

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

**VERMONT GUIDE**

**2014**

*Please note that this guide is for 2014 and may not be applicable to later years. To confirm that the laws and rules cited in the guide have not been modified since publication, and if you wish to receive legal advice, you should consult an attorney licensed in Vermont. You may also wish to review the materials on your state's property tax website for updated information.*

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

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## INTRODUCTION

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

The economic, environmental, public health, labor, social, and ethical problems associated with factory farms are becoming increasingly familiar, as evidenced in two recent reports by major non-governmental organizations: *Putting Meat on the Table: Industrial Farm Animal Production in America* (Pew Commission) and *CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations* (Union of Concerned Scientists). (Links to the reports are in Appendix D.) These problems are often keenly felt by rural communities, and one such 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 it: your assessment should account for any of the negative impacts the factory farm has on your property. If it doesn't, you may wish to challenge your assessment so that you can receive a fair one. This Guide will help you do that. It provides step-by-step information on the tax appeals process in Vermont, including some ideas about factual information to include in your challenge and information on additional resources. As you'll see, the Guide provides more detail about the lower levels of the process, which aren't formal court proceedings.

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

The Guide is available at [www.factoryfarmtaxprotest.org](http://www.factoryfarmtaxprotest.org), along with links and other resources. If you don't have access to the internet at your home, you should be able to use the internet at your local public library.

***You can also use this Guide to appeal your assessment based on other contiguous environmental factors, such as landfills or polluted water bodies. The same procedures would apply, and many of the same considerations would apply (see Appendix A).***



## CHECKLIST

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

### \_\_\_\_\_ **Step 1: Find out What Your Current Assessment Is**

- \_\_\_\_\_ You'll receive a notice if your assessment changes from the previous year.
- \_\_\_\_\_ You can view your assessment on the abstract of the grand list at the Town Clerk's office (once the abstract has been lodged).
- \_\_\_\_\_ You can view your property appraisal at the Lister's office.

### \_\_\_\_\_ **Step 2: Appeal to the Town Board of Listers**

- \_\_\_\_\_ File a written grievance with the Town Board of Listers. (Decide whether to include documentation with your grievance or to submit it at your hearing.)
  - \_\_\_\_\_ The deadline is ***on or before the first day of grievance hearings***, which varies by town. The deadline can be no later than June 19<sup>th</sup> (for towns of fewer than 5,000) or July 9<sup>th</sup> (for towns of 5,000 or more). ***The deadline may be sooner. Call your local Lister's office for your deadline.***
- \_\_\_\_\_ Prepare for your hearing. Gather documents, photos, witnesses, etc.
- \_\_\_\_\_ Attend grievance hearing to support your case (optional).
  - \_\_\_\_\_ An attorney or agent can represent you instead.
  - \_\_\_\_\_ If you (or an attorney or agent) don't attend, the Board of Listers will decide your case based on what you submitted with your written grievance.
- \_\_\_\_\_ Receive notice of your grievance result.

### \_\_\_\_\_ **Step 3: Appeal to the Board of Civil Authority (BCA)**

- \_\_\_\_\_ File an appeal in writing with the Town Clerk, explaining the basis for our appeal. (Decide whether to include documentation with your grievance or to submit it at your hearing.)
  - \_\_\_\_\_ Some towns have forms. Check with your Town Clerk.
  - \_\_\_\_\_ The deadline is ***14 days from the date your grievance result was mailed to you.***
- \_\_\_\_\_ Prepare for your hearing. Gather documents, photos, witnesses, etc. (You can submit more/different evidence to the BCA than you did to the Board of Listers.)
- \_\_\_\_\_ Attend BCA hearing to support your case (optional).
  - \_\_\_\_\_ An attorney or agent can represent you instead.
  - \_\_\_\_\_ If you (or an attorney or agent) don't attend, the BCA will decide your case based on what you submitted with your written appeal, and the BCA inspection of your property.

- \_\_\_\_\_ A BCA inspection committee will inspect the interior and exterior of your property, and report back to the BCA.
- \_\_\_\_\_ You'll receive notice of the BCA's decision.

\_\_\_\_\_ **Step 4: Appeal to the PVR Director or Superior Court (choose one)**

\_\_\_\_\_ **Option 1: Appeal to the Property Valuation & Review (PVR) Director**

- \_\_\_\_\_ File your appeal within *30 days of the date the BCA decision was mailed to you.*
  - \_\_\_\_\_ File the appeal with the PVR Director (and maybe the Town Clerk – see IV.A).
  - \_\_\_\_\_ Include \$70.00 filing fee.
- \_\_\_\_\_ The Director of the Property Valuation & Review Division will appoint a hearing officer to hear your case.
- \_\_\_\_\_ Prepare for your hearing. Gather documents, photos, witnesses, etc. (You can submit more/different evidence to the hearing officer than you did to the BCA.)
- \_\_\_\_\_ Attend hearing to support your case.
  - \_\_\_\_\_ It will be in your town.
  - \_\_\_\_\_ An attorney can represent you or you can represent yourself.
- \_\_\_\_\_ The hearing officer must inspect your property before deciding your case.
- \_\_\_\_\_ Receive notice of the hearing officer's decision.

\_\_\_\_\_ **Option 2: Appeal to Superior Court**

- \_\_\_\_\_ File your appeal within *30 days of the date the BCA decision was mailed to you.*
  - \_\_\_\_\_ File the appeal with the Town Clerk.
  - \_\_\_\_\_ Include \$250.00 filing fee.
- \_\_\_\_\_ Prepare for your hearing. Gather documents, photos, witnesses, etc. (You can submit more/different evidence to Superior Court than you did to the BCA.)
- \_\_\_\_\_ Attend hearing to support your case.
  - \_\_\_\_\_ An attorney can represent you or you can represent yourself.
- \_\_\_\_\_ Receive notice of the Superior Court's decision.

\_\_\_\_\_ **Step 5: Appeal to the Vermont Supreme Court (just the basics)**

- \_\_\_\_\_ File your appeal within *30 days* of the PVR Director or Superior Court decision.
- \_\_\_\_\_ The Vermont Rules of Appellate Procedure apply.

## BACKGROUND INFORMATION<sup>1</sup>

Each year in Vermont, real estate is assessed to help calculate property taxes. “Real estate” is basically land plus any improvements or structures on the land, and may also include rights or other features associated with the land. (Some properties, such as those used for charitable, educational, or religious uses, are exempt from taxation.)

Your property is appraised by a local *Lister* or *Board of Listers*. Most towns have three Listers on the Board of Listers, and each Lister serves a three-year term. Listers have training in appraising property. The *Division of Property Valuation & Review* holds periodic meetings for Listers with instructions on things like appraisal techniques, Lister duties under the law, and how to compile a grand list.

- The *Division of Property Valuation & Review* is a state-level division within the Vermont Department of Taxes. It assists in the administration of the property tax system in the state, including assistance to localities.

The Lister must appraise most property at its estimated *fair market value (FMV)* to arrive at the *appraisal value*. (But not properties enrolled in a “use value appraisal program” - e.g., some farm and forest lands. “Use value appraisal” means the property is valued as if it would always be that type of land - e.g., agricultural or forest. There’s a separate process for valuing these properties, with more involvement from the Property Valuation & Review Division, and a state-level “current use advisory board.”<sup>2</sup>)

- Estimated *fair market value* is: “the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value.”<sup>3</sup>

Generally, the first step in the process is to determine a property’s highest and best use. That is, one that is: “1) legally permissible, 2) physically possible, 3) maximally profitable, and 4) financially feasible.”<sup>4</sup> For most residential properties, the highest and best use is as a residential property. There are three main approaches for determining fair market value: the cost approach, the market data or sales comparison approach, and the income approach.

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<sup>1</sup> The sources for this section are: Vt. Secretary of State & Dep’t of Taxes, *A Handbook on Property Tax Assessment Appeals (Handbook)* (2009), available at [http://www.sec.state.vt.us/municipal/tax\\_appeal\\_handbook\\_2007.pdf](http://www.sec.state.vt.us/municipal/tax_appeal_handbook_2007.pdf); Vt. Institute for Gov’t, *Are You Appealing?: An Introductory Guide to Property Tax Assessment Appeals (Are You Appealing)* (1999), available at <http://www.waitsfieldvt.us/bca/Are%20You%20Appealing%20handout.pdf>; Vt. Stat. Ann. tit. 32, §§ 3411, 3431, 3434 - 3436, 3481, 3482, 3602-3620, 3651, 3752, 3753, 3756, 3802, 4001, 4041, 4052, 4111, 4115, 4116, 4151, 4152, 4181, 4301, 4341, 4342, 4602.

<sup>2</sup> Vt. Stat. Ann. tit. 32, §§ 3752, 3753. Also, under certain circumstances, a taxpayer can’t grieve a new use value.

<sup>3</sup> *Id.* § 3481. FMV should also include consideration of factors such as local regulation that affects land, and housing covenant subsidies for non-rental residential properties. (Residential rental properties with housing subsidy covenants or other governmental restrictions on rents are valued using in income approach outlined by statute.) *Id.*

<sup>4</sup> *Handbook, supra* note 1, at 4.

