

Property Tax Attorneys

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WALGREEN, ACT II: TRIAL COURT DECISION LIMITS ABILITY OF ASSESSORS TO IGNORE COMPARABLE SALES IN MAKING PROPERTY TAX ASSESSMENTS

In July 2008, the Wisconsin Supreme Court issued its landmark decision in *Walgreen Co. v. City of Madison*, in which the Court precluded the use of above market rents—often resulting from creative financial arrangements—to establish property tax assessments. In the first court decision involving the property tax assessment of a Walgreen store since the Supreme Court ruling, the Dane County Circuit Court may have extended the earlier *Walgreen* decision in ways that could help other taxpayers. In both the Supreme Court case and the recently decided Dane County case, Walgreen Co. was represented by a team led by Don Millis, a shareholder in Reinhart's Madison office and a member of the Reinhart Property Tax Team.

The Search for Comparable Properties

The most recent case involves the City of Verona's assessment of a Walgreen store for 2007 and 2008. The assessor based his valuation of the Walgreen store solely on the income approach. In Wisconsin, the income approach can be relied upon by the assessor only if there has been no recent arm's-length sale of the property that is being assessed and if there are no sales of comparable properties. There had been no sale of the Walgreen store, but Walgreen offered an expert appraisal that analyzed the sales of four comparable properties in Dane County and one in Waukesha County. Verona's assessor testified that he could find no comparable sales. However, the Verona assessor, who is also the assessor for the City of Middleton, said that he looked only in Verona and Middleton for sales. He did not look for sales in Madison or any of the other nearby communities.

The Court indicated that the Verona assessor should have looked beyond the boundaries of Verona and Middleton to find suitable sales. The Court was not able to agree with the Verona assessor's claim that there were no comparable sales because the assessor limited his search for comparable sales to Verona and Middleton.

Assessors Must Look Beyond Municipal Boundaries

It is not clear whether Verona will appeal this decision. As a trial court decision, it has limited persuasive value. However, it is significant that the Court rejected an approach that is often relied upon by local assessors. An assessor's jurisdiction often represents a small portion of a larger market (*e.g.*, a suburb within a larger metropolitan area). All too often assessors will look no further than the political boundaries of the municipality that employs them when assessing commercial properties. While assessors possess a great deal of information about sales within their own communities, in order to determine the value of a commercial property, it is typically necessary to look to the greater metropolitan area for comparable sales and comparable rents. The Dane County Court confirmed this by recognizing that "the market" does not end at the political boundaries of the municipality.

If you have any questions about the implications of this decision or any other aspect of property tax assessment, feel free to contact any member of the Reinhart Property Tax Team:



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