



# CITY COUNCIL

## MEETING AGENDA

December 20, 2018

**Marc D. Tall, Mayor**  
**Ronald J. Beauchamp, Mayor Pro Tem**  
**Ralph B. Blasier, Council Member**  
**Michael R. Sattem, Council Member**  
**Peggy O. Schumann, Council Member**

**Patrick S. Jordan, City Manager**  
**Tammy A. Weissert, CMC Interim City Clerk**  
**Ralph B. K. Peterson, City Attorney**

City Council Chambers located at: City Hall – 410 Ludington Street – Room C101 – Escanaba MI 49829

The Council has adopted a policy to use a Consent Agenda, when appropriate. All items with an asterisk (\*) are considered routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member or citizen so requests, in which event, the item will be removed from the General Order of Business and considered in its normal sequence on the Agenda.

### Regular Meeting

**Thursday, December 20, 2018, at 7:00 p.m.**

CALL TO ORDER

ROLL CALL

INVOCATION/PLEDGE OF ALLEGIANCE - Pastor Erik Heskin of Bethany Lutheran Church

APPROVAL/CORRECTION(S) TO MINUTES – Regular Meeting – December 6, 2018

APPROVAL/ADJUSTMENTS TO THE AGENDA

CONFLICT OF INTEREST DECLARATION(S)

BRIEF PUBLIC COMMENT(S)

PUBLIC HEARINGS

UNFINISHED BUSINESS

NEW BUSINESS

**1. Discussion - Proposal 1 and Next Steps for the City of Escanaba.**

**Explanation:** The City Council will discuss Proposal 1 and what steps to take next for the City of Escanaba.

**2. Setting Obsolete Property Rehabilitation Exemption Public Hearing – January 3, 2019 – 1204 Ludington Street – District No. 27.**

**Explanation:** Krysta Starz, owner of 1204 Ludington Street, has requested to be enrolled in the Obsolete Properties Rehabilitation Act (OPRA) (PA 146, 2000) which allows for partial exemption of property taxes for a specified period of time so that certain types of property improvements can be made. The intent of the legislation is to encourage rehabilitation of underutilized or decaying commercial or commercial/residential properties in certain designated communities. Administration is recommending Council set a public hearing date for January 3, 2019, so there is public understanding of the project.

**3.(a)Approval of a one year lease between the City of Escanaba and the Downtown Development Authority (DDA) for City property located at 1025 Ludington Street, Center Court.**

**Explanation:** Administration is seeking approval of a one year lease between the City of Escanaba and the Downtown Development Authority (DDA) for City property located at 1025 Ludington Street, known as Center Court.

**(b)Approval of a one year Parking Lot Lease and Parking Lot Maintenance Agreement between the City of Escanaba and the Downtown Development Authority (DDA).**

**Explanation:** Administration is seeking approval of a one year lease between the City of Escanaba and the Downtown Development Authority (DDA) for Parking Lot and Parking Lot Maintenance.

**4. Employment Agreement with Phil DeMay.**

**Explanation:** Agreement will be reviewed for new City Clerk, Phil DeMay.

APPOINTMENTS

BOARD, COMMISSION, AND COMMITTEE REPORTS

GENERAL PUBLIC COMMENT

Agenda - December 20, 2018

PROCLAMATION – “Tom Casperson Day”  
ANNOUNCEMENTS  
ADJOURNMENT

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Patrick S. Jordan". The signature is written in a cursive style with a large initial "P".

Patrick S. Jordan  
City Manager

**OFFICIAL PROCEEDINGS  
CITY COUNCIL  
CITY OF ESCANABA, MICHIGAN  
Regular Council Meeting  
Thursday, December 6, 2018**

The meeting was called to order by the Honorable Mayor Marc D. Tall at 7:00 p.m. in the Council Chambers of City Hall located at 410 Ludington Street.

Present: Mayor Marc D. Tall, Council Members, Ronald J. Beauchamp, Ralph B. Blasier, Michael R. Sattem, and Peggy O'Connell Schumann.

Absent: None

Also Present: City Manager Patrick S. Jordan, City Department Heads, media, and members of the public.

Executive Assistant Gustafson led Council in the Pledge of Allegiance.

Blasier moved, Sattem seconded, **CARRIED UNANIMOUSLY**, to approve Regular Meeting minutes from November 12, 2018, and Special Meeting Minutes from November 19, 2018 and November 29, 2018, as submitted.

**ADJUSTMENTS TO THE AGENDA**

Blasier moved, Schumann seconded, **CARRIED UNANIMOUSLY**, to approve the Agenda as submitted.

**CONFLICT OF INTEREST DECLARATION** – None

**BRIEF PUBLIC COMMENT** – None

**PUBLIC HEARINGS**

**PH-1 Public Hearing - Obsolete Properties Rehabilitation District No. 27 – 1204 Ludington Street**

The Obsolete Properties Rehabilitation Act (PA 146 of 2000) allows partial exemption of property taxes for a specified period for certain types of property improvements within a specified area. The intent of the legislation is to encourage rehabilitation of underutilized or decaying commercial or commercial/residential properties in certain designated communities such as Escanaba. The first step in the OPRA process was the establishment of a district consisting of one or more eligible properties. In accordance with program requirements, the owner of 1204 Ludington Street has submitted a request that the City establish an OPRA District, which if approved, would allow for an Obsolete Property Rehabilitation exemption in the future.

This being a public hearing, Mayor Tall asked for public comment.

Hearing no public comment, Mayor Tall then closed the public hearing.

Moved by Council Member Blasier, seconded by Council Member Schumann;

**CITY OF ESCANABA, DELTA COUNTY, MICHIGAN  
RESOLUTION TO ESTABLISH  
OBSOLETE PROPERTY REHABILITATION DISTRICT NO. 27**

- Whereas,** Pursuant to P.A. 146 of 2000, the City of Escanaba has the authority to establish “Obsolete Property Rehabilitation Districts” within the City of Escanaba; and
- Whereas,** Krysta Starz, has filed a written request with the clerk of the City of Escanaba requesting the establishment of the Obsolete Property Rehabilitation District for an area in the vicinity of 1204 Ludington Street located in the City of Escanaba hereafter described; and
- Whereas,** The City Council of the City of Escanaba determined that the district meets the requirements set forth in section 3(1) of PA 146 of 2000; and
- Whereas,** Written notice has been given by mail to all owners of real property located within the district and to the public by newspaper advertisement in the Daily Press and/or public posting of the hearing on the establishment of the proposed district; and
- Whereas,** On December 6, 2018, a public hearing was held and all residents and taxpayers of the City of Escanaba were afforded an opportunity to be heard thereon; and
- Whereas,** The City Council deems it to be in the public interest of the City of Escanaba to establish the Obsolete Property District Rehabilitation as proposed.

**Now, Therefore, Be It Resolved** by the City Council of the City of Escanaba that the following described parcel(s) of land situated in the City of Escanaba, Delta County, and State of Michigan, to wit:

- Parcel #051-320-2930-404-017; E ½ of Lot 2 of Blk 80 of the Proprietors 1st Addition, City of Escanaba, Delta County, Michigan

Be and hereby is established an Obsolete Property Rehabilitation District pursuant to the provisions of P.A. 146 of 2000 to be known as Obsolete Property Rehabilitation District No. 27.

The vote was as follows:

Ayes: Blasier, Schumann, Beauchamp, Sattem, Mayor Tall  
Nays: None

**RESOLUTION DECLARED ADOPTED.”**

**UNFINISHED BUSINESS**

**UB-1 City Clerk Appointment**

Having interviewed four candidates for the City Clerk position on November 29, 2018, Council made a decision on an appointment.

After discussion, Schumann moved, Blasier seconded, to make an offer to Phil DeMay for the City Clerk/I.T. Administrator position.

Upon a call of the roll, the vote was as follows:

Ayes: Schumann, Blasier, Mayor Tall  
Nays: Beauchamp, Sattem

**MOTION CARRIED.**

Council advised that a committee should draft a City Clerk/I.T. Administrator contract for Phil DeMay. After discussion, it was consensus for Council Members Schumann and Sattem, City Attorney Peterson, and HR Director/Treasurer Valentine, to be on a committee to draft the new City Clerk/I.T. Administrator contract and report back to Council at the December 20, 2018 meeting.

**NEW BUSINESS**

**NB-1 Approval – Intent to Apply for State Revolving Loan Funds (SRF) – Wastewater Department**

Administration sought Council approval to submit the Intent to Apply Form as drafted to the Revolving Loan Section. There is no cost with submitting this form. Mayor Tall stated he would like to apply for as many grants as possible, prior to looking for loans, in order to assist with this funding. Director of Water/Wastewater Jeff Lampi stated he has not found any grants available.

Blasier moved, Sattem seconded, to approve to submit the Intent to Apply Form as drafted to the Revolving Loan Section.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, Sattem, Beauchamp, Schumann, Mayor Tall  
Nays: None

**MOTION CARRIED.**

**NB-2 Approval – Professional Services for State Revolving Loan Funds (SRF) Project Plan & Sewer System Evaluation Survey (SSES) – Wastewater Department**

Administration sought Council approval to conduct the SRF Project Plan as required from the State, at a cost not to exceed \$48,000, and to also approve to conduct the work associated with the SSES if required by the DEQ, at a cost not to exceed \$50,000.

Blasier moved, Beauchamp seconded, to approve to conduct the SRF Project Plan as required from the State, at a cost not to exceed \$48,000, and to approve to conduct the work associated with the SSES if required by the DEQ, at a cost not to exceed \$50,000.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, Beauchamp, Sattem, Schumann, Mayor Tall  
Nays: None

**MOTION CARRIED.**

**NB-3 Approval – Planning Commission Term Re-Alignment**

Administration sought approval to have the Planning Commission terms be re-aligned to conform to the schedule outlined in the ordinance and based on the original appointment dates.

Sattem moved, Schumann seconded, to approve to have the Planning Commission terms be re-aligned to conform to the schedule outlined in the ordinance and based on the original appointment dates, with no one year extensions.

Upon a call of the roll, the vote was as follows:

Ayes: Sattem, Schumann, Beauchamp, Mayor Tall  
Nays: Blasier

**MOTION CARRIED.**

**NB-4 Approval – 2019 City Council Meeting Dates**

Administration sought Council approval of the 2019 regular Annual Council Meeting schedule.

Sattem moved, Schumann seconded, **CARRIED UNANIMOUSLY**, to approve the 2019 regular Annual Council Meeting schedule, with the adjustments of moving the April 18 meeting to April 25, as well as the July 4 meeting to July 1.

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

**BOARD, COMMISSION, AND COMMITTEE REPORTS**

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

**GENERAL PUBLIC COMMENT – None**

**ANNOUNCEMENTS**

- Council Member Beauchamp reminded everyone about the Christmas Parade on December 7, 2018.
- Council Member Schumann noted there will be a Christmas Open House Downtown over the weekend.
- City Manager Patrick Jordan stated there will be cookies and hot chocolate in the City Hall lobby after the parade.

**ADJOURNMENT**

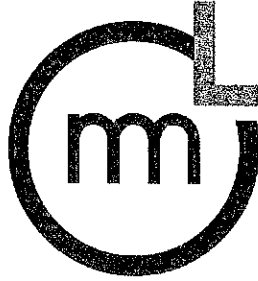
Hearing no further public comment, the Council adjourned at 7:34 p.m.

Respectfully submitted

Kim Gustafson  
Executive Assistant

Approved: \_\_\_\_\_  
Marc D. Tall, Mayor

NB-#1  
C.C. 12/20/18



michigan municipal league

a michigan municipal league white paper re:  
**recreational marihuana proposition**

Clyde J. Robinson, Kalamazoo City Attorney

*I am indebted to Tom Schultz and Lauren Tribble-Laucht for their proof-reading skills and editorial assistance and to Mark Wyckoff for sharing his insights contained in the September 2018 issue of Planning & Zoning News. My heart-felt thanks to each of them.*

-CJR



## **MICHIGAN MUNICIPAL LEAGUE WHITE PAPER RE: RECREATIONAL MARIHUANA PROPOSITION**

### **Introduction**

This paper is intended to provide municipal attorneys and their clients an idea of what to expect and the issues to be addressed should Michigan voters approve a proposal to legalize marihuana on November 6, 2018. The scope of this paper will outline the provisions of the initiated proposal and address some of the practical consequences for municipalities while raising concerns that local governmental officials should be prepared to confront in the event the proposal is adopted. It is assumed that the reader has a working knowledge of both the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, and in particular the Michigan Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et seq.*

While the proposed initiated law, titled the Michigan Regulation and Taxation of Marihuana Act (MRTMA), uses some of the same terms found in the MMFLA, the language between the two acts is not consistent. This circumstance alone, as well as other features of the initiated proposal, requires a thoughtful and thorough review of the language being proposed for adoption by Michigan voters and its potential impact at the local municipal level.

