

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

WASHINGTON 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 Washington. 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 Washington attorney if you wish to obtain legal advice.

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INTRODUCTION

This Guide is for Washington 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 Washington, 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 is not a substitute for 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 navigate the appeals process. We encourage you to check the recommended websites, contact your local officials, or consult with a licensed Washington attorney if you have any questions or to verify information such as filing deadlines.

The Guide is available at 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.

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.**

_____ **Step 2: Contact Your County Assessor to Discuss Reducing Assessment (optional).**

_____ **Step 3: Appeal to County Board of Equalization (BOE).***

_____ File one signed appeal form + one copy (and any attachments) with BOE.

_____ Deadline:

_____ July 1st of the assessment year *or*

_____ 30 days from the date your notice of value was mailed, whichever is later.

(In some counties: 60 days – check with your local BOE.)

_____ File evidence with BOE and County Assessor at least 7 business days before hearing.

_____ Attend BOE hearing to support your case.

_____ Receive BOE's decision.

** Sometimes you can appeal directly to the BTA and bypass the BOE. See page 11 for more information.*

_____ **Step 4: Appeal to State Board of Tax Appeals (BTA).**

_____ Deadline: 30 days from the date your BOE decision was mailed.

_____ Choose "Informal" or "Formal" appeal.

Option A: Informal Appeal.

_____ File two items with BTA:

_____ "Notice of Appeal" form with signature;

_____ Copy of BOE order.

_____ File your evidence with BTA and County Assessor at least 10 business days before hearing (unless the BTA sets a different deadline).

_____ Attend BTA hearing to support your case (usually in your county).

_____ Receive BTA's decision. If unsatisfied, request review.

_____ If a "proposed" decision → file an "exception" within 20 calendar days.

_____ If a "final" decision → petition for reconsideration within 10 business days (only if there was no proposed decision).

_____ You can't appeal informal BTA decisions.

Option B: Formal Appeal.

- _____ File notice of appeal (no form available) and copy of BOE order with BTA.
- _____ Attend BTA hearing to support your case (usually in Olympia).
- _____ Receive BTA's decision.
 - _____ If desired, request reconsideration.

_____ **Step 5: Appeal final BTA formal decision to Superior Court.**

- _____ Deadline: 30 days from the date of the BTA decision.

Note: if you get your assessment reduced after any of the above steps, you need to petition your County Treasurer for a refund of any taxes paid on the assessment.

_____ **Another Process: Pay Taxes under Protest and Petition for Refund.**

- _____ You can pursue this route regardless of whether or not you appeal to the BOE and the BTA.
- _____ File written protest with County Treasurer when you pay first installment of taxes (April 30th).
- _____ File suit in Superior Court for refund by June 30th of the next year (the year after taxes were due on the assessment). (May also file in federal court if it has jurisdiction.)

BACKGROUND INFORMATION¹

Real properties in Washington are periodically assessed to help calculate annual property taxes. “Real property” is basically real estate – land and structures or improvements on the land. Real property taxes help fund local services such as public schools, libraries, fire protection, and parks and recreation. (Some properties - such as government units, churches, and most nonprofit agencies - are exempt from taxation.)

Your county assessor will appraise your property at least once every four years and conduct a physical inspection at least once every six years. In some counties, properties are revalued every year. (Washington is working toward having all counties on an annual revaluation cycle.) In non-inspection years, your assessor might adjust your property’s value based on statistical data.

Your assessor must determine your property’s *true and fair market value in money*, which is the amount your property would sell for on the open market.² This is the *appraised value*. The *assessed value* might be less, e.g., if your property has some type of exemption. Your property is valued as of January 1st (the *valuation date*).

Fair market value/true value: amount your property would sell for on the open market (“the amount that a willing and unobligated buyer is willing to pay a willing and unobligated seller”).

Assessors use three main methods to determine fair market value:

Market or Sales Comparison: determines a property’s value based on sales of similar properties and/or the purchase price of the subject property. Used for most residential properties.

Cost: determines a property’s value based on the cost to replace a structure with a similar one. Used for new construction.

Income: determines a property’s value based on its potential to earn income. Used most for business properties.

Whenever your property’s appraised value changes, you’ll receive a ***change of value notice***. Your property’s value will also be on your tax statement, which you receive each year in February. (But note that your tax statement is based on the previous year’s assessed value – e.g.,

¹ The sources for this section are: Wash. State Dep’t of Revenue, *Homeowner’s Guide to Property Taxes* (“*Homeowner’s Guide*”) (Nov. 2011), available at http://dor.wa.gov/Docs/Pubs/Prop_Tax/HomeOwn.pdf; Wash. State Bd. of Tax Appeals, Property Valuation, <http://bta.state.wa.us/appeal/property.htm>; Wash. State Bd. of Tax Appeals, *Protest Flowchart: Contesting Your Valuation* (“*Valuation Flowchart*”), available at <http://bta.state.wa.us/documents/PayingUnderProtest.pdf>; Wash. State Bd. of Tax Appeals, How to Appeal, <http://bta.state.wa.us/appeal/default.htm>; Wash. Rev. Code Ann. §§ 84.04.090, 84.08.130, 84.41.030, 84.41.041, 84.56.020, 84.68.020, 84.69.030; Email from Wash. Dep’t of Revenue (Mar. 9, 2010).

² *Fair market value/true value* is also defined as “the amount of money that a willing and unobligated buyer is willing to pay a willing and unobligated seller.” *Homeowner’s Guide*, *supra* note 1, at 1.

your 2014 tax statement reflects your 2013 assessment.) Usually, taxes are due in two installments by April 30th and October 31st.

Challenging Your Assessment – An Overview

If you disagree with your assessment, you can:

- ***Appeal to the county Board of Equalization (BOE)***

AND/OR

- ***Pay your taxes under protest and petition for a refund in Superior Court.*** (You can choose this option regardless of whether or not you appeal to the BOE.)

If you ***appeal to the county Board of Equalization (BOE)***, you follow these general steps:

- 1) Contact your County Assessor to discuss reducing your assessment (optional).
- 2) Appeal to your county Board of Equalization (BOE).
 - In some cases, you can appeal directly to the state Board of Tax Appeals (BTA) without appealing to the BOE first.
- 3) If unsatisfied with the BOE decision, appeal to the state Board of Tax Appeals (BTA). Choose an “Informal” or “Formal” appeal. You can’t appeal an informal decision. (But, if you paid your taxes under protest, you preserved your right to go to court anyway.)
- 4) If unsatisfied with the BTA decision (Formal), appeal to Superior Court.

