

**IN THE SUPREME COURT OF IOWA
NO. 22-1190
STORY COUNTY CASE NO. CVCV052319**

STORY COUNTY WIND, LLC,
Appellant,
vs.
STORY COUNTY BOARD OF REVIEW,
Appellee.

**APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR STORY COUNTY
THE HONORABLE AMY M. MOORE
DISTRICT COURT JUDGE**

APPELLANT'S FINAL BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Iowa Code section 427B.26 is Ambiguous as to Repowers.

Cases

N.E. Cmty. Ed. Ass'n v. N.E. Cmty. Sch. Dist., 402 N.W.2d 765 (Iowa 1987)

Phillips v. Chic. Cent. & Pac. R.R. Co., 853 N.W.2d 636 (Iowa 2014)

Statutes

Iowa Code § 427B.26

II. Faced with Statutory Ambiguity, the District Court should have Adopted the IDR Guidance as to Repowers.

Cases

Carlson Co. v. Bd. of Review of City of Clinton, 572 N.W.2d 146 (Iowa 1997)

Phillips v. Chic. Cent. & Pac. R.R. Co., 853 N.W.2d 636 (Iowa 2014)

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Iowa Code § 4.6

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court in accordance with Iowa R. App. P. 6.1101(2)(c), (d) because it involves substantial issues of first impression and presents fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court. Specifically, the Iowa Supreme Court has never addressed the impact of a repower on the special valuation assessment schedule for wind energy conversion property set forth in Iowa Code section 427B.26. Additionally, the district court refused to adopt the agency guidance on this topic issued by the Iowa Department of Revenue, the foremost authority on property tax assessment in the State of Iowa, despite statutory ambiguity.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This appeal involves novel issues of statutory construction, including, specifically, the manner in which repowers are treated under the special valuation real property tax assessment schedule for wind energy conversion property set forth in Iowa Code section 427B.26.

II. RELEVANT EVENTS OF THE PRIOR PROCEEDINGS

This appeal relates to 75 taxable parcels in Story County, Iowa, consisting of 100 wind turbines (the “Parcels”) operated by Story County Wind, LLC (“SCW”). (April 26, 2022 Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment, p. 1, ¶ 1, App. 0033 (citing to Affidavit of Tom Flowers, Appendix in Support of Motion for Partial Summary Judgment, p. APPX0003, ¶ 1 App. 0037 – App. 0038); May 24, 2022 Petitioner/Appellant Story County Wind, LLC’s Response to Respondent/Appellee Story County Board of Review’s Amended Statement of Undisputed Material Facts, pp. 2, 4-5, ¶¶ 3, 5-6, App. 0196, App. 0198-0199; June 24, 2022 Order, p. 1, App. 0212).

This appeal stems from the Story County Assessor’s January 1, 2021 assessment of the Parcels for property tax purposes, which SCW timely protested to the Story County Board of Review (“SCBOR”) on April 27,

2021. (May 24, 2022 Petitioner/Appellant Story County Wind, LLC's Response to Respondent/Appellee Story County Board of Review's Amended Statement of Undisputed Material Facts, pp. 10, 12, ¶¶ 14, 17, App. 0204, App. 0206 (citing to April 27, 2021 Story County Wind, LLC Property Tax Petition to Board of Review), pp. RESP'TS APP'X 010-012, App. 0098 – App. 0100; June 24, 2022 Order, p. 2, App. 0213).

After reviewing SCW's protest petitions, the SCBOR chose to make no modifications to the January 1, 2021, assessment for the Parcels. (May 24, 2022 Petitioner/Appellant Story County Wind, LLC's Response to Respondent/Appellee Story County Board of Review's Amended Statement of Undisputed Material Facts, p. 13, ¶ 18, App. 0207).

In response, SCW timely filed its Notice of Appeal with the Story County District Court on June 4, 2021, pursuant to Iowa Code section 441.38(1), asserting under Iowa Code section 441.37 that: (i) the Parcels were assessed for more than the value authorized by the law; (ii) the Parcels are not assessable, are exempt from taxes, or are misclassified; and (iii) there are errors in the assessment. (June 4, 2021 Notice of Appeal, App. 0008; June 24, 2022 Order, p. 2, App. 0213).

