

April 19, 2018

Ms. Jacqueline Beaudry  
City Clerk  
Ann Arbor  
301 E. Huron St.  
Ann Arbor, MI 48107-8647

Dear Jacqueline,

This letter is to ask that your community support the efforts of the City of Escanaba regarding the fight to preserve the correct assessment of large big box stores—a fight that will have a significant impact on local governments state wide. For those of you who are on the Michigan Municipal Executives listserv, you may have seen the recent request by the city manager. The League supports his request.

The “dark store” or “obsolescence” property valuation theory cast a cloud over the ability of local governments to defend their assessments of a wide variety of commercial and large industrial facilities, especially corporate headquarters and unique properties found in many communities. The City of Escanaba won a significant victory in the Michigan Supreme Court for equitable property assessments in the “dark store” litigation of *Menard Inc. v City of Escanaba*. During the several stages of the litigation, the League’s Legal Defense Fund and the League financially assisted Escanaba, as did the Michigan Townships Association, the Michigan Association of Counties, the Michigan Association of School Boards, the Michigan School Business Officials, the Michigan Assessors Association, and the Government Law Section of the State Bar of Michigan. The case has been remanded back to the Michigan Tax Tribunal (MTT) for a determination of actual valuation. Local governments throughout Michigan have a huge stake in the Tribunal’s decision.

The remand hearing before the Tribunal could undermine what was won in the Court of Appeals and subsequently upheld by the Supreme Court. Big box retailers and appraisers are preparing studies to either support or undermine the *Menard* decision. Both the Tax Tribunal and Menard have stated that this case will be precedent setting and will determine how big box stores should be assessed.

The City of Escanaba, with a population of 12,616 and a taxable value of \$299,460,000 has expended close to \$190,000 on the Menard appeal; other Delta County taxing entities have added approximately \$40,000 to the city’s defense. We understand, however, that their contributions represent all they can provide. Because city leaders recognize the state-wide impact of their case, exceptionally high costs have been incurred by the city to achieve an outcome from which many more communities will also benefit.

Approximately 80% of MML member communities are also members of our Legal Defense Fund (LDF). We greatly appreciate your contribution and if this were a normal LDF case, there would be sufficient funds to make sure the city was getting the assistance it needs. This is not, however, a normal case, due

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to its cost and potential impact. The LDF and the League itself have already expended and committed approximately \$40,000 on “big box store” litigation, an amount that is much greater when counting the assistance of the other state associations mentioned above. We and the other state associations will do more, but we don’t have sufficient financial resources to give the city all the financial help it needs.

Because we are not likely to see a legislative fix pass before the Tribunal hears this case, it is imperative that the City prevails in this case, establishing a standard for valuation that is clear and fair. Many cities and townships stepped up to support one of several *amicus* briefs filed when this case was before the Supreme Court, indicating a strong statewide interest to play a part in a successful outcome. Additionally, the Michigan Department of Treasury recognizes the importance of this case and is considering providing a level of financial support for technical appraisal experts. However, more will be needed, and it is not fair that Escanaba fights this battle alone when many more communities will share in a fair and positive outcome.

For those communities that don’t currently have, and don’t expect to have, the sort of big box store at issue in this case—please note the following quote from a recent article by S&P Global Market Intelligence entitled “‘Dark Store’ Tactic By Big-Box Retailers Could Pressure U.S. Municipal Budgets And Credit Quality”:

We have also observed the use of dark store arguments by pharmacies, auto parts stores, and, in a few instances, fast food chains, and believe there’s some potential for these arguments to be employed more widely than they have been. The basic argument regarding functional obsolescence seems to apply equally well to other types of properties, giving rise to the potential for a domino effect of property tax appeals across the commercial and industrial portions of the tax base, which, were it to occur, could have a much more profound effect on some governments’ ability to levy ad valorem property taxes on a significant cross-section of taxpayers.

Thus, the Escanaba case may have a significant impact on all Michigan local governments.

If your community can offer financial assistance at this critical juncture, this is your opportunity. Checks can be made payable to the City of Escanaba, P.O. Box 948, Escanaba, MI 49829-0948. Please enclose a notation that the check is intended for the *Menards* Tax Tribunal appeal as the city has established a segregated account for this purpose. If you prefer, checks may be sent to the Municipal League’s Ann Arbor address, payable to “MML LDF – Escanaba” and we will forward the funds gathered to Escanaba. For more information regarding a community’s authority to make a contribution, please have your municipal attorney review *Hess v. Cannon and Grattan Townships*, (265 Mich. App. 582, 696 N.W.2d 742) regarding pertinent municipal authority and the court’s deference to legislative determinations of public purpose.

Thanks for your consideration. If you have any questions, please do not hesitate to contact Bill Mathewson at 734-669-6305 or [wmathewson@mml.org](mailto:wmathewson@mml.org).

Sincerely,



Daniel P. Gilmartin  
Executive Director/CEO

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