



Meeting Date: 6/27/2010  
Agenda Item: #9

**Mission Statement**  
Provide quality services in a modern, courteous and cost-efficient manner.

### VILLAGE BOARD MEETING STAFF REPORT

**REPORT TO:** President Burt McIntyre & Village Board of Trustees  
**REPORT FROM:** Robert Bartelt, Interim Village Administrator  
**AGENDA ITEM:** Review and Take Action on development agreement with Menards  
**ACTION REQUESTED:**  Ordinance  Resolution  Motion  Receive/File

#### POLICY ISSUE

Does the Village Board want to enter into a developer agreement with Menards in order for Menards to construct a retail center at 2300 Woodman Drive?

#### RECOMMENDED ACTION BY VILLAGE BOARD

If the Village Board is in favor of this policy action, the following motion may be made:

*"I move to approve the Developer Agreement with Menards, Inc."*

#### POLICY ALTERNATIVE(S)

The Village Board could take the following action:

- Amend the agreement.
- Deny the agreement.
- Table the item and request additional information.

#### POLICY REFERENCE

Wisconsin Statutes: 66.105, 66.1331, 66.1337

Howard Municipal Code: N/A

Policies & Procedure Manual: N/A

#### FINANCIAL INFORMATION

##### FISCAL IMPACT:

1. Is There A Fiscal Impact? Yes
2. Is it Currently Budgeted? Yes
3. If Budgeted, Which Line? TIF #4

##### FISCAL SYNOPSIS:

8,000 (\$8,000,000 New Value of Property) x  
\$17.20 (tax increment rate) = \$137,600.00

\$137,600.00 x 80% = \$110,080.00 (annual  
payment on New Value)

**\$1.6 million incentive projected to be paid in 15  
years**

At the April 25, 2011 Village Board Meeting, the Village Board in closed session approved an incentive of \$1,600,000 for Menards, Inc. contingent upon zoning approval and with the conditions that nothing would be paid up front and the project would have a minimum \$8 million value.

**BACKGROUND INFORMATION**

Menard, Inc. is planning to construct at 2300 Woodman Drive, contingent upon a Village of Howard approved Planned Development District, a home improvement store consisting of a ninety-four thousand four hundred thirty-two (94,432) square foot retail use, sixty-four thousand one hundred fifty-seven (64,157) square foot warehouse and three thousand seven hundred fifty-one (3,751) square foot office area, a roof overhang area of forty thousand six hundred eight (40,608) square feet, a separate lumber warehouse building of forty-two thousand three hundred fifty-two (42,352) square feet, with an estimated valuation of over \$8.0 Million Dollars.

Upon completion of the Project and reassessment of a guaranteed new Assessed Value of Eight Million Seven Hundred Nine Thousand One Hundred (\$8,709,100.00) Dollars, the Village will pay eighty percent (80%) of the tax increment real estate taxes generated and collected from the new value of the Property to Menard's on an annual basis until such time that Menard's has been paid a total of \$1.6 million.

**For illustration purposes only, the general net tax rate for the Village of Howard for 2010 was \$17.37 per \$1,000 of value. In subtracting the State of Wisconsin's tax rate from the total net tax rate for the Village, the tax increment rate is \$17.20 per \$1,000 of valuation. Assuming there were \$8.0 million of New Value in 2014 and the tax increment rate remained at \$17.20 the annual payment would be \$110,080.00 as follows:**

**8,000 (\$8,000,000 New Value of Property) x \$17.20 (tax increment rate) = \$137,600.00**

**\$137,600.00 x 80% = \$110,080.00 (annual payment on New Value)**

The annual payment shall be made on the first day of March of each year beginning March 1, 2014 contingent upon verification of the payment of real estate taxes and personal property taxes for the Property. The Village will be under no obligation to make the annual payment until such time as Menard has paid all outstanding personal property and real estate taxes for the Property.

The Village's obligation to make annual payments under the Payment Schedule shall be suspended for any year that the general real estate tax value of the Property as of January 1<sup>st</sup> is less than Eight Million Seven Hundred Nine Thousand One Hundred (\$8,709,100.00) Dollars.

