

Big Box Valuation and Dark Store Theory

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IAAO

- International Association of Assessing Officers
- In November 2015 issue of Fair & Equitable, published article "Thinking Outside the Big Box" by Tim Wilmath and Pat Alesandrini
- In September 2017, published Commercial Big-Box Retail: A Guide to Market-Based Valuation by the Special Committee on Big-Box Valuation

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Big Box Retail Stores

- Definition
 - Usually from 50,000 to 200,000-plus square feet
 - This can vary – one major retailer has six prototype stores varying from 15,000 to 260,000 square feet
 - This can also apply to single-tenant retail stores of any size and also to other property types

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History of Dark Store Appraisals

- First cases were from the late 2000s
- Early case – Michigan Target store 2010 valuation appeal
 - Since then, tax representatives and their hired appraisers have begun using dark store theory in valuation appeals of big box retail properties
 - The 2010 Target store case resulted in a 50% reduction in the property's valuation
 - There are dark store cases throughout the US
 - Tax representatives in appeal hearings have been using the dark store theory or hypothetical leased fee approaches in big box appeals

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Dark Store Theory (DST)

- Claims big box retail stores have been unfairly over-assessed
- Real property assessments should not be based on what the property is worth to the current user (value-in-use or use value), but on what the property would be worth to another prospective (hypothetical) user in the open market (value-in-exchange).
- Any costs associated with the property's construction must be ignored as an indication of value, and a significant portion of the costs must be considered functional obsolescence

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Dark Store Theory (cont.)

- By this argument, a property is already functionally obsolete as soon as it is constructed.
- Leases-in-place must also be ignored, because they too are a reflection of use value or value-in-use, in that the rents are typically based on costs to cover construction

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Dark Store Theory Appraisals

- Are based on using “comparables” that are vacant and/or at the end of their economic life
 - Comparables are typically much older than the subject property, in need of redevelopment, or vacant
 - Comparables are typically in locations that are no longer the retail corridor of the community
- Assumptions are made in the appraisal based on hypothetical conditions (i.e.: hypothetical leased fee)
 - Argue leases would be for tenants who typically rent in “dark stores”
 - Ignore deed restrictions

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Hypothetical Condition

- A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.
 - Comment: Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, p. 4)

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Issues

- Do a new operating store and a dark store have the same highest and best use?
- Should an appraiser use the same comparables for both?

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Executive Summary – Dark Store Theory

- To value occupied big box stores as-if-vacant and available for sale or lease to a future hypothetical user rather than in its current use, which is often a functioning occupied store
- Response: To value an occupied subject property as if vacant requires a hypothetical condition that the appraiser is required to disclose

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Executive Summary – Build-to-suit and sale-leaseback transactions

- Claims transactions are based on either financing or on improvement costs plus a premium paid for land acquisition
- Response: Analyze transactions to determine if they reflect the market value of the fee simple estate
 - Neither transaction should be automatically disregarded as improper comparables

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Executive Summary – Value-in-use versus value-in-exchange

- Value the property with a lease-in-place raises concerns that value-in-use as opposed to value-in-exchange is being appraised
- Response: If contract lease terms and rent are reflective of market, then contract rent equals market rent and value-in-use is equal to value-in-exchange
 - If not, supportable adjustments should be made to reflect value-in-exchange

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Executive Summary – Functional Obsolescence

- Custom improvements have value only for the specific occupant; hence, they are functionally obsolete as soon as they are built
- Response: Most big boxes are not unique
 - It is for the market to determine whether the improvements are in demand
 - It will be for the future buyer to make the economic decision to retrofit or demolish

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Executive Summary – Abandoned Vacant Stores

- Abandoned, vacant stores are evidence of functional obsolescence and lack of market demand
- Response: Abandoned stores may be evidence of functional obsolescence, or an indication of the detrimental impact that deed restrictions or changing demand in the marketplace can have on the pool of potential buyers

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Executive Summary – Impact of restrictive covenants

- Deed restrictions have no significant impact on property value
- Response: Deed restrictions, by design, are imposed to limit competition and force a change in highest and best use

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Executive Summary – Lease as an encumbrance

