

FILED
04-16-2026
Anna Maria Hodges
Clerk of Circuit Court
2025CV009593

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

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

PETITIONER’S RESPONSE TO MOTION TO DISMISS

I. INTRODUCTION

Respondent asks the Court to dismiss this certiorari action based solely on alleged procedural defects in the mechanics of service that did not impair the City’s notice or ability to respond. The motion should be denied.

Service rules exist to ensure that a respondent receives notice that the Court’s jurisdiction has been invoked. That purpose was fully satisfied here. The City received notice at City Hall, acknowledged receipt, and appeared by filing an Answer.

Prior to the service deadline, Petitioner again confirmed that the City had received notice. The City Clerk, acting as agent for the Board of Review, again verified receipt without objection, as confirmed in Exhibit E (attached).

These facts establish that the City had actual notice and a full opportunity to respond. Any defect in service was unintentional and caused no prejudice. Dismissal would elevate form over substance by prioritizing the mechanics of service over clear notice to the appropriate respondent.

II. THE CITY RECEIVED FULL NOTICE OF THE ACTION AND THE WRIT

On November 7, 2025, the Petition for Writ of Certiorari was hand-delivered to the City Clerk, as agent for the Board of Review, and to the City Attorney (Dkt. 13, p. 5).

On November 10, 2025, the Court issued the Writ of Certiorari (Dkt. 3).

On January 22, 2026, the City Clerk again received and acknowledged notice of this action, including the Writ of Certiorari and prior notice of the Petition (Exhibit E, attached).

On February 4, 2026, the City appeared in this action by filing an Answer, asserting improper service as an affirmative defense (Dkt. 5, p. 2).

These facts show that the City received timely and repeated notice and was able to respond without limitation. The facts are not reasonably disputed.

III. THE MOTION FOCUSES ON TECHNICAL SERVICE ARGUMENTS

Courts recognize that well-intended parties may effectively notify respondents while still making honest mistakes in the mechanics of service. While not every defect in service is excusable, courts distinguish between defects that deprive a respondent of notice and those that do not. Wisconsin law reflects this distinction, recognizing that fundamental defects defeat jurisdiction, while technical defects may be excused absent prejudice (e.g., *American Family Mutual Insurance Co. v. Royal Insurance Co.*).

Respondent focuses only on the mechanics of service—specifically, that Petitioner personally delivered the filings and initially served the Petition rather than the Writ. These arguments do not dispute that the City received timely notice, understood that judicial review had been initiated, and was able to appear in the action.

Respondent's arguments invoke the general principle that failure to properly effect service may constitute a fundamental defect. However, the cases it cites—including *Bergstrom*,

Hagen, and *Bartels*—arise from materially different circumstances. In those cases, defects in service prevented notice to the appropriate party, and dismissal followed because the court determined that jurisdiction was not properly invoked.

That is not the situation here. In this case, the appropriate respondent received timely notice, understood that judicial review had been initiated, and was able to appear in the action. No defect in service impaired its ability to respond or placed it at a disadvantage.

This case also involves certiorari review of a governmental decision. The administrative record already existed and was in the City's possession. Nothing about the manner of service impaired the City's ability to respond or defend this action.

Under these circumstances, dismissal would elevate the technical mechanics of service over the purpose of service itself—providing notice—and would prevent judicial review despite Respondent's full participation in the action.

IV. DISMISSAL IS NOT WARRANTED

The purpose of service is to provide notice. That purpose was fully satisfied here. The City received notice, acknowledged it, and appeared. Petitioner acted in good faith.

Respondent nevertheless seeks dismissal based solely on technical service arguments. Even Respondent acknowledges that in this case—where the appropriate party received notice and appeared in the action— “...the consequence of dismissal may be harsh” (Dkt. 13, p. 4).

The anticipated remedy under *Wis. Stat. §70.47(13)* is remand for reassessment consistent with law; it does not determine the ultimate property value or resolve the case. Dismissal would elevate a technical defect that caused no prejudice over (1) the Court's ability to review the legality of a government decision and (2) the Board of Review's ability to make a legally informed decision about property value.

V. CONCLUSION

For the foregoing reasons, the Court should deny Respondent's Motion to Dismiss and allow this certiorari action to proceed on the merits.

Oral argument may not be necessary to resolve the Motion. The material facts regarding service are not in dispute, and the remaining question—whether any defect in service was fundamental or technical—is one of law. In light of the statutory directive under *Wis. Stat. § 70.47(13)* that this certiorari action “shall be given preference,” resolution on the briefs may be appropriate unless additional information is required. While Petitioner is prepared to appear and address any questions the Court may have, he relies on this brief to fully present his argument.

