STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

MICHAEL FISCHER,

Petitioner,

v.

CASE NO.
25CV009593

CITY OF WAUWATOSA,

Respondent.

RESPONDENT CITY OF WAUWATOSA'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI REVIEW

Respondent, City of Wauwatosa, by its counsel, Crivello, Nichols & Hall, S.C., hereby submits the following brief in opposition to the petition for certiorari.

INTRODUCTION

Petitioner seeks certiorari relief from the September 16, 2025 decision of the City of Wauwatosa Board of Review ("Board") sustaining the 2025 assessment of $956,200 for the subject property. (Dkt. 1. P. 1). Petitioner bears the heavy burden of demonstrating that the Board acted outside its jurisdiction, contrary to law, arbitrarily or unreasonably, or without substantial evidence. He has not met that burden. Petitioner concedes that the Board acted within its jurisdiction. (Dkt. 10, p. 1). Therefore, the focus of the Petition is on the latter three elements.

The record demonstrates that the Board strictly adhered to its statutory role, properly deferred to the assessor's valuation judgment, and relied on competent evidence presented at the hearing on September 16, 2025. Petitioner's arguments ask this Court to reweigh evidence, resolve

credibility disputes, and substitute its judgment for that of the Board—relief that is expressly prohibited under Wisconsin certiorari law. The petition must therefore be denied.

STATEMENT OF FACTS

The record before the Court on this matter is set and was not challenged by the Petitioner. Therefore, the City relies on the evidence purported in the Record (Dkt. 6, R. 001-072) as is required by law.

The subject property is located at 1665 Mountain Avenue in the City of Wauwatosa and was assessed at $956,200 for 2025. (R. 001). At the September 16, 2025 hearing before the Board, the City's assessor Kristen Erdmann defended her assessment. The testimony of both the Petitioner and the Assessor can be seen in the proceeding's transcripts, R. 004-024. Petitioner did not present any other witnesses other than himself.

At the Board hearing, Petitioner argued that the 2025 assessed value of $956,200 is inaccurate and should instead by $863,000. (R. 006). He indicated that the assessment increased 60% from the prior year, which he views as unreasonable. (R.007). He also argued that no comparable sales in the Washington Highlands neighborhood supported a value above $900,000. (R. 008). He cited the Wisconsin Property Assessment Manual stating that the sales comparison approach is the "premier method" (*Id.*). Relying on this, he selected 31 comparable sales from 2022-2024 and focused on four comparable properties. (R. 007-008). He contended that *"There's no other properties in my neighborhood that have sold for more than $900,000, yet I'm being assessed at $956,000."* (R. 008). Using a cost method analysis, he estimated a true value of $806,000, adding that his 2021 purchase price of the property plus improvements "corresponds very closely with…the time adjusted sales of $808,000." (R. 010). In support of his arguments,

Petitioner submitted several exhibits and documents, which are included in the record as R.025-041.

In coming to his valuation, the Petitioner testified that when evaluating comparable properties, he did not look at the different variances among the properties. (R. 012). For example, he was asked if he made any adjustments for the characteristic differences between his property and the comparables he presented, or if he solely relied on the price per square foot. (*Id.*). He testified that he did not consider "different variances" that the assessors account for. (*Id.*). It's also important to note that Petitioner affirmatively stated that his property is the "nicest property in the Highlands" but he believes he got it at a discount. (R. 012-013).

The Board members then turned questioning to Ms. Erdmann, who began by identifying the parcel and describing the property's characteristics as recorded in the assessment roll. According to her testimony, the home sits on a 0.45-acre lot, is a 1928 Cape Cod, and contains 2,938 square feet of gross living area, rated "B plus quality" and "very good" condition, with four bedrooms, three bathrooms, masonry exterior, central air, a partial basement, and a two-car built-in garage (R.016). As she stated, the property "features decks, patios, and an enclosed frame porch" (*Id.*).

Erdmann then presented five comparable sales from the Washington Highlands neighborhood. (R.043). For each sale, she provided the sale date, sale price, time-adjusted value, lot size, architectural style, age, quality rating, condition, square footage, and amenities. For example, she testified that Sale #1, located at 1816 Alta Vista Avenue, sold for $827,923 in June 2023 and, after applying an 11.97% time adjustment, had an adjusted value of $927,025 (R.. 016–017). She proceeded through each comparable in similar detail.

After adjustments, Erdmann testified that the comparable sales produced a value range between $885,625 and $1,052,878 (R. 018). She stated that this range supports the City's assessed value of $956,200, noting that the subject property "falls within the range of adjusted sale prices" (R. 018).

