

## Conroe seeks attorney general's opinion in Wedgewood land donation negotiation

By Catherine Dominguez, Staff writer    Published 5:35 p.m. CDT, Friday, September 14, 2018

Montgomery County Attorney J D Lambright has submitted a request for an attorney general's opinion regarding the negotiation of a land donation of a portion of the now defunct Wedgewood Golf Course from Plains Capital Bank to the city of Conroe.

City Attorney Marc and City Administrator Paul Virgadamo, who live on the course, have been negotiating the deal for more than two years but didn't disclose they live on the course and would benefit financially by the action.

According to the city, Mayor Toby Powell asked Lambright to submit the request on behalf of the city after Councilman Duane Ham stated in a previous Courier article the city should seek the opinion. The Attorney General's Office has not issued an opinion to date.

On Thursday, the council agreed to hire an outside firm to continue the negotiations on behalf of the city. Winberry told the council he and Virgadamo have not had any further discussions with the bank and have both filed disclosure forms with the city secretary.

"I failed to acknowledge the ownership of my home located on hole 18 of the golf course and I also did not point out (City Administrator Paul Virgadamo) also property that is within the Wedgewood community," Winberry said of his presentation during the council's Aug. 8 workshop meeting. "This was an unintentional oversight. I realize that may appear self-serving at this point. People can choose to believe that or not."

Winberry said he was "distracted" and "not at the top of my game" during that workshop meeting resulting in him failing to make the disclosure.

During the Aug. 8 meeting, the council heard Winberry's presentation where the bank has proposed donating holes 4, 5, 6, 16 and 17 of the course that closed over two years ago. However, neither Winberry or nor Virgadamo disclosed during the 20-minute discussion that their homes sit on the golf course.

In exchange for the donation, the city would offer incentives for the future development of the remaining course including the creation of a municipal utility district. Winberry did not provide any information on the potential development of the land but noted it would not be multifamily housing.

According to Winberry, the city would maintain the property as a circular walking trail which would cost the city about \$60,000 to maintain a year. The council has taken no action on the potential donation.

According to Chapter 171, a local public official is defined as a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

Section 171.004 states If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if ... it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

An Aug. 14 open records request for disclosure forms filed by Winberry and Virgadamo was returned to The Courier that same day stating there were “no responsive documents.”

Citing several Attorney General Opinions, Winberry maintains he and Virgadamo did not violate the law in their participation in the deal. In an email to The Courier, Winberry referenced an opinion, KP-105, from the Attorney General’s office that states “this office has previously determined that a city employee is not a local public official and, as such, is not subject to chapter 171.”

Additionally, Winberry cited Opinion JC-54 which “expressly holds that a city attorney is not a public officer.” “Neither the City Administrator nor I have any authority to make the proposed agreement on behalf of Conroe. Only the Council can make this agreement and at best our roles are advisory only,” Winberry state in the email. “Our position in the matter is analogous to the staff members described in KP-105 who prepare staff reports and presumably recommendations for the Commission members described in that opinion. The Attorney General found the staff members in KP-105 were not public officials covered by Chapter 171.”