

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

vs.

DANIEL DIVELY and THE
STONYCREEK VALLEY
DEVELOPMENT CORPORATION
Defendants.


) IN THE COURT OF COMMON PLEAS
) OF SOMERSET COUNTY,
) PENNSYLVANIA

) NO. 275 CIVIL 2019
)
)
)
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)
)
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)

**DEFENDANT DANIEL DIVELY'S EXHIBITS TO MOTION FOR
SUMMARY JUDGMENT**

ALL EXHIBITS (A-L)

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Certified to be true and
correct copy of the original
Document on file in
this office.

Prothonotary

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.)

**RESPONSES TO
PLAINTIFFS' FIRST INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS TO DEFENDANT DANIEL DIVELY**

AND NOW, comes Defendant, Daniel Dively, by his attorney, David T. Leake, Esq., who sets forth the following Responses as follows:

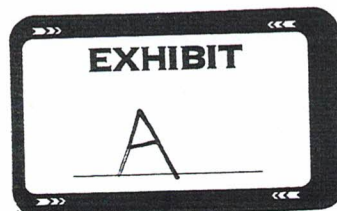
INTERROGATORIES

1. Identify Dively's current contact information, including home address and business address(es) for any entity in which Dively owns an interest or is otherwise affiliated.

ANSWER:

Daniel Dively's home address: 162 Sunset Road, Friedens, Pennsylvania 15541

The business address of Dirt Bottom Excavating, Inc., in which Mr. Dively is a partial owner, is located at the same address as above.



2. Identify all contracts and/or agreements, either written or oral, that Dively, Dirt Bottom, or any other entity owned or affiliated with Dively and/or Dirt Bottom, entered into with SVDC during the relevant time period. Included in your Answer, please identify the persons and/or entities involved in the transaction, the nature of Dively's and/or Dirt Bottom's interest in said entity, the goods and/or services provided, the date of agreement, the terms and conditions, and the purchase price and/or payment terms and whether payment was received.

ANSWER:

During the relevant time period, Mr. Dively conducted a substantial amount of work for SVDC on a donation basis. Much of said donated work was never confirmed in writing. The donated time and services Mr. Dively and Dirt Bottom Excavating, Inc. donated to SVDC which was kept of record is attached herewith as follows:

Exhibit A: An invoice dated 7/30/2018 in which Mr. Dively and Dirt Bottom Excavating, Inc. donated \$1,001.00 in time and materials to SVDC. The details of said services and materials is listed on said invoice attached herewith.

Exhibit B: An invoice dated 11/06/2018 in which Mr. Dively and Dirt Bottom Excavating, Inc. donated \$2,071.01 in time and materials to SVDC. The details of said services and materials is listed on said invoice attached herewith.

Exhibit C: An invoice dated 02/21/2019 in which Mr. Dively and Dirt Bottom Excavating, Inc. donated \$100.00 in time and materials to SVDC. The details of said services and materials is listed on said invoice attached herewith.

Exhibit D: An invoice dated 12/19/2019 in which Mr. Dively and Dirt Bottom Excavating, Inc. donated \$100.00 in time and materials to SVDC. The details of said services and materials is listed on said invoice attached herewith.

The only invoice in which Mr. Dively or Dirt Bottom Excavating, Inc. has in its possession regarding services and time provided to SVDC for consideration is attached herewith as Exhibit E. Exhibit E is an invoice dated 04/26/2017 describing the removal of three stumps and one telephone pole conducted by Dirt Bottom Excavating, Inc. for SVDC which was paid by SVDC in full on 04/28/2017 in the amount of \$2,300.00.

