

Holly Township  
Planning Commission - Regular Meeting  
Minutes of January 12, 2009

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**Call to Order:** Chairperson George Barton called the January 12, 2009 regular meeting of the Holly Township Planning Commission to order at or about 7:00 p.m. at the Holly Township Hall, 102 Civic Drive, Holly, Michigan, 48442.

**Roll Call:**

**Commissioners Present:**

George Barton, Chairperson  
LaLaine Kilbourn  
Rick Stevens  
Bill Angus  
Ted Gurski  
Steve Ruth  
Mark McHalpine

**Staff Present:**

Jesse Lambert, Supervisor  
Laura DeVault, Building & Zoning Administrator

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**Others Present:**

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Brian Oppmann, Carlisle/Wortman	Tim and Donna Burgess
Ray Foley, Applicant, Mulch Express	Tim Leineke
Larry Lilly	Jeff and Martie Gereche
Jacqueline Mirasolo	John Arden
Ken Bouchard	Douglas Arden
Valerie Bouchard	Harlan Hyatt
Dennis Owens	Art Sorenson
Paul Owens	

**Agenda Approval:**

Chairperson Barton noted the Agenda should be amended to reflect Election of Officers right after Approval of Minutes.

- **Commissioner LaLaine Kilbourn moved to approve the January 12, 2009 Agenda, as amended. Commissioner Bill Angus supported the motion. A voice vote was taken; all those present voted yes; the motion carried.**

**Public Hearing:**

1. Public hearing to consider a rezoning request by Mulch Express, 3323 Associates Drive, Burton, Michigan, 48529 for parcel numbers 01-12-251-009, 01-12-251-010, and 01-12-251-001 that are vacant and improved parcels known as Middleton Sand, Gravel & Nursery, 12166 South Dixie Highway in Holly Township, from AGRE Agricultural Residential to L-1 Light Industrial.
  - **Commissioner LaLaine Kilbourn moved to open the public hearing for the Mulch Express Company, parcel numbers 01-12-251-009, 01-12-251-010, and 01-12-251-001 known as Middleton Sand & Gravel. Commissioner Mark McHalpine supported the motion. A voice vote was taken; all those present voted yes; the motion carried.**

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Mr. Brian Oppmann stated the applicant is requesting that approximately 43 acres on three properties currently zoned AGRE Agricultural Residential be rezoned to L-1 Limited Industrial.

**Residents Commenting:**

Larry Lilly, 110 Clarence Street  
 Jeff and Martie Gereche, 6194 Belford Road  
 Jacqueline Mirasolo, 12230 Dixie Highway  
 John Arden  
 Ken and Valerie Bouchard, 6224 Belford Road  
 Douglas Arden, 12248 South Dixie Highway  
 Tim Leineke, 12286 Dixie Highway  
 Dennis Owens, 6335 Lahring Road  
 Paul Owens, 6435 Lahring Road  
 Harlan Hyatt, 6160 Belford Road  
 Art Sorenson, 6086 Belford Road  
 Donna Burgess, 12220 Dixie Highway

**Comments:**

- Why would a mining operation want to be rezoned light industrial? It scares him every time he hears light industrial
- Are they still mining there?
- Is there any room to put light industrial in at the mining operation?
- Why would this be approved when they're still mining gravel in there? They should be made to put everything back and make it look good when they're done mining before rezoning is considered.
- He is concerned with anything to do with rezoning in his area because there is open water. Everyone in the area is on natural wells and the mining operation is at least 110 feet below his elevation, which is affecting his water table.
- Several people in the area have had problems with their wells. This concerns their drinking water, their lives and their livelihood. Personally, she doesn't want any industrial business going on back there.
- She moved out there for the country. She's worried about the water now. They've tried different things back there. She doesn't want to see it turn industrial.
- His parents have owned this piece of property for nearly 60 years. He circulated a petition amongst the property owners along Dixie Highway, Belford and Lahring Road who abut this operation. Everyone opposes any kind of rezoning of this property. When the gravel company came in there, they knew it was zoned Agricultural Residential. They've raped that piece of property. The other builders in the area have also raped those premises and they're now down into the aquifer. The proposed owner of the property, Mulch Express, has already brought in materials that constitute wood debris and chemically hazardous materials. There are railroad ties in there, pallets, telephone poles, painted lumber. He's got photographs of the site and he provided them to the Planning Commission. The road elevation of the property is now about 70 feet below the grade of his property. Mr. Middleton got an agreement signed by Ms. Mirasolo's husband who is deceased and they literally cut right to the boundary line and scooped it all out and left an embankment that is almost a sheer drop. If any children walked out there, they would probably kill themselves.
- He's against the rezoning. He does want to have good drinking water. He believes they're digging too deep.
- Her husband and she believed they would buy their dream home and live in the country. Their life's earnings purchased their home so they could enjoy life and have their children there. This is affecting their drinking water now. They have a natural well. It doesn't smell or taste very good. It's not right to dig all

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this up, put all the junk in there. She doesn't want to see in any way, shape or form the property be able to be rezoned light industrial. There is no reason for that except monetary gain, which is corrupt. It's not right to hurt the people that live there with their families. She farms on her land also. The aquifer is right there. We've all got to make decisions in this life and you're held before God Almighty and your decisions will affect people's lives. You have to hear the people's voice and understand they don't want it. There is good reasons why they don't want this and why they oppose this and they would like the Planning Commission to please listen to them and hear what they say; not only hear them, but help them because they need the Planning Commission's help.

