

**PROPERTY ASSESSMENT APPEALS
FOR
HOMES NEAR FACTORY FARMS**

KANSAS GUIDE

2010

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 Kansas attorney if you wish to obtain legal advice.

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INTRODUCTION

This Guide is for Kansas homeowners who choose to challenge their property tax assessments because the assessments don't account for the negative impacts of nearby factory farms.

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 impact 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 appeals process in Kansas, 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 levels of the process, which aren't formal court proceedings.

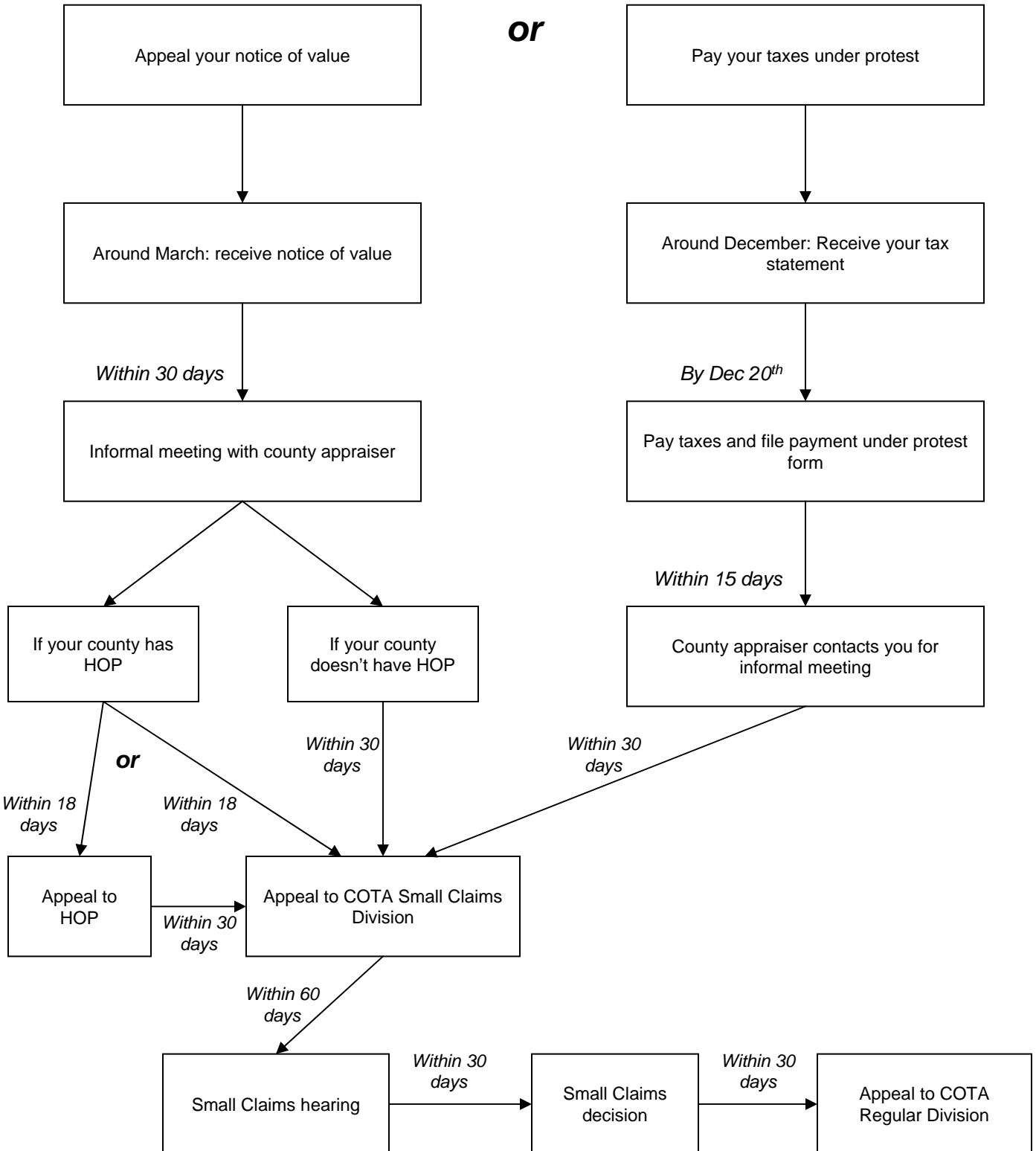
It's important to understand that this Guide isn't legal advice. The authors of this Guide aren't providing legal services to you, and the protections of an attorney-client relationship don't exist here. Instead, this Guide is intended to help you as you navigate the appeals process. We encourage you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

The Guide is available at www.factoryfarmtaxprotest.org, along with links and other resources. 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.

This Guide applies only to single-family residential homes rather than other types of property, such as agricultural or commercial property. In some cases, properties that are not single-family homes are valued differently and require a different appeals process than what is described in this Guide.¹

¹ See, e.g., Kan. Stat. Ann. §§ 79-501 (agricultural property valued differently), 74-2433f (appeal route different for single-family residential properties).

Kansas Assessment Appeals Process



CHECKLIST

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

___ **Step 1: Find Out What Your Current Assessment Is.**

___ **Step 2: Appeal Your Notice of Value or Pay Your Taxes under Protest.**

Option A: Appeal Your Notice of Value.

- ___ Receive your notice of value in the spring.
- ___ Have an informal meeting with your county appraiser.
 - ___ Schedule the meeting within 30 days of the date your notice of value was mailed to you.
 - ___ Before the meeting, gather information to support your request for lower value.
 - ___ Attend the informal meeting with your county appraiser.
 - ___ Receive the county appraiser's decision, usually by May 20th.
 - ___ If unsuccessful: appeal to HOP or COTA Small Claims Division.
- ___ *Maybe: Appeal to your Hearing Officer Panel (HOP). This step is optional and is only available in some counties.*
 - ___ File an appeal form with your county clerk within 18 days of the date your notice of informal meeting results was mailed to you.
 - ___ HOP will schedule your hearing on or before July 1st.
 - ___ Attend the HOP hearing to support your case.
 - ___ Receive HOP's decision around July 5th.
 - ___ If unsuccessful: appeal to COTA Small Claims Division (see Step 3).

Or

Option B: Pay Your Taxes Under Protest.

- ___ Receive your tax statement in the fall.
- ___ File a payment under protest form and other required documents with your county treasurer, usually by December 20th.
- ___ Within 15 days, your county appraiser will contact you to schedule an informal meeting.
 - ___ Before the meeting, gather information to support your request for lower value.
 - ___ Attend the informal meeting with your county appraiser.
 - ___ If unsuccessful: appeal to COTA Small Claims Division.

___ **Step 3: Appeal to the Court of Tax Appeals (COTA) Small Claims Division.**

- ___ File an appeal form and other required documents with COTA by the deadline:
 - ___ *If you used HOP:* within 30 days of HOP's decision.
 - ___ *If your county doesn't have HOP or you're paying under protest:* within 30 days of the date your informal meeting decision was mailed to you.
 - ___ *If your county has HOP but you didn't use HOP:* with 18 days of the date your informal meeting decision was mailed to you.

- _____ File copies with your county appraiser and county clerk, too. (Check to see if you also need to file copies with your county treasurer.)
- _____ The Small Claims Division will contact you to set up your hearing, within 60 days.
- _____ Gather information to support your case.
- _____ Attend the Small Claims Division hearing to support your case.
- _____ Receive the Small Claims Division decision within about 30 days of your hearing.
- _____ If unsuccessful: appeal to COTA Regular Division.

_____ **Step 4: Appeal to the Court of Tax Appeals (COTA) Regular Division.**

- _____ File an appeal form and other required documents with COTA.
 - _____ Deadline: within 30 days of the date your Small Claims decision was mailed to you.
 - _____ File copies with your county appraiser. (Check to see if you need to file copies with your county clerk, too.)
- _____ Gather information to support your case.
- _____ Exchange copies of your evidence with the county appraiser at least 10 days before the hearing.
- _____ Attend the Regular Division hearing to support your case.
 - _____ Bring at least 2 copies of your evidence to the hearing.
- _____ If unsuccessful: petition for reconsideration.
 - _____ File the petition with the Regular Division within 15 days of the Regular Division's decision on your hearing.
 - _____ The Regular Division will decide how to handle your petition within 20 days.
 - _____ If unsuccessful, appeal to the Kansas state courts.

_____ **Step 5: Appeal to the Kansas state courts.**

- _____ File for judicial review in the Kansas Court of Appeals within 30 days of the Regular Division's decision on your petition for reconsideration.
- _____ If unsuccessful, petition for review in the Kansas Supreme Court.

BACKGROUND INFORMATION²

Each year in Kansas, real properties are assessed to help calculate taxes. “Real property” is basically real estate – land and buildings or improvements on the land. The taxes help fund local services such as schools, roads, parks, and police and fire protection. (Some properties, such as educational or religious properties, are exempt from taxation.)

Your county appraiser will perform your assessment, unless your county is divided into districts – in which case district appraisers do the assessments. Your property is valued as of January 1st of each year. For residential properties, the value is based on *fair market value in money*.

Fair market value: “the amount an informed buyer is willing to pay, and an informed seller is willing to take for property in an open market without undue influences.”³

To value your property, the county appraiser reviews information such as the property’s size, age, location, style, quality, and condition. Then, there are three main approaches the appraiser uses to determine fair market value:

Sales approach: compares your property to similar properties that have sold, with adjustments for differences. Used most often for residential properties in areas where there have been many sales.

Cost approach: uses the replacement cost of your property (new), minus depreciation. Used most often for new or unique properties, or for areas where there aren’t many sales.

Income approach: estimates the income the property will produce. Used most often for commercial or rental properties.

In addition, your appraiser must visit your property every six years to inspect the exterior.

You will receive notice of your property’s value in the spring on a written notice of value. Usually, the appraiser must mail the notices by March 1st. Your property’s value will also be listed on your tax statement, which must be mailed to you on or before December 15th.

² The sources for this section are: Kansas Dep’t of Revenue, *The Property Tax Appeals Process in Kansas* (“*Appeals Process*”), available at www.ksrevenue.org/pvdappeals.htm (Property Tax Appeal guide links); Kansas Dep’t of Revenue, Forms and Publications/Property Valuation, www.ksrevenue.org/forms-pvd.htm; Kansas Dep’t of Revenue, *A Homeowner’s Guide to Property Tax in Kansas* (“*Homeowners Guide*”), available at www.ksrevenue.org/pdf/forms/pvdhomeowner.pdf; Kan. Stat. Ann. §§ 79-102, 79-201, 79-411, 79-501, 79-1411b, 79-1448, 79-1455, 79-1460, 79-1476, 79-1611.

³ *Appeals Process*, *supra* note 2. The statutory definition is: “the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion.” Kan. Stat. Ann. § 79-503a.

Challenging Your Assessment – An Overview

If you disagree with your assessment, you can either:

- *Appeal your notice of value (when you receive your notice of value in the spring);*
- OR*
- *Pay your taxes under protest (in December).*

If you *appeal your notice of value*, you'll follow these general steps:

- 1) Have an informal meeting with your county appraiser.
- 2) If unsatisfied, appeal to the Small Claims Division of the Court of Tax Appeals (COTA). In some counties, you can appeal to a county Hearing Officer Panel (HOP) before appealing to the Small Claims Division.
- 3) If unsatisfied, appeal to the Regular Division of the Court of Tax Appeals (COTA).

If you *pay your taxes under protest*, you'll follow these general steps:

- 1) File a “payment under protest” form with your county treasurer when you pay your taxes in December.
- 2) Have an informal meeting with your county appraiser.
- 3) If unsatisfied, appeal to the Small Claims Division of the Court of Tax Appeals (COTA).
- 4) If unsatisfied, appeal to the Regular Division of the Court of Tax Appeals (COTA).

THE APPEALS PROCESS

See these helpful websites about the appeals process:

Kansas Department of Revenue

www.ksrevenue.org/forms-pvd.htm (scroll down to Publications/Your Personal)

www.ksrevenue.org/pvdappeals.htm

Kansas Court of Tax Appeals

www.kansas.gov/cota/

I. Step 1: Finding out What Your Current Assessment Is⁴

- Usually, you'll receive written notice of your property's value in the spring on your notice of value.
 - Usually, your county appraiser must mail this notice by March 1st.
 - Your notice will include information about appeals.
 - If your assessment hasn't increased from the previous year, your county might use a different notification process. Contact your county appraiser or clerk to find out. (Check your local phone book for contact information.)
- Your property's value will also be on the tax statement you receive in December (or earlier). The County Treasurer must mail these by December 15th.
- The county appraiser keeps documents about your property, which are open to public inspection. E.g.:
 - Inventory contents sheet (ICS) – shows information collected on your property, such as size, condition, rooms, etc.
 - Comparable sales sheet – shows information about your property, plus information and sale prices for other properties that the county considers similar to yours. It may also show adjustments made to determine your property's value.

You can request this information to help you decide whether to appeal, and to help you with your appeal.

- Your county clerk also has a list of the assessments in your county, open to public inspection.

⁴ The sources for this section are: *Appeals Process*, *supra* note 2; Kansas Dep't of Revenue, *Preparing for a Property Valuation Appeal* ("Preparing"), available at www.ksrevenue.org/pvdappeals.htm (Appeal Preparation Guide link); Kan. Stat. Ann. §§ 79-1458, 79-1460, 79-1480; 79-2001.

II. Step 2: Appealing Your Notice of Value⁵ **or** **Paying Your Taxes under Protest⁶**

You can either appeal:

- When you receive your notice of value in the spring, *or*
- By paying your taxes under protest in December.

You can only use one method in any given year. (So, if you appeal your notice of value in the spring, you can't pay your taxes under protest that same year.)

- Both steps involve an informal meeting with your appraiser and, if unsatisfied there, an appeal to the Small Claims Division of the Court of Tax Appeals (COTA).
- If you wait until December and pay under protest, you'll have more time to prepare your appeal.
- If you appeal your notice of value in the spring and succeed, your assessment might be reduced before your taxes are due in December. (If not, you'll be entitled to a refund after taxes are due.)

Step 2: Option A Appealing Your Notice of Value⁷

1. Informal Meeting with County Appraiser

The first step in appealing your notice of value is to have an informal meeting with your appraiser.

- Contact your county appraiser by phone or in writing **within 30 days** of the date your written notice of value was mailed to you.⁸
- Then, your appraiser will schedule an informal meeting with you, usually by May 15th.

At the meeting:

- Your appraiser will explain how your property's value was determined and must provide you with evidence (e.g., a comparable sales sheet).
- This is your chance to explain why you think the appraiser's value is wrong.

⁵ The sources for this section are: *Appeals Process*, *supra* note 2; *Preparing*, *supra* note 4; *Homeowner's Guide*, *supra* note 2; Kan. Stat. Ann. §§ 79-1404a, 79-1448, 79-1606, 79-1610, 79-1611, 79-2005.

⁶ The sources for this section are: *Appeals Process*, *supra* note 2; *Preparing*, *supra* note 4; *Homeowner's Guide*, *supra* note 2; Kansas Court of Tax Appeals, PR Appeal Form (Payment Under Protest), available at www.kansas.gov/cota/documents/PR%20Appeal%20to%20Co.pdf; Kan. Stat. Ann. §§ 79-2001, 79-2005.

⁷ The sources for this section are listed *supra* note 5.

⁸ The county appraiser can extend this deadline for "just and adequate reasons." Kan. Stat. Ann. § 79-1448.

- You can represent yourself, or someone else can represent you. If someone other than an attorney represents you, you'll need to file a "Declaration of Representative" form. The form is available from your county appraiser or at: www.kansas.gov/cota/documents/DECLARATION%20OF%20REPRESENTATIVE.pdf

Preparing for the Meeting

You should gather information that supports your request for lower value.

The Kansas Department of Revenue⁹ makes the following suggestions:

- Ask the county appraiser for a copy of your property's ICS and comparable sales sheet (see above for definitions).
 - Review these documents for accuracy. E.g., make sure the information about your property is correct and drive by other homes on the comparable sales sheet to make sure they're the same as yours; if not, take photos to show how they're not.
 - Similar properties share characteristics such as condition, quality, style, age, and location.
- Other useful documents:
 - A recent sales contract for your property (within the last 2-3 years);
 - A recent appraisal report prepared by a fee appraiser. (See Appendix A for information on appraisal requirements and Appendix D for information on how to find a professional appraiser.)

Two areas to consider as you prepare for the meeting and the rest of your appeal:

1) Specific information about your property that shows how its fair market value has been decreased by a nearby factory farm. Appendix A has ideas about this type of information and a brief explanation of why the decision-makers in your appeal should consider it.

2) General information that shows nearby factory farms should be considered in property tax assessments. For instance, the examples in Appendix B show that factory farms can and have negatively impacted nearby property values. In some cases, local governments or courts ordered reductions in assessments. You can access some of the studies, articles, and cases at www.factoryfarmtaxprotest.org.

After the Meeting

The county appraiser will share a final decision with you soon after your meeting, usually by May 20th. If the decision is unfavorable to you, the county appraiser must give you a written explanation.

⁹ See the sources listed *supra* note 5.

If you are unsatisfied with the meeting, you can:

- Appeal to the Small Claims Division of the Court of Tax Appeals (COTA) (see Step 3 below);
- In some counties, appeal to a County Hearing Officer Panel (HOP) (see Step 2.A.2 below). *This step is optional.*

If your appraiser reduces your assessment, the state Director of Property Valuation can reverse the change within 60 days. If this happens, you can appeal to the Court of Tax Appeals (COTA).

2. Appeal to County Hearing Officer Panel (HOP)

In some counties, you can appeal to a county Hearing Officer Panel (HOP) before you appeal to the Small Claims Division. But you don't have to appeal to HOP first; you can appeal directly to the Small Claims Division from your informal meeting with your appraiser.

<p>Check with your county clerk to find out if your county has a HOP. Most counties do not.</p>

- You must file an appeal form with your county clerk within **18 days** of the date your notice of informal meeting results was mailed to you.
 - Get the appeal form from your county clerk and be sure to follow any instructions for filling it out and preparing for your hearing.
- Then, the HOP will schedule your hearing.
 - The county clerk will notify you at least 10 days before your hearing.
 - It will be in your county.
 - You can have an evening or Saturday hearing if you request it.
 - It will be on or before July 1st.
 - Your hearing officer or panel must have qualifications in property appraisal and property tax administration.
 - There's no presumption that the county's assessment is correct, so your appraiser must show by a "preponderance of the evidence" (more likely than not) that the county's assessment is correct. You need to be prepared to support your case, too.

<p>See the suggestions above and the ideas in Appendix A to help you prepare for your hearing.</p>
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- HOP has to issue a written decision with explanations by July 5th.
 - The county clerk will mail a copy to you within 5 days of the decision.
 - But it's possible that, if your appeal isn't heard by the time HOP adjourns, it'll be deemed denied. If this happens, you'll receive notice.
- If you're unsatisfied with the HOP results, you can appeal to the Small Claims Division of COTA (see Step 3 below).

The state Director of Property Valuation can reverse a change made by HOP within 60 days - if that happens, you can appeal to the Court of Tax Appeals (COTA).

Step 2: Option B Paying Your Taxes under Protest¹⁰

Remember: you can only pay your taxes under protest if you did not file a notice of value appeal earlier in the year.

- You file this appeal after you receive your tax statement from your county treasurer, usually in November. (The county treasurer mails tax bills on or before December 15th.)
- When you pay your taxes, file a “payment under protest” form with the county treasurer. This form is available from your county treasurer or at www.kansas.gov/cota/documents/PR%20Appeal%20to%20Co.pdf.
 - The form asks for basic information about your property, and the reasons for your protest.
 - There’s also space for you to indicate if someone else is representing you. If so, you’ll need to file the proper form (“Entry of Appearance” or “Declaration of Representative,” available at www.kansas.gov/cota/Forms/index.html (scroll down)).
- The deadline for filing is **December 20th**.¹¹
- The county treasurer will send a copy of your protest to the county appraiser.
- Then, within 15 days, the county appraiser will contact you to set up an informal meeting.
 - For more information on the informal meeting, see Step 2.A.1 above.
- If the appraiser changes your valuation, he/she will notify you in writing within 15 business days of your meeting.
- If you’re successful, the county treasurer processes any refund you’re due.

If you’re unsatisfied with the informal meeting, you can appeal to the Small Claims Division of COTA (see Step 3 below).

¹⁰ The sources for this section are listed *supra* note 6.

¹¹ But if at least ½ of your taxes are paid in escrow or by a tax service agent by December 20th, you have until January 31st to file the protest.

III. Step 3: Appeal to the Small Claims Division of COTA¹²

Single-family residential properties must appeal to the Small Claims Division of COTA before appealing to the Regular Division. Other properties can appeal to Small Claims first, or directly to the Regular Division. For more information, see the COTA materials at www.kansas.gov/cota/Forms/index.html.

Filing the Appeal Form

Begin your appeal to the Small Claims Division by filing an appeal form with COTA.

- You should've received the appeal form with the notice of your informal meeting or HOP results. If you didn't, check with your county clerk, treasurer, or appraiser. (Check your local phone book for contact information.)
- The form asks for basic information about your property and the reasons for your appeal.
- Be sure to follow the instructions on your appeal form and file all of the required documents with your form. E.g.,
 - You should make at least two copies of everything and file a set with your county clerk and a set with your county appraiser. You might need to file with your county treasurer, too. (Check with your county clerk to find out.)
 - Include a copy of your notice of results from your informal meeting or HOP.

The **filing address** is:

State Court of Tax Appeals
Docking State Office Building
915 SW Harrison, Ste 451
Topeka, KS 66612-1505

There are also provisions for fax and e-filing. See "Proceedings Before Court"/K.A.R. 94-2-19 & K.A.R. 94-2-20 at www.kansas.gov/cota/Rules_of_Practice_&_Procedure/index.html.

¹² The sources for this section are: *Appeals Process*, *supra* note 2; *Preparing*, *supra* note 4; Kansas Court of Tax Appeals, Tax Consultant & Attorney Information ("Consultant & Attorney Info"), www.kansas.gov/cota/Tax_Consultant_&_Attorney_Information/index.html; Kansas Court of Tax Appeals, Small Claims & Expedited Hearing Division ("Small Claims Division"), www.kansas.gov/cota/Small_Claims_&_Expedited_Hearing_Division/index.html; Kansas Court of Tax Appeals, *Instructions for Filing an Equalization Appeal* ("Equalization Instructions"), available at www.kansas.gov/cota/documents/EQNoHOPInstr.pdf; Kansas Court of Tax Appeals, *Instructions for Filing a Protest Appeal* ("Protest Instructions"), available at www.kansas.gov/cota/documents/PRFilingInstructions.pdf; Kansas Court of Tax Appeals, Filing Fees ("Filing Fees"), www.kansas.gov/cota/Filing_Fees/index.html; Kansas Court of Tax Appeals, Small Claims and Expedited Hearings Division, *General Information and Instructions* ("General Info"), available at www.kansas.gov/cota/documents/Small%20Claims%20General%20Info%20Pamphlet.pdf; Kansas Court of Tax Appeals, Rules of Practice & Procedure ("Practice Rules"), www.kansas.gov/cota/Rules_of_Practice_&_Procedure/index.html; Kan. Stat. Ann. §§ 74-2433f, 74-2438a, 79-1609, 79-2005.

The filing **deadline**:

- If you're appealing your notice of value and:
 - If your county doesn't have HOP: within **30 days** of the date the county mails your notice of informal meeting results to you.
 - If your county has HOP but you didn't use HOP: within **18 days** of the date the county mails your notice of informal meeting results to you.
 - If you used HOP: within **30 days** of HOP's decision.
- If you're paying under protest: within **30 days** of when your notice of informal meeting results was mailed to you.

General Information

- The Small Claims Division will contact you to set up your hearing within 60 days.
- You can represent yourself, or you can be represented by an attorney, a certified public accountant, a certified appraiser, an immediate family member, a tax representative, or an authorized employee.
 - If a non-attorney represents you, that person is not allowed to "practice law" before the Small Claims Division. This means the representative can't do things like sign pleadings, cross-examine witnesses, object to evidence, call witnesses, or offer legal arguments.
 - If someone else represents you, you'll need to file the proper form (available at www.kansas.gov/cota/Forms/index.html (scroll down)). Follow the instructions on your appeal form.
- There's no filing fee (for single-family residential properties).
- You need to send a copy of any communications you have with the Small Claims Division to the county appraiser, too.
- If you need to reschedule your hearing, you must:
 - Submit a written request to the Small Claims Division at least 2 days before your hearing;
 - Show good cause;
 - Waive the 60-day period in which the Small Claims Division would normally have to hear your case.

The Hearing

- **Preparing for the Hearing**
 - There are two main types of evidence you can present at your hearing: *exhibits* (documents or other types of physical materials) and *testimony* (oral statements by you or other witnesses).
 - The Small Claims informational pamphlet¹³ lists these examples of evidence:
 - Recent appraisal (see Appendices A and D for information on appraisal requirements and finding an appraiser);
 - Photos;

¹³ *General Info, supra* note 12.

- Testimony about property defects;
 - Sales comparison data;
 - Estimates of the cost to repair any defects, etc.
 - See also:
 - The suggestions above under Step 2.A.1 (Informal Meeting with Appraiser);
 - The ideas in Appendix A.
 - Bring to the hearing **two copies** of all documents and photos that you plan to present. One set is for the hearing officer; one for the county. (Don't forget your own set as well.)
 - If you're going to use electronics (e.g., video tape), you need to bring your own equipment.
- Your hearing will be held in the county where your property is located or an adjacent county, or you can request a telephone hearing on your appeal form.
 - There are special rules for telephone hearings (e.g., about how to exchange documents with the other side), so be sure to get those from the Small Claims Division if you have a telephone hearing.
 - The hearing is informal and usually lasts about 30 minutes.
 - The hearing is run by a hearing officer appointed by COTA.
 - The officer has training in appraisal and tax law.
 - The officer won't have any knowledge of your prior meeting with the county appraiser, so you'll need to explain your case/present your materials again.
 - Both you and the county appraiser will have the chance to present materials and testimony to support your opinions of value.
 - The county appraiser has the burden of proof. This means that COTA won't assume that the county's value is correct, and the appraiser must show the value is correct by a "preponderance of the evidence" (more likely than not).
 - However, you should still be "ready to show why your value is more accurate than the county's."¹⁴
 - If your value increased from the prior year, the county must:
 - Review the record of your property's last physical inspection;
 - Have documentation supporting the increase, and;
 - If the increase follows a year where your value was reduced on appeal, show "substantial and compelling" reasons for the increase.¹⁵
 - All of your documents will probably be returned to you before you leave.
 - There's no record or transcript of the hearing.

The Small Claims Division must make a decision within 30 days of your hearing and will send you notice of its decision. If you're not satisfied, you can appeal to the Regular Division of COTA (see Step 4 below).

¹⁴ *Appeals Process, supra* note 2.

¹⁵ Kan. Stat. Ann. § 79-1460a.

IV. Step 4: Appeal to the Regular Division of COTA¹⁶

For more information, see the most recent Court rules at
www.kansas.gov/cota/Rules_of_Practice_&_Procedure/index.html.

General Information

- This hearing is more formal than the Small Claims hearing and follows regular court rules of procedure.
- You can represent yourself, or an attorney can represent you.
- You must send a copy of any communications you have with the Regular Division to the county appraiser, too.
- If you and the county appraiser reach agreement before your hearing, you can file an “Agreed Order of Stipulation” with the Court. The form is available at www.kansas.gov/cota/documents/Agreed%20Order%20of%20Stipulation.pdf.

Filing Your Appeal

- You begin your appeal to the Regular Division by filing an appeal form and other required documents with COTA. Be sure to follow the instructions on the form.
- The appeal form should be included with the notice you received from Small Claims. If it’s not, contact your county clerk or appraiser for the proper form.
- There’s no filing fee (for single-family residential properties).
- The **deadline** for filing is within **30 days** of the date your Small Claims notice was mailed to you.
- The filing address is:

State Court of Tax Appeals
Docking State Office Building
915 SW Harrison, Ste 451
Topeka, KS 66612-1505

There are also provisions for fax and e-filing. See “Proceedings Before Court/K.A.R. 94-2-19 & K.A.R. 94-2-20 at www.kansas.gov/cota/Rules_of_Practice_&_Procedure/index.html.

Remember to send a copy to your county appraiser, too.

The Hearing

The Regular Division will provide more specific instructions before your hearing, so be sure to follow those instructions.

¹⁶ The sources for this section are: *Appeals Process*, *supra* note 2; *Preparing*, *supra* note 4; *Consultant & Attorney Info*, *supra* note 12; *Small Claims Division*, *supra* note 12; *Filing Fees*, *supra* note 12; *Equalization Instructions*, *supra* note 12; *Protest Instructions*, *supra* note 12; *General Info*, *supra* note 12; *Practice Rules*, *supra* note 12; Kan. Stat. Ann. §§ 74-2426, 74-2433f, 77-529.

- At least **10 days** before the hearing, you need to give the county appraiser copies of all the exhibits you’re going to use (documents, photos, etc.). The county appraiser will do the same, so that you each know what to expect. (But do not give copies to the court until your hearing.)
- Bring at least **2 copies** of all of your exhibits to the hearing.
- The Regular Division court is in Topeka, but the judges travel so your hearing might be in another city.
- One or more judges will hear your appeal.
- Both sides (you and the county) can present evidence and testimony.
 - You each have equal time to present your sides.
 - The county still has the “burden of proof,” which means that it must show its value is correct. You should still be prepared to show why yours is correct.
- The hearing is “de novo” – which means that the Regular Division will decide the case anew and won’t rely on or defer to the Small Claims decision. The Regular Division will have no prior knowledge of your case.
- There will be a record of your hearing, which will be used if you appeal.

If you need to reschedule your hearing, you must submit a written request at least 30 days before your hearing.

- The Court will only grant it for good cause.
- See www.kansas.gov/cota/Rules_of_Practice_&_Procedure/index.html (Continuance Policy) for information on filing this request.

Petition for Reconsideration

- If you’re not satisfied with the Regular Division’s decision, you can file a “petition for reconsideration” with the Regular Division.
- You have to file this petition before you can appeal to the next level.
- The **deadline** for filing is within **15 days** of the Regular Division’s decision.
- Then, the Regular Division will make a decision on your petition within 20 days, either:
 - Denying it, or
 - Granting it and changing its original decision, or
 - Granting it and ordering more proceedings to reconsider its original decision.
- If you’re unsatisfied with the results of this process, you can appeal to the Kansas Court of Appeals (see Step 5 below).

V. Step 5: Review in the Kansas State Courts¹⁷

The Regular Division’s decision is subject to “judicial review” (review by a court), and can be appealed to the Kansas Court of Appeals. The law doesn’t require you to have an attorney to appeal to the Court of Appeals. However, to ensure that you meet all the Court’s requirements and present your best case, you should seriously consider seeking legal counsel if you appeal to the Court of Appeals.

¹⁷ The sources for this section are: Kan. Stat. Ann. §§ 20-3018, 74-2426, 77-601, 77-609, 77-610, 77-613, 77-614, 77-617, 77-618, 77-621, 77-622, 77-623.

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

- A petition for reconsideration in the Regular Division is a prerequisite for judicial review in the Court of Appeals.
- The deadline for filing the appeal is within **30 days** of your petition for reconsideration decision (either a denial of reconsideration, or the decision after reconsideration).
- You begin by filing a petition for judicial review in the appropriate court. There are requirements for the contents of the petition and service on other parties.
- Usually, you can only appeal the issues that you raised in the Regular Division. Also, the Court usually limits its review of factual disputes to the record from the Regular Division. (So, you usually can't present new evidence here.)
- You have the burden of proving the Regular Division's decision is wrong.
- In reviewing the Regular Division decision, the Court will usually consider legal standards like whether the decision:
 - "Erroneously interpreted or applied the law,"
 - Is not supported by substantial evidence, or
 - Is "unreasonable, arbitrary or capricious."¹⁸
- The Court has the authority to order various remedies, e.g., set aside the Regular Division decision or remand it to the Regular Division for further proceedings.
- If you're not satisfied with the Court of Appeals' decision, you can petition for review in the Kansas Supreme Court.

¹⁸ Kan. Stat. Ann. § 77-621.

GLOSSARY

Appealing Notice of Value

Process by which a homeowner challenges his/her assessment after receiving notice of value in the spring (as opposed to appealing by *paying under protest* in the fall).

Assessment

The value assigned to a property by the county appraiser.

Burden of Proof

The level to which a certain party has to demonstrate his/her position is correct. E.g., in the Small Claims Division, the county appraiser has the burden to show by a preponderance of evidence (more likely than not) that his/her assessment is correct.

Comparable Sales Sheet

Document the county appraiser keeps about each property in the county. Shows information about the property, plus information and sale prices for other properties the county considers similar. May also show any adjustments made to determine the property's value.

Cost Approach

Property valuation technique that uses the replacement cost of a property (new), minus depreciation. Used most often for new or unique properties, or for areas where there aren't many sales.

County Appraiser

County official responsible for assigning values to the properties in the county each year.

County Clerk

In assessment appeals, a county official who has appeal information and forms, and to whom some appeal documents must be sent (e.g., HOP forms).

County Treasurer

The county official responsible for sending tax statements and refunding overpaid taxes in assessment appeals, and with whom some appeal forms must be filed (e.g., payment under protest forms).

Court of Tax Appeals (COTA) Small Claims Division

Informal state administrative court that hears assessment appeals for single-family residential properties, from HOP or from informal meetings with appraisers.

Court of Tax Appeals (COTA) Regular Division

The highest state administrative court that hears assessment appeals, including those from the Small Claims Division.

Evidence

Information that helps prove or disprove a fact in a case. Examples of evidence include documents, photographs, and testimony.

Exemption

Total or partial relief from the requirement to pay property taxes for certain types of property (e.g., educational or religious properties).

Exhibit

A tangible piece of evidence, such as a document, photograph, or report, that a party presents to support his/her case.

Fair Market Value

The value at which the county appraiser assesses residential properties - the “amount an informed buyer is willing to pay, and an informed seller is willing to take for property in an open market without undue influences.”¹⁹

Fee Appraisal

A professional report explaining a property’s fair market value; may be used as evidence in assessment appeals.

Hearing Officer Panel (HOP)

In some counties, a county-level board that can hear assessment appeals after the informal meeting with the appraiser and before appealing to the Small Claims Division.

Income Approach

Property valuation technique that estimates the income a property will produce. Used most often for commercial or rental properties.

Inventory Contents Sheet (ICS)

Document the county appraiser keeps that shows information collected on each property, such as size, condition, rooms, etc.

Kansas Court of Appeals

The appellate-level state court in Kansas. Hears assessment appeals from the Regular Division of COTA.

Kansas Supreme Court

The highest state court in Kansas, where people can petition for review of assessment appeal decisions made by the Kansas Court of Appeals.

Notice of Value

Notice of a property’s assessment from the county appraiser to the property owner, usually sent

¹⁹ *Appeals Process, supra* note 2. The statutory definition is: “[T]he amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion.” Kan. Stat. Ann. § 79-503a.

in the spring of each year. Triggers the “Appealing Notice of Value” process.

Party

A person who is an active participant and has a stake in a case. In assessment appeals, the property owner and the county appraiser.

Paying under Protest

Process by which a homeowner challenges his/her assessment by filing a “paying under protest” form with the county treasurer when paying taxes on the assessment in the fall (as opposed to *appealing notice of value* in the spring).

Real Property

Primarily, real estate – land and buildings or improvements on the land.

Sales Approach

Property valuation technique that compares a property to similar properties that have sold, with adjustments for differences. Used most often for residential properties in areas where there have been many sales.

Tax Statement

Notice mailed by December 15th of each year from the county treasurer to a property owner, containing the property’s assessment and amount of taxes due.

Testimony

A statement given by a witness under oath.

Witness

A person who gives oral or written testimony on behalf of a party in a case, who has firsthand knowledge or an expert opinion about the subject of the case.

APPENDIX A – IDEAS FOR INFORMATION TO SUBMIT ABOUT YOUR PROPERTY

You can use the ideas in this appendix to help you prepare for your informal meeting with your appraiser and any subsequent hearings.

The ideas listed here are only examples. If a nearby factory farm impacts your property in a way that isn't listed, you could use information about that as well. You should present as much information as you need to show that you deserve an assessment reduction. Your information might include photographs, documents, test results, personal statements from you or others, etc.

Note: the decision maker in your assessment appeal may give different levels of consideration to the different types of information you submit.

Physical Manifestations

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

- Poor air quality caused by animal waste or feed storage.
- Water pollution caused by the factory farm (e.g., contamination of groundwater, well water, streams, rivers, ponds, lakes, etc.)
- Soil contamination caused by the factory farm.
- Bad odors from 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 (e.g., ugly manure lagoons, unsightly manure sprayfields, unattractive industrial buildings, etc.).
- Substances leaching from the factory farm (e.g., fecal matter, antibiotics, hormones, heavy metals, etc.).
- 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).

Recent Appraisal or Testimony of Appraiser

If you have the resources to get a professional appraisal, it's probably a good idea. State materials list appraisals as examples of evidence you could present,²⁰ and state courts have accepted appraisals and appraiser testimony as persuasive.²¹

The appraisal should conform with "generally accepted" appraisal standards or procedures.²² Basically, "generally accepted appraisal standards" are the Uniform Standards of Professional

²⁰ *Preparing, supra* note 4; *General Info, supra* note 12.

²¹ *See, e.g., Saline County Bd. of County Comm'rs v. Jensen*, 88 P.3d 242, 248 (Kan. Ct. App. 2004) (upholding reliance on testimony of professional appraiser); *Wolf Creek Golf Links, Inc. v. Bd. of County Comm'rs*, 853 P.2d 62, 64 (Kan. Ct. App. 1993) (finding professional appraisal and testimony of commercial appraiser substantial and competent).

Appraisal Practice (USPAP) set by the Appraisal Foundation,²³ available at www.appraisalfoundation.org/s_appraisal/sec.asp?CID=3&DID=3.

Appendix D has information on how to find a professional appraiser.

Purchase Price

Documents showing the recent purchase price of your property (if it was less than your current assessment). You could 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 and a description of the factory farm's influence on the sale).

Purchase price evidence within the past 2-3 years is “generally given a great deal of weight” as long as it reflects the market (e.g., both parties were willing participants and the market hasn't changed from the time of the sale).²⁴

Comparable Sales

Information showing that your assessment is too high based on sales of similar properties.

- Similar properties share characteristics like condition, quality, style, age, and location.²⁵
- You could include information on similar properties that are near factory farms (e.g., information showing that a similar property sold for less because it's near a factory farm).
- Or, if the appraiser 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.

For information on other properties and their sale prices, ask your county appraiser for:

- Your property's *comparable sales sheets* and *ICS* (inventory contents sheet). These documents contain information about your property and properties the county appraiser considers similar to yours.
- The *ICSs* and *comparable sales sheets* for other properties you consider similar.

You can also drive by the homes listed on these sheets and take photographs to help make your case (i.e., to prove that a home is or is not similar to yours).

²² Kan. Stat. Ann. §§ 79-503a, 79-505(a).

²³ Id. §§ 79-504, 79-505, 79-506; *Saline County*, 88 P.3d at 243.

²⁴ *Preparing*, *supra* note 4.

²⁵ *Preparing*, *supra* note 4.

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.

Proximity

Information about your property's proximity (nearness) to a factory farm (e.g., a map or plat map showing the location of your property and the location of the factory farm). Check with your county clerk to find out where to see a plat map.

Marketability

- Information showing that your property hasn't sold or has taken longer to sell because of a nearby factory farm (e.g., you or a local realtor might explain that potential buyers raised concerns about the factory farm and were therefore 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's 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 the cost of reducing any harmful impacts of a nearby factory farm on your property. For example:

- The cost of cleaning up 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

Professional statements that factory farms devalue nearby properties. For example:

- A newspaper article reporting that a Kansas appraiser 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 appraiser that factory farms devalue nearby properties.

Stigma²⁶

Information showing that your property has stigma (e.g., negative feelings) 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 indicate that nearby properties such as yours suffer from stigma.

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.
- 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.

Why should the county appraiser, HOP, or COTA consider this kind of information in my tax appeal?

You have a right to have your property assessed and taxed at its fair market value.²⁷ Kansas law requires appraisers to consider a variety of factors when determining fair market value, including but not limited to “the effect of location on value” and “depreciation, including physical deterioration or functional, economic or social obsolescence.”²⁸ Location and economic obsolescence are important factors because they include the effects of nearby properties (such as factory farms) on fair market value.²⁹

The *Appraisal Journal* also includes useful information about how and why nearby factory farms should be considered in assessments. A 2001 article by John A. Kilpatrick (available at

²⁶ But note, the Kansas Supreme Court has held that *damages* (as opposed to diminution in value for assessment purposes) for a property's reduction in value based on stigma must be based on a reasonable fear and the stigma must “directly” affect the property in question, not an adjacent property. *Smith v. Gas Service Co.*, 169 P.3d 1052, 1059-60 (Kan. 2007).

²⁷ Kan. Stat. Ann. § 79-501.

²⁸ *Id.* § 79-503a.

²⁹ See, e.g., *Matter of the Protest of Kansiana Assocs.*, No. 94-2763-PR, 1995 WL 865883, *2 (Mar. 8, 1995) (economic obsolescence highly related to location).

www.greenfieldadvisors.com/publications/conanimal.pdf) explains that a factory farm can devalue nearby properties.³⁰

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.³¹ The influence of these factors can reduce a property's market value by 50-90%.³²

- **Stigma** - any of the “unknowns and risks associated with ownership of the property.”³³ 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”³⁴), it may be difficult to quantify, but it should not be overlooked.³⁵
- **Distance** - generally, the closer the factory farm, the greater its impact on property values.³⁶
- **Physical manifestations** - various impacts of factory farms, e.g., impaired water quality can reduce a neighboring property's value;³⁷ hydrogen sulfide emissions from manure lagoons may sicken neighbors;³⁸ dust, odors, and flies carrying animal blood, feces, or antibiotic-resistant bacteria may also impair a neighboring property's value.³⁹
- **Marketability evidence** - evidence about the length of time it takes to sell, or the unsalability of, a property.⁴⁰ For instance, as Kilpatrick reports, some rural homeowners in Michigan were unable to sell their home next to a pork processing facility. Pending litigation, the pork processing company offered to compensate them for 60% diminution in the market value of their home.⁴¹

³⁰ John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 Appraisal J. 301, 302 (2001). available at www.greenfieldadvisors.com/publications/conanimal.pdf.

³¹ *Id.* at 306.

³² *Id.*

³³ *Id.* at 302.

³⁴ See Vincent D'Elia & Catherine M. Ward, *The Valuation of Contaminated Property*, 111 Banking L.J. 350, 359 (July-Aug. 1994).

³⁵ See Bill Mundy, *Stigma and Value*, 60:1 Appraisal J. 7 (Jan. 1992).

³⁶ Kilpatrick, *supra* note 30, at 304-05 (citing University of Minnesota study).

³⁷ *Id.* at 304 (citing Kirshner & Moore study).

³⁸ *Id.* at 305 (describing illnesses near CAFOs in Minnesota).

³⁹ *Id.* at 305-06. 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.ehsrsrc.uiowa.edu/CAFOstudy/ (Chapter 7) (odor, dust, noise, and “general decline in the natural beauty of the area” from CAFOs can depress sales prices (citations omitted)).

⁴⁰ See D'Elia & Ward, *supra* note 34, at 360 (“longer marketing period” and “inability to sell” illustrate perceptions of devaluation).

⁴¹ Kilpatrick, *supra* note 30, at 306.

- ***Impacts on highest and best use*** – where the factory farm influences the use and enjoyment of your property, like from odor or flies.⁴² This factor might include things like being unable to grill out, open windows, play in the yard, or hang clothes out to dry.

You can access the article at www.greenfieldadvisors.com/publications/conanimal.pdf or from www.factoryfarmtaxprotest.org.

⁴² *Id.* at 302.

APPENDIX B – EXAMPLES OF DEVALUED PROPERTIES

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

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*, at 61 (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*, at 40-49 (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 the Environmental Protection Agency’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

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).

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).

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 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 within 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.

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.

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).

Selected Cases

A 1998 newsblurb from Kansas reported that a jury awarded \$15,000 to retired farmers who live near a feedlot for diminished property values and loss of peace of mind.

~ *Across the USA: News from Every State*, USA Today, June 22, 1998.

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 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).

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 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 & Appeals

Kansas Department of Revenue

www.ksrevenue.org/pvdappeals.htm

www.ksrevenue.org/forms-pvd.htm (scroll down to Publications/Your Personal)

Kansas Court of Tax Appeals

www.kansas.gov/cota/

(homepage)

www.kansas.gov/cota/Rules_of_Practice_&_Procedure/index.html

(rules)

www.kansas.gov/cota/Forms/index.html

(forms - scroll down)

www.kansas.gov/cota/Tax_Consultant_&_Attorney_Information/index.html

(information on representatives)

www.kansas.gov/cota/Small_Claims_&_Expedited_Hearing_Division/index.html

(Small Claims Division information)

Contact Information

Court of Tax Appeals

State Court of Tax Appeals

Docking State Office Building

915 SW Harrison, Ste 451

Topeka, KS 66612-1505

(785) 296-2388

(785) 296-6690 (fax)

maildesk@cota.ks.gov

County Officials (clerk, appraiser, treasurer)

Check your local phone book.

APPENDIX D – OTHER RESOURCES

Information on Factory Farms

Resources and Reports

- *Putting Meat on the Table: Industrial Farm Animal Production in America*
www.ncifap.org (click next to “Full Report”)
An outstanding overview of the problems caused by factory farms. (Pew Commission on Industrial Farm Animal Production, 2008)
- *CAFOs Uncovered: The Untold Cost of Confined Animal Feeding Operations*
www.ucsusa.org/food_and_environment/sustainable_food/cafos-uncovered.html
Another useful overview of factory farm issues. (Union of Concerned Scientists, 2008)
- Agriculture & Public Health Gateway
<http://aphg.jhsph.edu>
A searchable, online database of reports, articles, and other resources related to agriculture and public health. Produced by the Center for a Livable Future at Johns Hopkins University.
- *Environmental Impacts of Animal Feeding Operations*
www.epa.gov/waterscience/guide/feedlots/envimpct.pdf
An overview of environmental impacts of factory farms. (U.S. EPA, 1998)
- *Concentrated Animal Feeding Operations: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern*
www.gao.gov/new.items/d08944.pdf?source=ra
(U.S. GAO, 2008)

Organizations

- Socially Responsible Agricultural Project
www.sraproject.org
SRA Project provides free assistance to communities struggling to protect themselves from factory farms.
- Center to Expose and Close Animal Factories
www.closeanimalfactories.org
- Waterkeeper
www.waterkeeper.org/mainarticledetails.aspx?articleid=87
- Food & Water Watch
www.foodandwaterwatch.org/food/factoryfarms

- Sierra Club
www.sierraclub.org/factoryfarms/
- Natural Resources Defense Council (NRDC)
www.nrdc.org/water/pollution/cesspools/cessinx.asp
- National Family Farm Coalition
www.nffc.net
- Center for a Livable Future
www.jhsph.edu/clf

How to Find an Appraiser

- AppraiserUSA.com, Kansas Real Estate Appraiser Directory
<http://appraiserusa.com/kansas/index.htm>
After searching, you can click “See Appraiser’s Full Listing” to find more information about the appraiser, including whether he/she is licensed or certified.
- American Society of Appraisers
www.appraisers.org/findappraiser/
Try searching in both Real Property/Ad Valorem and Real Property/Residential.
- Appraisal Institute
www.appraisalinstitute.org/search.asp
This site has many search options. You can do a geographical search under “Quick Search,” or can use the “Advanced Search” and choose “Real Estate Tax Valuation and Consulting” under the “Business Services” option.
- Local Yellow Pages
- Recommendations

How to Find an Attorney

- Attorney and Firm Directory Search (linked from the Kansas Bar Association)
<http://www.legaldirectories.com/search.asp>
- American Bar Association, Consumers’ Guide to Legal Help
<http://www.abanet.org/legalservices/findlegalhelp/main.cfm?id=KS>
- StateLawyers.com, Attorney Directory – Kansas Counties
<http://www.statelawyers.com/AttorneyDirectory/Index.cfm/StateID:16>
- Lawyers.com, Find a Lawyer
www.lawyers.com/find-a-lawyer.html
- Local Yellow Pages
- Recommendations

Appendix E - Factory Farm Impacts Fact Sheet

Socioeconomic Impacts

Factory farms decrease the quality of life in rural communities.

- Communities with factory farms have wider social and economic gaps than communities with small, locally-owned and operated farms. (Pew p. 42)
 - Factory farms affect the “size of the middle class, family income levels and poverty rates, quality of public schools, and strength of civil society organizations (such as churches and civic organizations).” (Pew p. 42)
 - Factory farms are related to greater income inequality between the affluent and the poor, and greater poverty in communities generally. (Stofferahn p. 18)
 - Residents in factory farm communities, where agribusiness influence is heavy, tend to have less control over local decisions. (Pew p. 42; Stofferahn p. 18)

- Factory farm odors impair the social life of communities. (Pew p. 42)
 - Nearby factory farms disrupt routines that “normally provide a sense of belonging and identity – backyard barbecues, church attendance, and visits with friends and family.” (Pew p. 42)
 - The factory farms create feelings of “violation, isolation, and infringement” in place of freedom and independence. (Pew p. 42)
 - Factory farm communities suffer a decline in community organizations, civic participation, and social life. (Stofferahn p. 18)
 - Factory farm communities tend to have fewer (or poorer-quality) public services and fewer churches. (Stofferahn p. 18)
 - In a North Carolina study of residents within two miles of a 6,000-hog factory farm with an open lagoon, more than half of the respondents were not able to open their windows or go outside in nice weather because of the stench. (Wing & Wolf p. 236)

- Factory farms impair rural “social capital.” (Pew p. 43)
 - Factory farms create rifts and conflict in communities, including threats from factory farms to neighbors. (Pew p. 43; Stofferahn p. 18)
 - Factory farm communities have higher levels of stress, socio-psychological problems, and teen pregnancies. (Pew p. 43; Stofferahn p. 18)
 - Neighbors of corporate-owned factory farms have more negative feelings about “trust, neighborliness, community division, networks of acquaintanceship, democratic values, and community involvement” than those living near independent farms. (Pew p. 43)
 - “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 Technical p. 31)

- A Duke University study in North Carolina found “significantly more tension, more depression, more anger, less vigor, more fatigue, and more confusion,” as well as more “total mood disturbance” among residents who lived near large swine factory farm odors as compared to control subjects. (Schiffman et al.)

Factory farms decrease the value of surrounding properties.

- Various factory farm studies have 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.” (Pew p. 31)
- Factory farms devalue nearby properties to the extent the factory farms are seen as negative externalities by the marketplace. Factors like stigma, the type of affected property, the distance to the factory farm, physical impacts, engineering/scientific testing, impacts on property use, and marketability can reduce a property’s market value by 50-90%. (Kilpatrick pp. 301-02)
- See Appendix B for a long list of examples of properties devalued by factory farms.

Factory farms displace small farms.

- From 1982 to 1997, the number of small farms (less than 50 animal units) decreased between 23% and 28%. The number of factory farms with more than 1,000 animal units increased by 47%. (UCS p. 16)
- The number of CAFOs increased 234% from 1982 to 2002 (3,600 → almost 12,000). But the number of all farms raising animals decreased by 61% during the same time period. (GAO pp. 4, 63)

Factory farms hurt local economies.

- Factory farms have a lower “multiplier effect” than smaller farms. Rather than buying supplies and services from local businesses, they tend to buy from outside suppliers. (UCS p. 61)
- Factory farm communities tend to have less retail trade and fewer retail options. (Stofferahn p. 18)
- Factory farms are related to higher unemployment rates in the community. (Stofferahn p. 18)
- Because factory farms rely more on technology than labor, there are fewer decent jobs for local people. Instead, factory farm jobs tend to be low-paying and go to migrant workers who cannot find better jobs. (Pew p. 43)

- Factory farms reduce the local tax base but increase community expenses. For example, they take advantage of tax breaks but create higher road maintenance costs from their truck traffic. (UCS p. 61)
- Factory farms can reduce the residential tax base because they decrease the values of homes in the area. (UCS p. 61)

Factory farms create nation-wide economic burdens.

- Factory farms threaten free-market mechanisms because they control huge portions of the livestock industry. This happens where the four largest firms in an industry control more than 40 percent of the market. For broiler chickens, the four largest firms control 56% of the market; for beef, 83.5%; for hogs, 64%. (UCS pp. 19-20)
- Factory farms prosper through taxpayer subsidies. (UCS p. 29)
 - Farm bill subsidies for commodity grain crops have kept the price of animal feed low for factory farms. (UCS pp. 29-33)
 - CAFOs are major recipients of federal Environmental Quality Incentives Program (EQIP) funds, giving them a competitive advantage over smaller farms. (UCS pp. 37-40)
- Environmental contamination caused by CAFOs costs taxpayers billions of dollars to remediate. A “rough estimate” of the U.S. taxpayer cost to clean up soils under hog and dairy CAFOs is \$4.1 billion. (UCS p. 4)

Factory farms disproportionately affect poor or African American communities.

- In North Carolina and Mississippi, CAFOs are often sited in poor or African American communities. In North Carolina, there were 7.2 times more hog CAFOs in the highest poverty areas as compared to the lowest, and 5 times more in non-white population areas as compared to white. (Hodne p. 28)
- Negative impacts are intensified by reliance on well water and barriers to medical care. (Hodne p. 28)

Factory farms treat animals inhumanely, compromising our ethical values.

- Factory farm animals are raised indoors in small spaces (e.g., veal crates, pig gestation crates, chicken battery cages) that allow only minimal movement and do not allow them to express natural behaviors. (Pew p. 33)
- Factory farm animals are fed unnatural or manipulated diets leading to pain and discomfort. For example, beef cattle in feedlots are usually fed grain instead of the grass for which their digestive systems were designed, often leading to internal abscesses. Laying hens may have their feed restricted to encourage molting and egg laying. (Pew p. 33)

- Factory farm animals are physically altered without pain relief (e.g., tail docking in hogs, beak clipping in chickens, and horn removal in dairy cows). (Pew p. 33)

Environmental & Public Health Impacts

Factory farms contaminate ground and surface waters, creating environmental and public health problems.

- Factory farms generate about 500 million tons of manure per year. (EPA p. 7180)
- Manure and wastewater from factory farms contain pollutants like nutrients (e.g., nitrogen and phosphorus), organic matter, solids, odorous compounds, salts, trace elements (e.g., arsenic, lead, and aluminum), antibiotics, pesticides, hormones, and more than 150 pathogens harmful to human health. (EPA pp. 7235-36)
- Factory farm pollutants reach ground and surface waterways through runoff and erosion; spills and lagoon overflows; direct discharges to surface waters; leaching into soil and groundwater; volatilization and redeposition to the land; and airborne travel through spray irrigation systems and attachment to wind-borne dust. (EPA pp. 7236-37)
 - In Iowa, there were 329 documented manure spills from factory farms from 1992-2002. A 1999 Iowa study also found that 85% of lagoons and ponds sampled on factory farms had seepage rates at or above Iowa's limit. (Hodne pp. 10-12)
 - A Centers for Disease Control study of nine Iowa factory farms found that pollutants likely moved from lagoons through surrounding soil, and over and away from lands where manure was applied. Samples found chemical pollutants and pathogens, metals, bacteria, nitrates, and parasites around the factory farms, with earthen lagoons having the highest levels of chemical pollutants and pathogens. (Campagnolo pp. 3-5)
 - When contaminated water is disturbed, bacteria and other microbes are re-suspended back into the water column for weeks. A North Carolina study on lagoon spills and surface waters found high levels of fecal coliform even 61 days after a spill. (Mallin)
 - A Centers for Disease Control study found that applying manure within 100 feet of a well doubles the likelihood of elevated nitrate levels. The study compared samples from wells that had had manure applied within 100 feet of the wellheads within the past 5 years to samples where no manure was applied. (Domestic Wells Survey)
- Water quality problems are exacerbated when factory farms are clustered together geographically. (GAO pp. 20-21)
 - In the San Joaquin Valley in California, where limited water flows, pollution from clustered factory farms results in "long-term accumulation" of pollutants in water bodies. (GAO p. 22)

- Clusters of poultry operations on the Arkansas-Oklahoma border have impaired numerous surface waters in the region and also caused ground water concerns, according to EPA officials. (GAO p. 22)
- Excess nutrients, such as phosphorus and ammonia, lead to eutrophication in surface waters – causing fish kills, toxic algae blooms, red tides, hypoxia, shellfish poisoning, reduced biodiversity, and increased drinking water treatment costs. (EPA pp. 7235, 7238)
 - Nutrients from livestock and poultry operations in the Mississippi River Basin contribute to the largest hypoxic zone in US coastal waters (in the Gulf of Mexico). (EPA p. 7237)
 - CAFO manure also contributes to similar dead zones in the Chesapeake Bay and other important estuary regions along the East Coast. (UCS p.4)
- Organic matter decreases oxygen levels in water bodies as it decomposes, contributing to fish kills and the loss of other aquatic species. (EPA p. 7235)
- Solids like manure, bedding, spilled feed, hair, and feathers increase turbidity in surface waters, which decreases light penetration and hinders beneficial plant growth. They also transport other pollutants and settle on the bottom of water bodies, destroying important aquatic habitat. (EPA p. 7235)
- Manure contains the six pathogens responsible for more than 90% of food and waterborne diseases in humans, including Salmonella, Listeria, E. coli, and Giardia. They can be transmitted directly from manure to surface water and infect humans through things like swimming and shellfish consumption. (EPA pp. 7235-36, 7238)
 - In Walkerton, Ontario, 1,300 cases of gastrointestinal problems occurred and 6 people died from an outbreak of E.coli in May, 2000. The Ontario Ministry of Health and Long-Term Care determined that the likely cause was manure runoff near a drinking water well. (Canada Report)
 - In Milwaukee in 1993, the pathogen Cryptosporidium parvum passed through a water-treatment plant and sickened 403,000 people and killing 54. The pathogen was linked in part to cattle runoff (and also slaughterhouse and human sewage). (Hodne p. 24)
 - At a New York county fair, over 700 people got sick and 2 people died from an E. coli outbreak linked to manure runoff and a septic system. (Hodne p. 24)
- Since 2002, at least 4 peer-reviewed or government studies have directly linked hormones from factory farms with negative effects and malformations in the reproductive systems of aquatic life, laboratory rats, or human cells. (GAO p. 24)
- Nitrogen in manure transforms easily into nitrate form and can cause methemoglobinemia in babies, spontaneous abortions, and increased stomach and esophageal cancers when present in drinking water. It is not removed by conventional water treatment systems and is especially risky for those using domestic wells. (EPA p. 7238)
 - In Indiana in 1996, spontaneous abortions in humans were linked to high nitrate levels in wells near factory farms. (CDC pp. 569-71)

- In 1998, factory farm wastes caused nitrate contamination in 34% of almost 1,600 tested wells near factory farms in North Carolina. 10% of the wells had nitrate levels at or exceeding the drinking water standard. (NC)
- Increased nitrate in well-water is also linked to central nervous system defects in infants whose mothers drank the water. (Hodne p. 23)

Factory farms degrade air quality, creating environmental and public health problems.

- Livestock and manure at factory farms emit ammonia, hydrogen sulfide, particulates, odors, pathogens, methane, and nitrous oxides into the air, contributing to respiratory disease and global warming. (UCS pp. 55-56)
 - Decomposing animal urine and feces release at least 160 different gases, including hydrogen sulfide, ammonia, carbon dioxide, methane, and carbon monoxide. (Pew p. 16)
 - Since 2002, at least 7 peer-reviewed or government studies have directly linked air pollutants from factory farms (e.g., dust, hydrogen sulfide, odor, ammonia) with respiratory inflammation, asthma, allergies, headaches, eye irritation, and nausea. (GAO p. 25)
 - Livestock operations account for about 18% of human-induced greenhouse gas emissions (more than transportation). (LEAD p. 112)
 - Livestock-related emissions cause about 9% of human-induced global carbon dioxide emissions. Deforestation related to livestock-production causes about 2.4 billion tons of carbon dioxide emissions per year. The burning of fossil fuels to produce nitrogen fertilizer for livestock feed produces 41 million tons of carbon dioxide emissions per year. (LEAD pp. 88, 91, 112)
 - The livestock sector is responsible for 65% of human-induced nitrous oxide emissions and 64% of ammonia emissions (mostly from manure). (LEAD pp. xxi, 114).
 - Emissions from lagoons and anaerobic digesters create a global warming potential of 62 for methane and 275 for nitrous oxide over 20 years (compared with 1 for carbon dioxide). (Pew p. 27)
- Residents living near factory farms have higher levels of some diseases, such as respiratory and gastrointestinal illness, and impaired neurobehavioral health. (USC p. 60; Pew p. 17)
 - Children, the elderly, and those with chronic heart or lung disease are particularly vulnerable. (Pew p. 17)
 - Four large epidemiological studies demonstrated “strong and consistent associations” between factory farm air pollution and asthma. (Pew p. 17)
 - Volatile organic compounds emitted from factory farms cause increased neurobehavioral problems in people living near the factory farms. These include more negative mood states like tension, depression, fatigue, and confusion, and neuropsychiatric abnormalities like impaired balance, hearing, and intellectual function. (Pew pp. 18-19)
 - Hydrogen sulfide can cause “eye, nose, and throat irritation, diarrhea, hoarseness, sore throat, cough, chest tightness, nasal congestion, heart palpitations, shortness

of breath, stress, mood alterations, sudden fatigue, headaches, nausea, sudden loss of consciousness, comas, seizures, and even death.” (Yale § 2.3.1)

- An eastern North Carolina study of several communities reported significantly more headaches, runny noses, sore throats, excessive coughing, diarrhea, and burning eyes for residents near a 6,000-hog factory farm than for other residents. (Wing & Wolf p. 237)
- There is “direct evidence of harm to humans from occupational exposures within CAFOs.” Harm includes asthma, sinusitis, chronic bronchitis, nose/throat irritation muscle aches, inflamed membranes, and progressive decline in lung function. (ISA/UI p. 6)
 - In studies, at least 25% of factory farm workers suffered from respiratory diseases like chronic bronchitis and occupational asthma. (UCS p. 60)
 - Factory farm workers also have increased levels of organic dust toxic syndrome. (Pew p. 16)
 - Factory farm workers and animals have died asphyxia and respiratory arrest from high hydrogen sulfide levels created by manure pit agitation. Those who survive hydrogen sulfide incidents often develop severe respiratory impairments or syndromes. (Pew p. 16; ISA/UI p. 6)
 - Hydrogen sulfide emissions are a leading cause of death in the workplace. (Yale § 2.3.1)

Factory farms contribute to antibiotic resistance.

- The overuse and misuse of antibiotics by factory farms creates antibiotic-resistant pathogens. Antibiotic-resistant pathogens cause diseases that are more difficult to treat and increase morbidity and mortality. (UCS p. 62-63)
 - More than 90% of *Staphylococcus aureus* bacteria isolates are resistant to penicillin, and the number of methicillin-resistant isolates rose from 2.4% to 29% between 1975 and 1991. Staph bacteria cause infections that can lead to septic shock and death. (Lieberman & Wootan)
- Antibiotic-resistant bacteria from factory farms reach humans through direct routes in food, water, air, and direct contact, or indirectly through increased resistance in the environmental pool of bacteria. (Pew p. 16)
 - In Illinois, tetracycline-resistant genes were found under swine CAFO lagoons and in groundwater up to 250 meters away. (Hodne p. 19)
 - A 2006 study found increased levels of airborne antibiotic-resistant bacteria inside and downwind of factory farms, with *Staphylococcus aureus* (MRSA) being the most common. (Gibbs et al. p. 1032)
- Up to 75% of antibiotics given to CAFO animals pass unchanged into animal waste to contaminate ground and surface waters. (Hodne p. 18)
 - In an Iowa study, all of the sampled swine waste lagoons had various antibiotics in them, and 31% of nearby water samples had antibiotics. (Hodne p. 19)
 - In Ohio, 67% of water samples taken near poultry CAFOs had antibiotics in them. (Hodne p. 19)

Factory farms deplete energy and water resources.

- Producing crops for animal feed places “enormous demand on water resources,” with 87% of freshwater use in the United States going to agriculture (mainly irrigation). (Pew p. 27)
- Factory farms use water to wash animals and flush manure and wastes from confinement areas. Many factory farmed animals also consume large amounts of water. A Missouri group estimated that an 80,000/year hog operation uses over 200,000 gallons of water/day – 73 million gallons/year. (NRDC)
- It takes 100,000 liters of water to produce 1 kilogram of grain-fed beef and 3,500 liters for a kilogram of chicken meat. In contrast, a kilogram of potatoes requires 500 liters of water; wheat, 900; rice, 1,912; and soybeans, 2,000. (Cornell)
- The ratio of fossil fuel inputs per unit of food energy produced for factory farms can reach 35:1. For other agricultural products combined, it averages 3:1. (Pew p. 29)
 - Beef cattle production requires 54 units of energy inputs for 1 unit of protein output. (Cornell)

Factory farms are unsustainable and threaten food security.

- Factory farms rely on intensive, industrialized grain production that degrades soil, pollutes aquatic ecosystems, and contributes to global warming. (UCS p. 25)
- More than half of the two most widely grown crops in the United States (corn and soybeans) is fed to livestock, not people. (UCS p. 29)
- More than half of U.S. grain and almost 40% of world grain is fed to livestock rather than directly to humans. If all the grain in the U.S. were consumed by people instead, it could feed 800 million people. (Cornell)

Sources

- ~ Campagnolo et. al, *Report to the State of Iowa Dep't of Public Health on the Investigation of the Chemical and Microbial Constituents of Ground and Surface Water Proximal to Large-Scale Swine Operations* (Oct-Dec 1998) ("Campagnolo"), available at http://www.sec.nv.gov/cafo/tab_i.pdf.
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The Sierra Club also has a useful compilation of studies at <http://www.sierraclub.org/factoryfarms/resources/comphealthstudies.pdf>.