

NOTES TO CITY COUNCIL

From the Town of Wilson

Regarding Kohler Company's Petition for City Annexation

Overview

The City's pending action is that of **annexation by non-unanimous consent and zoning. Neither are necessary for a golf course**, as most in the county are in townships. Riverdale golf course in the Town of Wilson, which is located in between the City and the land where Kohler is proposing to build another, has worked for over almost 90 years. The proposed Kohler Company golf course requires a *Conditional Use Permit* whether it's in the City or Town. The City's zoning ordinance indicates that a privately owned golf course is classified as an *Outdoor Institutional Use* requiring a *Conditional Use Permit*. In addition, necessary "clear cutting" of forest at this location is also a *Conditional Use*. Aside from this, Kohler says its motivation for annexation is "to ensure that its golf course is developed and operated in a fiscally-stable municipality with access to reliable municipal services". This note addresses these issues.

The Town has had sanitary sewer service right against Kohler's parcel for 30 years, and since the entire area around the north and west sides of Kohler's parcel is all served by Town sewer, there isn't even any physically feasible route remaining for the City to extend municipal sewer to Kohler's land that is bounded to the east by the lake and south by Kohler-Andrae State Park. Therefore, **Kohler Company appropriately plans to rely on Town sewer.**

Kohler has, for several years, had plans in place for a private high capacity well to provide irrigation water supply, similar to what is used at Riverdale, Blackwolf Run and Whistling Straits. High capacity wells penetrate into a lower level of the local bedrock aquifer than the residential wells, which are within the upper level. There's quite a bit of hydraulic isolation between the two levels, so high capacity wells confined to the lower zone can be designed and operated with no adverse effect on residents' wells, even those close by. In this case, Kohler's well would be quite distant from any other private wells. While this level of well design expertise is not within the capability of the consultants that Kohler hired, it is well within the capabilities of the Town's consultants to advise on low-impact and sustainable development. **The bedrock aquifer provides ample supply of good quality water to residential and high capacity wells in the Town that are not subject to contamination in our area due to the local geology and are immune from the risks of public water systems.**

The Town's fire department is just a block from Kohler's parcel and the Town's First Responders have a consistent performance record of just several minutes response time. This is much quicker than is possible for any public or private ambulance service, which typically arrives more than ten minutes after our First Responders. It's the first ten minutes that mortality most heavily depends on, particularly in cardiac arrest, which is the most prevalent emergency service need of golfers. Regarding public safety and law enforcement; **is it anyone's opinion that the County Sheriff Department is less excellent than City Police?**

No service need has been legitimately identified that is not already provided by the Town!

The **Town of Wilson's "fiscal stability" is considerably stronger than the City's**, the latter presently facing the challenge of having to extend its borrowing limits to allow your Public Works Department to begin to catch up on much needed infrastructure reinvestment, which has been deferred by City Council for too long. In contrast, the Town has always stayed current on its road maintenance and sewer system. The Town has no long term debt and has always maintained a healthy operating cash reserve. In fact, the **City's motive is it to annex from the Town some additional tax base financial relief in order to subsidize ongoing municipal operations**. Considering this, how ironic is it that Kohler's expressed motive is to work within a more "fiscally stable municipality"? Let's not confuse stability with size, and general benefit to the area's economy is independent of whether any business is located within the City vs. the Town.

However, expense is apparently not a concern for Kohler Company. After three years of planning to use a private well for irrigation water supply, which is most economical and practical here, very recently the company "bargained" with the City to pay for almost two miles of city water main extension into the Town of Wilson in order to rationalize that it is water that comprises their just recently announced need for municipal services. The City's Water Utility has yet to have had a chance to do the system tests and evaluation necessary to determine the feasibility of this, and the concept of an extended leg off the existing system violates the design axiom of having interconnected loops in water supply systems. That's desirable not only to meet peak hydraulic demands, but also have circulation that reduces water line freezing during winter months. This would be particularly acute for supply to a facility that would have very little demand in winter, thus having very little or any water circulation in the pipes during that critical time.

