

WASHINGTON CITIES INSURANCE AUTHORITY

LAWSUIT TRANSMITTAL FORM

Date: 4/22/09

TO: Washington Cities Insurance Authority

FROM: Rob Lassoff

RE: Bainbridge Taxpayers Alliance v. COPRI

This is to advise you that the above-referenced lawsuit has been commenced and to transmit copies of the pleadings we have received for determination of a defense by WCIA as to the claims made and for assignment of defense counsel.

We have taken the following action:

- (✓) 1. A copy of the Summons and Complaint is attached to this letter.
- (✓) 2. A copy of the Summons and Complaint has been sent to our City/Organization Attorney with instructions that he/she put in a Notice of Appearance to avoid any default.
- () 3. Our City/Organization Attorney has filed a Notice of Appearance in this action and a copy of his/her Appearance is attached.
- () 4. The following City/Organization officials and/or employees have been served with this Summons and Complaint on the below indicated dates:

Date Served:

A. Roblind D. Lassoff, City Clerk 4/22/09 2:11 PM
B. _____
C. _____

Additional comments: _____

Roblind D. Lassoff
Member Contact Person

City Council
WCA Claim Dept.
APR 22 '09 PM 2:11
D. Kordonow
M. Dombrowski
P. McMurray
C. Brown

RECEIVED FOR FILING A. Ostalick
KITSAP COUNTY CLERK n. Neraas

APR 22 2009

DAVID W. PETERSON

J. Shear
J. Deer
E. Koniet
J. Ault

SUPERIOR COURT OF WASHINGTON
FOR KITSAP COUNTY

BAINBRIDGE RATEPAYERS ALLIANCE, a)
non-profit corporation,)
)
Plaintiff,)
vs.)
CITY OF BAINBRIDGE ISLAND, a municipal)
corporation,)
)
Defendants,)
)

No. 09 2 01023 6

COMPLAINT

Plaintiff alleges as follows:

1. The City of Bainbridge Island offers water, sewer, and stormwater management utilities, collectively referred to as the waterworks utilities (BIMC Sec. 3.44), through its Department of Public Works. The City water and sewer services are available to only a small portion of the island. Despite the requirement that utility funds only be used for their intended purpose; that the individual funds and their capital improvements be segregated; and that fund monies not be commingled, the City has a record of commingling all cash from all sources belonging to all its tax-supported and proprietary funds. Recently,

COPY

1 the City has sought financing through Bond Anticipation Notes and Revenue Bonds in an
2 amount that is almost 50% greater than that required to finance completion of the Waste
3 Water Treatment Plant (WWTP) capital improvement for which the financing is purportedly
4 sought. This lawsuit seeks declaratory and injunctive relief holding the financing proposal in
5 excess of the amount necessary to complete the WWTP project as unauthorized, and thus an
6 illegal, tax and enjoining the City from implementing these financing proposals or using any
7 funds secured thereby for any project other than completion of the WWTP.

8 **PARTIES, JURISDICTION AND VENUE**

9 2. Plaintiff Bainbridge Ratepayers Alliance is a non-profit organization
10 incorporated under the laws of the State of Washington. The Alliance's members include
11 Bainbridge Island citizens who pay utility charges imposed by the City and who are
12 concerned about the City's utility rates, taxes, and municipal finances.

13 3. Defendant City of Bainbridge Island is a municipal corporation of the State of
14 Washington located in Kitsap County. The City's jurisdiction encompasses the entirety of the
15 island.

16 4. The Court has jurisdiction over this matter under RCW 2.08.010 because
17 Plaintiff is challenging the legality of a tax and jurisdiction has not been vested exclusively by
18 law in some other court.

19 5. Venue is proper in this Court under RCW 4.14.025 because Defendant City of
20 Bainbridge Island is a municipal corporation located in Kitsap County.

21 **FACTS**

22 6. The Bainbridge Island Public Works Department manages sewage collection
23 and treatment in the Winslow area of the City.

1 7. The Winslow sewer service area encompasses only a small portion of the
2 City's jurisdiction.

3 8. The City has proposed completion of the improvements to the Winslow service
4 area Wastewater Treatment Plant.

5 9. The City has proposed to finance improvement completion by issuing revenue
6 bonds that substantially exceed the cost of financing such completion of the WWTP. The
7 estimated cost of completion ranges from \$4.2 million to \$4.6 million, while financing is
8 being sought for \$6 million.

9 10. These revenue bonds will be paid for by increased utility fees levied on
10 Winslow sewer service area utility customers.

11 11. The City has made this proposal without having first released a utility rate
12 study that shows the projected impact on the ratepayer of the proposed financing; without
13 evidence that current and future ratepayers can afford proposed rate increases; without
14 providing currently available information on the financial impact of other capital
15 improvements that might be required for the affected utility to be in compliance with
16 applicable local, state, and federal laws; without disclosing why the proposed financing is
17 excessive; and without receiving advisory recommendations from the Utility Advisory
18 Committee as required by Bainbridge Island Municipal Code chapter 2.33.

19
20 **FIRST CAUSE OF ACTION**
 ILLEGAL TAX

21 12. Plaintiff herein incorporates by reference paragraphs 1 through 11 as if fully
22 set forth herein.

