

The Sheboygan County circuit court has handed the Friends of the Black River Forest a victory in the group's challenge to a 2017 decision by the Department of Natural Resources to grant Kohler Co.'s request for a permit to fill wetlands to construct a golf course.

The Friends challenged the permit before an administrative law judge (ALJ), who threw out the permit in March 2019 after a five-day hearing. The ALJ found the DNR lacked sufficient information to grant the permit, such as from water quality and wetland impacts from fertilizers and changes to hydrology. Kohler appealed that decision to Sheboygan County Circuit Court.

On May 28, 2021, the Honorable Edward Stengel refused Kohler Co.'s request to reinstate the permit in a 38-page decision that affirmed the ALJ and dismissed Kohler Co.'s case. Said the Court, "[t]he ALJ concluded that the decision to issue the wetland permit was not based on scientific facts and definitive plans, but speculation and promises."

The Court continued, "[w]ithout complete and accurate information submitted by the project developers, the Department could not have made findings required by statute prior to issuing the wetlands permit. Because the Department did not have the complete and accurate evidentiary basis required to reach its conclusions, the ALJ was correct in his decision to reverse the DNR's issuance of the permit."

Mary Faydash, Friends spokesperson, responded to this victory for the grassroots group. "This decision affirms what Friends of the Black River Forest has been saying since the DNR issued the wetland fill permit. The DNR proceeded with the permit despite factual inconsistencies and incomplete information."

Faydash continued, “this decision affirms the ALJ’s conclusion that the DNR should not rely on vague promises to protect groundwater and wetlands from golf course development and operation.”

Key points from the court’s decision:

- Contrary to Kohler’s argument that the DNR could not consider issues like “clearing of trees, grading of land, and removal of flora” when issuing the wetland permit, the Court found “the plain language of the [wetland statute] indicates that the scope of the Department’s inquiry encompasses more tha[n] the strict, narrow field suggested by Kohler that limits the review only to the potential impacts on the wetland fill area itself.” In making this argument, the Court found that Kohler “selectively cit[ed] those portions of the statutes that support its argument.”
- The Court rejected Kohler’s “very complicated argument to establish that it was error [for the ALJ] to require a quantitative finding with respect to secondary adverse impacts cause [by] development on the site,” because the ALJ did not actually require such a finding.
- The Court found there was sufficient evidence in the record to support the conclusions that cumulative impacts would result from development of the golf course site, and that nutrients and pesticides applied to the golf course would reach groundwater and wetlands. Some of this evidence was testimony from the Friends’ experts at hearing.
- The Court rejected Kohler’s argument that the ALJ was compelled to impose conditions on the permit, rather than reverse it entirely.

Kohler’s proposed golf course would fill 3.69 acres of wetlands,

some of which are unique ridge and swale wetlands. It would cause secondary impacts to other wetlands on site, including rare interdunal wetlands. The golf course would also require deforestation of over half of Kohler's 247 acres and decrease habitat for migratory birds who use the land as a stopover site. Kohler Co. would also need several acres of land in Kohler-Andrae State Park to construct and operate the course.

"This rare piece of coastal landscape is the wrong place for a golf course," said Claudia Bricks, co-spokesperson for the Friends. "The Kohler company claims that the impacts to our environment will be minimal, but ALJ Kaiser's and Judge Stengel's decisions affirm the need for a complete review when such significant impacts are at stake.

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