VILLAGE OF THIENSVILLE
COMMITTEE OF THE WHOLE
AGENDA

DATE: Monday, October 3, 2016

LOCATION: 250 Elm Street
Thiensville, WI

Time: 6:00 PM

I. CALL TO ORDER

II. ROLL CALL
President: Van Mobley
Trustees: Kim Beck
Ronald Heinritz
Rob Holyoke
Kenneth Kucharski David Lange
Elmer Prenzlow
Administrator: Dianne Robertson
Staff: Director of Public Works Andy LaFond
Fire Chief Brian Reiels
Police Chief Scott Nicholson
Asst. Administrator Colleen Landisch-Hansen
Clerk Amy Langlois

III. BUSINESS

A. Review Capital Expenditures List

Documents:

CAPITAL EXPENDITURES.PDF

B. Review And Recommendation Regarding Ordinance No. 2016-04 Amending Chapter 18 Of The Village Code To "Peddlers, Itinerant Merchants"

Documents:

ORDINANCE 2016-04.PDF

C. Review And Recommendation Regarding Resolution No. 2016-13 Closing Loopholes Causing More Of Property Tax Burden To Shift From Commercial To Residential

Documents:

RESOLUTION 2016-13.PDF

D. Review And Recommendation Regarding Request From Walgreens To Change Planogram Of Spirits

Documents:

WALGREENS.PDF

E. Review And Recommendation Regarding Operator's License Approval:

1. Operator's License - New:

a. Remington's River Inn
Shawn M. Morris

F. Review And Recommendation Regarding Application For Parade Permit Or Street Closing For Annual Turkey Trot, Thursday, November 24, 2016

G. Review And Recommendation Regarding Application For Parade Permit Or Street Closing For Homestead Homecoming Parade, Friday, October 7, 2016, From 4:00 PM To 5:00 PM

IV. BUSINESS FROM THE FLOOR

A. Citizens to be Heard

Open to any citizen who wishes to speak on items not on the agenda. Please step to the podium and give your name and address for the record.

V. MISCELLANEOUS BUSINESS BY TRUSTEES AS MAY PROPERLY BE BROUGHT BEFORE THE BOARD.

A. Inter-Governmental Committee With Mequon

B. Use Of 101 Green Bay Road, Old Village Hall & Fire Station

C. Acceptance/Report Of Gifts Received

D. Dialog With Mequon Regarding Water Utility Service

E. Review Next Month's Meeting Date Schedule

VI. ADJOURNMENT

Amy L. Langlois, Village Clerk
September 30, 2016

Please advise the Thiensville Municipal Hall, 250 Elm Street (242-3720) at least 24 hours prior to the start of this meeting if you have disabilities and desire special accommodations.

Notice is hereby given that a quorum of the Village Board and/or Village Committees may be in attendance at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take any formal action thereto at this meeting.

VILLAGE OF THIENSVILLE
2016 CAPITAL EXPENDITURE REQUESTS
OCTOBER 3, 2016

DEPARTMENT	AMOUNT BUDGETED	AMOUNT REQUESTED	ITEM DESCRIPTION
FIRE	$ 2,000.00	$ 1,915.00	Pager Replacement
FIRE	$ 3,000.00	$ 3,000.00	Hose Replacement

