

BI-ANNUAL REPORT OF THE KING COUNTY HEARING EXAMINER

The report provides information concerning compliance with the objectives of Ordinance 11502 and the other duties of the Hearing Examiner stated in Chapter 20.24 of the King County Code

David Spohr, Interim Deputy Hearing Examiner
March 1, 2013



King County

JULY-DECEMBER 2012

K.C.C. 20.24.320

Semi-annual report

The chief examiner shall prepare a semi-annual report to the King County 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 examiner operations and identify any need for clarification of county policy or development regulations. The semi-annual report shall be presented to the council by March 1st and September 1st of each year.

K.C.C. 20.24.010 Chapter purpose

The purpose of this chapter is to provide a system of considering and applying regulatory devices which will best satisfy the following basic needs:

- A. The need to separate the application of regulatory controls to the land from planning;
- B. The need to better protect and promote the interests of the public and private elements of the community;
- C. The need to expand the principles of fairness and due process in public hearings.

K.C.C. 20.24.060

Deputy examiner duties.

The deputy shall assist the examiner in the performance of the duties conferred upon the examiner by ordinance and shall, in the event of the absence or the inability of the examiner to act, have all the duties and powers of the examiner. The deputy may also serve in other capacities as an employee of the council.

BI-ANNUAL REPORT OFFICE OF THE KING COUNTY HEARING EXAMINER

JULY – DECEMBER 2012

DAVID SPOHR
INTERIM DEPUTY HEARING EXAMINER

OVERVIEW

The King County Hearing Examiner is appointed by the [Metropolitan King County Council](#) to provide a public hearing process for land use and other critical issues that is fair, efficient, and accessible to all citizens.

We hear certain types of land use applications and appeals of county administrative orders and decisions, issue formal decisions, and make recommendations to the Council. We start this report with an overview of the specific Examiner jurisdictions, explaining the three broad categories and numerous subcategories of authorities provided by code. We then apply these groupings to the July-December 2012 period, as we break down Examiner workload and compliance with the various, code-imposed deadlines.

Our previous bi-annual report categorized and summarized information, offered statistical analysis, and employed charts and graphs to illustrate trends, thus establishing statistical baselines from which now to make detailed performance and workload comparisons. As our first order of business after coming on board in June was issuing findings and conclusions on past-due cases – a task completed by the end of July – our July 2012 data differs significantly from either the January-June or August-December periods. To address that in this report, we often employ a January-June baseline, a separate July carve out, and an August-December comparison. The August-December figures should reflect the current state of operations.

We are committed to courtesy, promptness, and helpfulness in assisting the public to make full and effective use of our services. In this spirit, we describe our current office initiatives, including our ongoing efforts to modernize office procedures, reworking our eighteen-year old Rules of Procedure, and participating with others in the Council branch to draft amendments to the Examiner code, K.C.C. 20.24.

We appreciate the trust the Council puts in us. We continue striving to make our decisions and recommendations well written, clearly reasoned, appropriately based on laws, rules, and policies, and timely.

K.C.C. 20.36.010

Purpose and intent

It is in the best interest of the county to maintain, preserve, conserve and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the county and its citizens.

K.C.C. 14.40.015 Procedure

A. The zoning and subdivision examiner shall hold public hearings on vacations which have been recommended for approval by the department of transportation, and provide a recommendation to the King County council, as prescribed by RCW 36.87.060.

K.C.C. 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

King County Code 20.24.070-.080 confers authority to the Examiner over matters for which the Examiner makes: (a) recommendations to the Council, which makes the final determination; (b) a final determination, appealable to the Council; or (c) the final decision for King County, with such decisions appealable to the courts. Distinct matter types within these three main categories are numerous (over eighty), but the majority of the Examiner’s caseload consists of eight to twelve common types. A non-exhaustive list, categorized by decision-making process, follows.

RECOMMENDATIONS TO THE COUNCIL (20.24.070)

Applications for public benefit rating system, assessed valuation on open space land, and current use assessment on timber lands (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

DECISIONS BY THE EXAMINER, APPEALABLE TO THE COUNCIL (20.24.072)

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

Preliminary plats

Plat alterations

FINAL DECISION BY THE EXAMINER (20.24.080)

Development permit fees (K.C.C. 27.24.085):

Permit billing fees

Permit fee estimates

Code compliance enforcement (K.C.C. Title 23 and Board of Health Code 1.08):

Land Use

Public Health

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,

Preliminary determinations under

short plat alterations

K.C.C. 20.20.030(B)

Temporary use permits under

Reasonable use exceptions under

K.C.C. 21A.32

K.C.C. 21A.24.070(B)

Zoning variances

Shoreline substantial development

permits

K.C.C. 20.24.085 Appeals of permit fee estimates and billings by department of development and environmental services - duties.

