

	)	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	)	CIVIL ACTION- LAW
Valley Development Corporation,	)	
	)	NO. 275 Civil 2019
Plaintiffs	)	
	)	
v.	)	
	)	
Daniel Dively, and The Stonycreek Valley	)	TYPE OF PLEADING:
Development Corporation,	)	<b>ANSWER AND NEW MATTER</b>
Defendants	)	
	)	FILED ON BEHALF OF
	)	DEFENDANT,
	)	STONYCREEK VALLEY
	)	DEVELOPMENT
	)	CORPORATION
	)	
	)	Fike, Cascio & Boose
	)	James R. Cascio, Esq.
	)	PA ID#21179
	)	Lois Witt Caton, Esq.
	)	PA ID#66061
	)	124 North Center Avenue
	)	Somerset, PA 15501

**STONYCREEK VALLEY DEVELOPMENT CORPORATION’S ANSWER AND  
NEW MATTER TO AMENDED COMPLAINT**

James R. Cascio, Esq., and Fike, Cascio & Boose appear on behalf of the Stonycreek Valley Development Corporation (“SVDC”), and file the following Answer and New Matter to the Amended Complaint. Unless otherwise noted, capitalized terms shall have the meanings assigned in the Amended Complaint.

**ANSWER**

1. Admitted in part. As of the date of this pleading, Neel is the registered owner of 1 share in SVDC, having availed himself of SVDC’s offer to redeem shares.

2. Admitted in part. As of the date of this pleading, Jenkins is the registered owner of 20 shares in SVDC, having availed himself of SVDC’s offer to redeem shares.

3. Admitted in part. As of the date of this pleading, Cavanaugh is the registered owner of 1 share in SVDC, having availed himself of SVDC's offer to redeem shares.

4. No answer is required to paragraph 4 of the Complaint.

5. It is admitted that Dively has served as a director of SVDC since 2015.

6. It is admitted that SVDC is a Pennsylvania Non-Profit Corporation and that it is identified on the records of the Pennsylvania Secretary of State Corporation Bureau as a "cooperative" corporation. However, the registered office of and principal place of business is listed as 514 Lake Shore Road, Friedens, PA 15541 on that record.

7. Admitted as to SVDC.

8. Admitted as to SVDC.

9. Admitted as to SVDC.

10. It is averred that Lake Stonycreek is located in Stonycreek Township, Somerset County, PA and that there are residences constructed on the lakefront. SVDC is not able to determine the meaning of "long-term residences" and to the extent that categorization of any residence or structure is material to the Plaintiffs' claims, it is denied.

11. It is admitted that SVDC was formed in 1959 as a for profit corporation. SVDC is without sufficient knowledge or information to form a belief as to the truth of any other matter asserted and the averment is otherwise specifically denied. In addition, the averments state conclusions and no response is required.

12. SVDC is without sufficient knowledge or information to form a belief as to the truth of the matter asserted and the averment is specifically denied in its entirety.

13. Because of the character of the real estate adjoining Lake Stonycreek, it is averred that the existence, access to, proper maintenance of, and prudent operation of Lake Stonycreek combine to enhance the value of all of the properties that form a part of the Lake Stony Creek Development. Paragraph 13 of the Complaint does not contain any averments of fact, and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

14. Because of the character of the real estate, it is averred that the existence, access to, proper maintenance of, and prudent operation of Lake Stonycreek combine to enhance the value of all of the properties that form a part of the Lake Stony Creek Development. Paragraph 14 does not contain any averments of fact, and otherwise states conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

15. Paragraph 15 of the Complaint does not contain any averments of fact, and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

16. Paragraph 16 of the Complaint does not contain any averments of fact, and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

17. It is admitted that the Plaintiffs have commenced the present action and purport to assert a derivative cause of action against Dively and SVDC. No other entities are named in the action as Defendants and any interpretation of the provisions of this averment in the Complaint to impose liability on any other party is denied. It is further denied that the Plaintiffs have asserted a derivative action against SVDC.

18. Denied. As established in paragraphs 1-3, the Plaintiffs are shareholders in the corporation.

19. SVDC acknowledges receipt of the correspondence referred to in Paragraph 19. To the extent Paragraph 19 and Exhibit "A" contain averments of any other facts, those averments are specifically denied.

