

*****ATTACHMENTS*****

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: R.O. No. 174-18-19. Submitting a financial report of the City of Sheboygan for the period commencing January 1, 2018 and ending September 30, 2018.

REPORT PREPARED BY: Marty Halverson, Finance Director

REPORT DATE: November 19, 2018

MEETING DATE: November 26, 2018

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

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

BACKGROUND / ANALYSIS:

The financial information for all funds for the period commencing January 1, 2018 and ending September 30, 2018 is presented for information and discussion.

STAFF COMMENTS:

Highlights of the report are as follows:

- General Fund revenues year to date as of September 30, 2018 total \$24,461,230 representing 66.09 percent of the annual budget.
- General Fund expenditures year to date as of September 30, 2018 total \$24,841,409 representing 65.75 percent of the annual budget.
- All other funds revenues total \$57,360,141 year to date as of September 30, 2018 representing 73.49 percent of the annual budget.
- All other funds expenditures total \$38,338,884 year to date as of September 30, 2018 representing 42.42 percent of the annual budget.

ACTION REQUESTED:

Motion to recommend the Common Council accept and file R.O. No. 174-18-19 submitting a financial report of the City of Sheboygan for the period commencing January 1, 2018 and ending September 30, 2018.

ATTACHMENTS:

- I. R.O. No. 174-18-19.

II

3.2

R. O. No. 174 - 18 - 19. By FINANCE DIRECTOR. November 19, 2018.

Submitting a financial report of the City of Sheboygan for the period commencing January 1, 2018 and ending September 30, 2018.

*Finance
Personnel*

FINANCE DIRECTOR

**CITY OF SHEBOYGAN
GENERAL FUND REVENUES
Year-to-date as of September 30, 2018**

GENERAL FUND REVENUE	Amended Budget	Year to Date	Percent of Budget
Taxes	\$ 16,240,705	\$ 16,240,705	100.00%
Taxes (Other than property)	1,405,356	176,760	12.58%
Licenses and Permits	879,850	904,093	102.76%
Intergovernment Revenue	14,500,293	4,747,540	32.74%
Charges for Services	1,587,059	1,208,129	76.12%
Fines and Forfeits	288,789	233,757	80.94%
Interest on Investments	228,500	79,460	34.77%
Miscellaneous Revenue	190,597	202,680	106.34%
Other Financing Sources	1,693,621	668,107	39.45%
Total Revenue	\$ 37,014,770	\$ 24,461,230	66.09%

OVERVIEW

Year to date revenue are within budget expectations.

TAXES

Taxes are recorded in January when due.

TAXES (OTHER THAN PROPERTY)

Consists of payments in lieu of tax with the largest amount from the Water Utility recorded at year end.

LICENSES AND PERMITS

Consists of permits issued by Building Inspection and City Clerk. Receipts are within budget expectations.

INTERGOVERNMENTAL REVENUE

Consists of state revenues received in April, July and November. Receipts are within budget expectations.

CHARGES FOR SERVICES

Consists of garbage fee, park rentals and cemetery charges. Receipts are within budget expectations.

FINES AND FORFEITS

Consists of court penalty costs and parking violations. Receipts exceed budget expectations.

INTEREST ON INVESTMENTS

Interest on investments at RBC and UBS recorded monthly.

MISCELLANEOUS REVENUE

Consists of city building rentals and sale of equipment. Receipts exceed budget expectations.

OTHER FINANCING SOURCES

Consists of interfund transfer of funds transferred in June and December.

**CITY OF SHEBOYGAN
GENERAL FUND EXPENDITURES
Year-to-date as of September 30, 2018**

GENERAL FUND EXPENSE	Amended Budget	Year to Date	Percent of Budget
General Government	\$ 3,884,436	\$ 2,395,255	61.66%
Public Safety	21,886,830	14,439,547	65.97%
Public Works	8,655,456	5,762,268	66.57%
Health and Human Services	193,622	134,202	69.31%
Culture/Recreation	2,603,334	1,810,991	69.56%
Conservation and Development	351,003	255,178	72.70%
Intergovernmental	2,601	1,208	46.44%
Unclassified	201,517	42,761	21.22%
Total Expenditures	\$ 37,778,799	\$ 24,841,409	65.75%

OVERVIEW

Annual expenditures projected to be below or within budget.

GENERAL GOVERNMENT

Annual expenditures projected to be below or within budget.

PUBLIC SAFETY

Annual expenditures projected to be below or within budget.

PUBLIC WORKS

Annual expenditures projected to be below or within budget.

HEALTH AND HUMAN SERVICES

Annual expenditures projected to be below or within budget.

CULTURE AND RECREATION

Annual expenditures projected to be below or within budget.

CONSERVATION AND DEVELOPMENT

Annual expenditures projected to be within budget.

INTERGOVERNMENTAL

Intergovernmental transfers completed as budget is amended.

UNCLASSIFIED

Annual expenditures projected to be below or within budget.

**CITY OF SHEBOYGAN
OTHER FUND REVENUES
Year-to-date as of September 30, 2018**

OTHER FUND REVENUE	Amended Budget	Year to Date	Percent of Budget
Special Revenue Funds	\$ 8,579,274	\$ 6,240,671	72.74%
Debt Service Funds	8,657,973	7,448,763	86.03%
Capital Project Funds	37,029,390	28,249,390	76.29%
Proprietary Funds	23,765,934	15,411,160	64.85%
Fiduciary Funds	17,264	10,159	58.84%
Total Revenue	\$ 78,049,835	\$ 57,360,141	73.49%

OVERVIEW

Year to date revenues are within budget expectations.

SPECIAL REVENUE FUNDS

Consists of the Police MEG Unit, CDBG funds, Mead Library, Tourism, Park, Forestry and Open Space, Cable TV, Municipal Court, Ambulance, Special Assessments, Harbor Centre Marina, Redevelopment Authority, Park Impact Fees, Storm Water and the E.H. Maywood Park Funds. Year to date revenues are within budget expectations.

DEBT SERVICE FUNDS

Consists of the G.O. Debt Service Fund and TID Debt Service Funds. Year to date revenues exceed expectations as tax recorded in January.

CAPITAL PROJECT FUNDS

Consists of the Capital Project, Capital Improvements, Industrial Park, and TID Capital Funds. Year to date revenue projections are below expectations as the budget included contributions for the Butzen Sports Complex and issuance of debt for 2018 projects.

PROPRIETARY FUNDS

Consists of Wastewater, Transit, Parking, Boat Facilities, Motor Vehicle, Health Insurance, Liability Insurance, Worker's Compensation and Information Technology Funds. Year to date revenues are within budget expectations.

FIDUCIARY FUNDS

Consists of the Cemetery Perpetual Care and Mead Public Library Trust Fund. Year to date revenue projections are below budget expectations as interest is recorded at December 31.

WATER UTILITY

The Water Utility is not included as it is governed by the Board of Water Commissioners.

**CITY OF SHEBOYGAN
OTHER FUND EXPENDITURES
Year-to-date as of September 30, 2018**

OTHER FUND EXPENSE	Amended Budget	Year to Date	Percent of Budget
Special Revenue Funds	\$ 8,722,725	\$ 4,750,531	54.46%
Debt Service Funds	8,597,472	2,509,503	29.19%
Capital Project Funds	47,447,402	16,113,974	33.96%
Proprietary Funds	25,612,574	14,964,876	58.43%
Fiduciary Funds	2,000	-	0.00%
Total Expenditures	\$ 90,382,173	\$ 38,338,884	42.42%

OVERVIEW

Year to date expenditures are within budget expectations.

SPECIAL REVENUE FUNDS

Consists of the Police MEG Unit, CDBG funds, Mead Library, Tourism, Park, Forestry and Open Space, Cable TV, Municipal Court, Ambulance, Special Assessments, Harbor Centre Marina, Redevelopment Authority, Park Impact Fees, and Storm Water. Year to date expenditures are within budget expectations.

DEBT SERVICE FUNDS

Consists of the G.O. Debt Service Fund and TID Debt Service Funds. Year to date expenditures are below budget expectations, as the majority of debt payments are in the fourth quarter of the year.

CAPITAL PROJECT FUNDS

Consists of the Capital Project, Capital Improvements, Industrial Park, and TID Capital Funds. Year to date expenditures are below budget expectations largely due to completion of projects and minimal expenditures for the Butzen Sports Complex and City Hall renovations.

PROPRIETARY FUNDS

Consists of Wastewater, Transit, Parking, Boat Facilities, Motor Vehicle, Health Insurance, Liability Insurance, Worker's Compensation and Information Technology Funds. Year to date expenditures are within budget expectations.

FIDUCIARY FUNDS

Consists of the Cemetery Perpetual Care and Mead Public Library Trust Fund. The transfer to the General Fund is recorded in December.

WATER UTILITY

The Water Utility is not included as it is governed by the Board of Water Commissioners.

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 128-18-19 by Alderpersons Rindfleisch and Bohren authorizing entering into a tentative agreement with the International Association of Fire Fighters Local 483 for a successor contract.

REPORT PREPARED BY: Sandy Rohrick, Director of Human Resources and Labor Relations

REPORT DATE: November 21, 2018

MEETING DATE: November 26, 2018

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

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

BACKGROUND / ANALYSIS:

Both parties to this tentative agreement are desirous of reaching an amicable understanding with respect to the employer-employee relationship that is to exist between them and enter into an agreement covering those matters primarily related to wages, hours, and working conditions and those matters primarily related to management function over which the employer has agreed to negotiate, as well as procedures for reducing potential conflict with respect to such matters.

STAFF COMMENTS:

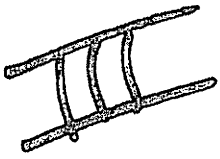
The significant and/or notable highlight of the 2018-2020 Agreement will be shared at the meeting.

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 128-18-19 by Alderpersons Rindfleisch and Bohren authorizing entering into a tentative agreement with the Fire Fighters Local 483 for a successor contract.

ATTACHMENTS:

- I. Res. No. 128-18-19



4.1

Res. No. 128 - 18 - 19. By Alderpersons Rindfleisch and Bohren.
November 19, 2018.

A RESOLUTION authorizing entering into a Tentative Agreement with the International Association of Fire Fighters Local 483 for a successor contract.

RESOLVED: That the Common Council hereby authorizes the appropriate City officials to enter into a Tentative Agreement with the International Association of Fire Fighters Local 483 for a successor contract, a copy of which is attached hereto.

Finance + Personnel

Royd Rindfleisch
James A. Bohren

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

DRAFT TENTATIVE AGREEMENT

Between the City of Sheboygan
And
IAFF Local 483
January 1, 2018 - December 31, 2020

1) WITNESSETH (Page 5) Section A: Modify to read:

"Both parties to this Agreement are desirous of reaching an amicable understanding with respect to the employer-employee relationship that is to exist between them and enter into an Agreement covering those matters primarily related to wages, hours, and working conditions and those matters primarily related to management function over which the employer has agreed to negotiate, as well as procedures for reducing potential conflict with respect to such matters. Nothing in this provision would eliminate the City's right to remove permissive subjects by law in successor contracts. In the event of the City's exercising of this right, the union reserves its right to review and potentially bargain the impact of same with regard to its members' wages, hours and working conditions."

2) ARTICLE II – UNION SECURITY (Page 7) Section C is pending proper language from legal.

3) ARTICLE IV - RESIDENCY REQUIREMENT (Page 9) Modify to read:

"All employees shall, within 4 months of their completion of probation, and as a condition of their employment, establish a permanent residence within 45 miles of the jurisdictional boundaries of the City of Sheboygan, and must remain as residents within 45 miles of the jurisdictional boundaries of the City of Sheboygan throughout their employment, except for the following:

1. The Human Resources Director, with input and/or recommendation of the Chief, may extend the four (4) months to accommodate a hardship with evidence the employee is in the process of securing residency.
2. Employees living outside the 45 miles of the jurisdictional boundaries of the City of Sheboygan as of December 31, 2015 may continue to reside at the address of record on December 31, 2015. Any future change in address must not be further away from the current address on record."

4) ARTICLE VII – NORMAL WORK WEEK (Page 12) First Paragraph. Modify to read:

"Line firefighters of the Fire Department shall be scheduled for twenty-four (24) consecutive hours of duty. The normal work week shall be fifty-six (56) hours, but no employee shall be guaranteed any specific number of hours in any one (1) week."

5) ARTICLE VIII – OVERTIME AND COMPENSATORY TIME (Page 13, lines 31 and 32 and page14, lines 1 and 2) Modify to read:

"Personnel must decide by November 15th if they intend to use compensation time off or receive cash for the remaining hours. Personnel may use accrued Fair Labor Standards Act compensatory time off through March 31st of the year following the cash payout. If compensatory time is not exhausted by March 31st, management will assign time off by May 31st with no less than one week notice unless mutually agreed between parties. Time off assignments hereunder will not be counted toward the maximum number of bargaining unit employees allowed off on approved leave of absence in accordance with Article XXII."

DRAFT TENTATIVE AGREEMENT

**Between the City of Sheboygan
And
IAFF Local 483
January 1, 2018 - December 31, 2020**

6) ARTICLE IX – PROMOTIONS AND TRANSFERS; Section C (Page 21) Modify to Read:

“A. Plan of Evaluation for Promotion: The Chief will select a qualified member of the department for promotion with approval from the Police and Fire Commission.

The Chief shall establish promotional procedures pursuant to applicable Wisconsin Statutes which include, but are not limited to, an evaluation of merit and ability in order to determine qualified employees for promotion. The Chief may notify the Union President in writing ten (10) days prior to implementation of any process revisions.”

“C. The promotional system for Firefighter or Fire Equipment Operator (FEO) to Lieutenant shall include the following: Qualified Firefighters and FEOs for the position of Lieutenant shall be chosen in accordance with Subsection (A) above. The candidate with the most seniority from those qualified shall be selected for promotion to the position of Lieutenant.”

“E. Fire Equipment Operator certification shall include the following: All employees hired after January 1, 2002 are required to be certified by the Sheboygan Fire Department as Fire Equipment Operators (FEO). The department will provide a training program to enable employees to become certified. With the exception of successful completion of the written and practical examination, an employee must complete the Fire Apparatus Driver/Operator program to be certified in order to receive the step 4 increase. To be eligible and qualified for promotion to FEO, a certified employee must have successfully completed a written and practical examination for FEO as established by the department.

The most senior qualified firefighter will be offered the FEO position. Declining the offer does not affect the employee's eligibility for future openings.

The fire department will provide employees opportunity to train so that they are able to become certified in a timely manner. The department will also provide opportunities for written and practical testing to be able to be qualified for promotion to FEO. If certification occurs beyond the thirty-sixth (36) month, upon certification, the employee's pay would be based on length of service and future step increases shall be based on the date of hire and not the date of the FEO certification.

Employees will be informed of the expected standards for completion of the Fire Apparatus Driver/Operator program as well as the expectations for successful completion of the written and practical examinations for qualification for promotion. It is the responsibility of the employee to provide the effort necessary to meet those standards and expectations. All new FEOs shall be ranked using in grade seniority based on the date of the promotion.*

***Firefighter Greg Wucherer shall be grandfathered. If/when he would be promoted to FEO, he shall be ranked according to department seniority.”**

7) ARTICLE X – GRIEVANCE PROCEDURE (Page 29) Modify to read:

“A. General Provisions: A grievance under this Agreement is a written claim arising under and during the terms of this Agreement, initiated as set out below limited to the interpretation, application, or

DRAFT TENTATIVE AGREEMENT

**Between the City of Sheboygan
And
IAFF Local 483
January 1, 2018 - December 31, 2020**

enforcement of the terms of this Agreement and disciplinary action except disciplinary action subject to Chapter 62.13 (i.e. involving suspension, reduction in rank, suspension and reduction in rank, or removal.) Any dispute with respect to the reasonableness of the application of work rules primarily related to working conditions, wages, or hours, except those that affect safety, firefighting, emergency medical services, or activities related thereto, shall be subject to the grievance procedure."

E. Steps in the Grievance Procedure – (Page 31) Lines 22-26 Paragraph will be removed.

E. Steps in the Grievance Procedure – (Page 32) Subsection (c) First sentence; Modify to read:

"In reviewing any differences with respect to the reasonableness of the application of new departmental rules or regulations primarily related to wages, hours, and working conditions under this grievance and arbitration procedure, the arbitrator shall take into account the special statutory responsibilities granted to the Chief under the statutes of the State of Wisconsin and amendments thereto."

8) ARTICLE XII – RULES AND REGULATIONS (Page 35) Modify to read:

"The rules and regulations of the Sheboygan Fire Department that primarily relate to wages, hours, and working conditions shall be made a part of this Agreement by this reference. Rules and regulations will be revised and amended as the need arises. The Chief agrees to notify the Union president of any new work rules primarily related to wages, hours, or working conditions before they are put into effect. Any dispute with respect to the reasonableness of the application of work rules primarily related to wages, hours, and working conditions, except those that affect safety, firefighting, emergency medical services, or activities related thereto, shall be subject to the grievance procedure."

9) ARTICLE XVIII – UNIFORM ALLOWANCE (Page 45) Section D is removed as it is a prohibited subject of bargaining.

10) ARTICLE XIX – SPECIAL SALARY PROVISIONS Section I (Page 50) First Paragraph. Modify to read:

"1. Paramedic Preceptor Compensation - Each semester, the Chief, or his/her designee will determine whether the Sheboygan Fire Department will participate in a paramedic preceptor program. The participation level shall not be above 1 paramedic student per ambulance."

Section H, subsection. 2; Premium Pay for work outside normal station routine work hours - Modify to read:

"2. Training: The City may require each employee to participate in two (2) training sessions per calendar year, to a maximum of four (4) hours outside the normal station work routine hours, at no additional expense to the City. Additionally, training sessions participated in with outside agencies other than solely the Sheboygan Fire Department must not exceed an additional six (6) sessions per calendar year, to a maximum of eighteen (18) additional hours outside the normal station work routine hours. (Sundays, and holidays are excluded.) Additional training may take place as agreed upon by

DRAFT TENTATIVE AGREEMENT

Between the City of Sheboygan
And
IAFF Local 483
January 1, 2018 - December 31, 2020

The Chief and the Union president or their designee.”

11) ARTICLE XXII – VACATION – FLSA AND REGULAR COMPENSATORY TIME – EMS DAY

II. ADMINISTRATION (Page 54) Modify to read:

“A maximum of four union personnel will be approved for leaves of absence in accordance with this article at any given time. Persons on sick leave, FMLA, and leave for department funded and/or required business may be considered as part of the four union personnel. (This is a factor in granting untimely off duty and same day leaves of absence only.)”

12) ARTICLE XXIII – UNION ACTIVITIES Section E; Modify to read:

“The Union’s grievance committee shall be determined by the Association. The Union’s bargaining Committee will be determined by the Association. Either party may select an attorney for purposes of conducting negotiations under the provisions of 111.70 of the Wisconsin Statutes.”

13) ARTICLE XXIX – LIFE INSURANCE (Page 69) Modify to read:

“The City agrees to continue in force the present life insurance or comparable coverage. The City agrees to contribute 50% of the member’s monthly basic life insurance premium costs of the Wisconsin Employee Group Life Insurance Plan or comparable coverage for eligible members of the bargaining unit.”

14) ARTICLE XXVII – HEALTH INSURANCE Section A (Page 65); Modify to Read:

“Actively employed Firefighters will be offered medical insurance at the same premium contributions as Non-Represented employees of the City of Sheboygan. This benefit ceases when the employee is laid off, discharged, or quits, subject to applicable federal laws (COBRA).”

15) ARTICLE XXXX – RETROACTIVITY (Page 80) Modify to read:

“A. Retroactivity will be paid on increases in salary from January 1, 2018, until this contract is executed. All benefits will be retroactive to January 1, 2018, unless otherwise noted.”

16) SALARY AND WAGE SCHEDULE Modify Paragraph C – Wages as follows:

Effective 01/01/2018 - 2.00%
Effective 01/01/2019 - 2.25%
Effective 01/01/2020 - 2.00%

DRAFT TENTATIVE AGREEMENT

Between the City of Sheboygan
And
IAFF Local 483
January 1, 2018 - December 31, 2020

17) ADDITIONAL ITEMS TO BE UPDATED AND CLEANED UP

- 1) **LETTERS OF UNDERSTANDING:** All letters of understanding will be updated with applicable dates as needed.
- 2) **LANGUAGE CLARITY:** All references to the Fire Chief in any context will be changed to Chief. All references to Chief Inspector or Fire Prevention Bureau will be removed. All references to Deputy Chief of Personnel will be removed. Generally speaking, personnel specific references will be changed to the Chief or his/her designee.
- 3) Sheboygan Fire Department Promotional Process (Pages 89-109) shall be removed from the Agreement.

This agreement is subject to ratification by IAFF Local 483 and the City of Sheboygan.

Dated this _____ day of _____, 20__.

FOR THE CITY OF SHEBOYGAN

FOR IAFF LOCAL 483

_____ Michael T. Romas Fire Chief	_____ Date	_____ Brendan Hughes Local 483 President	_____ Date
_____ Charles Butler Deputy Fire Chief	_____ Date	_____ Matthew Polzin Union Representative	_____ Date
_____ Sandy Rohrick Director of Human Resources and Labor Relations	_____ Date	_____ Joel Johnsrud Union Representative	_____ Date
_____ Darrell Hofland City Administrator	_____ Date	_____ William Cherek Union Representative	_____ Date

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 129-18-19 by Alderpersons Rindfleisch and Bohren adopting the 2019 City of Sheboygan Compensation Program for Non-Represented Employees.

REPORT PREPARED BY: Sandy Rohrick, Director of Human Resources and Labor Relations

REPORT DATE: November 21, 2018

MEETING DATE: November 26, 2018

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

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

BACKGROUND / ANALYSIS:

On a yearly basis, the City of Sheboygan reviews the Non-Represented Employee Compensation Program. All revisions are documented and reviewed by the Finance and Personnel Committee. All approved modifications are presented to Common Council for consideration and/or approval.

STAFF COMMENTS:

Updated the 2019 City of Sheboygan permanent non-represented positions following organizational updates throughout the year that reclassified positions based on market value. Increased all Non-represented pay scales by 2.25 percent consistent with budget approval.

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 129-18-19 by Alderpersons Rindfleisch and Bohren the 2019 City of Sheboygan Compensation Program for Non-Represented Employees.

ATTACHMENTS:

- I. Res. No. 129-18-19
- II. Compensation Program for Non-Represented Employees

III

4.2

Res. No. 129 - 18 - 19. By Alderpersons Rindfleisch and Bohren.
November 19, 2018.

A RESOLUTION adopting the 2019 City of Sheboygan Compensation Program for Non-Represented Employees.

RESOLVED: That the Common Council hereby adopts the 2019 City of Sheboygan Compensation Program for Non-Represented Employees, a copy of which is attached hereto and incorporated herein.

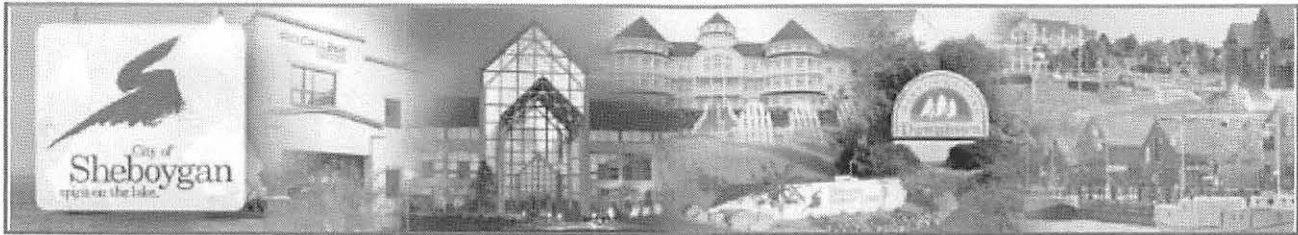
Finance & Personnel

Rand Rindfleisch
James A. Bohren

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor



CITY OF SHEBOYGAN

COMPENSATION PROGRAM

FOR

NON-REPRESENTED EMPLOYEES



Resolution to Amend to Council: November 19, 2018

Agenda Item Finance and Personnel Committee: November 26, 2018

Approval by Common Council:

(Replaces 2018 Non-Rep Compensation Program adopted by way of Res. 104-17-18)

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I. EXECUTIVE SUMMARY

In 2017, the Common Council voted to follow that same concept adopted by many other public employers and other professional organizations, shifting to a “market-based” approach rather than a standard pay grade approach. This approach evaluates the position and determines the fair market value (also known as the “Control Point”) for an employee who is fully trained in the position. The second noticeable change is the accelerated fashion a new employee receives market value once trained.

II. GENERAL COMPENSATION PHILOSOPHY

The salary and benefits provided by the City of Sheboygan to its employees are to attract and retain the most qualified and competent individuals to perform and provide quality public services to the citizens of Sheboygan. For this reason, the City will provide salaries based on internal equity and external competitiveness.

III. GENERAL PROGRAM DEFINITIONS

Department Head: For all purposes defined under this program, department head includes the following officers: City Administrator, Chief of Police, Fire Chief, Director of Public Works, Director of Human Resources and Labor Relations, Director of Planning and Development, and Information Technology Director, Director of Parking and Transit, and Finance Director.

Management Team Advisory Committee: Depending on the issue needing guidance, this committee will be appointed as needed by the City Administrator and may include Department Heads, elected officials or other Non-represented departmental leaders.

Employee(s): Any active, permanent full-time or permanent part-time, non-elected, non-represented employee, not including seasonal, temporary, extra help, or permanent employees whose regular work schedules are under 600 hours per year.

Employer: The City of Sheboygan.

Market Survey: The gathering, compilation, and analysis of market pay information by the Human Resources Department, or any agency or service contracted by the Human Resources Department, in order to determine the salary ranges for each pay grade.

Pay Grade: A group of one or more classifications which have been assigned the same pay range for compensation purposes. All jobs in a pay grade have the same range minimum, midpoint, and maximum rates.

Performance Appraisal Review: The procedure used by the employee's supervisor and/or department head to evaluate the employee's performance during the calendar year.

Program: Except where another program is specifically referred to, the compensation program for Non-represented employees.

Salary Range: The pay range assigned to a specific pay grade, and which includes either a defined minimum, midpoint and maximum rate of pay, or a progression step and pay range maximum based upon comparable information.

IV. ROLE OF THE HUMAN RESOURCES DEPARTMENT IN COMPENSATION ADMINISTRATION

The Human Resources Department shall be responsible for the following compensation administration activities:

1. Developing, implementing, and monitoring organization-wide compensation policies, procedures and programs, and ensuring adherence to them.
2. Developing and maintaining current job analysis and job description information throughout the organization, continually monitoring changes to the jobs, and revising analyses and job descriptions as appropriate.
3. Providing analysis and recommendations to support the annual compensation policies to be made by the Common Council as described in Section VII or VIII.
4. Providing compensation administration reports and data needed for effective program review and control.
5. Developing recommendations for and implementation of approved pay rates, pay structures and pay practices; reviewing market data to determine changes necessary to ensure that the organization is competitive within the relevant municipal and private sector labor markets.
6. Ensuring compliance with wage and hour laws and regulations.
7. Consulting with external compensation consultants and/or experts, as well as internal managers, supervisors, and employees on compensation and performance management problems and issues.
8. Developing, implementing and monitoring performance management policies, procedures and programs. This includes developing and reviewing the effectiveness of performance appraisal activities and ensuring that employees receive timely and accurate appraisals.
9. Preparing updates to the compensation program document contained herein for council review and approval, and providing this information to all employees covered by the program.
10. Educating employees on the current compensation program.

