

**TAX GRIEVING
FOR
PROPERTIES NEAR FACTORY FARMS**

NEW YORK

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 New York attorney if you wish to obtain legal advice.

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INTRODUCTION

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

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

If you live near a factory farm, your property tax assessment should reflect that fact. Your assessment should account for any of the negative impacts the factory farm has on your property. If it doesn't, you may wish to challenge your assessment so that you can receive a fair one. This Guide will help you do that. It provides step-by-step information on the tax grievance process in New York, 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 first two levels of the process, which aren't formal court proceedings.

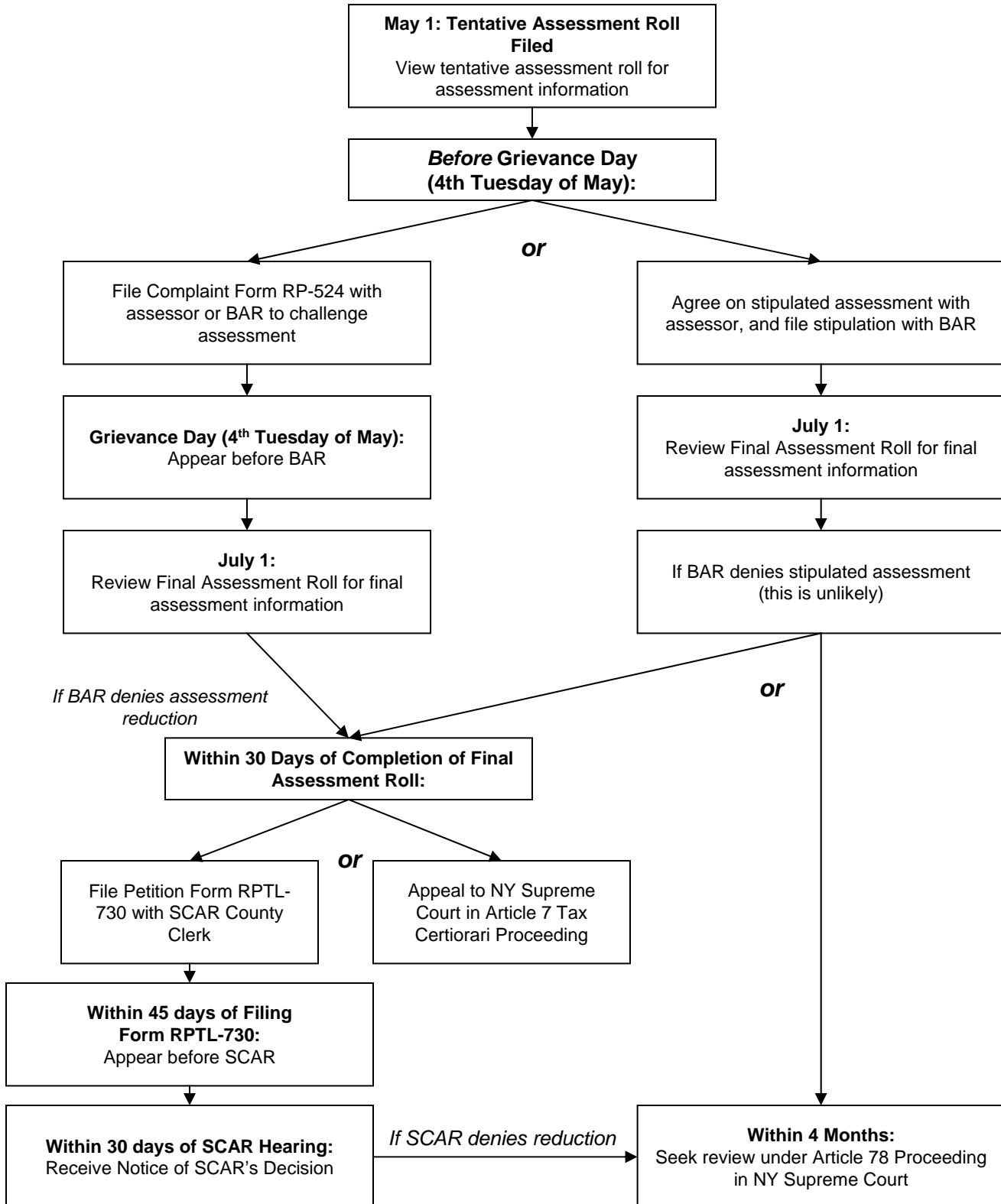
It's important to understand that this Guide isn't legal advice. The authors of this Guide aren't providing legal services to you, and the protections of an attorney-client relationship don't exist here. Instead, this Guide is intended to help you as you navigate the grievance process. We encourage you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

Readers should also be aware that this Guide doesn't apply to New York City and Nassau County, which have different procedures and forms (and, in any event, are unlikely to have any factory farms within their borders).

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

New York Tax Grievance Process

The dates used here are applicable to most, but not all, jurisdictions. For information on the dates in a particular assessing unit, you can call your assessor's office or go to www.orps.state.ny.us/MuniPro/, then select the county in which your assessing unit is located, then click on "Assessment Roll Dates."



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 details and for information on reaching an agreement with your assessor prior to a challenge. Also, be sure to confirm the dates for your assessing unit, as some don't follow the dates below.

- ___ Check your tentative assessment roll after May 1st for:
 - ___ Your tax map parcel number, property identification number, or section/block/lot of your property;
 - ___ The assessed value of your property;
 - ___ The full value of your property;
 - ___ The assessment rate used by your assessing unit (uniform percentage of value or level of assessment);
 - ___ The full value and assessed value of any properties similar to yours, if possible.
- ___ File complaint form RP-524 with your assessor or your local Board of Assessment Review (BAR).
 - ___ Form RP-524 must *arrive* on or before Grievance Day (4th Tuesday in May).
 - ___ Form RP-524 should be mailed certified mail, return receipt requested, or delivered in person with a receipt for confirmation.
 - ___ Attach the necessary documentation to your Form.
- ___ Appear before BAR for a hearing on Grievance Day (4th Tuesday in May).
- ___ Receive notification of BAR's decision.
- ___ Check your final assessment roll after July 1st for:
 - ___ The assessed value of your property;
 - ___ The total of exempt amounts;
 - ___ The taxable assessed value of your property (assessed value – exempt amounts).
- ___ Decide whether to appeal BAR's decision in an informal Small Claims Assessment Review (SCAR) or in a "tax certiorari" proceeding (a regular court proceeding).
- ___ For a SCAR appeal, file petition form RPTL-730 with the necessary documentation within 30 days of the completion of the final assessment roll with:
 - ___ County Clerk (3 copies);
 - ___ \$30 filing fee payable to the County Clerk.
 - ___ Hand-delivered or certified mail, return receipt requested.
 - ___ Clerk of your assessing unit (1 copy);
 - ___ Due within 10 days of filing with the County Clerk.
 - ___ Hand-delivered or certified mail, return receipt requested.
 - ___ School District Clerk (1 copy);
 - ___ Due within 10 days of filing with the County Clerk.
 - ___ By regular mail.
 - ___ County Treasurer (1 copy);
 - ___ Due within 10 days of filing with the County Clerk.
 - ___ By regular mail.
 - ___ Assessor or Chairman of the Board of Assessors (1 copy);
 - ___ Due within 10 days of filing with the County Clerk.
 - ___ By regular mail.
 - ___ Village Clerk under certain circumstances (1 copy).
 - ___ Due within 10 days of filing with the County Clerk.
 - ___ By regular mail.
- ___ Attend SCAR hearing, which will be within 45 days of filing form RPTL-730.
- ___ Receive notice of SCAR's decision, which will be within 30 days of the SCAR hearing.
- ___ If dissatisfied with SCAR's decision, decide whether to appeal in an Article 78 proceeding (a regular court proceeding).

BACKGROUND INFORMATION

Most of the information for this section is from New York's Office of Real Property Services' website, www.orps.state.ny.us. The website may be helpful in answering any further questions you have about property taxation.

Each year in New York, real properties are assessed to help calculate taxes. "Real property" is basically real estate - land and structures on the land, such as houses. Each parcel of property is assessed separately, even if owned by the same person. Revenues generated by the taxes are used to fund municipal services such as schools, road maintenance, and police and fire protection.

Assessments are performed by an assessor in the property's assessing unit, which is the town, city, county, or village in which the property is located. Some properties are located in multiple assessing units, and will be assessed more than once. (This applies most often to properties that are located in villages, though not all villages are assessing units.)

The assessor for the assessing unit is locally elected or appointed. Most assessors must complete basic training and receive certification from the state, and appointed assessors must participate in continuing education. The local government of the assessing unit may hire an expert to help the assessors appraise real property, and to give expert testimony in later proceedings.¹

To assess property, the assessor first determines its *market value* (a.k.a. "*full value*") - the price for which it would sell in an open market under normal conditions. Property value is determined as of the "valuation date" (usually July 1st of the previous year, but it varies by assessing unit.)

The best evidence of a property's market value is the recent sale price of the property in an arm's length transaction (where the seller is under no compulsion to sell, and the buyer is under no compulsion to buy). If there's no recent sale, there are three common methods for determining market value, but other methods may be used as well. The *market approach* is generally used for residential, vacant, and farm properties. It determines a property's value by comparing it to recent sales of similar properties. The *cost approach* is generally used for special purpose and utility properties. It determines a property's value by adding the cost to replace structures on the land to the market value of the land. The *income approach* is generally used for properties like apartment buildings, stores, or factories. It determines a property's value by estimating the amount of income it would produce if rented.

