



# CITY COUNCIL MEETING AGENDA

1<sup>st</sup> and 3<sup>rd</sup> Thursday of the Month

Marc D. Tall, Mayor  
Ronald J. Beauchamp, Mayor Pro-Tem  
Patricia A. Baribeau, Council Member  
Ralph B. Blasier, Council Member  
Michael R. Sattem, Council Member

James V. O'Toole, City Manager  
Robert S. Richards, CMC, City Clerk  
Ralph B.K. Peterson, City Attorney

City Council Chambers located at: City Hall - 410 Ludington Street - Room C101 - Escanaba, MI 49829

The Council has adopted a policy to use a Consent Agenda, when appropriate. All items listed with an asterisk (\*) are considered routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member or citizen so requests, in which event the item will be removed from the General Order of Business and considered in its normal sequence on the Agenda.

## Regular Meeting

Thursday, August 20, 2015, at 7:00 p.m.

CALL TO ORDER

ROLL CALL

INVOCATION/PLEDGE OF ALLEGIANCE - City Clerk Robert S. Richards

APPROVAL/CORRECTION(S) TO MINUTES - Regular Meeting - August 6, 2015

Joint Council/Electrical Meeting - August 12, 2015

Special Council Meeting - August 13, 2015

APPROVAL/ADJUSTMENTS TO THE AGENDA

CONFLICT OF INTEREST DECLARATION

BRIEF PUBLIC COMMENT

PUBLIC HEARINGS

NEW BUSINESS

**1. Approval - Professional Services Agreement - Michigan Tax Tribunal Cases - Legal Services.**

**Explanation:** Administration is seeking Council authorization to retain Mr. Jack VanCoevering as legal counsel for the Michigan Tax Tribunal cases that are currently filed against the City of Escanaba by AutoZone, 405 South Lincoln Road, the Escanaba Country Club, 1800 11th Avenue South and O'Reilly Automotive, 521 North Lincoln Road in an amount not to exceed \$40,000.

**2. Approval - Professional Services Agreement - Michigan Tax Tribunal Cases - Appraisal Services.**

**Explanation:** Administration is seeking Council authorization to retain Mr. James T. Hartman for appraisal services for the Michigan Tax Tribunal cases that are currently filed against the City of Escanaba by AutoZone, 405 South Lincoln Road, the Escanaba Country Club, 1800 11th Avenue South and O'Reilly Automotive, 521 North Lincoln Road in an amount not to exceed \$18,500.

APPOINTMENTS

BOARD, COMMISSION, AND COMMITTEE REPORTS

GENERAL PUBLIC COMMENT

ANNOUNCEMENTS

ADJOURNMENT

Respectfully Submitted

James V. O'Toole  
City Manager

**OFFICIAL PROCEEDINGS  
CITY COUNCIL  
CITY OF ESCANABA, MICHIGAN  
Regular Council Meeting  
Thursday, August 6, 2015**

The meeting was called to order by the Honorable Mayor Marc D. Tall at 7:00 p.m. in the Council Chambers of City Hall located at 410 Ludington Street.

Present: Mayor Marc D. Tall, Council Members, Patricia A. Baribeau, Ronald J. Beauchamp, Ralph B. Blasier, and Michael R. Sattem.

Absent: None

Also Present: City Manager James V. O'Toole, City Department Heads, media, and members of the public.

Pastor Chris Johnson of Christ the King Lutheran Church, gave the invocation and led Council in the Pledge of Allegiance.

Sattem moved, Blasier seconded, **CARRIED UNANIMOUSLY**, to approve Regular Meeting Minutes from July 16, 2015, as submitted.

**ADJUSTMENTS TO THE AGENDA**

Blasier moved, Beauchamp seconded, **CARRIED UNANIMOUSLY**, to approve the City Council Agenda as submitted.

**CONFLICT OF INTEREST DECLARATION** – None

**BRIEF PUBLIC COMMENT**

City resident Roberta Stacey expressed concerns on the PK Housing Project as proposed. Mrs. Stacey suggested that the area needed a mix of co-inhabitants, and suggested a mixed income rather than a concentration of affordable housing. Mrs. Stacey suggested project developers did not live in the community and area funds would be leaving the community.

City resident Dawn Duncan, questioned the projects income level guidelines. She stated many area seniors only lived on social security.

Downtown Development Director Ed Legault, stated his office, and the Michigan Economic Development Corporation (MEDC), had been working on the House of Ludington Project with the owners Ed and Suzell Eisenberger. They had been looking for different grants to fund repairs for restoring City historical buildings. He advised, it was difficult to find grants with private ownership which required a 50 percent match. Mr. Legault stated his office were doing everything they could to come up with a solution. Mr. Legault concluded that Council needed to support these type of projects.

City resident Charles Olsen spoke in support of the Downtown Development Authority, and Historic District Commission, but suggested the proposed development for the House of Ludington project may not be the best use for the building. He suggested the House of Ludington would be off limits once sold as senior housing, and suggested the project had proceeded to fast without public input. Mr. Olsen wanted to reuse the building as its current use, and suggested this proposed project may not be the best fit for the property.

Monique Ciofu spoke on the House of Ludington Project and suggested the building stay with its current use, and give the project time for the public to be able to speak and take part in the discussion.

**PUBLIC HEARINGS** – None

**NEW BUSINESS**

**Approval – Heavy Equipment - Backhoe w/Attachments – Department of Public Works.**

Administration sought Council approval to purchase a John Deere 410L backhoe with attachments in the amount of \$114,651.00 from Nortrax, Inc. of Escanaba, MI. This purchase was included in the current fiscal year budget.

Public Works Director Bill Farrell provided a brief synopsis of the purchase.

