

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

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**Michael C. Fischer**

Petitioner – 1665 Mountain Ave. Wauwatosa WI 53213-2331

vs.

Case No.: 2025CV009593

**City of Wauwatosa – Board of Review**Respondent – 7725 W. North Ave. Wauwatosa WI 53213-2331

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**PETITIONER’S BRIEF**Under *Wis. Stat. §70.47(13)*

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**I. INTRODUCTION**

This appeal arises from the decision of the City of Wauwatosa Board of Review (“BOR”) on September 16, 2025, sustaining an assessment of \$956,200 for Petitioner’s property at 1665 Mountain Avenue.

Petitioner contends that the BOR decision was contrary to law, arbitrary, and unsupported by substantial evidence, in violation of *Wis. Stat. §70.47(13)*. The BOR record shows that the assessment was based on speculative testimony, non-uniform treatment of adjacent properties, and valuation inputs that were inaccurate, undisclosed, or both.

The following questions guide the Court’s review under *Wis. Stat. §70.47(13)*:

- Did the BOR act within its jurisdiction?
- Did the BOR act according to law?
- Was the BOR’s decision arbitrary, oppressive, or unreasonable?
- Was the BOR’s decision supported by substantial evidence?

While Petitioner does not contest jurisdiction, the remaining three standards require reversal of the BOR decision, or alternatively, a remand with instructions for reassessment consistent with law.

## II. STATEMENT OF FACTS

A. The subject property is located at 1665 Mountain Avenue in Wauwatosa, Wisconsin.

1. In 2021, the property was purchased in one transaction but as two separate lots, each with its own parcel number (345-0639-000 & 345-0640-000).
2. In 2022–2023, the two lots were legally combined into a unified parcel (345-0640-001).
3. On assessment date of 1/1/2025, the property could only be legally valued or sold as the unified parcel.

B. At the BOR hearing, the City reported that land at the subject parcel was valued as if it could still be subdivided and sold as two separate lots, like it was in 2021, resulting in a land value of \$342,900 and a total assessment of \$956,200.

Petitioner contends the property should have been valued as a unified parcel, as it existed on 1/1/2025, with a land value of \$249,700 and a total assessment of \$863,000.

C. For simplicity, this brief outlines Petitioner’s arguments in general, while detailed evidence from the BOR record is summarized in lettered Exhibits at the end of this petition.

- EXHIBIT A: Transcript Excerpts Showing Speculative Lot-Split Testimony
- EXHIBIT B: Non-Uniform Land Valuation Among Adjacent Parcels
- EXHIBIT C: Data Errors and Omissions in the City’s Comparable Analysis
- EXHIBIT D: Valuation Inputs Withheld prior to the BOR Hearing

## III. ISSUES PRESENTED

As highlighted in the introduction, for this petition the following three questions guide the Court’s review under *Wis. Stat. §70.47(13)*:

- A. Did the BOR act according to law?
- B. Was the BOR’s decision arbitrary, oppressive, or unreasonable?
- C. Was the BOR’s decision supported by substantial evidence?

#### IV. ARGUMENT

A. The BOR decision was contrary to law under *Wis. Stat. §70.32(1)* and *Wis. Const. art. VIII, §1*.

1. **Speculative Basis for Non-Uniform Valuation:** At the BOR hearing, Deputy Assessor Cristin Erdmann testified that the subject property warranted a premium valuation because it could hypothetically be re-subdivided and the lots could be sold, "...as they formally were at the time of purchase in 2021." She further stated that adjacent parcels were valued differently because existing physical structures prevented those properties from being "split off for resale." (See Exhibits A and B)

This lot-split testimony is inconsistent with governing standards for uniform land valuation and highest and best use as of 1/1/2025. Absent that testimony, the record contains no substantial evidence supporting the higher per-square-foot land rate.