VILLAGE OF THIENSVILLE
2016 CAPITAL PROJECT EXPENDITURE REPORT
SEPTEMBER 19, 2016

ITEM BUDGETED	AMOUNT BUDGETED	AMOUNT IN RESERVES	TOTAL AMOUNT AVAILABLE	ACTUAL EXPENSE	DIFFERENCE	2016 NOT FUNDED	PRIOR YEAR
ADMINISTRATION							
Replace Rooftop HVAC-Village Board Room	$ -	$ -	$ -	$ -	$ -	$ 14,000.00	
Ambulance Bay Heating Unit	$ -	$ -	$ -	$ 4,390.00	$ (4,390.00)	$ -	
New Voting Machine	$ 7,800.00	$ -	$ -	$ -	$ -	$ -	
Riverview Drive Bike Route Signs	$ -	$ -	$ -	$ -	$ -	$ -	$ 2,100.00
Front Office Computers/Laptops/Printer	$ -	$ -	$ -	$ -	$ -	$ 8,500.00	
Front Office Filing/Storage	$ -	$ -	$ 6,500.00	$ 6,872.80	$ (372.80)	$ -	
	$ 7,800.00	$ -	$ 6,500.00	$ 11,262.80	$ (4,762.80)	$ 22,500.00	
POLICE DEPARTMENT							
3 Tactical Vests	$ -	$ -	$ -	$ -	$ -	$ -	
2 Squad Replacement (Year 4 of 4)	$ -	$ -	$ 22,000.00	$ -	$ 22,000.00	$ -	
3 Tazers	$ -	$ -	$ -	$ -	$ -	$ -	$ 3,000.00
Body Cameras	$ -	$ -	$ 7,000.00	$ -	$ 7,000.00	$ -	
P25 Radios	$ -	$ -	$ 4,500.00	$ -	$ 4,500.00	$ -	
Stationary Internet Access Point for Squads 1&2	$ -	$ -	$ 3,000.00	$ -	$ 3,000.00	$ -	
	$ -	$ -	$ -	$ -	$ -	$ -	
	$ -	$ -	$ 36,500.00	$ -	$ 36,500.00	$ -	$ 3,000.00
FIRE DEPARTMENT							
Fire Department Tires	$ -	$ -	$ 9,000.00	$ (870.90)	$ (870.90)	$ -	
Dive Truck Springs	$ -	$ -	$ -	$ -	$ -		$ 3,000.00
Hose Replacement Program	$ -	$ -	$ 3,000.00	$ -	$ 3,000.00	$ -	$ 6,272.67
Equipment Replacement Fund	$ -	$ 102,529.08	$ 102,529.08	$ -	$ 102,529.08		
Radio Replacement	$ -	$ -	$ -	$ -	$ -	$ -	$ 5,000.00
Toughbook Replacement for EMS	$ -	$ -	$ 4,000.00	$ -	$ 4,000.00	$ -	
Replace Truck #563	$ -	$ -	$ -	$ -	$ -	$ 273,000.00	
Pager Replacement	$ -	$ -	$ 2,000.00	$ 1,915.00	$ 85.00	$ -	
Turout Gear	$ -	$ -	$ -	$ -	$ -	$ 5,000.00	
	$ -	$ 102,529.08	$ 120,529.08	$ 1,044.10	$ 108,743.18	$ 278,000.00	$ 14,272.67
PUBLIC WORKS DEPARTMENT							
Vehicle Replacement Fund	$ -	$ 49,910.67	$ 49,910.67	$ -	$ 49,910.67	$ 20,000.00	
DPW Garage & Office Heater	$ -	$ -	$ -	$ 8,373.00	$ (8,373.00)	$ -	
Street Light Pole Replacements	$ -	$ -	$ -	$ 31,500.00	$ (31,500.00)	$ 6,000.00	$ 21,696.91
Emerald Ash Borer Program	$ -	$ -	$ 9,000.00	$ 7,230.00	$ 1,770.00	$ -	$ 12,728.50
Utility Trailer	$ -	$ -	$ -	$ -	$ -	$ 5,800.00	
Camera Upgrade-Public Works Yard	$ -	$ -	$ -	$ -	$ -	$ 5,000.00	
Downtown Wayfinding Signs	$ -	$ -	$ -	$ -	$ -	$ -	$ 5,000.00
Brush Chipper	$ -	$ -	$ -	$ -	$ -	$ 30,000.00	
Replace Street Light Glass Fixtures	$ -	$ -	$ -	$ -	$ -	$ -	$ 87,587.34
Radio Replacement	$ -	$ -	$ 6,500.00	$ -	$ 6,500.00	$ -	
Sidewalk Replacement	$ -	$ -	$ 8,000.00	$ -	$ 8,000.00	$ -	
Front End Loader Tires	$ -	$ -	$ 7,800.00	$ -	$ 7,800.00	$ -	
	$ -	$ 49,910.67	$ 81,210.67	$ 47,103.00	$ 34,107.67	$ 66,800.00	$127,012.75
DPW PARK DEPARTMENT							
Bleachers	$ 30,000.00	$ -	$ -	$ -	$ -	$ 30,000.00	
Annual Pigeon Creek Maintenance	$ 10,000.00	$ -	$ 5,000.00	$ -	$ 5,000.00	$ 5,000.00	$ 7,559.80
Annual Fishladder Maintenance	$ 5,000.00	$ -	$ 1,000.00	$ 241.65	$ 758.35	$ 4,000.00	$ 3,961.80
Tennis Court Light Replacement	$ 8,000.00	$ -	$ -	$ -	$ -	$ 8,000.00	
Geese Control	$ -	$ -	$ -	$ -	$ -	$ -	$ 1,600.00
	$ 53,000.00	$ -	$ 6,000.00	$ 241.65	$ 5,758.35	$ 47,000.00	$ 13,121.60
UNCLASSIFIED IMPROVEMENT FUND							
Water Main on Main Street	$ -	$ 243,395.87	$ 243,395.87	$ 9,303.20	$ 234,092.67		
Assessment Revaluation	$ 5,840.00	$ -	$ 5,840.00	$ 5,840.00	$ -		$ 11,680.00
Entryway Feature	$ -	$ -	$ -	$ -	$ -	$ 50,000.00	
Old Village Hall Upper Floor Study	$ -	$ -	$ -	$ -	$ -	$ 8,000.00	
Downtown Improvements	$ -	$ -	$ -	$ -	$ -		
Profile & Concrete Replace. Main Street	$ 1,145,000.00	$ 29,346.85	$ 1,174,346.85	$ 916,546.72	$ 257,800.13		
Replace Park Restrooms	$ -	$ -	$ -	$ 1,677.87	$ (1,677.87)		
Remediation DPW Yard	$ -	$ -	$ -	$ -	$ -	$ 10,000.00	
Thiensville Business Association Event	$ -	$ -	$ -	$ -	$ -		
Village Dam Inspection	$ 7,000.00	$ -	$ 1,000.00	$ -	$ 1,000.00		
Village Park Improvement Plan	$ -	$ -	$ 65,000.00	$ -	$ 65,000.00	$ 35,000.00	
Buntrock Lot Improve. & Trail Shade Structure	$ -	$ -	$ -	$ -	$ -	$ 35,000.00	
Freistadt Road/Pedestrian Path	$ -	$ -	$ -	$ -	$ -	$ 210,000.00	
Madero/Riverview to Freistadt	$ -	$ -	$ -	$ -	$ -	$ 58,212.00	
Madero/Coronada to Riverview	$ -	$ -	$ -	$ -	$ -	$ 44,699.00	
Madero/Riveredge to Freistadt	$ -	$ -	$ -	$ -	$ -	$ 134,009.00	
Sunny/Storm Sewer Replacement	$ -	$ -	$ -	$ -	$ -	$ 200,000.00	
TBA Event	$ -	$ -	$ -	$ -	$ -	$ 5,000.00	
CONTINGENCY	$ 314,201.00	$ -	$ 24,234.05	$ 299.85	$ 23,934.20		
	$ 1,472,041.00	$ 272,742.72	$ 1,513,816.77	$ 933,667.64	$ 580,149.13	$ 789,920.00	$ 11,680.00
TOTALS	$ 1,532,841.00	$ 425,182.47	$ 1,764,556.52	$ 993,319.19	$ 760,495.53	$ 1,204,220.00	$169,087.02

