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

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.

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

PETITIONER-APPELLANT'S REPLY BRIEF

Brant D. Kahler
Adam C. Van Dike
Steven C. Schoenebaum
BROWN, WINICK, GRAVES, GROSS,
BASKERVILLE & SCHOENEBAUM, P.L.C.
666 Grand Avenue, Suite 2000
Des Moines, IA 50309-2510
Telephone: (515) 242-2400
Facsimile: (515) 242-2488
E-mail: kahler@brownwinick.com
E-mail: vandike@brownwinck.com
E-mail: schoenebaum@brownwinick.com

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

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

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Budde v. City Development Board, 276 N.W.2d 846 (Iowa 1979)

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

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III. THE VALUE OF THE EXEMPT PROPERTY

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Rose Acre Farms, Inc. v. Bd. of Review of Madison County, 479 N.W.2d 260 (Iowa 1991)

ARGUMENT

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

It is undisputed that Emmet County Board of Review ("ECBR") did not file its Notice of Cross Appeal within 20 days of PAAB's February 26, 2016 Order.[1]

To be very clear, SLC does not contest ECBR's right to intervene or participate in SLC's judicial review action (as permitted by Iowa Code § 17A.19(2)), nor does SLC contest ECBR's right to claim adversely to SLC therein (as permitted by Iowa Rule of Civil Procedure 1.1603(1)).

SLC does, however, contest ECBR's ability to expand the scope of the judicial review action to encompass the portion of PAAB's rulings adverse to ECBR (and on which SLC did not seek judicial review). 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.").

[1] ECBR's claim that it was not provided notice of SLC's Petition for Judicial Review (ECBR App. Brief, p. 12) is false. SLC filed its Petition for Judicial Review on March 17, 2016. That same day, as evidenced by the March 17, 2016, Affidavit of Mailing filed with the district court, a copy of the Petition for Judicial Review and Original Notice were mailed to ECBR's attorney of record, Brett Ryan, in accordance with Iowa Code § 17A.19(2).

The resolution of this issue hinges on two competing Iowa Supreme Court opinions: Doerfer Division of CCA v. Nicol, 359 N.W.2d 428 (Iowa 1984) and City of Hiawatha v. City Development Board, 609 N.W.2d 532 (Iowa 2000). ECBR and PAAB claim that Doerfer is controlling; SLC claims that City of Hiawatha should control. Everything else being equal, City of Hiawatha is the more recent decision and controls over Doerfer.

ECBR tries to distinguish City of Hiawatha as not involving a "contested case." ECBR App. Brief, p. 11. This is incorrect.

Iowa Code § 17A.2(5) defines a "contested case" as "a proceeding including but not restricted to ratemaking, price fixing and licensing in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing."

City of Hiawatha involved City Development Board (the "Board") proceedings, which statutorily require a public hearing with notice given to all affected cities and counties, an opportunity for parties to submit written briefs and be heard at the hearing, and the authority of the Board to subpoena witnesses and documents for the hearing. See Iowa Code § 368.15 ("The committee shall conduct a public hearing on a proposal as soon as practicable. Notice of the hearing must be served upon the council of each

city for which a discontinuance or boundary adjustment is proposed, the county board of supervisors for each county which contains a portion of a city to be discontinued or territory to be incorporated, annexed, or severed, and any regional planning authority for the area involved. A notice of the hearing, which includes a brief description of the proposal and a statement of where the petition or plan is available for public inspection, must be published as provided in section 362.3, except that there must be two publications in a newspaper having general circulation in each city and each territory involved in the proposal. Any person may submit written briefs, and in the committee's discretion, may be heard on the proposal. The board may subpoena witnesses and documents relevant to the proposal.").

