



## Bringing Light to Michigan's "Dark Stores"

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*Foster Swift Municipal Law News*

May 31, 2016

Over the last year, a number of Michigan and national newspapers have reported on the "Dark Store Theory" of valuation—a property tax minimization strategy national retailers have used to claim that their "big box" stores should be valued differently from other commercial properties. According to national retailers, their "big box" stores should be valued by using sales of vacant, or "dark," big box stores.

The result is that traditional appraisal methods routinely used to value stores, factories or residences may not be used in property tax cases. The normal methods of property tax assessment are also excluded. Under the Dark Store Theory, big box property is assumed to be nearly 90 percent obsolete, once built, so a cost approach is assumed to be unreliable.

One reason most of the big box property is vacant is a result of national retailers placing anti-competitive deed restrictions on the property after the retailer leaves the property. The property typically cannot be sold for other commercial uses and must sit vacant until a zoning variance permits an industrial or non-commercial use. The result: compared to all other states, Michigan now values its Targets, Walmarts, Lowes, Home Depots, Sam's Clubs, Menards and Meijers, on average, 200 percent to 300 percent lower than any state in the United States.

The Michigan Association of Counties, the Michigan Townships Association, the Michigan Municipal League, local units and statewide school associations have been working on legislation to address these issues. Sen. Casperson, R-Escanaba, introduced SB 524 to address the use of vacant comparable sales and the impact of restrictive deeds in the General Property Tax Act. Rep. Kivela, D-Marquette, introduced HB 4909 to address anti-competitive deed restrictions and provide local units better options to address the blight caused by these deeds. Rep. Dianda, D-Calumet, introduced HB 4681 to address the tax loss caused from using vacant comparable sales to value newly-built property. Then, in the fall of 2015, the House Tax Policy Committee began holding hearings on the Dark Store Theory. This past April, the

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Vice-Chair of the House Tax Policy Committee, Rep. Maturen, R-Vicksburg, introduced HB 5578 to require the Michigan Tax Tribunal to provide better fact-finding. Rep. Maturen's bill passed the House Tax Policy Committee and was submitted to the House Speaker Cotter, R-Mt. Pleasant, to call a vote by the House. Foster Swift has actively assisted Michigan legislators in trying to understand these issues.

Rep. Maturen's bill seeks a modest fix by amending the Tax Tribunal Act to incorporate standard appraisal principles, based entirely on "The Appraisal of Real Estate," a standard appraisal treatise. HB 5578 is directed to Tribunal Members and their findings and conclusions, by requiring the Tribunal Members to apply generally accepted appraisal standards when rendering written decisions. The bill is not directed to litigants. It does not require any specific method of value but does require that the Tribunal Member consider all appraisal methods.

The bill addresses in detail vacancy and restrictive deeds as those last two characteristics might apply to the selection of comparable sales but does not prohibit either vacant comparable sales or restrictive deeds if they reflect typical exposure to and sales in the market under the same economic conditions as the subject property.

HB 5578 does not address procedure, budget, selection of members or other structural aspects of the Tribunal. It does not seek to advantage or disadvantage any litigant group. It does not address the complexities in properly defending a big box appeal. However, the bill provides meaningful planning options to defend these appeals. It is an important beginning.

Do you have questions about Michigan's "dark stores"? Contact Attorney Jack Van Coevering at [jvancoevering@fosterswift.com](mailto:jvancoevering@fosterswift.com) or 616.726.2221.