



King County

SEMI-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, Hearing Examiner
August 28, 2014

JANUARY - JUNE 2014

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SEMI-ANNUAL REPORT OFFICE OF THE KING COUNTY HEARING EXAMINER

JANUARY – JULY 2014

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 land use applications and appeals of many county administrative decisions, issue formal decisions, and make recommendations to the Council.

Twice a year we report to Council on Examiner operations; this report covers January through June 2014. We begin by explaining and reviewing specific Examiner jurisdictions. We then apply these groupings to the current period, analyzing Examiner workload and compliance with the various code deadlines. Throughout, we compare the current reporting period to previous periods. Finally, we close by describing our office initiatives.

Because of our work in 2013 to more actively manage our docket and to attack our list of old cases, we only carried thirty-eight cases into 2014 (as opposed to the eighty-three we carried over into 2013). One notable change illustrating our more active approach has been a substantial increase in status conferences during this reporting period. As to new cases arriving at the Examiner's Office, our filings were up significantly from the latter half of 2013 and up slightly from the first half of 2013. In terms of processing these new cases, we were 100% compliant with each of our various deadlines.

Finally, this spring the Examiner's Office moved out of the Courthouse and into the Yesler Building. The move took time and energy. However, with a concerted effort the last two years to digitally catalogue and archive over forty banker's boxes of case records reaching back to the 1970s, the move was more streamlined than previous Office moves. If nothing else, we had far less to move than the last time we relocated.

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.

20.24.010 Chapter purpose

The purpose of [the Hearing Examiner code] 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.

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.

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.

....

20.24.070 Recommendations to the council.

A. The examiner shall receive and examine available information, conduct open record public hearings and prepare records and reports thereof and issue recommendations, including findings and conclusions to the council based on the issues and evidence in the record in the following cases:

....

20.24.072 Type 3 decisions by the examiner, appealable to the council.

A. The examiner shall ... issue decisions on [plat-related] land use permit applications.... appealable to the Council on the record established by the examiner as provided by K.C.C. 20.24.210D.

....

20.24.080 Final decisions by the examiner.

A. The examiner shall issue final decisions ... which shall be appealable as provided by K.C.C. 20.24.240, or to other designated authority in the following cases:

....

EXAMINER JURISDICTION

There are two main avenues by which matters reach the Examiner. In certain situations the Examiner acts in an appellate capacity, hearing an appeal by a party not satisfied with an agency action. Elsewhere, 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 a recommendation to the Council, a decision appealable to the Council, or the County’s final decision. As to subject matter, the Examiner has jurisdiction over eighty distinct matters, in as disparate arenas as electric vehicle recharging station penalties (K.C.C. 4A.700), discrimination and equal employment opportunity in employment (K.C.C. 12.16), and open housing (K.C.C. 12.20). But the Examiner’s caseload mainly consists of a several common land use types. A non-exhaustive list, categorized by decision-making process, follows.

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

EXAMINER DECISIONS, APPEALABLE TO THE COUNCIL (K.C.C. 20.24.072)

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

- Preliminary plat
- Plat alterations

EXAMINER FINAL DECISIONS (K.C.C. 20.24.080)

Code compliance enforcement (Title 23):

- 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 revision/alterations
- Preliminary determinations
- Temporary use permits
- Reasonable use exceptions
- Zoning variances
- Shoreline substantial development permits

