

**TAX APPEALS
FOR
PROPERTIES NEAR FACTORY FARMS**

OREGON

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 Oregon attorney if you wish to obtain legal advice.

Sarah Vaile, Esq.

Wilson.sarahc@gmail.com

(914) 329-6387

with the assistance of the

*Environmental & Natural Resources Law Clinic at Vermont Law School, Tanith Baliban, Kathy Hessler, and the
Animal Law Clinic at Lewis & Clark Law School*

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INTRODUCTION

This Guide is for Oregon property owners who want to challenge their property tax assessments because the assessments don't account for the negative impacts nearby factory farms (a.k.a. "CAFOs") have on their properties.

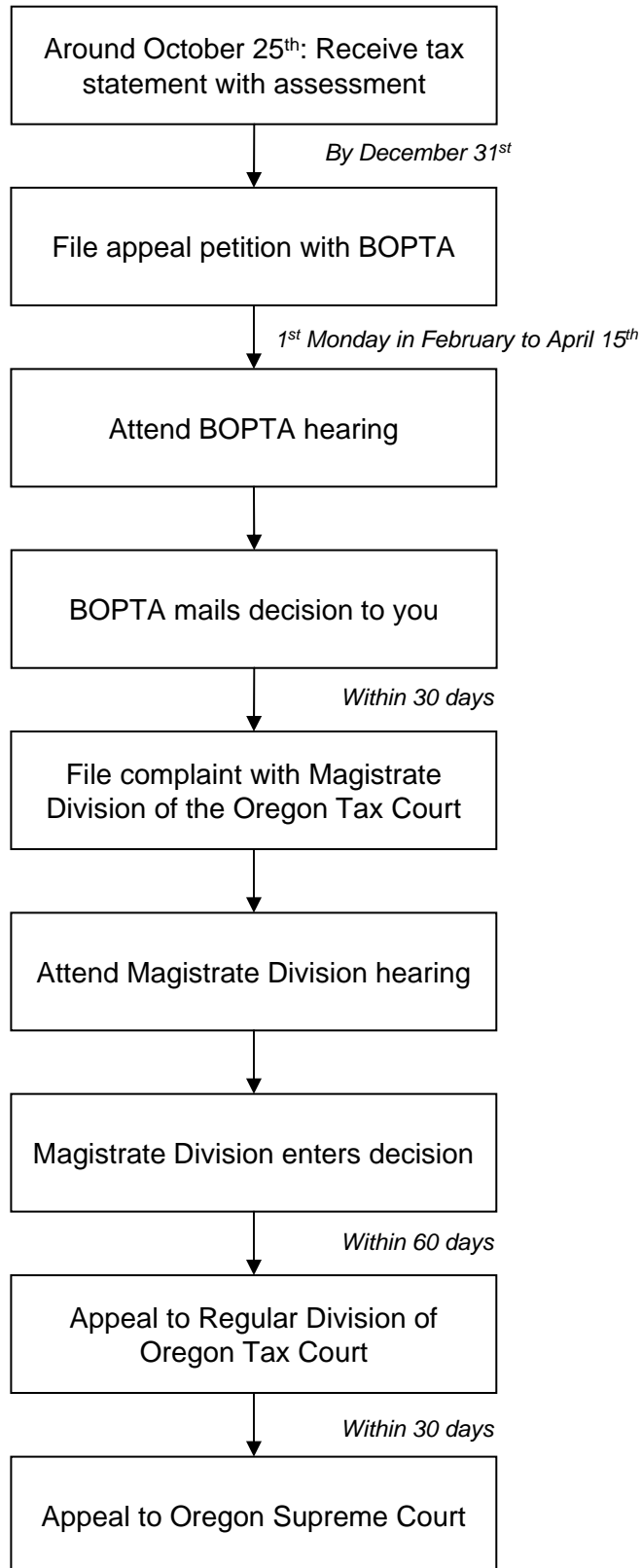
The economic, environmental, public health, labor, social, and ethical problems associated with factory farms are becoming increasingly familiar, as evidenced in two recent reports by major non-governmental organizations: *Putting Meat on the Table: Industrial Farm Animal Production in America* (Pew 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 impact is lower property values for those who live near the factory farms.

If you live near a factory farm, your property tax assessment should reflect that fact. Your assessment should account for any of the negative impacts the factory farm has on your property. If it does not, you may wish to challenge your assessment so that you can receive a fair one. This Guide will help you do that. It provides step-by-step information on the tax appeal process in Oregon, including ideas about factual information to include in your challenge and information on additional resources. As you will see, the Guide provides more detail about the first two levels of the process, which are not formal court proceedings.

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

The Guide is available at www.factoryfarmtaxprotest.org, and the website also has access to other resources. If you do not have access to the internet at your home, you should be able to use the internet at your local public library.

Oregon Tax Appeal Process



CHECKLIST

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

- ___ Around October 25th, receive your tax statement (with notice of your assessment) from your local tax collector. Go to the next step if you are dissatisfied with results.
- ___ File an appeal petition with your county Board of Property Tax Appeals (BOPTA) clerk.
 - ___ Attach:
 - ___ A copy of your tax statement;
 - ___ An authorization form for someone else to represent you (if needed); and
 - ___ Evidence about your requested real market value (documents, photos, etc.) as of the assessment date (January 1st).
 - ___ The petition must be filed between the date the tax statements are mailed and December 31st.
- ___ Between the first Monday in February and April 15th, attend BOPTA hearing to support your case. (BOPTA will let you know the specific date and time.)
- ___ Receive notice of BOPTA's decision. Go to the next step if you are dissatisfied with results.
- ___ File a complaint with the Magistrate Division of the Oregon Tax Court.
 - ___ Attach a copy of BOPTA's decision.
 - ___ File the original plus two copies. (And keep a copy for yourself.)
 - ___ Include a \$25 filing fee.
 - ___ The deadline is within 30 days of the mailing date of BOPTA's decision.
- ___ Prepare for your Magistrate Division hearing.
 - ___ Gather your evidence (exhibits) and plan your witnesses (if any).
 - ___ Label your exhibits.
 - ___ Send copies of your exhibits to the other side and the Magistrate Division before your hearing (14 days postmarked, or 10 days received).
 - ___ If possible, let the Magistrate Division know about your witnesses.
- ___ Attend the Magistrate Division hearing to support your case (in Salem, on the phone, or another convenient place). Go to the next step if you are dissatisfied with results.
 - ___ Bring copies of the exhibits you have already filed with the Magistrate Division.
- ___ Appeal to the Regular Division of the Oregon Tax Court within 60 days after the Magistrate Division's decision is entered. Go to the next step if you are dissatisfied with results.
- ___ Appeal to the Oregon Supreme Court within 30 days of the Regular Division's final judgment.

BACKGROUND INFORMATION¹

Most information for this section was taken from the Oregon Department of Revenue website at www.oregon.gov/DOR/PTD/property.shtml (How Property Taxes Work in Oregon). The website may help answer further questions you have about property assessment and taxation. You can also ask your county assessor or the state Department of Revenue for general information.

Contact information:

County assessors: www.oregon.gov/DOR/PTD/County.shtml

Department of Revenue: www.oregon.gov/DOR or (503) 378-4988 or (800) 356-4222

Each year in Oregon, real properties are assessed to help calculate taxes. “Real property” is basically real estate – land and buildings on the land. The taxes are used to support services such as police, fire protection, and education. (Some properties, like charitable or religious properties, are exempt from property taxes.)

Most assessments are performed by county assessors. (But the state Department of Revenue assesses some properties such as utilities.) Each year, your assessor will calculate two different values for your property: its *real market value* and its *maximum assessed value*.

Real market value: basically, the value your property would sell for on the open market between a willing buyer and willing seller. Your assessor typically calculates this by physically inspecting your property and comparing it to sales data from similar properties, and updating your assessment in later years based on trends with similar properties.

Maximum assessed value: a value used to limit the amount your property’s assessment can increase each year. Usually, it is equal to 103 percent of your property’s assessed value from the previous year, or 100 percent of your property’s maximum assessed value from the previous year, whichever is greater.

