

VI

R. C. No. 325 - 20 - 21. By FINANCE AND PERSONNEL COMMITTEE. April 19, 2021.

Your Committee to whom was referred R. O. No. 109-20-21 by City Clerk submitting a Summons and Complaint in the matter of Wal-Mart Real Estate Business Trust vs. City of Sheboygan; recommends referring to the Finance and Personnel Committee of the 2021-2022 Council.

F&P
21-22

By Hymie Rowha

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

II

4.2

R. O. No. 109 - 20 - 21. By CITY CLERK. December 7, 2020.

Submitting a Summons and Complaint in the matter of Wal-Mart Real Estate Business Trust vs. City of Sheboygan.

CITY CLERK

F4P
12-14-20
Hdd

STATE OF WISCONSIN**CIRCUIT COURT****SHEBOYGAN**Wal-Mart Real Estate Business Trust vs. City of
Sheboygan**Electronic Filing
Notice**

Case No. 2020CV000426

Class Code: Money Judgment

FILED

12-01-2020

Sheboygan County

Clerk of Circuit Court

2020CV000426

Honorable L Edward
Stengel

Branch 1

CITY OF SHEBOYGAN
SUITE 100
828 CENTER AVENUE
SHEBOYGAN WI 53081

Process Server

Date 12/1/20

Time 9:19 am

☐ Personal☐ Posted☐ Substitute☒ Corporate

Case number 2020CV000426 was electronically filed with/converted by the Sheboygan 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: 62e1ac

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 920-459-3068.

Sheboygan County Circuit Court
Date: December 1, 2020

FILED
12-01-2020
Sheboygan County
Clerk of Circuit Court
2020CV000426
Honorable L. Edward
Stengel
Branch 1

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

WAL-MART REAL ESTATE BUSINESS TRUST,
702 SW 8th Street
Bentonville, Arkansas 72716,

Plaintiff,

v.

Case No.: 20-CV-
Case Code: 30301
(Money Judgment: Over \$10,000)

CITY OF SHEBOYGAN,
828 Center Avenue, Suite 100
Sheboygan, Wisconsin 53081,

Defendant.

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 court, whose address is 615 North 6th Street, Sheboygan, Wisconsin 53081, and to Gimbel, Reilly, Guerin & Brown LLP, plaintiff's attorney, whose address is 330 East Kilbourn Avenue, Suite 1170, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

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 1st day of December, 2020.

GIMBEL, REILLY, GUERIN & BROWN LLP

By: *Electronically signed by Christopher L. Strohbehn*

CHRISTOPHER L. STROHBEHN

State Bar No. 1041495

cstrohbehn@grgblaw.com

RUSSELL J. KARNES

State Bar. No. 1054982

rkarnes@grgblaw.com

Attorneys for Plaintiff

POST OFFICE ADDRESS:

330 East Kilbourn Avenue, Suite 1170

Milwaukee, Wisconsin 53202

Telephone: 414-271-1440

FILED
12-01-2020
Sheboygan County
Clerk of Circuit Court
2020CV000426
Honorable L. Edward
Stengel
Branch 1

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

WAL-MART REAL ESTATE BUSINESS TRUST,
702 SW 8th Street
Bentonville, Arkansas 72716,

Plaintiff,

v.

CITY OF SHEBOYGAN,
828 Center Avenue, Suite 100
Sheboygan, Wisconsin 53081,

Defendant.

Case No.: 20-CV-
Case Code: 30301
(Money Judgment: Over \$10,000)

COMPLAINT

Plaintiff Wal-Mart Real Estate Business Trust (Walmart), by its undersigned counsel Gimbel, Reilly, Guerin & Brown LLP, for its complaint against defendant City of Sheboygan (the City), alleges as follows:

Nature of Action and Parties

1. This action is brought under Wis. Stat. §74.37(3)(d), for a declaration by this court that the 2020 value with respect to the parcel of real property in the City known as parcel #59281479120 (the Property), is no more than \$6,250,000, and, if necessary, for a refund of the excessive real estate taxes due to be imposed on Walmart by the City for the Property in 2020, plus statutory interest.

2. Walmart is a foreign corporation duly licensed to conduct business in the State of Wisconsin. Walmart is located at 702 SW 8th Street, Bentonville, Arkansas 72716. Walmart is the tenant on the Property and is responsible for the payment of property taxes, as well as for the prosecution of property tax disputes involving the Property.

3. The City is a body politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 828 Center Avenue, Suite 100, within the City.

4. The Property is located at 3711 South Taylor Drive, within the City.

Background Facts

5. The 2020 value of the Property was set by the City Assessor's office at \$17,423,900.

6. Walmart timely filed an objection to the 2020 assessment of the Property with the City's Board of Review pursuant to Wis. Stat. §70.47. The Board granted a Waiver of Board of Review Hearing in accordance with the provisions of Wis. Stat. §70.37(3). See attached Exhibit A.

7. Walmart timely brings this action and seeks review of the assessment as set forth below.

First Claim for Relief - Excessive Tax Assessment

8. The allegations of paragraphs 1-7 are incorporated as if fully re-alleged herein.

9. The value of the Property as of January 1, 2020 was no higher than \$6,250,000.

10. The 2020 assessment of the Property was excessive. As a result, the tax imposed on the Property for 2020 was excessive.

11. Walmart is entitled to a refund of 2020 taxes paid as may be determined to be due to Walmart, plus statutory interest.