- Suggests fee simple valuation assignment is the value unencumbered by a lease, which is as a vacant store
- Response: A lease does not encumber real property ownership rights
 - A lease is a possessory right, and a property may be held in fee simple, subject to a lease
 - Sales of leased properties can and should be used as comparables, if adjustments are made for above- or below-market rents when a market rent conclusion is required

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Executive Summary – Highest and best use

- Suggests: If a property is of a certain size, regardless of investment class, occupancy or deed restriction, it serves as an appropriate comparable for a subject property that is occupied and is not burdened with such a restriction.
- Appraiser should be wary of arriving at an overly broad highest and best use conclusion of general retail.
- Market segmentation analysis indicated the existence of multiple classes of retail properties, similar to other property types.
- Appraiser is highly encouraged not to use a deed-restricted comparable if the subject property does not have a similar restriction.

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Fee simple absolute definition

- Many jurisdictions require a valuation of the fee simple absolute estate (or fee simple)
- Black's Law Dictionary defines fee simple as:
 - An interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs; esp., a fee simple absolute. Often shortened to fee. (Garner 2014)

The legal concept of fee simple merely states that the owner has a fee simple estate, rather than a lesser estate, such as a life estate, fee simple determinable, or other various estates. It does not address government limitations or private encumbrances on the property.

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Encumbrances

- Black's Law Dictionary encumbrance in part as follows:
A claim or liability that is attached to property of some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest. (Garner 2014)
- The Uniform Commercial Code defines encumbrance as:
Encumbrance means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property. (Legal Information Institute n.d.)

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Leased fee and Leasehold

- Leased fee is an appraisal term and is defined as the ownership interest held by the lessor, which includes the right to receive the contract rent specified in a lease plus the reversionary right when the lease expires. (The Dictionary of Real Estate, Appraisal Institute, 2015)
- Leasehold is a legally defined term and appraisal term. This is the possessory interest held by the tenant. Black's Law Dictionary defines it as "a tenant's possessory estate in land or premises..." (Garner, 2014)

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Fee Simple and Leased-Fee Issue

- Appraiser must recognize that leases, easements, and estates other than fee simple exist in the real world of comparables.
- A lease fulfills the basic wish of an owner to receive rent.
- It is not an encumbrance to ownership of real property rights.
- Appraiser must be able to make any necessary market-based adjustments to the comparables.

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Jurisdictional Requirements

- Market value is defined as the price a purchaser, who is willing, but not obliged to buy, would pay an owner, willing, but not obliged to sell, taking into consideration all uses to which the property is adapted and might in reason be applied. Buhl Found. v. Board of Prop. Assessment, Appeals & Rev., 180 A.2d 900 (Pa. 1962).

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Market value definition

- Market Value: The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self interest, and assuming neither is under undue duress.

The Dictionary of Real Estate Appraisal, Appraisal Institute 2015, p. 141

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Market value and big box retail

- An appraiser's market value conclusion of a fee simple estate in a big box property should reflect the actual market condition of the property on the date of valuation
 - If occupied, value as an occupied property, using similar comps
 - If vacant, value as a vacant property, using similar comps

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Market value and big box retail

- Cost Approach inherently values the property in fee simple and arrives at a value as occupied (stabilized)
- Income Capitalization Approach assumes the property is occupied (stabilized), using income and expense data
- Using vacant sale comparables to value an occupied property requires an adjustment or a hypothetical condition, as this is valuing something contrary to what actually exists

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Value-in-use definition

- Value-in-use: The value of a property assuming a specific use, which may or may not be the property's highest and best use on the effective date of the appraisal.
 - Value-in-use may not be equal to market value but is different conceptually.
- When the highest and best use of a property is defined as how the property currently exists in use, the value-in-exchange of the property is equivalent to the value-in-use of the property.