**Cost:** determines a property's value based on the value of the land + the cost to reconstruct any improvements, less depreciation.

**Market Data/Sales Comparison:** determines a property's value based on sales of similar properties, adjusted for differences, and/or the purchase price of the subject property.

**Income:** determines a property's value based on its potential to earn income. Used most for income-producing properties (commercial, industrial, rental).

The best approach to use depends on the circumstances in any given situation. The “market” and “cost” approaches are usually the best approaches for residential properties. The recent sale price of a property can be very helpful, but is not necessarily determinative of value.

The Lister appraises your property based on its value as of **April 1<sup>st</sup>**. The Lister might inspect properties, or hire an expert for assistance upon the approval of the town Selectboard or by town vote. If the Listers hire someone else to do appraisals, that person needs to have certain qualifications and be approved by the Director of the Property Valuation & Review Division. The Lister's paperwork is public information – so the public can inspect and copy it (except for some personal property information). There might be a charge for any copies made.

After the Lister determines your property's appraisal value, the Lister will apply an equalization ratio to determine your property's **listed value**. (Equalization ensures that comparable properties in a town are taxed at the same rate.) The listed value goes on the **abstract of individual lists**. This is a list of all the taxable property in the town. It lists property owners by alphabetical order, properties, and property valuations (along with some other information). Generally, the **latest date** for publishing the abstract of individual lists is June 4<sup>th</sup> (for towns of fewer than 5,000) and June 24<sup>th</sup> (for towns of 5,000 or more). The Lister will lodge the abstract with the **Town Clerk**, and the public is allowed to inspect it.

- The **Town Clerk** has most of the town's records, including past grand lists and decisions from the Board of Civil Authority.
- The **Board of Civil Authority (BCA)** is a local, elected board comprised of the Town Clerk, the Selectboard, and Justices of the Peace of the town. The Town Clerk is also the Clerk of the BCA.

The Lister also has to notify property owners when their assessments change from the previous year, and post public notices around town about the abstract and the time and place for grievance hearings. Eventually, generally in late July or August, the Lister will lodge the **official grand list** with the Town Clerk, upon which taxes will be based (including any county taxes). (But appeals have to be filed before then.)

## Challenging Your Assessment – An Overview

If you disagree with the fair market value your Lister assigned to your property, you can appeal.

- The first step is to ***appeal to the Board of Listers*** by filing a grievance in writing, and attending a grievance hearing to support your case (optional).
- If you're unhappy with the Lister's decision, you can ***appeal to the Board of Civil Authority (BCA)***.
- If you're unsatisfied with the BCA's decision, you can appeal to either the ***Director of Property Valuation & Review (hearing officer)***, or to ***Superior Court*** (county-level court).
  - The ***Town Agent*** will likely act on behalf of the Town in appeals to the PVR Director or Superior Court. (He or she may also attend the BCA hearing.)
- From there, you can seek review at the ***Vermont Supreme Court*** regarding legal questions in your appeal.

### ***Note***

***You may appeal the equalization ratio applied to your property, but this guide focuses on how to appeal the fair market value/appraisal value of your property.***

## THE APPEALS PROCESS

### **I. Step 1: Find out What Your Current Assessment Is**<sup>5</sup>

- Your Lister must notify you if your assessment changes from the last grand list.
  - The notice must be mailed no later than June 4<sup>th</sup> (for towns of fewer than 5,000) or June 24<sup>th</sup> (for towns of 5,000 or more). *Note that it might be mailed earlier.*
  - The notice must also be mailed at least 14 days before the time set for grievance hearings.
  - The Lister needs to mail notices by registered mail or certified mail, or get a certificate of mailing from the post office. Otherwise, if there's a dispute as to when the notice was mailed, it's presumed it wasn't mailed properly/on time.
- You can view your assessment on the abstract of the grand list at the Town Clerk's office.
  - The Lister has to post notice that the abstract has been lodged. Notice will be posted at the Town Clerk's office and other public places in town.
  - The notice must give the time, date, and place for grievance hearings.
  - The notice must be posted at least 14 days before the time set for grievance hearings.
- You can ask your Lister to see your property appraisal.

*Note:* the Lister can change the abstract until grievances are completed. If he/she does so, the affected property owner must be notified, and can still appeal by filing written objections within a reasonable time.

*Also:* the Listers or Assessors in a town can request an extension of various deadlines from the Director of the Property Valuation & Review Division.

### **II. Step 2: Appeal to the Town Board of Listers**<sup>6</sup>

If you believe your listed assessment is too high, you can appeal to the Town Board of Listers. The first step in this process is to *file a written grievance* with your Lister.

#### **Filing the Grievance**

- Your grievance must be in writing. It should explain that you object to your assessment.
- You file the grievance with your Town Board of Listers. (See a local phonebook or website for contact information.)

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<sup>5</sup> The sources for this section are: *Handbook, supra* note 1; *Are You Appealing, supra* note 1; Vt. Stat. Ann. tit. 32, §§ 4111, 4152, 4341, 4342.

<sup>6</sup> The sources for this section are: *Handbook, supra* note 1, *Are You Appealing, supra* note 1; Vt. Stat. Ann. tit. 1, §§ 312, 317; Vt. Stat. Ann. tit. 32, §§ 4111, 4115, 4116, 4221, 4222, 4224, 4341; 1-3-108: 82-1 Vt. Code R. §§ (32)4222-1, -2 (this rule is available at <http://www.state.vt.us/tax/pvrlisters.shtml> - click on "Rule 82-1 General").

- The deadline for filing is *on or before the first day of grievance hearings*. The latest date that a town can begin hearings is June 19<sup>th</sup> (for towns of fewer than 5,000) or July 9<sup>th</sup> (for towns of 5,000 or more). *However, the hearings may be held earlier, so the deadline for filing may be earlier. Please call your local Lister's office to confirm the deadline for filing a grievance.*

## **The Grievance Hearing**

### **General Information**

- If you don't receive notice of the time and place for grievance hearings, you can call the Lister's office to confirm. Remember that the first day of hearings is also the last day to file a grievance.
  - The abstract of the grand list should note the time and place for hearings.
  - Notice should also be posted by the Lister at the Town Clerk's office and other public places in town.
- You may attend the hearing in person, or an agent or attorney may represent you. If you or an attorney/agent doesn't attend, the Board of Listers will decide your grievance based on the documents already submitted.
- The grievance hearings will last as many days as needed to hear and decide all grievances, but not later than July 2<sup>nd</sup> (for towns of fewer than 5,000) or July 22<sup>nd</sup> (for towns of 5,000 or more).
- The Listers have to keep minutes of the hearings. They must include: 1) the names of board members present; 2) a description and resolution of all motions, proposals, or resolutions made; and 3) the results of votes, including individual votes if roll call is taken. The minutes have to be completed within five days and filed with the Town Clerk. They're public information (open to the public).

### **Preparing for the Hearing**

- There are two main types of evidence that you'll probably want to prepare:
  - Documentary evidence (photos, reports, etc.); and
  - Sworn evidence (testimony).
- Please see **Appendix A** for a list of the different types of evidence it might be helpful to submit, as well as a few tips on how to prepare it. Particularly strong evidence includes:
  - A professional appraisal report for your property + testimony of the appraiser;
  - The recent purchase price of your property; and,
  - Comparable sales information.<sup>7</sup>

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<sup>7</sup> See the sources in footnotes 24, 25, 26, *infra*.

(*Appendix A* has more information on these and other types of evidence.)

- The Lister's records are public records. You can view and copy them. You might find helpful information there for preparing your appeal. (E.g., appraisal cards for individual properties, the grand list book, property transfer data.)

### At the Hearing

- The hearings are open meetings. The public can attend. (But the public – including the griever - doesn't attend the deliberations of the Listers.)
- You can submit the evidence you've prepared to support your case, including any testimony (which will be under oath).
- The Board will vote on and announce its official decision in an open session.

### After the Hearing

- The Lister will mail notice of your grievance result to you by July 9<sup>th</sup> (for towns of fewer than 5,000) or July 29<sup>th</sup> (for towns of 5,000 or more).
  - The Lister must mail the notice by certified mail or registered mail, or obtain a certificate of mailing. If not, and a dispute arises as to when it was mailed, you may have a right to appeal to next level (the BCA) even if the deadline has passed. (It's presumed the notice wasn't sent.)
  - The notice will inform you that you can appeal to the Board of Civil Authority (BCA) within 14 days.
- If changes need to be made to your assessment, the Lister will certify the abstract with corrections, and send a copy of the certification to you.

*Remember*, these are usually the deadlines for Listers, but they might receive an extension from the Property Valuation & Review Division. Or, local deadlines might be earlier.

## **III. Step 3: Appeal to the Board of Civil Authority (BCA)**<sup>8</sup>

If you're unsatisfied with the Lister's decision, you can appeal to the Board of Civil Authority (BCA). Recall that the BCA is a local board comprised of the Town Clerk, the Town Selectboard, and the Justices of the Peace for the town. Its appraisal experience and knowledge vary.

