IN THE SUPREME COURT OF IOWA

No. 19-0674
Dist. Ct. No. CVCV019170

STATELINE COOPERATIVE,
Petitioner-Appellant,

v.

PROPERTY ASSESSMENT APPEAL BOARD,
Respondent-Appellee.

EMMET COUNTY BOARD OF REVIEW,
Cross-Petitioner,

v.

STATELINE COOPERTAIVE and PROPERTY ASSESSMENT APPEAL BOARD,
Cross-Appellees – Cross-Appellees.

APPEAL FROM THE DISTRICT COURT OF EMMET COUNTY
THE HONORABLE DON E. COURTNEY, DISTRICT COURT JUDGE

BRIEF OF THE PROPERTY ASSESSMENT APPEAL BOARD

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. THE DISTRICT COURT HAD JURISDICTION OVER AND CORRECTLY ALLOWED THE BOARD OF REVIEW'S CROSS APPEAL

II. THE IOWA REAL PROPERTY APPRAISAL MANUAL'S INCLUSION OF ITEMS IS NOT DETERMINATIVE OF WHETHER OR NOT THOSE ITEMS ARE ASSESSABLE

III. THE DISTRICT COURT CORRECTLY AFFIRMED PAAB'S RULING THAT CERTAIN ITEMS OF STATELINE'S PROPERTY DID NOT QUALIFY AS MACHINERY AND THAT STATELINE FAILED TO PROVIDE RELIABLE EVIDENCE OF THE ALLEGEDLY EXEMPT MACHINERY'S VALUE

IV. AFTER CONSIDERING THE EVIDENCE AND TESTIMONY, PAAB PROPERLY FOUND THAT CERTAIN ITEMS OF STATELINE'S PROPERTY QUALIFIED AS MACHINERY AND CORRECTLY REMOVED THEIR VALUE FROM THE ASSESSMENT

ROUTING STATEMENT

This appeal should be transferred to the Court of Appeals under Iowa R. App. P. 6.1101(3)(a) as it is a judicial review of final agency action of the Property Assessment Appeal Board (PAAB), which applied existing legal principles under Iowa Code sections 441.21 and 441.37 (2015) to the facts of a contested case.

STATEMENT OF THE CASE

This is a judicial review challenging the final agency action of the Property Assessment Appeal Board (PAAB) under Iowa Code section 17A.19.

StateLine Cooperative (StateLine) is the owner of a feed mill facility located at 5265 206th Street, Armstrong. (App. 998-99). In 2014, the Emmet County Assessor assessed the property for $4,272,900. (App. 1021). StateLine petitioned the Board of Review asserting the property was exempt from property taxation under Iowa Code section 441.37(1)(a)(1)(c) (2014). (App. 1001, 1003-05). The Board of Review denied the petition. (App. 1002). StateLine then appealed to PAAB. (App. 998-99).

Following a contested case proceeding, PAAB issued an order (First Order) concluding that certain items of StateLine's property qualified for an exemption from property tax as machinery used in a manufacturing establishment. (App. 1015-16). PAAB also concluded that StateLine failed to show the entirety of its feed mill and steel storage bins qualified for the exemption. (App. 1016). Even if part of the feed mill and steel storage bins would qualify, PAAB reasoned that StateLine had also not demonstrated the correct value of those component parts in order to properly apply an

exemption. (App. 1016-17). PAAB ultimately ordered the exempt machinery, valued at $1,014,200, should be removed from StateLine's 2014 assessment. (App. 1018).

StateLine filed a Petition for Judicial Review of PAAB's ruling. (App. 8-12). The Board of Review then intervened and cross-appealed. (App. 30-33). Following several motions, the District Court remanded the case to PAAB "to receive additional evidence on, and determine, the portions and corresponding values of the feed mill buildings and exterior grain bins." (App. 554-55).

PAAB held a second contested case hearing on August 30, 2017, and issued its order on remand on March 23, 2018 (Order on Remand). (App. 1161-72). PAAB concluded the feed mill's overhead ingredient and load-out bins, located in Building 1, and the exterior steel grain bins' walls and roof (Buildings 5 and 6) are not machinery and thereby not exempt. (App. 1168). Further, PAAB found that StateLine's evidence of the allocations of value is not reliable. (App. 1168-69).

StateLine then filed an Amended Petition for Judicial Review. (App. 557-65). Following briefing, the District Court issued its ruling affirming PAAB's final agency action on March 29, 2019. (App. 976-85). StateLine

filed a Notice of Appeal on April 24, and the Board of Review filed a cross-appeal on the same day. (App. 986-99).

STATEMENT OF FACTS

The facts relevant here, and on which the court should rely, are those found by PAAB in its First Order and Order on Remand. *See IBP, Inc. v. Harpole*, 621 N.W.2d 410, 418 (Iowa 2001). All findings of fact are supported by substantial evidence in the record and set forth in the argument.

SUMMARY OF ARGUMENT

Iowa law permits the Board of Review's cross-appeal and the District Court correctly denied StateLine's Motion to Dismiss.

PAAB properly applied applicable legal provisions and definitions in finding that certain items of StateLine's property qualified for exemption as machinery used in a manufacturing establishment but the feed mill's overhead bins and the exterior steel grain bins did not. Where the current assessment provided specific, line-item values for exempt items, PAAB properly removed the value of the exempt property from the assessment. In accordance with the facts and its knowledge of valuation methodology, PAAB reasonably concluded that StateLine failed to provide reliable

evidence of the value of the feed mill's overhead bins and the exterior steel grain bins' walls and roof it asserted were exempt. Thus, the District Court did not err in affirming PAAB's Order.

ARGUMENT

I. THE DISTRICT COURT HAD JURISDICTION OVER AND CORRECTLY ALLOWED THE BOARD OF REVIEW'S CROSS APPEAL

A. ERROR PRESERVATION

This issue was preserved for review on appeal by StateLine's Motion to Dismiss filed April 7, 2016. The District Court subsequently denied the Motion in an order on August 9.

