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OUT OF THE DARK?

**A RECENT COURT RULING
SHINES NEW LIGHT
ON THE DARK STORE
APPRAISAL THEORY**

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The IAAO Special Committee on Big-Box Valuation, from left: Irene Sokoloff, CAE, MAI, CFE; Will Shepherd, JD, CFE; Tom Hamilton, PhD, MAI, CCIM, CRE, FRICS; Peter Korpacz, MAI, CRE, FRICS; Mark Kenney, MAI, SRPA, MRICS, MBA; and Paul Welcome, CAE, FRICS, ASA, RMA, Chair

Special task force tackles the dark store issue

An invisible wave spread across the meeting room as people looked up from their phones and glanced around at others.

“Did you hear?”

“Yeah. This is *huge*.”

On Friday morning, October 20, at the Hotel Phillips in downtown Kansas City, word spread among those attending IAAO’s Fall Leadership Days that the Michigan Supreme Court had reached a much-anticipated decision on a big-box/dark store case.

The court announced it would decline to hear retail giant Menards’ appeal of its tax assessment in the small city of Escanaba, Michigan, meaning a 2016 appeals court ruling in Escanaba’s favor will stand.

The court rejected Menards’ dark store valuation argument and ordered the Michigan Tax Tribunal to allow the parties to present more evidence and come up with a property value.

Michigan is ground zero for the dark store/big-box valuation controversy, an issue across the United States.



Dark Stores = Big Local Revenue Losses

Giant retailers like Walmart, Target, The Home Depot, and others for years have worked to convince cities and towns — and the courts — that their stores should be assessed based on the value of dark stores, or vacant, unused buildings.

The retailers say their massive, customized stores are treated unfairly by prevailing property valuation methods.

They claim traditional assessment methods are inaccurate because they don’t account for the fact that large stores are often customized and while such customizations increase the construction costs, they have no resale value for third-party use.

By KEITH ROBISON | IAAO Publications Manager

Therefore, they say their property should be assessed as if the store were *dark* — without a current tenant, lease terms, or construction costs being taken into consideration.

Escanaba officials fought big-box chain Menards in court for years, costing the city of 12,500 residents more than \$229,000 in legal bills so far.

Patrick Jordan, Escanaba's city manager, said he wasn't shocked by the state Supreme Court's decision.

"We felt confident in our case," he said. "But we were quite relieved when we finally heard."

Jordan said the Michigan Tax Tribunal's initial decision in favor of Menards reduced the store's taxable value from \$3.9 million to \$1.65 million for 2012 and from \$4 million to \$1.65 million for 2013.

Local tax revenue statewide had been reduced by at least \$100 million since 2013 because of big-box appeals through the Michigan Tax Tribunal, according to the Michigan Association of Counties.

"This is a most promising development," said Stephan Currie, executive director of the Michigan Association of Counties.

"The Tax Tribunal has to return to this matter and operate under the orders given by the Court of Appeals to properly assess the value of commercial property."

IAAO Special Committee presents its findings

The ruling in Michigan came just weeks after the IAAO Special Committee on Big-Box Valuation presented its findings in a morning session at the IAAO Annual Conference in Las Vegas.

Because of the ongoing controversy, the committee spent nearly a year compiling a position paper, "Commercial Big-Box Retail: A Guide to Market-Based Valuation," to provide guidance on assessing big-box retail properties (IAAO 2017).

Paul Welcome, CAE, FRICS, ASA, RMA, the County Appraiser for Johnson County, Kansas, was the committee chair.

"IAAO took a bold step in creating

the Special Committee and brought in a group of very intellectual people, and I think the paper we produced is excellent," Welcome said.

Committee member Peter F. Korpacz, MAI, CRE, FRICS, said, "We worked for over a year or more.

"It was a long process. We used our own experience and knowledge. We issued a draft a few months ago for interested parties, and we carefully considered the numerous responses.

"Most of the critical ones came from the retailers and law firms representing owners of big-box stores."

Committee member Irene E. Sokoloff, MAI, CAE, CFE, said, "We did this mainly because of rural areas with not a lot of retail sales."

"We want to help those assessors value these properties. It's just devastating for them when a big-box retailer comes to town, builds, and then restricts the property and leaves.

"The retailers say, 'Hey, we're going to come to your town and employ a lot of people and bring in a lot of business,' and often they want a lot of tax incentives.