- a) Non-Uniform Valuation: The BOR record shows that land at the subject property was assessed at \$17.49 per square foot, while adjacent parcels with similarly large lots were assessed below \$12.00 per square foot (BOR Record, pp. 34 & 40). The record contains no quantified adjustment demonstrating how potential subdivision translated into the \$17.49 per-square-foot land rate or how the minor reduction in land value from 2024 to 2025 ensured a uniform valuation.
- b) Land Valued as If Vacant: The Wisconsin Property Assessment Manual (WPAM) provides that land is to be valued as if vacant and that existing improvements are not relevant (*WPAM*, p. 12-2, H&BU). This guidance is inconsistent with the Deputy Assessor's statements that existing physical structures caused differences in the valuation of adjacent parcels.
- c) Fails Highest and Best Use (H&BU): A property's current use is presumed to be its highest and best use (*WPAM*, pp. 9–10 & 9–11). WPAM also cautions against reliance on a "...highly speculative use." Any departure from the current use must satisfy four H&BU tests. The BOR record contains no evidence that the subdivision testimony satisfies those tests.

- 1) *Not Legally Permissible*: On 1/1/2025, the parcels were legally combined, and it was no longer legally permissible to sell the surplus land as it was at the time of purchase in 2021. The land could only be legally valued or sold as a unified parcel.
- 2) *Not Physically Possible*: Physical improvements, including an existing patio and planned garage, prevented re-division of the property along the old 2021 lot lines. These obstructions were a key reason for originally combining the two prior lots.
- 3) *Not Financially Feasible*: The record contains no evidence that re-subdivision would provide a clear financial benefit. Re-subdividing the parcel would require additional costs for new surveys, adjusted lot lines, and uncertain HOA and City approvals.
- 4) *Not Maximally Productive*: Even when previously subdivided, the surplus land remained vacant for over a century (since the founding of the neighborhood in 1916). The record does not support re-division and resale as maximally productive.

B. The BOR's decision was arbitrary and unreasonable.

1. **Unsupported Testimony**: The Board upheld a higher property valuation based on unsupported testimony regarding potential lot subdivision (Exhibit A). The record lacks a zoning analysis, market evidence, or quantified adjustment to support that subdivision theory. Without evidentiary support in the record to justify the resulting valuation differential, the Board's decision was arbitrary and unreasonable.

a) *Impact of Unsupported Testimony*: Petitioner objected to the lot-division testimony during the hearing and again in summary remarks. The Board nevertheless relied on the statutory presumption of correctness to sustain the assessment without evidentiary support in the record for the higher valuation. (See Exhibit A)

C. The BOR's decision was not supported by substantial evidence.

1. **Data Errors**: The City's comparable sales analysis contains multiple data errors and omissions requiring approximately \$100,000 in corrections (Exhibit C). Petitioner requested the underlying data and it was not disclosed (Exhibit D), so the inaccuracies

were not evident until after the hearing. A decision based on materially flawed analysis does not constitute substantial evidence under **Wis. Stat. §70.47(13)**.

2. **Key Valuation Inputs Withheld:** Prior to the BOR hearing, Petitioner made multiple written requests to understand how the subject property was valued. The Assessor's Office declined those requests and instead directed Petitioner to a public dataset on the City's revaluation website (BOR Record, p. 46, Aug. 28). The dataset provided, however, did not contain the same data later used in the City's analysis. During closing arguments, the Deputy Assessor defended the City's valuation and criticized Petitioner's analysis for not using data that had not been disclosed (Exhibit A). An assessment based on undisclosed valuation inputs does not constitute substantial evidence under **Wis. Stat. §70.47(13)**.

a) Specific Data Missing:

- Lot size data
- Quality ratings
- CDU ratings (Condition, Desirability, and Utility)
- Assumptions and adjustment rates

