We answer your question in the negative. It should be noted, however, that the Board does have authority to deny a site plan that does not meet the requirements of ICC 16.15 or, in the alternative, to impose conditions on the site plan approval in conformity with ICC 16.15. Analysis follows."

The Planning Director came to a similar conclusion in his memo to the Board dated August 21, 1987.

Staff Presentation

Roberta Miller, Planner, posted a new aerial showing the site, and discussed the proposed plan; also posted the reclamation plan, noting that Pam Davenport, McDowell and Associates, Oak Harbor, representing the applicant, was present to discuss same.

Comments and Concerns addressed by the Commissioners

Chairman Colby asked if the reclamation plan had been addressed by the Hearing Examiner -- can find no comments within the Hearing Examiner's findings; further, he asked Examiner's secretary whether or not the matter was addressed, and had been advised she thought not.

The Board's options were reviewed by the Chairman, noting if the Board wishes to impose additional or different conditions from those recommended by the Hearing Examiner, the Board must indicate its intention to consider that and schedule its own public hearing to accept any additional testimony and evidence. He made the point that the Code specifically indicates that a reclamation plan shall include certain specific things, and he does not find those items indicated on the plan as required. Bonding is covered by the Code which states that "upon recommendation of the Hearing Examiner the Board shall require that the operator provide a bond . . . . ". The surface mining portion of the Land Use Ordinance contains a number of points, which in this case, will not be inspected by DNR because they are not part of DNRs regulations. This is the first gravel mine under the new Code; therefore he reminded that these standards have not applied previously.

The Chair finds sufficient reasons for remanding the matter to the Hearing Examiner based on his previous comments, and in addition: water impoundments/artificial lakes on the property; surprised to note that it was elected to select the steepest slope allowed by DNR as the final slope; compatibility with future permitted uses.

Commissioner Koetje however pointed out a statement under "Reclamation" indicating that it must be done in accordance with ICC 17.02.150 and the Washington State Surface Mining Act, RCW. According to Ms. Miller, bonding has been addressed through DNR, and he feels that the matter has been handled in accordance with the Code, the Legislative Intent, and all requirements met.

Commissioner Caldwell summarized his question: does the reclamation plan as submitted fully comply with the appropriate sections of the Zoning Code? Also, if the Board were to hold its own public hearing, focussing on the issue of the level of bonding, Commissioner Caldwell asked if the Board would be able to obtain during that hearing an estimate of what the reclamation project cost is and what level of bonding DNR might require.

Staff and Applicant Response

Ms. Miller stated that the reclamation plan was provided to the Examiner for review, had been discussed but not at great length, and a complete set of plans had been sent and covered at least briefly in the last page of her staff report. She met with Joye Bonvouloir, Island County Health Department, this morning about monitoring for the water system, concerning on what information she proposed a

change in terms of the monitoring well, and responded it was based on the information submitted about the adjacent surface mine in terms of the upper water table.

Pam Davenport confirmed that the operator would like to begin operations immediately upon receiving an operating permit from DNR; time life would be 15 years thereafter.

Ms. Miller stated that DNR is the agency who must next give approval, and responsible for compliance, it would appear appropriate that DNR would also hold the bond. There is no county staff with regular enforcement position with regard to surface mines. Staff has gone to look at those not in compliance with existing permit. She stated that the property is located in a rural residential zone; will be open space which should be compatible with surrounding development. Since no washing is proposed on site, the only water would be what falls with rainfall.

Ms. Davenport confirmed that DNR is the agency who determines the amount of the bond as part of their normal process of site investigation to determine individual site costs. Final slope is 1.75 horizontal to 1' vertical; DNR minimum is 1.5; angle of repose in sand & gravels is 33 degrees for stability purposes; the proposal here is 29 degrees. If siltation occurs, Ms. Davenport confirmed that it will be removed with a front end loader; with minimum of 20' above the water table does not anticipating ponding problem in the area mined. Further she confirmed that the fencing requirement would be met.

Decision

Commissioner Caldwell is comfortable with the issues the Board was allowed to look at during this meeting, recognizing that use approval is already an accomplished fact. He would support holding a public hearing if either of the other Board members sees issues which could be addressed through conditions. He would not support sending the matter back to the Hearing Examiner. Although he would not normally favor "dragging" out a matter; but since this is the first surface mining application processed under the new ordinance and quite clearly one of the more critical conditions of the application is the reclamation plan, a public hearing may provide an opportunity to develop guidelines as to what a reclamation plan ought to consist of.

Commissioner Koetje sees staff as being comfortable that all issues have been addressed pertaining to slopes, drainage, monitoring of the well site. He is surprised that mining can be allowed in RR, but that is how the Code reads. He would not support remanding this back to the Hearing Examiner.

The Chairman believes that the items required under the Code for reclamation plans should in fact be a part of that plan; this could be added through returning the matter to the Hearing Examiner or by the Board holding its own public hearing. He acknowledged the number of concerned citizens; the fact that he is uncomfortable with accepting the commentary made at this meeting as being binding on the applicant. If the Board holds its own hearing or sends the matter back to the Hearing Examiner, that can be incorporated as part of the record and made a part of the Binding Site Plan.

Commissioner Caldwell moved that the Board schedule a Public Hearing for September 21, 1987 at 3:00 p.m. on Binding Site Plan 02/87 in order to consider possible modifications to the recommendation as it is before the Board at this time. Motion, seconded by Commissioner Colby, carried by majority vote; Commissioner Koetje abstained.

HEARING HELD: ORDINANCE NO. R-60-87 REDUCING SPEED LIMIT ON MADRONA WAY TO 35 MPH. CONTINUED FROM AUGUST 17, 1987

A Public Hearing was held at 3:00 p.m. on Ordinance R-60-87, a pro-