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

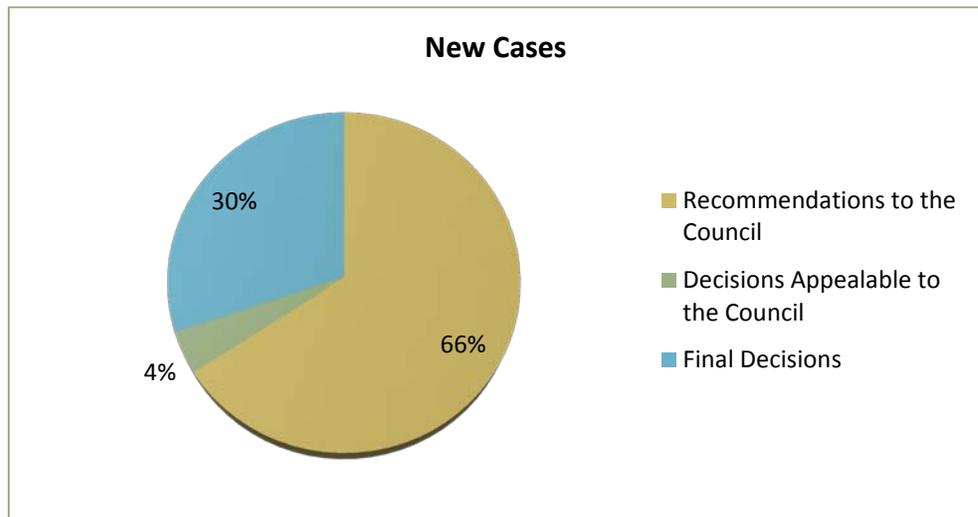
- Permit billing fees
- Fee estimates

NEW CASES

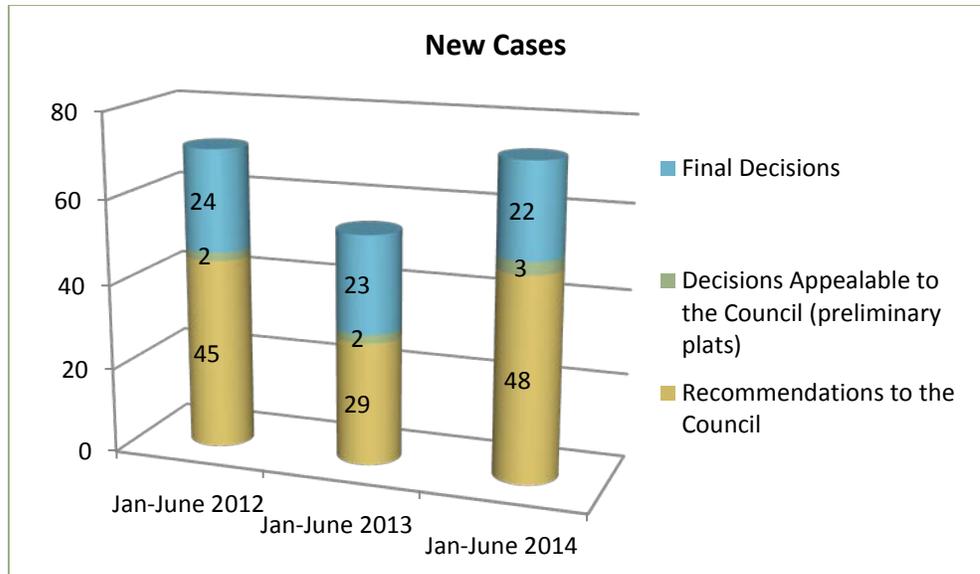
During the first half of 2014, we received 73 new cases, consisting of:

NEW CASES	JANUARY - JUNE 2014	Number of Cases
RECOMMENDATIONS TO THE COUNCIL		
	Open space and Timber lands	47
	Road vacations	1
DECISIONS APPEALABLE TO THE COUNCIL		
	Preliminary plats	3
FINAL DECISIONS		
	Code enforcement	17
	Land use	4
	Other	1
	TOTAL	73

