

FILED
03-03-2025
CIRCUIT COURT
DANE COUNTY, WI
2025CV000173

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 8

DANE COUNTY

ANNIE LAURIE GAYLOR, *et al.*Plaintiffs,
v.Case No. 25 CV 173
Case Code: 30701
Declaratory Judgment**CITY OF MADISON, *et al.***Defendants.

**BRIEF IN SUPPORT OF CITY OF MADISON'S MOTION TO DISMISS IN LIEU OF
ANSWER AND MOTION TO REQUIRE JOINDER OF PARTIES**

Introduction

On January 14, 2025, Plaintiffs filed a Complaint (ECF Doc. 4, Compl. hereinafter "Compl.") against Defendant City of Madison ("City"), the Presbyterian Student Center Foundation ("Foundation"), and St. Raphael's Congregation (the "Congregation") seeking declaratory relief under Wis. Stat. § 806.04. Plaintiffs have asked the Court to find that the Student Housing Facilities property tax exemption under Wis. Stat. § 70.11(3m) (the "Exemption") received by Foundation and the Congregation is facially unconstitutional and that the Defendants be enjoined from applying the Exemption to any property moving forward. By motion, the City has moved the Court to dismiss Plaintiffs' complaint in lieu of answering it, as authorized by Wis. Stat. § 802.06(2), asserting that the complaint fails to state a claim upon which relief may be granted and that the City is entitled to dismissal of the complaint as a matter of law, pursuant to Wis. Stat. § 802.06(2)(a)6. In the alternative, the City asserts that, pursuant to Wis. Stat. § 802.06(2)(a)7, Plaintiffs have failed to join parties under Wis. Stat. § 803.03 who are needed for just and complete adjudication, and moves the Court for an order, under Wis. Stat. § 803.03(3), to require the joinder of said parties.

Factual Statement

The following facts are taken from the Plaintiffs' complaint. The facts will be accepted as true only for the purposes of the present motion.

In 2009, as part of the 2009-10 State budget bill, 2009 Wis. Act 28 created a tax exemption for Student Housing Facilities, codified as Wis. Stat. § 70.11(3m) (the "Exemption"). (Compl. ¶ 18.) The Exemption was amended in 2013 as part of the 2013-14 State budget bill, 2013 Wis. Act 20. (Compl. ¶ 24.) The Exemption makes certain housing facilities at the University of Wisconsin-Madison which are owned by nonprofit organizations, house a certain number of students at the University, and offer certain support services and outreach programs to its residents and the public exempt from property taxes. The Exemption, in relevant parts, reads as follows:

70.11 Property exempted from taxation.... Property exempted from general property taxes is:

(3m) STUDENT HOUSING FACILITIES.

- (a) All real and personal property of a housing facility, not including a housing facility owned or used by a university fraternity or sorority, college fraternity or sorority, or high school fraternity or sorority, for which all of the following applies:
 - 1. The facility is owned by a nonprofit organization.
 - 2. At least 90 percent of the facility's residents are students enrolled at the University of Wisconsin-Madison and the facility houses no more than 300 such students.
 - 3. The facility offers support services and outreach programs to its residents, the public or private institution of higher education at which the student residents are enrolled, and the public.
 - 4. The facility is in existence and meets the requirements of this subsection on July 2, 2013, except that, if the facility is located in a municipally designated landmark, the facility is in existence and meets the requirements of this subsection on September 30, 2014.
- (b) If a nonprofit organization owns more than one housing facility, as described under par. (a), the exemption applies to only one facility, at one location.
- (c) Leasing a part of the property described in this subsection does not render it taxable if the lessor uses the leasehold income only for the following:
 - 1. Maintenance of the leased property.
 - 2. Construction debt retirement of the leased property.

3. The purposes for which the exemption under section 501 (c) (3) of the Internal Revenue Code is granted to the nonprofit organization that owns the facility.