At its core, the MRTMA authorizes the possession and nonmedical use of marihuana by individuals 21 years of age and older while establishing a regulatory framework to control the commercial production and distribution of marihuana outside of the medical context. While the regulatory scheme of the proposed statute is similar to that of the MMFLA, it also differs in significant ways.

### **When would the proposed law become effective if approved?**

Under the provisions of Article II, § 9 of the Michigan Constitution, an initiated law takes effect 10 days after the official declaration of the vote. Assuming the State Board of Canvassers declares the result of the November 6 election within a week after the election, the effective date of the law would be just before Thanksgiving of this year. Given this relatively short period to adjust to the change in the legal status of marihuana in Michigan, law enforcement officers should be provided training in advance of the possible change so as to avoid claims of false arrest and allegations of Fourth Amendment unlawful search violations.

Another constitutional feature of a voter-initiated law is that it can only be amended by a vote of the electors or by  $\frac{3}{4}$  vote of each house of the legislature. This likely makes amending the statute difficult, but not impossible, as the MMMA has been amended at least twice since its adoption by the voters in 2008.

As for the actual licensure of business authorized to grow, process, and sell recreational marihuana, the proposed act requires that the Michigan Department of Licensing and Regulatory Affairs (LARA) begin to issue licenses no later than a year after the effective date of the law. There is no specific licensing board created to review and grant recreational marihuana establishment licenses. Given the deliberate speed of LARA and the Medical Marihuana Licensing Board in processing and authorizing licenses under the MMFLA, it is an open question whether this deadline can be met. If it can't, then the burden of licensing will fall to local municipalities, because the MRTMA specifically provides that if LARA does not timely promulgate rules or accept or process applications, "beginning one year after the effective date of this act," an applicant may seek licensure directly from the municipality where the marihuana business will be located.

Under this scenario, a municipality has 90 days after receipt of an application to issue a license or deny licensure. Grounds for denial of a license are limited to an applicant not being in compliance with an ordinance whose provisions are not "unreasonably impracticable" or a LARA rule issued pursuant to the MRTMA. If a municipality issues a license under these circumstances, it must notify LARA that a municipal license has been issued. The holder of a municipally-issued license is not subject to LARA regulation during the term of the license; in other words, the municipality becomes the licensing and regulatory body for recreational marihuana businesses in the community.

**What does the proposed initiated statute seek to do?**

The purposes actually stated in the MRTMA are many and varied. In addition to legalizing the recreational use of marihuana by persons 21 years and older, the proposed statute at Section 2 seeks to 1) legalize industrial hemp (cannabis with a THC concentration not exceeding 0.3 percent), and 2) license, regulate, and tax the businesses involved in the commercial production and distribution of nonmedical marihuana. According to the text of the proposal the intent of the law is to:

- prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age and older;
- remove the commercial production and distribution of marihuana from the illicit market;
- prevent revenue generated from commerce and marihuana from going to criminal enterprises or gangs;
- prevent the distribution of marihuana to persons under 21 years of age;
- prevent the diversion of marihuana to illicit markets;
- ensure the safety of marihuana and marihuana infused products; and

- ensure the security of marihuana establishments.

Whether the proposal will actually live up to all of these intentions is open to question as many of the areas mentioned are not directly addressed in the proposed law. For instance, since the establishments that will be authorized to grow, process, and sell recreational marihuana may not receive licensure for another year, how is it that individuals can lawfully obtain and possess marihuana upon the effective date of the proposed act?

#### **What the proposed statute permits**

Under Section 5 of the MRTMA, persons 21 years of age and older are specifically permitted to:

- possess, use, consume, purchase, transport, or process 2.5 ounces or less of marihuana, of which not more than 15 grams (0.53 oz.) may be in the form of marihuana concentrate;
- within a person's residence, possess, store, and process not more than a) 10 ounces of marihuana; b) any marihuana produced by marihuana plants cultivated on the premises; and c) for one's personal use, cultivate up to 12 plants at any one time, on one's premises;
- give away or otherwise transfer, without remuneration, up to 2.5 ounces of marihuana except that not more than 15 g of marihuana may be in the form of marihuana concentrate, to a person 21 years of age or older as long as the transfer is not advertised or promoted to the public;
- assist another person who is 21 years of age or more in any of the acts described above; and
- use, manufacture, possess, and purchase marihuana accessories and distribute or sell marihuana accessories to persons who are 21 years of age and older.

Although not a direct concern of municipalities, law enforcement and social service agencies need to be cognizant that the act specifically provides that "a person shall not be denied custody of or visitation with the minor for conduct that is permitted by the act, unless the person's behavior such that it creates an unreasonable danger to the minor they can be clearly articulated and substantiated." MRTMA § 5. Exactly what this phrase means will likely be a source of litigation in the family division of the circuit courts.

The possession limits under the MRTMA would be the most generous in the nation. Most other states that have legalized marihuana permit possession of only one ounce, limit the number of plants to four-six, and do not permit possession of an extra amount within one's residence. An additional concern arises as to how these limits will be applied. It will be argued

that the limits are “per every individual age 21 or older who resides at the premises.” So these amounts are ostensibly doubled for a married couple, and perhaps quadrupled or more for a group of college students or an extended family sharing a residence. While this same concern is also present under the MMMA, the quantity of marihuana permitted to be possessed under the MMMA is significantly less than under the MRTMA, and lawful possessors (patients and caregivers) are required to be registered with the State.

Further the MRTMA does not neatly fit with the MMMA. It only says at Section 4.2 that it “does not limit any privileges, rights, immunities or defenses of a person as provided” by the MMMA. This raises the question whether registered patients and caregivers may lawfully possess marihuana exceeding the amounts permitted under the MMMA. However, this may become a moot point, since in all probability, if the MRTMA is adopted, the number of registered patients and caregivers under the MMMA could reasonably be expected to drop significantly, as its practical application would largely be limited to registered patients under the age of 21 and their caregivers.

#### **What is “Not Authorized” under the proposed statute**

The proposed initiated law does not set forth outright prohibitions, but instead cleverly explains what is not authorized. Specifically, under the terms of Section 4 of the proposal, one is not authorized to:

- operate while under the influence of marihuana or consume marihuana while operating a motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoke marihuana while in the passenger area of the vehicle on a public way;
- transfer marihuana or marihuana accessories to a person under the age of 21;
- process, consume, purchase, or otherwise obtain, cultivate, process, transport, or sell marihuana if under the age 21;
- separation of plant resin by butane extraction or other method that utilizes a substance with the flashpoint below 100° Fahrenheit in any public place motor vehicle or within the curtilage of any residential structure (This prohibition is actually broader than the one limited solely to butane extraction found in the MMMA);
- consume marihuana in a public place or smoke marihuana where prohibited by a person who owns occupies or manages property; however, a public place does not include an area designated for consumption within the municipality that has authorized consumption in a designated area not accessible to persons under 21 years of age;

- cultivate marihuana plants if plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access;
- possess marihuana accessories or possess or consume marihuana on the grounds of a public or private school where children attend preschool, kindergarten, or grades one through 12; in a school bus; or on the grounds of any correctional facility; and
- possess more than 2.5 ounces of marihuana within a person's place of residence unless any excess marihuana is stored in a container or area equipped with locks or other functioning security devices that restrict access to the contents of the container or area.

MRTMA § 4.5 then provides that “All other laws inconsistent with this act do not apply to conduct that is permitted by this act.” This general statement does not provide for a total repeal of existing marihuana laws, but its lack of specificity to other statutes being impacted, something that the Legislative Service Bureau helps the Legislature avoid, may portend problems in its application.

**Differences in Terminology**

The lack of consistency between those statutes addressing medical marihuana and the proposed recreational marihuana statute were alluded to at the beginning of this article; the following chart points out some of those differences.

<b>Key Differences between Medical Marihuana &amp; Proposed Recreational Marihuana Statutes</b>			
	<b>MMFLA</b>	<b>MMMA</b>	<b>Proposed MRTMA</b>
<b>Grower Limits</b>			
Class A	500 plant limit		100 plant limit (limited to Michigan residents for first 2 years)
Class B	1000 plant limit		500 plant limit
Class C	1500 plant limit; stackable		2000 plant limit; not clear if stackable
Microbusiness	-----		150 plant limit (limited to Michigan residents for first 2 years)
<b>Secure Transporter</b>	Required to move marihuana between licensed facilities; may move money		No specific requirement to use; no authority to transport money

<b>Compliance with Marihuana Tracking Act</b>	Required		No reference or requirement
<b>Plant Resin Separation</b>	-----	Butane extraction prohibited in a public place, motor vehicle or inside a residence or within curtilage of a residential structure or in a reckless manner	Butane extraction or another method that utilizes a substance with a flashpoint below 100° F prohibited in a public place, motor vehicle or within curtilage of any residential structure
<b>Possession Limits</b>			
Registered Patient (18 years and older, but can be less than 18)		2.5 oz. useable marihuana & 12 plants*	
Registered Caregiver (5 patient limit)		2.5 oz. useable marihuana & 12 plants per patient*	
Other Persons (21 years and older under MRTMA)		Not permitted	(a) 2.5 oz. of marihuana, of which not more than 15 grams may be concentrate; (b) 10 oz. within one's residence; (c) any amount produced by plants cultivated on the premises; and (d) 12 plants
<b>Inconsistent Terms</b>			
Licensed marihuana businesses	marihuana facility		marihuana establishment
Equipment to grow, process or use marihuana	paraphernalia		marihuana accessories
Business that sells marihuana	provisioning center		marihuana retailer
Certain parts of marihuana plant	Usable marihuana and usable marihuana equivalencies		Term not used
Marihuana-infused products	Excludes products consumed by smoking; exempts products from food law		Does not exclude products consumed by

			smoking or provide food law exemption
Enclosed, locked facility		Specifically defined to address a structure, an outdoor grow area, and motor vehicles	Container or area with a person's residence equipped with locks or other functioning security device that restricts access to the area or container's contents
Limitations on scope of local regulation	Purity, pricing or conflict with MMFLA or LARA rules		"Unreasonably Impracticable"
Zoning	Municipalities specifically authorized to zone, but growers limited to industrial, agricultural or unzoned areas	Municipalities may not limit caregiver operations to residential districts as a "home occupation" <i>DeRuiter v Byron Twp. (2018)</i>	Municipal regulation limited to: (a) reasonable sign restrictions; (b) time, place & manner of operation of marihuana establishments and the production, manufacture, sale and display of marihuana accessories; and (c) authorizing sale of marihuana for consumption in designated areas or at special events
Taxation	3 percent on gross retail receipts of provisioning centers		10 percent on sales price for marihuana sold or transferred by marihuana retailers & micro businesses

\*Under § 8 of the MMMA a patient and patient's caregiver may also collectively possess a quantity of marihuana that is not more than reasonably necessary to ensure an uninterrupted availability of marihuana for the purpose of treatment.

**What may a Municipality do?**

Unlike the MMFLA, where municipalities must "opt in," under the MRTMA, a municipality must "opt out." The proposed statute permits a municipality to "completely

prohibit" or "limit the number of marihuana establishments." Given the language used in Section 6, a municipality should not rely upon prior ordinances or resolutions adopted in response to the MMFLA, but should affirmatively opt-out of the MRTMA or set limits by ordinance, not by resolution. Further, by petition signatures of qualified electors of the municipality in an amount greater than 5 percent of votes cast for governor in the most recent gubernatorial election, may initiate an ordinance to completely prohibit or provide for the number of marihuana establishments within the municipality.

The initiative language in the MRTMA is problematic. Given the wording, it cannot be assumed that voters can initiate an ordinance to "opt in" should the local governing body choose to exempt the municipality from the act. Rather, the initiative options are either to "completely prohibit" or "limit the number" of marihuana establishments. It is an open question whether the initiative authority to provide for the number of establishments could be an avenue for voters to override a governing body's action, by ordinance or resolution, to "opt out" of the statute. Additionally, the vague wording of the statute leaves it open to question as to whether an initiative providing for the number of marihuana establishments must (or should) set forth proposed numbers or limits for each separate type of marihuana establishment.

