

**TAX PROTESTS
FOR
PROPERTIES NEAR FACTORY FARMS**

I O W A

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 Iowa attorney if you wish to obtain legal advice.***

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INTRODUCTION

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

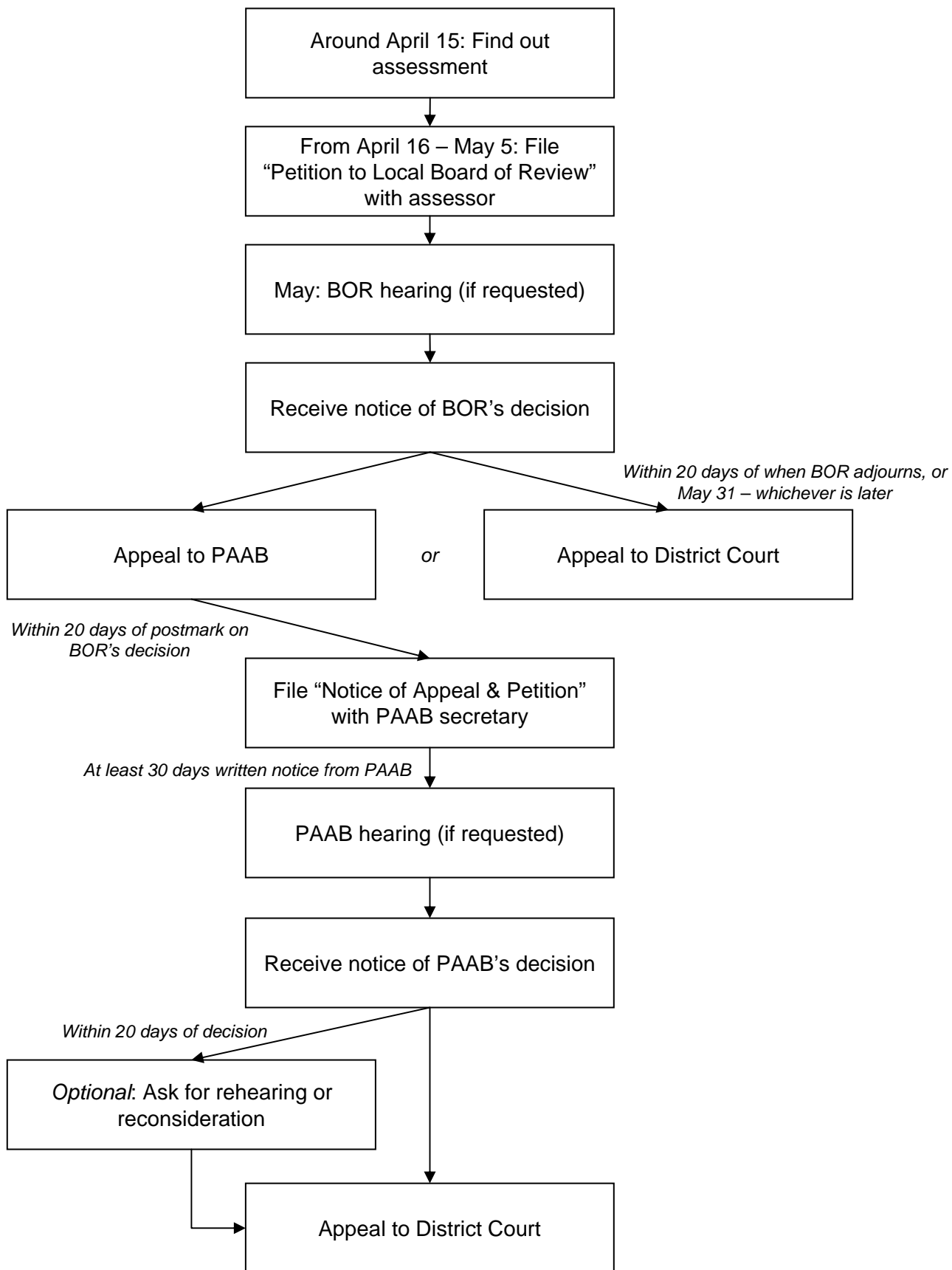
The economic, environmental, public health, labor, social, and ethical problems associated with factory farms are becoming increasingly familiar, as evidenced in two recent reports by major non-governmental organizations: *Putting Meat on the Table: Industrial Farm Animal Production in America* (Pew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

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

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

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

Iowa Tax Protest Process



CHECKLIST

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

- ___ Around April 15th, find out your assessment by:
 - ___ Receiving notice from your assessor, or
 - ___ Submitting a written request for your assessment.

- ___ File a “Petition to Local Board of Review” with your local Board of Review.
 - ___ Be sure to request an oral hearing if you want one.
 - ___ The Petition must be delivered or postmarked from April 16 – May 5.

- ___ If you requested a hearing, attend the BOR hearing in May to support your case.

- ___ Receive notice of BOR’s decision.

- ___ Decide whether to appeal BOR’s decision to PAAB or the District Court.

- ___ If appealing to PAAB:
 - ___ File a “Notice of Appeal & Petition” with the PAAB Secretary.
 - ___ The Notice must be delivered or postmarked within 20 days of the postmark on BOR’s decision letter.
 - ___ Be sure to request an oral hearing if you want one.
 - ___ Attach:
 - ___ The postmarked envelope of BOR’s decision letter to you.
 - ___ BOR’s decision letter.
 - ___ Your petition to BOR.
 - ___ All records, reports, and documents that you gave to BOR in support of your petition.
 - ___ *Optional:* 3 copies of any new information you want to submit (records, reports, appraisals, documents, etc.).
 - ___ If you requested a hearing, receive at least 30 days notice from PAAB about your hearing.
 - ___ Prepare for the PAAB hearing.
 - ___ Gather and label your exhibits.
 - ___ File 1 copy of all of your exhibits with the other parties at least 10 days before the hearing.
 - ___ *Please check with PAAB for filing requirements with PAAB.*
 - ___ Attend the PAAB hearing to support your case.