3. **Basic Valuation Data Missing:** Under **Wis. Stat. §70.32(1)** and **WPAM** Chapter 20, the assessor must present valuation data in a manner that allows "both property owners and the BOR to understand how the assessments were derived." The City's comparable sales analysis, however, omitted the most probable indicated values for the subject property – the mean and median values. This omission concealed internal inconsistencies in the City's comparable sales analysis and prevented meaningful oversight by either the BOR or the property owner. (See Exhibit C)

- a) Specific Data Missing: The mean of \$998,708 and the median of \$1,025,318 exceed the assessed value of \$956,200 by \$42,000 and \$69,000, indicating that the sales selected for the analysis cluster above the assessed value — a fact obscured when only the Value Range is shown. Without these measures of central tendency, neither the BOR nor the property owner could determine whether the assessment was

reasonably derived from selected comparable sales, all of which had materially smaller lots. As reflected in Exhibit C, the omission of these metrics limited meaningful review.

## V. REQUESTED RELIEF

A. Petitioner respectfully requests that this Court:

1. Determine that the BOR acted contrary to law, arbitrarily, and without substantial evidence,
2. Reverse or vacate the BOR determination sustaining the \$956,200 assessment,
3. Remand the matter for reassessment consistent with statutory requirements,
4. Grant such other relief as the Court deems just and equitable.

## VI. CONCLUSION

The BOR's decision rests on speculative testimony, non-uniform treatment of adjacent parcels, and valuation inputs that were inaccurate, undisclosed, or both. Each of these deficiencies independently undermines the assessment under the certiorari standards of *Wis. Stat. §70.47(13)*.

When requested valuation data and underlying inputs are not disclosed in advance, they cannot be meaningfully tested at the BOR hearing. Even so, the assessment must rest on substantial evidence. That evidence is not present in this record.

## VII. EXHIBITS:

- A. EXHIBIT A: Transcript Excerpts Showing Speculative Lot-Split Testimony
- B. EXHIBIT B: Non-Uniform Land Valuation Among Adjacent Parcels
- C. EXHIBIT C: Data Errors and Omissions in the City's Comparable Analysis
- D. EXHIBIT D: Valuation Inputs Withheld prior to the BOR Hearing

**EXHIBIT A: TRANSCRIPT EXCERPTS SHOWING SPECULATIVE LOT-SPLIT TESTIMONY****I. COMMENTS FROM PAGE 16 OF THE BOR RECORD****Cristin Erdmann – Deputy Assessor**

If you go to the next large sheet of paper behind your comparable grid, I do wanna note that the subject property has a larger lot like some of my comparable properties. However the main difference is that his lot was formally combined after his purchase. At this time, as of January 1<sup>st</sup> 2025, the lots could still be split off and he could have sold the vacant space and somebody could come-in and purchase to create a new dwelling.

I also want to point out that there is a difference in breakout from the land value...

**Roger Walsh – BOARD MEMBER**

Sorry, so that's why you have a larger land value?

**Cristin Erdmann – Deputy Assessor**

Correct, correct, yep. And when we looked at maintenance years after his purchase, we did make adjustments to the assessed value based upon his purchase price. And then we did make an adjustment to the assessed value based on the combination of the lots, as well as in 2025 when we did the citywide revaluation. If you look below, the land value actually decreased from \$370,900 to \$342,900. That's taking into consideration the changes in the market from his original purchase, as well as the 2019 revaluation.

In addition, the taxpayer did note that some of the lots across the street from him have different valuations. But I want to point out from the arial view that those lots cannot be split off as those single-family residences are smack dab in the middle of those parcels. And so there's a difference in valuation because those lots don't have that potential to split off for resale.

**Michael Fischer – Property Owner**

I don't know if I'm allowed to object

Pamela Stokke-Ceci – Board Member and Chairperson

Well...let her finish and then you can ask her questions

## II. COMMENTS ON PAGE 17 OF THE BOR RECORD – SUMMARY ARGUMENTS

### MICHAEL FISCHER – PROPERTY OWNER

... Let me just speak to this data. This data was not made available to me at all. And none of this data is in the city's data set. They provided me with this data set. They didn't have any of this stuff. So there is no way that I could even approach doing an analysis the way they do it. But I will say if you put good comparables into a bad system, you get a terrible result.