Note: If your assessment is reduced, you’ll need to petition your County Treasurer for a refund of any taxes paid on the assessment.

If you ***pay your taxes under protest***, you’ll follow these general steps:

- 1) Contact your County Assessor to discuss reducing your assessment (optional).
- 2) File a written protest with your County Treasurer when you pay your first installment of taxes (April 30th).
- 3) File suit for a refund in Superior Court (or federal court if it has jurisdiction).

You can pay your taxes under protest and petition for a refund whether or not you appeal to the BOE and the BTA.

THE APPEALS PROCESS

Helpful websites about the appeals process:

Washington State Department of Revenue

<http://dor.wa.gov/content/FindTaxesAndRates/PropertyTax/Default.aspx> (Property Tax Info)

Washington State Board of Tax Appeals

<http://bta.state.wa.us/appeal/default.htm> (How to Appeal)

For more information:

County Board of Equalization (see local phonebook)

County Assessor (see local phonebook)

Washington State Dep't of Revenue, Property Tax Division (360) 570-5885

Washington State Board of Tax Appeals (866) 788-5446

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

- Whenever your property's appraised value changes, you'll receive a change of value notice within 30 days of the appraisal. (Except that, according to law, the county can't mail notices between January 15th and February 15th.)
 - The assessor sends this to the name and address for your property on the assessment roll, so be sure to notify your assessor if you have a different mailing address.
- You can also contact your County Assessor to get your assessment.

II. Step 2: Contact County Assessor's Office⁴

If you disagree with your appraised value, you can contact your County Assessor to discuss reducing it.

- According to the Washington Department of Revenue, disagreements are usually settled at this level.
- You don't have to contact your assessor before you begin the rest of your appeal (e.g., to the county Board of Equalization).

³ The sources for this section are: *Homeowner's Guide*, *supra* note 1; Wash. State Dep't of Revenue, *Appealing Your Property Assessment to the County Board of Equalization ("Appealing to BOE")* (Oct. 2010), available at http://dor.wa.gov/Docs/Pubs/Prop_Tax/AppealProp.pdf; Wash. State Dep't of Revenue, *2010 Property Tax Calendar*, available at http://dor.wa.gov/Docs/Pubs/Prop_Tax/PropCal.pdf; *Valuation Flowchart*, *supra* note 1.

⁴ The sources for this section are: *Homeowner's Guide*, *supra* note 1; *Valuation Flowchart*, *supra* note 1.

- At the meeting, you can review the comparable sales information the assessor used to value your property. You can explain why you think your assessment should be reduced. Appendix A has ideas on information that might be useful to present.

III. Step 3: Appeal to County Board of Equalization (BOE)⁵

After you receive notice of your property’s value, you can appeal to your county Board of Equalization (BOE) to challenge it.

- The BOE is a three-to-seven member board appointed by county government (or the county legislature might itself be the BOE). There are training requirements for BOE members.
- Remember, you can also appeal your assessment in court by paying your taxes under protest, whether or not you appeal to the BOE first (see section VI).
- Sometimes, you can request a direct appeal to the state Board of Tax Appeals if you, your assessor, and the BOE agree, and your appeal involves complex issues beyond the BOE’s expertise. To do so:
 - File a form with the County Assessor’s office (form available at <http://bta.state.wa.us/documents/64%200079.pdf>).
 - For more information: (360) 570-5900, <http://bta.state.wa.us/appeal/default.htm>, or <http://apps.leg.wa.gov/WAC/default.aspx?cite=458-14-171>.

General Information about Appeals to the BOE

- You don’t have to have an attorney, but can have one if you want to.
- The hearing is informal.
- The BOE can raise, lower, or uphold your appraised value.
- You should pay your taxes when they are due, even if you do so under protest. Your County Treasurer will refund them later if necessary.

⁵ The sources for this section are: *Homeowner’s Guide*, *supra* note 1; *Appealing to BOE*, *supra* note 3; *Valuation Flowchart*, *supra* note 1; *Taxpayer Petition to the County Board of Equalization for Review of Real Property Valuation Determination*, available at http://dor.wa.gov/docs/forms/PropTx/Forms/TxpyrPetnCoBOERevRPValuDeterm_E.doc; Wash. State Dep’t of Revenue, *Property Tax Special Notice: Property Valuation Appeals* (May 2009), available at http://dor.wa.gov/Docs/Pubs/SpecialNotices/2009/sn_09_PropertyValuationAppeals.pdf; *How to Appeal*, *supra* note 1; Wash. State Dep’t of Revenue, *Operations Manual: County Boards of Equalization* (“*Operations Manual*”) 41-42, 45 (updated May 2011), available at http://dor.wa.gov/Docs/Pubs/Prop_Tax/BOE_Manual.doc; Wash. Rev. Code Ann. §§ 84.48.010, 84.48.014, 84.48.022, 84.48.042, 84.48.150, 84.69.020; Wash. Admin. Code § 458-14-171.

Filing the Appeal

- File the appeal in the county where your property is located. Find BOE’s address in the county government section of your local phonebook.
- Appeal forms are available at your County Assessor’s office, your county BOE, or the Department of Revenue website:
http://dor.wa.gov/docs/forms/PropTx/Forms/TxpyrPetnCoBOERevRPValuDeterm_E.doc
 - The appeal form comes with instructions. You must complete boxes 1-5 (information about your property and the reasons for your appeal), sign, and date the form or it won’t be complete.
 - You must include specific reasons explaining why the assessor’s value is incorrect.
 - There’s a box to check to request the information the assessor used to value your property.
 - You can attach documents/evidence to your form. There’s also a space on the form to indicate if you’re going to submit more evidence. If so, you have to submit it at least **7 business days** before the hearing. You must send copies to the assessor, too.
 - File **1 signed original petition with attachments (if any) + 1 copy** with the BOE.
- **Filing Deadline:**⁶
 - **July 1** of the assessment year for the assessment you’re appealing *or* **within 30 days** of the date your value notice was mailed (postmarked), **whichever is later**.
 - In some counties, the deadline is 60 days instead of 30 – check with your BOE.
 - If you mail your petition, it must be postmarked by midnight of the deadline.
 - You can also deliver your petition in person to the BOE and get it date stamped.

