

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 REPLY BRIEF**

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**I. INTRODUCTION**

The issue before the Court is more straightforward than Respondent suggests. Respondent frames this case as a request to “reweigh evidence, resolve credibility disputes, and substitute [the Court’s] judgment for that of the Board” (Dkt. 15, pp. 1–2). That characterization is not accurate.

Instead, this case presents a narrower question: whether the Board of Review’s (BOR) decision complied with the law and was supported by substantial evidence in the record. Petitioner asks the Court to apply basic certiorari standards to a decision that rests on non-uniform valuation, unsupported assumptions, and undisclosed data.

At the BOR hearing, the Deputy City Assessor testified that the subject property was valued at a materially higher land rate based on unsupported and therefore speculative reasoning. The record contains no credible evidence to support that testimony or the resulting non-uniform valuation. The Board upheld the assessment without resolving that defect.

Under *Wis. Stat. § 70.47(13)*, the decision must be reversed or remanded to the City of Wauwatosa Board of Review for reassessment in accordance with the law.

## II. DID THE BOR ACT ACCORDING TO THE LAW?

Respondent infers that the Board of Review acted lawfully because it was "...satisfied that the assessment was accurate, and was not persuaded by Petitioner's arguments" (Dkt. 15, p. 8). That is not the legal standard at issue here. The question is not which argument persuaded the BOR, but whether the BOR's decision complied with Wisconsin law, including the requirement to uniformly value all properties based on substantial evidence.

Under *State ex rel. Markarian v. City of Cudahy*, similar properties must be assessed uniformly. Here, similar adjacent properties were valued at a materially different rate based on unsupported reasoning. The record also reflects that the City may have declined to consider uniformity concerns as part of the BOR process, asserting that they should instead be addressed in circuit court.

"Sarah [City Assessor] notifies Michael [Petitioner] that uniformity concerns are addressed at circuit court and cannot be heard at the Board of Review."  
(Dkt. 6, p. 47, 9/4/2025)

That position appears inconsistent with Wisconsin law, which requires uniformity at the time of assessment.

At the BOR hearing, the City asserted that the subject parcel was valued as if it could be subdivided along prior 2021 lot lines, while adjacent parcels were valued differently because they allegedly could not be subdivided due to existing physical structures. The record contains no credible evidence to support either assertion.

Even if subdivision potential of the subject property were a valid consideration, the City has provided no evidence that similar adjacent parcels could not also be subdivided. Instead, the BOR relied on unsupported assertions regarding existing physical structures, and failed to apply that standard equally to the subject. A decision based on inconsistent treatment of comparable properties does not comply with the law.

- a. Wisconsin Assessment Standards: Respondent mischaracterizes Petitioner's arguments and claims the discussion of lot splitting "...elevates form over substance" (Dkt. 15, p. 8). The substance at issue is whether the City's stated valuation approach was uniform, consistent with the law, and supported by substantial evidence.

At the BOR hearing, the City stated it valued the subject parcel as if it could still be subdivided along prior 2021 lot lines, while adjacent parcels were valued differently because they allegedly could not be subdivided due to existing physical structures. The City provided no evidence to reconcile those statements with the requirements to uniformly value land (*Wis. Const. art. VIII, §1*), as if vacant (*WPAM*, p. 12-2, H&BU), and at its Highest and Best Use (*WPAM*, pp. 9–10 & 9-11).

- b. Highest & Best Use: A property's current use is presumed to be its highest and best use, and *WPAM* cautions against reliance on a "...highly speculative use" (*WPAM*, pp. 9–10 & 9-11). Despite this guidance, Respondent infers that "[t]he Board reasonably concluded that recognizing contributory land value for a large lot in an established residential market is neither speculative nor extraordinary" (Dkt. 15, p. 9).

Even if lot splitting reflects the highest and best use of the properties, any such determination must be applied consistently to all parcels. That determination must also be supported by substantial evidence showing that subdivision is legally permissible, physically possible, financially feasible, and maximally productive. No such evidence appears in the record.

### III. WAS THE BOR DECISION ARBITRARY, OPPRESSIVE, OR UNREASONABLE?

Respondent cites *BonStores Realty Two, LLC v. City of Racine Board of Review* and argues that "...the reasonableness of a competing [valuation] opinion is not alone enough to overcome the presumption of accuracy" (Dkt. 15, p. 10). That principle is not in dispute.

