

**STATE OF WISCONSIN****CIRCUIT COURT****DANE**

Mirus Madison II LLC vs. City of Madison

**Electronic Filing  
Notice**

Case No. 2020CV001245

Class Code: Money Judgment

FILED

06-18-2020

CIRCUIT COURT

DANE COUNTY, WI

2020CV001245

Honorable Frank D.

Remington

Branch 8

CITY OF MADISON  
210 MARTIN LUTHER KING JR. BOULEVARD  
MADISON WI 53703

FILE ID 61736

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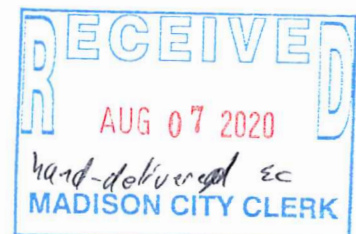
**Pro Se opt-in code: 66ae5a**

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 608-266-4311.

Dane County Circuit Court  
Date: June 18, 2020



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Branch 8

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

**MIRUS MADISON II LLC,**  
7447 University Ave., Suite #210  
Middleton, Wisconsin 53562

Plaintiff,

v.

**CITY OF MADISON,**  
210 Martin Luther King Jr. Blvd.  
Room 103, City-County Building  
Madison, Wisconsin 53703,

Defendant.

Case No. \_\_\_\_\_  
Case Code: 30301  
Case Type: Money Judgment

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**SUMMONS**

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**THE STATE OF WISCONSIN, TO EACH PERSON NAMED ABOVE AS A  
DEFENDANT:**

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Dane County Courthouse, 215 S. Hamilton St., Madison, WI 53703, and to plaintiff's attorney, Eric J. Hatchell, Foley & Lardner LLP, 150 E. Gilman Street, P.O. Box 1497, Madison, WI 53701-1497. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 18th day of June, 2020.

FOLEY & LARDNER LLP

s/ Eric J. Hatchell

Eric J. Hatchell (WI Bar No. 1082542)

FOLEY & LARDNER LLP

150 E. Gilman Street

P.O. Box 1497

Madison, WI 53701-1497

(608) 257-5035 (telephone)

(608) 258-4258 (facsimile)

*Attorneys for the Plaintiff*

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**COMPLAINT**

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Plaintiff, by its undersigned attorneys, Foley & Lardner LLP, as and for its Complaint against the defendant, City of Madison ("City"), hereby alleges and shows to the Court as follows:

**NATURE OF ACTION AND PARTIES**

1. This is an action brought pursuant to Wis. Stat. § 74.37(3)(d) to recover a refund of 2019 real property taxes imposed because of the excessive assessment of the real property described below.

2. Plaintiff owns the parcel of real property located in the City known as Parcel #251-0809-254-1591-4, located at 1520 Troy Drive (the "Subject Property").

3. The defendant City is a body corporate and politic, duly organized as a municipal corporation under Wisconsin law.

**CLAIM FOR RELIEF**

4. For the 2019 tax year, the City assessed the Subject Property at \$8,750,000 (“the 2019 assessment”).

5. The 2019 assessment was excessive and exceeded the fair market value of the Subject Property.

6. Plaintiff challenged the assessment at the Board of Review but the assessment was confirmed without any change and resulted in a 2019 net property tax amount of \$197,287.61.

7. The City’s assessment was based on an income approach, which computes the Subject Property’s net operating income (income less expenses or NOI) and divides it by the applicable capitalization rate. The capitalization rate is an estimate of the rate of return an investor would expect in order to invest in the Subject Property.

8. The City’s capitalization rate was based on blending the rates of both affordable and market rate properties, and in addition, relied on capitalization rates from financing appraisals for other low income housing tax credit properties in Madison. Deriving a capitalization rate in this manner is a violation of Wisconsin law, and resulted in an overassessment of the property. *See Regency West Apartments LLC v. City of Racine*, 2016 WI 99, 372 Wis. 2d 282, 888 N.W.2d 611.

9. Plaintiff is timely filing this *de novo* refund action pursuant to Wis. Stat. § 74.37(3)(d). Plaintiff is entitled to a refund of the excessive 2019 property taxes, plus statutory interest.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter Judgment in its favor and against the City awarding Plaintiff:

A. A refund of a portion of its 2019 property taxes as is supported by the evidence, together with statutory interest;

B. Its costs, disbursements and attorneys' fees of this action; and

C. Such other and further relief as this Court deems just and equitable.

Dated this 18th day of June, 2020.

FOLEY & LARDNER LLP

*s/ Eric J. Hatchell*

Eric J. Hatchell (WI Bar No. 1082542)

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*Attorneys for the Plaintiff*

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MIRUS MADISON II LLC,

Plaintiff,

v.

Case No. 2020-CV-1245

Case Code: 30301

CITY OF MADISON,

Defendant.

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**PLAINTIFF'S FIRST SET OF WRITTEN DISCOVERY**

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Pursuant to Wis. Stat. §§ 804.08 and 804.09 the City of Madison is required to respond to each interrogatory and request for production of documents in writing and under oath, within forty-five days of service. If you have a legal objection to answering a request, the reasons for the objection must be stated.

The City's obligations to answer these requests is mandatory. A failure to respond can result in the imposition of sanctions and/or a deemed admission.