As to the identity of the persons involved in the transactions in regard to Exhibits A – E, Mr. Dively cannot recall the exact persons and/or the exact particulars of each transaction. Mr. Dively further does not have any written records of said transactions outside Exhibits A – E and the meeting minutes of SVDC during the relevant time period. Said meeting minutes during the relevant time period are attached herewith as Exhibit F. As the meeting minutes illustrate, any time that Mr. Dively or Dirt Bottom Excavating, Inc. were involved in a transaction with SVDC Mr. Dively would abstain from voting. Further, from Mr. Dively's recollection, generally when Mr. Dively or Dirt Bottom Excavating, Inc. would conduct services for SVDC a board member or the acting president Larry Rosage would present at a board meeting the services that needed rendered. There would be an open discussing during the board meeting of SVDC regarding the services that SVDC needed, and Mr. Dively's response as to whether he would be able to provide said services. From his recollection thereafter would be a vote in which he would abstain, which would determine whether Mr. Dively or Dirt Bottom Excavating, Inc. would provide said services. However, this is only a general recollection of Mr. Dively's and all written records of any transactions in Mr. Dively's possession have been provided via Exhibits A – E. Aside from the donation work of Mr. Dively to SVDC any services or materials provided by Mr. Dively or Dirt Bottom Excavating, Inc. to SVDC during the relevant time period was for far under fair market value.

3. Identify all contracts and/or agreements, either written or oral, that Dively, Dirt Bottom, or any other entity owned or affiliated with Dively or Dirt Bottom, entered into with members of the Shanksville, Lake Stonycreek, and/or SVDC communities during the relevant time period. Included in your Answer, please identify the persons and/or entities involved in the transaction, the nature of Dively's and/or Dirt Bottom's interest in said entity, the goods and/or services provided, the date of agreement, the terms and conditions, and the purchase price and/or payment terms and whether payment was received.

ANSWER:

See answer to Interrogatory No. 2 for services rendered by Mr. Dively to SVDC during the relevant time period. Any further information requested by this paragraph is objected to as overly broad and goes beyond the request for information sought that could reasonably be construed as calculated to lead to the discovery of admissible evidence. Said objection is made pursuant to Rule of Civil Procedure 4003.1.

4. Identify all contracts and/or agreements, either written or oral, that Dively, Dirt Bottom, or any other entity owned or affiliated with Dively or Dirt Bottom, reasonably expected to enter into during the relevant time period, as alleged in Paragraph 224 of your Amended Answer. Included in your Answer, please identify the entity and/or entities involved in the prospective transactions, the nature of Dively's and/or Dirt Bottom's interest in any such entity, the goods and/or services involved in any such prospective transaction, the terms and conditions of the prospective transaction, and the agreed upon purchase price and/or payment terms.

ANSWER:

See answers to Interrogatories Nos. 2 and 3.

5. Identify all bids for goods and/or services that Dively, Dirt Bottom, or any entity owned or affiliated with Dively and/or Dirt Bottom submitted to SVDC during the relevant time period. Included in your Answer, please identify the persons and/or entities submitting the bid, the nature of the goods and/or services offered, the terms and conditions of the bid, and the estimated price and/or payment terms of the offered goods and/or services.

ANSWER:

See answers to Interrogatories Nos. 2 and 3.

6. Identify all SVDC matters that you have voted on during the relevant time period. Included in your Answer, please identify the matter voted upon and your vote.

ANSWER:

Please see Exhibit F which contains the SVDC Board Meeting minutes for the relevant time period which contains a summary of every vote that took place during the relevant time period. Said exhibit further contains every vote that Mr. Dively participated in during the relevant time period.

7. Describe in detail the basis for your allegation that "Plaintiffs, had full knowledge of" your "contracts or agreements with certain individuals to perform services in the Shanksville and Lake Stonycreek or SVDC communities," and your "reasonable expectations to acquire future contracts with additional individuals," as alleged in Paragraphs 225 and 226 of your Amended Answer. Included in your Answer, please identify the contracts or agreements to which Plaintiffs purportedly had knowledge, the individuals with whom Dively had, or reasonably expected to have, contracts or agreements, and the purported services performed or to be performed.

ANSWER:

Mr. Dively is unable to give specifics as to the information requested in Interrogatory No.

7. Mr. Dively asserts that he had contracts and reasonable expectations of future contracts, which were adversely affected by statements made by the Plaintiffs and by the filing of the current suit by the Plaintiffs.