- It appears the Township Planning Commission, Middleton Sand & Gravel and Mulch Express have all put the cart before the horse. The Planning Commission is proposing that the land is suitable for any kind of industrial usage without obtaining an environmental impact study first. Middleton Sand & Gravel are attempting to convey ownership without first completing their required reclamation program. And Mulch Express is dumping materials and debris inconsistent with the existing zoning before any zoning is changed. All this is negligence. It is also his firm belief that insufficient topsoil exists to allow for percolation. If an environmental impact study was conducted, all this would be substantiated and the Township and the community might be able to come to terms as to the correct usage for this land should one exist.
- They have railroad ties down there and lumber that should not be there. It should be taken out, it should be taken out now. They have drains there, it's beside a pond. Everything runs right into the water.
- The reclamation process should be done, the Master Plan should be followed and the mine operators should follow their permits. Everyone that's backed up to it has lost quite a bit of land, from ½ acre to an acre.
- Reclamation should be done first. It was mandated eight, ten years ago. He doesn't know how anything could be rezoned without reclamation. This company shouldn't even be in Holly.
- He's seen pictures of the rubbish and he can't understand how it can be allowed. It should be cleared out and a reclamation plan completed. He can't understand if the business is currently zoned agriculture and residential how a gravel pit can operate there.
- He remembers five years ago there was a water concern in Groveland. Everyone's on the same aquifer so each resident is concerned about their water condition. There should be information available from Groveland. He can understand everyone sees a giant hole and they think they've got to fill it up with stuff. If the stuff is good, that's okay. But if it's the type of material that Mulch Express brings, he cannot imagine what that's going to be. Their concern right now is the aquifer. He remembers a time even people in Grand Blanc were on the same aquifer. If they start polluting or whatever they would do by filling the void up in the gravel pit, we may be in a lot of trouble.
- She does not want light industrial next to her home. She's very concerned about their drinking water also because everyone has natural wells.

- **Commissioner LaLaine Kilbourn moved to close the public hearing for Mulch Express rezoning. Commissioner Ted Gurski supported the motion. A voice vote was taken; all those present voted yes; the motion carried.**

2. Public hearing to consider the proposed text amendments to the Township of Holly Code of Ordinances to Chapter 32 Zoning Ordinance, Article 2 Amendments & Enforcement to add new proposed zoning ordinance text for a Planning Commission per the Michigan Planning Enabling Act, PA 33 of 2008 and the Michigan Zoning Enabling Act, PA 110 of 2006, as amended.

- **Commissioner LaLaine Kilbourn moved to open the public hearing on the proposed text amendments to the Holly Township Code of Ordinances, Chapter 32 Zoning Ordinance,**

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**Article 2 Amendments & Enforcements. Commissioner Rick Stevens supported the motion. A voice vote was taken; all those present voted yes; the motion carried.**

Mr. Oppmann stated these were ordinance amendments to meet the requirements of Public Act 33 of 2008, the new Michigan Planning Enabling Act legislation. The ordinance creates the Planning Commission and authorizes the Planning Commission to have its duties.

- **Commissioner LaLaine Kilbourn moved to close the public hearing for the texts amendments on the Holly Township Code of Ordinance. Commissioner Rick Stevens supported the motion. A voice vote was taken; all those present voted yes; the motion carried.**

#### **Approval of Minutes:**

Mr. Brian Oppmann noted on Page 16, near the middle of the page, he referenced development agreement and Administrator DeVault has corrected him on that. It's not a development agreement; it's master deed and bylaws, a different condominium document.

Commissioner Ted Gurski noted Line 22, Page 13 should read Oakland County Road Commission will tell them if they "need" acceleration or deceleration lanes. And Page 15, Line 4, after "previously agreed to" there is just an "f" there. It probably should be "if".

Commissioner Rick Stevens noted Page 5, Line 16 should read Z BA.

- **Commissioner LaLaine Kilbourn moved to approve the December 8, 2008 minutes, as amended. Commissioner Mark McHalpine supported the motion. A voice vote was taken; all those present voted yes; the motion carried.**

#### **Election of Officers:**

- **Chairperson George Barton moved to nominate LaLaine Kilbourn as Chairperson. Commissioner Steve Ruth supported the nomination.**
- **Commissioner Mark McHalpine nominated Bill Angus as Chairperson.**
- **Commissioner Bill Angus moved to close the nominations for Chairperson. Commissioner Ted Gurski supported the motion. A voice vote was taken; all those present voted yes; the motion carried.**
- **A roll call vote for nomination of the Planning Commission Chairperson was taken. Angus: LaLaine Kilbourn; Kilbourn: Bill Angus; Stevens: Abstained; Gurski: LaLaine Kilbourn; McHalpine: Bill Angus; Barton: LaLaine Kilbourn; Ruth: LaLaine Kilbourn. LaLaine Kilbourn was elected as Planning Commission Chairperson by a 4/2 vote (1 abstained).**

Former Chairperson George Barton turned the meeting over to newly elected Chairperson LaLaine Kilbourn.

Chairperson LaLaine Kilbourn opened the floor for nominations for Vice Chairperson.

- **Commissioner Bill Angus nominated George Barton for Vice chairperson. A roll call vote was taken. Ruth: Yes; McHalpine: Yes; Barton: Yes; Stevens: Yes; Angus: Yes; Gurski: Yes; Kilbourn:**

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**Yes. Commissioner George Barton was elected as Planning Commission Vice Chairperson by a 7/0 vote.**

Chairperson Kilbourn opened the nominations for Planning Commission Secretary.

- **Commissioner Rick Stevens nominated Commissioner Steve Ruth for Secretary. Commissioner Ted Gurski supported the nomination. A roll call vote was taken. Kilbourn: Yes; Angus: Yes; Gurski: Yes; Stevens: Yes; McHalpine: Yes; Ruth: Yes; Barton: Yes. Commissioner Steve Ruth was elected as Planning Commission Secretary by a 7/0 vote.**

**Communications:** No communications.

**New Business:**

1. Rezoning request by Mulch Express, 3323 Associates Drive, Burton, Michigan, 48529 for parcel numbers 01-12-251-009, 01-12-251-010, and 01-12-251-001 that are vacant and improved parcels known as Middleton Sand, Gravel & Nursery, 12166 South Dixie Highway in Holly Township, from AGRE Agricultural Residential to L-1 Light Industrial.

