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IN THE SUPREME COURT OF IOWA

NO. 22-1190

STORY COUNTY WIND, LLC,
Appellant,

vs.

STORY COUNTY BOARD OF REVIEW,
Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR STORY COUNTY
THE HONORABLE AMY M. MOORE, DISTRICT COURT JUDGE

APPELLEE'S FINAL BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Story County Wind, LLC ("SCW"), incorrectly asserts that Iowa Code section 427B.26 is statutorily ambiguous because it does not address "repowering" wind energy conversion property ("WECP"); the law is unambiguous and does not require a county to restart the special valuation schedule in whole, or in-part, and surely not in such a fragmented, piecemeal fashion.

Statutes:

Iowa Code § 427B.26.

Ordinances & Regulations:

Story County, Iowa, Ordinance No. 179 (codified as STORY COUNTY, IOWA, CODE OF ORDINANCES ch. 9 (2018)).

Court Cases:

Auen v. Alcoholic Bevs. Div., Iowa Dep't of Com, 679 N.W.2d 586 (Iowa 2004).

Bank of Am., N.A. v. Schulte, 843 N.W.2d 876 (Iowa 2014).

Beverage v. Alcoa, Inc., 975 N.W.2d 670 (Iowa 2022).

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Treatises & Other Authorities:

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (West 2012).

ROUTING STATEMENT

The Iowa Supreme Court should retain this case because it involves substantial issues of first impression related to the interpretation of Iowa Code section 427B.26, as well as the proper interpretation of the special tax valuation provisions related to "wind energy conversion property." Iowa R. App. P. 6.1101(2)(*c*) (2022). There is no published appellate decision specifically interpreting those provisions.

This matter should also be retained by the supreme court because it presents a fundamental, urgent issue of broad public importance that, if left unsettled without an ultimate determination of the supreme court, could detrimentally impact the counties and municipalities across all of Iowa. *Id.* at r. 6.1101(2)(*d*).

STATEMENT OF THE CASE

Nature of the Case. Appellant Story County Wind, LLC ("SCW") appeals following the denial of its Motion for Partial Summary Judgment and the district court's simultaneous grant of the appellee's – the Story County Board of Review's ("the Board['s]")[1] – cross-Motion for Summary Judgment, which resulted in the dismissal of SCW's property tax appeal.

The Board accepts SCW's statement of Relevant Events of the Prior Proceedings and statements on the Disposition of the Case in District Court as adequate and essentially correct. Iowa R. App. P. 6.903(3) (2022).[2]

[1] The Story County Board of Review is referred to as "the Board" for clarity and ease of reading in this brief. Note: Story County Wind, LLC ("SCW"), refers to the Board as "SCBOR" in its brief. *See, e.g.,* SCW's Br. at 7. Despite the different monikers, both terms reference the same entity.

[2] All citations to the Iowa Rules of Court and the Iowa Code are to the current version unless otherwise stated.

STATEMENT OF THE FACTS

For the most part, the Board has no issue with SCW's Statement of the Facts provided in its brief. Iowa R. App. P. 6.903(3). That is to say, it accepts SCW's Statement of the Facts as adequate and essentially correct. *See id.* But the Board disagrees that the "repowering" activities relevant to this action were like "gutt[ing]" all 100 wind turbines. *See* SCW's Br. at 12. Instead, the more apt description of the repowering activities untaken by SCW may be found in the district court's Order describing the same:

> In 2019, SCW undertook a partial "repowering" project on the subject property, which it classified as "major modifications of components" of its existing facility, including 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." The repowering also included replacement of gearboxes, blades, pitch systems, bearings and main shafts, and oil coolers. The "Existing Plant (2009 COD)" had a "Plant Capacity" of 150 megawatts. The "Repowered Plant (2020 COD)" has a "Plant Capacity" of 150/162 megawatts. The project did not include any additional wind turbines nor any "changes to the transmission line, access roads, tower foundations, or towers" themselves.

App. at 0213 (citations omitted); *see* App. at 0189 - 0191; *see also* App. at 0200 - 0203.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT IN THE BOARD'S FAVOR, CORRECTLY DENIED SCW'S PARTIAL SUMMARY JUDGMENT MOTION, AND CORRECTLY DISMISSED SCW'S PROPERTY TAX ASSESSMENT APPEAL.

Error Preservation. Both parties argued and briefed this issue before the district court. App. at 0214. Likewise, the district court also granted summary judgment in the Board's favor on this issue. App. at 0224-0228; *see Jones v. Glenwood Golf Corp.*, 956 N.W.2d 138, 142 (Iowa 2021). As both parties raised this issue before the district court, that court ruled on it, and because the parties raise the issue again on appeal now, this matter was preserved for appellate review. *State v. Gross*, 935 N.W.2d 695, 698 (Iowa 2019) (citing *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002)).

Standard of Review. The Board agrees that the applicable standard of review here is for correction of errors at law. *Dolphin Residential Coop., 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)).[3] Although property tax appeals are usually be reviewed de novo, this case is reviewed for correction of errors at law because it was

[3] *See* SCW's Br. at 16-17.

disposed of on summary judgment. *See* Iowa Code § 441.38(3); Iowa R. App. P. 6.907; *Kucera v. Baldazo*, 745 N.W.2d 481, 483 (Iowa 2008) (quoting *Keokuk Junction Ry. v. IES Indus.*, 618 N.W.2d 352, 355 (Iowa 2000)). The applicable standard of review to this case is the same for all appeals that either follow summary judgment or challenge a lower court's interpretation of a statute. *In re A.M.*, 856 N.W.2d 365, 370 (Iowa 2014) (citing *Ashenfelter v. Mulligan*, 792 N.W.2d 665, 668-69 (Iowa 2010); *State v. Anderson*, 636 N.W.2d 26, 30 (Iowa 2001)); *see Serv. Employees Int'l Union, Local 199 v. Iowa Bd. of Regents*, 928 N.W.2d 69, 74 (Iowa 2019) (citations omitted). The parties also agree this case presents a purely legal issue for determination and that the only material dispute on appeal relates to how Iowa Code section 427B.26 functions as applied when assessing WECP.

In sum, because this appeal challenges the district court's interpretation of a statute and flows from a case disposed of by the district court after granting summary judgment in the Board's favor, it is reviewed for correction of errors at law. *See Concerned Citizens of Se. Polk Sch. Dist. v. City of Pleasant Hill*, 878 N.W.2d 252, 258 (Iowa 2016) (citation omitted) ("Issues of statutory construction are legal questions and 'are properly resolved by summary judgment.' ").

