

Wednesday, January 28, 2004

Klock deal: Plaintiffs deserve credit for cementing favorable agreement

We will never be excited about the prospect of houses going up in a corner of Jean Klock Park in Benton Harbor, but after a closer look at a legal settlement approved Tuesday, we believe last week in this space that we understated the benefit of the deal by focusing mainly on the city's initial affront.

That a portion of the park would be sold for residential development likely became inevitable when the city signed a contract last year with developers. Even if city commissioners had listened to the public's overwhelming opposition to the deal and changed their minds about selling part of the park, it is doubtful they could have gotten out of the contract without serious legal liabilities. And hopes of stopping the development through legal action - several residents filed suit to block the deal - probably were weak at best. Although the land was deeded to the city years ago specifically for use as a park, the Klock family - probably never imagining this would be an issue - did not spell out any specific legal restrictions in the deed. And though a judge temporarily blocked the sale on the basis of the city commission's wording in accepting the property in 1917, the plaintiffs knew their chances of ultimately succeeding on that shaky legal ground were low.

So although houses will be built on park property, opponents did manage to make sure no one will ever have to fight this battle again. In exchange for dropping their lawsuit, they got the city to agree to no future development on that property except for park purposes. This time, that pledge will be legally enforceable because it is part of a legal settlement approved by the court.

Without this agreement, it's possible - perhaps likely - that after this initial housing project, other developers would come along and offer the city money for their own piece of the park. Eventually, piece by piece, much of the park could have disappeared.

The plaintiffs also succeeded in getting the city to change its philosophy in the way it operates the park. By getting the city to open up another access road and remove fencing that kept non-paying pedestrians out of the park, the plaintiffs have done a great service to residents who have found the park quite user-unfriendly in recent years.

We remain extremely disappointed that it ever came to this. Commissioners who approved the original sale did a great disservice to city residents. But it's an action no future commission can repeat, thanks to the legal settlement approved on Tuesday.

(An opinion of The Herald-Palladium editorial board)