



**AGENDA**  
**COMMITTEE OF THE WHOLE**

**Tuesday, October 2, 2018**

**6:30 p.m.**

**Common Council Chambers, 224 East Jefferson Street**

Mayor Jeannie Hefty  
Susan Kott, Alderman, 1st District  
Theresa Meyer, Alderman, 1st District  
Bob Grandi, Alderman, 2nd District  
Ryan Heft, Alderman, 2nd District  
Steve Rauch, Alderman, 3rd District  
Jon Schultz, Council President, Alderman, 3rd District  
Thomas Preusker, Alderman, 4th District  
Todd Bauman, Alderman, 4th District

1. **Call to Order - Roll Call**
2. **Citizen Comments**
3. **Approval of Minutes** (*T. Meyer*)
  - A. To approve the Committee of the Whole Minutes for September 18, 2018.
4. **PRESENTATIONS:**
5. **DISCUSSION:**  
- Update regarding the Burlington Senior Center Budget.
6. **RESOLUTIONS:**
  - A. **Resolution 4920(22)** - To approve a resolution urging the Governor and the Legislature to protect homeowners and small businesses and close Loopholes that shift a greater property tax burden on to residential homeowners and small business.
7. **ORDINANCES:** There are none.
8. **MOTIONS:** There are none.
9. **ADJOURNMENT** (*B. Grandi*)

*Note: If you are disabled and have accessibility needs or need information interpreted for you, please call the City Clerk's Office at 262-342-1161 at least 24 hours prior to the meeting.*



**COMMITTEE OF THE WHOLE**

**ITEM NUMBER 3A**

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**DATE:** October 2, 2018

**SUBJECT:** MEETING MINUTES - To approve the Committee of the Whole Minutes for September 18, 2018.

**SUBMITTED BY:** Diahnn Halbach, City Clerk

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**BACKGROUND/HISTORY:**

The attached minutes are from the September 18, 2018 Committee of the Whole meeting.

**BUDGET/FISCAL IMPACT:**

N/A

**RECOMMENDATION:**

Staff recommends approval of the attached minutes from the September 18, 2018 Committee of the Whole meeting.

**TIMING/IMPLEMENTATION:**

This item is scheduled for final consideration at the October 2, 2018 Common Council meeting.

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**Attachments**

COW Minutes

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City Clerk  
300 N. Pine Street, Burlington, WI, 53105  
(262) 342-1161 - (262) 763-3474 fax  
[www.burlington-wi.gov](http://www.burlington-wi.gov)

**CITY OF BURLINGTON**  
**Committee of the Whole Minutes**  
**Jeannie Hefty, Mayor**  
**Diahnn Halbach, City Clerk**  
**Tuesday, September 18, 2018**

1. **Call to Order - Roll Call**

Mayor Hefty called the Committee of the Whole meeting to order at 6:30 p.m. Roll Call - Present: Mayor Hefty, Alderman Susan Kott, Alderman Theresa Meyer, Alderman Bob Grandi, Alderman Ryan Heft, Alderman Steve Rauch, Alderman Jon Schultz, Alderman Todd Bauman. Excused: Alderman Tom Preusker.

Staff present: Administrator Carina Walters, City Attorney John Bjelajac, Finance Director Steve DeQuaker, Assistant City Administrator/Zoning Administrator Megan Watkins, Public Works Director Peter Riggs, Police Chief Mark Anderson, and Intern Nick Faust.

2. **Citizen Comments** - There were none.

3. **Approval of the September 4, 2018 Committee of the Whole Minutes**

Motion: Rauch. Second: Bauman. With all in favor, the motion carried.

4. **DISCUSSION:**

A discussion regarding the Federal Emergency Management Association (FEMA) Community Rating System (CRS).

Gregory Governatori, Kapur & Assoc., explained that the National Flood Insurance Program (NFIP) Community Rating System (CRS) is a voluntary program for recognizing and encouraging community floodplain management activities exceeding the minimum NFIP standards and that Burlington is a NFIP member and qualifies to participate in the program. Governatori stated that the primary benefit of the program is to save residents money on their flood insurance premium and that currently most communities that enter the program are rated a Class 8 or 9, which equates to an approximate 10% discount.

Governatori also explained there are currently only 17 communities in Wisconsin that are part of the CRS program and while the City of Burlington consists of approximately 4000 properties, only 50-55 are located in the floodplain, which is approximately 1-2% of all the properties in Burlington. Governatori stated that it is unknown which properties carry flood insurance and that properties are not required to have flood insurance unless required by a mortgage company.