A. Introduction.

The question presented is one of statutory construction: if a taxpayer replaces, refurbishes, or "repowers" parts of existing WECP, but not the entire property, is a county required to assess the repowered portions on a new, separate assessment schedule starting at zero-percent after the new parts come into service, despite there being no law expressly providing for such a piecemeal approach or otherwise requiring the county to do so under Iowa Code section 427B.26(2)?

The answer is simple: no.

Like the district court concluded, a fair reading of the law reveals Iowa Code section 427B.26 is clear and unambiguous. App. at 0219 (citing *Com. Bank v. McGowen*, 956 N.W.2d 133 (Iowa 2021) (citation and quotation omitted)); *see* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (West 2012) (explaining the superior "interpretive approach" for construing law is "that of the 'fair reading': determining the application of governing text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.") ("Scalia & Garner"). Without any statutory language to support SCW's claims in the statute itself, the wind is prevented from ever reaching the sails of its argument. *Bank of Am., N.A. v.*

Schulte, 843 N.W.2d 876, 880 (Iowa 2014) ("Under the pretext of construction, we may not extend a statute, expand a statute, or change its meaning. On the other hand, we look no further than the language of the statute when it is unambiguous.") (citations omitted).

SCW's claims reflect a misunderstanding of both Iowa Code section 427B.26's terms and the Iowa Department of Revenue's ("IDR['s]") authority to interpret those terms. Iowa Code section 427B.26 provides no basis for the position that partially repowering WECP already on an established special assessment schedule somehow creates a new, separate, fragmented assessment schedule. *See, in absentia,* Iowa Code § 427B.26. And while the IDR may oversee tax assessments, it has no authority to read something into the law that is not there. *See Wakonda Club v. Iowa State Bd. of Tax Rev.*, 444 N.W.2d 490, 491 (Iowa 1989). Indeed, by employing the well-established tools of statutory construction and reviewing the prerequisites for enacting agency rules under Iowa's Administrative Procedure Act,[4] it is clear SCW's claims must fail. Thus, the district court correctly granted summary judgment in the Board's favor and dismissed SCW's property tax appeal, and this court should now affirm.

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[4] *See* Iowa Code ch. 17A.

1. Overview: Principles of Statutory Construction.

Iowa Code section 427B.26 is unambiguous and does not provide for the tax assessment scheme for WECP that SCW proposes. The district court should thus be affirmed based on Iowa's well-established process for construing statutes.

"The first step in our statutory interpretation analysis is to determine whether the statute is ambiguous." *State v. Middlekauff*, 947 N.W.2d 781, 793 (Iowa 2022) (quoting *State v. Zacarias*, 958 N.W.2d 573, 581 (Iowa 2021) (quoting *State v. Ross*, 941 N.W.2d 341, 346 (Iowa 2020))); *see Carreras v. Iowa Dep't of Transp., Motor Vehicle Div.*, 977 N.W.2d 438, 446 (Iowa 2022) (citations omitted); *Beverage v. Alcoa, Inc.*, 975 N.W.2d 670, 680 (Iowa 2022) ("As with all cases involving statutory interpretation, we start with the language of the statute to determine what the statute means."). The court's "inquiry ends with the plain language if the statute is unambiguous." *Zacarias*, 958 N.W.2d at 581; *Com. Bank v. McGowen*, 956 N.W.2d 128, 133 (Iowa 2021) ("If the 'text of a statute is plain and its meaning clear, we will not search for a meaning beyond the express terms of the statute or resort to rules of construction.' " (quoting *In re Estate of Voss*, 553 N.W.2d 878, 880 (Iowa 1996))). That is to say, only when it is first determined a statute "is ambiguous [that the courts may then] apply canons of statutory construction to determine

what the ambiguous language of the statute means." *Beverage,* 975 N.W.2d at 680 (citing *State v. Doe*, 903 N.W.2d 347, 351 (Iowa 2017) ("If there is no ambiguity, we apply that plain meaning. Otherwise, we may resort to other tools of statutory interpretation." (citation omitted))).

When construing a statute, legislative intent is determined only "from the words chosen by the legislature, not what it should or might have said." *Auen v. Alcoholic Bevs. Div., Iowa Dep't of Com.*, 679 N.W.2d 586, 590 (Iowa 2004) (citing *Painters & Allied Trades Loc. Union v. City of Des Moines*, 451 N.W.2d 825, 826 (Iowa 1990)). "Under the guise of construction, an interpreting body may not extend, enlarge, or otherwise change the meaning of the statute." *Id.* (citing *State v. Wedelstedt*, 213 N.W.2d 652, 656 (Iowa 1973)). That is, intent is determined by examining "the words the legislature chose when it enacted the statute, not the words it might have chosen." *State v. Pettijohn*, 899 N.W.2d 1, 15 (Iowa 2017), *abrogated on other grounds by State v. Kilby*, 961 N.W.2d 374, 383 (Iowa 2021) (citing *Ramirez-Trujillo v. Quality Egg, LLC*, 878 N.W.2d 759, 770 (Iowa 2016)); *Schulte*, 843 N.W.2d at 880; *see State v. Macke*, 933 N.W.2d 226, 233 (Iowa 2019).

"A statute is ambiguous ' "if reasonable minds could differ or be uncertain as to the meaning of the statute" based on the context of the statute.' If a statute is ambiguous, we 'rely on principles of statutory construction to

resolve the ambiguity.' " *Carreras*, 977 N.W.2d at 446 (quoting *Zacarias*, 958 N.W.2d at 581 (quoting *State v. Ross*, 941 N.W.2d at 346)). "Ambiguity may arise in two ways: (1) from the specific language used in the statute or (2) when the provision is considered in the context of the entire statute or other related statutes." *Beverage*, 975 N.W.2d at 680 (citing *Iowa Ins. Inst. v. Core Grp. of Iowa Ass'n for Just.*, 867 N.W.2d 58, 72 (Iowa 2015)); *accord Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 424-25 (Iowa 2010) (quoting *Midwest Auto. III, LLC v. Iowa Dep't of Transp.*, 646 N.W.2d 417, 425 (Iowa 2002) (citations and quotations omitted)).