8. Described in detail the basis for your allegation that "Plaintiffs, intentionally induced certain individuals to breach their contracts or oral agreements with [Dively], and/or to refuse to enter future contracts with [Dively]," as alleged in Paragraph 227 of your Amended Answer. Included in your Answer, please identify the contracts or agreements to which Plaintiffs purportedly interfered, the persons involved in said contracts or agreements, and the price and/or payments terms of said contracts or agreements.

ANSWER:

Mr. Dively asserts that several plaintiffs had contact with individuals in which Mr. Dively or Dirt Bottom Excavating, Inc. either had an existing contract with or had a reasonable expectation of entering a contract with. Mr. Dively further asserts that adverse statements made by said plaintiffs and the filing of this suit affected either a current contract or a potential future contract negatively.

Mr. Dively intends to depose the Plaintiffs in this matter in order to obtain further information about these occurrences.

9. Identify all legal actions taken and/or legal proceedings that you initiated during the relevant time period referencing or related to any contract or agreement identified in response to Interrogatory 8, including, but not limited to, the action taken, the caption of any such legal proceeding, the docket number of any such legal proceeding, and the current status of any such legal proceeding.

ANSWER:

Mr. Dively did not initiate any legal actions or proceedings during the relevant time period.

10. Identify all witnesses that you expect to call at trial in this action.

ANSWER:

Mr. Dively does not currently have an exhaustive witness list as discovery is not complete and he has not deposed the plaintiffs yet. However, Mr. Dively would intend on calling at trial any person that was on the Board of Directors of SVDC during the relevant time period. The identities of said individuals are included in Exhibit F. Without further discovery including depositions of plaintiffs, Mr. Dively is unable to provide any witnesses past said board members. However, Mr. Dively will supplement this interrogatory as discovery progresses and further witnesses are identified.

11. Identify all exhibits that you expect to introduce at trial in this action.

ANSWER:

Mr. Dively intends to introduce at a minimum Exhibits A – F attached herewith. Mr. Dively further intends to offer Amended Answer Defendant's Exhibits A – C which are attached herewith. Said exhibits are fully described in Defendant's Amended Answer. However, Mr. Dively is not in

a position to provide an exhaustive list of exhibits to be offered at trial, as discovery is not yet complete. Mr. Dively will continue to supplement this paragraph as discovery progresses.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please produce any documents, communications, and any other materials in your possession, custody, or control referencing or related to the Plaintiffs, individually or collectively, during the relevant time period.

RESPONSE:

All documents requested by Request for Production of Document No. 1 in Mr. Dively's possession, are attached herewith as Exhibits A – F and Amended Answer Defendant's Exhibits A – C.

2. Please produce any documents, communications, and any other materials in your possession, custody, or control exchanged between or amongst Dively, and/or Dirt Bottom, and/or any other entity owned by or affiliated with Dively or Dirt Bottom, and SVDC during the relevant time period.

RESPONSE:

All documents requested by Request for Production of Document No. 1 in Mr. Dively's possession, are attached herewith as Exhibits A – F and Amended Answer Defendant's Exhibits A – C.

3. Please produce any documents, communications, and any other materials in your possession, custody, or control exchanged between or amongst Dively, and/or Dirt Bottom, and/or any other entity owned by or affiliated with Dively or Dirt Bottom, and the Board of Directors during the relevant time period.

RESPONSE:

All documents requested by Request for Production of Document No. 1 in Mr. Dively's possession, are attached herewith as Exhibits A – F and Amended Answer Defendant's Exhibits A – C.

4. Please produce any documents, communications, and any other materials in your possession, custody, or control referencing or related to conflicts of interest between you and SVDC.

RESPONSE:

Mr. Dively does not have any documentation relating to conflicts of interest between himself and SVDC. As Mr. Dively always abstained from voting from any matter that involved Dirt Bottom Excavating, Inc. and SVDC, for services for consideration, no conflict of interest ever arose, other than the conflict of interest that every board member has by owning property on Lake Stonycreek which is addressed in the by-laws. Mr. Dively further asserts that any services provided by Dirt Bottom Excavating, Inc., or himself, to SVDC during the relevant time period was for consideration below fair market value. The only documents that may be relevant to this Request for Production of Documents is Exhibit F, the Meeting Minutes, in which Mr. Dively abstained from voting as described above.

