

James Gesbeck
9302 Harvest Moon Lane
Verona, WI 53593
608 335-2569

City of Madison
210 Martin Luther King Jr. Blvd
Room 103, City-County Building
Madison, WI 53703

City of Madison:

This is a claim on excessive assessment under Wis. Sta. § 74.37. Attached you will find the alleged claim for excessive assessment. It is drafted as a civil complaint, however please note that this has not been filed as the court. Rather than draft a separate civil complaint and claim I am using the attached draft civil complaint to act as the claim. It contains all the requirements under Wis. Stat. § 74.37 (2)(b).

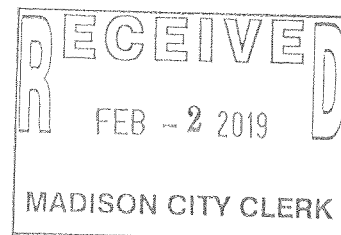
Please feel free to reach out to me with any questions.

Sincerely,

/s/ Electronically Signed by James Gesbeck

James Gesbeck

File ID 54613



James H Gesbeck

Plaintiff

Case No.

v.

Other -- Real Estate 30405

City of Madison

Defendant

COMPLAINT

Plaintiff, James Gesbeck, brings this claim for an excessive assessment against the City of Madison.

PARTIES

1. Plaintiff James Gesbeck resides at and owns 9302 Harvest Moon Lane, Verona, WI 53593, a residential property in the City of Madison, County of Dane.
2. Defendant City of Madison is a municipality and taxation district of the State of Wisconsin.

JURISDICTION AND VENUE

3. This complaint arises out of the real property tax assessment that the City of Madison assigned to the real property located at 9302 Harvest Moon Lane for 2018.
4. 9302 Harvest Moon Lane is located in Madison's assessment area 111 (area 111).
5. This claim meets the statutory requirements of Wis. Stat. § 74.37(2)(b) as it is in writing, states the circumstances and amount of the claim, is signed by James Gesbeck and will be served on the clerk of the taxation district (City of Madison).

6. This claim is being brought after plaintiff followed the procedures for and appealed his property tax assessment to the board of review pursuant to Wis. Stat. § 70.47 and Wis. Stat. § 74.37(4)(a).
7. Plaintiff has timely paid the first installment of the 2018 Property Taxes that were assessed against 9302 Harvest Moon Lane.
8. Plaintiff has first served this claim on the clerk of the court by January 31 of 2019 as 2019 is the year the contested assessment is payable pursuant to Wis. Stat. § 74.37(2)(b)5.

LEGAL STANDARD

9. This is a de novo review by the circuit court without any deference to the board of review. Bloomer Housing Limited Partnership v. City of Bloomer, 2002 WI App 252, 257 Wis. 2d 883, 653 N.W.2d 309.
10. The assessor's assessment is presumed correct unless the plaintiff presents significant contrary evidence. Id.
11. When the assessor correctly applies the Property Assessment Manual and statutes, the court will reject the plaintiff's claim. Allright Properties, Inc. v. City of Milwaukee, 2009 WI App 46, 317 Wis. 2d 228, 767 N.W.2d 567.
12. Article VIII, Section 1 of the Wisconsin Constitution requires a uniform taxation.
13. Wis. Stat. § 70.32(1) requires that real property be valued at the full value which could ordinarily be obtained at a private sale.
14. Chapter 9 of the Wisconsin Property Assessment Manual requires assessments to be uniform between properties.

PROPERTY INFORMATION

15. 9302 Harvest Moon Lane is parcel located in the City of Madison as lot 51 of the Cardinal Glenn subdivision.
16. The land at 9302 Harvest Moon Lane consists of 5,100 square feet of land with no water frontage.
17. The improvements on the land consist of a 1-story ranch style single family house built in 2015 by Veridian Homes and/or its subsidiaries.
18. The home has 1,462 square feet of space with three bedrooms and two bathrooms.
19. The home was conveyed from a subsidiary of Veridian Homes to James Gesbeck for a purchase price of \$ 276,000.00 in an arm's length transaction.
20. Veridian Homes and/or its subsidiaries, created the Cardinal Glenn subdivision. Veridian Homes constructed homes on the subdivided parcels before selling them on the open market.
21. As of January 1st of 2015 the house existed in a partially completed state resulting in an assessment below the assessment of a completed house.
22. The 2016 assessment for the property was \$ 275,100. This amount was likely based on the arm's length transaction that occurred the year prior for that parcel.
23. The 2017 assessment for the property was \$ 288,900.
24. The 2018 assessment for the property was \$ 309,100.
25. The property is correctly classified as residential property by the assessor.
26. The property is subject to the same covenants and restrictions as similar properties in the Cardinal Glenn subdivision.
27. There is nothing unique about this property as compared to other properties in the Cardinal Glenn subdivision.