III. DISPOSITION OF THE CASE IN DISTRICT COURT

In response to cross-motions for summary judgment, the district court issued its Order on June 24, 2022, granting SCBOR's motion for summary judgment, denying SCW's motion for partial summary judgment, and dismissing SCW's appeal. (June 24, 2022 Order, App. 0212 – App. 0229).

SCW timely filed its Notice of Appeal with this Court on July 15, 2022.

STATEMENT OF THE FACTS

The Parcels constitute “wind energy conversion property” (“WECP”), as that term is defined under Iowa Code Chapter 427B. Iowa Code § 427B.26(4)(b) (“*Wind energy conversion property*” means the entire wind plant including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation.”).

On October 16, 2007, the Story County Board of Supervisors enacted Ordinance No. 179 to allow for the special valuation of WECP for property tax assessment purposes in Story County (see Iowa Code § 427B.26(1)(a)) pursuant to the assessment schedule set forth in Iowa Code section 427B.26(2), which assesses WECP in increasing annual percentage increments of “net acquisition cost.” Iowa Code § 427B.26(2) (Subject WECP “shall be valued by the local assessor for property tax purposes as follows: (a) For the first assessment year, at zero percent of the net acquisition cost; (b) For the second through sixth assessment years, at a percent of the net acquisition cost which rate increases by five percentage points each assessment year; (c) For the seventh and succeeding assessment years, at thirty percent of the net acquisition cost.”). (May 24, 2022 Petitioner/Appellant Story County Wind, LLC’s Response to

Respondent/Appellee Story County Board of Review's Amended Statement of Undisputed Material Facts, pp. 2-3, ¶ 4, App. 0196 – App. 0197 (citing to October 16, 2007 Story County Ordinance No. 179), p. RESP'TS APP'X 008-009, App. 0039 – App. 0040; June 24, 2022 Order, p. 1, App. 0212).

“Net acquisition cost” is defined as “the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.” Iowa Code § 427B.26(4)(a).

The Parcels were placed in service in 2008 and were first assessed for property tax purposes in 2009. (May 24, 2022 Petitioner/Appellant Story County Wind, LLC's Response to Respondent/Appellee Story County Board of Review's Amended Statement of Undisputed Material Facts, pp. 4-6, ¶¶ 5, 8, App. 0198 – App. 0200; June 24, 2022 Order, pp. 1-2, App. 0212 – App. 213).

Since 2015 (i.e., the “seventh and succeeding assessment years”), the Parcels have been assessed at 30% of their net acquisition cost pursuant to Iowa Code section 427B.26(2)(c).

In 2019, the Parcels underwent a repower involving the replacement of one hundred (100) GE 1.5 MW 77 meter blade towers with one hundred (100) GE 1.62 MW 87 and 91 meter blade towers. Major components replaced during the repower included the gearbox, blades, hub, bearing and

main shaft, and gearbox. (April 26, 2022 Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment, p. 1, ¶ 2, App. 0033 (citing April 26, 2022 Appendix in Support of Motion for Partial Summary Judgment (Affidavit of Tom Flowers in Support of Motion for Partial Summary Judgment), p. APPX0003, ¶ 4, App. 0037)). In essence, SCW gutted and overhauled/upgraded all 100 turbines.

In 2019 and 2020, the Iowa Department of Revenue (“IDR”) issued a series of memorandums on the impact of repowers on the special valuation of WECP for assessment purposes under Iowa Code section 427B.26, indicating that where a taxpayer “substantially replaces” WECP through a repower, the new WECP components will be on a separate assessment schedule under Iowa Code section 427B.26(2) starting at zero percent of net acquisition cost, while the original, remaining WECP components will continue on the original assessment schedule. (April 26, 2022 Appendix in Support of Motion for Partial Summary Judgment (March 22, 2019 Iowa Department of Revenue Memorandum to Assessors), pp. APPX0007-APPX0009, App. 0041 – App. 0043; (July 24, 2020 Iowa Department of Revenue Memorandum to Assessors), pp. APPX0010-APPX0012, App. 0044 – App. 0046).

