

(TO PLAINTIFF'S ATTORNEY: Please Circle Type of Action Involved: - TORT - MOTOR VEHICLE TORT - CONTRACT - EQUITABLE RELIEF - OTHER.)

# COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2177CV00624

Antonio Viola  
....., Plaintiff(s)

v.

Conservation Commission For the City of Haverhill  
....., Defendant(s)


## SUMMONS


To the above named Defendant: Harmony Wilson

You are hereby summoned and required to serve upon Donald F. Borenstein & Gordon T. Glass  
Johnson & Borenstein, LLC.  
plaintiff's attorney, whose address is 12 Chestnut Street, Andover, MA 01810, an answer to the  
complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the  
day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the  
complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at  
Lawrence either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may  
have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's  
claim or you will thereafter be barred from making such claim in any other action.

WITNESS, Judith Fabricant, Esquire, at Salem, the  
day of July 14, in the year of our Lord two thousand 21

TRUE ATTEST COPY  
  
DEPUTY SHERIFF

  
Clerk

NOTICE TO DEFENDANT - You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.

### NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

CIVIL ACTION COVER SHEET

DOCKET NUMBER

Trial Court of Massachusetts  
The Superior Court



COUNTY Essex Superior Court (Lawrence)

Plaintiff Antonio Viola Defendant: Haverhill Conservation Commission

ADDRESS: 80 Main St., Malden, MA 02148 ADDRESS: City of Haverhill, MA

Plaintiff Attorney: Donald F. Borenstein; Gordon T. Glass Defendant Attorney:

ADDRESS: Johnson & Borenstein, LLC ADDRESS:

12 Chestnut St., Andover, MA 01810

(978) 475-4488

BBO: 566810; 706234 BBO:

TYPE OF ACTION AND TRACK DESIGNATION (see instructions section below)

CODE NO. TYPE OF ACTION (specify) TRACK HAS A JURY CLAIM BEEN MADE?  
E03 Certiorari Action, G.L. c.249, §4 x YES NO

\*If "Other" please describe:

Is there a claim under G.L. c. 93A?

YES NO

Is there a class action under Mass. R. Civ. P. 23?

YES NO

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine the amount of damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

A. Documented medical expenses to date

1. Total hospital expenses

2. Total doctor expenses

3. Total chiropractic expenses

4. Total physical therapy expenses

5. Total other expenses (describe below)

[Empty box for describing other expenses]

Subtotal (1-5): \$0.00

B. Documented lost wages and compensation to date

C. Documented property damages to date

D. Reasonably anticipated future medical and hospital expenses

E. Reasonably anticipated lost wages

F. Other documented items of damages (describe below)

[Empty box for describing other damages]

TOTAL (A-F): \$0.00

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

[Empty box for describing injury]

CONTRACT CLAIMS

This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).

Table with 3 columns: Item #, Detailed Description of Each Claim, Amount. Row 1: 1, [Empty], [Empty]. Total: [Empty]

Signature of Attorney/Unrepresented Plaintiff: X /s/ Donald F. Borenstein, Esq.

Date: June 16, 2021

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

[Empty box for related actions]

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney/Unrepresented Plaintiff: X /s/ Donald F. Borenstein, Esq.

Date: June 16, 2021

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

ESSEX, SS.

SUPERIOR COURT  
C.A. NO.: 2177CV00624

\_\_\_\_\_  
ANTONIO VIOLA,

Plaintiff,

v.

HARMONY WILSON, RALPH BASILIERE,  
THOMAS WYLIE, PHILLIP LACROIX,  
NEIL FRASCA, FREDERICK CLARK, and  
JENNIFER RUBERA, as they are the members  
of the CONSERVATION COMMISSION FOR  
THE CITY OF HAVERHILL,

Defendants.  
\_\_\_\_\_

FILED  
ESSEX SUPERIOR COURT  
2021 JUN 16 PM 12: 27

**COMPLAINT**

**Parties**

1. Plaintiff Antonio Viola (“Antonio” or “Plaintiff”) is an individual with his principal place of residence located at 80 Main Street, Malden, Massachusetts.

2. Defendants Harmony Wilson, Ralph Basiliere, Thomas Wylie, Phillip LaCroix, Neil Frasca, Frederick Clark, and Jennifer Rubera are the members of the Conservation Commission for the City of Haverhill (referred to collectively hereinafter as the “Commission”), are named in this action in that capacity, and each reside in the City of Haverhill, Massachusetts (“City”).

**Jurisdiction**

3. This Honorable Court has jurisdiction to review the decisions and Orders of

Conditions issued by the Commission by Certiorari pursuant to Mass. Gen. Laws ch. 249, § 4 and to grant declaratory relief pursuant to Mass. Gen. Laws ch. 231A, § 1.

