

VINCENT MILEWSKI, and
MORGANNE MACDONALD,

Plaintiffs,

vs.

Case No.: 14-CV-1482
Case Code: 30701
Declaratory Judgment

TOWN OF DOVER, BOARD OF
REVIEW FOR THE TOWN OF DOVER, and
GARDINER APPRAISAL SERVICE, LLC,

Defendants.

ANSWER OF DEFENDANT, GARDINER APPRAISAL SERVICE, LLC

NOW COMES the Defendant, Gardiner Appraisal Service, LLC, by its attorneys, Axley Brynelson, LLP, by Attorneys Charles V. Sweeney and Mitchell R. Olson, and as and for an answer to the Complaint of Plaintiffs in the above-captioned action, does respond as follows:

ANSWER TO COMPLAINT

1. In response to Paragraph No. 1, said allegation contains summary and/or argument and is not a proper pleading requiring a response; to the extent any response is required, Defendant denies same.

2. In response to Paragraph No. 2, said allegation contains summary and/or argument and is not a proper pleading requiring a response; to the extent any response is required, Defendant denies same.

3. In response to Paragraph No. 3, said allegation contains summary and/or argument and is not a proper pleading requiring a response; to the extent any response is required, Defendant denies same.

4. In response to Paragraph No. 4, admits.

5. In response to Paragraph No. 5, admits.

6. In response to Paragraph No. 6, admits.

7. In response to Paragraph No. 7, admits.

8. In response to Paragraph No. 8, admits.

9. In response to Paragraph No. 9, admits.

10. In response to Paragraph No. 10, denies the allegations therein, and puts the Plaintiffs to their strict proof.

11. In response to Paragraph No. 11, denies the allegations therein, and puts the Plaintiffs to their strict proof.

12. In response to Paragraph No. 12, admits.

13. In response to Paragraph No. 13, admits.

14. In response to Paragraph No. 14, admits.

15. In response to Paragraph No. 15, admits same, and affirmatively alleges that the Notice, marked as Exhibit A, is a legal notice, the terms and conditions of which speak for themselves.

16. In response to Paragraph No. 16, denies information sufficient to form a belief as to the truth of the allegations therein, and denies same.

17. In response to Paragraph No. 17, denies information sufficient to form a belief as to the truth of the allegations therein, and denies same.

18. In response to Paragraph No. 18, admits.

19. In response to Paragraph No. 19, admits.

20. In response to Paragraph No. 20, admits that there was no viewing scheduled after the October 8, 2013 letter; denies all other allegations therein.

21. In response to Paragraph No. 21, admits that there was no “interview” of the Plaintiffs; denies all other allegations therein.

22. In response to Paragraph No. 22, denies the allegations therein, and puts the Plaintiffs to their strict proof.

23. In response to Paragraph No. 23, denies the allegations therein, and puts the Plaintiffs to their strict proof.

24. In response to Paragraph No. 24, admits that Defendant performed a town-wide re-valuation in 2004, and admits that Plaintiffs refused access to the interior of the residence; denies all other allegations therein.

25. In response to Paragraph No. 25, denies any coercion relative to interior inspection, admits that Plaintiffs allowed for an interior inspection in 2004 and that the assessment was lowered subsequent to that inspection.

26. In response to Paragraph No. 26, denies the allegations therein, and puts the Plaintiffs to their strict proof.

27. In response to Paragraph No. 27, denies the allegations therein, and puts the Plaintiffs to their strict proof.

28. In response to Paragraph No. 28, denies the allegations therein, and puts the Plaintiffs to their strict proof.

29. In response to Paragraph No. 29, denies the allegations therein, and puts the Plaintiffs to their strict proof.

30. In response to Paragraph No. 30, denies the allegations therein, and puts the Plaintiffs to their strict proof.

31. In response to Paragraph No. 31, admits.

32. In response to Paragraph No. 32, admits.

33. In response to Paragraph No. 33, admits.

34. In response to Paragraph No. 34, denies information sufficient to form a belief as to the truth of the allegations therein, and denies same.

35. In response to Paragraph No. 35, denies information sufficient to form a belief as to the truth of the allegations as to BOR rejecting any certain argument(s); admits that the BOR did not allow Plaintiff's appeal at said hearing.

36. In response to Paragraph No. 36, denies information sufficient to form a belief as to the truth of the allegations therein, and denies same.

37. In response to Paragraph No. 37, denies information sufficient to form a belief as to the truth of the allegations therein, and denies same.

38. In response to Paragraph No. 38, denies information sufficient to form a belief as to the truth of the allegations therein, and denies same.

39. In response to Paragraph No. 39, repeat and restate the responses set forth above in Paragraphs 1 – 38, as if set forth in full.

40. In response to Paragraph No. 40, Plaintiffs' First Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

41. In response to Paragraph No. 41, Plaintiffs' First Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

42. In response to Paragraph No. 42, Plaintiffs' First Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

43. In response to Paragraph No. 43, Plaintiffs' First Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

44. In response to Paragraph No. 44, Plaintiffs' First Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

45. In response to Paragraph No. 45, Plaintiffs' First Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

46. In response to Paragraph No. 46, Plaintiffs' First Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

47. In response to Paragraph No. 47, Plaintiffs' First Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

48. In response to Paragraph No. 48, Plaintiffs' First Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

49. In response to Paragraph No. 49, Plaintiffs' First Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

50. In response to Paragraph No. 50, Plaintiffs' First Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

51. In response to Paragraph No. 51, Plaintiffs' First Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

52. In response to Paragraph No. 52, repeat and restate the responses set forth above in Paragraphs 1 – 51, as if set forth in full.

