



The Big Shift: Dark Store and Personal Property May 12, 2016

5/17/2016

League of WI Municipalities

1

How Did We Get Here



- 2008 Walgreen Decision Aftermath
 - Distortion of “Fee Simple” Valuation Concept
 - Leased Property– Ignore existence of lease and ignore the sale prices arising from sales of leased property.
 - Owner Occupied Big Box– Assume property is vacant/dark and will be sold to a buyer for a secondary use that is not consistent with its current highest and best use.

5/17/2016

League of WI Municipalities

2

Valuation Gimmicks



- Sales Comparison Approach – Use abandoned distressed properties or deed restricted sales as “comparable sales”.
- Income Approach – Ignore the actual rent earned at the property based on the assumption that the rent is always above market. Also ignore the existence of the lease and that the property is occupied.
- Cost Approach – Ignore actual construction costs and purchase price for the underlying land. Instead use “estimated” artificial costs with a huge discount for economic and functional obsolescence (measured by dark store sale prices).

5/17/2016

League of WI Municipalities

3

Value In Use/Value in Exchange



Taxpayers Argument –

- “Value In Use” - Improper to use as it values a property’s intrinsic value to its owner (ie. business model and “business” intangibles) instead of only the value of the sticks and bricks and “generic” dirt.
- “Value In Exchange” - Must be used and requires use of “comparable” sales (even if only remotely similar, deed restricted, dark and/or not in a desirable location) in a sales comparison approach. Sales of leased properties must be either ignored completely or heavily discounted because of the lease.

5/17/2016

League of WI Municipalities

4

Secondary Sales Conundrum



- Taxpayers argue that the property is substantially obsolete by design when built.
- Assessors assert – there is a market for “special purpose”, “limited market” and “build to suit” properties even in the absence of sales.
 - ❖ Excludes properties that are unintentionally overbuilt due to mistaken design assumptions (*functional* obsolescence) or obsolete due to unanticipated changes in the market. (*economic* obsolescence)
- Low re-sale values reflect a property's costly conversion to a secondary use that is inconsistent with the property's highest and best use .

5/17/2016

League of WI Municipalities

5

Assessor's Response



- Functional and Economic Obsolescence. Ludicrous ...
... that a brand new modern store located on a valuable corner or parcel is worth significantly less than its replacement cost new because similar properties are rarely bought and sold.
- The present use of a building must be assessed when a building in good condition is being used currently and for the foreseeable future for the unique purpose for which it was built.
- In the absence of “truly comparable sales” – assessor skips sales approach and instead focus on income and/or cost approach

5/17/2016

League of WI Municipalities

6

Hierarchy of Valuation Methods



Wis. Stats. §70.32 Hierarchy

- Tier 1 – Sale of the Subject
 - Issue – What constitutes a sale of the “Real Property”?
- Tier 2 – Sales of Comparable property
 - Issue – What are sales of “Comparable Properties” ?
- Tier 3 – Income and cost approaches
 - Issue – What are “Market Rents”?
 - Issue – Actual vs. “Estimated” construction costs.
Application of functional and/or economic depreciation

5/17/2016

League of WI Municipalities

7

Limitations of Value In Exchange



- Evidence: Operates on assumption that “comparable” sales evidence *always* exist.
- Markets: Operates on assumption that there is a market (likely buyer) for every property.
- Incongruity with Actual Construction Costs – If its not worth \$__ why did you spend \$____ to build it.
- Fairness: Inequitable assessment compared to residential

5/17/2016

League of WI Municipalities

8

2011 Nestle Sup. Ct. Decision

- What is a comparable property sale?
- Limited Market vs. No Market
- There may be a market but no “comparable” sales.
- New construction is evidence of a market
- Comparable sales must share the same highest and best use as the subject.
- General food processing is not the same highest and best use as a baby formula plant.
- No functional or economic obsolescence

5/17/2016

League of WI Municipalities

9

Market Segmentation

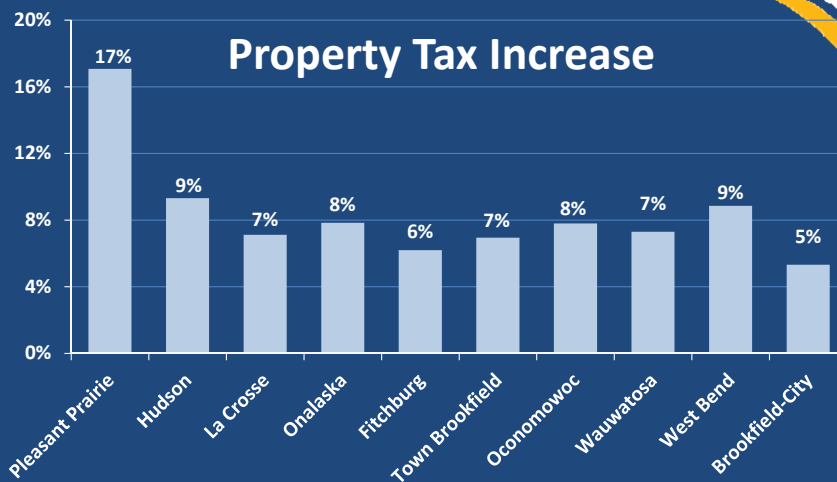
- In the absence of comparable sales on which to base determination, the appropriate solution is to reject the use of the sales approach, not to find the next best economic use for which comparable sales in the market can be found.
- Limits comparable sales to sales that share the same specific highest and best use as the subject.
- *Nestle* – Highest and best use should be as specific as the market will allow.
- Indiana (passed) and Michigan (proposed) Legislation

5/17/2016

League of WI Municipalities

10

The Tax Shift at Stake



5/17/2016

League of WI Municipalities

11

Seeking a Legislative Remedy

What we tried to do in 2015:

- 1. Budget motion clarifying that for property tax assessment purposes, real property includes licenses and leases appertaining to the land and improvements.
- 2. Introduce a separate bill accomplishing the above and addressing dark store strategies being employed by Big Box national retail chains.

5/17/2016

League of WI Municipalities

12

Seeking a Legislative Remedy



We Pointed to similar legislative activity in Indiana and Michigan.

The GOP dominated Indiana Legislature has unanimously passed two pieces of legislation recommended by the Indiana Counties Association.

Seeking a Legislative Remedy



Strategies for next session:

Educate the public and legislators of tax shift that will happen absent legislative response.

Work with GOP legislators to draft and introduce a bill at beginning of the session.

Consider rolling the legislation into the budget bill as part of a broader tax reform package that might be put together by JFC.

Seeking a Legislative Remedy



Legislators Committed to authoring a bill.

Sen. Duey Stroebel



Rep. Rob Brooks



Rep. Kooyenga is also supportive.



Seeking a Legislative Remedy



Allies:

WAAO – Assessors

WRA – Realtors

WCA – Counties

WTA – Towns

Opponents:

WMC

Walgreen and CVS

Target and other retailers

Lawyers Representing
above groups

Questions and Comments?



5/17/2016

League of WI Municipalities

17