B. STANDARD OF REVIEW FOR MOTION TO DISMISS

The Court reviews rulings on motions to dismiss for corrections of errors at law. *Iowa Individual Health Ben. Reinsurance Ass'n v. State University of Iowa*, 876 N.W.2d 800, 804 (Iowa 2016) (citing *Schaefer v. Putnam*, 841 N.W.2d 68, 74 (Iowa 2013).

C. THE BOARD OF REVIEW HAD THE RIGHT TO INTERVENE AS A MATTER OF LAW AND CLAIM ADVERSELY TO ANY PARTY

The District Court correctly permitted the Board of Review's cross-appeal to proceed. Before the District Court, and now on appeal, StateLine ignores the provisions for judicial review under Iowa Code section 17A.19 and the Iowa Rules of Civil Procedure that mandate intervention for a party

in a contested case and permit said intervenor to claim adversely to the named petitioner or respondent.

In this case, the Board of Review was an original party to the contested case proceeding before PAAB. Under Iowa Code section 17A.19(2), the Board of Review, as a matter of right, could intervene and participate in the judicial review "within forty-five days from the time the petition is filed." Further, Iowa Rule of Civil Procedure 1.1603 states, "In proceedings for judicial review of agency action in a contested case pursuant to Iowa Code section 17A.19: An intervenor may join with petitioner or respondent or claim adversely to both." Pursuant to Rule 1.1603, as an intervenor, the Board of Review has the right to claim adversely to any and all PAAB findings or conclusions against its interest in this judicial review action.

StateLine's argument that both parties were required to file original petitions for judicial review is nonsensical and not supported by law. (StateLine Appellate Brf. p. 29). It suggests that there is no mechanism for filing a cross-appeal, but the foregoing statute and rule provide specifically for such a procedure.

Analogous to the facts here, the Iowa Supreme Court held in *Doerfer Division of CCA v. Nicol*, 359 N.W.2d 428 (Iowa 1984), that a reviewing court had jurisdiction to hear an intervenor's counterclaim under Iowa Code section 17A.19(2) and Iowa Rules of Civil Procedure 1.407 (formerly Rule 75) and 1.1603 (formerly Rule 333(a)). Just as in *Doerfer*, to accept StateLine's position,

> would require *all* parties adversely affected by final agency action in a contested case to file a *petition*, setting out duplicative information, within thirty days. By waiting until the thirtieth day before filing, one party could strip other parties, dissatisfied with the decision but nonetheless willing to acquiesce, of any opportunity for affirmative relief. Such a theory finds no support in our law or in sound public policy.

Id.

The *Doerfer* decision was applied by the Iowa Court of Appeals in another judicial review action. In *Consumer Advocate Div., Dept. of Justice v. Utilities Bd., Utilities Div., Dep't of Commerce*, 423 N.W.2d 552 (Iowa Ct. App. 1988), a motion was filed to strike a cross-claim included in a petition of intervention. The district court granted the motion, but was reversed on interlocutory appeal. *Id*. The Court of Appeals plainly states, "*Doerfer* holds that a district court has jurisdiction to review claims for

affirmative relief by a cross-claimant even though the cross-claimant did not file a timely petition for judicial review." *Id*. at 552-53.

Moreover, StateLine's reliance on *City of Hiawatha v. City Development Board*, 609 N.W.2d 532 (Iowa 2000), is misplaced and that case is distinguishable. A careful reading of *City of Hiawatha* shows there were two separate agency actions and two separate rulings issued by the City Development Board; only one ruling resulted in subsequent judicial review. *City of Hiawatha* involved annexation of properties between the cities of Robins and Hiawatha. Both Robins and Hiawatha sought to annex some of the same land. On April 9, 1997, the City Development Board granted Hiawatha's request for annexation of two parcels. *Id*. at 537. Though this decision was adverse to Robins, Robins did not file a petition for judicial review of this action. *Id*.

Subsequently, on August 11, 1997, the City Development Board issued a second order annexing remaining parcels to Robins. *Id*. at 534-35. Hiawatha appealed this decision and Robins intervened. *Id*. Robins attempted to bootstrap its claims related to the April 9 order, and the two parcels annexed by Hiawatha, into the judicial review proceeding from the August 11 order. *Id*. at 535. The Supreme Court essentially determined it

lacked jurisdiction because Robins did not appeal that April 9 decision by the City Development Board. *Id*. at 537. Further, it concluded there was no way for the issue to be subsequently raised in the present case simply by intervening. *Id*. Essentially, the Court recognized the City Development Board issued separate final agency actions which created separate causes of action. Contrary to *City of Hiawatha*, here StateLine's and the Board of Review's claims all arise from the same final agency action; therefore, *City of Hiawatha* is not controlling. *See Consumer Advocate*, 423 N.W.2d at 553 ("The issues raised in the cross-claim were issues that arose out of the transaction or occurrence that was the subject matter of the original action.").

City of Hiawatha did not address Iowa R. Civ. P. 1.1603, which clearly establishes that an intervenor may make claims adverse to any parties to a judicial review proceeding. This court rule permits an intervenor to expand the scope of inquiry at the district court where the intervenor timely intervenes in a judicial review action.

StateLine also relies on *Ahmann v. Correctional Center Lincoln*, 755 N.W.2d 608 (Neb. 2008), which is neither controlling in the present case and has been effectively overturned by legislative action. Subsequent to

Ahmann, in 2009 the Nebraska legislature modified its judicial review statute which now states: "The filing of a petition for review shall vest in a responding party of record[1] the right to a cross-appeal against any other party of record. A respondent shall serve its cross-appeal within thirty days after being served with the summons and petition for review." NEB. REV. STAT. ANN. § 84-917(2)(a)(ii); 2009 Neb. Laws LB 35, § 32.

