

**IN THE SUPREME COURT OF IOWA  
NO. 19-0674  
EMMET COUNTY CASE NO. CVCV019170**

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**STATELINE COOPERATIVE,**  
Petitioner-Appellant,  
vs.  
**IOWA PROPERTY ASSESSMENT APPEAL BOARD**  
Respondent-Appellee.

**EMMET COUNTY BOARD OF REVIEW,**  
Cross Appellant-Cross Appellant  
vs.  
**STATELINE COOPERATIVE and IOWA PROPERTY  
ASSESSMENT APPEAL BOARD,**  
Cross Appellees-Cross Appellees.

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**APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR EMMET COUNTY  
THE HONORABLE DON E. COURTNEY  
DISTRICT COURT JUDGE**

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**PETITIONER-APPELLANT'S BRIEF**

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

### **I. THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION OVER THE ISSUES RAISED IN EMMET COUNTY BOARD OF REVIEW'S UNTIMELY NOTICE OF CROSS APPEAL**

#### **Cases**

Ahmann v. Correctional Center Lincoln, 755 N.W.2d 608 (Neb. 2008)

City of Des Moines v. City Development Board of the State of Iowa, 633 N.W.2d 305 (Iowa 2001)

City of Hiawatha v. City Development Board, 609 N.W.2d 532 (Iowa 2000)

Cooper v. Kirkwood Community College, 782 N.W.2d 160 (Iowa App. 2010)

Kingsway Cathedral v. Iowa Dept. of Transp., 711 N.W.2d 6 (Iowa 2006)

UE Local 893/IUP v. State, --- N.W.2d ---, 2019 WL 2147342, \*4 (Iowa May 17, 2019)

#### **Statutes**

Iowa Code § 17A.19(2)

### **II. THE DISTRICT COURT ERRED IN AFFIRMING PAAB'S RULING THAT BUILDING 1'S OVERHEAD BINS (INGREDIENT AND LOADOUT) ARE NOT EXEMPT AS "MACHINERY USED IN MANUFACTURING ESTABLISHMENTS"**

#### **Cases**

Brakke v. Iowa Department of Natural Resources, 897 N.W.2d 522 (Iowa 2017)

Citizens Aide/Ombudsman v. Rolfes, 454 N.W.2d 815 (Iowa 1990)



Dico, Inc. v. Iowa Employment Appeal Board, 576 N.W.2d 352 (Iowa 1998)

Federal Express Corp. v. Mason City Human Rights Commission, 852 N.W.2d 509 (Iowa App. 2014)

Geis v. City of Fond du Lac, 409 N.W.2d 148 (Wis. Ct. App. 1987)

Greenwood Manor v. Iowa Department of Public Health, 641 N.W.2d 823 (Iowa 2002)

Griffin Pipe Products Co. v. Board of Review of County of Pottawattamie, 789 N.W.2d 769 (Iowa 2010)

Kay-Decker v. Iowa State Board of Tax Review, 857 N.W.2d 216 (Iowa 2014)

Naumann v. Iowa Property Assessment Appeal Bd., 791 N.W.2d 258 (Iowa 2010)

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Wal-Mart Stores, Inc. v. Caselman, 657 N.W.2d 493 (Iowa 2003)

Wendling Quarries, Inc. v. Property Assessment Appeal Board of State of Iowa, 865 N.W.2d 635 (Iowa App. 2015)

## **Statutes**

Iowa Code § 17A.19(10)(b)

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Iowa Code § 441.17(2)

## **Rules**

Iowa Admin. Code § 701—18.58(1)

Iowa Admin. Code § 701—71.1(7)(a)(1)

Iowa Admin. Code § 701—71.1(7)(b)(1)

### **III. THE DISTRICT COURT ERRED IN AFFIRMING PAAB'S RULING THAT SLC FAILED TO MEET ITS EVIDENTIARY BURDEN TO VALUE THE EXEMPTION ASSOCIATED WITH BUILDING 1'S OVERHEAD BINS**

#### **Cases**

Naumann v. Iowa Property Assessment Appeal Bd., 791 N.W.2d 260 (Iowa 2010)

UE Local 893/IUP v. State, --- N.W.2d ---, 2019 WL 2147342, \*4 (Iowa May 17, 2019)

Wendling Quarries, Inc. v. Property Assessment Appeal Board of State of Iowa, 865 N.W.2d 638 (Iowa App. 2015)

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Iowa Code § 17A.19(10)(b)

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**IV. THE DISTRICT COURT ERRED IN AFFIRMING PAAB'S RULING THAT THE EXTERIOR GRAIN BINS ARE NOT EXEMPT AS "MACHINERY USED IN MANUFACTURING ESTABLISHMENTS"**

**Cases**

Naumann v. Iowa Property Assessment Appeal Bd., 791 N.W.2d 260 (Iowa 2010)

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Iowa Code § 17A.19(10)(n)

**Rules**

Iowa Admin. Code § 701—18.58

Iowa Admin. Code § 701—18.58(1)

Iowa Admin. Code § 701—18.58(4)(c)

Iowa Admin. Code § 701—71.1(7)(b)(1)

**V. THE DISTRICT COURT ERRED IN AFFIRMING PAAB'S RULING THAT SLC FAILED TO MEET ITS EVIDENTIARY BURDEN TO VALUE THE EXEMPTION ASSOCIATED WITH THE EXTERIOR GRAIN BINS**

**Cases**

Naumann v. Iowa Property Assessment Appeal Bd., 791 N.W.2d 260 (Iowa 2010)

UE Local 893/IUP v. State, --- N.W.2d ---, 2019 WL 2147342, \*4 (Iowa May 17, 2019)

**Statutes**

Iowa Code § 17A.19(10)(b)

Iowa Code § 17A.19(10)(c)

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Iowa Code § 17A.19(10)(m)

Iowa Code § 17A.19(10)(n)

## **ROUTING STATEMENT**

This case should be retained by the Iowa Supreme Court in accordance with Iowa R. App. P. 6.1101(2)(c), (d) because it involves substantial issues of first impression and presents fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court. Specifically, the Iowa Supreme Court has never directly interpreted and construed the scope of the “machinery used in manufacturing establishments” real property tax exemption found in Iowa Code §§ 427A.1(1)(e) and 427B.17(3)

## STATEMENT OF THE CASE

### I. NATURE OF THE CASE

This matter involves the Iowa Property Assessment Appeal Board's ("PAAB") application of the "machinery used in manufacturing establishments" real property tax exemption found in Iowa Code §§ 427A.1(1)(e) and 427B.17(3) (the "Exemption") to the Halfa Feed Mill in Emmet County, Iowa (the "Facility") owned and operated by Petitioner, StateLine Cooperative ("SLC"), as affirmed by the district court on judicial review.

### II. RELEVANT EVENTS OF THE PRIOR PROCEEDINGS

The Emmet County Assessor assessed the Facility for property tax purposes at \$4,272,900.00 for the January 1, 2014 assessment. App. 1021 (Agency Contested Case Record 2 of 4 ("Record 2"), Exhibit 1)<sup>1</sup>.

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<sup>1</sup> On April 12, 2016, PAAB's counsel filed the Agency Contested Case Record with the district court in four parts, numbered 1, 2, 3 and 4, respectively. Record 1 is paginated beginning with "PAAB 0001" and contains the various PAAB filings made by the parties prior to the limited remand. App 80-245. Record 2 is not paginated and contains SLC's numbered exhibits used at the PAAB hearing on October 7, 2015. App. 246-321. Record 3 is not paginated and contains Emmet County Board of Review's lettered exhibits used at the PAAB hearing on October 7, 2015. App. 322-463. Record 4 contains the transcript from the PAAB hearing on October 7, 2015. App. 464-511. On August 15, 2018, PAAB's counsel filed the Stateline Record on PAAB Limited Remand ("Remand Record") containing all additional filings, exhibits and transcript associated with the limited remand proceedings and hearing before PAAB on August 30, 2017.

SLC timely petitioned the Emmet County Board of Review (“ECBR”) on the ground that the assessment assessed certain components of the Facility that are not subject to real property tax under the Exemption. App. 1022-1025 (Record 2, Exhibit 2). SLC attached to its Petition to the ECBR a spreadsheet listing the specific components that it claimed are exempt, along with the assessed value for each such component. Id. In total, SLC asked the ECBR to reduce the overall assessed value for the Facility from \$4,272,900 to \$870,700. Id.

On May 14, 2014, the ECBR notified SLC that “the Board finds no error in the assessment as alleged by the taxpayer. The Board accepts the appraisal performed by Vanguard Appraisals, Inc. for the 2014 assessment.” App. 1026 (Record 2, Exhibit 3).

SLC then timely filed its Notice of Appeal & Petition to PAAB on June 16, 2014, on the same ground, asserting that the ECBR failed to reduce the January 1, 2014 assessment to account for the Exemption. App. 998-999 (Agency Contested Case Record 1 of 4 (“Record 1”), PAAB 0001 – PAAB 0002).

An evidentiary hearing was held before PAAB on October 7, 2015. App. 1084 (Agency Contested Case Record 4 of 4 (“Record 4”), p. 1).

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The Remand Record is paginated with blue page numbers in the bottom left corner of each page, beginning with 001.



PAAB heard testimony from SLC's Chief Financial Officer, David Edge, and Feed Department Manager, Cheryl Krichau. App. 1085 (Record 4, p. 2). The Emmet County Assessor, Barb Bohm, as well as the appraiser hired by the ECBR to conduct the appraisal, Ted Goslinga, testified on behalf of the ECBR. Id.