SCW concedes that "Iowa Code section 427B.26 does not expressly address WECP repowers."[5] So its allegation that Iowa Code section 427B.26 is somehow ambiguous is not that "the specific language used in the statute" creates the ambiguity. *Beverage*, 975 N.W.2d at 680. Nor does SCW's claim of ambiguity seem to flow from any suggestion that ambiguity somehow arises "when [Iowa Code section 427B.26] is considered in the context of the entire statute or other related statutes." *Id.* Instead, its claim is built on the shaky assertion that "[b]ecause Iowa Code section 427B.26 does not address the impact of repowers on the special valuation assessment schedule, it is

[5] SCW's Br. at 20.

ambiguous."[6] This is wrong given how ambiguity arises in statutes, *see Beverage*, 975 N.W.2d at 680, and it reflects a staunch misunderstanding of Iowa Code section 427B.26's meaning when considered in context and as a whole. *In re Guardianship of Radda*, 955 N.W.2d 203, 209 (Iowa 2021) (quoting *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995)); *see Chavez v. MS Tech. LLC*, 972 N.W.2d 662, 668 (Iowa 2022).

Importantly, "[w]hen, as here, the legislature acts as its own lexicographer, we 'are normally bound by the legislature's own definitions.'" *Sherwin-Williams Co.*, 789 N.W.2d at 425 (quoting *State v. Fischer*, 785 N.W.2d 697, 702 (Iowa 2010)).

> It is a well-settled principle of statutory interpretation that "[w]hen the legislature has defined words in a statute — that is, when the legislature has opted to 'act 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."

State v. Iowa Dist. Ct. for Scott Cty., 889 N.W.2d 467, 471-72 (Iowa 2017) (quoting *In re J.C.*, 857 N.W.2d 495, 500 (Iowa 2014); citing *Cedar Rapids Cmty. Sch. Dist. v. Parr*, 227 N.W.2d 486, 495 (Iowa 1975)) (cleaned up). Our interpretative journey thus begins with the statutory definitions codified by the legislature. *Id.*

[6] SCW's Br. at 28.

For clarity, the Board first addresses SCW's claim that a liberal reading of Iowa Code section 427B.26 is where our analysis begins when discerning the law's meaning.

2. Any Rule to Liberally Construe a Law in Favor of a Taxpayer is Irrelevant when the Statute At-Issue is Unambiguous.

SCW spends a significant chunk of its brief confirming what the Board does not challenge. True, the district court found Iowa Code section 427B.26 to be a "taxing statute" which would require the law is to be liberally construed in favor of the taxpayer *if* – and only *if* – the law is found to be ambiguous. *See Carlon Co. v. Bd. of Review of City of Clinton*, 572 N.W.2d 146, 154 (Iowa 1997). But SCW's claim that this "rule" of construction requires a liberal interpretation of the law be applied as the analytical starting point for the court's interpretation is not accurate.[7]

[7] *See* SCW's Br. at 28 (citing *Carlon*, 572 N.W.2d at 154) ("The special valuation assessment schedule contained in Iowa Code section 427B.26(2), which must be liberally construed in favor of the taxpayer, is based entirely on the net acquisition cost of the subject WECP" and "[b]ecause Iowa Code section 427B.26 does not address the impact of repowers on the special valuation assessment schedule, it is ambiguous.").

As stated in *Carlon*, the process of interpreting a statute – even taxing statutes – begins not by applying any specific rule of statutory interpretation first, but with the language of the statute itself to glean whether the law's plain language is ambiguous. *Id.* at 154 (citing *In re G.J.A.*, 547 N.W.2d 3, 6 (Iowa 1996)) ("*Only* when a statute is ambiguous may a court resort to the rules of statutory construction.") (emphasis added). It is only after a statute is found to be ambiguous that the court resorts to the canons of interpretation. *Id.*

And, even then, no singular canon of construction prevails over all others. *Id.*; *see* Scalia & Garner at 59 (discussing the "Principle of Interrelating Canons," which states that "No canon of interpretation is absolute. Each may be overcome by the strength of differing principles that point in other directions."); *see also Chickasaw Nation v. United States*, 534 U.S. 84, 93 (2001) (citation omitted) ("canons are not mandatory rules. They are guides that 'need not be conclusive.' "). In fact, even in *Carlon*, the court employed multiple canons of construction to interpret the relevant statute. 572 N.W.2d at 154 (employing the canons of (1) considering "all parts of the enactment," (2) the canon of liberal construction in favor of the taxpayer for taxing statutes, and (3) the canon directing a court "to look to the object to be accomplished and the evils and mischiefs to be remedied."). No liberal construction can defeat the supremacy of the unambiguous law, for "when the meaning of the

statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." *Bostock v. Clayton Cty.*, --- U.S. ---, 140 S.Ct. 1731, 1749, 207 L.Ed.2d 218 (2020) (citing *Carcieri v. Salazar*, 555 U.S. 379, 387, 129 S.Ct. 1058, 172 L.Ed.2d 791 (2009); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–254, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992) (remaining citation omitted)).

In short, the canons of construction are not applied at the outset. *See Carlon*, 572 N.W.2d at 154. Again, our analysis must start with the language of the law itself.

3. The Plain Language of Iowa Code section 427B.26 is Clear.

Because the court's conclusion turns on the meaning of Iowa Code section 427B.26, we start with the exact text of statute to "determine whether [its] language is ambiguous." *State v. Richardson*, 890 N.W.2d 609, 616 (Iowa 2017). As the definitions in subsection "4" apply to all other subsections of the law, the analysis starts there. *See* Iowa Code § 427B.26(4).

First, "wind energy conversion property" ("WECP") is 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." *Id.* § (4)(*b*). By its terms, the law is unambiguous – WECP is the "entire" wind farm, not just part of it. *Id*.

Second, "net acquisition cost" means "the acquired cost of the property including all foundations and installation cost less any excess cost adjustment." *Id*. § (4)(*a*). Again, the law is clear; the "net acquisition cost" is the WECP's cost when the property enters operation. *Id.* §§ 427B.26(2), (3), 4(*a*).

