

RESOLUTION NO. _____ - 2019

AUTHORIZING “DARK STORE” LITIGATION SUPPORT

Background: In recent years, some property owners have sought property tax reductions by arguing that the value of their retail building is comparable to the value of abandoned (“dark”) buildings that are in different locations and subject to significant sale restrictions limiting the number of potential buyers and suppressing the value of those “comparable” properties. These property owners rely on law from other states to leverage tax reductions from Wisconsin local governments, including those in Sauk County, who often do not have sufficient resources to fight these property tax reduction claims.

Dark store tax reduction claims rely on court decisions from other jurisdictions because there is no current decision from any Wisconsin appellate court that addresses the validity of the “dark store” argument. Property tax reductions cause tax burden shifts. However, litigating these types of claims is costly and the costs may not be covered by insurance.

Fiscal Impact: [] None [] Budgeted Expenditure [X] Not Budgeted

NOW, THEREFORE, BE IT RESOLVED, by the Sauk County Board of Supervisors, met in regular session, that the Sauk County Corporation Counsel is authorized to work with Sauk County municipalities to find a Sauk County “dark store” claim case suitable for a favorable appellate court decision and sharing attorney’s fees and litigation costs on a 50/50 basis; and

BE IT FURTHER RESOLVED, that the Sauk County Corporation Counsel must submit a “dark store” claim case recommendation to the Sauk County Board of Supervisors and obtain specific financial support authorization for any expenses, including attorney fees and litigations costs, in such case prior to participation by Sauk County.

For consideration by the Sauk County Board of Supervisors on May 21, 2019.

Respectfully submitted,

SAUK COUNTY EXECUTIVE & LEGISLATIVE COMMITTEE

PETER VEDRO, Chair

WILLIAM HAMBRECHT

WALLY CZUPRYNKO

THOMAS KRIEGL

DAVID RIEK

SAUK COUNTY FINANCE COMMITTEE

JOHN DIETZ, Chair

THOMAS KRIEGL, Vice Chair

KRISTIN WHITE EAGLE

KEVIN LINS

DAVID RIEK

Fiscal Note: No immediate fiscal impact. Successful dark store claims cause lower tax revenues for Sauk County and other local government units.

MIS Note: No information systems impact

Legislation Sponsor Note (Kriegl)

In recent years, retail property owners, particularly big box retailers, have secured substantial property tax reductions with the claim that the value of their retail building is comparable to the value of abandoned (“dark”) buildings. These are known as “dark store” claims and are based on law from other states. They succeed in Wisconsin, in part, because Wisconsin local governments, including those in Sauk County, do not have sufficient resources to fight these property tax reductions in court.

The Wisconsin League of Municipalities reports that in 1970/71 the property tax burden in Wisconsin was split nearly 50/50 between businesses and residences. In 2017/18 the property tax burden in Wisconsin shifted to about 32.8% for businesses and 67.2% for residences. Other studies indicate that big box retailer expenses for taxes and licenses amount to less than one-half percent of their income.

At least eight (8) Sauk County properties have obtained some type of dark store benefit not including the current attempt by Wal-Mart in Lake Delton nor the out of court settlement between the City of Baraboo, Wal-Mart, and Menards. The cost to Sauk County government for refunds and lost tax revenue is about \$1,139,335.78 to date. The cost to municipalities, school districts and other taxing jurisdictions is about \$3,920,000.00. In sum, these dark store tax reductions have shifted more than \$5 million of property taxes from eight dark store properties to all other Sauk County property taxpayers.

The future costs to Sauk County are substantial. The estimated annual future lost tax revenue to just Sauk County government from the eight dark store properties is approximately \$100,000 or \$12,500 per property. Assuming a flat levy rate, the projected revenue loss is just over \$1 million over the next ten years.

Only a small percentage of Sauk County big box stores have made dark store claims to date. However, Wal-Mart recently filed a dark store challenge against the Village of Lake Delton and there is no current legal restriction on these claims in Wisconsin to prevent even more tax shifting in the future. Moreover, the “dark store” argument is not limited to large retailers and a modified variation could be used by smaller and smaller retail stores to shift more and more tax burden to homeowners. Therefore, it is more likely than not that this problem will worsen without action.

Sauk County homeowners, small businesses, and Sauk County government are harmed by every successful dark store challenge anywhere in the county by reducing public funds for education, health care, roads and other government services. This resolution seeks to utilize the collective resources of the county and all of its residents to address that harm.

The actual legal costs to challenge or defend a dark store reduction cannot be projected with any specificity. However, they will certainly be less the ten-year \$1 million cost of the current reductions. If the legal costs are shared between Sauk County and a municipality 50/50 as this resolution proposes, the end costs to Sauk County are very likely to be less than just one year of Sauk County’s lost tax revenue, \$100,000, from the existing dark store properties. Importantly, the legal costs will be more projectable when a specific case is proposed for participation and Sauk County and the participating municipality will be able to use that information to make a final decision.

Notably, mere adoption of this resolution may also have a positive fiscal impact for Sauk County taxpayers and governments. Big box stores considering a dark store reduction may forego such action if this resolution is approved given the resource commitment from Sauk County it includes. A Sauk County commitment to use its resources to fight dark store property tax reductions makes the fight a little more even. It is reasonable to think that alone may discourage new dark store tax reduction proposals in Sauk County.

Sauk County previously, and correctly, used reserve funds to pay for dark store refunds. Similarly, Sauk County should use reserve funds to pay for resistance to dark store threats.