

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JAVELIN INVESTMENTS, LLC, *et al*,
Plaintiffs,

v.

ANGELA MCGINNIS AND MICHAEL
MCGINNIS
Defendants.

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CIVIL ACTION H-05-3379

ORDER

Plaintiffs filed a motion to compel defendants to comply (Dkt. 105) with this court's prior order (Dkt. 80) for a Rule 34 inspection. This court's prior order instructed that an expert inspection of the 9164 Westview house was to take place at a mutually convenient time between August 21 and October 1, 2006. The parties have failed to establish a mutually convenient time for the expert inspection. Instead, the parties have contentiously exchanged protocols regarding how the expert inspection is to take place.

Accordingly, this court ORDERS as follows:

1. The expert inspection is to take place between Monday, October 23, 2006 and Friday, October 27, 2006. Parties are to choose a mutually agreeable date within that range of dates. Friday, October 27, 2006 shall serve as a default date should the parties fail to come to an agreement.
2. The inspection may begin no earlier than 9:00 a.m. and end no later than 5:00 p.m.
3. In the event of dangerous weather conditions causing interference with exterior inspections (if deemed necessary by plaintiffs' expert) on the date chosen by the parties, the interior inspection of the house

is to take place as scheduled and any exterior inspection is to take place within three business days.

4. The purpose of the inspection is to examine and document the layout and dimensions of the subject house.
5. The inspection may be performed by plaintiffs' designated expert, Carl Mattern, assisted by not more than one (1) helper (besides plaintiffs' counsel).
6. One representative from plaintiffs' counsel may attend the inspection. One representative from defendants' counsel may attend the inspection. Counsel are expected to behave with the civility and courtesy befitting their chosen profession, and to ensure that their clients and agents are respectful and considerate in their dealings with the other side.
7. Plaintiffs may not attend the inspection or otherwise find themselves within close proximity of the subject house during the inspection.
8. Defendants may attend the inspection.
9. Defendants may not interfere with or disrupt the inspection in any manner whatsoever.
10. Defendants must allow full access to all portions of the subject house and must immediately accommodate reasonable non-invasive, non-damaging requests made by the plaintiffs' expert.
11. Plaintiffs' counsel is to provide a very brief written overview of the planned inspection so defendants may anticipate and accommodate the reasonable non-invasive requests of the expert. The overview shall be provided to defendant's counsel no later than two business days before the agreed inspection date.
12. Plaintiffs' expert may take non-invasive, non-damaging measurements of the exterior and interior of the subject house.
13. Plaintiffs' expert and/or counsel may videotape and/or photograph the exterior of the subject house.
14. Plaintiffs' expert and/or counsel may photograph the interior of the subject house. Plaintiffs' expert and/or counsel may not videotape the interior of the subject house.
15. Defendants and/or counsel may not videotape the inspection. Defendants and/or counsel may photograph the inspection.
16. Plaintiffs' expert must serve expert reports within 20 calendar days of inspecting the subject house. Defendants' expert report (if any) is due within 20 calendar days after receipt of plaintiffs' report.

17. CAUTION: Failure by any party, party counsel, or party agent to comply with this order will result in immediate sanctions.

Any objections to this order or requests for clarification must be filed in writing no later than Monday, October 16, 2006. If a party chooses to object, opposing counsel must respond within three business days.

Signed at Houston, Texas on October 11, 2006.



Stephen Wm Smith
United States Magistrate Judge