Subsection "4" provides the overarching definitions to be used for adopting (*see* subsection "1"), applying (*see* subsections "2" and "3"), and specially assessing (*see* subsection "2," subparagraphs "a" to "c") WECP. *Id.* § (4). Those statutory definitions – and only those definitions – are the foundation of the law. *Id*. And because the defined terms are facially unambiguous, the search for the meaning of those terms should, and must, end there. *Rhoades v. State*, 880 N.W.2d 431, 446 (Iowa 2016) ("where the language chosen by the legislature is unambiguous, we enforce a statute as written."); *Schulte*, 843 N.W.2d at 880; *Marshall v. State*, 805 N.W.2d 145, 158 (Iowa 2011); *City of Okoboji, Iowa v. Okoboji Barz, Inc.*, 717 N.W.2d 310, 314 (Iowa 2006). But if the court's analysis continues, the fact Iowa Code section 427B.26's legislatively defined terms are unambiguous is bolstered even more when those terms are considered in the "general scope and meaning

of the statute in its totality." *Marshall*, 805 N.W.2d at 158; s*ee Calcaterra v. Iowa Bd. of Med.*, 965 N.W.2d 899, 904 (Iowa 2021) (quoting *Porter v. Harden*, 891 N.W.2d 420, 425 (Iowa 2017)); *see also* Iowa Code § 4.1(38).

For instance, subsection "2" sets forth the special property tax assessment schedule[8] after WECP first becomes operational or "enters service," providing that:

> In lieu of the valuation and assessment provisions in section 441.21, subsection 8, paragraphs "b", "c", and "d", and sections 428.24 through 428.26, 428.28, and 428.29, wind energy conversion property which is first assessed for property taxation on or after January 1, 1994, and on or after the effective date of the ordinance enacted pursuant to subsection 1, 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.

[8] The scaling assessment timeline of Iowa Code section 427B.26(2), subparagraphs "a" to "c" is referred to as a "schedule" because it provides a "procedural plan that indicates the time and sequence of each operation." *Schedule*, MERRIAM-WEBSTER.COM DICTIONARY (last accessed Apr. 21, 2022), https://perma.cc/QR8P-FMHB.

Id. § 427B.26(2). It sets out when the assessed value of WECP gradually increases over seven years. *See id*. §§ (2)(*a*)-(*c*). Subsection "2" contains several key points that are easily gleaned from the text: (1) the special schedule commences for WECP "which is first assessed for property taxation" (*i.e.,* when the WECP is "placed in service," [9]); *and* (2) the scaling schedule used to determine a taxpayer's property tax obligation is based on a percentage of "the net acquisition cost." *Id*.

The qualifying phrase "which is first assessed for property taxation" speaks directly to when the special assessment of WECP begins. *Id*. The law states the special assessment schedule does not take effect until the WECP enters operation. *Id*. We know this because the statute defines WECP as "the entire wind plant" and, for the "entire wind plant" to be assessed and qualify as WECP, it must be entirely constructed and have already "come into service." *Id*. §§ (2), (4)(*b*); *see also* Iowa Admin. Code r. 701—80.13(1) ("the property must not be assessed until the assessment year following the year the entire wind plant is completed. A wind plant is completed when it is placed in service.").[10]

[9] *See* SCW's Br. at 11.

[10] *See* App. at 0108, 0165.

Subsection "2" also expressly instructs what value the assessment schedule is to be based on: the "net acquisition cost." *Id*. at §§ (2), (4)(*a*). Again, to remove any possible ambiguity from the assessment procedure, the legislature defined "net acquisition cost" as "the acquired cost of the property including all foundations and installation cost less any excess cost adjustment." *Id*. § (4)(*a*).[11] The term "acquired" appears in the past tense, suggesting "that the acts in the specific case matter" already happened or, as applied to this appeal, that the cost obtain the WECP was already expended by the taxpayer. *See State v. Davison*, 973 N.W.2d 276, 281 (Iowa 2022); *see also* Iowa Code § 427B.26(4)(*a*).

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[11] The term "acquired" means "to gain possession or control of; to get or obtain." *Acquire*, BLACK'S LAW DICTIONARY (11th ed. 2019); *see Acquired*, MERRIAM-WEBSTER.COM DICTIONARY (last accessed Oct. 20, 2022), https://www.merriam-webster.com/dictionary/acquired (defining "acquired" to mean "gained by or as a result of effort or experience; attained as a new or added characteristic, trait, or ability.").

By applying the meaning of "net acquisition cost" to the law's other special assessment provisions, the following is revealed with ease: WECP is first assessed when it first comes into service and, each year after, the special assessment schedule gradually increases one's property tax obligation at a fixed percentage of the initial cost of the entire wind farm (*e.g.,* the cost equal to first assessed value, or "net acquisition cost"). Iowa Code §§ 427B.26(2), (4); App. at 0108. This notion is supported even more by considering subsection "3," which states that the taxpayer must "file with the local assessor" a "declaration of intent to have the property assessed at the value determined under [section 427B.26]" by "February 1 of the assessment year in which the wind energy conversion property is *first assessed for property tax purposes*." Iowa Code § 427B.26(3) (emphasis added).

Subsections "2" and "3" directly align based on a fair reading of Iowa Code section 427B.26's plain text; that is to say, both subsections are framed in the context of the year WECP is "first assessed." *Id.* §§ (2), (3). And because the value of WECP is determined when it is "first assessed" for property tax purposes, the net acquisition cost is also fixed when used to determine one's tax obligations for WECP. *See id*. §§ (2), (3).

In all, Iowa Code section 427B.26 is unambiguous by its terms when viewed in context, especially given the legislature's choice to define WECP and net acquisition cost. *See id.* §§ (2), (4); *Christensen v. Iowa Dep't of Revenue*, 944 N.W.2d 895, 901 (Iowa 2020) (discussing *Sherwin-Williams Co.*, 789 N.W.2d at 423-24). So, as applied, SCW's claims merely request that the court read, or write, something into the law that is not there. *Jahnke v. Deere & Co.*, 912 N.W.2d 136, 143 (Iowa 2018) ("we may not read language into the statute that is not evident from the language the legislature has chosen.")).[12] As it follows then, SCW's claims lack merit, for the law cannot be reshaped by acts of judicial fiat. *Ames 2304, LLC v. City of Ames, Zoning Bd. of Adjustment*, 924 N.W.2d 863, 871 (Iowa 2019) (quoting *Jahnke*, 912 N.W.2d at 143); App. at 0222. Therefore, the district court correctly deferred to the clear, unambiguous language of Iowa Code section 427B.26, and it

[12] SCW's claims improperly extend in the same way to Story County Ordinance No. 179, which tracks Iowa Code section 427B.26 in every way relevant here. As both the statute and ordinance at-issue are consistent with one another, the Board's discussion and arguments related to Iowa Code section 427B.26 are fully incorporated for any arguments specific to Story County Ordinance No. 179.

correctly rejected SCW's invitation to rewrite the law itself. As a result, this court should affirm.