The Dictionary of Real Estate Appraisal, Appraisal Institute 2015, p. 245

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Hypothetical sale issues

- Hypothetical sale: Facts about the physical aspects of property and economic conditions surrounding the subject property
- Hypothetical seller: Unknown seller is knowledgeable and acts prudently and with self interest
- Hypothetical buyer: Appraiser does not identify buyer, current owner/user is a potential buyer

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Highest and best use tests

- For as-if-vacant and as-improved properties
 - Legally permissible
 - Physically possible
 - Financially feasible
 - Maximally productive

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Market segmentation

- Investment Class A: First-generation space, very good locations, NNN, long-term leases, national or regional tenants, attracts national investors, such as REITs, retirement funds, etc.
- Investment Class B: First-generation space, slightly older, good locations, remaining terms exceed 10 years, attracts national and regional investors

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Market segmentation

- Investment Class C: Nearing the end of their economic life for first-generation space, and may be classified as second-generation space, less desirable retail locations, remaining lease terms less than 10 years
- Investment Class D: Second-generation space, sell at low prices, often vacant or soon to be vacant
 - Original market demand for these properties has moved to more desirable retail locations

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Cost approach

- Strengths: It inherently values the fee simple property rights and eliminates the debate about leases and deed restrictions
- Weaknesses: Depreciation and entrepreneurial profit/incentive estimates are difficult to support

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Cost approach

- Land Valuation
- Entrepreneurial Profit/Incentive
- Functional Obsolescence
- Signage/Facade

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Sales comparison approach

- Strengths: Reliable when truly comparable properties are available in the market
 - This straightforward approach is widely understood and relied upon by the courts
 - It reflects the actions of buyers and sellers and is used to estimate market value
- Weaknesses: Sales may not be truly comparable and can lead to unreliable conclusions

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Sales in the big box market

- Build-to-suit: When the parties agree that the sale reflects market, the transaction is a potential comparable sale
- Sale leasebacks: Can be used when the circumstances meet the market value criteria
- Private sales: Sales of leased properties can be used for occupied properties, if the parties are unrelated and the circumstances meet the market value criteria

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Market segmentation of comparable sales

- Market segmentation: Differentiating the subject and comparable sales into segments, such as investment classes or retail types, creates a logical hierarchy
 - Ideally, first-generation space should be compared to a first-generation subject, and so on
 - Characteristics such as size, age, condition of the property, access, traffic counts, proximity to major employment centers, the concentration cluster of surrounding properties, and population size are some of the factors to consider.

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Deed restricted comparable sales

- Deed restricted sales: Comparable sales with deed restrictions should not be used for subject properties that are not encumbered with deed restrictions
- Deed restrictions, by design, change the highest and best use and may limit the possible pool of buyers

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Income capitalization approach

- Strengths: Fee simple owner of a commercial big-box properties often lease their properties, and this approach directly reflects market behavior
- Weaknesses: Proper selection of an appropriate capitalization rate, and any slight error in income or operating expenses are magnified in capitalization
- Yield Capitalization versus Direct Capitalization

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Income capitalization approach

- Direct Capitalization
 - Identification of Lease Comparable Properties
 - Vacancy and Collection Loss
 - Operating Expenses
 - Capitalization Rates

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Reconciliation and summary

- Cost approach: Useful when there is a scarcity of comparable sales in the market
 - Investors use this approach to determine financial feasibility, so it reflects market behavior
- Sales comparison approach: Provides strong support when there is ample data with suitable substitute properties
- Income capitalization approach: Used by investors of leased commercial properties
 - Market segmentation will help identify suitable rent comparables and capitalization rates

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Dark store

- Dark store or hypothetical leased fee is used in virtually all big box retail valuation appeals
 - The fee appraisers hired by tax reps are using these approaches in their appraisals

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Opponent's appraiser

- Uses deed restricted sales in his analysis, and does not cite restrictions
- Rebut: Deed restrictions are imposed to limit competition and force a change in the highest and best use
 - A change in use goes against his conclusion that the existing use continues to be the highest and best use
 - Restrictions also limit the market of potential buyers for the property, negatively impacting the sales price

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Opponent's appraiser

- Primarily use dark store sales to compare against occupied properties
 - The premise is properties that were vacant at the time of sale are true fee simple transactions

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Opponent's appraiser

- Rebut: It is a fundamental difference between his interpretation of fee simple and the county
 - Sales of leased properties can and should be used as comparables, if adjustments are made for above and below market rents
 - If the contract terms and rents are equivalent to market, then leased transactions would represent fee simple sales
 - Exclusively using vacant sales skews the value conclusion low
 - Valuing an occupied subject property as-if-vacant requires a hypothetical condition that the appraiser needs to disclose