... And she mentioned that the properties cannot be split off, and this is a problem I've been having with the city since I got here. It's on slide 19 in my back-up slides, so it's going to be hard to see, but when I bought the home, one of the things that really bothered me, was that it was one transaction, but I was being assessed for two different properties in one transaction.

So I bought both lots and the house for \$623,000. I had two lots, one was an empty lot, and I didn't understand why they weren't combined. So I thought I was doing the right thing as a citizen by combining the lots. Her hypothetical that I could then re-split these lots, I could do another assessment or survey of my home, and then split the lots again, and then potentially I could sell it is a hypothetical beyond reason.

The Wisconsin Property Assessment Manual says specifically if you have a large lot, you should decrease the dollars per square foot

She also mentioned that they have gone down a little in my property assessed value by like \$20 thousand dollars, so that would change my dollars per square foot...and I'm guessing here...from about \$18 square foot to like maybe \$16 per square foot. It's still not uniform with my neighbors.

### III. COMMENTS ON PAGE 20 OF THE BOR RECORD – CLOSING ARGUMENTS

#### Cristin Erdmann – Deputy Assessor

I would like to point out per my comp grid that the assessed value of \$956,200 is supported by the number of sales that both I and the taxpayer have both used in our analysis, however the taxpayer still does not make any adjustments besides the price per square foot methodology based on the current assessed value. Um, my comparable grid does show that the assessed value is within range of \$885,625 up to \$1,052,878. So I would ask the board to sustain the assessed value as the taxpayer has not met the burden of proof.

### IV. COMMENTS ON PAGE 20 OF THE BOR RECORD – BOARD MEMBER DELIBERATION

#### Alan Kesner – Alternate Board Member

I think based on the presumption and the evidence that the assessor has provided, I will second that motion. I think that the taxpayer has made some good points and made a good case for his discussion but based on the fact that the law provides the presumption and the assessor's adjustments do seem to be accurate, and do seem to like they make the right set of comparison to make the difference. I'm particularly moved by the fact that it's a double lot, and it has a lot of value in and of itself as a second lot. I'm gonna second that motion.

#### Michael Fischer – Property Owner

May I interject before a final ruling?

#### Pamela Stokke-Ceci – Board Member & Chairperson

No

#### Michael Fischer – Property Owner

OK...all right.

**EXHIBIT B: NON-UNIFORM LAND VALUATION AMONG ADJACENT PARCELS**

The Deputy City Assessor presented the document below at the BOR (See BOR Record, Page 44). The contemporaneous and follow-up notes shown below highlight the errors in the testimony.

**Exhibit 2: Comments**

**LEGEND**  
 • Comments  
 • Contemporaneous notes from the BOR Meeting

Land must be uniformly valued for taxation purposes. (Wis Constitution)  
 Current improvements are not relevant when estimating land value. (WPAM 12-2)  
 Assessors usually value platted areas on either a standard lot size or a front foot basis (WPAM12-13)

*Not in compliance with WPAM*

**WPAM 12-1 - Valuing Land**  
 Non-compliance:  
 • 12-2 - H&BU  
 • 12-13 - Land Valuation – Platted Areas

Adjacent parcels contain comparable surplus land with subdivision potential.

Land value on subject parcel is taking into consideration the excessive size of lot for the neighborhood along with topography. The subject parcel can still be split into two lots they formally were at the time of purchase in 2021 and the empty lot could be sold and built upon with a separate dwelling.

2024 Assessment Breakout	Assessment Shift (2024 to 2025)	2025 Assessment Breakout
Land: 370,900	- 7.5%	Land: 342,900
Building Improvements: 227,500	+ 170%	Building Improvements: 613,300
Total: 598,400	+ 60%	Total: 956,200

The calculations used to produce these value changes were never produced.

