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## **CAFO Grief: Using Tax Grieving Procedures to Protest Industrial Animal Factories**

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*[W]e have allowed—in fact we have officially encouraged—the establishment of the confined animal-feeding industry, which exploits and abuses everything involved: the land, the people, the animals, and the consumers. If we love our country, as so many of us profess to do, how can we so desecrate it?*<sup>1</sup>

*The modern industrial “farm” has no regard for the wisdom of the true farmer, one who honors his stewardship of the earth, who cares for his animals.*<sup>2</sup>

*More than any other institution, the American industrial animal farm offers a nightmarish glimpse of what capitalism can look like in the absence of moral or regulatory constraint.*<sup>3</sup>

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<sup>1</sup> Wendell Berry, *Compromise, Hell!*, ORION MAG., Nov./Dec. 2004, at 20, available at <http://www.orionmagazine.org/index.php/articles/article/147>.

<sup>2</sup> JANE GOODALL ET AL., HARVEST FOR HOPE: A GUIDE TO MINDFUL EATING 82 (2005).

<sup>3</sup> Michael Pollan, *An Animal’s Place*, N.Y. TIMES, Nov. 10, 2002, § 6 (Magazine), at 58.

Here in these places life itself is redefined—as protein production—and with it suffering. That venerable word becomes “stress,” an economic problem in search of a cost-effective solution, like tail-docking or beak-clipping or, in the industry’s latest plan, by simply engineering the “stress gene” out of pigs and chickens. “Our own worst nightmare” such a place may well be; it is also real life for the billions of animals unlucky enough to have been born beneath these grim steel roofs, into the brief, pitiless life of a “production unit” in the days before the suffering gene was found.

*Id.*

This Article does not directly address the cruel practices of industrial animal factories, as touched on in this quote and addressed in the recent Pew Commission report. PEW COMM’N ON INDUS. FARM ANIMAL PROD., THE PEW CHARITABLE TRUSTS, PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA (2008) [hereinafter PEW COMM’N], available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Industrial\\_Agriculture/PCIFAP\\_FINAL.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Industrial_Agriculture/PCIFAP_FINAL.pdf). However, to the extent tax protests can be successful in forcing animal factories to internalize their costs, we can hope that one major externality—the suffering borne by the animals—will likewise disappear.

*In the good old days, the air here smelled like lilac trees, flowers grew in the garden . . . . But that was before Willet [Dairy] expanded.*<sup>4</sup>

The voices of dissent against factory farms<sup>5</sup> are not new, but the chorus is growing. More people are becoming aware of the huge societal and environmental costs associated with industrial animal production, all too often experiencing them firsthand. Two recent reports by major nongovernmental organizations documented these costs and explained the underlying policies and structures supporting the rise of the industrial animal factory.<sup>6</sup> As put by a recent *New York Times* editorial, “both of these reports make clear [that] the so-called efficiency of industrial animal production is an illusion, made possible by cheap grain, cheap water and prisonlike confinement systems.”<sup>7</sup>

Basically, the public props up the factory farm industry through taxpayer-funded farm bill subsidies<sup>8</sup> and by shouldering the burden of externalities,<sup>9</sup> the external costs for which factory farms do not take responsibility.<sup>10</sup> Taxpayer-funded subsidies have included indirect subsidies in the form of low grain prices supported by direct subsidies to feed producers<sup>11</sup> and direct subsidies through the Environmental Quality Incentives Program, which has come to favor payments to industrial size

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<sup>4</sup> Rebecca Lerner, *Toxic Fumes, Blisters & Brain Damage: The Cost of Doing Business?*, ITHACA TIMES (N.Y.), Apr. 2, 2008 at 1, available at [http://www.zwire.com/site/news.cfm?newsid=19446417&BRD=1395&PAG=461&dept\\_id](http://www.zwire.com/site/news.cfm?newsid=19446417&BRD=1395&PAG=461&dept_id).

<sup>5</sup> This Article uses the terms “factory farm,” “industrial animal factory,” and “CAFO” (concentrated animal feeding operation) interchangeably. However, it should be noted that a facility may be a factory farm but not necessarily qualify as a CAFO under the Clean Water Act’s regulatory definition. See 40 C.F.R. § 122.23(b) (2007).

<sup>6</sup> DOUG GURIAN-SHERMAN, UNION OF CONCERNED SCIENTISTS, CAFOS UNCOVERED: THE UNTOLD COSTS OF CONFINED ANIMAL FEEDING OPERATIONS 30–39, (2008), available at [http://www.ucsusa.org/assets/documents/food\\_and\\_agriculture/cafos-uncovered.pdf](http://www.ucsusa.org/assets/documents/food_and_agriculture/cafos-uncovered.pdf); PEW COMM’N, *supra* note 3.

<sup>7</sup> Editorial, *The Worst Way of Farming*, N.Y. TIMES, May 31, 2008, at 26.

<sup>8</sup> GURIAN-SHERMAN, *supra* note 6, at 3, 10.

<sup>9</sup> *Id.* at 17.

<sup>10</sup> *Id.* at 29–30.

<sup>11</sup> The majority of corn grown in the United States goes to feed livestock. *Id.* at 29.

feeding operations.<sup>12</sup> Externalities include myriad types of environmental degradation, public health risks, inhumane animal practices, and harm to rural communities.<sup>13</sup>

Factory farms manifest their impacts on rural communities in a variety of ways. Many studies have confirmed that they cause social problems, including decreased quality of life associated with smells that impinge on outdoor freedom and cause feelings of “violation, isolation, and infringement.”<sup>14</sup> Factory farms are also associated with increased “stress, sociopsychological problems, and teen pregnancies.”<sup>15</sup> In addition to these impacts and their environmental and health costs, factory farms are bad for local economic development. They minimize the number of workers needed, they are not likely to buy their inputs locally, and they decrease the local tax base while increasing local expenses, such as road repair.<sup>16</sup> Because factory farms rely on capital-intensive technology, they create few jobs and those they do create are low-wage.<sup>17</sup> Finally, and most relevant here, they cause direct economic losses to their neighbors by lowering the “sales and taxable value[s]” of the neighbors’ properties.<sup>18</sup>

Thus, it is those people who live closest to factory farms who perhaps suffer the greatest harm. The environmental consequences of industrial animal production—such as air and water pollution—are often keenly felt as health consequences by rural neighbors who cannot escape contaminated well water and toxic air emissions.<sup>19</sup> Noxious odors impair nearby residents’ quality of life for obvious reasons.<sup>20</sup> One Duke University study found “significantly higher levels of tension, depression, anger, and fatigue among” residents living near a large hog facility, as

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<sup>12</sup> *Id.* at 37.

<sup>13</sup> *Id.* at 3–5; PEW COMM’N, *supra* note 3, at iii–iv.

<sup>14</sup> PEW COMM’N, *supra* note 3, at 42.

<sup>15</sup> *Id.* at 43.

<sup>16</sup> GURIAN-SHERMAN, *supra* note 6, at 61; WILLIAM J. WEIDA, COLO. COLL. & GLOBAL RES. ACTION CTR. FOR THE ENV’T, THE CAFO: IMPLICATIONS FOR RURAL ECONOMIES IN THE US, 3–5 (2004), available at [http://www.sustainabletable.org/issues/docs/YaleEconOnly\\_ND1.pdf](http://www.sustainabletable.org/issues/docs/YaleEconOnly_ND1.pdf).

<sup>17</sup> PEW COMM’N, *supra* note 3, at 43.

<sup>18</sup> WEIDA, *supra* note 16, at 1–2.

<sup>19</sup> See, e.g., GURIAN-SHERMAN, *supra* note 6, at 60.

<sup>20</sup> See, e.g., *id.*

compared to other rural residents.<sup>21</sup> All of these considerations, likely heightened by the distinctly non-bucolic appearance of factory farms and the growing stigma attached to them for grossly inhumane treatment of animals, combine to make homes near factory farms undesirable places to live and thereby reduce their fair market values.<sup>22</sup>

This Article presents a potential tool for those negatively impacted homeowners to use. It is a general roadmap for property tax assessment protests for residences near factory farms. It draws largely from a publicly available guide, also by this author, that was created as part of the Vermont Law School Environmental and Natural Resources Law Clinic's (ENRLC) project to facilitate these types of protests.<sup>23</sup> The project recognizes that when localities fail to account for the devaluing impacts that factory farms have on neighboring properties in making property tax assessments, they mistakenly overestimate the fair market values of those properties, which results in unfair and falsely high property taxes. If, in contrast, factory farms are properly taken into account, neighboring residences will receive fair assessments and fair tax bills, and localities will be more likely to consider the true costs of factory farms when making relevant policy decisions.

The ENRLC's project has been focused on New York; thus, this roadmap is New York specific.<sup>24</sup> New York has historically been home to a large number of industrial dairy operations, and the numbers have shown no signs of declining in recent years.<sup>25</sup> A compelling 2005 New York report by the Citizens' Environmental Coalition and the Sierra Club contained

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<sup>21</sup> Sierra Club, *That Stinks*, [http://www.sierraclub.org/cleanwater/that\\_stinks/factoid.asp?ID=32](http://www.sierraclub.org/cleanwater/that_stinks/factoid.asp?ID=32) (last visited Jan. 3, 2009).

<sup>22</sup> See, e.g., WEIDA, *supra* note 16, at 1–2; John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39 APPRAISAL J. 301, 301–04 (2001).

<sup>23</sup> LAURA MURPHY, VT. LAW SCH., *TAX GRIEVING FOR NEW YORK PROPERTIES NEAR FACTORY FARMS* (2008), available at <http://www.factoryfarmtaxprotest.com> (follow “Master Guide” hyperlink).

<sup>24</sup> However, please stay tuned to [www.factoryfarmtaxprotest.com](http://www.factoryfarmtaxprotest.com) for expansions into other states.

<sup>25</sup> MICHAEL SCHADE, CITIZENS' ENVTL. COAL. & SIERRA CLUB, *THE WASTING OF RURAL NEW YORK STATE: FACTORY FARMS AND PUBLIC HEALTH* 4, 12–13 (2005), available at <http://www.ecothreatny.org/cectoxic/WastingRuralNY.pdf>.

numerous profiles of New York residents impacted by factory farms (not all of them dairies).<sup>26</sup> Their stories share the common theme of lives altered for the worse:

Yes, I understand I live in the country. I was brought up on a farm in the country. Yes, I understand that there are animal and other organic odors produced in the country. These odors are not pleasant. But I can remember when, not too many years ago, salmon ran up the creek. Now the fish and game refuse to even stock here.<sup>27</sup>

It got to be pretty much impossible to have a cookout outside. If you left your door open or the window on your car, you'd come back and there would be hundreds of flies in there. It really impacts your enjoyment of your home . . . .<sup>28</sup>

The roads get wet with liquid manure, it dries and with the heavy traffic, becomes a fine dust that enters our home, our barn, our cars, and our lungs. Mowing the lawn, tending to our few animals or trying to garden is usually a 'noxious affair', after which we are sometimes sick with respiratory illnesses, headaches, and even dizziness and nausea. Swarming flies are also in abundance where we live. Even if the smell doesn't get us if we try to BBQ,<sup>29</sup> the flies will swarm our food on a really busy spreading day.

The amount of cows on this small area of land and the resulting air pollution is overwhelming. It actually penetrates the walls of my house, even in winter. These are not mere nuisance odors but toxic gases such as ammonia and hydrogen sulfide. . . . In my case they produce severe headaches. It tears me apart. I can't even breathe. They are making me ill in my own house.<sup>30</sup>

The odors here can get real bad. At times they aren't bad and at other times if the wind shifts . . . you can sit in this house with the windows closed and taste it. You can smell the sulfur. If you sit outside long, your eyes start to water and you have to blow your nose. You can smell it in your house and it gets in your clothes. Even in your house you're being held captive.<sup>31</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 7 (statement of Kenneth Hoffman).

<sup>28</sup> *Id.* at 9 (statement of Corey Hogan).

<sup>29</sup> *Id.* at 11 (statement of Connie Mather).

<sup>30</sup> *Id.* at 17 (statement of Gregg Kaczmarczyk).

<sup>31</sup> *Id.* at 23 (statement of John Minnick).

