

**TAX APPEALS
FOR
PROPERTIES NEAR FACTORY FARMS**

ILLINOIS

CITIZENS GUIDE

2009

This Guide is not legal advice. The authors of this Guide are not providing legal services to the readers, and the protections of an attorney-client relationship do not exist here. Please consult a licensed Illinois attorney if you wish to obtain legal advice.

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INTRODUCTION

This Guide is for Illinois property owners who want to challenge their property tax assessments because the assessments don't account for the negative impacts nearby factory farms have on their properties.

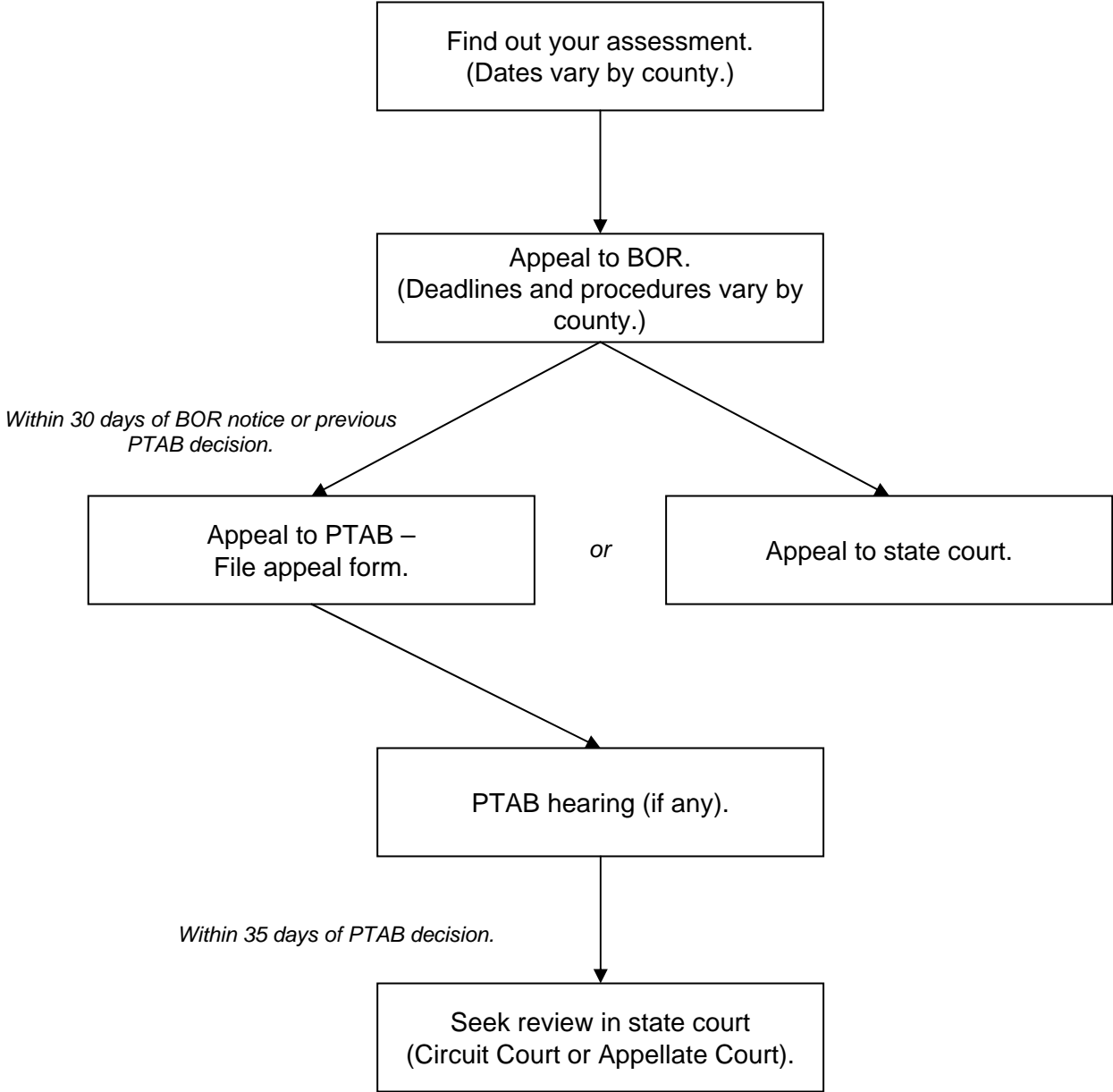
The economic, environmental, public health, labor, social, and ethical problems associated with factory farms are becoming increasingly familiar, as evidenced in two recent reports by major non-governmental organizations: *Putting Meat on the Table: Industrial Farm Animal Production in America* (Pew Commission) and *CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations* (Union of Concerned Scientists). These problems are often keenly felt by rural communities, and one manifestation is lower property values for those who live near the factory farms.

If you live near a factory farm, your property tax assessment should reflect that fact. Your assessment should account for any of the negative impacts the factory farm has on your property. If it doesn't, you may wish to challenge your assessment so that you can receive a fair one. This Guide will help you do that. It provides step-by-step information on the tax protest process in Illinois, including some ideas about factual information to include in your challenge and information on additional resources. As you'll see, the Guide provides more detail about the lower level of the process, which isn't a formal court proceeding.

It's important to understand that this Guide isn't legal advice. The authors of this Guide aren't providing legal services to you, and the protections of an attorney-client relationship don't exist here. Instead, this Guide is intended to help you as you navigate the protest process. We encourage you to check the recommended websites, call your local officials, or consult with a licensed Illinois attorney if you have any questions or to verify information such as filing deadlines.

The Guide is available at www.factoryfarmtaxprotest.com, and the website also has access to some helpful studies, cases, and articles. If you don't have access to the internet at your home, you should be able to use the internet at your local public library.

Illinois Tax Grieving Process



CHECKLIST

This is a basic checklist for the steps you need to take to challenge your assessment. Please refer to other sections in the Guide for detailed information.

- ___ Find out your assessment by
 - ___ Requesting it, or
 - ___ Receiving notice in the mail or newspaper.

- ___ Appeal to your county Board of Review (BOR).
 - ___ ***Deadlines and procedures vary by county. Check with your Board of Review.***
 - ___ General deadline for counties with less than 150,000 people – by August 10th or 30 days from when the assessment list is published, depending on when the assessor files the assessments with the Board of Review.
 - ___ General deadline for counties with 150,000 – 2,999,999 people – by September 10th or 30 days from when the assessment list is published, depending on when the assessor files the assessments with the Board of Review.

- ___ Decide whether to appeal the BOR’s decision to the Property Tax Appeal Board (PTAB) or the court system.

- ___ If appealing to PTAB:
 - ___ File an official “Appeal Form” in PTAB’s Springfield office.
 - ___ Must file within 30 days of :
 - ___ The postmark date on, or personal service of, your written notice from BOR, or
 - ___ The postmark date of a PTAB decision lowering your assessment for the previous year, if BOR is no longer accepting appeals for this year.
 - ___ Must file 3 copies of the Appeal Form (including original).
 - ___ Attach:
 - ___ 2 copies of all evidence (+1 if your requested change is more than \$100,000).
 - ___ 2 copies of the BOR’s decision
 - ___ Attend PTAB hearing (if any) to support your case.

- ___ Decide whether to appeal PTAB’s decision in the court system.
 - ___ Must file complaint within 35 days of PTAB’s decision.

BACKGROUND INFORMATION¹

Some of the information for this section was taken from the Illinois Property Tax Appeal Board website at <http://www.state.il.us/agency/ptab/assist/default.htm>. The website may be helpful in answering further questions you have about property taxation.

Each year in Illinois, real properties are assessed to help calculate taxes. “Real property” is basically real estate – land and any improvements in or on the land, such as buildings and structures. The assessments are usually performed by township assessors, subject to revision by the Supervisor of Assessments or the county Board of Review. (But Cook County uses a county assessor, and the state Department of Revenue assesses certain types of properties such as railroads.)

The **township assessor** performs assessment duties in township organization counties and is elected for a four-year term. The **Supervisor of Assessments** is a county-level official who’s elected or appointed in counties where there’s no county assessor (other than Cook County). The **Board of Review** is a county-level board that meets to revise assessments and hear assessment appeals.

To assess your property, your assessor first determines its **fair cash value** (or fair market value). Fair cash value is “the amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller.”² Then, the assessor applies a **level of assessment** to the fair cash value to arrive at **assessed value**. For most residential properties, the level of assessment is 33.33%. So, a property with a fair cash value of \$100,000 would have an assessed value of \$33,330 (100,000 x .3333). Your tax bill is then determined by applying the tax rates of your taxing districts to your property’s assessed value.