Once the market value has been determined, the actual assessment is calculated by multiplying the market value by the assessing unit's percentage rate (a.k.a. "*uniform percentage of value*" or "*level of assessment*"). (To ensure that taxes are fair, each property in the assessing unit must be assessed at the same rate.) The rate might be 100%, or it might be less than 100%.

¹ N.Y. Real Prop. Tax Law § 572 (McKinney 2007).

Example: In the City of Saratoga Springs, the uniform percentage of value was 78.38% in 2008. So, if a property's market value was \$100,000, its assessment would be \$78,380. By contrast, in the Town of Castile, the uniform percentage of value for 2008 was 100%. So, a property with a market value of \$100,000 would be assessed at \$100,000.

Some properties, such as religious property, are wholly or partially exempt from taxation.

When all of the assessments in an assessing unit are completed, they're published in a ***tentative assessment roll***, usually on May 1st (some units have different dates). After the tentative assessment roll is filed, property owners may protest, or "grieve," their assessments before the ***Board of Assessment Review (BAR)*** on Grievance Day (usually the fourth Tuesday, though it varies by assessing unit). After grievances are heard, the assessing unit publishes a ***final assessment roll***, usually on July 1st. Property owners who are still unsatisfied with their assessments may seek further review, either in formal court or in ***Small Claims Assessment Review (SCAR)***. Later (usually in January), property owners receive their tax bills or receipts.

The law doesn't require you to hire an attorney at any level, but you may wish to, especially if you appeal to the courts under Article 7 tax certiorari or Article 78. You can also have someone else represent you before BAR and SCAR, such as a family member, attorney, or property tax consultant.

THE GRIEVANCE PROCESS²

I. Step 1: Gathering Information

Before the tentative assessment roll is published, you may wish to contact your assessor's office for information about your assessment and the review process. (You can also get the information elsewhere, as described below.)

If you contact your assessor, questions to ask include:

1. When is the tentative assessment roll published, and where and when can I view it?
2. What is the deadline for filing a complaint to seek a reduction in my assessment?
3. When is Grievance Day?
4. When is the final assessment roll published, and where and when can I view it?
5. What is the latest state equalization rate for this assessing unit?*
6. What is the latest residential assessment ratio (RAR) for this assessing unit?*
7. What uniform percentage of value will appear on the tentative assessment roll?*

* You might need this information later for the complaint form for assessment review.

For your assessing unit's contact information, you can check your local phonebook or Appendix C.

- You might want to become familiar with properties in your assessing unit that are similar to yours. (Similar properties share characteristics such as square footage, style, age, quality of construction, condition, and site size.)
 - You could look at similar properties in your assessing unit that are both near and far from factory farms, and note their owners and addresses.
 - When you view the tentative assessment roll, you can check the assessments for these properties. If they are less than yours, they may help you reduce your assessment (see Appendix A).
 - If the properties were recently sold, you can try to find out their sale prices. If they are less than your assessment, they may help you reduce your assessment (see Appendix A).

² The format for this part is loosely based on New York State's 2006 guide to tax challenges. Unless otherwise noted, the information for this part was drawn from a combination of the following sources: New York State Office of Real Property Services (NY ORPS), www.orps.state.ny.us, including *What to Do if You Disagree with Your Assessment* ("What To Do") (Nov. 2007), available at www.orps.state.ny.us/pamphlet/complain/howtofile/whattodo.pdf; N.Y. Real Prop. Tax Law §§ 102, 503, 512, 522, 523, 523-a, 524, 525, 700 - 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 727, 729 - 739 (McKinney 2007); N.Y. Comp. Codes R. & Regs. tit. 22, §§ 202.58(b), (e), 202.59; New York State Office of Real Property Services, Opinions of Counsel (NY ORPS Opinion), nos. 2-97 (1973), 4-21 (1974), 5-75 (1976), 7-67 (1981), 8-83 (1984), 9-117 (1992), 10-37 (1997), 10-54 (1998), 10-89 (1999), 11-36 (2002), available at www.orps.state.ny.us/legal/opinions/index.cfm; communications with New York State's Office of Real Property Services, and with several assessing units and/or localities throughout New York.

New York's Office of Real Property Services website has some helpful suggestions on where to get comparable sales information and how to analyze it:

http://www.orps.state.ny.us/pamphlet/mv_estimates.htm.

Places to look include your local assessor's office, your municipal offices, local newspapers, and local real estate agents.

II. Step 2: Reviewing the Tentative Assessment Roll

A. What It Is

The tentative assessment roll is published yearly by the assessor for each assessing unit. Traditionally, it was a long roll of paper; now, it may be a booklet or it may be electronic. It lists assessment information the assessed properties within the assessing unit for the current year, including each property's assessed value, estimated full value, and level of assessment/uniform percentage of value.

- Properties are listed by tax parcel number. Electronic rolls may have an alphabetical listing, and may be searchable – it varies by assessing unit.
- As explained above, the “assessed value” of a property may be less than the “full value” if the assessing unit uses an assessment level of less than 100%.
- The roll is “tentative” because the assessments listed aren't final - the final assessment roll is filed after taxpayers have a chance to seek assessment reductions.

To see an example of a tentative assessment roll with an explanatory key, go to:

<http://www.orps.state.ny.us/pamphlet/tentasmroll.html>.

B. When It Is Filed

The tentative assessment roll is generally filed on May 1st, but some units have different dates.

- Each assessor must place a notice in the assessing unit's official or general newspaper when the tentative assessment roll is filed. If the assessing unit is a Town, notice will also be posted at the entrance to the Town clerk's office. The notice states when/where the roll can be viewed, and when/where BAR will meet.
- Although notice of tentative assessment is sometimes sent by mail, assessors are only required to give notice to taxpayers whose assessments increased from the previous year. Also, mailed notice is not due until ten days before Grievance Day (which gives you less time to file a grievance). Therefore, it's best not to depend on receiving notice, and to check the tentative roll when it is filed.

For information on tentative assessment roll filing dates, you can see Appendix C or call your assessor or municipal clerk.

C. Where It Can Be Reviewed

You can find out where to view the roll by contacting your assessor or reading the assessor's notice.

- The tentative assessment roll is public information and is usually kept at the assessor's office or the town clerk's office. (NY law requires the assessor to be in attendance with the roll for at least sixteen hours.)
- The roll must be available for viewing until BAR has heard all complaints relating to it.
- If you own property in an assessing unit but don't live there (and so are unable to view the tentative assessment roll), you can file a written request for information about your property assessment. For specific requirements, see www.orps.state.ny.us/pamphlet/complain/howtofile/adminreview.htm.

D. What to Look For

When viewing the roll, you can take note of:

1. The tax map parcel number, property identification number, or section/block/lot of your property;
2. The assessed value of your property (both "land" and "total");
3. The full value of your property;
4. The assessment rate used by the assessing unit (uniform percentage of value or level of assessment);
5. The full value and assessed value of any properties that are similar to yours, both near and far from factory farms. (Recall that similar properties share characteristics such as square footage, style, age, quality of construction, condition, and site size.)

If your property is assessed by more than one assessing unit (e.g., a Village and a Town), you should check the tentative assessment roll for each unit.

III. Step 3: Seeking Reduction by Speaking with Assessor

It's possible to reduce your assessment without appearing before BAR by meeting with your assessor.

- You should arrange the meeting soon after the tentative roll is filed, so you'll have time to file a grievance complaint if the assessor doesn't agree to a reduction.
- In the meeting, you can explain that a nearby factory farm has harmful impacts on your property, and request that the assessor reduce your property's full value accordingly.

See Appendices A and B for ideas about information to use in this meeting.
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If you and the assessor agree that your assessment should be reduced (and agree on the size of the reduction), you may enter into a "stipulation" by completing Form RP-524 and filing it with BAR by Grievance Day.

- See section IV.A for information on filing Form RP-524.

BAR usually approves the stipulated assessment³ (in most cases, BAR *must* approve it).⁴

- BAR doesn't have to notify you of approval; you should check the final assessment roll to make sure it includes your stipulated assessment.
- Once BAR approves the assessment, you can't ask BAR for a further reduction.
- Once the approved assessment appears on the final assessment roll, you can't appeal it.

In the unlikely event that BAR doesn't approve the stipulated assessment, BAR must notify you in writing on or before completion of the final assessment roll (in most assessing units, by July 1st).

- In this case, you can seek review in a SCAR proceeding, an Article 7 tax certiorari proceeding, or an Article 78 proceeding.⁵ (See Section VI.A for more information.)

For information on final assessment roll dates, you can see Appendix C or call your assessor.

IV. Step 4: Seeking Reduction before the Board of Assessment Review (BAR)

If you can't agree on an assessment reduction with your assessor, the next step is to seek a reduction by appearing before BAR. (*Note that you don't have to meet with your assessor first in order to appear before BAR.*)

- Begin the process by filing Complaint Form RP-524.
- There's no fee.
- There's no limit to the reduction you can request.
- There's an assumption that the assessment made by the assessor is correct, so you have the burden of proving otherwise. So, you should be sure to present as much information and documentation as you need in support of your request, and to show that the assessor's estimate of full value is incorrect.

