1. CALL TO ORDER / ROLL CALL

Chairman Warner called the meeting to order at 7:00 p.m. with a quorum present.

Members Absent: M. Kelly, T. Morris
Staff Present: Andy Moore, AICP, Williams & Works
Others Present: Members of the media, representative from Cherry Valley Development, citizens of the township

2. CONSIDERATION OF THE MEETING AGENDA

Agenda accepted as presented.

3. PUBLIC COMMENTS (BRIEF – UP TO 2 MINUTES)

A. Warner opened the floor to public comment at 7:01, and closed it at the same time, finding no public comment.

4. CONSIDERATION OF MEETING MINUTES

A. Minutes of the May 2, 2011 meeting.

R. Parent made a motion to approve the minutes of May 2, 2011 as presented. Motion was supported by K. Cavanaugh.

VOICE VOTE: All ayes. Minutes of the May 2, 2011 meeting approved.

5. INQUIRY OF CONFLICT OF INTEREST

None.
6. UNFINISHED BUSINESS

None.

7. NEW BUSINESS

A. **Public Hearing: Special Use Permit** Application submitted by Bill & Ellen Constantino, for a special use permit to construct a lean-to extension of 20’ x 36’ to an existing 36’ x 36’ Accessory Building in the A, Agriculture District. Said land is located at 10422 Alaska Ave. SE.

Ellen Constantino, of 10422 Alaska Ave, gave a brief overview of the request, indicating they needed the additional space for a horse buggy, hay and bedding storage, and gardening tools storage.

A. Warner opened public comment at 7:03; finding no public comment, he closed it at the same time.

A. Warner found from the applicant that building material is to match the existing building. R. Parent asked about trees or screening for neighbors, found that there are no trees screening the side of west side of the property, but the neighbors also have horses. A. Warner commented it is on a gravel road, very rural area, he owns a tree farm across the street.

K. Cavanaugh commented that although the applicant provided reasons for the expansion, she reminded her fellow commissioners that they were to consider land uses that would be good for the property into the future, not just for current owners; she thought that this was the case with this request, but wanted to remind them.

D. Gunnink inquired how far from the lot line would be; applicant wasn’t sure of the exact distance, but showed on aerial photo it was a large distance from the west lot line. A. Warner commented that there was a lot of vacant area out there, didn’t see a problem with this request.

D. Koopmans asked if this building would be used for a home-based business or have any dwelling units in it; applicant replied absolutely not. R. Parent asked if this building was the only other building on the property besides the residence; applicant answered it was.

**ARCHIE WARNER ENTERTAINS A MOTION:**

D. Koopmans motioned to approve the request by Ellen Constantino for a special land use permit to construct a lean-to extension of 20’ x 36’ to an existing 36’ x 36’ Accessory Building in the A, Agriculture District, located at 10422 Alaska Ave. SE, with the conditions that it does not house a home-based business, does not contain any dwelling units, and that the keeping of horses will comply with all applicable GAAMP’s.

Motion was supported by R. Parent.

B. **Application for Renewal of PMR Permit**: Submitted by Cherry Valley Development LLC, for 258 acres located at 6490 68th St. SE.

Dale Hermenet came forward as a representative for his father-in-law, Pete DenHartigh, owner of Cherry Valley Development LLC.

A. Warner opened the floor to public comment. Roger Keating, of 7166 Thornapple River Drive, commented that he was disturbed at this request, because the original permit was only for 15 years. R. Keating is also upset because he has lost water and trees because of the mining operations, frustrated because until recently, no engineers or representatives from the township had ever been out to his property. He would like the 20 year permit to not be allowed, maybe in 5 year increments but not 20, and to have it state that it not affect surrounding properties. R. Keating warned commissioners to be careful about the park, it could create a financial burden to the township.

A. Warner commented that he understood that the applicant had increased the surface water elevation of the lake in question by 2 feet, D. Hermenet confirmed they had. R. Keating stated he had requested the elevation level of the lake from the township for 5 years, but never got it. A. Warner asked if we knew what the original level was back in 1989 when permit was approved; R. Keating answered that the engineers suggested it was 710; A. Warner stated it was now 712. D. Hermenet confirmed that Excel Engineering had been out to the lake and measured it, it was at 714 at the time of their measurement.