5. Please produce all contracts and/or agreements, written or oral, identified in response to the Interrogatories above.

RESPONSE:

All documents requested by Request for Production of Document No. 1 in Mr. Dively's possession, are attached herewith as Exhibits A – F and Amended Answer Defendant's Exhibits A – C.

6. Please produce any documents, communications, and any other materials in your possession, custody, or control referencing or related to contracts and/or agreements that you expected to enter into during the relevant time period.

RESPONSE:

Mr. Dively does not have any documents in his possession relevant to the Request for Production of Documents made in Request for Production of Documents No. 6.

7. Please produce any documents, communications, and any other materials in your possession, custody, or control referencing or related to bids submitted to SVDC on behalf of Dively, Dirt Bottom, and/or any other entity owned or affiliated with Dively or Dirt Bottom during the relevant time period.

RESPONSE:

See Exhibit E which contains information relating to work done by Mr. Dively and/or Dirt Bottom Excavating, Inc. for under fair market value during the relevant time period. Mr. Dively does not have any further documentation, other than the meeting minutes contained in Exhibit F, which would qualify under this Request for Production of Documents.

8. Please produce any documents, communications, and any other materials in your possession, custody, or control referencing or related to votes offered by Dively in SVDC matters during the relevant time period.

RESPONSE:

See Exhibit F which is the meeting minutes which is every board meeting that took place during the relevant time period.

9. Please produce all documents relied upon in answering the above Interrogatories.

RESPONSE:


All documents requested by Request for Production of Document No. 1 in Mr. Dively's possession, are attached herewith as Exhibits A – F and Amended Answer Defendant's Exhibits A – C.

10. Please produce all exhibits that you intend to introduce at trial in this action.

RESPONSE:

Mr. Dively intends to introduce at a minimum Exhibits A – F attached herewith. Mr. Dively further intends to offer Amended Answer Defendant's Exhibits A – C which are attached herewith. Said exhibits are fully described in Defendant's Amended Answer. However, Mr. Dively is not in a position to provide an exhaustive list of exhibits to be offered at trial, as discovery is not yet complete. Mr. Dively will continue to supplement this paragraph as discovery progresses.

Respectfully submitted.




David T. Leake, Esq.
Attorney for Defendant
130 West Main Street
Somerset, PA 15501
(814) 445-6946
Supreme Court I.D. # 319455

**Verification Pursuant to
42 Pa. C.S.A. §102 and Pa. R.Civ.P. 76**

I, the undersigned, do hereby state that I, Daniel Dively, am one of the Defendants in the foregoing cause of action. I verify that the statements contained in the foregoing Response to Plaintiffs' First Interrogatories and Requests for Production of Documents to Defendant Daniel Dively 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.

10/15/20
Date



DANIEL DIVELY

HARRY C. NEEL, MICHAEL) IN THE COURT OF COMMON PLEAS OF
 JENKINS, and LEE CAVANAUGH) SOMERSET COUNTY, PENNSYLVANIA
 Individually and Derivatively on)
 Behalf of THE STONYCREEK)
 VALLEY DEVELOPMENT) No. 275 CIVIL 2019
 CORPORATION.)
 Plaintiffs,)
 vs.)
 DANIEL DIVELY, and THE)
 STONYCREEK VALLEY)
 DEVELOPMENT CORPORATION.)
 Defendants.)

CERTIFICATE OF SERVICE


I do hereby certify that I have this date served certified copies of the foregoing Response to Plaintiffs' First Interrogatories and Requests for Production of Documents to Defendant Daniel Dively upon the following individuals, by regular first class United States mail, postage prepaid, at the following addresses:

Metz Lewis Brodman Must O'Keefe LLC
 ATT: Brian T. Must Esq., John Paul Regan Esq.
 535 Smithfield Street, Suite 800
 Pittsburgh, PA 15222

Bethann R. Lloyd, Esq.
 Law & Finance Building
 429 Fourth Avenue, Suite 602
 Pittsburgh, PA 15219

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

10/23/20
 Date



 David T. Leake, Esq.
 Attorney for Defendant
 130 West Main Street
 Somerset, PA 15501
 (814) 445-6946
 Supreme Court I.D. # 319455

Invoice

Dirt Bottom Excavating INC.

