

IN THE COURT OF COMMON PLEAS OF SOMERSET COUNTY, PENNSYLVANIA

HARRY C. NEEL, MICHAEL JENKINS, and
LEE CAVANAUGH, Individually and
Derivatively on Behalf of THE STONYPARK
VALLEY DEVELOPMENT CORPORATION,

Plaintiffs,

v.

DANIEL DIVELY and THE STONYPARK
VALLEY DEVELOPMENT CORPORATION,

Defendants.

CIVIL ACTION

No. 275 Civil 2019

**PLAINTIFFS' MOTION FOR
CONTEMPT AND MOTION FOR
SANCTIONS**

Filed on Behalf of Plaintiffs

Counsel of Record for This Party:

Brian T. Must
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(412) 918-1100

IN THE COURT OF COMMON PLEAS OF SOMERSET COUNTY, PENNSYLVANIA

HARRY C. NEEL, MICHAEL W.)	CIVIL ACTION
JENKINS, and LEE E. CAVANAUGH,)	
Individually and Derivatively on Behalf of)	No. 275 Civil 2019
THE STONYCREEK VALLEY)	
DEVELOPMENT CORPORATION,)	Place this case on an Argument schedule for
)	Hearing on Plaintiffs' Motion for Contempt
Plaintiffs,)	and Motion for Sanctions
)	
v.)	
)	
DANIEL DIVELY and THE)	
STONYCREEK VALLEY)	
DEVELOPMENT CORPORATION,)	
)	
Defendants.)	

HEARING SCHEDULING PRAECIPE AND ORDER

Type of scheduling requested:

X Sec. Reg. (On the next available Argument Schedule).

Estimated hearing time for all parties: One and a Half (1.5) Hours

Judge D. Gregory Geary has previously heard a matter in this case.

X A copy of this praecipe has been served on opposing counsel and any unrepresented party.

/s/ John Paul Regan
 John Paul Regan, Esq.
 On Behalf of Plaintiffs, Harry C. Neel,
 Michael Jenkins, and Lee Cavanaugh

ORDER

AND NOW, this _____ day of _____ 2021, a Hearing is scheduled on
the _____ day of _____, 2021, in Court Room _____, at
_____ M. before Judge D. Gregory Geary.

BY THE COURT

3. Although, on September 22, 2021, Plaintiffs received a check for \$5,813.30, that check was received seventy-eight (78) days after the Court's explicit deadline.

4. Worse yet, as of the date of this Motion, SVDC has ardently refused to produce any additional documents, despite being ordered to do so by this Court.

5. Unfortunately, notwithstanding this Court's stern reprimand of SVDC's misconduct during the hearing on Plaintiffs' Second Motion to Compel and Motion for Sanctions, and its warning that further violations would subject SVDC to additional sanctions (including incarceration), SVDC continues to ignore its obligations under the Rules of Civil Procedure and this Court's clear and unambiguous Order.

6. More worrisome, on August 18, 2021, the parties participated in mediation, which resulted in an agreement in principle to amicably resolve this matter, pending the SVDC Board of Director's approval of the settlement package offered by Plaintiffs.¹

7. However, as discussed more fully below, following this agreement in principle, it became abundantly clear that the SVDC Board of Director's had no intention of accepting the settlement offer proposed by Plaintiffs.

8. Instead, SVDC acted several times to delay a vote on the settlement offer, refused to accept the terms proposed by the Plaintiffs (and instead, it unilaterally revised Plaintiffs' offer to vote upon only illusory promises to *maybe* take action in the future), and, ultimately, it improperly relinquished its authority to approve the settlement offer to less than a majority of SVDC's Lot Owners.

¹ Following the parties' agreement in principle, they further agreed to stay discovery pending the SVDC Board of Director's vote on the Plaintiffs' settlement offer. As discussed more fully, *infra*, on October 1, 2021, the Board of Director's voted to reject the Plaintiffs' settlement offer. Thus, the discovery stay was lifted as of October 2, 2021, and SVDC's obligations under the Rules of Civil Procedure resumed. Nevertheless, SVDC was already in contempt of this Court's Order prior to the agreement to stay discovery when it failed to produce any additional discovery by July 30, 2021.

9. As a result of SVDC's knowing misconduct and its failure to produce the documents required by the Court mandated deadline of July 30, 2021, it is in contempt of this Court's June 29, 2021 Order.

10. As a result of SVDC's bad faith mediation, it is liable to Plaintiffs for the costs they unnecessarily incurred in attempting to negotiate an amicable resolution to this case, and such sanctions as this Court deems just.

11. For these reasons, and the reasons set forth below, Plaintiffs respectfully requests that this Court grant these Motions.

II. CIVIL CONTEMPT

12. In order to be held in contempt of court, "the complaining party must show, by a preponderance of the evidence, that the party violated a court order." *Coffman v. Kline*, 167 A.3d 772, 780 (Pa.Super. 2017) (citation omitted).

13. The complaining party must establish: "(1) that the contemnor had notice of the specific order or decree which [it] is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent." *Id.*

14. Further, "[e]ach court is the exclusive judge of contempts against its process." *Barna v. Langendoerfer*, 246 A.3d 343, 346 (Pa.Super. 2021) (citation omitted).

15. It is well-settled that the "contempt power is *essential* to the preservation of the court's authority and prevents the administration of justice from falling into disrepute." *Id.* (emphasis added).

16. Finally, in *Rhoades v. Pryce*, 874 A.3d 148 (Pa.Super. 2005), the Pennsylvania Superior Court observed:

Sanctions for civil contempt can be imported for one or both of two purposes: to compel or coerce obedience to a court order and/or to

compensate the contemnor's adversary for injuries resulting from the contemnor's noncompliance with a court order. Attorneys' fees and other disbursements necessitated by the contemnor's noncompliance may be recovered by the aggrieved party in a civil contempt case. Because an award of counsel fees is intended to reimburse an innocent litigant for expenses made necessary by the conduct of an opponent, it is coercive and compensatory, not punitive. Counsel fees are a proper element of a civil contempt order.

Rhoades, 874 A.3d at 152 (internal citations omitted).

17. First, there can be no dispute that SVDC had notice of the June 29, 2021 Order directing it to produce certain documents to Plaintiffs.

18. The June 29, 2021 Order was properly docketed in this matter with a notation advising the parties to "see order for details and directives," and indicating that a certified copy of the Order was placed in counsel for SVDC's distribution box.

19. On July 12, 2021, Plaintiffs sent a letter to SVDC reminding it of its obligations under the June 29, 2021 Order. A true and correct copy of the July 12, 2021 Letter is attached hereto as **Exhibit "1"**.

20. In addition, on August 11, 2021, Plaintiffs against sent a letter reminding SVDC of its obligation to produce documents pursuant to the June 29, 2021 Order. A true and correct copy of the August 11, 2021 Letter is attached hereto as **Exhibit "2"**.

21. SVDC had notice of the June 29, 2021 Order.

22. Second, SVDC's conduct clearly reflects a knowing and wrongful intent to disobey this Court's Order.

23. Following the hearing on Plaintiffs' Second Motion to Compel and Motion for Sanctions, Plaintiffs set out to comply with the Court's instructions to protect potentially confidential information that SVDC anticipated producing by entering into a Stipulated Protective Order with SVDC.

24. Thus, on July 8, 2021, Plaintiffs supplied SVDC with a proposed Stipulated Protective Order aimed at ensuring SVDC had a mechanism to protect confidential information upon production. A true and correct copy of the July 8, 2021 email is attached hereto as **Exhibit “3”**.

25. Undersigned counsel also supplied counsel for SVDC with a signed Stipulated Protective Order following mediation on August 18, 2021.

26. To date, SVDC has neither executed nor filed the Stipulated Protective Order, despite claiming that such a Protective Order was a precondition to its ability to produce documents.²

27. More importantly, SVDC took steps to *comply* with the Court’s Order when it approved payment for \$5,813.30 pursuant to the June 29, 2021 Order.

28. That is, SVDC chose to comply with a portion of the Order, while otherwise ignoring its obligations.³

29. SVDC has not produced any documents pursuant to that *very same Order*.

30. SVDC’s conduct substantiates that it both knew of its obligations under the June 29, 2021 Order, and that it chose not to fully comply with the same.

² In any case, the Superior Court expressly denied that practical concerns, such as potential confidential information contained in *some* of the documents to be produce, act as a defense to a clear court mandate. *Coffman v. Kline*, 167 A.3d 772 (Pa.Super. 2017) (finding that complainant proved by a preponderance of the evidence that contemnor willfully violated a court order with the wrongful intent of avoiding practical obstacles). Further, following a motion to compel order, Pa.R.C.P. 4019(a)(2) provides that a party may not refuse to comply with such an order “on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order.” SVDC filed no such objection and has, in its control, a Stipulated Protective Order executed by Plaintiffs. Accordingly, SVDC has no justification for its failure to produce documents as directed by the Court.

³ SVDC’s payment to Plaintiffs itself constitutes contempt of Court, as Plaintiffs received that payment on September 22, 2021, *seventy-eight* (78) days after the Court-imposed deadline.

31. Simply, SVDC continues to engage in the very same bad faith discovery tactics for which it was previously sanctioned.

32. SVDC's partial compliance with the June 29, 2021 Order, long after the deadline to comply expired, and its continued refusal to produce documents to which Plaintiffs are undoubtedly entitled (which are essential to the ultimate resolution to this matter), establishes that SVDC willfully violated that Order with the wrongful intent of avoiding its obligations under the Pennsylvania Rules of Civil Procedure.

33. SVDC is, and remains, in contempt of this Court.

34. As noted above, Pennsylvania Courts have long held that Plaintiffs are entitled to an award of counsel fees as compensation for SVDC's civil contempt. *Rhoades, supra*.

