

MOTION TO COMPEL  
April 18, 2019

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REPORTER'S RECORD  
VOLUME 1 OF 1 VOLUMES  
TRIAL COURT CAUSE NO. C2018-1576B

DOUGLAS KIRK ) IN THE DISTRICT COURT  
vs. ) COMAL COUNTY, TEXAS  
COMAL APPRAISAL DISTRICT ) 207TH JUDICIAL DISTRICT

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MOTION TO COMPEL  
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On the 18th day of April, 2019, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Dibrell W. Waldrip, Judge Presiding, held in New Braunfels, Comal County, Texas.

Proceedings reported by computerized stenotype machine.

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VOLUME 1

Motion to Compel

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1 P R O C E E D I N G S

2 THE COURT: Mr. Kirk -- is there anybody  
3 that I can do something without a record, or do y'all  
4 need a record? Y'all have got actually trial on the  
5 merits scheduled, is that what that says on my docket?

6 MR. JAMES: No, Your Honor. It shouldn't  
7 be a trial on the merits. It's just a motion to compel.

8 THE COURT: Do you want it on the record?

9 MR. JAMES: Yes, Your Honor.

10 THE COURT: Okay. And y'all still think  
11 it will take 30-45 minutes?

12 MR. JAMES: I hope that it doesn't take  
13 that long, but it could.

14 THE COURT: Why don't y'all come on up and  
15 let's see what we're talking about just real quick.  
16 This is 18-1576.

17 MR. KIRK: Your Honor, you have earned  
18 your pay.

19 THE COURT: I'll keep working at it.

20 MR. JAMES: Your Honor, we -- we sent a  
21 request for inspection to inspect the property. This  
22 case concerns the market value of property --  
23 residential and commercial property owned by Mr. Kirk.  
24 We need our appraiser on the property to  
25 do an inspection, to do a -- a USPAP, a Uniform

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1 Standards Professional Appraisal Practice compliant  
2 report and that would be legally and factually  
3 sufficient under the rules of evidence.

4 THE COURT: I usually call him Doug, but  
5 Mr. Kirk --

6 MR. KIRK: Yes, sir.

7 THE COURT: -- I mean, is there some  
8 opposition to a particular appraiser --

9 MR. KIRK: Sir --

10 THE COURT: -- or is that the issue?

11 MR. KIRK: Well, there's a --

12 THE COURT: Is it a timing issue?

13 MR. KIRK: It's -- it's a lot of things.  
14 Am I ready to speak?

15 THE COURT: Well, I mean, I'm just trying  
16 to get the gist of it, not the entirety of it.

17 MR. KIRK: Well, the gist of it is the  
18 notice was defective. And if you start looking at other  
19 things, look at some of the other rules from -- from  
20 Texas Civil Rules of Procedure, there's other ways to  
21 solve this problem.

22 And I have a witness here today that will  
23 help the understanding of that, that we can simplify  
24 things without them having to send six people onto my  
25 property and not even tell me who the inspector is.

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1                   And I can go through the defects -- the  
2 defects of the notice, which ought to kill it right  
3 there. But if -- but if it doesn't kill it, we've got  
4 all kinds of other arguments.

5                   THE COURT: So which one of the 199s or  
6 197s do we --

7                   MR. JAMES: 196.7.

8                   MR. KIRK: Okay. We're looking at 196.7,  
9 request a motion for entry upon property, and -- and  
10 they made a request. The rules say that they must state  
11 the time, the place, the manner, the conditions and the  
12 scope of the inspection. And the rules say that they  
13 should say who the inspector is.

14                   And in their notice, the only thing they  
15 gave me is a time and a place. They didn't even tell me  
16 who the inspector was going to be. They said they have  
17 got -- they've got --

18                   MR. JAMES: Your Honor --

19                   MR. KIRK: Excuse me, can I finish?

20                   THE COURT: Let him just --

21                   MR. KIRK: I'm doing that for her benefit.

22                   They said they have parties who may  
23 attend, so it's like a tourist event. I need to know  
24 who the inspector is. The notice of inspection is  
25 wholly defective.

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1 THE COURT: Okay. Yes, sir?

2 MR. JAMES: Your Honor, the appraiser is  
3 Craig Zgabay. He's listed in the request for  
4 inspection. And the other person, we have one  
5 representative from the appraisal district listed and  
6 then we wanted to send one attorney.

7 We listed the undersigned counsel, which  
8 included four people on the signature block. We only  
9 need one attorney to go. So we're anticipating three  
10 people to -- to attend the inspection.

11 THE COURT: If it were just three people,  
12 if we named them, Mr. Kirk, and give you the -- the  
13 date -- or a date, will that resolve this in the future?  
14 In other words, even 30 days from today as far as  
15 being -- I mean, written notice -- I mean, open court  
16 notice, wouldn't that be a sufficient alternative?

17 MR. KIRK: They're still going to have to  
18 follow the rule that says they've got to tell me the  
19 manner, the conditions and the scope. None of that is  
20 in the original notice and the rules say that it should  
21 be.

22 THE COURT: Well, I mean, it's going to be  
23 in person as far as manner. I'm understanding they're  
24 going to have three people present.

25 MR. JAMES: Our request says photographing

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1 and videoing. We don't need a video. We can strike  
2 that. I know that there was an objection to that, but  
3 we do want to photograph it for the report. There's no  
4 other scope or conditions limiting it.

5 We anticipate that it will take one to two  
6 hours at the outside. Most of it is because there's  
7 a -- there's an amount of acreage that we'll have to  
8 walk the perimeter -- or the appraiser will have to walk  
9 the perimeter and so that will take a good portion of  
10 the time.

11 There's also -- we don't know the number  
12 of improvements exactly, somewhere around eight  
13 different improvements. So it will take a little bit of  
14 time, but we don't anticipate it taking more than two  
15 hours.

16 THE COURT: If we limit it to two hours  
17 and --

18 MR. KIRK: Sir, there's another  
19 alternative.

20 THE COURT: Okay.

21 MR. KIRK: I have a witness here in the  
22 courtroom. I'd like it put him on the stand and  
23 illustrate to you that we have already done this work.  
24 He's a --

25 THE COURT: But they're entitled to do it.



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1 MR. KIRK: But if you look at Rule 192.4,  
2 it starts to talk about cumulative or duplicative  
3 discovery obtainable from some other source that is more  
4 convenient, less burdensome or less expensive.

5 We've already done the work that their  
6 appraiser can use. In fact, they have a copy of the  
7 work. Their appraiser can examine that. All of the  
8 buildings have been measured. All of the buildings have  
9 been photographed, inside and out. There's diagrams  
10 that show where they're located on the property.

11 THE COURT: Okay. Let me just -- I  
12 understand you have a witness here, and I appreciate  
13 that, but I'm just trying to expedite this. By whom  
14 with what capacity did that work that you're suggesting?

15 MR. KIRK: This is a certified state  
16 architect -- a state certified architect. And what  
17 architects do for a living is they measure things.

18 THE COURT: I understand.

19 MR. KIRK: They're good at this.

20 THE COURT: But are they also the -- an  
21 appraiser with the qualifications that would allow those  
22 determinations to be admissible as an appraisal?

