

**OFFICIAL PROCEEDINGS
CITY COUNCIL
CITY OF ESCANABA, MICHIGAN
Study Session Meeting
Tuesday, December 9, 2014**

Pursuit to a special meeting notice posted November 19, 2014, 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, Ronald J. Beauchamp, Ralph B. Blasier, and Michael R. Sattem.

Absent: None

Also Present: City Manager James V. O'Toole, City Clerk Richards, and media.

ADJUSTMENTS TO THE AGENDA

Blasier moved, Beauchamp seconded, to approve the agenda as submitted.

CONFLICT OF INTEREST DECLARATION – None

BRIEF PUBLIC COMMENT – None

NEW BUSINESS

Discussion – City Purchasing Policy.

Administration led a discussion with Council Members regarding the possibility of updating the City of Escanaba Purchasing Policy involving the buying of goods and services. The following was discussed:

- Reviewed the history of City purchasing. Purchasing Department was dissolved back in 2005. Department Heads currently made their own purchases following the \$6,000 spending limit;
- In the current economy, the spending limit of \$6,000 hampered Department Heads in today's purchasing requirements;
- Manager O'Toole reviewed current purchasing practices that were involved with purchases over the current ordinance limit of \$6,000. With the current time requirements, the whole bid process could take as long as 6 weeks. The current spending limit, in certain instances, did not allow departments to respond appropriately or efficiently;
- A proposed revised purchasing practice was reviewed with Council. (See attachment – A);
- Relaxing of Council oversight would be more efficient. Council members already reviewed and approved Departmental purchasing requests during the annual budget hearings;
- There were two issues, the purchasing process and City Council approval;

- City Controller Mike Dewar reviewed history of ordinance amendments that led to the 1992 Ordinance amendment of a spending limit of \$6,000 for approval;
- Relaxing of Council oversight would be appropriate as long as Council reviewed the proposed purchases during the annual budget process. Administration recommended increasing the budget purchasing limit. An increase would allow Departments to function more efficiently in the current economy;
- A revised spending limit of \$25,000 was discussed. Administration stated the proposed \$25,000 amount would allow the Electric and Water/Wastewater departments to function more efficiently.

It was Council consensus to have Administration submit a formal proposal to Council for approval which included examples where the current spending limit hampered the purchasing process.

Discussion – Michigan Tax Tribunal Final Opinion and Judgment – Menards Inc., (Petitioner) vs. City of Escanaba, (Respondent).

Administration reviewed the recent Michigan Tax Tribunal Final Opinion and Judgment on the ad valorem property tax assessment levied by the City of Escanaba against Menards, Inc. for 2012, 2013, and 2014 tax years.

- City Assessor Daina Norden reviewed the method to which the Menards property was assessed, and the arguments used at the Tax Tribunal process, (See Attachment – B);
- Reviewed opinion given by the Tax Tribunal;
- Administration questioned whether the City should appeal the Tax Tribunal decision which could cost thousands of dollars;
- Reviewed City and County monetary losses based on the Tax Tribunal decision. Administration advised meetings with the County Officials were scheduled for later in the week to review their reimbursement costs to Menards and to review future tax loses;
- Reviewed other Tax Tribunal Appeals for stores in the community, but Assessor Norden advised their requests and potential losses were not to the size of the loss from Menards;
- Discussed possible new state laws that would fix the loop holes used by the Big Box Stores;
- There was a \$50 filing fee for a Menards Tax Tribunal rehearing to review the same information with the Tax Tribunal. Assessor Norden stated there was a \$3,000 Judge mathematical error, in the City of Escanaba’s favor, in the Menards decision. Assessor Norden recommended approval of the rehearing process just to correct the math error and to have the City side heard again;
- An appeal process on the Menard’s decision and another denial by the Tax Tribunal, would lead to a formal Court of Appeals process which would cost the City thousands of dollars in attorney fees;
- The best solution would be for our legislators to fix the loop hole in the State laws. Administration was encouraged to continue to contact our State Legislations;

- If the box stores continue to have the assessments reduced, it eventually hurts the municipalities and middle class that would ultimately force municipalities to raise its millage rates.