35. Further, Pa.R.C.P. 4019(g)(1), which governs discovery sanctions, states in relevant part:

if following the refusal, objection or failure of a party or person to comply with any provision of this chapter, the court, after opportunity for a hearing, enters an order compelling compliance *and that order is not obeyed*, the court on a subsequent motion for sanctions may . . . require the party or deponent whose conduct necessitated the motions or the party or attorney advising such conduct or both of them to pay the moving party the reasonable expenses, including attorney's fees, *incurred in obtaining the order of compliance and the order for sanctions*, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

Pa.R.C.P. 4019(g)(1) (emphasis added).

36. SVDC has failed to fully comply with this Court's June 29, 2021 Order.

37. This Court has already determined that an award of expenses for SVDC's bad faith misconduct was justified.

38. Moreover, there can be no justification for SVDC's willful refusal to produce documents to which Plaintiffs are entitled under the Rules of Civil Procedure in violation of a clear Court mandate.

39. Accordingly, Plaintiffs are entitled to an award of attorneys' fees incurred in obtaining the June 29, 2021 Order, and also, as compensation for the costs it incurred in seeking SVDC's compliance with the same.

40. In obtaining the June 29, 2021 Order, Plaintiffs incurred expenses related to Plaintiffs' Second Motion to Compel and Motion for Sanctions as follows:

Attorney	Time (Hours)	Rate	Total
John Paul Regan	2.6	\$235.00	\$611.00
	17.7	\$240.00	\$4,248.00
Brian T. Must	.5	\$400.00	\$200.00
Total			\$5,059.00

True and correct copies of Plaintiffs' invoices (redacted pursuant to the attorney client privilege) are attached hereto as **Exhibit "4"**.

41. Plaintiffs incurred the following expenses in seeking SVDC's compliance with the June 29, 2021 Order:

Attorney	Time (Hours)	Rate	Total
John Paul Regan	1.6	\$240.00	\$384.00
Total			\$384.00

Ex. 4.

42. Plaintiffs also incurred expenses related to the filing and presentation of the instant Motions in an amount yet to be determined, which is directly attributable to SVDC's contempt of Court. Pa.R.C.P. 4019(g)(1).

43. Thus, as a result of SVDC's misconduct in contempt of this Court's June 29, 2021 Order, Plaintiffs respectfully request that this Court direct SVDC to pay Plaintiffs **\$5,443.00** as compensation for the losses they suffered, plus the reasonable fees incurred in the filing and presentation of the instant Motions, and any additional relief that this Court deems just.

WHEREFORE, Plaintiffs Harry C. Neel, Michael Jenkins, and Lee Cavanaugh, individually and derivatively on behalf of the Stonycreek Valley Development Corporation, respectfully requests that this Court find SVDC in contempt of its June 29, 2021 Order, direct SVDC to fully comply with that Order within fourteen (14) days of the date of that Order or face sanctions, pay Plaintiffs \$5,443.00 as compensation for the losses Plaintiffs suffered as a result of SVDC's misconduct, plus a reasonable amount as determined by this Court incurred in the filing and presentation of the instant Motion, and such other relief as this Court deems just.

III. MOTION FOR SANCTIONS

44. Pursuant to Pa.R.C.P. 212.5, this Court may, at any time, "enter an order . . . scheduling a settlement conference, the purpose of which is to resolve the litigation." Pa.R.C.P. 212.5(a).

45. Rule 212.5 specifically states that, prior to the conference, the parties "shall engage in good faith efforts to resolve the case." *Id.*

46. However, the parties' good faith efforts to resolve the case do not end with the settlement conference. Instead, "strong judicial policy in Pennsylvania favor[s] the voluntary settlement of disputes and lawsuits." *Rothman v. Fillette*, 469 A.2d 543, 546 (Pa. 1983).

47. This policy has ancient and solid roots, which serve the “dual goal of reducing the burden on the courts and expediting the compensation of a claimant.” *Id.* (citation omitted).

48. Accordingly, “Judges and lawyers alike strive assiduously to promote amicable adjustments of matters in dispute, as for the most wholesome of reasons they certainly should. When the effort is successful, the parties avoid the expense and delay incidental to litigation of the issues; the court is spared the burdens of a trial and the preparation and proceedings that must forerun it.” *Id.* (citation omitted).

49. Thus, although Pa.R.C.P. 212.5 provides that parties must engage in good faith settlement discussions prior to court-mandated settlement conferences, there is a strong judicial policy requiring parties to engage in good faith efforts during and after settlement conferences (especially where the parties agreed to so participate), so long as settlement continues to be pursued. *See e.g. Lea v. PNC Bank*, 2016 WL 738053 (W.D. Pa. 2016) (unpublished memorandum) (noting that, under analogous Federal Rule of Civil Procedure 16, Courts are “authorized to require parties to attend conferences for the purpose of discussing settlement and impose sanctions if they fail to participate in good faith[.]”) (quoting *Newton v. A.C. & S.*, 918 F.2d 1121,1126 (3d Cir. 1990)).

50. Under these principles, when a party agrees to engage in settlement discussions, they implicitly agree to participate in good faith.

51. On July 23, 2021, upon agreement of the parties, this Court ordered a settlement conference and mediation to be conducted by the Honorable Judge Daniel W. Rullo.

52. On August 18, 2021, the parties engaged in an approximately ten (10) hour settlement conference and mediation.

53. At all times, Plaintiffs acted with an honest intent to amicably resolve this dispute, and they participated in the mediation prepared to so resolve the dispute on mutually agreeable terms.

54. At the end of the mediation, Plaintiffs and SVDC agreed to a resolution of this matter in principle.

55. Plaintiffs offered a full release of all claims as to all parties in exchange for an agreement by SVDC that would include: 1) a “Letter of Understanding;” 2) a Resolution by SVDC’s Board of Directors adopting a conflict of interest policy; 3) a Resolution by SVDC’s Board of Directors adopting a Model Code of Conduct; and 4) payment of a portion of Plaintiffs’ attorneys’ fees and costs associated with this matter (the “Settlement Package”).⁴

56. With respect to attorneys’ fees and costs, SVDC agreed in principle to pay \$42,000.00, with an additional \$30,000.00 to be paid by SVDC’s insurer. A true and correct copy of the Notice to the Lot Owners of a Special Meeting of the SVDC Board of Directors as drafted by SVDC (the “Notice”) is attached hereto as **Exhibit “5”**.

57. Because SVDC’s contribution exceeded \$20,000.00, SVDC took the position that it could not authorize payment until it held a Special Meeting of the Board, pursuant to Section 6.05 of its By-Laws, which reads:

- a. Non-emergency Unbudgeted Expenditures in excess of \$20,000 shall be included in the notice of the meeting (Board or Members) at which the expenditure is to be considered. Members shall have the opportunity for public comment or may submit written comments prior to the meeting.

A true and correct copy of SVDC’s current By-Laws is attached hereto as **Exhibit “6”**.

⁴ Under Pa.R.C.P. 5949, certain communications and documents related to mediation are privileged. Accordingly, Plaintiffs will not attach such communications and documents to the instant Motion. Nevertheless, they are available for *in camera* review upon request from this Court. That said, certain other documents and communications related to the parties’ mediation, including the Settlement Package, were made public on agreement of the parties pursuant to SVDC’s obligation to seek comment from its Lot Owners of the same, as discussed further *infra*.

58. Under those same By-Laws, such a Special Meeting may be called by the President of the Board “upon *three (3) days*’ notice by electronic mail, or facsimile transmission or forty-eight hours (48) notice delivered personally or by telephone to each Director. Upon written request of two (2) directors, a Special Meeting may also be called by the President or Secretary in like manner. Notification must include date, time and place, *but not the purpose of the meeting*. Ex. 6, at § 7.08(c) (emphasis added).

59. In addition, the Board of Directors (not the Lot Owners) undeniably exercises the power and authority to agree to the Settlement Package, including the approval of an unbudgeted expenditure. Ex. 6, at § 7.02(a)(1) (“All corporate powers shall be exercised by or under the authority of the Board”).

60. Based on the above, at all times relevant to this dispute, SVDC’s Board of Directors *alone* had the power and authority to approve the Settlement Package, and SVDC’s Lot Owners were only permitted an opportunity to comment on the proposed expenditure with three (3) days notice of the Special Meeting to consider the same.

61. With that as backdrop, at the end of the mediation on August 18, 2021, SVDC agreed to provide an up or down vote on the Settlement Package at the next meeting of the Board of Directors on August 19, 2021, which would be followed by a Special Meeting of the Board to ratify that decision after the Lot Owners were afforded an opportunity to comment.

62. Counsel for SVDC confirmed that this was the process to which the parties agreed by email dated August 19, 2021.

63. In violation of this agreement, on August 19, 2021, SVDC did not vote to approve or disapprove the Settlement Package, but, instead, voted to schedule a Special Meeting of the Board on September 17, 2021, far more than the three (3) days notice required by the By-Laws.

64. As a result of SVDC's failure to provide an up or down vote on the Settlement Package, Plaintiffs were forced to reengage Judge Rullo to oversee further discussions as to the process that SVDC was to abide by in reviewing and voting upon the Settlement Package.

65. Following a conference call with Judge Rullo, and based on the agreements reached therein, Plaintiffs submitted a letter to all parties on August 28, 2021, specifically outlining the Settlement Package and the Board's obligation to vote on the same.

66. SVDC did not object to the Settlement Package outlined in the August 28, 2021 Letter.

67. Subsequently, on September 6, 2021, undersigned counsel received for the *first time* a draft of the Notice, *i.e.* an early version of Exhibit 5, which SVDC agreed to allow Plaintiffs to review.

68. On September 7, 2021, Plaintiffs returned to SVDC a revised draft of the Notice with comments and suggested revisions.

69. Thereafter, with the September 17 Special Meeting looming, undersigned counsel requested several times to see a revised or final draft of the Notice, so that the Lot Owners would have ample time to comment on the Settlement Package.

70. During this same time frame, Plaintiffs heard rumors that the Board intended to delay the Special Meeting by a month, purportedly due to difficulty finalizing the Notice, and to further delay this litigation.