An opt-out for recreational marihuana will impact existing medical marihuana facilities in a municipality because for the first 24 months of the act, only persons holding a MMFLA license may apply for a recreational retailer, class B or C grower, or secure transporter license under the MRTMA unless after the first 12 months of accepting applications LARA determines that additional recreational marihuana establishment licenses are needed. MRTMA §9.6.

A municipality may adopt certain other ordinances addressing recreational marihuana and recreational marihuana establishments provided that they "are not unreasonably impractical" and do not conflict with the proposed act or any rule promulgated pursuant to the act. The statutory definition of the redundant term "unreasonably impracticable" found at Section 3(u) almost begs to be litigated. As defined by the proposal the term means:

"that the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent business person would not operate the marihuana establishment."

Presumably "unreasonably impracticable" regulations would pass judicial muster. Unfortunately, given that the possession, cultivation, processing, and sale of marihuana remains a crime under federal law, how does one assess an "unreasonable risk" or determine what constitutes such a high investment of time or money so as to deter a reasonably prudent



business person from going forward? Further, does this definition remove the judicial deference and presumption of reasonableness that accompanies ordinances?

Specifically, an ordinance may establish reasonable restrictions on public signs related to marihuana establishments, regulate the time place and manner of operation of marihuana establishments as well as the production manufacture sale or display of marihuana accessories and authorize the sale of marihuana for consumption in designated areas that are not accessible to persons under 21 years of age or special events in limited areas and for a limited time. A violation of ordinances regulating marihuana establishments is limited to a civil fine of not more than \$500. MRTMA § 6.

However, some of these regulations are problematic. The ability to establish reasonable restrictions on public signs related to recreational marihuana, being content-based, likely runs afoul of the holding in *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015). Further, MRTMA does not, unlike the MMFLA, specifically authorize a municipality to exercise its zoning powers to regulate the location of marihuana establishments. Rather, the MRTMA authorizes ordinances that “regulate the time, place, and manner of operation of marihuana establishments.”

The use of the time, place, and manner First Amendment test on the ability of government to regulate speech is ill suited and inappropriate to the licensure and regulation of local businesses. One cannot help but believe that the choice of the time, place and manner language was an intentional effort so as to permit marihuana establishments to heavily borrow from established legal precedent that largely circumscribes the ability of governmental authorities to restrict speech. Specifically, valid time, place, and manner type of restrictions must:

- 1) be content neutral;
- 2) be narrowly tailored to serve a significant governmental interest; and
- 3) leave open ample alternative channels for communication.

*Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) citing *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)

The above formulation is not consistent with Michigan zoning law doctrine, which, although subject to the due process and equal protection guarantees of the Fourteenth Amendment, generally requires that there be a reasonable governmental interest being advanced by the regulation. See *Charter Township of Delta v Dinolfo*, 419 Mich 253, 268 (1984). To this end, the only clear reference to the zoning power is the grant to municipalities to reduce

the separation distance between marihuana establishments and pre-existing public and private schools providing K-12 education from 1000' to a lesser distance.

A municipality's authority to authorize designated areas and special events for the consumption of marihuana holds the potential to give rise to specialty businesses such as in California where restaurants make marihuana-infused food and drinks available to diners.

At Section 6.5, the MRTMA specifically precludes a municipality from prohibiting the transportation of marihuana through the municipality or prohibiting the co-location of a grower, processor, or retailer from operating within a single facility or a shared location with a facility holding a license under the MMFLA. This latter prohibition raises the question whether communities that have opted-in to the MMFLA, and where a medical marihuana facility is operating, may opt-out of the MRTMA, since the proposed act at Section 17 provides that it is to be "broadly construed to accomplish" the purposes set forth under the act.

If a municipality limits the number of establishments that may be licensed and such limitation prevents LARA from issuing a state license to all applicants who otherwise meet the requirements for the issuance of a license, the MRTMA provides that "the municipality shall decide among the competing applications by competitive process intended to select applicants who are best suited to operate in compliance with the act within the municipality." MRTMA § 9.4. This provision raises the Pandora's Box that confronted municipalities that attempted to cap the number of licenses issued under the MMFLA. Any competitive process that seeks to determine who is best suited inherently has a subjective component that may expose the municipality to legal challenges based on alleged due process violations by the municipality from unsuccessful applicants asserting that the process employed was unfair on its face or unfairly administered. While there may be good reasons to limit the number of recreational marihuana establishments, any community that chooses to do so should be prepared to defend itself from challenges by unsuccessful applicants.

A municipality may adopt an ordinance requiring that marihuana establishments located within its boundaries obtain a municipally-issued marihuana establishment license; but the annual fee for such a license is limited to \$5,000 and any qualifications for licensure may not conflict with the MRTMA or rules promulgated by LARA pursuant to the Act.

#### **What limitations on the State are applicable to Municipalities?**

According to the proposal, a State rule may not be unreasonably impracticable, or limit the number of any of the various types of license that may be granted, or require a customer to provide a retailer with identifying information other than to determine a customer's age or acquire personal information other than that typically required in a retail transaction. MRTMA §8.3.

The State is required to issue a license under the act if the municipality does not notify LARA that the proposed establishment is not in compliance with a local ordinance and if the proposed location is not within an area “zoned exclusively for residential use and not within 1000 feet of a pre-existing public or private school providing K-12 education.” A municipality is authorized to reduce the 1000’ separation from a school requirement. MRTMA §9.3.

Additionally, the grounds for disqualifying a license applicant based on a prior controlled substance conviction is much reduced under the MRTMA than under the MMFLA. An applicant for a medical marijuana facilities license is disqualified if they have any of the following:

- a felony conviction or release from incarceration for a felony within the past 10 years;
- a controlled substance-related felony conviction within the past 10 years; or
- a misdemeanor conviction involving a controlled substance, theft, dishonesty, or fraud within the past five years.

In contrast, under the MRTMA any prior conviction solely for a marijuana offense does not disqualify or affect eligibility for licensure unless the offense involved distribution to a minor. Thus, persons convicted of trafficking in large amounts of marijuana would be eligible for a municipal marijuana establishment license. MRTMA §8.1(c).

Additionally, LARA is precluded from issuing a rule and municipalities may not adopt an ordinance requiring a customer to provide a marijuana retailer with any information other than identification to determine the customer’s age. MRTMA §8.3(b). In this regard, the MRTMA provides an affirmative defense to marijuana retailers who sell or otherwise transfer marijuana to a person under 21 years of age if the retailer reasonably verified that the recipient appeared to be 21 years of age or older by means of government issued photographic identification containing a date of birth. MRTMA §10.2.

There are also limitations on holding ownership interests in different types of facilities. Owners of a safety compliance facility or secure transporter may not hold an ownership interest in a grower or processor or retailer or microbusiness establishment. The owner of a microbusiness may not hold an interest in a grower or processor or retailer safety compliance for secure transporter establishment. And a person may not hold an interest in more than five marijuana growers or more than one microbusiness, unless after January 1, 2023 LARA issues a rule permitting otherwise. MRTMA §9.3.

Finally, for the first 24 months after LARA begins accepting applications for licensure, only persons who are residents of Michigan may apply for a Class A grower or microbusiness

license and to be eligible for all other licenses, persons must hold a State operating license pursuant to the MMFLA. MRTMA §9.6.

#### **What if the State fails to does not act in a timely fashion?**

If the State does not timely promulgate rules, despite the act not providing when those must be issued, or accept or process applications within 12 months after the effective date of the act, an applicant may submit an application for establishment directly to the municipality where the business will be located. MRTMA §16. A municipality must issue a license to the applicant within 90 days after receipt of the application unless the municipality determines that the applicant is not a compliance with an ordinance or rule adopted pursuant to the act. If a municipality issues a license, it must notify the department that the license has been issued. That municipal license will have the same force and effect as a State license but the holder will not be subject to regulation or enforcement by the State during the municipal license term. It is unclear whether, if the State puts in place a licensing system during the term of a municipal license, the establishment can be required to seek State licensure or is merely required to renew the license with the municipality.

#### **Municipality as an employer or landlord**

The MRTMA does not require that an employer permit or accommodate conduct otherwise allowed by the act in the workplace or on the employer's property. The Act does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marihuana. Nor does the act prevent an employer from refusing to hire a person because of that person's violation of a workplace drug policy. MRTMA §4.3. In this regard, the statute appears to codify the holding of *Casias v. Wal-Mart Stores, Inc.*, 764 F Supp 2d 914 (WD Mich 2011) *aff'd*, 695 F3d 428 (6<sup>th</sup> Cir 2012) permitting an employer to discharge an employee who as a registered patient under the MMMA used marihuana outside of work hours, was not under the influence while at work, but tested positive after suffering an injury while at work.

To the degree that a municipality provides housing and therefore acts as a landlord, the MRTMA permits the lessor of property to prohibit or otherwise regulate the consumption, cultivation, distribution, processing, sale, or display of marihuana and marihuana accessories on leased property, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking. MRTMA §4.4.

#### **Municipal share of Marihuana Excise Tax Fund**

Under the terms of the MMFLA, municipalities (cities, villages, and townships) in which a medical marihuana facility is located get a *pro rata* share of 25 percent of a medical marihuana

excise fund created by the imposition of a three percent tax on gross retail sales at provisioning centers. However, under the terms of the MMFLA, if a law authorizing the recreational or nonmedical use of marihuana is enacted, the tax on medical marihuana sales sunsets 90 days following the effective date of the new law. MCL 333.27601.

The MRTMA seeks to fill the gap created by the loss of the three percent excise tax under the MMFLA by creating marihuana regulation fund through the imposition of a 10 percent excise tax (which would be in addition to the six percent sales tax) on the sales price of marihuana sold or otherwise transferred by a marihuana retailer or microbusiness to anyone other than another marihuana establishment. However, the sale to be allocated to municipalities is reduced to 15 percent and before any money is provided to cities, villages, and townships in which a marihuana retail store or microbusiness is located, the State is made whole for its implementation, administration, and enforcement of the Act—and until 2022 or for at least two years, \$20 million from the fund must be annually provided to one or more clinical trials approved by the FDA that are researching the efficacy of marihuana in the treatment of U.S. armed services veterans and preventing veteran suicide. MRTMA §14.

The net effect for municipalities could result in more money under the MRTMA than under the MMFLA. This is because: a) the tax rate levied is over three times higher under the MRTMA (10 percent v. 3 percent); b) there is a larger pool of potential consumers (registered patients and caregivers v. all persons aged 21 and older); and, c) the allocation to municipalities under the MRTMA is based on the number of marihuana retail stores and micro businesses as opposed to all types of marihuana facilities under the MMFLA. However this this not take into account that if a municipality does not permit recreational marihuana retail establishments, it will not receive any revenue under the either the MMFLA or MRTMA, but will still have to deal with the social consequences of marihuana use that it may not prohibit under the new law.

The following table illustrates the differences between the two statutory approaches based on assumption of \$1 billion in sales, State expenses being recouped by applicable fees, a municipality having one percent of the total number of medical marihuana facilities or recreational retail businesses.

	<b>MMFLA</b>	<b>MRTMA</b>
Total Annual Retail Sales	\$1,000,000,000	\$1,000,000,000
Applicable Excise Tax Rate	3 percent	10 percent
Amount of Excise Tax Fund	\$30,000,000	\$100,000,000
Less Allocation for Veterans' Health Research	0 \$30,000,000	-\$20,000,000 \$80,000,000
Percentage Allocated to Municipalities	25 percent	15 percent

Amount Available for Municipalities	\$7,500,000	\$12,000,000
1% of facilities or retail establishments in municipality	\$75,000	\$120,000

In what appears to be a blatant attempt to convince voters to approve the MRTMA, 35 percent of the marihuana regulation fund will be allocated to the school aid fund for K-12 education and another 35 percent to the Michigan transportation fund for the repair and maintenance of roads and bridges. Unlike the MMFLA, which allocated 15 percent split equally (five percent each) between county sheriffs where a marihuana facility was located, the Commission on Law Enforcement Standards for Officer Training, and to the State Police, there is no allocation directly to law enforcement purposes under the MRTMA.

**Conclusion**

As challenging as it was for municipalities to come to grips with medical marihuana regulation under the MMFLA, the difficulties posed by the proposed MRTMA regarding recreational marihuana are likely to be significantly greater. Under the MMFLA many municipalities took a "wait and see" position on the issue of broad commercialization of medical marihuana, and in doing so only required that the governing body of the municipality do nothing. And for those municipalities that chose to "opt in," the MMFLA granted them a great deal of regulatory discretion, which some representatives of the marihuana industry have called "onerous" [Langwith, "Local Overreach", 97 Mich B J 36, 37 (August 2018)], so as to reasonably safeguard the public safety health and welfare.