23 MR. KIRK: No, sir. He's not an  
24 appraiser, but he has done an analysis.

25 THE COURT: That's what I'm saying is they

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1 don't have to accept those numbers.

2 MR. KIRK: No, they don't. While it's --  
3 the number is like measuring the size of a building.

4 THE COURT: In regard to then taking those  
5 numbers and comparing them for an appraisal.

6 MR. KIRK: What will their appraiser do  
7 different than measuring the buildings? I've got the  
8 measurements. I've got the pictures. I've got the  
9 entire analysis here. What are they going to do  
10 different that they have to be on-site to do it? Why  
11 can't they use the document that we produced and do  
12 their analysis based on that?

13 And the rules allow that. The rules allow  
14 that they -- they -- you know, we can do that in an  
15 easier, less expensive way. And the rules allow the  
16 judge to make that statement.

17 THE COURT: Well, if they want to agree to  
18 that, that's fine; otherwise, we'll have to have a  
19 hearing after lunch. That's all I know to tell you to  
20 do.

21 MR. JAMES: We can't agree to take it.

22 THE COURT: Okay. Then we'll just need to  
23 take this matter up. I've got, you know, other matters.  
24 I was just seeing if there might be some impasse that we  
25 could resolve. But otherwise, we'll just -- we'll have

CRAIG ZGABAY - APRIL 18, 2019  
Direct Examination by Mr. James

1 a hearing.

2 MR. KIRK: All right. Thank you, sir.

3 MR. JAMES: Thank you, Your Honor.

4 THE COURT: I don't want to deprive  
5 anybody of a hearing.

6 (Recess taken)

7 THE COURT: All right. Back on the Kirk  
8 and Comal Appraisal District matter. If y'all -- so  
9 it's your motion to compel. This is 18-1576.

10 Do you think there's anything else more we  
11 need to put on the record at this stage?

12 MR. JAMES: Yes, Your Honor. We have our  
13 appraiser we'd like to put on the stand.

14 THE COURT: Call him on up.

15 If you want to, you can come over here to  
16 the witness stand. It will be easy enough. Everybody  
17 can see you there and the court reporter can hear you.  
18 Let me get you to raise your right hand.

19 (Witness sworn)

20 THE COURT: You may proceed.

21 CRAIG ZGABAY,  
22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. JAMES:

25 Q. All right. Will you please state your name.

CRAIG ZGABAY - APRIL 18, 2019  
Direct Examination by Mr. James

1 A. Craig Zgabay.

2 Q. How are you currently employed?

3 A. I work for myself. I have a company, Candela  
4 Property Advisors.

5 Q. And what does your company do?

6 A. Primarily real estate appraisal.

7 Q. Would you please generally describe your  
8 experience as an appraiser.

9 A. I've been appraising since 1990. I've had my  
10 MAI designation from the Appraisal Institute since 1997,  
11 I believe. I'm currently a state certified general  
12 appraiser with the State of Texas.

13 Q. All right. You mentioned that you have an MAI  
14 and that you have a license with the State. Do you have  
15 any other licenses?

16 A. I'm a state salesman with the State of Texas as  
17 well.

18 Q. Okay. Do you have any other -- can you  
19 generally state your educational background as it  
20 relates to appraisal.

21 A. Got my -- my master's in land economics and  
22 real estate in 1990 from Texas A&M, bachelor's in -- in  
23 economics -- ag economics from A&M in '88.

24 Q. Are you required to take continuing education  
25 as part of your licenses?

CRAIG ZGABAY - APRIL 18, 2019  
Direct Examination by Mr. James

1 A. I am.

2 Q. Okay. What does that typically entail?

3 A. It's a hundred hours of continuing ed every  
4 five years.

5 Q. Okay.

6 A. And I'm current on everything.

7 Q. How -- how have you been engaged in this case?

8 A. Well, I've been asked to come up here and talk  
9 about whether an inspection is -- is needed for an  
10 appraisal. Would you like me to tell that part?

11 Q. We'll get there in just a minute. What -- what  
12 is the general definition of market value?

13 A. Well, in the appraisal world, market value  
14 is -- is that price that a willing buyer and a willing  
15 seller come to under conditions requisite to a fair sale  
16 with each party acting prudently and informed and -- and  
17 in cash or terms thereto. That's the basic generally  
18 accepted definition.

19 Q. Would a buyer in that scenario normally inspect  
20 a property prior to purchasing it?

21 A. The buyer typically would, yeah.

22 Q. Yeah. What -- what is entailed in an  
23 inspection?

24 A. Typically we'll go out and measure the  
25 property. I will always walk the boundaries of the

CRAIG ZGABAY - APRIL 18, 2019  
Direct Examination by Mr. James

1 property looking for any encroachments or what may  
2 appear to be unusual easements, anything that just looks  
3 out of the ordinary.

4           And then with respect to the improvements,  
5 it's important to note, you know, how they're built, the  
6 condition, the -- the quality. And the condition and  
7 the quality are typically really important pieces of it  
8 because later when you compare the subject property to  
9 other properties that may have sold, you're -- you're  
10 making judgments against how this property compares to  
11 that other property with respect to its age and its  
12 condition and its quality and features and so forth.

13           Q. How did you learn what was entailed or  
14 necessary for an inspection?

15           A. Well, I mean, I guess through the education --  
16 there's a good bit of education required to get the  
17 designation from the Appraisal Institute, as well as  
18 nearly 30 years of experience.

19           Q. If somebody did not have that experience, do  
20 you think that there would be things that they could  
21 possibly miss in doing an analysis of the property?

22           A. Possibly.

23           Q. When you inspect a property, what typical  
24 things are you looking for? I know you mentioned  
25 quality and condition. Is there anything else?

1           A.    It sort of depends a little bit on whether it's  
2 commercial or residential.  So on commercial properties,  
3 you know, how they're constructed, whether it's wood  
4 frame or steel frame or concrete, is important because  
5 there are different cost categories associated with  
6 those kinds of structures.

7                        On residential you tend to focus a little  
8 bit more on just what is in demand in the market.  So,  
9 you know, a house that has granite countertops and is  
10 finished out very nicely is very different from one that  
11 may have laminate countertops and hasn't been updated  
12 since 1970 or whatever.

13           Q.    Okay.  And with regard to the subject property,  
14 the one that's at issue in this litigation, what types  
15 of things would you be looking for?

16           A.    Well, there -- I guess I'm not really sure even  
17 what we're looking at.  I mean, the only data that --  
18 that I've been able to see is what Comal Appraisal  
19 District has on their Web site, and I've reviewed that.  
20 I did have a chance to do a cursory review of the report  
21 that -- that you had from the architect, I believe.

22           Q.    Okay.  We'll come back to that.  Let's go on to  
23 generally accepted appraisal methods.  When I say  
24 generally accepted appraisal methods, what does that  
25 term mean to you?

1           A.    Well, it's -- it's those practices that are  
2 prescribed by the Uniform Standards of Professional  
3 Appraisal Practice or USPAP as it's called. In that  
4 document it lays out in standards one and two how you  
5 perform an appraisal and how you report it.