### **Filing the Appeal**

- Your appeal must be in writing and briefly explain the reasons you're appealing.
  - Check with your Town Clerk → some towns have a form.
- You file it with the Town Clerk.

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<sup>8</sup> The sources for this section are: *Handbook*, *supra* note 1; *Are You Appealing*, *supra* note 1; Vt. Stat. Ann. tit. 1, § 312; Vt. Stat. Ann. tit. 32, §§ 4404, 4408, 4409, 4411; 1-3-108:82-1 Vt. Code R. § (32)4404(a)-1. (This rule is available at <http://www.state.vt.us/tax/pvrlisters.shtml> - click on "Rule 82-1 General.")

- The deadline for filing is ***14 days from the date your grievance result was mailed to you.***
  - But, if something the Lister does prevents you from filing on time, you can still appeal to the BCA within a “reasonable time.”<sup>9</sup>

## **The BCA Hearing**

### General Information

- The Town Clerk will call a meeting of the BCA to decide the appeals.
  - In some situations, BCA members can’t hear appeals. E.g., if a BCA member is also a Lister or Town Agent, or an attorney representing an appellant; or if certain relatives are appealing; or if the BCA member is appealing his/her own assessment.
- Notice of the hearing has to be posted in at least three public places in town, and mailed to each person who is appealing.
- The BCA meetings/hearings will be in town.
- The hearings have to be held within 14 days of the deadline for filing an appeal with the BCA.
- Like the Board of Listers, the BCA may meet for several days – until all appeals are heard and decided.
- You can represent yourself at the hearing, or an attorney or agent can represent you.
  - Or, you can just submit your appeal in writing and not go to the hearing.
  - Even if you don’t go to the hearing, the BCA has to hold a hearing, do your property inspection (see below), and make a decision on your appeal within the required timetables.
- The Lister will defend his/her assessment.
- The Town Agent may or may not be present.
- The BCA can increase, decrease, or sustain the Lister’s assessment.
- Your appeal will be withdrawn if:
  - You make a request in writing to withdraw it; or
  - After notice, you don’t allow an inspection of your property by the inspection committee (not including non-committee BCA members), including the interior of buildings. (The inspection is discussed below.)

### Preparing for the Hearing

It’s good to be prepared. The appeal handbook available on the Property Valuation & Review website says:

Both taxpayers and appraisers should bear in mind that the adequacy of

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<sup>9</sup> 1-3-108:82-1 Vt. Code R. § (32)4404(a)-1. (This rule is available at <http://www.state.vt.us/tax/pvrlisters.shtml> - click on “Rule 82-1 General.”)

the BCA's decision will depend on the evidence presented at the hearing by the parties. *Listers and appellants are clearly disadvantaged when they fail to provide the BCA with a comprehensive and articulate case.*<sup>10</sup>

### → Evidence

- You can submit more or different evidence to the BCA. You're not limited to what you presented to the Board of Listers.
  - Your evidence might be physical things like documents or photos, or oral testimony from you or other witnesses about your property's value.
  - You should organize your exhibits and arguments.
    - E.g., label your exhibits as "Appellant's Exhibit 1," "Appellant's Exhibit 2," etc. Write an outline of our arguments.
    - Make enough copies of your exhibits for the Lister and each member of the BCA.
    - You might want to practice with friends.
  - You might want to watch some other BCA hearings to get a sense of how they proceed.
- See *Appendix A* for ideas about evidence to submit, and some tips on how to present it.

### At the Hearing

- The hearing is less formal than a court proceeding.
- The hearing is usually recorded on audio tape, and the BCA has to prepare minutes.
- The BCA will hear and decide your case "de novo" or anew. It will hear the evidence and make its own decision, as opposed to reviewing the Board of Lister's decision.
- Witnesses will take an oath or affirmation.
- Usual conduct of hearing:
  - Lister's introduction. (Brief explanation of how the Lister arrived at the assessment for your property.)
  - Appellant presents case. You explain the reasons for your appeal. You can submit written testimony and other evidence (documents, etc.). You can testify yourself and/or have others testify for you (e.g., a professional appraiser).
  - Lister can respond.
  - The BCA asks questions, if it has any.
  - The BCA Chair appoints a committee to inspect your property.
  - The BCA Chair "adjourns" the hearing until the date to hear from the inspection committee. The hearing is not closed yet. So, the BCA can take additional testimony when it reconvenes.

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<sup>10</sup> *Handbook, supra* note 1, at 1 (emphasis in original).

## Property Inspection

At least 3 BCA members must visit your property, but they don't have to visit your property together. They will put together a report that includes their observations (location and condition of property, time and date, people present, etc.). They have to file the report with the BCA within 30 days of your original BCA hearing.

A few things to note about the inspection:

- It's not considered a public meeting.
- The Lister and Town Agent can't come along without your permission.
- The committee has to inspect the interior of your house even if your appeal only relates to the exterior.
- The inspection committee can't talk to you about your appeal. (This would be an inappropriate "ex parte" communication because the other side would not have an opportunity to test or rebut your discussions with the committee.)
- If, after notice, you don't allow an inspection of your property (exterior and interior), your appeal is considered withdrawn.

## After the Hearing

The BCA has to issue its decision within 15 days of receiving the inspection committee report and meeting to hear it. Inspection committee members can vote on the appeal with the rest of the BCA.

The BCA's decision must be in writing, with reasons. The BCA's decision is a public record. (But, the BCA doesn't have to deliberate or make its decision in public.)

The BCA gives notice of the decision to the Town Clerk, who will notify you and add it to the grand list. The value set by the BCA becomes your appraisal value for that year (the year appealed).

## **IV. Step 4: Appeal to the PVR Director or Superior Court<sup>11</sup>**

If you wish to appeal the BCA's decision, you can appeal to either:

- The Director of Property Valuation & Review (PVR Director)
  - The ***PVR Director*** will appoint a hearing officer to hear your case; or
- The ***Superior Court*** of the county in which your property is located.

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<sup>11</sup> The sources for this section are: *Handbook*, *supra* note 1; *Are You Appealing*, *supra* note 1; Vt. Stat. Ann. tit. 3, §§ 801, 809-813; Vt. Stat. Ann. tit. 32, §§ 1752, 4461, 4463, 4464, 4465, 4466, 4467, 4468, 4469; 1-3-109:84-1 Vt. Code R. (this rule is available at <http://www.state.vt.us/tax/pvrlisters.shtml> - click on "Rule 84-1 Appeals"); Vt. Rule Civ. P. 74; *Town of Barnet v. Cent. Vt. Public Serv. Corp.*, 131 Vt. 578 (1973); *Dewey v. Town of Waitsfield*, 184 Vt. 92, 101-02 (2008); *Kruse v. Town of Westford*, 145 Vt. 368, 371-72 (1985); *Leroux v. Town of Wheelock*, 136 Vt. 396, 398-99 (1978); *Woolen Mill Assoc. v. City of Winooski*, 162 Vt. 461, 462-63 (1994).

Town Selectboard members can also appeal.<sup>12</sup>

### Choosing between the Two

- Appeals to the PVR Director are likely – but not guaranteed – to be more speedy and less costly than appeals to Superior Court.
- If you appeal to Superior Court, you should seriously consider hiring an attorney (but you don't have to). You may want to hire an attorney at the PVR Director level, too (but you don't have to).
  - The State's appeal handbook says: "Whether you need an attorney is a question you should decide early, well before any scheduled hearing date, and should be based on the complexity of the appeal, your own resources and the potential benefit or detriment of the case."<sup>13</sup>

### Common to Both

- You have the burdens of "production" and "persuasion" – that is, the burden to show you're entitled to an assessment reduction. There's a presumption that the Lister's assessment is correct.
  - Burden of Production – You have to produce enough evidence to overcome the presumption that the Lister's assessment is correct. If you do, then the presumption goes away and the Town has to produce evidence to justify its appraisal. How much evidence is enough? The Vermont Supreme Court has said that "any admissible evidence" is enough to overcome the presumption, even if the Court doesn't end up deciding in your favor after all the evidence is presented.<sup>14</sup>
  - Burden of Persuasion – After you overcome the presumption in favor of the Lister, you still have to produce enough evidence to convince the BCA that the evidence as a whole favors your position.
- For appeals to either the PVR Director or Superior Court, the appeal is *de novo*. This means that the PVR hearing officer or Superior Court must determine the correct valuation of your property anew, and will not simply review the decision of the BCA. You can submit more or different evidence to the PVR Director or Superior Court than you did to the BCA.

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<sup>12</sup> Also, the Town Agent has to appeal to Superior Court in the name of the town if one or more taxpayers in the town, representing 3 or more percent of the grand list, makes this request before the end of the appeal period. (But not if the taxpayers making the request are appealing their assessments.) The Town then has 6 days to file the appeal. Vt. Stat. Ann. tit. 32, § 4461(b).

<sup>13</sup> *Handbook, supra* note 1, at 37.

<sup>14</sup> *See, e.g., Woolen Mill Assoc. v. City of Winooski*, 162 Vt. 461, 462-63 (1994).