Erdmann also addressed the property's land value, which the owner had argued was inconsistent with neighboring parcels. She explained that the owner had combined two lots after purchasing the property, and as of January 1, 2025, the combined parcel still retained the potential to be split and sold as a separate buildable lot. She testified that this potential increases the land's market value, stating that "the lots could still be split off and he could have sold the vacant space" (R. 018). She contrasted this with parcels across the street, explaining that those lots "cannot be split off as those single family residences are smack dab in the middle", which limits their redevelopment potential and explains their lower land assessments. (R.018). She also noted that despite the larger combined lot, the land value had actually decreased from the prior cycle—from $370,900 to $342,900—reflecting updated market conditions (*Id.*).

Responding to the property owner's concerns about difficulty obtaining information during open book, Erdmann explained that the assessor's office had been overwhelmed with inquiries. She testified that the office had "over 1,800 contacts during open book" and only five staff members to handle them (R. 019). As a result, most communication had to occur via email. (*Id*.).

Erdmann also addressed the owner's reliance on a realtor's estimated listing price of $899,000. She testified that list prices do not necessarily reflect market value, noting that "most properties are selling above asking" (R.019), and therefore a hypothetical list price below the assessment does not undermine the city's valuation.

In her closing remarks, Erdmann stated that the property owner had not made the necessary adjustments to his comparables to account for differences in characteristics, noting that he relied primarily on price-per-square-foot calculations. She testified that the owner "does not make any adjustments besides the price per square foot methodology" (R.021). She concluded that the owner did not meet the burden of proof required to overturn the assessment and reaffirmed that the city's valuation of $956,200 was supported by the comparable sales data. She therefore requested that the Board of Review sustain the assessment (R.021).

After hearing testimony from both the property owner and the City's Assessor, the Board of Review voted to sustain the City's 2025 assessed value of $956,200 for the property at 1665 Mountain Avenue. The Board concluded that the assessor's valuation was supported by the comparable sales data presented and that the property owner had not met the statutory burden of proof required to demonstrate that the assessment was incorrect. (R.020). As the Chairperson stated, the Board found that the assessor's evidence "supports the assessment," and therefore the objection was denied (R. 023-024).

LEGAL ANALYSIS

I. CERTIORARI REVIEW STANDARD OF REVIEW

"Statutory certiorari review is not for resolving disputes; rather, it exists only to test the validity of agency decisions." *Winkleman v. Town of Delafield*, 239 Wis. 2d 542, 620 N.W.2d 438, 2000 WI App. 254. The issues are limited to whether the tribunal has kept within the boundaries prescribed by the express terms of the ordinance, statute or law of this state. *George v. Schwarz*, 626 N.W.2d 57, 62, 242 Wis. 2d 450, 459, 2001 WI App 72.

The agency's exercise of legislative or judicial discretion is not reviewable. *State ex rel. Badtke v. School Bd. of Joint Common School Dist. No. 1, City of Ripon*, 1 Wis. 2d. 208, 83 N.W.2d

724 (1957). The court's job is not to substitute its own judgment for that of the lower body, but rather to ensure that the lower body acts procedurally according to its statutory guidelines. The discretionary decisions of a deliberative body are not to be disturbed. *Id.* The scope of review is limited to whether the administrative agency:

(1) kept within its jurisdiction,
(2) acted according to law,
(3) did not act arbitrarily or unreasonably or according to its will and not its judgment, and
(4) made a decision based on evidence one might reasonably use to make the determination in question.

Winkleman, 239 Wis. 2d at 546.

Findings of an administrative agency are conclusive on review by writ of certiorari if in any reasonable view, evidence sustains them. *Id.* In reviewing a decision on a writ of certiorari, there is a presumption that the agency acted according to law and the official decision is correct.

With regard to property assessment, the Court is required to give presumptive weight to the assessment.

> The value of all real and personal property entered into the assessment roll to which such affidavit is attached by the assessor shall, in all actions and proceedings involving such values, be presumptive evidence that all such properties have been justly and equitably assessed in proper relationship to each other.

§ 70.49(2) Wis. Stats.

The value of the property is presumed correct unless the property owner introduces significant contrary evidence. *Nankin v. Village of Shorewood*, 2001 WI 92, ¶ 25, 245 Wis.2d 86, 104, 630 N.W.2d 141. To overcome the presumption the owner must present "significant contrary evidence" or a challenge will be rejected. *Adams Outdoor Advertising Ltd. v. City of Madison*, 2006 WI 104, ¶25, 294 Wis. 2d 441, 717 N.W.2d 803. See also, *Xerox Corp. v. Wisconsin*

Department of Revenue, 114 Wis. 2d 522, 528, 339 N.W.2d 357 (Ct. App. 1983) (owner's evidence "must compel the conclusion that the assessor's valuation was incorrect").

