

BERRIEN COUNTY CIRCUIT COURT 01/30/04

111#7947 A11
DECREE & ORDER \$73.00
111#7947 A11
STATE REMON FEE \$4.00

CLELLEN BURY, et al.,

01/30/04

Plaintiffs,

Case Number 03-3430-CE-F

v.

Honorable Lynda A. Tolen

CITY OF BENTON HARBOR,

Defendant.

William T. Burgess (P36922)
Geoffrey A. Fields (P41788)
Dickinson Wright PLLC
Attorneys for Benton Harbor
200 Ottawa NW, Suite 900
Grand Rapids, MI 49503
(616) 458-1300

Charlette Pugh Tall (P48780)
Benton Harbor City Attorney

Thomas R. Fette (P13396)
Paul A. Taglia (P21241)
Attorneys for Plaintiffs

CONSENT JUDGMENT

AND PERMANENT INJUNCTION

At a session of the Court in St. Joseph, Berrien
County, Michigan on January 27, 2004

Present: Hon. LYNDA A. TOLEN
Circuit Court Judge

LEON D. JARVIS
REGISTER OF DEEDS
BERRIEN COUNTY, MICHIGAN

01 JAN 30 AM 9:33

RECORDED

Upon the Stipulation of the parties, having ~~conducted~~ a hearing on January 27, 2004,
pursuant to the Notice of Hearing filed in advance by the parties, and being advised in the
premises:

A Consent Judgment is entered to adjudicate, declare, find, and order the following:

Findings

Based on pleadings and evidence in the record, including evidence presented at earlier
hearings, the Court makes the following findings:

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PT OF 11-54-0013-
PT OF 11-54-0014-

1. The City of Benton Harbor ("Benton Harbor") owns Jean Klock Park.

2. On June 2, 2003, six members of the City Commission voted to sell part of Jean Klock Park to Grand Boulevard Renaissance LLC ("Developer") for residential development (the "Residential Project").

3. On June 16, 2003, Plaintiffs commenced this action to litigate the question of whether, and to what extent, the City may sell any portion of Jean Klock Park for uses other than bathing beach, park, or other public purposes.

4. On August 12, 2003, the Court entered a Preliminary Injunctive Order ("Injunction Order"). The Injunction Order provided for temporary injunctive relief under MCR 3.310, and depended upon a preliminary legal ruling on an issue of first impression in Michigan regarding the ability of a municipality to make a permanent dedication of public lands (the "Municipal Dedication Claim"). The Injunction Order also made a preliminary ruling that Plaintiffs are not likely to prevail on their other claims in this matter, including the claims relating to the deed from J.N. and Carrie Klock to the City (the "Deed Claim"), and claims arising under the environmental laws of the State of Michigan (the "Environmental Claims"). The Injunction Order did not make any final ruling on the merits with respect to any of the **claims of this case.**

5. On October 14, 2003, the Court entered an Order for Alternative Dispute Resolution ("ADR Order").

6. Pursuant to the ADR Order, the parties engaged in facilitative mediation. As a result of the mediation, the parties entered into a Settlement Agreement ("Settlement Agreement"), by which they agreed to settle all claims and defenses arising from the transactions and occurrences that are or could have been the subject matter of this action. A copy of the

Settlement Agreement is attached to this Consent Judgment as Exhibit A. The terms and conditions of the Settlement Agreement attached to this Consent Judgment are incorporated by reference into this Consent Judgment.

7. On December 24, 2003, the Court entered a Stipulated Order ("MCR 2.106 Order") to Continue Preliminary Injunctive Order and Modify Case Management and Scheduling Order. Pursuant to the MCR 2.106 Order, counsel for the parties published the MCR 2.106 Order in The Herald Palladium for three successive weeks. See Exhibit B. No other person filed an application to intervene in this action as required by the MCR 2.106 Order by the court-imposed deadline of January 21, 2004.

8. On January 20, 2004, at a public hearing, the City Commission voted to authorize entry of this Consent Judgment and initiated proceedings to amend the City's Master Plan to exclude certain portions of Jean Klock Park as contemplated by the Settlement Agreement entered by the parties and this Consent Judgment.

Conclusions of Law and Orders of the Court

Based upon the facts of this case, the consent of the parties, and taking into consideration the history, present-day concerns, and future interests of the City, Jean Klock Park, and the people who use Jean Klock Park, as well as the time and expense incurred and about to be incurred in connection with the Residential Project, the Court makes the following conclusions of law and orders as follows:

1. This Consent Judgment is intended to and may be recorded. It relates to the present and future use of Jean Klock Park and the Residential Project.