The MRTMA on the other hand, requires a municipality to affirmatively take legislative action to "opt out" of regulating recreational marijuana commercial enterprises. For those municipalities that choose to permit recreational marijuana establishments to exist in the community, the regulatory framework is much more circumscribed than under the MMFLA, and is certainly more likely to raise legal issues. Fortunately, commercialization of recreational marijuana is at least a year away should the ballot proposal to legalize marihuana be adopted and by that time the State regulatory framework for medical marihuana will have been in place for nearly two years.

Apart from the commercialization of recreational marihuana, municipal law enforcement officials and officers may be required to know the new rules surrounding "legalized" marihuana within days of the election. At a minimum, county and municipal prosecutors should be ready to provide training on the law in early November. It is also likely

that defendants who committed marihuana offenses prior to November 6 will seek dismissal of those charges should voters approve the ballot proposal.

In the meantime, municipal attorneys would be well-advised to read through the initiated statute more than once and be prepared to advise their clients of the significant ramifications of legalized marijuana on local governmental and social services.

-Submitted by Clyde J. Robinson, Kalamazoo City Attorney

I am indebted to Tom Schulz and Lauren Tribble-Laucht for their proof-reading skills and editorial assistance and to Mark Wyckoff for sharing his insights contained in the September 2018 issue of *Planning & Zoning News*. My heart-felt thanks to each of them. --CJR

NB-#2  
12-20-18

## Application for Obsolete Property Rehabilitation Exemption Certificate

This form is issued as provided by Public Act 146 of 2000, as amended. This application should be filed after the district is established. This project will not receive tax benefits until approved by the State Tax Commission. Applications received after October 31 may not be acted upon in the current year. This application is subject to audit by the State Tax Commission.

**INSTRUCTIONS:** File the original and two copies of this form and the required attachments with the clerk of the local government unit. (The State Tax Commission requires two copies of the Application and attachments. The original is retained by the clerk.) Please see State Tax Commission Bulletin 9 of 2000 for more information about the Obsolete Property Rehabilitation Exemption. The following must be provided to the local government unit as attachments to this application: (a) General description of the obsolete facility (year built, original use, most recent use, number of stories, square footage); (b) General description of the proposed use of the rehabilitated facility, (c) Description of the general nature and extent of the rehabilitation to be undertaken, (d) A descriptive list of the fixed building equipment that will be a part of the rehabilitated facility, (e) A time schedule for undertaking and completing the rehabilitation of the facility, (f) A statement of the economic advantages expected from the exemption. A statement from the assessor of the local unit of government, describing the required obsolescence has been met for this building, is required with each application. Rehabilitation may commence after establishment of district.

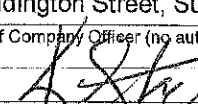
Applicant (Company) Name (applicant must be the OWNER of the facility) <b>Krysta Starz</b>		
Company Mailing address (No. and street, P.O. Box, City, State, ZIP Code) <b>1615 Ludington Street, Suite B, Escanaba, MI 49829</b>		
Location of obsolete facility (No. and street, City, State, ZIP Code) <b>1204 Ludington Street, Escanaba, MI 49829</b>		
City, Township, Village (Indicate which) <b>City of Escanaba</b>		County <b>Delta</b>
Date of Commencement of Rehabilitation (mm/dd/yyyy)	Planned date of Completion of Rehabilitation (mm/dd/yyyy) <b>12/1/2019</b>	School District where facility is located (include school code) <b>Escanaba 21010</b>
Estimated Cost of Rehabilitation <b>\$2,000,000.00</b>	Number of years exemption requested <b>12</b>	Attach Legal description of Obsolete Property on separate sheet
Expected project likelihood (check all that apply):		
<input checked="" type="checkbox"/> Increase Commercial activity	<input checked="" type="checkbox"/> Retain employment	<input checked="" type="checkbox"/> Revitalize urban areas
<input checked="" type="checkbox"/> Create employment	<input checked="" type="checkbox"/> Prevent a loss of employment	<input checked="" type="checkbox"/> Increase number of residents in the community in which the facility is situated
Indicate the number of jobs to be retained or created as a result of rehabilitating the facility, including expected construction employment _____		
Each year, the State Treasurer may approve 25 additional reductions of half the school operating and state education taxes for a period not to exceed six years. Check the following box if you wish to be considered for this exclusion. <input checked="" type="checkbox"/>		

### APPLICANT'S CERTIFICATION

The undersigned, authorized officer of the company making this application certifies that, to the best of his/her knowledge, no information contained herein or in the attachments hereto is false in any way and that all of the information is truly descriptive of the property for which this application is being submitted. Further, the undersigned is aware that, if any statement or information provided is untrue, the exemption provided by Public Act 146 of 2000 may be in jeopardy.

The applicant certifies that this application relates to a rehabilitation program that, when completed, constitutes a rehabilitated facility, as defined by Public Act 146 of 2000, as amended, and that the rehabilitation of the facility would not be undertaken without the applicant's receipt of the exemption certificate.

It is further certified that the undersigned is familiar with the provisions of Public Act 146 of 2000, as amended, of the Michigan Compiled Laws; and to the best of his/her knowledge and belief, (s)he has complied or will be able to comply with all of the requirements thereof which are prerequisite to the approval of the application by the local unit of government and the issuance of an Obsolete Property Rehabilitation Exemption Certificate by the State Tax Commission.

Name of Company Officer (no authorized agents) <b>Krysta Starz</b>	Telephone Number <b>(906) 553-6063</b>	Fax Number
Mailing Address <b>1615 Ludington Street, Suite B, Escanaba, MI 49829</b>		Email Address <b>Krysta@ClickCabinets.com</b>
Signature of Company Officer (no authorized agents) 		Title <b>CEO</b>

### LOCAL GOVERNMENT UNIT CLERK CERTIFICATION

The Clerk must also complete Parts 1, 2 and 4 on Page 2. Part 3 is to be completed by the Assessor.

Signature	Date application received <b>OCT 25 2018</b>
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FOR STATE TAX COMMISSION USE		
Application Number	Date Received	LUCI Code



**LOCAL GOVERNMENT ACTION**

This section is to be completed by the clerk of the local governing unit before submitting the application to the State Tax Commission. Include a copy of the resolution which approves the application and instruction items (a) through (f) on page 1, and a separate statement of obsolescence from the assessor of record with the State Assessor's Board. All sections must be completed in order to process.

**PART 1: ACTION TAKEN**

Action Date: _____		
<input type="checkbox"/> Exemption Approved for _____ Years, ending December 30, _____ (not to exceed 12 years)		
<input type="checkbox"/> Denied		
Date District Established	LUCL Code	School Code

**PART 2: RESOLUTIONS (the following statements must be included in resolutions approving)**

<p>A statement that the local unit is a Qualified Local Governmental Unit.</p> <p>A statement that the Obsolete Property Rehabilitation District was legally established including the date established and the date of hearing as provided by section 3 of Public Act 146 of 2000.</p> <p>A statement indicating whether the taxable value of the property proposed to be exempt plus the aggregate taxable value of property already exempt under Public Act 146 of 2000 and under Public Act 198 of 1974 (IFT's) exceeds 5% of the total taxable value of the unit.</p> <p>A statement of the factors, criteria and objectives, if any, necessary for extending the exemption, when the certificate is for less than 12 years.</p> <p>A statement that a public hearing was held on the application as provided by section 4(2) of Public Act 146 of 2000 including the date of the hearing.</p> <p>A statement that the applicant is not delinquent in any taxes related to the facility.</p> <p>If it exceeds 5% (see above), a statement that exceeding 5% will not have the effect of substantially impeding the operation of the Qualified Local Governmental Unit or of impairing the financial soundness of an affected taxing unit.</p> <p>A statement that all of the items described under "Instructions" (a) through (f) of the Application for Obsolete Property Rehabilitation Exemption Certificate have been provided to the Qualified Local Governmental Unit by the applicant.</p>	<p>A statement that the application is for obsolete property as defined in section 2(h) of Public Act 146 of 2000.</p> <p>A statement that the commencement of the rehabilitation of the facility did not occur before the establishment of the Obsolete Property Rehabilitation District.</p> <p>A statement that the application relates to a rehabilitation program that when completed constitutes a rehabilitated facility within the meaning of Public Act 146 of 2000 and that is situated within an Obsolete Property Rehabilitation District established in a Qualified Local Governmental Unit eligible under Public Act 146 of 2000 to establish such a district.</p> <p>A statement that completion of the rehabilitated facility is calculated to, and will at the time of issuance of the certificate, have the reasonable likelihood to, increase commercial activity, create employment, retain employment, prevent a loss of employment, revitalize urban areas, or increase the number of residents in the community in which the facility is situated. The statement should indicate which of these the rehabilitation is likely to result in.</p> <p>A statement that the rehabilitation includes improvements aggregating 10% or more of the true cash value of the property at commencement of the rehabilitation as provided by section 2(l) of Public Act 146 of 2000.</p> <p>A statement of the period of time authorized by the Qualified Local Governmental Unit for completion of the rehabilitation.</p>
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**PART 3: ASSESSOR RECOMMENDATIONS**

Provide the Taxable Value and State Equalized Value of the Obsolete Property, as provided in Public Act 146 of 2000, as amended, for the tax year immediately preceding the effective date of the certificate (December 31st of the year approved by the STC).

	Taxable Value	State Equalized Value (SEV)
Building(s)		
Name of Governmental Unit	Date of Action on application	Date of Statement of Obsolescence

**PART 4: CLERK CERTIFICATION**

The undersigned clerk certifies that, to the best of his/her knowledge, no information contained herein or in the attachments hereto is false in any way. Further, the undersigned is aware that if any information provided is untrue, the exemption provided by Public Act 146 of 2000 may be in jeopardy.

Name of Clerk	Clerk Signature	Date	
Clerk's Mailing Address	City	State	ZIP Code
	Telephone Number	Fax Number	Email Address

Mail completed application and attachments to: Michigan Department of Treasury  
 State Tax Commission  
 P.O. Box 30471  
 Lansing, Michigan 48909-7971

If you have any questions, call (517) 373-2408.

For guaranteed receipt by the State Tax Commission, it is recommended that applications and attachments are sent by certified mail.



Ms. Krysta Starz

August 21<sup>st</sup>, 2018

1615 Ludington St Suite B

Escanaba, MI 49829

RE: 1204 Ludington Street

Parcel No. 051-320-2930-404-017

Dear Ms. Starz,

On August 17<sup>th</sup>, 2018 I inspected your property at 1204 Ludington Street. Built in 1912 with 3,500 sq. feet of office/retail space on the ground floor and 3,000 sq. feet apartment space on the second and third floors, as well as the basement. The last business to occupy this building was nearly twenty years ago, they only used the ground floor and the building has been unoccupied since then.

This property is at least 90% functionally obsolete and inhabitable in its present condition. There is no plumbing, HVAC, or electrical systems in most of the building and all have to be replaced. Water damage from a leaky roof and windows is apparent, as well as pigeon droppings on both upper floors. There is evidence of mold and mildew and most of the building retains its original partitions and finish.

The buildings foundation appears to be sound and this site is salvageable . Because of possible mold, mildew and asbestos and the many other problems you should be eligible form a OPRA exemption.

I have enclosed a copy of the property record card and photo of the front of the building from the mid 1930's for your convenience.

Yours Truly,

Kevin Dubord

Asst. Assessor

**Mission Statement:**



Enhancing the enjoyment and livability of our community by providing quality municipal services to our citizens.  
*The City of Escanaba is an equal opportunity employer and provider.*

## 1204 Ludington Street, Escanaba

Constructed between 1906 and 1911, the three-story, flat-roofed, brick building was originally The Main Hotel & Saloon. The second and third floors remained an operating hotel into the 1960's, and possibly beyond. Many of the original hotel rooms and shared restrooms remain minimally intact. The first floor has been an array of shops and, most recently, office space. The building has unique half bay windows along the east and west walls of the second and third stories to allow light access into the original hotel rooms, regardless of the adjacent buildings height.

The property sits on a 25' x 140' parcel. The original building is 25'x120' which equates to 3,000 square feet per floor or 9,000 square feet above ground and 3,000 below ground for a total of 12,000 square feet.

Once rehabilitated, the building would house five mid-upscale apartments, one office/retail/event rental space, and storage, with a central outdoor courtyard.

