

*Town of East Lyme*

**Robert Blatt and Niantic Real Estate, LLC**

**v**

**East Lyme Inland Wetlands Agency**

**Mark Nickerson, First Selectman (Hard Copy)**

**Anna Johnson, Finance Director (via email)**

**Ed O'Connell, Town Attorney (via email)**

**Tracy Collins, Town Attorney (via email)**

**CIRMA (via email)**

**Gary Goeschel, Wetland's Officer (via email)**

**Gary Upton, Chairman (via email)**

**12/8/2020**

SUMMONS - CIVIL

JD-CV-1 Rev. 2-20
C.G.S. §§ 51-346, 51-347, 51-348, 51-350, 52-46a, 52-46, 52-250;
P.B. §§ 3-1 through 3-21, 8-1, 10-13

For information on
ADA accommodations,
contact a court clerk or
go to: www.jud.ct.gov/ADA

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov



Instructions are on page 2.

- Select if amount, legal interest, or property in demand, not including interest and costs, is LESS than \$2,500.
Select if amount, legal interest, or property in demand, not including interest and costs, is \$2,500 or MORE.
[X] Select if claiming other relief in addition to, or in place of, money or damages.

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.

Address of court clerk (Number, street, town and zip code)
70 Huntington Street, New London, Connecticut
Telephone number of clerk (860) 443 - 5363
Return Date (Must be a Tuesday) December 22, 2020
[X] Judicial District G.A. At (City/Town) Case type code (See list on page 2)
Housing Session Number: New London Major: A Minor: 66

For the plaintiff(s) enter the appearance of:

Name and address of attorney, law firm or plaintiff if self-represented (Number, street, town and zip code)
Robert A. Blatt
Juris number (if attorney or law firm)
Telephone number (914) 834 - 0291
Signature of plaintiff if self-represented: Robert A. Blatt
The attorney or law firm appearing for the plaintiff, or the plaintiff if self-represented, agrees to accept papers (service) electronically in this case under Section 10-13 of the Connecticut Practice Book. [X] Yes [ ] No
E-mail address for delivery of papers under Section 10-13 of the Connecticut Practice Book (if agreed) newenglandnational@gmail.com

Table with 2 columns: Parties, Name (Last, First, Middle Initial) and address of each party (Number, street, P.O. Box, town, state, zip, country, if not USA). Rows include First plaintiff (Robert A. Blatt), Additional plaintiff (Niantic Real Estate LLC), First defendant (Town of East Lyme Inland Wetland Agency), Additional defendant (Commissioner of the Department of Energy and Environmental Protection), and Additional defendant (unlabeled).

FILED
Dec 8 2020 AT 3:45 AM/PM
Kurt Hillman
EAST LYME TOWN CLERK

Notice to each defendant

- 1. You are being sued. This is a summons in a lawsuit. The complaint attached states the claims the plaintiff is making against you.
2. To receive further notices, you or your attorney must file an Appearance (form JD-CL-12) with the clerk at the address above. Generally, it must be filed on or before the second day after the 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 appear.
3. If you or your attorney do not file an Appearance on time, a default judgment may be entered against you. You can get an Appearance form at the court address above, or on-line at https://jud.ct.gov/webforms/.
4. If you believe that you have insurance that may cover the claim being made against you in this lawsuit, you should immediately contact your insurance representative. Other actions you may take are described in the Connecticut Practice Book, which may be found in a superior court law library or on-line at https://www.jud.ct.gov/pb.htm.
5. If you have questions about the summons and complaint, you should talk to an attorney.

The court staff is not allowed to give advice on legal matters.

Date 12/14/20
Signed (Sign and select proper box) [Signature]
[ ] Commissioner of Superior Court [X] Assistant Clerk
Name of person signing Tim Furrer
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 ensure that service is made in the manner provided by law.
c. The court staff 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.
I certify I have read and understand the above: [Signature]
Signed (self-represented plaintiff)
Date 11/24/2020
Docket Number