D. Koopmans commented that according to the readings of the monitoring wells, since 1995 through 2011, they have not varied by more than a foot; R. Keating contends that most of the damage was done prior to that. Discussion followed about the effect of the Great Lakes on the static water levels. A. Warner commented they were getting off topic.

R. Keating stated they have lived with the mine and the affects of it for many years, they are running 22 years on a 15 year permit; he is not happy about the promise of land for a park for a 20 year permit, would like to see permit given for a shorter time period. He stated in 1978, there was eight times the amount of water running through his property, now most of it is going south of him.

R. Keating stated another frustration is he requested records from the township under the Freedom of Information Act (FOIA), but was denied copies of certain records. Was able to confirm some things with Ed Rusticus; thought some unusual things were going on with wells 5, 6, & 7.

A. Warner commented to D. Hermenet there seemed to be two issues: groundwater to east of the pit seemed to be less, and surface water levels seemed to be lower. D. Hermenet stated that he lives right next door to R. Keating, and that he also has a pond in his yard with an irrigation system tied to the river that could fill his pond, but that he hasn’t used it for 3 years, hasn’t needed to, water levels are fine. He stated the DenHartighs wouldn’t deliberately do something to ruin anything; that if there was a problem they had created, they would do whatever necessary to fix it, he has taken R. Keating to the pit to observe things many times, is willing to take him whenever there is a concern.

R. Parent indicated he had spent 4 hours with R. Keating, was concerned about the information he was shown, thought there were inconsistencies, he felt it would behoove the township to meet
with a hydrologist and R. Keating and the applicant and go through these issues. R. Parent feels there are discrepancies that warrant further investigation.

D. Hermanet pointed out that the PMR permit had to be reviewed by the DEQ, they have all this information. A. Warner asked if they couldn’t just bore a 4 inch hole under the road to R. Keating’s property as a solution; D. Hermanet answered they had been willing to pursue that, R. Keating didn’t want it that, didn’t want DenHartigh to have to bear the expense of that, suggested they work out some other solution, like raising the water level in the lake by two feet, so DenHartigh did that instead. A. Warner found from R. Keating that he didn’t really want the water running above ground onto his property. A. Warner asked if there were some solution to this problem that wouldn’t create too much expense and would take care of it, R. Keating is sure there is, just have to find it. D. Hermanet indicated that R. Keating asked that they not fill bottom of dig with clay but with sand so ground water will drain better, DenHartigh has done that; possibly a French drain in SE corner may work.

A. Warner commented that the DenHartighs have tried several things to remedy this problem; R. Keating isn’t opposed to the pit continuing the mining – they have to come to a compromise so that R. Keating can get some more water and the DenHartighs can continue mining. D. Hermanet commented that if the permit can’t be renewed, they could sell for residential, the impact of wells and septic systems would be much greater, would much rather it stay open land and be used for a park. R. Keating pointed out that according to the original PMR, there couldn’t be any building on that land, high water table.

R. Keating stated that this is a new PMR permit; up to now they have been renewing the original 1989 PMR. A. Warner disagrees, original superseded by new permit in 2005; asked for clarification on what is new in this permit. D. Koopmans referenced letter from legal counsel, it refers to this as the second renewal of a PMR permit dated May 4, 2005, renewed May 4, 2008. R. Keating disagrees, says both of those dates were extensions of original permit from 1989.

R. Keating stated he isn’t against the permit, just the time length, and doesn’t want it to affect the water levels; A. Warner says water levels won’t change from where they are now. R. Keating says there is too much fluctuation, feels it is due to the mining hitting some underground vein of water; D. Hermanet indicated there have been several times in the past that R. Keating has called about the water levels and D. Hermanet has taken him to the pit to show him nothing has been done there to cause a change in his water levels.

A. Warner feels the permit should not be allowed for 20 years, should be at least a 5 year renewal process, and that within the first 3 to 5 years R. Keating and the applicant must work together to find a solution to the water problem. D. Hermanet agreed to 3-5 year increments. R. Keating pointed out that in the past when renewals have come up, the reports haven’t been there. A. Warner stated that there is a fund established to pay for inspections and reports, and the township will need to make sure those are being done.

D. Gunnink asked if mining areas would be the same, D. Hermanet answered that the big lake is almost done, whenever they mine there, they give notice to him and to R. Keating that the lake levels will be down until they fill again; that area won’t be affected again until maybe next fall or spring, it’s a very small part of what’s being mined.