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

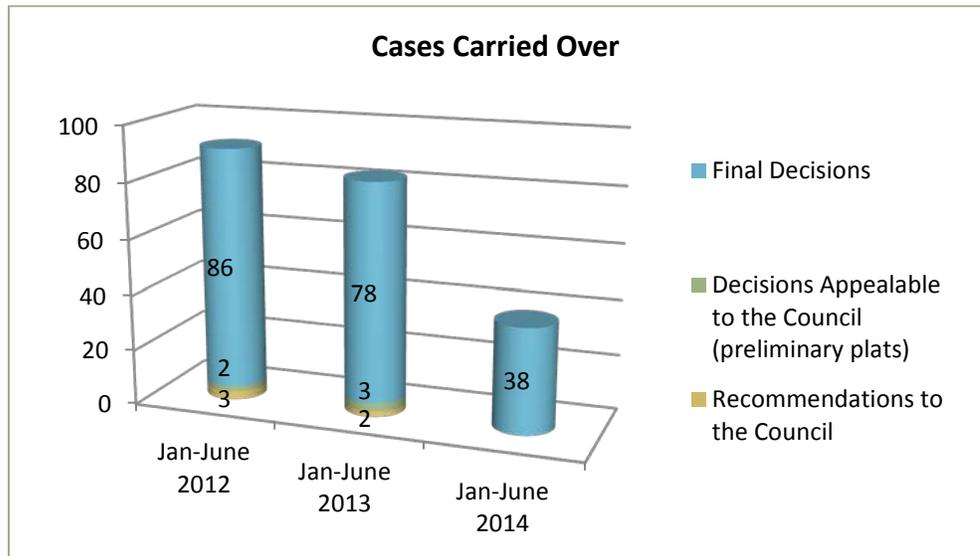


These 73 cases were a sharp increase from the 43 new cases we received in the last reporting period (July-December 2013). However, that is not the most apples-to-apples caseload comparison. As noted in previous semi-annual reports, because a significant percentage of our new cases in any year are “current use” taxation cases, and because most such applications come in the early part of any calendar year, first half Examiner numbers will typically be higher than second half numbers. Still, comparing the first half of 2014 to the first halves of 2012 and 2013, there is a substantial increase from 2013 and a slight increase from 2012.



CASES CARRIED OVER FROM PREVIOUS YEARS

A primary goal for 2013 was reducing the number of cases carried over from previous years. The majority of the cases we brought into 2013 were “continued on-call” cases (*i.e.*, cases where an Examiner grants the parties’ joint request to postpone a hearing while the parties attempt to reach a consensual solution). Many had been continued on-call for several years without any recent Examiner activity. By 2013’s end, we worked through the entire list, closing some cases, scheduling hearings for others, and (for those matters where we convened a proceeding and freshly determined that “on-call” status was appropriate) scheduling periodic status conferences. This has helped considerably, as illustrated by the thirty-eight cases we carried over into 2014, as compared to the eighty-three cases we carried over into 2013.



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 K.C.C. 20.24.070 and 20.24.072, the public hearing by the examiner shall constitute the hearing by the council.

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.

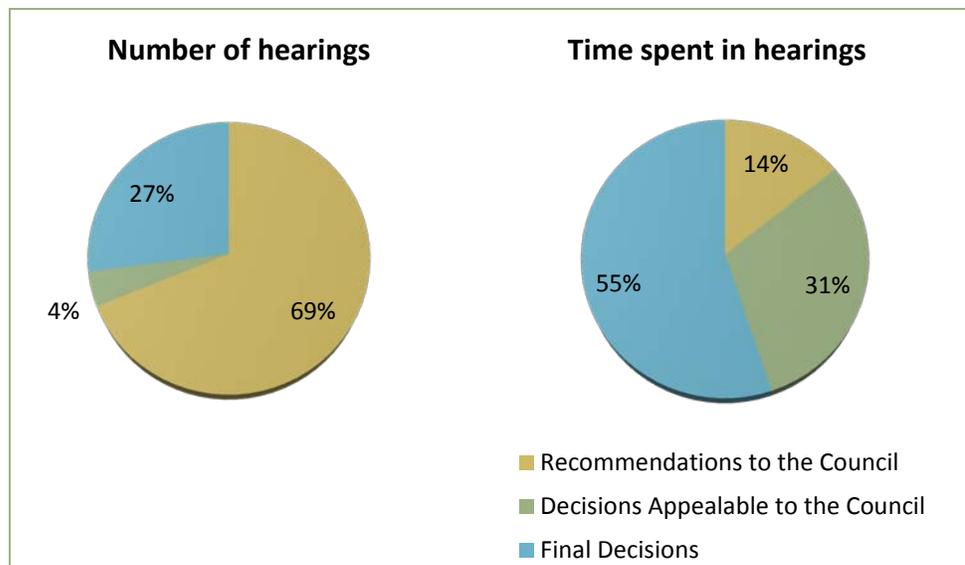
...

