

# Billstein, Monson & Small PLLC

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July 15, 2020

Billings City Council  
c/o Mike Whitaker, Parks Director

*Via Email*

Re: Possible Donation of Lot 2A, Sahara Sand 1<sup>st</sup> Filing

Dear Mayor Cole and Councilmembers Shaw, Yakawich, Ewalt, Neese, Choriki, Joy, Purinton, Ronning, Boyett and Brown:

I am a member of the Board of Directors of the Better Billings Foundation (the "BBF") and an attorney licensed to practice law in the State of Montana. Thank you for the opportunity to make a brief presentation at the July 20 Work Session and thank you for your time serving on our City Council.

While I hope to keep this letter and any corresponding presentation as brief as possible, I think that a brief summary of the purpose of the BBF and the history of the Oasis Water Park would be helpful. Please consider the following:

1. After a proposed mill levy failed that would have constructed a City of Billings owned and operated pool in the Heights, the BBF was formed to explore opportunities to improve the City of Billings through private donations and public/private partnerships.
2. After a lengthy period of due diligence, the BBF identified Sahara Park as the best location for the construction of a family aquatic center to be called the Oasis Water Park.
3. At that time, Sahara Park was one unified parcel consisting of approximately 9.255 acres.
4. The City of Billings expressed an interest in donating the entire Sahara Park to the BBF for the BBF to develop the Oasis Water Park. However, a group of neighbors requested that the City of Billings retain a portion of Sahara Park for the neighbors to develop a community park.
5. The discussions between the City of Billings and the BBF resulted in a Funding and Development Agreement dated December 14, 2009 pursuant to which the City of Billings agreed to donate a substantial portion of Sahara Park to the BBF if the BBF could meet certain requirements.
6. On June 16, 2011, the City of Billings donated 6.755 acres to the BBF, with the restriction that the donated property would revert to the City of Billings if the property



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ever ceased to be used as a family aquatic center. The City of Billings retained 2.5 acres of Sahara Park under tax ID A21920 for the potential construction of a neighborhood park ("Lot 2").

7. The BBF completed construction of the Oasis Water Park using almost exclusively private donations and is confident that the Oasis Water Park has been a positive addition to the amenities offered in the City of Billings.
8. Since 2011, Lot 2 has remained undeveloped. While the BBF has had an occasionally rocky relationship with some neighbors, the BBF believes that the neighbors are fully supportive of the development of Lot 2 by the BBF at this time.
9. Certain representatives of the City of Billings have approached the BBF about the BBF accepting the donation of Lot 2 for the BBF to develop as a neighborhood park and the BBF is happy to accept the donation of Lot 2.

The BBF believes that the City of Billings and the BBF need to restate the existing development agreement. The BBF believes that the revisions to the existing development agreement need to include the following:

- A. A restated agreement should address the additional donation of Lot 2 to the BBF.
- B. The BBF appreciates the need to restrict the purposes for which land donated by the City of Billings can be used. However, the current development agreement contemplates a more narrow family aquatic center with related features and the BBF hopes to use Lot 2 for more general family recreational activities that would be located in a City of Billings park and which relate to aquatic activity only with respect to the proximity to the Oasis Water Park.
- C. The proof of funding requirements should be removed as long since satisfied by the BBF.

While the focus of this prospective donation is to further the public/private partnership of the City of Billings and the BBF whereby the BBF would proudly develop a community park using private donations, the BBF believes that this arrangement provides additional financial benefits to the City of Billings. First, the BBF is responsible for all expenses to maintain the Oasis Water Park but the City of Billings presently maintains Lot 2. The BBF is willing and able to take over the maintenance expense of Lot 2.

Second, since 2012, the BBF has paid \$50,430.99 in arterial construction, stormwater, street maintenance and light maintenance fees which we understand would not have been paid if the City of Billings had continued to own an undeveloped Sahara Park. Further, it is our understanding that Lot 2 is currently not subject to those same fees based upon the ownership by the City of Billings. The BBF anticipates that it will be responsible to pay fees if the City of Billings chooses to donate the balance of Sahara Park to it. While the BBF has not yet asked the City of Billings to calculate the actual fees that will be charged to the BBF, if the arterial construction, stormwater, street maintenance and light maintenance fees are assessed to Lot 2 on a square footage basis, the BBF will pay roughly an additional \$2,600 annually – this math is based upon a current 2019 payment of \$7,022.94 by the BBF for 6.755 acres of Sahara Park and Lot 2 is approximately 2.5 acres, or 37% of the acreage presently owned by the BBF.

Thank you for taking the time to consider this matter. I look forward to being available to answer any questions that you might have on July 20<sup>th</sup>. We hope that you will be willing to then add the donation of Lot 2 to the next available City Council meeting that allows for notice to be provided to interested parties consistent with City Code Section 22-902.

Sincerely,

A handwritten signature in black ink, appearing to read 'ATB', with a long horizontal line extending to the right.

Andrew T. Billstein

enclosures

cc: Chuck Barthuly, Executive Director  
Brent Brooks, Esq.