2. This Consent Judgment replaces and supersedes all prior rulings made by the Court in this matter, including the Injunction Order, as amended or extended from time to time, all of which are dissolved.

3. Subject to paragraph 4 below, the Court defines Jean Klock Park to mean and include all property depicted in Exhibit C to this Consent Judgment. The Court permanently enjoins the City from using any portion of the property depicted as "Jean Klock Park" in Exhibit C to this Consent Judgment for any purpose other than bathing beach, park purposes, or other public purposes related to bathing beach or park use; provided, however, that there shall be no recreational vehicle park campsites; provided, further, that the City shall for all time be authorized and empowered to operate its water treatment facility, located at the south end of the park, including but not limited to capital improvements and expansion. The restrictions in this paragraph 3 shall run with the land and shall be binding upon the City and its successors.

4. Notwithstanding any other provision of this Consent Judgment, the City may sell the parcel ("Grand Boulevard Parcel"), which is depicted in Exhibit D to this Consent Judgment, to Grand Boulevard Renaissance LLC ("Developer"); provided, that the residences to be constructed as part of the Residential Project in the Grand Boulevard Parcel depicted on Exhibit D shall not exceed 35 feet in height from the ^{present-day TRS} level of Grand Boulevard. If, for any reason, the City is unable to complete sale of the Grand Boulevard Parcel to the Developer for the Residential Project, and the Developer is unable to complete the Residential Project, then this Consent Judgment shall be dissolved, and any party to this action may petition to reopen this action, in which case the Court shall hear and decide the Municipal Dedication Claim. In addition, the City may also use the parcel ("M-63 Parcel"), which is depicted in Exhibit E to this Consent Judgment, for purposes other than bathing beach, park, or other public purposes;

provided, however, that the City may only use the M-63 Parcel for such other use(s) if each of the following conditions is met: (a) the City Commission must approve such other use(s) as required by the City Charter; and (b) the Michigan Department of Natural Resources ("MDNR") must approve such other use(s) to the extent the MDNR is required to do so under the terms of grants made by the State of Michigan to the City.

5. This Court shall retain jurisdiction of this matter for the purpose, and to the extent necessary, of enforcing the terms and provisions of this Consent Judgment, and for deciding any issues arising from the implementation of the terms of this Consent Judgment and the Settlement Agreement.

6. Except as otherwise provided above in this Consent Judgment, this action (including the Deed Claim and Environmental Claims) is dismissed with prejudice.

7. Based upon the foregoing, and subject to the provisions of paragraphs 4 and 5 above, this Consent Judgment resolves all pending claims and closes this case.

Lynda A. Tolen
Honorable Lynda A. Tolen
1/27/04

Stipulation

The parties, by their respective counsel, pursuant to their Settlement Agreement, stipulate and consent to entry of the above Consent Judgment.

Thomas R. Fette
Thomas R. Fette (P13396)
Attorney for Plaintiffs

Geoffrey A. Fields
Geoffrey A. Fields (P41788)
Attorney for City of Benton Harbor

GRAPIDS 61926-1 144224

STATE OF MICHIGAN
CIRCUIT COURT FOR COUNTY OF BERRIEN
I certify that I have compared this copy with the original on file in this court & that it is a correct copy of the whole of such original

JAN 27 2004

M. LOUISE STINE
By *M. Louise Stine*
Deputy Clerk

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by the City of Benton Harbor ("City"), on the one hand, and Clellen Bury, Carol Drake, Gladys Peeples-Burks, Joseph Shurn, Norman Stemm, and Princella Tobias (collectively, "Plaintiffs"), on the other hand. The effective date ("Effective Date") of this Agreement is December 18, 2003.

Recitals

The City owns Jean Klock Park. On June 2, 2003, six members of the City Commission voted to sell part of Jean Klock Park to Grand Boulevard Renaissance LLC ("Developer") for residential development. On June 16, 2003, Plaintiffs commenced a lawsuit ("Lawsuit") against the City in Bury, et al. v. City of Benton Harbor, Berrien County Circuit Court ("Court"), Case Number 03-3430-CE-F. The primary issue in the Lawsuit involves whether, and to what extent, the City may sell any portion of Jean Klock Park for uses other than bathing beach, park, or other public purposes. On August 12, 2003, the Court entered a Preliminary Injunctive Order; and, on October 14, 2003, the Court entered an Order for Alternative Dispute Resolution ("ADR Order"). Plaintiff Harzell Taylor is being dismissed from this lawsuit with prejudice due to health problems. Pursuant to the ADR Order, the remaining parties engaged in facilitative mediation, and as a result of meetings with the mediator ("Mediator"), and taking into consideration the history, present-day concerns, and future interests of the City, Jean Klock Park, and the people who use Jean Klock Park, these parties have agreed to settle their dispute, including the Lawsuit, based on the terms and conditions set forth below.

