

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
STONYCREEK VALLEY DEVELOPMENT
CORPORATION,

Plaintiffs,

v.

DANIEL DIVELY and THE STONYCREEK
VALLEY DEVELOPMENT
CORPORATION,

Defendants.

CIVIL ACTION

No. 275 Civil 2019

**MOTION FOR SPECIAL AND
PRELIMINARY INJUNCTION**

Filed on Behalf of Plaintiffs

Counsel of Record for This Party:

Brian T. Must
PA I.D. No. 49657

John Paul Regan
PA I.D. No. 320664

METZ LEWIS BRODMAN
MUST O'KEEFE LLC
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.)	

MOTION FOR SPECIAL AND PRELIMINARY INJUNCTION

AND NOW comes Plaintiffs, Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, individually and derivatively on behalf of The Stonycreek Valley Development Corporation (collectively "Plaintiffs"), and files the within Motion for Special and Preliminary Injunction, stating as follows:

Factual Background

1. On April 17, 2019, Plaintiffs filed a Complaint (the "Complaint") against Defendants Daniel Dively ("Dively") and The Stonycreek Valley Development Corporation ("SVDC") (collectively "Defendants"). A true and correct copy of the Complaint is attached hereto as **Exhibit 1** and is incorporated herein by reference.

2. SVDC governs Lake Stonycreek, located in Somerset County, and the residential community dotting its shores.

3. SVDC is a stock-share basis, nonprofit corporation with approximately 7,800 shares issued to a single class of shareholders, and, based upon information and belief, it currently has approximately \$42,000 in operating capital.

4. In the Complaint, Plaintiffs alleged that Dively and members of the SVDC Board of Directors, as currently constituted, engaged in conduct that violated the Nonprofit Corporations Law of 1988 (“NCL”), 15 Pa.C.S. § 5101, *et seq.*, and SVDC’s By-Laws. A true and correct copy of SVDC’s By-Laws are attached to the Complaint as Exhibit C.

5. Briefly, Plaintiffs alleged that Dively and the SVDC Board of Directors: engaged in, and condoned, self-dealing; refused to honor, or ignored, written requests by shareholders in SVDC for inspection of the corporate records; improperly used voting proxies; and, pursued a proposed amendment to SVDC’s By-laws aimed at entrenching the current Board Member’s positions by proposing a **one-vote-per-shareholder** voting system and the elimination of cumulative voting for seats on the Board and the existing method that provides for **one-vote-per-share** voting system (the “Proposed Amendment”).

6. A Special Meeting to vote on the Proposed Amendment was held on April 27, 2019. At all times prior to the Special Meeting, SVDC announced and emphasized that the Special Meeting was being held *solely* to discuss and vote upon the Proposed Amendment.

7. During the Special Meeting, a majority of SVDC’s shareholders voted to deny the Proposed Amendment.

8. Immediately following the vote to deny the Proposed Amendment, and contrary to the express purposes of the Special Meeting, a motion was made by a family member of a current Board Member to vote upon a new and separate amendment to SVDC’s By-laws at the upcoming May 24, 2019 Annual Shareholders Meeting (the “Annual Meeting”).

9. The motion unlawfully proposed at the April 27, 2019 Special Meeting called for an amendment to SVDC's By-laws converting the current one-vote-per-share system with cumulative voting to a **one-vote-per-lot owner** voting system without cumulative voting for positions on the Board of Directors. It also contained an offer providing that SVDC would purchase back shares in the corporation at \$10 per share for the time-period between June 1, 2019 through December 31, 2019. Further, the amendment would take immediate effect at the Annual Meeting and govern the election of Board of Directors for the upcoming year.

10. Upon information and belief, the motion proposed at the Special Meeting was seconded, but not formally voted upon by the Board. Nevertheless, it was included in a packet of amendments to be voted upon at the Annual Meeting wherein it was entitled "Enclosure A." A true and correct copy of Enclosure A is attached herein as **Exhibit 2**.

11. The Board included Enclosure A in a second attempt to entrench its position and to continue its course of self-dealing, to the detriment of SVDC and its shareholders. In order to alter the outcome of the vote and sway votes in its favor, Enclosure A promises that SVDC will purchase all shares offered to it by its shareholders.

12. The shareholders with the most incentive to accept the sweetheart deal contained within Enclosure A are the shareholders who currently own the largest number of shares, and thus, possess the greatest voting power under the current voting system.

13. Upon information and belief, a number of shareholders have been improperly swayed by Enclosure A's promise to purchase their shares and intend to vote in favor of Enclosure A, despite having voted against the one-vote-per-share Proposed Amendment at the April 27, 2019 Special Meeting.

14. The Board's actions in this regard constitute breaches of the fiduciary duties beyond those contained in the Complaint, as the current Board Members stand to personally benefit from the outcome of the vote on Enclosure A.

15. Moreover, SVDC does not possess sufficient operating capital to purchase back all of SVDC's outstanding shares, despite the promise to do so contained within Enclosure A, thus subjecting SVDC to potential future liability.

16. Following the Special Meeting, numerous SVDC shareholders provided proxy votes to the Board regarding the proposed amendments to be presented at the Annual Meeting on May 24, 2019, as well as votes for the Board of Directors to be elected at that meeting, including cumulative votes for those seats.

17. The approval of Enclosure A would unilaterally change the voting proxies already submitted by SVDC shareholders from the current system, which is based on the total number of shares held and allows for cumulative voting of board seats, to a single vote for lot-owners, alone. Such a unilateral alteration of voting rights while the vote for the Board of Directors is ongoing would result in a fundamental injustice to those shareholders who submitted their proxy-votes in a good faith belief that they would be honored, as written.

18. For the reasons set forth below, the amendment to the SVDC By-laws proposed by Enclosure A violates SVDC's By-laws and the NCL, and thus, it is null and void.

19. Accordingly, Plaintiffs respectfully request that this Honorable Court enjoin SVDC from voting upon Enclosure A, thereby allowing the Annual Meeting to proceed utilizing the By-laws currently in force and ratified by the shareholders at the Special Meeting.

20. The Plaintiffs respectfully submit, that if the Honorable Court enjoins Defendants, then the Annual Meeting should proceed as scheduled. However, if the Court deems necessary,

Plaintiffs request that the Court reschedule the Annual Meeting until such time as it requires to consider and decide the issues raised herein.

21. Plaintiffs served this Motion for Special and Preliminary Injunction upon Defendants by electronic mail and U.S. pre-paid, first class mail as of the date of this filing.

22. In addition, Plaintiffs informed the Board of Directors of the unlawfulness of Enclosure A by letter to opposing counsel dated April 15, 2019. A true and correct copy of the April 15, 2019 Letter is attached hereto as **Exhibit 3**.

23. Upon information and belief, the Board decided to ignore Plaintiffs' warning and intends to allow a vote upon Enclosure A at the Annual Meeting.

24. Because the Annual Meeting is scheduled for Friday, May 24, 2019, Plaintiffs respectfully request a hearing at the Court's earliest convenience along with an order staying the Annual Meeting until further directed by this Court.

25. For the reasons set forth below, if a hearing cannot be held in the allotted time, Plaintiff's will suffer immediate and irreparable injury.

Analysis

26. Pursuant to Pa.R.Civ.P. 1531, Plaintiffs seek a special and preliminary injunction in order to enjoin Defendants from proposing and voting upon Enclosure A at the Annual Meeting and conducting the election of next year's Board of Directors according to a voting system that violates SVDC's By-laws and the NCL, and in order to prevent irreparable harm.

27. A party is entitled to a special and preliminary injunction if it establishes:

- (1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) that a preliminary injunction will properly restore the parties to their status as it existed immediately prior

to the alleged wrongful conduct; (4) that the activity that it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits; (5) that the injunction it seeks is reasonably suited to abate the offending activity; and (6) that a preliminary injunction will not adversely affect the public interest.

Warehime v. Warehime, 860 A.2d 41, 46-47 (Pa. 2004) (internal citations and quotations omitted).

28. Because Plaintiffs are able to meet its burden under the foregoing standard, special and preliminary injunctive relief is appropriate.

29. Under the NCL, a “member” in a nonprofit corporation is defined as, *inter alia*, “a shareholder of a corporation, if the corporation issues shares of stock.” 15 Pa.C.S. § 5103.

30. SVDC is a stock-share basis nonprofit corporation with approximately 7,800 shares issued to a single class of shareholders.

31. First and foremost, when a nonprofit corporation is composed of one class of members, such as SVDC, the NCL requires that “the members shall have *all* the rights of members generally in a nonprofit corporation,” including voting rights. 15 Pa.C.S. § 5751(a)(2) (emphasis added).

32. By amending the SVDC By-laws to provide for a one-vote-per-lot voting system, as opposed to the current system providing one-vote-per-share, SVDC would remove the voting rights of members who are shareholders, but not lot-owners.

33. The membership of SVDC includes shareholders who are not lot-owners.

34. That is, Enclosure A calls for disparate treatment of members of the same class in violation of the NCL.

35. In addition, SVDC's By-laws explicitly provide that "[b]usiness transacted at all special meetings shall be confined to the objects stated in the call and matters germane thereto." SVDC By-Laws, Article III, ¶ 8.

36. The Special Meeting was called to discuss and vote upon the Proposed Amendment, which, as stated above, sought to amend SVDC's By-laws to provide a one-vote-per-shareholder voting system.

37. Under the By-Laws, the discussion of any business apart from, and not germane to, discussing and voting upon the Proposed Amendment was improper and a violation of the By-laws.

38. In addition, SVDC's By-laws incorporate Robert's Rules of Order into the conduct of all meetings. SVDC By-Laws, Article, ¶ 11.

39. Under Robert's Rules of Order, "[n]o motion is in order that conflicts with the laws of the nation, or *state, or with the assembly's constitution or by-laws*, and if such a motion is adopted, even by a unanimous vote, it is null and void." Robert's Rules of Order Revised, Article VIII, ¶ 47 (emphasis added).