Following that hearing, on or about February 26, 2016, PAAB issued its Findings of Facts, Conclusions of Law, and Order (the "Order"). App. 1006-1020 (Record 1, PAAB 0152 – PAAB 0166). In the Order, PAAB ruled in favor of SLC in part, finding that the Facility contained \$1,014,200 of exempt "machinery used in manufacturing establishments" (as itemized in the table found on App. 1016 (Record 1, PAAB 0162)) under Iowa Code §§ 427A.1(1)(e) and 427B.17(3), including:

- The truck scales used to receive and weigh raw ingredients;<sup>2</sup>
- The aeration floors, fans and dryers, and power sweeps of the two exterior grain bins;<sup>3</sup>

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<sup>2</sup> The truck scales are pictured in App. 291-293 (Record 2, Exhibits 11 and 12). In the aerial photograph of the Facility (App. 260 (Record 2, Exhibit 5)), the truck scales are located inside the bays located on the front right of the main building.

<sup>3</sup> The new, larger grain bin (Building 5) is pictured on the right side of App. 260 (Record 2, Exhibit 5). Pictures of just Building 5 and its components are contained in App. 295 (Record 2, Exhibit 14). The older, smaller grain bin (Building 6) can barely be seen in App. 260 (Record 2, Exhibit 5), as it is positioned directly behind Building 5. Pictures of just Building 6 and its

- The numerous bucket conveyors (legs) used at the Facility to move raw ingredients and/or feed vertically throughout the feed manufacturing process;<sup>4</sup>
- The drag conveyors used at the Facility to move raw ingredients and/or feed horizontally throughout the feed manufacturing process;<sup>5</sup> and
- The insulated fat tanks at the Facility that hold fat grease that is metered into the ingredient mixer for quality control purposes in the feed manufacturing process.<sup>6</sup>

As a result, PAAB reduced the overall assessment for the Facility by \$1,014,200 from \$4,272,900 to \$3,258,700. App. 1018 (Record 1, PAAB 0164).

In the Order, PAAB also ruled against SLC as to the other components of the Facility SLC claimed were exempt. SLC asserted that

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components are contained in App. 297 (Record 2, Exhibit 15).

<sup>4</sup> The numerous bucket conveyors (legs) are pictured in App. 304-308 and 313 (Record 2, Exhibits 20-24 and 29). The exterior casing shown in the pictures house the bucket conveyors which consist of a belt with buckets on it that scoops and transports ingredients/feed vertically throughout the Facility.

<sup>5</sup> The numerous drag conveyors are pictured in App. 309-311 and 317-319 (Record 2, Exhibits 25-27 and 33-35), and have exterior structures that enclose a conveyor chain with paddles that pull ingredients and/or feed horizontally throughout the Facility.

<sup>6</sup> The insulated fat tanks are pictured in App. 301-302 (Record 2, Exhibits 17 and 18).

Building 1 (Feed Mill),<sup>7</sup> Building 5 (new, large exterior grain bin)<sup>8</sup> and Building 6 (old, small exterior grain bin)<sup>9</sup> were exempt in their entirety as “machinery used in manufacturing establishments.” PAAB noted in the Order, however, that Buildings 1, 5 and 6 contain component parts, some of which are taxable (i.e. not exempt) and others of which may be exempt from taxation. App. 1016-1017 (Record 1, PAAB 0162 – PAAB 0163). Notwithstanding, PAAB was unable to determine the taxable status and value of the other components of Buildings 1, 5 and 6 due to lack of evidence in the record. Id.

On March 17, 2016, SLC filed its Petition for Judicial Review with the district court seeking judicial review of the portions of PAAB’s Order

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<sup>7</sup> SLC refers to the main Feed Mill as Building 1 on its spreadsheet attached to the Petition to ECBR (App. 1025 (the last page of Record 2, Exhibit 2)). The Property Card for the Facility (App. 1028-1052 (Record 2, Exhibit 9)) refers to the Feed Mill as B-1. To avoid any confusion, it will be referred to hereinafter as Building 1.

<sup>8</sup> SLC refers to the large exterior grain bin as Building 5 on its spreadsheet attached to the Petition to Emmet County Board of Review (App. 1025 (the last page of Record 2, Exhibit 2)). The Property Card for the Facility (App. 1028-1052 (Record 2, Exhibit 9)) refers to the large exterior grain bin as B-3. To avoid any confusion, it will be referred to hereinafter as Building 5.

<sup>9</sup> SLC refers to the smaller exterior grain bin as Building 6 on its spreadsheet attached to the Petition to Emmet County Board of Review (App. 1025 (the last page of Record 2, Exhibit 2)). The Property Card for the Facility (App. 1028-1052 (Record 2, Exhibit 9)) refers to the smaller exterior grain bin as B-4. To avoid any confusion, it will be referred to hereinafter as Building 6.

adverse to SLC. In the Petition for Judicial Review, SLC was listed as the Petitioner and PAAB as the Respondent.

On March 23, 2016, the ECBR filed a Notice of Cross Appeal Pursuant to Iowa Code § 441.38, listing itself as the Cross-Appellant and SLC and PAAB as Cross-Appellees.

On April 7, 2016, SLC filed a Motion to Dismiss and Strike Notice of Cross Appeal Filed by Emmet County Board of Review on the grounds that it was untimely filed, thus depriving the district court of jurisdiction to consider it.

On April 25, 2016, SLC filed an Application for Remand to Introduce Additional Evidence pursuant to Iowa Code § 17A.19(7). Specifically, SLC requested that the matter be remanded by the district court back to PAAB to receive additional evidence on, and make a determination as to, the portions and corresponding values of Buildings 1, 5 and 6 that are exempt from taxation.

On August 9, 2016, the district court issued its Ruling on Motion to Dismiss and Strike Notice of Cross Appeal Filed by Emmet County Board of Review and on Petitioner's Application for Remand to Introduce Additional Evidence, denying SLC's Motion to Dismiss and Strike and granting SLC's Application for Remand, and remanding this matter back to

PAAB to receive additional evidence as to the taxable status and value of the various component parts of Buildings 1, 5 and 6.

On October 5, 2016, PAAB issued an Order Setting Procedure for Remanded Proceedings, stating “[t]he Court has ordered PAAB to receive additional evidence on, and determine, the portions and corresponding values of the feed mill building and two exterior grain bins.” App. 1105-1106 (Remand Record, pp. 002-003).

PAAB held a second evidentiary hearing to receive such evidence on August 30, 2017. App. 1173 (Remand Record, pp. 229). PAAB heard testimony from Mrs. Krichau, Don R. Vaske (SLC’s commercial appraiser), and limited testimony from Mr. Edge. App. 1174 (Remand Record, p. 230). Mrs. Bohm, and ECBR’s commercial appraiser, Robert Ehlers, testified briefly as well. Id.

Following that hearing, on or about March 23, 2018, PAAB issued its Findings of Facts, Conclusions of Law, and Order on Remand from the District Court for Emmet County (the “Remand Order”). App. 1161-1172 (Remand Record, pp. 217-228). In the Remand Order, PAAB ruled against SLC, holding that “the ingredient and load-out bins as well as the walls and roof of the two grain bins are not machinery and are therefore assessable as real estate,” and that the value allocations performed by SLC’s commercial

appraiser, Don Vaske, were not reliable. App. 1168-1169 (Remand Record, pp. 224-225). As a result, the Remand Order did not further modify Emmet County's 2014 assessment of the Facility.

Thereafter, on or about April 12, 2018, SLC filed an Amended Petition for Judicial Review requesting that the district court review all aspects of PAAB's Order and Remand Order that are adverse to SLC.

SLC filed its Brief in Support of Amended Petition for Judicial Review on August 31, 2018. The ECBR filed its Brief on the same day. PAAB filed its responsive Brief on October 11, 2018. SLC and the ECBR both filed Reply Briefs on November 30, 2018.

### **III. DISPOSITION OF THE CASE IN DISTRICT COURT**

The district court issued its Ruling on Petitioner's Petition for Judicial Review, Respondent's Cross Appeal for Judicial Review on March 29, 2019, affirming PAAB's Order and Remand Order in all regards.

SLC filed its Notice of Appeal with this Court on April 25, 2019. That same day, the ECBR filed its Notice of Cross Appeal.

## STATEMENT OF THE FACTS

SLC manufactures both meal and pelleted swine feed at the Facility for sale to livestock producers located primarily in North Central Iowa and Southern Minnesota.

The Facility is comprised of a number of structures and component parts. The structures and component parts at issue here include: Building 1's Overhead Bins (ingredient and loadout), Building 5 (newer, larger exterior grain bin) and Building 6 (older, smaller exterior grain bin).

### **I. BUILDING 1'S OVERHEAD BINS (INGREDIENT AND LOADOUT)**

Looking at App. 1027 (Record 2, Exhibit 5), Building 1 (Feed Mill) is the main building at the Facility, extending from the basement of the warehouse up through the vertical structure rising above the roofline of the warehouse. That vertical structure is comprised of the Overhead Bins, the cone-shaped ingredient distributor and the bucket elevators. As best shown in App. 1053-1054 (Record 2, Exhibit 10) (which shows the Overhead Bins during construction), the Overhead Bins sit on an I-Beam structure and include 24 separately stacked ingredient bins and 18 separately stacked loadout bins. See also App. 803 (Remand Record, p. 235 (Transcript p. 25:1-14)). Each bin has an independent wall and roof, with no common exterior wall or shell surrounding them. App. 803-804 (Remand Record, pp.