CASES	2005	2006	2007	2008	2009	2010	2011	2012	2013
FINAL DECISIONS									
Continued on-call	1	2	1	8	5	4	3	4	8
Appealed to Superior Court			1				1		
TOTAL=38									

PROCEEDINGS

We attempt to extend a high level of service to all our participants. After all, even where a matter raises no novel legal issue or has little impact beyond the parties, it is still crucially important to those parties. But not all types of cases require the same level of Examiner involvement. For example, the cumulative length of our two preliminary plat hearings exceeded the cumulative length of our thirty-two current use taxation cases.

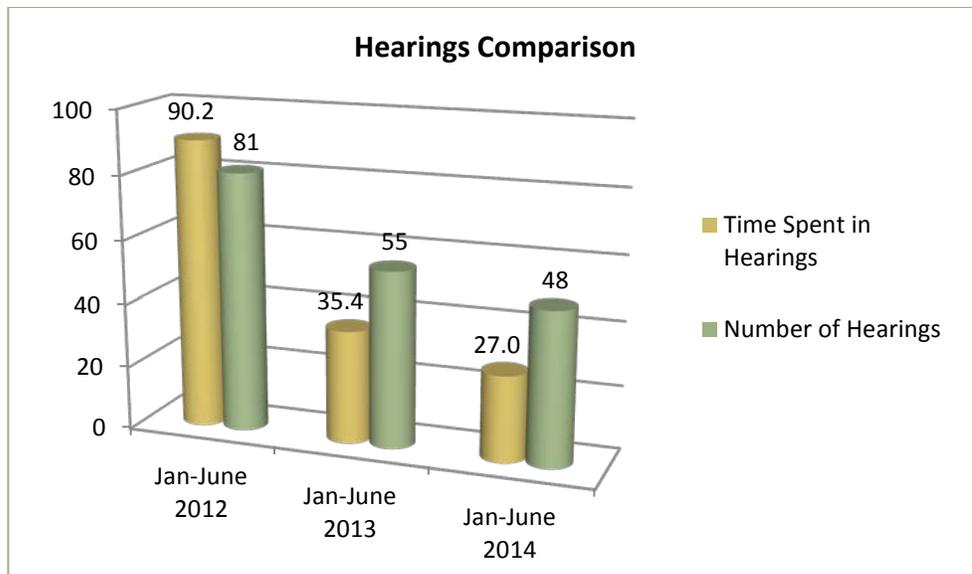
Number of Hearings	January – June 2014	Number of hearings	Cumulative length of time
RECOMMENDATIONS TO THE COUNCIL			
Open space and Timber lands taxation		32	3:04
Rezone		1	0:47
DECISIONS APPEALABLE TO THE COUNCIL			
	Preliminary plats	2	8:17
FINAL DECISIONS			
	Code enforcement	13	14:53
	TOTAL	48	27:01



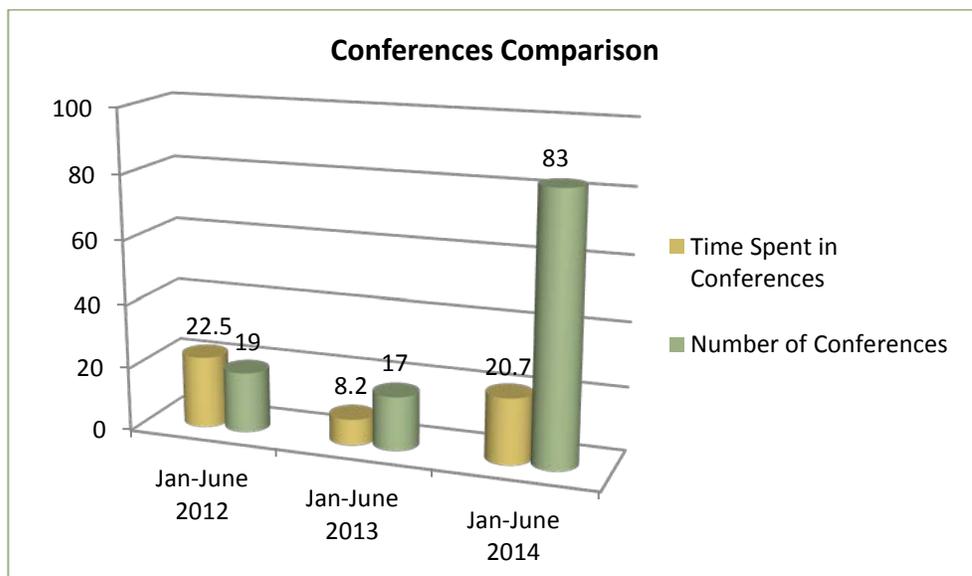
20.24.175 Case management techniques.