³ As one Court put it in 1999: "This may well be the first time a court has been asked to review a decision by a Board of Assessment Review (B.A.R.) in which the B.A.R. refused to ratify a stipulation entered into between the property owner and the town assessor." *Hornell Country Club, Inc. v. Hornellsville Bd. of Assessment Review*, 700 N.Y.S.2d 659, 182 Misc. 2d 687, 688 (N.Y. Sup. Ct. 1999).

⁴ N.Y. Real Prop. Tax Law § 525(3)(a) ("The board of assessment review shall . . . ratify assessment stipulations entered into by the assessor and the complainant") (emphasis added); *Hornell*, 182 Misc. 2d at 692 (stating that "shall" means *must*, not *may*). BAR must ratify a stipulation unless the stipulation was late, or the complaint form was not filled out properly. *See id.* at 694 (citing N.Y. Real Prop. Tax Law § 524(3)). BAR does not have the authority to "substitute its judgment for that of the assessor as to the propriety of the stipulated assessment valuation itself." *Id.* Instead, a "taxpayer should be able to rely on the adequacy of a stipulation entered into in good faith." *Id.* at 693.

⁵ NY ORPS Opinion #10-89 (July 16, 1999) (clarifying that Article 78 is not exclusive remedy for refusals to ratify stipulations).

A. Complaint Form RP-524

Form RP-524 is available at <http://www.orps.state.ny.us/ref/forms/pdf/rp524.pdf> and at your assessor's office.

For more information on how to fill out Form RP-524, check out "What To Do If You Disagree with Your Assessment" at <http://www.orps.state.ny.us/pamphlet/complain/howtofile/index.htm>.

1. Filling out Form RP-524

Form RP-524 asks for basic information on your property, including the reasons you believe your assessment should be reduced. A few things to note are:

- Be sure to fill out all relevant parts of the form, so that your complaint isn't dismissed.
- The information that you submit on your form will be publicly available (unless it falls under an exception such as trade secrets or significant personal privacy).
- Keep in mind that you must file a separate form for each separately assessed parcel, and with each assessing unit if your property was assessed by more than one unit.
- For Part One ("General Information"):
 - Section 3 only needs to be completed if you choose to have someone else represent you before BAR. Complainants usually represent themselves, but you can designate anyone to represent you – e.g., an attorney or property tax consultant with tax grieving experience.

See Appendix D for tips on how to find an attorney.

- For Section 6, remember that your *assessed value* will be less than your full market value if your assessing unit assesses at less than 100%.
- Section 7 is where you put your estimate of the current market value of your property.
 - Your estimate should reflect the total market value (land + attachments).
 - Your estimate should reflect the reduction in value caused by the factory farm.
 - You can't request a higher reduction (lower assessment) later, so you should make your estimate carefully.
- For Part Two ("Information Necessary to Determine Value of Property"):
 - You can check the factor(s) that apply to your property, and attach explanatory information.
 - If information about how a nearby factory farm impacts your property's value doesn't fit into any of the other factors, you can attach it under "additional supporting documentation."⁶

⁶ The list of factors should be non-exclusive. Other information may be submitted under the "additional supporting documentation" factor (a "catch-all" factor), and the top of the Form states: "If additional explanation or documentation is necessary, please attach." Further, New York's 2007 guide to tax grievances states that the written complaint "should include statements, records, and other relevant information to support" the complaint. *What to Do*, *supra* note 2, at 4.

Refer to appendices A and B for ideas about information to include in Form RP-524.

- For Part Three (“Grounds for Complaint”):
 - Complete Subpart A (“Unequal Assessment”) if your assessing unit assesses property at less than 100% of its full value.
 - Subpart A Section 2: It’s probably easiest to enter the assessing unit’s uniform percentage of value/level of assessment here and check Line c (statement of the assessor). This indicates that you’re only challenging the estimate of full value of your property (and not the average percentage used to calculate your assessment).
 - Subpart A Section 3: This is where you write in your estimate of your property’s full value (the same as your estimate in Part One Section 7).
 - Complete Subpart B (“Excessive Assessment”) if your property is assessed at 100% of its full value.
 - Subpart B Section 1 Line b: This is where you write in your estimate of your property’s full value (the same as your estimate in Part One Section 7).
 - Subparts C and D (“Unlawful Assessment” and “Misclassification”) aren’t based on an improper estimate of full value.
- Part Four: you only need to complete this if you designate someone to represent you before BAR.
- Part Six (“Stipulation”) applies if you and your assessor agreed to reduce your assessment (discussed above).

2. Filing Form RP-524

- You must file the form, with supporting materials attached, with the assessor or BAR by Grievance Day (usually the 4th Tuesday in May).
 - The form must *arrive* at the assessor’s office *on or before* Grievance Day. If the form arrives after Grievance Day (even if postmarked earlier), you’ll lose your right to review.
 - It’s best to ensure that the form arrives at least four business days before Grievance Day. Otherwise, your hearing could be postponed.

To find out when your Grievance Day is: look at the public notice of the tentative assessment roll, contact your assessor’s office, or see Appendix C.

- You can mail the form to your assessor’s office, or take it there in person.
 - If you mail the form, you might want to send it certified mail, return receipt requested.
 - If you hand-deliver the form, you should request a receipt.
 - Some offices accept electronic submissions (check with your assessor’s office).
- Alternatively, you can submit the form to BAR on Grievance Day.

- If you own property in an assessing unit but don't live there, you can request a later hearing date. For specific requirements, see <http://www.orps.state.ny.us/pamphlet/complain/howtofile/adminreview.htm>.

See Appendix C for your assessor's office contact information.
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B. About the Board of Assessment Review (BAR) Hearing

BAR is composed of 3-5 residents of the assessing unit who are appointed by the local government and supposed to have general knowledge of local property values. BAR can't include the assessor or any staff from the assessor's office. Sometimes an administrative hearing panel is appointed to hear grievances, for instance during revaluation years when there are likely to be many grievances.

On Grievance Day, the BAR in each assessing unit evaluates property owners' complaints.

- The public notice of the tentative assessment roll lists the time/place for BAR hearings, but you should contact your assessor's office to verify the information. (E.g., if your assessing unit uses an assessor who is also employed by another assessing unit, BAR may meet on a different date to accommodate the assessor's schedule.)
- BAR meets for as many days as necessary to hear the complaints.
- Hearings are open to the public (under NY's Open Meetings Law), but BAR deliberates and makes its decisions privately.

1. Your Role at the Hearing

Usually, you are not required to attend the hearing. However, you have the right to attend the hearing and to present statements and evidence in support of your complaint.

- Because you have the burden of proving your assessment is wrong, it's a good idea for you to attend to support your complaint, present evidence, answer BAR's questions, hear what the assessor says, and question the assessor if necessary.
- You could try to bring in witnesses (though this isn't common practice at informal BAR hearings).
- You could bring in signed statements from people.
- Sometimes, BAR may *require* you to attend or present additional evidence.⁷ If you willfully refuse to appear or answer material questions asked by BAR, then you won't be entitled to an assessment reduction.

⁷ N.Y. Real Prop. Tax Law § 525(2)(a).

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

1) Specific information about your property that shows how its market/full value has been decreased by a nearby factory farm. This would include any documentation you submitted with Form RP-524, as well as other evidence you bring to the hearing. Appendix A has ideas for this type of information and an 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 available at www.factoryfarmtaxprotest.com.

2. General Information on Hearings

- The assessor or assessor’s staff is required to attend the BAR hearing and has a right to be heard.
 - The assessor has a right to have his remarks recorded in the minutes for the hearing, upon request. (The remarks have to be made in an open and public session of BAR.)
 - BAR may ask the assessor to present evidence to support his assessment.
 - The assessing unit might have an expert to help with appraisals and to give testimony in hearings.

- The Board’s job is to arrive at fair and impartial decisions regarding property assessments and “determine the final assessment for each complaint before it.”⁸
 - The hearing is informal and isn’t meant to be adversarial; it’s designed to ensure that you receive the correct assessment.⁹
 - BAR may “administer oaths, take testimony and hear proof” regarding your complaint.¹⁰
 - BAR may “determine what information is material and whose presence is required.”¹¹
 - BAR should not “speculat[e] as to the outcome of litigation against the assessor’s methods” or consider whether “similarly treated taxpayers” have failed to complain.¹²
 - BAR may not “adopt a general policy requiring owners of residential property to submit professional appraisal reports as a condition precedent to reducing an

⁸ NY ORPS Opinion # 7-67 (Dec. 10, 1981).

⁹ *Jakubovitz v. Dworschak*, 413 N.Y.S.2d 444, 67 A.D. 2d 977, 978 (N.Y. App. Div. 1979).

¹⁰ N.Y. Real Prop. Tax Law § 525(2)(a).

¹¹ *Jakubovitz*, 67 A.D. 2d at 978.

¹² NY ORPS Opinion #7-67 (Dec. 10, 1981).

assessment.”¹³ Instead, it may require you to “furnish information reasonably necessary to resolve any issue raised by the taxpayer’s complaint.”¹⁴

- Minutes of the hearing are filed in the municipal clerk’s office where they can be viewed by the public.
 - The minutes aren’t formal transcripts and don’t contain line-by-line dialogue.
 - Generally, they simply list the grievances and the results (though this may vary by jurisdiction).