VILLAGE OF THIENSVILLE
OZAUKEE COUNTY, WISCONSIN
ORDINANCE NO. 2016-04
AN ORDINANCE AMENDING
CHAPTER 18
OF THE VILLAGE CODE TO "PEDDLERS, ITINERANT MERCHANTS"

WHEREAS, the Village Board desires to control and regulate the use of streets and sidewalks to the end that the safe use of sidewalks by pedestrians and roads by vehicles is ensured; and

WHEREAS, the Village Board further desires to protect Village residents from unsanitary food consumption/sales or fraudulent sales; and

WHEREAS, the Village Board finds that disallowing mobile food establishments will control and assure the safe streets and sidewalks, and will prevent unsanitary and/or fraudulent sales and is in the best interest of the health, welfare, and safety of Village residents.

THEREFORE, the Village Board of the Village of Thiensville do ordain as follows:

1. Sec. 18-206 is amended by inserting the following defined terms into the list of definitions:

Mobile food establishment means a restaurant or retail food company and/or individual that serves or sells food from a movable vehicle, push cart, or trailer. Mobile food establishment does not include a vehicle which is used solely to transport or deliver food or a common carrier regulated by the state or federal government.

Vehicle means any motor vehicle as defined by Wis. Stats. § 340.01(35).

Trailer means as vehicle as defined by Wis. Stat. § 340.01(71).

2. Sec. 18-238 is created as follows:

The Village shall not issue a permit for a Mobile Food Establishment as defined in Sec. 18-206.

