

## **Review of "Court Action" of Thursday 4/18/19 in the *Douglas Kirk v. Comal County Appraisal District* on Defendant's Motion to Compel CAD Inspection of Plaintiff's Property:**

1. The defendant opened by saying they simply needed to inspect the property to obtain an accurate appraisal of the property and that their notice to inspect under Texas Rules of Civil Procedure TRCP 196.7 had been denied by the Plaintiff and they were seeking a court order to compel the inspection and sanction the Plaintiff for making them pursue this order and not complying with the said rule.
2. Kirk countered that he had already given them all the information they need to do their appraisal.
3. Kirk also showed that the notice that he was given by the Defendants to inspect the property was defective under the law by not specifying the;
  - 3.1. Manner in which the inspection would be made;
  - 3.2. The conditions upon which the inspection would be made;
  - 3.3. The scope of the inspection to be made;
  - 3.4. and by whom the inspection would be made.
4. Kirk also showed that under TRCP 192.4 discovery permitted by these rules should be limited by the court if it determines, on motion or on its own initiative and on reasonable notice that the discovery sought is unreasonable or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive or the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.
5. Kirk also asserted that this inspection violated his:
  - 5.1. 4th Amendment Rights under the US Constitution;
  - 5.2. Search and Seizure protections under the Texas Constitution Art 1 Sec 9;
  - 5.3. The ARB Chairman stated that Kirk had a right to refuse entry on his property by the CAD;
  - 5.4. Criminal Trespass Provisions in the Texas Penal Code Sec. 30.05;
  - 5.5. TRCP 192.6(b) protection against undue burden, unnecessary expense, harassment, and annoyance.
  - 5.6. Judge can issue an order in the interest of justice under TRCP 192.6(b)(1).
6. The Defendant said that they needed to inspect the property and that the Property Analysis given them by Mr. Kirk's Architect done in February was not good enough to do an accurate appraisal of Mr. Kirk's Property.
7. The Defendants put a licensed appraiser on the stand for testimony supporting their assertion, who said he could not tell much from the architect's analysis.
8. The licensed appraiser was cross examined by Doug Kirk who obtained some information from him which undermined the Defendant's claim:

- 8.1. The appraiser said he would need to know the type of construction, quality and condition of the structure. Kirk asked him to read from the architect's analysis where all those things were provided for each building.
- 8.2. Kirk asked the appraiser what was missing from the analysis and he only could say the comparables.
- 8.3. Kirk asked if comparables were something he did on the site and he replied no that would be done in his office.
- 8.4. The appraiser said he always walks the property line to see if there are any encroachments.
9. Kirk put architect, Ronald F. Avery, on the stand and asked him questions about the property analysis he produced:
  - 9.1. He asked if he had done the work himself and signed and sealed it and he replied yes.
  - 9.2. He asked if he had observed documented the type of construction, quality and condition of the structures on the site and he replied yes.
  - 9.3. He asked if he had documented the presence of or absence of electrical, plumbing, heating, ventilation and A/C for each structure and he replied yes.
  - 9.4. He asked if he had measured and drew the footprint for each building and he replied yes.
  - 9.5. He asked if he had inspected and accounted for the the contours and topography of the property in his analysis and he replied yes.
  - 9.6. He asked if he thought that an appraiser could make an accurate appraisal from his analysis and he replied yes.
10. Kirk passed the witness and the Defendant asked the architect:
  - 10.1. If he and Kirk were friends and he replied yes.
  - 10.2. How long had they been friends and he replied 10 to 15 years.
  - 10.3. Did he know anything about appraisals and he replied yes he had hired appraisers on at least two occasions and as an architect developing property we often read appraisals for the property.
  - 10.4. The architect also said that we prepare an analysis on property in order to design structures for it.
  - 10.5. The defendant asked what kind of things would be in that and he replied, sun angles, prevailing winds, rain amounts, topography, improvements etc.
11. The parties argued their case a bit more after they were finished with the witnesses. The judge was slow to make a ruling but finally granted the Defendants motion to Compel Inspection and set the following:
  - 11.1. The inspection will be on May 18th
  - 11.2. for two hours
  - 11.3. by three people:
    - 11.3.1. an outside appraiser
    - 11.3.2. an attorney
    - 11.3.3. an agent from the CAD

It is amazing that all these rules are applied to citizens with brutal precision while they are completely ignored when government violates them. This motion should have been denied as soon as it was shown to be defective under TRCP 196.7 END OF STORY.