

Felker Family, LP vs. City of West Allis

**Electronic Filing  
Notice**Case No. 2018CV004472  
Class Code: Money JudgmentFILED  
05-25-2018  
John Barrett  
Clerk of Circuit Court  
2018CV004472  
Honorable Mary  
Triggiano-13  
Branch 13CITY OF WEST ALLIS  
7525 WEST GREENFIELD AVENUE  
MILWAUKEE WI 53214

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**Pro Se opt-in code: 8fd9cf**

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 414-278-4120.

**BY THE COURT:**

Electronically signed by John Barrett  
Clerk of Circuit Court

05-25-2018  
Date

FILED  
05-25-2018  
John Barrett  
Clerk of Circuit Court  
2018CV004472  
Honorable Mary  
Triggiano-13  
Branch 13

STATE OF WISCONSIN  
CIRCUIT COURT  
MILWAUKEE COUNTY

FELKER FAMILY, LP,  
19275 W. Capitol Drive  
Brookfield, WI 53045,

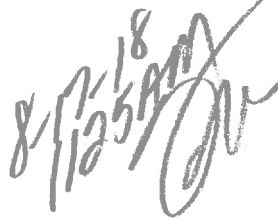
RECEIVED

AUG 17 2018

Plaintiff, CITY OF WEST ALLIS  
CITY CLERK

v.

CITY OF WEST ALLIS,  
7525 West Greenfield Avenue  
West Allis, WI 53214,



Case No. \_\_\_\_\_  
Money Judgment - 30301

Defendant.

**SUMMONS**

STATE OF WISCONSIN:

To each entity named above as Defendant:

You are hereby notified that the plaintiff named above have 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 901 North 9th Street, Room 104, Milwaukee, Wisconsin 53233, and to plaintiff's attorneys, Reinhart Boerner Van Deuren s.c., whose address is 22 East Mifflin Street, Suite 700, Madison, Wisconsin 53703. 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 25th day of May, 2018.

Reinhart Boerner Van Deuren s.c.  
22 East Mifflin Street, Suite 700  
Madison, WI 53703  
Telephone: 608-229-2200  
Facsimile: 608-229-2100

Mailing Address:  
P.O. Box 2018  
Madison, WI 53701-2018

39682583

**Electronically signed by Don M. Millis**

Don M. Millis  
State Bar ID No. 1015755  
Jessica Hutson Polakowski  
State Bar ID No. 1061368  
Sara Stellpflug Rapkin  
State Bar ID No. 1076539  
Shawn E. Lovell  
State Bar ID No. 1079801  
Attorneys for Plaintiff

STATE OF WISCONSIN  
CIRCUIT COURT  
MILWAUKEE COUNTY

FELKER FAMILY, LP,  
19275 W. Capitol Drive  
Brookfield, WI 53045,

Plaintiff,

v.

Case No. \_\_\_\_\_  
Money Judgment - 30301

CITY OF WEST ALLIS,  
7525 West Greenfield Avenue  
West Allis, WI 53214,

Defendant.

---

**COMPLAINT**

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Plaintiff Felker Family, LP ("Plaintiff"), by its undersigned counsel, Reinhart Boerner Van Deuren s.c., for its Complaint against the defendant City of West Allis (the "City"), 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 City for the years 2017 and 2018, plus statutory interest, with respect to a of real property in the City (the "Property").

2. Plaintiff is the owner on the Property, 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 City is a body corporate and politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 7525 West Greenfield Avenue in the City.

4. The Property is located at 333 South 108th Street, within the City, and is identified in the City's records as Tax Parcel No. 414-9990-001.

#### **JURISDICTION AND VENUE**

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

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

#### **BACKGROUND FACTS**

##### ***2017 Assessment - Background Facts***

7. The Department of Revenue determined that the aggregate ratio of property assessed in the City was 100.83234272% as of January 1, 2017.

8. For 2017, property tax was imposed on property in the City at the rate of \$28.277623 per \$1,000 of the assessed value for Property.

9. For 2017, the City's assessor set the assessment of the Property at \$6,287,200.

10. Plaintiff appealed the 2017 assessment of the Property by filing a timely objection with the City'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. The City's Board of Review heard Plaintiff's objection and sustained the assessment at \$6,287,200.

12. The City imposed tax on the Property in the amount of \$177,787.07.

13. Plaintiff timely paid the property taxes imposed by the City on the Property for 2017, or the required installments thereof.

14. On January 24, 2018, Plaintiff timely and personally served on the City Clerk Claims for Excessive Assessment pursuant to Wis. Stat. § 74.37(2) (the "2017 Claim"). A true and correct copy of the 2017 Claim is attached hereto as **Exhibit A** and is incorporated herein by reference.

15. On or about February 26, 2018, the City sent a letter to Plaintiff, stating that the City Council considered the 2017 Claim and disallowed the 2017 Claim in its entirety (the "2017 Disallowance"). A true and correct copy of the 2017 Disallowance is attached hereto as **Exhibit B** and is incorporated herein by reference.

#### *2018 Assessment - Background Facts*

16. The aggregate ratio of the property assessed in the City as of January 1, 2018 has not been determined as of the date of filing.

