

CAUSE NO. 15-2442-CV

RONALD F. AVERY,

IN THE DISTRICT COURT OF

Plaintiff,

v.

GUADALUPE COUNTY, TEXAS

GUADALUPE COUNTY
APPRAISAL DISTRICT,

Defendant.

25TH JUDICIAL DISTRICT

**DEFENDANT'S RESPONSES TO
PLAINTIFF'S REQUESTS FOR DISCLOSURE**

TO: Plaintiff *Pro Se*, Mr. Ronald F. Avery, 1933 Montclair Drive, Seguin, Texas 78155.

The Defendant, Guadalupe Appraisal District ("GAD"), timely serves its Responses to Plaintiff's Requests for Disclosure pursuant to Rule 194.3 of the Texas Rules of Civil Procedure as follows:

a. The correct names of the parties to the lawsuit.

RESPONSE: The Guadalupe Appraisal District is the correct name of the Defendant. The Plaintiff's correct name is within the Plaintiff's possession and control. The Plaintiff should be aware if it is correctly named.

The Defendant reserves the right to supplement, if necessary, this Response in accordance with the Texas Rules of Civil Procedure.

b. The names, addresses, and telephone numbers of any potential parties.

RESPONSE: The identity of any other potential Plaintiff is within the Plaintiff's knowledge, possession and control. At this time, the Defendant is not aware of any other potential Plaintiffs for this cause. There are no other potential Defendants concerning the market value of the Subject Property for the tax year at issue in this case.

The Defendant reserves the right to supplement, if necessary, this Response in accordance with the Texas Rules of Civil Procedure.

- c. **The legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial).**

RESPONSE: Tax Code § 23.01 provides that all property must be appraised as of January 1 of each year at its "market value," as that term is defined by Tax Code § 1.04(7)(A)-(C). Such property must be appraised according to generally accepted appraisal standards and techniques, including consideration of the property's individual characteristics. The law requires that the market value not be excessive. *See* Tex. Const. art VIII, § 1(b); Tex. Tax Code § 42.25. The law also requires equality and uniformity of appraisal. *See* Tex. Const. art VIII, § 1(a); Tex. Tax Code § 42.26.

On January 1, of the tax year at issue, the Plaintiff owned or was otherwise responsible for payment of taxes on the Subject Property located within the Guadalupe Appraisal District's appraisal jurisdiction.

The "Subject Property" in this lawsuit consists of real property that has been given the following account numbers by the Guadalupe Appraisal District and is at the following location:

Account Number
50610
50612
59576

As of January 1, the Guadalupe Appraisal District conducted a mass appraisal, which included the Subject Property, for the tax year at issue in this cause.

The District's initial appraisal of the Subject Property was conducted in accordance with all legal requirements and pursuant to generally accepted appraisal techniques and standards. The District's initial appraisal also considered the individual characteristics of the Subject Property. The Guadalupe Appraisal District considered the sales comparison approach, the cost approach, and the income approach to determine the market value of the Subject Property for the tax year at issue.

The Guadalupe Appraisal District contends that the market value of the Subject Property is, at a minimum, the amount currently on the appraisal roll for the tax year at issue.

As required by Texas law, the Plaintiff was notified that the Defendant, the Guadalupe Appraisal District, made an appraisal of the value of the Subject Property for the tax year at issue, for use by the relevant local taxing units. *See* Tex. Tax Code § 25.19. The Notice of Appraised Value from the Guadalupe Appraisal District contained the proposed appraised value, the proposed market value, and the estimated taxes for the Subject Property for the tax year at issue.

The Plaintiff disagreed with the District's initial proposed value of the Subject Property for the tax year at issue. Pursuant to Chapter 41 of the Texas Tax Code, the Plaintiff filed an administrative protest before the Guadalupe Appraisal Review Board. *See* Tex. Tax Code §

41.41(a). The Plaintiff complained of six grounds: value is over market; value is unequal; Tex. Const. art. VIII, §§ 1(a), 1-e and other laws; property should not be tax in Texas, property should not be tax in Guadalupe County or by its taxing units; the unlawfulness of ad valorem property tax in America according to the Founders.