The City is responsible for assessing all properties within the City limits for property taxes and determining whether a property qualifies for a property tax exemption. (Compl. at ¶ 15.) Since its enactment and subsequent amendment, Plaintiffs have identified four properties which qualify for and benefit from the Exemption:

1. The Pres House Apartments, located at 439 East Campus Mall (“Pres House”), owned by Defendant Foundation (Compl. at ¶ 3, ¶ 16 & Ex. F, p.1);
2. The Lumen House Apartments, located at 142 W. Johnson St. (“Lumen House”), owned by Defendant Congregation (Compl. at ¶ 3, ¶ 17 & Ex. F, p. 1);
3. The Babcock House, located at 1936 University Ave., owned by the Babcock House Foundation (“Babcock”) (Compl. at ¶ 28); and,
4. The Association of Women in Agriculture House (“AWA House”), located at 1909 University Ave., owned by the Association of Women in Agriculture Benefit Corp. (“AWA”) (Compl. at ¶ 28).¹

By letter dated May 6, 2024, Plaintiffs raised their concerns that the Exemption was unconstitutional with the City’s Board of Assessors, asserting that all properties exempted under Wis. Stat. § 70.11(3m), including Lumen House and Pres House, be added back to the tax roll. (Compl. at ¶ 52-54 & Ex. F.) On the same day, Plaintiffs were informed that the purview of the City’s Board of Assessors and the Board of Review does not include exempt properties and that the request to place exempt properties on the tax roll is not within the Board of Assessors authority. (Compl. at ¶ 55, Ex.

¹ Plaintiffs did not identify two other beneficiaries of the Exemption. Those other beneficiaries, according to the records of the City Assessor, are: the French House, owned by The French House, Inc., and located at 633 N. Frances St., which facility houses up to 34 students in a French language and cultural immersion program; and the Phos House, owned by Youth With a Mission, Inc., and located at 602 Langdon St., which facility has 16 units and houses students in a faith-based environment.

G.) Plaintiffs were also subsequently informed by letter dated May 14, 2024 that the Board of Review would not be reviewing the Plaintiffs' appeals. (Compl. at ¶ 56, Ex. H.) This action is not an appeal of these decisions, but rather a claim seeking declaratory relief under Wis. Stat. § 806.04 that the Exemption itself is unconstitutional. (Compl. at ¶ 9 & 102.)

Plaintiffs have joined Defendants Foundation and Congregation under Wis. Stat. § 803.03(1). (Compl. at ¶ 16 & 17.) Plaintiffs did not directly state why Babcock and AWA were not being joined to this matter, but did note that Babcock and AWA “were not the intended beneficiaries of the Exemption” and that they “are small, UW-Madison student co-ops that house a little more than 20 students each.”² (Compl. at ¶ 28.)

Argument

1. *Standard on Motion to Dismiss for Failure to State a Claim.*

“A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint.” *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶ 19, 356 Wis. 2d 665, 849 N.W.2d 693 (citations omitted); Wis. Stat. § 802.02(1)(a). In reviewing a motion to dismiss, Wisconsin courts assume the facts (but not the legal assertions) stated in the complaint are true. *Id.* at ¶ 19. Factual allegations in a complaint, however, must be “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action.” *Id.* at ¶ 25 (citation omitted). “[I]f it appears to a certainty that no relief can be granted under any set of facts that the plaintiff can prove in support of her allegations[,]” the complaint will be dismissed. *Strid v. Converse*, 111 Wis. 2d 418, 422, 331 N.W.2d 350, 353 (1983).

2. *The Complaint fails to satisfy the justiciable test.*

In this case, Plaintiffs have sought declaratory relief pursuant to Wis. Stat. § 806.04, arguing that the Exemption is facially unconstitutional. Under Wis. Stat. § 806.04(2), “Any person... whose

² As noted earlier in FN1, Plaintiffs did not identify two other beneficiaries of the Exemption, and thus did not provide any details about why they were not being added as additional parties.

rights, status or other legal relations are affected by a statute..., may have determined any question of construction or validity arising under the ... statute... and obtain a declaration of rights, status or other legal relations thereunder.” Under Wis. Stat. § 806.04(6), the court’s decision to grant or deny declaratory relief is discretionary. However, for a Plaintiff to be entitled to declaratory relief, a justiciable controversy must exist.

A controversy is justiciable when four conditions are met: (1) “A controversy in which a claim of right is asserted against one who has an interest in contesting it”; (2) “The controversy must be between persons whose interests are adverse”; (3) “The party seeking declaratory relief must have a legal interest in the controversy—that is to say, a legally protectable interest”; and (4) “The issue involved in the controversy must be ripe for judicial determination.”

Fabick v. Evers, 2021 WI 28, ¶ 9, 396 Wis. 2d 231, 238, 956 N.W.2d 856, 860 (citing *Loy v. Bunderson*, 107 Wis. 2d 400, 409-10, 320 N.W.2d 175 (1982)).

