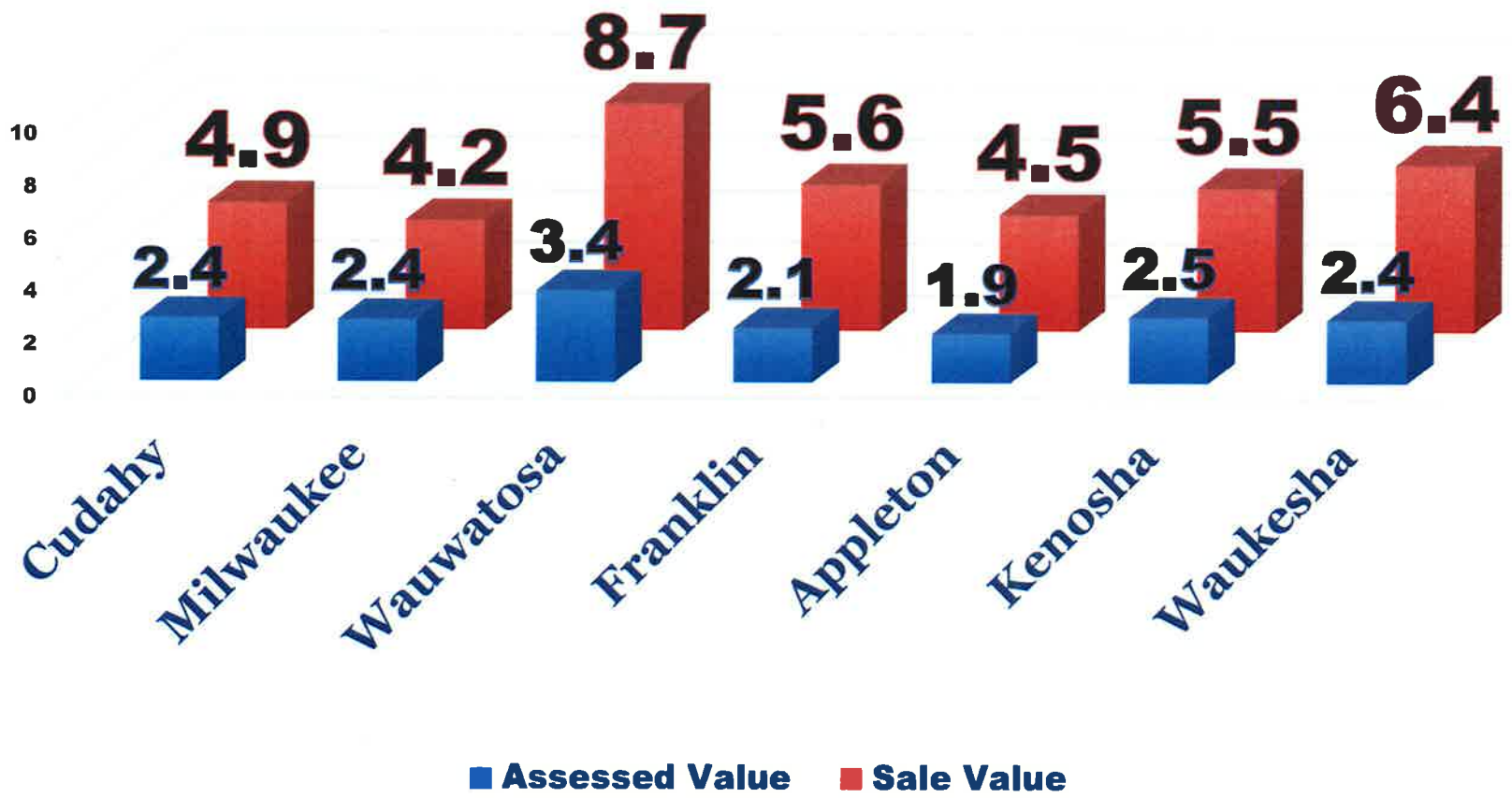


Walgreens & CVS Assessed Versus **Sale** Values

Millions of Dollars





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To: Wisconsin State Legislature
From: League of Wisconsin Municipalities Lobby Team
Date: November 1, 2017
Re: SB 291, Reversing *Walgreens v. City of Madison*; SB 292, Dark Store

The League of Wisconsin Municipalities urges you to support SB 291 (reversing *Walgreens*) and SB 292 (closing the dark store strategy). This memo explains what the bills do and why they are necessary. The League has worked closely with the authors on drafting and introducing these bills for two important reasons: 1) Returning common sense and fairness to the assessment of properties for property tax purposes; and 2) Closing the door on certain tax avoidance strategies being used by national big box chains and other commercial property owners and thereby stop even more of the property tax burden from being shifted to residential and other taxpayers. Homeowners already bear a disproportionate share of the total statewide property tax levy (68%). They should not and cannot bear more.

SB 292 – The Dark Store Bill

What does the bill do? SB 292 clarifies that a vacant or “dark store” cannot be used as comparable property for determining the assessed value of a fully operational and occupied property. It specifies that when assessors use sales of comparable properties for determining the value of a property they must use properties that are within the same market segment and similar to the property being assessed with regard to age, condition, use, type of construction, location, design, and economic characteristics.

Why is this change necessary?

