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**VIA EMAIL**

Attorney Charles C. Adams  
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Re: *Kohler application for conditional use permit with exceptions*

Dear Attorney Adams:

I write on behalf of the Friends of the Black River Forest ("FBRF") in response to the November 30, 2020, notice of public hearing on an "application for conditional use permit with exceptions by the Kohler Company to construct a new golf course on Kohler property north of Kohler Andrae State Park between Black River and Lake Michigan."

The notice states a hearing will be held at City Hall on December 15, 2020—less than two weeks from now—with written comments due by noon on December 14, 2020. However, it also states the legal description of the property will not be available until Tuesday, December 8, and directs the public to a BoardDocs website where no information on Kohler's CUP application is available. It does not otherwise inform the public how they can view the application. The notice does not inform the public that variances, shoreland-wetland zoning, or any other applicable overlay zoning designations will be addressed at the hearing, if that is the City's intent.

A member of FBRF requested a copy of the CUP application through an alder, who arranged to pick it up on November 30. However, she was told the application was not yet available that day. Other individuals called the Division directly yesterday and were given varying answers about the application's availability—that it would not be available until December 8, that it could be viewed in-person at the Division or picked up at a \$0.25/page charge (both unacceptable options in the midst of a pandemic). Finally, late yesterday, the application was made available to an individual via an ftp site. This site is not listed in the notice and is password protected. FBRF does not know how many other community members have also sought and been denied information, or have assumed the application is not available until December 8 and have not even tried to obtain it.

It appears the City is not complying with its own ordinances or with state law in its rush to hold a public hearing on Kohler's application. City of Sheboygan Ordinance chapter 15 establishes the proper procedures for CUP application review, public notice, and public hearing. The Zoning Administrator may not post notice of public hearing on a CUP application until he has certified the application is complete. Sheb. Ord. § 15.905(3). "No placement of the application on any agenda, as an item to be acted upon, shall occur unless said certification has occurred." *Id.* Upon certification, the Zoning Administrator must "review the application and evaluate and comment on the written justification for the proposed conditional use," and may also determine whether the proposed use is in harmony with the City's Comprehensive Master Plan. § 15.905(4)(b).

Notably, the Plan Commission need only schedule a public hearing on the application within 45 days of the Zoning Administrator's certification of completeness, not upon the applicant's submission of materials it alleges to be complete. § 15.905(5)(a).

Pursuant to Sheboygan Ordinance § 15.905(3)(d), a site plan is required in order for a CUP application to be complete. *See also* § 15.908(1) (requiring site plan approval for "initiation of all development activity"). A site plan, in turn, must have a legal description. § 15.908(3)(c)4. Thus, the Zoning Administrator may not certify the Kohler CUP application complete without a legal description of the Kohler property.

To date, the general public has not been able to view the Kohler application materials, does not know the legal description of the property proposed for inclusion in the CUP, does not know whether or when the application was certified complete, and has not seen the Zoning Administrator's written comments on Kohler's proposed justification for the CUP. Moreover, it is not possible as a matter of law that the Kohler CUP application has been certified complete without a legal description. Despite this, the City apparently still plans to hold an in-person public hearing on December 15.

The Wisconsin Supreme Court has made clear that the public is entitled to "a meaningful opportunity to express informed opinions at the public hearings" for conditional use permits. *Weber v. Town of Saukville*, 209 Wis. 2d 214, 238, 562 N.W.2d 412, 421 (1997) (emphasis added). Because of this, a permit application must be complete prior to the first posting of public notice for hearing on the application. *Id.* Completeness prior to notice, the court explained, ensures "ample opportunity for interested citizens to inform themselves in preparation for the hearing." *Id.*

Implicit in *Weber* is that the CUP application must be not only complete, but available to the public no later than the posting of the first public notice. Otherwise, members of the public still would be deprived of a meaningful opportunity to inform themselves of the materials and prepare for the hearing.

That is the case here. Although the public may have learned that a hearing on a CUP application will be held, it still lacks any information on the actual application materials submitted, the exact property involved, the Zoning Administrator's evaluation of the application, or any other details that would allow the public to prepare an adequate response for the proposed December 15 hearing. According to the Division, whose messages have been conflicting, none of this will even be available and accessible to the public until December 8—less than one week before written comments are due, and more than a week after the first public notice was published. This is insufficient as a matter of law.

Moreover, Kohler's proposed golf course—whatever its current iteration may be—is not a simple building project but a vast, transformative development that would irreparably alter not only the property itself, but its immediate surroundings and even much of the City. It is not fair to shortchange the public's review time of this complex project, or expect City staff to rush their review. Further, with numerous permitting processes and court cases still pending, the project's final form is anything but defined at this point, if it is allowed at all. Review of a CUP application at this stage—even if the current plans had been made available to the public—is premature at best, and further deprives the public of a meaningful opportunity to comment at public hearing.

For these reasons, FBRF respectfully requests that the City cancel the December 15, 2020 public hearing and set a new public hearing for a reasonable date in the future, at a reasonable time after the Kohler CUP application and accompanying materials have been completed and made available and accessible to the public.

Sincerely,

PINES BACH LLP



Leslie A. Freehill

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