C. Notice of BAR’s Decision

- Usually, BAR does not make its decision the day of the hearing.
 - The assessor can’t be present at BAR’s deliberations.
 - If an administrative panel (instead of BAR) heard your complaint, BAR will have to approve the panel’s decision, which might require an additional hearing. If so, BAR will notify you.
 - BAR could raise or lower your assessment.
- After making its decision, BAR must notify the assessor of any changes (including stipulations) in time for them to be included in the final assessment roll (before July 1st in most assessing units).
- BAR must also notify you of its decision when or before it notifies the assessor (except in the case of ratified stipulations). (However, if BAR doesn’t mail the notice, or if you don’t receive it, BAR’s determination will still be valid.) In most units, you would receive notice on or before July 1st. The notice must:
 - Be in writing;
 - Contain an explanation of BAR’s decision;
 - Note that you can appeal the decision in a Small Claims Assessment Review (SCAR) proceeding, or Article 7 tax certiorari proceeding;
 - State the deadline for filing petitions under SCAR and Article 7 tax certiorari;
 - Tell you where you can get a SCAR petition.

To see the standard “Notice of Determination” form that BAR uses to notify complainants of its decisions, go to <http://www.orps.state.ny.us/ref/forms/pdf/rp525.pdf>.

V. Step 5: Reviewing the Final Assessment Roll

For information on final assessment roll filing dates, contact your assessor’s office or see Appendix C.

- It’s a good idea to review the final assessment roll whether or not you receive notice of BAR’s decision.

¹³ NY ORPS Opinion # 8-83 (May 1, 1984).

¹⁴ *Id.*

- The deadline for filing an appeal runs from the final assessment roll, not from when you receive notice from BAR.
- If BAR approved your reduction, you can make sure that the assessor included it in the final assessment roll.
- The deadline for filing the final assessment roll is usually July 1st (but some units have different dates).
 - Your assessor must place a notice in the assessing unit's official or general newspaper that the final roll has been filed.
 - If the assessing unit is a Town, notice must also be posted at the entrance of the Town clerk's office.
- The final roll is public information and can be viewed at the municipal clerk's office.

You can look your municipal clerk up in your local phone book, or see Appendix C for contact information.

When viewing the roll, note:

- The total assessed value of your property;
- The total of all exempt amounts;
- The resulting taxable assessed value (total assessed value – exempt amounts).

(You'll need this information for appeals.)

VI. Step 6: Appeals of BAR Decisions

There are two kinds of BAR decisions that you might wish to appeal:

- A. A decision not to approve a stipulation agreed upon by you and your assessor, or;
- B. A decision not to reduce your assessment after a hearing.

A. Refusal to Ratify Stipulation

If BAR refused to approve your stipulation, you could appeal BAR's denial in one of three ways: a SCAR proceeding, an Article 7 tax certiorari proceeding, or an Article 78 proceeding.¹⁵

- SCAR proceeding:
 - File within 30 days.
 - Has eligibility requirements (discussed in Section VI.B).
 - You can present a new case with more evidence than you presented to BAR.
 - Less formal than a court proceeding (similar to BAR).

¹⁵ NY ORPS Opinion # 10-89 (July 16, 1999) (clarifying that Article 78 is not exclusive remedy for refusals to ratify stipulations).

- Article 7 tax certiorari proceeding:
 - File within 30 days.
 - You can present a new case with more evidence than you presented to BAR.
 - A regular court proceeding.
 - You should seriously consider seeking legal counsel from a licensed New York attorney.

- Article 78 proceeding:
 - File within 4 months.
 - You *can't* submit more evidence than you submitted to BAR.
 - A regular court proceeding.
 - You should seriously consider seeking legal counsel from a licensed New York attorney.

B. Denial of Reduction after Hearing

If BAR denies your request for an assessment reduction after a hearing, you have two options for appeal:¹⁶

1. An informal hearing before Small Claims Assessment Review (SCAR), or;
 2. An Article 7 tax certiorari proceeding in New York Supreme Court.
- You generally can't proceed under both.¹⁷
 - There are eligibility requirements for SCAR.

The SCAR process is discussed more thoroughly in this section. Like BAR, SCAR is designed to facilitate your involvement in the process and has an informal hearing. Article 7 tax certiorari, on the other hand, is a formal court proceeding for which you should seriously consider seeking legal counsel.

1. Small Claims Assessment Review (SCAR) Petition

SCAR is part of the local Supreme Court. You are eligible to petition under SCAR if:

- You own and live in a one, two, or three-family home on your property and use it exclusively for residential purposes. Some condominiums and vacant land also qualify.
- You filed a written complaint with BAR on time.
- You don't request a greater reduction than you requested before BAR.
- Your requested reduction isn't more than 25% of the assessed value, if the equalized value of the property is greater than \$450,000. (This is explained below in "Subpart B: Calculation of Equalized Value and Maximum Reduction in Assessment.")

¹⁶ N.Y. Real Prop. Tax Law §§ 700, 730.

¹⁷ Filing a petition under SCAR generally waives the right to review under Article 7 tax certiorari (unless the SCAR hearing officer determines you were not eligible for SCAR, and you then begin a timely Article 7 proceeding). *Id.* § 736(1).

a. Petition Form RPTL-730

The first step in the SCAR process is to file a form.

- The petition form is available at the office of the county clerk in which your assessing unit is located.
- Remember to file a separate form for each parcel of property.

Form RPTL-730 is also available at <http://www.nycourts.gov/litigants/scar/Petition.pdf>.

For more information on how to fill out Form RPTL-730, check out

“What To Do If You Disagree with Your Assessment” at

<http://www.orps.state.ny.us/pamphlet/complain/howtofile/index.htm>.

1) Filling out Form RPTL-730

Much of the information you need for this form was also required on the BAR form or is self-explanatory. Some things to note are:

- For Part One (“General Information”):
 - Section 3: The date of the final assessment roll is the *later* of: the last date allowed by law for filing of final roll (usually July 1st), or the day the assessor publishes and posts notice that the final roll has been filed.

Example: If the final roll is due on July 1st, but the assessor doesn’t publish notice of the roll until July 8th, you would enter July 8th. If the roll is due on July 1st, but the assessor published notice on June 28th, you would enter July 1st.

- Section 3 is also where you enter your assessment. (You’ll enter your requested assessment later.)

Contact your assessor’s office to find out the date of the final completion of the assessment roll.

- For Part Two (“Grounds for Petition”), Subpart A is where you enter your requested assessment (the one you requested on your BAR form).
- Part Two Subpart B (“Calculation of Equalized Value and Maximum Reduction in Assessment”) shows you if the reduction you’re requesting is too high for you to proceed under SCAR.
 - If it’s too high, you can either:
 - Appeal in an Article 7 tax certiorari proceeding instead, or;
 - Reduce your requested reduction to the amount calculated here and continue under SCAR.
 - Section 1 applies if your property isn’t in NYC or Nassau County (which are “special assessing units”).
 - First, enter the assessed value of your property as listed on the final roll (not your requested assessment.) Then, enter the state equalization rate for

your assessing unit. Divide the assessed value by the equalization rate to get the “equalized value.”

Example: If the assessed value of your property is \$200,000, and the state equalization rate for the assessing unit is 75%, then the equalized value is \$266,667 ($200,000 \div 0.75 = 266,667$). Or, if the assessed value of your property is \$600,000, and the state equalization rate is 75%, then the equalized value is \$800,000 ($600,000 \div 0.75 = 800,000$).

For information on state equalization rates, contact your assessor’s office or follow the links in Appendix A.

- If the equalized value of your property is \$450,000 or less, then you can proceed with SCAR.
- If the equalized value is more than \$450,000, there’s a limit on the reduction you can seek before SCAR. (See below.)
- Section 3 is where you calculate the maximum reduction you can seek before SCAR if your equalized value is more than \$450,000 by entering the assessed value and multiplying it by 0.25.
 - If you want a higher reduction, you must proceed under Article 7 tax certiorari; you must reduce your request to proceed under SCAR.
 - In any case, you can’t seek a higher reduction that you sought before BAR.

Example: If the equalized value of your property is \$800,000, and the assessed value is \$600,000, then the maximum *reduction* you can seek before SCAR is \$150,000 ($600,000 \times 0.25 = 150,000$). Therefore, the lowest *assessment* you can request is \$450,000 ($600,000 - 150,000 = 450,000$).

- Part Two Subpart C (“Unequal Assessment”) applies if properties in your assessing unit are assessed at less than full value. (For example, if the full value of your property is \$100,000, but it is assessed at \$85,000 (85% of full value).)
 - You should check Line a if you used the uniform percentage of value/level of assessment as your percentage on your BAR complaint. (This is because the uniform percentage of value applies to all property on the assessment roll, not just residential property, as the RAR in Line b does.)
 - Your estimate of full value will be the estimate you used on your BAR complaint (Part One Section 7).
 - Then you enter the percentage at which you believe your property should be assessed and the reason, as you did on your BAR complaint. (E.g., “statements of the assessor” would apply if you relied on the uniform percentage of value listed on the tentative assessment roll.)
 - The final assessment you request should be equal to the assessment you claimed before BAR (unless the *reduction* you requested before BAR is greater than the SCAR limit calculated above).

Example: Assume as above that your property was assessed at \$600,000 and the maximum reduction you can request is \$150,000. If you claim that your assessment should be \$400,000, you have asked for a \$200,000 reduction and exceeded the limit. The lowest assessment you can seek before SCAR is \$450,000 ($600,000 - 150,000$) (unless you requested a higher assessment {e.g., \$475,000} before BAR, in which case the BAR amount is the lowest assessment you can seek).