Alderman Schultz asked which class rating Burlington would fall into. Governatori responded possibly a class 9 or 10 which would equate to an 8% discount on average. Alderman Schultz then asked what are the next steps that need to be taken. Administrator Walters responded that the City would need to know if residents are interested in the program and suggested sending a letter to property owners, but because true costs were unknown, wasn't sure if this is worthwhile.

Alderman Bauman suggested sending a letter to residents located in the floodplain to see if there is interest.

Alderman Kott suggested including a copy of the floodplain map in a news story.

Administrator Walters stated a letter will be drafted and sent to residents as well as have an article published relating to this topic.

5. **RESOLUTIONS:**

- A. **Resolution 4919(21)** - To approve Amendment Number Two to the Planned Unit Development Agreement for the Meadows at Pine Brook Condominium Development.

Administrator Walters reviewed the background history stating that the original developer hadn't completed the project and the remaining infrastructure costs for the final lift at Spring Brook Drive was budgeted and paid for by the City. Walters stated that under the terms of the original Developer Agreement, any new successor must have Common Council approval and, under a mutually beneficial amendment to the agreement, the new developer has agreed to reimburse the City half of the incurred infrastructure costs as well as install a new light fixture near 1022 Spring Brook Drive.

6. **ORDINANCES:**

- A. **Ordinance 2041(7)** - To consider a rezone for property located at S. Kane Street (at Industrial Drive) from A-1, Agriculture/Holding District to M-2, General Manufacturing District.

Zoning Administrator Watkins explained that Kurt Petrie on behalf of Lynch Ventures has requested a rezone for property located at South Kane Street (at Industrial Drive), so that a parking lot can be developed for truck storage.

7. **MOTIONS:**

- A. **Motion 18-912** - To approve a revision to the City of Burlington Employee Handbook.

Administrator Walters explained that as part of best practices and being proactive, two new policies were added to the Employee Handbook which include a "return to work policy" and a "non-discrimination, anti-harrassment, and anti-retaliation policy".

8. **ADJOURNMENT**

Motion: Alderman Schultz. Second: Alderman Grandi. With all in favor, the meeting adjourned at 7:04 p.m.

Minutes respectfully submitted by:

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Diahnn C. Halbach  
City Clerk  
City of Burlington



**DATE:** October 2, 2018

**SUBJECT:** RESOLUTION 4920(22) - To approve a resolution urging the Governor and the Legislature to protect homeowners and small businesses and close Loopholes that shift a greater property tax burden on to residential homeowners and small business.

**SUBMITTED BY:** Carina Walters, City Administrator

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**BACKGROUND/HISTORY:**

The Wisconsin League of Municipalities, Wisconsin Counties Association and Wisconsin Towns Association have launched a campaign because they contend big box stores are employing strategies to avoid paying higher taxes under current law. If not stopped, the dark store strategy will result in a huge shift of the tax burden from commercial property owners to homeowners and others.

A study of twelve communities showed that if the dark store and Walgreens tax loopholes were fully implemented, residential tax bills would increase on average by 8 percent. Homeowners already bear a disproportionate share of the statewide property tax burden in Wisconsin (68% of total statewide levy is paid by homeowners). It's not that high in most other states. Homeowners in Minnesota, for example, pay only 50% of the property tax levy. In 1970, Wisconsin homeowners paid only \$50 of every \$100 that a community needed to pay for services. Tax attorneys for big box stores like Target, Walmart, Meijer, Menards, Home Depot, and Lowes, use what has traditionally been called the "dark store loophole" to argue that the value of a new store in a busy commercial district should be based on the value of former retail properties in unpopular areas that are now closed and vacant. While courts in Wisconsin have not yet endorsed the dark store theory, that has not stopped tax attorneys for big box stores and other commercial retail chains from using the argument before assessors in Wisconsin.

**A real example:** A Lowe's store in Wauwatosa is assessed for taxes at \$13.6 million. Lowe's claims the property is only worth \$7.1 million, even though it spent over \$16 million to acquire the land and build the structure. Lowe's argues that the land alone was devalued from \$9 million to \$3 million once the big box store was constructed and insists that only vacant dark stores can be used as comparable properties.

**Police Calls to Big Box Stores:** Big box retail stores demand more police service than any other commercial properties and certainly much more than residential properties. Municipal police are frequently called to respond to thefts and other issues at big box stores. As big box stores fight to avoid paying their fair share of property taxes, they actually use more of the services property taxes pay for. Meanwhile, more of the burden of paying for police services gets shifted to homeowners, the class of property using such services the least.

