

**KLS**

**Kasdorf  
Lewis &  
Swietlik**

*Attorneys At Law*

Writer's Direct Line: (414) 577-4039  
E-Mail: [mcieslewicz@kasdorf.com](mailto:mcieslewicz@kasdorf.com)  
[www.kasdorf.com](http://www.kasdorf.com)

February 25, 2015

Clerk of Circuit Court  
Racine County Courthouse  
730 Wisconsin Avenue  
Racine, WI 53403

Re: Milewski, et al. v. Town of Dover, et al.  
Case No.: 14-CV-1482  
Our File No.: 231.229059

**RECEIVED**  
2/27/15

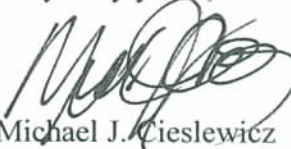
Dear Clerk:

I enclose with this letter a Notice of Motion and Motion for Judgment on the Pleadings and/or for Summary Judgment and the supporting brief on behalf of the defendants, Town of Dover and Board of Review for the Town of Dover in the above-referenced matter. I would appreciate it if you would file this on our behalf and indicate the date of filing on the bottom of the photocopy of this letter and return it to me in the self-addressed, stamped envelope provided.

By copy of this letter, we are providing a copy of the same to the Honorable Phillip A. Koss in Walworth County and the attorneys of record.

Thank you for your courtesy and cooperation.

Very truly yours,

  
Michael J. Cieslewicz

MJC/jw  
Enclosures

cc: Honorable Phillip A. Koss  
Thomas C. Kamenick, Esq.  
Mitchell R. Olson, Esq.

STATE OF WISCONSIN : CIRCUIT COURT : RACINE COUNTY

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VINCENT MILEWSKI and  
MORGANNE MACDONALD,

Plaintiffs,

vs.

Case No. 14-CV-1482

Case Code: 30701

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

Defendants.

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**NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS  
AND/OR FOR SUMMARY JUDGMENT**

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TO: Thomas C. Kamenick, Esq.  
Wisconsin Institute for Law & Liberty  
1139 E. Knapp Street  
Milwaukee, WI 53202

Mitchell R. Olson, Esq.  
Axley Brynelson LLP  
2 E. Mifflin St., Ste. 200  
P.O. Box 1767  
Madison, WI 53701-1767

PLEASE TAKE NOTICE that the defendants, Town of Dover and Board of Review for the Town of Dover, by their attorneys, Kasdorf, Lewis & Swietlik, S.C., will move the court, the Honorable Phillip A. Koss, in his courtroom at the Walworth County Courthouse, for judgment on the pleadings pursuant to Wis. Stat. § 802.06(3), or in the alternative, for summary judgment pursuant to Wis. Satt. § 802.08 on the 6<sup>th</sup> day of May, 2015 at 8:30 a.m., or as soon thereafter as this matter can be heard.

This motion is based upon the record and file herein and the brief in support filed herewith.

Dated at Milwaukee, Wisconsin, this 25<sup>th</sup> day of February, 2015.

KASDORF, LEWIS & SWIETLIK, S.C.  
Attorneys for Defendants, Town of Dover and  
Board of Review for the Town of Dover

By: 

Michael J. Cieslewicz  
State Bar No. 1016974  
Casey M. Kaiser  
State Bar No. 1088881

P.O. ADDRESS:

One Park Plaza, Suite 500  
11270 West Park Place  
Milwaukee, WI 53224  
Phone: (414) 577-4039  
Fax: (414) 577-4400  
Email: [mcieslewicz@kasdorf.com](mailto:mcieslewicz@kasdorf.com)  
[ckaiser@kasdorf.com](mailto:ckaiser@kasdorf.com)

STATE OF WISCONSIN : CIRCUIT COURT : RACINE COUNTY

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VINCENT MILEWSKI and  
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TOWN OF DOVER,  
BOARD OF REVIEW FOR THE TOWN OF DOVER and  
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**BRIEF IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS AND/OR  
FOR SUMMARY JUDGMENT**

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**BACKGROUND**

This would be a run-of-the-mill property tax assessment if the plaintiffs would have just let the Town of Dover's assessor, Gardiner Appraisal Service, LLC ("Gardiner") do its job. When Gardiner went about conducting a Town-wide assessment in 2013, the plaintiffs refused to let its employee inside their property so that he could perform a view of the interior.<sup>1</sup> (Compl. ¶¶ 13-20). The interior viewing would have provided Gardiner with additional facts on which to base its valuation.

