



King County

JULY – DECEMBER 2016

SEMI-ANNUAL REPORT OF THE KING COUNTY HEARING EXAMINER

The report provides information concerning compliance with the objectives and duties of the Hearing Examiner stated in Chapter 20.22 of the King County Code

David Spohr, Hearing Examiner
March 1, 2017

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SEMI-ANNUAL REPORT OFFICE OF THE KING COUNTY HEARING EXAMINER

JULY – DECEMBER 2016

DAVID SPOHR
KING COUNTY HEARING EXAMINER

OVERVIEW

The King County Hearing Examiner is appointed by the [Metropolitan King County Council](#) to provide a fair, efficient, and citizen-accessible public hearing process. We hear applications and appeals of many county administrative determinations, issue formal decisions, and make recommendations to Council.

Twice a year we report to Council on examiner operations; this report covers July 1 through December 31, 2016. We begin by explaining and reviewing specific examiner jurisdictions. We then apply these groupings to the current period, analyzing Examiner workload and compliance with various deadlines.

Throughout, we compare the current reporting period to previous periods. We describe some of our more interesting cases, discuss the few examiner matters on appeal to the courts, and close by describing our initiatives.

Our largest initiative this reporting period was finalizing draft revisions to our rules of procedure and mediation, replacing and consolidating our 1995 Rules of Procedure and separate 1995 Rules of Mediation. Our draft went to Council and various stakeholders on the final work day of 2016. As yesterday wrapped up the public's 60-day comment period on the draft rules, we should have a slightly revised draft to Council shortly.

In terms of day-to-day operations, the biggest change this reporting period has been fully implementing our spring 2016 assumption of animal control and for-hire licensing appeals. Our case numbers are up significantly, and we have needed to make efficiency adjustments to continue meeting our deadlines while offering first-rate service. We were 100% compliant with all three deadlines that apply to each examiner case, exceeding our goal of 95% compliance.

We appreciate the trust the Council puts in us, and we remain committed to courtesy, promptness, and helpfulness in assisting the public to make full and effective use of our services. In addition, we continue striving to timely issue well-written, clearly-reasoned, and legally-appropriate decisions and recommendations.

20.22.020 Chapter purpose

The office of hearing examiner is created and shall act on behalf of the council in considering and applying adopted county policies and regulations as provided in this chapter. The hearing examiner shall separate the application of regulatory controls from the legislative planning process, protect and promote the public and private interests of the community and expand the principles of fairness and due process in public hearings.

20.22.310 Semiannual report

The office of the hearing examiner shall prepare a semiannual report to the council detailing the length of time required for hearings in the previous six months, categorized both on average and by type of proceeding. The report shall provide commentary on office operations and identify any need for clarification of county policy or development regulations. The office shall file the report by March 1 and September 1 of each year...

20.20.020 Classifications of land use decision processes

A. Land use permit decisions are classified into four types, based on who makes the decision, whether public notice is required, whether a public hearing is required before a decision is made and whether administrative appeals are provided.

....

EXAMINER JURISDICTION

There are two main avenues by which matters reach the Examiner. Sometimes, the Examiner acts in an appellate capacity, hearing an appeal by a party not satisfied with an agency determination. Other times, the Examiner has “original jurisdiction,” holding a public hearing on a matter regardless of whether anyone objects to the agency’s recommended course of action. Depending on the type of case, at the end of a hearing the Examiner may issue the County’s final decision, a decision that is final unless appealed to Council, or a recommendation to Council. As to subject matter, the Examiner has jurisdiction over eighty distinct matters, in arenas ranging from lobbyist disclosure (K.C.C. 1.07) to career service review (K.C.C. 12.16) to open housing (K.C.C. 12.20). But the Examiner’s caseload mainly consists of several common types. A non-exhaustive list, categorized by decision-making process, follows.