- Part Two Subpart D (“Excessive Assessment”) applies if properties in your assessing unit are assessed at 100% of full value. (For example, if your property’s full value is \$150,000 and it is assessed at \$150,000.)
 - Section 1 is where you enter the value of your property as it was assessed, and the value as you believe it should be assessed.
 - Remember that your requested assessment can’t be less than the one you claimed before BAR, and the reduction you seek can’t exceed the limit calculated above.

Example: Assume your property was assessed at \$500,000, 100% of its full value. The equalized value of the property is thus \$500,000 ($500,000 \div 1$). The maximum reduction you can seek is \$125,000 ($500,000 \times 0.25$) – so your requested assessment can’t be lower than \$375,000 ($500,000 - 125,000$).

- Part Two Subpart E (“Information to Support the Full (Market) Value Claimed”) gives you a chance to explain why the assessor overestimated the full value of your property.
 - You should consider getting a recent appraisal detailing the reasons a nearby factory farm devalues your property.
 - Proper appraisals are strong, acceptable proof of value.
 - If you don’t submit an appraisal now, you won’t be able to submit an appraisal if you seek review of SCAR’s decision later.
 - Information that doesn’t fit into one of the listed categories might not be accepted.
 - If you don’t have an appraisal, you can try to submit the same information here as you did before BAR, as well as other information since BAR, by attaching additional documentation. (A recent call to the SCAR court indicated that you can present such evidence at the hearing, but you may want to call SCAR yourself to confirm.)

See Appendices A and B for ideas about information to submit with your form and at the hearing.

- Part Four: You only need to complete this if you designate someone to represent you before SCAR.¹⁸

¹⁸ A non-attorney representative may argue both the legal and the factual issues before SCAR. *Cipollone v. City of White Plains*, 581 N.Y.S.2d 421, 181 A.D.2d 887, 888 (N.Y. App. Div. 1992).

2) Filing Form RPTL-730

You must file the petition form, with supporting materials attached, with various people before the filing deadline – petitions filed after the deadline will be dismissed.¹⁹

The petition must be mailed or hand-delivered to the County Clerk within 30 calendar days of the *later* of:

- The date the assessing unit is required to file the final assessment roll, or;
- The date the assessing unit publishes notice that it has filed the final assessment roll.

As with the BAR complaint Form, it's a good idea to mail the petition via certified mail, return receipt requested, or to request a receipt if delivered in person. Copies mailed to the county and assessing unit clerks *must* be by certified mail, return receipt requested. If the petition is filed past the deadline, it could be dismissed.

To find out when your final assessment roll deadline is or when your final assessment roll was actually filed, contact your assessor's office or municipal clerk, or see Appendix C.

Petition Delivery Requirements

By filing deadline:

- **County Clerk (3 copies)**
 - Include a filing fee of \$30, made payable to the County Clerk (the Clerk of the Supreme Court).²⁰
 - Must be delivered in person or by certified mail, return receipt requested.
 - If delivered in person, it's a good idea to get a receipt stating the date and time the petition was delivered.

Within 10 calendar days of filing with the County Clerk:

- **Clerk of the Assessing Unit (1 copy)**
 - If there's no Clerk, you should file with the officer who performs the customary duties of the clerk.²¹
 - Must be delivered in person or mailed by certified mail, return receipt requested.
 - If delivered in person, you must be given a receipt stating the date and time the petition was delivered.
- **School District Clerk (1 copy)**
 - Mailed by regular mail to school districts in which any part of your property is located.
 - If there's no clerk, or the clerk's name and address can't be obtained, you may mail to a trustee of the school district.

¹⁹ The filing requirements in cities with a population of one million or more are slightly different, but probably inapplicable here.

²⁰ If you receive at least half of the reduction you request, you will be awarded \$30 for costs. If you receive less than half, you might be awarded up to \$30. If you do not receive a reduction, you will not receive any reimbursement.

²¹ N.Y. Real Prop. Tax Law § 730(8).

- This isn't required for the Buffalo City, Rochester City, Syracuse City, and Yonkers City school districts.
- **County Treasurer (1 copy)**
 - Mailed by regular mail.
- **Assessor or Chairman of the Board of Assessors (1 copy)**
 - Mailed by regular mail.
- **Village clerk if village recently ceased to be an assessing unit (1 copy)**
 - Mailed by regular mail.

The Assessment Review Clerk in the Supreme Court will assign your petition at random to a hearing officer(s).

- Hearing officers are selected by the Court from a pool of applicants.
- They don't need to be attorneys, but must have training, experience, and knowledge of assessment, valuation, and relevant law.
- The hearing officer is usually a local real estate agent or attorney, and can't have any conflicts of interest regarding the petitions (e.g., an economic or ownership interest in a subject property).

b. About the Small Claims Assessment Review (SCAR) Hearing

- The hearing officer will contact you at least 10 days before the hearing to set the date, time, and place for the hearing.
 - The hearing should be held within 45 days of the deadline for filing petitions.
- Hearings are usually held in the county where the property is located.
- Hearings are open to the public.
- All parties are required to attend the hearing.
 - You have a right to appear personally to support the statements in your petition and attachments, with or without a representative.
 - Failure to appear means the hearing officer will decide your petition based on the evidence already submitted.
 - You can authorize your representative to appear without you. (The authorization must be in writing and have the same year on it as your petition.)
- The hearing is informal.
 - There's no transcript.
 - It's conducted "on an informal basis in such manner as to do substantial justice between the parties according to the rules of substantive law."²²
 - Statements and evidence are presented to the hearing officer, who must "assure that decorum is maintained" and "consider the best evidence presented in each particular case."²³
 - The SCAR hearing is like an informal trial, so you aren't bound by "statutory provisions or rules of practice, procedure, pleading or evidence."²⁴

²² *Id.* § 732(2).

²³ *Id.*

²⁴ *Id.*

- You don't need to "present expert witnesses nor be represented by an attorney."²⁵
 - However, you may bring in witnesses to support your petition, and may question the assessor and any other witnesses.
- The officer has "broad discretion in considering evidence,"²⁶ and may "consider a wide variety of sources and information in evaluating assessments."²⁷
 - The hearing officer may request additional evidence. (If you willfully refuse to comply, you might not be able to receive your reduction.)
 - The hearing officer may also want to visit your property.
- There is still a presumption that your original assessment is correct, so the burden of proof is still on you to prove that it's incorrect.
 - However, there is no presumption in favor of BAR's decision – SCAR is hearing its own evidence and making its own decisions ("de novo" review).
 - You can include more evidence that you did before BAR.
- Remember that you can't request a greater reduction at the hearing than you did on your petition. Also, the hearing officer can't give you a greater reduction than you requested.

c. Notice of SCAR's Decision

Within 30 days after the hearing, the hearing officer must give a written decision to the Clerk of the Supreme Court.

- The officer must mail a copy to you, the clerk of the assessing unit, and each tax district named in the petition.
- The decision must state the officer's findings of fact and the evidence on which he or she relied.

If SCAR approves your requested reduction:

- You should check the assessment roll to make sure it was changed to reflect your reduction.
- If you already paid taxes on the original assessment, you should get a refund of those taxes (with interest) without having to apply for it.

When SCAR orders a reduction, there can't be anymore changes in the property's assessed value for one year (absent special circumstances such as revaluation in the assessing unit or improvements made to the property).

d. Review of SCAR's Decision

If SCAR doesn't approve your requested reduction, you can seek review under an Article 78 proceeding in New York Supreme Court.²⁸ Some basic information on the proceeding is given here, but you should seriously consider seeking legal counsel from a licensed New York attorney

²⁵ *Id.*

²⁶ *Meola v. Assessor of Colonie*, 615 N.Y.S.2d 506, 207 A.D.2d 593, 594 (N.Y. App. Div. 1994).

²⁷ *Montgomery v. Bd. of Assessment Review of Union*, 817 N.Y.S.2d 419, 30 A.D.3d 747, 749 (N.Y. App. Div. 2006).

²⁸ N.Y. Real Prop. Tax Law § 736(2). *See also, e.g., Montgomery*, 30 A.D.3d at 747 (reviewing denials of reduction by SCAR under Article 78).

if you pursue this route. (Remember there is no requirement that you have an attorney, but it's recommended.)

- The first step is to file a petition with the Supreme Court in the county in which SCAR is located, most likely within 4 months of receiving SCAR's decision.²⁹
 - There are specific requirements for the petition, as well as other filing and service requirements.³⁰
- If other taxpayers have filed similar grievances and are also seeking Article 78 review, you may make a motion with the Court to consolidate your cases at this point.³¹
- There's a presumption that the assessor's assessment is accurate³²
- The Court will uphold SCAR's decision if it has a rational basis (based on the record from the SCAR proceeding).³³
- You can't present additional evidence at this stage.

For information on how to find an attorney, see Appendix D.

2. Article 7 Tax Certiorari Proceeding

The second option for appealing BAR's decision not to reduce an assessment after a hearing is an Article 7 tax certiorari proceeding.

- Unlike SCAR, a tax certiorari appeal is a formal court proceeding. Therefore (though not required), you should strongly consider seeking legal counsel from a licensed New York attorney if you pursue this route.

Here are some basics about the proceeding, to give you a general idea of how it works.

