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 REPLY BRIEF

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ARGUMENT

I. SCBOR Misinterprets Iowa Code section 427B.26, Further Highlighting Statutory Ambiguity.

SCBOR's statutory interpretation argument misinterprets Iowa Code section 427B.26. Namely, SCBOR argues that the statutory definition of "net acquisition cost" ("the acquired cost of the property including all foundations and installation cost less any excess cost adjustment") only pertains to the cost incurred when the property was first acquired and placed in service. However, that definition does not say "first acquired" or "initially acquired" or anything similar. It simply says "acquired."[1] Along those lines, the "net acquisition cost" of the repowered Parcels at issue here will include the cost of the replaced components and the cost of the original components not replaced in the repower.

Understanding as much, SCBOR is then forced to turn to other provisions in Iowa Code section 427B.26 to support its argument that the statute is unambiguous and should be interpreted as written.

For example, SCBOR argues the phrase "first assessed" in Iowa Code section 427B.26(2) ("wind energy conversion property which is first

[1] Nor does it matter that the word "acquired" is used in the past tense. A taxpayer can only be assessed and taxed on property after it is acquired. When a repower occurs, the property replaced in the repower is also acquired prior to it being assessed and taxed. Accordingly, the use of past tense does not mean "first acquired," "initially acquired," etc.

assessed for property taxation on or after January 1, 1994…") requires the word "acquired" in the definition of "net acquisition cost" to somehow mean "first acquired." (SCBOR Proof Br., pp. 28-34). Instead, Iowa Code section 427B.26 was enacted by the Iowa legislature in 1993 and took effect January 1, 1994. The language in 427B.26(2) "wind energy conversion property which is first assessed for property taxation on or after January 1, 1994" simply notes that the statute is prospective, not retroactive, in its application.

SCBOR asserts the same argument with regard to the legislature's use of the phrase "first assessed" in Iowa Code section 427B.26(3). That argument, too, misses the mark. Iowa Code section 427B.26(3) pertains to the taxpayer's ability to opt into special valuation treatment for WECP under Iowa Code section 427B.26, as opposed to the former valuation and assessment provisions contained in Iowa Code chapters 428 and 441, and requires the taxpayer do so prior to the WECP being assessed for the first time. See Iowa Code § 427B.26(3) ("The taxpayer shall file with the local assessor by February 1 of the assessment year in which the wind energy conversion property is first assessed for property tax purposes, a declaration of intent to have the property assessed at the value determined under this section in lieu of the valuation and assessment provisions in section 441.21, subsection 8, paragraphs 'b', 'c', and 'd', and sections 428.24 to 428.29.").

Certainly, requiring a taxpayer to choose its statutory assessment framework prior to the WECP's first assessment has nothing to do with the "net acquisition cost" of the WECP (or the timing of the same).

In summary, the phrase "first assessed" in subsections (2) and (3) of Iowa Code section 427B.26 has no relation to the definition of "net acquisition cost," thus undercutting SCBOR's entire argument that the statute and its definitions are unambiguous and must be interpreted and construed as written by the legislature. As SCBOR points out, the legislature acted as its own lexicographer by including definitions for "net acquisition cost" and "wind energy conversion property." In that vein, had the legislature intended for "net acquisition cost" to pertain only to the initial cost to construct the WECP, it would have defined "net acquisition cost" accordingly. Moreover, the fact that the legislature included statutory definitions for those terms does not mean that those terms cannot be or are not ambiguous; it merely means that the court must interpret those terms using their given definitions (as opposed to common law or dictionary definitions). See Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417, 425 (Iowa 2010) ("It is a well-settled principle of statutory interpretation that when the legislature has defined words in a statute – that is, when the legislature has opted to acts as its own lexicographer – those

definitions bind us. As a corollary to this principle, when a statute defines a term, the common law and dictionary definitions which may not coincide with the legislative definition must yield to the language of the legislature.") (internal quotations and citations omitted).

Truly, the failure of SCBOR's statutory interpretation argument highlights the ambiguity in Iowa Code section 427B.26; namely, that the word "acquired" in the "net acquisition cost" definition can be reasonably argued to apply to the cost of WECP as initially constructed, and as repaired and replaced through subsequent repowers. (SCBOR Proof Br., pp. 22-23 ("A statute is ambiguous 'if reasonable minds can differ or be uncertain as to the meaning of the statute' based on the context of the statute.")). A repower undisputedly changes "the acquired cost of the property," on which WECP is assessed under the special valuation assessment schedule in Iowa Code section 427B.26(2). Some original components are removed and replaced. Other original components remain after the repower. Both change the overall "acquired cost of the property."

