

CAUSE NO. C2018-1576B

Douglas Walter Kirk	§	IN THE DISTRICT COURT
	§	
Vs.	§	
	§	207 th JUDICIAL DISTRICT
Comal Appraisal District	§	
	§	
	§	
	§	COMAL COUNTY, TEXAS

PLAINTIFF’S FIRST REQUEST FOR PRODUCTION AND INSPECTION OF DOCUMENTS

Comes now Douglas Walter Kirk, seeking RESPONSE from DEFENDANT regarding this request for production and inspection of documents.

TO: Comal Appraisal District, Defendant, by and through its attorney of record, Kirk Swinney (State Bar No. 19588400) at Low & Swinney, PLLC, 623 S. Baker Cir., Leander, Texas 78641, Phone (512) 379 5800.

Pursuant to TEX. R. CIV. P. 196, the Plaintiff requests that the Defendant produce for inspection and copying the documents herein specified at the Comal County Clerk’s Office, 150 N. Seguin, Suite 101, New Braunfels, TX 78130 during ordinary business hours and within the time period prescribed by Rule 196. In the alternative, documents may be copied and mailed to Douglas Kirk at 1850 Old Sattler Road, Canyon Lake, Texas 78132.

DEFINITIONS AND INSTRUCTIONS

1. The terms “document” or “documents” mean everything of every type or description, and everything constituting any medium, by which, through which or upon which any type of communication, information, or knowledge has been transmitted, recorded or preserved. These terms also mean every copy of a document where such copy is not an identical duplicate of the original.
2. The terms “person” or “persons” mean any natural person acting either individually or in a respective or fiduciary capacity, firm, partnership, corporation, joint venture, governmental entity or subdivision thereof, or any other form of organization or association.
3. The term “expert” means any expert witness or appraiser whom the Defendant may not call to testify at the trial, but whose opinions or impressions were reviewed by a testifying expert witness. This discovery does not seek documents prepared by testifying or purely consulting experts retained by the Defendant and prepared in anticipation of this litigation.
4. The terms “communication” or “communications” mean any contact or act by which any information or knowledge is transmitted or conveyed between two or more persons and shall include, without limitation, written contact by such means as letters, memoranda, telegraphs, or by any document, or any oral contact by such means as

face-to-face meetings and telephone conversations.

5. The word “concerning” as used herein means referring, relating, reflecting, pertaining, directly or indirectly, in any way to all or any part of a specified subject matter or document, including all subject matters or documents themselves.

6. The terms “meeting” or “meetings” mean any coincidence or presence of two or more persons, whether or not such coincidence or presence was by chance or prearranged, formal or informal, or any connection with some activity.

7. The term “appraisal” means any determination or estimate of the value of a property whether prepared formally or informally; whether written or unwritten; arrived at by any method; and prepared by any persons with or without formal training and experience in the appraisal of property.

8. For a definition of “value” and “market value”, you are referred to § 1.04(7) TEX. PROP. TAX CODE. These terms, however, are not to be narrowly construed. If the Defendant has possession or control of a document that purports to reflect the value or market value of a property under some different definition of those terms, that document is to be produced. It may not be withheld on the basis of a different definition of these terms.

9. The term “subject property” means each piece of real property that is the subject of this lawsuit, including any individual parcel thereof. Your responses to the requests

for production of documents should be with regard to each of the properties individually, specifying the property to which the response applies.

10. All documents herein which are in the Defendant's possession, custody or control shall be produced as directed herein. Any described document which is not in Defendant's immediate physical possession, but in regard to which Plaintiff has a right to compel production from a third person or which is otherwise subject to Defendant's control, shall be obtained and produced as directed.

11. The selection of documents from files and other sources shall be performed in such a manner as to ensure that the file, or other source from which a document is obtained, may be identified.

12. Documents attached to other documents or materials shall not be separated unless sufficient records are kept to permit reconstruction of the grouping.

13. If the Defendant withholds any document from production on the basis of privilege or some other limitation upon discovery, Defendant shall, nevertheless, identify such document by date, author, addressee, and general subject matter and identify all persons who received any copy thereof or otherwise obtained access to the document.