Furthermore, as noted by the Iowa Supreme Court in Budde v. City Development Board, Board proceedings carry all of the hallmarks of a contested case proceeding:

> Section 368.15, providing for a public hearing with notice of an annexation proposal states:
>
> > Any person may submit written briefs, and in the committee's discretion may be heard on the proposal. The board may subpoena witnesses and documents relevant to the proposal.
>
> The rules of the Board, made applicable to the Committee, elaborate on 368.15 and speak in terms of "opposing parties" who may appear and present evidence at hearings following the filing of the petition with the Board. The administrative rules of the Board provide that "the Committee chairperson shall determine the order in which opposing parties shall submit

> evidence. Parties who are neither the petitioner nor opposing parties may appear at a public hearing and present evidence." IAC § 220-2.3(368) (1975). Additionally, the Committee observes rules of privilege recognized by law and may exclude certain types of evidence. IAC §§ 220.2.5(368) (1975); 220-2.6(368) (1975). Finally, the Committee is required to make specific findings of fact supported by conclusions of law. §§ 368.16, 368.17, The Code, 1975.

276 N.W.2d 846, 850-51 (Iowa 1979); see also City of Des Moines v. City Development Board, 633 N.W.2d 305, 310 (Iowa 2001) ("Des Moines does not claim that the present action falls outside the definition of a contested case proceeding.").

Accordingly, ECBR is incorrect in arguing that the Board proceedings in City of Hiawatha were not contested case proceedings, and its attempt to distinguish City of Hiawatha in that manner fails. As such, the statutory provisions and court rules relating to intervention apply to ECBR in the same way they applied to the Robins in City of Hiawatha.

PAAB, too, attempted to distinguish City of Hiawatha by arguing that City of Hiawatha involved two separate agency actions (whereas this matter only involves one), and judicial review was sought on only one of those actions. PAAB App. Brief, pp. 17-18. Although the opinion is not clear about whether more than one agency action occurred, the number of agency actions is beside the point. The opinion makes clear that a party cannot

expand the scope of another party's judicial review action by intervening therein.

Both the City of Hiawatha ("Hiawatha") and the City of Robins ("Robins") made voluntary applications to the Board to annex certain property. City of Hiawatha, 609 N.W.2d at 534. In those competing applications, both cities sought to annex the same land, including two parcels denoted as Nos. 28 and 31. Id. The Board awarded all of the contested area to Robins except parcels 28 and 31, which were awarded to Hiawatha. Id.

Hiawatha petitioned for judicial review only of the Board's August 11, 1997 award of the contested area to Robins. Id. at 534–35. Robins intervened in Hiawatha's judicial review proceedings and tried to expand the scope thereof to include the Board's award of parcels 28 and 31 to Hiawatha (which, apparently, occurred in some form or fashion on April 9, 1997). Id. at 537.

PAAB argues that the April 9, 1997 award is a separate agency action than the Board's August 11, 1997 award. PAAB App. Brief, pp. 17-18. Again, the opinion does not speak to this issue. Regardless, the Iowa Supreme Court held that it lacked jurisdiction to consider Robins' attempt to expand the scope of Hiawatha's judicial review action through intervention.

City of Hiawatha, 609 N.W.2d at 537. The Iowa Supreme Court saw "nothing in chapters 17A or 368 that would permit an aggrieved party to challenge the ruling in that manner." Id. Importantly, nowhere did the Iowa Supreme Court discuss or otherwise limit the application of the opinion to situations involving separate agency actions. PAAB's attempt to distinguish City of Hiawatha, from this matter on that ground is, therefore, misplaced.

SLC respectfully prays this Court find City of Hiawatha to be the controlling legal precedent and hold that the district court lacked jurisdiction (as does this Court) to hear and consider any issues arising through ECBR's untimely Notice of Cross Appeal.

II. THE SCOPE OF THE EXEMPTION

The next issue for this Court to analyze is the scope of the Exemption.[2] Iowa law mandates that the Exemption be interpreted liberally to effectuate its purpose, which is directly supported by other related statutes and regulations utilizing similar terminology in similar contexts, and in direct contradiction to ECBR's misplaced attempt to equate the scope of the Exemption with the scope of the Iowa Real Property Appraisal Manual.

[2] As in SLC's opening brief, "Exemption" is shorthand for the "machinery used in manufacturing establishments" exemption from real property taxation created in tandem through Iowa Code §§ 427B.17(3) and 427A.1(1)(e).

A. <u>ECBR's Attempt to Limit the Exemption by the Iowa Real Property Appraisal Manual is Misplaced</u>

ECBR argues that the scope of the Exemption is limited to and defined by the Iowa Real Property Appraisal Manual (the "Manual"). ECBR App. Brief, pp. 13-16. This argument is contrary to applicable law. Also, ECBR has cited no legal authority in support of such an argument.