6                         Standard one basically lays out the  
7 process that you go through. And these are -- you know,  
8 these are minimum standards. Most appraisers,  
9 particularly those that are designated by the  
10 appraiser -- Appraisal Institute, tend to go a little  
11 bit above and beyond that.

12           Q.    Okay. Does USPAP always require an inspection?

13           A.    The answer to that is yes and no. The -- the  
14 first part of it is it -- it will say in USPAP that an  
15 inspection is not required. However, in the preamble  
16 USPAP, you have the scope of work rule and -- and it  
17 basically says that the appraiser has to do whatever is  
18 necessary to produce credible results.

19                         So from my perspective, I always like to  
20 look inside those -- the structure, walk the perimeter,  
21 because that's how I understand basically what the  
22 problem is, you know.

23           Q.    Now, for this property specifically, would  
24 USPAP require you to -- to conduct an inspection?

25           A.    In my opinion on this one, yes, because this is



1 not a standard kind of, you know, typical three-bedroom,  
2 two-bath, you know, house in a subdivision. This is ten  
3 acres with some improvements, as I understand it, that  
4 may be used commercially, some that are residential. So  
5 I don't think that I would feel comfortable appraising  
6 this property without inspecting it.

7 Q. All right. Would your report be more or less  
8 reliable if you did not conduct an inspection?

9 A. It definitely would be less reliable if I  
10 didn't conduct the inspection.

11 Q. Would your peers that have the -- the same  
12 educational background that are complying with USPAP  
13 conduct an inspection of this property?

14 A. They would.

15 Q. Okay. Could you reasonably obtain the  
16 information that you're looking for from another source?

17 A. Possibly, if -- you know, if it was somebody  
18 that had the same experience that I did and would be  
19 looking for the same things that I do.

20 Another appraiser that I have had some  
21 relationship with and have seen his work product in the  
22 past, in that situation I could possibly do it.

23 Q. Are you aware of any such person in this case  
24 that you could rely upon --

25 A. No.

1 Q. -- in that way? All right. Moving on to  
2 the -- to the architectural report, you mentioned that  
3 you had reviewed the -- the report. Will you describe  
4 the detail to which you've reviewed it.

5 A. Well, I mean, I looked at it when we were here  
6 this morning. The copy that we have -- or you have has  
7 some black and white pictures. That is not very helpful  
8 actually.

9 Q. Okay. Are you familiar with the architect -- I  
10 believe his name is Mr. Avery?

11 A. I'm not.

12 Q. Okay. So you don't have an opinion on his  
13 credibility?

14 A. I don't.

15 Q. Okay. Have you been asked or engaged to  
16 provide an opinion on the quality of Mr. Avery's report?

17 A. No.

18 Q. Okay. Is the report an appraisal?

19 A. His report?

20 Q. Yes.

21 A. No.

22 Q. Okay. Would it be proper under USPAP to rely  
23 on Mr. Avery's report in lieu of an inspection?

24 A. I don't think so because what I saw from the  
25 report is that there were -- there were measurements and

1 there were depictions of where certain improvements were  
2 on the site. But for example, what I didn't see is some  
3 professional assessment of the condition of the property  
4 or -- and I did note that there was some description of  
5 the type of materials used and the age, but that still  
6 wouldn't be sufficient to get a -- a well-rounded view  
7 of what it is you're appraising.

8 Q. Assuming that all that information was in there  
9 and it was USPAP compliant and you did not know  
10 Mr. Avery, would you be able to rely on his report?

11 A. If -- if all of that information was in there  
12 and it was by somebody that had had appraisal training  
13 and knew how to look at property and come to a judgment  
14 of condition and quality, then yes.

15 MR. JAMES: Okay. At this time I'll pass  
16 the witness.

17 THE COURT: Any questions, Mr. Kirk?

18 MR. KIRK: Your Honor, I have a question.  
19 Can we put him on re-call so that I can introduce the --  
20 the documents so that we can talk from the document? Is  
21 that okay?

22 THE COURT: Well, I mean, there may not be  
23 any objection.

24 I don't know, is there an objection to  
25 using this exhibit with this witness at this time?

1 MR. JAMES: We can discuss it. I do have  
2 an objection to introducing the exhibit into the record  
3 because it has an appraisal conclusion. He's not going  
4 to be qualified as an appraiser, so we do --

5 THE COURT: But for the purposes of  
6 cross-examination?

7 MR. JAMES: No objection.

8 THE COURT: Not for the truth of the  
9 matter asserted at the moment?

10 MR. JAMES: Yes, Your Honor. That's fine.

11 THE COURT: Why don't you just mark it as  
12 whatever you want to mark it as. You can mark it as  
13 Respondent's Exhibit 1.

14 MR. KIRK: Okay. This is -- yeah. We  
15 call it a Exhibit E because we supplied it to them in  
16 discovery.

17 THE COURT: Well, that's fine. We'll just  
18 use the same number.

19 CROSS-EXAMINATION

20 BY MR. KIRK:

21 Q. So I'm handing that to you.

22 THE COURT: It's just at this juncture  
23 admitted solely for the purpose of cross-examination  
24 rather than the truth of the matter asserted.

25 Q. (BY MR. KIRK) Would you look at that document,

1 please, and tell me if that's different than the one you  
2 examined before.

3 A. Well, so these pictures are in color and a  
4 little bit larger and legible. Okay. I've thumbed  
5 through it.

6 Q. Does that appear to be the same document you  
7 looked at except it's larger and in color?

8 A. Appears to be.

9 MR. KIRK: Okay. I'm going to suggest  
10 that it is. We can debate that later, but it is a  
11 larger copy of the same thing that we provided to the  
12 defense.

13 Q. (BY MR. KIRK) You said that as an appraiser,  
14 you are going to measure; is that correct?

15 A. Correct.

16 Q. What would you measure?

17 A. The outside walls of all of the improvements.

18 Q. And in that document, does it appear that  
19 somebody has already measured the outside walls of the  
20 improvements?

21 A. It appears so. I see some square-footage  
22 calculations.

23 Q. And do you also see the diagrams and -- on that  
24 particular page in the upper left-hand corner, are there  
25 measurements in the diagram itself?

1 A. It appears so.

2 Q. And that's on page?

3 A. Ten.

4 Q. Ten, just for the record. You indicated that  
5 you would walk the boundaries. What is the purpose of  
6 that?

7 A. Like I said, just to see if there are any  
8 unusual easements that may be apparent, whether there  
9 are any encroachments, whether the property line appears  
10 to be what -- you know, what it may -- whether the  
11 property line corresponds to a survey, which is another  
12 document.

13 Q. Would you look in this document on page two, an  
14 aerial photograph, do you see that?

15 A. I do.

16 Q. And on page three, a diagram that shows the  
17 boundaries of the property, do you see that?

18 A. I do.

19 Q. Would these be the boundaries that you would  
20 walk?

21 A. Yes.

22 Q. Okay. And if you go back to the previous page  
23 to page two, does it appear to you that this property is  
24 bounded by highways?

25 A. Yes.

1 Q. Does it appear that there's any other real  
2 estate encroaching or near that property?

3 A. It doesn't appear to be from this aerial photo.

4 Q. Okay. So you will agree, though, that those  
5 are roads that go all the way around it?

6 A. Right.

7 Q. And do they appear to be like highways, state  
8 highways, county highway? They are not labeled, but is  
9 that something you could get from the Internet, what --  
10 what the names of those streets are?