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Opponent's appraiser

- Identifies three leasing scenarios:
 - Leases for first generation space
 - Second generation tenants where owner pays for renovation costs amortizing the cost over the lease term
 - Second generation lease where tenants take the space "as is" or with minimal alteration

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Opponent's appraiser

- Rebut: Second generation tenant rents without TI (tenant improvement) allowance represent the low end or bottom of the market
 - TI is part of the market
 - Typically, costs are amortized over the term of the lease for the owner to recoup costs
 - No adjustment should be made if a market level TI allowance is within the lease
 - Second generation leases taken "as is" likely to reflect an area that is in decline, not attracting higher credit tenants, requiring higher levels of finish out typically found in better demographic locations with higher retail sales

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Opponent's appraiser

- To get to "Fee Simple" value, deducts 1.5 years holding costs from his "Leased Fee" value along with 12.5% entrepreneurial profit
- Rebut: There are multiple issues with this logic
 - NOI forecast with a high credit worthy tenant in-place on a 8-10 year lease term is the same NOI forecast for a moderate credit worthy tenant with 1-3 years remaining on the lease
 - This seems counterintuitive
 - A higher credit tenant on a longer term lease would have a higher NOI than a lower quality tenant

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Impacts - Michigan

- Marquette Township
 - Lowe's successful property tax appeal resulted in a tax refund that ultimately caused the township to close the public library on Sundays.
- Source: O. LaVecchia, 2015, "For Cities, Big-Box Stores Are Becoming Even More of a Terrible Deal"

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Impacts - Michigan

- Escanaba
 - Major road repairs had to be shelved because of a property tax refund garnered by the appeal of a Menard's home improvement store.
- Source: C. P. Dawsey, 2015, "Lawmakers to big box stores: Pay your fair share of taxes!", Bridge Magazine, Aug. 11
- October 2017 – Michigan Supreme Court denied an appeal by big-box retailer Menard against city of Escanaba.
- Source: Andrea Muse, 2017. "Michigan Court Denies 'Dark Store' Valuation Appeal in Win for Localities." State Tax Notes. October 30.

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Impacts - Michigan

- Houghton
 - Residents staged a community demonstration in summer of 2023.
 - Local retailer is seeking 60% assessment reduction
 - City claims retailer's appeal violates a development agreement in which Walmart received incentives to expand in 2004.
- Sources: Colin Jackson March 15, 2023 and TV6 WLUC News Team February 23, 2023

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Impacts - Indiana

- Boone County
 - In 2020, Indiana Tax Court affirmed an Indiana Board of Tax Review decision that had increased the assessed value of a Meijer Stores Limited Partnership grocery store for 2014-2017, roughly twice of its original assessment. (\$7.19 million to \$14.45 million)
 - Recent changes in state statutes introduced market segmentation that helped draw a stricter stratification on how to value new stores. This put new stores more in line with other new stores.
 - At the time of the ruling, there were 300 pending cases based on the dark store theory before the Board of Indiana tax review.
 - Source: Charlie Ban, 1/25/2021, National Association of Counties – viewed 4/21/2025

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Impacts - Iowa

- Hy-Vee Food Stores, Inc. v. Carroll County Board of Review 2013
 - When valuing a property used as a grocery store, it is appropriate to focus on comparable sales of grocery stores sold for continued use.
 - Homemakers Plaza, Inc. v. Polk County Board of Review 2013
 - Valuation should be based on the ongoing use of the property. Valuing the property based on a different use by a future purchaser, predicated on the assumption that a future purchaser would not continue the existing use, improperly overlooks how the property is currently being used.
- Source: Real Talk from the Polk County Assessor, Fall 2018

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Impacts - Wisconsin

- Kenosha County
 - League of Wisconsin Municipalities – in 1970, property taxes were split 50-50 between homeowners and businesses. By 2018, residential taxpayers share increased to 67%.
 - From 2018 to 2019 – Village of Somers (Walmart) homeowners' property taxes will increase by 8%, City of Kenosha by 9%, and Village of Pleasant Prairie by 17% or nearly \$893.
- Walgreen's Loophole
 - Owners of chain drugstore properties have received lower assessments through court decisions affirming that values should be determined based on hypothetical "market rents," rather than on the actual higher rent being paid.