- ___ Decide whether to ask for rehearing or reconsideration of PAAB’s decision. File within 20 days of PAAB’s decision.

- ___ Decide whether to appeal PAAB’s decision to the District Court.

BACKGROUND INFORMATION

Some of the information for this section was taken from Iowa's Department of Revenue website at www.iowa.gov/tax/locgov/iowa-property-tax.html. The website may be helpful in answering further questions you have about property taxation.

Every two years in Iowa (in odd-numbered years), real properties are assessed to help calculate taxes. "Real property" is basically real estate – land and improvements on the land, such as houses. Your tax bill is determined by applying your local tax rate(s) to your property's assessed value, and then subtracting credits (such as the Homestead Credit). Your taxes will go to support one or more "taxing authorities" – e.g., counties, school districts, hospital districts, fire protection associations.

The assessments are performed by local assessing officials. Each Iowa county has its own assessor, and some cities have assessors. (But public utilities and railroads are assessed by Iowa's Department of Revenue.) Assessors are appointed for six-year terms by local "conference boards" comprised of local governmental and school officials. Sometimes, your assessor will request supplemental information from you to help him/her assess your property.¹

The **assessment date** (the date on which your property's value is based) is January 1st of odd-numbered years, and assessors have until around April 15th to complete their assessments. In even-numbered years, the local Board of Review meets to review the assessments, and will adjust them if needed.² (The "Board of Review" is comprised of at least three people appointed by your local conference board to hear assessment appeals.³) Your assessor will send you notice whenever there is a change in your assessment, or you can make a written request to find out your assessment.⁴ Your assessment will be the basis for your taxes the next year, which are generally due in two installments beginning on September 30th. (So, your 2010 tax bill will be based on your January 1, 2009 assessment.)

According to Iowa law, an assessment must be based on the property's **actual value**, which is the "fair and reasonable market value" of the property.⁵ In turn, **market value** is the "fair and reasonable exchange . . . between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property."⁶

There are three main approaches assessors use to value property: the market approach, the cost approach, and the income approach. The **market approach** uses sales of similar properties to estimate a property's market value. The **cost approach** estimates how much it would cost to replace the property with a similar one. The **income approach** estimates the amount of income a

¹ Iowa Code Ann. § 441.19.

² *Id.* § 441.35.

³ *Id.* § 441.31.

⁴ *Id.* § 441.23.

⁵ *Id.* § 411.21(1).

⁶ *Id.*

property would produce (e.g., rent from an apartment building). In any case, your assessment can't be more than your property's fair and reasonable market value.⁷

If you disagree with the assessed value of your property, you can appeal to your local **Board of Review (BOR)**, and then to the state **Property Assessment Appeal Board (PAAB)** or county **District Court**. The law doesn't require you to hire an attorney at any level, but you may wish to, especially if you appeal to the District Court and beyond. You can also have someone else represent you before the Property Assessment Appeal Board, such as a family member, attorney, or tax representative. (Check with your local Board of Review for its rules on family members or others representing you.)

⁷ *Id.* § 441.2(1)(g) (but there is a different provision for valuing agricultural property).

THE PROTEST PROCESS

The following websites have helpful information about the protest process:

www.state.ia.us/tax/educate/78573.html (general)

www.state.ia.us/tax/PAAB/PAAB.html (PAAB)

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

There are basically two ways to find out what your assessment is:⁸

- Your assessor will give you written notice of your assessment whenever there's a change from the previous year.
- You can submit a written request to your assessor. It's probably a good idea to submit this as close to April 15th as you can, so that you'll have time to meet the appeal deadline.

You can also ask your assessor to give you "all information in any formula or method used to determine the actual value" of your property. By law, your assessor has to provide the information.⁹

You can go to www.iowa-assessors.org/htdocs/Assessors_of_Iowa/default.htm or check your phonebook for contact information for your local assessor.

Iowa's Department of Revenue offers the following guidance on how to tell if your assessment is correct:

Property owners who disagree with the assessor's estimate of the market value of their property should ask themselves, "Could I sell this property for that amount today?" If the answer is yes, then the value is probably correct. However, every property owner has the right to appeal an assessment.¹⁰

Remember that your protest and the information you use to support your appeal should be based on your property's actual value on the assessment date (January 1st).¹¹

⁸ Iowa Code Ann. § 441.23.

⁹ *Id.* § 441.21.

¹⁰ Iowa Dep't of Revenue, An Introduction to Iowa Property Tax, www.iowa.gov/tax/educate/78573.html.

¹¹ Iowa PAAB, Preparing for Your Hearing before the Property Assessment Appeal Board, available at <http://www.state.ia.us/tax/PAAB/PreparingforYourHearing.pdf>.

II. Step 2: Local Review at the Board of Review (BOR)¹²

A. Filing the Petition

To begin the appeals process, you must file a written, signed protest with your Board of Review.

- Iowa’s Department of Revenue has a form that you can use to file your protest, called “Petition to Local Board of Review.”

The “Petition to Local Board of Review” is available online at www.iowa.gov/tax/forms/56064.pdf, and at your assessor’s office.

- Your protest must be based on a reason authorized by Iowa statute.
 - In this case, where you’re challenging your property’s assessment as being too high, your reason would be that “the property is assessed for more than the value authorized by law.”¹³ (Remember that, under the law, your assessment must be based on your property’s “fair and reasonable market value.”)
 - You must specify the reason in your written petition, and include:
 - The amount of the over-assessment, and
 - The amount you believe is the actual value of your property, and a fair assessment.
 - The “Petition to Local Board of Review” form has spaces for you to fill in all this information.
- ***Be sure to request an oral hearing in your written protest/petition if you would like to have a hearing about your petition.***
- If you’re protesting assessments for more than one parcel of property, you can include the parcels on the same protest form if you’re relying on the same reason (over-assessment) for each parcel.
- You can check with your local officials (assessor, county clerk) to find out where to deliver your petition form (e.g., assessor/Board of Review address).
- You must file (in person) or postmark (in the mail) your petition from **April 16 to May 5** for it to be valid. (There’s an extended period for disaster areas; you can check with your local officials to find out the deadline. Also, if May 5th falls on a weekend, you can file the following Monday.) You might be able to do electronic filing – check with your local BOR to find out.