II. This Court Must Resolve the Statutory Ambiguity and Should Consider the IDR Memorandums in Doing So.

SCBOR spends the second half of its brief arguing that the Iowa Department of Revenue ("IDR") does not have authority to interpret Iowa Code section 427B.26 (pp. 41-45) and the 2019 and 2020 IDR

Memorandums are not legally binding (as they constitute unlawfully adopted administrative rules) (pp. 45-50).

These arguments miss the mark entirely. When faced with statutory ambiguity, district courts are to consider a number of factors, including "the administrative construction of the statute." Iowa Code § 4.6(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] (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).

Importantly, case law interpreting Iowa Code section 4.6 does not require the "administrative construction of the statute" to come in the form

[2] As held by the district court and conceded by SCBOR, "[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 Carlon 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," 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.")). The district court correctly acknowledged that the purpose of the statute was "reducing tax burdens for owners of WECP" (presumably to stimulate wind energy growth in Iowa).

of an agency rule, nor to be expressly authorized by the legislature.[3] See e.g., City of Waterloo v. Black Hawk Mut. Ins. Ass'n., 608 N.W.2d 442, 445 (Iowa 2000) (citing to Iowa Code § 4.6(6) and relying on agency construction of a statute contained in a letter from the insurance division of the Iowa Department of Commerce); Hennessey v. Cedar Rapids Community School Dist., 375 N.W.2d 270, 273 (Iowa 1985) (relying on testimony from the deputy auditor in charge of local government audits in a district court declaratory judgment and mandamus action between a county treasurer and four county school districts as to the interpretation and construction of Iowa Code section 298.13).

SCW does not argue that the 2019 or 2020 IDR Memorandums are binding agency rules. However, the IDR governs the assessment of real property for taxation purposes in Iowa, which includes the duty to "supervise the activity of all assessors and boards of review in the state of

[3] The Iowa Dental Ass'n v. Iowa Ins. Div., 831 N.W.2d 138 (Iowa 2013) and Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417 (Iowa 2010) opinions cited by SCBOR on this issue are distinguishable. Both of those opinions involve judicial review of agency action under Iowa Code 17A.19. In those matters, the petitioner was challenging adverse agency action that involved and/or was based upon that agency's interpretation of disputed statutory language, which necessarily requires a determination of whether or not the legislature vested the agency with interpretative authority. Here, no party is challenging any agency action by the IDR; rather, SCW recommends the Court look to the IDR for guidance given its authority over and expertise in property tax assessment in Iowa.

Iowa; to cooperate with them in bringing about a uniform and legal assessment of property as prescribed by law" (Iowa Code § 421.17(2)) and "[t]o 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)). Simply put, the IDR is in charge of property tax assessment in this State and is the foremost expert and authority on the same. As a result, SCW urged the district court (and urges this Court) to rectify the statutory ambiguity (i.e., the treatment of repowers in terms of the definition of "net acquisition cost") by considering the IDR's method for doing so in the 2019 and 2020 Memorandums (i.e., the adoption of the substantial replacement standard and framework). After all, both the district court and SCBOR complain that interpreting Iowa Code section 427B.26 to encompass subsequent WECP repairs on a cost basis is piecemeal and messy. The IDR's substantial replacement standard nullifies those complaints by proving a workable legal standard and framework, as shown by the numerous other counties in Iowa who have utilized and adopted it in response to WECP repowers.

CONCLUSION

Iowa Code section 427B.26 is ambiguous. Specifically, the word "acquired" in the definition of "net acquisition cost" necessarily encompasses repowers. Given the authority and expertise of the IDR, the substantial replacement standard and framework in the 2019 and 2020 Memorandums should be considered to rectify that ambiguity.

Notwithstanding, even if this Court does not adopt the IDR's substantial replacement framework, the district court erred in dismissing SCW's property tax appeal and this matter should be remanded and the district court instructed to take evidence and make a decision as to the impact of the 2019 repower on the 2021 assessment in terms of the Parcels' overall net acquisition cost and related assessment under Iowa Code section 427B.26(2).

CERTIFICATE OF COST

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

Dated this 20th day of December, 2022.

Respectfully submitted:

/s/ *Brant D. Kahler*

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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 December 20, 2022
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