

WISCONSIN TAX APPEALS COMMISSION

MARY BLACK,

Petitioner,

v.

Docket No.

CITY OF LAKE GENEVA,

Respondent.

PETITION FOR REVIEW OF MUNICIPAL FEE

To the Wisconsin Tax Appeals Commission:

Pursuant to Wis. Stat. § 66.0628(4), Petitioner Mary Black hereby appeals to the Tax Appeals Commission the reasonableness of the City of Lake Geneva's \$750 annual licensing fee for renting a home on a short-term basis.

PARTIES

1. Petitioner Mary Black owns a home in Lake Geneva at 1719 Miller Ct. that she rents on a short-term basis during the summer months.

2. Petitioner is represented by the undersigned attorneys from the Wisconsin Institute for Law & Liberty (WILL), who are authorized to appear and act for Petitioner in this matter. WILL's address is 330 E. Kilbourn Ave., Suite 725, Milwaukee, WI 53202.

3. Respondent City of Lake Geneva is a municipality of the State of Wisconsin with its offices and principal place of business at 626 Geneva Street, Lake Geneva, WI 53147. Lake Geneva established and enforces the fee that is the subject of this appeal.

STATEMENT OF FACTS

4. In 2017, the Wisconsin Legislature adopted legislation recognizing a homeowner's right to rent their home on a short-term basis and minimizing local municipalities' ability to interfere with that right. 2017 Wis. Act 59, § 996g; Wis. Stat. § 66.1014. The law prohibits municipalities from banning short-term rentals, while allowing municipalities to adopt reasonable regulations. *Id.*

5. In 2018, Lake Geneva adopted an ordinance regulating short-term rentals. Among other things, the ordinance requires homeowners wishing to rent their home on a short-term basis to obtain an annual license from the City and to pay an annual licensing fee, set by the City Council. Lake Geneva Ordinance § 98-206(y)(1)(b), (y)(1)(b)(x). A true and accurate copy of that ordinance is attached hereto as Exhibit 1.

6. The Lake Geneva City Council initially set its short-term-rental license fee in May 2018 at \$2,000 per year, ten to twenty times the fees charged by surrounding municipalities (*see infra*), suggesting that the City was attempting to circumvent the right-to-rent law by using an exorbitant fee to make short-term rentals unprofitable. *See* Lake Geneva City Council Meeting Minutes for May 29, 2018 at 2 (Resolution 18-R37).¹

7. On October 28, 2019, the Wisconsin Institute for Law & Liberty, on behalf of Petitioner and two other homeowners, sent a letter to the City of Lake Geneva explaining that its fee violated the right to rent and Wis. Stat. § 66.0628, which requires fees to bear a "reasonable relationship" to the "reasonable direct costs that are associated with any activity undertaken by the political subdivision that is related to the fee."

¹ https://www.cityoflakegeneva.com/vertical/sites/%7B14619068-6F01-4703-8EEB-EA74850C93B5%7D/uploads/May_29_2018_Council_Minutes.pdf

8. In response to that letter, the City Council voted on June 8, 2020, to lower the short-term-rental fee, but only to \$750, still the highest in the state that Petitioner is aware of (*see infra*). *See Lake Geneva City Council Meeting Minutes for June 8, 2020 at 3 (Resolution 20-R38).*²

9. Lake Geneva's fees for various licenses and permits, including its \$750 short-term-rental fee, are set forth in a schedule of fees adopted by resolution of the City Council. A true and accurate copy of the current schedule of fees is attached hereto as Exhibit 2.

10. There is no due date for a short-term-rental application or for the corresponding fee. Homeowners who wish to rent their home on a short-term basis may submit an application for a license with the fee at any time, but may not rent their home until they have received a license from the City. Once approved, the license is good for one year. Lake Geneva Ordinance § 98-206(y)(1)(b).

11. On June 4, 2021, Petitioner submitted an application for a short-term-rental license along with the \$750 fee. A true and accurate copy of Petitioner's application for a short-term-rental license is attached hereto as Exhibit 3.

12. The City of Lake Geneva approved Petitioner's application and issued her a license on June 4, 2021.

PETITIONER'S OBJECTION TO LAKE GENEVA'S FEE

13. Wisconsin Statute Section 66.0628(2) requires that "[a]ny fee ... imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is imposed." The statute further defines "reasonable relationship" to mean that "the cost charged by a political subdivision for a service provided to a person may not exceed the political subdivision's

² https://www.cityoflakegeneva.com/vertical/sites/%7B14619068-6F01-4703-8EEB-EA74850C93B5%7D/uploads/June_8_2020_Council_Minutes.pdf

reasonable direct costs that are associated with any activity undertaken by the political subdivision that is related to the fee.” Wis. Stat. § 66.0628(1)(b).

