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### Jean Klock Park deal will allow 27 houses

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BENTON HARBOR -- The city will sell a slice of Jean Klock Park for an upscale development, but the rest of the park should be forever protected under a legal settlement approved Tuesday night by city commissioners.

The 6-3 vote ends a simmering eight-month controversy over the city's plan to sell nearly 4 acres of the more than 90-acre park along Lake Michigan.

"It's a good settlement," said Commissioner At-Large Ralph Crenshaw.

"It's a win-win," said lawyer Thomas Fette, who represents Friends of Jean Klock Park, a group that sued the city to prevent any development in the park.

"For the city, the development will mean additional tax revenue," Fette said. "On the other hand, the majority of the park is now protected in perpetuity."

Under the settlement, developers Grand Boulevard Renaissance LLC agreed to build 27 houses instead of 28. The land area was reduced slightly from the original 3.8 acres.

The land runs along Grand Boulevard, an unpaved road near the park's northern boundary.

Mayor Wilce Cooke and commissioners Hurley Wallace and Etta Harper voted against the mediated settlement. Crenshaw and commissioners Eddie Marshall, Henry Griffin, Steve McCoy, Glenn Yarbrough, and Ruthie Haralson voted for it.

Cooke said the agreement could force the Michigan Department of Natural Resources to demand full refunds for all grants to improve the park.

The settlement followed months of mediation after Friends of Jean Klock Park won a temporary injunction to stop the sale.

Judge John Fields issued the temporary injunction in July, but he retired in August, before hearing arguments on a permanent injunction. Mediation meetings began in August.

The City Commission vote Tuesday followed a lengthy closed session and two days of intense negotiations, said Fette and lawyer Geoffrey Fields, who represented the city. Fette called it one of the best agreements he had been involved with in his 35 years of practice.

The settlement preserves the dune behind the area where the houses are to be built, and limits the height of the houses to 35 feet above the grade of Grand Boulevard.

Further, he said it opens Grand Boulevard to vehicle traffic through the park.

The settlement requires the city to remove the chain link fence around the park so that pedestrians can enter it at all times. The city may erect some other type of barrier to keep out all-terrain vehicles and dune buggies.

Finally, it keeps the rest of the park public forever.

Fette said the way the Klock family deeded the park to the city in 1917 created some legal loopholes that have been closed by the settlement. Some of those were closed by Judge Fields when he issued the injunction.

Fette said there was no reverter clause in the original deed language that would force the city to use the park only for the purposes the Klock family listed: bathing beach, park and public purposes. A reverter clause would have given the land back to the Klock heirs if the city violated those conditions.

Fette said Fields solved that by interpreting the city's dedication for those specific purposes to mean the city agreed to Klock's implied terms.

Fields wrote, "The plain language of the city of Benton Harbor's resolution dated May 7, 1917, demonstrated its clear and positive intent to dedicate the land forever for park and other public purposes. Accordingly, the city of Benton Harbor holds the land in trust for the public use, and the dedication by the city, upon completion, was and is irrevocable."

But there remained the troublesome phrase "public purposes."

Fields said Michigan courts have ruled that allowing gas or oil wells is serving a public purpose. That is not what either side wanted.

The settlement language asks the court to restrict all the rest of Jean Klock Park to "park purposes only." Fette said the one exception is the existing city water plant: that may stay.

Charles Ammeson, one of three partners in Grand Boulevard Renaissance LLC, said in August his group did not want unlimited development in the park.

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