28. The covenants and restrictions among the various neighborhoods in area 111 are similar.

ASSESSOR FAILED TO CORRECTLY APPLY THE PROPERTY ASSESSMENT

MANUAL AND THE STATUTES WHEN PERFORMING THE 2018 MASS

APPRAISAL

29. In 2018, the City of Madison assessor performed an annual assessment of the property in the City of Madison.

30. Upon information and belief, the City of Madison performs a mass appraisal on the parcels in the City of Madison on an annual basis. The mass appraisal requirements are described in Part 4 of Chapter 9 of the Wisconsin Property Assessment Manual.

31. "Mass appraisal is the underlying principle that Wisconsin assessors should be using to value properties in their respective jurisdictions". Wisconsin Property Assessment Manual, Chapter 9, Part 4, Page 9-9.

32. The mass appraisal conducted for area 111 does not comply with the Wisconsin Property Assessment Manual.

33. Specifically, the appraisal performed is required to mathematically recreate the changes in value and real estate activity occurring. Wisconsin Property Assessment Manual, Chapter 9, Part 4, Page 9-39.

34. The appraisal failed to meet that requirement as the assessments generated by the mass appraisal method are not reflective of the changes in value and real estate activity occurring.

35. The WPAM requires the tax burden be distributed fairly and equitably. Wisconsin Property Assessment Manual, Chapter 9, Part 4, Page 9-40.

36. The appraisal failed to meet that requirement as the assessment for the property at 9302

Harvest Moon Lane generated by the mass appraisal method is not fair or equitable compared to similar homes.

37. Plaintiff relies on the assessment data provided by the City of Madison which is believed to be accurate and reliable insofar as the City of Madison is providing data from records they keep in the ordinary course of their business.

38. Plaintiff's home increased at almost twice the average assessment increase of homes in area 111. This trend is consistent even as the characteristics of the homes become more similar.

39. There are 263 homes in area 111 that were built before 2017. The average increase in assessment is 3.65% with 108 of those homes (41%) having no increase in assessed value.

40. Plaintiff's home increased 7% which is slightly less than double the average increase in assessment.

41. Narrowing down homes to those that are even more like plaintiff's home also shows plaintiff's home suffered an arbitrarily high assessment increase.

42. There are 57 ranch homes in area 111 which averaged an increase of 3.67 % in assessed value. Of those homes, 22 (38%) had no increase in assessed value.

43. If you narrow even further there are 40 homes in area 111 that are 3-bedroom, 2-bathroom, ranch style homes with no finished basement area. The average increase in assessment was 3.28% while 14 of these homes had no increase in assessed value.

44. These statistics demonstrate that the assessments are not uniform across properties in direct violation of Chapter 9 of Wisconsin Property Assessment Manual.

ASSESSOR FAILED TO PROPERLY APPLY THE WISCONSIN PROPERTY

ASSESSMENT MANUAL WHEN PERFORMING SINGLE PROPERTY

APPRAISAL

45. To defend the assessment for plaintiff's property, assessor performed a single property appraisal.
46. This appraisal was conducted using the sales comparison approach.
47. 113 properties sold in area 111 in 2017 and through the first half of 2018 according to the data provided via
<https://www.cityofmadison.com/assessor/property/salesbyareareults.cfm>
48. The above website is believed to be accurate and reliable insofar as the City of Madison is providing data from records they keep in the ordinary course of their business.
49. There is active new construction occurring in area 111 which is bringing online additional homes. This includes the ongoing construction in Birchwood Point¹, 1000 Oaks² and upcoming construction for the south Addition to Birchwood Point³ and Acacia Ridge⁴.
50. A sales comparison approach to appraisal is correct as there are numerous comparable sales in the area and additional homes are going on the market and will continue going on the market for the foreseeable future.
51. The influx of new construction alters the housing market in that home sellers must compete not only with existing homes in the area, but also with new construction which is constantly increasing the supply of homes in the area.
52. The assessor selected three properties that he considers to be comparable.