The **assessment date** (the date on which your property’s value is based) is January 1st. In **general assessment** years, the assessors must actually view the properties to assess them. General assessment years are every four years, with the cycle starting in 1994 or 1995 depending on the type of county. (Most township counties start in 1995; most commission counties start in 1994.) In non-general assessment years, the assessors update assessments based on whether improvements have been added or removed from the properties, and there are papers property owners have to file about the improvements. The deadline for your assessor to turn in the assessments to the Supervisor of Assessments or Board of Review varies by county.

Whenever there’s a change in your assessment from the previous year, you must receive notice in the mail. There will also be notice of the change in your local newspaper of general circulation. Your County Treasurer will mail your tax bill to you by May 1st of the next year.

¹ Other sources for this section are: Illinois PTAB, Appeal Information for Illinois Taxpayers (Appeal Info), <http://www.state.il.us/agency/ptab/Pub/ptab2.pdf>; 35 Ill. Comp. Stat. 200/2-45, 200/3-5, 200/7-5, 200/9-70, 200/9-145, 200/9-155, 200/9-160, 200/9-180, 200/9-215, 200/16-25, 200/16-30; *Kankakee County Bd. of Review v. State Property Tax Appeal Bd.*, 787 N.E.2d 865, 869 (Ill. App. Ct. 2003); *Bd. of Review v. Property Tax Appeal Bd.*, 304 Ill. App. 3d 535, 538 (Ill. App. Ct. 1999).

² Appeal Info, *supra* note 1; 35 Ill. Comp. Stat. 200/1-50.

There are three main approaches assessors use to determine market value: the market approach, the income approach, and the cost approach. The **market approach** (or **comparable sales** approach) compares the property to similar properties that have recently sold. The **income approach** is used for properties that are most valuable as rental properties. The **cost approach** focuses on what it would cost to reproduce or recreate a property with the same value.

If you disagree with the assessed value of your property, you can appeal to your local Board of Review (or to the Board of Commissioners in a commission county). From there, you can appeal to the **Property Tax Appeal Board** or the court system. The Property Tax Appeal Board is a state-level body that hears assessment appeals from the Boards of Review. It has five members appointed by the Governor and approved by the state Senate. The law doesn't require you to hire an attorney at any level, but you may wish to, especially if you appeal to the court system.

Note

~ This Guide focuses on appeals for residential properties. The requirements and forms are similar for other types of property (e.g., farms). The Farm Appeal Form is available at www.state.il.us/agency/ptab/assist/forms.htm.

~ This Guide does not address appeals that are based on the application of a township multiplier/equalizing factor to the properties in a jurisdiction. Similar rules apply.

~ This Guide does not address appeals in Cook County. The requirements are slightly different there.

Please see the PTAB websites or call your state or local officials for more information about these types of appeals.

THE APPEALS PROCESS

The following website has helpful information about the appeal process:
<http://www.state.il.us/agency/ptab/default.htm> (click the Agency Links on the left).

I. Step 1: Finding out What Your Current Assessment Is³

There are basically three ways to find out what your assessment is:

- **Individual Notice:** In counties with less than 3,000,000 people, your assessor will give you notice of your assessment whenever there's a change from the previous year, except for changes caused by equalization. (Equalization is a process tax officials use to ensure most properties in a county are assessed at the same percentage.)
- **Public Notice:** In general assessment years, the county will publish a list of assessments in a local newspaper by December 31st. (For counties of 3,000,000 or more, the list is due as soon as the assessments are complete.) In other years, he or she will publish a list of added or changed assessments from the previous year (except for changes caused by equalization).
- **Individual Request:** You can always request your assessment and property information from your chief county assessment officer, who has to provide it by law.

You can find contact information for local assessing officials at
www.state.il.us/agency/ptab/pub/aandadir.htm.

II. Step 2: Local Review at the Board of Review (BOR)⁴

- The first place you go to appeal your assessment is your county Board of Review.
- *The filing deadlines and requirements vary by county, so you should contact your Board of Review or Supervisor of Assessments in early spring to find out the filing deadlines and requirements each year.*
- Some general rules:
 - The deadlines for filing a complaint are:
 - Counties w/less than 150,000 – **by August 10th or 30 days from when the assessment list is published**, depending on when the assessor files the assessments with the Board of Review.
 - Counties w/150,000 – 2,999,999 – **by September 10th or 30 days from when the assessment list is published**, depending on when the assessor files the assessments with the Board of Review.
 - Your complaint should be in writing and you should file **2 copies** of it.

³ The sources for this section are: 35 Ill. Comp. Stat. 200/12-5, 200/12-10, 200/12-20, 200/12-30, 200/17-5.

⁴ The information for this section was taken from: 35 Ill. Comp. Stat. 200/16-25, 200/16-30, 200/16-35, 200/16-55, 200/16-80, 200/16-85, 200/16-160; Illinois PTAB, Assessment and Appeal Information Directory (Information Directory), <http://www.state.il.us/agency/ptab/assist/default.htm>; Illinois PTAB, Frequently Asked Questions (FAQ), <http://www.state.il.us/agency/ptab/assist/faq.htm>.

- If the BOR gives you at least 30 days written notice of your hearing and you don't appear, the BOR could dismiss your appeal unless you get permission to delay it.
 - The BOR hears the complaints until all of them are heard, but should have your appeal decided by its adjournment date. The adjournment dates vary by county.
 - Less than 50,000 people – by September 7th
 - 50,000 – 74,999 people – by October 7th
 - 75,000 – 99,999 – by November 7th
 - 100,000 – 2,999,999 – by December 31st
 - The BOR will send notice of its final assessment decision to you in the mail, and will publish it in a local newspaper of general circulation.
- Taxing districts can file a complaint for review, too, if they think the property is under-assessed.
 - The BOR has the power to raise or lower your assessment.
 - If your assessment's reduced, it should stay in effect for the rest of the general assessment period (unless someone shows "substantial cause" why it shouldn't or the BOR decision gets changed by PTAB).⁵
 - Appendices A and B might have some helpful information for your BOR appeal.

The PTAB website has contact information for county assessing officials at <http://www.state.il.us/agency/ptab/pub/aandadir.htm> (scroll down).

III. Step 3: Appeal to the Property Tax Appeal Board (PTAB)⁶

If you're not happy with the BOR's decision, you can appeal to the Property Tax Appeal Board. You can also appeal to PTAB if you just received a favorable decision from PTAB for your prior year's assessment, and the deadline for filing with BOR has already passed.

For more information on PTAB proceedings:
<http://www.state.il.us/agency/ptab/assist/default.htm> (Taxpayer Assistance)
<http://www.state.il.us/agency/ptab/forms/default.htm> (Forms)
<http://www.state.il.us/agency/ptab/procedur/default.htm> (Practice & Procedure)

- You don't have to appeal to PTAB. You can appeal directly to the courts from the BOR if you wish. (But you can't do both.)

⁵ 35 Ill. Comp. Stat. 200/16-80.

⁶ The information in this section was taken from: 35 Ill. Comp. Stat. 200/9-20, 200/9-25, 200/16-160, 200/16-170, 200/16-175, 200/16-180, 200/16-185, 200/16-190; Ill. Admin. Code tit. 86 §§ 1910.10, 1910.25, 1910.30, 1910.40, 1910.50, 1910.55; 1910.63, 1910.65, 1910.66, 1910.67, 1910.69, 1910.70, 1910.80, 1910.90, 1910.92, 1910.93, 1910.94, 1910.98; *Stirs, Inc. v. City of Chicago*, 320 N.E.2d 216, 219 (Ill. App. Ct. 1974); Illinois PTAB, Information Directory, *supra* note 4; Illinois PTAB, FAQ, *supra* note 4; Illinois PTAB, Forms, <http://www.state.il.us/agency/ptab/assist/forms.htm>; Illinois PTAB, Help for Taxpayer Appeal Forms (Sample Appeal Form with Pop-up Instructions, Detailed Instructions, Checklist, Appeal Information for Illinois Taxpayers), <http://www.state.il.us/agency/ptab/assist/ResidentialHelp.htm>; Illinois PTAB, Practice & Procedure (Filing an Appeal, Grounds for an Appeal, Points of Emphasis, Response of the Board of Review, Subpoenas, The Hearing), <http://www.state.il.us/agency/ptab/procedur/default.htm>.