It is hard to imagine any prospective home buyer finding homes so negatively impacted by factory farms desirable places to live. When such homes are assessed for property tax purposes, they should reflect that fact. The concept is not new. As later described, property tax reductions have already been ordered on many occasions in many states for properties near factory farms. In fact, the Great Plains Environmental Law Center is currently sponsoring a similar project in Nebraska.<sup>32</sup>

This Article begins with a brief description of tax assessment and tax “grieving” procedures (as it is called in New York), then expands into a discussion of the legal justifications and evidentiary ideas for reducing property tax assessments based on neighboring factory farms. The broad legal arguments, multiple examples of properties already recognized as being devalued by factory farms, and cross-jurisdictional authority (for example, the *Appraisal Journal*) should apply to any state in the nation. The remainder of the roadmap could be adjusted to other states by substituting the relevant state’s procedures and controlling case law for New York’s.

## I

### TAX ASSESSMENT AND REVIEW IN NEW YORK

#### A. Tax Assessment Generally

Each year in New York, real properties are assessed in order to determine the taxes on those properties.<sup>33</sup> “Real property” is basically real estate—land and any structures, such as houses, that are attached to the land.<sup>34</sup> Revenues generated by the taxes are used to fund municipal services such as schools, road maintenance, and police and fire protection.<sup>35</sup>

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<sup>32</sup> See Great Plains Env'tl. Law Ctr., CAFO & Property Valuation Studies & Articles, [http://www.gpelc.org/projects/tax\\_protest.php](http://www.gpelc.org/projects/tax_protest.php) (last visited Jan. 3, 2009).

<sup>33</sup> New York State Office of Real Property Services, Valuing and Assessing Real Property [hereinafter Valuing and Assessing], [http://www.orps.state.ny.us/home/varp\\_index.cfm](http://www.orps.state.ny.us/home/varp_index.cfm) (last visited Jan. 3, 2009).

<sup>34</sup> N.Y. STATE OFFICE OF REAL PROP. SERVS., THE JOB OF THE ASSESSOR (2008) [hereinafter JOB OF THE ASSESSOR], available at <http://www.orps.state.ny.us/pamphlet/assessjo.pdf>.

<sup>35</sup> N.Y. STATE OFFICE OF REAL PROP. SERVS., HOW THE PROPERTY TAX WORKS (2008) [hereinafter HOW TAX WORKS], available at <http://www.orps.state.ny.us/pamphlet/taxworks.pdf>.

The assessment is performed by an assessor in the property's assessing unit.<sup>36</sup> The "assessing unit" is the town, city, county, or village in which the property is located.<sup>37</sup> Some properties are located in more than one assessing unit and so will be assessed more than once.<sup>38</sup> The assessor for the assessing unit is locally elected or appointed.<sup>39</sup> Most assessors must complete basic training and receive certification from the state, and appointed assessors must participate in continuing education.<sup>40</sup> The local government of the assessing unit may employ an expert to help the assessors appraise real property and to give expert testimony "in any action or proceeding in connection with any such assessment."<sup>41</sup>

To assess property, the assessor first determines the market value of the property.<sup>42</sup> "Market value," also known as "full value," is the price for which a property would sell in an open market under normal conditions.<sup>43</sup> The "valuation date" is basically the date on which the property is valued.<sup>44</sup> It varies by assessing unit but is usually July 1 of the previous year.<sup>45</sup>

The best evidence of a property's market value is the recent sale price of the property in an arm's length transaction; where the seller is under no compulsion to sell, and the buyer is under no compulsion to buy.<sup>46</sup> If there is no recent sale, there are three common methods for determining market value, but other

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<sup>36</sup> Valuing and Assessing, *supra* note 33.

<sup>37</sup> N.Y. STATE OFFICE OF REAL PROP. SERVS., ASSESSOR'S REPORT INSTRUCTIONS FOR CITIES AND TOWNS: DEFINITIONS (2008), [http://www.orps.state.ny.us/ess/asreport/b\\_define.htm](http://www.orps.state.ny.us/ess/asreport/b_define.htm).

<sup>38</sup> N.Y. STATE OFFICE OF REAL PROP. SERVS., WHAT TO DO IF YOU DISAGREE WITH YOUR ASSESSMENT 15 (2008) [hereinafter DISAGREE WITH YOUR ASSESSMENT], *available at* <http://www.orps.state.ny.us/pamphlet/complain/howtofile/whattodo.pdf>.

<sup>39</sup> JOB OF THE ASSESSOR, *supra* note 34.

<sup>40</sup> *Id.*

<sup>41</sup> N.Y. REAL PROP. TAX LAW § 572 (McKinney 2008).

<sup>42</sup> JOB OF THE ASSESSOR, *supra* note 34.

<sup>43</sup> *Id.*

<sup>44</sup> N.Y. STATE OFFICE OF REAL PROP. SERVS., THE REAL PROPERTY TAX CYCLE (2008), *available at* <http://www.orps.state.ny.us/pamphlet/rptcal.pdf>.

<sup>45</sup> N.Y. STATE OFFICE OF REAL PROP. SERVS., VALUATION STANDARDS (2008), <http://www.orps.state.ny.us/assessor/valuation/valstdsm.htm>.

<sup>46</sup> *See Allied Corp. v. Town of Camillus*, 604 N.E.2d 1348, 1350 (N.Y. 1992).



methods may be used as well.<sup>47</sup> The three common methods are the market approach, the cost approach, and the income approach.<sup>48</sup>

The market approach is generally used for residential, vacant, and farm properties.<sup>49</sup> Under this approach, a property's value is determined by comparing it to recent sales of similar properties.<sup>50</sup> The cost approach is generally used for special purpose and utility properties.<sup>51</sup> Under this approach, a property's value is determined by adding the cost to replace structures on the land to the market value of the land.<sup>52</sup> The income approach is generally used for properties like apartment buildings, stores, or factories.<sup>53</sup> Under this approach, a property's value is determined by estimating the amount of income it would produce if rented.<sup>54</sup>

Once the market value has been determined, the actual assessment is calculated by multiplying the market value by the assessing unit's percentage rate.<sup>55</sup> To ensure that taxes are fair, each property in the assessing unit must be assessed at the same rate.<sup>56</sup> This rate is known as the "uniform percentage of value" or "level of assessment."<sup>57</sup> The uniform percentage of value might be 100%, or it might be less than 100%. In the City of Saratoga Springs, for instance, the uniform percentage of value was 83% in 2007.<sup>58</sup> So, if a property's market value was \$100,000, its assessment would be \$83,000. By contrast, in the Town of Springwater, the uniform percentage of value for 2007 was

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<sup>47</sup> JOB OF THE ASSESSOR, *supra* note 34.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> HOW TAX WORKS, *supra* note 35.

<sup>56</sup> *Id.*

<sup>57</sup> N.Y. STATE OFFICE OF REAL PROP. SERVS., THE LOCALLY STATED LEVEL OF ASSESSMENT (2008), available at <http://www.orps.state.ny.us/pamphlet/loa.pdf>.

<sup>58</sup> New York State Office of Real Property Services, Saratoga Springs Equalization Rate History, <http://www.orps.state.ny.us/cfapps/MuniPro> (follow "Current Equalization Information" hyperlink; select "2007" and follow "Enter" hyperlink; follow "411500" hyperlink) (last visited Jan. 3, 2009).

100%.<sup>59</sup> So, a property with a market value of \$100,000 would be assessed at \$100,000. Some properties, such as religious property, are wholly or partially exempt from taxation.<sup>60</sup>

When all of the assessments in an assessing unit are completed, they are published locally in a “tentative assessment roll.”<sup>61</sup> The tentative assessment roll is usually published on May 1, but some assessing units have different dates.<sup>62</sup>

### ***B. Tax Assessment Review***

#### *1. Step 1: Board of Assessment Review (BAR)*

After the tentative assessment roll is filed, property owners may protest, or “grieve,” their assessments before the local Board of Assessment Review (BAR).<sup>63</sup> The first step in that process is to file a specified form (Form RP-524) prior to Grievance Day, which in most assessing units is the fourth Tuesday in May.<sup>64</sup> There is no fee to seek review before the BAR.<sup>65</sup>

A property owner might first meet with his or her assessor and agree to a “stipulated” assessment reduction, which is then filed with the BAR on the RP-524 form.<sup>66</sup> Or, a property owner may file the complaint form without any stipulation.<sup>67</sup> The form gives the property owner a chance to explain the reasons his or

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<sup>59</sup> New York State Office of Real Property Services, Springwater Equalization Rate History, <http://www.orps.state.ny.us/cfapps/MuniPro> (follow “Current Equalization Information” hyperlink; select “2007” and follow “Enter” hyperlink; follow “244800” hyperlink) (last visited Jan. 3, 2009).

<sup>60</sup> N.Y. STATE OFFICE OF REAL PROP. SERVS., EXEMPTIONS FROM REAL PROPERTY TAXATION IN NEW YORK STATE: 2007 COUNTY, CITY & TOWN ASSESSMENT ROLES (2008), <http://www.orps.state.ny.us/ref/pubs/exempt/ex07/exrpt07.htm#section1>.

<sup>61</sup> N.Y. STATE OFFICE OF REAL PROP. SERVS., FAIR ASSESSMENTS: A GUIDE FOR PROPERTY OWNERS (2008), available at <http://www.orps.state.ny.us/pamphlet/fairassessments.pdf>.

<sup>62</sup> *Id.*

<sup>63</sup> DISAGREE WITH YOUR ASSESSMENT, *supra* note 38, at 6.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 1.

<sup>66</sup> *Id.* at 8.

<sup>67</sup> N.Y. REAL PROP. TAX LAW § 524 (McKinney 2008).

her tax assessment should be reduced.<sup>68</sup> It lists seven factors to consider, including one for “[a]dditional supporting documentation.”<sup>69</sup>

On or around Grievance Day, the BAR in each assessing unit evaluates the complaints that property owners have filed.<sup>70</sup> The BAR is composed of three to five residents of the assessing unit, appointed by the local government.<sup>71</sup> Its job is to arrive at fair and impartial decisions regarding property assessments and to “determine the final assessment for each complaint before it.”<sup>72</sup> The BAR should not “speculat[e] as to the outcome of litigation against the assessor’s methods” or consider whether “similarly treated taxpayers” have failed to complain.<sup>73</sup>

The BAR may “administer oaths, take testimony and hear proofs” regarding the complaint.<sup>74</sup> There is a presumption in favor of the assessor, so the complainant has the burden of proving the assessment is wrong.<sup>75</sup> The proceeding is informal and is not meant to be adversarial; instead, it is “designed to insure the accuracy of the assessment,” and the BAR may “determine what information is material and whose presence is required” toward that end.<sup>76</sup> The BAR “may not adopt a general policy requiring that owners of residential property submit professional appraisal reports as a condition precedent to reducing an assessment.”<sup>77</sup> Instead, it may require a complainant

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<sup>68</sup> DISAGREE WITH YOUR ASSESSMENT, *supra* note 38, at 11; *see also* N.Y. REAL PROP. TAX LAW § 524(3).

<sup>69</sup> N.Y. STATE BD. OF REAL PROP. SERVS., COMPLAINT ON REAL PROPERTY ASSESSMENT, RP-524 at 2 (2008), *available at* <http://www.orps.state.ny.us/ref/forms/pdf/rp524.pdf>.

<sup>70</sup> DISAGREE WITH YOUR ASSESSMENT, *supra* note 38, at 6.

<sup>71</sup> N.Y. REAL PROP. TAX LAW § 523(1)(b).

<sup>72</sup> Board of Assessment Review (Powers and Duties) (Assessor’s Methodology)—Real Property Tax Law, § 1524, 7 OP. OFF. COUNSEL 67 (1981), *available at* <http://www.orps.state.ny.us/legal/opinions/v7/67.htm>.

<sup>73</sup> *Id.*

<sup>74</sup> N.Y. REAL PROP. TAX LAW § 525(2)(a).

<sup>75</sup> *See* Board of Assessment Review (Powers and Duties) (Evidentiary Demand—Professional Appraisal)—Real Property Tax Law, § 525, 8 OP. OFF. COUNSEL 83 (1984) [hereinafter COUNSEL OPINION 8-83], *available at* <http://www.orps.state.ny.us/legal/opinions/v8/83.htm>.

<sup>76</sup> *Jakubovitz v. Dworschak*, 413 N.Y.S.2d 444, 444 (App. Div. 1979).

