

**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**

**RESISTANCE TO EMMET COUNTY BOARD OF REVIEW'S
APPLICATION FOR FURTHER REVIEW OF COURT OF
APPEALS OPINION FILED NOVEMBER 4, 2020**

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ARGUMENT

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Further review of this matter is not warranted and should not be granted. The Court of Appeals' November 4, 2020 Opinion (the "Opinion") was well-reasoned and compliant with Iowa precedent in all regards disputed by Emmet County Board of Review ("ECBR").

Notably, ECBR failed to address and identify a specific ground upon which its Application for Further Review is based. An Application for Further Review is not simply a motion to reconsider alleged legal errs by the Court of Appeals and "will not be granted in normal circumstances." Iowa R. App P. 6.1103(1)(b). Rather, the Supreme Court looks to the four grounds set forth in Iowa Rule of Appellate Procedure 6.1103(1)(b), none of which are stated in or implicated by ECBR's Application for Further Review. For that reason alone, further review should not be granted.

Substantively, in accordance with the Supreme Court's opinion in Griffin Pipe Products Co. v. Board of Review of County of Pottawattamie, 789 N.W.2d 769 (Iowa 2010), the Opinion correctly applied a broad interpretation and construction to the Exemption¹ by holding that StateLine

¹ "Exemption" as used herein 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).

Cooperative's ("SLC") ingredient bins and exterior grain bins are exempt from real property taxation. As discussed below, this holding is further supported by Iowa Department of Revenue regulations and additional Supreme Court decisions.

Second, after criticizing Mr. Vaske's opinion of value of the exemptions for the ingredient bins and exterior grain bins, PAAB went so far as to explain how PAAB would have calculated the exemption values. Then, instead of simply valuing the exemptions itself based upon the ample evidence in the record necessary to do so, PAAB denied SLC's requested remand relief. The Court of Appeals correctly found that PAAB's actions in this regard were arbitrary, capricious and unreasonable and caused SLC substantial prejudice.

ECBR's final argument regarding burden of proof as to valuation of exemptions has been rejected at every single phase of this matter. Iowa law is clear that where a component of an assessed property is found to be exempt, the assessed value of that component assigned by the assessor is also its exempt value. In other words, the assessed value of a component found to be exempt can simply be subtracted from the overall assessment of that property. Logically, an assessor (or defending board of review) should not be allowed to attack its own assessment when arguing the value of an

exempt component. Stated differently, where, as here, a taxpayer has appealed an assessment only on the grounds of exemption, but not valuation, the taxpayer and board of review should be bound by the assessed component values assigned by the assessor.

ECBR's Application for Further Review should be denied.

II. THE COURT OF APPEALS CORRECTLY INTERPRETED AND CONSTRUED THE EXEMPTION IN FINDING THE INGREDIENT BINS AND EXTERIOR GRAIN BINS EXEMPT FROM REAL PROPERTY TAXATION

ECBR's argument on this first issue is premised entirely on Iowa Admin. Code r. 701-71.1(7)(a)(1), which defines "industrial real estate" to include "*land and buildings used for the storage of raw materials or finished products and which are an integral part of the manufacturing establishment.*" (emphasis added). ECBR Application for Further Review, pp. 17-18.

ECBR's argument is out of context, as ECBR failed to address the entirety of Iowa Admin. Code r. 701-71.1(7), which, states, in relevant part, as follows:

71.1(7) Industrial Real Estate.

a. Land and Buildings.

(1) Industrial real estate includes land, buildings, structures, and improvements used primarily as a manufacturing establishment. *** **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.

b. Machinery.

(1) Machinery includes equipment and devices, both automated and nonautomated, which is used in manufacturing as defined in Iowa Code section 428.20. See *Deere Manufacturing Co. v. Beiner*, 247 Iowa 1264, 78 N.W.2d 527 (1956).

