

SUMMONS - CIVIL

JD-CV-1 Rev. 9-08
C.G.S. §§ 51-346, 51-347, 51-349, 51-350, 52-45a,
52-48, 52-259, P.B. Secs. 3-1 through 3-21, 8-1

STATE OF CONNECTICUT
SUPERIOR COURT

www.jud.ct.gov

See page 2 for instructions

TO: Any proper officer; BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to make due and legal service of this Summons and attached Complaint.

- "X" if amount, legal interest or property in demand, not including interest and costs is less than \$2,500.
- "X" if amount, legal interest or property in demand, not including interest and costs is \$2,500 or more.
- "X" if claiming other relief in addition to or in lieu of money or damages.

Address of court clerk where writ and other papers shall be filed (Number, street, town and zip code) (C.G.S. §§ 51-346, 51-350)		Telephone number of clerk (with area code)	Return Date (Must be a Tuesday)
95 Washington Street, Hartford, Connecticut 06106		(860) 548-2700	October 27, 2009 Month Day Year
<input checked="" type="checkbox"/> Judicial District	<input type="checkbox"/> G.A. Number:	At (Town in which writ is returnable) (C.G.S. §§ 51-346, 51-349)	Case type code (See list on page 2)
<input type="checkbox"/> Housing Session		Hartford, Connecticut	Major: M Minor: 50

For the Plaintiff(s) please enter the appearance of:

Name and address of attorney, law firm or plaintiff if self-represented (Number, street, town and zip code)	Juris number (to be entered by attorney only)
Amodeo & Associates, LLC, 9 Austin Dr, Suite 201, Marlborough, CT 06447	423995
Telephone number (with area code)	Signature of Plaintiff (if self-represented)
(860) 836-8659	

Number of Plaintiffs: 1 Number of Defendants: 1 Form JD-CV-2 attached for additional parties

Parties	Name (Last, First, Middle Initial) and Address of Each party (Number; Street; P.O. Box; Town; State; Zip; Country, if not USA)	
First Plaintiff	Name: Wilfred D. Hodge Address: 36 Cheney Road, Marlborough, Connecticut 06447	P-01
Additional Plaintiff	Name: Address:	P-02
First Defendant	Name: The Board of Selectmen for the Town of Marlborough, Connecticut Address: 26 North Main Street, Marlborough, Connecticut 06447	D-50
Additional Defendant	Name: Address:	D-51
Additional Defendant	Name: Address:	D-52
Additional Defendant	Name: Address:	D-53

Notice to Each Defendant

- YOU ARE BEING SUED.** This paper is a Summons in a lawsuit. The complaint attached to these papers states the claims that each plaintiff is making against you in this lawsuit.
- To be notified of further proceedings, you or your attorney must file a form called an "Appearance" with the clerk of the above-named Court at the above Court address on or before the second day after the above Return Date. The Return Date is not a hearing date. You do not have to come to court on the Return Date unless you receive a separate notice telling you to come to court.
- If you or your attorney do not file a written "Appearance" form on time, a judgment may be entered against you by default. The "Appearance" form may be obtained at the Court address above or at www.jud.ct.gov under "Court Forms."
- If you believe that you have insurance that may cover the claim that is being made against you in this lawsuit, you should immediately contact your insurance representative. Other action you may have to take is described in the Connecticut Practice Book which may be found in a superior court law library or on-line at www.jud.ct.gov under "Court Rules."
- If you have questions about the Summons and Complaint, you should talk to an attorney quickly. **The Clerk of Court is not allowed to give advice on legal questions.**

Signed (Sign and "X" proper box)	<input checked="" type="checkbox"/> Commissioner of the Superior Court <input type="checkbox"/> Assistant Clerk	Name of Person Signing at Left	Date signed
		Pasquale Amodeo, Esq.	10/8/09