**Factual Allegations**

4. On or about November 12, 2020, Antonio duly filed a Notice of Intent (“Notice”) with the Commission to construct a single-family home with related appurtenances (“Project”) on his property located on Broadway, Haverhill, Massachusetts, identified as Haverhill Assessor’s Parcel No. 539-439-18, pursuant to Mass. Gen. Laws ch. 131, § 40, the Wetlands Protection Act (“Act”), and the Haverhill Wetlands Protection Ordinance (“Ordinance”).

5. On or about April 8, 2021, the Commission closed its public hearing regarding the proposed Project.

6. On or about April 22, 2021, the Commission voted to deny the proposed Project.

7. On or about April 28, 2021, the Commission purportedly issued its denial Order of Conditions regarding the proposed Project (“Order”).

8. Under the Ordinance, the Commission purported to deny the proposed Project because the same would not comply with the twenty-five foot (25’) No-Disturbance Zone and fifty-foot (50’) No-Build Zone established under § 8 of the Ordinance.

9. However, § 3 of the Ordinance provided numerous exceptions under which the Project should have been approved, regardless of any purported violation of No-Disturbance Zone or No-Build Zone.

10. The Commission’s Order exceeded the Commission’s authority, was arbitrary and capricious, unreasonable, not based on substantial evidence, and/or was based on error of law.

11. This Complaint, in the Nature of Certiorari and Declaratory Judgment, seeks review of the Commission’s Order.

**COUNT I**  
**ACTION FOR CERTIORARI PURSUANT TO M.G.L. ch. 249, § 4**

12. The Plaintiff repeats and re-alleges each of the other allegations of this Complaint as if expressly set forth herein.

13. The Commission's Order exceeded the Commission's jurisdiction under the Ordinance.

14. The Commission's decision rejecting the proposed Project was inconsistent with the requirements of the Ordinance, arbitrary and capricious, unreasonable, not based on substantial evidence, and/or was based on error of law.

WHEREFORE, the Plaintiff, Antonio Viola, respectfully requests that this Honorable Court:

- A. Order the Commission to issue an Order of Conditions approving the proposed Project;
- B. Enter judgment in favor of the Plaintiff on Count I of the Complaint; and
- C. Order such other and further relief as the Court deems equitable and just.

**COUNT II**  
**DECLARATORY JUDGMENT PURSUANT TO M.G.L. ch. 231A, § 1**

15. The Plaintiff repeats and re-alleges each of the other allegations of this Complaint as if expressly set forth herein.

16. As set forth above, an actual controversy has arisen between the Parties, which is appropriate for determination under Mass. Gen. Laws ch. 231A.

17. The proposed Project should have been approved under the plain language of § 3 of the Ordinance.

18. Pursuant to Mass. Gen. Laws ch. 231A, § 1, the Plaintiff seeks a declaration from this Court that § 3 of the Ordinance requires that the Commission approve the proposed Project.

WHEREFORE, the Plaintiff, Antonio Viola, respectfully requests that this Honorable

Court:

- A. Order and declare that § 3 of the Ordinance requires the Commission to approve Plaintiff's proposed Project;
- B. Enter judgment in favor of the Plaintiff on Count II of the Complaint; and
- C. Order such other and further relief as the Court deems equitable and just.

Respectfully Submitted,  
**ANTONIO VIOLA,**  
By his Attorneys,



Donald F. Borenstein, BBO #566810

[Don@jblclaw.com](mailto:Don@jblclaw.com)

Gordon T. Glass, BBO #706234

[Gordon@jblclaw.com](mailto:Gordon@jblclaw.com)

Johnson & Borenstein, LLC

12 Chestnut Street

Andover, MA 01810

Tel: 978-475-4488

Fax: 978-475-6703

Dated: June 16, 2021

**CIVIL TRACKING ORDER**  
(STANDING ORDER 1-88)

DOCKET NUMBER  
**2177CV00624**

**Trial Court of Massachusetts**  
**The Superior Court**



CASE NAME:  
Viola, Antonio vs. Harmony Wilson Member or alternate member of The Conservation Commission for the City of Haverhill et al

Thomas H. Driscoll, Jr., Clerk of Courts

TO: Gordon T Glass, Esq.  
Johnson and Borenstein, LLC  
12 Chestnut St  
Andover, MA 01810

COURT NAME & ADDRESS  
Essex County Superior Court - Newburyport  
145 High Street  
Newburyport, MA 01950

**TRACKING ORDER - X - Accelerated**

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

**STAGES OF LITIGATION**

**DEADLINE**

	SERVED BY	FILED BY	HEARD BY
Service of process made and return filed with the Court		09/14/2021	
Response to the complaint filed (also see MRCP 12)		06/16/2022	
All motions under MRCP 12, 19, and 20			
All motions under MRCP 15			
All discovery requests and depositions served and non-expert depositions completed			
All motions under MRCP 56			
Final pre-trial conference held and/or firm trial date set			
Case shall be resolved and judgment shall issue by			

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to

DATE ISSUED

**06/16/2021**

ASSISTANT CLERK

**Anne Mitchell**

PHONE

**(978)462-4474**