A reviewing court cannot assess the weight and credibility of the evidence. *State ex rel. Harris v. Annuity & Pension Bd.*, 87 Wis. 2d 646, 652, 275 N.W.2d 668 (1979). On certiorari review, a circuit court may not "order" the lower tribunal to take any specific action. The limited scope of certiorari review allows the circuit court to either affirm or reverse the action of the lower tribunal as inconsistent with its statutory charge. In this case, if the court makes a finding of procedural error in the deliberations, the remedy would be an order from the court requiring the City of Wauwatosa Board of Review to reconsider the matter in a fashion consistent with the court's description of its statutory authority.

The scope of a certiorari review is limited to the record that was before the administrative body. *State ex rel Harris v. Annuity & Pension Board*, 87 Wis. 2d 646, 275 N.W.2d 668 (1979). Facts outside of the record may not be considered when evaluating the validity of the agency's decision.

The Property Assessment Manual and case law set forth a three-tier methodology to determine fair market value. *Adams*, 2006 WI 104, ¶ 34, 294 Wis. 2d 441, 717 N.W.2d 803. Evidence of an arms-length sale of the subject property is the best evidence of fair market value. *Id.* If there has been no recent sale of the subject property, the sales of reasonably comparable properties must be considered. *Id.* Only if there has been no arms-length sale and there are no reasonably comparable sales can the third-tier assessment methodology be used. *Id.*

II. THE BOARD OF REVIEW ACTED ACCORDING TO LAW

Petitioner fails to prove the decision of the Board was in error. He argues that the evidence was contrary to law, the decision was arbitrary and unreasonable, and not based on substantial

evidence. (Dkt. 10, pp. 3-4). However, he relies on his own testimony (none from any purported expert) that he contends supports his allegations. At the Board of Review, the evidentiary requirement is simple. The property owner must offer sworn oral testimony to overcome the presumption that the assessment is correct. See Sec. 70.47(8)(i) Wis. Stats; *Steenberg v. Town of Oakfield*, 167 Wis.2d 566, 571-72, 482 N.W.2d 326 (1992). Petitioner offers nothing outside his own testimony to argue that the City did not offer "substantial evidence supporting" it's assessment. (Dkt. 10, p. 3). The standard, however, requires the property owner to overcome the presumption, which places this burden on the Petitioner, not the City. The Board was satisfied that the assessment was accurate, and was not persuaded by Petitioner's arguments. Thus, the petition fails and the assessment should be affirmed.

a. *The Board Properly Applied Wisconsin Assessment Standards*

Petitioner argues that the Board violated Wis. Stat. § 70.32(1) and constitutional uniformity principles by accepting testimony regarding the property's land characteristics and development potential. This argument misunderstands both the assessor's testimony and the Board's legal role. Assessors are required to consider all factors that affect market value, including lot size, configuration, and utility. Nothing in Wisconsin law prohibits an assessor from recognizing that excess land contributes to value, even when that land has been combined into a single parcel. The Board was entitled to accept testimony that the subject property's lot characteristics distinguish it from nearby parcels and justify a higher land component.

Petitioner's insistence that the property may only be assessed as though subdivision is legally impossible elevates form over substance. The record reflects that the assessor valued the property as it existed on January 1, 2025, considering its actual size, market appeal, and contributory land value—not as two separate taxable parcels.

b. Highest and Best Use was Not Speculative by the Board

Petitioner characterizes the assessor's testimony as a "speculative lot-split theory." The record does not support that characterization. The assessor did not assign value based on an imminent or guaranteed subdivision, but rather recognized that market participants attribute value to unusually large residential lots, particularly where surrounding properties lack similar development flexibility.

The Wisconsin Property Assessment Manual does not prohibit consideration of development potential; it cautions against reliance on highly speculative uses. The Board reasonably concluded that recognizing contributory land value for a large lot in an established residential market is neither speculative nor extraordinary.

III. THE BOARD'S DECISION WAS NOT ARBITRARY, OPPRESSIVE, OR UNREASONABLE.

Petitioner repeatedly asserts that the Board "relied on unsupported testimony." To the contrary, the Board relied on:

- The assessor's sworn testimony;
- A comparable sales analysis placing the assessment within a supported range; and
- The statutory presumption of correctness afforded to assessments.

It is well established that a Board may credit the assessor's testimony even where a taxpayer offers an alternative valuation approach. The Board explicitly acknowledged Petitioner's arguments but reasonably concluded that they did not rise to the level required to overcome the presumption of correctness.

