

Inwood Forest Legal Issues – 2007/2008/2009/2010

Chronological Summary

December 2006/January 2007

- In mid December of 2006, Inwood Forest Golf and Country Club (IFGCC) made an application with the City of Houston Planning and Development Department (P&D) to replat the 8.311 acres of land at the corner of Antoine and Long Creek where the clubhouse and parking lot are located. The main purpose of filing for the replat was to remove the current use restriction on that 8.311 acres of land. The current restriction limits its use to *recreational or landscaping purposes*.

The Near Northwest Management District (NNWMD) stepped in due to the short time frame and hired the law firm of Hoover Slovacek, LLP to fight the application on the grounds that a restriction cannot be removed by simply replatting the property. At the P&D hearing on January 4, 2007, IFGCC withdrew its application at the last minute.

- Mid January of 2007, the Inwood Forest Community Improvement Association (IFCIA) stepped in and took over from NNWMD in anticipation of IFGCC refileing its application with P&D to replat the 8.311 acres.
- IFGCC files a second application to replat the 8.311 acres and remove the current restriction on the property.

February 2007

- **February 1st** - IFGCC sells the golf course to Inwood Forest Partners, LP (IFP). Shortly thereafter, it is announced that the golf course and club house will be closed effective March 4, 2007. (Note: Renaissance Golf Group (RGG) owns the Clear Lake and Quail Valley golf courses. Many of the partners in RGG are also partners in IFP. The Clear Lake golf course is closed. The Quail Valley golf course is currently in operation.)
- **February 15th** - the City attorney's office recommends that the application to replat not be approved. IFGCC withdraws its request prior to the hearing scheduled for that day.
- **February 21st** - members of IFCIA and NNWMD meet with members of IFP at NNWMD's office. IFP states that they are golf course converters, not developers. Their intention is to get the IF golf course property ready for a development and sell it. No plan(s) was presented for the development/use of the golf course property.

When asked if the group had ever successfully converted a golf course, Mark Voltmann responded, “No.”

March 2007

- IFCIA files a lawsuit on March 21, 2007 in the Harris County 157th Judicial District Court. The cause # is 2007-16697.

The defendants in the lawsuit are:

- Inwood Forest Partners, L.P. (the new owner of the IF golf course)
- Caminata Holdings, LLC (Inwood Forest Partners, L.P. general partner) and
- Inwood Forest Golf and Country Club, Inc. (IFGCC), the previous owner of the IF golf course

In the lawsuit, IFCIA contends that IFP is in breach of implied restrictive covenants re: the Inwood Forest golf course. It notes that Inwood Forest was built and marketed as a golf course community and that buyers relied upon those representations; deed restrictions for homes that border the golf course include provisions that take into account the presence of the golf course and that golf course lots were sold at a premium.

House Bill (HB) 3232 – Missouri City backs the drafting of legislation that applies to the development of golf course properties. It does not prevent development, but it provides for an orderly process of notifying residents of proposed development projects and requires public hearings. In general, it requires developers to disclose their intentions up front and requires the appropriate city/county/municipalities to make a preliminary determination as to whether the plan meets applicable building ordinances.

April 2007

- IFP files a third application with P&D regarding the replatting of the 8.311 acres at the corner of Antoine and Long Creek. This application differs from the first two applications. It requires a public hearing and the posting of signs notifying residents of a public hearing to be held on May 10th. IFP’s request is basically the same as the first two applications: it wants to remove the current use restriction on the 8.311 acres by simply replatting the land. This is in violation of Texas statute.

May 2007

- **May 2nd** – IFP began skinning the greens on parts of the West side of the course. IFCIA filed for and received a Temporary Restraining Order (TRO) against IFP. The TRO required IFP to stop any further destruction of the golf course until

IFCIA's lawsuit against IFP could be heard by the courts. IFCIA is required to post a \$10,000 bond.

