

L19-00076

FILED
07-25-2019
Clerk of Circuit Court
Manitowoc County, WI
2019CV000332

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH _____

MANITOWOC
COUNTY

LOWE'S HOME CENTERS, LLC,
1000 Lowe's Blvd.,
 Mooresville, NC 28117,

Plaintiff,

v.

CITY OF MANITOWOC,
900 Quay Street,
Manitowoc, WI 54220,

Defendant.

RECEIVED

JUL 29 2019

CITY CLERKS OFFICE

Case No. _____

Money Judgment: 30301

Process Server *RAM*
Date: 7/29/19 Time: 12:54 am/pm
 Personal Substitute
 Posted Corporate

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 twenty (20) 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 Manitowoc County Circuit Court, whose address is Manitowoc County Courthouse, 1010 South 8th Street, 1st Floor, Room 105, Manitowoc, WI 54220 and to Daniel P. Deveny, Fredrikson & Byron P.A., Plaintiff's attorney, whose address is 200 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402. You may have an attorney help or represent you.

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CITY ATTORNEY

If you do not provide a proper answer within twenty (20) 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 25th day of July, 2019.

P.O. ADDRESS:

200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
Main: (612) 492-7000
Fax: (612) 492-7077

FREDRIKSON & BYRON, P.A.
Attorneys for Lowe's Home Centers, LLC

By: Electronically signed by Daniel P. Deveny
Daniel P. Deveny (#1114943)

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v.

CITY OF MANITOWOC,
900 Quay Street,
Manitowoc, WI 54220,

COMPLAINT

Plaintiff Lowe's Home Centers, LLC ("Lowe's"), by and through its attorneys, states and alleges its Complaint against Defendant City of Manitowoc ("City") as follows:

INTRODUCTION

1. This is an action filed pursuant to Wis. Stat. § 74.37(3)(d) to recover the amount of property tax imposed upon and paid by Lowe's for the taxes arising from the January 1, 2019 assessment (hereafter the "2019 tax year") because the City's assessment of the property in excess of fair market value violates Wis. Stat. § 70.32.

PARTIES

2. Plaintiff Lowe's is a North Carolina limited liability company with its principal place of business located at 1000 Lowe's Blvd., Mooresville, NC 28117.

3. Defendant City is a Wisconsin municipal corporation with its principal place of business located at 900 Quay Street, Manitowoc, WI 54220.

FACTS

4. At all relevant times, Lowe's owned certain property located in the City of Manitowoc at 4401 Dewey Street, identified by the City as Parcel No. 835-101-666 (the "Property").

5. For the 2019 tax year, the City assessed the Property at a value of \$5,724,000 consisting of \$1,168,100 for land and \$4,555,900 for the improvements thereon ("Assessment").

6. The fair market value of the Property on the Assessment Date was no greater than \$3,870,000 including land and improvements ("Fair Market Value").

7. Accordingly, the Assessment of the Property exceeded the Fair Market Value of the Property by no less than \$1,854,000 ("Excessive Assessment").

8. Lowe's has fully complied with all statutory requirements under its control for procedurally objecting to the 2019 Assessment under Wis. Stat. § 70.47.

9. Lowe's timely filed an Objection Form For Real Property Assessment to the City's Board of Review to dispute the Excessive Assessment.

10. On May 23, 2019, Lowe's submitted a Request for Waiver of Board of Review Hearing.

11. The Waiver was approved by the Board of Review at its meeting on May 29, 2019 and a copy of the signed waiver granting Lowe's request to waive the Board of Review's hearing of the objection pursuant to Wis. Stat. § 70.47(8m) was provided to Lowe's at that time. Lowe's additionally received notice of approval of its waiver by Certified U.S. Mail on or about May 31, 2019.

12. The Board's waiver of the hearing disallowed Lowe's claim on excessive assessment under Wis. Stat. § 74.37(3).

13. The Waiver listed \$5,724,000 as the "Taxpayer's assessment as established by assessor – Value as determined due to waiving of BOR hearing."

14. Lowe's has timely paid all installments of tax alleged to be due for the 2019 tax year.

15. Pursuant to Wis. Stat. §§ 74.37(3) and 70.47(8m), Lowe's timely commenced the action relating to the 2019 tax year within 60 days after it received notice of the hearing waiver disallowing Lowe's claim on excessive assessment.

CLAIM FOR RELIEF

16. All of the foregoing paragraphs are incorporated as if fully re-alleged.

17. The 2019 Assessment resulted in an excessive assessment of the Property, as defined in Wis. Stat. § 74.37(1), because the assessment exceeded the Fair Market Value of the Property.

18. Lowe's is aggrieved by the imposition of general property tax based on the excessive 2019 Assessment by the City and is, therefore, entitled to a refund under Wis. Stat. § 74.37 of the excessive taxes it paid to the City for the 2019 tax year, together with interest as provided by Wis. Stat. § 74.37(5).

WHEREFORE, Lowe's respectfully requests that this Court:

- A. Find the 2019 Assessment to be excessive;
- B. Find that Lowe's paid more than its fair share of taxes due to the Excessive Assessment in 2019;
- C. Find that Lowe's is entitled to a refund of the excessive taxes assessed by the City pursuant to Wis. Stat. § 74.37, together with interest pursuant to Wis. Stat. § 74.37(5); and

D. Grant any and all other relief that the Court deems just and equitable under the circumstances.

Dated this 25th day of July, 2019.

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200 South Sixth Street, Suite 4000

Minneapolis, MN 55402-1425

Main: (612) 492-7000

Fax: (612) 492-7077

FREDRIKSON & BYRON, P.A.

Attorneys for Lowe's Home Centers, LLC

By: Electronically signed by Daniel P. Deveny

Daniel P. Deveny (#1114943)

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STATE OF WISCONSIN**CIRCUIT COURT****MANITOWOC**

Lowe's Home Centers, LLC vs. City of Manitowoc

**Electronic Filing
Notice**

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Clerk of Circuit Court
Manitowoc County, WI

2019CV000332

Case No. 2019CV000332
Class Code: Money JudgmentCITY OF MANITOWOC
900 QUAY STREET
MANITOWOC WI 54220

Case number 2019CV000332 was electronically filed with/converted by the Manitowoc County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a \$20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: 79906b

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 920-683-4030.

Manitowoc County Circuit Court
Date: July 25, 2019