**NB-1** Blasier moved, Sattem seconded, to approve to purchase a John Deere 410L backhoe with attachments in the amount of \$114,651.00 from Nortrax, Inc. of Escanaba, MI.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, Sattem, Beauchamp, Baribeau, Tall  
Nays: None

**MOTION CARRIED.**

**Approval – Vactor Sewer Truck Rehabilitation/Restoration and Rebuild – Waste Water Department.**

Administration sought Council approval to retain Doheny Companies of Northville, MI to rehabilitate and restore the City of Escanaba's 2007 Vactor sewer truck in an amount not to exceed \$140,000. This item was included in the current fiscal year budget.

Water/Wastewater Superintendent Jeff Lampi provided information regarding the truck restoration project. Administration stated restoration of the unit was desired over

any newer vehicle because of the vehicle engine. The 2007 engine in the equipment was before the current emission standards. Newer vehicles, with similar engines and with the current emission standards, do not last as long.

Council Member Beauchamp suggested holding off on the paint job and use extra funds to do further restoration of the unit instead. Administration advised, the extra funds budgeted were for rental of a unit if the truck was needed during the truck restoration. Administration further advised the City had a mutual aide agreement with the City of Gladstone and would rent their similar vehicle if the need aroused.

After further discussion regarding restoration, and rental of a similar truck from the City of Gladstone, the following motions were made:

**NB-2a** Blasier moved, Beauchamp seconded, to approve to retain Doheny Companies of Northville, MI to rehabilitate and restore the City of Escanaba's 2007 Vactor sewer truck in an amount not to exceed \$115,000.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, Beauchamp, Sattem, Baribeau, Tall  
Nays: None

**MOTION CARRIED.**

**NB-2b** Beauchamp moved, Blasier seconded, to authorize an amount not to exceed \$25,000 for rental of a Vactor sewer truck if needed during the restoration of the Water/Wasterwater Department Vactor sewer truck.

Upon a call of the roll, the vote was as follows:

Ayes: Beauchamp, Blasier, Baribeau, Sattem, Tall  
Nays: None

**MOTION CARRIED.**

**Approval – City of Escanaba Street System Resolution – Act 51 Street System Map - Department of Public Works.**

Administration sought Council approval of a resolution to amend the City of Escanaba Street System Map for the purpose of obtaining funds under Act 51, P.A. 1951 as amended. Administration recommended 26th Avenue South from South 23rd Street to South Lincoln Road (M35) be added to the Act 51 street system as it was missing and did not have a previously submitted resolution from Council. The total length of street added was 110.88 feet.

**NB-3** "Upon motion made by Council Member Blasier, seconded by Council Member Sattem, the following resolution was adopted:

**RESOLUTION  
FOR  
STREET CERTIFICATION**

Whereas the City of Escanaba did on June of 1994 acquire title to 26th Avenue South from South 23rd Street to South Lincoln Road; and

Whereas it is necessary to furnish certain Information to the State of Michigan to place this street within the City of Escanaba Street System for the purpose of obtaining funds under Act 51, P.A. 1951 as amended.

**NOW THEREFORE IT IS RESOLVED:**

1. That the centerline of said 26th Avenue South is described as:  
PART OF NW1/4 OF SW ¼ OF  
SECTION 6 T.38N.,R.23W.  
&  
PART OF NE1/4 OF SE1/4 OF  
SECTION 1 T.38N.,R.24W.  
CITY OF ESCANABA  
DELTA COUNTY, MICHIGAN

FROM THE SW CORNER OF BLOCK 5 OF LAKE SHORE DRIVE ADDITION NO.1 TO CITY OF ESCANABA AS RECORDED AT LIBER "B" OF PLATS ON PAGE 38 OF DELTA COUNTY RECORDS, THENCE MEASURE S.00°09'17"E. PERPENDICULAR TO THE SOUTH LINE OF SAID BLOCK 5 A DISTANCE OF 22.77 FEET, THENCE MEASURE S.89°50'43"W. PARALLEL WITH SAID SOUTH LINE A DISTANCE OF 44.69 FEET TO THE CENTERLINE INTERSECTION OF 26TH AVENUE SOUTH AND 23RD STREET AND THE POINT OF BEGINNING OF THE CENTERLINE HEREIN DESCRIBED, THENCE N.69°05'29"W. A DISTANCE OF 89.43 FEET TO THE SOUTHEASTERLY CURB LINE OF STATE HIGHWAY M-35 AND THE POINT OF ENDING OF SAID CENTERLINE.

2. That said street is located within a City of Escanaba right-of-way and is under control of the City of Escanaba.
3. That said street is a public street and is for public street purposes.
4. That said street is accepted into the City of Escanaba Local Street System and was open to the Public on June 1994.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, Sattem, Beauchamp, Baribeau, Tall  
Nays: None

**RESOLUTION DECLARED ADOPTED."**

**Approval – Professional Services – Water Department Capital Improvement Plan – Water Department.**

Administration sought Council approval to retain C2AE of Escanaba, Michigan to complete a state mandated Water System Capital Improvement Plan (CIP) as part of the existing General Plan. The CIP would inventory items within the Water Plant and the entire water distribution system. A disinfection by-product evaluation would also be concluded at the same time, in an amount not to exceed \$10,000. This item was included in the current fiscal year budget.

Water/Wastewater Superintendent Lampi reviewed the Water System Capital Improvement Plan required by the State.

**NB-4** Beauchamp moved, Baribeau seconded, to approve to retain C2AE of Escanaba, Michigan to complete a state mandated Water System Capital Improvement Plan as part of the existing General Plan and further to approve a disinfection by-product evaluation at the same time, in an amount not to exceed \$10,000.