Here, StateLine and the Board of Review's claims arise from the same PAAB proceeding. Iowa R. Civ. P 1.1603 clearly states that an intervenor can raise adverse claims. *Doerfer* is the controlling case law on this question. For the foregoing reasons, the District Court correctly granted intervention and permitted the Board of Review to raise its cross-claims.

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[1] Under Nebraska law, "All parties of record shall be made parties to the proceedings for review. If an agency's only role in a contested case is to act as a neutral factfinding body, the agency shall not be a party of record. In all other cases, the agency shall be a party of record." NEB. REV. STAT. ANN. § 84-917(2)(a)(i).

II. THE IOWA REAL PROPERTY APPRAISAL MANUAL'S INCLUSION OF ITEMS IS NOT DETERMINATIVE OF WHETHER OR NOT THOSE ITEMS ARE ASSESSABLE

A. ERROR PRESERVATION

This issue has been preserved for review on appeal.

B. SCOPE AND STANDARD OF REVIEW

Review of agency action is limited to correction of errors at law. Iowa Code § 441.39. StateLine and the Board of Review bear the burden of proof in this judicial review action. *Id.*; § 17A.19(8)(a). In order to successfully challenge PAAB's decision, they must demonstrate prejudice to substantial rights arising from agency action that falls within one of the grounds designated in section 17A.19(10). *Mercy Health Cnt. v. State Health Facilities Council*, 360 N.W.2d 808, 811 (Iowa 1985).

The Court may affirm PAAB's action or remand the case for further proceedings. § 17A.19(10). Only where the Court finds that the substantial rights of the person seeking judicial relief have been prejudiced by the agency action shall the Court reverse, modify, or grant other appropriate relief. *Id.* Nearly all disputes in the field of administrative law are won or lost at the agency level. *Iowa Ill. Gas & Elec. Co. v. Iowa State Commerce Comm'n*, 412 N.W.2d 600, 604 (Iowa 1987).

If the court concludes PAAB has not been clearly vested with the authority to interpret a provision of law, the court may substitute its own interpretation if it finds PAAB's interpretation is erroneous. Iowa Code § 17A.19(10)(c); *Tremel v. Iowa Dep't of Revenue*, 785 N.W.2d 690, 692-93 (Iowa 2010). PAAB does not assert it has been clearly vested with the authority to interpret the Iowa Code section 427A.1. Nonetheless, PAAB contends it has not erroneously interpreted any applicable legal provision.

However, PAAB is statutorily authorized to review decisions of local boards of review relating to property assessments and is, therefore, clearly vested with the authority to apply the law to the facts in contested cases before it. *Id.*; Iowa Code §§ 421.1A(3), 441.37A(1)(b). In this case, PAAB examined the evidence and testimony and properly applied law to fact.

C. THE MANUAL DOES NOT DETERMINE WHETHER PROPERTY IS TAXABLE OR EXEMPT

Sections 427A.1(1)(e) and 427B.17(3) effectively exempts "[m]achinery used in manufacturing establishments" from real property tax. After consideration of the evidence and testimony, PAAB's First Order found the following items qualified for exemption as machinery used in a manufacturing establishment.

Table 1

Item	Value
Scale – Truck	$185,500
Scale – Truck	$107,100
Aeration Floor	$39,100
Fans & Dryers	$21,300
Fans & Dryers	$4,800
Power Sweep	$14,100
Aeration Floor (Bldg 6)	$5,300
Fans & Dryers	$2,800
Power Sweep	$3,200
Bucket Conveyor (Leg)	$67,300
Bucket Conveyor (Leg)	$73,700
Bucket Conveyor (Leg)	$39,200
Bucket Conveyor (Leg)	$66,800
Drag Conveyor	$38,600
Drag Conveyor	$49,000
Drag Conveyor	$11,100
Bucket Conveyor (Leg)	$103,700
Drag Conveyor	$61,200
Drag Conveyor	$46,800
Drag Conveyor	$33,600
Insulated Fat Tank	$24,500
Insulated Fat Tank	$15,500
Total	**$1,014,200**

(App. 1016).

The Board of Review offers no factual argument that these items are not machinery. Rather, its argument is a legal one – these items are included in the IOWA REAL PROPERTY APPRAISAL MANUAL (MANUAL) and therefore are assessable as real property. IOWA DEP'T OF REVENUE, IOWA REAL PROPERTY APPRAISAL MANUAL (2008) *available at*

https://tax.iowa.gov/iowa-real-property-appraisal-manual (last visited August 19, 2019). (Board of Review Appellate Brf. pp. 13-16; PDF pp. 24-27). Neither the MANUAL nor Iowa case law support the Board of Review's position.

The MANUAL is used to *value* property and exemption questions are separate from valuation. *See* Iowa Code § 441.21(1)(h) (noting "the assessor shall determine the *value* of real property in accordance with […] [the] manual") (emphasis added). Notably, the Board of Review does not point to any statement in the MANUAL indicating inclusion of items in the MANUAL is determinative of their taxable status. Rather, it is an assessor's statutory duty to assess property not exempt from taxation and, as the case may require, revoke an exemption and assess property the assessor "believes has been erroneously exempted from taxation." §§ 441.17(2); 441.17(11).

Moreover, in *Wendling Quarries, Inc., v. Property Assessment Appeal Board*, 865 N.W.2d 635 (Iowa Ct. App. 2015), the Iowa Court of Appeals held that a pit-less truck scale, which was included and valued in the MANUAL (p. 4-36), was equipment under Iowa Code section 427A.1(1)(d). The court remanded the case to PAAB to determine if the exception under section 427A.1(3) applied, which would render the scale exempt from

taxation. *Id*. Similarly, the MANUAL includes costs for car wash equipment despite the fact car wash equipment is exempt from taxation under section 427A.1(6). The MANUAL notes the possibility that car wash equipment may not be assessable. MANUAL, p. 6-99, available at https://tax.iowa.gov/sites/files/idr/documents/6PRECOMPUTEDSECTIONB.pdf (last visited August 19, 2019).