<sup>77</sup> COUNSEL OPINION 8-83, *supra* note 75.

to “furnish information reasonably necessary to resolve any issue raised by the taxpayer’s complaint.”<sup>78</sup>

Usually, the complainant does not have to make a personal appearance in order for her complaint to be considered.<sup>79</sup> However, she has the right to attend the hearing and to present statements in support of her complaint.<sup>80</sup> The assessor or assessor’s staff is required to attend the BAR hearing and has a right to be heard.<sup>81</sup> Minutes of each examination must be taken and filed in the office of the municipal clerk.<sup>82</sup>

Usually, the BAR does not make its decision the day of the hearing.<sup>83</sup> Except for stipulations that the BAR has ratified, the BAR must give notice to the complainant of its decision, which must include the reasons for the decision.<sup>84</sup> Then, the “final assessment roll” is published, usually around July 1.<sup>85</sup> The final assessment roll will reflect the BAR’s decision.<sup>86</sup>

## 2. Step 2: Review of BAR Decisions

Property owners may appeal BAR decisions through different routes depending on the type of decision and the type of property. For instance, if the BAR does not approve a stipulated assessment, the property owner may appeal in one of three ways: (1) under article 78 of the New York Civil Practice Law and Rules, (2) in a Small Claims Assessment Review proceeding, or (3) in a tax certiorari proceeding under article 7 of New York’s Real Property Tax Law.<sup>87</sup> However, it is apparently very rare for the BAR to refuse to ratify a

<sup>78</sup> *Id.*

<sup>79</sup> N.Y. REAL PROP. TAX LAW § 525(2)(a).

<sup>80</sup> DISAGREE WITH YOUR ASSESSMENT, *supra* note 38, at 7.

<sup>81</sup> N.Y. REAL PROP. TAX LAW §§ 525(2)(a), 526(4).

<sup>82</sup> *Id.* § 525(2)(a).

<sup>83</sup> *Id.* §§ 525(3)(a), (4).

<sup>84</sup> *Id.* § 525(4).

<sup>85</sup> DISAGREE WITH YOUR ASSESSMENT, *supra* note 38, at 14.

<sup>86</sup> N.Y. REAL PROP. TAX LAW §§ 525(4), 526(5).

<sup>87</sup> Assessment Review (Stipulation) (Failure to Ratify—Judicial Review)—Real Property Tax Law, §§ 525, 706, 730, 10 OP. OFF. COUNSEL 89 (1999), available at <http://www.orps.state.ny.us/legal/opinions/v10/89.htm> (clarifying that article 78 is not the exclusive remedy for refusals to ratify stipulations).

stipulation.<sup>88</sup> Further, absent very limited circumstances, the law indicates that the BAR *must* ratify stipulations.<sup>89</sup> The two limited exceptions are when the stipulation was not executed within the proper time frame (before Grievance Day), or the complaint form was not filled out pursuant to statutory requirements.<sup>90</sup> The BAR does not have the authority to “substitute its judgment for that of the assessor as to the propriety of the stipulated assessment valuation itself.”<sup>91</sup> Instead, a “taxpayer should be able to rely on the adequacy of a stipulation entered into in good faith.”<sup>92</sup>

The more common decision to appeal is a denial of a reduction after a hearing. In that instance, there are two possible avenues of recourse: (1) an informal hearing before a SCAR or (2) an article 7 tax certiorari proceeding in New York Supreme Court.<sup>93</sup> Any complainant may proceed under article 7 tax certiorari, but there are eligibility requirements for SCAR. The complainant may not proceed under both because filing a petition under SCAR waives the right to review under article 7 tax certiorari (with a limited exception).<sup>94</sup>

*a. Small Claims Assessment Review (SCAR)*

The Small Claims Assessment Review is akin to the Board of Assessment Review. It involves a similar process, filing a form

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<sup>88</sup> *Hornell Country Club, Inc. v. Hornellsville Bd. of Assessment Review*, 700 N.Y.S.2d 659, 660 (App. Div. 1999) (“This may well be the first time a court has been asked to review a decision by a Board of Assessment Review (B.A.R.) in which the B.A.R. refused to ratify a stipulation entered into between the property owner and the town assessor.”).

<sup>89</sup> N.Y. REAL PROP. TAX LAW § 525(3)(a) (“The board of assessment review shall . . . ratify assessment stipulations entered into by the assessor and the complainant.”) (emphasis added); *Hornell*, 700 N.Y.S.2d at 663 (“‘Shall’ means *must*, not *may*.”).

<sup>90</sup> See *Hornell*, 700 N.Y.S.2d at 664 (citing N.Y. REAL PROP. TAX LAW § 524(3)).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 663.

<sup>93</sup> N.Y. REAL PROP. TAX LAW §§ 700, 730 (McKinney 2000 & Supp. 2008). In New York, the main trial courts are called supreme courts. New York State Unified Court System, Trial Courts, <http://www.courts.state.ny.us/courts/trialcourts.shtml> (last visited Jan. 3, 2009). There are four appellate division courts, and the highest court in the state is the Court of Appeals. New York State Unified Court System, Appellate Courts, <http://www.courts.state.ny.us/courts/appellate.shtml> (last visited Jan. 3, 2009).

<sup>94</sup> N.Y. REAL PROP. TAX LAW § 736(1).

(RPTL-730) and attending a hearing.<sup>95</sup> Like the BAR, the SCAR hearing is meant to be informal. It is conducted “on an informal basis in such manner as to do substantial justice between the parties according to the rules of substantive law.”<sup>96</sup> Statements and evidence are presented to the hearing officer, who shall “assure that decorum is maintained” and “consider the best evidence presented in each particular case.”<sup>97</sup> The hearing officer has “broad discretion in considering evidence”<sup>98</sup> and may “consider a wide variety of sources and information in evaluating assessments.”<sup>99</sup>

The property owner maintains the burden to prove his assessment is wrong.<sup>100</sup> He “need not present expert witnesses nor be represented by an attorney.”<sup>101</sup> Because the SCAR hearing is like an informal trial, the petitioner is not bound by “statutory provisions or rules of practice, procedure, pleading or evidence.”<sup>102</sup>

The SCAR hearing officer must determine issues of both fact and law de novo.<sup>103</sup> Thus, the SCAR is not reviewing BAR decisions but is hearing its own evidence and making its own decisions. Although there is a presumption that the original assessment is correct, there is no presumption in favor of a BAR decision. There is no transcript of the hearing, and the hearing officer’s decision is not precedent for other proceedings.<sup>104</sup>

Review of SCAR decisions may be had in an article 78 proceeding in New York Supreme Court.<sup>105</sup> As in proceedings before BARs and SCARs, there is a presumption of accuracy to

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<sup>95</sup> DISAGREE WITH YOUR ASSESSMENT, *supra* note 38, at 15 (describing SCAR process).

<sup>96</sup> N.Y. REAL PROP. TAX LAW § 732(2).

<sup>97</sup> *Id.*

<sup>98</sup> *Meola v. Assessor of Colonie*, 615 N.Y.S.2d 506, 507 (App. Div. 1994).

<sup>99</sup> *Montgomery v. Bd. of Assessment Review*, 817 N.Y.S.2d 419, 420 (App. Div. 2006).

<sup>100</sup> N.Y. REAL PROP. TAX LAW § 732(2).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* § 732(4).

<sup>104</sup> *Id.* § 735.

<sup>105</sup> *Id.* § 736(2); *see also, e.g., Montgomery v. Bd. of Assessment Review*, 817 N.Y.S.2d 419, 419 (App. Div. 2006) (reviewing denials of reduction by SCAR under article 78).

the assessor's assessment.<sup>106</sup> Further, if the record that was before the SCAR shows that the SCAR's determination had a rational basis, the determination will be upheld.<sup>107</sup>

*b. Article 7 Tax Certiorari*

The second option for appealing a post-hearing BAR decision not to reduce an assessment is an article 7 tax certiorari proceeding. Unlike SCAR, a tax certiorari appeal is a formal court proceeding.<sup>108</sup> At this point, property owners may join their petitions with others on the tax roll who are challenging their assessments because of neighboring factory farms.<sup>109</sup>

An article 7 tax certiorari proceeding is actually a trial de novo; thus, the court accepts evidence and makes its own decision regarding the propriety of the petitioner's assessment.<sup>110</sup> As stated by a New York appellate court:

While a proceeding to correct an assessment has been called a proceeding to review and has been referred to as a certiorari proceeding it reviews nothing. It is a trial *de novo* to decide

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<sup>106</sup> Moyer v. Town of Greece, 724 N.Y.S.2d 289, 292–93 (App. Div. 2001).

<sup>107</sup> See, e.g., Krzys v. Town of Clifton Park, 699 N.Y.S.2d 554, 556 (App. Div. 1999) (holding that the SCAR decision had a rational basis); see also *Montgomery*, 817 N.Y.S.2d at 420 (holding that a SCAR decision's reliance on comparable sales information provided by an assessor had a rational basis); *Meola v. Assessor of Colonie*, 615 N.Y.S.2d 506, 507 (App. Div. 1994) (“When a Hearing Officer's determination is challenged, the court's role is limited to ascertaining whether the determination has a rational basis.”); *Bellomo v. Bd. of Assessment Review*, 586 N.Y.S.2d 404, 404 (App. Div. 1992) (holding in an article 78 proceeding that the “record contain[ed] a rational basis” for the hearing officer's finding).

<sup>108</sup> See DISAGREE WITH YOUR ASSESSMENT, *supra* note 38, at 10. Compare N.Y. REAL PROP. TAX LAW §§ 700–727 (tax certiorari), with *id.* §§ 729–739 (SCAR).

<sup>109</sup> N.Y. REAL PROP. TAX LAW § 706(2).

<sup>110</sup> *People ex rel. Manhattan Ry. Co. v. Barker*, 46 N.E. 875, 879 (N.Y. 1897) (stating that tax certiorari court takes evidence and makes findings of fact like a “new trial”); see also *People ex rel. Four Park Ave. Corp. v. Lilly*, 37 N.Y.S.2d 733, 737 (App. Div. 1942) (“The law is settled that [a certiorari proceeding is] in the nature of a new trial . . .”); Assessor (Powers and Duties) (Appearance in Tax Certiorari Proceeding) Assessment Review, Board of (Appearance in Tax Certiorari Proceeding)—Real Property Tax Law, Article 7, 4 OP. OFF. COUNSEL 21 (1974), available at <http://www.orps.state.ny.us/legal/opinions/v4/21.htm> (“While an Article 7 proceeding has been called a ‘review’ proceeding it is in reality a trial de novo rather than a ‘review’ as such.”).

whether the total assessment of the property is correct and if it is not to correct it.<sup>111</sup>

As with BAR and SCAR, the assessor's assessment carries a presumption of validity.<sup>112</sup> To overcome this presumption, the petitioner must present "substantial evidence to the contrary."<sup>113</sup> "The substantial evidence standard is a minimal standard. It requires less than 'clear and convincing evidence,' and less than proof by 'a preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt.'"<sup>114</sup> To meet the standard, the petitioner need only "demonstrate the existence of a valid and credible dispute regarding valuation."<sup>115</sup> To demonstrate such a dispute, the petitioner should present "documentary and testimonial evidence . . . based on 'sound theory and objective data.'"<sup>116</sup>

Most often, this evidence is in the form of a "competent appraisal."<sup>117</sup> A consideration that weighs in favor of an

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<sup>111</sup> Katz Buffalo Realty, Inc. v. Anderson, 270 N.Y.S.2d 12, 13 (App. Div. 1966).

<sup>112</sup> State v. Town of Hardenburgh, 710 N.Y.S.2d 435, 437 (App. Div. 2000) ("It is well settled that a tax assessment fixed by a local tax assessor carries with it a presumptive validity.").

<sup>113</sup> *Id.*

<sup>114</sup> FMC Corp. v. Unmack, 699 N.E.2d 893, 896-97 (N.Y. 1998) (citation omitted) (concluding taxpayer had met burden); see also *Hardenburgh*, 710 N.Y.S.2d at 437 (termining standard a "threshold of minimal height").

<sup>115</sup> FMC Corp., 699 N.E.2d at 897; see also *City of Troy v. Town of Pittstown*, 762 N.Y.S.2d 651, 655 (App. Div. 2003) (finding testimony offered by real estate appraiser and engineer established valid and credible dispute).

<sup>116</sup> FMC Corp., 699 N.E.2d at 897 (quoting *Commerce Holding Corp. v. Bd. of Assessors*, 673 N.E.2d 127, 131 (N.Y. 1996)).