3. Effective Date. This ordinance shall be effective upon publication

Approved by the Village Board of the Village of Thiensville this _____th day of September, 2016.

_____
Van Mobley
Village President

ATTEST:

_____
Amy L. Langlois
Village Clerk

RESOLUTION 2016-13
VILLAGE OF THIENSVILLE
CLOSE LOOPHOLES CAUSING MORE OF PROPERTY TAX BURDEN TO SHIFT FROM COMMERCIAL TO RESIDENTIAL

WHEREAS, homeowners in Wisconsin already pay 70% of the total statewide property tax levy; and

WHEREAS, that disproportionate burden is about to get much worse unless the Legislature closes loopholes that national chains like Walgreens and big box retail establishments like Target are using across the country to gain dramatic reductions in their property tax bills at the expense of homeowners and other taxpayers; and

WHEREAS, a carefully-orchestrated wave of 100s of lawsuits in Wisconsin is forcing assessors to slash the market value of thriving national retail stores, shifting their tax burden to local mom and pop shops and homeowners; and

WHEREAS, Walgreens and CVS stores in Wisconsin have argued in communities across the state that the assessed value of their property for property tax purposes should be only half of its actual value on the open market; and

WHEREAS, in many cases the courts have sided with Walgreens and CVS requiring communities to refund tax revenue back to the stores; and

WHEREAS, there are over 200 Walgreens stores located in Wisconsin's cities and villages; and

WHEREAS, Target, Lowe's, Meijer and other big box chains are using what is known as the "Dark Store Theory" to argue that the assessed value of a new, thriving store should be based on comparing their buildings to nearby vacant or abandoned stores from a different market segment; and

WHEREAS, the Republican-controlled Indiana State Legislature has on two occasions in the last two years overwhelmingly passed legislation prohibiting assessors from valuing new big box stores the same as nearby abandoned stores from a different market segment; and

WHEREAS, the Michigan State House overwhelmingly passed similar legislation in May of 2016.

NOW, THEREFORE, BE IT RESOLVED, that the Village Board of the Village of Thiensville urges the Governor and the Legislature to protect homeowners and main street businesses from having even more of the property tax burden shifted to them by passing legislation clarifying that:

1. Leases are appropriately factored into the valuation of properties; and
2. Assessors must, when using the comparable sale method of valuation, consider as comparable those sales exhibiting a similar highest and best use market segment, rather than similarly sized but abandoned properties.

PASSED AND ADOPTED by the Village Board of the Village of Thiensville, County of Ozaukee, State of Wisconsin on this 17th day of October, 2016.

Van A. Mobley, Village President

Amy L. Langlois, Village Clerk

LEAGUE OF WISCONSIN MUNICIPALITIES
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Issue Briefing: Dark Store Tax Shift

Court rulings giving tax cuts to chain stores result in tax increases for homeowners

Property taxes for homeowners and main street businesses are increasing in Wisconsin as national retailers pay less. A carefully-orchestrated wave of 100s of lawsuits in Wisconsin is forcing assessors to slash the market value of thriving national retail stores, shifting their tax burden to local mom and pop shops and to their home-owning customers. If the Legislature fails to close this loophole, we estimate that millions of dollars in property taxes will shift from large commercial properties to homeowners and other taxpayers over the next few years.

The table below shows what assessors estimate the tax increases that homeowners in select communities will experience when the Dark Store theory is fully-implemented. Calculations are based on amount of national chain retail, 2015 mill rates, and median home values:

City	Estimated Tax Increase	Average increase per home per year
Brookfield	5%	$233.50
Hudson	9%	$374.58
La Crosse	7%	$197.12
Oconomowoc	8%	$360.96
Pleasant Prairie	17%	$892.50
Wauwatosa	7%	$382.12
West Bend	8%	$253.89

This is not a new problem, nor is it exclusive to Wisconsin. Wisconsin is merely the latest state to experience this coordinated legal attack on in-state taxpayers. Indiana and Michigan have already experienced it. In Indiana, the Legislature promptly slammed the door on this court-created loophole. A similar legislative fix is pending in Michigan. Wisconsin must do the same.

Loophole #1: It's just a big empty box. Tax attorneys for Target, Meijer, and other big box chains are using what is known as the "**Dark Store Theory**" to argue that the assessed value of a new, thriving store should be based on the value of vacant or abandoned buildings of similar size. They argue that regardless of their new location or how updated their building is the value for 'property tax purposes' should be based on the value of the buildings and locations they abandoned prior to moving into the new store at their new location.