In all matters heard by the examiner, the examiner shall use case management techniques to the extent reasonable including:

- A. Limiting testimony and argument to relevant issues and to matters identified in the pre-hearing order;
- B. Pre-hearing identification and submission of exhibits (if applicable);
- C. Stipulated testimony or facts;
- D. Pre-hearing dispositive motions (if applicable);
- E. Use of pro tempore examiners;
- F. Voluntary mediation and complainant appeal mediation; and
- G. Other methods to promote efficiency and to avoid delay.



As previously discussed, one of our main policy shifts after assuming the Examiner role has been to hold periodic status conference calls in every case “continued on-call.” This ensures we stay on top of cases and keep parties’ feet to the fire. And our working hypothesis is that having periodic conferences may slightly reduce the number of new cases that eventually require an adversarial hearing, as we may be able to informally address conflicts before discussions between the parties breakdown to the point that one party requests a full hearing. It also means we schedule and hold more conferences, albeit typically brief ones.



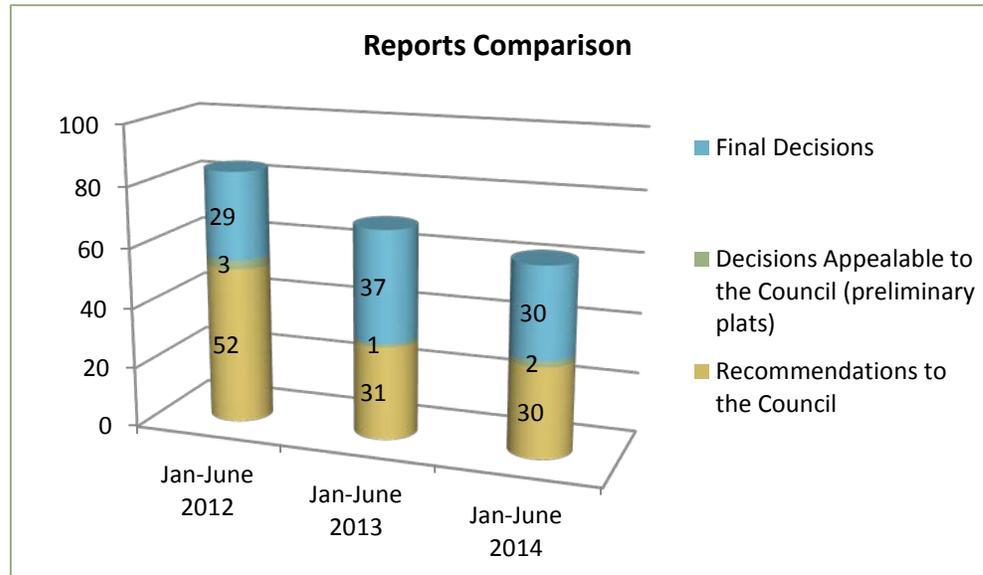
20.24.180 Examiner findings.

When the examiner renders a decision or recommendation, he or she shall make and enter findings of fact and conclusions from the record which support the decision and the findings and conclusions shall set forth and demonstrate the manner in which the decision or recommendation is consistent with, carries out and helps implement applicable state laws and regulations and the regulations, policies, objectives and goals of the comprehensive plan, subarea or community plans, the zoning code, the land segregation code and other official laws, policies and objectives of King County, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

REPORTS ISSUED

From January through June, 2014, the Examiner issued sixty-two reports. Among the most interesting involved appeals of health department violation notices issued to two hookah lounges. After public hearings, we found that the department had proven “smoking” in both lounges. We then turned to the complex questions of whether the lounges were “public places” or “places of employment.” We traced the legal evolution of smoking prohibitions, including a state supreme court decision, a statewide voter initiative, and a recent local health code rule. We analyzed the pertinent health code and an extensive body of case law about what makes an entity “private” versus “public.” Applying the various elements of the several tests, especially the selectivity of organization membership our high court emphasizes, we concluded that neither club had the selective, restrictive conditions of limited membership required to avoid the “public place” label. As that was sufficient to uphold the department and deny the appeals, we did not conclusively resolve the “place of employment” issue, but offered, as a potential guide, some analysis on the “employment” topic.