## A. Appeal to PVR Director

### Filing the Appeal

- The **deadline** for filing an appeal with the PVR Director is within **30 days** of the entry of the BCA decision.
    - The entry of the BCA decision is the date the Town Clerk *mailed* notice to you of the decision.
    - If the deadline falls on a Saturday, Sunday, or legal holiday, then the deadline is the next business day. (But it's probably a good idea to err on the safe side and file your notice of appeal before the weekend or holiday.)
  - The filing fee is \$70.00. (But if your appraised value is reduced by more than 20%, the fee is returned to you.)
  - According to Vermont regulations, you must file 3 copies of your notice of appeal with the PVR Director. *Please confirm this before filing.*<sup>15</sup>
    - The PVR Director will forward your notice of appeal to the Town Clerk.
  - Your notice of appeal should give a brief description of your property and its location, and set forth the reasons for your appeal.
- 
- The PVR Director will refer your appeal to a hearing officer appointed by the Director. This is someone who's not employed by the Director.
    - The PVR Director can remove the hearing officer for cause (inefficiency, etc.), and appoint someone else to fill a vacancy.
    - The hearing officer has to take and sign a constitutional oath, which is filed with the PVR Director.
  - Generally, the hearing officer isn't allowed to engage in "ex parte" communications with you or any other parties to the appeal (e.g., the Town Agent). This means that the hearing officer can't communicate with you about the facts or law involved in your appeal, unless the Town has an opportunity to participate as well. (E.g., both you and the Town should be present for any discussions the hearing officer has with you about your appeal.)

### Before the Hearing

- If you (or the Town Agent or Selectboard) think the "time or manner" of an appeal filed by one of the other parties isn't proper, you can file an objection in writing with the Director of Property Valuation & Review within 10 days. *The deadline for filing this is unclear. It is probably within 10 days of when the person who's appealing files an appeal with the Town Clerk, or within 10 days of when the person appealing mails out a copy of the notice of appeal to all interested persons per the Town Clerk's instructions.*<sup>16</sup> You need to file a copy

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<sup>15</sup> 1-3-109:84-1 Vt. Code R. §§ 3, 5. (This rule is available at <http://www.state.vt.us/tax/pvrlisters.shtml> - click on "Rule 84-1 Appeals.") The Vermont statutes and rules of civil procedure are not as clear on this question. Vt. Stat. Ann. tit. 32, § 4461(a); Vt. R. Civ. P. 74.

<sup>16</sup> The Vermont statute says the deadline is "on or before ten days after mailing of the notice of appeal by the clerk," but the Vermont Rules of Civil Procedure say that the person who is appealing (not the Town Clerk) files a copy of

with the other side, too. The Director will decide the issue, and will hold a hearing if a party requests one.

- You can withdraw your appeal anytime before it's heard. The Director will certify it to the Town Clerk, and your appraisal will become part of the grand list.
  - You can also settle with the other party.
- The hearing rules have provisions for "discovery." This means that each side can review the other side's information. E.g., you can look at the Town's records, and the Town can inspect your property.
- The hearing officer might have a "prehearing conference" with you and the Town to see if there are any issues that can be resolved before a hearing.

### Hearing the Appeal

- The hearing officer must promptly notify the Town Clerk and all the parties to the appeal of the time and place for the hearing, giving at least 10 days notice.
  - The hearing will be held in the town where the property is located.
- You can request a "continuance" (postponement) for good cause. You can make the request orally or in writing. It must be "timely," so you should do so as soon as possible before your hearing.
- If you don't attend the hearing, the hearing officer may allow the Town to present its evidence, and then decide the case based only on the Town's evidence. (The same may happen to the Town if the Town doesn't appear, and you present your evidence.)
- Proceedings of hearing.
  - Each side must have an opportunity to "respond and present evidence and argument on all issues involved."<sup>17</sup> Specifically, to:
    - "Advance any arguments, oral or written;"
    - "Express all pertinent facts and circumstances through evidence, oral or written;"
    - "Bring witnesses and cross-examine adverse witnesses;"
    - "Examine all documents or records used at the hearing;" and
    - "Question or refute any testimony or evidence."<sup>18</sup>
  - But, the hearing officer doesn't have to consider evidence that is "irrelevant or unduly repetitious."<sup>19</sup>
  - The hearing officer can subpoena witnesses, records, and documents; and may administer oaths to witnesses.
    - All testimony must be given under oath.
  - The two main parts of the hearing are:

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the appeal with all interested persons, per the Town Clerk's instructions. Vt. Stat. Ann. tit. 32, § 4463, Vt. Rule Civ. P. 74(b).

<sup>17</sup> Vt. Stat. Ann. tit. 3, § 809(c). 3 V.S.A. § 809 contains some of the requirements for "contested case" proceedings under Vermont's Administrative Procedure Act. Contested case provisions apply unless the parties waive them or they're inconsistent with the PVR appeal provisions in 32 V.S.A. §§ 4441-4469. Vt. Stat. Ann. tit. 32, § 4466.

<sup>18</sup> 1-3-109:84-1 Vt. Code R. § 15. (This rule is available at <http://www.state.vt.us/tax/pvrlisters.shtml> - click on "Rule 84-1 Appeals.")

<sup>19</sup> *Id.* § 18.

- Town introduces appraisal.
- Taxpayer offers evidence tending to show that the Town appraised his/her property at more than fair market value.

(But there will probably be other, smaller steps. E.g., if you want to present evidence to refute a specific point made by the Town, or if you want to cross-examine the Town’s witnesses. Or, if the hearing officer has questions for either side.)

- The hearing will be tape-recorded. You can request a transcript (written record) of the hearing from the Director of the Property Valuation & Review Division for a fee.
- The hearing officer has to inspect your property before deciding the case.
  - The hearing officer must issue a written decision to the Director within 30 days of your hearing. The Director will forward it to you.
    - The decision must assign a valuation to your property, and include facts and law to support the valuation. It also has to include a brief description of your property and “any comparable properties.”<sup>20</sup>

## **B. Appeal to Superior Court**

The law doesn’t require you to have an attorney to appeal to Superior Court - but to ensure that you meet all the Court’s requirements and present your best case, you should seriously consider seeking legal counsel if you appeal to Superior Court.

Some general information on the process in Superior Court:

- The **deadline** for filing an appeal with the Superior Court is within **30 days** of the entry of the BCA decision. (The entry of the BCA decision is the date the Town Clerk mailed notice to you of the decision.)
- The filing fee is \$250.00. (But if your appraised value is reduced by more than 20%, the fee will be returned to you.)
- You file the notice of appeal according to the Vermont Rules of Civil Procedure, Rule 74. So, you file your notice of appeal with the Town Clerk.
  - Then, the Town Clerk will give you a list of the “interested persons” in your appeal, along with instructions to file your notice of appeal with them.
  - Then, you file a copy of your notice of appeal with the interested persons, *and* with the Clerk of the Superior Court.
- A judge(s) will decide your case. There won’t be a jury.

## **C. After the Appeal**

- Whether you appeal to the PVR Director or to Superior Court, you’ll receive a copy of the decision via certified mail. The Commissioner of the Department of Taxes and the Town Clerk will also receive a copy, and the Town Clerk will record it.

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<sup>20</sup> *Id.* § 23.

- You will receive credit if your assessment is reduced, and you had already paid taxes based on the assessment you appealed.
- The final assessment that you receive after an appeal to the PVR Director or Superior Court will generally be your assessment for the next two years. (Unless your property has a substantial change, or there's a townwide reappraisal, or for some "use value" land.)

## **V. Step 5: Appeal to the Vermont Supreme Court**<sup>21</sup>

You can seek an appeal at the Vermont Supreme Court from a decision of the PVR Director or the Superior Court.

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

Here is some basic information on the process:

- You would file your notice of appeal with the Superior Court Clerk (for appeals from Superior Court) or with the Director of Property Valuation & Review (for appeals from Property Valuation Director). The deadline for filing is within **30 days** of the PVR Director or Superior Court decision.
- The Vermont Rules of Appellate Procedure apply.
- You can't submit new evidence at the Supreme Court level. It reviews the record (papers, filings, etc.) of the PVR hearing officer or Superior Court.
- The Supreme Court will only set aside the PVR hearing officer's or Superior Court's *findings of fact* if they are "clearly erroneous." However, the Supreme Court makes its own *legal conclusions* and does not defer to the PVR hearing officer or Superior Court.

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<sup>21</sup> The sources for this section are: *Handbook*, *supra* note 1; *Are You Appealing*, *supra* note 1; Vt. Stat. Ann. tit. 3, § 815; *Barnet*, 131 Vt. 578; *Barnett v. Town of Wolcott*, 185 Vt. 627, 627-28 (2009).

## GLOSSARY

### **Abstract of Individual Lists**

A list of all the taxable property in a town/jurisdiction, including names of property owners and valuations of properties. The Lister lodges this with the Town Clerk prior to grievances and prior to the filing of the official grand list.

### **Appraisal Value**

Your property's fair market value as determined by the Lister.

### **Assessment**

For purposes of appealing your "assessment," your property's appraisal value/fair market value as determined by the Lister.

### **Assessment Date**

See "Valuation Date."