4. Statutory Silence does not Equate to Statutory Ambiguity.

Contrary to SCW's suggestion that statutory silence naturally begets statutory ambiguity, well-established principles of statutory interpretation do not support such a claim.[13]

Iowa's appellate courts have regularly applied the longstanding rule that statutory interpretation and any associated search of legislative intent "is expressed by omission as well as by inclusion." *Chavez*, 972 N.W.2d at 668 (quoting *In re Guardianship of Radda*, 955 N.W.2d at 209 (quoting *Marcus*, 538 N.W.2d at 289)); *see Schmett v. State Objections Panel*, 973 N.W.2d 300, 304 (Iowa 2022) (citing *State v. Hall*, 969 N.W.2d 299, 309 (Iowa 2022) (other citation omitted)). This principle is reflected in the district court's Order granting summary judgment, and it properly (explicitly or otherwise) recognized and applied the "Omitted-Case Canon," or *casus omissus pro omisso habendus est* ("nothing is to be added to what the text states or reasonably implies). Scalia & Garner at 93 (explaining that the omitted case

[13] *See* SCW's Br. at 20, 28.

canon directs that "a matter not covered is to be treated as not covered."). [14]

As explained by Justice Antonin Scalia and Professor Bryan A. Garner,

> The principle that a matter not covered is not covered is so obvious that it seems absurd to recite it. The judge should not presume that every statute answers every question, the answers to be discovered through interpretation.[15] As the noted lawyer and statesman Elihu Root said of the judge: "It is not his function or within his power to enlarge or improve or change the law."[16] Nor should the judge elaborate unprovided-for exceptions to a text, as Justice Blackmun noted while a circuit judge: "[I]f the Congress [had] intended to provide additional exceptions, it would have done so in clear language."[17]
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> . . .

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[14] Some canons, like the Omitted-Case Canon, "are so venerable" they "continue to bear their Latin names." Scalia & Garner at 51.

[15] Citing Cal. Code Civ. Proc. § 1858; Cal. Civ. Code § 3530; *Simmons v. Arnim*, 220 S.W. 66, 70 (Tex. 1920); R.W.M. Dias, *Jurisprudence* 232 (4th ed. 1976).

[16] Elihu Root, *The Importance of an Independent Judiciary*, 72 Independent 704, 704 (1912); referencing Edward H. Levi, "The Nature of Judicial Reasoning," in *Law and Philosophy: A Symposium* 263, 274 (Sidney Hook ed., 1964).

[17] *Petteys v. Butler*, 367 F.2d 528, 538 (8th Cir. 1966) (Blackmun, J., dissenting).

> The absent provision cannot be supplied by the courts.[18] What the legislature "would have wanted" it did not provide, and that is an end of the matter. As Justice Louis Brandeis put the point: "A *casus omissus* does not justify judicial legislation."[19] And Brandeis again: "To supply omissions transcends the judicial function." [20]

Scalia & Garner at 93-94 (alterations in original). If these directives are to be considered authoritative and persuasive – and we think they are [21] – it is even

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[18] *Jones v. Smart*, [1785] 1 Term Rep. 44, 52 (Buller, J.); *MacMillan v. Director, Div. of Taxation*, 434 A.2d 620, 621 (N.J. Super. Ct. App. Div. 1981); Frank H. Easterbrook, *Statutes' Domains*, 50 U. Chi. L. Rev. 533, 548 (1983).

[19] Quoting *Ebert v. Poston*, 266 U.S. 548, 554 (1925) (Brandeis, J.).

[20] Quoting *Iselin v. United States*, 270 U.S. 245, 251 (1926) (Brandeis, J.).

[21] Iowa's appellate courts regularly rely on Justice Scalia's and Professor Garner's treatise as guidance and direction when interpreting legal texts. *See, e.g., Beverage*, 975 N.W.2d at 682 (Oxley, J.); *Davison*, 973 N.W.2d at 282 (Mansfield, J.); *Bribriesco-Ledger v. Klipsch*, 957 N.W.2d 646, 650-51 (Iowa 2021) (McDermott, J.); *Zacarias*, 958 N.W.2d at 581-82 (Christensen, C.J.); *Doe v. State*, 943 N.W.2d 608, 610 (Iowa 2020) (McDonald, J.); *State v. Mathias,* 936 N.W.2d 222, 239 (Iowa 2019)

more apparent that SCW is not asking the court to interpret Iowa Code section 427B.26's terms, but for it to rewrite the law itself. This it cannot do. *Auen*, 679 N.W.2d at 590.

Even more, SCW's interpretation would render clear portions of the statute superfluous. *See Vroegh v. Iowa Dep't of Corrs.*, 972 N.W.2d 686, 703 (Iowa 2022) (citing *Bribriesco-Ledger v. Klipsch*, 957 N.W.2d 646, 650–51 (Iowa 2021); Scalia & Garner at 174; *accord United States v. Butler*, 297 U.S. 1, 65, 56 S.Ct. 312, 80 L.Ed. 477 (1936) (emphasis in original) ("We generally don't read statutes to imply the legislature wasted its time and ink by including redundant provisions. Canons of statutory interpretation require that every word and every provision in a statute is to be given effect, if possible, and not deemed mere surplusage. No word should be ignored, and no provision should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence."). To adopt SCW's position that "a repower changes the net acquisition cost of WECP"[22] would be to disregard

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(Mansfield, J., dissenting); *Matter of Bo Li*, 911 N.W.2d 423, 429 (Iowa 2018) (Waterman, J.); *see also Interest of C.C.*, No. 20-1716, 2021 WL5458046, at *3 (Iowa Ct. App. Nov. 23, 2021) (May, J.).

[22] *See* SCW's Br. at 23.

that (1) the legislature defined WECP to mean "the *entire* wind plant," (2) the legislature specifically stated that the "net acquisition cost" refers to all the WECP at-issue when it "is *first* assessed." Iowa Code §§ 427B.26(4)(*a*), (*b*); *see id. §* (2) (emphasis added). Put differently, SCW's position glosses over the fact that "repowers" like those relevant here only relate to *part* of the WECP, not the "*entire* wind plant." *Id*. § (4)(*b*).[23] And its position defies the clear language chosen by the legislature. *Id. §*§ (2), (4)(*a*), 4(*b*). Yet, despite the requirement that, in general, "No word should be ignored" and no interpretation should cause any part of the law "to have no consequence," SCW asks the court do exactly what it cannot under the surplusage canon of interpretation. *Vroegh*, 972 N.W.2d at 703 (citations omitted).