- **May 10th** – A public hearing was held by P&D re: IFP's application to replat the 8.311 acres and remove the current use restriction. Councilmember Toni Lawrence requested and received a two week deferment on behalf of IFCIA.
- **May 17th** – Mark Voltmann of IFP was deposed by IFCIA's attorneys.
- **May 18th** – IFCIA's request for a Temporary Injunction was heard by Judge Randy Wilson.
- **May 21st** – Judge Wilson denied IFCIA's request for a Temporary Injunction without explanation.
- **Weeks of May 14th and 21st** - HB 3232 passed both the Texas House and Senate. HB 3232 is not applicable to the Inwood Forest golf course while it is the subject of a lawsuit. However, once the lawsuit is settled, HB 3232 will apply to the Inwood Forest golf course.
- **May 24th** – A public hearing was held by P&D regarding the removal of the restriction on the 8.311 acres where the country club and parking lot are located on Antoine and Long Creek. This was IFP's third attempt to have the current land use restriction removed and changed to unrestricted. The commission denied IFP's request pending the outcome of IFCIA's lawsuit against IFP.
- IFP files suit against Texas Bonding Co. which issued the bond IFICA was required to put up per the May 2, 2007 TRO request.

June 2007

- **June 15th** – Governor Perry signed HB 3232 into law and it became effective immediately.

- **June 18th** – IFCIA filed for an appeal of the Judge Wilson’s ruling denying IFCIA’s request for a temporary injunction.
- Knudson & Associates, IFP’s land use consultant, is subpoenaed by IFCIA

July 2007

- IFP claims that Knudson & Associates is not subject to subpoena due to the consulting expert privilege.
- IFP files suit against the City of Houston re: the P&D’s May 24th denial of IFP’s request to replat the 8.311 acres pending the outcome of IFCIA’s lawsuit against IFP.
- Mid July, the Appeals court orders IFP and IFCIA to nonbinding mediation.

August 2007

- **August 7th** - Clymer Wright, IFCIA board member, appeared before the Houston City Council to make them aware of the condition of the IF golf course and to find out why Neighborhood Protection was not enforcing the City of Houston ordinances re: tall grass/weeds etc... and fining IFP for their violations.
- The head of Neighborhood Protection came out to IF, toured the golf course property and began the process of citing IFP for code violations related to the golf course property.
- **August 14th** – Stacy Dudevszky, the former owner of the Inwood Forest golf course (IFGCC), is deposed by IFCIA’s attorneys.

September 2007

- **September 25th** - IFCIA and IFP meet for court ordered mediation. IFP presented “a” proposed plan for development of the golf course. IFCIA requested and received a 30 day period to consult with a land use expert to evaluate the proposed plan.

October 2007

- **October 1st** – IFCIA and its attorneys met with Vernon Henry & Associates, land use consulting experts, to discuss IFP’s proposed plan and to hire them to prepare a study of the golf course property.
- **October 25th** – IFCIA requested an extension of time from IFP to give Vernon Henry & Associates time to complete their study. IFP agreed to a 45 day extension of time until December 10, 2007 and asked that IFCIA meet with Mark Voltmann sometime during the week of November 26, 2007.

November 2007

November 30th – IFCIA met with IFP to discuss the proposed plan for development presented to IFCIA on September 25th. IFCIA’s representative from Vernon Henry & Associates noted several critical items that were not addressed in the plan. Two of the most important issues noted were that the floodway boundary was improperly identified on part of the plan and water detention was not addressed. IFP agreed to have a hydrology study done on the property and to share that information with IFCIA. It was estimated that the work would be done sometime in January of 2008. IFP also noted that it was drafting deed restrictions for the property and would allow IFCIA to review them. IFP and IFCIA agreed to meet again in February at a date to be determined.

December 2007

December 12th – IFCIA held a townhall meeting for Inwood Forest residents at Hoffman Middle school to discuss the status of the legal issues related to the golf course.

January 2008

January 25th – IFCIA held its annual meeting at Eisenhower High School. A presentation was made by a representative from the Near Northwest Management District regarding potential recreational uses for the golf course property. It was noted that a conservancy group was going to be formed to work on coming up with a plan for the recreational use of the property and to acquire the property. An update was given by IFCIA’s attorney regarding the current status of the various legal issues related to the golf course property.

