

Mich. Court Says Big Box Store Can't Dodge City Tax Finding

Law360, New York (May 27, 2016, 8:42 PM ET) -- The Michigan Court of Appeals on Thursday handed a victory to the city of Escanaba by overturning a state tax tribunal's decision to let hardware store chain Menards escape an \$8 million property tax assessment on a large store location, after finding the tribunal erred in its analysis.

In a published opinion, the court said the Michigan Tax Tribunal's rejection of Escanaba's tax assessment for the years 2012 through 2014 on a 166,196-square-foot Menards location built on more than 18 acres of land was "an error of law" that was "not supported by competent, material and substantial evidence."

While the city placed a true cash value on the property of \$7.8 million for 2012, \$8 million for 2013 and \$8.2 million for 2014, [Menard Inc.](#) disputed the valuation and argued to the tribunal that the true cash value of the property for each year was only \$3.3 million and the tribunal ultimately agreed.

The retailer supported its claims with an assessment by commercial real estate developer Joseph Torzewski, who used a sales-comparison approach to valuation and said in his report that the highest and best use of the property was as a continued retail location.

However, the city assessor used a cost-less-depreciation approach, which accounts for the price paid for a property and any depreciation in value, because most of the sales Torzewski had used for his comparison analysis had deed or land use restrictions that were not taken into consideration. The Escanaba property at issue has no such restrictions, meaning it can be sold for any use outright.

While the tribunal "gave no weight" to the cost-less-depreciation approach and found Torzewski's testimony that the land restrictions did not affect the value of the comparable sales he analyzed, the appeals court found the record was "insufficient to support his assertion."

"His testimony is that he consulted the brokers, sellers, and buyers of the comparables. Thus, that testimony is only sufficient to establish that to the parties involved in the actual transaction, the deed restrictions did not affect the sales price they were willing to pay," the appeals court said Thursday. "In other words, the market for sale was limited to those purchasers who were willing to accept the restrictions and so did not reflect the full value of the unrestricted fee simple."

The court went on to note that the deed-restricted comparables could never be used again for their highest and best use — a free standing retail location — given the "anti-competitive nature" of the restrictions, which generally prohibit a former big box location from becoming another retail space.

"On this record, there is no evidence to account for the impact of the deed-restricted properties being sold for purposes other than the HBU of the subject property," the court said. "It is plain that no adjustments were taken for this major difference in the subject property and the restricted comparables."

As the tribunal did not value the Escanaba property based on its highest and best use as an unrestricted, owner-occupied retail location on more than 18 acres of land, but instead as a former owner occupied building that could no longer be used as a retail space, the court said this was a clear error of law and reversed the tribunal's decision in favor of Menards.

Finding that simply remanding the case to the tribunal to be inadequate “in light of the deficiencies identified in this opinion,” the court also ordered the tribunal to accept additional evidence on the market effect of deed restrictions and the cost-less-depreciation approach to valuation.

With the additional information, the tribunal is to make an “independent determination” of the property's cash value “using correct legal principles,” the court said Thursday.

Representatives for Menards and Escanaba could not be reached late Friday for comment.

The retailer is represented by Carl Rashid Jr. of [Dykema Gossett PLLC](#).

The city is represented by Jack L. Van Coevering of [Foster Swift Collins & Smith PC](#).

The case is Menard Inc. v. City of Escanaba, number 325718, before the State of Michigan Court of Appeals.