Your final *assessed value* is the lesser of your real market value and your maximum assessed value.² Your local tax rates will be applied to your property’s assessed value to determine your taxes.

¹ Other sources for this section are: Oregon Department of Revenue, How to Appeal Your Property Value (How to Appeal), www.oregon.gov/DOR/PTD/IC_303_668.shtml; Oregon Department of Revenue, Real Property Assessment and Taxation (Assessment & Taxation), www.oregon.gov/DOR/PTD/IC_303_670.shtml; Oregon Department of Revenue, Property Tax Division, *The Three Approaches to Value: A Self-Study Course for Assessors and Appraisers (Three Approaches to Value)* (June 2007), available at www.oregon.gov/DOR/PTD/303-458.shtml; Oregon Judicial Department, Oregon Tax Court, <http://www.ojd.state.or.us/courts/tax/index.htm>; Oregon Tax Court, *Tax Appeals* (2009), available at www.ojd.state.or.us/courts/tax/documents/frequently_asked_questions.pdf; Or. Rev. Stat. §§ 306.255, 307.010, 307.030, 307.140, 308.146, 308.205, 308.210, 309.020, 309.022, 311.005, 311.250, 311.806; Or. Admin. R. 150-308.205-(A).

² Some properties qualify for a “specially assessed value,” which is a lower assessed value for certain types of property like farmland and open space. How to Appeal, *supra* note 1. Also, there might be slightly different provisions if your property has special circumstances such as new improvements. Or. Rev. Stat. § 308.146.

Example: Assume your property's *assessed value* for 2007 was \$150,000. Assume your property's *maximum assessed value* for 2007 was \$155,000. For 2008, your property's *maximum assessed value* will be \$155,000. (This is the greater of 103 percent of 150,000 (154,500) and 155,000.) Assume your property's *real market value* for 2008 was \$154,000. Your *assessed value* for 2008 will be the lower of your real market value and your maximum assessed value: \$154,000.

The ***assessment date*** (the date on which your property's value is based) is January 1st. You will receive notice of your assessment on your ***tax statement***, which shows your property's assessed value, real market value, and the taxes from each of your taxing districts - e.g., county, city, school, fire, and/or library. Your local ***tax collector*** (the local official responsible for collecting property taxes) must mail your tax statement by October 25th. The first installment of your taxes is due by November 15th.

Assessors use three main approaches to value property:

Sales comparison (or market) approach: a property's value is estimated by comparing it with the recent sale prices of other properties that are similar to it.

Income approach: a property's value is estimated by determining the potential income the property could earn.

Cost approach: a property's value is estimated by calculating the cost of the land and the cost of replacing structures on the property, minus depreciation.

An assessor should consider each approach, even if he/she does not end up using that approach.

Challenging Your Assessment – An Overview

If you disagree with your real market value, you can appeal to your county ***Board of Property Tax Appeals (BOPTA)***.

BOPTA is 3-member county-level board appointed by county government. There are training requirements for board members.

If you disagree with *BOPTA*'s decision, you can appeal to the ***Magistrate Division of the Oregon Tax Court***.

The *Magistrate Division* is the lower level of Oregon's Tax Court, where a magistrate hears state tax appeals.

If you do not agree with the *Magistrate Division*'s decision, you can appeal to the ***Regular Division of the Oregon Tax Court***.

The *Regular Division* is the upper level of Oregon's Tax Court, where a judge hears appeals from the Magistrate Division.

If you disagree with the Regular Division's decision, you can appeal to the *Oregon Supreme Court*.

The *Oregon Supreme Court* is the highest court in the state. It can hear appeals from the Regular Division.

The law does not require you to hire an attorney at any level, but you may wish to, especially if you appeal to the Regular Division of the Oregon Tax Court and beyond. You can also have certain other people represent you before BOPTA and the Magistrate Division, such as a spouse or real estate broker.

THE APPEAL PROCESS

The following websites have helpful information about the appeal process:

www.oregon.gov/DOR/PTD/Appeal_P.shtml (general)

www.oregon.gov/DOR/PTD/IC_303_668.shtml (general)

www.ojd.state.or.us/courts/tax/documents/frequently_asked_questions.pdf (Tax Court)

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

- Your tax statement serves as notice of your property’s assessment.
 - The statement includes your property’s assessed value and real market value. Remember that you are appealing your property’s “real market value.”
 - Your local tax collector has to mail your statement to you by October 25th.
- You should keep your tax statement handy – it has information you will need for your appeal.

II. Step 2: County Review at the Board of Property Tax Appeals (BOPTA)⁴

If you disagree with the real market value on your tax statement, you can appeal to your local BOPTA (a county-level board that hears assessment appeals).

- There is no fee.
- You (the property owner) or anyone obligated to pay taxes on your property can appeal.⁵
- You can represent yourself, or you can have someone else represent you (i.e., sign the petition and appear at the hearing for you). Only certain people can represent you (see the BOPTA petition form for more details):
 - Certain close relatives;
 - A licensed Oregon real estate broker;
 - A certified, licensed, or registered Oregon appraiser;
 - A qualified public accountant;
 - A lessee;

³ The sources for this section are: Oregon Department of Revenue, How Property Taxes Work in Oregon, www.oregon.gov/DOR/PTD/property.shtml; Oregon Board of Property Tax Appeals, 2008-2009 Real Property Petition, available at www.oregon.gov/DOR/PTD/docs/bopta/310-063.pdf; Or. Rev. Stat. § 311.250.

⁴ The sources for this section are: Oregon Department of Revenue, How Property Taxes Work in Oregon, www.oregon.gov/DOR/PTD/property.shtml; Oregon Department of Revenue, Appeal Rights: Property Tax (Appeal Rights), www.oregon.gov/DOR/PTD/Appeal_P.shtml; Oregon Department of Revenue, How to Appeal, *supra* note 1; Oregon Department of Revenue, Supervisory Power: Error Correction Procedure (Supervisory Power), www.oregon.gov/DOR/PTD/IC_303_688.shtml; Real Property Petition, *supra* note 3; Oregon Board of Property Tax Appeals, Authorization to Represent, available at www.oregon.gov/DOR/PTD/docs/bopta/303-031.pdf; Assessment & Taxation, *supra* note 1; Or. Rev. Stat. § 306.115, 308.242, 309.025, 309.026, 309.100, 309.110; Or. Admin. R. 150-308.242(3).

⁵ If someone other than the property owner appeals, he/she has to provide proof of the obligation to pay taxes.

- A person to whom you have given power of attorney;
- An Oregon attorney; or
- A legal guardian.

You will need to provide written, signed authorization and/or documentation for most representatives (but not attorneys) to represent you.

A. The BOPTA Petition

First step: file an appeal petition with supporting information about your property and the reasons for your appeal.

The petition form (with instructions) is available at:
www.oregon.gov/DOR/PTD/BOPTA.shtml,
www.oregon.gov/DOR/PTD/docs/bopta/310-063.pdf,
 your county clerk’s office, and your county assessor’s office.
 Make sure you have this year’s version.
 Contact information for county officials:
www.oregon.gov/DOR/PTD/County.shtml

- **Deadline:** You must file your petition **between the date the tax statements are mailed and December 31st**, or if December 31st falls on a weekend or a holiday, the deadline is the next business day.⁶

Delivery address: File your petition with the BOPTA clerk for the county in which your property is located (not your county assessor). You can find contact information here:
www.oregon.gov/DOR/PTD/docs/bopta/boptaclerks.pdf

- **Attachments:** You should attach several documents to your petition:
 - Copy of your tax statement;
 - Authorization form or documentation for representative (if any); and
 - Evidence (documents, photos, etc.) about your requested real market value as of the assessment date (January 1st).
- **Filling in the form:** The form includes instructions.⁷ Some things to note:
 - There is a section for you to fill in if someone else is representing you (p. 1).
 - If you need to provide written authorization, there is a form at www.oregon.gov/DOR/PTD/docs/bopta/303-031.pdf. You do not have to use the form; you could also send a letter, as long as it has the required information and signatures.

⁶ See Appendix E for your options if you miss the deadline.

⁷ If you do not use the form, be sure to follow these requirements for the petition you send: it must be in writing; it must state the facts and reasons for your petition; it must be signed or verified by you or your representative; it must give the address where you would like notices sent; it must say whether you would like a hearing. Or. Rev. Stat. § 309.100.