162 Sunset RD
Friedens, PA 15541
(814) 483-6275

dirtbottomexcavating@yahoo.com

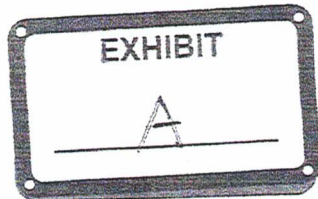


Date	Invoice #
7/30/2018	401

Bill To
Stonycreek Vally Development Corp. P.O.Box 237 Shanksville,PA.15560

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
2	Mob & Demob per piece of large equipment. 85 and skid loader	100.00	200.00
2	SK 85 Excavator 18K LB. with Tilt Rotator	120.00	240.00
1	Large Track Skid Loader per. hr.	85.00	85.00
1	Large Track Skid Loader with Roller per. hr.	100.00	100.00
2	Labor per hr.	40.00	80.00
1	Utility Truck per. hr.	70.00	70.00
	repair road and berm as per Musser Engineering dam inspection report.	226.00	226.00
	Materials 2RC modified	-1,001.00	-1,001.00
	Donation		



Make checks payable to Dirt Bottom Excavating INC
Thank you for your business!

Total \$0.00

Invoice

Dirt Bottom Excavating INC.

162 Sunset RD
Friedens, PA 15541
(814) 483-6275

dirtbottomexcavating@yahoo.com

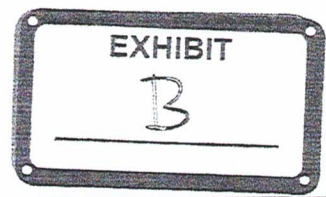


Date	Invoice #
11/6/2018	448

Bill To
Stonycreek Vally Development Corp. P.O.Box 237 Shanksville, PA. 15560

P.O. No.	Terms	Project
		Valve Box Repair

Quantity	Description	Rate	Amount
	Remove Box Off Of Valve 10/28/2018		
2	Utility Truck per. hr.	70.00	140.00
6.5	Labor per hr.	40.00	260.00
	Dismantle Box & Degrease 10/29/2018		
	Shop supplies	113.23	113.23
2	Shop Rate	80.00	160.00
1	Utility Truck per. hr. (Take Box to SMS)	70.00	70.00
	Reassemble & Reinstall Valve 10/31/2018		
3	Utility Truck per. hr.	70.00	210.00
9	Labor per hr.	40.00	360.00
2	Shop Rate	80.00	160.00
	Materials: New bolts, nuts, washers, and loctite	97.78	97.78
	Materials: SMS (New Gear)	500.00	500.00
	donation	-2.071.01	-2.071.01



Make checks payable to Dirt Bottom Excavating INC
Thank you for your business!

Total \$0.00

Invoice

Dirt Bottom Excavating INC.

162 Sunset RD
Friedens, PA 15541
(814) 483-6275

dirbottomexcavating@yahoo.com

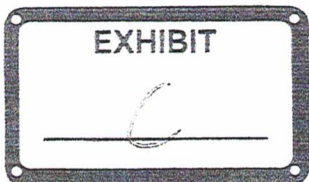


Date	Invoice #
2/21/2019	480

Bill To
Stonycreek Vally Development Corp. P.O.Box 237 Shanksville.PA.15560

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
1	Plowed, salt and anti-skid church parking lot for the February Meeting	100.00	100.00
1	Donation from Dirt Bottom Excavating Inc.	-100.00	-100.00



Make checks payable to Dirt Bottom Excavating INC Thank you for your business!	Total	\$0.00
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Invoice

Dirt Bottom Excavating INC.