A. As provided in K.C.C. chapter 27.50, on appeals of permit fee estimates and billings by the department of development and environmental services, the examiner shall receive and examine the available information, conduct public hearings and issue final decisions, including findings and conclusions, based on the issues and evidence.

K.C.C. 20.44.120 Appeals.

A. The administrative appeal of a threshold determination or of the adequacy of a final EIS is a procedural SEPA appeal that is conducted by the hearing examiner under KCC 20.24.080....

NEW CASES

During much of the second half of 2012, a significant portion of our work involved cases that had arrived at our office during earlier reporting periods. As noted above, July was largely devoted to issuing past-due findings and conclusions on earlier-completed hearings. Two of our preliminary plat decisions from the end of the first half of 2012 were appealed to Council in July, requiring a significant time commitment in the second half of 2012, especially since neither the undersigned nor our *pro tem* examiner had handled either case. And we have attempted to winnow down the list of older cases “continued on-call” (that is, cases where the parties had previously requested that we postpone action).

That said, new case filings declined from seventy-one in the first half of 2012 to twenty in the second half. That is likely the result of a long run, an intermediate run, and an sort run trend, namely:

- the permanent, long-term pattern of annexations shrinking the unincorporated areas that produce the overwhelming majority of our cases;
- the cyclical impact of the economic downturn (as permit applications and development plummeted in a down economy, so did the land use matters winding their way through the agencies and later reaching our office); and
- the annual cycle, given that a significant percentage of our new cases in any year are “current use” taxation, and most such applications come in the early part of a calendar year, meaning that for any given year the second half of the year should have fewer new case filings than the first half of the year.

For the above reasons (and if the first two months of 2013 are any indication) we expect the first half of 2013 to see more new cases than the second half of 2012, but not a return to historic levels. Table 1 compares new case filings, by category, for the first and second halves of 2012.

TABLE 1 – NEW CASES	January - June	July - December
NEW CASES REQUIRING A RECOMMENDATIONS TO THE COUNCIL		
Open space and timber lands application	44	6
Zone reclassifications	1	
Totals	45	6
NEW CASES REQUIRING A DECISIONS APPEALABLE TO THE COUNCIL		
Preliminary plat applications	2	1
NEW CASES REQUIRING A FINAL DECISIONS		
Enforcement appeals	22	12
Type 2 land use appeals	2	1
Totals	24	13
Combined totals	71	20

K.C.C. 23.01.010 Code Compliance

A. The purpose of this title is to identify processes and methods to encourage compliance with county laws and regulations that King County has adopted...to promote and protect the general public health, safety and environment of county residents...

B. It is the intention of the county to pursue code compliance actively and vigorously in order to protect the health, safety and welfare of the general public. This county intention is to be pursued in a way that is consistent with adherence to, and respectful of, fundamental constitutional principles.

Figure 1 illustrates the twenty new cases broken down by the categories called out in K.C.C. 20.24.070, .072, and .080.

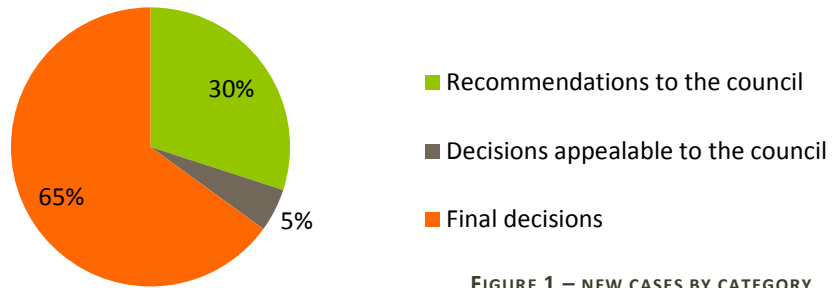


FIGURE 1 – NEW CASES BY CATEGORY

For comparison, Figure 2 details new case data from the previous eight years:

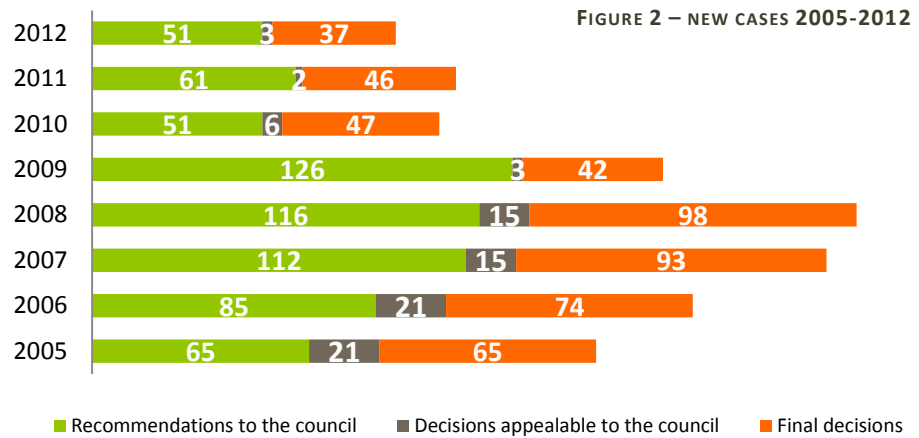


FIGURE 2 – NEW CASES 2005-2012

CASES CARRIED OVER FROM PREVIOUS YEARS

In addition to new matters received during the reporting period, the Examiner’s caseload, as of July 1, 2012, included eighty-four cases carried over from previous reporting periods. Of those, seventy-three were “continued on-call” (discussed above). Table 2 provides detail on cases carried over, listed by year and category.

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
RECOMMENDATIONS TO THE COUNCIL			1						1		
DECISIONS APPEALABLE TO THE COUNCIL						1				1	1
FINAL DECISIONS	1	1	1	2	8	6	14	15	13	14	3
Total=84	1	1	2	2	8	7	14	15	14	15	4

In all, as illustrated in Figure 3, ninety-four percent of cases carried over are administrative appeals that, in lieu of voluntary resolution by the parties, require a final Examiner decision.

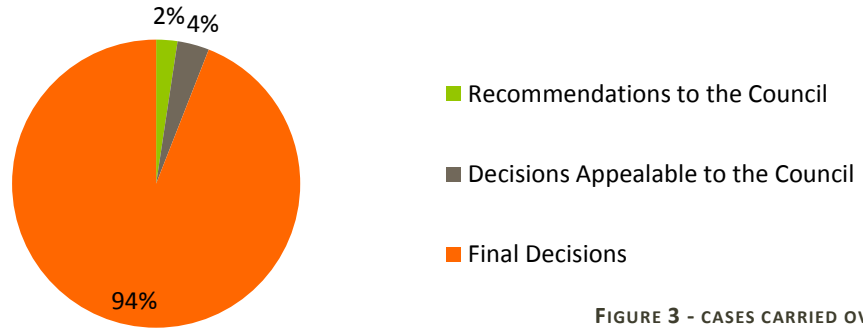


FIGURE 3 - CASES CARRIED OVER FROM PREVIOUS YEARS

K.C.C. 20.24.130 Public hearing

When it is found that an application meets the filing requirements of the responsible county department or an appeal meets the filing rules, it shall be accepted and a date assigned for public hearing. If for any reason testimony on any matter set for public hearing, or being heard, cannot be completed on the date set for such hearing, the matter shall be continued to the soonest available date. A matter should be heard, to the extent practicable, on consecutive days until it is concluded. For purposes of proceedings identified in KCC 20.24.070 and 20.24.072, the public hearing by the examiner shall constitute the hearing by the council.

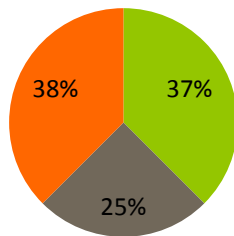
K.C.C. 20.24.145 Pre-hearing conference

A pre-hearing conference may be called by the examiner pursuant to this chapter upon the request of a party, or on the examiner's own motion. A pre-hearing conference shall be held in every appeal brought pursuant to this chapter if timely requested by any party.