235-236 (Transcript pp. 25:15-26:20; 28:13-29:12)). While it may look in App. 1053-1054 (Record 2, Exhibit 10) like there is a common wall or shell around the outside of the Overhead Bins, that is not the case. The Overhead Bins were constructed first. The warehouse building below the Overhead Bins was built around the I-Beam structure supporting the Overhead Bins and does not encompass or cover the Overhead Bins. App. 803-804 (Remand Record, pp. 235-236 (Transcript pp. 25:15-26:20; 28:13-29:12)). Along those lines, the Overhead Bins are an independent structure of bins stacked side-by-side that protrude above the roofline of the warehouse building. App. 803-804 (Remand Record, pp. 235-236 (Transcript pp. 25:15-26:20; 28:13-29:12)).

From a functionality standpoint, corn and non-corn ingredients are transported vertically through the bucket elevators located to the right of the Overhead Bins in App. 1027 (Record 2, Exhibit 5). At the top of the bucket elevators, the ingredients gravity flow into the cone-shaped distributor on top of the Overhead ingredient bins, which then distributes the ingredients into the appropriate Overhead ingredient bin by rotating an internal arm that lines up with the exterior spouts above each bin. App. 1089-1091 (Record 4, pp. 59:21-60:3; 60:18-62:11). The Overhead ingredient bins sit directly



above the scales, mixer and surge hopper<sup>10</sup> and make corn and non-corn ingredients (i.e., soybean meal, lysine, limestone, wheat midds) readily available in the desired quantity for each batch of feed produced. App. 1176; 1177 (Remand Record, pp. 234-235 (Transcript pp. 18:24-20:4; 25:6-11)). Ingredients go from the Overhead ingredient bins onto the scales through computerized augers that attach to the hopper bottoms of each bin. App. 1176 (Remand Record, p. 234 (Transcript p. 19:5-22)).

The Overhead loadout bins work in a similar manner, and are used to store and load finished feed products into semi-trucks to be transported to end-users. App.1176-1177 (Remand Record, pp. 234-235 (Transcript pp. 20:20-22:7)).

## **II. BUILDINGS 5 AND 6 (EXTERIOR STEEL GRAIN BINS)**

The Facility includes two exterior steel grain storage bins, both of which store and move corn, the Facility's main ingredient, through the feed manufacturing process. App. 1173 (Remand Record, p. 233 (Transcript pp.

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<sup>10</sup> **This same** area below the roofline in Building 1 also houses 30 micro-ingredient bins that move and store other feed ingredients that are used in much smaller quantities. App. 1092 (Record 4, pp. 70:4-19). Importantly, these micro-ingredient bins were not assessed by Emmet County in the January 1, 2014 assessment. App. 1028-1052 (Record 2, Exhibit 9). Mr. Goslinga, ECBR's expert at the first PAAB hearing, testified that, in accordance with the Iowa Department of Revenue and Real Estate Appraisal Manual, the machinery in this area was not assessed as real estate, as it is considered to be part of the feed manufacturing process. App. 1104 (Record 4, pp. 163:11-24).

14:22-16:4)). SLC utilizes both exterior grain bins at all times. App. 1179 (Remand Record, p. 237 (Transcript pp. 32:21-33:14)). Building 5 is the larger, newer bin shown on the front right of App. 1027 (Record 2, Exhibit 5). Building 6 is the smaller, older bin shown in the back right of App. 1027 (Record 2, Exhibit 5) (behind Building 5). Both bins sit on a concrete floor and foundation, have steel walls and roof, and house necessary mechanical components, including an aeration floor, fans and dryers, and a power sweep. The functionality of those mechanical components was aptly described by Mrs. Krichau at the initial PAAB hearing as follows:

“Q. And could you just – you know, encompassing the storage bin, the aeration floor, the fans and dryers, and the power sweep, could you tell the Board what roles those all play in the feed manufacturing process.

A. Sure. The bin has what we call an aeration floor, or it’s almost like a corrugated flooring. I don’t know exactly how to describe it, other than it has holes in it. So the fans will pull the air down through the grain through that floor to make sure that there’s air movement on it to keep it in good quality, so those work together to make sure that our ingredients stay in good condition. The bin also has a power sweep in it. So, as I told you before, the grain gravity-flows through some holes or sumps at the bottom of the bin. But there’s a point in the bin that you can’t get grain to flow anymore just because of its location within the bin, and so there’s a power sweep at the bottom of that bin. And so it pivots and goes around the diameter of the building and pushes the grain to these holes that are in the center of the bin that are above the reclaim conveyor so that we can get the bin bottom cleaned out of the grain.”

App. 1094 (Record 4, pp. 78:19-79:21).

The Facility is a fully integrated, constantly running feed manufacturing facility. App. 1177 (Remand Record, p. 235 (Transcript pp. 22:8-23:9)). Ingredients are delivered to the Facility by semi-truck and cannot thereafter be removed from the feed manufacturing process. Id. At capacity, a kernel of corn added to the larger exterior grain bin will only be present at the Facility for 16-20 days, and a kernel of corn added to the smaller exterior grain bin will only be present at the Facility for 4-5 days. App. 1180-1181 (Remand Record, pp. 238-239 (Transcript pp. 37:18-38:9)). To be very clear, functionally speaking, these exterior grain bins are very different from grain bins used at grain elevators or other commercial farming operations. App. 1177 (Remand Record, p. 235 (Transcript p. 22:18-19)).

## ARGUMENT

### I. THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION OVER THE ISSUES RAISED IN EMMET COUNTY BOARD OF REVIEW'S UNTIMELY NOTICE OF CROSS APPEAL

#### A. Error Preservation

SLC preserved error on this issue. SLC raised this issue in its April 7, 2016 Motion to Dismiss and Strike Notice of Cross Appeal Filed by Emmet County Board of Review, which the district court directly addressed and denied on August 9, 2016, in its Ruling on Motion to Dismiss and Strike Notice of Cross Appeal Filed by Emmet County Board of Review. See e.g., UE Local 893/IUP v. State, --- N.W.2d ---, 2019 WL 2147342, \*4 (Iowa May 17, 2019) (“We begin our analysis with basic principles of error preservation. It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”).

#### B. Standard of Review

District court rulings on motions to dismiss for lack of subject matter jurisdiction are reviewed by this Court for correction of errors at law. See Cooper v. Kirkwood Community College, 782 N.W.2d 160, 164 (Iowa App. 2010) (“We review rulings on subject matter jurisdiction for correction of errors at law.”); Kingsway Cathedral v. Iowa Dept. of Transp., 711 N.W.2d

6, 7 (Iowa 2006) (“Our review of a district court ruling on a motion to dismiss is for correction of errors at law.”).

**C. Argument**

**1. Relevant Procedural History**

PAAB issued its Order on February 26, 2016.

On March 17, 2016, SLC filed its Petition for Judicial Review with the district court seeking judicial review only of the portions of PAAB’s Order adverse to SLC. In the Petition for Judicial Review, SLC was listed as Petitioner and PAAB as Respondent.

On March 23, 2016, the ECBR filed a Notice of Cross Appeal Pursuant to Iowa Code § 441.38 with the district court, listing itself as the Cross-Appellant and SLC and PAAB as Cross-Appellees. Therein, the ECBR sought judicial review of “the ruling of the Property Assessment Appeal Board modifying the assessment of the property that was at issue in the administrative hearing before the Appeal Board.”

On April 7, 2016, SLC filed a Motion to Dismiss and Strike Notice of Cross Appeal Filed by Emmet County Board of Review on the grounds that it was untimely filed, thus depriving the district court of jurisdiction to consider it.

On August 9, 2016, the district court issued its Ruling on Motion to Dismiss and Strike Notice of Cross Appeal Filed by Emmet County Board of Review and on Petitioner's Application for Remand to Introduce Additional Evidence, wherein, after addressing arguments asserted by all parties, the district court denied SLC's Motion to Dismiss and Strike.

**2. The District Court did not have jurisdiction to consider the ECBR's Cross Appeal**

Both PAAB's Order and administrative rules require that any action for judicial review of the Order be commenced within 20 days. Order, p. 13 ("This Order shall be considered final agency action for purposes of Iowa Code Chapter 17A (2015). \*\*\* Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B; 441.39 and Chapter 17A); Iowa Administrative Code § 701-126.10(1) ("A party may seek judicial review of a decision rendered by the board by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the letter of disposition of the appeal by the board is mailed to the appellant. Iowa Code chapter 17A applies to judicial review of the board's final decision...").

The Order is dated February 26, 2016 and was postmarked for mailing on February 29, 2016. Accordingly, the latest possible date that an action for judicial review could be filed was March 20, 2016. SLC timely filed its Petition for Judicial Review of the Order on March 17, 2016. The ECBR, however, did not file its Notice of Cross Appeal until March 23, 2016.

