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# PREP&TRIAL

**JULY 10 - 11, 2025**  
**COLUMBUS, OH**



# Discovery and Depositions

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# Discovery By the Assessor

**Interrogatories – By property type**

**Requests for Production – By property type**

**Request for Admissions**

**Depositions**

**Inspection of the Subject Property**

**Non-party discovery**

**Discovery to Experts**



## Discovery By the Owner



Interrogatories – Assessment development/Equal Protection

Requests for Production – Assessment Development/ E.P.

Request for Admissions

Depositions – Assessor staff, expert

Public Records Request



## Discovery Scope and Limits

### Federal Rule of Civil Procedure 26(b)(1)

“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.”

Your state’s rule is likely the same.



# Timeline and Chronology of Discovery



Discovery in the age of case management orders – Deadlines!

Starting early

Basic discovery

Follow-up discovery

Macro to micro

Understand the case/issues and theory of the case

Be prepared to modify as issues arise

Do not let the opposing party decide what is at issue



# Standard Template vs. Customized Discovery



Basic discovery you should always serve

Case specific discovery

- No two property tax cases are alike.
- Different property types
- Different issues



## Interrogatories by Assessor

Assessor - What are the specific issues?

Fleshing out the details absent in the complaint and eliminating issues:

- Functional Obsolescence
- External Obsolescence
- Physical depreciation
- Intangibles
- Market rent/vacancy
- Identity of the players (Who knows what?)



## Request to Produce By Assessor

- All documents identified in interrogatories
- All documents supporting allegations of complaint (by paragraph)
- Income information - timeframe sufficient to determine stability of income stream/trending
- Capital improvements made (pre-date of valuation)
- Capital improvements planned (or made post date of value)
- Repairs made and planned



## Request to Produce By Assessor

- Other appraisals or estimates of value
- Recent sale - all transaction documents
- Offers to buy or sell
- Quarterly reports/financing documents
- SEC reporting
- Statements re: value



## Request to Produce By Assessor

- Data from other locations of chain stores (viability of subject)
- Chain stores - Planned closures
- 5-year plan
- Location/design/traffic count requirements for retail chain stores
- Newer or planned design changes of chain stores



## Request to Produce By Assessor

Any other admissions by party or admissions by agent of party

- Employees
- Real Estate Agents
- Affiliated entities
- Lenders
- Third party contractors



## Interrogatories by Owner

How was the assessment established?

- Who did what?
- Assessment process
- Sources of assessor's data

Compliance with statutory requirements

Consideration of relevant aspects of value in assessment



## Request to Produce By Owner

- Entire file on subject vs. protected confidentiality, nondisclosure, proprietary fiscal information.
- Documents re: mass appraisal system
- (Do you defend using mass appraisal-multiple regression analysis, market-based income tables, cost modeling or defend using one of the three approaches to value?)
- All documents identified in interrogatories
- Alternative to request to produce - Public Records Request



## Request to Admit



- Shortcutting trial procedures
- Foundations for admitting documents and facts



# Site Inspections



## **Parties Attending**

- Attorneys
- Assessor's Expert
- Client Representatives
- Property Manager/Owner's Rep w/ knowledge of property

## **Photos**

**Considering whether to include view of property at trial**



## Discovery to Non-Parties

- **Lenders/Banks**
- **Appraisers of subject property**
- **Contractors**
- **Discovery to Out-of-State entities**
  - **Complying with other state's laws**



# Discovery Outside the Confines of Civil Procedure



- **Public Records Requests**
  - To the Assessor
  - By the Assessor to other Government Agencies
- **Questionnaires**
- **Investor & Quarterly Reports**
- **Appraisals on the Internet**
- **SEC Filings**
- **Media Articles/Announcements**



# The Deposition





# Deposing the Appraiser



Depositions of appraisers often determine the outcome of the case

Settlement

Success at trial



# Goal of the Deposition - Attorney



"OK! I'LL TALK!"



## Goals of the Deposition - Attorney

- **Acquire information**
- **Eliminate surprises**
- **Cross examination prep**
- **Admission or “gotcha” statement**
- **Settlement “Motivation”**
- **Evidence in support of Motion in Limine**



# Goal of the Deposition - Expert





## Goal of the Deposition - Expert

- Don't educate the other side – this is not the time to show off your brilliance...
- ...Unless the client wants to impress to try to settle the case.
- Answer only the question asked (Yes, no, “I'd have to look into that.”)
- Your attorney can have you elaborate later.



## Deposition Prep – Attorney

### **Get help from your expert**

- Review appraisal
- Attend the deposition
- Provide preparation help and questions

### **Get help from another attorney**

- Experienced in valuation cases
- Experienced in property type



## Deposition Prep – Expert



- Review your appraisal and work file.
- Review your appraisal theory
- You can still make changes (And then you can still expect another deposition.)