While the Iowa Department of Revenue directs that assessors use the Manual (along with their own judgment) to value property,[3] the Iowa Department of Revenue requires that assessors separately and independently determine the taxable status of property by construing applicable exemption statutes and rules. See Iowa Admin. Code r. 701—80.50 ("*Responsibility of local assessors.* 80.50(1) The assessor shall determine the taxable status of all property. 80.50(2) In determining the taxable status of property, the

[3] See e.g., Iowa Admin. Code r. 701—71.5 ("*Valuation of commercial real estate*. In determining the actual value of commercial real estate, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available."); Iowa Admin. Code r. 701—71.6 ("*Valuation of industrial land and buildings.* In determining the actual value of industrial land and buildings, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code § 421.17(18), and any other relevant data available."); Iowa Admin. Code r. 701—71.18 ("*Judgment of assessors and local boards of review.* Nothing stated in these rules should be construed as prohibiting the exercise of honest judgment, as provided by law, by the assessors and local boards of review in matters pertaining to valuing and assessing of individual properties within their respective jurisdictions.").

assessor shall construe the appropriate exemption statute and these rules in a strict manner.”).

In other words, the Manual is a valuation tool – nothing more. To hold that the Manual governs valuation and taxable status of property would render the above-cited administrative rules contradictory and/or superfluous, which is never allowed. See e.g., Petition of Chapman, 890 N.W.2d 853, 857 (Iowa 2017) (“We apply the fundamental rule of statutory construction that we should not construe a statute to make any part of it superfluous. Accordingly, we presume the legislature included all parts of the statute for a purpose, so we will avoid reading the statute in a way that would make any portion of it redundant or irrelevant.”).

SLC also agrees with and incorporates herein by reference PAAB’s discussion of this issue on Section II(C), pp. 21-24 of its Appellate Brief.

B. The Exemption Must be Liberally and Broadly Construed

Under Iowa law, exemption statutes (such as Iowa Code §§ 427A.1(1)(e) and 427B.17(3)) must be liberally construed to effectuate their intended purpose. See Carlon Company v. Board of Review of City of Clinton, 572 N.W.2d 146, 154 (Iowa 1997) (“[S]tatutory construction requires us to look to the object to be accomplished and the evils and mischiefs to be remedied. We must provide a reasonable or liberal

construction that will best effect the statute's purpose rather than one that will defeat it."). In Carlon Company, the Iowa Supreme Court noted that the intended purpose of Iowa Code § 427B.17 (exempting "machinery used in manufacturing establishments" from real property taxation) is to promote economic development in the State of Iowa and to keep taxes on manufacturing machinery at a minimum. Id. at 155.

Along those lines, as conceded by PAAB, the Iowa Supreme Court's opinion in Griffin Pipe Products Co. v. Board of Review of County of Pottawattamie, 789 N.W.2d 769 (Iowa 2010) mandates "that a broad interpretation should be applied to the phrase, 'machinery used in manufacturing establishments.'" PAAB App. Brief, p. 29. Specifically, in Griffin the Iowa Supreme Court found that fixtures (including a three-floor cupola that extends above the roofline, a two-floor vertical annealing furnace and an exterior exhaust stack) were not outside the scope of the Exemption. Griffin Pipe Products Co., 789 N.W.2d at 775-76.

ECBR's and PAAB's attempt to diminish the precedential value of Griffin as distinguishable from this matter misses the mark. SLC does not argue that this Court is faced with the exact legal and factual issues as those presented in Griffin. Rather, SLC relies on Griffin for the proposition that the Iowa Supreme Court has previously broadly interpreted and applied the

Exemption. After all, if a massive cupola, furnace and exterior exhaust stack can be "machinery," certainly interior and exterior ingredient bins can be "machinery" as well.

Moreover, focusing primarily on the word "machinery," related Iowa administrative regulations further mandate a broad, liberal interpretation of the Exemption:

- "machinery" includes equipment, and can be automated and non-automated;[4]
- "machinery" includes "any mechanical, electrical or electronic device designed and used to perform some function and to produce a certain effect or result";[5]
- "machinery" 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";[6]

[4] See Iowa Admin. Code r. 701—71.1(7) (re: real property taxation of industrial real estate, the Iowa Department of Revenue defines "machinery" to "include equipment and devices, both automated and non-automated, which is used in manufacturing as defined in Iowa Code section 428.20.").

