

**NOTICE OF SPECIAL MEETING
VILLAGE OF FOX POINT
VILLAGE BOARD MEETING**

**SCHWEMER HALL – MUNICIPAL BUILDING
7200 N. SANTA MONICA BLVD
FOX POINT, WI 53217**

**WEDNESDAY
July 16, 2025
7:00 P.M.**

NOTE: THE VILLAGE BOARD WILL BE MEETING IN PERSON AT VILLAGE HALL, WITH A REMOTE ATTENDANCE OPTION, PER THE HYBRID MEETING PROCEDURES FURTHER DESCRIBED IN SECTION 19-32 D. OF THE VILLAGE CODE. THIS MEETING IS OPEN TO ALL CITIZENS IN PERSON AT VILLAGE HALL, OR THROUGH THE ZOOM PARTICIPANT INFORMATION SHOWN BELOW, SUBJECT TO THE FOLLOWING: NO ASSURANCE IS PROVIDED TO THOSE GOVERNING BODY MEMBERS AND CITIZENS INTENDING TO ATTEND REMOTELY THAT THE TECHNOLOGY WILL PERFORM SUFFICIENTLY TO ALLOW FOR THEIR PARTICIPATION AND THE MEETING WILL PROCEED REGARDLESS. PUBLIC OFFICIALS AND CITIZENS WISHING TO ENSURE THEY CAN PARTICIPATE ARE ENCOURAGED TO ATTEND IN PERSON. CITIZENS ARE ENCOURAGED TO SUBMIT ANY COMMENTS IN WRITING IN ADVANCE OF THE MEETING TO THE ASSISTANT VILLAGE MANAGER AT kausman@villageoffoxpoint.com, HOWEVER THERE IS NO LARGER RIGHT TO COMMENT REMOTELY OR IN WRITING THAN IN PERSON.

Zoom Participant Information
<https://us02web.zoom.us/j/88633852083>
Meeting ID: 886 3385 2083
Dial: (312) 626-6799

AGENDA

- 1. Roll Call**
- 2. Consideration and Possible Action concerning an Ordinance to Repeal and Re-Create Section 112-4. C. and Create Section 112-4.5 of the Village of Fox Point Village Code Related to Creation of the Position of Acting Village Manager**

The Village Board will consider and may act on an Ordinance to create the position of Acting Village Manager.

- 3. Announcement of Appointment of Acting Village Manager, Subject to Village Board Confirmation**

If the Ordinance described above is adopted, the Village President may announce her appointment of an Acting Village Manager, subject to the confirmation of the Village Board.

- 4. Possible Closed Session (First)**

It is anticipated the Village Board will convene into closed session for the following reason(s):

- a.** Upon motion made, seconded and adopted by roll call vote, the Board will convene in closed session pursuant to Wisconsin Statutes Section 19.85(1)(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility; and (f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be

likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations; specifically for purposes of discussing matters pertaining to employment and sensitive personal matters involving the Village Manager. The Village Board may invite specific persons to attend the closed session, and if so, the persons invited will be announced prior to convening in closed session.

5. Reconvene into Open Session (First)

The Village Board will reconvene into open session and may take action on such matters as were discussed in closed session.

6. Possible Closed Session (Second)

It is anticipated the Village Board will convene into closed session for the following reason(s):

- a. Upon motion made, seconded and adopted by roll call vote, the Village Board will convene into closed session pursuant to Wisconsin Statutes Section 19.85(1)(c) for considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility; more specifically, to discuss and consider the possible confirmation, compensation and related terms applicable to the individual the Village President appointed as Acting Village Manager. The Village Board may invite specific persons to attend the closed session, and if so, the persons invited will be announced prior to convening in closed session.

7. Reconvene into Open Session (Second)

The Village Board will reconvene into open session and may take action on such matters as were discussed in closed session.

8. Possible Closed Session (Third)

It is anticipated the Village Board will convene into closed session for the following reason(s):

- a. Upon motion made, seconded and adopted by roll call vote, the Village Board will convene into closed session pursuant to Wisconsin Statute Section 19.85(1)(g), to confer with legal counsel for the government who is rendering oral or written advice concerning strategy to be adopted by the governing body with respect to litigation in which the body is involved; more specifically regarding the Milwaukee County Circuit Court case entitled "The Town Club v. Village of Fox Point". The Village Board may invite specific persons to attend the closed session, and if so, the persons invited will be announced prior to convening in closed session.

9. Reconvene into Open Session (Third)

The Village Board will reconvene into open session and may take action on such matters as were discussed in closed session.

10. Adjournment

Published and Posted July 15, 2025.

PLEASE NOTE:

Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aids. Also, upon reasonable notice, best efforts will be used to ensure that members of the public lacking access to the virtual meeting platform are provided alternative reasonable methods to attend. For additional information or to request these services, contact the Village Clerk at (414) 351-8900. "Persons requiring an interpreter or other assistance should contact the Village Clerk's office 72 hours prior to the meeting. Notice is hereby given that a majority any other board, commission or committee may be present at the meeting to gather information about a subject in which they are interested. This constitutes a meeting of any other board, commission or committee pursuant to State ex rel. Badke v. Greendale Village Bd., 173 Wis. 2d 553, 494 2d 408 (1993), and must be noticed as such, although said boards, commissions or committees will not take any formal action at this meeting."

ORDINANCE NO. _____

AN ORDINANCE TO REPEAL AND RE-CREATE SECTION 112-4. C.
AND CREATE SECTION 112-4.5 OF THE VILLAGE OF FOX POINT
VILLAGE CODE RELATED TO CREATION OF THE POSITION OF
ACTING VILLAGE MANAGER

WHEREAS, the Village of Fox Point Village Code addresses performance of the Village Manager's duties when the Village Manager is "temporarily unable or not available" to perform the duties, by Section 112-4.C.; and

WHEREAS, the Village of Fox Point Village Code addresses performance of the Village Manager's duties when the position of Village Manager is "vacant," by appointment of an Interim Village Manager, by Section 112-4.1; and

WHEREAS, the Village of Fox Point Village Code does not currently address how the duties of Village Manager are to be addressed when the current Village Manager's absence is potentially more substantial than "temporary unable or not available" but the position is not "vacant"; and

WHEREAS, the Village of Fox Point Village Board finds that when the Village President reasonably believes the absence of the Village Manager may extend longer than 2 weeks and circumstances warrant, the Village President should be empowered to appoint an Acting Village Manager to serve during the period of absence; and

WHEREAS, the Village Board of the Village of Fox Point finds that the creation of the position of Acting Village Manager is in the best interests of the health, safety and general welfare of Village of Fox Point, to ensure continuous provision of key management services.