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Impacts - Wisconsin

- Baraboo

Walmart assessed for \$9.48 million. Lawsuit filed that the store should not be valued at more than \$5 million.

Argument is total assessment should be based on the sale of previously unsuccessful businesses, ones that were shuttered due to a lack of profits, and sold vacant instead of the cost of constructing a building and the business' income potential.

Baraboo News Republic 9/4/20

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Impacts - Wisconsin

- Plover – village assessment \$7,356,600 – Lowe's \$4,620,000

Court of appeals concluded that the circuit court properly rejected 8 sales of vacant or dark big box stores offered by Lowe's expert as evidence that the village's assessment was too high. The court of appeals said that Lowe's argument fails "because it is contrary to the Property Assessment Manual's explicit directive that the assessor should avoid using sales of improved properties that are vacant ('dark') or distressed as comparable sales unless the subject property is similarly dark or distressed."

TV6 news team – 3/2/21

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Impacts - Wisconsin

- Wausau

Walgreens claimed the city imposed "excessive real estate taxes" on its property in 2019 and years prior. Refunds have cost residents an additional \$122,000 in taxes since 2015, city documents show.

Wausau Daily Herald 2/26/20

- Delavan

Case with Lowe's is now before the Wisconsin Supreme Court

Walworth County Community News 4/15/22

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Impacts - Wisconsin

- Burlington

Walmart has filed suit against the city claiming excessive taxation, looking to reduce the store's assessment from \$8.6 to \$4.5 million.

Burlington could lose \$80,000 a year in tax revenue.

Journal Times 10/27/21

- Beaver Dam

Agreed to settle Walmart lawsuits to reduce the assessment for the distribution center and not the store. Refund is about \$112,000.

Capital Newspapers 9/22/21

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Impacts - Wisconsin

- Marshfield

Menards and the City of Marshfield reached an agreement over the store's assessed property tax value that prevents a trial.

Menards challenged the City to decrease the assessed value from \$8.2 million to about \$5.9 million for the tax years 2017 and 2018.

A mediation process was used, and Menards and the City agreed to reduce the assessed value for 2020 from \$8,714,600 to \$8,200,000. Menards released any claims against the city for the tax years 2017, 2018, and 2019.

On Focus 03/11/20

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Impacts - Wisconsin

- Wauwatosa

Year	Litigation Costs	Estimated loss in value
2013	\$235,000	\$2,916,417
2014	\$378,000	\$2,784,941
2015	\$170,000	\$4,066,525
2016	\$572,000	\$4,493,746
2017	\$763,000	\$218,157,390

Shedding Light on Dark Stores by Jillian Straight, PhD, Wisconsin Policy Project, October 2018, Volume 1, Number 4

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Update - Wisconsin

- Lowe's Home Centers, LLC vs. City of Delavan, 2023 WI 8, February 20, 2023

After attempting to appeal its property tax assessments, Lowe's sued the city of Delavan, arguing the city had valued a home improvement store in 2016 and 2017 at nearly twice what it should have been.

The city's assessor valued the Lowe's location at \$8.9 million, but Lowe's contended it was worth only \$4.6 million. The company's calculations was based in large part on the value of other Wisconsin big box stores that had long been vacant.

Wisconsin Public Radio, February 21, 2023

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Update - Wisconsin

- Lowe's Home Centers, LLC vs. City of Delavan, 2023 WI 8, February 20, 2023

But the Walworth County Circuit Court and later a Court of Appeals sided with the city, and the case made it to arguments before Wisconsin's Supreme Court this year.

Wisconsin's Supreme Court ruled unanimously in favor of the city of Delavan.

