

To the Board of Directors and Lot Owners of Lake Stonycreek,

Litigation Update

In the matter of

Harry C. Neel, et al v Stonycreek Valley Development Corporation (SVDC)

For those of you who don't know me, my name is Brad Meneilly . I'm a SVDC Board member and attorney. In February 2019, I was approached by a Board member and asked if I would be willing to fill a vacancy on the Board. I said No, because I'd only been on the Lake since July of 2017. But, after being approached by several other Board members, who felt I had experience and skills that would be beneficial to the SVDC, I agreed to serve out the four months remaining in the 2018-2019 term. Since then I've been elected to the Board four times and served two years as Vice President . Since the filing of the Lawsuit in April of 2019 I have served as the primary liaison between the Board and our D&O Insurance Carrier and Defense counsel.

This month , two separate "Motions for Summary Judgment" to dismiss the lawsuit against the Lake were filed in Somerset County Court. As these are public records it was decided to publish them to the Lot Owners who are the members of the Stonycreek Valley Development [Non-Profit Cooperative] Corporation (SVDC).

I have since received numerous requests to " to put the Motions into context " or just asked "what's going on?".

As background:

In late March 2019, three lot owners, Harry Neel, Lee Cavanaugh and Mike Jenkins through an Attorney, accused the Board of unspecified past wrongdoings. (Mr. Cavanaugh was killed last month in a tragic accident in Fla. but is still a named party in this suit.) In my year and a half of following the Board's activity (2018-2019) to better understand the place I hoped to retire to, I had witnessed no evidence of any inappropriate action(s) or failure to act. The SVDC Solicitor at the time, Mark Persun, was directed to contact the attorney to gather more information.

At about that same time, I had also been told of lot owners (Neel, Jenkins) buying or attempting to buy large blocks of SVDC stock. As the stock in a non-profit Corporation has no "investment value" the only logical conclusion was that they were trying to "buy" themselves seats on the SVDC Board. The Board with the advice of its Solicitor declined to sell any large blocks of stock, limiting purchases to 5 shares per member.

In recent depositions two of the plaintiffs, *in their sworn testimony*, admitted that their purpose and goal in attempting to acquire over 900 shares of SVDC stock , combined with cumulative voting[10,285 votes], was to place themselves, and select others on the SVDC Board. Six seats would represent a controlling majority.

The Lawsuit:

To those who have said the Board has not been transparent in informing the Lot Owners about all the details of the litigation over the past four years. Well let's just say it is hard to share details and discuss strategy when the plaintiffs are sitting in the room. But as I stated earlier the Motions to dismiss filed last week are public records .

On the Good Friday before the 2019 Annual Meeting, we learned that these same lot owners [Neel Jenkins , Cavanaugh] had filed suit against the SVDC ; quickly followed by an attempt to get an injunction to stop the Lot Owners from voting to amend SVDC's Bylaws to institutionalize in the Bylaws the concept of " One Lot One Vote". I've since learned that "One Lot One Vote" , by acclamation or a show of hands , not share voting, had been the practice at the Annual meetings from the reorganization of the SVDC as a Cooperative Non-Profit Corporation in 2005 through 2017. Voting by "shares" only occurred one time, in 2018.

The Court refused to grant plaintiffs a preliminary injunction, rejecting the notion that this vote for "One Lot One Vote" would cause "immediate and irreparable harm" to the lot owners and the SVDC. The lawsuit is now in its fifth year and with the filing of Motions for Summary Judgment, finally shows some hope of coming to an end.

Contrary to the demands made in their Complaint, and amended Complaint, all three plaintiffs in their depositions now agree that "One Lot One Vote" is the correct model for SVDC Lot Owner voting. This change of heart also reflects the clear requirements in Pennsylvania Statutes [Title 15] applicable to Lake Stonycreek; that voting rights in the specific category of a "Cooperative Corporation" must be exercised not by shareholders, but by members voting "their common interest in the co-op"; their lot(s). This also explains the SVDC voting practices from 2005-2017.

There has been no evidence presented of the 2018-2019 Board trying to "*entrench themselves*", as alleged in the 2019 Complaint, as a permanent Board . Over the past five years over two dozen Lot Owners have served on the Board of Directors. Today, only two of the eleven members elected to serve in 2018-2019 have continued to serve over the past four years, and one of those has decided not to run for the 2023/2024 term.