NOW, THEREFORE, the Village Board of the Village of Fox Point, Milwaukee County, Wisconsin, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 112 of the Village of Fox Point Village Code entitled, "Village Manager," Section 112-4 entitled, "Assistant Village Manager," Subsection C is hereby repealed and re-created as follows:

C. Whenever the Village Manager is temporarily unable or not available to perform the duties of office because of illness, absence from the Village or for any other cause, such duties and powers shall be exercised by the Assistant Village Manager. If there is no Assistant Village Manager, or the Assistant Village Manager is also temporarily unable or not available to perform the duties of the Village Manager's office because of illness, absence from the Village or for any other cause, such duties and powers shall be exercised by the Village Department Head designated by the Village Manager. If there is no Assistant Village Manager, or the Assistant Village Manager is unable or not available to perform the duties of the Village Manager's office and the Village Manager has not designated a Village Department Head to exercise such duties and powers, they shall be exercised by the Village President. The delegations of authority described in this subsection C. automatically terminate upon the first to occur of the following: (1) return to service by the Village Manager; (2) commencement of employment of an Acting Village

Manager appointed pursuant to Section 112-4.5 of this Code; (3) commencement of employment of an Interim Village Manager appointed pursuant to Section 112-4.1 of this Code; (4) commencement of employment of a Village Manager appointed pursuant to § 112-1 of this Code.

SECTION 2: Chapter 112 of the Village of Fox Point Village Code entitled, "Village Manager," Section 112-4.5 entitled, "Acting Village Manager," is hereby created as follows:

§ 112.4.5 Acting Village Manager

There is hereby created the office of Acting Village Manager. An Acting Village Manager may be appointed by the Village President subject to confirmation of the Village Board, if the Village Manager is unable or not available to perform the duties of office and the Village ~~President Board~~ reasonably believes the ~~absence may exceed 2 weeks and that the circumstances warrant the appointment~~. The appointment shall be in writing with a copy to the Village Clerk. The Village Clerk shall promptly notify the ~~Village Board and~~ Village department heads. The Acting Village Manager shall have all powers and duties of the Village Manager as described in § 112-2 of this Code, subject to any limitations that the Village ~~President Board~~ may impose on the powers of the Acting Village Manager when making the appointment ~~or thereafter. If a Village employee is appointed, no additional compensation shall be paid for service as Acting Village Manager, if any, shall be set unless agreed upon by the Village Board. Otherwise, the compensation of the Acting Village Manager shall be fixed by the Village Board.~~ The appointment may be for a definite or an indefinite term, but shall be at will and subject to termination at any time by the majority of the Village Board present and voting. If not terminated earlier by action of the Village Board, the appointment shall automatically terminate upon the first to occur of the following: (1) authorized return to service by the Village Manager; (2) commencement of employment of an Interim Village Manager appointed pursuant to Section 112-4.1 of this Code; (3) commencement of employment of a Village Manager appointed pursuant to § 112-1 of this Code.

SECTION 3: SEVERABILITY

Several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 4: EFFECTIVE DATE

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this _____ day of _____, 2025.

Village of Fox Point

Christine Symchych, Village President

ATTEST:

Sara Bruckman, Village Clerk/Treasurer

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

THE TOWN CLUB,

Plaintiff,

v.

VILLAGE OF FOX POINT and
VILLAGE BOARD OF FOX POINT,
Defendants.

Case No. 2024-CV-4721

VILLAGE OF FOX POINT,

Plaintiff,

v.

THE TOWN CLUB,
Defendant.

Case No. 2024-CV-6078

Decision

This case comes before the Court because the Town Club (“Club”) has filed a complaint in certiorari. This complaint reviews the Village of Fox Point (Village) and the Village Board of Fox Point’s (“the Board”) conditions for the Town Club’s pickleball¹ courts. The Club believes the conditions for

¹ Pickleball, a paddle sport that combines elements of tennis, badminton, and table tennis, was invented in the United States in 1965, on Bainbridge Island, Washington. Since its introduction, the sport has steadily increased in popularity. In 2022, pickleball was named the official state sport of Washington. For four years in a row, 2021 through 2024, the sport was named the fastest-growing sport in the United States by the Sports and Fitness Industry Association. The 2024 report found that there were 19.8 million participants that year, a 311% growth since 2021. Pickleball is one word, not

the courts are too restrictive. Attorney Matthew O'Neill of *Fox, O'Neill & Shannon, S.C*, Milwaukee, Wisconsin represents the Petitioner. Attorney Remzy D. Bitar of *Municipal Law & Litigation Group, S.C*, Waukesha, Wisconsin represents the Village of Fox Point. Each party has submitted briefs, the last of which was filed on May 7, 2025.²

The first part of this written decision will set forth some facts. The second part will state the applicable law. Third, the Court will summarize the arguments. Finally, the Court will decide if the Club has shown that the restrictions are impermissible.

hyphenated, not capitalized, despite what Microsoft Word thinks. See www.allpickleball.com [last visited June 16, 2025].

² On September 4, 2024, the Honorable Judge Brash issued a temporary injunction in the Village Zoning Enforcement Action, limiting pickleball activities at The Town Club as follows: • Pickleball activities shall only be allowed from May 1 to September 30; • The Town Club may host 1 pickleball mixer each month that pickleball activities are allowed with notice provided to the Village of Fox Point; • The Town Club may play their Tuesday Pickleball Leagues exclusively between 5:00 p.m. until 7:00 p.m.; and • The Town Club may engage in general pickleball activities from 9:00 a.m. until 12:00 p.m. on Fridays, Saturdays and Sundays.