Neither the Order, the PAAB administrative rules, nor Iowa Code Chapter 17A provide any mechanism for filing a cross appeal in an action for judicial review. Rather, if both parties at the agency level wish to seek judicial review of a final agency action, both parties are required to timely file separate petitions for judicial review, which are then generally consolidated after filing. See City of Hiawatha v. City Development Board, 609 N.W.2d 532, 537 (Iowa 2000) (“Robins contends the board erred by deleting parcels 28 and 31 from its application and assigning that area to Hiawatha. The problem with this argument is that Robins did not petition for judicial review. The board’s decision allowing Hiawatha to annex the two parcels in question was apparently issued on April 9, 1997, and affirmed after reconsideration by the board. Hiawatha’s annexation of the two parcels became complete upon expiration of the time for review of the board’s decision and the filing of the copies of the board’s proceedings with the Secretary of State, city clerk, and county recorder. Robins did not file a

petition seeking judicial review, although a timely petition to the district court is a jurisdictional prerequisite for judicial review of final agency action. Although Robins contends it may challenge the ruling of the board in connection with the two parcels of land by simply intervening in Hiawatha's judicial review proceeding, we see nothing in chapters 17A or 368 that would permit an aggrieved party to challenge the ruling in that manner. We there agree with the district court that it lacked jurisdiction to resolve the issue.”); see also Ahmann v. Correctional Center Lincoln, 755 N.W.2d 608, 611-12 (Neb. 2008) (where administrative procedure act does not expressly provide for cross appeals in relation to petitions for judicial review: “Courts [that] have considered similar statutory schemes have concluded that in the absence of a provision expressly extending the time for filing a cross-petition, any aggrieved party seeking judicial review of an administrative decision must file a separate, timely petition for review. In other words, where another deadline is not specified, a crosspetition is subject to the same filing deadline as the original petition. In the absence of such a provision, the plain language of the APA requires that the same deadline be applied to any party seeking judicial review of an administrative decision.”).



Furthermore, the Iowa Supreme Court has roundly held that the timing requirements for filing actions for judicial review are jurisdictional in nature. See e.g., City of Des Moines v. City Development Board of the State of Iowa, 633 N.W.2d 305, 309 (Iowa 2001) (“A timely petition for judicial review from an administrative decision is a jurisdictional prerequisite.”).

Accordingly, because the ECBR did not timely file its Notice of Cross Appeal, the district court did not have jurisdiction to hear or consider it and it should be dismissed and stricken. For purposes of this appeal, this Court should then limit the scope of this appeal to the matters timely appealed by SLC to the district court and then to this Court (i.e., the aspects of PAAB’s Order and Remand Order adverse to SLC).

**3. As an Intervenor, the ECBR cannot expand the scope of the judicial review action**

Based on the ECBR’s filings on this issue at the district court level, it is anticipated that it will argue that it had a statutory right to intervene within 45 days of the PAAB’s Order. See Iowa Code § 17A.19(2) (“Any party of record in a contested case before any agency wishing to intervene and participate in the review proceeding must file an appearance within forty-five days from the time the petition is filed.”).

SLC does not dispute that the ECBR had the right to intervene in the judicial review proceedings commenced through SLC’s Petition for Judicial

Review, nor does SLC dispute that the ECBR timely intervened.

SLC does, however, dispute the ECBR's ability to broaden the scope of the judicial review action through its intervention. In other words, SLC's judicial review action was limited in scope to those portions of PAAB's Order adverse to SLC. While the ECBR has the right to intervene as to the portions of PAAB's Order adverse to SLC, because the ECBR did not timely file a separate petition for judicial review, it cannot through intervention broaden the scope of the judicial review action to other portions of PAAB's Order not adverse to SLC.

This is the same conclusion reached by this Court in City of Hiawatha, which involved attempts by two cities to annex property not previously located in either city's boundaries. 609 N.W.2d at 534. The City of Hiawatha ("Hiawatha") and the City of Robins ("Robins") both attempted to annex, among other property, land described as parcel Nos. 28 and 31. Id. After considering the competing annexations by Hiawatha and Robins, the City Development Board awarded some property to Hiawatha and some property to Robins. Id. Included in the property awarded to Hiawatha was parcel Nos. 28 and 31. Id.

Hiawatha timely sought judicial review in district court of the portions of the City Development Board's decision that awarded land to Robins that

Hiawatha attempted to annex. Id. at 534-35. Importantly, Hiawatha did not seek judicial review of the City Development Board's decision to award parcel Nos. 28 and 31 to Hiawatha. Id. Robins also did not timely seek judicial review of the City Development Board's decision to award parcel Nos. 28 and 31 to Hiawatha, but rather sought to raise those issues by later intervening in Hiawatha's judicial review action at the district court level. Id. at 535. The district court affirmed the City Development Board's decision in all aspects. Id.

Hiawatha appealed the district court's ruling to the Iowa Supreme Court and Robins cross appealed. Id. The basis for Robins' cross appeal was that the district court affirmed the City Development Board's award of parcel Nos. 28 and 31 to Hiawatha. Id. On appeal, the Iowa Supreme Court held as follows on this issue:

Robins contends the board erred by deleting parcels 28 and 31 from its application and assigning that area to Hiawatha. The problem with this argument is that Robins did not petition for judicial review. The board's decision allowing Hiawatha to annex the two parcels in question was apparently issued on April 9, 1997, and affirmed after reconsideration by the board. Hiawatha's annexation of the two parcels became complete upon expiration of the time for review of the board's decision and the filing of the copies of the board's proceedings with the Secretary of State, city clerk, and county recorder. *Robins did not file a petition seeking judicial review, although a timely petition to the district court is a jurisdictional*

*prerequisite for judicial review of final agency action. Although Robins contends it may challenge the ruling of the board in connection with the two parcels of land by simply intervening in Hiawatha's judicial review proceeding, we see nothing in chapters 17A or 368 that would permit an aggrieved party to challenge the ruling in that manner. We therefore agree with the district court that it lacked jurisdiction to resolve the issue.*

Id. at 537 (emphasis added).

City of Hiawatha, therefore, clearly holds that an intervening party cannot expand the scope of judicial review sought by the petitioner. Rather, the intervening party is required to timely file a separate petition for judicial review on those issues beyond the scope of the petition for judicial review filed by the petitioner. Without a separate petition for judicial review on those issues, the district court lacks subject matter jurisdiction to hear and consider them.

Applying City of Hiawatha to this matter, because the ECBR failed to timely file a separate petition for judicial review of PAAB's Order, the judicial review action is limited in scope to the portions of PAAB's Order adverse to SLC. The ECBR cannot expand the scope of this judicial review proceeding by simply intervening in SLC's timely filed action for judicial review. See also Ahmann, 755 N.W.2d at 611-12.

**II. THE DISTRICT COURT ERRED IN AFFIRMING PAAB'S RULING THAT BUILDING 1'S OVERHEAD BINS (INGREDIENT AND LOADOUT) ARE NOT EXEMPT AS "MACHINERY USED IN MANUFACTURING ESTABLISHMENTS"**

**A. Error Preservation**

SLC preserved error on this issue. SLC raised this issue in its August 31, 2018 Brief in Support of Amended Petition for Judicial Review and again in its November 30, 2018 Reply Brief in Support of Amended Petition for Judicial Review. The district court ruled on this issue in its March 29, 2019 Ruling on Petitioner's Petition for Judicial Review, Respondent's Cross Appeal for Judicial Review. See e.g., UE Local 893/IUP, --- N.W.2d ---, 2019 WL 2147342, at \*4.

**B. Standard of Review**

Judicial review of agency actions is governed by Iowa Code § 17A.19. See Brakke v. Iowa Department of Natural Resources, 897 N.W.2d 522, 530 (Iowa 2017) (citing Kay-Decker v. Iowa State Board of Tax Review, 857 N.W.2d 216, 222 (Iowa 2014)). On judicial review, the district court may grant relief if the agency's action prejudiced the rights of the petitioner and the agency's action falls within one of the grounds set forth under Iowa Code § 17A.19(10). Id. (citing Renda v. Iowa Civil Rights Commission, 784 N.W.2d 8, 10 (Iowa 2010)). This Court, "[i]n reviewing

an agency decision on judicial review [ ] will apply the standards of chapter 17A to determine if [it] reach[es] the same result as the district court.” Naumann v. Iowa Property Assessment Appeal Bd., 791 N.W.2d 258, 260 (Iowa 2010).<sup>11</sup>

With regard specifically to PAAB’s interpretation and construction of the Exemption (found in Iowa Code §§ 427A.1(1)(e) and 427B.17(3)) (see Iowa Code § 17A.19(10)(c)), Iowa appellate courts have unequivocally held that PAAB does not have explicit or implicit authority to interpret Iowa Code Chapter 427A and is entitled to no deference in doing so. Wendling Quarries, Inc. v. Property Assessment Appeal Board of State of Iowa, 865

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<sup>11</sup> Generally speaking, under Iowa Code § 17A.19(10), this Court may reverse, modify, etc. PAAB’s Order and Remand Order to the extent that they are inconsistent with PAAB’s own rules, prior practices or precedent. See Iowa Code § 17A.19(10)(g), (h). Other grounds for reversal, modification, etc. include agency actions that are: beyond the agency’s authority or in violation of any provision of law; irrational, illogical or wholly unjustifiable; deemed to lack any foundation in rational agency policy; and/or unreasonable, arbitrary or an abuse of discretion. See Iowa Code § 17A.19(10)(b), (i), (k), (l), (m), (n). An agency action is arbitrary or capricious when it is taken without regard to the law or facts of the case, and it is unreasonable when it is clearly against reason and evidence. Dico, Inc. v. Iowa Employment Appeal Board, 576 N.W.2d 352, 355 (Iowa 1998) (citing Soo Line R.R. v. Iowa Department of Transportation, 521 N.W.2d 685, 688-89 (Iowa 1994)). “Unreasonable” is defined as the agency acting “in the face of evidence as to which there is no room for difference of opinion among reasonable minds...or not based upon substantial evidence.” Greenwood Manor v. Iowa Department of Public Health, 641 N.W.2d 823, 831 (Iowa 2002) (quoting Citizens Aide/Ombudsman v. Rolfes, 454 N.W.2d 815, 819 (Iowa 1990) (further citation omitted in original)).