The Iowa State Association of Assessors has a website with the contact information for all the assessors in Iowa (99 county assessors and 8 city assessors) – www.iowa-assessors.org/htdocs/Assessors_of_Iowa/default.htm.

¹² The information for this section was taken from: Iowa Code Ann. §§ 441.33, 441.37; Iowa Dep’t of Revenue, *Petition to Local Board of Review, Regular Session*, available at www.iowa.gov/tax/forms/56064.pdf ; Iowa Dep’t of Revenue, *An Introduction to Iowa Property Tax*, www.iowa.gov/tax/educate/78573.html; Iowa State Ass’n of Assessors, www.iowa-assessors.org/cgi-bin/public.cgi?path=index.html; Iowa Admin. Code r. 701-71.20(4).

¹³ Iowa Code Ann. § 441.37(1)(b).

B. The BOR Hearing

The BOR meets in May to consider assessment protests. It stays in session as long as it needs to act on all the protests, usually not past May 31st. If you requested an oral hearing in your petition, you can appear before the BOR to support your petition.

- You should get notice of your hearing from BOR, but can call if you don't.
- Each BOR has its own hearing procedures.
- You have the initial burden to show that your assessment is wrong. However, if you offer “competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor,” then the burden shifts to your assessor to show that his/her assessment is right.¹⁴
 - “Competent” means that the testimony complies with Iowa’s statutory requirements for assessments.¹⁵ (Appendix A has more information about this under “Recent Appraisal or Testimony of Appraiser.”)
 - “Disinterested” means that the witness has no “right, claim, title, or legal share in the cause or matter in issue, and who is lawfully competent to testify.”¹⁶
 - If you can't shift the burden to your assessor, you should be prepared to show what the correct value of your property is, and that it is more likely than not that your assessment is excessive.¹⁷

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

1) Specific information about your property that shows how its actual 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.com.

The BOR must give you written notice of its decision and the reasons for its decision.

III. Step 3: Appeal to the Property Assessment Appeal Board (PAAB) or the District Court

If you're not happy with the BOR's decision, you can appeal to either:

¹⁴ *Id.* § 441.21(3).

¹⁵ *Boekeloo v. Bd. of Review of City of Clinton*, 529 N.W.2d 275, 279 (Iowa 1995).

¹⁶ *Post-Newsweek Cable, Inc. v. Bd. of Review of Woodbury County*, 497 N.W.2d 810, 813 (Iowa 1993).

¹⁷ *Id.* at 814; *Boekeloo*, 529 N.W.2d at 280.

- The Property Assessment Appeal Board, or
- The District Court.¹⁸

Your assessor also has a right to appeal.

A. Option 1: Property Assessment Appeal Board (PAAB)¹⁹

For more information on PAAB proceedings, see www.iowa.gov/tax/PAAB/PAAB.html. The website has several helpful forms as well as helpful information sheets including:

Questions and Answers
Hearing Procedures
Preparing for Your Hearing
Glossary of Common Terms

The PAAB is a state-level board that reviews BOR decisions. It's part of Iowa's Department of Revenue and has three members with experience in property appraisals and taxes, appointed by the governor. It has the power to affirm, reverse, or modify the BOR's decision.

- You can represent yourself before PAAB, or you can have an attorney or "legal representative" represent you. A "legal representative" could be almost anyone – e.g., a tax representative, family member, or other person.
- There is no fee for appealing to PAAB, but you will be responsible for your own costs.
- Your taxes won't be delayed because of a PAAB appeal, but you will get a refund if you've already paid.
- You and the other parties can agree to a settlement anytime before PAAB issues its final decision, subject to PAAB's approval. To do so, you would need to put it in writing, have all parties sign it, and file it with PAAB.

1. Filing the Notice of Appeal & Petition

To appeal to PAAB, you'll need to file a written "Notice of Appeal & Petition" with certain information, described below. PAAB has a form you can use.

The "Notice of Appeal & Petition" form is available online at
www.iowa.gov/tax/PAAB/NotAppPet2008.pdf.

¹⁸ H.F. 2700, 82nd Gen. Assem., 2nd Reg. Sess. (IA 2008) (approved for Iowa Code Ann. § 441.37A); Iowa Code Ann. § 441.37A.

¹⁹ The information in this section was taken from: H.F. 2700, 82nd Gen. Assem., 2nd Reg. Sess. (IA 2008) (approved for Iowa Code Ann. § 441.37A); Iowa Code Ann. § 441.37A; Iowa Admin. Code § 701-71.21; Iowa PAAB, Forms, www.iowa.gov/tax/PAAB/PAAB-Forms.html; Iowa PAAB, Notice of Appeal & Petition, available at www.state.ia.us/tax/PAAB/NotAppPet2008.pdf; Iowa PAAB, Preparing for Your Hearing, *supra* note 11; Iowa PAAB, Exhibit List, available at www.state.ia.us/tax/PAAB/ExhibitList.pdf; Iowa PAAB, Hearing Procedures, available at www.state.ia.us/tax/PAAB/HearingProcedures.pdf; Iowa PAAB, Questions and Answers, available at www.state.ia.us/tax/PAAB/PAAB-QA.html.

a. Delivery Requirements

- You must file your petition within **20 days** after the postmarked date of BOR’s decision letter.
- You can deliver it in person or through first-class mail. (You can also use a courier service for immediate delivery.)
 - If you send it in the mail, it must be postmarked within 20 days of BOR’s decision letter postmark.
 - If you take it in person, you must deliver it within 20 days of BOR’s decision letter postmark.
- The delivery address is:
Secretary of the Property Assessment Appeal Board
401 SW 7th Street, Suite D
Des Moines, Iowa 50309-4634
- You must attach several things to your petition. (It’s a good idea to keep copies of these for yourself, too.)
 - The postmarked envelope of BOR’s decision letter to you.
 - BOR’s decision letter.
 - Your petition to BOR.
 - All records, reports, and documents that you gave to BOR in support of your petition.
 - *Optional:* Any new information you want to submit (records, reports, appraisals, documents, etc.).
 - You don’t have to submit new information now. You can submit it later.
 - If you do, you need to provide 3 copies of each.
- PAAB will give copies of your petition to BOR and the other parties, but you need to make sure that BOR and the other parties have copies of the attachments listed above.

b. Filling out the Notice & Petition

See Appendices A and B for ideas about information to include in your petition and hearing.