The Village's obligation to make annual payments shall terminate and Menard will hold the Village harmless and make no further claim against the Village under the Payment Schedule upon the happening of any of the following events:

- a. Sale or other transfer of the Property without the consent of the Village, which consent shall not be unreasonably withheld.
- b. Assignment of the Property by Menard for the benefit of creditors or bankruptcy proceedings involving Menard.
- c. Stopping business operations at the Property or reducing the level of operations such as to materially impact the Value of the Property, except during reasonable periods for remodeling or reconstruction due to casualty.

- d. Relocation of the business from the Property.
- e. Any change in the Tax Incremental Finance Law in the State of Wisconsin which would materially impact the Village's ability to use the tax increment generated by the Property for payment of the annual percentage value to Menard or cause the Village to make all or part of the payment from the general tax levy for the Village.

In addition to the tax base and jobs Menards will be creating, in exchange for the incentive Menards Inc. has committed to building above and beyond its prototypical store. The retailer has agreed to including brick banded colors and a parapet design for the Howard store's façade, which should help make it one of the nicest looking Menards stores in Northeast Wisconsin

The retailer also plans to use extensive landscaping along Woodman Drive to help screen the 14-foot high fence, will transplant trees on the berm, and use decorative iron fence on the south ends of the 14-foot high fence.

#### **ATTACHED INFORMATION**

- I. Proposed Development Agreement

**MENARD, INC. DEVELOPMENT AGREEMENT  
TIF DISTRICT NO. 4**

THIS AGREEMENT, entered into as of this \_\_\_\_\_ day of June, 2011, by and between the VILLAGE OF HOWARD, WISCONSIN, (“Village”), a Wisconsin municipal corporation, and Menard, Inc., a Wisconsin corporation, (“Menard”).

**WITNESSETH**

**WHEREAS**, in June, 2007 the Village of Howard created and approved the Project Plan for Tax Incremental Financial District No. 4 in accordance with the provisions of Section 66.1105 of the Wisconsin Statutes in order to provide a viable method of financing the costs of needed public improvements within said district and create incentives and opportunities for appropriate private development which will contribute to the overall development of the Village; and

**WHEREAS**, Wis. Stats. Sec. 66.1331 and 66.1337 empower Villages to assist development projects by lending or contributing funds and performing other actions of a character which the Village is authorized to perform for other purposes; and

**WHEREAS**, Menard has acquired certain Property in the TIF District No. 4, located on Woodman Drive, Village of Howard, Brown County, Wisconsin, and legally described as follows:

***INSERT LEGAL***

hereinafter referred to as the (“Property”) and a copy of the Retracement Certified Survey Map is attached hereto and made part of this Agreement as Exhibit A;

**WHEREAS**, Menard is planning to construct on the Property, pursuant to a Village of Howard approved Planned Development District, a home improvement store consisting of a ninety-four thousand four hundred thirty-two (94,432) square foot retail use, sixty-four thousand one hundred fifty-seven (64,157) square foot warehouse and three thousand seven hundred fifty-one (3,751) square foot office area, a roof overhang area of forty thousand six hundred eight (40,608) square feet, a separate lumber warehouse building of forty-two thousand three hundred fifty-two (42,352) square feet, with an estimated valuation of \$8.0 Million Dollars, hereinafter referred to as the (“Project”); and

**WHEREAS**, the Village believes that the development described herein and fulfillment generally of this Agreement are in the vital and best interests of the Village and its residents and in accord with the public purposes and conditions of applicable state and local laws and requirements under which said development has been undertaken and is being carried out; and

**WHEREAS**, the Village has determined to pay the costs of Menard’s construction of certain public improvements which are necessary to the Project, and to make certain allocations to the Project in order to induce and assist Menard in undertaking the Project and to meet the objectives

of the TIF District No. 4 Project Plan.