N.W.2d 635, 638 (Iowa App. 2015) (“PAAB does not contend it has authority to interpret chapter 427A, and no provision of section 421.1A – the code provision enabling PAAB – indicates explicitly or implicitly that PAAB has the requisite authority. Thus, we may substitute our interpretation of the provisions of chapter 427A for that of PAAB and the district court.”). Accordingly, on appeal, this Court’s “review is for correction of errors at law and [it is] free to substitute [its] interpretation of the statute de novo.” Id. (quoting Tremel v. Iowa Department of Revenue, 785 N.W.2d 690, 692-93 (Iowa 2010)).

Finally, on judicial review the factual findings in the Order and/or Remand Order can be reversed, modified, etc. if not supported by substantial evidence in the record when that record is viewed as a whole. See Iowa Code § 17A.19(10)(f). Accordingly, on appeal, this Court is “bound by PAAB’s findings of fact if they are supported by substantial evidence.” Wendling Quarries, Inc., 865 N.W.2d at 638. Substantial evidence is defined as “the quality and quantity of evidence that would be deemed sufficient by a neutral, detached and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be of serious and great importance.” Iowa Code § 17A.19(10)(f)(1). This substantial evidence review must involve a “fairly

intensive review of the record to avoid rubber-stamping the agency’s finding.” Federal Express Corp. v. Mason City Human Rights Commission, 852 N.W.2d 509, 511 (Iowa Ct. App. 2014) (citing Wal-Mart Stores, Inc. v. Caselman, 657 N.W.2d 493, 499 (Iowa 2003)).

**C. Argument**

**1. The Exemption should be interpreted broadly**

The Emmet County Assessor is required to assess all property in the county, except property exempt from taxation. See Iowa Code § 441.17(2) (“The assessor shall: \*\*\* (2) Cause to be assessed, in accordance with section 441.21, all the property in the assessor’s county or city, *except property exempt from taxation*, or the assessment of which is otherwise provided for by law”) (emphasis added)). Iowa Code §§ 427B.17(3) and 427A.1(1)(e) work in tandem as follows to create a property tax exemption for “machinery used in manufacturing establishments”:

*427B.17 Property subject to special valuation.*

3. Property defined in section 427A.1, subsection 1, paragraphs “e” and “j”, which is first assessed for taxation in this state on or after January 1, 1995, shall be exempt from taxation.

*427A.1 Property taxed as real property.*

1. For the purposes of property taxation only, the following shall be assessed and taxed, unless otherwise qualified for exemption, as real property:

e. Machinery used in manufacturing establishments. The scope of property taxable under this paragraph is intended to be the same as, and neither broader nor



narrower than, the scope of property taxable under section 428.22, Code 1973, prior to July 1, 1974.

The phrase “machinery used in manufacturing establishments”<sup>12</sup> is not defined in the Iowa Code. The Iowa Supreme Court, however, directly addressed the scope of that Exemption language in Griffin Pipe Products Co. v. Board of Review of County of Pottawattamie, 789 N.W.2d 769 (Iowa 2010) and interpreted it very broadly. In Griffin, Griffin was the manufacturer of ductile iron pipe products with a foundry located in Council

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<sup>12</sup> It is undisputed that the Facility is a “manufacturing establishment.” In fact, at the initial PAAB hearing, Mr. Ryan, ECBR’s attorney of record, stated as follows:

“There is no dispute that StateLine, like every other feed mill in the State of Iowa, is a manufacturing facility. They take raw ingredients, and they turn them into something else, add value. They meet the statutory definition. We didn’t dispute that when they asked us in discovery; we don’t dispute it now.”

App. 466 (Record 4, p. 7:6-14). Mr. Ryan’s admission is also consistent with the Emmet County Assessor’s classification of the Facility as “Industrial” for property tax purposes on the 2014 Real Estate Assessment Roll for Emmet County, Iowa (App. 1021 (Record 2, Exhibit 1)). See Iowa Admin. Code § 701—71.1(7)(a)(1) (“(a) Land and buildings. (1) Industrial real estate includes land, buildings, structures, and improvements *used primarily as a manufacturing establishment*. A manufacturing establishment is a business entity in which the primary activity consists of adding to the value of personal property by any process of manufacturing, refining, purifying, the packing of meats, or the combination of different materials with the intent of selling the product for gain or profit. Industrial real estate includes land and buildings used for the storage of raw materials or finished products and which are an integral part of the manufacturing establishment, and also includes office space used as part of a manufacturing establishment.”) (emphasis added)).

Bluffs, Iowa, which included a cupola, a vertical annealing furnace, and a steel exhaust stack, that the Iowa Supreme Court described as follows:

The cupola occupies three floors and extends above the roofline of the main production building and is used to melt the metals during the casting process. The vertical annealing furnace, which sits in the basement of the main production building and rises above the main floor of the plant, is used to alter the hardness and strength to the metal. The exhaust stack is connected to the exterior of the primary production building and vents hot gases and fine particulate matter generated by the smelting process.

Id. at 770. Pottawattamie County’s 2007 assessment of the foundry assessed the cupola, vertical annealing furnace and steel exhaust stack as real property. Id. Griffin appealed the assessment to the county board of review and then to district court, arguing that those three items were “machinery used in manufacturing establishments” under Iowa Code § 427A.1(1)(e) that are exempt from real property taxation. Id. at 770-71.

After reviewing authority from Iowa and other jurisdictions, the Iowa Supreme Court sided with Griffin and interpreted the “machinery used in manufacturing establishments” language in Iowa Code § 427A.1(1)(e) broadly to include *all* machinery, attached or unattached, fixtures or movable items, used in manufacturing establishments. Id. at 774-76. In doing so, Griffin cited with approval to authority holding that machinery used primarily for transportation, loading/unloading and storage purposes is

exempt from real property taxation. For example, the Iowa Supreme Court noted that in its prior opinion in Northwestern States Portland Cement Co. v. Board of Review, 58 N.W.2d 15, 19-21 (Iowa 1953), it held that plant water systems, air separators, dust collectors and a truck-turn around all fell within the scope of the Iowa Code § 428.22, the precursor to Iowa Code § 427A.1(1)(e). Griffin Pipe Products Co., 789 N.W.2d at 773-74. The Iowa Supreme Court also cited to Geis v. City of Fond du Lac, 409 N.W.2d 148, 150-51 (Wis. Ct. App. 1987), a Wisconsin Court of Appeals case that held that shell, silos, and a control room were exempt from taxation as manufacturing machinery, even though such property had the appearance of a building. Griffin Pipe Products Co., 789 N.W.2d at 774. The Iowa Supreme Court ended its analysis in Griffin by emphasizing that the Iowa legislature intended for the term “machinery” to be given a broad interpretation because the legislature did not provide express words of limitation. Id. at 775.

The broad holding in Griffin is corroborated by Iowa Department of Revenue regulations. Specifically, Iowa Administrative Code § 701—71.1(7) governs the real property taxation of industrial real estate and defines “machinery” to “include equipment and devices, both automated and nonautomated, which is used in manufacturing as defined in Iowa Code

section 428.20.” Iowa Admin. Code § 701—71.1(7)(b)(1). Similarly, for sales tax purposes, the Iowa Department of Revenue defines “machinery” broadly in the context of “industrial machinery and equipment” as:

Any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery, but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. The term also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Jigs, dies, tools, and other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be machinery.

Iowa Admin. Code § 701—18.58(1).

In line with the Iowa Supreme Court’s holding in Griffin and above-referenced provisions of the Iowa Administrative Code, the district court correctly affirmed PAAB’s broad interpretation of the “machinery used in manufacturing establishments” Exemption to encompass machinery “used in StateLine’s facility to move, store, and weigh inputs and outputs of StateLine’s manufacturing process.” App. 1015 (Record 1, PAAB 0161).

## 2. The Overhead Bins are “Machinery Used in Manufacturing Establishments”

While PAAB correctly interpreted the Exemption language, it failed to properly apply the Exemption to certain components of the Facility.

Inexplicably, PAAB held in the Remand Order:

StateLine has not shown the overhead bins (ingredient and loadout) or the large/small exterior grain bin’s walls and roof are machinery. We do not believe any of them would commonly be understood to be machinery. Their primary purpose is to hold raw material, protecting it from the elements, until it is needed in the manufacturing process.

App.1167 (Remand Record, p. 223). Stated differently, PAAB interpreted the Exemption in the Order to include machinery that stores and moves inputs and outputs. PAAB then held in the Remand Order, however, that the Overhead Bins are not exempt because their primary purpose is to store raw materials. The district court should not have allowed this blatant contradiction to stand, and neither should this Court.

Importantly, Emmet County did not assess the micro-ingredient bins below the roofline in Building 1 as real estate. See Footnote 10. Similarly, PAAB found the two insulated fat tanks at the Facility to be exempt as “machinery used in manufacturing.” App. 1016 (Record 1, PAAB 0162). The two insulated fat tanks are essentially ingredient bins as well – they store choice white grease that is metered into the mixer for use as an

ingredient in each batch of feed. App. 1095 (Record 4, pp. 84:1-85:24). In fact, Mrs. Krichau expressly testified that the insulated fat tanks are much like the other corn and non-corn ingredient bins at the Facility. App. 1095 (Record 4, p. 84:21-25). The Overhead Bins are functionally identical to the micro-ingredient bins and fat tanks, in that they store and move ingredients through the feed manufacturing process. In accordance, therefore, with Emmet County's decision to exclude the micro-ingredient bins from the assessment and PAAB's decision that the fat tanks are exempt, this Court should find that the Overhead Bins are also exempt "machinery used in manufacturing establishments."