Terms and Conditions

The City, Clellen Bury, Carol Drake, Gladys Peeples-Burks, Joseph Shurn, Norman Stemm, and Princella Tobias agree as follows:

1. This Agreement is conditioned upon the approval of the City of this entire Agreement, without changes or amendments, as authorized by law. The City shall obtain such approval from the City Commission at any of its regular meetings scheduled after January 1, 2004.

2. Upon execution of this Agreement, counsel for the parties shall inform the Court of this Agreement.

3. Upon execution of this Agreement, counsel for the parties shall file a Stipulated Order to Continue Preliminary Injunction Order and Modify Case Management and Scheduling Order (in the form attached to this Agreement as Exhibit A) for entry by the Court.

4. Upon approval of this Agreement by the City as described in paragraph 1 above, counsel for the parties shall submit a Consent Judgment (in the form attached to this Agreement as Exhibit B) for entry by the Court at a hearing to be scheduled by filing a Notice of Hearing (in the form attached to this Agreement as Exhibit C) with the Court.

5. Upon execution of this Agreement, counsel for the City shall seek to obtain any required approval by the Michigan Department of Natural Resources ("MDNR") for the sale of the "Grand Boulevard Parcel" (as defined in the Consent Judgment attached to this Agreement as Exhibit B).

6. **In addition, subject to approval by the City Commission and any other required governmental entity, the City agrees to (a) provide for the reopening of Grand Boulevard as depicted on Exhibit D to the Consent Judgment out of proceeds from the sale of the Grand Boulevard Parcel, and (b) replace the fence at Jean Klock Park out of proceeds from the sale of the Grand Boulevard Parcel.**

7. Each of the parties to this Agreement agrees to cooperate to take all necessary measures to obtain, and to refrain from actions that might impede, entry and implementation of the Consent Judgment and approval by the MDNR as provided for by paragraphs 4 and 5 above.

8. This Agreement is conditioned upon the successful completion of the sale of the "Grand Boulevard Parcel" as defined in and provided for by the Consent Judgment attached to this Agreement as Exhibit B.

9. Each of the parties supports, agrees to publicly support and promote, and authorizes counsel of record in the Lawsuit to publicly support and promote this Agreement, the Consent Judgment, and the successful implementation of all of the provisions of this Agreement and the Consent Judgment, including the sale and residential development of the "Grand Boulevard Parcel" as provided for in the Consent Judgment.

10. This Agreement binds and inures to the benefit of the parties and their respective successors and assigns.

11. This Agreement is entered into for the purpose of compromise, and neither this Agreement, nor any of its terms or conditions, shall be considered to be an admission by, or evidence of liability by or on behalf of any party to this Agreement.

12. This Agreement is the entire agreement of the parties regarding the resolution of their dispute over the transactions and occurrences regarding the Lawsuit, and no prior agreements, negotiations, or other understandings may be used to explain this Agreement or any of its terms and conditions.


13. This Agreement, its terms and conditions, and all exhibits may not be amended, modified, waived, or assigned, except in a writing signed by all parties to this Agreement, or their authorized representatives.

14. This Agreement was negotiated jointly by counsel for the parties, with the assistance of the Mediator, and shall not be construed against any party as the drafter if there is any question as to the meaning of this Agreement or any of its terms and conditions.

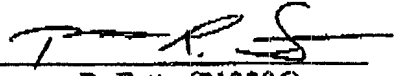
15. Michigan law governs this Agreement.

16. The undersigned counsel for the parties have discussed this settlement with the parties, and each is fully authorized to sign on behalf of and bind his respective clients to this Agreement.

17. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. It is agreed that the counsel for the parties may transmit this Agreement to one another by facsimile and that their facsimile signatures shall be accepted as original signatures.



Geoffrey A. Fields (P41788)
Attorney for City of Benton Harbor



Thomas R. Fette (P13396)
Attorney for Plaintiffs

STATE OF MICHIGAN
BERRIEN COUNTY CIRCUIT COURT

CLELLEN BURY, et al.,

Plaintiffs,

v.

CITY OF BENTON HARBOR,

Defendant.