<sup>117</sup> *Id.* at 899; see also *Livingston v. Jefferson County Bd. of Equalization*, 640 N.W.2d 426, 431, 438 (Neb. Ct. App. 2002) (relying on appraiser's assessment to find that the tax commission should have considered taxpayer's proximity to a factory farm); *Miriam Osborn Mem'l Home Ass'n v. Assessor of Rye*, No. 17175/97, Slip. Op., at 2 (N.Y. App. Div. June 5, 2007) (finding taxpayer's appraisal and the appraiser's testimony presented a valid dispute); *Sun Plaza Enters. v. Tax Comm'n*, 759 N.Y.S.2d 127, 128 (App. Div. 2003) (finding an appraisal sufficient to rebut "the presumptive validity of the assessments" even though that appraisal was ultimately rejected); *Frontier Park v. Assessor of Babylon*, 741 N.Y.S.2d 96, 97 (App. Div. 2002) (finding testimony of experienced certified real estate appraiser met burden); *Moyer v. Town of Greece*, 724 N.Y.S.2d 289, 292 (App. Div. 2001) (stating that a professional appraisal was appropriate proof of property's market value); *Vim Constr. Co. v. Bd. of Assessors*, 442 N.Y.S.2d 533, 537 (App. Div. 1981) (citing appraisal report as evidence that prospective landfill devalued proximate property). Cf. *Krzys v. Town of Clifton Park*, 699 N.Y.S.2d 554, 556 (App. Div. 1999) (holding



appraisal being competent is that it was prepared by a “licensed and experienced real estate appraiser,” where the appraiser “personally inspected the property,” conducted interviews, “reviewed various publications and surveyed local real estate” to arrive at a “formal appraisal report, containing detailed descriptions and analyses of the property.”<sup>118</sup>

Importantly, the appraisal report may also contain “anecdotal” information.<sup>119</sup> In a case before the New York Court of Appeals, the “[p]etitioner asserted that various activities . . . created a blight upon [his property] and such blight adversely impacted the market value of [his property].”<sup>120</sup> The court then accepted an appraisal that verified those assertions by detailing the “long and contentious history of the site,” including “letters of complaints” and “negative publicity.”<sup>121</sup> The court found that such considerations were an adequate basis for the appraiser’s conclusion that the property had been devalued.<sup>122</sup> For present purposes, a comparable appraisal would contain any relevant information, including anecdotal information, that shows a neighboring factory farm has devalued the petitioner’s property.

In addition to the above guidelines for appraisals, New York’s tax assessment review rules set out specific requirements for appraisal reports used at trial:

The appraisal reports shall contain a statement of the method of appraisal relied on and the conclusions as to value reached by the expert, together with the facts, figures and calculations by which the conclusions were reached. If sales, leases or other transactions involving comparable properties are to be relied on, they shall be set forth with sufficient particularity as to permit the transaction to be readily identified, and the report shall contain a clear and concise statement of every fact that a party will seek to prove in relation to those comparable properties. The appraisal reports also may contain photographs of the property under review and of any

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in an article 78 proceeding that the taxpayer had not sustained burden of proof without submitting appraisal).

<sup>118</sup> *FMC Corp.*, 699 N.E.2d at 898.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

comparable property that specifically is relied upon by the appraiser, unless the court otherwise directs.<sup>123</sup>

If the requirements are not met, the court may refuse to consider the appraisal.<sup>124</sup> Further, the petitioner may only offer expert testimony on value if she submits an appraisal report.<sup>125</sup>

Once the petitioner meets the initial burden of rebutting the validity presumption, she must prove by a preponderance of the evidence that her assessment is incorrect.<sup>126</sup> The court has great discretion in evaluating that evidence and in determining an assessment, and it need not choose either side's figure.<sup>127</sup> It "is not bound by opinion testimony" as long as there is "substantial independent evidence on which to base its finding."<sup>128</sup> It may weigh "the relative merits of the underlying data and conclusions drawn therefrom in order to determine" whether the petitioner has established that his "valuation is the more accurate one."<sup>129</sup>

Appeals from a tax certiorari proceeding are taken as an ordinary appeal from an order of the supreme court, to the appellate division and then to the court of appeals.<sup>130</sup> On appeal, the court will uphold the market value found by the supreme

<sup>123</sup> N.Y. COMP. CODES R. & REGS. tit. 22, § 202.59(g)(2) (2008).

<sup>124</sup> See *Niagara Mohawk Power Corp. v. Bethlehem Assessor*, 639 N.Y.S.2d 492, 494–95 (App. Div. 1996) (holding that appraisal offered by taxpayer's appraiser was properly stricken from record because it did not include the facts, source materials, and studies upon which it relied); see also *State v. Town of Thurman*, 589 N.Y.S.2d 659, 662 (App. Div. 1992) (rejecting appraisal for failure to include calculations).

<sup>125</sup> N.Y. COMP. CODES R. & REGS. tit. 22, § 202.59(h).

<sup>126</sup> *FMC Corp.*, 699 N.E.2d at 896–97; see also *City of Troy v. Town of Pittstown*, 762 N.Y.S.2d 651, 655 (App. Div. 2003).

<sup>127</sup> *Oneonta Tennis Club, Inc. v. City of Oneonta Assessor*, 622 N.Y.S.2d 414, 416 (Sup. Ct. 1994).

Generally, in an assessment review, the Court is granted great discretion in evaluating the appraisals presented by each party. The Court need not be held to one of the figures presented; rather, 'in the process of the review . . . the courts are authorized and may be expected to make separate factual determinations as to the value properly to be assigned to the land and [to any buildings].'

*Id.* (quoting *Shubert Org., Inc. v. Tax Comm'n*, 456 N.E.2d 485, 486 (N.Y. 1983)).

<sup>128</sup> *Katz v. Assessor*, 442 N.Y.S.2d 795, 797 (App. Div. 1981).

<sup>129</sup> See *FMC Corp.*, 699 N.E.2d at 898.

<sup>130</sup> N.Y. REAL PROP. TAX LAW § 724 (McKinney 2000); see also *Commerce Holding Corp. v. Bd. of Assessors*, 673 N.E.2d 127 (N.Y. 1996) (reaffirming the appellate division affirmation of the supreme court article 7 decision to reduce the assessment).

court if it is “within the range of the evidence presented.”<sup>131</sup> It will defer to the supreme court’s decision,

unless such finding is based upon [an] erroneous theory of law or [an] erroneous ruling in the admission or exclusion of evidence, or unless it appears that the court . . . has failed to give to conflicting evidence the relative weight which it should have and thus has arrived at a value which is excessive or inadequate.<sup>132</sup>

## II

### MAKING THE ARGUMENT FOR A LOWER ASSESSMENT

The information in this section is designed to help tax grievors argue that neighboring factory farms should be considered in their property tax assessments and present proof showing that their properties have been devalued because of the neighboring factory farms. It will (1) present the legal justifications for utilizing valuation methods that allow neighboring factory farms to be properly considered (assuming the factory farms have not already been considered under traditional approaches); (2) recount multiple instances where factory farms were found to impact neighboring properties’ market values; and (3) list ideas for proof about market value for grievors to present to applicable tribunals, grouped according to the factors on the RP-524 form for BAR.

The information can be tailored to fit a griever’s particular situation. For instance, if a griever needed to persuade the tribunal that a factory farm should be considered at all, the legal justifications and devaluation examples sections might be most helpful. If, on the other hand, the members of the tribunal were only interested in proof about the griever’s particular property, the information in the potential proof section would be more useful.

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<sup>131</sup> See *Katz*, 442 N.Y.S.2d at 799.

<sup>132</sup> *In re Newtown Creek Waterway*, 31 N.E.2d 916, 917 (N.Y. 1940); see also *City of Troy v. Town of Pittstown*, 762 N.Y.S.2d 651, 655 (App. Div. 2003) (finding that the supreme court, which found for taxpayer, “carefully considered each issue and gave appropriate weight” to competing expert opinions).

### A. *Legal Justifications for Inclusive Valuation Methods*

There are two principles that are central to property tax assessment in New York. First, “property must be assessed at market value,” as opposed to some other value.<sup>133</sup> Second, property tax “[a]ssessments shall in no case *exceed* full [market] value.”<sup>134</sup> As explained above, market value, also called full value, is “the amount which one desiring, but not compelled to purchase, will pay under ordinary conditions to a seller who desires, but is not compelled, to sell.”<sup>135</sup> Or, put more simply, market value is “the price most people would pay for a property in its current condition.”<sup>136</sup>

The best evidence of a property’s market value, independent of any method, is a recent arm’s length sale of the subject property.<sup>137</sup> If there is no recent sale, New York accepts the three traditional valuation methods commonly accepted across other jurisdictions to determine market value:<sup>138</sup> the comparable-sales approach, the capitalization-of-income approach, and the reproduction-cost approach.<sup>139</sup>

The comparable-sales approach is also known as the market approach and is most applicable to residential properties. Of the three traditional approaches, this is generally preferred, assuming sufficient data exists.<sup>140</sup> Under this approach, a property’s value is determined by comparing it to recent sales of

<sup>133</sup> *Allied Corp. v. Town of Camillus*, 604 N.E.2d 1348, 1350 (N.Y. 1992).

<sup>134</sup> N.Y. CONST. art. XVI, § 2 (emphasis added).

<sup>135</sup> *Erie Boulevard Hydropower, L.P. v. Town of Ephratah Bd. of Assessors*, No. 17-1-2000-0331 to -0332, -0400 to -0401, 2003 WL 21172636, at \*1 (N.Y. App. Div. Apr. 11, 2003).

<sup>136</sup> Valuing and Assessing, *supra* note 33.

<sup>137</sup> *Allied Corp.*, 604 N.E.2d at 1350; *see also* *Moyer v. Town of Greece*, 724 N.Y.S.2d 289, 292 (App. Div. 2001) (finding recent purchase price of property to be an acceptable proof of value); Vincent D’Elia & Catherine M. Ward, *The Valuation of Contaminated Property*, 111 BANKING L.J. 350, 360 (1994) (discussing how the perception of devaluation from contamination can be manifested in a lower selling price).

<sup>138</sup> *See* *Commerce Holding Corp. v. Bd. of Assessors*, 673 N.E.2d 127, 130 (N.Y. 1996); *see also* APPRAISAL STANDARDS BD., APPRAISAL FOUND., 2008–2009 UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, Rules 1-4(a), (c) (2008), available at [http://commerce.appraisalfoundation.org/html/USPAP2008/USPAP\\_folder/standards/Standards\\_Rule\\_1\\_4.htm](http://commerce.appraisalfoundation.org/html/USPAP2008/USPAP_folder/standards/Standards_Rule_1_4.htm).

<sup>139</sup> *Commerce Holding*, 673 N.E.2d at 130.

<sup>140</sup> *Allied Corp.*, 604 N.E.2d at 1351; *see also* *Moyer*, 724 N.Y.S.2d at 292.

similar properties.<sup>141</sup> The properties need not be identical.<sup>142</sup> They should, however, have more than one characteristic in common.<sup>143</sup> Some relevant similarities include square footage, style, age, quality of construction, condition, and site size.<sup>144</sup> The properties should have similar neighboring characteristics as well, in order to be truly similar.<sup>145</sup>

New York courts have also acknowledged the need for great flexibility in the methods that may be used to determine market value. “If one of the conventional theories of valuation is applicable to a particular situation, then that method should be employed. ‘Pragmatism, however, requires adjustment when the economic realities prevent placing the properties in neat logical valuation boxes.’”<sup>146</sup> Any method, as long as it is fair and nondiscriminating, will do.<sup>147</sup> Importantly, “*any* factor affecting a property’s marketability” must be taken into account.<sup>148</sup> Professional appraisal standards likewise embrace this inclusive, ever-developing approach to property assessment, stating that “[t]o keep abreast of . . . changes and developments, the appraisal profession reviews and revises appraisal methods and techniques and develops methods and techniques to meet new circumstances.”<sup>149</sup>

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<sup>141</sup> N.Y. OFFICE OF REAL PROP. SERVS., HOW ESTIMATES OF MARKET VALUE ARE DETERMINED FOR RESIDENTIAL PROPERTIES (2008), *available at* [http://www.orps.state.ny.us/pamphlet/mv\\_estimates.pdf](http://www.orps.state.ny.us/pamphlet/mv_estimates.pdf).

<sup>142</sup> *Gordon v. Town of Esopus*, 819 N.Y.S.2d 346, 347 (App. Div. 2006).

<sup>143</sup> *See Moyer*, 724 N.Y.S.2d at 292 (holding that the taxpayer failed to submit enough relevant proof to support assessment reduction because taxpayer’s comparable-sales approach was based only on square footage).

<sup>144</sup> *Id.*

<sup>145</sup> *See Vim Constr. Co. v. Bd. of Assessors*, 442 N.Y.S.2d 533, 537 (App. Div. 1981) (illustrating that properties must have similar neighboring characteristics in order to be considered similar by noting that comparable sales information was unhelpful where sales were not in vicinity of landfill site allegedly impacting subject property).