After refusing entry to the Gardiner employee, Gardiner sent the plaintiffs a certified letter requesting that they schedule a mutually convenient time for an interior view. (*Id.* ¶ 18, Ex. B). The plaintiffs never responded, and Gardiner was forced to assess their property without the benefit of an interior view. (*Id.* ¶ 20).

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<sup>1</sup> The facts relevant to this motion are not in dispute and are pulled from the allegations in the plaintiffs' Complaint.

The plaintiffs were unhappy with Gardiner's assessment. (*Id.* ¶ 31). They undertook to challenge the assessment before the Board of Review for the Town of Dover. (*Id.* ¶ 31-33). However, because the plaintiffs refused Gardiner's request to view the interior of their property, the Board refused to entertain the plaintiffs challenge, in conformance with Wis. Stat. § 70.47(7)(aa). (*Id.* ¶ 33-35).

The plaintiffs are seeking to challenge Gardiner's assessment before this Court under Wis. Stat. § 74.37(4)(a). (*Id.* ¶ 49). As a prerequisite though, they must show that they actually had a right to challenge the assessment before the Board in the first place. The plaintiffs argue that they should have been allowed to challenge the assessment before the Board because Gardiner had no right to view the interior of their property. (*Id.* ¶ 50). They are wrong.

### ARGUMENT

**I. The plaintiffs are not permitted to challenge the assessment because State law recognizes the necessity of an interior view.**

The Town's refusal to hear the plaintiffs' challenge is supported by statute, Wis. Stat. § 70.47(7)(aa), which provides:

No person shall be allowed to appear before the board of review, to testify to the board by telephone or to contest the amount of any assessment of real or personal property if the person has refused a reasonable written request by certified mail of the assessor to view such property.

There is no dispute that the plaintiffs refused Gardiner's written request by certified mail to view the interior of their property. Instead, the plaintiffs argue that Gardiner's request to view the interior of the property was *unreasonable* and, therefore, they were entitled to contest the assessment. Thus, the outcome here turns on the interpretation of what constitutes a "reasonable request."

The plaintiffs argue that Gardiner's request was unreasonable because they have a right to refuse to consent to a government search of their property. They believe that if Gardiner wanted to view the interior of their property, he would have needed to obtain a warrant.

The plaintiffs' arguments are meritless, and Gardiner's request to view the interior of their property was reasonable under prevailing law. Accordingly, the Board acted properly in refusing to allow the plaintiffs to challenge the assessment, and the plaintiffs cannot now contest the assessment before this Court.

State law and the Wisconsin Property Assessment Manual recognize that Gardiner's request to view the interior of the plaintiffs' property was reasonable. Not only was it reasonable, but pursuant to the Wisconsin Property Assessment Manual, it was required. As the Manual recognizes, an interior view is a necessary step for an assessor whose goal is to collect as much information as possible about the property so that he or she can make the most accurate assessment possible.

Wis. Stat. § 73.03 requires the Wisconsin Department of Revenue to prepare and publish a property assessment manual which "shall discuss and illustrate accepted methods, techniques and practices with a view to more nearly uniform and more consistent assessments of property at the local level." It also suggests procedures for how assessors are to comply with state law regarding how to value real estate, which is set forth in Wis. Stat. § 70.32.