If this Summons is signed by a clerk: a. The signing has been done so that the Plaintiff(s) will not be denied access to the courts. b. It is the responsibility of the Plaintiff(s) to see that service is made in the manner provided by law. c. The Clerk is not permitted to give any legal advice in connection with any lawsuit. d. The Clerk signing this Summons at the request of the Plaintiff(s) is not responsible in any way for any errors or omissions in the Summons, any allegations contained in the Complaint, or the service of the Summons or Complaint.	For Court Use Only
	File Date

I certify I have read and understand the above:	Signed (Self-Represented Plaintiff)	Date

Name and address of person recognized to prosecute in the amount of \$250
Andrew J. Catala 604 845 St. 2nd Fl Hartford CT 06106

Signed (Official taking recognizance; "X" proper box)	<input checked="" type="checkbox"/> Commissioner of the Superior Court <input type="checkbox"/> Assistant Clerk	Date	Docket Number
		10/8/09	503 3481

RETURN DATE: *October 27, 2009*

DOCKET NO: : SUPERIOR COURT

WILFRED D. HODGE : J.D. OF HARTFORD

v. : AT HARTFORD

THE BOARD OF SELECTMEN
OF THE TOWN OF MARLBOROUGH
CONNECTICUT : OCTOBER 8, 2009

COMPLAINT

FACTS TO ALL COUNTS

The Parties

1. The Plaintiff, Wilfred D. Hodge (“Will” or “Plaintiff”) is an individual residing in the Town of Marlborough, Connecticut (the “Town”) and eligible to vote at a Town Meeting.
2. Will is a veteran of the Viet Nam War, having been honorably discharged from the United States Army.
3. The Town of Marlborough Connecticut Board of Selectmen (“BOS”) is the chief executive and administrative body of the Town.
4. The powers of the BOS are described in Chapter III of the Marlborough Town Charter Effective November 5, 1985 (the “Charter”).

5. The BOS is compromised of the following three (3) elected individuals: William Black (“Black”), Riva Clark and Joseph LaBella.

6. Black is the First Selectman of the Town.

7. The duties and responsibilities of the First Selectman are described in Section 3.8 of the Charter.

Connecticut General Statute Provision related to Title 38

8. Connecticut General Statute § 12-81(21)(C) provides in relevant part as follows:

Municipal option to allow total exemption for residence with respect to which veteran has received assistance for special housing under Title 38 of United States Code. Subject to *the approval of the legislative body of the municipality*, the dwelling house and the lot whereupon the same is erected, belonging to...any citizen and resident of this state, occupied as such person's domicile shall be fully exempt from local property taxation, if such person is a veteran...and has received financial assistance for specially adapted housing under the provisions of Section 801 of Title 38 of the United States Code...[t]he same exemption may also be allowed on such housing units owned by the surviving spouse of such veteran (i) while such spouse remains a widow or widower, or (ii) upon the termination of any subsequent marriage of such spouse by dissolution, annulment or death, or by such veteran and spouse while occupying such premises as a residence. (emphasis added).

9. By letter dated June 5, 2009, Will has been approved by the Department of Veterans Affairs for a Special Adaptive Housing Grant pursuant to the provisions of Title 38 U.S. Code, Chapter 21 (“Title 38”).

Applicable Charter Provisions

10. Section 7.1.1. of the Charter states in its entirety:

“The legislative powers of the Town shall be vested in the Town Meeting and in the Board or [*sic*] Selectmen as specified in Section 3.3 through 3.6 and Chapter 4 of this Charter.”

11. Section 3.3 of the Charter describes the general and specific duties and responsibilities of the BOS.

12. Section 3.4 of the Charter describes the general and specific powers of the BOS.

13. Section 3.5 of the Charter describes the BOS’ power to enact ordinances.

14. Section 3.6 of the Charter describes the BOS’ power to enact emergency ordinances.

15. Chapter 4 describes the establishment of appointive boards in the Town.

16. Section 3.5 of the Charter provides in relevant part as follows:

“The Selectmen shall have the power to *enact Ordinances on any matter which the CGS or this Charter permits to be regulated by Ordinance...*”(emphasis added)

17. Connecticut General Statutes § 12-81(21)(C) does not require or permit the enactment of an ordinance.

18. The Charter does not provide for the enactment of an ordinance for a veterans’ property tax exemption.

The Request

19. In May 2009, Plaintiff’s spouse, Robin Hodge (“Robin”), brought the existence of CGS § 12-81(21)(C) to the attention of the BOS and requested that the BOS consider taking the appropriate steps to

approve the exemption in the Town.

