

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

**CONSENTED TO MOTION FOR LEAVE
OF COURT TO AMEND 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

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
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DEVELOPMENT CORPORATION,)	
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Plaintiffs,)	
)	
v.)	
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DANIEL DIVELY and THE)	
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DEVELOPMENT CORPORATION,)	
)	
Defendants.)	
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CONSENTED TO MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT

Plaintiffs Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, individually and on behalf of the Stonycreek Valley Development Corporation (collectively, “Plaintiffs”), by and through their attorneys, Metz Lewis Brodman Must O’Keefe LLC, files the within Consented to Motion for Leave of Court to Amend Complaint and in support thereof avers as follows:

1. Plaintiffs initiated this action by filing a Complaint on April 17, 2019, raising three causes of action for conduct undertaken by Defendant prior to that date.
2. Subsequently, on or about May 6, 2019, Defendant Daniel Dively (“Dively”) filed his First Set of Preliminary Objections to Plaintiffs’ First Complaint.
3. On May 14, 2019, Defendant the Stonycreek Valley Development Corporation (“SVDC”) filed its First Set of Preliminary Objections to Plaintiffs’ First Complaint.

4. On May 16, 2019, Dively filed a Supplement to First Set of Preliminary Objections to Plaintiff's First Complaint.

5. A hearing on Defendants' Preliminary Objections has been scheduled for July 18, 2019, at 1:30 p.m., before this Honorable Court.

6. Pursuant to Pa.R.C.P. 1033(a), a party, "either by filed consent of the adverse party or by leave of court, may at any time change the form of the action, add a person as a party, or otherwise amend the pleading."

7. Further, "[t]he amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense." Pa.R.C.P. 1033(a).

8. It is well-settled that "amendments to pleadings should be liberally allowed except where surprise or prejudice to the other party would result[.]" *Spain v. Vicente*, 461, A.2d 833, 838 (Pa.Super. 1983) (citation omitted).

9. During the pendency of this litigation, Defendants herein have engaged in additional and new violations of their fiduciary duties and the Nonprofit Corporations Law of 1988, 15 Pa.C.S. § 5101, *et seq.*

10. Accordingly, Plaintiffs respectfully request leave to file an Amended Complaint which clearly documents and identifies the additional and new misconduct undertaken by Defendants.

11. The amendment proposed hereby will neither surprise nor prejudice Defendants.

12. Counsel for Defendants have consented to the filing of an Amended Complaint.

13. A proposed Amended Complaint (without exhibits) that the Plaintiff intends to file upon receiving leave of Court to do so is attached hereto as **Exhibit A**.


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 an order granting this Motion which grants Plaintiffs leave to file an Amended Complaint within ten (10) days of such Order.

Respectfully submitted,

METZ LEWIS BRODMAN MUST O'KEEFE LLC

Date: June 28, 2019

By:



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

Attorneys for Plaintiffs

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PROPOSED ORDER

AND NOW, to wit, this ____ day of June, 2019, upon consideration of Plaintiffs Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, individually and on behalf of the Stonycreek Valley Development Corporation’s Consented to Motion for Leave of Court to File Amended Complaint, it is hereby ORDERED, ADJUDGED, and DECREED that said Motion is GRANTED. Plaintiffs shall file an Amended Complaint within ten (10) days of this Order.

BY THE COURT:

_____, J.

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and LEE CAVANAUGH, Individually and
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535 Smithfield Street, Suite 800
Pittsburgh, PA 15222
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JURY TRIAL DEMANDED



IN THE COURT OF COMMON PLEAS OF SOMERSET COUNTY, PENNSYLVANIA

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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

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AMENDED 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 Amended 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 450 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. To date, the Board of Directors has not responded to Shareholders' Demand Letter, nor has it formed a Special Litigation Committee.

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

FACTUAL ALLEGATIONS

Conflicts-of-Interest and Self-Dealing

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

28. 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.

29. 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.

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

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

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

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

34. 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.

35. 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.

36. 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.