### **Board of Civil Authority (BCA)**

A local, elected board comprised of the Town Clerk, the Selectboard, and Justices of the Peace of the town. Hears assessment appeals after the Board of Listers.

### **Board of Listers (see also "Lister")**

A local board comprised of three to five Listers. Responsible for appraising property, hearing grievances, and preparing the grand list.

### **Burden of Proof**

The level to which a certain party has to demonstrate that his/her position is correct. E.g., before the Board of Civil Authority, you have to present enough compelling evidence to remove the presumption that the Lister's assessment is correct (burden of production). Then, you have the burden to persuade the Board that you're entitled to an assessment reduction (burden of persuasion).

### **Comparable Sales Approach**

See "Market Data Approach."

### **Cost Approach**

A property valuation technique that determines a property's value based on the value of the land plus the cost to reconstruct any improvements, less depreciation.

### **Division of Property Valuation & Review**

A state-level division within the Vermont Department of Taxes. It assists in the administration of the property tax system in the state, including assistance to localities.

### **Equalization Ratio**

A ratio applied to a property's "appraisal value" to arrive at "listed value." Ensures that all properties in a jurisdiction are taxed at the same rate.

**Evidence**

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

**Exemption**

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

**Exhibit**

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

**Fair Market Value (estimated)**

The price a property would bring in the market “when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value.”<sup>22</sup>

**Income Approach**

A property valuation technique that determines a property’s value based on its potential to earn income. Used most for income-producing properties (commercial, industrial, rental).

**Listed Value**

The value of a property entered on the abstract of individual lists or grand list. Equal to the appraisal value with an equalization ratio applied.

**Lister (See also “Board of Listers”)**

Local official responsible for appraising property, hearing grievances, and preparing the grand list. Serves three-year term.

**Market Data Approach**

A property valuation technique that determines a property’s value based on sales of similar properties, adjusted for differences, and/or the purchase price of the subject property.

**Official Grand List**

A list of all the taxable properties in a town/jurisdiction, including names of property owners and property valuations. The official grand list is lodged with Town Clerk, usually in late summer, and is the basis for calculating property taxes.

**Party**

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

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<sup>22</sup> Vt. Stat. Ann. tit. 32, § 3481(1). FMV should also include consideration of factors such as local regulation that affects land, and housing covenant subsidies for non-rental residential properties. (Residential rental properties with housing subsidy covenants or other governmental restrictions on rents are valued using in income approach outlined by statute.) *Id.*

**Real Estate**

Primarily, land plus any improvements or structures on the land. May also include rights or other features associated with the land.

**Sales Comparison Approach**

See “Market Data Approach.”

**Hearing Officer**

An officer appointed by the Director of the Property Valuation & Review Division to hear assessment appeals after the Board of Civil Authority.

**Superior Court**

A county-level, state trial court. Hears assessment appeals after the Board of Civil Authority.

**Testimony**

A statement(s) given by a witness under oath.

**Town Agent**

A town official who may act on behalf of the Town in assessment appeals to the PVR Director or Superior Court.

**Town Clerk**

A town official with various duties in assessment appeals, who also serves as Clerk of the Board of Civil Authority. Custodian of most of the Town’s records.

**Use Value Appraisal**

Valuation for certain types of property (e.g., farms and forests) where property is valued as if it would always be that type of land/always be used for that purpose.

**Valuation Date**

The date as of which a property’s value is determined for assessment purposes – April 1<sup>st</sup>.

**Vermont Supreme Court**

The highest court in the state. Hears assessment appeals after the PVR Director or Superior Court on questions of law.

**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 hearings before the Board of Listers, the Board of Civil Authority, the PVR Director, and state courts.*

*The types of evidence listed here may be useful for appeals based on any type of environmental problem – not just factory farms.*

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

*Note: the decision maker in your assessment appeal may give different levels of consideration to the different types of information you submit. In Vermont, while any of this evidence might be relevant and helpful, the courts tend to especially favor: **recent purchase price evidence, comparable sales evidence, and professional appraisal reports.***

#### **Physical Manifestations**

Information about physical impacts of the nearby factory farm or environmental pollution, such as:

- Poor air quality caused by environmental pollution, or animal waste or feed storage from a factory farm.
- Poor water quality in wells, streams, or lakes, or soil contamination caused by a factory farm or other environmental problem.
- Bad odors caused by animal waste or other environmental contaminants.
- Intrusive noise caused by a factory farm (e.g., heavy truck traffic).
- Insect swarms from a factory farm.
- Harmful dust from a factory farm.
- Eyesores caused by a factory farm or other environmental problem or hazard (e.g., ugly manure lagoons, unsightly manure sprayfields, unattractive industrial buildings, algal blooms in a water body, etc.).
- Substances leaching from a factory farm, including sprayfields (e.g., fecal matter, antibiotics, hormones, heavy metals, etc.).
- Illnesses linked to a factory farm or environmental problem (e.g., a doctor's diagnosis of any illness you had that was caused or made worse by exposure to the factory farm or other pollution).

## **Purchase Price**<sup>23</sup>

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 factory farm or environmental problem (e.g., if you negotiated a reduction in the purchase price of your property because of a nearby pollution problem, you could include the purchase price as well as a description of the pollution’s influence on the sale).

The recent purchase price of a property is relevant, but not always determinative. It is most persuasive when it reflects a bona fide transaction on the open market.

## **Recent Appraisal and Appraiser Testimony**<sup>24</sup>

If you have the resources to get a professional appraisal, it’s probably a good idea. An appraisal is strong proof of value and would be useful throughout the grievance process. The appraisal should be recent (past 2-5 years), and should explain how your property’s market value is negatively impacted by the nearby factory farm or environmental hazard or pollution.

You should choose an appraiser who is licensed by the Real Estate Appraiser Board of the Vermont Secretary of State’s office. If possible, you should find one who has experience valuing environmental problems or contamination, or valuing homes near factory farms. The professional appraisal might incorporate comparable sales and purchase price evidence, as well as other factors or valuation methods. For best results, the appraiser should be willing to testify about the appraisal.

Appendix D has information on how to find a Vermont appraiser.
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<sup>23</sup> “In determining estimated fair market value, the sale price of the property in question is one element to consider, but is not solely determinative.” Vt. Stat. Ann. tit. 32, § 3481(1). Circumstances surrounding the sale of your property might cause the purchase price to be an unreliable indicator of fair market value. *See, e.g., Beach Properties, Inc. v. Town of Ferrisburg*, 161 Vt. 368, 376 (1994) (holding that while sale was voluntary, it did not occur in an open market, and the parties didn’t necessarily act in their own self-interest; therefore, the sale price was not indicative of fair market value); *Great Bay Hydro Corp. v. Town of Derby*, 181 Vt. 574, 575 (2007) (stating, “while sale price may represent a persuasive and favored method of determining fair market value, ‘there may be situations where a court must look beyond a sale.’”) (citations omitted).

<sup>24</sup> *See, e.g., Welch v. Town of Ludlow*, 136 Vt. 83, 86-87 (1978) (testimony of real estate appraiser and taxpayer were enough to meet burden of production); *Barrett/Canfield, LLC v. City of Rutland*, 171 Vt. 196, 198 (2000) (trial court considered taxpayer’s evidence of an independent appraisal by a mortgage provider); *USGen New Eng., Inc. v. Town of Rockingham*, 177 Vt. 193, 197-214 (2004) (discussing aspects of three expert appraisals and upholding trial court’s reliance on one).

## Comparable Sales<sup>25</sup>

Information showing that your assessment is too high based on sales of similar properties. You can compare your appraisal value to the sale prices of similar properties in town.

- You can determine which properties are similar to yours by reviewing property cards at the Lister's office.
- You can find sale prices on the property transfer returns for the town, which should be on file in the Town Clerk's office.

One way to present evidence is to make a chart of your property (the "subject" property), plus three or more comparable properties as shown below. (You can include more factors.)

	Subject	Sale 1	Sale 2	Sale 3
Sale Price				
Date of Sale				
Age of Improvements				
Condition				
Lot Size				
Floor Area (square feet)				
Garage				
Quality				

- You could include information on similar properties that are near factory farms or environmental problem areas. You would argue that your property's fair market value should be within the range of the other properties' sale prices – presuming that those sale prices reflected the environmental problem.
- Or, if your appraisal value is similar to the sale prices of similar properties that are *not* near factory farms or environmental problem areas, you could argue that the Lister failed to account for the problem by failing to make a proper downward adjustment to your property's value.<sup>26</sup>

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<sup>25</sup> See, e.g., *Handbook*, *supra* note 1; *Are You Appealing*, *supra* note 1; *Kruse*, 145 Vt. at 372 (taxpayer overcame presumption in favor of Lister by including "comparison with another residential property on a ten-acre lot"); *Welch*, 136 Vt. at 86-87 (testimony of real estate appraiser including comparison of similar properties helped overcome presumption in favor of Lister).

<sup>26</sup> Because properties are not actually entirely comparable, adjustments will have to be made to the sale prices to account for the different characteristics of the properties. This is difficult; the adjustments must be based on market data. (E.g., market data will establish how much of an adjustment is needed when one property is older than another, bigger than another, etc.). *Handbook*, *supra* note 1, at 5-7.