¹ <https://www.veridianhomes.com/find/neighborhoods/madison/birchwood-point>

² <https://www.veridianhomes.com/find/neighborhoods/madison/1000-oaks>

³ <https://madison.legistar.com/LegislationDetail.aspx?ID=3350688&GUID=44A94D87-C171-4F51-8C83-9C738F0ED1EE&Options=ID|&Search=50635>

⁴ <https://madison.legistar.com/LegislationDetail.aspx?ID=3486478&GUID=16196582-81FC-48C1-9A14-E480482C0E3A&Options=ID|&Search=51415>

53. Upon information and belief, the sales have been arms-length transaction and have been for a warranty deed.
54. The assessor did not apply the principles of the Property Assessment Manual when determining the adjustments.
55. Of most concern is that the assessor utilized incorrect information. Specifically, the assessor noted on the property comparison that he made an adjustment due to the property at 9302 Harvest Moon Lane having a porch while the property at 9320 Harvest Moon lane did not have porch. As shown in this image of 9320 Harvest Mon Lane, it does in fact have a porch. <http://www.wisconsinrealestate.com/data/madison/home/9320-Harvest-Moon-Ln,-Madison,-WI-53593/1822264/photos>.
56. Additionally, the assessor did not utilize adjustments as demonstrated by the market as required by Chapter 12 Page 12-25 of the Property Assessment Value.
57. The assessor utilized numbers with no statistical backing or explanation for how those numbers were generated.
58. The numbers do not comport to what the market shows for area 111.
59. 9302 Harvest Moon Lane, 9320 Harvest Moon lane and 10215 Meandering Way are all similar houses in that they are 3-bedroom, 2-bathroom, ranch homes built in 2015 by Veridian.
60. Upon information and belief, no additional improvements have been added to any of those three properties.
61. When 9320 Harvest Moon Lane and 10215 Meandering Way the market determined the appropriate price adjustment between those homes and 9302 Harvest Moon Lane.
62. The buyer of 9320 Harvest Moon Lane paid an additional 5.89 % of the home price of

9302 Harvest Moon Lane.

63. The buyer of 10215 Meandering Way paid an additional 9.42 % of the home price of 9302 Harvest Moon Lane.

64. These percentile differences demonstrate how the market values the differences between the properties.

65. The assessor failed to utilize this readily available market information and utilized incorrect information when performing his adjustments resulting in an appraisal that does not follow the principles of the Wisconsin Property Assessment Manual.

66. The assessor verbally stated that when conducting single property assessments that he does not consider flooring and made no adjustments for differences in flooring between these properties.

67. This is flawed as flooring affects the value of the property.

68. In this instance the home at 9320 Harvest Moon Lane has hardwood flooring but the assessor failed to consider this when performing adjustments.

69. A study by USA Today showed that hardwood flooring increases the amount that home buyers are willing to pay and that buyers are willing to pay an extra \$ 2,080 for hardwood flooring.

PROPER VALUATION

70. The three best comparable homes are 9320 Harvest Moon lane, 10215 Meandering Way and 9602 Sweet Autumn Dr.

71. All those homes are Ranch homes with 3 bedrooms and 2 bathrooms and were built in 2015 or newer.

72. Adjusting the price for the market value determined differences and other facts would

result in a valuation of 9302 Harvest Moon lane of \$ 302,750.99.

73. \$ 302,750.99 is \$ 6,349.01 less than the excessive assessment calculated by the assessor.

74. Using the mill rate of 0.0225197 this excessive assessment resulted in excess tax of \$ 145.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

REQUEST FOR RELIEF

Plaintiff requests judgement against the city of Madison as follows

- I. Recovery of the \$ 145 excessive tax because of the excessive assessment.
- II. Statutory interest⁵.
- III. An award of reasonable attorney's fees and costs to the fullest extent allowed by law; and
- IV. Granting all such additional or further relief as this Court deems just and equitable under the circumstances.

Dated this 29th Day of January

Submitted By:

/s/ Electronically Signed by James Gesbeck

James Gesbeck
Attorney for Plaintiff
State Bar: 1079800
9302 Harvest Moon Lane
Verona, WI 53593
608 335-2569

⁵ As an example, see, Wis. Stat. § 74.37(5)