

IN THE DISTRICT COURT OF Lancaster COUNTY, NEBRASKA
(county where original petition filed)

Case No. C119-2586
(case number assigned by clerk of court)

Mayhew Cabin Foundation
Plaintiff/Petitioner

vs.

City of Nebraska City
Defendant/Respondent

AFFIDAVIT AND APPLICATION TO PROCEED IN FORMA PAUPERIS
(Request to Proceed Without Payment of Fees)

STATE OF NEBRASKA)
) ss:
COUNTY OF Lancaster)
(county where signed)

2019 AUG 7 AM 11 37
CLERK OF THE DISTRICT COURT
LANCASTER COUNTY

The undersigned, being first duly sworn on oath, deposes and says that:

1. I am the plaintiff/ defendant/ petitioner in an action to/for Civil
(type of case filed)
 2. I bring this action in good faith, and I am entitled to redress.
 3. I am unable to pay the cost of litigation, including the cost of service and/or publication, and am unable to provide security.
 4. I have a net income of \$ 0 per month, derived from _____
(your net monthly income)
- _____, and I support a household of _____ people.
(i.e., employment, public benefits, Social Security, etc.) (number of people you support)



5. My only assets or resources, over which I have control or possession, are:

Cash on hand.....	\$ 0.00
Bank accounts	\$ 7,649.44
Vehicles.....	\$ 0.00
Real estate.....	\$ 0.00
Securities, stocks, bonds.....	\$ 0.00
Tools, equipment.....	\$ 0.00
Jewelry	\$ 0.00
Other (describe).....	\$ 0.00
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TOTAL	\$ 7,649.44

6. My necessary estimated monthly expenses are:

Rent or house payment	\$ 0.00
Utilities (Electricity, natural gas, propane).....	\$ 0.00
Telephone	\$ 0.00
Automobile payment (monthly).....	\$ 0.00
Automobile insurance (monthly).....	\$ 0.00
Gasoline for vehicle	\$ 0.00
Auto upkeep and repair	\$ 0.00
Doctor, dentist, medicines	\$ 0.00
Food	\$ 0.00
Cable TV, internet, etc.	\$ 0.00
Clothing, dry cleaning, laundry	\$ 0.00
Haircuts	\$ 0.00
Church.....	\$ 0.00
Entertainment.....	\$ 0.00
Personal care items	\$ 0.00
Other (describe).....	\$ 0.00
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TOTAL	\$

7. Other financial circumstances of which I would like the court to be aware:

Plaintiff is a 501(c)(3) nonprofit foundation. The bank balance of \$7,649.44 is misleading because \$7,000 is grant money received to fund a Civil War reenactment in October of 2019 that will be free to the public in Nebraska City. Because the \$7,000 was a grant, it cannot be used for any of purpose than paying for reenactment expenses. As a result, the Mayhew Cabin Foundation has a total of \$649.44 as of June 18, 2019. The foundation does own real estate located at 2012 4th Corso in Nebraska City. It is a museum property with historic structures and a museum building. The museum building is not considered to have any value as it is structurally unsound and water damaged. The site is zoned for commercial uses. However, any value to the site would be offset by the cost to raze the unsound museum building.

8. I believe my living expenses wholly absorb my income, and I have no assets that can be liquidated.

WHEREFORE, pursuant to Neb.Rev.Stat. §§ 25-2301 to 25-2310, I request the court authorize me to proceed *in forma pauperis* and direct Lancaster
(name of county where action filed)
County, Nebraska, to pay my costs, including fees and other expenses related to this action and waive provision of security.

NOTICE: DO NOT SIGN UNTIL YOU ARE IN THE PRESENCE OF A NOTARY

Cathleen M. Briley Date August 5, 2019
Signature (your signature)
Cathleen M. Briley, President, Mayhew Cabin Foundation
Your Full Name
2012 4th Corso
Your Full Street Address/P.O. Box
Nebraska City, Nebraska 68410
City/State/ZIP Code
(402) 873-3115 mayhewcabin@gmail.com
Phone E-mail Address

SUBSCRIBED AND SWORN to before me by Cathleen M. Briley this
5 day of August, 2019.

State of Nebraska - General Notary
SARAH FORGET
My Commission Expires
February 1, 2021

Sarah Forget
Notary Public

1 Plaintiff Pro Se

3 DISTRICT COURT OF NEBRASKA

5 Mayhew Cabin Foundation,) Case No.: C119-2586
6)
7 Plaintiff,)
8)
9 vs.) COMPLAINT
10)
11 City of Nebraska City)
12)
13 Defendant)

RECEIVED IN THE CLERK OF
THE DISTRICT COURT
AUG 07 2019
DATE

12 Plaintiff Mayhew Cabin Foundation brings forth the following causes of action and
13 alleges the following:

14 1. Plaintiff is a 501(c)(3) nonprofit foundation. The museum is located at 2012
15 4th Corso in Nebraska City and operates as Mayhew Cabin with John Brown's Cave
16 Museum. The museum interprets the history of the Underground Railroad in Nebraska. The
17 museum site includes historic structures that are on the national register of historic places.
18 The museum site is recognized by the National Park Service's Network to Freedom.

