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Berrien County Trial Court

# Deal will protect rest of Klock

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ST. JOSEPH — A settlement in a lawsuit approved Tuesday allows nearly 4 acres of Jean Klock Park to be sold for the construction of houses but permanently protects the remainder of the 90-acre Lake Michigan property from development.

Berrien County Trial Court Judge Lynda Tolen said the agreement will benefit both the public and the city of Benton Harbor, which owns the park, in a way not possible if the case had gone to trial.

"I think this truly is a win-win settlement," said Tolen, who after a hearing signed a consent judgment closing the case.

The deal ends a controversy that began in June when the Benton Harbor City Commission approved selling 3.8 acres of Jean Klock Park for 28 houses.

On Tuesday, six plaintiffs testified that they support the settlement to end a lawsuit they filed to stop Benton Harbor from selling park land.

"I believe this is the best way to ensure the park will not be encroached on in the future," said plaintiff Gladys Peebles-Burks.

Plaintiff Joseph Shurn said the settlement is a compromise that will preserve the park in the way J.N. Klock intended when he gave the land to the city in 1917.

"What we were really trying to do is maintain the gift of Mr. Klock," Shurn said.

The plaintiffs' lawyer, Thomas Fette, told the court that the trade-off of allowing a development slightly smaller than originally proposed will ensure protection the park never has had.

"None of the plaintiffs are happy the development is going to occur," Fette said, but all understand the agreement's importance "for our children and grandchildren and the generations to come."

Lawyer Geoffrey Fields, who defended the city in the matter, said court-ordered mediation led to the settlement.

"It's a good thing because quite frankly I'm not sure we could have settled this case without mediation," he said.

Tolen praised the parties in the case and their lawyers for working through the difficult issues to

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settle.

The settlement reduces from 28 to 27 the number of houses to be built by the developer, Grand Boulevard Renaissance. It also eliminates a finger of the development that would have crossed a dune area, and limits the height of houses to 35 feet above the street.

Other than a 3.8-acre section on the park's north end slated for sale, called the Grand Boulevard parcel, and a parcel near Michigan 63, the court order permanently bars the city from using the property for any purpose other than bathing beach, park or related purposes.

St. Joseph architect John Allegretti, a principal in the development company, said the housing will help the community, and that the settlement balances environmental concerns with human needs.

The Benton Harbor City Commission backed the land sale and development because the project offered much-needed revenue, a major boost in tax base and a step up in overall redevelopment efforts.

Other principals in Grand Boulevard Renaissance are St. Joseph lawyers Charles Ammeson and Roger Petzke, who are law partners, and Lou Hoekstra.

## The missing clause

The plaintiffs in the lawsuit, a group of Berrien County residents, sued Benton Harbor in June after the City Commission approved the sale of the park property to the developers.

The plaintiffs won a preliminary injunction in July to halt the land sale. But they discovered early in the litigation process that a deed conveying the property to the city did not prevent such action.

The deed does not include a clause requiring it to revert to the donor's heirs if it was used for other than park purposes. Without such a clause, under Michigan law the property was not dedicated as a park and could be sold or used in any way the city saw fit.

The injunction was granted on a legal theory, untried in Michigan,

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**RONALD TAYLOR**  
Community resident



that the city assumed a trust when it accepted the land, having the effect of dedicating it for park purposes.

Lawyers for the plaintiffs said the theory could fail to stand up at trial or in the appeals process, leaving the entire 90-acre park without protection from further sales and development.

The two sides met in two days of court-ordered mediation sessions and worked out an agreement. The settlement was approved Jan. 20 by the City Commission.

Plaintiffs' lawyer Fette told the court that the settlement, while protecting most of the park, also narrowly defines permitted uses.

In accepting the property as a gift from industrialist J.N. Klock in 1917, the Benton Harbor City Council specified it would be used for "public purposes." Lawyers said the term could mean many things, ranging from oil or gas exploration to sand mining.

Ronald Taylor, a retired Berrien County Circuit Court judge who now works as a consultant, testified as an interested citizen on behalf of Friends of Jean Klock Park, a citizens organization. Taylor lives in Higman Park in Benton Township, adjacent to Jean Klock Park and the area to be sold.

Taylor testified it came as "quite a shock" early in the litigation process to learn that the park deed did not prevent the city from selling the property. The idea that the deed contained a reverter clause was widely held by the public, although not true, he said.

As a result, the plaintiffs' lawyers came up with the "novel" legal theory that resulted in obtaining a preliminary injunc-

tion.

"We were well aware that it was, in fact, a fall-back position," Taylor said.

The most important part of the settlement is that it protects the park from future development, Taylor said in a statement.

Second, Taylor said that while all parties understand the city's need for future tax-based revenue, it is important to limit development to minimize intrusion into the park. Construction of the 27-house development will be near a bluff on the northern edge of the park. The work will be carefully controlled to secure the beach for public use and minimize the esthetic impact on the park, Taylor said.

A third important benefit, he said, is that the parties in the suit seized the opportunity of legal action to provide park improvements, Taylor said. They will include removal of a fence around the park and reopening and improving an old boulevard along the beach to allow better public access.

"The Friends of Jean Klock Park are disappointed that any development, however small and restricted, will be allowed in the park," Taylor said in his statement. "However, we are pleased that this settlement will finally, once and for all, put an end to periodic attempts over the years to sell off or otherwise profit from this important piece of the heritage of the southwestern Michigan area."

The settlement allows Benton Harbor to use a small piece of the property near M-63 for purposes other than a park, but only with the approval of the City Commission and state Department of Natural Resources.