Background Facts

The Club is a private club providing recreational events and is located at 7950 North Santa Monica Blvd., Fox Point, Wisconsin. (Doc. 3:3). The Club has a set of three tennis courts, which have existed since the 1970s. (Doc. 3:4). Club members have played pickleball on these courts since 2018. In May 2023, the courts needed repair. (Doc. 3:5). The Club contacted the Village Building Inspector. The Inspector said that as long as the Club was not expanding the courts, the work would be allowed. In September 2023, the Club submitted a Building Permit Application. The Village advised the Club that it needed a conditional use permit for the courts under Section 745-20 of the Village ordinances.³

³§ 745-20: Institutional District “In the F Institutional District, no building or premises shall be used, nor shall any building be constructed or enlarged, and no exterior alterations shall be made to an existing building which is arranged, intended, or designed to be used for any purpose except in conformity with the following. . . .”

In February 2024, the Board reviewed the draft permit and added two conditions. (Doc. 3:6). The two conditions were the courts should still allow tennis and that the Club use sound reduction screens to reduce the sound of the courts by 50% when at full capacity. The Club agreed to these conditions. The Plan Commission recommended approval of the draft permit on April 1.

On May 14, the Board issued a conditional use permit to the club. The permit had many new conditions for the pickleball activities. These conditions included hours of operation, sound restraints, and times of the year people can use the courts. (Doc. 3:7). One of the biggest restrictions from the permit is a 50-decibel (dB) sound limit. (Doc. 3:8).

Standard of Review

One aggrieved by the denial or issuance of a conditional use permit may appeal that decision by certiorari. Wis. Stat. §§ 62.23(7)(de)(5), 62.23(7)(e)(10)a.2. The court may reverse or affirm, wholly or partly, or may modify, the decision. If necessary, the court may take evidence constituting part of the proceedings upon which the court makes its determination.

Courts must accord a presumption of correctness and validity to a municipality's decision, and judicial review is limited (*Id.* at ¶ 13). As part of its review, the court may consider four factors:

- (1) whether the municipality kept within its jurisdiction;
- (2) whether it acted according to law;

(3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and

(4) whether the evidence was such that the municipality might reasonably make the order or determination in question.

See State ex rel. Mitchell Ero v. Board of Review of City of Milwaukee, 74 Wis. 2d 268, 281-82, 246 N.W. 2d 521 (1976).

Under certiorari review, Wisconsin courts have repeatedly stated there is a presumption of correctness and validity to a municipality's decision. *Ottman v. Town of Primrose*, 2011 WI 18, ¶ 48, 322 Wis. 2d 3, 28, 796 N.W. 2d 411, 423. This standard is appropriate because it recognizes that locally elected officials are especially attuned to local concerns. (*Id.* at ¶ 51, 28, 423). Further, the court may not substitute its view of the evidence for that of the municipality. (*Id.* at ¶ 53,

28, 423). Finally, when weighing the evidence, a court should affirm the municipality's view of the evidence if "reasonable minds could arrive at the same conclusion" reached by the municipality. *Jackson v. Buchler*, 2010 WI 135, ¶ 39, 330 Wis. 2d 279, 295, 739 N.W. 2d 826, 834.

The decision should be upheld if it is supported by the substantial evidence in the record. "Substantial evidence does not mean a preponderance of the evidence. Rather, the test is whether, taking into account all the evidence in the record, 'reasonable minds could arrive at the same conclusion as the [municipality].' " *Madison Gas & Elec. Co. v. PSC*, 109 Wis. 2d 127, 133, 325 N.W.2d 339 (1982). Substantial evidence asks whether, taking into consideration all the evidence in the record, "reasonable minds could arrive at the same conclusion." *State ex rel. Lomax v. Leik*, 154 Wis. 2d 735, 741, 454 N.W.2d 18, 21 (Ct. App. 1990). A reviewing court may not

question the weight placed upon the evidence but should only rule on the reasonableness of the decision. *Nowell*, 2013 WI 88 at ¶ 24.

While a presumption of correctness attends a board decision on certiorari review, deference to a municipality's construction of its own ordinance does not occur without a critical eye. *Ottman v. Town of Primrose*, 2011 WI 18, ¶ 61, 332 Wis. 2d 3, 32, 796 N.W.2d 411. A court will not defer to a construction that is unreasonable, including contrary to law, intent, history or purpose, or is without a rational basis. *Id.*, ¶ 15. The court owes no deference to a board on questions of law. *Miller v. Zoning Bd. of Appeals Case of Vill. of Lyndon Station*, 2023 WI 46, ¶ 9, 407 Wis. 2d 678, 685, 991 N.W.2d 380; *Fassett v. City of Brookfield*, 2022 WI App 22, ¶ 18, 402 Wis. 2d 265, 275, 975 N.W.2d 300. Zoning ordinances must be clear and unambiguous. *Heef Realty & Invs., LLP v. City of*

Cedarburg Bd. of Appeals, 2015 WI App 23, ¶ 7, 361 Wis. 2d 185, 190, 861 N.W.2d 797. Zoning ordinances must be construed in favor of the free use of property. *Id.*

Arguments

A. The Town Club's Position

The Town Club (the "Club") sought approval from the Village of Fox Point (the "Village") to resurface several of its courts that have long been used for pickleball. After the Plan Commission recommended approval with stipulated sound-mitigating conditions, the Village instead approved a conditional use order that included numerous arbitrary and likely unachievable conditions that the Club believes violate the Village's statutory authority. Accordingly, the Club brings this certiorari action challenging the Village's proposed conditions as arbitrary and unreasonable. This dispute concerns four arbitrary, unreasonable, and evidentiary insubstantial conditions imposed on the Club in the conditional use order ("Permit") approved by the Fox Point Village Board (the "Board"). (Doc. 25).

First, even though the Club has agreed to provide sound fencing designed to reduce noise by 50%, the Village conditioned the Permit on pickleball sound level not exceeding 50 decibels ("dB"). That, the record shows, is the level of basic conversation. The Club has agreed to perform a sound study which would provide actual, not idealized, measurable levels from which responsible decibel limits, if any, could be considered. The Board did not have substantial evidence supporting this arbitrary restriction as a condition. The Club, for its part, is already subject to the Village noise and nuisance provisions; the 50 dB level adds nothing other than an arbitrary level to measure. There is no evidence that the Village's own pickleball courts, which it unilaterally closed in the middle of this lawsuit, had any sound restrictions, much less 50 dB.

Second, the Board conditioned the Permit on pickleball being played only until 6:00 p.m., even though other outdoor activities at the Club are not so limited and pickleball had been played at the Club until dusk without complaint since 2019. Other than a few neighbors' complaints, there is no reason or evidence to support this time restriction. After all, other outdoor activities at the Club, including swimming, tennis and paddle tennis, are not so limited.

