



## Local News

## Is Harbor Shores golf course a 'public use'?

Print Page



Carol Drake and Clellen Bury talk in the rotunda of the Michigan Hall of Justice on Friday after their case, Drake and Bury vs. Benton Harbor and Harbor Shores Community Redevelopment Corp., was heard by the Michigan Supreme Court. The court will reach a decision on the case sometime before July 31, according to Drake and Bury's lawyer. Kate Genellie - H-P staff

**Michigan Supreme Court judges lean to that question in appeals case. At stake: The future of 3 lakeside holes.**

**By KATE GENELLIE - H-P Staff Writer**

Published: Saturday, January 22, 2011 1:06 PM EST

LANSING - What is public use?

Judging by the questions asked Friday by Michigan Supreme Court justices, this question could be key to how they rule on an appeal that conceivably could force Harbor Shores to rip up three holes of its golf course in Benton Harbor's Jean Klock Park.

Lawyers representing both sides in the case of Carol Drake and Clellen Bury vs. Benton Harbor and Harbor Shores were peppered with questions that hit on a 2004 consent agreement between the

plaintiffs and the city and where the line is drawn regarding public use.

For the plaintiffs, the case comes down to how people's intentions and expectations are respected when they give a gift, said Scott Howard, the lawyer representing Drake and Bury. In 1917, John Klock gave a 90-acre parcel of land along Lake Michigan to Benton Harbor in memory of his deceased daughter, Jean.

The defendants see the golf course, which is open to the public for a fee, as a boon to the city's economy and a benefit to the park itself, which has been cleaned up considerably in the development of the three holes along Lake Michigan for the 18-hole Harbor Shores golf course.

Harbor Shores is a nonprofit corporation formally called Harbor Shores Community Redevelopment Inc. It is a cooperative effort of three nonprofit organizations - Cornerstone Alliance, the Alliance for World-Class Communities and the Whirlpool Foundation - and the cities of St. Joseph and Benton Harbor, Benton Township, Berrien County, the state and others.

Harbor Shores has maintained all along that the three holes overlooking Lake Michigan are crucial to the entire course. Golf great Jack Nicklaus designed the course, and it bears his name.

The justices' decision will be issued sometime between now and July 31, the court's self-imposed deadline, Howard said.

The appeal heard Friday is the third time the plaintiffs have gone to court over the three golf holes.

The plaintiffs took the city and Harbor Shores to Berrien County Trial Court in 2008. The judge dismissed the case, ruling that the golf course use met the public recreation standard. The Michigan Court of Appeals then rejected Drake and Bury's appeal in January 2010 after the judges noted that Klock's original deed did not define "park purpose" or "public purpose," and therefore a broad definition of those terms could be used.

On Friday, Michigan Supreme Court Justice Stephen Markman asked several questions about the concept of the golf course as a public use. Does a baseball park count as public use, he asked Harbor Shores' lawyer, John Cameron. What about an amusement park?

There's a distinction between the ownership of the park and Harbor Shores' lease, Cameron said.

Harbor Shores leases 22 acres of the park, but the city has a great deal of control over the land. Besides receiving profits, the city can also set hours and golfing rates.

"This is a park. Golf is a park use, and Mr. Klock would be pleased to see the way the park is used today," Cameron said.

He argued that a golf course is a park use similar to a tennis court.

Chief Justice Robert Young Jr. said the question wasn't if the golf course was a park use, but whether it was a public use.

The golf course is owned and operated by Harbor Shores, Markman said. "That doesn't strike me as a public golf course."

Benton Harbor's lawyer, Pamela Enslin, said that while Harbor Shores operates the golf course, it is open to the public.

"So is Burger King, so is Walmart," Markman said.

Enslin pointed out that Harbor Shores only keeps enough money to cover the course's operating costs, while profits go to the city.

Howard said that because Harbor Shores has a 35-year renewable lease with the city for the next 105 years, the city effectively gave the park land to Harbor Shores instead of keeping it for the public.

The 2004 settlement

In the plaintiffs' opinion, the case should never have gotten as far as the state's supreme court.

Speaking outside the courtroom after the short arguments Friday morning - each side was allowed 15 minutes - Drake and Bury said they thought the whole issue of the use and future of Jean Klock Park was over after the settlement in 2004. A consent judgment between Drake and Bury and the city back then allowed the city to sell a portion of the park to a private housing developer as long as the city refrained from using the rest of the park "for any purpose other than a bathing beach, park purposes, or other public purposes related to bathing beach or park use," according to a Michigan Supreme Court order.

"We were given the impression that was the end of tampering with the park," Bury said.

In the current appeal, friend-of-the-court briefs were filed in support of both sides of the case.

Michigan Attorney General Bill Schuette filed a brief Thursday on behalf of Benton Harbor and Harbor Shores.

"This is a case in which community leaders struck a good balance between protecting natural resources and sparking desperately needed economic development," Schuette said in a press release. "It is the kind of creative thinking we need to help create jobs and paychecks in Michigan."

But a friend-of-the court brief filed by the Friends of Michigan Parks claimed that Benton Harbor has made the mistake of equating a benefit to the city with a benefit to the public.

"In tight economic times, such as now, a government body may be tempted to mortgage its assets for a short-term gain at a long-term cost," the brief reads. "In this case, publicly owned land is taken from the many to benefit the few."

[kgenellie@TheH-P.com](mailto:kgenellie@TheH-P.com)

Copyright © 2011 - Herald Palladium

---

[x] Close Window