<sup>146</sup> *Oneonta Tennis Club, Inc. v. City of Oneonta Assessor*, 622 N.Y.S.2d 414, 415 (Sup. Ct. 1994) (quoting *G.R.F., Inc. v. Bd. of Assessors*, 362 N.E.2d 597, 599 (N.Y. 1977)).

<sup>147</sup> *See, e.g., Commerce Holding Corp. v. Bd. of Assessors*, 673 N.E.2d 127, 130 (N.Y. 1996); *Allied Corp. v. Town of Camillus*, 604 N.E.2d 1348, 1350 (N.Y. 1992).

<sup>148</sup> *Commerce Holding*, 673 N.E.2d at 129 (emphasis added).

<sup>149</sup> *See* APPRAISAL STANDARDS BD., APPRAISAL FOUND., 2008–2009 UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, Rule 7-1(a) cmt. (2008), *available at* [http://commerce.appraisalfoundation.org/html/USPAP2008/USPAP\\_folder/standards/Standards\\_Rule\\_7\\_1.htm](http://commerce.appraisalfoundation.org/html/USPAP2008/USPAP_folder/standards/Standards_Rule_7_1.htm).

In line with these flexible views on valuation methodology, New York courts have adopted or favorably treated various nontraditional valuation techniques.<sup>150</sup> In particular, the New York State Court of Appeals has recognized “the unsuitability of the strict application of traditional valuation techniques to contaminated properties” and noted that “the prevailing trend in this field has been one of experimentation and adaptation, marked by the use of [adjusted] traditional techniques.”<sup>151</sup> In approving other techniques, courts have often relied on valuation literature to support their opinions, which indicates their willingness to move beyond limited court precedent in order to incorporate developing valuation ideas.<sup>152</sup> Sometimes the courts employ techniques that are not formal or defined methods but that reflect a consideration of any facts relevant to a property’s market value.<sup>153</sup>

Some of these nontraditional methods are described below. Several of them are particularly useful for measuring negative externalities from factory farms.<sup>154</sup> The concept that the siting of an externality can affect proximate property values is not a novel one.<sup>155</sup> Power generating plants, landfills, nuclear facilities,

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<sup>150</sup> See, e.g., *Commerce Holding*, 673 N.E.2d at 130–31.

<sup>151</sup> *Id.* at 130.

<sup>152</sup> See, e.g., *id.* at 131 (citing three *Appraisal Journal* articles as evidence that certain factors should be considered in environmental contamination cases); see also *Consol. Edison Co. v. City of New York*, 823 N.Y.S.2d 451, 456 (App. Div. 2006) (relying on Appraisal Institute literature for definition of “functional obsolescence” in tax assessment challenge).

<sup>153</sup> See, e.g., *Commerce Holding*, 673 N.E.2d at 129, 131 (“[T]he assessment of property value for tax purposes must take into account any factor affecting a property’s marketability. . . . While it is not possible to prescribe any one method to assess the effects of environmental contamination, there are certain factors that should be considered.”); see also *Richter v. Macomb Twp.*, No. 87090, 1985 WL 15496, at \*1–2 (Mich. Tax Trib. 1985) (concluding that “[a]bsent objective market data,” significant factual criteria will be relied on to reduce assessment for property near landfill and stating that “[e]ach case and situation must rest on its own facts”).

<sup>154</sup> See, e.g., MUBARAK HAMED ET AL., UNIV. OF MO., *THE IMPACTS OF ANIMAL FEEDING OPERATIONS ON RURAL LAND VALUES* 5 (1999) (defining “externality” as a “side effect of an industry that affects the welfare of others, either positively or negatively, and that is not included in the price of producing a good” and using hedonic pricing model to measure externalities from factory farms).

<sup>155</sup> See Kilpatrick, *supra* note 22, at 304 (citing studies finding property value impacts from nearby power generating plants, landfills, nuclear facilities, hazardous waste sites, and power lines); see also *Richter*, 1985 WL 15496, at \*2 (ordering assessment reduced by 50% based on proximity to landfill); *Vim Constr. Co. v. Bd.*

hazardous waste sites, power lines, leaking underground storage tanks, Superfund sites, pipeline ruptures, as well as animal feedlots, have all been found to impact neighboring property values.<sup>156</sup>

Implementing some of these methods would require extensive studies most likely beyond grievors' resources. However, the methods and their underlying reasoning offer some good ideas that can be adapted for the griever's use, as described in the potential proof section. Additionally, the methods are useful because they show that factors such as environmental impacts and proximity to a factory farm are indeed relevant to a property's market value. Therefore, the techniques themselves can be cited to show that environmental considerations and proximity to a factory farm, with its associated characteristics, should be considered in any assessment.

### 1. Hedonic Valuation

Hedonic valuation, or regression analysis, is a method that can be used to value a particular characteristic of a property. It has been cited with favor by the Court of Appeals of New York and is particularly useful for valuing environmental characteristics, such as odor and insect swarms.<sup>157</sup> Under this approach, the value of a property will equal the sum of its characteristics.<sup>158</sup> Therefore, each characteristic can be valued as the change in selling price for a particular property when that one

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of Assessors, 442 N.Y.S.2d 533, 537 (App. Div. 1981) (finding property value affected by contiguous landfill site in tax assessment proceeding); Robert A. Simons & Jesse D. Saginor, *A Meta-Analysis of the Effect of Environmental Contamination & Positive Amenities on Residential Real Estate Values*, 28 J. REAL EST. RES. 71 (2006) (summarizing seventy-five peer-reviewed articles and selected case studies on the effects of "leaking underground storage tanks, superfund sites, landfills, water and air pollution, power lines, pipeline ruptures, nuclear power plants, animal feedlots" and other uses on proximate residential real estate property values).

<sup>156</sup> Kilpatrick, *supra* note 22, at 304; *see also* Richter, 1985 WL 15496, at \*2; *Vim Constr.*, 442 N.Y.S.2d at 537; Simons & Saginor, *supra* note 155, at 71.

<sup>157</sup> *See Commerce Holding*, 673 N.E.2d at 131 n.4 (noting it as a "new valuation technique[] . . . being developed" with "promise"); *see also* James A. Chalmers & Scott A. Roehr, *Issues in the Valuation of Contaminated Properties*, 61 APPRAISAL J. 28, 36 (1993) (describing hedonic analysis as a means of understanding how environmental conditions, such as odor and insect swarms, affect residential property values); Ecosystem Valuation, Hedonic Pricing Method, [http://www.ecosystemvaluation.org/hedonic\\_pricing.htm](http://www.ecosystemvaluation.org/hedonic_pricing.htm) (last visited Jan. 3, 2009).

<sup>158</sup> Chalmers & Roehr, *supra* note 157, at 37.

characteristic changes.<sup>159</sup> So, put very simply, the value of a property located near a factory farm would be compared with the value of a similar property located away from the factory farm to determine any decrease in value caused by proximity to the factory farm.

This method has been used in studies to determine the impact of factory farms on neighboring property values.<sup>160</sup> The studies are limited to particular areas and time frames, so their exact findings would not necessarily be applicable to a particular grievance. However, as mentioned, the studies themselves can be used to show that factory farms can and do affect the selling prices of properties and should therefore be considered in property assessments.

## 2. *Contingent Valuation*

The contingent valuation method has also been cited with favor by the Court of Appeals of New York.<sup>161</sup> With this technique, people are surveyed about how much they would be willing to pay for an environmental benefit or how much discount they would require to buy an environmentally impaired property.<sup>162</sup> The results of the survey are averaged and extrapolated, where necessary, to determine the actual value of an environmental cost or benefit.<sup>163</sup>

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<sup>159</sup> *Id.*

<sup>160</sup> See generally HAMED ET AL., *supra* note 154, at 2 (using regression analysis to determine the average loss of land value within three miles of a factory farm); see also Katherine Milla et al., *Evaluating the Effect of Proximity to Hog Farms on Residential Property Values: A GIS-Based Hedonic Price Model Approach*, 17 URB. AND REGIONAL INFO. SYS. ASS'N J. 27 (2005) (using hedonic price modeling to evaluate impacts on residential property values from feeding operations); Joseph A. Herriges et al., *Living with Hogs in Iowa: The Impact of Livestock Facilities on Rural Residential Property Values 2* (Iowa State Univ. Ctr. for Agric. Dev., Working Paper No. 03-WP 342, 2003) (using hedonic analysis to determine impact of livestock facilities on rural residential property values).

<sup>161</sup> *Commerce Holding*, 673 N.E.2d at 131 n.4.

<sup>162</sup> Chalmers & Roehr, *supra* note 157, at 37–39; Ecosystem Valuation, Contingent Valuation Method, [http://www.ecosystemvaluation.org/contingent\\_valuation.htm](http://www.ecosystemvaluation.org/contingent_valuation.htm) (last visited Jan. 3, 2009).

<sup>163</sup> Contingent Valuation Method, *supra* note 162.



### 3. Contaminated Property Valuation

Professional standards require appraisers to take into account environmental contamination when appraising real property.<sup>164</sup> Appraisal literature indicates that contamination may be “in, on, or near the subject property” and may be “nonphysical contaminants such as noise or visual pollution.”<sup>165</sup> Further, “it is not actual contamination but the perception of the contamination by the market . . . that is of concern.”<sup>166</sup>

The appraisal profession has introduced a contaminated property valuation framework as an equation where the impaired value is equal to the unimpaired value minus cost effects, use effects, and risk effects.<sup>167</sup> Cost effects include remediation and related costs. Risk effects include stigma.<sup>168</sup> Additionally, a 1993 *Appraisal Journal* article identified five factors that should be considered in valuing contaminated properties, including “[t]he extent of the contamination,” “[t]he way in which the contamination is perceived,” and “[t]he effect of these responses on [the] utility and marketability.”<sup>169</sup>

The New York Court of Appeals has listed similar factors as relevant to environmental contamination assessment, citing various *Appraisal Journal* articles.<sup>170</sup> The factors included “the property’s status as a Superfund site, the extent of the contamination, the estimated cleanup costs, the present use of the property, the ability to obtain financing and indemnification in connection with the purchase of the property, potential liability to third parties, and the stigma remaining after

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<sup>164</sup> The Appraisal of Real Property That May Be Impacted by Environmental Contamination, OP. APPRAISAL STANDARDS BD. AO-9 (2008), available at [http://commerce.appraisalfoundation.org/html/USPAP2008/AOs/ao\\_09\\_.htm](http://commerce.appraisalfoundation.org/html/USPAP2008/AOs/ao_09_.htm); see also John A. Kilpatrick & Bill Mundy, *Appraisal of Contaminated Property in the United States*, 306 J. JAPAN REAL EST. INST. 25, 25 (2003), available at <http://www.greenfielddadvisors.com/publications/appconprop.pdf>.

<sup>165</sup> Chalmers & Roehr, *supra* note 157, at 29.

<sup>166</sup> *Id.*

<sup>167</sup> Thomas O. Jackson & Jennifer M. Pitts, *Municipal Setting Designations: A New Tool for Reducing Environmental Risk and Cost Effects on Property Values*, 75 APPRAISAL J. 105, 105 (2007).

<sup>168</sup> *Id.*

<sup>169</sup> Chalmers & Roehr, *supra* note 157, at 28–29.

<sup>170</sup> *Commerce Holding Corp. v. Bd. of Assessors*, 673 N.E.2d 127, 131 (N.Y. 1996).

cleanup.”<sup>171</sup> In that case, the court ultimately approved a valuation that combined traditional techniques with the estimated cleanup costs.<sup>172</sup>

Another court has noted that, even where no actual environmental contamination has been found on a property, similar factors can apply.<sup>173</sup> The factors include: (1) “the ‘stigma’ attached to environmentally damaged land in the eyes of any potential buyers,” (2) “the risk that undetected or currently unclassified hazardous materials will be identified,” and (3) “the costs of clean-up and rehabilitation.”<sup>174</sup>

The stigma factor, cited by both courts above, is an important influence on property values and, as mentioned, need not be tied to actual contamination.<sup>175</sup> Also, it may linger after any contamination has been removed.<sup>176</sup> As evidenced by a 1993 New York eminent domain case, the fact that stigma exists is enough to reduce a property’s market value, whether or not the stigma is reasonable.<sup>177</sup> In that case, the plaintiffs sought damages for a high-voltage power line easement acquired across their property. They claimed that “‘cancerphobia’ and the public’s perception of a health risk from exposure” to power lines negatively impacted the market value of their property.<sup>178</sup> The court agreed and further held that the plaintiffs need not prove the “reasonableness” of the public’s fears or perceptions.<sup>179</sup> Because “[t]he issue in a just compensation proceeding is whether or not the market value has been adversely affected,” “[w]hether the danger is a scientifically genuine or verifiable fact

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<sup>171</sup> *Id.* (citation omitted).