After further discussion, it was Council consensus to pay the \$50 fee for the rehearing of the Menard's Tax Tribunal decision.

APPOINTMENT(S) TO CITY BOARDS, COMMISSIONS, AND COMMITTEES – None

BOARD, COMMISSION, AND COMMITTEE REPORTS

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

GENERAL PUBLIC COMMENT – None

ANNOUNCEMENTS – None

Hearing no further public comment, the Council adjourned at 9:05 a.m.

Respectfully submitted,

Robert S. Richards, CMC
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: 12/02/2014
Re: December 9th Special Meeting

Michigan Tax Tribunal Update Regarding Menards Appeal

As the City Council is aware, Menards Inc. recently appealed their property tax assessment levied by the City of Escanaba on their store located at 3300 Ludington Street to the Michigan Tax Tribunal. The Menard's store in Escanaba is a 166,196 square foot building consisting of 57,948 square feet of garden center, material warehouse, and overhangs storage/shipping and is located on 18.35 acres.

As the Council is also aware, a hearing was held on August 14, 2014 at the Michigan Tax Tribunal in Lansing before Tribunal Judge Marcus L. Abood, SRA. This division of the Michigan Tax Tribunal is in place to hold formal hearings to resolve the more complicated appeals. As part of this process, there is a formal record of the hearing and attorneys typically represent the parties. These hearings can range in length from one day to two months or more. The presiding judge is either a Tribunal member or a hearing officer (i.e. an administrative law judge). The Tribunal currently consists of five members. These members are appointed by the Governor, with the advice and consent of the Senate, to serve terms of four years, with one member appointed to serve as chairperson.

In our case, the Petitioner (Menards, Inc.) was represented by Paul Bach of Paradigm Tax Group, LLC and Carl Rashid of Dykema Gossett, PLLC. Their appraisal was conducted by Joseph L. Torzewski, MAI. Representing the City of Escanaba were myself and Russell W. Hall of DeGrand, Reardon, & Hall, PC. We **also** had a review appraisal conducted by Miles Anderson, SRA, MMAO.

Over the last several months, there has been a lot of discussion regarding the “Dark Store” theory. To that end, I want to point out that our intent was not to re-argue this same case in that the Tribunal has already made a ruling regarding this theory in favor of the “Big Box” Stores in a different town with a different Corporation. That ruling has already been made by the Tribunal and is going through the appeals process.

The argument the City of Escanaba made with regards to the Menards was different. It was our position that the petitioner determined a “Dark Store” valuation using a flawed Sales Comparison approach to value. When I reviewed the sales used in the petitioner’s appraisal to determine if I agreed with their valuation based on law and current court decisions, I realized that many properties had extensive restrictions on the use of the property placed on them by the seller of the property. It was our position that these restrictions were not disclosed in the appraisal and no adjustment had been made for these restrictions. In the appraisal submitted by Menards there are sales that are considered “but excluded from [the] analysis for various reasons.” One that stands out is “[t]he fourth sale is a former Target in Warren that sold with use restrictions in place...” “This negatively impacted the sale price, as no retail uses were allowed.” This unused sale had an unadjusted price per square foot of \$21.19 and a gross building area of 106,165 built in 1990. I have attached the Special Warranty Deed which demonstrates what type of use restrictions were in place and included in the sales comparison approach on that particular matter.

As you know by now, Mr. Abood stated in his Final Opinion and Judgment that “Mr. Torzewski’s testimony regarding the consideration of deed restrictions is meaningful to his overall analysis.” Further; “Mr. Torzewski explained that all of his comparable sales had some type of deed restrictions but none that impacted their sale prices.”

As you have also heard, the Tax Tribunal ruled in Menards. Inc. favor which resulted in us having to adjust our values for years 2012- to \$20/sq. ft. (down from \$48.43), 2013- \$21/sq. ft. (Down from \$49.54), and 2014- \$22/sq. ft. (Down from \$ 50.88)

At the Special Study Session of City Council scheduled for December 9, 2014, I would like to discuss this matter in more detail so that there is an understanding of the overall situation, its impact and talk about what our options are so that I have a clear understanding of the direction the City Council would like me to go.