[5] See Iowa Admin. Code r. 701—18.58(1) (Iowa Department of Revenue definition of "industrial machinery and equipment" for sales tax purposes).

[6] Id.

- "machinery" includes items/components that perform only simple functions such as "simply [ ] holding [ ] materials in an existing state";[7] [8]
- "machinery" includes "all machinery used in processing (complete with power, foundation and installation)";[9] and
- "machinery" includes "tanks or silos (used in processing)."[10]

Accordingly, respectfully, PAAB erred in holding that SLC's Grain Bins and Overhead Bins are not exempt "machinery used in manufacturing establishments."

C. SLC's Grain Bins and Overhead Bins are Exempt

In PAAB's Remand Order, PAAB held that SLC's Grain Bins and Overhead Bins are not machinery because: (1) they would not commonly be

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[7] See Iowa Admin. Code r. 701—18.58(4)(c) (explaining the scope of the "machinery, equipment or computers used by a manufacturer for processing" sales tax exemption).

[8] On p. 31 of PAAB's Appellate Brief, PAAB asserts that SLC never offered the definition of "machinery" contained in Iowa Admin. Code r. 701—18.58 to PAAB at the agency level, which is incorrect. SLC relied on this definition of "machinery" from the very beginning of this process; PAAB included it nearly verbatim in the initial Petition to the ECBR. App. 1003 (Record 1, PAAB 0010).

[9] See App. 1149 (Remand Record, p. 106) (from the Industrial Machinery and Equipment Valuation Guide issued by the Iowa Department of Revenue in 1977); see also App. 1150 (Remand Record, p. 157) (from the Industrial Machinery and Equipment Valuation Guide issued by the Iowa Department of Revenue in 1984).

[10] See fn. 8.

understood to be machinery; and (2) their primary purpose is to hold and protect raw materials from the elements. App. 1167 (Remand Record, p. 223).

With regard to (1), common understandings are not at play here. Instead, from a statutory interpretation standpoint, when the same word (i.e., "machinery") is used in different, yet related, statutes, that word should be interpreted uniformly across them. See e.g., Farmers Co-op Co. v. DeCoster, 528 N.W.2d 536, 538-39 (Iowa 1995) ("The need for uniformity becomes more imperative where the same word or term is used in different statutory sections that are similar in purpose and content. Identical statutory language in different statutes should be given much the same meaning.").

With regard to (2), PAAB is legally and factually wrong.

Legally speaking, "machinery" under Iowa law includes processing equipment (including foundations, tanks and silos) that does nothing more than hold raw materials in their existing state. See Iowa Admin. Code r. 701—18.58(4)(c); App. 1149, 1150 (Remand Record, pp. 106, 157). It is undisputed that the Grain Bins and Overhead Bins at the very least perform that function and meet these criteria.

Also, "machinery" can be "automated or non-automated" (see Iowa Admin. Code r. 701—71.1(7)) and 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." See Iowa Admin. Code r. 701—18.58(1). In the Order, PAAB correctly classified many of the internal components of the Grain Bins as exempt "machinery" (such as aeration floor, fans and dryers, and power sweep) (App. 1016 (Record 1, PAAB 0162)), none of which could accomplish its intended function without the presence of the other components (including the walls and roof). For example, the fans and dryers help maintain the quality (i.e., temperature and moisture content) of the corn needed for use in manufacturing feed. Without the floors, walls and roof, those same fans and dryers could not effectively function.

Factually speaking, the Grain Bins and Overhead Bins do much more than store and protect raw materials.

First, and importantly, neither set of bins are detached structures that simply "store" feed ingredients. Instead, these bins "move" feed ingredients through the feed manufacturing process at the times and in the amounts needed. For example, corn is not hauled to the Grain Bins by semi-truck and then hauled back to the Facility when needed. Rather, the Grain Bins are connected to the Facility and have corn constantly moving through them. App. 1177 (Remand Record, p. 235 (Transcript pp. 22:8-23:9)). At capacity, a kernel of corn will only be present in the larger grain bin for 16-20 days

and in the smaller grain bin for 4-5 days. App. 1180-1181 (Remand Record, pp. 238-239 (Transcript pp. 37:18-38:9)).

