



Court of Appeals Issues Critical Decision on "Big Box" Store Property Tax Appeals

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Foster Swift Municipal Law News

May 27, 2016

On May 26, 2016, the Court of Appeals issued a published decision in *Menards Inc v City of Escanaba*, ___ Mich App ___; COA Dk No. 325718 (May 26, 2016), reversing the Tax Tribunal's decision. The Court of Appeals held that when a market contains distressed sales of property, a sales comparison approach would undervalue the property. In that instance the cost less depreciation approach must be considered. The Court of Appeals rejected the claim that a property built and operating as a "big box" store can be valued by using sales of former big box properties containing anti-competitive deed restrictions and converted to a different use.

This is a binding published decision. It is the first published "Big Box" decision since the Court of Appeals' earlier decisions in *Meijer v City of Midland*, 240 Mich App 1 (2000) and in *Thrifty Royal Oak v City of Royal Oak*, 130 Mich App 207 (1984). In the two earlier decisions, the Tribunal and the Court of Appeals reject sales of former big box properties, finding that the sales were distressed or speculative. This decision, however, provides a far more detailed discussion of the market for big box stores and concludes, "[T]here is essentially no market for big-box stores" because they are not sold for the same highest and best use of the subject property. Strict application of the sales comparison approach in a distorted market undervalues property, and so the cost-less-depreciation method is more appropriate to use.

The Court of Appeals remanded the case to the Tribunal to consider additional evidence regarding the sales comparison approach and the cost-less-depreciation approach finding that the record from the Tribunal, by itself, was inadequate to provide for a determination of value.

The Court of Appeals' published decision comes as the House of Representatives is considering HB 5578, a bill introduced by Representative David Maturen. The Court of Appeals' decision validates every aspect of HB 5578. HB 5578 requires the Tribunal to specifically

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reach those findings contained in the Court of Appeals' decision. The Court's decision will have significant impact on appeals of commercial property but will also impact other types of property tax appeals that use a variation of the underlying theory used in the Tribunal's decision in *Menard's, Inc.*