## **Proximity**

Information about your property's proximity (nearness) to a factory farm or environmental problem.

- E.g., a map or tax parcel map showing the location of your property and the location of the factory farm or pollution. Check with your Lister's office for a property parcel map. The Town Clerk may also have a map.

## **Marketability**

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

## **Financing**

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

## **Cost to Cure**

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

- The cost of cleaning up soil contamination;
- The cost of installing a filtration system to treat contaminated well water, etc.

## **Statements of Professionals**

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

- A newspaper article reporting that a Vermont Lister reduced property tax assessments because of a factory farm or environmental problem;
- A statement from a real estate agent that a nearby factory farm or environmental contamination devalues your property;
- A statement from your Lister that environmental problems or factory farms devalue nearby properties.

- A bank appraisal taking into account a nearby environmental problem or factory farm (e.g., an appraisal done during refinancing).

### **Stigma**<sup>27</sup>

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

- Information about the public’s negative perceptions of properties near environmental problem sites or 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 an environmental problem).
- Information about any perceived risks or unknowns associated with your property.
- Negative publicity about the factory farm or environmental issue could also indicate that nearby properties such as yours suffer from stigma.

### **Assessments of Similar Properties**<sup>28</sup>

For this type of evidence, you would compare your assessment to the *assessments* of properties that are similar to yours (as opposed to the *sale prices* of properties that are similar to yours). Properties that are “similar” will follow the same criteria as properties that are similar under the comparable sales method, above (age, condition, size, etc.).

- Information about the assessments of similar properties that *are* near factory farms or environmental problem areas. You could include this if your property is assessed at a higher value than those and argue that your assessment should be lower, too. You could include any information showing that the other properties were assessed lower because of the factory farm or environmental problem.

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<sup>27</sup> Though Vermont courts have not dealt much with stigma as applied to property values, the Vermont Supreme Court did favorably endorse the concept in a 2002 case. *See Nicholas v. Town of Pownal*, 2002 WL 34423792, \*2 (Vt. 2002). In that case, the Court upheld an assessment reduction based in part on the stigma of a nearby landfill: “Although the Town cites several out-of-state cases, none supports the argument that the trial court was precluded from considering the potential effect, often referred to in the case law as ‘stigma,’ that contamination on the adjacent landfill may have on the fair market value of their property. On the contrary, courts and commentators have recognized that ‘a stigma factor can attach to property whether contaminants are present, are threatened, or are totally absent.’ *Dealers Mfg. Co. v. County of Anoka*, 615 N.W.2d 76, 79 (Minn.2000) (noting that sigma may exist where property adjacent to subject site has been contaminated or has even been remediated); see also L. Lewandroski, *Toxic Blackacre: Appraisal Techniques & Current Trends in Valuation*, 5 Alb. L.J. Sci. & Tech. 55, 88 (1994) (‘stigma value has been recognized by some courts in granting real property tax assessment reductions for diminution in property value caused by proximity to contaminated sites [and] those perceived to be contaminated’).” This case is not considered precedential, since it was decided by a three-justice panel, but it might nevertheless provide insights into how the Court would consider stigma.

<sup>28</sup> *Note: Some states do not favor this type of evidence. It is not clear whether Vermont does, but there appears to be some support for it. See Fayetteco, Inc. v. City of South Burlington*, 131 Vt. 625, 628 (1973) (where taxpayer made showing that comparable properties – taking into account zoning classifications - were not assessed at corresponding values, taxpayer overcame presumption that Lister’s assessment was correct).

- Information about the assessments of similar properties that are *not* near factory farms or environmental problem areas. You could include this if your property was assessed at the same or higher value than those. It tends to show that the factory farm or environmental issue wasn't taken into proper consideration in your assessment.

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**Why should the Board of Listers, the BCA, the PVR Director, or Vermont state courts consider a nearby factory farm or other environmental pollution problem as part of my property's fair market value?**

As explained above, Vermont law requires that a property's appraisal value be set at its "estimated fair market value."<sup>29</sup> In Vermont, "[t]he estimated fair market value of a property is the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration *all the elements of the availability of the property*, its use both potential and prospective, any functional deficiencies, and *all other elements* such as age and condition which combine to give property a market value."<sup>30</sup> So, based on this definition, any elements that affect a property's market value should be considered in its assessment.<sup>31</sup> Such "elements" should include a nearby factory farm or environmental problem area (e.g., severely polluted water body), even if they are not a part of the subject property itself.

Both the Vermont Supreme Court and traditional principles of property valuation recognize that factors outside a property can lower its estimated fair market value.<sup>32</sup> This is sometimes referred to as "economic obsolescence," "external obsolescence," or "economic depreciation."<sup>33</sup> For instance, in a 1991 case, the Vermont Supreme Court upheld a decision by the State Board of Appraisers to reduce a property assessment by 8% because of the property's location near a landfill and contamination from a nearby salt shed.<sup>34</sup> (The State Board of Appraisers was basically the predecessor to the PVR Director appeal.) The property owners had testified that their well was contaminated from the Town's salt shed, and that they could see the Town landfill from their property.<sup>35</sup> The Board found: "the proximity of the subject to both the Town landfill and the Town salt shed constitutes an impairment in the desirability of the Breault house because

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<sup>29</sup> Vt. Stat. Ann. tit. 32, § 3481(1). But remember that some properties are appraised at their "use values" (e.g., forest or agricultural lands). (See the "Background Information" section of this Guide.)

<sup>30</sup> *Id.* (emphasis added).

<sup>31</sup> See *Welch*, 136 Vt. at 89 (upholding grade adjustment portion of Town's assessment because it "did take into account the individual characteristics of the land such as topography, view, accessibility, road frontage, location, and so forth").

<sup>32</sup> See, e.g., *Breult v. Town of Jericho*, 155 Vt. 565, 567 (1991); Int'l Assoc. of Assessing Officers, *Standard on Mass Appraisal of Real Property* 15 (Jan. 2011), available at <http://www.iaao.org/uploads/StandardOnMassAppraisal.pdf> (explaining that economic obsolescence takes into account "poor location"); Thomas P. Williams, *Categorizing External Obsolescence*, 64 Appraisal J. 148, 153-54 (April 1996) (external obsolescence relevant to and should be considered in all three traditional approaches; is a "key consideration" in appraisal work; appraisal profession recognizes location, environmental, and economic influences as external obsolescence).

<sup>33</sup> See, e.g., *Breult*, 155 Vt. at 567; *Jeffer v. Town of Chester*, 138 Vt. 478, 480 (1980); Williams, *supra* note 32.

<sup>34</sup> *Breult*, 155 Vt. at 567, 570.

<sup>35</sup> The Town had claimed that no noise or odors from the landfill reached the property – implying that, if they had, the Town might have agreed that an adjustment for economic obsolescence was warranted.

of its location. Therefore . . . this situation warrants the application of a locational obsolescence factor.”<sup>36</sup> The Court agreed with the Board that a “recognized adjustment to value was necessary.”<sup>37</sup>

Interestingly, the Court also found that it was within the State Board of Appraisers discretion to choose an 8% economic obsolescence factor, as opposed to some other number, even though it wasn’t based on a “precise mathematical breakdown.”<sup>38</sup> For instance, there was “no evidence from comparable properties showing the impact of the locational factors on fair market value.”<sup>39</sup> However, the Court upheld the 8% factor because it “within the range of the evidence” before the Board.<sup>40</sup> The Court explained that “[o]nce the Board has shown some basis in evidence for its valuation, the appellant bears the burden of demonstrating that the exercise of discretion was clearly erroneous. If the decision is within the range of rationality, it must be affirmed.”<sup>41</sup>

Sometimes, a contiguous site may be so environmentally hazardous that it actually changes the “highest and best use” of a nearby property. For example, in 2001, the Bennington Superior Court held that a former tannery landfill designated as a Superfund site, and associated “public alarm,” had rendered a neighboring property “‘economically obsolete’ as to any prospective residential use.”<sup>42</sup> The Court explained that the comparable sales approach was not a useful valuation method because the subject property was so unique.<sup>43</sup> The cost approach (which the Town had used to support an economic obsolescence reduction) was not useful, either, because the property no longer had any viability on the residential real estate market.<sup>44</sup> The Court noted its obligation to determine the “correct valuation” of the property in question and to “consider all other evidence” in light of the fact that comparable sales evidence was not available.<sup>45</sup> Doing so, the Court reduced the property owners’ assessment from \$78,200 to \$8,304 by looking at the unimproved value of the land in a residential market (\$16,808), and then reducing that by half.<sup>46</sup>

Thus, the effects of a neighboring factory farm or environmental problem area may show up in a traditional valuation method (e.g., as economic obsolescence). But, even if they don’t, they should be considered. The Vermont Supreme Court has said: “Approaches, such as reproduction cost, earning power, construction cost less depreciation, or the like, are only devices to assist in arriving at fair market value. This Court has repeatedly warned that the use of any single method, or even combination of methods that leads the appraisers astray of their

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<sup>36</sup> *Id.* at 567 (quoting Board of State Appraisers).