As an aside, the cases relied on by SCW for the assertion that "Silence on a particular issue constitutes statutory ambiguity"[24] are not significantly instructive nor supportive of its position. For instance, in *Northeast Community Educ. Association v. Northeast Cmty. School District*, our supreme court noted "The statute is silent as to whether suspension may be with or without pay. *If* a statute is ambiguous, the court in determining the

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[23] *See* SCW's Br. at 10-11, 23-24.

[24] *See* SCW's Br. at 24, n. 3.

intent of the legislature, may consider among other matters the object sought to be attained by the statute." 402 N.W.2d 765, 768-69 (Iowa 1987) (citation omitted) (emphasis added). But this statement appears to be dicta to some degree, given it was neither essential to the court's ultimate finding nor a clear order of the court that statutory silence *always* results in ambiguity in any case. *See id.* (noting the rules of construction are applied in instances of statutory silence only "*If* a statute is ambiguous . . .") (emphasis added). In any case, the court there ultimately found that the statute at-issue expressly or implicitly granted the challenged powers of the school board and superintendent that were allegedly absent from the statute, thereby suggesting the law was sufficiently clear. *Id*. at 768-70.

The same is true in *Phillips v. Chicago Central & Pacific R.R. Co.*, in which the Iowa Supreme Court considered the effect of *Chevron* deference under federal law within the context of the Federal Employers' Liability Act and Railroad Retirement Tax Act. *See* 853 N.W.2d 636, 647 (Iowa 2014). Regardless of the application its holding – which pertained to federal law primarily – the *Phillips* Court specifically articulated when *Chevron* deference to an administrative agency is likely required. The court noted for such deference to be given, the law must vest the administrative agency with the power to interpret the law. *Id*. at 648 (quoting *Chevron USA, Inc. v. Nat. Res.*

Def. Council, Inc., 467 U.S. 837, 842, 104 S.Ct. 2778, 2781, 81 L.Ed.2d 694, 702-03 (1984)). Moreover, ambiguity in the relevant statute must exist, in turn creating a "gap" for the agency to fill with its interpretation. *Id*. But neither condition applies to the IDR and this case, for the legislature has not vested the Department of Revenue with interpretive authority over Iowa Code section 427B.26's terms, as discussed below. And even more, section 427B.26's terms are unambiguous, as discussed above. Because neither condition for federal *Chevron* deference to apply exists here, "that is the end of the matter" and there is no potential issue as to whether statutory silence ever arises when the law already reflects "the unambiguously expressed intent of" the legislature. *Id*. (quoting *Chevron*, 467 U.S. at 842, 104 S.Ct. at 2781, 81 L.Ed.2d at 702-03). *Phillips* thus does not support SCW's position even under the more lenient "gap-filling" approach in *Chevron*, and any claim that statutory silence somehow causes statutory ambiguity outright is inaccurate. *See id*. (citation omitted).

B. The IDR Memorandums Lack Authority and an Adequate Legal Basis to Alter the Unambiguous Terms of Iowa Code § 427B.26.

The crux of SCW's argument is not really that the language of the law is ambiguous, but that the IDR somehow has both the power and ability to alter the scope and meaning of the law itself. But again, this is not true. *Jahnke*, 912 N.W.2d at 143 (quoting *Brakke v. Iowa Dep't Nat. Res.*, 897

N.W.2d 522, 533 (Iowa 2017)); *see* Iowa Code § 17A.23 ("An agency shall have only that authority or discretion delegated to or conferred upon the agency by law and shall not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon the agency."). Just as it is not the courts "role to 'change the meaning of a statute'," it is not an agency's role to do so, either. *Zacarias*, 958 N.W.2d at 582 (citation omitted).

At bottom, SCW incorrectly asserts, or suggests, that the IDR is both vested with the authority to interpret section 427B.26 and is somehow granted the authority to redefine the law's terms and re-construe its meaning without ever taking any official agency action; both assertions are wrong.

1. The IDR has no Authority to Interpret Iowa Code § 427B.26.

Unlike other parts of the Iowa's tax laws, the IDR (or the "director of revenue" specifically) is not vested with the authority to interpret the substance of Iowa Code section 427B.26, given the law's statutory definitions. *See* Iowa Code § 427B.26(4). As in other cases addressing statutory definitions, the IDR is not vested with the power to interpret the terms set out in section 427B.26. *See Iowa Dental Ass'n v. Iowa Ins. Div.*, 831 N.W.2d 138, 143-44 (Iowa 2013) (quoting *Sherwin–Williams Co.*, 789 N.W.2d at 419, 423-24 (analyzing Iowa Code § 428.20)).

For instance, in *Sherwin-Williams Co.*, our supreme court concluded that the IDR lacked interpretive power under like circumstances to those here:

> The insurmountable obstacle to finding the [IDR] has authority to interpret the word "manufacturer" in this context is the fact that this word has already been interpreted, *i.e.,* explained, by the legislature through its enactment of a statutory definition. Under these circumstances, we do not think the legislature intended that the department have discretion to interpret—give meaning to—this term.

789 N.W.2d at 423-24 (altered for consistency); *see Iowa Dental Ass'n* 831 N.W.2d at 143-44 (quoting same). Unlike other cases that may suggest some type of support for SCW's position, no statutory clause or provision exists within the text of Iowa Code section 427B.26 to alter or amend the relevant definitions themselves. *See Sioux City Truck Sales, Inc. v. Iowa Dep't of Transp.*, 975 N.W.2d 333, 340 (Iowa 2022) (noting "context clauses" may alter definitions). So because the IDR has not been granted clear authority to interpret section 427B.26's terms, any assertion that it can lacks merit. *Sherwin-Williams Co.*, 789 N.W.2d at 423-24.