The bold language above is the language ECBR emphasized in its Application for Further Review. That language, however, is in the portion of the “industrial real estate” definition dealing with “land and buildings.” At issue here is the second portion of the “industrial real estate” definition dealing with “machinery,” which is the administrative code section cited to and relied upon by the Court of Appeals in the Opinion. Opinion, p. 17. This only makes sense, given that the main issue before the Court of Appeals was the interpretation and construction of the word “machinery” in the “machinery used in manufacturing establishments” exemption.

Applying the definition of “machinery” from the above-quoted Iowa Administrative Code r. 701-71.7(b)(1), the Court of Appeals correctly held that the ingredient bins and exterior grain bins “essentially amount to nonautomated equipment” ... “used directly in manufacturing the products that the establishment is intended to produce and are necessary and integral parts of the manufacturing process.” Opinion, pp. 17, 24-25.

This holding is in accordance with the Supreme Court’s Griffin Pipe decision, which expressly requires that the Exemption be given a broad interpretation. Opinion, pp. 16-17. The holding is further supported by Carlson Company v. Board of Review of City of Clinton, 572 N.W.2d 146 (Iowa 1997), noting that “statutory 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,” (Id. at 154) and further holding 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.

Further support is found in other related Department of Revenue administrative regulations, all of which mandate a broad, liberal interpretation and construction of the Exemption:

- “machinery” includes “any mechanical, electrical or electronic device designed and used to perform some function and to produce a certain effect or result”;²
- “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”;³

² See Iowa Admin. Code r. 701—18.58(1) (Iowa Department of Revenue definition of “industrial machinery and equipment” for sales tax purposes).

- “machinery” includes items/components that perform only simple functions such as “simply [] holding [] materials in an existing state”;⁴
- “machinery” includes “all machinery used in processing (complete with power, foundation and installation)”;⁵ and
- “machinery” includes “tanks or silos (used in processing).”⁶

The Court of Appeals correctly applied a broad, liberal interpretation and construction to the Exemption, on which further review is not warranted or appropriate.

III. THE COURT OF APPEALS CORRECTLY FOUND THAT PAAB ACTED UNREASONABLY, ARBITRARILY AND CAPRICIOUSLY IN DECLINING TO VALUE THE EXEMPTIONS FOR THE INGREDIENT BINS AND EXTERIOR GRAIN BINS

ECBR’s argument as to this second section of its Application for Further Review is equally unavailing and based upon a misinterpretation and mischaracterization of the Opinion. Specifically, ECBR focuses on PAAB’s finding that Mr. Vaske’s valuation testimony was unreliable and claims that the Court of Appeals improperly reversed that finding and applied an

³ Id.

⁴ 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).

⁵ See APP. 1149 (from the Industrial Machinery and Equipment Valuation Guide issued by the Iowa Department of Revenue in 1977); see also APP. 1150 (from the Industrial Machinery and Equipment Valuation Guide issued by the Iowa Department of Revenue in 1984).

⁶ See fn. 5.

incorrect standard of review. The Opinion, however, does not affirm or reverse PAAB's finding as to the reliability of Mr. Vaske's testimony. Instead, the Opinion takes issue with PAAB's refusal to value SLC's requested exemptions for the ingredient bins and exterior grain bins after finding Mr. Vaske's testimony unreliable, despite there being ample evidence in the record to do so. Opinion, p. 26 ("Evidence was presented concerning the total value of the structures and of the claim exemptions. Because we find sufficient evidence in the record to reach values of the claimed exemptions, we conclude the IPAAB and court acted unreasonably, arbitrarily, or capriciously in declining to value the claimed exemptions, which prejudiced the substantial rights of StateLine.").

Stated differently, PAAB criticized Mr. Vaske's opinion of value for the ingredient bins and exterior grain bins, after which PAAB went so far as to explain how PAAB would have calculated the exemption values. Then, instead of simply valuing the exemptions based upon the ample evidence in the record necessary to do so, PAAB denied SLC's requested remand relief. The Court of Appeals found PAAB's refusal to value the exemptions based upon the evidence in the record necessary to do so unreasonable, arbitrary and capricious, not PAAB's determination that Mr. Vaske's opinion of value was unreliable.