14. Any reference to Defendant herein shall include all Defendants, employees, officers and agents of the Defendant or any independent appraiser or contractor

engaged by the Defendant .

15. The term “appraisal ratio” has the meaning stated in § 1.12(b) TEX. PROP. TAX CODE.

16. The term “median level of appraisal” is explained in § 1.12 TEX. PROP. TAX CODE.

17. The term “valuation date” means January 1 of each year in which the value of the subject property is in issue in this case.

18. Any reference to the “Defendant ” includes all responding Defendants if there are more than one.

19. Any reference to the “Plaintiff” includes all Plaintiffs if there are more than one.

20. Your attention is specifically directed to the provisions of the TX Rules of Civil Procedure including, but not limited to, Rule 193.5, pertaining to your duty to supplement answers to requests for production. Upon the occurrence of any of the events or contingencies giving rise to such duty to supplement, the Plaintiff herein makes demand upon you to supplement the responses hereto.

21. Black’s Law Dictionary or Webster’s Dictionary is a source of definitions for words used in this request.

DOCUMENTS TO BE PRODUCED

REQUEST NO. 1:

All written appraisals of the subject property, or any part thereof, prepared at any time from the January 1 five years prior to the earliest valuation date in issue in this litigation to date. (Supplement in the future as required.)

REQUEST NO. 2:

All documents which reflect or concern any communication between the Defendant and any expert concerning matters at issue in this lawsuit.

REQUEST NO. 3:

All documents tendered to or reviewed by any expert for use in arriving at his or her opinions or conclusions concerning the matters at issue in this lawsuit.

REQUEST NO. 4:

All documents used or relied upon by any expert in arriving at his or her opinions or conclusions concerning the matters at issue in this lawsuit.

REQUEST NO. 5:

All resumes or other documents describing the qualifications or experience of any expert.

REQUEST NO. 6:

All photographs, blueprints or diagrams of the subject property.

REQUEST NO. 7:

All documents which reflect or concern the sale of any property which the Defendant

or any expert considered or investigated as possibly being comparable to the subject property, or any part of the subject property.

REQUEST NO. 8:

All documents which show the value, price, cost or worth of the subject property and any property which the Defendant will contend in the trial of this cause is property comparable to the subject property.

REQUEST NO. 9:

All documents which show the acquisition costs, terms, construction contracts, or other agreements concerning the subject property.

REQUEST NO. 10:

All documents which show the replacement costs of the subject property as of the valuation dates, or of all property which the Defendant contends is comparable to the subject property.

REQUEST NO. 11:

All documents which reflect or concern any type of depreciation of or write-off on the subject property, as of the valuation dates, including physical deterioration, functional obsolescence and economic obsolescence.

REQUEST NO. 12:

All documents concerning the method or methods by which the Defendant or the

Defendant's experts calculated the market value, as of the valuation dates, of the subject property.

REQUEST NO. 13:

All documents which reflect or concern any loan or extension of credit wholly or partially secured by the subject property as of the valuation dates. (Supplement in the future as required.)

REQUEST NO. 14:

All documents which were prepared for or presented to a lender or guarantor in connection with the loans described in the request above including, but not limited to, financial packages, charts, diagrams, schedules and appraisals. You may limit your response to documents relevant to dates since the January 1 three years previous to the earliest valuation date in issue herein through the present date. (Supplement in the future as required.)

REQUEST NO. 15:

All documents which concern or reflect the amount of any actual or proposed sales price which was or is proposed for any offer or effort to purchase or sell the subject property, or was consummated in a sale of the subject property, or any part of the subject property at any time since the January 1 three years previous to the earliest valuation date in issue herein through the present date. (Supplement in the future as

required.)

REQUEST NO. 16:

All documents which were used, consulted or relied upon in the preparation of all appraisals of the subject property or any part of the subject property at any time since the January 1 three years previous to the earliest valuation date in issue herein through the present date. (Supplement in the future as required.)