> **Real World Example from Wauwatosa**: The Lowe's store at 12000 W. Burleigh St. is currently challenging the city's assessed valuation. The City assessed the property at $13.6 million. The City's expert believes the market value is actually $17.7 million. Lowe's argues the property's current value is $7.1 million of which $3 million is attributed to land. Yet, the land was purchased in 2007 for $9,012,800. Lowe's built a

140,000 square foot building in 2006 for approximately $7 million, they then subsequently purchased the land after constructing the building. Altogether, Lowe's spent in excess of $16 million to acquire the land and build the structure. Now, Lowe's argues that the land was devalued from $9 million to $3 million because the big box store was constructed. Lowe's insists that under Wisconsin law (based on the *Walgreens* decision) only vacant dark stores, such as the vacated big box stores near the former Northridge shopping area, can be used as comparables. The City disagrees, but their only options are costly litigation or settling with the property owner on a compromise value.

Loophole #2: Gold box on Wall Street, cardboard box on Main Street. Walgreens and CVS stores use a different, but related strategy, to argue that the assessed value of their properties should be less than half of actual sale prices on the open market. The two have already sued more than 100 Wisconsin communities, claiming the rent they pay for their newly-constructed, highly-visible corner locations doesn't accurately reflect its market value. These properties are developed to the retailer's specifications and leased to them with no landlord responsibility other than collecting rent. More than 80% of Walgreen stores and 95% of CVS stores operate under a lease arrangement. This arrangement is so desirable that drugstores have become the most popular single-tenant properties in the national real estate investment market. But attorneys for Walgreen and CVS argue that the sale prices obtained on investment exchanges don't represent market value and the underlying leases are the wrong tool for determining the property's value for 'property tax purposes.' Instead, they say, the assessments should hinge on the amount the landlord could get if the drugstore moved out and a different retailer moved in.

Real World Example from Oshkosh: Walgreens challenged the City of Oshkosh's assessments of two of its stores. The city based its assessment on the actual amounts the properties were sold on real estate investment exchanges. The court rejected the city's approach and ordered that the two Walgreens be refunded for several tax years. The total amount of the refunds equaled $305,672. Other taxpayers in Oshkosh now have to pick up Walgreen's former share of the tax burden. There are over 200 Walgreens located in Wisconsin's cities and villages.

Other states have stopped this tax shift. The Republican-controlled Indiana Legislature overwhelmingly passed bipartisan legislation in 2015 and 2016 prohibiting assessors from valuing new big box stores the same as nearby abandoned stores. The Michigan legislature is considering similar proposals. In May 2016 the Michigan house passed a dark store fix bill by a vote of 97-11. The bill is pending in the Michigan Senate.

Solution: Follow Indiana's lead and pass legislation in Wisconsin closing off these tax strategies and stopping the tax shift to home owners. Pass legislation clarifying that leases are appropriately factored into the valuation of properties and prohibiting assessors from valuing thriving big box stores the same as abandoned buildings in a different market segment. 9/1/16

Big-Box Stores Battle Local Governments Over Property Taxes

BY: Liz Farmer | September 2016

On Michigan's sparsely populated Upper Peninsula, big-box stores are a modern necessity. Where towns are spaced far apart and winters are long, one-stop shopping to load up on supplies adds a crucial convenience to what can be -- at least for many -- a rugged existence.

Landing one large retailer is a coup. Having more than one can make a city or town a regional shopping destination. Marquette Township, a small community adjacent to the larger city of Marquette, is in the unique position of having a handful of big-box chain stores. Taking advantage of the fact that the city of Marquette was mostly built out, the township began encouraging large-scale commercial development on its western edge early in the 2000s.

The town now boasts the only Lowe's on the Upper Peninsula, and the only PetSmart, Target and Best Buy. A Menards home improvement store and a Walmart Superstore are there as well. The flurry of new building and retail was so great that the township's tax revenue never took a hit during the Great Recession, even at a time when most small towns on the peninsula and elsewhere in Michigan were struggling.

But recently, the township suffered a dramatic drop in its property tax revenue. It had to cut back on spending, trim employee benefits and reduce library hours. The impact has reached up to surrounding Marquette County, which earlier this year closed a youth home to save money. The reason for the lost revenue isn't declining consumer demand. It's a series of rulings by the Michigan Tax Tribunal that have allowed large retailers to reduce their property tax assessments, in many cases by as much as half.