### Renovation

This will be an extensive renovation, as the building is currently functionally obsolete. The second the third floors have been occupied only by pigeons since the hotel closed. There is also no operating heating system or plumbing and very little operating electrical (none of which is to code).

Complete demo of interior of building.

Lead and asbestos abatement throughout.

Complete demo of single story addition to the back 20' of the building.

Demo of center portion of building to form central outdoor courtyard.

Repair foundation issues, particularly in the central portion of the building on the west side.

Replace missing and repair deteriorating brick facade and brick throughout the building.

Replace missing cornice on facade. To be rebuilt as near historically accurate as possible.

Repair or replace concrete pad at back 20' of building for exterior parking.

Replace all windows to be historically accurate.

Replace all doors to be historically accurate on the exterior and throughout on the interior.

Roof repair to include 80% replacement.

Replace pyramid style skylight.

Reframe entire building. To include new outdoor courtyard area in the center of the building.

Rebuild and relocate staircases.

New HVAC systems throughout.

New electrical throughout.

New plumbing and plumbing fixtures (sinks, faucets, toilets, showers, bathtubs) throughout.

New fire suppression system installed throughout to code.

Repair and reuse first floor original tile flooring.

Repair and reuse second floor original wood flooring.

Replace third floor flooring.

Repair and reuse first floor metal ceiling.  
New drywall throughout.  
New paint throughout - inside and out.  
New light fixtures throughout - inside and out.  
Appliances in apartments.  
Cabinetry in apartments.  
Countertops in apartments.  
Window treatments in apartments.

### **Reuse & Salvage of Fixed Equipment**

Unfortunately, none of the existing fixed equipment can be reused or salvaged for use in the rehabilitated facility.

### **Time Schedule for Rehab**

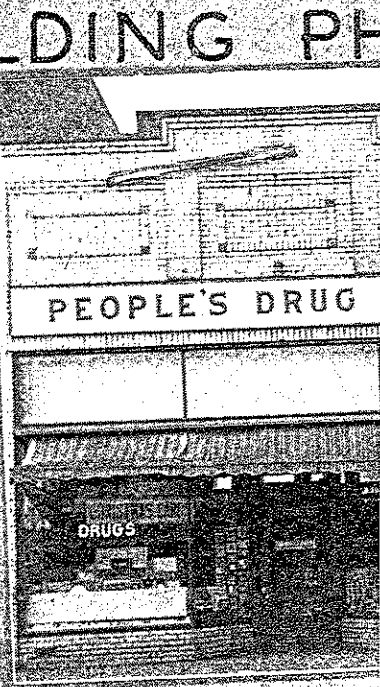
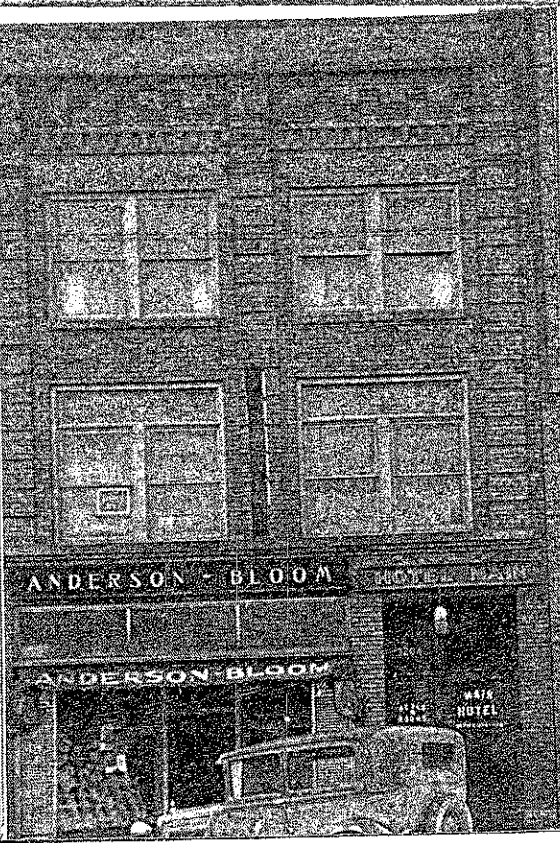
This project has been in the planning stages for about two years to-date. MEDC grant funding will be utilized for the rehabilitation of this project, which can take an undetermined amount of time. Once construction begins, the project is expected to take 9-12 months.

### **Expected Economic Advantages from Exemption**

The economic advantages from exemption are almost endless in this case. As the building sits it currently brings no value to Escanaba's downtown and, in fact, brings the value of the entire neighborhood down.

Not only will the exemption assist in the feasibility from a financial perspective to allow this project to be financially viable, once the building is complete it will have a major impact on Escanaba's historic district and downtown. This building is currently one of the most obscene eye sores on Ludington Street. It sits on one of the busiest blocks and is centrally located within the nationally registered historic district of Escanaba's Ludington Street. The visual impact alone that the rehabilitation of this building will accomplish for local residents and visitors to the area and their appreciation community redevelopment cannot be quantified.

Beyond the visual, is the fact that the rehabilitation of this building will include five apartments which will bring more patrons to the area to support the local business. It will also allow a business to occupy the currently unused glass storefront, bringing jobs to the area. Both of which will boost the entire downtown community and surrounding businesses.

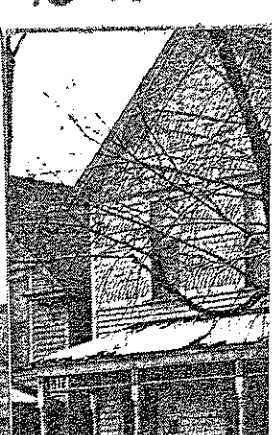
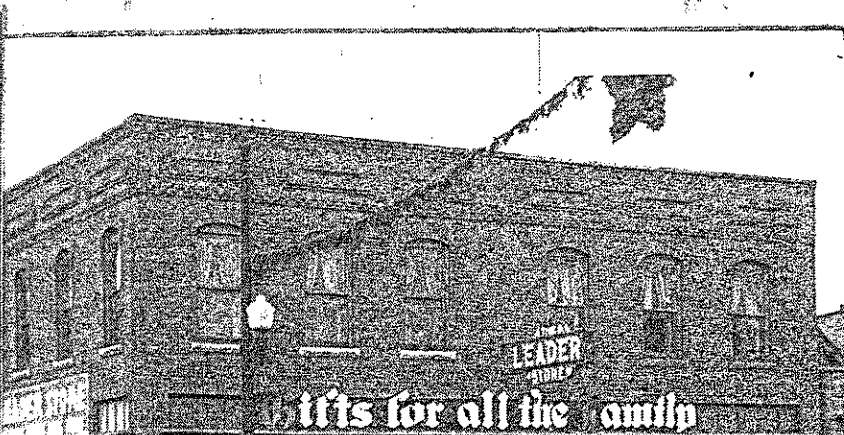
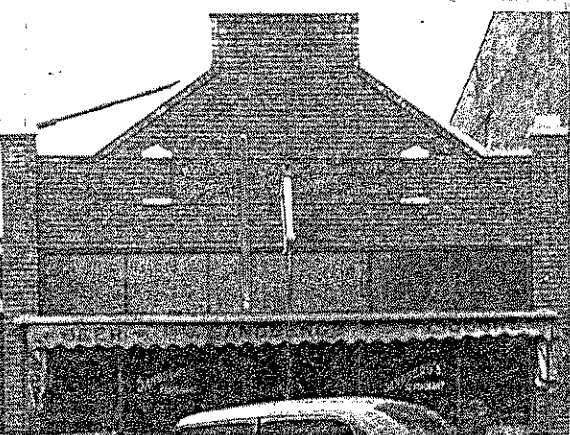
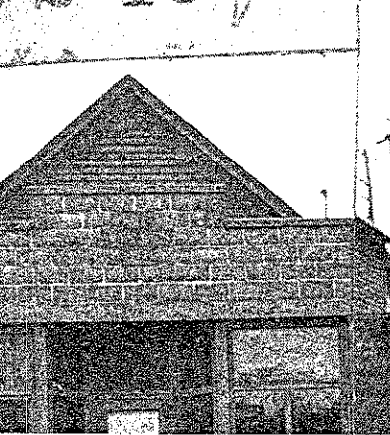


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# ASSESSMENT CARD

COUNTY Delta CITY Escanaba WARD \_\_\_\_\_ BOOK \_\_\_\_\_ PAGE \_\_\_\_\_ ITEM 2250 SHEET NO. 2230

PROPERTY ADDRESS North SIDE Dudington STREET, NO. 1204 OCCUPIED BY Tenant

OWNER'S NAME Mrs. Emily Magnuson ADDRESS 210 Stephenson Ave. City

LOT E 1/2 of 2 BLOCK 80 PLAT Proprietor's First Addition

METES AND BOUNDS E 1/2 Lot 2

### BUILDING DESCRIPTION

USE	FOUNDATION	ROOFING	INTERIOR FINISH	MISCELLANEOUS	GARAGE
<input type="checkbox"/> BUNGALOW	<input type="checkbox"/> POST	<input type="checkbox"/> ROLL	<input checked="" type="checkbox"/> PLASTER	<input checked="" type="checkbox"/> P. G. STO. FR.	COND. <u>Poor</u>
<input type="checkbox"/> SINGLE HOUSE	<input type="checkbox"/> CONCRETE	<input type="checkbox"/> SHINGLE	<input checked="" type="checkbox"/> DECORATED	<input type="checkbox"/> SPRINKLER	CONST. <u>Metal</u>
<input type="checkbox"/> DOUBLE HOUSE	<input type="checkbox"/> BRICK	<input checked="" type="checkbox"/> TAR AND GRAV.	<input checked="" type="checkbox"/> PINE	<input type="checkbox"/> PASS. ELEV.	FLOOR <u>DIRT</u>
<input type="checkbox"/> APARTMENT	<input checked="" type="checkbox"/> STONE	<input type="checkbox"/> COMPOSITION	<input type="checkbox"/> HARDWOOD	<input type="checkbox"/> FRT. ELEV.	SIZE <u>11 x 16</u>
<input checked="" type="checkbox"/> STORE	<input type="checkbox"/> PILES	<input type="checkbox"/> SLATE	<input checked="" type="checkbox"/> METAL CEILING	<input checked="" type="checkbox"/> FIRE ESC.	UNIT <u>one</u>
<input type="checkbox"/> STORE AND FLAT	<input type="checkbox"/> CAISSONS	<input type="checkbox"/> TILE	<input type="checkbox"/> MAR. AND TILE	<input type="checkbox"/> REFRIGERATOR	
<input type="checkbox"/> OFFICE BUILDING				<input type="checkbox"/> VAC. CL. SYS.	
<input checked="" type="checkbox"/> HOTEL	<b>EXT. WALLS</b>	<b>BASEMENT</b>	<b>HEATING</b>	<input checked="" type="checkbox"/> CABINETS	
<input type="checkbox"/> THEATRE	<input type="checkbox"/> METAL	<input type="checkbox"/> NONE	<input type="checkbox"/> STOVES	<input type="checkbox"/> FIRE PLACE	<b>PORCHES</b>
<input type="checkbox"/> FACTORY	<input type="checkbox"/> WIDE SIDING	<input type="checkbox"/> PART	<input type="checkbox"/> PIPELESS	<input type="checkbox"/> INCLIN.	FRONT <u>x</u>
<input type="checkbox"/> GARAGE	<input type="checkbox"/> STUCCO	<input checked="" type="checkbox"/> FULL	<input type="checkbox"/> HOT AIR	<input type="checkbox"/> OIL BURNER	SIDE <u>x</u>
<input type="checkbox"/> GAS STATION	<input checked="" type="checkbox"/> BRICK	<input type="checkbox"/> DIRT FLOOR	<input checked="" type="checkbox"/> STEAM	<input type="checkbox"/> GAS HEAT	REAR <u>x</u>
<input type="checkbox"/> WAREHOUSE	<input type="checkbox"/> TER. COT.	<input checked="" type="checkbox"/> CEMENT FLOOR	<input type="checkbox"/> VAPOR	<input type="checkbox"/> ELEC. HEAT	SLEEP <u>x</u>
	<input type="checkbox"/> STONE	<input type="checkbox"/> FINISHED	<input type="checkbox"/> HOT WATER	<input type="checkbox"/> CENT. HEAT	
<b>CONSTRUCTION</b>	<b>ROOF</b>	<b>FLOORS</b>	<b>PLUMBING</b>	<b>ROOMS</b>	
<input type="checkbox"/> WOOD FRAME	<input type="checkbox"/> GABLE	<input type="checkbox"/> DIRT	<input type="checkbox"/> NONE	<input type="checkbox"/> APTS.	
<input type="checkbox"/> VENEER	<input type="checkbox"/> HIP	<input type="checkbox"/> PINE	<input checked="" type="checkbox"/> FIXTURES	<input type="checkbox"/> RMS. APT.	<b>OTHER</b>
<input checked="" type="checkbox"/> BRICK	<input checked="" type="checkbox"/> FLAT	<input checked="" type="checkbox"/> HARDWOOD <u>36</u>	<input type="checkbox"/> TOILET	<input type="checkbox"/> FIN. ATT. RM.	
<input type="checkbox"/> ST. FRAME	<input type="checkbox"/> GAMBREL	<input type="checkbox"/> OAK	<input checked="" type="checkbox"/> BATH RMS. <u>5</u>	<input type="checkbox"/> FIN. BAS. RM.	<b>TOTAL</b>
<input type="checkbox"/> MILL	<input type="checkbox"/> MANSARD	<input type="checkbox"/> CEMENT	<input checked="" type="checkbox"/> TILE FLOOR <u>3</u>	<input checked="" type="checkbox"/> STOKER	<b>MISC.</b>
<input type="checkbox"/> RE CONG.		<input checked="" type="checkbox"/> TILE <u>2</u>	<input type="checkbox"/> TILE WALLS		<b>GR. TOTAL</b>