As to Neel and Jenkins not being given " access to SVDC corporate records" Under Pa.'s Statute and the SVDC Bylaws, as a lot owner one *has the right to review certain corporate records*. This was offered to the Neel and Jenkins ,despite their not having followed the protocols to properly request access to review records as set forth in both Pennsylvania 's Statutes and SVDC Bylaws. The offers were rejected, we were told, because the "times offered were inconvenient" . These records currently are published to the Members on a monthly basis.

It is my understanding that there has been much misinformation circulated in the community. Plaintiffs 2019 Complaint and subsequent Motions are not statements of " the facts", rather those documents merely set forth the Plaintiffs' representations of what they intend to prove at trial.

At the last hearing the Judge said to members of the Board in attendance , “..*you need to find a way to live with these gadflies*”. After sitting through the three plaintiffs depositions, taken since that hearing, it is clear from their testimony that they have personal /personality not “legal” issues with most ,if not all, of the *current and past* Board members. One Plaintiff, Jenkins, even stated that six of the Board members “need to be removed” as they are “bad eggs”; while , their jury of three, was still out on at least three newer members.

There has been no effort on the part of any of the last five Boards to limit plaintiffs involvement with, or membership on the Board. One plaintiff was elected to the Board in 2020 but failed to get reelected in 2021. All three put their names on the ballot in 2022. None received the votes necessary from the lot owners to be seated for the 2022-2023 term. None are seeking election to the 2023/2024 Board. Yet in their depositions they claim they are acting on behalf of, and in the best interests of, the Community.

Many have questioned why the Board didn’t enter into a settlement with the plaintiffs in 2021.

- During a mediation attempt in 2021, Plaintiffs initial demand was for the SVDC to reimburse them for their legal fees; which they estimated, at the time, to be around \$150,000. This demand was reduced (IIRC) to \$100,000 then \$72,000 as the day progressed. As of Feb 22 2023 their demand is now \$180,000. SVDC,s total annual revenue is between \$70,000-\$80,000.
- While the D&O policy provides up to \$1,000,000 in coverage, our Insurance carrier has evaluated the claims and only been willing to tender \$30,000, 3% of the policy limit, towards a settlement with the plaintiffs. The Insurer’s valuation of the claims against the SVDC is a “business decision” to pay some “nuisance money” to get it to go away.”
- A strong majority of Lot Owners , who expressed their feelings, stated that the Board should not contribute \$42,000 of the “ Lake reserve funds” (consisting of voluntary donations for dam improvements) to a settlement.
- Beyond the money, there were/are other demands from the plaintiffs that cannot be met under the SVDC’s , old or new, Bylaws. Including Bylaw amendments without Lot Owners approval.

The Plaintiffs have been standing firm despite the Judge’s statement to Neel and Jenkins in the Courtroom, at the last hearing in 2022, “*You are riding a very expensive train, on tracks going nowhere! Court adjourned!* ”

So, now we ‘ve reached a juncture, with the filing of two Motions for Summary Judgment with the Court where greater disclosure is possible. The two Motions have been shared with all the Lot Owners and posted on the SVDC website for all to read. Also late last year we took the last two depositions of the plaintiffs (necessary for a Summary Judgment brief), and transcripts became available in late December. Because excerpts of Plaintiffs depositions are attached to the Motion filed on behalf of Mr. Dively , these transcripts have been posted on the SVDC website so that Lot owners can read, *in the plaintiffs own words under oath*, their reasoning and motives for their actions over the past five years. These are the only depositions taken by SVDC’s legal counsel.

I encourage every lot owner and member to read these documents.

The Next steps:

1. The Plaintiffs Neal and Jenkins have 30/20 days to file an answer to the two (2) Motions for Summary Judgment . These Motions are both asking the Court to dismiss the suit against the SVDC and Dan Dively (named individually).
2. If the Plaintiffs so choose, both Plaintiff's and Defense Counsel will file supporting briefs with the Court.
3. Oral Arguments will be scheduled and heard.
4. The Judge will review the evidence placed before him and rule.
5. Even if the Judge denies the Motions, the case will continue to a trial, where the Plaintiffs will have the burden of proving their case.

This process could take five or six months. But may be shorter as the issues before the court are defined by Pennsylvania Statutes; while there are no "facts in dispute".

The Court, in evaluating these Motions , must apply Pennsylvania's Business Judgment Rule, which gives Corporate Boards and Board members protection from liability if their actions were reasonable and taken in good faith.

Under Pennsylvania law , the Court cannot set aside statutory requirements and as such cannot grant Neal and Jenkins the "relief" they are seeking the Court to grant.