1 13. The City's proposal to increase utility rates on all City utility customers
2 constitutes a tax, rather than a regulatory fee, because (1) a primary purpose for a significant
3 portion of the rate increase is to raise revenue, rather than to regulate utility service, and (2)
4 there is no relationship between the funding needed to complete the WWTP and the bond
5 financing proposal because the latter is in an amount that is substantially greater than the
6 financing required to complete the WWTP.

7 14. The City lacks authority to levy a tax on Winslow service area utility
8 customers to provide public benefits.

9 15. Plaintiff accordingly seeks a judgment declaring any excess proposed utility
10 rate increase to be an illegal tax, and an injunction enjoining the City from encumbering the
11 Winslow sewer service area utility customers with debt in excess of that reasonably estimated
12 for completion of the WWTP.

13
14 **SECOND CAUSE OF ACTION**
15 **FAILURE TO COMPLY WITH BIMC 2.33**

16 16. Plaintiff herein incorporates by reference paragraphs 1 through 15 as if fully
17 set forth herein.

18 17. The Bainbridge Island Municipal Code requires that a Utility Advisory
19 Committee "shall...[c]onsult with and make recommendations to the mayor and the city
20 council, give advisory recommendations to the city council relative to the planning for,
21 financing, operation and maintenance of water and sanitary sewer utility capital facilities."
22 BIMC 2.33.040(D).

23 18. The City has failed to follow the legal directive to establish a Utility Advisory
Committee.

1 19. The City’s wastewater treatment plant is a sanitary sewer utility capital facility.

2 20. There are no advisory recommendations from a Utility Advisory Committee
3 regarding the planning or financing of the proposed improvements to the wastewater
4 treatment facility.

5 21. The City’s failure to follow the duly authorized process renders the City’s
6 bond proposal arbitrary and, hence, denies Plaintiff and its members their rights to due
7 process guaranteed under the Washington Constitution.

8 22. Plaintiff accordingly seeks a judgment declaring the proposed bond issue void
9 and an injunction enjoining the City from proceeding with the bond issue.

10
11 **THIRD CAUSE OF ACTION**
 VIOLATION OF RCW 43.09.210.

12 23. Plaintiff herein incorporates by reference paragraphs 1 through 22 as if fully
13 set forth herein.

14 24. RCW 43.09.210 relates to local government accounting and requires, among
15 other things, that inter-departmental charges “shall be paid for at its true and full value.” The
16 City has a practice of allocating personnel costs from tax-supported funds to the utility funds
17 without compliance with the “true and full value” standard.

18 25. RCW 43.09.210 provides that no government fund or other government
19 agency “shall benefit in any financial manner whatever by an appropriation or fund made for
20 the support of another.” Over the years, the City and the Bainbridge Island School District
21 have entered into a series of inter-local agreements involving a number of issues. When the
22 City acquired a district-owned water system, the City paid a significant portion of the
23

1 acquisition cost by waiving storm water and sewer participation fees prospectively, which
2 resulted in an illegal financial benefit.

3
4 **FOURTH CAUSE OF ACTION**
5 **VIOLATION OF RCW 35A.34.220**

6 26. Plaintiff herein incorporates by reference paragraphs 1 through 25 as if fully
7 set forth herein.

8 27. RCW 35A.34.220 requires that "Moneys received from the sale of bonds or
9 warrants shall be used for no other purpose than that for which they were issued." BIMC
10 3.44.010 similarly requires that the three utilities within the "city's unified waterworks utility
11 ... shall be accounted for as though those utilities were separate funds." BIMC 3.45.010
12 explicitly requires that, "a utilities improvement fund" be established "to provide segregated
13 accounting and control for expenditure of moneys identified for the purpose or making capital
14 improvements."

15 28. The City's practice is to commingle all cash from all sources belonging to all
16 its tax supported and proprietary funds. The effect is the use via de facto loans of bond
17 proceeds for other purposes.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays that the Court grant it the following relief:

20 A. A judgment declaring any excess proposed utility rate increase over and above
21 that required to complete the WWTP to be an illegal tax;

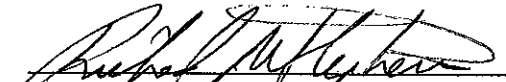
22 B. An injunction enjoining the City from using any financing secured in excess of
23 that necessary for completion of the Winslow WWTP for anything other than financing such
completion of the Winslow WWTP;

- 1 C. A judgment declaring the proposed bond issue void;
- 2 D. An injunction enjoining the City from proceeding with the proposed bond
- 3 issue in the absence of review by a Utility Advisory Committee that has been provided
- 4 sufficient time to review the pending bond proposal;
- 5 E. An order requiring an independent audit or accounting of the City's financial
- 6 records to ensure compliance with RCW 43.09.210, RCW 35A.34.220, and state law
- 7 governing the imposition of charges on utility ratepayers;
- 8 F. An award of costs and attorneys' fees; and
- 9 G. Such other and further relief as the Court may deem just and equitable.
- 10

11 DATED this 22nd day of April, 2009.

12 GROEN STEPHENS & KLINGE LLP

13 By:


Richard M. Stephens, WSBA #21776

Brian D. Amsbary, WSBA #36566
Attorneys for Plaintiffs