17. For 2017, property tax was imposed on property in the City at the rate of \$28.277623 per \$1,000 of assessed value of property.

18. For 2018, the City's assessor set the assessment of the Property at \$6,287,200.

19. Plaintiff appealed the 2018 assessment of the Property by filing a timely objection with the City'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).

20. By virtue of hearing waiver pursuant to Wis. Stat. § 70.47(8m), the Board of Review sustained the 2018 assessment on the merits without hearing at \$6,287,200. A true and correct copy of the 2018 Stipulation Waiving Hearing is attached hereto as **Exhibit C** and is incorporated herein by reference.

21. Assuming the 2018 mill rate will be essentially the same as the 2016 mill rate, the City will impose tax on the Property in the amount of \$177,787.

**CLAIM FOR RELIEF**

22. The allegations of paragraphs 1-22 are incorporated as if fully re-alleged herein.

***2017 Assessment - Claim for Relief***

23. The fair market value of the Property as of January 1, 2017 was no higher than \$5,000,000.

24. Based on the aggregate ratio of 100.8324272 %, the correct assessment of the Property for 2017 is no higher than \$5,041,621.

25. Based on the tax rate of \$28.277623 per \$1,000 of assessed value, the correct amount of property tax on the Property for 2017 should be no higher than \$142,565.

26. The 2017 assessment of the Property, as set by the City's Board of Review was excessive and, upon information and belief, violated Article VIII, Section 1 (i.e., the Uniformity Clause) of the Wisconsin Constitution. As a result, the property taxes imposed on the Property for 2017 was excessive in at least the amount of \$35,222.

27. Plaintiff is entitled to a refund of 2017 tax in the amount of \$35,222, or such greater amount as may be determined to be due to Plaintiff, plus statutory interest.

***2018 Assessment - Claim for Relief***

28. The fair market value of the Property as of January 1, 2018 is no higher than \$5,000,000.

29. Assuming an aggregate ratio of 100%, the correct assessment of the Property for 2018 is no higher than \$5,000,000

30. Assuming a tax rate of \$28.277623 per \$1,000 of assessed value, the correct amount of property taxes on the Property for 2018 should be no higher than \$141,388.

31. The 2018 assessment of the Property, as set by the City's Board of Review was excessive and, upon information and belief, violated Article VIII, Section 1 (i.e., the Uniformity

Clause) of the Wisconsin Constitution. As a result, the property tax imposed on the Property for 2018 was excessive in at least the amount of \$36,399.

32. Plaintiff is entitled to a refund of 2018 tax in the amount of at least \$36,399, 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 2017 should be no higher than \$5,041,621;

B. A determination that the correct taxes on the Property for 2017 should be no higher than \$142,565;

C. A determination that the assessment of the Property for 2018 should be no higher than \$5,000,000;

D. A determination that the correct taxes on the Property for 2018 should be no higher than \$141,388;

E. Judgment in the amount of \$71,621, or such greater amount as may be determined due to Plaintiff, plus statutory interest;

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

G. Such other and further relief as the Court deems appropriate and just.



Dated this 25th day of May, 2018.

Reinhart Boerner Van Deuren s.c.  
22 East Mifflin Street, Suite 700  
Madison, WI 53703  
Telephone: 608-229-2200  
Facsimile: 608-229-2100

Mailing Address:  
P.O. Box 2018  
Madison, WI 53701-2018

39612919

**Electronically signed by Don M. Millis**

Don M. Millis  
State Bar ID No. 1015755  
Jessica Hutson Polakowski  
State Bar ID No. 1061368  
Sara Stellpflug Rapkin  
State Bar ID No. 1076539  
Shawn E. Lovell  
State Bar ID No. 1079801  
Attorneys for Plaintiff

January 19, 2018

Don M. Millis, Esq.  
Direct Dial: 608-229-2234  
dmillis@reinhartlaw.com

**CLAIM FOR EXCESSIVE ASSESSMENT**

SERVED BY PROCESS SERVER

Monica Schultz  
City of West Allis  
7525 W. Greenfield Avenue  
West Allis, WI 53214



RECEIVED

JAN 24 2018

CITY OF WEST ALLIS  
CITY CLERK

Dear Clerk:

Re: Tax Parcel No. 414-9990-001

Now comes Claimant, Felker Family, LP, owner of parcel 414-9990-001 (the "Property") in West Allis, Wisconsin, by Claimant's attorneys Reinhart Boerner Van Deuren s.c., and files this Claim for Excessive Assessment against the City of West Allis (the "City"), pursuant to Wis. Stat. § 74.37. You hereby are directed to serve any notice of disallowance on the undersigned agent of the Claimant.

1. This Claim is brought under Wis. Stat. § 74.37(3)(d), for a refund of excessive real estate taxes imposed on Claimant by the City for the year 2017, plus statutory interest, with respect to the Property.
2. Claimant is the owner of the Property, 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 City is a body corporate and politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 7525 West Greenfield Avenue in the City.
4. The Property is located at 333 South 108th Street within the City and is identified in the City's records as Tax Parcel No. 414-9990-001.
5. The Wisconsin Department of Revenue determined that the aggregate ratio of property assessed in the City was 100.8431427% as of January 1, 2017.