20. Section 7.3(h) of the Charter allows the BOS to call a Town Meeting to act “on any proposal deemed of sufficient importance.”

21. To date, the BOS has not called a Town Meeting to act on the enactment of a veterans’ tax exemption allowed pursuant to CGS § 12-81(21)(C).

22. The BOS did not undertake any substantial discussion related to the enactment of a veterans’ property tax exemption until September 1, 2009, at the prompting of Plaintiff’s counsel.

23. At the September 1, 2009 BOS meeting, Black indicated to the public that the BOS is the legislative body of the Town, not the Town Meeting.

24. At the September 1, 2009 BOS meeting, the BOS indicated that they could not act on the enactment of a veterans’ tax exemption without further advice from counsel and decided to seek such advice.

25. The sole issue submitted to counsel by the BOS regarding the enactment of a veterans’ tax exemption allowed pursuant to CGS § 12-81(21)(C) was whether a surviving spouse of a veteran could be excluded from the exemption.

26. At the September 15, 2009 BOS meeting, the BOS voted to request that counsel draft an ordinance for the consideration of the BOS to adopt a veterans’ tax exemption allowed pursuant to CGS § 12-81(21)(C).

27. At the October 6, 2009 BOS meeting, the BOS voted to schedule a public hearing for

purposes of enacting an ordinance whereby the surviving spouse of a veteran receiving Title 38 benefits would not be allowed the same tax exemption, as permitted by CGS § 12-81(21)(C).

28. Additionally, at the October 6, 2009 BOS meeting, the BOS voted to create *only a temporary ordinance* whereby the tax exemption allowed by CGS § 12-81(21)(C) would expire in 2010.

29. By acting to propose an ordinance to adopt a veterans' tax exemption allowed pursuant to CGS § 12-81(21)(C), rather than submitting the question to a Town Meeting, the BOS bypasses the approval of the Town's legislative body (namely the voters at a Town Meeting) and thereby violates the Charter and the legislative intent of CGS § 12-81(21)(C).

FIRST COUNT

Declaratory Judgment

30-59. Paragraphs 1 through 29 of the facts set forth above are hereby made paragraphs 30 through 59 of this First Count as if more fully set forth herein.

60. Based on the foregoing, there are actual *bona fide* and substantial questions and issues in dispute with respect to the legal relationship of the parties to this action *vis-à-vis* the ability of Plaintiff, as a voter eligible to vote at a Town Meeting, to vote in a Town Meeting to adopt a veterans tax exemption required by CGS § 12-81(21)(C) to be adopted by the Town's legislative body; namely, the Town acting at a Town Meeting.

61. Moreover, based on the foregoing, a justiciable controversy presently exists between the

parties to this action.

62. Accordingly, it is requested that the Court declare that, pursuant to Section 7.1.1. of the Charter, the Town Meeting is the legislative body of the Town, except for those matters described in Section 3.3 through 3.6 and Chapter 4 of the Charter.

SECOND COUNT

Declaratory Judgment

63-92. Paragraphs 1 through 29 of the facts set forth above are hereby made paragraphs 63 through 92 of this First Count as if more fully set forth herein.

93. Based on the foregoing, there are actual *bona fide* and substantial questions and issues in dispute with respect to the legal relationship of the parties to this action *vis-à-vis* the ability of Plaintiff, as a voter eligible to vote at a Town Meeting, to approve the enactment of a veterans' property tax exemption requiring the approval of the Town's legislative body.

94. Moreover, based on the foregoing, a justiciable controversy presently exists between the parties to this action.

95. Accordingly, it is requested that the Court declare that, pursuant to Section 7.1.1. of the Charter, the Town Meeting is the legislative body of the Town for purposes of the enactment of a property tax exemption based upon CGS § 12-81(21)(C) and that the BOS are required, upon the proper submission

of a request to call a special Town Meeting to approve the enactment of a property tax exemption based upon CGS § 12-81(21)(C), to call such special Town Meeting pursuant to and in accordance with Section 7.7 of the Charter.