The Hearing

- BOE will notify you of the date, time, and location for your hearing.
 - It’s usually between July 15th and August 15th.
 - It will be held in your county.
- It is presumed that the assessor’s value is correct. You have the burden to show with “clear, cogent, and convincing evidence” that the assessor’s value is incorrect. This means you have to show it’s “highly probable” that the assessor’s value is incorrect.⁷

⁶ There are limited exceptions to the filing deadline. Contact your county BOE for more information.

- You can do this by presenting evidence about what your property’s market value actually is.
 - Your evidence should reflect your property’s value as of the valuation date (January 1st) for the assessment year you’re appealing.
- Preparing for your hearing:
 - See below - “**Preparing Your Evidence**” and “**Tips for Presenting Comparable Sales Evidence**” - for information on how to prepare for your hearing.
 - You can request all the information the assessor used to value your property; the assessor has to provide it at least 14 business days before the hearing.
 - If you listed comparable sales with your appeal form, you can’t change them later unless you have new evidence and provide the new evidence to the assessor and BOE at least seven business days before the hearing.
 - Usual order of proceedings at the hearing:
 - **Opening statements:** you can make general remarks about your case and your position. You speak first, then the assessor.
 - **Presentation of case:** you present your evidence, testify, and/or question any witnesses you brought. Then the assessor presents his/her case. You can each cross-examine (question) the other side’s witnesses and point out problems with the other side’s evidence.
 - **Closing arguments:** you can give a summary of your position and the evidence supporting it. Both you and the assessor have a chance to speak.

After the Hearing

- The BOE usually issues a written decision within 30-60 days of your hearing.
- If you’re dissatisfied with the decision, you can appeal to the State Board of Tax Appeals (BTA).

⁷ Once you show it’s highly probable that the assessor’s value is incorrect, you only have to show what your property’s proper value is by a “preponderance of the evidence” (more likely than not). *Operations Manual, supra* note 5, at 40-42; *Weyerhaeuser Co. v. Easter*, 894 P.2d 1290, 1296 (Wash. 1995).

Preparing Your Evidence⁸

- Your evidence might be physical things like documents or photos, or oral testimony from you or other witnesses about your property's value.
- Some examples of evidence:
 - Comparable sales information about other properties showing your value should be lower. See below for tips from the Board of Tax Appeals and the Department of Revenue.
 - A recent appraisal.
 - Documentation about your property's condition that the assessor might have missed.
 - Recent purchase price of your property.
 - Photos.
 - A map with the location of your property and comparable properties.
 - Documentation by others (e.g., qualified experts) of problems.
 - A written estimate of the cost to repair any problems on the property.
- Appendix A has more ideas about evidence to submit.

Tips for Presenting Comparable Sales Evidence⁹

Worksheet: You can download a “Comparable Sales Data Worksheet” (Microsoft Excel file) from the BTA website: <http://bta.state.wa.us/appeal/forms.htm>. The worksheet includes space to record specific information about your property and comparable properties, allowing you to organize your information into a chart. It also includes helpful descriptions of the various pieces of information. (Scroll over the red corners of the boxes.) There's also a blank copy of the worksheet in Appendix F at the end of this Guide.

Guidelines: Gather information on properties that are the most like yours (e.g., similar properties in your neighborhood or area). Use sales that are closest to your property's valuation date, within the past 5 years.

Information sources: your County Assessor, realtors, title companies, and appraisers.

Information to record for each similar property (and your property):

- Parcel or account number
- Address
- Date of sale
- Sale price

⁸ Property Valuation, *supra* note 1; *Appealing to BOE*, *supra* note 3.

⁹ *Id.*

- Characteristics
 - Location (e.g., same neighborhood)
 - Lot size, acreage, square feet
 - Desirable features (e.g., a view)
 - Undesirable features (e.g., an access problem)
 - Water system
 - Wetlands
 - Zoning
 - Type of construction (e.g., wood)
 - Square footage of finished living area
 - Age of home
 - Number of stories
 - Type of home
 - Condition of home
 - Number of beds and baths
 - Other features (e.g., garage, fireplace)

IV. Step 4: Appeal to State Board of Tax Appeals (BTA)¹⁰

The State Board of Tax Appeals (BTA) is an independent state agency consisting of three members. The BTA hears appeals from the BOE (and the Department of Revenue). Its mission is to “resolve appeals of taxpayers and taxing authorities to maintain public confidence in the state tax system.”¹¹

The BTA can decide your property’s value, but it can’t raise your property’s value more than your original assessment or the BOE amount, whichever is greater.

You can choose a “*formal*” or an “*informal*” appeal when you file your appeal.¹²

- If you don’t choose, the default is informal.
- You can convert a formal appeal into an informal appeal. For more information, see <http://apps.leg.wa.gov/wac/default.aspx?cite=456-09>.

¹⁰ The sources for this section are: *Homeowner’s Guide*, *supra* note 1, *Appealing to BOE*, *supra* note 3; Property Valuation, *supra* note 1; *Valuation Flowchart*, *supra* note 1; Wash. State Bd. of Tax Appeals, Forms and Instructions (various), <http://bta.state.wa.us/appeal/forms.htm>; Wash. State Bd. of Tax Appeals, E-file – Online Web Form, <http://bta.state.wa.us/appeal/efile%20web%20form.htm>; Wash. State Bd. of Tax Appeals, Deadlines, <http://bta.state.wa.us/CatsLink/BtaDeadlines.aspx>; Wash. State Bd. of Tax Appeals, About BTA, <http://bta.state.wa.us/about/default.htm>; *Operations Manual*, *supra* note 5, at 61-66; Wash. Rev. Code Ann. §§ 84.08.130, 82.03.020, 82.03.100, 82.03.130, 82.03.140, 82.03.180, 82.03.200, 84.08.060; Wash. Admin. Code §§ 456-09-010 - 456-09-960, 456-10-001 - 456-10-755; Email from BTA (May 15, 2012).

¹¹ About BTA, *supra* note 10.

¹² For more information on formal versus informal hearings, see Laura VanderVeer King, *Practice & Procedure before the Washington State Board of Tax Appeals*, 33 Gonz. L. Rev. 141 (1997/1998), available from the BTA website at: <http://bta.state.wa.us/appeal/property.htm> (scroll down to: “What’s the difference between an informal and a formal hearing?”).

Informal Appeal

- The hearing is informal.
- Used often by persons representing themselves.
 - The BTA rules state: “Although informal hearings are available to all parties, the informal process is helpful for persons who are not represented by counsel. In the informal process a taxpayer does not need to possess legal expertise in order to pursue an appeal.”¹³
- The hearing is usually in your county.
- The decision is final and can’t be appealed. (But remember - you can still file suit for a refund in Superior Court if you paid your taxes under protest.)