Mr. Ray Foley, representative for Mulch Express, indicated Mulch Express manufactures and distributes mulching products similar to what you would have at your home. They have an operation in Burton, Michigan with loading ramps, a mix machine and a coloring plant. That activity will remain in Burton, Michigan. When they became involved with the Middleton gravel site, it was because they needed a wood drop-off site that they grind up and turn into mulch. That's how they came across the Middleton site. To make the site economical for them, they've looked at doing a number of things. One was reinstating the gravel operation. He knows it's an ugly hole but there are gravel products remaining and they intend to continue mining. After speaking to Holly Township officials, it became clear that the site should be rezoned to light industrial or limited industrial. They're here to ask for a rezoning to light industrial which they understand is consistent with what they want to do on the property, which is to sell sand and gravel products and mulch. What they anticipate to occur by spring is materials that are produced in Burton would be trucked there. Their trucks carry 140 yards of product at a time. They would bring it to the site and sell it. They also have looked at expanding the nursery and landscaping activities on the site because of the frontage on Dixie Highway. It's configured very well for that type of product sale and exposure. They certainly would not, nor would any gravel extractor, put anything in that would disturb the aquifer. They are requesting it be rezoned and they be allowed to conduct wood collection operations.

Mr. Oppmann stated the main concern when you're looking at rezoning property is the Master Plan designation. The Master Plan designation for this property is Research/Office. That calls for a variety of light manufacturing, office, technology, R & D type uses. Holly Township doesn't have a zoning district for that specific category. However, if you look at the uses permitted in the zoning districts and you also look at the intent of the limited industrial district, you'll see that it meets this category. What they're proposing to do isn't really a concern tonight because the processing of wood is a special use and would require them to come back for site plan approval and a public hearing. The Planning Commission should focus on the Master Plan. The Master Plan also talks about mining operations and that there has to be coordinated planning. And a lot of the mines up there in that portion of the township are all Master Planned for Research/Office or mixed use, there not ready to be fully reclaimed and a coordinated plan hasn't been developed with open space and roadways and utilities. In summary, this meets both the intent and the designation for future land use for the property and Carlisle/Wortman recommends approval. They do have a developmental potential analysis in their property. It is a large piece of property, 43 acres. If it were fully developed, there would be potentially a significant amount of office space being used on the property but we're not at that point yet. That's just a full development potential analysis to give you an idea of what you're looking at.

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Again, it meets the Master Plan designation and the intent and the goals and objectives and they recommend approval. He would be happy to answer any questions.

Commissioner Barton questioned what the ruling is as far as extractive operations in an L-1 district.

Mr. Oppmann indicated he believes they are still governed under the mining ordinance and there is also a consent judgment on the property. It's considered a special land use to mine on the site.

Commissioner Barton questioned whether it's acceptable within limited industrial, as well as AGRE.

Mr. Oppmann indicated he was correct.

Administrator Laura DeVault indicated they are permitted to do mining in an AGRE district by consent judgment.

Commissioner Barton questioned what the consent judgment had to say about a sale and reclamation at time of sale.

Mr. Oppmann indicated he is not aware of what the actual consent judgment says in regard to that. It would have to be looked up and the township attorney be consulted. He believes the consent judgment runs with the land, regardless of who the owner is. So whoever owns it would be governed by the consent judgment.

Commissioner Mark McHalpine noted Mr. Oppmann's report refers to wetlands and that pictures given to the Planning Commission show a sizeable pond or lake there.

Mr. Oppmann indicated wetlands refers to regulated wetlands and there are no regulated wetlands on the property. If there is a pond, it's obviously part of the mining operation right now.

Commissioner McHalpine questioned whether there were laws they had to follow in regards to seepage into the water.

Mr. Oppmann stated he believed they had to follow local, state and federal guidelines regarding mining.

Commissioner McHalpine indicated there is creosote in railroad ties and arsenic and other chemicals which are very dangerous, including carcinogens that are involved with certain types of lumber processing. If those items are going to be wood chipped, wouldn't there be exposure of those chemicals getting into the water and into the aquifer? Five, six years ago there was a big issue with Groveland Township and their water; he'd hate to see Holly Township have the same issues. From photos he's seen there's also construction and other materials not natural to the site.

Mr. Oppmann noted tonight dealt with the rezoning. Whatever is going to occur with wood products, they will have to meet state and federal guidelines on disposal and storage of the materials. Those are the things the Planning Commission can touch on during the site plan process. Right now we're just dealing with the rezoning.

Commissioner Bill Angus questioned whether the Township staff has cited them for the dumping of all the wood products on the site.

Administrator DeVault indicated they were informed of it yesterday. The information has been relayed to the code enforcement officer.

Commissioner Angus indicated he believed they are in direct violation of their consent judgment.

Administrator DeVault stated she did not believe stockpiling wood products is a permitted use under a mining operation.

Commissioner Steve Ruth questioned how the dumping began.

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Mr. Foley indicated they aren't dumping, they are storing wood products.

Commissioner Ruth questioned whether there was a business agreement to do that.

Mr. Foley indicated there was a business agreement with a contingency that their first agreement with Mr. Middleton gave them permission to utilize a small portion to stockpile wood they would turn into mulch.

Commissioner Ruth questioned whether that agreement was prior to sale.

Mr. Foley indicated it was.

Commissioner Ruth stated he echoed Commissioner Angus' concerns. They could be dumping or stockpiling anything there. It strikes him a little strange they would begin part of the business before even acquiring the business. He doesn't know if that's allowed. There is a lot of material dumped that he would suggest needs to be cleaned up, then start the rezoning process. He doesn't know how it's gotten this far. It seems they have put the cart before the horse. He questioned what Mr. Foley could do to address the concerns of the residents on the effects on their water with runoff.

