



131 W. Wilson St., Suite 505  
Madison, Wisconsin 53703  
phone (608) 267-2380; (800) 991-5502  
fax: (608) 267-0645  
league@lwm-info.org; www.lwm-info.org

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To: Wisconsin State Legislators

From: Jerry Deschane, Executive Director, League of Wisconsin Municipalities

Re: Dark Store "road show" fails in Waukesha County

You have been told by opponents of the Dark Store legislation that this is not truly a statewide problem; and any problem that exists is due to a few "rogue assessors." A recent decision in Waukesha County Circuit Court exposes the fallacy of these arguments.

The Waukesha Circuit Court rejected an effort by a big box retailer to cut its property tax bill. Kohls Value Services, Inc. used both the Dark Store and *Walgreens* loopholes in an effort to convince the judge that its \$9.1 million leased property in Delafield was in fact worth only \$5.6 million; a discount for tax purposes of more than 38%. Waukesha County Circuit Court Judge William J. Domina signed the decision upholding the original assessment on March 20. The full decision and order is posted [here](#).

Kohls Value Services, Inc. leases the property from a Michigan real estate investment trust called Ramco Gershenson Properties Trust, or "Ramco." Since Kohls is responsible for property taxes under the lease, it filed the appeal, claiming the property was over-assessed in 2015, 2016 and 2017.

Kohl's tax attorneys attempted to convince the court that four vacant and clearly-distressed buildings were comparable examples for purposes of establishing the value of this newer property. They also tried to apply a "25% functional obsolescence factor," arguing that if the current occupant would leave, the property would be worth much less. Judge Domina was "unpersuaded" by these arguments, and upheld the property's original assessment.

While this circuit court decision cannot be cited as legal precedent, the League wanted to bring it to your attention because of what Judge Domina calls the "road show" nature of the case. In his decision, **Judge Domina stated that the case felt like a road show, with the attorneys and appraisers very familiar with one another, and making the same arguments they'd made in other communities around Wisconsin.** This demonstrates that the Dark Store theories are alive and well and being used in tax appeals throughout Wisconsin. The Judge said, "...the Court felt as though it was in the middle of a philosophic tug-of-war between the parties." This is consistent with the experience of cities throughout Wisconsin and illustrates the need for the Legislature to step in and clarify the law.

The State Department of Revenue's Property Assessment Manual instructs assessors NOT to use dark properties as comparables for commercial property, and yet the Dark Store attorneys routinely offer them up. Judge Domina correctly stated that the lease payment being made by Kohls to Ramco was a market-rate lease and thus was a reasonable double-check on the value of the property. The judge rejected the practitioners claim that the actual lease rates cannot be considered.

The Courts, DOR, and assessors are trying to apply the law fairly, but they need your help. The law needs to be clarified to take Dark Stores out of the equation and to allow an income property to be valued by the income it produces. The only way to stop tax attorneys from using the same arguments over and over across the state in a tax-shifting Road Show is to pass Senate Bill 130/AB146 or adopt a state budget that includes such legislation.

Thank you for considering our viewpoint.

*YOUR VOICE. YOUR WISCONSIN.*