Wisconsin Public Radio, February 21, 2023

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Update - Wisconsin

- *Lowe's Home Centers, LLC vs. City of Delavan*, 2023 WI 8, February 20, 2023
The Wisconsin Supreme Court resoundingly rejected a big box commercial retailer's attempt to demonstrate its tax assessment was "excessive" by using sales of dark and distressed properties as "reasonably comparable sales" to determine value. Significantly, the court also unequivocally rejected Lowe's contention that earlier decisions, including the Court's 2008 decision involving Walgreens, should be read to say that the statutory presumption that the assessor's valuation is correct does not apply in certain situations.
League of Wisconsin Municipalities, *Ding Dong the Dark Store Is Dead*, February 20, 2023

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Update - Wisconsin

- *Lowe's Home Centers, LLC vs. City of Delavan*, 2023 WI 8, February 20, 2023
The Court made clear that the presumption of correctness attaches when the assessment is filed along with the assessor's affidavit. If the objector rebuts the presumption with sufficient evidence, the presumption is overcome; that does not mean, however, the assessor's valuation was not presumed to be correct at the outset.
League of Wisconsin Municipalities, *Ding Dong the Dark Store Is Dead*, February 20, 2023

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Update - Wisconsin

- The Court noted that the Wisconsin Property Tax Manual (WPAM) provides the following in the context of using a sales comparison approach to valuation:
 - "Comparable sales refer to properties that are similar to the subject property in age, condition, use, type of construction, location, design, physical features and economic characteristics."
 - Assessors should use "comparable sales exhibiting a similar highest and best use and similar placement in the commercial real estate market."
 - Assessors should not use sale of vacant or distressed properties as comparable sales unless the property being assessed is similarly dark or distressed.
- League of Wisconsin Municipalities, *Ding Dong the Dark Store Is Dead*, February 20, 2023

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Update - Wisconsin

- The Wisconsin Supreme Court, deferring to the circuit court's factual finding that the evidence presented by Lowe's was "significantly less credible than that presented by the City," agreed with the circuit court that Lowe's did not provide significant contrary evidence to overcome the presumption of correctness.

League of Wisconsin Municipalities, Ding Dong the Dark Store Is Dead, February 20, 2023

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Update - Wisconsin

- The League's Legal Counsel, Claire Silverman, said "We are very pleased with the Court's decision in this case. Large commercial retailers have engaged in concerted efforts, statewide and nationally, to challenge tax assessments using novel and aggressive theories such as dark store theory. In Wisconsin they have misconstrued and argued for ever-more expansive readings of the Court's 2008 Walgreens decision."

League of Wisconsin Municipalities, Ding Dong the Dark Store Is Dead, February 20, 2023

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Update - Wisconsin

- The League's Legal Counsel, Claire Silverman, (continued) "It's incredibly expensive to litigate these cases and owners of big box commercial properties who assert these theories unsupported by the law, like dark store, are trying to pressure local governments to reduce their tax assessments. If the municipality caves, these owners get an unfair tax break, with the difference being shouldered by home owners and other small businesses. We hope today's court decision brings an end to that practice."

League of Wisconsin Municipalities, Ding Dong the Dark Store Is Dead, February 20, 2023

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Impacts - Kansas

- Kansas City - Nebraska Furniture Mart could collect a nearly \$1.5 million refund based on a Kansas Board of Tax Appeals ruling in September 2021. The county may appeal the decision in court.
- Olathe - Kansas Court of Appeals sided with Board of Tax Appeals in lowering tax bill for Bass Pro Shops Store in April 2021.
- Paul Wellcome, Johnson County Appraiser, said the county could lose close to \$133 million if DST becomes the dominant methodology in a 2018 analysis.
- KCUR 89.3 and NPR 9/17/21

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Impacts - Kansas

- The Kansas Supreme Court overturned lower court decisions faulting Johnson County's evaluation of nine Walmart and two Sam's Club stores. This rejected a 2021 decision of the Kansas Court of appeals and a previous ruling by the Kansas Board of Tax Appeals that found the county had overvalued property held by Walmart.
- The lower court said the commercial buildings should have been valued at what each would sell for if vacant or "dark" rather than what the retail companies paid for construction, land and improvements on those sites or earned through lucrative lease arrangements. The difference was approximately \$60 million.
Kansas Reflector and Topeka Capital-Journal 07/01/22

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Impacts - Arkansas

- Pulaski County
- Walmart has court case for 8 Walmart Supercenters and 2 Sam's Club stores over a projected \$900,000 in taxable revenue.
- KE Andrews Valuation Tax Solutions (viewed 5/2/22)