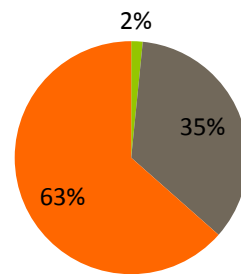
PROCEEDINGS

In our previous biannual report, we attempted, for the first time, to quantify the relationship between hearing length, matter complexity, and time spent writing reports, by introducing a new metric: time spent in hearings. For example, while applications for open space and timber lands accounted for thirty-seven percent of the number of hearings conducted during this reporting period, they represented just *two percent* of the total Examiner hearing time. Conversely, while enforcement appeal hearings accounted for an almost identical thirty-eight percent of the number of hearings, they represented over *sixty percent* of the total Examiner hearing time.

Number of Hearings



Time Spent in Hearings



- Recommendations to the Council
- Decisions Appealable to the Council
- Final Decisions

FIGURE 4 - NUMBER OF HEARINGS VERSUS TIME SPENT IN HEARINGS

Table 3 breaks our hearings down into categories. For each category, we list the number of hearings and the total time spent in hearings. The time an examiner must devote to a particular case often depends strongly on the case category.

K.C.C. 20.24.098 Time limits

In all matters where the examiner holds a hearing on applications under KCC 20.24.070, the hearing shall be completed and the examiner’s written report and recommendations issued within twenty-one days from the date the hearing opens, excluding any time required by the applicant or the department to obtain and provide additional information requested by the hearing examiner and necessary for final action on the application consistent with applicable laws and regulations.

In every appeal heard by the examiner pursuant to KCC 20.24.080, the appeal process, including a written decision, shall be completed within ninety days from the date the examiner’s office is notified of the filing of a notice of appeal pursuant to KCC 20.24.090.

When reasonably required to enable the attendance of all necessary parties at the hearing, or the production of evidence, or to otherwise assure that due process is afforded and the objectives of this chapter are met, these time periods may be extended by the examiner at the examiner’s discretion for an additional thirty days. With the consent of all parties, the time periods may be extended indefinitely. In all such cases, the reason for such deferral shall be stated in the examiner’s recommendation or decision.

As noted in K.C.C. 20.24.070-.080, and above, there are technically three types of final findings and conclusions an examiner issues: (a) recommendations to the Council, (b) final determinations appealable to the Council; and (c) King County’s final decisions. We often refer to these collectively as “decisions.”

TABLE 3 - NUMBER AND LENGTH OF HEARINGS	Number of hearings	Total time spent in hearings
RECOMMENDATIONS TO THE COUNCIL		
Open space and timber lands applications	6	0:15
DECISIONS APPEALABLE TO THE COUNCIL		
Preliminary plat applications	4	5:30
FINAL DECISIONS		
Enforcement appeals	5	4:00
Type 2 land use appeals	1	6:12
Category totals	6	10:12
Combined totals	16	30:42

REPORTS ISSUED

From July-December 2012, the Examiner issued thirty-two reports. Figure 5 illustrates a category-level summary of the recommendations and decisions issued during the reporting period:

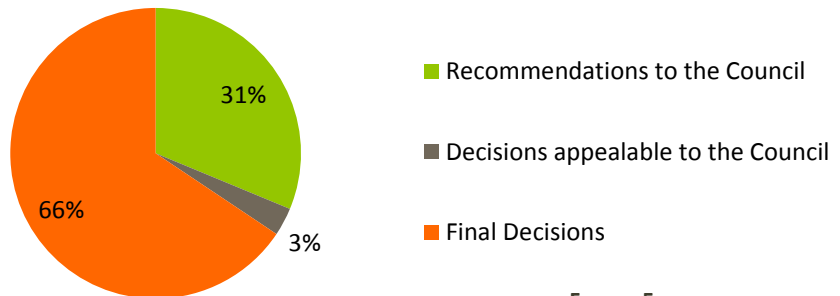


FIGURE 5 – REPORTS ISSUED

COMPLIANCE WITH CODE-MANDATED DEADLINES

Statutory requirements imposing processing-time deadlines articulate the expectation of swift and efficient Examiner processing of certain case matters. The code-established deadlines covered below represent the principal processing-time requirements. After coming on board in June, the first order of business was issuing findings and conclusions for past-completed hearings. By the end of July, we had issued decisions in all such cases, carry-overs from 2011 or the first part of 2012. We thus separate out July, which largely represents past-due decisions, from August-December performance, which more accurately represents current operations. Since the end of July, we have not employed our discretionary ability to extend a deadline for holding a hearing, and we have not missed any deadlines

for issuing findings and conclusions after holding a hearing. That streak will almost certainly end in 2013, as new case filings pick up and we attempt to winnow down the list of older, “continued on-call” cases (discussed above). But we will continue to strive to make deadline misses the rare exception to the rule of strict compliance.

