

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

DEFENDANT’S RESPONSES TO PLAINTIFF’S FIRST INTERROGATORIES

TO: Douglas Walter Kirk, Plaintiff.

NOW COMES the Defendant in the action named above and responds the following to the Plaintiff’s First Set of Interrogatories.

INTERROGATORY NO. 1

Refer to Exhibit 1 as attached to answer the following: Explain the meaning of each and every abbreviation, acronym or other term which appears on either of the two pages which re not in correctly spelled full English words.

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, as being a mere fishing expedition rather than seeking specific matters of fact, and as imposing far more burden on the Defendant than any possible benefit to the Plaintiff. To the extent the Defendant understands the interrogatory, it seems to be inquiring into the opinions and findings of testifying experts. As such, the Defendant objects to it as an inappropriate form of discovery.

INTERROGATORY NO. 2

Refer to Exhibit 1 as attached to answer the following: For each numerical value which

appears on either of the two pages, explain how each number was determined as well as what it means along with universally acceptable units of measure.

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, as being a mere fishing expedition rather than seeking specific matters of fact, and as imposing far more burden on the Defendant than any possible benefit to the Plaintiff. To the extent the Defendant understands the interrogatory, it seems to be inquiring into the opinions and findings of testifying experts. As such, the Defendant objects to it as an inappropriate form of discovery.

INTERROGATORY NO. 3

Describe how Defendant's previously offered comparables, Property ID Numbers 38132, 60796 and 32610 are like one another, how they are different from one another as well as how each is similar to and different from the property subject this lawsuit.

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, as being a mere fishing expedition rather than seeking specific matters of fact, and as imposing far more burden on the Defendant than any possible benefit to the Plaintiff. To the extent the Defendant understands the interrogatory, it seems to be inquiring into the opinions and findings of testifying experts. As such, the Defendant objects to it as an inappropriate form of discovery.

INTERROGATORY NO. 4

Describe in detail with methods and procedures, of any and all absolute market values listed in Exhibit 1 were determined.

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, as being a mere fishing expedition rather than seeking specific matters of fact, and as imposing far more burden on the Defendant than any possible benefit to the Plaintiff. To the extent the Defendant understands the interrogatory, it seems to be inquiring into the opinions and findings of testifying experts. As such, the Defendant objects to it as an inappropriate form of discovery.

INTERROGATORY NO. 5

State market value of the subject property that the Defendant believes to be true, to include the believed market value of the tract of land and each improvement.

RESPONSE:

The Defendant believes the market value of the subject property to be no less than the appraised value assigned to the subject property by the Defendant in the relevant year. However, the Defendant objects to the interrogatory to the extent it seeks the opinions of testifying experts. As such, it is an inappropriate form of discovery.

INTERROGATORY NO. 6

Describe in detail, the difference between commercial property and a residential homestead.

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, as being a mere fishing expedition rather than seeking specific matters of fact, and as imposing far more burden on the Defendant than any possible benefit to the Plaintiff. The Defendant further objects to the request as being inane and phrased for the purpose of harassment, not the discovery of any legitimate information. The Defendant further objects to

the interrogatory as seeking the opinions of testifying experts. As such it is an inappropriate form of discovery.

INTERROGATORY NO. 7

Subject the property this lawsuit, when governing, regulating, controlling or taxing under the Texas Tax Code, the Texas Constitution, and/or the United States Constitution, does the Defendant get its authority from the Texas Constitution and does the Defendant consider the Texas Constitution the beginning of the law or a continuance of the pre-existing common law?

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, and as imposing far more burden on the Defendant than any possible benefit to the Plaintiff. The Defendant further objects to the interrogatory, to the extent the Defendant can understand the interrogatory's incoherent rambling, as seeking matters of law rather than matters of fact.

INTERROGATORY NO. 8

Identify all persons who know the absolute value of the property subject this lawsuit, to include each and every employee of the Defendant and every person hired by the Defendant to determine the absolute value.

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, and as imposing far more burden on the Defendant than any possible benefit to the Plaintiff. The term "absolute value" is neither defined in the discovery nor known to the standards of ad valorem appraisal, which generally seeks market value. The Defendant further objects to the interrogatory as seeking the opinions of testifying experts. As such it is an inappropriate form of discovery.

INTERROGATORY NO. 9

Describe the method and procedures in detail by which each and every employee of the Defendant and every person hired by the Defendant, determined the absolute value of the property subject this lawsuit, if an absolute value has been determined by any/and/or all of these persons.

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, and as imposing far more burden on the Defendant than any possible benefit to the Plaintiff. The term “absolute value” is neither defined in the discovery nor known to the standards of ad valorem appraisal, which generally seeks market value. The Defendant further objects to the interrogatory as seeking the opinions of testifying experts. As such it is an inappropriate form of discovery.

INTERROGATORY NO. 10

If an absolute value of the property subject this lawsuit has not yet been determined by any/and/or all of the persons described herein, but the Defendant does plan to make said absolute determination, describe the method and procedure, in detail, by which each and every employee of the Defendant and every person hired by the Defendant, intends to determine the absolute value of the property subject this lawsuit, if any/and/or all persons is/are to make a determination.