**NOW, THEREFORE**, in consideration of the promises and mutual obligations of the parties hereto, the parties do hereby covenant and agree as follows:

**ARTICLE I  
REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

Section 1.1 **Representation and Warranties of the Village.** The Village makes the following representations and warranties as of the date hereof and as of the date of closing:

- a. The Village represents and warrants to Menard that they have the power and authority and legal right to enter into all of the transactions and to perform all of the obligations required to be entered into or performed by them under this Agreement.
- b. The Village represents and warrants to Menard that they are empowered and authorized to execute and deliver this Agreement. This Agreement has been duly executed and delivered on behalf of the Village, and will constitute, when executed and when delivered, legal, valid and binding obligations of the Village, enforceable in accordance with these terms except as limited by bankruptcy, insolvency or civil laws of general application affecting the enforcement of creditors' rights.
- c. The Village represents and warrants that there are no actions, suits, or mechanic's or construction liens, and no legal proceedings before any Court or governmental agency pending or threatened for the Project.
- d. The Village represents and warrants that it shall cooperate with Menard in a timely manner to obtain any land use or zoning permits from any applicable local, state, or federal authorities, including any permits required by Chapter 30 of the Wisconsin Statutes.
- e. The Village represents and warrants that it will not terminate or dissolve TIF District No. 4 until such time that the annual payments not to exceed a total of \$1.6 Million Dollars have been paid by the Village to Menard's as provided herein subject to the eligible expenditure period for the TIF District No. 4 and the maximum number of years. TIF 4 may remain in existence pursuant to Section 66.1105, Wisconsin Statutes.

Section 1.2 **Representation and Warranties of Menard.** Menard makes the following representations and warranties:

- a. Menard has the power to enter into this Agreement and to perform its obligations hereunder and is not in violation of the Laws of State of Wisconsin in any manner material to its performance hereunder.
- b. Subject to obtaining all necessary permits, approvals and similar items, Menard shall proceed with reasonable due diligence following execution of this Agreement to cause

the Project to be undertaken and constructed on the Property pursuant to the terms, conditions and limitations of this Agreement, in accordance with the terms of this Agreement, and in the accordance with the plans and specifications and all local, state, and federal laws, ordinances, and regulations (including, but not limited to, Chapter 30 Permit, DNR and Village storm water permits, all conditions and requirements for the final Planned Development District for the construction of the Menards Retail Store on the 29/41 Retail Centre Plat as approved by the Village Board on June 13, 2011, wetland, storm water, environmental, zoning, energy, conservation, building code and public health laws, ordinances and regulations).

- c. Menard will use its best efforts to obtain in a timely manner, all required permits, licenses and approvals, and will meet in a timely manner those which must be obtained or met before the Project can lawfully be undertaken or constructed, except those pertaining to portions of the Project specifically assigned to the Village herein.

## ARTICLE II RESPONSIBILITIES OF THE PARTIES

Section 2.1 **Responsibilities of the Village.** The Village shall be responsible for the performance and all costs incurred for the following subject to Menard's performance and the conditions and contingencies described below:

1. **Base Value.** The Base Value for the vacant Property located on Woodman Drive, as of January 1, 2011 is Seven Hundred Nine Thousand One Hundred (\$709,100.00) Dollars.
2. **Menard's Agreement.** Pursuant to Menard's Agreement the new Assessed Value of the Property upon completion of the Project on Woodman Drive, shall reflect an increase of not less than \$8.0 Million Dollars over the Base Value of the Property , which increase shall remain in effect on the first day of January each year thereafter that the Village is required to make any annual payments under this Agreement.
3. **Project Completion.** Upon completion of the Menard home improvement store including warehouse, office, roof overhang area and lumber warehouse, the Property on Woodman Drive will be reassessed in accordance with Chapter 70, Wis. Stats. and have a general real estate tax value of not less than Eight Million Seven Hundred Nine Thousand One Hundred (\$8,709,100.00) Dollars .
4. **New Value.** For each year of payment, the New Value of the Property and buildings located on Woodman Drive shall be calculated by subtracting the Base Value of the Property from the Assessed Value of the Property for real estate tax purposes as of January 1<sup>st</sup> for that year and each year thereafter that payments will be made by the Village.
5. **Payment Schedule.** Upon completion of the Project and reassessment of the Property , with an agreed new Assessed Value of Eight Million Seven Hundred Nine

Thousand One Hundred (\$8,709,100.00) Dollars, the Village will pay eighty percent (80%) of the tax increment real estate taxes generated and collected from the New Value of the Property to Menard's on an annual basis until such time that Menard's has been paid a total of \$1.6 Million Dollars.

