



# City of Appleton

100 North Appleton Street  
Appleton, WI 54911-4799  
[www.appleton.org](http://www.appleton.org)

## Meeting Agenda - Final Community & Economic Development Committee

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Wednesday, February 22, 2017

5:00 PM

Council Chambers, 6th Floor

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1. Call meeting to order
2. Roll call of membership
3. Approval of minutes from previous meeting

[17-206](#) CEDC Minutes from 1-11-17

Attachments: [CEDC Minutes 1-11-17.pdf](#)

### 4. Public Hearings/Appearances

### 5. Action Items

[17-207](#) Request to approve the attached resolution encouraging our state legislature to close property tax loopholes in Wisconsin

Attachments: [Dark Store Resolution Memo to CEDC 2-22-17.pdf](#)

[City of Appleton Resolution for Proposed Dark Store Legislation.pdf](#)

[Dark Store Resolution Memo Attachments.pdf](#)

[17-208](#) Request to approve a one (1) year lease with Erv Van Camp to farm the undeveloped land at 110 and 210 W. Edgewood Drive, estimated to be approximately 21 acres, at the rental rate of \$100 per acre, with no crop loss provision

Attachments: [FarmLeaseMemo\\_110&210 W Edgewood\\_2-10-17.pdf](#)

[110&210 W Edgewood - Farm Lease \(1-30-2017\).pdf](#)

[Edgewood Farm Lease Map EXHIBIT A.pdf](#)

[EXHIBIT B Small Exposure Leases.pdf](#)

### 6. Information Items

7. Adjournment

*Notice is hereby given that a quorum of the Common Council may be present during this meeting, although no Council action will be taken.*

*Any questions about items on this meeting are to be directed to Karen Harkness, Director, Community and Economic Development Department at 920-832-6468.*

*Reasonable Accommodations for Persons with Disabilities will be made upon Request and if Feasible.*



# City of Appleton

100 North Appleton Street  
Appleton, WI 54911-4799  
[www.appleton.org](http://www.appleton.org)

## Meeting Minutes - Final Community & Economic Development Committee

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Wednesday, January 11, 2017

5:00 PM

Council Chambers, 6th Floor

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1. Call meeting to order

**Meeting called to order at 5:00 p.m.**

2. Roll call of membership

**Present:** 5 - Coenen, Baranowski, Mann, Reed and Siebers

*Others present:*  
*Aldersperson Jeff Jirschele, District #15*

3. Approval of minutes from previous meeting

[17-016](#) CEDC Minutes from 12-14-16

**Attachments:** [CEDC Minutes 12-14-16.pdf](#)

**Siebers moved, seconded by Baranowski, that the Minutes be approved. Roll Call. Motion carried by the following vote:**

**Aye:** 5 - Coenen, Baranowski, Mann, Reed and Siebers

4. Public Hearings/Appearances

5. Action Items

[17-015](#) Request to approve the Cooperation Agreement between the City of Appleton and the Appleton Redevelopment Authority

**Attachments:** [City and ARA Cooperative Agreement 1-5-17.pdf](#)

**Siebers moved, seconded by Reed, that the Report Action Item be recommended for approval. Roll Call. Motion carried by the following vote:**

**Aye:** 5 - Coenen, Baranowski, Mann, Reed and Siebers

6. Information Items

7. Adjournment

**Baranowski moved, seconded by Siebers, that the meeting be adjourned at 5:10 p.m. Roll Call. Motion carried by the following vote:**

**Aye:** 5 - Coenen, Baranowski, Mann, Reed and Siebers



# MEMORANDUM

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TO: Community and Economic Development Committee

FROM: DeAnn Brosman, City Assessor

DATE: February 16, 2017

RE: Resolution to Encourage our Legislature to Close Tax Loopholes

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Please find attached a resolution encouraging our state legislature to close property tax loopholes in Wisconsin. These loopholes have allowed national retailers to be awarded large property tax refunds, thereby shifting their tax burden to homeowners and small business owners. This is impacting our tax base. To help you understand this issue, I have also attached the Dark Store Loophole Resource Page of the Wisconsin League of Municipalities (“the League”) which contains this resolution, along with the League’s Issue Briefing on the Dark Store Tax Shift. Lastly, you will find a recent article from The Post-Crescent describing the impact on our local communities.

As a city, we have awarded the following tax refunds due to these loopholes in recent years:

Target - \$79,128 refund in 2013  
Walgreens - \$385,633 refund in 2015  
CVS - \$339,594 proposed refund in 2017

Wisconsin assessors are required to value property at its market value – what it would sell for on the open market. Wisconsin courts, however, have not recognized that fully-occupied commercial buildings have a higher market value than vacant, abandoned (i.e. “dark”) commercial buildings. The courts have allowed retailers to use dark stores as comparable sales to occupied stores in assessment cases and, thereby, have awarded them large tax refunds. This dark store method is now being used by non-retailers to appeal assessed values. Most buyers of commercial property are investors who deem dark stores to be worth up to 50% less than occupied stores due to: lost rent, holding costs while vacant, leasing commissions, remodeling cost for a new tenant, seller-imposed restrictions on retail use, higher investment risk, inferior locations, and other factors.

In assessment cases, the courts also have not recognized the existence of all leases that sell with property. By not recognizing leases, the courts have often intrinsically valued commercial property as unoccupied with the above-mentioned discounts. Retail store vacancy in Outagamie County is only 4.5%, but yet we are being forced to assess these properties as if vacant.

State Senate President Roger Roth of Appleton has agreed to co-sponsor legislation to close these loopholes at the encouragement of the League and our mayor. This resolution has recently been passed in other municipalities including Wauwatosa, Brookfield, and West Bend. Please show Senator Roth and our entire legislature your support by passing this resolution.