37. Upon information and belief, Dively, with the support and assistance of the Board, 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 drafting requested scope of services favorably to his business, by undercutting known bids, or by discussing the splitting of a contract for his services into amounts that fall below SVDC's threshold that triggers automatic sealed bidding for contracts.

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

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, Dively drafted the scope of services favorably to his business, and the transactions 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 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 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 NCL does not require a written demand for the inspection of corporate records to be provided by an attorney.

55. The Board's refusal to respond to Cavanaugh's and Jenkins' written request caused them to incur unnecessary legal expenses.

56. In failing to honor written demands for the inspection of corporate records, the Board of Directors has concealed the details of SVDC's business transactions from the Shareholders and other shareholders of the corporation.

57. 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.

58. 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 Discrimination in Sale of Shares

59. 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 for seats on the Board of Directors.

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

61. SVDC has one class of members, composed of its shareholders.

62. At all times relevant to this matter, SVDC has remained a nonprofit corporation with one class of members, and it has not, at any time, amended its By-Laws to create an additional or separate class of members.

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

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

65. During the 2018 Board Election, then-sitting 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.

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

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

68. 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.

69. The Board of Directors' improper distribution of Mr. Musser's proxy-vote granted the then-sitting 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.

70. 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.

71. On February 4, 2019, the Board of Directors proposed an amendment to the By-Laws that would eliminate shareholders' voting rights on a **one-vote-per-share** basis with cumulative voting and replace it with a **one-vote-per-shareholder** voting system without cumulative voting (the "Proposed Amendment"). A true and correct copy of the Proposed Amendment is attached hereto as **Exhibit D**.

72. The Proposed Amendment, as presented to the SVDC shareholders on February 4, 2019, included the text of the provisions of the By-Laws to be amended, and the red-lined changes that were proposed at that time.

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

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

75. 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.

76. 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**.

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

78. 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.

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

80. 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.

81. 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.

82. At that time, a Special Meeting was scheduled for April 27, 2019, to vote on the Proposed Amendment to the By-Laws that effect the Shareholders' voting-rights.

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

84. 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.

85. 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.

86. 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.

The April 27, 2019 Special Meeting and the May 24, 2019 Annual Meeting

87. 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.

88. During the Special Meeting, a majority of the votes denied the Proposed Amendment.

89. Following the vote to deny the Proposed Amendment, 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").

90. The motion 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.

91. Upon information and belief, the motion proposed at the Special Meeting was seconded, but not formally voted upon by the Board.

92. SVDC did not provide any prior notice that the one-vote-per-lot owner motion would be discussed at the Special Meeting.

93. The motion was not proposed by the adoption by the Board of Directors of a resolution setting forth the proposed amendment.

94. The motion was not proposed by petition of members of SVDC entitled to cast at least 10% of the votes that all members are entitled to cast thereon, setting forth the proposed amendment, and it was not filed with the secretary of the corporation.

95. SVDC's By-Laws provide for amendments to the By-laws, but do not outline the manner for the proposal of any such amendment.

96. Instead, the By-Laws provide that the conduct of all meetings shall be in accordance with Robert's Rules of Order, which explicitly set forth the manner by which an amendment may be proposed.

97. Accordingly, the motion to amend the By-Laws made at the Special Meeting was not proposed consistent with the By-Laws or Pennsylvania statutory law.

98. When it was presented by oral motion to the Board at the Special Meeting, Enclosure A did not contain the language of the proposed amendment, the existing text that it proposed to be amended, a red-lined version of the By-Laws, or the proposed articles, as amended, set forth in full.

99. Nevertheless, the motion 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 F**.

100. Enclosure A, as included in the packet of amendments to be voted upon at the Annual Meeting, did not contain the language of the proposed amendment, the existing text that it proposed to be amended, a red-lined version of the By-Laws, or the proposed articles, as amended, set forth in full.

101. Enclosure A 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.

102. Further, Enclosure A provided that, if passed, the one-vote-per lot owner voting system would take immediate effect at the Annual Meeting and govern the election of Board of Directors for the upcoming year.

103. 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.

104. In order to alter the outcome of the vote and sway votes in its favor, Enclosure A promised that SVDC will purchase all shares offered to it by its shareholders.