Formal Appeal

- Many people choose to have someone represent them (but it’s not required). Only certain people can represent you – e.g., an attorney or certified public accountant (CPA).
- Most hearings are at the BTA’s office in Olympia.
- You can appeal a formal BTA decision to Superior Court.

General Information for Both Types of Appeal

- **Deadline for filing an appeal:** within **30 calendar days** of the day your BOE decision was mailed.
- - The BTA can’t accept an appeal after the deadline.
 - If the deadline is on a weekend or legal holiday, then the deadline becomes the next business day. Check with the BTA if you’re uncertain about the deadline.
 - Remember that some months have more than 30 days, so the deadline won’t just be the same date of the next month (e.g., a BOE order dated May 18 must be appealed by June 17).
- There’s no filing fee.
- You can still try to reach an agreement with your assessor on your property’s value. If you do, you can file a “stipulation” with the BTA.
 - The stipulation must contain your property’s parcel number, the assessment year, the agreed value of your property, and a brief explanation supporting the agreed value.

¹³ Wash. Admin. Code § 456-10-001.

- There's a stipulation form at <http://bta.state.wa.us/documents/Stipulation.pdf>.
- You can't make "ex parte" contact with the BTA members - i.e., you can't communicate with the BTA members about the substance of your case unless you include the other side (County Assessor).
- There are "service" requirements for all the documents you file with the BTA – e.g., you have to send the documents to the County Assessor too. Check with the BTA or the appeal rules links (below) for more information.
- Non-parties can file "amicus" briefs. This applies to people whose interests could be "substantially affected" by your appeal.¹⁴ Typically an amicus supports one side or the other (you or the assessor).
- The BTA will send you notice of your hearing at least 20 days in advance.
- The BTA might hold a prehearing conference to discuss things like scheduling and filing evidence.
- There are provisions for teleconference proceedings if everyone agrees.
- The hearing is recorded.

A. Informal Appeals

The full set of informal appeal rules is available at
<http://apps.leg.wa.gov/wac/default.aspx?cite=456-10>.

The rules cover some areas not described here – e.g., general information about the BTA as well as legal requirements for filing motions or conducting discovery (exchanging evidence with the other side before the hearing). You can consult the rules if these issues arise in your appeal.

You can represent yourself, or an attorney or certified public accountant can represent you. You can also designate someone else with the BTA's approval.

- If someone represents you, he/she must file a notice of appearance with the BTA and the County Assessor. It must include: names of the parties, docket number (if known), and the representative's name, address, phone, fax, and email.

Filing the Appeal

- **Send two items to the BTA:**
 1. Notice of Appeal with an original signature (yours or your representative's).

¹⁴ Wash. Admin. Code §§ 456-09-552, 456-10-507.

- The Notice of Appeal form and instructions are available at <http://bta.state.wa.us/appeal/forms.htm>. You can also get the form from the BTA, the county BOE, or the County Assessor's office.
- The form requests basic information about your property and the reasons for your appeal.
- You don't have to use the form as long as your notice contains the proper information. See <http://apps.leg.wa.gov/wac/default.aspx?cite=456-10-310>.

2. A copy of the BOE order that you're appealing.

- **Address**

Mailing (e.g., USPS)
Board of Tax Appeals
PO Box 40915
Olympia WA 98504-0915

Delivery (in person)
Board of Tax Appeals
910 5th Ave. S.E.
Olympia, WA 98501

- You can also e-file – see <http://bta.state.wa.us/appeal/efile%20web%20form.htm> for the form and instructions. (Basically, you fill in the form online, then attach a scanned copy of your BOE order.)

- The BTA must receive the electronic transmission by 5:00pm on the due date.
- You must also send or deliver the original appeal form to the BTA by the deadline.

- The BTA will notify you that your appeal was received. This letter will have your docket number, which you should use on future communications with the BTA.
- The BTA will send a copy of your appeal to your County Assessor.
- The BTA will ask the BOE for copies of all the evidence from your BOE hearing.

The Hearing

- The hearing is usually in your county.
- If you need to miss your hearing, you can:
 - have a representative attend for you;
 - request a hearing by telephone;
 - with the assessor's consent, request a hearing on the record (on the basis of the materials the BTA has).

Otherwise, if you miss your hearing, the BTA could dismiss your appeal. For information on postponing and rescheduling your hearing, contact the BTA or see <http://apps.leg.wa.gov/wac/default.aspx?cite=456-10-515>.

- Preparing for your hearing.
 - See the sections above - “*Preparing Your Evidence*” and “*Tips for Presenting Comparable Sales Evidence*” - for ideas.
 - You must provide your evidence to the BTA and other parties (County Assessor) at least **10 business days** before the hearing (unless the BTA sets a different deadline).¹⁵
 - At the same time, you must provide proof that you’ve filed the evidence with the other parties (“proof of service”). Contact the BTA or see <http://apps.leg.wa.gov/wac/default.aspx?cite=456-10-410> for instructions.
 - This deadline doesn’t apply to evidence you submitted to the BOE (since the BOE will send that separately to the BTA).
 - The BTA can accept more evidence than you presented to the BOE.
 - Once you submit materials to the BTA, they become public records (i.e., the public can view/copy them).

- At the hearing.
 - You and the assessor each have a chance to present your opinions of property value, with supporting evidence.
 - The usual order of proceedings is:
 - ***Administering of oath;***
 - ***Opening statements*** (first you, then the assessor). You can give a summary of your case – what you’re asking for and how you’re going to prove it;
 - ***Your case-in-chief*** (this is when you make your case) - present your evidence, question your witnesses, etc.; the assessor can question (cross-examine) your witnesses, too;
 - ***Assessor’s case-in-chief*** - you can cross-examine the assessor’s witnesses;
 - ***Closing arguments*** (first you, then the assessor). You also have a chance to make a final closing statement to rebut what the assessor said.
 - The BTA can ask questions, too.
 - It’s presumed that the assessor’s value is correct, so you have the burden to show that your assessment is wrong by “clear, cogent and convincing” evidence (i.e., “highly probable” – this is the same burden you had before the BOE).¹⁶
 - You can do so by presenting evidence of your property’s market value.

¹⁵ There are also deadlines for submitting briefs, if any (legal arguments supporting your case). See <http://apps.leg.wa.gov/wac/default.aspx?cite=456-10-505>.