## **Close Loopholes that Shift a Greater Property Tax Burden from Commercial to Residential Homeowners**

**Whereas**, home owners 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 addresses tax avoidance strategies that national chains like Walgreens, and big box retail establishments like Target and Lowe's 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 less than half of their actual sale prices 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, Menards and other big box chains are using what is known as the "Dark Store Theory" to argue that the assessed value of a new store in a thriving location should be based on comparing their buildings to sales of vacant stores in abandoned locations 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 common council of the City of Appleton 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 leased properties; and
2. When using the comparable sale method of valuation, assessors shall consider as comparable only those sales within the same market segment exhibiting a similar highest and best use rather than similarly sized but vacant properties in abandoned locations.

# Dark Store Tax Loophole Resource

## Page

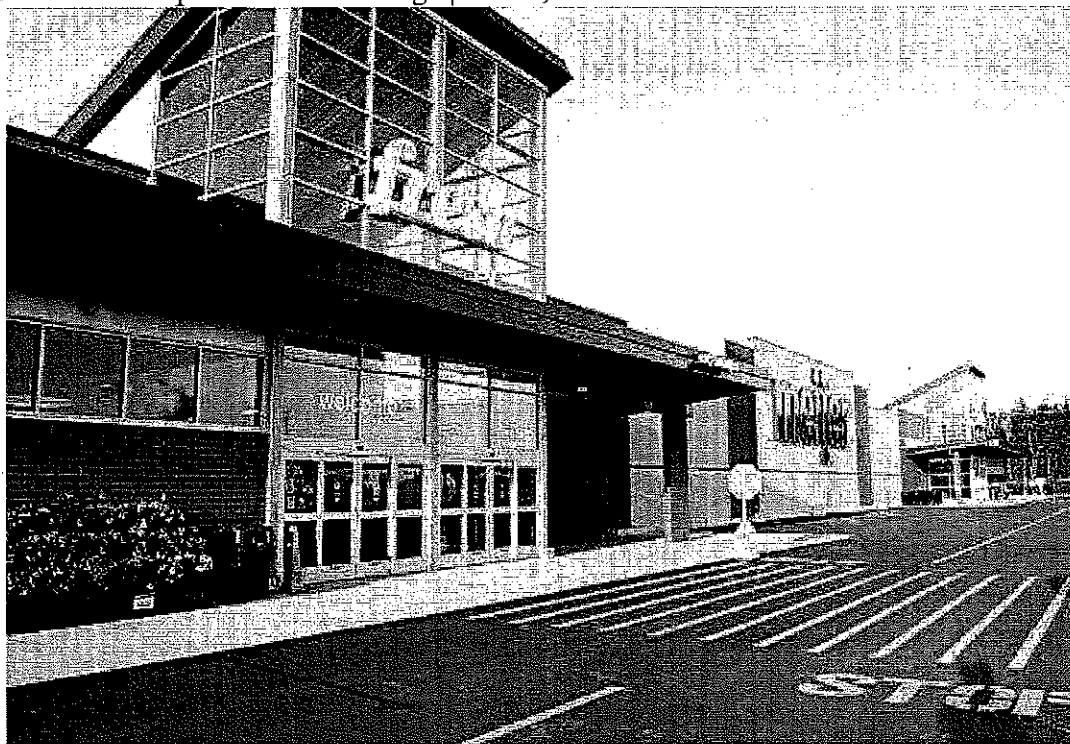
**The Issue:** The "Dark Store" strategy of property tax assessment is looming large over communities throughout the state of Wisconsin and unfortunately could soon be coming to your city or village. In fact, it may already be there.

In essence, the Dark Store strategy is a tax loophole being used by Big Box retailers and other national chains to lower the amount they pay in property taxes. Retailers such as Lowe's, Target, Meijer, Home Depot, Menards, Walgreens, and CVS are arguing that the market value of their thriving store should be based on the sales of similar size "comparable" properties that are vacant and abandoned.

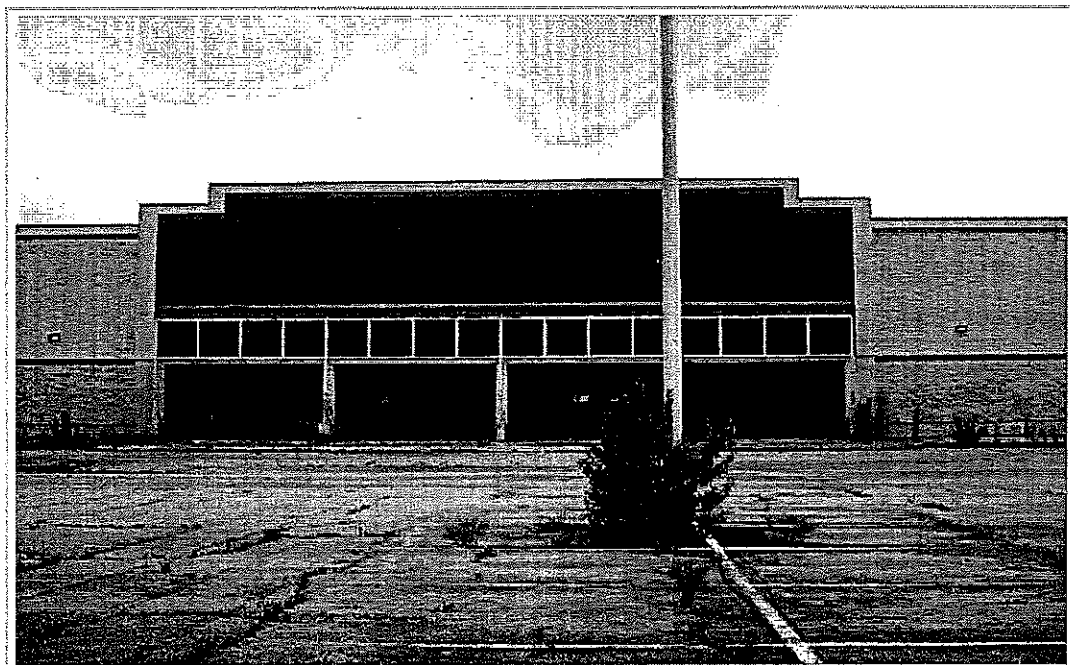
What? You mean a fully operational store, like a new Target, gets to pay the same property taxes as a closed, empty and "dark" K-Mart down the street? Yes, that's exactly what the retailers are fighting for and it's what is starting to happen more and more frequently.