14. Section 66.0628(4)(a) authorizes “[a]ny person aggrieved by a fee imposed by a political subdivision because the person does not believe that the fee bears a reasonable relationship to the service for which the fee is imposed [to] appeal the reasonableness of the fee to the tax appeals commission by filing a petition with the commission within 90 days after the fee is due and payable.”

15. And, under Section 66.0628(4)(b), the City of Lake Geneva “bear[s] the burden of proof to establish that a reasonable relationship exists between the fee imposed and the services for which the fee is imposed.” Wis. Stat. § 66.0628(4)(b).

16. On its face, Lake Geneva’s \$750 fee for a short-term-rental license does not “bear a reasonable relationship to the service for which the fee is imposed.”

17. Lake Geneva’s \$750 fee for a short-term-rental license is disproportionately large compared to the licensing fees Lake Geneva charges for other types of businesses. To give a few examples, a general business license is only \$25 per year, Exhibit 2 at 1; a creamery permit is \$50, Exhibit 2 at 1; a massage establishment is \$50, Exhibit 2 at 2; a mobile home park is \$100, Exhibit 2 at 2; a theater is \$200 or \$275, depending on the number of seats, Exhibit 2 at 3; a bowling alley is \$20 per lane, Exhibit 2 at 1; a taxi cab company is \$50 plus \$25 for each additional car, Exhibit 2 at 3; beer and wine licenses are \$100, Exhibit 2 at 1; and even a Class A Liquor license is only \$500, Exhibit 2 at 1.

18. Lake Geneva’s short-term-rental license fee is also significantly higher than the fees charged by other Wisconsin jurisdictions for renting a home on a short-term basis.

19. The State of Wisconsin, through the Department of Agriculture, Trade, and Consumer Protection, charges a one-time “pre-inspection” fee of \$300 for a “tourist rooming house” license (required for short-term rentals), and the annual fee thereafter is only \$110. Wis. Admin. Code ATCP § 72.05.

20. Sturgeon Bay, a city with a tourism industry similar to Lake Geneva’s, also charges only \$100 per year. *See Applications and Fees, City of Sturgeon Bay*, https://www.sturgeonbaywi.org/community/applications___fees.php (see link to “City Fee Schedule”).

21. The villages of Walworth and Fontana, located just on the other side of Geneva Lake, charge \$200 and \$250 respectively for short-term-rental licenses. *See Village of Walworth Short-Term-Rental Application*³; *Village of Fontana Short-Term-Rental Application*.⁴

22. The Town of Delavan, a few miles down the road, charges only \$100. *See Forms & Permits, Town of Delevan*, <https://www.townofdelavan.com/forms-permits> (navigate to “Short Term Rentals / Room Tax”).

23. And finally, Walworth County, where the City of Lake Geneva is located, charges only \$200 per year after the first year. *See Walworth County Short-Term-Rental Application*.⁵

24. These comparisons strongly suggest that Lake Geneva’s \$750 short-term-rental licensing fee exceeds Lake Geneva’s “reasonable direct costs” associated with licensing short-term-rental properties. Wis. Stat. § 66.0628(1)(b), (2).

³ https://villageofwalworth.govoffice2.com/vertical/sites/%7B9197016A-2CD3-4D78-9587-3FC839912C0F%7D/uploads/Tourist_Rooming_Houses_Short-term_Rentals_Requirements_and_Application_2019.pdf

⁴ <https://villageoffontana.com/wp-content/uploads/APPLICATION-Short-Term-Rental-2018.06.20-7.pdf>

⁵ <https://www.co.walworth.wi.us/DocumentCenter/View/5124/STR-Annual-License-Renewal---Fillable-PDF?bidId=>

25. Petitioner admits that a \$100 licensing fee would be reasonable, *see* Wis. Admin. Code TA § 1.15(2)(f), but beyond that, demands that Lake Geneva meet its statutory burden to establish “that a reasonable relationship exists between the fee imposed and the services for which the fee is imposed,” Wis. Stat. § 66.0628(4)(b).

WHEREFORE, Petitioner requests the following relief:

1. A refund of any portion of Petitioner’s \$750 fee that “exceed[s] [Lake Geneva’s] reasonable direct costs” associated with licensing short-term-rental properties.

Dated: July 1, 2021.

Respectfully submitted,

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