- The petition form requests basic information about you and your property, the reasons for your appeal, and what you’re asking for.
- For the “Grounds on Appeal” section, you have to choose the same grounds you did in your BOR protest (i.e., your property is assessed for more than its value).
- The form has a space for you to check whether or not you’d like a hearing. ***Be sure to check this if you would like a hearing.***
 - You can request to participate in a hearing on the telephone. There’s a form on PAAB’s website for that, which must be delivered to the PAAB Secretary and all other parties within 20 days of filing your petition.
- There is a section for you to list your attorney or legal representative (if any).
 - If you have a legal representative, you need to fill out a “Power of Attorney” form, too. It’s available on PAAB’s website. It must be delivered to the PAAB Secretary and all other parties.
 - If you have an attorney, the attorney will need to file an appearance with PAAB.

- Once you file, BOR will submit certain things for your appeal to PAAB (records, minutes of your BOR hearing, your property record card, etc.).

The PAAB website has several helpful forms you may want to use -

<http://www.iowa.gov/tax/PAAB/PAAB-Forms.html>.

- Request for Telephone Hearing
- Request for Continuance (different hearing date)
 - Withdrawal of Appeal
 - Power of Attorney
 - Exhibit List

2. The PAAB Hearing

Notice

PAAB will give you at least 30 days written notice of your hearing. The notice will:

- Have the date, time, and place of the hearing;
- Let you know that you can appear and present oral arguments, evidence, and briefs;
- Tell you that the hearing will be electronically recorded by PAAB, but that you can get a court reporter (word-by-word transcript) at your own expense;
- Let you know that you have to provide any Audio Visual equipment you want to use.

Preparation

- You should gather all the evidence you need to support your position and your requested assessment. Some examples of evidence listed on the PAAB website are:
 - A description of your property;
 - A recent appraisal of your property or in-person testimony from an appraiser. (It's best if the appraisal is based on the January 1st assessment date of your protest.)
 - Sales of comparable properties.
 - Recent purchase price or bill of sale.
 - Maps and photographs.
 - Affidavit (signed and sworn statement) about the value or sale of your property.
 - Written offer or listing for sale.
 - Witnesses that testify about the value of your property (e.g., appraisers, realtors, or others who know about your property).
- Remember that you can't argue a new ground for your appeal, but you can present additional evidence on the same ground (over-assessment).

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

See also Appendices A and B for ideas about evidence to submit.

- To prepare your exhibits for the hearing:
 - You should mark them with numbers with stickers provided by PAAB. (The “appellant” (the party appealing BOR’s decision) marks his/her exhibits with numbers; the “appellee” marks his/her exhibits with letters.)
 - You should list them on the exhibit list provided by PAAB. (PAAB’s website has a blank exhibit list with instructions.)
- You must file copies of all of your exhibits with the other parties at least **10 days** before the hearing (unless PAAB gives you a different deadline).
 - If you don’t, your hearing could be delayed or your exhibits could be excluded.
- You must file **3 copies** (originals plus 2 copies) of all of your exhibits, or a list of your exhibits, with PAAB at least **10 days** before the hearing. (This is the requirement in the law. However, PAAB’s current practice is *not* to require the exhibits before the hearing. Instead, you’d bring 3 sets with you, and fill out a list of exhibits when you got to the hearing.²⁰ *Please check with PAAB regarding this requirement.*)
 - If you want to, you can deliver just one set before the hearing, and bring the other two sets to the hearing.
 - If you just file a list, be sure to bring your actual exhibits and copies to the hearing.
- Remember that all of the papers (motions, briefs, exhibits, etc.) that you file in your appeal must be filed with the PAAB Secretary as well as the other parties (or their lawyers).
- Iowa’s regulations also have provisions for discovery (exchange of documents with the other parties before the hearing) and subpoenas (compelling someone to testify).

If you have questions about preparing for your hearing, please contact the PAAB Secretary at 515-725-0338.

Hearing

Some general things to know about the hearing are:

- Hearings are usually held in the hearing room of the PAAB, at 401 SW 7th Street, Suite D, Des Moines. (But PAAB may use a different location.)
- The hearing will be digitally recorded. You can request a transcript from PAAB (which PAAB can charge you for).
- Your appeal might be heard by less than the entire board.

²⁰ Email from PAAB attorney (12.16.08).

- You can appear in person, or your attorney or legal representative can represent you.
- If you don't appear after PAAB gave you proper notice of the hearing, PAAB could dismiss your appeal unless you get a "continuance."
 - If you need to delay your hearing, you can apply for a continuance for good cause. PAAB's website has a form you can use.
- All hearings are open to the public (but PAAB's deliberations are confidential).
- PAAB may consolidate your case with similar cases.
- PAAB might decide to have an informal prehearing conference with all the parties.
- The hearing lasts until all evidence has been presented.