Some courts in Wisconsin have upheld this "Dark Store theory" and cut property tax assessments in some cases by as much as 50 percent – resulting in a tax shift to homeowners or a cut in local services. These rulings could result in a shift of millions of dollars in tax burden across Wisconsin unless the loop hole is closed by the legislature.

**The Solution:** Follow the lead of the Indiana state legislature 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.



Should this new thriving store be valued for property tax purposes like the abandoned store in the photo below? That's what many big box chains are successfully arguing to reduce their property taxes. The result is that other taxpayers like you have to pick up the slack. Not fair, is it? Tell your legislator to do something about it. Support legislation banning the dark store tax strategy.





## Big Box Dark Store Documentary


<http://tinyurl.com/darkstore>

A highly informative documentary film explaining the complex, yet devastating "Dark Store" tax loophole issue facing Wisconsin communities. This is a hot topic the League of Wisconsin Municipalities has been fighting for more than a year and at a compact 24-minutes it is great film to show in your local communities when explaining this issue.

"Boxed In" is a 2016 documentary by Northern Michigan University Professor Dwight Brady, an Emmy Award winning producer, and 14 NMU students.

## Dark Store Resources

Dark Store Issue Briefing.

 Dark Store Model Resolution calling on the Legislature to pass legislation Closing Tax Loopholes Causing More of Property Tax Burden to Shift from Commercial to Residential.

## Big-Box Stores Battle Local Governments Over Property Taxes.

Nice summary of the dark store issue in the September 2016 issue of Governing.

## Should Lowe's 'dark store' strategy in Texas concern D-FW taxpayers?

An article on the just beginning process in Texas. Dallas News

## 'Dark stores' argument allows big businesses to skimp on property taxes.

An account of the 'Dark Store' Janesville situation. Janesville Gazette

An account of Lowe's actions in Alabama. [AL.COM Article](#)

## West Bend WI asks governor to close tax loopholes.

Facing two lawsuits and the prospect of a significant decline in tax revenues from larger retailers, area administrators have officially petitioned state officials for assistance. [Daily News Article](#)

## Wauwatosa, WI -- Mayor and many local governments asking the state for help.

Local municipalities are losing millions each year, and thousands of dollars are being spent on legal fees. It's an issue that's been steadily creeping into Wisconsin -- big box stores appealing their assessed values to pay lower property taxes.

[FOX6 story HERE.](#)

## Brookfield, WI sends message to combat big retail loopholes.

City of Brookfield -- Worst-case scenario: Property tax bills for the average resident go up \$233.50.

[Brookfield Elm Grove NOW article HERE.](#)

## How Big-Box Retailers Weaponize Old Stores

Tucked away on the northern edge of Michigan's rugged Upper Peninsula, Sault Ste. Marie is bracing for the battle of its life. The tourist town is heading to court in early 2017 to fight Walmart Stores, which seeks to cut \$286,000 off its annual property tax bill on a local store. Using what critics call the "dark store loophole," Walmart is following in the footsteps of big-box merchants including Lowe's and Target by arguing that its bustling store should be assigned about the same value for tax purposes as one that's been vacant for years, hundreds of miles away. [Bloomberg Businessweek Article Here.](#)



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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 their actual sale prices 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 for which the properties were sold. 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 abandoned stores in a different market segment. 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:

1. Leases are appropriately factored into the valuation of leased properties; and
2. When using the comparable sale method of valuation, assessors shall consider as comparable only those sales within the same market segment exhibiting a similar highest and best use rather than similarly sized but vacant properties in abandoned locations. 11/1/16

## 'Dark store' cases could cost millions in taxes

Doug Schneider, USA TODAY NETWORK-Wisconsin Published 6:22 a.m. CT Feb. 13, 2017 | Updated 2 hours ago



(Photo: Jim Matthews/USA TODAY NETWORK-WI)

HOWARD - An aggressive move by some major retail chains is putting homeowners in parts of Brown County and a number of other areas of Wisconsin at risk of a property tax jump in the coming years.

The action by retailers like Menards, Target, Lowe's and Walgreens has cost taxpayers millions of dollars in Michigan and Indiana. Oshkosh had to refund more than \$300,000 in taxes and fees. Howard, the Howard-Suamico School District and the county could wind up owing thousands to Menards.

It works like this: Retailers challenge their property assessments, citing similar — but vacant, or "dark" — stores, claiming their buildings are worth millions of dollars less than they've been assessed for by local governments, which typically set values based on both the building and its use.

In many cases, they've won so decisively that a Bloomberg headline said stores have "weaponized" the approach.

When retailers win, the other taxpayers lose. Municipalities have two choices: Cut services — sometimes dramatically — or make the rest of the community pay more in taxes. About 70 percent of municipal tax collections comes from homes. Smaller communities are hit particularly hard due to their smaller tax bases.

"What happens if the assessments of large format retailers get chopped in half?" asked Howard Village Administrator Paul Evert. "All the other taxpayers pick up the slack."

How much slack? Howard has assessed the Menards and its 18.7-acre site at 2300 Woodman Drive at \$12.45 million. Eau Claire-based Menard Inc. (<https://www.menards.com/main/home.html>) acknowledges it spent \$10.6 million to buy the land and build the store, but claims in legal papers that the site is worth only \$5.8 million.

In papers filed in November, the retailer demands that Howard provide a refund, with interest, and pay its legal fees. "The 2016 assessment of the property was excessive," wrote Christopher Strohbehn, a Milwaukee attorney. "The tax imposed on the property was excessive."