EXAMINER RECOMMENDATIONS TO THE COUNCIL (K.C.C. 20.22.060)

Applications for public benefit rating system-assessed valuation on open space land (K.C.C. 20.36.010)

Road vacation applications and appeals of denials (K.C.C. 14.40.015)

Type 4 land use decisions (K.C.C. 20.20.020(A)(4)):

- Zone reclassifications
- Plat vacations

EXAMINER DECISIONS, APPEALABLE TO THE COUNCIL (K.C.C. 20.22.050)

Type 3 land use decisions (K.C.C. 20.20.020(A)(3)):

- Preliminary plat
- Plat alterations

EXAMINER FINAL DECISIONS (K.C.C. 20.22.040)

Code compliance enforcement:

- Animal care and control (K.C.C. 11.04)
- Land use (K.C.C. Title 23)
- For-hire transportation (K.C.C. 6.64)
- Public Health (Bd. Of Health Code 1.08)

Threshold SEPA Determinations (K.C.C. 20.44.120)

Type 2 land use decisions (K.C.C. 20.20.020(A)(2)):

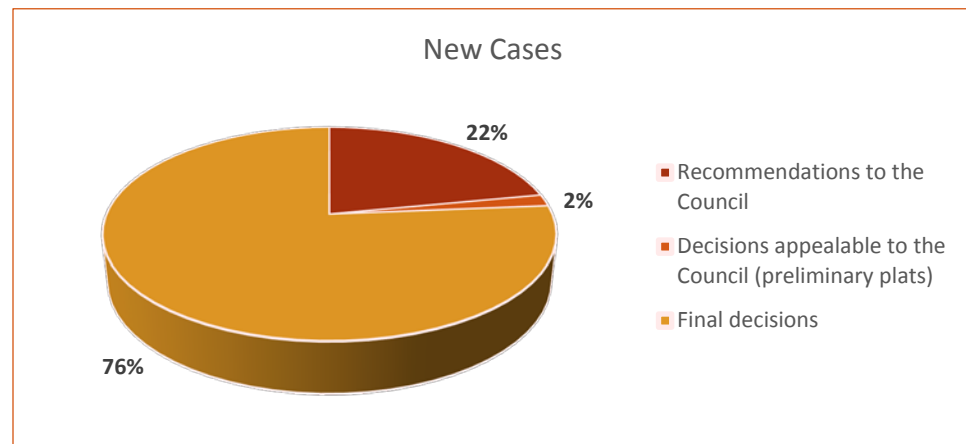
- Conditional use permits
- Short plats, short plat revisions/alterations
- Reasonable use exceptions
- Temporary use permits
- Shoreline substantial development permits
- Zoning variances

NEW CASES

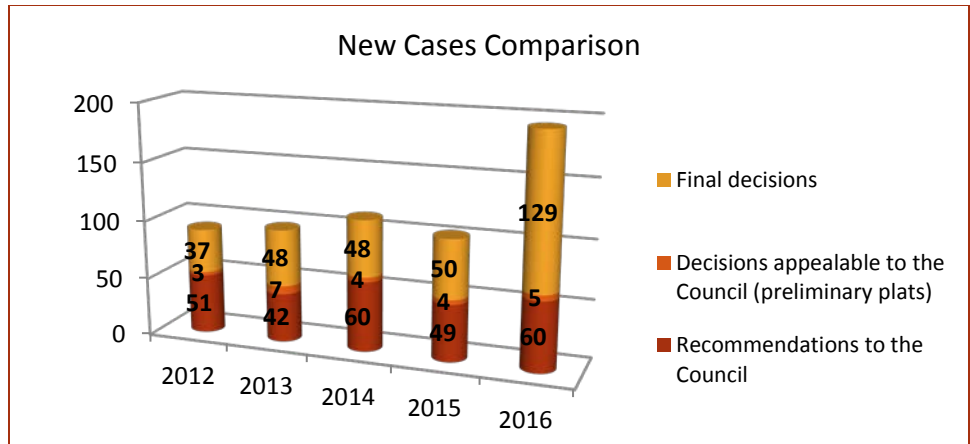
During the second half of 2016, we received 114 new cases, consisting of:

NEW CASES JULY —DECEMBER 2016		Number of Cases
RECOMMENDATIONS TO THE COUNCIL		
Open space		19
Rezone		2
Road vacation		4
DECISIONS APPEALABLE TO THE COUNCIL		
Preliminary plats		2
FINAL DECISIONS		
Animal Services enforcement		61
For-hire license enforcement		9
Land use enforcement		15
Land use Type 2		1
SEPA		1
TOTAL		114