Upon a call of the roll, the vote was as follows:

Ayes: Beauchamp, Baribeau, Blasier, Sattem, Tall

Nays: None

**MOTION CARRIED.**

**Approval – Use of Public Space/Street Closure - 323 1st Avenue North – Mary St. Pierre Scholarship Fund Raiser.**

Rhonda Danforth requested authorization to close off North 9th Street from 1st Avenue North to the alley on August 29, 2015 from 3:00 p.m. to 11:30 p.m. so they can use the space for their “Mary St. Pierre Scholarship Fund Raiser” event. Administration recommended approval of the request provided: 1) The City of Escanaba was named as an additional insured on their insurance policy, 2) All rules and regulations of the Michigan Liquor Control Commission and the Department of Public Safety are followed; and 3) Event sponsors provide all labor and material to clean-up at the conclusion of the event.

**NB-5** Sattem moved, Baribeau seconded, **CARRIED UNANIMOUSLY**, to approve a request from Rhonda Danforth to close off North 9th Street from 1st Avenue North to the alley on August 29, 2015 from 3:00 p.m. to 11:30 p.m. so they can use the space for their “Mary St. Pierre Scholarship Fund Raiser” event, provided: 1) The City of Escanaba was named as an additional insured on their insurance policy, 2) All rules and regulations of the Michigan Liquor Control Commission and the Department of Public Safety are followed; and 3) Event sponsors provide all labor and material to clean-up at the conclusion of the event.

**Update – Sale of the Power Plant – City Manager’s Office.**

Administration updated the Council and public on the latest developments related to the Escanaba generating facility. Manager O’Toole stated he was talking to Sterling Energy and they advised they were in the middle of a Corporate restructuring, and the Escanaba project was put on hold.

**Approval – Resolution of Support – Excel Realty Group – Senior Housing Development Project – 223 Ludington Street.**

Excel Realty Group sought Council approval of a resolution which supported the installation of 34 one and two bedroom senior housing apartments in the building located at 223 Ludington Street, commonly referred to as the “House of Ludington”. A resolution was needed as part of their application for funding to the various state agencies.

Manager O’Toole provided the following information:

The City of Escanaba was approached by a developer with a concept of redeveloping 223 Ludington Street into 34 one and two bedroom senior housing apartments.

Under the concept of the proposed development, the developer (Excel Realty Group, Beachwood, OH) proposed to construct 34 senior 1 and 2 bedroom units at 223 Ludington Street. The project would be a historic adaptive reuse project which was intended to reuse the four-story building, which contains approximately 38,000 square feet of building space. The project, if approved for funding, would be redeveloped in conformance with the Michigan State Historic Preservation guidelines and the U.S. National Park Service guidelines for historic places.

The Excel Realty Group stated the construction costs for the development were estimated to be \$5 million. The development would be financed with 9% tax credit equity and the federal historic credit, along with a permanent loan using the USDA 538 program. The development would also qualify for a 130% basis boost.

The Excel Realty Group was requesting the following from the City of Escanaba:

1. If their funding is approved, they will require a "Payment in Lieu of Taxes" Agreement along with a "City Services Agreement". Details would need to be worked out with the developer if their application is approved and will require City Council approval at a future date.
2. The project would require full public site plan review and approval from the Planning Commission.
3. A parking space zoning variance from the Zoning Board of Appeals will be required.

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August 6, 2015 – cont.

A tentative proposed schedule of events and steps that needed to take place was as follows:

August 4, 2015 A review of the concept was conducted by the Escanaba Historic Commission on August 4, 2015. A resolution of support was approved by the Commission.

August 5, 2015 A review of the concept was conducted by the Downtown Development Authority on August 5, 2015. A resolution of support was approved by the DDA Board of Directors.

August 6, 2015 A review of the concept along with a request for a City Council resolution which endorses the project will go before the City Council at a regularly scheduled meeting.

August 12 - 21, 2015 An appearance before the City Zoning Board of Appeals will be scheduled for a parking space requirement variance to the Escanaba Zoning Ordinance.

September 10, 2015 A site plan hearing before the Planning Commission will be conducted.

September 17, 2015 A public hearing on a "Payment in Lieu of Taxes" agreement and "Municipal Services Agreement" will be conducted before the City Council.

October 1, 2015 The developer will submit grant application package to state, and others for review and approval.

December 31, 2015 The developer should hear if they received funding or not.

Spring/Summer 2016 If funding is approved by State construction could begin.

Spring/ Summer 2017 Possible completion of project.

In order to submit their application to the State of Michigan for consideration, the State established a deadline of October 1, 2015 for all submittals.

Peter Jobson made a detailed presentation of the House of Ludington Project to the Council and citizens of Escanaba and how to generate funds to rehab the building. The proposed Project would stabilize and update the structure for a new life for the building. The Senior Housing proposal would be a great place for area seniors to live and provide an new outcome for the building.

Council Members requested information on their other projects Excel had completed throughout the state and the proposed parking variance that would be required.

Property owners, Suzell and Ed Eisenburger, thanked the community for all their support. They advised they were selling the building because they did not have the needed \$1,000,000 to make repairs to the building despite their best efforts to keep the business going. It was time for this type of project for the building and was a perfect fit for the building that needed to be saved.

Council Members also commented on the speed of the project, and reviewed the project pros and cons. Council noted there would be time for further discussion by the public. The Developers needed to request a parking variance from the Board of Appeals, receive approval from the City Planning Commission, and finally come back before Council to request a payment in lieu of taxes (PILOT) agreement.