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, and as imposing far more burden on the Defendant than any possible benefit to the Plaintiff. The term “absolute value” is neither defined in the discovery nor known to the standards of ad valorem appraisal, which generally seeks market value. The Defendant further objects to the interrogatory as seeking the opinions of testifying experts. As such it is an inappropriate form of discovery.

INTERROGATORY NO. 11

Describe each appraisal of the subject property or any part of the subject property at any time since January 1 five years prior to the earliest valuation date in issue, specifying the value determined by the appraisal and identifying the persons who performed the appraisal, the persons or entities to whom copies of the appraisal were furnished and the date of the appraisal.

RESPONSE:

The only appraisals of the subject property of which the Defendant is aware in the previous five years are those done by the Defendant. Notice of those appraisals was given to the property owner. They have been available, however, for public inquiry.

INTERROGATORY NO. 12

Describe, in detail, how the property subject this lawsuit is being taxed equally with other property in the State of Texas, giving specific examples.

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, and as imposing far more burden on the Defendant than any possible benefit to the Plaintiff. The Defendant further objects to the interrogatory as seeking the opinions of testifying experts. As such it is an inappropriate form of discovery. The Defendant does not appraise property outside of Comal County, Texas and cannot respond to how that property is appraised, nor is the appraisal of property outside Comal County relevant to an inquiry of equity and uniformity to the subject property. The Defendant appraises like property within Comal County utilizing like standards. The interrogatory is irrelevant, because Plaintiff did not protest on unequal appraisal.

INTERROGATORY NO. 13

Describe, in detail, how the property subject this lawsuit is being taxed uniformly with other property in the State of Texas, giving specific examples.

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, and as imposing far more burden on the Defendant than any possible benefit to the Plaintiff. The Defendant further objects to the interrogatory as seeking the opinions of testifying experts. As such it is an inappropriate form of discovery. The Defendant does not appraise property outside of Comal County, Texas and cannot respond to how that property is appraised, nor is the appraisal of property outside Comal County relevant to an inquiry of equity and uniformity to the subject property. The Defendant appraises like property within Comal County utilizing like standards. The interrogatory is irrelevant, because Plaintiff did not protest on unequal appraisal.

INTERROGATORY NO. 14

Describe in detail each and every improvement that occurred on the property subject this lawsuit between the Defendant's valuation of 2017 and the Defendant's valuation of 2018.

RESPONSE:

The Defendant is not aware of improvements being added to the subject property between its 2017 and 2018 appraisal, but is aware that some improvements were initially not included in the 2017 appraisal.

INTERROGATORY NO. 15

Explain in detail how guessing at the value of the property subject this lawsuit is constitutional under the Texas Constitution.

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, and as assuming facts not in evidence. The Defendant further objects to the interrogatory as seeking the opinions of testifying experts. As such it is an inappropriate form of discovery.

INTERROGATORY NO. 16

Explain in detail how guessing at the value of the property subject this lawsuit is in compliance with the Texas Property Tax Code

RESPONSE:

The Defendant objects to the interrogatory as seeking matters which are neither relevant nor likely to lead to the discovery of admissible evidence, as being vague, and as facts not in evidence. The Defendant further objects to the interrogatory as seeking the opinions of testifying experts. As such it is an inappropriate form of discovery.

INTERROGATORY NO. 17

Explain in detail how the property subject this lawsuit can be taxed under the Texas Constitution, Article 8 Section 1(a), absent a determination of the absolute value of the property subject this lawsuit.

RESPONSE:

To the extent the Defendant understands this interrogatory, which appears to be as so many of the Plaintiff's efforts are, mere harassment, it objects that the interrogatory seeks purely matters of law rather than matters of fact, that it is vague, and that it inquires into an undefined standard of "absolute value" not utilized in the appraisal of property for taxation in Texas.

INTERROGATORY NO. 18

Explain in detail how the absolute value of the property offered in comparison to the property subject this lawsuit was determined. (The comparables offered b the Defendant were Defendant's Property ID Numbers 38132, 60796, and 32610.)

RESPONSE:

To the extent the Defendant understands this interrogatory, which appears to be as so many of the Plaintiff's efforts are, mere harassment, it objects that the interrogatory seeks matters neither relevant nor

likely to lead to the production of admissible evidence, that it is vague, and that it inquires into an undefined standard of “absolute value” not utilized in the appraisal of property for taxation in Texas. The Defendant further objects to the interrogatory as seeking the opinions of testifying experts. As such it is an inappropriate form of discovery.

INTERROGATORY NO. 19

Describe each communication, oral or written, between any employee of the Defendant and any other employee of the Defendant, or any other party, specifying the date of the communication, the individual involved, the substance of the communication and whether the communication was by telephone, in person, by letter, etc. You may limit your response to those communications which concern the subject property of this lawsuit, or the Plaintiff of this lawsuit.

RESPONSE:

The Defendant objects to the interrogatory as seeking matters neither relevant nor likely to lead to the production of admissible evidence, as not being appropriately limited in time, as seeking matters as readily available to the Plaintiff as the Defendant, as imposing a greater burden on the Defendant than any benefit to the Plaintiff, and as being a mere fishing expedition rather than seeking specific matters of fact. Subject to the objections, the Plaintiff communicated to the Defendant at multiple ARB hearings and court hearings.

