

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

Esker Apartments, LLC vs. City of Madison

**Electronic Filing
Notice**

Case No. 2020CV001243

Class Code: Money Judgment

FILED

06-18-2020

CIRCUIT COURT

DANE COUNTY, WI

2020CV001243

Honorable Frank D.
Remington

Branch 8

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

FILE ID 61735

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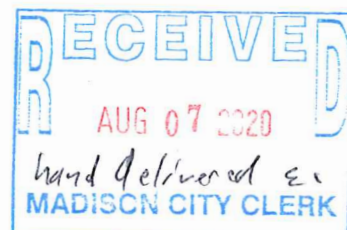
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Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals 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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06-18-2020
CIRCUIT COURT
DANE COUNTY, WI
2020CV001243
Honorable Frank D.
Remington
Branch 8

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

ESKER APARTMENTS, LLC,
1910 Hawks Ridge Drive, Suite #322
Verona, Wisconsin 53593

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

SUMMONS

**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)

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Attorneys for the Plaintiff

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STATE OF WISCONSIN

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DANE COUNTY

ESKER APARTMENTS, LLC,
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Plaintiff,

v.

CITY OF MADISON,
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Room 103, City-County Building
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COMPLAINT

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 #251-0608-022-0301-2, located at 2801 Hickory Ridge Road (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 \$1,950,000 ("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, and the Board reduced the final assessment to \$1,879,000 ("the Revised Assessment"). The Revised Assessment was used for purposes of calculating the 2019 net property tax amount, which was \$42,383.03.

7. The Revised Assessment is also excessive and exceeds the fair market value of the Subject Property.

8. The City assessed the property based on the recent sale of the property. The sale price, however, included the value of non-assessable park impact fees in the total amount of \$592,191.16. The park impact fees were akin to a tax paid by the previous owner and included in the final purchase price of the Subject Property. The money generated from the park impact fees were not, for example, used to connect utility laterals to the Subject Property that increased the value of the Subject Property. Instead, the park impact fee is an intangible which is not assessable as part of a real estate assessment. Thus, using the arm's-length sale price and assessing the value of the *real estate* only, the 2019 net estimated fair market value should not have exceeded \$1,357,808.90.

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