V. ROLE OF THE INDIVIDUAL DEPARTMENT IN COMPENSATION ADMINISTRATION

The individual departments shall be responsible for the following compensation administration activities:

1. Ensuring that approved compensation administration policies, programs, and procedures are followed in all divisions within the department.

2. Reviewing and approving all job descriptions and ensuring that the Human Resources Department is informed of all new and changed jobs so that jobs can be re-analyzed and new job descriptions can be developed.
3. Reviewing each employee's performance at least once a year and recommending any salary increase deemed appropriate. This task requires discussing the performance review and rating with the individual employee and submitting the required appraisal forms to the Human Resources Department for review and discussion of pay adjustments.
4. Recommending revisions in compensation administration policies, procedures, and practices to the Director of Human Resources and Labor Relations when deficiencies and problems are identified.

VI. ROLE OF THE MANAGEMENT TEAM ADVISORY COMMITTEE IN COMPENSATION ADMINISTRATION

The role of the Management Team Advisory Committee in compensation is one of providing a broad-based review of, and input into, overall compensation activities. The Director of Human Resources and Labor Relations acts as Chairperson for personnel related matters.

The Advisory Committee will perform two (2) specific roles:

1. At the request of the Director of Human Resources and Labor Relations, provide counsel and assistance with regard to the integrity and effectiveness of the compensation program for non-represented employees;
2. Review and provide input into the annual major pay policy recommendations made by the Director of Human Resources and Labor Relations, before presentation to the Finance and Personnel Committee (see Section VII).

All recommendations of the Advisory Committee shall be non-binding to the Director of Human Resources and Labor Relations, and for matters which come before them, the Finance and Personnel Committee.

VII. ROLE OF THE FINANCE AND PERSONNEL COMMITTEE IN COMPENSATION ADMINISTRATION

The Finance and Personnel Committee shall be responsible for the overall administration of the compensation program in coordination with the Director of Human Resources and Labor Relations, the Management Team Advisory Committee, the Common Council and other appropriate resources.

The Finance and Personnel Committee performs the following functions:

1. Approves, subject to Common Council approval, annual recommendations made by the Director of Human Resources and Labor Relations, after input from the Management Team Advisory Committee, regarding major pay policy decisions including:
 - a. range adjustments

- b. across-the-board increases, (if applicable)
 - c. merit increase annual budget
2. Approves all modifications to the compensation program described herein, for final approval by the Common Council.

VIII. ROLE OF THE COMMON COUNCIL IN COMPENSATION ADMINISTRATION

Each year, the Common Council shall make three (3) major pay policy decisions:

1. How much, if any, pay ranges should be adjusted to be externally and internally competitive;
2. How much, if any, should be budgeted for across-the-board adjustments (if necessary to maintain internal equity);
3. How much should be budgeted for merit increases;

These decisions shall be made based on information and recommendations provided by the Director of Human Resources and Labor Relations, after input from the Advisory Committee, and approval of the Finance and Personnel Committee.

In addition, upon recommendation of the Director of Human Resources and Labor Relations and the Finance and Personnel Committee, the Common Council shall approve all changes to the overall compensation program described herein.

IX. SALARY STRUCTURE

The City salary structure consists of a specified number of salary ranges for which range minimum, midpoint, and maximum rates of pay are established.

MINIMUM RATE

The salary for any employee shall not be less than the minimum established for their pay grade provided the minimum requirements of knowledge and/or certification of the position are met.

MIDPOINT RATE (ALSO KNOWN AS THE MARKET RATE OR CONTROL POINT)

The midpoint of a range is typically the comparable market average pay for a position.

MAXIMUM RATE

The maximum rate, the top rate for a pay grade, is the maximum salary the City will pay a position. The base salary for any incumbent shall not exceed the maximum rate established for his/her pay grade. Upon implementation of this pay plan, an employee receiving a salary at or in excess of the maximum rate will not be eligible for a pay adjustments until their rate of pay falls below the maximum for the pay range. At that point, the employee is eligible for the amount identified for their performance, not to exceed the top of pay for the position.

Assignment of classifications to the proper salary range is based on the market analysis results described in Section XI.

The salary structure shall be reviewed once each year, and may be adjusted by the Finance and Personnel Committee based on recommendation of the Director of Human Resources and Labor Relations. This recommendation will be based on the following factors:

1. Known or reasonably anticipated range adjustments for the next year reported by comparable employers used in the market analysis;
2. Analysis of economic conditions faced by the City Government (e.g. loss of shared revenues); and
3. Range adjustments occurring in the City's union contracts or reasonably anticipated by the Director of Human Resources and Labor Relations.
4. The Consumer Price Index (CPI) as determined by WDOR (Wisconsin Department of Revenue)

Achieving consistency with the City's stated pay policy (see Section X. A.) and consideration of the above four (4) factors will be the basis of the recommendation.

X. EXTERNAL RELATIONSHIP

A. POLICY

The City's policy is to place its total salary practice at or near the prevailing market practice for jobs of similar content within the City's chosen market as defined herein. The City's policy includes a desire to provide salary advancement opportunities which recognize changes in the economy, differences in performance, and salary levels which are fair compared to the City's internal market (pay levels in the union groups) and local private sector like positions.

B. SALARY SURVEYS

The City's objective is to maintain a level of pay that is competitive with the level of pay for similar skills in other similar public jurisdictions and private sector for which it competes for employees in the marketplace. The City achieves this competitiveness through a systematic method of determining what other jurisdictions in its market pay.

Specific external relationships shall be determined in general every three (3) years, or for a specific job whenever:

1. A salary range midpoint of a classification is insufficient to attract qualified candidates for employment;
2. A continuing turnover pattern in a classification can be directly linked to established compensation levels; or
3. Management deems that specific external relationships must be examined.

C. COMPOSITION OF THE MARKET

The City of Sheboygan recognizes the importance of correctly surveying the market, in order to:

1. Set pay levels which attract a sufficient quantity of qualified applicants to fill open positions.
2. Retain its high-performing, valuable employees over time, in order to recoup training investments, optimize organizational effectiveness, and minimize unwanted turnover.

Market data shall be gathered directly from other cities through public information requests or as part of a participant or direct consultation of other qualified surveys which include, but are not limited to, the following jurisdictions:

Appleton	Beloit	Eau Claire	Fond du Lac
Janesville	Manitowoc	Oshkosh	LaCrosse

These jurisdictions were selected based on one or more of the following criteria: similar populations; similar per capita income; and proximity to Sheboygan. The City shall periodically re-examine the appropriateness of the market base should circumstances arise which the City believes merit the need for such a re-examination.

D. MARKET ANALYSIS PROCESS

As required, the Human Resources Department will work with the department heads to update position descriptions. At a minimum, the position descriptions will contain the following information:

1. Purpose of position.
2. Description of essential functions of the job.
3. Description of marginal functions of the job.
4. Statement of required education and experience.
5. Description of knowledge, skills, and abilities required for the job.

A survey instrument will be created which includes short descriptions of each job and asks for relevant market data including, but not limited to, range minimums, midpoints, maximums, and actual rates. The survey will be sent to the market jurisdictions, with follow-up contacts as necessary. Every reasonable attempt will be made to obtain this information.

1. The Director of Human Resources and Labor Relations will gather pay data from relevant positions within the City's current workforce as a comparable – that is the "internal market".
2. Relevant market data will also be reviewed with both municipal and private industry employers in the area. Wherever possible, the City of Sheboygan will participate in qualified surveys being performed either through other municipalities or will hire an outside agent to perform a survey if necessary. In addition, the Human Resources Department will perform a direct information search, gathering applicable data directly from other municipalities through a public information data request.

3. An adjustment shall be made, if necessary, to the compiled data so that survey information is relevant for the applicable year.

XI. ASSIGNMENT OF POSITIONS TO SALARY GRADES

A. POLICY

It is the intent of the City to provide a compensation program which relates the pay ranges for its classifications to the pay practices in the defined market. Therefore, the assignment of classifications to pay grades within the pay structure shall be based on market data whenever possible.

B. PROCESS

The Director of Human Resources and Labor Relations shall place positions into the appropriate salary grade where the midpoint of the grade is closest to the "market estimate" pay rate identified through the survey process. The market estimate rate, which could also be referred to as the prevailing rate in the market, is the calculated rate of pay which most closely approximates the worth of that position in the market at the time of the survey.

In an effort to maintain internal equity within the pay structure, the Director of Human Resources and Labor Relations shall identify the appropriate pay grade for positions for which there are insufficient market data using reasonable comparison of such jobs with other City jobs.

The assignment of classifications to pay grades shall be recommended by the Director of Human Resources and Labor Relations and approved by the Finance and Personnel Committee. No employee's salary will exceed the maximum rate in his/her assigned salary range. If assignment to a grade leads to this occurrence, the situation will be resolved as described in Section XII, letter B,7.

At any time, when the applicable criteria indicate the need for a focused market analysis of a specific classification, the relevant market data from the City's market base shall be examined. Should the market data establish the need for a different pay grade assignment, the Director of Human Resources and Labor Relations make such recommendation to the Finance and Personnel Committee for approval.

In some cases, the City may determine that a different market base is warranted, given the specific circumstances of the position and the current market conditions.

XII. WAGE AND SALARY GUIDELINES

A. POLICY

The City recognizes the importance of consistency in determining wages and salaries for its employees. The intent of this policy is to provide guidelines for department heads to follow in the case of a new employee or change in employee status.

B. GUIDELINES

1. Salary Offers to New Employees

Once the best-qualified candidate for the position is identified, the Department Head and Director of Human Resources and Labor Relations will determine the starting salary that will be offered to the individual. The Department Head or Human Resources Department shall make a conditional offer of employment to the candidate (conditional offers inasmuch as they are contingent on the City of Sheboygan's verification of reference information, completion of any background check, successful completion of any post-offer medical examination/drug screen, and submission of satisfactory employment eligibility documentation required by law and approval by the Finance and Personnel Committee).

The Human Resources Director shall have the authority to approve a salary offer at or above up the control point for the position, with approval from the City Administrator for offers at or above midpoint of the salary range. Any recommendation which exceeds this amount must be approved by the Finance and Personnel Committee. Such recommendations should be based on employment market realities and/or individual qualifications. Because the salary range minimum rate for each grade is linked to the midpoint but does not automatically represent the amount for which individuals can be attracted to public service, some flexibility in setting hiring levels may be necessary to remain competitive.

The following guidelines shall apply to these situations:

- a.) Given the law of supply and demand, once a candidate is chosen, the employee's current rate of pay or most recent rate will be taken into consideration at the time an offer is made.
- b.) Generally speaking, applicants who do not fully meet or barely meet the minimum education and/or experience requirements may be hired lower than the range minimum for the pay grade in which their position has been placed. Applicants in the category must demonstrate a propensity to gain the necessary skills within a reasonable time. (An example may be driver who needs a CDL to perform a certain position and is actively enrolled in a training program at the time an offer of employment is made. The new employee may be hired less than the minimum pay until the driver becomes certified with a CDL, at which time the employee will be brought to the minimum pay for the position.)

2. Salary upon Promotion

A promotion is defined as a change by an employee from one position to another which has a higher salary range. At a minimum, promoted employees shall be placed at either the minimum rate in the new salary range, or maintain their current salary, whichever is greater. Every promotion is unique. A reasonable approach will be taken to provide an appropriate incentive for the chosen candidate. All promotional salary offers must be approved by the Director of Human Resources and Labor Relations. Often times, no immediate salary increase is awarded because the employee is already being paid within the range. However, the employee may become eligible for additional accelerated merit increase due to the new salary grade.

3. Salary upon Demotion

When an employee is unable to perform the position they hold, they will either be laid off or demoted. Each situation is unique as it depends on availability of additional positions and/or the employees qualifications. Generally, if an employee is demoted, they will experience a pay reduction. The demoted employee will need to demonstrate the ability to perform the essential functions in a new position and will be paid an appropriate level of pay considering their abilities and the pay scale of the new position.

4. Salary upon Transfer

An employee who transfers or is transferred from one classification to another classification in the same pay grade shall receive no salary adjustment, provided the transferred employee can perform the essential functions of the new position.

5. Salary upon Change in Pay Grade Due to Market Survey Analysis

When, as a result of the market survey analysis periodically undertaken by the City, an employee's classification is placed into a different pay grade, there will be no salary adjustment. If the employee's present salary is at the top pay for the grade or more than the new range maximum, the employee will not be eligible for an increases to his/her base pay while his/her salary equals or exceeds the range maximum.

6. Equity Adjustments

Pay is market driven. Equity adjustments are available, typically in the form of a one-time adjustment to realign the employee's salary to market value for the position.

7. Part-Time Employment

Part-time employees are those in which the employee is normally scheduled to work less than forty (40) hours in a work week. This includes intermittent positions working up to eight (8) hours per day on an irregular and uncertain schedule which alternately begins, ceases, and begins again as the needs of the City require. Part-time employees shall be hired at a pay grade which is equivalent to or compatible with the hiring rates established for similar full-time classifications. Permanent part-time employees shall be eligible for salary increases under the same manner as full-time employees

XIII. COMPENSATION ADMINISTRATION

A. POLICY ON SALARY INCREASES

The purpose of the City's pay increase policy is to establish and maintain an appropriate relationship between an employee's performance and pay. The system provides management with a mechanism to recognize individual accomplishments and to relate them to pay increases. The Merit Adjustment Program is intended to reward employee growth in a job as well as to differentiate in levels of performance and contribution.

Generally speaking, temporary and/or seasonal part-time employees may be paid at market rate due to the temporary nature of the position, even with returning employees. The position may or may not qualify for an increase from one year to the next.

The City's pay increase policy is designed to attract and retain high-quality employees, to reward employees in accordance with performance on the job, and to motivate employees to their highest level of performance. Above all else, the City treats its employees as individuals and as

members of the team by allowing employees to influence their pay opportunities through performance on the job.

Employees are encouraged at all times to work to the best of their abilities, to find ways to eliminate unnecessary work, and to discuss with their supervisor how tasks can be better performed. The result of employee contribution is a more productive City government -- a City more able to meet its obligations to the citizenry, respond to changes in technology and in the workplace, and a City that understands and satisfies the needs of its customers. The City's success and its ability to support its compensation practices depend on employee efforts and contributions.

B. PERFORMANCE EVALUATION

The City of Sheboygan recognizes the importance of recognizing an employee's efforts and follows a merit increase program where an employees pay is affected by their performance.

Each employee will receive a performance review every 12 months. The review will be performed during the last quarter of the calendar-year with any identified increase to be effective January 1, 2019.

The review form has four categories of performance: Unacceptable, Below, Successfully Achieved and Exceeds. Exhibit #3 is one example of an acceptable yearly performance evaluation. Electronic evaluations may also be utilized. In addition, the position of the City Administrator may have an evaluation form that is unique to the position, as governed by the Finance and Personnel Committee and the direction and approval of Common Council.

Goals are also established during the evaluation process, primarily by the supervisor with input from the employee. Wherever possible, goals are SMART (Specific, Measurable, Attainable, Relevant, and Time-bound). Supervisors and/or Department Heads and the employee need to document the employee's goals for the upcoming evaluation year, and may use one of two goals template listed in Exhibit #4.

C. MERIT ADJUSTMENTS BASED ON PERFORMANCE EVALUATIONS

Merit adjustments are granted to employees to encourage efficiency and to reward performance when the City's economic conditions permit. Merit increases are not automatic; nor does an employee acquire any right to an increase because of length of service or time in a job. Merit adjustments are based upon his/her supervisor's appraisal of the employee's performance in relation to established performance standards and goals. A merit adjustment should reflect a performance level that has been consistently demonstrated over a meaningful period of time, typically 12 months. If merit adjustments are awarded to the employee based on their performance, any pay increase will be issued on January 1.

1. Establishment of the Merit Increase Budget

The overall funding for the Merit Increase program budget shall be determined by the Common Council on an annual basis, following recommendation by the Director of Human Resources and Labor Relations, and supported by the Finance and Personnel Committee. The size of the budget will be based primarily on the economic conditions currently experienced by the City and any other factors deemed relevant by the Common Council.

2. Merit Increase Amount

Once the budget has been approved, it is up to each supervisor and/or department head to approve the amount granted to the employee. The City establishes the percentage guidelines in the merit adjustment on an annual basis and the amounts, therefore, are subject to change. A reserve amount will be set aside for merit increases, but the actual amount available as a percent increase will be determined the calendar year.

All merit increase adjustments shall be based on documented performance with higher increase percentages being reserved for performance that has overwhelmingly exceeded performance expectations. The actual size of the merit increase shall follow the percentage guidelines in the Merit Adjustment Schedule found in Exhibit #5. All merit adjustment requests made by department heads for individual employees are subject to appropriate documentation which is reviewed by the Human Resources Director.

The City shall review the merit adjustment amount every year. This review will be conducted by the Director of Human Resources and Labor Relations with approval with the Finance and Personnel Committee. All changes to the schedule shall be subject to the approval of the Common Council.

3. Merit Adjustments Applied to Current Salary

The merit adjustment percentage will be applied directly to the employee's current salary. Salary ranges will be reviewed periodically to insure the City's pay ranges remain competitive while the merit adjustment schedule is reviewed annually. Base wage adjustments provides newer employees and those in the lower part of the wage scale the opportunity to reach the midpoint, or fair market value, at a rate which reflects their job performance. (i.e. the better the performance the faster they reach the midpoint). It also allows above average and outstanding performances to exceed the midpoint which would be expected for employees who constantly perform at those levels, as well as those who either have greater experience levels when starting the position or those who have a greater length of time on the job.

4. Frequency of Merit Reviews

Consideration for merit adjustments shall be once every twelve (12) months during the final quarter of the calendar year, with any identified pay increase effective the first payroll (or thereafter) of the next calendar year.

A. Employees Returning from a Leave of Absence or Rehired

If an employee is off work on a qualified Leave Of Absence at the time the performance evaluation and applicable merit or incentive increase is due, upon return from leave to "active duty", the employee will receive any identified increase effective from the first date returned to active duty. Employees not returning to work, that is, employees who do not return to active duty, are not eligible for retroactive pay.

5. Performance Appraisal Review Procedures

All employees shall be evaluated by their department head a minimum of once per year. The employee's supervisor shall evaluate each employee's performance for the period following the employee's last performance appraisal review and recommend a merit adjustment for the employee that is consistent with the established merit adjustment amount, using either a

manual performance appraisal process (Exhibit #1) and appropriate form (Exhibit #3), or utilizing the on-line review process in MUNIS. In addition, the employee will be provided a feedback opportunity by completing an Employee Questionnaire Form (Exhibit #2) or completing the on-line questionnaire.

6. Delayed or Denied Merit Adjustments

Department Heads may deny or delay merit adjustments if employees are not performing in a fully capable manner. When merit adjustments are delayed or denied, a plan of action for improvement and a target date shall be set by the supervisor. Special performance appraisals are conducted when improvements have been noted or when the target date has been reached. Under no circumstance shall the period of time be shorter than three (3) months or longer than the employee's next scheduled review date. If the employee is then performing in a fully capable manner, the merit adjustment deemed appropriate by the Department Head may be granted. No adjustment shall be given on a retroactive basis, however. The decision to grant or deny a delayed merit adjustment must be made within thirty (30) days of the employee's review date. Employees normal review dates are not advanced by this denial/delay.

7. Performance Appraisal Appeal Process

Following a completed Performance Evaluation, the supervisor will notify the employees of the appropriate merit adjustment. If the employee is not in agreement with the merit adjustment identified, the employee may request a meeting with the Department Head. If the employee continues to be dissatisfied, the employee may request a meeting with the Director of Human Resources and Labor Relations. A final appeal will be allowed in front of the City Administrator. The employee will need to complete a *Notice of Evaluation Appeal Form* (Exhibit#6) which is then submitted to the Director of Human Resources and Labor Relations who will submit the Notice of Evaluation Appeal Form to the City Administrator. The City Administrator will schedule a meeting with the employee and the employee's Department Head to hear the employee's appeal, after which the City Administrator will either confirm the recommended merit adjustment or approve a new merit adjustment for the employee based upon additional objective facts. The decision will be confirmed in writing to the employee, and this decision shall be final. This appeal shall not, in any way, affect the employee's position within the department or as an employee of the City of Sheboygan.

8. Retroactivity

Employees terminating employment for any reason prior to Common Council adoption of an adjustment to the compensation, employment are not entitled to any retroactive application of that adjustment.

9. Employee and Management Training

The Human Resources Department shall conduct periodic training on the performance appraisal process to all supervisors, managers, and department heads responsible for conducting appraisals. The Human Resources Department will conduct periodic employee training on the performance management program in general, particularly if changes to the program occur.

XIV. COMPENSATION PROGRAM REPORTING

A. POLICY

The interests of the Common Council are best served by management reports which accumulate all costs and related information needed in their role as policy-makers who are ultimately responsible for the compensation program. These reports shall be facilitated by the Human Resources Department which will be responsible for compiling, summarizing and presenting the information to the Finance and Personnel Committee and Common Council.

B. PROCESS

The report shall be done on an as-needed basis, often as part of the budget process for the next year, and will contain the following information:

1. A breakout of requested annual adjustment dollars by component:
 - a. Merit Adjustments
 - b. Equity Adjustments
2. Assurance through Human Resources Department review that all employees have been evaluated.
3. A confidential report on the distribution of performance ratings.
4. Any other information deemed pertinent by Common Council.

XV. PLAN COMMUNICATION AND MANAGEMENT TRAINING:

The City recognizes the importance of ensuring that all employees are fully knowledgeable about the details of the compensation program. To that end, the Human Resources Department shall be responsible for the following actions:

1. Preparing and distributing plan information for all new employees as part of the orientation process.
2. As program changes occur pursuant to Common Council action, preparing information and holding meetings with employees to review all changes, and preparing and distributing individual notification to employees regarding any changes to their compensation. If minor changes are made, or if the change of the Non-Represented Compensation Program consist primarily to identify differences in the merit adjustment guide and/or pay scale, the Human Resources Department will distribute communication via posting a memo with the changes, either in a department or transmitted through intranet communications.

The City also recognizes the need to provide supervisors, managers, and department heads with details of the compensation program and their important roles in its administration. To this end, the Human Resources Department shall be responsible for providing new, and updating current supervisors, managers, and department heads thorough training in the areas of:

1. City compensation policies and procedures.
2. Sound pay-for-performance practices and City compensation techniques such as the use of pay increase guidelines.
3. Use of the budgeted merit adjustment and methods for forecasting increases.
4. Use of planning worksheets which include individual employee's past performance rating history, past raises, and timing of these raises, to provide the information to allow increases to be based on long-term performance opposed to short-term changes.

Exhibit #1

Performance Evaluation Process



Performance Evaluation Process

On-going organizational success depends on the intellectual capital within the organization. This program is a critical strategic tool for attracting and retaining qualified employees to sustain our organization and ensure that the our employees are achieving their own personal development goals.

Step 1: Department leaders need to identify current and future needs within their department, as well as needs within other departments they affect. Once that's completed, goals need to filter throughout the department. Employees may utilize either a "Goals Template" or the second page of the Performance Evaluation Form. If MUNIS is utilized, employees may upload their goals in the narrative section of the evaluation process.

Step 2: Approximately 3 weeks prior to the evaluation, manager should provide employee with an Employee Questionnaire Form. The employee needs to complete the questionnaire and return to the supervisor prior to the performance evaluation.

Step 3: Performance Evaluation. On a yearly basis, supervisor need to evaluate the performance of the employee. There are 4 general categories to describe the employee's performance:

4. PERFORMANCE EXCEEDS EXPECTATIONS - A level of accomplishments that overwhelmingly go beyond reasonable but demanding standards of performance, particularly in the key areas of responsibility. This employee consistently demonstrates an exceptional level of achievement and an demonstrate how this was accomplished.

3. PERFORMANCE SUCCESSFULLY ACHIEVED EXPECTATIONS - A level of performance that clearly achieved all major requirements of the position. It reflects good, solid performance expected of those who possess the necessary education, training, and experience for the job. This rating applies to those employees who consistently perform in an effective and professional manner.

2. PERFORMANCE NEEDS DEVELOPMENT / IMPROVEMENT - Often a rating reflective of a new employee to the organization or the position, this rating reflects the need for development as not all performance fully meets the requirements of the position. The need for further development and improvement is clearly evident.

1. UNACCEPTABLE PERFORMANCE - A level of performance which is clearly below minimum job requirements, even when close supervision has been provided. Performance must significantly improve within a designated period of time if the employee is to remain in the position.

Step 4: See the Merit Adjustment Schedules to determine what, if any, eligibility the employee has for a pay increase or lump sum payout based on their overall performance for both a merit increase and an incentive bonus. Complete the Merit Adjustment Form, attain appropriate signatures and forward all completed forms to Human Resources.

Throughout the year, Implement the formal and informal development opportunities through a combination of mentoring, coaching, job rotation, traditional educational programs, seminars and on-line learning solutions.

Exhibit #2
Employee Questionnaire Form



Performance Evaluation Process
Employee Self Evaluation Questionnaire

Name _____ Date _____
Print


Position _____ Evaluation Period _____

As a part of the evaluation process, use this form to review, describe, and evaluate your job performance over the past evaluation period. Share this form with your supervisor prior to your evaluation meeting for submittal with your annual performance evaluation for your file.

1. What were your most significant work-related accomplishments? (Include projects, assignments, new skills or knowledge gained.)
2. How do these accomplishments relate to your key responsibilities and goals for you and our department?
3. What goals were identified to be accomplished but you were unable to achieve and why?
4. What are your goals for the next evaluation period?
5. How will you accomplish these goals? And when do you anticipate completing them?
6. What do you need to accomplish these goals?
7. How can your immediate supervisor and/or management do to help you to accomplish your goals or work more effectively and support your position?
8. What additional training or development would help you improve and/or enhance your work performance?
9. What feedback or suggestions do you have to improve our department or City employment?