Mr. Foley indicated there is no problem from runoff. If you have lead paint or carcinogens in this product, then you could have runoff. That's not what Mulch Express does. To the extent that paint would ever come off that type of product, it would be a mistake, it would be thrown off to the side and disposed of.

Commissioner Ruth stated somebody reported there are quantities of telephone poles, railroad ties, et cetera.

Mr. Foley stated they have not brought in any telephone poles or railroad ties.

Mr. John Arden noted if the Planning Commission examined the photos he brought in with a magnifying glass, they will see there are those kinds of materials there. There are pallets, there's probably debris from demolition. There are railroad ties in there, telephones poles. If you release all the chemicals by exposure to the rain, the rain will leach everything right into the sand. It will be in the aquifer in a heartbeat.

Commissioner Ruth expressed concern regarding not reclaiming the property prior to the sale of the business and questioned whether that was even allowed. The biggest concern is the amount of material brought in prior to any sale based on the assumption that a rezoning would be done. This strikes him as way out of line.

Mr. Oppmann indicated according to the mining ordinance it's a violation to have any kind of waste. Their mining permit is up for renewal soon. That's another avenue to look at when the time comes for the mining portion of the site. If they're going to do any kind of mining, none of the waste is permitted. You can't just use it as a dumping ground. There is a whole paragraph of what's not permitted.

Commissioner Barton indicated he's been on the board for 20 years and he really pushed for doing the annual reports and pushed for bonding in order to have enough money to reclaim it if the mining operation went bankrupt. They never conceived of retaining the mining authority, then going toward limited industrial. You don't trigger the reclamation by saying you're doing both activities. His feeling is you have to trigger one or the other. You're either in the mining business or you're in the limited industrial business; he doesn't believe you can be in both. If you're going to be in the limited industrial, then you have to trigger the reclamation and make sure that's approved by the Township's engineer. The whole reason they wrote that verbiage into the law years ago and started annual inspections was for exactly that reason.

Commissioner Stevens noted Commissioner Barton brought up a good point. He feels it's a legal issue at this point rather than a Planning Commission decision. He questioned whether the Master Plan called for light industrial.

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Mr. Oppmann noted it calls for Research/Office, which is a future land use designation. Holly Township doesn't have that kind of a district. If you read the intent and the uses permitted both by right and also by special use in a limited industrial, it says research right in it.

Commissioner Stevens questioned whether it is an applicable request to request light industrial. Where it becomes a safety catch, because there are safety issues raised, would be under the special land use for that particular property where such issues as water cleanup or those types of things, lost land issues would be raised. He believes that would be the safety valve if it was rezoned to light industrial. That does not mean they would be automatically approved, they would have to come in and jump through whatever issues are discovered or brought up to appease the special land use permit.

Mr. Oppmann stated he is not trying to discount any of the issues on the site, they're perfectly valid; they're just not valid for a rezoning legally. They have to follow the site plan process. If they want to continue to mine the site or a portion of the site, they're going to have to come in and get a special land use permit for that. And if they want to do any kind of processing of wood material that they're at least proposing to do on another portion of the site, that's another type of special use.

Commissioner Stevens noted those issues would come up in a special land use request. Because it is set up to be zoned light industrial, it doesn't automatically permit the operation.

Mr. Oppmann noted it would trigger another public hearing and everyone would be notified again for the site plan.

Commissioner Stevens noted a huge issue is the legal issue, as Commissioner Barton brought up; what triggers the zoning change and if the court decision even allows for that.

Commissioner Ruth questioned whether Mulch Express' purchase agreement was contingent on getting the rezoning. He questioned whether they would continue to purchase the property if it was only for mining.

Mr. Foley indicated they would have to reevaluate that. They would like to get the Planning Commission's decision tonight. If the Planning Commission is not going to rezone it in accordance with what the Township's planner suggests and what the law requires, then they will have to make their decision.

Commissioner Gurski questioned if the Township rezones it, would Mr. Foley be responsible for the reclamation.

Mr. Oppmann stated Mr. Foley would need a mining permit which will designate him and his company responsible.

Administrator DeVault stated the applicant has an active mining permit now.

Commissioner Gurski questioned whether the use the applicant is requesting is a permitted use with the mining permit. The mulch and wood and trash, for lack of a better word, the wood products on the property aren't a permitted use with a mining permit.

Mr. Oppmann noted it is a violation of the mining permit. It is an enforcement issue at this point.

Commissioner Gurski questioned if it was rezoned, the first thing Mulch Express would have to do is get the pile of wood out of there or would it negate the mining.

Mr. Oppmann noted at that point it's an enforcement issue. In the past the Planning Commission and ultimately the Township Board has held up the approval of mining permits when there's been violations.

Commissioner Gurski noted he didn't want to start somebody off in business in the hole. He's sure Mr. Foley would like to know the issues. What he's heard from the Township and the residents, there are many concerns regarding

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the water. An environmental impact study is not on the table right now. He's sure in the future that would be one of the conditions. The railroad ties and the water and the trouble the Township has had in the past with the mining companies are the same problems there were before and part of the condition for approval for the mining permit. He has the same concerns the public has.

Commissioner Ruth questioned whether a request for rezoning was even legitimate to vote on when there is a direct violation related to what the applicant is requesting. It seems absurd. It shouldn't even be addressed.

Chairperson Kilbourn questioned whether Mr. Foley was listed on the last mining permit approved for Middleton and the mining permit he has applies to this site.

Mr. Foley indicated the mining permit that his company has applies to this site.

Chairperson Kilbourn noted all three separate parcels are being requested to be rezoned. She questioned Mr. Oppmann whether a special land use could be done for the mulch instead of rezoning. Once the property is rezoned, the zoning sticks whether he's there or not. If he goes away, somebody else can come in with light industry. If a special land use is done, that only lives for the length of time that he owns the property or is utilizing it for that use.

