



WISCONSIN LEGISLATIVE COUNCIL STUDY COMMITTEE MEMORANDUM

TO: MEMBERS OF THE STUDY COMMITTEE ON PROPERTY TAX ASSESSMENT PRACTICES

FROM: Scott Grosz, Principal Attorney, and Anna Henning, Senior Staff Attorney

RE: Recent Legislation Relating to Property Tax Assessment

DATE: August 30, 2018

This memorandum responds to committee members' requests for an additional, plain language explanation regarding two sets of companion bills introduced during the 2017 Legislative Session. The two sets of companion bills are: (1) 2017 Assembly Bill 386 and 2017 Senate Bill 292, relating to property tax assessments based on comparable sales and market segments ("comparable sales bill"); and (2) 2017 Assembly Bill 387 and 2017 Senate Bill 291, relating to property tax assessments regarding leased property ("lease bill"). The memorandum summarizes key provisions of both bills, together with relevant background information. Copies of both bills are attached to the memorandum.

COMPARABLE SALES BILL

Under **current law**, Wisconsin tax assessors must follow a three-step approach to tax assessment. The steps require assessments to be made based on the following types of data, applied in a first-to-last preference order: (1) recent sales of the subject property; (2) recent sales of comparable properties; and (3) other factors. [s. 70.32, Stats.; *State ex rel. Markarian v. City of Cudahy*, 45 Wis. 2d 683 (1970).]

The **comparable sales bill** relates to the second step in that approach. A key provision of the bill prohibits a "dark property" from being used as a comparable property.¹ For that purpose, the bill defines "dark property" to mean property that is vacant or unoccupied **beyond the normal period for property in the same real estate market segment**.

¹ The bill likewise prohibits assessors from using certain deed-restricted properties as comparable properties.

The bill also requires an assessor to use generally accepted appraisal methods and consider certain factors when assessing property based on recent, comparable sales. Specifically, it requires an assessor to consider: (1) sales or rentals of properties exhibiting the same or a similar highest and best use; and (2) sales or rentals of properties, located locally, regionally, or nationally, that are similar to the subject property with respect to specified characteristics.

As amended by the Senate Committee on Revenue, Financial Institutions, and Rural Issues, the bill defines “highest and best use” to mean “specific use of the property as of the current assessment date or a higher use to which the property can be expected to be put in before the next assessment date, if the use is legally permissible, physically possible, not highly speculative, and financially feasible and provides the highest net return.”

LEASE BILL

Under **current law**, if a Wisconsin assessor concludes that recent sales data is insufficient to allow assessment under the first or second steps of the *Markarian* approach, described above, then the assessor turns to step three. One recognized method in step three is the “income approach,” in which an assessor estimates a property’s value based on its income-generating potential. For leased property, a lease is one measure of income-generating potential.²

In 2008, the Wisconsin Supreme Court held that leased property must be assessed in terms of market rent, rather than actual rent.³ [*Walgreen Co. v. City of Madison*, 2008 WI 80.] That opinion is sometimes characterized as having made Wisconsin a “market rent” state rather than a “contract rent” state.

The **lease bill** could be characterized as reversing the decision in *Walgreen*. In key part, the bill requires an assessor, when assessing leased real property, to consider the **actual rent** pertaining to a property and affecting its value, including sale-leaseback provisions. However, that requirement only applies if all such lease provisions and rent are the result of an arm’s-length transaction involving unrelated persons.

The bill also specifies that real property must be valued by an assessor at its highest and best use. As amended by the Senate Committee on Revenue, Financial Institutions, and Rural Issues, the bill defines “highest and best use” similarly to the definition in the comparable sales bill.

AMENDMENTS TO THE BILLS

As described above, several amendments to the comparable sales bill and the lease bill were recommended for adoption by the Senate Committee on Revenue, Financial Institutions,

² A lease may also be a relevant consideration in step two of the *Markarian* approach. The Wisconsin Property Assessment Manual (WPAM) states: “when using the sales comparison approach with leased properties, it is important to know the income and expenses of each property. A property that appears to be comparable may in fact not be if the income and/or expenses are not at market levels due to differences in the bundle of rights being transferred.” [WPAM at 13-13.]

³ An exception applies if the actual rent is lower than market rent.

and Rural Issues. In addition to these amendments, several amendments to each Assembly bill were offered by the bills' author over the course of the 2017 Legislative Session.

Generally, the amendments to the Senate and Assembly versions of the bills appear intended to reconcile and update various definitions, such as the definition of "highest and best use," and to modify the treatment of deed-restricted property, the treatment of conditional uses, and the consideration of sale-leaseback transactions. Note, however, that several distinctions exist between the most recent amendments to the Senate and Assembly bills, including some distinctions likely to have substantive legal effect. For the full text of each amendment, see the Legislature's bill history page for the comparable sales bills: [2017 Assembly Bill 386](#) and [2017 Senate Bill 292](#), and for the lease bills: [2017 Assembly Bill 387](#) and [2017 Senate Bill 291](#).

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Attachments