The Guadalupe Appraisal Review Board heard the Plaintiff's Protest on July 21, 2105. The Guadalupe Appraisal Review Board later issued and delivered to the Plaintiff an Order Determining the Protest for the Subject Property.

The Plaintiff complained and notified the Guadalupe Appraisal Review Board that its Orders did not address three of his claims: property should not be tax in Texas, property should not be tax in Guadalupe County or by its taxing units; the unlawfulness of ad valorem property tax in America according to the Founders. The Plaintiff requested and received a hearing on these matters on October 14, 2015. The Guadalupe Appraisal Review Board later issued and delivered to the Plaintiff Orders Determining the Protest for the Subject Property on these three claims.

Not satisfied with the result of the administrative appeal, the Plaintiff now brings suit, under Chapter 42 of the Texas Tax Code, appealing the Guadalupe Appraisal Review Board's Order Determining the Protests for the tax year at issue. *See* Tex. Const. art VIII, §§ 1, 20; Tex. Tax Code §§ 42.01, 42.21.

The Defendant contends that the value for the Subject Property during the tax year at issue is, at a minimum, the amount stated on the ARB's Notice of Final Order / Order Determining Protest, which should also be the amount currently on the certified tax roll for the tax year at issue.

This case is reviewed *de novo*. *See* Tex. Tax Code § 42.23(a). As a result, the manner by which the initial appraised value was derived by the District is now moot. The Defendant will rely upon the opinions of expert witnesses to determine the market value of the Subject Property for the tax year at issue in this lawsuit.

The Defendant will contend that the Court lacks jurisdiction regarding the valuation of the Subject Property that was addressed in the Plaintiff's first protest heard in July 2015 because the Plaintiff did not timely file suit.

The Defendant reserves the right to supplement, if necessary, this Response in accordance with the Texas Rules of Civil Procedure.

d. The amount of and any method of calculating damages, i.e. taxes in dispute.

RESPONSE: Not applicable. There are no "damages" involved in this litigation. However, in the interests of full and fair discovery, there is an amount in dispute for each tax year in this litigation. If the Plaintiff's claims are correct, the amount in dispute is the difference in value of the Subject Property being appealed and the Subject Property's finally determined value, multiplied by the applicable tax rate for each tax year in dispute. In this *de novo* review, it is possible that the fact-finder will disagree with the Plaintiff's claims and the market value of the Subject Property could increase beyond the value that was determined by the ARB. The Plaintiff,

therefore, would owe more taxes as a result. See Tex. Tax Code Ann. § 42.23(a) (West 2014); *Cherokee Water Co. v. Gregg Cnty. Appraisal Dist.*, 801 S.W.2d 872, 877 (Tex. 1990). The Plaintiff also seeks its attorney's fees and court costs directly from the Defendant, if the Plaintiff prevails. See Tex. Tax Code §§ 42.29, 42.07.

The Defendant reserves the right to supplement, if necessary, this Response in accordance with the Texas Rules of Civil Procedure.

- e. **The names, addresses, and telephone numbers of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.**

RESPONSE: The Defendant, at this time, responds as follows:

The Defendant, Guadalupe Appraisal District's address is: 3000 N. Austin Street, Seguin, Texas 78155.

The Defendant, Guadalupe Appraisal District's telephone number is: (830) 303-3313.

District staff members who are familiar with the relevant facts of the case are:

Jamie Osborne, Chief Appraiser.

Jamie Osborne has knowledge of this lawsuit and responses to this discovery.

Jamie Osborne has knowledge of the District's initial appraised value of the Subject Property as of January 1 of the tax year in issue. Mrs. Osborne has knowledge of the equality and uniformity of the initial appraisal of the Subject Property as of January 1 of the tax year in issue. Mrs. Osborne also has knowledge of the appraisal methodologies considered and used to initially appraise the Subject Property in the District's mass appraisal.