<sup>37</sup> *Id.* at 567.

<sup>38</sup> *Id.* at 569.

<sup>39</sup> *Id.* at 567-68.

<sup>40</sup> *Id.* at 569.

<sup>41</sup> *Id.*

<sup>42</sup> *Nicholas v. Town of Pownal*, No. 302-9-99Bncv, 2001 WL 36083272, at ¶ 26 (Bennington Super. Ct. June 20, 2001).

<sup>43</sup> *Id.* ¶ 29.

<sup>44</sup> *Id.* ¶¶ 25-26, 29.

<sup>45</sup> *Id.* ¶ 32.

<sup>46</sup> *Id.* ¶¶ 22, 32.

statutory responsibility will not be accepted.”<sup>47</sup> Further, “in [an] appeal of [a] tax assessment, [the] court is ‘free to weigh any competent, relevant, and probative evidence of valuation.’”<sup>48</sup>

The *Appraisal Journal* also includes useful information about how and why nearby factory farms – and any associated environmental harms - should be considered in assessments. A 2001 article by John A. Kilpatrick (available at <http://www.thefreelibrary.com/Concentrated+Animal+Feeding+Operations+and+Proximate+Property+Values.-a078238407>) explains that a factory farm can devalue nearby properties.<sup>49</sup>

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.<sup>50</sup> The influence of these factors can reduce a property’s market value by 50-90%.<sup>51</sup>

- **Stigma** - any of the “unknowns and risks associated with ownership of the property.”<sup>52</sup> 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”<sup>53</sup>), it may be difficult to quantify, but it should not be overlooked.<sup>54</sup>
- **Distance** - generally, the closer the factory farm, the greater its impact on property values.<sup>55</sup>
- **Physical manifestations** - various impacts of factory farms, e.g., impaired water quality can reduce a neighboring property’s value;<sup>56</sup> hydrogen sulfide emissions from manure

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<sup>47</sup> *Town of Barnet*, 131 Vt. at 580-82 (remanding State Board of Appraisers decision for failing to determine a property’s fair market value or, in the alternative, failing to properly determine the FMV) (citations omitted). It should be noted that there was not a comparable sale or recent purchase price for the Court to review in this case. Having either would have made the determination of FMV easier. *Id.* at 581. However, as explained above, where comparable sales are not a good indicator of FMV, other methods should be used. And, a property’s recent purchase price is not necessarily determinative of FMV, either. *See, e.g., Barrett v. Town of Warren*, 179 Vt. 134, 139 (2005) (“There are limited situations in which the state appraiser may, consistent with the statute, disregard a sale and turn to other evidence of fair market value. These situations arise when ‘some evidence undermines the bona fide nature of the sale’ by showing that either the buyer or seller was compelled to participate, or that the sale was not at arm’s length.”) (citation omitted); Vt. Stat. Ann. tit. 32, § 3481 (“In determining estimated fair market value, the sale price of the property in question is one element to consider, but is not solely determinative.”).

<sup>48</sup> *Boivin v. Town of Addison*, 5 A.3d 897, 899 (Vt. 2010), quoting *Scott Constr., Inc. v. City of Newport Bd. of Civ. Auth.*, 165 Vt. 232, 237 (1996) (finding that lower court could properly rely on an appraisal using “development analysis” as sole method of valuation). *See also Welch*, 136 Vt. at 88 (“An inflexible formula that fails to take into account these various [statutory FMV] factors cannot be employed as the sole basis for an appraisal.”).

<sup>49</sup> John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 *Appraisal J.* 301, 302 (2001). available at <http://www.thefreelibrary.com/Concentrated+Animal+Feeding+Operations+and+Proximate+Property+Values.-a078238407>.

<sup>50</sup> *Id.* at 304, 306.

<sup>51</sup> *Id.* at 306.

<sup>52</sup> *Id.* at 302.

<sup>53</sup> *See Vincent D’Elia & Catherine M. Ward, The Valuation of Contaminated Property*, 111 *Banking L.J.* 350, 359 (July-Aug. 1994).

<sup>54</sup> *See Bill Mundy, Stigma and Value*, 60:1 *Appraisal J.* 7 (Jan. 1992).

<sup>55</sup> Kilpatrick, *supra* note 49, at 304-05 (citing University of Minnesota study).

lagoons may sicken neighbors;<sup>57</sup> dust, odors, and flies carrying animal blood, feces, or antibiotic-resistant bacteria may also impair a neighboring property's value.<sup>58</sup>

- **Marketability evidence** - evidence about the length of time it takes to sell, or the unsalability of, a property.<sup>59</sup> 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.<sup>60</sup>
- **Impacts on highest and best use** – where the factory farm influences the use and enjoyment of your property, like from odor or flies.<sup>61</sup> 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.thefreelibrary.com/Concentrated+Animal+Feeding+Operations+and+Proximate+Property+Values.-a078238407> or from [www.factoryfarmtaxprotest.org](http://www.factoryfarmtaxprotest.org).

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<sup>56</sup> *Id.* at 304 (citing Kirshner & Moore study).

<sup>57</sup> *Id.* at 305 (describing illnesses near CAFOs in Minnesota).

<sup>58</sup> *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/](http://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)).

<sup>59</sup> See D’Elia & Ward, *supra* note 53, at 360 (“longer marketing period” and “inability to sell” illustrate perceptions of devaluation).

<sup>60</sup> Kilpatrick, *supra* note 49, at 306.

<sup>61</sup> *Id.* at 302.

## APPENDIX B – EXAMPLES OF DEVALUED PROPERTIES

You can access some of these studies, articles, and cases at [www.factoryfarmtaxprotest.org](http://www.factoryfarmtaxprotest.org)

### Selected Studies & Reports

In describing the economic costs of CAFOs to rural communities, the 2008 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 2008 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 2012 report by Dr. John Kilpatrick of Greenfield Advisors evaluates a Colorado property and the impacts a nearby CAFO has on its value. The report explains that the principles within the report would be applicable to the appraisal of any property near a CAFO.

~ John A. Kilpatrick, *In re: Delta County* (Aug. 22, 2012).

This report was prepared to assist local boards of health who have concerns about CAFOs in their communities and to help them “understand their role in developing ways to mitigate potential problems associated with CAFOs.” The report states that “[t]he most certain fact regarding CAFOs and property values are that the closer a property is to a CAFO, the more likely it will be that the value of the property will drop.” It also noted that “[d]eclines in property values can . . . cause property tax rates to drop, which can place stress on local government budgets.”

~ Carrie Hribar, National Association of Local Boards of Health, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities*, at III, 11 (2010).

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.

The National Association of Realtors has put together a “field guide” that explains what CAFOs are and how they can impact property values. The guide lists several studies and notes that,

while a few studies have found a positive impact, “most studies have found a negative relationship between feedlots and property values.”

~ National Association of Realtors, *Field Guide to Impacts of Animal Feedlots on Property Values* (Sept. 2013).

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

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

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

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

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

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

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

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

Studies cited by Dakota Rural Action found that property within a 3-mile radius of a CAFO loses 6.6% in property valuation, and property within 0.10 mile of a CAFO loses up to 88% in property valuation.

~ Dakota Rural Action, *CAFO Economic Impact* (June 2006) (citing North Central Regional Center for Rural Development (1999:46); Siepel et al. (1998)).

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).

This study evaluated the influence of proximity to swine facilities on the sale price of residential properties, using a GIS-based hedonic model. The study reported that “[r]esults indicate a negative and significant impact on property value from hog operations.” The study also found

that the modeling “may be a promising technique for establishing setback guidelines, for assessing property value damages resulting from animal operations, and for evaluating potential property value impacts to surrounding properties when siting a new CAFO.”

~ Milla et al., *Evaluating the Effect of Proximity to Hog Farms on Residential Property Values: A GIS-Based Hedonic Price Model Approach*, 17 *URISA Journal* 27, 30–31 (2005).

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

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

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

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

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

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

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

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

### **Selected Articles**

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

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

A 2012 press release reported that property owners in Illinois were awarded a 12.5% reduction in their property value based on the effects of a neighboring swine CAFO. The reduction applied retroactively from the time the CAFO was constructed.

~ CRAPC & ICCAW, *Neighbors of Illinois Swine CAFO Claim Victory in Property Tax Appeal* (Sept. 6, 2012).

A 2007 article in the *Agriculture and Human Values* journal evaluated studies on industrialized farming and community impacts from the 1930s forward. It reported predominantly detrimental effects, including a decline in real estate values for residences close to hog CAFOs. ~ Lobao & Stofferahn, *The Community Effects of Industrialized Farming: Social Science Research and Challenges to Corporate Farming Laws*, Agric. & Human Values (2007).

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

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

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

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

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

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

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

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

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

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

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

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

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

This 2004 paper debunked assumptions underlying CAFO-proponent arguments, including those regarding CAFOs and property use. It noted: “CAFOs generate odor, air and water pollution, all of which have a direct impact on neighboring properties. The closer the neighboring property, the more severe the impact is likely to be. . . . The resulting loss of exclusive use by neighboring properties lowers their values and ultimately also lowers the taxes generated from these properties. Suing the offending party for these nuisance activities could potentially compensate the neighboring property owners. To prevent this, factory farming interests have attempted to sponsor legislation to prohibit nuisance suits for agricultural pollution.”