"But then when business slows or they want a bigger store, they leave town and leave an eyesore with restrictions, so it can't be used for the same purpose and it just sits there."

Korpacz said the dark-store valuation theory makes no sense.

"They build the (giant stores) and claim that as soon as the doors are open, the store is obsolete because the structure was built specifically for that store, but that's ridiculous.

"It's the simply the color of the paint on the floor or the logos on the door. So, replace those with something else. It can be dealt with."

'Unrealistically low artificial values'

The debate in Michigan, where the

dark store strategy took hold before spreading elsewhere, comes as some Wisconsin lawmakers are working to close the so-called loophole.

Groups representing local governments in Michigan predict they'll now fare better at the tax tribunal because of the state court's decision.

"No longer can big-box stores obtain unfair and substantial tax reductions based upon unrealistically low artificial values, while our other taxpayers contribute based upon the value of their properties," said Stephanie Simon Morita, a lawyer who wrote a brief to the court on behalf of the Michigan Municipal League.

Michigan State Sen. Tom Casperson has introduced legislation to address the dark-store loophole issue.

"It is a matter of fundamental fairness that big-box stores are treated the same as small, locally owned stores," Casperson said in a statement.

"I applaud them (Escanaba city officials) for their efforts in prosecuting this case to end the dark store loophole and ensure fairness for all local property owners."

Republican State Rep. David Maturen sponsored a separate bill, HB 4397, which supporters say backs up the Supreme Court order.

"Most of these stores, if they're assessed at \$2 million less than what they should be, they're saving a \$100,000 a year," Maturen said.

"Multiply \$100,000 times every big-box store in this state, and all of a sudden there's some



The committee's paper can be found at www.iaao.org/Big-BoxPaper



IAAO committee presents dark store paper



major money out there ... that should be going to police and fire and schools and every other service that's provided."

Michigan State Rep. Scott Dianda said the fixing the dark store issue will help restore tax equality.

"I am very pleased that the Michigan

Supreme Court, in a unanimous decision, declined to hear Menards' appeal of the Michigan Court of Appeals ruling that favored the city of Escanaba," he said in a statement.

"When big-box stores game the property tax system and put deed restrictions on the sale of their build-

ings, it hurts our cities and their residents.

"Small communities like mine ... welcome these stores because they create jobs and sell products we all need.

"But when they can get tax breaks and prevent other similar stores from buying their property, local units of government suffer and have a hard time providing the services residents, and these stores, expect.

"The Court of Appeals ruling and now the Supreme Court's denial of Menards' appeal favor local units of government in their fight for tax fairness."

Welcome said the decision supports the conclusions reached in the Special Committee's big-box position paper.

"It's still a fight, but now we have a state Supreme Court that has taken up the issue, so I hope it will be a positive influence in other jurisdictions," he said.

"It will be going through a lot of court systems now, and I think the Michigan case really helps everybody."

• The Michigan Supreme Court order

Menards owns a freestanding big-box retail store in the city of Escanaba. In determining the property's "true cash value" for purposes of property tax assessment, the city valued the property at about \$8 million, based on a cost approach. Menards challenged the assessment and presented an expert appraiser who valued the property at about \$3.3 million, based largely on a sales comparison approach. The Michigan Tax Tribunal (MTT) rejected the city's valuation and accepted Menards' valuation with minor adjustments. The Court of Appeals reversed and remanded, holding that there were flaws in the valuation approaches used by both parties, and that the MTT on remand must make a new determination of value after the parties are allowed to present additional evidence. The Supreme Court has directed oral argument to address whether the Court of Appeals exceeded its limited appellate review of a decision of the MTT and, if so, whether the MTT may utilize a valu-

ation approach similar to that recognized in Clark Equipment Company v Leoni Twp (1982).

• Dark store theory

This theory suggests that occupied big-box stores should be valued as if vacant and available for sale or rent to a future hypothetical user rather than in the current use, which is often a functioning, occupied store.

• Fee simple absolute

An interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs; esp., a fee simple absolute. Often shortened to fee (*Garner 2014*).