D. Gunnink feels we should address Keating’s concerns, maybe get hydrologist involved; A. Warner stated that Williams & Works have a hydrologist on staff and were already hired to look
into these issues before, R. Keating says they have never come off site to his house to look at
anything. D. Gunnink found that the wells in the area have never been affected by the mining.

A. Warner stated that if they would include R. Keating’s stipulation that surrounding properties
water levels could not be affected by the mining, they would have to start with current levels as a
baseline, D. Hermenet agreed. A. Warner also suggested that both parties work together toward a
reasonable solution, try it, and if it doesn’t work, DenHartigh would bear no more responsibility
to correct the problem.

R. Parent commented he was unsure if this was a new permit request or a renewal, he remembers
the 2005 permit as a renewal, not a new permit. K. Cavanaugh asked if because of the five
changes listed in the letter from legal counsel, this would be approving a new permit. A. Warner
believes the original permit expired, this is a new permit, D. Hermenet also understood it to be a
new 20 year permit. D. Koopmans referenced letter from legal counsel calling it a renewal of
permit dated May 4, 2005. Discussion followed about the original
permit from 1989; it expired and so in 2005, they extended the original permit, as legal counsel had recommended. R. Keating explained that any changes being made now to the 1989 permit would require a public hearing, otherwise it’s illegal. A. Warner stated it is an extension of the original PMR.

R. Parent commented that the DenHartighs have done a wonderful job with their pit, but so have
residents tolerating the traffic when there was high demand for the sand; with the economy down,
demand has decreased, keep in mind when economy picks up, so will demand and traffic. A.
Warner commented it is better to drive it 5 miles to a site than have to drive it 30 miles to a site.

**ARCHIE WARNER ENTERTAINS A MOTION:**

A. Warner moves to recommend to the Township Board approval for the extension for
the existing PMR permit with the understanding it will have to be studied for baseline
readings so that any further impact on surrounding neighbors can be measured, and that
the permit be for 20 years with 5 year renewals required, and that in the first five year
period there would be dialogue between the applicant and R. Keating about how to best
monitor any changes in the water flow, aboveground or underground, and that some type
of accommodations be made to correct the problem.

Motion was supported by D. Koopmans

R. Parent recommended tabling the request until they get clarification on whether this is a new
permit or an extension, since a new permit would require a public hearing. A. Warner doesn’t
think that is a bad idea, but it is a renewal, and the resolution is a renewal. R. Parent inquired if
they are making changes, doesn’t that make it a new permit? A. Warner responded they can take
out the part about impact to surrounding properties and the five year renewal process, though he
thinks that was in the original contract. R. Keating began speaking from the back of the room, A.
Warner called point of order.

D. Koopmans again referenced letter from counsel, renewing PMR permit dated May 4, 2005,
feels they are extending the original contract from 2005. K. Cavanaugh agreed, feels 15 year
permit expired, what was approved in 2005 is the new permit, and that called for three year
renewals.

A. Warner stated he has no problem amending his motion if they would like it to be 3 year
renewals with an 18 year permit, K. Cavanaugh doesn’t have a problem with the 5 year renewals. A. Warner stated he would like to see this move forward to the Township Board, and they could discuss the issues and modify it or seek legal counsel if necessary. R. Parent indicated he would be more comfortable with the 3 year renewals if that’s what the original permit called for.


A. Warner referenced the minor amendment to the Professional Shopping Services PUD, he worked with Township Planner Wells in approving it.

8. **PUBLIC COMMENTS (EXTENDED – UP TO 5 MINUTES)**

R. Keating stated that the 1989 – 2004 PMR permit for Cherry Valley Development is the only permit, everything else has been a renewal. He feels they are walking on thin ice by renewing and not setting up a new permit. A. Warner responded they are going on the recommendation of legal counsel.

9. **COMMISSIONER’S COMMENTS**

A. Warner appreciated everyone’s time and effort; commented that these items that can be contentious are exciting and it is their job to try to resolve these conflicts.

10. **ADJOURNMENT**

D. Koopmans made a motion to adjourn. Motion was supported by R. Parent.

**VOICE VOTE** – all ayes – Meeting adjourned at 8:21p.m.

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CALEDONIA TOWNSHIP PLANNING COMMISSION

Duane Gunnink, Secretary
Approved: 6/20/11

Sincerely,

Angela Burnside
Recorder