DEADLINES ONE AND TWO

K.C.C. 20.24.098 establishes two distinct case processing deadlines, described separately below. For each category, parties may (and often do) waive the deadline indefinitely. Alternatively, the Examiner may unilaterally extend the applicable deadline for up to thirty days for certain, specified reasons.

DEADLINE ONE—21 DAYS FROM APPLICATION HEARING OPEN TO REPORT

The first deadline relates to matters requiring an Examiner *recommendation* to the Council on an application. For these, the deadline for issuing Examiner reports is twenty-one days after the opening of a hearing. Thus, unlike examiner processing of *appeals* (discussed directly below), there is no time limit for an examiner to open hearings on an *application*, nor does the “appeals shall be processed by the examiner as expeditiously as possible” mandate apply, nor is the twenty-one day deadline even internally consistent. We are working with others in the Council branch to craft some language that would simplify the rules, applying the timelines and “expeditious processing” requirements of Deadline Two (below) to *all* examiner cases, regardless of type, and giving us (and the public) a single, easy-to-follow timeline to set expectations and against which to measure Examiner performance.

Table 4 lists, by type, the number of cases on which we issued a recommendation during the reporting period, as well as time spent (an average of days).

TABLE 4	Number of cases	Hearing open to report (average days)
RECOMMENDATIONS TO THE COUNCIL		
January-June 2012	54	31
July 2012	3	9
August-December 2012	6	11*

Timing computation does not include days required for the parties to submit supplementary materials.

*Where the ten day time period for issuing a decision after completing a hearing falls on a weekend or a holiday, the report due date is the following business day. Thus, although we issued all decisions during August-December within the ten day window, our average decision time, in straight calendar days, was eleven.

Figure 6 summarizes the frequency of use of Examiner discretion to extend Deadline One during the two reporting periods.

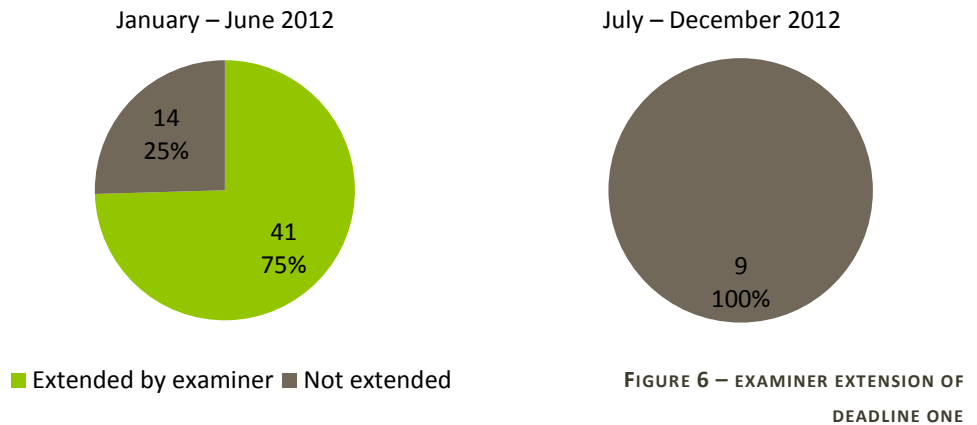
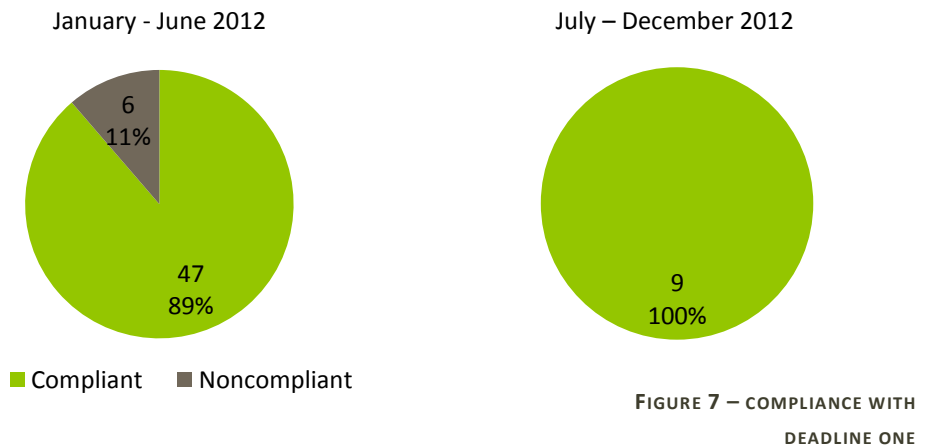


Figure 7 summarizes Examiner compliance with Deadline One for the two reporting periods of 2012.