- There's no fee for appealing to PTAB. (But there might be other costs like copying and appraiser fees.)
- PTAB has the power to raise or lower your assessment.
- If the BOR dismissed your appeal for failure to attend the BOR hearing, you can't appeal to PTAB.
- You can submit more evidence here than you did before the BOR.
- Your appeal doesn't stay your taxes, so you should still pay them on time. If PTAB lowers your assessment, your County Treasurer has to refund your overpaid taxes with interest.
- You can represent yourself before PTAB, or you can have an attorney represent you.
 - According to PTAB rules, "[a]ccountants, tax representatives, tax advisers, real estate appraisers, real estate consultants and others not qualified to practice law in this State may not appear at hearings before the Board in a representative capacity, and may not conduct questioning, cross-examination or other investigation at the hearing."⁷ However, these people can still testify for you or help you.
- The Board of Review will be the opposing party, but interested taxing districts can appeal or intervene in your appeal, too.
 - There are also intervention provisions for property owners or taxpayers who pay taxes on the property, if someone else filed the original appeal (see www.state.il.us/agency/ptab/procedur/interven.htm).
- The PTAB has some subpoena power in this process (to require someone to testify or to require certain documents to be produced), but it can't order you to allow access to your property for an appraisal.
 - However, you must allow taxing bodies and the BOR to inspect your property during the PTAB process if they make written requests, otherwise PTAB won't consider evidence you present to refute your assessment.
- You and the other parties can agree to a settlement before PTAB issues its decision, subject to PTAB's approval. You'd need to file a "Stipulation of Assessment(s) by the Parties" asking PTAB to apply the stipulated assessment.
 - The stipulated assessment must be supported by evidence.
 - PTAB doesn't have to honor stipulations filed after it decides your case. If that happened, you'd need to file a Complaint for Administrative Review in court (see Step 4 below), asking the court to send your case back to PTAB so that PTAB can consider the stipulated assessment.

The "Stipulation of Assessment(s) by the Parties" form is available at
www.state.il.us/agency/ptab/forms/ptab16.pdf.

- The PTAB has "walk-in assistance" hours from 8:30 – 5:00 Monday thru Friday.
 - You don't have to schedule an appointment but you can, especially if you think your issues are complicated.
 - You should bring information with you, including previous notices or decisions from BOR or PTAB.

⁷ Ill. Admin. Code tit. 86 § 1910.70.

- The walk-in address is:

William G. Stratton Office Building
Room 402
401 South Spring
Springfield, IL 62706
(217) 782-6076

A. Filing the Appeal Form

To appeal to PTAB, you'll need to file an official "Appeal Form."

You have to present evidence (or a legal argument) to support your case.

- You must submit evidence with your form, unless you submit a written request for an extension *with* your form.
- Then, PTAB has to give you a 30-day extension and may give you more time for good cause (e.g., serious illness of a witness). If you don't request the extension with your form, PTAB won't accept evidence filed later.

The "Appeal Form" is available online at www.state.il.us/agency/ptab/assist/forms.htm (Microsoft Word or PDF). Be sure to select the correct form (e.g., residential). Or, you can contact PTAB, your county Board of Review, or your Supervisor of Assessments. See Appendix C for contact information.

1. Delivery Requirements

- You must file your appeal form within **30 days** of:
 - The postmark date on, or personal service of, your written notice from BOR, or
 - The postmark date of a PTAB decision lowering your assessment for the previous year, if BOR is no longer accepting appeals for this year.
- You can deliver it in person during business hours, or through the mail.
- If you mail it by United States mail, it's deemed filed on the postmark date, unless the postmark is illegible. Then, it's deemed filed when PTAB receives it.
 - If you mail it by some other means, it's deemed filed by the date sent according to the tracking label.
 - The Appeal Form states that faxed appeals will not be accepted.⁸
- The delivery address is PTAB's Springfield office (it's on the form):

Illinois Property Tax Appeal Board
Room 402 Stratton Office Building
401 South Spring Street
Springfield, IL 62706-4001

⁸ But PTAB's Rules allow faxed submissions up to 100 pages, as long as an original is sent within 5 days. 86 Ill. Admin. Code § 1910.88.

2. Filling out the Appeal Form

The PTAB website has several helpful instruction sheets for filling out the form:

www.state.il.us/agency/ptab/assist/ResidentialHelp.pdf

(Sample Appeal Form with Pop-Up Instructions)

www.state.il.us/agency/ptab/assist/Line-by-line.pdf (Detailed Instructions)

www.state.il.us/agency/ptab/assist/Checklist.pdf (Checklist)

The Appeal Form requests information about your property, with specialized sections depending on the grounds for your appeal.

- On the first page, there's a box for you to check whether you'd like an "informal hearing," or whether you'd like PTAB to decide your appeal "on the evidence" that you submit.
 - PTAB materials say that you may get a quicker decision if you don't have a hearing.
 - The PTAB materials also say that, if you have an appraisal, PTAB is likely to give it more weight if the appraiser testifies at a hearing. Keep in mind that you can also bring other witnesses to a hearing to testify on your behalf.
 - PTAB must hold a hearing if you request it.
 - If you don't request a hearing, PTAB will review the evidence and decide whether a hearing is needed.
- Section I gives you information about filing requirements. You must submit:
 - **3 copies** of the completed Appeal Form (including the original);
 - **2 copies** of all evidence (+ another copy if your requested change is more than \$100,000);
 - **2 copies** of the BOR's decision (or PTAB's favorable decision for the previous year);
 - If you're filing an appeal for more than one parcel/PIN (property identification/index number), you should submit an appeal form for each appeal, or you can submit an "Addendum" form (available at <http://www.state.il.us/agency/ptab/assist/forms.htm>).
- Section II requests basic information about you, your property, and your assessment.
 - There's a space for you to fill in your attorney information, if one's representing you in this appeal.
 - There's a space for you to fill in the date of the BOR decision. If you're appealing after a favorable PTAB decision and the BOR deadline has passed, write in "PTAB decision" and the date of the PTAB decision instead.
 - Your property identification/index number (PIN) is on your tax bill or assessment notice.
 - There's a space for you to fill in your requested assessment, and your assessment from the BOR. You should also write in your assessment from your local assessor. (If the BOR assessment wasn't on your notice from BOR, you can get it from your Supervisor of Assessments or the BOR offices.)
 - Be sure to sign and date the form. (It's best if you sign and date each copy.) If more than one person is appealing (e.g., husband and wife), you should both sign.
 - At the bottom of the page, you must check one or more grounds for your appeal, and submit supporting evidence.

- It's probably a good idea to submit as much evidence as you can, under as many grounds as you can.⁹
- There's some confusion about whether or not you can submit things that aren't on the list.¹⁰ If you do submit evidence that isn't on the list, you should probably be sure to submit one or more things that are on the list. Appendix A has some ideas about additional evidence.

Grounds for Appeal

- Recent Sale
 - If you recently bought your property for less than your assessment.
 - Submit **2 copies** of evidence of the sale price (e.g., closing statement, sales contract, RESPA/settlement statement, Real Estate Transfer Declaration).
 - Complete Section IV.
 - You should show how the sale was an arm's length transaction. (If you do, the sale price will be "practically conclusive" of fair cash value.)¹¹
 - Willing buyer and willing seller.
 - No compulsion to buy or sell.
 - No unique value/necessity of property to buyer or seller.
 - You might include any proof that the seller offered a low sale price due to a nearby factory farm (e.g., if you negotiated a reduction in the purchase price of your property because of a factory farm, you could include the purchase price as well as a description of the factory farm's influence on the sale).
- Comparable Sales
 - If properties similar to yours recently sold for less than your assessment.
 - Submit **2 copies** of information on **3 comparable properties** and their sale prices within the past 3 years (e.g., property record cards, property characteristic printouts, date sold, price paid). The information should show how the properties are similar to yours.
 - Complete Sections III and V (comparable sales portion).
 - You might include information on similar properties that are near factory farms. If there's information showing that a similar property sold for less because it was near a factory farm, you could include that as well.

⁹ An Illinois court has stated that none of the valuation methods "provide conclusive evidence of value," but that they are "only factors to be considered." *Ellsworth Grain Co. v. Ill. Property Tax Appeal Bd.*, 526 N.E.2d 885, 889 (Ill. App. Ct. 1988).

¹⁰ An Illinois appellate court decision indicates that you can submit evidence that isn't on the list. *Cook County Bd. of Review v. Property Tax Appeal Bd.*, 777 N.E.2d 622, 625 (Ill. App. Ct. 2005) ("There is no requirement that a taxpayer must submit a particular type of proof in support of an appeal. The rule instead sets out the types of proof that *may* be submitted. Legislative use of the word 'may' is construed as permissive, not mandatory.") (accepting two-year old appraisal even though rule stated that appraisal as of the "assessment date" could be submitted). But PTAB has indicated you can't. *In re: Leonard Cahmann*, Docket No. 05-01390.001-R-1, at R10 (Ill. PTAB Oct. 2007), available at <http://www.state.il.us/agency/ptab/pub/Synopsis2007.pdf> (scroll down) (finding that taxpayer didn't submit market value evidence to satisfy the rule, which lists the types of proof that may be submitted).