- Under “Attendance at Hearing” (p. 1), there is a box for you to check *only if you do not want a hearing*.
 - If you do not have a hearing, BOPTA will decide your appeal based on the evidence you send in with your petition.
 - If you do not check the box, BOPTA will notify you of the time and place for the hearing.
 - There is a section for you to fill in your *real market value* from your tax statement, and your *requested* real market value (p.2). (There is also a section for appealing *specialty assessed values*, but that does not apply to you unless your property was specially assessed. Most properties are not.)
 - ***In most cases, you cannot proceed unless you request a real market value that is lower than your assessed value. This is because even if your real market value gets reduced, your assessed value will stay the same if your maximum assessed value is still lower than your reduced real market value.***⁸
 - There is a space for you to enter your *assessed value* from your tax statement (p.2).
 - There is a section for you to explain why the real market value on your tax statement is too high (p.2). You can attach additional pages if you need more space to explain.
 - You should also attach documentation to support your position. Some examples of evidence: recent deeds, listings, appraisals, and comparable sales data (information on similar properties in your area that have recently sold). See Appendices A and B for more ideas about evidence to submit. The Tax Court website also has some ideas: www.ojd.state.or.us/courts/tax/documents/frequently_asked_questions.pdf (pp. 15-16).
 - Your evidence should relate to your property’s real market value on the assessment date (January 1st).
 - BOPTA will not return the evidence, so be sure to keep copies for yourself.
 - This section also has general questions about your property for you to answer.
 - Remember to sign and date the form (p.2).
- **Completeness:** Your petition will be returned if it’s not complete. BOPTA will send you a “Defective Petition Notice” and give you time to correct your petition; if you miss the deadline, your petition will be dismissed.
 - **Settlement:** Before your hearing, you and your assessor can agree in writing to an assessment reduction (called a “stipulation”).
 - The stipulation needs to be signed by both you and your assessor.

⁸ Oregon statutes provide that a party must be “aggrieved” to pursue an appeal, and a party isn’t aggrieved unless a reduction in real market value will have some actual consequence. Or. Rev. Stat. § 305.275; *see also Parks Westsac L.L.C. v. Dep’t of Revenue*, 1999 WL 803080, No. 4366 (Or. T.C. 1999). There are some exceptions based on case-by-case situations – check with your local assessor. *Tax Appeals, supra* note 1, at 25.

- You would need to deliver the written stipulation to the BOPTA clerk before BOPTA convenes to hold hearings (before its first meeting of the year).
- Please contact your local BOPTA to find out how to proceed with settlement discussions. E.g., you might arrange an informal meeting with your assessor where you explain how the nearby factory farm affects your property, present supporting materials, and request an assessment reduction.

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

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

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

B. The BOPTA Hearing

- Hearings are held between the first Monday in February and April 15th.
 - BOPTA will notify you of the time and place for your hearing at least 5 days in advance. Hearings are usually in the county courthouse.
 - The BOPTA clerk must also post public notice of the hearings.
- Hearings are informal.
- Hearing procedures vary by county (e.g., some counties have time limits for presenting your case). You can check with your county BOPTA office to learn more.
- BOPTA will notify you in writing of its decision.

III. Step 3: Appeal to the Magistrate Division of the Oregon Tax Court⁹

The Oregon Tax Court's helpful manual on appeals to the Tax Court is available at www.ojd.state.or.us/courts/tax/documents/frequently_asked_questions.pdf.

The Tax Court Rules for the Magistrate Division are available at [www.ojd.state.or.us/web/ojdpublications.nsf/Files/2009MagistrateRules.pdf/\\$File/2009MagistrateRules.pdf](http://www.ojd.state.or.us/web/ojdpublications.nsf/Files/2009MagistrateRules.pdf/$File/2009MagistrateRules.pdf).

If you are unsatisfied with BOPTA's decision, you can appeal to the Magistrate Division of the Oregon Tax Court - this is the lower level of Oregon's Tax Court, which hears state tax appeals. Cases here are heard by a magistrate, a judicial officer with experience in tax law and property valuation. There is no jury.

- There is a \$25 fee.
- Your assessor will be the other party (defendant). Your assessor can appeal, too.
- The Magistrate Division is usually less formal than typical court proceedings. It's meant to be an "informal and easy to use process."¹⁰
- You will still need to pay your taxes on time, unless the court gives you a stay. (And then get a refund if you are successful.)
- You can represent yourself, or you can have certain other people represent you, including:
 - An Oregon attorney;
 - An Oregon certified public accountant;
 - An Oregon licensed real estate broker;
 - A state certified, licensed, or registered appraiser;
 - Your spouse, parent, or child who's at the age of maturity (check with your BOPTA about age); or,
 - Someone to whom you have given power of attorney.

If someone else represents you, you usually need to give the court a signed "Authorization to Represent." The form is available at www.ojd.state.or.us/courts/tax/documents/Auth_to_Represent.pdf.

⁹ The sources for this section are: Appeal Rights, *supra* note 4, How to Appeal, *supra* note 1; Supervisory Power, *supra* note 4; Oregon Tax Court, *supra* note 1; Oregon Judicial Department, Magistrate Division, www.ojd.state.or.us/courts/tax/magistrate.htm; Tax Appeals, *supra* note 1; Oregon Tax Court, Magistrate Division, *Complaint and Instructions to Appeal Property Tax*, available at www.ojd.state.or.us/courts/tax/documents/propcomplform.pdf; Oregon Tax Court Rules—Magistrate Division (TCR-MD), available at [www.ojd.state.or.us/web/ojdpublications.nsf/Files/2009MagistrateRules.pdf/\\$File/2009MagistrateRules.pdf](http://www.ojd.state.or.us/web/ojdpublications.nsf/Files/2009MagistrateRules.pdf/$File/2009MagistrateRules.pdf); Or. Rev. Stat. §§ 305.230, 305.275, 305.280, 305.415, 305.418, 305.425, 305.427, 305.430, 305.501, 305.560, 305.565, 309.110.

¹⁰ TCR-MD, *supra* note 9, at Preface.

A. Filing the Appeal

A sample complaint form (with instructions) is available at www.ojd.state.or.us/courts/tax/documents/propcomplform.pdf.

Or, you can contact the court at:
Clerk, Oregon Tax Court, Magistrate Division
1163 State Street, Salem, OR 97301
(503) 986-5650

• **Requirements**

- First step: file a written complaint. You can use the court’s form (see above), or file your own complaint with similar formatting/information.¹¹
- Be sure to fill out all sections and include your “request for relief” – that is, the specific amount of your requested assessment.
- Be sure to sign and date your complaint.
- Attach a copy of BOPTA’s decision.
- File the original plus two copies, including attachments, with the court. (Be sure to keep one copy for yourself.)
- Include the \$25 filing fee (make check payable to “Oregon Tax Court”). (If you cannot pay the fee, you can file a form explaining that and requesting a waiver. The form is available at www.ojd.state.or.us/courts/tax/documents/feewaiver.pdf, or you can request the form from the Magistrate Division.)

• **Deadline**

You must file the complaint **within 30 days** of the mailing date of BOPTA’s decision. Basically, this means it must be postmarked by the U.S. Postal Service by the due date. If you send it to the court in any other way (e.g., in person), it is considered filed when the court receives and date-stamps it.¹² *Check with the Magistrate Division (phone: (503) 986-5650) to find out if you need to mail your complaint via registered or certified mail.*

• **Delivery Address**

By mail: Oregon Tax Court, Magistrate Division
1163 State Street
Salem, OR 97301-2563

In person: 1241 State Street, Floor 3R
Salem, OR

¹¹ If you do not use the form, make sure your complaint includes this information: the nature of your interest, the facts showing how BOPTA’s decision affects you, and the reasons BOPTA’s decision should be changed. Or. Rev. Stat. § 305.560.

¹² See Appendix E for your options if you miss the deadline.