Mr. Oppmann noted a sunset date could also be set or a renewal date. The Renaissance Festival is renewed every three years. It runs with the land if that's how it's set up. You can set it up to renew every year or every three years for a special land use. In looking at the special uses and permitted uses in the AGRE district, the processing of wood products, since they're not grown on the site, they're brought in, it permits it if it's grown on the site in an AGRE but doesn't permit it by special use. The limited industrial district fits what he is proposing to do, which is the processing of paper and wood products. That's a special land use.

Chairperson Kilbourn questioned whether the AGRE designation should be changed. She would rather see it as a special land use than change the zoning. She questioned whether some type of imported materials ordinance should be done. She questioned whether it was something Holly Township needed as a whole.

Mr. Oppmann stated it may be a good idea to explore that.

Chairperson Kilbourn stated she would like a recommendation from the Township's attorney to determine whether the consent judgment that is with the current mining and current land continues on if there is a new owner; and also whether the mulching operation impacts anything in the consent judgment.

Administrator DeVault noted there was a meeting with the Township Planner, Mr. Foley and others a few months ago discussing how the ordinance applies, the consent judgment applies and how the Master Plan applies to their request. She spoke with the Township Attorney and, yes, they are bound by the consent judgment. And also they reviewed the zoning ordinance; she and Brian talked about it and the applicant, as well. After discussion with the attorney and the planner, they are allowed to have more than one use on the property.

Commissioner Barton questioned whether there were any minutes from the meeting Administrator DeVault spoke of.

Administrator DeVault indicated she spoke to the attorney on the phone and had the discussion.

Chairperson Kilbourn stated if they do sales on the property, they will need a traffic study for people coming in and out. Now there are people in and out continually if you're talking about sales on the site.

Commissioner Ruth indicated Mr. Oppmann had a comment on his report that the property could have the potential of 5,000 trips per day. That's a car every six seconds. He would think that would be impossible.

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Mr. Oppmann stated that's based on if you were to develop it to its maximum potential; looking at the entire 43 acres, if it was reclaimed and somebody wanted to do an office park. That's where the trip generation comes in.

Commissioner Stevens stated an attorney's opinion should be in the Planning Commission's packet. It's important to know what was discussed and not guess at what's been discussed. From here on out the Planning Commission should see these things. He questioned whether a requirement in the special land use could be a baseline study of that particular location to see what's going on, and then requiring an annual study after that. Later on it could be measured. The results would determine if the special land use is renewed.

Mr. Oppmann questioned what he was specifically referring to, the violations or the environmental impacts.

Commissioner Stevens indicated that would be determined at the special land use meeting based on issues he heard tonight, such as water issues. There are levels of water, aquifers, that he doesn't know whether it goes to Port Huron. But there are issues where criteria should be set up to measure basic issues by. That would be the basis for whether a special land use would be granted down the road and whether to renew the special land use. That would put a little weight on the person who owns the property to fulfill obligations.

Mr. Oppmann indicated the Planning Commission has the discretion to put any condition on the property owner for the special use. You can require them to come back and do a yearly renewal. You can put standards on there that it can't violate the ordinance, there can't be any reported violations. The Planning Commission has the ability to do that when the time comes for that.

Commissioner Barton indicated it appears the Planning Commission has 90 percent of facts on both sides but he'd like to go back a little bit. Two Master Plans ago was when the Research/Office first showed up, about 1997. At that time Genesee County was offering Holly Township a sewer line down Dixie Highway. Research/Office was there to allow the Township to have fully depleted mining properties, merge them into a common campus and bring in sewer and bring in something like an Oakland Community College campus there. It's a perfect setting. You'd have lakes and all kinds of things. It would be spectacular. But they never considered two things. One is they never considered changing the zoning without reclaiming the property. That was never thought of. This is a wrinkle that was never conceived. Number two is that they never considered the Research/Office, limited industrial, whatever, at the kind of elevation that they're talking about doing it. They would have expected the levels raised or at least set up where you had natural drainage that would work. Right now you're sitting with holes and you're trying to operate an industrial activity down in one of these holes. If it were granted as applied for, it would be not reclaimed mining property with a new zoning and a new purpose. They never conceived this type of thing in the Master Plan in '97-98 when they wrote it. He questioned what would trigger reclamation.

Chairperson Kilbourn indicated she would like to see a special land use added in the AGRE district specifically tied to the mining sites. That way the Township can have a yearly review of it and a permitted use year by year. She would not like to see the rezoning.

Commissioner Angus noted he didn't believe the discussion was as complex as it's being made out to be. The gentleman has applied for rezoning. And generally it is inappropriate to discuss uses, wood, gravel, anything except for his application, suitability with our ordinances, period. He doesn't know why we're talking about special land use permits or applications. The only thing the gentlemen is asking for is rezoning. Should his rezoning go as asked, his hurdle is going to deal with all the dirt, the wood and creosote and how to keep everything out of the aquifer. If he were granted his rezoning, he doesn't start chopping up wood tomorrow. He still has to bring a site plan back, he has to bring back his environmental studies and everything else. He's in violation right now. He doesn't think the ordinance says you can turn down such an application because of that.

Commissioner Ruth suggested testing it. He stated it was ludicrous the Planning Commission even had to consider it when all this is going on.

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Mr. Douglas Arden questioned whether a permit was needed to haul the materials in there.

Commissioner Ruth stated a permit was needed.

Mr. Douglas Arden indicated they just hauled it in and they should be sued for hauling it in there.

Commissioner Barton questioned whether the consent judgment was available to the Planning Commission.

Mr. Oppmann stated the Township should have it on file.

Mr. Foley indicated the reclamation plan was put in place by consent judgment long before Mulch Express became involved with the property.

Mr. Oppmann stated in order to get a mining permit a reclamation plan has to be submitted and a time frame shown to complete the plan. He knows every year they seem to go longer.

Commissioner Gurski questioned whether Mr. Foley would be responsible for the reclamation plan on the 40 some acres and Middleton would be responsible for the rest of the Middleton Sand & Gravel.

