

FILED

12-03-2021

Clerk of Circuit Court

Brown County, WI

2021CV001312

Honorable Marc A.

Hammer

Branch 5

STATE OF WISCONSIN
CIRCUIT COURT
BROWN COUNTY

KOHLER CO.
444 Highland Drive
Kohler, WI 53044,

Plaintiff,

v.

Case No. _____
Money Judgment - 30301

VILLAGE OF ASHWAUBENON
2155 Holmgren Way
Ashwaubenon, WI 54304,

Defendant.

SUMMONS

STATE OF WISCONSIN:

To each entity named above as 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 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 or electronically filed with the Court, whose address is 100 South Jefferson Street, Green Bay, Wisconsin 54301, and to plaintiff's attorneys, Reinhart Boerner Van

Deuren s.c., whose address is 1000 North Water Street, Suite 1700, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within 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 3rd day of December, 2021.

Reinhart Boerner Van Deuren s.c.
1000 North Water Street
Milwaukee, WI 53202
Telephone: 414-298-1000
Facsimile: 414-298-8097

Mailing Address:
P.O. Box 2965
Milwaukee, WI 53201-2965

Electronically signed by Kristina E. Somers
Kristina E. Somers
State Bar ID No. 1026028
Don M. Millis
State Bar ID No. 1015755
Sara Stellpflug Rapkin
State Bar ID No. 1076539
Attorneys for Plaintiff

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Green Bay, WI 54304

Defendant.

COMPLAINT

Plaintiff Kohler Co. (the "Plaintiff"), by its undersigned counsel, Reinhart Boerner Van Deuren s.c., for its Complaint against the defendant the Village of Ashwaubenon (the "Village"), alleges as follows:

NATURE OF ACTION AND PARTIES

1. This action is brought under Wis. Stat. § 74.37(3)(d), for a refund of excessive real estate taxes imposed on Plaintiff by the Village for the year 2021, plus statutory interest, with respect to a parcel of real property in the Village (the "Property").

2. Plaintiff is the owner of the Property improvements and tenant of the Property land, is responsible for the payment of property taxes and the prosecution of property tax disputes involving the Property, and is authorized to bring this claim in its own name.

3. The Village is a body corporate and politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 2155 Holmgren Way, in the Village.

4. The Property is located at 1950 S. Ridge Road within the Village and is identified in the Village's records as Tax Parcel No. VA-48-3.

JURISDICTION AND VENUE

5. The Court has personal jurisdiction over the Village pursuant to Wis. Stat. § 801.05(1).

6. Venue is appropriate in Brown County pursuant to Wis. Stat. § 801.50(2)(a).

BACKGROUND FACTS

2021 Assessment - Background Facts

7. The Department of Revenue determined that the aggregate ratio of property assessed in the Village was 94.2446751% as of January 1, 2021.

8. For 2020, property tax was imposed on property in the Village at the rate of \$18.102432 per \$1,000 of assessed value of property.

9. For 2021, the Village's assessor set the assessment of the Property at \$16,800,000.

10. Plaintiff appealed the 2021 assessment of the Property by filing a timely objection with the Village's Board of Review pursuant to Wis. Stat. § 70.47 and otherwise complying with all of the requirements of Wis. Stat. § 70.47, except Wis. Stat. § 70.47(13).

11. By virtue of a hearing waiver pursuant to Wis. Stat. § 70.47(8m), the Board of Review sustained the 2021 assessment on the merits without a hearing. A true and correct copy of the approved Request for Waiver of Board of Review (BOR) Hearing is attached hereto as **Exhibit A** and is incorporated herein by reference.

12. Assuming the 2021 mill rate will be essentially the same as the 2020 mill rate, the Village will impose tax on the Property in the approximate amount of \$304,121.

13. Plaintiff will timely pay the property taxes imposed by the Village on the Property for 2021, or the required installments thereof.

CLAIM FOR RELIEF

14. The allegations of paragraphs 1-13 are incorporated as if fully re-alleged herein.

2021 Assessment - Claim for Relief

15. The fair market value of the Property as of January 1, 2021 was no higher than \$12,367,000.

16. Based on the aggregate ratio of 94.2446751%, the correct assessment of the Property for 2021 is no higher than \$11,655,239.

17. Based on the tax rate of \$18.102432 per \$1,000 of assessed value, the correct amount of property tax on the Property for 2021 should be no higher than \$210,988.

18. The 2021 assessment of the Property, as set by the Village's Assessor and compared with other commercial property in the Village is excessive and, upon information and belief, violates Article VIII, Section 1 (i.e., the Uniformity Clause) of the Wisconsin Constitution. As a result, the property tax imposed on the Property for 2021 may be excessive in at least the amount of \$93,133.

19. Upon information and belief the Village will take the position that the assessment of property in the Village is at market value and, if true, then an over assessment of the Property constitutes a Uniformity Clause violation. As a result of the assessment of the Property, the Property bears an unreasonably disproportionate share of taxes on an ad valorem basis.

20. Plaintiff is entitled to a refund of 2021 tax in the amount of at least \$93,133, or such greater amount as may be determined to be due to Plaintiff, plus statutory interest.