- **Scheduling**

- The court will send you written notice of the date and time for a case management conference (usually 60-120 days after you filed your complaint). In this conference, you will talk with the judge and the other party about the issues of the case and how to proceed. It is usually done by phone.
- If you need to reschedule any court proceeding, you should submit a request to the court at least 10 days before the proceeding. To do so, you need to contact the other parties and get their approval for 3 alternative dates/times, then submit those to the court.
- The court might conduct your proceedings (conferences, hearings, etc.) by phone. You can request to participate by phone at least 10 days before the proceeding.

- **Communications**

- You cannot have any “ex parte” contact with the court. This means you cannot have private communication about case issues with the court and should copy the other side on any communications you send to the court.
- After you file your complaint, any time you send a documents to the court (including evidence), you must also send a copy to the other side and let the court know you have done so (e.g., by putting “cc” information on the document or filing a separate “certificate of service” with the court). A certificate of service form is available at www.ojd.state.or.us/courts/tax/documents/certificateofservice.pdf.
- Check with the Magistrate Division (phone: (503) 986-5650) to find out if you need to mail these documents via registered or certified mail.

- **Motions & Other Court Practices**

- A “motion” is basically a request from a party that the court make a certain order, after the complaint is filed (e.g., a motion to amend a pleading or a motion to dismiss).
- All motions, except those made in the hearing or a case management conference, must be in writing.
- The party who didn’t make the motion always has a chance to respond.
- There are other rules about motions in the Magistrate Division’s rules.

- **Settlement & Mediation:** The magistrate may encourage cooperation between you and the assessor, and offer mediation services.

- You and the assessor can settle your case. If you do, you should inform the court. There is a “Stipulated Agreement” form you can file, available at www.ojd.state.or.us/courts/tax/documents/stipulationprop.pdf.
- You can request mediation anytime. Or, the magistrate may require it.
 - Mediations are usually held in person.
 - A magistrate will lead the mediation.

- If you do not reach an agreement, you will proceed to a hearing (usually within 60 days). You will have a different magistrate at the hearing.

B. The Magistrate Division Hearing

- Your hearing might be by phone, or in person. In-person hearings may be in the courtroom in Salem, or at another convenient location.
- **Preparing Your Evidence**
 - You should gather information that supports your case. Some suggestions on the Tax Court website are:
 - Your property’s recent sale price;
 - An appraisal report;
 - County records of the sale prices of similar, nearby properties that sold around the time of your assessment date; and
 - A real estate agent’s opinion.
 - See Appendices A and B for more ideas about evidence to submit.
 - You have the burden to prove your case. So, you should compile as much effective evidence as you can to show that your given real market value is wrong, and your estimate is correct.¹³
 - Each piece of evidence is called an “exhibit.” Exhibits include (but are not limited to) “writings, reports, notes, graphs, pictures, photographs, documents, maps, receipts, records, diaries, minutes, ledgers, returns, calculations, articles, papers, data, and tests.”¹⁴
 - You must label your materials. Each exhibit should be labeled with your case number and its own exhibit number. If there is more than one page in a document, you should also label the pages, e.g.:
 - If your first document is a 1-page photograph, it would be labeled “1.”
 - If your second document is a 5-page appraisal report, it would be labeled “2-1, 2-2, 2-3, 2-4, 2-5.”
 - You should consider lining up witnesses to testify for you at the hearing.
 - If you hire an appraiser, real estate agent, or other expert to do a report for you, he/she should be available to testify at your hearing.
 - Other people can testify about your property and its value, too. They should have firsthand knowledge about something you are trying to prove.
 - Generally, the court gives more weight to testimony from people with more valuation experience.
 - Before your hearing, try to tell the court how many witnesses you will have.

¹³ Your burden of proof is technically called a “preponderance of the evidence” or the “more convincing or greater weight of evidence.” *Doyle v. Coos County Assessor*, 2005 WL 1083707, No. TC-MD030338E, TC-MD 040643E, at *2 (Or. Tax Magis. Div. 2005). This means that you need to prove it is more likely than not that you are right.

¹⁴ TCR-MD, *supra* note 9, at Rule 10.

- You must send all your evidence (except oral testimony from witnesses) to the court and the other side *before* your hearing. (Even if you submitted the same evidence to BOPTA.)
 - You should send it by U.S. Postal Service or hand-deliver it. Check with the Magistrate Division (phone: (503) 986-5650) to find out if there are other requirements (e.g., registered or certified mail).
 - The deadline is **postmarked 14 days before the hearing or physically received 10 days before the hearing**. (But the court may set a different deadline in your case.)
- You will not get your evidence back unless you request it from the court within 60 days of the magistrate’s decision.
- You can ask the other side about its evidence, too.

- **At the Hearing**

- Hearings are usually open to the public.
- Your hearing is “de novo” – meaning, it is a new proceeding where you submit all of your evidence again (plus any evidence you have obtained since your BOPTA appeal), and the magistrate will make his/her decision based on that evidence.
- Bring copies of all the evidence you have already submitted to the court.
- Make sure your witnesses know when and where to attend the hearing.
- The Salem courtroom has an easel. If you need other equipment (e.g., slide projector or computer), you should make your own arrangements and inform the court.
- The magistrate will listen to what you and your assessor say about the case. This is when you can explain how your evidence supports your case, call witnesses to testify about your property and its value, and question the other side’s witnesses.
- Here are some tips from the Tax Court website:
 - You will usually speak first.
 - If you are nervous, the magistrate might have the other side go first, or ask you some warm-up questions.
 - You might give an “opening statement,” explaining what you are asking for and why you should prevail (i.e., why your real market value is too high and you should receive a lower one).
 - The assessor can ask you questions, and vice versa. The judge can also ask you questions.
 - Follow good etiquette – be on time, dress neatly, stand when the magistrate enters the room and address him/her as “Your Honor,” “Judge,” or “Magistrate.”
 - Start your presentation with background information on your property: its location, how long you have lived there, what buildings it has, what you would be willing to sell it for, and information that is important to your case (e.g., the impacts of the nearby factory farm).
 - Keep a reference list of key points you want to make that explain how your evidence supports your case.

- During the assessor’s presentation, remain calm and quiet. Take notes about points you want to clarify later.
 - Think of specific questions you would like to ask the witnesses. Try not to argue with the other side’s witnesses.
 - You might give a summary/closing statement. You can tie together all of your evidence and testimony to explain why you should prevail.
- There is no official transcript/recording of the hearing, but you can record it if you give notice and a copy of the recording (if requested) to the magistrate.
 - After the hearing, the magistrate will issue a written decision and mail it to you, usually within 90 days.
 - If you cannot attend your hearing, your case could be dismissed. You need to let the court and the other party know right away, and file a written request for a new date.

IV. Step 4: Appeal to the Regular Division of the Oregon Tax Court & Beyond¹⁵

For more information on Regular Division proceedings, see the Tax Court website:
www.ojd.state.or.us/courts/tax/regular.htm and
www.ojd.state.or.us/courts/tax/documents/frequently_asked_questions.pdf.

The Tax Court Rules for the Regular Division are available at
[www.ojd.state.or.us/web/ojdpublishations.nsf/Files/2009RegularRules.pdf/\\$File/2009RegularRules.pdf](http://www.ojd.state.or.us/web/ojdpublishations.nsf/Files/2009RegularRules.pdf/$File/2009RegularRules.pdf).

You can appeal the Magistrate Division’s decision to the Regular Division of the Oregon Tax Court. This is a formal proceeding.

You can represent yourself, but the Tax Court says that most people “are well advised to seek legal advice in deciding whether (and how) to appeal.”¹⁶ (Unlike the Magistrate Division, the Regular Division does not allow anyone other than you or an Oregon attorney to represent you.)

You will need to comply with various rules and statutes. Most of the information below is from the Regular Division’s website, and is intended for those who proceed without a lawyer. These guidelines are not comprehensive; you should thoroughly consult the Court’s website and rules if you decide to go forward without a lawyer.

¹⁵ The sources for this section are: How to Appeal, *supra* note 1; Oregon Judicial Department, *Instructions for Filing an Appeal with the Oregon Tax Court Regular Division (Instructions for Filing)*, available at http://www.ojd.state.or.us/courts/tax/documents/Appeal_instructions_reg.pdf; *Tax Appeals*, *supra* note 1; Or. Rev. Stat. §§ 305.415, 305.425; 305.427, 305.445, 305.490, 305.501, 305.570.