¹⁶ Once you show it’s highly probable that the assessor’s value is incorrect, you only have to show what your property’s proper value is by a “preponderance of the evidence” (more likely than not). *Operations Manual, supra* note 5, at 41-42; *Weyerhaeuser Co.*, 894 P.2d at 1296.

- The hearing is “de novo,” which means that the BTA decides your case anew and doesn’t defer to the BOE decision; there’s no presumption that the BOE decision is correct.
- The hearing is recorded.

After the Hearing

- The BTA will issue a written decision and mail it to you, usually within 90 days. It’ll be either a “**proposed**” decision, or a “**final**” decision.
 - If it’s a **proposed decision** that goes against you, you can ask the BTA to reconsider by filing an “exception” within 20 calendar days. For more information, see <http://apps.leg.wa.gov/wac/default.aspx?cite=456-10-730>. There should also be instructions on the bottom of your BTA decision.
 - If it’s a **final decision** that goes against you, you can file a petition for reconsideration within 10 business days, *but only if there was no proposed decision first*. For more information, see <http://apps.leg.wa.gov/wac/default.aspx?cite=456-10-755>. There should also be instructions on the bottom of your BTA decision.
- You can’t appeal an informal BTA decision. (But, if you paid your taxes under protest, you can still file for a refund in Superior Court (see section VI below)).

B. Formal Appeals

The full set of formal appeal rules is available at
<http://apps.leg.wa.gov/wac/default.aspx?cite=456-09>.

General information:

- You can represent yourself, or an attorney or certified public accountant can represent you.
 - You don’t have to hire an attorney, but you may want to in order to ensure that you meet all of the hearing requirements. The BTA recommends “[I]egal (attorney) and technical (appraiser) advisors” for formal appeals.¹⁷
- File the appeal by filing a notice of appeal and a copy of the BOE order with the BTA.
 - The notice of appeal must contain certain information – see <http://apps.leg.wa.gov/wac/default.aspx?cite=456-09-310>.

¹⁷ Valuation Flowchart, *supra* note 1.

- The deadline for submitting evidence to the BTA and the other party is **10 business days** before the hearing (unless the BTA sets a different deadline).
- The BTA will issue a written decision (either an “initial” decision or a “final” decision).
 - You can petition the BTA to reconsider either decision if the decision goes against you.
 - An initial decision can become final if no one petitions for reconsideration.
- You can appeal a final, formal BTA decision to Superior Court. This is a legal proceeding, as opposed to an administrative proceeding.

V. Step 5: Appeal to Superior Court¹⁸

You can seek “judicial review” (review by a court) of a formal BTA decision in Superior Court. The Superior Court is a trial-level court; there are 29 Superior Court districts in Washington.

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 judicial review process in Superior Court:

- To begin, you file a petition and filing fee in the Superior Court where your property’s located, or in Thurston County, whichever you prefer.
- The deadline is 30 days from the date of the BTA order.
- You have to pay for the BTA to reproduce the record of your case and transmit it to Superior Court. (Exceptions can be made for those who can’t afford this.)
- You generally can’t raise new issues or offer new evidence. The Court will review the BTA’s record to make its decision. (The BTA record is a word-for-word account of the hearing, along with evidence and other documents both parties submitted to the BTA.)
- You still have the burden of proof – you must show that the BTA’s decision is wrong.
- In deciding whether the BTA decision is valid, the Court will consider things like whether the decision is supported by substantial evidence; whether it’s arbitrary and capricious; and whether it applies the law correctly.
- You can appeal the Superior Court’s decision.

¹⁸ The sources for this section are: Property Valuation, *supra* note 1; Valuation Flowchart, *supra* note 1; Washington Courts, Superior Courts, http://www.courts.wa.gov/appellate_trial_courts/?fa=atc.crtPage&crtType=Super; Rev. Code Wash. Ann. §§ 34.05.514, 34.05.526, 34.05.542, 34.05.554, 34.05.558, 34.05.566, 34.05.570, 82.03.180; Wash. Admin. Code §§ 456-09-010, 456-09-960.

VI. Another Process: Pay Taxes under Protest and Petition for Refund¹⁹

You can pay your taxes under protest and petition for a refund whether or not you appeal to the BOE or BTA.²⁰

- It is a separate process.
- It preserves your right to file a case in court. (Remember that you can't appeal an informal BTA decision to Superior Court.) But you could still appeal to the BOE first.²¹

To pay taxes under protest:

- File a written protest with the County Treasurer when you pay the first installment of your taxes. *If you pay your taxes without a written protest, then the taxes are non-refundable.*
- The written protest should:
 - State that you dispute liability for your property taxes and are paying under protest.
 - State your reasons (why you believe your appraised value is incorrect). Be sure to include all your reasons because you cannot add more later.
 - State that it's a continuing protest (so it applies to the second installment of your taxes, too).
- A state pamphlet advises: "You may want to consult an attorney before submitting your letter of protest. The law has very strict requirements and you may jeopardize your case if the letter of protest is incomplete."²²

Then, you can file a suit for a refund in Superior Court. The law doesn't require you to have an attorney, but this is a regular court proceeding. So, you should seriously consider seeking legal counsel if you appeal to Superior Court to ensure that you meet all the Court's requirements and present your best case. The deadline for bringing suit is **June 30th of the next year** (the year after your taxes were due). Your County Treasurer will issue your refund if you are successful.

¹⁹ The sources for this section are: *Appealing to BOE*, *supra* note 3; *Valuation Flowchart*, *supra* note 1; Wash. State Dep't of Revenue, *Paying Your Property Taxes under Protest ("Paying under Protest")* (Nov. 2010), available at http://dor.wa.gov/Docs/Pubs/Prop_Tax/Protest.pdf; Wash. Rev. Code Ann. §§ 82.03.180, 84.68.020, 84.68.050, 84.68.060, 84.69.020; *Transamerica Title Ins. Co. v. Hoppe*, 611 P.2d 1361, 1364-65 (Wash. Ct. App. 1980).

²⁰ "[N]o claim need be presented to the state or county or municipality, or any of their respective officers, for the return of such protested tax as a condition precedent to the institution of such action." Wash. Rev. Code Ann. § 84.68.020; *Transamerica Title Ins.*, 611 P.2d at 1364 ("Transamerica had a choice after the King County Assessor placed a value on plaintiff's title plant: it could have paid the tax under protest and sued for a refund . . . or sought an administrative remedy by appealing to the Board of Equalization. Both actions could have been initiated simultaneously. A taxpayer need not exhaust its administrative remedies before suing for a refund.") (citation omitted).