More generally, our new case filings, broken down into class, were:

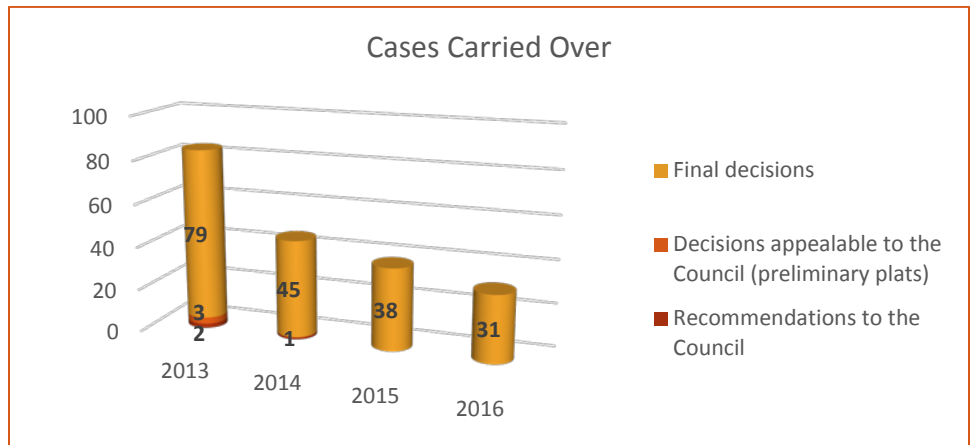


The 114 new case filings for the second half of 2016 represented a three-fold increase from the 33 we received in the second half of 2015. For the year, our 194 new cases received in 2016 was an increase from the 103 we received in 2015. The biggest factors were the new animal enforcement cases and for-hire license appeals. We expect the totals to rise slightly further in 2017, as we only started receiving the new classes of cases part-way into 2016.



CASES CARRIED OVER FROM PREVIOUS YEARS

At the end of each year we carry a certain number of cases into the next year. A few are matters on appeal; our case is stayed while a court decides. Most are cases continued at the joint request of the parties, while the parties attempt to reach an amicable resolution. After making a concentrated push in 2013 to winnow down our list, we have continued slightly culling the list the last two years. We expect the numbers to remain relatively constant from going forward.



For the 31 cases carried into 2016, almost half came to us last year, a quarter between 2013 and 2014, and a quarter before that.

CASES CARRIED OVER	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
RECOMMENDATIONS TO THE COUNCIL										
Active processing										1
FINAL DECISIONS										
Appealed to Superior Court						1				
Active processing					1			1		
Continued on-call	1		1	2		1	1	2	5	12
TOTAL=29										

20.22.030.C.

For the purposes of proceedings identified in K.C.C. 20.22.050 and 20.24.060, the public hearing by the examiner shall constitute the hearing required by the King County Charter by the council.

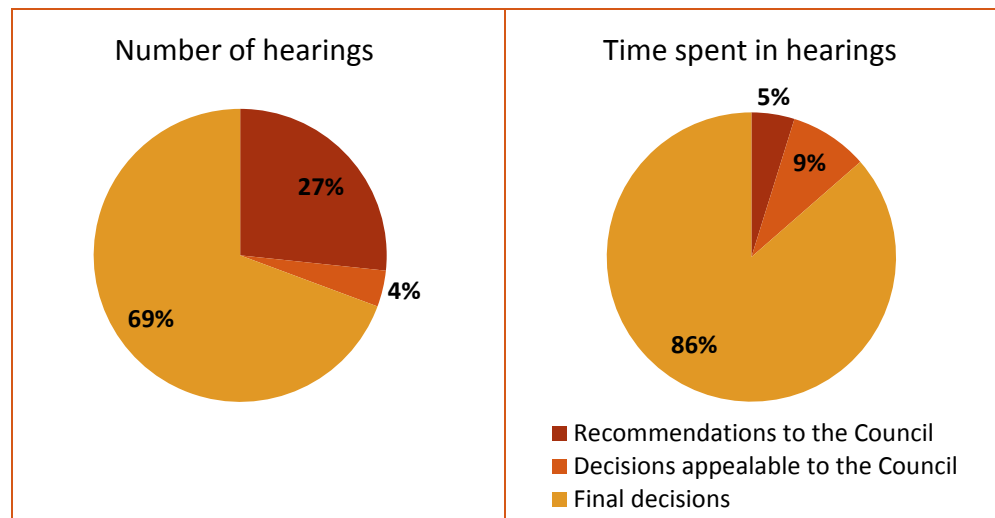
20.22.120.A. Prehearing conference

On the examiner's own initiative, or at the request of a party, the examiner may set a prehearing conference.