20. It is denied that the Board of Directors voted to ignore the Plaintiffs' Complaints. To the contrary, the Board of Directors determined that the complaints lacked merit.

21. SVDC acknowledges receipt of the correspondence referred to in Paragraph 21. To the extent Paragraph 21 and Exhibit "B" contain averments of any other facts, those averments are specifically denied.

22. SVDC acknowledges receipt of the correspondence referred to in Paragraph 22. To the extent Paragraph 22 and the Demand Letter contain averments of any other facts, those averments are specifically denied.

23. SVDC acknowledges receipt of the correspondence referred to in Paragraph 23. To the extent Paragraph 23 or the correspondence contain averments of any other facts, those averments are specifically denied.

24. It is denied that the Board of Directors voted to ignore the Plaintiffs' Demand Letter. To the contrary, the Board of Directors determined that there was no need for action on the Plaintiffs Demand Letter.

25. The Board of Directors, through counsel, offered to Plaintiffs' counsel to form a Special Litigation Committee on October 9, 2019, but that proposal was not accepted.

26. SVDC denies that any of its rights have been affected and asserts that all of the claims of the Plaintiffs, while unfounded, are direct claims, and not derivative. The averments of Paragraph 26 are denied.

27. Admitted.

28. SVDC is without sufficient knowledge or information to form a belief as to the truth of the matter asserted and the averment is specifically denied in its entirety.

29. SVDC is without sufficient knowledge or information to form a belief as to the truth of the matter asserted and the averment is specifically denied in its entirety.

30. SVDC is without sufficient knowledge or information to form a belief as to the truth of the matter asserted and the averment is specifically denied in its entirety.

31. SVDC is without sufficient knowledge or information to form a belief as to the truth of the matter asserted and the averment is specifically denied in its entirety.

32. SVDC is without sufficient knowledge or information to form a belief as to the truth of the matter asserted and the averment is specifically denied in its entirety.

33. SVDC is without sufficient knowledge or information to form a belief as to the truth of the matter asserted and the averment is specifically denied in its entirety.

34. Paragraph 34 of the Complaint does not contain any averments of fact, and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

35. Paragraph 35 of the Complaint does not contain any averments of fact, and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

36. SVDC is without sufficient knowledge or information to form a belief as to the truth of the matter asserted and the averment is specifically denied in its entirety. Further it is specifically denied that SVDC acted improperly in any respect, and that SVDC condoned, supported, or assisted Dively in any alleged improper activities. To the contrary, it is averred that SVDC acted properly in all respects.

37. Paragraph 37 of the Complaint does not contain any averments of specific facts, and to the extent the Court deems an answer is required, the averments are denied. Further it is specifically denied that SVDC acted improperly in any respect, and that SVDC condoned, supported, or assisted Dively in any alleged improper activities. To the contrary, it is averred that SVDC acted properly in all respects.

38. Denied as stated. To the contrary, the Board's policy requires the solicitation of 3 bids when the Board reasonably expects a specific expenditure to exceed \$5,000.00.

39. Paragraph 39 of the Complaint does not contain any averments of facts, and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

40. Paragraph 40 of the Complaint does not contain any averments of facts, and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied. Further it is specifically denied that SVDC acted improperly in any respect, and that SVDC condoned, supported, or assisted Dively in any alleged improper activities. To the contrary, it is averred that SVDC acted properly in all respects.

41. SVDC is without sufficient knowledge or information to form a belief as to the truth of the matter asserted and the averment is specifically denied in its entirety. Paragraph 41 of the Complaint does not contain any averments of facts, and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

42. Paragraph 42 of the Complaint does not contain any averments of facts, and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied. . Further it is specifically denied that SVDC acted improperly in any respect, and that SVDC condoned, supported, or assisted Dively in any alleged improper activities. To the contrary, it is averred that SVDC acted properly in all respects.

43. Paragraph 43 of the of the Complaint does not contain any averments of facts, and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied. . Further it is specifically denied that SVDC acted improperly in any respect, and that SVDC condoned, supported, or assisted Dively in any alleged improper activities. To the contrary, it is averred that SVDC acted properly in all respects.