Print Form

Reset Form

A TRUE COPY
ATTEST:
J. MARTIN, STATE MARSHAL

**RETURN DATE: December 22, 2020**

**SUPERIOR COURT  
J.D. OF NEW LONDON**

**NIANTIC REAL ESTATE LLC and  
LONDON  
ROBERT A. BLATT**

**AT NEW**

**VS**

**NOVEMBER 30, 2020**

**TOWN OF EAST LYME INLAND  
WETLAND AGENCY**

**TO ANY PROPER OFFICER:**

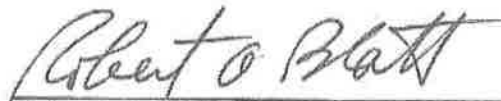
**GREETINGS:**

**BY AUTHORITY OF THE STATE OF CONNECTICUT**, you are hereby commanded to summon the Inland Wetland Agency of the Town of East Lyme, 108 Pennsylvania Avenue, Niantic (East Lyme), Connecticut to appear before the Superior Court for the Judicial District of New London, at New London on the Third Tuesday of December, 2020, then and there to answer unto the attached Appeal and Complaint of Niantic Real Estate LLC and Robert A. Blatt of 1890 Palmer Avenue, in the town of Larchmont, County of Westchester, and State of New York, said appearance to be made by said Inland Wetland Agency of the Town of East Lyme or its attorney, by filing a written statement of appearance with the Clerk of said Court on or before the second day following said return date, by service two (2) true and attested copies of the Appeal and Complaint, Recognizance, and of this Summons upon Karen Mill Galbo, Town Clerk of the Town of East Lyme, Connecticut in the time and manner provided by law;

**AND BY THE AUTHORITY OF THE STATE OF CONNECTICUT**, you are also commanded to serve the Commissioner of the Department of Energy and Environmental Protection of the State of Connecticut, 79 elm Street, Hartford,

Connecticut 06106 with a true and attested copy of the Complaint and Appeal,  
Recognizance of this Summons thereby providing notice of the pendency of this action  
pursuant to the requirements of §22a-43 of the Connecticut General Statutes.

Hereof fail not, but of this writ with your doings thereon, make due service and  
return. Dated at Larchmont, New York this 30th day of November, 2020.



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Robert A. Blatt, Pro Se

RETURN DATE: December 22, 2020

SUPERIOR COURT  
J.D. OF NEW LONDON

NIANTIC REAL ESTATE LLC and  
LONDON  
ROBERT A. BLATT

AT NEW

VS

NOVEMBER 30, 2020

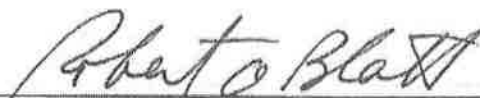
TOWN OF EAST LYME INLAND  
WETLAND AGENCY

TO ANY PROPER OFFICER:

RECOGNIZANCE FOR COSTS

You, Niantic Real Estate LLC and Robert A. Blatt, as Principal of 1890 Palmer Avenue, Larchmont, New York, and Jeffrey A. Torrance of 197 Upper Pattagansett Road, East Lyme, CT 06333 as surety, acknowledge yourselves jointly and severally bound to the Inland Wetland Agency of the Town of East Lyme, that Niantic Real Estate LLC and Robert A. Blatt shall prosecute the action which they have commenced against said Inland Wetland Agency of the Town of East Lyme in the Superior Court for the Judicial District of New London to full effect, and that you shall pay any costs for which judgment may be rendered against Niantic Real Estate LLC and or Robert A. Blatt.

Taken and acknowledged at Larchmont, New York this 7th day of December, 2020.



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Robert A. Blatt, Pro SE

RETURN DATE: December 22, 2020

SUPERIOR COURT  
J.D. OF NEW LONDON

NIANTIC REAL ESTATE LLC and  
ROBERT A. BLATT

AT NEW LONDON

VS

NOVEMBER 30, 2020

TOWN OF EAST LYME INLAND  
WETLAND AGENCY

TO ANY PROPER OFFICER:

APPEAL OF A DECISION OF THE INLAND WETLAND  
AGENCY OF THE TOWN OF EAST LYME

TO THE SUPERIOR COURT FOR THE JUDICIAL DISTRICT OF NEW LONDON, AT NEW LONDON, WITHIN AND FOR THE COUNTY OF NEW LONDON, on the fourth Tuesday of December, 2020, comes Niantic Real Estate LLC, a Connecticut Limited Liability Company with an office and principal place of business at 1890 Palmer Avenue, Suite 300, Larchmont, New York, appealing from a decision the Inland Wetland Agency of the Town of East Lyme and complain and say as follows;

1. Plaintiff, Niantic Real Estate LLC ("Niantic") and Robert A. Blatt ("Blatt") are each the owners of certain unimproved real property containing a total of 8 plus acres, more or less, located on Kensington Drive (Assessors Map 35.0-31-6-Blatt) and Upper Kensington Drive (Assessors Map 40.0-17-Niantic)
2. The Plaintiff Robert A. Blatt is the sole member of Plaintiff Niantic and participated together with Niantic in the Public Hearing on the Town of East Lyme Inland Wetland Agency ("ELIWA") on the ELIWA application to Increase the Upland Review Area from Inland Wetlands and Watercourses from 100 feet to 500 feet. See Record of Public Hearing Exhibit OO and Freedom of Information Act Request included therein made a part thereof.