71. At that time, Plaintiffs had seen only one draft of the Notice, which was reviewed and returned to SVDC within twenty-four hours. Plaintiffs did not in any way delay the holding of the Special Meeting, and, as such, objected strongly to any further delay to the Board of Directors' vote on the Settlement Package.

72. Finally, on September 15, 2021, SVDC sent a second draft of the Notice. However, the second draft of the Notice did not incorporate the Settlement Package as agreed upon. Instead, the Board offered only that “the Officers would *recommend* that the Board expand its Conflict-of-Interest” policy and “recommend the Board’s adoption” of a Code of Conduct.”

73. Plaintiffs objected to this language as SVDC’s counter-proposal materially changed the terms of the Settlement Package and rendered SVDC’s obligations completely illusory. Rather than adopting an expanded conflict of interest policy and a model code of conduct, SVDC was suddenly willing only to *recommend* that such Resolutions be passed.

74. In addition, SVDC proposed that the Board would solicit input from the Lot Owners in developing the policies, which was contrary to the parties’ agreement.

75. The second draft of the Notice in no way reflected an honest and good faith effort by SVDC to implement the mechanisms at the heart of the Settlement Package, which were proposed to ensure extended litigation between Lot Owner and SVDC *would not recur*.

76. As a result of SVDC’s unsolicited counteroffer, the parties once again engaged Judge Rullo for further negotiation.

77. Following a conference call with Judge Rullo on September 16, 2021, Plaintiffs submitted a revised version of the Notice which was *wholly in keeping* with the agreements reached during the call, including the removal of SVDC’s illusory promises and the reinstatement of terms consistent with the Settlement Package.

78. During the call, the parties also agreed to postpone the Special Meeting until October 1, 2021, as a compromise to an additional month long delay sought, for no good reason, by SVDC.

79. In complete disregard for the agreements reached by the parties on September 16, 2021, SVDC provided Plaintiffs a “final draft” of the Notice on September 21, 2021, which reinstated the illusory promises by SVDC to “consider an expansion” of the conflict of interest policy, and “recommend” a code of conduct. *See* Ex. 5.

80. The Notice, as released by SVDC, did not incorporate the terms of the Settlement Package.

81. Despite agreeing in principle to the Settlement Package on August 18, 2021, SVDC knowingly caused Plaintiffs to incur significant expenses in negotiating and re-negotiating the *same agreement* before materially altering the terms of that agreement for the purposes of the October 1, 2021 Special Meeting. This is the definition of bad faith mediation and negotiation.

82. But it gets worse.

83. During the October 1, 2021, Special Meeting, despite claiming that the Settlement Package (as revised by SVDC) was a “commendable” compromise, *see* Ex. 5, not one member of the SVDC Board of Directors actively advocated on behalf of approving the Settlement Package.⁵

84. Instead, members of the Board of Directors maintained their position that insurance should, could, and would cover SVDC’s expenses, and that SVDC would not be exposed to liability even if this matter proceeded to trial.

85. Then, in violation of Section 7.02(a)(1) of the By-Laws, members of the Board of Directors relinquished their authority to vote on the Settlement Package by allowing the Lot

⁵ The October 1, 2021 Special Meeting was open to the public, and a recording of the same was made available to the public. The recording is available at:

https://us02web.zoom.us/rec/share/mEIOv867v9YpjS7Lo0er9UoVs846Nds_MNau9aKY6OV4ujUOC7gXYt-sTBplxlNj.NzUkvAZk9E6QPZi2

Owners to vote on the Settlement Package, including by counting alleged votes sent by persons not in attendance at the Special Meeting.

86. The alleged final tally of the vote of the Lot Owners, upon which members of the Board of Directors based their vote, was approximately forty-one (41) Lot Owners voting to reject settlement, and twenty-three (23) Lot Owners voting to accept settlement.

87. There are two-hundred-and-eight (208) Lot Owners entitled to vote under the current By-Laws.

88. If this matter were subject to Lot Owner approval (which it is not), the tally relied upon by the Board of Directors did not constitute a majority of Lot Owners. Indeed, the Board did not even *receive* votes from a majority of the Lot Owners.

89. Accordingly, not only did the Board of Directors improperly relinquish their authority to approve the Settlement Package to the Lot Owners, the Board accepted and acted upon the ad hoc votes of *only* sixty-three (63) Lot Owners, *far less* than a majority.

90. Moreover, Board Member Brad Menielly, who represented SVDC during mediation and agreed to the Settlement Package in principle, *voted against* the Settlement Package.

91. Board President Joe Piccini, who also represented SVDC during mediation and agreed to the Settlement Package in principle, *did not vote at all*.

92. The Settlement Package was rejected.

93. The conduct of SVDC's representatives following mediation reflects an absolute disrespect for the mediation process and the settlement agreement between the parties.

94. SVDC's conduct caused Plaintiffs to waste both time and resources in advocating for a Settlement Package that the Board of Directors had no intention of approving.

95. SVDC's actions evidence nothing more than a desire to drive up Plaintiffs' attorneys' fees while it continues its campaign to delay this matter as long as possible (such efforts are clear and apparent from the record).

96. The above-conduct constitutes sanctionable bad faith mediation and negotiation tactics.

97. As a result of SVDC's bad faith, Plaintiffs' unnecessarily incurred attorneys' fees and costs as follows (notwithstanding the extensive personal time, energy, and effort that each Plaintiff volunteered to see this settlement through to the end):

Attorney	Time (Hours)	Rate	Total
John Paul Regan	45.6	\$240.00	\$10,944.00
Brian Must	1.5	\$400.00	\$600.00
Suzanne Smolin	2.1	\$130.00	\$273.00
Total			\$11,817.00

Ex. 4.

98. As a result of SVDC's bad faith mediation and negotiation tactics, Plaintiffs unnecessarily incurred attorneys' fees and costs of **\$11,817.00**, in ardent pursuit of a settlement agreement that SVDC's Board of Directors never intended to approve.

99. When considering SVDC's egregious misconduct and utter disregard for this Court and the Rules of Civil Procedure, further sanctions are both justified and warranted.

100. Accordingly, Plaintiffs respectfully request that this Court impose further sanctions upon SVDC as it deems just.

WHEREFORE, Plaintiffs Harry C. Neel, Michael Jenkins, and Lee Cavanaugh, individually and derivatively on behalf of the Stonycreek Valley Development Corporation,

respectfully requests that this Court to direct Defendant the Stonycreek Valley Development Corporation to pay Plaintiffs' \$11,817.00, in compensation for the attorneys' fees and costs it incurred related to mediation in this matter, and to further sanction Defendant in an amount as this Court deems just.

Respectfully submitted,

METZ LEWIS BRODMAN MUST O'KEEFE LLC

Date: October 15, 2021

By: /s/ John Paul Regan
Brian T. Must (PA I.D. No. 49657)
John Paul Regan (PA I.D. No. 320664)
535 Smithfield Street, Suite 800
Pittsburgh, PA 15222
(412) 918-1100

IN THE COURT OF COMMON PLEAS OF SOMERSET COUNTY, PENNSYLVANIA

HARRY C. NEEL, MICHAEL W.)	CIVIL ACTION
JENKINS, and LEE E. CAVANAUGH,)	
Individually and Derivatively on Behalf of)	No. 275 Civil 2019
THE STONYCREEK VALLEY)	
DEVELOPMENT CORPORATION,)	
)	
Plaintiffs,)	
)	
v.)	
)	
DANIEL DIVELY and THE)	
STONYCREEK VALLEY)	
DEVELOPMENT CORPORATION,)	
)	
Defendants.)	

PROPOSED ORDER

AND NOW, to wit, on this _____ day of _____ 2021, upon consideration of Plaintiffs’ Motion for Contempt and Motion for Sanctions, said Motions are hereby GRANTED. This Court finds Defendant the Stonycreek Valley Development Corporation (“SVDC”) in contempt of this Court for knowingly and willfully violating the Order of June 29, 2021, with the wrongful intent of avoiding its obligations under the Pennsylvania Rules of Civil Procedure. Within fourteen (14) days of the date of this Order, SVDC shall produce to Plaintiffs the documents and things expressly outlined in that Order. SVDC is hereby directed to pay Plaintiffs \$5,443.00, plus \$_____ as compensation for the attorneys’ fees and costs incurred in the filing, presentation, and pursuit of Plaintiffs’ Second Motion to Compel Defendant the Stonycreek Valley Development Corporation’s Answers to Discovery Requests and Motion for Sanctions, as well as the instant Motions.

Finally, Plaintiffs are awarded \$11,817.00, in compensation for the attorneys’ fees and costs it unnecessarily incurred as a result of SVDC’s bad faith mediation and negotiation tactics in this matter, plus \$_____ as a sanction for SVDC’s failure to participate in the mediation

process in good faith. The amount of compensation and sanctions owed to Plaintiffs totaling \$_____ shall be paid by SVDC within seven (7) days of the date of this Order. Any failure to abide by this Order shall subject SVDC to further sanctions at the discretion of this Court *sua sponte*.

_____, J.

EXHIBIT 1

METZ LEWIS BRODMAN MUST O'KEEFE LLC

535 Smithfield Street Suite 800 Pittsburgh, Pennsylvania 15222
T: 412.918.1100 F: 412.918.1199 www.metzlewis.com

July 12, 2021

VIA EMAIL: jcascio@fcblawyers.com

James R. Cascio, Esquire
Fike, Cascio & Boose
124 N. Center Avenue
Somerset, PA 15501

Re: Harry C. Neel, Michael Jenkins, and Lee Cavanaugh, Individually and Derivatively on Behalf of the Stonycreek Valley Development Corporation v. Daniel Dively and the Stonycreek Valley Development Corporation, Case No.: 275 of 2019

Dear Mr. Cascio:

As you are aware, on June 29, 2021, the Court entered an Order in the above-referenced matter directing your client, the Stonycreek Valley Development Corporation ("SVDC"), to make a payment of \$5,813.30 as a sanction for SVDC's failure to participate in the discovery process in good faith. By that same Order, the Court directed SVDC to pay that amount within seven (7) days, that is, by July 5, 2021. Subsequently, I advised you to send a check, made payable to Metz Lewis, to my attention. To date, we have not received the Court-mandated payment. As such, your client is in contempt of the Court's June 29, 2021 Order.