**NB-7** "Upon motion made by Council Member Baribeau, seconded by Council Member Sattem, the following resolution was made:

**A RESOLUTION BY THE ESCANABA CITY COUNCIL  
SUPPORTING THE EXCEL REALTY GROUP PROJECT PLAN FOR 223  
LUDINGTON STREET, COMMONLY KNOWN AS THE HOUSE OF LUDINGTON**

**Whereas**, Escanaba City Council supports the proposed House of Ludington development at 223 Ludington Street to construct 34 one and two bedroom senior dwellings units. This development is consistent with the City's strategy for restoring historic buildings in the downtown area, specifically on Ludington Street. This development addresses the need to build density and promote downtown living. This will further the City's goal of a vibrant downtown community for residents to live, work and play. This development meets these goals by putting key historic structures back into productive use and providing senior housing amenities for downtown residents. This development, if approved for funding under the tax equity credit program, federal historic tax credit program and USDA 538 program will be a significant investment in the downtown area; and

**Whereas**, The Escanaba City Council recognizes the value of historic preservation as an effective tool for economic revitalization; and

**Whereas**, through the 2011 Escanaba Downtown Development Authority's Developmental plan has prioritized additional mix used residential redevelopment to our Downtown Buildings; and

**Whereas**, the Escanaba Downtown Development Authority's 2020 Vision document stresses that the downtown be reinvented and revitalized by creating a mix of activity nodes focused retail, residential and entertainment uses; and

**Whereas**, the Escanaba Downtown Development Authority's 2015 goals list adding more mixed use developmental opportunities as part of its support of restoration of buildings downtown through its Façade program; and

**Whereas**, a payment in lieu of taxes agreement between the City of Escanaba & Excel Realty Group will be needed to make the project work; and

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**Whereas**, Excel Realty Group may need certain variances approved based on parking or other ordinances for the downtown project; and

**Whereas**, Excel Realty Group site plan for the project will need approval from the Escanaba Planning Commission; and

**Now, therefore be it resolved**, that the Escanaba City Council hereby supports the Project Plan to be developed by the Excel Realty Group to install 34 one and two bedroom senior apartments in the existing building located at 223 Ludington Street.

Ayes: Baribeau, Sattem, Blasier, Beauchamp, Tall  
Nays: None

**RESOLUTION DECLARED ADOPTED.**

## **APPOINTMENT(S) TO CITY BOARDS, COMMISSIONS, AND COMMITTEES**

Mayor Tall, with Council consensus, made the following appointments:

### **Escanaba Building Authority:**

Manager Jim O'Toole – term ending August 2018;  
Controller Melissa Becotte – term ending August 2016.

### **Harbor Advisory Committee:**

Todd Hurley - One year extended term.

## **BOARD, COMMISSION, AND COMMITTEE REPORTS**

Council Members reviewed City Board and Commission meetings each attended since the last City Council Meeting.

## **GENERAL PUBLIC COMMENT**

DDA Director Ed Legault reviewed his efforts over the last 6 months with the owners of the House of Ludington trying to secure funding avenues for the House of Ludington.

City Community Preservation Director Blaine DeGrave was grateful for the federal funding possibility to redevelop the House of Ludington.

## **ANNOUNCEMENTS**

- Marina Fest was scheduled for August 8<sup>th</sup>;

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August 6, 2015 – cont.

- Reviewed fund raising for the area animal shelter;
- Congratulated the Delta County Girls 13-14 year old baseball team, and the 15/16 year old girls who were at the world series.

Hearing no further public comment, the Council adjourned at 8:29 p.m.

Respectfully submitted

Robert S. Richards, CMC  
City Clerk

Approved: \_\_\_\_\_  
Marc D. Tall, Mayor

**OFFICIAL PROCEEDINGS**  
**CITY COUNCIL**  
**ELECTRICAL ADVISORY COMMITTEE**  
**CITY OF ESCANABA, MICHIGAN**  
**Special Joint Meeting**  
**Wednesday, August 12, 2015**

Pursuit to a meeting notice posted August 10, 2015, the meeting was called to order by the Mayor Marc D. Tall at 6:00 p.m. in the Council Chambers of City Hall located at 410 Ludington Street.

Present: Mayor Marc D. Tall, Council Members, Patricia A. Baribeau, Ronald J. Beauchamp, Ralph B. Blasier, and Michael R. Sattem.

Absent: None.

Present: Electrical Advisory Committee (EAC) Members: Chairperson Tim Wilson, John Mellinger, Ann Bissell, and Glendon Brown.

Absent: Electrical Advisory Committee (EAC) Members: Larry Arkens, John Anthony, One vacancy and Power Plant Liaison.

Also Present: City Manager James V. O'Toole, Electric Superintendent Mike Furmanski, City Controller Melissa Becotte, members of the public and media.

**ADJUSTMENTS TO THE AGENDA**

Sattem moved, Blasier seconded, **CARRIED UNANIMOUSLY**, to approve the Joint City Council & Electrical Advisory Committee Agenda as submitted.

**CONFLICT OF INTEREST** – None

**PUBLIC HEARING (S)**

**Energy Optimization and Renewable Energy Plans.**

A public hearing was conducted on the City of Escanaba Energy Optimization Plan and Renewable Energy Plan as required by Public Act 295, the Clean, Renewable, and Efficient Energy Act.

This being a public hearing, Mayor Tall asked if there was any public comment.

Hearing no public comment, Mayor Tall closed the public hearing.

No action was required by City Council.

**NEW BUSINESS**

**Update - Electric Department –General Operations.**

Electrical Superintendent Mike Furmanski updated the City Council, Electrical Advisory Committee, and Citizens of Escanaba on the current departmental activities.

- Staff was working on Commercial/Industrial jobs with 4 more to go;
- City had a Mutual-aid agreement with other Municipalities. A request was received to help out communities struck by storms in the lower peninsula. Two employees were sent to lower Michigan for two days to help out affected communities;
- New substation was progressing;
- Geo syntact on environmental conditions at the Power Plant;
- UP Energy Summit scheduled for September 30 in Marquette Michigan.

### **Update – Coal Supply Reconciliation.**

Administration updated the City Council, Electrical Advisory Committee, and Citizens of Escanaba on the status to reconcile coal inventory.