Even if this Court were to conclude that Petitioner offered evidence to support a reasonable opinion of value, that alone would be insufficient to overcome the presumption that the assessment is correct:

> Although their expert gave a complete explanation of all three approaches to value-income, comparable sales, and cost – the evidence simply represents a different way to value the property and did nothing to establish that the assessor's comparable sales approach was not supported by substantial evidence or did not comport with the statutory and administrative code requirements. **The reasonableness of competing opinion is not alone, enough to overcome the presumption of accuracy.** (emphasis added) .

BonStores Realty Two, LLC v. City of Racine Board of Review, 09-AP-3122 & 09-AP-3123, 2010 WL 3989100, ¶ 5 (Wis. Ct. App. Oct. 13, 2010)[1]. In *Bonstores Realty Two, LLC v. City of Racine Board of Review*, the Wisconsin Court of Appeals affirmed a 2008 tax assessment of Boston Store and J.C. Penney at Regency Mall, ruling the owners failed to show the city assessor's valuation was incorrect or unlawful, rejecting arguments that the Board arbitrarily ignored evidence. (*Id.*, ¶ 7). Further, the Court determined that when there is conflicting testimony, the "probity and credibility of the evidence is for the Board to determine." (*Id*.) The Assessor's comparable sales approach was supported by substantial evidence and there was no evidence in the record to establish the Assessment did not comport with the statutory or administrative code requirements.

Petitioner's disagreement with the assessor's reasoning does not render the Board's reliance arbitrary or unreasonable. Despite his attempts of arguing such, the Petitioner does not rely on any case law or statute to argue that the testimony was unsupported. In making these assertions, ironically, he draws conclusions without support or evidence that the decision was arbitrary. The decision of the Board must be affirmed.

[1] Wis. Stat. § 809.23 allows citation of unpublished opinions for persuasive value.

IV. THE BOARD'S DECISION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

Petitioner's final argument that the decision was not supported by substantial evidence is unsupported and inaccurate, and he comes up short again on the legal standard of prevailing. The assessor presented a comparable sales grid demonstrating a supported value range of approximately $885,000 to $1,052,000. (R.043). The assessed value of $956,200 falls squarely within that range.

If there has been no recent sale of the subject property, the sales of reasonably comparable properties must be considered. *Adams*, 2006 WI 104, ¶ 34, 294 Wis. 2d 441, 717 N.W.2d 803. Only if there has been no arms-length sale and there are no reasonably comparable sales can the third-tier assessment methodology be used. *Id.* Wisconsin courts have consistently held that an assessment supported by a reasonable range of comparable sales constitutes substantial evidence. The Petitioner offers no case law or statute that indicates the assessor's testimony to this valuation.

Next, Petitioner's criticism of specific data points, alleged errors, or alternative calculations does not negate the existence of substantial evidence. Certiorari review does not permit the Court to resolve which valuation analysis is "better" or "more accurate."

Petitioner argues that certain valuation inputs were not disclosed prior to the hearing. However, the assessor presented sufficient information at the hearing to explain the basis for the assessment. Petitioner was also afforded the opportunity to cross-examine and present contrary evidence. Lastly, Wisconsin law does not require pre-hearing disclosure of every internal valuation metric or worksheet. Even if it did, the assessor testified that their office had "over 1,800 contacts during open book" and only five staff members to handle them (R. 019). Any reasonable efforts to work with the Petitioner would have been made in open book, but there is nothing in the record

to suggest that those attempts were made. Absence of the assessor's file pre-hearing does not constitute lack of substantial evidence. It was all presented to the Board which rendered the decision.

The Board's role is not to audit the assessor's internal files but to determine whether the assessment is supported by credible evidence. The Board reasonably concluded that it was. Also, Petitioner's assertion that the assessor was required to present mean or median values misstates Wisconsin law. While such metrics may be informative, there is no statutory or manual requirement that they be calculated or presented to sustain an assessment. The Board was entitled to rely on value ranges and professional judgment.

CONCLUSION

Ultimately, Petitioner asks this Court to reweigh evidence, second-guess the assessor's professional judgment, and draw different conclusions from the same record. That is precisely what certiorari review forbids. As long as the Board's decision is one that reasonable minds could reach based on the evidence before it—which it plainly was—the Court must affirm.

The City of Wauwatosa Board of Review acted within its jurisdiction, followed the law, exercised reasoned judgment, and relied on substantial evidence in sustaining the 2025 assessment. Petitioner has failed to overcome the strong presumption of correctness afforded to that determination. For these reasons, Respondent respectfully requests that the Court deny the petition for certiorari and affirm the decision of the Board of Review.

Dated this 6th day of April, 2026.

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