11 A. Yes.

12 Q. You said that you would look at the  
13 improvements; is that correct?

14 A. Sure.

15 Q. You indicated that you would look at the  
16 condition; is that correct?

17 A. Right.

18 Q. Describe to me what the condition would be that  
19 you're looking for. What's a typical example of what  
20 you're looking for?

21 A. Say in a house, you know, you would look at the  
22 flooring and notice whether it appeared to be in good  
23 condition or whether it had some years of wear on it.

24 Also, really important in residences would  
25 be whether the bathrooms and the kitchen have been

1 updated over the last five or ten years or so, condition  
2 of the walls and ceilings and condition of the roof.

3 Q. Would you turn -- I'm sorry, would you turn to  
4 page four.

5 A. Okay.

6 Q. I'm going to direct your attention to the  
7 diagram that's in red. And then would you look at  
8 the -- in the box below that where it's labeled home,  
9 does it say the word size? Look at the box below the  
10 red, bottom of the page.

11 A. Yeah.

12 Q. Does it say -- do you see the word size?

13 A. No -- oh, size, right at the top. Okay.

14 Q. Okay. Does it appear that there's measurements  
15 20 feet by 30 feet?

16 A. It does.

17 Q. Is there the word front porch with some  
18 measurements?

19 A. Yes.

20 Q. Is there a word that says structure?

21 A. Yes.

22 Q. Would you read that paragraph aloud, please.

23 A. Constructed of eight by eight by 16 inch  
24 concrete masonry units, CMU, with fiberglass reinforced  
25 stucco on exterior and no interior finish on the CMU.



1 The interior partitions are two by four studs with  
2 gypsum board. The roof is concrete tiles on plywood on  
3 wood roof trusses. Foundation is reinforced concrete  
4 slab on grade.

5 Q. And as an appraiser, would you garner any more  
6 information than that by looking at this building in  
7 terms of -- in terms of structure?

8 A. I don't see anything in there about the --  
9 about the roof, about the roof cover.

10 Q. Let me direct your attention to where it says,  
11 roof is concrete tiles on plywood roof trusses.

12 A. Oh, concrete tiles, yes, sir.

13 Q. Tiles, yes, sir. So you do see something about  
14 the roof; is that correct?

15 A. Yes.

16 Q. Let me direct your attention to the next  
17 paragraph, condition. Would you read that aloud,  
18 please.

19 A. Home was built by the present owner, who is not  
20 a builder with experience in the building field. It is  
21 unfinished and plumbing is in bad shape, bare plywood  
22 floors upstairs. Tile is coming up in places downstairs  
23 through the slab cracks. Stairs have open risers and no  
24 finish. Wood trim is rotting. Clothes dryer is broken.  
25 Barrels are intended for future roof rainwater

1 collection system.

2 Q. Okay. So as an appraiser when you look at a  
3 structure, what else would you say typically besides  
4 what's written in that paragraph? And there's  
5 pictures -- there's photographs here, too. I want to  
6 direct your attention to that.

7 A. I don't see anything about the kitchen. And  
8 the kitchen is certainly maybe one of the more important  
9 points to look for when you're inspecting a house. And  
10 flooring, I don't see anything about flooring.

11 Q. If you will, turn to the next page, page number  
12 five. And I'm not going to make you read all of this  
13 stuff, but do you see also the word structure,  
14 condition, utilities?

15 A. I do.

16 Q. What else would you add if you were appraising  
17 that property other than those things? And if you want  
18 to read it, you may, but we don't need to read it aloud,  
19 unless you want to.

20 A. It -- it's not apparent to me whether there is  
21 any central heat and air and whether there are window  
22 units.

23 Q. Okay. So on page five, let me direct your  
24 attention to utilities. It says, no mechanical,  
25 electrical or plumbing available in the storage area.

1           A.    So am I to understand all -- all of this is  
2 storage, okay.

3           Q.    Yes.  This description box belongs to these  
4 photos and belongs to the diagram at the top of the  
5 page.  It's all color-coded so you can see what's what.

6           A.    So the presence of heating and ventilation  
7 systems wouldn't be very relevant for storage areas, but  
8 it would be for the residence.

9           Q.    All right.  Let me ask you another question.  
10 You mentioned in appraising improvements, you used the  
11 word "how is it built."

12                        So what do you mean by that?  What do you  
13 mean, how is it built?  I don't know your exact words,  
14 but do you understand what I'm asking?

15           A.    Yeah.  So whether it's a wood frame product or  
16 whether wood frame and on slab or whether it's pier and  
17 beam or whether in the case of commercial structures,  
18 they tend to be more steel frame.

19           Q.    Okay.  Now, let me direct your attention back  
20 to page four.  In looking at those photographs, can you  
21 tell the type or the how-built question, what type of  
22 construction it is?

23                        And I also want to call your attention to  
24 the fact that the structure -- the analyst said that it  
25 was CMU.  Do you know what a CMU is?

1 A. Concrete blocks.

2 Q. So can you look at the picture and compare the  
3 picture with that structure description and satisfy  
4 yourself that the photos reflect what's being said in  
5 the description?

6 A. Let's see.

7 Q. And this is on the how-built question.

8 A. Right. Well, so I would say these -- these  
9 pictures here are the only ones of the outside of the  
10 structure. And I would say from those pictures, it's  
11 not apparent to me. If -- if I hadn't read that these  
12 were CMUs, it's pretty difficult to look at that and  
13 tell for sure.

14 Q. Okay. Can you look at the photos and tell the  
15 age of this building?

16 A. By looking at the photos? I would say that's  
17 pretty difficult to do just from these photos.

18 Q. Okay. So if you looked at it in person, could  
19 you tell how old it was?

20 A. It usually makes it easier, just because you  
21 can walk around and see the different perspectives.

22 Q. But could you give me a date?

23 A. An exact date?

24 Q. Well, a year, two years?

25 A. Usually when we get there and we, you know,

1 kind of take it all in, then we'll estimate like an  
2 effective age. So if something were built in 1960, for  
3 example, and then renovated five years ago, maybe that  
4 tends to lower its actual age to a lower effective age.

5 Q. If you looked at this structure in person,  
6 could you tell what decade it was built in?

7 A. Probably could narrow it down, yeah.

8 Q. Could you tell what century it was built in?

9 A. I think so.

10 Q. Okay. That will be an interesting thing to  
11 find out.

12 Now, features -- you mentioned features.  
13 What kind of features are you looking for?

14 A. Well, in some homes you have intercom systems  
15 or you have central vacuum systems or you have HVAC that  
16 has zoned features to it, those sorts of things.

17 Q. Okay. Anything else?

18 A. Not off the top of my head.

19 Q. All right. Let me see. We may be ready.

20 You stated earlier that your goal is to do  
21 whatever is necessary to produce credible results.

22 A. Right.

23 Q. Can you give me three things that you need to  
24 do to make sure your results are credible from your  
25 perspective?