Based upon their pleadings in the Complaint, Plaintiffs have failed to make a showing that they are entitled to declaratory relief against the City in this matter. “A court must be presented with a justiciable controversy before it may exercise its jurisdiction over a claim for declaratory judgment. This is so because the purpose of the [Uniform Declaratory Judgments] Act is to allow courts to anticipate and resolve identifiable, certain disputes between adverse parties.” *Olson v. Town of Cottage Grove*, 2008 WI 51, ¶ 28, 309 Wis. 2d 365, 379, 749 N.W.2d 211, 218. “The merits of the constitutional issues presented need not and should not be addressed at this stage of the proceedings. The merits of plaintiffs’ cause of action do not determine its justiciability.” *Tooley v. O’Connell*, 77 Wis. 2d 422, 434, 253 N.W.2d 335, 340 (1977) (internal citations omitted). Thus, while Plaintiffs have made numerous allegations to support their claims that the Exemption is unconstitutional, Plaintiffs have not addressed the above noted justiciability standards at all or averred in any way why this matter is justiciable. Therefore, even assuming that all of the facts alleged are true, Plaintiffs have failed to state a claim upon which relief may be granted in this action for declaratory relief and the City is entitled to dismissal of the complaint as a matter of law, pursuant to Wis. Stat. § 802.06(2)(a)6.

a. No claim of right has been asserted against the City or the other Defendants.

The first prong of the justiciability test requires a Plaintiff to show that there is a controversy in which a claim of right is asserted against one who has an interest in contesting it. As a starting point, the Plaintiffs have not clearly asserted any claim of right *against the City*, the lead Defendant, in this matter.

The Plaintiffs are alleging that a property tax exemption received by four other parties is facially unconstitutional. But the Plaintiffs have not been denied the Exemption by the City, nor are they recipients of the Exemption by the City. They have not made any factual claims in the Complaint that demonstrates that they have a claim of right against the City pertaining to a property tax exemption created by and granted pursuant to State law. In fact, the City is not aware of any other Wisconsin cases where a local taxation district such as the City was sued by a third party seeking to have a property tax exemption under Wis. Stat. §70.11 declared unconstitutional.³ Rather, all the exemption cases involving local taxation districts arise from cases where a party was denied an exemption and sought review of that decision—which is not the situation here.

Moreover, it should be noted that under Wis. Stat. §§ 73.03(1) and (2), and 73.06(1), the State Department of Revenue (the “Department”) is the entity responsible for supervising the administration of the property tax statutes and for advising and directing assessors within the State as to their duties under the property tax statutes. Also, under Wis. Stat. § 73.03(45), the Department has the “duty” and the “power and authority” to “direct the assessor of any taxation district to deny specific claims for property tax exemption or to terminate specific existing property tax exemptions prospectively.” Based

³ There are other cases where declaratory relief has been sought against municipalities for property tax related reasons—but those cases involve statutes other than Wis. Stat. § 70.11 and generally involve the direct exercise of municipal powers. See, e.g., *Gottlieb v. City of Milwaukee*, 33 Wis. 2d 408, 147 N.W.2d 633 (1967) (declaratory judgment determining that the Ch. 66 Urban Redevelopment Law at the time, which allowed local jurisdictions to freeze property taxes under certain circumstances, was unconstitutional); and *Metro. Assocs. v. City of Milwaukee*, 2011 WI 20, 332 Wis. 2d 85, 796 N.W.2d 717 (declaratory judgment determining that several statutes which allowed municipalities to opt out of de novo review of Board of Review determinations was unconstitutional).

upon the foregoing, Plaintiffs may have a claim of right against the Department, but they've made no allegation to support a claim for declaratory relief against the City. Indeed, in two cases where a third party challenged the constitutionality of a tax exemption received by another party, both of those cases were brought against the Department of Revenue, not the local taxing jurisdiction.⁴ The dearth of applicable cases similar to this one is certainly suggestive that Plaintiffs have no claim of right against the City and that suing the City is the wrong vehicle to bring this claim.