44. Paragraph 44 of the Complaint does not contain any averments of specific facts, and to the extent the Court deems an answer is required, the averments are denied. . Further it is specifically denied that SVDC acted improperly in any respect, and that SVDC condoned, supported, or assisted Dively in any alleged improper activities. To the contrary, it is averred that SVDC acted properly in all respects.

45. Paragraph 45 of the Complaint does not contain any averments of specific facts, and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

46. Paragraph 46 of the Complaint does not contain any averments of specific facts, and to the extent the Court deems an answer is required, the averments are denied. SVDC maintains records in compliance with all applicable laws.

47. It is admitted that Exhibit C is a true and correct copy of the By-Laws in effect as of the date the Complaint in this action was filed. All other averments are conclusions of law and, to the extent a response is required, they are denied.

48. It is denied that the Board of Directors refused to honor written demands or to provide requested information. To the contrary, the Board of Directors provided relevant information.

49. It is denied that the Board of Directors responded to written demands with incomplete or outdated information. To the contrary, the Board of Directors provided the most recent information available.

50. It is denied that the Board of Directors refused to comply with the NCL and Bylaws and forced Jenkins to hire an attorney. To the contrary, the Board of Directors provided the requested information.

51. It is denied that the list of shareholders provided was outdated and incomplete. To the contrary the information provided was the most recent information available.

52. It is denied that Cavanaugh and Jenkins made two requests to audit the ballot and and review the paper ballot and paper proxy votes following the Board of Directors elections in 2018.

53. SVDC is without sufficient knowledge or information to form a belief as to the truth of the matter asserted and the averment is specifically denied in its entirety.

54. The averment of Paragraph 54 states a conclusion of law and no response is required. If one is required, the averment is denied.

55. The averment of Paragraph 55 states a conclusion of law and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

56. The averment of Paragraph 56 states a conclusion of law, and no response is required. If response were to be required, the paragraph's averments are specifically denied. It is specifically denied that SVDC concealed the details of its business transactions from the Shareholders and other shareholders of the corporation.

57. The averment of Paragraph 57 states a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied. It is specifically denied that refused to honor any written demands for inspections or information or acted improperly.

58. The averment of Paragraph 58 states a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied. . Further it is specifically denied that SVDC acted improperly in any respect, and that SVDC condoned, supported, or assisted Dively in any alleged improper activities. To the contrary, it is averred that SVDC acted properly in all respects.

59. SVDC was formed as a for profit Pennsylvania corporation and existed in that form until 2005 when it was converted to a non-profit corporation organized on a stock share basis. Voting rules are governed by the Bylaws of the Corporation. All other averments of Paragraph 59 are denied.

60. By reference to the records of the Pennsylvania Corporations Bureau, SVDC was formed as a for profit Pennsylvania corporation and existed in that fashion until 2005 when it was converted to a non-profit corporation organized on a stock share basis. Voting rules were governed by the Bylaws of the Corporation. All contrary averments of Paragraph 60 are denied.

61. The averments of Paragraph 61 are denied to the extent they conflict with the Articles, Bylaws and records of the corporation.

62. The averments of Paragraph 62 are denied to the extent they conflict with the Articles, Bylaws and records of the corporation.

63. The averments of Paragraph 63 are denied to the extent they conflict with the Articles, Bylaws and records of the corporation.

64. The averment of Paragraph 64 states a conclusion of law and no response is required. If one is required, the averment is denied.

65. The averment of Paragraph 65 states a conclusion of law and no response is required. If one is required, the averment is denied. Further, to the extent that the averment of Paragraph 65 asserts that the Musser proxy was held by the Board of Directors, that averment is denied.

66. It is admitted that all the votes of all shareholders holding multiple shares were governed by cumulative voting rules.

67. It is admitted that, at the time of the time of the board meeting in question, Jenkins owned 450 SVDC shares. All other averments in paragraph 67 are denied.

68. It is denied that the Musser proxy was held by the Board of Directors. To the contrary the Musser proxy was held by the individuals named in the proxy document.

69. The averment of Paragraph 69 states a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

70. The averment of Paragraph 70 states a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

71. It is admitted that Exhibit D is a proposed amendment to SVDC's Bylaws that is dated February 4, 2019. The document speaks for itself and therefore no further answer is required.