Second, these bins regulate ingredient quality as well. The Grain Bins, for example, regulate the temperate and moisture content of the corn (a perishable commodity) as it moves through them. App. 1094 (Record 4, pp. 78:19-79:21).

Simply put, when "machinery" is defined and interpreted in a manner consistent with other similar statutes and regulations, there can be no question that the Grains Bins and Overhead Bins are exempt from taxation as real property.

D. PAAB and ECBR have Conceded that Ingredient Bins are Exempt from Taxation as Real Property

PAAB and ECBR have conceded, correctly, that ingredient bins are exempt from taxation as real property. ECBR put forth testimony at the first PAAB hearing that the micro-ingredient bins in the main feed mill building were not assessed as real estate because they are considered to be part of the feed manufacturing process. App. 1104 (Record 4, pp. 163:11-24).

Similarly, in the Order, PAAB found SLC's fat tanks to be exempt machinery. App. 1016 (Record 1, PAAB 0162).

ECBR did not even address this contradiction. PAAB, when faced with this contradiction, responded only that the fat tanks are different than

the Grain Bins and Ingredient Bins because they have a heating element. PAAB App. Brief, pp. 33-34. In other words, PAAB reasons that the steel exterior fat tanks have an internal component that performs a heating function that qualifies the fat tanks as exempt "machinery." Similarly, then, the Grain Bins have internal components that PAAB classified as "machinery" that, too, perform temperature and moisture regulating functions (i.e., the fans and dryers). The only true difference between the fat tanks and bins at issue is that the fat tanks are much smaller. Given the holding in Griffin that multi-story cupola, furnace and exhaust stack can be "machinery used in manufacturing establishments," certainly size cannot be dispositive.

Agencies are required to uniformly and consistently rule. See Iowa Code § 17A.19(10)(h) ("The court shall reverse, modify, or grant other appropriate relief from agency action … if it determines that substantial rights of the person seeking judicial review have been prejudiced because the agency action is any of the following: *** (h) Action other than a rule that is inconsistent with the agency's prior practice or precedents…"). PAAB must be held to that standard here. All ingredient and loadout bins, automated or not, large or small, should be found to be exempt "machinery used in manufacturing establishments."

III. THE VALUE OF THE EXEMPT PROPERTY

The final issue for this Court to consider is the value to assign the Exempt property.

A. Where Assessed, the Assessed Value of the Property is Equal to the Exempt Value of the Property

In its Ruling, PAAB correctly held that 22 items at the Facility are exempt "machinery" (including truck scales, aeration floors, fans and dryers, power sweeps, bucket conveyors, drag conveyors and fat tanks). Each of those 22 items was separately assessed by Emmet County on an item-by-item basis. For those items of machinery, PAAB found their exempt value to be equivalent to their assessed value and reduced the overall assessment of the Facility accordingly. App.1016 (Record 1, PAAB 0162).

Interestingly, ECBR does not contest that those 22 items are exempt (other than to argue that the Manual directed Emmet County to assess them). Instead, ECBR complains that SLC could not rely on the assessed value of each of those 22 items, but rather had the burden to independently prove their exempt value. ECBR App. Brief, pp. 17-21.

SLC disagrees. PAAB disagrees. Iowa law disagrees. PAAB addressed this argument and the supporting law in detail on pages 44-48 of its Appellate Brief in this matter. SLC agrees, joins with and incorporates that argument herein.

In short, the White and Deere Manufacturing cases relied upon by ECBR are inapposite, as they are both valuation cases, not exemption cases. Moreover, Iowa law is clear that machinery must be valued on an item-by-item basis. Along those lines, where machinery must be removed from an assessment (due to exemption or otherwise), the assessed value of the machinery is the appropriate value to utilize. See e.g., Carlon Co., 572 N.W.2d at 146; Rose Acre Farms, Inc. v. Bd. of Review of Madison County, 479 N.W.2d 260 (Iowa 1991); Grundon Holding Corp. v. Bd. of Review of Polk County, 237 N.W.2d 755, 759 (Iowa 1976).

