

NOTICE

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

St. Mark Lutheran Church, Shanksville, PA

6 PM, on Friday, October 1, 2021

and

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

Summary

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

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

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

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

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

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

Background

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

Mediation

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

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

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

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

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

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

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

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

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

Next Steps

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

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

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

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

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

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

Stonycreek Valley Development Corporation