3. The ELIWA is empowered pursuant to the provisions of Chapter 440 of the Connecticut General Statutes to perform the functions of an Inland Wetlands and Watercourses Agency delegated pursuant to the provision of §22a-42 of the Connecticut General Statutes.
4. The Regulation Change Application by the ELIWA was purportedly commenced at a Special Meeting held by remote participation by Zoom due to COVID-19 held on May 18, 2020 although upon information and belief was actually commenced earlier during one or more illegal and unnoticed meetings held by the ELIWA Chairman and others during the period between February 24, 2020 and May 18, 2020.
5. At the commencement of the Special May 18, 2020 ELIWA meeting the Chairman, Gary Upton, sought to violate the Due Process and other United States Constitutional Rights of the Plaintiffs, and others, by instituting an immediate and unnoticed Moratorium on pending and future applications to the ELIWA. Despite being advised by two Connecticut Licensed Attorneys who are members of the ELIWA such action was illegal the Chairman persisted actually making his own Motion to Impose a Moratorium on all pending and future ELIWA Applications.
6. At the Regular ELIWA held by remote participation by Zoom on July 13, 2020 the Public Hearing was Opened and was then continued to August 10, 2020, also held remotely by Zoom, and then the regular September meeting, which meeting was cancelled at the last minute despite an available quorum due only to the unavailability of the Chairman. The Public hearing held remotely by Zoom was closed at the October 19, 2020 meeting.

7. The ELIWA conducted deliberations during their November 16, 2020 meeting held remotely by Zoom and voted to increase the buffer area from Inland Wetlands and Water Courses from 100 to 300 feet.
8. Plaintiff's Niantic and Blatt are statutorily aggrieved by the decision of the Agency pursuant to Connecticut statute §22a-43 in that they are the property owners of property located within 90 feet of an inland wetland and or watercourse.
9. Plaintiff's Niantic and Blatt are classically aggrieved by the decision of the ELIWA in that:
  - a. They are the owners of the properties and have expended considerable sums of money in their efforts to obtain approvals for the development of the property for residential purposes.
  - b. Their interest in the property, as owners, has been significantly and injuriously affected by the action of the ELIWA in that the decision of the ELIWA effectively denies the Plaintiffs Niantic and Blatt of the ability to develop the property for residential purposes in the manner in which it intended.
  - c. The specific legal and personal interests of the Plaintiffs, Niantic and Blatt as owner of the Properties, have been specially and injuriously effected by the actions of the Defendant thereby prohibiting the Plaintiffs Niantic and Blatt from developing their Properties in a manner authorized by Section §8-30g and §8-24 of the Connecticut General Statutes
  - d. Plaintiffs Niantic and Blatt have been or will be improperly denied the right to use these Properties, as the owner thereof, as permitted by §22a-36 to §22a-45 of the Connecticut General Statutes and the Agency's Regulations thereby



causing economic harm to the Plaintiffs and depriving the Plaintiff of the value inherent in the Property.

- e. The use and enjoyment of the Properties by Plaintiffs Niantic and Blatt and the value of the Properties which was the subject of the Regulation Change has been impaired, depreciated and diminished by reason of the decision of the ELIWA.

Plaintiff Robert A. Blatt is further classically aggrieved by the decision of the Agency in that:

- a. He is the sole member of the Plaintiff, Niantic, and therefore has a substantial economic interest in the business of Plaintiff Niantic.
- b. Plaintiffs Niantic and Blatt have a specific personal and legal property interest in the Properties, as sole member of Niantic, which is a disregarded entity for federal income tax purposes, which economic interest has been specifically and injuriously affected by the action of the ELIWA in that the action of the ELIWA deprives Plaintiffs Niantic and Blatt of the ability to develop the Property for affordable and residential housing, thereby greatly diminishing the value of the Property.
- c. The economic interest of Blatt as sole member of Plaintiff Niantic has been adversely affected and the value of the assets of has been depreciated as a result of the approval of the Defendants Regulation Change.
- d. The action of the ELIWA in Approving the Regulation change of the inland wetlands and water courses buffer from 100 to 300 feet has deprived Niantic of its ability to develop the Property for residential purposes as a set-aside, affordable housing development pursuant to the provisions of Connecticut

General Statutes §8-30g, thereby depriving Plaintiff Niantic and Blatt that to which he is entitled by law.