As noted by ECBR, 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)). PAAB's refusal to value the exemptions based upon the evidence in the record after explaining how to do so was without regard to the facts of the case and was clearly against reason and evidence. For example, PAAB agreed with Mr. Vaske's method of valuing the external grains bins and only disagreed with Mr. Vaske allocating 25% (instead of 30%) of the cost of construction to the foundation of the exterior grain bins. APP. 0792 ("Regarding the large and small grain bins, Vaske determined that 25% of the cost of construction is attributable to the foundations. *** 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.")). PAAB could have readily decreased the exemption value of the exterior grain bins by 5% (as the Court of Appeals easily accomplished in two short paragraphs – Opinion p. 27). PAAB's refusal to do so was clearly against reason and

done without regard to, and against, the evidence in the record presented by SLC, which prejudiced the substantial rights of SLC. As such, the Court of Appeals correctly reversed PAAB's refusal as arbitrary, capricious and unreasonable. No further review is warranted or appropriate.

IV. WHERE ASSESSED, THE ASSESSED VALUE OF THE PROPERTY IS EQUAL TO THE EXEMPT VALUE OF THE PROPERTY

ECBR's final argument is that SLC cannot rely on ECBR's assessed values of components of the property to value the exemptions associated with those components.

SLC disagrees. PAAB disagrees (it applied this very method to determine the value of exemptions for the 22 items of machinery found to be exempt in its initial Ruling (APP. 1016) and further resisted ECBR's argument in this regard on pp. 44-48 of its Appellate Brief). Iowa law disagrees.

The White v. Bd. of Review of Polk County, 244 N.W.2d 765 (Iowa 1976) and Deere Manufacturing Co. v. Beiner, 78 N.W.2d 527 (Iowa 1956) cases relied upon by ECBR are inapposite, as they are both valuation (i.e., overassessment) cases, not exemption cases. Where, as here, a taxpayer has appealed an assessment only on the grounds of exemption, but not valuation, the taxpayer and board of review should be bound by the assessed

component values assigned by the assessor. In such a case, the assessor (or defending board of review) should certainly not be allowed to dispute their own assessed values.

ECBR's reliance on Wendling Quarries v. Property Assessment Appeal Board, 865 N.W.2d 635 (Iowa App. 2015) is also misplaced. Like the case at bar, Wendling Quarries is an exemption case (involving a truck scale and foundation). Unlike the case at bar, Wendling Quarries involved only whether the truck scale was exempt, not the value of that exemption. In fact, the only testimony about value in Wendling Quarries was provided to show that the truck scale had sufficient value that it would be removed (i.e., not left behind) should the overall property be sold. Id. at 639-41. The Court of Appeals reversed PAAB's decision that the truck scale was not exempt and remanded back to PAAB for further analysis of the exemption and related exceptions. Id. at 642-43. On remand, a contested case hearing was held and PAAB found the truck scale was ordinarily removed and therefore 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/wendlingpaabreman_dedorder.pdf. At that time, as in this case, PAAB correctly deducted the

assessed value of the truck scale assigned by the assessor from Wendling Quarries' overall property tax assessment.

Moreover, Iowa law is clear that machinery must be valued on an item-by-item basis for assessment purposes. 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. Carlson Co., 572 N.W.2d at 154; see also Grundon Holding Corp. v. Bd. of Review of Polk County, 237 N.W.2d 755, 759 (Iowa 1976) (Court reduced the overall assessment of the property by the assessed value assigned to a building that was destroyed by fire).

PAAB, the district court and the Court of Appeals were all correct on this issue. Further review is not warranted or appropriate.

V. ECBR'S APPLICATION FOR FURTHER REVIEW SHOULD BE DENIED

For the reasons set forth herein, the Court of Appeals' Opinion was correct in all regards disputed by ECBR. As such, ECBR's Application for Further Review should be denied. Notwithstanding, should this Court grant ECBR's Application for Further Review, SLC requests the right to provide additional briefing on these and other issues.

Dated this 3rd day of December, 2020.

Respectfully submitted:

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CERTIFICATE OF SERVICE AND FILING

The undersigned certifies that on December 3, 2020, 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
Brant D. Kahler

December 3, 2020
Date