The following figure illustrates recommendations and decisions issued during the last four reporting periods:



COMPLIANCE WITH CODE-MANDATED DEADLINES

Statutory requirements impose processing-time deadlines for swift and efficient Examiner processing of certain case matters. The code-established deadlines covered below represent our principal time requirements. We were complaint with all deadlines in each and every case.

20.24.098 Time limits

In all matters where the examiner holds a hearing on applications under K.C.C. 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 K.C.C. 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 K.C.C. 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. Failure to complete the hearing process within the stated time shall not terminate the jurisdiction of the examiner.

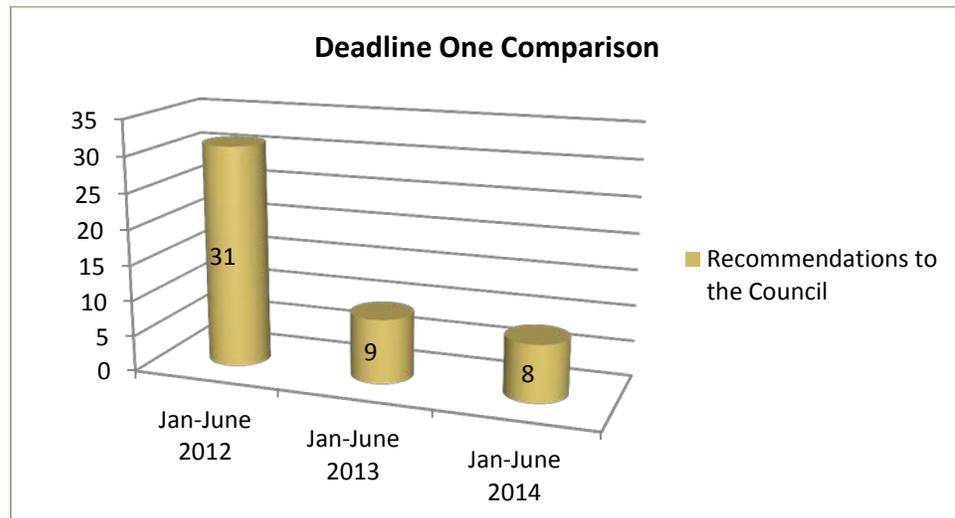
DEADLINES ONE AND TWO

K.C.C. 20.24.098 establishes two distinct processing deadlines, described separately below. The Examiner may unilaterally extend either deadline for up to thirty days. We strive to keep Examiner-initiated extensions to a minimum. During this reporting period, the Examiner instituted zero deadline extensions.

DEADLINE ONE—21 DAYS FROM APPLICATION HEARING OPEN TO REPORT

For Examiner recommendations to the Council on an application (such as for “open space” taxation cases), the deadline for issuing Examiner reports is twenty-one days after a hearing opens. We were compliant in each instance, reducing our average time by one day from early 2013 and by twenty-three days from early 2012.

REPORT DEADLINE 1—21 DAYS FROM HEARING OPEN TO REPORT: AVERAGES AND COMPLIANCE	Average days	Percent Compliant
RECOMMENDATIONS TO THE COUNCIL		
Open space and Timber lands	8	100%
Road vacation	7	100%
TOTAL	8	100%



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 (such as for code enforcement appeals). For these, the deadline for issuing Examiner decisions is ninety days from the date of appeal transmittal. We met this deadline in every instance, averaging fifty-four days from receipt to decision. That represents a four day increase from early 2013 but a twenty-one day decrease from early 2012.

20.24.097 Expeditious processing.

A. Hearings shall be scheduled by the examiner to ensure that final decisions are issued within the time periods provided in K.C.C. 20.20.100....

