

Judge continues Klock Park suit

By **SCOTT AIKEN / H-P Staff Writer** | **Posted: Wednesday, August 13, 2003 12:00 am**

ST. JOSEPH -- A judge has kept alive a lawsuit filed by a group of Berrien County residents to block Benton Harbor's planned sale of a 3.8-acre piece of Jean Klock Park for a housing development.

Berrien Trial Judge John Fields on Tuesday ruled that four of the seven plaintiffs in the suit have proper standing to pursue all claims raised in the suit. They are Clellan Bury, Carol Drake, Norman Stemm and Princella Tobias.

The other three remain plaintiffs only on a claim that the proposed development would cause harm to the environment. They are Joseph Shurn, Harzell Taylor and Gladys Peeples-Burks.

Fields in July issued a preliminary injunction halting the city's sale of part of the park to Grand Boulevard Renaissance, developers who plan to build 28 upscale homes on the site. The injunction remains in force until it is either overturned or made permanent following a trial to settle the lawsuit.

The parties were back in court Tuesday for a hearing on legal standing of the seven filing the suit. The city contended the seven did not have the legal right to file the court action.

Attorney Geoffrey Fields, who represents the city, argued that none of the plaintiffs had the special interest in the sale necessary to pursue an action in court. He said the city is on firm legal ground in selling the property.

The city attorney also has challenged the plaintiffs' assertion that the city's acceptance of the 90-acre park property by resolution in 1917 dedicated it forever for public use.

Paul Taglia, one of the plaintiffs' lawyers, argued that the property was "forever dedicated" as a park, and as such the plaintiffs have a legally protected beneficial interest in it.

Damages resulting from the development would be actual, he said, not conjecture.

The plaintiffs' testimony varied on how often they use the park.

One plaintiff, Norman Stemm, lives in adjacent Higman Park in Benton Township. Stemm testified that the development below the hill his house occupies would take away the scenic view.

"I'm gonna see a lot of roofs," said Stemm, who lived in the house 18 years.

Princella Tobias, publisher of the Benton Spirit newspaper, said she and others use the park as a resource for instructing school children.

Tobias also said she has made proposals to City Manager Joel Patterson to manage and clean the park.

The importance of making the park on Lake Michigan accessible to city youths was brought home on a 90-degree day, Tobias said. Some young men, desperate to cool off, were trying to raise enough money to rent a motel room so they could use its swimming pool, she said.

The property was deeded to the city by J.N. Klock and Carrie Klock in May 1917 and has since been used as a public beach and park.

In accepting the gift, the city council (now city commission) resolved the land would be "forever dedicated for bathing beach park purposes and other public purpose."

Earlier this year, the city commission voted to approve a development agreement calling for the sale of 3.8 acres on the north end of the park to Grand Boulevard Renaissance.

City officials have said the development would provide a badly-needed boost in tax revenue for Benton Harbor and Benton Harbor Area Schools.

Of the plaintiffs, Bury, Tobias, and Taylor live in Benton Harbor; Shurn, Stemm and Peoples-Burks are Benton Township residents; and Drake lives in Sodus.

The plaintiffs claim the city assumed a trust when it accepted the land for park purposes, but the trust was breached by the planned land sale. They also claim the proposed development would violate the Michigan Environmental Protection Act.

All except Taylor testified Wednesday. Taylor, a retired dentist, told the court he was ill, and submitted an affidavit.

Judge Fields will be retiring on Friday, and the case has been assigned to Judge Lynda Tolen.