

**VILLAGE OF WESTON, WISCONSIN
RESOLUTION NO. 2017-013**

- A RESOLUTION,** to recommend to the Governor and the Wisconsin legislature to close loopholes that shift a greater property tax burden from commercial to residential homeowners.
- WHEREAS,** home owners in Wisconsin already pay 70% of the total statewide property tax levy.
- WHEREAS,** that disproportionate burden is about to get much worse unless the Legislature addresses tax avoidance strategies that national chains like Walgreens, and big box retail establishments like Target and Lowe’s are using across the country to gain dramatic reductions in their property tax bills at the expense of homeowners and other taxpayers.
- WHEREAS,** a carefully-orchestrated wave of 100s of lawsuits in Wisconsin is forcing assessors to slash the market value of thriving national retail stores, shifting their tax burden to local mom and pop shops and homeowners.
- WHEREAS,** Walgreens and CVS stores in Wisconsin have argued in communities across the state that the assessed value of their property for property tax purposes should be less than half of their actual sale prices on the open market.
- WHEREAS,** in many cases the courts have sided with Walgreens and CVS, requiring communities to refund tax revenue back to the stores
- WHEREAS,** there are over 200 Walgreens stores located in Wisconsin’s cities and villages.
- WHEREAS,** Target, Lowe’s, Meijer, Menards and other big box chains are using what is known as the “Dark Store Theory” to argue that the assessed value of a new store in a thriving location should be based on comparing their buildings to sales of vacant stores in abandoned locations from a different market segment.
- WHEREAS,** the Republican-controlled Indiana state Legislature has on two occasions in the last two years overwhelmingly passed legislation prohibiting assessors from valuing new big box

stores the same as nearby abandoned stores from a different market segment.

WHEREAS, the Michigan state house overwhelmingly passed similar legislation in May of 2016.

BE IT RESOLVED that the Board of Trustee for the Village of Weston urges the Governor and the Legislature to protect homeowners and main street businesses from having even more of the property tax burden shifted to them by passing legislation clarifying that:

1. Leases are appropriately factored into the valuation of leased properties; and
2. When using the comparable sale method of valuation, assessors shall consider as comparable only those sales within the same market segment exhibiting a similar highest and best use rather than similarly sized but vacant properties in abandoned locations.

PASSED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF WESTON, at a regular meeting thereof, this 20 day of the month of March, 2017.

VILLAGE OF WESTON, a Municipal Corporation of the State of Wisconsin.

By: 
BARBARA ERMELING, President

ATTEST:
By: 
DANIEL GUILD, Administrator

FILED:
By: 
SHERRY WEINKAUF, Clerk



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Issue Briefing: Dark Store and Walgreens Decision Tax Shift

Court rulings giving tax cuts to chain stores result in tax increases for homeowners

Property taxes for homeowners and main street businesses are increasing in Wisconsin as national retailers pay less. A carefully-orchestrated wave of 100s of lawsuits in Wisconsin is forcing assessors to slash the market value of thriving national retail stores, shifting their tax burden to local mom and pop shops and to their home-owning customers. If the Legislature fails to close these loopholes, we estimate that millions of dollars in property taxes will shift from large commercial properties to homeowners and other taxpayers over the next few years.

The table below shows what assessors estimate the tax increases that homeowners in select communities will experience when the Dark Store strategy and Walgreens' decision is fully-implemented. Calculations are based on amount of national chain retail, 2015 mill rates, and median home values:

City	Estimated Tax Increase	Average increase per home per year
Brookfield	5%	\$233.50
Hudson	9%	\$374.58
La Crosse	7%	\$197.12
Oconomowoc	8%	\$360.96
Pleasant Prairie	17%	\$892.50
Wauwatosa	7%	\$382.12
West Bend	8%	\$253.89

This is not a new problem, nor is it exclusive to Wisconsin. Wisconsin is merely the latest state to experience this coordinated legal attack on in-state taxpayers. Indiana and Michigan have already experienced it. In Indiana, the Legislature promptly slammed the door on this court-created loophole. A similar legislative fix is pending in Michigan. Wisconsin must do the same.

Loophole #1: It's just a big empty box. Tax attorneys for Target, Meijer, and other big box chains are using what is known as the "Dark Store Theory" to argue that the assessed value of a new, thriving store should be based on the value of vacant or abandoned buildings of similar size. They argue that regardless of their new location or how updated their building is the value for 'property tax purposes' should be based on the value of the buildings and locations they abandoned prior to moving into the new store at their new location.

