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News

Heritage Sunday
A Heritage Newspaper

Federal court dismisses developer's lawsuit

By Paula Evans Neuman, Heritage Newspapers

DETROIT — A federal court has thrown out a developer's lawsuit over a project proposed for land in Gibraltar known as Humbug Marsh.

Developer Made In Detroit Inc. asked the court to rule that federal regulatory agencies have no jurisdiction over its controversial residential project.

Instead, U.S. District Judge George Caram Steeh said the case was "constitutionally premature," and dismissed it, rather than rule one way or the other whether the Army Corps of Engineers and the U.S. Environmental Protection Agency have jurisdiction over the project.

Downriver residents who have opposed the plan since its introduction in 1996 were optimistic in the wake of the ruling.

Environmentalists say the project — 295 houses and a golf course — will lead to the destruction of the last high-quality wetland on the American shore of the Detroit River.

And they are hopeful that MID someday might consider selling the 409 acres to an environmental trust. Half of the land is wetland or open water, and 112 acres are in a state conservation easement.

"I think constantly of the foresight and generosity of the Slocum family who donated what is now our Elizabeth Park," said Grosse Ile resident Blair McGowan, a member of Friends of the Detroit River.

"The same citizens who successfully banded together to save Humbug will have to pull together to find a way to preserve this natural resource for all generations to enjoy.

"This is a great chance for us to enhance the quality of life in the Downriver community."

U.S. Rep. John Dingell (D-16th District) has taken an active interest in protecting the property, as well.

"I was pleased to see the court's decision ... to dismiss the suit against the

U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency," he said Friday. "This decision reinforces the integrity of their work and a fair process.

"Humbug Marsh and Humbug Island are areas of unique ecological value for fish and waterfowl and deserve to be protected. They deserve protection under not only the federal Clean Water Act and other statutes, but also under the intent of the easement negotiated by the state of Michigan for protection of this invaluable resource."

MID Chairman William Merriweather called the judge's decision "an overly narrow view of constitutional law," and said the firm "anticipates beginning construction in the spring."

The developer has promised a spring construction start every year since the project was introduced.

In his Nov. 20 order to dismiss the case, Steeh wrote: "The court's ruling today does not preclude MID from having its day in court.

"MID may seek judicial review after it applies for a (wetlands) permit for its revised development plan and the corps renders a final decision on the application.

"Alternatively, if MID chooses not to pursue a permit, and instead commences construction activities, judicial review will be available to MID if EPA finds that it has violated the Clean Water Act and assesses an administrative penalty, or if the United States commences an enforcement action in court."

In other words, one option for MID is to submit a revised proposal to the corps. If the developer is then denied permits, the court will consider a legal challenge to the denial.

The corps denied the firm a wetlands permit in June 2000. MID's plan included underwater utility lines and a bridge to 20-acre Humbug Island. The corps ruled that the bridge and the underwater lines wouldn't be allowed.

MID asserted that the corps had no jurisdiction over the bridge, and threatened to build the project anyway.

"The corps offered to visit the property and review detailed construction plans so that potential violations could be avoided," states the background information in the Nov. 20 court order.

But MID didn't communicate further with the corps. Instead, the developer submitted a slightly revised plan, which included the bridge, to the Gibraltar Planning Commission. MID told the city's officials that no federal permits were needed for the new plan.

The corps and the EPA then warned MID that if it went ahead with construction, it would be risking enforcement action.

Gibraltar granted MID preliminary site plan approval in August 2000, but added some conditions. City officials said that if MID didn't get corps permits or a court decision saying none were needed, no final approval would be given.

On June 22, MID filed its complaint with U.S. District Court, seeking a declaration that federal permits weren't needed.

In August, the city's preliminary approval expired. MID asked for an extension, but city officials decided Monday not to consider the request.

If MID starts construction of its project now without federal wetlands permits, and is penalized for doing so, then the developer can take the matter back to federal court, the Nov. 20 order states.

And, apparently, that is the course the firm intends to take.

"We anticipate no further involvement by the Army Corps or the EPA in our project because we can absolutely guarantee that we will do nothing that falls within their jurisdiction," Merriweather said.

Either action — redesigning the project and seeking corps approval or starting construction without it — is likely to take time and money.

Michigan National Bank and Bank One are suing MID for \$2.6 million it borrowed and has not repaid. Court documents from that case assert that the developer is "on the verge of bankruptcy."

MID also would have to start the approval process over with Gibraltar's Planning Commission to proceed with the project.

The developer's land, a small part of which is in Trenton, is the last undeveloped mile on the American side of the Detroit River.

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