<sup>172</sup> *Id.* at 129; *see also* Univ. Plaza Realty Corp. v. City of Hackensack, 12 N.J. Tax 354, 371 (Tax Ct. 1992) (discussing value of property reduced by cost to cure asbestos problem).

<sup>173</sup> *See* Allied Corp. v. Town of Camillus, 604 N.E.2d 1348, 1350 (N.Y. 1992).

<sup>174</sup> *Id.*

<sup>175</sup> *See* Vim Constr. Co. v. Bd. of Assessors, 442 N.Y.S.2d 533, 537 (App. Div. 1981) (finding property’s market value “seriously affected by its location contiguous” to a *prospective* landfill); *see also* Criscuola v. Power Auth., 621 N.E.2d 1195, 1196 (1993) (finding property value reduced based on public’s fears and perceptions).

<sup>176</sup> *See* Lorraine Lewandrowski, *Toxic Blackacre: Appraisal Techniques & Current Trends in Valuation*, 5 ALB. L.J. SCI. & TECH. 55, 67 (1994).

<sup>177</sup> *See* Criscuola, 621 N.E.2d at 1195.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 1196.

should be irrelevant to the central issue of its market value impact.”<sup>180</sup> The same holds true for tax assessment proceedings, where “whether or not the market value has been adversely affected” is likewise the central issue.<sup>181</sup>

Valuation literature similarly recognizes stigma as an important influence on property values. Described generally, stigma includes any of the “unknowns and risks associated with ownership of the property.”<sup>182</sup> Because stigma is based on perceived risks—“[b]ecause buyers are people, perceptions, and not necessarily facts and legal principles, form the basis of their opinions”<sup>183</sup>—it may be difficult to quantify but should not be overlooked.<sup>184</sup> It is certainly an independently important factor affecting a property’s marketability, but it also fits neatly into frameworks as described here and in the Kilpatrick method, discussed below.

#### 4. Diversity of Assessment

Diversity of assessment has also been recognized as an acceptable means of challenging a property tax assessment.<sup>185</sup> Under this method, a property owner presents proof that comparable properties were assessed differently than his property.<sup>186</sup> Whether properties are comparable is a question of fact for the court.<sup>187</sup> Relevant factors would likely include location, square footage, style, age, quality of construction, condition, and site size.<sup>188</sup>

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<sup>180</sup> *Id.* (citation omitted).

<sup>181</sup> *Id.*

<sup>182</sup> Kilpatrick, *supra* note 22, at 302.

<sup>183</sup> See D’Elia & Ward, *supra* note 137, at 359.

<sup>184</sup> See Bill Mundy, *Stigma and Value*, 60 APPRAISAL J. 7 (1992).

<sup>185</sup> *Oneonta Tennis Club, Inc. v. City of Oneonta Assessor*, 622 N.Y.S.2d 414, 416 (Sup. Ct. 1994); see also *Moyer v. Town of Greece*, 724 N.Y.S.2d 289, 292 (App. Div. 2001) (finding that assessments of comparable properties are acceptable proof of value).

<sup>186</sup> *Oneonta*, 622 N.Y.S.2d at 416.

<sup>187</sup> *Id.*

<sup>188</sup> See *Moyer*, 724 N.Y.S.2d at 292 (factoring in comparable-sales approach).

### 5. *Kilpatrick Method*

An especially promising method for factory farm purposes is set forth in the *Appraisal Journal* by John A. Kilpatrick.<sup>189</sup> The primary thesis of this method is that a factory farm devalues proximate properties to the extent the factory farm is viewed as a negative externality by the marketplace.<sup>190</sup> It therefore fits squarely within New York's mandate to assess properties at market value and to consider any factor affecting marketability.<sup>191</sup>

Factors to be considered under this method overlap with relevant factors in other methods. They include: stigma, the type of subject property, the distance to the CAFO, physical manifestations, engineering/scientific testing, impacts on property use, marketability evidence, and impact on the highest and best use.<sup>192</sup> They can result in a 50% to 90% diminution in the property's market value.<sup>193</sup>

Regarding distance, generally, the closer the factory farm, the greater the impact on property values.<sup>194</sup> The physical manifestations factor is broad and may include various impacts. For example, impaired water quality can impair a neighboring property's value.<sup>195</sup> Hydrogen sulfide emissions from large confines of animal waste may cause illnesses in neighbors.<sup>196</sup> Dust, odors, and flies carrying animal blood, feces, or antibiotics may also impair a neighboring property's value.<sup>197</sup>

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<sup>189</sup> Kilpatrick, *supra* note 22.

<sup>190</sup> *Id.* at 302.

<sup>191</sup> See *Commerce Holding Corp. v. Bd. of Assessors*, 673 N.E.2d 127, 130 (N.Y. 1996).

<sup>192</sup> Kilpatrick, *supra* note 22, at 304, 306.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* at 305.

<sup>195</sup> *Id.* at 304.

<sup>196</sup> *Id.* at 304-05 (describing illnesses near CAFOs in Minnesota).

<sup>197</sup> *Id.*; see also *Corey v. State Bd. of Tax Comm'rs*, 674 N.E.2d 1062, 1065-66 (Ind. Tax 1997) (discussing that property owner presented two jars of air "redolent with swine" to the tax hearing officer); *Darnall Ranch, Inc. v. Banner County Bd. of Equalization*, No. A-04-199, 2005 WL 780379, at \*6 (Neb. Ct. App. Mar. 22, 2005) (discussing evidence presented by property owner, which included his testimony that his property was next to a large cattle feedlot and that he had problems with flies, smell, and dust from trucks); IOWA STATE UNIV. & UNIV. OF IOWA STUDY GROUP, IOWA CONCENTRATED ANIMAL FEEDING OPERATIONS AIR QUALITY STUDY 158 (2002), available at <http://www.public-health.uiowa.edu/ehsrc/>

The marketability evidence factor might include evidence about the length of time it takes to sell, or the unsalability of, a property.<sup>198</sup> For instance, as Kilpatrick reports, some rural homeowners in Michigan in the late 1990s were unable to sell their home next to a pork processing facility. Pending litigation, the pork processing company offered to compensate them for a 60% diminution in the market value of their home.<sup>199</sup>

#### 6. Any Relevant Factor Method

As discussed above, New York courts recognize that flexibility in valuation methodology is important to arriving at a fair valuation. This is especially true where, as in the factory farm context, no “single generally accepted valuation methodology” has emerged.<sup>200</sup> As mentioned above, the most important requirement for any method is that it “take into account any factor affecting a property’s marketability.”<sup>201</sup> Therefore, a factor that affects a property’s marketability need not fit into any defined method in order to be a necessary consideration in a property valuation.

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CAFOstudy/CAFO\_final2-14/pdf (finding odor, dust, noise, and “general decline in the natural beauty of the area” from CAFOs can depress sales prices). An interesting tool created by the University of Minnesota Extension illustrates that odors from feedlots do in fact impact neighboring properties by attempting to quantify those odor impacts and estimate the amount of feedlot setback needed to reduce impacts. See LARRY JACOBSON ET AL., O.F.F.S.E.T.: ODOR FROM FEEDLOTS SETBACK ESTIMATION TOOL (2002), <http://www.extension.umn.edu/distribution/livestocksystems/DI7680.html>.

<sup>198</sup> See D’Elia & Ward, *supra* note 137, at 360 (stating that “longer marketing period” and “inability to sell” illustrate perceptions of devaluation).

<sup>199</sup> Kilpatrick, *supra* note 22, at 306; see also *Salk v. Metamora Twp.*, No. 89167, 1985 WL 15497, at \*2 (Mich. Tax Trib. 1985) (noting that absence of sales over several years in an “otherwise desirable residential area” due at least partly to highly publicized toxic substances in nearby landfill).

<sup>200</sup> See *Commerce Holding Corp. v. Bd. of Assessors*, 673 N.E.2d 127, 130 (N.Y. 1996).

<sup>201</sup> *Id.* at 129; see also *Adams v. Welch*, 707 N.Y.S.2d 691, 694 (App. Div. 2000) (holding assessment methodology unlawful because it failed to take into account factors affecting property’s marketability); *People ex rel. Lehigh Valley Ry. Co. v. Harris*, 6 N.Y.S.2d 794, 797 (App. Div. 1938) (“Various items ordinarily enter into the worth of real estate[, including] every . . . element which can reasonably affect its value.”); *Oneonta Tennis Club, Inc. v. City of Oneonta Assessor*, 622 N.Y.S.2d 414, 415 (Sup. Ct. 1994) (“Rather than adopting . . . an inelastic approach to valuation, the Court may allow such method of valuation as most nearly takes into account all the pertinent factors and considerations at hand.”).

Two examples of relevant factors that do not necessarily fall under a specific method are: (1) whether the taxpayer has had difficulty obtaining financing for his property because it is near a factory farm and (2) whether local officials have commented on the property values of neighboring properties.<sup>202</sup> Additional ideas for other relevant factors are given below in the potential proof section.

### ***B. Examples of Properties Devalued by Factory Farms***

Multiple studies, cases, and articles have illustrated that proximity to a factory farm can negatively impact neighboring property values and should therefore be considered in the assessment process.

#### *1. Selected Studies*

In Iowa, one 1996 study found that proximity to a hog CAFO decreased neighboring property values in the following order: 40% within one-half mile, 30% within one mile, 20% within one and one-half miles, and 10% within two miles.<sup>203</sup>

Another Iowa study found that there may be a 1% to 10% reduction in property values of residences upwind of new CAFO facilities and that the drop in value “helps explain opposition by rural residents to large-scale feeding operations.”<sup>204</sup>

A 1999 study in Missouri found that the average loss of land value within three miles of a CAFO was \$112 per acre.<sup>205</sup>

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<sup>202</sup> See D’Elia & Ward, *supra* note 137, at 360 (noting that perceptions of devaluation manifested in limited financing options); see also Richter v. Macomb Twp., No. 87090, 1985 WL 15496, at \*1–2 (Mich. Tax Trib. 1985) (noting adverse publicity about proximate landfill and existence of “moral, if not legal” duty to disclose proximate landfill as relevant to devaluing of taxpayer’s property); Vim Constr. Co. v. Bd. of Assessors, 442 N.Y.S.2d 533, 534–35 (App. Div. 1981) (citing *Newsday* article about prospective landfill as evidence that prospective landfill devalued proximate property; also citing assessing unit document stating that prospective landfill “will cause properties in plaintiff Town of Huntington to be damaged and depreciated in value” as evidence that prospective landfill devalued proximate property; also citing complaint filed by Town).

<sup>203</sup> WEIDA, *supra* note 16, at 1.

<sup>204</sup> HERRIGES ET AL., *supra* note 160, at 19–20.

<sup>205</sup> HAMED ET AL., *supra* note 154, at 2 (“[T]here is a relationship between proximity to a CAFO and the value of property.”).

A Sierra Club study reported that county assessors in at least eight states lowered property taxes for neighbors of factory farms.<sup>206</sup>

A study in Berks County, Pennsylvania, evaluated the impact of potential local disamenities (undesirable land uses such as landfills and large-scale animal production) on neighboring properties.<sup>207</sup> It found that the impacts of CAFOs on neighboring property values did not vary significantly by species or by differences in the sizes of the operations.<sup>208</sup>

A Putnam County, Missouri, study found a fifty-eight dollar per acre loss of value for properties within one and one-half miles of a CAFO facility.<sup>209</sup>

Three different North Carolina studies, described in a presentation at the University of Kentucky, found that proximity and animal density have significant, negative impacts on the market values of residential properties.

A 2008 University of Northern Iowa study analyzed house sales in Black Hawk County, Iowa, to determine the effect of hog CAFOs on property values. It found “large adverse impacts suffered by houses that are very close (within 3 miles) to and directly downwind from a CAFO.”<sup>210</sup>

A 1996 newsletter from EPA’s National Center for Environmental Economics reported on an early North Carolina State University study that used hedonic analysis to make various findings on factory farms and their negative impacts on residential land values.<sup>211</sup>

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<sup>206</sup> WILLIAM J. WEIDA, COLO. COLL. & GLOBAL RES. ACTION CTR. FOR THE ENV’T, NUTRIENT MANAGEMENT ISSUES 3 (2001).