The conduct of the hearing (subject to the presiding officer at the hearing) is:

- The presiding officer describes the proceedings.
- The parties present opening statements (e.g., a "general description of the property and a brief statement of the reason(s) you believe your assessment to be incorrect,"²¹ as well as a summary of the evidence you intend to present).
- The parties present their cases (i.e., you present your exhibits and testimony).
 - Witnesses are sworn in and can be cross-examined by the other side or the PAAB.
 - If you have a witness to talk about an exhibit, you should submit the exhibit first.
 - You can object to the other side's evidence.
 - PAAB can question you and require you to produce relevant evidence (papers, documents, etc.).
 - The formal rules of evidence don't apply, but the rules of privilege do (rules about information that is protected from disclosure through relationships, e.g., an attorney/client or marital relationship).
 - PAAB will decide whether to "admit" evidence (which means it becomes part of the record and PAAB can consider it in its decision) after the other side has a chance to examine it.
 - Even if PAAB doesn't admit your evidence, you can make an "offer of proof" to ensure that your evidence (exhibits or testimony) goes into the record. To do so, you would offer a summary of the testimony or a copy of the exhibit.²²
 - If there is some evidence that you need to submit late, you can ask PAAB to keep the record open. Then, PAAB will set a deadline for submitting the evidence.
- When everything has been presented, the parties can present final arguments.

When PAAB makes its decision, it has to consider "anew" all questions relating to your property's assessment amount.²³ Basically, this means that it has to consider all the evidence and there is no presumption that your original assessment is correct. So, PAAB does not

²¹ Iowa PAAB, Preparing for Your Hearing, *supra* note 11, at 2.

²² Iowa statutes provide that "Any books, records, papers, or documents produced as evidence shall become part of the record of the appeal. Any testimony given relating to the appeal shall be transcribed and made a part of the record of the appeal." H.F. 2700, 82nd Gen. Assem., 2nd Reg. Sess. (IA 2008) (approved for Iowa Code Ann. § 441.37A); Iowa Code Ann. § 441.37A.

²³ *Id.*

“assume the valuation appealed from is correct.”²⁴ Instead, it “will review all evidence and make an independent judgment on property value.”²⁵

PAAB will send you a written decision on your appeal.

3. Rehearing or Reconsideration

If you aren't happy with PAAB's decision, you can ask PAAB for a rehearing or reconsideration.

- You must file for rehearing/reconsideration within **20 days** of PAAB's decision.
- There are application and notice requirements. You can contact PAAB for the specifics.
- Your application is deemed “denied” unless PAAB grants it within 20 days of your filing it.

B. Option 2: District Court²⁶

This is the other method of appealing the BOR's decision (if you don't appeal to PAAB).

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

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

- You begin by filing a written notice of appeal with the clerk of the District Court of the county in which BOR meets.
 - After you file in the District Court, you must also file notice with the chairperson, presiding officer, or clerk of BOR.
- You must file your appeal within **20 days** of when BOR adjourns, or May 31, whichever is later.
- As with PAAB, you cannot claim any new grounds for your appeal, but you can submit more evidence on the same grounds.
- Like PAAB, the District Court hears all questions relating to your assessment amount “anew” or “de novo.” So, the Court considers all the evidence to make its own decision, and doesn't assume your original assessment was correct.

Note:

If you appeal to the District Court from BOR or PAAB, the Court could raise, not just lower, your assessment.

²⁴ Iowa PAAB, Questions and Answers, *supra* note 19.

²⁵ *Id.*

²⁶ The information in this section was taken from H.F. 2700, 82nd Gen. Assem., 2nd Reg. Sess. (IA 2008) (approved for Iowa Code Ann. §§ 441.38, 441.38B); Iowa Code Ann. §§ 441.38, 441.38B, 441.39, 441.43; Iowa PAAB, Questions and Answers, available at www.state.ia.us/tax/PAAB/PAAB-QA.html;

IV. Step 4: Appeals from PAAB or District Court Decisions²⁷

If appealing a PAAB decision, you'd appeal to the District Court. If appealing a District Court decision, you'd seek review in Iowa's Supreme Court.

There are various provisions and requirements governing these appeals,²⁸ and you should seriously consider seeking legal counsel if you choose to appeal to the courts.

²⁷ The information in this section was taken from H.F. 2700, 82nd Gen. Assem., 2nd Reg. Sess. (IA 2008) (approved for Iowa Code Ann. §§ 441.38, 441.38B); Iowa Code Ann. §§ 441.38, 441.39; Iowa Admin. Code §§ 17A.20; Iowa Ct. Rules 6.1, 6.3, 6.4; Iowa PAAB, Appeals from PAAB Decisions, *available at* www.state.ia.us/tax/PAAB/PAABappeals.html.

²⁸ *See, e.g.*, Iowa Code Ann. §§ 441.38, 441.39; Iowa Admin. Code §§ 17A.20; Iowa Ct. Rules 6.1, 6.3, 6.4; Iowa PAAB, Appeals from PAAB Decisions, *available at* www.state.ia.us/tax/PAAB/PAABappeals.html.

GLOSSARY²⁹

Actual Value

Fair and reasonable market value of the property.

Appearance*

The official notice filed with the PAAB that tells the PAAB an attorney is representing a party to the appeal.

Appellant (Petitioner)*

A party appealing a decision from the local board of review, usually seeking reversal of the decision. In appeals before the PAAB it is typically the taxpayer/property owner.

Appellee (Respondent)*

A party against whom the appeal is filed. In appeals before the PAAB it is typically the local board.

Assessed Value

The dollar amount of your property, as determined by your assessor. It should be equal to your property's "actual value."

Assessment Date

The date on which your property's value is based: January 1st.

Assessor/Assessing Official

County or city assessor. For public utilities and railroads, the Iowa Department of Revenue is the assessor.

Board of Review

A local board with at least three members that hears assessment appeals, appointed by the local Conference Board.

Brief*

A written document that sets out the arguments of a party, including the important facts, a statement of the issues, and legal authority supporting a party's contentions.

Closing Statement*

A summary of what was presented at hearing.

Conference Board

A local board composed of governmental and school officials.