**COPY**

6. For 2017, property tax was imposed on property in the City at the rate of \$28.277623 per \$1,000 for of the assessed value for Property.

7. For 2017, the City's assessor set the assessment of the Property at \$6,287,200.

8. Claimant appealed the 2017 assessment of the Property by filing timely objections with the City'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).

9. The City's Board of Review heard Claimant's objections and sustained the assessment at \$6,287,200.

10. The City imposed tax on the Property in the amount of \$177,787.07.

11. Claimant timely paid the property taxes imposed by the City on the Property for 2017, or the required installment thereof.

12. The fair market value of the Property as of January 1, 2017 was no higher than \$3,500,000.

13. Based on the aggregate ratio 100.8431427%, the correct assessment of the Property for 2017 is no higher than \$3,529,135.

14. Based on the tax rate of \$28.277623 per \$1,000 of assessed value, the correct amount of property tax on the Property for 2017 should be no higher than \$99,796.

15. The 2017 assessment of the Property, as set by the City's Board of Review was excessive and, upon information and belief, violated Article VIII, Section 1 (i.e., the Uniformity Clause) of the Wisconsin Constitution. As a result, the property tax imposed on the Property for 2017 was excessive in at least the amount of \$77,992.

16. Claimant is entitled to a refund of 2017 tax in the amount of \$77,992, or such greater amount as may be determined to be due to Claimant, plus statutory interest.

17. The amount of this claim is \$77,992, plus interest thereon.

January 19, 2018  
Page 3

Dated at Madison, Wisconsin, this 19th day of January, 2018.

Sincerely yours,

A handwritten signature in black ink, appearing to be "Don M. Millis", written over a circular scribble.

Don M. Millis  
Agent for Claimant

35551266



Steven A. Braatz, Jr.  
City Clerk  
City Clerk's Office  
414.302.8220  
sbraatz@westalliswi.gov

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**NOTICE OF DISALLOWANCE OF CLAIM**

February 23, 2018

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

✓ Attorney Don M. Millis  
Reinhart Boerner Van Deuren S.C.  
22 East Mifflin Street, Suite 600  
Madison, WI 53703

Felker Family, LP  
c/o Registered Agent David Smith  
19275 West Capitol Drive  
Brookfield, WI 53045

Re: Claim for Excessive Assessment at 333 South 108<sup>th</sup> St.

Dear Mr. Millis:

At its meeting on February 20, 2018, the Common Council of the City of West Allis considered your claim received on or about January 24, 2018 regarding an excessive assessment at 333 South 108<sup>th</sup> Street, West Allis, Wisconsin, Parcel No. 414-9990-001, and denied the claim in full.

Please be advised that no lawsuit may be brought on this claim against the City of West Allis or any of its officials, officers, agents or employees after 90 days from the date of service of this letter.

Sincerely,

Steven A. Braatz, Jr.  
City Clerk

cc: City Attorney's Office  
City Clerk's Office

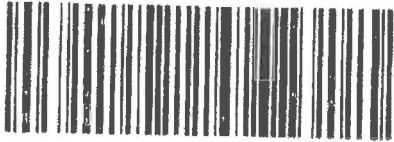




Greenfield Avenue  
Wisconsin 53214

ty Clerk

**CERTIFIED MAIL™**



7012 2920 0000 8389 5367



Attorney Don M. Millis  
Reinhart Boerner Van Deuren S.C.  
22 East Mifflin Street, Suite 600  
Madison, WI 53703



## 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 1<sup>st</sup> 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 <b>West Allis</b>	County <b>Milwaukee</b>
Requestor's name <b>Felker Investments 333, LLC</b>	Agent name (if applicable) * <b>Reinhart Boerner Van Deuren s.c. including but not limited, Don Millis, Shawn Lovell, Greg Stein</b>
Requestor's mailing address <b>333 S. 108th Street West Allis, WI</b>	Agent's mailing address <b>22 E. Mifflin Street, Suite 700 Madison, WI 53703</b>
Requestor's telephone number (     ) -     - <input type="checkbox"/> Land Line <input type="checkbox"/> Cell Phone	Agent's telephone number ( <b>608</b> ) <b>229</b> - <b>2200</b> <input checked="" type="checkbox"/> Land Line <input type="checkbox"/> Cell Phone
Requestor's email address	Agent's email address <b>dmillis@reinhartlaw.com</b>

Property address <b>333 S. 108th Street</b>	
Legal description or parcel number <b>414-9990-001</b>	
Taxpayer's assessment as established by assessor - Value as determined due to waiving of BOR hearing <b>\$ 6,287,200</b>	
Property owner's opinion of value <b>\$ 5,000,000</b>	
Basis for request <b>Pending litigation</b>	
Date Notice of Intent to Appear at BOR was given <b>4 - 5 - 18</b>	Date Objection Form was completed and submitted <b>5 - 23 - 2018</b>

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 Possible pending litigation

*Wayne B. Clark*  
Board of Review Chairperson's Signature

5-24-18  
Date

Taxpayer advised      5-24-18  
Date