¹⁶ *Instructions for Filing*, *supra* note 15.

- **Complaint:** You will need to file a complaint with the court clerk.
 - There is a sample complaint at: www.ojd.state.or.us/courts/tax/documents/complaintpropertytaxregular.pdf. If the sample does not fit your case, you can adjust the sample.
 - Your complaint should have plain, short statements. Label each paragraph and try to limit each paragraph to one set of facts.
 - Be sure to sign your complaint and make a copy. (The original goes to the court.)
 - Attach a copy of the Magistrate’s decision and label it “Exhibit A.”
 - Attach any other pertinent documents.
 - Include the \$50 filing fee (check or money order). If you cannot afford the fee, you can file a motion with an affidavit requesting a waiver of the fee. A sample form and affidavit is available at: www.ojd.state.or.us/courts/tax/documents/waiverordeferralregular.pdf.

Deadline: a complaint must be filed with the court clerk **within 60 days** after the Magistrate Division’s decision is entered. The complaint must be received in the Tax Court by the due date, or mailed via U.S. Postal Service on or before the due date.¹⁷ *Check with the Regular Division (phone: (503) 986-5645) to find out if there are specific mailing requirements (e.g., registered or certified mail).*

Delivery address:

By mail: Oregon Tax Court, Regular Division
1163 State Street
Salem, OR 97301-2563

In person: 1241 State Street, Floor 4R
Salem, OR

- **Communications**
 - You cannot have *ex parte* contact with the court (you cannot have private communication about case issues with the court and should copy the other side on any communications you send to the court).
 - You must copy other parties and send the court a “certificate of service” for every document you file with the court after your complaint. (A sample certificate of service is available at www.ojd.state.or.us/courts/tax/documents/certificateofservicereg.pdf.)
 - Check with the Regular Division (phone: 503-986-5645) to find out if there are specific requirements for documents you send to the court (e.g., regular or certified mail).

¹⁷ See Appendix E for your options if you miss the deadline.

- **Proceedings**

- The state Department of Revenue will be the other party (defendant). The court will notify the Department of your appeal. The Department will respond with an “answer” or a “motion” with the court. There are deadlines for you to respond to these.
 - The court clerk will schedule a telephone case management conference and tell you the date and time.
 - You and the other side can still settle your case. If you do not, it will proceed to trial.
 - The court will notify you of the date and time for your trial. (It might be in-person or over the phone.)
 - If you cannot attend your trial, your case could be dismissed. You must tell the court and the other party right away, and file a written request for a new date.
 - You will probably need to send all of your evidentiary materials to the court and the other party before your trial. The court will set deadlines for this.
 - There is no jury. Your case will be heard by an elected judge.
 - Your trial will be a “de novo” proceeding, meaning it is a “new” trial and the judge will only consider the evidence currently submitted to the court.
 - You still have the burden to prove your case.
 - The trial itself is similar to the Magistrate Division hearing.
 - The judge will issue a written decision (called an “opinion” or “order”).
 - If you win, the judge can award attorney fees and costs to you.
- You can appeal the Regular Division’s decision to the Oregon Supreme Court. If you do so, you should seriously consider obtaining legal counsel.
 - Your appeal must be filed within 30 days of the Regular Division’s final judgment.
 - There will not be a new trial. The Supreme Court will review the Regular Division’s decision for mistakes like errors of law or a lack of sufficient evidence in the record to support the Regular Division’s decision.

GLOSSARY¹⁸

Answer*

A document filed by the defendant in response to the information provided by the plaintiff in the complaint.

Appraisal*

Typically, a report prepared by an appraiser expressing an opinion of real property value that reflects pertinent market information. Various approaches may be used when appraising property, including cost, income, and sales comparison.

Appraiser*

A licensed professional who estimates property value. In property tax cases, the county assessor is typically the defendant and appears through a staff appraiser. Taxpayers may hire their own appraisers.

Assessed Value*

Taxes are based on the property's assessed value. Assessed value is the property's maximum assessed value or the property's real market value, whichever is less.

Assessment Date*

The date of the assessment year on which property is assessed: January 1st.

Assessor*

An elected or appointed official in each county who directs the administration of the state's property tax system for the county.

Board of Property Tax Appeals (BOPTA)*

Each county has a Board of Property Tax Appeals that considers and decides property tax appeals. Members of the board are appointed.

Burden of Proof*

The burden of proof is a "preponderance of the evidence," meaning the greater weight and the more convincing evidence. The plaintiff in a property value tax appeal bears the burden to show that his/her valuation best reflects the real market value of the property.

Certificate of Service*

A statement confirming that you provided the other party or parties with a copy of documents or other materials sent to the court, that also states when and how the copy was provided (via mail, fax, hand delivery, etc.). In the Magistrate Division, a "cc" or carbon copy noted on a letter sent to the other party is enough.

¹⁸ The definitions for items marked with an asterisk (*) are from *Tax Appeals, supra* note 1, at 27-31 (some verbatim).

Closing Statement

A statement a party can make at the close of a hearing, summarizing his/her evidence and argument.

Complaint*

The first document filed with the court by the plaintiff. It states what the issues are and what action or relief the plaintiff would like from the court.

Cross Examination

Questioning the other side's witness(es).

Defendant*

Generally, the county assessor or the Oregon Department of Revenue.

Evidence*

Information including, but not limited to, testimony, documents, and tangible objects, pictures, maps, tax returns, receipts, etc., that tends to prove or disprove an alleged fact. The judge or magistrate may find that certain evidence is not admissible (e.g., when it is submitted after the deadline).

Ex Parte* Contact

This occurs when one party communicates privately with the judge or magistrate. It is not permitted. A party is required to provide the other parties with copies of every writing sent to the court.

Exemption

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

Exhibit

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

Magistrate Division, Oregon Tax Court

The lower level of the Oregon Tax Court, where a magistrate presides and hears tax appeals.

Maximum Assessed Value

A value used to limit the amount your property's assessment can grow each year. Usually, it is equal to 103 percent of your property's assessed value from the previous year, or 100 percent of your property's maximum assessed value from the previous year, whichever is greater.

Opening Statement

A statement a party can make at the beginning of a trial or hearing to explain his/her case.

Oregon Supreme Court

Oregon's highest court. It can review Tax Court decisions.

Party

A person who is an active participant and has a stake in a case – usually the plaintiff or defendant.

Plaintiff*

The party who filed the appeal.

Real Market Value*

The amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm's-length transaction occurring as of the assessment date for the tax year. Or. Rev. Stat. § 308.205(1). The value of the property as of the assessment date as if it sold on the open market.

Real Property

Primarily, real estate (land and improvements on the land, such as houses).

Regular Division, Oregon Tax Court

The upper level of the Oregon Tax Court, where a judge presides and hears appeals from the Magistrate Division.

Tax Collector

The local official responsible for collecting property taxes and sending out tax statements.

Tax Statement

A document your tax collector must send to you by October 25th each year. It has your property's real market value and assessed value, and your taxes due.

Testimony

A statement given by a witness under oath.

Witness

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

APPENDIX A – IDEAS FOR INFORMATION TO SUBMIT ABOUT YOUR PROPERTY

You can use the ideas in this appendix to help you prepare for BOPTA and the Tax Court.

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

Keep in mind that the decision-maker in your tax appeal may give different levels of consideration to the different types of information you submit.

Physical Manifestations

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

- Poor air quality caused by animal waste and/or feed storage.
- Water pollution caused by the factory farm (e.g., contamination of groundwater or well water, streams, rivers, ponds, lakes, etc.)
- Soil contamination caused by the factory farm.
- Bad odors caused by animal waste.
- Intrusive noise caused by the factory farm (e.g., heavy truck traffic).
- Insect swarms from the factory farm.
- Harmful dust from the factory farm.
- Eyesores caused by the factory farm (e.g., ugly manure lagoons, unsightly manure sprayfields, unattractive industrial buildings, etc.).
- Substances leaching from the factory farm (e.g., fecal matter, antibiotics, hormones, heavy metals, etc.).
- Illnesses linked to the factory farm (e.g., a doctor's diagnosis of any illness you had that was caused or made worse by exposure to the factory farm).