72. It is admitted that Exhibit D contains editing markings indicating inserted and deleted text. It is denied that Exhibit D contains all of the provisions of the sections of the Bylaws in effect as of February 4, 2019.

73. It is admitted that the shares were available to purchase prior to March 2019, at \$10.00 per share.

74. It is admitted that Neel inquired about purchasing additional shares shortly before the March 16, 2019 Shareholder's meeting.

75. It is admitted that Mr. Rosage informed Neel that shares would not be sold to him on March 16, 2019.

76. It is admitted that Mr. Rosage informed Neel that the moratorium on the transfer of shares was adopted at a Board Meeting. By way of further answer, the Board Meeting at which the moratorium on the sale of shares was approved was held on January 30, 2019.

77. SVDC is without sufficient knowledge or information to form a belief as to the truth of the matter asserted and the averment is specifically denied in its entirety.

78. SVDC is without sufficient knowledge or information to form a belief as to the truth of the matter asserted and the averment is specifically denied in its entirety.

79. For reasons set forth in the New Matter, the averment is denied. Further, the averment of Paragraph 79 states a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

80. The averments of Paragraph 80 are not a correct interpretation of the provisions of Article VIII, Paragraph 4 of the By-Laws and are specifically denied.

81. The averments of Paragraph 81 are not a correct interpretation of the provisions of Article VII, Paragraph 4 of the By-Laws and are specifically denied.

82. It is admitted that a Special Meeting was scheduled for April 27, 2019. The rest of the averments of Paragraph 82 are denied.

83. Admitted.

84. The averment of Paragraph 84 states a conclusion of law and no response is required. If one is required, the averment is denied.

85. It is denied that the Board of Directors failed to comply with the Bylaws of the Corporation. To the contrary all required notices were given. The April 27, 2019 meeting was well attended.

86. The averment of Paragraph 86 states a conclusion of law and no response is required. If one is required, the averment is denied.

87. It is admitted that a Special Meeting of the Shareholders was held on April 27, 2019. The averment of Paragraph 87 states a conclusion of law and no response is required. If one is required, the averment is denied.

88. It is admitted that the Proposed Amendment was not passed by the voting members on April 27, 2019.

89. It is admitted that, following the announcement of the vote to deny the proposed amendment, an attendee at the April 27, 2019 meeting proposed modifications to the proposed amendment for the Board's consideration prior to the May annual meeting.

90. It is admitted that the proposal for consideration at the April 27, 2019 Shareholders meeting contained a change to voting based upon indicia of SVDC lot ownership and not shares. The proposal further did not authorize the redemption of outstanding shares of stock in SVDC.

91. To the extent paragraph 91 refers to the proposed modification to the Proposed Amendment that was discussed following the defeat of the Proposed Amendment, it is denied that



the proposed modification was a motion so there was no requirement for the proposal to be seconded or voted upon. It is further averred to the contrary that not vote by the Board could be taken at a Special Members Meeting.

92. It is denied that the SVDC did not provide notice of the Proposed Amendment prior to the April 27, 2019 meeting. To the contrary, the Board provided notice prior to the meeting. The Proposed Amendment did not pass.

93. To the extent paragraph 93 refers to the proposed modification to the Proposed Amendment that was discussed following the defeat of the Proposed Amendment at the April 27, 2019 meeting, it is denied. To the contrary, the Board of Directors could not have given notice prior to the April 27, 2019 meeting since the proposed modification was not offered until that meeting. Further, the Board of Directors did give notice of the proposed modification to the parties entitled thereto prior to the annual meeting in May.

94. The proposed modification was suggested at the April 27, 2019 meeting and later acted upon by the Board of Directors prior to the Annual Meeting.

95. The Bylaws of SVDC in effect at the time of the April 27, 2019 meeting speak for themselves and therefore no further answer is required. Paragraph 95 does not contain any averments of fact, and otherwise states conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

96. The Bylaws of SVDC in effect at the time of the April 27, 2019 meeting speak for themselves and therefore no further answer is required. . Paragraph 96 does not contain any averments of fact, and otherwise states conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

97. The averment of Paragraph 97 states a conclusion of law and no response is required. If one is required, the averment is denied.