Consistent with Wis. Stat. § 73.03, the Department has published the "Wisconsin Property Assessment Manual."<sup>2</sup> Wis. Stat. § 70.32 provides that "[r]eal property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03 (2a) from *actual view* or from the best information that the assessor can

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<sup>2</sup> The Manual is conveniently available at: <http://www.revenue.wi.gov/slf/wpam/wpam15.pdf>.

practicably obtain, at the full value which could ordinarily be obtained therefor at private sale.”  
(Emphasis added.)

Chapter 8 of the Manual deals with Residential Property Valuation. Throughout the chapter, the Department instructs on the importance of viewing the interior of the property being assessed.

At page 8-22, the Manual provides:

Upon entering the field, the assessor should be concerned with the following points:

1. Proper identification of the parcel
2. Property owner interview
3. Measuring improvements and **interior viewing**
4. Proper classification and depreciation estimates
5. Land value factors (emphasis added)

At page 8-23, the Manual provides:

To be sure that nothing is overlooked during the viewing many assessors set up a routine. For instance, the interior viewing may begin with the basement and continue on to the last level needing viewing.

...

Once the assessor has collected sufficient interior and exterior information, it is possible to subjectively consider the improvements and determine the proper grade.

In addition to publishing the Manual, the Department publishes the “Property Assessment Appeal Guide For Wisconsin Real Property Owners.”<sup>3</sup> The Guide provides property owners with a set a several helpful FAQs, one of which provides:

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<sup>3</sup> The Property Assessment Appeal Guide For Wisconsin Real Property Owners is available at <http://www.revenue.wi.gov/pubs/slf/pb055.pdf>.

What happens if I refuse to allow the assessor inside to view my property?

If a property owner denies entry to view the property, the assessor will send a certified letter requesting admittance to the property to view it. If the property owner still refuses admittance, the assessor will value the property using the best evidence available. This is commonly referred to as a dooamage assessment. Furthermore, the property owner will not be able to appear before the BOR. Most actions of appeal require that the assessor be allowed entry to view the property.

It is clear then that the State expects all assessors to view the interior of the properties that they are assessing. Actually, pursuant to Wis. Stat. § 70.32, which provides that assessments shall be made in conformance with the Manual, there is more than just an expectation—it is a mandate.

Taking these statutes and the Manual together, Gardiner's request to view the interior of the plaintiffs' property cannot be classified as anything other than reasonable. Because Gardiner was simply doing what the state statutes and the Manual required it to do, its request was reasonable. Accordingly, the Board properly barred the plaintiffs from contesting the assessment.

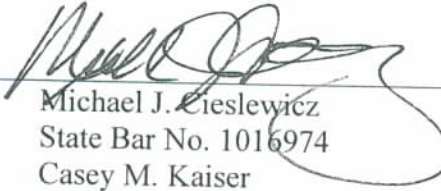
### CONCLUSION

If the plaintiffs had permitted the Town's assessor to view their property, they would have been permitted to contest his valuation before the Board. However, because they denied Gardiner access to that information, they were rightly precluded from doing so pursuant to Wis. Stat. § 70.47(7)(aa). Because the plaintiffs did not comply with the procedures necessary for contesting the assessment, Wis. Stat. § 74.37(4)(a) prohibits the plaintiffs from maintaining this suit. The Town and the Board are entitled to judgment, and the plaintiffs' Complaint should be dismissed.



Dated at Milwaukee, Wisconsin, this 25<sup>th</sup> day of February, 2015.

KASDORF, LEWIS & SWIETLIK, S.C.  
Attorneys for Defendants, Town of Dover and  
Board of Review for the Town of Dover

By:   
Michael J. Cieslewicz  
State Bar No. 1016974  
Casey M. Kaiser  
State Bar No. 1088881

P.O. ADDRESS:

One Park Plaza, Suite 500  
11270 West Park Place  
Milwaukee, WI 53224  
Phone: (414) 577-4039  
Fax: (414) 577-4400  
Email: [mcieslewicz@kasdorf.com](mailto:mcieslewicz@kasdorf.com)  
[ckaiser@kasdorf.com](mailto:ckaiser@kasdorf.com)