40. As such, Enclosure A is null and void as it violates the NCL and SVDC's By-laws.

a. *Plaintiffs and SVDC will suffer irreparable injury if the injunction does not issue.*

41. An injury is regarded as "irreparable" if it will cause damage that can only be estimated by conjecture and not by an accurate pecuniary standard. *The York Grp., Inc. v. Yorktowne Caskets, Inc.*, 924 A.2d 1234, 1242 (Pa.Super. 2007) (citation omitted).

42. In light of the above, SVDC, Plaintiffs, and the other shareholders in SVDC will be immediately and irreparably harmed if Enclosure A is voted upon, approved, and used to govern the election of the upcoming year's Board of Directors.

43. As a practical matter, Enclosure A proposes a course of conduct that could wholly drain SVDC's working capital.

44. By providing a promise to purchase the 7,800 outstanding shares in SVDC at \$10 per share, while only possessing approximately \$42,000 in working capital, Enclosure A suggests an untenable option that would directly harm SVDC.

45. In addition, as stated above, under the NCL and SVDC By-laws Enclosure A is null and void. Nevertheless, the Board persists in pursuing its discussion and vote.

46. The harm caused by the approval and use of Enclosure A at the Annual Meeting cannot be calculated or remedied by monetary damages because it is null and void, and, if approved, (1) it will govern the election of the upcoming Board of Directors at the Annual Meeting, and (2) the Board has already received numerous proxy votes utilizing the current voting system.

b. Greater Injury will result from refusing rather than granting the injunction, and no other interested parties in the proceedings will be substantially harmed.

47. The harm that Plaintiffs will suffer if an injunction does not issue far exceeds any harm that Defendants may suffer from its issuance.

48. Enjoining a vote on Enclosure A, or, if necessary, postponing the Annual Meeting until the Court has an opportunity to consider and decide the issues raised herein, will only prevent Defendants from engaging in an unlawful vote and curtail the Board's engagement in continued breaches of its fiduciary duties to SVDC.

49. In contrast, if the vote is not enjoined, Plaintiffs voting rights in the SVDC will be permanently diminished, and, in the case of Plaintiff Cavanaugh and other individuals who are shareholders, but not lot-owners, their voting rights will be entirely lost.

50. Moreover, the proxy vote submitted by Plaintiff Neel, and other shareholders, will no longer be honored as written since passage of Enclosure A would eliminate cumulative voting.

c. Issuing the injunction will ensure that the status quo between the parties is maintained.

51. The injunction that Plaintiffs seek will ensure that the parties' respective positions as they existed prior to this controversy are maintained pending the outcome of the current litigation and the Court's consideration of the issues raised herein.

52. Time is of the essence with respect to the upcoming Annual Meeting. The NCL and By-laws strictly prohibit an amendment to the By-laws as suggested by Enclosure A. However, by voting on and approving Enclosure A, the constitution of the upcoming Board of Directors will be decided by an unlawful process which, in addition to being null and void, would render meaningless the numerous proxy votes already cast for the pending election, and drastically alter the *status quo*. Accordingly, Defendants should not be permitted to consider and vote upon Enclosure A.

d. Plaintiffs have established a clear right to relief by demonstrating a substantial legal question that must be resolved to determine the rights of the parties.

53. In the context of special and preliminary injunctive relief, [t]o establish a clear right to relief, the party seeking an injunction need not prove the merits of the underlying claim, but need only demonstrate that substantial legal questions must be resolved to determine the rights of the parties." *SEIU Healthcare Pa. v. Commonwealth*, 104 A.3d 495, 506 (Pa. 2014).

54. Undoubtedly, the NCL and By-laws govern the conduct of SVDC meetings as well as the voting rights enjoyed by its shareholders. In this vein, the NCL and By-laws clearly prohibit disparate treatment of the members of SVDC, including by amending the By-laws to call for a one-vote-per-lot voting system as called for in Enclosure A.

55. As such, Plaintiffs are likely to succeed on the merits of this matter, and, in any case, they have certainly demonstrated that a substantial legal question exists that must be resolved before Enclosure A is voted upon.

e. The injunction that Plaintiffs seek is reasonably suited to abate the offending activity.

56. The relief that Plaintiffs seek – an injunction precluding Defendants from considering and voting upon an unlawful amendment to SVDC’s By-laws – is narrowly tailored to abate conduct expressly prohibited under the NCL and SVDC’s By-laws. This relief is not broader than necessary to protect SVDC, Plaintiffs, and the other shareholders in SVDC, during the pendency of this dispute.

f. The issuance of an injunction will not adversely affect the public interest.

55. Injunctive relief will not adversely affect the public interest. The governance of SVDC is largely an internal, private matter effecting only the interests of SVDC and its shareholders. Nevertheless, the public is clearly interested in the enforcement of its laws and private agreements freely entered into between parties.

Conclusion

WHEREFORE, Plaintiffs, Plaintiffs, Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, individually and derivatively on behalf of The Stonycreek Valley Development Corporation, respectfully request that this Honorable Court grant its Motion for Special and Preliminary Injunction, and issue an Order of Court enjoining Defendants, Danial Dively and the

Stonycreek Valley Development Corporation from considering and voting upon the proposed Amendment to the Stonycreek Valley Development Corporation's By-laws entitled "Enclosure A," and, if the Court deems necessary, postponing the Annual Meeting scheduled for May 24, 2019, until further directed by the Court.

Respectfully submitted,

METZ LEWIS BRODMAN MUST O'KEEFE LLC

Date: May 21, 2019

By:



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.)	

ORDER OF COURT

AND NOW, to wit, this ____ day of _____, 2019, upon consideration of Plaintiffs, Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, individually and derivatively on behalf of The Stonycreek Valley Development Corporation's Motion for Special and Preliminary Injunction, it is hereby ORDERED, ADJUDGED, and DECREED, that said Motion is GRANTED. Accordingly, it is hereby ORDERED that:

- (a) Defendants are enjoined from considering and voting upon the proposed amendment to the Stonycreek Valley Development Corporation's By-laws entitled "Enclosure A" at the May 24, 2019 Annual Meeting;
- (b) The Annual Meeting scheduled for May 24, 2019 is hereby postponed until further directed by this Court.

BY THE COURT:

_____, J.

VERIFICATION

I, Harry C. Neel, verify that the facts set forth in the Motion for Special and Preliminary Injunction are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date:

5/20/19

Harry C. Neel

Harry C. Neel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within **MOTION FOR SPECIAL AND PRELIMINARY INJUNCTION** has been served via Federal Express, overnight delivery and electronic mail, upon the following parties on this 21st day of May 2019:

Mark D. Persun, Esquire
158 East Main Street
Somerset, PA 15501
mdpersun@verizon.net

David T. Leake
Law Office of David T. Leake, Esquire
130 West Main Street
Somerset, PA 15501
David.Leake.Esq@gmail.com



John Paul Regan, Esquire
PA ID No.: 320664

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

SOMERSET

County

For Prothonotary Use Only:

Docket No:

2019 APR 17 AM 11:01

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

Harry C. Neel

Lead Defendant's Name:

Daniel Dively

Are money damages requested? ☒ Yes ☐ No

Dollar Amount Requested: ☐ within arbitration limits
☒ outside arbitration limits
(check one)

Is this a Class Action Suit? ☐ Yes ☐ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Brian T. Must

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☒ Other:
Breach of Fiduciary Duty -
Direct and Derivative

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute:
Discrimination
☐ Employment Dispute: Other

☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

- ☐ Zoning Board
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
Restraining Order
☐ Quo Warranto
☐ Replevin
☐ Other:

EXHIBIT

tabbles

Updated 1/1/2011

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
STONYCREEK VALLEY DEVELOPMENT
CORPORATION,

Plaintiffs,

v.

DANIEL DIVELY and THE STONYCREEK
VALLEY DEVELOPMENT
CORPORATION,

Defendants.

CIVIL ACTION

No. 275 Civil 2019

COMPLAINT

Filed on Behalf of Plaintiffs

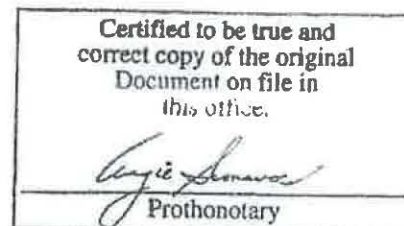
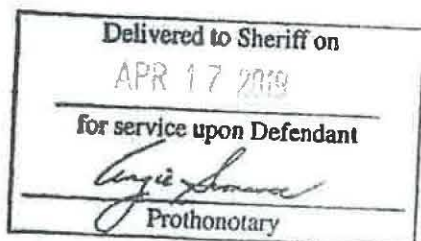
Counsel of Record for This Party:

Brian T. Must
PA I.D. No. 49657

John Paul Regan
PA I.D. No. 320664

METZ LEWIS BRODMAN
MUST O'KEEFE LLC
535 Smithfield Street, Suite 800
Pittsburgh, PA 15222
(412) 918-1100

JURY TRIAL DEMANDED



FILED FOR RECORD
2019 APR 17 AM 11:01
ANGIE SHAW
PROTHONOTARY
SOMERSET CO PA

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. ____ Civil 2019
THE STONYCREEK VALLEY)	
DEVELOPMENT CORPORATION,)	
)	
Plaintiffs,)	
)	
v.)	
)	
DANIEL DIVELY and THE)	
STONYCREEK VALLEY)	
DEVELOPMENT CORPORATION,)	
)	
Defendants.)	
)	
)	
)	
)	

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Southwestern Pennsylvania Legal Services, Inc.
218 Kimberly Avenue, Suite 101
Somerset, PA 15501
Telephone: (814) 443-4615
Fax: (814) 444-0331

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. ____ Civil 2019
THE STONYCREEK VALLEY)	
DEVELOPMENT CORPORATION,)	
)	
Plaintiffs,)	
)	
v.)	
)	
DANIEL DIVELY and THE)	
STONYCREEK VALLEY)	
DEVELOPMENT CORPORATION,)	
)	
Defendants.)	
)	
)	
)	
)	

COMPLAINT

Plaintiffs Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, individually and on behalf of the Stonycreek Valley Development Corporation, by and through their attorneys, Metz Lewis Brodman Must O'Keefe LLC, files the within Complaint and in support thereof avers as follows:

PARTIES

1. Plaintiff Harry C. Neel ("Neel") is an adult individual residing at 250 Capitol Drive, Pittsburgh, PA 15236. Neel owns 35 shares in the Stonycreek Valley Development Corporation and has been a shareholder since 2013.