98. To the extent this averment describes the proposed modification to the Proposed Amendment suggested at the April 27, 2019 meeting, there was no requirement that it be presented in any written form.

99. It is admitted that a motion to amend the bylaws reflecting the proposed modification was included in the notice of the annual meeting to be held on the May 24, 2019 Annual Meeting of Shareholders in the form set forth in Exhibit "F."

100. Enclosure A speaks for itself and therefore no further answer is required. Paragraph 100 does not contain any averments of fact, and otherwise states conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

101. Admitted.

102. Enclosure A speaks for itself and therefore no further answer is required. Paragraph 102 does not contain any averments of fact, and otherwise states conclusions, and no

response is required. If response were to be required, the paragraph's averments are specifically denied.

103. The averment of Paragraph 103 states a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

104. The averment of Paragraph 104 states a conclusion of law and no response is required. If one is required, the averment is denied.

105. Admitted.

106. It is denied specifically that Enclosure A was approved in part by Mr. Musser's 1,400 votes. To the contrary, it is averred that the proposal was approved because a majority of the Shareholders voted in favor.

107. It is denied specifically that Mr. Musser was assured that his shares would be repurchased by the corporation. To the contrary, the proposal discussed at the April 27, 2019 meeting did not include a redemption of shares. The proposal presented in advance of the May 24, 2019 Annual Meeting included a procedure to redeem all shares, not just particular shareholders. In fact, the Plaintiffs took advantage of the same process following adoption of the Bylaw change and redeemed substantial portions of their shareholdings.

108. The May 24, 2019 meeting was conducted in accordance with the applicable ByLaws. Paragraph 108 does not contain any averments of fact, and otherwise states conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

109. To the extent the Plaintiffs assume that amendments to corporate bylaws must be filed with the Pennsylvania Department of State, the averments of paragraph 109 are denied.

110. Denied as stated. It is averred that the purpose of the amendment to the Bylaws was to change to voting based upon indicia of SVDC membership and not share and to compensate the shareholders for the value of their shares.

111. The responses to paragraphs 1 through 104 are incorporated by reference.

112. It is admitted that Dively has served as a director of SVDC since 2015. It is not admitted that Dively's term in office includes "all times relevant to this case."

113. It is admitted that other individuals have served as members of SVDC's board of directors since its formation in 1959. Further, the Defendant is without sufficient information regarding the truth or falsity of the averments and, therefore, cannot admit or deny the allegation.

114. The averments of Paragraph 114 state a conclusion of law and no response is required. Further, the Defendant is without sufficient information regarding the truth or falsity of the averments and, therefore, cannot admit or deny the allegation.

115. The averments of Paragraph 115 state a conclusion of law and no response is required.

116. It is denied that Dively received preferential business treatment from SVDC by virtue of his membership on the Board of Directors.

117. It is denied that Dively engaged in the activities or took the actions averred in Paragraph 117.

118. The averments of Paragraph 118 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

119. It is denied that unidentified other members of the board engaged in the activities or took the actions averred in Paragraph 119 and strict proof is demanded at the time of trial.

120. The averments of Paragraph 120 presume facts which are denied, state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

121. It is denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 121. It is further averred that the averments of Paragraph 121 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

122. It is denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 122. It is further averred that the averments of Paragraph 122 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

123. It is denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 123. It is further averred that the averments of Paragraph 123 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

124. It is averred that the averments of Paragraph 124 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

125. The averments of Paragraph 125 presume facts which are denied, state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

126. The responses to paragraphs 1 through 120 are incorporated by reference.

127. It is admitted that Dively has served as a director of SVDC. It is not admitted that Dively's term in office includes "all times relevant to this case."

128. It is admitted that others have served as a director of SVDC. It is not admitted that other directors' terms in office include "all times relevant to this case." Further, the Defendant is without sufficient information regarding the truth or falsity of the averments and, therefore, cannot admit or deny the allegation.

129. The averments of Paragraph 129 state a conclusion of law and no response is required. Further, the Defendant is without sufficient information regarding the truth or falsity of the averments and, therefore, cannot admit or deny the allegation

130. The averments of Paragraph 130 state a conclusion of law and no response is required.

131. It is denied that Dively received preferential business treatment from SVDC by virtue of his membership on the Board of Directors.