19 2. Defendant is the City of Nebraska City.

20 3. Defendant has been directing surface and sewer waters via artificial means
21 (storm sewer inlets) onto the north edge of the Plaintiff's property in an unreasonable and
22 irresponsible manner for city surface water drainage resulting in severe erosion to the site
23 and systematic structural damage to an historic structure, and damage to other historic
24 structures.

25 4. Defendant is directing surface water from Defendant's property located
26 adjacent to the east of Plaintiff's property into a ravine located on Plaintiff's property in an
27 unreasonable and negligent manner and in violation of the law.

28 5. Defendant installed two drainage tubes extending from Defendant's property
29 located adjacent to the east that are directed into the north portion of the ravine on
30 Plaintiff's property in an unreasonable, irresponsible, and negligent manner. This drainage,
31 in addition to that listed in numbers 3 and 4 above, have resulted in severe erosion to the
32 site, systematic damage to an historic structure, and damage to other historic structures.

1 6. Defendant has acted in a negligent manner by failing to maintain and keep
2 clear a drainage tube located on Plaintiff's property that is part of Defendant's drainage
3 system. This failure resulted in severe flooding and erosion. The damaging flooding events
4 occurred approximately four to five times, particularly noted over Memorial Day Weekend
5 of 2019 (May 28, 2019 – water receded several days later), from June 3, 2019 to
6 approximately June 5, 2019, and from June 18, 2019 to June 24, 2019. As a result of these
7 flooding events, Plaintiff's property suffered extensive erosion, vegetation die-off,
8 destruction of a walkway and handrail, and structural damage to historic structures. Due to
9 damage, the overall museum site has been closed since May 28, 2019 cutting off the
10 museum's revenue source. Erosion to the ravine has caused a live large tree to fall onto
11 Plaintiff's museum grounds and damaged the electrical connection to another historic
12 structure.

13 7. Continual, iterative, and forceful hydraulic action of Defendant's surface
14 and sewer water draining onto Plaintiff's site from multiple sources and washing out of the
15 existing earth, sediments, and vegetation into the ravine and out through the piped
16 remainder of Defendant's sewer system, have caused erosion over the years, has resulted in
17 subsidence of the south portion of Plaintiff's property toward the ravine area, and caused
18 unknown amounts of Plaintiff's foundational earth to be washed into Defendant's drainage
19 system to the south. The shifting of the ground has caused Plaintiff's museum building to
20 sink northeasterly to the extent that the building is structurally unsound.

21 **COUNT 1 – NEGLIGENCE**

22
23 Defendant has acted in a negligent and unreasonable manner by draining surface
24 water from approximately 17 acres of city property and piped water directly onto Plaintiff's
25 property along the north.

26 Defendant has further acted in a negligent and unreasonable manner by draining
27 directly onto Plaintiff's property from two additional drainage tubes along the east of
28 Plaintiff's property and by grading Defendant's property so as to drain surface water down
29 Plaintiff's ravine embankment in violation of the law.

30 Defendant failed to maintain and keep clear a drainage tube that is part of
31 Defendant's drainage system, and to properly rock the ravine slopes or to construct a piped
32 drainage system. These failures resulted in serious damage to Plaintiff's site and historic
33 structures.

1 Defendant has an implied easement on Plaintiff's property and has failed to formally
2 file said easement in order to maintain ravine on Plaintiff's property as part of Defendant's
3 drainage system by properly taking erosion prevention measures.

4 Long-term negligence has resulted in severe injury to Plaintiff's property by erosion
5 of the site and systematic damage to an historic structure.

6 **DAMAGES**

7
8 Wherefore, Plaintiff seeks compensatory damages in the amount of \$4,449,300 for
9 the following:

10 **Construction of new museum building: \$447,000**

11 **Razing of current museum building: \$50,000**

12 **Repairs to tunnel exit and new walkway/handrail: \$443,000**

13 **Erosion remediation to site: \$500,000**

14 **Loss of income for the 2019 and 2020 season: \$6,300**

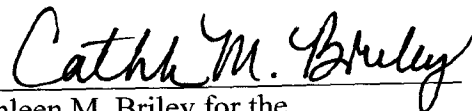
15 **Removal of fallen ravine tree: \$3,000**

16 **Punitive damages: \$3,000,000**

17
18 Plaintiff further requests Defendant to construct a new drainage tube at Defendant's
19 sole cost on city property adjacent to the east of Plaintiff's property (or elsewhere) in order
20 to divert all water currently draining onto Plaintiff's property to the proposed tube, whatever
21 its determined location, in order to prevent future damage to Plaintiff's property.

22 Lastly, Plaintiff requests Defendant to pay for any and all fees and costs for a
23 structural engineer to advise Plaintiff on structural soundness (or lack thereof) of Plaintiff's
24 damaged historic structures, including tunnel, cross-wings, and cabin cellar. Further, should
25 it be discovered that repairs need to be made to the cellar, cross-wings, and/or tunnel, any
26 and all repairs should be paid by Defendant.

Dated this 5th day of August, 2019



Cathleen M. Briley for the
Mayhew Cabin Foundation