2. Plaintiff Michael W. Jenkins ("Jenkins") is an adult individual residing at 670 Lake Shore Road, Friedens, PA 15541. Jenkins owns 450 shares in the Stonycreek Valley Development Corporation and has been a shareholder since May 2018.

3. Plaintiff Lee E. Cavanaugh ("Cavanaugh") is an adult individual residing at 302 West Elmwood Avenue, Mechanicsburg, PA 17055. Cavanaugh owns 50 shares in the Stonycreek Valley Development Corporation and has been a shareholder since 2006.

4. Plaintiffs Neel, Jenkins, and Cavanaugh will be collectively referred to as "Shareholders."

5. Defendant Daniel Dively ("Dively") is an adult individual residing at 162 Sunset Road, Friedens, PA 15541. Upon information and belief, Dively has been a member of the Stonycreek Valley Development Corporation Board of Directors since 2015.

6. Nominal Plaintiff and Nominal Defendant Stonycreek Valley Development Corporation ("SVDC" or the "Corporation") is a Pennsylvania Non-Profit Cooperative Corporation with a principal place of business at 514 Lake Shore Road, Friedens, PA 15541.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 42 Pa.C.S. § 931(a).

8. This Court has personal jurisdiction over the parties pursuant to 42 Pa.C.S. § 5301.

9. Venue is proper in this Court pursuant to Pennsylvania Rules of Civil Procedure 1006(a)(1) and 2179(a).

INTRODUCTION

10. Nestled in the foothills of the Laurel Highlands, Lake Stonycreek provides an idyllic setting for recreation and relaxation for its many long-term residences, whose houses dot the lakefront.

11. The private lake is the outcome of extended and extensive efforts by SVDC, beginning in 1959, shortly after it was incorporated.

12. From its commencement, SVDC oversaw the construction of the Lake Stonycreek Dam, which resulted in the formation of Lake Stonycreek, and carried out the governance of the residential community then-planned to reside on its shores.

13. Following construction of the dam, the Lake Stonycreek residential community developed into a tight-knit, small group of homeowners, including the Shareholders, who continue to share a love of the lake and its serene Western Pennsylvania setting.

14. Lake Stonycreek is, and remains, a source of pride for the residents of the lake, the Shareholders, and the Board of Directors who serve at their behest.

15. However, within the last two years, certain members of the Board of Directors stopped serving at the behest of the SVDC's shareholders and Lake Stonycreek's residences. Instead, they began serving their own self-interests, much to the detriment of the SVDC and the Shareholders.

16. It is with considerable heartache and displeasure that the Shareholders bring this action, wherein they seek to right the ship being sailed errantly by the Board of Directors and to ensure that the SVDC governs in the best interests of the lake and its people.

DERIVATIVE ACTION ALLEGATIONS

17. Pursuant to the Nonprofit Corporations Law of 1988 ("NCL"), 15 Pa.C.S. § 5101, *et seq.*, the Shareholders bring this action to enforce the rights of SVDC against Dively and other members of SVDC's Board of Directors, for harm caused to the Corporation since 2017.

18. The Shareholders were members of the Corporation during all times relevant to this proceeding.

19. On March 20, 2019, Shareholders, through counsel, advised the Board of Directors of their concerns that Board Members were acting in violation of SVDC's By-laws and the NCL, and in their own self-interest to the detriment of the Corporation. A true and correct copy of the Shareholders' March 20, 2019 Letter is attached hereto as **Exhibit A**.

20. Shareholders received no response from the Board of Directors, and, upon information and belief, the Board of Directors voted to ignore the complaints raised in the March 20, 2019 Letter.

21. On April 5, 2019, pursuant to 15 Pa.C.S. § 5781, Shareholders, through counsel, made a demand on the Board of Directors requesting that the Board of Directors appoint a Special Litigation Committee to investigate and rectify the specific allegations raised in that letter. A true and correct copy of the Shareholders' April 5, 2019 Demand Letter (the "Demand Letter") is attached hereto as **Exhibit B**.

22. In the Demand Letter, Shareholders requested that, if the Board of Directors were unable or unwilling to appoint a Special Litigation Committee to investigate and rectify the specific allegations raised in the Demand Letter, it provide Shareholders the authority to bring suit on behalf of SVDC.

23. Shareholders afforded the Board of Directors seven (7) days from the date of the Demand Letter to inform the Shareholders of its decision, so that timely and appropriate action could be taken.

24. The Board of Directors did not respond to Shareholders' Demand Letter within seven (7) days, and, based upon information and belief, the Board of Directors voted to ignore the Demand Letter.

25. Because the Board of Directors refused to enforce SVDC's rights, Shareholders have brought this action.

FACTUAL ALLEGATIONS

Conflicts-of-Interest and Self-Dealing

26. Dively is a member of the SVDC Board of Directors.

27. Dively owns, or partially owns, Dirt Bottom Excavating, Inc. ("Dirt Bottom"), a Pennsylvania corporation with a principle place of business at 162 Sunset Road, Friedens, PA 15441.

28. Dirt Bottom offers excavating services, including sewer lines, water lines, and French drains; construction services, including retaining and seawalls, boat slips, cantilevered docks, boat houses and lifts, and foundations; dredging services; and, landscaping and lawn care services.

29. Dirt Bottom's service area includes Lake Stonycreek and the residential community surrounding Lake Stonycreek.

30. Dirt Bottom provides services to SVDC for a fee, including, but not limited to, dredging of Lake Stonycreek, excavation services, and weed removal.

31. Upon information and belief, Dively is also a certified municipal police officer and volunteer fire fighter.

32. Upon information and belief, Dively provides lake patrol services to SVDC for a fee.

33. Since no later than 2017, Dively has used his position on the SVDC Board of Directors to engage in self-dealing to the detriment of the Corporation.

34. Specifically, Dively used his position on the Board of Directors to steer SVDC contracts for services to Dirt Bottom, himself, or other entities in which he has an ownership interest.

35. By way of an example, Dively was awarded a contract to dredge a channel of Lake Stonycreek on verbal approval from the then-Vice President, without the benefit of a bidding process or formal vote by the Board of Directors.

36. Upon information and belief, Dively also used his position on the Board of Directors to manipulate SVDC's bidding system to ensure that other bidders are unable to bid against him, either by undercutting known bids, or by splitting the contract for his services into amounts that fall below SVDC's threshold that triggers automatic sealed bidding for contracts.

37. SVDC's threshold triggering automatic sealed bidding for contracts is \$5,000.

38. Upon information and belief, Dively voted to approve contracts for SVDC with business-entities in which he owns an interest, and through which he personally benefitted.

39. To maintain a strangle-hold on SVDC's service contracts, Dively intimidated and threatened residents and shareholders who spoke out against his misconduct.

40. Upon information and belief, the transactions entered into between Dively and SVDC were palpably unfair since, among other reasons, they were not subject to a fair, impartial bidding process, which denied SVDC's shareholders the right to obtain the lowest-priced services.

41. Dively's personal interest in numerous transactions with SVDC, and manipulation of the bidding process, were condoned by other members of the Board of Directors, to be determined upon further investigation and upon review of the Corporation's records.

42. Dively's manipulation of the SVDC bidding process, undercutting of known bids, and participation in discussions and votes concerning his businesses' transactions with SVDC constitutes self-dealing in violation of the NCL, his fiduciary duty to SVDC, and his duty of loyalty to SVDC, causing direct harm to the Corporation, and irreparably diminishing the value of the Shareholders' share in the Corporation.

43. Dively's manipulation of the SVDC bidding process, undercutting of known bids, and participation in discussions and votes concerning his businesses' transactions with SVDC constitutes willful and/or reckless misconduct.

44. By condoning Dively's conflict-of-interest and self-dealing, other members of the Board of Directors are complicit in Dively's wrongdoing, and their behavior constitutes willful and/or reckless misconduct.

Lack of Transparency and Failure to Respond to Shareholder Requests

45. As a non-profit corporation, SVDC is obligated to keep, among other things, minutes of the proceedings of its members and directors, membership register (including the names and addresses of all members and other details of the membership of each), and complete books or records of account.

46. Upon information and belief, SVDC keeps minutes of the proceedings of its members and directors, membership register (including the names and addresses of all members and other details of the membership of each), and complete books or records of account.

47. Under Section 5508 of the NCL, and Article VII, Paragraph 2 of SVDC's By-Laws (the "By-Laws"), the Shareholders and other members of SVDC have a right, upon written demand, to inspect the Corporation's records. A true and correct copy of the By-Laws are attached hereto as **Exhibit C**.

48. In the past two years, the Board of Directors refused to honor over two dozen written demands from the Shareholders, and other shareholders, to inspect or otherwise be provided information regarding the management, accounting, operation, voting audits, and voting records of SVDC.

49. At other times, the Board of Directors responded to written demands from the Shareholders, and other shareholders, with only incomplete or outdated information.

50. The Board of Directors' refusal to comply with the NCL and the By-Laws forced Jenkins to hire an attorney, at a personal expense of \$750, to compel the Board of Directors to provide him a list of SVDC's shareholders.