53. In response to Paragraph No. 53, said allegation contains summary and/or argument and/or citation of legal authority, and is not a proper pleading requiring a response; to the extent any response is required, Defendant denies any liability under the cited provision.

54. In response to Paragraph No. 54, denies the allegations therein, and puts the Plaintiffs to their strict proof.

55. In response to Paragraph No. 55, denies the allegations therein, and puts the Plaintiffs to their strict proof.

56. In response to Paragraph No. 56, denies the allegations therein, and puts the Plaintiffs to their strict proof.

57. In response to Paragraph No. 57, denies information sufficient to form a belief as to the truth of the allegations therein, and denies same.

58. In response to Paragraph No. 58, denies the allegations therein, and puts the Plaintiffs to their strict proof.

59. In response to Paragraph No. 59, denies the allegations therein, and puts the Plaintiffs to their strict proof.

60. In response to Paragraph No. 60, denies the allegations therein, and puts the Plaintiffs to their strict proof.

61. In response to Paragraph No. 61, denies the allegations therein, and puts the Plaintiffs to their strict proof.

62. In response to Paragraph No. 62, denies the allegations therein, and puts the Plaintiffs to their strict proof.

63. In response to Paragraph No. 63, repeat and restate the responses set forth above in Paragraphs 1 – 62, as if set forth in full.

64. In response to Paragraph No. 64, Plaintiffs' Third Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

65. In response to Paragraph No. 65, Plaintiffs' Third Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

66. In response to Paragraph No. 66, Plaintiffs' Third Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

67. In response to Paragraph No. 67, Plaintiffs' Third Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

68. In response to Paragraph No. 68, Plaintiffs' Third Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

69. In response to Paragraph No. 69, Plaintiffs' Third Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

70. In response to Paragraph No. 70, Plaintiffs' Third Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

71. In response to Paragraph No. 71, repeat and restate the responses set forth above in Paragraphs 1 – 70, as if set forth in full.

72. In response to Paragraph No. 72, Plaintiffs' Fourth Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

73. In response to Paragraph No. 73, Plaintiffs' Fourth Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

74. In response to Paragraph No. 74, Plaintiffs' Fourth Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

75. In response to Paragraph No. 75, Plaintiffs' Fourth Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

76. In response to Paragraph No. 76, Plaintiffs' Fourth Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

77. In response to Paragraph No. 77, Plaintiffs' Fourth Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

78. In response to Paragraph No. 78, Plaintiffs' Fourth Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

79. In response to Paragraph No. 79, Plaintiffs' Fourth Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

80. In response to Paragraph No. 80, Plaintiffs' Fourth Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

81. In response to Paragraph No. 81, Plaintiffs' Fourth Cause of Action is not and cannot be stated against this answering Defendant, such that no Answer is required. To the extent an answer is required, denies.

82. In response to Paragraph No. 82, repeat and restate the responses set forth above in Paragraphs 1 – 81, as if set forth in full.

83. In response to Paragraph No. 83, said allegation contains summary and/or argument and/or citation of legal authority, and is not a proper pleading requiring a response; to the extent any response is required, Defendant denies any liability under the cited provision.

84. In response to Paragraph No. 84, said allegation contains summary and/or argument and/or citation of legal authority, and is not a proper pleading requiring a response; to the extent any response is required, Defendant denies any liability under the cited provision.

85. In response to Paragraph No. 85, denies the allegations therein, and puts the Plaintiffs to their strict proof.

86. In response to Paragraph No. 86, denies the allegations therein, and puts the Plaintiffs to their strict proof.

AFFIRMATIVE DEFENSES

As and for a separate and affirmative defense, the Defendant, Gardiner Appraisal Service, LLC, does assert the following:

87. The Complaint fails to state a claim upon which relief may be granted.

88. The Complaint may be barred by accord and satisfaction and/or payment.

89. The Complaint may be barred by laches, estoppel, and/or waiver.

90. The Plaintiffs may have failed to mitigate their damages.

91. The Defendant, Gardiner Appraisal Service, LLC, may have immunity as an agent of the Town of Dover.

92. The Defendant, Gardiner Appraisal Service, LLC, was not served a Notice of Claim and Claim prior to commencement of this lawsuit, and the lawsuit may be subject to dismissal for failure to follow the prerequisites of Wis. Stat. §893.80.

93. The Complaint seeks a remedy under Wis. Stat. §70.501 that can only be obtained by an action by the State; Plaintiffs have no standing or other right to pursue such relief.

94. The Complaint may be barred by Wis. Stat. §70.47(7).

WHEREFORE, this answering Defendant, Gardiner Appraisal Service, LLC, respectfully requests the Court grant the following relief:

- A. Dismissal of the Complaint of Plaintiffs, on the merits and with prejudice, as against Gardiner Appraisal Service, LLC.
- B. For Defendants reasonable attorney's fees, costs and disbursements, as allowed by law;
- C. For such other and further relief as may be just and equitable.

Dated this 20th day of August, 2014.

AXLEY BRYNELSON, LLP



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