Purchase Price¹⁹

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

¹⁹ Absent unusual market conditions, the recent sale price of a property is persuasive (but not conclusive) evidence of its market value. See *Ernst Brothers Corp. v. Dep't of Revenue*, 882 P.2d 591, 594 (Or. 1994) (citations omitted).

because of a factory farm, you could include the purchase price and a description of the factory farm's influence on the sale).

Recent Appraisal or Testimony of Appraiser

If you have the resources to get an appraisal, it's probably a good idea. BOPTA and Tax Court materials list appraisals as examples of evidence you could present, and appraisals frequently turn up in cases as credible evidence.²⁰

The appraisal should be recent - based on your property's value on the January 1st assessment date if possible - and should explain how your property's market value is negatively impacted by the factory farm. It should consider all three standard approaches to value, even if the appraiser finds that one or more approaches are not useful under the circumstances.²¹ Usually, the comparable sales approach is favored for residential properties.²²

Your appraiser should attend your hearing to testify about the appraisal.²³

Appendix D has information on how to find an Oregon appraiser.
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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 like size, location, age, and condition.²⁴
- For this approach to be accurate, adjustments must be made for differences in otherwise similar properties (e.g., a downward adjustment if your home has considerably fewer square feet than the other properties).²⁵ Adjustments must also be made if any of the

²⁰ See, e.g., *Tax Appeals*, *supra* note 1; *How to Appeal*, *supra* note 1; *Wong v. Clackamas County Assessor*, 2009 WL 418598, No. TC-MD 080442C (Or. Tax Magis. Div. 2009); *Taylor v. Clackamas County Assessor*, 2009 WL 323492, No. TC-MD 080527D (Or. Tax Magis. Div. 2009).

²¹ See Or. Admin. R. 150-308.205-(A); *Wong*, 2009 WL 418598, at *2.

²² *Three Approaches to Value*, *supra* note 1, at Sales Lesson 1-3.

²³ *Tax Appeals*, *supra* note 1, at 16.

²⁴ *Zakharyuk v. Clackamas County Assessor*, 2008 WL 5273295, No. TC-MD 080237B, *2 (Or. Tax. Magis. Div. 2008).

²⁵ See *id.* at *1-2; Or. Admin. R. 150-308.205-(A); *Three Approaches to Value*, *supra* note 1, at Sales Lesson 3-8, 3-9.

transactions weren't really "arms length" (e.g., if there were special circumstances such as a sale between relatives).²⁶

- If your assessment is based on comparable sales from workers' homes near factory farms, you might point out that your home and how you use it are not really comparable to the other homes because you do not work at a factory farm, and that sales to a specialized market (factory farm workers) are not representative of open market conditions.²⁷
- You could include information on similar properties that are near factory farms (e.g., information showing that a similar property sold for less because it is near a factory farm).
- Or, if the assessor calculated your assessment by comparing your property to other properties that are *not* near a factory farm, and did not 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.

You can check with your assessor's office for recent sales data, or your county clerk's office for sales information in documents like property deeds and mortgages.²⁸ You might get the information from sources like newspapers or real estate brokers, too.²⁹

Proximity

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

Your county assessor has maps that show the boundaries of each property in the county³⁰ The maps are public records.³¹

Marketability

- Information showing that your property has not sold or has taken longer to sell because of a nearby factory farm (e.g., you or a local realtor might explain that potential buyers raised concerns about the factory farm and were therefore reluctant to buy your property).

²⁶ Or. Admin. R. 150-308.205-(A); *Three Approaches to Value*, *supra* note 1, at Sales Lesson 1-10.

²⁷ A 2004 article in the *Appraisal Journal* explained that estimating market value and using the sales comparison approach usually require the buyer and seller to be "typically motivated." If they aren't, then there should be adjustments to the market value. Under the sales comparison approach, an adjustment should be made for "unusual conditions of sale." The article "highlight[ed] the importance of giving careful consideration to the conditions of sale for each comparable when performing the sales comparison approach." As an example, it discussed the unusual conditions of sale for real estate investment trusts: "For REITs to increase their real estate holdings, they of course must outbid other participants. Some hypothesize that this type of bidding leads to property acquisition premiums." Barrett A. Slade, *Conditions of Sale Adjustment: The Influence of Buyer and Seller Motivations on Sale Price*, 72:1 *Appraisal J.* 50 (2004). The same could be true where factory farms/factory farm workers are buying homes near the factory farms, creating premiums for the homes where there otherwise would be none.

²⁸ You can find contact information for county assessors and county clerks here:

www.oregon.gov/DOR/PTD/County.shtml.

²⁹ *Three Approaches to Value*, *supra* note 1, at Sales Lesson 1-7, 1-8.

³⁰ You can find contact information for county assessors here: www.oregon.gov/DOR/PTD/County.shtml.

³¹ Or. Rev. Stat. § 308.245.

- 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 have had difficulty obtaining financing, or have obtained less financing, because your property is near a factory farm.

Cost to Cure

Information about the cost of reducing any harmful impacts of a nearby factory farm on your property. For example:

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

Statements of Professionals

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

- A newspaper article reporting that an Oregon 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; or
- A statement from your local assessor that factory farms devalue nearby properties.

Stigma³²

Information showing that your property has stigma (e.g., negative feelings) attached to it because of a nearby factory farm. This can be a broad category and might include:

- Information about the public's negative perceptions of properties near factory farms in general, or of your property in particular (e.g., a statement from a local citizen that she

³² Oregon courts have recognized that stigma can decrease a property's value. *See, e.g., Conrad v. Multnomah County Assessor*, 2006 WL 373473, No. TC-MD 050618C, at *6 (Or. Tax Magis. Div. 2006) (stigma of nearby landslide site decreased property's value by half); *EJK Investments LLC v. Lane County Assessor*, 2005 WL 1503550, No. TC-MD 040558C, TC-MD 040557E (Or. Tax Magis. Div. 2005), *1, *7,* 9 (property value of former landfill and log pond site decreased by associated stigma); *Doyle*, 2005 WL 1083707, at *3 (history of uncertainty regarding roadway to property created stigma that decreased property's real market value).

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.

Assessments of Other Properties

Note: This approach is not favored in Oregon. The assessments of other properties on the tax roll are “generally not considered satisfactory evidence.”³³ “The court places little weight on evidence that compares the assessed value (AV) of the property under appeal with the AV of neighboring or like-kind properties.”³⁴

- Information about the assessments of similar properties that *are* near factory farms. You could include this if your property is assessed at a higher value than similar properties near factory farms. You could include any information showing that the other properties were assessed lower because of the factory farm.
- Information about the assessments of similar properties that are *not* near factory farms. You could include this if your property was assessed at the same or higher value as similar properties that are *not* near factory farms. It tends to show that the factory farm wasn't taken into proper consideration in your assessment.

Why should BOPTA or the Tax Court consider this kind of information in my tax appeal?

Oregon guidance documents and court cases show that a property's neighborhood and location are relevant considerations in determining its real market value.³⁵ If the neighborhood or location is undesirable (e.g., because of a factory farm), a property's value can decrease.³⁶ As explained in the state's assessor's manual:

- When characterizing a property under the sales comparison approach, an assessor/appraiser should characterize the desirability of the property's location as “high,” “average,” or “low.” For example, “close proximity to the Willamette River” would result in a “highly desirable” rating.³⁷
- When describing neighborhood characteristics under the sales comparison approach, an assessor/appraiser should take into account “adverse conditions.” An “adverse condition” could be “a residential property located directly under the flight path of an airport, noise or odor from an adjacent industrial plant, etc.”³⁸
- Under the cost approach, depreciation is taken into account. Depreciation can be caused by externalities (“loss[es] in value resulting from conditions outside the propert[ies]”).

³³ How to Appeal, *supra* note 1.

³⁴ *Tax Appeals*, *supra* note 1, at 16.

³⁵ See, e.g., *Zakharyuk*, 2008 WL 5273295, at *2 (similar properties should share similar locations); *Three Approaches to Value*, *supra* note 1, at Sales Lesson 2-2, Cost Lesson 1-8, 2-1, 2-2.

