

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

WILLAMETTE GARDENS APARTMENTS)	
LLC,)	
)	
Plaintiff,)	TC-MD 150146C
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	FINAL DECISION OF DISMISSAL

This Final Decision incorporates without change the court’s Decision of Dismissal, entered September 24, 2015. The court did not receive a statement of costs and disbursements within 14 days after its Decision of Dismissal was entered. See TCR MD 16 C(1).

This matter is before the court on its own motion to dismiss Plaintiff’s complaint for failure to comply with the court’s Order Compelling Site Inspection, issued September 14, 2015.

Defendant previously moved the court “for an order allowing Defendant access to the subject property to perform a site visit no later than August 28, 2015.” (Def’s Mot Formal Disc & Site Visit at 1.) The court granted Defendant’s request for a site inspection in its Order Granting Discovery, issued August 21, 2015. On September 2, 2015, Defendant filed a Motion for Sanctions, stating that Plaintiff failed to respond to its requests for a site visit and asking the court to dismiss Plaintiff’s Complaint. (Mot for Sanctions at 1.) On September 14, 2015, the court issued an Order Compelling Site Inspection, requiring Plaintiff to contact Defendant to arrange for a site inspection to occur on or before September 21, 2015. The court denied Defendant’s request for dismissal, but warned Plaintiff that failure to comply with the court’s order, by ensuring that Defendant was allowed a site inspection by the specified date, would result in dismissal of Plaintiff’s appeal, absent extraordinary circumstances. On

September 22, 2015, Defendant notified the court that it had not heard from Plaintiff's representative, and that the site inspection had not occurred. As of the date of this Decision of Dismissal, the court has received no further communication from Plaintiff.

Tax Court Rule – Magistrate Division (TCR-MD) 9 D provides that “[t]he court may sanction any party withholding information, including exclusion of the information from future proceedings, *or any other measure the court considers appropriate.*” (Emphasis added.) Tax Court Rule (TCR) 46 B(2)(c) provides that if a party fails to comply with a court order to compel the court may “dismiss[] the action or any part thereof, or render a judgment by default against the disobedient party.” In *Poddar v. Dept. of Rev.*, Oregon’s Supreme Court stated that where the property’s value is directly at issue, “the [Defendant’s] ability to defend against the complaint seriously would be impeded without access to the property.” 328 Or 552, 563, 983 P 2d 527 (1999).

The court warned Plaintiff that its Complaint would be dismissed if it failed to comply with the court’s prior orders. Plaintiff has not arranged for a site inspection. Plaintiff’s failure to do so has seriously damaged Defendant’s ability to defend itself. Plaintiff has offered no justification and no explanation for its failure to comply. The court finds that Plaintiff’s Complaint must be dismissed. Now, therefore,

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IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this ____ day of October 2015.

DAN ROBINSON
MAGISTRATE

If you want to appeal this Final Decision of Dismissal, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

***Your Complaint must be submitted within 60 days after the date of the Final Decision of Dismissal or this Final Decision of Dismissal cannot be changed.
TCR-MD 19 B.***

This document was filed and entered on October 12, 2015.