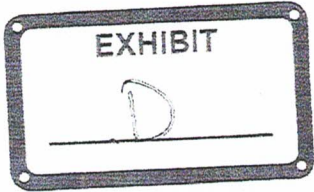
162 Sunset RD
 Friedens, PA 15541
 (814) 483-6275
 dirtbottomexcavating@yahoo.com



Date	Invoice #
12/19/2019	592

Bill To
Stonycreek Vally Development Corp. P.O.Box 237 Shanksville, PA. 15560

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Plow, salt, and anti-skid for December 2019 Meeting	100.00	100.00
	Donation from Dirt Bottom Excavating Inc	-100.00	-100.00
			

Make checks payable to Dirt Bottom Excavating INC
 Thank you for your business!

Total

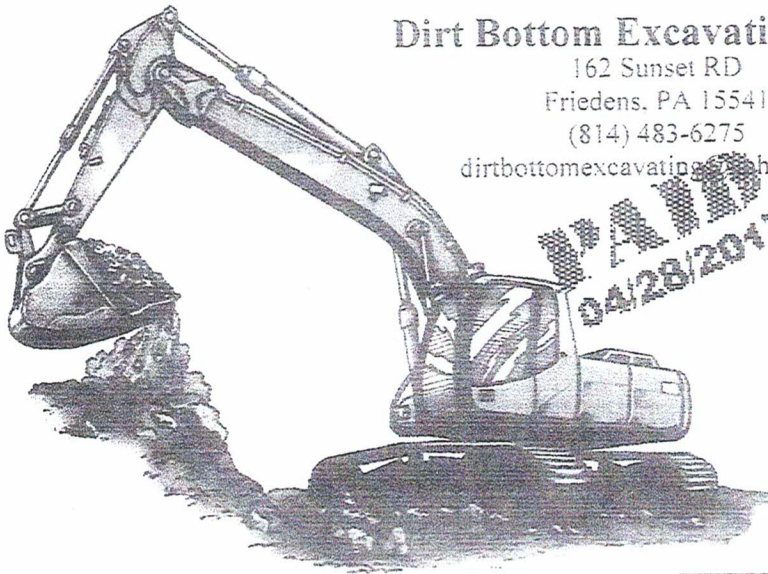
50.00

Invoice

Dirt Bottom Excavating INC.

162 Sunset RD
 Friedens, PA 15541
 (814) 483-6275

dirtbottomexcavating@yahoo.com

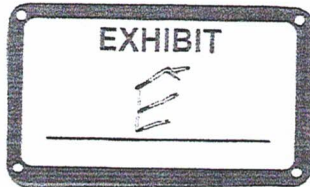


Date	Invoice #
4/26/2017	224

Bill To
Stonycreek Vally Development Corp. P.O.Box 237 Shanksville, PA. 15560

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Removal of 3 stumps and 1 telephone pole	2,300.00	2,300.00



Make checks payable to Dirt Bottom Excavating INC Thank you for your business!	Total	\$2,300.00
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WYECREEK VALLEY DEVELOPMENT CORPORATION

BOARD OF DIRECTORS MEETING

DATE: MAY 18, 2017

Directors in attendance: Larry Rosage, Dan Dively, Marcia Rogish, Jack Hershberger, Billy Blackburn, Kathe Kane,

Lee Cavanaugh, John Weir, Geoff Leah, Jim Dunn, Jim Bandstra.

Directors absent: Anne Devore, the Tweardy's.

The meeting was called to order at 6:00 p.m. By President Larry Rosage.

Additions to the agenda were Mary Woy property question--later tabled, and Brooke Walker concerning a boat permit.

A motion to accept the the minutes from the April 20th meeting was made by Marcia Rogish, seconded by Billy

Blackburn. Minutes were approved as presented.

Lee Cavanaugh presented a financial report. Kathe Kane moved to accept the report, Dan Dively seconded. Motion

was approved.

We reviewed the agenda for the Annual Shareholders Meeting to be held May 26, 2017.

We agreed upon the following as areas of responsibility in presenting information at that Meeting.