³⁶ *Conrad*, 2006 WL 373473, *6 (nearby landslide site decreased subject property's value).

³⁷ *Three Approaches to Value*, *supra* note 1, at Sales Lesson 2-2.

³⁸ *Id.*

Externalities could be caused by “poor traffic patterns, over supply of housing, deterioration of a neighborhood by social changes, serious unemployment, etc.”³⁹

- Neighborhood analysis is also important in the cost approach. “A parcel of real property is an integral part of its neighborhood. It is not, and cannot be treated separately from its environment or neighborhood.” If people think a neighborhood is “losing desirability,” it can decrease the value for the neighborhood.⁴⁰

The *Appraisal Journal* also includes useful information about how and why nearby factory farms should be considered in assessments. A 2001 article by John A. Kilpatrick (available at: <http://www.greenfieldadvisors.com/publications/conanimal.pdf>) explains that a factory farm devalues proximate properties to the extent it is viewed as a negative externality by the marketplace.⁴¹ Oregon courts have cited the *Appraisal Journal* with favor as authority in several cases,⁴² so the article could be helpful.)

The article outlines several factors that should be considered, including stigma, the type of subject property, the distance to the factory farm, physical manifestations, engineering/scientific testing, impacts on property use, marketability evidence, and impacts on the highest and best use.⁴³ The influence of these factors can reduce a property’s market value by 50-90 percent.⁴⁴

- **Stigma** - any of the “unknowns and risks associated with ownership of the property.”⁴⁵ 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”⁴⁶), it may be difficult to quantify, but it should not be overlooked⁴⁷
- **Distance** - generally, the closer the factory farm, the greater its impact on property values.⁴⁸

³⁹ *Id.* at Cost Lesson 1-8.

⁴⁰ *Id.* at Cost Lesson 2-1, 2-2.

⁴¹ John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 *Appraisal J.* 301, 302 (2001). <http://www.greenfieldadvisors.com/publications/conanimal.pdf>

⁴² *See, e.g., Hilton Hotels v. Umatilla County Assessor*, 2003 WL 22846400, No. TC-MD 020668C, TC-MD 030656B, at *4 (Or. Tax Magis. Div. 2003) (relying on *Appraisal Journal* article submitted by plaintiff to validate value adjustment plaintiff used); *Hilton Hotels Corp. v. Jackson County Assessor*, 2003 WL 21443402, No. TC-MD 020391C, at *3 (Or. Tax. Magis. Div. 2003) (where plaintiff submitted *Appraisal Journal* article as exhibit, stating that “[t]he court accepts Plaintiff’s position and the rationale put forth in the appraisal article); *Kailes v. Josephine County Assessor*, 2001 WL 34114321, No. TC-MD 980876, TC-MD 9909664C, TC-MD 982945C, TC-MD 000613C, at *5 (Or. Tax Magis. Div. 2001) (citing *Appraisal Journal* article for proposition that risks of owning certain properties increase in oversupplied market); *Avison Lumber Co. v. Dep’t of Revenue*, 1972 WL 726, at *5 (Or. Tax 1972) (in assessment appeal for industrial property, citing *Appraisal Journal* articles as providing “[u]seful insight into the appraisal of industrial property”).

⁴³ Kilpatrick, *supra* note 41, at 306.

⁴⁴ *Id.*

⁴⁵ *Id.* at 302.

⁴⁶ *See Vincent D’Elia & Catherine M. Ward, The Valuation of Contaminated Property*, 111 *Banking L.J.* 350, 359 (July-Aug 1994).

⁴⁷ *See Bill Mundy, Stigma and Value*, 60:1 *Appraisal J.* 7 (Jan. 1992).

⁴⁸ Kilpatrick, *supra* note 41, at 304-05 (citing University of Minnesota study).

- ***Physical manifestations*** - various impacts of factory farms, e.g., impaired water quality can reduce a neighboring property's value;⁴⁹ hydrogen sulfide emissions from manure lagoons may sicken neighbors;⁵⁰ dust, odors, and flies carrying animal blood, feces, or antibiotic-resistant bacteria may also impair a neighboring property's value.⁵¹
- ***Marketability evidence*** - evidence about the length of time it takes to sell, or the unsalability of a property.⁵² For instance, as Kilpatrick reports, some rural homeowners in Michigan were unable to sell their home next to a pork processing facility. Pending litigation, the pork processing company offered to compensate them for 60% diminution in the market value of their home.⁵³
- ***Impacts on highest and best use*** – where the factory farm influences the use and enjoyment of your property, e.g., from odor or flies.⁵⁴ This factor might include things like being unable to grill out, open windows, play in the yard, or hang clothes out to dry.

You can access the article at <http://www.greenfieldadvisors.com/publications/conanimal.pdf>, or from www.factoryfarmtaxprotest.org.

⁴⁹ *Id.* at 304 (citing Kirshner & Moore study).

⁵⁰ *Id.* at 305 (describing illnesses near CAFOs in Minnesota).

⁵¹ *Id.* at 305-06. See also Iowa State University & The University of Iowa Study Group, *Iowa Concentrated Animal Feeding Operations Air Quality Study: Final Report* 158 (2002), available at www.ehsrsrc.uiowa.edu/CAFOstudy/ (Chapter 7) (odor, dust, noise, and “general decline in the natural beauty of the area” from CAFOs can depress sales prices) (citations omitted).

⁵² See D’Elia & Ward, *supra* note 46, at 360 (“longer marketing period” and “inability to sell” illustrate perceptions of devaluation).

⁵³ Kilpatrick, *supra* note 41, at 306.

⁵⁴ *Id.* at 302.

APPENDIX B – EXAMPLES OF DEVALUED PROPERTIES

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

Selected Studies & Reports

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

- Doug Gurian-Sherman, Union of Concerned Scientists, *CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations*, at 61 (April 2008).

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

- Pew Commission on Industrial Farm Animal Production, *Putting Meat on the Table: Industrial Farm Animal Production in America*, at 40-49 (April 2008).

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

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

In Iowa, one 1996 study found that proximity to a hog CAFO decreased neighboring property values in the following order: 40 percent within .5 mile, 30 percent within 1 mile, 20 percent within 1.5 miles, and 10 percent 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 percent 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 or Iowa St. Univ. Ctr. for Agric. Dev. Working Paper 03-WP 342 (Aug. 2003).

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

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

A 1999 study in Missouri found that the average loss of land value within three miles of a CAFO was \$112 an 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 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. St. Univ., Staff Paper No. 363, June 2003).

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

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

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

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

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

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

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

- 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 Feb. 2007) (citing study of Park, Lee, and Seidl).

Selected Articles

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

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

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

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

An Iowa paper reported on the results of the University of Northern Iowa study mentioned above. One interviewee said that his neighbor had been offered \$1 million for his land before plans for a hog lot were announced, but that after the announcement, “the would-be buyer walked away.” “He lost almost \$1 million right there And it’s not necessarily smell. It’s psychological They don’t want anything to do with them (hog lots) if they see them.” Another interviewee, who had recently bought land in the area, said she “would not have bought the house and all the surrounding property . . . at above market value . . . if a CAFO was going to be built a mile away. . . . And to tell you the truth, I’ll sell my property at a huge loss to move away if they build these things.”

- *UNI Study: Hog Lot Cuts up to 15% off Nearby Home Values*, Waterloo-Cedar Falls Courier, Mar. 12, 2007, at A1.

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, at 2B.

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, at A1.

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.” He added that “CAFOs do decrease property values.”

- Niki Kelly, *General Assembly: House Restricts Feed Farms*, The Journal Gazette, Feb. 22, 2007, at 6C.

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 percent 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 percent reduction within .5 mile, 25 percent reduction within .75 mile, 20 percent reduction within 1 mile, 15 percent reduction within 1.25 miles, 10 percent reduction with 1.5 miles.

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

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

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

A Peoria, Illinois newspaper reported that county officials lowered property values for at least 20 people with homes within two miles of a large sow farm and its odor. The tax board decreased assessments by 30 percent for neighbors with 1.5 miles of the operation, and 10 percent for those within 2 miles of the facility.