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Third, the Board arbitrarily, unreasonably, and without substantial evidence conditioned the Permit on pickleball being played only from May 1 through September 30. Again, no other outdoor activity at the Club or anywhere else in the Village is so limited. There is simply no rational reason to prevent the Club's members and guests from engaging in this healthy, wholesome, family activity whenever weather permits.

Fourth, the Board inappropriately conditioned the Permit on the Club's payment of all expenses related to the Permit. This potentially unlimited obligation is not legally subject to the ordinance upon which the Village and Board rely. Nonetheless, the Club, without the benefit of counsel, was required to sign a form agreeing to this condition before it would be allowed to even

apply to resurface its courts. That is a penalty, not an agreement. Further, whatever the requirement for the period through the Permit's issuance, the American Rule should apply to this lawsuit, with each party bearing its own costs and fees.

All of this is a shame. Spring is almost here. The Club's members and guests, and the Village's residents (as to the closed Village courts) have no venue to play this popular, healthy, intergenerational sport. The Club has bent over backwards to be reasonable. There is and will be no lighting and no public address system on the courts. The Club agreed to erect a barrier designed to reduce the sound in key locations by 50%. The Club agreed to perform a sound/noise study. Nothing, however, was enough for the Village.

The Club has been a good Village neighbor for 70 years. 173 of its members live in the Village. The Club employs Village residents and is a draw for new Village residents. The Club brings revenue into the Village and pays all required taxes. It is not located in a purely residential district but in the mixed-use Institutional F District, with an adjacent active railroad line, and retail and commercial businesses just up the street. True, a few residents, particularly those closest to the Club, object to pickleball. But many, many other residents support the application. The Board
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erred in allowing the loudest objectors to drown out their equally important voices. The Club recognizes that, in the stereotypical cases, the certiorari standards of arbitrariness, unreasonableness and substantial evidence may be hard to overcome. This, however, is not a stereotypical case. It is the story of a longstanding private club which needed to resurface a few courts to continue playing a game that had been played for years. From there, the Village took control, requiring a conditional use permit for pickleball. Despite the Plan Commission twice recommending approval, once with conditions to which the Club agreed, the Board arbitrarily and without substantial evidence imposed unreasonable, improper, and onerous conditions on the Club. The court should vacate those conditions and let the pickleball season begin.

The court should reverse and order stricken the following provisions in the Village's proposed Permit as unreasonable, arbitrary, not supported by substantial evidence and representative of the Board's will and not its judgment: (1) the absolute 50 dB limit; (2) the limitation of pickleball play to 9:00 a.m. to 6:00 p.m.; and (3) the restriction on pickleball play to the months of May to September. The court should also reverse as unreasonable, oppressive, not allowed by law, arbitrary and not supported by substantial evidence the proposed Permit's condition requiring the Club to pay "all costs and expenses of any type" incurred by the Village in connection with the Permit

B. Fox Point's Position

This case concerns a conditional use permit (CUP) application submitted by The Town Club to the Village of Fox Point to convert its tennis courts to pickleball use. After several public hearings and review, the Village granted the CUP, adding conditions to ensure the noise generated by the use would be compatible with adjacent residential properties, since so many residents repeatedly and consistently expressed concerns about the deleterious consequences of the pickleball noise on their personal use and enjoyment of their homes, property values and other aspects of public health and

welfare. Indeed, this court has already issued a preliminary injunction against the Town Club addressing these noise concerns, limiting the activity to certain events and otherwise May to September from 9:00 a.m. until 12:00 p.m. on Fridays, Saturdays and Sundays. The Village Board's conditions were reasonable, practical and fully supported by the tremendous record of information before them

B. The Decision to Set the Decibel Limit at 50 dB was Based on Substantial Evidence.

Not only was the decision to set a specific decibel limit reasonable and supported by substantial evidence, so too was the decision to set the limit at 50 dB. The Village will not recount all the information discussed above that raised concerns about noise levels and the need to cap it at a limit. The Village, for instance, was presented with information about a city in Colorado that imposed upon pickleball courts a 47 decibel limit at the property line (R.51 at 17), a New York Times article in which an expert in pickleball sound mitigation referred to 55 dB noise as annoying (R.75 at 16-19.), a sound chart giving examples of noises that produce different decibel readings, (R.49 at 2-5.) and that that pickleball whacks from 100 feet away could reach 70 dBA while everyday background noise outside typically tops off at 55. (R.75 at 16-19.). These sources, among others, provided substantial evidence that informed the decision to set a 50 dB condition. The Town Club contends that the Village did not rely on evidence specific to The Town Club in making its decision. (Pl. BR.at 15.)

Since The Town Club did not have a sound study conducted on its own courts – and because the Town Club points to nothing in statute, code or the common law that required the Village to undertake any independent review – the Village could reasonably base its decision solely upon all the information presented to it by the applicant, staff and citizens regarding the noise produced by pickleball. Moreover, that some of the information came from outside the Village or State, does not make the conditions arbitrary. The game of pickleball is presumably the same everywhere. The sport does not produce less noise because it is played in one state or community rather than another. As a representative of The Town Club stated at one meeting, “there are a lot of complaints across the nation about the noise of the ball and the paddle.” (R.71 at 18.) It was, therefore, appropriate for the Village to rely on studies and ordinances from other communities since they dealt with the same exact activity taking place on The Town Club property – pickleball.

Moreover, none of these documents contain information that is so specific to a locality that the underlying principles cannot be applied to pickleball here. Contrary to The Club's belief, the fact that 50 dB is not as loud as some other common sounds, such as a train whistle or the noise produced by piano practice, does not make the 50 dB limit an arbitrary condition. The Club correctly points out that trains already pass through the Village twice a day, producing noise at much greater decibel levels. (Pl. BR.at 14.) However, a train passing through the Village a twice/day does not provide a fair comparison to the situation at hand. The level of concern from pickleball noise cannot be fairly assessed based on a train decibel comparison alone. The duration of the noise and its frequency must also be taken into consideration. While a train passes through the Village twice/day, the pickleball activity is proposed for many hours per day over many courts and by many players. It can hardly be argued that this multiplicity of noise can be fairly compared to a brief noise, albeit louder, that occurs for just a few minutes once or twice a day, if that. The Village property relied on substantial information before it about the concerns with a maximum volume for noise that will potentially be produced for hours every day. Additionally, the 50 dB limit should not be considered in isolation from the duration of the noise, yet this is precisely what The Town Club implies by pointing out that the Village allows trains to pass through at higher decibel limits. It was not improper for the Village

to set this condition where there was substantial evidence from local residents who provided oral statements of their concerns with noise, but also articles and other information about concerns with noise.