## Deposition Notice – Duces Tecum

- Appraisal
- Work file
- Other appraisals (and a list of other appraisals)
- Transcripts
- Authoritative texts
- (Review these before the deposition starts, take a break, or continue the depo)



## Deposition Notice Duces Tecum



*WPG Rockaway Commons LLC v. Rockaway Twp. Tax Collector*,  
2024 Bankr., LEXIS 2632; 2024 WL 4615552 (US. Bkrtcy. Ct., S.D.  
Texas, Houston Div. 2024)

- Can the same person be both a testifying and non-testifying expert?
- What is discoverable from that expert?



## Deposition Notice Duces Tecum

*WPG Rockaway Commons LLC v. Rockaway Twp. Tax Collector*,  
2024 Bankr., LEXIS 2632; 2024 WL 4615552 (US. Bkrtcy. Ct., S.D.  
Texas, Houston Div. 2024)

- Testifying expert's report is discoverable.
- Non-testifying expert's report is not discoverable.
- Draft of non-testifying expert's report not provided to attorney is discoverable when same person testifies.



## General Areas of Inquiry -Qualifications

- Local market knowledge
- Experience with property type
  - How many
  - When?
- Designations
- Publications/articles



## General Area of Inquiry – Approaches Considered

- Approaches considered
- Approaches rejected
- Why did the expert rely on the approach selected? (Market participants, available data, jurisdictional mandate, etc.)



# Cost Approach





# Cost Approach – Areas of Inquiry



Land value

Costs

Depreciation

Obsolescence



## Cost Approach - Costs

- Hard and soft costs
- Actual costs or cost manual
- Entrepreneurial profit



## Cost Approach – Physical Depreciation

- Average or excessive?
- What was the basis of that determination?
  - Depreciation tables?
  - Underlying data
  - Age/life
- Subsequent repairs that may have changed age?



## Cost Approach - Obsolescence

- *Eurofresh, Inc. v. Graham County, 187 P. 3d 530 (Az. App. 2007)*
- *-168 acre hydroponic greenhouse*
- *-40% external obsolescence adjustment based on 3 greenhouse sales*
  - *-2 not in operation at time of sale*
  - *-All 3 sold out of foreclosure or bankruptcy*



## Eurofresh, Inc. v. Graham Cnty



“It is not sufficient... to simply assert that a property’s value should be reduced because of external obsolescence observed elsewhere. Particularly, when, as here, a taxpayer calculates obsolescence based on other ‘comparable’ properties, the taxpayer must prove that the subject property actually is affected by the obsolescence seen in the other properties.”



- Double-dipping
  - If sales or income is used to adjust for obsolescence, isn't physical depreciation also a factor in those sales?
  - If replacement cost is used, doesn't that already factor in functional obsolescence/superadequacy?
  - Does using income as obsolescence adjustment just back into the income approach?



# Sales Comparison Approach

## Sales Comparison Approach





## Sales Comparison Approach

- Comparables considered
- Comparables rejected (work file)
- Highest and best use (breadth of initial H&B determination)
  - - Restrictive covenants
  - - Maximally productive
  - - Existing use, modify, demolish
- Fair market value – hypothetical transaction



# Sales Comparison Approach

- Comparables
- Highest and best use of comparables
- Post EDOV sales
- Adjustments
  - Location
  - Time
  - Physical features
  - Obsolescence



# Income Capitalization Approach

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## Income Approach

- Same questions as in Sales Comparison Approach re: rent comparables
- Capitalization rate (Market-extracted or build-up rate)
- Comparables used for market extracted cap rate



# Adjustments

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## Qualitative or quantitative?

Qualitative – subjective plus or minus adjustments based on relative comparison (appraiser's judgment)

Quantitative – numerical plus or minus percentage adjustments (appraiser's judgment)

Direction of the adjustments (all in one direction?)



## Deposition – Appraisal Theory

- The Appraisal of Real Estate
- These are often theory cases....
- Market demand and marketability
- Fee Simple
- Highest and best use
- Three approaches to value
- Fair market value – or other jurisdictional requirement



## Deposition – Appraisal Theory

- Valuation goal – FMV, Market value in use, etc.
- Fee simple – easements, restrictive covenants
- Market demand/marketability
- Highest and best use – (Physically possible, Legally permissible, Financially feasible, Maximally productive)



## Uniform Standards of Appraisal Practice



Many judges are indifferent

Must tie USPAP violations to value conclusion

Perhaps tax courts or administrative hearings with appraisers as fact-finders would be more concerned



## Post-Deposition

- “Bad” Depo – Saved by the errata sheet!
- The “Perfect” Depo – doesn’t exist!



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