¹¹ *People ex rel. Korzen v. Belt Railroad Co.*, 226 N.E.2d 265, 267-68 (Ill. 1967).

- This approach is strongly recommended “where there is evidence of comparable sales.”¹² (If you get an appraisal, it’d be in the appraisal.)
- Contention of Law
 - Submit **2 copies** of your legal argument, with authority (e.g., caselaw) to support it.
- Assessment Equity
 - If properties similar to yours got lower assessments than yours.
 - Submit **2 copies** of information on **3 comparable properties** and their assessments (e.g., property record cards). The information should show how the properties are similar to yours.
 - Complete Sections III and V (assessment data portion).
 - You might include information about the assessments of similar properties that are near factory farms. You could include any information showing that the other properties were assessed lower because of the factory farm.
- Recent Construction
 - Submit **2 copies** of construction receipts, including land value and labor.
 - Complete Section VI.
- Recent Appraisal
 - If you have an appraisal with a lower value than your assessment.
 - Submit **2 copies** of an appraisal within the last 3 years.
 - PTAB materials say that an appraisal is “generally the best evidence to support value.”¹³
 - An appraisal should be more than just a letter of opinion. It should have an examination of the 3 approaches to value (cost, market, income), and information on and an analysis of the data the appraiser relied on.
 - E.g., the appraisal must consider the comparable sales approach, unless “no market exists for the sale of the property.”¹⁴
 - The appraiser should inspect your property and be knowledgeable about the general value of real estate in the area.
 - As mentioned earlier, PTAB “accords little weight and credibility to appraisals submitted without testimony and without an opportunity for cross-examination.”¹⁵ (So, your appraiser should testify at your hearing.)
 - The appraisal should take into account the nearby factory farm’s influence on your property.
- For Comparable Sales and Assessment Equity:
 - According to PTAB’s pop-up instructions, you can contact your local assessment office for information on comparable properties. Property record cards are public

¹² *Kankakee*, 787 N.E.2d at 869. See also *Cook County Bd. of Review v. Ill. Property Tax Appeal Bd.*, 384 Ill. App. 3d 472, 484 (2008) (“Where the correctness of the assessment turns on market value and there is evidence of a market for the subject property, a taxpayer’s submission that excludes the sales comparison approach in assessing market value is insufficient as a matter of law.”).

¹³ Illinois PTAB, Grounds for an Appeal, *supra* note 6.

¹⁴ *Cook County Bd. of Review v. Ill. Property Tax Appeal Bd.*, 894 N.E.2d 400, 412-13 (Ill. App. Ct. 2008). See also *United Airlines, Inc. v. Pappas*, 809 N.E.2d 735, 743 (Ill. App. Ct. 2004) (sales comparison approach the “preferred method and should be used when market data is available”).

¹⁵ *Id.*

- records viewable at your assessor's, or Supervisor of Assessment's, office during business hours. You can request a copy or printout for a fee.
- Similar or comparable properties share characteristics such as:
 - Location (e.g., neighborhood)
 - Size (e.g., square feet of living and land areas)
 - Age
 - Construction (e.g., aluminum siding, frame)
 - Style (e.g., ranch, two-story)
 - Amenities
 - Condition
 - Design
 - Be sure to fill in the required information in Section V, even though you're attaching other evidence about the comparable properties.
-

- Section III (“Description of Property”) requests specific information about your property.
 - “Other improvements” refers to things that weren’t previously described, like patios, decks, or in-ground pools.
- Section VII (“Recent Photograph(s) of Subject Property and Comparable Properties”) provides space for you to attach photos of your property and comparable properties (if any). The photos will “assist the PTAB in evaluating the merits of our appeal.”¹⁶
 - The photos could also show visible physical impacts of the factory farm on your property (e.g., proximity, manure contamination, insect swarms, dust).
- The PTAB website emphasizes that you “must provide all information called for on the appeal form” in order to avoid having your appeal dismissed.¹⁷
 - According to PTAB Rules, if your appeal form is incomplete, PTAB must return it to you and give you 20 days to correct it and resubmit it.
- Once PTAB informs the BOR of your appeal, the BOR has 90 days to respond. Then, PTAB will forward the BOR’s response to you, and you have 30 days to submit rebuttal evidence to PTAB.
 - Rebuttal evidence can’t be new evidence to support your case (e.g., newly discovered comparable properties or a new appraisal.) Instead, it should refute or disprove the evidence the other side submitted.
 - Rebuttal evidence must include:
 - A written factual critique of the other side’s evidence;
 - A review appraisal; or
 - An analysis of the other side’s appraisal by a real estate appraisal expert.
- If your requested change is \$100,000 or more, you can request a list of the other side’s witnesses before the hearing (and have to provide a list for the other side if asked).

¹⁶ Illinois PTAB, Detailed Instructions, *supra* note 6.

¹⁷ *Id.*

B. The PTAB Hearing

- Once PTAB has all the evidence, it's time for a hearing (if requested or PTAB decided one was needed).
- PTAB gives notice of the date, time, and place at least 20 days before the hearing (unless the parties agree 20 days notice isn't needed).
 - If you need to delay the hearing, you can request a "continuance" in writing, for good cause (something beyond your control such as the serious illness of an important witness.) But, since PTAB usually only travels to each county once a year, a continuance could delay your appeal by a year – unless you want PTAB to decide it on the evidence.
 - If you fail to appear, PTAB could enter a default judgment against you.
 - The length of the hearing varies, but it usually lasts long enough for the parties to fully present all of their evidence and testimony.
 - The hearing is usually in the county seat of the county where the property is located.
 - PTAB might also schedule a prehearing conference, which is usually at PTAB's office in Springfield or Des Plaines.
- Hearings are usually open to the public.
- The hearing will be recorded by electronic means or by a court reporter.
 - If your requested assessment change is more than \$100,000, you have to provide a court reporter for the hearing.

At the Hearing

Your evidence for the hearing will be in two main categories: documentary and testimonial. Your documentary evidence basically includes documents, photographs, and other written materials (previously submitted to PTAB). Testimony will be the actual statements that you or your witnesses make on your behalf at the hearing.

- The hearings are usually conducted by hearing officers.
 - The hearing officer has a duty to "ensure that the hearing is conducted in a full, fair and impartial manner, that order is maintained, and that unnecessary delay is avoided."¹⁸
- Participants in the hearing might be:
 - You (the property owner or person responsible for paying taxes on the property);
 - Your attorney (if any);
 - Your witnesses;
 - Your local assessing officials, the BOR, and their witnesses.
- Witnesses testify under oath.
- You have the burden to prove your case.
 - If your appeal is based on the fair market value of your property (recent sale, comparable sales, recent construction, recent appraisal), you have the burden to prove

¹⁸ Ill. Admin. Code tit. 86 § 1910.67.

- your case by a “preponderance of the evidence” (meaning, you need to prove it’s more likely than not that you’re right).¹⁹
- If your appeal is based on assessment equity, you have the burden to prove your case by “clear and convincing evidence” (a higher burden to prove than preponderance of the evidence).²⁰
- The hearing is informal, but usually follows a certain order:
 - Preliminary matters.
 - Opening statements.
 - Case in chief.
 - Rebuttal.
 - Closing statements.
 - The appellant (you, the person appealing your assessment) usually goes first.
 - You can present your documentary and oral evidence (e.g., testimony from supporting witnesses).
 - Remember that you can’t present documentary evidence at the hearing unless you already submitted it to PTAB (unless stringent exceptions are met).
 - An appraiser can only testify for you if you already submitted his/her appraisal to PTAB with your other evidence as required.
 - Then, the BOR will present its case, followed by the intervenor(s) (if any).
 - You can cross-examine (question) the other side’s witnesses.
 - Remember that only you or your attorney can question witnesses.
 - You have a right to “rebuttal” – where you can explain why the other side’s evidence should be given less weight than yours.
 - You’ll probably have a chance to give a “closing argument.”
 - PTAB materials suggest using this time to explain why the BOR’s (or intervenor’s) evidence isn’t sufficient, and why your evidence is better. You could also summarize your main argument and explain how your evidence supports it.

PTAB Decision-Making

- PTAB will decide your appeal based on “equity” (fairness) and the “weight of evidence” (how convincing the evidence is).²¹
- PTAB decides your cases “de novo” – meaning that it only considers the evidence and briefs (if any) submitted by the parties in this appeal, and does not give any weight or consideration to the BOR’s decision.
 - However, you still have the burden to prove your case.
- If you succeed, PTAB recommends that you re-file an appeal the next year, since your local assessor will probably have already set your next assessment before your appeal is final.
 - If PTAB orders a reduction for an owner-occupied residence, the reduced assessment is supposed to be in effect for the rest of the general assessment period (subject to

¹⁹ *Id.* § 1910.63; *People v. Brown*, 892 N.E.2d 1034, 1042 (Ill. 2008).

²⁰ *Id.*

²¹ 35 Ill. Comp. Stat. 200/16-185.

equalization and unless it's sold for a different price or PTAB's decision gets reversed).

- In your appeal you should note that you got a reduction from PTAB (and attach the PTAB decision), that your property is owner-occupied residential, and that the year is part of the same general assessment period.

IV. Step 4: Appeals from PTAB Decisions²²

You can appeal PTAB's decision to the Circuit Court or the Appellate Court, depending on the amount of your requested change in assessment. If it is less than \$300,000, it goes to the Circuit Court for the county in which your property is located. (Some circuits cover more than one county.)

The law doesn't require you to have an attorney to appeal to the Circuit Court. However, to ensure that you meet all of the Court's requirements and present your best case, you should seriously consider seeking legal counsel if you appeal PTAB's decision to the Circuit Court.

This section only gives the basics of the Circuit Court process, so that you have a general idea of how the proceedings work.

- You have **35 days** from the date of your PTAB decision to file your complaint in court.
- There are provisions for filing the summons and complaint, and preparing the record for the court, that have to be followed or your case might get dismissed.
- You can't submit new evidence.
- The court will review PTAB's decision to decide:
 - Whether it is against the "manifest weight of the evidence"²³ (basically, whether the evidence shows another conclusion is obvious), and/or
 - Whether it is contrary to law.
- The court can affirm, reverse, or remand (send back) the decision to PTAB.
- You can appeal the Circuit Court's decision as in other civil cases. (But if your case gets remanded to PTAB to do more than just enter a specific decision, you'll have to wait until PTAB issues another decision after remand.)

²² The sources for this section are: 35 Ill. Comp. Stat. 200/16-195; 735 Ill. Comp. Stat. 5/3-102, 5/3-103, 5/3-104, 5/3-105, 5/3-107, 5/3-109, 5/3-110, 5/3-111, 5/3-112; Illinois PTAB, Points of Emphasis, *supra* note 6, Illinois PTAB, Practice & Procedure, Administrative Review of Board Decisions, <http://www.state.il.us/agency/ptab/procedur/adminrev.htm>

²³ See *Mead v. Bd. of Review of McHenry County*, 494 N.E.2d 171, 176 (Ill. App. Ct. 1986) (citations omitted).

GLOSSARY²⁴

Appellant

A party who appeals a lower court's decision (e.g., a property owner appealing an unfavorable BOR decision to PTAB).

Appellate Court

Illinois' mid-level state court that hears appeals from lower levels (e.g., Circuit Courts and administrative agencies).

Assessed Value

A property's assessment, calculated by multiplying the level of assessment (usually 33.33%) by the property's fair cash value.

Assessment Date

The date on which a real property's value is based, January 1st of each year.

Assessor

A county, township, or deputy official who evaluates and appraises property. Some townships may share one multi-township assessor. Township assessors are elected for four-year terms. (The state Department of Revenue assesses some property such as railroads.)

Board of Review (BOR)

A three-member county level board that hears appeals of local assessments. The titles and makeup vary depending on the county's population, organization (commission, township) and when the Board was formed.

Brief

A document that contains a summary of the facts, the pertinent laws, and an argument on how the laws apply to the facts supporting a particular position.

Circuit Court

Illinois' lower-level court, where most cases (e.g., trials) are heard. Each circuit has 1 to 12 counties in it.

Closing Argument

A final statement to a judge or jury (or PTAB hearing officer), where a party can summarize his/her evidence and explain how it justifies the relief sought, and/or explain how the other side's evidence is not sufficient.

²⁴ The sources for the definitions in this section (some verbatim) are: 35 Ill. Comp. Stat. 200/1-10, 200/1-50, 200/1-120, 200/1-130, 200/1-150, 200/2-5, 200/3-5, 200/5-5, 200/6-5, 200/6-30, 200/6-35, 200/9-70, 200/9-145, 200/9-215, 200/16-65; Ill. Admin. Code tit. 86 § 1910.5; *Black's Law Dictionary* (7th ed. 1999); *Kankakee*, 787 N.E.2d at 869; Illinois Courts, <http://www.state.il.us/court/General/Proceed.asp>; Illinois PTAB, <http://www.state.il.us/agency/ptab/board/creation.htm>.

Continuance

Prolonging a proceeding (e.g., a PTAB hearing) to a future date.

Cross Examination

The questioning of the other's sides witnesses at a trial or hearing in order to discredit the witness and/or the witness' testimony.

Documentary Evidence

Documents, papers, appraisals, photographs, written explanations, etc., that you submit to PTAB in your appeal.

Equalization

A process by which tax officials (e.g., the Board of Review) ensure that all properties in a county are assessed at the same percentage of fair cash value (except some properties like farms and coal property).

Fair Cash Value

The amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller.

Fair Market Value

See Fair Cash Value.

General Assessment Period

A four-year cycle where, in the first year, assessors must physically view properties to make assessments. The cycle begins in 1994 or 1995, depending on the type of county government (in all counties but Cook county).

Level of Assessment

A percentage set by statute that is applied to the fair cash value of a property to arrive at its assessed value. (For most properties, 33 1/3 %.)

PIN (Property Index Number)

A number used to identify a parcel of property for assessment and taxation purposes.

Property Tax Appeal Board (PTAB)

A state-level board that hears assessment appeals. It has five members appointed by the Governor and approved by the state Senate.

Real Property

Land and all things in or on it (e.g., buildings).

Stipulation

An agreement that the parties in an assessment appeal can make on one or more issues in the appeal. At the PTAB level, it requires filing a stipulation form for PTAB's approval.

Supervisor of Assessments

In counties with less than 3,000,000 people where no county assessor has been elected, this official is elected or appointed for a four-year term to supervise assessments.

Supreme Court

Illinois' highest court. It hears some appeals from the lower courts (Appellate or Circuit).

Taxing District

Any unit of local government, school district or community college district with the power to levy taxes.

Testimony

Evidence/statements that a witness gives under oath, at trial or in a written document such as an affidavit.

Witness

A person who gives testimony about a case as part of a court or hearing process, usually on behalf of a particular side.

APPENDIX A – IDEAS FOR INFORMATION TO SUBMIT ABOUT YOUR PROPERTY

The ideas listed here are only examples. If the factory farm near your home is impacting your property in a way that isn't listed, you could use information about that as well. Because you bear the burden of showing your given assessment is wrong, you should present as much information as you need to prove your case. Your information might include photographs, documents, test results, personal statements from you or others, etc.

Remember that the BOR, PTAB, and courts might not accept all of this evidence.

Items marked with an * are specifically listed on the PTAB Appeal Form and allowed by PTAB rules.

(See “Filling out the Appeal Form” under Step 3: Appeal to the Property Tax Appeal Board.)

Purchase Price/Recent Sale*

Documents showing the recent purchase price of your property (if it was less than your current assessment). E.g., closing statement, sales contract, RESPA/settlement statement, Real Estate Transfer Declaration.

- You should show how the sale was an arm's length transaction.²⁵ An arm's length transaction means:
 - There was a willing buyer and a willing seller.
 - Neither was under any compulsion to buy or sell.
 - The property doesn't have a unique value or necessity to either the buyer or the seller.
- You might include any proof that the seller offered a low sale price due to a nearby factory farm (e.g., if you negotiated a reduction in the purchase price of your property because of a factory farm, you could include the purchase price as well as a description of the factory farm's influence on the sale).

Recent Appraisal & Testimony of Appraiser*

PTAB materials say that an appraisal is “generally the best evidence to support value.”²⁶ It should take into account the nearby factory farm's influence on your property.

- An appraisal should be more than just a letter of opinion. It should have an examination of the 3 approaches to value (cost, market, income), and information on and an analysis of the data the appraiser relied on.
 - E.g., the appraisal must consider the comparable sales approach, unless “no market exists for the sale of the property.”²⁷
 - The appraiser should inspect your property and be knowledgeable about the general value of real estate in the area.

²⁵ If you do, the sale price will be “practically conclusive” of fair cash value. *Korzen.*, 226 N.E.2d at 267-68.

²⁶ Illinois PTAB, Grounds for an Appeal, *supra* note 6.

²⁷ *Cook County Bd. of Review*, 894 N.E.2d at 412-13. See also *United Airlines*, 809 N.E.2d at 743 (sales comparison approach the “preferred method and should be used when market data is available”).

- PTAB “accords little weight and credibility to appraisals submitted without testimony and without an opportunity for cross-examination.”²⁸ (So, your appraiser should testify at your hearing.)

Appendix D has information on how to find an Illinois appraiser.

Comparable Sales*

Information showing that the sale prices of similar properties are less than your assessment. This approach is strongly recommended “where there is evidence of comparable sales.”²⁹ (If you get an appraisal, the comparable sales analysis would be in the appraisal.)

- You could include information on similar properties that are near factory farms. If there’s information showing that a similar property sold for less because it was near a factory farm, you could include that as well.

Or, if the assessor calculated your assessment by comparing your property to other properties that are *not* near a factory farm, and didn’t make an adjustment, you could offer information showing that your property is *not* similar to the other properties, because the other properties are not near a factory farm.

Similar or comparable properties share characteristics such as:

- Location (e.g., neighborhood)
- Size (e.g., square feet of living and land areas)
- Age
- Construction (e.g., aluminum siding, frame)
- Style (e.g., ranch, two-story)
- Amenities
- Condition
- Design

Assessments of Other Properties*

Information about the assessments of similar properties that *are* near factory farms. You could include this if your property is assessed at a higher value than similar properties near factory farms. You could include any information showing that the other properties were assessed lower because of the factory farm.

²⁸ *Id.*

²⁹ *Kankakee*, 787 N.E.2d at 869. See also *Cook County Bd. of Review*, 384 Ill. App. 3d at 484 (“Where the correctness of the assessment turns on market value and there is evidence of a market for the subject property, a taxpayer’s submission that excludes the sales comparison approach in assessing market value is insufficient as a matter of law.”).

Similar or comparable properties share characteristics such as:

- Location (e.g., neighborhood)
- Size (e.g., square feet of living and land areas)
- Age
- Construction (e.g., aluminum siding, frame)
- Style (e.g., ranch, two-story)
- Amenities
- Condition
- Design

You might also submit information about the assessments of similar properties that are *not* near factory farms. You could include this if your property was assessed at the same or higher value as similar properties that are *not* near factory farms. It tends to show that the factory farm wasn't taken into proper consideration in your assessment.

Physical Manifestations

Information about physical manifestations of the factory farm, such as:

- Poor air quality caused by animal waste and/or feed storage.
- Poor water quality in wells or streams, or soil contamination caused by the factory farm.
- Bad odors caused by animal waste.
- Intrusive noise caused by the factory farm (e.g., heavy truck traffic).
- Insect swarms from the factory farm.
- Harmful dust from the factory farm.
- Eyesores caused by the factory farm.
- Substances leaching from the factory farm (e.g., fecal matter, antibiotics, and hormones).
- Illnesses linked to the factory farm (e.g., a doctor's diagnosis of any illness you had that was caused or made worse by exposure to the factory farm).

Proximity

Information about your property's proximity to a factory farm (e.g., a map or plat map showing the location of your property and the location of the factory farm).

Marketability

- Information showing that your property hasn't sold or has taken longer to sell because of a nearby factory farm. For example, you or a local realtor might explain that potential buyers have raised concerns about the factory farm and have therefore been reluctant to buy your property.
- Information about any of the negative impacts of the factory farm on your community, which could reduce the marketability of homes by making the community as a whole less desirable.

- Information showing that people would only consider buying your property at a discounted price because it is near a factory farm (e.g., a survey of locals or prospective buyers, or a realtor's statement).

Financing

Information showing that you've had difficulty obtaining financing, or have obtained less financing, because your property is near a factory farm.

Cost to Cure

Information about any costs you'd incur to reduce the harmful impacts of a nearby factory farm on your property. For example:

- The costs of cleaning up any soil contamination on your property caused by the factory farm;
- The cost of installing a filtration system to treat well water contaminated by factory farm pollution, etc.

Statements of Professionals

Examples of professional statements that factory farms devalue nearby properties. For example:

- A newspaper article reporting that an Illinois assessor reduced property tax assessments because of a factory farm;
- A statement from a real estate agent that a nearby factory farm devalues your property;
- A statement from your local assessor that factory farms devalue nearby properties.

Stigma

Information showing that your property has stigma attached to it because of a nearby factory farm. This can be a broad category and might include:

- Information about the public's negative perceptions of properties near factory farms in general, or of your property in particular (e.g., a statement from a local citizen that she would expect a discounted price on your property because it's near a factory farm, even if there were no actual physical impacts from the factory farm).
- Information about any perceived risks or unknowns associated with your property.
- Negative publicity about the factory farm could also be an indication that nearby properties such as yours suffer from stigma.

Asking Price

Information about your asking price, if you recently offered your property for sale at a reduced price (lower than your assessment).

- This might include a copy of the written offer of sale, and an explanation of the factory farm’s influence on the offer.
- Note that Illinois courts don’t look favorably on this type of evidence.³⁰

Why should the BOR or the PTAB consider this kind of information in my tax appeal?

Some assessing officials in Illinois have already recognized that properties near factory farms suffer declines in market value, and have adjusted the properties’ values accordingly.

- Clark County, Illinois established assessment abatements for fifty residential homes around a hog CAFO in the following order: 30% reduction within ½ mile; 25% reduction within ¾ mile; 20% reduction within 1 mile; 15% reduction within 1 ¼ miles; 10% reduction with 1 ½ miles.³¹
- A Peoria, Illinois newspaper reported that county officials lowered property values for at least 20 people with homes within two miles of a large sow farm and its odor. The tax board decreased assessments by 30% for neighbors with 1 ½ miles of the operation, and 10% for those within 2 miles of the facility.³²

Illinois courts have also recognized that factory farms or other disamenities can negatively impact neighboring property values.

- In *Nickels v. Burnett*, the Appellate Court upheld a preliminary injunction against building an 8,000-head hog CAFO based in part on “extensive evidence in the form of affidavits and scholarly articles authored by the expert affiants demonstrating that, if the hog facility were to begin operation, plaintiffs would experience substantially harmful health effects and a significant loss of value to their land.”³³ The Court found the “harms described were substantially certain to occur should the hog facility begin operations in its present proposed location.”³⁴
- In *O’Brien v. City of O’Fallon*, a nuisance case, the Appellate Court held that oppressive odors and fecal pollution were relevant to the decrease in the market value of a property near a city’s sanitary sewer overflow valve.³⁵

Also, there is some useful guidance in the professionally respected *Appraisal Journal* (published by the Appraisal Institute) about how and why nearby factory farms should be considered in assessments. A 2001 article by John A. Kilpatrick explains that a factory farm devalues proximate properties to the extent it is viewed as a negative externality by the marketplace.³⁶

³⁰ *Ellsworth Grain Co. v. Ill. Property Tax Appeal Bd.*, 526 N.E.2d 885, 890 (1988).

³¹ William J. Weida, *The Evidence for Property Devaluation Due to the Proximity to CAFOs* 6 (Col. College & GRACE Factory Farm Project, Jan. 21, 2002).

³² *Board Smells Lower Land Values near Hog Farm*, The Journal Star, May 6, 1998, at A1.

³³ *Nickels v. Burnett*, 798 N.E.2d 817, 820, 826 (Ill App. Ct. 2003).

³⁴ *Id.* at 826.

³⁵ *O’Brien v. City of O’Fallon*, 400 N.E.2d 456, 461-62 (Ill. App. Ct. 1980).

³⁶ John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 *Appraisal J.* 301, 302 (2001).

The article outlines several factors that should be considered, including stigma; the type of subject property; the distance to the factory farm; physical manifestations; engineering/scientific testing; impacts on property use; marketability evidence, and; impacts on the highest and best use.³⁷ The influence of these factors can result in a 50-90% diminution in a property's market value.³⁸

- Described generally, the stigma factor includes any of the “unknowns and risks associated with ownership of the property.”³⁹ As other writers have noted, 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”⁴⁰), it may be difficult to quantify, but it should not be overlooked.⁴¹
- Regarding distance, generally, the closer the factory farm, the greater the impact on property values.⁴²
- The “impacts on highest and best use” factor might include things like being unable to grill out, open windows, play in the yard, or hang clothes out to dry.
- The physical manifestations factor is broad and may include various impacts. For example, impaired water quality can impair a neighboring property's value.⁴³ Hydrogen sulfide emissions from large confines of animal waste may cause illnesses in neighbors.⁴⁴ Dust, odors, and flies carrying animal blood, feces, or antibiotics may also impair a neighboring property's value.⁴⁵
- The “marketability evidence” factor might include evidence about the length of time it takes to sell, or the unsalability of, a property.⁴⁶ 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.⁴⁷

You can access the article from www.factoryfarmtaxprotest.com.

³⁷ *Id.* at 306.

³⁸ *Id.* at 305.

³⁹ *Id.* at 302.

⁴⁰ See Vincent D'Elia & Catherine M. Ward, *The Valuation of Contaminated Property*, 111 *Banking L.J.* 350, 359 (July-Aug 1994).