THIRD COUNT

Declaratory Judgment

96-128. Paragraphs 1 through 29 of the facts set forth above, Paragraphs 60 and 61 of the First Count and Paragraph 95 of the Second Count hereby made paragraphs 96 through 128 of this Third Count as if more fully set forth herein.

129. Accordingly, it is requested that the Court declare that, pursuant to Section 3.5 of the Charter, the BOS lacks the authority to adopt an ordinance for the enactment of a veterans' tax exemption allowed pursuant to CGS § 12-81(21)(C) based on the fact that neither the Connecticut General Statutes nor the Charter permit such a matter to be regulated by ordinance.

Prayer for Relief

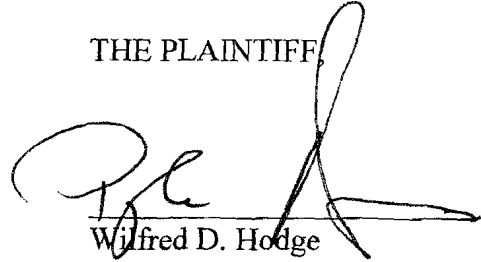
WHEREFORE, the Plaintiff claims:

- a. A temporary and permanent injunction prohibiting and restraining the BOS from enacting an ordinance related to the adoption of a property tax exemption based upon CGS § 12-

81(21)(C);

- b. A declaratory judgment that, pursuant to Section 7.1.1. of the Charter, the Town Meeting is the legislative body of the Town, except for those matters described in Section 3.3 through 3.6 and Chapter 4 of the Charter;
- c. A declaratory judgment that, pursuant to Section 7.1.1. of the Charter, the Town Meeting is the legislative body of the Town for purposes of the enactment of a property tax exemption based upon CGS § 12-81(21)(C) and that the BOS are required, upon the proper submission of a request to call a special Town Meeting to approve the enactment of a property tax exemption based upon CGS § 12-81(21)(C), to call such special Town Meeting pursuant to and in accordance with Section 7.7 of the Charter;
- d. A declaratory judgment that, pursuant to Section 3.5 of the Charter, the BOS lacks the authority to adopt an ordinance for the enactment of a veterans' tax exemption allowed pursuant to CGS § 12-81(21)(C) based on the fact that neither the Connecticut General Statutes nor the Charter permit such a matter to be regulated by ordinance;
- e. Costs pursuant to P.B. § 17-57; and
- f. Such other and further relief as this court deems appropriate.

THE PLAINTIFF,

A handwritten signature in black ink, appearing to read 'W. D. Hodge', written over a horizontal line.

Wilfred D. Hodge

By Amodeo & Associates, LLC, His Attorney

9 Austin Drive, Suite 201

Marlborough, CT 06447

(860) 836-8659

(860) 295-1488- Fax

Juris No. 423995

RETURN DATE: October 27, 2009

DOCKET NO: : SUPERIOR COURT

WILFRED D. HODGE : J.D. OF HARTFORD

v. : AT HARTFORD

THE BOARD OF SELECTMEN
OF THE TOWN OF MARLBOROUGH
CONNECTICUT

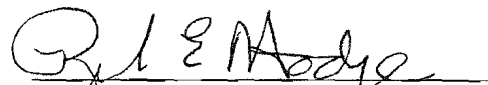
: OCTOBER 8, 2009

VERIFICATION AND ATTESTATION

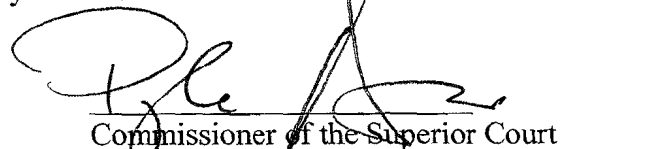
The undersigned, being duly sworn, deposes and says:

1. I am over the age of eighteen (18) years and I believe in the obligation of an oath.
2. I am the spouse of the Plaintiff referred to in the complaint filed with this Verification and Attestation.
3. I am intimately familiar with the facts and circumstances described in the complaint filed with this Verification and Attestation.
4. I personally attended the Board of Selectmen meetings of September 1, 2009, September 15, 2009 and October 6, 2009.
5. I hereby make an oath as to the truth of the matters contained in the complaint filed with this Verification and Attestation.

