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Another Dark Store Attempt Fails

Once again, the traveling troupe of Dark Store tax attorneys and appraisers-for-hire has failed to persuade a local judge. On April 4, 2019, Portage County Circuit Judge Thomas Flugaur dismissed a national chain store's attempt to have its property tax bill cut in half. Lowe's Home Centers, LLC claimed that the Village of Plover was charging them property taxes based on twice the actual value of their property. Judge Flugaur wouldn't bite. The Judge's decision is [here](#).

Although the village "won" this case, it wasn't free nor was it easy. It cost the village more than \$80,000 to hire the expert attorneys and appraisal specialists that were needed to win a four-day trial. As with other Wisconsin Dark Store challenges, the cost of defending the assessment plays a practical and significant role in deciding whether or not to negotiate a settlement. Many times the municipality chooses to settle, rather than incur the cost and risk of a trial. Other Dark Store appeals have cost even more than Plover's to defend against.

The Plover case played out similarly to other Dark Store road show performances. The property owner offered up a smorgasbord of vacant, boarded-up properties as "comparables," including one former department store that had been vacant for four years. The Village countered that the property in question was in the middle of a popular shopping district that had a very low vacancy rate; by no means was it comparable to a dark property. In the end, the judge decreed that none of the properties offered by the paid experts were truly comparable. Under Wisconsin law, that finding next leads to an assessment of the cost of the property; what it would cost to build a comparable store.

Under the cost approach, it seemed that the two sides were in agreement. The Village's cost-approach figure was \$8.5 million; the property owner's expert came up with \$8.9 million. (Both figures exceed the building's actual assessment value.) But then, the property owner's hired expert took his estimate one step further, claiming that the property had to be devalued by 50% due to "functional depreciation" of the property. The judge tossed that discount out, pointing out that the \$8.5 million and \$8.9 million figures both already accounted for depreciation. (The Lowe's building has been standing for 10 years.)

In his decision, Judge Flugaur repeatedly quoted from the Wisconsin Property Assessment Manual, which states, among other things, that "The assessor should avoid using sales of improved properties that are vacant ('dark') or distressed as comparable sales unless the subject property is similarly dark or distressed." So, once again, despite a local tax assessment that was done "by the book," treating the property owner fairly, a major retailer sued the village, forcing it to incur tens of thousands of dollars



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to defend other taxpayers from a tax shift. On behalf of taxpayers in Plover and dozens of other cities, villages and towns that are under similar assault, we respectfully but urgently ask that the Wisconsin Legislature take up and pass the Dark Store legislation to make it clear once and for all that the Dark Store Road Show is over.

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