- Over several months, Administration had been working on trying to reconcile the shortage of coal received from Alpha Coal Sales, and Upper Lakes Coal Co;
- Both companies were blaming each other for the shortage;
- Coal Shortage was just under \$500,000 according to usage reports from the Power Plant;
- Administration requested Council direct Administration to have the City Attorney file a lawsuit against both firms in order for the City to obtain funds for coal paid for but did not receive. It was noted that Alpha Coal Sales has since filed bankruptcy;

**NB-2** After discussion, Beauchamp moved, Blasier seconded, to direct Administration proceed with the filing legal action against Alpha Coal Sales, and Upper Lakes Coal Company for the City of Escanaba to be reimbursed for the coal shortage.

Upon a call of the roll, the vote was as follows:

Ayes: Beauchamp, Blasier, Baribeau, Sattem, Tall

Nays: None

**MOTION CARRIED.**

### **Discussion – Recommended Local Changes to Senate Bill 282.**

Electric Superintendent Mike Furmanski and Electrical Advisory Committee Member Brown led a discussion on suggested changes to Senate Bill 282, a bill to regulate the siting and construction of certain electric transmission lines.

- Committee Member Brown suggested the bill was a terrible piece of legislation and hoped it would never pass. Mr. Brown also stated companies should be mandated

- to declare their electric load so they do not fall behind the meter;
- There were many questions regarding the legislation. Sending a marked up bill may give them the wrong impression that the City was in support of the legislation;
  - Administration stated informational edits would be sent to Lansing with a disclaimer with a list of our additional questions.

### **Update – Power Plant Layup.**

Administration updated the City Council, Electrical Advisory Committee, and the Citizens of Escanaba regarding the layup of the power plant recently completed by Pro Energy Services on behalf of the City of Escanaba. ProEnergy submitted their final report. Committee Member Brown and Superintendent Furmanski would be available to answer questions.

### **Update – Power Plant Sale.**

The administration updated the City Council, Electrical Advisory Committee, and the Citizens of Escanaba regarding the sale of the plant.

- Manager forwarded email to everyone advising that Sterling Energy filed for Corporate restructuring;
- If Sterling Energy contacts the City stating they were still interested in purchasing the Power Plant, Administration would request a substantial down payment;
- Manager O'Toole reported the Delta County Circuit Court directed Escanaba Green Energy to repay the City of Escanaba legal fees as per the agreements signed by both parties.

**GENERAL PUBLIC COMMENT – None**

### **COUNCIL/COMMITTEE, STAFF REPORTS**

Brown shared a report on electric use over the last 20 years in the United States.

### **ADJOURNMENT**

Hearing no further public comment, or further reports from the Electrical Advisory Committee or Council, the meeting adjourned at 6:47 p.m.

Respectfully submitted,

Robert S. Richards  
City Clerk

Approved: \_\_\_\_\_

Marc D. Tall, Mayor

**OFFICIAL PROCEEDINGS  
CITY COUNCIL  
CITY OF ESCANABA, MICHIGAN  
Work Session Meeting  
Thursday, August 13, 2015**

Pursuit to a special meeting notice posted August 10, 2015, the meeting was called to order by the Honorable Mayor Marc D. Tall at 8:00 a.m. in the Council Chambers of City Hall located at 410 Ludington Street.

Present: Mayor Marc D. Tall, Council Members, Patricia A. Baribeau, Ralph B. Blasier, Ronald J. Beauchamp, and Michael R. Sattem.

Absent: None

Also Present: City Manager James V. O'Toole, City Department Heads, media, and members of the public.

**ADJUSTMENTS TO THE AGENDA**

Beauchamp moved, Sattem seconded, **CARRIED UNANIMOUSLY**, to approve the City Council Agenda as submitted.

**CONFLICT OF INTEREST DECLARATION** – None

**NEW BUSINESS**

**Discussion – Michigan Tax Tribunal Cases Update.**

Mrs. Daina Norden, City Assessor, updated the Escanaba City Council on the Michigan Tax Tribunal Cases that were currently filed against the City of Escanaba. (See Memo, Attachment – A) The following was also discussed:

- Discussed justification for outside appraisals;
- The major concern was that if the City loses the Tax Tribunal cases, many other stores would follow suite. The potential City loss on the four current cases was approximately \$65,000;
- Need legislative action to fix the loop hole in the law. Sen. Tom Casperson, (R-Escanaba), was working with Rep. Ed McBroom (R-Vulcan) and Rep. John Kivela (D-Marquette) to counteract the recent court decisions. Casperson advised he expected to introduce a bill soon after the fall legislative session begins in September;
- The State was also being contacted to get involved to fix the Big Box Stores issue;
- A request for Appraisals and Attorney fees would be put on the next regular Council Agenda, August 20, 2015;
- Council directed Administration to contact other Delta County municipalities for monetary help for the Tax Tribunal cases. In the end, it would affect them also.

No Council action was taken at this meeting.

**GENERAL PUBLIC COMMENT – None**

**ANNOUNCEMENTS**

- House of Ludington was hosting a paid music event.

Hearing no further public comment, the Council adjourned at 8:33 a.m.

Respectfully submitted,

Robert S. Richards  
City Clerk

Approved: \_\_\_\_\_  
Marc D. Tall, Mayor

**City of Escanaba Assessor**

# Memo

**To:** City Council  
**CC:** Jim O'Toole, Manager  
**From:** Daina Norden, Assessor  
**Date:** 8/04/2015  
**Re:** Michigan Tax Tribunal

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## **Michigan Tax Tribunal Cases Update Question hiring Attorney and Appraiser**

I just wanted to bring you up to date on the Michigan Tax Tribunal Cases that are currently filed against the City of Escanaba. Attached is a complete list of the cases I am working on. Additionally there is a Summary of the 2014 cases set for trial and their potential financial impact on the City of Escanaba.