**25**

**3-5**

**H-31**

**25**

CONDITION

Excellent    Good     Fair    Poor

### BUILDING VALUE COMPUTATIONS

YEAR	NO.	LENGTH	WIDTH	HEIGHT	SQ. F. AREA OR CU. F. CONT.	COST UNIT	COST REP. NEW	YEAR BUILT OR REM.	DEPRECIATION		COST NEW LESS DEPRECIATION OR SOUND VAL.	SOUND VALUE LESS OBSOLESCENCE	EXTRAS TO ADD	TOTAL MARKET VALUE
									%	AMOUNT				
		<u>170</u>	<u>75</u>	<u>31</u>	<u>93,000</u>			<u>1912</u>						
								<u>1932 Rem.</u>						

**Legal Description of 1204 Ludington St., Escanaba, MI 49837**

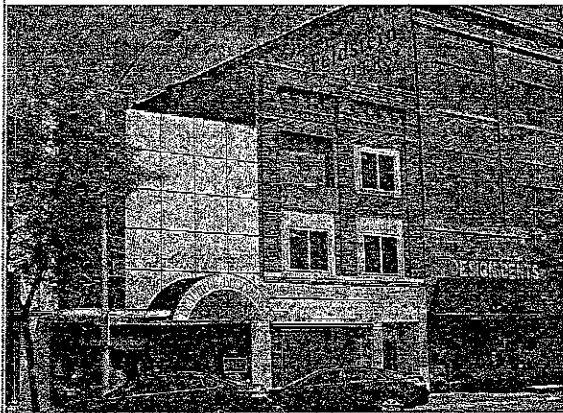
The East ½ of Lot 2 of Block 80 of Proprietor's First Addition to the City of Escanaba, according to the plat thereof, as recorded in Liber A of Plats, Page 3, Delta County Records

Grantor	Grantee	Sale Price	Sale Date	Inst. Type	Terms of Sale	Liber & Page	Verified By	Prct. Trans.
SUMMERS DOUGLAS D & ROXAN	STARZ KRYSTA NESS	30,000	12/20/2016	WD	ARMS-LENGTH	1177/695	KEVIN DUBORD	100.0
4 D RENTALS LLC	SUMMERS DOUGLAS DUANE	40,000	11/10/2004	LC	LAND CONTRACT	497/490		0.0
4D RENTALS	4D RENTALS LLC	0	01/01/1997	QCD	AFFILIATED GROUPS	497/490	DAINA NORDEN	0.0
DAGENAIS REAL ESTATE INC	4D RENTALS	1	03/15/1994	QCD	QCD	470/924	DAINA NORDEN	0.0

Property Address	Class: COMMERCIAL, 201	Zoning:	Building Permit(s)	Date	Number	Status
1204 LUDINGTON ST		School: Escanaba Schools 21010				
		P.R.E. 0%				
Owner's Name/Address	Map #:					
STARZ KRYSTA NESS 1615 LUDINGTON ST STE B ESCANABA MI 49829-2854	2019 Est TCV Tentative					

Tax Description	X	Improved	Vacant	Land Value Estimates for Land Table 20.COM 1				Value
		Public Improvements		Description	Frontage	Depth	* Factors * Rate %Adj. Reason	
E 1/2 OF LOT 2 OF BLK 80 OF THE PROPRIETORS 1ST ADDITION	X			E LUDINGTON	25.00	140.00	1.0000 1.0000	15,000
Comments/Influences	X	25 Actual Front Feet, 0.08 Total Acres						Total Est. Land Value = 15,000

Topography of Site	X	Level	Rolling	Low	High	Landscaped	Swamp	Wooded	Pond	Waterfront	Ravine	Wetland	Flood Plain
	X												
	X												



Year	Land Value	Building Value	Assessed Value	Board of Review	Tribunal/Other	Taxable Value
2019	Tentative	Tentative	Tentative			Tentative
2018	6,400	19,300	25,700			25,667C
2017	6,438	18,702	25,140			25,140S
2016	6,438	19,127	25,565			24,926C

\*\*\* Information herein deemed reliable but not guaranteed\*\*\*

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Desc. of Bldg/Section: RETAIL W/APTS Calculator Occupancy: Shopping Center, Mixed w/Residential		<<<<< Calculator Cost Computations >>>>>	
Class: C Floor Area: 9,000 Gross Bldg Area: 9,000 Stories Above Grd: 3 Average Sty Hght : 10 Bsmnt Wall Hght : 8		Class: C Quality: Average Stories: 3 Story Height: 10 Perimeter: 0 Overall Building Height: 32	
Depr. Table : 2.25% Effective Age : 36 Physical %Good: 44 Func. %Good : 45 Economic %Good: 80		Base Rate for Upper Floors = 84.66 (10) Heating system: Package Heating & Cooling Cost/SqFt: 13.49 100% Adjusted Square Foot Cost for Upper Floors = 98.15	
1900 Year Built Remodeled 32 Overall Bldg Height		Total Floor Area: 9,000 Base Cost New of Upper Floors = 883,350 Eff.Age:36 Phy.%Good/Abnr.Phy./Func./Econ./Overall %Good: 44 /45 /45 /80 /7.1 Total Depreciated Cost = 62,965	
Comments:		ECF (20 - COM 1, 25 - COM 2, 30 - IND/COM, 10 - ACREAGE)0.695 => TCV of Bldg: 1 = Replacement Cost/Floor Area= 98.15 Est. TCV/Floor Area= 4.86	
Construction Cost High Above Ave. X Ave. Low ** ** Calculator Cost Data ** ** Quality: Average Heat#1: Package Heating & Cooling 100 Heat#2: Package Heating & Cooling 0% Ave. SqFt/Story: 3000 Ave. Perimeter Has Elevators:		*** Basement Info *** Area: Perimeter: Type: Finished/Office (No Rates) Heat: No Heating or Cooling	
* Mezzanine Info * Area #1: Type #1: Office (No Rates) Area #2: Type #2: Office (No Rates)		* Sprinkler Info * Area: Type: Average	

(1) Excavation/Site Prep:		(7) Interior:		(11) Electric and Lighting:		(39) Miscellaneous:	
(2) Foundation:		(8) Plumbing:		Outlets:		Fixtures:	
X Poured Conc	Brick/Stone	Block	Many Above Ave.	Average Typical	Few None	X Few Average	X Few Average
(3) Frame:		Total Fixtures		Urinals		Many Unfinished Typical	
(4) Floor Structure:		3-Piece Baths		Wash Bowls		Incandescent	
(5) Floor Cover:		2-Piece Baths		Water Heaters		Fluorescent	
(6) Ceiling:		Shower Stalls		Wash Fountains		Mercury	
		Toilets		Water Softeners		Sodium Vapor	
		(9) Sprinklers:		Flex Conduit		Transformer	
				Armored Cable		(40) Exterior Wall:	
				Non-Metallic		Thickness	
				Bus Duct		Bsmnt Insul.	
		(10) Heating and Cooling:		(13) Roof Structure: Slope=0			
		X Gas					
		Oil		Hand Fired Boiler			
		Coal Stoker		(14) Roof Cover:			

\*\*\* Information herein deemed reliable but not guaranteed\*\*\*

# SKETCH/AREA TABLE ADDENDUM

Parcel No 051-320-2930-404-017

Property Address 1204 LUDINGTON STREET

City ESCANABA

County Delta

State MI

Zip 49829

Owner SUMMERS DOUGLAS D

Client

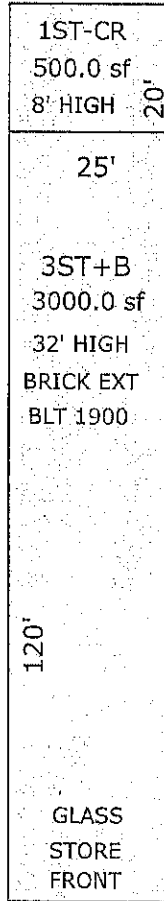
Client Address 1204LUDS

Appraiser Name KEVIN DUBORD

Inspection Date DRAWN 8-15-11

SUBJECT

IMPROVEMENTS SKETCH



1204 LUDINGTON STREET

Scale: 1" = 12'

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY					
Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	3ST+B	1.00	3000.00	290.0	3500.00
	1ST-CR	1.00	500.00	90.0	
Net LIVABLE Area (rounded w/ factors)					3500

Comment Table 1	
Comment Table 2	Comment Table 3

# Obsolete Property Rehabilitation Act Exemption

P.A. 146 of 2000, as amended

## Overview

*A means to encourage the rehabilitation of obsolete property and to increase commercial/residential housing available in downtowns or other areas characterized by underused or functionally obsolete properties.*

OPRA provides property tax exemptions for commercial and commercial housing properties that are rehabilitated and meet the requirements of the Act. The property must be located in a qualified local unit, such as the City of Escanaba and be located in an established Obsolete Property Rehabilitation District. Properties must meet eligibility requirements including a statement of obsolescence by the local assessor. Exemptions are approved for a term of 1-12 years as determined by the local unit of government. The property taxes for the rehabilitated property are based on the previous year's (prior to rehabilitation) taxable value. The taxable value is frozen for the duration of the exemption. Additionally, the State Treasurer may approve reductions of half of the school operating and state education taxes for a period not to exceed 6 years for 25 applications annually. Applications are filed, reviewed and approved by the local unit of government, but are also subject to review at the State level by the Property Services Division. **Exemptions are not effective until approved by the State.**

Functional obsolescence as defined by the state includes inadequate electrical, heating and plumbing. Oversized or undersized rooms, poor layouts and traffic flow problems, etc.

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***Functionally Obsolete:*** means that the property is unable to be used to adequately perform the function for which it was intended due to a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or super adequacies in design, or other similar factors that affect the property itself or the property's relationship with other surrounding property.

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Antiquated plumbing, heating, and electrical fixtures and connections or spaces that are not conducive to the use of modern equipment and technologies or spaces broken up by poorly planned wall dividers that may have been functional 50 or 100 years ago are examples of deficiencies which could qualify a building. Super adequacies include excessive ceiling height, excessive size, etc. The OPRA legislation requires a statement of obsolescence from a Level III or Level IV certified assessor using this criteria.

Once in the program there will now be three tax bills for the same property. 1) the tax bill on the land taxed at full millage, 2) the taxable value on the building is frozen at the pre-improvement level at full millage, and 3) the tax bill on the improvement which only taxes the School Operating (18 mills) and State Education Tax (6 mills) which could be reduced by ½ by the State Treasurer.