Exhibit #3

Sample Performance Evaluation Form / Competency Ratings (Form or electronic evaluation in MUNIS)



Yearly Performance Evaluation

Name: _____

Job Title/Grade: _____

Change Rate from _____ to _____

Clock: _____

Dept: _____

Eff Date: _____

	UNACCEPTABLE Not Competent in Position	BELOW Working toward Competency in Position	SUCCESSFULLY ACHIEVED Competent in Position	EXCEEDS OVERWHELMINGLY EXCEEDED EXPECTATIONS	COMMENTS:
Quality of Work Measures the ability of the employee to meet quality standards.	<input type="checkbox"/> Many mistakes Repeated occurrences of careless work and excessive errors because of assignments.	<input type="checkbox"/> Needs improvement Higher than normal amount of rework.	<input type="checkbox"/> Successfully Achieved Gold performance. Work seldom requires rework.	<input type="checkbox"/> Exceeds quality Consistently produces top-notch quality in all assignments. Able to master varied jobs.	
Quantity of Work Measures the ability of the employee to meet production standards.	<input type="checkbox"/> Fails to meet standards. Very slow on most job assignments. Fails to meet standards of the position.	<input type="checkbox"/> Below standard Generally below standard; requires more time to complete assignments than expected.	<input type="checkbox"/> Achieved standards Successfully Achieved standards and requirements of the position.	<input type="checkbox"/> Production high Employee consistently exceeds production standards or goals.	
Job Knowledge Measures the employee's knowledge of the job and standard work processes.	<input type="checkbox"/> Unwilling/unable Has not learned and/or makes no attempt to improve.	<input type="checkbox"/> Is still learning job Does not fully understand all job requirements or standard work procedures.	<input type="checkbox"/> Knows job requirements Follows standard work methods and procedures.	<input type="checkbox"/> Good job knowledge Knowledge of standard work. Keeps up with new developments.	
Work Area/Safety Measures employee's commitment to safety and continuous improvement.	<input type="checkbox"/> Does not support Departmental objectives are ignored and/or has minimal concern for safety.	<input type="checkbox"/> Shows some support Of continuous improvement objectives and safety; areas for improvement needed.	<input type="checkbox"/> Supports safety objectives Successfully follows safety rules and procedures.	<input type="checkbox"/> Leads safety Keeps work area in excellent condition and follows safety rules. Goes above and beyond.	
Adaptability Measures employee's ability to adapt to changing work environment and support team initiatives.	<input type="checkbox"/> Resists change. Slow to adapt to new situations or support cross-functional needs of the department.	<input type="checkbox"/> Slow to adapt Some resistance to change. Slow to adapt to cross-functioning initiatives.	<input type="checkbox"/> Adaptable Learns job requirements in a normal amount of time. Supports improvement.	<input type="checkbox"/> Adjusts readily Very adaptable to change. Takes ownership of initiatives.	
Cooperation Measures employee's ability to respond positively to assigned tasks and to work with others.	<input type="checkbox"/> Does not follow instructions. Continual friction with others and is hard to work with.	<input type="checkbox"/> Reluctant to follow directions or instructions. Periodic friction with others.	<input type="checkbox"/> Follows instructions Cooperates with supervisor and co-workers.	<input type="checkbox"/> Responds readily to unusual or difficult assignments. Excellent team work.	
Attitude/Work and Co. Measures employee's ability to work toward City objectives of highest productivity without compromise.	<input type="checkbox"/> Constantly critical of employer, job assignment, and/or other employees. Has caused dissension among others.	<input type="checkbox"/> Needs improvement In overall attitude toward the City and/or fellow employees.	<input type="checkbox"/> Positive Attitude Has positive attitude toward his/her work and the City. Sets a good example for others.	<input type="checkbox"/> Very positive attitude Promotes good will. Held in high esteem by co-workers and supervisors and members of the community.	
Dependability Measures the employee's ability to follow job instructions and complete his/her assignment.	<input type="checkbox"/> Unable or unwilling to follow job instructions and has repeated trouble completing work assignments.	<input type="checkbox"/> Needs guidance to insure job instructions are followed and work assignments completed.	<input type="checkbox"/> Generally dependable Can be depended upon to do the job correctly and within standards.	<input type="checkbox"/> Completes jobs under any conditions to the best of his/her ability.	
Attendance/Punctuality Measures employee's overall attendance and punctuality.	<input type="checkbox"/> Unacceptable attendance. High absence and tardiness rate. Leaves early. Doesn't respond to emergencies.	<input type="checkbox"/> Often tardy or absent Employee is working towards improvement.	<input type="checkbox"/> Acceptable attendance. Tardy very seldom. Responds to emergency calls. Willing to stay late when needed.	<input type="checkbox"/> Very good attendance. All work on time. Willing to help out for emergencies calls.	
OVERALL Performance Based on ratings above, indicate the employee's overall performance rating.	<input type="checkbox"/> UNACCEPTABLE Employee's performance is unacceptable to position. (Not Competent)	<input type="checkbox"/> BELOW MINIMUM Employee's performance at times fails to meet minimum job requirements. (Working toward Competency)	<input type="checkbox"/> ACHIEVED Employee's performance meets all position requirements. (Employee is competent in his/her job)	<input type="checkbox"/> EXCEEDS Employee's performance exceeds position requirements. (Employee is very competent in job)	

Supervisor's Signature	Date	Department Head's Signature	Date	Human Resource Signature	Date

revised 04/2013

Review	Recommendation	Evaluation	
Competency	Rating	Score	Comment
QUALITY	EXCEEDS	4.00	(High Quality) Consistently produces top-notch quality
QUANTITY	EXCEEDS	4.00	(Production high) Employee consistently exceeds product
JOB KNOW	EXCEEDS	4.00	(Good job knowledge) Knowledge of standard work. Keep
WORK AREA	EXCEEDS	4.00	(Leads safety) Keeps work area in excellent condition a
ADAPTABLE	EXCEEDS	4.00	(Adjusts readily) Very adaptable to change. Takes own
COOPERATE	EXCEEDS	4.00	(Does not follow instructions) Continual friction with
ATTITUDE	EXCEEDS	4.00	(Constantly critical) of employer, job assignment, and
DEPENDABLE	EXCEEDS	4.00	(Needs guidance) to insure job instructions are followe
ATTENDANCE	EXCEEDS	4.00	(Acceptable attendance) Tardy very seldom. Responds to

Exhibit #5

Non-Represented Employee Development and Reward Program Guide					
Salary Increase Reward Guide for Proven Engagement, Growth and Personal Development					
STRATEGY DEPLOYMENT AND PERSONAL PERFORMANCE PLAN EVALUATION	Quadrant 1 (Q1) 86% - 92.49% of CP	Quadrant 2 (Q2) 82.50%-89.99% of CP	CONTROL POINT (MARKET VALUE)	Quadrant 3 (Q3) 100.01% - 107.49%	Quadrant 4 (Q4) Maximum Pay (115%)
EXCEEDS/OUTSTANDING					
Overall performance throughout the year was outstanding. Consistently excelled in all areas of the job including accomplishing goals and development plans and was exceptional in the use business skills. Positive contributor; cooperative throughout all areas within and outside the organization	Up to 4.00%	Up to 3.00%		Yealy Budgeted Amount	<u>Under Max:</u> Yealy budgeted amount. <u>At/Over Max:</u> No additional increases are available for those at or over the maximum pay for the position.
SUCCESSFULLY ACHIEVED					
Overall performance results were achieved that met or exceeded expectations for challenging and difficult goals. Consistently excelled in accomplishing daily job duties and assignments and very effective in utilizing business tools and skills.	Up to 3.00%	Up to 2.00%		Yealy Budgeted Amount	<u>Under Max:</u> Yealy budgeted amount. <u>At/Over Max:</u> No additional increases are available for those at or over the maximum pay for the position.
DEVELOPING / NOT YET ACHIEVED					
Overall performance results were consistent and effective in learning the new position or responsibility. Goals met expectations. Accomplished established measures and development plans and effectively demonstrated position skills.	Up to 2.00%	Up to 1.00%		Not Available	<u>Under Max:</u> Yealy budgeted amount. <u>At/Over Max:</u> No additional increases are available for those at or over the maximum pay for the position.
NEW TO POSITION / NOT COMPETENT / PERFORMANCE IMPROVEMENTS NEEDED					
Overall performance results were inconsistent and did not meet expectations. May not have accomplished goals and development plans, and/or effectively demonstrated business skills. May be new to position or role and needs development to effectively meet performance requirements.	0%	0%		0%	<u>Under Max:</u> Yealy budgeted amount. <u>At/Over Max:</u> No additional increases are available for those at or over the maximum pay for the position.
	Employees in Q1 are hired at entry level. On-the-job training is expected. As such, this level typically achieves a great deal of learning and advancement in the job. Pay increases represent a greater acceleration at this level until the employee achieves the competitive market value for the position.	Employees in Q2 have developed considerably in their position, yet additional development is needed to reach market value.	Control Point is the market value of the position at approximately the 75th percentile point for the position.	Employees in Q3 are expected to know how to do their job competently and effectively. Little supervision is needed in the completion of most tasks at this point. More complex assignments and variations of duties are expected at this level, and greater multitasking is anticipated. Employees in this level are often able to teach and mentor others in similar roles or overlapping duties.	Employees in Q4 have been rewarded for their knowledge and expertise and are considered as being "at the top of their game." Greater expectation of performance is placed on employees in this category as they should be the best at what they do and should be able to "hit the ground running" on a daily basis, with little to no daily direction, and are often the "go-to" person for answers or direction.

NOTES:

This guide is for use in assisting in the allocation of salary merit increases. Categories are used to determine appropriate increases only. Performance evaluations should support strategy deployment / personal performance plans with discretionary merit amounts allocated accordingly.
 Q1: Eligible for Q1 Increase plus budgeted wage increase amount (based on merit)
 Q2: Eligible for Q2 Increase plus budgeted wage increase amount (based on merit)
 Q3: Eligible for wage increase amount only
 Performance evaluations should support strategy deployment / personal performance plans with discretionary merit amounts allocated accordingly.

Exhibit #6



CONFIDENTIAL

NOTICE OF PERFORMANCE EVALUATION APPEAL

TO: Sandy Rohrick
Director of Human Resources and Labor Relations

FROM: _____
Employee Position

I have reviewed my performance evaluation and my merit adjustment recommendation with my supervisor and/or department head.

The performance rating I was issued was _____.

I wish to appeal the rating for the following reasons:

(If additional space is needed for this explanation, please feel free to attach an additional document.)

I understand that if I request a performance and/or merit adjustment review by the Finance and Personnel Committee, my decision to do so will not, in any way, affect my position within the department or as an employee of the City of Sheboygan.

Signature of Employee Date

cc: Department Head

P:\NonRepCompPlan\2017
Notice Of Evaluation Appeal

Exhibit #7

2019 Non-Represented Pay Schedule (excluding DWP Labor Workforce)					
Salary Grade	Accelerator Eligible		Budgeted Merit Pool Only (Not Eligible For A Merit Accelerator)		Maximum (115%)
	Q1 (Minimum)	Q2 92.50%	Q3 Control Point	Q4 (107.50%)	
O	\$ 8.67 \$ 18,033.60	\$9.44 \$19,835.20	\$ 10.20 \$ 21,216.00	\$ 10.97 \$ 22,817.60	\$ 11.73 \$ 24,398.40
A	\$ 13.04 \$ 27,121.12	\$14.19 \$29,515.20	\$ 15.34 \$ 31,907.20	\$ 16.49 \$ 34,299.20	\$ 17.64 \$ 38,691.20
B	\$ 14.25 \$ 29,640.00	\$15.51 \$32,260.80	\$ 16.77 \$ 34,881.60	\$ 18.03 \$ 37,502.40	\$ 19.29 \$ 40,123.20
C	\$ 15.84 \$ 32,947.20	\$17.23 \$35,838.40	\$ 18.63 \$ 37,997.60	\$ 20.03 \$ 40,747.20	\$ 21.42 \$ 43,578.00
D	\$ 16.98 \$ 35,318.40	\$18.48 \$38,438.40	\$ 19.98 \$ 41,558.40	\$ 21.48 \$ 44,078.40	\$ 23.09 \$ 48,027.20
E	\$ 18.23 \$ 37,918.40	\$19.84 \$41,267.20	\$ 21.45 \$ 44,016.00	\$ 23.06 \$ 47,964.80	\$ 24.67 \$ 51,313.60
F	\$ 19.03 \$ 39,582.40	\$20.71 \$43,078.80	\$ 22.39 \$ 46,571.20	\$ 24.07 \$ 50,065.60	\$ 25.75 \$ 53,560.00
G	\$ 20.16 \$ 41,932.80	\$21.94 \$45,535.20	\$ 23.72 \$ 49,337.60	\$ 25.50 \$ 53,040.00	\$ 27.28 \$ 56,742.40
H	\$ 21.56 \$ 44,844.80	\$23.46 \$48,796.80	\$ 25.36 \$ 52,748.80	\$ 27.26 \$ 56,700.80	\$ 29.16 \$ 60,652.80
I	\$ 22.69 \$ 47,195.20	\$24.69 \$51,355.20	\$ 26.69 \$ 55,515.20	\$ 28.69 \$ 59,675.20	\$ 30.69 \$ 63,835.20
J	\$ 23.62 \$ 49,129.60	\$25.71 \$53,476.80	\$ 27.79 \$ 57,179.20	\$ 29.87 \$ 62,129.60	\$ 31.96 \$ 66,476.80
K	\$ 27.18 \$ 56,534.40	\$29.58 \$61,528.40	\$ 31.98 \$ 66,518.40	\$ 34.38 \$ 71,510.40	\$ 36.78 \$ 76,502.40
M	\$ 30.24 \$ 62,899.20	\$32.91 \$68,452.80	\$ 35.58 \$ 74,006.40	\$ 38.25 \$ 79,560.00	\$ 40.92 \$ 85,113.60
N	\$ 31.64 \$ 65,811.20	\$34.43 \$71,614.40	\$ 37.22 \$ 77,417.60	\$ 40.01 \$ 83,220.80	\$ 42.80 \$ 89,024.00
S	\$ 34.10 \$ 70,928.00	\$37.11 \$77,188.80	\$ 40.12 \$ 83,449.60	\$ 43.13 \$ 89,710.40	\$ 46.14 \$ 96,971.20
T	\$ 38.07 \$ 79,195.60	\$41.43 \$86,174.40	\$ 44.79 \$ 93,183.20	\$ 48.15 \$ 100,152.00	\$ 51.51 \$ 107,140.80
U	\$ 40.19 \$ 83,595.20	\$43.73 \$90,958.40	\$ 47.28 \$ 98,342.40	\$ 50.83 \$ 105,726.40	\$ 54.37 \$ 113,089.60
V	\$ 46.24 \$ 96,179.20	\$50.32 \$104,665.60	\$ 54.40 \$ 113,152.00	\$ 58.48 \$ 121,638.40	\$ 61.48 \$ 127,878.40
Y	\$ 49.78 \$ 103,542.40	\$54.18 \$112,694.40	\$ 58.57 \$ 121,825.60	\$ 62.96 \$ 130,956.80	\$ 67.36 \$ 140,108.80
Z	\$ 54.58 \$ 113,526.40	\$59.39 \$123,531.20	\$ 64.21 \$ 133,556.80	\$ 69.03 \$ 143,582.40	\$ 73.84 \$ 153,587.20

* Pay is rounded to the next even number of hourly pay. Yearly salary follows applicable hourly pay.

Exhibit #9

2019 City of Sheboygan Permanent Non-Represented Positions	
Grade	
0	
	Library Cleaner Library Page
A	
	Clerk I/Administrative Assistant Maintenance Grounds Worker / Transit TV Production Technician
B	
	Clerk II/Administrative Assistant Cashier/Data Entry Clerk II/Finance Permit Clerk II/Inspection Assistant Municipal Court Clerk Dispatcher/Transit MC Scheduler/Dispatch
C	
	Clerk III/Administrative Assistant/WWTP Transit Lead Support II Coordinator Transit Lead Support I Senior Center Assistant Supervisor MEG Unit Secretary Clerk III/Administrative Assistant/Fire Community Service Officer Transit Dispatcher Fill-in Library Maintenance Technician Library Assistant
D	
	Records Specialist Clerk IV/Administrative Assistant Parking Lead, Transit Library Technical Services Assistant
E	
	Department Secretary/Police Department Elections Specialist/City Clerk Council Licensing Clerk/City Clerk Court Services Secretary/Police Department TIME Agency Coordinator/Police Department Library Administrative Assistant
F	
	Purchasing/Accounts Payable Assistant Administrative Assistant to the Mayor Administrative Coordinator (Transit, Fire) Cataloger Human Resources Assistant

G	
	Legal Assistant Safety, Education and Training Supervisor (Transit)* Deputy City Clerk
H	
	Digital Evidence Manager/Police Department Property Officer/Police Department Library Maintenance Supervisor*
I	
	Crime Analyst/Police Department Building Inspection Specialist Municipal Court Clerk Analyst (Budget, Crime, and Management)* Senior Activities Center Supervisor * Community Development Planner* TV Production Director * Operations/PC Technician Library Communications Specialist*
J	
	Accountant* Library Public Safety Specialist Librarian* Library Page Supervisor*
K	
	GIS Project Specialist* Community and Economic Development Planner* Payroll Administrator * Transit Operations Supervisor* Streets Supervisor/ DPW* Benefits Analyst/Administrator * Equipment Services Supervisor/ DPW* Industrial WW Supervisor/WWTP* Maintenance Supervisor/WWTP* Office Supervisor/Police Department * Engineering Technician Process Systems / OPCO Electrical / Housing Inspector Library Information Technology Specialist*
M	
	Building/Housing Inspector I Building/Housing Inspector II Plumbing/Environmental Inspector Electrical/ Heating Inspector
N	
	Assistant City Attorney * Systems Analyst * Network Administrator * Assistant Engineer / Surveyor * Senior Engineering Technician

S	
	Environmental Engineer * Communications/Electronics Technician Planning and Zoning Manager* Library Technical Support Manager* Library Public Support Manager* Library Business Manager*
T	
	Superintendent, Parks and Forestry * Superintendent, WWTP* Superintendent, Streets* Superintendent, Facilities and Traffic * Civil Engineer / Project Manager *
U	
	Parking and Transit Director * Battalion Chief * Deputy Fire Chief * City Engineer *
V	
	Finance Director * Assistant Fire Chief* Director of Human Resources and Labor Rel* IT Director * Director of Planning and Development * Library Director*
Y	
	Police Chief* Fire Chief * Director of Public Works *
Z	
	City Administrator *

* Exempt

Exhibit #10
REVISIONS LOG

REVISION YEAR	DATE INTRODUCED TO SAL & GRIEV	MODIFICATION TO PRIOR NON-REP COMP PLAN	GENERAL ORDINANCE / RESOLUTION / OR OTHER REF DOCUMENT
2014	01-22-2014	<ol style="list-style-type: none"> 1) Modified the merit and incentive adjustment amounts to accommodate the 2014 budgeted increase amount to payroll of 2.5% overall 2) Updated Exec Summary, listed all department head titles (adding changes from 2013 re: appointed and at-will department heads), loosened the evaluation form statement, allowing for a switch to electronic/MUNIS based evaluation process if needed 3) Updated XIII, C, 4 to state that inactive employees out on leave will received increase upon return to active status 4) Miscellaneous date and/or title changes, replacing 2013 with 2014 5) Removed 6-month "evaluation" period as it is obsolete 6) 2014 Wage Scale ranges were NOT modified from 2013, just the date of the salary range was revised. 	Resolution 132-13-14 R.C. 310-13-14
2015		<ol style="list-style-type: none"> 1) Modify the merit amount to accommodate the 2015 budget increase to payroll of 2.0% overall. 2) Increase the mid-point of all salary grades by 2%. 3) Referenced the option to use the MUNIS electronic evaluation process. 	
2016		<ol style="list-style-type: none"> 1) Add one level higher Maintenance Worker (5) to the DPW Labor Workforce. 2) Change Chief Admin Officer title to City Administrator and add reference to a separate evaluation form for the position. 3) Modify percent increases for merit to ranges as a guideline to appropriately identify the discretionary element of the merit increase rather than a possible perceived increase amount. 	
2017		<ol style="list-style-type: none"> 1) Starting in 2017, a reserve account will be made available to determine an appropriate salary increase amount and will be based on a combination of market data and Consumer Price Index. 2) Consistent with Chapter 82 of the Municipal Code, it is possible to hire an employee in a position less than minimum pay if the employee does not possess the minimum qualifications but is either enrolled in a certificate program or has demonstrated the propensity to achieve the appropriate training to achieve the minimum qualifications. 3) 2017 Pay Scale Adjustments: 2017 <ol style="list-style-type: none"> a) Pay Grade 0 added. b) 2% increase to mid-point for grades 1-16. Range remains +/- 20%. c) DPW Pay Grades increased by 2% 4) 2017/2018 Pay Scale introduced for DPW Labor Workforce, seasonal and full- 	

		<p>time, including a modified step-increase program.</p> <p>5) Merit Adjustment Guide modified to provide up to 1.5% for merit on regular work assignments and up to .50% for achievement of goals and other duties. Employees at the top of their pay scale are no longer able to receive an increase in pay, either in the form of an increase to base pay or a lump sum.</p>	
2018		<p>1) Market-Based Compensation Plan introduced to accelerate wages for those under mid-point.</p> <p>2) Finance and Personnel Committee replaced Salaries and Grievances Committee during calendar year 2017.</p> <p>3) City Administrator to approve new hires at or above market-point for their position.</p> <p>4) Introduction of new pay scale with 19 grades vs. 16 grade. Scale updated with current comparable information.</p>	
		<p>1) Increased all Non-represented pay scales by 2.25% following budget approval.</p> <p>2) Updated the 2019 City of Sheboygan Permanent Non-Represented Positions following organizational updates throughout the year that reclassified positions based on market value.</p>	

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 130-18-19 by Alderpersons Rindfleisch and Bohren. A Resolution authorizing the Finance Director to execute the Wisconsin Statewide Debt Collection Agreement by and between the Wisconsin Department of Revenue and the City of Sheboygan with regard to debt collection services.

REPORT PREPARED BY: Marty Halverson, Finance Director

REPORT DATE: November 20, 2018

MEETING DATE: November 26, 2018

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

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

BACKGROUND / ANALYSIS:

The City and the Wisconsin Department of Revenue previously had multiple agreements (EMS, Personal Property, Invoices, Municipal Court) in place for debt collection. This agreement consolidates those multiple agreements into one along with making it a 5 year agreement with amendments as needed in the interval. The Agreement is to allow the state authorization to collect any amount owed to the City.

STAFF COMMENTS:

The consolidation of agreements into one will create less time tracking multiple agreements as well as the simplified language the state has placed into the contract making it more easily understood. The City has been using the Wisconsin debt collection process for multiple years.

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 130-18-19 by Alderpersons Rindfleisch and Bohren authorizing the Finance Director to execute the Wisconsin Statewide Debt Collection Agreement by and between the Wisconsin Department of Revenue and the City of Sheboygan with regard to debt collection services.

ATTACHMENTS:

- I. Resolution 130-18-19

III

4.3

Res. No. 130 - 18 - 19. By Alderpersons Rindfleisch and Bohren.
November 19, 2018.

A RESOLUTION authorizing the Finance Director to execute the Wisconsin Statewide Debt Collection Agreement by and between the Wisconsin Department of Revenue and the City of Sheboygan with regard to debt collection services.

RESOLVED: That the Finance Director is hereby authorized to execute the Wisconsin Statewide Debt Collection Agreement between the Wisconsin Department of Revenue and the City of Sheboygan, a copy of which is attached hereto and incorporated herein, and any other necessary documentation.

Finance + Personnel

Randy Rindfleisch

James A. Bohren

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____, _____, City Clerk

Approved _____ 20____, _____, Mayor

State of Wisconsin
Department of Revenue

Wisconsin Statewide Debt Collection Agreement

Updated: 6/8/2018

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INTRODUCTION

This agreement between the _____, (hereafter referred to as "agency") and the Wisconsin Department of Revenue (hereafter referred to as "department") sets forth the requirements and expectations relating to debt collection services.

STATUTORY AUTHORITY

The department is authorized by sec. 71.93(8), Wis. Stats., to enter into a written agreement to collect any amount owed to the agency.

DUTIES OF THE AGENCY

1. Debt sent to the department for collection must be:
 - Greater than \$50.00
 - At least 90 days past due, unless any of the following apply:
 - the agency is negotiating a payment plan
 - the agency has an active payment plan in good standing
 - the debtor has filed for bankruptcy
 - the debtor is deceased
 - the debtor has objected to the basis of the debt and the agency is responding to the objection
 - Reduced to a judgment or the debtor was provided with reasonable notice and an opportunity to be heard with regard to the validity of the debt
2. At least 30 days prior to referral of the debt to the department, the agency shall send notice to the debtor of the agency's intention to refer the debt to the department for collection. The notice must:
 - state the nature and amount of the debt,
 - identify the agency to whom the debt is owed, and
 - advise the debtor that collection costs will be assessed once the debt is referred to the department. Any appeal periods must have expired and all disputes resolved prior to referral of debt to the department.
3. The agency shall send the following file updates in an electronic format using the department's online application or by file exchange using the department's prescribed file layout:
 - New debts submitted to the department must contain the following information:
 - Legal name
 - Social Security Number (SSN), Federal Employer Identification Number (FEIN) or Driver's License Number (DLN)
 - Unique personal identification number that is not the SSN
 - Unique debt identification number
 - Original date the debt was incurred
 - Short debt description and a more detailed debt description used to aid in the collection process.

- Debts may only be updated or recalled by the agency for the following reasons:
 - Recalling a debt that was submitted in error. The agency agrees to contact the department prior to recalling a debt to discuss the action. The department will cease collection actions in progress.
 - Changing an estimated assessment to the actual amount due
 - Correcting a debt balance due to error on initial submission
 - Changing the debt balance for other administrative adjustment
- 4. The agency agrees to adjust all debts certified to the department's Tax Refund Intercept Program (TRIP) that it intends to send to the department for debt collection to a zero balance. Through this agreement, the department will offset refunds to the agency's debts according to the debt setoff hierarchy as authorized in sec. 71.93(3)(a), Wis. Stats.
- 5. Once debt is referred to the department for collection, the agency shall discontinue billing statements, demand letters, and active collection efforts. The agency will direct all debtor calls or requests regarding collection of the debt to the department.
- 6. Once a debt is referred to the department for collection, the agency shall forward any payments received to the department for processing. The department collection fee must be paid even if the debtor sends full payment of the debt to the agency.
- 7. If the debt is compromised or settled by the agency, the agency shall contact the department to determine the amount owed to the department for the collection fee. The agency is responsible for the full collection fee, based on the original amount certified, when entering a compromise or settlement agreement.
- 8. Correspondence and telephone inquiries received that relate to the validity of the debt shall be forwarded to the agency for a timely response. The agency must have resources available to assist debtors and department collectors with debt-related issues.
- 9. Once a debt is collected in full by the department, the debt is returned to the agency as satisfied. The agency shall not submit any changes to the department after the debt is satisfied. If the agency determines the debtor owed a lesser amount or the debt should have been adjusted, the agency shall refund the debtor the amount of overpayment received plus the department collection fee calculated at 15% of the amount overpaid, if appropriate. The department will not refund any paid collection when a debt is satisfied.
- 10. A debt certified by the agency using the wrong SSN or DLN will be reversed by the department and returned to the agency. Any payments and refund setoffs that occur because of erroneous identification information will be reversed by the department. The agency shall be responsible for reimbursement of collection fees or unrecoverable amounts due to submitting a debt with incorrect identification information.
- 11. The agency shall be responsible and liable for any claims or lawsuits made against the department arising from collection of a debt that is alleged to be incorrect or not owed by the debtor.
- 12. The agency agrees to maintain the confidentiality of all accounts, correspondence, documents and any other related information, which may be obtained from or furnished by the department in accordance with all applicable state and federal laws. If a third party is used by the agency to manage the debts referred to the department, the third party must sign a Vendor Confidentiality and Non-Disclosure Agreement with the department and will be bound by the same confidentiality requirements. Any unauthorized use or disclosure of such information, or inadequate procedures for safeguarding the confidentiality of such information, constitutes grounds for immediate termination of this agreement. All agency and vendor users who have access to the department's online system or access to files exchanged between the agency and the department must sign the attached user Certification of Understanding.