Chairperson Kilbourn stated the Planning Commission is deciding whether it would be rezoned light industrial, which means any of the applied light industrial uses could go in there. He wants to put in the mulch and the mining. That's what the Planning Commission is to decide tonight, whether or not to rezone to light industrial, whether it fits or not.

Commissioner Stevens indicated due to the fact residents are here tonight, he believes it's important for residents to understand the process of rezoning. The special land use would be a safety valve for any future development there even if it is rezoned. He also feels even though this has been discussed with the attorney, the Planning Commission has nothing in front of them in regards to reclamation which he believes is an issue if the purpose of the property is going to have continued mining. It doesn't mean it will always keep going; it could change 24 hours from now. He believes there are some legal issues that need to be sorted out, especially when there is already a court injunction in place. Obviously the Township has been taken to court already over the years. He believes they have to be careful. Commissioner Angus is right, Mr. Foley came here to request rezoning. According to our planner, it does seem like it fits in the light industrial. There are no guarantees that it could unfold without a lot of criteria being set up to meet before anything does unfold in that area. He would like to see a legal document before a decision is made. It also needs to go before the Township Board after the Planning Commission either denies or approves recommending it to the Township Board.

- **Commissioner Rick Stevens moved to table the request to obtain an opinion from the Township's attorney. Commissioner Ted Gurski supported the motion.**

Commissioner Ruth commented he doesn't even think the Planning Commission should entertain tabling it based on how we've gotten here and his previous comments. He believes the Planning Commission should just deny it.

Commissioner Angus stated the planner can review it and determine whether it complies with the ordinances and Master Plan, it doesn't need an opinion from the attorney. Turning it down at this point wouldn't be a good idea.

- **A roll call vote was taken. Barton: No; Ruth: No; McHalpine: Yes; Stevens: Yes; Kilbourn: Yes; Gurski: Yes; Angus: Yes. The motion carried with a 5/2 vote.**

Ms. Martie Gereche questioned whether the Master Plan included depleting or contaminating the water supply. Does the Master Plan include depleting or contaminating our land resources and what about our property values?

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They come into play. She doesn't understand how his mining permit can be valid if he doesn't even own the property there. What is the time frame of the reclamation? Those are the concerns she has.

Chairperson Kilbourn stated the Master Plan is an overall vision of what the Planning Commission sees for the Township for the next ten years. Current zoning and ordinances are what we go by. The Master Plan does not envision us ruining the water.

Commissioner Barton stated mining is the most aggressive thing that can happen out there. Limited industrial or light industrial they believed would be rather benign office buildings, single story, that would do some research, create jobs in Holly, et cetera. But their impact on the water table would be zilch because there's been way more impact on the water table with mining. They're sitting there with a dragline, getting in below the water table now. You have machines that are leaking oil. A lot of the operations aren't even electrically powered, they're diesel powered with their own generator and they move around and feed the screens and that sort of thing. Their goal was to basically level the property or get it to grade where you don't have real steep cliffs of disparity between properties. You have small lakes on the property, et cetera. It can be a very remarkable piece. They've always looked at this area as a real jewel of the township because it can be something extremely special if it's done intelligently. It's unfortunate that the same zoning that would permit offices is the same thing you'd go to for mulch because he doesn't see those two as consistent. But the rules are they're consistent. What he's having trouble with is they never conceived of not reclaiming this property before triggering the next event. So now we're talking about two things going on simultaneously. He's concerned about that. They put the triggers in there and right now they're not being tripped.

Ms. Gereche questioned what the purpose of the oversight is when they're allowed to go beneath the water table.

Ms. Mirasolo stated her husband and her had sold gravel off the bank of their property with the intention that Middleton gravel company was supposed to slope that. A letter was recently brought to her attention that her husband signed and she didn't know he had signed it. He passed away back in 2004. The back of her property is still not sloped. And the reason that Middleton said it wasn't done was because we did not tell them to go ahead and do that. My husband had taken some of the dirt and put it around in our yard and stuff. And when that was done, he told Mr. Middleton it was okay to slope it. It still is not done.

Chairperson Kilbourn stated that's part of the reclamation when the whole site would be reclaimed. If there is a problem where they're encroaching now, the code enforcement officer should take a look at it. Then Ms. Mirasolo may have to pursue legal action if needed. That has nothing to do with the Planning Commission.

Mr. Foley encouraged Ms. Mirasolo to come and talk to them.

Mr. John Arden stated no one has talked about the fact that there has to be a state license to bring this kind of waste onto the site. You have to have a state permit to dig into the aquifer. That hasn't been done. This isn't a case of something you're going to do in the future. He's got his material in there, the holes are in the ground, there's sediment runoff, there is silt runoff into these water bodies, all of which is leaking into the aquifer right now. There's no licenses from the state to do any of this; he has spoken to the DEQ.

Mr. Douglas Arden questioned whether the railroad ties and other things on the property would be taken out.

Mr. Foley stated if there are railroad ties, they will be removed. He noted the operation has run for five decades and there is a lot of stuff out there that shouldn't be in there.

Mr. Douglas Arden stated they just put it in there.

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Chairperson Kilbourn indicated she would call the code enforcement officer and have him take a look at what's there currently. If they're doing anything there right now, he'll issue a cease and desist order.

Mr. Harlan Hyatt stated it sounds like gravel pits are going from owner to owner and nothing ever gets reclaimed. Do they have to post a bond?

Chairperson Kilbourn stated mining operations have to submit a reclamation plan and a bond.

Mr. Dennis Owens, 6335 Lahring Road, stated the Planning Commission shouldn't consider zoning until the reclamation is done. It shouldn't go to the next owner until reclamation is done. Then zoning could be considered later.

Ms. Valerie Bouchard, 6224 Belford Road, questioned when reclamation started.

Chairperson Kilbourn stated the Master Plan is a vision for the next ten years.

Commissioner Barton stated the first Master Plan was done in the '60s. It's updated every five years.