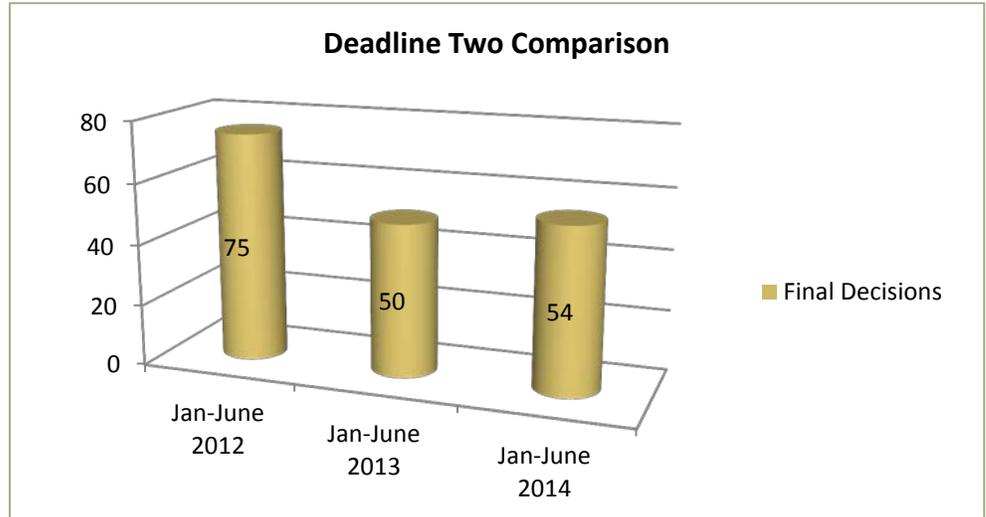
B. Appeals shall be processed by the examiner as expeditiously as possible, giving appropriate consideration to the procedural due process rights of the parties. Unless a longer period is agreed to by the parties, or the examiner determines that the size and scope of the project is so compelling that a longer period is required, a pre-hearing conference or a public hearing shall occur within forty-five days from the date the office of the hearing examiner is notified that a complete statement of appeal has been filed. In such cases where the examiner has determined that the size and scope warrant such an extension, the reason for the deferral shall be stated in the examiner's recommendation or decision. The time period may be extended by the examiner at the examiner's discretion for not more than thirty days.

20.24.210 Written recommendation or decision

A. Within ten days of the conclusion of a hearing or rehearing, the examiner shall render a written recommendation or decision and shall transmit a copy thereof to all persons of record. The examiner's decision shall identify the applicant and/or the owner by name and address.

....

REPORT DEADLINE 2—90 DAYS FROM CASE OPEN TO REPORT: AVERAGES AND COMPLIANCE	Average days	Percent Compliant
FINAL DECISIONS		
Code enforcement	54	100%
TOTAL	54	100%



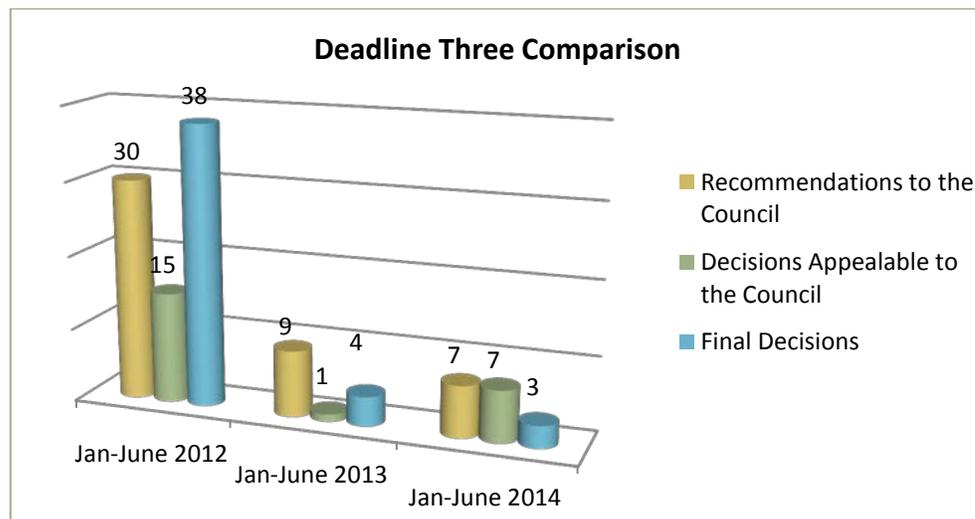
DEADLINE THREE—10 DAYS FROM HEARING CLOSE TO REPORT

The third deadline relates to all types of hearings, requiring the Examiner to issue findings and conclusions no later than ten calendar days following a hearing's conclusion. We were compliant with every decision we issued this period.