51. The list of shareholders provided to Jenkins was outdated and incomplete.

52. In addition, Cavanaugh and Jenkins, through his attorney, made two written requests each on the Board of Directors to audit the ballot and review the paper ballot and paper proxy votes following the Board of Directors' election in 2018.

53. The Board of Directors ignored Cavanaugh's and Jenkins' written request to audit the paper ballot and review the paper proxy votes following the Board of Directors' election in 2018.

54. The Board of Directors' refusal to honor the Shareholders' and other shareholders written demands to inspect the corporate records, or otherwise be provided information regarding the Corporation, constitutes a violation of the NCL and the By-laws, and has caused harm to SVDC and the Shareholders.

55. The Board of Directors' refusal to honor the Shareholders' and other shareholders written demands to inspect the corporate records constitutes willful and/or reckless misconduct.

Improper Use of Voting Proxies and Attempt at Entrenchment

56. At its outset, SVDC was a stock-share basis for-profit corporation, which entitled stockholders right to vote on a one-vote per share basis, with cumulative voting.

57. SVDC remained a stock-share basis corporation even after it was re-incorporated as a non-profit corporation in 2005.

58. The By-Laws also provide a mechanism for proxy-voting, but they do not provide for how proxy votes should be distributed for the purposes of cumulative voting.

59. Absent express instructions, equity and fairness requires the Board of Directors to distribute such votes equally among all candidates.

60. During the most-recent Board Election, current Board Members improperly used the proxy vote of shareholder Bradley Musser, whose 1,400 shares represent a voting-bloc far in excess to any other single shareholder, especially considering the effect of cumulative voting.

61. With cumulative voting, each of Mr. Musser's shares provided eleven (11) votes.

62. By way of comparison, Jenkins' 450 shares represent the second highest number of shares owned by any one individual shareholder.

63. Rather than splitting Mr. Musser's votes equally among all candidates, the Board Members distributed a portion of the votes to themselves to ensure they retained their seats on the Board and provided the remainder of the votes to Jessica Younkin, who, as a result, won a seat on the Board of Directors.

64. The Board of Directors' improper distribution of Mr. Musser's proxy-vote granted the current Board of Directors the ability to hand-pick the Board, thereby undermining and entirely devaluing the value of the shares owned by all non-Board members, including Shareholders.

65. After entrenching their positions on the Board of Directors, the Board of Directors, as currently constituted, sought to solidify their positions indefinitely into the future.

66. On February 4, 2019, the Board of Directors proposed an amendment to the By-Laws that would eliminate shareholders' voting rights on a per-share basis as well as cumulative voting. A true and correct copy of the SVDC Proposed By-Laws Revision is attached hereto as **Exhibit D**.

67. Contrary to SVDC's historic governance structure, the proposed amendment to the By-Laws would provide voting on a per-shareholder basis, undermining the value of the shares currently held by Shareholders.

68. As explained in further detail below, until sometime in March 2019, shares in SVDC were available for purchase, by anyone, for \$10 per share.

69. During the week of March 11, 2019, Neel contacted the Board of Directors to purchase additional one-hundred (100) additional shares and that he would present a check for the additional shares at the then-upcoming March 16, 2019 shareholders' workshop.

70. On March 16, 2019, Neel was informed by President Larry Rosage, for the first time, that the Board of Directors decided to cease the sale and transfer of shares, except to individuals owning no shares, who could purchase up to five (5) total shares.

71. At the March 16, 2019 shareholders' workshop, Rosage informed Neel that the moratorium on the sale of shares was passed during the January 17, 2019 meeting of the Board of Directors. However, no such vote was held during the January 17, 2019 meeting of the Board of Directors. A true and correct copy of the Minutes for the January 17, 2019 Meeting of the Board of Directors is attached hereto as **Exhibit E**.

72. During this same time period, Jenkins attempted to purchase additional shares in SVDC and was denied.

73. At all times relevant to this matter, the SVDC website has advertised the availability of shares for purchase upon request, without listing any conditions upon the sale of those additional shares.

74. The Board of Directors instituted a moratorium on the sale of shares to ensure its proposed amendments were passed.

75. Under Article VIII, Paragraph 4 of the By-Laws, the Board of Directors may only cease the transfer of shares not more than fifty days prior to the date of any meeting effecting the rights of shareholders.

76. Further, under that same Paragraph, the Board of Directors must give shareholders ten (10) days written notice of its intent to cease the transfer of shares.

77. A Special Meeting is scheduled for April 27, 2019, to vote on the proposed amendments to the By-Laws, which effect the Shareholders' voting-rights.

78. The date falling fifty (50) days prior to the April 27, 2019 Special Meeting is March 8, 2019.

79. Accordingly, the Board of Directors were obligated under the By-Laws to provide the Shareholders, and other shareholders, written notice of its intent to cease the transfer of shares by February 26, 2019, or ten (10) days prior to March 8, 2019.

80. The Board of Directors did not provide written notice of its intent to cease the transfer of shares by February 26, 2019, or by any other date.

81. Further, there is no mechanism under the By-Laws or the NCL permitting the Board of Directors to discriminate in the sale and transfer of shares between current shareholders and potential-future shareholders.

82. Upon information and belief, members of the Board of Directors are attempting to change the voting-rights of SVDC shareholders, including the Shareholders, to entrench their own positions on the Board to maintain control over SVDC in pursuit of their own self-interest and self-dealing.

83. Upon information and belief, the Board of Directors will use Mr. Musser's proxy-vote at the April 27, 2019 Special Meeting to vote on the proposed voting-rights amendment.

84. If the Board of Directors misuses Mr. Musser's proxy vote at the April 27, 2019 Special Meeting to ensure that the amendment passes, then the value and voting power of the Shareholders' shares in the Corporation will be irreparably diminished.

85. If the Board of Directors misuses Mr. Musser's proxy vote at the April 27, 2019 Special Meeting to ensure that the amendment passes, then the Corporation will be exposed to potential, future litigation due to the diminished value of the shares.

86. The Board of Directors' manipulation of Mr. Musser's proxy-votes and attempt to entrench themselves on the Board of Directors through the proposed amendments to the By-Laws in furtherance of their own self-interest violates the By-Laws and the NCL.

87. The Board of Directors' manipulation of Mr. Musser's proxy-votes and attempt to entrench themselves on the Board of Directors through the proposed amendments to the By-Laws in furtherance of their own self-interest constitutes willful and reckless misconduct.

COUNT 1
Breach of Fiduciary Duty
(Derivative Claim)

88. The averments of paragraphs 1 through 87 above are incorporated by reference.

89. At all times relevant to this case, Dively has served as a member of SVDC's Board of Directors.

90. At all times relevant to this case, other individuals to be named later, served as members of SVDC's Board of Directors.

91. As members of SVDC's Board of Directors, Dively, and other members of the Board of Directors, owed traditional fiduciary duties of loyalty and care to SVDC, the Shareholders, and SVDC's other shareholders.

92. As a fiduciary, a member of the Board of Directors is required to devote themselves to corporate affairs with a view to promote the common interests and not only their own, and they cannot utilize their position to obtain any personal profit or advantage.

93. Dively breached his fiduciary duties to the Corporation by engaging in self-dealing to his own personal benefit and to the detriment of SVDC.

94. Dively breached his fiduciary duties to the Corporation by manipulating SVDC's bidding process, undercutting known bids, and participating in discussions and votes concerning his businesses' transactions with SVDC.

95. Dively's breach of his fiduciary duties to SVDC constitutes willful and/or reckless misconduct.

96. Other members of the Board of Directors breached their fiduciary duties to the Corporation by condoning Dively's manipulation of SVDC's bidding process, undercutting

known bids, and permitting Dively to participate in discussions and votes concerning his own businesses' transactions with SVDC.

97. The self-interested transactions that Dively entered into with SVDC were palpably unfair to the Corporation.

98. The Board of Directors further breached their fiduciary duties to SVDC by failing to honor written demands for the inspection of corporate records offered by Shareholders and other shareholders and actively hiding the Board of Directors' misconduct from interested parties.

99. The Board of Directors breached their fiduciary duties to SVDC by misusing proxy-votes for their own benefit and to the detriment of the Corporation.

100. The Board of Directors breached their fiduciary duties to SVDC by seeking to diminish the voting-value of Shareholders' and other shareholders shares to entrench their own positions on the Board of Directors.

101. Dively's and the other members of the Board of Directors' breach of their fiduciary duties caused and continues to cause harm to SVDC in an amount to be proven at trial in excess of the mandatory amount for arbitration, for which claim is made, together with punitive damages in a like or greater amount, and attorneys' fees.

WHEREFORE, Plaintiffs Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, individually and on behalf of the Stonycreek Valley Development Corporation, respectfully request that this Court enter judgment in favor of Plaintiffs and against Defendants Daniel Dively and the Stonycreek Valley Development Corporation in an amount to be proven at trial, together with punitive damages, reasonable attorneys' fees and expenses, and award other and further relief as the Court deems just.

COUNT II
Breach of Fiduciary Duty
(Direct Claim)

102. The averments of paragraphs 1 through 101 above are incorporated by reference.

103. At all times relevant to this case, Dively has served as a member of SVDC's Board of Directors.

104. At all times relevant to this case, other individuals to be named later, served as members of SVDC's Board of Directors.

105. As members of SVDC's Board of Directors, Dively, and other members of the Board of Directors, owed traditional fiduciary duties of loyalty and care to SVDC, and its shareholders.

106. As a fiduciary, a member of the Board of Directors is required to devote themselves to corporate affairs with a view to promote the common interests and not only their own, and they cannot utilize their position to obtain any personal profit or advantage.

107. Dively breached his fiduciary duties to the Corporation by engaging in self-dealing to his own personal benefit and to the detriment of Shareholders.

108. Dively breached his fiduciary duties to the Corporation by manipulating SVDC's bidding process, undercutting known bids, and participating in discussions and votes concerning his businesses' transactions with SVDC.

