Gaming the System: Dark Stores

By Rick Haglund

Big box retail stores might offer great deals for shoppers, but they are becoming increasingly costly for the communities where they are located.

Recent court rulings and Michigan Tax Tribunal decisions have sliced tens of millions of dollars from the assessed value of stores such as Lowe's, Home Depot, and Meijer. Those rulings have resulted in the loss of millions of dollars in tax revenue by cities, townships, and counties, resulting in those local governments beginning to cut services.

In Marquette, the Peter White Public Library was forced to close on Sundays earlier this year after Marquette Township was ordered to refund more than $750,000 in tax payments to Lowe's after the township lost a court appeal of a Tax Tribunal ruling.

Municipalities Losing Tax Assessment Challenges

All over Michigan and throughout the country, retail giants are winning case after case using what critics call the "dark store" method of assessing their properties. "We're losing (more than $3 million) in taxable value from one store, and we will never recoup that cost," said Dulcee Atherton, Marquette Township's assessor. "That is the new tax base." Cutting back library hours could be just the beginning of widespread future cuts in local government services, Atherton and others warn.

The state Court of Appeals in 2014 upheld the Tax Tribunal's ruling that the Marquette Lowe's store had a taxable value (half of true cash value) of $1.8 million in 2012, rejecting the township's assessment of $5.2 million. The store was built in 2008 at a cost of $10 million.

"This gaming of the system, known in tax circles as the 'dark stores' technique, must come to a halt before counties and communities across Michigan are stripped of the resources to operate basic public services," Michigan Association of Counties' President Jon Campbell wrote in a recent Detroit Free Press op-ed. Ottawa County alone has lost $14.8 million in assessments, and $745,000 in tax revenue since 2010, through big box store appeals, the Free Press reported.

Explaining "Dark Stores"

Traditionally, big box stores have been assessed using the cost of construction of the stores, minus depreciation, to determine their true cash value. Assessors also can determine their value by calculating store income or through comparable sales of similar stores.

In the past several years, big box store owners have seized upon the comparable sales method. That has resulted in the Tax Tribunal and courts cutting their assessments by as much as 50 percent or more, and ordering local units of government to refund hundreds of thousand of dollars in tax payments from past years.

The problem is that big box store owners say there are so few comparable stores, the value of their new stores should be compared to vacant big box stores, which many of these same owners have abandoned. Thus, the "dark store" label.

Sen. Casperson Drafting New Legislation

Those vacant stores are often virtually worthless from a tax valuation standpoint because of deed restrictions that prevent them from being reused as big box stores. Such deed restrictions rankle Sen. Tom Casperson, a Republican who represents much of the western Upper Peninsula, including Marquette. The region has been hard hit by property assessment challenges from big box stores and other major employers. Casperson is working on legislation that would eliminate anticompetitive deed restrictions and clarify how commercial and industrial property should be assessed.

Casperson said he thought such legislation would be "a no-brainer" when he first tackled the issue more than a year ago. But he said many of his colleagues in the Legislature, who represented districts not yet affected by dark store assessments, viewed the move to limit them as "somehow raising taxes" on businesses.

"That wasn't our intent," Casperson said. But the Republican-controlled Legislature, which has been focused on cutting business taxes, often takes the view that closing a loophole, which is what Casperson calls dark store assessing, is a tax hike. "Everybody wants a tax cut, but we want to establish a system that is fair."

He sees Michigan sliding down a slippery slope unless something is done. Other kinds of large businesses in the Upper Peninsula, including paper mills, are beginning to challenge property assessments using the dark store argument. "I'm concerned that once this gets rolling, it's going to have a big impact," he said. "A lot of people say, 'What's wrong with going before the Tax Tribunal?' But the process is flawed; it's not a fair process." Casperson is planning to introduce legisla-

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tion addressing dark store assessing practices this fall.

Not Just Michigan

The dark store assessment method is sweeping across the country. For example, the Indiana Board of Tax Review ruled in December that a Meijer store in Indianapolis should be assessed at $30 a square foot, not the $83 a square foot assessed by Marion County. The county has appealed but might have to refund $2.4 million to Meijer if it loses, according to the Indianapolis Business Journal.

That case and others prompted Indiana Gov. Mike Pence to sign legislation in May reforming dark store assessment practices. But there is still confusion about the proper assessment of big box stores, according to media reports in Indiana.

Margaret Ford, president of the Michigan Assessors Association, said local assessors face a difficult task in determining the value of big box stores using the comparable sales method, because there are so few sales to use. "There should be some sort of resolution to this. It's not an issue that is just going to go away," said Ford, the assessor in Monitor Township on Bay City's west border. "We need to make it fair for everybody. The bottom line of assessing is to make sure property is assessed equally."

So far, the courts have upheld the big box stores' claims that the comparable sales model is an appropriate assessment method. But the negative impact the practice is having on the ability of local communities to provide an adequate level of services—services that the big box stores also benefit from—can't be ignored.

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