Case Number 03-3430-CE-F

Honorable Lynda A. Tolen

William T. Burgess (P36922)
Geoffrey A. Fields (P41788)
Dickinson Wright PLLC
Attorneys for Benton Harbor
200 Ottawa NW, Suite 900
Grand Rapids, MI 49503
(616) 458-1300

Charlette Pugh Tall (P48780)
Benton Harbor City Attorney

Thomas R. Fette (P13396)
Paul A. Taglia (P21241)
Attorneys for Plaintiffs

**STIPULATED ORDER TO CONTINUE PRELIMINARY INJUNCTIVE
ORDER AND MODIFY CASE MANAGEMENT AND SCHEDULING ORDER**

At a session of the Court in St. Joseph, Berrien
County, Michigan on _____

Present: Hon. _____
Circuit Court Judge

Upon the Stipulation of the parties, and being advised in the premises:

IT IS ORDERED as follows:

1. The parties agree that the Preliminary Injunction Order may remain in force and effect until the earlier of the March, 2004 trial date, or further order of the Court; provided, that in so stipulation, the City reserves and does not waive any and all objections it has raised in opposition to entry of the Preliminary Injunctive Order.

LIBER 2476
PAGE 1394

2. The deadline for any person having any interest whatsoever regarding the subject matter of this action to make an application to intervene in this action pursuant to MCR 2.209 shall be 28 days from the date of entry of this Order. Upon entry of this Order, counsel of record for the plaintiffs and defendant shall publish notice of this Order in a newspaper of general circulation of Berrien County for three consecutive weeks as provided for in MCR 2.106(D)(1).

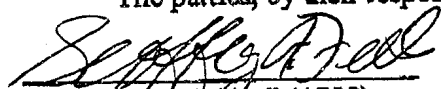
3. All other deadlines in the Case Management and Scheduling Order shall remain in place unless the Court orders otherwise upon stipulation of the parties.

Dated: December __, 2003

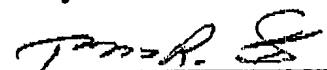
Circuit Court Judge

Stipulation

The parties, by their respective counsel, stipulate to entry of the above Order.



Geoffrey A. Fields (P41788)
Attorney for City of Benton Harbor



Thomas R. Fette (P13396)
Attorney for Plaintiffs

December 19, 2003

December 19, 2003

GRANDS 61926-1 143183-03

LIBER 2476
PAGE 1395

STATE OF MICHIGAN

BERRIEN COUNTY CIRCUIT COURT

CLELLEN BURY, et al.,

Plaintiffs,

Case Number 03-3430-CE-F

v.

Honorable Lynda A. Tolen

CITY OF BENTON HARBOR,

Defendant.

William T. Burgess (P36922)
Geoffrey A. Fields (P41788)
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Attorneys for Benton Harbor
200 Ottawa NW, Suite 900
Grand Rapids, MI 49503
(616) 458-1300

Charlette Pugh Tall (P48780)
Benton Harbor City Attorney

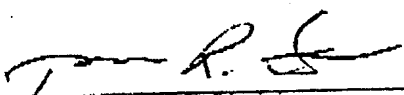
Thomas R. Fette (P13396)
Paul A. Taglia (P21241)
Attorneys for Plaintiffs

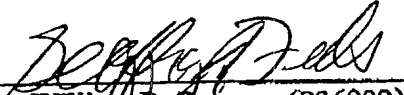
NOTICE OF HEARING

PLEASE TAKE NOTICE that counsel for the parties to this action will submit a Consent Judgment (in the form attached as Exhibit A) for entry by the Court at a hearing on _____, January __, 2003, at ____:____m., or as soon after as counsel of record may be heard.

TAGLIA, FETTE, DUMKE & WHITE, P.C.
Attorneys for Plaintiffs

DICKINSON WRIGHT PLLC
Attorneys for City of Benton Harbor

By: 
Thomas R. Fette (P13396)
Paul A. Taglia (P21241)
720 State Street, Post Office Box 890
St. Joseph, Michigan 49085
269-983-0755

By: 
William R. Burgess (P36922)
Geoffrey A. Fields (P41788)
200 Ottawa NW, Suite 900
Grand Rapids, Michigan 49503
616-336-1017

GRAPIDS 61026-1 143196

LIBER 2476
PAGE 1396

BERRIEN COUNTY CIRCUIT COURT

CLELLEN BURY, et al.,

Plaintiffs,

Case Number 03-3430-CE-F

v.

Honorable Lynda A. Tolen

CITY OF BENTON HARBOR,

Defendant.