PROCEEDINGS

We attempt to extend a high level of service to all our participants. After all, even matters raising no novel legal issues or creating little impact beyond the parties are still crucially important to those parties. But not all types of cases require the same level of Examiner involvement. For example, the average land use enforcement hearing took a dozen times longer than the average current use taxation hearing.

Number of Hearings July – December 2016	Number of hearings	Cumulative length of time
RECOMMENDATIONS TO THE COUNCIL		
Open space	17	1:40
Rezone	1	0:38
Road vacation	2	0:14
DECISIONS APPEALABLE TO THE COUNCIL		
Preliminary plats	3	5:15
FINAL DECISIONS		
Animal Services enforcement	29	18:14
Land use enforcement	15	18:18
For-hire license enforcement	8	8:49
TOTAL	75	53:08

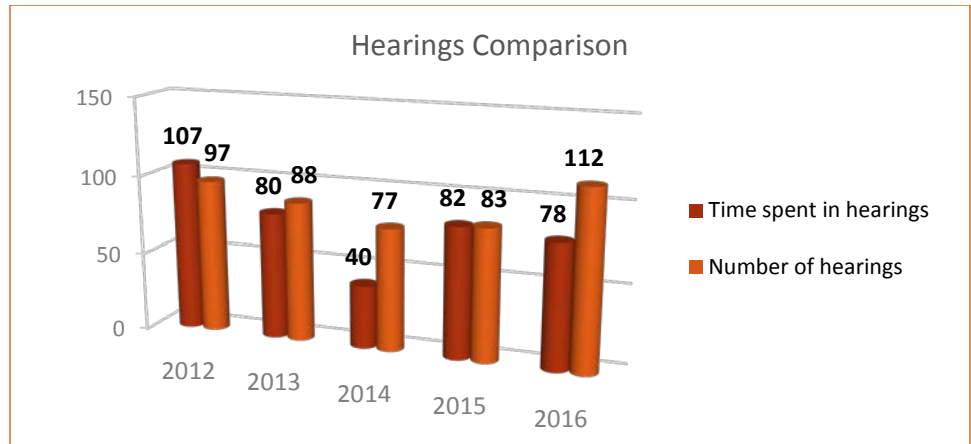


Compared to 2015, our number of hearings increased from 83 to 112, although our cumulative hours spent in hearings remained relatively constant.

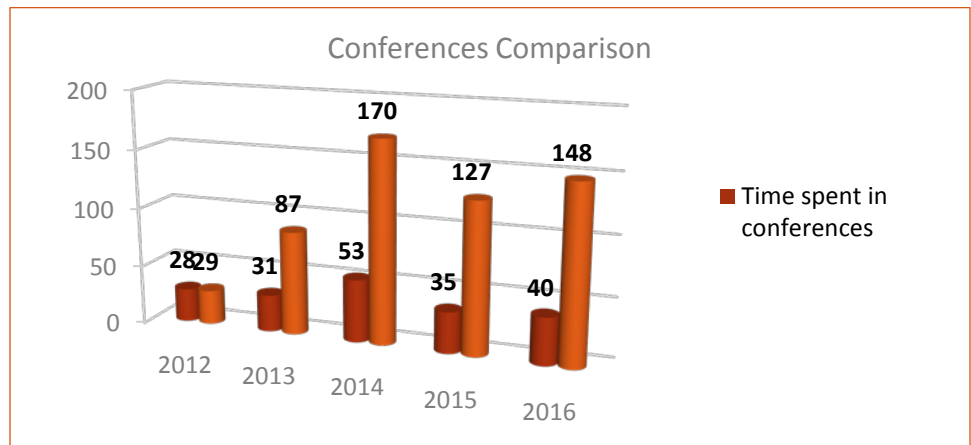
20.22.030.1

G. The examiner shall use case management techniques to the extent reasonable including:

1. Limiting testimony and argument to relevant issues and to matters identified in the prehearing order;
2. Prehearing identification and submission of exhibits, if applicable;
3. Stipulated testimony or facts;
4. Prehearing dispositive motions, if applicable;
5. Prehearing conferences;
6. Voluntary mediation; and
7. Other methods to promote efficiency and to avoid delay.