Within twenty-four (24) hours of the date of this letter, please advise me as to the status of SVDC's check and the exact date upon which we can expect payment. Otherwise, we will be forced to file a Petition for Contempt seeking additional fees and sanctions, as provided by the Pennsylvania Rules of Civil Procedure. Should you have any questions regarding the above, please do not hesitate to contact me.

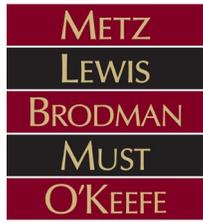
Very truly yours,

/s/John Paul Regan

John Paul Regan

JPR

cc: David T. Leake, Esquire (via Email: David.Leake.Esq@gmail.com)
cc: Dennis J. Stofko, Esquire (via Email: stofkoesq@stofkolaw.com)



ATTORNEYS AT LAW

JOHN PAUL REGAN

EXHIBIT 2

METZ LEWIS BRODMAN MUST O'KEEFE LLC

535 Smithfield Street Suite 800 Pittsburgh, Pennsylvania 15222
T: 412.918.1100 F: 412.918.1199 www.metzlewis.com

August 11, 2021

VIA EMAIL: jcascio@fcblawyers.com

James R. Cascio, Esquire
Fike, Cascio & Boose
124 N. Center Avenue
Somerset, PA 15501

Re: Harry C. Neel, Michael Jenkins, and Lee Cavanaugh, Individually and Derivatively on Behalf of the Stonycreek Valley Development Corporation v. Daniel Dively and the Stonycreek Valley Development Corporation, Case No.: 275 of 2019

Dear Mr. Cascio:

As you are aware, on June 29, 2021, the Court entered an Order in the above-referenced matter directing your client, the Stonycreek Valley Development Corporation ("SVDC"), to make a payment of \$5,813.30 as a sanction for SVDC's failure to participate in the discovery process in good faith. By that same Order, the Court directed SVDC to produce all documents responsive to Plaintiffs' discovery requests as specifically outlined in that Order. To date, we have not received a payment from SVDC, documents in response to Plaintiffs' discovery requests, or any response to our proposed Stipulated Confidentiality Agreement, which the Court advised us to file. As such, SVDC is, and remains in, contempt of court.

Notwithstanding the above, the Plaintiffs fully intend to participate in the upcoming mediation on August 18, 2021, in good faith. We earnestly hope to arrive at an amicable resolution to this case and to finally see the parties' differences behind them. However, if the parties are unable to reach a resolution on August 18, please accept this letter as further notice that we intend to move forward with the depositions previously noticed.

By way of a reminder, on July 12, 2021, we served Notices of Deposition scheduling depositions as follows:

Thursday, August 19, 2021:

- 9:00 a.m. Joe Piccini
- 11:00 a.m. Julie Fisher
- 2:00 p.m. Phyllis Picoulas

Wednesday, August 25, 2021:

- 9:00 a.m. William Blackburn, Sr.
- 1:00 p.m. William Blackburn, Jr.
- 3:00 p.m. Jack Hershberger



ATTORNEYS AT LAW

JOHN PAUL REGAN

James R. Cascio, Esquire
Fike, Cascio & Boose
August 11, 2021
Page 2

Friday, August 27, 2021:

- 9:00 a.m. Marcia Rogish
- 1:00 p.m. Brad Meneilly
- 3:00 p.m. Shelly Glessner

As previously agreed, these depositions will take place at your offices. Should you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

/s/John Paul Regan

John Paul Regan

JPR

cc: David T. Leake, Esquire (via Email: *David.Leake.Esq@gmail.com*)
cc: Dennis J. Stofko, Esquire (via Email: *stofkoesq@stofkolaw.com*)

EXHIBIT 3

From: James Cascio
Sent: Thursday, July 8, 2021 11:02 AM
To: Regan, John Paul
Subject: Re: Neel et al. v. SVDC et al. - Proposed Protective Order

Thanks. Just so we are on the same page, can you send an email with the tentative dates we discussed for discovery so I can be sure our calendars "sync"?

James R. Cascio, Esq. | **Fike, Cascio & Boose**

124 North Center Avenue | Somerset, PA 15501 | (814) 445-7948

jcascio@fcblawyers.com www.fcblawyers.com

This electronic message contains information from the law firm of Fike, Cascio & Boose. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at jcascio@fcblawyers.com.

On Jul 8, 2021, at 10:54 AM, Regan, John Paul <jregan@metzlewis.com> wrote:

Jim,

As we discussed this morning, attached for your review is a proposed stipulated protective order to govern our discovery moving forward. Please let me know if you have any suggested revisions, or if you would like to discuss this further.

JP

John Paul Regan
Associate
Metz Lewis Brodman Must O'Keefe LLC
535 Smithfield St. | Suite 800 | Pittsburgh, PA 15222
P: (412)-918-1107
E: jregan@metzlewis.com

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived. We have implemented **HAVEN™**, from **Corvid Cyberdefense** which protects our networks, data, email and endpoints with leading edge threat prevention controls and **24x7x365** threat detection and monitoring. To find out more [Click Here](#).

EXHIBIT 4

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
05/13/21	MUST, BRIAN T. Conference with Attorney J. Regan regarding strategy issues.	0.50	hours
05/13/21	REGAN, JOHN PAUL Call with B. Must regarding next steps on discovery, motion to compel	0.20	hours
05/14/21	REGAN, JOHN PAUL Draft and revise letter to opposing counsel regarding discovery deficiencies	0.80	hours
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
05/24/21	REGAN, JOHN PAUL Emails with clients regarding motion to compel, Dively deposition	0.10	hours
05/24/21	REGAN, JOHN PAUL Review file and documentation of discovery and document requests for motion to compel	0.30	hours
05/25/21	REGAN, JOHN PAUL Call with M. Jenkins regarding motion to compel, update on SVDC	0.20	hours
05/26/21	REGAN, JOHN PAUL Review Rosage and St. Clair deposition transcripts for motion to compel	1.00	hours
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

METZ LEWIS BRODMAN MUST O'KEEFE LLC

**535 Smithfield Street
Suite 800
Pittsburgh, PA 15222
412-918-1100**

Harry C Neel
401 Curry Hollow Road
Pittsburgh, PA 15236

July 14, 2021
Invoice #: 206108
Client #: 006366

EIN 23-2947545

STATEMENT FOR SERVICES RENDERED:

Matter: 00003

Lake Stonycreek Board Challenge

06/01/21	REGAN, JOHN PAUL Research Somerset County local rules regarding motions to compel, scheduling and filing	0.20 hours
06/02/21	REGAN, JOHN PAUL Draft and revise motion to compel, review and compile exhibits	5.60 hours
06/02/21	REGAN, JOHN PAUL Review deposition transcripts for St. Clair, Rosage, Weir, and Bandstra, SVDC documents produced and answers to Plaintiffs' discovery requests for drafting motion to compel	3.50 hours
06/03/21	REGAN, JOHN PAUL Draft, revise, and finalize motion to compel for filing	1.10 hours
06/04/21	REGAN, JOHN PAUL Emails with clients regarding motion to compel	0.10 hours
06/07/21	REGAN, JOHN PAUL Review emails from M. Jenkins regarding deposition prep materials, motion to compel hearing	0.20 hours
06/08/21	REGAN, JOHN PAUL Prepare for motion to compel hearing, review motion and exhibits	0.50 hours
06/08/21	REGAN, JOHN PAUL Emails with clients regarding motion to compel rescheduling	0.20 hours
06/08/21	REGAN, JOHN PAUL Calls with Court and opposing counsel regarding motion for continuance, rescheduling motions hearing	0.30 hours

METZ LEWIS BRODMAN MUST O'KEEFE LLC

**535 Smithfield Street
Suite 800
Pittsburgh, PA 15222
412-918-1100**

Harry C Neel
401 Curry Hollow Road
Pittsburgh, PA 15236

August 12, 2021
Invoice #: 206871
Client #: 006366

EIN 23-2947545

STATEMENT FOR SERVICES RENDERED:

Matter: 00003

Lake Stonycreek Board Challenge

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
07/08/21	REGAN, JOHN PAUL Draft and revise proposed stipulated confidentiality order	0.50	hours
07/08/21	REGAN, JOHN PAUL Calls and emails with J. Cascio regarding confidentiality order, upcoming depositions	0.30	hours
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
07/12/21	REGAN, JOHN PAUL Draft letter to J. Cascio regarding Court Order for payment of fees	0.20	hours

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
07/15/21	REGAN, JOHN PAUL Emails with clients regarding mediation with J. Rullo, review notes of call with Judge regarding same	0.10	hours
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
07/16/21	REGAN, JOHN PAUL Call with H. Neel and emails with clients regarding mediation	0.20	hours
07/19/21	REGAN, JOHN PAUL Emails with clients regarding mediation scheduling	0.10	hours
07/19/21	REGAN, JOHN PAUL Call with J. Cascio and emails with Judge Rullo regarding mediation, discovery responses	0.30	hours
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
07/30/21	REGAN, JOHN PAUL Call with Cascio, emails with M. Jenkins regarding SVDC discovery response	0.20	hours

METZ LEWIS BRODMAN MUST O'KEEFE LLC

**535 Smithfield Street
Suite 800
Pittsburgh, PA 15222
412-918-1100**

Harry C Neel
401 Curry Hollow Road
Pittsburgh, PA 15236

September 17, 2021
Invoice #: 207695
Client #: 006366

EIN 23-2947545

STATEMENT FOR SERVICES RENDERED:

Matter: 00003

Lake Stonycreek Board Challenge

08/02/21	REGAN, JOHN PAUL Call with M. Jenkins regarding discovery response, mediation	0.20	hours
08/06/21	REGAN, JOHN PAUL Call with H. Neel regarding discovery response, planning for mediation	0.20	hours
08/09/21	REGAN, JOHN PAUL Emails with clients regarding mediation and depositions	0.10	hours
08/10/21	REGAN, JOHN PAUL Call with M. Jenkins and H. Neel regarding mediation and deposition strategy and planning	0.70	hours
08/10/21	REGAN, JOHN PAUL Prepare for call with clients regarding mediation preparation, outline mediation strategy	0.30	hours
08/11/21	REGAN, JOHN PAUL Emails with clients and opposing counsel regarding depositions and mediation preparation	0.20	hours
08/11/21	REGAN, JOHN PAUL Draft and revise letter to J. Cascio regarding mediation and depositions	0.40	hours
08/13/21	REGAN, JOHN PAUL Draft and revise confidential mediation statement, prepare for mediation	3.50	hours
08/16/21	REGAN, JOHN PAUL Prepare for mediation, review deposition exhibits, deposition transcripts, and pleadings	2.80	hours

08/17/21	SMOLIN, SUZANNE L. Prepare binder of key documents per Attorney Regan;	2.10 hours
08/17/21	REGAN, JOHN PAUL Prepare for mediation, review exhibits, deposition transcripts, pleadings, non-profit corporations law, SVDC By-Laws, draft mediation outline, review mediation binder	7.00 hours
	[REDACTED]	[REDACTED] [REDACTED]
08/17/21	REGAN, JOHN PAUL Mediation preparation calls with H. Neel and M. Jenkins, emails with same and L. Cavanaugh regarding the same	0.50 hours
08/18/21	REGAN, JOHN PAUL Prepare for mediation, review notes, draft statement on damages	0.30 hours
08/18/21	REGAN, JOHN PAUL Attend mediation	8.50 hours
08/18/21	REGAN, JOHN PAUL Travel to and from Somerset for mediation	3.00 hours
08/19/21	REGAN, JOHN PAUL Review SVDC By-laws regarding approval of unbudgeted expenditures	0.20 hours
08/19/21	REGAN, JOHN PAUL Calls and emails with H. Neel and M. Jenkins regarding By-laws, SVDC procedure for approving unbudgeted expenditures	0.70 hours
08/19/21	REGAN, JOHN PAUL Emails with opposing counsel and Judge Rullo regarding settlement, approval of unbudgeted expenditures	0.20 hours
08/20/21	MUST, BRIAN T. Conference with Attorney J. Regan regarding settlement status and strategy.	0.40 hours
08/20/21	REGAN, JOHN PAUL Calls and emails with H. Neel, M. Jenkins, J. Rullo, and opposing counsel regarding [REDACTED] mediation agreement, next steps	0.70 hours
08/20/21	REGAN, JOHN PAUL Call with B. Must regarding mediation agreement, next steps in discovery	0.20 hours
	[REDACTED]	[REDACTED] [REDACTED]
08/23/21	REGAN, JOHN PAUL Calls and emails with H. Neel, M. Jenkins, Rullo, and opposing counsel regarding settlement agreement and upcoming depositions	2.00 hours
08/23/21	REGAN, JOHN PAUL Prepare for mediation conference call with Judge Rullo	0.30 hours
08/24/21	REGAN, JOHN PAUL	

Emails with J. Rullo and opposing counsel regarding stay of discovery, settlement agreement

0.20 hours

08/24/21

REGAN, JOHN PAUL

Call with H. Neel and M. Jenkins regarding mediation settlement, depositions, and discovery

1.00 hours

08/24/21

REGAN, JOHN PAUL

Call with B. Must regarding mediation settlement, planning and strategy for depositions and discovery

0.40 hours

08/26/21

REGAN, JOHN PAUL

Draft and revise mediation settlement terms letter to opposing counsel

0.60 hours

08/28/21

REGAN, JOHN PAUL

Revise, finalize, and send mediation settlement terms letter

0.30 hours

08/30/21

REGAN, JOHN PAUL

Emails with J. Rullo, opposing counsel, and clients regarding settlement, next steps

0.20 hours

08/31/21

REGAN, JOHN PAUL

Emails with M. Jenkins and H. Neel regarding update on settlement letter

0.10 hours

[Redacted text block]

METZ LEWIS BRODMAN MUST O'KEEFE LLC

**535 Smithfield Street
Suite 800
Pittsburgh, PA 15222
412-918-1100**

Harry C Neel
401 Curry Hollow Road
Pittsburgh, PA 15236

October 13, 2021
Invoice #: 208406
Client #: 006366

EIN 23-2947545

STATEMENT FOR SERVICES RENDERED:

Matter: 00003

Lake Stonycreek Board Challenge

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
09/01/21	REGAN, JOHN PAUL Emails and calls with opposing counsel, J. Cascio regarding settlement	0.30	hours
09/07/21	MUST, BRIAN T. Conference with Attorney J. Regan regarding settlement issues.	0.50	hours
09/07/21	REGAN, JOHN PAUL Emails and call with B. Must, J. Cascio regarding settlement planning and strategy, notice of special meeting of board	0.30	hours
09/07/21	REGAN, JOHN PAUL Review and revise SVDC proposed notice of special meeting of board	1.20	hours
09/13/21	REGAN, JOHN PAUL Emails and calls with clients and J. Cascio regarding notice of special meeting, postponement of special meeting	0.60	hours
09/14/21	REGAN, JOHN PAUL Emails with clients and J. Cascio regarding special meeting, settlement	0.20	hours
09/15/21	REGAN, JOHN PAUL Emails with J. Cascio and clients regarding proposed notice of special meeting	0.10	hours
09/15/21	REGAN, JOHN PAUL Review and analyze revised proposed notice of special meeting	0.30	hours
09/16/21	REGAN, JOHN PAUL		

Review and revise proposed notice of special meeting

1.20 hours

09/16/21	REGAN, JOHN PAUL Call and emails with opposing counsel, J. Rullo regarding settlement conference, negotiating notice of special meeting	1.00 hours
09/16/21	REGAN, JOHN PAUL Emails and call with clients, M. Jenkins regarding settlement, Board meeting	0.30 hours
	[REDACTED]	[REDACTED] [REDACTED]
	[REDACTED]	[REDACTED] [REDACTED]
09/20/21	REGAN, JOHN PAUL Calls and emails with clients and B. Must regarding settlement package, revisions to notice of special meeting	0.50 hours
09/20/21	REGAN, JOHN PAUL Meeting with B. Must regarding settlement negotiations, [REDACTED] mediation	0.20 hours
	[REDACTED]	[REDACTED] [REDACTED]
09/21/21	REGAN, JOHN PAUL Review SVDC proposed revised notice of special meeting, emails with opposing counsel and clients regarding same	0.80 hours
09/22/21	REGAN, JOHN PAUL Call with B. Must and emails with clients regarding planning for Special Meeting	0.40 hours
09/23/21	REGAN, JOHN PAUL Call with M. Jenkins regarding planning for October 1 Special Meeting	0.30 hours
09/27/21	REGAN, JOHN PAUL Emails with clients and call with M. Jenkins regarding settlement, SVDC Lot Owner response to Notice of Special Meeting, and planning for Special Meeting	0.40 hours
09/28/21	MUST, BRIAN T. Conference with Attorney J. Regan regarding strategy issues in light of upcoming lot meeting.	0.60 hours
09/28/21	REGAN, JOHN PAUL Call with B. Must regarding Special Meeting of Board planning and update	0.20 hours
09/28/21	REGAN, JOHN PAUL Review Robert's Rules of Order and SVDC By-Laws regarding voting process, Role Call voting procedure	0.40 hours
09/28/21	REGAN, JOHN PAUL Emails with clients regarding Special Meeting of Board, Robert's Rules and Role Call voting	0.10 hours
09/30/21	REGAN, JOHN PAUL Emails with clients regarding SVDC comments to settlement package	0.20 hours
	[REDACTED]	

[Redacted]

[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

EXHIBIT 5

NOTICE

To the Lot Owners of a Special Meeting of the SVDC Board of Directors

St. Mark Lutheran Church, Shanksville, PA

6 PM, on Friday, October 1, 2021

and

Notice to the Lot Owners/Members of a possible “Unbudgeted Expenditure” as required under Article 6.05 of the SVDC Bylaws.

Summary

Stonycreek Valley Development Corporation (“SVDC”) Shareholders Harry Neel, Lee Cavanaugh, and Mike Jenkins (the “Plaintiffs”) filed a lawsuit against SVDC and Dan Dively on April 18, 2019, in the Court of Common Pleas of Somerset County, Pennsylvania, seeking to recover direct and derivative monetary damages and other relief.

Last month, the Trial Judge in the matter urged the parties to engage in a non-binding and confidential mediation process, and Judge Daniel Rullo indicated a willingness to act as Mediator. All parties consented to participate in the process.

The Parties met with the Mediator on August 18 for 10 hours. At the end of the process, the Plaintiffs had four demands on the table, including that the SVDC and its Directors and Officers Liability Insurance Carrier reimburse the plaintiffs for a portion of their legal expenses.

Under Article 6.5 (a) 11.2(b) of the Bylaws, the Board must give advance notice to Lot Owners of any Meeting when the Board considers an unbudgeted expenditure of more than \$20,000.

The Board has scheduled a Special Board Meeting to discuss and act on the Plaintiffs’ demand at a Special Board Meeting on October 1, 2021, at 6 PM at St. Mark Lutheran Church in Shanksville, PA.

As required by the Bylaws, the Board is providing the Lot Owners notice and seeking input and comments on a potential unbudgeted expenditure that would exceed \$20,000.00.

Background

Litigation between the two parties has been extensive. Most recently, the parties exchanged interrogatories and Plaintiffs have taken depositions of four current and former Board members. Substantial additional discovery is sought under the Pennsylvania Rules of Civil Procedure, including additional depositions and document production. It is estimated that the case could be litigated for as long as another 2 years if it were to go to trial, and an additional 2 to 3 more years to resolve any appeals, resulting in additional costs and fees to all parties.