**The Solution:** Pass legislation like 2017 Assembly Bill 386 and close the dark store loophole and stop the tax shift to homeowners.

- AB 386 clarifies that assessors must use comparable 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. It says that assessors may not use a dark store as a comparable for property that is not dark or vacant.
- The bill codifies existing Wisconsin case law and parts of DOR's Wisconsin Property Assessment Manual.
- Local governments will not receive one dollar more in tax revenue if the bill passes, but the tax shift to homeowners will end.
- 63% of the Legislature signed on as co-sponsors of the dark store bill, but business group opposition killed our efforts to close the loophole that they use.

**BUDGET/FISCAL IMPACT:**

The Dark Store issue does not change the amount of taxes levied or collected. It changes who has the burden of paying those taxes.

**RECOMMENDATION:**

City staff recommends the Common Council approve this resolution.

**TIMING/IMPLEMENTATION:**

This item is for discussion at the October 2, 2018 Committee of the Whole meeting and is scheduled for final consideration at the October 16, 2018 Common Council meeting.

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**Attachments**

Res 4920(22) Darkstore Loophole  
Dark Store - 4 Facts  
Dark Store - Walgreens  
Dark Store - Walgreens Tax Shift  
Dark Store - Loop Hole Talking Points

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**A RESOLUTION URGING THE GOVERNOR AND THE LEGISLATURE TO PROTECT  
HOMEOWNERS AND SMALL BUSINESSES AND CLOSE LOOPHOLES THAT SHIFT A  
GREATER PROPERTY TAX BURDEN ON TO RESIDENTIAL HOMEOWNERS AND SMALL  
BUSINESSES**

The Common Council of the City of Burlington, Racine County, Wisconsin, resolves as follows:

**WHEREAS**, home owners in Wisconsin already pay 70% of the total statewide property tax levy; and

**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 Wal-Mart and Menards are using across the country to gain dramatic reductions in their property tax bills at the expense of homeowners and other taxpayers; and

**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; and

**WHEREAS**, Walgreens and other national chains 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; and

**WHEREAS**, in many cases the courts have sided with Walgreens, requiring communities to refund tax revenue back to the stores; and

**WHEREAS**, there are over 200 Walgreens stores located in Wisconsin's cities and villages; and

**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; and

**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; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Common Council of the City of Burlington, Wisconsin, that the City of Burlington hereby urges the Governor and the Legislature to protect homeowners and small 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.

Introduced: October 2, 2018

Approved:

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Jeannie Hefty, Mayor

Attest:

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Diahnn Halbach, City Clerk

# **Four Facts about the Dark Store and Walgreens tax Loopholes**

Prepared by the League of Wisconsin Municipalities  
July 2018

**1. Fact: National bond rating agencies are warning about the possible negative impacts on municipalities of the dark store tax loophole.** In January 2018, Standard and Poor’s Global Rating published an article saying that the dark store practice could place pressures on the budgets and credit quality of U.S. municipalities. The bond rating agency noted “the potential exists for the growing use of dark store theory to contribute to widespread fiscal pressure for certain types of issuers.” Partially on the basis of this, Springsted, a Midwestern local government financial consulting firm, said in a dark store whitepaper distributed to clients in April 2018: “Municipalities at all levels would be wise to understand the [dark store] issue, quantify the potential risk and prepare contingency plans, and consider legislation that could mitigate risk.”

**2. Fact: Local officials across the state are deeply concerned that the dark store and Walgreens tax loopholes will cause even more of the property tax burden to shift from commercial and manufacturing property owners to homeowners.** By any measure, homeowners already bear a disproportionate share of the statewide property tax burden in Wisconsin. Homeowners pay 68% of property taxes in Wisconsin. This is much higher than in most other states. Homeowners in Minnesota, for example, pay only 50% of all property taxes collected statewide. In 1970, homeowners in Wisconsin also paid only 50% of the tax levy. According to an analysis of 12 communities by the League of Wisconsin Municipalities, homeowners could see their property taxes increase by 8% or greater, if commercial and manufacturing property values are lowered by 50% as a result of chain stores, fast food operations, big box retailers, banks and others using the Dark Store and *Walgreens* loopholes. Homeowners should not and cannot bear more of the tax burden.