In 2021, the Story County Assessor continued assessing the Parcels at

30% of their net acquisition cost, despite the 2019 repower and Iowa Department of Revenue guidance to the contrary. (April 26, 2022 Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment, p. 1, ¶ 1, App. 0033 (citing April 26, 2022 Appendix in Support of Motion for Partial Summary Judgment (Affidavit of Tom Flowers in Support of Motion for Partial Summary Judgment), p. APPX0003, ¶ 3, App. 0037)).

On April 27, 2021, SCW timely petitioned the SCBOR to review its protest of the assessments levied for the Parcels, requesting an aggregate assessment for the Parcels of \$36,029,039 (as compared to the aggregate assessment levied for the Parcels of \$75,949,900). (May 24, 2022 Petitioner/Appellant Story County Wind, LLC's Response to Respondent/Appellee Story County Board of Review's Amended Statement of Undisputed Material Facts, p. 12, ¶ 17, App. 0206 (citing to April 27, 2021 Story County Wind, LLC Property Tax Petition to Board of Review), pp. RESP'TS APP'X 010-012, App. 0098 – App. 0100). SCW's requested assessment was calculated by subtracting the assessed net acquisition cost of repowered equipment removed from the site during the repower, and assessing the net acquisition cost of the equipment added during the repower at zero percent. Id.

After reviewing SCW's protest petitions, the SCBOR made no

modifications to the January 1, 2021, assessment for the Parcels. (May 24, 2022 Petitioner/Appellant Story County Wind, LLC's Response to Respondent/Appellee Story County Board of Review's Amended Statement of Undisputed Material Facts, p. 13, ¶ 18, App. 0207).

In response, SCW timely filed its Notice of Appeal with the Story County District Court on June 4, 2021, pursuant to Iowa Code section 441.38(1), asserting under Iowa Code section 441.37 that: (i) the Parcels were assessed for more than the value authorized by the law; (ii) the Parcels are not assessable, are exempt from taxes, or are misclassified; and (iii) there are errors in the assessment. (June 4, 2021 Notice of Appeal, App. 0008-0012; June 24, 2022 Order, p. 2, App. 0213).

The district court subsequently dismissed the appeal on June 24, 2022, when it granted SCBOR's motion for summary judgment and denied SCW's motion for partial summary judgment. (June 24, 2022 Order, App. 0212-0229).

ARGUMENT

I. THE DISTRICT COURT ERRED IN GRANTING SCBOR'S MOTION FOR SUMMARY JUDGMENT, DENYING SCW'S MOTION FOR PARTIAL SUMMARY JUDGMENT, AND DISMISSING SCW'S APPEAL.

A. Error Preservation

SCW preserved error on this issue. SCW submitted its partial summary judgment motion and supporting filings on April 26, 2022, and its filings in resistance to SCBOR's motion for summary judgment on May 16 and 24, 2022. (April 26, 2022 Motion for Partial Summary Judgment, App. 0023 – App. 0025; April 26, 2022 Memorandum of Authorities in Support of Motion for Partial Summary Judgment, App. 0026 – App. 0032; April 26, 2022 Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment, App. 0033 – App. 0034; April 26, 2022 Appendix in Support of Motion for Partial Summary Judgment, App. 0035 – App. 0054; May 16, 2022 Petitioner/Appellant's Memorandum of Authorities in Resistance to Respondent/Appellee's Motion for Summary Judgment, App. 0131 – App. 0141; May 16, 2022 Petitioner/Appellant's Motion to Strike Respondent/Appellee's Statement of Undisputed Material Facts in Support of Summary Judgment and Alternative Request for Extension of Time to Respond, App. 0142 – App. 0144; May 24, 2022 Petitioner/Appellant Story County Wind, LLC's Response to Respondent/Appellee Story County Board

of Review’s Amended Statement of Undisputed Material Facts, App. 0195 – App. 0209). Those filings contained all arguments asserted in this Brief. The district court addressed and rejected all such arguments in its June 24, 2022 Order. (June 24, 2022 Order, App. 0212 – App. 0229); See e.g., Garrison v. New Fashion Pork LLP, 977 N.W.2d 67, 79-80 (Iowa 2022) (“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”) (quoting Meier v. Senecaut, 641 N.W.2d 532, 537 (Iowa 2002)).