132. It is denied that Dively engaged in the activities or took the actions averred in Paragraph 132.

133. The averments of Paragraph 133 state a conclusion of law and no response is required.

134. It is denied that unidentified other members of the board engaged in the activities or took the actions averred in Paragraph 134.

135. The averments of Paragraph 135 presume facts which are denied, state a conclusion of law and no response is required. It is further averred that the averments of Paragraph 135 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

136. It is denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 136. It is further averred that the averments of Paragraph 136 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

137. It is denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 137. It is further averred that the averments of Paragraph 137 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

138. It is denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 138. It is further averred that the averments of Paragraph 138 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

139. It is averred that the averments of Paragraph 139 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

140. It is averred that the averments of Paragraph 140 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

141. The responses to paragraphs 1 through 135 are incorporated by reference.

142. Paragraph 142 of the Complaint does not contain any averments of specific facts, and otherwise state conclusions, and no response is required. If response were to be required, the paragraph's averments are specifically denied.

143. It is admitted that the Plaintiffs made numerous requests for records and information beginning in 2018.

144. The averments of Paragraph 144 state a conclusion of law and no response is required. Any averment that the Board of Directors did not provide responses and information

145. It is denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 145. It is further averred that the averments of Paragraph 138 state a conclusion of law and no response is required.

146. It is denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 146. It is further averred that the averments of Paragraph 146 state a conclusion of law and no response is required.

147. The averments of Paragraph 147 are not a correct interpretation of the provisions of the By-Laws and are specifically denied.

148. It is specifically denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 148. It is further averred that the averments of Paragraph 148 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

149. It is denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 149. It is further averred that the averments of Paragraph 149 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

150. It is denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 150. It is further averred that the averments of Paragraph 150 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

151. It is denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 151. It is further averred that the averments of Paragraph 151 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

152. To the extent the Plaintiffs assume that amendments to corporate bylaws must be filed with the Pennsylvania Department of State and the averments of paragraph 152 are denied.

153. It is denied that unidentified members of the board engaged in the activities or took the actions averred in Paragraph 153. It is further averred that the averments of Paragraph 153 state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

154. The averments of Paragraph 154 presume facts which are denied, state a conclusion of law and no response is required. If response were to be required, the paragraph's averments are specifically denied.

## **NEW MATTER**

### **AFFIRMATIVE DEFENSES**

#### **APPLICATION OF BUSINESS JUDGMENT RULE**

155. The Amended Complaint attempts to assert a derivative to enforce rights by or on behalf of SVDC challenging certain actions taken by the SVDC Board between 2018 and the annual meeting of Shareholders held on May 24, 2019.

156. The Amended Complaint challenges the SVDC Board business decisions, including allegedly

- a. not responding to the Plaintiffs' requests for corporate records and information,
- b. not proceeding with the Plaintiffs' derivative action,
- c. suspending sale of treasury and new issue shares of SVDC stock,
- d. entrenching the existing Board of Directors and Officers through proxies and cumulative voting of shares,
- e. thwarting the Plaintiffs from purchasing shares so they could be elected to the Board or otherwise direct the operation of SVDC.

157. SVDC was formed and owned by the original developer of the Lake Stonycreek residential development in 1959 as a Pennsylvania Business Corporation with capital stock.

158. Following its formation, SVDC acquired ownership of the tracts of land in Stonycreek Township, Somerset County, Pennsylvania eventually developed into the Lake Stonycreek, the dam and encroachment facilities, roads, infrastructure, facilities and other improvements associated with a single family residential community typical of developments in the mid 20<sup>th</sup> century in Western Pennsylvania.

159. The original developer retained ownership of the dam, its supporting structures, and the ground on which the lake was created by the impoundment of water, and sold lakefront and other lake access lots to individuals and families for residential and recreational purposes.

160. SVDC's original out sale deeds or other documentation in the buyers' chain of title associated with and initiated by original sales by the developer contained provisions for an annual front foot assessment by SVDC of \$1.00 to \$1.50 per linear foot to be used for lake and dam maintenance by SVDC.