Neither case law nor the MANUAL support the Board of Review's argument. The inclusion of an item in the MANUAL does not conclusively determine its taxable status. Rather, it is a question for the factfinder upon consideration of the evidence, testimony, and the law.

III. THE DISTRICT COURT CORRECTLY AFFIRMED PAAB'S RULING THAT CERTAIN ITEMS OF STATELINE'S PROPERTY DID NOT QUALIFY AS MACHINERY AND THAT STATELINE FAILED TO PROVIDE RELIABLE EVIDENCE OF THE ALLEGEDLY EXEMPT MACHINERY'S VALUE

A. ERROR PRESERVATION

This issue was preserved for review on appeal.

B. SCOPE AND STANDARD OF REVIEW

Review of agency action is limited to correction of errors at law. Iowa Code § 441.39. StateLine and the Board of Review bear the burden of

proof in this judicial review action. *Id.*; § 17A.19(8)(a). In order to successfully challenge PAAB's decision, they must demonstrate prejudice to substantial rights arising from agency action that falls within one of the grounds designated in section 17A.19(10). *Mercy Health Cnt. v. State Health Facilities Council*, 360 N.W.2d 808, 811 (Iowa 1985).

The Court may affirm PAAB's action or remand the case for further proceedings. § 17A.19(10). Only where the Court finds that the substantial rights of the person seeking judicial relief have been prejudiced by the agency action shall the Court reverse, modify, or grant other appropriate relief. *Id*. Nearly all disputes in the field of administrative law are won or lost at the agency level. *Iowa Ill. Gas & Elec. Co. v. Iowa State Commerce Comm'n*, 412 N.W.2d 600, 604 (Iowa 1987).

If the court concludes PAAB has not been clearly vested with the authority to interpret a provision of law, the court may substitute its own interpretation if it finds PAAB's interpretation is erroneous. Iowa Code § 17A.19(10)(c); *Tremel v. Iowa Dep't of Revenue*, 785 N.W.2d 690, 692-93 (Iowa 2010). PAAB does not assert it has been clearly vested with the authority to interpret the Iowa Code section 427A.1. Nonetheless, PAAB contends it has not erroneously interpreted any applicable legal provision.

If the agency error is one of fact, the Court must determine whether PAAB's findings of fact are supported by substantial evidence. § 17A.19(10)(f). "Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. Conversely, evidence is not insubstantial merely because it would have supported contrary inferences." *Gaskey v. Iowa Dep't of Transp., Motor Vehicle Div.*, 537 N.W.2d 695, 698 (Iowa 1995);§ 17A.19(10)(f)(1). "Making a determination as to whether evidence 'trumps' other evidence or whether one piece of evidence is 'qualitatively weaker' than another piece of evidence is not an assessment for the [courts] to make when it conducts a substantial evidence review of an agency decision." *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394 (Iowa 2007) (citations omitted); *McHose v. Property Assessment Appeal Bd.*, No. 14-1584, 2015 WL 4488252 *3 (Iowa Ct. App. July 22, 2015). The determining factor is not whether the evidence supports a different finding but whether the evidence supports the finding actually made. *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 536 (Iowa 1996).

Furthermore, because PAAB had the opportunity to view the demeanor and veracity of the witnesses at hearing, the court must give deference to any of PAAB's credibility findings. § 17A.19(10)(f)(3); *Arndt*,

728 N.W.2d at 394-95. The facts found by PAAB are supported by substantial evidence, and PAAB considered all relevant information in the record. The court will find no error under section 17A.19(10)(f).

Under section 17A.19(10)(m), "When the application of law to fact has been clearly vested in the discretion of an agency, a reviewing court may only disturb the agency's application of the law to the facts of the particular case if that application is 'irrational, illogical, or wholly unjustifiable.' " *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012). "The true nature of the inquiry requires a reviewing court to look at those facts that were and were not considered by the agency in applying law to fact and then to determine whether, on the whole, the agency's application of law to fact was irrational, illogical, or wholly unjustified." *Id*. at 266. Because factual determinations are within PAAB's discretion, "so is its application of law to the facts." *Clark v. Vicorp Restaurants, Inc.*, 696 N.W.2d 596, 604 (Iowa 2005) (citing *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004)). Applying this standard, the court is giving " 'appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency.' " *Mycogen Seeds*, 686 N.W.2d at 465 (quoting Iowa Code § 17A.19(11)(c)).

C. GENERAL OVERVIEW OF APPLICABLE EXEMPTION LAW

Sections 427A.1(1)(e) and 427B.17(3) effectively exempt "[m]achinery used in manufacturing establishments" from real property tax. At PAAB, the parties stipulated that StateLine was a manufacturer. Machinery is not defined by section 427A.1(1)(e) other than to state, "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."[2] *Id*. PAAB resolved any doubt in interpretation of section 427A.1(1)(e) in favor of the taxpayer. *Rose Acre Farms, Inc. v. Bd. of Review of Madison Cnty*., 479 N.W.2d 260, 263 (Iowa 1991) (citing *Iowa Dep't of Transp. v. General Elec. Credit Corp*., 448 N.W.2d 335, 341 (Iowa 1989)).

Before PAAB, the parties did not offer any precedential case law, with factual similarities and legal arguments, interpreting the meaning of the phrase "machinery used in manufacturing establishments." In *Griffin Pipe Products Co., Inc. v. Bd. of Review of County of Pottawattamie*, 789 N.W.

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[2] Iowa Code section 428.22 (1973) states, "Machinery deemed real estate. Machinery used in manufacturing establishments shall, for the purpose of taxation, be regarded as real estate."