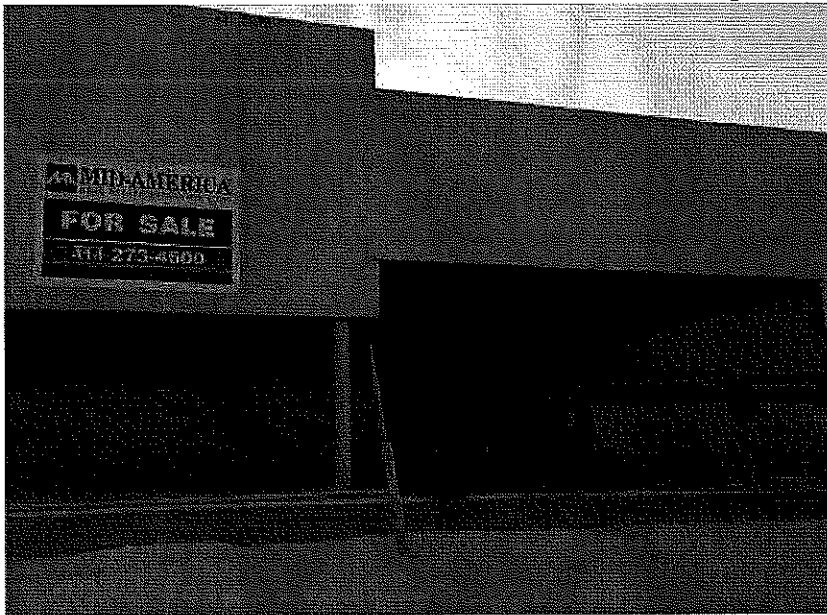
**RELATED:** [Retailers seek tax cuts with 'dark stores' theory \(/story/money/business/2017/01/14/retailers-seek-tax-cuts-dark-store-theory/96502204/\)](#)

**RELATED:** [WI cities worry over 'dark stores' lawsuits \(/story/money/2016/12/26/cities-brood-over-dark-store-lawsuits/95650564/\)](#)

**RELATED:** [Big box stores ring up property tax discounts \(/story/news/politics/2015/04/11/big-box-stores-reduced-property-assessments/25649545/\)](#)

**RELATED:** [Relief in sight for 'Dark Store' tax appeals \(/story/news/local/2016/07/11/relief-sight-dark-store-tax-appeals/86870964/\)](#)

The challenge is one of more than a dozen the company has filed in Wisconsin in the past year.



The vacant Cub Foods grocery in the East Town shopping center is among the stores cited by Menards as a building with comparable value to its Howard store in a challenge of the village's tax assessment of the store on Woodman Drive. (Photo: Jeff Bollner/USA TODAY NETWORK-Wisconsin)

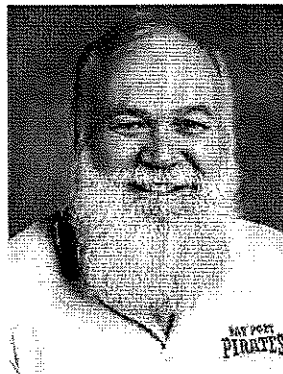
The company listed several stores as comparable to its Howard facility, including a Cub Foods in Green Bay, a Sears in Sheboygan and a former Home Depot in Beaver Dam. The three have something in common. None has operated as a store for years.

With Menards paying \$209,000 in taxes this year, the communities that tax it would have to refund about \$111,000 if the store wins the case.

## 'A real problem'

Communities including Ashwaubenon and Howard and the League of Wisconsin Municipalities are asking the state to step in, said Patrick Moynihan Jr., the Ashwaubenon village clerk who also represents the village on the county board. A committee of county lawmakers earlier this month recommended adding their voices to that crowd, saying the state needs to adopt legislation that blocks businesses from using unused buildings to reduce taxes on working stores.

"This is causing real impacts," said Howard Supervisor Richard Schadewald (<http://www.co.brown.wi.us/departments/?department=2c960fb409b5&i=e32767f67813>). "And the only remedy we have to help local taxpayers is with the state legislature. This is a real problem."



(Photo: Photo courtesy of Richard Schadewald)

How real? Menards' annual tax payment of Howard-Suamico School district (<http://www.hssd.k12.wi.us/>) taxes would fall from roughly \$103,000 to about \$48,000. For 2016, the district would have to refund the difference. In future years, the district would face a difficult choice: increase taxes next year to make up the difference, or cut its budget by a corresponding amount.

"That would be a rather large refund," said Matt Spets (<https://www.linkedin.com/in/matthew-spets-b477a762/>), the district's assistant superintendent for business services. "You're talking about one less teacher."

A reduction in the store's assessment would also mean more than \$50,000 in lost revenue for others that tax the store: Brown County, the village of Howard, Northeast Wisconsin Technical College (<https://www.nwtc.edu/>) and the state of Wisconsin.

Municipalities also fear that successful challenges will prompt other businesses to take similar steps.

"If one type of business or one type of property gets more favorable treatment, then everybody is going to be looking at that," Oshkosh City Attorney Lynn Lorensen said (</story/money/2016/12/26/cities-brood-over-dark-store-lawsuits/95650564/>). "They'll say, 'If Walgreens had success, maybe we can use a similar argument.'"

## Retailers' side

Retail chains see the issue differently. They insist it's unfair for communities to assess based on what's inside their stores, rather than valuing only the

Additionally, modern retail store designs are fairly unique, making it sometimes difficult for a company to sell a store it no longer wants or needs. Potential resale value, of course, plays a role in [how a property can be assessed \(/story/news/2017/01/20/kewaunee-uke-plant-entitled-12m-tax-refunds/96730004/\)](#). Or, like a former Walmart near Milwaukee, stores have deed restrictions that prevent them from being operated by other retailers.