February 2008

February 14th - A third mediation meeting was held with IFP. IFP had representatives from Dodson & Associates (hydrologists and civil engineers) and

Walter P. Moore (civil engineers) at the meeting. Dodson and Associates discussed a calculation that was done regarding the amount of detention that would be needed for each tract of land that makes up the golf course property. IFP and Dodson & Associates indicated that a formal study was not done because the developer(s) that developed the golf course property may have a different development plan from what was presented to IFCIA at these mediation hearings so, a detailed study would not be appropriate at this time.

IFP noted that they were on the third draft of deed restrictions and again said that they would make a draft of those restrictions available to IFCIA for our review. The mediation meeting then ended. The agreed deadline for this round of the mediation was February 29, 2008.

At the conclusion of our last mediation/settlement conference on February 14, 2008, IFCIA's counsel contacted IFP's counsel to reaffirm IFCIA's desire to continue settlement negotiations and obtain a draft of a proposed agreement that described an agreed use for the golf course property. IFP's attorneys did not return our counsel's calls and shortly thereafter, without further notice, IFP discontinued settlement negotiations and chose to pursue further litigation.

March 2008

During the first week in March, Inwood Forest Golf and Country Club, the previous owners of the golf course, filed a Motion for Summary Judgment asking the courts to dismiss IFCIA's lawsuit against them. A hearing was requested for April 11, 2008.

During the second week in March, IFP and their general partner, Caminata Holdings, filed a Motion for Summary Judgment asking to dismiss IFCIA's lawsuit against them. A hearing was requested for April 11, 2008.

IFP, Caminata Holdings and Inwood Forest Golf and Country Club are all named in the lawsuit brought by IFCIA.

March 28th - IFCIA and its attorneys appeared in Judge Randy Wilson's court and requested the following:

1. A continuance for the lawsuit against IFP, Caminata Holdings and Inwood Forest Golf and Country Club. The trial was scheduled to begin May 12, 2008. IFCIA noted that during the mediation process, IFCIA concentrated on the mediation process and now needed time to return to preparing for the trial. Judge Wilson granted IFCIA a continuance. The trial is now set for September 15, 2008.
2. A continuance to respond to IFP and Inwood Forest Golf and Country Clubs' requests for a Motion for Summary Judgment. Judge Randy Wilson granted IFCIA

a continuance for both. The hearings for these motions will take place on July 25, 2008.

July 2008

July 9th - Judge Randy Wilson had a telephone hearing with IFP and IFCIA's attorneys. He asked the July 25th hearing be put off for now due to a scheduling problem. IFCIA's attorneys reminded Judge Wilson that IFCIA filed a motion in August 2007 regarding IFP's contention that Knudson & Assoc. is a consulting expert and, therefore, is not subject to questioning/document requests by IFCIA's attorneys. Judge Wilson said he would get back to IFCIA within a week or so.

August 2008

August 7th - Judge Randy Wilson overruled IFP's objection to IFCIA's request for documents from Knudson & Assoc.'s. Judge Wilson ruled that Knudson & Assoc. is not a consulting expert. This means that IFCIA can now review Knudson & Assoc.'s documents related to the sale of the golf course.

September 2008

September 5 - IFCIA and IFP's attorneys had a telephone hearing with Judge Randy Wilson. The purpose of the conference call was to:

1. Set the hearing date for the motion for summary judgment filed by Inwood Forest Partners (the current owners of the golf course) and Inwood Forest Golf and Country Club (the previous owners of the golf course.) The hearing was supposed to take place on July 25th, but was postponed by the judge due to a scheduling conflict.

The hearing for the motion for summary judgment was reset for Friday, October 3rd.

2. IFCIA's lawsuit against Inwood Forest Partners and Inwood Forest Golf and Country Club - The trial was scheduled to start on September 15th. IFCIA requested a continuance on the grounds that the judge just recently ruled that Knudson & Associates are not consulting experts. As a result of this, Knudson & Associates turned over documents related to the Inwood Forest golf course property several weeks ago. IFCIA's attorneys needed time to go thru these documents and to take depositions from one or more Knudson & Associates' employees.