2d 769 (Iowa 2010), the Iowa Supreme Court was faced with the question of whether common law fixtures could also be machinery under subsection (*e*) of 427A.1(1) and thus exempt from taxation. The Court noted that Rule 701-71.7 "implicitly suggests that subsection (*e*) must be given a broad interpretation to include common law fixtures." *Id*. at 774. It further determined that it "would not supply a limitation that the legislature declined to provide." *Id*. at 775. The Court held that common law fixtures *may* constitute machinery used in a manufacturing establishment. *Id*. at 775-76. StateLine wrongly implies that *Griffin* indicated a broad definition of the term "machinery" should be applied. (StateLine Appellate Brf. p. 41). In fact, *Griffin* only stands for the proposition that a broad interpretation should be applied to the phrase, "machinery used in a manufacturing establishment." In the absence of statutory definition, PAAB turned to other provisions of law and to the methods of statutory interpretation to define the term "machinery."

To define the specific term machinery, PAAB turned to existing definitions. *Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 424-25 (Iowa 2010). To PAAB, StateLine cited to Iowa Administrative Code rule 701-71.1(7)(b)(1) as an applicable definition of the term. Rule

701-71.1(7)(b)(1) relates to the classification of real estate and 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."

PAAB also considered common definitions of the term 'machinery.' The Merriam-Webster dictionary defines 'machinery' as "machines of a particular kind or machines in general." *Machinery Definition*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/machinery (last visited Aug. 19, 2019).[3] *See also Machinery Definition*, DICTIONARY.COM, https://dictionary.reference.com/browse/machinery (last visited Aug. 19, 2019) (describing machinery as "an assemblage of machines or mechanical apparatuses"). A 'machine' is defined as "a piece of equipment with moving parts that does work when it is given power from electricity, gasoline, etc." *Machine Definition*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/machine (last visited Aug. 19, 2019). Black's Law defines 'machine' as "a device or apparatus consisting

[3] The Merriam-Webster website has changed and shows new definitions for machinery. The definition cited by PAAB is available in the same location under "More Definitions."

of fixed or moving parts that work together to perform some function." MACHINE, Black's Law Dictionary (10th ed. 2014).

StateLine now attempts to invoke a definition of "machinery" from Iowa Administrative Code Rule 701-18.58, which deals specifically with sales tax. (StateLine Appellate Brf. p. 42). StateLine did not offer this definition in the PAAB proceeding. (App. 770). To the extent this definition from the sales tax administrative rules is applicable, PAAB contends that the feed mill's overhead bins and the exterior grain bins are not "machinery" based on that definition.

In summation, PAAB broadly defined the phrase 'machinery used in a manufacturing establishment' and relied on the commonly understood definition of the term 'machinery' to determine whether items StateLine claimed should be exempt were, in fact, "machinery used in a manufacturing establishment." The district court correctly affirmed PAAB's order in this regard. (App. 982). It appears StateLine does not take issue with PAAB's interpretation itself, but rather PAAB's application of the law to the facts. (StateLine Appellate Brf. p. 43).

D. PAAB CORRECTLY DETERMINED THAT STATELINE'S OVERHEAD BINS AND EXTERIOR GRAIN BINS WERE NOT EXEMPT MACHINERY.

In an exemption case, PAAB "strictly construe[s] a statute and any doubt about an exemption is resolved in favor of taxation." *Carroll Area Child Care Center, Inc. v. Carroll Cnty. Bd. of Review*, 613 N.W.2d 252, 254 (Iowa 2000); *Wendling Quarries, Inc.*, , 865 N.W.2d 635; *Splash Enterprises, L.C. v. Polk Cnty. Bd. of Review*, No. 10-1887, 2011 WL 3925415 at *3 (Iowa Ct. App. 2011). It was StateLine's burden to prove it is entitled to the benefit of the exemption. § 441.21(3); *Sherwin-Williams Co.*, 789 N.W.2d at 424.

After consideration of the testimony and evidence at the two hearings, PAAB did not believe that StateLine's feed mill's overhead bins, located in Building 1, or the two exterior steel grain bins, identified by the Assessor as Buildings 5 and 6, qualified as machinery. In its First Order, PAAB concluded that the reinforced steel concrete foundations of the feed mill and the exterior grain bins did not meet the definition of machinery. (App. 1016).

In its Order on Remand, PAAB concluded that StateLine had not shown the overhead bins or the exterior grain bins' walls and roof were machinery. (App. 1167). PAAB stated,

> StateLine has not shown the overhead bins (ingredient and loadout) or the large/small exterior grain bin's *walls and roofs* 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. Similarly, the large and small grain bins' primary purpose is to store raw material until it is needed in the manufacturing process.

(Emphasis added). (App. 1167).

When applying the facts to the aforementioned definitions of machinery, it was reasonable for PAAB to conclude that these items – what essentially constitute walls and roofs – are not machinery.

StateLine argues that PAAB's orders are contradictory. (StateLine Appellate Brf. 43-44). However, PAAB's findings and conclusions are not contradictory. PAAB determined that insulated fat tanks would commonly be understood as machinery, whereas the exterior grain bins would not. Insulated fat tanks differ from grain bins because the tanks' contents are

heated so that the contents remain liquid. (App. 1095; Tr. p. 84).[4] Kirchau testified about the function of the fat tanks:

> Choice white grease is placed in this tank and maintained at a temperature for it to be still in liquid form. If it was not heated, it would set up, so the product is in here. (App. 1095; Tr. p. 84).

PAAB found certain property used in the grain bins are machinery because they aerate and dry the bins' contents, such as power sweeps, fans and dryers, and aeration floors. In contrast, the overhead bins and the exterior grain bins' walls and roof are not used to directly regulate the temperature or state (liquid, gas, solid) of their contents.