- The first step is to file a petition (which has specified requirements) with the Supreme Court in the county in which your property is located.³⁴
 - The deadline is 30 days from the completion of the final assessment roll (as explained above, the later of the date the roll was required to be filed, or the date

²⁹ N.Y.C.P.L.R. §§ 217(1), 506(b), 7804(b); *see also Adventist Home, Inc. v. Bd. of Assessors of Livingston*, 83 N.Y.2d 878, 880 (1994) (holding that Article 78 4-month statute of limitations for review of tax board decision ran from time of "actual notice" of decision).

³⁰ N.Y.C.P.L.R. § 7804.

³¹ N.Y. Real Prop. Tax Law § 602(a); *Montgomery*, 30 A.D. 3d at 748 (taxpayers joined in Article 78 appeal to Supreme Court).

³² *Moyer v. Town of Greece*, 724 N.Y.S.2d 289, 292-93 (N.Y. Sup. Ct. 2001) (citations omitted).

³³ *See, e.g., Krzys v. Clifton Park*, 699 N.Y.S.2d 554, 267 A.D.2d 658, 659-60 (N.Y. App. Div. 1999) (holding that SCAR decision had rational basis); *Montgomery*, 30 A.D.3d at 749 (holding that SCAR decision to deny reduction had rational basis, which was comparable sales information provided by assessor); *Meola*, 207 A.D.2d at 594 ("When a Hearing Officer's determination is challenged, the court's role is limited to ascertaining whether the determination has a rational basis.") (citation omitted); *Bellomo v. Bd. of Assessment Review of Mamakating*, 586 N.Y.S.2d 404, 185 A.D.2d 574, 575 (N.Y. App. Div. 1992) (in Article 78 proceeding, holding that "record contain[ed] a rational basis" for hearing officer's finding).

³⁴ N.Y. Real Prop. Tax Law §§ 702(1), 704(1), (2), 706(2), 708; N.Y. Comp. Codes R. & Regs. tit. 22, §§ 202.21, 202.59(b), (d).

notice was given of its filing).³⁵ (If the filing deadline is missed, the petition must be dismissed.³⁶)

- You may join your petition with other taxpayers on your tax roll who are challenging their assessments on the same grounds (e.g., lower full market values because of nearby factory farms).³⁷ The judge might consolidate petitions, too.³⁸
- There's still a presumption that the assessor's original assessment is correct – you have the burden of proving otherwise with “substantial evidence.”³⁹ (Once you do that, you have to prove by a “preponderance of the evidence” that your assessment is wrong.⁴⁰)
 - This is a new trial, so you can present your evidence again (including additional evidence) and the Court will make its own decision about your assessment.⁴¹
 - A “competent appraisal” is a way to meet the initial burden.⁴² Factors in a “competent appraisal” are:
 - That it was prepared by a “licensed and experienced” real estate appraiser;
 - Where the appraiser “personally inspected the property,” conducted interviews, “reviewed various publications,” and “surveyed local real estate”;
 - And arrived at a “formal appraisal report” containing “detailed descriptions and analyses of the property.”⁴³
 - New York's assessment review rules have specific requirements for an appraisal used at trial (otherwise the Court may refuse to consider it):⁴⁴
 - It must contain a “statement of the method of appraisal relied on” and “the conclusions as to value reached by the expert”;

³⁵ N.Y. Real Prop. Tax Law § 702(2).

³⁶ *Id.* § 702(3); *Garv Realty Corp. v. Gifford*, 387 N.Y.S.2d 145, 54 A.D.2d 578, 578 (N.Y. App. Div. 1976) (upholding dismissal of petition for failure to file by deadline).

³⁷ *See* N.Y. Real Prop. Tax Law § 706(2).

³⁸ *Id.* § 710.

³⁹ *State v. Town of Hardenburgh*, 710 N.Y.S.2d 435, 273 A.D.2d 769, 771 (N.Y. App. Div. 2000) (“It is well settled that a tax assessment fixed by a local tax assessor carries with it a presumptive validity.”) (citations omitted).

⁴⁰ *FMC Corp. v. Unmack*, 677 N.Y.S.2d 269, 273 (N.Y. 1998); *City of Troy v. Town of Pittstown Brittonkill Cent. School Dist.*, 762 N.Y.S.2d 651, 306 A.D.2d 718, 720 (N.Y. App. Div. 2003).

⁴¹ *Manhattan Ry. Co. v. Barker*, 46 N.E. 875, 152 N.Y. 417, 431 (1897) (tax certiorari court takes evidence and makes findings of fact like “new trial”); *Four Park Ave. Corp. v. Lilly*, 37 N.Y.S.2d 733, 265 A.D. 68, 70 (N.Y. App. Div. 1942) (“[t]he law is settled that [a certiorari proceeding is] in the nature of a new trial”); NY ORPS Opinion # 4-21 (“While an Article 7 proceeding has been called a ‘review’ proceeding it is in reality a trial de novo rather than a ‘review’ as such.”).

⁴² *FMC Corp.*, 677 N.Y.S.2d at 274-75; *see also* *Frontier Park v. Assessor of Babylon*, 741 N.Y.S.2d 96, 97 (N.Y. Sup. Ct. 2002) (testimony of experienced certified real estate appraiser met burden); *Miriam Osborn Mem'l Home Ass'n v. Assessor of Rye*, 841 N.Y.S.2d 821, 2007 WL 0649029, No. 17175/97, at *3 (N.Y. Sup. Ct. 2007) (where assessor claimed taxpayer failed to rebut presumption of validity because appraisal “was not based upon standard and accepted appraisal techniques,” holding taxpayer's appraisal and appraiser testimony presented valid dispute).

⁴³ *FMC Corp.*, 677 N.Y.S.2d at 274.

⁴⁴ *See* *Niagara Mohawk Power Corp. v. Bethlehem Assessor*, 639 N.Y.S.2d 492, 225A.D.2d 841, 843-44 (N.Y. App. Div. 1996) (holding that appraisal offered by taxpayer's appraiser was properly stricken from record because it did not include the facts, source materials, and studies upon which it relied); *State v. Town of Thurman*, 589 N.Y.S.2d 659, 183 A.D. 2d 264, 268 (N.Y. App. Div. 1992) (rejecting appraisal for failure to include calculations).

- It must contain “the facts, figures and calculations by which the conclusions were reached”;
 - If transactions involving comparable properties are used, “they shall be set forth with sufficient particularity as to permit the transaction to be readily identified,” and “the report shall contain a clear and concise statement of every fact that a party will seek to prove in relation to those comparable properties”;
 - They can “contain photographs of the property under review and of any comparable property that specifically is relied upon by the appraiser, unless the court otherwise directs.”⁴⁵
- Appeals from tax certiorari proceedings are like other appeals from the Supreme Court, to the Appellate Division and then the Court of Appeals.⁴⁶

⁴⁵ N.Y. Comp. Codes R. & Regs. tit 22, § 202.59(g)(2).

⁴⁶ N.Y. Real Prop. Tax Law § 724; *Commerce Holding Corp. v. Bd. of Assessors of the Town of Babylon*, 649 N.Y.S.2d 932, 88 N.Y. 2d 724, 724 (N.Y. 1996) (Court of Appeals reviewed Appellate Division affirmation of Supreme Court Article 7 decision to reduce assessment).

GLOSSARY

Ad Valorem Taxation

Taxation that's based on the assessed value of the subject of the tax.

Approved Assessing Unit

An assessing unit that's completed a property revaluation and has been certified by the State Board of Real Property Services. Certification gives the assessing unit some additional options in its property tax system – e.g., the option to use dual tax rates.

Article 7 Tax Certiorari Proceeding

A proceeding in New York Supreme Court where the taxpayer may appeal a decision by the Board of Assessment Review (BAR).

Article 78 Proceeding

A proceeding in New York Supreme Court where the taxpayer may seek review of a decision by SCAR, or of a decision by BAR not to ratify a stipulated assessment that the taxpayer and assessor have agreed upon without a formal challenge.

Assessed Value

The assessor's determination of the value of real property, before exemptions are applied but after the uniform percentage of value is applied.

Assessing Unit

A city, town, county, or village that assesses real property for tax purposes. Or, a "consolidated assessing unit," comprised of two or more cities or towns. There are more than 1,100 assessing units in New York. Note: Some properties are located in more than one assessing unit and will therefore be assessed more than once.

Assessment

A valuation of real property for tax purposes. See also "assessed value."

Assessor

An elected or appointed official who assesses real property in an assessing unit for tax purposes. An assessing unit might instead have a Board of Assessors.

Board of Assessment Review (BAR)

A board of 3-5 persons in an assessing unit, appointed by the local government, that hears and decides complaints filed by taxpayers seeking to lower their assessments.

Exemption

By law, relief from the requirement to pay property taxes, for instance because the property houses a religious institution.

Final Assessment Roll

The assessment roll that each assessing unit produces after BAR challenges have been

completed and changes made to the tentative assessment roll. It lists the “final” assessment for each parcel of real property in the assessing unit, though taxpayers may appeal BAR decisions.

Full Value

See “market value.”

Level of Assessment

See “uniform percentage of value.”

Market Value

The price for which a piece of property would sell in an “arms-length” transaction (where the seller’s under no compulsion to sell, and the buyer’s under no compulsion to buy). Also known as “full value.”

Real Property

Primarily, real estate and any structures attached to it.

Residential Assessment Ratio (RAR)

The median ratio in a list of ratios of assessments to sales prices for an assessing unit. Assessors may use the RAR to help measure assessment equity. For some assessment challenges, the taxpayer may also choose to use the RAR to identify the level at which his property should be assessed.

Revaluation or Reassessment

A systematic review of the assessments in an assessing unit.