**DEFINITIONS**

As used herein, the following terms shall have the meanings indicated below:

- (1) The terms "**you**," "**your**," "**City**," or "**Defendant**" refers to the City of Madison and to all of its representatives and agents.
- (2) The term "**Complaint(s)**" means the complaints filed by the Plaintiff on June 18, 2020.
- (3) The term "**Subject Property**" means Parcel #251-0809-254-1591-4, located at 1502 Troy Drive, located in the City.
- (4) The term "**Person**" means natural persons, corporations, partnerships, sole

proprietorships, unions, associations, federations, or any other kind of entity.

(5) The term “**Communication**” means any discussion, conversation, or transmission of information, opinions, or ideas, whether verbally, in writing, by email, by phone, by facsimile, or by any other mode.

(6) The term “**Document**” is used in the broadest sense possible and includes without limitation all of the following: correspondence, notes, telegrams, memoranda, e-mail, contracts, reports, voice mail, studies, diaries, timeslips, log-books, day-books, work schedules, pamphlets, charts, maps, plans, drawings, calendars, tabulations, calculations, financial records, tax returns, audit reports, progress notes and reports, bids, quotations, estimates, bonds, invoices, drafts, working papers, work sheets, books, computer printouts, computer cards, computer tapes, audio tapes, videotapes, minutes and minute books, statements, checks, receipts, administrative regulations, journals and authoritative texts, statistical or informational accumulations or summaries, files, photographs, microfilm or mechanical reproductions, attachments, enclosures and other materials related to or referred to in any of the foregoing and all other records of any kind in the possession and/or under the control of you or any person or agent acting on your behalf. Designated documents are to include all attachments, enclosures and other documents that are attached, related to or referred to such designated documents in any way.

(7) “**Relate to,**” “**related to,**” and “**relating to**” mean comprising, mentioning or describing, containing, enumerating, involving or in any way concerning, pertaining or referring to, being connected with, reflecting upon or resulting from, in whole or in part, directly or indirectly, the stated subject matter.

(8) In each question wherein you are asked to “**identify**” a person, state with respect to such person: (a) his/her name; (b) his/her last known home address and telephone number; and



(c) his/her business address and telephone number.

(9) In each question wherein you are asked to “**identify**” a Communication, state with respect to each Communication: (a) the date on which the Communication occurred; (b) the person(s) with whom the Communication occurred; (c) the mode of communication (whether in person, by email, by phone, by facsimile, or by any other mode); (d) the substance of information, opinions, or ideas communicated by each participant in the Communication; and (e) any Documents reflecting, summarizing, or in any way relating to the Communication.

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify all persons involved in determining or approving your assessment of the Subject Property for 2019 and describe the nature of each such person’s involvement with respect to the assessment.

**INTERROGATORY NO. 2:** Describe with particularity how you arrived at your 2019 assessed value for the Subject Property and identify all documents that set forth, or relate to or upon, which you relied with respect to your determinations of such assessments. Your response to this Interrogatory should include, but not be limited to, identification of the assessment methodology used to determine the assessed value of the Subject Property and the identification of all documents that evidence or relate to such methodologies.

**INTERROGATORY NO. 3:** To the extent not provided in response to Interrogatory No. 2, identify the income and expense information used to determine the assessments of the Subject Property, and specifically state whether you used income and expense information specific to the Subject Property. If income and expense information specific to the Subject Property was not used, explain why.

**INTERROGATORY NO. 4:** To the extent not provided in response to Interrogatory No. 3, identify the capitalization rate used to determine the assessment of the

Subject Property, including an explanation regarding how the capitalization rate was determined and selected.

**INTERROGATORY NO. 5:** Identify any outside experts you have engaged with respect to the assessment of property in the City for year 2019.

**DOCUMENT REQUESTS**

**REQUEST NO. 1:** Your complete assessment file for the Subject Property.

**REQUEST NO. 2:** To the extent not contained within the assessment file for the Subject Property, all documents evidencing or relating to your assessments of the Subject Property for year 2019 including, but without limitation, all work papers, drafts, notes, correspondence, and emails.

**REQUEST NO. 3:** All documents upon which you rely to defend your assessments of the Subject Property for 2019, including but not limited to any spreadsheets showing the calculation of the assessed value of the Subject Property.

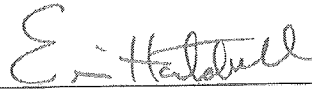
**REQUEST NO. 4:** To the extent not produced in response to the previous requests, all documents used or presented by the City at the 2019 Board of Review hearing.

**REQUEST NO. 5:** Copies of all appraisals (including appraisals of other properties owned by third-parties) which the City relied upon to determine the assessment of the Subject Property, including determining the capitalization rate. Plaintiff is willing to work with the City on an appropriate protective order should the City believe that is necessary before producing the relevant information.

**REQUEST NO. 6:** To the extent not specifically requested above, all documents identified or required to be identified in your responses to the foregoing interrogatories and/or consulted or utilized in formulating your answers to the foregoing interrogatories.

Dated this 6th day of August, 2020.

FOLEY & LARDNER LLP

A handwritten signature in cursive script, appearing to read "Eric J. Hatchell", written over a horizontal line.

Eric J. Hatchell (WI Bar No. 1082542)

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