Whereas the items PAAB found to be exempt as machinery were generally engaged in activities involving moving inputs (conveyors),

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[4] StateLine also attempts to make a comparison between the Building 1 overhead bins and micro-ingredient bins located in the same building. (Stateline Appellate Brf. p. 43-44). StateLine appears to be correct when it states that Emmet County did not assess the micro-ingredient bins. However, StateLine's attempts to interject facts in its brief that are not supported by any citation to the record and, PAAB asserts, are not supported by the record at all. The testimony StateLine cites indicates the existence of the micro-ingredient bins, but not their function. (StateLine Appellate Brf. p. 22, n. 10) (citing App. 1092; Tr. p. 70, ln. 4-19) wherein Kirchau states: "There's also a micro-bin system within the facility, that we have 30 bins and various ingredients in there."). In fact, StateLine offers no citation to any testimony or evidence describing their function or how they are used in the manufacturing process. As a result, StateLine's argument is improper as it relies on evidence outside of the record.

weighing inputs (scales), heating and storing inputs (insulated fat tanks), or drying inputs (aeration floor, fans and dryers, power sweep), the overhead bins and exterior grain bins are only used for storage. Inputs enter and exit the bins by the actions of *other* machines and equipment. The bins do not engage in any activity that results in a modification to their contents. The bins simply hold the material until it is removed for further processing. PAAB's orders are not contradictory because there are factual differences between the insulated fat tanks' and the bins' functions. PAAB reasonably determined the overhead bins and exterior grain bins' walls and roof are not machinery.

PAAB exempted all items it believed qualified for exemption as machinery and, where there was a doubt, resolved in favor of taxation. Because PAAB's conclusion was reasonable based on the evidence, its conclusion should not be disturbed.

E. PAAB REASONABLY CONCLUDED THAT EVEN IF THE OVERHEAD BINS AND EXTERIOR GRAIN BINS WERE MACHINERY, STATELINE DID NOT PROVIDE AN ACCURATE VALUATION OF THEM

Even if StateLine was able to demonstrate that the Building 1 overhead bins' and the exterior grain bins' walls and roofs should be exempt as machinery, it would still need to prove the value of these items in order to

remove the value from the assessment. This evidence was necessary because the assessment did not include a line-item value for the overhead bins' or the exterior grain bins' walls and roofs. Rather, it only included a total value for the entirety of the feed mill and the grain bins.[5] Moreover, StateLine had conceded that portions of Building 1 (the feed mill's foundation, floor, basement, tunnel, and walls) and the exterior grain bins' concrete floor and foundation are taxable real property. Although StateLine provided more detailed valuation of the overhead bins and exterior grain bins on remand, PAAB reasonably found those valuations unreliable.

In the second contested case hearing, StateLine offered valuations of the overhead bins and exterior grain bins prepared by Don R. Vaske and Ted. R. Frandson. (App. 1109-46). Don Vaske testified at the hearing regarding the valuations. (App. 1184-200; Tr. pp. 65-128).

Vaske did not independently value the feed mill or grain bins; rather he allocated the value assigned to those items in the assessment. Pages 2 to

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[5] The total value for the Feed Mill portion of the property was $1,685,900. (App. 1057). The total value for the exterior grains bins was $676,100 for Building 5 and $78,000 for Building 6 (excluding the items PAAB found to be machinery and equipment – aeration floors, fans and dryers, and power sweeps). (App. 1064-67).

6 of PAAB's Order on Remand detail his allocation method. (App. 1162-66). He allocated the values as follows:

Feed Mill (Building 1)	**Allocation Value**
Basement	$215,950
Ground Level	$377,400
Overhead Bins	$1,092,550
Exterior Grain Bins (Walls/Roof)[6]	**Allocation Value**
Building 5 Walls/Roof	$487,250
Building 6 Walls/Roof	$55,675

StateLine's argument was that the basement and ground level of Building 1 (the feed mill) was taxable real estate, while Building 1's overhead bins (ingredient and load-out) were exempt machinery. (App. 1157-58). Similarly, StateLine argued the walls and roofs of the exterior grain bins, identified by the Assessor as Buildings 5 and 6, were also exempt machinery. (App. 1158-59). StateLine contends Vaske's valuation was credible and PAAB erred in concluding otherwise. (StateLine Appellate Brf. pp. 47-49).

After considering all of the testimony, evidence, and arguments, PAAB concluded that Vaske's allocation did not provide an accurate value

[6] PAAB's Order on Remand identified the exterior grain bins as B3 and B4, respectively, because that is how Vaske identified the structures. (App. 1164). As PAAB notes in its Order on Remand, they are also identified in the record as Buildings 5 and 6.

of the property StateLine believes to be exempt. (App. 1168). Regarding the exterior grain bins, PAAB faulted Vaske's failure to account for site work associated with constructing the non-exempt foundations. (App. 1168). 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 roof.

To value the overhead bins, Vaske utilized the MANUAL's indication of a per-cubic-foot cost of the entirety of Building 1's feed mill. Based on StateLine's opinion of which portions of the feed mill were exempt or non-exempt, Vaske then applied the per-cubic-foot cost to each portion's area to arrive at an opinion of value of the alleged exempt and non-exempt portions. (App. 1164). In short, Vaske relied on the per-cubic-foot value of the whole feed mill to value the overhead bins.

PAAB questioned the theoretical basis of Vaske's valuation, which relied on a presumption that each cubic foot of the feed mill contributed equally to its value. Iowa Code § 17A.14(5) (noting an agency may use its "experience, technical competence, and specialized knowledge […] in the evaluation of the evidence."). (App. 1168). The problem with Vaske's methodology comes down to his use of a mass appraisal cost technique to

assign a value to a portion of a building. In valuing the feed mill, the MANUAL utilizes the comparative unit method. The comparative unit method is defined as "[a] method used to derive a cost estimate in terms of dollars per unit of area or volume based on known costs of similar structures that are adjusted for time and physical differences; *usually applied to a total building area*." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 584 (4th ed. 2013) (emphasis added). The International Association of Assessing Officers' text, "Property Assessment Valuation" describes the method as follows:

> The comparative unit method is the easiest, fastest, and most widely used method of cost estimation. Costs are summed and divided by an appropriate unit (square feet of ground area or floor area, or cubic feet) to derive a cost per unit. . . Total cost is estimated by comparing the subject improvement with similar, recently constructed buildings for which contract prices can be obtained.