B. Standard of Review

District courts hear assessment protest appeals from the local board of review “in equity and determine anew all questions arising before the board of review that relate to the liability of the property to assessment or the amount of the assessment.” Iowa Code § 441.38(3). Tax protests are reviewed by Iowa appellate courts de novo. Compiano v. Board of Review of Polk County, 711 N.W.2d 392, 395 (Iowa 2009).

Notwithstanding, “[a]lthough ordinarily appeals from decisions of the local board of review are triable in equity, Iowa Code § 441.39, and [the Iowa Supreme Court’s] review is de novo, Iowa R. App. P. 6.907, because the district court adjudicated the issue on appeal by summary judgment, [the Iowa Supreme Court’s] review is for corrections of errors at law.” Dolphin

Residential Cooperative, Inc. v. Iowa City Bd. of Review, 863 N.W.2d 644, 647 (Iowa 2015) (citing Am. Legion, Hanford Post 5 v. Cedar Rapids Bd. of Review, 646 N.W.2d 433, 437 (Iowa 2002)).

C. Argument

1. Statutory Framework for “Special Valuation of Wind Energy Conversion Property” under Iowa Code Section 427B.26.

Iowa Code section 427B.26 provides for a “special valuation of wind energy conversion property.” Importantly, as held by the district court, “[a]s section 427B.26 is a tax valuation statute, the court agrees with SCW that it must interpret the statute liberally in its favor.” (June 24, 2022 Opinion, p. 10, App. 0221 (citing Carlton Co. v. Bd. of Review of City of Clinton, 572 N.W.2d 146, 154 (Iowa 1997) (holding that special valuation statutes are to be “liberally construed in favor of the taxpayer and strictly against the taxing body.”))).

As noted above, the Parcels are WECP, defined as “the entire wind plant including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation.” Iowa Code § 427B.26(4)(b).

Under Iowa Code section 427B.26(1), a county board of supervisors is given the option to opt into the special valuation assessment schedule for

WECP set forth under section (2) by passing an ordinance following certain notice and hearing requirements. Iowa Code § 427B.26(1)(a) (“A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property as provided in subsection 2. The ordinance may be enacted not less than thirty days after a public hearing on the ordinance is held. Notice of the hearing shall be published in accordance with section 331.305 in the case of a county, or section 362.3 in the case of a city. The ordinance shall only apply to property first assessed on or after the effective date of the ordinance.”).

Importantly, if the county board of supervisors later determines that the ordinance ceases to be of benefit to the county, the county can repeal the ordinance. Iowa Code § 427B.26(1)(b) (“If in the opinion of the city council or the county board of supervisors continuation of the special valuation provided under this section ceases to be of benefit to the city or county, the city council or the county board of supervisors may repeal the ordinance authorized by this subsection. Property specially valued under this section prior to repeal of the ordinance shall continue to be valued under this section until the end of the nineteenth assessment year following the assessment year in which the property was first assessed.”).

While the ordinance is in effect, subject WECP is specially valued for property tax assessment purposes according to the following schedule:

- a. For the first assessment year, at zero percent of the net acquisition cost.
- b. For the second through sixth assessment years, at a percent of the net acquisition cost which rate increases by five percentage points each assessment year.
- c. For the seventh and succeeding assessment years, at thirty percent of the net acquisition cost.

Iowa Code § 427B.26(2).