1           A.    So -- well, I mean, the first thing is to  
2 understand the appraisal problem, what it is that you're  
3 appraising. And so that kind of goes to what we're  
4 talking about here, inspecting it and having a good  
5 record then of -- of what it is that you're appraising,  
6 size, features, condition, so forth.

7                         Secondly, then you have to finish going  
8 through the appraisal process, which is -- well, usually  
9 you will implement the sales comparison approach, which  
10 is finding sales of similar properties, and then making  
11 comparisons of the property that you're appraising with,  
12 you know, these other properties that have sold.

13          Q.    Okay. Thank you. So those items, the  
14 appraisal process, the sale of comparisons, making  
15 comparisons, where do you do that? Do you do that  
16 on-site?

17          A.    No.

18          Q.    Do you need to be on-site to do that?

19          A.    Not the analytical part of it, no.

20          Q.    Okay. Thank you. You also said that it's less  
21 reliable without inspection.

22          A.    I would say so generally, yeah.

23          Q.    Are you familiar with the Texas Tax Code?

24          A.    No.

25          Q.    Okay. So I'm not going to ask you a question,

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Redirect Examination by Mr. James

1 but I'll get that out later.

2 MR. KIRK: I pass the witness.

3 MR. JAMES: Just a couple of follow-up  
4 questions, Judge.

5 REDIRECT EXAMINATION

6 BY MR. JAMES:

7 Q. Do you know that the descriptions in this  
8 architectural report are accurate?

9 A. I don't.

10 Q. Okay. Do you know if anything is missing on  
11 there that would affect the value of the property?

12 A. Well, I mean, not without studying it a bit  
13 more. But like I said on the -- on page four where  
14 there's the description of the home, I mean, there's --  
15 I -- like on the utility section, it just says  
16 electrical, plumbing and HVAC, water from pump house via  
17 ground garden hose. Well, I mean, that tells me that  
18 there's the presence of electrical, plumbing and HVAC,  
19 but it doesn't tell me anything about whether it works,  
20 whether it's sized properly and it's sufficient for the  
21 home or not.

22 Q. Would your report be more credible if you were  
23 able to verify the information there and then, you know,  
24 discover additional information from an on-site  
25 inspection?

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1           A.     Yes.

2                   MR. KIRK: All right. Pass the witness.

3                   THE COURT: Anything else?

4                   MR. KIRK: That's all. Thank you.

5                   THE COURT: Thank you. You may step down.

6                   Any other witnesses from the movant?

7                   MR. JAMES: No, Your Honor.

8                   THE COURT: All right. Mr. Kirk, have you  
9 got anything?

10                   MR. KIRK: Your Honor, if it would please  
11 the Court, could I ask Ron Avery to become a witness for  
12 us?

13                   THE COURT: Sure.

14                   You can come on up.

15                   MR. KIRK: Was the previous witness sworn?

16                   THE COURT: Yes.

17                   MR. KIRK: So we need to swear him. I  
18 didn't catch that part.

19                   THE COURT: We will, yep.

20                   Let me get you to raise your right hand.

21                   (Witness sworn)

22                   THE COURT: Thank you. You may have a  
23 seat.

24

25



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1 RONALD AVERY,  
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. KIRK:

5 Q. Could you state your name and address for the  
6 record, please.

7 A. Yes. Ronald Franklin Avery. I live at 1933  
8 Montclair in Seguin, Texas.

9 Q. Are you a licensed architect in the state of  
10 Texas?

11 A. Yes, I am.

12 Q. How many years have you been a licensed  
13 architect?

14 A. Oh, gee, can I just tell you when I got my  
15 license?

16 Q. Yes, sir.

17 A. That was in 1984. I'm not good at math on the  
18 spot, so don't do that to me.

19 Q. How many -- how many years did you attend  
20 college to study architecture?

21 A. I spent -- it's a five-year program to get a  
22 bachelor's of architecture and then a minimum three  
23 years' internship. And I spent seven years' internship  
24 in the Houston area, multiple firms.

25 Q. Do architects make accurate measurements of

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1 built structures for their use in recording existing  
2 buildings and modifying them?

3 A. That's one of the things they're known for,  
4 yes.

5 Q. Have you measured and documented properties  
6 before for your use as an architect?

7 A. Absolutely.

8 Q. Okay. I'm going to hand you what has been  
9 marked as --

10 MR. KIRK: I'm sorry, Exhibit --

11 THE REPORTER: E.

12 MR. KIRK: So we all stuck with E,  
13 excellent.

14 And I'm sorry, Judge, you never got to see  
15 that.

16 Q. (BY MR. KIRK) Okay. Do you recognize this  
17 document, Mr. Avery?

18 A. Yes. It looks like a blowup. I did produce  
19 eight-and-a-half by 11 in color that I gave you earlier.  
20 And this one I see is -- is a blown-up copy.

21 Q. What's the title of that document?

22 A. Architect's Analysis of the Property of  
23 Mr. Douglas Kirk.

24 Q. Did you produce this document and apply your  
25 architectural seal to it?

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1 A. Yes, I did.

2 Q. And where would we see the seal on that  
3 document?

4 A. It's on the -- on the front page here.

5 Q. So this is already in evidence. Let's talk  
6 about it. In February 2019, did you visit the property  
7 the subject of your analysis?

8 A. I did.

9 THE COURT: Okay. Let me just stop you.  
10 I mean, it -- it's his analysis. It's admitted into  
11 evidence on a limited fashion at the moment.

12 MR. KIRK: Okay.

13 THE COURT: So I mean, if you want it --

14 MR. KIRK: You could just say, move along.

15 THE WITNESS: Limited to the issue.

16 MR. KIRK: Well, I'll move along -- or am  
17 I going too slow, Your Honor?

18 THE COURT: No. I mean, if you want it in  
19 other than the cross-examination of the prior witness,  
20 we need to -- we probably need to proffer it as such.

21 MR. KIRK: Actually, I would like it  
22 admitted as a document that he can testify to, so shall  
23 we do that separately?

24 THE COURT: Well, that's why I'm  
25 interrupting.

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1 MR. KIRK: Yes, sir.

2 MR. JAMES: And then I have the same  
3 objection, that it has appraisal judgments in here.  
4 He's not been -- there's -- he's not been admitted as an  
5 expert for appraisal purposes and he wouldn't qualify  
6 for it. So I'm okay with him talking about it  
7 generally, but I don't want it --

8 THE COURT: Yeah. As far as the  
9 admissibility of the document, the document is  
10 admissible but yet subject to cross-examination  
11 regarding the credibility of the information therein.  
12 You can cross-examine him about it.

13 MR. JAMES: Okay. All right.

14 THE COURT: I'm not taking anything within  
15 the document, numbers otherwise, for face value.

16 MR. JAMES: Okay. Fair -- fair enough.

17 MR. KIRK: So in English that means I can  
18 proceed?

19 THE COURT: Now you may proceed. I'll  
20 admit it. This is this witness' product.

21 MR. KIRK: Thank you.

22 Q. (BY MR. KIRK) Who owns the property that that  
23 analysis is of? I think we asked that.

24 A. I understand you, Douglas Kirk, does.

25 Q. Did you personally measure the structures that

RONALD AVERY - APRIL 18, 2019  
Direct Examination by Mr. Kirk

1 are located on the property?

