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To: Senate Committee on Revenue, Financial Institutions and Rural Issues  
From: Jerry Deschane, Executive Director, League of Wisconsin Municipalities  
Curt Witynski, J.D., Assistant Director, League of Wisconsin Municipalities  
Date: August 30, 2017  
Re: SB 291, Reversing *Walgreens v. City of Madison*  
SB 292, Dark Property

The League of Wisconsin Municipalities strongly supports SB 291 and SB 292. 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) Avoiding having even more of the property tax burden shifted to residential and other taxpayers, like local businesses. 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 Property Bill**

**What does the bill do?** SB 292 clarifies that a vacant or “dark property” 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 property tax strategy does not take hold in Wisconsin.
- If this bill is not enacted and the dark property strategy wins in Wisconsin courts, the result will be a significant tax shift from commercial to residential property tax payers.
- 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. Enactment will, however, prevent even more of the tax burden from being shifted to homeowners, local businesses, and manufacturers.

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

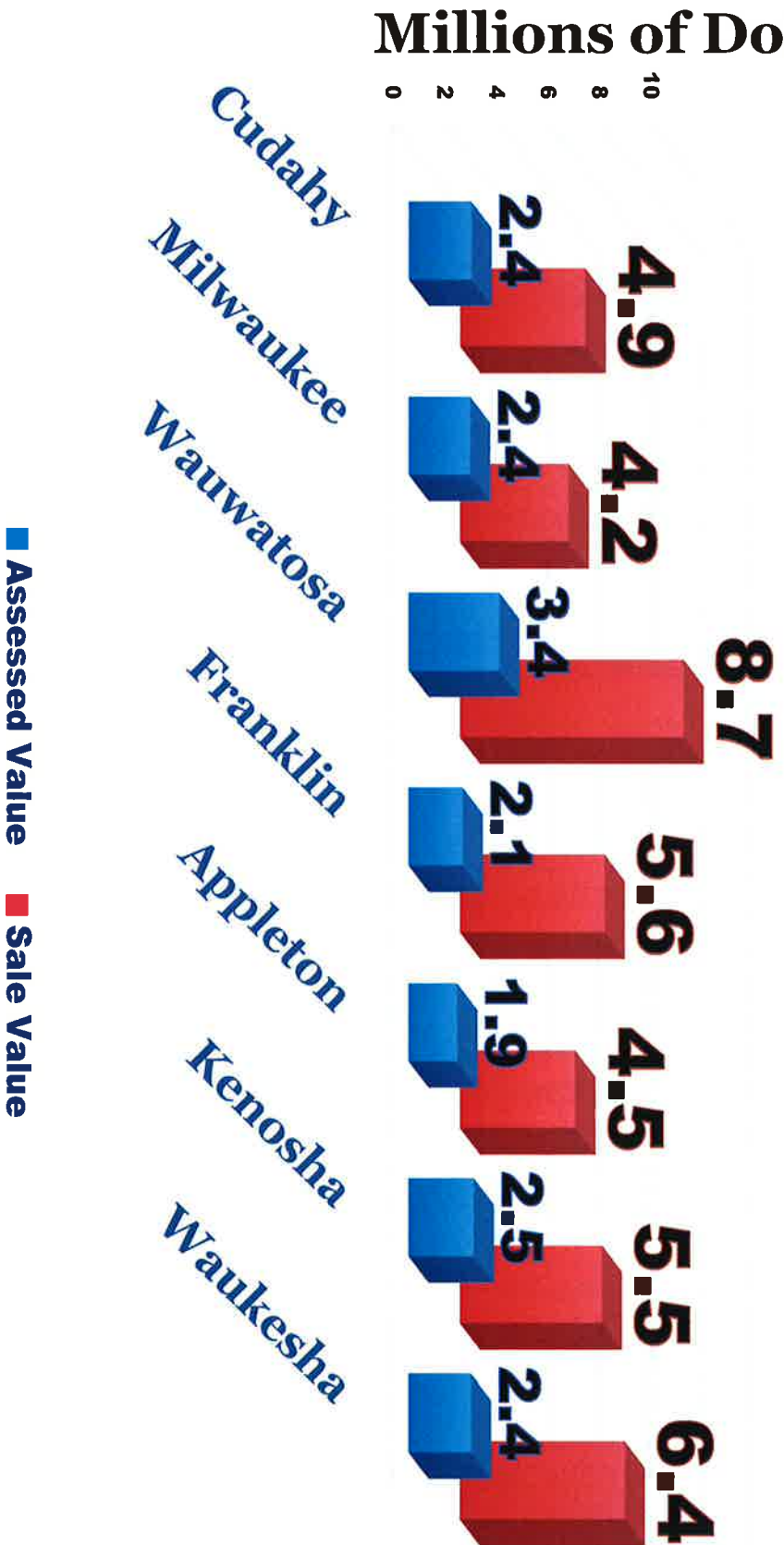
**What does the bill do?** SB 291 makes it clear that when valuing property assessors are to consider any applicable lease provisions and actual rent pertaining to a property and affecting its value.

### **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 retail 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 stores 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 recommend passage of these bills, which together will return common sense and fairness to the assessment of properties in Wisconsin. Thanks for considering our comments.

# Walgreens & CVS Assessed Versus Sale Values





# TAX SHIFT TO RESIDENTIAL

	Pleasant Prairie	Hudson	La Crosse	Onalaska	Fitchburg	Town Brookfield	Oconomowoc	Appleton	Wauwatosa	West Bend	Brookfield-City
Total Ass'd Value	2,667,459,100	1,532,694,370	3,078,582,790	1,653,232,040	2,592,798,500	973,532,803	1,893,455,895	4,891,842,500	5,268,420,900	2,402,808,300	6,619,514,680
Value 'At Risk'	777,923,700	261,258,000	409,067,500	240,293,900	302,327,900	126,409,500	273,821,500	410,106,100	716,864,200	390,962,800	668,682,200
Value Loss	50%	388,961,900	130,629,000	204,533,800	120,147,000	151,164,000	63,204,800	136,910,800	205,053,100	358,432,100	195,481,400
Tax Rate Increase	14.6%	17.1%	8.5%	6.6%	7.3%	5.8%	6.5%	7.2%	4.2%	6.8%	8.1%
	17.1%	9.3%	7.1%	7.1%	7.8%	6.2%	6.9%	7.8%	4.4%	7.3%	8.9%

## POTENTIAL PROPERTY TAX INCREASE IF DARK STORE STRATEGY AND WALGREENS LEGAL DECISION ARE FULLY IMPLEMENTED PRESUMES A 50% REDUCTION IN COMMERCIAL PROPERTY VALUES