²⁹ The sources for the definitions in this section are: Iowa PAAB, Glossary of Common Terms, *available at* www.iowa.gov/tax/PAAB/GlossaryofCommonTerms.pdf; Iowa Dep't of Revenue, www.iowa.gov/tax/locgov/iowa-property-tax.html; Iowa Code Ann. § 411.21(1). The definitions for the terms with an "*" were taken verbatim from PAAB's "Glossary of Common Terms."

Consolidated Levy

A single tax levy which is the sum of the tax rates for all the different taxing authorities that are levying property taxes.

Continuance*

To continue a matter or hearing to another time.

Cross Examination*

Questioning of a witness by the opposing party.

Credits

A reduction in the amount of property tax you owe (e.g., the homestead credit).

District Court

Part of Iowa's state court system. It is a county level court that can hear appeals from BOR or PAAB decisions.

Exemption

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

Exhibit*

A document, record, or other tangible object introduced as evidence in a hearing.

Legal Representative*

A person who acts on behalf of another person.

Market Value

The value of a property in a fair and reasonable exchange between a willing buyer and a willing seller. Each side should be familiar with all the facts relating to the property, and neither side should be under any compulsion to buy or sell.

Opening Statement*

A procedure at the start of a hearing in which each party summarizes the basis of the appeal or defense to the appeal.

Parcel Number*

The special identification number, assigned by a city or county, that refers to a specific piece of property.

Party*

A person, corporation, or association, who is an appellant or appellee in a case.

Power of Attorney*

A document giving someone authority to act on behalf of another person.

Property Assessment Appeal Board (PAAB)

A state-level board that reviews BOR decisions. It's part of Iowa's Department of Revenue and has three members with experience in property appraisals and taxes, appointed by the governor.

Real Property

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

Taxing Authority

An entity that collects property tax – e.g., cities, counties, school districts, townships.

Testimony*

Spoken evidence given by a witness, under oath, as distinguished by evidence derived by writings and other sources.

Witness*

A person who testifies to what he or she has seen, heard, or otherwise observed or testifies to his or her opinion.

APPENDIX A – IDEAS FOR INFORMATION TO SUBMIT ABOUT YOUR PROPERTY

You can use the ideas in this appendix to help you fill out your petition form and prepare for hearings before BOR and PAAB.

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

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

Physical Manifestations

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

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

Purchase Price

Documents showing the recent purchase price of your property (if it was less than your current assessment).

- You could include any proof that the seller offered a low sale price due to a nearby factory farm (e.g., if you negotiated a reduction in the purchase price of your property because of a factory farm, you could include the purchase price as well as a description of the factory farm's influence on the sale).

Recent Appraisal or Testimony of Appraiser

If you have the resources to get an appraisal, it's probably a good idea. The PAAB website lists a recent appraisal or in-person testimony of an appraiser in its list of "Helpful Evidence for Your

Appeal”³⁰ (also listed in “The PAAB Hearing” section above). 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.

The appraisal and/or appraiser’s testimony should comply with Iowa’s statutory requirements for assessment.³¹ Basically:³²

- 1) Sale prices of the property or comparable properties in normal transactions reflecting market value must be considered (even if there is only one comparable sale³³).
- 2) The probable availability or unavailability of people interested in buying the property must be considered.
- 3) Sale prices of comparable properties in abnormal transactions that don’t reflect market value can’t be considered, unless they are adjusted to reflect the abnormality. (E.g., sales within the immediate family, foreclosures or forced sales, contract sales, discount transactions, purchase of other or adjoining land to operate as a unit.)
- 4) If the market value can’t be “readily established” by comparable sales (e.g., because there are no comparable properties or not enough sales to compare³⁴), then the assessor can use other “uniform and recognized appraisal methods.” Methods include the income and cost methods. Factors include physical and functional depreciation and obsolescence and “all other factors which would assist in determining the fair and reasonable market value” (as long as the assessor doesn’t rely on just one of these factors).³⁵

Appendix D has information on how to find an Iowa 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.

³⁰ Iowa PAAB, Preparing for Your Hearing, available at www.iowa.gov/tax/PAAB/PreparingforYourHearing.pdf.

³¹ *Boekeloo v. Bd. of Review of City of Clinton*, 529 N.W.2d 275, 279-80 (Iowa 1995).

³² The listed requirements are from *id.*; *Maytag Co. v. Partridge*, 210 N.W.2d 584, 587 (Iowa 1973); Iowa Code Ann. § 441.21(1)(b), (2).

³³ *Cablevision Assocs. VI v. Fort Dodge Bd. of Review*, 424 N.W.2d 212, 216 (Iowa 1988) (citations omitted).

³⁴ *Id.*; *Boekeloo*, 529 N.W.2d at 279.

³⁵ There is some confusion in the courts as to whether the prohibition against relying on “one” applies to factors or methods. *Dowden v. Dickson County Bd. of Review*, 338 N.W.2d 719, 723 (Iowa App. 1983) (“actual value is not to be determined on the basis of one factor or one valuation method alone”) (citation omitted); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 281 N.W.2d 821, 826 (Iowa 1979) (“Sole reliance on only one valuation method is prohibited by [statute] when the other factors approach to valuation is used.”). *But see Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990) (citing cases that “suggest that the reference is to more than one of the factors”). The statute itself refers to “factors.” Iowa Code Ann. § 441.21(2).

Comparable Sales

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

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

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

You can get information on the sale prices of Iowa properties on the Iowa Department of Revenue website at www.iowa.gov/tax/locgov/propsalesstats.html .

Proximity

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

Marketability

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

Financing

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

Cost to Cure

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

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

Statements of Professionals

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

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

You could also get estimates of your property’s market value from experienced and knowledgeable real estate professionals such as realtors and real estate brokers.³⁶ Their estimates, calculations, and supporting testimony should comply with Iowa’s statutory requirements for property assessments, discussed above under “Recent Appraisal or Testimony of Appraiser.”³⁷

Assessments of Other Properties

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

The Iowa Department of Revenue website has information on assessments for Iowa properties at www.iowa.gov/tax/locgov/propsalesstats.html.
(The charts have information on assessed values as well as sale prices.)