**The current tax incremental rate that would apply to the New Value is the total net tax rate for the Village minus the tax rate for the State of Wisconsin.**

**For illustration purposes only, the general net tax rate for the Village of Howard for 2010 was \$17.37 per \$1,000 of value. In subtracting the State of Wisconsin's tax rate from the total net tax rate for the Village, the tax increment rate is \$17.20 per \$1,000 of valuation. Assuming there was \$8.0 Million Dollars of New Value in 2014 and the tax increment rate remained at \$17.20 the annual payment would be \$110,080.00 as follows:**

**8,000 (\$8,000,000 New Value of Property) x \$17.20 (tax increment rate) = \$137,600.00**

**\$137,600.00 x 80% = \$110,080.00 (annual payment on New Value)**

The annual payment shall be made on the first day of March of each year contingent upon verification of the payment of real estate taxes and personal property taxes for the Property which are due and payable as of such date. The Village will be under no obligation to make the annual payment until such time as Menard has paid all outstanding personal property and real estate taxes for the Property.

6. **Suspension of Payment Schedule.** The Village's obligation to make annual payments under the Payment Schedule shall be suspended for any year that the general real estate tax value of the Property as of January 1<sup>st</sup> is less than Eight Million Seven Hundred Nine Thousand One Hundred (\$8,709,100.00) Dollars.

7. **Termination of Payment Schedule.** The Village's obligation to make annual payments shall terminate and Menard will hold the Village harmless and make no further claim against the Village under the Payment Schedule upon the happening of any of the following events:

- a. Sale or other transfer of the Property without the consent of the Village, which consent shall not be unreasonably withheld.
- b. Assignment of the Property by Menard for the benefit of creditors or bankruptcy proceedings involving Menard.
- c. Stopping business operations at the Property or reducing the level of operations such as to materially impact the Value of the Property, except during reasonable periods for remodeling or reconstruction due to casualty.
- d. Relocation of the business from the Property.

- e. Any change in the Tax Incremental Finance Law in the State of Wisconsin which would materially impact the Village's ability to use the tax increment generated by the Property for payment of the annual percentage value to Menard or cause the Village to make all or part of the payment from the general tax levy for the Village.

Section 2.2 **Menard's Responsibilities.** Menard shall be responsible for the performance and all costs incurred for the following:

**A. Building – Project**

Menard will construct on the Property, a home improvement store consisting of an approximately ninety-four thousand four hundred thirty-two (94,432) square foot retail use, sixty-four thousand one hundred fifty-seven (64,157) square foot warehouse and three thousand seven hundred fifty-one (3,751) square foot office area, a roof overhang area of forty thousand six hundred eight (40,608) square feet, a separate lumber warehouse building of forty-two thousand three hundred fifty-two (42,352) square feet, per all the requirements and conditions of the Planned Development District for the Project as approved by the Village Board on June 13, 2011 which PDD approval is attached hereto as Exhibit B and made part of this Agreement.

**B. Agreement**

For payments by the Village to Menard, Menard is agreeing to an assessed real estate value for the Buildings and Improvements on Woodman Drive, Village of Howard, of Eight Million Seven Hundred Nine Thousand One Hundred (\$8,709,100.00) Dollars until all payments hereunder are received by Menard. **Following the expiration or termination of this Agreement, Menard shall have the right to contest the valuation of the Property at its sole discretion.**

**ARTICLE III  
INDEMNIFICATION**

Section 3.1 **Indemnification by the Village.** The Village agrees to protect and defend Menard now and forever, and further agrees to hold Menard harmless, from any claim, demand, suit, action or other proceeding whatsoever by any person or entity arising or purportedly arising from the negligence, willful or negligent misrepresentation, or willful or wanton misconduct of the Village, or their respective employees and/or agents, in fulfilling the obligations under this Agreement or the transactions contemplated hereby.