**3. Fact: Local Governments won’t receive one dime more in total property tax revenues if the dark store and *Walgreens* tax loopholes are closed.** The state strictly limits the total amount of property taxes a city, village, town, or county may collect. A city or county will collect the same total amount of taxes regardless of whether the dark store and *Walgreens* loopholes are closed, unless it significantly cuts spending on essential services, like police and fire or street maintenance. Closing the loopholes will, however, avoid shifting even more of the property tax burden from commercial and manufacturing property to homeowners and small businesses. Local government officials are fighting for a fair and equitable property tax system, not more tax dollars.

**4. Fact: Assessors and other local government officials have nothing to gain -- no financial or other personal interest at stake – with regard to how high or low a particular property is assessed for property tax purposes.** City, village, and town assessors are required to strictly adhere to state law, case law, and the Wisconsin Property Assessment Manual (WPAM) when assessing the value of property. State law requires assessors to be certified by the Department of Revenue. Assessors must comply with annual training and continuing education requirements. The Department of Revenue has the power to decertify any assessor that is consistently not assessing property in compliance with the standards and procedures set forth in state law and the WPAM.

# **Dark Store and Walgreens Tax Loopholes**

## ***Less Taxes for some mean more for Homeowners***

By Curt Witynski, Deputy Director, League of Wisconsin Municipalities  
July 9, 2018

A growing number of commercial and manufacturing properties are using property tax avoidance strategies known as the Dark Store and *Walgreens* loopholes to push their fair share of property taxes onto homeowners and small businesses.

Any property owner not using these loopholes, which includes all homeowners, will pay more in property taxes to make up for the tax reductions obtained by the commercial and manufacturing properties using them.

Local governments in Wisconsin rely on property taxes to fund essential services like police, fire, roads and libraries. Local officials statewide are concerned about more of the property tax burden being shifted onto homeowners. Homeowners should not and cannot bear more of the cost of local services.

**The Dark Store Loophole Explained.** Tax attorneys for big box stores like Target, Walmart, Meijer, Menards, and Lowes, use the dark store loophole to argue that the value of a new store in a busy commercial district should be based on the value of former retail properties in unpopular areas that are now closed and vacant. While courts in Wisconsin have not yet endorsed the dark store theory, that has not stopped tax attorneys for big box stores from using the argument before assessors in Wisconsin.

**A real example:** A Lowe's store in Wauwatosa is assessed for taxes at \$13.6 million. Lowe's claims the property is only worth \$7.1 million even though it spent over \$16 million to acquire the land and build the structure. Lowe's argues that the *land* alone was devalued from \$9 million to \$3 million once the big box store was constructed and insists that only vacant dark stores can be used as comparable properties.

**Police Calls to Big Box Stores.** Big box retail stores demand more police service than any other commercial properties and certainly way more than residential properties. Municipal police are frequently called to respond to thefts and other issues at big box stores. As big box stores fight to avoid paying their fair share of taxes, they use more of the services for which property taxes pay. Meanwhile, more of the burden of paying for police services gets shifted to homeowners, the class of property using such services the least.

**The Walgreens Loophole Explained.** Assessors are required to assess property for property tax purposes at its fair market value. The best evidence of fair market value is usually a recent arms-length sale price of that property. The Wisconsin Supreme Court created an odd exception to this rule for certain leased commercial and manufacturing properties in a 2008 decision involving a Walgreens store. The exception requires assessors to value property that is tied up in a long term lease to a single business at half of the recent sale price of that property. For

example, Walgreens and CVS typically lease their store space. The buildings leased by Walgreens and CVS are popular investment properties and typically sell for \$4 million or more depending on their location. Yet, these properties are required to be assessed for property tax purposes at \$2 million.

**A real example:** The Court of Appeals found that a CVS property in Appleton should be valued at \$1.8 million, much less than the City's \$4.4 million assessment, even though the higher value was based on an actual recent sale price of the property.

No other taxpayers receive similar special treatment. A homeowner, for example, could not claim that the assessed value of his or her home should be half the amount for which it was purchased. Courts in other states have rejected Walgreens low value argument, concluding instead that a recent sale price is the best indicator of value.

Walgreens and CVS consistently use the recent sale price of the property as the value of the real estate for all other purposes, including federal income tax forms. They claim the lower value only for property tax purposes.

Other commercial and manufacturing businesses that lease their space are beginning to use the same arguments to lower their property tax bills.

**The Tax Shift to residential.** The dark store loophole and *Walgreen's* decision shift more of the burden of paying for essential local services from commercial and manufacturing to residential taxpayers. By any measure, homeowners already bear a disproportionate share of the statewide property tax burden in Wisconsin. Homeowners pay 68% of property taxes in Wisconsin. This is much higher than in most other states. Homeowners in Minnesota, for example, pay only 50% of the property tax levy. In 1970, homeowners in Wisconsin also paid only 50% of the tax levy.

