**RESOLUTION NO. \_\_\_\_\_ - 2019**

**AUTHORIZING “DARK STORE” LITIGATION SUPPORT**

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

***Background:*** In recent years, some property owners, particularly big box retailers, have sought substantial 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 large retailers rely on law from other states and their wealth 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.

**It is estimated that 8 dark store challenges to property tax assessments has already cost Sauk County taxpayers about $5 million for education, health care, roads and other government services. Future lost revenues to Sauk County government alone are estimated at $100,000 annually. These losses and tax burden shifts will be permanent unless Wisconsin courts and/or the Wisconsin legislature act to prohibit the “dark store” property tax reduction/shift argument.**

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.

The Wisconsin state legislature came close to adopting bipartisan legislation during the last session. But it was stalled in committee by the majority party leadership. While new legislation is being discussed in the current legislative session, there is no guarantee that it will not suffer the same fate as its predecessor in the last session.

**Dark store proposals 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. However, it will take significant resources to fight a legal challenge against the well-funded big box retailers.**

**Sauk County homeowners, small businesses, and Sauk County government are harmed by every successful dark store challenge anywhere in the county.** This resolution seeks to utilize the collective resources of the county and all of its residents to address that harm.

**NOW, THEREFORE, BE IT RESOLVED**, by the Sauk County Board of Supervisors, met in regular session, that subject to a more specific cost analysis in a specific case, Sauk County, in cooperation with a county municipality, should commit its financial resources and share the legal costs on a 50/50 basis to defend against and litigate a “dark store” claim in Sauk County that yields a published Wisconsin appellate court decision on that issue and authorizes the Sauk County Corporation Counsel to communicate this support to all Sauk County local government units with property tax assessment responsibility and make a recommendation for such support and litigation participation to the County Board in an appropriate case.

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

Respectfully submitted,

**EXECUTIVE & LEGISLATIVE COMMITTEE**

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peter vedro, Chair WILLIAM HAMBRECHT

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DAVID RIEK

**Fiscal Note:** Potentially significant fiscal impact.

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.

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.

**MIS Note:** No information systems impact