B. The Dispute Regarding the Exempt Value of the Grain Bins is Purely Academic and Easily Resolved

Emmet County assessed the entire shell of each grain bin as one unit (i.e., it did not separately assess the base, walls and/or roof). SLC asserts that the entire shell of each grain bin is exempt (including the concrete foundation and base, which as discussed above, the Iowa Department of Revenue deems to be "machinery"). See App. 1149, 1150 (Remand Record, pp. 106, 157). To the extent this Court agrees, the exempt value of each grain bin is equal to its assessed value (as discussed in the preceding section): Building 5 -- $676,100; Building 6 -- $78,000. App. 1105 (Remand Record, p. 002, ¶¶ 1(b) and (c)).

In the Ruling, PAAB indicated that the Grain Bins' concrete foundation and base were likely not exempt (which, as discussed above in Section II(B), is contrary to Iowa law). App. 1016-1017 (Record 1, PAAB 0162 – PAAB 0163). Additionally, prior to the remand proceedings, PAAB ordered 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." App. 1105 (Remand Record, p. 002, ¶ 2).

Accordingly, on remand, SLC retained Don Vaske, a commercial appraiser, to allocate the assessed value of the Grain Bins across each bin's concrete foundation/base and walls/roof. Ultimately, PAAB found this evidence to be unreliable because Mr. Vaske's allocations did not, in PAAB's opinion, accurately account for the cost of site work. App. 1168 (Remand Record, p. 224).

ECBR does not substantively weigh in on this issue, but rather simply argues that PAAB's finding that Mr. Vaske's valuation opinions were unreliable is a finding of fact subject to deference under the "substantial evidence" standard. ECBR App. Brief, pp. 16-17.

PAAB, too, hardly weighs in on this issue, asserting only (with no citation to any evidentiary support in the record) that: "If he had included the site work cost in his allocation, he would have given a greater value to

the bins' foundations, which would have lowered the amount of value assigned to the bins' walls and roofs." PAAB App. Brief, p. 38.

The fact of the matter is that Mr. Vaske's allocation percentages were very similar to the allocation percentages PAAB deemed appropriate; hardly rendering Mr. Vaske's opinions "unreliable." App. 1168 (Remand Record, p. 224) ("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*.") (emphasis added). In other words, Mr. Vaske's allocations (25% base; 75% walls/roof) were five percent or less off from the allocations PAAB deemed appropriate (30% base; 70% walls/roof).

Accordingly, if this Court finds that PAAB is correct on this issue, the remedy is not to find that SLC failed to meet its evidentiary burden here. Instead, the Court should simply assign exemption values for the components of the Grain Bins in accordance with PAAB's approved allocations in the Remand Ruling. 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).

C. Mr. Vaske's Valuation Methodology for the Overhead Bins did Account for and Align with SLC's Cost to Construct the Overhead Bins

Emmet County assessed the entire above-grade portion of the main feed mill building as one structure (including the Overhead Bins). Prior to the remand proceedings, PAAB ordered that the assessed value of the feed mill building was "the true and correct value[] … for purposes of determining exemption, if any." App. 1105 (Remand Record, p. 002, ¶ 2).

Accordingly, on remand, SLC retained Mr. Vaske to allocate the assessed value of the above-grade space of the feed mill building between the Overhead Bins and the remaining space. Mr. Vaske did so using the same per-cubic-foot assessment methodology that Emmet County used in the initial assessment. 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 the Remand Order, PAAB ruled that Mr. Vaske's methodology was unreliable, largely because it failed to take into account the difference in construction costs between the Overhead Bins and other sections of the main feed mill building. App. 1168 (Remand Record, p. 224).

Here again, ECBR claims only that PAAB's finding in this regard is subject to the "substantial evidence" standard of review. ECBR App. Brief, pp. 16-17.