In conclusion, SLC agrees with PAAB's broad interpretation of the "machinery used in manufacturing establishments" Exemption, as set forth in pages 7 through 11 of the Order. App. 1012-1016 (Record 1, PAAB 0158 – PAAB 0162). However, SLC respectfully prays that this Court reverse the district court's affirmance of PAAB's conclusion in the Remand Order that the Overhead Bins do not constitute "machinery used in manufacturing establishments" and find the Overhead Bins to be exempt from taxation under Iowa Code §§ 427B.17(3) and 427A.1(1)(e). See Iowa Code § 17A.19(10)(b), (c), (f), (g), (h), (i), (k), (l), (m), (n).

### **III. THE DISTRICT COURT ERRED IN AFFIRMING PAAB'S RULING THAT SLC FAILED TO MEET ITS EVIDENTIARY BURDEN TO VALUE THE EXEMPTION ASSOCIATED WITH BUILDING 1'S OVERHEAD BINS**

#### **A. Error Preservation**

SLC preserved error on this issue. SLC raised this issue in its August 31, 2018 Brief in Support of Amended Petition for Judicial Review and again in its November 30, 2018 Reply Brief in Support of Amended Petition for Judicial Review. The district court ruled on this issue in its March 29, 2019 Ruling on Petitioner's Petition for Judicial Review, Respondent's Cross Appeal for Judicial Review. See e.g., UE Local 893/IUP, --- N.W.2d ---, 2019 WL 2147342, at \*4.

#### **B. Standard of Review**

Please see the Standard of Review set forth above under Section II(B). In short, this Court may independently apply chapter 17A to see if it reaches the same decision as did the district court on judicial review. Naumann, 791 N.W.2d at 260. With regard to PAAB' interpretation and construction of the Exemption, this Court's "review is for correction of errors at law and [it is] free to substitute [its] interpretation of the statute de novo." Wendling Quarries, Inc., 865 N.W.2d at 638. With regard to PAAB's factual findings, this Court is bound by such findings "if they are supported by substantial evidence." Id.

### C. Argument

In PAAB's October 5, 2016 Order Setting Procedure For Remanded Proceedings, PAAB held that the assessed values for Buildings 1, 5 and 6 were "the true and correct values of [those buildings] for purposes of determining exemption, if any."

Based on that holding, at the Limited Remand hearing held on August 30, 2017, SLC presented testimony from Don Vaske, a commercial appraiser hired by SLC to allocate Emmet County's overall assessed value of Buildings 1, 5 and 6 across their component parts. App. 1185 (Remand Record, p. 246 (Transcript pp. 66:19-68:9)). In doing so, Mr. Vaske was careful to be sure that said allocations were not arbitrary, but rather correlated with the construction costs (i.e., Replacement Cost New) of these component parts. In other words, Mr. Vaske independently confirmed that the appraised values assigned by the Emmet County Assessor were, in fact, correct. Mr. Vaske's report is contained in App. 1107-1146 (Remand Record, pp. 017-056 (Exhibit 39)).

Mr. Vaske first addressed Building 1. Emmet County assessed Building 1 in two components: (1) the Basement & Tunnel (\$215,950); and (2) all above-grade space, including the Overhead Bins (\$1,469,950), for a total Building 1 assessed value of \$1,685,900. App. 1185-1186 (Remand



Record, pp. 246-247 (Transcript pp. 68:10-71:18)); App. 1118 (Remand Record, p. 028 (Exhibit 39)). For both components, Emmet County assessed Building 1 using a calculation multiplying square/cubic footage of the component by a base unit cost to get a Replacement Cost New, which was then adjusted by a multiplier and reduced for depreciation. App. 1118 (Remand Record, p. 028 (Exhibit 39)).

In allocating value across the components of Building 1, Mr. Vaske agreed with Emmet County's assessment for the Basement & Tunnel. App. 1186-1187 (Remand Record, pp. 247-248 (Transcript pp. 73:11-20; 75:21-76:1)). Mr. Vaske then essentially broke the other assessed component (above-grade space) into two separate components: the Overhead Bins and the above-grade space beneath the Overhead Bins. App. 1186 (Remand Record, p. 247 (Transcript p. 73:6-10)). Mr. Vaske determined that the Overhead Bins sat 18 feet above-grade, meaning the space below the Overhead Bins occupied 40,104 cubic feet (2,228 square feet footprint x 18 vertical feet), and the Overhead Bins then occupied the remaining 116,140 cubic feet. App. 1189-1187 (Remand Record, pp. 247-248 (Transcript pp. 73:21-74:11)); App. 1118-1119 (Remand Record, pp. 028-029 (Exhibit 39)). Using that cubic footage breakdown, Mr. Vaske used the same base unit cost, multipliers and depreciation used by the Emmet County Assessor to

allocate the original assessment for all above-grade space (\$1,469,950) into Overhead Bins (\$1,092,550) and above-grade space below the Overhead Bins (\$377,400). App. 1186-1187 (Remand Record, pp. 247-248 (Transcript pp. 73:21-76:20)); App. 1118-1119 (Remand Record, pp. 028-029 (Exhibit 39)). In doing so, Mr. Vaske confirmed that these allocations aligned with SLC's construction material costs for these components -- \$577,000 for basement and ground floor (compared to allocation of assessed value of \$593,300) and \$1,032,000 for the Overhead Bins (compared to allocation of assessed value of \$1,092,550). App. 1187 (Remand Record, p. 248 (Transcript pp. 74:17-75:20; 76:21-77:16)). Based on Mr. Vaske's testimony, SLC requested that PAAB value the exemption for the Overhead Bins at \$1,092,550, and further reduce the Facility's overall assessed value accordingly.

In the Remand Order, PAAB held that Mr. Vaske's method for valuing the exemption applicable to the Overhead Bins was not "an entirely reliable reflection of the value of the ingredient and load-out bins." App. 1168 (Remand Record, p. 224). PAAB's entire holding in this regard is as follows:

Additionally, his allocation of value to the ingredient bins relied on the assessment, which valued the entirety of the feed mill on a per-cubic-foot basis. We find that extrapolating a per-unit value from the whole and applying that to a portion of the

property does not necessarily result in an accurate valuation of that portion. As an example, the IOWA REAL PROPERTY APPRAISAL MANUAL prescribes assessors are to arrive at the value of a restaurant by determining the restaurant's total square footage and then, considering its type of construction, apply a pre-determined value per-square-foot to arrive at its valuation. For instance, a 2,000 square foot wood frame restaurant would have a base cost of \$95.70 per-square-foot. Despite the fact that the MANUAL prescribes a per-square-foot value, it could not be reasonably argued that each square foot costs the same amount to construct or contributes an equal amount to its value. Accordingly, we do not believe Vaske's allocation method is an entirely reliable reflection of the value of the ingredient and load-out bins.

Id. This holding by PAAB is untenable. PAAB agrees with Mr. Vaske that Emmet County assessed the entire Building 1 (Feed Mill), including the Overhead Bins, on a per-cubic-foot basis, as required by the Iowa Real Property Appraisal Manual, yet then goes on to hold without any supporting authority that it was not appropriate for Mr. Vaske to do so. Moreover, PAAB completely ignored Mr. Vaske's testimony and report that indicate his stated exemption value for the Overhead Bins (\$1,092,550) is nearly identical to the construction costs for the Overhead Bins (\$1,032,000). PAAB's holding (and the district court's affirmance thereof) in this regard in the Remand Order defies logic and should be reversed. See Iowa Code § 17A.19(10)(b), (c), (f), (g), (h), (i), (k), (l), (m), (n). Instead, this Court should hold that SLC met its burden to prove that the value of the exemption

associated with the Overhead Bins is \$1,092,500 and should further reduce the overall assessment for the Property accordingly.<sup>13</sup>

**IV. THE DISTRICT COURT ERRED IN AFFIRMING PAAB'S RULING THAT THE EXTERIOR GRAIN BINS ARE NOT EXEMPT AS "MACHINERY USED IN MANUFACTURING ESTABLISHMENTS"**

**A. Error Preservation**

SLC preserved error on this issue. SLC raised this issue in its August 31, 2018 Brief in Support of Amended Petition for Judicial Review and again in its November 30, 2018 Reply Brief in Support of Amended Petition for Judicial Review. The district court ruled on this issue in its March 29, 2019 Ruling on Petitioner's Petition for Judicial Review, Respondent's Cross Appeal for Judicial Review. See e.g., UE Local 893/IUP, --- N.W.2d ---, 2019 WL 2147342, at \*4.

**B. Standard of Review**

Please see the Standard of Review set forth above in Section II(B). In short, this Court may independently apply chapter 17A to see if it reaches the same decision as did the district court on judicial review. Naumann, 791

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<sup>13</sup> Emmet County's expert witness, Mr. Ehler, valued the Overhead Bins at \$778,240. App. 1147-1148 (Remand Record, pp. 069-070). If the Court finds the Overhead Bins to be exempt and agrees with PAAB that SLC failed to meet its burden to prove the value of the exemption associated with the Overhead Bins, this Court should use the \$778,240 value assigned by Emmet County and Mr. Ehler as the exemption value for the Overhead Bins, and reduce the overall assessment for the Facility accordingly.

N.W.2d at 260. With regard to PAAB’ interpretation and construction of the Exemption, this Court’s “review is for correction of errors at law and [it is] free to substitute [its] interpretation of the statute de novo.” Wendling Quarries, Inc., 865 N.W.2d at 638. With regard to PAAB’s factual findings, this Court is bound by such findings “if they are supported by substantial evidence.” Id.