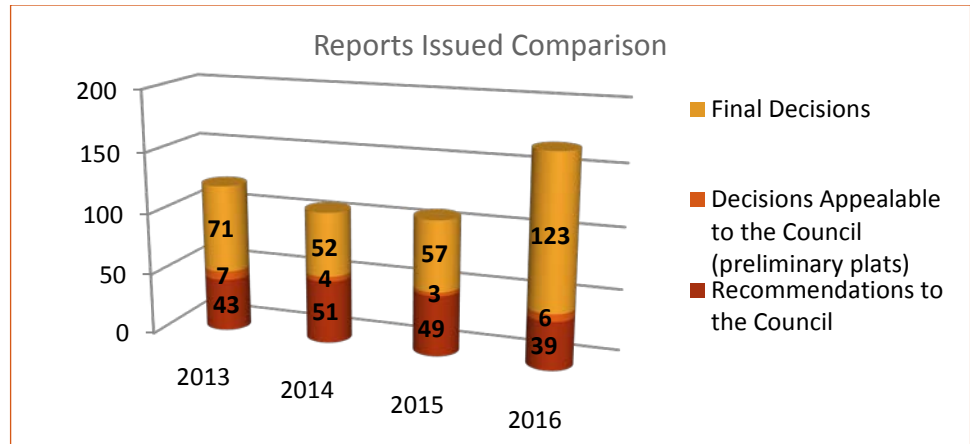


We made a significant policy shift in 2014 to hold periodic status conference calls in every case “continued on-call.” These conferences ensure we stay on top of cases and keep parties’ feet to the fire. Having periodic conferences helps us more speedily resolve cases, either through the parties’ amicable resolution or (where the parties appear at loggerheads) by ending the continuance, going to an adversarial hearing, and writing a decision. Our conference numbers have remained relatively steady ever since.



REPORTS ISSUED

At the conclusion of a case, we issue a final report closing out the matter. These closings are sometimes summary dismissals (such as when the parties settle a dispute) but more often are final determinations based on taking evidence and argument at a hearing and deciding the case on the merits. Our 168 reports in 2016 are significantly more than we have issued in previous years.



Beyond the numbers, our more interesting cases involved:

- Barking dog cases involving the prohibition against “Any animal that ... barks ... to an unreasonable degree, in such a manner as to disturb a person or neighborhood.” Unlike something like a dog bite, which may involve a one-time occurrence between strangers, noise complaints typically concern intractable neighbor disputes often stretching back years. Our first case, *Thrasher*, consisted of neighbors who had been involved in no less than five administrative hearings in the past few years. Such cases also tend to be long hearings since—unlike a one-time incident—the factual background involves repeated barking over the course of many days, weeks, and/or months, and the evidence often includes both audiovisual recordings and hotly contested testimony. The contours of the law too—including things like what duty an owner has to curb the dog’s barking (and how), what (if any) responsibility an aggrieved neighbor has to try to mitigate the barking’s impact, the difference between daytime and nighttime barking, the sensitivity of the listener, and what “an unreasonable degree” means in terms of barking repetition, duration, and timing—has required extensive legal analysis. Never a dull moment.
- For-hire driver’s license appeals have necessitated us becoming conversant in the world of infractions and criminal procedure. Many of our cases have concerned driving records (moving violations and caused-accidents), but several have involved non-driving related criminal convictions for crimes like domestic violence assaults. And while certain bases for license denial are mandatory—the code employing “*shall deny*” language—things like convictions for crimes of violence are discretionary denials (“*may deny*”), necessitating us balancing weighty public safety with driver (and their families) livelihood. Heavy matters indeed.
- In October we issued a preliminary plat approval for a small subdivision that proposed permit-exempt wells as its water source. At the same time, however,