13. The agency shall review reports transmitted, reconcile accounts and notify the department within 60 days of any discrepancies.
14. The agency shall have technical staff available to maintain electronic file layouts, electronic reports, and other requirements as needed. Agency and department contact information will be periodically updated.

DUTIES OF THE DEPARTMENT

1. The department shall take all reasonable and cost-effective actions to collect referred debts. Collection efforts may include, but are not limited to:
 - Identify assets available for satisfaction of debts
 - Send demand letters
 - Subpoena records
 - Setoff refunds
 - Negotiate and monitor payment plans
 - Levy assets
 - Certify wages
2. The department's Secretary may waive the referral of certain types of debts.
3. The department shall collect debts and assess interest in the same manner that it collects taxes and assesses interest under secs. 71.82(2), 71.91, 71.92, and 73.03 (20), Wis. Stats.
4. The department shall add an administrative fee to each debt referred for collection. The administrative fee is reviewed periodically and may be adjusted up or down. The department will provide 30 days' notice to the agency prior to any fee adjustment.
5. The department shall apply payments made on delinquencies first to fees, then penalties and interest, with the balance applied to principal. The department shall notify the agency and disburse payments on a monthly basis.
6. The department shall collect from debtors who owe multiple debts to various government entities. Proceeds collected shall be applied according to sec. 71.93(3), Wis. Stats.
7. The department shall send periodic Statements of Account to the debtor. If the agency requests interest on the debt, interest shall be posted monthly. Debtors may view account balances and make online payments at any time using the department's My Tax Account online service.
8. The department may suspend collection action on an agency account temporarily if the debtor raises concerns regarding validity of the debt that needs to be addressed by the agency. The debtor shall be advised that they must contact the agency within 30 days. The department may resume collection action after 30 days unless the agency contacts the department to request additional time or recalls the debt.
9. If a payment, refund, or refundable credit is determined to be in error or is otherwise adjusted after posting to an agency debt, the department may reverse the credit and reduce the monthly distribution by the adjusted amount.
10. The department may close out any debt with a balance that falls below \$20.00 and return the debt to the agency.

Wisconsin State Debt Collection Agreement

11. The department shall pursue debt collection until the debt is collected in full or the department has determined the debt is uncollectible.
12. The department may pursue collection against the spouse of the debtor in accordance with Wisconsin marital property laws. When considering collection actions against a spouse, the department may take the following actions:
 - Contact the agency. When the department identifies that a debtor is married and the debt was incurred during the marriage, the department may contact the agency for additional information regarding the nature of the debt.
 - Contact the spouse. Prior to taking any collection action against a spouse, the department shall send a spousal notice providing an opportunity for the spouse to be heard in regards to the ability to collect from the spouse.
13. The department shall suspend collection action on debts if the debtor files bankruptcy. It is the agency's responsibility to handle all bankruptcy matters. The agency must contact the department if they wish to recall a debt when bankruptcy has been filed.
 - If the bankruptcy is discharged, the department will contact the agency to review the debt for potential write off. If the debt survives bankruptcy, the agency must notify the department 60 days after the bankruptcy is closed to resume collection activity.
 - If the bankruptcy is dismissed, the department will resume collection activity.
14. The department shall send the following files:
 - Debt Response File – The department shall respond to all new debt submissions with a response to notify the agency whether the debt was accepted or rejected.
 - Transaction File - The department shall notify the agency monthly of credits posted to interest and principal and disburse payments through an ACH credit or state accounting system general ledger transfer.
 - Return Debt File - The department shall return debts to the agency on a monthly basis for the following reasons:
 - Debt is satisfied
 - Debt is uncollectible
 - Debtor is deceased
 - Debt balance is less than \$20
 - Debtor name and ID do not match DOR records
 - Agency recalled the debt
 - Performance Analysis Report – The department shall report on its collection performance upon agency request.
15. The department shall have agents available to assist debtors and the agency with debt-related issues.
16. The department shall resolve any debtor disputes pertaining to improper collection by the department.

Wisconsin State Debt Collection Agreement

- 17. The department shall have technical staff available to create and maintain electronic file layouts, electronic reports, and other requirements as needed. Agency and department contact information will be periodically updated.
- 18. The department's Secretary shall be the final authority in the resolution of any interagency disputes in regard to referral of debts.

LEGAL REQUIREMENTS

This agreement is effective upon the signing below of the agency's and department's representatives. The parties shall update the terms of the agreement every 5 years. Amendments mutually agreed to by authorized representatives of the agency and the department shall become effective when signed and dated as an ADDENDUM to this agreement. If allowed by state law, the agreement may be terminated upon 60 days notice by either party.

Wisconsin Department of Revenue

Agency

Print Name

Print Name

Signature

Signature

Date

Date

II

3.3

R. O. No. 175 18 - 19. By CITY ATTORNEY. November 19, 2018.

Submitting, for information, the Notice of Appeal filed by the Plaintiff/Appellant, Town of Wilson, in the matter of *Town of Wilson vs. City of Sheboygan*, Sheboygan County Circuit Court Case No. 17CV490, along with a copy of the Order for Dismissal and Judgment dated November 6, 2018.

Finance
Personnel.

City Attorney

Town of Wilson,)
 _____)
 _____)
 (party designation) Plaintiff)
 _____)
 -vs-)
 _____)
City of Sheboygan,)
 _____)
 _____)
 (party designation) Defendant.)

Notice of Appeal

Case No. 17-CV-490

Notice is hereby given that (name of party filing appeal) Town of Wilson appeals to the Court of Appeals, District II, from (choose one) the whole a part of the final judgment or order, entered on (date) November 6, 2018 in the circuit court for Sheboygan County, the Honorable (name of Judge) Daniel J. Borowski, presiding, in favor of (name of party opposing appeal) City of Sheboygan, and against (name of party filing appeal) Town of Wilson, wherein the court (describe judgment or order) entered an order upholding the City of Sheboygan's annexation of Town of Wilson land sought by Kohler Co. to develop a golf course.

NOTE: If this is an appeal under §809.30 or §809.32, also include the following (see §809.10(1)):

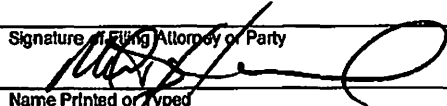
- If a postconviction motion was not filed, state the date of service of the last transcript or service of a copy of the circuit court case record.
 If a postconviction motion was filed, state the date of the order deciding the postconviction motion(s).
- If the Court of Appeals established any other filing deadline, state it.

If counsel is appointed under ch. 977, a copy of the order appointing counsel should be attached to the notice of appeal.

This (choose one) is is not an appeal within Wisconsin Statutes §752.31(2).

This (choose one) is is not an appeal to be given preference in the circuit court or court of appeals pursuant to statute.

Date: November 8, 2018

Signature of Filing Attorney or Party 	Telephone Number 262-513-3315
Name Printed or Typed Michael D. Huitink	State Bar Number (if applicable) 1034742
Address 675 N. Barker Road Suite 300 Brookfield, WI 53045	

This completed form must be filed with the clerk of the circuit court in which the judgment or order appealed from was entered. In addition, copies of this completed form must be served upon the following:

1. the Clerk of the Court of Appeals;
2. opposing counsel; and
3. any other party.

FILED
11-06-2018
Sheboygan County
Clerk of Circuit Court
2017CV000490

BY THE COURT:

DATE SIGNED: November 6, 2018

Electronically signed by Daniel J. Borowski
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

SHEBOYGAN COUNTY

TOWN OF WILSON,
Plaintiff,

vs.

CITY OF SHEBOYGAN,
Defendant.

Case No. 17 CV 490

ORDER FOR DISMISSAL AND JUDGMENT

On November 6, 2018, the Court issued a Decision and Order dismissing with prejudice the Town of Wilson's action to have the City's Ordinance annexing certain properties within the Town of Wilson declared invalid.. Based on the Court's decision, which is incorporated by reference as if fully set forth herein, the Court hereby orders that the Town of Wilson's complaint and any and all claims and causes of action therein are dismissed on the merits and with prejudice and that the Clerk of Courts enter a final judgment dismissing the Town of Wilson's case.

THIS IS A FINAL ORDER AND JUDGMENT FOR PURPOSES OF APPEAL UNDER WIS. STAT. § 808.03(1).

BY THE COURT:

DATE SIGNED: November 6, 2018

Electronically signed by Daniel J. Borowski
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

TOWN OF WILSON,

Plaintiff

v.

Case No. 2017CV490
Case Code: 30301

CITY OF SHEBOYGAN.

Defendant.

DECISION AND ORDER ON ANNEXATION

I. INTRODUCTION

This matter is before the Court for decision on the validity of City of Sheboygan (“City”) Ordinance No. 6-17-18 (“Ordinance”) which annexed certain portions of the Town of Wilson (hereinafter “Town” or “Town of Wilson”). The Ordinance was enacted by the City in response to a non-unanimous petition for annexation (hereinafter “Petition”) filed by Kohler Company (hereinafter “Kohler”) pursuant to the provisions of Wis. Stat. § 66.0217(3). The Petition requested the City to annex, among other properties, 247 acres of land in the Town of Wilson which Kohler seeks to develop into a world championship golf course (hereinafter “Kohler Land” or “Land”).

The Town filed an action against the City seeking to have the court declare the Ordinance invalid and to enjoin the annexation. As grounds for its action, the Town alleged that the

annexation: is improper under Wisconsin law; violates the “rule of reason”; did not strictly comply with the conditions precedent for annexation under Wis. Stat. § 66.0217; is non-contiguous in violation of Wisconsin law; constitutes an impermissible “balloon on a string” configuration; and is otherwise arbitrary, capricious and an abuse of discretion.

Under Wisconsin law, annexation ordinances must strictly comply with the procedural requirements of the annexation statute in order to be valid. A validly enacted ordinance enjoys a presumption of validity and will not be overturned unless the party challenging the ordinance demonstrates that the ordinance violates the judicially created “rule of reason.” Under the “rule of reason,” exclusions and irregularities in boundary lines of the annexed property must not be the result of arbitrariness; some reasonable present or demonstrable future need for the annexed property must be shown; and no other factors must be present which constitute an abuse of discretion on the part of the annexing municipality. The land which is the subject of an annexation must also be “contiguous” to the annexing municipality.

The matter was ultimately tried before the Court. The Court has reviewed the testimony of the parties and witnesses at trial as well as the exhibits entered into evidence. Based on the Court’s review of the evidence, the Court upholds the City’s Ordinance. The Court finds that the Ordinance complied with all statutory requirements under Wis. Stat. § 66.0217. The Court further finds that the lands involved in the annexation are “contiguous” to the City and that the Town has not otherwise shown that the Ordinance violates the rule of reason. The Court dismisses the Town’s declaratory judgment action and all claims and causes of action therein with prejudice.

II. PROCEDURAL BACKGROUND

The Court denied the Town's request to enjoin the annexation. The Court found that the Town did not demonstrate a reasonable degree of probability of success on the merits that the Ordinance violated the rule of reason or was otherwise invalid.¹

The parties subsequently filed cross-motions for summary judgment relative to the validity of the Ordinance under Chapter 66 and the rule of reason. The Court denied summary judgment on the grounds that there were disputed issues of material fact regarding the City's and/or Kohler's need for the annexed properties; whether the configuration of the annexed lands rendered the annexation invalid; and whether Kohler's petition strictly complied with the annexation statutes.²

With the permission of the Court, the City filed a supplemental motion for summary judgment on the issue of whether Kohler's petition strictly complied with the annexation statutes. Based upon the pleadings and affidavits filed by the parties, the Court granted the City's partial motion for summary judgment.³

A court trial was held on May 9, 2018 and May 10, 2018 on the Town's claims that the Ordinance violated the "rule of reason" and that the annexed properties were not contiguous to the City. A total of 12 witnesses testified at the trial. The witnesses included officials and employees from the Town and the City as well as a representative from Kohler. The Court admitted forty-seven (47) exhibits into evidence.⁴

¹The Court issued a written decision denying the Town's petition for a temporary injunction on November 3, 2017. The Court incorporates by reference, as if fully set forth herein, its previous decision denying injunctive relief.

²The Court issued a written decision denying summary judgment to the parties on March 1, 2018.

³The Court issued a written decision granting the City's motion for partial summary judgment on May 10, 2018.

⁴The parties stipulated to the introduction into evidence of several exhibits which were not admitted through witnesses at trial but provided necessary background regarding the annexed territory. These exhibits consisted of most of those included in the parties' summary judgment affidavits as well as joint exhibits which the parties agreed should be admitted into evidence. The Court ultimately prepared, and the parties approved, a combined "Exhibit Order" dated June 18, 2018. The Exhibit Order is comprised of all of the exhibits entered into evidence at trial.

At the Court's direction, the parties filed post-trial briefs and proposed findings of facts and conclusions of law. The following is the Court's decision on the merits.

III. FACTS

The Court heard hours of testimony and has reviewed hundreds of pages of exhibits admitted into evidence at trial. The following is the Court's findings of fact based on the testimony of the witnesses and the exhibits admitted into evidence, including the parties' Stipulated Facts.

A. The Kohler Property.

1. General History.

Kohler owns approximately 247 acres of land located along Lake Michigan ("Land"). The Company has owned the land for more than 75 years. Until the City's annexation of the Land in 2017, the Land was part of the Town of Wilson.

Kohler leased the Land to the State for State park use through the 1970's. Thereafter, Kohler used the Land for an outdoor trail park.

2. The "Tented Forest Project."

In 2010, Kohler proposed developing the Land for use as a "Tented Forest Project," whereby the Land would be developed into an upscale camping site. Kohler submitted a conditional use permit application with the Town for the development of the Tented Forest which was ultimately approved by the Town's Plan Commission.

As part of its due diligence for the Tented Forest, Kohler enlisted public comment from the Town's residents. The public expressed opposition to Kohler's development of the Land. Public concerns regarding the Tented Forest included potential adverse impact of the project on the local wells, wetlands and the environment, increased traffic in the Town and the extent of

deforestation required for the project.

Prior to moving forward to the Town Board approval of the Tented Forest, Kohler determined that the Tented Forest was not a profitable venture. Kohler therefore abandoned the Tented Forest project and withdrew the conditional use permit application with the Town.

3. Kohler Proposes A Golf Course Development on the Land.

Kohler ultimately determined that the Land was best suited for the development of a world class or championship golf course similar to the Black Wolf Run and Whistling Straits courses Kohler previously developed in the Village of Kohler and the Town of Mosel.⁵ In March of 2014, Kohler informed the Town of its desire to develop a golf course on the Land.

B. Kohler's Files a Conditional Use Permit Application with the Town for a Golf Course and the Town's Response.

On March 24, 2014, Kohler submitted an application for a conditional use permit with the Town for the golf course development. Kohler's application included a proposed design for the golf course development.

Conditional use permit applications such as Kohler's are initially forwarded to the Town's Plan Commission. The Plan Commission is responsible for reviewing the applications and making recommendations to the Board on those applications.

The normal process for a conditional use permit begins with a pre-application meeting between the applicant and the Plan Commission in which any issues regarding the application are addressed and the application is completed. The application is then presented at a Plan Commission meeting for a hearing on whether the Commission will recommend approval of the application to the Town Board. In applications involving large projects with multiple technical issues, the Plan Commission generally will retain technical consultants to assist the Plan

⁵Kohler envisioned the development of a golf course that would be rated one of the top 50 in the world.

Commission in reviewing and making recommendations to the Board on the application.

The Town reviewed Kohler's application and determined that it was incomplete. The Town specifically noted that the application did not include a grading plan or a site plan. Notwithstanding the deficiencies in the application, the Plan Commission began its review process. Because of the size and complexities involved in Kohler's development, the Town retained three consultants to evaluate the application and provide input on whether the proposed development complied with the Town's ordinances; provide guidance on the impact of Kohler's proposals on the Town and its residents; and provide input from the Town to the DNR, the Army Corps of Engineers and other governmental bodies as they evaluated the project.⁶

The Town acknowledged that it was going to be challenging for Kohler to succeed with its conditional use permit application. One of the Town's primary concerns with Kohler's application was the extent of deforestation required for the golf course and the collateral impact of deforestation on surface water quantity and quality, groundwater quantity and quality, the ecosystem and wildlife corridors.⁷ There was also a concern as to whether the level of deforestation required for the project would be permitted under the Town's Comprehensive Plan and its zoning ordinances.

Ultimately, the Plan Commission suspended the conditional use permit process indefinitely while Kohler sought approval from the DNR for the construction of the golf course. The Town concluded that it would be inefficient to independently evaluate the environmental impact of the golf course on the surrounding properties and the Town when the DNR was going to conduct the same environmental impact studies in connection with Kohler's DNR permit

⁶ When Kohler objected to one consultant (Hey and Associates), and recommended the Town use another consultant (Ruekert Mielke), the Town complied with Kohler's request.

⁷The challenges facing Kohler's conditional user permit application were identified by Roger Miller, who was appointed to the Chair of the Planning Commission in 2015. Miller was retained as a litigation expert by the Town and testified at the court trial.

application.

According to Town officials, Kohler never provided the information the Town required to complete Kohler's conditional use permit application. As discussed below, Kohler ultimately decided to pursue annexation with the City rather than moving forward with its application for a conditional use permit with the Town.

C. Kohler Becomes Concerned About Moving Forward With A Golf Course Development in the Town of Wilson.

Following the filing of its application for a conditional use permit, Kohler became concerned with whether the Town would approve the golf course development and whether developing a golf course in the Town was in Kohler's best interests. Kohler's concerns regarding the viability of the project in the Town were divided into four categories: political opposition; water; fire; and boundary agreement.⁸

1. Political Opposition.

The response from the Town's residents to Kohler's proposed golf course development was highly unfavorable. Several of the Town's residents, in fact, banded together to form a group, Friends of the Black River Forest (hereinafter "Friends"), to stop the development. The stated reasons for the Friends' opposition included environmental damage resulting from golf course construction, the deforestation required to build the golf course on the Kohler Land and drawdowns of the water available for nearby residential wells caused by Kohler's operation of a high capacity well to supply water to the golf course.

The Friends were vigorous in their opposition to the golf course and, by all appearances, politically influential. The Friends initiated several lawsuits to prevent Kohler's construction of

⁸Kohler's Hospitality Construction Portfolio Manager, Jonathan Hoekstra, testified at trial as to Kohler's concerns regarding the construction of a golf course development in the Town.

a golf course in the Town. The Friends further endorsed candidates for election to the Town Board who opposed the golf course development.

Kohler needed to secure the votes of three of the five members of the Board to obtain approval of Kohler's application for a conditional use permit. In the months following its conditional use permit application, the make-up of the Board changed resulting in a Board composed of historic opponents to the golf course development, most of whom were the preferred candidates of the Friends. In April of 2014, Nancy DesJardins, who opposed the golf course development, was elected to the Board. In 2015, John Ehmann, a vocal opponent of Kohler's golf course development, was elected Chairman of the Town Board. In 2015, Thomas Stoelb, who was a preferred candidate of the Friends and opponent of the golf course development, was elected to the Board.

Ehmann and Stoelb made their opposition to the golf course development well known before taking positions on the Board. In June of 2014, Ehmann and Stoelb were among several Town of Wilson residents who sent a letter to the Town Board and Plan Commission opposing the golf course development.⁹ The letter, which was admitted into evidence at trial as City Exhibit C10, detailed the residents' belief that the Board and Plan Commission had the authority to, and should deny, Kohler's application for a conditional use permit. The residents took the position, among others, that the golf course was not a permitted use under the P-1 zoning governing the Kohler Land and, further, that the deforestation required for the construction of the golf course was inconsistent with the Town's Comprehensive Plan.

Town Board Chair Ehmann was a particularly strong opponent of Kohler's proposal to build a golf course in the Town. In 2015, Ehmann gave a presentation to the Friends at a

⁹The heading of the letter stated that it was from the Friends of the Black River Forest to the Town of Wilson Board and Plan Commission.

“Kohler Golf Course Informational Meeting”¹⁰ in which he again set forth the position that the Board should not permit Kohler to build a golf course on the Kohler Land. Ehmann pointed to the following as support for his position:

- Construction of a golf course was not permitted under the Town’s 20 year comprehensive plan which mandates preservation, rather than development of the Kohler woodlands;
- Kohler’s proposed golf course was not an allowable conditional use under the Town’s P-1 zoning because it is a commercial rather than a recreational development;
- Kohler’s golf course otherwise violated the P-1 zoning code because the golf course would not increase recreational opportunities for Town residents, unduly disturb the environmental corridor and would have an adverse impact on local wells

In the same presentation, Ehmann outlined his belief that the construction of the golf course would have significant and undesirable environmental impacts including deforestation, destruction of wetlands, compromised waterways and fragmentation of the environmental corridor. Ehmann further expressed his belief that the construction of a golf course would invite unwanted tourism into the Town and would have no long term positive economic impact on the Town or its residents.¹¹

Like Ehmann and Stoelb, DesJardins believed that Kohler’s golf course development was in conflict with the Town’s Comprehensive Plan. She further opposed Kohler’s use of State park land in connection with the operations of the proposed golf course.

In addition to the election of three Board members who expressed opposition to the golf course, Ehmann appointed Roger Miller (“Miller”) to serve as the Town’s Plan Commission

¹⁰Exhibit 1, which was entered into evidence, is an audio-visual recording of Ehmann’s speech to the Friends.

¹¹A trial, Ehmann denied that he remained an opponent of Kohler’s development after being elected to the Board. Ehmann testified that Kohler addressed many of his concerns regarding the golf course following his presentation to the Friends in 2015. Ehmann stated that Kohler significantly reduced the wetland impact and setbacks for the golf course, changed the plan for accessing the golf course and significantly reduced the amount of State land to be included in the annexation.

Chairman 2015. Like Ehmann, Miller expressed his concern over the deforestation that would be required to build a golf course on the Kohler Land as well as the adverse impact to the shoreline and environment that would result from the development and generally opposed the golf course development. Miller informed representatives of Kohler that he did not believe the Kohler Land was “a good place for a golf course.”¹²

Kohler monitored the Board elections and was aware of the opposition of DesJardins, Ehmann, Stoelb and Miller to the golf course development. Considering the composition of the majority of the Board, Kohler was skeptical that the Board would approve its conditional use permit and allow Kohler to build a golf course in the Town of Wilson.

2. Water.

It is undisputed that the Town does not provide municipal water to its businesses and residents. As a result, those who live and operate businesses within the confines of the Town are required to rely on wells for their water supply.

In 2015, Kohler commissioned Excel Engineering to study the impact of operating a high capacity well on the wells of surrounding property owners. Excel Engineering concluded that there would be no material impact on neighboring wells. The Town also retained its own expert, John Jansen, to conduct a well impact study. Jansen similarly concluded that Kohler’s operation of a high capacity well would have a minimal impact on surrounding wells.

Notwithstanding the opinions of Excel and Jansen, Kohler remained concerned that that the Town’s inability to provide a municipal water source would detrimentally impact the golf course development. Kohler identified three adverse impacts: (1) insufficient volume of water for the golf course operations; (2) exposure to well damage claims from neighboring landowners;

¹²The Town separately retained Miller in this litigation to act as an expert on its behalf relating to the nature and topography of the lands which are the subject of the annexation. Miller testified at trial.

and (3) the potential for an inadequate water source for the Town's volunteer fire department in the event of a fire on the golf course development.

a. Insufficiency of Water for the Development.

Kohler was concerned that if it proceeded with the development in the Town, it would be required to rely exclusively on a high capacity irrigation well to provide water to the golf course development.¹³ Kohler believed that having a supplemental municipal water source, such as the City's municipal water, in addition to a high capacity well, would ensure Kohler had sufficient water to meet the needs of the golf course as well as the clubhouse and other buildings constructed as part of the golf course development.¹⁴

b. Exposure to Claims from Surrounding Landowners.

Kohler was also concerned that moving forward with the golf course development in the Town would expose the Company to significant liability from surrounding landowners who relied on wells to supply water to their properties. Kohler anticipated that the surrounding landowners would assert claims against Kohler for water drawdowns and damage to their wells resulting from Kohler's operation of a high capacity well. This raised the specter of long term litigation related to the golf course operation.

Kohler also expected that the Town would require any conditional use permit issued by the Town for the golf course to require Kohler to pay for the cost of repairing neighboring wells which experienced problems in conjunction with the development and operation of the golf course, i.e., a "well protection plan." Kohler determined that a well protection plan would unduly expose Kohler to excessive claims and repair costs from citizens living in the vicinity of

¹³Kohler admitted that the golf course would be operated on well, rather than municipal water. The only expert to testify at trial, hydrogeologist John Jansen, concluded the aquifer in the area was more than sufficient for Kohler's proposed golf course and would not have an adverse impact on surrounding wells.

¹⁴Kohler understood that the City would not extend municipal water to the golf course development unless the Kohler Land was annexed by the City.

the development, many of whom opposed construction of the golf course.¹⁵

3. Fire Protection.

Kohler was concerned with the ability of the Town's volunteer fire department to adequately protect the clubhouse and other buildings constructed on the golf course development due to the lack of a municipal water source in the Town. Because the Town did not have a municipal water source, the Town's fire department was required to transport its own water to a fire. Kohler believed that a municipal water source such as the City's would ensure adequate water was available to protect the buildings in the event of a fire and reduce the risk of loss to the Kohler properties.

4. Possible Border Agreement between the City and the Town.

As the concerns regarding a golf course development in the Town multiplied, Kohler also became at risk of losing the ability to have the City annex the Kohler Land. Kohler became aware that the Town approached the City with a "border agreement" proposal. Under the proposal, the Town would agree to the City's annexation of certain lands in the Town in exchange for the City's agreement not to annex other lands in the Town, including the Kohler Land. The potential for such a "border agreement" created the risk that Kohler may never be able to develop the land for a golf course and increased Kohler's urgency to pursue annexation from the City.