Accordingly, whereas real property is generally valued for assessment purposes at its “market value,”¹ WECP is specially valued for assessment purposes in terms of its “net acquisition cost,” defined as “the acquired cost of the property including all foundations and installation cost less any excess cost adjustments.” Iowa Code § 427B.26(4)(a). As noted above, in year one, WECP is taxed at 0% of its net acquisition cost, in year two at 5%, in year three at 10%, in year four at 15%, in year five at 20%, in year six at 25%, and in year seven and succeeding years at 30%. Iowa Code § 427B.26(2).

¹ See Iowa Code § 441.21(b)(1) (“The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. ‘Market value’ is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property.”).

2. Iowa Department of Revenue Guidance.

Iowa Code section 427B.26 does not expressly address WECP repowers. As a result, as noted above, the IDR issued a series of agency guidance on the subject in 2019 and 2020.²

The IDR, as administered by the Director of Revenue (the “Director”), governs the assessment of real property for taxation purposes in Iowa. Broadly, the Director shall “have and exercise general supervision over the administration of the assessment and tax laws of the state, over boards of supervisors and all other officers or boards in the performance of their official duties in all matters relating to assessments and taxation, to the end that all assessments of property and taxes levied on the property be made relatively just and uniform in substantial compliance with the law.” Iowa Code § 421.17(1). Also, the Director shall “supervise the activity of all assessors and boards of review in the state of Iowa; to cooperate with them in bringing about a uniform and legal assessment of property as prescribed by law.” Iowa Code § 421.17(2). This includes the Director’s duty “[t]o

² The district court emphasizes in its Order that the IDR’s 2019 and 2020 guidance as to repowers differed from its prior guidance on the subject. Agencies routinely evolve and update policies over time. That the IDR’s guidance as to repowers was updated in 2019 and 2020 is entirely irrelevant to the issues in this appeal. After all, it is not as if SCW is attempting to rely on old IDR guidance and asking this Court to ignore newer, updated guidance.

confer with, advise, and direct boards of supervisors, boards of review, and others obligated by law to make levies and assessments, as to their duties under the laws.” Iowa Code § 421.17(4). The IDR and its Director are the foremost authorities in the State of Iowa as to property tax assessment and their guidance on assessment matters should be adhered to, including, specifically, as to the construction of Iowa Code section 427B.26 in relation to WECP repowers.

Iowa Code section 427B.26 specially values WECP for assessment purposes in terms of “net acquisition cost” (as opposed to “market value” – as discussed above). Logically then, when WECP components are removed and replaced with new components during a repower, the net acquisition cost of the removed components should be removed from the assessment and the net acquisition cost of the replacement components added.

In 2019 the IDR instructed assessors to act in that same logical manner; namely:

If a taxpayer substantially replaces an existing tower or other improvements with a new tower or improvement, the new property will be subject to its own assessment schedule starting at zero percent. Net acquisition costs will consist of the acquired costs of the new property. Any original property remaining in use as part of the new tower or improvement schedule, such as foundations and support buildings, will continue on the original assessment schedule. The assessor will have to remove the costs attributable to the components being

replaced from the original assessment schedule or otherwise the taxpayer will be taxed on assets that no longer exist.

(April 26, 2022 Appendix in Support of Motion for Partial Summary Judgment (March 22, 2019 Iowa Department of Revenue Memorandum to Assessors), p. APPX0009, App. 0043).

In the 2020, the IDR clarified further, noting:

To the extent “repowering” or replacement of components of a wind energy conversion property results in a new tower or a taxpayer substantially replaces an existing tower or other improvements with a new tower or improvement, the new property will be subject to its own assessment schedule starting at zero percent.

(April 26, 2022 Appendix in Support of Motion for Partial Summary Judgment (July 24, 2020 Iowa Department of Revenue Memorandum to Assessors), p. APPX0011, App. 0045).

Simply put, where a repower substantially replaces the WECP, the net acquisition cost of the replaced original components should be removed from the assessment, the net acquisition cost of the replacement components should be added to the assessment on a new assessment schedule starting at zero percent, and all remaining original components should continue to be assessed at 30% of their net acquisition cost.