Dated at Marlborough, Connecticut on October 8, 2009.


Robin Hodge

Subscribed and sworn to before me, this 8th day of October 2009.


Commissioner of the Superior Court
Pasquale Amodeo, Esq.

RETURN DATE: October 27, 2009

DOCKET NO: : SUPERIOR COURT

WILFRED D. HODGE : J.D. OF HARTFORD

v. : AT HARTFORD

THE BOARD OF SELECTMEN
OF THE TOWN OF MARLBOROUGH
CONNECTICUT : OCTOBER 8, 2009

^{PA}
**APPLICATION FOR ~~IMMEDIATE~~ TEMPORARY INJUNCTION
AND ORDER TO SHOW CAUSE**

The Plaintiff in the above entitled action hereby makes application for a temporary injunction in accordance with his prayer for relief, and respectfully requests that the defendant, acting through its duly authorized agent, be ordered to appear at an early date to show cause why the prayer for an injunction should not be granted,

ORDER TO SHOW CAUSE

WHEREAS, the foregoing complaint with prayer and motion for a temporary injunction, duly verified, has been presented to the court; and

WHEREAS, upon application of the Plaintiff, it appears that an order should be issued directing the defendant in this action to appear before the court.

NOW THEREFORE, it is ordered that the defendant be summoned to appear before the Superior Court for the Judicial District of Hartford at Hartford (95 Washington Street, Hartford, CT) on October 26, 2009 then and there to show cause why a temporary injunction should not issue against it as prayed for in the foregoing complaint and application.

Dated October 9, 2009 at Hartford, Connecticut.

*in Courtroom 3
at 9:30 am

BY THE COURT (_____, J.)

Karen Picker
Assistant Clerk

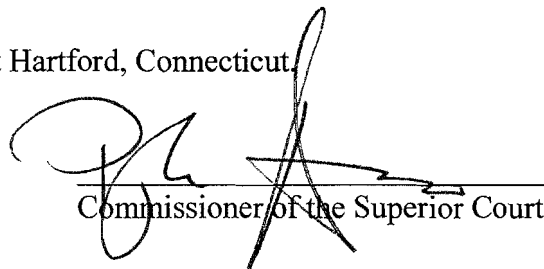
SUMMONS

To Any Proper Officer:

By authority of the state of Connecticut you are hereby commanded to summon the defendant in the foregoing action to appear before the Hon. TBD of the Superior Court at the place and time specified in the foregoing order, then and there to show cause why a temporary injunction should not be issued against it as prayed for in the foregoing complaint and application, by serving in the manner provided by statute for the service of process a true and attested copy of the foregoing writ and verified complaint, application, order and this summons on the defendant on or before October 15, 2009 [last date for service].

Hereof fail not, but due service and return make.

Dated October 9, 2009 at Hartford, Connecticut.



Commissioner of the Superior Court

ORDER FOR HEARING AND NOTICE

The above application having been presented to the court, it is hereby ordered that a hearing thereon be held at the Superior Court for the Judicial District of Hartford at Hartford (95 Washington Street, Hartford, CT) on October 26, 2009* and that the plaintiff give notice to the defendant of the pendency of the application and of the time and place it will be heard by causing a true and attested copy of the application, such proposed ~~unsigned~~^{K.P.} writ, summons, complaint, affidavit and of this order to be served by some proper officer on or before October 19, 2009 and that due return of service be made to this court.

Dated October 9, 2009 at Hartford, Connecticut.

BY THE COURT (_____, J.)

* at 9:30 am in
Courtroom 3

Karen Pickers
Assistant Clerk