Mrs. Osborne has knowledge of the administrative procedures and all relevant records of the Guadalupe Appraisal District.

The Defendant also names
Erich Strey, Deputy Chief Appraiser; and
Peter Snaddon, Commercial

Mr. Strey and Mr. Snaddon have attended the protest hearing and have information related to it.

The Defendant's representatives should only be contacted through its counsel of record: Christopher S. Jackson, Sandra Griffin, Carol Barton, or Dylan Wood with the law firm of PERDUE, BRANDON, FIELDER, COLLINS AND MOTT, LLP. Their contact address is: 3301 Northland Drive, Suite 505, Austin, Texas 78731. Their telephone number is: (512) 302-0190. Their fax number is: (512) 323-6693. Their email addresses are: cjackson@pbfc.com, sgriffin@pbfc.com, cbarton@pbfc.com and dwood@pbfc.com

The Defendant also names the Guadalupe Appraisal Review Board.

The Guadalupe Appraisal Review Board's address is: 3000 N. Austin Street, Seguin, Texas 78155.

The Guadalupe Appraisal Review Board's telephone number is: (830) 303-3313.

The current Chair of the Guadalupe Appraisal Review Board is Mr. Robert Miller.

Information about the members of the ARB panel that determined the protest may be stated in the ARB materials attached, at the Guadalupe Appraisal Review Board's offices during normal business hours, upon reasonable notice to the ARB's counsel, or may be made available on computer terminals in the Customer Service Department of the Guadalupe Appraisal District during regular business hours.

The Guadalupe Appraisal Review Board, and any of its members, should be contacted through their counsel: Roy Armstrong of ARMSTRONG & ARMSTRONG, P.C. His address is: 218 Beimer St. 4630 NDCBU Taos, New Mexico, 87571. His telephone number is: (866) 600-4818. His email address is: roy.armstrong@texasarb.com

The Defendant also names Christopher S. Jackson, Sandra Griffin, Carol Barton, and A. Dylan Wood with the law firm of PERDUE, BRANDON, FIELDER, COLLINS AND MOTT, LLP, as persons with knowledge of relevant facts. Their contact address is: 3301 Northland Drive, Suite 505, Austin, Texas 78731. Their telephone number is: (512) 302-0190. Mr. Jackson, Ms. Griffin, Ms. Barton and Mr. Wood are licensed Texas attorneys. They are the attorneys of record for the Defendant and have knowledge of the attorney's fees incurred by the Defendant in connection with this *de novo* proceeding. These attorneys may be called to testify regarding the reasonable and necessary attorney's fees relating to this proceeding. They may also offer testimony to rebut the Plaintiff's attorney's fees claims or amounts sought. Their testimony will be based upon Tax Code § 42.29 and the State Bar's standards for determining reasonable and necessary attorney's fees.

Furthermore, for a brief statement of Chris Jackson, Sandra Griffin, Carol Barton and A. Dylan Wood's's connection with this case, see Defendant's Response to (f), *infra*.

The Defendant also names the owner of the Subject Property. The owner may be contacted through the Plaintiff's attorneys. The owner presumably has knowledge of the Subject Property and has an opinion of value of the Subject Property for the tax year at issue in this case.

The Defendant also names as persons with knowledge of relevant facts: (1) all persons with whom sales, lease, or cost information was verified by any of the appraisers or appraisal staff in this case; (2) all grantors and grantees of comparable sales and all lessors and lessees of comparable rentals relied upon by the appraisers or appraisal staff in this case; (3) all other persons mentioned in the appraisal reports and files of the appraisers or appraisal staff in this case; (4) all persons listed by any party in response to discovery, in their list of fact witnesses,

and in their designation of experts. The information related to individuals affiliated with the Plaintiff is already known to the Plaintiff or is in Plaintiff's possession.

The Defendant also names any employees, agents, accountants, testifying experts, consulting experts whose mental impressions or opinions have been reviewed by a testifying expert, other representatives of the Plaintiff, as well as any other person named by the Plaintiff as a person having knowledge of relevant facts in their Responses to the Defendant's Requests for Disclosure. The identity and information related to such witnesses is already known to the Plaintiff or is in the Plaintiff's possession.