Second Claim for Relief – Non-Uniform Tax Assessment

12. The allegations of paragraphs 1-11 are incorporated as if fully re-alleged herein.

13. The value of the Property as of January 1, 2020 was no higher than \$6,250,000.

14. Upon information and belief, the 2020 assessment was not uniform with the assessment of other properties in the City and State and therefore, violates the Uniformity Clause of the Wisconsin Constitution.

15. Walmart is entitled to a refund of 2020 taxes paid as may be determined to be due to Walmart, plus statutory interest.

Third Claim for Relief – Declaratory Judgment

16. The allegations of paragraphs 1-15 are incorporated as if fully re-alleged herein.

17. As alleged above, the City's BOR delegated its authority to determine the 2020 value of the Property to this Court for its determination.

18. An actual and justiciable controversy exists as to Walmart right to a reduction in the 2020 value of the Property as set forth in Wis. Stat. §70.47.

19. Walmart seeks a declaratory judgment construing Wis. Stat. §70.47 to mandate a reduction in the 2020 value of the Property from \$17,423,900 to \$6,250,000, in accordance with Wisconsin statutory and case law as well as generally accepted appraisal principles.

20. If the Court rules that a hearing is mandated, Walmart seeks an order scheduling an evidentiary hearing from which this Court may make an administrative determination of the value of the Property.

WHEREFORE, plaintiff Walmart seeks the following relief:

A. A determination that the value of the Property as of January 1, 2020 was no higher than \$6,250,000.

B. A determination that Walmart is entitled to a refund of all taxes paid on the portion of the tax assessment that was excessive.

C. An award of all litigation costs incurred by Walmart in this action, including the reasonable fees of its attorneys; and

D. Any such other and further relief as the Court deems appropriate and just.

Dated this 1st day of December, 2020.

GIMBEL, REILLY, GUERIN & BROWN LLP

By: *Electronically signed by Christopher L. Strohbehn*

CHRISTOPHER L. STROHBEHN

State Bar No. 1041495

cstrohbehn@grgblaw.com

RUSSELL J. KARNES

State Bar No. 1054982

rkarnes@grgblaw.com

Attorneys for Plaintiff

POST OFFICE ADDRESS:**330 East Kilbourn Avenue, Suite 1170****Milwaukee, Wisconsin 53202****Telephone: 414-271-1440**

Request for Waiver of Board of Review (BOR) Hearing

Section 70.47 (8m), Wis. Stats., states, "The board may, at the request of the taxpayer or assessor, or at its own discretion, waive the hearing of an objection under sub. (8) or, in a 1st class city, under sub. (16) and allow the taxpayer to have the taxpayer's assessment reviewed under sub. (13). For purposes of this subsection, the board shall submit the notice of decision under sub. (12) using the amount of the taxpayer's assessment as the finalized amount. For purposes of this subsection, if the board waives the hearing, the waiver disallows the taxpayer's claim on excessive assessment under sec. 74.37(3) and notwithstanding the time period under sec. 74.37(3)(d), the taxpayer has 60 days from the notice of hearing waiver in which to commence an action under sec. 74.37(3)(d)."

NOTE: The legal requirements of the Notice of Intent to Appear must be satisfied and the Objection Form must be completed and submitted as required by law prior to the Request for Waiver of Board of Review Hearing being submitted.

NOTE: Request for Waiver must be presented prior to the commencement of the hearing.

Municipality City of Sheboygan	County Sheboygan
Requestor's name Wal-Mart Stores Inc.	Agent name (if applicable) * Christopher L. Strohehn / Russell J. Karnes
Requestor's mailing address P.O. Box 8050 Bentonville, AR 72712	Agent's mailing address Gimbel, Reilly, Guerin & Brown, LLP 330 E. Kilbourn Ave., Milwaukee, WI 53202
Requestor's telephone number (479) 204 - 3835 <input checked="" type="checkbox"/> Land Line <input type="checkbox"/> Cell Phone	Agent's telephone number (414) 271 - 1440 <input checked="" type="checkbox"/> Land Line <input type="checkbox"/> Cell Phone
Requestor's email address Brandon.Caplena@walmart.com	Agent's email address cstrohehn@grgblaw.com / rkarnes@grgblaw.com

Property address 3711 S. Taylor Dr., Sheboygan, WI 53081	
Legal description or parcel number 59281-479120	
Taxpayer's assessment as established by assessor - Value as determined due to waiving of BOR hearing \$ 13,265,000	
Property owner's opinion of value \$ 6,250,000	
Basis for request To take matter directly to Circuit Court as cases regarding prior assessments are currently pending in Circuit Court	
Date Notice of Intent to Appear at BOR was given 06 - 02 - 2020	Date Objection Form was completed and submitted 06 - 02 - 2020

All parties to the hearing understand that in granting of this waiver there can be no appeal to the Department of Revenue under sec. 70.85, Wis. Stats. An action under sec. 70.47(13), Wis. Stats., must be commenced within 90 days of the receipt of the notice of the waiving of the hearing. An action under sec. 74.37(3)(d), Wis. Stats., must be commenced with 60 days of the receipt of the notice of the waiving of the hearing.

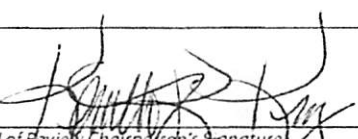

Requestor's / Agent's Signature

*If agent, attach signed Agent Authorization Form, PA-105

Decision

☒ Approved ☐ Denied

Reason _____


Board of Review Chairperson's Signature

☒ Taxpayer advised 10-16-2020
Date

10/14/2020
Date

**PLAINTIFF'S
EXHIBIT
A**