DEADLINE TWO—90 DAYS FROM APPEAL TRANSMITTAL TO REPORT

The second deadline relates to all matters on which the Examiner acts as the *final decision-maker*. For these, the deadline for issuing Examiner decisions is ninety days from the date of *appeal transmittal*.

Table 5 lists by type the number of cases for which the Examiner issues a decision during the reporting period, as well as time spent (an average of days) for the three relevant periods.

TABLE 5 – APPEAL TRANSMITTAL TO REPORT AVERAGES	Number of cases	Appeal transmittal to report (average days)
FINAL DECISIONS		
January-June 2012	14	75
July 2012	3	135
August-December 2012	5	59

Figure 8 summarizes the frequency of Examiner use of discretion to extend Deadline Two over the three relevant periods.

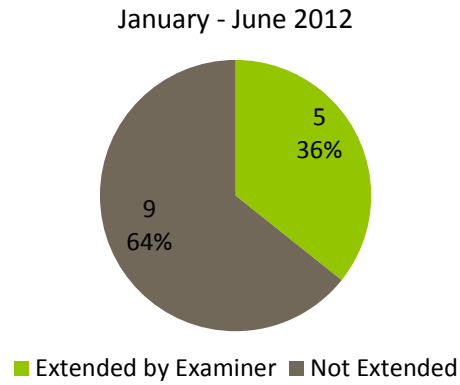


FIGURE 8 – COMPLIANCE WITH DEADLINE ONE

August - December 2012

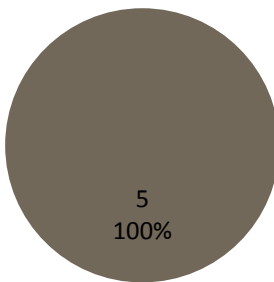


Figure 9 summarizes Examiner compliance with Deadline Two for each relevant period.

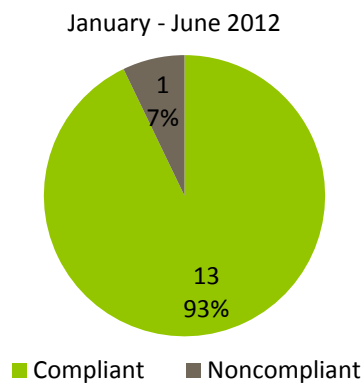
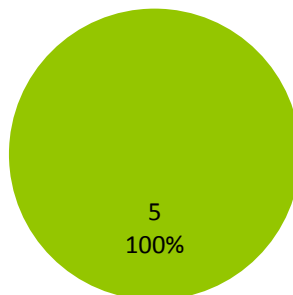


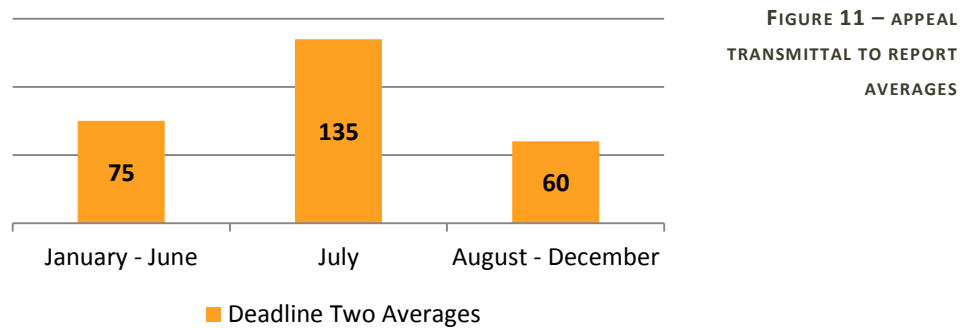
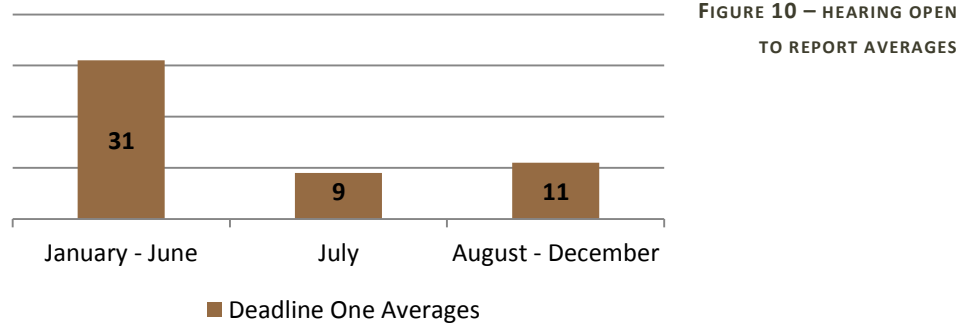
FIGURE 9 – COMPLIANCE WITH DEADLINE TWO