9. The ELIWA exceeded its statutory authority and acted illegally, unreasonably, arbitrarily and in abuse of the discretion vested in it in approving its Regulation change expanding the ELIWA's authority to increase the area subject to regulated activities in upland review areas adjacent to a wetland or watercourse on the Property without any demonstrated adverse impact to any wetland or watercourse resource in that:
  - a. An ELIWA Commission member or members introduced purported evidence that was irrelevant, inappropriate, false and or misleading and then used said information in support of its decision to increase the regulated area from 100 to 300 feet.
  - b. Certain Members of the ELIWA held illegal, unnoticed meetings to address the increase of the buffer area from 100 to as much as 1000 feet.
  - c. Certain members of the ELIWA ignored the legal advice of their Counsel in reaching their decision to approve the Inland Wetlands buffer from 100 to 300 feet.
  - d. Certain members of the ELIWA have a demonstrated bias and should have recused themselves from this matter.
  - e. Certain members of the ELIWA had known and unknown Conflicts of Interest which prevented them from participating in the proposed regulation change to increase the buffer from Inland Wetlands or Water Courses.

- f. There was no expert testimony or other evidence in the record of the proceedings before the ELIWA that supports the decision to increase the buffer from Inland Wetlands or Water Courses from 100 to 300 feet.
- g. The ELIWA ignored the holding from the Connecticut Supreme Court in re; Tilcon, Connecticut v. Commissioner of Environmental Protection, a 2015 decision.
- h. The ELIWA decision is illegal and invalid. First, there is no statutory authority for such a review area. The ELIWA statutory authority is limited to Inland Wetlands and Watercourses. Upland Review Areas are Non-wetlands. Upland Review areas are allowed at limited distances to allow for evaluation of potential impacts of construction on wetlands or watercourses. The 300 foot buffer area brings under the ELIWA review lands that have no conceivable geographic and hydrologic connection to wetland or water course impact.
- i. The decision by the ELIWA will result in enormous and unnecessary cost to applicants, including the Plaintiffs, who will be required to conduct soils and other investigations in non-wetlands, even if no impact of a wetlands or watercourse is possible.
- j. The ELIWA ignored the fact it already has authority to request information or evidence for construction activities more than 100 feet upgradient from a wetland or watercourse to demonstrate there will be no adverse impact, regardless of the distance.
- k. The ELIWA ignored Connecticut DEEP Model Guidelines that state that a 100 foot buffer is typically more than is necessary.

- i. The Agency failed to consider and apply the appropriate standards of regulatory and statutory review in considering the Regulation Change increasing the buffer area from Inland Wetlands or Watercourses from 100 to 300 feet application and thereafter denying the same.
- m. Upon information and belief, and supported by the record, some members of the ELIWA had predetermined their decision on their Regulation Change to increase the buffer from Inland Wetlands or Watercourses.
- n. The stated reasons for approval of the regulation change to increase the Inland Wetlands Buffer area from 100 to 300 feet were unsupported by substantial evidence in the record of the proceedings before the Agency.
- o. The approval of this Inland Wetlands and Water Courses buffer approved by the ELIWA represents a Regulatory Temporary Taking and is subject to the 5<sup>th</sup> Amendment of the United States Constitution Taking Clause which states in pertinent part "{N}or shall private property be taken for public use, without just compensation."
- p. The approval of the ELIWA Regulation Change to increase the buffer area from Inland Wetlands or Watercourses from 100 to 300 feet is based upon such other errors of law and fact which the record may reveal.

**WHEREFORE**, the Plaintiffs pray for:

1. A judgment vacating the decision of the Agency to Increase the Upland Review Area from 100 to 300 feet
2. A judgment sustaining the Plaintiffs' appeal, reversing the action of the Agency.
3. Costs.

4. Such other relief as the Court may deem appropriate.

Dated at Larchmont, New York this 7th day of December, 2020.

**THE PLAINTIFFS,  
NIANTIC REAL ESTATE LLC AND  
ROBERT A. BLATT**



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Robert A. Blatt, Pro Se  
Niantic Real Estate LLC  
c/o Anthony S. Novak, Esq.  
180 Adams Street  
Manchester, CT 06042