our Supreme Court was issuing *Hirst*, which re-envisioned—at least on the planning level—what it means to show “appropriate provisions” for potable water in the permit-exempt well context. A neighboring city and hospital district timely moved for reconsideration. We requested and received several well-written briefs. We offered preliminary rulings on several issues, such as whether to reopen the hearing record, the timing of the *Hirst* mandate vis-à-vis our case, and water availability as it relates to various stages of development. And we requested additional briefing on several procedural and substantive questions, such as appellant’s standing, factual water availability, and the impact of *Hirst* on pending applications. At the parties’ request, we have stayed the briefing while several *Hirst*-related bills move through Olympia. More to follow in the coming months.

APPELLATE ACTIVITY

At the request of Council, we now regularly include information involving appeals of Examiner decisions.

We received one new appeal in the second half of 2016, involving a for-hire driver’s license denial, *M. Singh*. The thrust of the appeal involves the regulatory scenario we discussed at length in our last semi-annual report. In a nutshell, the County and Seattle have a similar legal framework for when for-hire licenses must or can be a denied. Pursuant to a 1995 Executive/Mayor cooperative agreement, the County reviews for-hire driver’s license applications for *both* the County and Seattle and (when appropriate) issues a single, consolidated denial letter. However, an aggrieved licensee must separately appeal through both Seattle’s and the County’s systems. These parallel appeal processes create problems from the licensees’ perspective (attempting to navigate two administrative ladders, often while possessing only limited English proficiency), the administrative perspective (duplicative staff time and cost) and the jurisprudential perspective (potentially conflicting rulings and inconsistent legal interpretations on the same underlying facts). However, as of this writing, the *M. Singh* appellant has yet to take any action-forcing with the court.

We also have one ongoing appeal, *McMilian*, involving a (partially) legally nonconforming use as a wrecking yard. As we have previously reported, in early 2016, the examiner denied some of *McMilian*’s appeal, but granted much of it. *McMilian* appealed nonetheless. The superior court hearing occurred on December 2, 2016. At the conclusion of the hearing, the trial judge indicated it would be some time before she would issue a decision. We await the decision.

20.22.100.B.1

For appeals initiated by delivering the appeal statement to the responsible department or division...The examiner shall hold a prehearing conference or a hearing within forty-five days, and shall complete the appeal process, including issuing a determination, within ninety days of the date the office of the hearing examiner receives those materials.

20.22.100.C.

For applications for which the responsible department or division issues a recommendation and an examiner holds a public hearing and issues a decision or recommendation, the examiner shall complete the application review, including holding a public hearing and transmitting the report required by K.C.C. 20.22.220, within ninety days from the date the council refers the application to the office of the hearing examiner. Any time required by the applicant or the responsible department or division to obtain and provide additional information requested by the examiner and necessary for the determination on the application and consistent with applicable laws, regulations and adopted policies is excluded from the ninety-day calculation.

20.22.100.F.

The examiner may extend the deadlines in this section for up to thirty days. Extensions of over thirty days are permissible with the consent of all parties. When an extension is made, the examiner shall state in writing the reason for the extension.

COMPLIANCE WITH CODE-MANDATED DEADLINES

Statutory requirements impose deadlines for swift and efficient Examiner processing of certain case matters. The code-established deadlines discussed below represent our three principal time requirements. We were 100 percent complaint with all deadlines, meaning we exceeded the 95 percent compliance goal we set each reporting period.

Two of the three deadlines K.C.C. 20.22.100 established in March 2016 are new and/or revised. Thus, we are not including what would be a somewhat apples-to-oranges graph comparison with earlier reporting periods. We created a new baseline with our last report; within a few reports we will have a constant measuring stick to compare performance over reporting periods.

DEADLINE ONE—DAYS FROM APPEAL TRANSMITTAL TO FIRST PROCEEDING

For appeals, the Examiner must hold a prehearing conference or hearing within 45 days of receiving the appeal packet. We were compliant in all of our cases.