Real World Example from Wauwatosa: The Lowe's store at 12000 W. Burleigh St. is currently challenging the city's assessed valuation. The City assessed the property at \$13.6 million. The City's expert believes the market value is actually \$17.7 million. Lowe's argues the property's current value is \$7.1 million of which \$3 million is attributed to land. Yet, the land was purchased in 2007 for \$9,012,800. Lowe's built a 140,000 square foot building in 2006 for approximately \$7 million, they then subsequently purchased the land after constructing the building. Altogether, Lowe's spent in excess of \$16 million to acquire the land and build the structure. Now, Lowe's argues that the land was devalued from \$9

million to \$3 million because the big box store was constructed. Lowe's insists that under Wisconsin law (based on the *Walgreens* decision) only vacant dark stores, such as the vacated big box stores near the former Northridge shopping area, can be used as comparables. The City disagrees, but their only options are costly litigation or settling with the property owner on a compromise value.

To learn more about the dark store tax strategy and its impact on other tax payers visit the League's Dark Store Loophole Resource page: <http://www.lwm-info.org/1279/Dark-Store-Tax-Loophole>

Loophole #2: Gold box on Wall Street, cardboard box on Main Street. Walgreens and CVS stores use a different, but related strategy, to argue that the assessed value of their properties should be less than half of actual sale prices on the open market. The two have already sued more than 100 Wisconsin communities, claiming the rent they pay for their newly-constructed, highly-visible corner locations doesn't accurately reflect its fair market value for property tax purposes. Walgreens and CVS have won dramatic assessment reductions since a 2008 Wisconsin Supreme Court decision, *Walgreens v. City of Madison*, upheld this tax strategy. These properties are developed to the retailer's specifications and leased to them with no landlord responsibility other than collecting rent. More than 80% of Walgreen stores and 95% of CVS stores operate under a lease arrangement. Drugstores have become the most popular single-tenant properties in the national real estate investment market. But attorneys for Walgreen and CVS 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.' Instead, they say, the assessments should hinge on the amount the landlord could get if the drugstore moved out and a different retailer moved in.

Real World Example from Oshkosh: Walgreens challenged the City of Oshkosh's assessments of 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 that the two Walgreens be refunded 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. There are over 200 Walgreens located in Wisconsin's cities and villages.

To learn more about the need to overturn the *Walgreens v. Madison* decision and that decision's impact on other tax payers visit the League's Overturn the Walgreens Decision Web Page: <http://www.lwm-info.org/1468/Overturn-the-Walgreens-Decision>

Other states have stopped this tax shift. The Republican-controlled Indiana Legislature overwhelmingly passed bipartisan legislation in 2015 and 2016 prohibiting assessors from valuing new big box stores the same as abandoned stores in a different market segment. The Michigan legislature is considering similar proposals. In May 2016 the Michigan house passed a dark store fix bill by a vote of 97-11. The bill died in the Michigan Senate.

Solution: Follow Indiana's lead and pass legislation in Wisconsin closing off these tax strategies and stopping the tax shift to home owners. Pass legislation clarifying that:

1. Reverse the *Walgreens v. City of Madison* decision by clarifying that leases are appropriately factored into the valuation of leased properties (*Rep. Rob Brooks (R-Saukville and Sen. Duey Stroebel (R-Saukville) plan to introduce soon*); and
2. When using the comparable sale method of valuation, assessors shall consider as comparable only those sales within the same market segment exhibiting a similar highest and best use rather than similarly sized but vacant properties in abandoned locations. (*Rep. Rob Brooks and Sen. Roger Roth (R-Appleton) plan to introduce soon*).

**VILLAGE OF WESTON, WISCONSIN
AGENDA ITEM COVER SHEET**

MTG/DATE: Board of Trustees – 03/20/17

FROM: Daniel Guild, Administrator

DESCRIPTION: Resolution No. 2017-013: A Resolution to recommend to the Governor and the Wisconsin legislature to close loopholes that shift a greater property tax burden from commercial to residential homeowners

ACTION:	<input checked="" type="checkbox"/> Approve	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Proclamation
	<input type="checkbox"/> Deny	<input type="checkbox"/> Policy	<input type="checkbox"/> Report
	<input type="checkbox"/> Expenditure	<input type="checkbox"/> Procedure	<input checked="" type="checkbox"/> Resolution

QUESTION:
Should the BOT's pass a resolution recommending the State close loopholes that shift a greater property tax burden from commercial to residential homeowners?

BRIEF:
A carefully-orchestrated wave of 100s of lawsuits in Wisconsin is forcing assessors to slash the market value of thriving national retail stores, shifting their tax burden to local mom and pop shops and homeowners. Big box chains are using what is known as the "Dark Store Theory" to argue that the assessed value of a new store in a thriving location should be based on comparing their buildings to sales of vacant stores in abandoned locations from a different market segment. The Indiana and Michigan legislatures have passed recent legislation prohibiting assessors from valuing new big box stores the same as nearby abandoned stores from a different market segment.

FISCAL IMPACT: TBD

RECOMMEND: Administrator recommends approval.

COMMITTEE: Recommendation endorsed by Finance –03/06/17

REQUEST: Approve Resolution No 2017-013.

Is there an additional briefer with this agenda item?

Are there additional reference documents which have been attached to this report?