



Source: Harbor Shore Development Inc.

H-P graphic by Dave Brown; photos by John Madill

The photos, except at Jean Klock Park, show parcels that would be given to Benton Harbor for park land in exchange for use of 22 acres inside Jean Klock Park for a golf course.

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# Is it a fair trade?

## Harbor Shores says land swap will expand park; opponents call it a bad deal

By ANN BURCH  
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BENTON HARBOR — How do you compare 22 contiguous acres of dunes and parking lot along Lake Michigan with eight parcels of property totaling 47 acres, some of which are designated wetlands and most of which aren't connected?

That's just what the National Park Service is trying to do as it figures out the value of scattered pieces of land that Harbor Shores developers are proposing to give to the public in exchange for the dunes property. The city of Benton Harbor requested through the Michigan Natural Resources Trust Fund Board to convert the dune land in Jean Klock Park for use as part of an 18-hole Jack Nicklaus Signature golf course. The board approved the conversion request in the fall of 2006 and sent the proposal to the park service for final approval.

Because the city has received money under the federal Land and Water Conservation Act for Jean Klock Park improvements, the park service has to approve the request to swap the 22 acres of dunes with comparable property — officially called mitigated parcels — in the city of Benton Harbor.

The park service says the property has to belong to Benton Harbor residents in perpetuity, as the 1917 deed for Jean Klock Park sets forth.

Harbor Shores developers maintain that a view of Lake Michigan is essential for the successful development of the golf course. Without the view from three holes and fairways straddling the dunes, it would be just another golf course, they say.

The Harbor Shores development, of which the golf course is a part, is a more than \$400 million project on 530 acres in Benton Harbor, St. Joseph and Benton Township.

Plans are for it to include more than 900 houses or apartments, commercial and retail space, two hotels and an indoor water park.

In balancing the 22 acres in Jean Klock Park with the proposed 47 scattered acres elsewhere, the National Park Service, among other things, is reviewing the equal fair market value of proposed mitigated parcels, their recreational use, levels of environmental contamination and size.

The national agency is also concerned about the state of the rest of Jean Klock Park.

"If the park is converted, we want to make sure it isn't taking away from the recreational value of the park by leaving remnants of a park," said Jim Krejci, outdoor recreation planner for the park service's Midwest Regional Office in Omaha, Neb.

"There still has to be some recreational viability. That's something we are considering, something we are looking at pretty closely."

Krejci said the park service is also looking at the appraisals on the replacement property to see if there are any problems with the parcels.

One area of review is property the city already owns that is part of the conversion proposal and that was once part of the original 90 acres of land deeded to the city by John Klock in 1917.

"We are looking at the actual deeds for the mitigated property," Krejci said.

"We have some questions about the replacement park property. You can't replace park property with park property."

### **Jean Klock Park expansion**

The 47 acres in the eight parcels proposed for the exchange lie in the floodplain area along both sides of the Paw Paw River from just east of Paw Paw Avenue to where the river meets the St. Joseph River.

One parcel (Mitigation Parcel H on the accompanying map), a 3.4-acre tract, is located on the St. Joseph River near two proposed marinas in the city of St. Joseph. Three others appear on maps to be in Benton Township.

Mark Mitchell, director of the Alliance for World-Class Communities and a board member of Harbor Shores Redevelopment Inc., said the property that appears to be in Benton Township may not be in the township. He said no one is sure where the township and city meet, because the course of the Paw Paw River has been changed by governmental entities over time.

"We are still working through that," Mitchell said. "The river literally has been moved by the government. The tricky part is the slicing and dicing (of the expansion and mitigation process)."

The city of St. Joseph property was temporarily transferred to the city of Benton Harbor under a proposed contract annexation agreement to allow taxes to be captured for infrastructure improvements. However, Krejci said that would mean the mitigated property along the St. Joseph River would not remain in perpetuity to Benton Harbor residents.

"That's not something we would grant approval on," Krejci said. "We are looking at the ownership and those lease agreements. If the mitigated property reverts back to the city (St. Joseph), that would not be acceptable. It needs to remain in perpetuity."

Mitchell said he could not respond to the park service's comment because he has not talked with its staff. But he added that the Michigan Department of Natural Resources has made sure the mitigated properties would remain "dedicated permanently to the park."

"No matter what happens with the Harbor Shores project, those two parcels will be permanent park expansion property," Mitchell said.

An 8-acre parcel (Parcel D on the map), which was included in the original 90-acre deed, was handed back to Benton Harbor after the Michigan Department of Transportation redesigned Michigan 63 a few years ago. The land had been lost to the MDOT cloverleaf project in the 1950s.

The largest section of land is about 14.6 acres (Parcel E), and the smallest (Parcel F) is just under 2.5 acres. Most of the acreage is considered wetlands. "I can't tell you what percentage of land is considered wetlands, but a significant portion is wetland," Mitchell said. "But because it (mitigated land) will become part of the park, it will be preserved permanently and can't be developed."

