

Judge puts hold on sale of Jean Klock Park land

By SCOTT AIKEN / H-P Staff Writer | Posted: Wednesday, June 18, 2003 12:00 am

ST. JOSEPH -- Benton Harbor's plan to sell a portion of Jean Klock Park to developers has run into a roadblock.

Berrien Trial Judge John Fields on Tuesday granted a temporary restraining order sought by a group of citizens who want all of the park to remain public land.

The order prohibits the city from following through with the sale of 3.8 acres of park land to a development group that plans to build houses on it, and forbids construction. The order remains in effect until a hearing on a request for a temporary injunction set for July 1.

St. Joseph attorney Tom Fette, representing the citizens who are suing, said the temporary order preserves the status quo until a hearing can be held. "It leaves the property intact," Fette said.

Fette, Geoffrey Fields, attorney for the developers, Grand Boulevard Renaissance, and city attorney Charlette Pugh-Tall, are to file briefs by June 27.

The lawsuit was prompted by the Benton Harbor City Commission's actions to sell a piece of the park to the development group, which plans to use it for 28 luxury homes.

The land is in a 100-foot strip along Grand Boulevard, a street that has seen little use in recent years. Benton Harbor officials who back the plan say the land sale would bring much-needed money to city coffers, and the new homes would boost the tax base.

Plaintiffs in the lawsuit allege that the city has no authority or power to sell the land because it was donated with a deed covenant requiring that it remain a park or be used for other public purposes.

Also, the sale resolution adopted by the city commission in a split 6-3 vote June 2 violates grant agreements with the state and federal government, the residents claim. In obtaining certain grants, the city agreed to continue using the land as a part, sale opponents said.

Plaintiffs in the case, all Benton Harbor residents, are Clellen Bury, Princella Tobias, Joseph Shurn, Carol Drake, Harzell Taylor, Normal Stemm and Gladys Peeples-Burks.

Their civil complaint, filed Monday, alleges that the park property was conveyed to Benton Harbor in 1917 by J.N. Klock and his wife, Carrie Klock, city residents who were known for their philanthropic pursuits.

The land was deeded to the city with a restrictive covenant that said it shall "forever be used. by said City of Benton harbor for bathing beach, park, purposes, or other public purposes."

The city council, now city commission, accepted the gift by a May 7, 1917, resolution which said the property shall be forever dedicated to the purposes stated in the deed covenant.

The Klocks stepped in to buy the land abutting Lake Michigan after failed attempts to get voters to approve funding for the purchase.

Since 1917, the lawsuit alleges, the entire parcel of land has been maintained as a park open to the public.

The city commission in early May announced its intent to sell "underutilized" property "around" Jean Klock Park. Commissioners at a May 20 meeting of the Planning and Development Committee revealed that the property proposed for sale is within the park.

According to the plaintiffs, the state Department of Natural Resources has informed the city that sale of the 3.8 acres would violate terms of certain grants. The sale would require prior DNR approval, plaintiffs say, which has not been obtained.

Taking the property from required use as a park would require the city to mitigate by exchanging the land for property of like recreational value, repaying grants received from time to time, or both.

The plaintiffs also claim the city commission's action to sell the land poses a direct threat of impairment and destruction, violating the Michigan Environmental Protection Act.

The plaintiffs are seeking a declaratory judgment finding that the proposed sale violates the deed restriction. Also sought is a permanent injunction prohibiting the city from selling a portion of the park.

After the July 1 hearing, Judge Fields is to use four criteria in deciding whether to grant a preliminary injunction to block the land sale as the civil lawsuit proceeds.

Among them are whether the plaintiffs are likely to succeed on the merits of the case, and whether they will be "irreparably harmed" if the injunction is denied.