Small Claims Assessment Review (SCAR)

A proceeding within the New York Supreme Court system that a taxpayer may pursue to appeal BAR’s decision.

Special Assessing Unit

New York City or Nassau County.

State Board of Real Property Services

A 5-member board appointed by the Governor that oversees the administration of real property assessments in New York. For instance, the Board works on the state equalization rate, helps assessing units administer property assessments, and trains and certifies assessors.

State Equalization Rate

The percentage of full value at which properties in an assessing unit are assessed, as determined by the State Board of Real Property Services. The state uses it to ensure that properties are equitably taxed throughout the state. Sometimes, this’ll be the same as the assessing unit’s uniform percentage of value, or level of assessment.

Tax Levy

For property taxes, the total amount of money that an assessing unit must raise from the property tax.

Tax Rate

The rate at which a property assessment is taxed. For instance, \$50 for every \$1,000 of assessed value. The assessing unit determines the tax rate by dividing the tax levy by the total taxable assessed values of all properties in the assessing unit. So, if the total assessment of properties decreases one year, but the assessing unit still needs to raise the same amount of money through property taxes, the assessing unit may raise the tax rate for that year.

Taxable Status Date

The date on which a property's exemption status is determined. For most assessing units, it's March 1st of the year the final assessment roll is filed.

Tentative Assessment Roll

The tentative assessment roll is a list of information published every year by the assessor for each local assessing unit. It contains information about each parcel of property, including the assessed value of each property assessed, the estimated full value of each property assessed, and the level of assessment used in the assessing unit.

Uniform Percentage of Value

The percentage of full value (market value) at which an assessing unit assesses real property. So, once a property's market value has been determined, the market value is multiplied by the uniform percentage of value to arrive at the property's actual assessment. To ensure that taxes are fair, each property in the assessing unit must be assessed at the same rate. If the uniform percentage of value is 100%, a property's assessment will be the same as its market value. If the uniform percentage of value is 50%, the property's assessment will be half of its market value. Also called the "level of assessment."

Valuation

Determining the value of a piece of property.

Valuation Date

The date at which real property is valued for tax purposes. For most assessing units, it's July 1st of the year before the assessment roll is filed. So, if the final assessment roll is filed on July 1, 2009, the assessments be based on valuations from July 1, 2008.

APPENDIX A – IDEAS FOR INFORMATION TO SUBMIT ABOUT YOUR PROPERTY

You can use the ideas in this appendix to help you fill out Forms RP-524 and RPTL-730, and prepare for hearings before BAR and SCAR.

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

Also, 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 manifestations of the factory farm, such as:

- Poor air quality caused by animal waste and/or feed storage.
- Poor water quality in wells or streams, or soil contamination caused by the factory farm.
- Bad odors caused by animal waste.
- Intrusive noise caused by the factory farm (e.g., heavy truck traffic).
- Insect swarms from the factory farm.
- Harmful dust from the factory farm.
- Eyesores caused by the factory farm.
- Substances leaching from the factory farm (e.g., fecal matter, antibiotics, and hormones).
- Illnesses linked to the factory farm (e.g., a doctor's diagnosis of any illness you had that was caused or made worse by exposure to the factory farm).
- If the factory farm has a Clean Water Act (CWA) permit, any violations of the permit (e.g., where excessive manure was applied to a field and ran off into a nearby stream). New York's Department of Environmental Conservation should be able to help you find out if a nearby CAFO has a CWA permit and any violations. (The contact person is Jackie Lendrum, 518-402-8118.)

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

Recent Appraisal

If you have the resources to get an appraisal, it is a great idea. An appraisal is strong proof of value and would be useful throughout the grievance process. The appraisal should be recent, and should explain how your property's market value is negatively impacted by the nearby factory farm. You should consider choosing an appraiser who is certified or licensed by New York's Department of State.

Appraisals are not required before BAR or SCAR, but are required in some court cases. Courts have been very accepting of professional appraisals as credible evidence of a property's market value,⁴⁷ as long as the appraisal meets certain requirements.

See Section VI.B.2 for more information about the requirements for appraisals used in court. Appendix D has information on how to find a New York 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.

- Similar properties share characteristics such as square footage, style, age, quality of construction, condition, and site size.
- You could include information on similar properties that are near factory farms. If there is information showing that a similar property sold for less because it was near a factory farm, you could include that as well.

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

⁴⁷ See, e.g., *Sun Plaza Enters. Corp. v. Tax Comm'n of New York*, 2001 WL 35933252, No. 36625-95 (N.Y. Sup. Ct. 2001) (both sides presented professional appraisals and testimony); *Miriam Osborn*, 2007 WL 0649029, at *1-2 ("substantial evidence" comprised of appraisal and testimony of appraiser); *Moyer v. Town of Greece*, 724 N.Y.S.2d 289, 292 (N.Y. Sup. Ct. 2001) (in challenge to assessment, professional appraisal appropriate proof of property's market value); *Livingston v. Jefferson County Bd. of Equalization*, 640 N.W.2d 426, 431, 438 (Neb. Ct. App. 2002) (relying on taxpayer's appraiser to hold that tax commission should have considered taxpayer's proximity to a factory farm); *Vim Constr. Co. v. Bd. of Assessors*, 442 N.Y.S.2d 533, 82 A.D.2d 537, 544 (N.Y. App. Div. 1981) (citing appraisal report as evidence that prospective landfill devalued proximate property); *Krzys*, 267 A.D.2d at 660 (in Article 78 proceeding, holding that, without submitting appraisal, taxpayer had not sustained burden of proof).

Proximity

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

- Tax maps are public records and are available at the assessor's office or the city/town/village clerk's office.

For information on how to access tax maps in New York, go to http://www.orps.state.ny.us/ref/asmtdata/taxmappingresources.htm .
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Marketability

- Information showing that your property hasn't sold or has taken longer to sell because of a nearby factory farm. For example, you or a local realtor might explain that potential buyers have raised concerns about the factory farm and have therefore been reluctant to buy your property.
- Information about any of the negative impacts of the factory farm on your community, which could reduce the marketability of homes by making the community as a whole less desirable.
- Information showing that people would only consider buying your property at a discounted price because it is near a factory farm (e.g., a survey of locals or prospective buyers, or a realtor's statement).

Financing

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

Cost to Cure

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

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

Statements of Professionals

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

- A newspaper article reporting that a New York 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 was not taken into proper consideration in your assessment.

Stigma

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

- Information about the public's negative perceptions of properties near factory farms in general, or of your property in particular (e.g., a statement from a local citizen that she would expect a discounted price on your property because it's near a factory farm, even if there were no actual physical impacts from the factory farm).
- Information about any perceived risks or unknowns associated with your property.
- Negative publicity about the factory farm could also be an indication that nearby properties such as yours suffer from stigma.
- Fears and perceptions about the property do not need to be based on actual contamination or actual scientific danger.

Why should BAR and SCAR consider this kind of information in my tax grievance?

New York's Constitution states that property tax assessments "shall in no case exceed full [market] value."⁴⁸ Therefore, according to the highest court in the state, "any factor" that affects a property's marketability must be taken into account in determining a property's market value.⁴⁹ So, a neighboring factory farm must be considered to the extent that it affects a property's marketability.

This is true even if the factory farm does not factor into an assessment under one of the traditional approaches to assessment (recent sale, comparable sales, cost, income).⁵⁰ New York courts have acknowledged the need for great flexibility in the methods that may be used to determine market value. "If one of the conventional theories of valuation is applicable to a particular situation, then that method should be employed. 'Pragmatism, however, requires adjustment when the economic realities prevent placing the properties in neat logical valuation boxes.'"⁵¹ Any method, as long as it is "fair" and "nondiscriminating," will do.⁵²

In line with these flexible views on valuation methodology, New York courts have adopted or favorably treated various "non-traditional" valuation techniques.⁵³ A court might also employ a technique that is not a formal or defined method, but that reflects a consideration of any facts relevant to a property's market value.⁵⁴ Therefore, a factor that affects a property's marketability need not fit into any defined method in order to be a necessary consideration in a property valuation.

In approving non-traditional assessment techniques, New York courts have relied on valuation literature to support their opinions, which indicates their willingness to move beyond limited court precedent in order to incorporate developing valuation ideas.⁵⁵

⁴⁸ N.Y. Const. art. XVI, § 2.

⁴⁹ See *Commerce Holding*, 88 N.Y.2d at 729.

⁵⁰ For instance, if there are no comparable sales for your property because the "comparable" sales are not for properties near a factory farm. See *Vim Constr.*, 82 A.D.2d at 544-45 (illustrating that properties must have similar neighboring characteristics in order to be considered similar by noting that comparable sales information was unhelpful where sales were not in vicinity of landfill site allegedly impacting subject property).

⁵¹ *Oneonta Tennis Club, Inc. v. City of Oneonta Assessor*, 622 N.Y.S.2d 414, 415 (1994) (citation omitted).

⁵² See, e.g., *Allied Corp. v. Town of Camillus*, 604 N.E.2d 1348, 80 N.Y.2d 351, 356 (1992); *Commerce Holding*, 88 N.Y.2d at 731.

⁵³ See, e.g., *Commerce Holding*, 88 N.Y.2d at 731, 732 n.4 (noting hedonic valuation/regression analysis and contingent valuation as promising new valuation techniques; adopting factors to consider in valuing environmentally contaminated properties); *Oneonta Tennis Club*, 622 N.Y.S.2d at 416 (approving diversity of assessment method). See also *Moyer*, 724 N.Y.S.2d at 292 (assessments of comparable properties acceptable proof of value).