- National big box chains and other commercial property owners are challenging their assessed values for property tax purposes by arguing that their properties should be assessed at the same value as a vacant or dark property in a different location. Tax commissions and courts in states like Michigan and Indiana have agreed with the dark store argument, resulting in significant reductions in the commercial property tax base.
- SB 292 ensures that the dark store tax strategy does not take hold in Wisconsin.
- If this bill is not enacted and the dark store strategy wins in Wisconsin courts, the result will be a significant tax shift from commercial to residential property taxpayers.
- SB 292 is modeled after similar legislation that the state of Indiana passed in 2016 to avoid such a tax shift.
- The bill does not create new law. Rather it codifies existing Wisconsin case law and parts of DOR’s Wisconsin Property Assessment Manual.
- Under this bill, local governments will not receive one dollar more in tax revenue. The bill will, however, halt a major tax shift from occurring.

SB 291 – Reversing the 2008 *Walgreens v. City of Madison* decision

What does the bill do? SB 291 makes it clear that when valuing property assessors are to consider any applicable lease provisions and actual rent pertaining to a property and affecting its value.

Why is this change necessary?

- In 2008 the Wisconsin Supreme Court held in *Walgreens v. City of Madison* that an assessment by the income approach of retail property leased at “above market” rents must be based on market rents rather than the terms of Walgreen’s actual leases and that the value added by an “above-market” rent constitutes a contract right, rather than a real property right.
- The 2008 decision continues to control how assessors must value Walgreens, CVS, and other single-tenant retail stores, despite changes made to the *Wisconsin Property Assessment Manual* to counteract the effects of that decision.
- Walgreens, CVS and other single tenant commercial properties are successfully using the decision to convince the courts that their assessed values should be **less than half of the actual sale prices of the properties on the open market**. See the attached chart.
- Even though chain drugstores have become the most popular single-tenant properties in the national real estate investment market, regularly selling for \$6 million or more in Wisconsin, attorneys for Walgreen, CVS and other single-tenant leased properties argue that their actual sale prices don’t represent market value and the underlying leases are the wrong tool for determining the property’s value for property tax purposes.
- However, for all other purposes, such as federal income tax reporting, the value of the real estate is listed as the recent sale price. Only for property tax purposes is the actual sale price not acknowledged as the value of the real estate.
- **Real World Example from Oshkosh:** Walgreens challenged the City of Oshkosh’s assessments for two of its stores. The city based its assessment on the actual amounts for which the properties were sold. The court rejected the city’s approach and ordered the city to refund the two Walgreens for several tax years. The total amount of the refunds equaled \$305,672. Other taxpayers in Oshkosh now have to pick up Walgreen’s former share of the tax burden.
- **Real World Example from Appleton:** The Court of Appeals recently relied on the *Walgreens v. City of Madison* decision to affirm that a CVS property in Appleton should be valued at \$1.8 million, much less than the City’s \$4.4 million assessment, which was based on an actual sale of the property. Appleton is now looking at a \$350,000 refund.
- As a result, more of the property tax burden is shifted to homeowners and other taxpayers whose properties are typically assessed at fair market value as reflected by recent sale prices of their or comparable properties.

We urge you to vote in support these bills, which together will return common sense and fairness to the assessment of properties in Wisconsin. Thanks for considering our comments.

Tammie Jaeger

From: M.Alice O'Connor <aoc@constituencyservices.org>
Sent: Tuesday, May 15, 2018 4:15 PM
To: Adam N. Payne ; Bob Yeomans Supervisor ; Brad Karger ; Brian.Massey@outagamie.org; Chelsea Fibert ; ChuckHoffman@co.manitowoc.wi.us; Cory Cochart-Kewaunee County; craig.moser@outagamie.org; Dan Pazynski, Marinette County ; Dennis Brault-Vernon County ; Don Kriefall-Washington Co; Douglas Finn-Douglas County ; douglas.kane@buffalocounty.com; Jackie Sadler- Chippewa; Jason Dzwinel-Ozaukee; Jeanetta Kirkpatrick-Richalnd County Board Chair ; Jeff Beirl-Ashland County Administrator ; James Schroeder; John Tramburg-Columbia County ; Jon Hochkammer ; Josh Schoemann ; Judy Steinert-CB Admin assistant ; Kurt Gibbs-Marathon County Bd Chair ; Kyle Christianson - Tax and Finance Lobbyist ; Larry Willkom-Chippewa County; Lee Schenvogt, Ozaukee Co ; Linda Sinkula-Kewaunee County ; LMerrell@co.chippewa.wi.us; Mary Ann McMillan-Urel-Buffalo County Chiar ; Nick Osborne- Rock County Administrator Asst. ; Paul Hansen ; Robert Keeney; Robert Weidner-Kewaunee County; robert.sivick@co.waushara.wi.us; Roger TeStroete - Sheboygan County ; Sharon Hampson-LaCrosse County ; Sonya Hansen - Buffalo County; Steve Doyle, LaCrosse County Supervisor ; Steve O'Malley-LAX County Administrator ; Steven A. Rasmussen-Dunn County ; Supervisor Russ Podzilni ; Supervisor Walt Christiansen (WaltC@jeffersoncounty.wi.gov); Tammie Jaeger; Tara Johnson ; VERN Gove -Columbia County; Walt Christiansen-Jefferson County; William Goehring - Sheboygan Co
Cc: Nicole Hoffmann
Subject: HANDOUTS TO DISCUSS Dark Store -- Handouts
Attachments: Walgreens sales vs. Assessed value chart 9-27-17.pdf; memo in support of dark store and Walgreens reversal legislation.pdf

Please print and bring these Friday. The legal counsel for the League of Wisconsin Municipalities will be talking about the impact of dark store legislation not passing on local coffers.

See many of you Friday. If you have not RSPV'd yet, pleased do so.

Regards,
Alice

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