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Real Estate Entitlements

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DARK PROPERTY THEORY

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Assessing Commercial Property

- Wisconsin Statutes Section 70.32(1):
 - Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual under s. 73.03(2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale . . .

Assessing Commercial Property (cont.)

- *Market Value* "is the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale . . . " WPAM. at G-40. Sometimes, this is called value in exchange and it is contrasted with **use value**, which is the value "to a specific owner, as opposed to its value in exchange." WPAM at G-48.
 - WPAM is short for the WISCONSIN PROPERTY ASSESSMENT MANUAL published annually by the Department of Revenue

Assessing Commercial Property (cont.)

- *Fee Simple Interest* "is the fullest form of private ownership subject only to certain government limitations." WPAM at 7-1. For example, most homeowners own their homes in fee simple. That is, their ownership is limited only by customary powers of government, such as zoning, and common easements, such as utility easements.

Walgreen Co. v. City of Madison

- Wisconsin's Supreme Court has held that the lease is not part of the bundle of rights that is to be assessed for purposes of the property tax. *Walgreen Co. v. City of Madison*, 2008 WI 80, ¶¶45-46, 752 N.W.2d 687, 311 Wis. 2d 158 (2008).
- The "dark property" argument is an outgrowth of the Walgreen's Supreme Court decision in 2008.

Previously Proposed Legislation

2 bills:

- LRB-0372/6:
 - For property tax purposes, real property includes any leases, rights, and privileges pertaining to the property, including assets that cannot be taxed separately as real property, but are inextricably intertwined with the real property
 - Specifically reverses *Walgreen Co. v. City of Madison*
 - Redefines "arm's-length sale"

Previously Proposed Legislation (cont.)

- LRB-0373/9:
 - A property is not comparable to the property being assessed if:
 - the seller has placed restrictions on the highest and best use of the property, or
 - the property is dark property and the property being assessed is not dark property
 - The bill defines "dark property" as property that is vacant or unoccupied beyond the normal period for property in the same real estate market segment

Supporters of Legislation

- Should a new, thriving store be valued for property tax purposes like an abandoned store?



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Supporters of Legislation (cont.)

- Should a commercial property location (like a Walgreens) that sells for \$5,000,000 be assessed any less than its sale price?
- Should a court valuing a property whose highest and best use is big box retail consider a sale of the property with a deed restriction that forbids future big box retail use?

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Bricks, Sticks and Mud

- Appraisal science has long held that a "lease never increases the market value of the real property rights to the fee simple estate." *Walgreen Co.*, at ¶13 (quoting Appraisal Institute, *THE APPRAISAL OF REAL ESTATE* 473 (12th Ed. 2001)).
- Considering leases when assessing real property adds significant complexity to assessment practices and volatility to assessment rolls

Bricks, Sticks and Mud (cont.)

- Proponents of "Dark Property Theory":
 - Best method to value
 - Stable tax base
 - Avoids taxing business value
 - Less intrusive

Questions?



Thank You!

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