While the City is the lead Defendant in this matter, the Plaintiffs have also joined Foundation and Congregation as additional parties under Wis. Stat. § 803.03(1). While that joinder is not being contested in this motion, it is important to note that Plaintiffs have not advanced that they have any independent claim of right against Foundation and Congregation that could make this matter justiciable in the City's absence. And to be sure, there is no legal authority that the City is aware of that would give an unrelated third party the right to directly challenge another person's application for or receipt of a property tax exemption, whether by declaratory relief or other means. Thus, if the City is not a party to this action anymore, Plaintiffs have no cause of action against the remaining Defendants, meaning that if the Court grants the City's motion, the entire case should be dismissed.

As the Plaintiffs' Complaint has failed to assert that they have a claim of right against the City or the other Defendants pertaining to the constitutionality of the Exemption, its claim for declaratory relief should be dismissed for failure to state a claim upon which relief can be granted.

⁴ See *Lake Country Racquet & Athletic Club, Inc. v. Morgan*, 2006 WI App 25 (unsuccessful constitutional challenge by for-profit health clubs to §70.11(12)(a), which statute granted a property tax exemption to property owned by the YMCA); *Nw. Airlines, Inc. v. Wisconsin Dep't of Revenue*, 2006 WI 88 (unsuccessful constitutional challenge by out-of-state air carrier company to §70.11(42), which statute grants property tax exemptions to air carriers who operate hub facilities in Wisconsin).

b. The City has no interest in contesting the constitutionality of the Exemption.

However, even assuming that Plaintiffs do have a claim of right against the City and can bring this challenge of the constitutionality of the Exemption before the court for declaratory relief, Plaintiffs have not alleged that the City has any interest in contesting this assertion.

In their Complaint, Plaintiffs merely note that the City “is responsible for assessing all properties within the city limits for taxes and determining whether a property qualifies for a tax exemption.” (Compl. at ¶ 15.) This is certainly true, as the City Assessor values all real property within the City annually and administers tax exemptions as enacted by the State legislature (and interpreted by the Courts), consistent with the Wisconsin Property Assessment Manual and using forms prescribed by the Department. Wis. Stat. § 70.11(intro); Wis. Admin Code Ch. Tax 12.06(2). Pursuant to those duties, the Assessor processes the Department’s property tax exemption forms to determine if an exemption should be granted or denied, and continued or terminated.⁵ But, the City Assessor has no independent authority to declare a property tax exemption unconstitutional. The City’s role in property tax exemptions is administrative only, reviewing property owner submittals to determine if, pursuant to State law, an exemption should be granted or denied, and continued or terminated.

Indeed, if this matter proceeds and the Exemption is declared constitutional, the City Assessor will continue to administer the Exemption as required; and if this matter proceeds and the Exemption is declared unconstitutional, the City Assessor will no longer administer the Exemption. The City’s interest in the outcome of this controversy can be characterized as indifferent—it does not matter to the City one way or the other if the Plaintiffs’ suit is successful or unsuccessful; it will follow the law regardless. Because of that, the City has no interest in contesting Plaintiffs’ challenge to the

⁵ The Department’s exemption forms include: the Property Tax Exemption Request Form (PR-230), completed by a property owner when a property tax exemption under Wis. Stat. § 70.11 is being sought; the bi-annual Property Owner’s Tax Exemption Report (PC-220), completed by property owners with exemptions; and the Taxation District Exemption Summary Report (PC-226), completed by the taxing jurisdiction. Tax exemption forms are available at <https://www.revenue.wi.gov/Pages/Form/govexmpt-Home.aspx> (last visited 2/27/25 at 9:25 am).

constitutionality of the Exemption. As Plaintiffs have not alleged any such interest, and no such interest actually exists, the Plaintiffs have failed to meet the first prong of the justiciable test and therefore its claim for declaratory relief should be dismissed for failure to state a claim upon which relief can be granted.

c. The City and the Plaintiffs' interests are not adverse.

The second prong of the justiciability test requires that the controversy must be between persons whose interests are adverse. But, Plaintiffs have not alleged any facts that suggest that their interests and the City's interests are adverse in this matter.

Certainly, the City and the Plaintiffs differ on their views about the proper method to bring this challenge and the role of the City Assessor. (Compl. ¶ 47-56.) But those are not the issues present in this case. The Complaint does not, in fact, assert any position by the City on the underlying claim that the Exemption is facially unconstitutional. As noted in the preceding section, the City has no interest in the outcome of the litigation. But lacking interest is not the same thing as an adverse interest, meaning that Plaintiffs' Complaint falls short on this prong as well.