The judge granted IFCIA a continuance for the beginning of the trial until Monday, December 8th.

September 25 - Due to Hurricane Ike, IFCIA's attorneys requested and received a continuance for the hearing regarding the motion for summary judgment that had been scheduled for October 3rd.

Patti Knudson Joiner of Knudson & Associates had been scheduled to be deposed by IFCIA's attorneys on Friday, September 12th, the day before Hurricane Ike. The deposition was canceled and reset for October 7th.

October 2008

October 7th – The first part of Patti Knudson Joiner's deposition was taken.

October 15th – The final part of Patti Knudson Joiner's deposition was taken.

October 31 - Judge Randy Wilson heard arguments re: Inwood Forest Partners (the current owners of the golf course) and Inwood Forest Golf and Country Clubs' (the previous owners of the golf course) motions to have IFCIA's lawsuit against them dismissed. Judge Wilson did not make a ruling. There are two cases that he wants to review. One of the cases has been cited by IFP's attorneys and the other is a recent case that has been cited by IFCIA's attorneys. Judge Wilson said that he needed to review these cases again. Both cases are central to the arguments for this motion and the original lawsuit filed by IFCIA.

November 2008

November 21 - Judge Wilson heard arguments regarding a motion for summary judgment that was filed by Inwood Forest Partners (IFP) and Inwood Forest Golf and Country Clubs' (IFGCC). IFP and IFGCC are seeking to have IFCIA's lawsuit against them dismissed. As we reported earlier, Judge Wilson said he needed time to review two cases. One case was cited by IFP and the other was cited by IFCIA. Since Judge Wilson has not ruled on the motion for summary judgment and the December 8th trial date is approaching, IFCIA asked for a continuance for the start of the trial.

Judge Wilson noted that he owes IFCIA and IFP an answer re: the motion for summary judgment. He also noted that he wants the lawsuit to be heard soon. He granted a continuance for the start date of the trial. It is now set to begin on February 16th. His comments indicated that IFCIA's lawsuit will be going to trial. However, until Judge Wilson makes his ruling regarding the motion for summary judgment, we will not know if our entire case will be heard or if parts of it will be heard.

NOTE: Judge Wilson may have more than one trial scheduled to begin on February

16th and due to scheduling conflicts, the court (not IFCIA) may have to push this date back.

FEBRUARY 2009

February 3 – Judge Randy Wilson denied all of IFP and IFGCCs’ motions to have all or parts of IFCIA’s case against them dismissed. This means that IFCIA’s full case against IFP and IFGCC will be heard in court. This was a significant victory for IFCIA.

February 10 – The February 16th trial date was reset for May 18th. IFCIA requested a short continuance from the court due to a medical emergency in the lead counsel’s family. IFP was interested in seeking a continuance until September. A compromise date of May 18th was reached based upon Judge Randy Wilson’s availability. The May 18th date is a preferential setting which means that IFCIA’s case is the only case scheduled to be heard on that date.

May 2009

May 4 - IFP’s attorneys contacted IFCIA’s attorneys and indicated that IFP was going to file a motion for continuance to move the start of the trial from May 18th to September. They indicated that IFP was in negotiations with the City regarding the sale of the golf course property. They said they could not give us much information regarding the status of the negotiations or if the negotiations were for all or part of the golf course property.

May 8 - The hearing for this motion took place in Judge Randy Wilson’s court. IFCIA’s attorneys noted that we were encouraged that IFP was talking to the City about the golf course property, but that we had no verification of the talks, the status of them, the amount of property involved etc... IFP’s attorneys noted that an “exhaustive” study of the golf course property is currently underway to determine its usefulness for flood control purposes.

IFP has given the City a proposal for the sale of the property. They did not specify if it was for some or all of the golf course property. IFP’s attorneys noted that, to date, IFP had not received a response from the City.