PAAB, on the other hand, spends nearly three pages in its Appellate Brief further justifying the Remand Ruling with statements and evidence not in the record (including two real estate appraisal treatises). PAAB ends that discussion by acknowledging that SLC offered testimony that Mr. Vaske's valuation of the Overhead Bins was consistent with SLC's costs to construct those bins (as shown in Exhibit E), yet completely mischaracterizes that testimony as follows:

> The witnesses offered minimal testimony regarding Exhibit E; specifically, there was no explanation of what costs are included or how they are allocated across the components. PAAB cannot say whether the document includes both direct and indirect costs. Nor can PAAB determine whether the "Feedmill Building Concrete" and "Modular Bin Systems" classifications are under or over-inclusive related to the items StateLine asserts are exempt. Nonetheless, it may be possible that Exhibit E provides a more reliable allocation of the component values than those provided by Vaske.

PAAB App. Brief, p. 41.

This characterization is not supported by the record. Mr. Edge (SLC's CFO) expressly testified (on direct and cross examination) that Exhibit E, Line Item 19 "modular bin system -- $1,032,500" represents SLC's cost to construct the Overhead Bins. App. 1183-1184 (Remand Record, p. 244-245

(Transcript pp. 58:20-62:10)). This is consistent with Mr. Vaske's value allocation testimony, where he allocated $1,092,550 to the Overhead Bins. This represents only a $60,000 (approximately 5%) difference between SLC's cost to construct the Overhead Bins and Mr. Vaske's valuation.

In summary, PAAB's finding that Mr. Vaske's valuation methodology and opinion was "unreliable" is not supported by the record. Rather, PAAB ruled that Mr. Vaske's valuation opinion needed to align with SLC's construction costs, which it did.

Accordingly, as in the previous section, if this Court agrees that Mr. Vaske's valuation methodology and opinion regarding the Overhead Bins is unreliable, the appropriate remedy would be to: (1) use PAAB's methodology to value the Overhead Bins equivalent to SLC's construction costs ($1,032,000); or (2) at worst, use the $778,240 valuation offered by ECBR's expert, Mr. Ehler. App. 10147-1148 (Remand Record, pp. 069-070).

Dated this 10th day of October, 2019.

Respectfully submitted:

/s/ *Brant D. Kahler*

Brant D. Kahler, AT0009819
Adam C. Van Dike, AT0008004
Steven C. Schoenebaum, AT0006987
BROWN, WINICK, GRAVES, GROSS,
BASKERVILLE AND SCHOENEBAUM, P.L.C.
666 Grand Avenue, Suite 2000
Des Moines, IA 50309-2510
Telephone: (515) 242-2400
Facsimile: (515) 242-2488
E-mail: kahler@brownwinick.com
E-mail: vandike@brownwinick.com
E-mail: schoenebaum@brownwinick.com

ATTORNEYS FOR PETITIONER-APPELLANT
STATELINE COOPERATIVE

CERTIFICATE OF COST

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

Dated this 10th day of October, 2019.

Respectfully submitted:

/s/ *Brant D. Kahler*

Brant D. Kahler, AT0009819
Adam C. Van Dike, AT0008004
Steven C. Schoenebaum, AT0006987
BROWN, WINICK, GRAVES, GROSS,
BASKERVILLE AND SCHOENEBAUM, P.L.C.
666 Grand Avenue, Suite 2000
Des Moines, IA 50309-2510
Telephone: (515) 242-2400
Facsimile: (515) 242-2488
E-mail: kahler@brownwinick.com
E-mail: vandike@brownwinick.com
E-mail: schoenebaum@brownwinick.com

ATTORNEYS FOR PETITIONER-APPELLANT
STATELINE COOPERATIVE

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.

Respectfully submitted:

/s/ Brant D. Kahler

Brant D. Kahler, AT0009819
Adam C. Van Dike, AT0008004
Steven C. Schoenebaum, AT0006987
BROWN, WINICK, GRAVES, GROSS,
BASKERVILLE AND SCHOENEBAUM, P.L.C.
666 Grand Avenue, Suite 2000
Des Moines, IA 50309-2510
Telephone: (515) 242-2400
Facsimile: (515) 242-2488
E-mail: kahler@brownwinick.com
E-mail: vandike@brownwinick.com
E-mail: schoenebaum@brownwinick.com

ATTORNEYS FOR PETITIONER-APPELLANT
STATELINE COOPERATIVE

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/s/ Brant D. Kahler October 10, 2019
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