D. Kohler Elects to Seek Annexation from the City.

As a result of Kohler's concerns about its ability to successfully move forward with a golf course development in the Town, Kohler decided to pursue a petition for annexation with

¹⁵Kohler's concern regarding the impact of operating the golf course on a high-capacity well was based on the opposition of neighbors with wells, not scientific evidence that Kohler's golf course development would unduly drawdown or harm adjacent wells. Kohler financed a study which showed that the operation of a high-capacity well for the golf course would not have a significant impact on the wells of neighboring property owners.

the City in late 2016. Kohler's Hospitality Construction Portfolio Manager, Jonathan Hoekstra ("Hoekstra"), summarized Kohler's reasons for moving forward with the City rather than the Town:

Q: So what, if any, role did that understanding of the potential of boundary agreement locking you out of the city play in your determination to annex these lands to the City?

A Again, over the period of time there were a number of things that were happening ultimately making it appear and seem to be more and more difficult to get this project approved, and that would have, in our opinion, ended the project because with the number of town board members we believed were not going to vote for the project, with the neighbors and neutral observers, I will call them, residents concerned about wells, et cetera, and then with an agreement, we would be left with no project. So that was probably the culmination of all of those issues that led to the annexation occurring.

Prior to moving forward with the City, Kohler did not inform the Town that Kohler believed the Town lacked sufficient services for its golf course development. For example, Kohler never claimed it needed municipal water from the City for the course. Kohler also did not express any concern to the Town about any of the Town's other services being insufficient for the golf course.

E. Preliminary Discussions Between Kohler and the City Regarding Annexation.

In late 2016, an outside corporate attorney from Kohler approached the City Administrator, Darrell Hofland, regarding Kohler's desire to have the City annex the Kohler Land. Kohler advised the City that it was considering annexation for purposes of moving forward with the development of a world championship golf course. Hofland was aware that Kohler had an application for a conditional use permit pending with the Town when Kohler approached the City regarding the potential for annexation.

Hofland was receptive to Kohler's annexation proposal. Hofland noted that the proposed annexation of the Kohler Land was consistent with the City's plan for future growth which included expansion south from the City into the Town of Wilson. Hofland further emphasized

that the long term financial viability of the City is substantially dependent on the City's ability to expand through annexation such as the Kohler proposal.

In addition to the benefits the City could receive from the golf course, the City viewed the annexation as an opportunity to expand municipal services south into the Town of Wilson along 12th and 18th Streets. The extension of municipal services facilitated the ability of the City to develop residential subdivisions in the Town which was also part of the City's strategic growth plan.

The City and Kohler continued to discuss the proposed annexation over the next several months. The discussions focused on the benefits which the City would receive if Kohler proceeded forward with its plan to build a world championship golf course on the Kohler Land. In this regard, Kohler retained a consultant to conduct an economic impact study of the annexation. The study revealed that annexation of lands which included a world championship golf course would provide the City with a significant increase in its tax base and also provide a substantial benefit to the City's businesses, restaurants and hotels.

The mutual interest between Kohler and the City in the proposed annexation was reflected in the terms of a proposed Pre-annexation Development Agreement ("Agreement") which was negotiated between City officials and Kohler before Kohler's formal filing of the petition for annexation on April 28, 2017.¹⁶ The recitals in the Agreement recognize Kohler's intent to develop a championship golf course on its vacant land located in the Town of Wilson as well as the City's authority to annex that land under Wis. Stat. § 62.0217. The recitals further recognize that Kohler's planned use of the property was "consistent with the City's

¹⁶The Pre-Annexation Agreement was not executed by the parties until after the Common Council approved the annexation as well as the Pre-Annexation Agreement in August of 2017. A signed copy of the Pre-Annexation Agreement was offered and admitted into evidence as Joint Exhibit 2.

Comprehensive Plan adopted December 5, 2011” and would provide land needed for growth of the City. The recitals state:

The City specifically acknowledges that Developer's proposed development and use of the Property as described herein, is compatible with and will further the City's planning objectives, will be of substantial benefit to the City, will extend the corporate limits and jurisdiction of the City, will promote orderly growth, planning and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents.

The Agreement established proposed mutual obligations of the City and Kohler as it relates to the proposed annexation. The City agreed to, among other things, cooperate in obtaining the necessary permits for the golf course; extend water utility to the golf course property at Kohler's expense; provide police, fire and emergency services to the property; connect sanitary sewer service to the property; and consider rezoning the property to SR-5 Residential so as to permit the construction of an 18 hole championship golf course.

Kohler correspondingly agreed to, among other things, construct storm water facilities on the property and connect all buildings developed on the property to the City's sanitary sewer system. Kohler also assumed an obligation to connect to and utilize the City's municipal water service for all proposed improvements on the property including the clubhouse, irrigation system, maintenance building and cart building, to the City's municipal water service within three years of development and to pay the cost of extending municipal water to its property.¹⁷ Finally, Kohler agreed to reimburse the City's actual costs incurred in connection with the annexation, including litigation costs and attorney's fees, up to \$200,000.

Kohler's annexation proposal was introduced to the Common Council in early spring of 2017. On April 24, 2017 the City convened into closed-session to discuss annexing the Kohler

¹⁷ Kohler's agreement to connect its improvements to the City's water service was required under any conditional use permit for the 18 hole championship golf course.

Land, which was described in the minutes of that meeting as a “Southside Development Opportunity.” This presentation, which was marked as Town Exhibit 16 at trial, confirms that Kohler intended to petition the City to annex parcels of land in the Town that would, upon completion of the annexation, incorporate Kohler’s proposed golf course development within City limits.

The presentation included a summary of the City’s obligations under the Pre-Annexation Development Agreement. The presentation then discussed the benefits that the City anticipated receiving from the golf course development. These benefits included the following:

- Up to 11 additional parcels of land within City limits;
- An additional \$6 to \$8 million in new assessed valuation to the City;
- Future opportunity for additional annexations along South 12th Street;
- Up to 200 new jobs; and
- The opportunity to annex the Poth Farm into the City for the development of single family residences.

F. Kohler’s Petition for Annexation.

1. Procedural History.

On April 28, 2017, Kohler published a notice of intention to circulate annexation petition in the Sheboygan Press. The Petition included signatures from five of the six qualified electors (the five signatories defined as a majority of the votes cast for governor in the Annexation territory at the last gubernatorial election), and the owners of 91 percent of the Annexation territory (measured by assessed value).

The five signatures on the Petition represented three parcels within the annexation. Two of these properties were recently purchased by Kohler. One of the signatures on the annexation

petition was from one of Kohler's outside litigation attorneys, Jessica Polakowski of Reinhart Boerner, on behalf of the LLC that recently had purchased a parcel included in the annexation.

Kohler also mailed (by certified mail with return receipt requested) copies of the notice to the City Clerk, Town Clerk, the Clerk of Sheboygan Area School District, the owners of the property in the Territory, and the Wisconsin Department of Administration ("DOA"). Kohler mailed a completed Request for Annexation Review to DOA on April 28, 2017 listing a population of 8 in the Annexation.

On about May 3, 2017, DOA published on its Municipal Data System the annexation materials submitted by Kohler, and listed the population of the Annexation as 8. On or about May 22, 2017, the City and Town submitted annexation questionnaires to the DOA. Both the City and the Town's questionnaires included population estimates for the annexation.

2. The Configuration of the Lands included in the Annexation.

Kohler designed the boundaries of the annexation to connect the Kohler Land to the City. The annexation consists of several parcels moving from the connection point with the City to the south and east to the Kohler Land. The City had no input or involvement whatsoever in determining the boundaries for the annexation.¹⁸

According to the annexation review which was conducted by the Department of Administration ("DOA") and admitted into evidence as City Exhibit 2, the connection point between the City and Parcel 1 of the annexation is 650 feet in width. From the connection point, the annexed land proceeds in a southeast direction toward the Kohler land. *Id.* The proposed annexed land varies in size from approximately 1,450 feet wide, to approximately 190 feet wide at a point between neighboring residential developments before expanding at the Kohler land. A

¹⁸The City did not independently investigate the properties included within Kohler's annexation or whether the owners of those properties had any independent desire to become part of the City.

map of the territory included in the annexation appears below followed by a chart which describes the parcels included in the annexation including their respective dimensions.¹⁹

Annexation Map



¹⁹The map outlining the dimensions of the parcels in the annexation was attached to the Affidavit of Roger Miller which was admitted into evidence as Town Exhibit 65. The parcel details were taken from Town Exhibit 67 which was admitted into evidence at trial.

Parcel Descriptions

Parcel	Dimensions Included in Annexation	Description
1	19.2 acres	Western half of a larger parcel that compromises the northwestern end of the Riverdale golf course. The parcel is owned by Sheboygan Town and Country Corporation.
2	19.68 acres	Parcel which was part of the Poth Farm which is owned by the City. The parcel is presently forested and undeveloped.
3	9.85 acres	Eastern end of a parcel owned by the City. The parcel is presently forested and undeveloped.
4	4.86 acres	Southern one-third of a parcel held by the Koller Living Trust. Two thirds of the parcel are in the Town and one-third of the parcel is in the City. The land is predominantly wooded but does include a residence. The parcel is included in a managed forestry program with the State of Wisconsin which precludes development of the parcel.
5	4.61 acres	Southern portion of a parcel held by the Koller Living Trust. The southern one-third of the parcel is in the City and the northern two thirds of the parcel are in the Town. The parcel is included in the managed forestry program with the State of Wisconsin which precludes development of the parcel.
6	19.89 acres	Riverdale golf course parcel.
7	.2 acres	Single lot in an eight lot Deerfield subdivision. The parcel was purchased by Wilson/Sheboygan County LLC. Jessica Polakowski, an outside attorney retained by Kohler, signed the Petition on behalf of LLC.
8	3.5 acres	Wooded lot with a residence owned by John Siegworth.
9	1.51 acres	Wooded parcel owned by John Siegworth.
10	2.58 acres	Lot with a single residence located at the intersection of South 12 th Street and Stahl Road and owned by Nina Stapel.
11-13	11: .36 acres 12: .19 acres 13: .18 acres	Portion of County owned land which comprises a public road right-of-way.
14-15	14: .15 acres 15: .09 acres	Portion of Town owned land which comprises a public road right-of-way.
16	2.4 acres	2.5 acre parcel with a single family home on the east side of South 12 th Street just north of a drive into the River Trail subdivision. The parcel is presently owned by Kohler Company.
17	.04 acres	River Trails subdivision Out lot consisting of forested wetland. Owned by River Trails Owners Association, Inc.
18	.15 acres	Driveway into the River Trails subdivision and River Trails subdivision Out lot 3. Owned by River Trails Owners Association, Inc.
19	.46 acres	Driveway into River Trails subdivision and River Trails Subdivision Out lot 4
20	.15 acres	River Trails subdivision Out lot 2 consisting of .13 acres of forested wetland. Owned by River Trails Owners Association Inc.

21	.91 acres	River Trails Subdivision Lot 11, undeveloped, partially forested. Owned by Kohler Company.
22	.39 acres	River Trails Subdivision Lot 10, undeveloped, partially forested. Owned by Kohler Company.
23	.36 acres	River Trails Subdivision Lot 9. Undeveloped, partially forested. Owned by Kohler Company.
24	.15 acres	River Trails Subdivision Lot 5. Undevelopable, entirely forested.
25	2.25 acres	River Trails Subdivision Lot 1. Undeveloped, entirely forested lot. Owned by River Trails Owners Association.
26-27	26: 10.37 acres 27: 3.62 acres	Undeveloped forested parcels owned by Kohler Company.
28	140 acres	Kohler-Andrae State Park with development prohibition
29-33	29: 26.3 acres 30: 63 acres 31: 29.7 acres 32: 49.5 acres 78.44 acres	Undeveloped forested land owned by Kohler Company
34-41	34: 40.1 acres 35: 9.3 acres 36: 1.1 acres 37: 1.2 acres 38: 3 acres 39: .5 acres 40: .6 acres 41: 23 acres	Kohler-Andrae State Park

Evidence was introduced at trial regarding each of the parcels included within the annexation. As noted in the chart above, certain of the parcels included in the annexation are parts or portions of larger parcels of land, i.e., Kohler did not include the area of the larger parcel in the boundaries of the annexation. Following the enactment of the City's ordinance, these larger parcels are subject to both Town and City regulations: the portion of the parcel located in the Town is subject to Town regulation and the portion of the parcel located in the City is subject to City regulation.

G. The City's Response to Kohler's Annexation Proposal.

Kohler's Petition for annexation was received positively by City officials.²⁰ The City, like many other cities across the nation, has watched jurisdictions surrounding the City experience substantial increases in their economic growth and expansion of their tax bases. The growth of surrounding jurisdictions has allowed these jurisdictions to provide high quality of life at lower tax rates than their municipal counterparts. The City, in contrast, has experienced increased demand for services as well as the cost of those services with less corresponding high end economic growth. This has resulted in economic disparity between the City and the areas that surround it.

In order to address this disparity, the City has employed a strategy of expanding its boundaries through annexation to capture economic growth in areas surrounding the City. The City, by its own admission, aggressively pursues annexation opportunities in order to achieve economic growth. The City generally views opportunities to expand its borders through annexation as a positive and in its best interests. Expansion into surrounding areas facilitates the ability to continue to provide services at a reasonable tax rate.

The City's desire to achieve economic growth through expansion is summarized in the City's 2000 Comprehensive Plan which provides in pertinent part²¹:

The City of Sheboygan is facing problems similar to many Wisconsin cities. The nearby towns, are generally becoming upper income enclaves, and are growing in more healthy socio-economic patterns than the City, simply because the City is providing the range of goods, services, employment opportunities and housing opportunities typical of urban communities, while capturing virtually nothing near the top end of the residential or commercial market. There is a growing income, and housing disparity between residents of the City and those located in the

²⁰ The City's reasons for pursuing the annexation with Kohler, and ultimately, bringing Kohler's Petition to the Common Council for vote, were established through the trial testimony of, among others, City Administrator Hofland, the City's Manager of Planning and Zoning, Steve Sokolowski, the City's Director of Planning and Development, Chad Pelishek and the City's Water Utility Superintendent, Joe Trueblood.

²¹ See City Exhibit 4, p. R-148.

surrounding area. The City is providing more services, including many that benefit the entire region, while other jurisdictions are realizing a significantly increasing share of the region's growth and the resulting economic and tax benefits. As these disparities grow, it will become more difficult for the City to effectively compete with its neighbors for new growth and development. To continue to provide quality services with a reasonable tax rate and maintain the City's quality of life, it is necessary for the City to capture a fair share portion of the area's future growth.

The City did not specifically consider annexing the Kohler Land prior to Kohler's Petition for Annexation. However, the City had historically targeted the lands within the annexation, including the Kohler Land, for future City expansion, development and economic growth as part of the City's 2011 Comprehensive Plan.²² The Comprehensive Plan specifically targeted zoning the Kohler Land for recreational use.

The City analyzed Kohler's Petition and concluded that Kohler's Petition presented the City with significant opportunities for economic growth and expansion. In his "Request for City Plan Commission Consideration," dated May 26, 2017, the City's Manager of Planning and Zoning, Steven Sokolowski, identified the following economic opportunities for the City presented by Kohler's proposed golf course development:

- New tax revenues generated annually for local and state governments in the amount of \$1.267 million;
- The creation of 227 new, full time equivalent jobs;
- 22,000 additional room nights per year for Sheboygan County hotels and increased expenditures for the local hospitality, retail, food and beverage industries by \$6.5 million;
- Total annual economic output resulting from the new golf course in Sheboygan County in the estimated amount of \$20.6 million; and
- Annual increase of \$87,000 in school property taxes.

²²The City prepared the 2000 and 2011 Comprehensive Plans pursuant to Wisconsin's Comprehensive Planning Law, often referred to as the "Smart Growth" law. This law requires local governments to adopt a Comprehensive Plan in order to engage in certain land use regulations, such as subdivision regulation and zoning.

The City further determined that the Petition provided the City the opportunity to increase single family residential housing for which the City had (and continues to have) an immediate and critical need. The City was, and is, significantly behind other cities in the construction of new single family residences which are needed to house those who live and/or desire to relocate to the City. Sheboygan County's rate of home construction per 5,000 residents was measured at 3.4 new homes per year compared to a statewide average of 8.6 homes per year.²³ Outagamie County which is similar to Sheboygan County in job market maintained a rate of 11.6 homes per year. Sheboygan County's issuance of housing permits for new homes also significantly behind State of Wisconsin averages.

The absence of available single family housing in the City was detrimental to the City's economic growth. Sheboygan County has minimal unemployment and a significant number of job openings. As such, many jobs will be filled by those coming from outside of the County. When families relocate for employment, they often seek single family residential homes. Due to the City's shortage of single family residential housing, the City was unable to effectively compete in recruiting prospective employees to the City and capture the economic growth associated with employee relocations to the City. The City estimated that it would be required to build 73 homes each year to keep up with the demand for single family residences.

The Kohler annexation facilitated the City's ability to immediately address its housing needs. The lands in the annexation included the Poth Farm property which the City purchased in May of 2001 for the specific purpose of developing residential housing. The Poth Farm is located along 18th Street, south of the connection point between the City and the annexed properties. The City planned to develop 110 lots on the Poth Farm for the construction of single

²³The statistics related to the City's single family residential housing shortage are incorporated within the trial testimony and summary judgment affidavit of Chad Pelishek. Pelishek's summary judgment affidavit and attachments were marked as City Trial Exhibit 19 and admitted into evidence.

family residences.²⁴ The lots range in size from 11,000 square feet to 28,000 square feet. The proposed development also included an eight acre park.

The City had not previously developed the farm due to the cost of extending roads, water and utilities to a relatively small area with a limited tax base. The Kohler annexation provided the City with additional revenues from which the City could more cost effectively extend roads, water and sewer to the Poth Farm and other areas within the annexation.

The City further determined that residential development in the Poth Farm area would spur additional residential development in areas in and around the annexed lands. The City observed that extending municipal water and other services to one area often prompts developers to consider residential developments in surrounding areas where municipal services were not previously available and were cost prohibitive to provide.²⁵

In addition to economic benefits, the Kohler annexation also provided benefits to the City's Water Utility. Expansion of the City's borders through annexation allows the City to increase usage of the City's existing water utility services. In this respect, the City's water utility is capable of pumping and treating up to 34 million gallons of water per day. Prior to the annexation, however, the City was only utilizing one-half of the utility's rated pumping and treating capacity. The Kohler annexation provides the City with the opportunity to extend water service south along 12th Street and 18th Street into the residential and commercial areas of the annexed lands. The extension of this service will increase the number of users on the City's system and, as a result, provides greater economies of scale for operating the City's water utility.

²⁴The City's plan to develop the Poth Farm for the development of single family residences originated when the City purchased the Poth Farm in 2000. The City's intent in purchasing the Poth Farm is reflected in a May 11, 2000 memo from the former City Planner, Ronald French, to the Common Council. The memo is included within City Exhibit 11 which was admitted into evidence at trial.

²⁵The City's Administrator, Hofland, acknowledged that the City did not know how many parcels outside of the annexation could be developed.

H. The Town's Reaction to the Petition.

The Town was surprised by Kohler's filing of the Petition. Kohler did not inform the Town that it was considering annexation with the City prior to filing the Petition nor had Kohler expressed concerns over moving forward with a golf course development in the Town before seeking annexation from the City. The City similarly did not inform the Town of its interest in annexing the lands included in the annexation before the Petition was filed.

The Town strongly opposed Kohler's Petition. The Town took the position that the proposed annexation usurped the Town's ability to determine the impact of Kohler's development on the Town and to protect the Town's residents from the adverse impacts from the development. The Town further believed that the Petition deprived the Town's residents of a voice in determining whether Kohler should be permitted to develop a golf course in the Town. Finally, the Town believed that Kohler's Petition, and any ordinance enacted by the City approving the Petition, violated the rule of reason.

I. The DOA's Review of the Annexation.

An annexation initiated by property owners or electors such as Kohler must be reviewed by the Department of Administration ("DOA") as part of the procedural requirements for approval of an annexation. The DOA is required to issue an opinion as to whether the annexation is in the public interest. *Wis. Stat. § 66.0217(6)*. The DOA's opinion is forwarded to the municipal clerk and must be reviewed by the annexing body before final action is taken on an annexation. *Id.* The language of *Wis. Stat. § 66.0217(6)*, which governs the DOA's public interest review, provides:

(6) DEPARTMENT REVIEW OF ANNEXATIONS.

(a) *Annexations within populous counties.* No annexation proceeding within a county having a population of 50,000 or more is valid unless the person publishing a notice of annexation under sub. (4) mails a copy of the notice to the clerk of each municipality affected and the department,

together with any fee imposed under s. 16.53 (14), within 5 days of the publication. The department shall within 20 days after receipt of the notice mail to the clerk of the town within which the territory lies and to the clerk of the proposed annexing village or city a notice that states whether in its opinion the annexation is in the public interest or is against the public interest and that advises the clerks of the reasons the annexation is in or against the public interest as defined in par. (c). The annexing municipality shall review the advice before final action is taken.

In determining whether an annexation is in the public interest under Wis. Stat. § 66.0217 (6), the DOA is required to examine: (1) the shape of the proposed annexation and the homogeneity of the territory with the annexing village or city and any other contiguous village or city; and (2) whether the town could clearly better supply needed municipal services to the territory than the annexing city or village. *Wis. Stat. § 66.0217(6)*.

Consistent with these statutory requirements, Kohler submitted its petition for annexation to the DOA. In anticipation of the DOA's review, the Town provided the DOA with several submissions in opposition to the annexation. The Town argued, among other things, that the annexation was an impermissible "balloon-on-a-string" annexation that irrationally splits the town for a "contrived, de minimis border with Sheboygan"; that the annexation was not "contiguous" under the Wisconsin Supreme Court's decision in *Town of Mt. Pleasant v. City of Racine*, 24 Wis. 2d 41, 127 N.W.2d 57 (1964) ("Mt. Pleasant I"); that the annexation was based on a false claim of "need" for City services; and that the annexation includes large portions of undeveloped, natural land that are not homogeneous with the south side of the City.

The DOA found the Kohler annexation was in the public interest.²⁶ In reaching its decision, the DOA rejected the Town's claim that the annexation was an impermissible "balloon-on-a-string" configuration under *Mt. Pleasant I*. Instead, the DOA found that the dimensions and configuration of the annexation, "while not ideally shaped," were closer to the dimensions of

²⁶The DOA's letter decision relative to the annexation was admitted into evidence at trial as City Exhibit 2.

the annexation that the Wisconsin Supreme Court approved in *Town of Mt. Pleasant v. City of Racine*, 28 Wis. 2d 519, 137 N.W.2d 656 (1965). (“Mt. Pleasant II”).

The DOA further determined that the proposed land use of the annexation territory for a golf course and the adjacent land to the north was “more homogeneous with the City than it is with the Town.” *Id.* The DOA noted that the annexed lands were immediately adjacent to fully developed, rather than rural, areas of the Town which are “urban in nature and much more consistent with the developed City lands than with the bulk of Town of Wilson lands to the southwest which tends to be more rural in nature.”

The DOA likewise found that Kohler’s proposed use of the land for a golf course required City services such as sewer and water, police and fire protection and planning and zoning services. *Id.*, p. 2. The DOA rejected any claim that the Town could better provide these services than the City:

The City indicates in its submitted questionnaire that it can provide these desired services. Petitioner has committed to using City water for the proposed development’s clubhouse, irrigation system, maintenance building and cart building within three years of development. It cannot be said that the Town can “better” provide services such as water.

Id.

J. The City Approves the Petition and Enacts and Annexation Ordinance.

On May 30, 2017, the City of Sheboygan Plan Commission held a public hearing on the proposed annexation and rezoning. At the conclusion of the hearing, the Plan Commission unanimously recommended the Annexation and rezoning the land in the annexation to Suburban Residential.

On August 7, 2017, the full City Common Council adopted, by a vote of 11 of its 16 (11-5) members – representing 2/3 of its members – an ordinance annexing the territory included in the Kohler Annexation. The Ordinance is identified as 6-17-18. On that same date, the City

Common Council adopted Ordinance 4-17-18, zoning the Annexation to SR-5, Suburban Residential. On August 7, 2017, the City Common Council approved the Pre-Annexation Agreement between Kohler Co. and the City.

IV. STANDARD OF REVIEW

The legislature has conferred broad authority to cities and villages to annex unincorporated lands under Chapter 66. *Town of Pleasant Prairie v. City of Kenosha*, 75 Wis.2d 322, 326-27, 249 N.W.2d 581 (1977). Annexation ordinances, like other legislative enactments, enjoy a presumption of validity. *Id.* A party challenging an annexation ordinance has the burden of overcoming the presumption with proof that an ordinance is invalid. *Id.*

Wisconsin annexation law permits landowners or electors to initiate a petition for annexation to become part of a municipality pursuant to Wis. Stat. § 66.0217. Kohler's Petition was one for direct annexation by one-half approval, i.e., a non-unanimous annexation. Direct annexation by non-unanimous approval is governed by Wis. Stat. § 66.0217(3) which provides as follows:

(3) OTHER METHODS OF ANNEXATION. Subject to ss. 66.0301 (6) (d) and 66.0307 (7), and except as provided in sub. (14), territory contiguous to a city or village may be annexed to the city or village in the following ways:

(a) Direct annexation by one-half approval. A petition for direct annexation may be filed with the city or village clerk if it has been signed by either of the following:

1. A number of qualified electors residing in the territory subject to the proposed annexation equal to at least the majority of votes cast for governor in the territory at the last gubernatorial election, and either of the following:

- a.** The owners of one-half of the land in area within the territory.
- b.** The owners of one-half of the real property in assessed value within the territory.

2. If no electors reside in the territory subject to the proposed annexation, by either of the following:

- a.** The owners of one-half of the land in area within the territory.

b. The owners of one-half of the real property in assessed value within the territory.

* * * * *

A. Substantive Requirements of a Non-Unanimous Annexation under Wis. Stat. § 66.0217(3).

The statutory language of Wis. Stat. § 66.0217(3) imposes one substantive requirement. In order for a municipality to annex a property based on a non-unanimous petition, the territory must be “contiguous” to a city or village. *Wis. Stat. § 66.0217(3)*.

The remaining substantive requirements for a non-unanimous annexation are found in the common law. *Town of Pleasant Prairie*, 75 Wis. 2d at 326-327. In determining whether an annexation ordinance is valid, courts apply the “rule of reason.” *Id.* The rule of reason is designed to determine whether the power delegated by the legislature under Chapter 66 has been abused by a city or village under the facts and circumstances of a given case. *Id.* In order to survive a challenge under the “rule of reason,” an annexation must satisfy the following three requirements:

- (1) Exclusions and irregularities in boundary lines of an annexation must not be the result of arbitrariness;
- (2) Some reasonable present or demonstrable future need for the annexed property must be shown;
- (3) No other factors must be present which constitute an abuse of discretion.

Id.