Section 3.2 **Indemnification by Menard.** Menard agrees to protect and defend the Village now and forever, and further agrees to hold the Village harmless, from any claim, demand, suit, action or other proceeding whatsoever by any person or entity arising or purportedly arising from the negligence, willful or negligent misrepresentation, or willful or wanton misconduct of Menard, or their respective employees and/or agents, in fulfilling the obligations under this Agreement or the transactions contemplated hereby.

Section 3.3 **Contractual Liability.** Each party shall be responsible for satisfying any and all contracts and/or subcontracts entered into by that party with third parties for purposes of completing its respective portion of the project, and shall indemnify and hold the other parties harmless from any such contractual liability.

#### ARTICLE IV DEFAULT

Section 4.1 **Acts constituting default.** Subsequent to Menard's closing of its purchase of the Property, the failure of any party to observe or perform any of the covenants, conditions, or obligations applicable to that party under this Agreement in a timely or satisfactory matter, unless said failure results from one or more of the causes described in Section 5.5 below, shall constitute a default under the terms of this Agreement.

Section 4.2 **Acts permissible in the event of a default.** In the event of such a default, the aggrieved party may take any one or more of the following actions after giving 30 days written notice to the defaulting party, but only if the default has not been cured within said 30 days:

- a. The party may suspend its performance under this Agreement until it receives assurance from the defaulting party, deemed adequate by the aggrieved party, that the defaulting party will cure its default in a timely matter and intends to continue performance under the Agreement.
- b. The aggrieved party may proceed to arbitration.

Section 4.3 **No implied Waiver.** In the event any covenant or provision of this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.4 **Arbitration.** In the event any dispute should arise under this Agreement, the parties agree to submit the matter to binding arbitration pursuant to Chapter 788 of the Wisconsin Statutes. Arbitration shall take place in Brown County unless otherwise agreed to by the parties. The parties shall select a mutually agreed upon arbitrator to arbitrate the matter. In the event the parties cannot agree upon the arbitrator, each party shall select their own arbitrator who shall jointly select a third arbitrator. The third arbitrator shall be the person who arbitrates the matter, and the decision shall be binding upon all parties. The parties share equally in the cost of such arbitrator.

#### ARTICLE V ADDITIONAL PROVISIONS

Section 5.1 **Conflicts of Interest.** No member of the governing body or other officer of the Village shall have any financial interest, direct or indirect, in this Agreement, the Property, or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken there under or with respect thereto not shall any such member of the governing body or other

official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the Village shall be personally liable to the Village in the event of any default or breach by Menard or successor or on any obligations under the terms of this Agreement.

Section 5.2 **Restrictions on Sale of the Development Area.** Without the express written consent of the Village, any lands or parcels comprising the Property may not be sold, transferred or conveyed in any manner which would under law in effect on the date of this Agreement render any portion of the Property exempt from property taxation; provided, however, that the Village's consent shall not be required in connection with the granting of any mortgage to finance or refinance lands or parcels comprising the Property or in connection with any sale or conveyance pursuant to or following any foreclosure (or acceptance of deed in lieu of foreclosure) of such mortgage. The covenants contained in this section shall bind and run with the lands and parcels comprising the Property, but shall expire and be of no further force and effect upon the termination or expiration of this Agreement.

Section 5.3 **Headings.** Descriptive headings as used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

Section 5.4 **Notice.** Any notice required under this Agreement shall be given in writing, signed by the party giving notice, and personally delivered or mailed by first class mail, postage prepaid, to the parties, and addressed as follows:

If to the Village:  
Village Administrator  
2456 Glendale Avenue  
P.O. Box 12207  
Green Bay, WI 54307-2207

If to Menard:  
Menard, Inc.  
Attn: Properties Division  
5101 Menard Drive  
Eau Claire, WI 54703

Notice shall be deemed delivered, in the case of personal delivery on the date when personally delivered, or in the case of mail, on the date when said notice is deposited in the United States mail with sufficient postage to affect such delivery.