Yet even if the IDR is vested with the power to interpret the statute given it has promulgated agency rules related to, or at least referencing,

WECP,[25] whatever weight those regulations carry is "not enough to override clear statutory language." *Calcaterra*, 965 N.W.2d at 907. The Iowa Supreme Court has made clear, "Adoption of administrative rules which are at variance with statutory provisions or which amend or nullify legislative intent exceed[s] the department's authority." *Id*. (quoting *Wakonda Club*, 444 N.W.2d at 491) (alteration in original). Put another way, "When a statute directly conflicts with a rule, the statute controls." *Id.* (quoting *Exceptional*

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[25] Of the seven occasions "wind energy conversion property" is substantively referenced in the IDR's rules, only three relate to the property tax assessment procedures, and all of those references are in a single administrative rule. *See* Iowa Admin. Code r. 701—80.13 (referring to WECP three times in order to "implement Iowa Code section 427B.26 and chapter 476B"). Based on this alone, it is clear the IDR has not taken any steps to interpret Iowa Code section 427B.26 – its references to WECP merely "parrot" the statute. *See Sherwin-Williams Co.*, 789 N.W.2d at 422 (stating, "With a few insignificant changes, the department's rule defining the term 'manufacturer' simply parrots the statutory definition of this term, and consequently, the rule does not *interpret* the statute.") (emphasis in original) (citation omitted).

Persons, Inc. v. Iowa Dep't of Hum. Servs., 878 N.W.2d 247, 252 (Iowa 2016)). Iowa's courts alone are empowered to discern what the law says. *Id*.

To be clear, no party disputes that the IDR (again, its director, really) has the power to "promulgate rules subject to chapter 17A to carry out the intent of" certain sections of Iowa's tax code. *See StateLine Coop. v. Iowa PAAB*, 958 N.W.2d 807, 813-14 (Iowa 2021) (discussing Iowa Code § 427A.1(9)). Despite any authority the IDR may have to construe, administer, or interpret portions of the Iowa Code, it would still need to invoke its rulemaking authority to exercise that power. *Id*. So even if the legislature granted the IDR authority to interpret Iowa Code section 427B.26's terms via its rulemaking authority, the IDR has not done so in compliance with the requirements of the Iowa Code. *See, in absentia,* Iowa Admin. Code ch. 701.

a. The IDR Memorandums are at most an Unlawfully Adopted Administrative Rule or Rules.

SCW continues to rely on two IDR Memorandums issued in 2019 and 2020 as essentially the sole basis for its claim.[26] As a result, the district court correctly declined SCW's invitation to "adopt" the IDR's Memorandum statements as a part of the statute, as they stray from established Iowa law.

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[26] *See* SCW's Br. at 20-22, 24-27.

After all, why should the court adopt a position that the IDR has not done so itself, and which the Memorandums' author does not endorse? [27]

For clarity, the 2019 Memorandum states:

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

App. at 0043, 0103, 0160 (emphasis added); *see also* App. at 0044-0046. Both Memorandums, however, are flawed.

Nowhere in Iowa Code section 427B.26 does the phrase "substantially replaces" appear; in fact, the words "substantial" and "replace" do not appear

[27] *See, in absentia,* Iowa Admin. Code ch. 701; Replacement Tax Task Force, *Report Letter to Iowa State Sen. Dawson & Rep. Hein*, IOWA DEP'T OF MGMT., at 2 (Jan. 20, 2022) (noting IDR Div. Adm'r Julie G. Roisen, the Task Force's Co-Chair, abandoned her Memorandum positions and voted to "clarif[y] the act of repowering does not reset the special assessment schedule under Iowa Code section 427B.26(2).").

in the statute at all. *See, in absentia,* Iowa Code § 427B.26; *see also Beverage*, 975 N.W.2d at 689 (Waterman, J., concurring in part and dissenting in part) (noting a case cannot be made for the statutory inclusion of a term that "appears nowhere" in a statute and is never mentioned, "[e]ven if the purpose of a statute could somehow override plain language, and it can't"). As a result, an arbitrary phrase in the Memorandums (*e.g.,* "substantially replaces") lacks legal weight and cannot usurp and replace Iowa Code section 427B.26's plain terms that the legislature chose. *Id.*; *Branderhorst v. Iowa State Hwy. Comm'n*, 202 N.W.2d 38, 41 (Iowa 1972) ("administrative agencies [do] not possess common law or inherent powers, but only the powers which are conferred by statute.") (alteration in original).

The Memorandums were not issued under the IDR's authority "To issue rules as are necessary, subject to the provisions of chapter 17A, to provide for the uniform application of the exemptions provided in section 427.1 in all assessor jurisdictions in the state." Iowa Code § 421.17(18). Nor were they issued under its general authority "to establish all needful rules not inconsistent with law for the orderly and methodical performance of the director's duties, and to require the observance of such rules by those having business with or appearing before the department." *Id.* § 421.14. The Memorandums were not published under the IDR's power to "prescribe rules

relating to the standards of value to be used by assessing authorities in the determination, assessment and equalization of the actual value for assessment purposes of all property subject to taxation in the state" to "bring[] about uniformity and equalization of assessments throughout the state of Iowa." *Id.* § 421.17(2)(*c*). And the Memorandums were not issued under the Agency's authority to "prescribe and promulgate all forms of books and forms to be used in the listing and assessment of property." *Id.* § 421.17(3). Indeed, it is telling that while some of the IDR's rules refer to WECP, no agency rule at all was invoked in the Memorandums that were issued. *See, in absentia,* App. at 0041-0046, 0101-0103, 0158-0160.

Even if the IDR could alter or reinterpret section 427B.26's terms and meaning, it would have had to do so by rule. Iowa Code § 17A.2(11) (noting a "rule" is "an agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency."). True, the Memorandums generally apply to WECP and affect a portion of the taxpaying public, and of course they are "intergovernmental" "memorandums" or "other communications." *See id* § 17A.11(*c*). But if the Memorandums are authoritative, they would "substantially affect the legal rights of, or procedures available to, the public or any segment thereof"; consequently, if

they are found to have been issued for an authoritative purpose, they would qualify as improperly adopted "rules." *Id.*

Put another way, the Memorandums likely constitute unlawful rulemaking under Iowa Code chapter 17A and would still be barred from serving as legal authority in any action even if they embodied some authority vested in the IDR to interpret Iowa Code section 427B.26's provisions (which the IDR does not have). *See id.* §§ 17A.3 – 17A.8 (setting forth the procedures required for promulgating an agency rule); *see also Anderson v. Iowa Dep't of Hum. Servs.*, 368 N.W.2d 104, 108 (Iowa 1985) (citation and quotations omitted) ("To have the force and effect of law, the [agency memorandum, directive, manual or communication] must be promulgated properly."). The IDR never complied with any of the required rulemaking procedures for the Memorandums to be given the force of law, so they have no legal effect now. *Id*. §§ 17A.3-.8, 17A.19(10)(*d*) (stating prejudice arises when an agency's action is "[b]ased upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process."); Iowa Admin. Code r. 701—7.25 (setting forth the IDR's rulemaking requirements by its own rules and incorporating the provisions of Iowa Code ch. 17A). "Validly adopted rules have the force and effect of law[,]" not those that are invalid like the resulting "rule" set out within the

Memorandums if they were found to be authoritative. *See Anderson*, 368 N.W.2d at 108.