**C. Argument**

**1. The Exemption should be interpreted broadly**

The law applicable to this section is the same as discussed above under Section II(C)(1). For purposes of brevity, SLC urges this Court to conclude, as PAAB did, that the “machinery used in manufacturing establishments” Exemption language should be interpreted and applied broadly to include *all* of SLC’s machinery at the Facility, including those, such as the exterior grain bins, that are used to store and move ingredients through the feed manufacturing process.

**2. The Exterior Grain Bins are “Machinery Used in Manufacturing Establishments”**

Like the micro-ingredient bins, fat tanks and Overhead Bins, the exterior grain bins both store and move ingredients through the feed manufacturing process and therefore constitute exempt “machinery used in manufacturing establishments.”

In assessing Building 5, Emmet County separately assessed each of the following components: steel grain storage bin, aeration floor, fans & dryers, fans & dryers, and power sweep. App. 1038 (Record 2, Exhibit 9 (DE 0011)). Similarly, in assessing Building 6, Emmet County separately assessed each of the following components: steel grain storage bin, aeration floor, fans & dryers, and power sweep. App. 1040 (Record 2, Exhibit 9 (DE 0013)). PAAB's Order held that the aeration floor, fans and dryers, and power sweep in both Buildings 5 and 6 were exempt "machinery used in manufacturing establishments." App. 1016 (Record 1, PAAB 0162). PAAB assigned exemption values to those components equivalent to their assessed values. Id. SLC agrees and has not appealed those holdings.

In assessing Buildings 5 and 6, Emmet County did not further break down the "steel grain storage bin" line item for either grain bin. App. 1038, 1040 (Record 2, Exhibit 9 (DE 0011, DE 0013)). In other words, there was no separate assessment of either bin's concrete floor and foundation, walls or roof.

On remand, SLC broke the "steel grain storage bin" line item for Buildings 5 and 6 down into two components: (1) concrete floor and foundation; and (2) walls and roof. SLC then presented evidence as to the functionality and value of those component parts.

PAAB's Remand Order in this regard held as follows:

StateLine has not shown the overhead bins (ingredient and loadout) or the large/small exterior grain bin's walls and roof are machinery. We do not believe any of them would commonly be understood to be machinery. Their primary purpose is to hold raw material, protecting it from the elements, until it is needed in the manufacturing process.

App. 1167 (Remand Record, p. 223).

To summarize, PAAB's Order held that Buildings 5's and 6's concrete floor and foundation were taxable, and PAAB's Remand Order held that Buildings 5's and 6's walls and roof were taxable. SLC has appealed both of those rulings and requests that this Court reverse them both. See Iowa Code § 17A.19(10)(b), (c), (f), (g), (h), (i), (k), (l), (m), (n).

As discussed above, despite being larger in size, the exterior grain bins are functionally identical to the Facility's other ingredient bins, one of which (the micro-ingredient bins) Emmet County did not assess as real estate, and another of which (the fat tanks) PAAB found to be exempt. All ingredient bins are "machinery used in manufacturing establishments" and must be treated as such.<sup>14</sup>

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<sup>14</sup> For sales tax purposes, "machinery, equipment or computers used by a manufacturer for processing" are exempt from sales tax. Iowa Admin. Code § 701—18.58. In that context, "processing" is defined broadly to include "all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer." Iowa Admin. Code § 701—18.58(1).

Second, factually speaking, PAAB’s finding that grain bins’ “primary purpose is to hold raw material, protecting it from the elements, until it is needed in the manufacturing process” (App. 1167 (Remand Record, p. 223)) is incorrect and not supported by substantial evidence. The grain bins do much more than hold and protect corn. For example, the grain bins prepare and ensure the quality of the corn for processing into feed (through regulation of temperature and moisture content). App. 1094 (Record 4, pp. 78:19-79:21). Also, the grain bins don’t “hold” corn until it is needed. In other words, it is not as if corn is delivered, dumped in a bin and sits there until it is needed. Rather, corn is constantly flowing in, through and out of the grain bins as part of an integrated feed manufacturing process. App. 1177 (Remand Record, p. 235 (Transcript pp. 22:8-23:9)). At capacity, a kernel of corn added to the larger exterior grain bin will only be present at the Facility for 16-20 days, and a kernel of corn added to the smaller exterior

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In explaining the breadth of “processing,” the Iowa Department of Revenue provided an example of “processing” in the context of a microbrewery, noting that “[a]ll stages of this brewing are part of processing whether those stages involve the transformation of the raw materials from one state to another, e.g., fermentation or aging, *or simply involve holding the materials in an existing state, e.g., storage of hops in a bin or storage of the beer immediately prior to bottling...*” Iowa Admin. Code § 701—18.58(4)(c) (emphasis added). Here, “processing” for sales tax purposes is nearly identical in scope to “manufacturing” under the Exemption. As such, the Iowa Department of Revenue’s express inclusion of storage of ingredients in a bin in the scope of “processing” dictates that storage of ingredients in a bin should also fall within the scope of “manufacturing” under the Exemption.



grain bin will only be present at the Facility for 4-5 days. App. 1180-1181 (Remand Record, pp. 238-239 (Transcript pp. 37:18-38:9)).

Additionally, the grain bins are fully integrated machines that rely on the presence of all components to function properly, including the aeration floor, fans and dryers and power sweep (which PAAB correctly held are exempt as “machinery used in manufacturing establishments”) and the floor walls and roof. Stated differently, if any of those components was missing, the grain bins could not effectively prepare and move corn throughout the feed manufacturing process. For example, without the fans and dryers, the corn would have too much moisture for use in the feed manufacturing process. Also, without the floor, walls and roof, those same fans and dryers could not effectively function or control the temperature or moisture content of the corn.

Along those lines, the Iowa Department of Revenue has expressly ruled that “machinery” includes “equipment and devices, *both automated and nonautomated*, which is used in manufacturing.” Iowa Admin. Code § 701—71.1(7)(b)(1). The Iowa Department of Revenue has also stated that “machinery” necessarily “includes not only the basic unit of the machinery, but also any adjunct or attachment necessary for the basic unit to accomplish its intended function.” Iowa Admin. Code § 701—18.58(1). Because the

grain bins could not function without all component parts (including floor, walls and roof), the entire exterior grain bins constitute exempt “machinery used in manufacturing establishments.”

In conclusion, SLC agrees with PAAB’s broad interpretation of the “machinery used in manufacturing establishments” Exemption, as set forth in pages 7 through 11 of the Order. App. 1012-1016 (Record 1, PAAB 0158 – PAAB 0162). However, SLC respectfully requests that this Court reverse PAAB’s conclusion (and the district court’s affirmance thereof) in the Remand Order that the exterior grain bins (Buildings 5 and 6) do not constitute “machinery used in manufacturing establishments” and instead find them to be exempt from taxation under Iowa Code §§ 427B.17(3) and 427A.1(1)(e). See Iowa Code § 17A.19(10)(b), (c), (f), (g), (h), (i), (k), (l), (m), (n).

**V. THE DISTRICT COURT ERRED IN AFFIRMING PAAB’S RULING THAT SLC FAILED TO MEET ITS EVIDENTIARY BURDEN TO VALUE THE EXEMPTION ASSOCIATED WITH THE EXTERIOR GRAIN BINS**

**A. Error Preservation**

SLC preserved error on this issue. SLC raised this issue in its August 31, 2018 Brief in Support of Amended Petition for Judicial Review and again in its November 30, 2018 Reply Brief in Support of Amended Petition for Judicial Review. The district court ruled on this issue in its March 29,

2019 Ruling on Petitioner’s Petition for Judicial Review, Respondent’s Cross Appeal for Judicial Review. See e.g., UE Local 893/IUP, --- N.W.2d ---, 2019 WL 2147342, at \*4.

**B. Standard of Review**

Please see the Standard of Review set forth above under Section II(B). In short, this Court may independently apply chapter 17A to see if it reaches the same decision as did the district court on judicial review. Naumann, 791 N.W.2d at 260. With regard to PAAB’ interpretation and construction of the Exemption, this Court’s “review is for correction of errors at law and [it is] free to substitute [its] interpretation of the statute de novo.” Wendling Quarries, Inc., 865 N.W.2d at 638. With regard to PAAB’s factual findings, this Court is bound by such findings “if they are supported by substantial evidence.” Id.

**C. Argument**

- 1. If the Entire “Steel Grain Storage Bin” Line Item for Buildings 5 and 6 are Exempt from Taxation as “Machinery Used in Manufacturing Establishments,” the Exemptions Should be Valued Equivalent to the Assessed Value for Those Line Items – Building 5 (\$676,100), Building 6 (\$78,000)**

The valuation of the exemption associated with the exterior grain bins has two possibilities, depending on this Court’s ruling as to the scope of the Exemption. If this Court finds that the entire “steel grain storage bin” line

item for Buildings 5 and 6 are exempt from taxation, this Court should assign an exemption value equivalent to the assessed value. For Building 5, the exemption value would be \$676,100. For Building 6, the exemption value would be \$78,000.

This is consistent with PAAB's Order, wherein PAAB assigned an exemption value equivalent to the assessed value for the 22 Facility components (i.e., truck scales, mechanical components of the two exterior grain bins, bucket conveyors and legs, drag conveyors, and insulated fat tanks) PAAB held in the Order were exempt from taxation as "machinery used in manufacturing establishments."