109. Dively's breach of his fiduciary duties to SVDC constitutes willful and/or reckless misconduct.

110. Other members of the Board of Directors breached their fiduciary duties to the Corporation by condoning Dively's manipulation of SVDC's bidding process, undercutting

known bids, and permitting Dively to participate in discussions and votes concerning his own businesses' transactions with SVDC.

111. The self-interested transactions that Dively entered into with SVDC were palpably unfair to the Corporation.

112. The Board of Directors breached their fiduciary duties to SVDC by failing to honor written demands for the inspection of corporate records offered by Shareholders and other shareholders and actively hiding the Board of Directors' conduct from interested parties.

113. The Board of Directors breached their fiduciary duties to SVDC by misusing proxy-votes for their own benefit and to the detriment of the Shareholders.

114. The Board of Directors breached their fiduciary duties to SVDC by seeking to diminish the voting-value of Shareholders' and other shareholders shares to entrench their own positions on the Board of Directors.

115. Dively's and the other members of the Board of Directors' breach of their fiduciary duties caused and continues to cause harm to the Shareholders in an amount to be proven at trial in excess of the mandatory amount for arbitration, for which claim is made, together with punitive damages in a like or greater amount, and attorneys' fees.

WHEREFORE, Plaintiffs Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, individually and on behalf of the Stonycreek Valley Development Corporation, respectfully request that this Court enter judgment in favor of Plaintiffs and against Defendants Daniel Dively and the Stonycreek Valley Development Corporation in an amount to be proven at trial, together with punitive damages, reasonable attorneys' fees and expenses, and award other and further relief as the Court deems just.

COUNT III
Violations of the Nonprofit Corporations Law of 1988
(Direct and Derivative)

116. The averments of paragraphs 1 through 115 above are incorporated by reference.

117. The NCL and the By-Laws provide Shareholders and other shareholders a right to inspect the Corporation's records upon written demand.

118. On at least two dozen occasions, the Shareholders or other shareholders provided the Board of Directors with a written demand to inspect SVDC's corporate records, or other requests for information, including the membership register, voting audits, voting records, minutes of meetings, books and records of account, and records of the proceedings of the Board of Directors.

119. The Board of Directors violated the NCL by failing to provide Shareholders and other shareholders an opportunity to inspect the Corporation's records, or otherwise provide information requested.

120. The Board of Directors violated the NCL by providing Shareholders and other shareholders outdated or incomplete information following a written demand to inspect SVDC's corporate records.

121. The Board of Directors violated the NCL by forcing Jenkins to seek legal aid, at his own personal expense, to compel the Board of Directors to honor his written demands to inspect SVDC's corporate records.

122. The NCL, through the By-Laws, require the Board of Directors to provide ten (10) day written notice of its intent to cease the sale or transfer of shares in SVDC during the fifty (50) period preceding the April 27, 2019 Special Meeting.

123. The Board of Directors further violated the NCL by failing to provide ten (10) day written notice of its intent to cease the sale or transfers of sales in SVDC before ceasing the sale or transfer of shares in the Corporation.

124. The Board of Directors violated the NCL by refusing to sell Neel and Jenkins shares in SVDC without providing proper written notice.

125. The Board of Directors violated the NCL by instituting a discriminatory practice of selling shares in the Corporation, that is, by refusing to sell Neel and Jenkins, or any other current shareholder, additional shares in the Corporation, and by permitting a maximum of five (5) shares to be sold to potential shareholders who did not own any shares.

126. The Board of Directors violations of the NCL and the By-Laws constitute willful and/or reckless misconduct.

127. The Board of Directors violations of the NCL and the By-Laws caused and continues to cause harm to the Corporation and to Shareholders in an amount to be proven at trial in excess of the mandatory amount for arbitration, for which claim is made, together with punitive damages in a like or greater amount, and attorneys' fees.

WHEREFORE, Plaintiffs Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, individually and on behalf of the Stonycreek Valley Development Corporation, respectfully request that this Court enter judgment in favor of Plaintiffs and against Defendants Daniel Dively and the Stonycreek Valley Development Corporation in an amount to be proven at trial, together with punitive damages, reasonable attorneys' fees and expenses, and award other and further relief as the Court deems just.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiffs Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, individually and on behalf of the Stonycreek Valley Development Corporation, respectfully request that this Court enter judgment in their favor and against Defendants Daniel Dively and the Stonycreek Valley Development Corporation as follows:

1. That the Court enter a judgment against Defendants, finding that:
 - a. Dively, and other members of the Board of Directors, breached their fiduciary duties to SVDC;
 - b. Dively, and other members of the Board of Directors, engaged in willful and/or reckless misconduct;
 - c. The transactions entered into between Dively and SVDC were palpably unfair to the Corporation;
 - d. Dively, and other members of the Board of Directors violated the SVDC By-Laws;
 - e. Dively, and other members of the Board of Directors violated the Nonprofit Corporation Law of 1988.
2. That the Court enter an order requiring Defendants to provide Plaintiffs a full and complete accounting of all profits and damages resulting from Dively's, and other members of the Board of Directors', unlawful activities.
3. That the Court enter an order finding Dively, and other members of the Board of Directors, personally liable for their unlawful activities.
4. That the Court award Plaintiffs damages in an amount to be determined at trial.

5. That the Court award Plaintiffs their attorneys' fees, costs, and other expenses incurred in this action.

6. That the Court award Plaintiffs pre- and post-judgment interest at the highest applicable rate.

7. That the Court grant such and other further relief as is just and proper.

A JURY TRIAL IS HEREBY DEMANDED FOR ALL CLAIMS SO TRIABLE.

Respectfully submitted,

METZ LEWIS BRODMAN MUST O'KEEFE LLC

Date:

4-15-19

By:



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

Attorneys for Plaintiffs

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

on behalf of Plaintiffs

Signature: _____

Name: Brian T. Must

Attorney No.: 49657

VERIFICATION

I, Harry C. Neel, verify that the facts set forth in the Complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date:

4/15/19

Harry C. Neel
Harry C. Neel

I, Michael W. Jenkins, verify that the facts set forth in the Complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date:

4-15

Michael W. Jenkins
Michael W. Jenkins

I, Lee E. Cavanaugh, verify that the facts set forth in the Complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date:

Lee E. Cavanaugh

VERIFICATION

I, Harry C. Neel, verify that the facts set forth in the Complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

Harry C. Neel


I, Michael W. Jenkins, verify that the facts set forth in the Complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

Michael W. Jenkins

I, Lee E. Cavanaugh, verify that the facts set forth in the Complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 4/15/2019



Lee E. Cavanaugh

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

March 20, 2019



ATTORNEYS AT LAW

BRIAN T. MUST

Board of Directors
Stonycreek Valley Development Corporation
P.O. Box 237
Shanksville, PA 15560

Re: SVDC Board Members – Violations of Pennsylvania Law and Breaches of Fiduciary Duty

Dear Board Members:

This firm represents a number of shareholders (the "Shareholders") of the Stonycreek Valley Development Corporation ("SVDC"). The Shareholders are concerned that this Board is undertaking a course of conduct that violates Pennsylvania's Nonprofit Corporation Law and the fiduciary duties that you owe to SVDC as Board Members. Moreover, this Board's reckless engagement in conflicted and self-interested transactions not only harms the corporation, but it also raises the prospect that you will be held individually liable for that harm.

Recently, the Board's conduct has raised fear amongst the Shareholders that the Board is no longer pursuing SVDC's best-interests. Instead, it has undertaken self-interested transactions without a proper bidding procedure or any other means of ensuring that the proposed transaction is fair and reasonable to SVDC. Further, the Board has no mechanism in place to assure that its decisions are informed by all relevant information, such as a Board Member's personal interest in the transaction. This conduct has been undertaken despite Pennsylvania law, and non-profit corporation best-practices, which require disclosure of all material information before entering into a transaction, especially when a potential conflict of interest is implicated. Finally, such self-interested transactions are a clear breach of the fiduciary duties that you, as Board Members, owe to SVDC. Although the Shareholders have voiced these concerns, the Board has not been responsive to the Shareholders' pleas.

In addition, the Shareholders worry that Members of the Board, in response to the Shareholders' growing concerns, are currently acting to entrench their position on the Board to the detriment of the corporation. This worry is most obvious in the Board's recent proposed revisions to SVDC's by-laws. On February 4, 2019, the Board proposed revisions to the SVDC by-laws which drastically diminish the Shareholders voting rights. The Board proposed eliminating shareholder voting rights on a per-share basis, to be replaced instead by voting on a per-shareholder basis, and removing cumulative voting all together.



Direct Dial: 412.918.1124

e-mail: bmust@metzlewis.com

Cellular: 412.638.4178

Board of Directors
Stonycreek Valley Development Corporation
March 20, 2019
Page 2

The passage of such a measure would guarantee that current Board Member's could maintain control over SVDC, and the self-interested transactions, indefinitely into the future.

In order to avoid potential litigation, and personal liability for any harm done to SVDC, the Shareholders demand: 1) that the Board immediately begin complying with the Pennsylvania Nonprofit Corporation Law and nonprofit corporation best practices; 2) that any current Board Member with a conflict of interest detrimental to SVDC immediately resign; 3) that the Board institute a conflict-of-interest policy aimed at avoiding conflicts of interest in the future; and, 4) that the Board withdraw the self-serving motion to revise the by-laws as stated in the February 4, 2019 proposed revisions. If you fail to take these steps, the Shareholders are prepared to take additional action, as necessary.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,



Brian T. Must

BTM:gls

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



ATTORNEYS AT LAW

BRIAN T. MUST

April 5, 2019

Board of Directors
Stonycreek Valley Development Corporation
P.O. Box 237
Shanksville, PA 15560

Re: Demand to Bring Action on Behalf of Corporation

Dear Board Members:

This firm represents Harry Neel (35 shares, shareholder since 2013), Michael Jenkins (450 shares, shareholder since 2018), and Lee Cavanaugh (50 shares, shareholder since 1977), and other shareholders (the "Shareholders") who each own an interest in Stonycreek Valley Development Corporation ("SVDC"). Please consider this letter the Shareholders' Demand, pursuant to 15 Pa.C.S. § 5781 of the Pennsylvania Nonprofit Corporations Law (the "NCL"), that the Board take immediate action to enforce SVDC's rights and to prevent further harm to the corporation. Based on the following, the Shareholders demand that the Board take immediate action to rectify the claims asserted below, and to indefinitely postpone the Special Meeting scheduled for April 27, 2019, until such appropriate actions have been taken.