William T. Burgess (P36922)
Geoffrey A. Fields (P41788)
Dickinson Wright PLLC
Attorneys for Benton Harbor
200 Ottawa NW, Suite 900
Grand Rapids, MI 49503
(616) 458-1300

Charlette Pugh Tall (P48780)
Benton Harbor City Attorney

Thomas R. Fette (P13396)
Paul A. Taglia (P21241)
Attorneys for Plaintiffs

CONSENT JUDGMENT

At a session of the Court in St. Joseph, Berrien
County, Michigan on _____

Present: Hon. _____
Circuit Court Judge

Upon the Stipulation of the parties, having conducted a hearing on _____,
2004, pursuant to the Notice of Hearing filed in advance by the parties, and being advised in the
premises:

A Consent Judgment is entered to adjudicate, declare, find, and order the following:

Findings

Based on pleadings and evidence in the record, including evidence presented at earlier
hearings, the Court makes the following findings:

RECEIVED JAN 29 2004

1. The City of Benton Harbor ("Benton Harbor") owns Jean Klock Park.
2. On June 2, 2003, six members of the City Commission voted to sell part of Jean Klock Park to Grand Boulevard Renaissance LLC ("Developer") for residential development (the "Residential Project").
3. On June 16, 2003, Plaintiffs commenced this action to litigate the question of whether, and to what extent, the City may sell any portion of Jean Klock Park for uses other than bathing beach, park, or other public purposes.
4. On August 12, 2003, the Court entered a Preliminary Injunctive Order ("Injunction Order"). The Injunction Order provided for temporary injunctive relief under MCR 3.310, and depended upon a preliminary legal ruling on an issue of first impression in Michigan regarding the ability of a municipality to make a permanent dedication of public lands (the "Municipal Dedication Claim"). The Injunction Order also made a preliminary ruling that Plaintiffs are not likely to prevail on their other claims in this matter, including the claims relating to the deed from J.N. and Carrie Klock to the City (the "Deed Claim"), and claims arising under the environmental laws of the State of Michigan (the "Environmental Claims"). The Injunction Order did not make any final ruling on the merits with respect to any of the claims of this case.
5. On October 14, 2003, the Court entered an Order for Alternative Dispute Resolution ("ADR Order").
6. Pursuant to the ADR Order, the parties engaged in facilitative mediation. As a result of the mediation, the parties entered into a Settlement Agreement ("Settlement Agreement"), by which they agreed to settle all claims and defenses arising from the transactions and occurrences that are or could have been the subject matter of this action. A copy of the

Settlement Agreement is attached to this Consent Judgment as Exhibit A. The terms and conditions of the Settlement Agreement attached to this Consent Judgment are incorporated by reference into this Consent Judgment.

7. On December __, 2003, the Court entered a Stipulated Order ("MCR 2.106 Order") to Amend Case Management Order and Scheduling Order. Pursuant to the MCR 2.106 Order, counsel for the parties published a Notice of Entry of MCR 2.106 Order in a newspaper of general circulation in Berrien County for three successive weeks. See Exhibit B. No other person filed an application to intervene in this action as required by the MCR 2.106 Order by the court-imposed deadline of January __, 2003.

8. On January __, 2003, at a public hearing, the City Commission voted to authorize entry of this Consent Judgment and initiated proceedings to amend the City's Master Plan to exclude certain portions of Jean Klock Park as contemplated by the Settlement Agreement entered by the parties and this Consent Judgment.

Conclusions of Law and Orders of the Court

Based upon the facts of this case, the consent of the parties, and taking into consideration the history, present-day concerns, and future interests of the City, Jean Klock Park, and the people who use Jean Klock Park, as well as the time and expense incurred and about to be incurred in connection with the Residential Project, the Court makes the following conclusions of law and orders as follows:

1. This Consent Judgment is intended to and may be recorded. It relates to the present and future use of Jean Klock Park and the Residential Project.

2. This Consent Judgment replaces and supersedes all prior rulings made by the Court in this matter, including the Injunction Order, as amended or extended from time to time, all of which are dissolved.

3. Subject to paragraph 4 below, the Court defines Jean Klock Park to mean and include all property depicted in Exhibit C to this Consent Judgment. The Court permanently enjoins the City from using any portion of the property depicted as "Jean Klock Park" in Exhibit C to this Consent Judgment for any purpose other than bathing beach, park purposes, or other public purposes related to bathing beach or park use, except for recreational vehicle park campsites; provided, however, that the City shall for all time be authorized and empowered to operate its water treatment facility, located at the south end of the park, including but not limited to capital improvements and expansion. The restrictions in this paragraph 3 shall run with the land and shall be binding upon the City and its successors.