August - December 2012



COMPLIANCE WITH DEADLINES ONE AND TWO—COMPARISON

Figure 10 and Figure 11 illustrate the average number of days, pursuant to deadlines One and Two above (twenty-one days from hearing open or ninety days from appeal transmittal) to complete hearings and issue reports during the three relevant periods.



DEADLINE THREE

Finally, for both Deadline One and Deadline Two cases, K.C.C. 20.24.210(A) requires findings and conclusions issued no later than ten days following the *conclusion of a hearing*.

Table 6 provides data, organized by category, on the number of cases for which the Examiner issued a decision or recommendation during the reporting period, as well as the average time from hearing close to report issuance, for the three relevant periods.

TABLE 6 Number of cases Hearing close to report (average days)

RECOMMENDATIONS TO THE COUNCIL

January through June 2012	56	30
July 2012	4	9
August through December 2012	6	10

APPEALABLE TO THE COUNCIL

January through June 2012	3	15
July 2012	-	-
August through December 2012	1	7

FINAL DECISIONS

January through June 2012	31	46
July 2012	7	147
August through December 2012	14	7

Figure 12 provides category-level summary data on the average time (in days) that elapsed from hearing close to report issuance for the three relevant periods:

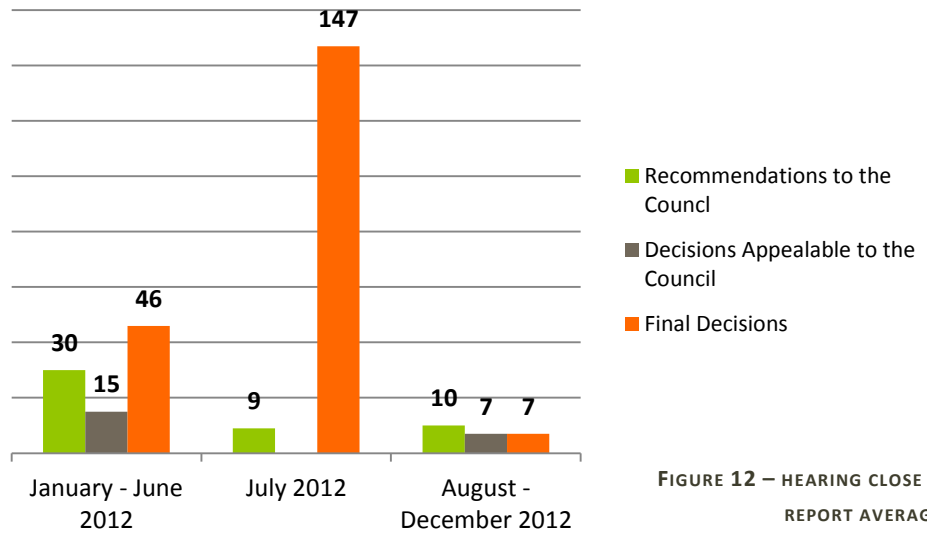


FIGURE 12 – HEARING CLOSE TO REPORT AVERAGES

Figure 13 illustrates the Examiner’s compliance, for the three relevant periods, with the ten-day, report issuance deadlines established in K.C.C. 20.24.210(A),