When it comes to local concerns about impacts from a land use activity, whether it be traffic, dust, or noise, Wisconsin courts have routinely found such considerations to be reasonable without the need for scientific or expert proof.⁴ Such condition-setting, in order to address local concerns where, as here, there is substantial evidence in supports, fits in harmony with the law governing conditional uses and how local officials are attuned to balancing land use goals of their community. Here, many of the residents who spoke did not testify based on mere speculation but instead testified based on their experiences living near The Club, having developed concerns with even the more modest use of outdoor pickleball at the site. Those experiences showed there was already noise-related concerns, as well as even concerns that the Club was conducting unauthorized outdoor pickleball in years previously (i.e., before this application), which would have been amplified by approved months-long, days-long and unregulated outdoor pickleball.

For example, Ann Saxie lives directly across from The Town Club and stated that when she first moved into her home in 1996, The Club was “respectful of the neighbors” and “quiet at night” but now “is noisy virtually twenty-four hours a day.” (R.63 at 18.) Amy Barth, who also lives near The Club, explained that she recently called the police due to screaming coming from Club courts. (R.61 at 50.) She stated that “last Saturday night, somebody brought their own microphone and boombox and they were broadcasting a paddleball mix.” (R.61 at 50.) Brian Hartnet, another neighbor of The Town Club, explained that he has woken up at 2:00 in the morning to noise “that probably would have drowned out the coyotes.” (R.71 at 11-12.) These types of statements further supported the Village’s conclusion that a decibel limit was necessary in order to ensure that The Town Club and its nearby residents could exist in harmony. Finally, the Club asserts it has operated as a good neighbor for 70 years, bringing revenue into the Village, providing employment, and helping draw new residents. (Pl. BR.at 2, 5, 19.) While perhaps true, these statements have no bearing on certiorari review, let alone the review proceedings before the Village Board and any condition-setting by the Village...

As part of its initial application, the Club agreed to the following term for review: [W]henver the services of the Village Attorney, Village Engineer, Village Forester or any other of the Village's professional staff (internal or independently contracted) results in a charge to the Village for that professional's time and services and such service is not a service supplied to the Village as a whole, the Village Treasurer shall charge the property owner for the fees incurred by the Village. (R.24 at 4.) The Village incorporated this cost recovery feature into the CUP.⁵ Although the Club now contests this CUP provision, it did not challenge it in the proceedings below. Indeed, on the eve of the Village Board’s final review of the CUP, its counsel wrote a letter to the Village Board indicating that the Club had met all requirements for issuance of the CUP and the CUP should be granted, without any objection to this cost recovery provision. See Dkt. # 89 (April 4, 2024 letter from Attorney Jaekels). Nor do the transcripts of the relevant proceedings before the Plan Commission or Board show that the Club made any objection to the cost recovery provision. It is therefore waived or forfeited.⁶ In any event, this practice is required by a Village ordinance which provides that “the Village Clerk/Treasurer shall charge property owners fees for services . . . whenever the Village 5 The Village is not suggesting, as the Club argues at p. 24 of its Brief, that this section of the conditional use order is intended to apply to litigation expenses. Nor is the Village suggesting that the condition reverses the American Rule for attorneys’ fees. . . incurs professional fees in considering . . . conditional use permit petitions.” Vill. Ord. 67-16 (emphasis added). The Town Club has never challenged this Code provision by declaratory relief. This certiorari action – applying a condition as part of an application review that simply tracks the code – is not the proper forum to contest this ordinance provision or

this practice. See *HearstArgyle Stations, Inc. v. Bd. of Zoning Appeals of City of Milwaukee*, 2003 WI App 48, ¶ 32, 260 Wis. 2d 494, 659 N.W.2d 424 (in certiorari action, court held that any claim arguing that state law preemption of a municipal ordinance or application of such must be brought forth pursuant to declaratory relief); *Kaiser v. City of Mauston*, 99 Wis.2d 345, 355, 299 N.W.2d 259 (Ct.App.1980) (stating that a declaratory judgment action was the proper method of challenging the validity of an ordinance creating a lake improvement district) (overruled on other grounds).

Here, by signing the application, the Club agreed to bear the costs of any professional services that the Village incurred on the Club's behalf. This statement embodies the Village's standard practice for applicants of land use permits and zoning review such as conditional use permits, variances and the like. It was not created out of whole cloth for the Club. Whenever an applicant applies for a CUP in Fox Point, he or she is charged for the costs incurred by the Village. The condition requiring The Town Club to reimburse the Village for costs and expenses merely restates what is already required by the Village Code. Although the condition requires The Town Club to reimburse the Village for "all costs and expenses," the listed examples of such expenses clearly show that the condition is intended for The Town Club to pay for professional service expenses. In providing examples of costs and expenses, the condition lists "the cost of professional services incurred by the Village of Fox Point for the review and preparation of required documents, attendance at meetings or other related professional services as well as to enforce the conditions in this approval due to a violation of these conditions." (R.25 at 14). (emphasis added). Such a condition is not unreasonable because even if it were eliminated from the CUP, the Club would still be charged the same fees pursuant to § 67-16 of the Village Code.

The Town Club argues that Wis. Stat. § 66.0627 does not authorize the Village to recover the costs of such professional services. (Pl. BR.at 23.) This is not the case. Even though professional services are not specifically mentioned under the definition of "services" in § 66.0627(1)(c), the statute has been broadly interpreted by Wisconsin courts. In *Rusk v. City of Milwaukee*, the Wisconsin Court of Appeals held that a building reinspection fee imposed by a municipality on property owners fell within the definition of "services" provided by the statute. 2007 WI App 7, ¶ 17, 298 Wis.2d 407, 727 N.W.2d 358. The Court explained that "the examples given in the statute are not meant to limit its application in any way" and concluded that "although the statute gives some examples of its use, § 66.0627 covers a great range of possible service charges." *Id.* While the Wisconsin Supreme Court more recently held that fees relating to the construction of a roundabout could not be charged under § 66.0627, the Court's reasoning centered around the fact that "a roundabout is an improvement, not a service." *CED Props., LLC v. City of Oshkosh*, 2018 WI 24, ¶ 40, 380 Wis.2d 399, 429, 909 N.W.2d 136. In determining that the construction of physical infrastructure did not constitute a service under the statute, the Supreme Court did not overrule the Court of Appeals' holding that building reinspections are a service nor did it preclude a future holding that professional review and approval of a conditional use permit is a service which a municipality may charge for under Wis. Stat. § 66.0627.