4. Notwithstanding any other provision of this Consent Judgment, the City may sell the parcel ("Grand Boulevard Parcel"), which is depicted in Exhibit D to this Consent Judgment, to Grand Boulevard Renaissance LLC ("Developer"); provided, that the residences to be constructed as part of the Residential Project in the Grand Boulevard Parcel depicted on Exhibit D shall not exceed 35 feet in height from the level of Grand Boulevard. If, for any reason, the City is unable to complete sale of the Grand Boulevard Parcel to the Developer for the Residential Project, and the Developer is unable to complete the Residential Project, then this Consent Judgment shall be dissolved, and any party to this action may petition to reopen this action, in which case the Court shall hear and decide the Municipal Dedication Claim. In addition, the City may also use the parcel ("M-63 Parcel"), which is depicted in Exhibit E to this Consent Judgment, for purposes other than bathing beach, park, or other public purposes;

provided, however, that the City may only use the M-63 Parcel for such other use(s) if each of the following conditions is met: (a) the City Commission must approve such other use(s) as required by the City Charter; and (b) the Michigan Department of Natural Resources ("MDNR") must approve such other use(s) to the extent the MDNR is required to do so under the terms of grants made by the State of Michigan to the City.

5. This Court shall retain jurisdiction of this matter for the purpose, and to the extent necessary, of enforcing the terms and provisions of this Consent Judgment, and for deciding any issues arising from the implementation of the terms of this Consent Judgment and the Settlement Agreement.


6. Except as otherwise provided above in this Consent Judgment, this action (including the Deed Claim and Environmental Claims) is dismissed with prejudice.

7. Based upon the foregoing, and subject to the provisions of paragraphs 4 and 5 above, this Consent Judgment resolves all pending claims and closes this case.

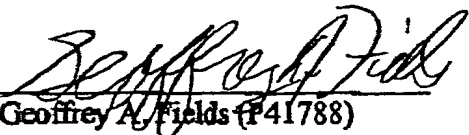
Honorable Lynda A. Tolen

Stipulation

The parties, by their respective counsel, pursuant to their Settlement Agreement, stipulate and consent to entry of the above Consent Judgment.



Thomas R. Fette (P13396)
Attorney for Plaintiffs



Geoffrey A. Fields (P41788)
Attorney for City of Benton Harbor

GRAPIDS 61926-1 143731v03

LIBER 2476
PAGE 1401

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TAGLIA FETTE DUMKE

CHELSEA-BURY & J.
Plaintiff

CITY OF RENTON HARBOR
Defendant

AFFIDAVIT OF PUBLICATION

CASE NO. 03-146-CEF
Honorable Judge A. Tolson

William T. Burgess (734922)
Geoffrey A. Fields (41776)
Jackson Wright PLLC
Attorneys for Renton Harbor
200 Chelsea-NW, Suite 400
Grand Rapids, MI 49503
(616) 451-1500

Charlene Pugh Tall (14720)
James Hester City Attorney

Thomas K. Feltz (217250)
Paula Taglia (217241)
Attorneys for Plaintiff

WITNESSETH CHRISTOPHER
C. FORTMEYER, CLERK OF
SAY: MARY ANNE BENTIVE
GRANDLAND, MODIFY
LAW
MANAGEMENT AND
REPRESENTING ORDER

At a session of the Court in
St. Joseph, Berrien County
State of Michigan, on
December 24, 2003

Present: The Honorable
Judge A. Tolson, Circuit Court
Judge

Upon the stipulations of the
parties, and being
advised of the premises:

IT IS ORDERED as follows:

1. The parties agree that the
Preliminary Injunction Order
they remain in force and effect
until the earlier of the March
2004 legal date, or further
order of the Court; provided,
that the stipulations, the City
attorneys and does not waive
any and all objections if his
raised in connection to entry of
the Preliminary Injunction
Order.

2. The deadline for any per-
son serving any process shall
expire regarding the subject
matter of this action to make
an application to intervene in
the action pursuant to MCR
2.209 shall be 20 days from
the date of entry of this Order
upon entry of this Order.
Copies of records for the plain-
tiff and defendant shall pub-
lish notice of this Order in a
newspaper of general circula-
tion of Berrien County for
three consecutive weeks as
provided for in MCR
2.106(D).

3. All other deadlines in the
Case Management and
Scheduling Order shall
remain in place unless the
Court orders otherwise upon
stipulation of the parties.

Dated December 24, 2003
Judge A. Tolson
Circuit Court Judge

Stipulations

The parties, by their respec-
tive counsel, stipulate to entry
of the above Order.