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Impacts - Arkansas

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Impacts - Mississippi

- Rankin County
- Walmart and Sam's Club lawsuits were dismissed without prejudice (suits cannot be filed again) in favor of the county.
- Suits were filed in 2020 and 2022 by Wal-Mart Real Estate Business Trust to cut the company's property taxes in half.
- Walmart owns three stores in Flowood, Pearl and Richmond, and a Sam's Club in Pearl.
- Had Walmart prevailed, the county would have lost about \$500,000 annually in ad valorem taxes.
- WLBT (viewed 4/21/25)

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Impacts - Maine

- Brunswick
- Walmart has appealed their assessment, and it could cost Brunswick more than \$128,000 in loss of revenue.
Press Herald 1/20/20

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Impacts - Maine

- Across the state, since 2015, according to data collected by The Maine Monitor, large retailers have succeeded in lowering the valuation of their properties by more than \$16 million, resulting in hundreds of thousands of dollars in tax reductions. Hundreds of millions of dollars in abatement requests are still outstanding around the state.
- Sun Journal 2/28/22

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Impacts - Maine

- Thomaston
Walmart disputed Thomaston's assessment that its Supercenter there was worth about \$15.8 million for property tax purposes. The company's own assessment put the store's value at close to \$7.4 million. If upheld by the state, the lower assessment would have required Thomaston to rebate roughly \$170,000 in taxes to Walmart for each affected year – about 2% of the town's total property tax revenue, according to its financial records.
Maine Monitor 12/17/22
The decision...

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Impacts - Maine

- Thomaston (continued)
- Maine Board of Property Tax Review rejected Walmart's claim that their store's value should be treated like that of a building for sale, not as an active business.
Board members determined that Walmart had not met its burden of proof to show that Thomaston's assessment of the store was "manifestly wrong," which is the legal standard in cases like this.
Maine Monitor 12/17/22

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Impacts - Maine

- Brewer, Ellsworth, and Falmouth

Walmart settled with Ellsworth and Falmouth following a written decision by the state Board of Property Tax Review issued in December siding with the city of Brewer. The board determined that state law barred the retailer from contesting its tax bill.

Valerie Moon, Brewer's city assessor, argued that an obscure state law prevents any landowner from appealing a tax assessment if the owner refuses to provide relevant information to the local tax assessor.

The board decided Walmart's refusal to provide the information barred the company from pursuing the appeals.

Bangor Daily News 02/10/23

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Impacts – New York

- In the fall of 2021, Gov. Kathy Hochul signed legislation designed to eliminate the dark store argument.
- The legislation tightens the guidelines that assessors use in calculating the taxable value of a business like a big box store.
- Times Union, "Big Retailers out of luck in 'Dark Stores' approach", 12/19/21

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Impacts - Nationwide

- Bloomberg CityLab in an article "After the Retail Apocalypse, Prepare for the Property Tax Meltdown" on 11/14/18, focused on dark store theory. A map highlighted 21 states over the past 10 years where there were "dark store" cases filed, and mentioned locations in multiple states facing these issues.

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Example - Philadelphia

- Walmart purchased part of Franklin/Philadelphia Mills in late 2012 for \$10,196,000.
- Walmart tore down the anchor store it purchased and built a Supercenter for \$19,742,600 million. Total assessment was set at \$29,938,600.
- At appeal, attorney stated that since the improvement was so specific for Walmart only, the improvement did not have any value.
- In Montgomery County, Walmart had recently purchased a Home Depot location and converted it into a Walmart.
- Additional issue - 10 year tax abatement on the improvement was not applied for in a timely manner.

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Additional Resource

- Lincoln Institute of Land Policy
 - State-by-State Property Tax at a Glance
Full Volume 2024
385 pages
 - Highlights dark store issues and updates in multiple states

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What can you do within your state?

- Possible remedies could include sharing county litigation tactics, legislation, and change at higher appeal level
 - Monthly conference call
 - Legislation could be drafted to narrow the definition of fee simple described in state statutes
 - Figure out vacancy based on age of improvements statewide

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