The first is Menards which we are all familiar with. Currently we have filed a court of appeals on the decision and further down the list we have filed an appeal for the 2015 tax year as well.

The second is the Walgreens personal property appeal. This has been fast tracked and on July 29<sup>th</sup> I was notified that this is scheduled for a court hearing with a valuation disclosure due 9/17/2015. The Department of Treasury has issued a memo regarding their determination of the proper depreciation schedule for these appeals. Last week we stipulated based on the Department of Treasury decision.

Autozone, Escanaba Country Club, and O'Reilly Automotive are three cases that I propose we hire legal counsel and have an appraisal conducted. I have cost estimates for three cases from our attorney Jack VanCoevering as well as an estimate for the appraisals from James T. Hartman. I went with Mr. Hartman on the advice of Mr. VanCoevering because the Golf Course Appraisal is a pretty specialized item and this firm works with Golf Course valuation regularly. They also offer a discounted price because we are looking to hire them for multiple appraisals. See attached cost estimates. Jack's estimate included Hudson's instead of O'Reilly's however I believe it would be the same based on his estimate. I have notified Mr. VanCoevering of the difference.

The last case with an upcoming trial date is Delta Plaza Mall. This court date is newly added with a valuation disclosure due February 18, 2016. I intend to discuss this case with the Tax Consultants for the mall but ultimately I feel that we will need to hire Counsel and an Appraiser for this case as well if my discussions are unsuccessful.

The next case has not been finalized. The petitioner is in default.

The remaining cases are in the early stages of the process and I have been working on them as well. One that stands out is the Shopko appeal in that the Representative for Shopko is the same Representative that Menards had. I have been gathering data and preparing to send a request to the Michigan Department of Treasury/State Tax Commission for assistance in this Shopko case as well as 4 other Shopko cases in Michigan that were filed by the same firm. As I understand it, they have the ability to get involved in cases with the potential for a substantial impact on tax valuations.

Michigan Tax Tribunal 1(517)373-3003												
Case No.	Case Year	Case No.	Case Year	Case No.	Case Year	Case No.	Case Year	Case No.	Case Year	Case No.	Case Year	Case No.
14-000081	2010, 2011, 2012, 2013	430-0000-402-010	2010, 2011, 2012, 2013	Walgreen Company	2010, 2011, 2012, 2013	Paragon Tax Group Paul Esch	2010, 2011, 2012, 2013	3300 Ludington Street personal property @ Walgreens 2301 Ludington Street	ET	SETTLED	X	
14-002976	2014, 2015	420-2825-200-031	2014, 2015	Autozone Development	2014, 2015	Fred Gordon, PC	405 North Lincoln Road Autozone Store	ET	Sent interrogatories 7/15/15 - Recvd 7/30/15			10/17/2015 12/16/2015 - 12/30/2015
14-003007	2014, 2015	120-2825-278-003	2014, 2015	Palm Revocable Trust	2014, 2015	Fred Gordon, PC	Hudsons 201 North Lincoln Road	ET	SETTLED	X		
14-003330	2014, 2015	420-2831-300-028	2014, 2015	Escanaba Country Club	2014, 2015	Fred Gordon, PC	Escanaba Country Club 1800 11th Avenue South	ET	Sent interrogatories 7/18/2016 - Due 8/05/16 Sent additional interrogatories for appraiser 7/29/15 - Due 8/25/15			8/5/2015 11/5/2015 1/4/2016 - 1/15/2016
14-004038	2014	420-2813-200-004	2014	Gary Micheau	2014	Self	Americas Best Value Inn 2301 North Lincoln Road	ET	SETTLED	X		
14-004871	2014, 2015	420-2830-100-009	2014, 2015	O'Reilly Automotive Inc	2014, 2015	Ryan, LLC	O'Reilly Store 821 North Lincoln Road	ET	Offered stip of \$50/sq ft - Countered \$100 w/ proof respond Monday			7/20/2015 1/16/2016 3/16/2016 - 3/31/2016
14-005398	2014, 2015	120-2825-278-001	2014, 2015	Escanaba Delta Mall LLC	2014, 2015	GSA Property Tax Consultants	Delta Plaza Mall 301 North Lincoln Road	ET	Need Valuation Disclosure			2/18/2016 4/18/2016 - 4/29/2016
15-001222	2015	420-2825-200-022	2015	Paragon Tax Group Paul Esch	2015	Self	739 Ludington St 2305 N Lincoln 2327 N Lincoln	ET	PETITIONER IN DEFAULT			N/A 6/25/2015
15-001472	2015	420-2919-300-027	2015	Sears Holdings Corp	2015	Patrick C Doody Law Offices	Kmart	ET	ANSWER SENT 6/28/2015			
15-001736	2015	420-2825-200-022	2015	Shopko Prop. SPE #16	2015	Paragon Tax Group Paul Esch	Shopko 25301 S Avenue North	ET	ANSWER SENT 7/20/15			
15-002137	2015	420-2825-100-006	2015	City V Memorals	2015	Jack VanCoevering	3300 Ludington Street	ET	PETITION SUBMITTED			
15-002603	2015	420-2825-200-020	2015	GMHC Retail Escanaba MI MOBILE	2015	Ryan, LLC Thomas Randle	Tractor Supply 2501 N Lincoln Rd	ET	NEEDS ANSWER			
15-003710	2015	420-2813-200-007	2015	Tractor Supply Co.	2015	Same		ET	ANSWER SENT 8/12/15			

15 Total Open

6 2015 Total NEW

## Summary of Pending Michigan Tax Tribunal Cases

**1 Escanaba Country Club**

2014 Total Assessed	590,288
2014 Taxable Value	521,163
2014 Appealed Value	330,000
2014 Difference in Tax	(191,163)
Total Years being appealed	2
Total potential revenue loss all years \$	(6,641.27)

Total Taxable Value being appealed:

2014 (1,762,279)

Potential City Revenue Loss:

\$ (65,682.03) for all years listed

**2 Autozone**

2014 Total Assessed	268,455
2014 Taxable Value	268,455
2014 Appealed Value	150,000
2014 Difference in Tax	(118,455)
Total Years being appealed	2
Total potential revenue loss all years \$	(4,100.49)

**3 O'Reilly Automotive**

2014 Total Assessed	390,699
2014 Taxable Value	390,699
2014 Appealed Value	280,000
2014 Difference in Tax	(110,699)
Total Years being appealed	2
Total potential revenue loss all years \$	(4,635.24)

**4 Delta Plaza Mall**

2014 Total Assessed	2,536,178
2014 Total Assessed	2,286,000
2014 Appealed Value	944,038
2014 Difference in Tax	(1,341,962)
Total Years being appealed	2
Total potential revenue loss all years \$	(50,305.04)

NB#1  
NB#2  
CC 8/20/15

# Memo

**TO:** City Council  
**CC:** Jim O'Toole, Manager  
**FROM:** Daina Norden, Assessor  
**DATE:** 8/14/2015  
**RE:** Michigan Tax Tribunal – Request for Professional Services

**Michigan Tax Tribunal Cases Request to Hire Attorney and Appraiser**

There are currently three (3) upcoming Michigan Tax Tribunal appeals that are scheduled for trial. Because of the time needed to conduct an appraisal and have it submitted by the deadline, I am requesting we retain legal counsel to represent the City of Escanaba for the Michigan Tax Tribunal. I am further requesting we retain outside appraisals for the following:

**1. ESCANABA COUNTRY CLUB – 1800 10<sup>th</sup> Avenue South**

This is a specialized property and both legal counsel and appraisal costs are higher for this case. The appraiser I am suggesting we hire has experience and knowledge in Golf Course Appraisals, which is necessary should this go to trial before the Tribunal.

- **Estimated Legal Costs: \$10,000 - \$25,000**

This case will require more work in that it is relatively unique and will require the services of a specialist.

- **Total Estimated Appraisal Costs: \$8,500**

Two (2) phases of appraisal will be needed for this case. Phase I of the appraisal is estimated to cost \$5,500. The Phase II portion of the appraisal is estimated to cost \$3,000.

- **Total Estimated Combined Costs: \$18,500-\$33,500**

**2. AUTOZONE – 405 North Lincoln Road**

- **Estimated Legal Costs: \$5,000 - \$7,500**

The legal costs for this case is approximately half (1/2) of the estimated \$10,000 to \$15,000 for both the AutoZone Case and the O'Reilly's Auto Parts Store case.

- **Estimated Appraisal Costs: \$7,000\***

Two (2) phases of appraisals are needed for this case. Phase I of the appraisal is estimated to cost \$4,500. The Phase II portion of the appraisal is estimated to cost \$2,500. There will be a discounted price if both Autozone and O'Reilly's appraisals are awarded\*.

- **Total Estimated Combined Costs: \$12,000 - \$14,500**

### 3. **O'REILLY AUTO PARTS STORE – 521 North Lincoln Road**

- **Estimated Legal Costs: \$5,000 - \$7,500.**

The legal costs for this case is approximately half (1/2) of the estimated \$10,000 to \$15,000 for both the AutoZone Case and the O'Reilly's Auto Parts Store case.

- **Estimated Appraisal Costs: \$7,000\***

Two (2) appraisals are needed for this case. Phase I of the appraisal is estimated to cost \$4,500. The Phase II portion of the appraisal is estimated to cost \$2,500. There will be a discounted price if both Autozone and O'Reilly's appraisals are awarded\*.

(\* NOTE: Autozone and O'Reilly's combined appraisal costs, *if both awarded*, would be: **\$10,000** (\$6,500/\$3,000) for a savings of \$4,000. Additionally, if all three (3) appraisals are awarded, there is a potential \$500 per appraisal savings for travel time and expenses).

As the City Assessor, I am recommending we retain the professional services of Attorney Jack VanCoevering of Bloom, Sluggett, Morgan Counselors & Attorneys, 15 Ionia SW, Suite 640, Grand Rapids, MI 49503 in an amount not to exceed \$40,000 for the three (3) referenced cases. Additionally, I am recommending we retain the professional services of James T. Hartman of Valbridge Property Advisors | The Oetzel-Hartman Group, 2127 University Park Drive, Suite 390, Okemos, MI 48864, in an amount not to exceed \$18,500 to provide the needed appraisals.

It should be noted that the Escanaba Assessor's Office always tried to work with the Petitioner's to resolve the valuation differences. In all three (3) of these cases I have asked for any proof or evidence they have to justify the value they believe to be the true value. In all three (3) cases there wasn't any proof to give to me and there were not any appraisals conducted. I have provided both my cost approach as well as my sales comparison approach to both Autozone and O'Reilly's in hopes of resolving these cases. In the case of the Escanaba Country Club (ECC) I did review the assessment a couple of years ago using the knowledge I acquired when I attended a Golf Course Appraisal School in 2006. I did provide a summary to the ECC after I concluded my review. I have not received any evidence from the ECC. Additionally I have reviewed current listings of Golf Courses that are for sale in Michigan and Wisconsin and nearly all of the listing prices are above the current true cash value assessed to the ECC.