161. After the developable lots were sold as single family home sites, SVDC retained ownership of the lake, the impoundments and other common facilities associated with the homes built on or near Lake Stonycreek on the properties originally owned, subdivided and sold by the developer, also the owner of all or substantially all, of the shares of SVDC.

162. As owner of Lake Stonycreek, SVDC controlled access to the Lake, subject to the general jurisdiction of the Commonwealth of Pennsylvania over the navigable waters of the Commonwealth of Pennsylvania.

163. Contrary to the Plaintiff's assertions in the Complaint, SVDC's role has not been the governance of the Lake Stonycreek community, but the governance of the access to, and operation and maintenance of the Lake and any other SVDC owned real estate.

164. For example, SVDC sets rules and regulations, license fees, size and power regulations for the access to, use of and enjoyment of boats on Lake Stonycreek.

165. Gradually, over the decades, shares and transfers of SVDC stock were made to individuals other than the original developer, including owners of the lots and improvements in the Lake Stonycreek Development.

166. Because of the critical importance of access to, and regulation and maintenance of Lake Stonycreek and its impoundment and support properties, owners of lots and structures have purchased SVDC shares to preserve the significant value of their improved properties surrounding Lake Stonycreek.

167. Ownership of SVDC stock was never restricted to owners of lots and structures in the development.

168. The value of properties in the development is inherently linked to access to, and maintenance of Lake Stonycreek in a useable condition, making SVDC's operations an integral part of the community.

169. Even though it wasn't created as part of the original property development, SVDC has, and continues to function and operate as a homeowner's association for decades.

170. SVDC's financial governance has developed into a process where the front foot assessment revenue, frozen in time at 1960 rates, is supplemented by license fee income from boat permits based on the size and power of the boats and special assessments of the lot owners.

171. SVDC's expenses generally are for vegetation control, shore maintenance, mechanical and structural maintenance and improvements of the dam and gateway, and general maintenance of the remaining land and access points.

172. Over the decades, when required, SVDC raised capital by selling SVDC shares.

173. Owners of SVDC shares have often been Lake Stonycreek property owners when they purchased shares.

174. The election of Board members and other corporate actions had all been done before 2005 under Articles of Incorporation of a for profit corporation and bylaws vesting voting rights in the shareholders and bylaw provisions permitting cumulative voting on all shareholder matters.

175. In 2005, facing a need to raise capital for dredging operations, coupled with an inability to qualify for local, state and federal grant funding, SVDC shareholders approved Articles of Conversion of SVDC as a Pennsylvania Non Profit Corporation.

176. The records of the Pennsylvania Secretary of State and the Articles of Conversion reflect SVDC's election to proceed under a stock share form of governance, rather than a member-based model.

177. Since the conversion in 2005, SVDC has functioned as a Non Profit Corporation with Shareholders.

178. Through SVDC's history and operations, the SVDC board, recognizing SVDC's purpose of maintaining and regulating access to Lake Stonycreek and that maintenance of the dam's structural and mechanical condition is critically integral to the market value of every property in the development, has functioned as a homeowners' association.

179. SVDC boat and dock regulations are designed, implemented and enforced to insure all property owners wishing to use Lake Stonycreek for recreational purposes have opportunities to do so.

180. Maintenance and security is provided to insure and harmonize all property owners' full use and enjoyment of the Lake facility that distinguishes their properties from a home in the woods.

181. Board policies, culture and governance are maintained to insure fiscal responsibility and solvency while assuring the full use and enjoyment of lake side ownership to Property Owners.

182. Board membership is voluntary and uncompensated.

183. SVDC's management "culture" has consistently been to exercise business judgment as if SVDC's constituency was the property owners in the Lake Stonycreek development, without regard to share ownership.



184. Both before and after the conversion to a non-profit corporation, SVDC's Board has acted, and continues to act to benefit the property owners in the development, regardless of share ownership.

185. Beginning in 2018, when the Plaintiffs acquired SVDC stock, engaged in information requests and sought seats on the SVDC Board, members of the Board became concerned that the Plaintiffs planned to purchase sufficient shares of SVDC stock to take over control of SVDC's activities.