INT'L ASSN. OF ASSESSING OFFICERS, PROPERTY ASSESSMENT VALUATION 241 (3d ed. 2010).

The per-cubic-foot rate used in the assessment, and on which Vaske relied, is an estimate based on the total cost to build a feed mill comparable to the subject. While the comparative unit method can result in reliable values for a whole structure, a more tailored technique should be used if valuing only a portion of a structure – such as the feed mill's overhead bins.

PAAB provided an example of the flaw of this approach in valuing a portion of a building in its Order on Remand, p. 8. (App. 1168). *See* MANUAL p. 6-15, *available at* https://tax.iowa.gov/sites/files/idr/documents/6PRECOMPUTEDSECTIONA.pdf (last visited Aug. 19, 2019). To summarize, it makes sense for the Assessor and MANUAL to use the comparative unit method for valuing the entirety of the feed mill, but it does not make sense for Vaske to use the same approach when valuing only certain portions thereof. Therefore, Vaske's approach to valuing the overhead bins was unreliable.

Because he was trying to allocate value amongst the feed mill's components, Vaske should have utilized a different technique that focused more directly on the costs associated with those components, such as the quantity survey method or the unit-in-place method. The quantity survey method accounts for the indirect and direct costs of all materials used in construction, which are summed to arrive at the buildings total cost. THE APPRAISAL OF REAL ESTATE at 594. The unit-in-place method takes account the direct and indirect costs of every building component, which are then added together to arrive at the building's value. *Id*. at 590. Each of these methods provides a more reliable indication of the value of individual

portions of a building. They are more likely to result in a reliable indication of value for StateLine's overhead bins.

Even so, StateLine contends Vaske's allocations are consistent with the feed mill's construction costs in Board of Review Exhibit E. (App. 1080-81; StateLine Appellate Brf. p. 49). 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 System" 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.

Because Vaske's allocation could not be relied on, PAAB affirmed the assessments regarding those items. Based on its experience and expertise in the area of property assessment and valuation, the Court should find no error in PAAB's conclusion.

IV. AFTER CONSIDERING THE EVIDENCE AND TESTIMONY, PAAB PROPERLY FOUND THAT CERTAIN ITEMS OF STATELINE'S PROPERTY QUALIFIED AS MACHINERY AND CORRECTLY REMOVED THEIR VALUE FROM THE ASSESSMENT

A. ERROR PRESERVATION

This issue was preserved for review on appeal.

B. SCOPE AND STANDARD OF REVIEW

The Scope and Standard of Review for PART IV is the same as the Scope and Standard of Review for PART III, *supra*.

C. PAAB PROPERLY EXEMPTED CERTAIN ITEMS FROM STATELINE'S ASSESSMENT

Although PAAB did not conclude that StateLine's overhead bins or exterior grain bins qualified for exemption, PAAB's First Order found that substantial evidence supports the conclusion that the items listed in Table 1 below were machinery because they are used to "move, store, and weigh inputs and outputs of StateLine's manufacturing process." (App. 1015-16). It then reduced StateLine's assessment by the combined amount of value attributed to these items on the Assessor's property record card. (App. 1018).

Table 1

Item	Value
Scale – Truck	$185,500
Scale – Truck	$107,100
Aeration Floor	$39,100
Fans & Dryers	$21,300
Fans & Dryers	$4,800
Power Sweep	$14,100
Aeration Floor (Bldg 6)	$5,300
Fans & Dryers	$2,800
Power Sweep	$3,200
Bucket Conveyor (Leg)	$67,300
Bucket Conveyor (Leg)	$73,700
Bucket Conveyor (Leg)	$39,200
Bucket Conveyor (Leg)	$66,800
Drag Conveyor	$38,600
Drag Conveyor	$49,000
Drag Conveyor	$11,100
Bucket Conveyor (Leg)	$103,700
Drag Conveyor	$61,200
Drag Conveyor	$46,800
Drag Conveyor	$33,600
Insulated Fat Tank	$24,500
Insulated Fat Tank	$15,500
Total	**$1,014,200**

(App. 1016).

The primary testimony on which PAAB relied to find these items are machinery was from Cherilyn Kirchau, Feed Department Manager for StateLine. (App. 1009-10). Kirchau testified to the use of these items at the facility on pages 51 to 109 of the October 7, 2015, hearing transcript. (App. 1087-101).

Again, the Board of Review offers no factual argument these items do not meet the definition of machinery. Rather, its argument is that inclusion of these items in the MANUAL renders them assessable. For the reasons described in PART II, the argument is without merit.

D. PAAB PROPERLY EXEMPTED THE VALUE OF THE TABLE 1 ITEMS FROM THE ASSESSMENT BECAUSE THERE WAS RELIABLE EVIDENCE OF THE EXEMPT PROPERTY'S VALUE

The Board of Review also asserts PAAB erred by reducing StateLine's assessment by removing the value, as shown on the Assessor's property record card, of the items PAAB found were exempt machinery. Unlike the previously discussed overhead bins and the two steel exterior grain bins' walls and roof, the Assessor's property record card contained line-item values for the items included in Table 1. PAAB's decision to reduce the assessment by removing those values was consistent with the law.

In *Carlon Co. v. Bd. of Review of City of Clinton*, 572 N.W.2d 146 (Iowa 1997), the Iowa Supreme Court considered the valuation of manufacturing machinery and computers, which were then subject to assessment. The Court concluded that "stronger authority supports the view that machinery and computers should be valued on an item, or per component, basis." *Id.* at 154. After engaging in statutory construction, the

Court found that the valuation of manufacturing machinery and equipment is to be done on an individual item basis. *Id.* Although the parties dispute whether certain items of StateLine's property are machinery, StateLine's property record card indicates a line-item value for the items in Table 1. (App. 1020) (summarizing the disputed items and values assigned to them on the assessment).