Because of the way the parcels are configured along the Paw Paw River, the smaller tracts would be connected by walking paths and by existing city streets and sidewalks that are not part of the conversion proposal.

Mitchell said the Michigan Natural Resources Trust Fund Board agreed that the land swap is equitable.

"The DNR (Michigan Department of Natural Resources) and the Trust Fund Board agreed it was fair," said Mitchell, adding that the strips of parcels are an extension of a park development plan never implemented years ago to connect Jean Klock Park with property along the Paw Paw River.

Harbor Shores developers and Benton Harbor's city manager call the additional property proposed under the conversion an "expansion of the park."

Mitchell said the vision of the Harbor Shores project is to create a walking and biking path that will connect the arts district in downtown Benton Harbor to Jean Klock Park. The pathways will also connect to existing walkways along Graham Avenue.

The public can reach the trail system from downtown Benton Harbor, Klock Park and at various locations from existing city streets, Mitchell said.

### **What opponents claim**

Opponents say the swap is wrong and illegal.

"When you focus on just the plan for substitution or mitigation, it becomes clear that what is being proposed is dishonest in many ways," said LuAnne Kozma, director of the Michigan chapter of Defense of Place, a land conservation organization.

"It does not take into account all the parkland they are trying to take out of park use. It's not just 22 acres they've got outlined inside the park, like a couple of jigsaw puzzle pieces that would be part of the golf course. All the land around these pieces would be affected, too."

Mitchell said there is "some confusion" over the possible interaction between golfers and pedestrians.

"The walkways are not part of the golf course," Mitchell said. "There are safety boundaries, large buffer areas (between the two types of users) as far as interaction of the two."

Barriers also would be built within the park to keep beachgoers and picnickers safe from errant golf balls.

"Have you seen a game of golf in an area that was once dunes?" Kozma asked. "The golfers go off the turf grass and into what might remain of the dunes. ... The turf grass and the buffer areas around it would all serve only golfers."

Kozma said the public would be excluded from the dunes, and the dunes would be aesthetically, physically and ecologically sacrificed to golf.

"To say this wouldn't interfere with the public's enjoyment of the dunes' crests by walking along a dunes' crest and seeing a golf course taking up the entire landward side of the dunes ... is as dishonest as it gets," Kozma said.

"I'd challenge anyone who loves the dunes along the coast of Michigan to say that they (golf course holes and fairways) would not impact a dunes landscape, the natural forces at work, the habitat they provide, the peacefulness and the recreational enjoyment of that dune's landscape by building a golf course on top of them."

Developers say the three golf holes in Jean Klock Park would not be built on the dunes but next to the dunes. Under the proposals, fill dirt would be used to lift the area to the height of the dunes, providing golfers a view of Lake Michigan.

"The golf course is not going to infringe upon the dunes," Mitchell said.

Developers are proposing a parking lot on the existing beach with a public access road along the beach. Mitchell said plans are to unearth the original road that is buried under sand. That road once allowed bathers to drive along the lake.

The road and parking areas would run along either side of the present bathhouse and would not consume much more of the beach area than what once existed.

"There would be angled parking on either side of the park," Mitchell said. "People will be able to access the full length of the beach. I don't think it will compromise the beach. In fact, it will cut down on how far you will have to walk to get to the beach."

But Kozma said this would also contribute to the loss of parkland that is now the beach.

"They also don't take into account all the acreage on the beach they'd like to put a parking lot on," Kozma said. "There would be a whole lot of considerations just concerning that – the acreage, the value, the loss of the recreational usefulness, the aesthetics. That alone represents a huge loss that's not being put into the conversion-mitigation equation."

### **The 2004 consent judgment**

More important, Kozma claimed, the conversion proposal is illegal because of a 2004 consent judgment between the city and residents who sued the city.

The judgment was a result of a lawsuit brought by those residents against the city for selling approximately 4 acres of the park for private homes.

Under the judgment, the city agreed not to convert any more of the park's acreage to private use.

Developers, however, maintain that the golf course will be public, not private.

"With a court-ordered consent judgment which prohibits any further development in the park, the city and the state should not be proposing this to the federal government at all," Kozma said. "Not every park has this extra protection. Jean Klock does."

Carol Drake, co-founder of The Friends of Jean Klock Park and one of the people involved in the 2004 consent judgment, said the city will have to file a legal motion in Berrien County Trial Court to amend the judgment.

During a public hearing in September held by the Michigan Department of Environmental Quality to hear comments on the proposal by Harbor Shores to pump 450,000 gallons of water from the Paw Paw River to irrigate the golf course, Drake asked the DEQ to hold off any decision until the National Park Service and the court have ruled on the conversion proposal.

"I strongly recommend that in order to spare more public tax dollars on the process and further destruction of natural areas, that the MDEQ table its decision on any permits related to the project," Drake said.

"Do not believe for one minute that this natural beach and dune area will not be negatively impacted, because the truth is the natural aesthetic value of the entire park will be sacrificed."

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