186. Members of the Board realized that if persons who did not necessarily share the belief that SVDC's power to control access to the waters of Lake Stonycreek should be administered in a way to benefit all owners of land in the surrounding development, the value of their properties would be severely diminished.

187. Sharing the business judgment that retaining the stock basis of corporate management following the 2005 conversion to a non-profit corporation and election to maintain a share structure could subject SVDC to a "hostile takeover" of the Board by persons who may not share the goal of reasonably restricting access to Lake Stonycreek to the property owners, members of the Board took actions to amend the Bylaws and take all additional and necessary action to insure that the long-standing governing philosophy allowing access to Lake Stonycreek by the lot owners would be preserved.

**WHEREFORE**, SVDC respectfully requests that this Court examine the process and actions of the SVDC Board, follow the sensible policy of judicial non-interference in business decisions known as the Business Judgment Rule and find that in all matters complained of, the SVDC Board of Directors and Officers did not engage in self-dealing, acted within the scope of their authority, exercising reasonable diligence and on the honest belief that they were serving SVDC's best interests, and determine that the actions complained of in the Plaintiffs' Complaint be dismissed.

### **SECOND AFFIRMATIVE DEFENSE**

#### **(Unclean Hands)**

188. Plaintiffs' claims are barred by the doctrine of unclean hands.

### **THIRD AFFIRMATIVE DEFENSE**

#### **(Act 170, 15 Pa.C.S.A. §101-9507 - Corporations and Unincorporated Associations)**

189. Plaintiffs' claims are barred to the extent not authorized or in compliance with the laws of Pennsylvania as found at Act 170 of the Pennsylvania Legislature, Title 15 Pa.C.S.A. §101-9507.

#### **FOURTH AFFIRMATIVE DEFENSE**

##### **Waiver And Estoppel**

190. Plaintiffs, by taking advantage of the SVDC's offer to redeem shares, which was part of the amendment to the Bylaws, have waived any claims regarding the propriety, regularity, or enforceability of the amendments to the Bylaws of the Corporation occurring in 2019.

#### **FIFTH AFFIRMATIVE DEFENSE**

##### **Direct Action Only**

191. All harm or injury alleged by the Plaintiffs is in the nature of direct injuries or breaches by SVDC, and no derivative harm to SVDC is established.

#### **ADDITIONAL DEFENSES**

1. SVDC reserves the right to supplement and/or amend this answer, including the addition of further affirmative defenses, based upon the course of discovery and future proceedings in this action.

Respectfully submitted,  
FIKE, CASCIO & BOOSE

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James R. Cascio, Esq.  
PA Supreme Ct. ID# 21179

#### **VERIFICATION**

I verify that the statements made in this Answer and New Matter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

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Larry Rosage

	)	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	)	CIVIL ACTION- LAW
Valley Development Corporation,	)	
	)	NO. 275 Civil 2019
Plaintiffs	)	
v.	)	
	)	
	)	
Daniel Dively, and The Stonycreek Valley	)	TYPE OF PLEADING:
Development Corporation,	)	<b>ANSWER AND NEW MATTER</b>
Defendants	)	
	)	FILED ON BEHALF OF
	)	DEFENDANT,
	)	STONYCREEK VALLEY
	)	DEVELOPMENT
	)	CORPORATION
	)	

**CERTIFICATE OF COMPLIANCE**

I, JAMES R. CASCIO, ESQUIRE, Attorney for Defendant Stonycreek Valley Development Corporation in the above-captioned matter, certify this filing complies with 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.

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James R. Cascio, Esquire  
Supreme Court I.D. No. #21179

	)	IN THE COURT OF COMMON
	)	PLEAS
	)	OF SOMERSET COUNTY,
	)	PENNSYLVANIA
Harry C. Neel, Michael Jenkins,	)	
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Defendants	)	
	)	FILED ON BEHALF OF
	)	DEFENDANT,
	)	STONYCREEK VALLEY
	)	DEVELOPMENT CORPORATION
	)	

**CERTIFICATE OF SERVICE**

I certify that a copy of these Preliminary Objections has been served upon the following by United States Mail, with postage affixed, this \_\_\_\_\_ day of November, 2019:

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James R. Cascio, Esquire  
Supreme Court I.D. No. #21179