### EXHIBIT C: DATA ERRORS AND OMISSIONS IN THE CITY'S COMPARABLE ANALYSIS

The Deputy City Assessor presented the document below at the BOR hearing (See BOR Record, Page 43).

The contemporaneous and follow-up notes shown below highlight data errors, omissions, and typos, which could not realistically be fact-checked or challenged during the hearing.

#### Exhibit 1: Comments

**LEGEND**

- Comments
- Data Errors & Omissions
- Typos
- Contemporaneous notes from the BOR Meeting

**Data Errors and Omitted Inputs in City Comparable Sales Analysis**  
Cumulative impact is approximately \$100,000

(WPAM Ch. 20, Duties of Assessor, § 9)

Side 10

**Data Input Errors**

- Acreage rounding errors: 0.02 Acres = \$ 15K est.
- Sales date discrepancy/typo: Aug 8/9 v. Sept 9/8 = \$ 5K est.

BOARD OF REVIEW		SALE 1		SALE 2		SALE 3		SALE 4		SALE 5	
COMPAR CODE	City of Milwaukee										
PAR ID	345-4949-001										
VALUATION DATE	January 3, 2025										
SALES ANALYSIS											
Subject											
Parcel Number	345-4949-001	345-4949-001	345-4949-001	345-4949-001	345-4949-001	345-4949-001	345-4949-001	345-4949-001	345-4949-001	345-4949-001	345-4949-001
Address	1723 ALTA VISTA AVE	1723 ALTA VISTA AVE	1723 ALTA VISTA AVE	1723 ALTA VISTA AVE	1723 ALTA VISTA AVE	1723 ALTA VISTA AVE	1723 ALTA VISTA AVE	1723 ALTA VISTA AVE	1723 ALTA VISTA AVE	1723 ALTA VISTA AVE	1723 ALTA VISTA AVE
SALE DATE	Jan 2021	Jan 2021	Jan 2021	Jan 2021	Jan 2021	Jan 2021	Jan 2021	Jan 2021	Jan 2021	Jan 2021	Jan 2021
SALE PRICE	\$425,000	\$425,000	\$425,000	\$425,000	\$425,000	\$425,000	\$425,000	\$425,000	\$425,000	\$425,000	\$425,000
TIME ADJUSTMENT	30.24%	19.8%	19.8%	19.8%	19.8%	19.8%	19.8%	19.8%	19.8%	19.8%	19.8%
ADJUSTED SALE PRICE	\$811,395	\$811,395	\$811,395	\$811,395	\$811,395	\$811,395	\$811,395	\$811,395	\$811,395	\$811,395	\$811,395
Lot Area (Acres)	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18
Lot Area (Sq Ft)	15500	15500	15500	15500	15500	15500	15500	15500	15500	15500	15500
Style	104 Cape Cod	104 Cape Cod	104 Cape Cod	104 Cape Cod	104 Cape Cod	104 Cape Cod	104 Cape Cod	104 Cape Cod	104 Cape Cod	104 Cape Cod	104 Cape Cod
Year Built	1988	1988	1988	1988	1988	1988	1988	1988	1988	1988	1988
Exterior	Masonry/Brick	Masonry/Brick	Masonry/Brick	Masonry/Brick	Masonry/Brick	Masonry/Brick	Masonry/Brick	Masonry/Brick	Masonry/Brick	Masonry/Brick	Masonry/Brick
Central Air (Y/N)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Basement	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full
Quality	9+	9+	9+	9+	9+	9+	9+	9+	9+	9+	9+
Year Built (only FR/LA)	1988	1988	1988	1988	1988	1988	1988	1988	1988	1988	1988
Partial Basement Area (Sq Ft)	0	0	0	0	0	0	0	0	0	0	0
Finished Basement	1	1	1	1	1	1	1	1	1	1	1
Area Above	0	0	0	0	0	0	0	0	0	0	0
Other Features	DISCLOSURE REQUIRED	DISCLOSURE REQUIRED	DISCLOSURE REQUIRED	DISCLOSURE REQUIRED	DISCLOSURE REQUIRED	DISCLOSURE REQUIRED	DISCLOSURE REQUIRED	DISCLOSURE REQUIRED	DISCLOSURE REQUIRED	DISCLOSURE REQUIRED	DISCLOSURE REQUIRED
Condition (See 19 of appraisal)	0	0	0	0	0	0	0	0	0	0	0
Adjusted Sale Price											
Median Indicated Value	Mean: \$956,708	\$1,025,338	\$895,000	\$1,025,338	\$895,000	\$1,025,338	\$895,000	\$1,025,338	\$895,000	\$1,025,338	\$895,000
Median Indicated Value	Mean: \$956,708	\$1,025,338	\$895,000	\$1,025,338	\$895,000	\$1,025,338	\$895,000	\$1,025,338	\$895,000	\$1,025,338	\$895,000