Here, Petitioner's argument is not based solely on a competing opinion of value, but also on the absence of substantial evidence to support the Deputy Assessor's testimony.

Under *State ex rel. N/S Associates v. Board of Review of Village of Greendale*, the Board must independently evaluate evidence and cannot simply accept unsupported conclusions from the assessor. Likewise, under *Rosen v. City of Milwaukee*, unsupported or speculative conclusions cannot sustain an assessment.

Once Petitioner identified specific and credible concerns with the City's assessment—including non-uniform valuation, lack of quantified adjustments, undisclosed inputs, and unexplained disparities—the BOR was required to address them. Petitioner objected to the lot split testimony and specifically challenged it as, "a hypothetical beyond reason" (Dkt. 6, pp. 16 & 18), yet the BOR failed to resolve that concern. Once Petitioner identified specific, record-supported concerns, the BOR could not rely on the presumption of correctness to substitute for missing reasoning or undisclosed methodology.

The BOR decision was therefore arbitrary and unreasonable because it relied on the presumption of correctness rather than substantial evidence.

#### **IV. WAS THE BOR DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

Respondent asserts that efforts to resolve data issues in the City's valuation should have been made during the Open Book period and that there is "...nothing in the record to suggest that those attempts were made" (Dkt. 15, pp. 11–12). The BOR record directly contradicts that claim. As documented, Petitioner made repeated (13+) good-faith efforts during and after the Open Book period to understand how the City Assessor valued the subject property (Dkt. 10, p. 12; Dkt. 6 pp. 45–62).

Under *Waste Management of Wisconsin, Inc. v. Kenosha County Board of Review*, a valuation must follow accepted methodology and be supported by credible evidence. Under

***State ex rel. Levine v. Board of Review of Village of Fox Point***, substantial evidence requires credible evidence that a reasonable mind could rely upon.

Here, the City did not disclose the basis for its valuation until the BOR hearing, making real-time data verification impractical. Subsequent review of the data revealed that key inputs—including property characteristics, lot information, quality ratings, CDU factors, and adjustment rates—were inaccurate, undisclosed, or both. These errors materially affected the City’s analysis, requiring adjustments of approximately \$100,000 (Dkt. 10, p. 11). A decision based on inaccurate or undisclosed information does not satisfy the substantial evidence standard.

Respondent also asserts that it was appropriate for the BOR to “...rely on value ranges and professional judgement” (Dkt. 15, p. 12). But substantial evidence requires more than a min/max range and unsupported conclusions; it requires a reasoned explanation linking the comparable sales to the final assessed value. If a range alone were sufficient, the City could justify any assessment by simply identifying one comparable sale lower and one higher than the proposed value.

Here, the City identified one comparable sale lower and four higher, yet obscured that imbalance by presenting only the min/max value range. Respondent asserts that the assessed value “falls squarely within that range” (Dkt. 15, p. 11); however, the midpoint of the min/max range still exceeds the assessment. When considering all comparable sales, the commonly used mean and median more clearly demonstrate that the analysis lacks centering and overshoots the assessment by up to \$69,000 (Dkt. 10, p. 5). The record reflects that the assessor did not account for this lack of centering or explain how the higher-valued properties, with materially smaller lots, were truly comparable to the subject property.

The Wisconsin Property Assessment Manual requires the assessor to present valuation data in a manner that allows, "...both property owners and the BOR to understand how the assessment was derived" (*WPAM*, 20-17, Section 9). That requirement was not met. Although commonly used measures such as mean and median are not specifically required, some logical indicator is necessary to demonstrate the City's methodology and support the conclusion that the selected sales are truly comparable to the property being assessed.

## V. CONCLUSION

Respondent's arguments do not address the core defects in the record. This case turns on whether the assessment was lawful and supported by substantial evidence. The BOR record shows that it was not.

Instead, the record shows non-uniform valuation, unsupported assumptions, and undisclosed methodology. The Board of Review did not resolve those issues and instead relied on the presumption of correctness to sustain the assessment. Petitioner therefore respectfully requests that the Court reverse or remand for proceedings consistent with applicable law.

Respectfully submitted,

**Michael C. Fischer**  
Petitioner, pro se