The Defendant reserves the right to supplement, if necessary, this Response in accordance with the Texas Rules of Civil Procedure.

- f. **For any testifying expert: (1) the expert's name, address, and telephone number; (2) the subject matter on which the expert will testify; (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information; (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party: (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and (B) the expert's current resume and bibliography.**

RESPONSE: Pursuant to Comment 3, Rule 195, Texas Rules of Civil Procedure, the Defendant is not required to designate an expert or otherwise provide information concerning testifying experts until the Plaintiff produces an expert report or tenders an expert for deposition. The Plaintiff must first designate an expert in response to the Defendant's Requests for Disclosure. The Defendant will supplement its response to this Request when the Plaintiff responds.

- g. **Any discoverable indemnity and insuring agreements.**

RESPONSE: The Defendant does not believe this Request is applicable to this case, however, no such agreement is known to the Defendant at this time.

The Defendant reserves the right to supplement, if necessary, this Response in accordance with the Texas Rules of Civil Procedure.

- h. **Any discoverable settlement agreements.**

RESPONSE: There are no settlement agreements, known to the Defendant, for the tax year in issue relating to the Subject Property in dispute in this cause.

The Defendant reserves the right to supplement, if necessary, this Response in accordance with the Texas Rules of Civil Procedure.

i. Any discoverable witness statement.

RESPONSE: The Defendant responds as follows:

Responsive statements may include the Notice of Appraised Value, the Plaintiff's correspondence, documents, affidavits, other testimony to the Guadalupe Appraisal District or the Guadalupe Appraisal Review Board, the Notice and Order sent by the ARB, or other appraisal records. The originals of such information should already be in the Plaintiff's possession.

To the extent such information is not in Plaintiff's possession, responsive information and any recorded audio of the ARB hearing will either be attached as a response to your discovery requests or be made available for inspection and copying at the District's office, during normal business hours, upon reasonable notice to Defendant's counsel.

To the extent that any discoverable witness statements consist of deposition testimony, the Plaintiff shall be notified and able to attend and secure a transcript as dictated by the Texas Rules of Civil Procedure.

The Defendant has not prepared or requested any other witness statements in anticipation of trial.

The Defendant reserves the right to supplement, if necessary, this Response in accordance with the Texas Rules of Civil Procedure.

j. In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

RESPONSE: Not applicable.

The Defendant reserves the right to supplement, if necessary, this Response in accordance with the Texas Rules of Civil Procedure.

k. In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

RESPONSE: Not applicable.

The Defendant reserves the right to supplement, if necessary, this Response in accordance with the Texas Rules of Civil Procedure.

l. The name, address, and telephone number of any person who may be designated as a responsible third party.

RESPONSE: Not applicable.

The Defendant reserves the right to supplement, if necessary, this Response in accordance with the Texas Rules of Civil Procedure.

**DEFENDANT'S OBJECTIONS AND RESPONSES
TO PLAINTIFF'S FIRST SET OF INTEROGATORIES**

TO: Plaintiff *Pro Se*, Mr. Ronald F. Avery, 1933 Montclair Drive, Seguin, Texas 78155.

The Defendant, Guadalupe Appraisal District, files its timely responses to Plaintiff's First Set of Interrogatories pursuant to Rule 197.2 of the Texas Rules of Civil Procedure as follows:

INTERROGATORY NO. 1: The legal theory and supporting documentation of the Respondent's defense, namely, any proof that the State of Texas owns the property of the Petitioner upon which it has a right to charge the Petitioner an annual rent to occupy, possess and use the subject properties, also known as "ad valorem property taxes."

RESPONSE: The Defendant refers the Plaintiff to Texas Constitution art. VIII, § 1(b) and Texas Tax Code §§ 11.01(a), (b), 6.01(b) and 32.01 as authority for the the political subdivisions to assess ad valorem taxes upon Plaintiff's property for the tax year at issue.