REQUEST NO. 17:

All documents reflecting communications between the Defendant and any other persons concerning the value of the subject property at any time since the January 1 three years previous to the earliest valuation date in issue herein through the present date. (Supplement in the future as required.)

REQUEST NO. 18:

All documents which concern or reflect any correspondence or communication between the Defendant and any representative of the Plaintiff concerning the subject property since the January 1 three years previous to the earliest valuation date in issue herein through the present date. (Supplement in the future as required.)

REQUEST NO. 19:

All documents which reflect or concern any matter asserted by the Defendant in answer to the Plaintiff's Interrogatories.

REQUEST NO. 20:

If the appraisal ratio of the subject property has been compared to the median level of appraisal of (1) a reasonable and representative sample of other properties in the Defendant's jurisdiction, or (2) a sample of properties in the Defendant's jurisdiction consisting of a reasonable number of other properties similarly situated to or of the same general kind or character as the subject property, then produce the following:

(a) all documents which identify, reflect or concern all property included in the sample or considered for inclusion in the sample; (b) all appraisals or other documents which reflect or concern the market value of all property used or considered for use in the sample; (c) all documents which reflect or concern the manner in which the market value of any property in the sample was determined or calculated, and (d) all documents which reflect or concern the manner in which the median level of appraisal of the sample was calculated or determined.

REQUEST NO. 21:

Please produce any documents relevant to all property for all years which the Defendant may contend to be a comparable property to the subject property for purposes of relief under TEX. PROP. TAX CODE ANN. § 42.26(a)(3).

REQUEST NO. 22:

Please produce all documents calculating median level of appraisal of all groups

of properties which the Defendant contends are comparable properties to the subject property pursuant to § 42.26(a)(3).

REQUEST NO. 23:

Please produce all documents relevant to adjustments which may need to be made to the values of properties which the Defendant contends to be comparable properties to the subject property pursuant to a theory of relief under § 42.26(a)(3).

REQUEST NO. 24:

Please produce all construction contracts for all improvements made or being made on the subject property at any time since the January 1 five years previous to the earliest valuation date at issue herein through the present date. (Supplement in the future as required.) Please also produce any and all invoices, draw requests, bills, progress payments and other transactions associated with any such construction.

REQUEST NO. 25:

Please produce all documents concerning all fact or expert witnesses whom the Plaintiff has identified or subsequently identifies, which documents would enhance or disparage the witness's or the business of that witness's professional reputation, veracity, or accuracy, and which the Defendant may use to impeach that witness.

REQUEST NO. 26:

Please produce documents containing factual information which relates to or forms

the basis of the mental impressions or opinions held by all persons who may testify on your behalf as a witness other than a testifying expert witness in this cause.

REQUEST NO. 27:

Please produce all documents related to and/or included in the Plaintiffs account and/or records held by the Defendant, or associated with Plaintiff's name and/or property, of any and all kinds, linked in any and all ways with the Plaintiff. Include all present and historical documents bearing Plaintiff's name. (Supplement in the future as required.)

REQUEST NO. 28

Please produce all photographs held or controlled by the Defendant depicting and/or showing the Plaintiff and/or his property. (Supplement in the future as required.)

REQUEST NO. 29

Please produce all appraisal cards from all years relating to Plaintiff's property in Comal County, Texas, which are or have been created, captured, stored or maintained by Defendant.

REQUEST NO. 30

Please produce all licenses, registrations or certificates issued by the Texas Department of Licensing and Regulation to each and every Defendant or employee of the Defendant(s), which expired or expires in the years 2014, 2015, 2016, 2017,

2018 and/or 2019.

REQUEST NO. 31

Please produce all documents which contribute or have contributed to the creation of an Appraisal Model relative to the subject property. Include the Appraisal Model document itself.

REQUEST NO. 32

Please produce all documents which contribute or have contributed to the identification of a Market Area relative to the subject property. Include the Market Area document itself.

REQUEST NO. 33

Please produce all documents which contribute or have contributed to the identification and updating of relevant characteristics relative to the subject property.

REQUEST NO. 34

Please produce all documents which contribute or have contributed to the identification of property characteristics that affect property values in the market area relative to the subject property.