2 A. Yes, I did.

3 Q. And how did you measure that property?

4 A. With a tape measure that you would build  
5 buildings with. You've seen them before. And also, I  
6 used a -- a laser measuring device in some situations.

7 Q. Did you personally photograph the interior and  
8 exterior of any structures that you wanted to?

9 A. Yes, I did.

10 Q. And do those pictures appear in the document?

11 A. Yes, they do.

12 Q. Did you prepare the analysis based upon the  
13 data that you gathered?

14 A. Yes.

15 Q. Did anyone tell you what to do or what not to  
16 do regarding gathering data?

17 A. No, they did not.

18 Q. Were you restricted in any way in gathering the  
19 data?

20 A. No, sir.

21 Q. Does your property analysis accurately  
22 represent what you saw on the property?

23 A. It does.

24 Q. Did you personally make the drawings in the  
25 property analysis?

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Direct Examination by Mr. Kirk

1 A. I did.

2 Q. Did you make those drawings based upon the data  
3 that you personally gathered in the field?

4 A. I did.

5 Q. Did you name the structures and color-code them  
6 in the documents so that anyone could easily locate them  
7 and know the size, condition, type and quality of  
8 construction of each improvement?

9 A. I did.

10 Q. Did you also add notes about available utility,  
11 plumbing, electrical, heating, ventilation and air  
12 conditioning systems observed in each of the structures?

13 A. I did.

14 Q. Did you also do a site plan of the property?

15 A. I did.

16 Q. Did you take into account contour lines and  
17 topographic information?

18 A. I did.

19 Q. Is your property analysis an accurate  
20 description of the size, character and quality of the  
21 property and its improvements sufficient in your  
22 estimation for any licensed appraiser to use in  
23 determining its value compared to other properties?

24 A. It is. I think it's a sufficient report for  
25 that, yes.

RONALD AVERY - APRIL 18, 2019  
Cross-Examination by Mr. James

1 MR. KIRK: I pass the witness.

2 CROSS-EXAMINATION

3 BY MR. JAMES:

4 Q. All right. Mr. Avery, how do you know  
5 Mr. Kirk? How did you become familiar with him?

6 A. We've been friends over the years.

7 Q. For how long?

8 A. Oh, I don't know -- what, ten, 15? I don't --  
9 I can't remember exactly when I first met him.

10 Q. Do you have any appraisal experience?

11 A. No. I'm not an appraiser. I'm familiar with  
12 what they do. I've hired two of them myself. I mean,  
13 I -- I kind of know what they do. I've seen the reports  
14 they make and stuff, yes.

15 Q. So the last question that Mr. Kirk asked you  
16 asked you if this report was sufficient for any  
17 appraiser to use.

18 A. Yes.

19 Q. You know that just by -- by working  
20 occasionally, not based on any particular training or  
21 education?

22 A. Well, like I said, I have seen their work.  
23 I've hired two of them myself on two different pieces of  
24 property I own. I know the kind of things they do. I'm  
25 not an appraiser. This isn't an appraisal, but it is a

RONALD AVERY - APRIL 18, 2019  
Cross-Examination by Mr. James

1 report that is sufficient for appraisal work, yes.

2 Q. Okay. But when you say it's sufficient for  
3 appraisal work, that judgment is not based on any  
4 education or any other training?

5 A. Well, I have a license as an architect, a  
6 pretty good background for dealing with buildings --

7 Q. Yes.

8 A. -- and dealing with site developments, the site  
9 work, what it takes to do that kind of stuff, yeah.

10 Q. Other than the architectural experience, do you  
11 have any other -- any appraisal experience or education?

12 A. Yeah -- well, I mean, it's -- I've had some  
13 very close relationships with it, yeah. I've had to  
14 read those. We read appraisals when we develop  
15 property. We get appraisals of property so we know how  
16 much it costs.

17 Q. So you've read appraisals before?

18 A. I've read many appraisals.

19 Q. Any other thing besides reading appraisals, any  
20 other training or education?

21 A. I've never performed an appraisal -- appraisal  
22 for an appraisal. I mean, let's make that clear. I'm  
23 not an appraiser.

24 Q. To that, you have value --

25 A. I'm not ignorant of the topic, though.



RONALD AVERY - APRIL 18, 2019  
Cross-Examination by Mr. James

1 Q. No. I understand. You have a lot of  
2 experience.

3 A. Yeah. Thank you.

4 Q. Architects -- architects work closely with  
5 appraisers from time to time.

6 A. Yes, they do. Yes.

7 Q. Okay. Okay. When did you first -- when were  
8 you first on the property? When was the first time that  
9 you visited the subject property?

10 A. I'm sorry, I still didn't hear that.

11 Q. When was the first time that you visited the  
12 subject property?

13 A. First time ever?

14 Q. Yes, sir.

15 A. I don't know. I can't remember it. Like I  
16 said, I can't remember exactly when I met him or when I  
17 first visited the property. I bought fireworks over at  
18 his fireworks stand that's on the property.

19 Q. When was that?

20 A. Oh, geez, a couple of years ago --

21 Q. Okay.

22 A. -- something like that.

23 Q. But that was probably the first time that you  
24 were on his property?

25 A. No. I think he -- he does a newspaper and I

RONALD AVERY - APRIL 18, 2019  
Cross-Examination by Mr. James

1 have seen -- I have met him at his house before to talk  
2 about stuff in the newspaper.

3 Q. Okay.

4 A. He lives on the property, so I -- I've been out  
5 there to see him at his home.

6 Q. Okay. Are you being paid for your opinion --  
7 or were you paid for this report?

8 A. Yeah, he did. He paid me.

9 Q. What was your fee?

10 A. \$200.

11 Q. Okay. Do you own property nearby Mr. Kirk's  
12 property?

13 A. No, I don't.

14 Q. Okay. Have you ever filed a protest with the  
15 appraisal district?

16 A. Yes.

17 Q. Okay. What was the result of that protest?

18 A. Pretty good. I got one piece of property  
19 reduced from \$60,000 to \$385.

20 Q. Oh, wow. That was a success.

21 A. The judge wanted to actually get me to help him  
22 on his appraisal work.

23 Q. So you had a lawsuit as well that followed?

24 A. Yes, I did.

25 Q. You've sued the appraisal district before?

RONALD AVERY - APRIL 18, 2019  
Cross-Examination by Mr. James

1 A. Yes. Yes.

2 Q. Okay. Do you have an opinion of the appraisal  
3 district and their work?

4 A. An opinion of the appraisal district?

5 Q. Yeah. Did they do a good job? Did they do a  
6 bad job? What's your general opinion.

7 A. Well, it depends on the property, you know.

8 Q. Okay. Generally, what -- what was your opinion  
9 of the appraisal district then?

10 A. Well, sometimes they do a pretty accurate job  
11 of what they do and sometimes they don't. It just  
12 depends on the property.

13 Q. Okay. Let's see if we have anything else.

14 This architecture report, are there any  
15 requirements or guidelines that govern how the report is  
16 to be written?

17 A. Any guidelines? Well, yes. I mean, first of  
18 all, you've got to document what you have. You have to  
19 get the size of it.