Ms. Bouchard questioned whether the public could view the Master Plan.

Chairperson Kilbourn indicated the Planning Commission is doing the Master Plan revision right now. The draft Master Plan should be on March's Agenda and should be on the Holly Township web site right now. The public can review it and write in any comments they want. It's hollytownship.org. This will come back to the Planning Commission next month, hopefully with a lawyer's opinion with it. Then Planning Commission will rule on it.

Mr. Larry Lilly, 110 Clarence Street, stated he has come to the meetings for ten years and heard a lot about the mining operations. Any time there is light industry zoning being requested, there should be a red flag. It happened on East Road; they wanted to put light industrial in there with the residents. You table things. All the people here are very concerned about this. They've spent a lot of time here. It's wrong to table it. Come up with an answer. You have a hole in the ground. Turn it down. How do you rezone a hole in the ground? Think about it.

Chairperson Kilbourn stated they try not to rule with incomplete information. When they feel they need more information or an expert opinion, they request it.

**Old Business:**

1. Green infrastructure draft map review

Chairperson Kilbourn suggested postponing this until next month when a large version of the map could be obtained from Oakland County.

2. Annual report

Commissioner Barton indicated he would get a cursory summary out for not only '07, but '08 before the board meeting in eight days.

3. Master Plan update

Chairperson Kilbourn noted the Master Plan is out for the 63-day review.

Administrator DeVault indicated Oakland County is contacting their neighboring jurisdictions so they can schedule their meeting and make sure they have the comments by the time they have their meeting. They will send their recommendations on to Holly Township.

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Mr. Oppmann noted Springfield Township has Holly Township's Master Plan on the agenda next month. Any comments will be submitted. You don't have to hold a public hearing right after the 63 days. You can have a number of months to go through it again and maybe make more revisions. There are comments we may need to address. We may need a month or two just to do a workshop. There is no time frame after the 63 days that you have to actually hold a public hearing and adopt the Master Plan.

4. Proposed text amendments to the Township of Holly Code of Ordinances to Chapter 32 Zoning Ordinance, Article 2 Amendments & Enforcement to add new proposed zoning ordinance text for a Planning Commission per the Michigan Planning Enabling Act, PA 33 of 2008 and the Michigan Zoning Enabling Act, PA 110 of 2006, as amended.

Mr. Oppmann noted this has been prepared by the Township attorney and addresses the requirements of PA 33 of 2008. One of the new items in the act was you had to have an ordinance in place that establishes the authorities of the Planning Commission.

Chairperson Kilbourn noted the Planning Commission received a copy of this both last month and this month. It appears the copy they have this month includes a change. Under Item Number 6, there was one removed, that the Planning Commission shall prepare a capital improvement plan.

Administrator DeVault noted she spoke with the Township attorney, who double-checked the provision of the law. The Planning Commission is not required to prepare a capital improvement plan unless the Township owns and operates a water and sewer treatment plant.

Chairperson Kilbourn noted when they were talking about a capital improvement plan, it wasn't adding into the Master Plan, it is addressing future improvements they would like to see.

Mr. Oppmann noted it's not required in the new plan. They try and suggest to all their communities to consider it, especially with the economic times. Money is very tight so it's helpful to forecast. They've done it in Independence and Springfield Townships both. Independence needed to because they operate water and sewer facilities. Springfield does not, but they wanted to do it anyway. It's something that the board ultimately should consider and the Planning Commission will obviously see it.

Chairperson Kilbourn questioned whether there were additional things that should be added to the Code of Ordinances due to the new act.

Mr. Oppmann stated he doesn't know if Mr. Need has taken a look at the rest of the ordinance. The Township has until 2011 to comply with the act.

- **Commissioner Bill Angus moved to recommend to the Township Board approval of text amendments to the Township of Holly Code of Ordinances, Chapter 32, Article 2 Amendments & Enforcement to add new proposed zoning ordinance text for a Planning Commission per the Michigan Planning Enabling act, PA 33 of 2008 and the Michigan Zoning Enabling Act, PA 110 of 2006, as amended. Commissioner Ted Gurski supported the motion. A roll call vote was taken. McHalpine: Yes; Kilbourn: Yes; Stevens: Yes; Ruth: Yes; Angus: Yes; Barton: Yes; Gurski: Yes. The motion carried by a 7/0 vote.**

**Public Comment:**

Mr. Larry Lilly, 110 Clarence Street, expressed to the Planning Commission Happy New Year. He heard a lot of good comments. He believes the Planning Commission has to be more firm with people who come in and ask for things, especially when you have people from the community who come here. He doesn't know how many times

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he's been through this, the Planning Commission tables it and two weeks later it comes back, you okay it. There is an obvious hole in the ground and these people can see it all the time. They live around it and they've been living with this for decades. Nothing has been done about it. We have an opportunity to do something and something should be done, especially if it's changed to light industrial. Any time you deal with the mining company you set a precedent for all of them. You have to check, double-check and triple-check it always. There should be a decision tonight to not go forward, then have the attorney check it. Don't tell me what we can't do or we're going to be sued; that's not the way it should work. It should be changed starting in 2009.

Ms. Gereche questioned once the topography is changed, how in the world is it possible to survey the area to find out what has been lost, what actually belongs to the home owners and what actually now belongs or is in the hands of the mining operation.

Commissioner Angus stated everyone has a property line. If part of your property has collapsed and fallen down the hill, you still own title along that line.

Ms. Martie Gereche stated there is no land there.

Commissioner Angus stated they would have a claim that they have taken away some of their property.

Ms. Gereche stated she would like the Planning Commission to take that into consideration. The residents didn't ask for that, they didn't give their consent to that. They didn't give their consent to people taking away their property. She doesn't think any reasonable person would agree to that. She can assume the Planning Commission wouldn't want somebody taking a hold of your land or your resources and wasting it or contaminating it. It's not fair that somebody should have to waste their time, energy and their resources to have to go to court to reclaim what is already theirs.