First and foremost, the NCL sets forth the duties owed by a director of a nonprofit corporation. A director "shall stand in a fiduciary relation to the corporation," and he or she "shall perform his duties as a director . . . in good faith, in a manner he reasonably believes to be in the best interest of the corporation and with such care, including reasonable inquiry, skill, and diligence, as a person of ordinary prudence would use under similar circumstances."¹ Further, as a fiduciary, Board Members owe a duty of loyalty to SVDC. The duty of loyalty "requires that corporate directors devote themselves to corporate affairs with a view to promote the common interests and *not only their own*, and that they cannot *directly or indirectly utilize their position to obtain any personal profit or advantage*."² Under the NCL, Board Members are personally liable for damages to the corporation when they breached their duties to the corporation, and the breach constitutes self-dealing, willful misconduct, or recklessness.³

¹ 15 Pa. C.S. § 5712(a)

² *Anchel v. Shea*, 762 A.2d 346, 357 (Pa.Super. 2000) (emphasis added).

³ 15 Pa. C.S. 5713(a).



Direct Dial: 412.918.1124

e-mail: bmust@metzlewis.com

Cellular: 412.638.4178

Based on information and belief, numerous Board Members have engaged in conduct that constitutes a breach of their fiduciary duty and duty of loyalty to SVDC, including self-dealing and willful or reckless misconduct. Specifically, Board Member Daniel Dively has used his position on the Board to engage in self-dealing by steering contracts for services to his own personal business interests. Mr. Dively's self-dealing includes manipulating the bidding system to ensure that other service-providers are unable to bid against him, reviewing and undercutting known bids, and threatening and intimidating residents and Shareholders who raise concerns about his misconduct. Mr. Dively's business interests and manipulation of the bidding process are well-known, and apparently condoned by Board Members who have voted in favor of Mr. Dively's services, despite their knowledge of his conflict-of-interest. As such, other Board Members, to be determined upon further investigation, are complicit in Mr. Dively's self-dealing, and their behavior also constitutes willful misconduct.

Second, the Board's actions are actively being hidden from the Shareholders, and other individuals with a stake in the enterprise. As a result, the Shareholders, and others, have been forced to resort to legal assistance, at their own expense, to acquire basic information from the Board. For example, the Board refused to honor over two dozen requests for information regarding the management, accounting, and operation of SVDC. At other times, the Board provided only outdated information in response to shareholder requests.

The Board's refusal to supply requested information violates the NCL and the Bylaws, which provide shareholders a right to inspect corporate records, including, but not limited to, the membership register, voting records, books and records of account, and records of the proceedings of the Board Members.⁴ As such, the Shareholders are unable to fully ensure that SVDC is being managed and operated according to corporate best-practices and in compliance with all required statutes and regulations.

Third, the Board is misusing or unfairly applying SVDC's rules and regulations and Bylaws to its own advantage, and to the detriment of the Shareholders and residents of Lake Stonycreek. By way of an example, Board Member John Weir has been allowed to maintain a trailer on his property for over six years, and no permanent building plan for a structure has been submitted and approved by the Board. Not only does this violate SVDC's Building Code, but the Board has enforced this provision to prohibit long-term trailer use on non-Board Member's property. It is a clear conflict-of-interest for the Board to apply SVDC's rules and regulations to other shareholders and residences of Lake Stonycreek while declining to apply those same rules and regulations to itself. Moreover, such conduct calls into questions whether current Board Members are acting in the best-interests of SVDC, or merely abusing their positions on the Board to further their own self-interests.

⁴ 15 Pa.C.S. § 5508; SVDC Bylaws, Article VII, ¶ 2.

Fourth, during the most-recent Board election, certain Board Members used the proxy vote of Bradley Musser, whose 1,400 shares were determinative in deciding the final makeup of the Board, as currently constituted. Because 1,400 shares represented a voting-bloc far in excess to any other shareholder, Board Members were able to manipulate the election to further the majority of the Board's own self-interests.

Although the Bylaws provide for voting by proxy, they do not provide the mechanism by which those votes are to be distributed. Rather than distributing the proxy votes fairly, the Board seized the opportunity to entrench their own positions and to ensure that the Board's preferred candidates were elected, including themselves. In so doing, the Board undercut the election mechanism, and, when considering the effect of their own votes in combination with the proxy-bloc, those Board Members rendered meaningless the votes of the remaining shareholders.

Finally, several Board Members are again attempting to entrench their positions on the Board by pushing for a one-shareholder-one-vote system, and the removal of cumulative voting, at the upcoming April 27, 2019 Special Meeting. Ultimately, the Board intends to undermine the authority and value of all minority shareholders interests in the corporation.

In furtherance of this scheme, the Board, again in violation of the Bylaws, refused to issue additional shares in SVDC, except to individuals who own less than 5 shares, who then may purchase only up to 5 shares in the corporation. Simply, the Bylaws do not allow the Board to discriminate against current shareholders and future, potential shareholders in this way.

In addition, although, under Article VIII, Paragraph 4, the Board may temporarily cease the transfer of shares, it may only do so "not more than fifty days" prior to the Special Meeting, and only after ten-days written notice of the closing has been provided to each shareholder of record.⁵ Here, the fifty-day period marking the boundary of the Board's ability to cease the transfer of shares in advance of the April 27, 2019 Special Meeting was March 8, 2019. Accordingly, written notice of the Board's intent to cease the transfer of share was required to be provided by February 26, 2019. The Board did not provide any such notice.

Indeed, the Board refused a request by a Shareholder to purchase additional shares despite failing to provide proper notice as required by the Bylaws, and despite continuing to sell shares to other individuals. Again, this conduct clearly violates the Bylaws, and betrays certain Board Members' clear intent to act in their own self-interest and to usurp control over SVDC from the Shareholders and others with an interest in the corporation.

⁵ SVDC Bylaws, Article VIII, ¶ 4.

Board of Directors
Stonycreek Valley Development Corporation
April 5, 2019
Page 4

In light of the above, the Shareholders demand that the Board appoint a Special Litigation Committee of uninterested, impartial, and objective individuals to investigate and rectify the claims asserted above.⁶ If the Board is unable or unwilling to so act, then the Shareholders demand the authority to immediately file suit on behalf of SVDC to protect the corporation's interests. In addition, due to the serious breaches of conduct alleged above, especially as it regards the upcoming April 27, 2019 Special Meeting, the Shareholders demand that the Special Meeting be indefinitely postponed until the Special Litigation Committee ends its investigation and resolves the above-mentioned claims, or any litigation proceeding from those claims is completed.

If the Board does not intend to pursue this matter further, the Shareholders request notice of the Board's decision in this regard within seven (7) days of the date of this letter so that appropriate action may be taken. Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,



Brian T. Must

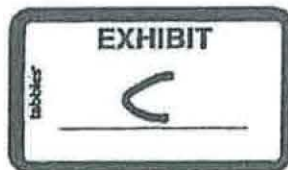
BTM:gls

⁶ 15 Pa.C.S. §§ 5781, 5783.

Corporate Records
Of
The Stonycreek Valley Development Corporation

Incorporated under the laws
of the
Commonwealth of Pennsylvania

Law Offices of Simon Uhl



Foreword

The Stonycreek Valley Development Corporation Board of Directors is elected yearly by the Stonycreek Valley Development Corporation shareholders for the management, protection and improvement of Lake Stonycreek in the interest of the shareholders and property owners. Any person owning one (1) or more Stonycreek Valley Development Corporation shares is a shareholder.

Stonycreek Valley Development Corporation was incorporated in 1959 as a for-profit corporation and became a not-for-profit corporation with the affirmative vote of the Second Amendment which was recorded on August 15, 2005 to reflect such.

Lake Stonycreek is a subdivision of Somerset County, Pennsylvania in Stonycreek Township.

BY-LAWS

ARTICLE I – OFFICES

1. The office of the Lake Stonycreek Valley Development Corporation, hereto referred to as the corporation, shall be at the residence of the Corporation Secretary or at a place the directors may from time to time designate.
2. The Corporation may also have offices at such other places as the Board of Directors, who are defined in Article IV, said members of this Board are hereto referred to as directors, may from time to time appoint or the business of the corporation may require.

ARTICLE II – SEAL

1. 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 – SHAREHOLDERS' MEETING

1. Meetings of the shareholders shall be held annually in Shanksville, PA or at such place or places as may from time to time be selected by the Board of Directors.
2. The annual meeting of the shareholders shall be held in May on the Friday preceding Memorial Day at 7pm, or as may be selected by the directors when they shall elect a Board of Directors, and transact such other business as may properly be brought before the meeting. If the annual meeting shall not be called and held within six months after the designated time, any shareholder may call such meeting.
3. The presence, in person or by proxy, of the holders of five (5) percent of the outstanding shares entitled to vote shall constitute a quorum at all meetings of the

shareholders except as otherwise provided by law, by Articles of Incorporation or by these By-Laws. If however, such quorum shall not be present at any meeting of the shareholders; those entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite number of shares shall be present. In the case of any meeting called for the election of directors, adjournment or adjournments exceeding fifteen days each, as the holders of a majority of the shares present in person or by proxy shall direct, until such directors have been elected, and those who attend the second of such adjourned meetings, although less than a quorum, shall nevertheless constitute a quorum for the purpose of electing directors. In the event that a quorum cannot be determined at an annual shareholders meeting and a shareholder or shareholders adjourn the meeting, the original meeting may receive reports prepared by the Board of Directors and/or any of its committees. The meeting will then be adjourned and subsequently re-opened, without a quorum for the single purpose of the election of directors for the upcoming term.