<sup>207</sup> Richard Ready & Charles Abdalla, *The Impact of Open Space and Potential Local Disamenities on Residential Property Values in Berks County, Pennsylvania*, at i (Penn. State Univ., Staff Paper No. 363, 2003).

<sup>208</sup> *Id.*

<sup>209</sup> WILLIAM J. WEIDA, COLO. COLL. & GLOBAL RES. ACTION CTR. FOR THE ENV’T, THE EVIDENCE FOR PROPERTY DEVALUATION DUE TO THE PROXIMITY TO CAFOs 5 (2002).

<sup>210</sup> Hans R. Isakson & Mark D. Ecker, *An Analysis of the Impact of Swine CAFOs on the Value of Nearby Houses*, 39 AGRIC. ECON. 365 (2008).

<sup>211</sup> *Effects of Hog Operations on Residential Property Values*, ENVTL. DAMAGE VALUATION & COST BENEFIT NEWS (EPA/Nat’l Ctr. for Env’tl. Econ., Wash., D.C.), Dec. 1996, at 3, <http://yosemite.epa.gov/ee/epalib/nwlet.nsf/Media> (follow “Air - Tropospheric” hyperlink; then follow “Effects of Hog Operations” hyperlink).

2. *Selected Cases*

In 2002, a Nebraska court held that a tax commission should have considered the effect of a nearby factory farm on a taxpayer's property value.<sup>212</sup> The taxpayer presented evidence from an appraiser who "considered that a potential buyer would take into account the odor produced by the hog farrowing facility" and adjusted the property's value downward for that and other reasons.<sup>213</sup> The court made several strong statements illustrating its conviction that factory farms impact neighboring property values:

In the context of negotiations between a willing buyer and seller to arrive at fair market value, the neighboring hog facility and the house's location would unquestionably affect the market value of Livingston's house. Any other conclusion would mean that two identical houses, one located next to the railroad switching yard and the other next to the country club golf course, have identical values—an obviously arbitrary and illogical conclusion that no reasonable person would reach.

. . . That many potential buyers would not look favorably upon the hog facility, and judge the home's value with reference thereto, is demonstrated by some well-known Nebraska cases in which homeowners have successfully sued hog facility owners for damages caused by interference with the use of their nearby homes.

. . . No reasonable fact finder could conclude that in the real estate marketplace, a potential buyer would not notice, and react economically, to having a large hog facility very nearby while living in a remote location.<sup>214</sup>

In another Nebraska tax case, the court held that a property owner clearly produced enough evidence to show that his property had been devalued based on "the external depreciation to the property caused by the proximity to the feedlot" and assessor error.<sup>215</sup> Evidence presented by the property owner included his testimony that his property was next to a large cattle

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<sup>212</sup> Livingston v. Jefferson County Bd. of Equalization, 640 N.W.2d 426, 431, 437 (Neb. Ct. App. 2002).

<sup>213</sup> *Id.* at 431.

<sup>214</sup> *Id.* at 437.

<sup>215</sup> Darnall Ranch, Inc. v. Banner County Bd. of Equalization, No. A-04-199, 2005 WL 780379, at \*6 (Neb. Ct. App. Mar. 22, 2005).



feedlot and that he experienced problems with flies, smell, and dust from trucks.<sup>216</sup>

In a 1997 Indiana case, property owners asserted that a state board did not adequately consider the negative effects a proximate hog operation had on their neighborhood when assessing their property.<sup>217</sup> To support their claim that odors from the operation impaired the enjoyment of their property, the plaintiffs presented two jars of air taken from their yard to the hearing officer.<sup>218</sup> The tax court held that the plaintiffs met their burden of proving their assessment was incorrect based on the proximate hog operation's effect on the desirability of their neighborhood.<sup>219</sup> Relevant evidence include the two jars of air "redolent with swine" (though unopened, the hearing officer conceded they would smell bad) and oral evidence of how the odor impaired the enjoyment of their property (they were unable to play tennis, open windows, or hang clothes out to dry).<sup>220</sup>

In a 1999 South Dakota case, the court upheld the decision of a land commission to deny a permit for the siting of a hog confinement facility based on, among other things, devaluation of surrounding real estate.<sup>221</sup>

In 2003, an Illinois Court upheld a preliminary injunction against building a large-scale hog facility.<sup>222</sup> Among other things, neighboring plaintiffs had alleged that the facility would devalue their properties.<sup>223</sup> The plaintiffs introduced the affidavit of a professional appraiser, who stated that neighboring property values would be reduced by 18% to 35%.<sup>224</sup> They also presented affidavits from two doctors who concluded, respectively, that "years of downwind exposure to Hydrogen Sulfide even in low doses can cause permanent brain damage and . . . any exposure

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<sup>216</sup> *Id.* at \*2.

<sup>217</sup> *Corey v. State Bd. of Tax Comm'rs*, 674 N.E.2d 1062, 1065 (Ind. Tax 1997).

<sup>218</sup> *Id.* at 1063.

<sup>219</sup> *Id.* at 1065–66.

<sup>220</sup> *Id.* at 1066 (reversing state board's assessment on these grounds).

<sup>221</sup> *Coyote Flats, L.L.C. v. Sanborn County Comm'n*, 596 N.W.2d 347, 352, 356 (S.D. 1999).

<sup>222</sup> *Nickels v. Burnett*, 798 N.E.2d 817, 826 (Ill. App. Ct. 2003).

<sup>223</sup> *Id.* at 820.

<sup>224</sup> Brief of Appellees at 10, *Nickels*, 798 N.E.2d 817 (No. 2-03-0414).

must be avoided”<sup>225</sup> and that “locating the proposed hog facility 3/4 of a mile or less away from homes is likely to cause medical and psychological symptoms to the people living in those homes.”<sup>226</sup> Another expert opined that

subjecting the Schmidt and Klein families (the families living closest to the site of the proposed hog operation), to the hog operation odors will significantly increase the likelihood that the two families will experience health problems and that it will cause significant detrimental effects on the quality of their lives.<sup>227</sup>

In his opinion, “subjecting the other 13 families, whose homes are located within 3/4 of a mile from the proposed hog operation, to the emissions generated by the proposed hog operation will increase their risk of health problems.”<sup>228</sup>

In Pasco, Washington, an appraisal done for litigation purposes found an over 50% reduction in value of a family farm impacted by neighboring CAFO dust, flies, fecal matter, and odor.<sup>229</sup> The CAFO settled the lawsuit by relocating the plaintiffs and buying their farm.<sup>230</sup>

In Michigan, a horse farm appealed its property tax assessment because it was located near a large-scale pork processing facility.<sup>231</sup> The horse farm got a 50% reduction based on airborne externalities and flies.<sup>232</sup>

In a 2002 Iowa nuisance case, the court ordered a pork company to pay \$100,000 to homeowners when their home dropped \$50,000 in value after a nearby CAFO was built.<sup>233</sup> The plaintiffs had alleged that the CAFO attracted bugs and harmed their physical and emotional health.<sup>234</sup>

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<sup>225</sup> *Id.* at 19.

<sup>226</sup> *Id.* at 9.

<sup>227</sup> *Id.* at 10.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> Kilpatrick, *supra* note 22, at 305.

<sup>231</sup> *Id.* at 305–06.

<sup>232</sup> *Id.* at 306.

<sup>233</sup> *Judge Awards Iowa Couple \$100,000 in Hog Lot Lawsuit*, AMARILLO GLOBE-NEWS (Tex.), Jan. 12, 2002, available at [www.amarillo.com/stories/011202/usn\\_judgeawards.shtml](http://www.amarillo.com/stories/011202/usn_judgeawards.shtml).

<sup>234</sup> *Id.*

In 1998, property owners in Cedar County, Nebraska, received an assessment reduction based on a neighboring CAFO.<sup>235</sup> On the protest form to the tax board, the property owners stated:

Our neighbor has built a hog confinement and lagoon across the road from our house. This same neighbor has runoff from his cattle yards into the road ditch 100ft from our well. The nitrates in our water has [sic] increased making it not safe to drink. We feel a valuation increase of \$35,340 is unfair.<sup>236</sup>

The board looked at the property and assessed a 25% locational depreciation.<sup>237</sup>

In January 2002, in Calhoun County, Illinois, a jury awarded \$76,400 in damages to four property owners who claimed a four thousand hog operation within a mile of their properties lowered their property values.<sup>238</sup> In another Iowa county, a court awarded \$100,000 to other property owners for decreased property values from a nearby hog feeding operation.<sup>239</sup>

### 3. Selected Articles

A Michigan land use article reported that a tax tribunal reduced the assessments for properties adjacent to CAFOs.<sup>240</sup> It ordered local officials to reduce the taxable values of at least five rural homes by 35% based on problems with stench from a hog livestock factory and on “slim sale chances” for the homes.<sup>241</sup>

Clark County, Illinois, established assessment abatements for fifty homes around a hog CAFO in the following order: 30% reduction within one-half mile, 25% reduction within three-quarters of a mile, 20% reduction within one mile, 15%

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<sup>235</sup> GREAT PLAINS ENVTL. LAW CTR. & GLOBAL RES. ACTION CTR. FOR THE ENV'T, GUIDE TO TAX-PROTESTS FOR RURAL COMMUNITIES IN NEBRASKA 12 (2007), available at [http://www.gpelc.org/projects/guide\\_to\\_tax\\_protest.pdf](http://www.gpelc.org/projects/guide_to_tax_protest.pdf).

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> Jerry Perkins, *Jury Sides Against Hog-Lot Firm: A Total of \$76,400 Will Go to Residents Near the Facility*, DES MOINES REG. (Iowa), Jan. 26, 2002, at 2D.

<sup>239</sup> *Id.*

<sup>240</sup> Patty Cantrell, *Michigan Tax Tribunal Recognizes Hog Factory Stench*, GREAT LAKES BULLETIN NEWS SERVICE, Dec. 7, 1999, available at <http://mlui.org/print.asp?fileid=4527>.

<sup>241</sup> *Id.*

reduction within one and one-quarter miles, and 10% reduction with one and one-half miles.<sup>242</sup>

In Waseca County, Minnesota, a county assessor designed a “smell location chart” to determine reductions in values of properties near feedlots.<sup>243</sup> Factors in the percentage-of-reduction allowed included, the proximity to the feedlot, the number of animals, and the presence of a manure lagoon.<sup>244</sup>

A 2006 article in the *Journal of Ecological Anthropology* recognized the ill effects of factory farms on neighboring properties: “In addition to their negative effects on the local economy and tax base, large corporate operations are the source of environmental issues that threaten the property values of rural and urban residents. This strains the economic base and places higher burdens of taxation on remaining residents.”<sup>245</sup>

A Peoria, Illinois, newspaper reported that county officials lowered property values for at least twenty people with homes within two miles of a large sow farm and its odor.<sup>246</sup> The tax board decreased assessments by 30% for neighbors within one and one-half miles of the operation and 10% for those within two miles of the facility.<sup>247</sup>

An Iowa paper reported on the results of the University of Northern Iowa study mentioned above.<sup>248</sup> One interviewee said that his neighbor had been offered \$1 million for his land before plans for a hog lot were announced but after the announcement “the would-be buyer walked away.”<sup>249</sup> Another interviewee, who had recently bought land in the area, said she “would not have

<sup>242</sup> WEIDA, *supra* note 16, at 2.

<sup>243</sup> Douglas Clement, *Knee Deep in Feedlot Feuds*, FEDGAZETTE (Minn.), July 2001, available at <http://www.minneapolisfed.org/pubs/fedgaz/01-07/feedlots.cfm>.

<sup>244</sup> *Id.*

<sup>245</sup> Barbara J. Dilly, *Tax Policy and Swine Production in Iowa*, 10 J. ECOLOGICAL ANTHROPOLOGY 45, 48 (2006), available at <http://shell.cas.usf.edu/~jea/PDFs/Dilly.pdf>.

<sup>246</sup> Adriana Colindres, *Board Smells Lower Land Values Near Hog Farm*, LINCOLN J. STAR (Neb.), May 6, 1998, at A1, available at <http://www.mindfully.org/Farm/Hog-Land-Values6may98.htm>.

<sup>247</sup> *Id.*

<sup>248</sup> Jeff Wilford, *UNI Study: Hog Lot Cuts Up to 15% Off Nearby Home Values*, WATERLOO COURIER (Iowa), Mar. 12, 2007, at A1.