# Obsolete Property Rehabilitation Act Exemption

P.A. 146 of 2000, as amended

**An example of how the OPRA affects property taxes** for property with an exemption. Using the 2013 millage rates for the City of Escanaba, the annual rates would be as follows:

The taxable value of the parcel prior to the exemption is \$70,000. Of the total taxable value, assume that \$20,000 is the portion attributable to the land. Assume also that rehabilitation and remodeling result in a total taxable value of \$1,200,000 for the rehabbed property. The tax breakdown would be as follows:

School Oper.	= 18.0000 mills
State Ed Tax	= 6.0000 mills
<b>TOTAL Millage</b>	<b>= 59.8744 mills</b>

Annual Tax Bill	Taxable Value		Millage		Annual Tax Dollars
1) Land	20,000	X	59.8744	=	\$ 1,197
2) Frozen Building TV	50,000	X	59.8744	=	\$ 2,943
3) Non-frozen TV	1,130,000	X	*18.0000	=	\$ 27,120
	1,130,000	X	*6.0000	=	
<b>Total Annual Tax</b>					<b>= \$ 31,260</b>

<i>Annual Tax Without Exemption</i>	\$ 71,849
<i>Annual Savings</i>	\$ 40,589
<i>Savings Over 12-year term</i>	\$ 487,071

\* The State Treasurer can exempt up to 50% of the State Education Tax and the school operating tax for a period of up to 6 years, which would result in additional annual savings of \$13,560 or \$81,360 for the term of the exemption.

The OPRA exemption applies only to existing buildings. Taxable value attributable to increased building size, whether vertical or horizontal, is taxed at the full millage rate.

Additionally, if the rehabbed property is commercial/residential, any portion which qualifies as primary residence would be exempted from the 18 mills of school operating tax, in the same manner as any other homestead.

The entire process is set by statute.

Unlike other exemptions, OPRA exemptions can be transferred to new property owners. The exemption can be transferred to a new owner during or after rehabilitation with the approval of the city council. The process starts at the local assessor's office.

# Obsolete Property Rehabilitation Act Exemption

P.A. 146 of 2000, as amended

## Definitions Contained In or Referenced In Public Act 146 of 2000

**"Commercial housing property"** means that portion of real property not occupied by an owner of that real property that is classified as residential real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, is a multiple-unit dwelling, or is a dwelling unit in a multiple-purpose structure, used for residential purposes. Commercial housing property also includes a building or group of contiguous buildings previously used for industrial purposes that will be converted to a multiple-unit dwelling or dwelling unit in a multiple-purpose structure, used for residential purposes.

**"Commercial property"** means land improvements classified by law for general ad valorem tax purposes as real property including real property assessable as personal property pursuant to sections 8(d) and 14(6) of the general property tax act, 1893 PA 206, MCL 211.8 and MCL 211.14, the primary purpose and use of which is the operation of a commercial business enterprise. Commercial property shall also include facilities related to a commercial business enterprise under the same ownership at that location, including, but not limited to, office, engineering, research and development, warehousing, parts distribution, retail sales, and other commercial activities. Commercial property also includes a building or group of contiguous buildings previously used for industrial purposes that will be converted to the operation of a commercial business enterprise or a multiple-unit dwelling or a dwelling unit in a multiple-purpose structure, used for residential purposes. Commercial property does not include any of the following: Land, Property of a utility

**"Facility"**, except as otherwise provided in this act, means a building or group of contiguous buildings.

**"Functionally obsolete"** means that the property is unable to be used to adequately perform the function for which it was intended due to a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or superadequacies in design, or other similar factors that affect the property itself or the property's relationship with other surrounding property. (See MCL 125.2652)

**Note:** The STC offers the following as examples of functional obsolescence:

- 1) A floor plan which is inappropriate for the highest and best use of the property.
- 2) A heating system which is inadequate for the highest and best use of the property.
- 3) Excessively high or low ceilings for the highest and best use of the property.
- 4) Partition walls which restrict the highest and best use of the property.
- 5) Mechanical systems (e.g. electrical, plumbing, etc) which are inadequate for the highest and best use of the property.

**"Obsolete property"** means commercial property or commercial housing property, that is 1 or more of the following:

- (i) "Blighted property". Blighted property means property that meets 1 or more of the following criteria:
  - a. Has been declared a nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.
  - b. Is an attractive nuisance to children because of physical condition, use, or occupancy.

# Obsolete Property Rehabilitation Act Exemption

P.A. 146 of 2000, as amended

- c. iii. Is a fire hazard or is otherwise dangerous to the safety of persons or property.
  - d. iv. Has had the utilities, plumbing, heating, or sewerage permanently disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
  - e. v. Is tax reverted property owned by a qualified local governmental unit, by a county, or by this state. The sale, lease, or transfer of tax reverted property by a qualified local governmental unit, county, or this state after the property's inclusion in a brownfield plan shall not result in the loss to the property of the status as blighted property for purposes of PA 145 of 2000. (MCL 125.2652)
- (ii) A facility as that term is defined below:  
"Facility" as defined in PA 451 of 1994 means any area, place, or property where a hazardous substance in excess of the concentrations which satisfy the requirements of section 20120a(1)(a) or (17) or the cleanup criteria for unrestricted residential use under part 213 has been released, deposited, disposed of, or otherwise comes to be located. Facility does not include any area, place, or property at which response activities have been completed which satisfy the cleanup criteria for the residential category provided for in section 20120a(1)(a) and (17) or at which corrective action has been completed under part 213 which satisfies the cleanup criteria for unrestricted residential use. (See MCL 324.20101)
- (iii) Functionally obsolete. Please see the definition of "functionally obsolete".

**"Obsolete property rehabilitation district"** means an area of a qualified local governmental unit established as provided in section 3. Only those properties within the district meeting the definition of "obsolete property" are eligible for an exemption certificate issued pursuant to section 6 of PA 146 of 2000.

**"Rehabilitation"** means changes to obsolete property OTHER THAN REPLACEMENT that are required to restore or modify the property, together with all appurtenances, to an economically efficient condition. Rehabilitation includes major renovation and modification including, but not necessarily limited to, the improvement of floor loads, correction of deficient or excessive height, new or improved fixed building equipment, including heating, ventilation, and lighting, reducing multistory facilities to 1 or 2 stories, improved structural support including foundations, improved roof structure and cover, floor replacement, improved wall placement, improved exterior and interior appearance of buildings, and other physical changes required to restore or change the obsolete property to an economically efficient condition. **Rehabilitation shall not include improvements aggregating less than 10% of the true cash value of the property at commencement of the rehabilitation of the obsolete property.**

**"Rehabilitated facility"** means a commercial property or commercial housing property that has undergone rehabilitation or is in the process of being rehabilitated, including rehabilitation that changes the intended use of the building. A rehabilitated facility does not include property that is to be used as a professional sports stadium. A rehabilitated facility does not include property that is to be used as a casino. As used in this subdivision, "casino" means a casino or a parking lot, hotel, motel, or retail store owned or operated by a casino, an affiliate, or an affiliated company, regulated by this state pursuant to the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226.

# Obsolete Property Rehabilitation Act Exemption

P.A. 146 of 2000, as amended

## City of Escanaba Application Process

These are the steps to follow if you wish to apply for an Obsolete Properties Rehabilitation Exemption (OPRA exemption):

1. **Request in writing** to the city assessor that an Obsolete Properties Rehabilitation District be established for your property. City Council will approve this by resolution. Do not begin structural or cosmetic improvements to the building until after the district is established by City Council. This process may take four to six weeks.
2. **Request that the city assessor inspect** your building to determine if the property qualifies as obsolete property under the legislation. This can be done before council acts on your request for an OPRA district.
3. **Complete the application form and addendum** provided by the city assessor. You must include a letter stating that the rehabilitation project could not be completed without the assistance of the exemption (required by statute). Also include cost estimates of your planned projects and approximate completion schedules. Be as specific as possible. The assessor will bring this before Escanaba City Council and a public hearing will be held to consider your exemption. This process will take an additional four to six weeks.
4. **If approved by City Council the assessor will then send** required documents to the State of Michigan for review and approval/disapproval by the State Tax Commission. Please note that the STC must receive the application by October 1<sup>st</sup> to consider the exemption for the next year's taxes. In order to maintain the necessary timetable, your district request should be started by the end of June with the completed exemption application submitted by the first (1<sup>st</sup>) Thursday of September. An OPRA exemption granted by the state on or before December 31<sup>st</sup> of any year will take effect in the following tax year.

### NOTE:

**An OPRA exemption will result in three separate tax bills** for the exempt parcel: 1) land is assessed and taxed normally, 2) the frozen taxable value for all levies 3) "Non-frozen taxable value" means that the increased taxable value resulting from project improvements will be taxed only the School Operating (18 mills) and State Education Tax (6 mills) which may be reduced by ½ by the State Treasurer for up to 6 years:

**You must pay property taxes timely.** Failure to pay taxes before they become delinquent on March 1<sup>st</sup> of each year may constitute a reason for revoking the exemption.

**A Principal Residence Exemption may apply** if you rehabilitate the upper floor(s) of your property into your primary residence.

City of Escanaba  
Phone: (906) 786-9402  
Email: [dnorden@escanaba.org](mailto:dnorden@escanaba.org)

NB-#3a+3b  
12-20-18

MEMORANDUM

December 10, 2018

TO: Patrick Jordan, City Manager  
Tammy Weissert, Interim City Clerk



FROM: Melissa Becotte, City Controller

Subject: Leases

In 1996, the City entered into two 22 year lease agreements with the DDA.

The first lease was for the Center Court building. Under the terms of the lease, the DDA paid the City \$1.00 per year and the City maintained the structural integrity of the building.

The second lease was for parking lots. Under the terms of this lease, the City maintains the lots and the DDA paid for all costs.

Both leases expire 12/31/18. The DDA has requested one year lease for 2019 for both the parking lots and Center Court.

I am recommending approval of the attached lease renewals with the DDA. If there are any questions, please feel free to contact me. Thank you!



## LEASE AGREEMENT

This lease is made as of the \_\_\_ day of \_\_\_\_\_, 2018, between the CITY OF ESCANABA ("Lessor"), a Michigan municipal corporation of the County of Delta, State of Michigan, and the DOWNTOWN DEVELOPMENT AUTHORITY of the CITY OF ESCANABA ("Lessee"), created by the City of Escanaba pursuant to Michigan law, being MCL 225.1651 et seq.

Whereas, the parties hereto desire to enter into an agreement to lease certain real property hereinafter described, which is the property of the Lessor, and

Whereas, it is necessary and desirable to reduce to writing the covenants and agreements of the parties relative thereto;

Now therefore, for and in consideration of the covenants and agreements contained herein, the parties hereto agree as follows:

### 1. DESCRIPTION OF PROPERTY:

The lessor, in consideration of the rent and covenants herein contained, does hereby let and lease to the Lessee all that certain piece or parcel of real property (hereinafter referred to as "the demised premises") situated in the City of Escanaba, County of Delta, State of Michigan, and more particularly described as follows to wit:

Lot 6 of Block 65 of the Original Plat of the City  
of Escanaba.

### 2. TERM OF LEASE AND RENTAL:

Lessee rents the above premises for a term of one (1) year, commencing on the 1<sup>st</sup> day of January, 2019 and terminating on the 31<sup>st</sup> day of December, 2019, or sooner as provided herein, at the annual rental of one (\$1.00) dollar.

### 3. USE OF PREMISES:

The leased premises may be used by Lessee for its activities as Downtown Development Authority.

### 4. ALTERATIONS, ADDITIONS AND IMPROVEMENTS:

Lessee shall have the right to make alterations and improvements to the leased premises and provided that such alterations and improvements shall first require the prior written consent of Lessor, which consent shall not be unreasonably withhold, provided, however, that all such alterations and improvements shall be performed at the sole expense of Lessee and in compliance with all applicable ordinances and building codes.

5. INSTALLATION OF TRADE FIXTURES AND EQUIPMENT:

Lessee shall have the right to install trade fixtures and equipment and may at the expiration of the Lease term remove the same, provided, that any damage caused by such removal shall be repaired by Lessee.

6. REPAIRS AND MAINTENANCE:

a. Obligations of Lessee: Except for those repairs expressly made the obligation of Lessor hereunder, Lessee shall, during the term of this lease, at its expense, keep the interior and exterior of the demised premises in as good an order and repair as it is at the date of the commencement of this lease, and shall repair at its own expense any damage which occurs to the interior or exterior of the building, including door and windows, resulting from Lessee's operation, reasonable wear and tear and damage by accidental fire or casualty excepted. In addition, Lessee shall make, at its sole expense, all routine repairs and major repairs to plumbing, toilet facilities and other fixtures and equipment installed for the general supply of water, heat, electricity and other utilities.

Lessee shall maintain any lawn and parking area in and about the demised premises in good order and repair, including the removal of snow, ice, rubbish and other obstructions.

b. Obligations of Lessor: Lessor, during the term of this lease, shall keep the structural supports, roof and exterior walls of the building in good order and repair, except repairs which are occasioned by the acts of the Lessee, its agents and employees.