Big-box retailers argue that the market value of their commercial property should be the sale price of similarly sized but vacant retail buildings. They point out that these buildings are extremely hard to sell as-is once the retailer moves out. They tend to sit empty for long periods. Thus, the assertion is, they aren't worth nearly as much as local tax assessors have traditionally assumed in valuing the property.

This appeals approach was first largely successful in the Detroit area following the recession, when nearly all retailers were dealing with depressed property values. But since then, it has spread across otherwise thriving areas in Michigan to the point where it is difficult to find a county that hasn't been challenged on the issue. The assessment community has even given it a name, dubbing it the "dark-store" strategy.

Local governments, needless to say, aren't buying this. "When you get your house appraised, they're going to look at properties that are occupied," says Steve Currie of the Michigan Association of Counties. "They're not going to look at the foreclosed one because that's not an equitable property. It's the same case here."

Michigan is far from alone in seeing localities take dark-store hits to their property tax base. Counties in Alabama, Florida and Indiana are seeing widespread challenges that make use of the dark-store method. The National Association of Counties says it's an emerging issue in Iowa, North Carolina, Ohio, Tennessee, Washington and Wisconsin.

Still, while these cases have been proceeding for the better part of a decade, it's only been recently that county organizations and public officials have realized the geographical magnitude of the challenge. County assessors forced to respond to it aren't always aware of similar controversies

outside their jurisdiction. This is particularly true in places that are geographically isolated and where assessors are part-time employees.

Getting policymakers clued in to the problem has also been tricky. The world of property tax assessments is loaded with definitions and methodology that, to the average outsider, can seem overwhelming. Property appraisal laws vary by state, and arguments that hold water in one state might not in the next. So it's not always clear to lawmakers what -- if anything -- they can do legislatively to help counties respond to the threat.

Even in places where counties have pieced together a coordinated effort to fend off challenges, response on the state level has varied. The Indiana General Assembly took arguably the strong-est action, passing two laws last year that essentially banned the dark-store tactic. But those laws were repealed and replaced with a weaker law this year. Alabama passed a law that amounted to an administrative change giving counties more legal resources. The Michigan Legislature has considered but not approved bills dealing with how the Tax Tribunal hears assessment challenges. In these places and elsewhere, many are concerned that the longer it takes for a concerted state response, the more money counties and local governments will lose.

Big-box retailers say the market value of a property should be the sale price of similarly sized but vacant retail buildings. (Flickr/Nicholas Eckhart)

Big-box retail stores aren't the first to complain that their property's uniqueness should afford them special consideration when it comes to their taxable value. Nearly a century ago, the owners of the New York Stock Exchange tried to get the building's appraisal value lowered by arguing that the building's unusual -- and expensive -- design would be of no value to any future buyer. In fact, the argument went, the building actually lowered the value of the land itself because a future buyer would be forced to shell out the money for demolition costs. While the court rejected that argument in 1928, it has become a popular case to make ever since, with varying levels of success.

There are different nuances and different case law in every state, but it can be generally said that appraisers look at three factors in determining the taxable value of property: the sale price of comparable properties, the current cost to build minus depreciation and the income generated by rents charged to tenants. Appraisers can apply a blend of these approaches to arrive at a property's value, or place most of the weight on just a single approach.

When it comes to unique properties like big boxes, finding comparable sales is difficult. Property values differ by market and it's simply not often that an oversized retailer in a market area sells its property. For this reason, appraisers prefer giving more weight to building costs.

But big-box retailers say using the construction costs of a building to determine the assessment artificially inflates the value. And they insist it's unfair to value their retail properties based on their worth to the current user (referred to as "value-in-use") instead of the value the property would have on the open market (called "value-in-exchange"). The appropriate use of the competing valuation methods is a topic of seething debate in the appraisal world. Retail representatives fall decidedly on value-in-exchange. "It's easy to be confused by the presence of a business," says Florida real estate broker Sheila Anderson, whose firm Commercial Property Services has represented owners in scores of appeals. "But a business is not [what needs to be] assessed." In her view, it's only the resale value of the empty building that matters for taxation. And that is nearly always a much smaller amount.

Complicating the matter are deed restrictions the big-box retailers place on the properties they do sell. Typically, a retailer closes a location to open up another store close by, or leaves because the market isn't viable anymore. But just to be sure a competitor doesn't move in and fare better, the deed bars the new owner from operating a similar business. Assessors say this limitation artificially depresses the market value of the property. The retailers consider it insignificant.