The rule of reason does not authorize a court to inquire into the wisdom of an annexation or determine whether the annexation is in the best interest of the parties or the public. *Id.* Decisions on these issues are for the legislature, not the courts to make. *Id.* As stated by the Wisconsin Supreme Court in *Town of Pleasant Prairie*:

In annexation proceedings the city council in the first instance

determines the suitability or adaptability of the area proposed to be annexed and the necessity of annexing the same for the proper growth and development of the city. Upon a review the courts cannot disturb the council's determination unless it appears that it is arbitrary and capricious or is an abuse of discretion.

Id. at 327-328 quoting *Town of Brookfield v. City of Brookfield*, 274 Wis. 638, 646, 80 N.W.2d 800 (1957).

B. Procedural Requirements.

Section 66.0217, Wis. Stats. imposes a series of procedural requirement with which an annexation must comply. These include the requirement that a petition for non-unanimous annexation be signed by a specified number of the qualified electors or landowners residing in the territory which is the subject of the proposed annexation. *Wis. Stat. § 66.0217(3)*. The statute also sets forth requirements for: filing the petition; the content of the notice for annexation; the content of the annexation petition; and DOA review the annexation. *See Wis. Stat. §§ 66.0217(4), (5), (6) and (10)*. An annexation ordinance must be approved by two-thirds vote of the members of the governing municipality. *Wis. Stat. § 66.0217 (10)*.

Under Wisconsin law, an annexation ordinance must be enacted in strict compliance with these procedural requirements. *Town of Baraboo v. Village of West Baraboo*, 2005 WI App 96, ¶7, 283 Wis.2d 479, 699 N.W.2d 610; *Town of Blooming Grove v. City of Madison*, 70 Wis.2d 770, 774, 235 N.W.2d 493 (1975). An ordinance which does not comply with the statutory procedures for annexation is void. *Id.* Substantial compliance will not save an annexation that is not accomplished in "strict conformity" with statutory requirements. *Id.* The rationale for the strict conformity rule was explained by the Court in *Town of Blooming Grove*:

The numerous cases coming to this court over the years reflect the difficulties annexation cases present to various governmental entities. The city argues that they have 'substantially complied' with the statute, and the town has shown 'no prejudice' as a result of the procedures followed by the city. To add such considerations to or substitute them for

the established rule of strict conformity in annexation cases would only compound the already perplexing problems that exist among governmental units in this type of case.

...Annexation of territory from a township may in fact have serious consequences to the town, not the least of which may be its tax base. In annexation cases, we see no reason why the annexing municipality should not be required to comply strictly with the mandate of the statute. In this case, the city did not do so.

V. ANALYSIS

In its post-trial brief, the Town claims that it proved at trial that the subject annexation “fails virtually every legal test for an annexation.” In support of this proposition, the Town claims that the City and the annexed lands are not “contiguous” in violation of Wis. Stat. § 66.0127(3). Next, the Town claims that no need has been shown by the City or Kohler for the annexation. Finally, the Town claims that the City abused its discretion by, among other things, “rubber stamping” the annexation “in exchange for money, without any serious evaluation of the environmental or other laws and impacts surrounding it, and by delegating its judgment and discretion to a private company.”

The Town has the burden of overcoming the presumption of validity of the City’s Ordinance and demonstrating the Ordinance is invalid. The Town has failed to meet its burden of proof with respect to any of the challenges to the Ordinance. The City’s Ordinance is, in all respects, valid. The Court dismisses the Town’s action for declaratory judgment with prejudice.

A. The Annexation Satisfies the Procedural Requirements of Wis. Stat. § 66.0217.

The Town previously challenged the validity of the City’s Ordinance on the basis that the petition did not comply with Wis. Stat. § 66.0217(5)(a) which requires a petition for annexation to, among other things, “specify” the population of the annexed territory. The Town asserts that the petition failed to satisfy Wis. Stat. § 66.0217(5)(a) because the petition did not include a federal census of the annexed area or evidence that the DOA “certified as acceptable” the

population estimate or actual population count included in the petition.

On May 10, 2018, the Court granted the City's partial motion for summary judgment dismissing the Town's claims under Wis. Stat. § 66.0217(5)(a). The Court found that the undisputed facts demonstrate that the DOA "certified as acceptable" the population in Kohler's petition based on its review of the petition and ultimate acceptance of the petition for public interest review. The Court incorporates by reference, as if fully set forth herein, its May 10, 2018 written decision on the City's partial summary judgment.

At trial, the Town did not raise any new issues regarding whether Kohler's Petition or the City's Ordinance strictly complied with the procedural requirements for an annexation under Wis. Stat. § 66.0217. The trial centered on whether the Ordinance satisfied the "contiguity" requirement in Wis. Stat. § 66.0217(3) and the rule of reason.

For purposes of the record, the Court finds that the Petition and the Ordinance complied with the procedural requirements of Wis. Stat. § 66.0217. The Petition, among other things, was properly noticed and included the signatures of five of the six qualified electors and the owners of 91% of the territory measured by assessed value. The DOA reviewed the annexation and found the annexation was in the public interest. Finally, the Ordinance was approved by a supermajority of the Common Council. The Ordinance complied with the procedural requirements of Wis. Stat. § 66.0217 and is valid.

B. The Boundaries of the Annexation Are Not Arbitrary Under the Rule of Reason.

The first requirement in the "rule of reason" inquiry is that the exclusions and irregularities in an annexation must not be the result of arbitrariness on the part of a municipality. *Town of Baraboo*, 2005 WI App 96, ¶21; *Town of Campbell v. City of La Crosse*, 2003 WI App. 247, ¶21, 268 Wis. 2d 253, 673 N.W.2d 696. When, as in this case, annexation proceedings are

initiated by a private property owner, the general rule is that municipalities cannot be charged with arbitrary action in drawing the boundary lines of an annexation. *Id.*; see also *Town of Pleasant Prairie*, 75 Wis. 2d at 339. As recognized by the Court in *Town of Baraboo*:

As to the first requirement, that “the exclusions and irregularities in boundary lines of annexations must not be the result of arbitrariness[,] ... [t]he general rule is that where direct annexation proceedings are initiated by property owners, the annexing municipality may not be charged with arbitrary action in drawing the boundary lines.”

Town of Baraboo, 2005 WI App 96, ¶21 quoting *Town of Campbell*, 2003 WI App. 247, ¶21 (emphasis added).

In owner initiated petitions, the choice of the boundaries is a matter of discretion by the private petitioners. *Town of Baraboo*, 2005 WI App 96, ¶21; *Town of Campbell*, 2003 WI App. 247, ¶21. Private petitioners have the right under the annexation statutes to act “in light of their desires” and in their best interests when they initiate a direct annexation. *Town of Campbell*, 2003 WI App. 247, ¶21; *Town of Waukesha v. City of Waukesha*, 58 Wis.2d 525, 530, 206 N.W.2d 585 (1973). Petitioning property owners are under no obligation to include areas in an annexation which are of no concern to them and may include only their own property. *Id.*, at 532. Private property owners may also determine the boundaries so as to ensure the success of the annexation. *Town of Campbell*, 2003 WI App. 247, ¶21; *Town of Pleasant Prairie*, 75 Wis. 2d at 342.

When a direct annexation is initiated by a private property owner, a municipality is in no position to negotiate when it is presented with a petition for annexation. *Town of Medary v. La Crosse*, 88 Wis. 2d 101, 122-123, 277 N.W.2d 310 (1978). There is not much that a municipality can do other than accept or reject the entire petition. *Id.* As recognized by the Court in *Town of Medary*:

A municipality is in no position to negotiate or pick and choose when it is presented with a petition for annexation. Section 66.021, Stats., which provides for annexations, does not make any provision for a city to annex only that portion of territory described in an annexation petition for which it has a need. It must annex all of the territory or none of it. The city is prohibited from coercing or giving special economic consideration to those circulating annexation petitions. *Town of Pleasant Prairie v. City of Kenosha*, 75 Wis.2d 322, 331, 249 N.W.2d 581 (1977).

Id.

There is an exception to the “general rule” regarding owner-petitioned annexations: a municipality may be charged with arbitrariness in the boundaries of an owner-petitioned annexation where it can be established that the municipality is the real controlling influence in selecting the boundaries for the annexation. *Town of Campbell*, 2003 WI App. 247, ¶22; *Town of Pleasant Prairie*, 75 Wis. 2d at 339. As explained by the Court in *Town of Pleasant Prairie*:

As regards annexations under sec. 66.021(2)(a), Stats., it is only where the annexing municipality itself is one of the petitioning landowners or where the municipality otherwise is shown to be the real controlling influence in the proceedings, that the boundaries of an annexation will be scrutinized for an abuse of municipal discretion by the courts. *Town of Fond du Lac v. City of Fond du Lac*, supra.

Id., at 339-340. “Influence” by a municipality means more than simply providing technical assistance or recommendations to the petitioner. *Town of Campbell*, 2003 WI App. 247, ¶22. Influence means conduct by which the annexation authority dominates the petitioner so as to have effectively selected the boundaries for the annexation. *Id.*

Applying the foregoing authorities to the present case, the City cannot be charged with any irregularities in the boundaries of the subject annexation. There is absolutely no evidence in the record supporting any claim that the City selected the boundaries for the Kohler annexation. To the contrary, the evidence points only to the fact that Kohler selected the lands to be included in the annexation and established the boundaries for the annexation. Kohler did not seek the

City's input regarding the boundaries of the annexation prior to filing its petition and the City gave no such input.

The only evidence introduced at trial regarding the City's involvement in the annexation occurred after Kohler advised City officials that Kohler would be pursuing the annexation. The record shows that City officials, including Sokolowski, assisted in the presentation of the concept of the annexation to the Common Council. Kohler and City officials further prepared a draft Pre-annexation Development Agreement which discussed the mutual benefits of the annexation as well as the parties' obligations in the event the Common Council approved the petition.

The City's involvement in presenting the annexation to the Common Council and in preparing a Pre-annexation Development Agreement does not rise to the degree of influence and control necessary to impute the boundaries of the annexation to the City. The City's involvement in the annexation had nothing to do with determining the boundaries for the annexation. Therefore, any irregularities in the boundaries of the annexation cannot be imputed to the City.

In its post-trial brief, the Town concedes the absence of any City control or influence over the annexation boundaries or its configuration. The Town claims, in fact, that the City took a "blind eye" to the properties that Kohler included in the annexation so as to avoid having the boundaries of the annexation imputed to the City and that City officials agreed to advocate for Kohler's petition without allegedly knowing what would be included within the annexation. *See Town Post-Trial Brief, pp. 11-12.*

In sum, the only evidence offered at trial demonstrates that Kohler, and only Kohler, determined the boundaries for the annexation and the properties to be included in the petition. The City exercised absolutely no influence or control whatsoever in selecting the boundaries for

the annexation. As a result, cannot be charged with any arbitrary action in drawing the boundary lines. *Town of Baraboo*, 2005 WI App 96, ¶21; *Town of Campbell*, 2003 WI App. 247, ¶21. The City's Ordinance satisfies the first prong of the rule of reason.

C. The Annexed Lands Are Contiguous to the City.

The Town focuses its challenge at trial on whether lands included in the Kohler petition are contiguous to the City under Wis. Stat. § 66.0217(3). As it did in connection with its request for injunctive relief, the Town insists that the annexation is invalid under the Wisconsin Supreme Court's decision in *Mt. Pleasant I* because the City and the lands included in the Kohler annexation are not "contiguous." The Town claims that since 1964, a "gerrymandered" or "corridor" annexation, whereby a private developer attempts to reach a targeted, non-contiguous property by a string of properties to a city, does not meet the statutory requirement of contiguity.

The Town's continued insistence that *Mt. Pleasant I* controls on the issue of contiguity in owner-petitioned annexations is without support. Although contiguity and the alleged arbitrariness in the boundaries or configuration of annexed property remain a proper consideration in a challenge to an owner-initiated annexation, the circumstances in which this factor may be invoked has been significantly circumscribed by decisions of the Wisconsin Supreme Court and Court of Appeals. Since *Mt. Pleasant I*, the Wisconsin Supreme Court and Court of Appeals have refused, absent egregious circumstances, to impute irregularities in the boundaries of an owner-petitioned annexation to a municipality so as to render an annexation unreasonable and arbitrary or non-contiguous under the rule of reason. Only in those circumstances when an annexation adds territory that represents an "island"—either in actuality or in essence—apart from the municipality's existing territory, can an annexation be rendered invalid on grounds that the municipality is not "contiguous" to the lands that are the target of an

annexation. See *Town of Lincoln v. City of Whitehall*, 2018 WI App. 33, 382 Wis. 2d 112, 912 N.W.2d 403 review granted, 2018 WL 5269315.

The decision in *Mt. Pleasant I* has been so significantly limited that the Court of Appeals has questioned whether an owner-petitioned annexation can ever be rendered invalid on contiguousness grounds based on irregularities in the boundaries of the annexation. *Town of Campbell*, 2003 WI App. 247, ¶27. As observed by the Court of Appeals in *Town of Campbell*:

Town of Mt. Pleasant is a difficult case to harmonize with subsequent supreme court cases that recognize the right of petitioning property owners to include only their own properties and state that in such situations the annexing municipality is not charged with arbitrariness, as long as it is not a controlling influence.

Town of Campbell, 2003 WI App. 247, ¶27.

In *Town of Lincoln*, the Court of Appeals again questioned the viability of the contiguity requirement announced in *Mt. Pleasant I* in an owner-initiated annexation. *Town of Lincoln*, 2018 WI App. 33, ¶¶39, 47, fn. 7. In fact, the Court of Appeals requested clarification from the Wisconsin Supreme Court as to whether an owner-initiated annexation may be challenged on arbitrariness grounds due to the “exceptional shape” of the annexed territory. *Id.* The Court stated:

We acknowledge that in *Town of Campbell v. City of La Crosse*, 2003 WI App 247, 268 Wis. 2d 253, 673 N.W.2d 696, we expressed skepticism as to whether the general shape of the annexed territory remained susceptible to challenge in an owner-initiated annexation. *Id.*, ¶27 & n.7. Consequently, we called on our supreme court to clarify whether *Town of Mt. Pleasant v. City of Racine*, 24 Wis. 2d 41, 127 N.W.2d 757 (1964), remained valid given the subsequent case law. *Town of Campbell*, 268 Wis. 2d 253, ¶27 n.7. Nonetheless, despite our professed skepticism in *Town of Campbell*, we appear to have subsequently analyzed a direct annexation’s shape under the rule of reason in *Town of Baraboo v. Village of W. Baraboo*, 2005 WI App 96, ¶¶21-22, 283 Wis. 2d 479, 699 N.W.2d 610. We therefore assume an annexation of an “exceptional shape” may trigger further scrutiny for arbitrariness, but we renew our call for the supreme court to clarify the law in this area.

Id.

The general rule remains that irregularities in the boundaries of an owner-initiated annexation may not be imputed to an annexing municipality absent controlling influence by the municipality. The decisions of the Wisconsin Supreme Court and Court of Appeals recognize the right of petitioning property owners to include in their annexation only those properties which the owners deem necessary and in their best interests.

It is against the backdrop of the limited viability and applicability of *Mt. Pleasant I* in owner-initiated annexations that the Court must analyze whether the City's annexation of the Kohler Land violates the rule of reason on contiguity grounds. The Court concludes, as it did at the injunction stage in this action, that the City's annexation satisfies the contiguity requirement. By annexing the Kohler Land, the City did not in actuality or in essence create an island entirely separate and apart from the City's existing territory. The boundaries, size and shape of the annexation are not so egregious as to warrant invalidation of the annexation on contiguity grounds. The Town's claim that the City's Ordinance is invalid on contiguity grounds under *Mt. Pleasant I* is rejected.

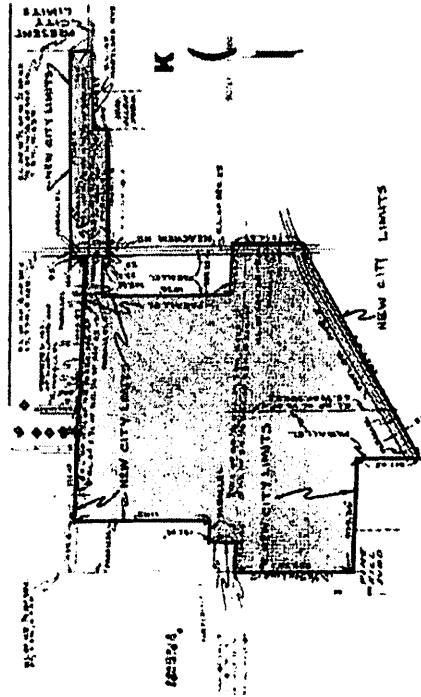
1. The Law on Contiguity.

a. The *Mt. Pleasant I* Decision.

The Town bases its challenge to the City's Ordinance on the Wisconsin Supreme Court's decision in *Mt. Pleasant I*. In *Mt. Pleasant I*, the issue before the Court was whether an ordinance of the City of Racine annexing certain lands in the Town of Mt. Pleasant was void because the proposed area to be annexed was not contiguous to the City of Racine under the statutory provisions then in effect for annexations. The annexation at issue was initiated, like the present case, by a private petitioner.

The petitioner in *Mt. Pleasant I* sought to have the City annex a 145 acre tract of non-

contiguous land. The landowner filed a petition for annexation with the City. In order to satisfy the statutory contiguity requirements and connect the tract of land to the City, the landowner included within its petition for annexation a “corridor” of land which connected the land to the City. A diagram of the *Mt. Pleasant I* annexation is shown below:



The corridor was approximately 1,705 feet long, and varying in width from approximately 306 feet to 152 feet. The corridor was 153 feet wide where it touched the southwest corner of the Racine city limits and also where it connected with the boundaries of the annexed area. When the annexation ordinance was enacted, there was no dedicated street in existence through the corridor and there were no city streets giving access to the corridor.²⁷

The trial court upheld the City’s ordinance. The trial court found the corridor contains a full width street and that the area within the corridor contained or would provide all of the

²⁷The main portion of the annexed property was platted for 328 residential lots. Prior to the annexation, the town had entered into a contract with the city providing for sewage disposal. The town had also received authorization to construct water public service to the area with water supplied by the city. The Town maintained a police force, was part of a school district and had an agreement for fire protection with the city and an adjacent village.

necessary services to the entire annexed area. Likewise, the trial court determined that the corridor provided a natural and practical connection whereby the area as a whole may be developed as an integral and homogeneous part of the city of Racine. Finally, the trial court determined that the city has a need for additional residential and shopping areas to provide for its expanding population. The trial court concluded that the annexation satisfied the statutory requirements, that the tract in question is contiguous to the city of Racine and that the tract is reasonably suitable or adaptable to city uses and needs.

On appeal, the Wisconsin Supreme Court reversed the trial court's decision, holding that the annexed area was not "contiguous" to the City under the annexation statute. In determining whether the annexation was "contiguous," the Mt. Pleasant Court developed a "rule of reason" standard to be applied to municipal annexations. *Id.*, at 46.²⁸ Under the "rule of reason standard," a circuit court is charged with determining whether the proposed boundary lines of an annexation are reasonable, i.e., they were not fixed arbitrarily, capriciously, or in the abuse of discretion. *Id.* at 46.

In developing the rule of reason standard, the Court recognized that the discretionary authority of a city to determine its own boundaries is not wholly without limitation. *Id.* at 45-46. The Court observed that the legislative intent of a municipal corporation is of a collective body and of compactness or contiguity. *Id.* The Court stated that an annexation which connects a municipality to an annexed area only by a corridor a "few feet wide" is inconsistent with this legislative intent:

Shoestring or gerrymander annexation is not a rare phenomenon. The tendency of subdividers to reach far out into the countryside for vacant land, and their desire to attach it to the city of services, is natural; however, this can lead to annexations which in reality are no more than

²⁸The dissent in *Mt. Pleasant I* observed that the majority engrafted the "rule of reason" requirement on whether the contiguity requirement is met under an annexation statute. *Id.*, at 48-49.

isolated areas connected by means of a technical strip a few feet wide. Such a result does not coincide with legislative intent, and tends to create crazy-quilt boundaries which are difficult for both city and town to administer.

Id.

Based on the narrow dimensions of the corridor connecting the City of Racine to Mt. Pleasant, the Court found that the City of Racine's annexation of the Mt. Pleasant lands was unreasonable and constituted an abuse of discretion. *Id.*, at 47. The Court concluded that the annexation did not satisfy the contiguity requirement in the annexation statute and remanded the case to the trial court with instructions to enter judgment declaring the City of Racine's annexation order void and of no effect. *Id.*

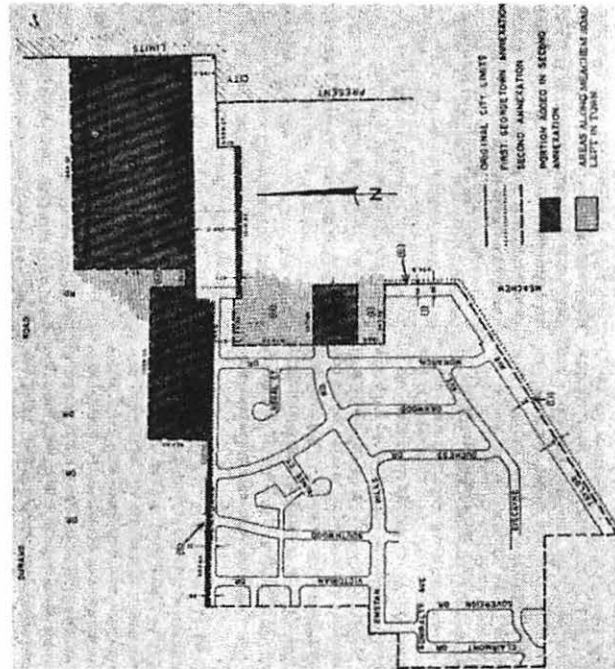
b. *Mt. Pleasant II* and its Progeny.

(1) *Mt. Pleasant II.*

Soon after *Mt. Pleasant I* was decided, the lands included in the proposed annexation were reconfigured by the landowner and made the subject of another petition for annexation. The concerns of the *Mt. Pleasant I* Court regarding the narrow corridor connecting the annexation were addressed by widening the annexed area. *Mt. Pleasant II*, 28 Wis. 2d at 521. The border of the annexation was expanded from 186 to 1,023 feet and the annexation was widened in various other areas as the annexation proceeded southbound toward the "balloon" or largest part of the annexation. *Id.* The changes to the initial annexation are summarized below:

The important changes from the first attempted annexation are: (1) The area covered by the annexation was increased from 144 to 172 acres. (2) The strip connecting the territory to the city was widened from 186 to 1,023 feet (see A on map). (3) All of Maryland (sic) Avenue was included instead of just one-half (see B). (4) A 424-by-1,059-foot area was added north of Maryland Avenue (see C). (5) A 17-foot strip south of Taylor Avenue was eliminated by making that avenue the southern boundary for the area (see D). (6) A 22-foot strip east of Meachem Road was removed by making that road the eastern boundary (See E.) (7) A 292-by-397-foot section lying west of Meachem was added (see F).

Id. As shown in the following diagram taken from *Mt. Pleasant II*, the annexation continued to include relatively narrow areas of land and also remained relatively irregular in its shape. The portions added to the annexation following *Mt. Pleasant I* are shaded in black:



The Town again challenged the annexation under the rule of reason. *Id.*, at 524. Although the Town no longer challenged whether the dimension of the border between the City of Racine and the annexation was sufficient, the Town asserted that the annexation was void because the boundary lines were drawn so as to “arbitrarily eliminate electors from participating in the annexation proceedings and without regard for city needs and purposes.” *Id.*

The trial court found that the City’s annexation continued to violate the rule of reason notwithstanding the change in the dimensions of the annexation. *Id.* The Court determined that the ordinance inappropriately excluded at least twenty electors and further that the boundary lines remained unreasonable and unrealistic. *Id.* at 525.

The Wisconsin Supreme Court reversed the trial court's decision and upheld the City's annexation ordinance. *Id.* at 529. The Court found that the Town failed to demonstrate that the exclusion of electors from the annexed area was arbitrary, capricious, or unreasonable.²⁹ *Id.*, at 526. The Court, likewise, found that the Town failed to demonstrate that the configuration of the annexed area was arbitrary or capricious. *Id.*, at 528-529. In reaching its decision, the Court determined that the annexation did not impermissibly create any "islands" of Town property. *Id.*

The Court in *Mt. Pleasant II* also declined to impute any irregularities in the shape and configuration of the annexation to the City of Racine. *Id.* The Court emphasized that the shape of the annexation was attributable to the private party petitioner which the City was bound to accept:

Second, in Fond du Lac the annexation proceedings were commenced by the city while in the present case the city was bound to accept the plan 'as is' since Racine Properties, Inc., was the petitioner.

Id.

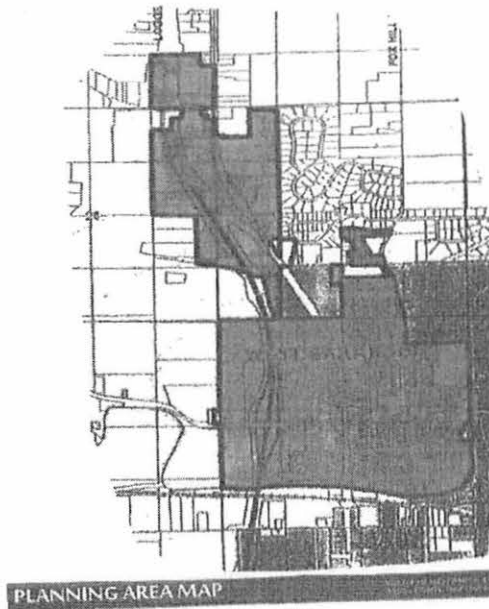
In upholding the configuration, the Court recognized that the annexation statute does not impose any requirements on the territory to be included in an annexation or require the boundaries to be established according to any pattern. *Id.* at 529. The Court emphasized that the boundaries of an owner initiated petition are discretionary to the petitioner. *Id.*

(2) *Town of Baraboo.*

The decision of the Court of Appeals in *Town of Baraboo*, 2005 WI App 96, ¶21 is further instructive. In *Town of Baraboo*, the north-south extension of an owner-initiated annexation by the Village of Baraboo was one and one-half times longer than the Village prior to the annexation. The annexation was connected to the Village "by a sliver of land just over 200

²⁹The Court noted that the trial court impermissibly shifted the burden of proof to the City once the annexation was attacked as being unreasonable by requiring the City to demonstrate that there was a "sound municipal reason" for the exclusion of each and every piece of property not covered by the annexation. *Id.*

feet wide, at its southern tip.” The town brought suit against the Village to have the annexation ordinance declared invalid. The town contended that the annexation at issue constituted an impermissible “gerrymandered” or “crazy quilt” municipal boundary. *Town of Baraboo*, 2005 WI App 96, ¶22. The annexed area appeared as shown below:



Source: Village of Baraboo's website; see also City's Brief in Opposition to the Town's Motion for a Temporary Injunction, p. 20.