105. At the Annual Meeting, Enclosure A was approved.

106. Enclosure A was approved, in part, due to Mr. Musser's 1,400 votes in favor of Enclosure A.

107. Mr. Musser was assured that, if Enclosure A passed, his shares would be repurchased by the corporation.

108. Immediately thereafter, Enclosure A was effectively incorporated into the By-Laws, and a one-vote-per-lot owner voting system was used to elect the Board of Directors for the upcoming year.

109. Prior to the election of the Board of Directors, SVDC did not file the proposed amendment contained within Enclosure A with the Pennsylvania Department of State.

110. By amending the By-Laws to provide for a one-vote-per-lot voting system, SVDC eliminated the voting rights of members who are shareholders, but not lot owners.

COUNT I
Breach of Fiduciary Duty
(Derivative Claim)

111. The averments of paragraphs 1 through 104 above are incorporated by reference.

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

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

114. 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.

115. 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.

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

117. Dively breached his fiduciary duties to the Corporation by manipulating SVDC's bidding process, undercutting known bids, drafting the scope of services sought by SVDC in a manner favorable to his business, and participating in discussions and votes concerning his businesses' transactions with SVDC.

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

119. 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, drafting of the scope of services sought by SVDC in a manner favorable to his business, and permitting Dively to participate in discussions and votes concerning his own businesses' transactions with SVDC.

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

121. 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.

122. In failing to honor written demands for the inspection of corporate records, the Board of Directors further breached their fiduciary duties by concealing the nature of SVDC's business dealings from its shareholders.

123. 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.

124. 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.

125. 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)

126. The averments of paragraphs 1 through 120 above are incorporated by reference.

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

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

129. 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.

130. 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.

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

132. Dively breached his fiduciary duties to the Corporation by manipulating SVDC's bidding process, undercutting known bids, drafting the scope of services sought by SVDC in a manner favorable to his business, and participating in discussions concerning his businesses' transactions with SVDC.

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

134. 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, drafting the scope of services sought by SVDC in a manner favorable to his business, and permitting Dively to participate in discussions and votes concerning his own businesses' transactions with SVDC.

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

136. 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.

137. In failing to honor written demands for the inspection of corporate records, the Board of Directors further breached their fiduciary duties by concealing the details of SVDC's business dealings from the Shareholders.

138. 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.

139. 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.

140. 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)

141. The averments of paragraphs 1 through 135 above are incorporated by reference.
142. The NCL and the By-Laws provide Shareholders and other shareholders a right to inspect the Corporation's records upon written demand.
143. 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.
144. 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.
145. 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.
146. 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.
147. 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.

148. 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.

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

150. 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.

151. The Board of Directors violated the NCL by presenting Enclosure A for a vote at the Annual Meeting without using proper corporate formalities or abiding by Robert's Rules of Order.

152. The Board of Directors violated the NCL by using the one-vote-per-lot owner voting system in the election of the Board of Directors at the Annual Meeting without first filing the proposed amendment with the Pennsylvania Department of State.

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

154. 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 nullifying the May 24, 2019 vote of the Board of Directors and order a new vote to be taken with the voting rules in effect as of May 24, 2019.

4. That the Court enter an order finding Dively, and other members of the Board of Directors, personally liable for their unlawful activities.

5. That the Court award Plaintiffs damages in an amount to be determined at trial.

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

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

8. 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: _____

By: _____

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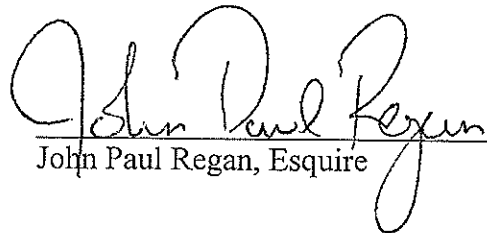
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **CONSENTED TO MOTION FOR LEAVE OF COURT TO FILE AMENDED COMPLAINT** was served via U.S. regular mail, first class mail, postage prepaid, and electronic mail, on this 28th day of June, 2019, upon the following:

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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:

John Paul Regan

Name:

John Paul Regan

Attorney No.: 320664