INTERROGATORY NO. 2: The legal theory and any supporting documentation of the Respondent's defense showing any lawful operation by which the Petitioner has lost their property to the State his Forefathers created for his benefit and for the making of his property secure from all including his own government.

RESPONSE: Objection. The Interrogatory is vague and confusing as written. Subject to and without waiving these objections, the Defendant responds in the interests of full and fair discovery as follows: The Defendant refers the Plaintiff to Texas Constitution art. VIII, § 1(b) and Texas Tax Code §§ 11.01(a), (b), 6.01(b) and 32.01 as authority for the the political subdivisions to assess ad valorem taxes upon Plaintiff's property for the tax year at issue.

INTERROGATORY NO. 3: The names of any experts, living or dead, upon which the Respondent will produce that would exceed the witness and testimony of Thomas Jefferson, Samuel Adams, John Adams, and John Locke and Frederick Bastiat made a part of this petition.

RESPONSE: At trial, the Defendant will rely upon the opinions of its expert witness related to the value of the Subject Property. To the extent that this Interrogatory seeks information prepared subsequent to the Appraisal Review Board hearing(s) by an expert witness, Texas Rule of Civil Procedure 195.1 limits discovery regarding testifying expert witnesses to Request for Disclosure, depositions and reports. Subject to and without waiving these objections, the Defendant responds in the interests of full and fair discovery as follows: The Defendant will rely upon the opinions of its experts. The Defendant's experts have not finalized their opinions at this time. When they do, the Defendant refers the Plaintiff to Defendant's Responses to Plaintiff's Requests for Disclosure (subsection f).

**DEFENDANT'S OBJECTIONS AND RESPONSES
TO PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS**

TO: Plaintiff *Pro Se*, Mr. Ronald F. Avery, 1933 Montclair Drive, Seguin, Texas 78155.

The Defendant, Guadalupe Appraisal District, files its timely responses to Plaintiff's First Set of Requests for Production of Documents pursuant to Rule 196.2 of the Texas Rules of Civil Procedure as follows:

REQUEST FOR PRODUCTION NO. 1: All documents upon which the Respondent will rely upon to show that the Petitioner does not own their property but only rents it from the State upon the rental terms meticulously, yet still arbitrarily, set by local State Representatives (GCAD) upon which, if not paid, the true owner, Petitioner, is evicted and his property leased to another tenant.

RESPONSE: Objection. The Interrogatory is vague and confusing as written. Subject to and without waiving these objections, the Defendant responds in the interests of full and fair discovery as follows: The Defendant refers the Plaintiff to Texas Constitution art. VIII, § 1(b) and Texas Tax Code §§ 11.01(a), (b), 6.01(b) and 32.01 as authority for the the political subdivisions to assess ad valorem taxes upon Plaintiff's property for the tax year at issue.

Respectfully submitted,



Christopher S. Jackson
Texas Bar No. 00796816
cjackson@pbfc.com

Sandra Griffin
Texas Bar No. 00791280
Carol Barton
Texas Bar No. 00783610
A. Dylan Wood
Texas Bar No. 00797689

**Perdue, Brandon, Fielder, Collins
& Mott, L.L.P.**
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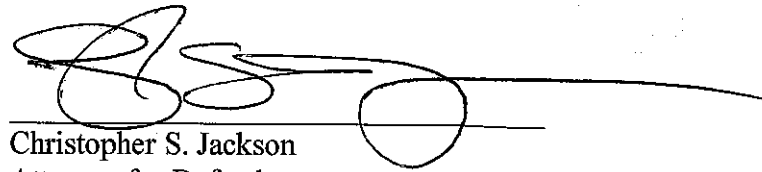
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2016, pursuant to Tex. R. Civ. P. 21a, a true and correct copy of the foregoing was served via electronic service and/or United States certified mail, return receipt requested, on Plaintiff at the address below:

Mr. Ronald F. Avery
1933 Montclair Drive
Seguin, Texas 78155

Email: taphouse@sbcglobal.net



Christopher S. Jackson
Attorney for Defendant