## Taxing Entity Potential Revenue Loss Impact Chart - MTT Appeals against City of Escanaba

<b>2014 values</b>		Escanaba Country Club		Autozone		O'Reilly Automotive		<i>Combined Impact Annually</i>	
		Assessed	590,288	Assessed	268,455	Assessed	390,699		
		\$ 57,907 per hole		\$ 78.90 per sq ft		\$ 99.49 per sq ft			
		Taxable	521,163	Taxable	268,455	Taxable	390,699		
		Appeal Taxable	330,000	Appeal Taxable	150,000	Appeal Taxable	280,000		
\$ 36,667 Appeal per hole		\$ 44.09 Appeal per sq ft		\$ 71.30 Appeal per sq ft					
		<b>Difference</b>	<b>(191,163)</b>	<b>Difference</b>	<b>(118,455)</b>	<b>Difference</b>	<b>(110,699)</b>		
Taxing Entity	Millage	Loss in Revenue		Loss in Revenue		Loss in Revenue			
School Operating	18.0000	(3,440.93)		(2,132.19)		(1,992.58)		\$ (7,565.71)	
State Ed	6.0000	(1,146.98)		(710.73)		(664.19)		\$ (2,521.90)	
City Services	17.0000	(3,249.77)		(2,013.74)		(1,881.88)		\$ (7,145.39)	
Delta County	6.8317	(1,305.97)		(809.25)		(756.26)		\$ (2,871.48)	
Escanaba School	4.7500	(908.02)		(562.66)		(525.82)		\$ (1,996.51)	
Bay College	3.3076	(632.29)		(391.80)		(366.15)		\$ (1,390.24)	
ISD	2.3851	(455.94)		(282.53)		(264.03)		\$ (1,002.50)	
DATA	0.6000	(114.70)		(71.07)		(66.42)		\$ (252.19)	
<b>Total Millage</b>	<b>58.8744</b>	<b>\$ (11,254.61)</b>		<b>\$ (6,973.97)</b>		<b>\$ (6,517.34)</b>		<b>\$ (24,745.91)</b>	



BLOOM  
SLUGGETT  
MORGAN

COUNSELORS & ATTORNEYS

Jack L. Van Coevering  
Direct Dial (616) 965-9346  
Fax (616) 965-9350  
jvancoevering@bsmlawpc.com

June 1, 2015

Daina Norden, MAAO & MCPPE  
Assessor, City of Escanaba  
PO Box 948  
Escanaba, MI 49849

Dear Daina:

I have attached an engagement agreement for the City and have also provided it to Mr. O'Toole. For your reference, I reduced our hourly rate from the Menards matter as the proposed engagement is for multiple properties and these matters are less complex. My rate is \$275 an hour and Crystal Morgan's rate is \$225 an hour. The majority of cost is attorney fees. We estimate that the total expenses for the appeal to range from \$10,000 to \$35,000 for all three cases up to the point of a trial.

As we discussed, our representation is largely to perform the legal aspects of your defense and prepare the City for a trial in the event a trial occurs but to allow you to settle the case. Some of these tasks (i.e. filing answers or responsive pleadings) you can complete, and we will review, revise, edit and file under our letterhead. *If you are unable to resolve the matter and trial is inevitable, we will be there to assist.* Aside from saving legal fees, this gives the opposing side encourage to settle and to settle at numbers that are favorable to the City.

Obviously cost range is an estimate and actual amounts may vary. To provide further perspective, I am providing the following outline of the likely steps with rough cost estimates. Please note that not all these steps are required. We will advise and you will decide whether to proceed to the next step.

1. File Appearance and attend to other correspondence with Tribunal. (\$2,000 to \$5,000)
2. Prepare and file discovery requests and respond to discovery requests. (\$3,000 to \$12,000)
3. Obtain and work with appraisers, appraisal review, develop the defense theories and evidence, etc. (\$2,000 to \$5,000)
4. Prepare and file motions regarding discovery or basic jurisdictional motions. Oral Argument: research, prepare exhibits, prepare for and present oral argument. (\$5,000 to \$6,000)

{19141-001-00042754.1}

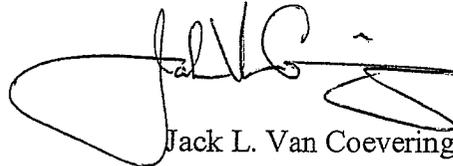
15 Ionia SW . Suite 640 . Grand Rapids . MI 49503 . t 616.965.9340 . f 616.965.9350 . www.bsmlawpc.com

5. Review, revise and file Prehearing Statements, exhibit lists and other required Prehearing materials. (\$1,000 to \$4,000)

Because of the impact of this case to other properties in Delta County, I recommend that the City pursue a Cost-Sharing Agreement with other local jurisdictions and the State of Michigan. A Cost-Sharing Agreement allocates the cost of litigation to all local tax collecting units by some formula, typically reflecting a local unit's percentage of the total millage assessed. We have not included the cost of assisting you with a Cost-Sharing Agreement but it is not significant.

I hope this helps. Please share this information with the City Manager. We would like to work with you to work for the City and assist you in defending your tax roll. To that end, we would welcome the opportunity to discuss this with you, your City Manager or elected officials.

Very truly yours,



Jack L. Van Coevering

**RE: MTT Appraisals in City of Escanaba**

---

**From :** James T. Hartman  
**Subject :** RE: MTT Appraisals in City of Escanaba  
**To :** Daina Norden <dnorden@escanaba.org>

Tue, Jul 28, 2015 03:24 PM

 1 attachment

Daina,

The following is the appraisal fees for a Phase I/Phase II appraisal report. Phase I would be a single year valuation and would provide a range in value. Phase II would be the final report for tax tribunal purposes, with two years of valuation.

Escanaba Country Club \$5,500/\$3,000 – Total \$8,500

With the O'Reilly's and Autozone, it would appear to be some duplication of research. Assuming I was awarded both, the fee would be \$6,500/\$3,500 – Total \$10,000. If I am only awarded one then the fee is - \$4,500/\$2,500 – Total \$7,000.

If awarded all two or three appraisals, I could reduce my fee \$500 each as there would be a cost savings with drive-time, etc.

The time to complete the phase I reports is 45-60 days and the phase II is 21-30 days.

Thank you,  
Jim