**Undisclosed Data**

- Time adjustment data for the subject property not shown (WPAM Ch. 20, Duties of Assessor, § 9)

**Omitted Results**

- The analysis provides no indicated value (Adjusted Sales Price is shown twice)
- The mean & median indicated values both exceed the assessed value of \$ 956,200.

**Non-Disclosed Data**

- Lot size data was not disclosed in the city dataset, but it drove six-figure adjustments
- The sales used in this analysis have materially smaller lot sizes than the subject (< 20%).
- Quality and CDU data have never been disclosed

**Home Feature Errors**

- Construction type issue: Brick vs. masonry/fr. = \$ 35K est.
- Basement error: Full vs. partial = \$ 18K est.
- Rec room error: 820 sf vs. 0 sf = \$ 15K est.
- In-Law suite not discussed: 2nd Full Kitchen = \$ 15K+ est.
- A 5th bathroom in basement is not shown or valued

<https://results.net/real-estate/1723-alta-vista-918-wauwatosa-wi-53213/478313204/>

**EXHIBIT D: VALUATION INPUTS WITHHELD PRIOR TO THE BOR HEARING**

At BOR, the Deputy City Assessor presented a timeline record of communication between Petitioner and the City (See BOR Record, Page 45-62). The table below summarizes the dates when Petitioner requested Open Records information from the City Assessor Office and reflects certain communications not included in the timeline. In response, the City referred Petitioner to its public revaluation website and a general dataset of recent sales data. Other requests were denied prior to the BOR hearing.

	OPEN BOOK (7/18 to 8/15/2025)		PRE-BOR HEARING (8/15 to 9/15/2025)	
	Request for Feedback	Request for Comparable Sale Data	Request for Feedback	Request for Land & Bldg. Data
<i>Petitioner's email requests for open information (10 mails)</i>	7/29, 8/8, 8/14	8/18, 8/19 (absent from timeline)	9/1, 9/5	9/7, 9/8, 9/9
<i>Assessor's email response to deny the request</i>	8/16	8/18 (absent from timeline)	9/5	9/8
<i>Petitioner's face-to-face attempts to get information (since email didn't work)</i>	---	8/28*	9/4	9/11

\* Note: This was the only instance where the City Assessor's Office shared information by referring Petitioner to the **City Revaluation Website** ([www.wauwatosa.net/real](http://www.wauwatosa.net/real)). That dataset was later found to be incomplete.

The following public information was not disclosed prior to the BOR hearing.

- Disclosed on 8/28: 2022–2024 Comparable Sales Data (incomplete)
- Disclosed at BOR on 9/16: Comparable Locations and Comparable Data
- Not Disclosed: Land Details, Quality, CDU, Assumptions, Adjustment Rates