This conclusion is bolstered by the IDR's own agency rules, which state that "Any oral or written advice or opinion rendered to members of the public by department personnel not pursuant to a petition for declaratory order is not binding upon the department." Iowa Admin. Code r. 701—7.24. Of course, the Memorandums are not the byproduct of any contested case, nor were they issued as a declaratory judgment or other order. As it follows then, because issuance of the Memorandums did not occur pursuant to, or in accordance with, any of the administrative procedures required for those Memorandums to be binding on the public or the IDR as an agency, they are not, in fact, binding on the court, or the county, now. *See id*.

Separately, there appears to be a disagreement as to whether deference should be given to longstanding agency precedent.[28] SCW seemingly suggests that the Memorandums, which abandon the IDR's longstanding interpretation of the same law, is somehow "irrelevant." [29] In reply, the Board simply notes the Administrative Procedure Act would seemingly not support that assertion.

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[28] *See* SCW's Br. at 20, n. 2.

[29] SCW's Br. at 20, n. 2.

See Iowa Code §§ 17A.19(10)(*g*), (*h*) (stating agency actions not by rule that are "inconsistent with the agency's prior practice or precedents" and do not "justify that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for [it]" may be grounds for reversal, modification, or other relief of that action).

CONCLUSION

The district court did not err by finding Iowa Code section 427B.26 is clear and unambiguous. No rule of liberal construction requires finding otherwise. *See Sherwin-Williams Co.*, 789 N.W.2d at 424-31; *Chavez*, 972 N.W.2d at 666-71; Scalia & Garner at 56 (explaining the "Supremacy-of-Text" Principle" and stating that "The words of a governing text are of paramount concern, and what they convey in their context, is what the text means.").

Nowhere in Iowa Code section 427B.26 or Story County Ordinance No. 179 is there any suggestion or method for "restarting" the special assessment schedule for WECP in the piecemeal fashion that SCW requests the court to somehow legislate itself. *See, in absentia,* Iowa Code § 427B.26. The plain meaning of the law and its express terms bolster this conclusion.

And Iowa Code section 427B.26 includes no variation of the phrases "substantially replace" or "repowering" – indeed, the word "substantial" does not appear within the statute at all. *See, in absentia, id*. Thus, while SCW may wish those terms were included, or set out, in section 427B.26, the legislature did not do so at the law's inception or in the nearly 30-years since. *Id.*; *Iowa Land Title Ass'n v. Iowa Fin. Auth.*, 771 N.W.2d 399, 402 (Iowa 2009) (recognizing "the legislature knows how to modify [a] word" and "has

done so in many instances”); *see also* 1993 Iowa Acts (75 G.A.) ch. 161, § 2 (H.F. 664) (codifying Iowa Code § 427B.26 for the first time). The Court cannot read something into the statute that is not there, and its holdings and determined construction given to the law is determined “by the words the legislature chose, not by what it should or might have said.” *Iowa Land Title Ass’n*, 771 N.W.2d at 402 (citing *State v. Wiederien*, 709 N.W.2d 538, 541 (Iowa 2006)).

SCW simply asks the court to judicially-legislate terms into a statute that are not there at all. Even so, the supremacy of the law’s unambiguous text and the well-established principles and canons of statutory interpretation undermine the reasonableness of its request. *Id.*; *see* Scalia & Garner at 57 (“except in the rare case of an obvious scrivener’s error, purpose – even purpose as most narrowly defined – cannot be used to contradict text or supplement it . . . . Or to put the point differently, the limitations of the text – what a text chooses *not* to do – are as much a part of its ‘purpose’ as its affirmative dispositions.”) (emphasis in original). To do so now would not be right.

Because Iowa Code section 427B.26 is clear and unambiguous, the analysis ends there. But even if the court considers the 2019 and 2020 Memorandums that the Department of Revenue posted, those Memorandums

have no legal effect, as they are merely embodiments of an illegally adopted administrative rule, at best. Iowa's administrative agencies – even the IDR – cannot rewrite the law's clear text; this is especially true as it relates to Iowa Code section 427B.26, as the legislature did not vest the IDR with interpretive authority over its terms. *See Sherwin-Williams Co.*, 789 N.W.2d at 424-31.

In all, Iowa Code section 427B.26 is clear facially and as applied. Accordingly, SCW's claims cannot succeed and the judgment of the district court should be affirmed. After all, "The law *is* what the law *says*." [30]

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[30] *Davison*, 973 N.W.2d at 292 (McDermott, J., concurring specially) (quoting *Bank One Chi., N.A. v. Midwest Bank & Tr. Co.*, 516 U.S. 264, 279, 116 S.Ct. 637, 133 L.Ed.2d 635 (1996) (Scalia, J., concurring in part and concurring in judgment)).

REQUEST FOR ORAL SUBMISSION

The Appellee, Story County Board of Review, requests oral argument on this matter. Iowa R. App. Pro. 6.903(2)(*i*).

Respectfully submitted,

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CERTIFICATE OF COST

The undersigned Assistant Story County Attorneys, in accordance with the requirements of Iowa Rule of Appellate Procedure 6.903(2)(*j*), certify that the amount paid for printing, or duplicating, the necessary copies of Appellee's Amended Brief was $0.00.

Dated the 14th day of December, 2022.

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CERTIFICATE OF SERVICE & FILING

The attorneys below certify that on December 14, 2022, this brief was electronically filed with the Clerk of the Iowa Supreme Court using the EDMS electronic filing system in accordance with Iowa Rules of Appellate Procedure 6.100(1) and 6.901(1)(*b*).

A copy will be electronically served on all parties via EDMS with the Notice of Electronic Filing or Presentation in accordance with Iowa Rules of Appellate Procedure 6.100(1), 6.901(1)(*b*), and 6.901(1)(*d*), as well as Iowa Rules of Electronic Procedure 16.302(1), 16.306(2), 16.309(1), and 16.404.

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CERTIFICATE OF COMPLIANCE WITH TYPFACE REQUIREMENTS & TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. Pro. 6.903(1)(*d*) and 6.903(1)(*g*)(1) or (2) because:

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Dated the 14th day of December, 2022.

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