The debate leads to real questions about the fairest way to value these prolific but unique properties, says Allen Booth, a former city assessor in Rhode Island without any affiliation to a dark-store case. "The reality is there are very few tenants that will move into the custom building when you're dealing with these big-box situations," he says. But, he adds, officials are leery of retail attorneys' motives because they can profit greatly from the challenges by taking a cut of the tax refund if they win. "You have to wonder," Booth says, "are these people just being obnoxious or are the properties really overvalued and it's just that now someone's looking at it?"

Tax courts in Michigan have generally agreed with retailers that properties were being overvalued. In Marquette Township, Lowe's successfully used this argument in a 2012 challenge to its property assessment and succeeded in reducing its taxable value from $5.2 million to less than $2 million, even though the store alone cost $10 million to build. The township spent several hundred thousand dollars in legal costs but failed to win in the appeals process. As a result, the ruling applied to other pending challenges. All told, the township's total property tax collections have fallen nearly 22 percent in just a few years.

Statewide, the results have been similar. According to the International Association of Assessing Officers, the valuation on large retailers across the country is anywhere from $45 to $75 per square foot, depending on the market. After five years of litigation in Michigan, says tax attorney Jack Van Coevering, the average per-square-foot value in the state is $20.

The big-box retailer Meijer brought a case at one of its most successful Indiana locations, in Marion County, after winning reduced assessments in Michigan. The attorney for Meijer went so far as to tell the *Indianapolis Business Journal* that the appeal in Marion County was a test case because "whatever the value is there would be the upper limit of the value across the state." The retailer won in late 2014 and got its assessment slashed from $83 per square foot to $30 per square foot. The decision applied retroactively, requiring Marion County to refund Meijer $2.4 million for nine years of back taxes. Indiana county officials estimated that if the decision were to be extended to the more than 17,000 commercial properties across the state, it would mean a loss of $120 million in property tax revenue statewide.

Indiana lawmakers responded quickly. In 2015, the legislature passed two bills: One effectively banned using the dark-store method to value existing businesses, and the other required using the cost method for properties over a certain square footage. But those laws were repealed this year under concerns they violated the uniformity clause in the state's constitution, which requires all property to be assessed on an equal basis. The Indiana General Assembly then passed a new law that requires assessments to be based on the value of properties that are "similarly situated in the marketplace."

Other states have tried other tactics. Alabama passed a law this year that allows counties to remove these cases from their district attorney's jurisdiction and hire outside attorneys to fight them. In Michigan, a bill passed the House that would require the Tax Tribunal to consider all three valuation methods (rather than just the one the retailer is arguing for). It will be considered in the Senate later this fall.

In short, the legislative authority of lawmakers to intervene is murky. "It's always appropriate for the legislature to try to clarify and remedy a situation when appropriate," says Joan Youngman, a property tax expert with the Lincoln Institute of Land Policy. "But you want to be sure this is a problem with the existing law."

In the end, the best way to beat back the challenges is to win in court. But that's a tough task for counties that don't have a lot of resources. In Tampa, Fla., Hillsborough County's director of valuation, Tim Wilmath, says counties in his state have caught on early to the dark-store challenge and have for the most part been able to mount successful defenses. Wilmath co-authored an article in an industry magazine last year advising county assessors on how to challenge the tactic, which has made him a de facto adviser to smaller counties across the country. "They're looking for advice

on how best to go at it," he says of the calls from outside Florida. "But even when they know all the right things to do, they still settle because they just don't have the money."

In Michigan, a recent Court of Appeals ruling may prove to be a turning point. In May, the court overturned a 2015 decision by the Michigan Tax Tribunal that had favored the retailer Menard against the city of Escanaba in a property tax dispute. The court found that Escanaba's cost-based approach was more reasonable than the retailer's comparable sales method, which included using dark stores. The case was remanded back to the tribunal with directions to consider all the assessment methods. It may end up setting a precedent for cases in Michigan that are currently open.

Still, for counties and townships that have already lost or settled cases, the damage has been done. And because of limits on how much localities can increase the property tax each year, the previous losses in tax revenue will never be made up. In Marquette Township, that means officials will have to figure out how to replenish the reserves that were drained to pay back Lowe's, at the same time adjusting permanently to a shrunken tax base.