20 Q. What gives you the authority or guidelines that  
21 you have to follow? Is there any -- like for instance,  
22 when Mr. Zgabay was up here, he was talking about the  
23 Uniform Standards of Professional Appraisal Practices  
24 that govern appraisal reporting.

25 A. Right.

1 Q. Is there something analogous for architecture  
2 reporting?

3 A. Not really. Because like I say, they don't do  
4 appraisal work. We do know how to document what's on  
5 the site because we do site analysis. I mean, you could  
6 hire an architect -- and many times when you build  
7 buildings or design a project, you have them do what  
8 they call site analysis. That's one of the first things  
9 we look -- learn in school is site analysis.

10 So you go to the property and you -- and  
11 you -- first of all, you look up a lot of things about  
12 property, you know, the sun orientated, the wind --  
13 available wind and all of that kind of stuff. You  
14 document where trees are, like the topography of the  
15 place; the temperatures year-round, all kinds of things.

16 Now, that kind of stuff is not in here.  
17 It's not really that relevant, but it -- yeah, property  
18 analysis can be quite extensive.

19 Q. Okay. Could you have completed this report  
20 without an on-site inspection?

21 A. I couldn't have done this without -- yeah,  
22 myself, I couldn't have done it without going to it.

23 Q. All right.

24 MR. JAMES: We'll pass the witness.

25

1 REDIRECT EXAMINATION

2 BY MR. KIRK:

3 Q. Okay. First, I've got a couple of questions.  
4 The fact that you've been to the property and you've  
5 photographed the property and you've had full access to  
6 the property, that led you to write this document; is  
7 that correct?

8 A. Correct.

9 Q. Do I need to hire another architect to do the  
10 same thing or can I trust that yours is accurate?

11 A. I think you could trust my work. I'll stand  
12 behind my work. I can't imagine anybody going out there  
13 and producing better work.

14 Q. If I hired an appraiser and gave him that  
15 document, do you think he could answer the questions  
16 that he needs --

17 A. He could do it.

18 Q. -- answered?

19 A. He could do a better appraisal than I could,  
20 but using the same material.

21 Q. But would he need to duplicate your work --

22 A. No, he wouldn't.

23 Q. -- in order -- like if he took his camera out  
24 and pointed it at the wall, would his camera show  
25 something that yours did not?

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1 A. No, sir.

2 Q. If he measured the wall with a tape measure or  
3 with a laser device, would his measurement be better  
4 than yours?

5 A. No, sir.

6 Q. If he asked questions about utilities and  
7 mechanicals and so on, would his results be different  
8 than yours?

9 A. No, sir.

10 Q. Okay. Another question, it was pointed out  
11 that you and I are friends. This is true, is it not?

12 A. Correct.

13 Q. Would you jeopardize your architectural  
14 credentials, your seal, for me as a friend? Would you  
15 lie for me?

16 A. I would not.

17 Q. The architectural seal that you have, not  
18 everybody has one of those, do they?

19 A. No, sir.

20 Q. What's the importance of that seal? If you  
21 look at, say, a set of blueprints or analysis and that  
22 seal is there, what does that tell the world?

23 A. That tells them that I stand behind the work as  
24 a professional architect, that that's an accurate record  
25 of what's on the ground there.

1 Q. How did you get that seal?

2 A. Well, I told you the background, my work. I  
3 had to study for five years, work in the offices for  
4 three years. That's when you get your -- you take  
5 exams, of course. They're quite extensive, nothing but  
6 two days of exams.

7 Q. You've worked for David Weekley Homes?

8 A. Yes.

9 Q. How many homes do you think you've sealed for  
10 them in the past three years?

11 A. I've sealed over a hundred homes.

12 MR. KIRK: Pass the witness.

13 THE COURT: Anything further?

14 MR. JAMES: No other questions.

15 THE COURT: Thank you. You can step down.  
16 Any additional witnesses?

17 MR. KIRK: No, sir.

18 THE COURT: Okay. I think it would  
19 just -- I mean, it's not about lying or anything else.  
20 It's -- it's the matter -- it's a judgment call. It's a  
21 judgment call necessary by an appraiser versus an  
22 architect. And even the architect couldn't have done  
23 his work without going to the site.

24 And so the same, I think, would very much  
25 be true for an appraiser. And a judgment call is --

1 because a judgment call -- it's a personal evaluation.  
2 I mean with that, I appreciate the 192.4 rule, but I  
3 still think we -- we need to probably allow for the  
4 appropriate appraisal.

5 MR. KIRK: Your Honor, can I bring up a  
6 bit of law?

7 THE COURT: You may.

8 MR. KIRK: This is the Texas Tax Code,  
9 Chapter 25, Section 25.18. It's talking about periodic  
10 reappraisals. It says under Section 25.181, Identifying  
11 property to be appraised through physical inspection or  
12 by other reliable means of identification, including  
13 deeds or other legal documentation, aerial photographs,  
14 land-based photographs, surveys, maps and property  
15 sketches.

16 So the Texas Tax Code is telling us, you  
17 can do an appraisal in Texas with an inspection or you  
18 can do it with all of these other things. It doesn't  
19 require you to do an inspection.

20 And I would argue as we started out  
21 earlier today, 192.4, limitations on the scope of  
22 discovery, we've already done the work. I don't see  
23 that it makes any sense to literally violate my rights  
24 to say no, you cannot come on the property so that they  
25 could do something that's already been done.



1 I feel like we ought to work something out  
2 as opposed to telling me that I have to give away all of  
3 my rights, my -- my Fourth Amendment right, my Section 9  
4 right from the Texas Constitution, the -- the right of  
5 criminal -- or noncriminal trespass, Texas Penal Code  
6 Section 30.05.

7 I don't want anybody on my property. I've  
8 been burglarized at six -- at least six times. I have a  
9 tremendous amount of passive deterrent systems on that  
10 property. And to let somebody come on that property  
11 means I have to shut that all down. That's annoying.  
12 It's a burden. It's not necessary and it's going to  
13 cost -- frankly, it's goes to cost the appraisal  
14 district or the defendant in order for me to do all of  
15 that.

16 THE COURT: And does that passive  
17 deterrent system add value to the property?

18 MR. KIRK: Probably not, but it sure is  
19 annoying when you hit it. It's not something I want  
20 people walking around on the property.

21 THE COURT: I don't know what a passive  
22 deterrent system is or is not. But if it's a security  
23 system, is that reflected in this architectural report?

24 MR. KIRK: No, sir, it's not. It's things  
25 like trip wires. The cost of a trip wire is maybe a

1 buck --

2 THE COURT: It's not --

3 MR. KIRK: -- but when you trip --

4 THE COURT: It's not just the cost basis  
5 that's important.

6 MR. KIRK: When you trip on it, it sure  
7 hurts. There are also systems where pepper spray is  
8 released when you trip it. That's all going to have to  
9 be dismantled if -- somebody that I don't approve of  
10 being there, I have to protect their safety. I've got  
11 to go through and take all of that out. Otherwise,  
12 they're going to get hurt and then guess what, they're  
13 going to sue me.

