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STATE OF IDAHO }  
 COUNTY OF KOOTENAI } SS  
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CLERK DISTRICT COURT  
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

NORTH IDAHO BUILDING  
 CONTRACTORS ASSOCIATION, on  
 behalf of themselves and all others  
 similarly situated,

Plaintiff,

vs.

CITY OF HAYDEN, an Idaho  
 municipality,

Defendant.

Case No. *CV 12-2818*

COMPLAINT

COMES NOW, the Plaintiff above-named, NORTH IDAHO BUILDING CONTRACTORS ASSOCIATION, and for cause of action against the Defendant, CITY OF HAYDEN, complains and alleges as follows:

I.

Plaintiff, North Idaho Building Contractors Association ("NIBCA"), is a non-profit corporation in good standing doing business in the state of Idaho. NIBCA is a trade association consisting of members in and around the City of Hayden. The purpose of NIBCA is to foster

ASSIGNED TO  
 JUDGE MITCHELL

trade and commerce of the residential and commercial housing industry and to advance the civic, commercial and industrial interests of the association members within the territory covered by the association.

II.

The Defendant, the City of Hayden, is a municipality incorporated in the state of Idaho and administered pursuant to Idaho Code § 50-101 et seq.

III.

Members of NIBCA routinely do business in the City of Hayden, and in order to obtain construction permits have been forced to pay sewer system capacity or capitalization fees to the City of Hayden.

**GENERAL ALLEGATIONS**

IV.

The City of Hayden requires builders and/or developers to pay various “Sewage Capitalization Fees” in order to obtain a building permit for the construction of any new residential or commercial building.

V.

In recent years, the City of Hayden has dramatically increased these Capitalization Fees.

VI.

Members of NIBCA, being greatly concerned about the impact and chilling effect the Capitalization Fees have on the construction industry, pointed out the legal deficiencies of these fees and attempted to work with the City of Hayden to discuss and resolve its members’ concerns.

VII.

Specifically, NIBCA wrote to the City of Hayden pointing out the strong precedent under

Idaho Law that Capitalization Fees are not to be used primarily for revenue raising purposes, or for future expansion of the City's sewer system, but rather can be used only for operation and maintenance of the system.

VIII.

Through substantial communications with the City of Hayden, NIBCA learned that the City had based its Capitalization Fee in an amount calculated to pay for a number of proposed capital expansion projects that were clearly designed to increase the capacity of the system.

IX.

The City of Hayden's Capitalization Fees have never been approved by an ordinance, resolution or any other formal or public procedure.

X.

NIBCA has obtained City accounting records that detail the collection and use of the Capitalization Fees. The records identified nearly 20 capital projects tied to sewage system expansion from 2005 to 2011.

XI.

The City of Hayden's records further indicate that significant funds are at stake, a staggering \$10,614,410.70 has been spent or budgeted for sewer system expansion projects from 2005 through 2014, all of which was, or is to be, financed through sewage capitalization fees.

XII.

Many, if not all, of the projects are for the expansion of the sewage system, rather than for repair or maintenance of the existing system.

XIII.

Fees collected to raise revenue are not considered fees by Idaho common law, rather they

have been held to be unlawful taxes.

**COUNT I  
UNCONSTITUTIONAL TAKING**

XIV.

The Fifth Amendment of the United States Constitution, as applied to the states under the Fourteenth Amendment, prevents the taking of private property without due process of law or without just compensation.

XV.

Idaho Constitution Article I § 14 incorporates the Fifth Amendment of the United States Constitution.

XVI.

Under 42 U.S.C. § 1983, a person deprived of their rights under the color of any act, statute, ordinance, regulation, custom or usage of any public entity is entitled to redress at law or in equity.

XVII.

The City of Hayden's exaction of the Capitalization Fee was unlawful as the city had no authority to charge the tax or fee as enumerated in the counts stated below and therefore has resulted in the taking of private property of members of NIBCA by a governmental agency which is vested with the power of eminent domain.

XVIII.

The Capitalization Fee imposed upon members of NIBCA by the City of Hayden constitutes an inverse taking of the members' private property without ascertainment and payment of just compensation under both the Idaho and United States Constitutions.

XIX.

On behalf of its members, NIBCA is entitled to an order that the City of Hayden's Capitalization Fee policies have resulted in a violation of their Constitutional rights, by the taking of private property without the due process of law.

XX.

Members of NIBCA have suffered injury caused by the City of Hayden charging an unlawful fee and seek compensation for damages in an amount which will be proven at trial, which in any event is in excess of \$25,000.

**COUNT II – DECLARATORY ACTION:  
VIOLATION OF TAXING LIMITATIONS OF THE IDAHO CONSTITUTION**

XXI.

All previous allegations are restated and incorporated herein by reference.

XXII.

Pursuant to the allegations herein the sewer capitalization fee is not a fee but a disguised tax.

XXIII.

Pursuant to Article VII § 6 of the Constitution of the State of Idaho, the City of Hayden's power to tax is limited to grants of authority given it by the Idaho Legislature.