²¹ *Id.*; *Valuation Flowchart*, *supra* note 1.

²² *Paying under Protest*, *supra* note 19, at 1.

GLOSSARY

Appraised Value

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

Assessed Value

The taxable value of your property (basically, appraised value minus any exemptions for things like non-profit properties).

Assessment

For purposes of appealing your "assessment," the "appraised value" portion of "assessed value" (i.e., the fair market value of your property as determined by your assessor).

Board of Equalization (BOE)

A county level board that hears appeals of property tax assessments.

Board of Tax Appeals (BTA)

An independent state agency with three members that hears appeals of property tax assessments, usually from the Board of Equalization. You can choose a "formal" or "informal" appeal to the BTA.

Burden of Proof

The level to which a certain party has to demonstrate that his/her position is correct. For example, before the Board of Tax Appeals, you have the burden to show with clear, cogent, and convincing evidence (highly probable) that the assessor's value is wrong. After that, you have the burden to show what your property's value actually is by a preponderance of the evidence (more likely than not).

Change of Value Notice

Notice you receive whenever your property's appraised value changes.

Comparable Sales Approach (also "Sales Comparison" or "Market" Approach)

Property valuation technique that determines a property's value based on sales of similar properties and/or the purchase price of the property itself. Used for most residential properties.

Cost Approach

Property valuation technique that determines a property's value based on the cost to replace a structure with a similar one. Used for new construction.

County Assessor

County official responsible for assigning values to the properties in the county.

County Treasurer

The county official responsible for refunding overpaid taxes in assessment appeals, and with whom some appeal forms must be filed (e.g., a written protest if paying under protest).

Evidence

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

Exemption

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

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

Amount a property would sell for on the open market (“the amount of money that a willing and unobligated buyer is willing to pay a willing and unobligated seller”²³).

Income Approach

Property valuation technique that determines a property’s value based on its potential to earn income. Used most for business properties.

Market Approach

See “Comparable Sales Approach.”

Party

A person who is an active participant and has a stake in a case. In assessment appeals, the parties are the property owner and the County Assessor.

Pay under Protest & Petition for Refund

Process by which a homeowner challenges his/her assessment by filing a written protest with the County Treasurer when paying the first installment of taxes, and petitioning Superior Court for a refund later.

Real Property

Primarily, real estate – land and structures or improvements on the land.

Sales Comparison Approach

See “Comparable Sales Approach.”

Superior Court

A lower-level, state trial court. Hears petition for refund cases as well as appeals from formal BTA decisions.

Testimony

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

²³ *Homeowner’s Guide*, *supra* note 1.

True & Fair Market Value in Money

See “fair market value.”

Valuation Date

The date as of which fair market value is determined – January 1st.

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 the meetings and/or hearings in your appeal.

The ideas listed here are only examples. If a nearby factory farm impacts your property in a way that isn't listed, you could use information about that as well. You should present as much information as you need to show that the assessor's value is incorrect, and what your property's market value actually is. 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. E.g., in Washington, comparable sales evidence is highly favored but information about other properties' assessments is not.

Physical Manifestations

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

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

Recent Appraisal or Testimony of Appraiser

If you have the resources to get a professional appraisal, it's probably a good idea. State materials list appraisals as recommended evidence.²⁴

Professional appraisers generally follow the Uniform Standards of Professional Appraisal Practice, available at <https://netforum.avectra.com/eWeb/DynamicPage.aspx?Site=taf&WebCode=USPAP>.

²⁴ Property Valuation, *supra* note 1; *Appealing to BOE*, *supra* note 3; Valuation Flowchart, *supra* note 1.

Washington statutes also have appraisal guidelines for assessors, including:

- The assessor must consider any sales of the actual property (purchase price) or comparable sales within the past 5 years, including “physical and environmental influences” and the extent to which the sale “actually represents the general effective market demand for property of such type, in the geographical area in which such property is located.”²⁵
- The assessor may also use the cost and income approaches to valuation.²⁶

Appendix D has information on how to find a professional appraiser.

Purchase Price

Documents showing the recent purchase price of your property (if it was less than your current assessment). You could include any proof that the seller offered a low sale price due to a nearby factory farm (e.g., if you negotiated a reduction in the purchase price of your property because of a factory farm, you could include the purchase price and a description of the factory farm’s influence on the sale). This type of evidence is favored in Washington.²⁷

Comparable Sales

Information showing that your assessment is too high based on sales of similar properties. Washington favors this type of evidence.²⁸

- You could include information on similar properties that are near factory farms (e.g., information showing that a similar property sold for less because it’s near a factory farm).²⁹
- Or, if the appraiser calculated your assessment by comparing your property to other properties that are *not* near a factory farm, and didn’t make an adjustment, you could offer information showing that your property is *not* similar to the other properties, because the other properties are not near a factory farm.³⁰

See “***Tips for Presenting Comparable Sales Evidence***” (Step 3 above) for more information.

²⁵ Wash. Rev. Code Ann. § 84.40.030(1).

²⁶ *Id.* § 84.40.030(2).

²⁷ *Id.* § 84.40.030(1) (requiring assessor to consider purchase price of subject property within past 5 years).

²⁸ See Property Valuation, *supra* note 1; *Appealing to BOE*, *supra* note 3; *Wash. Beef, Inc. v. County of Yakima*, 177 P.3d 162, 174 (Wash. Ct. App. 2008) (citing statute and regulations requiring assessor to consider comparable sales, and noting it as the “most reliable” method as long as supporting data is adequate – e.g., based on arm’s length transactions).

²⁹ So, the effects of the factory farm may already be accounted for in the sale prices of other properties. In one BTA case, the owner claimed that his property value was adversely impacted by several different factors, including proximity to a feedlot. He also submitted three comparable sales, and the Assessor submitted other comparable sales. The Board found that negative effects of the feedlot and other adverse influences were reflected in both parties’ comparable sales because the properties were all in the same vicinity. *Meldrum v. Mcdowall*, 1999 WL 1458555, *2-3 (Wash. Bd. Tax App. 1999).

³⁰ The BTA approved this concept when discussing how “economic obsolescence” could be estimated: “compare sales of similar properties subject to the negative influence with those that are not”) *Hewlett Packard Co. v. Gassaway*, 1996 WL 272917, *6 (Wash. Bd. Tax App. 1996) (citing *The Appraisal of Real Estate* (1990)).