Respectfully submitted,

Michael C. Fischer
Petitioner, pro se

ATTACHMENTS:

- Exhibit E - January 22, 2026 Email Confirming Receipt of Petition & Writ of Certiorari

EXHIBIT E – JANUARY 22, 2026 EMAIL CONFIRMING RECEIPT OF PETITION & WRIT OF CERTIORARI

BOR Meeting Transcripts from 9/16/2026

From: Michael Fischer (mfischer@aol.com)

To: zkessler@wauwatosa.net

Date: Thursday, January 22, 2026 at 01:50 PM CST

Zach -
Just checking in on status.

As the city clerk, are you pulling together the proceedings of the Board of Review from 16-September as ordered by the Circuit Court? If not, do you know who is?

The order was issued on 11/10/2025, so the transcript must be submitted to the court by Friday, 2/6/2026.

I just want to ensure someone is working on this per the court orders (attached). Can you point me in the right direction?

Mike



City - Writ of Certiorari (2025-10-11).pdf
119.8 kB



Proof of Service (2025-11-07 - Signed).pdf
708.4 kB

On Friday, January 23, 2026 at 12:38:50 PM CST, Zachary Kessler <zkessler@wauwatosa.net> wrote:

Hello –

The record is close to being completed and will be filed by outside counsel retained by the City.

Thank you,

Zach Kessler, MPA

Director of Municipal Services | City of Wauwatosa

7725 W North Ave | Wauwatosa, WI 53213

Desk: (414) 479-8919 | Office: (414) 479-8917

www.wauwatosa.net

FIRST ATTACHMENT TO EMAIL

Case 2025CV009593	Document 3	Filed 11-10-2025	Page 1 of 1
<div style="display: flex; justify-content: space-between;"> <div style="width: 70%;"> <p>BY THE COURT:</p> <p>DATE SIGNED: November 10, 2025</p> <p style="text-align: center;"><u>Electronically signed by William S. Pocan</u> Circuit Court Judge</p> </div> <div style="width: 25%; color: red; font-size: small;"> <p>FILED 11-10-2025 Anna Maria Hodges Clerk of Circuit Court 2025CV009593</p> </div> </div>			
STATE OF WISCONSIN	CIRCUIT COURT Branch 26	MILWAUKEE COUNTY	
<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p>MICHAEL FISCHER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="padding-left: 80px;">vs.</p> <p>CITY OF WAUWATOSA – BOARD OF REVIEW,</p> <p style="padding-left: 40px;">Respondent.</p> </div> <div style="width: 35%; text-align: right; vertical-align: middle;"> <p>Case No. 25CV9593</p> </div> </div>			
WRIT OF CERTIORARI			
<p>WHEREAS a petition for writ of certiorari was filed by MICHAEL FISCHER, <i>pro se</i>, on November 5, 2025, praying that a writ of certiorari be granted and issued out of this court to the Board of Review for the City of Wauwatosa, in relation to the procedures and hearing resulting in a decision issued by Board on September 16, 2025, sustaining an assessment of \$956,200 for petitioner’s property located at 1665 Mountain Avenue, Wauwatosa, WI 53213-2331, which petitioner claims (1) was arbitrary, unreasonable, and procedurally unfair; (2) lacked substantial evidence and relied on inaccurate data; and (3) was contrary to the law.</p> <p>This Court, being willing to be certified of all of the proceedings of said Board of Review in relation to this matter does command you, Board of Review for the City of Wauwatosa, to certify and return to this court within ninety (90) days after service of this Writ upon you all records and papers of the proceedings of said Board relating to the above assessment so that this Court may further act to review them. The Court requires a written transcript of the proceeding rather than a CD.</p> <p style="text-align: center;">SO ORDERED</p>			

SECOND ATTACHMENT TO EMAIL

PROOF OF SERVICE

Case No.: 2025CV009593
Court: Milwaukee County Circuit Court
Petitioner: Michael Fischer
Respondent: City of Wauwatosa Board of Review

- 1. Documents Served
- Petition for Writ of Certiorari (including all attachments filed with the court)
2. Parties Served
- City Clerk - City of Wauwatosa (as agent for the Board of Review)
- City Attorney - City of Wauwatosa
3. Method of Service
- Hand-delivery
4. Date of Service
- Friday, November 7th, 2025
5. Locations Served
- City Clerk's Office, City Hall, 7725 W. North Avenue, Wauwatosa, WI 53213
- City Attorney's Office, City Hall, 7725 W. North Avenue, Wauwatosa, WI 53213

6. Declaration
I, Michael Fischer, declare that the above documents were served on the parties listed on the date and by the method indicated. I affirm that the information in this Proof of Service is true and correct to the best of my knowledge.

Signature: [Handwritten Signature]
Date: NOV 7, 2025

RECEIPT ACKNOWLEDGMENT: Staff may stamp, date, or initial here to confirm receipt

City Clerk's Office: [Handwritten: Received by Misty 11/7/2025]

Stamp/Initial: [Stamp: Received by Date: NOV 07 2025]

City Attorney's Office: City Clerk's Office

Stamp/Initial: Date: