

**TAX APPEALS
FOR
PROPERTIES NEAR FACTORY FARMS**

MISSOURI

CITIZENS GUIDE

2009

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

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TABLE OF CONTENTS

Introduction	4
Flowchart	5
Checklist	6
Background Information	7
The Appeals Process	9
I. Step 1: Finding out What Your Current Assessment Is	9
II. Step 2: Informal Meeting with Your Assessor	9
III. Step 3: Appeal to the Board of Equalization (BOE)	10
A. Filing the Appeal	10
B. The BOE Hearing	10
V. Step 4: Appeal to the State Tax Commission (STC)	11
A. Filing the Complaint	12
1. Delivery Requirements	12
2. Filling out the Complaint Form	13
B. The STC Hearing	13
C. Reconsideration: Required for Judicial Review	15
V. Step 5: Review in the County Circuit Court & Beyond	15
Glossary	17
Appendices	
A – Ideas for Information to Submit about Your Property	19
B -- Examples of Devalued Properties	25
C – Links to Helpful Assessment Information	32
D – Other Resources	33
E – Appraisal Requirements	35

INTRODUCTION

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

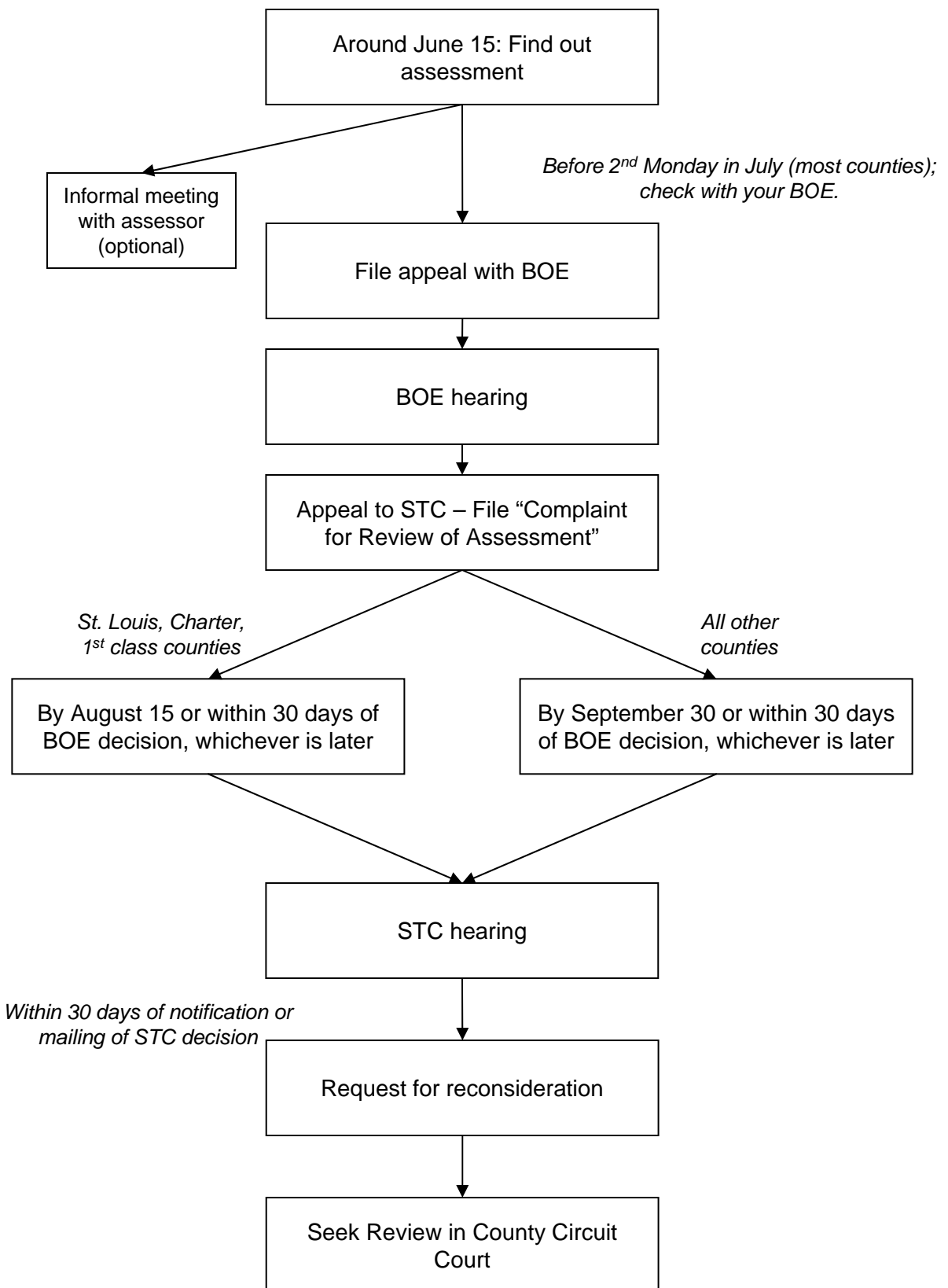
The economic, environmental, public health, labor, social, and ethical problems associated with factory farms are becoming increasingly familiar, as evidenced in two recent reports by major non-governmental organizations: *Putting Meat on the Table: Industrial Farm Animal Production in America* (Pew Commission) and *CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations* (Union of Concerned Scientists). These problems are often sharply 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 negative impact 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 appeal process in Missouri, 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 State Tax Commission level of the process, which is uniform throughout the state and somewhat less formal than a regular court proceeding.

It's important to understand that this Guide is not legal advice. The authors of this Guide are not providing legal services to you, and the protections of an attorney-client relationship do not exist here. Instead, this Guide is intended to help you as you navigate the protest process. We encourage you to: 1) check the recommended websites, 2) call your local officials, or 3) consult with a licensed Missouri attorney if you have any questions or to verify information such as filing deadlines.

The Guide is available at www.factoryfarmtaxprotest.org, and the website also has access to some 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.

Missouri Tax Appeals Process



CHECKLIST

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

- ___ Find out your assessment by:
 - ___ Receiving notice of an increase from your assessor, around June 15th, or;
 - ___ Checking with your County Clerk's office around July 1st.

- ___ Have an informal meeting with your assessor, if desired.

- ___ File an appeal with the county Board of Equalization (BOE).
 - ___ The deadline is the second Monday in July for most counties. *Please check with your BOE.*
 - ___ Contact your local BOE for specific forms and requirements.

- ___ Attend the BOE hearing and present evidence about your property's market value.

- ___ Appeal to the State Tax Commission (STC).
 - ___ File a "Complaint for Review of Assessment."
 - ___ The deadline is:
 - ___ For St. Louis, charter, and first-class counties: on or before August 15th, or within 30 days of the BOE decision, whichever is later.
 - ___ For all other counties: on or before September 30th, or within 30 days of the BOE decision, whichever is later.
 - ___ File 2 copies.
 - ___ Attach the BOE's decision.
 - ___ Gather evidence to support your case.
 - ___ Attend the STC hearing to support your case.

- ___ File request for reconsideration with the STC within 30 days of the notification or mailing of its decision.

- ___ Seek review in the county Circuit Court

BACKGROUND INFORMATION¹

Most of the information for this section was taken from the Missouri State Tax Commission website, <http://oa.mo.gov/stc/>.

The website may be helpful in answering further questions you have about property taxation.

“Real property” is basically real estate – land and any improvements to the land, such as houses. The assessments are primarily performed by county assessors, subject to review by the Board of Equalization and the State Tax Commission.

To assess residential property, your assessor first determines its **true value in money** (or market value). (But some agricultural/horticultural lands have a different standard for true value in money.²) **Market value** is basically “the price your property would bring when offered for sale by a person who is willing but not obligated to sell it, and is bought by a person who is willing to purchase it but who is not forced to do so.”³ Then, the assessor applies an **assessment level** (a percentage based on the property’s classification) to the market value to arrive at **assessed value**.⁴ The assessment level for residential properties is 19%. So, a residence with a market value of \$75,000 would have an assessed value of \$14,250 (75,000 x .19). Your tax bill is then determined by applying your school and county tax rates to your property’s assessed value.

The **assessment date** (the date on which your property’s value is based) is January 1st of odd-numbered years. The assessed value of your property will remain the same for the subsequent even-numbered year, unless there’ve been improvements or new construction on your property between January 1st of the odd year and January 1st of the even year. If so, that’ll be added to or subtracted from your property’s assessed value. Whenever there’s an increase in your property’s assessed value, your assessor must notify you in person or by mail.

There are three main approaches assessors use to determine market value: the cost approach, the market approach, and the income approach.⁵ The **cost approach** estimates the value of land as if vacant, and then adds the replacement cost of improvements, minus any depreciation. The **market approach** (or **comparable sales** approach) compares the property to similar properties that have recently sold (if any), with adjustments for differences like location. The **income approach** estimates the amount of rental income a property would produce (minus expenses and vacancies), and converts it to a value for the property. The assessor also looks at “any other factors that can help place an accurate value on the property.”⁶

¹ Other sources for this section are: RSMo. §§ 137.115(1), 137.180, 138.010(1), 138,190; 12 Mo. CSR §§ 30-3.001, 30-3.005, 30-3.025; *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008); Missouri State Tax Commission, *Appealing Your Property Tax Assessment (Appealing)*, <http://oa.mo.gov/stc/appeal.htm>; Email from Missouri State Tax Commission (STC email) (Feb. 2, 2009) (on file with the Env’tl & Natural Resources Law Clinic at Vt. Law School).

² Missouri State Tax Commission, *Frequently Asked Questions (FAQ)*, <http://oa.mo.gov/stc/faqs.htm>.

³ *Id.* See the Glossary in this Guide for a more thorough definition of market value under Missouri law.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

If you disagree with the assessed value of your property, you can have an informal meeting with your local assessor and/or appeal to your county Board of Equalization, and then appeal to the State Tax Commission. The law doesn't require you to hire an attorney at any level, but you may wish to, especially if you want more help at the State Tax Commission, or if you appeal to the Circuit Court and beyond.

You can always appeal your assessment in an odd-numbered year.

You can appeal in an even-numbered year if:

- ~ You didn't appeal to the STC the previous year;***
- ~ You did appeal, but your appeal is still pending in an even-numbered year before the STC and you request that the STC send notice to your county clerk that the appeal is pending (the notice will be considered the filing of your appeal with the BOE);***
- ~ Your appeal was dismissed by the STC;***
- ~ Your assessor didn't give you notice of an increase based on property improvements between January 1st of the odd year and January 1st of the even year;***
- ~ Your assessor didn't adjust your assessment downward due to negative property improvements between January 1st of the odd year and January 1st of the even year.***

THE APPEALS PROCESS

The following links provide helpful information about the appeals process:

- <http://oa.mo.gov/stc/faqs.htm> (general)
- <http://oa.mo.gov/stc/appeal.htm> (STC)
- http://oa.mo.gov/stc/appeals_brochure.pdf (STC)
- www.stc.mo.gov (STC)

I. Step 1: Finding out What Your Current Assessment Is⁷

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

- Your assessor must notify you whenever there's an increase in your assessment, in mail or in person.
 - If your county has a charter government, the notice is due by June 15th.
 - If your county doesn't have a charter government, the notice is due by June 15th beginning in 2011.
- Your assessor must file the assessment book with the county clerk by July 1st. This book will list your property's assessed value and you can try contacting your county clerk's office to see it. (You may need to contact your clerk before July 1st, depending on the appeal deadline for your local Board of Equalization.)

The STC website has contact information for county clerks and assessors at <http://oa.mo.gov/stc/brochures.htm> (under "Directories"), or you can check your local phonebook.

II. Step 2: Informal Meeting with Your Assessor

The STC recommends that you contact your county assessor's office as soon as you're notified of your assessment, if you want to appeal it. You could arrange an informal meeting to discuss how your assessment was made, what factors were considered (e.g., whether your assessor considered the nearby factory farm), and records about your property. According to the STC, many disagreements are settled at this level.⁸

However, you don't have to have an informal meeting with your assessor. You can appeal directly to the Board of Equalization.⁹

⁷ The sources for this section are: RSMo. §§ 137.180, 137.245; 12 Mo. CSR § 30-3.010; Missouri State Tax Commission, *Appealing*, *supra* note 1.

⁸ Missouri State Tax Commission, *FAQ*, *supra* note 2.

⁹ RSMo. § 137.275.

III. Step 3: Appeal to the Board of Equalization (“BOE”)¹⁰

As mentioned above, the BOE is a county-level board that hears assessment appeals.

A. Filing the Appeal

- The deadline for filing an appeal is the **second Monday in July** in most counties. *Please check with your local BOE for your filing deadline. First-class counties may have an earlier deadline.*¹¹
 - However, if your assessment increased from the previous year and your assessor didn’t notify you of the increase before the BOE deadline, you can appeal directly to the State Tax Commission within 30 days of December 31st or whenever you receive notice of your assessment/tax statement, whichever is later. You should attach proof of late notice to your complaint.
- For first-class counties, the appeal must be in writing.
- For all other counties, the appeal can be in person, by attorney or agent, or in writing.
- The forms and requirements for BOEs vary, so you should contact your county clerk for information.

The STC website has contact information for county clerks at <http://oa.mo.gov/stc/brochures.htm> (under “Directories”), or you can check your local phonebook.

B. The BOE Hearing

- The BOE will hold a hearing where you can present evidence about your property’s market value (and the assessor can also present evidence). Remember that your evidence should relate to your property’s value on January 1st of the odd-numbered year.
- Some examples of evidence are:
 - Photographs;
 - Recent sale price of property;
 - Oral testimony of someone who recently appraised your property.
- There are more examples of evidence in Appendix A.
- Other procedures for BOE hearings vary by county, so you can contact your county clerk if you’d like more information about the hearing.

¹⁰ The sources for this section are: Missouri State Tax Commission, FAQ, *supra* note 2; RSMo. §§ 137.275, 137.385; 12 Mo. CSR § 30-3.010(1)(B)(1.); STC email, *supra* note 1.

¹¹ There is a discrepancy in the statutes regarding the BOE appeal deadline. RSMo § 137.275 appears to apply the second-Monday-in-July deadline to all counties, but RSMo § 137.385 specifies that for first-class counties, the deadline is the third Monday in June. In first-class counties, the BOE can extend the deadline. RSMo § 137.385.

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

1) Specific information about your property that shows how and to what extent its 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.

IV. Step 4: Appeal to the State Tax Commission (STC)¹²

If you're not happy with the BOE decision, you can appeal to the State Tax Commission within 30 days. The STC is a state agency that oversees property tax assessment in Missouri, and hears assessment appeals.

- You can represent yourself before the STC, or you can have an attorney. As the STC website says, “only you can decide whether you need an attorney to assist you with your case.”¹³
- There is no fee for appealing to the STC.
- You and your assessor can agree to a settlement anytime before the STC decides your case.
- You and your assessor can request mediation. You must do so within 30 days of acknowledgement by the STC that it received your complaint. If you reach an agreement, you'll submit it to the STC for approval. If you don't, you'll proceed to a hearing.
- If you're appealing the assessment for more than one parcel of property, be sure to fill out separate forms for each parcel.
- In first-class charter counties and some cities, you might be able to recover some of your costs (e.g., for an appraisal) and fees (e.g., for an attorney) if you get your assessment reduced by at least 15 percent.
- You'll still need to pay your taxes by December 31st, or your appeal could be dismissed. However, you can pay under protest and the county collector will impound the disputed amount.
- There are provisions for other people to intervene or submit legal memos in your appeal under certain circumstances.

¹² The sources for this section are: Missouri State Tax Commission, <http://oa.mo.gov/stc/>; Missouri State Tax Commission, Instructions-Real Property Appeals, <http://oa.mo.gov/stc/870-0055instructions.htm>; Missouri State Tax Commission, Appealing, *supra* note 1; Missouri State Tax Commission, FAQ, *supra* note 2; RSMo. §§ 138.430, 138.431, 138.432, 138.434, 138.470, 139.031, 536.110; 12 Mo. CSR, §§ 30-3.010, 30-3.020, 30-3.040, 30-3.050, 30-3.060, 30-3.080; *Herky, LLC v. Holman*, 277 S.W.3d 702, 706-07 (Mo. App. E.D. 2008).

¹³ Missouri State Tax Commission, Appealing, *supra* note 1.

A. Filing the Complaint

To appeal to the STC, you'll need to file a special form called a "Complaint for Review of Assessment."

The "Complaint for Review of Assessment" form is available online at http://oa.mo.gov/stc/forms_legal.htm ("Real Property"). You can also call or write to the STC and ask for the form (Appendix C has contact information).

1. Delivery Requirements

- The filing deadline depends on your county.
 - For St. Louis, charter, and first-class counties, the deadline is: **on or before August 15th, or within 30 days of the BOE decision, whichever is later.**
 - Check with your county clerk to find out if you live in a first-class county. (As of January 2009, the first-class counties listed on the STC website were: Boone, Buchanan, Callaway, Camden, Cape Girardeau, Cass, Clay, Cole, Franklin, Greene, Jackson, Jasper, Jefferson, Platte, St. Charles, St. Louis, Taney.)
 - For all other counties, the deadline is: **on or before September 30th, or within 30 days of the BOE decision, whichever is later.**
 - Or, if your assessor didn't notify you of an increase before the BOE deadline, you can appeal directly to the State Tax Commission **within 30 days of whenever you receive notice of your assessment/tax statement, or on or before December 31st of the tax year in question, whichever is later.** You should attach proof of late notice to your complaint.
- Delivery methods are:
 - Personal service (e.g., you hand-deliver your complaint to the STC). Must be delivered by filing deadline.
 - Registered or certified mail. Must be deposited with United States Postal Service by filing deadline.
 - Private carrier service. Date on the record of mailing must meet filing deadline.
 - Regular or metered mail. Post office cancellation should meet filing deadline.
 - Electronic (fax or email). Must be received by 5:00pm on the day of the filing deadline.
- The delivery address is:

Missouri State Tax Commission
P.O. Box 146
Jefferson City, MO 65102-0146
Facsimile: 573-522-8171
For more information, call: 573-751-1715.
- You must file **2 copies** of the form (and you should keep another copy for your records).
- You must attach a copy of the BOE decision (and should keep another copy for your records).
- If you attach any other documents to the form, you must file 2 copies of that document.

2. Filling out the Complaint Form

- The complaint form requests basic information about you and your property, your requested assessment, and the basis for your appeal.
 - Keep in mind that later, in the STC hearing, you'll need to explain how your evidence relates to your requested assessment and how you calculated it. The STC has ruled that your requested assessment should be more than “conjecture and speculation” and shouldn't be “simply pulled out of thin air.”¹⁴
- When you're filling in the “true value (market)” and “assessed value” part, remember that the *true value* is the *market value* your assessor put on your property, and the *assessed value* is the value after the residential percentage (19%) was applied.
- Since you're appealing your assessment because you believe your assessment is too high and your assessor didn't properly consider a nearby factory farm, you should check the **“Overvaluation”** box as the grounds for your appeal.
 - But if you're appealing on other grounds, too, you should check those boxes as well.
- You or your attorney must sign the complaint form.

B. The STC Hearing

After the STC receives your complaint form, it will send you notice of the date, time, and place for your hearing.

The STC might schedule a Prehearing Conference, too.

- This is an informal meeting with you, the assessor, and a hearing officer.
- You can bring any documentation you think would be helpful in the discussion.
- If no settlement is reached, the STC will schedule a hearing.

Your hearing process might include standard legal practices like:

- “Discovery” - basically, the exchange of information and evidence with the other party before the hearing;
- “Motions” - where a party files a request for something with the STC (e.g., a motion for a continuance asking the STC for a later hearing date);
- “Pre-filed Testimony” – where the STC allows you to submit evidence before the hearing if certain conditions are met (e.g., written testimony in question and answer form from a witness who can't make the hearing).

All hearings and conferences are in the county where your property is.

See Appendices A and B for ideas about documents or information to submit during your Prehearing Conference or Hearing.

¹⁴ *Morgan v. Muehlheausler*, Appeal No. 07-10501 (Mo. State Tax Comm'n 2008), available at http://www.stc.mo.gov/2008/Morgan-07-10501.htm#_ednref7 (though taxpayer showed with photo that his property value was negatively affected by nearby highway, he didn't provide evidence that supported the actual number value of his requested assessment).

Your “evidence” for the hearing will be in two main categories: “exhibits” and “testimony.” Your exhibits basically include documents, photographs, written testimony, and other written materials. Testimony will be the actual statements that you or your witnesses make on your behalf at the hearing.

- Usually, a Hearing Officer will conduct your hearing.
 - Hearing Officers are employed by the state and are trained attorneys.
 - Usually, the same Hearing Officer will issue the decision in your case.
- The hearing will be tape-recorded.
- The hearing is like a trial.
- The hearing usually lasts about an hour.
- You’ll be able to present your side of the case at the hearing. (The assessor is allowed to do the same.)
- You have the responsibility to show, with persuasive evidence, that your assessment is too high and what your assessment should be.¹⁵
 - Remember that you need to show the value of your property on January 1st of the odd-numbered year. (So, if it’s an even-numbered year, you’ll need to prove your property’s value for the previous year.)
 - Remember to explain how your evidence relates to your requested assessment and how you calculated it. (See Appendix A/“Recent Appraisal & Testimony of Appraiser” for more information on the importance of supporting your requested assessment.)
 - You can present evidence to support your case: documents, photos, etc.
 - You can testify and have others testify for you.
 - You can cross-examine (ask questions of) the other side’s witnesses.
 - If you think the other side is presenting something incorrect, you can object. The Hearing Officer will ask you to explain your reasons and then decide whether or not to allow the evidence.
- After both sides have presented evidence, the Hearing Officer will usually let you make a “closing argument.” You could make a summary statement (e.g., that you believe your assessment is wrong, and what it should be), and explain how the evidence you presented supports your statement.
- If you need to delay the hearing for reasons like illness or prior commitment, you can request a “continuance” from the STC. The request should be made in writing at least **5 days** before the hearing. For last-minute emergencies (e.g., weather, illness), the STC will usually re-schedule your hearing.

The STC will issue a decision in writing as soon as it reviews the evidence and prepares its decision, within 60 days of your hearing (or 60 days of when the last brief is filed, if any).

¹⁵ There is a discrepancy in Missouri law regarding what exactly the taxpayer’s threshold is to prove his/her case. In reference to both BOE and STC appeals, Missouri statutes clearly state: **“There shall be no presumption that the assessor’s valuation is correct.”** RSMo. §§ 138.060(1), 138.431(3). However, without explanation, case law in the courts and the STC since the statute was passed do operate under that presumption, sometimes applying it to BOE decisions as well. See, e.g., *Abeln v. State Tax Comm’n of Mo.*, 793 S.W.2d 490, 491 (Mo. App. E.D. 1990); *Murhring v. Zupan*, Appeal No. 06-69501 (Mo. State Tax Comm’n 2006) (under “Presumptions in Appeals”), available at <http://www.stc.mo.gov/2006/Muehring05-69501.htm>.

C. Reconsideration: Required for Judicial Review

If you aren't happy with the STC's decision, you can ask for reconsideration. You must appeal to the full STC for reconsideration before the Circuit Court may review your case.

- You must file a written request for review with the STC within **30 days** of notification or mailing of its decision.
 - The request should be detailed and list the specific reasons you believe the decision is wrong, based on the evidence at the hearing.
- The STC will allow or deny your request. If it allows it, it will either:
 - Review the evidence and the decision and decide whether to affirm, modify, or reverse it;
 - Take more evidence (e.g., have another hearing), or;
 - Remand (send back) to the Hearing Officer with instructions on how to proceed.
- Again, you must appeal to the full STC so that the Circuit Court may review any dispute or disagreement you may have with you assessment.

V. Step 5: Review in the County Circuit Court & Beyond¹⁶

The STC's final decision is subject to "judicial review" (review by a court), and can be appealed to the county Circuit Court. The law doesn't require you to have an attorney to appeal to the Circuit Court. However, to ensure that you meet all of the Court's requirements and present your best case, you should seriously consider seeking legal counsel if you appeal the STC's decision to the Circuit Court.

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

- A request for reconsideration before the STC is a pre-requisite for judicial review in the Circuit Court.
- The deadline for filing the appeal is **30 days** after the mailing or delivery of notice of the STC's decision on your request for reconsideration.
- You begin by filing a petition in the Circuit Court in which your property is located, or in the Circuit Court of Cole County (Jefferson City). There are also requirements for filing copies of your petition with the STC and the other parties (e.g., your assessor).
- As the person who filed the appeal, you're basically responsible for making sure the Court has the record from the STC within 30 days after filing the petition. The "record" might include the entire transcript (a written record of the testimony at the hearing) and the evidence from the STC hearing.
- There's no jury. A judge will decide your case.
- Usually, the judge limits his/her review to the record from the STC. (So, you usually can't present new evidence here, but can present new evidence "if the court finds that

¹⁶ The sources for this section are: RSMo. §§ 138.432, 138.470, 536.100, 536.110, 536.130, 536.140; 12 Mo. CSR §§ 30-3.080, 30-3.085

such evidence in the exercise of reasonable diligence could not have been produced or was improperly excluded at the hearing before the agency.”¹⁷

- In reviewing the STC’s decision, the judge will usually consider established legal standards like whether the STC’s decision:
 - Is “unsupported by competent and substantial evidence upon the whole record;”
 - Is “unauthorized by law;”
 - Is “arbitrary, capricious or unreasonable,” or;
 - Involves “an abuse of discretion.”
- The Court can reverse, affirm, or modify the STC’s decision, order reconsideration, or order the STC to take certain actions.
- Appeals from the Circuit Court’s decision are taken as appeals in other civil cases.

¹⁷ RSMo. § 536.140.

GLOSSARY¹⁸

Assessed Value

The value of a property for property tax purposes, which is equal to the market value \times the assessment level (for residential properties, 19%). So, a residential property with a market value of \$100,000 would have an assessed value of \$19,000 ($100,000 \times .19$).

Assessment Date

The date on which a property's value is based: January 1st of odd-numbered years. (But, if there've been improvements to the land before the next January 1st, they'll be added to or subtracted from the property's value in the even-numbered year.)

Assessment Level

A percentage that is applied to a property's market value to arrive at assessed value, depending on the classification of the property. The assessment level for residential properties is 19%.

Board of Equalization

A county-level board that reviews assessments and hears assessment appeals. It's composed of county commissioners, the county assessor, the county surveyor, the county clerk, and two appointed members with experience in real estate.

Circuit Court

Part of Missouri's state court system. It is a county-level court that can hear appeals from the STC.

Closing Argument

A summary statement at the end of a hearing explaining a party's position and how the evidence supports the position.

Continuance

Rescheduling a hearing to a later time.

County Assessor

A locally-elected county official who assesses and classifies properties for tax purposes.

Exemption

Relief from the requirement to pay property taxes for certain types of property (e.g., charitable associations).

¹⁸ The sources for the definitions in this section are: Missouri State Tax Commission, Definitions, <http://www.stc.mo.gov/definitions.htm>; Missouri State Tax Commission, FAQs, *supra* note 2; Missouri State Tax Commission, Appealing, *supra* note 1; Missouri State Tax Commission, Property Reassessment and Taxation, http://oa.mo.gov/stc/reassessment_brochure.pdf; RSMo. §§ 53.010, 138.010, 138.470, 536.110; 12 Mo. CSR § 30-3.050.

Market Value

The price a property would bring on the market between a willing, but not obligated, buyer and seller. Also known as “true value in money.” Necessary components of market value are:¹⁹

- Competitive & open market
 - Reasonable time allowed for exposure on open market
- Buyer & seller act prudently and knowledgably
 - Typically motivated
 - Well-informed and well-advised
 - Acting in what they consider their own best interests
- The price is not affected by undue stimulus
 - Price is a “normal” consideration
 - Not affected by special financing amounts or transactional terms, fees, costs, services, credits
- All other conditions required for a fair sale
 - Payment in cash or cash equivalent
 - Financing is typical for the location and on terms generally available in the community.

Real Property

Primarily, real estate (land, growing crops, and improvements to the land, such as houses) and the rights and privileges associated with its ownership.

State Tax Commission

A state agency directed by three commissioners, appointed by the Governor and approved by the state Senate. It helps supervise and enforce property tax law, and hears assessment appeals from the Board of Equalization.

True Value in Money

For residential properties - the price a property would bring “after a reasonable exposure to the open market when offered for sale by a person who is willing but not obligated to sell it, and is bought by a person who is willing to purchase it but who is not forced to do so.”²⁰ Also known as “market value.”

¹⁹ *Morgan v. Muehlheausler*, *supra* note 14 (citing appraisal literature).

²⁰ Missouri State Tax Commission, Definitions, *supra* note 18.

APPENDIX A – IDEAS FOR INFORMATION TO SUBMIT ABOUT YOUR PROPERTY

*You can use the ideas in this appendix to help you prepare for the BOE and STC.
The STC website also has some guidance about types of evidence at
<http://oa.mo.gov/stc/appeal.htm> (scroll down).*

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 prove your case. Your opinion alone, without more information, is generally not enough.²¹ Your information might include photographs, documents, test results, personal statements from you or others, etc.

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

Purchase Price

Documents showing the recent purchase price of your property (if it was less than your current assessment), including the sales contract and closing statement.²²

- 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 as well as a description of the factory farm's influence on the sale).

²¹ Missouri State Tax Commission, *Appealing*, *supra* note 1.

²² *Id.*

Recent Appraisal & Testimony of Appraiser²³

If you have the resources to get an appraisal, it's probably a good idea. You don't have to have an appraisal, but as the STC website says: "It is very difficult to prove value of your property in the absence of an appraisal, unless you have purchased the property at a time close to the tax date." A prior case before the STC also suggests that, even if you have lots of evidence to demonstrate that a nearby factory farm devalues your property, you still need to apply a traditional valuation method (*e.g.*, comparable sales, cost approach) appropriately to use that evidence and arrive at your property's actual market value.²⁴

- If you want to present an appraisal, the appraiser has to be at the hearing to testify about it.
- Any appraiser hired for a fee must be certified or licensed by the Missouri Real Estate Appraisers Commission in order to testify and submit an appraisal at the hearing (except for the assessor's staff and some corporate appraisers).
- There are requirements the appraisal must meet. (Please see Appendix E for a detailed list of requirements from Missouri's Administrative Code.)
 - It should be a "complete narrative appraisal report."²⁵
 - The pages should be numbered.
 - There should be a narrative introduction, an explanation of the methods used and why other methods weren't used, a final opinion of value, and the appraiser's signature.
 - It should include the appraiser's license or certificate number.

Appendix D has information on how to find a licensed or certified Missouri appraiser.

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.

Comparable Sales

Information showing that the sale prices of similar properties are less than your assessment.

- 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).
- Helpful information to show the other properties and sales are similar could include:²⁶

²³ *Id.*; 12 Mo. CSR § 30-3.065.

²⁴ *Murhring, supra* note 15 (under "Complainant's Burden of Proof").

²⁵ 12 Mo. CSR § 30-3.065.

²⁶ *Id.*; Missouri State Tax Commission, *Appealing, supra* note 1.

- Photos;
- Lot size;
- Type of construction;
- Number of rooms;
- Date of construction;
- Location;
- Date of sale;
- Conditions of sale.

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

Proximity

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

Marketability

- Information showing that your property hasn't sold or has taken longer to sell because of a nearby factory farm (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 is near a factory farm (e.g., a survey of locals or prospective buyers, or a realtor's statement).

Financing

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

Cost to Cure

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

- The costs of cleaning up any soil contamination on your property caused by the factory farm;

- The cost of installing a filtration system to treat well water contaminated by factory farm pollution, etc.

Statements of Professionals

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

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

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.

Stigma

Information showing that your property has stigma attached to it because of a nearby factory farm.²⁷ 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.
- Information about any perceived risks or unknowns associated with your property.
- Negative publicity about the factory farm could also be an indication that nearby properties such as yours suffer from stigma.

²⁷ The Missouri Supreme Court has recognized that stigma can devalue a property. *See Frank v. Env'tl Sanitation Management, Inc.*, 687 S.W.2d 876, 883 (Mo. banc 1985) (in permanent nuisance case involving property near landfill, stating that the "[e]vidence . . . showed a stigma from repeated leachate outbreaks permanently devalued plaintiffs' property." *See also Amish v. Walnut Creek Development, Inc.*, 631 S.W.2d 866, 872-73 (Mo. App. W.D. 1982) (holding that evidence given by appraiser supported damage calculation based on diminished market value in negligence claim, where appraiser testified that "the values of the properties on the market had been permanently reduced because land which has been flooded takes on a stigma").

Why should the BOE or the STC consider this kind of information in my tax appeal?

The Missouri Supreme Court has held that, for a property tax assessment to be upheld, it must “take into account all factors relevant to a determination of ‘true value in money.’”²⁸ In turn, the State Tax Commission has recognized that factory farms can devalue neighboring properties²⁹ (thus making them “relevant”).

In one of the STC cases, a man who lived near a factory farm (or CAFO) challenged his assessment as being too high. (As of his January 1, 2005 assessment date, the hog facility was still in the planning phase.) The STC stated: “[I]t would clearly appear that the existence of a CAFO within a half mile of a residential property would lessen the fair market value of the property.” However, the STC upheld the original assessment because the taxpayer didn’t present enough evidence “to demonstrate the existence of sufficient sales data from rural areas of Missouri to establish the actual market impact” or provide sufficient “market data . . . to demonstrate the economic impact of a CAFO on nearby residential properties.”³⁰ The STC also noted that “the evidence failed to establish that a well informed buyer would have known of the CAFO being planned for operation a year later.”³¹

Other Guidance

There is also some useful guidance in the *Appraisal Journal* about how and why nearby factory farms should be considered in assessments. A 2001 article by John A. Kilpatrick (available at www.greenfieldadvisors.com/publications/conanimal.pdf) explains that a factory farm devalues proximate properties to the extent it is viewed as a negative externality by the marketplace.³² (Missouri courts have cited the *Appraisal Journal* with favor,³³ so the article could be helpful.) In other words, properties near factory farms suffer a loss of value that owners have no control over because of the negative impact to the local real estate market caused by the factory farm operations.

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; and marketability evidence.³⁴ The influence of these factors can result in a 50-90% diminution in a property’s market value.³⁵

²⁸ *Stephen & Stephen Properties, Inc., v. State Tax Comm’n*, 499 S.W.2d 798, 802 (Mo. 1973) (citations omitted).

²⁹ *Murhring, supra* note 15; *Harley & Susie Bogue, Inc. v. Rinehart*, Appeal No. 03-32091 (Mo. State Tax Comm’n 2004), available at <http://www.stc.mo.gov/2004/Harley%20&%20Susie%20Bogue.%20Inc.%20v.%20Rinehart.htm> (where hog facility challenged its assessment in part based on economic obsolescence, stating: “While it is true that many people do not want to live around a swine production facility, this fact tends to devalue the surrounding property more than it devalues the swine production facility.”) (under “Complainant’s Evidence Is Not Credible/Unsupported Economic Obsolescence Adjustment”).

³⁰ *Murhring, supra* note 15 (under “Summary & Conclusion”).

³¹ *Id.*

³² John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 *Appraisal J.* 301, 302 (2001).

³³ *Bi-State Development Agency v. Ames Realty Co.*, 258 S.W.3d 99, 107 (Mo. App. E.D. 2008); *State Highway Comm’n v. Barbeau*, 397 S.W.2d 561, 567 (Mo. 1966).

³⁴ Kilpatrick, *supra* note 32, at 306.

³⁵ *Id.*

- **Stigma** - any of the “unknowns and risks associated with ownership of the property.”³⁶ 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”³⁷), it may be difficult to quantify, but it should not be overlooked.³⁸
- **Distance** - generally, the closer the factory farm, the greater the impact on property values.³⁹
- **Physical manifestations** - various impacts of factory farms. For example, impaired water quality can reduce a neighboring property’s value;⁴⁰ hydrogen sulfide emissions from manure lagoons may sicken neighbors;⁴¹ dust, odors, and flies carrying animal blood, feces, or antibiotic-resistant bacteria may also impair a neighboring property’s value.⁴²
- **Marketability evidence** - evidence about the length of time it takes to sell, or the unsalability of, a property.⁴³ For instance, as Kilpatrick reports, some rural homeowners in Michigan in the late 1990s were unable to sell their home next to a pork processing facility. Pending litigation, the pork processing company offered to compensate them for a 60% diminution in the market value of their home.⁴⁴
- **Impacts on highest and best use** - where the factory farm influences the use and enjoyment of your property, e.g., from odor or flies.⁴⁵ 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 <http://www.greenfieldadvisors.com/publications/conanimal.pdf>, or from www.factoryfarmtaxprotest.org.

³⁶ *Id.* at 302.

³⁷ See Vincent D’Elia & Catherine M. Ward, *The Valuation of Contaminated Property*, 111 *Banking L.J.* 350, 359 (July-Aug 1994).

³⁸ See Bill Mundy, *Stigma and Value*, 60:1 *Appraisal J.* 7 (Jan. 1992).

³⁹ Kilpatrick, *supra* note 32, at 304-05 (citing University of Minnesota study).

⁴⁰ *Id.* at 304 (citing Kirshner & Moore study).

⁴¹ *Id.* (describing illnesses near CAFOS in Minnesota).

⁴² *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, p. 158) (odor, dust, noise, and “general decline in the natural beauty of the area” from CAFOS can depress sales prices) (citations omitted).

⁴³ See D’Elia & Ward, *supra* note 37, at 360 (“longer marketing period” and “inability to sell” illustrate perceptions of devaluation).

⁴⁴ Kilpatrick, *supra* note 32, at 306.

⁴⁵ *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

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 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).

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.

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).

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 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).

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

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

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

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

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

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

Selected Articles

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 with 1 ½ miles of the operation, and 10% for those within 2 miles of the facility.

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

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

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

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

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

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

In 1998 in Cedar County, Nebraska, property owners received an assessment reduction based on a neighboring CAFO. On the protest form to the tax board, the property owners stated: “Our neighbor has built a hog confinement and lagoon across the road from our house. This same neighbor has runoff from his cattle yards in to the road ditch 100ft from our well. The nitrates in our water ha[ve] increased making it not safe to drink. We feel a valuation increase of \$35,340 is unfair.” The board looked at the property and decided to assess a 25% locational depreciation.

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

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.

APPENDIX C – LINKS TO HELPFUL ASSESSMENT INFORMATION

- General information on tax assessment and challenges

<http://oa.mo.gov/stc> (STC)
(573) 751-1715 (Legal Section)
Legal Section
State Tax Commission of Missouri
621 East Capitol Avenue
PO Box 146
Jefferson City, MO 65102-0146

www.stc.mo.gov (STC)
(573) 751-2414 (general)
State Tax Commission of Missouri
PO Box 146
Rm 840 Harry S. Truman State Office Building
301 West High Street
Jefferson City, MO 65102

- Contact information for county assessors and clerks

<http://oa.mo.gov/stc/brochures.htm>

- Forms

Complaint for Review of Assessment (STC) - http://oa.mo.gov/stc/forms_legal.htm
Instructions - <http://www.stc.mo.gov/pdf/AssessmentInstructions.pdf>

- Real Property Assessment Timeline

http://www.stc.mo.gov/pdf/RE_Timeline_09292008.pdf

APPENDIX D – OTHER RESOURCES

Information on Factory Farms

www.ncifap.org/ (Pew Commission report; click next to “Full Report”)
www.ucsusa.org/food_and_environment/sustainable_food/cafos-uncovered.html (Union of Concerned Scientists report)
www.foodandwaterwatch.org/food/factoryfarms (Food & Water Watch)
www.waterkeeper.org/mainarticledetails.aspx?articleid=87 (Waterkeeper)
www.sierraclub.org/factoryfarms/ (Sierra Club)
www.nrdc.org/water/pollution/cesspools/cessinx.asp (NRDC)
www.nffc.net (National Family Farm Coalition)
www.sraproject.org (Socially Responsible Agricultural Project)
<http://aphg.jhsph.edu> (Agriculture & Public Health Gateway)
www.jhsph.edu/clf/ (Center for a Livable Future)
www.closeanimalfactories.org (Center to Expose & Close Animal Factories)
www.epa.gov/waterscience/guide/feedlots/envimpct.pdf (EPA)
www.morural.org (Missouri Rural Crisis Center)
www.movotesconservation.org/Home.aspx?ContentID=163 (Missouri Votes Conservation)
www.dnr.mo.gov/env/wpp/cafo/cafos8x11.pdf (map of Missouri CAFOs)

How to Find an Appraiser

(Remember that if you use an appraiser for a fee and want to present the appraisal in your STC hearing, the appraiser must be state-certified or licensed.)

- Missouri Division of Professional Registration,
Real Estate Appraisers Commission
<http://pr.mo.gov/appraisers-search.asp>
- AppraiserUSA.com, Missouri Real Estate Appraiser Directory
<http://appraiserusa.com/missouri/index.htm>
If you click on “See Appraiser’s Full Listing” after you do your search, there is more information about the appraiser, including whether he/she is state-licensed.
- American Society of Appraisers
www.appraisers.org/findappraiser/
Try searching in both Real Property/Ad Valorem and Real Property/Residential.
- Appraisal Institute
www.appraisalinstitute.org/search.asp
There are various search options on this page. You could do a geographical search under “Quick Search”, or could choose the “Advanced Search” option and choose “Real Estate Tax Valuation and Consulting” under the “Business Services” option.