Asking Price

Information about your asking price, if you recently offered your property for sale at a reduced price (lower than your assessment). This might include a copy of the written offer of sale, and an explanation of the factory farm's influence on the offer.

Proximity

Information about your property's proximity (nearness) to a factory farm (e.g., a map or plat map showing the location of your property and the location of the factory farm). Check with your County Clerk to find out where to see a plat map.

Marketability

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

Cost to Cure³¹

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

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

³¹ Washington recognizes the cost to cure contaminated properties as relevant in determining market value. *See, e.g., Moreland Northwest Co. v. Brooks*, 1993 WL 115858, *4-5 (Wash. Bd. Tax App. 1993) ("the presence of environmental contamination is viewed as a form of functional or economic obsolescence, and the cost to cure contamination is an allowable deduction") (citing International Association of Assessing Officers publication).

Statements of Professionals

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

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

Stigma³²

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

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

³² Washington courts have noted that stigma can decrease a property's value and have indicated the stigma should be based on a reasonable belief. In a 2008 stigma damages case against the government (not a property assessment case), the Court found that "stigma damages are awardable when there is no speculation that the harm affecting market value is from an existing identifiable problem." *City of Cle Elum v. Owens & Sons, Inc.*, 2008 WL 934080, *4 (Wash. Ct. App. 2008) (unpublished opinion) (citing *Mayer v. Sto Indus., Inc.*, 132 P.3d 115, 124 (Wash. 2006)). The Court also reviewed several Washington decisions to conclude that:

there was no speculation that the objects of fear, each with its own catalyst for damage or harm that led to property value "stigma," were either already present or would be manifest due to the very operation or existence of the facility. *Ferry v. City of Seattle*, 116 Wash. 648, 662-63, 203 P. 40 (1922) (reasonable expectation of disaster due to adverse soil conditions in earthen embankment holding reservoir; inherent magnitude of potential disaster caused depreciation in adjoining property values); *Everett v. Paschall*, 61 Wash. 47, 51-53, 111 P. 879 (1910) (building of a tuberculosis sanitarium in a residential area enjoined as nuisance because presence of facility created tangible fear and dread of disease that caused decline in adjacent real estate values); *Harris v. Skirving*, 41 Wn.2d 200, 202, 248 P.2d 408 (1952) (substantial evidence supported findings that dump would pose health risks; general fear and alarm of nearby residents was reasonable and well-founded).

Id. at *5.

Assessments of Other Properties

*Note: This type of evidence is disfavored in Washington. The BOE cannot consider assessments of other properties when determining your property's market value.*³³

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

Why should the BOE or BTA consider these types of information in my tax appeal?

In determining fair market value, Washington law requires assessors to consider factors which, facially, would include nearby factory farms and their impacts. For instance, assessors must consider comparable sales (if any) that account for “physical and environmental influences” and the “geographical area in which [the subject] property is located.”³⁴ Additionally, assessors can consider “economic (or external) obsolescence” – which is “the diminished value of a building due to negative influences emanating from outside the property.”³⁵ It can be caused by “a variety of factors – e.g., neighborhood decline; the property’s location in a community, state, or region; or local market conditions.”³⁶ As mentioned above, the Board of Tax Appeals has recognized that factory farms or other undesirable neighbors can negatively affect properties in their vicinity.³⁷

The *Appraisal Journal* also includes useful information about how and why nearby factory farms should be considered in assessments. A 2001 article by John A. Kilpatrick (available at <http://www.thefreelibrary.com/Concentrated+Animal+Feeding+Operations+and+Proximate+Property+Values.-a078238407>) explains that a factory farm can devalue nearby properties.³⁸ (The

³³ *Appealing to BOE, supra* note 3; Property Valuation, *supra* note 1 (scroll down to “What type of evidence will be considered at the State Board hearing?”); *Operations Manual, supra* note 5, at 8.

³⁴ Wash. Rev. Code Ann. § 84.40.030(1).

³⁵ *Hewlett Packard*, 1996 WL 272917 at *6. Economic obsolescence can figure into the comparable sales or the cost approach. See text, *supra* note 30 (economic obsolescence calculated in comparable sales); *Operations Manual, supra* note 5, at 25-26 (cost approach accounts for economic obsolescence).

³⁶ *Gassaway v. Sharp Microelectronics Tech*, 1993 WL 169987, *6 (Wash. Bd. Tax App. 1993) (quoting *The Appraisal of Real Estate*) (internal quotation marks omitted).

³⁷ *Meldrum*, 1999 WL 1458555, at *2-3 (acknowledging the influence of a feedlot and other adverse factors on the owner’s property, and finding they were reflected in the sale prices of similar properties in the same vicinity: “We understand the Owner’s position regarding the adverse influences the 22 items he lists [feedlot, junkyard] have on his properties. We find the sales are all in the same area as the Owner’s properties and are subject to the same factors, which are reflected in the sale prices.”).

³⁸ John A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39:3 *Appraisal J.* 301, 302 (2001). available

Washington Court of Appeals and the Board of Tax Appeals have cited the *Appraisal Journal* with favor, so the article could prove useful.³⁹⁾

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.⁴⁰ The influence of these factors can reduce a property's market value by 50-90%.⁴¹

- **Stigma** - any of the “unknowns and risks associated with ownership of the property.”⁴² 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”⁴³), it may be difficult to quantify, but it should not be overlooked.⁴⁴
- **Distance** - generally, the closer the factory farm, the greater its impact on property values.⁴⁵
- **Physical manifestations** - various impacts of factory farms, e.g., impaired water quality, can reduce a neighboring property's value;⁴⁶ hydrogen sulfide emissions from manure lagoons may sicken neighbors;⁴⁷ dust, odors, and flies carrying animal blood, feces, or antibiotic-resistant bacteria may also impair a neighboring property's value.⁴⁸
- **Marketability evidence** - evidence about the length of time it takes to sell, or the unsalability of, a property.⁴⁹ 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.⁵⁰

<http://www.thefreelibrary.com/Concentrated+Animal+Feeding+Operations+and+Proximate+Property+Values.-a078238407>.

³⁹ See, e.g., *Cascade Court Ltd. P'ship v. Noble*, 20 P.3d 997, 1002 n.33 (Wash. Ct. App. 2001); *Taylor v. Portmann*, 2004 WL 2376313, *3 (Wash. Bd. Tax App. 2004).

⁴⁰ Kilpatrick, *supra* note 38, at 304, 306.

⁴¹ *Id.* at 306.

⁴² *Id.* at 302.

