

Fields mulling Jean Klock Park land sale

By **SCOTT AIKEN / H-P Staff Writer** | Posted: **Wednesday, July 2, 2003 12:00 am**

ST. JOSEPH -- Berrien Trial Judge John Fields said Tuesday he will decide "shortly" whether or not to grant an injunction to block Benton Harbor's planned sale of a piece of Jean Klock Park for a housing development.

Fields took the matter under advisement after hearing testimony regarding the proposed sale of 3.8 acres on the park's north end. The judge also toured the property.

At the conclusion of the day-long hearing, Fields said he would issue an opinion soon but did not set a date. Until the judge rules on the issue, a temporary restraining order granted two weeks ago remains in effect.

During the hearing, a lawyer representing seven Benton Harbor residents who filed suit to halt the sale argued that allowing the transaction would open the door to future sales.

"Once it starts, no matter what the intentions may be, there is no way to stop it," attorney Paul Taglia said.

"The balance here, the focus, has to be on what's down the road."

But the city argued that the deed conveying the property does not block the sale, and that the proposed development would provide sorely needed revenue.

"The lifeblood of a city is tax revenue," said city Commissioner Ricky Hill. "Everything else is fleeting."

Revenue from the sale of lots would provide seed money to make the park useable to more people in a city where 42 percent of residents are under 16, Hill said.

The 90 acres of park land was given to Benton Harbor in May 1917 by industrialist J.N. Klock and his wife.

Within a few days the city council (now commission) accepted the gift by resolution, which stated that a deed covenant and condition required the land to be used for bathing beach, park or other public purposes. The resolution said the land was "forever dedicated" for park purposes.

The park was named for the Klocks' daughter, who died in infancy.

The land has remained a park for 86 years, though part of it is now occupied by the city water plant, and a piece was taken by the state in the 1950s to build Michigan 63.

On June 2, the city commission voted to approve a sale agreement with Grand Boulevard Renaissance, a development group. The resolution rescinds conflicting resolutions, specifically the 1917 resolution.

Lawyers for the citizens group argue that by doing so, the city divested itself of park ownership.

The plaintiffs claim the city would breach its trust by selling part of the property, violating the Klocks' intent in donating the land. They also allege the proposed development would damage natural resources in violation of the Michigan Environmental Protection Act.

But according to the city, the deed allows the property to be sold. The deed conveyed all "reversion and reversions" to the city, which means heirs of the Klocks could not recover the property in forfeiture proceedings.

The property, which adjoins the Higman Park residential area in Benton Township, is 100 feet wide by 1,450 feet long. The development proposed for the site would adjoin a smaller development of four expensive Lake Michigan homes called Marram Shores.

Grand Boulevard Renaissance plans to build 28 upscale houses, seven per year for four years.

Benton Harbor officials testified Tuesday that the proposed sale would give the city an infusion of cash to help stabilize finances.

If all the houses are built, the city would collect \$4 million to \$6 million on lot sales. The proposal earmarks 5 percent of the total for Jean Klock Park, money needed to draw more people to the under-used lakefront property, officials said.

The project "would be a windfall for everybody," testified Benton Harbor Mayor Charles Yarbrough.

City police, the fire department and other financially pressed services would get revenue from the increased tax base, Yarbrough said. If all 28 homes were built, the development would generate an estimated \$530,606 per year in tax revenue for the city, county, schools and other taxing units.

But Yarbrough acknowledged the sale might not be the last time the city parted with land at Jean Klock Park.

"There is no assurance that I can give you," he said.

But Yarbrough added that "nobody in their right mind" would sell the bathing beach portion of Jean Klock Park.

Testifying for the plaintiffs, environmental consultant Roberta Saline said she discovered no threatened or endangered plants on the proposed development area. But one habitat on the property could support two types of threatened plant species, she said.

The area has three distinct habitats, Saline said, and three or four wetland areas were found in one. Because the wetlands are close to Lake Michigan, a state Department of Environmental Quality permit would be required to build there, she said.

The park, with wide sandy beaches, dunes and wooded areas, rarely attracts 100 people "on a good day," said Geoffrey Fields, the city's lawyer in the case. He is not related to Judge Fields. In his opening statement, attorney Fields said the park has the potential to attract thousands of visitors like nearby Silver Beach County Park in St. Joseph.

The motion for a preliminary injunction is predicated on the deed, Fields said. But a reading of the deed shows that the property was given to the city and its assigns, which means a sale was contemplated.

One issue hanging over the project is whether the Michigan Department of Environmental Quality will approve the idea. Because of the state grants for the park, sale of the land could result in a requirement to pay back the money or bar the city from future grants.

Another possibility is that the city would have to mitigate the sale by finding similar property for park use.

St. Joseph attorney Charles Ammeson, a partner in the development group, said the city would get an immediate payment of \$500,000 if the project goes forward.

The lots in the proposed development would be sold for an average of \$300,000, based on city appraisal figures, and Benton Harbor would get 75 percent of the sale price, he said.

The 3.8 acres would fetch about \$1.5 million an acre, Ammeson said, making it the most valuable real estate in Benton Harbor.