INTERROGATORY NO. 20

Identify each person who the Defendant will call as a witness at any hearing or trial in this litigation and describe the type of knowledge relevant to this litigation possessed by each such person.

RESPONSE:

Rufino H. Lozano, Chief Appraiser of the Defendant. Mr. Lozano is knowledgeable of the appraisal of the subject property, protests, procedures and communications. See response to request for disclosure.

Jennifer Salazar, Director of Operations of the Defendant. Ms. Salazar is knowledgeable of the appraisal

of the subject property, protests, procedures and communications. See response to request for disclosure. Craig Zgabay, appraiser. Mr. Zgabay will be knowledgeable of the market value of the subject property. See response to request for disclosure.

Kirk Swinney and Ryan James, attorneys for Defendant. They are knowledgeable of attorney fees. See response to request for disclosure.

INTERROGATORY NO. 21

Identify all experts who may not be called to testify but whose work product forms a part of the basis for the opinions of any testifying expert.

RESPONSE:

None known at this time.

INTERROGATORY NO. 22

Please identify by owner, account number, and by year to which the comparison is made, any property which the defendant contends is comparable to the subject property. For each of those properties, and for each year applicable, please identify any adjustments to the appraised value of those properties which the Defendant contends would be appropriate for a comparison of those values to the value of the subject property. Please also identify the median appraised value of the allegedly comparable properties appropriately adjusted per year in contention. Please identify any special characteristic of each of the alleged comparable properties which may necessitate an adjustment to value thereof for comparison to the subject property. Please also state the market value of the purported comparable properties and information leading to that conclusion of value. Please identify any sales prices of the alleged comparable property taking place at any time since the January 1 five years earlier than the earliest tax year in issue herein.

RESPONSE:

The Defendant intends to rely upon the testimony of expert witnesses for evidence regarding the market

value and the equal and uniform value of the subject property. As such, the Defendant objects to the interrogatory as being an inappropriate form of discovery. The interrogatory is irrelevant, because Plaintiff did not protest on unequal appraisal.

INTERROGATORY NO. 23

If the appraisal ratio of the subject property or the appraisal ratio of any part of the whole 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 jurisdiction of the Defendant, or (2) a sample of properties in the jurisdiction of the Defendant consisting of a reasonable number of other properties similarly situated to or of the same general kind or character as the subject property, then provide the following information:

- (a) the identity of each property considered for use in the sample;
- (b) the identity of each property actually used in the sample;
- (c) the market value of each property considered for use in the sample;
- (d) the manner in which the market value of each property was determined, including each appraisal method considered, each calculation performed, each figure used in the valuation process, and the origin or basis of each such figure;
- (e) an identification of each appraisal of property used in the sample, including the identity of the property appraised, the identity of the appraiser, the date of the appraisal and the appraised value;
and
- (f) the manner in which the median level of appraisal of the sample was determined.

RESPONSE:

The Defendant intends to rely upon the testimony of expert witnesses for evidence regarding the market value and the equal and uniform value of the subject property. As such, the Defendant objects to the interrogatory as being an inappropriate form of discovery. The interrogatory is irrelevant, because Plaintiff did not protest on unequal appraisal.

INTERROGATORY NO. 24

For each expert and fact witness which the Defendant has identified, please state all facts known to you which would enhance or disparage the witness's or the business of that witness's professional reputation, veracity, or accuracy or which the Defendant may use to impeach that witness. Please specifically state any facts known to you to indicate whether the opinions rendered or facts related by any of them are accurate or inaccurate, and what if, any, business or professional complaints against any of them are known to you. Identify the party lodging such a complaint, the date and stated reason for the complaint.

RESPONSE:

The Defendant does not intend to impeach any of its witnesses. It is not aware of any business or professional complaints against them, and believes each of them to be competent, reliable, and trustworthy.

INTRROGATORY NO. 25

Describe the general substance of the mental impressions, if known, and opinions, if known of any person who may testify on your behalf as a witness, other than a testifying expert witness in this cause, and a brief summary of the basis for them.

RESPONSE

At this time, the Defendant only intends to call expert witnesses.

Respectfully Submitted,

LOW SWINNEY EVANS & JAMES, PLLC
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/s/ Kirk Swinney

By: _____

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ATTORNEYS FOR DEFENDANT

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF COMAL §

BEFORE ME, the undersigned notary public, on this day personally appeared, Jennifer Salazar, who, after being by me duly sworn under oath, stated that she had read the foregoing answers to Interrogatories and that such answers were true and correct to her knowledge and belief, and that she was authorized to execute the same.

Jennifer Salazar, Director of Operations

SWORN AND SUBSCRIBED TO BEFORE ME on this ____ day of June, 2019.

Notary Public in and for the State of Texas

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been electronically served upon the Plaintiff in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on this the 24th day of June 2019.

Douglas Walter Kirk
dougkirk@gvtc.com

/s/ Kirk Swinney

Kirk Swinney