REPORT DEADLINE 3—10 DAYS FROM HEARING CLOSE TO REPORT: AVERAGES AND COMPLIANCE	Average days	Percent compliant
RECOMMENDATIONS TO THE COUNCIL		
Open space and Timber lands	8	100%
Road vacation	1	100%
DECISIONS APPEALABLE TO THE COUNCIL		
Preliminary plats	7	100%
FINAL DECISIONS		
Code enforcement	3	100%
Land use	1	100%
TOTAL	100%	

As illustrated in the below chart, our hearing conclusion-to-report time increased slightly (from early 2013) in two of the three categories, and decreased in the

third. Our early 2014 times still represented a significant decrease from early 2012.



OFFICE INITIATIVES

SUGGESTED “GRADING” DEFINITION CLARIFICATION

The Examiner is instructed to use the semi-annual report to identify needed clarifications to county rules. Here we note one definitional issue not warranting its own ordinance but perhaps worthy of consideration the next time the zoning code (K.C.C. Title 21A) or the grading code (K.C.C. chapter 16.82) is updated.

The zoning code, which houses the critical areas chapter (K.C.C. 21A.24), employs a definition of “grading” as “any excavation, filling, removing the duff layer or any combination thereof.” K.C.C. 21A.06.565. Conversely, the grading code defines “grading” as any “excavating, filling or land-disturbing activity, or combination thereof.” K.C.C. 16.82.020(O).

Comparing those two definitions, the excavating, filling, and combination elements are constant. The difference is the third item, the zoning code’s “removing the duff layer” versus the grading code’s “land disturbing activity.” The grading code elsewhere defines “land disturbing activity” expansively as “an activity that results in a change in the existing soil cover, both vegetative and nonvegetative, or to the existing soil topography.” K.C.C. 16.82.020(Q). Thus the grading code’s definition of “grading” is broader than the zoning code’s definition: all “removing the duff layer” is “land disturbing activity,” but not all “land disturbing activity” entails “removing the duff layer.”

We take no position on the policy choice of the appropriate “grading” trigger. However, as the critical areas chapter (K.C.C. chapter 21A.24) looks within the zoning code for its definitions, and given the normally heightened restrictions

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that apply to critical areas (as opposed to non-critical areas), it does not seem intentional that the rules would be more restrictive in general than they would be when applied specifically to critical areas.

The Council may wish to consider this issue the next time it takes up the grading code or the zoning code.

OFFICE MOVE

This spring, to accommodate Council space needs, the Examiner moved two blocks from the County Courthouse and into the Yesler Building. The move, as all moves, was somewhat disruptive, but not as much as Examiner's Office moves have been in the past. That is in part because for the past two years Examiner's Office staff worked through case records reaching back to the 1970s, combined (and condensed) our on-site records with off-site records, digitally catalogued the resulting compilation, and archived over forty banker's boxes of materials. Thus, although the move took time and effort, it was more streamlined than previous Examiner moves.

EXAMINER CODE RE-WRITE

Our recent efforts to improve Examiner operations began with our re-draft of our 1995-era Examiner Rules of Procedures, expanded to a work group of Council staff attempting to craft a proposal to thoroughly revise the Examiner Code (K.C.C. chapter 20.24), and has enlarged somewhat to encompass the myriad of other codes that reference or impact Examiner operations. This work continued this reporting period. Although we do not control the timing, we are hopeful for a proposal to disseminate before the end of the year.

CONCLUSION

We began 2014 in better position than we began previous reporting periods, and we stayed on target. We look forward to continuing our rewarding and (we hope) valuable work. Our semi-annual report for the second half of 2014 will be presented on or before March 1, 2015.

Submitted August 28, 2014,



David Spohr, Hearing Examiner