⁴¹ See Bill Mundy, *Stigma and Value*, 60:1 *Appraisal J.* 7 (Jan. 1992).

⁴² Kilpatrick, *supra* note 36, at 304-05 (citing University of Minnesota study).

⁴³ *Id.* at 304 (citing Kirshner & Moore study).

⁴⁴ *Id.* (describing illnesses near CAFOS in Minnesota).

⁴⁵ *Id.* at 305. See also Iowa State University & The University of Iowa Study Group, *Iowa Concentrated Animal Feeding Operations Air Quality Study: Final Report* 158 (2002), available at www.ehsr.uiowa.edu/CAFOfstudy/ (Chapter 7) (odor, dust, noise, and “general decline in the natural beauty of the area” from CAFOS can depress sales prices) (citations omitted).

⁴⁶ See D'Elia & Ward, *supra* note 40, at 360 (“longer marketing period” and “inability to sell” illustrate perceptions of devaluation).

⁴⁷ Kilpatrick, *supra* note 36, at 305.

APPENDIX B – EXAMPLES OF DEVALUED PROPERTIES

You can access some of these studies, articles, and cases at www.factoryfarmtaxprotest.com.

Selected Studies & Reports

In describing the economic costs of CAFOs to rural communities, the recent Union of Concerned Scientists report stated that “because property values are reduced near CAFOs, the residential tax base may suffer as well.”

~ Doug Gurian-Sherman, Union of Concerned Scientists, *CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations* (April 2008).

The recent Pew Commission report on industrial farm animal production described the various negative impacts that factory farm facilities have on the environment, public health, animal welfare, and rural communities. The report did not directly address declining property values, but did note the negative influence factory farms have on rural social capital and the rights of neighbors to enjoy their own properties.

~ Pew Commission on Industrial Farm Animal Production, *Putting Meat on the Table: Industrial Farm Animal Production in America* (April 2008).

A technical report for the Pew Commission report discussed various CAFO studies and found that: “Industrialization of animal agriculture leads to the reduced enjoyment of property and the deterioration of the surrounding landscape, which are reflected in declining home values and lowering of property tax assessments. Recurrent strong odors, the degradation of water bodies, and increased populations of flies are among the problems caused by CAFOS that make it intolerable for neighbors and their guests to participate in normal outdoor recreational activities or normal social activities in and around their homes.

~ Pew Commission on Industrial Farm Animal Production, *Community and Social Impacts of Concentrated Animal Feeding Operations*, at 31.

In Iowa, one 1996 study found that proximity to a hog CAFO decreased neighboring property values in the following order: 40% within ½ mile; 30% within 1 mile; 20% within 1.5 miles, and; 10% within 2 miles.

~ William J. Weida, *The CAFO: Implications for Rural Economies in the U.S.* 1 (Colo. College & GRACE Factory Farm Project 2004) (citing Padgett & Johnson).

Another Iowa study found that there may be a 1-10% 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.”

~ Joseph A. Herriges et al., *Living with Hogs in Iowa: The Impact of Livestock Facilities on Rural Residential Property Values* 19-20 (Iowa State Univ. Ctr. for Agric. Dev. Working Paper 03-WP 342 (Aug. 2003)).

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.”

~ H. Isakson & M. D. Ecker, *An Analysis of the Impact of Swine CAFOs on the Value of Nearby Houses* 19 (Univ. of N. Iowa Technical Report, July 23, 2008).

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

~ Mubarak Hamed et al., *The Impacts of Animal Feeding Operations on Rural Land Values 2* (Cmty. Policy Analysis Ctr., Univ. of Mo., May 1999) (finding that “there 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.

~ William J. Weida, *Nutrient Management Issues* (GRACE Factory Farm Project, Apr. 4, 2001) (citing Sierra Club, *Property Tax Reductions* (Mar. 13, 2000)).

A study in Berks County, Pennsylvania evaluated the impact of potential local disamenities on neighboring properties. 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.

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

A Putnam County, Missouri study found a \$58/acre loss of value for properties within 1.5 miles of a CAFO facility.

~ William J. Weida, *The Evidence for Property Devaluation Due to the Proximity to CAFOs* 6 (Col. College & GRACE Factory Farm Project, Jan. 21, 2002).

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.

~ Michael Thomas et al., *A Comparison of Three Recent Hedonic Models of Hog Farm Discommodity in Coastal North Carolina: Evidence of Diseconomies of Scale and Brown Zones* (May 2003) (citing studies of Bruton, Ansine et al., and Kim).

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.

~ USEPA, National Center for Environmental Economics, *Effects of Hog Operations on Residential Property Values*, 3:12 Newsletter (Dec. 1996).

A recent white paper by the Institute of Science, Technology and Public Policy reported on the negative impacts hog CAFOs have in Iowa, including “marked[] and consistent[]” decreases in land values and quality of life in areas near CAFOs. The report noted a study finding that “[p]roximity to a CAFO can reduce the value of a home by 40%.”

~ Institute of Science, Technology and Public Policy, *Concentrated Animal Feeding Operations (CAFOs): Assessment of Impacts on Health, Local Economies, and the Environment with Suggested Alternatives* 3, 6 (post February 2007) (citing study of Park, Lee, and Seidl).

Selected Articles

Clark County, Illinois established assessment abatements for fifty residential homes around a hog CAFO in the following order: 30% reduction within ½ mile; 25% reduction within ¾ mile; 20% reduction within 1 mile; 15% reduction within 1 ¼ miles; 10% reduction with 1 ½ miles.

~ William J. Weida, *The Evidence for Property Devaluation Due to the Proximity to CAFOs* 6 (Col. College & GRACE Factory Farm Project, Jan. 21, 2002).

A Peoria, Illinois newspaper reported that county officials lowered property values for at least 20 people with homes within two miles of a large sow farm and its odor. The tax board decreased assessments by 30% for neighbors with 1 ½ miles of the operation, and 10% for those within 2 miles of the facility.

~ *Board Smells Lower Land Values near Hog Farm*, The Journal Star, May 6, 1998, at A1.

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.” Specifically, “[s]ources 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.”

~ A.E. Reisner, *Newspaper Coverage of Controversies about Large-Scale Swine Facilities in Rural Communities in Illinois*, 83:11 J. Animal Sci. (Nov. 1, 2005).

This 2001 article in the *Appraisal Journal* explains how CAFOs can negatively impact proximate property values, and lists several factors that should be considered in valuing those properties.

~ John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 *Appraisal J.* 301 (2001).

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.”

~ Barbara J. Dilly, *Tax Policy and Swine Production in Iowa*, United States, 10 J. Ecological Anthropology 45, 48 (2006).

An Iowa paper reported on the results of the University of Northern Iowa study mentioned above. One interviewee said that his neighbor had been offered \$1 million for his land before plans for a hog lot were announced, but that after the announcement, “the would-be buyer walked away.” “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 (hog lots) if they see them.” Another interviewee, who had recently

bought land in the area, said she “would not have bought the house and all the surrounding property . . . at above market value . . . if a CAFO was going to be built a mile away. . . . And to tell you the truth, I’ll sell my property at a huge loss to move away if they build these things.”

~ *UNI Study: Hog Lot Cuts up to 15% off Nearby Home Values*, Waterloo Courier, Mar. 12, 2007.

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.”

~ Jennifer Jacobs, *Candidates Tout Their Farm Credentials*, Des Moines Register, Nov. 11, 2007.

In January 2007, Indiana residents turned out to testify before the state legislature on a CAFO moratorium bill. 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.” Another testified that “[d]ecreased property value because of CAFOs mean [sic] decreased revenue from property taxes, which means less money for our schools.”

~ Jondi Schmitt, *Hoosiers Voice CAFO Concerns: Proposed Bill Would Put Three-Year Moratorium on Start of Construction*, South Bend Tribune, Jan. 30, 2007.

The Indiana House passed a bill in February 2007 that would prohibit new CAFOs within 1 mile of cities, towns, schools, and health facilities. 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 our neighbors.” “CAFOs do decrease property values,” he said.

~ Niki Kelly, *General Assembly: House Restricts Feed Farms*, The Journal Gazette, Feb. 22, 2007.

A Michigan Land Use article reported that a tax tribunal reduced the assessments for properties adjacent to CAFOs. 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.

~ Patty Cantrell, *Michigan Tax Tribunal Recognizes Hog Factory Stench* (Mich. Land Use Inst., Dec. 7, 1999).

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

~ Douglas Clement, *Knee Deep in Feedlot Feuds*, FedGazette, July 2001.

A 2006 Letter to the Editor in opposition to proposed legislation that would weaken Michigan’s environmental laws described the “severe pollution” that CAFOs cause. 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.” She also noted that “[t]he stench from CAFOs has led to reductions in property values of up to 70 percent by the Michigan Tax Tribunal for nearby residents no longer able to enjoy or sell their homes.”