The attorneys listed in Menards' Howard case didn't respond to requests for comment last week. But in a [January interview with the Journal Sentinel \(/story/money/business/2017/01/14/retailers-see-tax-cuts-dark-store-theory/96502204/\)](#), one made his position clear: The value of the store is its property, not what's inside the building.

Minnesota attorney Robert A. Hill (<http://roberthilllaw.com/>)'s website calls his firm "relentless advocates for property taxpayers." He said municipalities "just want to pretend that what's black is white, and that real estate somehow should not be the only thing that gets assessed."

Municipal officials, though, says that approach defies logic.

"A brand-new Walmart is worth the same as a boarded-up Kmart?" said Deena Bosworth, director of governmental affairs for the Michigan Association of Counties [\(/story/news/politics/2015/04/11/big-box-stores-reduced-property-assessments/25649545/\)](#). "I don't think so."

## 'Devastating effect'

In Michigan and Indiana, where dark-store lawsuits were an issue before they took hold in Wisconsin, impacts are being felt.

Michigan's local governments have issued more than \$100 million in tax refunds since 2010, experts say. Indiana's spent an estimated \$120 million. In 2015, Indiana attempted to resolve dark-store cases by establishing new assessment standards for big-box stores, but repealed them in 2016, apparently amid concerns about constitutional issues.

Before dark-store challenges became common, [the average Michigan 'big box' store was assessed at \\$55 per foot, said Jack Van Coevering \(/story/money/business/2017/01/14/retailers-see-tax-cuts-dark-store-theory/96502204/\)](#), an attorney who was chief judge of the Michigan Tax Tribunal but now represents municipalities in dark-store cases. Now, assessments of Menards and Target are less than half that.

"There's wave after wave after wave," he said. "Whether we've reached the end of the storm, I don't know."

An Escanaba-area library cut hours because its host community had to cut its budget. When an Upper Peninsula Lowe's brought a dark-store case last year, about 130 people protested outside the business. Northern Michigan University [produced a 25-minute documentary video, "Boxed In." \(/http://boxedin.news/what-is-boxed-in-all-about/\)](#) on dark-store impacts.

"This has a devastating effect," [the Michigan Municipal League says \(/http://www.mml.org/advocacy/dark-stores/\)](#). "Municipalities don't just lose future revenue, but have to pay back the retailers for 'over-taxing' them in prior years."

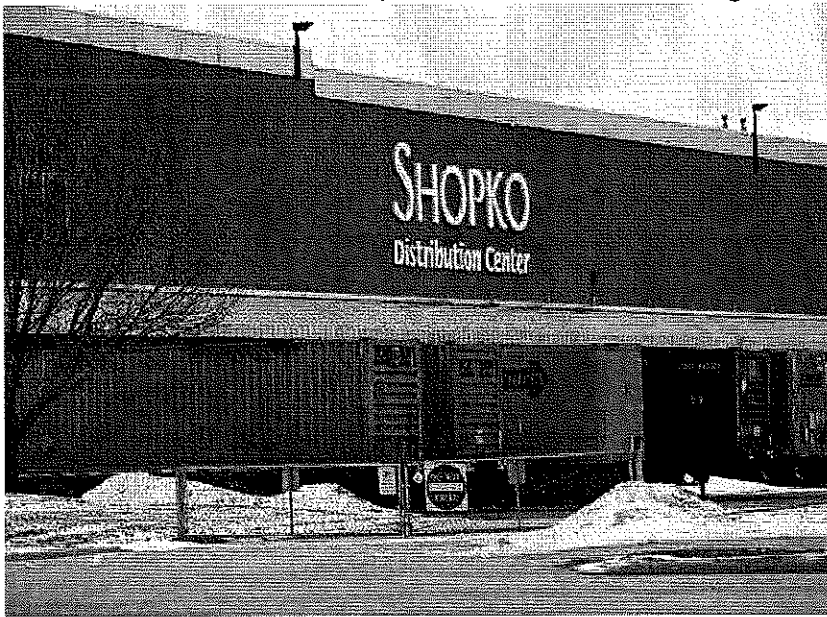
Communities also incur costs to fight the challenges. A Port Huron [Menards sought a \\$2 million cut to its 2014 and 2015 assessments \(/story/news/local/2016/07/11/relief-sight-dark-store-tax-appeals/86870964/\)](#). A court reduced the store's valuation by \$300,000.

The case cost the city more than \$33,000 in legal expenses — more than it receives in taxes from the store.

[dschneid@greenbaypressgazette.com](mailto:dschneid@greenbaypressgazette.com) and follow him on Twitter @PGDougSchneider. USA TODAY NETWORK-Wisconsin reporters Rick Romell and Nate Beck contributed to this story.

## De Pere suit

Big-box retailers aren't just suing because of assessments on their stores.



Shopko Stores Operating Co. is challenging De Pere's property tax assessment of its distribution center at 171 Lawrence Drive. (Photo: Jim Matthews/USA TODAY NETWORK-WI)

ShopKo Stores Operating Co. LLC has filed legal papers saying the city of De Pere over-assessed its west side distribution center by more than \$9 million. The retailer seeks an assessment reduction from \$20.1 million to \$10.9 million on its facility at 1717 Lawrence Drive, plus a refund of taxes it says it overpaid, and legal costs.

Shopko is represented by Christopher Strohbehn of Milwaukee, who also represents Menards in its assessment lawsuit involving its Howard retail store. De Pere is represented by a Madison firm.

## Other battlegrounds

Brown County isn't the only place where some major retailers are seeking significant reductions in their assessments. Highlights:

- **Alabama:** Lowe's, a \$59 billion business, has filed lawsuits seeking assessment reductions on 27 stores. Officials said a loss could cost the state \$1.5 million annually.
- **Fond du Lac:** Menards argues that the value of its store is no more than \$5.2 million; the city's assessment is \$9.2 million. A similar lawsuit from Target says Fond du Lac should reduce its taxes by a third.
- **New York:** The city of Auburn agreed this month to settle a dispute by reducing the assessment of a Walmart by about \$1 million, which will give the store a tax refund of about \$11,000.
- **Racine:** Target has filed multiple challenges to its assessment. It cites a vacant Kmart and a former Home Depot as comparable properties.
- **San Antonio, Texas:** Lowe's sued Bexar County, claiming its 11 area stores were worth the same as empty buildings — about \$30 per square foot, rather than the \$80 to \$85 per square foot at which they were assessed. A court recently ruled against the retailer.