That said, even if the Court found that the City had some interest in this matter, that doesn't mean that this interest is necessarily adverse to the Plaintiffs' interests. It should be noted that property tax exemptions are generally against the City's financial interest. Property taxes are the main source of revenue for municipalities like the City—as, unlike the State, City's cannot institute sales taxes, income taxes or other consumption taxes to generate revenue. By removing property from the tax rolls, exemptions decrease the taxable property base, reduce revenue sources, and have a negative impact on the City's levy (taxing) limit. Also, the City's costs to serve exempt properties that are otherwise paid for by property taxes, such as police and fire services, street maintenance, and basic governmental services, are, generally, borne by the non-exempt properties, increasing the tax share on residential properties in particular. Affordable housing is a national issue at the moment, and decreasing the property tax burden on residential housing is one tool to address that problem. As such, the City's

interests would, in fact, be served by the Court granting Plaintiffs' request for declaratory relief in this matter and restoring the exempt Student Housing Facility properties to the tax rolls. Hence, even pragmatically speaking, the City's and the Plaintiffs' interests are not adverse—the City would be benefited financially if this exemption is ruled unconstitutional.

In summary, as the Plaintiffs want the exemption declared unconstitutional, and the City either has no interest in this matter or would even benefit financially from that determination, our interests are not clearly adverse. As a result, Plaintiffs' complaint has failed to meet the second prong of the justiciable test and its claim for declaratory relief should be dismissed for failure to state a claim upon which relief can be granted on this ground as well.

d. There is sufficient basis to grant the City's motion without addressing the other justiciability prongs.

As noted above, the City argues that the Plaintiffs have failed to meet the first two prongs of the justiciable test necessary to sustain a claim for declaratory relief, which, on its own, is sufficient to warrant the dismissal of this matter for failure to state a claim upon which relief can be granted. There are, of course, two additional prongs to the test in question: that the Plaintiffs have a legally protectable interest and that the issue is ripe for judicial determination. However, given the foregoing arguments, which provide sufficient basis for the Court to grant the City's motion to dismiss for failure to state a claim upon which relief can be granted, the City does not find it necessary to address these prongs in this motion.

3. *Joinder of additional necessary parties is required in this matter.*

In the event that the Court denies the City's motion to dismiss for failure to state a claim upon which relief can be granted, then in the alternative, the City asserts that, pursuant to Wis. Stat. § 802.06(2)(a)7, Plaintiffs have failed to join additional parties under § 803.03 who are needed for

just and complete adjudication, and moves the Court for an order to require the joinder of said parties.

When determining if there is a necessary party that must be joined to an action, the court must determine if any of the reasons set forth in § 803.03(1) have been met. Under this Subsection:

- (1) PERSONS TO BE JOINED IF FEASIBLE. A person who is subject to service of process shall be joined as a party in the action if:
 - (a) In the person's absence complete relief cannot be accorded among those already parties; or
 - (b) The person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:
 1. As a practical matter impair or impede the person's ability to protect that interest; or
 2. Leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of his or her claimed interest.

Under the interest test in sub. (1)(b)1, "[t]he relevant inquiry in Wisconsin is... not whether a prospective party has a legal or legally protected interest in the subject of an action, but whether the person or entity has an interest of such direct and immediate character that the [prospective party] will either gain or lose by the direct operation of the judgment." *Dairyland Greyhound Park, Inc. v. McCallum*, 2002 WI App 259, ¶ 15, 258 Wis. 2d 210, 224, 655 N.W.2d 474, 481 (internal quotations and citations omitted). If any of these standards are met and the person has not been joined as a party, then, under § 803.03(3) the court shall order that the person be made a party. Moreover, under Wis. Stat. § 803.03(4), "[a] pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subs. (1) and (2) who are not joined, and the reasons why they are not joined."

In this matter, Plaintiffs are seeking a declaratory judgment that the Exemption is facially unconstitutional and that it cannot be applied to any property going forward. (Compl. at ¶ 102.a and b.) Considering this, and pursuant to Wis. Stat. § 803.03(1), Plaintiffs have joined, as parties to this action against the City, two recipients of the Exemption, Foundation and Congregation. (Compl. at ¶¶

3, 16 and 17.) Despite claiming that Pres House and Lumen House “are tax exempt under a special Exemption for which no other properties in Madison or the rest of Wisconsin can ever qualify” (Compl. at ¶ 3), Plaintiffs have acknowledged that there are two other beneficiaries of the Exemption, Babcock and AWA (Compl. at ¶28).⁶ Wis. Stat. § 803.03(4) requires that “[a] pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subs. (1) and (2) who are not joined, and the reasons why they are not joined.” The only “reasons” provided by Plaintiffs is that Babcock and AWA “were not the intended beneficiaries of the Exemption” and that the properties “are small, UW-Madison student co-ops that house a little more than 20 students each.” Even assuming those statements are accurate, that does not mean that those two entities, or other beneficiaries of the Exemption, should not be joined in this matter.