Mediation

The President and Vice President of the Board represented SVDC in the August 18, 2021, mediation. While these Officers were representing the Corporation and Board, it was with the clear understanding that they did not have authority to bind the Corporation and could only bring any resulting proposals for Board action.

Following a lengthy mediation process overseen and moderated by Judge Rullo, the participants mutually concluded that a “recommendable” compromise could include certain non-monetary undertakings:

- A “Letter of Understanding” in a form agreeable to all parties, jointly drafted by the parties’ legal counsel.
- The Board would act to review and consider an expansion of SVDC’S existing Conflict of Interest Policy on mutually acceptable terms. The Pennsylvania Nonprofit Corporation Act contains provisions defining and governing a Board member’s fiduciary duties to the Corporation. Also, Article 7.04 (b) of the Bylaws adopted by the SVDC Lot Owners in 2020, while this suit was pending, contains Conflict of Interest provisions.
- While SVDC complies with Pennsylvania law, the Board will consider adoption of a Resolution formalizing an expanded conflict of interest policy and proposed Resolution.
- The Officers would recommend the Board’s adoption of a “Code of Conduct” that will guide board members by committing to generally accepted “best practices” for nonprofit corporate directors and to adopt a Resolution formalizing the Code of Conduct Policy.
- While the parties work to finalize the expanded Conflict of Interest and Model Code of Conduct policies, Judge Rullo will maintain non-binding oversight over the parties’ negotiations.
- As has been past practice, the Board will solicit input offered from the lot owners, including the Plaintiffs, in developing the Conflict of Interest and Code of Conduct Policies.

The Plaintiffs also sought reimbursement for their legal fees. In this regard, SVDC secured and maintains a Directors and Officers Liability policy from The Cincinnati Insurance Company which provides liability coverage and covers defense costs (outside the Policy limits) after payment of a \$1,000 deductible. Cincinnati made it clear in the mediation that it is fully prepared to cover defense costs up to and including a trial.

Cincinnati issued a "Reservation of Rights" letter in this matter in 2019, when it first began paying defense costs on behalf of SVDC and Dively. A Reservation of Rights letter is provided by an insurance company to an insured party to indicate that a claim may not be covered under a policy. Reservation of Rights letters do not deny a claim. However, such a letter indicates that the insurer is investigating the claim and reserves the right to deny the claim after it completes its investigation. Cincinnati engaged an independent law firm to investigate the original claims and monitor all aspects of this case; and they have done so for the past two years.

Both Defense Counsel and Cincinnati's counsel have expressed the opinion that the SVDC has a strong case. Further, at the mediation, Cincinnati expressed its resolve to defend the matter to trial if necessary. That said, lot owners should be aware that litigation tends to be drawn out, expensive and divisive. Favorable Court outcomes can never be guaranteed. Moreover, because Cincinnati issued a Reservation of Rights letter, it remains possible that, following trial, Cincinnati may seek to recoup its expenses from SVDC.

In the interests of resolving the matter for the good of the community and not as an admission of liability, Cincinnati is willing to contribute up to \$30,000 towards a global settlement agreement. Cincinnati's consent to the settlement, and its contribution of \$30,000 toward that settlement, is subject to a dismissal of the entire lawsuit with prejudice; Cincinnati does not consent to a settlement that leaves the lawsuit pending against any defendants.

Plaintiffs responded to the Mediator's request for a "what we need" demand for legal fees, by reducing their demand for reimbursement of legal fees from \$150,000 to \$72,000. With Cincinnati's offer of \$30,000 towards a settlement, SVDC would be required to contribute \$42,000 to meet the Plaintiffs' demands and settle the case. To put this aspect of Plaintiff's demand in perspective the SVDC's contribution to the settlement represents about \$150 per lot. If the Board approves and implements the settlement package, the Plaintiffs agreed to dismiss the lawsuit against all parties with prejudice.

The Mediator encouraged the Officers to take the Plaintiffs' offer back to the Board for fair and full consideration.

Next Steps

The SVDC Board of Directors will convene a Special meeting on October 1, 2021, 6 PM, at St. Mark Lutheran Church, Shanksville, PA, to discuss and act on the settlement offer.

Under Robert's Rules of Order and SVDC Bylaws Article 6.05(a), a Motion to Approve Settlement Offer

will be on the Agenda. If seconded, the Board will address and vote on the settlement offer outlined above, including the unbudgeted expenditure necessary to fund the settlement of the action. The Board must follow this procedure to comply with the Bylaws.

Lot owners may provide written comments and/or attend the meeting on October 1, 2021. The Board considers written comments most useful since they are generally more precise and can be circulated and thoughtfully considered by Board members prior to the meeting.

SVDC's unbudgeted expenditure of \$42,000.00 would be paid from SVDC's existing available cash reserves. The current value of these reserves, which are held in money market accounts, is approximately \$293,000.00. For clarity, SVDC maintains an additional Restricted Dam Breach Fund of \$280,000.00, as an alternative to posting a Bond, at an annual cost of \$2,000-3,000, as required by the Commonwealth.

The Officers and Board offer no recommendations on this proposed settlement agreement until it has been discussed in detail by the Board and pending the opportunity to receive the Lots Owners' input.

Stonycreek Valley Development Corporation

EXHIBIT 6

STONYCREEK DEVELOPMENT CORPORATION BYLAWS

Adopted: May, 2020

ARTICLE I: NAME

1.01 Name

The legal name of this corporation shall be **The Stonycreek Valley Development Corporation (SVDC)**. The business of the corporation will be conducted as D/B/A **Lake Stonycreek**.

ARTICLE II: SEAL

2.01 Seal

The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Pennsylvania."

ARTICLE III: OFFICES

3.01 Offices

(a) The office of the Lake Stonycreek Valley Development Corporation shall be at the residence of the corporation's Secretary or at a place the directors may from time to time designate.

(b) The Corporation may also have offices or a mailing address at such other places as the Board of Directors, who are defined in Article VII, may from time to time direct or the business of the corporation may require.

ARTICLE IV: PURPOSES AND POWERS

4.01 Purpose

(a) The Stonycreek Valley Development Corporation – hereafter referred to as the “Corporation” is organized and operated exclusively for the purposes of preserving, repairing, maintaining, and improving the integrity, value, function, privacy and exclusive use of Lake Stonycreek and other SVDC owned property, both real and personal, on behalf of its members (Lot Owners) and to pursue economic and social benefits for its members and for any other purposes allowed in compliance with the requirements of Section 501(c) of the Internal Revenue Code of 1986, as amended (the “Code”) and corresponding provisions of any subsequent federal tax laws.

(b) Stonycreek Valley Development Corporation was incorporated in 1959 as a For-Profit corporation and became a 501 (c) Not-for-Profit corporation with the affirmative vote of the Second Amendment which was recorded on August 15, 2005 to reflect such.

(c) Lake Stonycreek is a cultural feature (162 acre lake) located in Somerset County, Pennsylvania. Its primary coordinates place it within the 15541 zip code delivery area. It is neither a township nor a borough of Somerset County.

4.02 Powers

In furtherance of such purposes, the corporation shall have the same powers as an individual to do all things necessary or convenient to carry out the purposes, as set forth in the Articles of Incorporation and these Bylaws.

4.03 Nonprofit Status and Exempt Activities Limitation

Notwithstanding any other provision of these Articles, the corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c) of the Code, as amended or supplemented. The corporation shall not permit any part of the net earnings or net assets of the corporation to inure to the benefit of any member of the corporation or any other private individual (except that reasonable compensation may be paid for services rendered to or for the corporation in effecting one or more of its purposes).

4.04 Distribution upon Dissolution

Upon the dissolution of the corporation or the winding up of its affairs, after payment or provision for payment of the corporation’s liabilities has been made, the corporation’s remaining assets shall be distributed to a corporation then existing and qualified under the provisions of Section 501(c) or 501(c)(7) of the Code, as selected by the Board of Directors of the corporation

ARTICLE V: DEFINING THE TERMS: MEMBER(S) AND LOT

5.01 No Membership Classes

The corporation's "Membership" shall include any person, persons, trust or other legal entity recorded as having an ownership interest in one (1) or more lot(s) located within the Stonycreek Valley Development Corporation as identified by deed(s) as recorded at the Somerset County Recorder of Deeds Office.

All "Members" will have the right to attend and observe Board meetings; and attend Member meetings with the right to petition and make motions, subject to the restrictions set forth in Articles X and XI.

5.02 Lot

A Lot located within the SVDC shall be the "voting entity" recognized within the SVDC's Corporate structure.

(a) Each "Lot" shall have one vote:

- (1) on matters placed before the Members for action and
- (2) for each open seat at Board of Directors elections (Article VII 7.05)

(b) While a Lot may have more than one person or legal entity holding an ownership interest, in all Corporate matters requiring a vote, each "Lot" shall have only one vote. It shall be up to the members (legal owners) of each lot to come to an agreement or consensus on how that single vote is cast on the matter(s) being voted on. If no consensus/agreement between the lot owners can be reached the lot will be recognized as present to establish a quorum; but its vote will not be recognized or counted in regard to the matter, motion or open Board seat being voted on.

Article VI: CORPORATE FUNDS and FUNDING

6.01 Dividends & Distributions

The corporation is a nonprofit organization. No dividends or distributions shall be paid on shares. Shares outstanding prior to these Bylaws being amended in May 2020 were redeemable at \$10 per share during the period from June 1st 2019 to December 31st 2019. Notice of the right to exercise redemption was given to Members/shareholders and published on the SVDC website.

6.02 Fees

The Board shall establish and collect annual lot and boat fees to fund the operation and maintenance of the lake and other corporation owned property real and personal.

6.03 Reserve Fund

From time to time, in their absolute discretion, the directors may set aside a reserve fund to meet contingencies, bonding requirements, or for repairing and maintaining any property of the corporation or for such other purposes as the directors shall believe to be conducive to the interests of the corporation. The directors may also abolish any such reserve in the manner it was created.