⁵⁴ See, e.g., *Commerce Holding*, 88 N.Y.2d at 729, 732 (noting that "the assessment of property value for tax purposes must take into account any factor affecting a property's marketability" and deciding that, "[w]hile it is not possible to prescribe any one method to assess the effects of environmental contamination, there are certain factors that should be considered") (citation omitted).

⁵⁵ See, e.g., *id.* at 732 (citing three *Appraisal Journal* articles as evidence that certain factors should be considered in environmental contamination cases). See also *Consolidated Edison Co. of N.Y., Inc. v. City of New York*, 33 A.D.3d 915, 920 (N.Y. App. Div. 2006) (relying on *Appraisal Institute* literature for definition of "functional obsolescence" in tax assessment challenge).

An especially promising valuation publication for factory farm purposes is an article in the *Appraisal Journal* by John A. Kilpatrick. It explains a method for valuing properties near factory farms – “Concentrated Animal Feeding Operations and Proximate Property Values.”⁵⁶ (The article can be accessed from www.factoryfarmtaxprotest.com.) The primary thesis of this method is that a factory farm devalues proximate properties to the extent the factory farm is viewed as a negative externality by the marketplace.⁵⁷

Factors to be considered under the “Kilpatrick” method include: 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.⁵⁸ They can result in a 50-90% diminution in a property’s market value.⁵⁹

- Described generally, the stigma factor includes any of the “unknowns and risks associated with ownership of the property.”⁶⁰ 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”⁶¹), it may be difficult to quantify, but it should not be overlooked.⁶²
- Regarding distance, generally, the closer the factory farm, the greater the impact on property values.⁶³
- The physical manifestations factor is broad and may include various impacts. For example, impaired water quality can impair a neighboring property’s value.⁶⁴ Hydrogen sulfide emissions from large confines of animal waste may cause illnesses in neighbors.⁶⁵ Dust, odors, and flies carrying animal blood, feces, or antibiotics may also impair a neighboring property’s value.⁶⁶

⁵⁶ John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 *Appraisal J.* 301 (2001).

⁵⁷ *Id.* at 302.

⁵⁸ *Id.* at 306.

⁵⁹ *Id.* at 305.

⁶⁰ *Id.* at 302. As evidenced by a 1993 New York eminent domain case, the fact that stigma exists is enough to reduce a property’s market value, whether or not the stigma is “reasonable.” *Criscuola v. Power Auth. of N.Y.*, 621 N.E.2d 1195, 81 N.Y.2d 649, 651 (1993). In that case, the plaintiffs sought damages for a high voltage power line easement acquired across their property. They claimed that “cancerphobia” and the “public’s perception of a health risk” from exposure to power lines “negatively impact[ed]” the market value of their property. *Id.* The Court agreed, and further held that the plaintiffs need not prove the “reasonableness” of the public’s fears or perceptions. *Id.* at 651-52. Because “the issue in a just compensation proceeding is whether or not the market value has been adversely affected . . . [w]hether the danger is a scientifically genuine or verifiable fact should be irrelevant to the central issue of its market value.” *Id.* at 652.

⁶¹ See Vincent D’Elia & Catherine M. Ward, *The Valuation of Contaminated Property*, 111 *Banking L.J.* 350, 359 (July-Aug 1994).

⁶² See Bill Mundy, *Stigma and Value*, 60:1 *Appraisal J.* 7 (Jan. 1992).

⁶³ Kilpatrick, *supra* note 56, at 304-05 (citing University of Minnesota study).

⁶⁴ *Id.* at 304 (citing Kirshner & Moore study).

⁶⁵ *Id.* (describing illnesses near CAFOS in Minnesota).

⁶⁶ *Id.* at 305. See also Iowa State University & The University of Iowa Study Group, *Iowa Concentrated Animal Feeding Operations Air Quality Study: Final Report* 158 (2002), available at www.ehsrc.uiowa.edu/CAFOSstudy/

- The “marketability evidence” factor might include evidence about the length of time it takes to sell, or the unsalability of, a property.⁶⁷ 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.⁶⁸

For more information on NY legal theories for including factory farms in neighboring assessments, see *CAFO Grief: Using Tax Grieving Procedures to Protest Industrial Animal Factories* in the Journal of Environmental Law & Litigation, available at <http://www.law.uoregon.edu/org/jell/articles.php> (Volume 23(2) 2008) and www.factoryfarmtaxprotest.com.

(Chapter 7) (odor, dust, noise, and “general decline in the natural beauty of the area” from CAFOs can depress sales prices) (citations omitted).

⁶⁷ See D’Elia & Ward, *supra* note 61, at 360 (“longer marketing period” and “inability to sell” illustrate perceptions of devaluation).

⁶⁸ Kilpatrick, *supra* note 56, at 305.

APPENDIX B - EXAMPLES OF DEVALUED PROPERTIES

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

Selected Studies & Reports

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

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

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

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

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

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

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

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

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

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

A 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 etl al., and Kim).

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 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).

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 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).

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.

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.

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).

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.

Selected Cases

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. Ct. 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 Flynn's [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 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 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).

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.

APPENDIX C – LINKS TO HELPFUL ASSESSMENT INFORMATION

- General information on tax assessment and challenges

New York State Office of Real Property Services
www.orps.state.ny.us
518-474-2982

- Sample tentative assessment roll with explanatory key

www.orps.state.ny.us/pamphlet/tentasmtroll.html

- Contact information for local officials, including assessors and municipal clerks

County – go to www.orps.state.ny.us/MuniPro/, then select a county, then click on “Local Officials Addresses.”

Towns, Cities, & Villages – go to www.orps.state.ny.us/MuniPro/, then click on the county the Town/City/Village is in, then click on “municipality,” then select the Town/City/Village, then click on “Local Officials Addresses.”

- Dates (valuation date, tentative assessment roll, Grievance Day, final assessment roll)

Go to www.orps.state.ny.us/MuniPro/, then select the county within which the assessing unit is located, then click on “Assessment Roll Dates.”

- Information on accessing tax maps in New York

www.orps.state.ny.us/ref/asmtdata/taxmappingresources.htm

- Contact information for BAR

Contact the local assessor’s office for BAR information.

- Sample “Notice of Determination” form from BAR

www.orps.state.ny.us/ref/forms/pdf/rp525.pdf

- Information on state equalization rates and local levels of assessment

Go to www.orps.state.ny.us/MuniPro/, then select the county within which the assessing unit is located, then click on “Current Equalization Information,” then select the year.

- Information on residential assessment ratios (RARs):

Go to www.orps.state.ny.us/MuniPro/, then select the county within which the assessing unit is located, then click on “RAR Information,” then select a year.

- Forms

RP-524 (BAR complaint) – www.orps.state.ny.us/ref/forms/pdf/rp524.pdf

RPTL-730 (SCAR petition) – www.nycourts.gov/litigants/scar/Petition.pdf

APPENDIX D – OTHER RESOURCES

- Information on Factory Farms

www.ncifap.org/ (Pew Commission Report; click link next to “Full Report”)
www.ucsusa.org/food_and_environment/sustainable_food/cafos-uncovered.html (Union of Concerned Scientists report)
www.factoryfarm.org (Factory Farm.Org)
www.foodandwaterwatch.org/food/factoryfarms (Food & Water Watch)
www.waterkeeper.org/mainarticledetails.aspx?articleid=87 (Waterkeeper)
www.cectoxic.org/WastingRuralNY.pdf (NY Report by Citizens Environmental Coalition & Sierra Club)
www.citizenscampaign.org/campaigns/farming.asp (NY Citizens Campaign for the Environment)
www.sierraclub.org/factoryfarms/ (Sierra Club)
www.nrdc.org/water/pollution/cesspools/cessinx.asp (NRDC)
www.nffc.net (National Family Farm Coalition)
www.sraproject.org (Socially Responsible Agricultural Project)
<http://aphg.jhsph.edu> (Agriculture & Public Health Gateway)
<http://www.jhsph.edu/clf/> (Center for a Livable Future)
www.farmweb.org (Families against Rural Messes)
www.epa.gov/waterscience/guide/feedlots/envimpct.pdf (EPA)
www.p2pays.org/ref/21/20524.htm (papers from 1998 Manure Management Conference)
www.dec.ny.gov/permits/36895.html (map of NY CAFOs)

- How to Find a New York Appraiser

- AppraiserUSA.com, New York Real Estate Appraiser Directory
<http://appraiserusa.com/newyork/index.htm>
- American Society of Appraisers
www.appraisers.org/findappraiser/
Try searching in both Real Property/Ad Valorem and Real Property/Residential. Because there might not be an appropriate appraiser in each county, also try searching the whole state.
- 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 a New York Attorney
 - New York State Bar Association Lawyer Referral and Information Service
www.nysba.org/AM/Template.cfm?Section=Find_a_Lawyer&Template=/CustomSource/LegalInfoByCounty.cfm&cty=lrs
 - Find a Real Estate Lawyer, Lawyers.com
www.lawyers.com/Real-Estate/New-York/browse-by-county.html
 - Consumers' Guide to Legal Help Lawyer Referral, American Bar Association
www.abanet.org/legalservices/findlegalhelp/lris.cfm?id=NY
 - Local Yellow Pages
 - Recommendations