As a beneficiary of the Exemption, Babcock and AWA, and other beneficiaries of the Exemption, have the same interests at stake in this matter that Defendants Foundation and Congregation have. Specifically, if judgment is granted to the Plaintiffs, and the City is enjoined from applying the Exemption to any property going forward, the Babcock House, the AWA House and other beneficiaries of the Exemption would lose their property tax exemption. As noted by the *Dairyland* court, these entities both have “an interest of such direct and immediate character that the [prospective party] will either gain or lose by the direct operation of the judgment.” 2002 WI App 259, ¶ 15. Thus, being excluded from this matter would impair or impede their ability to protect their interest in the continuation of the Exemption.

Additionally, if other beneficiaries of the Exemption are not included in this action and the City is enjoined from continuing the Exemption on Babcock House, AWA House or other properties by judgment in this matter, the City will be left with a substantial risk of incurring inconsistent obligations pertaining to the Exemption. The City’s restoration of the Babcock House and AWA

⁶ As noted above in FN1, there are actually two other beneficiaries of the Exemption that were not mentioned in the Complaint, the French House and the Phos House.

House, or other exempt properties, to the tax roll would surely be met by property owner claims of an unlawful tax under Wis. Stat. § 74.35. Subsequent courts would not be bound by the Circuit Court's decision in this case. The possibility of an inconsistent judgment is not insubstantial as the issues presented in those unlawful tax cases would be very different than the ones before the court in this case. This risk of an inconsistent judgment would be eliminated if Babcock and AWA, and other beneficiaries of the Exemption, whose interests match those of Foundation and Congregation, were joined as parties in the pending matter.

It may be inconvenient for the Plaintiffs' arguments that there are a handful of additional beneficiaries of the Exemption, including non-religious institutions that own student housing facilities. But just because it is inconvenient, or that they weren't the intended beneficiaries of the legislation, or that they are small operations when compared to Pres House and Lumen House, doesn't mean that their interests are not at stake in this litigation and that the City would not be harmed by their exclusion. Babcock and AWA should have been joined to this lawsuit initially, just like Foundation and Congregation. And the additional recipients of the Exemption should be joined as well. Thus, if the Court denies the City's motion to dismiss, then before this matter proceeds, the Court should find, pursuant to Wis. Stat. § 802.06(2)(a)7, that Plaintiffs failed to join parties needed for just and complete adjudication under § 803.03, and order Plaintiffs to make AWA, Babcock and all other beneficiaries of the Exemption parties under § 803.03(3).

Conclusion

Plaintiffs are seeking declaratory relief in this action filed against the City, asserting that the Exemption is facially unconstitutional. Based solely on the Complaint filed in this matter, and assuming all facts alleged are true, Plaintiffs have not established that they are entitled to declaratory relief. They have not alleged facts that demonstrate that this matter is justiciable, which is required in order to obtain declaratory relief. Specifically, Plaintiffs have not asserted a claim of right against the

City or the other Defendants. Moreover, Plaintiffs have not alleged that the City has an interest in contesting the constitutionality of the Exemption, or that the City's interests, if they exist, are adverse to those of the Plaintiffs. In fact, the City has no interest in this matter, and, if anything, its interests are not adverse to those of the Plaintiffs. For these reasons, this case should be dismissed for failure to state a claim upon which relief can be granted, pursuant to Wis. Stat. § 802.06(2)(a)6.

In the alternative, should the Court deny the City's motion to dismiss, this Court should grant the City's motion, pursuant to Wis. Stat. § 802.06(2)(a)7, that Plaintiffs failed to join parties needed for just and complete adjudication under § 803.03, and order Plaintiffs to make AWA, Babcock and all other beneficiaries of the Exemption parties under § 803.03(3).

Dated this 3rd day of March, 2025.

Electronically signed by Doran Viste

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