4. At each meeting of the shareholders every shareholder having the right to vote shall be entitled to vote in person or by proxy either in writing or transmitted electronically. The notice of the annual shareholder meeting will specify a return date for the proxy vote. No unrevoked proxy shall be valid after eleven months from the date of its execution, unless a longer time is expressly provided therein, but in no event shall a proxy, unless coupled with an interest, be voted on after three years of the date of its execution. 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 20 days prior to the date of the meeting in accordance with Article III, Section 5. In all elections for directors cumulative voting shall be allowed. Upon demand made by a shareholder at any election for directors before the voting begins, the election shall be by ballot. No share shall be voted at any meeting upon which any installment is due and unpaid. The original share ledger or transfer book, or a duplicate thereof kept in this Commonwealth shall be prima facie evidence of the right of the person named therein to vote thereon.

5. Written notice of the annual meeting shall be mailed to each shareholder entitled to vote thereat, at such address as appears on the books of the corporation, at least twenty days prior to the meeting.

6. In advance of any meeting of shareholders, the Board of Directors may appoint judges of election, who need not be shareholders, to act at such meeting or any

adjournment thereof. If judges of election be not so appointed, the chairman of any such meeting may, and on the request of any shareholder or his proxy, shall make such appointment at the meeting. The number of judges shall be two or three. If appointed at a meeting on the request of one or more shareholders or proxies, the majority of shares present and entitled to vote shall determine whether two or three judges are to be appointed. On request of the chairman of the meeting, or of any shareholder 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 any fact found by them. No person who is a candidate for office shall act as a judge.

7. Special meetings of the shareholders may be called at any time by the President, or the Board of Directors, or the holders of not less than one-fifth of all the shares outstanding and entitled to vote. At any time, upon written request of any person entitled to call a special meeting, it shall be the duty of the Secretary to call a special meeting of the shareholders, 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.

8. Business transacted at all special meetings shall be confined to the objects stated in the call and matters germane thereto.

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

10. The officer or agent having charge of the transfer books shall make at least five days before each meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting, arranged in alphabetical order, with the address of and the number of shares held by each, which list shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting, and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original share ledger or transfer book, or a duplicate thereof kept in this Commonwealth, shall be prima facie evidence as to who are the shareholders

entitled to examine such list or share ledger or transfer book, or to vote in person or by proxy, at any meeting of shareholders.

11. The conduct of all meetings of the Stonycreek Valley Development Corporation shall be in accordance with Robert's Rules of Order.

ARTICLE IV –DIRECTORS

1. The business of this corporation shall be managed by its Board of Directors, no less than 10 in number, who need not be residents of this Commonwealth but must be shareholders in the corporation. They shall be elected by the shareholders, at the annual meeting of shareholders of the corporation, and each director shall be elected for the term of one year, and until his successor shall be elected and shall qualify.

2. In addition to the powers and authorities by these By-Laws expressly conferred upon them, the Board may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Articles or by these By-Laws directed or required to be exercised or done by the shareholders.

3. The meetings of the Board of Directors may be held at such place within this Commonwealth as a majority of the directors may from time to time appoint, or as may be designated.

4. Each newly elected Board may meet at such place and time as shall be fixed by the Board at the meeting at which such directors are elected and no notice shall be necessary to the newly elected directors in order legally to constitute the meeting, or they may meet at such place and time as may be determined by the directors.

5. Regular meetings of the Board shall be held without notice at such time and place as shall be determined by the Board.

6. Special meetings of the board may be called by the President on 3 days notice to each director, either personally or by mail or by electronic means; special

meetings shall be called by the President or Secretary in like manner and on like notice on the written request of two directors.

7. A majority of the directors in office shall be necessary to constitute a quorum for the transaction of business, and the acts of a majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. 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.

8. Directors as such, shall not receive any stated salary for their services and no director shall be allowed any compensation for expenses to attend any regular or special meeting of the Board PROVIDED, that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefore.

ARTICLE V – OFFICERS

1. The executive officers of the corporation shall be chosen by the directors and shall be a President, Secretary, and Treasurer. The Board of Directors may also choose a Vice-President and such other officers and agents as it shall deem necessary, who shall hold their offices for such terms 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 Secretary. It shall not be necessary for the officers to be directors.

2. The salaries of all employed agents of the corporation shall be fixed by the Board of Directors.

3. The officers of the corporation shall hold office for one year and until their successors are chosen and have qualified. Any officer elected or appointed by the

Board of Directors may be removed by the board of Directors whenever in their judgment the best interests of the corporation will be served thereby.

4. The President shall be the chief executive officer of the corporation; he/she shall preside at all meetings of the shareholders and directors; he/she shall have 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.

5. The secretary shall attend all sessions of the Board and all meetings of the shareholders and act as clerk thereof, and record all the votes of the corporation and the minutes of all its transactions in a book to be kept for that purpose; and shall perform like duties for all committees of the Board of Directors when required. He/she shall give, or cause to be given, notice of all meetings of the shareholders and of 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.

6. The Treasurer shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall keep the moneys 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, 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,

7. 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 lake community.

8. The Board of Directors shall issue and revise Lake Rules and Regulations that govern the lake community. These rules and regulations will cover, but are not limited to, boat types, length, permits, fees, and operation, fishing, hunting, warnings and fines, building codes and requirements and subdivision of lots and any topic that the Board deems necessary. The Rules and Regulations may be revised in accordance with Section 7. The Board shall provide notice to all lake owners of any new rules and regulations, or changes thereto, to be posted 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 upon by the Board of Directors at the time of adoption. Each lot/property owner and his or her family shall be subject to following all of the Lake Rules and Regulations set forth by the Board of Directors.

ARTICLE VI – VACANCIES

1. 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.
2. Vacancies in the Board of Directors shall be filled by majority of the remaining member of the board though less than a quorum, and each person so elected shall be a director until his successor is elected by the shareholders, who may make such election at the next annual meeting of the shareholders or at any special meeting duly called for that purpose and held prior thereto.

ARTICLE VII – CORPORATE RECORDS

1. There shall be kept at the at the office of the corporation an original or duplicate record of the proceedings of the shareholders 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. An original or duplicate share register shall also be kept at the registered office, or at the office of a transfer agent or registrar within this Commonwealth, giving the names of the shareholders in alphabetical order, and showing their respective addresses, then number of shares held by each, the number and date of certificates issued for the shares, and the number and date of cancellation of every certificate surrendered for cancellation.
2. Every shareholder shall have a right to examine, in person or by agent or attorney, at any reasonable time or times, for any reasonable purpose, the share register, books or records of account, and records of the proceedings of the shareholders and directors, and make extracts there from.

ARTICLE VIII – SHARE CERTIFICATES

1. The corporation is a nonprofit corporation. No dividends or distributions shall be paid on shares held. (Second Amendment)
2. The share certificates of the corporation shall be numbered and registered in the share ledger and transfer books of the corporation, as they are issued. They shall be signed by the President and Treasurer and shall bear the corporate seal.
3. Transfers of shares shall be made on the books of the corporation upon surrender of the certificates therefore, endorsed by the person named in the certificate of by attorney, lawfully constituted in writing. No transfer shall be made inconsistent with the provisions of Article 8 of the Uniform Commercial Code, approved the sixth day of April, one thousand nine hundred fifty-three (Act No. 1), and its amendments and supplements.

No stock of this corporation may be sold, transferred or assigned without the corporation waiving its right to purchase said stock at its market value. Such waiver must be in writing and signed by the Treasurer of the corporation and the seller of the stock. Such waiver shall become a permanent record of the corporation. The corporation shall have thirty days to purchase said stock after it has been notified in writing. If the corporation does not purchase said stock within thirty days the corporation must furnish a waiver of right to the seller. (Second Amendment)

4. The Board of Directors may fix a time, not more than fifty days, prior to the date of any meeting of shareholders, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares will be made or go into effect, as a record date for the determination of the shareholders entitled to notice of, or to vote at, any such meeting or to receive any such allotment of rights, or to exercise the rights in respect to any such change, conversion, or exchange of shares. In such case, only such shareholders as shall be shareholders of record on the date so fixed shall be entitled to notice of, or to vote at, such meeting, or to exercise such rights as the case may be, notwithstanding any transfer of any shares on the books of the corporation after any record date fixed, as aforesaid. The board of Directors may close the books of the corporation against transfers of shares during the whole or any part of such period, and in such case, written or printed notice thereof shall be mailed at least ten days before the closing thereof to each shareholder of record at the address appearing on the records of the corporation or supplied by him to the corporation for the purpose of notice. While the stock transfer books of the corporation are closed, no transfer of shares shall be made thereon. If no record date is fixed for the determination of shareholders entitled to receive notice of, or vote at, a shareholders' meeting, transferees of shares which are transferred on the books of the corporation within ten days next preceding the date of such meeting shall not be entitled to notice of or vote at such meeting.

5. Any person claiming a share certificate to be lost or destroyed shall make an affidavit or affirmation of that fact and advertise the same in such manner as the Board of Directors may require, and shall give the corporation a bond of indemnity with sufficient surety to protect the corporation of any person injured by the issue

of a new certificate from any liability or expense remaining outstanding, whereupon a new certificate may be issued of the same tenor and for the same number of shares as the one alleged to be lost or destroyed, but always subject to the approval of the Board of Directors.

6. Subject to the provisions of the statutes, the Board of Directors may declare the outstanding shares of the corporation out of its surplus from time to time and to such extent as they deem advisable, in cash, property or in shares of the corporation.