DEADLINE—1 45 DAYS FROM APPEAL TRANSMITTAL TO FIRST PROCEEDING AVERAGES AND COMPLIANCE	Average days	Percent Compliant
FINAL DECISIONS		
Animal Services enforcement	38	100%
For-hire license enforcement	40	100%
Land use enforcement	30	100%
Land use Type 2	21	100%
SEPA	33	100%
TOTAL	38	100%

Where the parties jointly request an extension (such as when appellant is working to obtain a permit that would resolve a code enforcement case) the Examiner may grant a lengthy extension to Deadline One. In addition, the Examiner may (on examiner motion, or on the contested request of one of the parties) extend the deadline, but only up to 30 days. We strive to keep Examiner-initiated or non-consensual extensions to a minimum (five percent or less of our cases). We used our extension twice: once (by four days) to enable us to arrange for a Ukrainian interpreter and the other (by almost the full month) where the appellant wanted to push back the hearing and the agency objected.

DEADLINE TWO—DAYS FROM APPLICATION REFERRAL/APPEAL TRANSMITTAL TO REPORT

For appeals and for applications, the Examiner should wrap up review, including issuing a final determination, within 90 days of receiving the appeal packet, or (for applications) within 90 days of Council referring the application to the Examiner. We were compliant in all of our cases.

As with Deadline One, an Examiner may (on his or her own motion or at the contested request of one of the parties) extend Deadline Two for up to 30 days. Here too, we strive to keep Examiner-initiated extensions to a minimum. Only one cases (an open space tax matter) took over 90 days to process, and there the parties had jointly requested that we continue the initial hearing.

DEADLINE—2		
90 DAYS FROM APPLICATION REFERRAL/ APPEAL TRANSMITTAL TO REPORT AVERAGES AND COMPLIANCE	Average days	Percent Compliant
RECOMMENDATIONS TO THE COUNCIL		
Open space	35	100%
Rezone	28	100%
Road vacation	36	100%
DECISIONS APPEALABLE TO THE COUNCIL		
Preliminary plats	21	100%
FINAL DECISIONS		
Animal Services enforcement	37	100%
For-hire license enforcement	45	100%
Land use enforcement	52	100%
TOTAL	40	100%

DEADLINE THREE—10 BUSINESS DAYS FROM HEARING CLOSE TO REPORT

The last deadline relates to all types of hearings, requiring the Examiner to issue findings and conclusions no later than ten business days after completing a hearing. We were compliant on all of our reports.

DEADLINE—3		
10 BUSINESS DAYS FROM HEARING CLOSE TO REPORT AVERAGES AND COMPLIANCE	Average days	Percent compliant
RECOMMENDATIONS TO THE COUNCIL		
Open space	7	100%
Rezone	5	100%
Road vacation	4	100%
DECISIONS APPEALABLE TO THE COUNCIL		
Preliminary plats	6	100%
FINAL DECISIONS		
Animal Services enforcement	4	100%
For-hire license enforcement	6	100%
Land use enforcement	4	100%
SEPA	4	100%
TOTAL	4	100%

RULES OF PROCEDURE

Our largest initiative this reporting period was finalizing draft revisions to our 1995 Rules of Procedure and separate 1995 Rules of Mediation. We started this project a few years ago, but then shelved it after realizing that better rules should start from a better code. So, as reported in previous reports, we embarked with others from the Council on a lengthy, to-the-studs overhaul of the examiner code. The code revision project came to fruition with a new KCC Chapter 20.22 (replacing the old KCC Chapter 20.24) in March 2016, giving us an improved law on which to base enhanced rules.

We thus turned back to our rules this reporting period, and on the final workday of 2016 proudly transmitted our draft Rules of Procedure and Mediation to the Clerk, posted them on our website, and sent copies to various stakeholders.

Some of the rule changes are preordained by code changes (such as timely motions for reconsideration automatically staying an appeal deadline), but most are stand-alone improvements, including: adding definitions of terms; liberalizing and clarifying the process for amending appeal statements; improving and modernizing procedures for filing and service; simplifying our byzantine, nine-page mediation rules into a single page; better explaining expectations and procedures surrounding discovery; spelling out the subpoena process; clarifying how one “intervenes” in an examiner matter; making explicit our exclusion of unconstitutionally obtained evidence; providing new, specially-tailored measures for select classes of cases; amending what had been too broad and yet too shallow an agency burden of proof; and eliminating open-ended examiner discretion to defer to agency determinations.