6.04 Special Assessments

Subject to a quorum being established, an affirmative vote of the majority of Lots present at any Annual or Special Lot Owners' Meeting, a Special Assessment(s) may be levied on lots; if notice of, including the purpose and the amount of the proposed assessment is contained in the notice of the meeting.

6.05 Unbudgeted Expenditures

- a. Non-emergency Unbudgeted expenditures in excess of \$20,000 shall be included in the notice of the meeting (Board or Members) at which the expenditure is to be considered. Members shall have the opportunity for public comment or may submit written comments prior to the meeting.
- b. Emergency expenditures or expenditures required by Commonwealth or Federal action shall be published, with supporting documentation, as part of the next meeting minutes.

6.06 Solicitation of Bids

For projects or other annualized expenditure(s) anticipated, or found to be, in excess of \$5,000 the Board shall solicit for bids or advertise for "RFPs" (Request for Proposals). Notice of such actions will be included in the meeting minutes. A Bid higher than the "low bid" may be accepted if it is shown that such action is in the best interests of the Corporation and documented in the minutes.

ARTICLE VII: BOARD OF DIRECTORS

7.01 Number of directors

The corporation shall have a Board of Directors consisting of eleven (11) directors.

7.02 Powers

(a) Corporate Powers.

- (1) All corporate powers shall be exercised by or under the authority of the Board. The affairs of the Stonycreek Valley Development Corporation shall be managed under the direction of the Board, except as Reserved to the Members/Lots or otherwise provided for by law.
- (2) The Board may make such rules for its own regulation, including the creation of standing or special committees, and shall determine the policies of the corporation, and perform all duties necessary for the transaction of the affairs of the corporation.
- (3) The Board will have the power to promulgate administrative rules and regulations (including provision for the enforcement thereof) which it deems necessary or appropriate to ensure compliance with the law, financial integrity, or the proper functioning of the corporation.

(b) Rules and Regulations. The Board of directors shall issue and revise Lake Rules and Regulations that govern the lake community, including but not limited to: boats such as types, lengths, permits, fees and operation, fishing and hunting; warnings, fines up to and including suspension of lake access privileges, subdivision of lots; and any other topic deemed necessary by the Board.

The Rules and Regulations may be revised in accordance with Article XIV. The Board shall provide notice to all Members (Lot Owners) of any new rules and regulations or changes thereto and post them on the Lake Stonycreek website. A copy of the Rules and Regulations may be printed from the website and will be available to be mailed upon request. Each proposed new rule or regulation and each changed rule or regulation, in its new format, shall be separately voted on upon the Board of Directors at the time of adoption. Each Lot/Property Owner(s) and his or her family and guests shall be subject to following all of the Lake Rules and Regulations set forth by the Board of directors.

7.03 Terms:

(a) All directors shall be elected to serve a one term; however, the term may be extended until a successor has been elected. Directors may serve terms in succession.

(b) The term of office shall be considered to begin upon election; and end at the conclusion of the next Annual Meeting of the Membership, unless the term is extended or until such time as a successor has been elected.

7.04 Qualifications of directors

(a) In order to be eligible to serve as a Director on the Board of directors, the individual must be 18 years of age and a Member of The Stonycreek Valley Development Corporation.

(b) Conflict of Interest - Every Director in a manner and form prescribed by the Board shall, as a condition of office, be required to fully disclose any actual, apparent or potential conflict of interest prior to election and/or following election as they may arise and as otherwise required by the corporation.

(1) No transaction involving remuneration or other benefit to a Director or a member of the Director's family (family defined as: wife/husband, partner, children, parents and grandparents) or to an organization of which a Director, or family member is an officer, director or controlling stockholder or in which any such person has a financial interest shall be entered into by the corporation without full disclosure by the interested Director and with the approval of the Board of directors with a finding that the transaction is fair and reasonable to the corporation.

7.05 Election of directors

Directors will be elected at the Annual Meeting of Members which shall be held in May on the Friday proceeding Memorial Day at 7:00 pm, or on an alternative date as may be selected by the Directors.

7.06 Vacancies

(a) The Board of Directors may fill vacancies, by majority vote, due to resignation, inability to perform his/her duties, death or removal of a Director.

(b) The Board may appoint new directors to fill a previously unfilled Board position, subject to the maximum number of directors under these Bylaws. Each person so elected shall be a Director until his successor is elected by the Members, who may make such election at the next Annual Meeting, or at any special meeting duly called for that purpose and held prior thereto.

(c) Unexpected Vacancies. Vacancies in the Board of directors due to resignation, death, or removal shall be filled by the Board for the balance of the term of the Director being replaced.

7.07 Removal of directors

A Director may be removed by the affirmative vote of ($\frac{3}{4}$) of the voting directors then in office, if:

(a) If a Director has more than two excused and two unexcused absences in a year. Excused absences shall be granted by at least two officers of the board for a reason deemed adequate by those two officers, or

(b) for conduct deemed to be materially contrary to the interests of the corporation, including, but not limited to disclosures of confidential information to third parties, or

(c) significant, continuing conflicts of interest that affect such Director's ability to serve, or

(d) for commission of a crime or other action involving moral turpitude,.

Before any meeting of the Board at which a vote on removal will be made the Director in question shall be given electronic or written notification of the Board's intention to discuss her/his case and is given the opportunity to be heard at a meeting of the Board.

7.08 Board of Directors Meetings

(a) Initial Meeting of a Newly Elected Board. Each newly elected Board of Directors may meet at such time and place as fixed by the Current Board at the meeting at which such directors are elected. No notice shall be necessary to the newly elected directors in order legally to constitute the meeting.

(b) Regular Meetings. The Board of directors shall meet within this Commonwealth as the majority of the directors may from time to time determine at times and places fixed by the Board. Board meetings shall be held upon four (4) days' notice by first-class mail, electronic mail, or facsimile transmission or forty-eight (48) hours' notice delivered personally or by telephone. If sent by mail, facsimile transmission, or electronic mail, the notice shall be deemed to be delivered upon its deposit in the mail or transmission system. Notice of meetings shall specify the place, day, and hour of meeting. The purpose of the meeting need not be specified.

(c) Special Meetings. The President of the Board may call Special Meetings upon three (3) days' notice by electronic mail, or facsimile transmission or forty-eight hours (48) notice delivered personally or by telephone to each Director. Upon written request of two (2) directors, a Special Meeting may also be called by the President or Secretary in like manner. Notification must include date, time and place, but not the purpose of the meeting.

(d) Waiver of Notice. Any Director may waive notice of any meeting, in accordance with Pennsylvania statutes.

(e) The conduct of all meetings of the corporation shall be in accordance with Robert's Rules of Order.

7.09 Manner of Acting

(a) Quorum. A majority of the directors in office immediately before a meeting shall constitute a quorum for the transaction of business at that meeting of the Board. No business shall be considered by the Board at any meeting at which a quorum is not present. If all the directors shall severally or collectively consent in writing or electronically by email to any action to be taken by the corporation, such action shall be as valid corporate action as though it had been authorized at a meeting of the Board of directors.

(b) Majority Vote. Except as otherwise required by law, these Bylaws or by the Articles of Incorporation, the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

(c) Remote Decision Making. If all the directors shall severally or collectively consent in writing or electronically by email to any action to be taken by the corporation, such action shall be as valid corporate action as though it had been authorized at a meeting of the Board of directors. All Remote Decisions(s) shall be memorialized as part of and included in the minutes of the next monthly meeting. Whether approved or denied.

(d) Hung Board Decisions. On the occasion that directors of the Board are unable to make a decision based on a tied number of votes, the President or presiding officer in the order of presence shall have the power to swing the vote based on his/her discretion. The President shall table a vote on hung motions until the next regular meeting if less than eight (8) directors are present in person or electronically (as permitted under Section 7.09(e)).

(e) Participation. Except as required otherwise by law, the Articles of Incorporation, or these Bylaws, directors may participate in a regular or special meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting, including in person, internet video meeting, or by telephonic conference call.

7.10 Compensation for Board Service

Directors shall not receive any compensation or stated salary for their services, and no director shall be reimbursed for expenses to attend any regular or special meeting of the Board.

7.11 Compensation for Professional Services by directors

Directors are not restricted from being remunerated for professional services provided to the corporation. Such remuneration shall be reasonable and fair to the corporation and must be reviewed and approved in accordance with the Board Conflict of Interest policy and applicable state law.

7.12 Indemnification of Directors, Officers and Agents

(a) Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, or administrative or is a subject of investigation by reason or fact that he/she is or was a director or officer of the corporation, shall be indemnified and held harmless by the corporation to the fullest extent and manner authorized or permitted by the laws of the Commonwealth against all expense, liability and loss (including attorney's fees.)

(b) Directors may rely on information provided to them by legal counsel; as well as accounting, engineering other professional consultants in their decision making.

7.13 Insurance

The Board of directors shall maintain Property, General Liability, D & O Liability insurance policies and such other coverages required in reasonable amounts or as required by the Commonwealth.

ARTICLE VIII: OFFICERS

8.01 Selection

The Executive Officers of the corporation shall be chosen by the directors and shall be a President, Vice President, Secretary and Treasurer. The Board of Directors may also choose such other officers and agents as it shall deem necessary, and shall have such authority and shall perform such duties as from time to time shall be prescribed by the Board. Any two or more offices may be held by the same person, except the offices of President and Vice-President; Vice-President and Secretary. It shall not be necessary for the officers to be directors.

8.02 Compensation

The compensation of all employed agents of the corporation shall be fixed by the Board of directors.

8.03 Term Limits

The officers of the corporation shall hold office for one year and until their successors are chosen and qualified. Any officer elected or appointed by the Board of directors may be removed by the Board of directors whenever in their judgement the best interests of the corporation will be served thereby.

8.04 Vacancies

If the office of any officer or agent, one or more, becomes vacant for any reason, the Board of directors may choose a successor or successors, who shall hold office for the unexpired term in respect of which such vacancy occurred.