3. The District Court Erred in Its Interpretation and Construction of Iowa Code section 427B.26.

a. Iowa Code section 427B.26 is ambiguous as to repowers.

Iowa Code section 427B.26 does not expressly address repowers, which the district court held is evidence of legislative intent that repowers do not impact the special valuation assessment schedule provided thereunder. In other words, the statute is unambiguous in its treatment, or lack thereof, of repowers. The district court's holding in this regard is contrary to law and constitutes reversible error.

The entire special valuation scheme for WECP set forth in Iowa Code section 427B.26 is based upon “net acquisition cost,” which the legislature expressly defined as “the acquired cost of the property including all foundations and installation cost less any excess cost adjustments.” Iowa Code § 427B.26(4)(a). Contrary to the district court's reasoning, the legislature did not limit “net acquisition cost” to the original or initial acquired cost of the property. As such, the legislature's own definition of “net acquisition cost” inherently encompasses repowers and their “acquired cost.” Stated differently, a repower changes the net acquisition cost of WECP. Some original components are removed and replaced. Other original components remain after the repower. Either way, the overall net

acquisition cost of the WECP is different after the repower than before, and Iowa Code section 427B.26 requires that WECP be assessed in terms of its net acquisition cost.

Accordingly, the statutory silence as to repowers, when coupled with the definition of “net acquisition cost,” renders Iowa Code section 427B.26 ambiguous.³

b. Faced with statutory ambiguity, the district court should have adopted the IDR guidance as to repowers.

After erroneously determining Iowa Code section 427B.26 is unambiguous, the district court further erred by refusing to adopt the IDR’s “substantial replacement” standard as to repowers.

On the one hand, the district court asserts that:

[T]he practical application of SCW’s statutory interpretation results in an overly complex taxation schedule. *** Under its statutory definition, WECP includes such items as “electrical equipment” and “power lines.” Adopting SCW’s statutory interpretation would result in a multitude of tax valuation schemes for individual wind plants, as a new schedule would potentially be created every time components, including “electrical equipment” and “power lines,” were replaced.

(June 24, 2022 Opinion, p. 9, App. 0220).

³ Silence on a particular issue constitutes statutory ambiguity. See, e.g., N.E. Cmty. Ed. Ass’n v. N.E. Cmty. Sch. Dist., 402 N.W.2d 765, 768-69 (Iowa 1987); see also Phillips v. Chic. Cent. & Pac. R.R. Co., 853 N.W.2d 636, 647 (Iowa 2014).

On the other hand, in that same paragraph, the district court states:

Even if the court were to agree with SCW that the net acquisition cost includes newly acquired components, there is no language in the statute whatsoever limiting addition of the costs of those components to net acquisition cost only when there has been a substantial replacement...

Id.

This is circular reasoning. The district court purportedly cannot interpret Iowa Code section 427B.26 as inherently encompassing repowers because that would create an overly complex taxation schedule,⁴ which the district court acknowledges would be minimized by a substantial replacement standard, which the district court then asserts can't be adopted because it is not supported by the unambiguous language of Iowa Code section 427B.26.⁵

⁴ This purported complexity is nothing more than the district court's unfounded assumption. In fact, to the contrary, other counties in Iowa have adopted the taxation scheduled SCW proposes in this matter without complication.

⁵ The district court similarly erred in holding that "adopting SCW's interpretation would run contrary to the purpose of section 427B.26 and legislative intent." (June 24, 2022 Opinion, p. 10, App. 0221). After acknowledging that "section 427B.26 reduces tax burdens for owners of WECP," the district court holds that the stated purpose of the statute is to benefit "the local taxing authority." Id. This is clearly not the case. In Carlton, the Iowa Supreme Court held that special valuation statutes "are liberally construed in favor of the taxpayer" and courts are required to "provide a reasonable or liberal construction that will best effect the statute's purpose rather than one that will defeat it." 572 N.W.2d at 154. The district court correctly acknowledged that the purpose of the statute was "reducing

Instead, when faced with statutory ambiguity, the district court was required to consider outside factors to determine legislative intent, including “administrative construction of the statute” (such as that provided by the IDR here). Iowa Code § 4.6 (“If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters: (1) the object sought to be attained; (2) the circumstances under which the statute was enacted; (3) the legislative history; (4) the common law or former statutory provisions, including laws upon the same or similar subjects; (5) the consequences of a particular construction; (6) *the administrative construction of the statute*; and (7) the preamble or statement of policy.”) (emphasis added)).