"The long and short of it," says Marquette Township Manager Randy Girard, "is that we will not recover."

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Village of Thiensville - Amy Langlois

From: MGR 04884 <MGR.04884@store.walgreens.com>
Sent: Wednesday, September 21, 2016 11:10 AM
To: Village of Thiensville - Amy Langlois
Subject: Spirits Planogram change
Attachments: Spirits.pdf

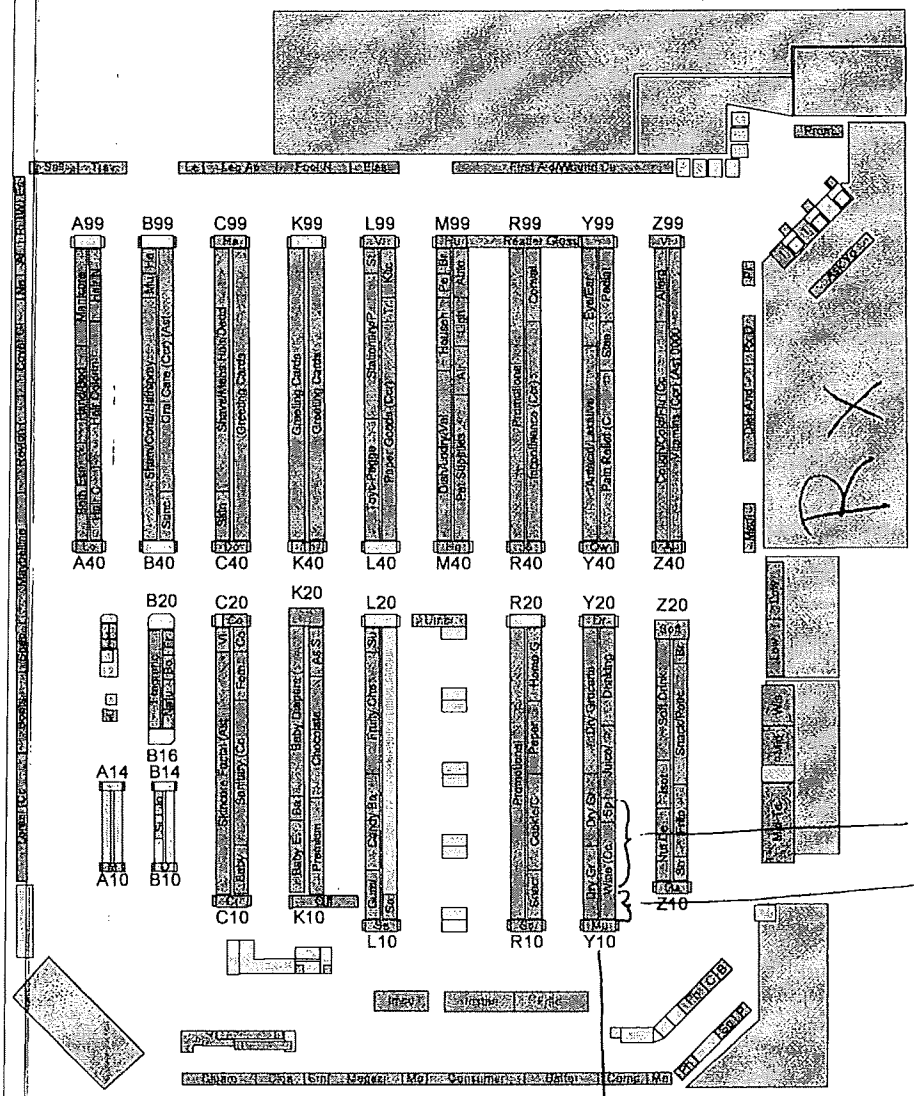
Hi,

This is Shoua from Walgreens in Thiensville. We are looking to change our spirits planogram. We would like to add a 3 feet of spirits into our set. This would increase our current subscription from 3ft to 6 feet total. We would have the 3ft spirits end stand and it would wrap around to 3 feet into the aisle. Our wine selection would stay the same, just shifted down 3ft. The attachment will show you a map of our store and where this change is occurring. If you have any questions please feel free to call me. If you can also let me know when we can proceed or not. Thanks.

Shoua Janasiak

262-242-3451

District 444 - Store 4884 Floorplan
278 N Main St, Thiensville, WI



12 ft wine

3 ft in Aisle of spirits

Front Doors

3ft Endstand of Spirits

Planogram

Department