With the public comment period having closed yesterday, and having received relatively few comments, we look forward to reviewing and incorporating the comments in the near future and circulating to Council any needed revisions to our December draft. We are confident that later in this reporting period we will have a fully operational, much improved, set of rules.

ADJUSTING TO HIGHER CASE VOLUMES AND DIFFERENT TYPES OF CASES

As described above, our office has begun hearing two new types of enforcement cases, animal enforcement and for-hire vehicle licenses. This has boosted our numbers significantly, and we have needed to make adjustments to continue meeting our deadlines and responsibilities. If last period was the planning and initial roll out phase, this period has been about growing into and improving our performance. One change the undersigned has made, which has created a world

of efficiency gains, has been investing in good voice recognition software; it has really sped up report writing, especially those that draw from many exhibits. Below, we highlight a few other efficiency strategies we tried and will continue to employ.

NEW CASE PROCESSING

Working at higher speeds with higher volumes increases the opportunity for data entry error, so we instituted a two-step process for opening cases in our database. The legislative secretary does the initial file opening entries, and then the clerk double-checks. This ensure data accuracy, both for case processing deadline tracking and for party contact information.

In the past, the examiner did most new case intake and made most scheduling determinations. The influx of new cases has required shifting more examiner time to hearing preparation and report writing. Thus, the clerk now does an initial case review and—based on evaluation of the charged violations and appeal statements—estimates hearing length and likelihood of settlement. She then suggests a hearing schedule to meet case processing deadlines, coordinates scheduling other hearings on the same date to minimize both downtime and delays, and attempts to balance the examiner’s entire workload over a given period.

Database Management and Workflow Coordination

To our delight, the newest member of our staff, brought on late 2015, possesses a strong set of technical skills, on top of a diligent eye for time management and a commitment to efficiency. Once she got a handle on the baseline tasks, we made her a co-database administrator, with the key responsibility of managing our automatic workflows (pre-set combinations of tasks that are our main way of organizing our work). This not only makes sense for time management, but because she uses the workflows the most, it is logical that she be editing them.

EXHIBITS

Together the secretary and clerk have made significant improvements to our exhibit handling. Nearly all of our exhibits for appeals are now stored electronically. We also worked to transition departments to electronically file most exhibits. In advance of hearings, exhibits are digitally stamped and bates numbered, and exhibits lists are drafted. Previously, nearly all of the work on exhibits was done during a hearing. With the current improvements, many on staff’s initiative, time is freed up during the hearing for staff to take clear notes, which are very useful for post-hearing review (especially for lengthy hearings), and to pay attention to the evidence and arguments offered.

CASE MANAGEMENT TECHNIQUES

What began as a tool to assist in our learning new codes for our new case types, we have now made permanent. Our notices of hearing used to be boilerplate: times, dates, and pre-hearing deadlines. We now map out the pertinent issues for hearing, providing a preliminary take on what items seem potentially fertile (and not fertile) and asking for additional information. The benefits to us taking the time and effort to prepare this language are:

1. If the situation warrants, it can nudge the parties towards settlement;
2. If applied, it can focus the department staff report and party presentations at hearing;
3. It distills, for the mostly lay people who appear before us, the appeal process into understandable and manageable pieces, and it lets participants know that we are paying careful attention to each case.

REGULATORY CHANGE RECOMMENDATION

The code requires our semi-annual reports to identify any needed regulatory clarification. As discussed above, the biggest one in the coming weeks will be Council considering, finalizing, and acting on a motion to revamp our Rules of Procedure and Mediation.

CONCLUSION

The year 2016 marked a big change, with the Examiner taking on the first major body of non-land related casework in several decades. We look forward to continuing a smooth-running process, while maintaining our standards for our pre-existing casework. Our semi-annual report for the first half of 2017 will be presented on or before September 1, 2017.

Submitted March 1, 2017,



David Spohr, Hearing Examiner