7. The directors, from time to time, in their absolute discretion, may set aside a reserve fund to meet contingencies, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interests of the corporation, and the directors may abolish any such reserve in the manner in which it was created.

ARTICLE IX – MISCELLANEOUS PROVISIONS

1. All checks or 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.

2. The fiscal year shall be the calendar year.

3. Whenever written notice is required to be given to any person, it may be given to such person, either personally or by sending a copy thereof through the mail, or by electronic means, to his/her address appearing on the books of the corporation, or supplied by him/her 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 entitled thereto when deposited in the United States mail or transmitted electronically to such person. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the general nature of the business to be transacted.

4. 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 the 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 X – ANNUAL STATEMENT

1. 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 XI - AMENDMENTS

1. These By-Laws may be altered, amended or repealed by the affirmative vote of a majority of the shares present and entitled to vote at any regular or special meeting of the shareholders, if notice of the proposed alteration, amendment or repeal be contained in the notice of the meeting.

**SVDC Proposed By-Laws Revision
February 4, 2019**

red = text to be amended/deleted

blue = proposed new language for Shareholder action

ARTICLE III – SHAREHOLDERS’ MEETING

4. At each meeting of the shareholders every shareholder having the right to vote shall be entitled to vote in person or by proxy either in writing or transmitted electronically. Each voting shareholder shall be eligible to cast one vote.

The notice of the annual shareholder meeting will specify a return date for the proxy vote. No unrevoked proxy shall be valid after eleven months from the date of its execution, unless a longer time is expressly provided therein, but in no event shall a proxy, unless coupled with an interest, be voted on after three years of the date of its execution.

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 20 days prior to the date of the meeting in accordance with Article III, Section 5, 4.

~~In all elections for directors cumulative voting shall be allowed. For the purposes of electing Directors each shareholder present and eligible to vote shall cast one vote per candidate for director and shall vote for the number of candidates equal to the number of vacancies.~~

Upon demand made by a shareholder at any election for directors before the voting begins, the election shall be by ballot.

~~No share shall be voted~~ No shareholder shall vote at any meeting upon which any installment is due and unpaid. The original share ledger or transfer book, or a duplicate thereof kept in this Commonwealth shall be prima facie evidence of the right of the person named therein to vote thereon.

ARTICLE XI – AMENDMENTS

1. These By-Laws may be altered, amended or repealed by the affirmative vote of a majority of the ~~shares~~ shareholders present and entitled to vote at any regular or special meeting of the shareholders, if notice of the proposed alteration, amendment or repeal be contained in the notice of the meeting.



Stonycreek Valley Development Corporation

Board of Directors Meeting

Date: January 17, 2019

Directors in attendance: Jim Bandstra, Derrick St.Clair, Dan Dively, Geoff Leah, Jack Hershberger, John Weir, Jessie Younkin

Directors absent: Larry Rosage, Dale Laughlin, Billy Blackburn, Marcia Rogish

Guest: Dennis Hahn, Mike Jenkins, Brandon Stone, Attorney Persun

The meeting was called to order by VP Jim Bandstra at 6:00pm

Additions to the agenda were called for: Receiving Online Payments; Walker Property

The Board reviewed the minutes from the December 20th Board Meeting. Derrick St.Clair brought up his concern with posting the dollar amount totals from the Dirt Bottom Excavating report. The Board discussed the issue. Derrick St.Clair made a motion to exclude the dollar amount totals from the December Meeting Minutes; Seconded by Geoff Leah; Motion failed 3 to 4. John Weir made a motion to approve the minutes as presented; Seconded by Jack Hershberger; Derrick St.Clair opposed; all others were in favor; minutes approved as presented.

The Financial Report was reviewed. Jessie Younkin made a motion to approve; Seconded by Geoff Leah; all were in favor; Financial Report approved.

The Board reviewed a building plan approval request from Brandon Stone; John Weir made a motion to approve the plans; Seconded by Jack Hershberger; all were in favor; plans approved.

Dennis Hahn asked if the Board could post (on the website or Facebook) a tentative agenda a week before each Board Meeting for interested Shareholders/Lot Owners. The Secretary will send out via her email contact list.

Jack Hershberger reminded the Board to watch for the mining permit request and talked about his concern with the possibility of water quality being affected. Brandon Stone informed the Board that his wife may be able to help with water testing. Jack will follow up with the Stones.

The Board discussed the annual billing, boat permit application, and information letter that will be sent out in January. Geoff Leah will work on shortening the letter and updating it with all the new and/or changes made to the rules and regulation.



The Board reviewed a building plan approval request from D. Purdy. Geoff Leah made a motion to approve the plans as long as the dock with boat does not exceed the 20 foot limit; Seconded by Jack Hershberger; all were in favor; motion passed. Geoff will email Mr. Purdy.

John Weir made a motion to pay the Attorney Persun invoice; Seconded by Derrick St.Clair; all were in favor; motion passed.

Derrick St.Clair informed the Board that he has been researching receiving payments for lot fees and boat permits through an online store. Derrick made a motion to set up an online store and have the SVDC eat the 2% fees for the first year; Seconded by Geoff Leah; all were in favor; motion passed.

The Board reviewed an invoice from Musser Eng.; Dan Dively made a motion to pay the invoice; Seconded by John Weir; all were in favor; motion passed.

Dan Dively gave an update on the Walker land purchase.

Jessie Younkin made a motion to adjourn; Seconded by Geoff Leah; all were in favor; meeting adjourned 7:28.

Next Meeting is February 21, 2019

Respectfully submitted- Lynette Fleegle

(Enclosure A)

We recognize the need for more equitable representation of lot owners as it pertains to the election of the Board of Directors for SVDC and other matters which come before the lake community.

To accomplish this goal I propose at the May 24, 2019 annual Shareholders' meeting that we act on the following motion:

- Convert to one vote per lot on any action or motion requiring ratification by the lot owners.
- Voting on Directors shall not be cumulative ie., not stacked on one Director.
- In fairness to shareholders, offer to buy back shares at \$10 per share. This offer will be good from June 1, 2019 until Dec 31, 2019.
- Our hope is that many shareholders will not take the buyback, preferring instead to continue to support the Lake in this way. However, the offer is open to those so inclined.
- This motion, if passed, will be the rules followed for the election of Directors at the May 24, 2019 Shareholders' meeting.

Signed:



Date:

4/27/19

Seconded by,

Signed:



Date:

4/27/19

+++++

Name: _____

Number of Shares Owned: _____

I, the undersigned, vote Yes _____ No _____ to the above motion.

Signed: _____ Date: _____

(The Board recommends 'Yes')



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



ATTORNEYS AT LAW

BRIAN T. MUST

May 15, 2019

Via First Class, U.S. Mail
Electronic Mail – mdpersun@verizon.net

Board of Directors
Stonycreek Valley Development Corporation
c/o Mark D. Persun, Esquire
158 East Main Street
Shanksville, PA 15501

Re: May 24, 2019 Proposed By-law Amendments

Dear Attorney Persun:

As you are well-aware, this Firm represents a number of concerned shareholders in the Stonycreek Valley Development Corporation ("SVDC"). It has recently come to our attention that the SVDC Board of Directors intends to permit a vote on a motion that has been entitled "Enclosure A." Because the proposed amendment captured in Enclosure A, and the means by which it was presented to the Board, violates the SVDC by-laws and the Nonprofit Corporations Law ("NCL"), we demand that the Board remove Enclosure A from consideration at the upcoming Annual Meeting to be held on May 24, 2019.

By way of a brief summary, Enclosure A was proposed during the April 27, 2019 Special Meeting. It suggests an amendment to SVDC's by-laws that would convert the current one-vote-per-share voting system to a one-vote-per-lot voting system. The proposed amendment would also eliminate cumulative voting for positions on the Board of Directors and take effect immediately following its passage. We understand that the Board intends to hold its vote on Enclosure A at the outset of the upcoming meeting, and thus, if passed, it would govern the election of next year's Board of Directors.



First and foremost, the course of action proposed by Enclosure A violates the NCL. Under the NCL, when a nonprofit corporation is composed of one class of members, like SVDC, the law requires that "the members shall have *all* the rights of members generally in a nonprofit corporation," including voting rights.¹ By amending the by-laws to provide for a one-vote-per-lot voting system, SVDC would remove the voting rights of members who are shareholders, but not lot-owners. That is, Enclosure A calls for disparate treatment of members of the same class in violation of the NCL. Simply, either all the members of SVDC are permitted to vote, or no member may vote.

Second, SVDC's by-laws explicitly provide that "[b]usiness transacted at all special meetings shall be confined to the objects stated in the call and matters germane thereto."² As you are well-aware, the April 27, 2019 Special Meeting was called to discuss and vote upon a proposed one-vote-per-share voting system. The discussion of any business apart from, and not germane to, that objective, including the motion calling for a vote on an entirely different voting system, was improper and a clear violation of the by-laws. As such, it cannot be discussed and voted upon at the upcoming meeting.

Finally, under Robert's Rules of Order, which were incorporated into the conduct of all SVDC meetings,³ "[n]o motion is in order that conflicts with the laws of the nation, or *state*, or *with the assembly's constitution or by-laws*, and if such a motion is adopted, even by a unanimous vote, it is null and void."⁴ In light of the above, it is clear that Enclosure A is null and void as it violates the NCL and SVDC's by-laws. Accordingly, we demand that it be removed from consideration at the upcoming May 24, 2019 Annual Meeting.

If you would like to discuss this matter further, please feel free to contact me.

Very truly yours,



Brian T. Must

BTM:glS

¹ 15 Pa.C.S. § 5751(a)(2) (emphasis added).

² See SVDC By-Laws, Article III, ¶ 8.

³ *Id.* at Article III, ¶ 11.

⁴ Robert's Rules of Order Revised, Article VIII, ¶ 47 (emphasis added).

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
on behalf of Plaintiffs

Signature: _____

Name: John Paul Regan

Attorney No.: 320664