Geoffrey A. Fields (41776)
Attorney for City of Renton
Harbor
December 19, 2003

Thomas K. Feltz (217250)
Attorney for Plaintiff
December 19, 2003

WITNESSETH: December 27, 2003
and January 3 & 10, 2004

STATE OF MICHIGAN

COUNTY OF BERRIEN } SS

Jennifer Lyon, being duly sworn and says that
she is Inside Sales Supervisor of The Herald-Palladium,
a newspaper published, printed and circulated in the
County of Berrien, State of Michigan: That the
annexed printed notice has been printed and published
in said newspaper 3 times. Same being on the
following days, to wit:

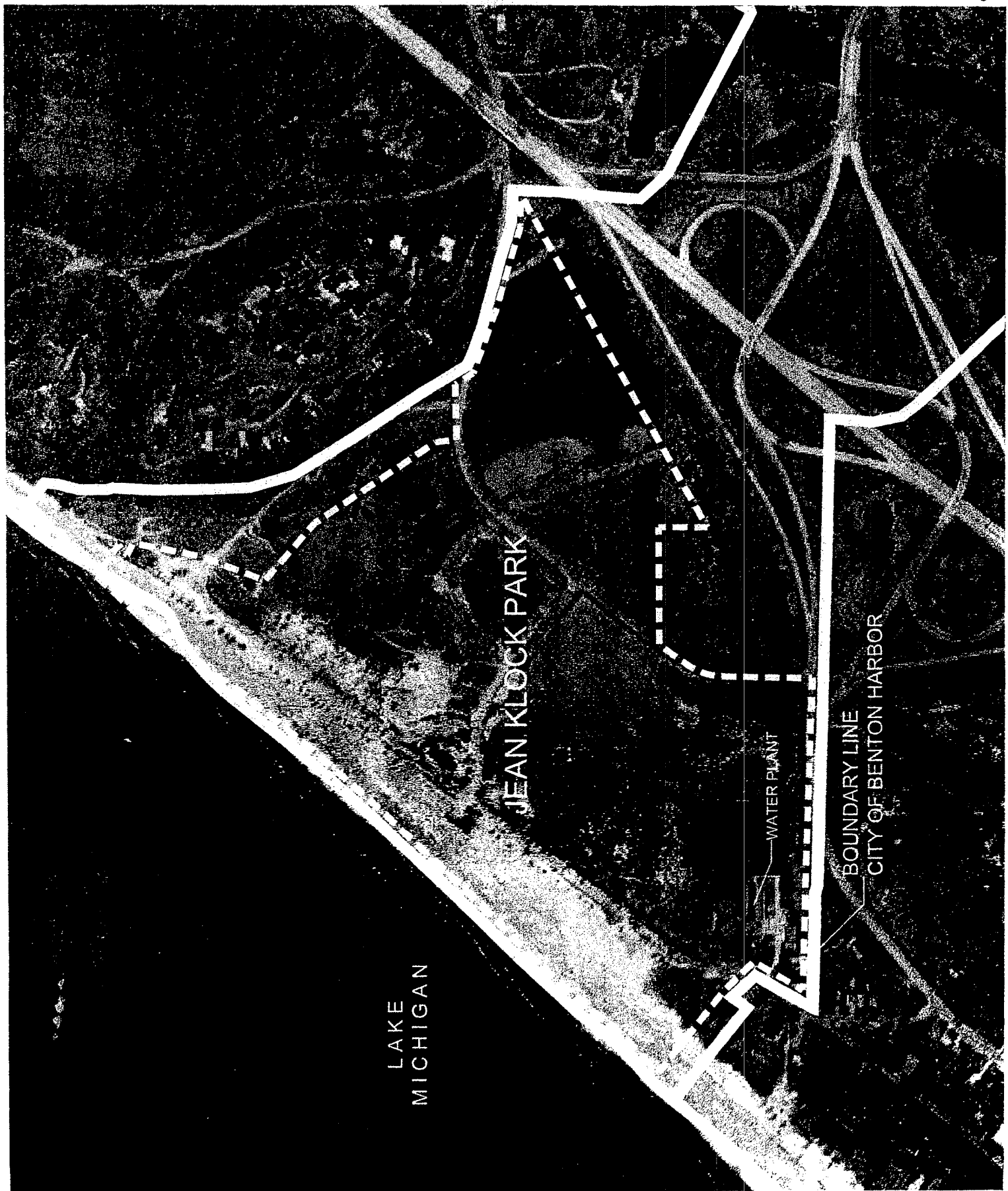
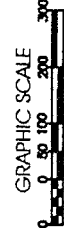
December 27, 2003
January 3, 10, 2004

Jennifer Lyon
(Signature)