Kohler's description of their stated motivation is a misleading distraction from the actual **objective which is to put the project under a jurisdiction that is separate from representation of the ownership of all the adjacent and surrounding land**. This is key to Kohler because all Conditional Use Permit ordinances require avoidance of adverse impacts on adjacent properties. By isolating their project from the representation of all the surrounding land owners in the Town, Kohler need not be any more concerned about their neighbors' property rights (which are the adjacent permitted uses) than the City's Plan Commission appeared to be in developing their recommendation to you.

The proposed annexation would put Kohler's proposed project under City control, which, up to this point in time, has only expressed attraction to the optimistically projected dollar signs and additional opportunities for subsequent annexations. All ten of the proponents heard at the City's recent Plan Commission Public Hearing pined about only the envisioned potential monetary gain. However, **by law, monetary gain cannot be the sole motivation of annexation**.

Of the twenty dissenting comments made at the same hearing, about equal numbers came from both City and Town residents regarding a wide variety of additional pertinent considerations. Nevertheless, the Plan Commission, within seconds of the close of hearing, voted for support of annexation without any discussion whatsoever. In this case, the Commission did not perform the due diligence for which it is charged in developing its recommendation. Now that's up to you. Zoning considerations ought to follow annexation because the content of zoning ordinances is unique to the particular town, village or city that has or gains jurisdiction.

Annexation Issues

The power of villages and cities is delegated to them through legislation by the State under specific requirements. Annexations shall:

- 1) **Avoid irregular patterns** in order to afford efficiency, practicality, and economy in providing services. The “balloon on a string” pattern of **the proposed non-unanimous annexation would create a far greater and accentuated irregularity** than any of those now existing, which are the result of various small unanimous annexations by those property owners. Neither the City nor the Town have strong-armed any of those owners to make the pattern more regular because the Town and the City’s Department of Public Works cooperate in providing efficient services irrespective of these existing relatively small irregularities. However, the extreme degree of separation of the Kohler land from the City would divide the Town in two and the shape of the annexation would be problematic for the City to serve, particularly for emergency services. We suggest that you confer with the Sheboygan County Emergency Management Director on this. The narrow strip of connecting land would also become problematic, not only for services but also administration of zoning ordinances of both Town and City. Some lots would have both applied on different parts of a single parcel. This may possibly be the most arbitrary geometry of annexation attempt that has occurred to date in this State.
- 2) **Be consistent with the characteristics of the land.** Kohler’s and the adjacent State Park parcels **are among the most natural lands** in eastern Wisconsin and are in fact **the least urban**, even less so than the Town’s rural agricultural land, some of which is actually included in the proposed annexation. The low density, forested residential land just north of the park is also remarkably “un-urban” despite DOA’s opinion to the contrary based on either unfamiliarity or bias. Go see for yourself the nature of the subject property (with Kohler Company permission) and the adjacent land for which permission is not required.
- 3) **Not abuse State authority granted to it, and shall act with discretion.** In order to minimally qualify for the petition, Kohler purchased just two homes and had those few “electors” now renting sign for it, even though most landowners along the narrow “string” did not. So in fact, the few signatures obtained were bought. The pattern of annexation was specifically and blatantly gerrymandered to exclude all adjacent and surrounding homes and their elector occupants. Therefore, this pattern is not only arbitrary with respect to all legitimate purposes of annexation, it will be **an extreme example of municipal abuse of authority and absence of discretion** if the Council approves it.

Pursuant to the above three principals of annexation, the following *Rule of Reason* is a judicially created doctrine that is applied by the courts to ascertain if the above criteria are met in any particular case:

- a) **Are there exclusions or irregularities in the boundaries that are arbitrary** and not based on physical characteristics?
- b) **Is there reasonable present or demonstrable need** for municipal services?
- c) **Are there factors that exist that constitute an abuse of discretion** on the part of the annexing municipality?

The proposed annexation is rife with violations of all of these. The State Department of Administration (DOA) opinion letter, which is only advisory but must still be considered by you, is based on severe mischaracterization of every factual aspect of this case with the exception that the proposed zoning is appropriate for a municipality. That high density proposed zoning is not compatible with the characteristics of the subject or adjacent land, nor is it necessary for the proposed use. Therefore, we suggest that you consider DOA's opinion on the "public interest" merits of the proposed annexation as not very astute advice in this instance.