Section 5.5 **Force Majure.** If any party hereto shall be materially delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of Acts of God, strikes or walk outs, unavailability of materials, failure of power, riots, insurrections, terrorist acts, the act or failure to act of another party, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such party's control, then the time for performance of such act shall be extended for a period of

such delay provided that the party whose performance is delayed, hindered, or prevented gives immediate written notice to the other parties and takes all reasonable actions to overcome the condition affecting its performance as expeditiously as possible. At the request of any party hereto, authorized representatives of all the parties to this Agreement shall meet to discuss any condition affecting performance hereunder and potential actions that might be undertaken to overcome such conditions.

Section 5.6 **Entire Agreement.** This document contains the entire Agreement between the parties with respect to the matter set forth herein, and shall inure to the benefit of and shall bind the parties hereto, their respective heirs, executors, successors or assigns. This Agreement may be modified only in writing, with said written modification(s) signed by an authorized representative of each party.

Section 5.7 **Governing Law.** This Agreement shall be construed in accordance with the Laws of the State of Wisconsin.

Section 5.8 **Cooperation.** The parties hereto agree to cooperate in the prosecution of applications made by any party for any governmental certificates, permits, or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or the use of occupancy of the Property. The parties agree at any time, or from time to time at the written request of another party, to sign and deliver other such documents as may be reasonably requested or may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

Section 5.9 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

Section 5.10 **Relationship with Parties.** Nothing contained in this agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agenda or to create any partnership, joint venture or other association between the Village and Menard.

Section 5.11 **Further Assurances.** Village and Menard, each agree, at any time or from time to time at the written request of the other, to sign and deliver such other instruments, notices, conveyances, Agreements or other documents as may be reasonable requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this agreement.

Section 5.12 **No Liability of Village.** Village shall have no obligation or liability to the lending institute, architect, contractor, or subcontractor, or any other party retained by Menard in the performance of its obligations and responsibilities under the terms and conditions of this Agreement. Menard specifically agrees that no representations, statements, assurances or guarantees will be made by Menard to any third party or by any third party which are contrary to these provisions.

Section 5.13 **Recording of Agreement.** The Agreement and any and all subsequent

modifications thereof or additions thereto may upon being duly executed, be recorded by the Village with the Register of Deeds for Brown County, Wisconsin.

Section 5.14 **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto as well as their respective successors, transferees and assigns. With the consent of the Village, which consent shall not be unreasonably withheld, Menard may assign this Agreement, or any part thereof, from time to time to any entity controlled or managed by Menard, or to any person acquiring any portion or portions of the Development Area, provided that, in the event of any such transfer, the applicable terms and conditions of this Agreement shall run with the title of the Property included in the portion of the Development Area so transferred. The Village may condition its consent upon the transferee expressly assuming all of the obligations of Menard as contained in this Agreement. Upon any such transfer of Menard’s interest, Menard shall be released from its obligations hereunder.

Section 5.15 **Construction of Agreement.** It is understood and agreed by Menard and the Village that this Agreement shall be construed without regard to any presumption or other rule regarding construction against the party causing the Agreement to be drafted. Each party having had the opportunity to have the Agreement reviewed by their respective counsel or having waived their right to do so as evidence by their signature hereon.

Section 5.16 **Severability.** In the event that one or more provisions of this Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be at all affected or impaired thereby.

In witness whereof, the parties hereto have executed this Agreement as of the date first written above.

**VILLAGE OF HOWARD, WISCONSIN**

By: \_\_\_\_\_  
Name: Burt McIntyre  
Title: Village President

By: \_\_\_\_\_  
Name: Robert Bartelt  
Title: Administrator/Clerk

**MENARD, INC.**

By: \_\_\_\_\_  
Name : Theron J. Berg  
Title: Real Estate Manager