This is further consistent with PAAB's October 5, 2016 Order Setting Procedure For Remanded Proceedings, wherein PAAB held that the assessed values for Buildings 5 and 6 were "the true and correct values of [those buildings] for purposes of determining exemption, if any."

SLC agrees with this approach and has not appealed PAAB's holdings in this regard.

After all, this is an exemption case, not a valuation case. SLC solely appealed the January 1, 2014 assessment on the ground that certain aspects of the Facility were exempt from taxation as "machinery used in manufacturing establishments" under Iowa Code §§ 427B.17(3) and

427A.1(1)(e). App. 998-999; 1001 (Record 1, PAAB 001-002, 008). As a result, the assessed values of any exempt structures/components are binding on ECBR and SLC. To hold otherwise would be illogical and unjust. For example, ECBR would have been the first to object had SLC asserted exemption values greater than the January 1, 2014 values assessed by Emmet County for the various components at issue. Likewise, then, ECBR has not challenged, and should not be allowed to challenge, its own January 1, 2014 assessment of the Facility to defeat SLC's claimed exemptions.

In summary, PAAB's Order and Remand Order erred in holding that SLC failed to meet its evidentiary burden to prove the exemption value associated with Buildings 5 and 6. In accordance with PAAB's Order as to the other 22 Facility components and PAAB's October 5, 2016 Order Setting Procedure For Remanded Proceedings, this Court should order that the exemption value associated with Buildings 5 and 6 be their assessed value (\$676,100 and \$78,000, respectively). See Iowa Code § 17A.19(10)(b), (c), (f), (g), (h), (i), (k), (l), (m), (n).

- 2. If Only Certain Components of the "Steel Grain Storage Bin" Line Item for Buildings 5 and 6 are Exempt from Taxation as "Machinery Used in Manufacturing Establishments," the Exemptions Should be Valued in Accordance with Don Vaske's Testimony and Opinions**

SLC also presented valuation testimony from Mr. Vaske at the Limited Remand hearing before PAAB on August 30, 2018 in relation to the allocation of the assessed value across the component parts of Buildings 5 and 6. App. 1185 (Remand Record, p. 246 (Transcript pp. 66:19-68:9)). As discussed above, Emmet County initially assessed Buildings 5's and 6's base, walls and roof, respectively, together as one line item (titled "steel grain storage bin"). App. 1038, 1040 (Record 2, Exhibit 9 (DE 0011, DE 0013)); App. 1181 (Remand Record, p. 249 (Transcript pp. 78:17-80:20)); App. 1115-1116 (Remand Record, pp. 025-026 (Exhibit 39)). Mr. Vaske separated that assessment between Buildings 5's and 6's walls and roof, on the one hand, and concrete base and foundation, on the other hand. App. 1188 (Remand Record, p. 249 (Transcript pp. 78:17-80:20)). To do that, Mr. Vaske spoke with three regional bin manufacturers to determine the cost to construct new bins similar in size and capacity to Buildings 5 and 6. Those discussions aligned with and supported Emmet County's initial assessment of Buildings 5 and 6. From there, Mr. Vaske inquired of these bin manufacturers what percentage of the total bin construction cost was allocated to concrete, which ranged from 20-30 percent. Mr. Vaske was then comfortable allocating Emmet County's assessment of Building 5's and 6's base, walls and roof to 25% base and 75% walls and roofs. App. 1188-

1190 (Remand Record, pp. 249-251 (Transcript pp. 80:21-86:19)); App. 1115-1117 (Remand Record, pp. 025-027 (Exhibit 39)). For Building 5, Mr. Vaske allocated the assessed value of \$676,100 to base (\$188,850) and walls and roof (\$487,250). For Building 6, Mr. Vaske allocated the assessed value of \$78,000 to base (\$22,325) and walls and roof (\$55,675). App. 1189-1190 (Remand Record, pp. 250-251 (Transcript pp. 85:19-86:19)); App. 1117 (Remand Record, p. 027 (Exhibit 39)).

In the Remand Order, PAAB held as follows as to Mr. Vaske's allocation of value across the Buildings 5 and 6 components:

Here, we are not convinced that Vaske's allocations accurately reflect the value of the property StateLine believes to be exempt. Regarding the large and small grain bins, Vaske determined that 25% of the cost of construction is attributable to the foundations. At the same time, however, he failed to account for the site work or estimate how the site work cost should be allocated to the resulting grain bin. PAAB finds that while the methodology Vaske employed is sound, it failed to account for the site work. To remedy, we would increase the cost of construction attributed to the foundation to the upper end of his range at 30%; thus reducing his attributed value for the roof and walls.

App. 1168 (Remand Record, p. 224). In other words, PAAB agrees with Mr. Vaske's allocation of value methodology, but simply thinks that the percentage split between base and walls/roof should have been 30/70 instead of 25/75 to better account for site work done when the bins were constructed. Should this Court agree with PAAB in this regard, SLC

requests that this Court simply modify Mr. Vaske's valuations to account for the change in percentage split. In doing so, Building 5's assessed value of \$676,100 would be allocated 30% to base (\$202,830) and 70% to walls and roof (\$473,270). Building 6's assessed value of \$78,000 would be allocated 30% to base (\$23,400) and 70% to walls and roof (\$54,600).

In summary, regardless of whether this Court uses Mr. Vaske's allocation values and percentages or PAAB's slightly modified values and percentages for Building 5's and 6's component parts, PAAB erred in holding (and the district court erred in affirming) that SLC failed to meet its evidentiary burden to prove the exemption valuation associated with those component parts. See Iowa Code § 17A.19(10)(b), (c), (f), (g), (h), (i), (k), (l), (m), (n).

## **CONCLUSION**

In accordance with Iowa Code § 17A.19(10), SLC requests this Court grant the following specific relief:

1. Reverse the district court and PAAB by finding that Building 1's Overhead Bins constitute "machinery used in manufacturing establishments" under the exemption provided in Iowa Code §§ 427A.1(1)(e) and 427B.17(3).



2. Reverse the district court and PAAB by finding that SLC met its evidentiary burden to prove the value of the exemption associated with Building 1's Overhead Bins through Mr. Vaske's explanation and use of the allocation of value methodology, and, in doing so, order that the exemption value associated with Building 1's Overhead Bins is \$1,092,500 and further reduce the January 1, 2014 assessment of the Facility by that amount.

3. Alternatively, should the Court find that Mr. Vaske's allocation of value methodology was not a reliable reflection of the value of the Overhead Bins, this Court should order that the exemption value associated with Building 1's Overhead Bins is \$778,240, the value assigned by Emmet County's expert witness, Mr. Ehler, and further reduce the January 1, 2014 assessment of the Facility by that amount.

4. Reverse the district court and PAAB by finding that Buildings 5 and 6 constitute "machinery used in manufacturing establishments" under the exemption provided in Iowa Code §§ 427A.1(1)(e) and 427B.17(3).

5. Order that the exemption value associated with Building 5 is its assessed value of \$676,100 and further reduce the January 1, 2014 assessment of the Facility by that amount.

6. Alternatively, should this Court find that Building 5's concrete floors and foundation are not exempt from taxation, but that Building 5's walls and roof are exempt from taxation:

- a. Reverse the district court and PAAB by finding that SLC met its evidentiary burden to prove the value of the exemption associated with Building 5 through Mr. Vaske's explanation and use of the allocation of value methodology across the component parts of Building 5, and, in doing so, order that the exemption value associated with Building 5's walls and roof is \$487,250 and further reduce the January 1, 2014 assessment of the Facility by that amount.
- b. Alternatively, if this Court agrees with PAAB that the exemption value associated with Building 5's walls and roof should be 70% of the assessed value of Building 5 as a whole, order that the exemption value associated with Building 5's walls and roof is \$473,270 and further reduce the January 1, 2014 assessment of the Facility by that amount.

7. Order that the exemption value associated with Building 6 is its assessed value of \$78,000 and further reduce the January 1, 2014 assessment of the Facility by that amount.

8. Alternatively, should the Court find that Building 6's concrete floors and foundation are not exempt from taxation, but that Building 6's walls and roof are exempt from taxation:

a. Reverse the district court and PAAB by finding that SLC met its evidentiary burden to prove the value of the exemption associated with Building 6 through Mr. Vaske's explanation and use of the allocation of value methodology across the component parts of Building 5, and, in doing so, order that the exemption value associated with Building 6's walls and roof is \$55,675 and further reduce the January 1, 2014 assessment of the Facility by that amount.

b. Alternatively, if this Court agrees with PAAB that the exemption value associated with Building 6's walls and roof should be 70% of the assessed value of Building 6 as a whole, order that the exemption value associated with Building 6's walls and roof is \$54,600 and further reduce

the January 1, 2014 assessment of the Facility by that amount.

## REQUEST FOR ORAL SUBMISSION

In accordance with Iowa Rule of Appellate Procedure 6.908,  
Appellant hereby requests Oral Argument in this matter.

Dated this 10th day of October, 2019.

Respectfully submitted:

*/s/ Brant D. Kahler*

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## CERTIFICATE OF COST

I hereby certify that the amount actually paid for printing or duplicating necessary copies of Petitioner-Appellant's Proof Brief was \$0.00.

Dated this 10th day of October, 2019.

Respectfully submitted:

*/s/ Brant D. Kahler*

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## CERTIFICATE OF SERVICE AND FILING

The undersigned certifies that on October 10, 2019 the foregoing was electronically filed with the Clerk of the Iowa Supreme Court using the EDMS system, a copy of which will be electronically served upon all counsel of record registered with EDMS via Notice of Electronic Filing or Presentation.

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/s/ Brant D. Kahler  
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