- Local Yellow Pages
- Recommendations

How to Find an Attorney

- The Missouri Bar, Find a Lawyer
<http://www.mobar.org/fa9a5c63-a2c3-4c6e-a86a-de191b13e501.aspx>
- StateLawyers.com, Attorney Directory – Missouri Counties
<http://www.statelawyers.com/AttorneyDirectory/Index.cfm/StateID:25>
- American Bar Association, Consumers’ Guide to Legal Help Lawyer Referral
<http://www.abanet.org/legalservices/findlegalhelp/main.cfm?id=MO>
- Lawyers.com, Find a Lawyer
<http://www.lawyers.com/All-Areas-of-Law/Missouri/All-Cities/attorneys-and-law-firms.html?s=&ns=y&st=q>
- Local Yellow Pages
- Recommendations

APPENDIX E – APPRAISAL REQUIREMENTS

(Reprinted from Missouri Code of State Regulations,

<http://www.sos.mo.gov/adrules/csr/current/12csr/12c30-3.pdf>)

12 CSR 30-3.065 Appraisal Evidence

PURPOSE: This rule describes the suggested content and guidelines for the composition of appraisal reports as exhibits and is consistent with sections 339.500 to 339.549, RSMo which limit who may provide real property appraisal services for a fee in hearings before the State Tax Commission.

(1) As used in this rule, a “complete narrative appraisal report” for real property should be paginated for easy reference and should contain the following elements:

(A) A narrative introduction, including:

1. A statement of purpose, including a statement of the property interest being valued;
2. A description of the subject property including, but not limited to, a legal description of the property and any leasehold interests; address, locator number where applicable; land and improvement area; zoning, topography and neighborhood;
3. A statement of the highest and best use of the subject property; and
4. An opinion of the true value in money of the subject property;

(B) A statement of the recognized approaches to value with a statement of why each approach was or was not used.

1. An income approach should include:

A. A complete reconstructed income and expense statement for the subject property showing economic or market values for each of the following elements:

- (I) Potential gross income;
- (II) Vacancy and collection loss;
- (III) Miscellaneous income;
- (IV) Effective gross income;
- (V) Operating expenses; and
- (VI) Net operating income;

B. The capitalization method and rate used including all calculations, a narrative explanation of why the capitalization method is appropriate and an explanation of each element of the selected method;

C. A statement of the applicable tax levy rate;

D. Sources of actual and market expense, income and capitalization rate figures and verification for each; and

E. A final indication of value.

2. A sales comparison approach should include:

A. The name of the owner(s), the location, date of sale, conditions of sale, land and improvement areas, sales price and source of information for each comparable sale;

B. A narrative explanation of why the comparable properties were selected for use;

C. A statement that the sales have been verified and by and with whom they were verified;

D. A specific listing of adjustments made; and

E. A final indication of value including a narrative explanation of why that value was chosen.

3. A cost approach should include:

A. An opinion of the value of the subject land and a description of the methodology used to arrive at that opinion;

B. A narrative explanation of whether the replacement cost or the reproduction cost was used and why;

C. An estimate of the reproduction cost or replacement cost new, including the method used and sources employed to arrive at that estimate;

D. The amount and type of depreciation applied with a narrative explanation of why the depreciation was applied and the methods employed; and

E. A final indication of value.

4. Any other approach to value used should be explained with sufficient specificity to allow all other parties to reconstruct the approach used. A narrative explanation of why the approach was used should be included;

(C) A final opinion of value which correlates all approaches used including a narrative explanation of any weighing process used to arrive at that final opinion of value; and

(D) The signature of the appraiser.

(2) As used in this rule, an appraisal report for personal property should, at a minimum, conform to Uniform Standards of Professional Appraisal Practice (USPAP) requirements for a summary appraisal.

(3) Beginning July 1, 1999, it will be unlawful for any person who is not licensed or certified by the Missouri Real Estate Appraisers Commission as provided in sections 339.500 to 339.549, RSMo, to, for a fee, develop and offer into evidence a real estate appraisal or appraisal report, as those terms are defined in section 339.503(1) and (4), before the commission unless such person is exempt from licensure and certification pursuant to section 339.501.5, RSMo Supp. 1998.

(4) Any appraisal or appraisal report, as those terms are defined in section 339.503(1) and (4), which is filed with the commission or offered into evidence pursuant to 12 CSR 30-3.060 shall contain the Missouri Real Estate Appraisers Commission certificate or license number of the person or persons who developed the appraisal or appraisal report, or a statement setting forth the basis for exemption from licensure and certification for such persons pursuant to section 339.501.5, RSMo Supp. 1998. Any such appraisal or appraisal report failing to comply with this provision will be excluded from evidence at the evidentiary hearing on the valuation of the property under appeal.

(5) Any written direct testimony of a person, testifying as to an appraisal or appraisal report, as those terms are defined in section 339.503(1) and (4), which is filed with the commission or offered into evidence pursuant to 12 CSR 30-3.060 shall contain testimony stating the Missouri Real Estate Appraisers Commission certificate or license number of the person or persons who developed the appraisal or appraisal report, or a statement setting forth the basis for exemption from licensure and certification for such person or persons pursuant to section 339.501.5, RSMo Supp. 1998, of the person or persons whose written direct testimony is being offered into evidence. Any such written direct testimony failing to comply with this provision will be excluded from evidence at the evidentiary hearing on the valuation of the property under appeal.

AUTHORITY: sections 138.430 and 138.431, RSMo 2000. Original rule filed Aug. 23, 1995, effective Jan. 30, 1996. Amended: Filed March 30, 1999, effective Oct. 30, 1999. Amended: Filed Dec. 29, 2005, effective Aug. 30, 2006.*

**Original authority: 138.430, RSMo 1939, amended 1939, 1945, 1947, 1978, 1983, 1989, 1999; and 138.431, RSMo 1983, amended 1986, 1992, 1999.*