<sup>249</sup> *Id.* at A9. “He lost almost \$1 million right there . . . . And it’s not necessarily smell. It’s psychological . . . . They don’t want anything to do with them [sic] (hog lots) if they see them.” *Id.*

bought the house and all the surrounding property . . . at above market value . . . if a CAFO was going to be built a mile away.”<sup>250</sup> She added that she would “sell [her] property at a huge loss to move away if they buil[t a CAFO]” near her house.<sup>251</sup>

In January 2007, Indiana residents turned out to testify before the Senate Energy and Environmental Affairs Committee on a CAFO moratorium bill.<sup>252</sup> One woman testified that a businessman was “driven to suicidal thoughts because he was unable to sell his home after six years because of the odor from a nearby CAFO.”<sup>253</sup> Another testified that “[d]eferred property value[s] because of CAFOs mean[t] decreased revenue from property taxes, [and] less money for our schools.”<sup>254</sup>

The Indiana General Assembly passed a bill in February 2007 that would prohibit new CAFOs within one mile of cities, towns, schools, and health facilities.<sup>255</sup> One representative who supported the bill said he “want[ed] the pork industry to grow” in Indiana but that growth could happen “while having respect to [sic] our neighbors.”<sup>256</sup> He added that “CAFOs do decrease property values.”<sup>257</sup>

A 2006 letter to the editor, opposing proposed legislation that would weaken Michigan’s environmental laws, described the “severe pollution” that CAFOs cause.<sup>258</sup> The author explained that the growing number of CAFOs in Michigan was “threatening our public health, our rural communities and the viability of Michigan’s 52,000 farms.”<sup>259</sup> She also noted that “[t]he stench from CAFOs has led to reductions in property

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<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> See Jondi Schmitt, *Hoosiers Voice CAFO Concerns: Proposed Bill Would Put Three-Year Moratorium on Start of Construction*, SOUTH BEND TRIB. (Ind.), Jan. 30, 2007, at A1.

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> Niki Kelly, *General Assembly: House Restricts Feed Farms*, J. GAZETTE (Ind.), Feb. 22, 2007, at 6C.

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> Anne Woiwode, Letter to the Editor, *Animal Sewage from Livestock Farms Threatens Communities*, KALAMAZOO GAZETTE (Mich.), May 15, 2006.

<sup>259</sup> *Id.*

values of up to 70 percent by the Michigan Tax Tribunal for nearby residents no longer able to enjoy or sell their homes.”<sup>260</sup>

In February 1998, residents of Caribou, Maine, petitioned the city council for a temporary ban on factory pig farms.<sup>261</sup> Among concerns were “strong odor from waste, surface and ground water contamination and plummeting property values.”<sup>262</sup>

In an article summarizing newspaper coverage of concerns about large-scale swine facilities (LSSF) in Illinois, a “distinct undercurrent” of claims against the facilities was that they were “difficult for communities,”<sup>263</sup> specifically:

Sources were concerned that LSSF were socially disruptive: they went against traditional community values, destroyed the community’s history, violated ethics of neighborliness, and created community conflict. In addition, they were concerned that the community would have to develop infrastructure capacity to handle the effects of LSSF, paying for social services, schools, and health care for migrant workers and cleaning up spills and abandoned lagoons. Those opposed to LSSF also maintained that the large-scale operations had no overall economic benefit for communities because they displaced more jobs than they created, decreased property values and made alternative industries, such as tourism, less viable.<sup>264</sup>

Coverage of the 2007 Food and Family Farm Presidential Summit in Iowa noted that “many neighbors say the [CAFOs] stink up the air and foul the water, devastate their property values, and drive small farmers out of business.”<sup>265</sup>

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<sup>260</sup> *Id.*

<sup>261</sup> Gloria Flannery, *Caribou Councilors Seek Ban on Piggery: Fears of Pollution, Odor Lead to Ordinance Proposal*, BANGOR DAILY NEWS (Me.), Feb. 25, 1998.

<sup>262</sup> *Id.*

<sup>263</sup> A.E. Reisner, *Newspaper Coverage of Controversies About Large-Scale Swine Facilities in Rural Communities in Illinois*, 83 J. ANIMAL SCI. 2705, 2710 (2005), available at <http://jas.fass.org/cgi/reprint/83/11/2705>.

<sup>264</sup> *Id.*

<sup>265</sup> Jennifer Jacobs, *Candidates Tout Their Farm Credentials*, DES MOINES REG. (Iowa), Nov. 11, 2007, at 28.

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### ***C. Potential Proof***<sup>266</sup>

Following is a non-exhaustive list of potential proof to present to tax tribunals and to the courts on any appeals or reviews. It is grouped according to the best form RP-524 factor under which to submit it.<sup>267</sup> Each piece of proof also has a suggested valuation method under which to present it if required by the tax tribunal or court. As previously discussed, however, any factor that affects a property's marketability must be taken into consideration, so it need not fit neatly into a particular valuation method to be relevant. Whether the potential proof is appropriate for use in a particular grievance will depend upon the property's particular situation.

#### ***1. Factor: Purchase Price of the Property***

***Proof:*** Documents showing the recent sale price of the property

This evidence would be useful where a taxpayer recently bought a piece of property near a factory farm for less than the current assessment of that property. The taxpayer should also offer any proof that the seller offered a low sale price or that the sale price was negotiated downward because of the property's proximity to a factory farm. For instance, if the taxpayer negotiated a reduction in the purchase price of the property because of its proximity to a factory farm, the taxpayer should enter the purchase price of the property on the form and attach an explanation describing the factory farm's influence on the sale.

***Method:*** Best Evidence

#### ***2. Factor: Asking Price If Recently Offered for Sale***

***Proof:*** Evidence that a property's asking price has been recently lowered because of proximity to a factory farm

For instance, if the complainant recently offered the property for sale at a reduced price because of ill effects from a factory farm, the complainant should list the asking price on the form

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<sup>266</sup> Thank you to William Cooke of Citizens Campaign for the Environment for his contributions to the ideas about proof in this section.

<sup>267</sup> Recall that as the first step in the grievance process, a griever files form RP-524, which lists seven factors to consider in determining a property's market value.

and attach an explanation describing the factory farm's influence on the asking price. The complainant might also present a written offer of sale and explain the factory farm's influence on that offer.

*Method:* Kilpatrick (marketability evidence factor); Any Relevant Factor

*3. Factor: Recent Appraisal of the Property*

*Proof:* Recent appraisal of the taxpayer's property indicating that the property's market value is negatively impacted by a proximate factory farm

An appraisal is not required before the BAR or SCAR, but it is recommended because it is an extremely valuable piece of information. As discussed previously, an appraisal is strong proof of value; it would be useful to the taxpayer at any stage of her grievance. If the appraisal is eventually used before a court, there are specific requirements for it. For instance, it should contain any information the appraiser relied upon in conducting the appraisal. It should be thorough and should state any methods used, conclusions about value, and any facts, figures, or calculations used to reach that value. The appraisal may also contain other information such as photographs and anecdotal information and could incorporate any of the proof listed here that is applicable to the taxpayer's situation.

*Method:* Any Relevant Factor

*4. Factor: Additional Supporting Documentation*

*Proof:* Evidence, including photographs, test results, and testimony about any physical manifestations of the factory farm

Some evidence might include:

- poor air quality caused by animal waste, feed storage, or both;
- poor water quality in wells or streams or soil contamination that might be caused by the factory farm;<sup>268</sup>

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<sup>268</sup> For example, the complainant could present the results of a well test on her property indicating that the factory farm may be leaching contaminants into ground water.



- bad odors caused by animal waste;
- intrusive noise caused by, for instance, heavy farm vehicle traffic;
- insect swarms from the factory farm;
- bothersome dust from the factory farm;
- eyesores caused by the factory farm;
- substances leaching from the factory farm, including fecal matter, antibiotics, and hormones;
- illnesses linked to the factory farm;<sup>269</sup> or
- any violation of a Clean Water Act permit (if the factory farm has such a permit).<sup>270</sup>

*Method:* Contaminated Property Valuation (extent of contamination factor, risk of hazardous materials factor); Kilpatrick (physical manifestations factor, engineering/scientific testing factor); Any Relevant Factor

*Proof:* Evidence showing the property's proximity to a factory farm

This might be a plat map of the assessing unit with the location of the taxpayer's property and the location of the factory farm in relation to it.

*Method:* Kilpatrick (distance to the factory farm factor); Any Relevant Factor

*Proof:* Evidence that a property has not sold or has taken longer to sell because of its proximity to a factory farm

This might include testimony from a realtor or the complainant that potential buyers have raised concerns about the factory farm and have therefore been reluctant to buy the property.

*Method:* Kilpatrick (marketability evidence factor); Any Relevant Factor

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<sup>269</sup> For example, the complainant could present a doctor's diagnosis of any illness she had that was caused or exacerbated by exposure to factory farm conditions.

<sup>270</sup> This might be the case where excessive manure was applied to a field and ran off into a nearby stream.

*Proof:* Evidence that the taxpayer has had difficulty obtaining financing or has obtained smaller amounts of financing because of proximity to a factory farm

*Method:* Any Relevant Factor

*Proof:* A survey of locals or prospective buyers who would only consider buying the property at a discounted price because the property is near a factory farm

*Method:* Though not a complete study, supported by the logic underlying the Contingent Valuation method; Any Relevant Factor

*Proof:* Statements from the assessor's office that the factory farm devalues proximate properties

*Method:* Any Relevant Factor

*Proof:* Documents or testimony showing the sale prices and characteristics of similar properties

This evidence would be useful where other properties near factory farms, that are also otherwise similar to the complainant's property (for example, in size or style) were recently sold for less than the complainant's property assessment. If there is proof that a similar property sold for less because it was near a factory farm, the complainant should also present that to the tax board.

*Method:* Comparable Sales

*Proof:* Evidence about the *assessments* and characteristics of similar properties that are *not* near factory farms

This method could be useful where the complainant's property is assessed at the same value as otherwise similar properties that are not near the factory farm; it shows that the factory farm was probably not taken into consideration in the complainant's assessment. The complainant should argue that if an assessor failed to consider factory farm proximity as a characteristic of the property's value, the assessment is inaccurate.

*Method:* Though not a complete study, supported by the logic underlying the Hedonic method; Any Relevant Factor

*Proof:* Evidence about the *assessments* and characteristics of similar properties that *are* near factory farms

This method could be useful where the complainant's property is assessed at a higher value than similar properties that are also near factory farms. The complainant should argue that her property should not be assessed at a higher value than similar properties near factory farms. If there is proof that a similar property was assessed at a lower value because it is near a factory farm, the complainant should also present that to the tax board.

*Method:* Diversity of Assessment

*Proof:* Evidence about any costs the taxpayer would incur to ameliorate the effects of a nearby factory farm

*Method:* Contaminated Property Valuation (estimated cleanup costs factor)

*Proof:* Evidence about any negative impacts of the factory farm on the community, which would tend to show reduced marketability of homes because the community as a whole is undesirable

*Method:* Kilpatrick (marketability evidence factor); Any Relevant Factor

*Proof:* Evidence that the taxpayer's property has stigma attached to it

This is a broad category of proof that may overlap with other categories. Any evidence that speaks to any of the factors outlined in the stigma section above should be presented here. This includes any evidence of the public's negative perceptions of properties near factory farms in general or of the taxpayer's property in particular. It also includes any evidence about perceived risks or unknowns associated with the property. Fears and perceptions about the property need not be based on actual contamination or scientific danger.

Many of the studies, cases, and articles cited above can be used to show that the public has negative perceptions about properties near factory farms generally. An example of a stigma specific to the taxpayer's property would be a statement from a local citizen that she would expect a discounted sale price on the taxpayer's property because it was close to a factory farm, even if there were no actual physical impacts from the factory farm. Adverse publicity about the factory farm itself is also a good indication that nearby properties suffer from stigma.

*Method:* Contaminated Property Valuation (stigma factor); Kilpatrick (stigma factor); Any Relevant Factor

### III CONCLUSION

The business of industrial animal agriculture paints a disturbing picture filled not with pastoral landscapes but with environmental degradation, sickness, inhumanity, and declining rural communities. One way to fight back is for local citizens, who live near the animal factories, to demand fair property tax assessments that accurately reflect the negative externalities imposed upon them by the factory farms. As explained in this Article, there are strong legal arguments to be made that property tax assessments must account for the impacts of neighboring factory farms. There are many examples of situations in which this has already happened. The more it happens, the less neighbors will be forced to compensate for the costs factory farms inflict on their properties and their communities.