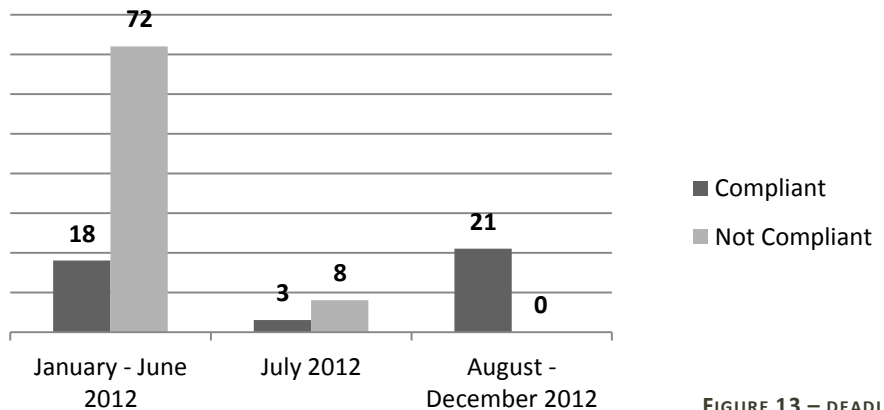


FIGURE 13 – DEADLINE COMPLIANCE

KING COUNTY CODE 20.24 AND THE EXAMINER RULES OF PROCEDURE AND MEDIATION

As promised in our previous semi-annual report, we set to work in the July-December period to bring into the modern era our 1995 Examiner Rules of Procedure and Rules of Mediation. It became apparent that our Rules update could be better crafted if there were an updated K.C.C. 20.24 to serve as the amended Rules' starting point (as the Rules must follow from the Code).

To that end, we have internally completed a draft Rules re-write, and we are working with a team from the Council to come up with draft language related to K.C.C. 20.24. Although final decisions on the timing of the amendment process and content of any such changes is the Council's, we anticipate a proposal related to K.C.C. 20.24 by the time of our next semi-annual report (September 1, 2013).

MODERNIZING EXAMINER PRACTICE

As noted in our previous report, during the current period we continued working to modernize our practice. For example, to avoid the otherwise large increase in office travel costs (both in terms of mileage and FTE lost in transit) corresponding to the Department of Permitting and Environmental Review's (DPER's) relocation to Snoqualmie, we worked with Council IT and DPER to procure the necessary equipment to allow an Examiner to conduct certain preliminary proceedings via videoconference from our offices; early results are promising. And we reworked document templates for compatibility and functionality, streamlined the transfer of data from our case management system, and continued to migrate a backlog of inactive (but still open) cases from our old filing system.

For other initiatives like "e-filing" and "client portal" webpages that would potentially allow participants to electronically file documents and review case materials in real time, we have continued to move forward. However, finalizing any such changes will need to be incorporated into an amended Examiner's Rules of Procedure. And, as discussed above, such changes to the Rules would themselves require, or at least strongly benefit from, adjustments to K.C.C. 20.24. For example, in an electronic era what should qualify as "serving" or "filing" a document or providing "notice" of a proceeding? Obtaining Code and then Rule clarity are necessary predicates to finalizing any modernizing efforts. We will continue to explore the technical side, but changes to official practice will largely need to await completion of the Code and Rule revisions discussed above.

MANAGEMENT UPGRADES

K.C.C. 20.24.170 (A)(2)

Rules and conduct of hearings.

The hearing examiner may propose amendments to the rules by filing a draft of the amendments and a draft of a motion approving the amendments in the office of the clerk of the council, for distribution to all councilmembers for review. At the same time as the filing of the draft, the hearing examiner shall also distribute for comment a copy of the proposed amendments to any county department that has appeared before the examiner in the year before the filing of proposed amendments and to any other parties who have requested to be notified of proposed amendments to the rules. Comments to the proposed amendments may be filed with the clerk of the council for distribution to all councilmembers for sixty days after the proposed amendments are distributed for comment. The amendments shall take effect when they have been approved by the council by motion.

Our office is committed to furthering the goals of Equity and Social Justice, and as such have been actively engaged in the work of the Legislative Branch ESJ Team. Over the next year we intend to continue promoting ESJ principles by formalizing ESJ goals and targets and developing action plans to accomplish them.

We applaud the Council's adoption of a new employee evaluation system, and are pleased to begin the work necessary to establish a culture of professional development and accountability.

Strategic plan implementation is a critical component to an efficient and effective King County. Over the coming year we intend to fully incorporate the goals and principles of the Strategic plan into our management plan.

Submitted March 1, 2013.



David Spohr, Interim Deputy Hearing Examiner