SOURCES: USA TODAY NETWORK-Wisconsin, *al.com*, *The Journal Times*, *San Antonio Express-News*, *Auburn Citizen*.

Read or Share this story: <http://gbpg.net/2l6WuGw>

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We are One Nation**

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**NOMINATE SOMEONE**





“...meeting community needs...enhancing quality of life.”

## MEMORANDUM

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TO: Community and Economic Development Committee

FROM: Matt Rehbein, Economic Development Specialist

DATE: February 10, 2017

RE: Lease of Farmland at 110 & 210 W. Edgewood Drive

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The City of Appleton acquired the properties at 110 & 210 W. Edgewood Drive in the Town of Grand Chute on July 1, 2016 and November 18, 2016, respectively. Improvements to 110 W. Edgewood include a single-family home and approximately 7 acres of farmland. Improvements to 210 W. Edgewood include a single-family home, a barn, and approximately 16 acres of farmland. These properties are located in the City's Growth Corridor and are included in the Boundary Agreement between the City of Appleton and the Town of Grand Chute. City utilities do not currently serve these properties.

Both parcels are zoned for agricultural use, and, historically, this land (both parcels) has been leased to Erv Van Camp for farming operations. The Community and Economic Development Department believes this is responsible management of the land and wishes to continue leasing the farmland until development is warranted. In addition, actively farming the land should help prevent the establishment of wetlands on the properties. Based on information from the nationalized Statistics Service, the average lease rate for farmland in Outagamie County in 2016 was \$128/acre. We have met with Mr. Van Camp and negotiated a rate of \$100/acre. The reduction is based on some delineated wetlands on the site and the size of the parcel(s).

### Staff Recommendation:

The Community and Economic Development Department be authorized to enter into a one (1) year lease with Erv Van Camp to farm the undeveloped land at 110 & 210 W. Edgewood Drive, estimated to be approximately 21 acres. The price shall be at a rental rate of \$100 per acre, with no crop loss provision **BE APPROVED.**

# FARMING LEASE AGREEMENT

## BETWEEN THE CITY OF APPLETON AND ERVIN VAN CAMP

THIS LEASE AGREEMENT ("**Lease**") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2017, between the City of Appleton ("**Landlord**") and Ervin Van Camp ("**Tenant**") for the area of the Properties highlighted on Exhibit A attached hereto, for the limited purpose described herein. Landlord and Tenant may be jointly referred to herein as the parties.

Landlord: City of Appleton  
Attn: Karen Harkness, Director of Community and Economic Development  
100 North Appleton Street  
Appleton, WI 54911

Tenant: Ervin Van Camp  
1451 West Broadway Drive  
Appleton, WI 54913

Property: 110 and 210 West Edgewood Drive, Appleton, WI 54913  
(Limited to the area of the Properties highlighted on Exhibit A)

1. Term. The initial lease term ("**Initial Term**") shall commence upon full execution of this lease and shall run for one (1) calendar year. After the Initial Term, all obligations herein shall automatically renew for one (1) additional one (1) year period ("**Renewal Term**") unless terminated pursuant to the paragraph 3 below.

Initial Term: \_\_\_\_\_ to \_\_\_\_\_  
Renewal Term: \_\_\_\_\_ to \_\_\_\_\_

2. Rent. Tenant shall pay Landlord the annual sum of two thousand one hundred twenty five dollars and zero cents (\$2,125.00), calculated at 21.25 acres x \$100.00 per acre/per year for each year of this lease ("**Annual Rent**"). The total amount paid over the entire course of this Lease shall be four thousand two hundred fifty dollars and zero cents (\$4,250.00), calculated as the Annual Rent during the Initial Term and Renewal Term. The Annual Rent shall be payable as follows:

- a. Initial Term: Half (1/2) of the Annual Rent shall be due upon execution of this Agreement and half (1/2) must be received by the Landlord on or before November 1, 2017;
- b. Renewal Term: Half (1/2) of the Annual Rent be received by Landlord on or before April 1, 2018, and half (1/2) of the Annual Rent must be received by the Landlord on or before November 1, 2018.

3. Use of Premises.

- a. Tenant must use the Property solely for growing crops.
- b. At all times Tenant shall avoid damaging, harming or otherwise disturbing the trees located on and immediately adjacent to the Property, with the exception of occasional trimming the tree branches if the branches become long enough to get caught in the tenant's turbine. Tenant must receive written permission from the landlord prior to trimming the branches. Tenant immediately report to Landlord any signs of damage to any of the trees.