Subscribed and sworn to me this 16th Day of
January A.D. 20 04

Karen G. Crowl

NOTARY PUBLIC, Berrien County, Michigan
My commission expires Oct 18 20 05



LAKE
MICHIGAN

JEAN KLOCK PARK

WATER PLANT

BOUNDARY LINE
CITY OF BENTON HARBOR



GRAND BOULEVARD
PARCEL

LAKE
MICHIGAN

WATER PLANT

BOUNDARY LINE
CITY OF BENTON HARBOR

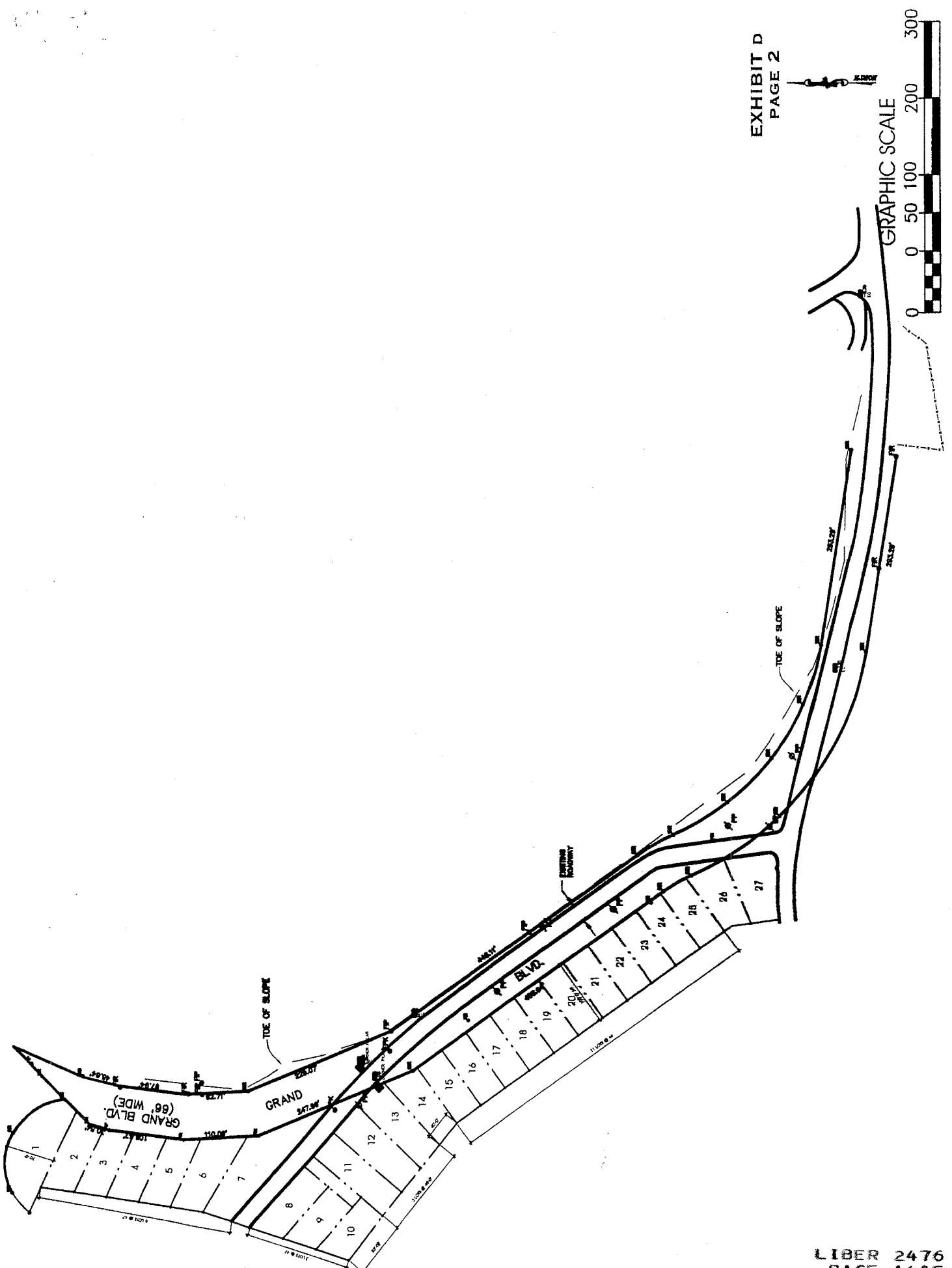


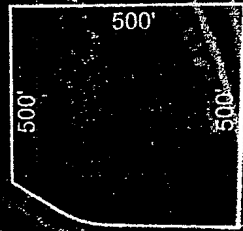
EXHIBIT D
PAGE 2

GRAPHIC SCALE





LAKE
MICHIGAN



WATER PLANT

BOUNDARY LINE
CITY OF BENTON HARBOR

