

## **For Immediate Release:**

### **Contact:**

Carol Drake

Friends of Jean Klock Park

(269) 925-4880

[cdrake@savejeanklockpark.org](mailto:cdrake@savejeanklockpark.org)

[www.savejeanklockpark.org](http://www.savejeanklockpark.org)

## **FRIENDS OF JEAN KLOCK PARK FILE BRIEF ON APPEAL**

### **Benton Harbor, Michigan — December 8, 2008**

On August 22, 2008, the Berrien County court dismissed a lawsuit brought by two members of the Friends of Jean Klock Park regarding the City of Benton Harbor's right to lease Jean Klock Park to developers. The decision was immediately followed with the filing of an appeal by Plaintiffs Carol Drake and Clellen Bury through their attorney Scott Howard of Olson, Bzdok & Howard of Traverse City. On Wednesday November 26<sup>th</sup>, the Plaintiffs/Appellants filed a Brief on Appeal with the State of Michigan Court of Appeals, Grand Rapids.

Plaintiffs are seeking to have the State Court of Appeals overturn the Berrien County Trial Court decision and uphold the 2004 consent judgment that was intended to restrict any further private development in the park.

“The 2004 Consent Judgment allowed for the sale of a portion of the park to a private developer in exchange for a permanent injunction against any further privatization or conversion of the park,” explained Plaintiff Carol Drake. “In accepting approval from the National Park Service to develop any further privately owned and operated development within the remaining park boundaries the City has violated its legal obligations under the Consent Judgment to preserve the remainder of Jean Klock Park for future generations.”

The leased portion of the park would be used as three holes of a privately owned and operated “Championship Jack Nicklaus Golf Course.” The Plaintiffs believe that the Klock's intent was clear that the park was to be maintained as a passive recreational asset for the community forever and that there is ample evidence that the Klock gift was given to the City of Benton Harbor in stewardship for the public.

According to Clellan Bury, the other Plaintiff in the case, “the statements of John Klock at the dedication of the property show, without a doubt, that the purpose of the gift was to give the public a park for all people to enjoy, but especially a place for children.” At the park's dedication Klock said:

**“In taking an inventory of life, we all take stock of the circumstances surrounding the happiest moments. The giving of this park to the city of Benton Harbor has been to Mrs. Klock and myself, the happiest moment of our lives. The deed of this park in the courthouse of St. Joseph will live forever. Perhaps some of you do not own a foot of ground, remember then, that this is your park, it belongs to you. Perhaps some of you have no piano or phonograph, the roll of the water murmuring in calm, roaring in storm, is your music, your piano and music box.” In closing Mr. Klock stated, “The beach is yours, the drive is yours, the dunes are yours, all yours. It is not so much a gift from my wife and myself, it’s a gift from a little child. See to it, that the park is the children’s.”**

The Plaintiffs contend that the Trial Court failed to recognize the intent of the Consent Judgment and deed restrictions; that there is no rational interpretation of either the deed restrictions or consent judgment that would allow the park to be used for a privately owned and operated high-end golf course; and that the resulting opinion was one that failed to honor the intentions of both the donors and parties to the consent judgment.

Brief on Appeal available upon request.

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