~ William J. Weida, *Considering the Rationales for Factory Farming* (for presentation) 10 (Mar. 5, 2004).

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

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

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

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

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

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

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

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

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

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

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

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

### **Selected Cases**

In a 2013 decision by the Idaho Board of Tax Appeals, a property owner was awarded a 20% reduction in his residential property assessment due to his property’s proximity to a CAFO. As evidence, the property owner explained that his property was and would be negatively impacted by the CAFO because of dust and odors, impaired views, nearby (or migrating) contamination and disease, loud noises, etc. He also presented an appraiser working paper that summarized CAFO impacts on nearby property values, a summary of a study done in a neighboring county that quantified property value decreases based on proximity to CAFOs, and a real estate broker’s letter that estimated a decrease in his property’s value of 20-30%. The Board found that the County should have made appraisal adjustments based on these factors, and ordered a 20% reduction relying primarily on the neighboring county study, the appraisal paper, and the real estate broker’s statement.

~ *In the Matter of the Appeals of Joe Morton*, Nos. 12-A-1377 & 12-A-1379 (Idaho Bd. of Tax Appeals, April 22, 2013).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the context of negotiations between a willing buyer and seller to arrive at fair market value, the neighboring hog facility and the house's location would unquestionably affect the market value of Livingston's house. Any other conclusion would mean that two

identical houses, one located next to the railroad switching yard and the other next to the country club golf course, have identical values – an obviously arbitrary and illogical conclusion that no reasonable person would reach. . . .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **APPENDIX C – LINKS TO HELPFUL ASSESSMENT INFORMATION**

### **Vermont Department of Taxes – Property Valuation & Review Division**

#### **Contact Information**

133 State Street  
Montpelier, VT 05633-1401  
(802) 828-5860 (phone)  
(802) 828-2824 (fax)

#### **Website**

<http://www.state.vt.us/tax/pvr.shtml>

#### **Publications**

*A Handbook on Property Tax Assessment Appeals* (2009)  
(VT Secretary of State & VT Dep't of Taxes, Property Valuation & Review Division)  
[http://www.sec.state.vt.us/municipal/tax\\_appeal\\_handbook\\_2007.pdf](http://www.sec.state.vt.us/municipal/tax_appeal_handbook_2007.pdf)

*Are You Appealing? An Introductory Guide to Property Tax Assessment Appeals* (1999)  
(VT Institute for Government)  
<http://www.sec.state.vt.us/municipal/pubs/Appealing.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](http://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](http://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](http://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](http://www.gao.gov/new.items/d08944.pdf?source=ra)  
(U.S. GAO, 2008)

#### *Organizations*

- Socially Responsible Agricultural Project  
[www.sraproject.org](http://www.sraproject.org)  
SRA Project provides free assistance to communities struggling to protect themselves from factory farms.
- Waterkeeper  
<http://waterkeeper.org/pure-farms-pure-water/>
- Food & Water Watch  
[www.foodandwaterwatch.org/food/factoryfarms](http://www.foodandwaterwatch.org/food/factoryfarms)
- Natural Resources Defense Council (NRDC)  
[www.nrdc.org/water/pollution/cesspools/cessinx.asp](http://www.nrdc.org/water/pollution/cesspools/cessinx.asp)

- Sierra Club  
[www.sierraclub.org/watersentinels/factoryfarms.aspx](http://www.sierraclub.org/watersentinels/factoryfarms.aspx)
- National Family Farm Coalition  
[www.nffc.net](http://www.nffc.net)
- Center for a Livable Future  
[www.jhsph.edu/clf](http://www.jhsph.edu/clf)

### **How to Find a Vermont Appraiser**

- Vermont Secretary of State, Board of Real Estate Appraisers  
[http://vtprofessionals.org/opr1/real\\_estate\\_appraisers/](http://vtprofessionals.org/opr1/real_estate_appraisers/)  
Click on “Licensing Databases → Roster Download” to conduct a search.
- AppraiserUSA.com, Vermont Real Estate Appraiser Directory  
<http://appraiserusa.com/vermont/index.htm>  
After searching, you can click “See Appraiser’s Full Listing” to find more information about the appraiser, including whether he/she is licensed.
- American Society of Appraisers  
[www.appraisers.org/FindAnAppraiser/FindanAppraiser.aspx](http://www.appraisers.org/FindAnAppraiser/FindanAppraiser.aspx)
- Appraisal Institute  
[www.appraisalinstitute.org/](http://www.appraisalinstitute.org/)  
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 a Vermont Attorney**

- Vermont Bar Association, Lawyer Referral  
[https://www.vtbar.org/FOR THE PUBLIC/Find a Lawyer/Lawyer Referral Service Information.aspx](https://www.vtbar.org/FOR%20THE%20PUBLIC/Find%20a%20Lawyer/Lawyer%20Referral%20Service%20Information.aspx)
- American Bar Association, Consumers’ Guide to Legal Help  
<http://www.abanet.org/legalservices/findlegalhelp/main.cfm?id=VT>
- StateLawyers.com, Attorney Directory – Vermont Counties  
<http://www.statelawyers.com/AttorneyDirectory/Index.cfm/StateID:45>
- Lawyers.com, Find a Lawyer  
[www.lawyers.com/find-a-lawyer.html](http://www.lawyers.com/find-a-lawyer.html)  
Find a Real Estate Lawyer  
<http://www.lawyers.com/Real-Estate/Vermont/browse-law-firms-by-city.html>
- Local Yellow Pages
- Recommendations

# Appendix E - Factory Farm Impacts Fact Sheet

## Socioeconomic Impacts

### **Factory farms decrease the quality of life in rural communities.**

- Communities with factory farms have wider social and economic gaps than communities with small, locally-owned and operated farms. (Pew p. 42)
  - Factory farms affect the “size of the middle class, family income levels and poverty rates, quality of public schools, and strength of civil society organizations (such as churches and civic organizations).” (Pew p. 42)
  - Factory farms are related to greater income inequality between the affluent and the poor, and greater poverty in communities generally. (Stofferahn p. 18)
  - Residents in factory farm communities, where agribusiness influence is heavy, tend to have less control over local decisions. (Pew p. 42; Stofferahn p. 18)
  
- Factory farm odors impair the social life of communities. (Pew p. 42)
  - Nearby factory farms disrupt routines that “normally provide a sense of belonging and identity – backyard barbecues, church attendance, and visits with friends and family.” (Pew p. 42)
  - The factory farms create feelings of “violation, isolation, and infringement” in place of freedom and independence. (Pew p. 42)
  - Factory farm communities suffer a decline in community organizations, civic participation, and social life. (Stofferahn p. 18)
  - Factory farm communities tend to have fewer (or poorer-quality) public services and fewer churches. (Stofferahn p. 18)
  - In a North Carolina study of residents within two miles of a 6,000-hog factory farm with an open lagoon, more than half of the respondents were not able to open their windows or go outside in nice weather because of the stench. (Wing & Wolf p. 236)
  
- Factory farms impair rural “social capital.” (Pew p. 43)
  - Factory farms create rifts and conflict in communities, including threats from factory farms to neighbors. (Pew p. 43; Stofferahn p. 18)
  - Factory farm communities have higher levels of stress, socio-psychological problems, and teen pregnancies. (Pew p. 43; Stofferahn p. 18)
  - Neighbors of corporate-owned factory farms have more negative feelings about “trust, neighborliness, community division, networks of acquaintanceship, democratic values, and community involvement” than those living near independent farms. (Pew p. 43)
  - “Recurrent strong odors, the degradation of water bodies, and increased populations of flies are among the problems caused by CAFOS that make it intolerable for neighbors and their guests to participate in normal outdoor recreational activities or normal social activities in and around their homes.” (Pew Technical p. 31)

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

### **Factory farms decrease the value of surrounding properties.**

- Various factory farm studies have found that: “Industrialization of animal agriculture leads to the reduced enjoyment of property and the deterioration of the surrounding landscape, which are reflected in declining home values and lowering of property tax assessments.” (Pew p. 31)
- Factory farms devalue nearby properties to the extent the factory farms are seen as negative externalities by the marketplace. Factors like stigma, the type of affected property, the distance to the factory farm, physical impacts, engineering/scientific testing, impacts on property use, and marketability can reduce a property’s market value by 50-90%. (Kilpatrick pp. 301-02)
- See Appendix B for a long list of examples of properties devalued by factory farms.

### **Factory farms displace small farms.**

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

### **Factory farms hurt local economies.**

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

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

### **Factory farms create nation-wide economic burdens.**

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

### **Factory farms disproportionately affect poor and African American communities.**

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

### **Factory farms treat animals inhumanely, compromising our ethical values.**

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

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

### **Environmental & Public Health Impacts**

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

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

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

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

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

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

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

### **Factory farms contribute to antibiotic resistance.**

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

### **Factory farms deplete energy and water resources.**

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

### **Factory farms are unsustainable and threaten food security.**

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

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