



"Leadership in Public School Governance"

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TO: Members, Assembly Committee on Ways and Means
FROM: Dan Rossmiller, WASB Government Relations Director
DATE: June 29, 2017
RE: **SUPPORT for ASSEMBLY BILL 386**, relating to property tax assessments based on comparable sales and market segments.

The Wisconsin Association of School Boards (WASB), on behalf of all 422 public school boards in the state of Wisconsin, **supports** Assembly Bill 386. Our members have an interest in ensuring that property taxes, which comprise a substantial portion of the operating revenues of school districts, are fairly and equitably administered.

Whenever a group of taxpayers or class of property owners can employ a concerted strategy to reduce the share of property taxes paid by that group or class, the result is that a share of the tax burden is shifted to another group or class of taxpayers.

Assembly Bill 386 is designed to establish a set of reasonable statutory assessment "ground rules" or guidance to curb a strategy that a particular type of property owners—particularly so-called "big box retail chains"—has sought to use to reduce its property tax burden, thus shifting a portion, often significant, of the property tax burden to other taxpayers, including homeowners and small businesses.

The brick and mortar stores of so-called "big box" retailers have proven to be a challenge for property tax assessors. While there will likely always be disputes over assessments between owners and assessors, the problem facing assessors is finding appropriate "comparables" within this market segment of "big box" stores because of some unique characteristics of these properties.

Unlike most other types of property, big-box stores are generally not built to be sold. Instead they are typically built and occupied by the owner—the first generation user. As a result, relatively few first-generation big box store properties are offered for sale. Those that are offered for sale are typically offered in a sale-leaseback transaction in which the property is sold to investors and then leased back to the big box retailer—thus, the big-box chain becomes the tenant.

Even when a big-box chain abandons a store, whether because there may no longer be customer support at that location or due to corporate downsizing or even a poor business decision, chances are good that the abandoned store may not be offered for sale to another retail chain that might profitably operate in that store location. In many cases, big-box retailers' stores have restrictions placed on them when they are sold. These deed restrictions (also known as restrictive covenants) prohibit a rival chain from operating in one of a big-box retailer's former stores. These deed restrictions arguably prevent these properties from being put to their highest and best use as retail stores and limit the number of potential buyers and sales among the pool of the most likely buyers—other retailers. They also prevent the vacant stores from being offered for lease to competing users, preventing potentially ideal users from negotiating and establishing market rent for the property.

This bill is prompted by the fact that big box retailers have argued, often successfully, that fully operational big box stores should be assessed in the same manner as abandoned, obsolete, vacant buildings—so called "dark stores"—earning this approach the nickname the "dark store strategy."

All property owners have a right to challenge their assessment for property tax purposes; however, big box chains have been particularly organized and aggressive in their property tax appeals in other states using this dark store strategy.

Assembly Bill 386 attempts to head off this scenario in Wisconsin. It legislatively clarifies long-standing statutory directives, in s. 70.32 (1), Stats., to consider recent arm's-length sales of "reasonably" comparable property and to consider all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.

Under current law, assessors must use a three-step process in order to properly assess a property to determine its full value at its highest and best use. The first step in the process is to base the assessment on any recent arm's-length sale of the subject property. If the subject property has not been recently sold, an assessor must next consider sales of reasonably comparable properties. If the assessor determines no such comparable sales are present, an assessor may use a "cost" or "income" assessment approach, considering all factors which have a bearing on the value of the property.

Assembly Bill 386 attempts to define comparable sales or rentals of properties in a way that reflects the realities of how big box stores operate in the real estate market in a way that is fair to all taxpayers. The bill requires an assessor to consider all of the following as comparable to the property being assessed:

- Sales or rentals of properties exhibiting the same or a similar highest and best use with placement in the same real estate market segment; and
- Sales or rentals of properties that are similar to the property being assessed with regard to age, condition, use, type of construction, location, design, physical features, and economic characteristics.

The bill defines "real estate market segment" to mean a pool of potential buyers and sellers that typically buy or sell properties similar to the property being assessed, including potential buyers who are investors or owner-occupants.

Assembly Bill 386 also provides that 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 if 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.

This approach has both logic and merit. It clarifies for assessors what the highest and best use of the property is in a common sense way. If a big box store property is occupied by a first-generation user and is operating successfully, the highest and best use of that property is likely to be in its continued use as a first-generation big box store. Its use value and its exchange value would be identical in such a situation. The deed restrictions that often encumber big box properties eliminate potential buyers who would use the property in its highest and best use, thereby artificially lowering the potential sales price of the property. Under the bill, if an assessor determines such a deed restriction changes the highest and best use of the property so that it is no longer comparable or if the deed restriction substantially impairs the property's marketability, it could no longer be considered as comparable. Finally, while the sales or assessments of vacant or unoccupied big box stores ("dark stores") could be given consideration, they could no longer be considered as comparable. The bill directs assessors to ensure that the sale and the comparable have the same highest and best use.

This bill will not increase overall property tax collections or the amount of property tax revenue that any school district may collect. What it does is protect the school districts property tax base against erosion and prevent more of the property tax burden to other taxpayers, such as homeowners, who do not have the benefit of structuring their ownership or rental interests as big box retailers can.

For the reasons indicated, we support Assembly Bill 386. Thank you for the opportunity to address the committee today.