⁴³ See Vincent D'Elia & Catherine M. Ward, *The Valuation of Contaminated Property*, 111 *Banking L.J.* 350, 359 (July-Aug. 1994).

⁴⁴ See Bill Mundy, *Stigma and Value*, 60:1 *Appraisal J.* 7 (Jan. 1992).

⁴⁵ Kilpatrick, *supra* note 38, at 304-05 (citing University of Minnesota study).

⁴⁶ *Id.* at 304 (citing Kirshner & Moore study).

⁴⁷ *Id.* at 305 (describing illnesses near CAFOs in Minnesota).

⁴⁸ *Id.* at 305-06. See also Iowa State University & The University of Iowa Study Group, *Iowa Concentrated Animal Feeding Operations Air Quality Study: Final Report* 158 (2002), available at www.ehsrsrc.uiowa.edu/CAFOstudy/ (Chapter 7) (odor, dust, noise, and “general decline in the natural beauty of the area” from CAFOs can depress sales prices (citations omitted)).

⁴⁹ See D'Elia & Ward, *supra* note 43, at 360 (“longer marketing period” and “inability to sell” illustrate perceptions of devaluation).

⁵⁰ Kilpatrick, *supra* note 38, at 306.

- ***Impacts on highest and best use*** – where the factory farm influences the use and enjoyment of your property, like from odor or flies.⁵¹ This factor might include things like being unable to grill outside, open windows, play in the yard, hang clothes out to dry, or maintain a swimming pool.

You can access the article at

<http://www.thefreelibrary.com/Concentrated+Animal+Feeding+Operations+and+Proximate+Property+Values.-a078238407> or from www.factoryfarmtaxprotest.org.

⁵¹ *Id.* at 302.

APPENDIX B – EXAMPLES OF DEVALUED PROPERTIES

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

Selected Studies & Reports

In describing the economic costs of CAFOs to rural communities, the 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).

A 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]ecreases 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 news article 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

Washington Department of Revenue

Taxpayer Assistance Telephone Information Center
(800) 647-7706

Property Tax

<http://dor.wa.gov/content/FindTaxesAndRates/PropertyTax/Default.aspx>

Property Tax Forms

http://dor.wa.gov/content/getaformorpublication/formbysubject/forms_prop.aspx

Property Tax Publications

http://dor.wa.gov/content/FindTaxesAndRates/PropertyTax/prop_pubcatag.aspx

Homeowner's Guide to Property Tax

http://dor.wa.gov/Docs/Pubs/Prop_Tax/HomeOwn.pdf

Appealing Your Property Assessment to the County Board of Equalization

http://dor.wa.gov/Docs/Pubs/Prop_Tax/AppealProp.pdf

Paying Your Property Taxes under Protest

http://dor.wa.gov/Docs/Pubs/Prop_Tax/Protest.pdf

Operations Manual: County Boards of Equalization

http://dor.wa.gov/Docs/Pubs/Prop_Tax/BOE_Manual.doc

2012 Property Tax Calendar

http://dor.wa.gov/Docs/Pubs/Prop_Tax/PropCal.pdf

Board of Tax Appeals

Board of Tax Appeals

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(360) 586-9029 (fax)

How to Appeal/Property Valuation

<http://bta.state.wa.us/appeal/property.htm>

Forms and Instructions

<http://bta.state.wa.us/appeal/forms.htm>

Comparable Sales Data Worksheet

http://bta.state.wa.us/appeal/comp_sales.htm

Protest Flowchart: Protesting Your Valuation

<http://bta.state.wa.us/documents/PayingUnderProtest.pdf>

Deadlines

<http://bta.state.wa.us/CatsLink/BtaDeadlines.aspx>

Rules – Informal Appeals

<http://apps.leg.wa.gov/wac/default.aspx?cite=456-10>

Rules – Formal Appeals

<http://apps.leg.wa.gov/wac/default.aspx?cite=456-09>

Maps & Directions

<http://bta.state.wa.us/appeal/maps.htm>

Law Review Article about Practicing before the BTA

<http://bta.state.wa.us/appeal/property.htm>

(scroll down to: “What’s the difference between an informal and a formal hearing?”)

APPENDIX D – OTHER RESOURCES

Information on Factory Farms

Resources and Reports

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

Organizations

- Socially Responsible Agricultural Project
www.sraproject.org
SRA Project provides free assistance to communities struggling to protect themselves from factory farms.
- Community for Restoration of the Environment (CARE)
Contact: Helen Reddout, President
Phone: 509-854-1662 Email: hred54wa@embarqmail.com
- Dairy Education Alliance
<http://dairyeducation.org/>
Contact: Helen Reddout, Executive Director
Phone: 509-854-1662 Email: hred54wa@embarqmail.com

- Waterkeeper
<http://waterkeeper.org/pure-farms-pure-water/>
- Food & Water Watch
www.foodandwaterwatch.org/food/factoryfarms
- Sierra Club
www.sierraclub.org/watersentinels/factoryfarms.aspx
- Natural Resources Defense Council (NRDC)
www.nrdc.org/water/pollution/cesspools/cessinx.asp
- National Family Farm Coalition
www.nffc.net
- Center for a Livable Future
www.jhsph.edu/clf

How to Find an Appraiser

- Washington Department of Revenue, Accredited Appraiser Search
<http://dor.wa.gov/Content/FindTaxesAndRates/PropertyTax/AppraiserSearch.aspx>
- AppraiserUSA.com, Washington Real Estate Appraiser Directory
<http://appraiserusa.com/washington/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 or certified.
- American Society of Appraisers
www.appraisers.org/FindAnAppraiser/FindanAppraiser.aspx
Try searching in both Real Property/Ad Valorem and Real Property/Residential.
- Appraisal Institute
www.appraisalinstitute.org/search.asp
This site has many search options. You can do a geographical search under “Quick Search,” or can use the “Advanced Search” and choose “Real Estate Tax Valuation and Consulting” under the “Business Services” option.
- Local Yellow Pages
- Recommendations

How to Find an Attorney

- Washington State Bar Association, Find Legal Help
<http://www.wsba.org/resources-and-services/find-legal-help>
- American Bar Association, Consumers' Guide to Legal Help
<http://www.abanet.org/legalservices/findlegalhelp/main.cfm?id=WA>
- StateLawyers.com, Attorney Directory – Washington Counties
<http://www.statelawyers.com/AttorneyDirectory/Index.cfm/StateID:47>
- Lawyers.com, Find a Lawyer
www.lawyers.com/find-a-lawyer.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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