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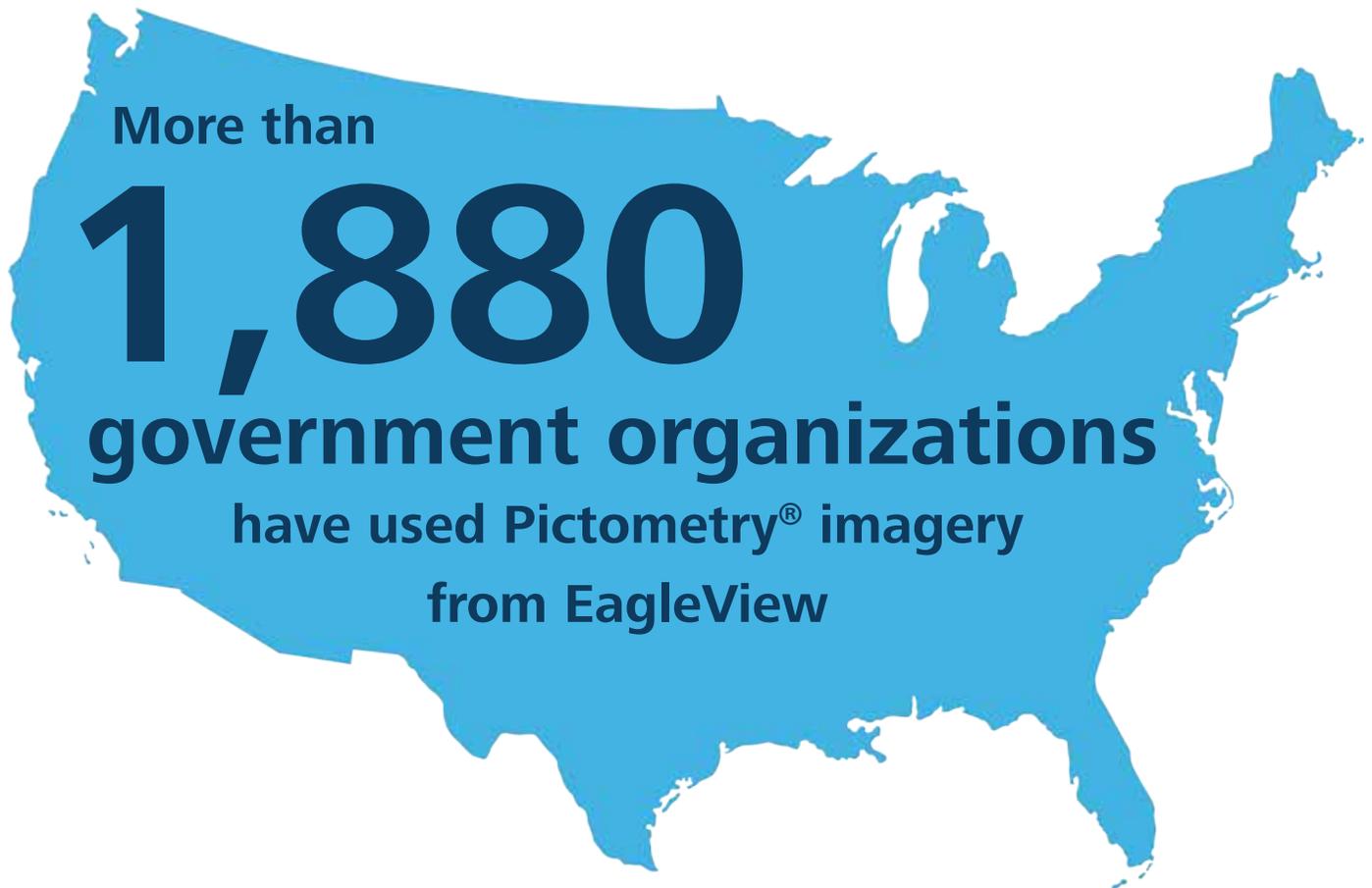
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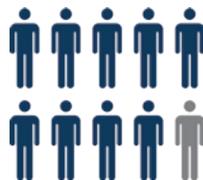
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IAAO International Research Symposium

**April 5-6, 2018
Prague, Czech Republic**

The International Association of Assessing Officers is proud to announce that the 12th International Research Symposium will be held April 5-6, 2018, at the Boscolo Prague Hotel in Prague, Czech Republic.

The IAAO International Research Symposium is an annual event offering an exploration of the intersection of public policy and mass appraisal standards, guidance, and implementation challenges. The focus will be on the exchange of knowledge and emerging technology trends for continuous improvement of land administration and property tax systems world-wide.

Registration opens soon at www.iaao.org/IRS