Stigma

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

³⁶ *Birusingh v. Knox*, 418 N.W.2d 80, 82 (Iowa App. 1987) (real estate broker and realtor testified as to property’s market value using combination of cost and sales approaches).

³⁷ *Id.*; *Boekeloo*, 529 N.W.2d at 279-80.

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

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

The main principle of property assessment in Iowa is that an assessment can’t exceed the “fair and reasonable market value” of the property.³⁸ This requirement takes precedence even over other statutory requirements for assessments.³⁹ Further, Iowa law provides that “all . . . factors which would assist in determining the fair and reasonable market value of the property” should be considered in an assessment.⁴⁰ This could include the “property surrounding” the subject property and “the type of residences nearby.”⁴¹ So, if the factory farm near your property is affecting your property’s market value at all, it has to be properly considered and reflected in your assessment amount.

Also, there is some useful guidance in the *Appraisal Journal* about how and why nearby factory farms should be considered in assessments. A 2001 article by John A. Kilpatrick explains that a factory farm devalues proximate properties to the extent it is viewed as a negative externality by the marketplace.⁴² (The Iowa Supreme Court has cited the *Appraisal Journal* as authority in an assessment case,⁴³ 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.⁴⁴ The influence of these factors can result in a 50-90% diminution in a property’s market value.⁴⁵

³⁸ Iowa Code Ann. § 441.21(g) (but there are different valuation provisions for agricultural properties). *See also* *Maytag Co. v. Partridge*, 210 N.W.2d 584, 587 (Iowa 1973) (“In sum, in every case the objective sought is the exchange value between voluntary, informed buyers and sellers.”).

³⁹ *Id.* (“Notwithstanding any other provision of this section, the actual value of any property shall not exceed its fair and reasonable market value,” except agricultural properties).

⁴⁰ *Id.* § 441.21(2); *Boekeloo*, 529 N.W.2d at 278 (in assessment challenge case, holding that environmental contamination should be considered and stating: “[O]ur assessment statute and prior case law require that the assessor consider any factor that may affect market value.”).

⁴¹ *See Birusingh*, 418 N.W.2d at 82 (approving realtor’s testimony where realtor took into account surrounding property in arriving at value for protester’s property).

⁴² John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 *Appraisal J.* 301, 302 (2001).

⁴³ *Maytag Co. v. Partridge*, 210 N.W.2d 584, 589 (Iowa 1973).

⁴⁴ Kilpatrick, *supra* note 43, at 306.

⁴⁵ *Id.* at 305.

- Described generally, the stigma factor includes any of the “unknowns and risks associated with ownership of the property.”⁴⁶ 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”⁴⁷), it may be difficult to quantify, but it should not be overlooked.⁴⁸
- Regarding distance, generally, the closer the factory farm, the greater the impact on property values.⁴⁹
- The “impacts on highest and best use” factor might include things like being unable to grill out, open windows, play in the yard, or hang clothes out to dry.
- The physical manifestations factor is broad and may include various impacts. For example, impaired water quality can impair a neighboring property’s value.⁵⁰ Hydrogen sulfide emissions from large confines of animal waste may cause illnesses in neighbors.⁵¹ Dust, odors, and flies carrying animal blood, feces, or antibiotics may also impair a neighboring property’s value.⁵²
- The “marketability evidence” factor might include evidence about the length of time it takes to sell, or the unsalability of, a property.⁵³ For instance, as Kilpatrick reports, some rural homeowners in Michigan in the late 1990s were unable to sell their home next to a pork processing facility. Pending litigation, the pork processing company offered to compensate them for a 60% diminution in the market value of their home.⁵⁴

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

⁴⁶ *Id.* at 302.

⁴⁷ See Vincent D’Elia & Catherine M. Ward, *The Valuation of Contaminated Property*, 111 *Banking L.J.* 350, 359 (July-Aug 1994).

⁴⁸ See Bill Mundy, *Stigma and Value*, 60:1 *Appraisal J.* 7 (Jan. 1992).

⁴⁹ Kilpatrick, *supra* note 53, at 304-05 (citing University of Minnesota study).

⁵⁰ *Id.* at 304 (citing Kirshner & Moore study).

⁵¹ *Id.* (describing illnesses near CAFOS in Minnesota).

⁵² *Id.* at 305. See also Iowa State University & The University of Iowa Study Group, *Iowa Concentrated Animal Feeding Operations Air Quality Study: Final Report* 158 (2002), available at www.ehsr.uiowa.edu/CAFOSstudy/ (Chapter 7) (odor, dust, noise, and “general decline in the natural beauty of the area” from CAFOS can depress sales prices) (citations omitted).

⁵³ See D’Elia & Ward, *supra* note 48, at 360 (“longer marketing period” and “inability to sell” illustrate perceptions of devaluation).

⁵⁴ Kilpatrick, *supra* note 43, at 305.

APPENDIX B – EXAMPLES OF DEVALUED PROPERTIES

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

Selected Studies & Reports

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

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

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

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

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

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

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

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

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

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

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

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

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

~ Mubarak Hamed et al., *The Impacts of Animal Feeding Operations on Rural Land Values 2* (Cmty. Policy Analysis Ctr., Univ. of Mo., May 1999) (finding that “there is a relationship between proximity to a CAFO and the value of property”).

A Sierra Club study reported that county assessors in at least eight states lowered property taxes for neighbors of factory farms.

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

A study in Berks County, Pennsylvania evaluated the impact of potential local disamenities on neighboring properties. It found that the impacts of CAFOs on neighboring property values did not vary significantly by species or by differences in the sizes of the operations.

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

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

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

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

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

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

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

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

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

Selected Articles

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

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

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

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

Coverage of the 2007 Food and Family Farm Presidential Summit in Iowa noted that “many neighbors say the [CAFOs] stink up the air and foul the water, devastate their property values, and drive small farmers out of business.”