8.05 President's Duties

The President shall be the Chief Executive Officer of the corporation; he/she shall preside at all meetings of the Members and directors; he/she shall preside over general and active management of the business of the corporation, shall see that all orders and resolutions of the Board are carried into effect subject, however, to the right of the directors to delegate any specific powers, except such as may be by statute exclusively conferred on the President, to any other Officer or Officers of the corporation. He/she shall be EX/OFFICIO a member of all committees, and shall have the general powers and duties of supervision and management usually vested in the office of President of a corporation.

8.05 Vice-President's Duties

The Vice-President shall act in the absence, or incapacity of the President with the full force and authority of the President. The Vice-President shall undertake such other duties as may be assigned by the President.

8.06 Secretary's Duties

The Secretary shall attend all sessions of the Board and all meetings of the Members (Lot Owners) and act as clerk thereof, recording all votes of the corporation and the minutes of all its transactions in a book to be kept for that purpose; and shall perform such duties for all committees of the Board of directors when required. He/she shall give, cause to be given, notice of all meetings of the Members and the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, and under whose supervision he/she shall be. He/she shall keep in safe custody the corporate seal of the corporation, and when authorized by the Board, affix the same to any instrument requiring it.

8.07 Treasurer's Duties

The Treasurer shall have custody of the corporation's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall keep the money of the corporation in separate account to the credit of the corporation. He/she shall disburse the funds of the corporation as may be ordered by the Board of directors, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his/her transactions as Treasurer and of the financial condition of the corporation.

8.08 Other Agents

At its sole discretion, the directors may from time to time deem it necessary to employ agents to be charged with secretarial, accounting, legal, lake maintenance, lake safety duties or any duties needed for the betterment of the corporation and the lake community.

ARTICLE IX: CORPORATE RECORDS

9.01 Location of Records.

There shall be kept at the office of the corporation an original or duplicate record of the proceedings of the Members and of the directors, and the original or a copy of its By-Laws, including all amendments or alterations thereto to date, certified by the Secretary of the corporation.

9.02 Lot Owner Responsibilities.

Members (Lot Owners) shall have the duty and responsibility to inform the Corporation of their ownership interests in lots located in the Stonycreek Valley Development Corporation and provide the corporation with a current mailing address (singular) and other contact information as may be relevant.

9.03 Right to examine.

Members (Lot Owners) shall have the right to examine in person, or by an agent or attorney, at any reasonable time or times, for any reasonable purposes, the books or records of account and records of the proceedings of the Members and Directors and may make extracts there from.

ARTICLE X: ANNUAL MEETING OF THE MEMBERSHIP (LOT OWNERS)

10.01 Purpose

The Annual Meeting of the Membership of The Lake Stonycreek Development Corporation, is held for the purpose of reporting on the financial status of the corporation, reviewing the past year's accomplishments, outlining future plans and for the election of Board members, as well as any other business as may be properly brought before the meeting.

10.02 Date, Time, Location & Notice

(a) The Annual Meeting of the Membership shall be held in May on the Friday preceding Memorial Day at 7:00 pm, or on an alternative date as may be selected by the directors.

(b) The location shall be held in Shanksville, PA or at such place or places as may from time to time be selected by the Board of Directors.

(c) If the Annual Meeting shall not be called and held within six (6) months after the designated time, any ten (10) Members may call such meeting.

(d) Written notice of the Annual Meeting of the Membership shall be mailed to each Lot entitled to vote thereat. The notice shall be mailed to such address as appears on the books of the corporation, at least twenty (20) days prior to the meeting.

10.03 Manner of Acting

(a) The President of the Board shall preside at the Annual Meeting and all regular and special meetings of the membership.

(b) The conduct of all meetings of the Membership shall be in accordance with Robert's Rules of Order.

10.04 Quorum

(a) The presence, in person or by proxy, of 1/3 (33.3 percent) of the "Lots" entitled to vote shall constitute a quorum at all meetings of the Members except as otherwise provided by law, the Articles of Incorporation or by these By-Laws.

(b) If such quorum shall not be present at any Meeting of the Members, those entitled to vote thereat shall have power to adjourn the meeting without notice other than announcement at the meeting, until the requisite number of members shall be present.

(c) In the case of any meeting called for the election of directors, which is adjourned for lack of a quorum, two additional attempts will be made (not exceeding fifteen (15) days each), seeking to establish a quorum for the purpose of electing directors. Those Members attending the second of such meetings, although less than a quorum, shall nevertheless constitute a quorum for the purpose of electing directors.

(d) In the event a quorum cannot be determined at an annual Members meeting and Members adjourn the meeting, the original meeting may receive reports prepared by the Board of Directors or any of its committees..

10.05 Voting Rights

(a) Each “Lot” within the original borders of the SVDC shall have the right to cast one (1) vote on each matter brought to a vote during a Members meeting. This includes one (1) vote for each open seat for the Board of Directors. See Article V 5.02.

(b) The recorded deed, or a duplicate thereof recorded in this Commonwealth, shall be prima facie evidence of the right of the person(s) named therein to participate in casting the Lot’s vote thereon.

(c) If a Lot is held in a trust or by a corporation, then a notarized proxy must be presented to the Secretary no less than thirty (30) days prior to any Members meeting, which will then authorize an agent of the trust or corporation to vote its Lot(s). The proxy shall be recognized until repealed/replaced for ten (10) years whichever comes first.

(d) No Lot shall be voted at any meeting upon which any installment is due and unpaid.

(e) Upon demand before the voting begins for any election for directors, a Member may demand the election shall be by ballot.

10.06 Proxy

(a) Members are entitled to vote by proxy either in writing or transmitted electronically. The Notice of the Annual Membership Meeting will specify a return date (deadline) for the proxy. Proxy’s shall be subject to and in accordance with Pennsylvania law or regulations(s).

(b) No unrevoked proxy shall be valid after eleven (11) months from the date of its execution, unless a longer time is expressly provided therein.

(c) In no event shall a proxy, unless coupled with an interest, be voted on after three (3) years of the date of its execution.

(d) In the case of voting by proxy, only those items may be voted on that have been set forth in the notice of the meeting that was mailed twenty (20) days prior to the date of the meeting in accordance with Article X 10.02.

10.07 Cumulative Voting

In all elections for directors, cumulative voting **shall not** be allowed.

10.08 Appointment of Election Judges

(a) In advance of any meeting of Members, the Board of directors may appoint Judges of Election, who need not be Members (Lot Owners), to act at such meeting or any adjournment thereof.

(b) If Judges of Election are not appointed under (a), the Chairman of any such meeting may, and upon the request of any Member (Lot Owner) or his proxy, make such appointment at the meeting. The number of Judges shall be two or three, which shall be determined by a majority of members present and entitled to vote.

(c) On the request of the President, or of any Member or his/her proxy, the Judges shall make a report in writing of any challenge or question or matter determined by them, and execute a Certificate of Fact found by them.

(d) No person who is a candidate for office shall act as a Judge.

ARTICLE XI: SPECIAL MEETING OF MEMBERS

11.01 Purpose

Special meetings of the Members may be called at any time by the President or the Board of directors, or not less than twenty-five (25) of all the Lots entitled to vote. Business transacted at all special meetings shall be confined to the subjects stated in the notice, and matters and actions germane thereto.

11.2 Date, Time, Location and Notice.

(a) At any time, upon written request of any person(s) entitled to call a special meeting, it shall be the duty of the Secretary to call a special meeting of the members to be held at such time as the Secretary may fix, not less than ten nor more than sixty days after receipt of the request.

b) Written notice of a special meeting of the Members stating the time, place and object(s) thereof, shall be mailed, postage prepaid, to each lot entitled to vote thereat at such address as appears on the books of the corporation, at least twenty (20) days before such meeting, unless a greater period of notice is required by statute in a particular case.

ARTICLE XII: MISCELLANEOUS PROVISIONS

12.01 Signature Authority

All checks and demands for money and notes of the corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

12.02 Fiscal Year

The fiscal year shall be the calendar year.

12.03 Written Notice.

Whenever written notice is required to be given to any "Lot" it may be given to such address (singular) either personally or by sending a copy thereof through the mail, or by electronic means, to the address appearing on the books of the corporation, as supplied by the Member(s) /Lot Owner(s) to the corporation for the purpose of notice. If the notice is sent by mail or electronically, it shall be deemed to have been given to the person(s) entitled thereto when deposited in the United States mail or transmitted electronically to such person.

Meeting notices shall specify the place, day and hour of the meeting and, in the case of a Special Members or Board meeting, the general nature of the business to be transacted

12.04 Waivers

Whenever any written notice is required by statute, or by the Articles or By-Laws of this corporation, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Except in the case of a special meeting, neither the business to be transacted at nor the purpose of a special meeting need be specified in the waiver of notice of such meeting. Attendance of a person, either in person or by proxy, at any meeting shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

ARTICLE XIII: ANNUAL STATEMENT

13.01 Date of Presentation and Format

The President and Board of directors shall present at each annual meeting a full and complete statement of the business and affairs of the corporation for the preceding year. Such statement shall be prepared and presented in whatever manner the Board of directors shall deem advisable and need not be verified by a certified public accountant.

ARTICLE XIV: AMENDMENTS

14.01 Alterations

These By-Laws may be altered, amended or repealed by the affirmative vote of a majority of the "Lots" present and entitled to vote at any regular or special meeting of the Members, where a quorum is established, and if notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **MOTION FOR CONTEMPT AND MOTION FOR SANCTIONS** has been served via pre-paid, first class U.S. Mail and electronic mail, upon the following parties on this 15th day of October, 2021

Honorable Judge D. Gregory Geary
111 East Union Street
Suite 120
Somerset, PA 15501

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/s/ John Paul Regan

John Paul Regan, Esquire
PA ID No.: 320664

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Metz Lewis Brodman Must O'Keefe LLC

Signature: /s/ John Paul Regan

Name: John Paul Regan

Attorney No. Pa. I.D. 320664