~ Anne Woiwode Letter to the Editor, *Animal Sewage from Livestock Farms Threatens Communities*, Kalamazoo Gazette, May 15, 2006.

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

~ Gloria Flannery, *Caribou Councilors Seek Ban on Piggery; Fears of Pollution, Odor Lead to Ordinance Proposal*, Bangor Daily News, Feb. 25, 1998.

Selected Cases

An appellate court in Illinois has recognized that factory farms can decrease neighboring property values. In *Nickels v. Burnett*, the Court upheld a preliminary injunction against building an 8,000-head hog CAFO based in part on “extensive evidence in the form of affidavits and scholarly articles authored by the expert affiants demonstrating that, if the hog facility were to begin operation, plaintiffs would experience substantially harmful health effects and a significant loss of value to their land.” The Court found the “harms described were substantially certain to occur should the hog facility begin operations in its present proposed location.”

The neighboring plaintiffs alleged that the facility would devalue their properties (among other things). The plaintiffs introduced the affidavit of a professional appraiser, who stated that neighboring property values would be reduced by 18-35%. 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 must be avoided;” 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.” 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.” 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.” ~ *Nickels v. Burnett*, 798 N.E.2d 817, 820, 826 (Ill. App. Ct. 2003); Brief of Appellees at 7-10.

In January 2002, in Calhoun County, Iowa, a jury awarded \$76,400 in damages to four property owners who claimed a 4,000-hog operation within a mile of their properties diminished their property values. In another Iowa county, a Court had recently awarded \$100,000 to other property owners for decreased property values from a nearby hog feeding operation.

~ Jerry Perkins, *Jury Sides against Hog-lot Firm: A Total of \$76,400 Will Go to Residents Near the Facility*, Jan. 26, 2002.

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. The plaintiffs had alleged that the CAFO attracted bugs and harmed their physical and emotional health.

~ Associated Press, *Judge Awards Iowa Couple \$100,000 in Hog Lot Lawsuit*, Amarillo Globe-News, Jan. 12, 2002.

In a 1997 Indiana Tax Court 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. 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. 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. Relevant evidence that the plaintiffs presented included the two jars of air "redolent with swine" (though unopened, the hearing officer conceded they would smell bad), and verbal testimony about how the odor impaired the enjoyment of their property (they were unable to play tennis, open windows, or hang clothes out).

~ *Corey v. State Bd. of Tax Comm'rs*, 674 N.E.2d 1062, 1063, 1065-66 (Ind. Tax. 1997) (reversing state board's assessment on these grounds).

In a case before Indiana's Court of Appeals that was basically a zoning challenge to a proposed CAFO, some people who lived near the proposed CAFO presented evidence that their property values would decline if the CAFO were built. They presented testimony by their Township Assessor, who said:

The first thing that has to happen if this hog operation goes in, is the neighborhood value will have to be lowered from a good to a fair or a poor [T]here's some houses like Flynns [sic], Bowmans and Jerry Marsh's, David Helt's there's some of them that the Sexton's house, there's two of them there that are pretty new houses, Steve Bowman's sister just built a new house up there. I wouldn't be surprised if they wouldn't drop 30 percent, I don't think it would be out of the question. So the property values will decrease in this area.

The Court held that the testimony was enough to show that the people near the proposed CAFO would "suffer a pecuniary loss" if the CAFO permit were granted.

~ *Sexton v. Jackson County Bd. of Zoning Appeals*, 884 N.E.2d 889, 893-94 (Ind. App. 2008).

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. 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. 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.

~ *Livingston v. Jefferson County Bd. of Equalization*, 640 N.W.2d 426, 431, 437 (Neb. Ct. App. 2002).

In another Nebraska tax case, the state Supreme Court held that an assessor's valuation was "arbitrary and unreasonable" because it did not apply external/locational depreciation to a home that was near a cattle feedlot. The property owner provided testimony about problems with dust, trucks, and flies from the nearby feedlot. In addition, the well for the home was connected to the cattle-watering facility.

~ *Darnall Ranch, Inc. v. Banner County Bd. of Equalization*, 753 N.W.2d 819, 830-32 (Neb. 2008).

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.

~ *Coyote Flats, LLC v. Sanborn County Comm'n*, 596 N.W.2d 347, 352, 356 (S.D. 1999).

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. The CAFO settled the lawsuit by relocating the plaintiffs and buying their farm.

~ John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 Appraisal J. 301, 305 (2001).

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

~ John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 Appraisal J. 301, 305 (2001).

In 1998 in Cedar County, Nebraska, property owners received an assessment reduction based on a neighboring CAFO. 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 in to the road ditch 100ft from our well. The nitrates in our water ha[ve] increased making it not safe to drink. We feel a valuation increase of \$35,340 is unfair." The board looked at the property and decided to assess a 25% locational depreciation.

~ Great Plains Environmental Law Center, Case Studies, Cedar County, Property Valuation Protest Form (1998).

APPENDIX C – LINKS TO HELPFUL ASSESSMENT INFORMATION

- General information on tax assessment and challenges
www.state.il.us/agency/ptab/assist/default.htm
www.state.il.us/agency/ptab/procedur/default.htm
- Contact information for PTAB

Illinois Property Tax Appeal Board (main office)
402 Stratton Office Building
401 South Spring
Springfield, IL
(217) 782-6076
ptab_webmaster@state.il.us

Illinois Property Tax Appeal Board (this office isn't always open)
Suburban North Office Facility
9511 West Harrison Street, Suite 171
Des Plaines, Illinois 60016
- Contact information for local officials (including the Supervisor of Assessments)
www.state.il.us/agency/ptab/pub/aandadir.htm (scroll down)
- Synopses and explanations of prior PTAB decisions
<http://www.state.il.us/agency/ptab/pub/Synopsis.htm>
- Sample PTAB Appeal Form (filled-in with pop-up instructions)
www.state.il.us/agency/ptab/assist/ResidentialHelp.pdf
- Forms

Residential Appeal Form (PTAB)
www.state.il.us/agency/ptab/assist/ptab1a.pdf

Farm Appeal Form (PTAB)
www.state.il.us/agency/ptab/assist/ptab14a.pdf

Stipulation of Assessment by the Parties (PTAB)
www.state.il.us/agency/ptab/forms/ptab16.pdf

APPENDIX D – OTHER RESOURCES

- Information on Factory Farms

www.ncifap.org/ (Pew Commission report; click next to “Full Report”)

www.ucsusa.org/food_and_environment/sustainable_food/cafos-uncovered.html (Union of Concerned Scientists report)

www.factoryfarm.org (Factory Farm.Org)

www.foodandwaterwatch.org/food/factoryfarms (Food & Water Watch)

www.waterkeeper.org/mainarticledetails.aspx?articleid=87 (Waterkeeper)

www.sierraclub.org/factoryfarms/ (Sierra Club)

www.nrdc.org/water/pollution/cesspools/cessinx.asp (NRDC)

www.nffc.net (National Family Farm Coalition)

www.sraproject.org (Socially Responsible Agricultural Project)

<http://aphg.jhsph.edu> (Agriculture & Public Health Gateway)

<http://www.jhsph.edu/clf/> (Center for a Livable Future)

www.farmweb.org (Families against Rural Messes)

www.epa.gov/waterscience/guide/feedlots/envimpct.pdf (EPA)

www.p2pays.org/ref/21/20524.htm (papers from 1998 Manure Management Conference)

www.iccaw.org (Illinois Citizens for Clean Air & Water)

- How to Find an Appraiser

- AppraiserUSA.com, Illinois Real Estate Appraiser Directory

<http://appraiserusa.com/illinois/index.htm>

If you click on “See Appraiser’s Full Listing” after you do your search, there is more information about the appraiser, including whether he/she is state-licensed.

- American Society of Appraisers

www.appraisers.org/findappraiser/

Try searching the Real Property categories.

- Appraisal Institute

www.appraisalinstitute.org/search.asp

There are various search options on this page. You could do a geographical search under “Quick Search”, or could choose the “Advanced Search” option and choose “Real Estate Tax Valuation and Consulting” under the “Business Services” option.

- Local Yellow Pages

- Recommendations

- How to Find an Attorney
 - Illinois State Bar Association
www.illinoislawyerfinder.com/search.html
 - StateLawyers.com, Attorney Directory – Illinois Counties
www.statelawyers.com/AttorneyDirectory/Index.cfm/StateID:13
 - Lawyers.com, Find a Lawyer
www.lawyers.com/Illinois/browse-by-city.html
 - American Bar Association, Consumers' Guide to Legal Help
www.abanet.org/legalservices/findlegalhelp/main.cfm?id=IL
 - Local Yellow Pages
 - Recommendations