Judge Wilson said he needed more information regarding the status of these negotiations before he could make a ruling. He told IFP and IFCIA that he was going to make a call to a high ranking city official to determine the status of these negotiations and to let that person know that these negotiations could affect the trial setting.

May 14 – IFCIA’s attorneys contacted Judge Wilson’s court to check on the status of the judge’s phone call to the City. The court requested that IFCIA file an informal request for a status conference with the judge. IFCIA will do this.

June 2009

June 5 – A status conference was held in Judge Wilson’s court. (This was the court’s first available time.)

Judge Wilson noted that he has spoken to Mayor White. He said that he would not divulge the particulars of the conversation, but that the conversation led him to believe that negotiations are taking place and that it would be reasonable to move the trial date to give IFP and the City time to negotiate. He noted that the trial setting had been moved on his docket to early December.

Judge Wilson said that he wanted to hold another status conference to get an update. He has scheduled it for Friday, August 28th at 9 am. Judge Wilson told IFP’s attorney that they need to keep IFCIA up to date on significant matters regarding the status of these negotiations. He noted that we (IF homeowners) need to be kept informed and that these are our homes. IFP’s attorneys agreed to do this.

August 2009

August 28 – IFP’s attorney stated that negotiations with the City of Houston were continuing and that the negotiations were for all of the golf course property. Judge Wilson scheduled a telephone status conference for Friday, October 2.

October 2009

October 2 – Due to a scheduling problem with Judge Wilson’s court, the telephone status conference was rescheduled for Tuesday, October 6.

October 6 – During this telephone conference, IFP’s attorney stated that IFP and the city were still negotiating for all of the golf course property. He also noted that Mayor White has indicated that he would like this matter to be resolved by election day, 11/3/09. IFP’s attorney noted that he thought that the December 2009 trial date was beneficial to the negotiations. Judge Wilson told IFP’s attorney’s to keep IFCIA informed and scheduled the next telephone status conference for Monday, November 2nd.

November 2009

November 2 – IFP’s attorney’s indicated that they had had a verbal agreement with the city, but that it had fallen through. Please see the 11/06/09 email blast at

<http://www.ifcia.info/phpbbforum/viewforum.php?f=5&sid=c16bb19ae7d509632a67f1e2cffcb24a> for further information regarding this conference.

Judge Wilson noted that if there was no deal, then IFCIA and IFP were going to trial. The trial is scheduled to begin Monday, December 7th. Judge Wilson set up another telephone conference call for Monday, November 9th.

November 9 – During this telephone conference call, Judge Wilson moved the start date of the trial to Monday, December 14th at 8:30 am. He had a scheduling conflict the later part of the week of December 7th.

December 2009

December 14th – The trial begins. See the following link for daily summaries of trial activity for Monday, December 14th thru Friday, December 18th.

<http://www.ifcia.com/emailhistory>

Monday – December 21st - The attorneys for IFCIA and Inwood Forest Partners (IFP) made their closing arguments. IFCIA's attorney, Matt Kornhauser, was given 45 minutes to speak to the jury. IFP's attorney Mark Breeding had 1 hour to make his closing argument. IFCIA's attorney then had 15 minutes to respond to Mr. Breeding's comments.

Mr. Kornhauser summarized IFCIA's case for the jury and took them through the questions (or jury charge) they would have to answer to reach a verdict. In his summation, Mr. Kornhauser made it clear that the residents of Inwood Forest did not want the jury's sympathy, but rather wanted IFP to abide by the original plan and scheme of IF when it was developed. Approximately 38 IF residents attended Monday's hearing.

The jury was dismissed about 11:30 am, took a 30 minute lunch break and began deliberations. They were given the following four questions to consider:

Question No. 1

Was there a general plan or scheme of development of IF whereby the Golf Course Property was restricted to golf course use for the benefit of adjacent subdivided lot owners?