Applicable Law⁴

⁴ See, *A Line In The Sand: Florida Municipalities Struggle To Determine The Line Between Valid Noise Ordinances And Unconstitutional Restrictions* Stetson L. Rev. 461; *Regulating The Limits Of Speech* 91 AUG WILAW 36, Douglas J. Hoffer, Wisconsin Lawyer.

A. Wisconsin Statute

Wis. Stat. § 62.23(7)(de)(2): Conditional Use Permits

a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

b. The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.

The following summary is helpful:

Under the police power, a municipality may regulate or prohibit noise that may affect the public health or welfare. Governments have a legitimate interest in protecting the well-being, tranquility, and peace of their citizens, as well their traditional public forums, such as city streets and parks, from excess noise, and for this reason, the police power comprehends the power, within constitutional limits, to enact an ordinance restricting making noise by various specified means audible on a public way. Municipalities have a substantial interest in protecting their citizens from unwelcome noise, and this interest is at its zenith in residential areas, in which citizens have substantial privacy interests.

A content-neutral ordinance banning "unreasonable noise" does not violate the First Amendment, where the ordinance was enacted to further a substantial government interest in protecting its citizens from unwelcome noise, and was narrowly tailored to achieve that goal. Noise ordinances may not be vague or overbroad, especially when they impinge on freedom of speech, but some have been upheld despite contentions that they were vague, it being recognized that an ordinance regulating loud, disturbing, and unnecessary noises may utilize general language, so long as it notifies the public of the conduct it proscribes.

Noise ordinances may not be discriminatory and must have a relation to the comfort, safety, or welfare of the municipality. A noise ordinance may be unconstitutional, if it does not serve the interests of the public, generally, as distinguished from those of one person or of a relative few.

As these summaries show, there are numerous cases concerning noise limitations. *City of Miami Beach v. Seacoast Towers-Miami Beach, Inc.*, 156 So. 2d 528 (Fla. 3d DCA 1963) (holding that a noise ordinance, having the practical effect of prohibiting a property owner from doing any construction during one-third of each year, is not valid, because the ordinance clashes with the full enjoyment of property by its owner and does not protect the welfare of the whole people). A municipal noise ordinance relating to the volume of televisions, radios, and similar devices in residential zones was content-neutral, in the context of an overbreadth challenge under the First

Amendment, as the ordinance made no reference to the content of the sound, but regulated only the volume. *State ex rel. City of Providence v. Auger*, 44 A.3d 1218 (R.I. 2012).

An ordinance prohibiting sound reproduction devices in vehicles from being played so that they can be heard outside vehicle at a distance of greater than 25 feet was not facially overbroad, because the ordinance was content-neutral, in that it restricted excess noise regardless of the content of the communications, was narrowly tailored to serve the significant government interest of abating excessive noise emanating from vehicles within the city, and left open ample alternative channels for enjoyment of music or other forms of communication. *Com. v. Scott*, 2005 PA Super 224, 878 A.2d 874 (2005).

A noise ordinance, which did not impose restrictions from 4:00 p.m. to 10:00 p.m. during the week and from 4:00 p.m. to 11:00 p.m. on weekends did not unduly burden protected speech; the government has a substantial interest in protecting citizens from unwelcome noise, particularly in the privacy of their homes, and it need not choose least restrictive means to accomplish that goal, and the defendant, who was convicted of violating the ordinance, did not offer a basis for finding that the time-of-day limitations, which were incorporated into the ordinance following testimony at a public hearing, reached substantially more conduct than necessary. *Stevens v. Matanuska-Susitna Borough*, 146 P.3d 3 (Alaska Ct. App. 2006).

A city's noise control ordinance failed to leave sufficient alternative channels for communication, as required by the free speech clause, even though it employed a decibel threshold; an opera singer alleged that she was arrested while making noise below the threshold, and even if she exceeded the threshold, the code could nonetheless deprive her of ample channels if the threshold was unreasonably low. *McClellan v. City of Alexandria*, 363 F. Supp. 3d 665 (E.D. Va. 2019).

U. S. Labor Party v. Pomerleau, 557 F.2d 410 (4th Cir. 1977) (violation depended on the investigator's subjective opinion, and the investigator was not able to follow the ordinance's directive to measure the decibel level at the property line); *Munn v. City of Ocean Springs, Miss.*, 763 F.3d 437 (5th Cir. 2014); *Daley v. City of Sarasota*, 752 So. 2d 124 (Fla. 2d DCA 2000) (ordinance that prohibited all amplified sound emanating from incompletely enclosed structures within a commercial business—new town zone, which applied during certain hours of each day, regardless of the sound's volume or whether that sound could be heard outside of the structure); *People of City of Grand Rapids v. Gasper*, 314 Mich. App. 528, 888 N.W.2d 116 (2016); *Nichols v. City of Gulfport*, 589 So. 2d 1280 (Miss. 1991) (ordinance prohibiting "unnecessary or unusual" noises that either "annoy," injure, or endanger comfort, repose, health, or safety of others); *People v. Stephens*, 28 N.Y.3d 307, 44 N.Y.S.3d 352, 66 N.E.3d 1070 (2016). An ordinance making it unlawful for any person to make, continue, or cause to be made or continued any loud, unnecessary, or unusual noise or any noise that either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others within the city limits is unconstitutionally vague in that its language fails to establish sufficient ascertainable standards of conduct, the terms "unnecessary" and "annoy" requiring persons of common intelligence to guess at its meaning. *United Pentecostal Church v. Steendam*, 51 Mich. App. 323, 214 N.W.2d 866 (1974).