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

A 2006 Letter to the Editor in opposition to proposed legislation that would weaken Michigan’s environmental laws described the “severe pollution” that CAFOs cause. The author explained that the growing number of CAFOs in Michigan was “threatening our public health, our rural communities and the viability of Michigan’s 52,000 farms.” She also noted that “[t]he stench from CAFOs has led to reductions in property values of up to 70 percent by the Michigan Tax Tribunal for nearby residents no longer able to enjoy or sell their homes.”

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

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

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

In an article summarizing newspaper coverage of concerns about large-scale swine facilities (LSSF) in Illinois, a “distinct undercurrent” of claims against the facilities was that they were “difficult for communities.” Specifically, “[s]ources were concerned that LSSF were socially disruptive: they went against traditional community values, destroyed the community's history, violated ethics of neighborliness, and created community conflict. In addition, they were concerned that the community would have to develop infrastructure capacity to handle the effects of LSSF, paying for social services, schools, and health care for migrant workers and cleaning up spills and abandoned lagoons. Those opposed to LSSF also maintained that the large-scale operations had no overall economic benefit for communities because they displaced

more jobs than they created, decreased property values and made alternative industries, such as tourism, less viable.”

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

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

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

Selected Cases

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

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

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

- Jerry Perkins, *Jury Sides against Hog-lot Firm: A Total of \$76,400 Will Go to Residents Near the Facility*, The Des Moines Register, Jan. 26, 2002, at 1D.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The neighboring plaintiffs alleged that the facility would devalue their properties (among other things). The plaintiffs introduced the affidavit of a professional appraiser, who stated that neighboring property values would be reduced by 18-35 percent. 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 .75 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 .75 of a mile from the proposed hog operation, to the emissions generated by the proposed hog operation will increase their risk of health problems.”

- *Nickels v. Burnett*, 798 N.E.2d 817, 820, 826 (Ill. App. Ct. 2003); Brief of Appellees at 7-10.

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

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

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

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

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

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

APPENDIX C – LINKS TO HELPFUL ASSESSMENT INFORMATION

General Information on Tax Assessment and Challenges

General Overview: www.oregon.gov/DOR/PTD/property.shtml

Appeals: www.oregon.gov/DOR/PTD/Appeal_P.shtml and
www.oregon.gov/DOR/PTD/IC_303_668.shtml

Magistrate Division: www.ojd.state.or.us/courts/tax/magistrate.htm

Regular Division: www.ojd.state.or.us/courts/tax/regular.htm

2009 Assessment & Taxation Calendar

www.oregon.gov/DOR/PTD/docs/PTD-calendar.pdf

Useful Contact Information

Oregon Department of Revenue

www.oregon.gov/DOR/

Phone: (503) 378-4988
(800) 356-4222

Oregon Tax Court

www.ojd.state.or.us/courts/tax/index.htm

Mailing Address: 1163 State Street
Salem, OR 97301-2563

Physical Address: 1241 State Street
Salem, OR 97301
Floor 3R (Magistrate Division)
Floor 4R (Regular Division)

Phone: Magistrate Division: (503) 986-5650
Regular Division: (503) 986-5645
Toll Free: (800) 773-1162

Contact Information for County Officials (Assessor, Tax Collector, Clerk)

www.oregon.gov/DOR/PTD/County.shtml

(or check the government section of your local phone book.)

Contact Information for Board of Property Tax Appeals Clerks

www.oregon.gov/DOR/PTD/docs/bopta/boptaclerks.pdf

Forms

BOPTA - Real Property Petition (with instructions)

www.oregon.gov/DOR/PTD/docs/bopta/310-063.pdf

BOPTA - Authorization to Represent

www.oregon.gov/DOR/PTD/docs/bopta/303-031.pdf

Magistrate Division - Sample Complaint (with instructions)

www.ojd.state.or.us/courts/tax/documents/propcomplform.pdf

Magistrate Division – Authorization to Represent

www.ojd.state.or.us/courts/tax/documents/Auth_to_Represent.pdf

Magistrate Division – Fee Waiver Application & Affidavit

www.ojd.state.or.us/courts/tax/documents/feewaiver.pdf

Magistrate Division – Stipulated Agreement

www.ojd.state.or.us/courts/tax/documents/stipulationprop.pdf

Regular Division - Sample Complaint

www.ojd.state.or.us/courts/tax/documents/complaintpropertytaxregular.pdf

Regular Division – Motion & Affidavit for Fee Waiver or Deferral

www.ojd.state.or.us/courts/tax/documents/waiverordeferralregular.pdf

Regular & Magistrate Divisions – Certificate of Service

www.ojd.state.or.us/courts/tax/documents/certificateofservicereg.pdf

APPENDIX D – OTHER RESOURCES

Information on Factory Farms

Resources and Reports

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

Organizations

- Friends of Family Farmers, Oregon
www.friendsoffamilyfarmers.org
This grassroots organization promotes socially responsible agriculture in Oregon through education, advocacy, and community organizing.
- Socially Responsible Agricultural Project
www.sraproject.org
SRA Project provides free assistance to communities struggling to protect themselves from factory farms.
- Waterkeeper
www.waterkeeper.org/mainarticledetails.aspx?articleid=87

- Food & Water Watch
www.foodandwaterwatch.org/food/factoryfarms
- Sierra Club
www.sierraclub.org/factoryfarms/
- Natural Resources Defense Council (NRDC)
www.nrdc.org/water/pollution/cesspools/cessinx.asp
- National Family Farm Coalition
www.nffc.net
- Center for a Livable Future
www.jhsph.edu/clf
- Center to Expose and Close Animal Factories
www.closeanimalfactories.org
- Oregon Tilth
www.tilth.org
- Oregon Department of Agriculture, Confined Animal Feeding Operations
www.oregon.gov/ODA/NRD/cafo_front.shtml

How to Find an Appraiser

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

How to Find an Attorney

- StateLawyers.com, Attorney Directory – Oregon Counties
www.statelawyers.com/AttorneyDirectory/Index.cfm/StateID:37
- Oregon State Bar
www.osbar.org/public/ris/ris.html#referral
(503) 620-0222 or (800) 452-8260
- Lawyer Referral Service
(503) 648-3763 or (800) 452-8260
- Lawyers.com, Find a Lawyer
www.lawyers.com/Oregon/browse-by-city.html
- American Bar Association, Consumers' Guide to Legal Help
www.abanet.org/legalservices/findlegalhelp/main.cfm?id=OR
- Local Yellow Pages
- Recommendations

APPENDIX E – IF YOU MISS AN APPEAL DEADLINE⁵⁵

Sometimes, you can try to appeal to the Magistrate Division or the Department of Revenue even if you missed an earlier appeal deadline.

If you did not file first with BOPTA, the requirements for appeals to the Magistrate Division are:

- It is a residential appeal.
- The court determines that the difference between your requested real market value and your given real market value is 20 percent or more.
- The court determines you had “good and sufficient cause” for not filing with BOPTA. This means an “extraordinary circumstance” beyond your control. Things that *do not* qualify are “inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.”⁵⁶

So, there is no guarantee that the court will grant your appeal or change your assessment.

If you miss a BOPTA or Tax Court appeal, sometimes you can appeal to the state Department of Revenue. The Department of Revenue can change your assessment using its “supervisory powers,” but only if it’s “necessary to conform the [assessment] roll to applicable law”⁵⁷ and only under special circumstances such as:

- Your assessor requests a reduction;
- You and your assessor agree to a change in writing.

So, again, there is no guarantee that the Department of Revenue will grant your appeal or reduce your assessment.

The petition form for an appeal to the Department of Revenue is available at www.oregon.gov/DOR/PTD/docs/830-009.pdf, or from your county assessor or the Department of Revenue.

For more information on late appeals, see www.oregon.gov/DOR/PTD/IC_303_688.shtml or call (503) 945-8286.

⁵⁵ The sources for this section are *Tax Appeals*, *supra* note 1, at 24, Or. Rev. Stat. §§ 305.288; Supervisory Power, *supra* note 4.

⁵⁶ Or. Rev. Stat. § 305.288(5)(b)(B).

⁵⁷ Or. Rev. Stat. § 306.115.