Even after recognizing the IDR statutorily governs Iowa property tax assessment, the district court doubles back to its holding that Iowa Code section 427B.26 is unambiguous, and further holds that the IDR’s guidance as to repowers “ignore the plain language of the statute” and are “unreasonable and unjustifiable.” Order, p. 14.

Again here, the district court’s reasoning continues to be hamstrung by its initial erroneous conclusion that Iowa Code section 427B.26 is

tax burdens for owners of WECP” (presumably to stimulate wind energy growth in Iowa). That purpose does not change or become a dual purpose simply because the legislature allowed local taxing authorities to opt out of the special valuation scheme under certain circumstances.

unambiguous. Had the district court correctly found that Iowa Code section 427B.26 is ambiguous as to repowers (especially in light of the vague definition of “net acquisition cost”), the district court would easily have (and should have) adopted the IDR’s guidance and substantial replacement standard. After all, the district court recognized that, where an agency has interpreted a statute, “[i]f the agency’s reading fills a gap or defines a term in a reasonable way in light of the Legislature’s design, we give that reading controlling weight.” (June 24, 2022 Opinion, p. 13, App. 0224 (quoting Phillips v. Chicago Cent. & Pacific R. Co., 853 N.W.2d 636, 647 (Iowa 2014))). The IDR’s 2019 and 2020 memorandums do just that – they fill the gap in the vague definition of “net acquisition cost” by providing a legal standard and mechanism for addressing the change in “net acquisition cost” imposed by a repower.

In the end, Iowa Code section 427B.26 is ambiguous as to repowers and the district court erred by failing to adopt the “substantial replacement” standard and other guidance on this matter from the IDR, the foremost authority on property tax assessment in the State of Iowa.

CONCLUSION

The district court erred in dismissing SCW's appeal of the 2021 tax assessment for the Parcels. The special valuation assessment schedule contained in Iowa Code section 427B.26(2), which must be liberally construed in favor of the taxpayer (Carlton, 572 N.W.2d at 154), is based entirely on the net acquisition cost of the subject WECP, which invariably changes after the WECP undergoes a repower. Because Iowa Code section 427B.26 does not address the impact of repowers on the special valuation assessment schedule, it is ambiguous. The district court, when faced with said ambiguity, was statutorily required to look at outside factors, including agency guidance; here, the 2019 and 2020 IDR Memorandums adopting the substantial replacement standard.

SCW respectfully prays that this Court overturn and reverse the district court's June 24, 2022 Order and remand for further proceedings. In doing so, SCW further respectfully prays this Court adopt the IDR's substantial replacement standard and order that the Parcel's 2021 assessment be calculated by: (i) subtracting the net acquisition cost of all WECP components replaced during the 2019 repower; (ii) adding the net acquisition cost of all new WECP components added during the 2019 repower on a separate assessment schedule starting at zero percent in 2021

(pursuant to Iowa Code section 427B.26(2)(a)); and (iii) continuing to assess all remaining, original WECP components on the existing assessment schedule (here, 30% of net acquisition cost under Iowa Code section 427B.26(2)(c)).

REQUEST FOR ORAL SUBMISSION

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

Dated this 20th day of December, 2022.

Respectfully submitted:

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CERTIFICATE OF COST

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

Dated this 20th day of December, 2022.

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CERTIFICATE OF SERVICE AND FILING

The undersigned certifies that on December 20, 2022, 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 20, 2022
Date