§ 396. Municipal police power to regulate noise

AMJUR MUNCCORP § 396 George L. Blum, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Glenda K. Harnad, J.D.; Janice Holben, J.D.; Karen L. Schultz, J.D.; and Eric C. Surette, J.D

A Westlaw search on “pickleball noise restrictions” produced the following case: *Chick, Co-Trustee of Patricia L. Chick Living Trust Dated July 18, 2001 v. Bohnert*, 2024 WL 4862949, Court of Appeals of Kentucky (not reported in S.W. Rptr). In this case, the Chicks and the Bohnerts were neighbors. The neighborhood is exclusively residential. While the Chicks lived in their Glenview Manor property since 1979, they spent part of the year in Florida. The Bohnerts have lived at their Glenview Manor property for several years and two separate times; from 2002 to 2015 and again from 2019 to present.

The Bohnerts were former tennis players and have a backyard tennis court on their property. In 2019, the Bohnerts converted their property to play pickleball.

Dissatisfied, the Chicks filed suit in Jefferson Circuit Court on November 6, 2020, alleging that the noise from the Bohnerts' pickleball court violated the Amended Declaration of Restrictions for Glenview Manor and that the noise from the pickleball court constituted "a nuisance

The bench trial on the first stage spanned three days with the testimony of eighteen witnesses concerning whether the pickleball play constituted a private nuisance,

The trial court also found that the Chicks' requested remedy was a reach too far. While the trial court suggested "that a better remedy may be one where the Bohnerts play for shorter durations only during reasonable daylight hours to mitigate the noise coming from their backyard," the trial court concluded that the Chicks' request of "a permanent injunction as to the playing of pickleball in the Bohnerts' backyard is not appropriate under the circumstance." On October 3, 2023, the trial court entered an order amending its judgment to make clear that the trial court also found that the pickleball play was not a nuisance under the Kentucky nuisance statute. On October 18, 2023, the trial court entered an order ultimately dismissing the Plaintiffs' claims. From those orders, the Chicks made a timely appeal.²

The Kentucky court wrote as follows:

"[t]here can be no fixed standard as to what kind of noise constitutes a nuisance." Some persons may be annoyed by certain noise and others unaffected; neither situation is dispositive as to whether a certain noise constitutes a nuisance. *Id.* Indeed, in *Anderson*, the Court stated, "[t]he determining factor when noise alone is the cause of complaint is not its intensity or volume. It is that the noise is of such character as to produce actual discomfort and annoyance to a person of ordinary sensibilities, rendering adjacent property less comfortable and valuable." *Id.*

Recognizing this, the trial court analyzed the evidence adduced at trial in light of the factors in KRS 411.550:

To begin, the Bohnerts' use of their property is lawful; they are playing an outdoor sport in their backyard and even with complaints to the Louisville Metro Police, there has been no enforcement or citations issues as to the pickleball noise.^[4] Additionally, in looking at the kind, volume, and duration of the annoyance or interference with the use and enjoyment of the [Chicks'] property, this is minimal noise. Per the pleadings, the Bohnerts played pickleball approximately half the days in the month, for approximately one hour per day. Comparing this to [other cases examined by the trial court], the pickleball play is not of such duration to be considered "around the clock" and is not disturbing the plaintiffs' sleep as it is during normal waking hours. Further, in looking at the character of the area, it is a residential neighborhood. Families live in neighborhoods and use their property for entertainment; including outdoor sports. Overall, in considering all of the facts and circumstances of the case, including the limited duration of pickleball play, a permanent injunction is not appropriate here.⁵

Further, the trial court did not find⁶ "that the noise from pickleball play constitutes an annoyance or nuisance to the neighborhood, anymore than other noise such as lawnmowers, leaf blowers, etc."

As the finder of fact, it was the trial court's sole prerogative to hear and weigh the evidence,⁷ and apply the evidence to KRS 411.550. The trial court's findings are supported by substantial evidence. This Court cannot substitute its own judgment for that of the trial court, and this court certainly does not find that the Chicks "unequivocally" established a nuisance.

...

Because we agree with the trial court that the Bohnerts' pickleball play was not a nuisance, did not violate the noise ordinance, nor violate the Glenview Manor Amended Declaration of Restrictions, we need not discuss whether an injunction is an appropriate remedy. However, even if the Chicks had succeeded on one of their claims, we agree the trial court did not abuse its discretion denying the Chicks' requested relief of "total prohibition against pickleball play[.]"

The trial court found that a total prohibition of pickleball play would be inequitable. The trial court reasoned:

The Court here would suggest that a better remedy may be one where the Bohnerts play for shorter durations and only during reasonable daylight hours to mitigate the noise coming from their backyard. As stated in an older case, "One living in a city ... must necessarily submit to annoyances which are incidental to city life." *Pfingst v. Senn*, 23 S.W. 358, 360 (Ky. 1983). This is a neighborhood containing numerous families, and some amount of noise is incidental to living near other people. In sum, the Court must deny the request for an issuance of a permanent injunction against the playing of pickleball on the Bohnerts' property.

The Chicks claim that in balancing the equities, there is no alternative to a total ban on pickleball play because "there is no reasonable method by which they can abate the pickleball noise" and their only solution is "to leave their homes, be it retreating to the basement, leaving the home temporarily during the course of a pickleball game, or moving away from Glenview Manor altogether."

This Court agrees that the equities weigh in favor of the Bohnerts, particularly in light of the far-reaching and drastic remedy sought by the Chicks. This is not a situation where a suite of full-time pickleball courts have opened with continuous play every hour of the day. Instead, this is a situation where a family is using their property for an occasional recreational activity; as the trial court found, the Bohnerts "played pickleball approximately half the days in the month, for a total of approximately one hour of the day" and "during normal waking hours." As the trial court noted, community living requires suffering occasional annoyances incidental to city life. A family enjoying their property by playing a sport on occasion is one of those "annoyances." Thus, even assuming the Chicks had proven one of their underlying claims, we find the trial court did not abuse its discretion in denying a complete injunction against all pickleball play.

Decision

This analysis is broken up by the permit conditions instead of party arguments. The Club has brought a certiorari action challenging four conditions that the Village proposed.

The four conditions are:

1. The Board conditioned the permit on the Club's payment of all expenses related to the permit.
2. Pickleball can only be played until 6:00 p.m.
3. Pickleball can only be played from May 1 through September 30.
4. The pickleball sound level should not exceed 50 dB at any property line surrounding the Club.