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

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

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

In January 2007, Indiana residents turned out to testify before the state legislature on a CAFO moratorium bill. One woman testified that a businessman was “driven to suicidal thoughts because he was unable to sell his home after six years because of the odor from a nearby CAFO.” Another testified that “[d]ecreased property value because of CAFOs mean [sic] decreased revenue from property taxes, which means less money for our schools.”

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

The Indiana House passed a bill in February 2007 that would prohibit new CAFOs within 1 mile of cities, towns, schools, and health facilities. One representative who supported the bill said he “want[ed] the pork industry to grow” in Indiana, but that growth could happen “while having respect to our neighbors.” “CAFOs do decrease property values,” he said.

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

A Michigan Land Use article reported that a tax tribunal reduced the assessments for properties adjacent to CAFOs. It ordered local officials to reduce the taxable values of at least five rural

homes by 35% based on problems with stench from a hog livestock factory, and on “slim sale chances” for the homes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Selected Cases

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In another Nebraska tax case, the Court held that a property owner clearly produced enough evidence to show that his property had been devalued based on “the external depreciation to the property caused by the proximity to the feedlot” and assessor error. Evidence presented by the property owner included his testimony that his property was next to a large cattle feedlot, problems with flies and smell, and dust from trucks.

~ *Darnall Ranch, Inc. v. Banner County Bd. of Equalization*, 2005 WL 780379, No. A-04-199, *6 (Mar. 22, 2005) (Case may only be cited in similar cases before Nebraska Court of Appeals. Nebraska Rules of Practice and Procedure in the Supreme Court and Court of Appeals, Rule 2E.).

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

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

An appellate court in Illinois has recognized that factory farms can decrease neighboring property values. In *Nickels v. Burnett*, the Court upheld a preliminary injunction against building an 8,000-head hog CAFO based in part on “extensive evidence in the form of affidavits and scholarly articles authored by the expert affiants demonstrating that, if the hog facility were to

begin operation, plaintiffs would experience substantially harmful health effects and a significant loss of value to their land.” The Court found the “harms described were substantially certain to occur should the hog facility begin operations in its present proposed location.”

The neighboring plaintiffs alleged that the facility would devalue their properties (among other things). The plaintiffs introduced the affidavit of a professional appraiser, who stated that neighboring property values would be reduced by 18-35%. They also presented affidavits from two doctors who concluded, respectively, that “years of downwind exposure to Hydrogen Sulfide even in low doses can cause permanent brain damage and . . . any exposure must be avoided;” and that “locating the proposed hog facility 3/4 of a mile or less away from homes is likely to cause medical and psychological symptoms to the people living in those homes.” Another expert opined that “subjecting the Schmidt and Klein families (the families living closest to the site of the proposed hog operation), to the hog operation odors will significantly increase the likelihood that the two families will experience health problems and that it will cause significant detrimental effects on the quality of their lives.” In his opinion, “subjecting the other 13 families, whose homes are located within 3/4 of a mile from the proposed hog operation, to the emissions generated by the proposed hog operation will increase their risk of health problems.” ~ *Nickels v. Burnett*, 798 N.E.2d 817, 820, 826 (Ill. App. Ct. 2003); Brief of Appellees at 7-10.

In Pasco, Washington, an appraisal done for litigation purposes found an over 50% reduction in value of a family farm impacted by neighboring CAFO dust, flies, fecal matter, and odor. The CAFO settled the lawsuit by relocating the plaintiffs and buying their farm. ~ John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 Appraisal J. 301, 305 (2001).

In Michigan, a horse farm appealed its property tax assessment because it was located near a large scale pork processing facility. The horse farm got a 50% reduction based on airborne externalities and flies. ~ John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 Appraisal J. 301, 305 (2001).

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

APPENDIX C – LINKS TO HELPFUL ASSESSMENT INFORMATION

- General information on tax assessment and challenges

www.iowa.gov/tax/educate/78573.html (Iowa Dep't of Revenue)
(515) 281-4040 (general info on Iowa property tax)

www.iowa.gov/tax/PAAB/PAAB.html (PAAB)
(515) 725-0338 (PAAB main number)

- Contact information for local assessors

www.iowa-assessors.org/htdocs/Assessors_of_Iowa/default.htm.

- Information on the sale prices of Iowa properties

www.iowa.gov/tax/locgov/propsalesstats.html

- Forms

Petition to Local Board of Review - www.iowa.gov/tax/forms/56064.pdf

Notice of Appeal & Petition (PAAB) - www.iowa.gov/tax/PAAB/NotAppPet2008.pdf

Request for Telephone Hearing (PAAB) - www.iowa.gov/tax/PAAB/PAAB-Forms.html

Request for Continuance (PAAB) - www.iowa.gov/tax/PAAB/PAAB-Forms.html

Withdrawal of Appeal (PAAB) - www.iowa.gov/tax/PAAB/PAAB-Forms.html

Power of Attorney (PAAB) - www.iowa.gov/tax/PAAB/PAAB-Forms.html

Exhibit List (PAAB) - www.iowa.gov/tax/PAAB/PAAB-Forms.html

APPENDIX D – OTHER RESOURCES

- Information on Factory Farms

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

- How to Find an Appraiser

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

- How to Find an Attorney
 - StateLawyers.com, Attorney Directory – Iowa Counties
www.statelawyers.com/AttorneyDirectory/Index.cfm/StateID:15
 - Iowa State Bar Association
www.iowabar.org/main.nsf
Click on “Find a Lawyer”
 - Lawyers.com, Find a Lawyer
www.lawyers.com/Iowa/browse-by-city.html
 - American Bar Association, Consumers’ Guide to Legal Help Lawyer Referral
www.abanet.org/legalservices/findlegalhelp/main.cfm?id=IA
 - Local Yellow Pages
 - Recommendations