REQUEST NO. 35

Please produce all documents which contribute or have contributed to taking into account location and market area relative to the subject property.

REQUEST NO. 36

Please produce all documents which contribute or have contributed to taking into account physical attributes relative to the subject property.

REQUEST NO. 37

Please produce all documents which contribute or have contributed to taking into account legal restrictions relative to the subject property.

REQUEST NO. 38

Please produce all documents which contribute or have contributed to developing an appraisal model that reflects the relationship among the property characteristics affecting value in each market area, determining the contribution of individual property characteristics relative to the subject property.

REQUEST NO. 39

Please produce all documents which contribute or have contributed to application of the conclusions reflected in an appraisal model to the characteristics relative to the subject property.

REQUEST NO. 40

Please produce all documents which contribute or have contributed to reviewing the appraisal results to determine value relative to the subject property.

REQUEST NO. 41

Please produce all documents which contribute or have contributed to setting the appraisal value at/under/over market value relative to the subject property.

REQUEST NO. 42

Please produce all documents which contribute or have contributed to an accurate evaluation relative to the subject property.

REQUEST NO. 43

Please produce all documents which contribute or have contributed to gathering and/or recording sales data relative to the subject property.

REQUEST NO. 44

Please produce all deeds and all legal documents and all surveys and all maps and all sketches used by the Defendant to identify the subject property.

REQUEST NO. 45

Please produce all documents used by the Defendant to take into account legal and economic attributes relative to the subject property.

REQUEST NO. 46

Please produce all documents involving easements, covenants, leases, reservations, contracts, declarations, special assessments, ordinances and/or legal restrictions relative to the subject property.

REQUEST NO. 47

Please produce all documents which illustrate, and/or identify, and/or designate and/or prove the date (day, month, year) improvements were made on the subject property.

REQUEST NO. 48

Please produce all Google Earth documents and all GIS documents which the Defendant used and/or uses and/or maintains relative the subject property.

REQUEST NO. 49

Please produce all documents that illustrate and/or prove and/or show that other property and/or properties are similar and/or comparable to the subject property.

REQUEST NO. 50

Please produce all documents that illustrate and/or prove and/or show the Auxiliary improvements of the subject property.

REQUEST NO. 51

Please produce all documents that illustrate and/or prove and/or show the parameters of a market area relative to the subject property.

Respectfully Submitted,

By _____
Douglas Walter Kirk, *pro se*
1850 Old Sattler Road
Canyon Lake, Texas 78130
Telephone: (830) 237-7313
E-mail: dougkirk@gvvc.com

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to the Texas Rules of Civil Procedure on this the _____ day of May, 2019, a true and correct copy of the foregoing has been served via certified mail (70182290000166284835) on Defendant Comal Appraisal District, 900 South Seguin Avenue, New Braunfels, Texas, 78130 through its attorney Kirk Swinney (State Bar No. 19588400) at Low Swinney Evans & James, PLLC, 623 S. Baker Cir., Leander, Texas 78641, Phone (512) 379 5800.

By _____
Douglas Walter Kirk, *pro se*
1850 Old Sattler Road
Canyon Lake, Texas 78130

Telephone: (830) 237-7313
E-mail: dougkirk@gvvc.com

Douglas Kirk
1850 Old Sattler Road
Canyon Lake, Texas 78132
(830) 237-7313
dougkirk@gvtc.com

May 22, 2019

Subject: Plaintiff's First Set of Interrogatories NO. C2018-1576B
Plaintiff's Request for Disclosures
Plaintiff's First Request for Production and Inspection.

Kirk Swinney (State Bar No. 19588400)
Low Swinney Evans & James, PLLC
623 S. Baker Cir.
Leander, Texas 78641

Phone (512) 379 5800

Dear Mr. Swinney:

Enclosed please find Plaintiff's First Set of Interrogatories, Plaintiff's Request for Disclosures, and Plaintiff's First Request for Production and Inspection relative to Cause No. C2018-1576B.

Please do not hesitate to send me an email if you have any questions.

Thank you.

Sincerely,

Douglas Kirk