Doc. 90:3-4; Doc. 91

The Club believes that the conditions imposed violate Wis. Stat. § 62.23(7)(de)⁵ because they are not reasonable, practicable, or measurable. (Doc. 3:8). The Board considered the Club's permit under § 745-10⁶ and § 745-20⁷ of the Fox Point Village Municipal Code. The Board believes that the proposal is compatible with the area; it is in keeping with the unique residential character of the community; and it does not result in any substantial adverse effect on surrounding properties. (Doc. 89).

⁵ Wis. Stat. § 62.23(7)(de)(2): Conditional Use Permits

a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

b. The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.

⁶ Outdoor recreational areas and facilities: Swimming pools, tennis courts, athletic fields, and other buildings or grounds used for leisure-time activities of a predominantly outdoor nature shall be permitted in those districts and subject to such regulations as are hereinafter designated.

⁷ § 745-20, *supra* note 3.

Condition One: Permit Costs

To be able to apply for repair of the courts, the Club had to sign an agreement with the Village. (Doc. 90:24). By signing this agreement, the Club needs to pay the costs of the Village's professional staff and representatives for the permit. The Club believes the agreement expands to "all costs and expenses of any type."⁸ The Club argues that Wis. Stat. § 66.0627(2) does not authorize the recovery of costs or fees in this conditional use proceeding.⁹ (Doc. 90:25). The Club does not believe it should be required to pay any costs or fees for the lawsuit at hand.

⁸ "The Petitioner and/or Property Owner shall, on demand, reimburse the Village of Fox Point for all costs and expenses of any type incurred by the Village of Fox Point in connection with the review and approval of this application, including, but not limited to, the cost of professional services incurred by the Village of Fox Point for the review and preparation of required documents, attendance at meetings or other related professional services as well as to enforce the conditions in this approval due to a violation of these conditions. . . ." Conditional Use Order, Doc. 25:27.

⁹ Wis. Stat. § 66.0627(2) Special charges for current services and certain loan repayments: ". . . the governing body of a city, village or town may impose a special charge against real property for current services rendered by allocating all or part of the cost of the service to the property served. The authority under this section is in addition to any other method provided by law."

The Village responded by saying it is not suggesting that the section of the conditional use order in question is intended to apply to litigation expenses. (Doc. 91:24, footnote 5). The Village is required by Village ordinances that “the Village Clerk/Treasurer shall charge property owners fees for services . . . whenever the Village incurs professional fees in considering . . . conditional use permit petitions.” (Doc. 91:24-25). By signing the agreement, the Club bears the costs of any professional services that the Village incurred on the Club’s behalf. (Doc. 91:24). The Village states that this is standard practice.

The Club eventually replied to the Village and Board and stated:

The Club does not object to limited professional services up to the issuance of the Conditional Use Order, so long as the Club has an opportunity to review those charges and object to those it believes are unreasonable. For example, the Club should not have to pay for professional services regarding the Board’s December 12, 2023 meeting, which was not properly noticed.

Doc. 95:13.

The Club agreed to pay the costs and should be bound by their agreement.

Conditions Two and Three

Two conditions are in issue here:

1. Pickleball can only be played until 6:00 p.m.
2. Pickleball can only be played from May 1 through September 30.

The Court finds these conditions to comply with the statute for several reasons. First, they were supported by substantial evidence. Numerous neighbors opposed pickleball play, pretty much altogether. Limiting the hours and the days is a compromise that balances the residents' rights to enjoyment with the Club's right to be a racquet club. The Court sees this as pretty similar to the limits on when one can be in a public park. Second, the period that the sport can be played roughly matches the period outdoor sports can be

played in Wisconsin. Thus, in the fall and in the winter, the interests of the residents reign supreme. The Village forged an intelligent, reasonable compromise based on substantial testimony.

Condition Four: Sound level

The Club agreed to provide sound fencing designed to reduce noise by 50%. (Doc. 90:3). The Village does not want the pickleball court to exceed 50 dB at any property line. The Club argues that the Board's condition of not exceeding 50 dB is not supported by substantial evidence. (Doc. 90:13). The Club believes that the Board ignored the reasoned analysis of the Plan Commission's initial recommendation to approve the permit without a particularized noise component. (Doc. 90:15). The Club also believes that the Board has no evidence regarding the Club's courts that would support a 50 dB maximum.

The Club disagrees with the suggestion that the pickleball courts would make more noise than usual because the sport has become so popular. (Doc. 90:16). Its response is that only two additional pickle ball courts will be added to the original property footprint and all of the courts will be screened. The screens are supposed to reduce sounds by up to 50%.

The Court has several problems with this condition. First, there is no evidence in the record that pickleball *can be played* with so little volume. The fact that other cities have set volume levels near 50 dB is unconvincing. This is what is in the record:

Environmental Noise

Weakest sound heard 0 dB

Whisper Quiet Library 30dB

Normal conversation (3-5') 60-70dB

Telephone dial tone 80 dB

City Traffic (inside car) 85dB

It is difficult to imagine how this activity could be done more quietly than a normal conversation.

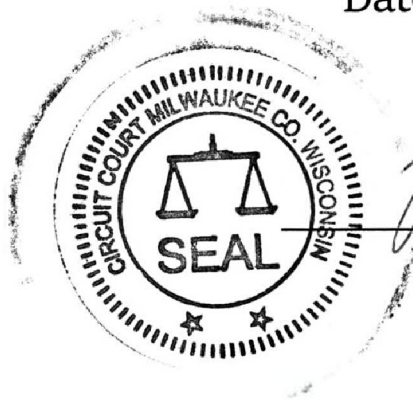
Second, a condition that effectively prevents a racquet club from playing a racquet sport entirely might be an overreach. The statute requires that conditions must be reasonable and supported by substantial evidence. The 50 dB limit could be problematic, especially if it prevents pickleball altogether.

Legal Conclusions and Orders.

1. The Village's conditions concerning hours is reasonable.
2. The Village's allowance of pickleball play May 1 through Labor Day is reasonable.
3. The Club agreed to pay the costs for the permit.
4. The Court wishes to hold a hearing as to the 50 dB limit.

5. The parties should confer as to how soon they can be prepared to offer evidence as to the reasonableness of the 50 dB standard. The Court will conduct a hearing as soon as practicable, if the parties so desire.

^{11th} July
Dated this 17th day of June, 2025



Thomas McAdams

Thomas McAdams
Milwaukee County
Branch 7