14 Your Honor, another point, the appraisal  
15 district appraises thousands of pieces of property every  
16 year without a physical inspection and they stand by  
17 those appraisals. They publish them. They send them to  
18 the taxpayer. The taxpayer pays based upon those  
19 appraisals. They're not physically done. Why is this  
20 so different? We've offered them a whole lot more  
21 information than they've ever seen before. Why can't  
22 they take that and make their judgment?

23 THE COURT: I think they probably could if  
24 they wanted to, but they're not limited to that. That's  
25 the problem. There's alternate ways to do it, but

1 there's not a limitation on that.

2 MR. JAMES: Your Honor, I just -- I want  
3 to add -- I don't know what I need to respond to  
4 specifically there, but this is a de novo review. Mass  
5 appraisal standards are used on the administrative  
6 level. But once it gets to district court, the Texas  
7 Tax Code specifically states that this is a de novo  
8 review of the appraisal review board order.

9 This case is governed by the same rules  
10 that apply to civil cases generally. We aren't confined  
11 to how it is done at the administrative level. This is  
12 a -- this is a legal proceeding. The rules of civil  
13 procedure that normally apply in this case.

14 THE COURT: Yeah. I mean, just typically  
15 when you go from the administrative to the legal, we're  
16 ramping up, so to speak, the standards regarding  
17 authenticity, credibility, the weight to be given to all  
18 of the different types of evidence in a hypothetical  
19 situation, ergo the reason to up the quality from  
20 different methods that you have suggested, including  
21 what you have provided.

22 I mean, I think there can be some  
23 reasonable conditions established that -- you know, that  
24 will allow for an appropriate inspection. I -- I just  
25 don't think that any taxpayer can produce their own

1 work, you know, and then expect the other side of  
2 litigation to accept it.

3 I mean, this -- this will be used for your  
4 side of the equation and they're entitled to use what  
5 they want for their side and then the two can compete.  
6 That's what the purpose of litigation is. Then we'll  
7 let the fact finder decide ultimately which one they  
8 place most or more credibility in. It might be a  
9 combination of the two somewhat.

10 And with that, I mean, I'm going to order  
11 that the inspection be allowed, Doug -- Mr. Kirk.

12 MR. KIRK: And, Your Honor, what  
13 conditions are we going to follow?

14 THE COURT: Three people. I mean --

15 MR. JAMES: Can we -- can we add a  
16 potential peace officer to come with us? I'm a little  
17 bit nervous about all of the passive -- it will be the  
18 three people that we mentioned and then possibly a peace  
19 officer.

20 THE COURT: I don't know what -- what do  
21 you mean by that? I mean, somebody on duty or  
22 something?

23 MR. JAMES: Somebody from the sheriff's  
24 office. We'll hire an off-duty cop to come with us just  
25 to supervise so that -- so that it's a -- it's a

1 protected inspection and everything is clear.

2 MR. KIRK: That's pretty offensive.

3 THE COURT: Yeah. I'm not sure that's --  
4 when do you need to accomplish this by?

5 MR. JAMES: We would like to do it in the  
6 next 30 days, if that's practical.

7 THE COURT: Gotcha. Today is the 18th. I  
8 don't know what day of the week --

9 MR. KIRK: Look for a Sunday, please.

10 THE COURT: A Sunday?

11 MR. KIRK: A Sunday, yes, sir.

12 THE COURT: I'm not going to force them to  
13 do it on a Sunday, on a weekend.

14 MR. KIRK: But you're going to force me to  
15 do it on a nonweekend. Why do they get to pick the date  
16 and I don't?

17 And I would argue, too, they only need one  
18 person. This appraiser right here -- we'll go with this  
19 guy right here. Why do they need three people? What  
20 are they going to do, hold his camera?

21 THE COURT: That's just as offensive.

22 MR. KIRK: I'm sorry?

23 THE COURT: That's just as offensive,  
24 Mr. Kirk.

25 MR. KIRK: Sir, I think it's very

1 offensive to order me --

2 THE COURT: All right. Very good.

3 THE BAILIFF: Quiet, sir. Watch your tone  
4 with the Court, please. Thank you.

5 THE COURT: Very good. I'm not -- I'm not  
6 going to send a peace officer out there. But at the  
7 same time, if somebody needs to -- assistance, they can  
8 have some assistance. And if they want to do it on the  
9 19th of May, which is a Sunday, they can do it. My  
10 point is, they can do it that week of the 19th through  
11 the 25th with, you know, basically ten days' notice or  
12 something. Is that sufficient, with the precise day  
13 within that week, I mean, that they choose? I don't  
14 know what their schedule is. I'm not going to dictate  
15 that somebody go do it on a weekend because normally  
16 people are going to church.

17 MR. KIRK: What length of time, sir?

18 MR. JAMES: We can limit it to two hours.

19 THE COURT: Two hours.

20 MR. KIRK: And can we have the names of  
21 the people in advance so we can do a background check?

22 THE COURT: I mean, if you must, but --  
23 yeah, we'll get you the names, just ten days in advance.

24 MR. JAMES: We can do that.

25 THE COURT: Just pick the date, give them

1 the names.

2 MR. JAMES: Okay. What time of the day  
3 works best for you?

4 MR. KIRK: 1:00.

5 THE COURT: Okay. At one p.m. on whatever  
6 date they give you notice of, the names of the people,  
7 ten days in advance of some date, the 19th through the  
8 25th.

9 Anything else?

10 MR. JAMES: No, Your Honor.

11 THE COURT: I mean, as far as you -- just  
12 conditions, so to speak?

13 MR. KIRK: Well, I -- I would have a lot  
14 of conditions. I would want them to sign a liability  
15 release so if anybody gets hurt, I'm not blamed. This  
16 property has creeks that are 16 feet deep. And if  
17 somebody falls in a creek and breaks a leg, I don't want  
18 to be responsible.

19 THE COURT: I'm ordering it, the  
20 inspection. I mean, if there's -- there's a bit of a --  
21 you know, as an order of the Court, I think that pretty  
22 much sufficiently covers you in that regard.

23 Anything else?

24 MR. KIRK: I guess not. Thank you.

25 THE COURT: Okay.

1 MR. JAMES: Thank you, Your Honor.

2 MR. KIRK: Do you need that document?

3 THE COURT: No. You may have it. You can  
4 withdraw the exhibits.

5 MR. KIRK: Thank you. We'll withdraw them  
6 and bring them back at trial. Thank you very much.

7 MR. JAMES: May we be excused?

8 THE COURT: Yes.

9 MR. JAMES: Thank you, Your Honor.

10 (Proceedings adjourned)

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1 STATE OF TEXAS  
2 COUNTY OF COMAL

3  
4 I, Cindy Cummings, Official Court Reporter in and  
5 for the 433rd District Court of Comal, State of Texas,  
6 do hereby certify that the above and foregoing contains  
7 a true and correct transcription of all portions of  
8 evidence and other proceedings requested in writing by  
9 counsel for the parties to be included in this volume of  
10 the Reporter's Record in the above-styled and numbered  
11 cause, all of which occurred in open court or in  
12 chambers and were reported by me.

13 GIVEN UNDER MY HAND, on this the 28th day of April,  
14 2019.

15 /s/ Cindy Cummings

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