The Board of Review cites to *White v. Board of Review of Polk County*, 244 N.W.2d 765 (Iowa 1976) and *Deere Manufacturing Co. v. Zeiner*, 78 N.W.2d 527 (Iowa 1956) for the proposition that a taxpayer asserting the assessment includes exempt property must demonstrate the value of the property independent of the exempt property. (BOR D. Ct. Brf. pp. 17-19; BOR Appellate Brf. pp. 18). Notably, the claims made in *White* and *Deere* were whether the property was assessed for more than authorized by law, (i.e. over assessment), and not an exemption question as StateLine claims here. *White*, 244 N.W.2d at 768; *Deere*, 78 N.W.2d at 529. There may be a theoretical basis for requiring a showing of a property's residual value in an overassessment claim that may not otherwise be necessary when asserting items of property are exempt.

The assessment should ultimately reflect the value for non-exempt property. *See* § 441.17(2) (noting assessor's duty to value all property, except property exempt from taxation). More recent case law indicates a willingness to simply remove the value assigned to items determined to be exempt from assessment. In *Rose Acre Farms*, the Court found cages, a watering system, an egg collection system, a manure removal system, and bulk bins are not taxable real property because they are equipment or machinery that are ordinarily removed under section 427A.1(3). 479 N.W.2d 260. The court ordered the case be remanded to reclassify the disputed items as personal property. *Id*. at 265.

Similarly, in *Grundon Holding Corp. v. Bd. of Review of Polk County*, 237 N.W.2d 755, 759 (Iowa 1976), the Court reduced the assessment by the value assigned to a building that was destroyed by fire. These courts have not required the taxpayer to show the value of non-exempt property, but relied on the value the Assessor assigned to the items.

The Board of Review also relies on *Wendling Quarries, Inc. v. Property Assessment Appeal Board*, 865 N.W.2d 635 (Iowa Ct. App. 2015), but its interpretation of the case is inaccurate. (BOR D. Ct. Brf. pp. 17-18: BOR Appellate Brf. pp. 19-21). Under the statutory section at issue in that

case (Iowa Code § 427A.1(1)(c)), the main issues before PAAB and the court were: 1) whether the taxpayer's truck scale was machinery or equipment and, 2) would the truck scale be ordinarily removed. *Id*. at 639. The taxpayer, Wendling Quarries, presented evidence of the truck scale's value, but that evidence was designed to show that the truck scale had value such that it would be ordinarily removed. In contrast to the Board of Review's argument here, Wendling Quarries' value evidence was not presented for the truth of the matter asserted, but for an ancillary reason.

After the *Wendling Quarries* case was remanded to PAAB, a contested case hearing was held and PAAB found the truck scale was ordinarily removed and exempt. *Wendling Quarries, Inc. v. City of Cedar Rapids Bd. of Review*, Remanded Order, PAAB Docket No. 11-101-1194 (Aug. 12, 2015), *available at* https://paab.iowa.gov/sites/default/files/decisions/2018/wendlingpaabremandedorder.pdf. PAAB deducted the value assigned to the truck scale by the Assessor from Wendling Quarries' assessment.

PAAB found the items in Table 1 met the definitions of machinery and were thereby exempt from property taxation. Furthermore, the assessment of the Table 1 Items was sufficiently particularized to allow for

an easy removal of their value from the assessment. As an example, the MANUAL supplies a specific price for a truck scale based on its size and tonnage. MANUAL 4-36, *available at* https://tax.iowa.gov/sites/files/idr/documents/4ANALYZEDUNITCOSTSECTION.pdf (last visited Aug. 19, 2019). The MANUAL's value for the truck scale was used in setting the assessment for that component.[7]

In using these line-item values derived from the MANUAL and included on the Assessor's property record card, PAAB's action was not only rational and reasonable, but was also consistent with the foregoing law. The Board of Review has failed to show that PAAB's decision was in error.

CONCLUSION

The District Court correctly denied Stateline's Motion to Dismiss. Its assertion that the Court lacks jurisdiction to consider the Board of Review's claims on judicial review is contrary to the Iowa Rules of Civil Procedure and precedential case law.

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[7] The Manual shows that an 80' by 12' foot truck pit truck scale would have a replacement cost new of $93,700, which is that same amount indicated on StateLine's property record card. (App. 1059).

Further, PAAB's orders are consistent with the law and the facts and were correctly affirmed by the District Court. PAAB properly interpreted Iowa law, applied existing definitions of machinery, and reasonably concluded that some portions of StateLine's property should be exempt, but other portions should not. Where possible, PAAB removed the value of the exempt property in accordance with Iowa law. In the case of the overhead bins and the exterior grain bins's walls and roof, however, PAAB reasonably concluded that StateLine's valuations were not reliable. For these reasons, PAAB asks the Court to affirm the District Court and PAAB Orders.

Respectfully submitted,

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WAIVER OF ORAL ARGUMENT

PAAB respectfully requests this case be set for nonoral submission.

CERTIFICATE OF ATTORNEY'S COSTS

I hereby certify that the cost of printing the foregoing Property Assessment Appeal Board Brief was $0.

/s/ Jessica Braunschweig-Norris
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CERTIFICATE OF FILING

I hereby certify that I have filed the attached Property Assessment Appeal Board Brief by electronically filing a copy with the Clerk of the Iowa Supreme Court, on the 8th day of October, 2019.

/s/ Jessica Braunschweig-Norris
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2019, I served the Property Assessment Appeal Board Brief on the following parties to this proceeding by electronically filing the same with the Iowa Judicial Branch District Court EDMS System.

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