Zoning Issues

The proposed zoning by the City (SR-5) is high density, allowing extremely small lots as permitted (undeniable) uses, comprising the densest single family blocks now existing within urbanized areas of the City. The petitioned mile long "string" proposed to connect Kohler's parcel to the City would form a narrow swath of high density housing zoning across non-consenting owners' lands that are now appropriately zoned agricultural, low density residential, and park and recreation; all consistent with their present uses. **The State Park land and Kohler's parcels are also presently appropriately zoned (park and recreation) for their character, present use, and planned uses.** The present zoning is also consistent with both the Town's and City's Comprehensive Plans. **The proposed zoning is in violation of both plans** and is proposed for reasons not understood by the Town. **Do you** as a Council member **know specifically why the City proposes high density residential zoning as the primary and permitted (undeniable) use even though not a single residence is planned?**

Aside from the presently proposed golf course, over the last 50 years Kohler Company's parcel has had several different actual uses and proposed future uses. During the 1960's there was full public access adjutant to the State Park to the south. The land west of the Black River, which the company donated in 1965 to the State, was given on the condition that it "shall be used for State Park and public recreation purposes" as specifically limited by that Deed (copy attached).

When the forested, low density Timberlake Subdivision (which DOA's recent opinion letter inaccurately characterizes as "urban") just to north was planned in 1969, a similar future for the Kohler parcel was anticipated and accommodated in the road planning. Subsequently, public access to the Kohler Company parcel went in the other direction; becoming limited to several hundred individual permits in order to allow hiking without adverse impact to that "sensitive environment". In the several years prior to the current golf course idea, a very low density hospitality project, the Tented Forest, was planned in detail as a Permitted Use on this land within the Town.

This annexation and zoning decision should not be based on the presently conceived use on just the Kohler parcel. Both annexation and zoning require much broader considerations as they involve more than just Kohler Company's parcel and the currently proposed use. Additionally, the feasibility of this currently proposed project still faces substantial State permitting issues in regard to proposed filling of wetlands. **By law, filling of wetlands cannot be done unless there is no "practicable alternative"**. That includes any other potential location for a golf course that does not require filling of wetlands.

There's also a Federal law issue; LAWCON 6(f). Because Kohler's parcel is not big enough to fit all that they need for a golf course on their land, the plan relies on making private use of a substantial amount of the north end of the State Park. LAWCON prohibits conversion of public recreation land to private use (see attached State of Wisconsin 1984 correspondence). In spite of this, Kohler Company appears to have confidence in the project proceeding (refer to the attached March, 2014 letter to Governor Walker). **The pertinent consequent zoning administration issue here is that the applicant's project doesn't even fit on their land**, and it also depends on exclusive use by a private business enterprise, occupying for "99 years", 32 acres of State tax payer owned State Park land that is dedicated to public access, for which Kohler Company has offered to pay \$1 per year. While this bargain is not a local zoning issue, it ought to be an issue to every citizen and their elected representatives in this State.

Closing

The Town of Wilson Board will continue to operate openly and fairly in the best long term and comprehensive interests of its residents and its critical neighbor, the City. While it must protect itself from attempts at indiscriminant abuse of power, it will still continue to collaborate at the operational level with the City for ongoing and future projects that are of mutual benefit to our collective community. We will also continue to pursue effective intergovernmental cooperation as both of our Comprehensive Plans require and DOA has very strongly advised.

Sincerely,

John Ehmann
Town of Wilson Board Chair

Roger G. Miller
Town of Wilson Plan Commission Chair

Enclosures: Town of Wilson's Completed Questionnaire re: the Proposed Kohler Annexation
 Exhibit C: City Nexus
 Exhibit D: Town of Wilson Plat Map
 Exhibit E: Land Characteristics
 Exhibit F: Wastewater Treatment Service Areas
 Exhibit G-1: Petitioner Map
 Exhibit G-2: Proposed Annexation String Detail
 Exhibit G-3: Proposed Annexation string Detail
 Exhibit H: Application for Permit to Discharge Dredged and Fill Materials into Wetlands
 Kohler Co. Request for Annexation Review
 March 26, 2014 Letter from Kohler Co to Governor Walker
 1984 Correspondence in re LAWCON 6(f)
 1965 Warranty Deed between Kohler Co. and the State of Wisconsin