) foot tall fence around the maintenance facility for security, safety and screening purposes.
4. To have 25-foot setbacks for the maintenance building from residentially zoned property.
5. To locate the #7 tees within the 50-foot setback for actively used outdoor recreational areas from any residentially zoned property.
6. To the paving setback to allow two (2) access points: the point where the entrance road first enters Kohler Co. property near the proposed maintenance buildings and the proposed access drive to the existing State Park maintenance facility.

**ATTACHMENTS:**

Extension Request Letter and required attachments.