XXIV.

The Idaho Legislature has not granted the City of Hayden, or any Idaho municipal corporation, the authority to impose a sewer capitalization tax on builders and/or developers.

XXV.

The City of Hayden's sewer capitalization tax exceeds those Constitutional and

legislative grants of authority. The City of Hayden has no authority to enact the sewer capitalization tax.

XXVI.

Any tax not authorized under Idaho law is void and unenforceable.

XXVII.

In addition, the City of Hayden's sewer capitalization tax is offensive of Article VII § 5 of the Constitution of the State of Idaho which requires all taxes be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax.

XXVIII.

A legal controversy exists between the City of Hayden and NIBCA regarding the collection of Capitalization Fees from the association's members.

XXIX.

NIBCA is an interested party entitled to obtain a declaration of rights, status or other legal relations pursuant to Idaho Code § 10-1202.

XXX.

NIBCA and the public at large are entitled to a declaration that the City of Hayden's Capitalization Fee policy, as it has been implemented since at least 2005, is in violation of Idaho's Constitution with regard to taxing and regulatory authority and therefore void.

XXXI.

Members of NIBCA have suffered injury caused by the City of Hayden charging an unlawful fee and seek compensation for damages in an amount which will be proven at trial, which in any event is in excess of \$25,000.

**COUNT III -- DECLARATORY ACTION:**

**VIOLATION OF POLICE POWER LIMITATIONS  
OF THE IDAHO CONSTITUTION**

XXXII.

All previous allegations are restated and incorporated herein by reference.

XXXIII.

The City of Hayden's authority to collect fees, including Capitalization Fees, is limited in part to the police powers found under Constitution of the State of Idaho Article XII § 2. In order for the City of Hayden to collect a fee pursuant to its police powers, there must be a proportionate nexus between the fees and their regulated use. Such fees must be rationally related to the cost of enforcing the regulation and cannot be assessed purely as a revenue raising scheme.

XXXIV.

The revenue collected from the City of Hayden's Capitalization Fee bears no necessary relationship to the regulation of maintaining its sewage systems, but rather is to generate funds for the non-regulatory function of expanding sewage system capacity.

XXXV.

The City of Hayden's Capitalization Fee policies are beyond the scope allowed under the Idaho Constitution, including but not limited to the following:

- a. By its own admission, the City of Hayden has been and continues to utilize the Capitalization Fees for sewage system capital projects that expand the system's capacity.
- b. Neither the calculations of nor the use of the Capitalization Fees are based on the maintenance, repair or replacement of the existing sewage system.
- c. There is weak or woeful lack of accounting for the Capitalization Fees, which are utilized as general revenues for capital expansion projects or for other purposes on an "ad hoc"

basis.

XXXVI.

A legal controversy exists between the City of Hayden and NIBCA regarding the collection of Capitalization Fees from the association's members.

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NIBCA is an interested party entitled to obtain a declaration of rights, status or other legal relations pursuant to Idaho Code § 10-1202.

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NIBCA and the public at large are entitled to a declaration that the City of Hayden's Capitalization Fee policy, as it has been implemented since at least 2005, is in violation of Idaho's Constitution with regard to taxing and regulatory authority and therefore void.

XXXIX.

Members of NIBCA have suffered injury caused by the City of Hayden charging an unlawful fee and seek compensation for damages in an amount which will be proven at trial, which in any event is in excess of \$25,000.

**COUNT IV – DECLARATORY ACTION:  
FAILURE TO CHARGE A REASONABLE “EQUITY BUY-IN” FEE**

XL.

All previous allegations are restated and incorporated herein by reference.

XLI.

Pursuant to Idaho law, a city managing public works shall do so in the most efficient manner consistent with sound economic and public advantage, to the end that the services of such works be furnished at the lowest possible cost and shall not be a source of revenue.



XLII.

The City of Hayden is charging arbitrarily imposed fees, which are not based on the cost to support the existing public sewage system and the operating costs thereof.

XLIII.

The City of Hayden's Capitalization Fee is not based on the value of the existing system, but rather is based on the projected costs of expanding the system to accommodate future system users.

XLIV.

The Capitalization Fee charged by the City of Hayden is arbitrary and unreasonable in that it is not based on the existing sewer system capacity to be utilized by a new user but is a source of revenue to the City.

XLV.

A legal controversy exists between the City of Hayden and NIBCA regarding the collection of Capitalization Fees from the association's members.

XLVI.

NIBCA is an interested party entitled to obtain a declaration of rights, status or other legal relations pursuant to Idaho Code § 10-1202.

XLVII.

NIBCA and the public at large are entitled to a declaration that the City of Hayden's Capitalization Fee policy, as it has been implemented since at least 2005, is in violation of Idaho's Constitution with regard to taxing and regulatory authority and therefore void.

XLVIII.

Members of NIBCA have suffered injury caused by the City of Hayden charging an

COMPLAINT - 9