As you read and evaluate this update , the two Motions and the three Depositions , remember some rules that are shared in the first year of Law School:

- 1 Never take legal advice from plaintiff's (the other guy's) legal counsel as it will always be self-serving. You as a Lot Owner , with lots and homes around the Lake, have "skin " in this game even though you are not named in the Lawsuit.
- 2 Plaintiffs are the aggressors in a lawsuit. They got to go first, frame the playing field and their Lawyers got to present their accusations in the light most favorable to their clients.
- 3 As Board Members and Lot Owners, we were stuck with having to start on defense, having to react to and defend against "allegations" put forth by the Plaintiff's highly paid Attorneys .
- 4 As a general rule the "Facts" come out in the Discovery process [documents and depositions], and at Trial. That said, in the end the Court will be "the ultimate finder of Fact".

The secondary impact on the SVDC and our Lake Community;

In my estimation, this suit has not provided any benefit to the community; rather it has divided the Lake community and set neighbor against neighbor. Many talented serving Board members have walked away, and others have declined to consider service over the past four years due to the ongoing disruption created by this lawsuit.

Over the past two years, I've observed an increase in the plaintiffs and a small group of their supporters/minions "trolling" at Board meetings; and have been told of their "gaslighting" the Board and Board members around the community ..

The SVDC's insurance carrier reached a point of no longer wanting to deal with the plaintiffs going forward; and did not renew our Directors and Officers (D&O) policy this past December. But, they continue to cover our legal defense cost.

Fifteen of the sixteen other insurance carriers approached to write D&O coverage declined to offer a policy; many directly citing the lawsuit as the sole reason. The Sixteenth agreed to offer a policy, but it singled out, and excluded coverage for any actions brought by any of the plaintiffs [Neel, Jenkins and Cavanaugh]. The loss of D&O insurance led to the resignation of five (5) Board members in mid-December 2022.

SVDC a Pennsylvania Non-profit Cooperative Corporation:

To share some things I've learned about the SVDC as a legal entity. The SVDC sold \$10 "stock" to lot owners in 2005 not to bestow ownership interests in "stockholders"; but to raise working capital as it transitioned from a For-profit to a Cooperative Non-profit Corporation. I was told that each Lot Owner was encouraged to buy 50 shares. This fundraising was akin to a Community Hospital Association selling "bricks" to local residents and businesses to raise money to build that first hospital or addition. 12,500 shares were authorized in 2005 with approximately 7,600 "sold" through 2019.

Prior to 2018 a lot owner only needed one share to participate equally in the governance of the SVDC. For perspective, out of SVDC's 235 shareholders; only 8 shareholders owned more than 100 shares; 135 owned 10 shares or less; over 100 owned 5 shares or less.

Under State and Federal law the SVDC is an independent legal entity, that looks to its members (the owners of a lot(s)) to elect a Board of Directors to manage the operations on a day to day basis. As a Federal (IRS) 501(C)7 Non-profit corporation the SVDC is recognized as a "Recreational or Social Club" in the same business category as a Country Club or Private Golf Community. The difference being; we are organized around a man-made lake and water sports instead of golf and a golf Course. As a Pennsylvania "Non-profit Cooperative Corporation"; the SVDC is akin to the Somerset Rural Electric Co-op that the north shore lots on the lake get their power from. As a member of the SRE Co-op

because I have an SRE electric meter, I have one vote in electing its Board of Directors. As the owner of a lot on Lake Stonycreek, I have one vote (for each empty seat) in electing the SVDC's Board of Directors.

In Conclusion:

Looking back, I'm proud of the work the Board has accomplished over the past four plus years, despite the time and demands we needed to spend to respond to this lawsuit.

In 2020, Revised Bylaws were adopted by Lot Owners; by a vote margin of almost 6 to 1. We finally got the dam valve fixed, and the weeds under control; initiated water quality monitoring, and resumed fish stocking. Additionally, with the State's assistance we reduced silt infusion from the Sportsmen Club and we are well underway toward completing a major silt abatement project at Boone Run and "the fingers". Additionally, we've had greater Lot Owner participation via public and Zoom meetings and an expanded and updated Community Website.

Personally, over the past four years, looking back, I have donated hundreds of hours in legal services to the SVDC. Not only in the normal course of Board business, but in drafting and shepherding the new Bylaws and assisting outside legal counsel in this protracted litigation process on issues alleged to have occurred before I was a Board member.

I hope this Update has been helpful in your understanding of the current status of the 2019 Lawsuit brought against the SVDC by Lot Owners Neel and Jenkins.

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April 17th, 2023