4. Termination. Tenant may terminate this lease upon providing the Landlord with written notice prior to February 28, 2018. Landlord, at its option, may terminate this lease as it relates to all or a portion of the property at any time and for any reason upon thirty (30) days written notice to Tenant. In the event Landlord terminates this lease for a portion of the property, Tenant shall be reimbursed a prorated portion of any rent already paid that year and subsequent Annual Rent shall be adjusted based on remaining acreage available for Tenant's use. Tenant shall be entitled to no other adjustments or remedies as a result of early lease termination.
5. Payment. It is the Tenant's obligation to ensure payment has been received by the Landlord on or before the due date described in paragraph 2 above. Payment must be made by check or money order and may be hand delivered or mailed to the address listed above for the Landlord. Late payments, except when approved by the Landlord or in the case of a bona fide dispute between the parties, may incur a penalty of \$25.00 per day. Returned checks shall incur a penalty of \$45.00 and late penalties may be applied.
6. Real Estate Taxes and Special Assessments. Landlord agrees to pay all real estate taxes and special assessments with regard to said property.
7. Holdover. In the event Tenant holds over or remains in possession or occupancy of the premises after the expiration or earlier termination of this lease, Tenant shall be obligated to pay Landlord fifty dollars (\$50.00) per day as rent for every day said Tenant holds over or remains in possession and Landlord shall have the right to recover from Tenant all reasonable costs of eviction, including court costs and attorney's fees.
8. Notice. For the purpose of this Lease, notice means a document in writing and delivered personally or by United States certified or registered mail, postage prepaid, return receipt requested. Any notice must be delivered to the parties at their respective addresses set forth above. The date that notice shall be deemed to have been made shall be the date of delivery, when delivered personally; or the date set forth on the return receipt if sent by certified or registered mail.
9. INDEMNIFICATION. LANDLORD AND TENANT SHALL BE LIABLE FOR THEIR OWN ACTS AND/OR NEGLIGENCE AND THE ACTS AND/OR NEGLIGENCE OF THEIR INVITEES AND GUESTS, AND EACH AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES, INCLUDING LITIGATION EXPENSES (INCLUDING COURT COSTS AND ATTORNEY'S FEES) PAID OR SUSTAINED BY REASON OF THE ACT AND/OR NEGLIGENCE OF THE OTHER, OR THE OTHER'S INVITEES AND GUESTS OR ARISING IN ANY WAY OUT OF THIS AGREEMENT.
10. INSURANCE. TENANT SHALL INDEMNIFY AND SAVE HARMLESS THE LANDLORD AND LANDLORD'S OFFICERS, AGENTS AND EMPLOYEES AGAINST AND FROM ANY AND ALL DAMAGES AND COSTS, AND ALL CLAIMS FOR THE SAME, AND ANY AND ALL PENALTIES, FINES, AND FORFEITURES OCCASIONED BY OR GROWING OUT OF TENANT'S FAILURE TO COMPLY WITH, CONFORM TO OR OBEY ANY FEDERAL, STATE, OR MUNICIPAL LAW, ORDINANCE, RULE, REGULATION, ORDER, OR NOTICE AS AFORESAID. TENANT SHALL SECURE INSURANCE CONSISTENT WITH THE TERMS SET FORTH IN EXHIBIT B ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE AND SHALL PROVIDE PROOF OF SUCH INSURANCE BY PROVIDING A CERTIFICATE OF INSURANCE TO THE CITY CLERK UPON THE EXECUTION OF THIS LEASE.
11. Assignment of Lease. This Lease may not be assigned by Tenant, and in the event Tenant may vacate the Property, the lease shall immediately terminate. This Lease may be assigned by Landlord to another party.
12. Tests; Inspections. Landlord, its successors, assigns, contractors, agents and/or employees shall at reasonable times have the right to enter upon the Property to conduct any tests, inspections or studies as Landlord may deem desirable; provided, however, that any such tests, inspections or studies shall not materially interfere

with Tenant's use of the premises and provided further that such inspections shall not in any way obligate Landlord to make any repairs or replacements to the Property.

13. Entry upon Premises. Landlord, its successors, assigns, contractors, agents, and/or employees shall at reasonable times have the right to enter upon the premises to install, construct, maintain, repair, replace, and operate sewer, water, gas, and electric lines, cables, poles, substations, and other appurtenant structures; provided that such installation, construction, maintenance, repair, replacement, and operation shall not materially interfere with Tenant's use of the premises. In the event Landlord decides to provide this premise with City sewer and water, it shall do so at its sole expense.

14. Liens. Tenant shall not directly or indirectly create, or permit to be created, or permit to remain and will immediately discharge, any lien, encumbrance, or charge on, or pledge of, the premises or any part thereof or the interest of Tenant under this lease.