A "general plan or scheme of development" occurs when a common grantor:

- 1) develops a tract of land for sale in lots and pursues a course of conduct

which indicates that he intends to inaugurate a general scheme or plan of development for the benefit of himself and the purchasers of the various lots; and

- 2) inserts by numerous conveyances in the deeds substantially uniform restrictions, conditions and covenants against the use of the residential lots; and
- 2) retains property not similarly restricted when it was sold

Answer the following question if you answered “Yes” to Question No. 1. Otherwise, do not answer the following question.

Question No. 2

Did IFP have actual or constructive notice that the Golf Course Property was part of the general plan or scheme you found in response to Question No.1 as of February 1, 2007?

“Actual notice” exists when a person actually knows the facts charged to him.

“Constructive notice” means information and/or facts that would be evident to a person upon a reasonable inspection of the premises, plat maps, deed restrictions, deeds and other such recorded instruments.

Question No. 3

What is a reasonable fee for the necessary services of the attorneys for Plaintiffs, the Association and/or Clymer Wright, for the legal services rendered in this case, as to Inwood Forest Partners, stated in dollars and cents?

To determine a reasonable attorney’s fee, consider the following:

- a) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;
- b) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- c) the fee customarily charged in the locality for similar legal services;
- d) the amount involved and the results obtained;
- e) the time limitations imposed by the client or the circumstances;
- f) the nature and length of the professional relationship with the client;
- g) the experience, reputation and ability of the lawyer or lawyers performing the services; and

- h) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Do not consider any attorney's fees for legal services rendered by Plaintiffs' attorneys that relate solely to claims for fraud, negligent misrepresentation, conspiracy, malice or exemplary damages.

Answer with an amount for each of the following:

- a) For preparation and trial
- b) For an appeal to the Court of Appeals
- c) For making or responding to a petition for review to the Supreme Court of Texas.
- d) If the petition for review is granted by the Supreme Court of Texas.

Question No. 4

N/A if the jury's answer to Question No. 1 is Yes.

In order for the jury to reach a verdict, at least ten out of twelve of them had to be in agreement on each issue.

At 2:50 pm, the final verdict was read.

Question # 1 – Yes (By a vote of 10 – 2)

Question # 2 – Yes (By a vote of 10- 2)

Question # 3 –

- a) \$650,000
- b) \$100,000
- c) \$ 25,000
- d) \$ 50,000

Question # 4 – N/A since the answer to Question #1 was Yes

The verdict in this case sets a legal precedent.

Please note that IFP has the option to appeal this verdict. It could take several months before it is known if they will file for an appeal.

February 2010

February 19th – IFCIA filed a Motion for Judgment on the Verdict. This is a motion made to the court asking the judge to sign an order affirming the jury's verdict. (The judge has some discretion in modifying the jury's verdict if he/she feels that the verdict is not supportable by the facts of the case.)

February 26th – IFP filed a Motion for Judgment Non Obstante Verdicto and to Disregard Certain Jury Answers. With this motion, IFP was asking the court to disregard the jury's verdict.

March 2010

March 31st – A hearing was held in Judge Wilson's court. He heard arguments related to IFP's motion filed on February 26th. Judge Wilson said he had some reading to do and that he would rule shortly.

April 2010

April 1st – Judge Wilson signed an order **denying** IFP's Motion for Judgment Non Obstante Verdicto and to Disregard Certain Jury Answers and **granted** IFCIA's Motion for Judgment on the Verdict. The judge made no changes to the jury's verdict.

April 15th – IFCIA filed a Motion to Modify, Correct or Reform the Judgment. While reviewing the final orders that Judge Wilson signed on April 1st, Hoover Slovacek noted that the court clerk had erroneously omitted an exhibit that should have been included with the signed order. This motion was filed to ask the judge to correct this.

April 30th – Judge Wilson signed IFCIA's Motion to Modify, Correct or Reform the Judgment.

With this signed order, IFP now has 30 days to file a motion for a new trial. This is the first step they will take if they decide to appeal the jury's verdict.

If IFP files for a new trial, they will be required to post a supersedeas bond for the attorney's fees awarded to IFCIA by the jury. The bond will include attorney's fees related to both the lawsuit and for estimated fees related to the appeals process.

Updated May 1, 2010