Commissioner Barton stated the Township annually monitors the slopes. They have an engineer that tours every mining property. They monitor slopes very carefully because they don't want this exact situation. They limit them to a 3 on 1 slope.

Chairperson Kilbourn noted the mining operations would be coming in soon to renew their permits. She noted residents could check with the Township offices to find out when they would be on the agenda.

Mr. John Arden stated the photographs he submitted reflects the slope is vertical on Ms. Mirasolo's boundary line. There is no fence at the top. There is no barrier.

Chairperson Kilbourn suggested if she has a letter signed by her husband and Middleton, take it to court to enforce it.

Mr. Jeff Gereche questioned whether the Planning Commission would want this in their backyard.

Commissioner Gurski stated he would have had the DEQ out there already.

Mr. John Arden stated he has contacted many people and the Township will be hearing from them in a very short time.

Mr. Gereche stated in the nine years he's owned the property, he knew the gravel pits existed when he bought the property. He is in the building trade. He understands their function. The comment that concerns him is that his neighbor drilled his well twice in the nine years he's been there. That troubles him considering Mr. Gereche's well is at the same depth. They've also noticed in the last four or five years a fine dust issue affecting the filters in the pool and their gutters. There is quite a distance between the pit and their homes but it's definitely being transferred. He leaves at 4:35 in the morning, coming home at 6, 7:00 at night. He understands the trucks need to function for

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that pit to operate. But he also knows there are many times at 12:30, 1:00 in the morning the equipment is trying to clear the road which is a blessing in the sense the road is being attended to, but the trucks of course are coming through. That would be an issue. He's not only praying for their well-being, but the township's and the direction that they go concerning any issue considering the Master Plan for his well-being and any of his neighbors. They have to have trust in all of your decisions, each and everyone of you, because it's clear there are some real issues. He'd just ask that from now on he doesn't get a knock on his door at 9:30, 10:00 on a Friday night bringing to his attention something that is definitely an issue that he needs to know and what direction this is going.

Chairperson Kilbourn stated in approximately May they will all be back in for their mining permits. They are under a court consent judgment. Some of that already stipulates their hours of operation and other things that the Planning Commission and the Township Board cannot change. However, when they come back in for their permit, they do look at complaints, they do make them clean up sites and do things. Otherwise they won't permit their permits. She invited everyone to come back in in the spring when the mine operators come in for their permits. They're in a hurry to get permits then because that's the start of their business. So they want to help everybody to make sure they get their permits. The Master Plan public hearing will probably be in April. If you want to look at the Master Plan on the web site and come back for the public hearing, you're welcome.

Ms. Val Bouchard requested that the Planning Commission not look at the pictures alone, but take a field trip out there and look at the site.

**Reports:**

**Commissioner Stevens** reported the Zoning Board of Appeals met prior to this meeting in regard to the Genysis Credit Union's request for parking. He found out he could not chair the meeting or be a part of the meeting due to the new regulations. He stated the ZBA probably wouldn't have passed an appeal to get the parking based on the zoning criteria. They felt this was the first request under the overlay district and it ought to be looked at prior to a vote. So it was tabled, which is pretty unusual for the Z BA to table a request. Karin Winchester, Laura DeVault and others, maybe Brian, will get together prior to the next Z BA meeting to see if they don't have to get an appeal. Based on the way the applicant is proposing it, he wants to have the parking or pull out of the project, which would be extremely unfortunate. Hopefully something can be set up so he can get what he's looking for and we don't have to bring it to the Z BA for a vote.

**Commissioner McHalpine** stated there are too many gray areas regarding the rezoning that was requested tonight. He doesn't know what the Planning Commission can do in regards to building materials being brought in.

Mr. Oppmann stated he's in violation of the mining permit.

Commissioner McHalpine noted he can't do those things anyway because of the consent judgment.

Commissioner Angus stated they have been grossly in violation of the consent judgment for decades. They've set down and made an agreement between the Township and the mining operators. Really that helps them out, the consent judgment. It might be in there that if you elect to rezone it or change another use, you are walking away from this judgment and you must now become compliant with the Township's regulations for this property.

Commissioner Barton noted Randy Ford has been in here saying everything was met over the last several years.

Commissioner Gurski questioned why every year it comes back, they're encroaching here, they still have trash here, they still have sheds and other buildings, then it goes on to the Township Board where it's approved with all the conditions.

Chairperson Kilbourn noted the township now has a code enforcement officer which they never had before.

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Commissioner Gurski stated Hubble, Roth & Clark have had the same pictures. He's seen pictures that they have taken.

Chairperson Kilbourn suggested making a motion to ask the board for money for the planner to create language for a Research/Office zoning area.

Administrator DeVault noted Commissioner Ruth could take it to the township board.

Chairperson Kilbourn noted it's called out in the Master Plan for Research/Office, we just don't have the verbiage behind it.

Commissioner Barton noted succession rules should be written into the Planning Commission bylaws so you can succeed yourself. He would like public hearings to be voted on before they happen in the previous meeting. The public hearing tonight was not voted on a month ago. It came from left field.

Chairperson Kilbourn agreed. She indicated she has stated it time after time she would like to see the issue so she can look at it, review it, get the bugs out of it before the public hearing is set. That way residents aren't riled up about things that aren't even going to happen.

Administrator DeVault noted the law and the ordinances say that when the application is submitted a public hearing must be scheduled, with the exception to text amendments.

Mr. Oppmann noted the state law gives guidance. Once somebody files an application you have to put it on the next available Planning Commission agenda as long as you meet public notice requirements.

Commissioner Angus: No report.

Commissioner Gurski: No report.

Commissioner Ruth: No report.

Administrator DeVault: No report.

**Adjournment:** Chairperson LaLaine Kilbourn, hearing no other business, adjourned the meeting at 9:36 p.m.

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Zo Turner, Recording Secretary  
Holly Township