15. Severability. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ERVIN VAN CAMP, TENANT**

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print: \_\_\_\_\_

**CITY OF APPLETON, LANDLORD**

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Timothy M. Hanna, Mayor

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

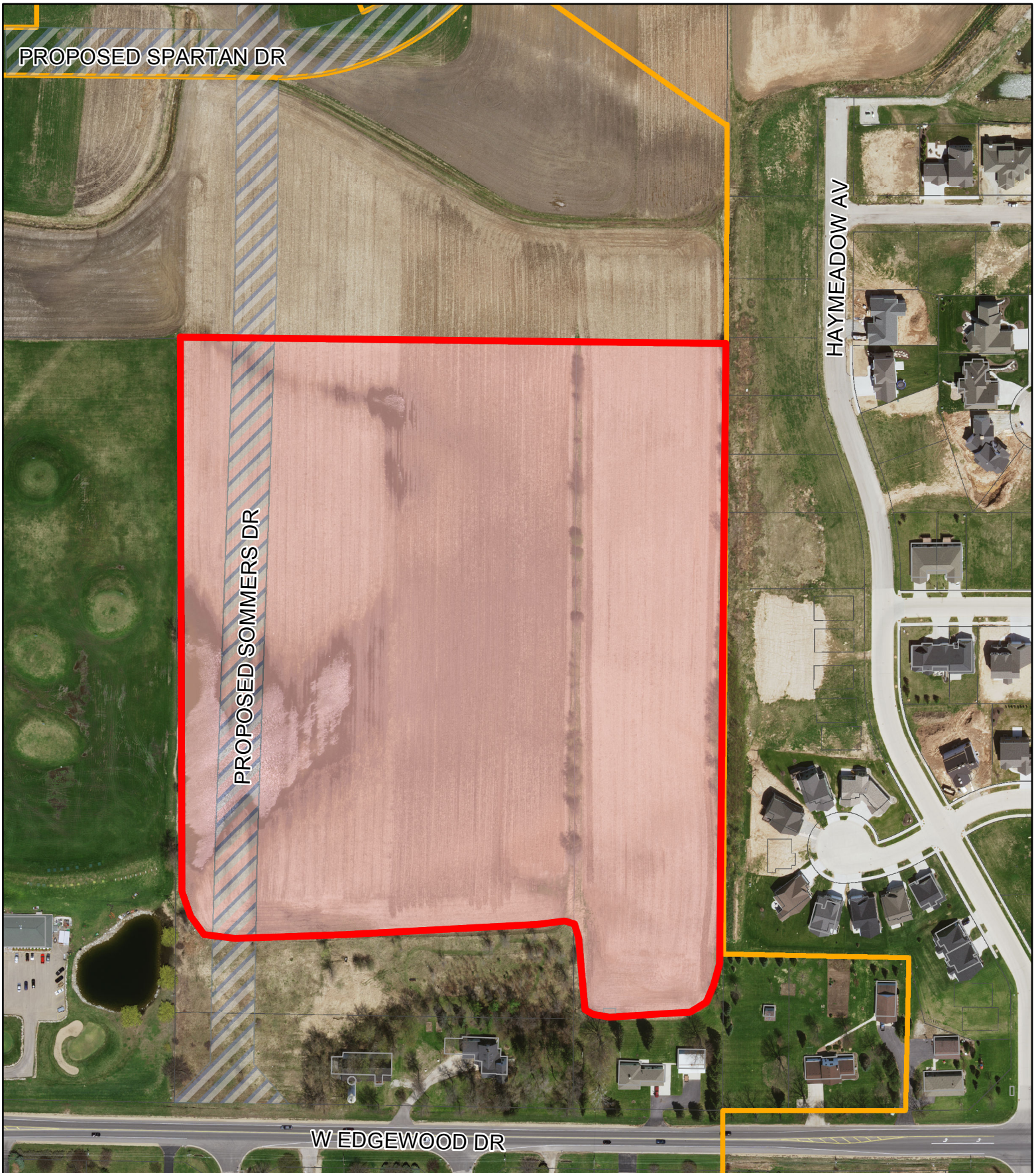
By: \_\_\_\_\_  
Kami Lynch, City Clerk

Approved as to Form:




\_\_\_\_\_  
James P. Walsh, City Attorney

J:\Attorney\WORD\FORMS\LEASE\210 W Edgewood - Farm  
Lease (1-30-2017).docxx





## Edgewood Drive Farm Lease

-  Area to be Farmed = 21.25 Acres
-  Proposed Road
-  City Limits

# EXHIBIT A



Date: 11/28/2016

0 150 300 Feet



## EXHIBIT B

### **CITY OF APPLETON INSURANCE REQUIREMENTS SMALL EXPOSURE LEASES**

The Contractor shall not commence work on contract until proof of insurance required has been provided to the applicable department before the contract or purchase order is considered for approval by the City of Appleton.

It is hereby agreed and understood that the insurance required by the City of Appleton is primary coverage and that any insurance or self insurance maintained by the City of Appleton, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed and the length of time that is specified, if any, in the contract or listed below whichever is longer.

#### **1. INSURANCE REQUIREMENTS FOR CONTRACTOR—LIABILITY**

- A. Commercial General Liability coverage at least as broad as Insurance Services Office Commercial General Liability Form, including coverage for Products Liability, Completed Operations, Contractual Liability, and Explosion, Collapse, Underground coverage with the following minimum limits and coverage:
  - 1. Each Occurrence limit \$1,000,000
  - 2. Personal and Advertising Injury limit \$1,000,000
  - 3. General aggregate limit (other than Products—Completed Operations) **per project** \$2,000,000
  - 4. Products—Completed Operations aggregate \$2,000,000
  - 5. Fire Damage limit — any one fire \$50,000
  - 6. Medical Expense limit — any one person \$5,000
  - 7. Watercraft Liability, (Protection & Indemnity coverage) “**if**” the project work includes the use of, or operation of any watercraft, then Watercraft Liability insurance must be in force with a limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.
  - 8. Products – Completed Operations coverage must be carried for two years after acceptance of completed work.
- B. Automobile Liability coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1—“Any Auto” basis.
- C. Workers’ Compensation as required by the State of Wisconsin, and Employers Liability insurance with sufficient limits to meet underlying Umbrella Liability insurance requirements. If applicable for the work coverage must include Maritime (Jones Act) or Longshoremen’s and Harbor Workers Act coverage.
- D. Also, see requirements under Section 3.

#### **2. INSURANCE REQUIREMENTS FOR SUBCONTRACTOR**

All subcontractors shall be required to obtain Commercial General Liability (if applicable Watercraft liability), Automobile Liability, Workers' Compensation and Employers Liability, (if applicable Aircraft liability) insurance. This insurance shall be as broad and with the same limits as those required per Contractor requirements, excluding Umbrella Liability, contained in Section 1 above.

**3. APPLICABLE TO CONTRACTORS / SUBCONTRACTORS**

- A. **Primary and Non-Contributory requirement – all insurance must be primary and non-contributory to any insurance or self-insurance carried by City of Appleton.**
- B. Acceptability of Insurers - Insurance is to be placed with insurers who have an *A.M. Best* rating of no less than A- and a Financial Size Category of no less than Class VI, and who are authorized as an admitted insurance company in the state of Wisconsin.
- C. Additional Insured Requirements – The following must be named as **additional insureds** on all Liability Policies for liability arising out of project work - City of Appleton, **and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be ISO form CG 20 10 07 04 and also include Products – Completed Operations equivalent to ISO form CG 20 37 07 04 or their equivalents for a minimum of 2 years after acceptance of work. This does not apply to Workers Compensation Policies.**
- D. Certificates of Insurance acceptable to the City of Appleton shall be submitted prior to commencement of the work to the applicable department. **In addition form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure must also be provided or its equivalent.** These certificates shall contain a provision that coverage afforded under the policies will not be canceled or non renewed until at least 30 days' prior written notice has been given to the City of Appleton.