7. UTILITIES AND JANITORIAL SERVICE:

Lessee shall pay all charges for electric, gas, water and other utility services required in connection with Lessee's use of the demised premises. Lessee shall also be responsible for the routine janitorial service in conjunction with its obligation to maintain the premises in a good condition.

8. INSURANCE:

Lessor shall, during the term of the lease, obtain and maintain at its expense the following types and amounts of insurance:

a. Fire and casualty insurance on all buildings, building improvements, building contents, including all personal property of the Lessee and Lessee's customers. This insurance shall be provided in the amounts to cover replacement of said building and contents. The deductible shall be not more than \$1,000.00.

b. Insurance against liability for bodily injury in a single limit amount of not less than \$500,000.00 for any one accident and property damage insurance in a minimum amount of \$50,000.00. Said policy shall name lessor as an additional insured.

c. Workers' compensation insurance in the limits required by the state law of the State of Michigan.

9. DEFAULT OF BREACH:

Each of the following events shall constitute a default or breach of this lease by Lessee:

a. If the existence of Lessee shall terminate pursuant to State law.

b. If Lessee shall fail to perform or comply with any of the conditions of this lease, other than rental, and if the non-performance shall continue for a period of thirty (30) days after notice thereof by Lessor to Lessee or, if the performance cannot be reasonably had within the thirty (30) day period, Lessee shall not in good faith have commenced performance within the thirty (30) day period and shall not diligently proceed to completion of performance.

c. If Lessee shall vacate or abandon the demised premises.

10. EFFECT OR DEFAULT OF BREACH:

In the event of any default or breach hereunder, as set forth in section 9, the rights of Lessor shall be as follows:

a. Lessor shall give Lessee a written notice of forfeiture, specifying the default which has occurred and shall give Lessee a period of fifteen (15) days after service of said notice of forfeiture to correct the default which has occurred.

b. Lessor may elect, but shall not be obligated, to make any payment required of Lessee herein or comply with any agreement, term or condition required hereby to be performed by Lessee, and Lessor shall have the right to enter the demised premises for the purpose of correcting or remedying any such default and to remain until the default has been correctly or remedied, but any expenditure for the correction by Lessor shall not be deemed to waive or release the default of Lessee or the right of Lessor to take any action as may be otherwise permissible hereunder in the case of any default.

c. Lessor may re-enter the premises immediately and remove the property and personal items of Lessee, and store the property in a public warehouse or at a place selected by Lessor, at the expense of Lessee. After re-entry Lessor may terminate the lease on giving fifteen (15) days written notice of termination to Lessee. Without the notice, re-entry will not terminate the lease. On termination Lessor may recover from Lessee all damages proximately resulting from the breach, including the cost of recovering the premises, and the worth of the balance of this lease over the reasonable rental value of the premises for the remainder of the lease term, which sum shall be immediately due Lessor from Lessee.

d. After re-entry, Lessor may relet the premises or any part thereof for any term without terminating the lease, for the best rent and terms reasonably obtainable under the circumstances. Lessor shall have the right, but shall not be required, to apply the rent received from reletting the

premises: (1) to reduce the indebtedness of Lessee to Lessor under the lease, not including indebtedness for rent, (2) to expense of the reletting and alterations and repairs made, (3) to rent due under this lease, or (4) to payment of future rent under this lease as it becomes due.

e. Lessor shall have such other rights and remedies as may be provided by law, including summary proceedings.

11. FIRE OR OTHER CASUALTY:

If all or any part of the building located on the leased premises is damaged or destroyed by fire or other casualty, the Downtown Development Authority shall be given one year to restore or replace the building provided that the Downtown Development Authority abide by the ordinances of the City of Escanaba.

12. ASSIGNMENT AND SUB-LEASING:

Lessee shall not assign this lease or any interest herein, or sub-let the demised premises or any part thereof, without the prior written consent of Lessor. Consent shall not be unreasonably withheld. Notwithstanding any such consent, in the event of any assignment of this lease, or any sub-letting hereunder, Lessee shall remain liable for the performance of all covenants on the part of Lessee to be performed hereunder.

13. QUIET ENJOYMENT AND ZONING:

The Lessor hereby covenants that it is the sole owner of the leased premises, that it has full authority to execute this lease, that the premises are currently zoned for Lessee's intended purpose and that the Lessee, upon paying said rent and performing the covenants contained in this lease, shall and may quietly have, hold and enjoy the leased premises during the term hereof.

14. WAIVERS:

The acceptance by Lessor of any installment of rent shall not operate as a waiver of breach of any covenant or condition of this lease. Any assent, expressed or implied, by Lessor to any breach of any covenant or condition shall not operate as an assent or waiver of any such covenant or condition generally, or of any subsequent breach thereof.

15. NOTICES:

All notices to be given with respect of this lease shall be in writing. Each notice shall be sent by certified mail, postage prepaid and return receipt requested, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing.

Every notice shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein. Nothing contained herein shall be construed

to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

16. ACCESS TO PREMISES:

Lessor shall have the right to enter upon the leased premises during reasonable hours for the purpose of inspecting the same, and during the last ninety (90) days of the lease term, for the purpose of showing the said premises to prospective purchasers and/or tenants.

17. TOTAL AGREEMENT; APPLICABLE TO ITS SUCCESSORS:

This lease contains the entire agreement between the parties and cannot be changed or terminated except by a written instrument subsequently executed by the parties hereto. This lease and the terms and conditions thereof apply to and are binding on the heirs, legal representatives, successors, and assigns of both parties.

In witness whereof, the parties have agreed to the terms of this documents on the \_\_\_\_ day of \_\_\_\_\_, 2018.

In the presence of:

Lessor:  
**City of Escanaba**


\_\_\_\_\_  
Witness

\_\_\_\_\_  
Marc Tall, Mayor

In the presence of:

Lessee:  
**Downtown Development Authority**

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Sue Parker, Chairperson

## LEASE OF PARKING LOTS

This lease is made as of the \_\_\_\_ day of \_\_\_\_\_, 2018, between the CITY OF ESCANABA ("Lessor"), a Michigan municipal corporation of the County of Delta, State of Michigan, and the DOWNTOWN DEVELOPMENT AUTHORITY of the CITY OF ESCANABA ("Lessee"), created by the City of Escanaba pursuant to Michigan law, being MCL 225.1651 et seq.

Lessor, in consideration of the rent later specified to be paid by Lessee and the covenants and agreements later contained, by the Lessee to be performed, has let unto the Lessee those certain premises in the City of Escanaba, State of Michigan, described on Exhibit "A", which exhibit is attached by this reference incorporated herein for all purposes as if set forth at length.

The Lessor and Lessee agree as follows:

**1. Term:**

The term of this lease shall be from the January 1, 2019 until December 31, 2019.

**2. Rental:**

Lessee agrees to pay to Lessor as rent for the premises the sum of \$1.00.

**3. Purpose:**

The premises shall be used for parking facilities and for no other purpose without the written consent of Lessor being first obtained.

**4. Indemnification:**

Lessee shall indemnify Lessor from all loss, costs and expense arising out of any liability, or claim of liability, for injury or damages to persons or property sustained, or claimed to have been sustained by anyone by reason of the operation, use or occupation of the facilities described above by Lessee, whether such use is authorized or not, or by any act or omission of Lessee or any of its officers, agents, employees, guests, patrons or invitees, and Lessee shall pay for all and any damage to the property of the Lessor, or loss or theft of such property, done or caused by those persons.

**5. Insurance:**

Lessee agrees to deliver to Lessor, upon the execution of this lease, a copy of a continuing public liability and property damage insurance policy satisfactory to Lessor indemnifying and holding Lessor harmless against any and all claims in the amount of \$500,000 for injury to any one person and \$50,000 for property damage and shall keep the same in force during the term of this lease. Said insurance policy shall provide that the Lessor is named as an additional insured and that the Lessor shall receive 20 days notice from the insurance carrier prior to the cancellation of such policy.

**6. Repairs and Maintenance:**

Lessee represents that Lessee has inspected and examined the demised premises and accepts them in the present condition. Upon expiration of this lease or at any sooner termination, the Lessee will quit and surrender possession of the premises peaceable and in as good order and condition as the premises were at the commencement of the term, reasonable wear, tear and damage by the elements excepted; Lessee further agrees to leave the premises free from all nuisance and dangerous and defective conditions.

Lessee agrees that it will maintain all present fencing and curb stops and the parking spaces in each individual lot shall be striped at least once per year. Lessee agrees that it shall maintain said parking facilities clean and clear of all debris and brush. Lessee agrees that it will be responsible for all snow removal and plowing required by said parking facilities. Said snow plowing shall include the responsibility for the removal of any and all snow from the premises. Lessee agrees that it will be responsible for occasional sweeping of said lots to remove dirt, broken glass and debris. Lessee agrees that it will be responsible for occasional salting of said facilities, if ice requires the same. Lessee agrees that it will be responsible for occasional grading of any gravel lots. Lessor agrees that it will be responsible for the paving of any parking lots covered by this agreement.

**7. Assignment and Mortgage:**

Neither the demised premises nor any portion of them shall be sublet, nor shall this lease nor any interest in it be assigned, hypothecated or mortgages by Lessee, and any attempted assignment, subletting, hypothecation or mortgaging of this Lease shall be of no force and effect and shall confer no rights up on any assignee, sublessee, mortgagee or pledgee.

**8. Termination by Lessor:**

Lessor may terminate this lease at any time, by serving upon Lessee a written notice of termination which notice shall be served at lease ninety (90) days prior to the date in the notice named for such termination.

**9. Default:**

In the event that Lessee shall be in default in the performance of any of the terms of conditions agreed to be kept and performed by Lessee, then in that event Lessor may terminate and end this lease immediately and Lessor may enter upon the premises and remove all persons and property; in the event Lessor shall bring legal action to enforce any of the terms of this lease or to obtain possession of the premises by reason of default of Lessee or otherwise, Lessee agrees to pay Lessor all costs of such legal action.

**10. Waiver:**

Waiver by Lessor of any default in performance by the Lessee of any of the terms, covenants or conditions contained herein shall not be deemed to continue waiver of default or of any subsequent default.

**11. Compliance with Laws:**

Lessee agrees to comply with all laws, ordinances, rules and regulations that may pertain or apply to the demised premises and their use.

**12. Successors in Interest:**

All of the terms, covenants and conditions contained herein shall continue and bind all successors in interest of Lessee.

IN WITNESS, the CITY OF ESCANABA, by its Mayor and ESCANABA DOWNTOWN DEVELOPMENT AUTHORITY, by its chairperson, have each cause the respective names to be signed to this instrument the day and year first above written.

Attest:

CITY OF ESCANABA

\_\_\_\_\_

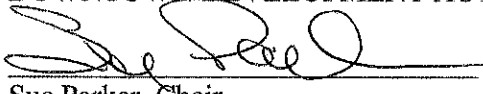
\_\_\_\_\_  
Marc Tall, Mayor

Print

Attest:

DOWNTOWN DEVELOPMENT AUTHORITY

  
\_\_\_\_\_

  
\_\_\_\_\_

Print

Sue Parker, Chair



# PROCLAMATION

## In Honor of Tom Casperson Upon the Occasion of His Retirement

**WHEREAS,** Tom Casperson was the invaluable Senator of the Michigan 38<sup>th</sup> Senate for two, four-year terms, 2010-2018; and

**WHEREAS,** Tom Casperson served as Representative of the 108<sup>th</sup> District Michigan State House for six years, 2002-2008; and

**WHEREAS,** Tom Casperson served as Chair of the House Conservation, Forestry and Outdoor Recreation Committee, and Vice-Chair of the Transportation Committee; and

**WHEREAS,** Tom Casperson was awarded Advocate of the Year from the Michigan Forest Products Council, several Legislative Leadership awards, Legislator of the Year by the Michigan Townships Association, and Michigan's Most Effective Public Servant by Transportation Riders United ; and

**WHEREAS,** The people of Escanaba wish to thank Tom Casperson for his years of service to the people of Escanaba and congratulate him upon the momentous occasion of his retirement and wish him continued success in his future endeavors.

**NOW, THEREFORE, BE IT PROCLAIMED,** that I, Marc D. Tall, Mayor for the City of Escanaba, on behalf of the City Council and all Escanaba employees and citizens, do designate December 21, 2018, as,

### "Tom Casperson Day"

in the City of Escanaba, and wish him the best in his retirement.

\_\_\_\_\_  
Marc D. Tall, Mayor