On appeal from the circuit court's grant of summary judgment in favor of the Village, the Court of Appeals rejected the town's claim that the configuration of the annexation was invalid under *Mt. Pleasant I* and concluded that the boundaries and shape of the annexation did not violate the rule of reason. *Id.*, ¶23. The court found that although the annexation created an “arm like” extension of the northern boundary of the Village of Baraboo, the annexation was not a “shoestring” or “balloon on a stick” annexation “whereby the Village relied solely on a highway right-of-way to ‘capture’ a distant prized parcel.” *Id.* The court emphasized that the annexation consisted of parcels flanking both sides of a highway corridor whose owners sought

annexation and that the corridor in question had experienced increased traffic flow and development pressure in recent years. *Id.* The court further emphasized that the annexation allowed the Village to plan for orderly commercial and industrial development served by appropriate municipal services. *Id.*

The court concluded that under the facts before it, there was no reason to deviate from the general rule that owner-initiated petitions should not be invalidated based on the arbitrary or irregular shape of the annexation:

As in *Town of Campbell*, we do not find the present annexation to be of a kind that removes it from the “general rule” that owner-petitioned annexation should not be invalidated under the first component of the rule of reason. *See Town of Campbell*, 268 Wis.2d 253, ¶ 27, 673 N.W.2d 696 (concluding that it is “the better course to follow” more recent supreme court analysis of the issue as opposed to that in *Town of Mt. Pleasant*).

Id.

c. The Most Recent Statement of the Law: The *Town of Lincoln* Decision.

The requirements to satisfy the statutory contiguity requirement in a private party annexation were recently addressed by the Court of Appeals in *Town of Lincoln*, 2018 WI App. 33.³⁰ In *Town of Lincoln*, the ordinance at issue involved a “direct annexation by unanimous approval” under Wis. Stat. § 66.0217. The annexation was initiated by Whitehall Sand and Rail (“Whitehall Sand”). Whitehall Sand worked with property owners in the area and determined the properties to be included in the annexation petition.

Following the filing of the petition, the City’s Mayor questioned the lands included in the petition because he believed that the boundaries created an impermissible island. Thereafter,

³⁰As noted above, the Wisconsin Supreme Court accepted a petition for review of the Court of Appeals’ decision in *Town of Lincoln*. The petition was accepted by the Court in early September of 2018.

Whitehall Sand discussed the matter with property owners and revised the annexation to include additional properties so as to address the Mayor's concern.

The annexation was ultimately made up of four phases. Phase one consisted of approximately 277 acres extending northward from the City's northern boundary, where the annexed territory and the City shared a border of approximately three-quarters of one mile. Phase two consisted of 292 acres, arranged in a ribbon approximately one-fourth mile wide, extending northwesterly from the northwestern corner of the phase one territory. Phase three consisted of approximately 380 acres, connected to phase two at its southern edge for approximately one-fourth mile before expanding both to the north and to the west. Finally, phase four consisted of approximately 300 acres located to the west of phase three. Phases three and four shared a boundary of approximately one-half mile.

The Town brought an action for declaratory relief against the City to have the annexation ordinance invalidated on the grounds, among others, that the annexed lands were not contiguous to the municipality as required by Wis. Stat. §§ 66.0217(2). The Town claimed that the annexation was not contiguous because the annexation constituted an impermissible "balloon on a string annexation" and the boundaries were "impermissibly gerrymandered." The Town further contended that the irregularities in the boundaries could be charged to the City because the City, not Whitehall Sand, established the properties included in the annexation.

The City moved for summary judgment dismissing the Town's claims that the annexation did not satisfy the statutory contiguity requirements.³¹ The circuit court granted the City's motion and dismissed the Town's complaint. In reaching its decision, the circuit court

³¹The Town asserted several other challenges to the annexation ordinance at issue. *Id.*, ¶¶8-10. The circuit court dismissed these challenges as being beyond the scope of judicial review of a direct annexation. *Id.*, ¶11. The Court of Appeals upheld the trial court's dismissal of the Town's claims with the exception of the contiguity requirement. *Id.*, ¶27.

determined that contiguity under Wis. Stat. § 66.0217 required only that the annexed territory was in physical contact with an existing City boundary. The Court found that the City and the annexed areas were in physical contact with each other and therefore dismissed the Town's claims.

The Court of Appeals subsequently affirmed the circuit court's decision. *Id.*, at ¶50. In reaching its decision, the Court reviewed the contiguity requirement and ruled, contrary to the circuit court, that a finding of statutory contiguity requires more than physical contact between a municipality and the annexed territory. *Id.*, at ¶30. The Court determined that "contiguity" also requires a finding that the boundaries and configuration of the annexed territory in relation to the existing municipal boundaries are not "arbitrary under the first prong of the rule of reason." *Id.*, citing *Mt. Pleasant I*, 24 Wis. 2d at 45–46.

As to the first requirement for statutory contiguity, the Court observed that there is no single definition of the term "contiguity" in Wis. Stat. § 66.0217. *Id.*, ¶32. The Court found that under Wisconsin Supreme Court decisions, the trend was to "require at a minimum some significant degree of physical contact between the properties in question." *Id.*, quoting *Town of Delevan v. City of Delevan*, 176 Wis. 2d 516, 528, 500 N.W.2d 268 (1993). The Court observed, however, that the absence of physical contact between two properties does not necessarily preclude a finding of statutory contiguity. *Id.* The Court noted that the Wisconsin Supreme Court found statutory contiguity despite a twenty-three foot gap between the municipality and the annexed properties *Town of Lyons v. Lake Geneva*, 56 Wis. 2d 331, 335-336, 202 N.W.2d 228 (1972) and despite a 400 foot stretch of water which divided the municipality from the annexed lands in *Town of Delevan*. *Id.*, ¶33.

The Court held there are two circumstances in which a town may challenge the

boundaries of an annexation on contiguity. The first circumstance is where the annexing municipality is one of the petitioning landowners or where the municipality is shown to be the true controlling influence in selecting the boundaries for an annexation. *Id.*, ¶39. The Court observed that “influencing” in the context of an annexation, means more than providing mere technical assistance or recommendations to the petitioners. *Id.* “Influencing,” the Court determined, refers to conduct by which the “annexing authority dominates the petitioners so as to have effectively selected the boundaries” of the annexation. *Id.*

The second circumstance is when boundaries of the annexation are of an “exceptional shape” demonstrating shoestring, gerrymandered or crazy quilt municipal boundaries. *Id.* The Court recognized that a Town may challenge contiguity in this circumstance even when a private landowner initiates the annexation and sets the boundaries for the lands to be annexed. *Id.*

The Court ruled, however, that a Town’s ability to challenge an ordinance based on the boundaries of a private party petition is limited to only the most egregious situations in which the land connecting the municipality to the target of the annexation is so narrow that the target of the annexation represents an “island”—either in actuality or in essence—apart from the municipality’s existing territory. *Id.*, ¶¶39, 46-47. Mere irregularities in shape or the presence of an “arm-like extension” from the municipal boundary are insufficient, in and of themselves, to invalidate an annexation on grounds of arbitrariness. *Id.*, ¶46. The Court explained:

To elaborate, our understanding of existing law is that, to the extent an arbitrariness/exceptional shape analysis still applies to owner-initiated annexations, *see supra* n.7, the analysis is designed to protect against only the most egregious configurations. Specifically, annexations cannot add territory that represents an “island”—either in actuality or in essence—apart from the municipality’s existing territory. *See, e.g., Town of Mt. Pleasant*, 24 Wis. 2d at 46, 127 N.W.2d 757 (discussing the need to avoid “annexations which in reality are no more than isolated areas connected by means of a technical strip a few feet wide”). *All of the various, colorful metaphors used to describe what constitutes an arbitrary configuration seem concerned with this type of extreme result.*

So long as no part of the annexed territory is so narrow as to effectively create such an island, the petitioners' choice of boundaries is not unreasonable.

Id., ¶47 (emphasis added).

Applying the contiguity standards to the case before it, the Court first held that the annexation at issue in *Town of Lincoln* satisfied the statutory physical contiguity standard. *Id.*, ¶34. The Court found that the connection point between the annexed lands and Whitehall Sand in Phase 1, which was three-quarters of one mile, constituted a “significant degree of physical contact” so as to satisfy the contiguity requirement. *Id.* The Court noted that the connection point in Phase 1 gave “physical contiguity to the entire annexed area.” *Id.*

The Court next found there was no evidence in the record that the Whitehall had any involvement in, or influence over, setting the boundaries of the annexation such that irregularities in the annexation could be imputed to Whitehall Sand. *Id.*, ¶43. The Court determined that the mayor’s advice to Whitehall Sand regarding the legality of the boundaries selected by the private landowner did not constitute “influence” over the selection of the boundaries such that Whitehall could be charged with any arbitrary action in drawing of the boundary lines. *Id.* The Court reasoned that a municipality’s provision of technical assistance or suggestion of land to be included in an annexation to comply with legal requirements does not, as a matter of law, rise to the level of influence required to impute the boundaries selected to the City. *Id.*

Finally, the Court held that the annexation was not of an “exceptional shape” so as to render the boundaries arbitrary and in violation of the contiguity requirement. *Id.*, ¶46. The Court initially determined that the boundaries of the annexation did not create a gerrymandered island nor was the annexation of a “crazy quilt” configuration.” *Id.*

The Court likewise found that the subject annexation did not constitute an impermissible

“balloon on a string.” *Id.*, ¶48. In so finding, the Court compared the configuration of subject annexation with the shape of the annexation in *Mt. Pleasant I.* *Id.*, ¶48. The Court observed that the 145 acre target of the annexation in *Mt. Pleasant I* was connected to the city by a long, narrow corridor or “string” of approximately 1700 feet in length that varied in width between 150 and 300 feet with its narrowest point where the annexed territory connected to the municipality. *Id.* In contrast, the Court found that the “balloon” or target of the Whitehall Sand annexation was 300 acres and was connected to Whitehall by lands which totaled nearly 950 acres. *Id.* The narrowest point of the annexation was over 1,000 feet and was part of a 300 acre parcel in Phase 2 of the annexation. *Id.*, ¶49. Based on its analysis, the Court concluded that the Whitehall Sand annexation, unlike the annexed lands in *Mt. Pleasant I*, did not constitute a “shoestring configuration” whereby the annexed territory included “isolated areas connected by means of a technical strip a few feet wide.” *Id.* ³²

2. The City’s Annexation Satisfies the Contiguity Requirement As Established under the *Town of Lincoln* Decision.

a. There Is a Significant Degree of Contact Between the City and the Lands Which Are the Subject of the Petition.

In the present case, the connection point between the City and the annexed lands unquestionably meets the contiguity requirement in Wis. Stat. § 66.0217(3). The border between the City and the annexed areas is in excess of 200 yards. The contact area plainly constitutes a “significant degree of physical contact” between the City and the annexed properties. *Town of Delevan*, 176 Wis. 2d at 528. It also most certainly meets the expanded definition of “contiguous” adopted by the Court in *Town of Lyons*. As such, the first prong of the “contiguity” test set forth in the *Town of Lincoln* is satisfied in this case.

³²The Court further observed that there was no evidence that the “string” territory in the annexation at issue was included merely as a means of reaching the alleged “balloon territory.” *Id.* The evidence showed that all phases of the annexed territory were going to be used for mining operations. *Id.*

b. The City Did Not Influence Selection of the Annexation Boundaries.

The second part of the *Town of Lincoln* test for contiguity is whether there is evidence that the City influenced selection of the boundaries for the annexation such that any irregularities may be imputed to the City. As discussed at length above, there is absolutely no evidence that the City had any involvement in, or influence over, setting the boundaries of the annexation. As a result, there is no basis to impute any irregularities in the boundaries of the annexation to the City. The second prong of the *Town of Lincoln* test has been satisfied.

c. The Configuration of the Annexation Satisfies the Contiguity Requirement for an Owner Petitioned Annexation.

The annexation further meets the contiguity standard in *Town of Lincoln*. There is no part of the annexed territory that is so narrow that the target of the annexation, i.e., the Kohler Land, represents an “island”—either in actuality or in essence—apart from the City. Stated differently, the City, through the annexation, did not add an island, either in actuality or in essence, apart from the City’s existing territory. Likewise, the shape and configuration of the annexation is not so irregular so as to provide any basis to overturn the City’s Ordinance on contiguity grounds.

This conclusion is borne out by the overall dimension and shape of the annexed lands in the Kohler annexation. The connection point between the City and the annexed lands is in excess of two football fields in width. The connection point is more than three times the width of the connection point in the annexation upheld by the Court of Appeals in the *Town of Baraboo* and four times greater than width of the connection point at issue in *Mt. Pleasant I*.

The overall width of the lands in the Kohler annexation is substantially greater than *Mt. Pleasant I*. As the annexation proceeds south and east toward the Kohler Land from the

connection point, the annexation area ranges from 190 feet wide at its narrowest point, which is two-thirds of the widest point in the *Mt. Pleasant I* annexation, to 1,450 feet wide, which is almost five times the widest dimension of the *Mt. Pleasant I* annexation.

Viewed individually, the component parts of the lands connecting the Kohler Land to the City are also substantially larger and different in their composition from their counterparts in *Mt. Pleasant I*. The vertical arm attaching Kohler's annexation to the City, which is comprised of Parcels 1 through 3, is significantly larger in dimension than any aspect of the corridor in *Mt. Pleasant I*. Parcel 1 of the Kohler annexation, which is part of the Riverdale golf course, is over 19 acres in size. Parcels 2 and 3, which are owned by the City, combined are over 29 acres. The Kohler annexation is in stark contrast to the extremely narrow and long corridor in *Mt. Pleasant I* which measured which measured 1,705 feet in length and varied in width from approximately 152 feet to approximately 306 feet.

Moving beyond the arm in the Kohler annexation and traveling south and east toward the Kohler Land, there is no segment of the annexation which can reasonably be described as a "technical strip a few feet wide" which the Court in *Mt. Pleasant I* found objectionable or which is so narrow so as to add an island apart from the City. While smaller "out lots" and "rights of way" are incorporated into the Kohler annexation in areas such as parcels 11 through 15 and 17 through 25, these parcels are bordered by additional and larger parcels of land which are included in the annexed lands. The combination of the parcels results in a significantly larger overall territory.

The overall shape and appearance of the Kohler annexation is likewise not so arbitrary or unreasonable that it can or should be invalidated. The configuration of the Kohler annexation is similar in shape and dimension to the annexation the Wisconsin Supreme Court upheld in *Mt.*

Pleasant II. Like the *Mt. Pleasant II* annexation, the Kohler annexation consists of an “arm” of land which proceeds in a southbound direction from the City. The annexation then moves to the east and south where it eventually connected with the annexation “target”, i.e., the Kohler Land. The parcels included in the Kohler annexation, while varying in dimension, are substantial in dimension and similar to the annexation approved by the Wisconsin Supreme Court in *Mt. Pleasant II*.

The character and utility of the properties connecting the City to the Kohler Land are also significantly different than the properties in the corridor connecting Mount Pleasant to the target of the annexation in *Mt. Pleasant I*. The corridor in *Mt. Pleasant I* did not have an identified current or future purpose. The corridor did not have a dedicated street within it and no city streets provided access to it. The corridor’s only identified value or purpose was to serve as the “string” connecting Mount Pleasant to the target of the annexation.

The parcels included in the Kohler annexation have far greater utility and purpose and are akin to those lands upheld by the Court of Appeals in *Town of Baraboo*. Parcels 2 and 3 of the “arm” of the Kohler annexation were purchased by the City prior to the annexation for the express purpose of the development of single family residences. Parcel 2, the former Poth Farm property, exceeds 19 acres in size and is capable of accommodating 110 single family residences as well as a small park. Parcel 1, which is also in the arm, is part of the Riverdale golf course. The balance of the land from Parcel 3 of the annexation to the Kohler Land is likewise developed or capable of being developed. The land includes parcels with existing single family residences, undeveloped subdivision parcels and segments of the Riverdale golf course. The City has a need to annex these properties and the Kohler annexation facilitates the orderly development of the City as envisioned in the City’s 2000 and 2011 Comprehensive Plans.

The *Mt. Pleasant II*, *Town of Baraboo* and *Town of Lincoln* mandate upholding the City's Ordinance and annexation of the Kohler Land in this case. The City's annexation of the Kohler Land does not create in essence or actuality an island. Likewise the presence of an "arm like" extension in the annexation and the somewhat irregular shape of the annexation are insufficient, in and of themselves, to invalidate the annexation. The lands included in the City's annexation are substantial in dimension and are significantly different than the narrow corridor which the Wisconsin Supreme Court invalidated in *Mt. Pleasant I*.

The Town's repeated insistence throughout this case and in its post-trial brief that the Kohler annexation is factually "indistinguishable" from the annexation overturned in *Mt. Pleasant I* are unsustainable. There is no basis to overturn the City's Ordinance annexing the Kohler Land on contiguity grounds.

In its post-trial brief the Town does not discuss in any meaningful way or distinguish the decisions which substantially limit the applicability of the *Mt. Pleasant I* decision in owner-petitioned annexations. The Town's post-trial brief does not even mention the 2018 Court of Appeals decision in the *Town of Lincoln*, which, similar to the decades of decisions before it, questions not only the applicability of *Mt. Pleasant I* to an owner initiated annexation but the viability of *Mt. Pleasant I* in owner initiated annexations. The Town also does not reference or in any way attempt to distinguish the *Town of Baraboo* or *Mt. Pleasant II* decisions which support the validity of the Kohler annexation.

The Town's remaining arguments in its post-trial brief for invalidating the annexation on contiguity grounds similarly provide no basis in law or in fact to overturn the City's Ordinance. The Town first argues that the Kohler annexation is not contiguous to the City because "Kohler built an annexation string" solely for the purpose of connecting the Kohler Land to the City. The

Town claims, without any supporting authority, that any time a private property owner such as Kohler files a petition for annexation in which the target land is connected by a “corridor” of land, the annexation violates the contiguity requirement:

Regardless of the label, however, the rationale is the same. “Contiguity is not satisfied when a private party targets non-contiguous land for annexation and creates a corridor of land for the purpose of “connecting” to a city or its services.

Town Post-Trial Brief, p. 27.

The Town’s position is unsupported in Wisconsin law. There is nothing in Wisconsin statutes or the common law which prevents a landowner seeking annexation from designing the boundaries of an annexation to achieve a physical connection between the target of the annexation and a municipality. The annexation statute, Wis. Stat. § 66.217 *et. seq.* allows private property owners to pursue petitions for annexation with a municipality. In so doing, Wis. Stat. § 66.217 does not does not control or restrict how a private petitioner designs the boundaries of the lands connecting the target of an annexation to a municipality. The statutory language only requires that the municipality is contiguous to the land to be annexed. *Wis. Stat. § 66.217.*

Likewise, Wisconsin courts do not prohibit landowners from designing the boundaries of an annexation to connect the target of an annexation to a municipality. In the decisions since *Mt. Pleasant I*, Wisconsin courts have given great deference to the desires of landowners to become part of a municipality. Private landowners are granted broad discretion in designing the boundaries of an annexation so as to ensure the success of an annexation petition. Private party petitioners are not required to include any specific amount of territory in a petition nor are they required to draw the boundaries according to any set pattern. *Mt. Pleasant II*, 28 Wis. 2d at 529. Private property owners are likewise under no obligation to include areas in an annexation which are of no concern to them and may design the boundaries so as to ensure the success of the

annexation. *Town of Campbell*, 2003 WI App. 247, ¶21; *Town of Pleasant Prairie*, 75 Wis. 2d at 342; *Town of Waukesha*, 58 Wis. 2d at 532.

Private party petitioners may, as Kohler did in this case, even include a portion of a parcel in an annexation while excluding the remainder of the parcel from the annexation. Again, as a private landowner, Kohler had the right to design the boundaries of the annexation as Kohler saw fit. As recognized by the Court of Appeals in the *Town of Lincoln*:

The Town also argues the annexation divides certain properties that were originally subject to a single legal description, such that those properties are now partly inside the annexed territory and partly outside the annexation boundaries. Yet, in a direct annexation by unanimous approval, such matters are left to the discretion of the petitioning landowners, who have the right to act in their best interests as they see them. *See Town of Campbell*, 268 Wis. 2d 253, ¶ 21, 673 N.W.2d 696. As such, their decision to include or exclude certain portions of their property does not per se demonstrate arbitrariness. *See Town of Baraboo*, 283 Wis. 2d 479, ¶¶ 21–22, 699 N.W.2d 610.

Town of Lincoln, 2018 WI App. 33, ¶46, fn. 8.

In its post-trial brief, the Town further suggests that Kohler's annexation should be scrutinized more carefully because the petition was a non-unanimous petition. *See Town Post-Trial Brief*, pp. 17, 23. The Town emphasizes that Kohler's annexation petition was supported by "only five" signatures. *Id.* The non-unanimous nature of the annexation is of no consequence to the validity of the annexation.

Section 66.0217(3) expressly recognizes the ability of a municipality to annex territory contiguous to a municipality based on a "direct annexation by one-half approval." The legislature, in crafting the language for direct annexation by one-half approval, did not impose any additional requirements on non-unanimous annexations. The statutory language for a non-unanimous direct annexation, like that of a unanimous direct annexation, requires only that the land to be annexed be "contiguous." *See Wis. Stat. §§ 66.0217(2), (3).*

Wisconsin courts also do not distinguish between unanimous and non-unanimous owner-initiated in reviewing annexations under the rule of reason. *Town of Pleasant Prairie*, 75 Wis.2d at 341-342. In *Town of Pleasant Prairie*, the Wisconsin Supreme Court upheld the right of a landowner in a non-unanimous direct annexation to design an annexation as the landowner saw fit notwithstanding the presence of dissenting landowners included in the properties to be annexed. *Id.* at 342. The Court found that where direct annexation proceedings are initiated by a property owner in a non-unanimous annexation, any irregularities or arbitrary action in drawing the boundary lines cannot be imputed to the annexing municipality despite the presence of dissenting landowners. *Id.*, at 339-340. In finding that the existence of objecting landowners does not provide a basis to invalidate an annexation, the Court stated:

The mere existence of objections to annexation among some affected landowners does not invalidate the annexation. Where no electors reside on the land to be annexed, the legislature has provided that annexation may be accomplished on the basis of a petition signed by the owners of half the land in area or half the real estate in assessed value. Sec. 66.021(2)(a)2, Stats. Where all landowners (and electors if any) are in favor of annexation and sign the petition, the special streamlined procedure created by sec. 66.021(12) may be employed. It is implicit in these provisions that under sec. 66.021(2)(a) the property of minority landowners may be annexed without their acquiescence. The legislature would not have made separate provision for the case of annexation by unanimous approval if it were intended that unanimous approval be required where annexation is sought under the general provisions of sec. 66.021(2), Stats. As we recognized in the *Town of Madison* Case, majority rule may be a hardship upon minority landowners. However, the statute is clear and unambiguous in requiring this result. If a different result is to be achieved the remedy lies with the legislature, not with the courts.

Id. at 342-343.

In the present case, the presence of landowners who do not support the annexation does not provide any legal basis to invalidate it. Kohler had the right, as the property owner did in *Town of Pleasant Prairie*, to avail itself of the provisions in Wis. Stat. § 66.0217(3) which permit “direct annexation by one-half approval.”

In sum, the Town has not demonstrated anything about the boundaries of the Kohler annexation which would warrant invalidating the annexation on contiguity grounds. The Town has not shown that any portion of the lands between the City and the Kohler Land are so “egregious” and narrow so as to render the Kohler Land, either in actuality or in essence, an island apart from the City’s existing territory. Likewise, the Town has not pointed to anything in terms of the shape or size of the annexation which supports any claim that the annexation is invalid. The Town’s insistence that *Mt. Pleasant I* controls in this case is legally and factually unsupported. As in *Town of Baraboo*, this Court finds nothing about the City’s Ordinance annexing the Kohler Land which supports deviating from the general rule that irregularities in an owner-initiated petition cannot be imputed to the City under the rule of reason. The Kohler annexation satisfies the contiguity requirement. The Court upholds the City’s ordinance.

D. The City and Kohler Demonstrated a Present or Demonstrable Future Need for the Annexed Property.

In reviewing an annexation, the rule of reason requires the court to consider whether the City has some reasonable present or demonstrable future need for the annexed territory. *Town of Pleasant Prairie*, 75 Wis. 2d at 334. As a corollary to this requirement, an annexation must be reasonably suitable or adaptable to City needs. *Id.*

The need requirement furthers public policy favoring orderly growth of urban areas by preventing irrational and arbitrary annexation of territory. *Town of Sugar Creek v. City of Elkhorn*, 231 Wis. 2d 473, 483, 605 N.W.2d 274 (Ct. App. 1999). When a municipality initiates the annexation proceeding, the factors deemed relevant to establishing need must be scrutinized closely by the court. *Id.* Where, however, a property owner such as Kohler initiates an annexation proceeding, courts must be responsive to the desire of a property owner to be located in a particular municipality. *Id.* In cases involving direct annexation initiated by a private

property owner, the court is required to consider factors in the need analysis including applicable zoning ordinances, development goals, and available services. *Id.*

To sustain the validity of an annexation the annexing municipality need not have a pressing, imperative need for the territory. *Town of Pleasant Prairie*, 75 Wis. 2d at 334. A showing of a reasonable need is sufficient to sustain annexation. *Id.* In *Town of Pleasant Prairie*, the Court provided the following non-exclusive list of factors which are relevant to the question of reasonable need:

- the necessity for reasonable and orderly plans for municipal development;
- an increase in population and the existence of growth overflowing existing boundaries;
- a need for additional area for industrial or residential construction to accommodate present and reasonably anticipated future growth;
- extension of police, fire, sewer and other services to a substantial number of residents of adjacent areas;
- and the avoidance of pollution problems that might result from reliance on septic tanks in developing the annexed area.

Id., at 335-336.

In *Town of Sugar Creek*, the Court of Appeals held that a City's desire to expand its zone of economic interest as relevant to determining reasonable need.³³ *Town of Sugar Creek*, 231 Wis. 2d at 482-483. The factors which the Court recognized as supporting a municipality's zone of economic interest include future benefits to a city; the necessity for sensible and systematic plans for urban development; the need for more land to accommodate present and future industrial development; commercial or residential construction; and the goals for the development of the annexed parcel as all supporting reasonable need. *Id.* In recognizing the

³³In *Town of Sugar Creek*, the Court found that the list of factors relevant to reasonable need identified by the Court in *Town of Pleasant Prairie* was not all inclusive. *Id.*

zone of economic interest as a need supporting municipal annexation, the Court in *Town of Sugar Creek* approved the following testimony from the city's expert:

[C]ities have a need and in a sense they also have an obligation to their residents to enhance and protect the economic growth and social well-being of the community, and that economic well-being in particular rests on the economic base, activities in the communities. By economic base, we're talking about the basic industries and manufacturing institutions that bring jobs and economic money into the committee [sic]. In this case we have really two situations reverting economic base. We have both the existing economic base represented by the Mann Brothers and other ongoing business. We also have the potential for additional economic base activities that's implied by the likely expansion of economic activity along the [state trunk highways] 12-67 aerial [sic]....