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. A determination that the assessment of the Property for 2021 should be no higher than \$11,655,239;
- B. A determination that the correct tax on the Property for 2021 should be no higher than \$210,988;
- C. Judgment in the amount of \$93,133, or such greater amount as may be determined due to Plaintiff, plus statutory interest;
- D. An award of all litigation costs incurred by Plaintiff in this action, including the reasonable fees of its attorneys; and
- E. Such other and further relief as the Court deems appropriate and just.

Dated this 3rd day of December, 2021.

Reinhart Boerner Van Deuren s.c.
1000 North Water Street
Milwaukee, WI 53202
Telephone: 414-298-1000
Facsimile: 414-298-8097

Mailing Address:
P.O. Box 2965
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Electronically signed by Kristina E. Somers
Kristina E. Somers
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State Bar ID No. 1076539
Attorneys for Plaintiff

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 Ashwaubenon	County Brown
Requestor's name Kohler Co.	Agent name (if applicable)* Reinhart Boerner Van Deuren s.c., including but not limited to Kristina Somers
Requestor's mailing address 444 Highland Drive Kohler, WI 53044	Agent's mailing address 1000 North Water Street, Suite 1700 Milwaukee, WI 53202
Requestor's telephone number () - <input type="checkbox"/> Land Line <input type="checkbox"/> Cell Phone	Agent's telephone number (414) 298 - 1000 <input checked="" type="checkbox"/> Land Line <input type="checkbox"/> Cell Phone
Requestor's email address ksomers@reinhartlaw.com	Agent's email address ksomers@reinhartlaw.com

Property address 1950 S. Ridge Road	
Legal description or parcel number VA-48-3	
Taxpayer's assessment as established by assessor – Value as determined due to waiving of BOR hearing \$ 16,800,000	
Property owner's opinion of value \$ 12,367,000	
Basis for request Litigation likely.	
Date Notice of Intent to Appear at BOR was given 9 - 30 - 2021	Date Objection Form was completed and submitted 10 - 5 - 2021

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.

Kristina Somers (Agent)
Requestor's/Agent's Signature

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

Decision

Approved Denied

Reason By Tax Payer Request

Shukubal
Board of Review Chairperson's Signature

10/6/2021

Date

Taxpayer advised 10/6/2021
Date

Agent Authorization

If an agent is representing the property owner or municipality, the property owner or municipality must provide prior written authorization for the agent to represent the company or municipality when contacting the reviewing authority.

Section 1: Property Owner and Property Information

Company/property owner name Kohler Co.			Taxation district <input type="checkbox"/> Town <input checked="" type="checkbox"/> Village <input type="checkbox"/> City	County Brown	
Mailing address 444 Highland Drive			Street address of property 1950 S. Ridge Road		
City Kohler	State WI	Zip 53044	City Ashwaubenon	State WI	Zip 54304
Parcel number VA-48-3	Phone (920) 457-4441		Email	Fax () -	

Section 2: Authorized Agent Information

Name / title Kristina Somers and any other employee or agent of Reinhart Boerner Van Deuren s.c.	Company name Reinhart Boerner Van Deuren s.c.
Mailing address 1000 North Water Street, Suite 1700	Phone 414-298-1000 Fax 414-298-8097
City Milwaukee	State WI Zip 53202

Section 3: Agent Authorization

Agent Authorized for: (check all that apply) <input type="checkbox"/> Manufacturing property assessment appeals (BOA) <input type="checkbox"/> Access to manufacturing assessment system (MAS) <input type="checkbox"/> Wisconsin Department of Revenue 70.85 appeals <input checked="" type="checkbox"/> Municipal Board of Review <input checked="" type="checkbox"/> Other <u>All municipal property tax matters</u>	Enter Tax Years of Authorization <hr/> <hr/> <hr/> <u>2017 and forward (until revoked in writing)</u> <u>2017 and forward (until revoked in writing)</u>
Authorization expires: <u> - - </u> <i>(mm - dd - yyyy)</i>	
Send notices and other written communications to: (check one or both)	
<input type="checkbox"/> Authorized Agent <input type="checkbox"/> Property Owner	

Section 4: Agreement/Acceptance

I understand, agree and accept:

- The assessor's office may divulge to the agent any information it may have on file concerning this property
- My agent has the authority and my permission to accept a subpoena concerning this property on my behalf, but this grant of authority and permission does not cure or waive any defect in the subpoena or the manner in which it was served
- Signing this document does not relieve me of personal responsibility for timely reporting changes to my property and paying taxes, or penalties for failure to do so, as provided under Wisconsin tax law.
- A photocopy and/or faxes copy of this completed form has the same authority as a signed original.
- If signed by a corporate officer, partner, or fiduciary on behalf of the owner, I certify that I have the power to execute this Agent Authorization form.

Section 5: Owner Grants Authorization

Owner Sign Here ►	Owner name (please print)
	Edward J. Devine
	Owner signature
	
Company or title	Date (mm-dd-yyyy)
Kohler Co., Vice President - Taxation	10 - 01 - 2021