The League of Wisconsin Municipalities analyzed the potential impact on residential property owners in twelve communities if the dark store and *Walgreens* tax loopholes were fully implemented and resulted in a 50% reduction in the value of certain commercial and manufacturing properties. We found that homeowners in those twelve communities would on average see their property taxes increase by 8%.

**Legislative Fix Needed.** The Wisconsin Legislature can close the loopholes – fix the problem – and stop the tax shift to homeowners by passing legislation in 2019. The Legislature had an opportunity to close the loopholes in 2018, but failed to do so. The dark store and *Walgreens* reversal bills had remarkably broad support among legislators of both parties. The dark store bill had 84 co-sponsors (63% of the Legislature). The *Walgreen's* bill had 61 co-sponsors (46% of the Legislature). If the bills had been scheduled for votes, they would have passed both houses by huge margins.

Unfortunately, the Wisconsin Manufacturers & Commerce Association (WMC) and businesses using the loopholes convinced legislative leaders to kill the legislation.

WMC claims that cities and villages promote legislation closing the dark store and *Walgreens* tax loopholes so they can collect more property taxes. WMC contends local officials “have a self-interest in assessing property higher because it means they can collect more taxes.”

This statement reveals a fundamental misunderstanding about property taxes in Wisconsin. Higher assessments do not equate to more tax revenue. Assessments determine who pays what portion of the tax levy, not the size of the levy. State law strictly limits a community’s ability to increase property tax collections. Even if the assessed value of a property were increased, the total amount of taxes collected by the community stays nearly frozen from one year to the next under state law. A community will collect the same amount of taxes regardless of whether the dark store and *Walgreens* loopholes are closed, unless it significantly cuts spending on essential services, like police and fire or street maintenance.

Closing the loopholes avoids shifting even more of the property tax burden from commercial and manufacturing property to homeowners and small businesses. Local officials are fighting for a fair and equitable property tax system, not more tax dollars.

The League of Wisconsin Municipalities will work with legislators again next session to try to restore common sense and fairness to the property tax assessment process. Maybe next year homeowners will win.



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

## 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) are circulating LRB-0372 to accomplish this goal.*
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) are circulating LRB-0373 to accomplish this goal.*

# Dark Store Tax Loophole Talking Points

Prepared by League of Wisconsin Municipalities

June 2018

Municipal officials are asking the Legislature to close the dark store loophole to avoid shifting more of the property tax burden from commercial and manufacturing property to homeowners and small businesses.

- Tax attorneys for big box stores like Target, Walmart, Meijer, Menards, Home Depot, and Lowes, are using what is known as the dark store loophole to argue that the value of a new store in a busy commercial district should be based on the value of former retail properties in unpopular areas that are now closed and vacant.
- **An actual example:** The Lowe's store on Burleigh St. in Wauwatosa is assessed for taxes at \$13.6 million. Lowe's claims the property is only worth \$7.1 million even though it spent over \$16 million to acquire the land and build the structure. Lowe's argues that the *land* alone was devalued from \$9 million to \$3 million because the big box store was constructed and insists that only vacant dark stores can be used as comparables.
- Big box stores are using the dark store argument as part of their effort to pay a smaller share of property taxes even though they demand more police services than other commercial properties and way more than residential properties.
- If not stopped, the dark store strategy will result in a huge shift of the tax burden from commercial property owners to homeowners and others.
- A study of twelve communities showed that if the dark store and *Walgreens* tax loopholes were fully implemented, residential tax bills would increase on average by 8 percent.
- Homeowners already bear a disproportionate share of the statewide property tax burden in Wisconsin (68% of total statewide levy is paid by homeowners). It's not that high in most other states. Homeowners in Minnesota, for example, pay only 50% of the property tax levy.
- In 1970, Wisconsin homeowners paid only \$50 of every \$100 that a community needed to pay for services.
- **The Solution:** Pass legislation like 2017 Assembly Bill 386 and close the dark store loophole and stop the tax shift to homeowners.
- AB 386 clarifies that assessors must use comparable 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. It says that assessors may not use a dark store as a comparable for property that is not dark or vacant.
- The bill codifies existing Wisconsin case law and parts of DOR's Wisconsin Property Assessment Manual.
- Local governments will not receive one dollar more in tax revenue if the bill passes, but the tax shift to homeowners will end.
- 63% of the Legislature signed on as co-sponsors of the dark store bill, but business group opposition killed our efforts to close the loophole that they use.