This is fairly well-known in the area but when you have an economic base activity; it helps the community in several ways. It's not just the taxes that it pays, it's the...salaries and wages it pays to its employees that support local businesses. It's the direct transfer of funds to other businesses in the area that they may use and the multiplier of all of those effects. So from the standpoint of the City's need to protect their current and future economic needs, the annexation is needed. It's also needed not just for the existing activities, but for the potential future activities along, ah, that highway corridor.

Id. at 481.

In cases of direct annexation, a property owner's need may be sufficient, in and of itself, to meet the need factor under the rule of reason. *Town of Pleasant Prairie*, 75 Wis. 2d at 334; *Town of Campbell v. City of La Crosse*, 2003 WI App. 247, ¶30, 268 Wis. 2d 253, 673 N.W.2d 696; *Town of Lafayette v. City of Chippewa Falls*, 70 Wis.2d 610, 629-30, 235 N.W.2d 435 (1975). Accordingly, a property owner's need for municipal services that the annexing municipality alone can satisfy meets the need factor. *Town of Pleasant Prairie*, 75 Wis. 2d at 334; *Town of Campbell v. City of La Crosse*, 2003 WI App. 247, ¶30, 268 Wis. 2d 253, 673 N.W.2d 696; *Town of Lafayette*, 70 Wis.2d at 629-30. A property owner's desire to obtain a change of zoning on its land or to develop that land also satisfies the need requirement. *Town of Pleasant Prairie*, 75 Wis. 2d at 329. A property owner may seek annexation from a municipality

to pursue what is in the owner's best interests. *Id.* The Court in *Town of Pleasant Prairie* explained:

We find nothing in this state of affairs which would justify invalidating the annexation now before the court. The Town's assertion that the sole purpose behind the annexation was to obtain a change in zoning is misleading. The Ganglers' purpose was to develop their land, preferably for industrial use, which required zoning and municipal services not available in the Town. It cannot be doubted that a purpose to develop one's land is legitimate, and this court has stated that property owners may seek annexation in pursuit of their own perceived best interests. *Town of Lafayette v. City of Chippewa Falls*, 70 Wis.2d 610, 629, 630, 235 N.W.2d 435 (1975); *Town of Waukesha v. City of Waukesha*, 58 Wis.2d 525, 530, 206 N.W.2d 585 (1973). Cf. *Town of Madison v. City of Madison*, 12 Wis.2d 100, 106 N.W.2d 264 (1960), in which the court recognized that removal of the burden of town zoning ordinances on property in the town owned by the city of Madison was a legitimate goal of the annexation proceeding. We hold that a direct annexation not otherwise in conflict with the rule of reason is not invalidated because the petitioners are motivated by a desire to obtain a change in the zoning of their land.

Id. at 329-330 (internal citations omitted).

Applying the foregoing authorities to the present case, the Court finds that the "need" factor under the rule of reason has been satisfied. First, and foremost, the City showed a present or demonstrable future need for the annexed property. The most obvious example is in the expansion of residential housing. The City has historically lagged behind other municipalities in developing single family residential housing for those who moved to and/or work in the City. The City estimates it needs to add approximately 73 single family housing units per year to accommodate the demand.

The subject annexation allows the City to expand its available residential housing by bringing the Poth Farm, which the City purchased several years earlier for the express purpose of expanding its available residential housing, within the City's boundaries and jurisdiction. By means of the annexation, the City can now more efficiently and cost-effectively bring municipal services to the Poth Farm area which lowers the entry cost for residential development in the

area. Expansion into the Poth Farm area provides the City with an additional 110 single family residential sites. The City's need to expand residential housing to accommodate population growth and expand economic opportunity, alone, meets the reasonable need standard *Town of Pleasant Prairie*, 75 Wis. 2d at 335-336; *Town of Sugar Creek*, 231 Wis. 2d 473 at 482-483.

Likewise, residential development in the Poth farm land further increases the potential for the expansion of residential housing in other areas of the annexation. Expansion of municipal services into an area lowers the entry cost for other developers to move forward with residential development in other areas. The City's interests in expanding its population and to annex land to facilitate future population growth also satisfies the need requirement. *Id.*

Annexation further provides the City with the ability to achieve its long term economic planning and goals. In its 2000 and 2011 Comprehensive Plans, the City realized that its future viability depends upon its ability to capture a portion of the economic growth occurring outside of the City's boundaries. Like other municipalities, the City is faced with the cost of providing greater services, including those that benefit the entire region, while surrounding jurisdictions realize the region's growth and economic benefits.

The City's annexation of the lands in the Kohler petition allows the City to realize the economic benefits associated with the expansion of residential single family housing as well as Kohler's development and operation of a world class golf course. These economic benefits include substantially increased tax revenues, the creation of 227 new full time jobs, significant increased expenditures for local hospitality, retail, food and beverage and an \$87,000 increase in the school property tax base. The City's desire to effect a reasonable and orderly plan for municipal expansion, development and economic growth satisfy the need requirement under the rule of reason. *Id.*

The annexation further benefits the City's Water Utility by creating greater economies of scale in the operation of the existing water utility infrastructure. The expansion of the water utility in a southerly direction along 12th Street and 18th Street in the annexed lands increases residential and commercial users who, in turn, fund the operation of the water utility. This is also a recognized need for an annexation. *Id.*³⁴

Kohler also demonstrated need for annexation. Kohler owns a substantial portion of the lands subject to the annexation and has an economic interest in developing those lands into a world championship golf course. Like any other business, Kohler was in need of a partner to help it achieve its business and economic goals.

Kohler first sought to work with the Town of Wilson on the golf course development. Over time, however, Kohler's prospects of achieving approval of its application for a conditional use permit for the development of a golf course decreased significantly. The Town's residents, many of whom opposed the construction of a golf course in the Town, elected a majority to the Town Board that opposed the golf course development including the Town Board Chair, Ehmann, Stoelb and DesJardins.

Ehmann and Stoelb were affiliated with the Friends of the Black River which is a group that was organized to oppose the golf course and which filed lawsuits to stop the golf course from being built. Before being elected to the Board, Ehmann and Stoelb publicly opposed the golf course. They participated in campaigns, both written and oral, to inform the public as to why the Kohler's golf course development was not permitted under the Town's 20 year

³⁴In finding the City demonstrated a reasonable present or future need, the Court is not relying solely on the apparent ability of the City to provide services to the annexed area. *See City of Beloit v. Town of Beloit*, 47 Wis. 2d 377, 389-391, 177 N.W.2d 361 (1970). The court recognizes that because a particular city is better able to provide services does not, in and of itself, satisfy the rule of reason. *Id.* The record in this case, however, contains substantially more. The record demonstrates that the annexed land has been in the City's long range growth plans for future economic growth, expansion and development for several years. Moreover, the evidence in this case demonstrates that the City stands to gain economically by extending services to the annexed lands as the addition of lands offsets the cost of the City's water utility.

comprehensive plan as well as the Town's zoning code. DesJardins similarly opposed the golf course development and believed that a golf course development was inconsistent with the Town's Comprehensive Plan.

Ehmann appointed another opponent of the golf course development, Roger Miller, as Chair of the Town's Plan Commission. The Plan Commission was responsible for evaluating Kohler's application for a conditional use permit and making recommendations to the Board regarding the application.

In light of these developments, Kohler reasonably believed that it may never obtain Town Board approval of its proposed golf course development. If Kohler wanted to develop its land in the manner which Kohler believed was in its best interests, it needed a new partner which shared in its vision, a partner which it found in the City. Kohler had a right to move forward with the City, rather than the Town, and pursue its economic best interests and to proceed in a manner which would allow Kohler to develop its land as it chose to do. *Town of Pleasant Prairie*, 75 Wis. 2d at 329.

Kohler also had the right to pursue the annexation in order to seek zoning which would allow for construction of the golf course on the Kohler Land. *Id.*, at 329. Although the Town Board never formally rejected Kohler's application for a conditional use permit, the Town Board members historically opposed the golf course development as being inconsistent with the Town's Comprehensive Plan and its zoning ordinances. Kohler reasonably believed that Ehmann, Stoelb, DesJardins and Miller would not take a different approach when it came time to finally address and vote on Kohler's application for a conditional use permit.³⁵

³⁵Kohler was not bound to accept the Board members' later claims that they would approach voting on Kohler's application in an open and unbiased manner.

Kohler's other stated reasons for the annexation also satisfy the reasonable needs standard. Kohler expressed doubt over the Town's ability to provide needed services to the golf course development. While Kohler intended to provide water to its golf course through a high capacity well, Kohler determined that it would benefit from the availability of the City's municipal water source. Municipal water ensured that there would be sufficient water available for the club house and other buildings constructed in conjunction with the golf course development.

Likewise, the availability of municipal water for the City's full-time professional fire department, including local hydrants on the Kohler premises, provided Kohler with better fire protection for the buildings on the golf course development than the Town's volunteer fire department, which relied on transporting water to fire scenes. Kohler's desire for municipal water which the City could provide, but the Town could not, satisfies the need requirement. *Town of Campbell*, 2003 WI App. 247, ¶31.

Kohler's concern that reliance on a high capacity well to provide water for a golf course development in the Town would unreasonably expose Kohler to damage claims from local property owners further justifies Kohler's need for the annexation. Although the various experts opined that Kohler's operation of a high capacity well would not unreasonably drawdown the aquifer or jeopardize the availability of water for surrounding residents, Kohler nonetheless faced the risk that the Town's residents, many of whom opposed Kohler's construction of a golf course, would assert claims for damages to their wells due to Kohler's operation of its golf course. Kohler was entitled to consider the potential of future claims and the cost of litigating those claims. Kohler was further entitled to conclude, notwithstanding the opinions of the experts, that the risk of numerous claims and litigation from the Town's residents was

prohibitive and supported Kohler's need to petition for annexation with the City. Again, Kohler was entitled to act in its own best interests in pursuing annexation with the City. *Town of Pleasant Prairie*, 75 Wis. 2d at 329.

The Town seeks to challenge the credibility of the needs set forth by the City and Kohler. The Town asserts that the needs set forth by Kohler and the City were mere creations of Kohler and the City and not based on any real need on behalf of either party to the annexation. The Town's efforts to undercut the stated needs of Kohler and the City are unsupported.

The Court had the opportunity to observe Hoekstra from Kohler and Sokolowski and Pelishek as well as the other witnesses from the City, who provided the primary testimony at trial regarding the reasonable need factor and found these witnesses and their testimony to be credible. The witnesses did not appear in any way to be engaging in revisionist history to demonstrate need.

The testimony of the City witnesses as to need was corroborated by the historical factual record. The 2000 and 2011 Comprehensive Plans document the City's desire, long prior to Kohler's annexation petition, to pursue economic opportunities in the annexed lands including the development of single family housing on these lands.

Kohler's concerns regarding moving forward with a golf course in the town were based on events occurring contemporaneous to its application for a conditional use permit. The newly elected majority of the Town Board historically opposed Kohler's development of a golf course in the Town of Wilson. It is further unquestioned that the Town could not provide a municipal water source for either operation of the golf course or to protect Kohler's assets in the event of a fire, and had no plan to provide such a water source. Hoekstra's testimony regarding the negotiations between the City and the Town over a border agreement was also uncontested.

The Town's claim that the needs of Kohler and the City were manufactured for purposes of litigation is further contradicted by the terms of the proposed Pre-annexation Agreement which was negotiated *before* Kohler filed its Petition. The Agreement memorializes the City's and Kohler's respective wants and needs relative to the proposed annexation and corroborates the testimony of the witnesses.³⁶

The Town next challenges the City's stated needs for the scope of the lands included in the annexation. The Town asserts that if the City's need for the annexation was to increase the availability of single family residential housing, it would only "need" parcels 2 and 3 of the annexation as the remainder of the land is either already developed or cannot be developed.

The Town's challenge to the scope of the land included in the annexation is in conflict with the law on annexation in Wisconsin. In an owner initiated annexation such as Kohler's, the City cannot pick and choose the lands in the annexation it wants and does not want—the choice of the boundaries of an annexation and the lands included in an annexation are matters of discretion of the private petitioners. *Town of Baraboo*, 2005 WI App 96, ¶21 quoting *Town of Campbell*, 2003 WI App. 247, ¶21. The City had no choice other than to accept or reject the entire petition. *Town of Medary*, 88 Wis. 2d at 122-123.

The Town next claims that the City's failure to pursue annexation of the Kohler Land in the past bars the City from now claiming that it has a "need" to annex those properties. As established by the City's witnesses, however, annexation was not economically feasible before Kohler's petition. Sokolowski and other City witnesses testified that although the City never previously considered annexing the Kohler Land, the City always targeted the Land for future

³⁶ The Agreement is especially telling as to Kohler's need for municipal water: Kohler agreed as a condition of a permit for its development of a golf course to utilize municipal water in the club house and all other buildings on the development within three years and agreed to pay the cost of extending municipal water to its property.

expansion should the opportunity arise as reflected in the City's 2000 and 2011 Comprehensive plans. Kohler's petition for annexation provided just such an opportunity: by annexing the Kohler Land, the City could realize economic benefits, including the development of additional single family housing, the incorporation of a world championship golf course and the benefits of an increased tax base.

The Town likewise asserts that Kohler's need for the City's municipal water source is not a real, demonstrable need. In doing so, the Town points to the fact that the Town's and Kohler's experts found that Kohler's operation of a golf course on the Land utilizing a high capacity well would not unreasonably drawdown or damage the wells of neighboring residents.

Kohler was not bound to the opinions of water experts in determining how to proceed with the golf course development. Kohler operates a business and it does so in order to maximize its revenues and profits while minimizing the risk of losses. Kohler was, and is, entitled to look beyond the expert reports and determine that it did not want to take the risk of exposing itself to meritorious and potentially unmeritorious claims from neighboring property owners for damage to their wells. Kohler was also entitled to evaluate what would occur if the experts were wrong and its operation of a golf course did impact the aquifer and damage the wells of surrounding property owners. Moving forward with the annexation with the City provided Kohler with the opportunity to operate the golf course development on municipal water which could minimize the possibility of damage to the wells of surrounding properties as well as claims from surrounding property owners.

The same is true with respect to the Town's volunteer fire department. Kohler was entitled to determine that its development would be better served by a full-time professional firefighting service which has access to a municipal water source rather than a volunteer service

that relies on transporting water to a fire scene. In assessing its need, Kohler need not take the risk of moving forward with the Town's fire service notwithstanding the Town Fire Department's claims of competence. Kohler could reasonably conclude, as it did, that a municipal water service with hydrants located on the golf course development provides Kohler with the best protection for its assets. A direct annexation which is not otherwise in conflict with the rule of reason is not invalidated because the petitioners, such as Kohler, are motivated by a desire to obtain city sewer or water services. *Town of Sugar Creek*, 231 Wis. 2d at 485.

In the end, while the Town may question the City's expressed needs for the annexation, the Town has failed to meet its burden of proving the City has no reasonable present or future need for the annexation. The "reasonable need" prong of the rule of reason has been satisfied in this case.

E. There Are No Other Factors Present That Constitute an Abuse of Discretion.

In its post-trial brief, the Town sets forth a series of "facts" which, according to the Town, demonstrate that the City abused its discretion in enacting the annexation Ordinance.

Those "facts" are as follows:

- Sheboygan believes that any annexation adding land and tax revenue to Sheboygan should be supported;
- Sheboygan's employees began lobbying for this golf course development even before it knew what other properties would be included in the annexation (i.e., supported the golf course regardless of any other issues or needs);
- Sheboygan allowed Kohler to write and even dictate the advocacy position for the golf course, both to its officials and the DOA;
- Sheboygan knew this plan was "controversial" and could not be supported by references to its Comprehensive Plan, and asked Kohler to provide justifications for it;
- Sheboygan admitted the benefit of a golf course would benefit the entire region, regardless of whether it was controlled by the Town or

Sheboygan, but wanted the extra tax revenue generated by the development;

- Sheboygan had no concern about ripping this land use conditional use permit decision away from the Town and residents that surround the subject parcel; and
- Sheboygan, in expectation of a legal challenge, negotiated a Pre-Annexation Agreement for Kohler to pay the City to defend this annexation.

The Town concludes that the City abused its discretion by:

essentially “rubber stamping” the annexation and agreeing to support the golf course simply to get more money, with no regard for City of Sheboygan or Sheboygan County environmental ordinances, the Town’s jurisdiction, or even the plans for Kohler’s golf course (which it claims it still does not have). Not a single Sheboygan employee evaluated the relevant ordinances, or the judicial rule of reason, before recommending this annexation for the sole municipal desire to take money from the Town.

The Court finds no merit to the Town’s claims that the City abused its discretion in enacting the annexation Ordinance based on any of the facts or reasons outlined above. The Town does not cite one case or other legal authority that supports its contention that the City’s alleged acts, whether taken individually or collectively, constitute an abuse of discretion under Wisconsin annexation law. Speculative and unsupported contentions such as those advanced by the Town cannot overcome the presumed validity of the annexation ordinance. *Town of Sugar Creek*, 231 Wis. 2d at 485. For this reason alone, the Court denies the Town’s abuse of discretion claims.

The Court independently finds that none of the facts or reasons given by the Town show the City abused its discretion in enacting the Ordinance. Initially, many of the alleged “bad acts” which the Town identifies are taken out of context and unsupported by the factual record. The City did not, as the Town contends, “rubber stamp” the annexation without first investigating it and determining whether the annexation fit within the City’s Comprehensive Plans and needs.

To the contrary, City officials, including Sokolowski and Pelishek, conducted a thorough analysis of the petition before recommending it to the Common Council for adoption.

The best evidence of this is Sokolowski's May 30, 2017 memo recommending the annexation which was prepared *after* Kohler filed the petition for annexation and two months *prior* to the Common Council's vote to adopt the Ordinance. The memo reflects that the City was aware of the lands to be included in the annexation (Kohler's petition already had been filed); that the City analyzed how those lands fit within the City's plan for strategic economic growth, including the development of needed single family residences in the Poth Farm area; and how the annexation would economically benefit the City. The factors Sokolowski considered in the memo and the City's identified needs for the annexation are all, notwithstanding the Town's claims, legitimate considerations in establishing need for the annexation and do not, in any way, constitute an abuse of discretion. *Town of Pleasant Prairie*, 75 Wis. 2d at 335-336; *Town of Sugar Creek*, 231 Wis. 2d at 482-484.

The Town's assertion that the City abused its discretion by taking advantage of the economic and growth opportunities presented by Kohler's annexation is similarly without merit. The Court of Appeals in *Town of Sugar Creek* expressly recognized a municipality's desire to expand its zone of economic interest as a legitimate need to support an annexation. *Town of Sugar Creek*, 231 Wis. 2d at 482-483.

The Town's claim that the City abused its discretion by "ripping" the golf course opportunity from the Town is without merit. The Town does not cite to any supporting authority under Wisconsin law for the proposition that a city may not consider or act on a private party petition for annexation when the private party has a pending application for a conditional use permit with a town. Correspondingly, the Court is unaware of any case or other authority, and

the Town provides none, which holds that a town has a vested right to resolve a pending conditional use permit application before an applicant can pursue annexation with a municipality relative to the same lands.

The Court likewise finds no legal support to find an abuse of discretion in this case. Kohler determined in its business judgment that it wanted to pursue annexation with the City rather than move forward with the Town. This was well within Kohler's discretion and legal right to do under Wis. Stat. § 66.0217 as a private land owner. Likewise, there is nothing in the statutory scheme under Wis. Stat. § 66.0217 or common law decisions on annexation which holds the City could not proceed forward and consider Kohler's petition notwithstanding Kohler's pending application with the Town.

The Town's claim that the golf course development was taken from the Town is not factually supported. Other than hiring consultants to review Kohler's petition, the Town had not taken material steps to move forward on the application. The Town, in fact, had suspended action on Kohler's application. Moreover, the Town took the position that Kohler's application failed to meet the Town's requirements and that Kohler needed to provide further information before the Town could act on the application.

The Town's claim that Kohler acquired certain lands for purposes of pursuing annexation with the City does not invalidate the legality of the annexation. As referenced throughout this decision, Kohler had the right to design the annexation in a manner which was in its best interests and to include within the annexed lands only those lands which it deemed necessary and appropriate. The Town cites to no authority stating that Kohler could not acquire land to pursue an annexation or that the City could or did abuse its discretion in considering Kohler's Petition based upon the lands that were included in the Petition.

The efforts of City officials to work with Kohler in defining and crystallizing the opportunities offered by the annexation and to effectively present those opportunities to the Common Council likewise were legal and appropriate. The provision of technical assistance and recommendations to the petitioners in an annexation is permissible and does not constitute an abuse of discretion under the rule of reason. *Town of Campbell*, 2003 WI App. 247, ¶22.

The Town's claim that the City abused its discretion by entering a Pre-Annexation Development Agreement with Kohler in which Kohler agreed to indemnify the City for its attorney's fees in this litigation is unsupported. In *Town of Brockway v. City of Black River Falls*, 2005 WI App. 174, ¶¶18-42, 285 Wis. 2d 708, 702 N.W.2d 418, the Court of Appeals held that a pre-annexation agreement between a municipality and a petitioner does not constitute an unauthorized contractual delegation of governmental authority or otherwise violate the rule of reason.

Likewise, there is nothing about Kohler's agreement to indemnify the City for its attorney's fees in this action which runs afoul of the decision in the *Town of Brockway*. Kohler and the City anticipated various costs with the annexation, including the extension of water to the Kohler land. The parties negotiated terms into the pre-annexation agreement which shifted a portion of those costs from the City to Kohler. The attorney's fees provision was one of those provisions. As this was an owner-petitioned annexation, and Kohler designed the boundaries of the annexation, it made sense that the City would require Kohler to pay the City's costs of litigation, up to \$200,000. The City's decision to do so is not an abuse of discretion, but rather, a smart economic decision and one that saves taxpayer money.

The final piece of evidence which demonstrates the absence of any abuse of discretion or arbitrary action on the part of the City is the DOA's opinion finding the annexation to be in the

public's interest. Wisconsin courts have recognized that when an annexation is challenged on the ground that it is arbitrary and capricious, the DOA's position is evidence to be considered by the trial court in analyzing the proposed annexation. *See generally, City of Beloit v. Towns of Beloit, Turtle & Rock*, 47 Wis. 2d 377, 383-384, 177 N.W.2d 361 (1970); *Mt. Pleasant II*, 28 Wis. 2d at 527.

The DOA's opinion regarding the annexation supports the conclusion that the City did not abuse its discretion in enacting the Ordinance. The DOA rejected the Town's argument that the annexed territory was not contiguous to the City; determined that the proposed land use of the annexation territory for a golf course and the adjacent land to the north was "more homogeneous with the City than the Town"; and found that the City could provide municipal services such as sewer, water, police and fire protection and planning that the Town could not. The DOA concluded that the annexation was in the public interest.³⁷

The Town has failed to overcome the presumption of validity of the City's ordinance by demonstrating that the City engaged in other arbitrary conduct or misused its discretion under the rule of reason. The Town's challenge to the City's ordinance is denied.

VI. CONCLUSION

The Town failed to satisfy its burden of proving the City's Ordinance annexing the Kohler Land is invalid. The City's Ordinance complies with the statutory requirements of Wis. Stat. § 66.0217. The Ordinance further complies with the common law rule of reason and the contiguity requirement discussed in the *Town of Lincoln*. The annexed lands are contiguous to

³⁷In referencing the DOA's opinion, the Court is mindful of the recent decision of the Wisconsin Supreme Court in *Tetra Tech EC, Inc. v. Wisconsin Department of Revenue*, 2018 WI 75, 382 Wis. 2d 496, 914 N.W.2d 21 (2018) which held that an administrative agencies opinions and conclusions are entitled to no deference. To the extent that *Tetra Tech* applies to the DOA's analysis in this case, this Court's decision upholding the City's Ordinance is no way dependent on the DOA's findings—the DOA's decision is merely additional evidence supporting the Court's conclusion. The Court would uphold the City's Ordinance even if the DOA's opinion is disregarded in its entirety.

the City; any and all irregularities and exclusions in the boundary lines of the annexed property are not the result of arbitrariness; the City has shown reasonable present or demonstrable future need for the annexed property; and no other factors are present which constitute an abuse of discretion on the part of the City. Accordingly, the Town's action to have the Ordinance declared invalid is dismissed on the merits and with prejudice.

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Submitted for your information are the benchmark measurements for the Finance Department, for the period commencing January 1, 2018 and ending September 30, 2018.

REPORT PREPARED BY: Marty Halverson, Finance Director

REPORT DATE: November 26, 2018

MEETING DATE: November 26, 2018

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

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

BACKGROUND / ANALYSIS:

The benchmark measurements for the Finance Department for the period commencing January 1, 2018 and ending September 30, 2018 is presented for information and discussion.

STAFF COMMENTS:

Highlights of the report are as follows:

- Vendor checks issued have increased in comparison to 2017 but on pace with annual amounts for 2017 and 2018 goal.
- Reports for the third quarter were not distributed by the 15th of the month nor were reconciliations completed by the 20th of the month, largely due to the transition of finance directors. Report templates have been established for departments to be able to run them independently and finance will continue to support this transition.
- The 40 percent goal of taxes collected at financial institutions was not met, although the actual collections is at 37 percent, relatively unchanged from 2017.
- Rate of return on investments is performing below the LGIP currently. A meeting with the bank and investment team from WI Bank and Trust took place and will continue to review the investment strategy.
- The Board of Review convened in June with no changes to the assessment roll.

ACTION REQUESTED:

For informational purposes only.

ATTACHMENTS:

- I. Finance and Assessing benchmark measurements.

FINANCE

Measurements	2016 Actual	Y-T-D 9/30/2017	2017 Actual	Y-T-D 9/30/2018	2018 Goals
<u>Workload</u>					
Vendor checks issued	6,030	4,714	6,038	4,413	5,000
Accounts receivable invoices	682	492	1,223	961	1,250
Receipts processed	24,664	22,416	27,758	19,189	24,500
Journal entries posted	4,025	2,953	4,712	3,258	4,200
<u>Effectiveness</u>					
Percent of reports distributed by the 15th	0%	34%	50%	0%	50%
Percent of reconciliations completed by the 20th	0%	0%	25%	0%	50%
Percent of receipts processed within one business day	95%	94%	95%	92%	95%
<u>Efficiency</u>					
% of taxes collected at financial institutions	35%	38%	38%	37%	40%
<u>Effectiveness</u>					
Rate of Return on investment	1.53%	1.43%	1.38%	1.42%	1.50%
Basis points above LPIG	1.11%	.68%	.17%	-0.58%	.25%

ASSESSING

Measurements	2016 Actual	Y-T-D 9/30/2017	2017 Actual	Y-T-D 9/30/2018	2018 Goals
<u>Workload</u>					
Cases presented/cases upheld by Board of Review	0	0	0	0	5
<u>Efficiency</u>					
Cost of assessment per parcel	\$20.29	\$17.92	\$19.72	\$19.81	\$19.74
<u>Effectiveness</u>					
Assessment ratio	.9966	.9621	.9620	.9048	.9400