

CAUSE NO. C2018-1576B

DOUGLAS WALTER KIRK,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	COMAL COUNTY, TEXAS
	§	
COMAL APPRAISAL DISTRICT	§	
	§	
Defendant.	§	207 TH JUDICIAL DISTRICT

MOTION TO COMPEL INSPECTION OF PROPERTY AND FOR SANCTIONS

TO THE HONORABLE JUDGE OF THE COURT:

NOW COMES the Defendant, the Comal Appraisal District, and moves this court to compel the Plaintiff, Douglas Walter Kirk, to allow the Defendant to inspect the property which is the subject of this litigation. This motion is brought pursuant to TEX. R. CIV. P. 215, 196.7. For cause of such, the Defendant would show the court as follows:

I.

This is an ad valorem tax valuation contest. It is inherent in the nature of such cases that the Plaintiff is in control of the salient information necessary to properly prepare for trial. That includes control and possession of the property that is the subject of the litigation. In order to properly prepare a value for trial testimony, the Defendant must inspect that property and garner essential information about it.

II.

Heretofore, on or about February 25, 2019, the Defendant properly served a request for inspection of premises to the Plaintiff. That request is attached as Exhibit A hereto. The Plaintiff has refused to allow the Defendant and its representatives on the subject property to inspect it, and has filed an objection to the inspection. The value of the subject property is the

central issue of this litigation. It is imperative that the Defendant and its experts be allowed to inspect the property for proper appraisal of the same. Trial is *de novo*; therefore the Defendant may and will engage a fee appraiser to give testimony on the value of the subject property. No credible appraiser will render a fee appraisal without having at least seen the subject property.

III.

The Defendant has incurred expenses and attorney fees in the bringing of this motion and due to the cancellation of the times for inspection of the subject property for which the Defendant prays an award in sanction.

Respectfully submitted,

LOW SWINNEY EVANS & JAMES, PLLC
623 S. Baker Cir.
Leander, Texas 78641
Phone (512) 379-5800
Fax (512) 367-5932

By: /s/ Kirk Swinney

Kirk Swinney
State Bar No. 19588400
kswinney@lsejlaw.com

Ryan L. James
State Bar No. 24078731
rjames@lsejlaw.com

Peter William Low
State Bar No. 12619300
peterwilliamlow@lsejlaw.com

James R. Evans, Jr.
State Bar No. 06721500
jevans@lsejlaw.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF CONFERENCE

I certify that attorneys at this firm have attempted to confer, with the the Plaintiff in regard to the above referenced Motion to Compel Inspection and for Sanctions but have been unable to secure satisfactory responses to that discovery.

/s/ Kirk Swinney

Kirk Swinney

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served by e-mail upon all counsel of record in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on this the 18th day of March, 2019.

Douglas Walter Kirk
dougkirk@gvtc.com

/s/ Kirk Swinney

Kirk Swinney

Exhibit A

CAUSE NO. C2018-1576B

DOUGLAS WALTER KIRK,

Plaintiff,

v.

COMAL APPRAISAL DISTRICT

Defendant.

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

COMAL COUNTY, TEXAS

207TH JUDICIAL DISTRICT

**NOTICE OF INSPECTION, PHOTOGRAPHING,
AND VIDEOTAPING OF PREMISES**

TO: Douglas Walter Kirk, Plaintiff, 1850 Old Sattler Road, Canyon Lake, Texas, 78130.

Pursuant to TEX. R. CIV. P. 196, the Defendant requests the Plaintiff to make available to it the property at issue in this suit for an onsite inspection on **April 1, 2019 at 10:00 a.m.**, or as may be agreed upon between the parties. Parties who may attend the inspection include Jennifer Salazar, Craig Zgabay and the undersigned counsels.

Dated this 25th day of February, 2019.

Respectfully submitted,

LOW SWINNEY EVANS & JAMES, PLLC
623 S. Baker Cir.
Leander, Texas 78641
Phone (512) 379-5800
Fax (512) 367-5932

/s/ Kirk Swinney

By: _____

Kirk Swinney
State Bar No. 19588400
kswinney@lsejlaw.com

Peter William Low
State Bar No. 12619300
peterwilliamlow@lsejlaw.com

Ryan L. James
State Bar No. 24078731
rjames@lsejlaw.com

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State Bar No. 06721500
jevans@lsejlaw.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been electronically served upon all counsel of record in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on this the 25th day of February, 2019.

Douglas Walter Kirk
dougkirk@gvvc.com

/s/ Kirk Swinney

Kirk Swinney